

**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-FIRST SESSION

SUPPLEMENT No. 33 (A/41/33)



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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.

[30 May 1986]

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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 40/78 of 11 December 1985 and met at United Nations Headquarters from 7 April to 2 May 1986. 1/
2. In accordance with General Assembly resolutions 3349 (XXIX) of 17 December 1974 and 3499 (XXX) of 15 December 1975, the Special Committee was composed of the following member States: Algeria, Argentina, Barbados, Belgium, Brazil, China, Colombia, Congo, Cyprus, Czechoslovakia, Ecuador, Egypt, El Salvador, Finland, France, German Democratic Republic, Germany, Federal Republic of, Ghana, Greece, Guyana, India, Indonesia, Iran (Islamic Republic of), Iraq, Italy, Japan, Kenya, Liberia, Mexico, Nepal, New Zealand, Nigeria, Pakistan, Philippines, Poland, Romania, Rwanda, Sierra Leone, Spain, Tunisia, Turkey, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Yugoslavia and Zambia.
3. The session was opened by Mr. Carl-August Fleischhauer, Under-Secretary-General, the Legal Counsel, who represented the Secretary-General and made an introductory statement.
4. Mr. Georgiy F. Kalinkin, Director of the Codification Division of the Office of Legal Affairs, acted as Secretary of the Special Committee and of its Working Group. Ms. Jacqueline Dauchy, Deputy Director for Research and Studies (Codification Division, Office of Legal Affairs), acted as Deputy Secretary of the Special Committee and of the Working Group; Mr. Larry D. Johnson, Senior Legal Officer, and Mr. Manuel Rama-Montaldo and Mr. Igor G. Fominov, Legal Officers (Codification Division, Office of Legal Affairs), acted as assistants secretaries of the Special Committee and its Working Group.
5. At its 96th and 98th meetings, on 7 and 8 April 1986, the Special Committee, bearing in mind the terms of the agreement regarding the election of officers reached at its session in 1981, 2/ agreed upon the composition of the Bureau of the Committee as follows:

<u>Chairman:</u>	Mr. Domingo Santiago Cullen (Argentina)
<u>Vice-Chairmen:</u>	Mr. Bengt Broms (Finland)
	Mr. Siegfried Hoppe (German Democratic Republic)
	Mr. Yasin A. Aena (Iraq)
<u>Rapporteur:</u>	Mr. Maged Abdel Khalik (Egypt)
6. The Bureau of the Special Committee also served as the Bureau of the Working Group.
7. At its 97th meeting, on 7 April 1986, the Special Committee adopted the following agenda (A/AC.182/L.45):
 1. Opening of the session.
 2. Election of officers.

3. Adoption of the agenda.
4. Organization of work.
5. Consideration of the questions mentioned in General Assembly resolutions 40/68 and 40/78 of 11 December 1985, in accordance with the Committee's mandate set forth in resolution 40/78.
6. Adoption of the report.

8. At the same meeting, the contents of General Assembly resolutions 40/3 of 24 October 1985 and 40/10 of 11 November 1985 concerning the International Year of Peace were conveyed to the members of the Special Committee in furtherance of paragraph 2 of resolution 40/10.

9. The Chairman also 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. The Committee took note of the communication.

10. The Chairman informed the Special Committee that, in a letter addressed to the Chairman of the Special Committee, at its 1985 session, the Chairman of the Committee on Conferences had stated that, in view, inter alia, of the difficult financial climate, the reduction of a report by as little as a single page would have a measurable effect on the expenditures of the Organization. The Special Committee took note of the communication.

11. In accordance with General Assembly resolution 40/78, the Committee agreed to accept as observers any State Member of the United Nations that so requested. It therefore decided to grant requests to that effect received from the Permanent Missions to the United Nations of Chile, Cape Verde, Cuba, Democratic Yemen, Honduras, Hungary, the Libyan Arab Jamahiriya, Morocco, Oman, Panama, Peru, Senegal, Suriname, the Syrian Arab Republic, Uruguay and Zimbabwe.

12. In compliance with the decisions taken by the Special Committee at its 98th and 99th meetings, the Working Group proceeded in accordance with the following timetable:

(a) It started its work with the consideration of the progress report of the Secretary-General on the preparation of a draft handbook on the peaceful settlement of disputes between States (A/AC.182/L.46) and devoted to it one meeting on 8 April 1986;

(b) It devoted seven subsequent meetings, held from 11 to 16 April 1986, to the proposal relating to a commission of good offices, mediation and conciliation;

(c) It then took up the question of the rationalization of existing procedures of the United Nations and devoted three meetings to it, held on 16 and 17 April 1986;

(d) It then dealt with the question of maintenance of international peace and security and devoted 13 meetings to it, held between 18 and 28 April 1986;

(e) The last two days of the session were devoted to the consideration of the report, which the Special Committee decided would not exceed 32 pages in the original language.

13. In addition to the working papers which were considered by the Working Group (see paras. 14, 32, 44 and 45 below), the Special Committee had before it a communication received from Oman pursuant to paragraph 8 of General Assembly resolution 40/78 (A/AC.102/2), and the progress report of the Secretary-General referred to in paragraph 12 (a) above.

II. 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 Rapporteur

14. The Working Group had before it the above-mentioned proposal (A/AC.132/L.47), the text of which reads as follows:

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

"1. Resort to a commission for good offices, mediation or conciliation within the United Nations is defined below as a procedure which is permanently at the disposal of Member States and of the competent organs of the Organization, in order to contribute to the solution of international disputes, to defuse situations which could lead to international friction or give rise to a dispute, and to prevent conflicts among States.

"2. The procedure consists in setting up a commission of good offices, mediation or conciliation, in accordance with modalities described below, subject to other modalities and conditions agreed upon by the interested States.

"3. Such a commission may be set up for each particular case through the agreement of the interested States, on the basis of a resolution of the Security Council or of the General Assembly, adopted in accordance with their respective rules of procedure, or following the contacts of the interested States with the Secretary-General.

"4. When a dispute, the continuance of which is likely to endanger the maintenance of international peace and security, or a situation which might lead to international friction or give rise to a dispute, is submitted to the Security Council, in accordance with the provisions of the Charter, the Council will consider, inter alia, the possibility of recommending to the States parties to such a dispute or those directly affected by such a situation, called further parties, to set up a commission of good offices, mediation or conciliation as an adequate means of solution.

"Likewise, when the General Assembly is seized, in accordance with the provisions of the Charter, with a dispute, or a situation which might lead to international friction or give rise to a dispute, or which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the Charter setting forth the purposes and principles of the United Nations, the General Assembly will consider, inter alia, subject to the provisions of Article 12 of the Charter, the possibility of recommending to the States parties to such a dispute or to those directly affected by such a situation, called further parties, to set up a commission of good offices, mediation or conciliation as an adequate means of solution.

"5. The parties may also agree to set up a commission of good offices, mediation or conciliation, following their contacts with the Secretary-General.

"6. When the parties accept the recommendation of the Security Council or of the General Assembly, or agree, following their contacts with the Secretary-General, to resort to a commission of good offices, mediation or conciliation, the setting up of such a commission is proceeded with.

"7. For each particular case, the Commission is composed of three Member States, which are not parties in the dispute and are not directly affected by the respective situation.

"Any member State may be eligible for membership in such a commission.

"States members of the Commission are designated, with the agreement of the parties, by the President of the Security Council or by the President of the General Assembly, as appropriate. When the Commission is set up by the agreement of the parties following their contacts with the Secretary-General, the latter will designate the States member of the Commission, with the agreement of the parties.

"The parties may also agree to designate one State member to fulfil the procedure of good offices, mediation or conciliation, as defined in the present document.

"8. The States designated will nominate, to participate in the Commission, highly qualified representatives, with adequate experience, who will act in the commission in their individual capacity.

"The Chairman of the Commission is designated by its members, with the agreement of the parties.

"9. The proceedings of the Commission will take place at United Nations Headquarters in New York, or in any other place agreed upon by the parties.

"10. After taking note of the elements of the respective dispute or situation, on the basis of submissions made by the parties, as well as of information provided eventually by the Secretary-General, the Commission will seek to bring the parties to enter immediately into direct negotiations for the settlement of the dispute or situation, or to resume such negotiations.

"The Commission will seek to establish the aspects on which the parties agree, as well as their differences of opinion and perception, and to clarify the factual elements related to the dispute or situation, with a view to making adequate suggestions for the beginning or the resuming of negotiations (concerning, for instance, their framework, problems to solve, stages of negotiation).

"The Commission may invite the parties to refrain from actions or deeds which could lead to the aggravation of tensions and degenerate the dispute into a conflict.

"11. If such negotiations do not begin within a reasonable time, or if all parties request it at any time, the Commission will offer to each of the parties solutions which it deems adequate, seeking through mediation to bring closer their positions until an agreement is reached.

"12. The parties may agree at any moment of the procedure to entrust the Commission with functions of conciliation.

"In such a case, the Commission formulates solutions which it deems adequate for the settlement of the dispute or situation and submits them to the parties.

"The parties may determine the basis on which the Commission should formulate such solutions. If such indications are not given, the Commission should be guided mainly by the obligations of States resulting from the Charter of the United Nations and by the principles of international law and justice.

"The parties will be requested to pronounce themselves on these solutions within a period of time established by the Commission.

"13. The Security Council or the General Assembly may, when recommending the setting up of the Commission, establish a period of time during which it should act for the solution of the respective dispute or situation.

"14. The Commission will work in full confidentiality.

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

"15. Upon the conclusion of its activity, the Commission will report to the United Nations organ which recommended to have recourse to it. The respective United Nations organ may also request interim reports.

"When the Commission is set up through the agreement of the parties, following their contacts with the Secretary-General, the parties decide if a report is to be made public.

"16. The parties to a dispute or directly affected by a situation will act in good faith and will support by all means the activities of the Commission.

"17. In order to facilitate the exercise by the peoples concerned of the right to self-determination as referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, the States concerned, as well as other parties to a dispute involving the exercise of such a right, may agree to have recourse to a commission as described above, following the recommendation of the Security Council or of the General Assembly, or following their contacts with the Secretary-General.

"18. The setting up of a commission, as provided for in the present document, shall not in any way affect the exercise by the Security Council or by the General Assembly of the powers conferred upon them in accordance with the Charter concerning any dispute or situation submitted to them, including the powers to recommend to the parties other means of settlement.

"The Security Council and the General Assembly, respectively, may at any time resume the consideration of a dispute or of a situation for which they have recommended to resort to a commission.

"In such a case, the Security Council and the General Assembly, respectively, may make any recommendation concerning the Commission, including the cessation of its activities.

"19. The setting up of a commission cannot prevent the Secretary-General from initiating or performing missions of good offices with the parties to a dispute or directly affected by a situation.

"20. Having recourse to the procedure described in the present document does not in any way affect the obligations and the right of parties to resort, for the peaceful settlement of their disputes, to other means, agreed upon in a bilateral, regional or multilateral framework, in conformity with the principle of free choice of means."

15. Many delegations stressed that any effort aimed at promoting the peaceful settlement of disputes was worthy of serious consideration. The proposal (A/AC.182/L.47) was generally viewed as an improvement over the previous versions thereof. Mention was made in this respect of the shift from the institutional to the procedural approach, of the clear separation between the three procedures involved, of the ad hoc character of the proposed commission, and of the efforts that had been made to clarify the relationship between the proposed commission and United Nations organs and to take into account the relevant provisions of the Charter, including those relating to the free choice of means.

16. Misgivings and doubts were expressed, however, with regard to the proposal. Some delegations stressed that various aspects, including the composition of the envisaged commission, the status of its members, its financing, staffing and functioning, the role of the parties and the sequence of the three procedures, remained unclear. It was also said that it was incumbent on the sponsors to demonstrate the need for a new procedure, particularly in the light of the under-utilization of existing mechanisms. The remark was made, in this connection, that failure to settle disputes by peaceful means was attributable more to a lack of political will on the part of States than to a scarcity of mechanisms at the universal and regional levels. Some delegations took the view that the proposal was not in keeping with the provisions of the Charter of the United Nations relating to the respective roles of the Security Council and the General Assembly and to the powers of the Secretary-General. Other observations were made relating, on the one hand, to the implications of the proposal in relation to the 1907 Hague Convention on Peaceful Settlement of Disputes, and, on the other hand, to the scope of the proposal, which, it was said, should be limited to disputes the continuance of which was likely to endanger international peace and security. The view was expressed that there were criteria for differentiating disputes from situations and that only the former should fall within the competence of the envisaged commission. The remark was made that it would be more prudent to abide by the approach reflected in Article 34 of the Charter. A further remark was that it was not clear whether the intention was to provide for a new procedure or for a new organ and that the performance of tasks such as fact-finding in border disputes would of necessity entail financial implications. Objections were raised against third party settlement procedures; the institutionalization of such procedures, it was said, jeopardized the principle of free choice of means and it should be borne in mind that similar initiatives had failed in the past.

17. In relation to paragraph 1 of the proposal, it was stressed that Article 35 of the Charter of the United Nations contemplated a role for both Member States and non-member States. The words "and of the competent organs of the Organization" were viewed as ambiguous. Two re-formulations of the paragraph and other drafting changes were proposed.
18. Regarding paragraph 2 of the proposal, it was suggested that the concluding phrase "subject to other modalities ...", should be deleted or modified. The phrase "interested States" was considered as unclear, a comment that was repeated in the context of paragraph 3, and it was suggested that the terms "parties", "interested States" and "States directly affected" should be defined and, in this particular respect, terminological consistency should be ensured throughout the working paper.
19. With reference to paragraph 3, the remark was made that placing the General Assembly and the Security Council on an equal footing was not in keeping with the Charter of the United Nations, which conferred on the latter organ the main responsibility in the field under consideration. The question was raised whether the agreement of the parties was to precede or to follow the recommendation of a United Nations organ, a point on which the text was viewed as unclear. It was suggested that the words "in accordance with their respective rules of procedure" might create problems of interpretation and should be deleted. The word "contacts" was also viewed as leaving largely imprecise the role of the Secretary-General in the setting up of the commission.
20. As regards paragraph 4 of the proposal, some delegations questioned the competence of the General Assembly under the Charter of the United Nations to take the course of action envisaged in the second part of paragraph 4 inasmuch as under paragraph 2 of Article 11 of the Charter, any question relating to the maintenance of international peace and security on which action is necessary is to be referred by the General Assembly to the Security Council. It was suggested that the two parts of paragraph 4 should be combined into a single paragraph. The phrase "in accordance with the provisions of the Charter" was viewed as unnecessary and it was suggested that the idea of conformity with the Charter should be enunciated in a general provision that would apply to the entire text. The word "submitted" was viewed as too formal by some representatives and too restrictive by others, who observed that it did not take into account the possibility of the Council acting proprio motu.
21. Paragraph 5 of the proposal was viewed by some representatives as a duplication of paragraph 3. It was also said that the Secretary-General should promote by all means the implementation of the resolutions of the Security Council.
22. Paragraph 6 of the proposal was thought by some delegations to be unclear as to the moment at which the commission was to be set up and as to the possibility of the commission being established without any involvement of a United Nations organ. Some delegations made drafting suggestions.
23. With regard to paragraphs 7 and 8 of the proposal, some delegations thought that the commission should be composed of States, which, in turn, would appoint their representatives; in their view the fact that individuals acted solely in a personal capacity could create practical problems. Other delegations believed that, in many instances, it would be preferable to submit disputes to individuals whose appointment the parties could object. It was suggested that an appropriate solution would be to allow the parties to choose whether the commission

should be composed of States or of individuals since the advisability of a given composition could vary according to the nature of the dispute and the procedure involved.

24. With specific reference to the first part of paragraph 7, the suggestion was made to combine it with the fourth part of paragraph 7. It was proposed that the Commission comprise either up to three members or five members in disputes involving several parties. The second part of paragraph 7 was considered unnecessary by some representatives who suggested that it should be combined with the first part of paragraph 7. It was also proposed that membership in the commission be opened to non-Member States of the United Nations, and that the formulation of the second part of paragraph 7 be clarified. Regarding the third part of paragraph 7, it was suggested that it be left to the parties themselves to designate the commission's composition and that that part of the paragraph should be shortened. The fourth part of paragraph 7 raised the problem of whether an additional fourth member of the commission was meant or whether a single member would act instead of a three-member commission.

25. With regard to the first part of paragraph 8 the view was expressed that words such as "highly qualified representatives" should be avoided. It was also suggested that parties to a dispute should have a say regarding the individuals who would make up the commission, for example, through the establishment of a panel from which they would be selected by the parties. In this connection the selection methods provided for the Hague Permanent Court of Arbitration and the 1967 fact-finding panel were recalled. As to the second part of paragraph 8, it was asked what sort of functions would be vested in the commission's chairman.

26. It was noted that while paragraphs 11 and 12 clearly referred to mediation and conciliation, respectively, paragraph 10 did not expressly mention good offices. The role of the parties in passing from one procedure to the other should be clarified.

27. With regard to the first part of paragraph 10, the view was expressed that direct negotiations were a flexible and effective procedure different from the three envisaged by the paper. The choice should be left to the parties rather than be vested in a commission procedure which was too rigid. It was said that the provisions of the third part of paragraph 10 should not be optional and should apply to all States, along the lines of paragraph 8 of the Manila Declaration on the Peaceful Settlement of International Disputes, contained in General Assembly resolution 37/10 of 15 November 1982.

28. In responding, the sponsor made a number of clarifications in order to show that the proposed procedure was in conformity with the Charter and the balance enshrined in it between the Security Council, the General Assembly and the Secretary-General and that its elaboration and approval with the participation of all States might prove its usefulness. The sponsor also noted the constructive nature of the remarks made in relation to various paragraphs, including those containing drafting suggestions, and stated that they would be easily taken care of during the elaboration of the definitive version of the proposal.

29. The consensus of the Working Group was that the discussion had contributed a positive step and had revealed the existence of some elements on which general agreement might well be possible and that that should enable further progress on the proposal.

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 Rapporteur

30. In examining this question, it was noted that, in accordance with the agreement reached by the Special Committee at its 1985 session, the Secretary-General had invited the States members of the Committee to attend a meeting of the Consultative Group on the Handbook on the Peaceful Settlement of Disputes between States, which had taken place on 3 April 1986 under the chairmanship of the Under-Secretary-General, the Legal Counsel. At that meeting, the Consultative Group had reviewed the drafts prepared by the Secretariat for the introduction and chapter I, entitled "The principle of the peaceful settlement of disputes between States", and section A of chapter II relating to negotiations and consultations.

31. After a short debate, the Working Group took note of the progress report of the Secretary-General (A/AC.182/L.46).

III. RATIONALIZATION OF EXISTING PROCEDURES OF THE UNITED NATIONS

Statement of the Rapporteur

32. The Working Group had before it a revised version (A/AC.182/L.43/Rev.1) of a working paper submitted at the previous session by France and the United Kingdom of Great Britain and Northern Ireland, which reads as follows:

"Rationalization of existing United Nations procedures

- "1. Without prejudice to the provisions of the Charter of the United Nations on voting, resolutions and decisions of the General Assembly should be adopted whenever possible by consensus. Consultations should be carried out informally, or within subsidiary bodies or ad hoc working groups, with the widest possible participation of Member States, in order to facilitate the adoption by the General Assembly of conclusions and solutions which are generally acceptable and therefore most likely to be implemented. These principles should be reflected in the rules of procedure of the General Assembly.
- "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 put forward, for the attention of the next General Committee, suggestions about the organization and rationalization of the work of the next General Assembly.
- "4. The agenda of the General Assembly should, in the light of consultations with interested delegations, be rationalized as much as possible by grouping or merging related items, by fixing an interval of two or more years for the discussion of certain items, and by removing items if discussion on them has been postponed on several successive occasions.
- "5. The General Committee should consider, at the beginning of each session of the General Assembly, the possibility of convening certain Main Committees successively, taking into account the questions with which they are charged and the organization of the work of the whole session.
- "6. The distribution of agenda items between the Main Committees of the General Assembly, and between those Committees and the plenary sessions of the General Assembly, should be reviewed, with a view to ensuring the best use of the expertise of the Committees, and of the time and resources available.
- "7. Each Main Committee should have in addition to the Chairman and Rapporteur three Vice-Chairmen in order that all regional groups might be represented on the Bureau.
- "8. Except in exceptional circumstances, the General Assembly should not create new subsidiary organs without discontinuing an equivalent number of existing organs.

"9. The dates and length of the sessions of intersessional bodies of the General Assembly should be arranged by the General Assembly and Committee on Conferences so as to facilitate the maximum efficiency in the conduct of their work, full account being taken of the available facilities, competing priorities and budgetary resources. The length of sessions should be kept to a necessary minimum bearing in mind past experience and the state of current work, and it should be open to all intersessional bodies to curtail or adjourn their sessions ahead of time if the circumstances so justify.

"10. The General Assembly and Committee on Conferences should adhere strictly to the decision in resolution 31/140 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.

"11. In order to promote adequate consideration of the issues involved, efforts should be made to reduce the number of resolutions adopted by the General Assembly. Resolutions ought not to request observations from States or reports by the Secretary-General except in cases where that would be indispensable for facilitating the implementation of these resolutions or the continued examination of the question."

33. Commenting on the topic in general, several delegations stressed the close link of the rationalization of procedures with the substantial issues. They also stressed the importance of keeping the subject under review. Reference was made in that connection to the financial situation of the United Nations, which required optimum use of reduced resources. Other delegations pointed out that a body had specially been established to deal with the financial situation of the United Nations and that the issue of rationalization, however important, was a complex one on which the Committee had so far achieved only limited results. Concern was expressed that pursuit of this work might result in the Committee resuming discussion of proposals that had failed to elicit general support or were already reflected in annexes to the rules of procedure of the General Assembly. But it was pointed out that the working paper concentrated on aspects that the Committee had decided were worthy of further consideration.

34. Some delegations recalled that a number of forums were or had been considering various aspects of the topic and that rationalization should start with the elimination of duplication. The remark was also made that the Committee could usefully follow relevant developments taking place in other forums. It was suggested that the Secretariat should undertake a survey of those developments.

35. The view was expressed that three essential considerations should guide the efforts at rationalizing United Nations procedures, namely, strict conformity with the Charter of the United Nations, the unacceptability of proposals that would reduce or distort the political activity of United Nations organs, and full respect for the rights of sovereign States to bring matters before those organs. On the other hand, the view was expressed that the ability of the United Nations to achieve the objectives of the Charter depended to a large extent on the quality of its procedures and that the modest proposals contained in the working paper were aimed not at limiting the right of sovereign States to bring matters to the attention of the United Nations, but at ensuring that the work of the Organization was as effective and expeditious as possible.

36. Some delegations said that the paper was highly selective in focusing on the General Assembly and that it should deal with all the principal and subsidiary organs of the United Nations, particularly the Security Council, and their functioning and modalities. Doubts were expressed about such a broad approach, which would trespass on the competence of principal organs. It was indicated on behalf of the co-sponsors that delegations were always free to submit other proposals.

37. An observation was made that the recommendation that subsidiary organs should hold pre-session consultations in order to reach agreement on the organization of their work and on their bureau would enable those organs to devote all their time to the consideration of the substantive items before them.

38. Only paragraphs 1 to 5 of the working paper were discussed in detail.

39. With regard to paragraph 1 of the working paper, the view was expressed that consensus was a vague concept. While general agreement was desirable, it was meaningful only when based on the political will of States. It was not considered desirable if it resulted in emptying proposals of their substance. The remark was made, on the other hand, that notwithstanding the absence of a definition, consensus was part of the current practice of the United Nations and paragraph 1 of the proposed text contained guarantees against possible abuse. Several delegations objected to the last sentence, stressing in particular that consensus was not a procedural matter and therefore had no place in the rules of procedure. Others took the opposite view and stated that paragraph 104 of annex V to the rules of procedure of the General Assembly already contained a reference to consensus, but with a limited scope. In their view, the proposal was merely designed to describe the practice of the organization in the way that the members of the Committee would find most appropriate.

40. Paragraph 2 was supported by several delegations, but considered by others as at variance with practice.

41. With respect to paragraph 3, objections were raised by some delegations and the question was asked how the idea contained therein would be implemented in practice. It was also noted that the idea was already reflected in paragraph 4 of annex VII to the rules of procedure of the General Assembly. In response to that view, it was pointed out that that paragraph was concerned with the current session of the Assembly, but that paragraph 3 of the working paper was concerned with rationalization of the work of the forthcoming Assembly.

42. As regards paragraph 4, the remark was made that a similar idea was to be found in paragraph 1 of annex VII and paragraphs 20 and 21 of annex V to the rules of procedure of the General Assembly. Some delegations supported the merging of related items. Others drew attention to the political difficulties involved in determining whether specific items were related. Doubts were expressed, furthermore, on the deletion of agenda items merely on the ground that discussion of them had been postponed on several occasions. It was remarked, however, that the text of paragraph 4 did not make the removal of items automatic.

43. Paragraph 5 was viewed as worthy of further consideration by several delegations. Some objections were raised that the proposal might require a reorganization of the work of the General Assembly.

Statement of the Rapporteur

44. The Working Group had before it a revised version (A/AC.182/L.38/Rev.2) of the working paper submitted at previous sessions by Belgium, the Federal Republic of Germany, Italy, Japan, New Zealand and Spain, which read as follows:

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

- "1. States should fully co-operate with the relevant organs of the United Nations and support their preventive activities relating to disputes, situations which might lead to international friction or give rise to a dispute (hereafter: 'situation') and matters which may threaten the maintenance of international peace and security (hereafter: 'matter').
- "2. States should be encouraged to approach the relevant organs of the United Nations in order to obtain suggestions on preventive means for dealing with disputes, situations and matters.
- "3. States directly concerned, particularly if they intend to formally request a meeting of the Security Council, should be encouraged to approach, directly or indirectly, the Security Council at an early stage and, if appropriate, on a confidential basis.
- "4. The Security Council should consider holding periodic meetings and consultations to review the international situation.
- "5. In order to prepare itself for preventive activities, the Security Council should consider making more frequent use of rule 23 of its provisional rules of procedure in appointing the Secretary-General as rapporteur for a specified question and employing other means at its disposal as set forth in its provisional rules of procedure.
- "6. When a specific dispute, situation or matter is brought to the attention of the Security Council without a meeting being requested, the Security Council should consider holding consultations with a view to examining the facts of the dispute, situation or matter and keeping it under review, with the assistance of the Secretary-General. In the course of these consultations, equal opportunity to present their views should be ensured to the States directly concerned.
- "7. In such consultations, without prejudice to formal decisions it might take at a subsequent stage, the Security Council should consider employing such confidential methods as it deems appropriate.
- "8. The Security Council should also consider in such consultations:
 - "(a) Making an appeal to the States concerned to refrain from any action which might lead to the deterioration of the dispute, situation or matter;

"(b) Calling upon the States concerned to fulfil their obligations under the Charter; and/or

"(c) Suggesting to the States concerned means of settlement and/or such terms of settlement as it deems appropriate.

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

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

"11. The Security Council should also consider the opportunity to recommend to the States directly concerned appropriate procedures or methods of adjustment for disputes, situations or matters submitted to it and to recommend such terms of settlement as it deems appropriate.

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

"13. The General Assembly should be encouraged to make full use of the provisions of the Charter in order to discuss disputes, situations and matters and, subject to its Article 12, make appropriate recommendations including resorting to negotiations or other peaceful means of adjustment or settlement.

"14. The General Assembly should encourage and, where appropriate, endorse efforts undertaken at the regional level to prevent and/or remove a dispute, situation or matter in the region concerned.

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

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

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

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

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

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

"21. The Secretary-General should be encouraged to approach the Security Council on a confidential basis and to make full use of his right to bring disputes, situations or matters to the attention of the Security Council at as early a stage as he deems appropriate.

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

"23. Preventive activities, when appropriate, should be reviewed."

The Working Group also had before it a working paper (A/AC.182/L.48) submitted by Czechoslovakia, the German Democratic Republic and Poland, which read as follows:

"Role of States Members of the United Nations and of the United Nations Organization in the maintenance of international peace and security including, inter alia, the prevention and removal of threats to the peace and of situations which may lead to international friction or give rise to a dispute"

Explanatory observations

"The maintenance of international peace and security is a common concern of all countries and a vital purpose of the United Nations.

"In resolutions 38/141 of 19 December 1983, 39/80 A of 13 December 1984 and 40/78 of 11 December 1985, the General Assembly requested the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization to accord priority by devoting more time to the question of the maintenance of international peace and security in all its aspects in order to strengthen the role of the United Nations, in particular the Security Council, and to enable it to discharge fully its responsibilities under the Charter in this field; this necessitated the examination, inter alia, of the prevention and removal of threats to the peace and of situations which might lead to international friction or give rise to a dispute; the Special Committee was requested to work on all questions with the aim of submitting its conclusions to the General Assembly for the adoption of such recommendations as the Assembly would deem appropriate.

"While the Special Committee undertook during its 1984 and 1985 sessions a preliminary examination mainly of one aspect of the United Nations and its main organs preceding the start of the pacific settlement of disputes, it has not yet engaged in a more comprehensive approach to the question of the

maintenance of international peace and security in all its aspects in order to strengthen the role of the United Nations as envisaged in the Committee's mandate.

"The strengthening of the role of the United Nations in this area cannot be separated from the role of States and their conduct in fulfilling their obligations under the Charter of the United Nations, in accordance with the basic principles of international law.

"The role of States as primary actors in the maintenance of peace and security and in conflict prevention needs to be strongly emphasized and the conduct of States in accordance with the purposes and principles of the Charter should be considered a vital aspect of any realistic discussion on the problem. Special attention must be given to the protection from war, especially nuclear war, as a major task of conflict prevention and maintenance of international peace and security in general.

"Such a discussion could lead in the end to the elaboration of a document of a declaratory character on the strengthening of the effectiveness of the United Nations in the maintenance of international peace and security in accordance with the Charter and on the efforts of States in eliminating threats to the peace, in particular the threat of nuclear war, halting the arms race and improving the international situation in a spirit of peaceful coexistence and détente. This would also be an important contribution to the creation of an all-embracing system of international security.

"The present paper intends to provide the necessary starting points in this regard that would enable the Committee to broaden gradually its working base, so as to engage, in an orderly and realistic manner, in the comprehensive approach to the question of the maintenance of international peace and security, as mandated by the General Assembly.

"The following provisions could constitute, prima facie, the framework for discussion of the Special Committee in the indicated direction.

"I. Lasting validity of the purposes and principles of the Charter of the United Nations

"1. International developments of the last four decades have reaffirmed convincingly the viability of the purposes and principles enshrined in the Charter of the United Nations. It was possible to prevent another global war, to safeguard peace and to improve the well-being of mankind.

"2. Significant progress has been achieved in the co-operative international endeavour to maintain international peace and security, in enhancing international awareness of the need for disarmament and co-operation for development, as well as in other important areas. The process of national liberation and decolonization was nearly completed.

"3. However, despite the achievements, the purposes of the Charter have not yet been fully realized and its principles and provisions are not being fully and universally respected. The situation continues to be characterized by the mounting tension and anxiety resulting from an unprecedented accumulation of nuclear weapons and other means of potentially ultimate destruction, as well

as from continuation and aggravation of local conflicts, interference and intervention, acts of aggression, violations of the right to self-determination, and grave economic and social problems, particularly in the developing countries. All these questions have a direct bearing on the maintenance of international peace and security and need to be resolved urgently through determined collective efforts.

"4. The most important prerequisite for solving the critical issues of the present world and for safeguarding international peace and security lies in an unswerving observance by all States of the purposes and principles of the United Nations contained in the Charter and developed in other generally recognized international instruments, such as:

"(a) The Declaration on the Granting of Independence to Colonial Countries and Peoples of 14 December 1960;

"(b) The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations of 24 October 1970;

"(c) The Declaration on the Strengthening of International Security of 16 December 1970;

"(d) The Manila Declaration on the Peaceful Settlement of International Disputes of 15 November 1981;

"as well as the provisions of other relevant documents of the United Nations adopted by consensus, including inter alia, the Definition of Aggression of 14 December 1974, the Final Document of the first special session of the General Assembly devoted to disarmament of 1 July 1978 and the Declaration on the Preparation of Societies for Life in Peace of 15 December 1978.

"5. All States have the responsibility to secure a more effective application of the fundamental principles and rules of contemporary international law, particularly with regard to fulfilling the following universally accepted principles:

"(a) The principle of equal rights and self-determination of peoples;

"(b) The principle of sovereign equality of States;

"(c) The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter;

"(d) The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered;

"(e) The principle that States shall refrain in their international relations 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;

"(f) The principle that States shall give the United Nations every assistance in any action it takes in accordance with the Charter and shall refrain from giving assistance to any State against which the United Nations is taking preventive or enforcement action;

(g) The principle of non-intervention in matters within the domestic jurisdiction of any State, in accordance with the Charter;

"(h) The principle of co-operation among States in accordance with the Charter.

"II. General framework for defining the role of States in the maintenance of international peace and security in accordance with the Charter of the United Nations

"1. The fundamental responsibility for the maintenance of international peace and security and for the prevention and removal of threats to the peace and of situations which may lead to international friction or give rise to a dispute rests with sovereign States which are the primary subjects of international law.

"2. All Member States of the United Nations are duty-bound to give their fullest support to the endeavours of the Organization to ensure respect for, and the observance of, the Charter in order to increase the effectiveness of the Organization and its relevant organs in discharging their responsibilities for the maintenance of international peace and security as assigned to them by the Charter.

"3. In exercising their rights inherent in, and encompassed by, each State's sovereignty, all States are obliged to define and conduct their relations with other States in accordance with international law in a manner compatible with the purposes and principles of the United Nations so as to prevent the emergence of international disputes or conflicts constituting a threat to international peace and security.

"4. All States, whenever it is determined in accordance with the Charter that international peace and security are endangered, should strive in good faith to take effective collective measures for the removal of threats to the peace and for the suppression of acts of aggression, as defined by the General Assembly in its resolution 3314 (XXIX), or other breaches of the peace, and to bring about by peaceful means and in accordance with international law, adjustment or settlement of international disputes or situations which might lead to a breach of peace; in so doing, States should fully respect the exclusive responsibility of the Security Council to decide what measures or action may be necessary to maintain or restore international peace and security.

"5. Nothing in the foregoing paragraph shall be construed as enlarging or diminishing in any way the scope of the provisions of the Charter concerning cases in which the use of force is lawful.

"6. Since the process of disarmament affects the vital security interests of all States they must be all actively concerned with and contribute to the measures of disarmament and arms limitation, which have an essential part to

play in maintaining and strengthening international peace and security. Among such measures, the prevention of nuclear war as well as immediate and effective steps to be taken towards the complete liquidation of all arsenals of nuclear and chemical weapons and for banning offensive outer space weaponry has the highest priority. The role and responsibility of the United Nations in the sphere of disarmament, in accordance with its Charter, must be strengthened through urgent collective efforts and adoption of measures to arrest and reverse the arms race, to eliminate the nuclear threat on Earth, to prevent the extension of the arms race into outer space and to employ material and human resources for social and economic development of mankind.

"III. Possible steps to be taken by States to implement more effectively the objectives and principles of the Charter of the United Nations in order to maintain international peace and security"

"The Special Committee could consider the following questions pertaining to the maintenance of international peace and security with a view to elaborating and submitting to the General Assembly appropriate recommendations thereon.

"1. Realization of urgent measures that should be undertaken by States at the global, regional or any other level in order to enhance the effectiveness of the principle of non-use of force in international relations with a view to reducing and eliminating the threat of military confrontation and, particularly, the threat of nuclear war, through inter alia:

"(a) Making progress towards the elaboration of a comprehensive and universally binding instrument on the non-use of force in international relations;

"(b) Renunciation of first use of nuclear weapons by all nuclear-weapon States, individually or within an agreed collective framework, with a view to completely prohibiting any use of nuclear weapons and thus preventing the outbreak of a nuclear war;

"(c) Adoption by all nuclear-weapon States of an undertaking not to use nuclear weapons under any circumstances against non-nuclear States in whose territory there are no such weapons, to respect the status of the nuclear-weapon-free zones already created and to encourage the creation of new such zones in various parts of the world;

"(d) Strengthening the régime of non-proliferation of nuclear weapons in accordance with the Treaty on the Non-Proliferation of Nuclear Weapons;

"(e) Speedy elaboration of binding international arrangements to strengthen the peaceful status of outer space, to outlaw any development or deployment of space-based weapons and the use of force in outer space and from space against the Earth, and to promote a broad international co-operation in the peaceful exploitation of outer space under conditions of its non-militarization;

"(f) Conclusion, on a regional basis or between politico-military alliances, of agreements on mutual non-use of military force, including the commitment not to be the first to use nuclear or conventional arms against one another, and on maintaining peaceful relations between the States parties to such agreements, with a view to strengthening international peace and security, reducing tension and creating conditions for gradually overcoming the division of the world into politico-military groupings.

"2. Implementation on a global or regional level of other substantive measures of a both political and military nature to increase confidence and stability conducive to the strengthening of international peace and security, such as:

"(a) Introducing a moratorium on all nuclear explosions until the conclusion of a treaty on the complete and general prohibition of nuclear-weapon tests;

"(b) Undertaking an obligation by nuclear-weapon States to refrain from stationing nuclear weapons on the territory of States where there are none, as well as not to increase stockpiles of nuclear weapons or replace them with new ones in countries where such weapons have already been installed;

"(c) Other appropriate measures, like the prevention of accidental or unauthorized use of nuclear weapons and avoidance of the possibility of surprise attacks;

"(d) Non-proliferation of other types of weapons of mass destruction, in particular chemical weapons, including the creation of chemical-weapon-free zones;

"(e) Assuming the obligation not to develop and manufacture new types of weapons of mass destruction and new systems of such weapons as well as conventional weapons, comparable in destructiveness to weapons of mass destruction;

"(f) Non-increase of military budgets and their balanced proportionate reduction.

"3. Effective implementation of the system of collective security provided for in the Charter is a fundamental prerequisite for achieving genuine and lasting peace and needs to be actively pursued. In so doing, States should pay due attention in particular to:

"(a) Employing all means available to them for strengthening the role of the Security Council in the pacific settlement of disputes, prevention of conflicts and removal of threats to the peace and security, including reaffirmation in practice of their obligation strictly to observe and implement Security Council decisions;

"(b) Securing a just political settlement of international crises and regional conflicts;

"(c) Making greater use, without prejudice to the principle of free choice of means, of direct consultations and meaningful negotiations in order to prevent and peacefully resolve their disputes.

"4. Identification and realization of additional measures in accordance with Chapter VII of the Charter aimed at:

"(a) Enforcing the prohibition of subjecting the territory of a State or country to military incursion, occupation or acquisition by force in contradiction of the Charter;

"(b) Giving full effect to the right of all peoples to determine their own destinies, including the right to statehood and independence free of external coercion or constraint;

"(c) Completing the process of decolonization.

"5. Enduring peace and stability also require the economic security of States, which is an integral part of an all-embracing system of international security. In this connection, it is of particular importance to ensure that:

"(a) All States more fully co-operate in creating just and rational international economic relations, encouraging structural changes in the world economy for the benefit of all States, while taking into account the needs of the developing countries, in accordance with the Charter of Economic Rights and Duties of States and the Declaration and Programme of Action for the Establishment of a New International Economic Order of 1974;

"(b) Effective ways and means to solve, in a comprehensive manner, interrelated issues of money, finance, debt and trade and other related problems are urgently agreed upon and implemented;

"(c) Sovereignty of States over their natural and other resources is consistently respected;

"(d) No State should use or encourage others to use economic, political or any other measures designed to force another State to subordinate to it the exercise of the latter's sovereign rights.

"6. In the interests of peace and security, States should secure both the widest possible access to the achievements of modern science and technology and their application exclusively for peaceful purposes.

"7. With a view to strengthening international peace and security and preventing mass and flagrant violations of human rights and fundamental freedoms, all States should increase their efforts to strengthen the role of international law, through ratifying or acceding to, if they have not yet done so, the international instruments in the field of human rights, in particular, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights, the International Covenant of Civil and Political Rights and the International Convention on the Suppression or Punishment of the Crime of Apartheid.

"8. Important tasks relating to the strengthening of peace and security lie before States in the field of education, information and internal legislation. They should provide for education for peace at all levels of their school systems and adopt, if they have not yet done so, laws prohibiting

war propaganda and dissemination of fascist and similar ideas and practices. These goals should be promoted more actively also by the national mass media, cultural and scientific institutions and by other relevant means.

"IV. Role of the Security Council and other main organs of the United Nations in the prevention and removal of threats to the peace and of situations which may lead to international friction or give rise to a dispute

"All States Members of the United Nations recognize the need for strengthening the role of the Organization, in particular of the Security Council, which under the Charter of the United Nations, has been vested with the primary responsibility for the maintenance of international peace and security. In this context, they pay special attention to a greater involvement of the Organization, pursuant to its Charter, in preventing and removing threats to the peace and situations which may lead to international friction or give rise to a dispute. For this purpose they emphasize the following:

- "1. The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations or decide what measures shall be taken in accordance with Articles 41 and 42 of the Charter to maintain or restore international peace and security.
- "2. In order to prevent an aggravation of the situation the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39 of the Charter, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. It is solely for the Security Council to adopt decisions on the questions relating to the establishment of the United Nations peace-keeping operations and the direction of them throughout the entire operations, sending of observer missions and the direction of their activities.
- "3. The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to dispute in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security. In doing so, the Security Council alone has the right to decide on all questions pertaining to the establishment of fact-finding missions and the direction of their activities.
- "4. The General Assembly may, taking into account the provisions of Articles 11 and 12 of the Charter, discuss any questions relating to the maintenance of international peace and security and make recommendations with regard to any such questions.
- "5. The Secretary-General may bring to the attention of the Security Council any matter which, in his opinion, may threaten the maintenance of international peace and security. He shall assist by all means at his disposal in the implementation of the resolutions and decisions of the Security Council and perform such functions as are entrusted to him by the Security Council. The Secretary-General shall report to the Security Council on the performance of these functions."

46. The Working Group had a discussion regarding the manner of its consideration of the topic. The sponsors of document A/AC.182/L.38/Rev.2 and some other delegations stressed the special status of their revised document as a result of the Committee's work for two consecutive sessions, in accordance with the agreement reached at the 1983 session to begin by elaborating the preventive aspect of the maintenance of international peace and security. In that connection, they referred to paragraph 3 (a) of General Assembly resolution 40/78 which stated that the Special Committee should work expeditiously on their paper as well as other proposals which might be made on the specific question it dealt with, with a view to completing its consideration. They also urged the Special Committee to begin a drafting exercise based on their paper, aimed at reaching specific recommendations on the preventive role of United Nations organs.

47. The sponsors of A/AC.182/L.48 and some other delegations stressed the general nature of the Special Committee's mandate. They referred in this connection to paragraph 3 (a) of General Assembly resolution 40/78 which stated that the Special Committee should accord priority to the question of the maintenance of international peace and security in all its aspects and not, as claimed, to a specific aspect of this subject. They emphasized the sovereign right of any State to present at any time proposals which had to be considered on an equal footing with any other proposals.

48. A third group of delegations emphasized the urgent need to reach specific recommendations on the maintenance of international peace and security, which was, in their view, proof of the Special Committee's credibility. They also recalled the agreement reached in 1983 to begin the elaboration of a specific recommendation on the preventive role of United Nations organs, including the conduct of States in this respect. They stressed that document A/AC.182/L.38/Rev.2 was based not only on the views of its sponsors but also on various observations made by all delegations in the course of its consideration over the last two years, and concluded that it had an advanced status. This group of delegations regarded document A/AC.182/L.48 as a valuable contribution by its sponsors to the work of the Special Committee, and stressed that further time was needed to allow their respective Governments to study its contents. They therefore proposed that the Special Committee could begin by finalizing its work on the preventive role of United Nations organs through drafting a document based on document A/AC.182/L.38/Rev.2 and the relevant parts of document A/AC.182/L.48, and then devote a number of meetings for the consideration of the remaining parts of document A/AC.182/L.48.

49. After consultations, the Working Group agreed that it would work strictly in accordance with General Assembly resolution 40/78; it would devote: one meeting to the introduction of both documents submitted (A/AC.182/L.38/Rev.2 and A/AC.182/L.48); one or two meetings to a preliminary exchange of views on the two documents; five meetings to the concrete examination of document A/AC.182/L.38/Rev.2, taking into account the relevant provisions of document A/AC.182/L.48, with a view to identifying points of agreement; and three meetings to the consideration of document A/AC.182/L.48

Introduction of and preliminary exchange of views on working papers
A/AC.182/L.38/Rev.2 and A/AC.182/L.48

50. A spokesman on behalf of the sponsors of each working paper made an introductory statement.

51. Several representatives viewed the revised working paper (A/AC.182/L.38/Rev.2) as a definite improvement over its prior versions. They remarked that the revised version of the working paper maintained the basic thrust of the version presented in 1985 as to substance, but had undergone only structural and drafting changes in response to comments made and for purposes of clarity and precision. They said that the revised working paper provided a solid basis for the Committee to begin drafting a document containing specific recommendations on the preventive role of United Nations organs to be submitted to the General Assembly at its forty-first session. The same representatives also emphasized that that document offered the Committee the best opportunity for achieving general agreement on a document on the question under discussion. In their view, this was due in large measure to its concrete and specific nature and also to the general agreement reached in 1983 to begin by elaborating conclusions on the preventive role of United Nations organs. They also viewed the revised working paper as fully in conformity with the spirit and letter of the Charter.

52. However, some representatives voiced reservations on the contents of the revised working paper (A/AC.182/L.38/Rev.2), as in their view, various paragraphs of it ran counter to provisions of the Charter, particularly those regarding the primary responsibility of the Security Council in the maintenance of international peace and security. They considered it premature to treat it as the sole basis for preparing a document for submission to the General Assembly, as it ignored more fundamental elements, in particular the conduct of States in the maintenance of international peace and security.

53. The working paper contained in document A/AC.182/L.48 was viewed by some delegations as a solid basis for the work of the Special Committee in strict conformity with its mandate and with the Charter, as it provided a broad range of effective measures in the military, political, economic and humanitarian fields which should be undertaken by all States in order to create an all-embracing system of international security. Those delegations stressed the highest priority they attached to the programme of complete liquidation of all weapons of mass annihilation by the end of the twentieth century, proposed by the Union of Soviet Socialist Republics on 15 January 1986, which was in their view of paramount importance to the maintenance of international peace and security. Thus the paper, in their view, was comprehensive, included general principles concerning the conduct of States and could form the basis of a document of a declaratory nature on strengthening the effectiveness of the United Nations, and on the efforts of States in eliminating the threat of nuclear war, halting the arms race and improving the international situation.

54. Reservations with regard to the contents of document A/AC.182/L.48 were expressed by other representatives. They considered the document as overly ambitious as it attempted to deal with all issues facing the international community and touched upon matters well beyond the competence of the Committee, many of them controversial. They stressed that no results or general agreement would be possible if work proceeded on the basis of document A/AC.182/L.48. Although some ideas contained in it merited discussion, the consideration of document A/AC.182/L.48 should not in any way hamper the finalization of document A/AC.182/L.38/Rev.2, which had been prepared in accordance with the agreement reached in 1983.

Concrete examination of document A/AC.182/L.38/Rev.2, taking into account the relevant provisions of document A/AC.182/L.48, with a view to identifying points of agreement

55. Several representatives viewed the idea underlying paragraph 1 of the revised working paper (A/AC.182/L.38/Rev.2) as being in line with various provisions of the Charter of the United Nations, including Article 2, paragraph 5. It was stressed that this paragraph dealt with the embryonic phase in the chronological development of a dispute or situation, before the arising of a threat to international peace and security.

56. Certain representatives were of the view that preventive activities were only one of the aspects of the question of maintenance of international peace and security and believed that it might be useful to highlight this fact and the decisive role of States in preventive activities, but suggested that this could be done elsewhere in the paper, in a chapeau or preamble.

57. Comments were made concerning certain terms appearing in the text of the paper. Clarification was needed, it was said, of the term "preventive activities" which did not appear in the Charter. The meaning of "dispute" was questioned. Also, it was suggested to drop throughout the paper references to "matters", a term which covered the concepts of "dispute" and "situation", as Article 12 of the Charter made abundantly clear. Finally, the appropriateness of the phrase "relevant organs" was questioned.

58. Reservations were expressed on paragraph 1 by certain representatives who maintained that it attempted to impose on States obligations contrary to the Charter. Some representatives criticized the paragraph as it failed to recognize the organic link between the role of States and that of the activities of United Nations organs in the field. They proposed to include in A/AC.182/L.38/Rev.2, paragraphs 1 to 4 and a portion of paragraph 6 of section II of A/AC.182/L.48.

59. Some other representatives raised doubts regarding the insertion of certain paragraphs of A/AC.182/L.48 in A/AC.182/L.38/Rev.2. In their view, these paragraphs were too general and irrelevant to the specific focus of A/AC.182/L.38/Rev.2. It was also questioned whether paragraphs 1 and 4 of section II of A/AC.182/L.48 were in conformity with Article 24 paragraph 1, and Article 48, paragraph 1, of the Charter of the United Nations.

60. With regard to paragraph 2 of the revised working paper (A/AC.182/L.38/Rev.2), questions were raised as to the meaning of such expressions as "approach", "suggestions", "relevant organs" and "preventive means". It was also questioned whether the States referred to in paragraph 3 should be precisely indicated as the States "directly concerned".

61. Certain representatives believed that a serious omission was that of not mentioning the free choice of means available to States for settling disputes under Article 33 of the Charter. Before encouraging States to make use of the Security Council at this early stage of a dispute, they should be encouraged to negotiate between themselves. It was, moreover, suggested that certain general principles regarding the peaceful settlement of disputes should be included in the working paper and that portions of paragraph 3 of section III of A/AC.182/L.48 should be added. In addition, it was suggested to insert a reference to States making prior use of regional arrangements for peaceful settlement before approaching the Security Council, in accordance with Article 52, paragraph 2, of the Charter of the United Nations.

62. Other representatives, however, did not believe that paragraph 2 in any way affected Article 33 of the Charter; in their view, nothing prevented States from employing the means specified therein as they deemed fit. Moreover, they said, it was irrelevant to repeat general principles and provisions stated in the Charter concerning settlement of disputes. Such proposals did not focus on concrete preventive aspects and a debate on them would only delay expeditious work on the paper.

63. As to paragraph 3, it was proposed to limit the paragraph to direct approaches to the Security Council, subject to the procedures and priorities established by the Council. In addition, it was suggested that the contents of Article 34 of the Charter should be inserted in the paragraph; this was, however, considered to be unnecessary, according to another view.

64. Paragraphs 4, 5 and 6 generally met with a favourable response. With reference to paragraph 4, the remark was made that, in comparison with Article 28, paragraph 2, of the Charter of the United Nations, the first part was retrogressive; another view was that the text should be brought more closely into line with Article 28, paragraph 2, of the Charter. In response, it was observed that the periodic meetings envisaged in the working paper were to be held at an informal level and with a specific purpose and therefore differed from those provided for in the Charter. The word "periodic" raised difficulties with some delegations. It was proposed to limit the scope of the second part of paragraph 4 by making it clear that the developments to be reviewed were those endangering international peace and security. It was suggested to replace "and" by "or", to give more leeway to the Security Council. It was also suggested to reflect in paragraph 4 the idea contained in Article 28, paragraph 3, on the grounds that the presence of the Security Council in troubled areas would have a beneficial preventive effect. The remark was made, on the other hand, that, aside from creating organizational problems, the convening of the Security Council at places other than the seat of the Organization might detract from the serenity of its proceedings. It was, furthermore, proposed to add to paragraph 4 a phrase aimed at broadening its scope.

65. With reference to paragraph 5, it was suggested to delete the last words ("as set forth" etc.), which were viewed as restrictive. The opening words were considered unclear and the reference to rule 23 as over-emphasizing one among the many courses of action which were open to the Council.

66. As to paragraph 6, it was suggested to delete the phrase "with the assistance of the Secretary-General", which was viewed as imprecise. The drafting of the second sentence was criticized as being too rigid by several delegations. Another suggestion was to include in the paragraph the idea contained in paragraph 3 of section IV of document A/AC.182/L.48.

67. With respect to paragraph 7, doubts were expressed on the proviso "without prejudice, etc.", as well as on the reference to "confidential methods", which some delegations viewed as unduly restrictive and others as inappropriate in relation to a phase of the activity of the Security Council where the nature of the dispute and the Council's competence to deal with it had not yet been clearly established. In this connection, however, attention was drawn to the basic assumption underlying paragraphs 6 to 8 as formulated in the opening words of paragraph 6. Reference was made to the established practice of issuing presidential statements following consultations without convening a formal meeting. It was also pointed out that, in the case envisaged, the President of the Council had a duty to conduct informal consultations irrespective of the position of the other side as was usually done.

68. Regarding paragraph 8, it was suggested to include in subparagraph (a) a mention of the obligation of the States concerned to engage actively in the settlement of their disputes. Paragraph 8 (c) was criticized as seeking to import in the consultation process notions which belonged to another phase of the Council's activity. It was pointed out that the Charter provided for recommendations of the Security Council, not suggestions, and that contemplating resort to such steps at a stage when the matter was not formally before the Council was contrary to the Charter and to the principle of non-interference as enunciated in Article 2, paragraph 7.

69. Regarding paragraphs 9 and 10, the view was expressed that it was inappropriate to lump together a variety of steps, each of which was subject to a different set of pre-conditions under the Charter. The remark was made that the text should specify that the sending of fact-finding missions was subject to the consent of the States concerned. The observation was made, on the other hand, that the working paper merely aimed at encouraging the use of certain procedures and that it would be for the Security Council to determine whether the conditions to which resort to the procedures was subject had been met. In respect to the remark that the phrase "appropriate for a of United Nations presence" was unclear, it was said that a broad formula had been chosen to safeguard the freedom of action of the Security Council. It was suggested that paragraph 9 should include language taken from paragraphs 1 and 2 of section IV of document A/AC.182/L.48. The remark was made, on the other hand, that the language in question was based on Article 39 of the Charter, which referred to a much more advanced stage than that envisaged in document A/AC.182/L.38/Rev.2. As regards paragraph 10, it was suggested to bring it more closely into line with Article 52, paragraph 3, of the Charter and to include therein the proviso contained in paragraph 1 of the same article.

70. Paragraph 11 was viewed as more closely related to the settlement of disputes than to the prevention of conflicts. Doubts were expressed on the reference to "situations or matters" in the light of Article 36 of the Charter and it was suggested to replace "and" by "or" in the penultimate line, taking into account Article 37. The remark was further made that the idea contained in Article 36, paragraph 2, was not reflected in the paragraph.

71. Regarding paragraph 12, the remark was made that the seeking of an advisory opinion of the International Court of Justice was a very effective preventive means. The text was, however, viewed by some delegations as running counter to Articles 33 and 96 of the Charter and by others as less satisfactory than the previous version.

72. Gratification was expressed on behalf of the sponsors at the constructive turn of the discussion. It was indicated that the comments which had been made, including the drafting suggestions, would be duly taken into account.

Consideration of document A/AC.182/L.48

73. A spokesman of the co-sponsors proposed a specific grouping of the paragraphs contained in the working paper (A/AC.182/L.48) in the interest of an orderly discussion, taking groups of paragraphs one after the other.

74. Before reaching an agreement on the method to follow in considering the working paper (A/AC.182/L.48), the question was asked whether one could in good faith believe that the highly controversial approach reflected in document A/AC.182/L.48 could profitably be substituted, particularly in a Committee governed

by the rule of general agreement, for the step-by-step approach which had enabled the Special Committee to achieve results in two of its areas of work, and which the sponsors of document A/AC.182/L.38/Rev.2 had opted for in focusing on a specific aspect of the question of maintenance of international peace and security on which general agreement seemed possible. It was remarked, on the other hand, that all delegations should honour the agreement reflected in paragraph 49 above that proposals relating to the maintenance of international peace and security "in all its aspects" could be submitted by States as they see fit, that the Special Committee was plagued by delaying procedural tactics, which aimed at imposing the will of some on others and which were hardly consonant with the general concern for efficiency and economy, and that no proposal should be rejected outright as incapable of eliciting general agreement until it had been seriously discussed.

75. The Working Group agreed to consider the working paper (A/AC.182/L.48) part by part, starting with the part entitled "Explanatory observations".

76. Regarding the part entitled "Explanatory observations" and the working paper in general, a group of delegations stressed that the working paper dealt with the efforts of States, in accordance with the Charter of the United Nations as a vital aspect of any realistic discussion of the question of maintenance of international peace and security. In this respect, they emphasized that special attention should be given to the protection from war, particularly nuclear war, and the creation of an all-embracing system of international security as a major task of securing peace in the world and broadening international co-operation among States. Another group of delegations considered the working paper to be unbalanced. They stressed that a number of the proposals touched highly controversial subjects and could paralyse the work of the Special Committee. They saw no merit in diverting the Committee from the step-by-step approach it had taken by general agreement in 1983.

77. Some delegations considered the first three paragraphs of the working paper (A/AC.182/L.48) unobjectionable: the view was expressed that the first paragraph should be acceptable to all and that the other two contained a useful reminder of the all-embracing character of the Committee's mandate on the issue under consideration. Other delegations held that those paragraphs were either unnecessary or misleading. A number of delegations objected to the second paragraph on the ground that the citation it contained from General Assembly resolution 40/78 was truncated in two revealing respects: it omitted the reference to the importance of general agreement, as contained in paragraph 5 and to the part of paragraph 3 (a) of resolution 40/78 instructing the Special Committee to work expeditiously on the working paper (A/AC.182/L.38/Rev.2), with a view to completing its consideration thereof. It was indicated in reply that the sponsors were firmly committed to the principle of general agreement and that they had quoted the part of paragraph 3 (a) of resolution 40/78 to which their working paper was intended to respond.

78. Regarding the fourth, fifth and sixth paragraphs of the working paper, several delegations expressed strong disagreement with the claim that the strengthening of the role of the United Nations could not be separated from the conduct of States. This approach was considered as being at variance with the general objective of the Special Committee which, as its title indicated, was to strengthen the role of the Organization, and as diametrically opposed to the basic assumption which had guided the efforts of the Committee over the last three years. It was, furthermore, viewed as highly selective in focusing on disarmament and nuclear weapons and leaving out a number of other relevant issues, including economic issues. It was also considered as unproductive, inasmuch as it focused on issues which were

already dealt with in such specialized forums as various disarmament bodies and the Special Committee on the Non-use of Force and were unlikely to lead to general agreement. Concern was expressed at the true intention behind the paragraphs in question, which were described as reflecting a deliberate attempt at obstructing progress on document A/AC.182/L.38/Rev.2 and at jeopardizing the good work already accomplished in that respect.

79. Other delegations considered it an undeniable truth that States were primary actors in the maintenance of peace and security. They stressed that an international organization was made up of States and that trying to strengthen the role of the Organization in the area under consideration without stimulating the efforts of sovereign States was a sterile exercise which condemned the Committee to focus on theoretical or peripheral matters. It was also stressed that the issues listed in the second sentence of the fifth paragraph and in the sixth paragraph of the working paper (A/AC.182/L.48) were of fundamental importance for the maintenance of international peace and security; that the creation of an all-embracing system of international security would be a milestone in the history of the United Nations and in the progressive development of international law; and that while it was true that the technical aspects of disarmament were being dealt with elsewhere, the Committee would be fully within its mandate if it enunciated general legal obligations in this area, as had been done, for example, 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)).

80. The reference, in the sixth paragraph, to "the elaboration of a document of a declaratory character" was viewed as unclear and the question was asked whether "declaratory" meant "descriptive", "non-binding" or "theoretical". The view was also expressed that there was no need for one more document of a declaratory nature and that emphasis should be placed on concrete measures which would enable the Organization to be more helpful to States.

81. The remark was made, on the other hand, that by using the word "declaratory", the sponsors had expressed their intention to keep their initiative within realistic limits and that the end-product could take the form of a General Assembly resolution. In that connection, it was said that some of the ideas contained in parts II and IV of the working paper could find their place in the preamble to the document which would be elaborated on the basis of working paper A/AC.182/L.38/Rev.2.

82. The seventh paragraph of the working paper (A/AC.182/L.48) was viewed by some delegations as useful, emphasizing that the working paper was a basis for negotiation and aimed at fostering a dialogue in order to find a common denominator between various views. Other delegations held that the over-ambitious approach reflected in the working paper could not possibly be embarked upon in an orderly and realistic manner, and asked why the sponsors felt it necessary to abandon the limited but promising effort undertaken on the basis of document A/AC.182/L.38/Rev.2 in favour of a venture in which the prospects of agreement were remote, to say the least.

83. Regarding Part I of the working paper (A/AC.182/L.48), a group of delegations stressed that paragraphs 1 to 5 were formulated in such a manner that they could not raise any objections and might be considered among those on which general agreement was possible. They pointed out that these paragraphs could be incorporated into the substantive part or the preamble of a future comprehensive

document on the maintenance of international peace and security. Another group of delegations said that they failed to understand how a series of truisms were responsive to the object of the Committee and that they were not prepared to embark on a part-by-part discussion until the questions they had raised in the course of the consideration of the part entitled "Explanatory observations" of the working paper had been answered. The co-sponsors of A/AC.182/L.48 stated that they had already answered all the questions raised during the discussion of the "Explanatory observations", and recalled the agreement that had been reached to consider their document part by part. It was stressed, however, that the answers given by the co-sponsors did not cover most of the main objections raised in the discussion of the "Explanatory observations".

Notes

1/ For the membership list of the Committee at its 1986 session, see A/AC.182/INF.11 and Add.1.

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

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