

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

GENERAL ASSEMBLY

OFFICIAL RECORDS: THIRTY-FIFTH SESSION

SUPPLEMENT No. 41 (A/35/41)



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NOTE

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I. INTRODUCTION

1. At its 61st plenary meeting, on 9 November 1979, the General Assembly on the recommendation of the Sixth Committee, 1/ adopted resolution 34/13 entitled "Report of the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations", which reads as follows:

"The General Assembly,

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

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

"Recalling in particular its resolution 33/96 of 16 December 1978, in which it decided that the Special Committee should continue its work,

"Having considered the report of the Special Committee, 3/

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

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

"Expressing the hope that the drafting of a world treaty on the non-use of force in international relations will be completed as soon as possible,

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

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

1/ Official Records of the General Assembly, Thirty-fourth Session, Annexes, agenda item 116, document A/34/642.

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

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

"3. Invites the Governments which have not yet done so to communicate their comments or suggestions or to bring them up to date, in accordance with General Assembly resolution 31/9:

"4. Requests the Secretary-General to provide the Special Committee with the necessary facilities and services, including the preparation of summary records of its meetings;

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

"6. Decides to include in the provisional agenda of its thirty-fifth session the item entitled 'Report of the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations'."

2. The membership of the Special Committee as appointed by the President of the General Assembly is as follows:

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

* Argentina, Brazil and Chile replaced Cuba, Ecuador and Mexico, which were members in 1979, on the basis of rotation as agreed by the Latin American Group when the members of the Committee were appointed (A/32/500, annex III).

3. By a note verbale dated 27 March 1980 from the Permanent Representative of the United States of America to the United Nations, the Secretary-General was informed that the United States would not be participating in the forthcoming session of the Special Committee (A/AC.193/L.10).

4. The Special Committee met at United Nations Headquarters from 7 April to 2 May 1980. 4/

5. The session was opened on behalf of the Secretary-General by Mr. Erik Suy, Under-Secretary-General, the Legal Counsel, who represented the Secretary-General at the session.

4/ For the membership list of the Special Committee at its 1980 session, see document A/AC.193/INF.3 and Add.1.

6. Mr. Valentin A. Romanov, Director of the Codification Division of the Office of Legal Affairs, acted as Secretary of the Special Committee. Miss Jacqueline Dauchy, Senior Legal Officer (Codification Division, Office of Legal Affairs) acted as Deputy Secretary to the Special Committee. Mr. Lucjan Lukasik, Mr. Manuel Rama-Montaldo, Legal Officers, Mr. Sergei Shestakov and Mr. Andrew Sinjela, Associate Legal Officers (Codification Division, Office of Legal Affairs) acted as Assistant Secretaries to the Special Committee.

7. At its 32nd and 43rd meetings, on 9 and 28 April 1980, the Special Committee elected the following officers:

<u>Chairman:</u>	Mr. Gailan Mahmoud Ramiz (Iraq)
<u>Vice-Chairmen:</u>	Mr. Alejandro Bendaña Rodríguez (Nicaragua) Mr. Nabil A. Elaraby (Egypt) Mr. Dimiter Kostov (Bulgaria)
<u>Rapporteur:</u>	Mr. Eric Duchêne (Belgium)

8. At its 32nd to 34th meetings, on 9 and 10 April, the Special Committee considered the adoption of the agenda. It had before it the provisional agenda contained in document A/AC.193/L.9. Amendments were proposed in connexion with the drafting of item 5 and were submitted respectively by the United Kingdom (A/AC.193/L.11) and Uganda (A/AC.193/L.12) as was also a subamendment by Italy (A/AC.193/L.13) to the above amendment of Uganda. At its 34th meeting, the Special Committee, following an oral proposal by Morocco, adopted the following agenda:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.
5. Consideration, pursuant to paragraph 2 of General Assembly resolution 32/150, paragraph 2 of its resolution 33/96 and paragraph 2 of its resolution 34/13, of proposals and suggestions submitted by States.
6. Adoption of the report.

9. At its 34th meeting, on 10 April, the attention of the Special Committee was drawn to two requests for observer status which had been received respectively from the Permanent Representative of Mexico to the United Nations and the Permanent Representative of Viet Nam to the United Nations. The Special Committee agreed to grant those requests in accordance with the practice so far followed by it. One representative referred to the absence of the delegation of the United States of America and to the note (A/AC.193/L.10) in which the reasons for this absence were put forward. He requested that this note be included in the report, but no decision was taken.

10. At its 35th meeting, on 11 April, the Special Committee considered the organization of its work. After discussion, the Committee:

(a) Agreed in principle to both a general debate and the establishment of a Working Group;

(b) Set Monday afternoon, 14 April 1980, as the deadline for the delegations wishing to speak in the general debate to inscribe themselves on the list in order to determine when the Working Group could commence its work;

(c) Agreed also that the Working Group would start where it had left off in its consideration of the five-States document submitted at the previous session and reproduced in paragraph 129 of its report on that session. 5/

11. The Special Committee devoted its 37th to 40th meetings, held between 16 and 18 April, to a general debate in which the representatives of the following States took part: Egypt, Germany, Federal Republic of, Argentina, Mongolia, Hungary, Spain, Belgium, Morocco, Chile, Romania, Bulgaria, Benin, France, Nepal, Italy, Japan, Brazil, Senegal, India, Poland, Finland, Nicaragua, Iraq, United Kingdom of Great Britain and Northern Ireland and Union of Soviet Socialist Republics. In accordance with the decision taken by the Committee at the 34th meeting, the observer from Viet Nam made a statement with the consent of the Committee.

12. The Special Committee had before it the "Draft World Treaty on the Non-Use of Force in International Relations" introduced by the Union of Soviet Socialist Republics. 6/ The Committee also had before it comments of the Government of Niger received in accordance with General Assembly resolution 34/13 (A/AC.193/2 and Corr.1). The Committee furthermore had before it a statement made by the Chairman at the 41st meeting, circulated in accordance with a decision taken by the Committee at its 42nd meeting (A/AC.193/L.15).

13. The Working Group was chaired by the Chairman of the Special Committee, the other officers of the Special Committee also performing their respective functions in the Working Group. It held nine meetings between 21 and 28 April.

14. Since the Committee had not completed its work, it generally recognized the desirability of further consideration of the questions before it. While the majority were in favour of renewing the mandate of the Committee, some delegations took the position that the mandate should not be renewed and others considered that the mandate should be reviewed.

15. At its 46th meeting, on 2 May 1980, the Special Committee considered and approved the report of the Working Group (see sect. III below). The report of the Special Committee was adopted at the same meeting.

5/ Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 41 (A/34/41) and Corr.1).

6/ Ibid., annex.

II. GENERAL DEBATE

16. The first speaker at the 37th meeting, the representative of Egypt, stressed the great relevance and importance of the Committee's mandate to the maintenance of international peace and security and pointed out that full respect for the Charter principle of non-use of force in international relations, which he described as the corner-stone of the contemporary international legal order, was a prerequisite for the protection of mankind from the scourge of war. In view of the monumental progress of weapons of mass destruction the international community could no longer afford any gaps or loop-holes that would tolerate the use of force by any State.

17. Enhancement of the principle of non-use of force could be realized where three conditions were met:

(a) All States should strictly observe the principle of non-use of force and, as a step conducive to this end, the elaboration of binding legal instruments which would define and clarify the various dimensions of that principle deserved serious consideration;

(b) All States should abide by their Charter obligation to settle their disputes by peaceful means and should have available the required machinery to that end;

(c) The collective security system ushered in by the Charter should be revitalized and attention should focus on the measures open to the competent organs of the United Nations, including fact-finding and investigation, provisional measures and economic and military sanctions.

In this connexion, he wished to point out that important proposals aimed at improving the functioning of the United Nations machinery were under consideration in the Special Committee on the Charter of the United Nations. The approach to the Committee's mandate should therefore be comprehensive and comprise the above-mentioned three elements.

18. The joint proposal of Egypt and Mexico referred to in paragraph 150 of the report of the Committee on its 1979 session, 7/ which aimed at elaborating upon the relevant provisions of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations 8/ in conformity with the developments of the last 10 years and taking into account all the resolutions pertaining to the area of peace and security, might well be a meaningful and constructive point of departure for the Committee's work.

7/ Ibid.

8/ General Assembly resolution 2625 (XXV).

19. In the light of recent developments which not only violated but shattered the principle of non-use of force in international relations, he wished to emphasize that his country opposed all forms of the use of force in interstate conduct regardless of the identity of the perpetrator, whether from the East or from the West, whether a small country or a super-Power. As a result of the military intervention taking place in Afghanistan, all States, especially the non-aligned small countries, had felt a direct threat to their security. The violation by a super-Power of a principle which was the essence and corner-stone of the international legal order furthermore underscored glaring contradictions and underlined wide gaps in the structure of the international legal system as channelled through United Nations organs. Consequences would be disastrous unless the international community strongly affirmed that it was the responsibility of the United Nations to protect the sovereignty, territorial integrity and political independence of all States.

20. In conclusion, he appealed to all Members to contribute positively to the work of the Working Group and avoid at this stage unwarranted controversy on the form which the outcome of that work would eventually take.

21. The second speaker at the 37th meeting, the representative of the Federal Republic of Germany, recalled that his delegation had felt obliged to vote against the renewal of the Committee's mandate because it viewed as unfortunate persistent attempts to limit the discussion too soon to the drafting of a convention. It further could not ignore an additional element which had come into the picture, namely, the military intervention of the Soviet Union in Afghanistan: the violation of the Charter by the Soviet Union was particularly distressing as the State which had committed it had initiated the Special Committee and was a permanent member of the Security Council. Despite serious concerns, his delegation had decided for the time being to participate in the Committee's work because no opportunity should be missed to secure universal recognition of the principle of non-use of force. In this connexion, he wished to stress that renunciation of force was the corner-stone of his country's foreign policy.

22. All aspects of the principle of non-use of force should be thoroughly discussed: that principle was already firmly embodied in the Charter in close connexion with the principle of the peaceful settlement of disputes, the right of self-defence, the principle of non-intervention and the right of peoples to self-determination, human rights and fundamental freedoms. Dealing with it in isolation in a new instrument entailed the risk of undermining the total prohibition of the use of force. The question arose whether the continued use or threat of force in international relations was attributable to deficiencies in the relevant rules and machinery. The reply was clearly in the negative and what was required was the will of individual members to make use of the existing machinery.

23. At the previous session, his delegation had requested, jointly with four other delegations, an inquiry into the reasons for the continued violation of the principle of non-use of force. This request appeared even more justified in view of the Soviet intervention in Afghanistan. The Committee should examine first the actual motives behind the use of force between States and then discuss one by one the other issues directly connected with the non-use of force.

24. The third speaker at the 37th meeting, the representative of Argentina, stressed that no prohibition, including the principle of the non-use of force, was self-executing if it was not accompanied by the will of the States to which it was

addressed, as was shown by the history of international relations during the last 35 years. The mandate of the Committee established by General Assembly resolution 32/150 of 19 December 1977 had four aspects: (a) to examine the views expressed during the debates held on the items at the thirty-first and thirty-second sessions of the Assembly; (b) on the basis of the aforesaid examination to draft a world treaty on the non-use of force in international relations; (c) on the basis of the same above-mentioned examination to deal with the question of peaceful settlement of disputes; and (d) to formulate other recommendations relating to the non-use of force in international relations and on the peaceful settlement of disputes as the Committee deemed appropriate. That mandate had been ratified by paragraph 2 of General Assembly resolution 33/96 of 16 December 1978 and, some changes notwithstanding, by paragraph 2 of General Assembly resolution 34/13.

25. The impossibility of preventing, with the legal instruments presently in force, the intervention in the internal affairs of other States frequently leading to true breaches of the peace had made it necessary to take measures to prevent or punish the use of force in any of its forms. But a treaty of this importance purporting to implement the resolutions of the Security Council might prove too utopic for the present state of international relations and the credibility of the Organization might be eroded by drafting inoperative drafts, the implementation of which might require an appropriate international climate. Any instrument of this nature had to be achieved with the participation of the big Powers and the non-aligned group which together were three fourths of mankind.

26. General Assembly resolution 2131 (XX) of 21 December 1965, known as "Declaration on the Inadmissibility of Intervention" should be brought up to date. Together with the drafting of an instrument affirming that the non-use of force was a principle linked with the sovereign equality of States, the Committee, through its Working Group, could undertake the elaboration of a declaration on non-intervention in internal affairs. There was no legal impediment to conclude a treaty. In defence of any legal instrument which might have a bearing on Charter provisions, it should be recalled that, when discussing present article 53 of the Vienna Convention on the Law of Treaties, 9/ several countries representing different regions and legal systems had referred to Article 103 of the Charter as a norm of jus cogens. Every State should solemnly assume the obligation to seek a solution by peaceful means to its international problems, particularly through negotiation, taking specially into account that the only enduring solutions were those based on justice and equity. No conclusion arrived at in the Committee could weaken principles already recognized and accepted by the international community.

27. The fourth speaker at the 37th meeting, the representative of Mongolia, said that the solution to the issue under consideration, which was directly linked to the maintenance and strengthening of international peace and security, would considerably contribute to achieving the main aim of the United Nations, as reflected in Article 1, paragraph 1, of the Charter. Enhancing the effectiveness of this principle, which was the purpose of the inclusion of the item in the General Assembly's agenda, would surely promote the strengthening of universal peace and security, and the consolidation and deepening of the process of international détente and constitute yet another barrier to the designs of the forces of imperialism, colonialism, hegemonism and militarism.

9/ Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference, p. 287.

28. Although the principle in question represented a peremptory norm of international law, and was reflected in the Charter and other international legal documents, it was nevertheless, as evidenced by post-war history in general and recent events in South-East Asia and in the region of the Persian Gulf in particular, frequently violated by certain States. Local wars and conflicts which had caused, during the past 35 years, incalculable suffering and death to millions of people, could easily today, in view of the emergence of whole systems of nuclear weapons and other weapons of mass destruction, escalate into global nuclear war.

29. His country's keen interest in searching for ways and means of enhancing the effectiveness of this principle stemmed from the fact that certain forces which lay claims to large parts of territories of neighbouring States and sometimes to the whole of a country did not hesitate to use force, and was reinforced by the recent events in South-East Asia, where a permanent member of the Security Council had arrogated to itself the right to "teach lessons" to other peoples and countries by the use of armed force.

30. The overwhelming majority of the Members of the Organization had endorsed the idea of concluding a treaty on the non-use of force in international relations, which would define in concrete terms the obligation of States not to use force in their international relations. This idea had the support of the non-aligned countries of Asia, Africa and Latin America - as was made clear by the Sixth Conference of Heads of State or Government of Non-Aligned Countries, held at Havana 10/ - as well as of the socialist countries and some Western European States. The need and urgency of concretizing the principle of non-use of force were underscored by the recent attempts to misinterpret the principle and put into question the inherent right of peoples to determine their own fate, choose their own path of socio-economic development and form of government and to exercise their inherent right of individual or collective self-defence, recognized by international law and reflected in Article 51 of the Charter.

31. The elaboration of a treaty based on Article 2, paragraph 4, of the Charter was in accord with the United Nations practice of embodying general principles of the Charter in multilateral conventions. The argument that the proposed treaty would either merely restate a Charter obligation or, in case of divergence, de facto amend the Charter was unconvincing and hypocritical. The general principle of respect for human rights had been further developed and concretized in a number of international conventions and covenants. Furthermore, the intention, as clearly appeared from the Soviet draft, was to concretize and develop Article 2, paragraph 4, of the Charter, in strict conformity with its spirit and letter. The documents which should be taken into account in carrying out the task included the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations; the Declaration on the Strengthening of International Security, 11/ resolution 2936 (XXVII), the Definition of Aggression, 12/ the resolution on the Strict Observance of the Prohibition of the Threat to Use of Force in International Relations, 13/ the Declaration on the Granting of Independence to Colonial Countries

10/ See document A/34/542.

11/ General Assembly resolution 2734 (XXV).

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

13/ General Assembly resolution 2160 (XXI).

and Peoples, 14/ the Declaration on the Deepening and Consolidation of International Détente, 15/ and the resolution on the inadmissibility of the policy of hegemonism in international relations. 16/

32. On the so-called question of Afghanistan, he asked those who described the Soviet emergency aid to the Afghan people as an invasion where they were when a permanent member of the Security Council had committed a naked act of aggression against Viet Nam, a sovereign, independent and non-aligned country, in order to teach a bloody lesson. The people of his country, which had experienced internal oppression and intrigues of external forces, fully understood the difficulties encountered by the people of Afghanistan. Faced, after the triumph of a popular revolution, with plots by the deposed feudal lords and interference of foreign reactionary forces, his country had concluded a treaty of friendship with the Soviet Union. The Soviet assistance had enabled his country at the time to consolidate its sovereignty and the revolutionary gains. Today the friendship of the Soviet Union was a decisive factor in defending the country from encroachments of a southern neighbour whose great power ambitions and claims were well known. Since the victory of the April revolution of 1978 in Afghanistan, the forces of the internal counter-revolution and foreign reactionary forces had intensified their subversive activities, including armed incursions from a neighbouring country. Under those circumstances, the Afghan Government had requested from the Soviet Union military aid in order to defend the revolutionary gains of their people and to repel armed incursions and provocations from the outside. The request for aid and assistance was based on article 4 of the 1978 Treaty of Friendship, Good Neighbourliness and Co-operation between Afghanistan and the Soviet Union and was in strict conformity with Article 51 of the Charter.

33. As to the procedural aspects of the Committee's work, his delegation noted with regret that some States were trying to impede the work of the Committee and that one of the permanent members of the Security Council had used the last preambular paragraph of General Assembly resolution 34/13 as a pretext for not participating in the work of the Committee, although the true reasons of its attitude could easily be deduced from the recent developments in Europe and in the regions of the Persian Gulf and the Indian Ocean and from its reluctance to concretize the principle of non-use of force in international relations and assume concrete obligations not to resort to use or threat of force.

34. The note of the United States emphasized the inextricable link between the principle of the non-use of force in international relations and the principle of the peaceful settlement of disputes. But this link was clearly recognized by article 2 of the Soviet draft treaty. The note further stressed that the Committee's work was duplicated elsewhere. That was true of the part of the mandate concerning the peaceful settlement of disputes, but the part in question had been inserted at the insistence of, among others, the delegation of the United States. The claim that the insertion of the last preambular paragraph of General Assembly resolution 34/13 constituted a deliberate effort to move away irrevocably from consensus towards confrontation was puzzling, for the question was one of a few States only opposing the majority decision and not vice versa. The penultimate sentence of the note gave the false impression that the Committee was composed of two States only. This was not so for the overwhelming majority of States was interested in drafting a world treaty on the non-use of force "at the earliest possible date".

14/ General Assembly resolution 1514 (XV).

15/ General Assembly resolution 32/155.

16/ General Assembly resolution 34/103.

35. The campaign around the events in Afghanistan and the anti-Soviet propaganda were intended to divert world public opinion from the oppressive designs of imperialist forces which tried to use the prevailing situation as a pretext to continue to interfere in Afghanistan's internal affairs and to realize their aim of creating interventionist rapid deployment corps in that part of the world.

36. The fifth speaker at the 37th meeting, the representative of Hungary, said that at the thirty-fourth session of the General Assembly, his delegation had given full consent to the mandate of the Special Committee. His delegation shared the view of the majority of the States Members of the United Nations that the Special Committee should give attention, first of all, to the drafting of a treaty, which could constitute a reliable structure of world peace at a time when the accumulation of lethal weapons was posing unknown perils to mankind. At the same time, he expressed his delegation's strong opposition to any attempt at hindering the constructive work of this body or distracting its attention to the discussion of irrelevant matters.

37. As his Government has outlined on several occasions with reference to the principle of elaboration of a world treaty on the non-use of force in international relations, the draft treaty submitted by the Soviet Union constituted a sound basis for working out a generally acceptable text containing universally binding, jus cogens rules of international law on refraining from the use of force in international relations involving any types of weapons. The position of his delegation in supporting the conclusion of such a treaty remained as valid as ever. The purpose of elaborating and concluding such a treaty was to transform the principle of non-use of force into a clearly defined obligation that would enhance the responsibility of States for strict observance of that basic principle of international law and would thus increase its effectiveness. This clearly defined obligation was linked with the well-established legal principles concerning the peaceful settlement of disputes. The world treaty, developing and concretizing the obligation of States not to use force, as enshrined in the Charter, and particularly taking into account the emergence of nuclear weapons and other weapons of mass destruction, would be in keeping with the vital interests of all States regardless of the size of their territory or population, regardless of whether they were nuclear-weapon Powers or not. Furthermore, such a treaty would also engender favourable conditions for curtailing the steadily increasing arms race and for the reduction of armaments, including nuclear weapons, as well as for further progress towards general and complete disarmament. It was also important that the treaty should in no way deprive States of their inherent right to individual or collective self-defence in accordance with Article 51 of the Charter. As his delegation had consistently pointed out, another significant criterion of the world treaty was that it should observe the legitimate rights of national liberation movements.

38. Guided by these considerations, his delegation firmly believed that the time had come indeed to act in order to fulfil the challenging task given to the Special Committee by the General Assembly. His delegation expressed confidence that the working out and conclusion of an international legal instrument on the non-use of force and the strict observance thereof could effectively contribute to the process of détente - which had been experiencing difficulties due to the increased activity of the extremist circles of imperialism - promote the cause of disarmament and strengthen the legal basis of international co-operation. In this connexion, his delegation continued to maintain its position that the Special

Committee should concentrate on its task in a business-like manner and a positive spirit of co-operation, without allowing itself to be distracted into considering matters lying outside the scope of its mandate and without giving in to ill-advised attempts to interfere with its constructive work. His delegation welcomed all positive efforts and initiatives promoting the goal of the Special Committee and expressed the will of continuing the discussion of relevant issues within the framework of the open-ended working group which the Special Committee had re-established.

39. The first speaker at the 38th meeting, the representative of Spain, stated that the principle of the non-use of force, accepted and recognized by the international community, was a peremptory norm of international law in the sense of articles 53 and 64 of the Vienna Convention on the Law of Treaties. It was therefore a norm inherent in the structure of the international community which could not be ignored or modified by agreement between States and bound all States irrespective of any conventional link, as stressed by the International Court of Justice in its advisory opinion of 28 May 1951. 17/ His country believed that the principle of non-use of force could be the subject of a more precise formulation and systematization like all other principles contained in Article 2 of the Charter. But the precondition for that was a strict compliance with the principle. Recent events expressly condemned by a majority of delegations at an emergency special session of the General Assembly, had demonstrated that the test to show the positive will of States in their collective search for peace was not their attitude vis-à-vis a draft treaty on the non-use of force in international relations proposed by one delegation. States had only one way to show their goodwill in this field: abstaining from using or threatening to use force. In this respect it was not possible to resort, as apparently had been intended, to a sort of "functional division" proposing, on the one hand, a world treaty on the non-use of force and, on the other, trampling under foot the very principle under codification. The theoretical attitude of States had to be consistent with their practical attitude respecting in both cases the principle of non-use of force.

40. In the course of the events here commented upon, the attempt had been made to justify from a legal point of view the resort to the use of force, stating on some occasions that it was an "intervention by invitation", and on other occasions implying that it was a case of "necessity". However, both international legal precedents and writings unequivocally condemned the recourse to force in both cases, reaffirming the binding character of the principle contained in the Charter. The International Court of Justice in its judgement of 9 April 1949 18/ had stated that the alleged right of intervention could only be considered by the Court as a manifestation of a policy of force such as had in the past given rise to the most serious abuses and such as could not, whatever be the present defects in international organization, find a place in international law. Professor Ago, in his eighth report on State responsibility (A/CN.4/318/Add.5, p. 16) stated that in view of the compelling reasons which led to the definitive affirmation of the prohibition of the use of force, it seemed inconceivable that

17/ Reservations to the Convention on Genocide, Advisory Opinion: I.C.J. Reports 1951, p. 15.

18/ Corfu Channel case, Judgement of 9 April 1949: I.C.J. Reports 1949, p. 4 et seq., more particularly p. 35.

the legal conviction of States would today accept "necessity" as justification for a breach of that prohibition and for resort to the use of force.

41. To promote the drafting of a treaty on the non-use of force and at the same time to trample it under foot was a contradiction. His delegation believed the mandate of the Committee had to be adjusted or reinterpreted in the light of the new realities. Special attention should be devoted to the intimate relationship existing between the principle of the non-use of force, the principle of the peaceful settlement of disputes and the system of collective security. The work of the Committee should revolve around those three subjects, examining with respect to each of them, its legal constituents, its forms or manifestations and, if appropriate, the institutional means for their implementation existing within the Organization. To avoid overlapping with the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization those subjects could be examined at a much deeper and more complex level than initially envisaged in the Committee.

42. With reference to the principle of the non-use of force, the following aspects should be examined: (a) definition of certain words like force, threat of force, intervention and self-defence; (b) the forms or manifestations of the use or threat of using force, delimiting their scope and contents and reaffirming, if appropriate, their lawful or unlawful character; (c) the general principle of non-intervention; (d) the relationship between internal conflicts and the prohibition of the use of force, including cases of foreigners subjected to coercive measures by a local government and the right of the State of their nationality to intervene on their behalf, having recourse, if appropriate, to the use of force; (e) the non-recognition or nullity of situations emanating from the threat or the illegal use of force.

43. With reference to the principle of peaceful settlement of disputes, the following points could be examined: (a) principles of independence and sovereign equality of States and of the free choice of means; (b) enumeration of the means of peaceful settlement in the light of the appropriate international legal instruments; (c) the duty to abstain from all acts or measures which might aggravate international disputes; (d) the institutional proceedings of peaceful settlement of disputes contained in the Charter with reference in particular to the Security Council, the General Assembly, the International Court of Justice and regional organizations; (e) the appointment of a rapporteur or conciliator for any situation or international dispute brought to the attention of the Security Council as provided for by resolution 268 (III) of 28 April 1949.

44. With reference to the collective security system, the following points could be examined: (a) the action of the Security Council in cases of threats to the peace, breaches of the peace or acts of aggression, specially the provisional measures provided for by Article 40 and the definitive measures provided for by Articles 39, 41 and 42 of the Charter; (b) the role of the General Assembly, in those cases where the Security Council could not act due to the lack of unanimity among its permanent members; (c) the machinery set up in accordance with the Charter for the observations of the situation in those zones where there were international tensions as stated in the report of the Secretary-General of 20 October 1965; (d) the contribution of the Members of the United Nations to the maintenance of international peace and security as provided for in Articles 43 to 47 of the Charter; (e) peace-keeping operations. The above enumeration should not be considered as exhaustive but rather as tentative.

45. The second speaker at the 38th meeting, the representative of Belgium, stressed that, although the Soviet initiative had the merit of giving renewed relevance to the search for means of enhancing the principle of non-use of force, his delegation had repeatedly voiced objections to one of the approaches mentioned in the mandate of the Committee, namely, the drafting of a treaty. Notwithstanding the legal objections raised by many delegations to this approach, some representatives persisted in their belief that the drafting of a treaty was the main task of the Committee and that all that remained to be done was to negotiate its contents. Others, however, felt that this idea was a bad one. The principle of non-use of force was enshrined in paragraph 4 of Article 2. It was furthermore reaffirmed in a number of other instruments, including the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, the Definition of Aggression, the Declaration on the Strengthening of International Security and, at the regional level, the Final Act of Helsinki. ^{19/} Those instruments went beyond reaffirming the principle and dealt with broader aspects of inter-State relations. The question therefore arose of the usefulness of a treaty exclusively devoted to the principle of non-use of force, the provisions of which would necessarily be borrowed from existing documents. Not only would the proposed treaty be redundant, it would also, if identical to the Charter, create confusion and legal ambiguities in the event that not all Member States would adhere to it and, if different from the Charter, result in discrepancies which would be all too easy to exploit.

46. Furthermore, the introduction of a new element in the mandate of the Committee at the last session of the General Assembly had compelled his delegation to vote against the relevant resolution as this change could, in its view, only jeopardize further the Committee's work and the very objectives of the United Nations. In this connexion he drew attention to the penultimate paragraph of the note verbale circulated at the request of the United States (A/AC.193/L.10).

47. Turning to political considerations, he wondered whether the world was not witnessing a progressive deterioration of international relations and mentioned in this connexion the 1975 crossing of Viet Nam into Laos, the 1975 intervention of Cuba in the civil strife in Angola, the 1977 intervention of Cuba in Ethiopia and the invasion of Cambodia by Viet Nam and of Afghanistan by the USSR in 1979. All these interventions, which had allegedly taken place at the request of the Governments concerned, were undeniably uses of force. Regarding Viet Nam in particular, not all States were prepared to accept its claim that its action in relation to Laos and Cambodia were humanitarian interventions, acts of self-defence or measures to prevent a Chinese aggression. Since Viet Nam had asked to participate as an observer, it would be in a position to benefit from the debate and better appreciate the need to respect the Charter.

48. As to the invasion of Afghanistan by the Soviet Union, it was a naked act of aggression, as had been amply established in the Security Council and at the sixth emergency special session of the General Assembly. At the request of a Government which was not yet in existence, the Soviet troops had invaded Afghanistan and occupied its cities and condemned a traditionally courageous and

^{19/} Final Act of the Conference on Security and Co-operation in Europe, Cmnd. 6198 (London, H. M. Stationary Office, 1975).

independent people to the painful experience of use of force in international relations. The principle of non-use of force was less respected by the Soviet Union and the States claiming to be guided by its doctrine than by the so-called capitalist countries. If the States in question considered that the Charter was not enough, they should conclude a new treaty among themselves. His Government for its part was unwilling to be a party to a masquerade and refused to hear mentioned, a fortiori to discuss, the Soviet draft, the examination of which should be adjourned. If the Committee, which had failed to make any notable progress at its two previous sessions, was prepared to focus on the other proposals before it it might perhaps be kept alive. Otherwise its mandate could be referred to other United Nations forums.

49. The third speaker at the 38th meeting, the representative of Morocco, regretted that some delegations should remain sceptical as to the usefulness of the Special Committee and as to the timeliness of a legal instrument which would enhance the effectiveness of the principle of non-use of force, some of them even maintaining that such an instrument would be superfluous and could weaken the Charter.

50. The proposed instrument should not merely reiterate the relevant provisions of the Charter: it should develop and define in clear terms the principle under consideration, and supplement existing instruments, taking them as a guideline. In this connexion, he wished to point out that the Soviet draft was neither exclusive nor exhaustive and that the Committee had before it other working papers, which could be amended or accepted in part. Any new international instrument on the non-use of force in international relations should contain a clear denunciation of direct or indirect intervention against the political independence or territorial integrity of States. In this connexion, he referred to the Definition of Aggression which listed among acts of aggression "the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein", thus recognizing that when subversion reached certain proportions and revealed the flagrant complicity of a State, it could be qualified as an act of aggression and thus gave rise to the right to self-defence. His delegation was of the view that the draft treaty should enshrine the right of individual and collective self-defence recognized in Article 51 of the Charter. Account should also be taken of subversive attempts aimed at destabilizing countries or entire regions and bringing hegemonistic systems into power. Furthermore economic weapons such as commercial protectionism or boycotts could in the present-day world be infinitely more cruel and devastating than military activity and it was therefore necessary to include a developmental dimension in the concept of non-use of force. It was also necessary to keep in mind the close link between the question of the efficacy of the international machinery for the peaceful settlement of disputes and that of the strengthening of the principle of non-use of force. Furthermore, his country, which was committed to the peaceful means for the settlement of disputes as listed in Article 33 of the Charter, considered it necessary that the proposed treaty should place due emphasis on the range of procedures open to States in this respect under the Charter.

51. Any initiative aimed at safeguarding international peace and security could only arouse the interest of his Government, particularly in view of the

resurgence of the cold war, the arms race, the hegemonistic designs of big and small countries, flagrant intervention in the internal affairs of States and direct and indirect subversion. The legal format of the future instrument was of secondary importance; what was decisive was the political will of States to implement it in good faith. If the strengthening of the principle of non-use of force was to concretize itself in a solemn legal instrument acceptable to all nations, it should first find factual expression in the international life, in a political action resolutely and clearly oriented towards the same goal.

52. The proposed new instrument should focus on the strengthening of the general rule of the prohibition of the use of force in all its forms, the strengthening of international institutions, universal and regional, for the implementation of the rule and the strengthening of peaceful means of settlement of disputes.

53. The fourth speaker at the 38th meeting, the representative of Chile, stressed the importance of the task before the Committee. Although the international community already had numerous international instruments fully in force embodying the principle of non-use of force in international relations, such as the Charter of the United Nations, the Charter of the Organization of American States, 20/ the Pact of the League of Arab States, 21/ the Charter of the Organization of African Unity, 22/ the American Treaty of Pacific Settlement (Pact of Bogota), 23/ the Inter-American Treaty of Reciprocal Assistance (Rio Treaty), 24/ the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations and the Definition of Aggression, the international situation showed a different reality. How else could the situation in Afghanistan be described but as a use of force in international relations? That had been overwhelmingly demonstrated in the meetings of the Security Council and during the sixth emergency special session of the General Assembly. The task of the Committee was to seek the most effective way to avoid the repetition of such acts which endangered international peace. But the Committee faced a paradox, namely, that the State promoting the establishment of the Committee and the adoption of a world treaty of the non-use of force was a customary user of force in international relations. How then to believe in its good intentions or in the serious character of its proposal? The President of the Soviet Union, Mr. Brezhnev, had said on 15 January 1980: "Not to have intervened would have meant to leave Afghanistan at the mercy of imperialism and to allow the forces of aggression to repeat what they succeeded to do, for instance, in Chile." The quote was crystal clear: exactly the same thing would have happened in Chile as in Afghanistan.

54. His country therefore had doubts about the effectiveness of the Special Committee. Nevertheless, it was also true that the great majority of the international community believed in the principles of the non-use of force and

20/ United Nations, Treaty Series, vol. 119, No. 1609, p. 50.

21/ Ibid., vol. 70, No. 241, p. 248.

22/ Ibid., vol. 479, No. 6947, p. 72.

23/ Ibid., vol. 30, No. 449, p. 84.

24/ Ibid., vol. 21, No. 324, p. 93.

peaceful settlement of disputes, respected them and had the inalienable right to demand and watch over faithful compliance with them. His country was therefore in favour of any serious and responsible initiative tending to develop the principles of the United Nations enshrined in its Charter concerning the non-use of force and the peaceful settlement of disputes.

55. The fifth speaker at the 38th meeting, the representative of Romania, said that his country attached special importance to strict adherence by all States to the fundamental principles governing relations among States, particularly those of respect for independence and national sovereignty, equality of rights, non-interference in internal affairs, inadmissibility of resort to force or threat of force and the peaceful settlement of all international disputes. Those principles stemmed from certain objective requirements of the peaceful coexistence of peoples and only strict adherence to them could promote friendly relations among countries and sound international co-operation.

56. The prohibition of the use of force was undeniably a key principle of contemporary international relations not only because it was enshrined in the Charter and other important politico-legal instruments but also because genuine respect for it had become a sine qua non condition for the security and progress of all countries and for the survival of human civilization. This principle was a peremptory norm of international law, which meant that no State had the right under any circumstance to use force in order to solve a dispute, the only exception - a clearly circumscribed one - being the exercise of the right of self-defence. That the principle was transgressed was an additional reason for doing everything possible to ensure its scrupulous respect by all States without exception.

57. The mere enunciation of the principle, however important, was not enough. The tremendous changes which had taken place in the international life and which had influenced the development of certain principles of international law, as evidenced by the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, the Definition of Aggression and the Final Act of Helsinki, warranted the further elaboration of those principles, the very generality of which could lead to different or even divergent interpretations and thereby be a source of conflicts and tensions. Of course, it was not enough to concretize and develop the principle of non-use of force: the required good faith and political will to respect it also had to be present.

58. It was difficult to ignore the deterioration of the international situation which was due to the intensification of tendencies to redivide the world into spheres of influence, of the policy of force and domination and of interference in internal affairs of States, as well as to accumulation of unsolved conflicts. At a time when the primary objective of international politics was the defence of peace and of the independence of peoples and the safeguarding of détente, it was particularly necessary to ensure scrupulous respect for the independence of each country, non-interference in the affairs of States and the right of peoples to achieve and strengthen national independence and to carry out the political and social transformations which they wished. Far from shirking its responsibilities, therefore, the Committee should make every efforts towards the complete elimination of the use of force in international law and towards the solution of all disputes by peaceful means, through negotiations.

59. In this connexion, he wished to recall that his country had proposed the elaboration under the auspices of the United Nations of a general treaty on the peaceful settlement of disputes as well as of a universal code of conduct which would enunciate the fundamental rights and obligations of States. His country also supported the preparation of an international instrument on the inadmissibility of the use of threat of force and was of the view that a treaty on the non-use of force should contain a clear prohibition both of the use of armed force and of indirect forms of coercion, interference and intimidation.

60. The treaty should also provide that the principle of the non-use of force was absolute and irrevocable, and that the use of force was permissible only in the exercise of the right of individual and collective self-defence, in accordance with the provisions of the Charter; bilateral or multilateral treaties concluded by States must not, therefore, contain any departures from that principle or authorize the use of force in international relations outside the framework laid down by the Charter. The treaty should also contain the following principal elements:

(a) A clear and unequivocal definition of the obligation of States to refrain from the threat or use of force;

(b) A provision stipulating that no political, military or any other consideration could justify the use of force or the threat of force against another State;

(c) The obligation of all States to solve their disputes exclusively by peaceful means;

(d) An undertaking by all the contracting States not to resort in any case or in any circumstances to the threat or use of force, and to refrain from interfering in any way in the domestic affairs of other States; no argument or grounds could justify interference with or foreign intervention against sovereign and independent States, or the provision or armed support to groups using force against their own Government to overthrow legally constituted national bodies recognized at the international level;

(e) International non-recognition of any territorial acquisition or special advantages deriving from acts of force directed against the unity and territorial integrity of a State or from political, economic or cultural threats or pressure;

(f) A list, not exhaustive in character, of the material elements constituting the threat or use of force to be prohibited by the treaty: the occupation of alien territory by force; acts directed against the unity and territorial integrity of a State; the use of any type of weapons against the territory of a State or attacks by the armed forces of a State on the land, naval or air forces of another State; war propaganda;

(g) The right of every State to individual and collective self-defence against armed attack and the right of peoples still under colonial domination or foreign occupation to resort to armed struggle for national liberation, including the right to seek and receive support;

(h) The obligation of States possessing nuclear weapons to refrain from the threat of using them, as well as any form of force, against States not

possessing such weapons; States possessing nuclear weapons must undertake not to use those weapons against each other;

(i) The obligation for all States to continue to make efforts to adopt concrete and effective measures for disarmament, and nuclear disarmament in particular.

61. His delegation, while recognizing the close link between the principle of non-use of force and that of the peaceful settlement of disputes, felt that each principle had its own characteristics, which explained the presence in the agenda of the General Assembly of a separate item on the peaceful settlement of disputes. This item, which had been included in the agenda on his country's initiative, would be considered at the next session in accordance with resolution 34/102 which, inter alia, urged all States to co-operate in the elaboration of a declaration of the General Assembly on the topic. The question had also been considered at length during the recently held session of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization in the course of which a draft had been worked out. 25/ His delegation felt that the adoption of a declaration on the peaceful settlement of disputes could enhance the effectiveness of the prohibition of the use of force. In its view, the principle of the peaceful settlement of disputes should be codified and developed in a separate instrument containing detailed provisions concerning procedures and methods for the implementation of this general obligation.

62. The sixth speaker at the 38th meeting, the representative of Bulgaria, said that it was not the intention of his delegation to participate in a general debate, for he had presumed that there would not be any since all delegations had had ample opportunities to express their position of principle on the subject under consideration. Taking into account, however, the fact that some new members had joined the Committee, his delegation deemed it just and fair to provide them the opportunity to state their views on the question before the Committee. It was on these grounds that his delegation had given its consensus for a general exchange of views.

63. He recalled that at the thirty-fourth session of the General Assembly the overwhelming majority of delegations had expressed the opinion that the conclusion of a world treaty on the non-use of force was timely and appropriate as a substantial and extremely important effort to promote peace and security in the relations among all States. Discussion during the 1979 session had proved once again that this was a question which Member States considered to be one of overriding importance. By its resolution 34/13, the Assembly had urged the Committee to complete its task at the earliest possible date. His delegation regretted that a permanent member of the Security Council has decided not to participate in the work of the Committee, thus demonstrating its total disregard for the urgent need to carry out as soon as possible the task entrusted to it.

64. His delegation endorsed and supported the Soviet draft of a world treaty on the non-use of force in international relations. The principle of non-use of force was a corner-stone of the foreign policy of his country, which always exerted consistent efforts to promote respect for and observance of this principle.

25/ See Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 33 (A/35/33).

Regrettably, however, because of the policies pursued by the imperialist, militarist and hegemonist forces the strict observance of this fundamental principle of the Charter was still far from being implemented. That was why his delegation had always expressed the view that in this field additional guarantees should be formulated.

65. Regarding the mandate of the Committee, his delegation considered that the draft treaty submitted by the Soviet Union greatly facilitated its task and represented a solid basis for the future work. His delegation recalled that the working group had begun its consideration of the various articles of the Soviet draft. Pertinent comments had been made with regard to the merits of the proposed text as well as to the ways of improving it. At the same time, however, certain comments and observations were heard which could hardly conceal an a priori negative approach to the very idea of reaffirming this principle. The motivation behind these artificial and arbitrary objections to the idea of concluding a world treaty in this field had nothing to do with a just and equitable approach to the issue under consideration. Their logic was both strange and unacceptable to his delegation for it was based on the wrong premise that nothing could be done to ensure the effectiveness of the principle of non-use of force except by means and methods prescribed by other principles and norms of international law. While his delegation would be the last to deny the existing interrelation between the principles of contemporary international law, it would like to draw the Committee's attention to the fact that this interrelation should not be interpreted in such a way as to prohibit the enhancing of the effectiveness of one of the principles of international law by specific means and methods inherent to this particular principle. Any other interpretation would represent a serious impediment to the process of progressive development of international law and its codification and the consolidation of the very foundations of contemporary international law and of the international legal order.

66. In supporting the Soviet draft his delegation took into account the fact that it was based on the recognition of the aforementioned interrelation. It was evident that the conclusion of a world treaty would further promote the observance of the principle of non-use of force even for the simple reason that the conventional norms clarifying the respective rights and obligations of States would facilitate the process of interpretation and application of the principle in question.

67. The time had come to translate words into deeds and to begin to elaborate the text of the future document. In this respect there were several relevant ideas, proposals and suggestions expressed formally and informally by a number of delegations. The approach of the Committee should be constructive and flexible. For example, the opportunities provided by the proposal that the Working Group take as a basis for its work the relevant section of the Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations should not be ignored. Finally, his delegation considered it imperative that the Working Group of the Committee should resume its active work as soon as possible.

68. The seventh speaker at the 38th meeting, the representative of Benin, said that the initiative which the Committee had been asked to consider had been welcomed enthusiastically from the start, in both the Committee and the Working Group. Some delegations, however, had engaged in analyses that were completely

lacking in objectivity and in which false statements served as the basis for political propaganda. The fact was that the major contending forces in the world had not budged an inch from their positions, and the brunt of the accompanying demonstrations of that antagonism which had been observed from time to time in various parts of the world was borne by the developing countries. The representatives of those countries had constantly expressed their support for the suggestion to draft a legal instrument designed to ban the use of force in international relations, for it was the developing countries above all which would benefit politically from such an undertaking; indeed, although the world had escaped the scourge of a third world war, Asia, Africa and Latin America had for 30 years been the scene of a host of sectoral aggressions and acts of intervention, and it was therefore natural that the peoples of those regions who had suffered from over-exploitation by the capitalists and from racist and imperialist oppression should be particularly anxious to see the Charter strengthened in order to protect their freedom and sovereignty. His country had been the victim of aggression perpetrated by mercenaries from Europe; they had sought to overthrow the established régime and replace it by puppets, but had failed. Article 2, paragraph 4, of the Charter had not prevented the States of the northern hemisphere which had been involved in that unfortunate event from tolerating, notwithstanding the fact that they had acceded to the Charter, the recruitment and training of mercenaries whose mission was to destabilize a régime of the people. These same Powers had helped recruit mercenaries to prevent Africa from liberating itself, as could be seen from the example of Zimbabwe.

69. The countries in the southern hemisphere were the victims of shameless economic aggression; lacking technology they were over-exploited and therefore had everything to gain from a treaty that would protect them from rapacious and unscrupulous exploiters. Far from having harmful effects, as those who opposed the idea claimed in their characteristically subjective manner, the proposed instrument would help peoples to free themselves in a difficult context where the mighty imposed their law on the weak. What was at stake was nothing less than the fate of the peoples of Asia, Africa and Latin America, who accounted for 70 per cent of mankind. The defenseless peoples who sought only equality and justice were determined to combat international imperialism and all forms of racist aggression and domination, and hence to ally themselves with the forces struggling for just causes. The Soviet initiative was more timely than ever: it was probably not the last word on the issue and the proposed instrument would probably have to be amended to include, inter alia, specific provisions recognizing the right of peoples to use armed force to free themselves and their right to adopt the political and economic system of their choice, but there was no question that the reaction of the overwhelming majority of Member States was positive.

70. Concerning the events in Afghanistan, his delegation pointed out that what was involved was an anti-imperialist revolution which had threatened major interests and had thus become the target of sabotage. His country was against all foreign intervention but would not associate itself with a campaign which classified as intervention an operation whose purpose was different. Furthermore, he pointed out that no one had spoken of the aggression against Viet Nam or of the use of force against the Palestinian people; that proved that international morality was still very rudimentary.

71. The first speaker at the 39th meeting, the representative of France, explained that his delegation had voted against resolution 34/13 because, in its opinion, a world treaty on the non-use of force would be useless and dangerous. Since the principle of the non-use of force had been unanimously recognized and legally established, the only problem before the Committee was to determine the best way to promote the effective respect for that principle. The non-use of force was already a binding legal obligation for all Members of the United Nations, and any violation of that obligation, particularly by States that claimed to be in favour of making it universal, was unacceptable. He drew attention to the United States note verbale which had been distributed as document A/AC.193/L.10. His delegation also wished to reiterate its own profound concern about the crisis caused by the Soviet Union's military intervention in Afghanistan, which constituted a grave violation of the principles governing international relations, as embodied in the Charter of the United Nations. His country considered that intervention to be unacceptable. Accordingly, the Soviet Union should withdraw its troops from Afghanistan immediately, in accordance with the resolution adopted by the General Assembly on 15 January 1980 by an overwhelming majority.

72. There could be no ambiguity with regard to the broad scope and binding force of Article 2, paragraph 4, of the Charter, and nothing had thus far occurred to alter the importance of that provision. Since a binding legal instrument, without any loop-holes, already prohibited the use of force and since, moreover, that instrument - which was the most universal and the most highly respected in the legal hierarchy - established the machinery needed to ensure respect for such a prohibition, there was no need either to supplement it or to amend it, but merely to determine what action could be undertaken with a view to ensuring that States complied with it more fully.

73. Time must not be wasted in procedural squabbles that were totally futile, for it was clear that the Committee's mandate, like that of the two previous years, was to consider ways of enhancing the effectiveness of the principle of non-use of force in international relations. Four courses of action were open to the Committee: it could draft a world treaty prohibiting the use of force; it could elaborate a draft declaration or resolution on the same subject; it could analyse the reasons why the principle of non-use of force had not been respected, particularly in recent years; and, lastly, it could study the problem of the peaceful settlement of international disputes with a view to determining whether the unsuitability of existing machinery was obliging States to try to settle their disputes by force.

74. In his delegation's opinion, a new instrument prohibiting the use of force would probably not strengthen the authority or the effectiveness of the principle laid down in Article 2, paragraph 4, since it would have neither the solemn political scope of the Charter - a universal and binding instrument - nor its legal standing, under Article 103, in the hierarchy of the rules of international law. Moreover, a new instrument would probably not be ratified by all States Members of the United Nations; as a result, its scope would be limited, and confusion would be created in relations among Member States, parties to the treaty or not. Above all, any reiteration of the principle of non-use of force would have the very serious drawback of weakening the Charter. The repetition of the principle, as currently formulated, might imply that the legal scope of that provision had been diminished and might thus discredit the

Charter as a whole. As to the question of reformulating a particular principle of the Charter by adding something to it or eliminating something from it, such an exercise would constitute a departure from the method of review laid down in the Charter itself and would not have any legal effect, taking into account the provisions of Article 103.

75. Furthermore, if only one of the principles of the Charter was reiterated, without any mention of the machinery for collective security, the peaceful settlement of disputes, self-defence, and so forth, the balance established between those different elements would be destroyed; on the other hand, if all of them were reiterated, a new charter would ultimately be written, but it would not have the necessary universality or solemnity.

76. In support of its proposal, the Soviet delegation had pointed out that the provisions of the Charter could be expanded on the basis of Article 13. It was true that there were examples of conventions that expanded the provisions of the Charter, particularly in the field of human rights, but it did not appear possible to expand Article 2, paragraph 4, by means of a convention, without undermining the basic equilibrium established in that connexion by the Charter. In addition to the fact that it was linked to the principle of the peaceful settlement of disputes and to the right of self-defence, the principle of non-use of force was incorporated in the system for the maintenance of international peace established by the Charter in Articles 11 and 12 - which determined the possibilities of action by the General Assembly in such matters - and in Chapter VII - which determined the specific responsibilities of the Security Council. It would be extremely dangerous to limit the discretionary powers conferred upon the Security Council under Article 39 of the Charter and, for that reason, texts of so great an importance as the Definition of Aggression had been considered only as recommendations.

77. There were two other drawbacks in the method proposed by the Soviet Union: on the one hand, general formulations, such as that contained in the Charter, were always preferable to formulations which responded to specific concerns of the time, particularly in view of the pace at which conditions of international life were evolving; the wording of Article 2, paragraph 4, had the advantage of laying down an obligation which remained valid at all times, in all places and circumstances and for all States, in accordance with the conditions prescribed by the Charter. On the other hand, a treaty that went into the details of the principle in question would have little chance of being ratified by all States, since there would be no general agreement on the types of practical conduct to be considered as falling within or, conversely, not falling within, the prohibition of the use of force. A treaty claiming to specify the content of the obligation to refrain from the use of force that was not accepted by the world community as a whole would cast doubt on the value of generally accepted principles, such as those set out in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations and in the Definition of Aggression and also, which was even more serious, on the validity of Article 2, paragraph 4, itself.

78. His delegation did not exclude the possibility - and that was the second course open to the Committee - of seeking to persuade States to observe more fully the principle of the non-use of force by, for example, preparing a draft declaration or resolution, although it wondered how a General Assembly resolution could be more convincing for certain States than the Charter itself. For its

part, it preferred the other two approaches it had mentioned. The first consisted in trying to determine the reasons why States, in certain situations, had recourse to force. To that end, specific cases in which a dispute was settled without recourse to the use of force should be examined, as should others in which, conversely, force was used. Such an analysis would reveal the point at which the dispute evolved towards a peaceful solution or else became worse, and the reasons for either development. The second approach was that of the peaceful settlement of disputes. The principle of the peaceful settlement of international disputes, laid down in Article 2, paragraph 3, of the Charter, was the indispensable complement to the principle of the non-use of force. The experience gained before the Second World War, with The Hague Conventions of 1899 and 1907, the Covenant of the League of Nations and, more specifically its articles 12 to 15, and the Briand Kellogg Pact had shown that the existence of sophisticated machinery for the settlement of disputes was not, in itself, an adequate guarantee of the preservation of peace. In that respect, it was essential not to disregard the principle of the sovereignty of States, recognized by the Charter, and to renounce the chimerical hope of persuading States to undertake in advance to have recourse to settlement by arbitration or judicial settlement of all their disputes. Article 33 of the Charter laid down the principle of free choice of peaceful means of settlement of disputes, which was also recalled in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. Pre-established general machinery, such as the International Court of Justice, was ill-equipped for the requirements of the world today, where conflicts were, with increasing frequency, either technical or political. In the former case, preference should be given to "made-to-measure" settlements, adapted to each type of dispute, through recourse to suitable arbitrators selected for each case. In the latter type of disputes, States, being sovereign, obviously refused to submit to settlement by international judges and preferred arbitrators selected for each individual case.

79. In the light of those considerations, his delegation had submitted to the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization 26/ the following proposals:

- (1) That the Charter, in particular Article 33, should be strictly enforced;
- (2) That provision should be made for a system of compulsory settlement of disputes by means of arbitration in all bilateral and multilateral conventions;
- (3) That in cases where a State had voluntarily had recourse to a method of compulsory settlement of disputes, the decision rendered should be adhered to;
- (4) That the regional machinery provided for in Article 52 of the Charter should be more widely used;
- (5) That ad hoc, specialized methods of settlement should be developed wherever possible: in bilateral agreements on the one hand, and, on the other, where it was possible to prescribe a precise procedure;

26/ Ibid., Thirty-third Session, Supplement No. 33 (A/33/33), p. 12.

- (6) That a list of authorities which would agree to designate, when the occasion arose and for each individual case, presidents of arbitration tribunals should be drawn up, it being understood that the first arbitrators would be selected by the States parties to the dispute in question;
- (7) That a practical United Nations manual on the peaceful settlement of international disputes should be prepared.

80. Finally, measures designed to prevent the use of force must extend to the disarmament sector; on that subject his Government had submitted various proposals outlining specific ways of achieving the right to security, which all States should enjoy.

81. In conclusion, his delegation emphasized that the Committee had before it, in addition to the five-States working paper (A/AC.193/WG/R.1) 27/ and the proposal submitted at the end of the Committee's second session by the delegations of Egypt and Mexico, a suggestion made to the General Assembly by the delegation of Brazil, to the effect that the principles embodied in the Declaration on Friendly Relations should be analysed, taking their interrelationship into account (see A/C.6/34/SR.18, para. 44). The Committee should, however, begin by asking itself for what reasons the principle solemnly enshrined in Article 2, paragraph 4, of the Charter was not respected by States.

82. The second speaker at the 39th meeting, the representative of Nepal, said that his delegation regretted the absence of the United States from the Committee this year. Both non-use of force as well as the peaceful settlement of disputes had been recognized as fundamental principles of inter-state relations by the United Nations Charter, and reiterated by various General Assembly resolutions. The General Assembly expected from the Committee some concrete proposals reached by consensus which would go beyond mere reiteration of fundamental principles and become effective as well.

83. His delegation referred to the Political Declaration of the Sixth Conference of Heads of State or Government of Non-Aligned Nations which stated that "the proposed treaty should reaffirm the right of States to defend themselves and to use force for the purpose of liberating their occupied territories and the rights of peoples under alien and colonial domination to struggle for self-determination and against colonialism and apartheid" (A/34/542, p. 68).

84. His delegation regretted that in spite of the obligations of States under Article 2, paragraph 4, of the Charter there had been instances of open violation of territorial integrity of States. The recent developments in Afghanistan had been alarming. They had raised many questions regarding inter-State relations and had even brought forth the question of survival of small and weak nations in spite of the principles of non-interference enshrined in the Charter. These developments stressed still more the necessity of enhancing the effectiveness of non-use of force in international relations. The fulfilment of the mandate by the Committee was contingent on the will on the part of all its members to consent to a consensus for the attainment of the common objective. Any conclusion made by the Committee had to be comprehensive enough to enjoy the support of all. His delegation supported the establishment of a Working Group.

27/ Ibid., Thirty-fourth Session, Supplement No. 41 (A/34/41 and Corr.1), para. 129.

85. The third speaker at the 39th meeting, the representative of Italy, stated that from the outset his delegation had tried to prevent the Committee from proceeding to draft a treaty without even examining the question of whether indeed that was the best way to induce States to observe the principle of the non-use of force. Therefore, it had decided to co-sponsor the working paper reproduced in the Special Committee's last report 28/ which intended to draw the attention of the members of the Committee to the need to examine first the factors which, throughout the 35-year history of the United Nations, had prompted so many States to resort to force; and following that, to consider point by point and alternatively the main issues regarding the non-use of force and the peaceful settlement of disputes.

86. Some extremely serious developments had taken place on the international scene which showed how illusory it would be to believe that a treaty of the kind proposed by the Soviet Union could succeed in discouraging States from resorting to force. Indeed, the very proponent of the treaty had itself resorted to force, and in its more serious form: that of an armed intervention into the territory of a non-aligned country. By such action, the Soviet Union had severely compromised the credibility of its proposals in the Committee. Moreover, it had seriously undermined the trust that lay at the basis of the policy of *détente*, a concept which was indivisible and global and therefore required particular restraint on the part of those countries bearing a special responsibility for the maintenance of international peace and security. He then quoted from the common statement of the nine members of the European Community at the sixth emergency special session of the General Assembly as follows:

"... What in fact is at stake here is not only the independence and territorial integrity of Afghanistan, but the very principles on which the international community has attempted for years to build a system of international relations based on the equality of States large and small and on respect for the rule of law. Should political expediency prevail and the armed invasion of a small country by a great Power be condoned or tolerated, there would be a great risk that the rule of law would be progressively eroded and replaced by the rule of force." 29/

87. In view of the circumstances, the task of the Committee had become a most delicate and important one this year. The precise duty of the Committee was first of all to appeal to all States to abide strictly by the principles of non-use of force and peaceful settlement of disputes, inviting those countries which had violated them to fulfil the conditions for the re-establishment of the rule of law and of the atmosphere of trust upon which international peace, security and stability were founded.

88. Although not, in principle, against the idea that the United Nations Charter might be adapted in those instances in which its provisions had clearly proven to be outdated, the basic principles of the Charter should be kept untouched and this was a case in which the Special Committee should be warned against the danger of potentially harmful changes. There was also a great deal of risk involved in any attempt to single out any of the principles of the United Nations system listed in Article 2 of the Charter, since they were all interdependent. His delegation favoured a comprehensive approach, including consideration of the question of enhancement of the principle of non-intervention and non-interference in the internal affairs of other nations.

28/ Ibid.

29/ Ibid., Sixth Emergency Special Session, Plenary Meetings, 2nd plenary meeting, pp. 13-15.

89. The concern of the non-aligned countries and their aim to seek additional legal guarantees for their security and stability under the present circumstances could best be achieved not by the adoption of a new treaty reiterating the existing obligations, but rather by emphasizing the necessity to implement, to the fullest extent, the provisions of Chapter VII of the Charter, and by developing the system for the peaceful settlement of disputes outlined in Chapter VI.

90. The question also arose of how to avoid duplication of the work being done in these fields elsewhere. The Committee should carefully redefine its mandate and its method of work. Since there were many issues being examined in other forums which were directly related to the non-use of force - namely, in the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization - it could be useful to observe a pause in the session and await the results of such work in order to obtain new ideas and solutions which would be of help in a comprehensive consideration of the problem of non-use of force.

91. The fourth speaker of the 39th meeting, the representative of Japan, recalled that because of the insertion of a new paragraph in resolution 34/13, 14 delegations, including his own, had been obliged to vote against the resolution. The new element introduced into the preamble had upset the delicate balance of operative paragraph 2. Furthermore, a new factor had been added to the whole question of non-use of force in international relations, namely, the fact that a clear violation had been committed against the principle of non-use of force by the very proponent of a world treaty on that principle and that no international solution had yet been found. There was a real need to conduct an over-all review of the question, including the necessity and usefulness of continuing the Committee's work itself, in order to define freshly the issues.

92. His delegation thought that the draft treaty as proposed by the Soviet Union - in terms of its contents as well as its legal effects - should be examined with utmost care. Effective implementation of the non-use of force could not be attained by mere repetition of that principle in international treaties, but rather by adopting concrete disarmament measures, thus fostering a relationship of mutual trust among nations. Furthermore, the Charter of the United Nations already provided for the non-use of force in international disputes, and this was legally binding upon all Member States. One might ask what would be the usefulness of concluding a treaty repeating the commitments as to the non-use of force already contained in the Charter of the United Nations. On the other hand, if the proposed treaty should provide for rights and duties different from those contained in the Charter, there was the risk that it would lead to the weakening of the obligation regarding the non-use of force as already contained in the Charter. Furthermore, if all Member States were not to become parties to the proposed treaty, a complex legal problem would arise from any discrepancy in the legal obligations fixed by the Charter and the proposed treaty.

93. Furthermore, the international community had in recent months witnessed the military intervention and occupation of a neighbouring non-aligned, Islamic State by the very proponent of the world treaty in question. The military action of the Soviet Union against Afghanistan constituted a flagrant violation of, and challenge to, the fundamental principles of international law embodied in the Charter providing for the non-use of force, the peaceful settlement of disputes, non-intervention in domestic matters, and the territorial integrity of States. Strong condemnation of this Soviet military intervention had been clearly

demonstrated by the international community through the adoption, by an overwhelming majority of 104 affirmative votes, of the resolution on this question at the sixth emergency special session of the General Assembly earlier in the year. It was patently self-contradictory for the proponent of a treaty on the non-use of force to resort to measures which undermined the very principle of the non-use of force.

94. His delegation also had grave doubts as to the wisdom of drafting a treaty on the principle of non-use of force, as this would isolate that principle from related principles and functions of the United Nations, such as the peaceful settlement of disputes and non-intervention in the domestic matters of States. Indeed, the prohibition of the use of force and the peaceful settlement of disputes were closely interrelated, and were stipulated in the Charter as inseparable principles. In this respect, his delegation attached particularly great importance to the fact-finding functions of the General Assembly, the Security Council as well as the Secretary-General and had put forward concrete proposals relating to this matter at the recent Manila session of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization. 30/

95. The study of the topic of peaceful settlement of disputes and the related strengthening of the role of the United Nations was in conformity with the mandate to draft recommendations conferred on the Committee by General Assembly resolutions 32/150, 33/96 and 34/13. His delegation considered that it was this aspect of the mandate on which the Committee should focus at this session. It welcomed the decision of the Committee to take up the working paper which had been tabled by five European Members at the last session, and whose main emphasis was on the question of the peaceful settlement of disputes. The working paper appeared to constitute a useful basis for discussion.

96. The fifth speaker at the 39th meeting, the representative of Brazil, stated that as far back as when the initiative had first been brought to the attention of the General Assembly his delegation had voiced its doubts as to the necessity of drafting an instrument for enhancing the effectiveness of the principle of non-use of force in international relations. He maintained that it would be unwise to embark upon the drafting of a world treaty before making a thorough analysis of the existing international instruments that enshrined the principle of the non-use of force. Such an analysis should be completed after a wide exchange of views on the causes of the actual or threatened use of force and violence. He also felt that an endeavour should be made to find out what was lacking to transform Article 2, paragraph 4, of the Charter into a reality in the relations among States. He suggested that the Special Committee should apply itself to finding out whether the principles and methods set forth in the Charter could usefully be supplemented and how.

97. That task should be undertaken if the General Assembly decided to renew the Committee's mandate. It might be useful to consider the interrelationship among the various principles embodied in the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, as adopted by the General Assembly in resolution 2625 (XXV). The Secretariat could prepare a comparative paper which would take into consideration the existing instruments that enshrined principles

30/ Ibid., Thirty-fifth Session, Supplement No. 33 (A/35/33), paras. 61-75.

on the subject. This paper could then be utilized by the Working Group when examining new proposals, including the draft treaty prepared by the Soviet Union.

98. The sixth speaker at the 39th meeting, the representative of Senegal, pointed out that violations of the principle of non-use of force were becoming more and more frequent and that the non-aligned countries, which were the primary victims of acts of aggression, military occupation and great-Power rivalry for world hegemony, had not failed to welcome the Soviet initiative concerning the preparation of a treaty on the non-use of force in international relations. His country had supported the idea of such a treaty in principle, and had spelled out what elements such a treaty should contain in order to fill the serious gaps in the Soviet draft.

99. The Committee's approach should be open and non-exclusive, all proposals being taken into account. While all delegations were in agreement on the need to strengthen the principle of the non-use of force, there were differing viewpoints concerning how to achieve that goal. Accordingly, all possible alternatives must be considered in good faith and in a constructive spirit. Although the discussions had not borne any fruit so far in spite of the importance and urgency of the issue, his delegation remained hopeful that the Committee would be able to find a way out of the deadlock. The proposal submitted by the representatives of Egypt and Mexico deserved consideration. His delegation also felt that the proposal to draft a treaty on the non-use of force was a positive contribution to efforts to rid the world of war.

100. However, nothing could come of the proposal unless nations' words - particularly those of the great Powers - were in harmony with their deeds. In fact, so long as the Powers that were strongest militarily continued their policy of expansion of their spheres of influence, armed intervention, aggression and occupation of the territories of the small States, the idea of a treaty on the non-use of force would lack credibility. Recent events in Afghanistan had disturbed most of the non-aligned countries, for they were a flagrant example of disregard for the rights of peoples to freely choose their political, economic and social system. His delegation believed that the withdrawal of Soviet troops from Afghanistan, as requested by the General Assembly, would be a concrete contribution to enhancing the effectiveness of the principle of the non-use of force. It reaffirmed its opposition to all intervention of any kind that was designed to deprive the peoples of their right to self-determination.

101. The seventh speaker at the 39th meeting, the representative of India, said that his country continued to play a positive and constructive role in the promotion of world peace and strengthening of international security. His country attached great importance to the principle of non-use of force in international relations, in which it saw another expression of non-violence. For this reason his delegation supported the Soviet initiative aimed at enhancing the effectiveness of the principle of non-use of force. His delegation recalled an appeal of non-aligned countries to all States to refrain from the use of force in international relations, in order to create a climate favourable to world peace and security. Those countries welcomed the creation of the Committee for negotiating a draft treaty and expressed the hope that its work would be successfully concluded in the shortest possible time.

102. The principle of non-use of force in international relations was a well-established and universally recognized principle of international law. It had already become a peremptory norm of international law and had been reaffirmed in

many international instruments adopted by the United Nations as well as other international bodies: the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, the Declaration on the Strengthening of International Security, adopted on 16 December 1970, and resolution 3314 (XXIX) containing the Definition of Aggression, as well as resolution 2936 (XXVII) on non-use of force in international relations and permanent prohibition of the use of nuclear weapons. In spite, however, of the status of that principle in international law, States had repeatedly resorted to force in violation of it. The use of force in international relations resulted in fear which in turn led to arms race, particularly the nuclear-arms race. In his delegation's opinion, it was in this over-all perspective that an initiative for enhancing the effectiveness of the principle should be viewed. The objective of the work of the Committee was not only to reaffirm and reiterate the principle of non-use of force but also to ensure its universal and effective application.

103. There were three main proposals before the Committee: a draft world treaty submitted by the Soviet Union, a working paper submitted by five Western States, and a proposal submitted by Egypt and Mexico. His delegation supported the establishment of the Working Group which would discuss those proposals.

104. Referring specifically to the draft treaty, his delegation held the view that the concept of force should not be limited to military force, it should include all types of force, coercion and pressures, whether of a political or economic nature. It should contain an express provision to the effect that no territorial acquisition resulting from the threat or use of force should be recognized as legal, and prohibit the use of nuclear and thermonuclear weapons. The treaty should also expressly recognize as lawful the use of force by peoples struggling against colonialism, alien domination, foreign occupation, racial discrimination and apartheid.

105. Turning to the 5-State proposal, he noted that its main emphasis was on the peaceful settlement of disputes. His delegation wished to refer to recent developments in this respect. Firstly, the General Assembly had adopted resolution 34/102 on settlement by peaceful means of disputes between states, and invited Member States to express their opinions, suggestions and proposals regarding the elaboration of a declaration on the peaceful settlement of disputes between States. The Assembly had further decided to include an item entitled "Peaceful settlement of disputes between States" in the provisional agenda of its thirty-fifth session. Secondly, the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization at its last session had prepared a Draft Declaration on the Peaceful Settlement of Disputes. 31/ In the light of the above developments, his delegation was of the view that the Committee, in order to avoid duplication of efforts, should defer its consideration of the 5-State proposal relating to peaceful settlement of disputes until the final outcome of the work of the above-mentioned Committee and the First Committee was known.

106. In respect of the proposal of Egypt and Mexico, his delegation believed that it deserved serious consideration by the Committee. However, it felt that in addition to the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, elements and provisions contained in other documents and instruments, such

31/ Ibid., sect. II.B.

as the Soviet draft treaty, the General Assembly resolutions containing the Definition of Aggression, the Declaration on the Strengthening of International Security and resolutions on non-intervention in internal affairs of States should form the basis for consideration by the Special Committee.

107. The eighth speaker at the 39th meeting, the representative of Poland, said that through drafting and concluding a world treaty on the non-use of force in international relations, a further milestone could be achieved both in the process of building a peaceful structure of world relations and in the progressive development of international law.

108. The Committee's mandate was to strengthen the very basic principle upon which international relations had been based. Since discussion in the Committee demonstrated an overwhelming majority in favour of the treaty, it should, first of all, concentrate its work on drafting a world treaty on the non-use of force in international relations. The Committee could not and should not be a forum for deliberations irrelevant to the subject-matters before it. Discussion of issues or subject-matters not related to the mandate, in the opinion of his delegation, was contrary to resolution 34/13 and aimed at obstructing the work of the Committee. His delegation considered that the Committee should promptly proceed with the concrete, working discussion, including consideration of individual articles in the draft, since the overwhelming majority favoured the elaboration of the treaty as embodied in the draft submitted by the Soviet Union.

109. The events and, in particular, many armed conflicts which had taken place since the adoption of the United Nations Charter showed and proved that it was necessary and essential to strengthen the principle of refraining from threat or use of force set forth in Article 2, paragraph 4, of the Charter. There was no contradiction between the proposed treaty and the principle set forth in that provision of the Charter; quite to the contrary. The development in an international treaty of a legal norm, which of necessity had been presented in a very short and laconic form in such a basic document as the Charter, would be in full conformity with the principles of codification and progressive development of international law. It was natural for legal norms to originate as a part of customary law, then to find a place in resolutions or declarations and later to become the subject of bilateral agreements, and ultimately to take the highest form of international obligation through the conclusion of a multilateral treaty. The conclusion of a treaty based on the draft submitted by the Soviet Union would be in full conformity with the Charter and many resolutions of the United Nations, as well as with contemporary international law. It would strengthen the Charter and the authority of the United Nations. The codification and progressive development of the principle set forth in Article 2, paragraph 4, of the Charter would confirm and strengthen that provision of international law as well as lay down the legal conditions necessary for its strict application. Furthermore the proposed instrument would reaffirm the right of States to individual or collective self-defence laid down in Article 51 of the Charter as well as the inalienable right of peoples under colonial and racist régimes or other forms of domination to struggle for their freedom and independence.

110. Being situated in Europe, his country had always been actively involved in putting forth the initiatives that served the consolidation of peace and the strengthening of international security. Therefore, it attached great importance to article IV of the draft treaty, the main purpose of which was to diminish the threat of a world war and to create favourable conditions for progress in

disarmament. Concrete proposals and initiatives taken at the international level by his country were in full compliance with the noble principle and ideas contained in the said draft article of the Soviet Union's proposed treaty.

111. In February 1980 the United Worker's Party of his country adopted a resolution calling for the preservation of peace, the halting of the arms race and the continuation of the policy of détente. That resolution, which was circulated as an official document of the General Assembly (A/35/116), emphasized that, in a time so decisive for the further development of the entire international situation, it was more necessary than ever to have the joint co-operative action of all the forces of peace and realism to protect what détente had achieved so far, to continue it, and to make it irreversible. International developments confirmed the fundamental view of States Parties to the Warsaw Treaty as to the necessity of consolidating security and strengthening political détente by way of military détente. The resolution emphasized that the speediest possible convening of a conference on military détente and disarmament in Europe would be of particular importance today. Agreement to that effect might become a turning-point in the international situation. It would constitute a stimulus to give an impetus to the ongoing negotiations and to create favourable premises to solve disarmament problems in Europe. Poland was ready to host such a conference in its capital. The convening of the conference on military détente and disarmament in Europe would constitute an important way of improving the general international climate. It would foster decisions to halt the arms race on the European continent and would also have a positive influence on the entire international security. The importance of such an initiative went beyond the regional framework. He noted with great satisfaction that this initiative had met with the support of many countries which shared the concern of his country for the consolidation of peace and the strengthening of the process of détente that had proved so beneficial to all peoples in the world.

112. The ninth speaker at the 39th meeting, the representative of Finland, said that his country, which pursued a policy of neutrality and relied primarily on political means for its security, had a fundamental interest in the creation of a more rational and peaceful world order excluding the threat or use of force as a means of national policy of any country, and had consistently supported all international efforts to eliminate the threat or use of force in international relations and to promote the peaceful settlement of disputes in accordance with the Charter.

113. Steps towards a more peaceful world order should go beyond the prevention of conflicts and aim at the elimination of the underlying causes of such conflicts. The further development and strengthening of the mechanism of peaceful settlement of disputes was one of the major means for this purpose. In this spirit his delegation had welcomed the initiative for an international instrument on the prohibition of the use of force which could provide a renewed commitment by States to the principle of non-use of force in international relations in accordance with the Charter.

114. Recent events had again amply demonstrated the need to do everything possible to strengthen the respect for the principle of non-use of force and its application in practice. In this regard, he recalled that the Nordic Foreign Ministers, on 28 March 1980, had expressed deep concern at the recent international developments, emphasized how important it was for the international situation as a whole to reach a solution in Afghanistan comprising an early withdrawal of the foreign forces and underlined that the dialogue between the leading great Powers must continue.

115. The task embodied in the mandate of the Committee was both urgent and complex: the problem was not only to agree on how the prohibition of the use of force in accordance with the Charter should be formulated but also to come to an agreement on the most effective way possible to guarantee respect for the principle of non-use of force by all in any situation involving an international dispute. Therefore, the Committee should also consider, in accordance with its mandate, ways and means to enhance the peaceful settlement of disputes, taking into account the work done elsewhere both within and outside the United Nations.

116. The first speaker at the 40th meeting, the representative of Nicaragua, stated that in his view the principle of the non-use of force was inseparable from the principle of self-determination of peoples, a principle for which the people of his country had shed its blood and, which as a member of the Non-Aligned Group, it was ready to defend until its last consequences.

117. Reality indicated that the use of force in international relations had been historically undertaken against peoples fighting to shape their own destiny, to achieve independence from tyranny and poverty and against imperialism. The progress of peoples and international peace were being hindered by the increasing resistance of the forces of imperialism, colonialism, racism, including zionism, expansionism, hegemony and all forces which intended to perpetuate the relations of inequality and all privileges acquired by force. The Committee had to take into account all those aggressive manifestations which had neither moral nor legal justification. But there were also other more discreet but not less destructive uses of force which the Committee had to examine, namely, policies of pressure, threats of use of force, indirect aggression, illegal economic blockades, destabilization attempts and, in general, increasingly utilized methods of open or concealed intervention in the internal affairs of States, thus threatening their independence, particularly in the case of non-aligned and developing countries.

118. The previous work of the Committee was not very encouraging. Although the Committee's mandate was clear, its work seemed to be at a standstill. The Committee's mandate was to elaborate a draft treaty purporting to obtain universal acceptance and containing political and legal guarantees for the strengthening of peace. The present international situation, rather than serve as an excuse to question the goal and the very existence of the Committee, as some delegations had done, made it more necessary than ever to draft a treaty on the non-use of force. Small countries, which constituted the great majority of countries of the world, were vulnerable to the threats of the use of force and, consequently, in need of a world instrument as a legal weapon.

119. The proposed treaty should safeguard the right of States to defend themselves and to have recourse to force to liberate their occupied territories as well as the right of peoples under foreign and colonial domination to fight for their self-determination, against colonialism and apartheid. No block politics should be introduced into the work of the Special Committee. The only way to comply with the mandate defined by the General Assembly in the shortest possible time was to start from the principle of peaceful coexistence as a keystone of international relations.

120. The second speaker at the 40th meeting, the representative of Iraq, stated that the integrated nature of the present day world economic system, together with the existence of nuclear weapons of mass destruction could make the outbreak of hostilities between States result either in a world-wide economic dislocation or

the annihilation of mankind as a whole. He pointed out that no State could afford to remain indifferent to the question of the use of force, and referred to the suffering caused to the people of the third world through the years, including the African and Arab people, as a consequence of the unfettered use of force by imperialist powers, by means of direct colonial rule or economic exploitation or intervention. He stressed that the people of Palestine were still victims of Zionist, racialist occupation and were denied the right to self-determination and statehood. The foreign policy of his country was non-alignment, which was based on the respect of the sovereignty, territorial integrity and non-interference in the domestic affairs of other States and the right of States not to join military blocks. It was in the light of this policy that his country condemned the foreign intervention in Afghanistan as a grievous phenomenon, and an erroneous and unjustifiable act, arousing anxiety and resentment among all peoples attached to freedom and independence.

121. He then referred to the "National Charter" proposed by his country and circulated as a document of the General Assembly (A/35/J10, annex) which was aimed at the lessening of tension in the area. He summarized the "National Charter" as follows:

- (1) Rejection of the presence of foreign military forces and bases in the Arab Homeland or facilitating their presence in any formula or under any pretext or cover;
- (2) The undertaking by all Arab States never to resort to force to settle their disputes and to have such disputes settled by peaceful means;
- (3) The principle mentioned in the second paragraph above applies not only to the Arab countries, but extends, reciprocally, to all neighbouring countries.

122. He believed that the correct and objective approach to the work of the Special Committee should be conducted as follows:

- (1) To determine first the substantive elements which could in fact and law enhance the effectiveness of the principle of non-use of force in international relations;
- (2) To determine the legal instrument that was best suited to contain these substantive elements. Moreover he said that in so far as his delegation was concerned, this would have to be a treaty.

123. The third speaker at the 40th meeting, the representative of the United Kingdom of Great Britain and Northern Ireland, said that the item which had given rise to the creation of the Committee had been introduced into the General Assembly in 1976, under the portentous title "Conclusion of a World Treaty on the Non-Use of Force in International Relations". It responded to no generally perceived need to review the law concerning the non-use of force and had perhaps been conceived as a means of persuading people that its authors were somehow more in favour of non-use of force than others. It had not been supported at any stage by his country's delegation, which had voted against resolution 34/13. It had begun life as a controversial item and had remained so ever since. Since it had not been managed in a way designed to achieve consensus, the serious question arose whether meaningful results could be achieved - or even expected - in such circumstances.

His delegation had explained the reasons, both legal and political, for its opposition to the idea of a treaty on the subject and its view remained unchanged. It was opposed to the very idea of a treaty and felt that what was needed was to reaffirm the existing law and to enhance respect for the Charter - since there was evidence of its violation.

124. Recent actions by the Soviet Union had demonstrated that the fair words of the Soviet delegation in the General Assembly about enhancing the principle of the non-use of force by concluding some new treaty were of little real significance. Their words should not be drowned in the call of 104 voices, as recorded in resolution 2 (ES-VI) of January 1980 adopted by the General Assembly at its sixth emergency special session, for the withdrawal of foreign forces from Afghanistan. The call in that resolution, as well as subsequent calls by the Islamic countries meeting in Islamabad at the end of January, remained unanswered, and it was clear that no work should be done on the treaty submitted to the Committee by the Soviet delegation. It was being claimed that Soviet troops were not invading Afghanistan but were being sent in response to an invitation made by the Government of that country. The true position about this so-called invitation had already been made clear by numerous speakers, both in the Security Council and in the General Assembly.

125. With respect to the so-called "April revolution" in Afghanistan, the argument seemed to be that since a Communist régime had come to power in April 1978, there had been some qualitative change in Afghanistan's relations with the Soviet Union. In this connexion, he quoted from Tunkin's Theory of International Law as follows:

"The principles of proletarian internationalism and other socialist norms arising in relations between countries of the socialist camp are international legal principles and norms of a new, higher type of international law - a socialist international law, the basis of which is being formed in relations among states of the socialist system and which is coming to replace contemporary general international law." 32/

He also quoted another extract as follows:

"The Soviet State, as the 'oldest' socialist State whose historic fate has been the most difficult task of paving the way for a new socio-economic formation, always precisely fulfills its duties arising from the principles of socialist internationalism. A vivid manifestation of this policy is the assistance of the Soviet Union to the Hungarian people in 1956 and the assistance, together with other socialist countries, to the people of Czechoslovakia in 1968 in protecting socialist gains and, ultimately, in defending their sovereignty and independence from sudden swoops of imperialism ..." 33/

One wondered whether the Soviet Union might not be still trying to claim that there existed an exception from the fundamental principles of contemporary law and the Charter; that general international law on the non-use of force and non-intervention gave way as between communist countries and did not apply; even, that the Charter

32/ G. I. Tunkin, Theory of International Law, trans., with an Introduction, by William E. Butler (Cambridge, Massachusetts: Harvard University Press, 1974), p. 444.

33/ Ibid., pp. 435-436.

principles did not apply. The concept of peaceful coexistence contained the idea. But such a doctrine was not accepted in the Helsinki Final Act and was contrary to the Charter.

126. In document A/AC.193/L.10, the United States had explained its decision to withdraw from the Committee's work. This represented a significant development which the Committee could not ignore. The absence of two permanent members of the Security Council and the decision of the United States to withdraw, for reasons with which his delegation was in full sympathy, clearly faced the Committee with the question of whether it could ever hope to achieve anything useful, particularly given its origins and the terms of its present mandate in paragraph 2 of General Assembly resolution 34/13.

127. After pointing out that the title of the item as originally proposed had been changed, he recalled that his delegation, in view of its commitment to the upholding and furthering of the principle of non-use of force had, together with others, submitted a working paper (A/AC.193/WG/R.1) on the peaceful settlement of disputes and the non-use of force. As regards the suggestion of Egypt and Mexico, he recalled that the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations embraced seven interrelated principles and that this interrelationship could not be ignored.

128. The important thing at the present time was to reaffirm the validity of the existing law based on the Charter and to call upon all Member States fully and faithfully to fulfill their obligations. It was in that way that the Committee could best enhance the effectiveness of the principle of non-use of force in international relations. His delegation was of the view that the Committee's mandate should not be renewed, at least in its present form. There must be a question over the Committee's future when nothing had been produced, when nothing had been achieved, when confrontation not consensus was sought by its proponent and when interest in participation was declining.

129. The fourth speaker at the 40th meeting, the representative of the Union of Soviet Socialist Republics, said that his country attached great importance to the work of the Special Committee. His Government believed that the speedy elaboration, on the basis of the United Nations Charter, of the draft world treaty, and its conclusion, would be an effective political and international legal guarantee of the strengthening of international peace and security and safeguard the world from the threat of a world-wide thermo-nuclear disaster. This view had been shared also by other States.

130. The overwhelming majority of States Members of the United Nations were in favour of the elaboration and conclusion of such a treaty. Evidence of this was to be found in the adoption by the General Assembly of resolution 34/13, which clearly defined the mandate of the Committee. It called for the preparation of a world treaty on the non-use of force in international relations and expressed the hope that the drafting of the treaty would be completed as soon as possible. This understanding of the task of the Special Committee was a reflection of historical realities. On the one hand, the peoples of the world wanted to live in conditions of good neighbourliness and co-operation on the basis of respect for each other's sovereignty and interests. They demanded the application of such a policy by their Governments. On the other hand, world developments had been proceeding on different lines, particularly in recent times, when the international situation

as a result of provocative acts by the forces of imperialism and hegemonism had become strained. This quite clearly showed that the conclusion of a world treaty on the non-use of force had become a task that could no longer be delayed. It would give States a greater responsibility for the stricter observance of this principle and thereby enhance its effectiveness.

131. The Soviet draft had been recognized by many delegations to constitute a suitable basis for the elaboration of a generally acceptable document. His delegation was, of course, ready to give favourable consideration to any proposals for the inclusion in the draft of any additional wording that was not incompatible with the provisions of the United Nations Charter. During the general debate and the paragraph-by-paragraph discussion of the draft world treaty, many delegations had put forward some extremely interesting proposals and remarks, which could be considered by the Working Group. The next step was to agree as soon as possible on specific elements of the principle of the non-use of force. The Working Group could, in his delegation's opinion, begin to prepare a working paper on the basis of the proposals and views to be submitted by various States Members of the United Nations.

132. The Committee was thus faced with important tasks, and the sooner it set about the actual business of accomplishing them, the better it would be for the cause of peace and international security. Unfortunately, some delegations were attempting to turn the Special Committee away from the preparation of a treaty. This was a deliberate attempt to divert the attention of the Special Committee from fulfilling the tasks assigned to it by the General Assembly and to slow down its work. Why was it felt appropriate to touch on questions which related only to the internal competence of the Soviet Union and Afghanistan and exclusively to the bilateral relationships of those two countries? What was the purpose of this flagrant interference in the affairs of sovereign States? Those delegations which attempted to involve the Special Committee in such discussions obviously intended to assist that State member of the Special Committee which had refused to participate in the current session and to draw attention away from the genuine cause of the present deterioration on the international situation.

133. In the opinion of his delegation, the entire responsibility for the present tense situation in the world lay with those who saw in détente an obstacle to their imperialist plans to incite a war psychosis and to interfere in the internal affairs of other peoples; the responsibility also lay with those who had the deeply ingrained habit of behaving quite casually with other States, of conducting themselves in the international arena as if they were allowed to do anything, and of supporting aggressors and racists in southern Africa and the Middle East.

134. No one had to be deceived by slander against the Soviet Union. This was a worn-out record which his delegation had heard many times before. In this connexion, he quoted the response of L. I. Brezhnev to questions asked by the correspondent of the newspaper Pravda.

"If there were no Afghanistan, certain circles in the United States and NATO would undoubtedly find another pretext for raising tensions in the world."

135. In conclusion, his delegation wished to cite the words of A. A. Gromyko, Minister for Foreign Affairs of the Soviet Union, who had said on 18 March 1980.

"The present world situation is not simple. However, the Soviet Union by no means takes a pessimistic view of the situation. Those who attempt to strike out détente from the list of real phenomena in the world political situation fail to realize that it has become deeply ingrained in the consciousness of peoples and that there is no longer any reasonable alternative to détente. This, of course, did not mean that the complexities in the present world situation would disappear of their own accord. In order to prevent the re-emergence of the 'cold war', urgent and decisive steps had to be taken to preserve and strengthen all of the gains achieved, especially in the last decade, i.e. the 1970s."

His delegation stressed again that the preparation of a world treaty was in the basic interest of all peoples and that no State which genuinely sought peace and better relations with other countries could oppose such a treaty.

136. The last speaker at the 40th meeting, the observer of Viet Nam, stressed that the main objectives of his country's policy was to secure peace and create favourable international conditions so as to rapidly heal the wounds of war, restore and develop its economy, build the material and technical basis of socialism, improve the living standards of its people and at the same time firmly support the struggle of the world peoples for peace, national independence, democracy and social progress.

137. His delegation was in favour of the early drafting of a world treaty on the non-use of force in international relations which would certainly contribute to the improvement of the climate of international relations. The principle of non-use of force was constantly violated: imperialism, colonialism, hegemonism, expansionism and other reactionary forces were indulging in an active arms race, ceaselessly threatening to use force against the world peoples who were struggling for peace, independence, justice and social progress. The American imperialists were feverishly intensifying their military forces in the Indian Ocean, speeding up the supply of arms to local reactionaries to oppose the Arab and Palestinian peoples and the Iranian people and engaging in a demonstration of force in the Caribbean Sea. As to the Chinese reactionary rulers in Peking, they were building a strategic nuclear force, seeking an all-round alliance with imperialism and speeding up the modernization of their armed forces so that their country might become a first-class nuclear super-Power by the end of the century. Oppressed peoples had no alternative but to exercise their inalienable right to self-determination by all means at their disposal and at the same time with the support from friendly countries and progressive forces in the world.

138. His country, which had endured nearly 1,000 years of Chinese feudals' domination and nearly a century of colonialism and neo-colonialism was now threatened by Chinese hegemonism and expansionism. In this connexion, he quoted paragraph 30 of the Committee's report on its last session 34/ and stressed that the aggression launched against his country to teach it a bloody lesson was a flagrant violation of the principle of non-use of force and showed China's irresponsibility with regard to the purposes and principles of the United Nations. In the face of such a situation, his delegation, while strongly supporting the early drafting of a treaty on the non-use of force, wished to emphasize that the proposed instrument should affirm the right of oppressed peoples in the world to use all means at their disposal, including armed struggle and moral support from progressive forces to achieve self-determination and independence.

34/ Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 47 (A/34/41 and Corr.1).

139. With regard to the so-called "question of Afghanistan", he stressed that the people of his country and the oppressed peoples of all continents knew that in the crucial moments of their struggle, when young revolutionary régimes were threatened by warmongers and revanchist Powers, only international political, material, moral and military assistance from progressive forces which sustained peace and justice throughout the world could give them the means of dealing with their enemies. For their part imperialist and expansionist circles knew that they could only put down revolutions if they isolated their initiators from the support of progressive forces. His country saw the events of 27 December 1979 as a major victory for the people of Afghanistan, safeguarding what the revolution of April 1978 had accomplished and thwarting the manoeuvres of American imperialism, of the Peking reactionaries and of other reactionary forces that had tried to liquidate the Afghan revolution. The strong, timely, positive and generous assistance of the Soviet Union was entirely justified and necessary, in keeping with the aspirations of the people of Afghanistan, with the Treaty of Friendship, Good Neighbourliness and Co-operation between the two countries, signed on 5 December 1978, and with Article 51 of the United Nations Charter. No one had the right to interfere in what was a purely internal affair of the people of Afghanistan and if the international community had not yet made its contribution, it must at least refrain from any action which could cause harm. By lending its support to the efforts of the martyred peoples of the world in their aspirations for independence, justice and peace, it would truly place itself on the side of the peace and security of peoples and nations.

140. As to the slanderous allegations which had been made during the debate against his country, he categorically rejected them. Those who spoke of peace and stability in Indo-China and South-East Asia should not forget the genocidal crimes committed by American imperialism in Viet Nam, in Kampuchea and in Laos nor the military adventure by Chinese troops in Viet Nam. The militant solidarity between the three peoples in Indo-China had been tested and tempered through the long wars of resistance against colonialism and imperialism and through the present struggle against the international reactionaries in collusion with imperialism. In this connexion, he recalled the joint communiqué of the Conference of the Foreign Ministers of Viet Nam, Kampuchea and Laos issued on 5 January 1980 which stressed that the presence of Vietnamese troops in Kampuchea and Laos at the request of the Governments concerned to defend their revolutionary gains was very necessary and conformed to the three peoples' aspirations, international law and the United Nations Charter.

III. REPORT OF THE WORKING GROUP

141. As indicated in paragraph 10 above, the Special Committee decided, at its 35th meeting, to re-establish a working group whose mandate would be the same as that entrusted to the Committee itself by the General Assembly in resolution 34/13. The Working Group held nine meetings between 21 and 28 April 1980.

142. In accordance with the decision of the Special Committee reflected in paragraph 10 above, the Working Group took up first the working paper submitted at the previous session by Belgium, France, the Federal Republic of Germany, Italy and the United Kingdom of Great Britain and Northern Ireland (A/AC.193/WG/R.1), 35/ consideration of which had not been completed at that session for lack of time.

143. The Working Group devoted its 13th, 14th, 15th and 16th meetings to this working paper.

144. In introducing the working paper, the spokesman for the co-sponsors said that it consisted primarily in a working method and provided a list of items that should be discussed. The sponsors considered that the preparation of any international instrument covering both the principles of the peaceful settlement of disputes and of non-use of force could not be started without a preliminary in-depth study of the causes of the increasing tendency of Member States to resort to the use of force. It was felt that it would be preferable to devise effective methods and procedures adapted to the different situations that might arise in the world of today. To that end, it seemed essential to investigate causes in which Member States had resorted to the use of force, in order to understand why the rule laid down in Article 2, paragraph 4, had not been more effective. That preliminary investigation would be conducted in the Working Group.

145. Another of the sponsors stressed that the working paper was intended to contribute to the organization of the activities of the Working Group and to facilitate its progress, and that it was neither exclusive nor definitive; the sponsors hoped that other countries would communicate their own ideas on the subject, and they were open to any suggestion which would help to broaden the scope of the work.

146. A number of delegations felt that the working paper provided a useful basis of discussion because it approached the issue before the Special Committee from a comprehensive spectrum, taking duly into account the various political and juridical elements involved. The view was reiterated that since the principle of non-use of force was not only a cardinal principle of the Charter but also a firmly established peremptory norm of general international law, its efficaciousness would not be enhanced by the development of its legal expression. In this connexion, the point was made that the problem before the Special Committee did not arise on the legal plane: it related to the effectiveness of, and compliance with, an existing norm.

35/ Reproduced in Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 41 (A/34/41 and Corr.1), para. 129.

147. Other delegations, however, said that they favoured the elaboration of a treaty; they pointed out that while it was true that the principle of non-use of force was enshrined in the Charter and was a peremptory norm of international law, there was no logic in the claim that the embodiment of the principle in a world treaty could weaken it: many States, including Western European States, had concluded a host of treaties in which the principle was reaffirmed and they had obviously never considered that the existence of those treaties weakened the relevant provisions of the Charter. It was also pointed out that since the conclusion of the Charter, the international community had seen fit to move further, and that the existence of the Charter was no impediment to the development of the doctrine in order to make the implementation of the constitutional document safer and more practical. Another observation was that the Special Committee was a legal body and that its action was confined to the area of international law. In that area and leaving aside political aspects, the only course open to the Working Group was the strengthening of the legal norm which could best be achieved through its reaffirmation in a legally binding instrument.

148. Several representatives urged the Working Group not to get bogged down again in questions of form. It was pointed out in this connexion that the various proposals before the Working Group had the same general goal, namely, to enhance the effectiveness of the principle of non-use of force. Scientific progress had led to the emergence of weapons with unprecedented destructive powers, and economic wealth had allowed for the accumulation of enormous stocks of conventional weapons and weapons of mass destruction. As a result, there was no alternative but to search for ways and means to enhance the principle of non-use of force in order to avert military conflicts and wars. Since there was no disagreement on the purpose of the work but only divergences of views on questions of method, the debate should concentrate on issues of substance. In this connexion, the view was expressed that, even if eventually the work of the Committee did not result in a treaty, some kind of paper would have to be prepared and that the elements of such a paper, therefore, had to be discussed.

149. The view was expressed, on the other hand, that the way of going about the enhancement of the principle of non-use of force could not be reduced to a subsidiary question; it was a fundamental one. Both the Soviet proposal and the five-States working paper contained the idea of enhancing that specific principle but it was one thing to do it through the elaboration of a resolution and quite another to draft a conventional or contractual instrument. It was added that, should the Special Committee decide to recommend to the General Assembly the adoption of a declaration or a resolution on the question, the document in question would have to be useful and balanced. Dealing with the principle of non-use of force in isolation was felt to be impossible. It was no accident that the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations dealt simultaneously with the principle of the non-use of force, the principle of peaceful settlement of disputes and other principles or that the Final Act of Helsinki reflected the same approach. The Working Group should follow those examples. In addition, other elements such as the right of self-defence, the collective security machinery, the principle of non-intervention and the principle of the right of peoples to determine their own future would have to be taken into consideration. In connexion with the collective security system, it was pointed out that the structure of the working paper was somewhat unbalanced since it did not place that element on an equal footing with the questions of non-use of force and the peaceful settlement of disputes.

150. A number of delegations commented on the first paragraph of the five-States working paper dealing with the question of the causes or reasons which led States to use force.

151. Some delegations expressed support for a study of the reasons for which States violated the prohibition of the use of force. In this context, the view was expressed that when there had been a recourse to force it was not because of uncertainties as to the meaning and scope of the law: the relevant provision of the Charter was not unclear nor limited in its scope. The crux of the matter lay in the failure on the part of Governments to observe the obligations they had undertaken in ratifying the Charter. In this connexion, it was said that any attempt to shape the behaviour of political units was inseparable from the complexities and realities of power. The absence of an international authority capable of implementing and making States implement their obligations explained, in part, the fragility of the legal framework erected by the international community. Peace then became a perilous state of non-war in which States violated principles without questioning their validity, a situation which was made even more contradictory by the impossibility of determining or even establishing the watershed between aggression and self-defence. Since the principles existed it was in the disparities of power that one found the causes for the use of force in international relations: persuasive efforts were therefore the only way to discourage the use or the threat of force, restore confidence in the principles enshrined in the Charter and in other relevant instruments and thereby induce States to resort to the peaceful options for the solution of their differences.

152. It was also stated that the analysis of the reasons for which States resorted to force would no doubt lead to the finding that the use of force could have been avoided if the machinery for peaceful settlement of disputes had been brought into play. In the same order of ideas, the view was expressed that an essential prerequisite to the establishment and development of a really workable system for the peaceful settlement of disputes was the knowledge of the causes which led States to resort to force because such a system could only be effective if it was geared towards the kind of problems which were at the root of disputes. The Working Group should therefore first study the reasons for the use of force by States in international relations and examine whether the parties to a dispute had attempted to exhaust the available means of peaceful settlement and, if so, why such means had resulted in a failure.

153. Specific causes which were mentioned included strategic factors, foreign domination, the existence of régimes which practised mass and flagrant violations of human rights, policies of hegemony, economic questions, the persistence of racist régimes and apartheid, problems bound up with the recognition of contested boundaries, and intervention into the internal affairs of a State to prevent a socio-economic system from developing in accordance with the wishes of the population.

154. Other delegations, however, expressed doubts on the advisability of discussing the causes or reasons which led States to have recourse to force. In this connexion, it was said that it was difficult to see how the outcome of such a study could ever become a provision of a treaty or a paragraph of a resolution and be straight-jacketed in any legal draft. Another opinion was that most of the causes which had been mentioned during the debate were superficial and adjective revolving around a substantive cause: the political will of States. It was further asked in what cases it would be possible to determine the causes or reasons why States under certain circumstances resorted to force.

155. Disagreement was expressed with that view. The political will of States and governmental decisions were, it was maintained, superficial explanations: the basic reason for the use of force lay in the socio-economic foundations of society; it was rooted in the practice of exploitative societies such as the capitalistic society. In this connexion, the suggestion was made that rather than indulging in philosophical discussions which could only drive delegations further apart, the Working Group should focus on international law which provided States with a common language and helped them to abide by the policy of peaceful coexistence.

156. Some delegations commented on specific points of the two sections of the working paper devoted respectively to the peaceful settlement of disputes and to non-use of force.

157. With respect to the section on the peaceful settlement of disputes, the general view was expressed that this was an area where there was room for progress. Strengthening of the mechanisms and procedures for the peaceful settlement of disputes was viewed as a pre-condition for the enhancement of the principle of non-use of force. In this connexion, the opinion was expressed that the question of a draft declaration on the peaceful settlement of disputes, which had been the subject of intensive deliberations at the last session of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization would be taken up again separately at the forthcoming session of the General Assembly since an item was included in the agenda further to an initiative taken the previous year by Romania.

158. The view was expressed that the Charter, in its Article 33, paragraph 1, referred to only one type of international disputes, namely, those endangering international peace and security. It was also pointed out that the Charter did not impose on States the obligation to settle their disputes by peaceful means but to settle them exclusively by peaceful means.

159. More specific comments included the observation that the listing of means of peaceful settlement of disputes appearing in the relevant section of the working paper should be supplemented with references to means mentioned in other international documents such as the Declaration on the Strengthening of International Security. It was further felt advisable to study the role of the Security Council, the General Assembly, the Secretary-General, regional organizations and the International Court of Justice. The suggestion was made that the role of the Court be examined in the light of Article 36, paragraph 2, of its Statute and General Assembly resolution 171 (II) and 3232 (XXIX).

160. With regard to the obligations of States in this area, special emphasis was placed on the obligation of States to settle all international disputes solely by peaceful means, the obligation of the parties not to resort to acts which might aggravate the dispute, the duty of States parties to contribute in good faith to the settlement of disputes, and the obligation of the parties, if a dispute remained unresolved, to continue to seek a peaceful settlement. Other elements which were mentioned included the duty of States to solve territorial and border disputes by peaceful means and the concept that recourse to means of peaceful settlement did not run counter to State sovereignty.

161. With respect to the section on non-use of force, special emphasis was placed on the development of the peace-keeping concept and machinery; in this connexion,

attention was drawn to point (3) which highlighted the need to enhance the United Nations peace-keeping capacity, point (6) which underlined the obligation of Member States to support peace-keeping operations, point (7) which stressed the responsibility of Member States to share equitably the financial burden, point (8) which sought to encourage Member States to create facilities for the training of the necessary personnel, and point (9) which drew attention to the possibility of supplying the Secretary-General with up-to-date information on possible stand-by capacities to be made available if the Security Council found a need for establishing new peace-keeping forces.

162. Special interest was also expressed in point (2) relating to the study of means or facilities available or needed to identify or avoid possible crises. It was felt necessary for United Nations organs having a responsibility in the maintenance of international peace and security, and particularly the Security Council, to consider the ways in which the facts in an incipient dispute could be gathered and presented to the competent organs of the United Nations. Consideration should also be given to the possible machinery for the implementation of the provisions of the Charter which enabled any Member State or the Secretary-General to initiate procedures before the Security Council and set in motion a conciliation process, notwithstanding the reluctance of the parties to make the first step. Attention was further drawn to the desirability of reaffirming and putting into practice the obligation of Member States to provide the Organization with the necessary means for the adoption of effective measures to maintain international peace and security.

163. With respect to point (1), doubts were expressed on the advisability of examining within the Special Committee the issues of disarmament - notwithstanding their link with the question of non-use of force. If the Special Committee nevertheless decided to examine them, it should approach the task from the angle of the international legal order. Other delegations, however, expressed support for point (1) for, in their view, it was through the adoption of concrete disarmament measures that the effective implementation of the principle of the non-use of force could best be ensured.

164. With respect to point (4), it was recalled that, at the last session of the Special Committee on the Charter of the United Nations, the Japanese delegation had submitted a working paper which advocated strengthening the fact-finding capacities of the United Nations. ^{36/} It was suggested that point (4) should refer to the enhancement of the powers of the General Assembly in accordance with resolution 377 (V) and that the role of the Secretary-General in the area of fact-finding should also be enhanced, for example, through the adoption by the Security Council or the General Assembly of a resolution reaffirming his powers under Article 99 and giving him a general mandate, for instance, to station representatives in dispute areas and have them report to him on the facts of the situation. It was felt that such a machinery, which could be established by way of a resolution, would diminish the possibility of armed conflicts because it would give the competent organs a chance to ascertain the facts and discuss issues before they resulted in hostilities.

165. Comments were also made on the concluding points of the section on non-use of force: while agreeing with a reaffirmation of the principle of non-use of force, certain representatives expressed the view that the concepts of "force", "threat of

^{36/} See Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 33 (A/35/33), paras. 61-75.

force", "international relations", and "territorial integrity or political independence of any State" should be defined and that the principle should be elaborated upon in the light of developments which had taken place since the adoption of the Charter. It was pointed out that in the absence of a more precise definition of the concept of territorial integrity and political independence of States, the concept could lend itself, as had recently been the case, to an a contrario interpretation allowing a State to resort to force against another State under the excuse that force was not being directed against the latter's territorial integrity or territorial independence but aimed at maintaining the established constitutional order, protecting a minority, or under any other pretext.

166. In connexion with the last of the above-mentioned points, it was stated that the lawful uses of force deserved examination, and a number of delegations referred in particular to the question of self-defence. The observation was made that, although the Charter expressly dealt with self-defence and did so in seemingly clear terms, the issue was one on which the proceedings of the Security Council and the General Assembly revealed a diversity of views. It was asked, if the concept of anticipatory self-defence could be reconciled with the criteria mentioned in the Caroline case, what was the relationship between self-defence and such concepts as reprisals, hot pursuit, intervention, self-help and retaliation, what was the exact meaning of armed attack under Article 51 and whether a counter-attack was self-defence. It was also suggested to reflect on the obligation of informing the Security Council of the measures allegedly taken in exercise of the right of self-defence and to consider the kind of action the Council might take - for example, the dispatch of fact-finding missions - in case of breach of the obligation in question. The view was expressed that fear of action by the Council might induce States to think twice before taking advantage of Article 51 and might stimulate them to resort more often to the mechanism provided for in the Charter.

167. In the course of the discussion, several delegations suggested that the Secretariat be requested to prepare a synoptic table of the various proposals before the Working Group in order to bring out the points of convergence and divergence. Other delegations disagreed with the suggestion: they pointed out that the existing proposals were of a different nature and therefore did not lend themselves to a comparative approach.

168. The Working Group devoted its 18th meeting to the consideration of the proposal of the Soviet Union for a world treaty on non-use of force. 37/

169. The representative of the sponsor of the proposal said that he wished to comment on certain questions relating to the Committee's mandate. Noting that certain delegations had opposed the idea of drafting a world treaty on the non-use of force in international relations, he pointed out that that idea was based on a full analysis of the current international situation and of the main changes in international relations. In his delegation's view, the main cause of armed conflict was the use of force by certain Governments, such as the colonial, the imperialist and the Fascist Powers. Military force had been used to subjugate the people of Viet Nam, and was being used in the occupied Arab territories. Recent events confirmed that the use of force gave rise to a military threat. Indeed, the events of the past 24 hours indicated that force was being used by certain States as a

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

basic instrument of national policy. While some delegations felt that the reasons for using armed force were unclear, he wished to point out that the very founding of the United Nations and the use of force in the Second World War made it abundantly clear for what purposes armed force was used. The use of force could never lead to a lasting and just solution of disputes between Governments. Accordingly, additional practical measures were needed in order to enhance the effectiveness of the non-use of force and to ensure the implementation of the fundamental obligation assumed under the Charter. That was especially so in view of the proliferation of nuclear weapons in recent years. The draft treaty submitted by the Soviet Union provided for a close organic link between the prohibition of the use of force and the prohibition of the use of atomic and other weapons of mass destruction. In accordance with the draft treaty, the opposing sides would renounce the use of armed force and of any kind of weapons, and article I of the treaty defined the scope of application of that prohibition. The adoption of practical measures was also dictated by the fact that since 1945 over 100 armed conflicts and wars had taken place. Many States relied on the use of force. According to the Brookings Institute, the United States had used or threatened to use force over 200 times between 1945 and 1975. An additional reason why a world treaty was needed was the existence of unsolved disputes. There was, of course, no intention to suggest that all disputes between States should somehow be "frozen". One of the aims of the proposed instrument was to direct the policy of States towards the peaceful settlement of disputes. The alignment of forces in the world had recently changed in favour of peace and socio-economic progress, a factor which stimulated the search for a means of remedying a situation in which certain forces, especially in recent times, were endeavouring to exacerbate the international situation, to undermine détente and to step up the arms race. The principle of the non-use of force was enunciated in the Charter in only a very general way. The stage had now been reached where that provision should be supplemented by an appropriate international agreement in the form of the treaty proposed by the Soviet Union. That initiative was no propaganda campaign; such an instrument was an objective requirement, as was being increasingly recognized by all peace-loving States and by all States that advocated co-operation among Governments with different political systems. The proposed instrument was an entirely practical measure and would not duplicate the provision of the Charter. Specific additional means of safeguarding the principle of non-use of force were contained in article IV of the treaty, under which the Contracting Parties would seek to implement effective measures for lessening military confrontation and for disarmament, and in article II, concerning the peaceful settlement of disputes. Some delegations had created the false impression that the Soviet draft contradicted the principle of the peaceful settlement of disputes. A careful study of the document indicated, however, that the two principles were closely related. The draft treaty, in its provisions, strengthened the obligation for the peaceful settlement of disputes and ipso facto excluded the possibility of using force. A further additional means of ensuring the fulfilment of the fundamental obligation not to use force was provided for in article V, under which each Contracting Party would consider what measures must be taken, in accordance with its constitutional procedure, for ensuring the fullest compliance with its obligations under the treaty. Many such measures could be taken, for example, the prohibition of war propaganda, or a pledge to be guided exclusively by certain principles, including the principle of the non-use or threat of force in international relations. The claim by certain States that the draft treaty would undermine the Charter constituted a deliberate distortion of the actual situation. Indeed, a measure directed towards the further development of a principle of the Charter could neither contradict nor weaken that principle nor the entire Charter.

Even if that possibility existed, under Article 103 of the Charter the obligation assumed by States under that instrument would prevail. In view of the specific guarantee provided in the draft treaty, he was quite unable to understand the apprehensions of those countries which considered that the draft treaty could undermine the Charter. It was well known that the intention was to elaborate the draft treaty in the Committee itself through the examination of all its provisions and on the basis of a consensus. Should any group of States feel that a particular provision might undermine the Charter, there was always the possibility of studying that question and of reaching agreement on a basis acceptable to all groups of States. The attitude of some of the countries in question was all the more difficult to understand as they themselves had put forward proposals clearly aimed at circumventing the Charter including proposals concerning fact finding and peace-keeping operations, which contained elements that contradicted the Charter. Furthermore, various semantic and terminological arguments were being put forward, and there were endless and futile discussions of the form of the future document and of the number of States which would ratify it. That kind of approach was clearly inconsistent: it was aimed at preventing the United Nations from considering the urgent problem of strengthening peace and international security. Furthermore, the absence of one member of the Committee from the meetings could only be described as an example of disrespect to the United Nations, and all attempts to explain away that absence were flimsy. Some delegations had attempted to use the consideration of proposals aimed at deepening détente, reversing the arms race and strengthening world peace as a means of slandering the foreign policy of various peace-loving States. His delegation firmly rejected such indecent fabrications and insinuations. The obstructionist policy of those countries vis-à-vis any proposals aimed at strengthening security and averting a new war was a blatant contradiction of the fundamental principle of the Charter and had been discredited throughout the world.

170. The other representative who spoke in this context said that the strengthening of the principle of non-use of force in international relations was in the interest of all peoples and could only serve the cause of international peace and security. Attention should therefore focus on means of strengthening the principle in question. It was particularly important to develop contemporary international law, the evolution of which was slow and should therefore be encouraged. International law had already upheld many principles of vital importance for the life of peoples, in particular the right to self-determination and the right of self-defence. The Security Council, the General Assembly and the other bodies which dealt with those questions had an important contribution to make in the interest of mankind. In present-day international circumstances, it was important that the work of the Committee, rather than highlighting divergences of views and dissensions, should lead to positive results and contribute to the elimination of the use of force in international relations.

171. The Working Group devoted its 19th and 20th meetings to the consideration of a working paper submitted by a group of non-aligned countries (Benin, Cyprus, Egypt, India, Iraq, Morocco, Nepal, Nicaragua, Senegal and Uganda).

172. The working paper read as follows:

THE DEFINITION OF THE USE OF FORCE OR THREAT OF FORCE

The use of force or threat of force could be defined not only in terms of military force, but also in terms of all uses of coercion such as economic or political coercion or hostile propaganda, as well as the resort to activities such as subversion, pressure, intimidation, support of terrorism, covert attempts to destabilize Governments, the use of mercenaries or financing or encouraging them.

Principle 1

Complete prohibition of the use of force or the threat thereof in international relations, in accordance with the Charter of the United Nations.

Article 2, paragraph 4, of the Charter
General Assembly resolution 2625 (XXV)
General Assembly resolution 2160 (XXI)

Principle 2

All States have the duty to refrain from military intervention or reprisal or the threat thereof against another State.

General Assembly resolution 2625 (XXV)

Principle 3

All States have the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands including mercenaries for incursion into the territory of another State.

General Assembly resolution 2625 (XXV)
Security Council resolutions 404
405
419

Principle 4

All States have the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts.

General Assembly resolution 2625 (XXV)

Principle 5

The above principles (3 and 4) do not affect the legitimate right of the liberation movements recognized by the United Nation and/or the regional organizations to seek and to receive support in their struggle for self-determination and independence.

Principle 6

All States have the duty to refrain from engaging in covert attempts to destabilize other Governments.

Principle 7

Not to recognize, ab initio, the consequences that ensue from the use of force, or threat of it, such as the conclusion of a treaty which has been procured by threat or use of force or contains provisions in violation of peremptory norms of international law or creation of situations of fait accompli, or acquisition of territory or advantages resulting from use of force, or the change of the demographic or cultural or geographic characteristics of the territories under occupation, in accordance with binding international legal conventions and principles of international law (jus cogens).

General Assembly resolution 2625 (XXV)
General Assembly resolution 2160 (XXI)
General Assembly resolution 3314 (XXIX),
annex
Convention on the Law of
Treaties (1969), article 52
Geneva Conventions of 1949 and
Additional Protocols of 1977
The Hague Conventions of 1899 and 1907

Principle 8

The use of force gives rise to international responsibility.

International Law Commission documents

Principle 9

To stress that the duty of the United Nations to discharge its responsibilities under the Charter with respect to the maintenance of international peace and security is fundamental to the enhancement of the effectiveness of the principle of the non-use of force in international relations.

General Assembly resolution 2160 (XXI)

Principle 10

All States have the duty to assist the United Nations in discharging its responsibility as assigned to it by the Charter for the maintenance of international peace and security.

General Assembly resolution 2160 (XXI)

Principle 11

The duty of all States to support the victim of the use of force by all means at their disposal - material and moral - until all the consequences of such use of force are eliminated.

General Assembly resolution 3314 (XXIX),
annex

Principle 12

In all circumstances States retain their inherent right to self defence as embodied in Article 51 of the Charter.

Principle 13

Reaffirmation of the legitimacy of the right of people under colonial, racial and alien régimes and foreign occupation to use all means at their disposal, including armed struggle, to achieve self-determination and independence and territorial integrity and to liberate occupied territories and to eliminate the trace of racialism.

General Assembly resolution 1514 (XV)
General Assembly resolution 2621 (XXV)
General Assembly resolution 2980 (XXVII)
General Assembly resolution 3118 (XXVIII)

Principle 14

The progress towards the realization of the goal of general and complete disarmament under strict and effective international control will enhance the effectiveness of the principle of non-use of force in international relations.

Tenth special session of the General
Assembly

Principle 15

The scrupulous observance by all States of the principle of non-interference in internal and/or external affairs of other States is essential to the enhancement of the principle of non-use of force.

General Assembly resolution 33/74

Principle 16

1. The peaceful settlement of disputes is a necessary corollary to the principle of non-use of force in international relations.

2. The content of the substance relevant to the peaceful settlement of disputes is to be derived basically from the provisions of the United Nations Charter and the general principles of international law.

Article 2, paragraph 3)
Article 33) of the Charter
Articles 52, 53, 54)

Note

(Attention of the Special Committee is invited to the work being done on the subject in the First Committee and the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization.)

Principle 17

To reaffirm that the application of the principle of good faith in the conduct of international relations contribute to the creation of the atmosphere of trust and confidence which are necessary to the enhancement of the principle of non-use of force.

173. Many delegations welcomed the working paper as an important, well-balanced and timely contribution to the work of the Committee. The view was expressed that the paper had the merit of moving the Committee away from the idea of a treaty and focusing its attention on genuine problems. Another opinion was that the paper demonstrated that the efforts should be oriented towards the elaboration of a legal instrument and had much in common with the Soviet draft.

174. It was pointed out that the working paper had been submitted by a group of delegations representing two thirds of mankind and a wide variety of civilizations, experiences and aspirations. It was designed to enable the Working Group to engage in a substantive discussion without getting embroiled in sterile squabbles on questions of format or peripheral matters and to work towards reaching a consensus on a formal document. The document should not be considered final nor as a substitute for the other two proposals before the Working Group. There were actually points of convergence between the three proposals before the Committee since they all touched upon the non-use of force, peaceful settlement of disputes, the maintenance of international peace and security and disarmament. There were also some ideas which did not appear in the other two proposals, particularly in principles III, IV and VI which were of special concern to the third world. In general, it could be said that the working paper contained a series of ideas to be focused upon in order to comprehend the nature of the substantive problems and issues before the Committee. Those ideas were not exhaustive and were to be subjected to the process of dialogue and reflection. They were intended to be added to the reservoir of questions of substance which the Committee would ultimately have to tackle. It could also be observed that almost all the principles contained in the paper were already part and parcel of contemporary international law and many represented rules of law in the nature of jus cogens.

175. Regarding the method followed for the elaboration of the paper, it was observed that the objective of the sponsors had been to bring up to date and articulate, on the basis of documents agreed upon by the General Assembly, a series of principles relevant to the principle of the non-use of force in order to ensure that the international legal order should not have gaps or loop-holes. It was also

pointed out that the language used in it was both precise and conciliatory, its sponsors having had in mind not only the principles but also the means to strengthen them and the reasons which might lie behind the recourse to force.

176. Some delegations made preliminary comments of a general character regarding certain aspects of the document. It was pointed out that the structure of the document was somewhat unbalanced since it dealt much more extensively with the principle of the non-use of force than with the principle of the peaceful settlement of disputes and the collective security system. Furthermore, it did not give sufficient weight to the question of the legal uses of force. It was also observed that the document should not place on an equal footing articles from the United Nations Charter and provisions from General Assembly resolutions and that the paper could have a somewhat more logical structure if divided by topics or chapters. In this respect, it was suggested that the structure of the paper could be altered in the light of research work designed to gather in a sort of "corpus juris" all the resolutions the General Assembly had adopted since 1945 on the question of the non-use of force. It was also felt that several principles required a more in-depth reflection, taking into account in particular the questions raised on page 75 of Supplement No. 2 to volume I of the Repertory of Practice of Organs of the United Nations.

177. A number of delegations made preliminary comments on specific elements of the working paper.

178. The idea of defining the use of force or threat of force was found interesting provided it was coupled with the carrying out of an analysis of the causes behind the use of force. Some delegations, however, expressed the fear that the task might prove time-consuming and the difficulties insurmountable. It was added that the proposed form of wording was imprecise and subject to interpretation in view of the vagueness of such terms as "pressure" and "intimidation". The opinion was also expressed that some of the elements present in the text, such as the concept of economic or ideological coercion, seemed to be more relevant to non-interference or non-intervention than to non-use of force and that the proposed approach might lead to a dangerous expansion of the concept of self-defence. It was finally asked whether the definition should focus on manifestations of force or on the concept of force itself and whether a distinction should not be made between the concepts of use of force and threat of force which, although related, were different: the use of force was related to physical force, political pressure, economic pressure, etc., whereas the threat of force was the explicit or implicit promise of a State to resort to force against another State if the latter did not conform to a certain conduct.

179. The sponsors indicated that they had no objection to the issue of the definition being dealt with after all the principles had been discussed.

180. Principle 1 was generally considered as essential. Some delegations felt that it needed to be supplemented in the light of the text of Article 2, paragraph 4, of 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. It was noted that the present language was borrowed from resolution 2160 (XXI) which had not been adopted by consensus and could furthermore be considered as having been overtaken by the above-mentioned Declaration. It was also said that article 1 of the Soviet draft included three elements which were lacking in the working paper, namely, the prohibition of the

use of force in all environments, the ban on the use of any type of weapons and the inadmissibility of any consideration seeking to justify the use of force. In this latter respect, reference was made to the formulation used in the Final Act of Helsinki and in article 5 of the Definition of Aggression.

181. On principle 2, the view was expressed that the question of reprisals should be discussed in the context of the use of force. It was also noted that the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations did not refer to military intervention and the suggestion was made that consideration be given to the approach in article 3 of the Definition of Aggression. Finally it was pointed out that the Soviet draft and the five-States working paper included an element which was missing from principle 2, namely, the obligation of States not to assist States having resort to force.

182. Principles 3 and 4 were felt to be particularly important as a reminder that the concept of use of force was not confined to open crossing of frontiers by regular troops. It was also noted that they aimed at guaranteeing the stability and security of young nations and putting an end to the practice of confrontation by means of surrogate countries.

183. In connexion with principle 3 and the question of mercenaries, mention was made of the proceedings of the Diplomatic Conference on the Development and Reaffirmation of International Humanitarian Law and of the Nigerian initiative concerning the drafting of a convention on the activities of mercenaries.

184. It was suggested that the formulation should be borrowed from article 3 (g) of the Definition of Aggression which was a more recent instrument than the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

185. As to principle 4, the view was expressed that the question should be approached from the angle of the use of force.

186. Principles 5 and 13 were jointly commented upon and it was suggested that they should be merged. Here again reference was made to the outcome of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law. Some delegations pointed out that those principles dealt with most sensitive and controversial issues which were not explicitly dealt with in the Charter and should be considered in the context of the principle of self-determination of peoples which was articulated in a full way in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. It was also stated that the principles in question were out of place in a document dealing with the enhancement of the principle of non-use of force and were not recognized by the Charter. Some delegations also recalled that they had not supported the resolutions mentioned in reference because they did not consider the approach in those resolutions as being in accordance with the existing legal situation. They added that they were not ready to recognize as legitimate the use of force for achieving self-determination or independence nor to assimilate the struggle for self-determination to self-defence. It was suggested that the drafting of the principles be brought into line with the language of resolution 2936 (XXVII). In connexion with principle 5, it was noted that the safeguard clause it contained was unduly limited to principles 3 and 4 and should extend to the entire content of the document. Furthermore, it

was stated, the Definition of Aggression did not contain the limiting clause on recognition by the United Nations and/or the regional organizations and it referred to peoples and not to national liberation movements. The view was expressed on the other hand that principle 5 should not be interpreted as limiting the rights of national liberation movements and should be read in conjunction with principle 13 which contained the general norm governing the legal status of those movements.

187. Principle 6 was felt by some delegations to be of fundamental importance, even though its drafting called for improvement since attempts to destabilize Governments were not always covert. Other, however, felt that the issue was not clear because of the imprecision of the concept of destabilization, and that in any case it pertained more to non-intervention than to non-use of force.

188. Principle 7 aroused the interest of several delegations but also gave rise to some doubts: it was felt to be out of place in a document which should transcend specific situations and avoid references to concrete cases. It was noted that this principle, which raised the question of the recognition of titles and rights acquired by an action in breach of the Charter and other principles of international law, brought to mind the so-called Stimson doctrine, the history of which was not encouraging but which, in the light of the Charter, it would seem logical to promote and recognize. The non-recognition of annexation, it was added, seemed to be a natural corollary of the principle of the territorial integrity of States and inviolability of frontiers. The view was also expressed that the proposed formulation was somewhat loose in that it used the term "recognize" in two senses: non-recognition of a territorial situation was a technical concept, but when the text referred to changes of the demographic, cultural or geographic characteristics of territories it used the term "recognize" in a broader sense.

189. Principle 8 was generally considered as requiring further elaboration in the light of the work carried out by the International Law Commission. It was asked in particular if it was limited to the unlawful uses of force, if it extended to individuals and if the question of the threat of force had been intentionally left out.

190. Principles 9 and 10 were felt to appropriately underscore that the effectiveness of the collective security system established in the Charter, on the one hand, was a sine qua non condition of the observance by States of the principles of non-use of force and the peaceful settlement of disputes and, on the other hand, depended on the compliance of Member States with their obligations under the Charter and with the decisions of the Security Council and the resolutions of the General Assembly. It was noted that those principles had been borrowed from General Assembly resolution 2160 (XXI), which, as indicated above, could be considered as having been overtaken by the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. The suggestion was made that the two principles be merged but the sponsors held that the distinction between the duties of the United Nations organs responsible for the maintenance of international peace and security and those of Member States, a distinction which was made in Chapter VII of the Charter, should be maintained.

191. It was suggested that principle 9 be expanded to cover the peace-keeping activities of the United Nations. As to principle 10, it was noted that it omitted

the reference, contained in resolution 2160 (XXI), to the obligation of States to support efforts to ensure respect for and compliance with the principles of the Charter.

192. Doubts were expressed on principle 11 on account in particular of the imprecision of the term "victim" which did not appear anywhere in the Definition of Aggression. It was felt that the idea was difficult to generalize in the form of a principle: not only was this an area where conventional law could come into play but provision of material help to the victim of a use of force might result in an expansion of the conflict. The question was also raised whether the duty referred to in principle 11 was limited to States or extended to national liberation movements and peoples under colonial, racial and alien régimes and foreign occupation.

193. It was noted that the ideas in principle 12 were reflected in article 3 of the Soviet draft treaty.

194. Principle 14 was considered as rightly underscoring, as did also article 4 of the Soviet draft and point (1) of the relevant section of the five-States working paper, the link between enhancement of the principle of non-use of force and the achievement of general and complete disarmament under strict and effective international control. Mention was made in this connexion of an initiative taken at the tenth special session of the General Assembly concerning the development of confidence-building measures.

195. Principle 15 was felt to contain, as did also principles 3 and 4, an important guarantee for the security and stability of young and small States. Its drafting was, however, considered less satisfactory than the corresponding language in the Final Act of Helsinki because it linked the principle of non-use of force with two only of the principles of jus cogens.

196. Principle 16 was generally recognized as extremely important, and it was noted that it had its counterpart in the Soviet draft treaty (article 2) and in the five-States working paper. It was, however, generally felt to be too general and requiring further elaboration. In this connexion, it was pointed out that Article 2, paragraph 3, of the Charter should be read in conjunction with Article 1, paragraph 1, under which States had the duty to bring about adjustment of international disputes or situations by peaceful means "and in conformity with the principles of justice and international law". The effectiveness of the principle of non-use of force would certainly be enhanced, it was maintained, if disputes were settled not only without resort to force but also in conformity with justice and international law.

197. Principle 17 was also felt to be an important provision which should not be relegated to the end of the paper. It was pointed out that, although the principle of good faith was articulated in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, the interpretation of the concept could vary depending on the socio-economic system of States. In this connexion, attention was drawn to article 5 of the Soviet draft treaty which reflected the concern that the political environment in international relations be shaped in a way conducive to the enhancement of the principle of non-use of force.

198. Finally, some delegations said that various other elements should be added to the present text. Those elements included the duty of States to co-operate, the promotion of respect for human rights, the principles relating to actions aimed at disrupting the national unity or territorial integrity of States and the principles of the territorial integrity of States, the inviolability of frontiers and the respect for treaties and internationally binding awards. It was also felt necessary to make clear in the text that the principles were interdependent.

199. Several delegations reiterated their interest in the preparation of a comparative table of the various proposals before the Working Group. Other delegations were of a different view.

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