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

GENERAL ASSEMBLY

OFFICIAL RECORDS: THIRTY-SIXTH SESSION

SUPPLEMENT No. 33 (A/36/33)



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New York, 1981

NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

/14 May 1981/

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I. INTRODUCTION

1. At its 95th plenary meeting, on 15 December 1980, the General Assembly, on the recommendation of the Sixth Committee, 1/ adopted resolution 35/164, which read as follows:

"The General Assembly,

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

"Recalling its resolutions 686 (VII) of 5 December 1952, 992 (X) of 21 November 1955, 2285 (XXII) of 5 December 1967, 2552 (XXIV) of 12 December 1969, 2697 (XXV) of 11 December 1970, 2968 (XXVII) of 14 December 1972 and 3349 (XXIX) of 17 December 1974,

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

"Recalling especially its resolution 3499 (XXX) of 15 December 1975, by which it established the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, and its resolutions 31/28 of 29 November 1976, 32/45 of 8 December 1977, 33/94 of 16 December 1978 and 34/147 of 17 December 1979,

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

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

"Noting also the progress of the debate held during the thirty-fifth session on the item entitled "Peaceful settlement of disputes between States", included in the agenda in pursuance of General Assembly resolution 34/102 of 14 December 1979, especially concerning the consideration of the draft Manila declaration on the peaceful settlement of international disputes, 3/

"Recognizing the importance and usefulness of the Repertoire of the Practice of the Security Council and the Repertory of Practice of United Nations Organs as the principal sources of records for the analytical studies of the application and interpretation of the provisions of the Charter and of the rules of procedure made thereunder,

1/ Official Records of the General Assembly, Thirty-fifth Session, Annexes, agenda item 108, document A/35/732.

2/ Ibid., Thirty-fifth Session, Supplement No. 33 (A/35/33 and Corr.1).

3/ Ibid., para. 159.

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

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

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

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

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

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

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

"(a) To accord priority to its work on the proposals regarding the question of the maintenance of international peace and security, with a view to listing and examining all proposals, including those relating to the functioning of the Security Council;

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

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

"5. Also requests the Special Committee to continue the elaboration of the draft Manila declaration on the peaceful settlement of international disputes with a view to submitting it for consideration to the General Assembly at its thirty-sixth session;

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

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

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

"9. Requests the Secretary-General to render all assistance to the Special Committee, including the provision of summary records; 4/

"10. Requests the Secretary-General to give high priority to the preparation and publication of the supplements to the Repertoire of the Practice of the Security Council and the Repertory of Practice of United Nations Organs in order to bring those publications up to date as quickly as possible and to submit a progress report on the matter to the General Assembly at its thirty-sixth session;

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

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

2. At the same plenary meeting, the General Assembly, on the recommendation of the Sixth Committee, also adopted resolution 35/160 entitled "Peaceful settlement of disputes between States", which read as follows:

"The General Assembly,

"Having examined the item entitled 'Peaceful settlement of disputes between States',

"Deeply concerned at the continuation of conflict situations and the emergence of new sources of disputes and tension in international life, and especially at the growing tendency to resort to force or the threat of force and at the escalation of the arms race, which gravely endanger the independence and security of States, as well as international peace and security,

"Reaffirming its resolution 34/102 of 14 December 1979, in which it urged all States to co-operate in the elaboration of a declaration of the General Assembly on the peaceful settlement of disputes between States,

"Considering that the elaboration of a declaration on the peaceful settlement of disputes between States could contribute to the elimination of the danger of recourse to force or the threat of force and, therefore, to the strengthening of international peace and security,

"Noting with satisfaction the report of the Secretary-General, 5/ containing the opinions, suggestions and proposals of States regarding the declaration on the peaceful settlement of disputes between States,

4/ See General Assembly resolution 35/10 B, para. 2 (e).

5/ A/35/391 and Add.1.

"Noting also the report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, 6/ especially the work done on the draft Manila declaration on the peaceful settlement of international disputes, 7/

"Taking into account the suggestions and opinions expressed during the examination at its current session of the question of the peaceful settlement of disputes between States,

"Bearing in mind the wide consultations that have taken place in connexion with the content of the declaration on the peaceful settlement of international disputes and the fruitful activity in the Working Group, established at the current session of the General Assembly, which continued the elaboration of the declaration,

"1. Calls again upon all States to adhere strictly in their international relations to the principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered;

"2. Considers that the question of the peaceful settlement of disputes should represent one of the central concerns for States and that, to this end, the efforts for examining and further developing the principle of the peaceful settlement of disputes between States and the means of consolidating its full observance by all States in their international relations should be continued;

"3. Considers also that the elaboration, as soon as possible, of a declaration of the General Assembly on the peaceful settlement of international disputes is likely to contribute to the strengthening of the role and the efficiency of the United Nations in preventing conflicts and settling them peacefully;

"4. Reuquests the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization to continue the elaboration of the draft Manila declaration on the peaceful settlement of international disputes with a view to submitting it for further consideration to the General Assembly at its thirty-sixth session;

"5. Refers to the Special Committee the report of its Working Group on the Peaceful Settlement of Disputes, 8/ as well as the views expressed at the current session of the General Assembly on the contents of the declaration;

"6. Expresses the hope that the States which have not yet transmitted to the Secretary-General their opinions on that matter will do so as soon as possible in order to contribute, in this way also, to the elaboration of the declaration;

6/ Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 33 (A/35/33 and Corr.1).

7/ Ibid., para. 159.

8/ A/C.6/35/L.21.

"7. Decides to include in the provisional agenda of its thirty-sixth session the item entitled 'Peaceful settlement of disputes between States'."

3. In accordance with General Assembly resolutions 3349 (XXIX) of 17 December 1974 and 3499 (XXX) of 15 December 1975, the Special Committee was composed of the following Member States:

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

4. The Special Committee met at United Nations Headquarters from 17 February to 14 March 1981. 9/

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

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, Deputy Director for Research and Studies (Codification Division, Office of Legal Affairs), acted as Deputy Secretary to the Special Committee and as Secretary to the Working Group. Mr. Larry D. Johnson, Mr. Shinya Murase and Mr. Manuel Rama-Montaldo, Legal Officers, and Mr. A. Mpazi Sinjela and Mr. Sergei B. Shestakov, Associate Legal Officers (Codification Division, Office of Legal Affairs), acted as Assistant Secretaries to the Special Committee and its Working Group.

7. At the 48th meeting, on 18 February 1981, it was announced that, following informal consultations, members of the Committee had arrived at the following

9/ For the membership list of the Committee at its 1981 session, see A/AC.182/INF.6 and Add.1 and 2.

agreement regarding the election of officers: the Committee would have a Chairman, three Vice-Chairmen and a Rapporteur, and those officers should represent the different regional groups and, as far as possible, the various points of view held in the Committee. It would have a single, open-ended Working Group with the same Chairman and officers as the Committee. The chairmanship of the Committee, and hence also that of the Working Group, would be rotated and would go first to the Latin American Group, then to the Eastern European Group, the African Group, the Group of Western European and other States and the Asian Group. On each occasion, a candidate would be proposed on behalf of the regional group concerned. It had been agreed that that system of rotation should not prevent a representative of a country that was not committed to any of the points of view prevailing in the Committee from being elected Chairman by general agreement. It had also been agreed that any change in the order of rotation could be made only on the basis of a general agreement, and mainly in the event that a delegation invited the Committee to meet in its country. Lastly, all delegations had recommended that, in conducting the work of both the Committee and the Working Group, the Chairman should consult closely and frequently with the other officers of the Committee.

8. At its 49th and 50th meetings, on 18 and 19 February, the Special Committee agreed upon the composition of the officers of the Committee as follows:

Chairman: Mr. Sergio Gonzalez-Gálvez (Mexico)

Vice-Chairmen: Mr. Bengt Broms (Finland)
Mr. Nabil A. Elaraby (Egypt)
Mr. Dietmar Hucke (German Democratic Republic)

Rapporteur: Mrs. Maria Lourdes Ramiro-Lopez (Philippines)

9. At its 49th meeting, the Special Committee adopted the following agenda (A/AC.182/L.23):

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.
5. Consideration of the observations and proposals of Governments pursuant to General Assembly resolutions 3499 (XXX), 31/28, 32/45, 33/94, 34/147 and 35/164 and of the requests contained in paragraphs 4 and 5 of resolution 35/164 as well as of the request contained in paragraph 4 of resolution 35/160, with reference to its paragraphs 2, 3 and 5.
6. Adoption of the report.

10. The Special Committee had before it the reports it submitted to the General Assembly on the work of its 1976, 1977, 1978, 1979 and 1980 sessions. 10/ It had also before it the report of the Working Group on the Peaceful Settlement of Disputes (A/C.6/35/L.21) established by the Sixth Committee at the thirty-fifth session of the General Assembly, the draft Manila declaration on the peaceful settlement of international disputes which was sponsored by Egypt, El Salvador, Ghana, Indonesia, Madagascar, Nigeria, the Philippines, Romania, Sierra Leone and Tunisia, circulated in document A/C.6/35/L.5, as well as a working paper submitted by France under the title "Proposed outline of a handbook on the peaceful settlement of disputes" (A/AC.182/L.24), which had been prepared for the previous session of the Special Committee but had not been circulated at that session for lack of time, 11/ and a working paper, also submitted by France, entitled "Draft amendment to the rules of procedure of the General Assembly" (A/AC.182/L.25). 12/ The Committee further had before it a "Document prepared by the Chairman" (A/AC.182/L.27 and Add.1 and 2), 13/ a draft procedural recommendation submitted by Cyprus, Ecuador, Egypt, Indonesia, Liberia, Mexico, the Philippines, Romania, Rwanda, Sierra Leone, Tunisia, Venezuela and Yugoslavia (A/AC.182/L.28) and a draft recommendation presented by Egypt on behalf of non-aligned countries of the Special Committee (A/AC.182/L.29). 14/

11. At the 50th meeting, on 19 February, the Committee agreed that, starting on that same day and until the end of the following week, Working Group meetings would be held, and that morning meetings would be devoted to the question of maintenance of international peace and security and afternoon meetings to the peaceful settlement of disputes. The Committee also agreed to ask the Secretary-General to request a high-level official of the Secretariat to report orally as soon as possible on the work accomplished to date on the rationalization of General Assembly procedures so that a decision as to how to proceed on this question could be taken on the basis of that report.

12. At the 10th meeting of the Working Group, on 27 February, Mr. William B. Buffum, Under-Secretary-General for Political and General Assembly Affairs, made a statement regarding rationalization of existing procedures of the United Nations and replied to questions that were raised by the members of that Working Group (see sect. IV below).

13. Further to requests addressed to the Secretariat at the 51st meeting of the Committee, on 20 February, the Committee heard, at its 52nd meeting, on 2 March, a statement by a representative of the Office of Legal Affairs concerning the question of the Repertory of Practice of United Nations Organs. The Committee

10/ Official Records of the General Assembly, Thirty-first Session, Supplement No. 33 (A/31/33); ibid., Thirty-second Session, Supplement No. 33 (A/32/33); ibid., Thirty-third Session, Supplement No. 33 (A/33/33); ibid., Thirty-fourth Session, Supplement No. 33 (A/34/33); ibid., Thirty-fifth Session, Supplement No. 33 (A/35/33 and Corr.1).

11/ Ibid., Thirty-fifth Session, Supplement No. 33 (A/35/33 and Corr.1), para. 168. See para. 309 below.

12/ See para. 89 below.

13/ See paras. 268 and 312 below.

14/ See para. 269 below.

further considered the question at its 53rd and 54th meetings, on 4 and 11 March. Mr. Erik Suy, Under-Secretary-General, the Legal Counsel, replied to the questions that had been raised. A number of delegations noted with concern that the preparation and publication of the Repertory of Practice of United Nations Organs had fallen considerably behind schedule and expressed the wish that the Office of Legal Affairs take the necessary steps to bring the Repertory up to date as quickly as possible, as mandated in paragraph 10 of General Assembly resolution 35/164 of 15 December 1980, as well as to publish the existing volumes in the appropriate languages, and also to reprint the out-of-stock issues of the Repertory in the appropriate languages as soon as possible. It was widely noted that, in view of the importance of the timely issuance of the Repertory, it was necessary to retain the post of co-ordinator of the Repertory and that that should be done within the existing number of posts available to the Office of Legal Affairs.

14. In accordance with the decision taken at its 48th meeting, the Special Committee established an open-ended Working Group. The Working Group carried out its work under the chairmanship of Mr. Sergio Gonzalez-Gálvez, Chairman of the Special Committee. The Vice-Chairmen of the Special Committee, Mr. Bengt Broms, Mr. Nabil A. Elaraby and Mr. Dietmar Hucke and the Rapporteur of the Special Committee, Mrs. Maria Lourdes Ramiro-Lopez, served as Vice-Chairmen and Rapporteur, respectively, of the Working Group. There were also various meetings of informal consultations of members of the Working Group.

15. At its 52nd meeting, on 2 March, the Chairman informed the Committee that requests for observer status had been received from the Libyan Arab Jamahiriya, Peru, Chile, Morocco, the Holy See and Swaziland. There had been no specific request to make a statement in the Special Committee; that did not reflect a lack of interest in doing so, but rather the fact that non-members were awaiting a decision by the Committee on the general question of observer status. In view of the failure to reach agreement, he suggested that the Committee should authorize him to consult with the representatives of those countries which had already made requests for observer status in order to clarify their aims and to propose a compromise solution at a subsequent meeting.

16. At its 53rd meeting, on 4 March, the Chairman reported that the consultations on whether or not to admit observers to the Committee's meetings had so far achieved no positive results, although most delegations had supported his view that the Committee should be open to all Member States. Since the nature of its functions and decisions meant that most of the Committee's substantive meetings took place in the Working Group, a decision would also have to be made regarding the participation of observers in the Group. The Chairman of the Committee therefore made the following ruling: the Committee should allow observers from all States which requested such status to participate in its work; observers would be entitled to make statements in the plenary meetings of the Committee with the latter's prior authorization; negotiations would continue on the question of the participation of observers in the Working Group, but account should be taken of the fact that there was no provision or decision to the effect that the Working Group's meetings should be closed. Some delegations expressed the view that observers in the Special Committee should be allowed to attend the meetings of the Working Group and to participate in its work as well. Other delegations, however, did not agree with this view.

17. In accordance with the ruling of the Chairman reflected in paragraph 16 above, the observers from Chile and Peru made statements at the 54th meeting, with the prior authorization of the Committee.

18. At its 56th and 57th meetings, the Special Committee had before it a statement of the Rapporteur on the work carried out by the Working Group. In accordance with the decision of the Committee, the part of that statement concerning the maintenance of international peace and security appears as section II of the present report. The parts of the statement of the Rapporteur concerning the peaceful settlement of disputes and rationalization of existing procedures of the United Nations appear in sections III and IV, respectively.

19. The Special Committee expressed the view that substantial progress had been made towards fulfilment of the tasks extended to it.

20. The Special Committee draws in particular the attention of the General Assembly to the progress made in its work on the topic of the peaceful settlement of disputes.

21. In this regard, the General Assembly should consider the establishment of a working group at the beginning of its thirty-sixth session with a view to finalizing the draft Manila declaration on the peaceful settlement of disputes.

22. Some members of the Special Committee felt that its mandate should be renewed while other members felt that that was a matter falling within the competence of the General Assembly.

II. STATEMENT OF THE RAPPORTEUR ON THE QUESTION OF THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY

23. As is indicated in paragraph 11 of the report of the Special Committee, for a certain period of time the Working Group devoted its attention in an alternative fashion to the question of the maintenance of international peace and security and to that of the peaceful settlement of disputes. After the 11th meeting, however, the Group concentrated its attention exclusively on the question of the maintenance of international peace and security while informal consultations were held on the peaceful settlement of disputes question. Thus, the question of the maintenance of international peace and security was considered by the Working Group at its 2nd, 4th, 6th, 8th, 10th and 12th to 20th meetings, from 20 February to 13 March 1981.

24. This statement is based not on full summary records, to which the Working Group is not entitled, but rather on the notes of the Rapporteur and those prepared for her assistance by competent services of the Secretariat. What follows, therefore, is a brief summary of the main trends of the debate from unofficial notation. It does not purport to reflect in detail all statements or comments made in the Working Group.

25. With regard to the question of the maintenance of international peace and security, the Working Group, on the suggestion of the Chairman and with a view to assisting the Special Committee in fulfilling its mandate as set forth in General Assembly resolution 35/164, took as its basis of work the informal compilation of proposals on the topic submitted at its 1976 to 1980 sessions, which had been prepared by the Chairman of the 1980 session with the assistance of the Rapporteur. That compilation is reproduced in paragraph 152 of the report of the Special Committee on its 1980 session. 15/

26. Concerning the weight to be attached to that informal compilation, one member stated that it represented the work of one person, whereas the General Assembly had entrusted the task of compiling proposals to the Special Committee as a whole. Work on the proposals related to the maintenance of international peace and security should therefore, it was urged, commence with the Committee's determining which items should be included in the compilation, and which not. The representative who held this view then made brief remarks on various proposals included in the compilation. Those remarks are not reflected here as the delegation in question made more detailed comments on those proposals later, when delegations were given the opportunity to comment on individual proposals in the compilation.

27. Another view expressed in that regard, however, held that the suggestion that the compilation before the Committee was the work of one person, was incorrect: the Chairman and Rapporteur might have been responsible for the physical compilation of the proposals, but the proposals themselves emanated from many different members of the Committee. It was also recalled that all the proposals had been previously discussed by the Working Group in the Special Committee at its earlier sessions; it was not necessary to engage in a new general debate, repeating arguments put forward earlier, on each proposal. 16/

15/ Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 33 (A/35/33 and Corr.1).

16/ The Working Group had before it an informal paper prepared by the Secretariat which read as follows:

"Proposals included in the informal compilation of the proposals submitted to the Special Committee at its 1976, 1977, 1978, 1979 and 1980 sessions with regard to the topic of the maintenance of international peace and security prepared by the Chairman with the assistance of the Rapporteur (A/35/33 and Corr.1, paragraph 152)"

<u>Document</u>	<u>Sponsor(s)</u>	<u>Reference</u>	<u>Date of submission</u>	<u>Session at which proposal was considered</u>
"A/AC.182/L.5	Colombia	A/32/33, p. 182, Annex II.D	5 March 1976	1976* 1977*
"A/AC.182/L.9	Philippines	A/32/33, p. 188, Annex II.G	10 March 1976	1977*
"A/AC.182/L.12/Rev.1	Algeria, Argentina, Barbados, Colombia, Congo, Cyprus, Ecuador, Egypt, El Salvador, Kenya, Mexico, Nigeria, Philippines, Romania, Sierra Leone, Tunisia, Yugoslavia, Zambia	A/32/33, p. 192, Annex II.H	8 March 1977	1979
"A/AC.182/L.15	Italy and Spain	A/32/33, p. 209, Annex II.J	8 March 1977	1979
"A/AC.182/WG/6	Mexico	A/33/33, p. 19, Chapter II.B, paragraph 7	10 March 1978	1979
"A/AC.182/WG/8/Rev.1	Tunisia	A/33/33, p. 26, Chapter II.B, paragraph 23	16 March 1978	1979
"A/AC.182/WG/20	Cyprus	A/33/33, p. 70, Chapter II.D, paragraph 4	23 March 1978	1979
"A/AC.182/WG/29	Romania	A/34/33, p. 72, Chapter III.C, paragraph 25	5 March 1979	1979
"A/AC.182/WG/30/Rev.1	Sierra Leone	A/34/33, p. 77, Chapter III.C, foot-note 15/	15 March 1979	1979
"A/AC.182/WG/31	Turkey	A/34/33, p. 80, Chapter III.C, paragraph 41	9 March 1979	1979
"A/AC.182/WG/32	Yugoslavia	A/34/33, p. 81, Chapter III.C, paragraph 43	9 March 1979	1979
"A/AC.182/WG/33	United States of America	A/34/33, p. 84, Chapter III.C, paragraph 51	9 March 1979	1979 and 1980
"A/AC.182/WG/35	Greece	A/34/33, p. 88, Chapter III.C, paragraph 57	12 March 1979	1979
"A/AC.182/WG/37	United Kingdom of Great Britain and Northern Ireland	A/34/33, p. 88, Chapter III.C, paragraph 60	13 March 1979	1980
"A/AC.182/WG/42	Indonesia	A/35/33, p. 17, paragraph 46	1 February 1980	1980
"A/AC.182/WG/44/Rev.1	Japan	A/35/33, p. 26, paragraph 74	12 February 1980	1980
"A/AC.182/WG/46/Rev.2	Algeria, Congo, Cyprus, Egypt, El Salvador, Ghana, Iran, Kenya, Nigeria, Romania, Rwanda, Sierra Leone, Tunisia, Yugoslavia and Zambia	A/35/33, p. 46, paragraph 136	14 February 1980	1980 ¹

* In the context of the examination of the analytical study submitted by the Secretary-General pursuant to General Assembly resolution 3499 (XXX), document A/AC.182/L.2 (A/32/33, annex II.A).

28. In connexion with how best to organize the Working Group's discussion of that compilation, some delegations believed that the Committee should focus on a limited number of proposals. It was pointed out that General Assembly resolution 35/164, which defined the Committee's terms of reference, gave priority, in paragraph 3 (a), to "proposals regarding the question of the maintenance of peace and security ... including those relating to the functioning of the Security Council". The Assembly's reason for doing so was that it intended the Committee to accord priority to the consideration of those proposals related to the functioning of the Security Council.

29. Other delegations stated that the Committee should go through the entire list of proposals one by one, considering all questions relating to the maintenance of international peace and security. It was also stressed that paragraph 3 (a) of General Assembly resolution 35/164 should be interpreted as meaning that proposals concerning the functioning of the Security Council should be considered along with - not before - the other proposals relating to the maintenance of international peace and security. All proposals should be considered by the Working Group.

30. The Working Group followed a flexible approach in examining the informal compilation, on occasion discussing ensemble all the proposals contained in one section of the compilation and on other occasions discussing separate proposals or groups of proposals which appeared to be closely related.

A. Section I of the informal compilation

Proposal 1

31. The text of proposal 1 read as follows:

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

32. Several representatives favoured an investigation of the reasons for the Organization's inability to maintain international peace and security and therefore supported the first proposal. It was said that such an investigation would be useful and might take the form of consultations among States concerning the reasons for the reduced role of the United Nations in the maintenance of international peace and security. Furthermore, one representative noted that his Government had announced that it was considering calling for a special session of the General Assembly to look into the reasons for the present inability of the United Nations to maintain international peace and security. Proposal 1 was described as being very important, for the United Nations had clearly been unable to maintain international peace and security in the face of recent major occurrences; the question had already come up in other forums such as the Sixth Committee. It was said to be clear that the United Nations was suffering from a loss of credibility owing to its inability to maintain international peace and security, which was attributed to the attitude the Great Powers adopted towards the Organization. The United Nations had developed a series of basic principles that should enable States to coexist in peace. The problem was that those principles were not always observed. The United Nations did not have the strength that it should have in international relations; the causes of that lack of strength should be analysed. The immediate

task, then, was to make a dispassionate assessment of the events that had led to the current state of crisis, before setting about finding a solution. While the wording of that proposal could perhaps be improved to reflect comments made by delegations, it was the view of several delegations that proposal 1 should be included in the list to be submitted to the General Assembly.

33. In considering it useful to investigate the reasons for the present inability of the United Nations to maintain international peace, it was maintained that one of the reasons was the refusal of some States to fulfil their obligations in accordance with Articles 1 and 2 of the Charter. To enhance the role of the United Nations in maintaining international peace, it was first a question of exhausting all the possibilities provided by the Articles of the Charter, especially those concerned with preventing conflict between States and with the reaction of the Organization to such conflicts. The strengthening of the role of the United Nations depended on achieving disarmament, reducing the arms race and further elaborating and codifying international law.

34. Certain representatives were of the view that the use of the word "inability" was perhaps too strong and did not adequately reflect the financial, political and constitutional crisis relating to that "inability". Nor did the proposal go to the heart of the issues, namely, the maintenance of international peace and security. The wording of the proposal appeared unduly negative and defeatist in approach, which was unwarranted in view of the Organization's accomplishments over the years. The role of the United Nations in this field was not, it was said, a record of failure and futility but included many successes. It should be rephrased more broadly so as to permit a discussion of what should be done to improve the international situation.

35. While expressing general support for proposal 1, certain representatives also stressed the links between it and proposal 2. The two proposals were considered to be clearly related and tied together.

Proposal 2

36. Proposal 2 reads as follows:

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

37. Several representatives favoured the inclusion of proposal 2 in the list of proposals which awakened special interest and on which general agreement was possible, to be drawn up by the Committee. For States to follow the course advocated in proposal 2 would be, it was said, a positive development. It was suggested that the Committee should explore how States could be encouraged to bring matters before the Security Council. The proposal was also viewed with some sympathy if it would lead to a gentlemen's agreement and more frequent resort to Chapter VI of the Charter.

38. It was said that the proposal should be studied further and its wording reviewed in order to relate it more fully to the question of the maintenance of international peace and security. While agreement was expressed with the view that the proposal could be useful for that question it was wondered what form such an entreaty should take in order to be effective and what impact it would have on the real problems faced by the United Nations.

39. A number of representatives also remarked on the close link between proposals 1 and 2. An effort should be made, it was suggested, to incorporate them into a single paragraph. States should be urged not only to demonstrate their faith in the United Nations but to seek the reasons why there was no confidence in the United Nations and to create the conditions which would lead to the development of such confidence. However, it was also stated that States had already demonstrated their faith in the Organization by becoming Members.

Proposal 3

40. The text of proposal 3 read as follows:

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

41. Some representatives reaffirmed the special importance their Governments attached to a universal code of conduct as suggested in proposal 3. It was considered essential to spell out the rights and duties of States in terms more detailed than the general principles laid down in the Charter, which were subject to a variety of interpretations. It was stated that a binding code of conduct would complement the Charter. Precisely because of the progress made in international law since 1945 it was now possible to envisage a document that would set out in detail the fundamental rights and duties of States. One representative welcomed the large support and interest shown at Manila towards this proposal. He drew attention to paragraphs 91 to 101 of the Committee's report on its 1980 session 17/ which described views expressed at Manila on that matter. He was of the view that, at the present time, the Committee should not examine the contents of such a code in detail but rather concentrate on reaching agreement on the idea of having such a code. His delegation firmly believed that such a code was necessary and that it should take the form of a legally-binding treaty. This would differentiate qualitatively the code from other United Nations declarations and resolutions. Moreover, he did not think that the failure of previous attempts to adopt the draft declaration on the rights and duties of States elaborated by the International Law Commission should deter the Committee from the task of codifying the fundamental rights and duties of States. The establishment of democratic relations among States required a clear definition of the rights and duties of every State with the participation of those countries that had acceded to independence since the drafting of the Charter of the United Nations. Moreover, he did not share the simplistic view set forth in paragraph 89 of the Committee's report, since clearly such a code would neither reiterate nor revise the provisions of the Charter; it would develop and supplement the principles of the United Nations in the light of the experience acquired by States since the Second World War in their efforts to establish new relations among them, based on equity, justice and mutual understanding. That was extremely important for the strengthening of international peace and security, and he therefore hoped that the Committee would agree that proposal 3 was one on which general agreement could be reached. He also expressed the preference that the formulation of this proposal would reflect accurately the

17/ Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 33 (A/35/33 and Corr.1).

wording of the paper submitted by the non-aligned countries at Manila (A/AC.182/WG/46/Rev.2) 18/ and would include a reference to the legal nature of such a code.

42. On the other hand, other representatives expressed serious doubts concerning the proposal to try to draft such a universal code of conduct and opposed its inclusion in the list to be prepared by the Committee. It was said there was no need for such additional normative instruments - Article 2 of the Charter already covered the question of fundamental rights and duties of States. It was stressed that an attempt to draft a universal code of conduct was unlikely to be helpful regardless of the form the code took and that since 1945 there had been an unprecedented development and codification of international law in numerous different agreements and conventions which, taken together, constituted a substantial code by which States should guide their actions. A better approach to adopt would be to urge more States to ratify existing conventions and agreements or to expand and improve upon existing agreements between States. In addition, doubts were expressed by one representative about codification of the matters to be covered by a universal code, as any codification would tend to lead to crystallization of the legal order and weaken progress in international law. A guide to interpretation was favoured rather than a universal code.

43. The opinion was also voiced that while the new legal commitment called for in proposal 3 was not objectionable per se, it would be of great benefit only if it actually proved effective. The difficulty appeared to be less the lack of legal instruments than of political will. It was felt that the moment was not propitious for a universal code of conduct, since it would require a broad consensus that would be difficult to obtain.

Proposal 4

44. Proposal 4 read as follows:

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

45. Certain representatives believed proposal 4 to be worthy of consideration and valuable as it was essential to spell out such rights and duties of States in detail. The hope was expressed that the proposal would be included in the list to be submitted to the General Assembly in the form in which it had originally been presented. The view that such a treaty was not important was not shared; on the contrary, it was maintained that it would be very important for the maintenance of international peace and security. It was remarked that perhaps the Committee should not go into that matter in great detail since that subject was being considered by another Committee at the moment, but it should nevertheless be included in the list to be submitted to the General Assembly.

46. Certain other representatives opposed including the proposal in the list to be prepared. It was described as a distraction since an international treaty on the non-use of force was being discussed elsewhere in the Organization. Besides, it was said, such a treaty would detract from the meaning of paragraphs 3 and 4 of Article 2 of the Charter; new normative instruments were not needed.

18/ Ibid., para. 136.

47. Other representatives believed that the question of an international treaty on non-use of force should be left to the Special Committee dealing with the matter already.

48. In addition, one representative stressed that, while there was no objection to the proposal, it was preferable to expand and improve upon existing agreements between States as the basic difficulty lay more in the lack of political will than in lack of legal instruments.

Proposal 5

49. The text of proposal 5 read as follows:

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

50. Proposal 5 was considered by certain representatives as very important given the changes in the international situation that had taken place over the past 30 years. The proposal was also welcomed since amending Article 2 of the Charter would extend rather than restrict its provisions. While accepting the proposal, one representative felt it should not have priority for future work and would require much more careful consideration.

51. A few representatives indicated an open mind with regard to proposal 5. It was deemed necessary to be clear what amendments to Article 2 of the Charter were intended under this proposal.

52. Other representatives opposed the idea reflected in proposal 5, stressing that the Principles enshrined in Article 2, as well as the Purposes set forth in Article 1, formed the basis of the Organization and should remain untouched. It was neither appropriate nor useful to include additional Principles in Article 2. The Article could only be weakened by adding additional Principles. Accepting proposal 5 would not make any constructive contribution to the maintenance of international peace and security; what was necessary was to ensure compliance with existing norms. In addition, the view was held that general agreement could not be reached on many of the additional Principles suggested for inclusion in the Charter.

Proposal 6

53. Proposal 6 of the informal compilation read as follows:

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

54. It was stated that the existence of the definition of aggression adopted by the General Assembly in 1974 (resolution 3314 (XXIX) of 14 December 1974) opened up possibilities which should be made use of when decisions had to be reached on acts of aggression. The definition should accordingly be annexed to the Charter as suggested in proposal 6. The thought was also expressed that ideally the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations should be appended similarly.

55. It was also said that while the proposal could be considered acceptable, it should not have priority in the future work of the Committee as it needed much more careful consideration. One representative said he had an open mind with regard to the proposal.

56. Other representatives disagreed with proposal 6, emphasizing that the definition of aggression would add nothing to the Charter. Adding the definition to the Charter in an attempt to make it a code binding on the Security Council would not be in accord with its competence under the Charter. The Security Council should use various criteria in order to arrive freely at a decision in conformity with Chapter VII of the Charter. Moreover, adding the definition of aggression to the Charter might restrict the freedom of action of the Organization and the Security Council and raise problems regarding the definition's subsequent implementation. It seemed hardly sensible, according to another representative, to incorporate the definition of aggression in the Charter, especially in view of the way it was written and the difficulties encountered by the Special Committee on the Question of Defining Aggression. The point was also made that the definition had had little impact on discussions within the Organization. States seemed to set more value on the Declaration on Friendly Relations among States, referred to earlier.

B. Section II of the informal compilation

57. A number of representatives referred to section II as a whole or commented in a general way on proposals or questions raised therein.

58. One representative stated that all the proposals contained in section II related to a major problem which was eroding the credibility of the United Nations, namely, the non-implementation of United Nations resolutions. His delegation believed that that problem was directly related to the Security Council and that the Council must focus its attention on that matter: it was up to the Council to take action in instances of non-compliance with its resolutions. Some representatives supported this view, stressing that all the items in section II were very important, in that they all sought to deal with the Organization's basic malaise: the failure of States to implement its decisions; some of the proposals could, it was felt, be more happily worded, however. Support was expressed for any proposal that would have the effect of enhancing the decision-making process in the United Nations and the subsequent application of the decisions reached. All four of the items appearing under section II of the compilation were thus to be endorsed. The fact that States had evolved established modes of practice regarding decisions taken by the United Nations augured well for an attempt to codify that practice further. As the proposals in section II were all closely linked to the effectiveness of the United Nations and were all directed towards the implementation of measures approved by States, they should all be placed on the list to be submitted to the General Assembly.

59. Another representative stressed that section II dealt with the crux of the Committee's mandate. Basically, the short-comings of the United Nations in terms of peace and security could not be attributed to weaknesses in the Charter but to lapses in the attitude of certain Member States regarding the purposes and principles of the United Nations. Moreover, the Security Council should meet to review the status of the implementation of its resolutions and should establish subsidiary organs for that purpose in accordance with Article 29. Subsidiary organs might also be entrusted with such tasks as conciliation, arbitration, inquiry and good offices but, should their efforts be to no avail, the Security Council itself should offer the necessary conciliation or arbitration services. His delegation also felt that the question of the implementation of Security Council resolutions deserved considerable attention, and it agreed that the Security Council should be more prepared, whenever necessary, to employ the enforcement measures set forth in Chapter VII of the Charter. Moreover, the General Assembly should have greater authority when the Security Council was paralyzed by a veto, and the relationship between the Security Council and the General Assembly could be clarified - although not necessarily through any arbitrary revision of the Charter - in order to strengthen the trend towards allowing the General Assembly to play a greater role when the Security Council was unable to act. That could be achieved, for example, through an understanding that, when the General Assembly was called upon to act in that manner, its resolutions adopted either by consensus or unanimously, or even by a given majority, would be binding.

60. According to yet another representative, the connexion between the proposals in section II and the maintenance of international peace and security could be made rather more explicit.

61. Some other representatives stated that section II as a whole was not very encouraging in terms of its containing proposals likely to receive general

agreement. In fact, it was felt that all the proposals contained therein were unfortunate and reflected a concept of the role of the United Nations that could not be endorsed. The view was expressed that accepting the proposals in section II would not achieve the aim of strengthening the role of the Organization in maintaining international peace.

62. One representative, supported by other speakers, suggested that since the proposals in section II did not directly relate to the question of international peace and security, but to the functioning of the United Nations as a whole, they should not be included in the compilation. The question of the functioning of the Security Council could be taken up at a later stage, for example, during the discussion of procedural matters or of the functioning of the Organization.

Proposal 7

63. Proposal 7 read as follows:

"7. All Member States should accept and carry out all decisions and recommendations of the Security Council, in accordance with the Charter, and follow the recommendations of the General Assembly, as well as other organs of the United Nations (see A/AC.182/L.12/Rev.1)."

64. Some representatives favoured proposal 7, it being said that it did not require an amendment to the Charter and that it represented one practical suggestion on ways of improving the effectiveness of the General Assembly and the Security Council as well as enhancing the credibility of the United Nations system. The inclusion of proposal 7 was also supported by representatives who stressed the great importance they attached to the implementation of United Nations resolutions. Since the *raison d'être* of the United Nations was the maintenance of international peace and security, the resolutions pertaining thereto should be respected. Proposal 7 offered a remedy for that situation, although it did not specify the method whereby such resolutions could be implemented. One representative remarked that the proposal originally submitted by his delegation went further along those lines and provided, inter alia, for the Security Council to set up the appropriate bodies, in accordance with Article 29. Another representative remarked that fears voiced that the proposal would make General Assembly recommendations binding were misplaced. The proposal simply called upon States to "follow" such recommendations.

65. Some representatives believed that proposal 7 required further study or redrafting. In the opinion of one representative, if decisions taken within the United Nations were to be made binding, they would have to be taken by the proper bodies - those with the competence and authority to do so. Decisions of the Security Council were already binding upon all Member States, under Article 25 of the Charter, but its recommendations and the recommendations and decisions of the General Assembly were not. In some cases, however, decisions by the Assembly which did not, strictly speaking, have the force of law had gradually entered international relations as a constant feature of States' conduct. Such was the case with the many resolutions condemning apartheid. He foresaw little difficulty in reaching agreement on giving binding force to decisions in that category. To one representative proposal 7 was unsatisfactory, being too weak in substance apropos of Security Council decisions and posing problems where the recommendations of the Council and the General Assembly were concerned. The proposal needed to be completely redrafted: in its existing form it might well be inconsistent with the provisions of the Charter. He also thought it would be inopportune to destroy

the delicate balance struck in the Charter between Council and Assembly. According to another representative, its wording should be changed or it should be deleted entirely, since compliance with the recommendations of the General Assembly and of other organs depended upon the sovereign will of States. Certain representatives stressed that the wording of the proposal could be improved with the aim of making a clear distinction between decisions of the Security Council and recommendations of the General Assembly, the latter not being legally binding.

66. Still other representatives opposed proposal 7 and its inclusion in the list to be prepared, deeming it to be wrong in law and a mis-statement of the Charter, going beyond the scope of Article 25. It was viewed as devoid of meaning since it placed all the recommendations and decisions of all United Nations bodies on the same level. The concern was voiced that it might disturb the delicate balance of the Charter set down in Article 25. Even in terms of feasibility and of prospects for reaching agreement on the proposal, it was said it should not be included in the compilation relating to the Committee's work.

67. In the opinion of one representative who opposed proposal 7, it attempted to combine two different things, namely, decisions of the Security Council and recommendations of the General Assembly. The word "recommendation" did not carry the force of a binding, legal commitment but rather was a proposal that should be considered by individual Governments in good faith. The question of the legal effect of a resolution was more important than the question of whether it was binding or not. The word "follow" was too vague to become part of the Charter. As far as other organs of the United Nations were concerned, it was difficult to see how, for example, Secretariat "recommendations" could be followed; furthermore, in the case of the International Court of Justice, decisions were already binding. Considering the number of resolutions adopted by the General Assembly at its thirty-fifth session in 1980 it was over-ambitious to seek to provide that resolutions should constitute firm commitments for all Member States. There was a limit to what the United Nations could do, given the vast range of current activities.

Proposal 8

68. Proposal 8 read as follows:

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

69. One representative, referring to proposal 8, said that if that proposal was implemented it would have exceptional consequences on the role of the United Nations in the maintenance of international peace and security. Arguments put forward that proposal 8 would institute a system of weighted voting or that it would bypass national constitutional procedures were far removed from the essence of the proposal. Since, under Article 25, decisions requiring the affirmative votes of only nine Members constituted firm commitments, it was difficult to understand why a resolution adopted unanimously by a much larger body should not also constitute a firm commitment for those States participating in the relevant vote. The adoption of proposal 8 would enhance the sense of responsibility which States felt in the elaboration and adoption of resolutions of the General Assembly and of the Security Council and would result in an authentic consensus which would effectively strengthen

the role played by the United Nations in settling international problems. Peace and security themselves would be strengthened if States considered such resolutions to be firm commitments. In actual practice, such decisions often had no effect at all, but the argument that General Assembly resolutions were merely recommendations without any legal effect was disputable: the adoption of resolutions was a legal act, and States should implement such resolutions in good faith. Any attitude to the contrary did not strengthen the role of the United Nations. The wording of proposal 8 could perhaps be improved to refer to those resolutions of the Security Council and General Assembly relating to the maintenance of international peace and security.

70. Another representative said it was strange that delegations which, in 1979, had supported a proposal to make decisions adopted by consensus binding on the membership of the United Nations should now argue against the retention of proposals 7 and 8. Members had a moral responsibility to give due weight to the General Assembly's recommendations; he believed they should make a firm commitment to stand by resolutions adopted without a vote. The problem with Article 25 of the Charter was that precisely the same States which refused to abide by Assembly decisions also refused to abide by the decisions of the Security Council.

71. It was suggested by one representative that proposal 8 might not require amendment to the Charter. It might be necessary only to adopt provisions to ensure that, when Security Council decisions were taken by consensus, the participating States would assume a firm commitment to implement such decisions. Another representative indicated concern over the reference to both consensus and unanimous vote in the proposal. If the two terms were equivalent the reduplication was superfluous; if not, he feared that it would lead to difficulties of interpretation. It would be better to keep to "consensus", which had acquired a particular and unmistakable shade of meaning within the Organization.

72. Other representatives did not agree with proposal 8 and suggested it should not be included in any future compilation or list. It clearly went beyond the scope of Article 25, creating considerable problems. While certain speakers found the proposal interesting, they found it difficult to accept the idea that such resolutions should be considered as binding, like treaties. Moreover, States Members of the United Nations had agreed, under Article 25 of the Charter, to assume a commitment only vis-à-vis decisions of the Security Council. Clearly, that process could not be extended because of the national constitutional mechanisms governing the commitments assumed at the international level under a treaty. In fact, proposal 8 would have the effect of bypassing the competent national authorities and mechanisms as well as the power of national parliaments. The proposal might, it was also said, be relevant if an effort was being made to reorganize the United Nations in its entirety. However, any such effort would be imprudent currently because of the difficulties involved in putting the United Nations back together again. Moreover, certain resolutions could be considered as being already binding on Member States; e.g., the Declaration on Friendly Relations and certainly resolutions adopted in the financial area which obligated Member States to pay their financial assessments.

73. Furthermore, it was stressed, no amendment to the Charter such as called for under proposal 8 would be necessary if it could be understood that the adoption of decisions by consensus or a unanimous vote indicated a firm political commitment to their terms. An attempt to give such decisions binding force, however, would

probably be unconstructive in that it would lead to a sharp reduction in the number of resolutions that could be adopted on the politically "soft" basis of consensus, and thereby exacerbate the tensions between Member States. Also the idea of a "firm commitment" might open the door to a State's claiming that a resolution not adopted by consensus or unanimous vote did not constitute a commitment.

74. Finally, according to one representative, proposal 8 was not clear whether it referred to resolutions of the Security Council or to those of the General Assembly. Security Council resolutions were already dealt with in Article 25 of the Charter. In that sense, the proposal was redundant. Other United Nations bodies seemed increasingly to adopt resolutions by consensus or unanimously and although that did enhance their moral and political significance, it would not be consistent with the present international situation to suggest that resolutions thus adopted were binding. Accordingly, proposal 8 should not be included in the compilation.

Proposal 9

75. The text of proposal 9 read as follows:

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

76. Besides those representatives who expressed agreement in general with all the proposals indicated in section II of the compilation (see para. 58 above) one representative held the view that proposal 9 might not require the amendment of the Charter to which it referred. Another representative suggested proposal 9 should be limited to the question of the maintenance of international peace and security. He said it was necessary to adopt measures to implement the resolutions of the General Assembly and the Security Council, and additional provisions would be conducive to that end.

77. Those representatives who opposed proposal 9 believed it to be unnecessary. There was no need to amend the Charter or propose new measures in order to ensure the application of General Assembly and Security Council resolutions. Both bodies could establish special machinery for overseeing the implementation of their resolutions. Indeed, the proposal appeared perplexing to some because, in practice, a number of subsidiary bodies had been set up by the Security Council and the General Assembly to monitor the implementation of their resolutions. Accordingly, there was no need to amend the Charter in order to formalize something which was already being done in practice and thus, it was urged, proposal 9 should not be included in the list to be prepared.

78. Another point of view put forward was that the only attainable goal in this field would be to urge the Council and the Assembly to make greater use of their existing powers to delegate authority for overseeing the application of a given decision or resolution, and that, it was argued, would give them less latitude for action than they had at the moment. Proposals 9 and 10 might be merged in a more modest proposal, but for the present it was thought their only effect would be to provoke an avalanche of reports serving no practical purpose.

Proposal 10

79. The text of proposal 10 read as follows:

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

80. In commenting specifically on proposal 10, one representative thought it contained a practical suggestion on ways of improving the effectiveness of the Organization without amending the Charter. Another representative noted that some provisions of the Charter obliged the Security Council to report to the General Assembly yearly or in connexion with specific cases. Because current reporting was not adequate, proposal 10 suggested that an appropriate mechanism should be established for that purpose. Yet another representative indicated his delegation had no objection to proposal 10.

81. Certain other representatives, however, presented objections to the proposal. One representative believed proposal 10 raised many questions that bore no relation to the Charter and contained some issues that had already been rejected at San Francisco. Accordingly, it would not be wise to set up such an elaborate system, which would only produce additional documentation. Therefore, his delegation did not agree with it. As to the submission of periodic reports on the implementation of Security Council and General Assembly resolutions, he doubted such reports would serve much purpose. It would be a constitutional departure from existing practice for the Security Council to report to the General Assembly. Moreover, if the issue at stake was important, everyone would know which countries were complying with the resolution in question and which countries were not. Enough opportunities already existed to draw attention to such countries. There was no need to change the existing system, whereby specific requests could be made for an investigation into the implementation of particular resolutions and a report thereon. Another representative was of the view that proposal 10 should not be in the compilation, because the Charter clearly delimited the competence of the various organs of the United Nations, in particular the principal organs, and because both the General Assembly and the Security Council already monitored the way in which their decisions were implemented. Thus, there was no need to create a mechanism for that purpose, nor would such a mechanism be consistent with the present stage of development of international relations; it would conflict with the nature of the Organization, as defined in the Charter, which did not include supervising what was done by sovereign States but merely co-ordinating their activities in accordance with the Charter. Still another representative opposed proposal 10 as it would merely increase the administrative tasks of States and of the Secretariat without producing any real results.

82. In the course of the discussion of proposal 10 and of section II in general, a number of representatives commented favourably on the idea that the foreign ministers of States members of the Security Council should meet periodically to review the international situation and exchange views thereon. The concept of periodic, high-level meetings of the Security Council was deemed consistent with Article 28, paragraph 2, of the Charter. Attention was drawn by one representative to the fact that the delegation of a permanent member of the Security Council had originally proposed such meetings at Dumbarton Oaks on the grounds, first, that

decision makers should also assume some of the responsibility for the work of the Security Council and, secondly, that such meetings would provide an opportunity to hold private consultations to review outstanding issues, without attracting undue attention or arousing unjustified expectations. The first three Secretaries-General had urged the implementation of Article 28, and his delegation saw such meetings as one means of carrying out proposal 2 in section I of the informal compilation (see para. 36 above). Therefore, despite the lack of enthusiasm aroused by the first such meeting in 1970, he felt that periodic consultations would offer a realistic way of approaching proposals 9 and 10 and thus deserved the Committee's attention. Another representative drew attention to the statement made on 23 February 1981 by the head of State of a permanent member of the Security Council in which the proposal was made to convene a special session of the Security Council, in which the top leaders of Member States as well as other leaders would participate, in order to find the key for improving the international situation and preventing war.

C. Section III of the informal compilation

Proposal 11

83. Proposal 11 of the informal compilation read as follows:

"11. There should be a strengthening of the role of the General Assembly in the maintenance of international peace and security by making full use of the provisions of Articles 10, 11, 13 and 14 and of the relevant resolutions of the General Assembly (see A/AC.182/WG/20; WG/30/Rev.1; WG/46/Rev.2)."

84. An amendment was orally proposed to proposal 11 so that the final phase would read "as well as the relevant resolutions of the General Assembly and its rules of procedure". The sponsor of the amendment felt the change was necessary because the rules of procedure had been accepted by all delegations whereas individual States might claim that they had not agreed to all relevant resolutions. In addition, he could not subscribe to the view that the General Assembly had no active role to play in the maintenance of peace and security. The original intention, in 1945, had been for the General Assembly to determine general issues and guidelines while the Security Council would act as the Assembly's executive arm. Unfortunately, the balance struck in San Francisco had never really taken effect, to the detriment of both the Council's and the Assembly's work. Given the rare occasions on which the Security Council resorted to its powers under Chapter VII of the Charter it was natural for Member States to turn to the General Assembly. He realized that some delegations must have difficulty with the reference in proposal 11 to the General Assembly's rules of procedure; but there was nothing sinister in the suggestion that the Assembly should consider reports from the Security Council. The Security Council had primary responsibility for the maintenance of international peace and security - but "primary" could not be taken to mean "exclusive".

85. One representative said that the thrust of section III as a whole was to define and reform the role of the General Assembly in the maintenance of international peace and security. His delegation could not agree with the position taken by some others, notably those that had proposed the deletion from the Charter of Article 23 which assigned primary responsibility for the maintenance of peace and

security to the Security Council. The relationship between the General Assembly and the Security Council as defined in the Charter was not antagonistic but co-operative, as the purpose of the United Nations as a whole was to preserve international peace and security. On that understanding his delegation had no difficulty with proposal 11, believing that all bodies, including the General Assembly, should make full use of the powers attributed to them by the Charter. The references made in the proposal to resolutions of the General Assembly and the Assembly's rules of procedure were quite acceptable, although the extent of the residual powers accruing to the General Assembly might be a matter for debate when the Security Council failed to act on a case threatening peace and security. It was noted by a few representatives that proposals 11 and 14 were closely related in substance and could, if combined and reformulated, be included in the list to be prepared by the Committee.

86. Another representative expressed support for the role of the General Assembly as set out in Chapter IV of the Charter and had no objection to adopting any course of action open to the Assembly, under the Charter. Thus he did not object to proposals 11 or 12 provided they were put into practice within the existing frame of the Charter - which, he pointed out, included one provision, Article 12, that had been omitted from the text of proposal 11. Other representatives said that the omission of Article 12 of the Charter from those listed in proposal 11 was conspicuous, and should be remedied. At the same time, no reference should be made to such notorious anti-Charter resolutions as 377 A (V) of 3 November 1950, entitled "Uniting for peace". It was felt, in any case, that the subject-matter of the item was procedural and, as such, was not directly related to the substance of the matter at hand.

87. Certain representatives did not find proposal 11 useful. The view was expressed by one representative that it was a statement of political inclination on the part of some delegations but that it took the Committee no further. He doubted whether a greater use of the General Assembly would lead to progress in the maintenance of international peace and security. The "Uniting for peace" resolution (377 A (V)) had been used in specific situations to enable the General Assembly to react to those situations.

88. Another view expressed by a representative was that the proposal was too general and irrelevant because General Assembly resolutions were already being fully used. The new drafting suggested was not considered acceptable because the Assembly's rules of procedure referred to resolution 377 A (V) which was objectionable. Indeed, his delegation intended to submit a proposal to amend the rules of procedure, especially articles 8 (b) and 9 (b), in order to provide a method to convene a special session without reference to resolution 377 A (V).

89. As indicated in the Committee's report, see para. 10 above, such a proposal was subsequently circulated by France in the Special Committee (A/AC.182/L.25). It read as follows:

"(1) Replace paragraph (b) of rule 8 by the following text:

'The General Assembly may also, where circumstances so require, be convened in emergency special session within twenty-four hours of the receipt by the Secretary-General of a request for such a session from the Security Council, on the vote of any nine members thereof, or of a request from a majority of the Members of the United Nations expressed as provided in rule 9.'

"(2) In paragraph (b) of rule 9:

Replace the words 'pursuant to resolution 377 A (V)' by the words 'pursuant to rule 8 (b)'.

"(3) In rule 19:

Replace the words 'dealt with in resolution 377 A (V)' by the words 'dealt with in Article 11, paragraph 2, of the Charter'."

Proposals 12 and 13

90. Proposals 12 and 13 read as follows:

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

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

91. Most of those representatives who referred specifically to proposals 12 and 13 made comments applicable to both proposals.

92. It was emphasized by certain representatives that proposals 12 and 13 contained important ideas which were consistent with the stipulation in Article 15, paragraph 1, and Article 24, paragraph 3, of the Charter. The Working Group should not a priori exclude the possibility of ways and means of strengthening the role and attributes of the General Assembly in the field of the maintenance of international peace and security. However, such a process was basically a matter of developing what was contained in the Charter, and it was essential to avoid a restrictive interpretation which would contradict not merely what was specifically stated, but also what was implied by the provisions of that document. One representative stressed he could not agree to the omission of proposals 12 and 13 from the Committee's list. The proposals would not just lead to a proliferation of documents: they were essential if the roles of the General Assembly and Security Council were to be strengthened and confidence in the Organization's peace-keeping abilities enhanced. They would ensure application of Article 24 of the Charter, and involved no change in the balance of responsibilities between the Assembly and the Council.

93. Other representatives did not consider the proposals helpful, necessary or well-worded. It was said that they were unlikely to impart new impetus to the work of the General Assembly, since they advocated current practices. The General Assembly already made suggestions to the Security Council; no need was seen to change the current practice whereby the Council was free to decide to act on the Assembly's suggestion. More doubt was expressed about proposal 13, since the text might be construed to give insufficient weight to Article 12 of

the Charter. Also, proposal 12 seemed to involve little more than a proliferation of papers. One representative remarked that virtually all the major organs of the United Nations already submitted annual reports to the General Assembly. On the other hand, he did not believe the Assembly was entitled to make suggestions and proposals to the Security Council in connexion with any report the Council submitted: the responsibilities of the two bodies were clearly demarcated by the Charter. The second sentence of the item should accordingly be deleted; the remainder was superfluous. The same thing could be said of proposal 13. The Security Council had discretionary powers to deal with items on its agenda while the General Assembly, under Articles 11 and 12 of the Charter, could not make recommendations on matters which the Security Council was discussing.

Proposal 14

94. The text of proposal 14 read as follows:

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

95. As indicated earlier, certain representatives stressed the close links between the substance of proposal 14 and proposal 11. It was suggested that the two proposals might be combined and reformulated so as to arrive at a generally acceptable text. The view was expressed that in examining proposal 14 the Working Group faced a complex problem of interpretation of the Charter, involving as it did the institutional and political balance on which the United Nations was based. Yet it was also stated that while there was no objection to holding urgent special sessions of the General Assembly in the circumstances described in proposal 14, that was a practice already followed.

96. Other representatives expressed doubts concerning the proposal. It presupposed the inability of the Security Council to act and was another form of advocating the "Uniting for peace" resolution, which had been used in certain situations. The proposal was also objected to by those representatives who viewed it as a mere repetition of the provisions of resolution 377 A (V) which was unacceptable to their delegations.

Proposal 15

97. Proposal 15 read as follows:

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

98. One representative recalled that his delegation had already submitted a proposal dealing with the consensus procedure which had had a favourable reception from some other delegations. The item should certainly, he said, be included in the Committee's list, ideally among those likely to gain general acceptance.

99. Some representatives, however, believed the proposal too ambitious or extreme in calling for an amendment to the Charter to endorse the consensus procedure. No need was seen to take such action, useful as the consensus procedure was. An attempt to amend the Charter as advocated would pose extremely difficult problems and could well have an adverse effect on the consensus procedure itself. Besides, the consensus procedure was the proper way of dealing not only with the maintenance of international peace and security but also with other problems. The obligation for consensus would paralyze the Organization, whereas what was needed was an endeavour to gain consensus and seek greater co-operation on the part of States, which would lead to greater weight given to resolutions and a greater chance of their implementation.

100. Certain representatives, however, were of the view that proposal 15 could provide a means to consider the usefulness of the consensus procedure. One representative remarked that there were certainly different attitudes on the part of States towards resolutions on which they had abstained rather than voted in favour. The rules of procedure could be re-examined to see whether an approach such as that adopted by the Third United Nations Conference on the Law of the Sea could be used in order to cut down the number of resolutions. Another representative thought that consensus was important for the political and legal effect of General Assembly and Security Council resolutions. Instead of categorically endorsing the consensus procedure, the paragraph might use a formula similar to that contained in the General Assembly resolutions renewing the mandate of the Special Committee, i.e. it might state that the importance of achieving consensus should be borne in mind in considering essential problems pertaining to international peace and security.

Proposal 16

101. The text of proposal 16 read as follows:

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

102. Several representatives indicated their willingness to support proposals designed to improve the existing arrangements for fact-finding such as proposal 16. Those mechanisms could be used under present circumstances, and perhaps would be used more often in the future, if they were improved and up-dated. Proposal 16 was also found to be consistent with Article 22 of the Charter relating to the establishment by the General Assembly of subsidiary organs and reflected the practice of regional organizations which utilized fact-finding extensively. One representative noted that the General Assembly had often called for bodies to establish the facts of a dispute, and the practice had been particularly popular in the 1940s. One endorsement of the practice, interesting in that it had been supported by a number of delegations that were now opposed to fact-finding by the Assembly, was contained in resolution 2443 (XXIII) of 19 December 1968. Another representative referred to the impression that the fact-finding mechanisms set up by the General Assembly resolutions had been little used, but emphasized that the same was also true of other provisions, such as Chapter VII of the Charter, despite constant pleas for the application of that Chapter. He stressed that proposal 16 should be examined in all its facets with a view to reaching agreement on its formulation.

103. In that connexion, certain representatives urged that the original formulation of the proposal appearing in document A/AC.182/WG/44/Rev.1 19/ should be used in the future work on this proposal.

104. One representative remarked in connexion with proposal 16 and past Assembly efforts in this field that there were volumes of resolutions which were not taken seriously by anyone, and that one could note the inconsistent positions of certain delegations in various committees. As a general rule, the existing fact-finding mechanisms set up by General Assembly resolutions had not been used because they were not a fruitful approach.

105. Another representative stated that he failed to appreciate the point of proposal 16. It was not within the General Assembly's power to set up fact-finding mechanisms, since that responsibility belonged, under Article 34 of the Charter, to the Security Council and was to be used specifically in order to determine whether the continuance of a dispute or situation was likely to endanger the maintenance of international peace and security. The only other body in the United Nations with the authority to engage in fact-finding was the International Court of Justice. It was clear that the legal position had not been taken into account when proposal 16 was drafted; he therefore recommended the exclusion of the proposal from the Committee's list.

D. Section IV of the informal compilation

Proposal 17

106. Proposal 17 read as follows:

"17. The membership of the Security Council should be increased taking into account the principle of equitable geographical distribution (see A/AC.182/L.9; A/AC.182/WG/6)."

107. Some representatives expressed their strong support and agreement with the content of proposal 17. The membership of the United Nations had increased by three fourths, justifying an increase in Security Council membership. Certain of these representatives believed the Committee need not discuss the merits of the proposal as it was now an item before the General Assembly. One delegation which expressed support for the content of the proposal in paragraph 17 of the informal compilation considered that, since a draft resolution on the question was currently before the General Assembly, proposal 17 should be included in the list which the Committee had been mandated to draw up, on the understanding that the Committee must not prejudge the decision to be taken in due course by the General Assembly in exercise of its sovereignty.

108. One representative said that his delegation's reasons for opposing any increase in the membership of the Security Council as was suggested in proposal 17 had been set out repeatedly, but no one had yet advanced any argument to support such an increase beyond the claim that the Council's membership should grow because the membership of the Organization had grown - a suggestion he found irrelevant and logically unjustified.

19/ Ibid., para. 74.

109. Certain other representatives urged that proposal 17 be deleted. One of these representatives gave the following reasons for that position: (a) since the membership of the Security Council was very carefully balanced and, in its present form, correctly reflected the international balance of power, all proposals aimed at expanding its membership were fraught with danger for the work of the Security Council and the Organization as a whole; (b) the careful balance between the two major organs of the United Nations, the Security Council and the General Assembly, would be destroyed by increasing the membership of the Security Council, since the Security Council bore the prime responsibility for the maintenance of international peace and security and it was wrong to assume that there as a residual competency residing in the General Assembly; (c) an increase in membership of the Security Council would mean reduced efficiency and would impede the "prompt and effective action by the United Nations" in the maintenance of international peace and security, as stated in Article 24 of the Charter; (d) a purely arithmetical calculation could not be applied to the membership of the Security Council because it dealt with extremely acute political matters; (e) proposal 17 laid too much stress on one principle - equitable geographical distribution - whereas Article 23 of the Charter also stressed that due attention should be given to the "contribution of Members of the United Nations to the maintenance of international peace and security and to the other purposes of the Organization"; (f) the Security Council must be capable of taking immediate action in the maintenance of international peace and security; and (g) provision was already made in Article 31 of the Charter for any Member of the United Nations which was not a member of the Security Council to participate in the discussion of any question brought before the Security Council. The problem of an increased role of Member States in the Security Council had been resolved in practice. The right of the veto was not a right or a privilege, but a heavy and serious responsibility, constituting the very foundation of the Organization, since it assured the equality of States of the two major economic systems. Any restriction on the rule of unanimity would be detrimental because it would be unrealistic. As it stood now, no Security Council decision could be taken without the vote of the 10 non-permanent members of the Security Council, whereas if the five permanent members abstained, the non-permanent members could still take decisions, even on matters of substance. The existence of a large number of non-permanent members made it impossible to adopt decisions that were not in keeping with their own interests.

110. At approximately this point in the proceedings of the Working Group, one delegation submitted an informal proposal to regroup the proposals appearing in section IV in the informal compilation according to their nature. The Working Group discussed this informal proposal but reached no agreement upon it.

Proposal 18

111. The text of proposal 18 read as follows:

"18. Non-permanent members of the Security Council should be elected in accordance with the criteria set forth in Article 23, paragraph 1, of the Charter and therefore due regard should be especially paid, in the first instance, to their contribution to the maintenance of international peace and security and to the other purposes of the Organization (see A/AC.182/L.15)."

112. Some representatives warmly commended proposal 18 which was designed to remind Member States of the importance of applying the two criteria outlined in Article 23, paragraph 1, of the Charter when selecting the non-permanent members of the Security Council. It was urged by one representative that stricter observance of Article 23 of the Charter - considering the manner in which States honoured their commitments under the Charter when holding elections to non-permanent membership of the Council - ought to be tried before the Committee embarked on any revision of the Charter itself.

113. Other representatives indicated agreement, in principle, with proposal 18 as long as it faithfully reflected Article 23, paragraph 1, of the Charter and referred to the principle of equitable geographic distribution. Moreover, it was said, the evaluation of a State's contribution to the maintenance of international peace and security could not be based on strict criteria. For example, financial contribution was rejected as a strict criterion given the inequality of means of different States. Perhaps a third criterion would be in order, namely, that of strict rotation. Doubts were also voiced whether proposal 18 was realistic.

Proposal 19

114. The text of proposal 19 read as follows:

"19. A new article should be inserted before Article 25 to the effect that the Members of the United Nations are under an obligation to accept and carry out the decisions of the Security Council in matters relating to international peace and security (see A/AC.182/WG/32)."

115. Certain representatives endorsed proposal 19 but certain other representatives considered it to be unnecessary in view of what Article 25 of the Charter stipulated. It was also considered unacceptable. It was maintained that the proposal defined the circumstances in which Members must carry out the Security Council's decisions and thus appeared to restrict the powers of a body whose authority it was notionally supposed to extend.

Proposal 20

116. The text of proposal 20 read as follows:

"20. Article 25 should be amended to the effect that the Members of the United Nations agree to accept and carry out resolutions and decisions of the Security Council as well as resolutions and decisions of the General Assembly relating to the maintenance of international peace and security and to support all peace-keeping operations established by the United Nations (see A/AC.182/WG/46/Rev.2)."

117. Proposal 20 as a whole was endorsed or supported by some representatives. It was maintained that its intention was not to establish a world government but to provide that, in the event that the Security Council was unable to act, the resolutions and decisions of the General Assembly could be implemented as faithfully as possible.

118. Some other representatives rejected proposal 20 as a whole as being unnecessary and unacceptable. One representative stressed that proposal 20 was unacceptable because it would enable the General Assembly to adopt resolutions and decisions that were binding on Member States thus violating the principle of State sovereignty and the principle of non-interference in the internal affairs of States which was set forth in Article 2, paragraph 7, of the Charter. Of course it would be very desirable for recommendations of the Security Council to be binding since they concerned matters involving the maintenance of international peace and security. Regarding the second part of the proposal relating to support for all peace-keeping operations established by the United Nations, it was not clear what operations were being referred to for only the Security Council had the authority to decide to carry out such operations. It was true that there had been illegal operations, most notably in the Congo and in the Middle East. However, according to the Charter, and according to his delegation, decisions relating to the execution of peace-keeping operations, emplacement of forces and the manner of financing such operations could be taken only by the Security Council.

119. A number of representatives were opposed to the first part of the proposal but expressed support for the second. As for the first part, the most important change brought about by proposal 20 would be to put resolutions adopted by the General Assembly on a par with Security Council decisions. But additionally, the Security Council would lose the option of making recommendations and be confined to taking binding decisions only, becoming a kind of world government. On the other hand, it was thought that the distinction between Security Council recommendations and decisions was a sound one: the Council at times refrained from taking a decision on an issue because the political circumstances made it advisable to do so. And since it was already difficult to enforce existing decisions by the Council, little virtue was seen in multiplying the decisions to be enforced. The same argument applied a fortiori to resolutions by the General Assembly, which were often highly unrealistic. In any event it could be argued that, as far as the Security Council was concerned, the matter was entirely covered by Article 25 of the Charter with the exception that the proposal also referred to resolutions of the Security Council. In practical terms it was not essential to confer binding force on Security Council recommendations concerning the maintenance of international peace and security, since the Security Council could, after all take a decision rather than adopt a recommendation - as was provided in Article 25 of the Charter. It was essential to give every leeway to the Council. But in relation to the General Assembly it was very unlikely that States would agree to accept that resolutions of the General Assembly should be legally binding. That would effectively transform the United Nations into a supranational body, and there was no evidence in States' current relations to suggest that the change would be acceptable.

120. The second part of the proposal relating to peace-keeping operations was understood to mean operations authorized in accordance with the Charter. Obviously, much could be done to improve the United Nations capacity in respect of such operations. No organ had exclusive competence to decide such matters, according to certain representatives. Another representative, however, while favouring the Organization's deployment of peace-keeping forces, was less than happy with the call in proposal 20 for Members to support "all peace-keeping operations established by the United Nations". Perhaps the sponsors had had in mind the possibility of operations decided upon by the General Assembly, but in his view that was not in keeping with the Charter: only the Security Council had the authority to institute peace-keeping operations.

121. It was also stressed by some representatives that the Organization's peace-keeping operations must unquestionably be supported, financially no less than morally. It was hypocrisy for some States to concur in the establishment of a peace-keeping operation and then refuse to pay their part of the associated financial burden. Expenses incurred for such operations authorized in accordance with the Charter were expenses of the Organization within the meaning of Article 17. If the Committee could agree that all peace-keeping operations instituted in accordance with the Charter must be supported by all Member States, it would have achieved a great deal.

122. One representative expressed the hope that the peace-keeping system might one day be incorporated into the Charter, not by amending Article 25 as suggested in proposal 20, but by adding a new chapter "6 1/2". But according to another representative, the Committee must not let the lack of a specific Charter provision relating to peace-keeping cast doubts upon the binding nature of Article 17, paragraph 2. Another representative stated it was not clear whether a new chapter of the Charter was needed on the peace-keeping question.

Proposal 21

123. The text of proposal 21 read as follows:

"21. The relationship between disarmament and the maintenance of international peace and security should be examined further (see A/AC.182/WG/30/Rev.1)."

124. Proposal 21 was endorsed by certain representatives. It was suggested, however, that the proposal should be rephrased and made more specific. One delegation supported the proposal in paragraph 21 but suggested that it be phrased so that emphasis was laid not on the further examination of the relationship between disarmament and the maintenance of international peace and security but rather on the link of cause and effect between, on the one hand, disarmament, development and decolonization and, on the other, international peace and security. Attention should be given not so much to studies but to practical measures. Also, it was said to imply incorrectly that the relationship between disarmament and the maintenance of international peace and security was not being considered at the present time. It would be more correct to suggest that greater emphasis should be given to consideration of that relationship.

Proposal 22

125. The text of proposal 22 read as follows:

"22. There should be examination of the possibility of establishing a universal body which would meet periodically to evaluate the progress made in disarmament and to adopt decisions; and to review the existing disarmament negotiating machinery in order to increase its effectiveness (see A/AC.182/L.12/Rev.1)."

126. Proposal 22 was specifically endorsed by one representative who stressed it deserved detailed consideration in view of the fact that a special session of the General Assembly devoted to disarmament was scheduled for 1982. The view was

also expressed that proposal 22 seemed unnecessary, in view of the fact that the General Assembly had held a special session devoted to disarmament only a few years earlier and that another such session was scheduled for 1982. One representative suggested it should not be included in the compilation while another said it might perhaps be considered at a later date.

Proposals 23 to 32

127. Proposals 23 to 32 of section IV of the informal compilation dealt with the voting procedures of the Security Council, touching upon such delicate issues as the principle of unanimity among the five permanent members (so-called "right of veto") and the definition of procedural matters. These proposals were often discussed as a whole, in the context of broader questions relevant to more than one proposal. To a great extent, therefore, the debate does not lend itself to a proposal-by-proposal analysis. Thus it would seem more appropriate to deal jointly with the deliberations of proposals 23 to 32 of section IV of the informal compilation, which read as follows:

"23. An appeal should be made to the permanent members to abide by their Joint Statement of 8 June 1945 (see A/AC.182/WG/6).

"24. The permanent members of the Security Council should consult to examine whether there are areas which they could agree to treat as procedural and in which, in accordance with Article 27, paragraph 2 of the Charter, they could refrain from using the veto (see A/AC.182/WG/37; A/AC.182/WG/46/Rev.2).

"25. A resolution should be adopted enumerating those questions which are to be regarded in the Security Council as procedural in nature (see A/AC.182/WG/6).

"26. The Security Council rules of procedure should be amended so as to provide that the decision of whether a given matter is procedural or not should be decided by an affirmative vote of nine members (see A/AC.182/WG/46/Rev.2).

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

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

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

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

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

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

Comments of a more general nature

128. Concerning the order of the proposals under discussion, one representative was of the view that there was no apparent logic in the enumeration of proposals 23 to 31 and suggested that they should be rearranged into the following three groups: group 1, proposals 24, 25 and 29; group 2, proposals 27 and 28; and group 3, proposals 23, 26, 30 and 31. Group 1 dealt with the identification of the procedural matters as referred to in Article 27, paragraph 2, of the Charter. There were three ways of identifying procedural matters: proposal 24 provided for their identification by means of consultations and agreement among the permanent members of the Security Council; proposal 25 provided for their identification by means of a resolution of the General Assembly or the Security Council; and proposal 29 provided for their identification by means of an amendment to the Charter or a resolution of the General Assembly. Group 2 dealt with the non-applicability of the unanimity rule to certain matters which were presumably non-procedural. Proposals 27 and 28 suggested that the rules of procedure of the Security Council should be amended to determine the veto's non-applicability to such matters. The rules could be amended only by a decision of the Security Council in accordance with Article 30 of the Charter. Group 3 concerned specific matters to which the unanimity rule should not apply and contained proposals on both procedural and non-procedural matters. Proposals 23 to 31 gave concrete examples of possible situations and action, but many other concrete examples omitted from the compilation could be found in working papers such as A/AC.182/WG/46/Rev.2, 20/ for instance, peace-keeping operations by consent and the peaceful settlement of disputes.

129. Another representative said that proposals 23 to 32 all related to the sensitive area of the voting of the Security Council, which was governed by Article 27, paragraph 3, of the Charter. This rule was often called the "unanimity rule" or the "right of veto", terms which reflected its twofold purpose: to confirm the authority of decisions taken on substantive matters by the five permanent members, and to avoid major confrontation if the five permanent members did not agree. These purposes were valid, and therefore any proposal made must remain within the framework of the Charter. The proposals could be grouped as follows: (a) proposals 23, 25, 26 and 29, which dealt with the definition of procedural and non-procedural matters and the criteria for deciding between the two, a definition which, although theoretically desirable and deserving of discussion, would probably not be successful; and (b) proposals 24 and 30, which dealt with the attempt to establish agreement among the permanent members of the Security Council that there were specific decisions in which they would not insist on the unanimity rule. It was noteworthy that the proposals in A/AC.182/WG/37 21/ had been put forward by one of the permanent members and it was to be presumed that other permanent members were also in favour of them. His delegation welcomed these proposals as a point of departure, with a view to establishing conclusions along the lines of the mandate.

130. It was noted by a representative that proposals 23 to 31 related to problems of Security Council procedure. It was possible to undertake a systematic study

20/ Ibid., para. 136.

21/ Ibid. para. 45.

of such problems with a view to enhancing prompt and effective action by the Council in the maintenance of international peace and security. The proposals under consideration reflected, inter alia, a desire to examine the possibility of agreement on identifying those Security Council decisions which might be regarded as procedural. Another representative stressed that the complexity of the problems involved required that the Committee should consider the proposals in more depth.

131. Yet the view was also expressed that at that stage of its work the Working Group should have been drafting recommendations for eventual submission to the General Assembly. Proposals 23 to 31 were all devoted to the voting procedures of the Security Council but reflected very different and contradictory approaches to the issue; it was difficult to pursue all such proposals and have a logical approach. The representative in question urged that an effort be made to establish a good basis for the formulation of recommendations in the future.

132. One representative, stressing that his delegation had co-sponsored most of the proposals under consideration, said that the Working Group should not hold a new debate on the substance of each proposal, but carry out a review based on the degree of acceptability of those proposals with a view to formulating recommendations to the General Assembly.

133. Support was expressed by a representative for proposals 23 to 32 which were in his view relevant and important. He found it essential to introduce in the Charter provisions which would limit abuse of the veto. Another representative expressed general support for proposals 23 to 32 because they enhanced the role of the Security Council and strengthened the role of the Organization in the maintenance of international peace and security.

134. Similarly, another representative stated that proposals 23 to 32 were important because they related to the very essence of the function of the Organization; they should therefore be maintained in the compilation. Although it had been said that any change in the unanimity rule would hamper and paralyse the decision-making functions and effectiveness of the Organization, this delegation did not agree. If the Organization had been inefficient since 1945, it was largely because of the unanimity rule. Since the membership of the Organization had tripled since then, the Charter no longer corresponded to the reality of today. The unanimity rule was also contrary to the principle of the sovereign equality of States.

135. Referring to proposals 23 to 32, one representative said that those proposals, most of which had been sponsored by his delegation, aimed at improving the functioning of the Council. Some called for an amendment of the Charter but in his view the time had come to bring up to date provisions which no longer corresponded to realities; the Committee should not shirk its responsibilities in this respect.

136. Another representative supported in general proposals 23 to 32 and noted that the right of veto had paralyzed the Security Council; reforms were needed if the Council was to function effectively. Permanent members should use the right of veto judiciously and in the interest of world peace. Furthermore, they should abide by the fundamental nemo iudex principle and abstain whenever they were parties to a dispute in accordance with Article 27, paragraph 3, of the Charter.

137. Still another representative, stressing the importance of the role of the Security Council in the maintenance of international peace and security, pointed out that the rule of unanimity of permanent members of the Council limited the opportunity for States which did not enjoy the prerogative of the veto, notwithstanding the principle of the sovereign equality of States, to contribute to the maintenance of peace. Thus proposal 23 and subsequent proposals were supported, particularly those which sought to include in the rules of procedure of the Security Council provisions aimed at limiting the scope of the right of veto. According to this view, it was difficult to understand the concern of some delegations that such proposals might destabilize the present system.

138. It was stressed by a representative that since the Security Council was a vital organ in the maintenance of international peace and security a logical solution must be found concerning its operation. The veto was viewed as a legal irritant to which delegations had become accustomed. Smaller States, whose security was perhaps guaranteed by the veto, now desired taking responsibility for their own decisions. Concepts of freedom, equality and fraternity were seen as ideals not only internally but also for international life. Charter responsibilities may be shared by all States and burdens lightened for those having special responsibilities. Regarding proposals to enhance the Security Council's functioning, this representative urged that members of the Council, including permanent members, abide by the provision of Article 27, paragraph 3, when they were a party to a dispute.

139. The main idea to be borne in mind, according to another representative, was the necessity to increase Security Council efficiency while at the same time devising appropriate methods to this end. In that connexion, proposals 24 to 31 were moderate and realistic as they did not call for Charter amendment. Rather, emphasis had been placed on agreement between the permanent members, as had been achieved in 1945, and on the Council's rules of procedure to be adopted under Article 30. Full attention needed to be given to these proposals in a more precise way. He also called attention to his delegation's proposal contained in paragraph 2 of A/AC.182/WG/32 22/ which he hoped would meet with general support. That proposal read as follows:

"When two or more countries are involved in an armed conflict, there should be an immediate request by the Security Council for cease-fire, separation of armed forces and their withdrawal behind the borderlines of their respective countries, that is, to the points from which they started their military operation. For such a request, a gentleman's agreement not to use the right of veto should be reached among the permanent members of the Security Council."

140. According to one representative, proposals 23 to 31 were of special interest to his delegation. He stressed that the Security Council had an important role to play in international relations and therefore a need existed to make certain improvements and to attempt to increase its efficiency in its efforts to maintain international peace and security. In the present international climate, it was realistic to maintain the veto; what was needed was non-abuse of the veto. This

22/ Ibid., Thirty-fourth Session, Supplement No. 33 (A/34/33), sect. III.C, para. 43.

goal was reflected in proposals 23 to 31 which, in view of their great importance must be examined in detail in the future. The veto should be used only to promote international peace and security, not for the exclusive interests of certain countries. Illustrations existed where permanent members had exercised the veto in violation of the letter and spirit of the Charter.

141. In referring to proposals 23 to 31 as procedural, one representative stated that, although an attempt had been made in 1946 to define "procedural" when the Security Council rules of procedure were considered, the results were still provisional. The rules of procedure could be amended, but they did not apply to voting in the Security Council, which was done in accordance with the Charter. By not defining the term, the permanent members were able to exercise the veto power when they wished to do so, which is why his delegation had submitted proposals at the 1980 session, held at Manila, to attempt to find areas where the veto should not be applied. Chapter VI of the Charter included all the issues that were related to the peaceful settlement of disputes. Article 27, paragraph 3, stated that a party to a dispute should abstain from voting, and it was clear that this included permanent members as well as non-permanent members. Although the proposals in question were not an attempt to cancel the veto power, there were certainly areas where veto power should not be used, such as commissions of inquiry or fact-finding missions. One approach formerly advocated by some had been to attempt to amend the Charter but he felt that it was more important to follow the intentions of the San Francisco Conference and leave the matter in the rules of procedure. Either the Member States with the veto power could agree to issue an appendix in which certain areas would be defined as being outside the veto power, or the Security Council itself could adopt measures to amend and define what areas were covered by the veto power. Matters dealt with in Chapter VI of the Charter, fact-finding missions or the sending of observers did not define all the areas that could be agreed upon. The main criterion was whether the action would require enforcement or not: if so, Chapter VII could be invoked; if it was with the consent of the interested party, Chapter VI would apply, involving not only observer missions but also peace-keeping by consent. The five permanent members had committed themselves in San Francisco to the principle that the Security Council rules of procedure could not be vetoed, in accordance with Article 30 which stated that "the Security Council shall adopt its own rules of procedure, including the method of selecting its President".

142. At a later point in the debate this representative stressed that there was nothing new in the idea of amending the rules of procedure of the Council since those rules had in fact already been amended several times, with the concurrence of delegations which now took a negative attitude to the proposals before the Committee. Furthermore, it was not the first time that an attempt was being made at drawing an acceptable distinction between procedural and substantive questions. In this connexion he referred to the 1948 report on the problem of voting in the Security Council 23/ submitted to the General Assembly by its Interim Committee and more specifically to its conclusions. As to the argument that the Council was master of its procedures and that it would be wrong to have the General Assembly address a recommendation to the Council, he drew attention to General Assembly resolution 290 (IV) of 1 December 1949 entitled "Essentials of peace" which called upon the five

23/ Official Records of the General Assembly, Third Session, Supplement No. 10, document A/578.

permanent members to exercise restraint with respect to the use of the unanimity rule. He added that the rationale behind this kind of approach was to introduce in the modus operandi of the Council a rule similar to Article 18 of the Charter.

143. Similarly, another representative referred to the proposals in document A/AC.182/WG/46/Rev.2, 24/ some of which were reflected in the proposals under review. He stated they were very important and positive since they were aimed at improving the effectiveness of the Security Council. They had the advantage of not requiring any amendment of the Charter and calling only for amendments to the rules of procedure of the Council, which could be done under Article 30 of the Charter. Still another representative viewed as particularly essential the drawing of a distinction between procedural and substantive questions.

144. Proposals 23 through 32 were considered by a representative as being extremely important, since they related to the principle of unanimity, the use of the veto, and the definition of procedural matters. They touched upon the credibility of the Security Council and, since criticism of the Security Council's ineffectiveness reflected upon the United Nations, affected that Organization's image. His delegation believed that the veto should not, in accordance with Article 27, paragraph 3, be applied by a permanent member, a party to a dispute, in matters relating to Chapter VI of the Charter or under Article 52, paragraph 3. Furthermore, the veto should not be applied to fact-finding missions or peace-keeping, especially if there was consent regarding peace-keeping operations among the States concerned. The veto should also not be applied to special United Nations observers; in the context of current events, that was especially important. His delegation wished to see procedural matters defined more clearly, and it was within the competence of the Special Committee to consider that matter further. Two ways of approaching the problem would be for the rules of procedure of the Security Council to be amended or for the permanent members of the Security Council to make a gentlemen's agreement regarding the use of their veto right. Since the success of the Security Council's efforts depended upon the permanent members, they had a responsibility to the entire United Nations to exercise that right wisely.

145. It was emphasized by one representative that agreement or an agreed interpretation should be reached among the permanent members of the Security Council on the non-use of the principle of unanimity in certain matters, such as the application of the provisions of Chapter VI. The restriction of the use of the veto through such an agreement would not reduce the Security Council's power but rather would contribute to its credibility in terms of the prevention of conflicts and the promotion of peace. The concepts contained in proposals 27, 28, 30 and 31 were extremely useful, and his delegation endorsed them.

146. It was felt by another representative that the permanent members of the Security Council should decide what points must be considered procedural for the purpose of exercising their right of veto. With regard to the two alternatives of amending the Council's rules of procedure or achieving a consensus among its members, his delegation favoured the latter procedure. The permanent members should come forward and settle the problem in good faith.

147. With reference to viewing peace-keeping as a procedural matter, a representative stated that the criterion used in such cases was whether consent or enforcement was

24/ Ibid., Thirty-fifth Session, Supplement No. 33 (A/35/33 and Corr.1), para. 136.

involved. If there was consent, the matter was then within the scope of Chapter VI. In referring to fact-finding missions, observers or peace-keeping in such terms, his delegation and others had been speaking of several methods for the peaceful settlement of disputes and for providing the Security Council with information, without prejudice to the Security Council's right to take other forms of action in accordance with the Charter. With regard to the discussion on proposals 23 to 32, he said that arguments in favour of the principle of unanimity usually pointed out that it was necessary for the maintenance of peace and security. His delegation had doubts on that score; in the past 30 years, a reluctance to apply the provisions of Chapter VII had been noticeable. He therefore requested the Secretariat to provide information on the application of Chapter VII since 1945.

148. On the other hand, another representative said that, although drawing a distinction between procedure and substance was beneficial, calling a decision to launch a peace-keeping mission a procedural issue was something of an understatement. Similarly, recommending that rules of procedure should be treated as procedural matters was one thing, whereas using them to circumvent the provisions of the Charter was another. Such issues should be considered in depth, as the members of the Special Committee differed in their views on those matters.

149. Another point of view was pressed by a representative who, in referring to proposals 23 through 32, said that one legal point which should not be overlooked was that although it would be improper to amend the Security Council's rules of procedure so that some decisions which had traditionally been considered substantive were treated as merely procedural, it was entirely possible for the permanent members of the Security Council to agree among themselves not to use the right of veto on certain decisions which so far had been considered substantive. For example, the decision to send a mission to a country for humanitarian purposes was a welcome one and should be reached by consensus among the permanent members if possible, and without the use of the veto.

150. A somewhat similar viewpoint was mentioned by a representative who remarked that the approach of amendment to the rules of procedure of the Council seemed somewhat premature: it should be resorted to only after agreement had been reached among the permanent members.

151. Another representative, while supporting the preceding remarks, said he wished to stress that amendment of the Charter was a legal and appropriate way of improving it. When the Charter had been written, there had been only 46 States not permanent members of the Security Council; there were currently 149. For that reason, it was important to attempt to redress the imbalance which had persisted from many years before.

152. In opposing any proposals aimed at restricting the scope of the veto right one representative stated that the balance established by the Charter had been carefully worked out and should be maintained. The veto right had its adverse aspects but it prevented confrontations between the permanent members of the Council. He expressed readiness to consider any idea which would not put in question the unanimity rule nor lead to a revision of the Charter.

153. Another representative emphasized that the rule providing for the principle of unanimity of permanent members was one of the most important provisions governing the United Nations, constituting an important means to halt efforts to divert the

Organization to activities contrary to the letter and spirit of the Charter. As proposals 23 to 31 were directed at weakening that essential rule, they were unacceptable. The rule of unanimity corresponded to the reality of the political situation existing in the world. Experience had amply shown that the Charter should not be changed in this respect.

154. It was noted by a representative that, while it was maintained that proposals 23 to 32 were not intended to abolish the veto, proposals 26 to 31 showed the opposite: proposal 26 provided a basis for circumventing the principle of unanimity and proposal 31 questioned the very purpose for establishing that principle. Both proposals were dangerous for the well-being of the Organization. The principle of unanimity reflected the special responsibilities placed upon permanent members; that burden could not be relieved without risk of war. The veto prevented one side from imposing its will on the other side and had proven of great assistance in the maintenance of international peace and security, including for the benefit of smaller countries. In the reality of the present world composed of two social systems, the principle of unanimity was one of the basic provisions governing the functioning and existence of the Organization. Proposals 24, 25, 27, 28 and 29 were aimed at examining areas in which the veto was not utilized. This was a task for the Security Council; no subsidiary body of the Assembly could supervise or pressure the Council in this regard. Such proposals were not helpful in any event owing to the extreme difficulty in defining what is procedural or not.

155. According to one representative, proposals 23 to 32 were among the most important of the compilation. After pointing out that those proposals put in question the principle of the unanimity of permanent members of the Security Council, he stressed that the reasons which had militated in 1945 for the establishment of the present system remained valid today and that it would be illusory to strive for a change in the international situation through a revision of the rules concerning the functioning of the Organization and the decision-making process in the Security Council. The rules established at San Francisco had been carefully worked out and had in fact been the condition of the very creation of the Organization, a point which clearly appeared from the "Statement by the Delegations of the Four Sponsoring Governments on the Voting Procedure in the Security Council Council" 25/ of June 1945. Proposals 24 to 32 aimed at restricting the scope of the unanimity rule in a generally artificial way. If certain issues had been considered as substantive in the practice of the last 36 years, there were good reasons for that; realities could not be changed through the adoption of resolutions. Furthermore, the intention at the time of the drafting of the 1945 Statement had been to limit as much as possible the scope of the right of veto as clearly appeared from a comparison between the Charter system and the system of the League where the rule of unanimity was absolute. At San Francisco, a great deal of attention had been given to the question of the distinction between procedural and substantive questions and the 1945 Statement contained sufficiently precise guidelines in that respect, referring in particular to the chain of events from the moment when the Council decided to undertake an inquiry or to formulate recommendations. If such decisions were to be henceforth treated as procedural questions, the resulting uncertainties and conflicts would weaken instead of strengthen the Organization. While it could be argued that the 1945 Statement had not been accepted by all States, the fact remained that this Statement was not an a posteriori interpretation but an essential condition of the establishment of the Organization. Since the realities of 1945 still prevailed today, the way in which they were reflected in the current functions of the Organization should not be

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

altered and attempts at amending the Charter through modification of the rules of procedure were in his view unsound.

156. One representative stressed that in considering proposals 23 to 32, which contained many important elements, it should be kept in mind that the Security Council was not an executive organ of the General Assembly but a fully autonomous body. It had been so designated under the Charter, since extremely important political questions connected with the preservation of international peace and security were discussed in the Council. Accordingly, in resolving the question of the difference between procedural and substantive matters within the Security Council, normal criteria did not apply. For example, in applying Article 34, commissions for investigating disputes were often appointed. Such appointments were ostensibly procedural matters; however, it was clear that the function of such a commission and its operating procedures were highly charged politically. It was obvious, for instance, that a commission investigating a border dispute would not remain in New York, but would proceed to the site of the conflict in the territory of a sovereign State. It would call witnesses, observe the movements of troops and carry out many functions which had immediate and grave effects upon any sovereign State; in practice, many apparently procedural decisions of the Security Council had had extremely important political consequences for many sovereign States. The procedural-versus-substantive question could thus not be resolved purely mechanically; it was necessary to proceed from a realistic appraisal of the existing world situation, where countries with differing social and economic systems were vying in the international arena.

157. That same representative later stated in the debate that any attempt to define which matters were procedural and which were of a substantive nature would only impede the functioning of the Security Council, rather than make it more effective. Practice had shown that the principal organs of the United Nations preferred to have flexible rules which could be applied in a wide range of situations. Furthermore, it was frequently difficult to define questions as purely procedural since they often had political consequences for the States concerned. His delegation stressed the primary importance of the clear definition, as provided for in the Charter, of the competence of the Security Council as opposed to that of the General Assembly particularly with regard to the maintenance of international peace and security. That was clearly evident in the fact that decisions of the Security Council imposed an obligation on all States, while recommendations of the General Assembly were not binding in nature. That clear differentiation was further stressed in Article 11, paragraph 2, and Article 12, paragraph 1, of the Charter. The principle of unanimity of the permanent members of the Security Council was essential not only to the functioning, but also to the very existence of the Organization because it took due account of the existence of two different social and economic systems in the world providing a framework in which those two groups could work on an equal footing. In that way neither group could take decisions or engage in actions which would be detrimental to the other, particularly with regard to the maintenance of international peace and security. The assertion that the principle of unanimity and the power of veto played a negative role ignored the fact that that was the only method of finding mutually acceptable solutions and taking effective decisions. Without the principle of unanimity, States which did not agree with a certain decision would simply ignore it. Furthermore, the principle of consensus was an outgrowth of the principle of unanimity and played a very positive role in the work of the Organization, guaranteeing effective implementation of decisions and resolutions. His delegation was opposed to proposals 24 to 32 of the informal compilation of proposals.

158. Also according to that representative, the most important criterion to be used regarding Security Council decisions was that of procedure-versus-substance, rather than important-versus-not important as established in Article 18 for General Assembly decisions. The Security Council's decisions could have most serious consequences for the activities of sovereign States, and might even entail intervention in the domestic affairs of such States. A most important distinction should accordingly be drawn between the Security Council and the General Assembly, for the former did not merely consider and discuss, as did the latter, but had the right to adopt effective measures affecting the rights and activities of States. The changes which had taken place in the interpretation of the Charter since 1945 had been in line with its basic principles, and it was still relevant today. Experience showed that the Charter worked well as a means of co-ordinating many very different approaches and opinions. It was extremely important for regulating relationships among all States in the world, for it provided a single system of rules and principles by which all States could be governed. It was also the foundation of an entire system of regional, multilateral and bilateral agreements, so that rejecting the Charter also entailed invalidating many stable and useful international accords. This would harm not just one group of States, but all States.

Comments of a more specific nature

159. While most of the above comments of a general nature can be related to some or all of proposals 23 to 32, on some occasions representatives made more specific references to individual proposals. What follows therefore is intended to reflect some of those more specific comments, but must be read in conjunction with the comments made of a more general nature, reflected in the preceding section.

160. While certain representatives maintained that the Joint Statement referred to in proposal 23 had a settled legal status, and therefore had no place in any list to be compiled, it was also maintained that while that Statement had not been accepted by certain delegations at San Francisco, its exact legal nature was not in issue. In their view, the point was that the permanent members had recognized the need to define procedural and substantive areas for purposes of using the veto.

161. Concerning proposal 24, a number of representatives favoured its inclusion in the future list, deeming it to be a useful co-operative enterprise. Surprise was expressed that the Committee had paid so little attention to proposal 24, which was a positive initiative by a permanent member of the Security Council. Consultations such as those suggested would be extremely useful, and the Committee should devote more attention to the proposal. A suggestion was made that such consultations be held not only among the five permanent members; all States should have a say in the matter. It was stated by one representative that proposal 24 could be taken as a point of departure but needed strengthening; the permanent members should endeavour to decide what Council decisions could be regarded as fully within the procedural category and thus not subject to veto. An example of an effort made to identify such procedural decisions could be found in General Assembly resolution 267 (III) of 14 April 1949 entitled "The problem of voting in the Security Council", which was adopted by 43 votes to 6 with 2 abstentions. It was pointed out that some delegations tried to dismiss that resolution as having little value because it was adopted by a vote, but other resolutions which those delegations had supported and which had also been adopted by a vote were considered by them to have the same value as resolutions which had been adopted by consensus. Resolution 267 (III) could well serve as a departure in studying and treating the matter.

162. Another representative suggested that the word "could" in the last line be replaced by "shall" or "are required to" to bring it into line with Article 27, paragraph 3 of the Charter. Certain representatives also drew attention to the close connexion between proposal 24 to proposal 30. On the other hand, certain representatives termed proposal 24 as unacceptable because it was for the members of the Security Council themselves to consider changes in procedure.

163. Proposal 25 was considered ambiguous by one representative; it was not clear whether that proposal referred to a resolution of the General Assembly or the Security Council. One approach might be to have a combined resolution: the General Assembly could consider and then recommend to the Security Council for adoption a list of those matters which could be regarded as procedural. Already in 1949, the General Assembly had adopted resolution 267 (III) which recommended to the Security Council that certain decisions should be regarded as procedural. The list of such decisions annexed to that resolution might be used as a starting point. Another representative questioned whether the resolution proposed in proposal 25 could be useful since it was unlikely that even three or four countries would agree with it. According to yet another representative, the proposal was not acceptable because any attempt to define in advance questions as procedural in nature without taking account of the specific characteristics of each matter and the conditions involved, was unrealistic and would only impede the work of the Security Council. On the other hand, proposals 25 and 29 were supported and viewed as complementary since they involved the establishment of a catalogue of issues of a procedural nature on which the unanimity rule did not apply.

164. One representative found proposal 26 unacceptable because in accordance with the Joint Statement of June 1945 questions which were not clearly procedural or substantive were defined as such by the permanent members of the Security Council in accordance with the principle of unanimity. There were a number of matters which seemed to be procedural in nature, but nevertheless were of significant political importance for the sovereign States concerned. Decisions taken on the basis of an affirmative vote of nine members could constitute interference in the internal jurisdiction of States. Another representative said the proposal involved a possible approach, but it was probably no more useful than proposals 27 to 29 which followed.

165. Proposals 27 and 28 were deemed by one representative as providing the Committee a possible basis for the Committee's work in formulating recommendations. He believed amending the Council's rules of procedure, as suggested in proposal 28, was consonant with Article 30 of the Charter and could be the best way to meet the concerns reflected in the proposals being discussed. Another representative supported the basic concepts behind the proposals but felt that amending the Council's rules might not be the best way to achieving their objectives; other ways should be explored. It was suggested that proposal 27 reflect its original version found in document A/AC.182/WG/46/Rev.2. 26/ Another suggestion was that the ideas reflected in proposals 28 and 29 could form part of the consultations envisaged under proposal 24. According to one representative, proposal 27 was closely linked to proposal 28 which also sought to limit the scope of the unanimity rule. The difficulty lay in defining procedural matters as opposed to matters of substance and defining a dispute as opposed to a situation, which was subject to different procedural rules in accordance with the Charter. An attempt to implement

26/ Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 33 (A/35/33 and Corr.1), para. 136.

proposal 28 would impede the work of the Security Council. It was maintained that proposal 29 was rather ambiguous and gave no clear indication as to how it was to be implemented. Procedural matters could perhaps be defined either by amending the Charter or by adopting a General Assembly resolution. Another view put forward was that the definition called for in proposal 29 would restrict the flexibility of the Security Council and would also impede the settlement of various questions dealing with the maintenance of international peace and security.

166. Regarding proposal 30, certain representatives favoured the proposal but called for clarification as to the meaning of the words "humanitarian purposes". The importance of the proposal, subject to the consent of the State concerned, was underlined. Another representative believed it should include a reference to the inalienable right of peoples under colonial and racist minority rule. One representative stressed that the unanimity rule should not apply to the appointment of commissions of inquiry or fact-finding missions. Contrary to what had been stated earlier, the activities of such bodies would not violate State sovereignty because they could not be dispatched without the prior consent of the host State. Furthermore, the Security Council in establishing such missions had the responsibility to control them in such a way that they remained neutral and avoided any political presentation of facts. Only the Security Council could make a political judgement of the issues involved. Such a judgement could often best be done on the basis of the information provided by fact-finding missions. On the other hand, certain other representatives stressed that the establishment of fact-finding missions was always a question of substance, not procedure; action in this field was reserved for the Security Council, although the Assembly might be able to consider the matter under Article 11, paragraph 2.

167. Opposition was expressed to the creation of commissions of inquiry and fact-finding missions without the application of the unanimity rule. Such a procedure would be at variance with the principles of sovereignty and non-interference in the internal affairs of sovereign States. In such situations due account must be taken of the positions of the States representing the two different economic systems in the world. The current procedure used in the Security Council was entirely suitable and had justified itself in practice.

168. Proposal 31 was expressly favoured by certain representatives but was regarded by other representatives as unrealistic, involving a change of the entire modus operandi of the Council. Proposals aimed at changing the Council's rules were inconsistent with the Charter which manifestly governed those rules, not vice versa. It was stated that proposal 31 could be very divisive and could have dire consequences affecting the very existence of the Organization.

169. Some representatives firmly supported proposal 32. One representative pointed out that there were countries whose interests were not adequately reflected in the Council as it presently operated and that the proposals aimed at extending the right to veto, such as proposal 32, were therefore commendable. Moreover, the world body could not ignore the role of all regional groups in present day international life. One representative, supporting proposal 32, said that so long as the international situation required the existence of the veto, it should extend to one or two non-permanent members from each geographic region. Proposal 32, to which strong objections were possible, was not unrealistic, since the reasons for the continued maintenance of the veto also militated in favour of its extension to other Council members representing other geographic regions. Its adoption would increase

trust in the Security Council and its members, which was necessary if it was to play a greater and more important role in international life. On the other hand, other representatives opposed the proposal as unwise and unwarranted. One representative found it illogical to criticize the evils of the right of veto and at the same time advocate its extension to additional Member States, the more so as the non-permanent members already had the majority in the Council. It was difficult to comprehend, according to one representative, how proposal 32 was workable or could increase the Council's efficiency.

170. According to one representative, proposal 32 was unacceptable to his delegation since the Charter as it existed was suitably balanced and realistically reflected the international political situation. Proposal 32 would disturb that balance and seriously impede the functioning of the Security Council.

171. Finally, some representatives referred to the proposal found in paragraph 2 of A/AC.182/WG/32 (see para. 139 above). It was urged that its positive features be taken up in the future. One representative noted it might require an amendment to the Charter inasmuch as the question with which it dealt was not a procedural one. It was also said that it was somewhat overlong and the language in some parts was ambiguous. One suggestion made was the deletion of the phrase "that is, to the points from which they started their military operation". Another representative appreciated the spirit of the proposal but expressed doubts as to its practicability.

Proposal 33

172. Proposal 33 of the informal compilation read as follows:

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

173. With regard to proposal 33, several delegations endorsed it, observing that the proposal was an attempt to consolidate current practice and give recognition to actual developments, and to keep the Security Council abreast of situations. It was stated that this proposal was in line with the practice which had grown up in the Council, and that informal consultations could be useful for achieving consensus. One speaker, however, expressed the view that holding consultations could become a required stage in resolving a dispute and would therefore be harmful to the functions of the Security Council, since there could be disagreement among delegations as to whether these consultations were necessary and this would lead to delay in taking action. Another delegation also stated that it did not favour institutionalizing the practice of holding consultations since it was desirable to maintain the flexibility which currently existed.

174. Asked for clarification on whether the subjects of the informal consultations would actually be on the Security Council's agenda, or would not be officially before the Security Council, the sponsor of proposal 33 replied that it was the practice of the Security Council to hold consultations from time to time independently of the need for formal meetings. In the case of entirely new situations which might come to the Council's attention, it would not be unusual for the President of the Council to have informal consultations on purely procedural questions such as the timing of a meeting and the formulation of the agenda item

which might be proposed at the meeting. To that extent, informal meetings had been held before a new item was inscribed on the agenda. He said he would have to study the practice of the Council further before he gave more details.

175. A few delegations observed that a disservice had been done to the elegance of the drafting of proposal 33, since it did not originally imply that meetings would have to take place. The purpose of the proposal was to encourage the practice and, if a delegation wanted a meeting, it was legally entitled to it as soon as possible.

176. It was suggested that proposal 33 should be rephrased as follows:

"Once the Security Council is seized of a crisis situation or a dispute ..."

177. One delegation indicated that it had no objection to including proposal 33 in the compilation but doubted that it would be sufficient, in itself, to enable the Council to overcome the paralysis which currently plagued it.

Proposal 34

178. Proposal 34 of the informal compilation prepared by the Chairman read as follows:

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

179. As to proposal 34, some delegations favoured the periodic review meetings of the Security Council as proposed. It was stated that this proposal had considerable merit; the idea was for the Council to hold a periodic review similar to that held by the Economic and Social Council. It was suggested that such a meeting should be attended by the Ministers for Foreign Affairs. The view was expressed that the proposal reflected the existing practice as laid down in Article 38 of the Charter, paragraph 26 of General Assembly resolution 2734 (XXV) of 16 December 1970 and the Council's rules of procedure. One delegation stated that the procedure envisaged would not be rigid, and that any machinery established to review the international situation should be ad hoc. Another delegation observed that the experience with such meetings so far had not been encouraging but it was worth holding such a meeting again. Still another representative, while recognizing the practical difficulties which might arise in specific cases, favoured the holding of periodic review meetings of the Council at the ministerial level.

180. The view was also expressed, in endorsing proposal 34, that it reflected current practice and it would be useful to convene special sessions of the Security Council to seek the keys to improve the international climate and to prevent war. Other world leaders should be included, it was said, and such meetings should be carefully prepared. It was also pointed out that this proposal was related to the peaceful settlement of disputes and disarmament.

181. One delegation observed that the idea of a periodic review of the international scene by the Security Council was worthy of further consideration: the identification of areas of tension could help to prevent an aggravation of the

situation. The question arose as to whether such a review should be carried out at regular intervals or at the request of States.

182. Another delegation observed that proposal 34 was a good idea, but it depended on the drafting, since the forcing of meetings was inadvisable. Still another representative expressed the view that, although he had no objection to including this proposal in the compilation, he doubted that it would be sufficient, in itself, to enable the Council to overcome the paralysis which currently plagued it.

Proposal 35

183. Proposal 35 of the informal compilation read as follows:

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

184. Some delegations endorsed the idea put forward in proposal 35. It was pointed out that this proposal was not new. The Council should make use - within certain limits - of the possibility which was already available under Article 28 of the Charter to hold sessions away from Headquarters. It was said that this proposal reflected past and current practice and should be approved because of the political impact of holding sessions away from Headquarters; the financial and technical difficulties involved could be overcome.

185. Some other delegations observed, however, that this proposal should not be recommended because it would make it difficult for the Security Council to function continuously. In addition, such meetings would be expensive and inconvenient. In this context, one delegation stated that it did not believe that the holding of Security Council meetings away from Headquarters would serve to make the Security Council a more flexible and efficient instrument for the settlement of disputes. That depended ultimately on the political will of Member States. Some representatives cautioned against the abuse of the possibility, provided for under Article 28 of the Charter, of holding sessions away from Headquarters. According to one delegation, problems might arise in that the Council might have to deal with several crises at the same time. It was said that the Council should meet away from Headquarters only on an exceptional basis. The view was further expressed that proposal 35 should not become a general rule since flexibility was called for in scheduling meetings of the Security Council away from Headquarters; the need for such sessions should be considered on a case-by-case basis.

186. According to one delegation, while proposal 35 was worthy of consideration, it might be going too far to assert that the Security Council should as a general rule hold sessions away from Headquarters. That would be very costly and might sometimes be impossible for technical and communications reasons. Nevertheless, the convening of meetings near the area of conflict could have a restraining effect on the parties.

Proposal 36

187. Proposal 36 of the informal compilation read as follows:

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

188. Some delegations stated that proposal 36 was acceptable. One delegation especially appreciated its formal recognition of a role which the Secretary-General was already playing in the field of inquiry and mediation. Another delegation stated that, while proposal 36 might be appropriate, the precise mandate of the proposed subsidiary organ should be examined closely.

189. Some other delegations expressed the view, however, that, although this proposal was in accordance with the Charter and the rules of procedure, it was not a good idea in all cases. They expressed doubts as to whether there was a need for a permanent organ of inquiry and mediation. One delegation observed that the establishment of an organ of inquiry and mediation might not prove helpful. For example, the complicated procedures of such an organ might not be effective. This representative stated that the co-operation of the Secretary-General in ensuring the implementation of Security Council decisions should be sought; reports requested of the Secretary-General could serve as a useful means of keeping under review the situation with regard to the implementation of the Council's decisions. Another representative, while recognizing that proposal 36 was a good idea, held the view that it would nevertheless be best to abide by past practice and set up various bodies on an ad hoc basis, for this would provide more flexibility. The Security Council should decide on the composition of such bodies.

190. One representative stated that he doubted the usefulness of creating a new organ of inquiry and mediation, which would presumably be able to interpret Security Council decisions. Another delegation expressed the view that, while his delegation generally favoured the use of inquiry, mediation, and fact-finding as a mechanism for resolving difficult situations, it shared the doubts expressed by the preceding speaker, however, regarding the value of creating new subsidiary organs of the Security Council. His delegation would prefer a more pragmatic approach of dealing with particular situations or disputes rather than creating standing organs.

191. Another representative said in this connexion that he endorsed the suggestion that States that were not members of the Security Council could and should be invited to be members of ad hoc subsidiary organs established for the purpose of inquiry and mediation.

Proposal 37

192. Proposal 37 of the informal compilation read as follows:

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

193. With respect to proposal 37, one representative stated that it might be appropriate, in connexion with certain peace-keeping operations, to create such a

subsidiary organ, the membership of which could be much broader than that of the Council itself since Article 29 of the Charter did not necessarily limit the membership of subsidiary bodies to members of the Council. It might be useful, for example, for such a committee to include States which sent troop contingents even if they were not Council members. In his opinion, that would deal with the criticism that was sometimes made regarding the exclusive powers of the Council in respect of peace-keeping operations. However, the proposal raised questions which would require careful study. One question would relate to what authority such a subsidiary organ would have to make decisions; his delegation did not wish to interfere with the Council's decision-making powers in that regard.

194. Another delegation also observed that, while Article 29 seemed adequate at the present time, the Security Council could examine the proposal in greater detail.

195. One representative expressed the view that, although he had some doubts concerning the establishment of a committee for the supervision of peace-keeping operations, his delegation favoured combining proposals 36 and 37 in some way on an ad hoc basis.

196. Some delegations expressed doubts as to the establishment of such a committee. According to one delegation, proposal 37 posed a very serious risk because it would introduce the veto into peace-keeping operations. Once a peace-keeping operation was launched it must be well-run, which could not be done by a committee.

197. Objections were also expressed from the procedural point of view. It was stated that establishment of such a committee might encroach upon the powers of the Special Committee on Peace-Keeping Operations.

198. It was also said that the wisdom of proposal 37 was doubtful since it might result in interference in the day-to-day operations entrusted to the Secretary-General. Once the Security Council had taken a decision, one representative said, the powers of the Secretary-General should be sufficiently wide and clear to make such a permanent body unnecessary. It was further observed by another representative that proposal 37, involving the creation of a committee for the supervision of peace-keeping operations, seemed superfluous since such a committee already existed, although its work was proceeding slowly. He stated that many delegations, including his own, opposed placing the matter entirely in the hands of the Security Council and felt that the General Assembly could and should play a role in the matter.

Proposal 38

199. Proposal 38 of the informal compilation read as follows:

"38. A guideline which is to a certain degree general and comprehensive should be established by a resolution of the Council with regard to the setting up of subsidiary bodies of the Security Council and the modality of their dispatch (see A/AC.182/WG/44/Rev.1)."

200. While a few delegations expressed the view that proposal 38 was generally acceptable, other delegations observed that there was no utility in establishing the guideline as proposed, because it would tend to change the acceptable record of the Security Council. A similar view was expressed that proposal 38, as it now stood, was too rigid and that the question of subsidiary bodies required greater flexibility.

201. Some delegations observed that proposal 38 was worded in very vague and general terms and would have to be redrafted as its present formulation was open to misinterpretation.

Proposal 39

202. Proposal 39 of the informal compilation read as follows:

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

203. Certain delegations approved proposal 39 because, in their view, it encouraged the Security Council to base its position on actual data and its decisions on the appropriate interests of States.

204. Several other delegations, however, could not support this proposal which seemed to them contrary to the letter and spirit of the Charter. The peremptory wording of the proposal seemed to hamper the freedom of the Security Council and limit its powers. It was feared that the proposal might limit the decisions and further weaken the functions of the Security Council. It was observed that, although the spirit of the proposal was good, its application to specific cases could be problematic.

205. The view was also expressed that the ideas underlying proposal 39 were not clear; it was seemingly aimed at disrupting the normal processes of the Security Council in the area of the maintenance of international peace and security.

Proposal 40

206. Proposal 40 of the information compilation read as follows:

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

207. One delegation stated that proposal 40 should be approved because it encouraged non-permanent members to participate in discussions of the Security Council when their sovereignty, territorial integrity and national security were in danger.

208. Several other delegations who referred to this proposal, however, considered that it was not necessary since Article 31 of the Charter should be left as now worded. It was observed that the practice of the Security Council with regard to the participation in its debates of States that were not members of the Council was very generous. There was no need, in particular, to amend Article 31 of the Charter since the Council was very liberal in determining whether a State's interests were affected or in danger as a result of a question brought before it.

It was also said in this connexion that an amendment to the Charter was not necessary, since the Council's rules of procedure could take care of such questions. The rules could provide that non-members could participate in discussions at each instance without the prior approval of the Security Council.

209. It was further pointed out by one representative that proposal 40 seemed unnecessary, since the Security Council's rules of procedure already allowed Member States to participate, even if their national security was in no way endangered by the matter under consideration. His delegation had particular doubts about the advisability of amending Article 31 of the Charter, which was the basis for rule 37 of the Council's provisional rules of procedure, the rule which served the very purpose at which proposal 40 was aimed. Another delegation observed that proposal 40 had presumably been drafted without the knowledge that the Security Council already hears every State that wishes to be heard, even though this sometimes occurs after a decision has been taken.

Proposal 41

210. Proposal 41 of the informal compilation read as follows:

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

211. Some delegations supported proposal 41, stating that they favoured the early involvement of the Security Council in matters in order to prevent their erupting into violence. It was also observed that proposal 41 was related to proposal 33 and was particularly important because it encouraged an early examination of possible crises.

212. One representative stated that he agreed with the idea behind proposal 41, but felt that its wording should be more concise and more information provided on the consultative mechanism. Another representative said that proposal 41 was too vague for his delegation to take a position on it. It was not clear, for example, what the task of the consultative mechanism would be or whether the sponsors had in mind a subsidiary organ or merely some procedure. Further clarification by the sponsor would be welcome. If the idea was to set up a consultative mechanism outside the Security Council, then there was no need for it; if the intention was to create such a mechanism within the Security Council, new terminology was needed for such a mechanism, since the Security Council already followed this practice.

213. One delegation expressed doubts regarding both the wording and the substance of proposal 41. The proposal was not very clear and great care should be taken in considering the establishment of any such consultative mechanism.

Proposal 42

214. Proposal 42 of the informal compilation read as follows:

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

215. Some delegations supported proposal 42, as they considered there was an urgent need to enhance the fact-finding functions of the Security Council and the role of the Secretary-General in that field. One delegation stated in this context that it especially supported the strengthening of the Secretary-General's fact-finding functions. Another delegation held the view that while the proposal did not call for objection, it was curiously phrased.

216. One representative, however, disagreed with proposal 42, since all matters relating to the implementation of Article 34, fact-finding and decision-making were exclusively within the purview of the Security Council in accordance with the Charter. There was no reason to invest the Secretary-General with the powers to carry out investigations, missions and fact-finding functions. He pointed out that the first and second Secretaries-General did not make themselves responsible for fact-finding missions, unless the Security Council so instructed them.

Proposal 43

217. Proposal 43 of the informal compilation read as follows:

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

218. Certain delegations expressed support for proposal 43 on the increased use of observer missions, since they could constitute partial deterrents to aggression and a valuable means for stabilizing situations. It was also said that they often contributed to the peaceful settlement of disputes. One delegation stated that proposal 43 needed to be clarified so that it did not place the Security Council in a strait jacket; the Security Council had to take into account the circumstances of each situation.

Proposal 44

219. Proposal 44 of the informal compilation read as follows:

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

220. Some delegations endorsed proposal 44. It was stated that the United Nations or the Security Council should study techniques of disarmament. Proposal 44 was seen as complementary to proposal 42; the study called for could be very useful.

221. One delegation stated that proposal 44, as well as proposals 43 and 45, should be looked at seriously because they would encourage the Security Council to find ways and means to settle disputes as early as possible. Those proposals also encouraged Member States to use the potential of the Security Council before a conflict started, even in matters not requiring a formal meeting.

222. Objection to proposal 44 was expressed by one representative who stated that, since the Security Council was action-oriented, it should mainly take care of practical decisions rather than study techniques of fact-finding; such studies would reduce the efficiency and flexibility of the Security Council.

Proposal 45

223. Proposal 45 of the informal compilation read as follows:

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

224. The view was expressed in support of proposal 45 that Member States had the right to bring matters to the Security Council even if the parties involved in the dispute did not do so.

225. Some delegations, however, considered that care was needed before taking a final position with regard to the development of the ideas set forth in this proposal. Thus one representative urged caution concerning third-party involvement in the settlement of disputes that might endanger international peace and security. The possibility of such involvement was already provided for under Article 35 of the Charter but it was best in the early stages of a dispute or situation not to encourage the involvement of third parties, even in its mildest form, namely, by bringing the matter to the attention of the Security Council. He held the view that it was more appropriate for the Secretary-General or the Security Council itself to initiate action in respect of such disputes. Another delegation, referring to the need for balance with regard to the involvement of third parties, recalled that Article 35 of the Charter already provided for that possibility, which should be resorted to responsibly and with restraint.

226. One representative expressed the view that Member States not parties to the dispute should not be encouraged to bring matters to the Security Council, since this would lead to increasing tension and mutual recriminations. He added that matters brought before the Security Council should be supported by facts.

E. Section V of the informal compilation

227. The Working Group began its consideration of proposals 46 to 64, constituting section V of the informal compilation, but was unable to complete its examination for lack of time. What is indicated covers only the preliminary debate reflecting the statements which have been made on the proposals thus far.

228. It was remarked by one representative that a thorough consideration was needed for all the proposals of this section, a section considered to be "action-oriented". Another representative viewed the proposals contained in section V as divided into three groups: the first, proposals 46 to 54, related to Chapter VII of the Charter; proposal 55 dealt with Chapter VIII; and proposals 56 to 64 concerned the actual development of United Nations peace-keeping operations. While some of the ideas behind the proposals of the first group, except for proposals 50 to 52, could be favoured in general, he doubted whether the stress they placed on Chapter VII would be productive.

Proposal 46

229. The text of proposal 46 read as follows:

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

230. A number of delegations supported the idea expressed in proposal 46. The view was expressed that Chapter VII was the very foundation of the Charter, since it contained provisions on actions to be taken when peace was threatened or acts of aggression took place. History showed, however, that almost no action had been taken under Chapter VII in cases of threats to peace. Accordingly, it was essential to urge that Chapter VII be applied or that new ways be found to ensure the maintenance of peace and security. It was timely and imperative that serious efforts be taken to attempt anew to implement the provisions of Chapter VII of the Charter. The request was renewed to the Secretariat for accurate information to be supplied in plenary on the cases when Chapter VII had been applied since the United Nations was first created. ^{27/} The view of many delegations that a number of the proposals on peace-keeping should be referred to the Special Committee on Peace-keeping Operations ("Committee of 33") was noted with appreciation. The view that all such proposals should be referred to that Committee, whether they related to Chapter VII or not, was viewed as an endorsement of the General Assembly's role in the maintenance of peace and security.

231. Although some representatives supported the proposal, they expressed the view that it was ambiguous and needed to be made more specific. One representative proposed a drafting change consisting of eliminating the word "all", and replacing the word "implemented" by the words "utilized whenever the situation so requires". Also, certain representatives favoured the combining of proposals 46 and 53.

232. One representative was of the view that the meaning of proposal 46 was unclear. Disagreement was voiced by another representative who stated that proposal 46 simply enjoined all members to respect and apply the provisions of the Charter in dealing with peace-keeping operations.

^{27/} See A/AC.182/SR.54, paras. 22-25.

Proposal 47

233. Proposal 47 read as follows:

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

234. Proposal 47 was viewed by some representatives as unacceptable since it entailed a duplication of the work being done in the Committee of 33 and posed the danger of creating bodies which would cause far more trouble than the current machinery did. It was also stated that the wording of proposal 47 was unclear. A suggestion to replace the word "military" by "peace-keeping" was made by one representative. Another representative disagreed with that suggested change since in his view the proposal related to United Nations operations under Article 42, not to peace-keeping operations.

Proposal 48

235. The text of proposal 48 read as follows:

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

236. Certain representatives endorsed proposal 48 while other representatives considered it unacceptable for the same reasons adduced in connexion with proposal 47. One representative suggested that the word "allow" in proposal 48 should be replaced by "facilitate".

Proposal 49

237. The text of proposal 49 read as follows:

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

238. Certain representatives supported paragraph 49 and considered it worthy of consideration. It was stated that the steps recommended in this proposal were in conformity with Articles 43 and 45 of the Charter. The same doubts voiced with regard to proposal 47 were also voiced concerning proposal 49.

Proposal 50

239. Proposal 50 read as follows:

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

240. While some support for proposal 50 was expressed by one representative who also felt its ideas needed clarification, other representatives disagreed with the proposal or found it unacceptable because the General Assembly and the Committee of 33 were already working on guidelines for the use of military forces of the United Nations.

Proposal 51

241. Proposal 51 read as follows:

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

242. While supporting proposal 51, one representative was of the view that the ideas contained in it needed to be further clarified. Objections to proposal 51 were raised by certain other representatives. It was stated that although the matter was important, it was a technical problem which was the concern of the Security Council itself.

Proposal 52

243. The text of proposal 52 read as follows:

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

244. With respect to proposal 52, it was said by one representative that the Military Staff Committee membership should be enlarged to include all members of the Security Council so as to further enhance the chances of establishing a system for the regulation of armaments.

245. One representative objected to proposal 52 for the reason that it would create a monster that would get in the way of the efficient functioning of the Security Council. Another objection raised was that proposal 52 dealt with a matter which was being considered in the Committee of 33 and should not therefore be brought up in the Special Committee.

Proposal 53

246. The text of proposal 53 read as follows:

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

247. While not disagreeing with the suggestions contained in proposal 53, one representative commented that its purpose was unclear. The proposal seemed merely to restate the obvious, i.e. that the Security Council should ensure that its decisions were respected and speedily implemented. As indicated earlier, suggestions were made that it be combined with proposal 46.

Proposal 54

248. The text of proposal 54 read as follows:

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

249. Certain representatives endorsed the proposal or thought it dealt with an area which should be usefully explored further. It was also remarked, however, that it was unclear and required further specificity.

Proposal 55

250. The text of proposal 55 read as follows:

"55. The role of regional organizations in the maintenance of international peace and security should be encouraged, in accordance with Chapter VIII of the Charter, without detriment to the overriding authority of the United Nations. A closer relationship between the organizations and the Security Council should be developed (see A/AC.182/WG/L.12/Rev.1)."

251. It was the generally held view that proposal 55 dealt with an area which it would be useful to explore further. One representative stated that his delegation, like most African delegations, could testify to the role of regional organizations in peace-keeping operations. A sine qua non of their activities on the African continent when conflicts arose was the involvement of the Organization of African Unity, and indeed in most cases this condition was met. The role of the regional organizations was accordingly useful and should be encouraged.

252. The author of proposal 55 stated that the proposal would serve further to develop the close relationship between the United Nations and regional organizations, and would be in harmony with Chapter VIII.

Proposal 56

253. Proposal 56 read as follows:

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

254. Certain representatives endorsed this proposal, but one representative described it as simply a pious expression of hope.

Proposal 57

255. The text of proposal 57 read as follows:

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

256. While one representative believed the purpose laudable, certain other representatives thought it unrealistic or objectionable. The idea behind the

proposal seemed, one representative stressed, to be at variance with the very nature of the United Nations and with the Charter itself. The Organization was not yet a world parliament with the right to command permanent armed forces. The proposal would create more problems than it would solve. His delegation suspected that the permanent peace-keeping force mentioned in the proposal would be used primarily against national liberation and revolutionary movements.

Proposal 58

257. Proposal 58 read as follows:

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

258. The view was expressed by one representative that the United Nations present practice of peace-keeping by interposition of forces between contending parties should be given a place of honour in the Charter. Peace-keeping by interposition was viewed as appropriate to a world legal order in which disputes were frozen and hostilities prevented or brought to a standstill, the differences being taken to a proper international forum for adjudication and settlement by peaceful means. A new paragraph in the Charter was considered necessary to spell out the basic principles of observation and peace-keeping by interposition. Another representative said the idea was useful but should be further refined. It was viewed by one representative as good in principle but in its attempt to spell out a general principle was considered as likely to destroy the current, smoothly-operating system. Another representative fully agreed with the second sentence of the proposal, which reflected existing practice, but could not accept the first sentence.

Proposal 59

259. The text of proposal 59 read as follows:

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

260. Some representatives expressed support for the proposal. One representative felt it would be a valuable step for Governments to earmark troop contingents for United Nations peace-keeping operations, and said that his Government had already done so. On the other hand, another representative rejected the proposal since the matter was being considered in detail in the Committee of 33 and was creating great controversy.

Proposals 60 to 63

261. Proposals 60 to 63 read as follows:

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

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

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

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

262. It was stressed by one representative that proposal 60 was a useful area to consider, that proposal 61 was essential if Members were serious about the United Nations capacity for peace-keeping and that with regard to proposal 62, if collective security were to be endorsed, the financial obligations which it entailed had to be met. The last part of proposal 63 put forward a good suggestion, he said, but naturally the conditions described in the first part would have to be met before the suggestion could be implemented. Support was expressed by other representatives for proposals 61 to 63 relating to the necessity of Members to be sincere about their commitments, including financial, to peace-keeping activities. Another representative, however, said proposals 60 to 62 all dealt with practical aspects of peace-keeping which should be decided upon by the Committee of 33. In his view proposal 63 could not be supported because the problem it dealt with had already been considered by the General Assembly in 1978.

Proposal 64

263. Proposal 64 read as follows:

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

264. Support was expressed by some representatives for the idea contained in proposal 64 which was considered useful. One representative, however, termed the proposal unacceptable, since all practical aspects of peace-keeping operations should be considered in the Committee of 33.

F. Draft recommendation proposed by Egypt (document A/AC.182/WG/50)

265. One representative introduced a draft recommendation which had been prepared in the light of the instructions given to the Special Committee by the General Assembly in resolution 35/164. The latter very clearly stated, in his view, that priority should be accorded to the question of the maintenance of international peace and security and that the Committee should make recommendations in areas on which general agreement was possible. The recommendation was limited in scope as the Committee had not completed its consideration of all the proposals in the compilation. He invited delegations to submit comments and suggest amendments, stressing the need for all to be flexible and to work together to reach agreement. It would not be right for one or two delegations to stand in the way of measures which were acceptable to the overwhelming majority.

266. The draft recommendation proposed by Egypt (A/AC.182/WG/50) read as follows:

"1. The Special Committee was of the view that the proper fulfilment of the Charter provisions necessitates that urgent and intensified efforts be undertaken to enable the Security Council, the organ vested with primary responsibility for the maintenance of international peace and security, to enhance its effectiveness in order to take early, prompt and effective action on behalf of the United Nations.

"2. The Special Committee invites the attention of the Security Council to the most disturbing phenomena of non-implementation of United Nations resolutions, in particular Security Council decisions which are binding on all Member States in accordance with the provisions of Article 25 of the Charter.

"3. The Special Committee was of the view that, as a general rule, the Security Council should base its cease-fire resolutions on the Purposes and Principles of the Charter which ensure the sovereignty and territorial integrity of Member States, and prohibits the threat or use of force in international relations.

"4. The Special Committee was of the view that there is an urgent need to examine the areas where the rule of unanimity should not apply. Subject to further negotiations, the examination of certain areas, such as, inter alia, the following, would be (appropriate) (useful) (desirable).

"A. Issues which are confined to providing the Security Council with the necessary information to enhance its ability to discharge promptly and effectively its responsibilities under the Charter including all forms of ascertaining facts by the Security Council or the Secretary-General, as well as the dispatch of United Nations Observers with the consent of the host country to observe and report with a view to ensuring the sovereignty and territorial integrity of that country.

"B. Entrusting the Secretary-General with certain functions in dispute settlement, in accordance with Article 98 of the Charter and rule 23 of the Provisional Rules of Procedure of the Security Council.

"C. Article 27, paragraph 3, by stipulating that 'in decisions under Chapter VI under paragraph 3 of Article 52 a party to a dispute shall abstain from voting', did not provide a distinction between Permanent Members and non-Permanent Members. All Member States have on an equal footing to comply with its provisions.

"5. The Special Committee was of the view that the early realization of the aforementioned proposals will have a direct and beneficial effect on the functioning of the Security Council.

"6. The Special Committee was of the view that the modalities for incorporating and reflecting these proposals should be further negotiated and agreed upon in accordance with the relevant provisions of the Charter and the Provisional Rules of Procedure of the Security Council.

"7. The Special Committee requests the Secretary-General to submit a paper to the thirty-sixth session of the General Assembly containing the necessary documentation on all relevant proposals considered by the United Nations organs on improving the functioning of the Security Council, including the 1945 San Francisco Conference."

267. A representative said that he did not agree with the interpretation of General Assembly resolution 35/164 voiced by the sponsor of the draft recommendation. In the view of his delegation, paragraph 2 (b) of that resolution should be interpreted as meaning that the Committee should give priority to areas where general agreement was possible and that any recommendation should relate to that question of priority. It was true that not all delegations agreed with that interpretation of the resolution and it was because of the ambiguity of paragraph 2 (b) that his delegation in the General Assembly had voted against the inclusion of the words "to make recommendations thereon". Furthermore, it was clear from paragraph 3 (a) that the Committee could not make any recommendations until it had completed its examination of all the proposals contained in the compilation. His delegation could not take a position on the substance of the draft recommendation submitted by the previous speaker as it was, at that time, available only in one language. According to another representative, however, the draft recommendation constituted a minimum which could be submitted by the Special Committee to the General Assembly. He stated that, on the whole, its provisions were moderate and should be acceptable to the Committee.

G. Document prepared by the Chairman

268. At the 20th meeting of the Working Group, on 13 March 1981, the Chairman introduced the document reproduced below. This document reflected the opinion of the Chairman on the progress made by the Committee during the session and did not imply any commitment on the part of any delegation. In introducing this text it was the hope of the Chairman to help provide the Committee with a basis for future work. Proposals 46 to 74 were not covered, as a discussion on them could not be completed for lack of time. The document read as follows:

"I. Maintenance of international peace and security a/

"A. Proposals on which general agreement is possible subject to negotiations on the specific formulation

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

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

"10 bis. Members of the Security Council should be encouraged to implement Article 28, paragraph 2, of the Charter and to hold periodical meetings at a high level.

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

"18. Non-permanent members of the Security Council should be elected in accordance with the criteria set forth in Article 23, paragraph 1, of the Charter and therefore due regard should be especially paid, in the first instance, to their contribution to the maintenance of international peace and security and to the other purposes of the Organization (see A/AC.182/L.15).

"21. The relationship between disarmament and the maintenance of international peace and security should be examined further (see A/AC.182/WG/30/Rev.1).

"22. There should be examination of the possibility of establishing a universal body which would meet periodically to evaluate the progress made in disarmament and to adopt decisions; and to review the existing disarmament negotiating machinery in order to increase its effectiveness (see A/AC.182/L.12/Rev.1).

"23. An appeal should be made to the permanent members to abide by their Joint Statement of 8 June 1945 (see A/AC.182/WG/6).

"24. The permanent members of the Security Council should consult to examine whether there are areas which they could agree to treat as procedural and in which, in accordance with Article 27, paragraph 2, of the Charter, they could refrain from using the veto (see A/AC.182/WG/37; A/AC.182/WG/46/Rev.2). c/

"a/ Each proposal bears the number given to it in the informal compilation prepared by the Chairman of the 1980 session with the assistance of the Rapporteur and reproduced in para. 152 of document A/35/33, with the exception of proposals 10 bis, 31 bis and 32 bis which did not appear in that compilation.

"b/ It was suggested to delete the words 'be urged to'.

"c/ It was suggested to replace 'could' by 'must' or 'are required to'.

"31 bis. All members of the Security Council should strictly abide by Article 27, paragraph 3, and abstain when party to a dispute from voting in decisions under Chapter VI and under paragraph 3 of Article 52.

"32 bis. When two or more countries are involved in an armed conflict, there should be an immediate request by the Security Council for cease-fire, separation of armed forces and their withdrawal behind the borderlines of their respective countries, that is, to the points from which they started their military operation. For such a request, a gentleman's agreement not to use the right of veto should be reached among the permanent members of the Security Council (A/AC.182/WG/32). d/

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

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

"B. Proposals which have awakened special interest but need further examination

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

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

"7. All Member States should accept and carry out all decisions and recommendations of the Security Council, in accordance with the Charter, and follow the recommendations of the General Assembly, as well as other organs of the United Nations (see A/AC.182/L.12/Rev.1). g/

"10. An appropriate mechanism should be established for controlling the

"d/ It was suggested to delete the words: 'that is, to the points from which they started their military operation'.

"e/ It was suggested to replace the opening words by: 'Once the Security Council is seized of a crisis situation or dispute without a meeting being requested' (the rest without change).

"f/ The sponsor said that the proposal should read as in the original, namely:

'To consecrate in the framework of an international treaty of a legally binding nature, the commitment of all States not to resort, in any case and in any circumstance, to the use of force or to the threat of force in order to interfere in the domestic affairs of other States, and in particular not to support with military forces, under any motive, actions of various groups, which rise against lawful Governments of sovereign and independent States.'

"g/ It was suggested to replace 'should' by 'shall'.

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

"11. There should be a strengthening of the role of the General Assembly in the maintenance of international peace and security by making full use of the provisions of Articles 10, 11, 13 and 14 and of the relevant resolutions of the General Assembly (see A/AC.182/WG/20; WG/30/Rev.1; WG/46/Rev.2). h/

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

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

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

"17. The membership of the Security Council should be increased taking into account the principle of equitable geographical distribution (see A/AC.182/L.9; A/AC.182/WG/6).

"19. A new article should be inserted before Article 25 to the effect that the Members of the United Nations are under an obligation to accept and carry out the decisions of the Security Council in matters relating to international peace and security (see A/AC.182/WG/32).

"20. Article 25 should be amended to the effect that the Members of the United Nations agree to accept and carry out resolutions and decisions of the Security Council as well as resolutions and decisions of the General Assembly relating to the maintenance of international peace and security and to support all peace-keeping operations established by the United Nations (see A/AC.182/WG/46/Rev.2).

"25. A resolution should be adopted enumerating those questions which are to be regarded in the Security Council as procedural in nature (see A/AC.182/WG/6).

"26. The Security Council rules of procedure should be amended so as to provide that the decision of whether a given matter is procedural or not should be decided by an affirmative vote of nine members (see A/AC.182/WG/46/Rev.2).

h/ It was suggested to add at the end 'and its rules of procedure'.

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

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

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

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

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

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

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

"38. A guideline which is to a certain degree general and comprehensive should be established by a resolution of the Council with regard to the setting up of

"i/ It was suggested that this proposal should be worded as in the original, namely:

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

'(a) The admission of new members;

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

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

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

subsidiary bodies of the Security Council and the modality of their dispatch (see A/AC.182/WG/44/Rev.1).

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

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

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

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

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

"C. Proposals on which general agreement does not seem possible at the present time

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

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

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

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

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

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

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

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

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

H. Draft recommendation presented by Egypt on behalf of non-aligned countries of the Special Committee (document A/AC.182/L.29)

269. The delegation of Egypt presented document A/AC.182/L.29. In presenting that document, the representative of Egypt stated that he was doing so on behalf of non-aligned countries of the Special Committee as a basis for future work of the Special Committee on a priority basis. The document read as follows:

"1. The Special Committee was of the view that the proper implementation of the Charter provisions necessitates, inter alia, that urgent and intensified efforts be undertaken to enable the Security Council, the organ vested with primary responsibility for the maintenance of international peace and security, to enhance its effectiveness in order to take early, prompt and effective action in this field.

"2. The Special Committee draws the attention to the disturbing consequences of the non-implementation of United Nations resolutions, in particular Security Council decisions which are binding on all Member States in accordance with the provisions of Article 25 of the Charter.

"3. The Special Committee was of the view that there is a need to examine the areas where the application of the rule of unanimity should be limited. Subject to further negotiations, the examination of certain areas, inter alia, the following would be appropriate:

"(a) Ascertaining facts by the Security Council and dispatching of United Nations observers with the consent of the host country to observe and report to the Council;

"(b) Entrusting the Secretary-General with functions in dispute settlement in accordance with Article 98 of the Charter and rule 23 of the provisional rules of procedure of the Security Council;

"(c) The examination of other matters under Chapter VI;

"(d) Ensuring full adherence to Article 27, paragraph 3, stipulating that 'in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting', which did not provide a distinction between permanent members and non-permanent members;

"(e) Adoption of resolutions calling for cease-fire, separation of armed forces and withdrawal behind respective borders in cases of armed conflict;

"(f) Admission of new member States.

"4. The Special Committee recommends that the General Assembly draw the attention of the Security Council to the aforementioned matters."

270. Owing to lack of time, it was not possible to consider this proposal.

III. CONTINUATION OF THE ELABORATION OF THE DRAFT MANILA
DECLARATION ON THE PEACEFUL SETTLEMENT OF DISPUTES

271. This section reflects the stage of consideration of the draft declaration on peaceful settlement of disputes in the Working Group and in informal consultations carried out under the chairmanship of the Chairman of the Special Committee. The texts which have been worked out for paragraphs 1 to 14 of section I and paragraphs 1 to 3 of section II are reproduced below. The formulations on which no agreement has yet been reached have been placed between square brackets. Those texts have been worked out without prejudice to the right of all delegations to propose additional provisions. It is further understood that the results of the work are subject to an agreement on the contents of each part of the draft as well as on the entire text of the declaration.

A. Sections I and II

272. The texts read as follows:

Section I. General principles 28/

1. All States shall act in good faith and in conformity with the purposes and principles enshrined in the Charter of the United Nations with a view to avoiding disputes among themselves likely to affect friendly relations among States, thus contributing to the maintenance of international peace and security. States shall strengthen international peace and security, live together in peace with one another as good neighbours and strive for the adoption of effective measures in the field of disarmament, the halting of the arms race and the creation of political and legal guarantees of international peace and security.
2. All States shall settle their international disputes exclusively by peaceful means in such a manner that international peace and security, and justice, are not endangered.
3. International disputes shall be settled on the basis of the sovereign equality of States and in accordance with the principle of free choice or means in conformity with the Charter of the United Nations mutual benefit the principles of justice and international law. Recourse to, or acceptance of, a settlement procedure freely agreed to by States with regard to existing or future disputes to which they are parties shall not be regarded as incompatible with sovereign equality of States.
4. When engaged in a process of peaceful settlement of disputes, States shall continue to observe, inter alia, the principles of international law concerning:

28/ It has been proposed to revise the titles of all sections or possibly to delete them.

- the independence and the territorial integrity of States;
- equal rights of States and mutual benefit;
- non-use of force or of threat of force in international relations;
- non-recognition of any territorial acquisition or special advantage resulting from the threat or use of force;
- non-interference and non-intervention in internal or external affairs of States;
- equal rights and self-determination of peoples in particular the right to self-determination of peoples under colonial or foreign domination, including apartheid or other forms of racial discrimination;
- inalienable right of every people to freely choose their political, economic and social systems;
- permanent sovereignty of States over their natural resources;
- fulfilment in good faith of obligations under international law.

4. In the settlement of their international disputes all States shall also observe, inter alia, the principles enunciated 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 other relevant pertinent resolutions of the General Assembly. 29/

5. States shall seek in good faith and in a spirit of co-operation an early and just settlement of their international disputes by any of the following means: negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice, including good offices. In seeking such a settlement, the parties shall agree on such peaceful means as may be appropriate in the circumstances and the nature of their dispute. If after a reasonable period, the States have been unable to settle their disputes through negotiations, they shall promptly utilize other settlement procedures including those provided for in this Declaration. Any pressure on the parties to a dispute aimed at inducing them to choose a given means of settlement, especially a means involving the intervention of a third party is inadmissible.

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

29/ It was also suggested to delete this paragraph.

7. In the event of failure of the parties to a dispute to reach an early solution by any of the above means of settlement, they shall continue to seek a peaceful solution and shall consult forthwith on mutually agreed means to settle the dispute peacefully. Should the parties fail to settle by any of the above means a dispute the continuance of which is likely to endanger the maintenance of international peace and security, they shall refer it to the Security Council in accordance with the Charter and without prejudice to the responsibilities powers and responsibilities functions and powers authority prerogatives of the Security Council set forth in the relevant provisions of Chapter VI of the Charter of the United Nations.

8. States parties to an international dispute, as well as other States, shall refrain from any action whatsoever which may aggravate the situation so as to endanger the maintenance of international peace and security and make more difficult or impede the peaceful settlement of the dispute, and shall act in this respect in accordance with the purposes and principles of the United Nations. 30/

10. States should consider concluding conclude agreements for the peaceful settlement of disputes which may arise among them. They should also consider including include in bilateral agreements and multilateral conventions to be concluded, as appropriate, effective provisions for the peaceful settlement of disputes arising therefrom.

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

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

11 bis. States should more frequently resort to direct negotiation which is the most flexible and effective means of peaceful settlement of international disputes.

12. States shall in accordance with international law implement in good faith all aspects of agreements concluded by them on the terms modalities of settlement of their disputes for the settlement of their disputes.

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

13. In the exercise of their right to self-determination and independence as it derives from the Charter, peoples subjected to colonial, racist domination and apartheid hegemonism or to any other form of alien

30/ In relation to paragraph 9, see the tenth and eleventh paragraphs of the preamble below (para. 308).

domination/ and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations /in accordance with that Declaration/ may have recourse to the relevant provisions of this Declaration /in accordance with their inalienable right to participate fully and on an equal basis in any process of peaceful settlement of disputes to which they are parties/. 31/

14. Neither the existence of a dispute nor the failure of a procedure of peaceful settlement of disputes shall permit the use of force or threat of force by any of the States parties to the dispute. 32/

Section II. Role of the United Nations 33/

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

2. Member States in fulfilling in good faith their obligations under the Charter /shall give due /respect/ /weight/ to/, /should respect/ the recommendations of the General Assembly and the Security Council concerning peaceful settlement of disputes.

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

(a) /Bear in mind the provisions of the Charter according to which the General Assembly may consider disputes as well as the provisions according to which the General Assembly may recommend measures/ /Make full use of the provisions of the Charter in order that the General Assembly may consider such situations or disputes before they develop into conflicts and to recommend measures/ for the peaceful adjustment of any situation, regardless of origin which it deems likely to impair the general welfare or friendly relations among nations;

(b) /Make full use of the General Assembly in the peaceful settlement of international disputes, including the utilization of the existing mechanisms and the establishment of subsidiary organs or any other machinery which may be required/ /Utilize subsidiary organs which the General Assembly may establish in the exercise of the powers vested in it according to the relevant provisions of the Charter of the United Nations/;

31/ It was suggested to delete this paragraph. It was also suggested in connexion with the second alternative to reformulate the text in a negative form ("Nothing in this Declaration can be construed as impairing the exercise of the right to self-determination and independence of peoples, in particular peoples subjected to colonial racist domination and apartheid ...").

32/ In relation to paragraph 15, see paragraph 2 of section III below (para. 308).

33/ See foot-note 28 above.

(c) Consider the establishment, if requested by all the parties to a dispute of an informal ad hoc group which would extend good offices to the parties to bring about the peaceful settlement of the dispute. 34/

B. Statement of the Rapporteur

273. In connexion with this topic, the Working Group had before it the second revised version of the draft Manila declaration on the peaceful settlement of disputes (A/AC.182/WG/48/Rev.2), reproduced in paragraph 164 of the report of the Special Committee on its 1980 session 35/ and also circulated under the symbol A/C.6/35/L.5, as well as various related documents referred to in paragraph 275 below. It also had before it a working paper submitted by the United States at the 1980 session and containing a questionnaire directed to Member States on the question of the peaceful settlement of disputes (A/AC.182/WG/47, reproduced in paragraph 166 of the report of the Special Committee of its 1980 session), as well as a working paper submitted by France at the current session under the title "Proposed outline of a handbook on the peaceful settlement of disputes" (A/AC.182/L.24).

274. This statement shall first deal with the question of the elaboration of the draft declaration and then turn briefly to the other proposals.

275. Further to the requests contained in paragraph 5 of General Assembly resolution 35/164 and paragraph 4 of resolution 35/160, the Working Group concentrated on the elaboration of the draft Manila declaration of the peaceful settlement of disputes. It took as the basis of its work the second revised version of that draft referred to in paragraph 273 above and also took into account the list of oral suggestions made in Manila in the course of the first reading of the first revised version of the draft, 36/ the report of the Working Group on the Peaceful Settlement of Disputes established by the Sixth Committee at the thirty-fifth session of the General Assembly (A/C.6/35/L.21) and a document listing proposals and remarks made on the draft Manila declaration during the debate of the Sixth Committee on agenda items 108 and 51 at the thirty-fifth session of the General Assembly (A/C.6/35/WG.1/R.1).

276. The Working Group carried out a review of section I and paragraphs 1 to 3 of section II of the second revised draft Manila declaration, in the course of which a number of concrete comments and informal proposals were made by members of the Working Group.

277. The stage reached in relation to the various provisions of section I and paragraphs 1 to 3 of section II is reflected in detail in paragraph 272 of the report of the Special Committee. It should be stressed that the results of the work carried out so far on these provisions are subject to an agreement on the contents of each part of the draft as well as on the entire text of the declaration.

34/ It was also suggested to delete this paragraph.

35/ Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 33 (A/35/33 and Corr.1).

36/ Ibid., Appendix to the Statement of the Rapporteur on the work carried out by the Working Group.

278. The paragraphs of the draft declaration considered by the Working Group will now be considered, stressing the points on which there is general agreement and bringing out the most salient features of the problems still pending.

279. Although for reasons of expediency and based upon the original draft, reference in the statement is to sections I and II and their respective headings, it should be noted at the outset that those headings and the very division into sections is one aspect of the draft declaration on which there is not yet agreement.

280. Starting with section I on general principles, and with reference to its paragraph 1, it may be said that, subject to the word "all" which appears in square brackets, the text as it emerged from the consultations seems to be generally acceptable. There is, however, a proposal to add a second sentence to the paragraph, which also appears in square brackets, on which no agreement has been reached.

281. Paragraph 2 is also largely agreed upon except for the word "all" at the beginning of the paragraph. The formulation emerged from the consultations develops the original text of the proposal by adding to it language taken from article 2, paragraph 3, of the Charter.

282. Paragraph 3 as it emerged from the consultations, is largely based on the original text, but a variety of alternatives have been suggested in relation to the phrase "in conformity with justice and international law". Some delegations wished to insert therein a reference to the Charter of the United Nations. Others favoured a mention of the concept of mutual benefit and it was also suggested that the phrase "justice and international law" should read "principles of justice and international law" which is taken from Article 1, paragraph 1, of the United Nations Charter.

283. Paragraph 4 is still the subject of differences of view. Some delegations considered that it was imprudent and irrelevant to this exercise to list the principles to be observed in the settlement of international disputes. Others maintained that paragraph 4 was indispensable and that efforts should be made to improve the wording of the paragraph by devising for each principle an appropriate formulation. Still other delegations would prefer to replace entirely the enunciation of principles contained in the paragraph by a reference, on a non-exhaustive basis, to the principles enunciated 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, a reference which, in the view of still others, should be supplemented by the inclusion of the phrase "and other pertinent resolutions of the General Assembly".

284. Paragraph 5 as contained in the original text seems to have obtained general agreement. However, two additions have been proposed which appear in square brackets, one referring to the prompt utilization of other settlement procedures if negotiations failed and the other referring to the inadmissibility of any pressure aimed at inducing the parties to choose a given means of settlement.

285. The text of paragraph 6 seems to have been the subject of general agreement.

286. Paragraph 7 as it appeared in the original draft seems also to have been the subject of general agreement with, however, the addition, at the end, of the words

"in accordance with the Charter" and the inclusion of a safeguard clause concerning the role of the Security Council in Chapter VI of the United Nations Charter. In this latter respect various formulas have been proposed, which appear in squared brackets in the text.

287. Paragraph 8 appears to have been the subject of general agreement.

288. Concerning paragraph 9 of the original draft, there was a generally agreed proposal to transfer its contents to the preamble of the draft declaration where it appears, between brackets, as the final part of its paragraph 10 or as a new paragraph 11 (see para. 308 below).

289. Paragraph 10 has been the subject of general agreement in some of its aspects. It, nevertheless, still contains some alternative texts between brackets relating to the extent of the obligations to be assumed by States in accordance with the paragraph as well as to whether it would cover all disputes or only those which may arise in the future.

290. Paragraph 11 has not yet been the subject of a general agreement and it appears entirely between brackets. While some delegations defended the inclusion of the paragraph in the draft declaration stressing the importance of international tribunals as a means of peaceful settlement, others maintained that the paragraph was wrong and even at odds with the principle of freedom of choice of means. Among those defending the inclusion of the paragraph there were also differences of views, one of them proposing a new formulation appearing between brackets, which limits the scope of the projected paragraph to States parties to treaties establishing such tribunals. Other views introduced some drafting changes in the original formulation, which also appears between brackets.

291. A paragraph 11 bis has been also proposed, on which no general agreement was reached. It aims at obtaining a more frequent resort by States to direct negotiation as a means of peaceful settlement.

292. Paragraph 12 has been the subject of general agreement although some alternative formulations have been proposed regarding its text. The most important points on which there is still no agreement concern the inclusion of the phrase "in accordance with international law" to qualify the implementation in good faith of the agreements concluded by States on peaceful settlement as well as the inclusion of the phrase "all aspects of" referring to those agreements. While some delegations maintained that the words "all aspects of" were unclear and should therefore be deleted, others maintained that they should be kept so as to encompass not only procedural aspects of the agreements but also the acceptance of the outcome of the settlement process.

293. Paragraph 13 is still among those on which no general agreement could be reached. Some delegations opposed the inclusion of the paragraph on the ground that its subject-matter was unrelated to the purposes of the draft declaration since the status of liberation movements and States was not parallel but entirely different. Other delegations supported the necessity to include the paragraph on the ground that national liberation movements could be involved in a dispute which threatened international peace and security, as recent history showed. They maintained, nevertheless, that the paragraph should be reworded. In this respect, a new formulation was suggested for paragraph 13 which appears between brackets.

The category envisaged by this new formulation is "peoples subjected to colonial, racist domination and apartheid and referred to in the Declaration on ... Friendly Relations ..." rather than "authentic representatives of a people recognized by the respective regional organization and by the United Nations", as provided for in the original formulation. Some changes were also suggested regarding the proposed new formulation of paragraph 13. Among those changes are those proposing that the category envisaged by the paragraph should also encompass "hegemonism" as well as peoples subjected "to any other form of alien domination", and that the paragraph should clearly state with regard to the above-mentioned category of peoples "their inalienable right to participate fully and on an equal basis in any process of peaceful settlement of disputes to which they are parties". In connexion with the new formulation it was also suggested that it should be drafted in a negative form and that it should refer first to "peoples" in general, and, then, in particular, to those subjected to colonial, racist domination and apartheid, etc.

294. Paragraph 14 has been generally agreed upon. Its text is very similar to the formulation of paragraph 14 in the original draft. Its sole differences concern the word "justify" which has been replaced by the word "permit" and the words "or coercion" which have been deleted.

295. It was agreed that the contents of paragraph 15 of the original draft together with that of paragraph 7 of section II should become the subject of a disclaimer clause to be incorporated into section III of the draft declaration relating to final provisions.

296. With respect to section II of the draft declaration concerning the role of the United Nations, the following observations are made.

297. Paragraph 1 has been generally agreed upon, on the basis of the formulation contained in the original draft. The only points still subject to final agreement concern the possible reference to "Member States" rather than "States" at the beginning of the paragraph, and the choice between the words "procedures and means provided for in" or "provisions of" regarding the full use to be made by States of the Charter of the United Nations in the area of peaceful settlement of disputes.

298. Paragraph 2 has also been generally agreed upon largely on the basis of the formulation contained in the original draft declaration. Some reservations, however, were expressed regarding the possibility that the paragraph might be regarded as establishing a generally binding character for recommendations of the General Assembly. It was felt that the need to maintain the balance between the powers of the principal organs of the Organization should not be sacrificed to the desirability of observing the resolutions of the General Assembly and the Security Council. Consequently, the word "implement" which appeared in the original draft text of the paragraph has been deleted from the text appearing in paragraph 272 of the report and still pending is a choice between the expressions "shall give due respect to", "shall give due weight to" and "should respect" concerning the recommendations of the General Assembly and the Security Council referred to in the paragraph.

299. Although there is general agreement on the inclusion of paragraph 3 of section II in the draft declaration, there are still broad differences of views as to the exact scope that the said paragraph should be given.

300. Some delegations maintained that paragraph 3 as originally drafted did not fully reflect the general structure of the Charter, particularly the relation between the General Assembly and the Security Council in the field of the peaceful settlement of disputes. The paragraph was regarded by those delegations as a political appeal to place greater emphasis on the General Assembly and increase its role in the field of dispute settlement. The entire paragraph should be reformulated, it was felt, in strict accordance with the Charter.

301. Other delegations found that paragraph 3 was an accurate reflection of the balance between the powers of the General Assembly and the Security Council as provided for in the Charter and would change in no way the areas of competence of those two organs. The draft declaration followed the same order of reference contained in the Charter, which referred first to the role of the General Assembly in the peaceful settlement of disputes in Articles 11, 12 and 14 and only afterwards, in Chapter VI, explained the role of the Security Council in that regard. Any change in that order would disregard the structure of the Charter.

302. Still some other delegations, although recognizing that the General Assembly had a residual power or secondary responsibility in the field of peaceful settlement if the Security Council failed to exercise its primary responsibility, found themselves unable to support a recommendation implying that the General Assembly should undertake certain action in this field.

303. The texts still found between brackets in the chapeau as well as in the subparagraphs of paragraph 3 reflect the different trends regarding this paragraph.

304. Regarding the Preamble and the provisions of section III of the draft declaration, the Working Group appointed two Vice-Chairmen of the Special Committee, namely, Mr. Bengt Broms of Finland and Mr. Dietmar Hücke of the German Democratic Republic, to co-ordinate the consultations and receive proposals on those two parts of the draft. The texts product of the above-mentioned consultations are reproduced below in paragraph 308 of the report of the Special Committee.

305. Attention may briefly be drawn to the proposal of the United States of America concerning a questionnaire directed to Member States on the question of peaceful settlement of disputes and to the proposal submitted by France regarding the outline of a handbook on the peaceful settlement of disputes. This statement will not dwell on those proposals since the Working Group could not consider them for lack of time. It may, however, be pointed out that the proposal of the United States (A/AC.182/WG/47) is reproduced in paragraph 166 of the report of the Special Committee at its 1980 session. 37/

306. As to the French proposal, contained in document A/AC.182/L.24, it is reproduced in paragraph 309 below.

C. Remaining provisions of the draft

307. Paragraphs 4 to 7 of section II - and the related proposals which were presented in the course of the session - on which negotiations are still at an early stage are reproduced below.

37/ Ibid., para. 166.

Paragraph 4

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

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

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

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

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

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

Related proposals

United States

In the chapeau insert after "international peace and security", "and support the involvement of the Security Council in any situation or dispute the continuance of which is likely to endanger the maintenance of international peace and security"

Subamendment by the Philippines

Insert the words "and support the involvement" after the words "strengthen the role".

Alternative suggested by Finland

Insert "and support its involvement" after "the Security Council".

Egypt

Insert at the end of the opening sentence:

"and the Council should discharge its responsibilities in accordance with the Charter."

Algeria

Replace the opening sentence by the following:

"Member States should enable the Security Council to fully play its role."

USSR

Replace the opening sentence by the following:

"Member States should strengthen the role of the Security Council in the implementation of its powers in accordance with the Charter in the area of the settlement of any dispute or situation the continuation of which is likely to endanger the maintenance of international peace and security."

France

Reword the chapeau taking into account Article 34 of the Charter.

India

Delete subparagraphs (a) and (b) unless it can be made clear that the disputes referred to are those the continuance of which is likely to endanger the maintenance of international peace and security.

USSR

Delete subparagraph (b).

India

Delete the end of subparagraph (b) from the words "in formal session" and replace it by "in accordance with the Charter".

USSR

Replace subparagraph (c) by the following:

"The Security Council should be encouraged to make wider use of the opportunity provided by Articles 28 and 29 of the Charter of the United Nations and of information presented by the Secretary-General on the request of the Council and the members of the Security Council should be encouraged to consider greater use of informal consultations for the discharge of the Council's functions under Chapter VI of the Charter of the United Nations."

United States

In subparagraph (c) delete the words: "on the request of the Security Council".

USSR

Delete subparagraph (e).

Yugoslavia

Insert an additional subparagraph (f) reading as follows:

"(f) Encourage the Security Council to act without delay in cases where international disputes develop into armed conflicts."

Paragraph 5

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

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

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

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

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

Related proposals

France

Redraft paragraph 5 as follows:

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

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

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

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

Italy

Redraft paragraph 5 as follows:

"Member States of the United Nations should strive to enhance procedures for peaceful settlement of disputes in which independent international bodies, such as conciliatory commissions of all kinds, arbitration tribunals or judicial organs are involved and exercise jurisdiction based upon the consent of the parties to the dispute.

"In selecting any of such procedures Member States of the United Nations should be aware of their wide variety as developed by recent international practice and therefore of the ease of adapting the procedures to the circumstances, nature and object of any particular dispute. Member States should also bear in mind the opportunity, as appropriate, of resorting to specialized bodies or agencies as well as to regional arrangements.

"As far as judicial settlement of international disputes is concerned, the attention of Members of the United Nations is drawn to the possibilities offered by the International Court of Justice for the peaceful settlement of disputes, especially since the reform of its rules of procedure. States are reminded:

"(a) That the International Court of Justice is the principal judicial organ of the United Nations and that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court;

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

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

"It is recalled that States are obliged to comply strictly with the decisions taken by the arbitral tribunals or by the International Court of Justice in disputes to which they are a party and that the Security Council may, in the event of non-observance of the decision of the International Court of Justice and at the request of the party which has complied to that decision, make recommendations or decide on steps to be taken to ensure that the judgement is carried out.

"Member States should bear in mind that the advisory function is one of the basic functions of the International Court of Justice and that it should be improved by appropriate measures in accordance with Article 96 of the Charter of the United Nations.

"States Members of the United Nations are also reminded that resort to third-party settlement of international disputes does not exclude, either pending the settlement procedure or thereafter, recourse to direct negotiations between the parties to the dispute, whenever such recourse may appear a more flexible and effective means of bringing about an expeditious settlement of the dispute or, if an arbitral or judicial settlement has been already arrived at, whenever negotiations may facilitate an agreement on ways and means of implementation of the terms of settlement."

Subamendments to the proposal by Italy

France

Replace the first part of paragraph 4 up to the words "Security Council" by the following words:

"It is recalled that whenever States have accepted a binding means of settlement of disputes they are obliged to comply strictly with the decision taken. It is to be stressed, in particular, that the Security Council ...".

(the rest of the paragraph remains unchanged)

United States

Incorporate in the proposal by Italy subparagraph (a) of paragraph 5 of the draft declaration as contained in document A/C.6/35/L.5.

German Democratic Republic

Delete the paragraph or use the formulation proposed by France.

China

Reflect in the paragraph the idea that the quality of the work of the Court should be improved in order to have more Member States resort to it and envisage the possibility of investigating the reasons for the present situation of the Court.

Paragraph 6

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

Paragraph 7

Nothing in this Declaration shall be construed as prejudicing in any manner the relevant provisions of the Charter or the rights and duties of States, or the scope of the functions and powers of the United Nations organs under the Charter, in particular those relating to the peaceful settlement of disputes. 38/

Related proposals

USSR

Delete the last two sentences.

38/ See para. 2 of sect. III of the draft declaration, para. 308 below.

In the first sentence, replace "dispute" by "matter".

Italy

In the last sentence, replace "on measures thus taken" by "on such steps", and delete the words "or the General Assembly".

D. Preamble and section III

308. By decision of the Working Group, Mr. Bengt Broms (Finland), Vice-Chairman of the Special Committee and Mr. Dietmar Hucke (German Democratic Republic), Vice-Chairman of the Special Committee were appointed to co-ordinate the consultations on the preamble and the provisions in section III. They submitted the following text which was not considered for lack of time.

Preamble

The General Assembly,

Conscious that the Charter of the United Nations embodies the principles and establishes the means and essential framework/ means and an essential framework/ for the peaceful settlement of international disputes the continuance of which is likely to endanger the maintenance of international peace and security/,

Recognizing the important role of the United Nations and the need to enhance its effectiveness in the peaceful settlement of international disputes and maintenance of international peace and security/ in the adjustment or settlement of international disputes or situations which might lead to a breach of the peace/, in accordance with the principles of justice and international law, in conformity with the Charter of the United Nations,

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

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

Reaffirming also the principle of the Charter that all States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State or in any other/ manner inconsistent with the purposes of the United Nations,

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

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

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

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

Aware of existing international instruments as well as respective principles of international law concerning the peaceful settlement of disputes, including the principle on the exhaustion of local remedies, whenever applicable,

Reaffirming the principle of international law on the exhaustion of local remedies, whenever applicable,

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

III. Final provisions General part 39/

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

2. Declares that nothing in this Declaration shall be construed as prejudicing in any manner the provisions of the Charter or the rights and duties of States spelled out therein, including its provisions concerning cases in which the use of force is lawful.

2. Declares that nothing in this Declaration shall imply in any way enlarging or diminishing the scope of the Charter and its provisions or shall be construed as prejudicing in any manner the right and duties of States, or the scope of the function and powers of the United Nations in particular those relating to the peaceful settlement of international disputes.

39/ It has been proposed to revise the titles of all sections or possibly to delete them.

3. Declares further that the provisions of this Declaration shall in no way impair the legitimate right of peoples under colonial and racist domination to struggle by all means for their national independence and self-determination/ nothing in this Declaration could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right, and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist régimes or other forms of alien domination, nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration./

4. Considers that the conclusion of a general treaty on peaceful settlement of disputes could facilitate or contribute towards the attainment of just and equitable international relations thereby enhancing the maintenance of international peace and security./ 40/

4./ 5./ Stresses the need to continue the efforts aimed at codifying and promoting the progressive development of the principles of the Charter, including the principle/s and norms governing of the peaceful settlement of international disputes./ 41/

E. Working paper submitted by France (A/AC.182/L.24)

309. The working paper submitted by France (A/AC.182/L.24) entitled "Proposed outline of a handbook on the peaceful settlement of disputes" read as follows:

"Introduction: purpose of the handbook.

"I. Definition of various methods of peaceful settlement of international disputes

"II. Legal instruments containing commitments to the peaceful settlement of disputes

"A. International agreements containing a general commitment to the settlement of disputes:

"(a) Universal agreements

The United Nations Charter,

Articles 1 and 2

Chapter VI and Article 33

Chapter XIV, the International Court of Justice

40/ It was suggested to delete this paragraph.

41/ It was suggested to delete this paragraph.

The Statute of the International Court of Justice and, in particular, Article 36

The general act of arbitration

"(b) Regional agreements:

of the OAU type (Cairo Protocol of 1964)

the European Convention on the Settlement of Disputes

"(c) Bilateral agreements

Arbitration agreements

"B. International agreements containing provisions on the peaceful settlement of disputes relating to the interpretation and implementation of the agreement in question

"(a) International agreements establishing international organizations:

Provisions for the settlement of disputes

By institutions of the organization (IMF, GATT, for example)

By procedures external to the organs of the organization:

For example, advisory opinion of the International Court of Justice

"(b) Other agreements:

Multilateral, such as conventions on diplomatic relations, oil pollution, the hijacking of aircraft, and IBRD loans

Bilateral

"III. Commitments undertaken in advance and ad hoc commitments:

"(a) Scope of the distinction

"(b) Advantages and drawbacks of the two formulae

"(c) The problem of reservations to commitments undertaken in advance

"IV. Mediation

Examples

"V. Conciliation

"(a) Examples of

(i) conciliation actually effected

(ii) conciliation clauses: institutionalized conciliation and ad hoc conciliation

"(b) Problems of organization:

- (i) For institutionalized conciliation
- (ii) For ad hoc conciliation

"VI. Arbitration

"(a) Arbitration clauses and arbitration agreements

"(b) Examples of arbitration clauses and arbitration agreements

"(c) Questions to be settled:

- (i) Determination of the mandate given to the arbitrators
- (ii) Role of law and of equity
- (iii) Task of determining the law applicable to the dispute or of finding a precise and specific solution to the dispute
- (iv) Powers of investigation
- (v) Powers to take interim measures (legal nature of these measures)
- (vi) Nature of the award
- (vii) Possibility of revision
- (viii) Choice of arbitrators
 - Number
 - Conditions of nationality, residence, etc.
 - Morality
 - Problem of referee
- (ix) Appointment of agents and their powers
- (x) Choice of the place of arbitration
- (xi) Appointment of the clerk
 - Organization of clerical work
- (xii) Miscellaneous procedural problems
 - Either settled by reference to existing rules
 - Or settled ad hoc

(xiii) Particular problems

Written proceedings and oral proceedings

Determination of the number and nature of items of written proceedings, the number and nature of oral statements (length, possibility of annexes for written proceedings, date of production, order of precedence between the parties)

Languages of the proceedings, provisions relating to translation and interpretation

(xiv) Questions of conclusions, time-limits for the formulation of conclusions

(xv) Regulation of the presentation of arguments

Proof of affirmations (problem of the production of texts quoted)

Possibility of presenting new arguments

(xvi) Regulation of the role of experts (appointed by the Tribunal or by the parties)

(xvii) Role of maps

(xviii) Regulation of the award

Written nature

Mode of determination

(majority - unanimity)

Possibility of separate opinions

Justification

Significance to the parties

Possibility of revision

(xix) Question of publicity

Of debates

Of the award

Relations with the press

(xx) Immunities of the arbitral tribunal, of the agents, of the clerk

Types of clauses contained in an agreement with the authorities of the host State

(xxi) Problems of remuneration

(xxii) Archives of the arbitral tribunal

"VII. Judicial settlement

Problems involved in arbitral settlements which disappear, and those which remain

Depending on the court to which the settlement is entrusted

The International Court of Justice

International human rights courts

"VIII. The enforcement of the award

"IX. Recourse procedures"

IV. STATEMENT OF THE RAPPORTEUR ON RATIONALIZATION OF EXISTING PROCEDURES OF THE UNITED NATIONS

310. Concerning the question of the rationalization of existing procedures of the United Nations mentioned in paragraph 3 (b) of General Assembly resolution 35/164, the Working Group, at its 10th meeting, heard a statement by the Under-Secretary-General for Political and General Assembly Affairs who reviewed the activities of the General Assembly in connexion with the rationalization of its procedures. He noted, inter alia, that, although there had not been any fundamental change in procedure, there had been an accumulation of small advances in conducting the work of the General Assembly. He pointed out that, despite the fact that there was no longer any formal working group to deal with the rationalization of General Assembly procedures, that subject was being pursued for example by the Committee on Conferences which had been requested to investigate additional ways of further reducing the volume of documentation - a problem which he described as a major one. He also mentioned as an area requiring attention the continuous increase of the number of agenda items discussed in plenary. In conclusion, he assured members of the Working Group that their proposals would be studied carefully and would be presented in whatever form they wished.

311. During the ensuing exchange of views, various suggestions and comments were made by the members of the Working Group concerning, inter alia, the need to avoid having different aspects of the same item discussed in different committees, the role of the General Committee in streamlining the agenda, the involvement of the Sixth Committee in the drafting of treaties and conventions, the need to ensure absolute equality among working languages, computerization, control of documentation and the burden placed on United Nations facilities by meetings and other gatherings, at Headquarters and elsewhere, of bodies not directly connected with the Organization or its work.

312. At the 20th meeting of the Working Group, on 13 March 1981, the Chairman introduced the document reproduced below. This document reflected the opinion of the Chairman and did not imply any commitment on the part of any delegation. In introducing this text it was the hope of the Chairman to help provide the Committee with a basis for future work:

"A. Possible basis for future work

"The Special Committee at its next session should take as a basis of its work on this topic the working papers submitted at the 1979 session of the Committee by the United States (A/AC.182/WG/38, reproduced in document A/34/33, p. 41) and by Romania and the Philippines (A/AC.182/WG/39, reproduced in document A/34/33, p. 52) with a view to the possibility for their further consideration, taking into account the relevant decisions made by the General Assembly at its last session.

"B. Proposal

"1. The General Assembly should review the recommendations on its methods and procedures for dealing with legal and drafting questions, adopted by resolution 684 (VII) of 6 November 1952 and forming annex II of the General Assembly rules of procedure.

"2. The task of such a review could be carried out by the Sixth Committee, or by a working group established by it, or it could be entrusted to another Committee such as the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization.

"3. The Secretary-General should be requested to prepare a report on the practice of the General Assembly and its Main Committees as it relates to the recommendations contained in General Assembly resolution 648 (VII)."

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