

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

GENERAL ASSEMBLY

OFFICIAL RECORDS: THIRTY-SEVENTH SESSION

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NOTE

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

[14 June 1982]

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I. INTRODUCTION

1. At its 94th plenary meeting, on 11 December 1981, the General Assembly, on the recommendation of the Sixth Committee, 1/ adopted resolution 36/122, which read as follows:

"The General Assembly,

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

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

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

"Recalling especially its resolution 3499 (XXX) of 15 December 1975, by which it established the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, and its resolutions 31/28 of 29 November 1976, 32/45 of 8 December 1977, 33/94 of 16 December 1978, 34/147 of 17 December 1979 and 35/164 of 15 December 1980,

"Having considered the report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization on the work of the session it held in 1981, 2/

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

"Noting also the progress of the debate held during the thirty-sixth session on the item entitled 'Peaceful settlement of disputes between States', included in the agenda in pursuance of General Assembly resolution 35/164, especially concerning the consideration of the draft Manila declaration on the peaceful settlement of international disputes, 3/

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

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

1/ Official Records of the General Assembly, Thirty-sixth Session, Annexes, agenda item 122, document A/36/782.

2/ Ibid., Thirty-sixth Session, Supplement No. 33 (A/36/33).

3/ Ibid., Thirty-fifth Session, Supplement No. 33 (A/35/33 and Corr.1), para. 164.

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

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

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

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

"3. Also decides that the Special Committee shall convene its next session from 22 February to 19 March 1982;

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

"(a) To accord priority to its work on the proposals regarding the question of the maintenance of international peace and security, including those relating to the functioning of the Security Council, with a view to continuing its examination of the compilation of proposals contained in its report on the work of the session it held in 1980 ^{4/} and to considering the recommendations and proposals submitted during its session in 1981 or thereafter;

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

"5. Also requests the Special Committee to finalize the draft Manila declaration on the peaceful settlement of international disputes with a view to its consideration and adoption by the General Assembly, and to submit it to the Assembly at its thirty-seventh session;

"6. Further requests the Special Committee, in the light of the progress it has achieved concerning the question of the peaceful settlement of disputes, to continue its work on this question by considering the remaining proposals contained in the list prepared by the Committee in accordance with General Assembly resolution 33/94;

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

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

"9. Decides that the Special Committee shall accept the participation in its meetings of observers of Member States and, paying due regard to its

^{4/} Ibid., para. 152.

efficiency and the time at its disposal, allow their participation in the meetings of its working groups;

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

"11. Requests the Secretary-General to prepare an informal working paper containing an analytical summary of the statements made on the item in the Sixth Committee during the thirty-sixth session of the General Assembly, and to submit it to the Special Committee at its next session;

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

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

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

2. At its 92nd plenary meeting, on 10 December 1981, the General Assembly, on the recommendation of the Sixth Committee, 5/ also adopted resolution 36/110 entitled "Peaceful settlement of disputes between States", which read as follows:

"The General Assembly,

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

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

"Taking into account the need to exert utmost efforts in order to settle any situations and disputes between States exclusively by peaceful means, and to avoid any military action and hostilities, which can only make more difficult the solution of existing problems,

"Also taking into account the provisions of the Charter of the United Nations concerning the peaceful settlement of disputes between States,

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

5/ Ibid., Thirty-sixth Session, Annex, agenda item 118, document A/36/778.

"Taking note of the reports of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization 6/ and of the Working Group on the Peaceful Settlement of Disputes, 7/

"Taking note also of the progress made in the Special Committee and in the Working Group in the elaboration of the draft Manila declaration on the peaceful settlement of international disputes,

"Taking into account the opinions expressed during the examination at its thirty-sixth session of the question of the peaceful settlement of disputes between States,

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

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

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

"4. Requests the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization to finalize the draft Manila declaration on the peaceful settlement of international disputes with a view to its consideration and adoption by the General Assembly, and to submit it to the Assembly at its thirty-seventh session;

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

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

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

6/ Ibid., Thirty-sixth Session, Supplement No. 33 (A/36/33).

7/ A/C.6/36/L.19.

8/ Ibid.

Algeria
Argentina
Barbados
Belgium
Brazil
China
Colombia
Congo
Cyprus
Czechoslovakia
Ecuador
Egypt
El Salvador
Finland
France
German Democratic Republic
Germany, Federal Republic of
Ghana
Greece
Guyana
India
Indonesia
Iran
Iraq

Italy
Japan
Kenya
Liberia
Mexico
Nepal
New Zealand
Nigeria
Pakistan
Philippines
Poland
Romania
Rwanda
Sierra Leone
Spain
Tunisia
Turkey
Union of Soviet Socialist
Republics
United Kingdom of Great Britain
and Northern Ireland
United States of America
Venezuela
Yugoslavia
Zambia

4. The Special Committee met at the United Nations Office at Geneva from 22 February to 19 March 1982. 9/

5. The session was opened by Mr. Erik Suy, Under-Secretary-General, the Legal Counsel, who represented the Secretary-General and read out a statement on his behalf.

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

7. At its 60th and 61st meetings, on 23 February 1982, the Special Committee, bearing in mind the terms of the agreement regarding the election of officers reached at its previous session, 10/ agreed upon the composition of the officers of the Committee as follows:

9/ For the membership list of the Committee at its 1982 session, see A/AC.182/INF.7 and Add.1.

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

Chairman: Mr. Siegfried Zachmann (German Democratic Republic)

Vice-Chairmen: Mr. Mario Alemán (Ecuador)
Mr. Bengt Broms (Finland)
Mr. Ignace Karuhije (Rwanda)

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

8. At its 60th meeting, the Special Committee adopted the following agenda (A/AC.182/L.30):

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.
5. Consideration of the observations and proposals of Governments pursuant to General Assembly resolutions 3499 (XXX), 31/28, 32/45, 33/94, 34/147, 35/164 and 36/122 and of the requests contained in paragraphs 5 and 6 of resolution 36/122 as well as of the request contained in paragraph 4 of resolution 36/110, with reference to its paragraphs 2, 3 and 5.
6. Adoption of the report.

9. The Special Committee had before it the reports it submitted to the General Assembly on the work of its 1976, 1977, 1978, 1979, 1980 and 1981 sessions. 11/ It had also before it the report of the Working Group on the Peaceful Settlement of Disputes (A/C.6/36/L.19) established by the Sixth Committee at the thirty-sixth session of the General Assembly, as well as the informal working paper prepared by the Secretary-General pursuant to paragraph 11 of General Assembly resolution 36/122 containing an analytical summary of statements made in the Sixth Committee during the thirty-sixth session of the General Assembly (A/AC.182/L.31). The Special Committee also had before it a revised draft recommendation presented by Egypt on behalf of non-aligned countries of the Special Committee (A/AC.182/L.29/Rev.1). 12/

10. At its 61st meeting, on 23 February, the Committee established its open-ended Working Group. The Committee also agreed that during the first week of the session the Working Group would devote nine consecutive meetings to consideration of proposals on the question of the maintenance of international peace and security,

11/ Official Records of the General Assembly, Thirty-first Session, Supplement No. 33 (A/31/33); ibid., Thirty-second Session, Supplement No. 33 (A/32/33); ibid., Thirty-third Session, Supplement No. 33 (A/33/33); ibid., Thirty-fourth Session, Supplement No. 33 (A/34/33); ibid., Thirty-fifth Session, Supplement No. 33 (A/35/33 and Corr.1) and ibid., Thirty-sixth Session, Supplement No. 33 (A/36/33).

12/ See para. 254 below. For additional information on the documentation before the Working Group in relation to the question of the maintenance of international peace and security, see sect. III below.

in accordance with paragraph 4 (a) of General Assembly resolution 36/122, and that, from 2 to 12 March, it would devote 18 consecutive meetings to consideration of the draft Manila declaration on the peaceful settlement of international disputes, with a view to finalizing the text of the draft, in accordance with General Assembly resolution 36/110 and with paragraph 5 of Assembly resolution 36/122. It was also agreed that beginning on 15 March the Working Group would devote four further consecutive meetings to consideration of proposals on the maintenance of international peace and security; two meetings on 17 March would then be devoted to consideration of the rationalization of existing procedures of the United Nations, as referred to in paragraph 4 (b) of resolution 36/122, and perhaps to other matters, such as the finalization of the draft Manila declaration. At its 63rd meeting, on 15 March, the Special Committee decided to alter slightly its programme of work, extending by one day the time allotted to the consideration of the draft Manila declaration.

11. The Working Group carried out its work under the chairmanship of Mr. Siegfried Zachmann, Chairman of the Special Committee. The Vice-Chairmen of the Special Committee, Mr. Mario Alemán, Mr. Bengt Broms and Mr. Ignace Karuhije, and the Rapporteur of the Special Committee, Mrs. Maria Lourdes Ramiro-Lopez, served as Vice-Chairmen and Rapporteur, respectively, of the Working Group. The Working Group decided to establish a Drafting Group chaired by Mr. Bengt Broms, Vice-Chairman of the Special Committee, to take up the pending points left by the Working Group in its consideration of the draft Manila declaration, with a view to finalizing its text. There were also various meetings of intensive informal consultations of members of the Working Group.

12. At the 60th and 62nd meetings, held on 23 February and 8 March respectively, the Chairman informed the Special Committee that the Secretariat had received notifications of observer status from Chile, Cuba, the Libyan Arab Jamahiriya, the Netherlands and Peru. At the same meetings, and in accordance with paragraph 9 of General Assembly resolution 36/122 of 11 December 1981, the Committee accepted the participation in its meetings of observers from those States.

13. At the 63rd meeting of the Special Committee, on 15 March, the observers from Chile and the Libyan Arab Jamahiriya made statements, with the prior authorization of the Committee. At the 64th meeting, on 19 March, the observer from Peru made a statement with the prior authorization of the Committee.

14. Section II of the present report is devoted to the draft Manila declaration on the peaceful settlement of disputes. At its 64th meeting, on 19 March, the Special Committee had before it a statement of the Rapporteur on the work carried out by the Working Group on the maintenance of international peace and security, which is reproduced in section III of the present report.

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

16. The Special Committee draws in particular the attention of the General Assembly to the completion of the task assigned to it under paragraph 4 of General Assembly resolution 36/110 and paragraph 5 of General Assembly resolution 36/122 concerning the finalization of the draft Manila declaration on the peaceful settlement of international disputes, as reflected in section II of the present report.

17. With reference to paragraph 4 (b) of General Assembly resolution 36/122, the Special Committee was unable, owing to lack of time, to consider proposals made by Member States on the question of rationalization of existing procedures of the United Nations. However, it was agreed that this question was of importance to the work of the United Nations and that it should be considered at the next session of the Special Committee.

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

II. DRAFT MANILA DECLARATION ON THE PEACEFUL SETTLEMENT OF
INTERNATIONAL DISPUTES

19. In accordance with paragraph 4 of General Assembly resolution 36/110 and paragraph 5 of General Assembly resolution 36/122, the Special Committee finalized the draft Manila declaration on the peaceful settlement of international disputes which it submits to the General Assembly for consideration and adoption:

Manila Declaration on Peaceful Settlement of International Disputes

The General Assembly,

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

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

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

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

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

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

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

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

Stressing the need for all States to desist from any forcible action which deprives peoples, particularly peoples under colonial and racist régimes or other forms of alien domination, of their inalienable right to self-determination,

freedom and independence, as referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,

Mindful of existing international instruments as well as respective principles and rules concerning the peaceful settlement of international disputes, including the exhaustion of local remedies whenever applicable,

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

Solemnly declares:

I

1. All States shall act in good faith and in conformity with the purposes and principles enshrined in the Charter of the United Nations with a view to avoiding disputes among themselves likely to affect friendly relations among States, thus contributing to the maintenance of international peace and security. They shall live together in peace with one another as good neighbours and strive for the adoption of meaningful measures for strengthening international peace and security.

2. Every State shall settle its international disputes exclusively by peaceful means in such a manner that international peace and security, and justice, are not endangered.

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

4. States parties to a dispute shall continue to observe in their mutual relations their obligations under the fundamental principles of international law concerning the sovereignty, independence and territorial integrity of States, as well as other generally recognized principles and rules of contemporary international law.

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

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

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

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

9. States should consider concluding agreements for the peaceful settlement of disputes among them. They should also include in bilateral agreements and multilateral conventions to be concluded, as appropriate, effective provisions for the peaceful settlement of disputes arising from the interpretation or application thereof.

10. States should, without prejudice to the right of free choice of means, bear in mind that direct negotiations are a flexible and effective means of peaceful settlement of their disputes. When they choose to resort to direct negotiations, States should negotiate meaningfully, in order to arrive at an early settlement acceptable to the parties. States should be equally prepared to seek the settlement of their disputes by the other means mentioned in the present Declaration.

11. States shall in accordance with international law implement in good faith all the provisions of agreements concluded by them for the settlement of their disputes.

12. In order to facilitate the exercise by the peoples concerned of the right to self-determination as referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, the parties to a dispute may have the possibility, if they agree to do so and as appropriate, to have recourse to relevant procedures mentioned in the present Declaration, for the peaceful settlement of the dispute.

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

The organs of the United Nations and the specialized agencies should study the advisability of making use of the possibility of requesting advisory opinions of the International Court of Justice on legal questions arising within the scope of their activities, provided that they are duly authorized to do so.

Recourse to judicial settlement of legal disputes, particularly referral to the International Court of Justice, should not be considered an unfriendly act between States.

6. The Secretary-General should make full use of the provisions of the Charter of the United Nations concerning the responsibilities entrusted to him. The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security. He shall perform such other functions as are entrusted to him by the Security Council or by the General Assembly. Reports in this connexion shall be made whenever requested to the Security Council or the General Assembly.

III

Urges all States to observe and promote in good faith the provisions of the present Declaration in the peaceful settlement of their international disputes,

Declares that nothing in the present Declaration shall be construed as prejudicing in any manner the relevant provisions of the Charter or the rights and duties of States, or the scope of the functions and powers of the United Nations organs under the Charter, in particular those relating to the peaceful settlement of disputes,

Declares that nothing in the present Declaration could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist régimes or other forms of alien domination; nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration,

Stresses the need, in accordance with the Charter of the United Nations, to continue efforts to strengthen the process of the peaceful settlement of disputes through progressive development and codification of international law, as appropriate, and through enhancing the effectiveness of the United Nations in this field.

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

20. In accordance with the decision taken by the Special Committee indicated above (see para. 10), the Working Group devoted its first nine meetings, from 23 February to 1 March 1982, to the consideration of proposals regarding the question of the maintenance of international peace and security. Also in accordance with that decision, the Working Group later reverted to the consideration of proposals regarding that question at its 21st, 22nd and 24th meetings, held on 16 and 17 March 1982.

21. The Working Group began its work by resuming its consideration of the proposals contained in the informal compilation of proposals on the question submitted at its 1976 to 1980 sessions, which had been prepared by the Chairman of the 1980 session with the assistance of the Rapporteur. 13/ It then turned its attention to the draft recommendation presented at the 1981 session by Egypt on behalf of non-aligned countries of the Special Committee (A/AC.182/L.29). 14/

22. In addition to the above, the Working Group had before it a proposal submitted by France at the 1981 session of the Special Committee (A/AC.182/L.25). 15/ Its sponsor indicated that it should be added to the informal compilation of proposals and discussed in the same manner as other proposals. The Working Group also had before it a new proposal submitted by France relating to the question of the maintenance of international peace and security (A/AC.182/WG/51). 16/

23. As was the case at its last session, the Working Group followed a flexible approach in examining the proposals before it, on occasion discussing proposals or paragraphs separately, and on other occasions discussing groups of proposals or paragraphs which appeared to be closely related.

24. Following the practice established at previous sessions of the Special Committee, the portions of this statement which follow are intended to provide a brief summary of the main trends of the debate held within the Working Group as could be determined from unofficial notation. This statement is based on the notes of the Rapporteur and those prepared for her assistance by competent services of the Secretariat. It should be understood that it is intended to reflect only the more salient points which arose in the course of discussions.

13/ That compilation is reproduced in para. 152 of the report of the Special Committee on the work of its 1980 session, Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 33 (A/35/33 and Corr.1).

14/ The draft recommendation is reproduced below at para. 188. A revised version of that draft recommendation was presented to the Working Group but not considered owing to lack of time. See paras. 254-255 below.

15/ This proposal is reproduced below at para. 256.

16/ This proposal is reproduced below at para. 265.

A. Section V of the informal compilation

25. The Working Group at the 1981 session of the Special Committee began the consideration of proposals 46 to 64, constituting section V of the informal compilation, but was not able to complete its examination for lack of time. The preliminary debate held at that time on those proposals is reflected in paragraphs 228 to 264 of the report of the Special Committee on the work of its 1981 session. 17/

26. The text of proposal 46 read as follows:

"46. All the provisions embodied in Chapter VII of the Charter should be implemented (see A/AC.182/L.15)."

27. Members of the Working Group were generally of the view that Chapter VII was an essential element of the Charter as far as the maintenance of international peace and security was concerned and that the observance of its provisions was of vital importance. Chapter VII was considered by several representatives as the corner-stone of the Charter which, if properly applied, would ensure the maintenance of international peace and security and prevent aggression.

28. A number of delegations supported proposal 46 and viewed it as very important and extremely useful. It was considered a legitimate and useful proposal because it called for the application of Chapter VII, which guaranteed the system of collective security on which the maintenance of peace and security was dependent, as well as the implementation of the purposes of the United Nations. Some representatives stressed that Chapter VII had not been applied or implemented as it should have been. While the authors of the Charter had obviously intended Chapter VII to dissuade States from threats to the peace, breaches of the peace and acts of aggression, such acts had in fact increased. One representative wondered whether the Security Council's reluctance to apply Chapter VII in flagrant cases of aggression and breach of the peace was the result of a diplomatic preference for verbal sanctions rather than action or whether Chapter VII, as it stood, was ill suited to such actions. When an act of aggression was committed the Security Council adopted a resolution and considered that it had done its duty, although the aggression continued. Moreover, it was said, the fact that acts of aggression went unpunished was an encouragement to their perpetrators and undermined the credibility of the Security Council and the Organization. In order to restore that credibility, it was necessary to objectively and correctly apply the provisions of Chapter VII. Proposal 46 did not ask the Security Council to deviate from the Charter, rather it was designed to point out that while the provisions of the Charter were adequate, the modalities of their application must strictly follow the Charter.

29. Concern was expressed by certain representatives regarding the abuse of the right of veto by permanent members of the Security Council. It was maintained that history had showed that action had almost never been taken under Chapter VII because of the lack of unanimity of the Security Council. The view was held that the Security Council had implemented measures under that Chapter on very few of the occasions on which it would have been justified in so doing, as recent events

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

showed. Over-emphasis on the legal aspects might conceal the truth: lack of unanimity within the Council lead to different interpretations of the Charter. It was unrealistic to expect the Council to maintain international peace and security and halt acts of aggression when its members were in fact encouraging aggression; unanimity within the Security Council was essential. It was stated by one representative that permanent members of the Security Council had used the principle of unanimity to protect their allies and further their own political and strategic interests, thus the role of the Security Council as the guardian of international peace and security had been perverted and certain States, which respected the decisions of neither the Security Council nor the international community could commit acts of aggression with impunity. The hope was expressed that the Security Council would be able to implement Chapter VII, which would restore rights and maintain and strengthen international peace and security. In that connexion, the idea that the permanent members should reach agreement on the application of unanimity rule to pave the way for implementation of Chapter VII was in particular supported by one delegation.

30. According to one view, proposal 46 contained three main elements: the idea of more frequent recourse to Chapter VII of the Charter as a whole; the idea that Chapter VII should be more fully and effectively applied; and the idea that the letter and spirit of Chapter VII should be respected together with all the other provisions in the Charter, particularly Article 24. It was emphasized that if Chapter VII were applied more frequently and effectively the international situation would be much improved.

31. In agreeing that Chapter VII of the Charter was indeed the corner-stone of the Charter and of the collective security system established after the Second World War, one representative stressed that it was not a question of amending those provisions, but of implementing and observing them. The effective implementation of Chapter VII, rather than mere invocations of that Chapter in Security Council resolutions, was the essence of international peace and security. Consequently, in studying the question and the short-comings of the United Nations as it arose at present, an attempt must be made, he said, to understand why the provisions of Chapter VII were not being applied. Perhaps it might be possible to enlist the assistance of the United Nations Secretariat or of experts to help explain why those provisions were not being fully applied, and the consequences of that state of affairs. His delegation therefore considered that proposal 46 was highly relevant to the Committee's work.

32. A number of other representatives said they could not support proposal 46 because they considered it unclear and imprecise. It was said by one such representative that one of the basic problems posed by the proposal arose from its vagueness. If it merely amounted to a recommendation to observe the provisions of Chapter VII, it was acceptable, but if it meant distorting the Charter so as to abolish the Security Council's freedom of action, it was not acceptable. It was indicated by certain delegations that the use of the terms "all" and "implemented" in the text of the proposal created serious ambiguities. The use of the former term raised the question whether the intention was to apply all 13 Articles of Chapter VII at once, whereas the latter term implied that provisions of that Chapter had never been invoked, which was not the case in fact.

33. Certain delegations who supported the basic idea of proposal 46 noted that drafting improvements could be made. One representative denied that it had been suggested that Chapter VII of the Charter had never been invoked. But there was no doubt that the fundamental provisions of that Chapter, in particular Article 43,

and the other provisions concerning the Military Staff Committee, and making available to the Security Council the armed forces necessary for the purpose of maintaining international peace and security, were not being implemented. The word "implemented" might not be the happiest term, but the fact was that it posed a problem in the case of Chapter VII, whose essential provisions, forming an integral part of the system for the maintenance of international peace and security, were not being respected. One delegation suggested that the proposal be amended to read "Whenever there exists a threat to the peace, a breach of the peace or an act of aggression, the provisions embodied in Chapter VII of the Charter should be implemented". This amended version, however, did not, according to another representative, clear up those elements of ambiguity which existed in the proposal.

34. Another representative, in recapitulating the history of proposal 46, stressed that Chapter VII contained two different types of provisions and suggested that the authors of proposal 46 should take that into account in redrafting the proposal. He described the origins and background of Article 43 and the various proposals put forward over the course of the years with a view to implementing it. The original intention of forming a permanent United Nations army had proved unworkable, and therefore the existing system of ad hoc agreements in case of need had arisen. In his opinion, the existing system was satisfactory, and there was no need to go back to the original idea of a permanent army. A proposal might be made for a network of agreements which States to have troops always available for the United Nations, as a development of the agreements already existing in the case of some States, including his own country, which had passed legislation to that effect.

35. On the other hand, certain delegations urged that the Committee should concentrate on the substance of proposals rather than their wording.

36. According to one view, there was no need to redraft proposal 46, as it was quite clear: it called for the full implementation of existing provisions of the Charter. There was no question of a revision of those provisions, rather what should be sought was the effective implementation of the existing provisions of Chapter VII, which provided a very wise and flexible centralized system for the use of force by the United Nations. It was emphasized that the only body which could take the decision to use force was the Security Council and that the principle of unanimity in the Security Council was fundamental. There was no denying the extreme usefulness of proposal 46, since one of the reasons for the ineffectiveness of the United Nations was the failure to apply the very useful provisions of Chapter VII of the Charter, particularly those in Article 43. Although as a result of the efforts made by the Military Staff Committee and the Security Council during the first years of the United Nations activities, agreement had been reached in more than half of the articles on the subject of making armed forces available to the Security Council the provisions of Article 43 of the Charter had remained unimplemented because of the obstructionist position of some States.

37. None the less, according to the view shared by certain representatives, the work of the Special Committee must not overlap with that of other bodies, in particular the Special Committee on Peace-keeping Operations (Committee of 33). Accordingly, while the proposal deserved full attention, it should not be included in the final list of proposals. The Committee of 33 was the best negotiating forum for the detailed discussion of individual proposals of this sort. Certain representatives, however, disagreed with that position, maintaining that the Working Group should be able to consider questions included in the agenda of another body.

38. Doubts were voiced by certain representatives concerning the realism or utility of the proposal under discussion. The question was raised whether the proposal was concerned primarily with peace-keeping operations. While one representative believed that that was not the case, another representative held the view that peace-keeping operations were covered by Chapter VII, and that the emphasis in the proposal on Chapter VII implied that the Security Council had exclusive competence to authorize, direct and supervise all aspects of peace-keeping operations. In view of the current international situation and the wording of proposal 46, it was thought unlikely to be of practical consequence. Another question raised was whether the proposal referred to the fact that Article 43 and related measures had not been implemented. If that was the case, it was suggested, the proposal would then overlap with other proposals in section V of the informal compilation and would be of doubtful utility. In addition the fact that armed forces had not been sent into the field for enforcement purposes had nothing to do with the absence of agreements concluded in conformity with Article 43.

39. Some representatives stated that if the proposal sought to update or restructure Chapter VII or to bring pressure to bear on the Security Council to apply some of the provisions of Chapter VII, such as Article 41, more often or even in a particular case, it dangerously encroached on the powers of the Security Council and was unacceptable. It was stressed that Chapter VII aimed essentially at leaving to the Security Council the power and discretion to decide on the appropriate measures to be taken in each case brought to its attention; it was for that body to determine according to circumstances, the modalities of application of Chapter VII and the action to be taken. Bringing pressure to bear on the Security Council to adopt a particular line of action in a given case could not constitute observance of Chapter VII. The Special Committee could not adopt a recommendation urging the Security Council to adopt all the measures provided for in Chapter VII, since the adoption of certain measures excluded the possibility of having recourse to other arrangements. The Security Council must be the only judge in such matters.

Proposal 47

40. Proposal 47 read as follows:

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

41. The author of proposal 47 indicated that the original, more detailed version of the proposal, which appeared in document A/AC.182/WG/29, 18/ conveyed a clear

18/ That version read as follows:

"3. Establishment of clear rules and principles governing the military activities of the United Nations, and to that end:

"(a) To expedite the elaboration, by the Special Committee on Peace-keeping Operations, of specific proposals concerning the method of establishment, the powers and the legal provisions governing the operation of peace-keeping forces;

idea of what his delegation had originally had in mind. It wished to accelerate the elaboration of guidelines for the use of United Nations forces and to regulate questions such as the right of Member States to participate, in rotation, in the constitution of United Nations forces. In the absence of specific provisions, differing political interests, particularly those of the permanent members of the Security Council, had ensured that peace-keeping operations whenever undertaken had given rise to serious difficulties. The fact that a proposal before the Special Committee was also before another United Nations body should not prevent the Special Committee from studying it. If it was thought that certain proposals concerning the Chapter should be referred to the Committee of 33, his delegation would not object. He recognized that the drafting of proposal 47 could be improved. However, it was very similar to proposal 50 and he said his delegation would like to hold consultations with the authors of proposal 50 to devise a common formula. The Charter need not necessarily be amended if the General Assembly drafted guidelines for use by United Nations military forces. The right of the General Assembly to elaborate such guidelines had already been recognized by the establishment of the Committee of 33. Further, in 1962, the International Court of Justice had implicitly recognized the right of the General Assembly to give guidelines regulating the use of United Nations military forces constituted under Article 22. The question of whether the General Assembly should or could have a role in using military forces authorized by the Security Council was more complex.

42. Other delegations also expressed support for proposal 47. It was said that in the past, it had not always been clear how United Nations forces were to discharge their duties and there had been serious confrontations between the United Nations forces and State authorities. Clear and precise rules could generate confidence and mutual understanding and further the cause of peace and security. Adoption of proposal 47 would, it was felt, improve efforts to maintain international peace and security.

43. The proposal was not supported, however, by other representatives. According to one view, proposal 47 was unclear; if the words "military activities" meant peace-keeping operations, certain principles already existed, and if they referred to enforcement measures, the proposal duplicated other proposals relating to Article 43. Moreover, problems in peace-keeping operations had not flowed from any lack of rules and principles governing the activities of the United Nations forces;

(continued)

"(b) To confirm the right of all Member States, based on principle of rotation, of participating in the establishment of United Nations military forces, with the consent of the Government of the receiving State;

"(c) To lay down, in the General Assembly, guidelines for the utilization of military forces organized under the United Nations auspices;

"(d) To agree in advance, by the States concerned in any conflict, as to the national composition of the United Nations forces."

Ibid., Thirty-fourth Session, Supplement No. 33 (A/34/33), chap. III.C., para. 25.

there was a body of rules, guidelines and principles that worked extremely well. Problems had arisen because of a lack of practical measures, the non-universality of the practice of the Nordic States described earlier by another representative and because of non-co-operation by States in the region of the conflict. Another view stressed was that the rules and principles referred to in the proposal already existed in the Charter itself; the Committee should concentrate its efforts on those provisions.

44. Other representatives pointed out that proposal 47 related to an issue dealt with by the Committee of 33. It was felt that the Special Committee should avoid reopening the debate on difficult issues which had been studied for many years in depth by the Committee of 33; to duplicate the work of another Committee set up especially for the purpose of dealing with such issues would be quite pointless. One representative wondered whether, in view of its generality, proposal 47 could not be brought closer to proposal 56, according to which the activities of the Committee of 33 should be enhanced and expedited.

Proposal 48

45. The text of proposal 48 read as follows:

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

46. Certain representatives expressed support for proposal 48, which they believed would enhance the effectiveness of the Organization in the field of maintenance of peace and security. As to the preparation by the Secretary-General of the report called for by the proposal, it was stressed that the responsibility of the Secretary-General as chief executive of the Organization was ubiquitous. The Security Council had primary, but not exclusive, responsibility for peace and security; as a major organ, it did not work in isolation. The Secretary-General's activities complemented those of the Security Council, as indicated by Article 99 which conferred a specific responsibility on the Secretary-General with respect to peace and security. The proposal merely sought to ensure that the Secretary-General as a central figure in the United Nations could undertake such assignments. Furthermore, the Security Council was one of a number of United Nations organs, any one of which was entitled to request the Secretary-General to prepare the type of report envisaged. It was ultimately for the Member States to decide on the degree of consideration which such a report would enjoy.

47. Doubts concerning the proposal were expressed by certain other representatives. According to one view, while it was no doubt preferable to apply Article 43, it was none the less doubtful whether the proposal in question, as well as proposal 49, would enable the United Nations to use armed forces for enforcement purposes. While unreserved support for Articles 43 and 45 was expressed, it was nevertheless observed that no military or peace-enforcement operation had failed for lack of forces to be sent to the field. According to this view, proposals 47, 48 and 49 did not seem absolutely essential, considering the remarkable success of practical operations carried out by the United Nations since its creation. Another view expressed was that the report to be prepared by the Secretary-General under proposal 48 did not come within his terms of reference unless the Security Council requested him to prepare it. It was important not to upset the delicate balance of the main organs of the United Nations. The main point at issue was ways and means of obliging Member States to comply with the provisions of the Charter. To request the Secretary-General to find such ways and means would, according to this view, be giving him an extremely delicate task which he might refuse, particularly since, under the Charter, he was not competent to carry out such a task.

Proposal 49

48. The text of proposal 49 read as follows:

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

49. In support of proposal 49 it was said that the importance of the collective security system under the Charter could not be over estimated. The United Nations fulfilled its responsibility in that respect, but sometimes haphazardly, by chance. Proposal 49, therefore, was there to remind all States that they must be unified towards peace, prepared to react to conflicts. It was true that some, in particular developing countries, may not be in a position to respond promptly to that kind of situation. In order for third world countries to participate fully in the maintenance of collective security and in particular in the operations launched by the United Nations, they must be granted assistance. But for the time being, the optional arrangements in force were quite satisfactory.

50. It was also stated that proposal 49 was very relevant at the present time, particularly in view of the deterioration in the international situation. If Article 43 of the Charter was implemented, it would be possible to avoid numerous mistakes. In practice, instead of implementing Article 43, the international community had rushed into crises from which it had not managed to extricate itself. Proposal 49 did not provide for the creation of a permanent army, but rather encouraged States to respect Article 43, which was a more realistic approach than contemplating the adoption of another approach falling half way between Chapter VI and VII, as had sometimes been urged. According to this view, the time when the States would conclude the agreements provided for in Article 43 was near.

51. Certain representatives, while noting that ideally it was preferable to have concluded the agreements mentioned in Article 43 of the Charter, nonetheless observed that the lack of such agreements had not seemed to hinder peace-keeping operations in practice. The proposal thus, it was suggested, did not seem absolutely essential. It would unfortunate, it was believed, if in one way or another, the Committee gave the impression that any effort with regard to the agreements provided for in Article 43 would be useful from the point of view of accomplishing the role of the United Nations in the area of maintaining international peace and security.

52. One representative said that it was important to decide at the outset whether the Special Committee favoured agreements leading to a permanent army or was satisfied with the present type of ad hoc agreements. In that connexion, certain representatives referred to proposal 57 which contained a suggestion for a permanent peace-keeping force. It was considered not necessary to have a network of agreements to establish a permanent force; one representative said he would prefer a recommendation to extend the present network of agreements concluded between the United Nations and several States Members so as to have available, in case of need, reserve troops in individual countries. It was stressed, however, that such agreements had to be concluded between the Security Council and Member States, in conformity with Article 43.

53. In that regard, another representative believed that Article 43 did not relate to the establishment of permanent armed forces. The creation of a permanent army was linked to the establishment of a supra-national government, which was utopian. Article 43, which had not been implemented, indicated how agreements could be concluded, the terms of those agreements and the modalities according to which armed contingents could be placed at the disposal of the Security Council. Certain political figures outside of the United Nations had proposed the creation of a permanent army, and the first two Secretaries-General of the United Nations had also formulated proposals along those lines. According to some of those proposals, the army created would have been a quasi-permanent one, and the Secretary-General would have determined the number of contingents (which would have comprised 20,000 to 30,000 men at the start) supplied by different States, but those proposals had caused objections on the part of his country, for they were contrary to the Charter and they had therefore not been successful. It was also stressed that Article 43 provided for agreements between the Security Council, the only body empowered to decide on the use of armed forces, and States Members. On the other hand, special agreements between the Secretary-General and States intending to send troops into another State had been imposed on the States in whose territory armed forces were then installed. The Secretary-General was not empowered by the Charter to conclude the latter type of agreement, which would place him above States. When the first two Secretaries-General had usurped powers not conferred on them by the Charter and which rested with the Security Council alone, there had been crises.

Proposal 50

54. Proposal 50 read as follows:

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

55. A number of delegations favoured proposal 50 and considered it important to the maintenance of international peace and security. According to one opinion, that proposal was basic and must be kept on the list to be drawn up. It was said that while the members of the exclusive club of the Security Council would naturally like to keep their prerogatives, the General Assembly must not be pushed into the background and must not be refused the right to make decisions on questions of concern to humanity. The United Nations had been conceived for the purpose of serving humanity and must evolve with the times. The Committee should not feel that it was bound by ideas which had become out of date, but should face contemporary issues squarely. If international peace and security were of interest to everyone, then the General Assembly and not the Security Council was the valid authority. While the Security Council was supposed to be able to intervene rapidly in a case of conflict, that was not the case in practice because of vetoes by certain States and because of the lack of unanimity among permanent members. The time had come to acknowledge the General Assembly's role in this area and it was not objectionable to consider the possibility of amending the Charter to obtain that desired result. The General Assembly should, it was stressed by these representatives, at least give the Council directives in the area of maintenance of international peace and security.

56. Surprise was registered by one representative that the proposal under examination had caused so much concern. If it turned out that a United Nations body like the General Assembly was in a position to perform certain functions

legitimately, there was no reason to oppose that idea. The United Nations must be considered from a political point of view; it formed a whole, whose harmony should not be disturbed. There should be no fear that strengthening the role of the General Assembly would lead to anarchy.

57. In sharing some of the views of those in favour of proposal 50, one representative stressed that times did change, and that the proposals to strengthen the role of the General Assembly deserved careful examination. Proposal 50, however, could involve a complicated process of amending the Charter, he said, which raised the question whether such an amendment was really justified.

58. A number of other delegations expressed doubts concerning proposal 50 or opposed it. Some of these delegations felt that proposal 50 was unnecessary and that it suggested there were problems where in fact none existed. It was said that it ran the risk of creating some misunderstandings, for it tended to confer on the General Assembly a right which it already possessed under Article 11 of the Charter. Certain representatives stressed that while the basic aspects of the use of military forces placed under United Nations aegis fell within the exclusive competence of the Security Council, the Charter, in Articles 10, 11 and 12 recognized that the General Assembly played a certain part, and thus the General Assembly had established the Special Committee on Peace-keeping Operations in 1965. Except for the fact that proposal 50 spoke of "military forces" instead of peace-keeping forces, it added nothing to the established practice. Since the General Assembly was already acknowledged as having capacity in the field and a subsidiary body of the General Assembly was dealing with that question, it was asked why the Charter should be revised.

59. It was emphasized by one representative that the question at hand was to find out whether some proposals being examined were wise and useful for strengthening the role of the United Nations and contributing to the maintenance of international peace and security. If the idea behind proposal 50 was not to change the balance of the Charter since the Security Council's power would be preserved with regard to the use of force, but simply to confer on the General Assembly the right to lay down guidelines in that area, the proposal could cause some difficulty. It could give rise to a conflict between the General Assembly and the Security Council if both had the right to lay down guidelines on the use of armed force and in fact gave different guidelines. This might lead, according to this representative, to the absurd situation in which a State might have the option of choosing between the guidelines of the Security Council and those of the General Assembly. Alternatively, one might imagine the General Assembly imposing its point of view on the Security Council, in which case the risk of conflict would disappear, but instead there would be a grave distortion of the balance laid down in the Charter. Hence, the doubts of his delegation as to the usefulness and wisdom of proposal 50. He urged the members of the Committee to think about what had been said concerning the rights which the General Assembly already enjoyed under the Charter. He added that even the sponsors of the proposal seemed to be aware of those difficulties, since the proposal spoke of "recognizing" the right of the General Assembly to lay down guidelines, which seemed to indicate the pre-existence of that right.

60. Another representative maintained that the reason why no delegation should wish to keep proposal 50 on any list of proposals had to do with the fact that it benefited no point of view. The idea that the General Assembly should have a certain power with regard to the use of armed force created two reactions: an unfavourable reaction, in particular on the part of one or several permanent

members of the Security Council who would not accept an amendment in that direction, and a favourable reaction. But, he continued, one might have thought that the advocates of that idea would not have sought to amend the Charter in order to obtain something which already existed and which had been codified in General Assembly resolution 377 (V) of 3 November 1950. Those who had spoken of the need for an amendment were somehow implying that the General Assembly was exceeding its mandate when it exercised the powers which resolution 377 (V) recognized it as having, which was certainly not the opinion of most of the Member States. Furthermore, if the sponsors of the proposal wished to amend the Charter in order to enable the General Assembly to lay down guidelines on the use of military force they were on the wrong track, since that was precisely the task of the Committee of 33. Moreover, were those guidelines useful and necessary? What type of guideline was involved? Suggesting that the absence of guidelines to be given on the use of military force presented a problem limiting the peace-keeping capacities of the United Nations, was tantamount to concealing real problems. Taking that analysis into account, his delegation believed that it was difficult to try to maintain the proposal, whatever one's point of view on the functioning of the United Nations. But if some believed that the General Assembly could not currently use military force for peace-keeping and wanted it to have that power, naturally they could propose to amend the Charter. But in that case, the amendment would not deal with the guidelines that the General Assembly laid down, but would rather be directed towards developing the power of the General Assembly. His delegation agreed with the advisory opinion of the International Court of Justice, which had recognized the legitimacy of certain powers conferred on the General Assembly. He urged that it was prudent not to pursue such ideas as reflected in proposal 50; in trying to increase the role of the General Assembly, the Committee would run the risk not only of undermining the current system but even of killing the authority of the Assembly itself.

61. In connexion with references made to General Assembly resolution 377 (V), it was said by one representative that the adoption of that resolution could not be considered a glorious chapter in the history of the United Nations and should not provide a precedent. Another representative emphasized that the General Assembly's powers came from the Charter and not from a particular resolution voted by the Assembly itself. Still, he noted that the Assembly's competences should not be underestimated; they were quite extensive, including those concerning the maintenance of international peace and security. In that connexion, he referred to Article 14 of the Charter. The Assembly was also a forum where all States met on equal terms, including the new countries, and where the weight of world public opinion made itself felt. However that may be, it was not for the Assembly to make decisions concerning its own powers.

62. In that same connexion, a representative emphasized his delegation's view that the Security Council alone was empowered to make decisions concerning recourse to United Nations armed forces. He said that an attempt was being made to prove that the General Assembly had secondary competence in that area. But such a reasoning was not substantiated by the Charter, and was completely artificial. Some delegations had also said that great changes had taken place in the world and that perhaps the time had come to grant the General Assembly new powers. The world certainly had experienced great changes, but those changes went in the direction of the goals and principles of the Charter. The existence in the world of States with different socio-economic systems - socialist and capitalist - was a fact of life; what had changed was the power relationship, in favour of socialism's forces of peace. If those realities were taken into account, it could not be claimed that the time had come to create an international parliament. In a case of conflict

between countries with different socio-economic systems, there were strong risks of outbreak of a world war with catastrophic consequences. Proposals to increase the powers of the General Assembly were therefore not acceptable.

63. Because proposal 50 involved an amendment of the Charter, certain representatives said it was unacceptable and should be deleted from the compilation. It was considered entirely alien to the Charter's basic structure and ran the risk of undermining the very foundations of the Organization. However, according to another view, at the current stage of the Committee's work it was impossible to decide to eliminate a particular proposal. The list to be submitted to the General Assembly must contain all proposals made by States, except if, in the light of discussion, some States were no longer pressing for the proposals which they had submitted.

64. Finally, several representatives supported the suggestion that the sponsors of proposals 50 and 47 should meet in order to examine the two proposals with a view to finding a common wording which would take account of the discussion.

Proposal 51

65. Proposal 51 read as follows:

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

66. While certain representatives found proposal 51 very interesting, further clarifications were requested. The aim of the proposal appeared to be to give States an extra guarantee that their will and their interests would be respected within the context of implementing the collective security system. The proposal was considered important enough to merit further discussion and clarifications; it should be rejected only if it appeared that current practice was satisfactory. In that connexion, one representative wondered whether it was very useful to continue discussion as long as current practice had not been studied more thoroughly. Perhaps the Secretariat could be requested to supply useful information which would make it possible to understand the question better. Referring to current practice, another representative noted that it had evolved greatly. At the outset, some discrimination had been practised against using military contingents from socialist countries; that had not been the case since the 1970s. Similarly, certain Member States had sometimes been advised not to send troops, but the situation had changed. For some time, the opinion of the States concerned had also been taken into account, a particularly delicate question from a political point of view.

67. Some representatives cast doubts on the necessity of following the suggestion reflected in proposal 51. According to this view, what the proposal hoped to achieve was already what was being done in practice; thus, its sponsors would have to clarify their intention. The proposal, it was said, appeared to be aimed at including a general obligation in the Charter, an obligation to agree in advance and in principle on the national composition of United Nations forces, but in practice, States parties had always been asked to give their opinion on that point. To these representatives, therefore, it was questionable whether there was a need to amend the Charter. In that connexion, it was stressed by some representatives that it was erroneous to believe the Charter should be amended as suggested by the proposal because the Charter was sound in several respects. The discretionary powers of the Security Council should be taken into account. Only

the Security Council was empowered to make a decision on the composition of United Nations forces; agreement by the States parties would certainly help increase the effectiveness of those forces, but it was not necessary to amend the Charter. One representative noted that if it were felt really necessary, such a provision, as called for by proposal 51, could simply be included in the group of rules which it would probably be necessary to draw up for future governance of the agreements concluded between the Security Council and the Member States under Article 43.

68. As to the advisability of the proposal, the question was raised by certain representatives whether it was really necessary to compel States concerned to give their explicit agreement as to the composition of United Nations forces, for that ran the risk of putting them in a delicate situation later on. Moreover, it was considered absolutely absurd for the Security Council, in case of action under Article 42, to have to ask for advance agreement from the States against whom measures were to be taken. It was not necessary to withdraw the proposal, it was said, but it should be considered in the light of comments made in the Working Group, for it ran the risk of seriously hindering and complicating United Nations efforts in the area of maintenance of international peace and security.

69. The drafting of the proposal was referred to by a number of representatives. One representative who found the proposal unclear said he would like to know exactly what was meant by "States concerned" and by "conflict", since those terms lent themselves to several interpretations. Another representative said that perhaps the text of the proposal could be modified, and that it could be stipulated that States should be "consulted in advance" on the composition of armed forces, which was also in keeping with practice. That would give the States concerned the right to be heard, a right which they would lose if they had to give advance agreement. The proposal, therefore, should be extremely carefully worded. A third representative agreed that the wording of the proposal was confusing. It was not clear what type of forces were involved - intervention forces (Art. 42), peace-keeping forces (Art. 43), or other types.

70. The suggestion was made by one representative that perhaps a solution would be to group proposals 47, 50 and 51 together, for they in fact represented different aspects of the same question.

Proposal 52

71. The text of proposal 52 read as follows:

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

72. One representative said that proposal 52 was linked to proposals 49 and 46 and contained some interesting elements aimed at taking full advantage of unused possibilities offered by the Charter. The idea was to make the best use of the work of the Military Staff Committee, whose activities had been positive up to 1948 but had slackened since. He recalled that not only the members of the Security Council but other Members of the United Nations, as specified by Article 47, paragraph 2, of the Charter, could participate in the work of that Committee. With a bit of goodwill, that body could be revived in the interests of all peoples and of the United Nations itself. Furthermore, he called attention to Article 47, paragraph 4, which referred to a particularly interesting possibility namely the creation of regional sub-committees especially if the trend towards creating regional armed forces was considered. The establishment of regional sub-committees

of the Military Staff Committee would make it possible to create a direct link between the Security Council and the armed forces placed at its disposal, which would avoid illegal occupations of territories without basis in the Charter. In short, if the basic idea of the proposal's sponsors was to bring a permanent body of the Security Council back to life, that idea was a good one.

73. It was recalled by another representative that the Military Staff Committee met regularly to establish the fact that there were no items on its agenda. His delegation could understand why all the members of the Security Council would like to participate in the meetings of the Military Staff Committee and it would have no objection to increasing the membership of the Committee if necessary; nevertheless, the first thing to do was to assign the Committee effective tasks to accomplish.

74. On the other hand, the belief was expressed by one representative that it was not necessary to increase the membership of the Military Staff Committee as it currently existed. The number of Committee members could be increased if certain circumstances required it, but it should certainly not be done for cosmetic reasons. It was also observed that the discussion on proposal 52 had not facilitated the task of the Working Group.

Proposal 53

75. The text of proposal 53 read as follows:

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

76. Certain representatives believed proposal 53 to be one of the most important proposals in the informal compilation. One could not, it was said, speak of strengthening the credibility of the Organization if it was impossible to make sure that decisions of the Security Council were carried out. Proposal 53 basically called on States to make every effort to implement Security Council decisions. The proposal, therefore, had great possibilities, since the Council had extensive powers at its disposal. In that connexion, one representative referred to Article 26 of the Charter, which conferred on the Security Council powers that it had fully exercised up to 1956, after which the situation had developed along different lines. His delegation had always, he said, done all it could to strengthen the role and importance of the Security Council in the maintenance of international peace and security, to purify the international climate and to work towards measures which would help prevent a world war. Proposal 53 was considered extremely important and it was felt that it should be included in the final list.

77. A number of representatives noted a link between proposals 53 and 46 and some said their position with regard to proposal 53 was similar to that taken concerning proposal 46. According to one view, proposal 53 should be considered within the context of proposal 46. The problem of applying the provisions of the Charter must be approached by placing particular emphasis on specific aspects of Chapter VII of the Charter, and proposal 53 came to the heart of the matter. The Security Council was the main body responsible for peace-keeping operations; its role should be strengthened in that area, within the framework of the Charter, by exploring all the possibilities offered by the Charter, in particular from the point of view of the collective security system. While noting that proposals 53 and 46 could be considered together, another representative suggested that perhaps a new element could be added to those proposals, by specifying that the Security Council should

also make use of all ways and means conferred on it by the Charter in order to put an end promptly to acts committed illegally in violation of the Charter and which were likely to affect the maintenance of international peace and security. The effect of that proposal would be to strengthen the role of the United Nations in general and the Security Council in particular.

78. Yet according to another view set forth, proposal 53 merely seemed to state the obvious. In addition, the proposal was incorrectly limited to Chapter VII of the Charter, for the Security Council could act in areas other than the maintenance of peace and security; according to Article 94, paragraph 2 of the Charter, for example, it could intervene in case of non-compliance with a decision rendered by the International Court of Justice. Furthermore, proposal 53 seemed to aim only at the decisions of the Security Council, whereas the Council could also adopt recommendations.

Proposal 54

79. The text of proposal 54 read as follows:

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

80. Several representatives supported proposal 54 and found it important and of practical significance. It was considered necessary and useful to remind Member States of their duty to honour their obligations under the collective security system. It was said that the proposal responded to urgent and current needs, since the international situation was becoming more and more critical. The view was expressed that Article 51 and all the aspects of the collective security system should certainly be reflected as specifically as possible in the work of the Special Committee. One representative remarked that collective security matters were very delicate, as proven by the situation of the front-line States in Africa, who were constantly subjected to attacks launched by the apartheid régime, which was continuing to commit its disgraceful actions with impunity. According to the Charter, not only the States parties to a conflict but the other States, too, must bring the situation to the attention of the Security Council. If those collective efforts were encouraged, the aggressive States would proceed less easily to action and measures against apartheid, in particular, would be facilitated. According to another representative, the collective security system should not be considered only from the angle of Chapter VII of the Charter; account must be taken of articles appearing in other chapters, in particular Article 35, which Member States should implement. The establishment of a consultative mechanism, which had been proposed, would facilitate the intervention of the Security Council before conflicts erupted. Furthermore, his delegation supported the proposal which had been made with a view to establish procedures for periodic review by the Security Council of the international situation.

81. Stress was placed by several representatives on the great importance of Article 51, which maintained for States their inherent right of self-defence. That Article also, it was emphasized, imposed on States the obligation to report to the Security Council measures taken in the exercise of that right. It was particularly useful to remind all the Member States of the Organization of that obligation

which, unfortunately, was more often ignored than respected. States frequently asserted that they were acting in exercise of the right of self-defence, individual or collective, sometimes for long periods, without informing the Security Council of the measures they had taken. That was an unfortunate situation, first of all because it raised doubts as to the authenticity of the declaration of the right of self-defence and, on the other hand, because it undermined the authority of the Security Council as the body responsible for the maintenance of peace and security, whereas everyone agreed that the authority of the United Nations in general and the Security Council in particular had to be strengthened. Another representative suggested that perhaps it would be useful, at a subsequent stage, to consider the possibility of establishing a link between the obligations under Article 51, including the procedure by which a State, assuming it had enough time, reported a matter to the Security Council before the eruption of a conflict, and the exercise of the right of self-defence under that Article. One would naturally think that if Article 51 maintained the right of self-defence, it also maintained the legal principles connected with it. That question could be more thoroughly examined, he suggested. On the other hand, another representative said that with regard to the obligation of Member States immediately to report to the Security Council all measures taken under Article 51, that reminder was justified but not essential; everything should not be brought down to a question of time. The most important point in his view was that Article 51 had been implemented up to the present and was continuing to be implemented. He said that proposal 54 deserved sustained attention, but that it should not be limited to one of the elements which composed it.

82. One representative believed that proposal 54 was certainly interesting, especially the beginning of it, which reflected a very broad approach to questions having to do with the collective security system. Calling the attention of all the States to all aspects of that system would help strengthen the system and, by that very fact, help ensure the security of peoples. His delegation believed that guarantees of peace and security should be strengthened, in particular by taking all necessary measures in the area of disarmament. The material guarantees should be supplemented and elaborated together with legal and political guarantees. Drawing up international guarantees within the context of the General Assembly and its subsidiary bodies, negotiating international agreements on a large scale, on the non-use of force, for example, here a pressing task that opened up encouraging prospects, for achieving progress in that area would make it possible to ensure international peace. He believed it was timely to remind States of the need to report matters to the Security Council but he deplored the fact that, in a number of cases, States called the Council's attention to artificial situations and problems or to questions which, under Article 2, paragraph 7, did not fall within the Charter and were within the domestic jurisdiction of States. That was an unjustified attitude which stirred up unnecessary frictions and differences between States. It was absolutely necessary to take that requirement of the United Nations Charter into consideration.

83. Certain delegations made suggestions concerning the drafting of proposal 54. One representative believed there was some imbalance among the various elements of the proposal. The operative part of that proposal made a distinction between a function, the need to honour all aspects of the collective security system and the obligation under Article 51. He suggested that the beginning of the text should be strengthened. It was also said that a distinction should be made between the obligation under Article 51 and the possibility provided by Article 35. In addition, the word "matters" in the proposal was not sufficient; it was more fitting, for example, to speak of cases which may endanger international peace and

security. One representative felt that the indirect reference to Article 35, paragraph 1, of the Charter created certain problems because the Article stated that Members of the Organization had the possibility of bringing any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council, whereas proposal 54 underlined the need to bring such matters before the Security Council. It therefore seemed to his delegation that that part of the proposal should be changed to bring it into line with Article 35, paragraph 1, of the Charter. Another delegation said that while it had no objections, in principle, to proposal 54, it felt that further clarifications were needed in respect of the collective security system.

84. Finally, while one representative believed that proposal 54 was linked to proposal 46 and spelled out its intentions, another representative did not believe the two proposals went in the same direction. The latter representative stressed that proposal 46 had brought up difficulties because of its very general nature, while proposal 54 was much more specific and concerned a particular obligation. There were considerable differences between the two proposals and, though his delegation supported proposal 54, that should not imply, he said, that it supported proposal 46.

Proposal 55

85. The text of proposal 55 read as follows:

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

86. Those delegations who referred to proposal 55 generally supported it and considered it to be useful and important. As regional organizations played a vital role in the contemporary world, the idea of encouraging the role of such organizations, which were well aware of local problems, in the maintenance of international peace and security was to be supported. It was mentioned that such regional organizations as the Organization of African Unity had a very important role to play in that connexion. Further supported was the idea of developing and strengthening co-operation between regional organizations and the United Nations and Security Council. It was said that proposal 55 was a reminder of the fact that the United Nations did not or should not try to assume the role of the sole organization working for the cause of peace. There should not be any competition between the regional organizations and the United Nations; they should, in fact, complement each other.

87. It was stressed by one representative that it was no doubt true that while the primary obligation to settle disputes related to the States concerned, those States could often derive immense advantage from the assistance provided by the regional organization. It was many times said in the Security Council and General Assembly that local disputes involving States of a particular region should in the first instance be a matter for themselves and their neighbours. His delegation agreed, subject to the proviso appearing in the first sentence of proposal 55, namely, that there should not be any detriment to the overriding authority of the United Nations. The purpose of the final sentence was to ensure that there should be no conflict with and no jeopardy to the system set up under the United Nations. In

that connexion, it was said that the activities of regional organizations under the Charter of the United Nations were subject to a number of conditions and should be based on a number of principles enshrined in the Charter. Certain of the regional initiatives undertaken in the sphere of international peace and security and in that of enforcement action had not been compatible with the principles and purposes of the Charter and had not been undertaken with the authority of the Security Council. The problem was particularly important in view of the attempts to create regional armed forces and to use them for purposes incompatible with the Charter. That aspect must be emphasized in the Committee's subsequent discussions.

88. Certain delegations supported proposal 55 in principle but felt its wording could be improved. One representative believed that the words "without detriment to the overriding authority of the United Nations" were redundant and could be deleted. He was not opposed to the concept referred to in that phrase, but believed it was covered by the reference to Chapter VIII; if the Committee preferred to maintain that clause his delegation would not press the suggestion. While another representative considered that suggestion useful and as warranting further consideration when the final wording of the proposal to be submitted to the General Assembly was discussed, other representatives believed the words in question should be retained; the proposal in its present form appeared to be perfectly clear, it was said.

89. Certain representatives drew attention to the reference to Chapter VIII in proposal 55. The hope was expressed by one representative that further discussion of the proposal would clarify the numerous questions arising in connexion with the three Articles of Chapter VIII. Another representative, while supporting proposal 55 in principle, felt the wording of the proposal should be improved and the reference to Chapter VIII clarified. In his view, Article 53 was outdated and his delegation could not support its application in the present circumstances.

Proposal 56

90. Proposal 56 read as follows:

"56. The activities of the Special Committee on Peace-keeping Operations should be enhanced and expedited (see A/AC.182/L.15)."

91. Support for proposal 56 was voiced by some representatives. It was said that peace-keeping was an important area for exploration with a view to furthering the goals of the Charter. The Committee of 33 should deal with such matters and the Special Committee should appeal to it to make every effort to achieve useful results in its work. Stress was placed on the fact that the activities of the Committee of 33, which dealt with sensitive issues that were important for the entire United Nations, could be made more operational. It must have the right conditions for its work, and efforts should therefore be made to improve the international situation. The Committee of 33 should, it was urged, remain the principle body for dealing with peace-keeping operations and the Special Committee should co-ordinate with it to strengthen such operations. Such co-ordination should also take place, it was suggested, in areas such as non-use of force.

92. In the view of one representative there was an important link between proposals 56 and 57; perhaps they could be combined. He said that it was a well known fact that peace-keeping operations were the ultimate mechanism for the restoration of peace. Under existing arrangements, such operations had not always

been as prompt as they might have been, but despite the many organizational and financial problems involved, the United Nations had not failed to discharge its duty. The goodwill of all nations was required and they must not allow ideological differences to prevent them from playing their part in such operations.

93. Some other representatives could not support proposal 56. According to some of these representatives, the Committee of 33 was perhaps not the best organ for achieving progress in peace-keeping operations and such progress might be better achieved by the Special Committee. There would be no duplication with the work of the Committee of 33 since it had not recently been very active in the field. Proposal 56 could not, according to this view, be agreed to until the Committee had tried to make its own contribution to enhancing the peace-keeping capacity of the United Nations, which was a step towards the very active and effective collective security system required if meaningful disarmament, as opposed to arms limitation, was to be achieved. Similarly, it was remarked that instead of referring the matter to the Committee of 33, the Special Committee should try to solve these problems itself. One representative did not think it was appropriate for the Special Committee to submit proposal 56, which appeared somewhat derogatory towards another United Nations body on the same level; the Special Committee could make proposals that were just as useful as those made by the Committee of 33 with regard to peace-keeping.

94. Finally, one representative said he could not give his views on proposal 56 without taking into account the views of the permanent members of the Security Council and the members of the Committee of 33. The Special Committee's future decisions and discussions would undoubtedly depend on the measures recommended by the Committee of 33.

Proposal 57

95. The text of proposal 57 read as follows:

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

96. At the outset of the Working Group's discussion of proposal 57, a number of representatives posed questions to the authors of the proposal before speaking on its merits. It was asked by one representative how large the permanent peace-keeping force proposed was to be, where it would be stationed and who would cover the cost. In indicating that while the proposal was perhaps unrealistic as far as peace-keeping work was concerned, another representative said that the creation of a force to deal with major relief operations might not be so complex and he inquired whether the sponsors of proposal 57 envisaged such relief operations in conditions of conflict or in natural disaster situations. Finally, one representative asked which body of the United Nations would be responsible for taking the decision to establish a permanent peace-keeping force and posed the following questions: What was meant by a permanent peace-keeping force and was it to be assigned permanently to a specific area or was it to be a standing body? How was such a force to be manned? Would contingents be sent from different countries and would they be voluntary forces or would they come from the armed forces of Member States? Who would command such a force, and which United Nations body would have full authority over it? Where would such a force be located and for how long?

97. One of the delegations which had submitted a proposal upon which proposal 57 was based pointed out that many of the answers to the questions which had been raised were to be found in the reference document for the proposal, namely, document A/AC.182/L.5. 19/ The proposal had been made, he said, because history had shown that the United Nations was unable to deal effectively with threats to or breaches of the peace and acts of aggression, and thus failed to carry out its fundamental role under the Charter. The purpose of a permanent peace-keeping force was precisely to maintain peace in the common interest; it should only enter combat in exceptional circumstances. Such a force could also serve for major relief operations or to guarantee armistice arrangements. With regard to financing, funds could be derived from disarmament measures, an area in which unfortunately very little progress had been made. He stressed that the privileges provided for in Article 27, paragraph 3, of the Charter also entailed obligations for the Powers concerned. The cost of financing should therefore be borne primarily, although not exclusively, by the permanent members of the Security Council. The exact arrangements for the permanent peace-keeping force should be set out in an annex to the Charter, as in the case of the Statute of the International Court of Justice. Finally, the idea behind the proposal was in no way contrary to the Charter or the ideals of the United Nations, but on the contrary squarely within its purview.

98. Some representatives said that while proposal 57 may be well-intended, they could not support it because they considered it unrealistic, impractical or

19/ The relevant portion of that document read as follows:

"ESTABLISHMENT OF A 'PERMANENT' PEACE-KEEPING FORCE' - Chapter VII

"To ensure that the United Nations is able to intervene promptly in the event of breaches of the peace or acts of aggression, Colombia recommends the establishment of a 'Permanent Force' for peace-keeping which can restore peace, prevent it from being disrupted, or guarantee the terms of armistices. It could also be used for rescue operations in a case of major disaster.

"It is therefore considered advisable:

"(a) That a definition of aggression should be included in the Charter;

"(b) That, through disarmament, the great Powers should provide funds for the maintenance of the Permanent Force, since the privileges provided for in paragraph 3 of Article 27 also entail inescapable obligations for those Powers;

"(c) That the Permanent Force should be composed of numerically equal contingents, from the five permanent members of the Security Council, on the one hand, and, on the other hand, from five Member States to be chosen by the General Assembly for a three-year period;

"(d) That a statute should be annexed to the Charter, similar to the Statute of the International Court of Justice, specifying the technical and operational conditions."

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

unworkable. The Working Group was urged to focus its attention on the practical implementation of the existing provisions of the Charter. According to one view, the idea of a permanent peace-keeping force ignored the fact that the United Nations was an international organization in which sovereign States of different social and economic systems had joined together to preserve international peace. The Organization was not a supranational parliament, independent of its Member States, with the right to command permanent armed forces. Such a position was, it was stressed, incompatible with world realities and with the nature of the Organization. It was said that the difficulties encountered by the Security Council and the Secretary-General in maintaining peace-keeping operations were well-known. The creation of a permanent army involved an enormous task and was impractical; in any event, many possibilities were already open under Article 43. Moreover, it was stressed that the proposal for the creation of a permanent peace-keeping force was clearly not based on the existing provisions of the Charter which did not provide for such a force; extreme caution was called for when dealing with proposals seeking to derogate from the basic provisions of the Charter. Answers remained pending to the questions of who should decide to set up such a permanent force, at whose disposal it should be placed, and how it should be deployed, let alone the problems of financing and equipping such a force. In that connexion it was pointed out that the United Nations, with its "zero growth" budget, should not be saddled with additional financial commitments which it might not be able to handle: it already had difficulties in securing the financial commitments for existing peace-keeping operations.

99. One representative emphasized that proposals 57, 58 and 59 were interrelated as they all concerned the possibility of creating some type of peace-keeping force. His country attached great importance to peace-keeping operations, and had in the past placed a contingent at the disposal of the United Nations. In the interests of efficiency, arrangements should be flexible and geared to each specific case, and therefore his delegation could not see the interest of having a force ready in advance: each State should be free to choose at the last moment what type of unit it was willing or able to place at the disposal of the United Nations in each case. Finally, he said, it should be remembered that the subject had been entrusted to the Committee of 33.

100. With regard to major relief operations mentioned in the proposal, one representative believed it might be better to turn to regional organizations and request them to create within their own regions the capability for providing help in the case of major relief operations following a natural disaster, for example. Such a division of tasks between the United Nations and regional organizations in that specific field would prove much less costly than to have forces in reserve, not to mention a permanent United Nations force to which his delegation was opposed.

101. In the course of the discussion of proposal 57, one representative suggested that it should not be included in the Working Group's list of proposals. A sponsor of the proposal, however, observed that it had been agreed not to delete any proposals from the list, and therefore no delegation had the right to seek to exclude a proposal, even if it considered that proposal unrealistic. The Chairman pointed out that the Working Group was engaged in an exchange of views on the informal compilation of proposals, and had not reached the stage of deciding upon them. On the other hand, he said that if the Working Group reached general agreement on a proposal, it was entitled to make recommendations thereon to the Committee.

Proposal 58

102. Proposal 58 read as follows:

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

103. It was observed by one representative that proposal 58 provided a long-term possibility of strengthening peace-keeping operations and the role of the United Nations. Such operations were of ever-growing importance and certainly deserved a place in the Charter. However, it would require an amendment of the Charter which could not be made in the near future.

104. One representative reserved his position on proposal 58, indicating that while he did not deny that the proposal was well-founded, he did not consider it indispensable. It was superfluous to provide that peace-keeping operations, which he said were already fully covered by Chapter VII, should be given a place of "high honour" in the Charter. He felt it would be better to be realistic and endeavour to improve the existing machinery.

105. Other representatives did not support the proposal. It was said that the proposal, particularly the second part, was not entirely clear. The Security Council acted on behalf of all States Members of the United Nations, and not in order to represent the views of only some of them. The Council could not be asked to transform itself into a general headquarters or general office for rapid deployment forces. According to this view, the Council should proceed by stages: it should first decide whether action was a threat to peace was taking place, and should then urge the parties to end the conflict. Only if that approach proved ineffective should it then envisage taking steps of its own. It was also maintained that proposal 58 was already covered by proposal 46. Certain representatives felt that proposal 58 served no purpose. Chapter VII of the Charter was abundantly clear according to one delegation; while another delegation stressed that the application of proposal 58 might create new and serious difficulties for the organization of peace-keeping operations.

106. One representative emphasized that it was totally unnecessary and undesirable to amend the Charter, particularly when account was taken of the present tension in international relations. The Charter had guaranteed peace for more than 35 years. Where peace-keeping operations were concerned, existing provisions could certainly be improved, but such improvements were in the hands of the Security Council and the States concerned. The practices followed for a number of years - missions of inquiry, assignment of military observers, etc. - had apparently given rise to no criticism. Since fundamental and essential provisions with respect to peace-keeping already appeared in the Charter - for example in Articles 34 and 40 - it was superfluous to add technical details which would turn the Charter into a common textbook. He suggested that if the proposal was retained, the words "In particular", at the beginning of the second sentence, which raised doubts and misunderstandings by giving the impression that another body might take the action in question, should be deleted. The Charter was a flexible instrument which made it possible to adapt to a changed international situation. It was unfortunate that

efforts were being made in certain quarters to follow another path in violation of the provisions of the Charter and to establish forces at, for example, the regional and subregional levels. The tragic consequences of such action would shortly be clear but the entire responsibility belonged to the countries which drew up and executed such plans, and not to the United Nations.

Proposal 59

107. The text of proposal 59 read as follows:

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

108. Several representatives supported proposal 59. Some of these representatives noted that it followed along the same lines as Article 43 of the Charter. The view was held that the proposal was particularly useful in providing that if States were unable to supply national peace-keeping contingents to the United Nations they could nevertheless provide other types of assistance such as logistic support, which would enhance their capacity to contribute to international peace-keeping operations. If a country did have contingents that could be earmarked for a United Nations peace-keeping force, such contingents should, it was maintained, receive adequate training to enable them to act competently within the mandate of the mission for which they had been earmarked, and to avoid incidents. The link between proposals 59 and 60 was also noted.

109. A representative of one of the delegations sponsoring proposal 59 said that he unreservedly endorsed the proposal and welcomed the support it had received. The proposal differed considerably from other proposals in section V of the informal compilation, in that it required no amendment to the Charter nor did it relate to questions of principle on the way in which decisions had been taken on certain operations. It would make it possible, he said, to avoid a number of difficulties with respect, for example, to the cost of a United Nations reserve force. It also shared out the responsibility for peace-keeping as broadly as possible among all Member States, thus avoiding a situation in which some States had to assume excessively heavy burdens, and giving everyone a role to play in that field.

110. In that connexion, some representatives who supported proposal 59 stressed the role and special situation of third world countries in participating in the activities of the United Nations in the maintenance of international peace and security. One representative reiterated the emphasis he had placed during the consideration of proposal 49 on the special needs of the third world countries, which did not wish to play a mere spectator role in the United Nations system. He stressed that a number of those countries had already actively supported United Nations action, particularly in the military field; discharging their international undertakings before meeting their domestic needs, they had placed military contingents at the disposal of the United Nations. Third world countries had a sense of their international responsibilities and wished to defend the principles set forth in the Charter and to continue to play an effective part in United Nations activities, particularly where questions of international peace and security were concerned. Another representative said that, while he recognized the need for joint efforts by the international community to ensure the maintenance of

international peace and security, it should be emphasized that third world countries were facing special situations. Where the provision of military contingents to the United Nations was concerned, it must be remembered that the strength of those countries was small in relation to their needs and that they had to face many problems, particularly development problems, where other resources were concerned. It was not unfitting to indicate that those countries could and should endeavour to contribute in some way to the maintenance of international peace and security. With a few exceptions in respect of localized conflicts, however, threats to security and to the maintenance of peace arose he said, from conflicts pursued by the great Powers through small intermediary countries. Much was demanded of third world countries with respect to situations for which they were not responsible.

111. Certain other representatives, however, were of the view that it was not necessary to include proposal 59 in the list. They observed that at first sight proposal 59 related only to "practical" measures, but that that was not really the case. It was considered necessary, first, to settle questions of principle, such as the question of determining who had the right to begin peace-keeping operations, and the question of defining the conditions of employment of armed forces. It was pointed out that it had not been possible to solve those questions in the Committee of 33 which had studied them for a number of years. Certain countries had been trying for some time to exclude such questions from discussion and to focus on "practical" questions. Such attempts were designed, it was maintained, to legalize illegal past practices, whereas what was essential was to return to the provisions of the Charter, and particularly to those of Article 43, which described the scope of the agreements that could be negotiated. According to this view, where peace-keeping operations were concerned, what was lacking was not military contingents or logistic support but a clarification of the Security Council's role in that field. It was said that the problem was being considered in detail in the Committee of 33, and was of no special interest.

112. While one representative said proposal 59 should be considered in the Committee of 33, another representative believed that the fact that that Committee was dealing with such questions was no reason why the Special Committee should not have the proposal before it.

Proposals 60 to 63

113. Proposals 60 to 63 read as follows:

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

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

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

"63. States should explore with other Members the possibility, once the current peace-keeping arrears are eliminated by payments of amounts owed combined with voluntary and/or assessed contribution, of establishing on a

reimbursable basis a special peace-keeping fund to be available to cover the initial costs of peace-keeping operations authorized by the Security Council (see A/AC.182/WG/33)."

114. In the course of the discussion, representatives sometimes referred to proposals 60 to 63 as a whole, while on other occasions referred to separate proposals or groupings thereof.

115. As far as proposals 60 to 63 as a whole were concerned, some representatives indicated their support for those proposals or believed they deserved serious consideration. It was said that proposals 60 to 63 were self-evident and aimed simply at making peace-keeping operations as effective as possible. The hope was expressed that delegations for which those proposals might raise philosophical difficulties would examine them objectively and realize that they would impose no additional obligations on them, but were designed only to encourage them to participate in the operations. The view was held that the proposals in question were of a clearly constructive nature and appeared so obvious that one could not refuse to support them. Proposals 60 to 63 were welcomed by a representative who stressed that the maintenance of an army required the allocation of a substantial share of a nation's gross national product to the military budget. The adage "if you want peace, prepare for war" was still valid; peace was not only illusory but also costly. Peace-keeping operations were therefore possible only if adequate financial support was received. He stressed his country had done its duty in the past and would go on doing it in the interest of peace.

116. Some representatives noted that the questions covered by proposals 60 to 63 were also being studied by the Committee of 33. One representative therefore expressed certain reservations with respect to the proposals. Certain representatives noted that the questions raised by the proposals were among the most controversial problems considered by the Committee of 33 and expressed doubts about the usefulness of continuing the controversies provoked by such questions in the Special Committee.

117. Concerning specifically proposal 60, one representative emphasized that while divergent views were represented in the Working Group concerning the manner of deciding upon peace-keeping operations, all States nevertheless recognized that the United Nations could and should, in certain cases, carry out such operations. It was therefore essential to ensure the effectiveness of those operations - hence the value of proposals 59 and 60, which dealt with the practical arrangements to be made for increasing the effectiveness of operations duly authorized by the Organization. It would be cynical, he said, to endorse the idea that the Organization could authorize peace-keeping operations without seeking to make any arrangements to ensure their effectiveness. Furthermore, rejection of proposal 60 on the ground of opposition to financial arrangements was not apt because that proposal related to the training and technical equipment of troops.

118. In that connexion it was said by a representative that, for a small country, it was extremely important to give special language and other training to contingents which might be called upon to participate in peace-keeping operations. For that purpose, some 60 officers from the Nordic countries had been brought together in a regional centre to get to know each other and to follow a number of special courses. He had had an opportunity to teach the legal aspects of peace-keeping operations in the centre. Other regions might follow that example for the training of officers, while soldiers might receive special training at the national level - a process which had already given good results. Where technical

equipment was concerned, it appeared important that the great Powers which did not wish to participate directly in an operation should provide an adequate quantity of equipment to countries sending troops into the field.

119. One representative remarked that care must be exercised in respect to proposal 60, since it failed to define clearly the "technical equipment" envisaged.

120. It was stressed by another representative that his delegation was unable to support proposal 60 because nothing could be said about personnel or technical equipment used in peace-keeping operations until questions of principle were settled. He asked who were the personnel in question, and whether the technical equipment referred to was intended for observers as well as for peace-keeping units. His country did not recognize certain illegal operations of the United Nations, for instance in the Congo in 1960-1964. It was difficult to refer to the provision of the services envisaged in a proposal designed to legalize an illegal practice. Furthermore, as observed previously, the question was due for consideration by the Committee of 33.

121. A number of representatives referred to the question of the financing of peace-keeping operations, which was dealt with in proposals 61 to 63. One representative said that the system of collective security was based on the principle of collective responsibility, and that when any association took any decision, all its members were required to apply it. Financial questions should be considered more pragmatically. In his view, however, there was no purpose in dwelling on the point at the present stage. He observed that any reference by third world countries to amendment of the Charter gave rise to an outcry, even though certain other States did not hesitate at times to depart from its provisions. Similarly, another representative stated that while proposals 61 to 63, which were closely related to proposal 59, raised no difficulty for his delegation, it should not be forgotten that certain international conflicts were fomented by great Powers acting behind the scenes. Peace-keeping operations should be carried out in accordance with the principles of the Charter, and should lead effectively to the maintenance of peace.

122. In expressing his agreement that the Charter was a comprehensive instrument establishing inescapable obligations which must be fully respected, one representative emphasized that although the Security Council was primarily responsible for the maintenance of international peace and security it did not have the exclusive responsibility. The General Assembly, in which all States were represented, had a "latent" responsibility, and when the Security Council failed to fulfil its functions, the General Assembly could play a role in that respect in accordance with the Charter. There was, however, an exception to the principle of legal equality of States - a principle that was the corner-stone of the Organization. That exception was the rule of unanimity in the Security Council. In his delegation's view, the interpretation given by one Member State when subscribing to the Charter was the only legally acceptable interpretation, in that it introduced the principle of the legal equality of States and of their collective responsibility. While the Charter accorded the primary peace-keeping role to the Security Council, it also imposed obligations on that body's members, particularly as concerned the responsibility for financing peace-keeping operations.

123. It was recalled by a delegation that some States which considered that certain peace-keeping operations had not been authorized in the regulations, had refused to contribute to the financing of such operations until after the International Court of Justice had delivered its opinion concerning certain expenses of the

Organization. Other States had made a voluntary contribution and had stated that they would honour their financial obligations. Others had adopted a pragmatic attitude, while yet others having assented to certain operations, had refused to assume their financial obligations. No peace-keeping operation could be authorized without the consent of a permanent member of the Security Council. The countries concerned should therefore be logical and contribute to the financing of the operations which they themselves had approved. The matter had nothing to do with whether another body was capable of dealing with the problems concerned, or with Discussion of the legality of operations carried out in the 1950s. If an operation had been duly authorized under the rules and regulations, should not all States do everything possible specifically to ensure the effectiveness of those operations? Countries opposed to that view were violating their obligation to co-operate with other States in achieving the aims of the Charter. He hoped that those considerations would lead certain States to reconsider their objections to the proposals under consideration.

124. It was stated that, when the Security Council decided on a peace-keeping operation, it should establish the ways and means of financing it. There was nothing to prevent it from consulting the States most closely concerned which were not represented in the Council in order to obtain their views on the subject. Considerable importance was attached to a balance of competence and to co-operation between the General Assembly and the Security Council, and it was moreover considered that peace-keeping operations could only be of value to mankind on those terms. It was pointed out that under Article 11, paragraph 2, of the Charter, all "action" had to be referred to the Security Council. On the basis of the opinion of the International Court of Justice relating to certain expenditures of the Organization, some States restricted the exclusive power of the Security Council to the so-called coercive action provided for in Chapter VII, and considered a number of actions as constituting only police action not falling within the scope of Article 11, paragraph 2, but relevant to a Chapter VI big, which had yet to be written. His country, however, believed the term "action" encompassed any measure designed to establish a force for intervention in a State, and therefore involved the Security Council. The General Assembly had only residual powers, applicable to certain cases provided for under the Charter.

125. It was emphasized by another representative that the Security Council should not only decide on the launching of a peace-keeping operation but should also deal with all related questions, particularly financial questions. In the case of three illegal operations, his country had announced that it had no intention of bearing any responsibility for their financing. It had also expressed the view that, in certain cases, the aggressor should be responsible for paying the costs of a peace-keeping operation, and had stated that it could not support operations carried out at the regional or subregional levels. Regarding the question of the advisory opinion of the International Court of Justice referred to by certain representatives, he recalled that at the San Francisco Conference the proposal to confer on the International Court of Justice the exclusive right of interpreting the Charter had been rejected, that agreement had been reached on the idea that the Organization's main organs should themselves be able to interpret provisions of the Charter which concerned their sphere of competence and that in any case of dispute as to their competence, there would be a case for requesting the International Court of Justice to give an advisory opinion. In that case, States would be free to abide by such an advisory opinion or to disregard it.

126. Referring specifically to proposal 61, one representative observed that peace-keeping activities and their financing had become a subject of disputes. His Government had closely followed developments on the international scene with respect to that question and had tried to assess the role played by such activities for maintaining peace in the interest of all mankind. It had come to adopt a flexible solution with respect to future operations, which it would consider case by case. If such operations followed the principles of the Charter, encouraged the maintenance of peace and respected the national independence of States, his Government would treat them seriously.

127. It was observed by another representative that proposal 61 gave the impression that some States wished to shirk their obligations. Third world countries certainly had difficult choices to make, and it was regrettable that no account had been taken of that fact. Such a categorical demand for a contribution for peace-keeping operations whose cost was added to the Organization's regular budget could not be made to third world countries. The affluent countries, which spent billions of dollars to develop their armaments, should be in a position to assume the whole or part of the expenditure entailed by such operations. It was urged that there should be some solidarity among the international community.

128. It was, however, stressed by one representative that proposal 61 imposed no additional burden on anyone, since the General Assembly had accepted the advisory opinion of the International Court of Justice that the financing of peace-keeping operations should be provided for in the Organization's regular budget. The financial crisis connected with those operations had not been caused by the financial difficulties of third world countries but, he said, by the refusal of three permanent members of the Security Council to respect their obligations. One of those States had made a voluntary contribution to conclude the matter, and another had made a partial contribution; the representative of the third country was now engaging in long statements. He also urged members of the Special Committee to carefully read Article 17 of the Charter.

129. Another representative said he was unable to support proposal 61 for reasons given earlier in connexion with the general question of financing of peace-keeping operations. He did stress, however, that one could not impose on States the consequences of such illegal operations as those of the early 1950s. With respect to the advisory opinion of the International Court of Justice, some countries had tried to give that opinion a force it did not possess by seeking to have it confirmed by the General Assembly. It was evident from the Charter, however, that an advisory opinion could have no binding force.

130. One delegation said with respect to proposal 61 that its position as stated in the Fifth Committee of the General Assembly was clear and that there was no point in reverting to the matter.

131. With respect to proposal 62, one representative said that the Organization's deficit, which had now assumed considerable proportions, was a result of illegal activities on the part of the Secretary-General, and of certain no less illegal peace-keeping operations, and that the expenditures occasioned by such operations could not be met from assessed contributions. His delegation was therefore unable to support proposal 62. If delegations insisted on maintaining that proposal, the matter should be studied by the Committee of 33.

132. On the other hand, one representative believed that if the question was not within the Special Committee's competence, the session would have to be closed. It would be better if the delegation which opposed proposal 62 would refer to operations which it "considered illegal" rather than to "illegal" operations. With respect to the voluntary contributions referred to in the proposal, he recalled that two permanent members of the Security Council had already made such contributions without prejudice to their position of principle with respect to certain aspects of peace-keeping. In view of the volume of arrears owed by another permanent member for certain operations to which it had given its consent in the Security Council, that country might wish to make further contributions to finance operations whose legality it had never contested.

133. Referring to proposal 63, the view was expressed by one representative that, before establishing a special fund, steps should be taken to settle the basic question referred to in Article 43 of the Charter and to put an end to illegal peace-keeping operations. All the practical problems would then be solved. He believed certain delegations wished a decision to be taken first on those practical questions in order to continue illegal operations. He urged members of the Working Group to show goodwill in seeking a solution. Another delegation asked that representative which of the peace-keeping operations carried out since 1970 - to which that representative's Government had given its consent - were operations that could be considered illegal, and what had to be done to avoid a repetition of that situation.

Proposal 64

134. Proposal 64 read as follows:

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

135. Certain representatives believed proposal 64 to be entirely self-evident and harmless. The Secretary-General was merely requested to carry out his responsibilities, and there was nothing new in the proposal since he had already carried out studies on the administrative and logistics problems connected with peace-keeping operations. The Secretary-General was, in fact, best placed to carry out such studies since he had all the necessary means at his disposal, including all the files on peace-keeping operations; it was certainly not the role of the Security Council to carry out such studies. The Secretary-General appeared to be designated for the task, as Article 98 would seem to indicate. One view also maintained was that although it might be objected that the task came within the competence of the Committee of 33, there was no conflict of interest as between the Secretary-General and that Committee, since both were pursuing the same objectives.

136. But to one representative, proposal 64 could not be supported since that proposal was designed to confer tasks on the Secretary-General which were not within his competence. That would mean reverting to former illegal practices. In 1958, for example, the Secretary-General had carried out a study with a view to laying the basis for future peace-keeping operations. The principles set forth in that study had not been respected during the operation carried out in the Congo, and that showed how useless such a procedure was. His delegation had no intention of minimizing the role or importance of the Secretary-General, but under

proposal 64, the Secretary-General would not only prepare studies but also recommendations. It was not stipulated to whom such recommendations would be made, but it would no doubt be to other important organs of the Organization. The Secretary-General was not empowered to make recommendations to other organs of the United Nations or to sovereign States. In the field of peace-keeping operations, only States had the right to take decisions. On the other hand, the Secretary-General certainly had a role to play under Article 98 of the Charter. He was required to take part in meetings of all organs and to form conclusions on them. A distinction should be made, however, between his customary tasks and the tasks of the Security Council or of the Committee of 33. In short, the Secretary-General should not be placed above States, since that would be contrary to the Charter.

137. The representative of the delegation which had originally submitted proposal 33 indicated that the problem apparently lay in the use of the word "recommendations" in proposal 64. His delegation considered that the Security Council should allow the Secretary-General full flexibility to carry out his tasks. As he understood it, the delegation opposing the proposal considered that the Secretary-General should act under the direction of the Security Council, but, at the same time, recognized that the administrative and logistics aspects of peace-keeping operations were the responsibility of the Secretariat. In a spirit of conciliation, therefore, his delegation was prepared to accept an amendment to the effect that the Secretary-General should prepare a study so that Member States could make recommendations. The question of supervision might be considered by the Special Committee, the Committee of 33 or the Security Council. It was regrettable that the mere mention of the Secretary-General had aroused such reactions. Another representative also indicated a willingness to submit an amendment so that the proposal would no doubt be considered acceptable by everyone. He suggested such an amendment could either stipulate to whom the recommendations should be made or replace the term "recommendations".

138. Finally, it was said by one representative that the Working Group was engaging in semantics. Proposal 64 might be interpreted in a broad or a strict sense, but if amendments along the lines of those just proposed were accepted, it should be possible to reach rapid agreement.

B. Section VI of the informal compilation

Proposal 65

139. The text of proposal 65 read as follows:

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

140. Some delegations supported this proposal. It was pointed out that since there was general agreement that the Security Council should exercise to the full its responsibilities in relation to international peace and security and since all delegations were in favour of the Security Council carrying out its role, it could be presumed that all would support measures allowing the Council to be provided at an early stage with the material with which properly to exercise its functions. There were many circumstances, it was added, in which the Secretary-General could advantageously take some initiative while remaining impartial. Reference was made in this connexion to the declaration read out by the Legal Counsel on behalf of the Secretary-General on the opening day of the session (see A/AC.182/SR.59), in which mention had been made of the Secretary-General's intention to reactivate his political role within the constitutional parameters of his function.

141. The remark was further made that proposal 65 was in accordance with Article 99 of the Charter and was actually aimed at the full implementation of the Secretary-General's duties as set forth in that Article. In this connexion it was suggested that the wording of the proposal, which referred to drawing the attention of the Security Council to situations of tension, be brought in line with that of Article 99 which referred instead to bringing to the Council's attention any matter which might threaten the maintenance of international peace and security. Elaborating on the relationship between Article 99 and the content of proposal 65, some delegations held the view that Article 99 clearly conferred upon the Secretary-General the powers referred to in the proposal. In their opinion, there could be no doubt that the Charter, under Article 99, gave the Secretary-General the right to bring matters to the attention of the Security Council and it was to be assumed that he had the power to carry out his duties under the Article. Attention was drawn to the fact that, according to international law and jurisprudence, international organizations possessed the powers necessary for them to exercise their duties as set forth in the constituent agreements, even if such powers were not expressly mentioned. Under Article 99, it was observed, the Secretary-General had a subjective right and a discretionary power to judge situations and he therefore had the right and, implicitly, the power to gather information, in order subsequently to report to the Security Council. The view was further expressed that the Secretary-General's powers under Article 99 could only be effective if he could undertake the activities referred to in proposal 65 and that to reject the proposal was contrary to the principle of good faith interpretation.

142. In support of proposal 65 the point was also made that that proposal was in accordance with current practice. It was recalled in this connexion that the Secretary-General had used the prerogatives in question in the case of the military conflict between Iran and Iraq when he had sent his representative to the two countries. Reference was further made to a case where Tunisia had invited the Secretary-General to send a representative for an exchange of views: on that occasion, it was recalled, the Secretary-General had stated in his report to the Security Council that it was obvious that his duties under Article 99 could not be fulfilled unless he was in a position to carry out personal observation of the situation.

143. Some delegations, while supporting the general thrust of proposal 65, insisted on the need not to go beyond the powers entrusted to the Secretary-General in Article 99. It was stated in particular that the scope of the proposed fact-finding missions should not be confused with the kind of investigation which was the prerogative of the Security Council and was part of the process leading in the last resort to coercive measures. It was also suggested to qualify the first sentence of the proposal by providing therein for the necessary consent of the States concerned. The view was expressed in this connexion that even the Security Council, the principal organ for the maintenance of international peace and security, should, when a case was brought to its attention, contact the States in question and should avoid taking decisions which did not have the consent of the States directly concerned.

144. Other delegations said that they could not support proposal 65 for both legal and practical reasons. They held the view that the contents of the proposal were not in accordance with the Charter and that the Secretary-General did not have the right to undertake the action envisaged in proposal 65 on his own initiative; in their opinion, if the Security Council considered it appropriate to entrust to the Secretary-General functions such as the sending of representatives on fact-finding missions, as it had in the past, these functions were entirely within the competence of the Security Council. Objection was raised to attempts to manipulate Article 99 and doing violence to the Charter which, it was mentioned, did not contain any provision conferring upon the Secretary-General the type of powers inherent in proposal 65. Disagreement was expressed with any unrealistic proposal which sought to place the Secretary-General above sovereign States, with the result that the United Nations would cease to be an international co-ordinating body and become a kind of super-State. Mention was made in this connexion of the activities of the first two Secretaries-General who, it was stated, had undertaken illegal actions outside their sphere of competence and emphasis was placed on Article 97 of the Charter which described the Secretary-General as "the chief administrative officer of the Organization". The remark was made in particular that it was difficult to see how the Secretary-General could carry out the type of missions proposed, which would involve a vast increase in the staff of the United Nations Secretariat to deal with the many hotbeds of conflict existing in the world. It was furthermore pointed out that the verification of certain facts could not be carried out by simple observation and would call for the use of satellites and similar equipment. In the opinion of the delegations in question, a proposal which opened the way for such a tremendous range of activity, all without the sanction or decision of the Security Council, was unacceptable.

Proposal 66

145. The text of proposal 66 reads as follows:

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

146. Some delegations supported this proposal which they viewed as closely related to proposal 65 and equally acceptable. In this connexion, it was suggested to combine the common elements in both proposals. The remark was made that inasmuch as the main element in proposal 66, as well as proposal 65, referred to the Charter responsibility of the Secretary-General under Article 99, it was difficult to understand how those proposals could meet with objections. The view was expressed in this connexion that proposal 66 - like proposals 65 and 67 - constituted an attempt to spell out clearly what Article 99 expressed somewhat laconically and that no one could deny that the Secretary-General had an intrinsic right to be involved in the process of the maintenance of international peace and security. It was pointed out that the power conferred under Article 99 must be made into an effective power and that there was an inevitable connexion between drawing the Security Council's attention to certain situations and being in possession of sufficient facts and information to enable the Security Council to exercise its responsibility and form a judgement as to whether a particular situation was liable to endanger peace and security. Disagreement was expressed with interpretations of the Charter which, by over-emphasizing the administrative functions of the Secretary-General, seemed to imply that the Secretary-General should be confined to administrative functions. It was recalled in this connexion that all previous incumbents and the present Secretary-General had been actively involved in the process of the maintenance of international peace and security. The view was expressed that all had discharged their duties as they were intended to do and that the practice was a well-established and well-executed one. The remark was further made that no interference in the internal affairs of States was to be feared since the proposal duly safeguarded the rights of States. It was finally suggested to merge proposal 66 with proposal 65 and use the language of the corresponding provision of the draft Manila declaration on the peaceful settlement of international disputes (see para. 19 above).

147. Other delegations objected to proposal 66 for the reasons they had mentioned in relation to proposal 65. They felt that proposal 66 contradicted the Charter because it conferred on the Secretary-General greater powers than had been prescribed under Article 99. In their opinion, the provisions of the Charter clearly stated that fact-finding and inquiries could be conducted only by the Security Council and by no other official, and the Secretary-General did not have the authority to undertake such activities although the first two Secretaries-General had unlawfully assumed such responsibility. The remark was further made that to confer on the Secretary-General the powers contemplated in proposal 66 might well lead to situations of interference in the internal affairs of States or to threats to their security.

Proposal 67

148. The text of proposal 67 reads as follows:

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

149. Some delegations supported this proposal on the ground that the Secretary-General should be able to request a meeting of the Security Council on matters of international peace and security rather than merely bringing matters to its attention. In their opinion, proposal 67 further developed the ideas contained in proposals 65 and 66 and should be welcomed, as were the latter two proposals, since the prevailing view was that the strengthening of the role of the Secretary-General would strengthen the Organization.

150. Other delegations felt that proposal 67, although well-intentioned, was unnecessary or even harmful. The remark was made that the proposal added nothing in practice to Article 99 of the Charter and rule 3 of the provisional rules of procedure of the Security Council since under those provisions, the Secretary-General could bring matters to the attention of the Council and a meeting of the Security Council could thus be called. Proposal 67 was therefore viewed as liable to weaken the status quo. It was furthermore observed that if the Secretary-General took the initiative of convening a Council meeting it might embarrass his position and affect the objective consideration of his report by the Council. Acceptance of proposal 67 would, it was added, undermine the Secretary-General's independence and objectivity.

151. Still other delegations objected to proposal 67 as incompatible with Article 99 and rule 3 of the provisional rules of procedure of the Security Council, requiring an amendment to the Charter and conferring on the Secretary-General rights which were not provided for in the Charter. It was recalled that in San Francisco proposals seeking to empower the Secretary-General to bring certain matters other than threats to international peace and security, for example concerning violations of the principles of the Charter, to the attention of the Security Council had been rejected as had the idea that the Secretary-General should have the right to bring matters concerning international peace and security not only to the attention of the Security Council but also of the General Assembly. Such proposals, it was stated, would have given the Secretary-General more rights than had sovereign States and since proposal 67 was aimed at the same result, it contradicted the Charter in substance and was hence impracticable.

Proposal 68

152. The text of proposal 68 reads as follows:

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

153. Some delegations supported this proposal which was viewed as closely related to proposal 66 and designed to encourage the Secretary-General to play a more active role in the maintenance of international peace and security. While agreeing that under the Charter, the Security Council had the primary responsibility for the maintenance of international peace and security, they observed that the General Assembly had a residual role to play in this area and stressed that the Charter should be a constitutional instrument for the maintenance of international peace and security. Strengthening the role of the Secretary-General as provided in proposal 68 was therefore viewed as desirable inasmuch as it might help the General Assembly to play an active role in the area of the maintenance of international peace and security and was also welcomed as a way of adapting the United Nations to the realities of the world, which, it was remarked, were substantially different from what they were in 1945. It was pointed out that proposal 68 derived from several Articles of the Charter which gave, in particular, the Secretary-General the right to draw the attention of the General Assembly to any questions relating to the maintenance of international peace and security even if those were not threatened; the remark was made that the report of the Secretary-General on the work of the Organization provided for in subparagraph (a) of rule 13 of the General Assembly's rules of procedure was supposed to relate to all aspects of that work, including questions relating to the maintenance of international peace and security. In this connexion disagreement was expressed with the claim that the Security Council had the monopoly of measures relating to the maintenance of international peace and security and attention was drawn to paragraphs 2 and 3 of Article 11 of the Charter.

154. With specific reference to the first part of proposal 68, it was pointed out that the Charter provided, in Article 98, that the Secretary-General should make an annual report to the General Assembly on the work of the Organization, without setting any limitations on the subjects to be dealt with; the Secretary-General could refer in his report to a dangerous situation, without exceeding his powers. The remark was made that once that situation had been brought to the notice of the General Assembly, the latter was authorized to consider it, in conformity with paragraph 1 of Article 11, and to bring it to the attention of the Security Council, in accordance with paragraph 3 of that same Article and that it was then for the Council to decide what action should be taken in the matter. Thus, it was concluded, the process envisaged did not run counter to the Charter, nor did it threaten the balance of powers between the Security Council and the General Assembly; the proposal in question merely pinpointed what the Secretary-General might say in his annual report.

155. With respect to the second part of the proposal, the remark was made that under rule 12 of the Assembly's rules of procedure the Secretary-General was authorized to draw up the provisional agenda of an Assembly session and that under rule 13 of those same rules of procedure he had the right to include a question in the Assembly's provisional agenda before it had been considered and definitely adopted; attention was drawn to the fact that the phrase "all items which he deems necessary to put before that body" was borrowed from subparagraph (g) of rule 13. In this connexion, however, it was suggested to delete the word "all" before the word "items" in the penultimate line of the proposal so that the last part of the text would read "to include in the provisional agenda of the General Assembly items which he deemed necessary to put before that body". Other comments concerning the wording of the second part of proposal 68 included the remark that it would be necessary to refer to the Charter and to specify that, although the Secretary-General could include in the provisional agenda of a General Assembly session any question he deemed necessary, he was nevertheless not authorized to

include in it questions which were under consideration in the Security Council as well as the remark that it would be necessary to take account of paragraph 2 of Article 12, which stipulated that the Secretary-General shall notify the General Assembly or States Members of the United Nations immediately the Security Council ceased to deal with such matters.

156. In the opinion of the delegations in question proposal 68 did not run counter to the Charter and deserved to be kept on the future list as having aroused special interest and lending itself to possible agreement, subject to improvements in the wording which might be felt necessary to dispel the misgivings raised by some representatives on the subject of its compatibility with the Charter.

157. Other delegations held the opposite view. In their opinion proposal 68 was contrary to the letter and spirit of the Charter which, in numerous Articles, had established a balance between the functions and powers of the Security Council and those of the General Assembly. Reference was made, in particular, to paragraph 1 of Article 24, to paragraph 2 of Article 11 and to paragraph 2 of Article 12, whence it emerged that the Secretary-General had the right to report to the Assembly on matters relative to the maintenance of international peace and security which were being dealt with by the Security Council, but not on matters of that kind which had not been referred to the Council. In this connexion the question was asked how the Secretary-General could refer to the General Assembly questions relating to the maintenance of international peace and security, when paragraph 2 of Article 11 stated that such questions might only be brought before the Assembly by a Member of the United Nations, by the Security Council or by a State which was not a Member of United Nations. Another question which was asked was: how could the Secretary-General speak in his annual report drafted in application of Article 98 of the Charter of matters with which he was not authorized to deal in his annual report on questions relative to the maintenance of international peace and security as provided for in paragraph 2 of Article 12? The delegations in question accordingly expressed the fear that proposal 68 would entail a complete revision of the Charter or at least upset the balanced relationship established by the Charter between the Security Council and the General Assembly, undercutting the Security Council's primary role in the maintenance of international peace and security.

158. Proposal 68 was also objected to on the ground that in practice, it would make not the slightest contribution to strengthening the role of the Organization, as envisaged by the Committee. It was pointed out that in conformity with the Charter, any Member State of the United Nations might bring to the attention of the Security Council a situation which endangered international peace and security and that under the terms of Article 99, the Secretary-General could do likewise. In this connexion, the view was expressed that the Secretary-General and Member States were equally empowered to request that a meeting of the Security Council be convened and that in both cases withdrawal of the request did not amount to a waiver of the right to make such a request.

159. Furthermore, it was observed, any Member State which so wished could also draw the attention of the General Assembly to a specific question, pursuant to paragraph 2 of Article 11, and the Assembly could itself draw the Security Council's attention to situations which were likely to endanger international peace and security in accordance with Article 11, paragraph 3, it being understood, however, that the Assembly must not formulate recommendations on a matter connected with the maintenance of peace and security which had already been referred to the Council.

160. With respect to the idea of encouraging the Secretary-General to bring matters to the attention of the General Assembly through his introduction to his annual report, the view was expressed that, while there was no provision in either the Charter or the rules of procedure of the General Assembly, or in the practice of the Organization which limited the Secretary-General's authority to administrative matters only, it was difficult to conceive of an Secretary-General who, faced with a matter threatening international peace and security, would not bring it immediately to the attention of the Security Council, as he was authorized to do under Article 99, but would wait until he drafted his annual report to draw that situation to the attention of the General Assembly, which could not take a decision. It was felt equally inconceivable that, in a situation of that kind, a Member State, instead of drawing it to the attention of the Security Council or the General Assembly, should wait impassively until the Secretary-General drafted his annual report. The view was expressed that although, pursuant to paragraph (g) of rule 13 of the rules of procedure of the General Assembly, the Secretary-General could suggest the inclusion in the Assembly's agenda of an item he deemed necessary, he could not violate the Charter by including in it a matter which was likely to threaten international peace and security for, according to the Charter, responsibility for matters of that kind lay primarily with the Security Council.

161. Still other delegations objected to proposal 68 on the ground that it sought to expand the power of the Secretary-General beyond what was provided in the Charter. It was recalled that the proposal at San Francisco that the Secretary-General should be empowered to bring matters concerning threats to international peace and security to the attention of the General Assembly had been rejected, since it would have placed him on an equal footing with sovereign States or even higher. It was further pointed out that, under the terms of Article 35 of the Charter, the right to bring any matter relative to the maintenance of peace and security to the attention of the General Assembly belonged to Member States alone and that under Article 99 the Secretary-General could bring such a matter to the attention of the Security Council only, the latter being the only body capable of taking rapid and effective action. Thus, it was concluded, in giving the Secretary-General a right not conferred on him by the Charter, proposal 68 aimed at placing him on an equal footing with sovereign States, which was inconceivable for the time being. In this connexion, disagreement was therefore expressed with the claim that when the Secretary-General brought a matter to the attention of the Security Council he had, like any Member State taking a similar initiative, the right to request that a meeting of the Security Council be convened.

162. Another argument which was adduced against proposal 68 was that the report of the Secretary-General on the work of the Organization had to be prepared in the light of the provisions of the Charter defining the powers of the Secretary-General, powers which, in matters relating to the maintenance of international peace and security were governed and delineated by Article 99 of the Charter, and should not be expanded at the expense of the Security Council's functions as defined in Article 24, paragraph 1. The view was also expressed that rule 13 of the rules of procedure of the General Assembly did not entitle the Secretary-General to introduce new items through the introduction to his annual report. In this connexion the view was expressed that, if, in his introduction to his annual report or in the report itself, the Secretary-General referred to a matter which had not been previously considered by the Security Council he was placing himself in a delicate situation and attention was drawn to the consequences which had resulted from such attempts by the first two Secretaries-General.

163. Referring to the second part of the proposal, those same representatives urged great caution in relation to the inclusion of items in the Assembly's provisional agenda by the Secretary-General. The view was expressed that rule 13 of the rules of procedure of the General Assembly did not apply to matters concerning international peace and security, but to administrative items, since the Secretary-General was the chief administrative officer of the United Nations and reference was made to a case where the Secretary-General had introduced an item on the maintenance of international peace and security relating to the question of international terrorism and had found himself in a very unenviable position. It was also remarked that only Member States could request the inclusion of new items in the Assembly's agenda. Subparagraph (g) of rule 13, it was stated, referred exclusively to items which the Secretary-General might put before the Assembly and consequently did not refer to those relating to the maintenance of peace and security, since those were a matter for the Security Council, pursuant to Article 99 of the Charter. The remark was further made that it would be difficult to understand why Member States should encourage the Secretary-General to violate the Charter.

C. Section VII of the informal compilation

164. The Committee noted that, owing to lack of time the proposals contained in section VII had not been considered at the 1981 session of the Special Committee.

Proposals 69 and 70

165. The text of those proposals read as follows:

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

"70. Article 107 and the provisions referring to 'enemy States' in Article 53 should be dealt with, as a possible first step, through a General Assembly solemn declaration that the ex-enemy State clauses cannot apply per se to Member States of the Organization (see A/AC.182/L.9; A/AC.182/L.15; A/AC.182/WG/6)."

166. Some delegations recalled that at its 15th meeting, on 14 February 1977, 20/ the Special Committee had decided to organize its work on the basis of document A/AC.182/L.2, reproduced in the Special Committee's report to the General Assembly at its thirty-second session 21/ and that according to the outline of that document the question of the enemy States clauses did not come under the item "Maintenance of international peace and security" but under the item "Other matters". They further observed that there was little likelihood of proposals 69 and 70 meeting

20/ A/AC.182/SR.15, reproduced in Official Records of the General Assembly, Thirty-second Session, Supplement No. 33 (A/32/33), p. 213, paras. 11, 12 and 13.

21/ Official Records of the General Assembly, Thirty-second Session, Supplement No. 33 (A/32/33), annex II.A.

with the approval of all members of the Working Group so that insisting that the question be considered at the present stage would be untimely, pointless and an act of provocation and was liable to give rise to a stormy debate which could only hamper the satisfactory progress of the Working Group's activities. While recognizing that every delegation naturally had the right to make proposals, those delegations felt that a problem arose when a delegation pressed the Working Group to depart from a decision adopted by the Committee in order to force it to consider a most controversial question. Readiness was however expressed to consider any question dealt with in document A/AC.182/L.2 under the title "Other matters", once the Working Group had completed its consideration of the items in its work programme.

167. Other delegations held the view that although document A/AC.182/L.2 had been extremely useful for the start of the Special Committee's work the mandate of the Working Group did not derive therefrom. In their opinion, proposals 69 and 70 were definitely concerned with the maintenance of international peace and security and fell within the mandate of the Committee. Exception was taken at the characterization of the idea of considering proposals 69 and 70 as a provocation. The view was expressed in this connexion that a mere exchange of views could not be an act of provocation.

168. Some other delegations, without insisting that the question dealt with in proposals 69 and 70 be considered at the present stage, observed that at one time or another an opportunity should be provided of holding a general exchange of views on the matter. In this connexion, it was felt that the question would be considered in a more favourable climate if all delegations were ready to participate in such an exchange of views. The suggestion was made that the proposals in question be considered at the meetings reserved towards the end of the session for the study of questions relating to maintenance of international peace and security.

169. On the substance of the matter, the remark was made that since the Charter, by its nature, constituted a fundamental document for relations between States, which was aimed at safeguarding peace and promoting progress in the world, it was essential that it should be able to meet the requirements of the modern world, progressive trends and the vital aspirations of all peoples by reflecting just principles. It was also said that, as the establishment of the Special Committee showed, the time had come to ensure that the provisions of the Charter satisfied those needs. The view was further expressed that even though the Charter was a document of capital importance, constituting the corner-stone of the Organization, close to 40 years had elapsed since its elaboration and that the international situation had changed. As a result, it was stated, certain provisions no longer corresponded with present-day reality so that it had become necessary to change them.

170. The arguments invoked by delegations favouring the consideration of proposals 69 and 70 focused on what was described as the anachronistic character of Articles 53 and 107, on the inapplicability of the régime established therein, on the inadmissibility of providing in the Charter for two classes of States and on the negative implications of the provisions in question in relation to world peace.

171. With respect to the first point, the view was expressed that the Charter, adopted nearly 40 years ago, referred in Articles 53 and 107 to a concept which no longer corresponded with reality, and the remark was made that since the end of the Second World War peace treaties had been signed, relations between States had been

normalized and co-operation and friendship had spread. More specifically it was remarked that the so-called "enemy States" maintained friendly relations with all other States and that the provisions referring to enemy States did not apply to peace-loving States which had been omitted as such to the United Nations in conformity with Article 4 of the Charter. It was also observed that so-called enemy States could no longer be regarded as such from the moment they were given the possibility of participating in the work of the United Nations. Thus, it was concluded, maintaining Articles 53 and 107 in the Charter was an anachronism.

172. It was also remarked that the régime provided for in Articles 53 and 107 had become inapplicable. The view was expressed that those Articles merely implied that any measure taken by the victorious nations as a result of the Second World War should not be affected by the provisions of the Charter, whereas today the prohibition to use force, both as a general principle of international law and as a fundamental principle of the Charter, must apply to all States. Thus, it was concluded, Article 53 as well as Article 107, which was of a transitional nature, as indicated in the title of the relevant Chapter of the Charter were relics of the past which could be deleted as part of a general revision of the Charter, although the question of their immediate deletion should not be allowed to create discord among Members of the United Nations.

173. With reference to the inadmissibility of providing in the Charter for two classes of States, the remark was made that, while the Charter distinguished between founding Members and Members admitted at a later date, it should under no circumstances be assumed that States could be classified in different categories. It was also said that nearly 40 years after the end of the Second World War there should no longer be two categories of States and that the provisions of the Charter referring to enemy States were therefore outdated.

174. Regarding the negative implications of the provisions in question in relation to world peace, the view was expressed that maintaining Articles 53 and 107 in the Charter was a hindrance to détente and relations of absolute equality between States and that in the interests of building a just and lasting peace in the world, the reference in the Charter to enemy States should be deleted.

175. The view that Articles 53 and 107 should be deleted was shared by several other representatives and the hope was also expressed that the concept of "enemy States" would soon be removed from the Charter.

176. A more specific view on the content of proposals 69 and 70, was that proposal 69, although it was useful, constituted no more than an intermediary stage and that proposal 70 was acceptable. It was recalled that a number of other proposals dealing with the obsolete nature of Articles 53 and 107 were not included in the compilation and that the Working Group would have to take account of that when it drew up its list for submission to the General Assembly. The hope was expressed that members of the Working Group would at least manage to agree that Articles 53 and 107 were no longer up to date.

177. Other representatives refrained from commenting on the substance of proposals 69 and 70 for the reasons indicated in paragraph 166 above. Some of them indicated that their delegations' silence on the substance of proposal 69 should not be taken to signify approval, nor yet rejection. Astonishment was further expressed at the claim that the retention of clauses containing a reference to "enemy States" was harmful to détente, inasmuch as it was difficult to see how provisions which recognized the co-operation of permanent members of the Security Council could be incompatible with the idea of détente.

178. Still other representatives found proposals 69 and 70 unacceptable and strongly disagreed with the claim that Articles 53 and 107 of the Charter were obsolete. In this connexion, the view was expressed that any attempt to delete the words "enemy States" would mean not only revising the Charter, but also rewrite history. It was recalled that the Charter had been elaborated following one of the greatest tragedies in history, the Second World War, which had ended with the crushing of fascist Hitlerite forces and it was deemed inconceivable that anyone should wish to repudiate that war which had claimed millions of victims. The point was further made that deleting the concept of "enemy State" would cast doubt on the legal force of a number of agreements concluded after the war on the basis of the Charter and would result in the elimination from that document, which was the source of international law, of the extremely important provisions on the political and material responsibility of States which had been guilty of aggression and caused the war, which provisions in fact constituted a warning to potential aggressors. It was added that to claim that Articles 53 and 107 were anachronisms was to attack the very foundation of the Organization and to sap the bases for friendly relations among States on which development and the deepening of international détente must rest. The view was further expressed that Articles 53 and 107 reflected the fundamental objectives of the Charter and the will of the Member State to draw lessons from the past, and did not in any way encroach on the rights of ex-"enemy States" if international relations were based on respect for the aims and principles of the Charter. It was added that political considerations militated in favour of maintaining those Articles. Objection was also raised to the idea of a "solemn declaration" and the view was expressed that Articles 53 and 107 should be retained as they stood, for historical and political reasons. The representatives in question regretted that the Working Group should have begun a substantive debate on a delicate question which was not linked to the maintenance of international peace and security.

Proposal 71

179. The text of proposal 71 read as follows:

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

180. Some representatives supported this proposal which was described as very useful and raising an important problem linked to the question of human rights and that of good neighbourly relations between States. The view was expressed that it would be advisable to find a solution based on the Charter to a problem which was likely to endanger international peace and security. It was also said that although the thrust of the proposal was acceptable, it was not clear whether the phrase "national minorities" referred to minorities forming an integral part of a nation, or minorities wishing to establish a nation of their own.

181. Other delegations expressed doubts about proposal 71. It was noted in particular that the question of national minorities, i.e. of the relatively few minorities found in some countries, was primarily a matter for the internal law of the countries concerned. The remark was further made that on the international level the protection of minorities, which had been an important concern of the League of Nations, was viewed within the United Nations as an aspect of the broader question of human rights. In this connexion it was pointed out that the question dealt with in proposal 71 was satisfactorily regulated by a number of instruments

such as the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights, particularly article 27 thereof. It was also remarked that the question should be dealt with in the Commission on Human Rights which was precisely considering a Draft text in this field, or in its Sub-Commission on Prevention of Discrimination and Protection of Minorities.

182. Serious doubts were further expressed on the need to include in the Charter whatever new instrument could be worked out on the question. The remark was made that the Charter was self-sufficient in this respect since it was based on the general principle of the protection of human rights and that it would suffice for the General Assembly to study the matter and adopt a declaration with a recommendation to Member States to respect it.

Proposals 72 and 73

183. The delegation which sponsored proposals 72 and 73 indicated that those proposals had been submitted seven years previously, at a stage in the decolonization process which in many respects was now a thing of the past, and should therefore be revised in the light of the changed situation. The Working Group agreed to defer consideration of the proposals until the stage when it examined proposals on decolonization.

Proposal 74

184. The text of proposal 74 read as follows:

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

185. Some delegations supported this proposal, the aim of which was, according to its sponsor, to prevent injurious consequences for the purposes and principles of the Charter which might arise as a result of the activities of fascist or neo-fascist forces. The view was expressed that proposal 74 deserved the Committee's full attention because it was evident that the struggle against fascist and neo-fascist elements had not been successfully concluded by proclaiming the purposes of the Charter. The matter was felt to come within the Committee's jurisdiction inasmuch as the legal basis for steps to eradicate fascist and neo-fascist forces was the Charter. In this connexion, the view was expressed that the proposal reflected the purposes for which the United Nations stood and related to the very foundation of all the Organization's activities since the United Nations had been created as a result of the struggle against fascism and militarism. Fascism and neo-fascist activities, it was added, struck at the roots of the United Nations' existence as well as the purposes and principles of the Charter.

186. Disagreement was expressed with the claim that the activities of the organizations in question should be permitted in the name of freedom of thought and expression because, by the very nature of their ideology, fascist forces were destructive and a threat to international peace and security and negated freedom of thought and expression. The remark was further made that the draft resolutions tabled in the Third Committee of the General Assembly in 1980 and 1981 concerning measures to be taken against Nazi, fascist and neo-fascist activities and all other forms of totalitarian ideologies and practices, based on racial intolerance, hatred and terror had received broad approval, which demonstrated that the vast majority of Member States supported a more pronounced anti-fascist commitment by the United

Nations. Regret was expressed that efforts should be made to link proposal 74 to artificial issues dealt with in other United Nations bodies.

187. Other representatives said that proposal 74 was unacceptable to their delegations because it was, in their view, irrelevant to the Committee's work. In this connexion it was remarked that, as had rightly been pointed out during the debate, the matter was under discussion in the Third Committee and that it was essential to avoid duplication of work. The remark was further made that if the proposal was to be maintained on the list it should be redrafted to cover all forms of totalitarianism or other ideologies or practices based on intolerance, hatred, terror or systematic denial of human rights which constituted a threat to international peace and security. The view was expressed that the problem was dealt with more realistically in General Assembly resolution 2839 (XXVI) of 18 December 1971. Another view was the language in proposal 74 should be broadened to include totalitarian ideologies imposed by terror, which advocated genocide of indiscriminate terror, apartheid and terrorism, in accordance with the tenor of the discussions and decisions of the Committee on Human Rights and the General Assembly. The problem of terrorism was highlighted as one which called for further work by the United Nations in that or another context. Finally, it was noted that the proposal was unclear as to the action envisaged, whether a declaration or an international treaty or an amendment to the Charter.

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

188. The text of the draft recommendation read as follows:

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

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

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

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

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

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

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

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

"(f) admission of new Member States.

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

Comments on the draft recommendation as a whole

189. The delegations on behalf of which the draft recommendation was presented supported it as a useful and important contribution to the work of the Special Committee which contained positive elements and constructive suggestions deserving serious study. The view was also expressed that the draft recommendation represented a just and reasonable request and a valuable attempt to identify measures to enhance the effectiveness of the Security Council.

190. Several representatives noted with satisfaction that the proposal responded to a widely felt need of strengthening the role of the Organization in the maintenance of international peace and security, increasing the effectiveness and flexibility of the Security Council and ensuring that the Council was not paralysed at moments when urgent action was required. It was pointed out that the Security Council was unquestionably the primary organ in the United Nations system responsible for the maintenance of international peace and security and that the small third world countries which attached great importance to the rule of law and the legitimacy of United Nations actions believed that the Security Council must be allowed to function effectively in the current dangerous international situation fraught with threats to international peace and security. The view was further expressed that although there was no escaping the fact that the United Nations had been founded on the notion that some States were called upon to play a predominant role, the Security Council should act completely impartially and the question was asked whether the Security Council could be said to have given its best in the case of the African countries which, like most of the developing countries, most frequently experienced conflicts. The point was made that the United Nations took in nearly all the countries in the world and should not be regarded as the exclusive domain of certain Powers even though the great Powers had a key role to play and should assume their responsibility. This approach, it was noted, was reflected in the draft recommendation which, while recognizing the primary role of the Security Council, sought to enhance operational procedures in the interests of international peace and security and aimed at giving the Security Council, which was primarily responsible for the maintenance of international peace and security, the means of working effectively without, however, calling into question the principle of unanimity of the permanent members of the Council.

191. With regard to what was described as a matter of great concern to the vast majority of Member States of the United Nations, namely, the very delicate issue of the rule of unanimity, it was recalled that the right of veto reflected, from the historical standpoint, the balance of power following the Second World War, and, from the legal standpoint, the primary responsibility of the permanent members of the Security Council for the maintenance of international peace and security. Everyone was said to be aware that within the framework of the rapidly changing post-war international relations, the collective security system upon which the drafters of the Charter based the hopes of the international community had proved utopian, and preventive diplomacy had soon become the Organization's new approach towards peace. The remark was made that if, as provided in Article 24 of the Charter, the permanent members exercised their veto power with a sense of duty in strict accord with the purposes and principles of the Charter and with a sense of their responsibility towards all Member States, then international peace and security would be effectively guaranteed but that such was not the case, so that the Security Council was often unable to play its role. Experience so far had shown that the whole matter was a question of attitudes. Attitudes which were incompatible with the provisions of the Charter on questions of international peace and security were to be blamed for the sufferings of the last 35 years and not the Charter of the United Nations. Small countries, therefore, sought to defend their interests through the proper and strict implementation of the principles enshrined in the Charter. A change of attitudes was imperative and one way to make a positive contribution towards this end was to enhance the effectiveness of the Security Council so as to enable it to take early, prompt and effective action in the field of the maintenance of international peace and security, a field in which it had the primary responsibility. It was therefore felt logical that at the 1980 Manila session many developing countries should have put forward concrete proposals seeking to strengthen the United Nations, and particularly the Security Council, in the maintenance of international peace and security.

192. Emphasis was placed on the fact that the draft recommendation did not call for amendments to the Charter. It was observed that the aim of the draft was not to revise the Charter or to call into question the need to respect the decisions of the Council but to give the Council which was fundamentally responsible for the maintenance of peace the means of working effectively. It was said that if the countries which were doing everything in their power to stand in the way of any revision of the Charter made a slight effort to act in the interests of the Organization, the non-aligned countries would perhaps not find it necessary to change anything in the Charter and that since it could hardly be claimed that the Security Council took its decisions with due regard for the higher interests of the Organization, a day would come when it would no longer be possible to postpone the revision of the Charter. Nevertheless, the fact that the draft recommendation merely sought to strengthen the role of the Organization through an improvement of the working conditions of the Security Council without amending the Charter was viewed as one of its positive features. In this connexion, it was recalled that the initial purpose of the sponsors of the draft recommendation had been to draw up a number of proposals which would not give rise to objections on the ground that they would require the Charter to be amended and that their text, which had resulted from the efforts to emerge from the impasse reached by those in favour of a revision of the Charter and those opposed to it, had the merit of broaching an issue of great importance for the majority of the Members of the United Nations without implying any need to amend the Charter. The remark was made in this connexion that the draft recommendation did not seek to replace the Security Council but to increase its effectiveness and flexibility within the existing framework, an approach which was described as cautious, reasonable and moderate; the draft, which did not imply any modification of the Charter, could perhaps find a place in the provisional rules of procedure of the Security Council. Moreover, it was observed that Member States normally chose the most moderate method of work; and it was clear that any positive action relied on the goodwill of the permanent members; acknowledgement of that point was proof of the trust placed in them. Some permanent members, however, had perhaps misunderstood the non-aligned countries' proposal or had seemed to imply that no discussion on the basis of it was possible - an impression which, it was hoped, was mistaken.

193. With regard to the relationship between the draft recommendation and proposals contained in the informal compilation, it was said that the sponsors, rather than trying to put forward new ideas, had made an effort to see how a particular suggestion could contribute to enhancing the effectiveness of the Security Council and to find a middle way between extreme positions reflected in proposals which the Committee had been considering for five or six years, and that it was incumbent on the Working Group to find a means of reconciling possible contradictions.

194. In support of the draft recommendation, it was also said that it represented a step forward over the other proposals and the hope was expressed that the Committee would be able to present to the General Assembly not merely a list of proposals but also definite recommendations such as the draft recommendation under consideration. Such an approach was, it was stated, in keeping with the resolutions adopted by the General Assembly at its thirty-fifth and thirty-sixth sessions on the work of the Special Committee. It was recalled in this connexion that at its last session the General Assembly had reacted forcefully to the absence of concrete results from the Special Committee and that as the main negotiating body on those issues, the Committee must produce constructive exchanges of opinion leading to results in order to retain its credibility.

195. While generally supporting the draft recommendation, some delegations, however, stressed that it called for further study. The suggestion was made in particular that the draft be discussed in the context of proposals 26 to 32. The view was also expressed that careful study and patient consultation among all States was required to work out what was feasible and appropriate in relation to so important an issue as the limiting of the rule of unanimity and it was suggested that the draft recommendation be included in the list of proposals, in accordance with the General Assembly resolutions on the work of the Special Committee so as to form the basis for further work as a priority item. The draft recommendation, it was stated, should be analysed with complete objectivity, without prejudging the final result of such an analysis.

196. Satisfaction was expressed by the sponsoring delegations at the welcome given to the draft recommendation and, with reference to paragraph 2 (b) of General Assembly resolution 36/122, the opinion was expressed that agreement on the draft under consideration was not impossible and that it would be desirable to study the new ideas which had emerged in the course of the discussion so as to achieve the result desired which was to enhance the effectiveness of the Security Council.

197. Other delegations, while welcoming the efforts made by non-aligned countries towards a constructive approach to strengthening the role of the Security Council in the sphere of the maintenance of peace, expressed some reservations of a substantive or procedural nature in relation to the draft recommendation.

198. At the substantive level, the view was expressed that although it was true that in the past major world problems had not been brought to the Security Council in an appropriate manner and even when they had, had not always been dealt with in the Security Council as many might have wished, and although the draft recommendation was therefore useful and deserved consideration, possibly in the context of proposal 24, agreement seemed unlikely on some of its elements. In this connexion, it was noted that although there appeared to be a considerable body of opinion in favour of the draft recommendation, certain States, especially among those entitled to use the right of veto in the Security Council still needed to be convinced. The view was further expressed that if the desire was to enhance the effectiveness of the Security Council so as to ensure the prompt adoption of effective measures, a far wider range of issues and practices must be considered in order to give full force to that principle. It was also suggested that themes such as the development of preventive action by the United Nations and the strengthening of the role of the United Nations in collecting information and facts should be incorporated into the draft recommendation.

199. Reservations of a procedural nature included the remark that elements of the draft recommendation had appeared under different proposals included in the informal compilation, a fact which, it was stated, raised a procedural problem since it involved abstracting from the informal compilation certain items and attempting to place them into a priority situation as the basis of a recommendation from the Committee, and also meant, directly or indirectly, rejecting other items. The question was therefore asked how the Committee was to proceed on that particular matter, taking into account the fact that the draft, although based on some proposals of the compilation, contradicted other such proposals. In order to solve the problem, it was suggested that the draft be taken as the new text of a series of proposals of the compilation which the Working Group had just considered and to which the draft should be added, and that it be kept in mind as a possible

guidance for the preparation of the final document which the Working Group should produce once it had analysed the proposals on which agreement was possible, along the lines of the list prepared in 1979 on the peaceful settlement of disputes.

200. Still other delegations said that they did not favour the draft recommendation. The view was expressed that, although any proposal which, without involving a revision of the Charter, could strengthen the role of the United Nations and inject new life into the Organization should be actively supported, it was not desirable to call into question the Charter of the United Nations, including vital aspects such as the unanimity rule and the provisions relating to permanent members of the Security Council. The inclusion of the draft recommendation in the list of proposals was therefore objected to on the ground that the time was not ripe for the Committee to take up such a complex and difficult issue.

201. It was also said that the draft recommendation was quite unacceptable inasmuch as it represented a set of proposals selected from those which the Working Group had examined, and thus sought to prejudge all those proposals. The time had not come, it was added, to adopt that kind of draft recommendation, as the Working Group was currently engaged in drawing up a list of proposals for detailed discussion at a later stage. The view was also expressed that it was not yet the moment to include the draft in the list for submission to the General Assembly and that the text should be considered in detail at a subsequent stage of the Special Committee's work. The draft recommendation was also viewed as unacceptable in the light of General Assembly resolutions 35/164 and 36/122 which clearly indicated that only proposals on which there was a consensus could go forward. In the view of those delegations, therefore, the draft should be considered completely objectively on the same basis as the earlier proposals and the question of the format should be left aside for the moment.

Paragraph 1

202. Some representatives welcomed the generality of paragraph 1. It was said that this paragraph was included as a statement of principle which was aimed at highlighting the need for the Security Council to take prompt and effective action to remedy any situation in which peace was threatened. Paragraph 1, it was stated, was clear and direct and made it plain that the Security Council had not always performed its tasks as effectively as might have been wished and that an effort must be made to enhance its effectiveness. Preference was expressed for a general text inasmuch as an excess of precision might actually be adverse, and the point was made that one should beware of stretching too far the interpretation of the present formulation, which could be amended if it was felt to call for improvement.

203. Other representatives, although not objecting to the paragraph, felt that it merely enunciated general principles and did not deal with ways and means of achieving the desired result. In this connexion, it was stated that if the purpose was to keep to generalities paragraph 1 could be adopted and considered as a recapitulation of the Committee's recommendations on the matter of the maintenance of international peace and security, without any need to go into more detail on the question of the right of veto and the present structure of the Security Council which reflected the world situation with great accuracy, but that if the wish was to enhance the effectiveness of the system, it was essential that the practical measures to be taken to allow the Security Council to take prompt and effective action be spelled out, and that the numerous concrete proposals already considered be regrouped so as to give fullness to the text. The view was expressed in this

connexion that a wide range of issues and practices should be considered with a view to enhancing the effectiveness of the Security Council, that all aspects of the question of international peace and security should be covered and that the precise measures of the type proposed in documents A/AC.182/WG/33 22/ and WG/37 23/ should be included, inasmuch as the question was not to present the General Assembly with vague ideas but with concrete proposals which it could approve through recommendations, such as a recommendation that the Security Council envisage the creation of consultative machinery which could deal with matters before it was too late. Paragraph 1, it was noted, would not be very useful unless it was followed up by precise suggestions, including a study of the ways and means of enhancing the effectiveness of the system, and of the reasons why the Security Council often did not intervene until after blood had been shed, and why the States were so often unwilling to inform it of certain matters.

204. In this connexion, the view was expressed that paragraph 1 should be taken as a preamble to a series of concrete ideas and that to that effect it could be supplemented with the phrase "To achieve this objective, the Special Committee considers that ..." or "To achieve this objective, the Security Council should ...". With specific reference to the wording of paragraph 1, it was suggested that the words "the Special Committee was of the view that" should be deleted from the paragraph so as not to anticipate the final form of the draft recommendation. Other comments of a drafting nature included the remark that it was not obvious whether it was a question of ensuring the implementation of certain provisions or of the whole of the Charter - although the latter interpretation was viewed as more likely to be correct - and the observation that the expression "enhance its effectiveness in order to take early, prompt and effective action on behalf of the United Nations" could be interpreted in two different ways: to enhance the effectiveness of the Security Council so as to enable it to take prompt and effective action if it decides that this was necessary or - a second possibility - to enhance its effectiveness in order to ensure that in practice effective action would be taken promptly.

205. Another view was that, aside from having been submitted at a stage which was not particularly appropriate for eliciting a positive reaction, the text revealed in its paragraph 1 an illogical approach to the question. It was observed that the paragraph in question recommended that urgent and intensified efforts be undertaken to enable the Security Council to enhance its effectiveness but did not deal at all with the how and why of the situation and gave the impression when read in conjunction with paragraph 3 that all the violations of the Charter were to be blamed on the Security Council and on the principle of unanimity. According to this view, international peace and security required first and foremost a clear improvement in the international situation and a readiness on the part of all States to take measures to facilitate collective efforts for disarmament, to create genuine effective guarantees for international security and to seek peaceful solutions to the differences between Member States, and it should not be thought that all problems could be solved by a magic formula or panacea, for example, by requesting the permanent members of the Security Council to give up their veto,

22/ Ibid., Thirty-fourth Session, Supplement No. 33 (A/34/33), sect. III.C, para. 51.

23/ Ibid., sect. III.C, para. 60.

something which in addition to being a violation of the Charter, would produce a result contrary to that sought. The remark was also made that the Special Committee was a subsidiary organ of the General Assembly and that all matters connected with the functioning of the Security Council should be the object of agreement within the Council itself: attention was drawn in this connexion to the delicate balance established by the Charter between the spheres of competence of the principal organs, particularly with regard to the maintenance of international peace and security.

Paragraph 2

206. Some delegations supported the idea contained in this paragraph stressing that more attention should be paid to content rather than to form. The view was expressed that non-implementation of United Nations resolutions and particularly Security Council decisions was a major factor in the erosion of the role and prestige of the United Nations. Attention was drawn to proposal 15 of the informal compilation which aimed at having the consensus procedure endorsed in the Charter and to proposal 8 which sought to have the Charter provide that resolutions adopted by consensus or unanimously constituted firm commitment for Member States. The sponsors of these proposals expressed readiness to hold consultations with the sponsors of the draft recommendation to see how their concerns could be reflected in a joint text.

207. Several delegations placed special emphasis on the importance of ensuring the implementation of Security Council resolutions. Concern was expressed at a de facto situation observed by all, whereby a very large number of Security Council resolutions were not implemented, thus calling into question the credibility of the Security Council in particular and of the Organization in general. Indeed, it was said that such non-implementation was detrimental to international peace and security and went to the very root of the functioning of the whole United Nations system. It was stressed that since a decision of the Security Council was taken in the name of Member States and represented the conclusion of a difficult process, it should not be ignored once taken but be duly respected by Member States, particularly when it was a question of the maintenance of international peace and security. Non-implementation of the Security Council resolutions was viewed as leading to the undermining of the authority of the Council and discouraging States from bringing matters to the Council since they could not be certain in advance that a Security Council resolution would be implemented. Attention was also drawn to the important connexion between the non-implementation of Security Council resolutions and the rule of unanimity, the rationale of which was that agreement among the five permanent members on a resolution would guarantee the actual implementation of that resolution. Non-implementation of resolutions adopted under those conditions was viewed as particularly disturbing.

208. In order to clarify the scope of the paragraph, it was said that what was at stake was obviously the non-implementation of decisions relating to the maintenance of international peace and security which was a matter for the Security Council since it was understood that General Assembly resolutions were normative but non-binding. Also to clarify the paragraph, it was suggested to replace the text following the words "of the non-implementation" by the words "of United Nations resolutions concerning the maintenance of international peace and security, in particular those adopted by the Security Council, bearing in mind Article 25 of the Charter". Several of the supporters of paragraph 2 agreed that its wording could be improved and made more specific.

209. Other delegations, without objecting to paragraph 2, found it too general and imprecise inasmuch as it did not provide for concrete steps to remedy the situation and described a symptom, rather than the causes, of the problem. The view was expressed in this connexion that the implementation of a system of law depended on community reactions rather than on limited principles and that although paragraph 2 could be part of a more complete recommendation it was not in its present form specific enough. To give the paragraph more body, it was suggested to add at the end "For this reason, the Security Council should implement measures set out in the Charter ensuring that its decisions are respected and speedily implemented", a sentence which was borrowed from proposal 53 of the informal compilation.

210. Some of the delegations in question insisted on the need to make a clear distinction between General Assembly resolutions, which were recommendations, and Security Council resolutions, which were binding, pointing out that more precise wording aimed at obviating any possibility of misunderstanding would no doubt make the proposal acceptable to all. In this connexion, the view was expressed that paragraph 2 as presently drafted gave the impression that Security Council resolutions had the same value as those of other organs, which was neither true nor in keeping with the principles in force and that the text should be redrafted in order to specify that it was dealing with the non-implementation of Security Council resolutions.

211. Still other representatives said that they could not endorse paragraph 2 in its present form. While noting that Article 25 was one of the basic provisions of the Charter and that failure of Member States to respect the obligations deriving from it had far-reaching consequences for the role of the Security Council with regard to the maintenance of international peace and security, they pointed out that the mention in paragraph 2 of "United Nations resolutions" was an endeavour to put the Security Council and General Assembly resolutions on an equal footing, an approach which they had rejected as incompatible with the Charter in the framework of the discussion of proposals 7 to 10 of the informal compilation. It was further observed that one could not refer to all the Organization's resolutions and then speak of resolutions which were binding on Member States, and the point was made that resolutions of the Security Council were binding in nature whereas those of the General Assembly and other United Nations bodies were recommendations which the Member States could choose to respect or not, without explanation.

212. Some of those delegations pointed out that describing all Security Council resolutions as binding and all General Assembly resolutions as non-binding was an over-simplification. Thus it was said that some of the Security Council resolutions were decisions and were binding under Article 25 but that when the Council acted under Chapter VI of the Charter, for example, it formulated recommendations. Furthermore, it was stated, the Council could choose in some cases between recommendations or binding decisions and as a result a distinction must be made not only between Security Council and General Assembly resolutions but also between Council decisions and Council recommendations. The view was also expressed that while some Security Council decisions were not binding some General Assembly decisions were and that paragraph 2 concerned the binding resolutions according to the Charter, whether of the Security Council or of the General Assembly, and that this should be clarified by the inclusion of a reference to the maintenance of international peace and security. Attention was however drawn to the need not to lose sight of the real purpose of paragraph 2 which was clear since it spoke of Security Council decisions which were binding for all Member States.

213. Finally, emphasis was placed on the negative implications of paragraph 3 in relation to paragraph 2 and the remark was made that if resolutions were adopted against the opinion of some permanent members of the Security Council, their chance of implementation would be reduced. With regard to the wording, the view was expressed that the term "non-implementation" called for clarification: the hope was expressed that cases of deliberate non-implementation were intended and that there was no question of instances of implementation requiring lengthy delays.

214. Paragraph 2 was also found unacceptable in relation to paragraph 3 which sought to limit the application of the rule of unanimity. It was deemed illogical to draw attention to the consequences of the non-implementation of resolutions and at the same time invite the Council to adopt resolutions in disregard of the principle of unanimity. Resolutions adopted under those conditions would not, it was observed, be the outcome of negotiations but express the views of a simple majority and would have practically no chance of being implemented. Paragraph 2 in its present form was therefore felt to be completely in contradiction with the desired objective and likely to have an effect contrary to that sought.

Paragraph 3

215. Representatives made general comments on paragraph 3 of the draft recommendation submitted by Egypt on behalf of non-aligned countries of the Special Committee and also made comments on individual subparagraphs.

Comments on paragraph 3 as a whole

216. Some representatives spoke in favour of paragraph 3 and believed it deserved serious and detailed consideration by the Special Committee. It was emphasized that it sought to strengthen the role of the Security Council in the maintenance of international peace and security and to enable it to fulfil its responsibilities fully. Member States of the Organization, in particular non-aligned countries, were concerned by the fact that the Security Council had not always been in a position to discharge its responsibilities. The sponsors of the draft recommendation were, it was said, first and foremost concerned about the effective operation of the United Nations and the Security Council in the maintenance of international peace and security. Peace was endangered and force was being used in different parts of the world yet the Security Council was not actively engaged and was not performing its primary function of discussing such situations and finding solutions. A strong Security Council would certainly discourage all those who dared flagrantly to violate the provisions of the Charter. Within this context, limitation of the rule of unanimity was seen as a positive step, especially in those cases where it had been proven beyond doubt that it served no useful purpose. Thus, it was said, paragraph 3 contained very useful proposals designed to avoid the abuse of the rule of unanimity and ensure that the power of veto was reserved for exceptional situations in the interests of world peace and security. A limitation of the right of veto in certain areas was considered desirable, for it would enable resolutions to be adopted in certain important areas by the majority, if not by consensus. The drafters of the Charter had never intended the principle of unanimity among permanent members to be used as a mechanism for obstructing the work of the Charter, but rather as a safeguard to ensure implementation of Security Council decisions relating to the maintenance of international peace and security. The problem to be tackled at present was to enable the Security Council to advance in its work and fulfil its vital functions without encountering obstacles emanating from members of the Council.

217. A number of representatives who supported paragraph 3 stressed that the proposals contained therein were not intended in any way to call into question the rule of unanimity but sought to adapt its application in the light of acquired experience, the needs of the situation and the difficulties encountered by the Security Council. There was no intention to revise the Charter, nor to disturb the internal balance of the United Nations or to disrupt the methods or basic assumptions upon which the Charter was predicated; the fact was recognized that there were permanent members of the Security Council and that such a situation was an essential component of the United Nations system. Fears and misgivings on the part of some delegations should, it was observed, thus be dispelled. The sponsors' interest was to safeguard the United Nations and its proper and vital role in the maintenance of international peace and security.

218. According to these representatives, that was not to say, nevertheless, that the proposal was not concerned with one of the most controversial and delicate aspects of the working of the Security Council, namely, the principle of unanimity. Since the adoption of the Charter, that rule had always been a source of concern to many countries. Past experience and present problems had led non-aligned countries to request deeper consideration of the problems relating to that rule. In considering the responsibilities of the permanent members of the Security Council, it was impossible to leave out the question of the rights and responsibilities of the other members of the United Nations under the Charter in the field of the maintenance of international peace and security. It was emphasized that paragraph 3 did not call for the removal of the rule of unanimity but merely for its limitation; and again not purely and simply for its limitation, but for its adjustment to existing circumstances and needs. It was therefore an attempt by non-aligned countries to assist the Security Council, and especially its permanent members, to find means of resolving difficulties. The subparagraphs were a response to the weaker points in the practice of the rule of unanimity, a rule which should necessarily be subordinated to the purposes and principles of the United Nations itself as set forth in the Charter. The paragraph should therefore be examined in the light of the interests of all Member States of the United Nations, including the permanent members of the Security Council, in a constructive spirit with a view to formulating recommendations for the General Assembly to make to the Security Council. It was urged that the permanent members of the Security Council give their opinions on the proposals included in the paragraph so as to concert efforts in order to achieve results beneficial to the entire international community.

219. Thus, the view was maintained that the draft recommendation in general, and particularly paragraph 3 showed great moderation and could form the basis for a consensus within the Special Committee. The draft recommendation, it was said, incorporated ideas from earlier proposals, some even by permanent members of the Security Council, which showed the spirit of compromise of non-aligned countries in adopting so moderate and realistic an approach to a question of concern to many countries since the inception of the Organization. It was furthermore remarked that the list of areas singled out for examination in the proposal should not be taken as an exhaustive list. The areas mentioned in the paragraph were simply those which had the most chance of being the subject of general agreement.

220. One representative remarked that while his delegation supported the draft recommendation and in particular paragraph 3 in principle, it considered that a more prudent approach was required to such an important and delicate issue as the principle of unanimity of the major powers. If each permanent member of the

Security Council in the exercise of the power of veto acted from a genuine concern for international peace and for the purposes and principles of the United Nations Charter, and with a sense of responsibility towards the other States Members of the United Nations, the Security Council could play a major role. In fact, the power of veto was not exercised in that manner; hence the proposal to limit the rule of unanimity. While that was a reasonable request, it involved a revision of some provisions of the Charter and of the voting procedures within the Security Council, a task fraught with obstacles. Some of the specific proposals could be put in a more simple and more acceptable manner while yet others were formulated in perhaps too simple a manner to deal with very broad and highly complicated issues. Nevertheless, his delegation considered that all the proposals should be studied more carefully and should be the subject of broad consultations among Member States.

221. Certain representatives believed paragraph 3 contained very interesting elements and ideas which could form the basis for further discussion. Some of those elements were viewed as being susceptible of general support, if appropriately recast, while other elements did not seem appropriate. It was recognized that there was a similarity between certain of the ideas in paragraph 3 and suggestions contained in working papers submitted earlier by certain delegations. The suggestion was made that permanent members of the Security Council should consult with a view to considering some of the ideas embodied in the paragraph. It was remarked that, as the proposal indicated, the rule of unanimity constituted one of the fundamental elements of the structure of the United Nations; that being so, the purpose of paragraph 3 appeared to be to deal with certain situations in which it was suggested that a minority view should not be allowed to prevent Security Council action. The introductory passage of paragraph 3 raised the question of the method of implementation of the ideas embodied in the paragraph. Three methods were possible, according to one view expressed. The first would be some system of amending the Charter. The second would be for the Security Council, or the United Nations, to take some decision interpreting the provisions of Article 27 (2) of the Charter in relation to certain categories of decisions. The third would be for some understanding to be reached among the permanent members of the Security Council to the effect that, in their voting practice, they would refrain from casting a negative vote in certain matters or in certain circumstances. It was stressed that there were numerous legal and practical differences between the three methods.

222. Serious doubts, however, were expressed as to whether the Security Council's role in the maintenance of international peace and security would be strengthened by restricting the use of the rule of unanimity. The view was maintained that the proposals in paragraph 3 were very heterogeneous and raised a procedural problem. Paragraph 4 seemed to indicate that the draft recommendation would be from the General Assembly to the Security Council: the Security Council would then presumably deal with the aspects in question through a reform of its practice and perhaps its rules of procedure. However, some subparagraphs of paragraph 3 dealt with substantive matters which could only be tackled by a revision of the Charter itself, and thus a recommendation to the Security Council would be without effect. The draft recommendation also raised the whole question of the balance of the Charter as decided upon in the San Francisco Agreement 24/ an agreement which still corresponded to the real world. Paragraph 9 of the San Francisco Agreement justified the rule of unanimity on practical, realistic grounds and the same considerations applied to the present world circumstances. That Agreement also

24/ United Nations Conference on International Organizations, III/1/37 (1), document 852.

made clear that seemingly simple proposals in paragraph 3 had in fact serious consequences; proposals to eliminate the rule of unanimity could not be endorsed. [However, further points could be added to the proposals which deserved to be studied, such as the issue of the creation of subsidiary bodies by the Security Council under Article 29 of the Charter. Also consultations might be held among the permanent members of the Security Council to agree on more effective procedures to enhance the effectiveness of the Council]. The draft recommendation as it stood, however, would upset the balance of the Charter and rather than increasing the Council's effectiveness might dangerously jeopardize the functioning of the Organization and the Council's performance of its role.

223. Furthermore, certain representatives noted that while paragraph 3 aimed at restricting the use of the rule of unanimity within the Security Council, a realistic examination of present practice in the United Nations and other international organizations showed a clear trend towards strengthening the rule of unanimity. For example, in the General Assembly, there was now much greater emphasis on consensus as a means of increasing effectiveness. The rule of consensus, although not enshrined in constituent instruments, nevertheless seemed to emerge as a necessity. The tendency was a wise one, dictated by practical considerations and had led to the adoption of an increasing number of decisions by consensus. That practice had produced very fruitful results and many important General Assembly resolutions had been adopted by consensus, such as that on the Declaration on Principles of International Law concerning Friendly Relations and Co-operation Among States and that on the Definition of Aggression. The consensus method enhanced the effectiveness of a decision and facilitated its practical implementation. It thus produced the result which all Member States wanted. On the other hand, experience had shown that whenever unbalanced decisions had been adopted, they had not proved to be in the general interest and had been ineffective. Such was the case with a large number of illegal decisions adopted in the 1940s and 1950s. The manner in which they had been adopted had detracted from their authority; indeed they had become a dead letter.

224. On the other hand, disagreement was expressed with the contention that the draft recommendation went against the trend in favour of the consensus system. Non-aligned and other States had welcomed that trend and were not likely to detract from it. There could be no doubt that the practice of trying to secure general support for a decision before it was adopted made its implementation easier. It was also observed that there had indeed been an evolution with regard to the consensus and the majority of Member States on various occasions had accepted the rule of consensus when it had been thought important to mobilize the entire United Nations membership on a particular decision or in order to codify certain rules of law. The acceptance of consensus was therefore in the interests of the evolution of the United Nations and helped make it more operative. It was queried whether those representatives who had laid stress on the evolution of the principle of consensus within the United Nations envisaged an extension of the right of veto all 15 members of the Security Council; that possibility might receive consideration, it was suggested.

225. Some representatives expressed the view that paragraph 3 contained unacceptable proposals aimed at destroying the very foundations of the Organization which had guaranteed peaceful co-existence and co-operation among States since the Second World War. The introductory sentence to paragraph 3 to the effect that there was a need to examine the areas where the application of the rule of unanimity should be limited was totally erroneous. The Security Council was called upon to deal with very important issues, including the extremely delicate one of

maintaining international peace and security. The Council was one of the most important organs of the international community, being the only body with peace-keeping powers throughout the world. It was, therefore, totally unrealistic to assert that there could be any need to curtail the rule of unanimity in the Security Council. If the intention was to do away with the unanimity rule with regard to the use of force, the sponsors of the draft recommendation should have said so. If there was such an intention, it would be well to consider the implications of the proposal. One implication would be the possibility of deciding by a majority vote the use of armed force against a permanent member of the Security Council. In the present nuclear missile age, the result would be the blotting out of the United Nations, permanent members and all. The principle of unanimity among the permanent members of the Security Council was considered essential for the working and indeed for the very existence of the Organization, as it took due account of the existence of two different economic and social systems and provided a framework in which they could work on an equal footing, without either being able to take decisions or actions detrimental to the other. That principle had proved to be the only realistic and viable arrangement in the existing circumstances because it prevented the United Nations from being used for purposes contrary to the Charter. The United Nations and the Charter had stood the test of time, inter alia, because of the principle of unanimity among the permanent members of the Security Council, which had shown itself to be the most realistic mechanism for preserving international peace and security in the relations obtaining among States. Thus, the preservation and application of the principle of unanimity among the permanent members of the Security Council had contributed to the effective maintenance of international peace and security. Any weakening of that principle would have an adverse effect on the distribution of power within the Organization. Moreover, according to the Charter and existing practice, all the issues dealt with in paragraph 3 were matters of substance which should be decided by the rule of unanimity in keeping with the 1945 Four-Power Statement. 25/ Thus, paragraph 3 was said to be of no interest and not suitable for inclusion in the list of proposals that the Working Group was drawing up. Indeed, the sponsors of the draft recommendation had drawn hasty conclusions from the discussions in stating in paragraph 3 that "the Special Committee was of the view...", when in fact some delegations entertained serious doubts as to the limitation of the rule of unanimity.

226. In the course of the discussion of paragraph 3, the question was raised whether the Working Group should refer certain subparagraphs thereof to a drafting committee or whether it should attempt to reformulate proposals itself. Support was expressed for the idea that it would be a constructive initiative to convene a small group, which would include the permanent members of the Security Council, for further consultations with a view to drafting a recommendation which would not seek to revise or amend the Charter but to ensure better application of the rules and a much more effective functioning of the Security Council. One view expressed was that a small group could be convened to examine how certain aspects reflected in the paragraph could be recast with a view to facilitating their possible inclusion in the list to be prepared by the Special Committee of all those proposals upon which general agreement was possible and which warranted priority consideration by the Special Committee. On the other hand, another view expressed was that it was of doubtful utility to envisage a smaller group meeting on the matter; there

25/ Ibid.

appeared to be no agreement within the Working Group on the contents of the paragraph and it appeared unlikely that any agreement would emerge. It was also remarked by one representative that the draft recommendation was but one among a number of proposals which had been submitted by Member States, some of which had yet to be considered; the Group was not yet at the stage of setting up smaller subgroups and it would be premature to consider such a step at the present time. Another representative believed that the convening of informal consultations at the present session was not practicable due to the lack of time remaining in the session.

227. Finally, one representative stressed the constructive and primary nature of the debate which had been held on paragraph 3. In his view, the serious and detailed exchange of views which had taken place on the paragraph and its six subparagraphs augured well for the future work by the Special Committee on the question of the maintenance of international peace and security; a good basis had been provided for further efforts. While some of the subparagraphs needed clarification and reformulation or might cause difficulties for some delegations, other subparagraphs did not seem likely to cause major difficulties. It was said that delicate legal issues were involved in some of the proposals as it would not be possible either to amend the Security Council's provisional rules of procedure or to suggest agreed interpretations of certain Charter provisions if such measures went beyond the language of the Charter itself. But such issues were capable of being solved, and he urged that the proposal under consideration be considered as one of those which awakened special interest but needed further examination. It represented an effort to build something for the future. Confidence was expressed that at the next session of the Special Committee more time could be devoted to the paragraph with a view to reconciling views with regard to at least some of the proposals contained therein.

Comments on separate subparagraphs of paragraph 3

Subparagraph (a)

228. Certain representatives believed that subparagraph (a) contained some elements which warranted further and more detailed consideration. The areas of fact-finding and verification were important ones and the proposal reflected in this subparagraph represented a school of thought which held that fact-finding was an area where the action of the Security Council should be facilitated. There were many circumstances in which the performance of the Security Council must depend upon a clear knowledge of facts; there was no ground for suspicion about the Council engaging in fact-finding. It was felt there was much merit in avoiding the use of the veto when it came to fact-finding, as distinct from the making of recommendations by the Security Council. It was suggested that the permanent members of the Security Council should be urged to consult with a view to considering the ideas embodied, inter alia in subparagraph (a).

229. The hope was expressed that the subparagraph could form the basis of a generally acceptable provision without too much difficulty, although it was suggested that subparagraph (a) could be put in a more simple and more acceptable manner.

230. Attention was drawn to the similarity between subparagraph (a) and other proposals previously submitted. Reference was made in particular to paragraph (1)

of section 2 of document A/AC.182/WG/44/Rev.1 26/ which set forth proposals very similar to those contained in paragraph 3 (a), and to paragraph 7 of document A/AC.182/WG/37 27/ which suggested treating as procedural (and thus not subject to veto) the use of missions whose remit was clearly limited to fact-finding. The latter proposal was deemed particularly important because its sponsor was a permanent member of the Security Council. It was accordingly suggested that the sponsors of the draft recommendation should be invited to elaborate further the contents of subparagraph (a) taking into account those two working papers; doing so would undoubtedly greatly enhance the chances of a general acceptance of the draft recommendation.

231. As to the intentions behind the proposal contained in subparagraph (a), it was stressed that the permanent members of the Security Council should be reassured that the sole purpose of the proposal was to facilitate the work of the Security Council. For example, an important issue in arms control agreements was the matter of verification. Powers wished to be assured that ways and means of verification truly existed. If the unanimity rule was used to prevent the Security Council from ascertaining facts, parties could not have confidence in the implementation of such agreements. Limiting the rule of unanimity in such circumstances was a step towards building confidence in the Security Council as a mechanism for ensuring international peace and security.

232. Certain other representatives felt that the ideas contained in the subparagraph had very serious implications which called into question the acceptability of the proposal. Reference in that connexion was made to paragraph 4 of the 1945 Statement by the Delegations of the Four Sponsoring Governments on the Voting Procedure 28/ which spoke, *inter alia*, of decisions and actions by the Security Council initiating a chain of events which might begin with an investigation but which might in the end require the Council to invoke measures under Chapter VII. Such decisions and actions were thus clearly non-procedural and were subject to the rule of unanimity. In addition, it was said that the Security Council's fact-finding function must be viewed as being closely linked to its primary responsibility under Article 24 of the Charter. The proposal in paragraph (a) ostensibly dealt with a procedural question, but in fact there were political and legal implications to any fact-finding by the Security Council. Missions of observers should be approached in the framework of Chapter VII of the Charter, and were subject to Article 27, paragraph 3.

233. Furthermore, the view was emphasized that the main function of the Security Council was the investigation of specific disputes or situations since that act initiated all its subsequent activities. To propose circumscribing the principle of unanimity for that function ran counter not only to the Charter but also to practical common sense. The decision to send a fact-finding mission was of crucial

26/ Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 33 (A/35/33), para. 74.

26/ Ibid., Thirty-fourth Session, Supplement No. 33 (A/34/33), sect. III.C, para. 60.

28/ United Nations Conference on International Organizations, III/1/37(1), document 852.

political significance: it could not be taken on the basis of a majority vote. It was well known that there were often disputes between States with different socio-economic systems. If the Security Council adopted a one-sided decision, there was no chance of its being implemented. The question of what to do in the case of a particular dispute was not a procedural matter but highly substantive. The same was deemed to be true of the question of sending military observers. The whole matter was clearly spelled out in Article 34, Chapter VI, and in Chapter VII of the Charter. Unfortunately in recent years, there had been many violations of the Charter and it was high time to return to its strict observance, which was the most promising way of enhancing the effectiveness of the Security Council. As to the purported intent of the proposal to build confidence in the Security Council, it was difficult to see how confidence between the permanent members of the Security Council and other States would be enhanced if the Security Council would take decisions in violation of the Charter. The unanimity rule ensured that the Council adopted decisions which took into account the interests of States with different social and economic systems. Otherwise there would always be a suspicion, sometimes well-founded, that one group was taking advantage of the situation to the prejudice of the other group. A one-sided decision in a critical area would effectively eliminate the confidence of Member States in the Security Council.

234. According to another view, however, it was not considered that fact-finding pure and simple, without recommendations, must necessarily be subject to the unanimity rule. Furthermore, while the "chain of events" doctrine could be subscribed to, pure fact-finding did not necessarily set in motion an unstoppable chain of events. With regard to the risk of one system taking advantage of another, as between East and West, the decision not to apply the veto would not particularly be of advantage to either group: they would be in exactly the same position. What was not solved was the extent to which the de facto veto power of other States might operate to cause an imbalance. There would clearly have to be some sort of pledge or degree of understanding on the subject, which could be considered in detail by the Committee if it was agreed that some elements of the draft recommendation might be given priority attention. It was true that the line between fact-finding and making recommendations was a fine one but it did exist in all legal systems. A commitment to a new perception of how the Security Council should work would be required not only by the permanent members of the Council but also by its other members.

235. The "chain of events" argument was also reflected in another view expressed. The declaration put forward by the Big Powers at San Francisco clarified that the decisions and actions by the Security Council may have grave consequences and be at the beginning of a chain of events which might necessitate the application of enforcement measures. However, that argument was not found entirely acceptable. A recommendation by the Council, for instance, did not necessarily lead to the application of enforcement measures. On the other hand, enforcement measures were limited to disputes under Chapter VII. Under Article 10 of the Charter the General Assembly has similar powers to those of the Security Council on matters pertaining to the pacific settlement of disputes. Since the recommendations of the General Assembly were not subject to veto, it was wondered by the veto was necessary in the Security Council for similar recommendations.

Subparagraph (b)

236. Certain representatives who addressed themselves to subparagraph (b) believed it contained some very interesting ideas and dealt with an area of considerable interest, namely, that of entrusting the Secretary-General with additional

functions pursuant to Article 98 of the Charter, which was quite apart from the powers vested in the Secretary-General by Article 99 of the Charter. The ideas contained in the subparagraph, particularly the idea that it was not advisable for a decision to entrust the Secretary-General with functions in dispute settlement in accordance with Article 98 of the Charter to be subject to a veto, were deemed worthy of detailed consideration and the permanent members were urged to consult with a view to considering them.

237. Stress was placed on the potentially enormous range of functions which could be carried out by the Secretary-General. There were occasions on which the Secretary-General could act under the authority of the Security Council and in response to it. If the Security Council conveyed additional duties to the Secretary-General, it could also state the limitations within which he had to act. It was not believed necessary to discuss general principles of the delegation of powers, in the light of Article 98 which referred to "such other functions as are entrusted to him by these organs". That Article meant that the Security Council could only confer functions within the scope of its own functions; it should be recognized that every organ was acting within the scope of its own functions.

238. As was the case with subparagraph (a), the hope was expressed that the contents of subparagraph (b) would not pose too many difficulties, although it was suggested that it could be put in a more simple and more acceptable manner.

239. One representative observed that under Article 98, the Secretary-General had no functions on his own initiative with regard to the settlement of disputes. Under the rules of procedure of the Security Council, his duties in relation to the Security Council were mainly of an administrative nature, although under rule 23 of its provisional rules of procedure he could be appointed as rapporteur for a specific situation. The Secretary-General might also be entrusted with good offices functions. But the unanimity rule clearly needed to apply to such activities on his part. Otherwise the Secretary-General would find himself in an equivocal, not to say embarrassing, position and indeed his impartiality might be called into question. It was doubted that the Security Council could, as had been suggested, convey some of its main duties to the Secretary-General. No main organ of the United Nations could delegate its functions to another subsidiary body, either temporarily or permanently, since to do so would be a departure from the Charter and from established generally recognized principles and would ultimately lead to the breaking down of the United Nations activities.

240. Another view maintained was that the apparently simple proposal contained in subparagraph (b) in fact had serious implications in the light of paragraph 4 of the 1045 Statement to which reference was made on connexion with subparagraph (a) (see para. 232 above).

Subparagraph (c)

241. In explanation of the proposal contained in subparagraph (c), it was said that its intention was not to subject the whole of Chapter VI to the non-application of the veto. It was recognized that there was a close link between Chapters VI and VII but at the same time situations could be envisaged in which Chapter VI would not involve a threat to international peace and security, as indicated by the words "any dispute" in Article 35, paragraph 2. In such a case the Security Council would be acting as a sort of court of arbitration. The permanent members of the Security Council should be assured that there was no intention to revise the Charter.

242. Certain representatives, however, found subparagraph (c) unacceptable. It was considered to be fundamentally unwise and at least premature. Such a blanket provision was much too sweeping in scope and was likely to prove the enemy of any moderate evolutionary possibilities for the Charter. No general rule of the type envisaged could be laid down. It was pointed out that there was a close link between Chapters VI and VII and that events might develop in such a way that the Security Council might consider that action under Chapter VI as not sufficient in order to prevent the outbreak of war and that it was necessary to resort to action under Chapter VII. The proposal to limit the rule of unanimity as indicated in the subparagraph did not seem to be dictated by any factual requirements and, if implemented, would result in the disorganization of the work of the Security Council.

243. Other representatives believed that the proposal required further refinement and clarification. The subparagraph dealt with a highly complicated matter and yet was formulated in too simple and broad a manner. It was said that while subparagraphs (a) and (b) were more carefully phrased, subparagraph (c) seemed to propose a blanket approach which cast doubt on the preceding subparagraphs. An appeal was made to the sponsors to withdraw that subparagraph as it now stood and to consider rewording it.

Subparagraph (d)

244. Representatives who spoke specifically on subparagraph (d) generally supported it. It was noted that the proposal was aimed at reminding States of the provisions of Article 27, paragraph 3, stipulating that parties to a dispute should abstain from voting in certain decisions, and at stressing that there should be no distinction between permanent and non-permanent members in the application of that provision. The subparagraph was supported as it was aimed at the full adherence of all States to existing provisions of the Charter. It was seen as an important point of departure for future work on the draft recommendation.

245. According to one view, although the proposal was interesting, it was in need of drafting improvement. The permanent members of the Security Council were urged to consult with a view to considering the ideas embodied, inter alia, in subparagraph (d).

Subparagraph (e)

246. Some representatives expressed support for the proposal contained in subparagraph (e). It was pointed out that the aim of subparagraph 3 (e) of the draft recommendation was to enable the Security Council, when hostilities broke out, to call for an immediate cease-fire and a withdrawal of forces to their original positions. The intention behind the subparagraph was to establish a logical sequence of steps which should be taken in any sort of dispute: the contestants were to withdraw at once to their original positions in order that negotiations could begin. It was felt - particularly in the current nuclear age - that the Security Council should have the capacity, unhindered by the veto process, to prevent conflicts from spreading. The view was expressed that if the drafters of the Charter had been able to foresee the level of nuclear armament to be reached in another 35 years, they would surely not have provided for a right of veto in the Security Council. There were no grounds for inferring any threat to the currently held power of veto; indeed, as for that power being useful in maintaining peace, it should be recalled that its use had often allowed conflicts to continue. Use of the veto had, on a number of occasions, blocked adoption by the Security Council

of a resolution, and had thereby prevented negotiations from taking place among Security Council members. It was doubtless expecting a great deal - perhaps too much - of the permanent members to agree to a suppression of the right of veto in this area as some situations were indeed particularly delicate and complicated; nevertheless, since action in all such situations was left, under the provisions of the Charter, to the members of the Security Council, the latter was expected by the United Nations as a whole to adopt clear and effective decisions for the maintenance of international peace and security. The Security Council had the duty to analyse every situation brought to its attention and take a decision on it, regardless of the lack of agreement among the parties concerned as to the solution of the dispute. Ceasefire proposals must be viewed in the over-all context of the peaceful settlement of disputes. As to the realism of the proposal, it was remarked that the very drafting of the Charter had been thought unrealistic given the circumstances at the time. While drafting suggestions might be made, representatives who supported subparagraph (e) stressed that it was an essential proposal and that its substance should not be altered.

247. In that connexion, certain representatives remarked that subparagraph (e) dealt with very broad and complicated issues but that it had been drafted in perhaps too simple a manner. It had to be recognized that the subject of subparagraph (e) gave rise to a number of difficulties because of its implications concerning not only the unanimity rule but the system of collective security. Discussion of the subject, therefore, should be continued in order to look into all the problems involved, with a view to determining the extent to which the Security Council could take effective action in regard to conflicts which called for political as well as collective security measures. A solution must be sought as a matter of priority if the Security Council was to be enabled to fulfil its basic task of maintaining international peace and security. It must be borne in mind that the approach involved was a new one directly linked to application of the rule of unanimity, and on that account warranted further consideration.

248. Some other representatives, however, stressed that the proposal in question was unrealistic. According to one view expressed along those lines, if any fighting broke out, it would be difficult to have a decision adopted automatically and immediately, as subparagraph (e) seemed to suggest. Experience had shown that, in the case of conflict, the side which saw itself at an advantage was prepared to accept a cease-fire but not a withdrawal. As for the other party, it only wanted a cease-fire if accompanied by withdrawal. Subparagraph (e) was not sufficiently realistic and would lead to disillusionment; its adoption would not be a good commitment for the Security Council to undertake at the present time. Moreover, there seemed to be a misleading implication that the Security Council's difficulties in dealing with situations had always stemmed from its permanent members alone. But the record showed otherwise: indeed, there had been occasions when those with the right of veto had been urged to use it by those without. Perhaps the idea involved could be followed up with a view to a recommendation to the effect that Member States might commit themselves to the view that the Security Council should act in the manner proposed in that subparagraph, but a survey would almost certainly reveal that few delegations would be prepared to state categorically that the Security Council should have all situations referred to it and should always call for immediate cease-fire and withdrawal. Thus, while an approach to communality had much to commend it, the text under consideration was most unpromising.

249. According to another view, subparagraph (e) was unrealistic because it was impossible that the type of situation envisaged in that subparagraph could be

resolved without the use of the rule of unanimity. It was precisely for situations of the sort referred to that Article 24 of the Charter had been drafted. It was true that, in the current nuclear age, there was the danger that a situation could quickly become cataclysmic; but the record showed that a number of times, the Security Council had taken speedy and effective action, having brought cease-fire arrangements into effect within hours on some occasions. To seek to limit the application of the rule of unanimity would delay action rather than accelerate it - especially since the objective was not just to achieve a cease-fire but to produce a resolution whose implementation would contain the conflict, end it and remove its causes. And it was surely unthinkable that the unanimity rule could be abandoned in order to force a decision against the wish of any permanent member of the Security Council; such an approach would be irrational and utterly unacceptable. It was necessary to take an over-all view of every situation, if the Security Council was to continue being effective in maintaining international peace and security.

Subparagraph (f)

250. The representatives who spoke specifically with reference to subparagraph (f) generally expressed doubts concerning the proposal contained therein. It was said that the admission of new members clearly ought to take place on the basis of general agreement. Reference was made to Article 4 of the Charter and attention drawn to cases where difficult issues had arisen regarding Statehood and the governmental institutions claiming to represent a particular aspirant State and to cases where unknown groups had attempted to establish claims that they represented a State. It was suggested that the possibility of application of the veto to the admission of new States should remain. Furthermore, it was stressed that the suggestion contained in subparagraph (f) did not correspond to any need since the United Nations was now universal. In practice, the unanimity rule in the Security Council with respect to admission of new members had helped in coming to a solution of problems in this area. It had been made abundantly clear that no major action by the United Nations, such as the admission of new members could be undertaken without the concurrence of the permanent members of the Security Council. The view was also emphasized that the idea that the application of the rule of unanimity should be limited in regard to admission of new Member States was tantamount to proposing amendments to the Charter. Pursuant to the latter, it was up to the Security Council to make recommendations on the basis of the principle of unanimity, and up to the General Assembly to adopt them. The reasons behind the proposal were doubtless practical ones aimed at avoiding difficulties of the sort faced by the United Nations in the past; but those difficulties had in any case always been overcome, because of the principle of unanimity. Indeed, some members of the Working Group would not be present but for the existence of that rule.

Paragraph 4

251. In support of paragraph 4, it was stated that a majority of the members of the Working Group clearly considered the proposed draft recommendation worthy of submission to the General Assembly for consideration. The proposals it contained covered many important issues, including those relating to the right to veto, which must be carefully considered by all Members, taking fully into account the provisions in the Charter, the history of the United Nations and the sponsors' intentions. The Proposals had received only general consideration so far, and it would be irresponsible at the current stage, to deem them unwise. It was not out of place for the Special Committee to indicate to the General Assembly its reactions to the draft recommendation. The wording of the paragraph was considered

acceptable and it was considered a legitimate and logical recommendation. It was urged that the draft recommendation be given a separate status and not be added to either the informal compilation of proposals already examined by the Working Group or to the list to be prepared by the Committee on the question of the maintenance of international peace and security. The suggestion was also made that the proposed draft recommendation should be included in the list to be submitted for consideration by the General Assembly and that its consideration should be a priority item on the agenda for the Special Committee's next session.

252. The view was also expressed, however, that paragraph 4 was premature and unacceptable. It was premature in that it did not correspond to the present stage of work within the Working Group or the Special Committee. It was stressed that the draft recommendation reflected certain proposals contained in the informal compilation of 74 proposals previously considered in detail. To follow the course suggested by paragraph 4 would entail pre-judging the work of the Working Group in examining all the proposals made - or to be made - with a view to ascertaining which proposals were of special interest and susceptible of general agreement. Discussion and clarification of all the proposals submitted must first take place before reaching the stage envisaged in paragraph 4. The paragraph was also considered unacceptable because the thrust of the draft recommendation was to blame the principle of unanimity for the shortcomings of the Security Council, which was an erroneous approach. Such an approach was contrary to the Charter, did not meet the real requirements of the Security Council and entered the delicate area of the respective competences of the Council and the General Assembly. It was considered inadmissible for one principle organ of the Organization to exercise influence over another.

253. According to another view, however, paragraph 4 was not premature. Leaving aside positions of substance regarding the draft recommendation, it was considered correct and useful for its sponsors to indicate how they thought matters should be dealt with; that question would certainly be given careful consideration.

E. Revised draft recommendation presented by Egypt on behalf of non-aligned countries of the Special Committee (document A/AC.182/L.29/Rev.1)

254. The representative of Egypt, on behalf of non-aligned countries of the Special Committee presented document A/AC.182/L.29/Rev.1. In doing so, he indicated that the sponsors of document A/AC.182/L.29 had revised that document in the light of the debate held and expressed the hope that at the next session of the Special Committee the revised version would receive full consideration as a separate document. The document read as follows:

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

"2. The Special Committee was of the view that there is a need to examine the areas where the rule of unanimity shall not apply. Subject to further negotiations, the examination of certain areas, inter alia, the following would be appropriate:

"(a) ascertaining facts by the Security Council and dispatching impartial United Nations observer missions in areas of tensions, disputes, or conflicts with the consent of the host country;

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

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

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

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

"(f) admission of new Member States;

"(g) establishment of subsidiary organs as referred to in Article 29 of the Charter.

"3. The Special Committee draws attention to the disturbing consequences of the non-implementation of Security Council resolutions, particularly decisions which are binding on all Member States in accordance with Article 25 of the Charter. Measures set out in the Charter should be taken to ensure that the decisions of the Security Council are respected and speedily implemented.

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

255. Owing to lack of time, it was not possible to consider this document.

F. Proposals submitted by France (A/AC.182/L.25; A/AC.182/WG/51)

Document A/AC.182/L.25

256. As indicated above (paragraph 22), the Working Group had before it a proposal submitted by France (A/AC.182/L.25) at the 1981 session of the Special Committee which contained draft amendments to the rules of procedure of the General Assembly and which read as follows:

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

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

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

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

"(3) In rule 19:

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

257. The sponsor of the proposal informed the Working Group that the idea for the proposal had been inspired by the provisions of Article 11, paragraph 2, which contains inter alia, provisions under which the General Assembly may discuss questions relating to the maintenance of international peace and security and by Article 20 which provides that special sessions of the Assembly shall be convoked by the Secretary-General at the request of the Security Council or of a majority of the Members of the United Nations. Based on these two Articles of the Charter, the proposal contained in Document A/AC.182/L.25 was designed to facilitate the urgent convocation of emergency special sessions of the General Assembly when circumstances so required and to enable the Assembly to more usefully fulfil its role as contemplated in Article II, paragraph 2 of the Charter. The proposal, which involves simply a modification of three rules of the Assembly's rules of procedure, was aimed at providing more flexible procedures for convening emergency special sessions of the General Assembly, based upon the provisions of the Charter.

258. Some representatives expressed support for the proposal contained in document A/AC.182/L.25 because it was a logical result of the fact that the discredited document entitled "Uniting for Peace" (resolution 377 (V) of 3 November 1950) was an illegal document which had been dictated by one side during the Cold War period. The machinery which had been established by that resolution had never even functioned in fact. While for a number of years, on the basis of that only too well-known resolution attempts had been made to systematically undermine the United Nations, its basic provisions and the well-established balance between the principal organs, practice had shown that these attempts had proven futile. The

proposal in question was seen as a welcome development and as a return to the only correct interpretation of the Charter.

259. According to another view expressed, while the adoption of resolution 377 (V) was an infamous event in the annals of United Nations history which could in no way be taken as a means for strengthening the role of the Organization, specific views on proposal A/AC.182/L.25 would have been given at the next session of the Special Committee.

260. The proposal was supported in principle by some representatives who viewed it as a worthwhile initiative designed to facilitate the procedures and machinery for the possible expeditious convening of an emergency special session of the General Assembly when the Security Council had reached an impasse, due to the exercise of the right of veto. The proposal was welcomed as opening up new prospects of progress in the Special Committee. Both past and recent experience had shown that it was valuable and positive in such circumstances to provide an opportunity for the General Assembly to exercise its authority in dangerous emergency situations threatening international peace and security. It must be recognized that under Article 24 the Members of the Organization had conferred on the Security Council the primary responsibility to act in such situations. But if the Council did not act, then the Members themselves, through the General Assembly, must be able to meet the crisis.

261. One of the representatives sharing this view stressed that proposal A/AC.182/L.25 should be seen in the context of the entire machinery of resolution 377 (V) which had been adopted during the Cold War. Much of the machinery established by that controversial resolution was today an anachronism. It was timely to dispose of such sequels of the past and focus on proposals useful to meet the needs of the contemporary international community, in which the United Nations must play an active and vital part. His delegation would thus propose in due course to the Special Committee a draft recommendation for adoption by the General Assembly which would formally abolish the machinery established under resolution 377 (V), with the exception of the emergency special session procedure, and which would adopt the proposals contained in document A/AC.182/L.25. Several representatives indicated they looked forward to receiving the text of such a new proposal and hoped that a careful consideration of it, together with document A/AC.182/L.25, at the next session of the Special Committee would produce positive results.

262. As to resolution 377 (V), some representatives remarked that, regardless of the backdrop against which it was adopted, it had to be recognized that the procedure for calling emergency special sessions provided for therein was a valuable beginning. It was not possible, pending more detailed in-depth examination, to accept a wholesale deletion of references to that resolution as certain features thereof might still be useful to retain. The opinion was expressed that it was not appropriate to characterize past General Assembly resolutions as "illegal", even though with hindsight experience might have shown they were ill-advised. The point was to try to search for ways to make the Organization more effective and to improve its capabilities, not condemn past actions.

263. One representative remarked that his delegation took a measure of pride in having been involved in creating the possibilities provided to the General Assembly under resolution 377 (V). It was not positive to cast aspersions on those who had desired to protect and codify the residual role of the General Assembly in the

maintenance of international peace and security. Even though decisions such as resolution 377 (V) were taken more than thirty years ago, their important contribution to the functioning of the Organization could not be denied. A more thorough examination of proposal A/AC.182/L.25 and the related new proposal to be submitted should be undertaken next year in the course of the preparation of the list of proposals which were susceptible to general agreement, although doubt was expressed whether either proposal would command such agreement. This representative hoped to hear at that time the reasoning of those who considered resolution 377 (V) illegal, but not the proposal in document A/AC.182/L.25.

264. Turning to the separate amendments contained in proposal A/AC.182/L.25, one representative indicated a certain hesitancy in endorsing the third amendment relating to rule 19 of the Assembly's rules of procedure. In his view, the reference to Article III, paragraph 2, was likely to lead to confusion. He suggested, however, that the second sentence of the existing rule should be deleted because there was no need to provide for the inscription of additional items at an emergency special session; such a session should have a precise subject-matter.

Document A/AC.182/WG/51

265. At the present session, the following proposal (A/AC.182/WG/51) was submitted by France:

"When dealing with a matter in which two or more States are involved, the Security Council might consider, if it deems it appropriate, hearing briefly and separately representatives of those States in the course of informal consultations, so as to enable its members to ask the representatives for any explanations members would like to have at their disposal."

266. The sponsor of proposal A/AC.182/WG/51 explained that the aim of the proposal was to assist Security Council members to be better informed during the course of its deliberations. While the Council's rules allowed for representatives of States who were involved in a conflict to make statements at formal meetings of the Council, no such procedure or rule obtained for the informal consultations held among Council members prior to formal meetings. Those informal consultations had, as was well-known, become an extremely effective working method of the Council. But it had been necessary at times to suspend those consultations in order to elicit further information from one or more of the States directly involved in the matter before the Council. The proposal thus made provision for a procedure whereby information could be ascertained from States in the course of the informal consultations.

267. Some representatives welcomed the proposal as a sound contribution to the Security Council's conduct of business and as a recognition of the need to place relevant information before members of the Security Council in advance of the formal meetings of the Council, which are usually held after the elaboration of resolutions were well in progress. However, some of these representatives questioned the limitation in the proposal to only "representatives of States" involved in the matter. In their view, it would be preferable to mention "parties" to the dispute, as in some cases such parties may not be States, such as in the case of national liberation movements, but which should nevertheless be heard by the Council on the same basis as States. All possibilities should be provided for in the proposal. It was also questioned whether it was wise to specify in the proposal that representatives would be heard "briefly and separately". It would be more appropriate not to prejudge the time element or the manner of such a hearing, but

rather leave those questions to the Security Council or to its President, to be determined in the light of the circumstances. The suggestion was also made that the proposal could be made more positive by changing the word "might" to "should".

268. Some other representatives, however, cautioned that while the proposal may perhaps not be objectionable per se, it should be seen in the larger context of balancing between the procedures for facilitating closed, informal Council meetings and those arranged for open, formal meetings of the Council in which all Member States have an interest in the discussion. The danger to be avoided was that by encouraging informal meetings, the content and value of official meetings would thereby be diminished. There should not be any erosion or hampering of the regular functioning of the Security Council in its formal work. It was recalled that open diplomacy had been encouraged as a policy to avoid the problems and objections of the closed, secret diplomacy of the past.

269. It was moreover observed that while it was appropriate for the Special Committee to consider recommendations to the Security Council urging a general course of action or method of work, it was somewhat doubtful if it was appropriate to embark on such detailed recommendations envisaged in the proposal as to how it should conduct its informal consultations. Some of the more general ideas, such as those contained in the 1948 report of the Interim Committee 29/ warranted examination, but the degree of specificity in proposal A/AC.182/WG/51 appeared to overreach the bounds of what one principal organ might appropriately recommend to another. The proposal thus warranted a careful study and analysis at the next session of the Special Committee.

270. Finally, the view was expressed that regardless of the positive aspects which the proposal might have, it directly affected sensitive aspects of the relationship between the General Assembly and the Security Council. It would be more appropriate, desirable and effective to have the proposal considered by the Security Council itself.

29/ See Official Records of the General Assembly, Third Session, Supplement No. 10 (A/578, A/583, A/605 and A/606).