

**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: THIRTY-FIFTH SESSION

SUPPLEMENT No. 33 (A/35/33)



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New York, 1980

#### **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.**

/12 June 1980/

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## I. INTRODUCTION

1. At its 105th plenary meeting, on 17 December 1979, the General Assembly, on the recommendation of the Sixth Committee, 1/ adopted resolution 34/147, which read as follows:

"The General Assembly,

"Reaffirming its support for the purposes and principles set forth in the Charter of the United Nations,

"Recalling its resolutions 992 (X) of 21 November 1955, 2285 (XXII) of 5 December 1967, 2552 (XXIV) of 12 December 1969, 2697 (XXV) of 11 December 1970, 2968 (XXVII) of 14 December 1972 and 3349 (XXIX) of 17 December 1974,

"Recalling also its resolutions 2925 (XXVII) of 27 November 1972, 3073 (XXVIII) of 30 November 1973 and 3282 (XXIX) of 12 December 1974 on the strengthening of the role of the United Nations,

"Recalling especially its resolution 3499 (XXX) of 15 December 1975, by which it established the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, and its resolutions 31/28 of 29 November 1976, 32/45 of 8 December 1977 and 33/94 of 16 December 1978,

"Having considered the report of the Special Committee, 2/

"Noting that progress has been made in fulfilling the mandate of the Special Committee,

"Recalling its decision, adopted at its 4th plenary meeting on 21 September 1979, to include in the agenda of its thirty-fourth session the item entitled 'Settlement by peaceful means of disputes between States',

"Noting the importance that pre-session consultations among the members of the Special Committee and other interested States may have in facilitating the fulfilment of its task,

"Considering that the Special Committee has not yet completed the mandate entrusted to it,

"1. Takes note of the report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization;

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1/ Official Records of the General Assembly, Thirty-fourth Session, Annexes, agenda item 114, document A/34/769, para. 19.

2/ Ibid., Thirty-fourth Session, Supplement No. 33 (A/34/33).

"2. Decides that the Special Committee should continue its work in pursuance of the following tasks with which it is entrusted:

"(a) To list the proposals which have been made or will be made in the Committee and to identify those which have awakened special interest;

"(b) To examine proposals which have been made or will be made in the Committee with a view to according priority to the consideration of those areas on which general agreement is possible;

"3. Requests the Special Committee at its next session:

"(a) To continue its work on the proposals made by Member States regarding the question of the maintenance of international peace and security with a view to listing and examining those proposals;

"(b) To consider proposals made by Member States on the question of rationalization of existing procedures of the United Nations and, subsequently, any proposals under other topics;

"4. Further requests the Special Committee, in the light of the progress it has achieved concerning the question of the peaceful settlement of disputes, to continue its work on this question with a view to developing and recommending a means of bringing the work to an appropriate conclusion on the basis of the list prepared by the Special Committee in accordance with General Assembly resolution 33/94;

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

"6. Urges members of the Special Committee to participate fully in its work in fulfilment of the mandate entrusted to it;

"7. Invites Governments to submit or to bring up to date, if they deem it necessary, their observations and proposals in accordance with General Assembly resolution 3499 (XXX);

"8. Requests the Secretary-General to render all assistance to the Special Committee;

"9. Requests the Secretary-General to bring up to date as quickly as possible the Repertory of Practice of United Nations Organs, as mandated in resolutions 796 (VIII) of 27 November 1953, 992 (X) of 21 November 1955 and 2968 (XXVII) of 14 December 1972;

"10. Requests the Special Committee to submit a report on its work to the General Assembly at its thirty-fifth session;

"11. Decides to include in the provisional agenda of its thirty-fifth session the item entitled 'Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization'."

2. At the same meeting, by decision 34/432 the General Assembly accepted the offer of the Government of the Philippines to act as host to the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization at Manila from 28 January to 22 February 1980.

3. 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	Italy
Argentina	Japan
Barbados	Kenya
Belgium	Liberia
Brazil	Mexico
China	Nepal
Colombia	New Zealand
Congo	Nigeria
Cyprus	Pakistan
Czechoslovakia	Philippines
Ecuador	Poland
Egypt	Romania
El Salvador	Rwanda
Finland	Sierra Leone
France	Spain
German Democratic Republic	Tunisia
Germany, Federal Republic of	Turkey
Ghana	Union of Soviet Socialist Republics
Greece	United Kingdom of Great Britain and Northern Ireland
Guyana	United States of America
India	Venezuela
Indonesia	Yugoslavia
Iran	Zambia
Iraq	

4. The Special Committee met at the Philippines International Convention Center at Manila, from 28 January to 22 February 1980. 3/

5. The session was opened by Mr. Erik Suy, Under-Secretary-General, the Legal Counsel, who represented the Secretary-General. A keynote address was delivered by His Excellency General Carlos P. Romulo, Minister for Foreign Affairs of the Republic of the Philippines. His Excellency Mr. Estelito P. Mendoza, Solicitor-General of the Philippines, also spoke.

6. Mr. Valentin A. Romanov, Director of the Codification Division of the Office of Legal Affairs, acted as Secretary of the Special Committee and, in the absence of the Legal Counsel, represented the Secretary-General. Mr. Gamal Badr, Deputy Director for Research and Studies (Codification Division, Office of Legal Affairs) acted as Deputy Secretary to the Committee. Miss Jacqueline Dauchy, Senior Legal Officer (Codification Division, Office of Legal Affairs) acted as Deputy Secretary to the Special Committee and Secretary to its Working Group. Mr. Larry D. Johnson, Mr. Manuel Rama-Montaldo, Legal Officers, and Mr. Andres Sinjela, Associate Legal Officer (Codification Division, Office of Legal Affairs), acted as Assistant Secretaries to the Special Committee and its Working Group.

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3/ For the membership list of the Committee at its 1980 session, see A/AC.182/INF.5 and Corr.1.



7. At its 40th, 41st and 42nd meetings, on 28, 29 and 31 January, the Special Committee agreed upon the composition of the officers of the Committee as follows:

Chairman: Mr. Estelito P. Mendoza (Philippines)  
Vice-Chairmen: Mr. Dietmar Hucke (German Democratic Republic)  
Mr. Abdul G. Koroma (Sierra Leone)  
Miss Martha Oliveros (Argentina)  
Rapporteur: Mr. Donald J. MacKay (New Zealand)

8. At its 41st meeting, the Special Committee adopted the following agenda (A/AC.182/L.21):

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.
5. Consideration of the observations and proposals of Governments pursuant to General Assembly resolutions 3499 (XXX), 32/45, 33/94 and 34/147 and of the request contained in paragraph 4 of resolution 34/147.
6. Adoption of the report.

9. The Special Committee had before it the reports it submitted to the General Assembly on the work of its 1976, 1977, 1978 and 1979 sessions. 4/

10. In accordance with the decision taken at its 41st meeting, the Special Committee established an open-ended Working Group to discuss the topics referred to in paragraphs 3 (a) and 4 of General Assembly resolution 34/147. For lack of time the Working Group was unable to consider the topic referred to in paragraph 3 (b) of that resolution. The Working Group carried out its work under the chairmanship of Mr. Estelito P. Mendoza, Chairman of the Special Committee. The Vice-Chairmen of the Special Committee, Mr. Dietmar Hucke, Mr. Abdul G. Koroma and Miss Martha Oliveros, and the Rapporteur of the Special Committee, Mr. Donald J. MacKay, served as Vice-Chairmen and Rapporteur, respectively, of the Working Group. There were also various meetings of informal consultations of members of the Working Group.

11. At the 43rd meeting of the Special Committee, on 12 February, the representatives of Nigeria and Liberia made statements under item 5 of the agenda of the Special Committee.

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4/ Official Records of the General Assembly, Thirty-first Session, Supplement No. 33 (A/31/33); *ibid.*, Thirty-second Session, Supplement No. 33 (A/32/33); *ibid.*, Thirty-third Session, Supplement No. 33 (A/33/33) and *ibid.*, Thirty-fourth Session, Supplement No. 33 (A/34/33).

12. At its 45th meeting, on 22 February, the Committee decided that the statements which had been made by the Foreign Ministers of the Philippines and of Nigeria, respectively at its 40th and 43rd meetings, should be appropriately reflected in its report. A summary of those statements is annexed to the present report.
13. At its 44th and 45th meetings, the Special Committee had before it a statement of the Rapporteur on the work carried out by the Working Group. In accordance with the decision of the Committee, this statement appears, together with an appendix thereto, in section II of the present report.
14. The Special Committee expressed its view that substantial progress had been made towards fulfilment of the tasks entrusted to it.
15. The Special Committee draws in particular the attention of the General Assembly to the progress made in its work on the topic of the peaceful settlement of disputes.
16. With reference to paragraph 9 of General Assembly resolution 34/147, the Special Committee expressed the wish that the Repertory of Practice of United Nations Organs be brought up to date and that the existing volumes and supplements be reprinted.
17. Some members of the Special Committee felt that its mandate should be renewed while other members felt that that was a matter falling within the competence of the General Assembly.
18. The Special Committee wishes to place on record its deep appreciation to the Government and people of the Republic of the Philippines for making possible the holding of the 1980 session of the Special Committee at Manila and for their generous and warm hospitality which contributed greatly to the successes achieved at the session.

## II. STATEMENT OF THE RAPPORTEUR ON THE WORK CARRIED OUT BY THE WORKING GROUP

19. The Working Group established by the Special Committee at its 41st meeting (see para. 10 above) held 31 meetings between 31 January and 22 February. It agreed, in accordance with the mandate given to it by the Special Committee, to devote its first three meetings to a continuation of its work on the proposals made by Member States regarding the question of the maintenance of international peace and security and subsequently to devote its morning meetings to that aspect of its mandate and its afternoon meetings to the continuation of its work on the peaceful settlement of disputes.

### A. Continuation of the work on the proposals made by Member States regarding the question of the maintenance of international peace and security

20. The Working Group dealt with this aspect of its mandate at its 1st to 3rd, 4th, 6th, 10th, 11th, 14th, 16th, 18th, 20th, 21st and 30th meetings, held between 31 January and 21 February 1980.

21. It had before it, in addition to two working papers submitted at the previous session by the United States and the United Kingdom respectively in documents A/AC.182/WG/33 5/ and A/AC.182/WG/37, 6/ which had not been fully considered at that session for lack of time, three new working papers as follows: a working paper concerning the United Kingdom working paper submitted by Indonesia (A/AC.182/WG/42), a working paper submitted by Japan (A/AC.182/WG/44), which was subsequently revised in the light of the discussion (A/AC.182/WG/44/Rev.1) and a working paper submitted by Algeria, Congo, Cyprus, Egypt, Ghana, Iran, Kenya, Nigeria, Romania, Rwanda, Sierra Leone, Tunisia, Yugoslavia and Zambia, later joined by El Salvador (A/AC.182/WG/46/Rev.1), 7/ which was subsequently revised in the light of the discussion (A/AC.182/WG/46/Rev.2). A working paper submitted by Egypt at an early stage of the discussion (A/AC.182/WG/43) was subsequently incorporated in the 15-Power working paper. 8/

22. A summary of the discussion organized according to the order of consideration of the above-mentioned proposals is to be found below. It is followed by a summary of the views not directly related to specific proposals which were expressed in the course of the debate, and by the text of an informal compilation of the proposals submitted to the Special Committee at its 1976, 1977, 1978, 1979 and 1980 sessions with regard to the topic of the maintenance of international peace and security, prepared by the Chairman with the assistance of the Rapporteur.

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5/ Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 33 (A/34/33), pp. 84-86.

6/ Ibid., pp. 88 and 89.

7/ The original text of the working paper (A/AC.182/WG/46 and Corr.1) was replaced by a revised text before the paper came under discussion.

8/ Two working papers which had been submitted at an early stage of the session by the Philippines (A/AC.182/WG/40) and by Algeria (A/AC.182/WG/41) were not insisted upon.

1. Working paper submitted by the United States of America (A/AC.182/WG/33)

(a) Text of the working paper

23. The text of the working paper is reproduced below:

A. Crisis anticipation

1. Establishment of a consultative mechanism that enhances the likelihood that the Council will become involved in matters before they erupt into violence.

2. Urge all Member States, pursuant to article 35, and the Secretary-General, pursuant to article 99, to exercise their right to bring matters to the Security Council even if the parties do not do so.

B. Collective security system

All States Members should be reminded of the need to honour all aspects of the collective security system, including both the need to bring matters to the Security Council and obligation to report promptly any and all measures taken under article 51.

C. Strengthening United Nations peace-keeping capabilities

1. United Nations peace-keeping reserve

States which have not yet done so should explore possibilities of earmarking troop contingents for a United Nations peace-keeping reserve of national contingents trained in peace-keeping functions.

- (i) Contingents could be either combatant or logistics units and should be available for United Nations service on short notice;
- (ii) Countries wishing to participate in peace-keeping operations would inform the Secretary-General of the type and size of troop contingents they would be prepared to make available;
- (iii) Countries not in a position to provide military units might consider earmarking other facilities, such as staging areas.

2. Training and technical equipment for peace-keeping units and observers.

In order to make a United Nations peace-keeping reserve a coherent force:

- (i) Arrangements for training of earmarked contingents by the United Nations in peace-keeping methods should be explored;
- (ii) Adequate training of officers and perhaps non-commissioned officers in peace-keeping should be considered as a key element of peace-keeping preparedness;

- (iii) The United Nations and prospective participating countries might contract with appropriate institutions or facilities for such training, which could include seminars and field exercises;
- (iv) Alternatively some form of United Nations staff and training college should be considered for this purpose;

Training might initially be conceived with a view to preparing officers to train their own national contingents for peace-keeping operations;

- (v) The possibility of developing a training programme for personnel designed to serve on United Nations observer missions should be explored:
  - (a) Countries providing observers should, where possible, be asked to make them available for training one or two months prior to undertaking such duty;
  - (b) Training might be conducted at the headquarters of the United Nations Truce Supervision Organization in Palestine (UNTSO).

### 3. Administration and logistics

The Secretary-General should prepare a study of administrative and logistics problems connected with United Nations peace-keeping, in order to develop recommendations for streamlining and systematizing procedures for establishing and operating peace-keeping forces, including recourse to commercial supplies where appropriate.

### 4. Financing peace-keeping

- (a) All Members shall fulfil their Charter obligations to pay their assessed contribution for peace-keeping;
- (b) Explore the ways and means of eliminating the current United Nations deficit for peace-keeping through:
  - (i) Voluntary contributions; and/or
  - (ii) Assessments under article 17;
- (c) Explore with other Members the possibility, once the current peace-keeping arrears are eliminated by payments of amounts owed combined with voluntary and/or assessed contribution of establishing on a reimbursable basis a special peace-keeping fund to be available to cover the initial costs of peace-keeping operations authorized by the Security Council.

5. The Committee may wish to know that, in the context of meaningful progress in this area, the United States would be willing to contribute as follows:

- (a) The United States would, on receipt of a request from the Secretary-General, be prepared to consider assisting with the airlift of troops and

equipment required for establishing a United Nations peace-keeping force authorized by the Security Council;

(b) The United States is prepared to examine on a case-by-case basis the possibility of not requiring reimbursement for the provision of initial airlift facilities;

(c) The United States would be prepared to examine with the United Nations possible ways of upgrading the technical equipment available to observer missions and peace-keeping forces and of enhancing their observation through the use of or access to modern technologies available in those fields.

(b) Summary of the discussion

24. As the above paper was discussed only to some extent at the 1979 session of the Special Committee, 9/ the Working Group reverted to it during the present session to complete its consideration thereof. The sponsor of the working paper said that nothing had happened in the recent past to diminish the need for the Security Council to take effective measures in the maintenance of international peace and security. He felt it was more essential than ever to find some method of involving the Security Council before a crisis got out of hand. Referring to the "consultative mechanism" to be established for crisis anticipation under section A of the working paper, he stressed that he was not insisting on any fixed idea as to the type of mechanism, although an informal arrangement was generally favoured. One possibility was for the Secretary-General to keep a "watch list" of potential trouble spots to be reviewed by the Council which might be examined in periodic informal consultations. As to section B of the paper, he said that the propensity to rely on Article 51 of the Charter of the United Nations as a justification for any act of force might be mitigated if the reporting requirement of that article were scrupulously honoured. He noted that the reporting requirement was a substantive requirement of the article designed to require that claims of self-defence be subjected to the light of day. It was also suggested that such claims might be considered an inherent element of the plea of self-defence, without which such a plea could not be entertained. Turning finally to section C on peace-keeping capabilities, the sponsor acknowledged that, while certain problems in the field had been resolved, other questions relating to troop availability, logistics, supplies, maintenance, etc., had not, and the guidelines question was no longer an issue after UNEF II.

25. Some representatives welcomed the paper and generally supported its contents, viewing the proposals as timely and praiseworthy. It was seen as encouraging that proposals on the question of the maintenance of international peace and security had been submitted by certain permanent members (see sect. 2 below) of the Council, as those members had a central role in that important area of United Nations activity. Appreciation was expressed that the paper had dealt with three important points: (a) crisis anticipation; (b) the collective security system; and (c) strengthening United Nations peace-keeping activities.

26. Some other representatives, however, were of the view that the thrust of the substance of the proposals was already covered by the provisions of the Charter and

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9/ Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 33 (A/34/33, pp. 84-88, sect. III.C., paras. 51-56.

the provisional rules of procedure of the Security Council, some of which had not been utilized. There appeared to be little point in reiterating what was already in the Charter. The sponsor agreed that there was little reflected in the proposals that was not already possible under the Charter or the Council's provisional rules of procedure. What his delegation sought was for States to make greater use of existing procedures.

27. Several representatives suggested that the proposals were vague and timid, aimed at maintaining the status quo and dealing with procedural refinements or peripheral issues, and did not go to the very heart of the question or offer the needed substantive changes which would truly contribute to the maintenance of international peace and security. Crises which had arisen had been discussed at length in the Security Council, it was said, but they persisted because of the inability of the Security Council to take the necessary measures to solve them. The main issue in the area under consideration was to make the Security Council effective by democratizing it. The importance of the principle of the sovereign equality of States was also stressed. It was said that making a distinction between States on the basis of their responsibilities in the maintenance of international peace and security contradicted this principle. Regret was also expressed concerning the absence in the working paper of any reference to economic issues, since economic development was a prerequisite to peace and security. The sponsor held the view that the use of the term "democratization" in the United Nations context was misleading and had little meaning in a system in which Governments responsible for 100,000 persons existed simultaneously with Governments responsible for 200 to 600 million persons. Furthermore, he fully accepted the relationship of international peace and security to economic development, but since the Committee had organized its work on the basis of the outline of the Secretariat study (A/AC.182/L.2) 10/ and since economic development had not been selected as a priority topic by the General Assembly in defining the mandate of the Committee, his delegation had thought it preferable not to touch on this question in its working paper. However, he expected economic and social problems, including those relating to human rights whose importance could not be overemphasized in light of recent uses of force which had been explained in terms of prevention or termination of gross abuses of human rights, to be taken up at a later stage.

(i) Comments on section A of the working paper

28. Certain representatives referred to section A of the paper on "crisis anticipation" 11/ and in particular to paragraph 1 which called for the establishment of a consultative mechanism that enhanced the likelihood that the Security Council would become involved in matters before they erupted into violence. Having been requested to clarify what was envisaged by a "consultative mechanism", the sponsor indicated that he did not insist on any specific mechanism, but thought that the Secretary-General could maintain a watch-list of potential crisis areas to be reviewed at periodic Council meetings, possibly closed, or informal consultations. The Secretary-General could, if appropriate, after consulting, informally, report to the Security Council whether in his opinion the existing

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10/ Ibid., Thirty-second Session, Supplement No. 33 (A/32/33), p. 93, annex II.A.

11/ Certain representatives noted that this section contained proposals similar to those made by the United Kingdom in its working paper (see sect. 2 below).

situation was or was not likely to present a threat to international peace and security. The Secretary-General should be encouraged to bring matters to the attention of Council members informally.

29. Some representatives welcomed the idea of the Security Council getting involved before a crisis erupted and shared the view that crisis anticipation deserved careful attention. Support was expressed for the idea of working out methods of preventive diplomacy aimed at defusing situations of tension and conflict. The consultative mechanism envisaged could be very useful, it was said, not only for the Security Council but also for the General Assembly and the Secretary-General. A body attached to the office of the Secretary-General could be created which could involve itself in research and projection into the future about the potential crisis areas. This could even be done without the establishment of new bodies.

30. Other representatives, however, believed that further study of the proposal was needed and questioned whether the proposal added anything new to the existing system. Doubts were expressed as to the implications of the proposal concerning the establishment of a consultative mechanism, as it might lead to improper interpretations of the Charter. It was noted that, as far as prevention of conflicts and tensions was concerned, the United Nations' inabilities were blamed by many delegations on a lack of political will on the part of Member States. The setting up of new mechanisms would do little to improve the situation. It was said that the Security Council could not discharge its functions in the maintenance of international peace and security as long as the veto was being abused against the interests of the majority. Existing use of informal consultations by the Security Council was also noted, as was their effectiveness in preventing disputes. It was questioned under what articles of the Charter would information be gathered through the envisaged consultative mechanisms. The sponsor commented that, with regard to the fact-finding mechanism, it was not necessary to decide whether fact-finding decisions were procedural or not. The stress should be on the Security Council functioning in an informal manner, pre-empting arguments made by those who would seek to prevent it from discussing the matter on the ground that the question had not been properly brought before it procedurally. He pointed out that indeed the Charter of 1945 was not that of 1980. Amendments to the Charter had been adopted, as well as had the 1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. 12/

31. Certain representatives also referred to the proposal in paragraph 2 of section A of the working paper by which all States pursuant to Article 35 and the Secretary-General pursuant to Article 99 were to be urged to exercise their right to bring matters to the Security Council even if the parties did not do so. The suggestion that measures be taken to implement fully Articles 35 and 99 was welcomed by certain representatives. It was suggested that it might be worth studying the powers of the Secretary-General under Article 99, as well as the residual responsibilities of the General Assembly, and the holding of periodic meetings of the Security Council. Certain other representatives, however, believed that the proposals would expand the powers of the General Assembly and of the Secretary-General at the expense of those of the Security Council. They stressed that the Council had primary, if not exclusive, responsibility for the maintenance of international peace and security. A number of representatives agreed that

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12/ General Assembly resolution 2625 (XXV), annex.



preventive measures or crisis anticipation were important elements for strengthening the Organization's capacity to maintain international peace and security. The application of Article 28, paragraph 2, of the Charter was suggested in this respect. But some delegations held that the principle of State sovereignty required that any fact-finding mission or any other step taken vis-à-vis the one or other party to a dispute required the approval of the Member State concerned. Likewise, the Secretary-General could act only on the basis of a request made by the parties concerned, or on an authorization by the Security Council for providing facts on a given dispute. It was further stressed that Articles 35 and 99 should not be used in such a way as to complicate situations in relation to which efforts were being exerted to resolve the dispute pursuant to Article 52.

32. A number of representatives singled out the need for the Secretary-General to exercise his function under Article 99 of the Charter. This article, it was said, had rarely been used; and some of those who supported a more active role for the Secretary-General questioned whether its drafting was adequate to meet the purpose for which it was intended. They suggested that the Committee should find a method - such as providing guidelines - which would assist the Secretary-General in arriving at his opinion referred to in Article 99 of the Charter. Another view expressed questioned the usefulness of the suggestion in the working paper that the Secretary-General should be urged to exercise his right under Article 99 as, undoubtedly, the Secretary-General was aware of the powers available to him.

33. In this respect, the sponsor pointed out that full advantage of the possibility under Article 99 had rarely been taken and that no Secretary-General had even cited that article until recently. At this time, however, and since there had been no objection to the recent use of Article 99, there seemed to be a willingness to accept the implicit and explicit use of that article. An encouragement to use Article 99 would probably be welcomed by any Secretary-General. He also felt that the reference to State sovereignty had been used in a casual and overly sweeping way as a qualification to the Secretary-General's utilization of Article 99. There were certainly limits to the Secretary-General's powers but just as one had to be careful in speaking too sweepingly of the implied and express powers flowing from Article 99, one also had to exercise similar care in speaking of limitation of those powers.

(ii) Comments on section B of the working paper

34. A number of delegations referred to section B of document A/AC.182/WG/33, relating to the collective security system. The view was expressed that it would be useful to remind all Member States of the need to honour all aspects of the collective security system. It was noted that the system could not be brought into operation until all avenues for reaching a peaceful settlement to a dispute had been exhausted, and that under the Declaration on Friendly Relations the parties to a dispute should refrain from any action which might aggravate the situation. As to the part of section B concerning the obligation to report measures taken under Article 51, certain representatives welcomed the stress which the United States proposal laid on the obligation of Member States to report immediately to the Security Council measures taken under Article 51, since the effect of that obligation was to limit possible abuses of the right of self-defence. It was also supported as being necessary in order to clarify and investigate the facts.

35. Certain other representatives questioned the utility of the proposal regarding Article 51 and its reporting requirement. The working paper implied that the failure by the Council to maintain international peace and security was due mainly to the lack of reporting to the Council on measures taken in self-defence by States. However, if force was used outside the specific categories of cases under which a State was allowed to use coercive measures, the reporting procedure by itself did not guarantee that the Security Council would take effective action, that the victim would be compensated and that aggression would be repelled. It was also somewhat idealistic to expect from a culprit State that it report itself to the Security Council. To be truly impartial and objective, the reporting of measures taken under Article 51 would have to be done by a third party. On the other hand, it was noted that the failure by States to comply with the duty to report to the Security Council under Article 51 was at least an indication that the measures had not been taken in self-defence. It was also said that the purpose of the reporting obligation was to give the Security Council the opportunity of reviewing actions taken in the name of self-defence. Beyond being informed of such actions, the Security Council should be in a position to take whatever measures were necessary for the maintenance of international peace and security and to ensure that no State be allowed to get away with an act of aggression. The proposal should also have dealt with the question of whether the existing system made it possible for the Council to determine if the plea was justified, and what action the Council could take to remedy a situation where it was found that the claim of self-defence was not justified. Questions such as "self-help" should also have been touched upon.

36. The sponsor of the working paper noted, in response, that in recent years, the world had witnessed several significant examples of cross-border uses of force, none of which had been reported to the Security Council. He therefore felt that the proposal of his delegation on this point had its value. Since the Charter was signed, no State had attempted to use force without at least trying to justify it by a claim of self-defence. Advantage should be taken of this sensitivity to world public opinion, in order to bring matters to the Security Council to the maximum extent possible.

37. He disagreed that it was unrealistic to expect States to report to the Security Council measures allegedly taken in the exercise of the right of self-defence. He referred to the weight of world public opinion, which should be built upon so as to require that an allegation of self-defence be backed up by reporting. It was to be hoped that steps beyond the mere reporting of facts would prove possible, but reporting was the first step to assist the international community in analysing the facts to establish whether or not an armed attack or an act of self-defence had occurred.

38. On the question of "self-help" the sponsor maintained that there was no such thing as legitimate and legal action of self-help. So-called acts of self-help were either legal acts of self-defence or they were illegal. They did not become legal because they were understandable under certain circumstances. In such cases there might exist illegal uses of force which, in the light of all the surrounding circumstances such as provocation, fear for survival and the absence of mens rea, did not constitute an act of aggression but they remained violations of Article 2, paragraph 4.

39. In the course of the debate a suggestion was made that Article 51 needed to be clarified. A detailed analysis of the question of self-defence and of all the

problems arising in connexion with Article 51 was also suggested. On the other hand, the view was expressed that Article 51 should not be textually tampered with, but that the reporting procedure therein should be considered an inherent pre-condition to invoking a plea of self-defence. Another suggestion was to recommend that a definition of self-defence be drafted to supplement the Definition of Aggression adopted by the General Assembly in 1974. 13/

(iii) Comments on section C of the working paper

40. Turning to section C of the working paper, entitled "Strengthening United Nations peace-keeping capabilities", some delegations noted that the subject-matter was extremely important. The role and value of peace-keeping forces in the maintenance of international peace and security should not, it was emphasized, be underestimated. It was encouraging to note that there were a number of proposals submitted, including those contained in document A/AC.182/WG/33, which supported peace-keeping operations and which exhibited a general recognition that there was a need to strengthen the peace-keeping capacity of the Organization.

41. Certain representatives, however, questioned the propriety of the Special Committee conducting an in-depth discussion of the question of peace-keeping when the matter was within the competence of the Special Committee on Peace-keeping Operations, as it might lead to a duplication of work. Moreover, they asserted, first of all guidelines should be prepared on which practical measures should be based, this being an activity on which the present Committee might not be entirely successful and which might lead to waste of time rather than concrete results. Other delegations felt that the existence of the Special Committee should not be a barrier to a discussion of the issues of peace-keeping in the present Committee. Rather than overlapping each other's work, the present Committee's endeavours should complement those of the Peace-keeping Committee, it was suggested. Some delegations said that the Special Committee had not been too successful in resolving such outstanding issues as the peace-keeping arrears, not to mention the other added tasks it had assumed. If the present Committee were successful in bringing some fresh thoughts on the matter, it would enhance the role of the United Nations.

42. As to the suggestion contained in paragraph 1 of section C concerning a United Nations peace-keeping reserve, it was remarked that while the idea of a permanent peace-keeping force had often been discussed, the idea had remained illusory. The ad hoc peace-keeping forces had, however, played an important role. The Nordic countries, it was noted, had agreed to school potential United Nations peace-keeping forces in English in order to avoid possible language problems, and perhaps the Special Committee on Peace-keeping Operations had not investigated all avenues. For example, the regional training of such forces might be an approach to be explored. Some delegations opposed the creation of a permanent peace-keeping reserve, saying it was better to maintain the present system of assembling forces on an ad hoc basis. The proposal reflected in paragraph 3 of section C that the Secretary-General prepare a study on the administrative and technical problems of peace-keeping operations was considered not only valuable to the proper future functioning of peace-keeping operations, but also as a way of recording the wealth of knowledge in this area. As to the financing of peace-keeping operations referred to in paragraph 4 of section C, certain representatives said that the financing of

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13/ General Assembly resolution 3314 (XXIX), annex.

peace-keeping operations was a matter for only the Council to decide. One possibility mentioned was to make the aggressor State responsible for bearing the full cost. Another opinion was that, if an operation was decided upon by the Council, its financing should also be determined by the Council. It was suggested in this connexion that it would be useful for the Council to make use of the power conferred on it by Article 29 by creating a committee to assist it in the exercise of that financing function. The membership of that committee might be appreciably larger than that of the Council, thereby ensuring wider representation in decision-making.

43. On the general question of peace-keeping and proposals relating thereto, some representatives stressed that peace-keeping operations had to be established strictly in accordance with Chapter VII of the Charter if they were not to become a means of serving the narrow interests of individual States. In their view it was the Security Council which was responsible for supervising all aspects of United Nations peace-keeping activities, including the establishment and functioning of peace-keeping forces. As far as the powers of the Secretary-General in the matter were concerned, the development of practices contrary to the Charter could not be supported. All questions relating to peace-keeping should be decided on the basis of the principle of the unanimity of the permanent members of the Security Council, and strictly in conformity with Chapter VII, notably by concluding the agreements envisaged in Article 43 and implementing the provisions relating to the Military Staff Committee. The concept of peace-keeping operations also implied the agreement of the country receiving the peace-keeping contingents. There was a definite difference, according to this view, between the use of United Nations forces for peaceful purposes and their use for coercive purposes. But both uses could only be authorized by the Security Council. The Charter did not authorize the General Assembly or the Secretary-General to use armed forces on behalf of the United Nations, and the theory of "residual powers" of the General Assembly could not be accepted in that regard. These delegations could not accept the principle in General Assembly resolution 377 (V). While reference had been made in this regard to the position taken by the International Court of Justice on "Certain expenses of the United Nations", 14/ it was to be noted that an advisory opinion was not binding upon Member States.

44. Other representatives, however, expressed the contrary opinion. In their view, while it was agreed that the Security Council was the only organ which under the Charter could control enforcement measures, the concept of peace-keeping referred to the method which the United Nations had devised to deal with certain situations in which the Security Council did not see fit to resort to Chapter VII. States were free to contribute to the mounting of peace-keeping operations, such operations being subject to the approval of the States concerned and in particular of the host State. The authority of the General Assembly in those matters was underscored by the fact that the Special Committee on Peace-keeping Operations was a subsidiary body of the Assembly and not of the Security Council. Furthermore, while one could argue over the merits of the relevant advisory opinion of the International Court of Justice, there was no doubt that the majority of Member States did abide by it in accordance with the Assembly decision to accept the opinion. As to General Assembly resolution 377 (V), it definitely did not, it was stressed, arrogate to the General Assembly more than what was provided for in the Charter. It had been used in

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14/ Certain expenses of the United Nations (Art. 17, para. 2, of the Charter), Advisory Opinion of 20 July 1962: I. C. J. Reports 1962, p. 151.

respect of peace-keeping only once and many delegations which were on record as opposing the resolution had not opposed it on that occasion. Furthermore, it had become an integral part of the rules of procedure of the General Assembly and had been used by States which maintained that they did not approve it. Some representatives expressed disagreement, in particular, with the position that peace-keeping operations fell under the régime of Chapter VII of the Charter. It was pointed out that Chapter VII dealing with the collective security system had to a very large extent remained a dead letter and had as a result been replaced in practice by peace-keeping operations. These operations did not therefore necessarily have their legal basis in Chapter VII. It was furthermore emphasized that the enforcement measures envisaged in Article 42 did not require the consent of the States against which they were directed whereas the absolute prerequisite to the launching of peace-keeping operations was the consent of the States concerned, as was made abundantly clear by the practice of the Security Council. It was also argued that Article 42 was directly connected with Article 43 and that, since no agreement had been concluded under Article 43, Article 42 could not legally be invoked. Peace-keeping operations did not come under Chapter VII nor under Chapter VI but fell in between. It was suggested that since the Charter did not contain clear provisions in this area, it might be useful in the interest of the smooth functioning of such operations to establish a firm legal foundation upon which it could be based. However, according to another opinion, one could conceive of Article 42 being used by way of a de facto agreement between the Security Council and a State seeking to take action, and the United Nations was not barred from invoking Article 42 until Article 43 had been given effect. Indeed it could be argued that the Council had adopted precisely this view in 1966.

2. Working paper submitted by the United Kingdom of Great Britain and Northern Ireland (A/AC.182/WG/37) and related working paper submitted by Indonesia (A/AC.182/WG/42)

(a) Text of the working paper submitted by the United Kingdom of Great Britain and Northern Ireland

45. The text of the working paper is reproduced below:

1. Member States should make full use of Article 35, including the initiation of action over situations or disputes in which they are not directly involved, in order that the United Nations may consider situations or disputes before they develop into conflicts.

2. Because Member States do not always request inscription of situations and disputes on the Council's agenda, the Security Council should establish procedures for periodic review of the international scene so that areas of tension and incipient dispute can be identified and means of defusing the crisis may be discussed. Consideration should be given to meetings at the ministerial level where appropriate.

3. The Secretary-General should be encouraged to exercise his powers with regard to the maintenance of international peace and security more fully, in particular in drawing the attention of the Council to situations of tension under Article 99 and providing the facts on which the Council can base informed discussion and the adoption of appropriate measures. The Security Council should respond to such reports by the Secretary-General with positive action.

4. The Security Council should consider the techniques of fact-finding and the ways these should be supplemented. In particular, the United Nations should study advances in observation techniques, including the verification of arms control agreements, with a view to using them in the maintenance of peace and security.

5. The role of regional organizations in the maintenance of international peace and security should be encouraged, in accordance with Chapter VIII of the Charter, without detriment to the United Nations overriding authority. A closer relationship between the organizations and the Security Council should be developed.

6. The Security Council should consider increased use of observer missions in areas of tension, dispute or conflict, both as impartial reporters and as deterrents to aggression.

7. The permanent members of the Security Council should consult to examine whether there are areas which they could agree to treat as procedural and in which, in accordance with Article 27, paragraph 2, of the Charter, they could refrain from using the veto; for example, the use of missions whose remit is clearly limited to fact-finding.

8. The capacity of the United Nations to mount efficient peace-keeping operations at short notice should be further strengthened. Member States should regard peace-keeping operations as a common responsibility and should take all steps possible to facilitate or promote their contribution to United Nations peace-keeping in terms of troops or logistic support.

9. When a crisis situation or dispute is brought to the attention of the Security Council without a meeting being requested, the President of the Council should hold informal consultations with a view to ascertaining the facts of the situation and keeping it under review, with the assistance of the Secretary-General.

(b) Text of the related working paper submitted by Indonesia

46. That working paper sought to insert after paragraph 3 of the working paper submitted by the United Kingdom of Great Britain and Northern Ireland an additional paragraph reading as follows:

"The Secretary-General should be encouraged to bring matters threatening international peace and security to the attention of the General Assembly through his introduction to the annual report which he is required under Article 98 to make to the General Assembly on the work of the United Nations, and through the exercise of the right to include in the provisional agenda of the General Assembly all items which he deems necessary to put before that body."

(c) Summary of the discussion

47. As the paper on maintenance of international peace and security submitted by

the United Kingdom to the Special Committee in 1979 15/ was not discussed at that session for lack of time, the Committee discussed it at the present session. In briefly referring to his paper, the sponsor explained there were three main themes therein: (a) prevention is better than cure; (b) accurate diagnosis must precede prescription of remedies (i.e., the Security Council needs a better appreciation of the facts of a situation); and (c) the Organization and its Charter offer great potential which has yet to be realized. He said the aim of the paper was to promote practical improvements which could be given immediate effect should the Committee and the General Assembly agree on them.

48. A number of representatives welcomed the working paper which was described as useful and constructive, and they expressed general support for the proposals contained therein. Comments were made that, as with the United States working paper, it was encouraging to note that proposals on the question had been submitted by a permanent member of the Security Council. However, some other representatives believed that the working paper reflected Charter provisions and other existing texts and thought that very little new had been offered. The view was also expressed that, while the working paper represented an attempt at improvement on the present United Nations system, it was nevertheless vague and had the major shortcoming of implying the maintenance of the status quo and of ignoring both the existence of obsolete provisions and the new political and economic realities. These proposals dealt with peripheral issues, not the crux of the matter.

49. As far as paragraph 1 was concerned, one view expressed was that, while it and paragraphs 2 and 3 were constructive, they would probably produce no fundamental improvement, but might increase the role of the United Nations in settling and preventing disputes between States. Another view expressed was that in practice the distinction between "situations" and "disputes" had not been clearly and consistently maintained by the Security Council. It was therefore considered necessary to establish a distinction between the two terms. "Dispute" should be considered as a disagreement on matters or issues between two or more States which had reached a stage at which the parties had formulated claims and counterclaims. "Situation" could be considered as a serious threat to the peace without any formulation of claims.

50. Clarifications were requested of the sponsor with regard to the intended meaning of paragraph 2. The sponsor commented that the proposal was not intended as a copy of the parliamentary practices of his country. It was simply thought that there would be value in the Security Council reviewing the situation on the international scene without waiting for someone to bring a particular matter before it. The purpose of the proposal was to offer a practical idea capable of general agreement. It was noted that periodically the Economic and Social Council discussed the world economic situation and that while that did not result in solving all the world economic problems there was some merit in proposing the idea for the Security Council. Some interest was expressed concerning the holding of Security Council meetings at the ministerial level. It was, however, noted that that possibility, which was always open under paragraph 2 of Article 28 of the Charter, had been rarely used and when it was used was not necessarily successful. More detailed study of the proposal was urged. It was also pointed out that as matters stood the General Assembly's agenda permitted it to carry out a periodic review of a whole

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15/ Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 33 (A/34/33), pp. 88-89, sect. III.C, para. 60.

range of questions involving international peace and security, so that the practical impact of the proposal was limited. It was suggested that the Committee should concentrate on the functioning of the Security Council, particularly the unanimity rule.

51. Concerning paragraph 3, the sponsor indicated in response to a request for clarification that its contents were implicit in Article 99 of the Charter which empowered the Secretary-General to bring to the attention of the Security Council any matter which, in his opinion, might threaten the maintenance of international peace and security. But in order to do so usefully, it was necessary for him to undertake preliminary investigations to enable him to provide the Council with material for an informed discussion and the adoption of whatever measures were required.

52. As to the additional paragraph proposed by Indonesia (see para. 46), it was supported by certain representatives. It was noted that it was customary for the Secretary-General to bring to the attention of the General Assembly certain matters both in the context of the introduction to his annual report on the work of the Organization and through the exercise of his right, under the rules of procedure of the General Assembly, to inscribe certain questions in the provisional agenda of the Assembly. That he should be encouraged to use these prerogatives in matters affecting the maintenance of international peace and security was deemed a useful suggestion which deserved further consideration since it offered a way of bringing matters to the attention of the General Assembly at a time when it might prove possible to prevent a situation from becoming one of conflict.

53. The suggestion was also made that the scope of the proposal should be extended to cover not only matters breaching international peace and security, but also matters which might constitute a threat. On the other hand, doubt was expressed whether the proposal might in itself resolve the problem because the authority of the Secretary-General to discharge his responsibilities under Article 99 should also encompass a provision to the effect that he had authority to conduct good offices, mediation and fact-finding with the approval of the parties concerned.

54. Paragraph 4 of the United Kingdom working paper elicited support from certain representatives. Gratification was expressed because the problem of fact-finding was seen as important not only within the Security Council but also in the General Assembly and other bodies. It was pointed out in that connexion that the Assembly had decided that an in-depth study on the use of modern observation methods for the purposes of disarmament should be carried out with the assistance of a group of government experts. <sup>16/</sup> The idea deserved to be extended to other areas, it was said. It was however suggested that a more detailed study of the proposal was required.

55. Support was also given to paragraph 5 by most representatives who made reference to it. It was found particularly useful as it dealt with the regional organizations playing their due role in the maintenance of international peace and security. Support was also expressed for the paragraph - provided that Chapter VIII of the Charter was fully respected. According to another view, however, it was unfortunate that the reference to that Chapter in the proposal failed to mention the precise nature of Article 53. Furthermore, the question of regional structures for

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<sup>16/</sup> General Assembly resolution 34/83 E.



the maintenance of international peace and security was of special interest since it related to the sources of conflict facing the contemporary world and which constituted threats to the peace. The North/South dialogue and economic issues could not be ignored. They must be kept in mind to avoid a catastrophic situation from arising. On the other hand, it was also said that one could not respond to security needs without responding to economic needs as well. Following the agreed order of A/AC.182/L.2, economic issues should be left until later.

56. Paragraph 6 was generally supported by those representatives who made reference to it, with the understanding that the host country for such missions would give its consent. The Security Council could not impose an observer mission upon a State, although on many occasions such missions were welcomed. The Council should thus take full advantage of this possibility. Suggestions were put forward that the proposal be further developed, such as extending it to cover such missions established by the General Assembly or utilized by the Secretary-General.

57. Certain representatives commented favourably on paragraph 7 concerning the possibility of the permanent members of the Security Council agreeing to refrain from using the veto in certain areas which could be treated as procedural, such as missions whose remit was clearly limited to fact-finding. The proposal was considered by some as an important point of departure in the matter of refraining from the use of veto. That device might, it was said, be extended to other areas, such as the admission of new members. It was considered encouraging that at least one and possibly two permanent members were not disinclined to take a close look at the San Francisco statement of 8 June 1945, 17/ and examine the question of what decisions were procedural within the meaning of Article 27, paragraph 2, of the Charter with a view to determining criteria which could be included in the rules of procedure of the Security Council. According to another point of view, an addition should be made to paragraph 7 to the effect that members of the Security Council should hold consultations on the adoption of a code of conduct for the use of the veto.

58. Other representatives, however, could not support paragraph 7, inter alia, because it aimed at weakening the principle of unanimity. Stress was placed on the belief that the dispatch of fact-finding missions should be subject to the principle of the unanimity of the permanent members of the Security Council. Moreover, that measure invariably had political overtones and necessarily affected the interests of individual States, particularly those in the region concerned, so that it was extremely difficult to limit the scope of such missions to fact-finding. Also, each fact-finding mission was inseparably connected with the principal tasks of the Security Council. In the case of general approval of the parties to a dispute to such missions no difficulties were foreseen, but if one of the parties considered such a mission as an interference in its internal affairs the application of the unanimity principle by the permanent members of the Security Council seemed unavoidable, it was stated.

59. A number of representatives made favourable comments on paragraph 8. Satisfaction was expressed that it did not refer either to the Security Council or the General Assembly. Reference was made to the advisory opinion of the International Court of Justice on "Certain expenses of the United Nations" 18/

17/ United Nations Conference on International Organization, III/1/37 (1), document 852.

18/ See foot-note 14 above.

regarding the residual powers of the General Assembly in this field. That area might be further developed and studied. On the question of peace-keeping operations in general, it was said that, while in practice certain countries had reservations about United Nations peace-keeping operations, their usefulness was recognized by the overwhelming majority of States. It would not be reasonable, however, to expect developing countries to participate to the same extent as developed countries in such operations.

60. Finally, paragraph 9 was viewed as a valuable reminder that the dispatch of missions of inquiry was not the only mode of fact-finding available to the Security Council.

3. Working paper submitted by Japan (A/AC.182/WG/44 and Rev.1)

(a) Initial text of the working paper (A/AC.182/WG/44)

61. The initial text of the working paper is reproduced below:

Strengthening of the fact-finding functions of the United Nations

The United Nations has become an almost universal forum where a variety of international disputes are taken up and discussed, and resolutions are adopted on them. As such a forum, the United Nations today plays an important role for the maintenance of international peace and security, in helping the whole international community grasp the real issues involved, presenting it with the materials for making judgements and furthermore urging the countries concerned, through appealing directly to world opinion, to exercise self-restraint and thereby to facilitate the settlement of disputes among them.

In order to enhance the capacities of the United Nations to play such a role, it is necessary to strengthen the functions of the United Nations in investigating the facts of the situation on the basis of which deliberations should take place. Japan stressed such a need in the general debate of the thirty-fourth session of the General Assembly.

For this purpose, the United Nations should utilize to the maximum extent the fact-finding functions already attributed to its various organs under the Charter and, in this context, particular consideration should be given to the ways and means of strengthening those functions of the Security Council, the Secretary-General and the General Assembly.

More specifically, thought should be given to the following points: to establish, under these major organs, subsidiary bodies for the fact-finding purposes (or to utilize the existing ones) and to dispatch them, on behalf of the United Nations, to the major dispute areas (or to the areas where situations exist which might lead to international friction or give rise to international disputes) on a permanent basis or each time an important dispute (or situation) arises.

Some illustrative measures to implement these ideas are described below:

## 1. The Secretary-General

The General Assembly should reaffirm, by its resolution or some other means, that each time an important dispute or situation arises, the Secretary-General, under the competence that he possesses as prerequisite to carrying out his functions provided for in Article 99, may, for example, station his representative, for a certain period, in the area concerned, and make him to investigate the facts of the situation and to report the outcome to him from time to time. All States Members should co-operate to the maximum extent with the Secretary-General in his carrying out such tasks.

## 2. The Security Council

(1) In order to make full use of the fact-finding competence of the Security Council under Article 34 of the Charter, any resolution regarding the establishment of fact-finding missions and their dispatch is to be exempted from the use of veto. It is desirable, to this end, that the Security Council makes this point clear by adopting an interpretative resolution on Article 34 of the Charter.

(2) The Security Council, in exercising its own fact-finding functions under Article 34 of the Charter, should take note of the functions of the Secretary-General under the Charter and, without prejudice to his own competence recognized under Article 99, make use of them. For example, the Security Council may, by its resolution, confer on the Secretary-General a mandate of a general nature (i.e., not each time when a dispute arises), to conduct fact-finding functions and to report the outcome thereof to the Security Council. The Council, upon receiving the report of the Secretary-General, would meet on an urgent basis to examine it. In conferring such a mandate, the Security Council may prescribe concrete means of fact-finding (e.g., the Secretary-General or his representative should visit the area concerned each time a dispute or a situation arises; the Secretary-General should station his representative on a permanent basis in major parts of the world; the Secretary-General should dispatch roving envoys periodically or on an ad hoc basis, etc.) or give the Secretary-General a certain degree of discretion in the fulfilment of his duties.

(3) It is desirable that a guideline which is to a certain degree general and comprehensive be established by a resolution of the Council with regard to the setting up of subsidiary bodies of the Security Council and the modality of their dispatch.

## 3. Other existing machineries of the United Nations

The existing fact-finding mechanisms set up by General Assembly resolutions should be utilized, and, if necessary, be updated. For example, the Panel for Inquiry and Conciliation (General Assembly resolution 268 D (III)) should be utilized by the various organs of the United Nations and the countries parties to disputes; the Peace Observation Commission (General Assembly resolution 377 B (V)) by the General Assembly or the Security Council; the United Nations Register for Fact-Finding (General Assembly resolution 2329 (XXII)) by the countries parties to disputes. For this purpose, concrete measures should be explored, including the adoption by the General Assembly of

a resolution recalling past resolutions to this effect (e.g., General Assembly resolution 2329 (XXII)) and urging its Member States and various organs of the United Nations to make the best use of such existing mechanisms.

(b) Summary of the discussion of the initial text

62. In introducing his working paper, the sponsor said that his delegation purported to develop and expand ideas contained in other working papers in a comprehensive and concrete fashion, without resorting to amendments of the Charter. Regarding paragraph 1, he stated that it used the word "reaffirm" because under Article 99 the Secretary-General already possessed fact-finding powers, a competence that he had already exercised in several instances. The purpose of the paragraph was to encourage the Secretary-General to exercise that competence. Paragraph 2 concerned the Security Council. Subparagraph (1) contained an idea already found in paragraph 7 of document A/AC.182/WG/37 (see para. 45 above). A new point consisted in the possibility of the Security Council's adopting an interpretative resolution on Article 34 of the Charter. Subparagraph (2) dealt with the utilization by the Security Council of the fact-finding functions of the Secretary-General. Subparagraph (3) was related to a guideline concerning the setting up of subsidiary bodies of the Security Council and the modalities of their dispatch. Paragraph 3 was concerned with the utilization of other existing machineries of the General Assembly established by the relevant resolutions. Mention was made in particular of the Peace Observation Commission established by resolution 377 B (V) which, although existing and its membership being renewed every two years, had not met since 1957.

63. Several representatives who addressed themselves to the working paper welcomed it and expressed support for its general orientation. The proposals were regarded by these delegations as containing constructive and positive elements. The hope was expressed that it would subsequently be agreed that the paper had awakened special interest and was one on which general agreement was possible. It was stressed that fact-finding was an essential part of the work of the United Nations. Furthermore the proposals contained in the working paper did not upset the balance of powers and checks between the Security Council and the General Assembly established by the Charter. In this sense it was stated that the proposals were moderate and served to enhance in a realistic way the role of the United Nations in the field of fact-finding.

64. Other representatives, however, expressed doubts and reservations on the working paper. While not formally proposing a revision of the provisions of the Charter, it nevertheless went beyond the stipulations of the Charter. The view was taken that even though the paper was an endeavour to make use of the avenues provided by Charter provisions, it contained many contradictory and debatable passages. It was pointed out that the powers of the Security Council, the General Assembly and the Secretary-General in the area of fact-finding were clearly formulated in the relevant provisions of the Charter, and that those provisions offered possibilities which were far from having been exhausted. The working paper would result in a transfer of policy-making powers from the Security Council to the Secretary-General and in a limitation of the applicability of the unanimity rule to the dispatch of fact-finding missions. The working paper was therefore considered unacceptable by those representatives.

65. Concerning the preamble, it was remarked that in the fourth paragraph the establishment of new organs was envisaged but the idea was not reflected in the

operative part, unless one could consider fact-finding missions as organs, which was doubtful in view of their ad hoc and temporary character. The sponsor of the working paper stated that although the paper foresaw in its introduction, and did not rule out, the possibility of establishing new subsidiary bodies for fact-finding purposes, it did not propose the establishment of any new body as such.

66. As to paragraph 1 dealing with the Secretary-General, certain representatives supported its provisions and underlined in particular the obligation of States to co-operate with the Secretary-General in the carrying out of his fact-finding duties. The view was taken that the Secretary-General's competence to investigate facts, while perhaps not specified in the Charter (the relevant articles were said to be Articles 7, 97, 98 and 99) was solidly based on a dynamic interpretation of the Charter aimed at giving full effect to its provisions, chiefly by means of the concept of implicit powers. However, the question of the stationing of representatives of the Secretary-General appeared, it was said, unclear. If the intention was to implement certain resolutions adopted by a competent organ, the matter fell under Article 98, but that article did not have to be referred to inasmuch as the action expected from the Secretary-General would be in implementation of the relevant resolution. It was noted that the paragraph was silent on whether the consent of the States concerned was required for the dispatch of representatives of the Secretary-General on fact-finding missions. The requirement for such consent should be explicitly set forth. Furthermore, not only the General Assembly but also the Security Council should reaffirm the prerogatives of the Secretary-General in this matter.

67. Certain other representatives suggested that the paragraph was unrealistic or based on an incorrect understanding of the Charter. It appeared that the paper was aimed mainly at enlarging the competence of the Secretary-General in the field of fact-finding. According to one view, over-emphasizing the role of the Secretary-General in matters relating to the maintenance of international peace and security was not realistic. In such matters, one could not rely on the personal judgement of representatives of the Secretary-General. The Secretary-General himself could not be expected in view of his numerous responsibilities, mainly of an administrative nature, to carry out the envisaged functions. The powers of the Secretary-General had to be exercised under the supervision of the Security Council and the General Assembly. According to another view paragraph 1 of the proposal was inexplicable as Article 34 did not confer on the Secretary-General a mandate of a general nature to conduct fact-finding functions. Besides, the proposal that the Assembly might authorize the Secretary-General to station a representative and have him investigate the facts was contrary to the principle of the primary responsibility of the Security Council in the maintenance of international peace and security fixed in Article 24 of the Charter. Furthermore, the administrative and other functions of the Secretary-General were clearly defined in the Charter. He was not entitled to meddle in the proceedings of the General Assembly and the Security Council concerning the maintenance of international peace and security. He could not perform his functions satisfactorily unless he confined himself strictly to the powers conferred on him by the Charter. If, as had happened in the past, he ignored that fundamental rule and usurped the functions of other organs, the political consequences were bound to be disastrous. Only Member States, acting on the basis of the Charter within the framework of the principal organs, were in a position to bring about the required balance among sharply divergent political opinions, and any expansion of the powers of the Secretary-General beyond the provisions of the Charter, at the expense of the prerogatives of the other principal organs of the United Nations, was liable to weaken rather than strengthen the Organization.

68. By way of clarifying his working paper A/AC.182/WG/44, the sponsor stated that paragraph 1 simply reaffirmed the Article 99 powers of the Secretary-General; it was not designed to confer new competences upon him. The point was to encourage the Secretary-General to exercise his discretionary and other powers under Article 99. This approach had received support in connexion with the work of the Working Group on the question of the peaceful settlement of disputes. The sponsor also confirmed that both the Security Council and the General Assembly could reaffirm the Secretary-General's competence on fact-finding. The paper did not intend to exclude the possibility that the Council would make such a reaffirmation. The sponsor agreed that the consent of the host country was needed when United Nations fact-finding missions were dispatched; this point had been taken for granted in the paper. The foregoing should not detract, it was said, from the obligation of all States Members to co-operate as stated in the last sentence of paragraph 1.

69. As to paragraph 2, subparagraph (1) was favourably commented upon by some representatives who considered the proposal on the non-use of the veto in respect of fact-finding to be encouraging. It was suggested that the proposal be aligned with the similar proposal contained in the United Kingdom working paper (see para. 45 above). Doubts were voiced, however, by some other representatives. Hesitations were expressed about the proposed adoption by the Security Council of an interpretative resolution on Article 34. It was further maintained that the suggestion that the unanimity rule should not apply to the dispatch of fact-finding missions undermined one of the corner-stones of the Organization and hence was unacceptable. Fact-finding necessarily involved political questions and formed an integral part of the decision-making processes of the Security Council.

70. Certain representatives referred to subparagraph (2) and suggested that perhaps a reference should be made to Article 98 of the Charter, as well as to Article 99. The sponsor of the working paper explained that in his opinion, when the Security Council conferred, under Article 34, a mandate on the Secretary-General to conduct fact-finding functions, the legal basis of such an action of the Security Council was found in Article 98. Accordingly, the Secretary-General under Article 98 had the obligation to report his fact-finding activities to the General Assembly as part of the work of the Organization. However, since his functions were performed in the context of Article 34, he was obliged to report first of all and as expeditiously as possible to the Security Council. The sponsor therefore had no difficulty in incorporating a reference to Article 98 in paragraph 2 (2) of the working paper.

71. Yet another view held that that paragraph contained an arbitrary interpretation of Article 99. According to that view, the dispatch of fact-finding missions was, under the Charter, a matter within the exclusive competence of the Security Council. The Security Council had, of course, repeatedly organized missions of inquiry and the role of the Secretary-General had usually been confined to the appointment of members of such missions in consultation with the President of the Security Council. That was the only way, it was stressed, in which the Security Council could obtain an impartial and accurate account of the facts. Missions of that type acted in conformity with the Charter and with their own mandate, and their conclusions were subsequently utilized by the Council in deciding on the necessary measures. That system should be preserved, because the Secretary-General could not be expected, given his heavy administrative responsibilities and his duty to attend meetings of the General Assembly and the Security Council, also to deal with the management of fact-finding missions away from Headquarters, where his presence was required. The

sponsor of the proposal, however, emphasized that in the utilization by the Security Council of the Secretary-General's fact-finding functions under this paragraph, the Secretary-General would be completely under the authority of the Security Council as it would be the Council which would determine his mandate and which would evaluate his fact-finding efforts or results. No limit would therefore be placed on the competence of the Security Council. Note was taken by the sponsor that Article 34 need not be interpreted to mean that fact-finding endeavours thereunder must be exclusively ad hoc. As this was not explicitly stated, it was urged that a flexible interpretation was possible.

72. The proposal reflected in subparagraph (3) of paragraph 2 met with the approval of the representative who specifically made reference to it, although it was suggested that the idea should be formulated as an autonomous recommendation by the Committee. It was recalled that a proposal had been made at the previous session 19/ calling for the establishment of a subsidiary inquiry and mediation organ to monitor, in co-operation with the Secretary-General, the application of Security Council resolutions concerning international peace and security.

73. Finally, the proposal in paragraph 3 to review other existing machineries of the United Nations was welcomed by some speakers. It was thought a good idea to review the existing machinery and to examine the structure and terms of reference of existing bodies so as to determine their usefulness and put them to service accordingly. There was merit in reminding Member States of the existence of machineries which had never been used and had become moribund. Particular mention was made of the United Nations Register for Fact-Finding. That register had never been used, it was stressed. The task of the Committee could be to ask Members of the United Nations to try to make use of that system as it had a useful role to play. It was also commented that the strengthening of the role of the General Assembly with respect to the whole area of the maintenance of international peace and security in general was to be supported, as well as its role in the area of fact-finding.

(c) Revised text of the working paper (A/AC.182/WG/44/Rev.1)

74. Following the discussion of working paper A/AC.182/WG/44, its sponsor submitted the revised text reproduced below.

Strengthening of the fact-finding functions of the United Nations

The United Nations has become an almost universal forum where a variety of international disputes are taken up and discussed, and resolutions are adopted on them. As such a forum, the United Nations today plays an important role for the maintenance of international peace and security, in helping the whole international community grasp the real issues involved, presenting it with the materials for making judgements and furthermore urging the countries concerned, through appealing directly to world opinion, to exercise self-restraint and thereby to facilitate the settlement of disputes among them.

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19/ See A/AC.182/WG/35, reproduced in Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 33 (A/34/33), p. 88, sect. III.C, para. 57.

In order to enhance the capacities of the United Nations to play such a role, it is necessary to strengthen the functions of the United Nations in investigating the facts of the situation on the basis of which deliberations should take place. Japan stressed such a need in the general debate of the thirty-fourth session of the General Assembly.

For this purpose, the United Nations should utilize to the maximum extent the fact-finding functions already attributed to its various organs under the Charter and, in this context, particular consideration should be given to the ways and means of strengthening those functions of the Security Council, the Secretary-General and the General Assembly.

More specifically, thought should be given to the following points: to establish, under these major organs, subsidiary bodies for the fact-finding purposes (or to utilize the existing ones) and to dispatch them, on behalf of the United Nations, to the major dispute areas (or to the areas where situations exist which might lead to international friction or give rise to international disputes) on a permanent basis or each time an important dispute (or situation) arises. It is presumed that the consent of the host country is required when such fact-finding missions are dispatched. All Member States should co-operate to the maximum extent with such missions in their carrying out of their tasks.

Some illustrative measures to implement these ideas are described below:

1. The Secretary-General

The General Assembly and/or the Security Council should reaffirm, by their resolution or some other means, that each time an important dispute or situation arises, the Secretary-General, under the competence that he possesses as prerequisite to carrying out his functions provided for in Article 99, may, for example, station his representative, for a certain period, in the area concerned, and make him to investigate the facts of the situation and to report the outcome to him from time to time. All States Members should co-operate to the maximum extent with the Secretary-General in his carrying out such tasks.

2. The Security Council

(1) In order to make full use of the fact-finding competence of the Security Council under Article 34 of the Charter, the rule of the unanimity of the permanent members of the Security Council should not be applied to any resolution regarding the establishment of fact-finding missions and their dispatch. It is desirable, to this end, that the Security Council may make this point implicitly or explicitly by treating such a matter as a question of procedure or by agreeing by way of a stipulation or resolution to so regard the question of the establishment of the fact-finding missions and their dispatch.

(2) The Security Council, in exercising its own fact-finding functions under Article 34 of the Charter, should take note of the functions of the Secretary-General under the Charter and, without prejudice to his own competence recognized under Article 99, make use of them. For example, the Security Council may, under Article 98, by its resolution, confer on the Secretary-General a mandate of a general nature (i.e., not each time when a dispute



arises), to conduct fact-finding functions and to report the outcome thereof to the Security Council. The Council, upon receiving the report of the Secretary-General, would meet on an urgent basis to examine it. In conferring such a mandate, the Security Council may prescribe concrete means of fact-finding (e.g., the Secretary-General or his representative should visit the area concerned each time a dispute or a situation arises; the Secretary-General should station his representative on a permanent basis in major parts of the world; the Secretary-General should dispatch roving envoys periodically or on an ad hoc basis, etc.) or give the Secretary-General a certain degree of discretion in the fulfilment of his duties.

(3) It is desirable that a guideline which is to a certain degree general and comprehensive be established by a resolution of the Council with regard to the setting up of subsidiary bodies of the Security Council and the modality of their dispatch.

### 3. Other existing machineries of the United Nations

The existing fact-finding mechanisms set up by General Assembly resolutions should be utilized, and, if necessary, be updated. For example, the Panel for Inquiry and Conciliation (General Assembly resolution 268 (D) (III)) should be utilized by the various organs of the United Nations and the countries parties to disputes; the Peace Observation Commission (General Assembly resolution 377 B (V)) by the General Assembly or the Security Council; the United Nations Register for Fact-Finding (General Assembly resolution 2329 (XXII)) by the countries parties to disputes. For this purpose, concrete measures should be explored, including the adoption by the General Assembly of a resolution recalling past resolutions to this effect (e.g., General Assembly resolution 2329 (XXII)) and urging its Member States and various organs of the United Nations to make the best use of such existing mechanisms.

#### (d) Summary of the discussion of the revised text

75. The sponsor stressed that he had taken into account the various constructive suggestions and comments that had been made, with a view to improving the original proposals. The changes, he said, were minor ones and he did not think that a new discussion on them was necessary. The changes he had introduced related to the following paragraphs: in the fourth paragraph of the preamble, certain words had been added to the end of the sentence with regard to the consent of the host country; in paragraph 1, "and/or the Security Council" had been added after "The General Assembly"; in paragraph 2 (1) the non-applicability of the unanimity rule to the establishment and sending of fact-finding missions was further elaborated; in paragraph 2 (2), the words "under Article 98" were added to the second sentence beginning with "For example ...". The revised text was not the subject of further discussion, although a comment was made by one delegation that the amended fourth preambular paragraph which called upon States to co-operate to the maximum extent with such fact-finding missions did not convey the intended meaning. What should have been required, it was said, was to request the consent of the host country to receive the mission. Other revised points were welcomed by that same delegation.

4. Working paper submitted by Algeria, the Congo, Cyprus, Egypt, El Salvador, Ghana, Iran, Kenya, Nigeria, Romania, Rwanda, Sierra Leone, Tunisia, Yugoslavia and Zambia (A/AC.182/WG/46/Rev.1 and Rev.2) 20/

(a) First revised text of the working paper (A/AC.182/WG/46/Rev.1)

76. The first revised text of the working paper is reproduced below:

Maintenance of international peace and security

GENERAL PRINCIPLES

I. Universal code of conduct

Fundamental rights and duties of States:

The preparation and adoption of a universal code of conduct covering the fundamental rights and duties of States with a view to concluding an internationally binding treaty as a supplement to the Charter and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

(I) The obligation of all States to implement faithfully, promptly, fully and in good faith the relevant resolutions of the competent organs of the United Nations relating to the maintenance of international peace and security.

(II) The duty of all States to settle all international disputes exclusively by peaceful means, in such a manner that national independence, territorial integrity, international peace and security and justice are not endangered.

(III) The right and duty of every State to participate actively, on the basis of equality, in solving outstanding international issues.

(IV) The inalienable right of every State to national independence, sovereignty and territorial integrity.

(V) The prohibition of all forms of colonialism, racial discrimination, including apartheid and all other forms of foreign domination.

(VI) The inalienable right of every State independently to decide on its own destiny, freely to choose and develop its political, economic and social system in accordance with its wishes and its interests, without any outside interference.

(VII) The inalienable right of peoples under colonial and racist minority rule including apartheid and all other forms of racial and foreign domination

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20/ El Salvador joined the co-sponsors after the first revised text of the working paper had been circulated.

to self-determination and national independence, and the legitimacy of their struggle by all means including armed struggle for their national liberation.

(VIII) The obligation of all States to support the legitimate struggle of peoples under colonial and racist minority rule including apartheid and all other forms of racial discrimination for self-determination and independence and to refrain from any action liable to hamper or jeopardize the free exercise of peoples to self-determination and independence.

(IX) The duty of every State to strive for the complete elimination of colonialism, all forms of racism and racial discrimination including apartheid and all forms of foreign domination.

(X) Respect for the inviolability of frontiers and for the territorial integrity of every State or every territory under colonial, foreign domination or occupation and the prohibition, therefore, of any measures threatening the national unity or the territorial integrity of another State.

(XI) The prohibition of the use of force and all its consequences including annexation and occupation by any State of all or part of any territory or the dismemberment of such territory in violation of the right of peoples to self-determination and independence, as well as respect for their territorial integrity.

(XII) The prohibition of the usurpation by States, for the purpose of performing any acts concerning the future of a people struggling to exercise its right to self-determination and independence, of the powers of the authority representing that people.

(XIII) Non-recognition of situations brought about by the threat or use of force contrary to the purposes and principles of the Charter.

(XIV) The obligation of States to respect fully the national independence, sovereignty, unity, territorial integrity and equal security of other States.

(XV) The obligation of States to refrain from any action detrimental to the realization of the inalienable rights of peoples struggling to attain self-determination and national independence, including:

Urging non-compliance with relevant resolutions of the Security Council;

Promoting negative policies contrary to the purposes and principles of the United Nations;

Interfering in the inherent rights of States to discharge their obligations under the Charter in conformity with Article 49.

(XVI) The duty of States not to intervene, directly or indirectly for any reason whatever, in the internal or external affairs of any other State.

(XVII) The obligation of States to abstain in their international relations from the use or threat of force in any way and under any pretext or circumstances, as well as the exercise of any political, economic, military or other form of coercion against another State.

(XVIII) The inherent rights of each State to defend itself in accordance with Article 51 of the United Nations Charter by all available means against any threat to its sovereignty and national independence, including military means in the case of armed aggression.

(XIX) The duty of every State to faithfully implement the provisions of the Charter of the Economic Rights and Duties of States adopted by the General Assembly in resolution 3281 (XXIX) of 12 December 1974.

## II. Institutional and functional reforms

### A. The Security Council

#### General

As the organ vested with the primary responsibility for maintenance of international peace and security, the Security Council has to be more credible. Its working methods have to be improved and its procedure should be revised with a view to enhancing its ability to carry out its vital responsibilities.

The realization of the proposed improvements do not necessarily require Charter amendments. It is possible to introduce meaningful changes through two parallel courses of action.

#### 1. Agreement on the unanimity rule

An agreement should be concluded by the members of the Security Council on the unanimity rule with a view to incorporating it into the rules of procedure of the Council, regarding certain aspects of the functioning of the Security Council. The agreement would prescribe that the unanimity rule shall not apply, inter alia, when the following matters are considered by the Council:

(a) The admission of new members;

(b) The inalienable right of peoples under colonial and racist minority rule including apartheid and all other forms of racial and foreign domination to self-determination and national independence;

(c) Cease-fire injunctions shall in all cases require withdrawal to international boundaries or to recognized cease-fire lines;

(d) The application of the unanimity rule should be excluded in the adoption of decisions relating to disputes to which a permanent member is a party in accordance with Article 27 (3) of the Charter.

#### 2. Revision of rules of procedure

It is suggested that Chapter VII of the provisional rules of procedure entitled "Voting" and composed of only rule 40 be revised as follows:

(I) Rule 40 should read as follows: "Voting in the Security Council shall be in accordance with the relevant Articles of the Charter

and the Statute of the International Court of Justice, as well as rules 41 and 42, of the rules of procedure."

(II) New rule 41 should read as follows: "The unanimity rule shall not apply, inter alia, to the following:

(a) All resolutions relating to Chapter VI entitled "Pacific settlement of disputes".

(b) All resolutions authorizing the establishments of peace-keeping operations with the consent of the parties concerned.

(c) All resolutions aiming at "fact-finding".

(d) All other cases referred to in the Security Council agreement on the unanimity rule.

(III) With respect to the General Assembly, the Charter stipulates in Article 18, paragraph 3, that "the determination of additional categories of questions to be decided by a two-thirds majority shall be made by a majority of the members present and voting".

The Charter does not contain a corresponding rule with respect to the Security Council. This important issue should be settled in conformity with the letter and spirit of the Charter by incorporating the following rule.

(IV) New rule 42 should therefore read as follows: "The decision of whether a given matter is procedural or not should be decided by an affirmative vote of nine members."

#### B. The General Assembly

(a) Strengthening of the role of the General Assembly in the maintenance of international peace and security by making full use of the provisions of Articles 10, 11, 13 and 14 as well as General Assembly resolution 377 (V) of 3 November 1950.

(b) Effective examination of the annual reports of the Security Council to the General Assembly and formulation, following discussion of such reports of specific proposals concerning the practical activities of the Security Council.

#### C. The Secretary-General

The proper discharge of the Secretary-General's responsibilities under the provisions of Article 99 require that, without prejudice to the rights of States under the Charter, he undertakes steps to acquire information and ascertain facts on developments the continuance of which is likely to endanger international peace and security and report on these developments when appropriate, to the Security Council and to the General Assembly.

## D. General

1. Article 25 of the Charter should be modified to read as follows:

"The Members of the United Nations agree to accept and carry out resolutions and decisions of the Security Council as well as resolutions and decisions of the General Assembly relating to the maintenance of international peace and security and to support all peace-keeping operations established by the United Nations."

2. Amend Article 2 of the Charter by the addition of the following after paragraph 7:

"8. Right of peoples to self-determination and independence and legitimacy of the struggle of peoples still under colonial and foreign domination effectively to exercise that right and achieve national independence.

"9. Permanent sovereignty of States over their natural wealth and resources."

### (b) Summary of the discussion

77. In introducing the working paper, the representative who spoke on behalf of the sponsors said that those delegations, aware of the lessons of the League of Nations and of international life, started from the premise that an effective international organization was an absolute requirement for the maintenance of international peace and security and that irrespective of the military capacities of any State, the United Nations was essential to maintain the balance between the contending forces of the world. The international community aspired to a world organized as a political democracy in which the economic resources and the political values would be equitably shared. In its 35 years of existence, however, the Organization had not fulfilled this aspiration. The concept of democracy could not be reduced to a mere counting of States. Rather, it implied the possibility for all States, including the newly independent ones, to participate in the decision-making process on important issues whatever their wealth or their size. The present world situation did not, in the opinion of the sponsors, give much credit to the United Nations as a guarantor of world peace and it was for that reason and with a view to enhancing the role of the United Nations that the co-sponsors had submitted the working paper under consideration.

78. Under section I of the working paper, it was suggested to prepare a universal code of conduct covering the fundamental rights and duties of States. With respect to point (I), the spokesman for the sponsors stressed that, as had been recognized by the International Court of Justice in its advisory opinion in the South West Africa case, it was simplistic to say that a resolution of the General Assembly was not binding: the passing of a resolution, whatever its nature and the circumstances of its adoption, was a legal act on the part of organs of the United Nations, to which Member States owed a degree of respect. Furthermore resolutions relating to the primordial goal of the maintenance of international peace and security must be fully respected and faithfully implemented by all Member States. In point (II) which reminded States of a fundamental obligation, the word "exclusively" and the reference to national independence and territorial integrity were of special importance. Point (III) placed emphasis on the need to democratize the United

Nations as it appeared unrealistic and contrary to the interest of international relations to discard the views of some 100 Member States or to ignore the interests of the States particularly involved in a given situation. In this connexion, the sponsors felt that issues should not be taken away from the United Nations and decided in other forums with the United Nations being used as a mere rubber stamp.

79. Points (IV) to (VII) reflected the view that the continuation of colonialism and racial discrimination and the denial of the right to self-determination could only endanger the maintenance of international peace and security. As a corollary, points (VIII) and (IX) laid down the obligation of all States to contribute to the elimination of colonial situations and situations of racist minority rule or racial discrimination, which were actual or potential sources of frictions. Point (X) dealt with the case of colonial territories threatened with dismemberment and emphasized the obligation of the United Nations and the international community to ensure that the territorial integrity of such territories would be respected when they achieved independence. The remaining points were self-explanatory and the sponsors merely wished to place special emphasis on point (XIII) concerning the non-recognition of situations brought about by the threat or use of force contrary to the Charter and to point out, in relation to point (XVIII), that a State which utilized force first was the aggressor and that self-defence was the opposite of aggression.

80. Section II of the working paper dealt with institutional and functional reforms. In subsection A it stressed the need to enhance the credibility of the Security Council and to improve its working methods. One point which deserved special attention was subparagraph (c) of paragraph 1 which contained a principle followed by the United Nations jurisprudence, namely, that when there was an outbreak of hostilities, the status quo ante must be restored. There had, however, been one significant exception to this principle, namely, Security Council resolution 230 (1966), and this hiatus in the practice of the Security Council highlighted, in the view of the co-sponsors, the desirability of codifying the principle in a declaration or a treaty. Another point worthy of special attention was subparagraph (d) which embodied the basic principle that no one should be a judge in his own cause, a principle which should apply to permanent and non-permanent members alike.

81. Turning to paragraph 2, the spokesman of the sponsors said that the new rules it was suggested to include in the rules of procedure were aimed at ensuring a more effective functioning of the Security Council and enhancing its ability to take decisions on vital issues of the international life. In particular, the proposed rule 42 was to some extent a counterpart to Article 18, paragraph 3, of the Charter concerning the determination within the General Assembly of categories of questions to be decided by a two-thirds majority: while it was true that in recent time the permanent members had been reluctant to resort to the double veto, the co-sponsors nevertheless felt the proposed new rule to be useful.

82. Subsection B related to the complementary role of the General Assembly, when the Security Council was unable or unwilling to act. It highlighted the importance of resolution 377 (V) as well as the need for the General Assembly to fulfil its functions by a thorough examination of the Secretary-General's reports on the performance of the Security Council.

83. The spokesman of the sponsors finally indicated that constructive suggestions were welcome: the working paper was not a package-deal but a basis for negotiations

in good faith to which elements could be added and which could be revised in the light of the discussion.

84. A number of representatives thanked the sponsors for their constant endeavours to stimulate the discussion in the area under consideration and stressed the importance and relevance of the working paper which in their view could only enhance the effectiveness and credibility of the Special Committee. The working paper, it was stated, reflected the main preoccupation of the non-aligned countries which, because they were the main victims of the "might makes right" policy and of aggression, intervention, terror and use of force and foreign domination, had a vital concern in the issue of peace and security.

85. Some delegations, however, said that the working paper, although it was interesting and contained a number of positive elements, also included a series of proposals which gave rise to serious doubts and objections.

86. It was further said that, while the document was commendable and deserved consideration as a reflection of the deep concern of the non-aligned group for lessening tension in the world, reducing the dangers inherent in colonialism and promoting the independence of countries, the attempts which were made therein at restricting the scope of the principle of unanimity could only lead to an impasse.

(i) Comments on section I of the working paper

87. Commenting in general terms on section I of the working paper, a number of delegations welcomed the idea of elaborating, within the framework of a code of conduct, the rights and duties of States, in order to promote the rule of law in international relations and strengthen the role of the United Nations in the maintenance of international peace and security. In this connexion, it was suggested that advantage be taken of the experience acquired in the past in the drafting of similar instruments within the framework, for instance, of the 1919 Paris Peace Conference, the Seventh International Conference of American States held in 1933, the 1945 Inter-American Conference which had adopted the so-called Declaration of Mexico, and the United Nations Organization itself, particularly within the International Law Commission which in 1949 had submitted to the General Assembly a Draft Declaration on Rights and Duties of States. 21/

88. Other delegations, however, expressed reservations as to the wisdom of drafting the proposed code - in particular in view of the existence of the Charter which was in itself a code of conduct - and wondered whether the work of the Committee should not be geared towards improving the functioning of the Organization rather than towards a reiteration of the Friendly Relations exercise. They also pointed out that the International Law Commission Draft Declaration on Rights and Duties of States was a rather discouraging precedent since the Assembly in its resolution 375 (IV) had confined itself to taking note of the draft and transmitting it to Member States for consideration. While having some doubts about the advisability of drafting the proposed code for these reasons, the delegations in question nevertheless expressed readiness to go along with the wish of the sponsors in this respect. In this connexion, it was stated that the proposed code should not be so much a list of rights and obligations as a restatement of some aspects of international law - a contemporary reflection of the basic principles guiding the conduct of States in international relations.

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21/ General Assembly resolution 375 (IV), annex.



89. A number of delegations, however, objected to the proposed code taking the form of a treaty. It was said in particular that before deciding on the legal format of the instrument, general agreement had to be reached on the elements to be included in it - an obvious prerequisite if the code was to have any meaning at all. The first stage should therefore be to select those of the rights and duties of States which were most relevant to the question of the maintenance of international peace and security and the second stage to find appropriate formulations - referring in particular to the relevant provisions of the Charter and other United Nations documents - and to organize the various elements in the appropriate sequence according to their importance. The view was further expressed that the elaboration of instruments parallel to the Charter or supplementing it raised problems linked to the hierarchy of norms of international law. The question arose, in particular, as to the relationship which the proposed code would have to the Charter and to the Declaration on Friendly Relations. A legally-binding code, it was stated, could neither transcend the Charter in view of Article 103 thereof, nor exist parallel to it since there would then be two different legal régimes in the same area; a treaty could similarly not supplement the Friendly Relations Declaration, it was added, since the two instruments would be of a different legal nature. The fear was also expressed that if the proposed treaty was not ratified by all Member States, the legal force of the Charter principles reflected in it would be adversely affected. Finally the point was made that if the proposed treaty was to be identical to the Charter it would be useless, and that if it differed from it, it would circumvent the revision procedure laid down in Articles 108 and 109.

90. Some other delegations indicated that they would be willing to consider a new treaty on this subject, as long as care was taken to ensure that it correctly reflected the development of the law and did not create conflict or difficulties of interpretation with other instruments on the same subject-matter. They maintained that it was not out of place to consider formulating a binding document, as a supplement to the Charter and the Friendly Relations Declaration, especially when it was recognized that the violation of any of the principles listed in section I was bound to be a source of conflict and a threat to the peace. That section, it was pointed out, was intended to recognize and address the actual and potential sources of conflict among States and to stress their rights and obligations. It was true that the principles listed therein were already contained in other instruments and were well known to all States, but there was merit in repeating them for in a community of more than 150 Member States with different interests, requirements and even abilities to understand the problems of others, the diversity of approaches to existing principles and to the concept of justice made it imperative to strive toward a uniform interpretation of the rules governing the conduct of States. The number of unlawful acts which took place on the international scene and the frequent cases of misinterpretations by States of their obligations and duties under the Charter and other basic instruments of the United Nations fully warranted, it was added, the preparation of the proposed code of conduct. The fact that no action had been taken on the Draft Declaration submitted to the General Assembly in 1949 by the International Law Commission because of objections raised by two permanent members was no reason for discarding the method itself but merely highlighted the difficulty of the task and the need for serious negotiation. Finally, it was pointed out that the proposed code was not intended to be a repetition of Charter norms and would therefore not be redundant. Neither was it intended to result in indirect revision of the Charter. The purpose of the proposed code was to supplement the Charter through development of some of its norms. Surprise was expressed that the delegations which advocated the conclusion of a treaty on the non-use of force in international relations should claim that no

provision of the Charter could be developed in a separate legally binding instrument without the legal force of that provision being put in question. Many treaties based on the Charter norms had been elaborated in the last 35 years - for example, in the field of disarmament or human rights - and no one had even argued that such treaties had weakened the Charter.

91. A number of representatives commented on specific elements of section I. As far as the general outline of the proposed code was concerned, it was suggested to regroup some of the points as follows: (a) implementation of international obligations: points (I) and (XIX); (b) territorial integrity: points (IV), (VI), (X) and (XIV); (c) self-determination: points (VII), (VIII), (IX) and (XV); (d) non-intervention: points (XIII) and (XVII). Point (I) was felt to be unacceptable as entailing a de facto amendment of the Charter: in this connexion it was pointed out that only certain decisions of the Security Council were binding while those of the General Assembly, as was well known, were recommendatory.

92. It was further pointed out that as presently worded point (I) gave the impression that only those resolutions relating to the maintenance of international peace and security were to be faithfully implemented. A more appropriate approach, it was maintained, would be to emphasize the broader obligations of States under generally recognized principles of international law and their duty to make the United Nations collective security system more effective and to co-operate to this end.

93. The view was also expressed that point (I) reflected a simplistic view of the binding or recommendatory nature of resolutions of the General Assembly and the Security Council. Thus, it was stated, there could not be any doubt that the termination of the mandate on South West Africa by the General Assembly was an act with significant legal consequences. The same applied to the resolution by which the General Assembly had adopted the Friendly Relations Declaration, and to the resolutions on the budget of the Organization. Similarly, the Security Council could make recommendations under Chapter VII and take decisions outside Chapter VII. One should not therefore try to treat all resolutions and decisions as having the same legal force.

94. Other delegations, however, supported point (I) and expressed concern in this connexion at the number of General Assembly resolutions and even Security Council decisions which had remained unimplemented. It was stressed in particular that resolutions of the General Assembly must be respected and ought to be the result of profound and comprehensive negotiations and that whenever the Security Council's action was blocked its prerogatives and responsibilities should be taken over by the General Assembly as peace and security were the concern of the entire membership and not only of the permanent members of the Council. In this context, the suggestion was made that in order to enhance the diminishing effectiveness of the Organization, all General Assembly resolutions (and in particular those relating to colonialism, racism and economic imbalance) should be examined to see which ones had not been implemented.

95. On point (II), the observation was made that although the peaceful settlement of disputes was closely related to the maintenance of international peace and security, the two questions should not be mixed in the light of the organizational framework in which the Committee was conducting its work. Attention was drawn to the need accurately to reflect the principle enunciated in the Charter and in this respect doubts were expressed in particular about the words "territorial integrity".

This was because if, for example, a territorial dispute between two neighbouring States was taken to the International Court of Justice and if, as a result of the Court's decision, a change occurred in the territorial integrity of the parties, it could not be claimed, notwithstanding this change, that the principle of peaceful settlement of disputes had been violated. Disagreement was expressed with this argument on the ground that no question of territorial integrity arose when a State decided, by an act of sovereignty, to relinquish part of its territory in compliance with the decision of an international tribunal: only when such territory was removed from a State by force was there a violation of territorial integrity.

96. On point (III), it was suggested to include therein a reference to the duty of States to contribute actively to the strengthening and further extension of international détente. The view was also expressed that the existence of extreme cases in which two countries had decided on the fate of another without the latter's participation was no reason for going to the other extreme. In this context, disagreement was expressed with the claim that the United Nations was sometimes used as a rubber stamp: one of the functions of the United Nations, it was stated, might well be to act ex post facto. For example, the work of the Disarmament Conference although it took place outside of the United Nations acquired enhanced legitimacy from being endorsed by the United Nations.

97. Point (IV) did not give rise to any objection.

98. Regarding point (V) and subsequent points, it was noted that almost half of the 19 principles listed dealt with the right to self-determination and that merger of certain points should be considered to achieve the required balance. The view was also expressed that the wording in those points should be brought in line with the language of the Charter and of relevant General Assembly resolutions.

99. With regard to point (V), it was noted that it contained a partial listing of human rights violations, and as such came under another topic.

100. On point (VII) the view was expressed that in dealing with colonialism one should recall the principle laid down in the Declaration on Friendly Relations among States that all peoples have a right freely to determine without external interference their political status in accordance with their own wishes. Mention was also made of the case of a colony which had opted for retaining the status of colony: such an option, it was stated, should not be closed to territories which found it to be in their best interest. In this regard, the contrary view was also expressed: namely, that there were no colonial situations which a people could freely choose to accept, because such a choice would be an illegal act in itself, according to United Nations decisions and contemporary international law. Furthermore, it was noted, the United Nations had never advocated forcing independence on a people who did not want it. On the contrary, it had always stressed the free choice of peoples to determine their future and pointed out that geography or the size of the population could not be used by the administering Power as a pretext to deny a people its right to self-determination. Only the peoples concerned had the right to take such factors into consideration if they considered them relevant to their future. In this regard, it was emphasized that the peoples concerned should be enabled to decide their destiny in a formal and orderly manner such as a plebiscite or referendum organized and supervised in conjunction with the United Nations. While agreeing fully with this interpretation, some representatives observed that as presently drafted point (VII) could lead to a

misconstruction of the right to self-determination. In relation to point (VII), the question was also asked whether it was appropriate to include in a United Nations code of conduct a provision advocating armed struggle by all means. Reference was made in that connexion to the relevant provision of the Definition of Aggression which had been accepted by consensus. It was further suggested to include in points (VII) and (VIII) a reference to the purposes and principles of the United Nations on the ground that all Charter principles should be interpreted in accordance with the spirit of the Charter and that it would be wrong to uphold one particular principle while ignoring another, namely, in this instance, the principle of the non-use of force in international relations.

101. Point (VIII), it was stated, should contain a reference to foreign domination.

102. With respect to point (IX), it was suggested to include therein a reference to the inadmissibility of the policy of hegemonism in international relations, as underlined in General Assembly resolution 34/103.

103. With regard to point (X), attention was drawn to the case of territories under colonial or foreign domination which had, at a previous moment in time, been removed from the sovereignty of a State to the detriment of its territorial integrity: in such a case, it was maintained, the possibility of the territory in question reverting to the sovereignty of the State from which it had been separated should not be foreclosed. It was also noted that the word "or" should be inserted between "colonial" and "foreign" since there were cases of foreign domination not caused by colonialism.

104. Doubts were expressed on points (XI) and (XII).

105. In relation to point (XIV), the meaning of the words "equal security" was queried.

106. Point (XVII) was objected to as containing a verbose reformulation of Article 2, paragraph 4. It was also pointed out that, in certain cases, international law did allow the taking of countermeasures of an economic or political nature such as reprisals and measures deriving from the non adimpleti contractu rule, and that point (XVII) should not lead to interpretations whereby measures permissible under international law would be considered as prohibited.

107. Point (XVIII) was described as an unfortunate paraphrase of Article 51 in which the phrase "by all available means" definitely seemed to go too far. In this connexion, it was pointed out that the use of certain means such as inhuman weapons causing unnecessary suffering was not permissible under international law. Article 51, it was added, was a key Charter provision, the wording of which should be strictly followed.

108. As to point (XIX), it was objected to on the ground that the Charter of Economic Rights and Duties of States had been strongly opposed by a number of States and could therefore not be considered as reflecting generally accepted principles.

109. Some representatives suggested the inclusion of additional ideas in the proposed code such as the duty to promote and intensify international co-operation designed to achieve the goals of disarmament (particularly nuclear disarmament) as defined at the tenth special session of the General Assembly devoted to disarmament

and in resolution 34/88. In this connexion, it was said that the arms race went on at a feverish pace, that increasingly sophisticated weapons were continuing to be developed and that there was a need for operative agreements in this area. Still another element which it was suggested should be taken into consideration was the need to put an end to acts of armed aggression against other States for various stated purposes and to end the use of means of waging war that violated the Charter and the generally accepted norms of the law of war. It was said in this connexion that States which resorted to such methods paid no heed to the principles of the Charter and recognized only the law of the strongest. The suggestion was also made that the proposed code should make reference to the principle of the permanent sovereignty of States over their natural wealth and resources as an element indispensable to the maintenance of international peace and security and should reflect the need to build the infrastructure of peace also in the minds of men so as to prepare them for life in peace. Reference was made in this connexion to the Declaration on the Preparation of Societies for Life in Peace (General Assembly resolution 33/73).

110. It was further proposed that section I should be supplemented by the addition of the fundamental principle that "Every State has the duty to fulfil in good faith its obligations under international agreements valid under the generally recognized principles and rules of international law". In this connexion, the view was expressed that, if the United Nations wanted to embrace all activities outside its sphere, it must live up to its generality and uphold the international standards developed elsewhere.

111. Finally, mention was made of the need to include in the list the duty of States to co-operate with one another in accordance with the Charter, as well as their duty to respect international customary and treaty law in its entirety.

(ii) Comments on section II of the working paper

112. Commenting in general terms on section II, a number of representatives stressed that the purpose behind the proposed institutional reforms was to promote an efficient Organization. They maintained that although in some areas the United Nations had achieved considerable results, its role and effectiveness in its main task - namely, the maintenance of international peace and security - left much to be desired and that its credibility and authority were being questioned: aggression, foreign occupation, intervention and interference in the internal affairs of other States, colonialism and super-domination by one or several centres of power were, it was maintained, evidence of a certain impotence of the Organization. These representatives felt that the proposed institutional reforms were useful as a way to strengthen the United Nations and were also moderate, realistic and realizable since they did not entail amendment of the Charter and since all the changes called for were to be brought about by agreement. Particular interest was expressed by a number of delegates in the proposals aiming at restricting the use of the veto and strengthening the role of the General Assembly in the maintenance of international peace and security. In this connexion, it was pointed out that the co-sponsors had stopped short of recommending to the General Assembly the convening of a review conference, in the hope that the more restrained course of action they advocated would meet with a generally positive response.

113. Other delegations noted that the general emphasis in section II was the restructuring of the relationship between the Security Council and the General

Assembly in a way which would undermine the principle of unanimity of the permanent members of the Security Council. Those delegations maintained that, in spite of assertions to the contrary, many of the proposals mentioned in section II did not aim at improving the functioning of the organs of the United Nations but an indirect revision of its Charter. This applied in particular to proposals seeking to define cases in which the unanimity rule would not apply or to transfer powers of the Security Council to the General Assembly or to the Secretary-General, notwithstanding the very clear provisions of the Charter in this respect. Furthermore, it was added, some proposals expressly aimed at amending the Charter even though, under its mandate, the Special Committee was to work out generally acceptable proposals which would contribute to the maintenance of international peace and security, a criterion which the proposals in question could not possibly meet.

114. Specific comments were made on the various elements of section II. Regarding subsection A, a number of representatives stressed that the principle of unanimity should operate in the interest of order and justice and that rules for its operation should be agreed upon by the permanent members of the Security Council. In this connexion, it was pointed out that the proposal came from States which would favour the abolition of the veto as being an undemocratic system, totally unjustified in contemporary times, and as a source of abuse which created an impediment to the Organization in the completion of the task of maintaining international peace and security. The proposal therefore reflected moderation which, it was hoped, would be reciprocated by the delegations opposed to amendment of the Charter. One delegation recalled that it was in that same spirit that it had proposed that members of the Security Council should hold consultations on the adoption of a code of conduct for the use of the veto.

115. Other representatives wondered if the significance of the question of the veto was not being over-emphasized. While not opposing a discussion of possible restrictions on the principle of unanimity, they mentioned that it was not self-evident that peace and security would have been more efficiently maintained if the requirement of unanimity had had a more limited scope than it had under the Charter. In their view, the effects of the unanimity rule were too often examined in the context of particular crises or in relation to the interests of individual States and they should be analysed in a less short-term perspective, taking into account how to best safeguard the interests of the international community for the future. It was also stated that, although the evolutionary method reflected in section A had its merit, it also had its limits and it was not possible to evolve in the framework of parallel instruments or rules of procedure completely new rules at variance with the actual wording of the Charter.

116. Still other delegations held that the proposals in subsection A infringed upon the powers of the Security Council under the Charter. They strongly objected to the view that the principle of unanimity was contrary to the interests of peace and recalled that the veto had been used on many occasions to protect the security of States, particularly in the Middle East. It was also pointed out that the unanimity rule had not prevented the Security Council from taking action to secure the victory of the right to self-determination and that the Organization's failure to eliminate all colonialist and racist régimes had nothing to do with the functioning of the Security Council.

117. With respect to paragraph 1, some delegations expressed support for the idea of a gentlemen's agreement for the non-use of the veto in relation to the questions

mentioned in subparagraphs (a) to (d). They pointed out that this approach should not raise any difficulty since it was similar to the one which the permanent members had taken in drafting the San Francisco statement. Other delegations felt, however, that the proposed agreement would run counter to the provisions of the Charter relating to the decision-making process within the Security Council. It was added that the idea of an agreement between the permanent members to limit the scope of the principle of unanimity raised the issue of the relationship between such an agreement and the Charter: since there was no doubt that the Charter would prevail, given the provisions of Article 103, such an agreement would have no legal effect.

118. With respect to subparagraph (a), some delegations expressed readiness to consider the question and to envisage the possibility of an agreement among the permanent members of the Security Council not to use the veto with regard to the admission of new members, subject, however, to the existence of a parallel attitude on the part of the majority which was capable of producing, or refusing to produce, the required nine votes.

119. Other delegations maintained that the admission of new States had direct consequences on the balance between different systems within the United Nations and consequently on the interests and security of States and should therefore not be exempted from the principle of unanimity. In this connexion, the question was asked whether the developments in certain regions of the world might not result in the emergence of puppet régimes, or of entities, to the admission of which the countries of those regions would wish the principle of unanimity to apply. It was also suggested that, paradoxically, the principle of unanimity had operated, as far as the admission of new members was concerned, in such a way as to help the Organization to achieve universality. Furthermore, it was added, the admission of a new member had in some cases been blocked not by the exercise of the right of veto but for lack of the required majority.

120. On the other hand, the view was expressed that the arguments adduced on this question during the discussion merely confirmed that the veto should be abolished in relation to the admission of new members: far from empowering the Organization to achieve universality, it had in a number of cases slowed down the process of admission of new members. The admission requirements contained in Article 4 had nothing to do with the political orientation of the States applying for membership. As long as a State was peace-loving and was found able and willing to carry out the obligations of the Charter, it is entitled to become a Member.

121. With respect to subparagraph (b), it was maintained that the developments which had taken place since the adoption of General Assembly resolution 1514 (XV) were ample evidence of the need to take issues of self-determination out of the scope of the right of veto. On the other hand, the view was expressed that the issue dealt with in subparagraph (b) was of extreme importance and that it was difficult to understand why the rule of unanimity should not apply to it. Furthermore, it was maintained, the unanimity principle had not prevented the Security Council from taking action in this area. Another comment was that the formulation of the subparagraph should be revised to make it clear that the right to self-determination existed for all peoples, whether or not under colonial and racist minority rule.

122. Subparagraph (c) was viewed by some representatives as running counter to the Charter and as ill-advisedly restricting the freedom of action of the Security Council in a very important area where it should be able to choose whatever course it saw fit in the light of the specific requirements of the situation. The

subparagraph was found worthy of consideration by other representatives who nevertheless wondered what effect the proposed rule would have on the binding nature of the decisions concerned. They pointed out that if a permanent member was prepared to cast a veto on an issue of this type that permanent member could be presumed to be backing one of the belligerent parties to the hilt and, if that was the case, it was very unlikely that that party would accept to abide by whatever injunction was addressed to it. It was suggested that if the Organization was to make unenforceable cease-fire arrangements as a result of the proposed agreement, the consequences for the maintenance of international peace and security would be negative rather than positive.

123. In connexion with subparagraph (c), it was asked whether in the practice of the Security Council cease-fire injunctions had not in most instances been accompanied with a withdrawal request to international boundaries or recognized cease-fire lines, except, of course, when the conflict took place within a State.

124. Regarding subparagraph (d), the view was expressed that the question raised therein was exhaustively and correctly dealt with in Article 27, paragraph 3, which accordingly required no amendment. The observation was also made that the formulation of the subparagraph did not properly reflect existing law since the forced abstention clause applied equally to all members of the Security Council. Other delegations, however, pointed out that, while it was true that Article 27, paragraph 3, applied to all members of the Council, emphasis had been placed on permanent members because subparagraph (d) was part of a section dealing with restrictions on the use of the veto. It was also said that notwithstanding the clear provisions of Article 27, paragraph 3, a permanent member party to a dispute casting a veto in violation of that provision was not a rare occurrence and that subparagraph (d) was not therefore superfluous. The question was also asked whether the President of the Security Council could declare void a veto cast in violation of Article 27, paragraph 3, or whether the question would have to be referred to the International Court of Justice or some other jurisdiction established for that purpose.

125. With respect to paragraph 2, a number of representatives maintained that the proposed amendments to the rules of procedure of the Security Council were in fact aiming at Charter revision and they seriously questioned the possibility of modifying constitutional rules through revision of rules of procedure. The point was further made that the rules of procedure were a matter for the body concerned to decide and that it was not for the Committee or for the General Assembly to interfere with the rules of procedure of the Security Council.

126. In relation to the proposed new rule 41 it was said that by no stretch of imagination could anyone maintain that all matters coming under Chapter VI were matters of procedure. Subparagraph (a) of the proposed new rule was therefore in direct contradiction with the Charter. As to subparagraph (b) some representatives said that they could agree to the launching of a peace-keeping operation by the General Assembly against the objection of a permanent member provided that such a step had the necessary broad support within the General Assembly. Given that position, they questioned the advisability of creating a system under which nine Member States would be able to launch something as huge as a peace-keeping operation and thereby embark on a course which might not even have enough support to obtain a two-thirds majority in the General Assembly. The point was further made in relation to subparagraphs (a) and (b) that it was politically unthinkable that major decisions on situations in which a threat to the peace existed should be



taken by nine members without the concurrence of the permanent members which had primary responsibility for the maintenance of international peace and security.

127. With respect to subparagraph (c), some delegations recognized that it was possible to maintain that resolutions relating to steps of a purely fact-finding nature were procedural. Others, however, held that fact-finding measures represented the initial step of a process which could lead to enforcement action being taken by the Council; they recalled in this connexion that although attempts had been made in the past, for political reasons, to impose fact-finding measures on States in defiance of the principle of unanimity, the current practice of the Council in this area was completely consistent with the provisions of the Charter and therefore required no change.

128. As to the proposed new rule 42, it was stated that the record of abuse of Article 18 did not give cause for agreeing to a proposal which might result in matters under Chapter VII being treated as questions of procedure. Unless therefore there was a change of attitude with respect to Article 18, it seemed imprudent to go along with the insertion in the rules of procedure of the Council of the proposed new Article 42. It was also pointed out that, whereas under Article 18, recommendations on questions concerning the maintenance of international peace and security required a two-thirds majority, the proposed new rule 42 would enable a group of nine States to set in motion, without the concurrence of the permanent members, a process that could lead to the adoption of mandatory decisions. The proposal was therefore felt to be totally illogical and bound to undermine the entire decision-making process of the Organization.

129. Other representatives supported the approach reflected in paragraph 2 and maintained that the proposed new rules of procedure would help the Security Council to discharge its functions more efficiently. In reply to the argument that it was for the Security Council to adopt its rules of procedure, the point was made that the intention of the co-sponsors was not to amend the existing rules of the Council but to make suggestions in that respect. In this connexion, reference was made to resolution 267 (III) of 14 April 1949, by which the General Assembly had recommended to the members of the Security Council that without prejudice to any other decisions which the Security Council might deem procedural, the decisions set forth in the annex to the resolution should be deemed procedural and that the members of the Security Council should conduct their work accordingly. In reply to specific comments made in the course of the discussion, it was pointed out in relation to subparagraph (a) of the proposed new rule 41 that the disputes which it was suggested to place outside the scope of the unanimity rule were those which did not involve a threat to the peace, breach of the peace or act of aggression. It was further said, in relation to subparagraph (b) that many States did not accept the "chain of events" theory on which no agreement had been reached at the time of the adoption of the Charter. As to proposed new rule 42, it was described as a counterpart to Article 18 and was intended to fill the gap left in the Charter as a result of the refusal of the vast majority of original Member States to accept the San Francisco statement.

130. With respect to subsection B, all the delegations commenting on subparagraph (a) said they were in favour of a fuller use of Articles 10, 11, 13 and 14 of the Charter. Divergent views were however expressed on the reference to General Assembly resolution 377 (V). While some representatives said they could accept a mention of that resolution which authorized the Assembly to act only when the Security Council was prevented from carrying out its Charter obligations by the use

of the veto, and, even then, by recommending measures to Member States or to the Council itself, other delegations objected to the reference in question: they maintained that the purpose of resolution 377 (V) had initially been to circumvent the Security Council and to give the General Assembly the power to use armed force on behalf of the Organization. That the resolution aimed at transferring to the General Assembly functions falling within the exclusive competence of the Security Council was, it was argued, clearly apparent from its section A, paragraph 1, which referred to threats to the peace, breaches of peace and acts of aggression - language borrowed from Chapter VII of the Charter.

131. As to subparagraph (b), doubts were expressed on its wisdom because, aside from the fact that the Council was very liberal in allowing non-members to take part in its proceedings, most of the key issues which were discussed in the Council eventually found their way in the agenda of the General Assembly.

132. A number of delegations expressed general support for subsection C, although doubts were expressed about the word "require", on the basis that under Article 99 the Secretary-General was not obligated but enabled to bring matters to the Security Council. Doubts were also expressed about the words "without prejudice to the rights and obligations of States under the Charter", which, it was stated, gave licence for the most expanded interpretation of Article 2, paragraph 7. Several representatives agreed with the view that Article 99, as appeared clearly from the use of the words "in his opinion", gave certain powers of assessment to the Secretary-General, who should be encouraged to use them in order to acquire information and carry out quiet or preventive diplomacy functions.

133. Other representatives, however, disagreed with the idea in subsection C which, they maintained, would lead to an enlargement of the powers conferred upon the Secretary-General by Articles 98 and 99 of the Charter. In their view, those powers should be carried out strictly in accordance with the Charter, and should be interpreted in a less lenient way than the one reflected in subsection C.

134. As far as subsection D was concerned, most of the representatives who commented on the proposed amendments to the Charter found them unwise and unacceptable. It was said in particular that the proposed reformulation of Article 25 presupposed agreement on what kind of decisions or resolutions related to the maintenance of international peace and security and would infinitely compound the problem of determining which resolutions or decisions were binding. It was also said that the proposed redraft led to the conclusion that the resolutions of the Security Council and the General Assembly which did not relate to the maintenance of international peace and security were not obligatory, while under the Charter the decisions of the Security Council were to be carried out. The proposed rewording aimed at placing emphasis on the resolutions of the General Assembly concerning the maintenance of international peace and security but one could wonder whether it did not over-emphasize an aspect and deprive many General Assembly resolutions of their moral authority. Disagreement was further expressed with the equation which the proposed text purported to make between the resolutions of the Security Council and those of the General Assembly as well as with the confinement of the scope of Article 25 to the maintenance of international peace and security.

135. With respect to the proposed additions to Article 2, it was said that the basic principles of the Charter should not be tampered with. Furthermore, the right of peoples to self-determination and independence was already enshrined in at least two places in the Charter and did not need further repetition. As to the principle

of the permanent sovereignty of States over their natural wealth and resources, it flowed from the principle of the sovereignty of States over their territory and there was no need to inscribe it in the Charter as a new principle. It was also said that General Assembly resolution 1803 (XVII) recognized that the permanent sovereignty of States over their natural wealth and resources could only be exercised in accordance with international law, and that a principle deriving its contents from international law could not be embodied in the Charter until the legal rules relating for example to nationalization, discrimination compensation or the use of water by an upper riparian had been clarified and universally accepted.

(c) Revised text of the working paper (A/AC.182/WG/46/Rev.2)

136. At the 25th meeting of the Working Group, the spokesman of the co-sponsors, who had been joined by El Salvador, introduced the revised version of the working paper which is reproduced below:

Maintenance of international peace and security

I. GENERAL PRINCIPLES - UNIVERSAL CODE OF CONDUCT

Fundamental rights and duties of States:

The preparation and adoption of a universal code of conduct covering the fundamental rights and duties of States with a view to concluding an internationally binding treaty as a development of the United Nations Charter and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

(I) The obligation of all States to implement faithfully, promptly, fully and in good faith the relevant resolutions of the competent organs of the United Nations relating to the maintenance of international peace and security.

(II) The duty of all States to settle all international disputes exclusively by peaceful means, in such a manner that national independence, territorial integrity, international peace and security and justice are not endangered.

(III) The prohibition of all forms of colonialism, racial discrimination, including apartheid and all other forms of foreign domination and the duty of every State to strive for their complete elimination.

(IV) The inalienable right of every State to national independence, sovereignty and territorial integrity and to independently decide on its own destiny and freely to choose and develop its political, economic and social system in accordance with its wishes and interests, without any outside interference.

(V) The inalienable right of peoples under colonial and racist minority rule including apartheid and all other forms of racial and foreign domination to self-determination and national independence, and the legitimacy of their struggle by all means including armed struggle for their national liberation.

(VI) The obligation of all States to support the legitimate struggle of peoples under colonial and racist minority rule including apartheid and all other forms of racial discrimination for self-determination and independence and to refrain from any action liable to hamper or jeopardize the free exercise of peoples to self-determination and independence.

(VII) The obligation of States to refrain from any action detrimental to the realization of the inalienable rights of peoples struggling to attain self-determination and national independence, including:

Promoting negative policies contrary to the purposes and principles of the United Nations.

Urging non-compliance with relevant resolutions of the Security Council.

Interfering in the inherent rights of States to discharge their obligations under the Charter in conformity with Article 49.

(VIII) The prohibition of the usurpation by all States to substitute themselves for the authority representing a people struggling to exercise its right to self-determination and independence and in the performance of any act affecting the future of such a people.

(IX) The obligation of States to respect fully the national independence, sovereignty, unity, territorial integrity and equal security of other States.

(X) Respect for the inviolability of frontiers and the prohibition of any measures threatening the national unity or the territorial integrity of another State or of any territory under colonial or foreign domination or occupation.

(XI) The prohibition of the use of force and the non-recognition of all its consequences including annexation and occupation by any State of all or part of any territory or the dismemberment of such territory in violation of the principles and purposes of the Charter and the right of peoples to self-determination and independence, as well as respect for their territorial integrity.

(XII) The obligation of States to abstain in their international relations from the threat or use of force in any way and under any pretext or circumstances, as well as the exercise of any political, economic, military or other form of coercion against another State.

(XIII) The inherent right of each State to defend itself in accordance with Article 51 of the United Nations Charter by all available means against any threat to its sovereignty and national independence, including military means in the case of armed aggression.

(XIV) The duty of States not to intervene, directly or indirectly for any reason whatever, in the internal or external affairs of any other State.

(XV) The duty of all States to strive for general and complete disarmament and the prohibition of the use of nuclear weapons by all States.

(XVI) The duty of every State to faithfully implement the provisions of the Charter of the Economic Rights and Duties of States adopted by General Assembly resolution 3281 (XXIX) of 1974.

(XVII) The sovereignty of States over their natural wealth and resources.

(XVIII) The right and duty of every State to participate actively, on the basis of equality, in solving outstanding international issues.

(XIX) Any State or group of States is prohibited, under any circumstance or for any reason whatsoever, to pursue hegemony in international relations or seek a position of dominance, either globally or in any region of the world.

## II. INSTITUTIONAL AND FUNCTIONAL REFORMS

### A. The Security Council

#### General

As the organ vested with the primary responsibility for maintenance of international peace and security, the Security Council has to be more credible. Its working methods have to be improved and its procedure should be revised with a view to enhancing its ability to carry out its vital responsibilities.

The realization of the proposed improvements do not necessarily require Charter amendments. It is possible to introduce meaningful changes through two parallel courses of action.

#### 1. Agreement on the unanimity rule

An agreement should be concluded by the members of the Security Council on the unanimity rule with a view to incorporating it into the rules of procedure of the Council, regarding certain aspects of the functioning of the Security Council. The agreement would prescribe that the unanimity rule shall not apply, inter alia, when the following matters are considered by the Council:

(a) The admission of new members;

(b) The inalienable right of peoples under colonial and racist minority rule including apartheid and all other forms of racial and foreign domination to self-determination and national independence;

(c) Cease-fire injunctions shall in all cases be based on full respect for the territorial integrity of States which require withdrawal to international boundaries or to recognize cease-fire lines;

(d) The application of the unanimity rule should be excluded in the adoption of decisions relating to disputes to which a permanent member is a party in accordance with Article 27 (3) of the Charter.

## 2. Revision of rules of procedure

It is suggested that Chapter VII of the provisional rules of procedure entitled "Voting" and composed of only rule 40 be revised as follows:

- (I) Rule 40 should read as follows: "Voting in the Security Council shall be in accordance with the relevant Articles of the Charter and the Statute of the International Court of Justice, as well as rules 41 and 42, of the rules of procedure."
- (II) New rule 41 should read as follows: "The unanimity rule shall not apply, inter alia, to the following:
  - (a) All resolutions relating to Chapter VI entitled "Pacific settlement of disputes".
  - (b) All resolutions authorizing the establishment of peace-keeping operations with the consent of the parties concerned.
  - (c) All resolutions aiming at "fact-finding".
  - (d) All other cases referred to in the Security Council agreement on the unanimity rule.
- (III) With respect to the General Assembly, the Charter stipulates in Article 18, paragraph 3, that "the determination of additional categories of questions to be decided by a two-thirds majority, shall be made by a majority of the members present and voting".

The Charter does not contain a corresponding rule with respect to the Security Council. This important issue should be settled in conformity with the letter and spirit of the Charter by incorporating the following rule.

- (IV) New rule 42 should therefore read as follows: "The decision of whether a given matter is procedural or not should be decided by an affirmative vote of nine members."

### B. The General Assembly

(a) Strengthening of the role of the General Assembly in the maintenance of international peace and security by making full use of the provisions of Articles 10, 11, 13 and 14 and of the relevant resolutions of the General Assembly.

(b) Effective examination of the annual reports of the Security Council to the General Assembly and formulation, following discussion of such reports of specific proposals concerning the practical activities of the Security Council.

### C. The Secretary-General

The proper discharge of the Secretary-General's responsibilities under the provisions of Article 99 may require that he undertake steps to acquire information and ascertain facts on developments the continuance of which is likely to endanger international peace and security and report on these developments when appropriate, to the Security Council and to the General Assembly. Such investigation in the territory of a State will require its consent.

### D. General

1. Article 25 of the Charter should be modified to read as follows:

"The Members of the United Nations agree to accept and carry out resolutions and decisions of the Security Council as well as resolutions and decisions of the General Assembly relating to the maintenance of international peace and security and to support all peace-keeping operations established by the United Nations."

2. Amend Article 2 of the Charter by the addition of the following after paragraph 7:

"(8) Right of peoples to self-determination and independence and legitimacy of the struggle of peoples still under colonial and foreign domination effectively to exercise that right and achieve national independence.

(9) Permanent sovereignty of States over their natural wealth and resources."

137. This second revised version of the working paper was not discussed for lack of time.

### 5. Summary of the views not directly related to specific proposals

138. A number of delegations commented in general terms on what they sensed to be the main trends within the Special Committee and various views were expressed.

139. Some held that the debate had revealed two major tendencies: while some were advocating the status quo, which they found satisfactory, and the maintenance of a privileged category of States, others, recognizing that major upheavals had occurred in international relations, were demanding not superficial reforms, but fundamental changes. Some of the proposals before the Working Group were felt by those delegations to be vague and timid, and to have the major short-coming of implying the maintenance of the status quo and of ignoring both the existence of obsolete provisions and the new political and economic realities which had emerged in the United Nations. In this connexion, attention was drawn to the conclusions formulated by the Sixth Summit Conference of the Non-Aligned Countries and to the Havana Declaration, which urged progress towards democratizing the United Nations and adoption of certain amendments of the Charter. Given the feverish pace of the arms race and the rivalry among political blocs which was keeping international

relations in a ferment a vigorous attack should be mounted on the world's problems and the third world should be allowed to play its rightful role in the maintenance of international peace and security. These representatives also pointed out that the Special Committee would have to demonstrate a spirit of innovation.

140. Other delegations felt that the Working Group was being presented with what they termed a false dichotomy between those who favoured change and those who were supposedly satisfied with the present situation. They said that there was probably no one who found the present state of affairs entirely satisfactory. While not being complacent about this state of affairs and while understanding the frustration which Member States felt when an urgent attempt at settling a dispute by peaceful means or another effort at preventive diplomacy was defeated by the exercise of an individual veto, some suggested that the debate would be more productive if it concentrated on areas and proposals where general agreement was possible and that the main concern of the Special Committee should be to find how best, given the realities of the present-day world, the Organization could be strengthened and its work enhanced.

141. Still other representatives stated that if peace was threatened, if the arms race continued and if entire peoples were in danger of annihilation, the fault did not lie with the structures and procedures established by the Charter. While supporting all constructive efforts made within the United Nations to promote the strengthening of friendly relations, reduce tension, create conditions favouring the consolidation of States' independence, prohibit the use of force, slow down the arms race, bring about disarmament, extirpate the vestiges of colonialism and eliminate racist régimes, and while favouring the development of firm guarantees for the security of States, they expressed their conviction that the most effective tool for the realization of these ends was the Charter, which defined the basic principles of international relations and stated the cardinal principle of non-use of force. The Charter also contained detailed rules for the functioning of the machinery set up under it and specified the functions of individual organs having a role to play in the maintenance of international peace and security, drawing a very clear distinction between the various types of functions assigned to each of them.

142. Many delegations commented on the issue of the review of the Charter. Several argued that the important objective of the strengthening of the role of the Organization could only be achieved on the basis of proposals aimed at the full realization of the provisions of the Charter, which was the corner-stone of the structure of the United Nations. In this connexion, it was recalled that Article 43 had not yet been given effect and that a great deal could be accomplished in the area of the codification and progressive development of international law. Those delegations added that they could not agree to amending the Charter because efforts in that direction would lead to a destruction of the existing balance and of time-proven procedures, and would undermine the authority of the United Nations and threaten its very existence. It was also said that the United Nations had been founded above all to prevent the repetition of another tragic world war and ensure peaceful conditions for States, and that this primordial goal had lost nothing of its relevance. It could only be achieved if the Charter was strictly complied with. When the United Nations failed to achieve its goals, it was added, this was due to the fact that some Member States did not fully abide by the provisions of the Charter or refused to implement the resolutions of the Security Council.



143. Other delegations, while recognizing that adherence to the Charter was essential and that many of the inabilities of the United Nations were due to a lack of political will on the part of Member States, none the less maintained that the changes which had taken place in the world since 1945 warranted a review of the Charter. It was stressed in particular that the Charter had been elaborated at a time when the major concern was to strike a balance between two blocs; since then, however, new forces had emerged and the system established by the Charter no longer reflected the actual structure of the international community. The point was also made that the Charter itself endorsed the idea of review and defined the method to implement it. A review of the Charter in their view was thus legally permissible and politically desirable and should not be shirked, at least in specific areas.

144. Still other delegations suggested that it was wiser to keep the Charter evolving than trying to force specific changes however appealing they might be at a specific moment in time. As a constitutional instrument, the Charter was a living, breathing document which had evolved to meet new requirements. The situation of 1980, it was stated, was not that of 1945 and the change appeared quite clearly from a review of the proceedings of the Committee on Friendly Relations: while in 1963 it could still be claimed that there was no right of self-determination but a principle of equal rights and self-determination and that the Charter did neither deal with intervention, except in Article 2, paragraph 7, nor envisage the possibility for a dependent people or a people otherwise deprived of its basic rights to resort to force, the General Assembly had seven years later, adopted a document, viewed by some as a mere recommendation but which could probably best be understood as a universally accepted interpretation of the Charter, which recognized the right of self-determination, defined a Charter-based doctrine of non-intervention and covered in a subtle way the relationship between the use of force to deny peoples the exercise of their basic rights and the correlative possibility of response to the use of force in denial of those rights. It was also pointed out that the opposition of some Members, including permanent members of the Security Council, to any Charter amendment had to be reckoned with, particularly in view of Article 108 of the Charter. Thus, it was argued, the Committee should refrain from unrealistically striving towards amendment of the Charter, and should try to achieve certain results by way of gentlemen's agreements and through a progressive interpretation of existing norms.

145. Regarding the possibility of convening a review conference, some delegations maintained that resolutions 992 (X) and 2285 (XXII) were referred to in the preamble of resolution 34/147 and were therefore part of the mandate of the Committee. They added, moreover, that such a review conference, according to the prevailing opinion, could be convened by a decision of the majority of the General Assembly and by a vote of any seven members of the Security Council.

146. Other delegations, however, took the view that the Special Committee offered an appropriate framework for carrying out a comprehensive review of the functioning of the United Nations and that if it faced difficulties in the fulfilment of its mandate, it was most unlikely that a review conference would find the task any easier.

147. A number of delegations also commented on the functioning of the Security Council. It was stated that the Council played a useful role and that if certain problems remained unsolved and certain resolutions unimplemented, the fault lay not in the relevant Charter provisions but in the lack of willingness of some countries to adhere to the purposes and principles of the Charter. Some delegations

maintained that the Working Group should refrain from discussing the principle of the unanimity of the permanent members, in view of the non-adoption by the General Assembly at its last session of the draft resolution submitted on that topic, and felt it necessary to make it quite clear that they viewed the principle in question as a corner-stone of the system established by the Charter. The United Nations had come into being as a result of the victory of the Allied Powers in the Second World War and the principle of unanimity had been worked out among the major Powers during the war. Article 25 had thus been proposed at San Francisco by the States which had made the greatest contribution to the common victory. Disagreement was expressed with the view that after 35 years had elapsed everything connected with that war and the accomplishments to which it had led should be forgotten, for the lessons of history were a useful deterrent to those who wished to plunge the world into another war. The situation which existed at the time of the adoption of the Charter, namely, the existence of States with different socio-economic systems, has been prevailing throughout those years and the Charter was a reflection of that situation. It was said that the principle of the sovereign equality of States which was embodied in Article 2 governed, inter alia, the functioning of the General Assembly and its decision-making process. The Security Council, however, was a unique organ - not only in the United Nations but probably in the entire world - in view of the immense powers that had been conferred upon it, and the need to prevent the misuse of the United Nations as an instrument of war by States with one socio-economic system against States with another socio-economic system. In that sense the unanimity rule could truly be called a corner-stone of the Organization. It was further maintained that without the principle of unanimity the United Nations would contribute not to unity but to disunity of States, not the settlement of disputes and prevention of conflicts, but to the deepening of differences and crises in relations among States. It was added that the principle of unanimity did not endanger the principle of the sovereign equality of States. It reflected the facts of the contemporary world, in which certain States heavily influenced the developments of international life. This was reflected in the status of the permanent members, entrusted with a special responsibility for the maintenance of international peace and security and in paragraph 28 of the Final Document of the Tenth Special Session of the General Assembly devoted to disarmament (General Assembly resolution S-10/2).

148. Other delegations took the view that the vast powers vested in the Security Council, particularly under Chapter VII of the Charter, had remained inoperative, and that if the world had been spared a third world war it was because of the balance of power. In their view, the membership on whose behalf the Security Council was to act was entitled to ask for changes to make a reality of the collective security system. They pointed out that, although the ultima ratio of the veto system in the Security Council was that the permanent members would endeavour to maintain international peace and security, experience showed that vetoes had often been cast to prevent the Security Council from making a decision. The approach in dealing with the problem should not be a negative one - i.e., trying to deprive the permanent members of the veto - but a positive one, namely, determining the kind of veto which was needed to maintain international peace and security: thus a permanent member involved in a particular dispute or situation should not be allowed to prevent the Council from taking action by casting a veto. It was also said that all members of the Security Council, and permanent members in particular, must be conscious of the fact that they had the responsibility to protect peace and security and the future of mankind. Past experience had shown that the Security Council had many times been prevented to act because of the exercise of the veto power, sometimes to the detriment of non-aligned and developing

countries or colonized and dominated peoples. In response to the suggestion that the veto might sometimes be used to protect other countries, it was commented that the non-aligned countries did not wish to be protected by the major Powers; they merely asked the major Powers to respect the Charter of the United Nations and act in the Security Council so as to allow it to discharge its responsibilities. The point was made that the wish of some countries to consider proposals aiming at placing reasonable limits on the exercise of the right of veto could not be harmful to the existence of the Organization. Considering that the veto was not a right but rather the embodiment of a responsibility, some delegations suggested that it would perhaps be desirable, instead of regulating the veto of the permanent members in a restrictive manner, to confer the same responsibility as it presently existed upon other States. It was also said that the unanimity rule had been stretched beyond the field of maintenance of international peace and security notwithstanding the principle of the law of treaties under which exceptions should be interpreted in a narrow sense. It was further said that the abstention clause contained in Article 27, paragraph 3, equally applied to all States parties to a dispute whether they were permanent or non-permanent members of the Security Council. The corner-stone of the Charter, it was maintained, lay in its Articles 1 and 2 and the principle of unanimity was a mere procedural rule concerning the voting in the Security Council.

149. Still other delegations noted that, unlike the Council of the League of Nations, the Security Council had been vested with considerable powers. Those powers should only be used if all permanent members were in agreement. The point was also made that the enlargement of the Security Council had had the significant result that no decision could henceforth be taken without the concurrence of the third world. This development was a positive one because it meant that meaningful enforcement action could not be envisaged taking place against the fundamental interests of the third world or of the two groups possessing the veto power. Furthermore experience showed that, although the veto limited the action which could be taken because of the power realities of the present-day world, it did not eliminate the judgement of the international community on a particular act and should not therefore be seen as a privilege but as an onerous responsibility. Thus, the veto did not incapacitate the institution from making it very costly to a State so to act as to find itself in a situation of diplomatic isolation, nor was it a barrier to the General Assembly expressing in a recommendatory fashion the views of the international community. The view was also expressed that, although the veto had sometimes been abused, it had not been used in a manner inconsistent with the San Francisco statement, an understanding which, even though it was perhaps not immutable, had been issued and made available to all in 1945 and in the light of which the role of permanent members had been accepted by all.

150. Finally a number of representatives stressed the importance and usefulness of the Repertory of Practice of United Nations Organs and recommended a strengthening of the Office of Legal Affairs to enable the Secretary-General to bring that publication up to date as quickly as possible, in accordance with paragraph 9 of General Assembly resolution 34/147.

6. Informal compilation of the proposals submitted to the Special Committee at its 1976, 1977, 1978, 1979 and 1980 sessions with regard to the topic of the maintenance of international peace and security, prepared by the Chairman with the assistance of the Rapporteur

151. At the 30th meeting of the Working Group, on 21 February 1980, the Chairman read out the text of the above-mentioned compilation. In doing so, he noted that the compilation had been prepared to facilitate the task of the Working Group. It contained the suggestions of the Chairman and Rapporteur as to the manner in which proposals submitted to the Working Group might possibly be compiled in a more manageable form than in the original documents or in document A/AC.182/WG/49. 22/ He said that the compilation did not prejudice any action which the Special Committee might take in relation to each of the proposals reflected therein in pursuance of the mandate entrusted to it by the General Assembly or the question of whether all of the proposals might appropriately be dealt with under the present topic, on which members of the Special Committee might have different views.

152. The text of the compilation as read out by the Chairman is reproduced below:

I

1. The reasons for the present inability of the United Nations to maintain international peace should be investigated, and there should be an exploration of ways and means of enhancing the role of the United Nations in maintaining international peace (see A/AC.182/WG/30/Rev.1)

2. Member States should be urged to demonstrate their faith in the United Nations by referring to it any matter or situation which, under the Charter, falls within its competence (see A/AC.182/WG/6)

3. A universal code of conduct embodying the fundamental rights and duties of States should be prepared (see A/AC.182/WG/6; WG/8/Rev.1; WG/46/Rev.2)

4. An international treaty on the non-use of force should be drafted (see A/AC.182/WG/29)

5. Article 2 of the Charter should be amended so as to include additional principles (see A/AC.182/L.12/Rev.1; A/AC.182/WG/46/Rev.2)

6. The definition of aggression should be added to the Charter (see A/AC.182/L.12/Rev.1)

II

7. All Member States should accept and carry out all decisions and recommendations of the Security Council, in accordance with the Charter, and

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22/ Containing a preliminary version of the informal compilation referred to above.

follow the recommendations of the General Assembly, as well as other organs of the United Nations (see A/AC.182/L.12/Rev.1)

8. The Charter should be amended to provide that resolutions adopted by consensus or unanimous vote constitute firm commitments for all Member States (see A/AC.182/L.12/Rev.1)

9. The Charter should be amended to include provisions stipulating that both the General Assembly and the Security Council should indicate in each case, for important problems, the procedures, machinery or bodies responsible for overseeing the implementation of the resolutions adopted and for proposing measures to ensure their application (see A/AC.182/L.12/Rev.1)

10. An appropriate mechanism should be established for controlling the implementation of the decisions and recommendations of the United Nations, inter alia, through the submission of periodic reports on the implementation of resolutions adopted by the principal organs of the United Nations at their regular and special sessions (see A/AC.182/L.12/Rev.1; A/AC.182/WG/6)

### III

11. There should be a strengthening of the role of the General Assembly in the maintenance of international peace and security by making full use of the provisions of Articles 10, 11, 13 and 14 as well as General Assembly resolution 377 (V) of 3 November 1950 (see A/AC.182/WG/20; WG/30/Rev.1; WG/46/Rev.2)

12. Substantive annual reports should be submitted to the General Assembly by the competent organs of the United Nations, especially by the Security Council, on the main problems of international peace and security. The General Assembly should make to the Security Council suggestions and proposals in connexion with the activity of the world Organization in this field (see A/AC.182/L.12/Rev.1; A/AC.182/WG/46/Rev.2)

13. The General Assembly should be able to request from the Security Council substantive reports on all major problems concerning international peace and security, and should have the right to formulate, following discussions of these reports, specific proposals concerning the practical activities of the Security Council (see A/AC.182/L.12/Rev.1)

14. The role and responsibility of the General Assembly should be strengthened through the holding of urgent special sessions when the Security Council is not in a position to fulfil its responsibility in cases such as threats to the peace, breaches of the peace and acts of aggression (see A/AC.182/L.12/Rev.1; A/AC.182/WG/32)

15. Article 18 of the Charter should endorse the consensus procedure for dealing with essential problems pertaining to international peace and security (see A/AC.182/L.12/Rev.1)

16. The existing fact-finding mechanisms set up by General Assembly resolutions should be utilized and, if necessary, be updated (see A/AC.182/WG/44/Rev.1)

#### IV

17. The membership of the Security Council should be increased taking into account the principle of equitable geographical distribution (see A/AC.182/L.9; A/AC.182/WG/6)
18. Non-permanent members of the Security Council should be elected in accordance with the criteria set forth in Article 23, paragraph 1, of the Charter and therefore due regard should be especially paid, in the first instance, to their contribution to the maintenance of international peace and security and to the other purposes of the Organization (see A/AC.182/L.12/Rev.1)
19. A new article should be inserted before Article 25 to the effect that the Members of the United Nations are under an obligation to accept and carry out the decisions of the Security Council in matters relating to international peace and security (see A/AC.182/WG/31)
20. Article 25 should be amended to the effect that the Members of the United Nations agree to accept and carry out resolutions and decisions of the Security Council as well as resolutions and decisions of the General Assembly relating to the maintenance of international peace and security and to support all peace-keeping operations established by the United Nations (see A/AC.182/WG/46/Rev.2)
21. The relationship between disarmament and the maintenance of international peace and security should be examined further (see A/AC.182/WG/30/Rev.1)
22. There should be examination of the possibility of establishing a universal body which would meet periodically to evaluate the progress made in disarmament and to adopt decisions; and to review the existing disarmament negotiating machinery in order to increase its effectiveness (see A/AC.182/L.12/Rev.1)
23. An appeal should be made to the permanent members to abide by their Joint Statement of 8 June 1945 (see A/AC.182/WG/6)
24. The permanent members of the Security Council should consult to examine whether there are areas which they could agree to treat as procedural and in which, in accordance with Article 27, paragraph 2 of the Charter, they could refrain from using the veto (see A/AC.182/WG/37; A/AC.182/WG/46/Rev.2)
25. A resolution should be adopted enumerating those questions which are to be regarded in the Security Council as procedural in nature (see A/AC.182/WG/6)
26. The Security Council rules of procedure should be amended so as to provide that the decision of whether a given matter is procedural or not should be decided by an affirmative vote of nine members (see A/AC.182/WG/46/Rev.2)

27. An agreement should be concluded by the members of the Security Council on the unanimity rule, with a view to incorporating it into the rules of procedure of the Council, prescribing that the unanimity rule shall not apply when certain matters are considered by the Council (see A/AC.182/WG/46/Rev.2)

28. The Security Council rules of procedure should be amended to provide that the unanimity rule shall not apply to certain matters (see A/AC.182/WG/46/Rev.2)

29. The term "procedural matters" in Article 27, paragraph 2 of the Charter should be defined (see A/AC.182/L.12/Rev.1)

30. The unanimity rule should not apply to matters such as the appointment of commissions of inquiry or fact-finding missions or commissions to serve humanitarian purposes (see A/AC.182/L.5; A/AC.182/WG/44/Rev.1)

31. There should be an agreement by the permanent members of the Security Council not to use the veto in matters relating to the maintenance of international peace (see A/AC.182/WG/30/Rev.1)

32. The unanimity rule should extend to one or two non-permanent representatives, by rotation, from each geographical region represented on the Security Council (see A/AC.182/L.12/Rev.1)

33. When a crisis situation or dispute is brought to the attention of the Security Council without a meeting being requested, the President of the Council should hold informal consultations with a view to ascertaining the facts of the situation and keeping it under review, with the assistance of the Secretary-General (see A/AC.182/WG/37)

34. The Security Council should establish procedures for periodic review of the international scene so that areas of tension and incipient dispute can be identified and means of defusing the crisis may be discussed. Consideration should be given to meetings at the ministerial level where appropriate (see A/AC.182/WG/37)

35. The Security Council should hold its sessions outside the Headquarters, taking into account Article 28 of the Charter, in regions where a threat to peace may arise and where the solution of disputes is the most necessary and urgent (see A/AC.182/L.12/Rev.1)

36. The Security Council should establish, in accordance with Article 29, an appropriate organ of inquiry and mediation to follow systematically on a permanent basis, in co-operation with the Secretary-General, the application of the Council's resolutions concerning international peace and security and, where appropriate, to suggest to the parties concerned adequate means for the swift and effective application of those resolutions (see A/AC.182/WG/35)

37. A subsidiary organ of the Security Council should be created in accordance with Article 29 of the Charter. This organ would be called: "Committee for the Supervision of Peace-keeping Operations" (see A/AC.182/WG/8/Rev.1)

38. A guideline which is to a certain degree general and comprehensive should be established by a resolution of the Council with regard to the setting up of subsidiary bodies of the Security Council and the modality of their dispatch (see A/AC.82/WG/44/Rev.1)

39. The Security Council shall take fully into consideration the points of view of the States directly interested in the question under discussion and shall avoid taking decisions which do not have the consent of those States, except when there is a direct and recognized threat to international peace and security or when an act of aggression has been committed (see A/AC.182/WG/31)

40. Article 31 should be amended to permit any Member of the United Nations which is not a member of the Security Council to participate without vote in the discussion of any question brought before the Security Council whenever such Member considers that its sovereignty and its territorial integrity and national security are especially affected or are in danger (see A/AC.182/L.12/Rev.1)

41. There should be established a consultative mechanism that enhances the likelihood that the Council will become involved in matters before they erupt into violence (see A/AC.182/WG/33)

42. The Security Council, in exercising its own fact-finding functions under Article 34 of the Charter, should take note of the functions of the Secretary-General under the Charter and, without prejudice to his own competence recognized under Article 99, make use of them (see A/AC.182/WG/44/Rev.1)

43. The Security Council should consider increased use of observer missions in areas of tension, dispute, or conflict, both as impartial reporters and as deterrents to aggression (see A/AC.182/WG/37)

44. The Security Council should consider the techniques of fact-finding and the ways these should be supplemented. In particular, the United Nations should study advances in observation techniques, including the verification of arms control agreements, with a view to using them in the maintenance of peace and security (see A/AC.182/WG/37)

45. All Member States, pursuant to Article 35, and the Secretary-General, pursuant to Article 99, should exercise their right to bring matters to the Security Council even if the parties do not do so (see A/AC.182/WG/33; A/AC.182/WG/37)

V

46. All the provisions embodied in Chapter VII of the Charter should be implemented (see A/AC.182/L.12/Rev.1)

47. There should be established clear rules and principles governing the military activities of the United Nations (see A/AC.182/WG/29)



48. The Secretary-General should prepare a report on ways and means which could allow Member States to comply with the obligations under Articles 43 and 45 of the Charter (see A/AC.182/L.12/Rev.1)

49. The Security Council should be requested to give early consideration to the provisions of Article 43 of the Charter regarding special agreements by Member States of the United Nations undertaking to make available armed forces, assistance and facilities required for the purpose of maintaining international peace and security and as a first step, should proceed with the early negotiations of the above agreements (see A/AC.182/L.12/Rev.1; A/AC.182/WG/20)

50. The Charter should be amended to recognize the right of the General Assembly to lay down guidelines concerning the use of military forces organized under United Nations auspices (see A/AC.182/L.12/Rev.1)

51. The Charter should be amended to stipulate that States concerned in any conflict should agree in advance to the national composition of United Nations forces (see A/AC.182/L.12/Rev.1)

52. The membership of the Military Staff Committee should be increased so as to include all members of the Security Council (see A/AC.182/L.9)

53. The Security Council should implement measures set out in the Charter ensuring that its decisions are respected and speedily implemented (see A/AC.182/WG/30/Rev.1)

54. All States Members should be reminded of the need to honour all aspects of the collective security system, including both the need to bring matters to the Security Council and obligation to report promptly any and all measures taken under Article 51 (see A/AC.182/WG/33)

55. The role of regional organizations in the maintenance of international peace and security should be encouraged, in accordance with Chapter VIII of the Charter, without detriment to the overriding authority of the United Nations. A closer relationship between the organizations and the Security Council should be developed (see A/AC.182/WG/37)

56. The activities of the Special Committee on Peace-keeping should be enhanced and expedited (see A/AC.182/L.12/Rev.1)

57. A permanent peace-keeping force should be established for peace-keeping work and major relief operations (see A/AC.182/L.5; A/AC.182/WG/30/Rev.1)

58. The process of peace-keeping by observation and interposition should be spelt out in general terms and given a place of high honour in the United Nations Charter. In particular, the Security Council should be able, whenever it deems it necessary, to establish and deploy United Nations peace observation teams and a United Nations interposition force to arrest or prevent violence, and permit settlement of disputes by peaceful means (see A/AC.182/L.9)

59. States which have not yet done so should explore possibilities of earmarking troop contingents for a United Nations peace-keeping reserve of national contingents trained in peace-keeping functions, or if they are not in a position to do so might consider earmarking other facilities, or providing logistic support (see A/AC.182/WG/33; A/AC.182/WG/37)

60. Arrangements should be made for training and for technical equipment for peace-keeping units and observers (see A/AC.182/WG/33)

61. All members shall fulfil their Charter obligations to pay their assessed contribution for peace-keeping (see A/AC.182/WG/33)

62. There should be an exploration of the ways and means of eliminating the current United Nations deficit for peace-keeping through voluntary contributions and/or assessments under Article 17 (see A/AC.182/WG/33)

63. States should explore with other Members the possibility, once the current peace-keeping arrears are eliminated by payments of amounts owed combined with voluntary and/or assessed contribution, of establishing on a reimbursable basis a special peace-keeping fund to be available to cover the initial costs of peace-keeping operations authorized by the Security Council (see A/AC.182/WG/33)

64. The Secretary-General should prepare a study of administrative and logistics problems connected with United Nations peace-keeping, in order to develop recommendations for streamlining and systematizing procedures for establishing and operating peace-keeping forces, including recourse to commercial supplies where appropriate (see A/AC.182/WG/33)

## VI

65. The Secretary-General should be encouraged to exercise his powers with regard to the maintenance of international peace and security more fully, in particular in drawing the attention of the Council to situations of tension under Article 99, stationing his representatives in such areas and providing the facts on which the Council can base informed discussions and the adoption of appropriate measures. All Member States should co-operate to the maximum extent with the Secretary-General in his carrying out such tasks (see A/AC.182/WG/37; A/AC.182/WG/44/Rev.1; A/AC.182/WG/46/Rev.2)

66. The proper discharge of the Secretary-General's responsibilities under the provisions of Article 99 requires that, without prejudice to the rights of States under the Charter, he undertakes steps to acquire information and ascertain facts on developments the continuance of which is likely to endanger international peace and security and report on these developments, when appropriate, to the Security Council and to the General Assembly (see A/AC.182/WG/46/Rev.2)

67. The Secretary-General should be given the authority to request a meeting of the Security Council, when he deems it necessary, to deal with a problem that could endanger international peace and security, instead of merely "bringing matters to the attention of the Council ...", as provided in Article 99 (see A/AC.182/L.5)

68. The Secretary-General should be encouraged to bring matters threatening international peace and security to the attention of the General Assembly through his introduction to the annual report which he is required under Article 98 to make to the General Assembly on the work of the United Nations, and through the exercise of the right to include in the provisional agenda of the General Assembly all items which he deems necessary to put before that body (see A/AC.182/WG/42)

## VII

69. The General Assembly should ask Member States for their comments and suggestions on the applicability of the references in Articles 53 and 107 to "enemy states" (see A/AC.182/L.12/Rev.1)

70. Article 107 and the provisions referring to "enemy states" in Article 53 should be dealt with, as a possible first step, through a General Assembly solemn declaration that the ex-enemy state clauses cannot apply per se to Member States of the Organization (see A/AC.182/L.9; L.12/Rev.1; A/AC.182/WG/6)

71. A United Nations document on national minorities (regulation and protection of the rights of minorities) should be adopted and incorporated into the Charter (see A/AC.182/L.12/Rev.1)

72. Practical measures should be adopted to support the liberation movements of peoples under colonial domination recognized by the United Nations by establishing favourable conditions for the work of observers from these movements in the United Nations and elaborating, under United Nations auspices, specific programmes of multilateral assistance to national liberation movements, always in conformity with the purposes and principles of the United Nations (see A/AC.182/L.9)

73. A special session of the General Assembly should be convened, devoted to the discussion and adoption of effective measures for the granting of independence to territories still under colonial domination and the establishment, for this purpose, of the earliest possible deadlines (see A/AC.182/L.9)

74. All kinds of activities of persons, groups or organizations of fascist or neo-fascist character should be prohibited (see A/AC.182/WG/32).

B. Continuation of the work on the question of the peaceful settlement of disputes

153. The Working Group dealt with this aspect of its mandate at its 5th, 9th, 12th, 13th, 15th, 17th, 19th, 20th, 21st to 24th, 26th to 28th and 31st meetings, held between 4 and 22 February 1980.

1. Proposals relating to the preparation of a draft declaration on the peaceful settlement of disputes

154. After an exchange of views, the Working Group came to the conclusion that a draft declaration on the peaceful settlement of disputes should be prepared as envisaged in the list of proposals contained in section II of its report on its 1979 session, 23/ although some delegations expressed doubts as to the ability of the Working Group to complete a useful draft in the short time available.

(a) Working paper submitted by Greece (A/AC.182/WG/45)

155. At the 9th meeting, on 6 February, the representative of Greece introduced a working paper on the question of the peaceful settlement of disputes (A/AC.182/WG/45) which read as follows:

"1. States parties to a dispute shall from its inception do all in their power, acting in good faith and according to the principles of the Charter, to settle the dispute peacefully in conformity with one of the procedures provided for in Article 33 of the Charter.

"2. The States shall likewise refrain, from the inception of the dispute, from any action likely to prolong or aggravate the dispute.

"3. If after a reasonable period the States have been unable to settle their dispute through negotiation, they shall promptly utilize the other settlement procedures provided for in Article 33 of the Charter.

"4. States shall not resort to the threat or use of force or to any form of political, economic or other duress or pressure in order to settle their disputes.

"5. States shall undertake never to recognize situations which have been created through the threat or use of force in contravention of the Charter of the United Nations."

156. This working paper was generally favourably commented upon although it also gave rise to some doubts.

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23/ Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 33 (A/34/33), p. 5.

(b) Informal working paper submitted by Egypt, Indonesia, Mexico, Nigeria, the Philippines, Romania, Sierra Leone and Tunisia (A/AC.182/WG/48)

157. At the 12th meeting, on 8 February, the representative of the Philippines introduced on behalf of Egypt, Indonesia, Mexico, Nigeria, the Philippines, Romania, Sierra Leone and Tunisia the informal working paper (A/AC.182/WG/48) which is reproduced below:

Declaration on the peaceful settlement  
of international disputes

Preamble

The General Assembly,

Reaffirming its full adherence to the principle of the United Nations that all States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered,

Reaffirming also its complete support to the principle of the United Nations that all 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;

Reiterating that no State or group of States has the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other State,

Bearing in mind the importance of maintaining and strengthening international peace and security, based on the principle of international law concerning friendly relations and co-operation among States, irrespective of their political, economic and social systems or levels of economic development,

Deeply concerned over the continuation of conflict situations and international disputes, the emergence of new sources of conflict and tension, particularly the tendency to use force, military and economic pressure, and to intervene against sovereign States and interference in their internal affairs, which gravely endanger the independence and security of peoples and States, as well as world peace and security,

Recognizing the important role of the United Nations in the promotion of peaceful settlement of international disputes and prevention of armed conflict among States and in bringing about by peaceful means, in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace,

Solemnly declares:

I. Obligations of States

1. All States shall act in good faith in the conduct of their international relations in such a manner as to avoid and prevent disputes or conflicts among themselves.
2. All States shall have the duty to settle all their international disputes exclusively by peaceful means.
3. All States shall have the duty to seek in good faith and in a spirit of co-operation an early, just and peaceful settlement of their international disputes by peaceful means of their own choice.
4. The parties to any dispute shall seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means.
5. In the event of failure to reach a solution by any of the above modes of settlement, the parties to the dispute shall consult forthwith to seek mutually-agreed ways to settle the dispute peacefully.
6. States parties to an international dispute shall act in accordance with the principles of the Charter in order to facilitate the solution of the dispute and shall refrain from any action which may aggravate the situation, extend the dispute, or constitute an obstacle or delay the settlement.
7. States other than parties to an international dispute have the duty to contribute to the peaceful settlement of such dispute, acting in this respect in conformity with the purposes and principles of the United Nations Charter.
8. The initiative proposed in good faith by third parties with a view to contributing to the settlement of disputes shall not be deemed by the parties to a dispute as an unfriendly act.
9. If the parties to a dispute agree on the terms of settlement of their dispute, they shall implement such an agreement in good faith.

II. General principles

1. All international disputes shall be settled on the basis of the sovereign equality of States.
2. In the settlement of their international disputes all States shall also observe, inter alia, the following principles: respect for each other's national independence and territorial integrity; non-use of force or threat of force; non-interference and non-intervention in the internal or external affairs of States; inalienable right of every people to decide their own fate and freely choose their political, economic and social systems; self-determination of peoples under colonial or foreign domination; and permanent sovereignty of States over their natural resources.

3. States shall have an obligation not to make diplomatic representations to protect their nationals or to invoke international jurisdictions for that purpose when the said nationals have means of recourse to competent national courts available to them.

### III. Role of the United Nations

1. States should make more effective and systematic use of the procedures and machinery provided for by the United Nations Charter, particularly the methods contained in Chapter VI concerning pacific settlement of disputes.

2. Member States of the United Nations have a duty, in furtherance of strengthening the role of the Organization in the peaceful settlement of disputes, to fulfil their obligations under the Charter and, in accordance with its provisions, to implement the resolutions of the General Assembly and Security Council.

3. Member States of the United Nations should support the strengthening of the role of the General Assembly, in accordance with the Charter, in the prevention and peaceful settlement of disputes. To this end they should:

(a) Make full use of the provisions of the Charter, including the initiation of action over situations or disputes in which they are not directly involved, in order that the General Assembly may consider situations or disputes before they develop into conflicts;

(b) Utilize the existing fact-finding mechanisms set up by the General Assembly resolutions and initiate action in the General Assembly, as the case might be, to review or to update them;

(c) Establish, at the request of the parties to a dispute, an informal ad hoc group in order to extend good offices to the parties and to bring about the peaceful settlement of the disputes.

4. Member States of the United Nations should support the involvement of the Security Council in any situation or dispute the continuance of which is likely to endanger the maintenance of international peace and security. To this end, they should:

(a) Bring all disputes to which they are a party to the Security Council if other methods of pacific settlement do not expeditiously solve those disputes, or, where other methods of pacific settlement are being resorted to, report to the Security Council on what actions they are taking in the context of other fora or procedures;

(b) Bring disputes to which they are not a party but which appear to be continuing without settlement to the attention of the Security Council and either request the Security Council to meet in formal session or, alternatively, request the President of the Council to conduct consultations with the members of the Council and report to the Council;

(c) Encourage the Security Council to make wider use of the opportunities provided for by the Charter and of information presented by the

Secretary-General on its request in order to review periodically situations of potential threat to international peace and security, including greater use of informal consultations for the discharge of the Council's functions under Chapter VI concerning pacific settlement of disputes:

(d) Consider enhancing the fact-finding capacity of the Security Council in accordance with the Charter on an ad hoc basis;

(e) Encourage the Security Council to consider increased use of observer missions in areas of tension, dispute or conflict, with the consent of the parties, both as impartial reporters and as deterrents to aggression, as well as a way to promote pacific settlement.

5. Member States of the United Nations should strive to enhance the role of the International Court of Justice and increase its effectiveness by more frequent recourse to the Court in contentious cases. To this end they should:

(a) Consider accepting the compulsory jurisdiction of the International Court of Justice in accordance with Article 36 of its Statute;

(b) Refer to the Court any legal disputes the continuation of which could endanger international peace and security unless that dispute is capable of expeditious settlement by other means:

(c) Consider extending the range of cases in which an advisory opinion may be requested from the International Court of Justice by enabling the parties to a legal dispute, if they unanimously agree on the utility of such an advisory opinion as well as on the terms of the question to be asked to the Court, to have their request endorsed by the General Assembly;

(d) Insert in treaties, in cases considered possible and appropriate, clauses providing for the submission to the International Court of Justice of disputes which may arise from the interpretation or application of such treaties.

6. Member States of the United Nations should encourage the Secretary-General to exercise his responsibilities under the provisions of Article 99 of the Charter which enables him to bring to the attention of the Security Council any matter that may threaten the maintenance of international peace and security. To this end, without prejudice to the rights and obligations of States under the Charter, the Secretary-General may take steps to acquire information and ascertain facts. Reports on measures thus taken should be submitted, when appropriate, to the Security Council and the General Assembly for their immediate consideration.

#### IV. Modes of pacific settlement

1. In fulfilling their obligations peacefully to settle their international disputes, States shall bear in mind the availability of the following procedures:



(a) Negotiation consists of an attempt by the States parties to a dispute to settle it in a spirit of co-operation and good faith through diplomatic channels;

(b) Inquiry consists of the agreement of the parties to a dispute to a Commission which shall investigate and report facts involved in a dispute;

(c) Mediation consists of the submission of a dispute to a third party with a view to helping the parties to the dispute to reach an amicable settlement;

(d) Conciliation consists of the submission of a dispute to a Commission, which shall function within the limitations agreed upon by parties, with a view to elucidating the questions in dispute and collecting all useful information in order to make recommendations to the parties aimed at the solution of their dispute;

(e) Arbitration consists of the submission of a dispute to an arbitration tribunal agreed upon by the parties which shall function within the limitations agreed upon by the parties and which shall issue an award binding on the parties;

(f) Judicial settlement consists of the submission of a dispute to an international court whose judgement shall be binding unless pursuant to express provisions providing for advisory opinions.

2. All States have the right, at any time, to choose their own means to settle peacefully any international dispute, whether those means are or are not enumerated in Article 33 of the United Nations Charter.

3. States parties to regional arrangements or agencies shall make every effort to achieve pacific settlement of their disputes through such regional arrangements. This does not preclude States from bringing any dispute before a United Nations organ.

4. States might wish to consider to conclude bilateral agreements with a view to the settlement of any dispute which might arise in certain fields and to include in bilateral and multilateral conventions provisions for a system of peaceful settlement of disputes.

5. Nothing in this declaration shall preclude States from agreeing to any method of dispute settlement of their choosing nor shall the above list be interpreted as suggesting the priority of any one method over any other.

## V. Final provisions

1. Appeals to all States to observe and promote in good faith the above-mentioned principles in their international relations and activities;

2. Considers that the conclusion of a general treaty on peaceful settlement of disputes, based on the foregoing principles, could facilitate or contribute, towards the attainment of just and equitable international relations thereby enhancing the maintenance of international peace and security;

3. Decides to continue the efforts aimed at the elaboration of such a general treaty, which shall codify and promote the progressive development, under the auspices of the United Nations, of the principles and norms governing the peaceful settlement of international disputes.

158. This working paper was discussed in the Working Group and subsequently revised.

(c) Revised informal working paper submitted by Egypt, Indonesia, Mexico, Nigeria, the Philippines, Romania, Sierra Leone and Tunisia (A/AC.182/WG/48/Rev.1 and Rev.1/Add.1)

159. At the 21st meeting of the Working Group, on 14 February 1980, the representative of the Philippines introduced on behalf of the sponsors a revised version of the informal working paper (A/AC.182/WG/48/Rev.1). In so doing, he indicated that no final agreement had yet been reached among the sponsors on the fifth preambular paragraph or on paragraphs 13 and 15 of section I and that those provisions should therefore be considered as being between square brackets. The revised working paper is reproduced below:

Draft Manila declaration on the peaceful  
settlement of international disputes

Preamble

The General Assembly,

Recognizing the important role of the United Nations in the promotion of peaceful settlement of international disputes and prevention of armed conflict among States and in bringing about by peaceful means, in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace,

Deeply concerned over the continuation of conflict situations and international disputes, the emergence of new sources of conflict and tension, particularly the tendency to use force, military and economic pressure, and to intervene against sovereign States and interfere in their internal affairs, which gravely endanger the independence and security of peoples and States, as well as world peace and security,

Reaffirming the principle of the United Nations that all States shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered,

Reaffirming also the principles of the United Nations that all 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 manner inconsistent with the purposes of the United Nations,

Reiterating the inalienable right of peoples under colonial and racist minority rule including apartheid and all other forms of racial discrimination and foreign domination to self-determination and national independence, and the legitimacy of the struggle for their freedom by all appropriate means at their disposal,

Bearing in mind the importance of maintaining and strengthening international peace and security, based on the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations irrespective of their political, economic and social systems or levels of economic development,

Conscious that the Charter of the United Nations establishes the essential framework for the peaceful settlement of international disputes and that all States should settle their international disputes within this framework,

Determined to promote international co-operation in the political field and to encourage the progressive development of international law and its codification,

Solemnly declares:

I. General principles and obligations of States

1. All States shall act in good faith and in conformity with the principles of the United Nations Charter in the conduct of their international relations in such a manner as to avoid and prevent disputes or conflicts among themselves.

2. All States shall have the duty to settle all their international disputes exclusively by peaceful means.

3. All international disputes shall be settled on the basis of the sovereign equality of States and in accordance with the principle of free choice of means.

4. In the settlement of their international disputes all States shall also observe, inter alia, the following principles of international law: respect for each other's national independence, sovereignty and territorial integrity; non-use of force or threat of force in international relations; non-interference and non-intervention in the internal or external affairs of States; inalienable right of every people to decide their own fate and freely choose their political, economic and social systems; self-determination of peoples under colonial or foreign domination; and permanent sovereignty of States over their natural resources.

5. All States shall have the duty to seek in good faith and in a spirit of co-operation an early and just settlement of their international disputes by any of the following modes: negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means.

6. States parties to regional arrangements or agencies shall make every effort to achieve pacific settlement of their disputes through such regional arrangements. This does not preclude States from bringing any dispute before a United Nations organ.

7. In the event of failure to reach a solution by any of the above modes of settlement, the parties to a dispute shall consult forthwith and continue to seek mutually-agreed ways to settle the dispute peacefully.

8. States parties to an international dispute, as well as other States, shall in accordance with the purposes and principles of the Charter refrain from any action which may aggravate the situation, extend the dispute, or constitute an obstacle or delay the settlement.

9. States other than parties to an international dispute shall support the efforts of the parties to achieve a peaceful settlement of their dispute. An initiative proposed in good faith by third parties, in this context, including an offer of good offices, shall not be deemed by the parties to a dispute as an unfriendly act.

10. States shall respect the principle of general international law establishing the requirement of the exhaustion of local remedies.

11. States should consider concluding agreements with a view to the settlement of any dispute which might arise in certain fields and to include in bilateral and multilateral conventions provisions for a system of peaceful settlement of disputes.

12. If the parties to a dispute agree on the terms of settlement of their dispute, they shall implement such an agreement in good faith.

13. The above principles and obligations governing the settlement of international disputes shall apply to the authentic representatives of a people fighting for the exercise of their right to self-determination and independence against colonial and racist régimes including apartheid and any other form of foreign domination, recognized by the appropriate regional organization and by the United Nations.

14. Neither the existence of a dispute nor the failure of a procedure of peaceful settlement of a dispute the continuation of which is likely to endanger the maintenance of peace and security could legitimate resort by one of the States parties to the dispute or any other State, to the use of force or threat of force, or to political or economic pressure or to other forms of coercion against the other State party to the dispute.

15. None of the above principles and obligations should be interpreted as affecting the inherent rights of each State to defend itself in accordance with Article 51 of the United Nations Charter by all available means against any threat to its sovereignty and national independence, including military means in the case of armed aggression.

## II. Role of the United Nations

1. States should make more effective and systematic use of the procedures and machinery provided for by the United Nations Charter, particularly the methods contained in Chapter VI concerning peaceful settlement of disputes.

2. Member States of the United Nations should, in furtherance of strengthening the role of the Organization in the peaceful settlement of disputes, fulfil their obligations under the Charter and, in accordance with the provisions of Chapter VI, comply with the recommendations contained in the resolutions of the General Assembly and Security Council.

3. Member States of the United Nations should strengthen the role of the General Assembly, in accordance with the Charter, in the prevention and peaceful settlement of disputes. To this end they should:

(a) Make full use of the provisions of the Charter, including the initiation of action over situations or disputes in which they are not involved, in order that the General Assembly may consider situations or disputes before they develop into conflicts;

(b) Utilize fact-finding mechanisms set up by the General Assembly resolutions and initiate action in the General Assembly, as the case might be, to review or to update them;

(c) Establish, at the request of the parties to a dispute, an informal ad hoc group in order to extend good offices to the parties and to bring about the peaceful settlement of the disputes.

4. Member States of the United Nations should support the involvement of the Security Council in any situation or dispute the continuance of which is likely to endanger the maintenance of international peace and security. To this end, they should:

(a) Bring disputes to which they are a party to the Security Council if other methods of pacific settlement do not solve those disputes, or report to the Security Council on what actions they are taking in order to settle their disputes;

(b) Bring disputes to which they are not a party to the attention of the Security Council and either request the Security Council to meet in formal session or, alternatively, request the President of the Council to conduct informal consultations with the members of the Council and report to the Council;

(c) Encourage the Security Council to make wider use of the opportunities provided for by the Charter and of information presented by the Secretary-General on its request in order to review periodically situations of potential threat to international peace and security, including greater use of informal consultations for the discharge of the Council's functions under Chapter VI concerning pacific settlement of disputes;

(d) Enhance the fact-finding capacity of the Security Council in accordance with the Charter on an ad hoc basis;

(e) Encourage the Security Council to consider increased use of observer missions in areas of tension, dispute or conflict, with the consent of the parties, both as impartial reporters and as deterrents to aggression, as well as a way to promote pacific settlement.

5. Member States of the United Nations should strive to enhance the role of the International Court of Justice and increase its effectiveness by more frequent recourse to the Court. To this end they should:

(a) Consider accepting the compulsory jurisdiction of the International Court of Justice in accordance with Article 36 of its Statute;

(b) Refer to the Court any legal disputes the continuation of which could endanger international peace and security unless that dispute is capable of expeditious settlement by other means;

(c) Consider extending the range of cases in which an advisory opinion may be requested from the International Court of Justice;

(d) Insert in treaties, in cases considered possible and appropriate, clauses providing for the submission to the International Court of Justice of disputes which may arise from the interpretation or application of such treaties.

6. Under the provisions of Article 99 of the Charter 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. To this end, with the consent of the parties, the Secretary-General may take steps to acquire information and ascertain facts. Reports on measures thus taken should be submitted when appropriate to the Security Council and the General Assembly for their immediate consideration.

### III. Final provisions

1. Appeals to all States to observe and promote in good faith the above-mentioned principles in their international relations and activities;

2. Considers that the conclusion of a general treaty on peaceful settlement of disputes, based on the foregoing principles, could facilitate or contribute, towards the attainment of just and equitable international relations thereby enhancing the maintenance of international peace and security;

3. Decides to continue the efforts aimed at the elaboration of such a general treaty, which shall codify and promote the progressive development, under the auspices of the United Nations, of the principles and norms governing the peaceful settlement of international disputes.

160. The fifth preambular paragraph and paragraphs 13 and 15 of section I of the above text, which as indicated in paragraph 159 above had not yet been finally agreed among the sponsors, were subsequently the subject of an addendum (A/AC.182/WG/48/Rev.1/Add.1), which is reproduced below:

1. The fifth preambular paragraph should read as follows:

"Stressing the need for all States to desist from any forcible or other action which deprives peoples under colonial and racist minority rule, including apartheid and all other forms of racial and foreign

domination, of their inalienable right to self-determination, freedom and national independence and to refrain from military and repressive measures aimed at preventing the attainment of independence by all dependent peoples in accordance with the Charter and in furtherance of the objectives of General Assembly resolution 1514 (XV) of 14 December 1960, and to render assistance to the United Nations and, in accordance with the Charter, to the oppressed peoples in their legitimate struggle in order to bring about the speedy elimination of colonialism or any other form of external domination,".

2. Paragraph 13, section I, should read as follows:

"The authentic representatives of a people fighting for the exercise of their right to self-determination and independence against colonial and racist régimes, including apartheid and any other form of foreign domination, recognized by the respective regional organization and by the United Nations, shall in any process of peaceful settlement have the same rights and assume the same obligations as representatives of States under the present Declaration."

3. Delete paragraph 15, section I.

161. The revised informal working paper was considered by a number of delegations as constituting a useful basis for future work. It was examined in first reading at the 21st to 24th, and 26th to 28th meetings of the Working Group, held between 14 and 19 February 1980.

162. In the course of the first reading, a number of delegations made oral suggestions, including amendments, reservations and objections to some provisions of the draft which were subsequently discussed in a series of intensive, open-ended informal consultations. 24/ Some were incorporated by the sponsors in a second revised version of the draft but some still stand.

(d) Second revised working paper submitted by Egypt, El Salvador, Ghana, Indonesia, Nigeria, the Philippines, Romania, Sierra Leone and Tunisia (A/AC.182/WG/48/Rev.2)

163. At the 31st meeting of the Working Group, on 22 February 1980, a second revised version of the working paper (A/AC.182/WG/48/Rev.2) was introduced by the representative of the Philippines on behalf of Egypt, El Salvador, Ghana, Indonesia, Nigeria, the Philippines, Romania, Sierra Leone and Tunisia.

164. It is reproduced below:

Draft Manila declaration on the peaceful settlement of  
international disputes

Preamble

The General Assembly,

Conscious that the Charter of the United Nations embodies the principles and establishes the means and essential framework for the peaceful settlement of international disputes,

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24/ For a list of those oral suggestions, see the appendix below.

Recognizing the important role of the United Nations and the need to enhance its effectiveness in the peaceful settlement of international disputes and maintenance of international peace and security in accordance with the principles of justice and international law, in conformity with the Charter of the United Nations,

Deeply concerned over the continuation of conflict situations including those arising from colonial and racist policies of apartheid, the emergence of new sources of international disputes and tension, particularly the growing tendency to use force or threat of force, including economic coercion, to intervene in the internal affairs of States or subject them to aggression or control, and the escalation of the arms race, which gravely endanger the independence and security of States, as well as international peace and security,

Reaffirming the principle of the Charter that all States shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice are not endangered,

Reaffirming also the principle of the Charter that all 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 manner inconsistent with the purposes of the United Nations,

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

Stressing the need for all States to desist from any forcible or other action which deprives peoples, in particular those under colonial and racist minority rule, including apartheid and all other forms of racial and foreign domination, of their inalienable right to self-determination, freedom and national independence and to refrain from military and repressive measures aimed at preventing the attainment of independence by all dependent peoples in accordance with the Charter and in furtherance of the objectives of General Assembly resolution 1514 (XV) of 14 December 1960, and to render assistance to the United Nations and, in accordance with the Charter, to the oppressed peoples in their legitimate struggle in order to bring about the speedy elimination of colonialism or any other form of external domination,

Reiterating that no State or group of States has the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other State,

Bearing in mind the importance of maintaining and strengthening international peace and security and the development of friendly relations among States irrespective of their political, economic and social systems or levels of economic development,

Aware of existing international instruments concerning the peaceful settlement of disputes,

Determined to promote international co-operation in the political field and to encourage the progressive development of international law and its codification, particularly in relation to the peaceful settlement of international disputes,



Solemnly declares:

I. General principles

1. All States shall act in good faith and in conformity with the purposes and principles of the Charter of the United Nations, and conduct their international relations with a view to avoiding disputes among themselves and thus ensure the maintenance of international peace and security.

2. All States shall settle their international disputes exclusively by peaceful means.

3. International disputes shall be settled on the basis of the sovereign equality of States and in accordance with the principle of free choice of means, in conformity with justice and international law. Recourse to, or acceptance of, a settlement procedure freely agreed to by States with regard to existing or future disputes to which they are parties shall not be regarded as incompatible with sovereign equality.

4. In the settlement of their international disputes all States shall also observe, inter alia, the following principles: respect for each other's national independence, sovereignty and territorial integrity; non-use of force or threat of force in international relations; non-recognition of territorial acquisition resulting from the threat or use of force in contravention of the provisions of the Charter; non-interference and non-intervention in the internal or external affairs of States; inalienable right of every people to freely choose their political, economic and social systems, in particular the right of self-determination of peoples under colonial or foreign domination, including apartheid and other forms of racial discrimination, and permanent sovereignty of States over their natural resources.

5. States shall seek in good faith and in a spirit of co-operation an early and just settlement of their international disputes by any of the following means: negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice, including good offices. In seeking such a settlement, the parties shall agree on such peaceful means as may be appropriate in the circumstances and the nature of their dispute.

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

7. In the event of failure of the parties to a dispute to reach an early solution by any of the above means of settlement, they shall continue to seek a peaceful solution and shall consult forthwith on mutually agreed ways to settle the dispute peacefully. Should the parties fail to settle their dispute by the above means they shall refer it to the Security Council.

8. States parties to an international dispute, as well as other States, shall, in accordance with the purposes and principles of the Charter, refrain from any action whatsoever which may aggravate the situation, extend the dispute, or constitute an obstacle or delay the settlement.

9. States shall respect the principle of international law on the exhaustion of local remedies, whenever applicable.

10. States should consider concluding agreements on peaceful settlement of disputes which may arise among them. They should also consider including in bilateral agreements and multilateral conventions, as appropriate, provisions for a system of peaceful settlement of disputes arising therefrom.

11. States shall enhance the role and effectiveness of international tribunals for the purpose of settling international disputes established by multilateral treaties to which they are parties.

12. States shall, in accordance with international law, implement in good faith all aspects of their agreement on the terms of settlement of their disputes.

13. The provisions of this Declaration shall apply to the authentic representatives of a people recognized by the respective regional organization and by the United Nations, in the exercise of their right to self-determination and independence in any process of peaceful settlement.

14. Neither the existence of a dispute nor the failure of a procedure of peaceful settlement of a dispute shall justify the use of force or threat of force or coercion by any of the States parties to the dispute.

15. Nothing in this Declaration shall be construed as in any way enlarging or diminishing the scope of the Charter, including its provisions concerning cases in which the use of force is lawful, particularly the right of self-defence in accordance with Article 51 of the Charter.

## II. Role of the United Nations

1. States should make full use of the procedures and means provided for by the Charter of the United Nations, particularly Chapter VI concerning peaceful settlement of disputes.

2. Member States, in fulfilling in good faith their obligations under the Charter concerning peaceful settlement of disputes should respect and implement the recommendations of the General Assembly and the Security Council based on the provisions of Chapter VI.

3. Member States should strengthen the role of the General Assembly in the peaceful settlement of disputes as well as in the peaceful adjustment of any situation. To this end, they should:

(a) Make full use of the provisions of the Charter in order that the General Assembly may consider such situations or disputes before they develop into conflicts and to recommend measures for the peaceful adjustment of any

situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations;

(b) Utilize machinery established under the Charter for the peaceful settlement of international disputes;

(c) Consider the establishment, if requested by the parties to a dispute, of an informal ad hoc group which would extend good offices to the parties to bring about the peaceful settlement of the dispute.

4. Member States should strengthen the role of the Security Council in the settlement of any dispute or situation the continuance of which is likely to endanger international peace and security. To this end, they should:

(a) Inform the Security Council of action which they have taken in order to settle their disputes which they have not previously referred or brought to the attention of the Security Council in accordance with the Charter;

(b) With respect to any such dispute or situation, to request the Security Council to meet on it in formal session or to request informal consultations among the members of the Council;

(c) Encourage the Security Council to make wider use of the opportunity provided for by the Charter and of the information presented by the Secretary-General on the request of the Security Council in order to review periodically situations or disputes of potential threat to international peace and security, as well as to consider greater use of informal consultations for the discharge of the Council's functions under Chapter VI;

(d) Consider making greater use of the fact-finding capacity of the Security Council in accordance with the Charter;

(e) Encourage the Security Council to consider as a means to promote peaceful settlement the increased use of observer missions in areas of tension, dispute or conflict with the consent of States in whose territory the missions are to exercise their functions.

5. Member States of the United Nations should strive to enhance the role of the International Court of Justice and to increase its effectiveness by more frequent recourse to the Court. To this end, they should:

(a) Consider the possibility of accepting the compulsory jurisdiction of the International Court of Justice in accordance with Article 36 of its Statute;

(b) Refer to the Court any legal dispute the continuation of which could endanger international peace and security unless that dispute is capable of expeditious settlement by other means;

(c) Consider extending the range of cases in which an advisory opinion may be requested from the International Court of Justice;

(d) Consider including in treaties, where appropriate, clauses providing for the submission to the International Court of Justice of disputes which may arise from the interpretation or application of such treaties.

6. Under the provisions of Article 99 of the Charter, the Secretary-General may bring to the attention of the Security Council any dispute which in his opinion may threaten the maintenance of international peace and security. To this end, the Secretary-General may take steps to acquire information and ascertain facts and may, for this purpose, arrange visits to any State with its consent. Reports on measures thus taken should be submitted, when appropriate, to the Security Council or the General Assembly.

7. Nothing in this Declaration shall be construed as prejudicing in any manner the relevant provisions of the Charter or the rights and duties of States, or the scope of the functions and powers of the United Nations' organs under the Charter, in particular those relating to the peaceful settlement of international disputes.

### III. Final provisions

1. Appeals to all States to observe and promote in good faith the provisions of this Declaration in the peaceful settlement of their international disputes;

2. Considers that the conclusion of a general treaty on peaceful settlement of disputes could facilitate or contribute towards the attainment of just and equitable international relations thereby enhancing the maintenance of international peace and security;

3. Stresses the need to continue the efforts aimed at codifying and promoting the progressive development of the principles and norms governing the peaceful settlement of international disputes.

165. This second revised version of the working paper could not be discussed for lack of time.

#### 2. Other proposals

(a) Working paper submitted by the United States of America (A/AC.182/WG/47)

166. The Working Group also had before it a working paper submitted by the United States of America (A/AC.182/WG/47), containing the text of a questionnaire directed to Member States. This working paper is reproduced below:

#### QUESTIONNAIRE

##### A

1. List the means of dispute settlement (inquiry, conciliation or mediation, arbitration, judicial settlement, or other) other than negotiation in which your State has been involved in the last 10 years:

2. List those instances in which you believe the process was effective irrespective of whether the result was in accord with your country's desired result:

3. List those instances in which you believe the process was either ineffective or inefficient irrespective of whether the result was in accord with your country's desired result:

(a) Why do you believe the system did not work satisfactorily?

(b) What steps could be taken to improve the functioning?

4. If faced by a similar problem or problems in the future, would you be likely to adopt the same basic method and, if not, what method would you choose?

5. Has your country sought third party dispute settlement with a second State but been frustrated by the refusal of the second State to accept the third party involvement?

(a) To the extent possible, without revealing confidential material, list the instances:

(b) Do you have any suggestions which might avoid further such occurrences?

6. Has any State sought third party dispute settlement with you which you have rejected?

(a) To the extent possible, without revealing confidential material, list the instances and, if you wish, explain the reasons for your refusal:

(b) Do you have any suggestions which would result in the enhancement of your willingness to respond affirmatively to requests for third party dispute settlement?

B

1. Are you prepared to agree in advance to submit all disputes to inquiry or fact finding?

If the answer is negative:

(a) What disputes, if any, would you be prepared to agree in advance to submit to inquiry or fact finding?

(b) What disputes would you not be prepared to agree in advance to submit to inquiry or fact finding?

(c) Why would you not be prepared to agree?

(d) Are you prepared to seek or, if sought by others, to accept provisions in some or all bilateral treaties, provisions providing for inquiry or fact finding?

(e) Are you prepared to seek or accept provisions in some or all multilateral treaties provisions providing for inquiry or fact finding?

(f) What measures could or should the international community take to enhance your willingness to agree in advance to submit disputes to inquiry or fact finding?

2. Are you prepared to agree in advance to submit all disputes to third party conciliation or mediation?

If the answer is negative:

(a) What disputes, if any, would you be prepared to agree in advance to submit to conciliation or mediation?

(b) What disputes would you not be prepared to agree in advance to submit to conciliation or mediation?

(c) Why would you not be prepared to agree?

(d) Are you prepared to seek or, if sought by others, to accept provisions in some or all bilateral treaties, provisions providing for conciliation or mediation?

(e) Are you prepared to seek or accept provisions in some or all multilateral treaties provisions providing for conciliation or mediation?

(f) What measures could or should the international community take to enhance your willingness to agree in advance to submit disputes to conciliation or mediation?

3. Are you prepared to agree in advance to submit either all disputes to arbitration or all disputes which have not been resolved by conciliation or other means?

(a) What disputes would you be prepared to agree in advance to submit to arbitration?

(b) What disputes would you not be prepared to agree in advance to submit to arbitration?

(c) Why would you not be prepared to agree?

(d) Are you prepared to seek or, if sought by others, to accept provisions in some or all bilateral treaties, provisions providing for arbitration?

(e) Are you prepared to seek or accept provisions in some or all multilateral treaties provisions providing for the submission of disputes which may arise thereunder to arbitration?

(f) What measures could or should the international community take to enhance your willingness to agree in advance to submit disputes to arbitration?

4. Has your country accepted the compulsory jurisdiction of the International Court of Justice: in all cases, subject to reservations, in multilateral treaties, in bilateral treaties?

(a) If you do not accept the jurisdiction of the Court pursuant to Article 36 of the Statute of the International Court of Justice, or if your acceptance of the jurisdiction is subject to any reservations, what steps, if any, would you be prepared to contemplate to widen the sphere of application of the Court's jurisdiction with regard to your country?

(b) Are you prepared to seek or, if sought by others, to accept provisions in some or all bilateral treaties, provisions providing for settlement of any disputes which may arise thereunder by the International Court of Justice? If some, which types?

(c) Are you prepared to seek or accept provisions in some or all multilateral treaties provisions providing for the settlement of any disputes which may arise thereunder by the International Court of Justice? If some, which types?

(d) What measures could or should the International Court of Justice or the United Nations or individual States take to enhance your willingness to agree in advance to accept the compulsory jurisdiction of the International Court of Justice?

5. Have you directly or indirectly made use of, or advocated the use of, good offices?

(a) Do you think there should be greater use of good offices on the part of the Secretary-General or any other competent person or persons?

(b) What measures could or should the international community take to enhance the efficacy and the use of the good offices of the Secretary-General or any other competent person or persons?

6. Are you prepared to be available as the third party providing good offices?

7. Do you have any further suggestions to enhance the effectiveness of the norm obligating States to settle their disputes by peaceful means?

167. A number of delegations commented favourably on this working paper, although some felt that the wording could in some respects be improved. The sponsor of the working paper suggested that the General Assembly should request the Secretary-General to forward the questionnaire to Member States for their reply and to submit to the Assembly for its consideration a report containing those replies. The Working Group did not pursue its work in this connexion for lack of time.

(b) Working paper prepared by France

168. Finally, the delegation of France informed the Rapporteur that it had prepared a working paper entitled "Proposed outline of a handbook on the peaceful settlement of disputes". This working paper, however, was not circulated for lack of time.

APPENDIX TO THE STATEMENT OF THE RAPPORTEUR 25/

List of oral suggestions made in the course of the first reading of document A/AC.182/WG/48/Rev.1 and Rev.1/Add.1 and text of an informal working paper prepared by the delegation of the Philippines

- A. List 26/ of oral suggestions made in the course of the first reading of document A/AC.182/WG/48/Rev.1 and Rev.1/Add.1 27/

Preamble

Additional paragraph

1. Insert at the beginning of the preamble an additional paragraph reading:  
"Striving to enhance the effectiveness of the role of the United Nations in the peaceful settlement of disputes on the basis of strict compliance with the Charter."

Subamendment

Replace "on the basis of strict compliance" by "in accordance".

First paragraph

2. Replace "prevention of armed conflict among States" by "the maintenance of international peace and security".
3. Spanish version: insert commas before "y de conformidad" and after "del derecho internacional".
4. French version: bring the wording into line with that of the Charter. Insert commas after "des situations" and after "de caractère international".

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25/ Annexed to the statement of the Rapporteur pursuant to a decision taken by the Committee at its 45th meeting (see para. 13 above).

26/ This informal interim list was prepared as an aid to the negotiating process and of necessity does not include all suggestions and comments, some of which were made at subsequent stages of the work. It is arranged according to the chronological order of consideration of the various provisions of document A/AC.182/WG/48/Rev.1 and Rev.1/Add.1. As a result, the suggestions relating to the fifth preambular paragraph and to paragraphs 13 and 15 of section I on which discussion was postponed (see paras. 159 and 160 above) until agreed texts had been worked out among the sponsors (see document A/AC.182/WG/48/Rev.1/Add.1) are to be found in the latter part of the list.

27/ For the text of documents A/AC.182/WG/48/Rev.1 and Rev.1/Add.1, see paragraphs 159 and 160 above.



### Second paragraph

5. Doubts were expressed on the paragraph as a whole.
6. Insert the words "the arms race and of" before the words "conflict situations".
7. After "of conflict situations" insert the words "stemming, inter alia, from colonial and racist domination, including the policies of apartheid and all other forms of foreign domination".
8. Reword the phrase starting with "particularly the tendency ..." by: "particularly the growing tendency to use force or threat of force, including economic pressure, to subject sovereign States to aggression and control and to interfere in their internal affairs which gravely endanger ... the end of the paragraph without change".
9. Replace the words "and to intervene against sovereign States and interfere in their internal affairs" by "and to intervene in the internal affairs of sovereign States".
10. Delete "peoples and" in the last line of the paragraph.
11. Replace "world peace and security" by "international peace and security".

### Third paragraph

12. Replace "the principle of the United Nations" by "the principle embodied in the United Nations Charter".
13. Delete "of the United Nations".
14. Insert "Charter" after "United Nations".
15. Delete "all" before "States".
16. Replace "States" by "Member States".

### Fourth paragraph

17. Replace the whole paragraph by "Reaffirming the principle embodied in Article 2, paragraph 4, of the Charter".
18. Insert "Charter" after "United Nations".
19. Delete "all" before "States".

### Fifth paragraph (A/AC.182/WG.48/Rev.1/Add.1) 28/

See suggestions Nos. 172 and 173 below.

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28/ See foot-note 26 above.

### Sixth paragraph

20. Redraft the paragraph as follows:

"Bearing in mind the importance of maintaining and strengthening international peace and security and of the development of friendly relations and co-operation among States, irrespective of their political, economic and social systems or levels of economic development".

21. Delete the last phrase starting with the words "irrespective of ..."  
or alternatively insert an additional paragraph reaffirming the Declaration on Friendly Relations.

### Seventh paragraph

22. Replace "the essential framework" by "the principles, means and essential framework."

23. Replace "the essential framework" by "the essential framework and the relevant principles".

24. Replace "the essential framework" by "an essential framework and essential principles".

25. Replace "within this framework" at the end of the paragraph by "in compliance with the Charter" or "in conformity with the Charter".

26. Delete "all" before "States".

27. Replace "should" by "shall".

28. Bring the seventh paragraph into line with the first paragraph by inserting after "international disputes" "or situations which might lead to a breach of the peace."

### Eighth paragraph

29. Delete "to promote international co-operation in the political field" and add at the end of the paragraph "and to further the peaceful settlement of international disputes".

30. Move the concept of international co-operation in the political field to a separate paragraph to appear between the seventh and eighth paragraphs.

31. Delete "and its codification".

32. Insert an additional paragraph reading:

"Bearing in mind international instruments concerning the peaceful settlement of disputes".

33. Insert an additional paragraph reading:

"Reaffirming the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations," (see suggestion No. 21).

## Section I

### Title

34. Doubts were expressed on the reference to "obligations of States".

35. Delete the title.

36. Replace the present title by "General provisions".

### Paragraphs 1 and 2

37. Combine paragraphs 1 and 2 as follows:

"States in their international relations shall act in good faith and in conformity with the principles of the United Nations Charter and settle their international disputes by peaceful means in such a manner that peace and security, and justice, are not endangered."

38. /If above redraft is not accepted:

- Insert in paragraph 1 "purposes and" before "principles".

- Replace in paragraph 2 "shall have the duty to" by "shall".]

### Paragraph 3

39. Redraft the paragraph as follows:

All international disputes shall be settled, account being taken of the principle of free choice of means, on the basis of the sovereign equality of States and international law.

### Subamendment

Replace "and international law" by "and with due regard for international law".

40. Add the following at the end of the paragraph (text taken from the fifth paragraph of the section of the Friendly Relations Declaration concerning the principle that States shall settle their international disputes by peaceful means):

"Recourse to, or acceptance of, a settlement procedure freely agreed to by States with regard to existing or future disputes to which they are parties shall not be regarded as incompatible with sovereign equality".

41. Delete paragraph 3 and include the principle of freedom of choice in paragraph 4.

#### Paragraph 4

42. In the second line, delete "of international law".
43. The possibility of deleting the paragraph was envisaged.

Alternatively it was suggested to redraft the principles listed as follows:

First principle: delete "territorial integrity";

Third principle: redraft as follows:

"non-intervention in the affairs of States";

Fourth principle: omit "to decide their own fate";

Fifth principle: the relevance of that principle was questioned;

Sixth principle: this was considered as raising issues still unsettled.

44. Redraft the fifth principle as follows:

"right to self-determination and independence of peoples under colonial and racist domination, including apartheid and all other forms of foreign domination."

45. Establish a link between the fourth and fifth principles by inserting "and in particular" before "self-determination".

#### Paragraph 5

46. Replace "modes" by "means" and "shall have the duty" by "shall".
47. After "disputes" insert "on the basis of international law" (following the model of the Helsinki Final Act).
48. Insert a reference to "good offices" after "inquiry".
49. Insert "of their own choice" at the end of the paragraph.
50. Redraft the paragraph as follows:

"All States shall have the duty to seek in good faith and in a spirit of co-operation an early and just settlement of their international disputes. They may resort, according to their choice, to one or several of the following means: negotiation, ...".

51. Add the following at the end of the paragraph:

"In making such a settlement, the parties shall agree upon such peaceful means as may be appropriate to the circumstances and nature of the dispute" (formulation taken from the second paragraph of the relevant principle of the Friendly Relations Declaration).

52. Insert at the end of paragraph 5 or as a new paragraph 7 bis:

"If after a reasonable period the States have been unable to settle their dispute through negotiation, they shall promptly utilize the other settlement procedures provided for in Article 33 of the Charter." (See paragraph 3 of document A/AC.182/WG/45 reproduced in paragraph 155 above.)

#### Paragraph 6

53. Replace "their disputes" by "their local disputes" and by way of consequence replace in the second sentence "any dispute" by "any such dispute".

54. Insert at the end of the first sentence "or agencies, before referring them to the Security Council" (see Article 52, paragraph 2 of the Charter).

#### Paragraph 7

55. After "In case of failure" insert "after a reasonable period of time" and after "continue" insert "in accordance with paragraph 2 above".

56. Redraft the second half of the paragraph from the words "and continue" as follows:

"The parties to a dispute shall continue to seek a settlement of the dispute by other peaceful means and shall consult forthwith to seek mutually agreed ways to settle the dispute peacefully".

57. Replace "by any of" by "by one of".

58. Reflect in the paragraph the idea of periodic appraisal of the progress of the efforts of the parties to settle the dispute.

#### Paragraph 8

59. Replace the end of the paragraph after "situations" by "so as to endanger the maintenance of international peace and security and shall act in accordance with the purposes and principles of the United Nations" (formulation taken from the fourth paragraph of the relevant principle of the Friendly Relations Declaration) or alternatively use the following formulation taken from the Helsinki Final Act:

"Participating States, parties to a dispute among them, as well as other participating States, will refrain from any action which might

aggravate the situation to such a degree as to endanger the maintenance of international peace and security and thereby make a peaceful settlement of the disputes more difficult and shall act in accordance with the purposes and principles of the United Nations".

#### Paragraph 9

60. Delete the paragraph.
61. Delete the second sentence.
62. Delete the paragraph, provided the concept of "good offices" finds a place among the means of peaceful settlement somewhere else in the draft.
63. Place paragraphs 8 and 9 immediately after paragraph 5.

#### Paragraph 10

64. Redraft the paragraph as follows: "States shall refrain from invoking diplomatic immunity for their nationals if the latter have not previously exhausted local remedies wherever this is necessary in accordance with international law."
65. Insert at the beginning of the paragraph: "In disputes relating to the condition of aliens" or, alternatively, add at the end of the paragraph: "where applicable".
66. Delete the word "general" before the words "international law".
67. Doubts were expressed about the inclusion of this paragraph in the draft declaration.
68. Delete the paragraph.
69. Redraft the paragraph in the light of the observations made thereon.
70. Replace the paragraph by the following:

"All States shall be required to respect the legal systems of other States."

71. Redraft the paragraph as follows:

"States shall make every effort in accordance with international law to exhaust all local remedies before resorting to any other means.

#### Paragraph 11

72. Delete the words "in certain fields".
73. French text: replace "Les Etats doivent" by "Les Etats devraient".

74. Redraft the paragraph as follows:

"States should consider concluding agreements with a view to the settlement of disputes which might arise in certain fields and including in bilateral and multilateral conventions provisions for a system of peaceful settlement of disputes concerning the interpretation or the application of those conventions".

75. Add the words "covered by those agreements" after the words "in certain fields".

76. Insert the words "as appropriate" before the words "to include in bilateral and multilateral conventions".

77. Redraft the paragraph as follows:

"States should seek to conclude agreements with a view to the settlement of general or specific disputes limited to certain categories and to include in bilateral and multilateral conventions provisions for a system for the settlement of disputes over the interpretation or application of those conventions."

78. Insert after paragraph 11 a paragraph 11 bis reading as follows:

"States which are parties to treaties establishing specialized international tribunals shall co-operate in order to ensure the full attainment of the purposes for which they were established."

79. In the above text, insert the words: "or original" after the word "international".

#### Paragraph 12

80. Replace the words "agree" by the words "have agreed".

81. It was suggested that the paragraph should clearly refer not only to agreements concluded after the dispute arose but also to agreements concluded earlier.

82. Add at the end of the paragraph the words "and in accordance with international law".

83. It was suggested that the paragraph should refer not only to peaceful settlement based on an ad hoc agreement by the parties but also to arbitration and judicial settlement.

#### Paragraph 13 (A/AC.182/WG/48/Rev.1/Add.1) 29/

See suggestions Nos. 174 to 180 below.

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29/ See foot-note 26 above.

#### Paragraph 14

84. Delete the words: "the continuation of which is likely to endanger the maintenance of peace and security".
85. Add the words "in violation of international law" at the end of the paragraph.
86. Delete the paragraph.
87. Include after paragraph 14 a paragraph 14 bis reading as follows:

"States shall undertake never to recognize situations which have been created through the threat or use of force in contravention of the Charter of the United Nations."

#### Paragraph 15 (A/AC.182/WG/48/Rev.1/Add.1) 30/

See suggestions Nos. 181 and 182 below.

#### Suggested additional paragraphs

88. Include after paragraph 15 a paragraph 15 bis reading as follows:

"None of the above principles and obligations should be interpreted to be applicable to any form of aggression falling within the scope of the Definition of Aggression as adopted by the General Assembly."

89. Add at the end of section I a new paragraph reading as follows:

"No provision of this Declaration may be interpreted as contradicting or prejudicing in any manner the purposes and principles of the Charter or the rights and duties of States under the Charter."

### Section II

#### Title

90. Delete the title.

#### Paragraph 1

91. Replace the words "make more effective and systematic use" by the words "full use".
92. French text: replace "devraient" by "doivent".

#### Paragraph 2

93. Redraft the paragraph as follows:

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30/ Ibid.



"Members of the United Nations, in furtherance of strengthening the role of the Organization in the peaceful settlement of disputes and in addition to fulfilling their obligations under the Charter should, in accordance with the provisions of Chapter VI, comply with the recommendations contained in the resolutions of the General Assembly and the Security Council."

94. Add the words "in good faith" after the word "fulfil".
95. Replace the words "comply with the recommendations contained in the resolutions of the General Assembly and Security Council" by the words: "comply with the decisions of the Security Council".
96. Delete the reference to the General Assembly and add at the end of the paragraph:

"and endeavour to implement the recommendations contained in the resolutions of the General Assembly."
97. Replace "comply with" by "respect".
98. Use the concept of due regard with respect to General Assembly resolutions.
99. Delete the words "of the United Nations".
100. Replace the words "and Security Council" by the words "on the one hand, and the Security Council on the other".
101. Eliminate the discrepancy between the French version using the word "respecter", and the English version using the words "comply with".
102. In order to bring out the distinction between decisions and recommendations of the General Assembly and the Security Council, redraft the end of the paragraph as follows:

"take suitable action to put into effect the recommendations of the General Assembly and the Security Council".

### Paragraph 3

103. Delete the words "prevention and" and add, after the word "disputes", "and in the peaceful adjustment of any situation regardless of its origin which it deems likely to impair the general welfare or friendly relations among nations".
104. Add, after the word "disputes", "which could endanger the maintenance of international peace and security".
105. Combine paragraphs 2, 3 and 4 under one heading reading:

"Member States of the United Nations should: ...".

106. French version: in suggestion No. 102 above, translate "welfare" by "bien-être".
107. Reverse the order of paragraphs 3 and 4 and combine them into a single paragraph.
108. Redraft paragraph 3 as follows:
- "Member States have a duty to strengthen the role of the General Assembly in accordance with the Charter of the United Nations in the prevention and peaceful settlement of disputes. To this end, they should ... [the rest of the paragraph without change]."
109. In the phrase "To this end they should", replace "should" by a less stringent form of words.

Subparagraph (a)

110. Insert the words "in the General Assembly" after "initiation of action".
111. Delete the end of the subparagraph from the words "including the initiation".
112. Redraft subparagraph (a) so that it should contain (i) a reaffirmation of the faith in the principles of the United Nations regarding the peaceful settlement of disputes and (ii) an appeal to Member States to comply with those principles.

Subparagraph (b)

113. Delete the end of the subparagraph from the words "and initiate action".
114. Delete the subparagraph.
115. Redraft the subparagraph as follows:

"Utilize fact-finding mechanisms set up by the General Assembly resolutions and, as the case might be, review or update them".

Subparagraph (c)

116. Delete the subparagraph.

Paragraph 4

117. Doubts were expressed on the use of the word "should".

Subparagraphs (a) and (b)

118. Combine the two subparagraphs and specify the character of the dispute which may be brought to the attention of the Security Council. The following text was suggested:

"Member States as well as non-member States may bring disputes the continuation of which is likely to endanger international peace and security to the Security Council in accordance with the provisions of the Charter."

119. Add the word "or" at the end of subparagraph (a).
120. Add the word "all" before the word "disputes" in subparagraphs (a) and (b).
121. Include in both subparagraphs a reference to Article 35 of the Charter, as follows:

"in the circumstances enunciated in Article 35".

122. In order to make it clear that subparagraphs (a) and (b) concern only those disputes referred to in the opening sentence of paragraph 4, insert the word "such" before "disputes" in both subparagraphs.

Subparagraph (a)

123. Bring into line the wording of the subparagraph with that of subparagraph 3 (a).
124. In relation to this subparagraph, replace "should" by "shall".

Subparagraph (b)

125. Redraft the first part of the subparagraph as follows:

"Bring disputes and situations to which they are not a party to the attention of the Security Council or the General Assembly ... [the rest of the subparagraph without change]".

126. Replace the words "and report to the Council" by the words "and report as appropriate".
127. Add the words: "in accordance with Article 35 of the Charter".

Subparagraph (c)

128. Bring the wording in line with that contained in point C (vi) of the "List of proposals" reproduced in the report of the Special Committee on its 1979 session. 31/

Subparagraph (d)

129. Delete the words "on an ad hoc basis".

Subparagraph (e)

130. Delete the subparagraph.

Additional subparagraph

131. Add a subparagraph (f) reading as follows:

"In exercising its powers under Chapter VII of the United Nations Charter, the Security Council is requested to take due account of General Assembly resolution 3314 (XXIX), which contains a definition of aggression."

Additional paragraph 4 bis

132. Add a paragraph 4 bis reading as follows:

"States non-members of the United Nations are requested to bring to the attention of the principal organs of the United Nations any disputes to which they are a party under the conditions provided for in Article 35, paragraph 2, of the United Nations Charter."

Subamendment

133. Add the following words: "in accordance with Article 2, paragraph 6, and Article 35 of the Charter".

Paragraph 5

(i) Suggestions based on the present draft

Opening paragraph

134. French version: replace the words "le rôle" by "l'autorité".

135. The word "strive" was felt to be strong, taking into account the principle of free choice of means for the peaceful settlement of disputes.

136. Add the words "in appropriate cases" after the words "more frequent recourse to the Court".

137. Replace the second sentence by the following: "To that end they should consider the possibility of:", with the consequential amendments in subparagraphs (a), (b), (c) and (d).

138. Redraft the opening paragraph as follows:

"Member States of the United Nations should strive to increase the effectiveness of the International Court of Justice by more frequent recourse to the Court. To this end they should: ..."

Subamendment

139. Insert the words "inter alia" before the words "by more frequent recourse".

140. Redraft the opening paragraph as follows:

"Member States of the United Nations should strive actively to enhance the role of the International Court of Justice and increase its effectiveness with a view to enabling Member States to: ..."

141. Include in the opening paragraph a mention of the Charter of the United Nations and of the Statute of the International Court of Justice.

Subparagraph (a)

142. Move the contents of the subparagraph to the opening paragraph.

143. Insert the words "the possibility of" after the word "consider".

144. Delete the word "compulsory".

145. Delete the subparagraph.

Subparagraph (b)

146. Redraft the subparagraph as follows:

"Refer to the Court as a general rule legal disputes in accordance with the Statute of the Court."

147. Doubts were expressed on the words "the continuation of which could endanger international peace and security."

Subparagraph (c)

148. Delete the subparagraph.

Subparagraph (d)

149. Replace the word "Insert" by "Consider inserting".

Suggested additions

150. Include in the paragraph a reference to the power of the Court to decide a case ex aequo et bono if the parties agree thereto.

151. Include in the paragraph a mention of the possibility of making use of chambers of the Court in accordance with Article 26 of the Statute of the Court.

152. Include in the paragraph a mention of the obligation to comply with the awards of the Court.

(ii) Suggested reformulations of the paragraph

153. Redraft the paragraph as follows:

"The attention of Members of the United Nations is drawn to the facilities offered by the International Court of Justice for the peaceful settlement of legal disputes, especially since the reform of its rules of procedure. States are reminded:

"(a) That the International Court of Justice is the principal judicial organ of the United Nations;

"(b) That the jurisdiction of the Court is based on their consent and that recognition of the jurisdiction of the International Court of Justice as compulsory is a matter of their own choice;

"(c) That they may insert in treaties, whenever they consider it possible and appropriate, clauses providing for the submission to the International Court of Justice of disputes which may arise from the interpretation or application of such treaties."

#### Subamendments

154. In the opening sentence replace "facilities" by "possibilities" and delete the word "legal".

In subparagraph (c) replace the words "they may insert" by the words "it is desirable that States should insert".

Add the following two subparagraphs:

"(d) That Member States of the United Nations are obliged to comply strictly with the decisions of the Court in disputes to which they are a party and that the Security Council may, in the event of non-observance of a decision of the Court and at the request of the party which has complied with that decision, make recommendations or decide on steps to be taken to ensure that the judgement is carried out;

"(e) That the advisory function is one of the basic functions of the Court and that it should be strengthened by appropriate measures in accordance with Article 96 of the Charter of the United Nations, with due regard for the legitimate interests of the parties concerned."

155. Replace the words "is a matter of their own choice" in subparagraph (b) by a more suitable expression.
156. Add at the end of the first sentence of the opening paragraph "which has brought some flexibility to the settlement of disputes".
157. In the last part of suggestion No. 154 delete the words: "with due regard for the legitimate interests of the parties concerned" at the end of subparagraph (e).

#### Paragraph 6

158. Redraft the second sentence of the paragraph as follows:

"To this end, the Secretary-General must take steps to acquire information and ascertain facts and may for that purpose arrange visits to any State concerned with its consent."

159. Delete the second and third sentences of the paragraph.
160. Delete the words "To this end" in the second sentence and replace, in the third sentence, the words "when appropriate" by the words "if necessary".
161. In the first sentence of the paragraph, replace the word "matter" by the word "dispute".
162. Doubts were expressed as to the suitability of the obligation to report as stated in the last sentence of the paragraph.
163. Delete the reference to Article 99.
164. Delete the paragraph.

#### Additional paragraphs

165. Include a new paragraph 6 bis reading as follows:

"In international disputes in which the Secretary-General offers his good offices in seeking a peaceful settlement, the States parties to the dispute should respond promptly. States which have accepted the good offices of the Secretary-General shall provide him with the necessary assistance to facilitate the performance of his task."

#### Subamendments

166. Redraft the above text as follows:

"States parties to an international dispute shall extend their full co-operation to the Secretary-General in the discharge of his good offices mission."

167. Redraft the above text as follows:

"The Secretary-General may with the consent of the parties concerned undertake missions of good offices. In such cases the States concerned should extend their co-operation to him in the discharge of his duties /mandate/."

168. The word "mandate" in the above text was objected to.

169. Insert at the end of section II a new paragraph as follows:

"Nothing in the above paragraphs shall be interpreted as in any way affecting the scope of the provisions of the United Nations Charter with respect to the functions and powers of United Nations organs."

## Subamendment

170. Reformulate the above text along the lines of the corresponding paragraph of the Friendly Relations Declaration reading as follows:

"Nothing in this Declaration shall be construed as prejudicing in any manner the provisions of the Charter or the rights and duties of Member States under the Charter or the rights of peoples under the Charter, taking into account the elaboration of these rights in this Declaration."

171. Amalgamate the texts in suggestions Nos. 169 and 170.

## Preamble (continued)

Fifth paragraph (A/AC.182/WG/48/Rev.1/Add.1, point 1) 32/

172. Redraft the paragraph along the lines of the third preambular paragraph of the International Convention against the Taking of Hostages, 33/ reading as follows:

"Reaffirming the principle of equal rights and self-determination of peoples as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, as well as in other relevant resolutions of the General Assembly."

173. Simplify the drafting of the paragraph by retaining only the first part of the text up to the words "in furtherance of the objectives of General Assembly resolution 1514 (XV) of 14 December 1960."

## Section I (continued)

Paragraph 13 (A/AC.182/WG/48/Rev.1/Add.1, point 2) 32/

174. Doubts were expressed as to the applicability to national liberation movements of various provisions of the draft declaration and, hence, as to the suitability of the paragraph as a whole.
175. Redraft the paragraph so as to avoid equating national liberation movements with States.
176. Replace the words "have the same rights and assume the same obligations as representatives of States" by "enjoy the same possibilities as representatives of States".

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32/ See foot-notes 26 and 27 above.

33/ General Assembly resolution 34/146, annex.



177. After the word "independence" replace the present wording by the following formulation:

"would be able to take advantage of the provisions of this Declaration without prejudice to the means at their disposal, including armed struggle".

178. After the word "United Nations" replace the present wording by the following formulation:

"would be able to take advantage of the provisions of this Declaration without prejudice to the positions dictated by the nature of their movements. They shall in any process of peaceful settlement enjoy the rights and assume the obligations that derive from this Declaration".

179. Replace "and" by "and/or" between "regional organization" and "by the United Nations".

180. Redraft the paragraph so as to make it more precise.

Paragraph 15 (A/AC.182/WG/48/Rev.1/Add.1) 32/

181. Insert a paragraph on the right of self-defence under Article 51 of the United Nations Charter.

182. Insert in an appropriate place in the draft a mention of the right of self-defence under Article 51 of the United Nations Charter.

Section III

Paragraph 1

183. Replace "principles" by "paragraphs".

184. Replace "principles" by "provisions of this Declaration".

185. Replace "in their international relations and activities" by "in settling their international disputes" or "in the peaceful settlement of their international disputes".

186. Redraft the paragraph as follows:

"Appeals to all States to comply in good faith with this Declaration in the conduct of their international relations."

187. Place the paragraph elsewhere in the draft, possibly in the preamble, with appropriate drafting changes.

Paragraphs 2 and 3

188. Delete the two paragraphs.

189. Bring into line the contents of the two paragraphs.

190. Rephrase paragraph 3 to read:

"Decides to continue the efforts aimed at codifying, and promoting the progressive development of, the principles and norms governing the peaceful settlement of disputes."

B. Text of an informal working paper prepared by the delegation of the Philippines 34/

Draft Manila Declaration on the Peaceful Settlement  
of International Disputes

Preamble

The General Assembly,

Conscious that the Charter of the United Nations embodies the principles and establishes the essential framework for the peaceful settlement of international disputes,

Recognizing the important role of the United Nations and the need to enhance its effectiveness in the peaceful settlement of international disputes and maintenance of international peace and security in accordance with the Charter of the United Nations and in conformity with the principles of justice and international law,

Deeply concerned over the continuation of conflict situations, including those arising from colonial and racist policies of apartheid, the emergence of new sources of international disputes and tension, particularly the growing tendency to use force or threat of force, including economic pressure, to intervene in the internal affairs of sovereign States, and the escalation of the arms race, which gravely endanger the independence and security of States, as well as international peace and security,

Reaffirming the principle of the Charter that all States shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice are not endangered,

Reaffirming also the principle of the Charter that all 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 manner inconsistent with the purposes of the United Nations,

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

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34/ The above working paper was prepared taking into account comments, observations and amendments of delegations after the conclusion by the Working Group of its first reading of the working paper contained in document A/AC.182/WG/48/Rev.1 and Rev.1/Add.1.

Stressing the need for all States to desist from any forcible or other action which deprives peoples under colonial and racist minority rule, including apartheid and all other forms of racial and foreign domination, of their inalienable right to self-determination, freedom and national independence and to refrain from military and repressive measures aimed at preventing the attainment of independence by all dependent peoples in accordance with the Charter and in furtherance of the objectives of General Assembly resolution 1514 (XV) of 14 December 1960, and to render assistance to the United Nations and, in accordance with the Charter, to the oppressed peoples in their legitimate struggle in order to bring about the speedy elimination of colonialism or any other form of external domination,

Bearing in mind the importance of maintaining and strengthening international peace and security and the development of friendly relations among States irrespective of their political, economic and social systems or levels of economic development,

Determined to promote international co-operation in the political field and to encourage the progressive development of international law and its codification, particularly in relation to the peaceful settlement of international disputes,

Solemnly declares:

#### I. General principles

1. All States shall act in good faith and in conformity with the purposes and principles of the Charter of the United Nations in the conduct of their international relations in order to prevent disputes or conflicts among themselves.

2. All States shall settle their international disputes exclusively by peaceful means.

3. All international disputes shall be settled on the basis of the sovereign equality of States and on the principle of free choice of means, in conformity with justice and international law.

4. In the settlement of their international disputes all States shall also observe, inter alia, the following principles: respect for each other's national independence, sovereignty and territorial integrity; non-use of force or threat of force in international relations; non-interference and non-intervention in the internal or external affairs of States; inalienable right of every people to freely choose their political, economic and social systems, in particular the right to self-determination and independence of peoples under colonial or foreign domination, including apartheid and other forms of racial discrimination, and permanent sovereignty of States over their natural resources.

5. All States shall have the duty to seek in good faith and in a spirit of co-operation an early and just settlement of their international disputes by any of the following means: negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice. In seeking such a settlement, the parties shall agree on such peaceful means as may be appropriate in the circumstances and the nature of this dispute.

6. States parties to regional arrangements or agencies shall make every effort to achieve pacific settlement of their local disputes through such regional arrangements or agencies. This does not preclude States from bringing any such dispute before a United Nations organ in accordance with the Charter.

7. In the event of failure to reach an early solution by any of the above means of settlement, the parties to a dispute shall continue to seek a peaceful solution and shall consult forthwith on mutually-agreed ways to settle the dispute peacefully.

8. States parties to an international dispute, as well as other States, shall, in accordance with the purposes and principles of the Charter, refrain from any action whatsoever which may aggravate the situation, extend the dispute, or constitute an obstacle or delay the settlement.

9. States shall support the efforts of the parties to a dispute to achieve a peaceful settlement. Such support may include an offer of good offices.

10. States shall respect the principle of international law on the exhaustion of local remedies, whenever applicable.

11. States shall consider concluding agreements on peaceful settlement of disputes which might arise among them. They shall also consider including in bilateral agreements and multilateral conventions provisions on peaceful settlement of disputes arising therefrom.

12. States which are parties to treaties establishing specialized international or regional tribunals for the purpose of settling disputes shall co-operate to ensure the full attainment of the purposes for which they were established.

13. States shall implement in good faith their agreement on the terms of settlement of their disputes. They shall also comply in good faith with the final awards of judgements of arbitral or judicial tribunals.

14. The authentic representatives of a people fighting for the exercise of their right to self-determination and independence against colonial and racist régimes, including apartheid and any other form of foreign domination, recognized by the respective regional organization and by the United Nations, shall in any process of peaceful settlement have the same rights and assume the same obligations as representatives of States under the present Declaration.

15. Neither the existence of a dispute nor the failure of a procedure of peaceful settlement of dispute shall justify the use of force or threat of force, political or economic pressure, or any other form of coercion by any of the States parties to the dispute.

16. Nothing in this Declaration shall be construed as prejudicing, in any manner, the provisions of the Charter or the rights and duties of States, or the scope of the functions and powers of United Nations organs under the Charter.

## II. Role of the United Nations

1. States shall make full use of the procedures and machinery provided for by the Charter of the United Nations, particularly the methods contained in Chapter VI concerning pacific settlement of disputes.

2. Member States, in furtherance of strengthening the role of the United Nations in the peaceful settlement of disputes and in fulfilling in good faith their obligations under the Charter shall, in accordance with the provisions of Chapter VI, comply with the recommendations of the General Assembly and of the Security Council.

3. Member States shall, in accordance with the Charter, strengthen the role of the General Assembly in the prevention and peaceful settlement of disputes as well as in the adjustment of any situation, regardless of origin, which may impair the general welfare or friendly relations among nations. To this end, they shall:

(a) Make full use of the provisions of the Charter, including the initiation of action in the General Assembly over situations or disputes, in order that the General Assembly may consider such situations or disputes before they develop into conflicts;

(b) Utilize fact-finding mechanisms set up by the General Assembly and initiate action in the General Assembly to review or to update them;

(c) Consider the establishment, if requested by the parties to a dispute, of an informal ad hoc group which would extend good offices to the parties to bring about the peaceful settlement of the dispute.

4. Member States shall support the involvement of the Security Council in any dispute or situation the continuance of which is likely to endanger international peace and security. To this end, they shall:

(a) Bring to the attention of the Security Council such dispute or situation, including what actions are being taken to settle the dispute or remedy the situation, or refer to the Security Council any such dispute or situation to which they are a party if other methods of pacific settlement fail to solve the dispute or remedy the situation;

(b) With respect to any such dispute or situation, to request the Security Council to meet on it in formal session or to request the President of the Council to conduct informal consultations with the members of the Council and report to the Council thereon;

(c) Encourage the Security Council to make wider use of the opportunity provided for by the Charter and of the information presented by the Secretary-General on the request of the Security Council in order to review periodically situations of potential threat to international peace and security, as well as to consider greater use of informal consultations for the discharge of the Council's functions under Chapter VI concerning pacific settlement of disputes;

(d) Enhance the fact-finding capacity of the Security Council in accordance with the Charter;

(e) Encourage the Security Council to consider, with the consent of the parties, the increased use of observer missions in areas of tension, dispute or conflict, as a means to promote pacific settlement.

5. Non-member States may bring to the attention of the Security Council or of the General Assembly any dispute or situation to which they are a party, in accordance with the Charter.

6. Member States of the United Nations shall strive to enhance the role of the International Court of Justice and to increase its effectiveness by more frequent recourse to the Court. To this end, they shall:

(a) Consider the possibility of accepting the compulsory jurisdiction of the International Court of Justice in accordance with Article 36 of its Statute;

(b) Refer to the Court any legal dispute the continuation of which could endanger international peace and security unless that dispute is capable of expeditious settlement by other means;

(c) Consider extending the range of cases in which an advisory opinion may be requested from the International Court of Justice;

(d) Consider including in treaties, where appropriate, clauses providing for the submission to the International Court of Justice of disputes which may arise from the interpretation or application of such treaties;

(e) Comply with the decision of the Court in any case to which they are a party. If any party to a case fails to perform the obligations incumbent upon it under a judgement rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems it necessary, make recommendations or decide upon measures to be taken to give effect to the judgement.

7. Under the provisions of Article 99 of the Charter, the Secretary-General may bring to the attention of the Security Council any dispute which in his opinion may threaten the maintenance of international peace and security. To this end, the Secretary-General may take steps to acquire information and ascertain facts and may, for this purpose, with the consent of the parties, arrange visits to the States concerned. Reports on measures thus taken should be submitted, when appropriate, to the Security Council and the General Assembly for their consideration.

8. States parties to a dispute shall respond promptly to an offer of good offices made by the Secretary-General. Parties who have accepted the offer, shall extend full co-operation to the Secretary-General in the discharge of his good offices mission.

## ANNEX

### Summary of the statements made in the Special Committee by the Foreign Ministers of the Philippines and of Nigeria

#### A. Summary of the statement made by the Minister for Foreign Affairs of the Philippines

1. At the 40th meeting of the Special Committee, General Carlos P. Romulo, Minister for Foreign Affairs of the Philippines, said, inter alia, that the United Nations, an institution unprecedented in its vision, had been designed to arrest a retrograde slide towards disaster and to lift up the hopes of mankind towards universal peace, international security and economic equity among men and nations. Yet many had come to believe that it was better to strengthen themselves and their capacity for war than to think of strengthening the United Nations, and in the present disarray and weakness of the international organization, this might appear as the wisest, if dismaying, course to follow.
2. The Special Committee provided a context in which the monumental tasks of redirecting human energies away from destruction to the noble work of building a safer, saner and happier world could be addressed in a practical and concrete way through the presentation of suggestions which, if adopted, would go far to realize the age-old dream of a united world living in peace. A viable international community had certain irreducible requirements, among which the requirement of peaceful settlement of disputes, the requirement of commonly agreed peace-keeping machinery, the requirement of fair and equitable representation in all the decision-making processes of the community and the requirement of equity and justice in the economic and political rights of the community.
3. In view of the fact that several major proposals had gone forward directly to the General Assembly at its thirty-fourth session, the Special Committee must look closely at its procedures and make sure that they took into account the wishes and thinking of the majority of Member States. Fortunately the original concept of the United Nations was still good and workable and the Charter basically remained an excellent instrument. The Special Committee thus only needed to improve what already existed. In the area of the peaceful settlement of disputes, for example, the lack of any central standing procedure in the United Nations should be remedied and the concept of a declaration, and later a treaty, on the topic was a welcome one. Regarding the maintenance of international peace and security which many Powers still did not see as a task belonging in the hands of the world Organization - an attitude leaving no alternative save the escalating arms race - a workable design for a collective world security system, as was needed to fill the gap left by the collapse of the concept of maintenance of peace by a concert of great Powers, could serve as an encouragement for States to move more confidently towards full implementation of the Charter. It seemed to be clear that unless satisfaction was found in the Special Committee for the free discussion and development of recommendations on all vital areas of United Nations effectiveness, other fora would be sought, and not necessarily providing as good an opportunity for thoughtful deliberation as existed in the Committee itself.

4. This was the time, a good time, to recommend improvements in the United Nations. The Special Committee could not suddenly change the minds of peoples or of Governments as to what was necessary and how to achieve it, but it could develop proposals which carried their own weight of conviction as to the value and usefulness of an effective world organization; it could suggest improvements and machinery which would have a major impact if implemented, and illustrate that, with more reliable mechanisms readily available, Members would be considerably less likely to turn aside from the United Nations in their efforts to achieve redress. If the Special Committee could play some small part in establishing such a trend, its efforts would not have been in vain.

B. Summary of the statement made by the Minister of State for External Affairs of Nigeria

1. At the 43rd meeting of the Special Committee, Chief Patrick Bolokor, Minister of State for External Affairs of Nigeria, said, inter alia, that the considerable increase in the African and, indeed, the third world nations' membership in the United Nations through the implementation, in particular, of Chapter XI of its Charter and General Assembly resolution 1514 (XV), would remain one of the most worthwhile achievements of the Organization. The nations in question, which saw in the United Nations the one pre-eminent vital forum for resolving international disputes and the only viable safeguard and alternative to unilateral action by the big Powers, had constantly demanded that the role of the Organization as a whole and especially that of the Security Council should be strengthened. Events had confirmed them in their belief that no single Member State or group of States, whatever its economic strength, political system or military clout, could provide a panacea for all the challenging present-day problems.

2. In view of the interdependence of the powerful and the weak, the rich and the poor, the great and the small, the institutions of the United Nations should be democratized to the degree that reflected the changed membership of the Organization: the maintenance of world peace, the promotion of justice and human rights in the world, the acceptance of a more equitable system for regulating economic relations among States had become too serious to be left in the hands of a few States and it was in this context that the big Powers should actively encourage the participation of all States in the vital decisions which affected mankind. The drafters of the Charter had had the foresight to discern that for the Charter to be relevant, it had to be adaptable to meet the challenges of the changing circumstances of succeeding generations and they had envisaged in Article 109 the holding of a review conference.

3. The acknowledgment of the incapacities of the Organization had resulted in the establishment of the Special Committee which had been entrusted with the difficult task of reviewing the institutional framework of the United Nations as presently constituted and advancing recommendations designed to enhance the effectiveness of the Organization. After offering some comments on behalf of the African Group on the working paper submitted within the Working Group by 15 delegations, a/ he recalled that Nigeria had co-sponsored the proposal, submitted to the General

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a/ See document A/AC.182/WG/46/Rev.2, reproduced in para. 136 above.



Assembly at its thirty-fourth session, to increase the membership of the Security Council from its present strength of 15 to 21, b/ and expressed the hope that this proposal which was aimed at reflecting the present membership of the United Nations and, taking account of the present-day political realities, would be fully supported by all members during the thirty-fifth session of the Assembly.

4. In conclusion, he stressed that Nigeria, like all the members of the Organization of African Unity and indeed all the countries of the third world which had to rely on international law and custom to settle their disputes peacefully and not through resort to force, saw in the United Nations a bastion for defence and the only peaceful forum for airing their manifold concerns, and were therefore committed to the strengthening of its role and effectiveness.

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b/ Document A/34/L.57.

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