

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

GENERAL ASSEMBLY

OFFICIAL RECORDS: THIRTY-EIGHTH SESSION

SUPPLEMENT No. 41 (A/38/41)



UNITED NATIONS

New York, 1983

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.

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I. INTRODUCTION

1. At its 107th plenary meeting, on 16 December 1982, the General Assembly, on the recommendation of the Sixth Committee 1/ adopted resolution 37/105 entitled "Report of the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations", which read as follows:

"The General Assembly,

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

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

"Recalling, in particular, its resolutions 33/96 of 16 December 1978, 34/13 of 9 November 1979, 35/50 of 4 December 1980 and 36/31 of 13 November 1981, in which it decided that the Special Committee should continue its work,

"Taking note of the statement made by the Chairman of the Special Committee at its session in 1982, 3/

"Having considered the report of the Special Committee, 4/

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

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

"Expressing the hope that the Special Committee will, on the basis of the proposals before it, complete the mandate entrusted to it as soon as possible,

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

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

"3. Requests the Special Committee, in order to ensure further progress in its work, to begin at its forthcoming session, as the next step, the elaboration of the formulas of the working paper containing the main elements of the principle of non-use of force in international relations, taking duly into account the proposals submitted to it and, in particular, the efforts undertaken at its session in 1982;

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

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

"6. Requests the Secretary-General to provide the Special Committee with the necessary facilities and services;

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

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

2. The membership of the Special Committee as appointed by the President of the General Assembly and taking into account the rotation system described in documents A/32/500, annex III, and A/35/762 is as follows:

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

* Argentina, Brazil and Chile replace Cuba, Ecuador and Mexico, which were members in 1982 (see A/32/500, annex III, and A/35/762).

3. The Special Committee met at United Nations Headquarters from 31 January to 25 February 1983. 5/

4. The session was opened on behalf of the Secretary-General by Mr. Carl-August Fleischhauer, Under-Secretary-General, the Legal Counsel, who represented the Secretary-General at the session.

5. Mr. Valentin Romanov, Director of the Codification Division of the Office of Legal Affairs, acted as Secretary of the Special Committee. Miss Jacqueline Dauchy, Deputy Director for Research and Studies (Codification Division, Office of Legal Affairs), acted as Deputy Secretary to the Special

Committee. Mr. Lucjan Lukasik, Mr. Manuel Rama-Montaldo, Mr. Sergei Shestakov and Mr. A. Mpazi Sinjela, Legal Officers, acted as Assistant Secretaries to the Special Committee.

6. At its 78th and 85th meetings, on 1 February and 8 February 1983, the Special Committee elected the following officers:

Chairman: Mr. Ivan Garvalov (Bulgaria)

Vice-Chairmen: Mr. Ahmed Fath-Alla (Egypt)
Mr. Moritaka Hayashi (Japan)
Mr. Ricardo Sateler (Chile)

Rapporteur: Mr. Agustín Font (Spain)

7. At its 78th meeting, on 1 February, the Special Committee adopted the following agenda:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.
5. Consideration, pursuant to paragraph 2 of General Assembly resolution 32/150, paragraph 2 of resolution 33/96, paragraph 2 of resolution 34/13, paragraphs 2 and 3 of resolution 35/50, paragraphs 2 and 3 of resolution 36/31, and paragraphs 2 and 3 of resolution 37/105, of proposals and suggestions which are before the Special Committee.
6. Adoption of the report.

8. At the same meeting, the attention of the Special Committee was drawn to the requests for observer status received from the Permanent Missions to the United Nations of Algeria, the German Democratic Republic, Viet Nam and Yugoslavia. The Special Committee agreed to grant those requests as well as any requests to that effect from any other State that is not a member of the Committee, in accordance with the practice it had followed at its 1982 session, as reflected in paragraph 8 of its report on that session. 4/ The Committee took a similar decision at its 79th, 80th, 81st, 82nd and 86th meetings, held on 2, 3, 4 and 11 February, in relation to requests for observer status which had been received from the Permanent Missions to the United Nations of Cuba, Czechoslovakia, Democratic Yemen, Ecuador, the Libyan Arab Jamahiriya and Mexico.

9. At its 81st meeting, on 3 February, the Committee, with respect to the organization of its work, agreed:

(a) That the Working Group of the Committee, which is open to all members, would be reconstituted, with the Committee's Bureau being the same as that of the Bureau of the Working Group;

(b) To conduct a general debate on item 5 of the agenda until 8 February;

(c) To conduct another general debate in the course of two plenary meetings on 11 February;

(d) That the Working Group begin its work in the afternoon of 8 February and hold 2 meetings on 9 February and two meetings on 10 February. 6/

10. At the 78th meeting, the representative of the Soviet Union made a statement which he asked to be considered as a statement in the general debate.

11. The Special Committee devoted its 81st to 85th meetings, between 3 and 8 February, and its 86th and 87th meetings on 11 February, to a general debate in which the representatives of the following States took part: Egypt, Uganda, United States of America, Romania, Mongolia, Greece, Hungary, France, Finland, Bulgaria, Federal Republic of Germany, United Kingdom of Great Britain and Northern Ireland, Belgium, Japan, Brazil, Poland, Morocco, Italy, India, Iraq, Peru, Argentina, Chile, Cyprus and Nicaragua. In accordance with the decision reflected in paragraph 8 above, the observers for the German Democratic Republic, Viet Nam, Czechoslovakia, Ecuador and Cuba made statements with the consent of the Committee.

12. The Committee had before it the draft World Treaty on the Non-Use of Force in International Relations submitted by the Union of Soviet Socialist Republics. 2/ It also had before it the comments and suggestions of Governments received in accordance with General Assembly resolution 37/105 (A/AC.193/5 and Add.1). In addition, the Working Group had before it the working paper submitted at the 1979 session of the Committee by Belgium, France, Germany, Federal Republic of, Italy and the United Kingdom, 7/ a revised working paper submitted at the 1981 session of the Committee by 10 non-aligned countries (Benin, Cyprus, Egypt, India, Iraq, Morocco, Nepal, Nicaragua, Senegal and Uganda), 8/ and a proposal submitted by the Chairman 3/ submitted at the 1982 session of the Committee.

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

14. At its 92nd meeting, on 25 February, the Committee considered and approved the report of the Working Group (see sect. III below). The report of the Committee was adopted at the same meeting.

II. GENERAL DEBATE

15. The General Debate reflected the continuation of three main approaches to the mandate and work of the Committee.

16. Several representatives emphasized that the primary task of the Special Committee under the relevant resolution of the General Assembly was to draft at the earliest possible date a world treaty on the non-use of force in international relations. It was pointed out that the Soviet Union's initiative to conclude that treaty was timely and appropriate and that the conclusion of such a treaty would constitute a natural continuation of the efforts made by the United Nations and its Member States to consolidate the international-law system of the non-use of force, as established in the Charter, and to strengthen universal peace and international security. It was also stressed that such a treaty would promote new and more dependable political and legal guarantees of international security, contribute to a general improvement in the international situation, increase confidence among States and nations, and represent a turning-point from which progress towards a stable and reliable peace could be made. Furthermore, the treaty, being concurrent with the real interests of all States regardless of their political and social systems, would contribute to the preservation of peace and to the strengthening of the United Nations.

17. It was also emphasized by those representatives that the conclusion of a world treaty on the non-use of force, together with the adoption of other effective measures to eliminate the threat of war, had become particularly urgent in view of the current heightening of international tension, the increasing danger of a military conflict and even the risk of a nuclear catastrophe. It was pointed out in that regard that the existing international situation in world affairs was a source of deep concern for peoples. The remark was further made that instead of détente the world was witnessing confrontation and that, between 1945 and 1982, 180 armed conflicts had broken out, of which 97 per cent were located in the developing world, and that, as a result, 10 million human lives had been lost, not to mention the immense material damage. Furthermore, it was mentioned that there was, instead of security, an uncontrolled arms race and striving for military superiority.

18. It was pointed out in that respect that the problem of prohibiting the use of force was, in large measure, the problem of ensuring that the use of nuclear weapons, which had the greatest potential for annihilation, was inadmissible. It was emphasized that "there was no more important work in international politics today than that of averting the growing threat of nuclear war and bringing under control and terminating the nuclear arms race". It was further added that in the face of the growing danger of nuclear catastrophe, concrete and urgent measures should be undertaken by the international community, especially by the nuclear Powers, to reverse those ominous trends.

19. Therefore these representatives stated that the conclusion of a legally binding and universal world treaty which would prohibit the use of force by means of weapons of any kind, including nuclear weapons, would be an effective step towards averting a nuclear catastrophe. A step of historical significance along those lines had, as was pointed out by several representatives, already been taken by the Union of Soviet Socialist Republics, which had made a universal commitment that it would not be the first to use nuclear weapons. Since, it was added, the

problem of the prohibition of the use of force was, to a large extent, a problem of establishing the principle of inadmissibility of the use of nuclear weapons and elimination of the danger of nuclear war, the conclusion of a world treaty, coupled with the renunciation of first use of nuclear weapons, would be the first crucial step forward in overcoming confrontation and towards strengthening world peace and security. It was further pointed out that non-use of any kind of force and limiting conventional weapons was of the same paramount importance as inadmissibility of use of nuclear ones. Mention was made in that connection of the political declaration adopted by the Political Consultative Committee of States Parties to the Warsaw Pact, which met at Prague on 4 and 5 January 1983, the core of which was a new proposal for concluding a treaty concerning the mutual renunciation of the use of military force and the maintenance of peaceful relations between States members of the Warsaw Pact and NATO. It was also felt important that the commitment not to use military force should be combined in that treaty with provisions relating to the strengthening of the United Nations as a global instrument of collective security. The initiatives to conclude the world treaty on the non-use of force in international relations and the treaty on the mutual renunciation of military force and the maintenance of peaceful relations, it was added, demonstrated that the efforts exerted by some States in that context had never affected the supremacy of the jus cogens norm enshrined in Article 2, paragraph 4, of the Charter.

20. Another circumstance which, it was stressed, called for the speedy elaboration of a world treaty on non-use of force was the fact that political and legal measures strengthening the security of States would facilitate the adoption of practical measures to limit and reduce armaments. It was felt that progress in disarmament and in the strengthening of international security had to be sought along parallel paths. The important thing was, it was said, "not to stand still but to advance on all major fronts towards the elimination of the threat of war. Success on one front will facilitate progress on others". Thus, it was concluded, there was an objective need to elaborate, at the earliest possible date, a world treaty on the non-use of force as a way of facilitating the establishment of favourable conditions for progress in the settlement of disarmament questions.

21. The representatives in question underscored the fact that the world treaty on the non-use of force and the treaty concerning the mutual renunciation of the use of military force and the maintenance of peaceful relations had the same purpose: that of making inadmissible the use of all kinds of weapons, eliminating war from international relations and settling all disputes by peaceful means.

22. It was further stressed that the conclusion of a world treaty on the non-use of force would be consistent with an international practice that had fully proved its worth, namely, that of drawing up treaties and agreements aimed at putting into practice the principles of the Charter and establishing specific obligations based on those principles. It was also felt that the constant evolution of the system of international relations required further development and specification of the principles of the Charter through the process of codification and progressive development of international law. The encouragement for the progressive development of international law and its codification, it was added, was one of the tasks of the United Nations under Article 13, paragraph 1 (a), of the Charter. From the legal point of view, the conclusion of a world treaty would promote further the observance of the principle of non-use of force in international relations, for the conventional norms clarifying and specifying the respective rights and obligations of States would facilitate the process of interpretation and

application of the principle in question. It was pointed out in that regard, that international practice had given numerous examples of elaboration of legal instruments providing an interpretation of the general principles enshrined in the Charter. A specific example of such practice was the Final Act of the 1975 Conference on Security and Co-operation in Europe.

23. With respect to the compatibility of the world treaty with the relevant provisions of the Charter, it was emphasized that it was necessary to concretize the prohibition of the use of force as contained in Article 2, paragraph 4. The precise description of the forms and methods of the threat and use of force meant by that Article would also serve such a purpose, since it would make violations and circumventions more difficult, whereas, on the other hand, control of the observance of the prohibition as well as the realization of the responsibilities of States in case of violation could become easier. It was further stated that the position of rejection by some representatives of the progressive idea of concluding a world treaty on the non-use of force in international relations on the basis of its incompatibility with the provisions of the Charter was "artificially construed, deliberately negativistic and unconvincing and incorrect". Efforts to elaborate and to perfect the principle of non-use of force in international relations by means of a binding treaty had gained the decisive support of the overwhelming majority of States Members of the United Nations. It was also felt that the general recognition of that necessity could be derived from the adoption by the General Assembly of such important documents as the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (resolution 2625 (XXV)) and the Definition of Aggression (resolution 3314 (XXIX)), which contained a precise interpretation of the principle of non-use of force.

24. As to the allegations of certain delegations that the concretization and further development of the principle of non-use of force could undermine, weaken or supersede the fundamental obligations concerning the non-use of force as enshrined in the Charter, it was pointed out that those obligations would in no way be weakened but, on the contrary, would be reinforced by the conclusion of a world treaty on the non-use of force containing not only a general prohibition of the use or threat of force, but provisions on the inadmissibility of using weapons of any kind. The principles embodied in the Charter, it was further stated, had served as a basis for the conclusion of numerous international treaties in the fields of disarmament, human rights and, in particular, the maintenance of international peace and security. The General Assembly resolutions and international legal instruments relating to certain provisions of the Charter had not vitiated the legal force of the latter but, quite to the contrary, had played an outstanding role, legal and political, in increasing the effectiveness of the provisions of the Charter and translating them into reality and, on the whole, had served to enhance the role of the United Nations.

25. The representatives in question stressed that the time had come for the Special Committee to act in a purposeful and constructive manner in order to accomplish the task entrusted to it. They said that they looked with confidence to the 1983 session because a number of factors justified a measure of optimism. In this connection, attention was drawn to the successful adoption of the Manila Declaration on the Peaceful Settlement of International Disputes, which demonstrated that, with good will and political determination, it was possible to reach mutually acceptable solutions, whatever the complexity of the problems at stake. It was also pointed out that in paragraph 3 of resolution 37/105, the

General Assembly provided the Committee with the necessary guidance by instructing it to start elaborating the formulas of the working paper containing the main elements of the principle of non-use of force.

26. The remark was further made that the Committee had before it a series of useful proposals, among them the draft world treaty submitted by the Soviet Union, which was described as having provided the springboard for the consideration of the question as representing a good basis for the elaboration of the final draft of a treaty, the working paper submitted by a group of non-aligned countries, which was viewed as a valuable and helpful step in the right direction, and the proposal of the Chairman of the 1982 session which, it was stated, reflected a reasonable, constructive and realistic approach and contained a number of important ideas.

27. The elaboration of the formulas of the working paper containing the main elements of the principle of non-use of force and, in particular, the development and definition of the principle of non-use of force were viewed by those representatives as an important step towards the subsequent drafting of, and agreement on, a world treaty on the non-use of force in international relations, which the General Assembly had mandated the Special Committee to elaborate on as far back as 1976.

28. The representatives in question expressed readiness to approach in a constructive spirit the carrying out of the responsible task entrusted to the Special Committee by the General Assembly and urged the members of the Committee to display the necessary spirit of co-operation and understanding, so that substantial positive results might be achieved during the 1983 session in compliance with the pressing demand of the majority of the States for a more effective discharge by the United Nations of its functions in the maintenance of peace and security.

29. The second main approach could be summarized as follows. In the first place, the representatives concerned expressed awareness of the acute problem which persistent violations of the prohibition of the use of force posed for peoples and States. Second, many of them expressly opposed the idea of drafting a treaty or other instrument of a normative character, since, according to them, it would not solve the problem of the above-mentioned violations; on the contrary, they said, it would be counter-productive. Third, they proposed, instead, a number of measures which, in their opinion, could realistically be expected to improve the situation. Finally, they referred to the other documents before the Committee. It should be noted that, in that current of opinion, different nuances could be perceived. These four points will be dealt with in turn.

30. In the first place, as has been recalled, those representatives expressed awareness of the acute problem which persistent violations of the prohibition of the use of force posed for peoples and States. The hope was expressed that the ideas contained in the recent report of the Secretary-General on the work of the Organization would be given the attention they deserve by the Security Council and would be duly taken into account by the Special Committee. Concern was expressed at the fact that effectiveness on the world scene of the principle of non-use of force had not responded either to the commands of its letter or to the spirit of enhancing good neighbourly relations that should guide its proper implementation. Reference was made in that connection to acts of aggression, to faits accomplis unilaterally achieved through violence, and to invasions and illegal occupation of territories.

31. In the second place, those representatives opposed the idea of a treaty or other instrument of a normative character. They stressed that the episodes of use of force did not stem from any gaps in the law and that the elaboration of such instruments would not improve the world situation.

32. Some representatives recalled that their delegations had voted against resolution 37/105, inter alia, because it still mentioned the idea of drafting a treaty on the non-use of force in international relations. They felt that an important prerequisite for the Special Committee to improve its less than impressive record and reach its goal of enhancing the effectiveness of the principle of non-use of force in international relations was to direct its efforts away from the drafting of a world treaty.

33. Under its mandate, several representatives stated, the purpose of the Committee was to enhance the effectiveness of the principle of non-use of force either by elaborating a treaty or by making such other recommendations as it deemed appropriate. The first alternative would, in fact, be counter-productive; therefore, the representatives in question reiterated their opposition to the idea of drafting a treaty on the non-use of force in international relations. It was recalled that the prohibition of the use of force was laid down in very clear terms in the most universal legal instrument, namely, the Charter, and that the obligations contained in Article 2, paragraph 4, of the Charter as well as the twin obligation spelled out in Article 2, paragraph 3, clearly indicated to States how to behave in their reciprocal relations, the only exceptions to the prohibition of the use of force being the ones found in the Charter, as with the right of self-defence preserved in Article 51 thereof. In that connection, it was noted that if the envisaged treaty were to repeat the commitments contained in the Charter, it would cast doubts on the validity of those commitments, discredit the Charter and put in question the rule of pacta sunt servanda. If, conversely, the treaty deviated from the Charter, it might restrict the scope of Article 2, paragraph 4, and would, by singling out one specific principle and leaving out the principle of peaceful settlement of disputes, the collective security system and self-defence, destroy the careful balances established by the Charter. It would, furthermore, set up a parallel legal régime in an instrument having neither the solemnity nor the universality of the Charter, the final result being instability and confusion.

34. It was remarked that, although Article 103 of the Charter would continue to apply, it would not necessarily be sufficient as a practical means to avoid the confusion arising out of the existence of a new treaty in parallel with the Charter. That situation might impinge in a negative way on the behaviour of States as well as on the activity of the principal organs of the United Nations.

35. Some among the representatives opposed to the elaboration of a treaty said that they did not rule out the possibility of drafting a declaration on the matter. However, most of them expressed opposition to the idea of a declaration of a normative character which would entail the same dangers as a new treaty. Some delegations, in that context, felt that if a document should be drafted by the Special Committee it should focus on practical, operational recommendations intended to enhance the effectiveness of the principle of non-use of force as well as of other related principles of the Charter of the United Nations, in particular, the principle of pacific settlement of disputes. Some delegations, however, expressed reservations on the drafting of any document by the Special Committee. In that connection, it was held that there was no need for any normative action, in

view of the clarity of Article 2, paragraph 4, and also because the Declaration concerning friendly relations already contained, in careful language, patiently negotiated over many years, and ultimately adopted by consensus in the General Assembly, a whole section on the principle of the non-use of force which consisted of no less than 13 paragraphs elaborating the content of the principle in question and its consequences, thus leaving no room for the argument that that principle remained unclear or obscure, or that its incidents or consequences needed to be spelled out.

36. Furthermore, it was added, the fact was that, despite the activities of the Committee which kept the principle of the non-use of force in the forefront of attention from year to year, the situation in the real world had not changed much: most of the illegal and unacceptable uses of force identified during earlier sessions of the Committee continued, and new ones had been added, and there was therefore no reason to think that further semantic work would produce a change in the behaviour of States.

37. In the third place, those representatives proposed other measures to improve the situation.

38. Several representatives stressed that an essential condition for the elimination of the use of force in international relations was the political will of States to abide by their obligations under the Charter. The remedy to the evils of the world was, it was stated, strict adherence to all the principles of the United Nations as set out in Article 2 of the Charter. Reference was made in that connection to the feeling expressed in the Secretary-General's report that "we now take the Charter far less seriously than did its authors, living as they did in the wake of a world tragedy" and to his belief that "an important first step would be a conscious recommitment by Governments to the Charter". Thus, it was stated, what was needed was concrete and operational, rather than formal and nominal, steps. In that regard, a treaty or other normative instrument on the non-use of force in international relations could not precede or replace the strengthening of the United Nations machinery for the maintenance of peace and the completion of a system of real international security based on concrete, verifiable and mutual measures of disarmament and arms limitation and control.

39. In the fourth place, the representatives in question offered comments and suggestions on alternative courses of action which the Special Committee could, in their opinion, follow more profitably with a view to enhancing the effectiveness of the principle of non-use of force. It was said, in particular, that the Committee should consider the principle in question in its relation with other Charter-based principles, including the principle of the peaceful settlement of disputes, and in its relationship with the collective security system as a whole.

40. It was recalled, in that connection, that the progress that the Charter of the United Nations marked over such previous efforts as the Kellogg-Briand Pact was the elaboration of a collective security system and that to look at Article 2, paragraph 4, in isolation of that system was to march back from the achievements of 1945. It was also suggested that specific means for improving mechanisms in the area of the peaceful settlement of disputes and ensuring the early involvement of existing organs, including the Security Council and the Secretary-General, should be explored. The conviction was expressed that if such effective mechanisms were readily available to contending parties and appropriately urged upon them at as early a stage as possible, resort to arms would be avoided in many instances. It

was recalled that in his report on the work of the Organization, the Secretary-General had pointed out that in recent manifestations of the use of force "all the parties would have gained immeasurably from the effectiveness of a system for the peaceful settlement of disputes", and insisted that "something must be done, and urgently, to strengthen our international institutions and to adopt new and imaginative approaches to the prevention and resolution of conflicts". In that connection, it was remarked that the Manila Declaration on the Peaceful Settlement of International Disputes offered a basis for further elaboration of more concrete measures of dispute settlement.

41. Other ways of enhancing the effectiveness of the principle of non-use of force which were mentioned by some of the representatives in question included encouraging the Secretary-General to make greater use of his powers under Article 99 of the Charter, enhancing fact-finding by the Secretary-General and by the Security Council, encouraging parties and non-parties to bring matters to the Council at an early stage of the problem, improving the functioning of peace-keeping operations - which required a positive attitude on the part of all States, in particular the permanent members of the Security Council - with regard to all aspects of the system, including financing and acknowledging the relationship between the cause of peace and respect for fundamental human rights, violations of which were often the cause or the pretext of the use of force by one State against another.

42. The view was further expressed by some that it would be useful to explore, possibly within the framework provided by point II, 1 A, of the proposal of the Chairman of the 1982 session, 3/ the reasons why States resorted to force by reviewing specific cases of the use of force.

43. Some of the representatives who mentioned the above elements as relevant to the work of the Special Committee held the view that disarmament problems did not fall within the purview of the Committee, particularly since they were being dealt with in a number of other forums.

44. In the fourth place, with respect to the basis on which the Committee should conduct its future work, the view was expressed that the working paper submitted by five Western European countries at the 1979 session, 7/ unlike other proposals before the Committee, had not been the subject of a special reading and should be more thoroughly examined. The working paper submitted by a group of non-aligned countries 8/ was also viewed as worthy of consideration, although it was recalled that the discussion at the previous session had revealed considerable differences of opinion on both its normative and institutional aspects.

45. As to the initiative taken by the Chairman of the 1982 session, 3/ it was also considered noteworthy. While some representatives felt that the method of grouping the relevant elements of all proposals submitted so far under specific headings seemed appropriate and feasible, and while particular interest was expressed in sections E, F and G, it was also pointed out that the initiative of the Chairman had been taken in an individual capacity and had not been endorsed by the Committee. Others, however, found the working paper difficult to accept, unless its normative aspects were fully reconsidered and a sufficient amount of weight placed on the elements relating to the peaceful settlement of disputes. Some delegations were opposed to the idea of beginning by elaborating formulas and subsequently considering the legal nature of the instrument into which they would be incorporated.

46. There was another body of opinion which placed great emphasis on the importance of the principle of non-use of force in today's international relations and on its relevance for the Organization and its Member States. It was characterized as the corner-stone upon which the United Nations, the non-aligned movement and contemporary international law rested. The said principle constituted jus cogens or a peremptory norm of international law, it was said, from which no derogation was allowed. The intimate interrelationship between the principle of non-use of force and threat of force as an obligation concerning an effective behaviour of States and the principle of the peaceful settlement of disputes as an obligation to use the adequate means to obtain that result was also underscored by a group of delegations.

47. Notwithstanding the foregoing, it was pointed out, the international scene had witnessed during the last decades, and particularly during the last years, numerous instances of application of the politics of force and of intervention in the internal affairs of States. New military confrontations had arisen, the arms race had accelerated and the danger of wars, including nuclear war, had become more imminent. Brutal expulsions of indigenous people from their ancestral homes and lands and attempts to change the demographic character of countries through the use of force had also taken place. While the Special Committee was discussing ways of enhancing the effectiveness of the principle of non-use of force in international relations, territories and countries continued to remain under foreign occupation and new violations of the principle continued unabated. The effective elimination of the use of force or the threat of force, it was pointed out, should entail, inter alia, a renunciation to recognize spheres of influence and interests, the elimination of hegemonistic and great Power policies as well as a renunciation of any form of intervention in the internal affairs of small and middle-sized countries and of the application of pressures and economic sanctions.

48. The idea was also expressed that the growing gap between the rich and the poor countries, colonialism, foreign domination and apartheid were among the causes of the use of force in international relations not usually mentioned by some groups of States.

49. Several criticisms were levelled at the little progress made so far by the Special Committee and at the way it had been conducting its work. That lack of progress was due to the lack of political will to examine measures conducive to a real enhancement of the effectiveness of the principle of non-use of force in international relations. One delegation added that the lack of progress was also due to the lack of precision which had characterized the mandate and objectives of the Special Committee since its establishment. That delegation therefore took the view that the General Assembly should thoroughly review the mandate of the Special Committee to decide whether to continue a task whose prospects, at least in the present circumstances, were not at all good.

50. Several representatives criticized as a delaying tactic the holding of a general debate at this stage of the Special Committee's work. The general debate, it was felt, tended to be repetitious and sterile, diverting precious time that the Special Committee needed for the conduct of its actual work. The existence of the Special Committee was a reality, it was said, in spite of all differences concerning it, and therefore all efforts should be made to ensure the successful outcome of its sessions. In this regard, several representatives stated that the Committee should give pre-eminence to the juridical aspects of its work, leaving aside sterile political discussion, as the best way to ensure the success of its efforts.

51. Concerning the approach to be followed by the Special Committee in its work, representatives felt that the actual mandate of the Committee for its present session was duly reflected in paragraph 3 of General Assembly resolution 37/105, namely, the elaboration of formulas of the working paper containing the main elements of the principle of non-use of force in international relations, taking duly into account the proposals submitted to it and, in particular, the efforts undertaken at its session in 1982. It was felt that the Special Committee should adopt an approach similar to that taken by the Ad Hoc Committee on the Drafting of an International Convention against the Taking of Hostages and by the Charter Committee in its elaboration of the Manila Declaration on the Peaceful Settlement of International Disputes, namely, to identify and list the problems involved in the manifestation of the use of force, and the relationships between the principle of non-use of force, and other Charter principles; thereafter to glean from the different working papers converging proposals which might be susceptible of general agreement and, finally, to deepen the examination of those proposals. Several Representatives generally considered the revised working paper submitted by the non-aligned countries of the Special Committee as the most comprehensive, the most realistic and the most likely initiative to lead to a possible area of general agreement. It was also said that it contained lofty principles and high ideals relevant to the principle of non-use of force which, if implemented, would, inter alia, close the gaps and loopholes which in the past had been used as pretences for the illegal use of force. It had been submitted in a constructive spirit to lead the Committee to a substantive debate on the principles involved. Nevertheless, the same representatives felt that in conducting its work the Committee should take into account all the proposals before the Committee on an equal footing.

52. Support was also expressed for the paper submitted by the former Chairman of the Special Committee, Mr. El-Araby from Egypt, at its previous session, as a noteworthy procedural proposal. In this connection, some representatives felt that an appropriate course of action to carry out the Committee's mandate was to proceed to elaborate a consolidated compilation of proposals contained in the three proposals submitted to the Special Committee, grouped under the headings contained in Mr. El-Araby's paper. Some representatives did not exclude altogether the possibility of a discussion of those headings. Another representative felt that the question of definitions of concepts relating to the principle of non-use and threat of force should be left for a later stage. It was also said that the drawing up of a consolidated working paper at an early date would greatly facilitate the work of the Working Group by giving it guidelines and a direction to its work.

53. As to the form or legal status of the future instrument to be elaborated by the Special Committee, some representatives pronounced themselves in favour of the initiative to draft a treaty on the non-use of force in international relations or, at least, an international document with as binding a nature as possible. Other representatives felt that the question of the determination of the form of the future instrument should better be left for a later stage. Not to prejudge on the nature of the future instrument, it was said, was an understanding carried over from previous sessions, which did not contradict paragraph 2 of resolution 37/105 and which would help the Special Committee's deliberations.

54. Some representatives indicated various elements that a future instrument on the principle of non-use of force should contain. The instrument, it was said, should recognize the said principle as part of jus cogens or pre-emptory norms of

international law. It should broadly approach the scope of the definition of force covering not only the concept of physical force but also all forms of coercion, whether military, political, economic or any other form. It should also provide for an unconditional and explicit prohibition of the use of nuclear weapons along with conventional weapons. Indirect uses of force such as inciting, abetting or aiding armed bands in the territory of another State, involvement in civil strife or intervention in the internal affairs of other countries as well as destabilization of Governments should also be included. The instrument should also regulate lawful uses of force such as self-defence, enforcement action under Chapter VII of the Charter and the right of peoples to fight against colonialism, alien domination, foreign occupation, racial discrimination and apartheid. Except for those cases of lawful use of force, the instrument should be universal in its application of the principle of non-use of force and threat of force, also recognizing, it was stated by one delegation, "the obsolete character" of Charter provisions referring to former enemy States in the Second World War. The instrument should also refer to the consequences arising from the unlawful use of force, or the threat of it, such as non-recognition of acquisition of territories and treaties concluded in violation of the principle; non-recognition of changes in cultural or demographic characteristics of territories under occupation as well as responsibility for damage done to the people, territory and resources during such illegal occupation. The instrument, it was further maintained, should clearly reflect the interrelationship between the principle of non-use of force and other principles of international law such as the principle of peaceful settlement of disputes between States, the principle of good faith and the principle pacta sunt servanda, or respect of treaty obligations valid in accordance with generally recognized principles and rules of international law and in full conformity with Article 103 of the Charter. Mention was also made of institutionalized mechanisms for the monitoring of potentially dangerous situations and for increasing the peaceful resolution of conflicts such as good offices and mediation by the Secretary-General or by third States and international judicial institutions. Finally, it was added, alternative approaches to the enhancement of the principle of non-use of force should also be contemplated by the future instrument, such as disarmament and collective security measures.

55. It was also pointed out that the strengthening of the principle of non-use of force in international relations could only be effectively achieved by complying with the provisions of the Charter on effective collective measures for the prevention and removal of threats to the peace and for the suppression of acts of aggression. The principle of non-use of force under Article 2, paragraph 5, spoke of the necessity of "taking preventive or enforcement action", obviously by the Security Council. As things stood now the Security Council was deprived of the available means for enforcement action and therefore it could not answer its primary purpose under the Charter, as was so emphatically shown in recent cases of contemptuous disregard of repeated and unanimous decisions of the Council. That situation had arisen as a consequence of the non-implementation by the Security Council, and more particularly by its permanent members, of the mandatory provisions of the Charter under Chapter VII for a United Nations force, to be available to the Security Council, with the assistance and advice of the Military Staff Committee. That Committee had been fully established from the very start of the United Nations; it had functioned regularly but also perfunctorily, because of the lack of a United Nations force.

56. It was also said that it should be understood that the adoption of an instrument on the non-use of force was only a means and not an end in itself and

that its effectiveness would always be subject to the political will of States not to have recourse to force contravening the Charter. Nevertheless the existence of the Special Committee was an excellent occasion for further delimiting the elements of the principle of non-use of force and for completing the codification of a pre-emptory norm of international law of the importance of the principle in question.

III. REPORT OF THE WORKING GROUP

57. As indicated in paragraph 9 above, the Special Committee decided at its 81st meeting to reconstitute a Working Group with the same officers as the Committee.

58. The Working Group held 13 meetings between 8 and 18 February 1983.

59. At the meeting on 10 February 1983, the Chairman made the following proposal concerning the work of the Working Group on the basis of informal consultations:

"We will have a discussion of what is termed in Ambassador El-Araby's informal paper 7 'headings' in conjunction with the 3 officially submitted proposals before the Committee. The nature of the discussion would be entirely up to the delegations. It will be either substantive or procedural, or both, or only one. It is up to the delegations to choose what kind of discussion they will conduct. Delegations will be free in discussing what is termed in Ambassador El-Araby's informal paper 7 'headings' to make proposals, to accept the 'headings' the way they are now, or to amend them or to sub-amend them, to add and delete from the existing language, to propose new so-called 'headings', to propose texts under each 'heading' which may be taken either from the 3 officially submitted proposals or they may be entirely new proposals or old proposals.

"The Working Group will begin discussing the so-called 'headings' the way they are now featured in Ambassador El-Araby's informal paper, one by one.

"The aim is to reach general agreement on what kind of 'headings' there will be and to allocate the substantive texts that might eventually accompany each respective 'heading'.

"After this phase is exhausted the Working Group will be in a position to begin the elaboration of formulae in compliance with General Assembly resolution 37/105.

"What I am proposing now is an uninterrupted phase of discussion on 'headings' and texts."

60. At the same meeting, the Working Group adopted the Chairman's proposal by consensus. It therefore began by considering one by one the "headings" contained in the informal paper submitted by the Chairman of the Special Committee's 1982 session, Mr. El-Araby. 3/

"Heading" A

61. This "heading" was worded as follows:

"Manifestations, scope and dimensions of the threat or use of force".

62. The term "manifestations" was interpreted by certain representatives as including the study of the causes of use of force mentioned in the introductory part of the proposal of the five Western European countries. 7/ Other representatives questioned this interpretation which according to them did not correspond to the intention of Mr. El-Araby. They indicated that in their opinion

the word "manifestations" referred to the forms of the use of force and therefore to the definition of the use of force.

63. It was proposed that, under "heading" A, a study should be made which would comprise the following three elements: (1) a case-by-case study of specific manifestations of the use of force taking into consideration the historical, legal, psychological and political context; (2) a phenomenological analysis of the different forms of use of force (use of armed force, indirect aggression, attempts at subversion or attempts to overthrow the Government, pressure of a political or economic nature on States, economic boycott, etc.); and (3) a study of the reasons advanced by States to justify use of force, which would include an analysis of the links between the principle of non-use of force and other principles of international law such as the principle of self-determination or the principle of territorial integrity and be designed to determine whether those reasons corresponded to the Charter provisions concerning legitimate use of force, particularly Article 51.

64. The various elements of the proposal were favourably received by some delegations but criticized by others.

65. With regard to the idea of a case-by-case study, the delegations in favour of the proposal recalled that a difference of views existed within the Committee as to the best way of enhancing the effectiveness of the principle of non-use of force: some advocated a normative approach and others considered that none of the instances of use of force was due to a faulty formulation or misunderstanding of the existing norm. While reiterating their belief that it would be pointless, and even dangerous, to revamp a norm stated in perfectly clear terms in Article 2, paragraph 4, the delegations in question stressed that the best way of determining which of the two above-mentioned approaches was correct would be to analyse specific cases in order to see whether it was necessary to clarify the principle of non-use of force or whether its effectiveness should be enhanced by strengthening the system of collective security, the machinery for peaceful settlement of disputes and the residual role played by the General Assembly in that regard. It was added that it would be quite possible to conduct such a study in a calm atmosphere, if necessary by depersonalizing the cases studied and leaving aside pending disputes, without passing judgement and without encroaching on the fact-finding prerogatives of the Security Council and of the Secretary-General.

66. The idea was put forward that, in selecting specific cases for study, it would be useful to refer to the Repertory of Practice of United Nations Organs. Lastly, the comment was made that either one espoused the idea that everything which concerned non-use of force was within the domain of the Security Council, in which case the Special Committee had no *raison d'être*, or else one agreed that the Assembly could consider the question - which seemed to flow from Article 10 of the Charter - in which case it should be given the opportunity to consider all aspects of the question.

67. Other delegations objected to the idea of a case-by-case study. They criticized the attitude of those who took refuge behind the clarity of the norm and so maintained that there was nothing else to do but to observe the actual situation and ponder the reasons why the norm was not respected. It was thought that such an attitude disregarded the whole constructive evolution which made possible the transition from the stage of the League of Nations - which did not prohibit war but delayed it - to the stage of the Briand-Kellogg Pact - which envisaged renunciation

of war - and, lastly, to the stage of the Charter, which prohibited not only the use but also the threat of use of force. The delegations in question added that it would be incomprehensibly conservative to claim that evolution stopped there, whereas the technological revolution and the appearance of nuclear weapons urgently required a new effort to develop the principle of non-use of force and to give it concrete shape.

68. It was also stated that the proposed study would be fruitless, would provoke polemics, would distract the Committee from its mandate and would lead it to play the role of a court of justice. It was not clear what criteria would prevail in the selection of the cases of use of force which would be studied. In particular, it was asked whether the Committee would become seized of disputes which were not within the competence of the Security Council and whether it might thus jeopardize delicate negotiations. It was also noted that, if the Committee started to reopen those cases, it would seem to be questioning the manner in which the General Assembly and the Council had performed their task, would encroach on the prerogatives of the Council and of the Assembly and would undermine the authority of those two organs.

69. It was also stressed that the proposed study would be impracticable: in that connection, questions were raised about how the Committee could consider specific cases of use of force without the participation of the States concerned, how the proposed study could be undertaken without exacerbating disputes, how the Committee could investigate disputes or situations when Article 34 specified that such investigations were within the exclusive competence of the Security Council, how it could identify certain types of behaviour as constituting use of force when under the terms of Article 39 the Council alone was competent to determine the existence of breaches of the peace or acts of aggression, how it could consider a dispute between two States without informing itself of the factual circumstances and how it could obtain information of that type without provoking legitimate protests on the part of the States in question, in the light of the principle embodied in Article 2, paragraph 7, of the Charter.

70. The idea of taking into consideration in the Committee the sociological, political, psychological and economic aspects of use of force was welcomed by some delegations and was criticized by others.

71. Also in connection with the term "manifestations", attention was drawn to "heading" D and it was proposed that the term should be preceded by the adjective "illegitimate".

72. With reference to the term "scope", certain delegations asked whether the underlying intention was to determine whether the concept of use of force should mean only the use of armed force or covered also actions of a different type, such as political pressure and economic coercion.

73. The term "dimensions" was also found by certain delegations to be vague: it was asked whether it referred to the size of the danger represented by a particular type of use of force, or to the distinction between use of force and threat of use of force. It was also asked whether it referred to the seriousness of the use of force, the number of States involved or the frequency of the phenomenon or whether it dealt with the questions raised in the Repertory of Practice of United Nations Organs under the headings "The question of the scope and limit of the phrase 'threat or use of force against the territorial integrity or political independence

of any state'" and "The question of the scope and limit of the phrase 'in any other manner inconsistent with the Purposes of the United Nations'".

74. Other delegations felt that the Working Group did not have to embark on a scholarly debate on the meaning of the terms in question and that it was quite pointless to become embroiled in semantic analyses and to dissect each of the words used. In that connection, it was pointed out that "heading" A was perhaps deliberately ambiguous, which was all to the good because the existing wording did not prejudge the position of any delegation. It was also stressed that it was difficult to engage simultaneously in a procedural task and an in-depth analysis of questions and that, at that stage, the Working Group should concentrate on the procedural task - in other words, it should keep the existing "headings" and set out under each of those "headings" the proposals which had been submitted to it; it could then embark on an analytical study of the elements thus grouped, during which the various points of view would be stated, and conclude by evolving suitable wording for each of the "headings", in the light of that analysis. It was added that the aim of Mr. El-Araby's proposal had been to provide a general framework for grouping the proposals originating from various sources, and it was to that task that the Working Group should address itself.

75. Certain delegations announced which elements of proposals officially submitted to the Committee they wished to be included under "heading" A. In that connection, mention was made of the preamble to the Soviet World draft treaty 2/ and of the second sentence of article I, paragraph 1, of that draft, as well as of paragraphs 1 and 3 of the paper of the non-aligned countries. 8/ Reference was also made to the introductory part of the paper of the five Western European countries. 7/ The point was made that all the proposals, and not only substantive formulations, should find a place under the 7 "headings", and that the Working Group was not yet at the drafting stage. It was added that it should be clearly understood that when the time came, any delegation could request that the study mentioned in the introductory part of the five Western European countries' paper be undertaken.

"Heading" B

76. This "heading" reads as follows:

"General prohibition of the threat or use of force".

77. Some delegations considered that this "heading" was a key element of the Special Committee's work and that there could be no question of deleting it. It was observed in that connection that since the adoption of Lenin's Peace Decree, which had characterized war as a crime against humanity, the principle of non-use of force had been clarified and developed and the efforts to give concrete expression to that principle should continue, taking into account the scientific and technological revolution and in particular the appearance of the most deadly of weapons, namely nuclear weapons. It was also recalled that the Charter was binding on all States, whatever their economic and social systems, and that, as the Secretary-General had stated in his recent report on the work of the Organization, 9/ an important first step would be to bring about a conscious recommitment by Governments to the Charter. The reaffirmation of the principle along the lines indicated by "heading" B would therefore be welcome but it would be advisable to add the idea contained in the second sentence of article I, paragraph 1, of the Soviet world draft treaty.

78. Other delegations considered that "heading" B was unnecessary, since the use of force was clearly prohibited by Article 2, paragraph 4, of the Charter, and that the role of the Committee was not to reiterate that principle but to enhance its effectiveness. "Heading" B was not only useless but also dangerous in so far as it made the principle open to discussion and might lead to formulations differing from those of the Charter. The delegations in question therefore proposed the deletion of the "heading", which also had the disadvantage of creating the erroneous impression that there was general agreement to proceed with normative work.

79. Yet other delegations, while recognizing that the principle of non-use of force was a well-established norm and that "heading" B was therefore not perhaps strictly necessary, considered that a reference to the principle could logically be included in the outline of the discussion. In that connection, it was considered that "heading" B could be placed as an epigraph before the seven "headings" and reworded so as to indicate clearly that the Committee could not undertake the task of reiterating or reformulating the prohibition of the use of force and that the principle in question should be viewed in the context of the other principles of the Charter and the system of collective security. To that end the following forms of wording were proposed: "Recognition of the wrongfulness of the threat or use of force in accordance with the Charter of the United Nations (or in accordance with international law)"; "Respect by States of the principle of the illegality of the threat or use of force" and "Principle of non-use of force as stated in the Charter of the United Nations".

80. Some delegations considered that the original wording was preferable. In particular, it was felt that words such as "recognition" and "respect" did not take account of the binding nature of the principle in question. Doubts were likewise expressed about adding a reference to the Charter or international law. The reference to the Charter seemed pointless to some delegations, because the Committee was bound to conform strictly to the Charter, and was deemed unduly restrictive by others, which proposed that it should be replaced by a reference to contemporary international law. Reservations were expressed about the latter reference, because of the uncertainties that existed with regard to the content of international law outside the framework of the Charter. It was further argued that international law was international law and that to qualify it by "contemporary" or any other word was wrong. In response it was pointed out that the term "contemporary" appeared in the Manila Declaration on Peaceful Settlement of Disputes recently adopted by consensus in General Assembly resolution 37/10. Lastly, it was observed that the proposed additions were superfluous, since the use and threat of force were prohibited by international law, which, in its current composition, encompassed the Charter, which contained Article 2, paragraph 4.

81. The word "general" gave rise to various interpretations: it was inquired whether the word was intended to evoke a comprehensive concept while de-emphasizing details or whether the intention was to prohibit force in general. Another interpretation was that the word was intended to express the global character of the prohibition of the use of force, which covered all spheres of international relations, all categories of acts involving the use of force and all States. In that connection, it was observed that the principle of non-use of force applied not only to all States but also to all groups of States. Lastly, the view was expressed that the word "general" was intended to highlight the fact that the use of force was prohibited, irrespective of its nature (armed force, political or economic pressure ...) and of its degree (dispatch of armed bands or regular armies, use of conventional weapons or nuclear weapons). In support of the

peremptory character of the principle of non-use of force in international relations, attention was drawn to the need to take account of the work of the International Law Commission concerning the concept of a crime under international law as reflected in Article 19 of the draft articles on State responsibility.

82. Other delegations felt that it would be unwise to exaggerate the importance of forms of wording, since at the current stage the Working Group was seeking to identify the elements of the principle of non-use of force and not to draft texts.

83. In that connection, it was suggested that the following should be inserted under "heading" B: the first sentence of paragraph 1, and paragraphs 2 and 3 of article I of the Soviet draft world treaty, paragraphs 2 and 16 of the paper submitted by the non-aligned countries and points 1, 2 and 3 of the last part of the paper submitted by the five Western European countries. Lastly, it was observed that the proposal submitted in connection with "heading A" (see para. 68 above) was also applicable, at least at the current stage, to "heading" B.

84. Some delegations proposed that "headings" A and B should be transposed. Other delegations said that the existing order was justified if an inductive method was used (whereby manifestations would be analysed before the prohibition was formulated) but that in view of the Committee's mandate, there was some logical justification for placing "heading" B before "heading" A.

85. A number of new "headings" were proposed for insertion between "headings" B and C.

86. First, it was proposed that a "heading" reading "Relationships between violations of human rights and the threat or use of force" should be inserted after "heading" B. It was explained that an analysis of a number of instances of violence in recent years would show that violations of human rights had been either the cause or the pretext for the use of force by one State against another.

87. Some delegations considered that proposal constructive and worthy of interest. It was explained that mass violations of human rights could easily lead to the use of force because the Governments involved tended to resolve the internal difficulties engendered by their policies by adopting an aggressive attitude with regard to other States and because such violations could lead other States to resort to force for humanitarian reasons and in order to assist the victims.

88. Other delegations, however, observed that the proposal in question related to one of the causes of failure to respect the principle of non-use of force and that if one of those causes was singled out it would be necessary to mention all the others - among which reference was made to the arms race and the injustice that characterized international economic relations - and to devise for each a form of wording that met with general agreement, something which would probably be particularly difficult to do in the case of the concept of human rights, which was interpreted in very different ways by different States and also aroused very strong feelings. It was also said that the Declaration on the Friendly Relations did not create any direct link between the principle of non-use of force and violations of human rights and attention was drawn to the need to keep in mind the mandate of the Committee. In this connection, the remark was made that studying human rights in the framework of the Committee would be as unwise as entrusting the question of non-use of force to the Third Committee or to the Commission on Human Rights.

89. It was also proposed that the "heading" entitled "Prevention of the threat or use of force" should be inserted between "headings" B and C. The sponsor of that proposal said that three phases could be distinguished in the chronology of a conflict: the first preceded the use or threat of force and it was at that stage that preventive action could be taken; in the second phase, the dispute had actually arisen and the peaceful settlement of disputes had to come into play; in the third phase, force had been used and hence the question of consequences arose. He observed that many disputes were exacerbated and degenerated into open conflicts because the mechanisms provided for in Chapters VI and VII of the Charter were not used as originally envisaged. In his view, it was necessary to take steps to ensure that greater use was made of the resources offered by the United Nations with regard to the prevention of disputes and of violations of the principle of non-use of force, of which Articles 34, 40 and 99 provided examples, and to be more aware of the potential role of the United Nations in that regard, which ranged from fact-finding to peace-keeping operations and preventive diplomacy by the Secretary-General.

90. A number of delegations welcomed that proposal: it was deemed particularly useful in the context of efforts to ensure greater respect for the principle of non-use of force, since its purpose was to make optimum use of the possibilities that existed both within and outside the framework of the United Nations for preventing the use of force. It was suggested that the proposed "heading" should be inserted immediately after that mentioned in paragraph 86 above and followed by most of the paragraphs in the paper submitted by five countries relating to the non-use of force.

91. However, some doubts were expressed with regard to the above-mentioned proposal. It was felt that the concerns which it reflected were apparently already covered by "headings" B, E and F. It was also observed that if the proposal was not limited to the framework of the United Nations and was not intended to define a new principle of international law, it could be included among the confidence-building measures mentioned in "heading" G. The question of which texts would be placed under the new "heading" was likewise raised.

92. It was also proposed that a third new "heading", reading "General obligation of States to settle their disputes by peaceful means" should be inserted between the two new "headings" mentioned in paragraphs 86 and 89 above. The sponsor of the proposal explained that the new "heading" related to the general obligation of States - set forth in Article 2, paragraph 3, of the Charter - to settle their disputes by peaceful means - an obligation which was the corollary of the principle of non-use of force and should therefore be coupled with it in the series of "headings" - and that under that "heading" the categories of disputes that most often gave rise to the threat or use of force could be identified. He also said that his proposal would re-establish a balance in Mr. El-Araby's paper, which devoted four "headings" to the non-use of force and only one to the peaceful settlement of disputes, although those two elements were accorded equal importance in the Committee's mandate. He added that "heading" E should be reworded so as to make it clear that the proposed new "heading" concerned the principle of peaceful settlement of disputes and "heading" E concerned the practical means of strengthening the machinery for the peaceful settlement of disputes. The proposal was welcomed by some delegations but others considered that it clearly fell within the terms of reference defined by "heading" E and should be examined in that context.

93. During the discussion of the three aforementioned proposals, a number of delegations expressed concern about the proliferation of new "headings". It was noted that those proposals reflected an approach differing from that taken during the preparation of Mr. El-Araby's paper, which had been designed to bring out the points on which the proposals submitted to the Committee converged. The view was expressed that only when the Working Group had completed its consideration of the seven existing "headings" would it be able to decide whether new "headings" were necessary and it was suggested that the submission of new proposals should be deferred until a later stage so as not to call in question the approach reflected in Mr. El-Araby's paper.

"Heading" C

94. "Heading" C reads as follows:

"Consequences of the threat or use of force".

95. This heading was considered very important by several delegations, which observed that a norm could not be effective unless it was accompanied by sanctions and unless there was appropriate machinery for the application of the sanctions. It was added that there was justification for "heading" C even within the context of a non-normative approach, for it would lead to consideration of the means and methods that would make it possible to eliminate the consequences of the use of force.

96. Other delegations felt it necessary to reserve their position on that "heading" so long as the orientation and objective of the work remained uncertain. It was observed that there would be a reason for the existence of "heading" C if the aim was to prepare a normative document - a course to which the delegations in question were opposed - but if that was not the case, it was hard to see how an analysis of the problems involved would contribute to the discovery of practical means of enhancing the effectiveness of the principle under consideration. It was also observed that the wording did not indicate clearly whether the "heading" referred to the wrongful consequences of the use of force or to the material results of the use of force - in which case it was closely linked to "headings" A and B - or to its legal consequences (sanctions and enforcement measures) - in which case it was connected to "heading" F.

97. The view was expressed that "heading" C concerned three categories of consequences, namely: non-recognition of the consequences arising from the use or threat of force; international responsibility of the State which used force; duty of States to assist the victims of the use of force.

98. With regard to the second of those three aspects, it was observed that any act of aggression should entail the international material responsibility of the State that had committed it and should also entail the criminal responsibility of the individuals who had ordered it. Reference was made in that connection to the principles that had been recognized by the Nürnberg Tribunal and endorsed by the General Assembly. It was added that in the case of any threat to the peace, breach of the peace or act of aggression, it would be possible to apply the measures, whether involving the use of armed force or not, that were provided for in Chapter VII of the Charter, and that violations of the principle of non-use of force could give rise to the application of Articles 5 and 6 of the Charter.

99. It was remarked, however, that it would be stating the obvious to say that the breach of an international obligation entailed responsibility, but that on the other hand the criminal responsibility of the organs of the State was a very exceptional phenomenon and could be entailed only in the very specific cases defined in the 1945 London Agreement establishing the international military Tribunals. It was noted that article 5 of the Definition of Aggression shed little light on the question, for it drew a distinction between "a war of aggression", which it characterized as a crime, and aggression which "gives rise to international responsibility", without defining the type of responsibility involved. It was added that article 19 of the draft articles of the International Law Commission likewise provided no solution, for although it drew a distinction between crimes and internationally wrongful acts, it did not indicate the effects of that distinction with regard to individuals acting as organs of the State nor the consequences flowing from the characterization of an act as a crime. Lastly, it was remarked that in any event it was doubtful whether all types of use of force, even non-military force, could be considered international crimes.

100. With regard to the concept of non-recognition of the consequences of the use of force, concern was expressed about the imprecision of a form of wording that might encompass not only the principle of non-recognition of territorial gains acquired by force as reflected for example in Security Council resolution 242 (1967) but also lawful consequences such as the right to use force in exercise of the right of self-defence and the right of the victim to obtain reparations. Mention was also made of the steps that could be taken within the framework of the United Nations to eliminate the consequences of the use or threat of force, the question of the solidarity of the Members of the United Nations with the victim of an act involving the use of force and the implementation of the provisions of instruments of humanitarian law such as the Geneva Conventions and the Additional Protocols thereto.

101. During the debate on "heading" C, several delegations expressed concern because the Working Group persisted in engaging in a detailed analysis of the terms used. They observed that such an analysis would not be justified unless the aim was to prepare a normative instrument, and that since that question remained open there was no reason for the time being to attach excessive importance to the wording of the "headings". It was suggested that paragraphs 4, 5 and 8 of the paper submitted by the non-aligned countries should be included under "heading" C.

"Heading" D

102. "Heading" D reads as follows:

"Legitimate use of force".

103. Some delegations said that they were in favour of the "heading": it was, in their view, a corollary of "heading" B, since it was logical to have a statement of the principle followed by mention of the exceptions. It was pointed out in that connection that the exceptions to the principle of non-use of force derived not only from Article 51 and other provisions of the Charter but also from resolutions and declarations of later date than the Charter that authorized the use of force in other cases. A number of representatives specifically mentioned the right of colonial peoples and national liberation movements to resort to armed struggle in order to gain self-determination and independence. Reference was also made to exceptions deriving from treaties and agreements concluded earlier by States.

Among the texts to appear under "heading" D were paragraphs 5, 10 and 11 of the non-aligned countries' paper and article 3 of the Soviet world draft Treaty, as well as a safeguard clause reserving the legitimate right of colonial peoples, endorsed by the Security Council and the General Assembly, to struggle for their independence and liberty and the right of peoples to fight the consequences of aggression.

104. Other delegations, while acknowledging that there was a conceptual link between the principle of non-use of force and the exceptions to it, pointed out that those exceptions should not be taken up during an exercise aimed at strengthening the effectiveness of the principle of non-use of force. It was consequently suggested that the content of "heading" D should be treated as an intrinsic element of "heading" B. Another comment made was that the debate had merely served to confirm the apprehensions of those who feared that the presence of such a heading would open the door to the creation of new exceptions to the principle of non-use of force or confer greater respectability on those that were not unanimously accepted. It was further asserted that no resolution, no treaty, bilateral or multilateral, could be superimposed on or undermine the relevant provisions of the Charter. Consequently, it was suggested that the words "in accordance with the Charter of the United Nations" should be added at the end of "heading" D.

"Heading" E

105. "Heading" E reads as follows:

"Peaceful settlement of disputes".

106. A number of amendments to the wording of the "heading" were proposed in the course of the discussion. First, reference was made to the proposal mentioned in paragraph 92 above, and it was proposed that the existing wording should be replaced by "means of peaceful settlements of disputes". The delegation making that proposal stated that under "heading" E, in the revised form proposed by it, practical measures to be taken to strengthen the system for the peaceful settlement of disputes, which went beyond the framework of the Charter, would be considered. It pointed out in that connection that Article 33 listed a number of modes of peaceful settlement but regulated neither their use nor their sequence, and that that was a gap to be filled by, for example, prescribing that, if one mode of settlement was unsuccessful, the parties were bound to resort to other means in order to prevent the dispute from degenerating into open conflict. It also proposed the addition of a new "heading", to come immediately after "heading" F, on the role of the United Nations in the peaceful settlement of disputes from the point of view of the principle of non-use of force. Another delegation further proposed that "heading" E should be divided into two subheadings which would read: "General obligation to resort to peaceful settlement of disputes" and "Practical measures for the peaceful settlement of disputes".

107. A third proposal was to replace "heading" E by three headings E, F and G, to read, respectively, "Principle of the peaceful settlement of disputes, its scope and dimensions", "Machinery and procedures for the peaceful settlement of disputes" and "Role of the principal organs of the United Nations in the peaceful settlement of disputes".

108. Finally, in order to make "heading" E less general - a shortcoming which, it was said, not only extended its scope beyond the framework of the United Nations but weakened its linkage to the principle of non-use of force - the following wording was proposed: "Settlement of disputes exclusively by peaceful means".

109. Some delegations took note with satisfaction of those proposals, which, in their view, had the advantage of relating the work more closely to strengthening the principle of the peaceful settlement of disputes. It was stated in that connection that, unlike the principle of non-use of force which, being a prohibition, did not lend itself to being strengthened, the principle of peaceful settlement of disputes created a positive obligation which States might be encouraged to comply with better by identifying methods and rules by means of which the entire range of modes of settlement provided for in Article 33 of the Charter could be used to best advantage. It was noted in that connection that the Manila Declaration, like the Declaration on Friendly Relations, was somewhat disappointing as far as practical dispute settlement methods were concerned and that "heading" E provided an opportunity to fill existing gaps in the matter.

110. Other delegations expressed reservations about the proposals mentioned above. Specifically, it was said that it was no part of the Committee's mandate to have detailed discussions on machinery for the peaceful settlement of disputes, a question which, it was pointed out, lay within the terms of reference of the Special Committee on the Charter of the United Nations. It was accordingly proposed that the second of the subheadings referred to in paragraph 106 above should be amended as follows: "Enumeration of practical measures for the peaceful settlement of disputes".

111. Reservations were expressed about the latter amendment on the grounds that its effect was to restrict the scope of the exercise in which the Committee was engaged and that that was inconsistent with the spirit of the working method adopted on the proposal of the Chairman: it was suggested that it should be sub-amended so as to read: "Enumeration and strengthening of modes of peaceful settlement of disputes". It was also suggested that the proposal referred to in paragraph 106 above should be amended by adding a third "subheading" reading "Development of machinery for the peaceful settlement of disputes".

112. Objections were made to the latter proposal on the grounds that it would have the effect of amending the Charter.

113. On the general question of the peaceful settlement of disputes, several delegations expressed the view that "heading" E as it stood was in its proper place in the list of "headings" because it was logical, having reviewed all elements of the principle of non-use of force, to emphasize that, since the settlement of international disputes by force was prohibited and since the perpetuation of such disputes was not desirable, States should resort to the modes of peaceful settlement provided for in the Charter. It was pointed out that if, as some were arguing, "headings" that stated the obvious should be deleted, the same reasoning should cause "headings" stating the principle of the peaceful settlement of disputes to be discarded. A further point was that the importance of a subject did not depend on the number of "headings" devoted to it and that there was therefore no reason for increasing the number of "headings" and "subheadings" referring to the peaceful settlement of disputes ad infinitum. It was noted that while stressing the need to continue efforts to strengthen the process of peaceful settlement of disputes by the progressive development and codification of

international law the Manila Declaration covered essential aspects of the principle of peaceful settlement of disputes and the Special Committee was not the appropriate body for focusing work on this principle. It was likewise pointed out that, given the context of "heading" E, only those aspects of the peaceful settlement of disputes having a direct bearing on the principle of non-use of force should be retained. Doubts were expressed, in particular, about proposals that apparently contemplated all disputes and not just those the continuance of which was likely to endanger the maintenance of international peace and security. Finally, it was observed that the Special Committee should not infringe upon the competence of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, whose terms of reference expressly covered the peaceful settlement of disputes.

114. In the view of those delegations, the existing wording of "heading" E was sufficiently broad to cover all the concerns that had been expressed during the debate and should therefore be left as it stood. It was suggested that paragraph 14 of the paper submitted by the non-aligned countries and article II of the Soviet draft treaty should be placed under that "heading". Other elements that might be placed under that "heading" were a reaffirmation of paragraph 3 of Article 2, a provision that States should, in accordance with the Charter of the United Nations, use the modes of peaceful settlement enumerated in Article 33, a statement of the decisive role played by the Security Council in that sphere, as evidenced in the Charter and the practice of the Council, and a clause based on paragraph 8 of section I of the Manila Declaration.

115. It was proposed that a new "heading" entitled "Respect for and fulfilment in good faith of international obligations" should be added immediately after "heading" E. The delegation making the proposal stressed that that principle was enunciated in the third preambular paragraph to the Charter, in Article 2, paragraph 2, of the Charter, in the Declaration on Friendly Relations and in article 26 of the Vienna Convention on the Law of Treaties. Paragraph 15 of the paper submitted by the non-aligned countries would, he said, be placed under that "heading".

116. A number of delegations firmly supported that proposal. The doctrine, it was stressed, acknowledged that treaty norms were pre-eminent in international law because of the considerable increase in the number of international treaties and that treaty norms had characteristics that made them a particularly suitable vehicle for the creation of rules of international law. It was also pointed out that the implementation in good faith and observance of treaty obligations were a corner-stone of relations among States and that the principle of good faith played a major role in the establishment of a climate of confidence in international relations.

117. Doubts were expressed by our delegation, however, concerning the proposal. Among the questions asked was whether the principle of good faith was really one of the elements of the principle of non-use of force. Another point made was that the proposed principle raised the very complex issue of the existence and content of jus cogens and its implications with regard to the validity of existing treaties. It was suggested that the idea embodied in the proposed new "heading" should be discussed in connection with "heading" G, and specifically confidence-building measures. The delegation making the proposal stated, however, that it was maintaining its proposal in its original form.

"Heading" F

118. This "heading" reads as follows:

"Role of the United Nations".

119. Certain representatives mentioned points which they thought should be studied under "heading" F. For example, it was stated that, if the United Nations were to contribute to the enhancement of the effectiveness of the principle of non-use of force, it should take greater advantage of the possibilities offered by the Charter in the framework of Article 29, utilize all the investigatory functions entrusted to the Security Council by Article 34, make full use of Chapter VII of the Charter and ensure that the provisions embodied therein were implemented and encourage the Secretary-General to exercise his powers, including fact-finding powers, under Article 99.

120. Other delegations stated that "heading" F should cover mainly means of enhancing the effectiveness of the Security Council and of making full use of the extensive powers entrusted to it by the Charter. They thought it inappropriate to raise in the context of "heading" F controversial questions which could only complicate the Special Committee's task. The opinion was expressed that by virtue of the Charter, and more specifically Article 34, the Security Council alone was invested with powers in the matter of fact-finding and dispatch of missions and that no other United Nations organ possessed such powers. Attempts to give the Secretary-General the right to take the initiative in that regard would, it was said, amount to a revision of the Charter and, for the delegations concerned, that would be unacceptable.

121. The remark was however made that, since the Working Group had agreed to leave all possibilities open at this stage, it was not logical to set aside from the outset the possibility that the Committee might reach the conclusion that an amendment to the Charter was desirable.

122. Also with reference to "heading" F, several delegations mentioned peace-keeping operations. It was stated in that connection that no other aspect of United Nations practical activity was more directly linked to the enhancement of the effectiveness of the principle of non-use of force. In particular, emphasis was placed on the obligation to support peace-keeping operations and on the responsibility incumbent on Member States to participate in the financing of operations decided on in accordance with the Charter.

123. While acknowledging that some of the questions of principle raised by peace-keeping operations did fall within the mandate of the Special Committee, certain delegations considered that detailed consideration of the organization, content and financing of the operations came within the purview of another organ - the Special Committee on Peace-keeping Operations - and that the Special Committee should be careful not to encroach on the competence of that organ.

124. It was suggested that paragraphs 6 and 7 of the paper of the non-aligned countries should be placed under "heading" F.

125. The sponsor of the proposal mentioned in paragraph 107 above explained that the proposal would require a consequential rewording of "heading" F, which would read: "Role of the United Nations in the strengthening of the effectiveness of the principle of non-use of force".

126. Another proposal was that the "heading" should be amended to read: "Strengthening of the role of the United Nations: (a) in the peaceful settlement of disputes; (b) in the non-use of force".

127. This proposal gave rise to objections. It was pointed out that the strengthening of the role of the United Nations was part of the mandate of the Special Committee on the Charter of the United Nations, the name of which actually made explicit reference, in identical terms, to the idea contained in the proposed new wording. It was also stated that "subheading" (a) was clearly already covered by "heading" E and it was asked why, in the context of an exercise designed to enhance the effectiveness of the principle of non-use of force, the peaceful settlement of disputes was highlighted and non-use of force was relegated to second place. Doubts were expressed about the advisability of splitting into "subheadings" offering no clearly apparent advantage a wording which had the great merit of being sufficiently general.

128. Certain representatives considered, however, that the wording of "heading" F was too general to be of any use and mentioned the need for as comprehensive an enumeration as possible of the elements which affected the Committee's mandate. It was stressed that, if all the questions which were being studied elsewhere were to be left out of the Committee's mandate, it would undoubtedly be left with nothing to do and that it would be an admission of impotence on its part for it to give up the idea of submitting at least an inventory - failing a solution - of the questions affecting its mandate.

129. Other representatives said that "heading" F was satisfactory because it covered the role of the United Nations in general terms to the extent that it was related to the principle of non-use of force. The same approach, it was stated, should be taken in relation to the principle of peaceful settlement of disputes.

"Heading" G

130. This "heading" reads as follows:

"Disarmament and confidence-building measures".

131. Certain delegations stated that this "heading" was of cardinal importance. It was emphasized that disarmament was not only the essential prerequisite for the solution of many problems facing the international community but also represented a material guarantee of strict respect for the principle of non-use of force: in that connection, the point was made that, if States did not have the material means to engage in acts of force, the question of failure to observe the principle of non-use of force would not arise. In order to enhance the effectiveness of that principle, it was necessary to adopt measures designed to halt the arms race, to move towards genuine disarmament and to prohibit totally the use of nuclear weapons and other weapons of mass destruction. It was suggested that States should consider the measures to be taken in accordance with their constitutional procedures in order to honour to the full their obligation not to use force.

132. Other delegations considered that it was in the sections of the Final Act of Helsinki entitled "Document on confidence-building measures and certain aspects of security and disarmament" and "Co-operation in humanitarian and other fields" that ideas for study under "heading" G were to be found. It was suggested that the "heading" should be reworded to read: "Ways of eliminating the causes which lead

States to use force" and it was specified on that occasion that the arms build-up was not a cause of the use of force but the result of the lack of confidence.

133. Doubts were expressed about the concept of material guarantee of the principle of non-use of force; it was thought that a binding principle did not have to be accompanied by guarantees and could not be subordinated to the achievement of disarmament; it was also asked whether disarmament could really be considered as a means of enhancing the effectiveness of the principle of non-use of force and was not instead the consequence of non-use of force. The fear was also expressed that an attempt to catalogue all the disarmament measures adopted or under study would favour certain measures, with the correlative risk of a contrario interpretations which would weaken the principle of non-use of force: in that connection, it was asked whether, by making a unilateral declaration of non-first-use of nuclear weapons, a State became morally authorized to use other forms of force. It was felt that the best approach was to leave disarmament questions to the competent organs. It was suggested that "heading" G should be reworded to read "Conditions of security and confidence-building measures". Emphasis was also placed on "collateral security measures", good examples of which were provided by the development of friendly relations and good-neighbourly relations and the implementation of the Declaration on the Strengthening of International Security.

134. Mention was made of the necessity of the adoption by all States of an obligation to refrain from the use of armed forces involving any type of weapons, including nuclear and other types of weapons of mass destruction. This was the aim to conclude a world treaty on non-use of force in international relations.

135. Still other delegations felt that in its existing wording "heading" G did fit into the Special Committee's terms of reference. The view was expressed that the principle of disarmament was linked to the principle of non-use of force in the same manner as the principle of the peaceful settlement of disputes, and it was stated that it was impossible to agree with the view that disarmament was not a means of enhancing the effectiveness of the principle of non-use of force. In that connection, several delegations considered that under "heading" G there should be spelled out the need for studying ideas such as the establishment of nuclear-free zones.

136. While acknowledging that the questions referred to in "heading" G were linked with the Committee's mandate, certain delegations noted that the discussion had revealed far-reaching conceptual differences which might lead the Working Group into areas outside its competence. It was therefore stated that the Committee should embark on a consideration of those questions only if it was able to rely on very specific guidelines.

137. It was suggested that articles IV and V of the Soviet draft world treaty and paragraph 12 of the paper of the non-aligned countries should be placed under "heading" G.

Notes

1/ Official Records of the General Assembly, Thirty-seventh Session, Annexes, agenda item 118, document A/37/721.

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

3/ Ibid., Thirty-seventh Session, Supplement No. 41 (A/37/41), para. 372.

4/ Ibid., Supplement No. 41 (A/37/41).

5/ For the membership of the Special Committee at its 1983 session, see A/AC.193/INF.6 and Corr.1.

6/ In accordance with the decision taken at its 45th meeting on 10 February 1983, the Working Group held further meetings on 14, 15 16, 17 and 18 February 1983.

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

8/ Ibid., Thirty-sixth Session, Supplement No. 41 (A/36/41), para. 259. Originally circulated as document A/AC.193/WG/R.2/Rev.1.

9/ Ibid., Thirty-seventh Session, Supplement No. 1 (A/37/1).

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