United Nations

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
Fifty-third session
Supplement No. 33 (A/53/33)

General Assembly
Official Records
Fifty-third session
Supplement No. 33 (A/53/33)

Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

United Nations • New York, 1998

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.

ISSN 0255-1276

[Original: Arabic/Chinese/English/
French/Russian/Spanish]
[26 February 1998]

Contents

Chapter I
Introduction

1. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization was convened in accordance with General Assembly resolution 52/161 of 15 December 1997 and met at United Nations Headquarters from 26 January to 6 February 1998.

2. In accordance with paragraph 5 of General Assembly resolution 50/52 of 11 December 1995, the Special Committee was open to all States Members of the United Nations.

3. On behalf of the Secretary-General, Mr. Hans Corell, the Legal Counsel, opened the session.

4. Mr. Roy S. Lee, Director of the Codification Division of the Office of Legal Affairs, acted as Secretary of the Committee, assisted by the Deputy Director, Mr. Manuel Rama-Montaldo (Deputy Secretary) and, as assistant secretaries, Mr. Mpazi Sinjela, Mr. David Hutchinson, Ms. Virginia Morris, Mr. Vladimir Rudnitsky and Mr. Renan Villacis of the Codification Division.

5. At its 223rd meeting, on 26 January 1998, the Special Committee, bearing in mind the terms of the agreement regarding the election of officers reached at its session in 1981,[1] and taking into account the results of the pre-session consultations among its member States, elected its Bureau as follows:

Chairman:
Mr. Trevor Pascal Chimimba (Malawi)

Vice-Chairmen:
Ms. Yesim Baykal (Turkey)
Ms. Gaile Ann Ramoutar (Trinidad and Tobago)
Mr. Markiyan Z. Kulyk (Ukraine)

Rapporteur:
Mr. Hiroshi Kawamura (Japan)

6. The Bureau of the Special Committee also served as the Bureau of the Working Group.

7. Also at its 223rd meeting, the Special Committee adopted the following agenda (A/AC.182/L.98):

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.
5. Consideration of the questions mentioned in General Assembly resolution 52/161 of 15 December 1997, in accordance with the mandate of the Special Committee as set out in that resolution.
6. Adoption of the report.

8. At its 223rd meeting, the Special Committee also established a Working Group of the Whole for its work and agreed on the following organization of work: proposals relating to the maintenance of international peace and security (six meetings); proposals regarding the peaceful settlement of disputes between States (four meetings); proposals concerning the Trusteeship Council (one meeting); the question of identification of new subjects, assistance to working groups on the revitalization of the work of the United Nations and coordination between the Special Committee and other working groups dealing with the reform of the Organization (one meeting); and the consideration and adoption of the report (three meetings). The distribution of meetings would be applied with the necessary degree of flexibility, taking into account the progress achieved in the consideration of the items. It was also understood that delegations, if they so wished, could make general statements in the Working Group in connection with the various items.

9. With regard to the question of the maintenance of international peace and security, the Special Committee had before it a revised working paper submitted by the Russian Federation at the 1997 session of the Special Committee entitled "Some ideas on the basic conditions and criteria for imposing and implementing sanctions and other enforcement measures" (A/AC.182/L.94);[2] a working paper submitted by the Russian Federation at the current session of the Special Committee, entitled "Basic conditions and criteria for the introduction of sanctions and other coercive measures and their implementation" (A/AC.182/L.100; see para. 45 below); a working paper submitted by the Russian Federation at the 1996 session of the Special Committee, entitled "Draft declaration on the basic principles and criteria for the work of United Nations peacekeeping missions and mechanisms for the prevention and settlement of crises and conflicts" (A/AC.182/L.89);[3] an informal working paper submitted by the Russian Federation at the 1997 session of the Special Committee, entitled "Some views on the importance of and urgent need for the elaboration of a draft declaration on the basic principles and criteria for the work of United Nations peacekeeping missions and mechanisms for the prevention and settlement of crises and conflicts" (A/AC.182/L.89/Add.1);[4] a working paper also submitted by the Russian Federation at the present session of the Special Committee, entitled "Fundamentals of the legal basis for

United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations" (A/AC.182/L.89/Add.2 and Corr.1; see para. 73 below); a revised version of the working paper submitted by the Cuban delegation at the 1995 session of the Special Committee, entitled "Strengthening of the role of the Organization and enhancing its effectiveness" (A/AC.182/L.93);[5] a working paper of the same title submitted by Cuba at the current session of the Special Committee (A/AC.182/L.93/Add.1; see para. 84 below); and a revised proposal submitted also at the current session by the Libyan Arab Jamahiriya "with a view to strengthening the role of the United Nations in the maintenance of international peace and security" (A/AC.182/L.99; see para. 98 below).

10. With regard to the peaceful settlement of disputes between States, the Special Committee had before it a revised proposal submitted by Sierra Leone at the previous session of the Special Committee, entitled "Establishment of a Dispute Prevention and Early Settlement Service" (A/AC.182/L.96),[6] which was orally revised at the current session (see para. 105 below). The Committee also had before it a working paper submitted by Guatemala in 1997 entitled "Possible amendments to the Statute of the International Court of Justice to extend its competence with respect to contentious matters to disputes between States and international organizations" (A/AC.182/L.95/Rev.1)[7] (amended at the current session of the Special Committee (see para. 129 below)); a working paper of the same title submitted by Costa Rica at the previous session (A/AC.182/L.97) as an alternative drafting to the working paper submitted by Guatemala;[8] and a proposal by Guatemala submitted at the current session, entitled "Draft of a questionnaire addressed to States regarding the proposal to extend the jurisdiction of the International Court of Justice in contentious cases to disputes between States and intergovernmental organizations" (A/AC.182/L.101; see para. 140 below).

11. In the course of the session and at the request of the Special Committee, the Secretariat prepared and distributed several information papers: (a) selected documents pertaining to the operational aspects of Article 50 of the Charter and of the Sanctions Committees; (b) sanctions regimes established under relevant Security Council resolutions; (c) selected extracts from papers or matters that might be relevant to the subject matter pertaining to the establishment of a dispute prevention and early settlement service (Sierra Leone proposal); (d) a selected list of documents that might be relevant to the subject matter pertaining to the establishment of a dispute prevention and early settlement service (Sierra Leone proposal); and (e) an information paper concerning organs, programmes and organizations dealing with environmental matters.

Chapter II
Recommendations of the Special Committee

12. The Special Committee submits to the General Assembly:

(a) As regards the question of the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter, the recommendation contained in paragraph 34 below;

(b) As regards the question of identification of new subjects, assistance to working groups on the revitalization of the work of the United Nations and coordination between the Special Committee and other working groups dealing with the reform of the Organization, the recommendations contained in paragraph 167 below.

Chapter III
Maintenance of international peace and security

A. Implementation of Charter provisions related to assistance to third States affected by sanctions

13. Delegations who spoke on the question of the implementation of Charter provisions related to third States affected by the imposition of sanctions underscored the importance they attached to the topic. In that connection some delegations made reference to a communiqué issued by the Movement of Non-Aligned Countries at a meeting held in New Delhi, which had stressed the importance the Movement attached to the question of assistance to third States affected by the imposition of sanctions and to the need to find a permanent solution to the problem. The importance of the topic could also be seen from the fact that the General Assembly had in recent years adopted separate resolutions dealing specifically with assistance to third States affected by the imposition of sanctions. This was a welcome departure from its past practice of adopting only one general resolution pertaining to the work of the Special Committee on the Charter.

14. With regard to the carrying out of sanctions in general, some delegations stressed that, since sanctions were adopted collectively, their consequences should also be borne equitably by all States. Given their grave consequences, sanctions should only be imposed after other peaceful measures had failed. Furthermore, resort to Chapter VII of the Charter should only be contemplated as a last resort and only when there was a threat to international peace and security. The view was also expressed that sanctions should not be used as a primary means to settle international disputes. Since the provisions of the Charter had equal importance, the issue of assisting third States affected by sanctions should be taken into consideration together with the imposition of sanctions. A view was also expressed by some delegations as to the importance of the use of sanctions as an alternative to the use of force.

15. Some delegations expressed the view that, following the great increase in the number of sanctions imposed in the 1990s, it was incumbent upon the United Nations to find ways and means of alleviating their negative effects, in particular on third States. According to those delegations it was important to address the question of the effects of sanctions on third States in more concrete ways, since not doing so would lead to a weakening of the sanctions regime as a whole under the Charter.

16. Some delegations recognized the undoubted importance of the right under the Charter of affected States to consult the Security Council with a view to finding a solution to problems resulting from the application of sanctions, through committees created by the Security Council or other means determined by it. They also stressed, however, that the fundamental role of the Council in and its primary responsibility for the maintenance of international peace and security should not be affected.

17. The view was expressed by some delegations that since sanctions caused indiscriminate harm to human life and damage to property, their imposition should be approached with great prudence. The view was also expressed that sanctions only had the potential to cause indiscriminate harm to human life and damage to property. Some delegations wondered whether the need to impose sanctions always warranted the pain inflicted by them. The effects of sanctions were, moreover, often felt beyond the borders of the target State. This called for a re-examination of the question of the sanctions regime as a whole.

18. Some delegations stressed the fact that, before sanctions were imposed, it was necessary to define carefully their scope and content and that a time-frame should be provided within which to apply them. They should be lifted as soon as the intended objective had been met. It was also stressed, in that connection, that in order to minimize the effects of sanctions on third States, the Security Council should carry out regular consultations with States that might potentially be affected, before, during and after the imposition of such sanctions.

19. The view was also expressed that the Sanctions Committees should not widen the scope of application of sanctions, as doing so could increase the negative consequences on third States.

20. The idea of setting up a focal point within the Secretariat to collate information and to oversee the implementation of sanctions was viewed by some delegations as a welcome positive development. Some other delegations stressed that such an undertaking did not in itself constitute a solution to the overall problem of alleviating the negative effects on third States. Similarly, adoption of a methodology for assessing collateral damage to third States was considered by some to be rather procedural in nature and should not be viewed as constituting a substitute to finding practical ways and means of resolving the problem.

21. Some delegations stressed the role to be played by international financial institutions with regard to assistance to third States affected by the imposition of sanctions. Some other delegations observed that while such institutions could, no doubt, play a role with regard to providing assistance to the affected third States, the responsibility for finding a more durable solution to the problem rested with the Security Council. It was noted, moreover, that international financial institutions were limited by their constituent instruments and could not be expected to assume the whole responsibility of providing assistance to third States affected by the imposition of sanctions.

22. According to some delegations, since it was evident that sanctions had negative effects on third States, it was imperative that a permanent mechanism should be established for compensating them from harm suffered as a result. Reference was made, in that regard, to the proposal made by the Movement of Non-Aligned Countries that a trust fund be established to assist third States affected by the imposition of sanctions. Without such a funding mechanism, the provisions of Article 50 would not be fully implemented.

23. Some other delegations expressed the view that the establishment of a permanent mechanism was premature. According to those delegations, the implementation of the provisions of Article 50 did not depend on the existence of a permanent funding mechanism. Ad hoc arrangements currently in place were considered by them to be adequate in addressing the problem.

24. With regard to the right to compensation, the view was expressed by some delegations that such a right existed for

compensating third States affected by the application of sanctions for actual loss incurred. The issue that needed further study and clarification was whether such a right also existed with regard to the potential losses third States might incur as a result of the imposition of sanctions.

25. Some delegations noted that the Subgroup on Sanctions of the Working Group on an Agenda for Peace, which considered the question, had recommended that this issue should be dealt with in an appropriate manner in the Sixth Committee.

26. According to some other delegations, the issue concerning the implementation of Charter provisions related to assistance to third States affected by sanctions had not fully been considered in other forums. The Special Committee was better suited to carry out an in-depth consideration of the problem. It was suggested that the Special Committee should proceed to a consideration of practical ways and means of dealing with the problem of third States affected by the imposition of sanctions.

27. Reference was made to the report of the Secretary-General of 28 August 1997 (A/52/308), in which he set out measures taken within the Secretariat to develop capacities and modalities for providing better information and early assessment about actual or potential effects of sanctions on third States. In this connection, mention was made of the proposal of the Secretary-General in his report to convene a meeting of an ad hoc group of experts to study a methodology for assessing the consequences actually incurred by third States as a result of preventive or enforcement measures, a proposal that had been adopted by the General Assembly in paragraph 4 of its resolution 52/162 of 15 December 1997. Such a course of action was widely endorsed by delegations who spoke on the issue. Some of them stressed the fact that the composition of the group should be broad-based and should reflect equitable geographical representation of all States. In addition, the group should include experts from third States affected by the imposition of sanctions. In this connection, some delegations stressed in particular the need for the participation of the experts from the developing countries in the work of that group. It was suggested that in its work the group of experts should take into account the views expressed in the Special Committee on the Charter and in the Sixth Committee during the consideration of the item and should be provided with the reports the Secretary-General had submitted on the question.

28. A proposal was made in this connection that the Secretariat should prepare a summary of the discussion in the Sixth Committee and in the Special Committee on the Charter, to be made available to the group of experts. Such a summary would provide the group of experts with a broad and comprehensive overview of the views of States expressed on the question.

29. Doubts were expressed by some delegations as to the institutional advisability of the proposal, given the expert nature of the group and the fact that it had been established by the General Assembly without specific instructions regarding its method of work.

30. There was, however, a widely supported suggestion that it would be advisable for the Secretariat to make available, on an informal basis, to the group of experts, an account of the views expressed in the Sixth Committee and in the Special Committee on the question of assistance to third States affected by the application of sanctions under Chapter VII of the Charter. Some delegations suggested that a compilation of measures undertaken and reports submitted by the Secretary-General with regard to the implementation of General Assembly resolutions adopted in the last five years on the question should be made available to the group of experts .

31. It was suggested that the report of the working group should be made available to delegations sufficiently ahead of time to allow a constructive discussion during the fifty-third session of the General Assembly. In that connection, a proposal was made that the Special Committee should recommend to the Sixth Committee that a working group be established in the Sixth Committee during the fifty-third session of the Assembly to conduct a substantive discussion on the report of the group of experts.

32. According to some delegations, since the group of experts had not yet met, it would be prudent to await its report before a decision could be made as to how to deal with it. In their view, a recommendation by the Special Committee to the Sixth Committee to establish a working group at its next session would be premature, since the Sixth Committee would need to analyse the report of the group of experts before making a decision as to how to deal with the issue.

33. The view was also expressed by some delegations that while there was no need to pre-empt the Sixth Committee from deciding how it should deal with the report of the group of experts, the Special Committee could, nevertheless, express its views within certain parameters on the manner in which it felt the report should be considered by the Sixth Committee.

34. As a result of its deliberations, the Special Committee recommended to the General Assembly at its fifty-third session to consider, in an appropriate substantive manner, the report of the Secretary-General on the results of the ad hoc expert group meeting to be convened in accordance with General Assembly resolution 52/162 of 15 December 1997

and to address further the question of the implementation of the provisions of the Charter relating to assistance to third States affected by the application of sanctions under Chapter VII of the Charter and the implementation of the provisions of Assembly resolutions 50/51 of 11 December 1995, 51/208 of 17 December 1996 and 52/162 taking into account all reports of the Secretary-General on this subject, the text on the question of sanctions imposed by the United Nations contained in annex II to General Assembly resolution 51/242 of 15 September 1997, as well as the proposals presented and the views expressed in the Special Committee.

B. Consideration of the working paper submitted by the Russian Federation entitled "Some ideas on the basic conditions and criteria for imposing and implementing sanctions and other enforcement measures"

35. At the 2nd meeting of the Working Group, on 26 January 1998, the representative of the Russian Federation referred to the working paper entitled "Some ideas on the basic conditions and criteria for imposing and implementing sanctions and other enforcement measures".[9]

36. The sponsor delegation maintained that there was a need for the development of clear criteria for the imposition, implementation and lifting of sanctions in order to establish a proper normative basis for taking decisions on such matters. These criteria should include, *inter alia*: the necessity of a prior determination by the Security Council of the existence of a threat to the peace, breach of the peace or act of aggression; recognition that sanctions are an extreme measure that should be used only after the prior exhaustion of all other diplomatic or peaceful means for maintaining or restoring international peace and security; the establishment of a clear and definite time-frame within which the sanctions regime was to apply; and limits on the imposition, scope and implementation of sanctions established by reference to considerations of a humanitarian character.

37. The sponsor delegation placed particular emphasis upon the "humanitarian limits" of sanctions. The fundamental consideration in this regard was that sanctions should not cause unacceptable suffering to the civilian population of the State against which they were imposed; in particular, they should not endanger enjoyment of the rights to life, food and health. It was important in this connection that sanctions regimes which were in place should be the subject of periodic review and that those regimes should be adjusted, if need be, in the light of the humanitarian situation prevailing within the State against which the sanctions were directed. It should be recognized that sanctions might even need to be temporarily lifted if that were the only way to avert a humanitarian catastrophe.

38. A number of the basic aspects of the humanitarian limits of sanctions were also outlined by the sponsor delegation. The access of humanitarian aid to the population of the State against which the sanctions were directed should be guaranteed, particularly if that State were unstable or were one of the least developed countries. International humanitarian organizations should be completely exempt from sanctions restrictions so that their work in the State against which the sanctions were directed would not be impeded. Medicines and basic foodstuffs should be exempted from the scope of sanctions regimes. In order to facilitate the delivery of the most essential humanitarian supplies to the population of the State against which the sanctions were directed, there should be a waiver of the requirement that preliminary notification of the intended export of such materials must be given to the sanctions committee of the Security Council, the practice of *post facto* notification being employed instead. Procedures for approving deliveries of vitally needed humanitarian goods to the population of the State against which the sanctions were directed should be made as simple and straightforward as possible. Humanitarian and medical assistance should be provided in a strictly impartial and non-discriminatory manner; in particular, it should be made equally available to all sectors of the population of the State and to all parties to any internal conflict. In order to ensure the proper application of these criteria, the sponsor delegation suggested that the views of international humanitarian organizations should be taken into account in the devising and implementation of sanctions regimes.

39. The sponsor delegation referred to a number of recent developments which threw light on the humanitarian limits of sanctions. He noted that, in its General Comment No. 8 (1997),[10] the Committee on Economic, Social and Cultural Rights had recently made a number of observations on the relationship between sanctions and the enjoyment of social, economic and cultural rights. In particular, the Committee had observed that those rights must be taken fully into account when designing sanctions regimes, that there should be effective monitoring of the protection of those rights while the sanctions were in force and that steps should immediately be taken to respond to any disproportionate suffering which might be experienced by vulnerable groups within the State against which the sanctions were directed. He also observed that, in its resolution 52/107 of 12 December 1997, the General Assembly had specifically recommended that the

impact of sanctions on children should be assessed and monitored and that those regimes should, if necessary, be subject to child-focused exceptions of a humanitarian nature.

40. In the discussion which ensued, some delegations expressed the view that the proposal dealt with matters which had already been addressed by the General Assembly in annex II to its resolution 51/242 of 15 September 1997 and that for the Special Committee to consider them once more would entail a needless duplication of work. On the other hand, it was pointed out that, in that resolution, the Assembly had affirmed that the concept of "humanitarian limits of sanctions" merited further attention and that standard approaches should be elaborated by relevant United Nations bodies. The Special Committee was an appropriate body to undertake the elaboration of such approaches. In particular, the proposal deserved careful study in order to see whether it contained ideas which might usefully supplement the work which had already been done by the General Assembly. The view was also expressed, however, that many of the "humanitarian" issues addressed in the proposal were not within the expertise of the Special Committee.

41. A view was expressed that the Secretariat should prepare an informal paper indicating the measures and arrangements taken by the Security Council and its subsidiary organs to improve their working methods, in particular in the area of the humanitarian aspects of sanctions. The Secretariat prepared two informal papers for the Special Committee in response to that request (see para. 11 and subparagraphs (a) and (b)).

42. Concern was expressed about the negative impact of sanctions on the civilian population of the State against which they were directed, particularly their deleterious effects on children. Frequently, they caused severe suffering among the population, halted or set back development and even led to loss of life. At the same time, the view was expressed that the occasioning of suffering among the population of the target State, if not inherent to sanctions, was at the very least an almost necessary aspect of them. That having been said, it was certainly desirable that such suffering should be avoided as far as possible and, insofar as it could not, that it be kept to a minimum. To that end, it was to be hoped that it would be possible for the Committee to establish a set of guidelines for use by the Security Council.

43. Mention was made of a number of criteria which should govern the imposition, implementation and lifting of sanctions. Sanctions should only be imposed if there was a clear threat to the maintenance of international peace and security. They should only be used in the last resort, when all other peaceful means had been tried and had failed; and, even then, they should be imposed only after the most careful consideration. The decision to impose them should not be politically motivated or taken for the purpose of causing suffering in the State against which they were directed. They should be imposed only in order to achieve specific, agreed objectives; and clear and precise conditions should be laid down regarding the steps which the target State should take in order for them to be lifted. They should be specifically targeted and should be so devised as to minimize suffering among the population of the target State. Humanitarian considerations should be kept in mind when imposing sanctions and in the course of their implementation. In this connection, a view was expressed that due regard should be paid to information provided to humanitarian organizations. They should be lifted immediately once the danger to international peace and security to which they were a response had abated. At the same time, it was noted that sanctions provided an important and valuable alternative to the use of force.

44. The view was expressed that sanctions should be imposed only for a definite period of time, which should be clearly specified at the time of their imposition. In this regard, it was acknowledged that third States certainly had a direct interest in knowing exactly how long sanctions regimes were going to last. However, the view was expressed that, since the purpose of sanctions was to change the behaviour of the State against which they were directed, it was not desirable that they should be so framed as to lapse on a particular date regardless of whether or not that State had taken the steps which were being required of it.

45. At the 8th meeting of the Working Group, on 2 February 1998, the representative of the Russian Federation introduced a working paper entitled "Basic conditions and criteria for the introduction of sanctions and other coercive measures and their implementation" (A/AC.182/L.100), which read as follows:

"I

"The basic conditions and criteria for the introduction and application of sanctions include the following elements:

"1. The application of sanctions is a radical measure and is permitted only after all other peaceful means of settling the dispute or conflict have been exhausted and only when the Security Council has determined the existence of a threat to peace, a breach of the peace or an act of aggression.

"2. The application of sanctions is permissible only in the event of a real, objectively verified and factually established threat to international peace or a breach of the peace, and this refers specifically to

international peace, not peace between communities, clans or groups.

"3. Sanctions must be introduced in strict conformity with the provisions of the Charter of the United Nations and the rules of international law and justice, pursue clearly defined purposes, have a time-frame, be subject to regular review and provide for clearly stipulated conditions for lifting them, and the lifting of them must not be linked to the situation in neighbouring countries.

"4. Before the introduction of sanctions, the country or party which is the object of the sanctions must be given unambiguous notice.

"5. The introduction or utilization by individual States of additional sanctions and other coercive measures alongside sanctions introduced by the Security Council is not permissible.

"6. Compulsory utilization of means for the peaceful settlement of disputes, including negotiations and provisional measures in accordance with Article 40 of the Charter, up until the time when the need may arise for the introduction of sanctions by the Security Council.

"7. The use of sanctions for the purpose of overthrowing or changing the lawful regime or existing political order in the country which is the object of sanctions is not permissible.

"8. The creation of a situation in which the consequences of the introduction of sanctions would inflict considerable material and financial harm on third States is not permissible.

"9. The imposition on a State which is the object of sanctions of additional conditions for cessation or suspension of sanctions is not permissible except as a result of newly discovered circumstances.

"10. Objective assessment of the short-term and long-term socio-economic and humanitarian consequences of sanctions is necessary both at the stage of their preparation and in the course of their implementation.

"II

"In considering the question of sanctions, special attention should be paid to the 'humanitarian limits' of sanctions. Their main components could be the following provisions:

"1. When the Security Council considers issues relating to sanctions, account must be taken of humanitarian considerations, which are even more pressing in time of peace than in time of war.

"2. Decisions on sanctions must not create situations in which fundamental human rights not subject to suspension even in emergency situations would be violated, above all the right to life, the right to freedom from hunger, the right to prevent and cure epidemic and other diseases and combat them, and the right to create conditions which would ensure medical services for all and care in the event of illness.

"3. The creation of a situation in which sanctions would cause excessive suffering to the civilian population, especially its most vulnerable sectors, is not permissible.

"4. Periodic adjustment of sanctions is desirable taking into account the humanitarian situation and depending on the fulfilment by the State which is the object of sanctions of the requirements of the Security Council.

"5. The temporary suspension of sanctions is desirable in emergency situations and cases of *force majeure* in order to prevent a humanitarian disaster.

"6. Ensuring unimpeded and non-discriminatory access of the population of countries which are the object of sanctions to humanitarian assistance.

"7. Impermissibility of measures likely to cause a serious deterioration in the situation of the civil population and breakdown of the infrastructure of the State which is the object of sanctions.

"8. Consideration of the views of international humanitarian organizations of generally recognized authority in drawing up and implementing sanctions regimes.

"9. Exclusion of international humanitarian organizations from the effect of sanctions limitations with a view to facilitating their work in countries which are the object of sanctions.

"10. Utmost simplification of the regime established for delivery of humanitarian supplies required for the sustenance of the population, and exclusion of medical supplies and staple food items from the scope of the sanctions regime.

"11. Strict observance of the principles of impartiality and the impermissibility of any form of discrimination in the provision of humanitarian and

medical assistance and other forms of humanitarian support for all sectors and groups of the population."

46. The sponsor delegation explained that the working paper had been prepared in the light of the discussion which had taken place in the Committee, both at the current session and at the 1997 session, on the sponsor delegation's earlier proposal on the subject.[11] The purpose of the paper was to assist the Committee in focusing its work on the concrete elements in that earlier proposal, in particular, those relating to the "humanitarian limits" of sanctions. The sponsor delegation considered that the further concretization of the legal aspects of those elements would be of substantial assistance to the Security Council. It would also correspond with the objective expressed by the General Assembly in its resolution 51/242 that standard approaches to the "humanitarian limits" of sanctions should be elaborated by relevant United Nations bodies.

47. A number of delegations welcomed the new working paper. It contained a number of important ideas which, once developed, would usefully complement the provisions of the Charter and provide the Security Council with clear and objective criteria to guide its decisions on the imposition, implementation and lifting of sanctions. The suggestion was made that the Committee should proceed to a paragraph-by-paragraph reading of the paper.

48. Other delegations expressed reservations about the suggestion. It was pointed out that the proposal dealt with matters which had already been addressed at length by the General Assembly in annex II to resolution 51/242. The General Assembly had affirmed there that the concept of "humanitarian limits of sanctions" merited further attention from relevant United Nations bodies. However, it was far from clear that the Special Committee was an appropriate place to undertake the further study of that concept. Moreover, the question of "humanitarian limits of sanctions" was only one of the issues which were addressed by the proposal. Section I of the proposal dealt with other issues entirely. Those issues, which had also formed part of the subject matter of annex II to resolution 51/242, were being examined in other forums within the Organization and it was not appropriate for the Special Committee to address them. It was also pointed out in this connection that it was unclear what manner of relationship there would be between annex II to resolution 51/242 and any document which the Committee might elaborate on the basis of the proposal. In particular, it was not clear whether any such document would supersede or otherwise derogate from the terms of that annex, which was the product of careful and detailed negotiations.

49. The view was expressed that much of what was contained in the proposal was either not of a legal nature or else was not formulated with sufficient precision or legal accuracy to serve as a basis for further work within the Committee. It was also observed that there had not been sufficient time to give the proposal the kind of consideration which was a necessary preliminary to subjecting it to a detailed, paragraph-by-paragraph reading, particularly in view of the fact that it touched on many fundamental sensitive issues of a constitutional nature. There were also other matters before the Committee which had benefited from that kind of consideration and which it was more appropriate receive its detailed attention.

50. Certain delegations stated that, in view of the preceding considerations, they would not participate in any paragraph-by-paragraph consideration of the proposal.

51. Some other delegations pointed out that the General Assembly, in paragraph 20 of annex II to its resolution 51/242, had affirmed that the concept of "humanitarian limits of sanctions" merited further attention and that relevant United Nations bodies should undertake the elaboration of standard approaches to the issues it raised. That being so, for the Committee to give further, detailed consideration to the proposal could hardly be a needless duplication of work. The view was also expressed that the Special Committee was an appropriate body to undertake work on the issues dealt with in the proposal, particularly since many of them were of an entirely legal nature.

52. The Committee proceeded to conduct a paragraph-by-paragraph reading of the new working paper, on the understanding that the reading was in the nature of a preliminary discussion only and that silence should not be taken to signify agreement.

53. With regard to paragraph 1 of section I, it was stated that the wording of the paragraph should be aligned with that of the relevant provisions of Chapter VII of the Charter. In particular, the words "settling the dispute or conflict" should be replaced by "maintaining or restoring international peace and security". In support of this view it was pointed out that Chapter VII of the Charter contained no reference whatsoever to disputes or conflicts underlying a threat to the peace, a breach of the peace or an act of aggression. It was further observed that this omission was perfectly reasonable since, whenever the application of Chapter VII was called for, the settlement, of any prior dispute or conflict had to take second place to the need to maintain or restore international peace and security. It was added that, as a matter of fact, the need to apply Chapter VII could well arise in the absence of any prior dispute or conflict between the States concerned.

54. The view was also expressed that the wording of the paragraph should be aligned with that of annex II to General

Assembly resolution 51/242. In particular, the word "radical" should be deleted and be replaced with wording reflecting the notions set forth in paragraph 1 of that annex: namely, that sanctions should form part of a "graduated response", that they are "a matter of the utmost seriousness and concern" and that they "should be resorted to only with the utmost caution, when other peaceful options provided by the Charter are inadequate".

55. Concern was expressed regarding the categorical manner in which the paragraph was formulated. The Security Council, it was observed, must be free to respond to each situation in the manner it considered most appropriate. The paragraph, as drafted, did not acknowledge the flexibility required by the Security Council. The view was expressed that to preserve that necessary element of flexibility, the expression "is permitted" should be replaced by the words "should be used". It was added that a similar remark might be made in respect of a number of the paragraphs of the proposal.

56. With regard to the formula "all other peaceful means", a suggestion was made that there should be inserted after it the words "including provisional measures provided for in Article 40 of the Charter". Paragraph 6 could then be deleted as being no longer necessary. A suggestion was also made that the possibility of recourse to the International Court of Justice might be mentioned so as to reflect the terms of Article 36, paragraph 3, of the Charter. Another suggestion was that the words "legally available" should be inserted before the words "peaceful means" and that an allusion should be made to the idea that the availability of "other peaceful means" should be assessed in the light of the specific circumstances of each case.

57. Responding to these comments, the sponsor delegation stated that it would at a later stage submit a revised version of the proposal in which the wording of paragraph 1 would be aligned with that of Article 39 of the Charter. The sponsor delegation was also open to aligning the wording of the paragraph with that of annex II to General Assembly resolution 51/242, since the general purpose of the paragraph was, like paragraph 1 of that annex, to stress that all other available peaceful means should be employed first before resort was had to sanctions. It had not been the intention of the sponsor delegation, though, to fetter the legal discretion of the Security Council or to trespass upon its prerogatives.

58. In respect of paragraph 2, a number of delegations expressed agreement with the general thrust of the first of its two clauses. In particular, the view was expressed that, while it might be a matter for the judgement of the Security Council whether a situation constituted a threat to international peace and security, the existence of the situation itself should be factually established and objectively proved beyond reasonable doubt. On the other hand, concern was expressed regarding a lack of correspondence between the wording of the paragraph and the wording of Article 39 of the Charter. Such discordance might create new grounds to challenge the lawfulness of the decisions of the Security Council, it was observed, as well as interfere with its capacity to evaluate situations. Concern was also voiced that the words "objectively verified and factually established" might be understood to imply that the Security Council should hold a full and formal inquiry into a situation before making a determination under Article 39 of the Charter, which would hamper its ability to respond to emerging crises in an effective and timely manner. The view was also expressed, however, that any such apprehension was unjustified.

59. Differing opinions were expressed with regard to the second clause of paragraph 2. On the one hand, it was felt that the clause as a whole should be deleted so that the paragraph would end with the words observed "breach of the peace". Some delegations observed that most conflicts of international concern were currently internal in origin and in nature, and that internal conflicts were more likely to be of international concern in view of the decreasing importance of international borders. In this connection, a view was also expressed that notice should be taken of developments in international humanitarian law whereby parties to an internal conflict which enjoyed a degree of political structure and a measure of territorial control were recognized to be subject to that law and to possess an international status as belligerents. It was also argued that the purpose of sanctions was to change the behaviour of the holders of power and that those who held power did not always coincide with the Government of a State. Some other delegations differed with those views. It was pointed out in this connection that any reference to the issue should be consistent with the Charter and, in particular, with the Purposes and Principles of the Organization.

60. It was further suggested in this regard that, in addition to deleting the second clause of the paragraph, the word "international" should be deleted from the first clause and the wording of that clause strictly aligned with that of the first part of Article 39 of the Charter. There was, however, opposition to that suggestion, since the word "international" appeared in the second part of Article 39, where it qualified the word "peace", and since one of the Purposes of the United Nations was "to maintain international peace and security".

61. On the other hand, the view was advanced that there was no warrant in the Charter for the extension of the provisions of Chapter VII to situations which were of a purely internal nature. Admittedly, it might be the case that a situation which was internal in origin might develop into a

threat to international peace; but then that situation was no longer purely internal, and had instead taken on international dimensions. The second clause of the paragraph should accordingly be retained.

62. In the light of the above views, a range of opinions were expressed regarding the retention of paragraph 2. Some delegations were of the view that it should be deleted as unnecessary, since it merely repeated what was already in paragraph 1, at least once certain problematic elements were removed from it. Other delegations considered that, while the paragraph should be deleted, elements of it should be retained and incorporated in paragraph 1. Yet other delegations favoured its retention. A suggestion was also made that the ideas contained in the paragraph might be separated out, developed and made into separate paragraphs of their own.

63. In commenting on these views, the sponsor delegation remarked that it was not the purpose of the first clause of the paragraph to affect the prerogatives of the Security Council in its making of determinations under Article 39 of the Charter. The second clause was, similarly, fully in accordance with the letter and spirit of the Charter.

64. With regard to paragraph 3, the view was expressed that it should be aligned with the terms of paragraph 2 of annex II to General Assembly resolution 51/242. In particular, the reference in that paragraph of the annex to Article 24, paragraph 2, of the Charter should be incorporated.

65. Support was expressed for the propositions in the paragraph that sanctions should be introduced in strict conformity with the Charter, that they should pursue clearly defined purposes and that conditions for lifting them should be clearly stipulated. In particular, support was voiced for the proposition that sanctions, once imposed, should be subjected to regular review. The view was also expressed that, just as many of the ideas in the paragraph reflected aspects of the concept of due process of law, so other, procedural aspects of that concept should be incorporated in the paragraph, including the notion that the Security Council should hear the views of the State against which the sanctions were directed.

66. Different opinions were expressed regarding the statement to the effect that sanctions "must ... have a time-frame". On the one hand, it was felt that sanctions should be subject to a definite time-frame which was clearly specified in advance. Otherwise, the essentially temporary nature of sanctions would be eroded. The setting of such a time-frame was also necessary in order to avoid a situation in which sanctions were kept in place indefinitely because of the veto by one of the permanent members of the Security Council of any decision to lift them. On the other hand, it was said that it was inconsistent with the very nature and purpose of sanctions to frame the resolutions that imposed them in such a manner that they would lapse on a certain date regardless of whether or not the State against which the sanctions were directed had altered its conduct in the manner that was being required of it. Reference was made in this regard to paragraph 3 of annex II to General Assembly resolution 51/242. It was also remarked that, if the purpose of the paragraph was to ensure that sanctions were not continued any longer than was necessary in order to achieve the objectives for which they had been imposed, it was preferable that their implementation be made subject to frequent and regular review, rather than being so framed as automatically to lapse on a given date. In response, the view was expressed that such a process of review was hardly a sufficient guarantee against the unjustified and illegitimate prolongation of sanctions. It was also pointed out that, if the State against which sanctions were directed had, by the time those sanctions were due to lapse, failed to take the steps which had been required of it by the Security Council, it was always possible for the Council to adopt a new decision extending the operation of the sanctions.

67. Responding to the above comments, the sponsor delegation stated that the purpose of the stipulation that sanctions should have a time-frame was to prevent their indefinite continuation by ensuring that, when they were adopted, a definite period was set for compliance with these measures. Referring to the opening words of paragraph 3, he observed that Article 1, paragraph 1, of the Charter also made reference to the requirement of conformity with the principles of justice and international law.

68. In respect of paragraph 4, doubts were expressed regarding its practical signification, as well as to its operability in cases in which State structures had collapsed in the State against which the sanctions were to be imposed. It was also remarked that situations might arise in which the maintenance of peace would require the immediate imposition of sanctions, without notice. At the same time, support was expressed for the recognition in the paragraph of the values of the due process of law.

69. For lack of time the paragraph-by-paragraph reading of the proposal encompassed its paragraphs 1 to 4 only. However, in the course of the discussion, observations were made on certain of the proposal's other paragraphs.

70. With regard to section I of the proposal, the view was expressed that the proposition advanced in paragraph 5 was of great importance. On the other hand, it was said that that proposition did not reflect the current state of international law. Concern was also expressed with regard to the use of the word "coercive". As for paragraph 6, the view was expressed that it should not be formulated in terms of the settlement of disputes, but of the utilization of measures for the

maintenance or restoration of international peace and security. The view was also expressed that the proposition advanced in the paragraph did not necessarily and in all circumstances represent good policy. A suggestion was made to delete the paragraph and to incorporate certain elements from it into paragraph 2. As far as paragraph 7 was concerned, the opinion was expressed that it sought unjustifiably to preclude the use of a measure which, in certain extreme but not inconceivable cases, might be indispensable to maintain or restore international peace. Observations were made in agreement with the idea set forth in paragraph 8, the view being expressed that that idea should be further developed and elaborated upon. It was remarked that the meaning of paragraph 9 was obscure. In connection with paragraph 10, it was suggested that the Secretary-General of the United Nations should make periodic reports to the Security Council on the humanitarian effects of any sanctions which it might adopt.

71. With regard to section II of the proposal, support was expressed for the ideas expressed in its paragraph 1. There was also support for the ideas expressed in paragraph 2, though an opinion was voiced that the reference to "fundamental human rights not subject to suspension even in emergency situations" was vague and indeterminate. In connection with paragraph 2, a view was expressed that the thinking behind that paragraph should be followed to its logical conclusion: namely, that sanctions should, wherever possible, be targeted at the leaders of a State, rather than against its population; though at the same time it should be recognized that those leaders were themselves entitled to the respect of their human rights. In the case of paragraph 3, concern was voiced with regard to the use of the word "excessive" to qualify the word "suffering". The implication was that it was acceptable to cause some, even great, suffering to the civilian population of the State against which the sanctions were directed, which was questionable. Similar remarks were made regarding the use of the word "serious" in paragraph 7. The suggestion was also made that that paragraph should be merged with paragraph 3. With respect to paragraph 10, support was voiced for its second clause, as the starvation of the civilian population of a State was hardly calculated to assist in realizing the objectives for the achievement of which sanctions were imposed. As for paragraph 11, an opinion was expressed that it should be deleted since it dealt with matters other than those which were the subject of the proposal.

72. The view was expressed that it was necessary to conduct a paragraph-by-paragraph consideration of the proposal at the next session of the Special Committee in order to complete its first reading. The contrary view was also expressed.

C. Draft declaration on the basic principles and criteria for the work of United Nations peacekeeping missions and mechanisms for the prevention and settlement of crises and conflicts

73. At the 4th meeting of the Working Group, on 28 January 1998, the delegation of the Russian Federation introduced under the above-mentioned item a working paper entitled "Fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations" (A/AC.182/L.89/Add.2 and Corr.1), which read as follows:

"The legal basis for peacekeeping operations in the context of Chapter VI of the Charter could include primarily the following fundamental elements:

- Purpose: removal of the threat to international peace and security in accordance with Chapter VI of the Charter of the United Nations and creation of conditions conducive to a political settlement;
- The legal foundation for the competence of the United Nations to establish peacekeeping operations;
- Obligatory chain of command on the United Nations side (Security Council, Secretary-General, command of the operation);
- Components of operations: military, civilian, police, humanitarian;
- Basic principles of peacekeeping operations: neutrality, impartiality, non-interference in the internal affairs of the parties to the conflict; need for the consent of the receiving State (of the parties to the conflict) and the transit States; non-use of force except in cases of self-defence and cases established by the mandate of the operation;
- The mandate of peacekeeping operations should include a clear indication of who is authorized to do what, taking into account possible combined objectives and the existence of a number of components of the operation. In particular, reference might be made to such functions as ceasefire, truce and other agreements; border control and patrolling, separation of the hostile

parties; assistance in the maintenance of law and order at the request of the Government of the receiving State; ensuring the safety of personnel and other persons in accordance with the mandate of the operation; assistance in the conduct of elections; demobilization and disarmament of armed formations; provision in the provision of humanitarian assistance;

– The undisputed right of self-defence;

– Machinery for the conduct of peacekeeping operations: legal basis for determining the budget of peacekeeping operations; conditions for the contribution of national contingents; agreements with the receiving State and the States of transit; the role of the Secretariat;

– Provisions relating to the personnel of peacekeeping operations: the 1994 Convention on the Safety of United Nations and Associated Personnel; requirements placed on the personnel; payment; insurance; compensation in the event of injury or death; rules of conduct, including instruction under humanitarian law; rules for the bearing of arms, etc.;

– Responsibility of the United Nations and States with respect to participation in peacekeeping operations: responsibility of the Secretary-General for the organization, planning, coordination and leadership of peacekeeping operations; apportionment of responsibility between the United Nations and troop-contributing States for damage caused in the course of an operation by United Nations personnel through actions not prohibited by international law; criminal jurisdiction of States over their nationals forming part of the personnel of peacekeeping operations."

74. The delegation of the Russian Federation, referring to the multifaceted nature of the draft declaration which it had submitted at the 1996 session of the Committee[12] and which was discussed at the 1997 session,[13] suggested a gradual approach to its consideration. At the current stage it proposed to focus on the legal framework of peacekeeping operations, also gradually, beginning with the regulation of operations under Chapter VI of the Charter. The main purpose of the working paper, which should not be considered as an alternative to the draft declaration, was to highlight the legal framework for one of the topical activities of the United Nations – its peacekeeping operations; the paper had been formulated following suggestions made by delegations at the previous session.

75. The sponsor delegation further highlighted the basic elements of the above legal framework as formulated in the new working paper, such as: the purpose of peacekeeping; the legal foundation for the competence of the United Nations to establish peacekeeping operations; legal aspects of command of operations on the United Nations side; components of operations; application to peacekeeping operations of relevant principles; the mandate of peacekeeping operations; legal aspects of use of force in cases of self-defence (other aspects of use of force would require a special consideration in the future, in connection with Chapter VII of the Charter); machinery for the conduct of peacekeeping operations; provisions relating to the personnel of peacekeeping operations; and the responsibility of the United Nations and States which have contributed contingents to peacekeeping operations.

76. In an exchange of views at subsequent meetings, the delegation of the Russian Federation was invited to clarify the relationship of the new working paper with the previous proposal on the topic. In response, the sponsor delegation explained that the new working paper was intended to complement and clarify the proposal it had put forward at a previous session of the Committee and, in accordance with the suggestions made at that session by other delegations, focused on normative, legal aspects of the issue and on main approaches to the elaboration of the proposed draft declaration. The paper sought to facilitate the discussion of the issue in order to elicit further comments and suggestions to be taken into account which could lead to a possible future revision of the earlier proposal. An adoption of the declaration by consensus would be preferable; since it was based on relevant provisions of the Charter and other international legal instruments, the declaration would then not become a mere recommendation, but would acquire proper political and legal significance. The sponsor delegation stressed the need to elaborate within the United Nations an instrument which would contain relevant basic principles, model rules or guidelines in this area and would take into account the extensive experience of the Organization in the field of peacekeeping and of relevant provisions of its Charter, decisions of its main bodies as well as of those of regional and subregional organizations and international agreements. This would answer also the needs of regional organizations active in the field of peacekeeping, providing them with a proper permanent integrated normative basis for such activities, and could be achieved by the Special Committee whose legal expertise was successfully utilized

for the preparation of various declarations in other areas within its mandate.

77. Some delegations were of the view that there was no practical need to elaborate a fixed set of legal principles for peacekeeping operations, as suggested in the new working paper, since there already was sufficient legal basis and practical experience for such activities. A point was made that a fixed set of principles could restrict the necessary flexibility which the specific features of each operation would require, raise controversies and thus negatively affect the United Nations potential in this important area. In response, the sponsor delegation stated that the valuable practice of the United Nations in this field needed proper consolidation and normative regulation in order to make the entire area of peacekeeping, as well as concrete peacekeeping operations, more effective.

78. In the view of some delegations the paper incurred some confusion concerning activities under Chapters VI and VII of the Charter. The sponsor delegation pointed out that the paper had been prepared in response to statements made at a previous session of the Committee requesting a more distinct delimitation of various peacekeeping operations under different Chapters of the Charter. The paper followed a gradual approach, starting with operations under Chapter VI.

79. Some delegations were of the view that the matters covered by the working paper fell within the mandate of the Special Committee on Peacekeeping Operations (assisted by the Department of Peacekeeping Operations of the United Nations Secretariat) and other forums, such as the Fifth Committee and the First Committee, and that their activities in the field should not be duplicated by the Special Committee on the Charter. In response, the sponsor delegation pointed out that the Special Committee on the Charter, as an expert legal body which, in accordance with its mandate, had elaborated a number of important instruments in the field of law, was particularly qualified to deal with the basic legal elements and issues of peacekeeping. Other bodies, such as the Special Committee on Peacekeeping Operations, were not focused on relevant legal issues.

80. Some delegations stressed that the proposed paper was a timely, useful and realistic proposal, was well focused, concise and properly structured and aimed at providing a proper consolidated legal framework for peacekeeping operations of the Organization on the basis of its relevant practice and provisions of the Charter. In their view, its consideration by the Special Committee on the Charter, which was focused on relevant legal issues, was entirely within its mandate and did not duplicate activities of other forums dealing with other aspects of peacekeeping. Those delegations suggested that the Committee should start a paragraph-by-paragraph discussion of the paper in order to achieve progress in the elaboration of a declaration in this field which would contribute to the effectiveness of relevant activities of the United Nations by providing a solid normative basis for such activities and would also become an important research and educational tool in this area.

81. Some delegations felt that there was a need to clarify the meaning of various elements and formulations contained in the working paper, including its purpose (whether it would also cover preventive diplomacy), the meaning of the principles of neutrality and impartiality as applied to peacekeeping, the concepts of the consent of the receiving State, especially when no State structures were in place, and of self-defence, and apportionment of responsibility between the United Nations and troop-contributing countries for damage caused in the course of an operation through actions not prohibited by international law (including such an apportionment in case the operation is conducted by a troop-contributing State under a United Nations Chief Commander). It was also suggested that the United Nations peacekeeping personnel should be briefed on issues concerning the respect for human rights and that these issues should be included in the working paper.

82. In response to the above, the sponsor delegation pointed out that the purpose of the paper was formulated in very general terms and was intended to be improved on the basis of suggestions to be made by the delegations. As regards the principles of neutrality and impartiality, there was no clear distinction between them, and relevant practice itself suggested their complementary application to the situations envisaged in the working paper. The sponsor delegation stated that it was ready to improve the formulation of the complex concept of the "consent of the receiving State" in cooperation with other delegations. With regard to "self-defence", the notion was considered in the paper in connection with the United Nations forces, rather than with those of States, and reference was made to the 1994 Convention on the Safety of United Nations and Associated Personnel which only partially covered relevant issues in this field. In connection with other comments it was emphasized that the paper was not aimed at dealing with concrete problems in the field of peacekeeping or providing concrete and final answers to them. It rather contained the views and ideas of the delegation of the Russian Federation on relevant legal issues and the intention was to invite other delegations, in the course of its paragraph-by-paragraph discussion, to improve its content and to make it more concrete on the basis of the existing extensive United Nations practice and documentation in this area.

83. A number of specific suggestions were made in connection with the proposal, such as: to delete the words "need for the" before the word "consent" in the fifth subparagraph; to remove in the seventh subparagraph the word "undisputed" as characterizing the right of self-defence, in view of its inconsistency with the Charter of the United Nations, which limited the scope of that right; in the last paragraph to add provisions requesting the United Nations or troop-contributing States to prepare the peacekeeping personnel in the area of human rights; and to consider the issues of the chain of command, insurance and compensation at the Special Committee on Peacekeeping Operations. The view was expressed that there was a need to proceed with a thorough consideration of the draft declaration at the next session of the Special Committee, in 1999. However, the contrary view was also expressed.

D. Consideration of the revised working paper submitted by Cuba at the 1997 session of the Special Committee, entitled "Strengthening the role of the Organization and enhancing its effectiveness" and the additional working paper submitted by Cuba at the current session under the same title

84. At the 2nd meeting of the Working Group, on 26 January 1998, the delegation of Cuba referred to the consideration of its revised proposal at the previous session of the Special Committee[14] and presented an additional working paper (A/AC.182/L.93/Add.1), which read as follows:

"Strengthening of the role of the Organization and enhancing its effectiveness

"The delegation of Cuba considers that, in accordance with its mandate and responsibility, the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization has an important task to do, namely, to contribute, actively and effectively, to the reform of the Organization.

"The purpose of this working paper is to develop one of the aspects contained in the revised proposal submitted by Cuba to the Special Committee on the Charter at its 1997 session, specifically that concerning **the responsibility of the Security Council and of the General Assembly for the maintenance of international peace and security.**

"In the view of the Cuban delegation, discussion of this issue could help the Special Committee to undertake, within the context of the reform, revitalization and democratization of the United Nations, a necessary analysis of some aspects of the respective tasks and responsibilities of the Security Council and of the General Assembly in respect of the maintenance of international peace and security, and of the principal causes and consequences of the relationship between these two principal organs of the Organization.

"**Responsibility of the Security Council and of the General Assembly for the maintenance of international peace and security**

"The process of democratization of the United Nations today faces a great challenge that is rooted in the distribution of power and responsibility between the General Assembly and the Security Council, and in the interrelationship between these two organs.

"The overwhelming majority of Members of the Organization are of the opinion that the General Assembly has been marginalized, that it has been relegated to second place in terms of its role and principal functions and that it has been prevented from dealing with priority issues of importance to the life and operation of the Organization.

"New concepts such as humanitarian intervention, preventive diplomacy, economic and political conditionalities, sanctions and world government reflect this reality.

"Accordingly, it is in the interest of the majority of Members of the Organization, to examine the functions and responsibilities of the General Assembly and of the Security Council, with a view to ensuring that the General Assembly is able to effectively carry out its broad mandates and functions and with a view to promoting greater democracy and representativeness in the work of the Security Council.

"It could be said that, in recent years, the Security Council has appropriated to itself responsibilities that have implications for the separation of powers outlined in the Charter.

"The Security Council has authorized and carried out numerous military interventions inside the borders of Member States.

"To that end, the Council has engaged in extensive, unilateral interpretations of the letter and spirit of **Chapters VI, VII and VIII** of the Charter.

"It cannot be claimed that the Charter confers on the Security Council exclusive responsibility for the formulation of principles and policies to guide the action of the Organization.

"**Articles 10 and 11** of the Charter clearly recognize that such responsibility rests with the General Assembly, as the **organ specifically charged with developing such general principles and policies.**

"After giving a broad interpretation of **Article 13, paragraph (1) (a),** of the Charter, the Council has taken upon itself the responsibility for establishing international criminal tribunals as part of the progressive development of international law.

"And yet **Article 13, paragraph (1) (b),** of the Charter, explicitly assigned responsibility for **'assisting in the realization of human rights and fundamental freedoms'** to the General Assembly.

"All too often, the Security Council is given responsibility for 'preventive action' and 'preventive intervention' and is thereby transformed into a kind of 'economic security council'.

"Any careful reading of the Charter shows that in **Articles 10, 11, 14, 55 and 65** the area of 'economic security' was explicitly assigned to the General Assembly and to the Economic and Social Council.

"Nowhere in the Charter is it stated that the Security Council has authority to take initiatives in this area.

"On the contrary, according to **Article 10 and Article 11, paragraph 2,** of the Charter, **the General Assembly may decide when to refer a situation to the Security Council,** and **Article 65** mandates the Economic and Social Council to **furnish information to the Security Council and to assist the Security Council upon its request.**

"**Broad authority and responsibility of the General Assembly**

"There are many examples which could be cited to demonstrate that the General Assembly has broad authority and responsibility and that its broad powers have for the most part never been fully used or exercised.

– **Article 10** of the Charter authorizes the General Assembly to **'discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter'.**

"It does not confer such authority on any other organ; accordingly, no one should try to claim that the Security Council has equal status.

– **Article 11, paragraph 1,** of the Charter mandates the General Assembly to **'consider the general principles of cooperation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments'.**

– According to **Article 13, paragraph (1) (a),** of the Charter, the General Assembly **can undertake studies and 'make recommendations for the purpose of promoting international cooperation in the political field and encouraging the progressive development of international law and its codification'.**

"No other organ of the United Nations is mandated under the Charter to consider or to establish general principles and policies with regard to international peace and security.

– According to **Article 12, paragraph 1,** of the Charter, the General Assembly **shall not make any recommendation with regard to a dispute or situation which is being considered by the Council.**

"Nevertheless, the Charter does not prevent the General Assembly from discussing any question, dispute or situation under consideration by the Security Council, nor does it rule out the possibility of the majority of Member States expressing their opinion on actions proposed by the permanent members of the Council.

– As stipulated in **Articles 10 to 14** of the Charter, the peaceful settlement of disputes is a shared responsibility of the General Assembly and the Security Council.

"The General Assembly has even been granted the power to send fact-finding missions, as reflected in resolution 46/59 of 9 December 1991.

– **Article 15, paragraph 1,** of the Charter requests the Security Council **to submit annual and special reports** to the General Assembly on its efforts to maintain international peace and security.

"This means that the General Assembly may at any time, by virtue of the broad power granted to it under the Charter, request the Council to provide it with truly substantive reports on the measures that the Council has decided to take to maintain international peace and security.

– **Article 24, paragraph 1,** of the Charter provides that the **'Members confer on the Security Council the primary responsibility for the maintenance of international peace and security, and agree that ... the Security Council acts on their behalf'.**

"The only organ of the United Nations in which the **'Members'** (as stipulated in **Article 24, paragraph 1,** of the Charter) are represented is the General Assembly. Accordingly, the General Assembly is the only organized multilateral source from which the basic mandates conferred on the Security Council emanate.

– Two thirds of the members of the Security Council are elected by the General Assembly. This shows that the Security Council depends on the General Assembly for its very existence and functioning.

– As stipulated in **Article 24, paragraph 2,** of the Charter, in discharging its duties, the Security Council **'shall act in accordance with the Purposes and Principles of the United Nations'.**

"If the Members of the United Nations deem or consider that the Council is not prepared to act in accordance with the purposes and principles of the Organization, such a judgement could invalidate the procedural restriction contained in **Article 12, paragraph 1,** of the Charter, and make it possible to ensure that the decisions of the Security Council truly reflect the will of the majority of Members of the Organization.

– The Security Council can decide upon or authorize a peacekeeping operation or another military action.

"Nevertheless, as stipulated in **Article 17, paragraph 2,** of the Charter, only the General Assembly can approve the expenses and the budget for such purposes.

"This shows that in financial terms, for example, the Assembly can adopt binding measures in relation to decisions or resolutions of the Security Council.

– A permanent member of the Security Council can veto a proposal to amend the Charter.

"Nevertheless, only the General Assembly can adopt an amendment to the Charter.

"**Article 109, paragraph 1,** of the Charter confers explicitly on the General Assembly the power to hold a General Conference **'for the purpose of reviewing the Charter at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any nine members of the Security Council'**.

"The submission by the General Assembly of a vitally necessary amendment to the Charter and its subsequent veto by one or more permanent members of the Security Council would not infringe upon the authority of the Assembly, but would simply illustrate in a dramatic way the arrogance of power and the inertia existing within the Security Council.

"Cuba believes that any analysis and review of the real relationship of power and authority between the Security Council and the General Assembly would reveal the full extent of the difference between what the majority of States Members of the United Nations, represented in the General Assembly, is doing now and what it could do.

"Any analysis and review of the responsibility of the Security Council and of the General Assembly for the maintenance of international peace and security would show that the responsibility and powers of the General Assembly have been undermined as a result of flagrant violations of the letter and spirit of the Organization's Charter.

"Cuba believes that it will not be possible to talk about a real and constructive process of reform and revitalization of the Organization unless a reform is promoted which makes the United Nations more democratic, re-establishes the principles of the Charter in its practices, democratizes the Security Council and reinstates the powers of the General Assembly that are now being usurped or diminished.

"The Special Committee has the important task of contributing to a reform process which ensures that every action of the United Nations and its main organs reflects the sovereign equality of all Member States."

85. The sponsor delegation pointed out that the new working paper elaborated on some aspects of the previous document, in particular on the respective powers of the Security Council and the General Assembly in the

maintenance of international peace and security. It included an analysis of specific provisions of the Charter of the United Nations in order to illustrate the expansion of the functions of the Security Council in violation of the balance of powers between the Security Council and the General Assembly enshrined in the Charter. The paper also intended to show the progressive marginalization undergone by the broad powers and functions of the General Assembly under the Charter, which had not been exercised because of the extent to which the Security Council had exceeded its powers.

86. The sponsor delegation also pointed out that the working paper was not intended to encroach on the work of other bodies engaged in the United Nations reform process. The sponsor delegation also stressed that a correct interpretation of the Charter would provide a better balance of powers between the Security Council and the General Assembly. The proposals concerning the Security Council could be considered by the Special Committee under its specific competence to consider the legal aspects of the reform process of the United Nations and the revitalization and democratization of its organs. Occasionally, some apparent duplication might be perceived in the work of United Nations forums because the entirety of the work of the United Nations was interrelated.

87. Following a request for clarification concerning some concepts contained in the penultimate paragraph of the working paper, the sponsor delegation pointed out that it could not conceive of a constructive reform process or the revitalization of the United Nations without its democratization, in order to ensure that the purposes and principles of the Charter were implemented in the actual way in which the Organization functioned. This included the democratization of the Security Council and the restoration of the powers taken away from the General Assembly. To the sponsor delegation, democracy in the United Nations would mean that all States, small and large, had equal sovereign rights and were equal subjects of international law. In this connection, the sponsor delegation pointed to the lack of the representative character of the current composition of the Security Council, where the various regions of the world were not sufficiently represented, and to the need for a restoration of the powers of the General Assembly in the maintenance of international peace and security as examples of possible areas for a greater process of democratization in the United Nations. The reform of the Organization should encompass not only a few aspects of the Charter but rather all areas susceptible of revitalizing the Organization through a process of genuine democratization.

88. In the exchange of views which ensued, some delegations expressed the view that the working paper was a thoughtful one and that it constituted a significant contribution containing interesting elements that merited consideration by the Special Committee. It was stressed that the working paper provided an interesting legal context for discussion by drawing attention to the functions and powers of the General Assembly under the Charter of the United Nations, in particular Chapter IV thereof, that the Charter should be interpreted to provide a better balance of powers between the Security Council and the General Assembly, and that the provision of Article 12 of the Charter merited thorough consideration.

89. The view was expressed that the Special Committee could play an important and valid role in the reform process by considering the legal aspects of the relevant issues and that duplication could be avoided by focusing on issues contained in the working paper that were not being considered by other bodies, such as the relationship between the Security Council and the General Assembly and the role of the General Assembly under Article 13 of the Charter. The view was also expressed that it would not be advisable for the Committee to act as legal adviser in the reform process.

90. The view was also expressed that it was important to bring the Special Committee within the multifaceted process of United Nations reform, that its legal insights would be a valuable contribution and help other bodies engaged in this process and that it was necessary to ensure that the United Nations organs operated effectively and within the limits established in the Charter.

91. Some delegations expressed concern regarding the possible duplication of work which the consideration of the proposed paper might entail with the work undertaken in other United Nations forums, particularly the working group on the reform of the Security Council.

92. The view was expressed that, while fully agreeing with the principles of democratization of the United Nations and the Security Council, it was extremely difficult to separate legal and political aspects of the highly sensitive issues addressed in the working paper. Such separation would not be helpful for achieving solutions which enjoyed general agreement and it was essential to avoid interfering with the mandate of the working group that was considering some of the same issues.

93. The view was also expressed by other delegations that the Special Committee could deal with the legal aspects of the Charter and the organs of the United Nations. However there was a need to avoid duplication between different bodies of the United Nations.

94. In response to an inquiry as to the final form or outcome envisaged with regard to the working paper, the sponsor

delegation pointed out that it did not have a preconceived idea in that respect. The main purpose, at the current stage, was to provide enlightenment and to promote a more in-depth discussion on specific aspects of the proposal submitted by the same delegation at the previous session of the Special Committee. The sponsor encouraged other delegations also to submit working papers on these or other aspects of that proposal. It expressed its determination to submit additional working papers in the future which would elaborate on other chapters of the proposal submitted at the previous session.

95. The sponsor delegation expressed its appreciation for the positive reaction which its working paper had elicited in the Special Committee. As regards the concern for possible duplication, expressed by some delegations, with the work carried out in other forums of the United Nations, the sponsor delegation stressed that the working paper really went beyond the issues which had been considered in such forums. The working paper, for example, did not deal with specific proposals to increase the number of members of the Security Council but rather with issues such as the relationship between the General Assembly and the Security Council (Article 12), periodic reports of the Security Council to the General Assembly (Article 15), etc., which had not been considered in all its aspects in the Working Group on the reform of the Security Council or other forums.

96. Some delegations reiterated their view that the working paper addressed issues being discussed in the Working Group on the reform of the Security Council and that consequently there was a need to avoid duplication of work.

97. A suggestion was made to the effect that the sponsor delegation should prepare a draft resolution on the subject matter dealt with in the working paper, which could become a recommendation of the Special Committee to the General Assembly. Some delegations expressed their opposition to having a recommendation adopted on the subject matters dealt with in the working paper.

E. Consideration of the revised proposal presented by the Libyan Arab Jamahiriya with a view to strengthening the role of the United Nations in the maintenance of international peace and security

98. At the 3rd meeting of the Working Group, on 27 January 1998, the delegation of the Libyan Arab Jamahiriya introduced a revised proposal (A/AC.182/L.99) under the above title, which read as follows:

"Because of its far-reaching impact on the life and well-being of peoples, the maintenance of international peace and security is one of the purposes for which the United Nations was established. To that end, the framers of the Organization's Charter established effective collective measures to prevent threats to and violations of international peace and security and to suppress acts of aggression. The Charter of the United Nations assigns to the Security Council principal responsibility for the achievement of this goal.

"Since the General Assembly is the organ of the United Nations that embodies the Organization's universal and democratic character, the Charter of the United Nations states that it may consider the general principles of cooperation in the maintenance of international peace and security and may make recommendations in their regard to the Members of the United Nations or to the Security Council or to both.

"Developments in the international arena in recent times have provided the United Nations with appropriate opportunities to play the role assigned to it under the Charter. If the United Nations is to be more effective in strengthening the efforts of the international community to promote cooperation in the maintenance of international peace and security, there is a need for a reorganization and reform of the Organization and for the necessary measures to be taken to enhance the role of its major organs on the basis of the principles of justice, democracy and the full sovereign equality of Member States. This process must in the first instance address the improvement of the working methods and mechanisms of the Security Council so that no single State or restricted group of States is given the opportunity to obstruct its actions and resolutions by invoking the rule of the consensus of its permanent members.

"It may be said that the changes that have taken place in the international arena in recent times have reduced the use made by certain States permanent members of the Council of that rule. This, however, is an element of limited impact that does not obviate the need for a discussion of the rule with a view to eliminating the fears of many Members concerning the domination that is exercised by a few over the actions of the Security Council and that prompts them to pursue a policy of double standards in order to secure their own political advantage.

"The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization can contribute to the efforts being

made to reform the Organization so that it can perform the tasks assigned to it effectively and efficiently. In this context, the Special Committee must explore the proposals made to revitalize the General Assembly and to highlight its role as the principal organ mandated to discuss any matters within the scope of the Charter, including the maintenance of international peace and security. The Special Committee should also contribute to the efforts to reform the Security Council, including its composition, and to improve its working methods.

"The Libyan Arab Jamahiriya believes that the following ideas and proposals will assist the Special Committee in its endeavour to strengthen the role of the United Nations in the maintenance of international peace and security, bearing in mind that other Member States will have other views and ideas to supplement and develop these proposals:

"1. Consideration, pursuant to the provisions of Articles 10, 11 and 14 of the Charter, of ways and means of bolstering the role of the General Assembly in the maintenance of international peace and security as a common responsibility of all Member States of the United Nations;

"2. Recommendation of ways to enhance the relationship between the General Assembly and the Security Council on the basis of Articles 15 and 24 of the Charter and within the framework of the endeavour by both organs to strengthen international peace and security;

"3. Discussion of the role of the Security Council in the maintenance of international peace and security; consideration of the adverse consequences of invoking the rule of the consensus of the permanent members of the Council; and exploration of ways to limit the use made of the rule, including the identification of issues with respect to which such use may not be made;

"4. Identification of the procedural matters to which reference is made in paragraph 2 of Article 27 of the Charter;

"5. Elaboration of criteria to ensure that the composition of the Security Council reflects the general membership of the United Nations; equitable geographical distribution in the membership of the Council; and conduct of a periodic review to improve the Council's working methods;

"6. Formulation of a precise definition of what constitutes a threat to international peace and security so as to ensure that there is no resort to action under Chapter VII of the Charter in cases that do not constitute such a threat;

"7. Exploration of the effective implementation of Article 31 of the Charter, which ensures the right of any Member of the United Nations to participate, without a vote, in the discussion of any question brought before the Security Council whenever the latter considers that the interests of that Member are specially affected."

99. In introducing the proposal, the sponsor delegation stressed the ongoing current suffering and the problems arising from non-compliance with the provisions of the Charter of the United Nations and the failure of the Security Council to perform its primary responsibility for the maintenance of international peace and security owing to the hegemony being exercised upon the Council and the way in which its functions were being interpreted.

100. The sponsor delegation drew attention to five elements of the proposal:

- First, one purpose of the proposal was to highlight the need for expanding and enlarging the responsibilities and the jurisdiction of the General Assembly, which should play an effective role in the maintenance of international peace and security;
- Second, the sponsor delegation stressed that it was necessary to do away with the veto power in the Security Council and to limit its use in response to the expansion of the use of the veto, the lack of seriousness in approaching these matters and the selfish interests that prevailed owing to the privilege which some countries exploited to serve their own narrow self-interests and temporary political purposes;
- Third, in the view of the sponsor delegation, it was important not to overlook the history of the positions taken by such countries with respect to racism in South Africa when considering the experience of the United Nations concerning sanctions. It was necessary to correct the prevailing mechanism in the Security Council by which particular States used sanctions to protect their own interests, particularly the interpretation of Article 51 of the Charter;
- Fourth, the sponsor delegation highlighted the need to provide a fair and equitable solution to the manner in which problems came before and

were dealt with by the Security Council. For example, there could be situations in which a permanent member was a party to a conflict while the other parties were not members of the Security Council. Thus, the permanent member could monopolize the situation and defy the Articles of the Charter, as has been seen on many occasions;

– Fifth, in the view of the sponsor delegation, the scope of participation of membership in committees established by the Security Council under rule 28 of its provisional rules of procedure should be expanded. While Member States were called upon to implement resolutions adopted by the Security Council, a monopoly existed in the domination not only of the Security Council but also of the various committees established to implement the resolutions, which resulted in an imbalance. The essence of the injustice was that the resolutions were adopted and implemented by the same organ. The international community should decide what needed to be done based on objective criteria.

Chapter IV
Peaceful settlement of disputes between States

A. Consideration of the revised proposal submitted by Sierra Leone, entitled "Establishment of a Dispute Prevention and Early Settlement Service"[15]

101. At the 7th meeting of the Working Group, on 30 January 1998, the delegation of Sierra Leone noted the time that had elapsed since its proposal was first tabled in the Special Committee, the subsequent revisions that the delegation had introduced to it to take account of the preliminary reactions to it and the lack so far of specific action of the Special Committee on the proposal.

102. In the light of the above, the Sierra Leone delegation suggested that the Special Committee should first determine whether there existed an agreement in principle that the proposal was a useful one deserving further consideration. If such were the case, the Special Committee should devise an appropriate methodology to ensure a speedy outcome on the proposal. If such an agreement did not exist, a better course of action might be to withdraw the proposal.

103. This approach by the sponsor delegation was generally praised for its frankness and sense of practicality. Some delegations expressed reservations on the usefulness of the proposal, viewing it either as duplicating efforts currently undertaken by the Secretary-General in the area of preventive diplomacy or as not sufficiently convincing concerning the kind or nature of the disputes to which it might be applicable. A suggestion was made that the proposal should be referred to another body whose competence must be in keeping with the subject matters dealt with in the document.

104. However, some delegations were of the view that the proposal was a useful one, deserving further consideration and that the Special Committee was the appropriate organ for such an undertaking. The proposal was basically sound, even though the machinery contemplated therein could be considered as too heavy. The suggestion was made that it should be examined in order to reduce it to its more basic elements as well as those not covered by other existing mechanisms. It was therefore decided that the proposal should continue to be examined at the current session of the Special Committee.

105. At its 11th meeting, on 3 February 1998, the Working Group began a paragraph-by-paragraph consideration of the proposal, which it was unable to conclude owing to a lack of time. At the outset, the sponsor delegation introduced a reordering of the paragraphs of the revised proposal and introduced a new paragraph 1. The new paragraph 1 specified the name of the mechanism. Former paragraphs 1 to 4 would constitute the introduction to the proposal. The sponsor also proposed the deletion of the last paragraph of the proposal. The revised proposal, as reordered, together with new paragraph 1, read as follows:

"Introduction

"The idea of concentrating United Nations efforts on a situation that may become an inflamed dispute likely to endanger international peace and security has now been accepted, but the United Nations has not developed a special mechanism to deal with so many current crises. While the then Secretary-General reorganized the Secretariat in such a way that information on incipient crises is being collected, the Secretariat is being downsized and is not likely to be increased to deal with an avalanche of new problems.

"A new, not too expensive mechanism is needed for prevention activities. The Sierra Leone proposal can, it is hoped, fill this gap. As the Secretary-General pointed out in his annual report to the General Assembly at its

forty-ninth session,[11] preventive measures are highly cost-effective, as the sums they require are paltry by comparison with the huge costs in human suffering and material damage which war always brings, and they also compare favourably 'with the less huge, but nevertheless substantial, cost of deploying a peacekeeping operation after hostilities have broken out'.

"The present proposal does not require the creation of new bureaucracy; it would be a small subsidiary organ of the General Assembly established under Article 22 of the Charter of the United Nations, much smaller than the many special committees and working groups that the General Assembly has established in the past.

"The proposed mechanism may perhaps be called more accurately a 'Dispute Prevention and Early Settlement Service' rather than 'Dispute Settlement Service', as some objections have been raised to the latter title. Its main function would be to coordinate activities both of the United Nations and of relevant regional organizations at the pre-dispute stage or early dispute stage when a situation needs to be monitored in order to prevent its aggravation.

"Mechanism

"1. The mechanism shall be called: 'Dispute prevention and early settlement service'.

"2. The mechanism would consist of a Board of Administrators or Directors with five members to be elected by the Sixth Committee of the General Assembly from among 10 candidates proposed, two each by the five regional groups on the Committee as best qualified for administering the Dispute Prevention and Early Settlement Service. The five non-elected candidates would become alternates that would be available to act as substitutes for one or more of the regular members who were not available for a particular activity, because of health or some other special reason. Each Administrator or Director would be elected for three years and would be eligible for re-election. The members of the Board and the alternates would be seconded by their permanent missions to the United Nations and their salaries would continue to be paid by the missions. The Board would be located in New York and secretariat services would be arranged for it by the United Nations Office of Legal Affairs. Alternatively, a Committee of five persons with a Chairman, like any working group, could be formed to carry out the functions of the Service, the members of the Committee to be elected as hereinbefore mentioned. The Sierra Leone delegation would be willing to accept any suitable word in place of the word 'Administrator' if it is not acceptable to the majority of delegations.

"3. To maintain liaison between the Board and the three principal organs, which are specially concerned about the escalation of situations into full-blown disputes, the President of the Security Council, the President of the General Assembly and the Secretary-General would be invited to appoint their personal representatives who would serve as a link between each of them and the Board, exchange information and participate in the meetings of the Board without a vote. In this way any duplication of efforts would be avoided and coordination of activities would be facilitated.

"4. The leadership of each regional group would keep its members of the Board and alternates informed about any relevant preventive activities of the regional organizations or arrangements in the region.

"5. One of the main functions of the Board would be to maintain a register of experts (who may be called either settlers, preventers or facilitators of disputes) on the prevention and settlement of disputes and adjustment of situations, composed of names of individuals compiled by the Board itself. It should also include individuals nominated by Member States. A State may nominate either its own nationals or well-known individuals of some other nationality well acquainted with the problems of a particular region. Again, delegations are at liberty to suggest suitable designations for the experts. The Sierra Leone delegation would, however, prefer to retain the word 'settler'.

"6. Having received information through diplomatic channels, the media, the academic community or non-governmental organizations, the Board of Administrators would consult with the Department of Political Affairs of the United Nations Secretariat, which includes six regional divisions (two for Africa, two for Asia and one each for the Americas and Europe) and specializes in collecting information that is relevant for preventive activities and analysing it for the purpose of identifying situations in which the United Nations could play a useful preventive role. If it is determined that a particular situation may become a threat to the peace, the Dispute Prevention and Early Settlement Service would contact the States concerned and offer its services. If the offer should be rejected by any party, no further action would be taken by the Service.

"7. The Security Council, the General Assembly and the Secretary-General would be entitled to request the Service to explore whether a particular situation requires their attention. The Presidents of the Assembly and of the Council and the Secretary-General would be kept informed by their representatives on the Board about the progress of each case and would in turn inform the Board of the views and relevant activities of the persons they represented. By the same channel, the three officials would be informed about the final result, positive or negative, of the Board's and of the experts' activities.

"8. The States concerned may prefer receiving quiet and confidential assistance from the Service rather than raising the issue in the General Assembly or the Security Council. The Board of Administrators, after consulting the parties concerned, would choose the appropriate persons from the Register of experts (settlers) to deal with the particular problem: ascertain the facts and views of the parties, consult with the parties about the preferred approach – further consultations, good offices, mediation or conciliation – and advise them how best to proceed.

"As the General Assembly has stated, prevention requires 'discretion, confidentiality, objectivity and transparency', as appropriate;[16] if the experts (settlers) would observe these injunctions, they would have a chance to find a solution. If one effort does not succeed, the settler or settlers monitoring the situations would propose some other approaches. With patience, persistence and ingenuity, after trying a number of approaches and presenting possible solutions, there is a good chance that a solution would be found which would be considered by the parties to be sufficiently equitable.

"9. It should be emphasized that the essence of the Sierra Leone proposal is to have some form of third-party service which will offer assistance to parties in dispute. The services to be offered should be spontaneous and voluntary. It is for the parties to decide if they want to accept the offer of the services.

"10. The proposed Service might be given a trial run of at least three years, and if successful, would be made permanent. The General Assembly would retain in any case the power to revise at any time the mandate of the Service or to terminate it completely."

106. Comments were made on new paragraphs 1, 2 and 3 of the reordered proposal, as well as on the proposal as a whole.

General comments

107. It was suggested that the proposal should be less ambitious in scope, that it should not deal with preventive diplomacy but rather confine itself to the peaceful settlement of disputes. It was suggested in this connection that if the Service were to be effective in settling disputes, it would need to be reinforced with experts with different backgrounds so as to be able to deal with disputes that were highly technical in nature and varied in scope. However the view was also expressed that preventive diplomacy could also appropriately be undertaken by any such body.

108. The view was expressed by some delegations that it would be necessary to specify in the proposal the legal basis upon which the Service would be founded, namely, the Charter of the United Nations. It was stressed in this connection that any mechanism to be established should be in accordance with the Charter of the United Nations, should not have any financial implications and should not disturb the balance of powers of the United Nations organs as established in the Charter.

109. The sponsor delegation stated that the legal basis of the proposal could be found in Articles 10 to 14 and 22 of the Charter.

110. Reservations were voiced regarding the sources of information that the Service could use in settling a dispute. It was suggested that it might be preferable for the parties to the conflict to provide the Board with the necessary information relating to the conflict rather than for the Board to use information from other sources, such as the academic community or from the press.

111. The view was expressed that the consent of the parties to the dispute was necessary before the Board could deal with a dispute.

112. Reservations were made and clarifications were sought concerning the nature of the disputes that the Board could deal with. It was not clear whether the Board could deal with all types of disputes, those that were international in character as well as those arising out of an internal conflict situation, or only with one type of conflict.

113. Reference was made to the status of recommendations to be made by the Board: whether such recommendations would be made in the name of the Board, members of the Board or on behalf of the United Nations.

114. The question of the relationship between the Board and other bodies was also raised. It was suggested that there might be utility in having the Board coordinate activities dealt with by different bodies in the field of early warning and preventive peaceful settlement of disputes. In this connection, the view was expressed that the sponsor delegation might wish to consult the work being carried out in the United Nations in the field of early warning in situations likely to endanger

international peace and security and conflict preventive measures to see how the proposal would relate to such efforts.

115. The view was expressed that the Secretariat should prepare an informal paper containing a selected list of documents as well as extracts from papers on matters which might be relevant to the subject matter pertaining to the establishment of a dispute prevention and early settlement service. The Secretariat prepared two informal papers for the Special Committee in response to that request (see para. 11 above, subparas. (c) and (d)).

Paragraph 1

116. Some reservations were expressed concerning the words "preventive" and "early". It was observed in this connection that if the mechanism was intended to intervene in conflicts at an early stage before they escalated, the mechanism should be permanent in nature.

117. The sponsor delegation stated that the inclusion of prevention in the proposal was designed to enable the Board to deal with the conflict at an early or gestation stage before the crisis escalated into a major conflict. The mechanism was not intended to deal with the settlement of major disputes as these fell under the domain of the Security Council.

Paragraph 2

118. Several comments were made on paragraph 2 of the proposal dealing with the composition of the Board of Administrators or the Directors, their mode of election, their functions as well as the mode of funding of the Board's activities.

119. Regarding the body that would elect the Board, the point was made that the members of the Board should be elected by the General Assembly rather than by the Sixth Committee. It was suggested that each regional group should propose a list of five instead of two candidates. Another proposal made was that since some States did not belong to any regional group, it might be preferable for there to be a universal list of candidates from which to elect members of the Board. That would give an opportunity to all States to present candidates.

120. It was suggested that the proposed mandate of the members of the Board, namely a renewable three-year term, might be too short. A longer, albeit non-renewable term was suggested as preferable, since it would enhance the impartiality of the members of the Board.

121. With regard to the proposed five alternate members, the concern was raised that since they would not be elected, it would be inappropriate for them to act as substitutes in the event that a member could not be available for a particular activity.

122. Regarding the funding of the Board's activities, concern was expressed that the solution envisaged in the proposal, namely that members of the Board should be paid by their permanent missions, might imperil their impartiality. It was also pointed out that such an approach would run counter to the current trend of the General Assembly which, in its resolution 51/243 of 15 September 1997, had decided to phase out all gratis personnel by the end of 1998, and it would also run counter to the provisions of Article 101 of the Charter of the United Nations. However, the view was also expressed that a more limited involvement of mission personnel under a more modest mechanism would not be problematical.

123. It was also suggested that, in order to guarantee the impartiality of the Board, a funding mechanism should be provided for the Service, and that the status of the members of the Board should be governed by Articles 100 and 101 of the Charter of the United Nations.

124. The suggestion was made that it might be preferable for members of the Board to serve on a part-time rather than a full-time basis. In this connection, doubts were expressed as to the practical possibility for the members of the Board to devote part of their time to mission activities and the other part to the work of the Service, since both functions were of a demanding nature. Such an arrangement might also have implications for the impartiality and confidentiality of their work.

125. With reference to the funding of the Board's activities, the sponsor delegation indicated that while the members of the Board would continue to receive their salaries from their missions, the operating costs of the Service could be financed by establishing a trust fund of voluntary contributions.

126. It was observed in this connection that a trust fund for preventive diplomacy already existed and that the Secretary-General often made use of it. Doubts were expressed as to whether another trust fund could be established to cover essentially the same aspect of work.

Paragraph 3

127. It was suggested that the representatives referred to in paragraph 3, who would serve as a link between the Board and the three principal organs especially concerned about the escalation of situations into full-blown disputes, namely the Security Council, the General Assembly and the Secretary-General, should be representatives of the organs themselves, to ensure continuity, rather than, for example, personal representatives of the President of the Security Council or the

President of the General Assembly. Otherwise, with each change of president, there might be a change of representatives, thus affecting the efficiency of the functions of the link. The sponsor delegation expressed its willingness to amend the proposal to take into account the above observation. In this regard, a more limited approach to the mechanism was suggested in which personnel associated with the mechanism would be viewed as assisting the Secretary-General, in which case such a role and related problems would not arise. The view was also expressed that the question of the establishment of the service was to be carefully considered at the subsequent session of the Special Committee as a result of which the question of the future of that proposal might be settled.

B. Consideration of the working paper submitted by Guatemala, entitled "Possible amendments to the Statute of the International Court of Justice to extend its competence with respect to contentious matters to disputes between States and international organizations" (A/AC.182/L.95/Rev.1), and of the working paper submitted by Costa Rica, entitled "An alternative drafting to the working paper submitted by Guatemala (A/AC.182/L.95/Rev.1) entitled 'Possible amendments to the Statute of the International Court of Justice to extend its competence with respect to contentious matters to disputes between States and international organizations'" (A/AC.182/L.97)

128. At the 4th meeting of the Working Group, on 28 January 1998, the delegation of Guatemala, as sponsor of document A/AC.182/L.95/Rev.1 and also on behalf of the sponsor of document A/AC.182/L.97, referred to the two above-mentioned working papers.[17]

129. The delegation of Guatemala introduced an oral revision to paragraph B of the former of these working papers whereby the text of article 36 A (1) (b) was amended to read as follows:

> "(b) A treaty to which all or some or only one of the States members of the organization are parties confers competence on the Court for such purpose, the State party or the States parties to the dispute are parties to the treaty, the dispute falls within the category or one of the categories of disputes provided for in the relevant provisions of the treaty, and the organization has, by means of a declaration, already accepted the competence conferred on the Court by the treaty with respect to the dispute; or"

The same delegation explained that the revision was made in order to make it clear that the subparagraph applied to bilateral treaties between a State and an international organization, as well as to treaties between States and international organizations to which more than one State was party. It added that although the revision did not exhaust the possibilities for perfecting that delegation's proposal, it was nevertheless being presented since the sponsor delegation considered it to be of particular importance.

130. The delegation of Guatemala suggested that the Committee should first consider whether a reform of the type proposed in the two working papers was feasible. If the conclusion was that it was, the Committee should then proceed to consider if it was indeed advisable to introduce such a reform. The Committee might also consider the advisability of requesting the views of States on the proposals.

131. In the exchange of views that ensued, it was observed that, since the Statute of the International Court of Justice formed an integral part of the Charter of the United Nations, adoption of the reforms proposed in either of the working papers would necessarily entail the amendment of the Charter. Currently, there did not exist any consensus on embarking on the lengthy and complex process of amending the Charter. The two proposals were therefore untimely and premature. It was also pointed out that the General Assembly, in paragraph 4 of its resolution 52/161 of 16 December 1997, had recently taken a position that the Statute of the Court should not be the subject of amendment.

132. On the other hand, the view was advanced that the Charter should not be regarded as immutable or as not susceptible to amendment. This was all the more so inasmuch as the former of the two proposals would involve amendment of the Statute of the International Court of Justice. The suggestion was made in this connection that it might facilitate further consideration of the two proposals if a distinction were made for that purpose between the United Nations and other intergovernmental organizations.

133. Some delegations expressed doubts whether there was any pressing or practical need for a reform of the type proposed. There already existed a wide range of mechanisms for settling disputes of the type envisaged by the two proposals. Moreover, these mechanisms included procedures

that accorded a role to the International Court of Justice in the resolution of those disputes. It was emphasized that there had been no suggestion that these procedures were inadequate or unsatisfactory. That being so, any benefits there might be in the reform proposed were likely to be more than offset by the considerable costs in terms of time and effort the process of introducing that reform would entail. Reference was made in that regard to the number of complex legal questions that would have to be resolved were the proposed reform to be embarked upon. The view was also expressed that it was not appropriate to consider the creation of further mechanisms for resolving disputes of the type in question in addition to those which were already contained in the constituent instruments of international organizations and the agreements they had concluded with States.

134. Some other delegations maintained that the reform proposed, even if it was not necessary, would nevertheless be useful and that it would strengthen the principle of the peaceful settlement of disputes and enhance the role and the authority of the International Court of Justice.

135. Some delegations emphasized that, in view of the relatively low number of States that had made declarations recognizing the jurisdiction of the International Court under Article 36, paragraph 2, of its Statute, the time was not right to extend the jurisdiction of the Court in the manner proposed. It would be more appropriate to examine ways in which to encourage States to make declarations under Article 36, paragraph 2, of the Statute of the Court. On the other hand, it was pointed out that, in accordance with the proposals being made, the Court would have jurisdiction in respect of the category of disputes in question only vis-à-vis those States which decided to proceed to recognize its jurisdiction concerning those disputes. Accordingly, those States which had opted not to avail themselves of this possibility, whether or not they had recognized the Court's jurisdiction under Article 36, paragraph 2, of its Statute, had nothing to fear from the reform proposed and there was no need for them to prevent its being introduced for the benefit of those who did desire it.

136. The question of the international legal personality of international organizations also gave rise to some discussion. Reservations were expressed about the application of that concept to all international organizations. The view was also expressed that it might be difficult to determine which international organizations of the more than 5,000 intergovernmental organizations in existence enjoyed personality of a character to enable them to be parties to proceedings before the International Court. On the other hand, it was pointed out that it was well established, both in jurisprudence and in practice, that the concept of international legal personality might apply to international organizations. There was, moreover, no reason to suppose that that concept would give rise to difficulties in the present context.

137. On a practical level, concern was expressed about the effects the reform proposed would have on the operation of the International Court of Justice. The President of the Court had recently indicated that the Court had a full workload. The difficulties the Court was experiencing as a result had been acknowledged by the General Assembly in paragraph 4 of its resolution 52/161 of 16 December 1997. It was emphasized that the proposed reform would only add to those burdens. It was pointed out, however, that this argument would run against encouraging States which had not yet done so to accept the jurisdiction of the Court. In response to this objection it was said that there was no real need to expand the jurisdiction of the Court to embrace international organizations, whereas a need certainly did exist for measures to encourage States to accept the jurisdiction of the Court.

138. Responding to those observations, the delegation of Guatemala pointed out that legal disputes between international organizations and their member States were not by any means inconceivable. Mechanisms for the resolution of such disputes existed in a host of bilateral agreements between States and international organizations, including the United Nations. The constituent instruments of certain international organizations also established procedures, consisting generally of arbitration clauses, for resolving disputes between the organization and its member States, that were not unknown in practice. Procedures even existed for settling certain disputes by obtaining a "binding" advisory opinion from the International Court of Justice. Notwithstanding the availability of these mechanisms, the reform proposed, even if it was not necessary, would, nevertheless, be useful. In particular, it would make it possible to use the services of the International Court of Justice to settle disputes between States and international organizations without there being any need to have recourse to the complicated procedures and mechanisms involved in securing from it a "binding" advisory opinion, a procedure which, as had been pointed out in the literature, was not entirely satisfactory. The delegation of Guatemala added that it was categorically not its intention to have the proposal be considered necessary. Its position was rather that it was sufficiently useful for it to be worthwhile to take the steps for its implementation. Furthermore, it was far from certain that the Court would continue to have a full workload, as was currently the case.

139. The suggestion was made that, in order to assist in the further consideration of the two proposals within the Committee, the General Assembly might circulate a

questionnaire to ascertain the views of States regarding the feasibility and desirability of amending the Statute of the International Court in order to achieve the objective those proposals had in view. Some delegations expressed the opinion that the suggestion was premature, given the views that had already been expressed on the issue within the Committee. The view was also expressed that the suggestion might give rise to some confusion, since the General Assembly had recently invited the views of States on the consequences for the operation of the Court of the increase in the volume of cases before it and, in so doing, had specified that this was on the understanding that any action that might be taken as a result of that invitation would not have any implications for any changes in the Charter of the United Nations or the Statute of the International Court of Justice. Other delegations supported the suggestion, however, and proposed that interested delegations might undertake the drafting of such a questionnaire.

140. At the last meeting of the Working Group, the delegation of Guatemala introduced a proposal entitled "Draft of a questionnaire addressed by the General Assembly to States regarding the proposal to extend the jurisdiction of the International Court of Justice in contentious cases to disputes between States and intergovernmental organizations" (A/AC.182/L.101), which read as follows:

> "1. Do you consider that insuperable difficulties of a purely legal nature render the proposal unfeasible or unworkable?
>
> "2. If your answer to question 1 is in the affirmative, specify the reasons for this position.
>
> "3. If your answer to question 1 is in the negative, do you consider that there are policy reasons for rejecting the proposal?
>
> "4. If your answers to questions 1 and 3 are in the negative, do you consider that *locus standi* before the International Court of Justice should be granted to *all* or only to *some* intergovernmental organizations?
>
> "5. Having regard to your answer to question 4, do you consider that to effectuate the proposal it is necessary to amend *both* the Statute of the International Court of Justice and the Charter (as distinct from the Statute), *or* that amending the Statute suffices?"

141. The sponsor delegation explained that it considered the inclusion of the above questionnaire in the Committee's report useful since it set forth in an orderly and concrete manner the principal issues and possible problems which would arise from the proposal.

142. Some delegations were of the view that the issues raised in the proposed questionnaire required an in-depth discussion which, for lack of time, it was not possible to have at the current session of the Special Committee. Consequently, consideration of the questionnaire should be postponed until the next session of the Committee.

143. A view was expressed that the sending of such a questionnaire to States might not be entirely useful, since unlike questionnaires sent to States in the past by the International Law Commission, the proposed questionnaire did not seem to address technical questions or enquire about the practice of States in specific areas. A view was also expressed that sending such a questionnaire would not be advisable since the questions it contained could be discussed at the next session of the Special Committee, the composition of which included the 185 States Members of the United Nations.

Chapter V
Proposals concerning the Trusteeship Council

144. At its 8th meeting, on 2 February 1998, the Special Committee considered proposals concerning the Trusteeship Council. Reference was made to a proposal submitted by Malta to convert the Trusteeship Council into a coordinator for the global commons or the common heritage of mankind, as well as to a recommendation contained in the report of the Secretary-General of 14 July 1997 entitled "Renewing the United Nations: a programme for reform" (A/51/950), proposing that the Trusteeship Council be reconstituted as the forum through which Member States exercised their collective trusteeship for the integrity of the global environment and common areas such as oceans, atmosphere and outer space (para. 85).

145. It was recalled that the review of the role of the Trusteeship Council had been on the agenda of the Special Committee for two years and that views expressed by Member States, both to the Secretary-General and in debates held in the Special Committee and in the Sixth Committee, clearly indicated the existence of different opinions on the topic. The view was expressed that the proposal to transform the Trusteeship Council into an organ that would oversee the global commons or the common heritage sought to preserve a balance in the principles embodied in the Charter, the principle of trust remaining as relevant as when the Organization was founded and the need for coordination in those areas of common concern for the international community required the application of the principle of trust.

146. A view was expressed that the proposal did not aim to set up an "executing arm" of the principles found in various conventions, nor would it encroach on areas not recognized as belonging to the common heritage, but would strive instead to ensure that the overall picture pertaining to the common heritage be borne in mind. Noting that full potential of the provisions of the Charter of the United Nations had not been exhausted, in particular as regards Article 77, paragraph 1 (c), it was suggested that it would be hasty to do away with a principal organ of the Organization. It was pointed out in this connection that although the Trusteeship Council might have completed its mandate with regard to the territories that it had under its purview, the Charter still provided for the possibility of placing in trust those territories voluntarily placed under the system by States responsible for their administration.

147. While noting striking similarities between the Malta proposal and the proposal of the Secretary-General as to the end result they both sought, the point was made that the Secretary-General not only already indicated particular areas of competence for a transformed Council, but went a step further in including the modalities of the manner in which the Council could function. It was suggested in this connection that perhaps a more cautious approach whereby the specific areas could be first subject to agreement of Member States might have a more productive outcome.

148. The view was expressed that the Secretariat should prepare an informal paper containing a list of organs, programmes and organizations dealing with environmental matters. The Secretariat prepared an information paper for the Special Committee in response to that request (see para. 11 above, subpara. (e)).

149. Some delegations expressed their support for the proposal by Malta. The view was expressed that greater specificity on the proposal could be provided, in particular as regards the areas of possible competence of the Trusteeship Council. Some delegations also favoured retaining the Council since it was felt that the historic mission of the organ had not necessarily been fulfilled and that it could prove to be most useful for dealing with matters that might arise in the future, especially in light of the provision found in Article 77, paragraph 1 (c), of the Charter. The view was also expressed that the concept of common heritage was linked to the concept of trust and that the name itself of the Trusteeship Council had historical significance.

150. Other delegations expressed their conviction that the Trusteeship Council should be abolished since its mandate had been fulfilled. The point was made that the proposal by the Secretary-General seemed to indicate that Member States had already agreed to retain the Council, while in reality there were divergent views on the matter. It was pointed out that there were different forums for dealing with the global commons and that the Council would require both financial resources and staff if it were to be given a new role. Some delegations supporting the abolition of the Council indicated that this would not preclude consideration of the need to create another body to deal with issues related to the global commons or to the environment, but this was a separate matter to be considered on its own merits in an appropriate forum. The view was also expressed that, at the end of the twentieth century, the provision in Article 77, paragraph 1 (c), did not appear sufficient reason for keeping the Council in existence. Furthermore, to stretch the normal meaning of this provision to cover the global commons seemed out of place.

151. Some other delegations were of the view that the abolition of the Trusteeship Council would be premature and unnecessary since a case of trusteeship might arise in the future and because keeping the organ in existence had no financial implications for the Organization. The abolition of the Council would also require the cumbersome process of amending the Charter. As to the possibility of assigning the Council a coordinating role for the global commons, some delegations were of the view that careful consideration needed to be given in order to determine whether there was a need for a coordinating body, in particular in view of the fact that such a body might duplicate work carried out by numerous institutional arrangements set up to deal with those areas. It was noted that by giving the Council a coordinating role for such areas, numerous treaties establishing those institutional arrangements would have to be amended accordingly. The view was also expressed that there were different understandings of what areas could be considered as being of common concern to the international community. Reservations were also expressed regarding a possible flexible interpretation of the Charter provisions, which would provide the Council with a new mandate. Such a new mandate, it was said, would require amendments to the Charter.

152. Proposals concerning the Trusteeship Council continued to elicit conflicting views and consequently no recommendations were made on them by the Committee.

Chapter VI
Identification of new subjects, assistance to working groups on the revitalization of the work of the United Nations and coordination between the Special Committee and other working groups dealing with the reform of the Organization

A. Identification of new subjects

153. The question of the identification of new subjects for possible incorporation into the Special Committee's mandate was not considered at the current session of the Special Committee on the basis of specific proposals presented by delegations but rather from the point of view of the advisability for the Special Committee to embark upon such an exercise at the current juncture of its activities.

154. There was a prevailing view in the Committee that, given the number of proposals currently on its agenda, it was preferable for it to advance as much as possible in their consideration and in the achievement of concrete results thereon, before deciding on possible new areas of work.

155. Some delegations indicated, however, that it might not be prudent to wait until the Special Committee had completely exhausted its current agenda before deciding on new subjects, since that approach, if carried to an extreme, might lead to a fracture in the Committee's work.

156. Some delegations indicated some areas for possible future consideration by the Special Committee, such as: the reasons why the number of States recognizing the jurisdiction of the International Court of Justice under Article 36, paragraph 2 of its Statute was so low; and the role of advisory opinions of the Court and the possible extension of the right to request such opinions to additional entities and to the Secretary-General of the United Nations.

B. Assistance to working groups on the revitalization of the work of the United Nations and coordination between the Special Committee and other working groups dealing with the reform of the Organization

157. Some delegations proposed that, in order to fulfil the Committee's mandate in the most efficient manner and to avoid duplicating the work of other United Nations forums, the chairmen of the Special Committee or its Bureau should informally coordinate the activities of the Committee with the chairmen or the bureaux of other relevant bodies of the Organization and, in particular, of the working groups dealing with the reform of the United Nations. A view was also expressed that such coordination should be based on frequent informal contacts with the secretariats and the most active delegations of relevant bodies and could also include inviting the representatives of such bodies and relevant units of the Secretariat to inform the Special Committee briefly, during its sessions, on the relevant activities of those bodies. It was also suggested that the Chairman of the Special Committee could convey in writing or verbally to the chairmen of other relevant bodies dealing with the revitalization of the United Nations an offer to assist them in their work.

158. Other delegations questioned the advisability of the proposed contacts. The Special Committee met only once, early in the year, and this time framework did not facilitate practical and meaningful contributions to the work of other reform forums, which had their own session periods and specific methods of work. The role of the Special Committee as a possible "Legal Adviser" to other reform bodies was also questioned, since such a role was more appropriate for the Office of Legal Affairs of the Secretariat. The point was also made that de facto, informal contacts already existed between the various reform bodies and the Special Committee, since delegates of the Special Committee often attended meetings of other reform bodies and vice versa. This, together with a careful mutual examination among the various bodies of their respective reports, should be enough to determine whether there existed any overlap or duplication among them.

C. Working methods of the Special Committee

159. Several delegations considered that the efficiency of the Special Committee could be greatly enhanced and its potential better realized by modifying its working methods, a topic which could be the subject of serious discussion in the Sixth Committee or at the next session of the Special Committee itself.

160. It was suggested that a more focused discussion of the different topics was required and that this purpose could be achieved by limiting the agenda to topics mandated by the General Assembly or to those proposals enjoying broad support. The view was expressed that the efficiency of the Committee might also be enhanced by avoiding a premature detailed analysis of some proposals.

161. In this connection, some delegations felt that no proposal should be discarded from the outset because of its contents and that all proposals should be the subject of an initial discussion. However, in order to prevent some proposals from languishing on the Committee's agenda for several years, it was suggested that a decision-making mechanism, possibly a time frame, could be established so as to avoid protracted discussion of a proposal lacking sufficient support. Once the decision to proceed with the topic had been made, it would be necessary to determine the specific manner for doing so. On the other hand, the point was also made that it might not be advisable to summarily discard a proposal lacking substantial support in an initial phase, since support could be built once greater specificity was attained.

162. The point was made that early submission of proposals by sponsor delegations before the start of the Committee's session, preferably one month in advance, would greatly facilitate the discussion in the Committee because that would give delegations adequate time to consult with the respective capitals and receive instructions. This would allow a more substantive and fluid debate.

163. Other suggestions made to improve the efficiency of the Special Committee's sessions included the preparation of a short-term and medium-term programme for the Special Committee; the agreement, at the end of each session, on a provisional agenda for the next session to be recommended to the Sixth Committee; a stricter adherence to the organization of work adopted at the beginning of each session by, *inter alia*, keeping a list of speakers on each topic to be closed at specific dates; and, utilizing the informal pre-session consultations with the Legal Counsel to elaborate a more detailed and focused programme of work for the Special Committee.

164. Delegations generally stressed the advantages of starting the meetings of the Special Committee punctually so as to achieve a better utilization of the conference services at its disposal.

165. Divergent views were expressed regarding the duration of the session of the Special Committee. Some delegations considered that by starting the meetings punctually and focusing the debate it would be feasible to deal with the agenda items in one week, perhaps reserving an additional two days for the preparation and adoption of the report. Other delegations were of the view that the Special Committee had proved its effectiveness and that there was no reason for shortening the Committee's session. It was noted that in the past the Committee had been assigned up to four weeks. The point was also made that the Committee's session should be extended to three weeks in order to allow a more in-depth discussion of the proposals before it. In this connection, it was also noted that the current practice of organizing pre-session consultations had greatly reduced the need for longer sessions, since agreement on the composition of the Bureau and on the organization of work, which in the past used to take a great deal of the Special Committee's time, could now be reached in advance. It was also suggested that the duration of each session could be contingent upon the Committee's agenda.

166. There was widespread agreement that moving the Special Committee's session to a date in the spring would make it easier for it to carry out its work. Holding the session in January had the disadvantage of not allowing enough time to elapse for a careful consideration of the comments on the topics made in the Sixth Committee, nor was the Committee able to assess the reports which the Secretary-General might be able to provide. In addition, the short time span after the end of the discussion in the Sixth Committee proved to be quite burdensome for smaller delegations unable to finalize their reports in a timely manner while having to prepare themselves for the discussions in the Charter Committee. The point was also made in this connection that the date at which the Committee held its session was determined by priorities set by the General Assembly.

167. As a result of its deliberations, the Special Committee recommended to the General Assembly that its future sessions should be scheduled, to the extent possible, later in the first half of any given year.

Notes

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

[2] Ibid., *Fifty-second Session, Supplement No. 33* (A/52/33), para. 29.

[3] Ibid., *Fifty-first Session, Supplement No. 33* (A/51/33), para. 128.

[4] Ibid., *Fifty-second Session, Supplement No. 33* (A/52/33), para. 58.

[5] Ibid., para. 59.

[6] Ibid., para. 75.

[7] Ibid., para. 101.

[8] Ibid., para. 115.

[9] Ibid., para. 29.

[10] See document E/C.12/1997/8.

[11] *Official Records of the General Assembly, Fifty-second Session, Supplement No. 33* (A/52/33), para. 29.

[12] Ibid., *Fifty-first Session, Supplement No. 33* (A/51/33), para. 128.

[13] Ibid., *Fifty-second Session, Supplement No. 33* (A/52/33), paras. 39-58.

[14] Ibid., para. 59.

[15] Ibid., para. 75.

[16] General Assembly resolution 47/120 A, ninth preambular paragraph.

[17] *Official Records of the General Assembly, Fifty-second Session, Supplement No. 33* (A/52/33), paras. 101 and 115, respectively.

98-04578 (E) 270398