

**REPORT
OF THE SPECIAL COMMITTEE
ON ENHANCING
THE EFFECTIVENESS OF THE PRINCIPLE
OF NON-USE OF FORCE
IN INTERNATIONAL RELATIONS**

GENERAL ASSEMBLY

OFFICIAL RECORDS: FORTY-FIRST SESSION

SUPPLEMENT No. 41 (A/41/41)



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New York, 1986

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.

[13 March 1986]

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I. INTRODUCTION

1. At its 112th plenary meeting, on 11 December 1985, the General Assembly, on the recommendation of the Sixth Committee, 1/ adopted resolution 40/70 entitled "Report of the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations", which read as follows:

"The General Assembly,

"Recalling its resolution 31/9 of 8 November 1976, in which it invited Member States to examine further the draft World Treaty on the Non-Use of Force in International Relations 2/ as well as other proposals made during the consideration of the item,

"Recalling also its resolution 32/150 of 19 December 1977, by which it established the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations,

"Recalling, in particular, its resolutions 33/96 of 16 December 1978, 34/13 of 9 November 1979, 35/50 of 4 December 1980, 36/31 of 13 November 1981, 37/105 of 16 December 1982, 38/133 of 19 December 1983 and 39/81 of 13 December 1984, in which it decided that the Special Committee should continue its work,

"Taking note of the statements made by the Chairmen of the Special Committee at its sessions in 1983, 3/ 1984, 4/ and 1985, 5/ based on the informal working paper presented by the Chairman of the Special Committee at its session in 1982, 6/

"Having considered the report of the Special Committee on the work of the session it held in 1985, 7/

"Taking into account that the Special Committee has not completed the mandate entrusted to it,

"Reaffirming the need for effectiveness in the universal application of the principle of non-use of force in international relations and for assistance by the United Nations in this endeavour,

"Taking into account the suggestions of States made during the consideration of the report of the Special Committee on the reparation at the present stage of a declaration on the non-use of force in international relations,

"1. Takes note of the report of the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations,

"2. Decides that the Special Committee shall continue its work with the goal of drafting a world treaty on the non-use of force in international relations and, at the earliest possible date, as an intermediate stage, a declaration on the non-use of force in international relations, as well as the peaceful settlement of disputes or such other recommendations as the Committee deems appropriate;

"3. Invites the Special Committee, in drafting the declaration, to take into consideration the results of work done in the preparation of the working paper containing the main elements of the principle of non-use of force in international relations, as well as the suggestions submitted to it and the efforts undertaken at its previous sessions;

"4. Invites Governments to communicate their comments or suggestions on the question considered by the Special Committee;

"5. Requests the Special Committee to be mindful of the importance of reaching general agreement whenever it has significance for the outcome of its work;

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

"7. Requests the Special Committee to concentrate its work in the framework of its working group;

"8. Requests the Secretary-General to provide the Special Committee with the necessary facilities and services;

"9. Invites the Special Committee to submit a report on its work to the General Assembly at its forty-first session, containing, inter alia, the concrete results achieved through the discussion of the elements referred to in paragraph 3 above;

"10. Decides to include in the provisional agenda of its forty-first session the item entitled "Report of the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations."

2. The membership of the Special Committee as appointed by the President of the General Assembly and taking into account the rotation system described in documents A/32/500, annex III, A/35/762, A/38/778, A/39/849 and A/40/1020 is as follows:

Argentina*	Guinea	Romania
Belgium	Hungary	Senegal
Benin	India	Somalia
Brazil*	Iraq	Spain
Bulgaria	Italy	Togo
Chile*	Japan	Turkey
Cyprus	Mongolia	Uganda
Egypt	Morocco	Union of Soviet Socialist
Finland	Nepal	Republics
France	Nicaragua	United Kingdom of Great
Germany, Federal	Panama	Britain and Northern Ireland
Republic of	Peru	United States of America
Greece	Poland	

* Argentina, Brazil and Chile replaced Cuba, Ecuador and Mexico, which were members in 1985 (see A/32/500, annex III, A/35/762, A/38/778, A/39/849 and A/40/1020).

3. The Special Committee met at United Nations Headquarters from 20 January to 13 February 1986. 8/

4. The session was opened on behalf of the Secretary-General by Mr. Carl-August Fleischhauer, Under-Secretary-General, the Legal Counsel, who represented the Secretary-General at the session.

5. Mr. Georgiy Kalinkin, Director of the Codification Division of the Office of Legal Affairs, acted as Secretary of the Special Committee and its Working Group. Miss Jacqueline Dauchy, Deputy Director for Research and Studies (Codification Division, Office of Legal Affairs), acted as Deputy Secretary to the Special Committee and its Working Group. Mr. Andrzej Makarewicz, Mr. Manuel Rama-Montaldo and Mr. Boris Grigoriev, Legal Officers, acted as Assistant Secretaries to the Special Committee and its Working Group.

6. At its 124th meeting, on 22 January 1986, the Special Committee unanimously elected the following officers:

Chairman: Mr. Gyula Szelei-Kiss (Hungary)

Vice-Chairmen: Mr. Maged Abdel Khalik (Egypt)
Mrs. Flora L. Noriega (Panama)
Mr. Hari Bhakta Joshi (Nepal)

Rapporteur: Mr. José María Castroviejo (Spain)

7. At its 124th meeting, on 22 January 1986, the Special Committee adopted the following agenda:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.
5. Consideration, pursuant to paragraph 2 of General Assembly resolution 32/150, paragraph 2 of resolution 33/96, paragraph 2 of resolution 34/13, paragraphs 2 and 3 of resolution 35/50, paragraphs 2 and 3 of resolution 36/31, paragraphs 2 and 3 of resolution 37/105, paragraphs 2 and 3 of resolution 38/133, paragraphs 2 and 3 of resolution 39/81 and paragraphs 2 and 3 of resolution 40/70, of proposals and suggestions which are before the Special Committee.
6. Adoption of the report.

8. At the same meeting, the attention of the Special Committee was drawn to the requests for observer status received from the Permanent Missions to the United Nations of Algeria, Czechoslovakia, the German Democratic Republic, Honduras, the Lao People's Democratic Republic, Mexico, Oman, Suriname, the Syrian Arab Republic, Venezuela, Viet Nam and Yugoslavia. In accordance with General Assembly resolution 40/70, the Committee agreed to accept as observers any State Member of the United Nations which so requested. It therefore decided to grant the above-mentioned requests. The Committee took similar decisions at its 125th, 128th and

129th meetings, held on 23 and 30 January and on 5 February 1986, in relation to requests for observer status which had been received from the Permanent Missions to the United Nations of Cape Verde, Cuba, the Libyan Arab Jamahiriya and Tunisia.

9. At its 124th and 128th meetings and further to suggestions from a number of delegations that it was necessary to reduce the Committee's financial implications, the Special Committee, on the proposal of the officers of the Committee, reached the following understanding with respect to the organization of its work:

"The Special Committee will have four meetings (23, 24, 27 and 30 January) available to it for a brief general exchange of views. The list of speakers will be closed by Monday, 27 January.

"The Working Group will be reconstituted, with the officers of the Committee serving in their capacities as the officers of the Working Group. It will hold 11 meetings, starting on Tuesday, 28 January, and ending on Friday, 7 February. The last of these meetings will be devoted to an evaluation of the work done in the framework of the Working Group.

"The report, which should not exceed 32 pages in the original language, will be prepared in stages. It will be available in all languages on Wednesday, 12 February. Four meetings (13 and 14 February) will be reserved for the consideration and adoption of the report."

10. The Special Committee devoted its 125th, 126th, 127th and 128th meetings, between 23 and 30 January, to a general exchange of views in which the representatives of the following States took part: Union of Soviet Socialist Republics, Mongolia, Brazil, United States of America, United Kingdom of Great Britain and Northern Ireland, Japan, Poland, Romania, Chile, France, Belgium, Bulgaria, Greece and Germany, Federal Republic of. In accordance with the decision reflected in paragraph 8 above the observers for Czechoslovakia, the German Democratic Republic and Cuba made statements with the consent of the Committee.

11. A group of delegations, through a statement made by one delegation on its behalf, indicated that it had not participated in the general exchange of views because, in its opinion, such a general exchange of views would not contribute to the work of the Special Committee since it would only prompt a repetition of opinions already expressed in previous years and take up a considerable amount of the time and resources available. According to the view of that group, it was more conducive to the progress of the Special Committee and more in accordance with its mandate to concentrate efforts in the Working Group. Consequently, those delegations did not participate in the general exchange of views.

12. Between 28 January and 13 February 1986, the Working Group held 13 meetings, of which two were devoted to the consideration and adoption of its report.

13. The Committee had before it the documents referred to in paragraph 15 of its 1985 report. 7/ It also had before it the comments and suggestions of Governments received in accordance with General Assembly resolutions 38/133, 39/81 (A/AC.193/6 and Add.1, A/39/440 and A/AC.193/7) and 40/70 (A/40/224-S/17081, A/40/269, A/40/323, A/40/346, A/40/452 and A/AC.193/8).

14. At the 125th meeting, on 23 January 1986, the Chairman informed the Special Committee that the Under-Secretary-General for Political and Security Council Affairs had sent to the Chairman of the 1985 session of the Committee a letter

dated 6 December 1985, in which he, inter alia, asked that the contents of General Assembly resolution 40/3 of 24 October 1985 and 40/10 of 11 November 1985 concerning the International Year of Peace be conveyed to the members of the Special Committee in furtherance of paragraph 2 of resolution 40/10. In accordance with this request, the two above-mentioned resolutions were made available to the members of the Special Committee.

15. At the 130th meeting, on 7 February 1986, the Chairman brought to the attention of the Special Committee a communication concerning the budget problems of the United Nations which the Secretary-General had addressed to him, in his capacity as Chairman of the Special Committee, as well as to the presiding officers of other intergovernmental bodies of the Organization. The Committee took note of this communication.

16. Since the Committee had not completed its work, it generally recognized the desirability of further consideration of the question before it and that such efforts should be undertaken on the basis of the broadest possible agreement.

17. At its 131st meeting, on 13 February 1986, the Committee considered and approved the report of the Working Group (see sect. III below). The report of the Committee was adopted at the same meeting.

II. GENERAL EXCHANGE OF VIEWS

18. A group of representatives observed that the course and results of the last session of the General Assembly had again confirmed the topicality and urgency of concrete steps to be taken by all States for the comprehensive enhancing of the effectiveness of the principle of non-use of force in international relations. The principle had been embodied in the Charter of the United Nations as a result of the prolonged evolution of contemporary international law and of the efforts of numerous States belonging to different social and economic systems, and had been further developed and given tangible form in many treaties and in a number of United Nations declarations and resolutions. The Committee's work was an essential part of that process and had special significance during the current International Year of Peace, a year in which nations must transcend their narrow interests in the cause of preserving peace and preventing nuclear catastrophe.

19. The same group of representatives emphasized that the socialist countries had always worked to strengthen political and legal guarantees for the preservation of peace and for banishing the concept of the use of force from political life forever. In this context, reference was made to the solemn commitment of the Soviet Union never to be the first to use nuclear weapons and it was pointed out that, if the three nuclear Powers that had not yet done so would follow its example, an important step would have been taken towards improving the international atmosphere and enhancing the effectiveness of the principle of non-use of force. It was also stressed that conflicts in a number of areas could be settled peacefully if the Soviet proposal that every permanent member of the Security Council should undertake to observe, in respect of the countries of Asia, Africa and Latin America, the principles of non-interference and of renunciation of the use or threat of force and to refrain from involving those countries in their military blocs were accepted. Attention was also drawn to a number of outstanding Soviet peace initiatives, especially the programme for the complete elimination of all nuclear weapons throughout the world by the year 2000, proposed by the General Secretary of the Central Committee of the Communist Party of the Soviet Union,

M. Gorbachev. Reference was also made to the proposals and initiatives submitted by the socialist States at the Stockholm Conference on Confidence and Security-building Measures and Disarmament in Europe relating, inter alia, to the conclusion of a treaty on mutual non-use of military force and on maintaining peaceful relations.

20. The view was expressed that, as the work of the Special Committee confirmed, the overwhelming majority of States favoured the adoption of appropriate measures to enhance the effectiveness of the principle of non-use of force. Taking into account the position of a number of non-aligned countries and of some Western countries, States that were in favour of the conclusion of a world treaty on the subject had agreed - in a spirit of compromise - that the Committee should prepare a declaration as an intermediate stage before the drafting of a treaty. The new approach as reflected in General Assembly resolution 40/70 was viewed as fully consistent with the Charter and responsive to the concern of many States for a safer world. The deliberations of the Working Group and the documents submitted in the Committee were a sound basis for the continuation of the Committee's work of identifying the content of the future document, the elaboration of which would be not only a token of sincerity but also an important step in implementing the Committee's mandate and thereby promoting the preservation of peace and the establishment of the sound legal order which was the prerequisite for friendly relations among States, regardless of size or social system.

21. The same group of delegations stated that the future declaration should be aimed at the complete elimination of the use of force and all non-peaceful means for settling international disputes and should unequivocally prohibit the use of nuclear weapons and other weapons of mass annihilation as well as the use of political pressure, economic coercion and aggressive propaganda against other countries.

22. One representative pointed out that one way of enhancing the effectiveness of the principle of non-use of force was to develop the prohibition of the use of force starting from the premise that all rules and all juridical institutions must be adjusted so as to take account of the evolution of the world and that trying to halt progress in international law was a position that ran counter to history. He further stated that the philosophy underlying General Assembly resolution 40/9 of 8 November 1985, which had been accepted by all Member States, should prevail in the Special Committee. In his opinion, the document to be drawn up by the Committee should stress the imperative nature of the principle of non-use of force, emphasize the universal nature of the principle, affirm that States must refrain from any act involving the use or threat of force, propaganda measures in support of a war of aggression, or any form of military intervention, and any act that prevented a State from exercising its sovereign rights, and list the aspects of the principle of the peaceful settlement of disputes that were linked to the principle of non-use of force.

23. Hope was expressed by some delegations that the new approach reflected in General Assembly resolution 40/70 would be positively met by all members of the Committee, among which one delegation singled out the permanent member of the Security Council which had so far refused to participate in the Committee's work, and that they would demonstrate in deeds their constructive contribution to the task entrusted to it. Reference was also made to the appeal of the Secretary-General, contained in his last report on the work of the Organization, ^{9/} stating that on the occasion of the fortieth anniversary the membership as a whole might reaffirm Charter obligations especially those relating to the non-use of force.

24. Other delegations, on the other hand, expressed regret at the fact that the mandate of the Special Committee contained in General Assembly resolution 40/70 had been adopted without making efforts to achieve general agreement on its drafting. Although the new mandate of the Special Committee referred to the drafting of a declaration, this was unacceptable to those delegations which, in the past, had left on record their opposition to the idea of a treaty on this matter and their reasons therefor. This group of representatives continued to believe that any instrument focusing on the content of the norm would be unhelpful, whether a treaty or a declaration, since it could detract from the credibility and the balance of the Charter of the United Nations as established in Article 2, paragraph 4, and in Chapter VII on collective security. Furthermore, instances of violence which had erupted in various parts of the world were not attributable to lack of clarity concerning the content of the norm on the prohibition of the threat or use of force. The peremptory principle of the prohibition of the use of force in international relations, although leaving considerable scope for a creative and convincing policy committed to the renunciation of force, did not require a formulation of new rules of international law. The effectiveness of the non-use of force principle could be enhanced not by the drafting of a new normative document, but only by a fresh determination of all States to put into practice the rule of law and search for practical measures for achieving that purpose.

25. According to this trend of thought, the Special Committee should concentrate its efforts on finding common ground as to the second and alternative part of its mandate which referred to "such other recommendations as the Committee deems appropriate". This body of opinion maintained that focusing on ways and means to make the collective security system function better was the route to a useful contribution to enhancing the effectiveness of the norm. Matters which could be considered in that context included the enhancing of the capacity of the Secretary-General, the strengthening of the functioning of the Security Council, and the undertaking of practical measures to enhance the peace-keeping capacity of the United Nations; the strengthening and encouraging of greater use of peaceful means of dispute settlement; a deeper and more meaningful recognition of the relationship between the denial of fundamental human rights and cross-border violence, as well as a series of confidence-building measures, some suitable for regional action, others for global consideration. The Committee should seek to identify and to formulate practical measures and concrete modalities tending to the creation of a mutual confidence and to the strengthening of the peaceful settlement of disputes. Emphasis was placed on the desirability of a case-by-case analysis of recent manifestations of the use of force so as to try to identify their causes. The following headings were proposed: (a) ways of discouraging expansionism; (b) ways to ameliorate differences to avoid their becoming disputes; (c) the peaceful settlement of disputes; (d) human rights violations; (e) support for, and enhancement of, the collective security system. It was also suggested that another approach might be to recognize that the time had come to encourage States to rethink their position with a view to widening the common ground. A questionnaire prepared by the Committee and sent to States might be a useful tool to this end.

26. Some representatives indicated that the discussion's aim should not be the drafting of a normative instrument but at most, in the view of one representative, of a political declaration with which to bring to an end the work of the Committee. Another representative within this body of opinion suggested that the Committee's work should be brought to an end by agreeing to a short report recording and summarizing the work carried out over the last nine years and setting out a series of conclusions that could find the agreement of all Committee members.

27. One representative was of the view that the new element contained in General Assembly resolution 40/70 could contribute to a progress in the Special Committee's work. Discussion of the headings should continue, bearing in mind that the important thing was not the headings themselves but the legal norms and principles embodied therein. All headings were closely interrelated, including the heading C on the consequences of the use or threat of force. The following elements should be considered under this heading in accordance with contemporary international law: the non-recognition of unlawful territorial acquisitions, the international responsibility of the State using force and the criminal responsibility of culpable leaders, the duty of States to assist the victims of force, and the impossibility of State succession in an unlawful situation.

28. One representative underscored the importance of the principle of the non-use of force in international relations and regretted the numerous instances of the use of force in the present-day international situation. Since force in international relations is unacceptable, the collective security system, the role assigned to the Secretary-General and to the Security Council in accordance with the Charter of the United Nations should be improved. Yet it should always be borne in mind that in this field the political will of States to abide by the principle of the prohibition of the use of force was more important than the legal provisions.

III. REPORT OF THE WORKING GROUP

29. As indicated in paragraph 9 above, the Special Committee decided, at its 128th meeting, to reconstitute a Working Group with the same officers as the Committee.

30. In accordance with the decision reflected in paragraph 9 above, the Working Group held 4 substantive meetings between 28 January and 7 February 1986. It furthermore devoted two meetings, held on 13 February, to the consideration and adoption of its report.

31. At the first meeting, it was agreed to start substantive work with headings E, F and A in Mr. Elaraby's paper, 10/ which had at previous sessions elicited a measure of support, it being understood that during the discussion delegations would be free to submit proposals in accordance with the mandate contained in General Assembly resolution 40/70. It was further agreed that the Working Group would then consider the remaining headings in Mr. Elaraby's paper. In accordance with the decision reflected in paragraph 9 above, the Working Group devoted its last meeting to an evaluation of the work done at the current session.

Heading E (Peaceful settlement of disputes)

32. This heading was generally recognized as extremely important to the work of the Special Committee. The principle of the peaceful settlement of disputes was described as a fundamental principle of the Charter of the United Nations and as a necessary corollary to the principle of non-use of force. Reference was made in this connection to paragraph 14 of the revised working paper submitted by non-aligned countries. 11/ It was generally recognized that respect for, and promotion of, the principle of peaceful settlement of disputes would greatly contribute to enhancing the effectiveness of the principle of non-use of force.

33. Regarding the wording of heading E, the remark was made that the linkage between that wording and the subject-matter before the Committee should be more clearly brought out so as to avoid trespassing on the area of competence of other

committees. Reference was made in that connection to the suggestion in paragraph 52 of the report of the Special Committee on its session in 1985.

34. It was indicated that, in considering the enhancement of the effectiveness of the principle of non-use of force in international relations, it is necessary to supplement heading E on peaceful settlement of disputes with a reference to another principle of special importance, namely, the principle of respect for and fulfilment in good faith of international obligations. Both principles formed the basis of non-use of force, were essential to international peace and security, and guaranteed peace and peaceful coexistence between States.

35. As to the provisions to be included in a future document, attention was drawn to the four provisions listed in paragraph 58 of the 1985 report of the Special Committee which, it was stated, did not appear to raise objections or difficulties. It was pointed out that the provision in (a) was taken from the Charter of the United Nations and was directly relevant to the subject-matter before the Committee; that the provision in (b) should be unobjectionable since it reproduced the non-exhaustive list of available means contained in Article 33 of the Charter, without privileging any over the others in accordance with the principle of free choice of means; that the provision in (c) recognized the fact that third-State intervention could exacerbate disputes and make their settlement more difficult, and that the provision in (d), emphasized that the failure of efforts to settle a dispute by peaceful means does not authorize States to resort to force or the threat of force.

36. Some delegations indicated that they had no basic difficulty with these four provisions. Suggestions on the wording included the remark that the word "reaffirm" in provision (a) was inappropriate since nobody challenged the existence of the obligation; the observation that the listing of means in provision (b) could usefully be replaced by a general formula such as "means provided for in the Charter and other peaceful means of their own choice" and the remark that the phrase "any action" in provision (c) went beyond the particular subject-matter before the Committee. Additional provisions which, it was stated, should find room under peaceful settlement of disputes included the following: (1) no consideration can justify resort to force or threat of force to settle a dispute; (2) States should exert every effort to arrive at an early settlement of their disputes by peaceful means and continue to seek a peaceful solution in the event of failure of a particular method of settlement. Still another suggestion was to deal with ways and means of preventing differences from evolving into disputes.

37. Other delegations, commenting on the approach taken in provisions (a) to (d), observed that elaborating on a positive obligation did not give rise to the same a contrario problem inherent in a parallel exercise on a negative obligation like the obligation to refrain from the use of force. They, however, maintained that the four provisions in question, although in themselves unobjectionable, were unhelpful. It was further stated that the suggested approach invited the Committee to embark on a normative exercise, which some delegations were not prepared to agree to, particularly as the recently adopted Manila Declaration had gone as far as one could realistically hope to go in that direction. Rather, it was stated, efforts should focus on promoting the peaceful settlement of disputes through concrete and practical steps, for example by agreeing that, in case of failure of negotiations, each party has the right to insist on resort, first to a non-binding, and then to a binding, third party means of settlement. It was also suggested to look into the obligation of States parties to a dispute, the continuance of which is likely to endanger the maintenance of international peace and security, to bring

the dispute before the Security Council, taking duly into account the provisions of Chapter VIII of the Charter. Fact-finding and resort to regional mechanisms were mentioned as other areas deserving further study and attention was further drawn to a proposal made in another forum concerning the preparation of a list of authorities who would be willing to appoint arbitrators or chairmen of arbitral tribunals. 12/

38. A third approach which was suggested was to combine the political and the theoretical approaches and to reflect on the concept of peaceful settlement of disputes by determining if it referred to partial or total settlement, by examining whether the word "peaceful" barred resort to any form of force and by analysing the notion of dispute.

39. In the light of the debate, it was suggested to add three more provisions as follows:

(a) States should enhance the determining role of the Security Council so that it can fully and effectively discharge its functions under the Charter of the United Nations in the resolution of any dispute or any situation, the continuance of which is likely to endanger the maintenance of international peace and security;

(b) States parties to regional arrangements or agencies should make every effort to achieve the pacific settlement of local disputes through such regional arrangements and by such regional agencies before referring them to the Security Council;

(c) States should make wider use of the possibility offered by the Security Council, in accordance with the Charter, to investigate the factual circumstances of any dispute or situation to determine whether the continuance of such a dispute or situation is likely to endanger the maintenance of international peace and security.

40. The first and third of these provisions were viewed by several delegations as ignoring the role of the General Assembly and the Secretary-General in the peaceful settlement of disputes. They were furthermore considered as more closely related to heading F than to heading E. As to the second of the proposed new provisions, the remark was made that it was based on Article 52, paragraph 2, of the Charter of the United Nations and was, as such, unobjectionable. It was, however, noted that the matter was a delicate one which the Charter dealt with somewhat ambiguously and attention was drawn to the danger inherent in taking specific Charter provisions out of their context. Reference was made in that connection to two important provisos in Article 52, namely, the proviso in paragraph 1 that regional arrangements and agencies should be consistent with the purposes and principles of the Charter and the proviso in paragraph 4 which safeguarded, on the one hand, the power of the Security Council under Article 34 to investigate disputes or situations regardless of regional arrangements and, on the other, the right of States under Article 35 to bring any dispute or any situation of the nature referred to in Article 34 to the attention of the Security Council or the General Assembly. The view was also expressed that paragraph 1 of Article 33 did not confer any priority to regional arrangements and agencies over other means of peaceful settlement and that Article 52, paragraph 2, merely recommended that States should make use of such arrangements and agencies. The remark was made, on the other hand, that paragraph 2 of Article 52 was couched in the form of an obligation and that it was one thing to assess the extent of that obligation in the light of other provisions of the Charter and quite another to view the paragraph in

question as being of a recommendatory nature. One delegation expressed unwillingness to discuss the proposals contained in paragraph 39 above, if they were presented as part of a drafting exercise inasmuch as the Committee had not reached that stage.

41. In order to allay the fear that the provision in (b) above might be interpreted as giving precedence to regional arrangements or agencies over other means of settlement, an additional provision was proposed as follows:

States shall settle international disputes on the basis of the sovereign equality of States and in accordance with the principle of free choice of means in conformity with obligations under the Charter of the United Nations and with the principles of justice and international law.

42. One representative stressed that the task of the Special Committee was to fill the gap between clear Charter norms and reality. All States agreed on the need to preserve the human species and the integrity of its environment. A recent message from six chiefs of State to the chiefs of State of two great Powers, as well as a recent joint statement by the latter, stressed the need to establish mutual confidence, the importance of a continuous dialogue and the need for a document containing measures to foster confidence and security so as to give a concrete expression to the principle of non-use of force. Recent efforts by a group of four neighbouring countries to reach a negotiated settlement of the Central American conflict could also be considered as a valuable pilot experiment. The effort by those countries was a *sui generis* and good faith initiative, which far from seeking to encroach upon the sovereign powers of the countries involved, aimed at getting the parties to the conflict together and identifying points of convergence. Such an approach could also be useful at the preventive stage before the conflict had crystallized or, if already crystallized, before it had become a dangerous conflagration.

Heading F (Role of the United Nations)

43. The importance of this heading and its relevance to the subject-matter before the Committee were recognized by all the delegations which commented on it. It was stressed that the United Nations had a major contribution to make to enhancing the effectiveness of the principle of non-use of force in international relations because its Charter, on the one hand, set norms of conduct aimed at ensuring the maintenance of international peace and security and, on the other, provided for an elaborate collective security system. Mention was made in this context of the contribution of the General Assembly to the development and concretization of the principle of non-use of force, and of the role of the Security Council whose numerous decisions and resolutions gave concrete expression to that principle as contained in the Charter.

44. Another view was that it was in the area covered by heading F that the Committee could most effectively contribute to enhancing the effectiveness of the principle of non-use of force. The task of the Committee, it was observed, was to increase the likelihood that a norm already in existence, but which was not always complied with, would be observed by all States.

45. It was also said that while United Nations mechanisms had a major role to play in the prevention and solution of conflicts or disputes, their actual involvement and contribution depended on the political will of States to make use of them. The role of the United Nations at all the stages of development of a conflict should be

strengthened in the interest in particular of weak States which had to rely on the rule of law and to which the United Nations organs, because of their objectivity and representative character, afforded the best protection.

46. Regarding the elements to be discussed under heading F, one view was that the five following ideas could usefully be explored: (a) drawing a list of the various types of circumstances, for example, incipient border conflict, treaties not being adequately observed, migration of people into a border area, military manoeuvring - which might induce States to bring an issue before the Security Council under Article 35 of the Charter of the United Nations; such a list, it was stated, could be useful in sensitizing States to the potential of the Security Council and prompting them to make use of that potential for constructive ends, but it would leave unimpaired the right of States not to bring before the Council issues of the type listed; (b) listing the cases or types of cases in which the Secretary-General might reasonably conclude that political reasons prevented a State from bringing an issue before the Council and that he should, in the interest of the international community, exercise his prerogative under Article 99 of the Charter of bringing it himself to the attention of the Council, the intention being not to give binding directions to the Secretary-General but to alert States to the possibility that the Secretary-General might use his prerogative in the cases of paralysis referred to above and thereby prompt them to change their mind and bring the issue before the Council; (c) inducing States to comply with the often ignored reporting obligation contained in Article 51 of the Charter by adopting language underscoring that obligation and by authorizing the Secretary-General, acting on behalf of the Security Council, to enquire of a nation apparently having used force if it wished to assert that its actions were taken in self-defence, thereby deterring uses of force in which no possible claim of self-defence could rationally be made; (d) studying the question of fact-finding (which, it was observed, was relevant to the three phases of development of a conflict) and clarifying in particular the procedural characteristics of circumstances in which fact-finding might become appropriate, the conditions required for the dispatch of fact-finding missions and the differentiation between fact-finding missions in relation to their legal basis and to the organ generating them, so as to reduce the number of legal issues to be addressed in arriving, in conditions of emergency, at substantive conclusions on the sending of a mission; (e) promoting peace-keeping, as a unique contribution which the Organization could make to prevent resort to force or to limit or reduce the use of force, by codifying the responsibility of all Members to contribute, in the proportions to which they were assessed, to the financing of formally established peace-keeping operations.

47. These ideas elicited a favourable response from some delegations but gave rise to doubts on the part of others. On point (b), the remark was made that instructing the Secretary-General to bring matters before the Security Council even if the States concerned were not prepared to do so would run counter to the principle of free choice of means, as expressed in the provision reproduced in paragraph 41 above and would be particularly inappropriate at the stage of incipient tension and exacerbated sensitivity to sovereignty issues. On point (c) the remark was made that the Security Council was probably the only organ which could undertake the proposed task. Furthermore, each situation was sui generis, which was the reason why the Security Council enjoyed discretionary powers in discharging its functions in the light of all the circumstances of the case. The Committee should, it was stated, refrain from venturing into the political field and focus on the formulation of provisions of a legal nature. Point (d) was viewed as belonging under heading D and point (e) as falling within the competence of the Special Committee on Peace-keeping Operations.

48. There were other approaches with respect to the elements to be included under heading F.

49. One approach was to analyse under heading F: (a) the responsibility of United Nations organs and (b) the obligations and responsibilities of Member States. In relation to point (a), it was recalled that the General Assembly had obligations and responsibilities in the area of the maintenance of international peace and security under Articles 10, 11 and 14 of the Charter of the United Nations. Reference was made in this context to General Assembly resolution 40/9. It was furthermore suggested, on the one hand, to reflect on ways of encouraging implementation by the Security Council of the provisions of Chapter VII, including Articles 41 and 42, and of rules 24 and 28 of the provisional rules of procedure of the Council and, on the other hand, to encourage the Secretary-General to make more frequent use of its powers under Article 99, an idea which, it was recalled, had found expression in General Assembly resolution 40/9. With regard to point (b) attention was drawn to the right of States under Article 35 to bring matters before the Security Council or the General Assembly, as well as to their obligations under Articles 41 and 43. It was also said that Member States should resort to the United Nations for the settlement of their disputes; support United Nations involvement in the handling of international problems instead of trying to reach illusory solutions outside the framework of the Organization; and promote the implementation of United Nations decisions and resolutions.

50. Another approach was to include the formulations appearing under (a) and (b) in paragraph 66 of the report of the Special Committee on its session in 1985, as well as the following formulations:

(a) Member States should reaffirm the important role conferred by the Charter on the General Assembly in the area of peaceful settlement of disputes and the maintenance of international peace and security;

(b) The Secretary-General should make full use of its powers under the Charter and effectively perform the tasks entrusted to him by the Security Council or the General Assembly;

(c) States when they consider it necessary, can use the possibility offered by the International Court of Justice for the settlement of legal disputes.

51. With regard to the provision in (b) above, the implication that the Secretary-General did not have prerogatives of his own in the area of the maintenance of international peace and security and could act only by virtue of a mandate from the General Assembly or the Security Council gave rise to objections.

52. Referring in general to the approach reflected in paragraph 49 above, some representatives said that absence of objections on their part to particular texts did not imply acceptance of those texts as elements of the end-product of the Committee's work, particularly as many of the texts in question already appeared in existing documents. It was also said that the Working Group was engaged in a search of relevant elements and not in a drafting exercise.

53. Other representatives said that it was the prerogative of every delegation to identify elements which, in its opinion, should not give rise to difficulties or objections and to present them as such to the Committee in the wording it deemed appropriate.

Heading A (Manifestations, scope and dimensions of the threat or use of force)

54. Some delegations viewed heading A as interesting inasmuch as it offered an opportunity to bring out points of agreement on the concept of force, a concept which, it was stated, was not defined in Article 2, paragraph 4, of the Charter of the United Nations, nor in any legal instrument. These delegations emphasized that the term "force" should be viewed as encompassing not only military force but also other forms of the use of force including attempts at destabilization, economic and political coercion, hostile propaganda, subversion, intimidation, support of terrorism, etc. Attention was drawn to paragraph 3 of the revised working paper submitted in 1981 by non-aligned countries, ^{13/} which reflected the enumerative approach to the definition of the term "force" and contained a non-exhaustive list of the various forms of the use or threat of force, as well as to the work carried out by the International Law Commission in relation to the Draft Code of Offences against the Peace and Security of Mankind. One delegation underlined in particular the need for a clear prohibition of economic coercion, as envisaged in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV)), and of hostile propaganda, and proposed, in relation to the latter concept, the following alternative provisions:

Reaffirming the duty of a State to abstain from any defamatory campaign, vilification or hostile propaganda for the purposes of intervening or interfering in the internal affairs of other States.

or

Reaffirming the duty of a State to abstain from hostile propaganda directed against another State or group of States.

Another delegation suggested to add to the list contained in the revised working paper of non-aligned countries reprisals involving the use of force and manifestations of force aimed at preventing other States from exercising their sovereign rights. It was pointed out that existing documents had to be built upon, taking into account the realities of international life, and that many States had much to fear from uses of force not involving resort to armed force.

55. Attention was drawn, on the other hand, to the difficulties involved in trying to define the term "force", which stemmed from the diversity of the interests at stake and from the international law implications of a definition of that term. The view was expressed that embarking on such a time-consuming exercise would only be useful if there was a genuine wish to elaborate a concrete norm of international law. Another view was that the Declaration on Friendly Relations adequately dealt with the concept of force and that caution should be exercised lest heading A should become a platform for decreasing the level of agreement on the meaning of Article 2, paragraph 4, of the Charter.

56. Other delegations, while having reservations on the words "scope and dimensions", which they viewed as unclear and as possibly duplicating heading B, to which they could not agree, held the view that the concept of "manifestations of the threat or use of force" was useful to the extent that it oriented the Working Group away from the normative approach and towards an examination of specific uses of force and of their underlying causes - an exercise which, in their opinion, could lead to agreement on the nature of the problem and therefore pave the way to its solution.

57. Still other delegations considered heading A as providing an excellent framework for efforts aimed at developing and making more specific the principle of non-use of force. They advocated a juridical approach based on the practice of the last 40 years and on the numerous international law instruments of a bilateral and multilateral nature in which the principle of non-use of force had already been developed and concretized. It was suggested to include in a preamble of a future document the following provisions:

(a) Considering it essential that all States should refrain in their international relations from the threat or use of force against the territorial integrity and political independence of any State, or in any other manner inconsistent with the purposes of the United Nations;

(b) Recognizing the urgent need in the circumstances of the present nuclear threat for all States to take effective steps and measures to reduce the risk of military confrontation and to promote a drastic change in the policies of States from confrontation to peaceful co-operation;

(c) Noting with satisfaction that the principle of non-use or threat of force in international relations has been embodied in a number of international intergovernmental instruments of a multilateral and bilateral character;

(d) Taking into account the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, the Definition of Aggression and the Manila Declaration on the Peaceful Settlement of International Disputes, reflecting the will of States to observe strictly the principle of non-use of force or threat of force.

58. The approach reflected in paragraph 57 above which, it was stated, aimed at identifying points on which some sort of consensus might be reached, was supported by several delegations, some of which proposed additional provisions as follows:

(a) Desirous to remove the risk of new wars and military conflicts between States and to increase the responsibility of all States to observe strictly and unswervingly the principle of non-use of force or threat of force in international relations;

(b) Bearing in mind their obligations under the Charter of the United Nations to maintain peace and refrain from the threat or use of force.

59. The approach in question was criticized by other delegations which said that they were not prepared to embark on the discussion, let alone on the drafting, of elements of a preamble without knowing the nature of the text for which such a preamble was intended. The remark was made that most of the provisions contained in paragraphs 57 and 58 above already appeared in the draft World Treaty submitted in 1976 by the Soviet Union and that their reiteration seemed intended to gear the Committee towards the elaboration of a normative instrument. The delegations in question recalled that they were opposed to the elaboration of a declaration as an intermediate step towards the drafting of a treaty and could therefore not participate in the working out of a preamble to such a declaration. They furthermore asked how a reiteration of what was already contained in the Charter and in other instruments could have a positive effect on the political attitude of States, and urged that instead of paraphrasing a norm which did not call for

elucidation, the Committee should analyse the reasons why the norm was being violated and look for practical means of influencing the actual patterns of behaviour of States.

60. It was remarked, on the other hand, that the Committee had no other way to contribute concretely to enhancing the effectiveness of the principle of non-use of force than to produce a document endowed with political and moral weight and aimed at persuading States to observe more faithfully their obligations. Surprise was expressed at the objections raised against the reaffirmation in the present context of ideas which had already found expression in existing documents. Taking stock of what had already been achieved before taking an additional step forward was, it was observed, perfectly natural and in keeping with the practice followed in the United Nations since 1945. In response to the argument that the political will of States was an essential ingredient in enhancing the effectiveness of the principle of non-use of force, it was pointed out that the required political will had to manifest itself in concrete political language which would serve as a basis for the document under elaboration.

61. In response to the remark that the provisions in paragraph 57 contained nothing new, it was acknowledged that there was indeed a need to provide new ideas based on the current realities of international life. To that effect it was suggested to insert in a preamble the following provisions:

Expressing serious concern over the continuing international tension, the ongoing arms race, in particular the nuclear-arms race, and the increase of its danger and its extension to outer space;

Emphasizing the importance of the immediate cessation of the arms race on earth and of prohibiting its extension to outer space.

The following provision was also suggested:

Reaffirming that the use of nuclear weapons and other weapons of mass annihilation and the waging of nuclear war should be outlawed.

62. With reference to the above provisions, the view was expressed that, although the use of nuclear weapons was undeniably a form of the use of force, this aspect of the subject-matter before the Special Committee fell within the province of other forums. It was also said that none of the uses of force which the world had witnessed since the adoption of the Charter had involved the use of nuclear weapons - whereas conventional weapons had made innumerable victims - and that the nuclear weapon was a deterrent and an element of self-defence. Attention was furthermore drawn to the danger inherent in singling out a particular type of weapon and thereby inviting a contrario interpretations which would undermine the prohibition contained in Article 2, paragraph 4, of the Charter.

63. The remark was, on the other hand, made that the provisions in paragraph 61 above were not geared towards the formulation of a legal norm on the prohibition of certain types of weapons and merely recorded the fact that nuclear weapons were the most deadly of all. The argument derived from the danger of a contrario interpretation was therefore described as groundless, particularly in view of the guarantees provided by the procedure followed in the Special Committee and by Article 103 of the Charter.

Heading D (Legitimate use of force)

64. Several delegations expressed reservations on heading D. Among them, some held the view that this heading did not belong any more than heading B in the document to be elaborated by the Committee: in their opinion, dealing with the exceptions to the norm was as ill-advised as dealing with the norm itself. Others, while being of the view that heading D was a useful reminder of a fundamental principle, drew attention to the complexity of the issue and to the cautious approach taken thereto in the Declaration on Friendly Relations and the Definition of Aggression, as well as in the draft of the International Law Commission on State responsibility - an approach which, in their opinion, was fully justified in view of the divergences of opinion on the question of the preventive use of force and on the meaning of the word "inherent" in Article 51 of the Charter of the United Nations. Fear was expressed that heading D might be an invitation to expand the scope of the exceptions to the principle of non-use of force beyond what was envisaged in the Charter.

65. Other delegations observed that one could not deal with the prohibition of the use of force without mentioning the exceptions to that prohibition. It was pointed out that in a less than ideal world where acts of aggression were being carried out notwithstanding the prohibition contained in Article 2, paragraph 4, of the Charter of the United Nations, it was necessary to deter the use of force and that Article 51 and Chapter VII of the Charter had a restraining effect and thereby contributed to making the principle of non-use of force more effective. The view was furthermore expressed that the complexity of the issue should not be over-emphasized. It was stressed that many alleged uncertainties disappeared if one looked for answers in the Charter rather than in the law preceding 1945 and that, under the Charter, the use of force was legitimate only in the exercise of the right of self-defence against an armed attack in accordance with Article 51, in the context of the collective security system provided by the Charter and in the exercise of the right of colonial peoples and national liberation movements to fight for their freedom and independence. Special emphasis was placed by some delegations on the right of self-defence on which the survival of a State sometimes depended and which could therefore not go unmentioned. The importance of the right of colonial peoples and national liberation movements to fight for their freedom and independence was also highlighted and mention was made in this context of Latin America's experience of outside intervention aimed at preventing the countries concerned to give expression to their political will to live in peace. Reference was also made to the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV)), to the relevant provisions of the Declaration on Friendly Relations and to point 9 of the revised working paper submitted in 1981 by non-aligned countries.

66. Some delegations proposed that the following four provisions which, it was stated, should not give rise to difficulties, be included in a future document:

(a) States should refrain from the threat or use of force except in cases provided for in the Charter of the United Nations;

(b) States have the inherent right of individual or collective self-defence in accordance with Article 51 of the Charter if an armed attack occurs against them;

(c) No consideration can be invoked to justify the threat or use of force in violation of obligations under the Charter;

(d) The colonial peoples and the national liberation movements have the right to fight for their freedom and independence.

67. Other delegations disagreed with the view that these provisions, particularly the fourth one, did not give rise to difficulties. The first three, it was stated, individually represented in their general thrust a reasonable interpretation of the Charter of the United Nations but their inclusion in the context of an exercise aimed at solidifying the norm did not serve any useful purpose. Concern was, furthermore, expressed over interpretations which, it was stated, distorted the true meaning of the Charter. The remark was made that Article 2, paragraph 4, concerned Member States and not national liberation movements, that it reflected a commitment of States and not a prohibition of a general and absolute character and that it dealt with the use of force, in precisely defined cases, "against the territorial integrity and political independence of States or in any manner inconsistent with the purposes of the United Nations". Self-defence was only one of the cases where the use of force was legitimate.

68. It was suggested to examine under heading D ways of ensuring better compliance with the reporting obligation under Article 51 of the Charter. Another suggestion was to discuss the relationship between the exercise of the right of self-defence and the application of the laws of war. The view that, because the use of force was prohibited under the Charter, the laws of war were not applicable any longer except in their humanitarian aspects gave rise to certain objections.

Heading C (Consequences of the threat or use of force)

69. Some representatives proposed that the following five provisions be discussed:

(a) A State which committed an act of aggression bore political and material responsibility and the persons guilty of carrying out an act of aggression bore criminal responsibility;

(b) States and statesmen that resort first to the use of nuclear weapons would be committing the gravest crime against humanity;

(c) The Security Council had the right to take sanctions against the State which committed an act of aggression under Chapter VII of the Charter of the United Nations;

(d) A State against which preventive or enforcement action had been taken by the Security Council might be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council;

(e) A State which had persistently violated the principles contained in the Charter could be expelled from the Organization by the General Assembly upon the recommendation of the Security Council.

They observed that the idea underlying these provisions was that the most effective way of ensuring respect for a legal rule was to subject violations to sanctions. It was pointed out that provision (a) reflected a principle which had found expression in the Declaration on Friendly Relations, in the Definition of Aggression and in the Statute of the Nürnberg Tribunal. Provision (b) was based on the fact that the use of nuclear weapons could have catastrophic consequences not only for a State or a group of States but for the whole of mankind, which warranted

qualification of the first use of such weapons as the gravest crime against humanity. Reference was made in the context of provision (b) to the joint statement adopted at the Geneva summit in which the leaders of the Soviet Union and the United States had agreed that a nuclear war cannot be won and must never be fought. Provision (c) was a reflection of the Charter and of the practice of the Security Council and was consonant with the widely shared view that the collective security system should be strengthened. As to provisions (d) and (e), they were based on Article 5 and Article 6 of the Charter, respectively. Thus, it was stated, these five provisions could be considered as areas of possible agreement.

70. Other representatives viewed the approach reflected in paragraph 69 above as focusing on non-compliance with the rule and on exceptions thereto, and as ill-advised in the framework of an exercise aimed at enhancing the effectiveness of the rule. Rather, it was stated, efforts should concentrate on practical improvements which would increase the likelihood that States would abide by their obligation not to use force. The remark was further made that a discussion of the consequences of the use or threat of force would be of little practical value since States were unlikely to be deterred from the use of force by a recitation of consequences which were already generally recognized.

71. Still other representatives reiterated their position that the discussion should focus on the three following elements: (a) non-recognition of the consequences arising from the threat or the use of force; (b) international responsibility incurred by the use of force; and (c) duty of States and of the international community to assist the victims of the use of force.

72. Some delegations commented in some detail on the five provisions referred to in paragraph 69 above. Attention was also drawn to the danger inherent in parafrasing or quoting out of context specific provisions of the Charter of the United Nations. With reference to provision (a), attention was drawn to the extreme complexity of the problem of attribution of individual criminal responsibility in international law, a problem on which, it was stated, one should await the results of the work currently being carried out in the International Law Commission. Reservations were also expressed on the words "act of aggression" appearing in provisions (a) and (c), on account of the restrictive approach reflected in the Definition of Aggression which left out the threat of force as well as forms of the use of force other than armed force. Provision (b) was viewed as belonging under heading G. Furthermore, the objections previously raised to the singling out of a particular type of weapon were reiterated (see para. 62 above). Provision (b), it was observed, was misguided in two respects, first because it established a relationship between the lawfulness or unlawfulness of a specific use of force and the type of weapon used and second because it implied that the use of nuclear weapons - even on a limited scale - necessarily had more serious consequences than a large-scale use of chemical or bacteriological weapons. Provisions (c), (d) and (e) were objected to by some delegations on the ground that a recitation of Charter provisions served no useful purpose. The view was furthermore expressed that provisions (d) and (e) should be more closely related to the specific subject-matter before the Committee.

73. In response to the above observations, it was stated that in prohibiting resort to force, special emphasis should be placed on the use of all arms of mass destruction, whether nuclear or chemical or of whatever type might be invented. The remark was also made that conflicts of limited scale could easily develop into high intensity conflicts involving the use of nuclear weapons and that the proposals contained in paragraph 69 should serve as a warning to any potential aggressor.

Heading G (Disarmament and confidence-building measures)

74. A group of delegations felt that there was a direct link between disarmament and the task before the Committee. It was stressed that the statement of 15 January 1986 of the General Secretary of the Central Committee of the Communist Party of the Soviet Union, M. Gorbachev, had been made in that spirit. Although the task of the Committee was not to engage in disarmament negotiations, the consideration of elements of significance for the strengthening of the non-use of force principle was well within its mandate. It was suggested to include in the document to be elaborated a provision concerning the obligation not to be the first to use nuclear weapons. The relationship between disarmament and the non-use of force was a mutual one. Progress on disarmament would contribute to the strengthening of the principle of the non-use of force, since without weapons no use of military force was possible. On the other hand, concrete steps by States to enhance the principle of the non-use of force would, by creating confidence and trust, promote and develop the process of disarmament which was a material guarantee of the non-use of force. It was proposed to include in a future document the following provisions which, it was stated, should not give rise to any objections:

(a) All States should take effective measures to eliminate the threat of nuclear war, to curb the arms race, and above all, the nuclear arms race, to prevent its extension into outer space, to overcome negative confrontational tendencies regarding relations among States, to build confidence as an integral component of such relations, to improve radically the international climate and to develop extensive and mutually beneficial co-operation among States;

(b) All States should undertake active efforts aimed at the relaxation of international tensions, the consolidation of the international legal order and the creation of a reliable and comprehensive system of international security in accordance with the Charter of the United Nations as well as an integrated system of security in various regions.

75. One representative stressed that a nuclear threat existed not only because of the stockpiling of nuclear weapons but also as a result of nuclear tests which exposed the States to a radiation risk. In this context it was remarked that this type of threat was particularly unfair because it did not imply a state of tension or a deterioration of relations between the State carrying out the tests and the victim State and was essentially the result of geography.

76. In the view of other representatives, the task of the Special Committee was not related to disarmament but to enhancing the effectiveness of the principle of the non-use of force. Disarmament issues were highly complex and should be dealt with in the specialized forums created to deal with them. Furthermore, although disarmament was important, it was not an essential condition for the non-use of force. For instance, the present situation in which nuclear weapons were not being used resulted not from disarmament but from the existence of these weapons and from the fact that they could lead to the mutual destruction of those who used them. Furthermore, the goal of a general and complete disarmament was not necessarily realistic or attainable. On the one hand, a State, even if firmly committed to the principle of the non-use of force, could maintain some weapons or forces for its own defence. On the other hand, it was difficult to speak of general and complete disarmament as long as States kept forces or weapons for the maintenance of internal order or for repression against their population. It was recalled that the inclusion of disarmament in heading G had been tolerated but had never been the subject of general agreement. The second part of the heading was, in the view of

this group of representatives, closely related to enhancing the effectiveness of the principle of the non-use of force. Confidence-building measures, it was stated, could be world-wide or specifically tailored for a specific region or sub-region and should be approached with utmost seriousness and a practical spirit by all members of the United Nations. It was said that the first proposed provision was objectionable and should not be included in a list of proposals on which general agreement could be found. As to the second provision, the view was expressed that it contained interesting elements which needed to be treated at some stage. It was also pointed out that confidence-building measures should involve, inter alia, transparency, verification and exchange of information and observation missions.

77. Some representatives stressed that confidence-building measures did not necessarily possess a military character but could also cover a wide range of areas such as co-operation in the economic, scientific, technical and health fields. In this connection, mention was made of paragraph 107 of the report of the Special Committee on the session in 1985.

78. Still other representatives, although sharing the view that there was a close link between disarmament and confidence-building measures, on the one hand, and enhancing the effectiveness of the principle of non-use of force, on the other, felt that the matter should be dealt with in a very general way without entering into a detailed consideration. Reference was made in this connection to paragraph 108 of the 1985 report of the Special Committee.

Heading B (General prohibition of the threat or use of force)

79. Some delegations considered this heading as crucial to the entire exercise in which the Special Committee was engaged. It was recalled that in the Charter of the United Nations the various issues covered by the provisions previously dealt with, namely, peaceful settlement of disputes, the right of individual and collective self-defence and the role of the United Nations including the Security Council, were intrinsically linked to the principle of non-use of force and that the same approach should prevail in the work of the Committee. In the view of these delegations, it was inconceivable that a document on enhancing the effectiveness of the principle of non-use of force should not reaffirm and concretize that principle. The remark was made that a principle could be developed into norms and reference was made in this connection to the Declaration on Friendly Relations, the Definition of Aggression, General Assembly resolution 1514 (XV), the Manila Declaration and the Covenants on Human Rights.

80. On the other hand, reservations were expressed on this heading and some delegations urged its deletion. It was observed that a restatement of the norm would be redundant if it reproduced the language of the Charter and of no value whatsoever if it differed from that language inasmuch as a declaration could not establish or modify treaty obligations.

81. Some delegations felt that heading B should be retained but as a reminder of the norm whose effectiveness had to be enhanced. Doubts were expressed on the words "general prohibition": the concept of renunciation of the use of force reflected in Article 2, paragraph 4, of the Charter was proposed as a substitute. Another suggestion was to rephrase the heading as follows: "Principle of non-use of force as enunciated in the Charter of the United Nations".

82. As to the provisions to be included in a future document, the view was expressed that the future document to be elaborated by the Committee should provide that the prohibition of the use or threat of force is a peremptory norm of international law, that it applies to all States irrespective of their political or socio-economic régimes, level of development and geographical position and that no consideration of any nature can justify resort to force or the threat of force.

83. Another view was that while attempts at defining force seemed unpromising, advantage should be taken of heading B to deal with forms of the use of force other than armed force. The view was expressed in this connection that the Charter of the United Nations aimed at eliminating all forms of pressure in international life, as evidenced by the emphasis in the Preamble on tolerance and good-neighbourliness and by the listing of principles in Article 2, and that the use in Chapter VII of the phrase "armed force" justified a broad interpretation of the term "force" as used in Article 2, paragraph 4.

84. Still another view was that the general prohibition of the use of force was a basic Charter obligation which it was necessary to confirm, and that placing emphasis on specific types of weapons would give it maximum effect. Some delegations proposed to include the following provisions which, it was stated, should not give rise to difficulties:

(a) All States should reaffirm, and make more binding, the obligation contained in the Charter of the United Nations, under which States shall refrain, in their mutual relations as well as in their international relations in general, from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations;

(b) All States should refrain from the use of armed forces employing any types of weapons, including nuclear and other weapons of mass destruction, on land, at sea, in the air and in outer space; they should not threaten such use or threaten the safety of international sea, air and space communications passing through areas beyond the limits of national jurisdiction;

(c) All States shall not assist, encourage or urge other States or groups of States to resort to the threat or use of force in violation of the Charter of the United Nations.

85. Other delegations, however, remarked in connection with these proposals that the principle of non-use of force was already mandatory for all States Members of the United Nations and that there was no need to confirm it or to stress its mandatory character; it was also stated that the characterization of a use of force as illegal did not depend on the type of weapon used, and that it served no useful purpose to repeat provisions of the Charter.

86. The general approach reflected in these provisions also gave rise to criticism. Concern was expressed at a tendency to repeat under all headings similar and, moreover, marginally relevant ideas. Disagreement was expressed with the view that the proposed provisions would not give rise to difficulties and the objections reflected in paragraph 52 above were reiterated.

87. The views reflected in paragraph 53 were also reiterated.

88. Commenting on the nature of the end-product of the work of the Committee, some delegations said that what was needed was concrete measures aimed at ensuring stricter respect of the norm. Other delegations remarked that everybody agreed on the need for concrete measures and that a declaration reflecting the political will of States to act along certain lines would be one such measure.

89. At the concluding stage of the review of the seven headings contained in Mr. Elaraby's paper, attention was drawn to three other questions which had been mentioned at previous sessions as deserving to be considered by the Working Group. One of those questions was that of the prevention of the threat and the use of force. Reference was made in this connection to paragraph 111 of the report of the Special Committee on its session in 1985. The other question was that of the violation of human rights which is dealt with in paragraphs 116 to 120 of the 1985 report of the Special Committee. As to the last question, it concerned the concept of respect for and fulfilment in good faith of international obligations, which was to be found in paragraph 15 of the revised working paper distributed in 1981 by non-aligned countries. Reference is made in this respect to paragraph 121 of the 1985 report of the Special Committee.

90. The following is the list of the proposals suggested by some delegations, in the course of the work of the Working Group at its 1986 session, for inclusion in a possible future document to be worked out by the Committee. It was understood that the proposals in the list were preliminary in nature and without prejudice to the right of any delegation to make amendments or submit other proposals. Although there was a preliminary consideration of the proposals, no final conclusions were reached concerning any of them.

Heading E

States shall reaffirm their obligation to settle disputes among them by peaceful means in such a manner as not to endanger international peace and security;

For this purpose they shall use, in conformity with the Charter of the United Nations, such means as negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their own choice;

States should also refrain from any action which might aggravate the situation to such a degree as to endanger the maintenance of international peace and security and thereby make a peaceful settlement of the dispute more difficult;

The existence of a dispute or the failure of the procedure for peaceful settlement should not permit the use of force or threat of force;

States should enhance the determining role of the Security Council so that it can fully and effectively discharge its functions under the Charter of the United Nations in the resolution of any dispute or any situation, the continuance of which is likely to endanger the maintenance of international peace and security;

States parties to regional arrangements or agencies shall make every effort to achieve the pacific settlement of local disputes through such regional arrangements and by such regional agencies before referring them to the Security Council;

States shall make wider use of the possibility offered by the Security Council, in accordance with the Charter of the United Nations, to investigate the factual circumstances of any dispute or situation to determine whether the continuance of such a dispute or situation is likely to endanger the maintenance of international peace and security;

States shall settle international disputes on the basis of the sovereign equality of States and in accordance with the principle of free choice of means in conformity with obligations under the Charter of the United Nations and with the principles of justice and international law.

Heading F

All States shall strive to enhance the effectiveness of the United Nations in supporting its action in the maintenance of international peace and security in accordance with the Charter of the United Nations;

All States shall strive to enhance the effectiveness of the collective security system provided by the Charter and, in particular, its principal organ, the Security Council, which has the primary responsibility for the maintenance of international peace and security;

Member States shall reaffirm the important role conferred by the Charter on the General Assembly in the area of peaceful settlement of disputes and the maintenance of international peace and security;

The Secretary-General should make full use of his powers under the Charter and effectively perform the tasks entrusted to him by the Security Council or the General Assembly;

States, when they consider it necessary, can use the possibility offered by the International Court of Justice for the settlement of legal disputes.

Heading A

Considering it essential that all States should refrain in their international relations from the threat or use of force against the territorial integrity and political independence of any State, or in any other manner inconsistent with the purposes of the United Nations;

Recognizing the urgent need in the circumstances of the present nuclear threat for all States to take effective steps and measures to reduce the risk of military confrontation and to promote a drastic change in States' policies from confrontation to peaceful co-operation;

Noting with satisfaction that the principle of non-use or threat of force in international relations has been embodied in a number of international intergovernmental instruments of a multilateral and bilateral character;

Taking into account the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, the Definition of Aggression and the Manila

Declaration on the Peaceful Settlement of International Disputes, reflecting the will of States to observe strictly the principle of non-use of force or threat of force;

Desirous to remove the risk of new wars and military conflicts between States and to increase the responsibility of all States to observe strictly and unswervingly the principle of non-use of force or threat of force in international relations;

Bearing in mind their obligations under the Charter of the United Nations to maintain peace and refrain from the threat or use of force;

Expressing serious concern over the continuing international tension, the ongoing arms race, in particular the nuclear-arms race, and the increase of its danger and its extension to outer space;

Emphasizing the importance of the immediate cessation of the arms race on earth and of prohibiting its extension to the outer space;

Reaffirming that the use of nuclear weapons and other weapons of mass annihilation and the waging of nuclear war should be outlawed.

Heading D

States shall refrain from the threat or use of force except in cases provided for in the Charter of the United Nations;

States have the inherent right of individual or collective self-defence in accordance with Article 51 of the Charter if an armed attack occurs against them;

No consideration can be invoked to justify the threat or use of force in violation of obligations under the Charter;

The colonial peoples and the national liberation movements have the right to fight for their freedom and independence.

Heading C

A State which commits an act of aggression bears political and material responsibility and the persons guilty of carrying out an act of aggression bear criminal responsibility;

States and statesmen that resort first to the use of nuclear weapons will be committing the gravest crime against humanity;

The Security Council has the right to take sanctions against the State that commits an act of aggression under Chapter VII of the Charter of the United Nations;

A State against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council;

A State which has persistently violated the principles contained in the Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council.

Heading G

All States shall take effective measures to eliminate the threat of nuclear war, to curb the arms race, and above all the nuclear-arms race, to prevent its extension into outer space, to overcome the negative trends of confrontational tendencies regarding relations among States, to build confidence as an integral component of such relations, to improve radically the international climate, and to develop extensive and mutually beneficial co-operation among States;

All States shall undertake active efforts aimed at the relaxation of international tensions, the consolidation of the international legal order and the creation of a reliable and comprehensive system of international security in accordance with the Charter of the United Nations, as well as an integrated system of security in various regions.

Heading B

All States shall reaffirm, and make more binding, the obligation contained in the Charter of the United Nations, under which States shall refrain, in their mutual relations as well as in their international relations in general, from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations;

All States shall refrain from the use of armed forces employing any types of weapons, including nuclear and other weapons of mass destruction, on land, at sea, in the air and in outer space; they shall not threaten such use or threaten the safety of international sea, air and space communications passing through areas beyond the limits of national jurisdiction;

All States shall not assist, encourage or urge other States or groups of States to resort to the threat or use of force in violation of the Charter of the United Nations.

91. Some delegations held that the session had like previous ones, been repetitious and of very limited usefulness because of the lack of agreement on the mandate and because of the insistence of some delegations on the idea of a treaty, or of a declaration as a step towards a treaty. They also regretted that the Working Group should have at times dealt with questions of marginal relevance to the subject-matter before it. They stressed that the proposals made orally by some delegations during the discussion of the various headings, and now reproduced in paragraph 90 above, were not helpful because the Committee had not reached the drafting stage. Agreement on a mutually acceptable new mandate, which could, in the view of some of those delegations, focus on the elaboration of a political declaration and, in the view of others, on the formulation of practical measures, was, in their opinion, a sine qua non condition of progress. Some felt that failing such an agreement, a way should be found to put an end to an exercise which they viewed as a useless drain on limited resources.

92. Other delegations observed that the present stalemate was detrimental to the image of the United Nations and to the principle of non-use of force. They drew attention to the elements contained in the revised working paper submitted in 1981 by non-aligned countries. 13/ They ascribed the repetitive nature of the debate and the Committee's failure to fulfil its mandate to the opposition between the proponents and the adversaries of a normative instrument on the non-use of force.

They urged all parties concerned to adopt by general agreement at the next session of the General Assembly a revised mandate which requested the Special Committee to elaborate only a declaration.

93. Still other delegations observed that the work of the Special Committee should be seen against the broader background of the present world situation where essential steps had been undertaken to improve the international climate and to increase mutual confidence. The positive results achieved at the Soviet-American summit meeting at Geneva had, it was stated, favourably influenced the Committee's work. The view was expressed that the mandate was realistic and that what was mostly needed for achieving significant progress was the political will on the part of certain members to make a constructive contribution. Some positive results had been achieved, thus creating a good basis for the future work of the Special Committee on the elaboration of a declaration.

94. All delegations paid tribute to the Chairman for having succeeded in making a serene atmosphere prevail over the entire session.

Notes

1/ Official Records of the General Assembly, Fortieth Session, annexes, agenda item 134, document A/40/1001.

2/ Ibid., Thirty-fourth Session, Supplement No. 41 (A/34/41 and Corr.1), annex.

3/ Ibid., Thirty-eighth Session, Supplement No. 41 (A/38/41), para. 59.

4/ Ibid., Thirty-ninth Session, Supplement No. 41 (A/39/41), para. 51.

5/ Ibid., Fortieth Session, Supplement No. 41 (A/40/41), annex.

6/ Ibid., Thirty-seventh Session, Supplement No. 41 (A/37/41 and Corr.1), para. 372.

7/ Ibid., Fortieth Session, Supplement No. 41 (A/40/41).

8/ For the membership of the Special Committee at the session held in 1986, see A/AC.193/INF.8 and Add.1.

9/ Official Records of the General Assembly, Fortieth Session, Supplement No. 1 (A/40/1).

10/ Ibid., Thirty-seventh Session, Supplement No. 41 (A/37/41 and Corr.1), para. 372.

11/ Ibid., Thirty-sixth Session, Supplement No. 41 (A/36/41), para. 259.

12/ Ibid., Thirty-fourth Session, Supplement No. 33 (A/34/33), para. 13 B (iii).

13/ See footnote 11.

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