

**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-NINTH SESSION

SUPPLEMENT No. 41 (A/39/41)



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## **NOTE**

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

[4 April 1984]

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## 1. INTRODUCTION

1. At its 101st plenary meeting, on 19 December 1983, the General Assembly, on the recommendation of the Sixth Committee, 1/ adopted resolution 38/133, 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, 36/31 of 13 November 1981 and 37/105 of 16 December 1982, 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 1983, 3/ based on the informal working paper presented by the Chairman of the Special Committee at its session in 1982, 4/

"Having considered the report of the Special Committee, 5/

"Taking note of the prospects of progress in the work of the Special Committee registered during its session in 1983,

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

"Reaffirming the need for effectiveness in the universal 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 continue at its forthcoming session 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 the efforts undertaken at its session in 1983;

"4. Invites Governments 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. Decides that the Special Committee shall accept the participation of observers of Member States, including participation in the meetings of its working group;

"7. Requests the Special Committee to concentrate its work in the framework of its working group;

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

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

"10. Decides to include in the provisional agenda of its thirty-ninth 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, A/35/762 and A/38/778 is as follows:

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

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\* Cuba, Ecuador and Mexico replaced Nicaragua, Panama and Peru, which were members in 1983 (see A/32/500, annex III, A/35/762 and A/38/778).

3. The Special Committee met at United Nations Headquarters from 21 February to 16 March 1984. 6/

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. Ms. Jacqueline Dauchy, Deputy Director for Research and Studies (Codification Division, Office of Legal Affairs), acted as Secretary of the Special Committee and of its Working Group. 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 and its Working Group.

6. At its 95th meeting, on 23 February 1984, the Special Committee elected the following officers:

Chairman: Mr. Ryszard Krystosik (Poland)

Vice-Chairmen: Mr. Domingo Cullen (Argentina)  
Mr. Ahmed Fath-Alla (Egypt)  
Mr. P. Sreenivasa Rao (India)

Rapporteur: Mr. Agustín Font (Spain)

7. At the same meeting, 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, paragraphs 2 and 3 of resolution 37/105 and paragraphs 2 and 3 of resolution 38/133, 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, Czechoslovakia, El Salvador, the German Democratic Republic, Honduras, the Libyan Arab Jamahiriya, the Syrian Arab Republic and Tunisia. The Committee agreed to grant those requests from Member States which so requested. The Committee took a similar decision at its 96th, 98th, 101st and 102nd meetings, held on 23 and 27 February and 2 and 9 March, in relation to requests for observer status which had been received from the Permanent Missions to the United Nations of Colombia, Nicaragua, Peru, Viet Nam and Yugoslavia.

9. At its 96th meeting, on 23 February, the Committee discussed the organization of its work. Some delegations favoured the holding of a general exchange of views in order to allow them to express their views on the general aspects of the matter under consideration and on the methods of work of the Committee. Other delegations

considered that a general exchange of views would not contribute to the work of the Special Committee since it would only prompt a repetition of views already expressed in previous years and take up a considerable amount of the time available. In the view of those delegations, it was more conducive to the progress of the Special Committee and more in accordance with its mandate to concentrate efforts in the Working Group. Consequently those delegations would not participate in the general exchange of views.

10. The proposal was made that, after the conclusion of the work of the Working Group, a debate should be held in order to evaluate the results of the work. While some delegations expressed support for this proposal, others felt that there was no need for it. They felt that such a debate would be a repetition of the general exchange of views and was unnecessary since such evaluation usually took place in the General Assembly.

11. At its 97th meeting, on 24 February, the Committee reached the following understanding with respect to the organization of its work:

"The Committee agreed to devote Friday (24 February) and Monday (27 February) of next week to a general exchange of views, it being understood that if a minimum of two hours is left unused on Monday, the Working Group will start its work immediately. Otherwise, the Working Group will start its work on Tuesday morning (28 February). The work of the Working Group will be continued on the basis of the statement made by the Chairman of the Committee on 10 February 1983, which was adopted by consensus (A/38/41, paras. 59 and 60). The list of speakers for the general exchange of views will be kept open until Thursday (1 March) at 1 p.m., and once a minimum of five speakers is inscribed on the list on any day, a plenary meeting of the Committee will be convened the next day. In any case, the list of speakers for the general exchange of views will be exhausted on Friday of next week (2 March).

"The third week of the session will be entirely devoted to meetings of the Working Group, except that on Friday afternoon of that week (9 March) the Committee will begin an evaluation of the work done. The evaluation will continue also on Monday (12 March) of the last week; Tuesday (13 March) will be left for the Rapporteur and the Secretariat to prepare the draft report.

"The Committee will commence consideration of the draft report from Wednesday (14 March) and adopt it on Friday (16 March)."

12. The Special Committee devoted its 97th to 101st meetings, between 24 February and 2 March, to a general exchange of views in which the representatives of the following States took part: Union of Soviet Socialist Republics, United States of America, Ecuador, Greece, Mongolia, Cyprus, France, Cuba, Germany, Federal Republic of, Hungary, Japan, Italy, Romania, Belgium, Bulgaria, the United Kingdom of Great Britain and Northern Ireland and Poland. In accordance with the decision reflected in paragraph 8 above, the observers for the German Democratic Republic, Viet Nam and Czechoslovakia made statements with the consent of the Committee.

13. The Working Group held 15 meetings between 28 February and 9 March.

14. The Committee devoted its 102nd to 104th meetings, between 9 and 12 March, to an evaluation of the work done.



15. 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 38/133 (A/AC.193/6 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, the Federal Republic of Germany, 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 4/ at the 1982 session of the Committee.

16. Since the Committee had not completed its work, it generally recognized the desirability of further consideration of the question before it.

17. At its 107th and 108th meetings, on 15 and 16 March, the Committee considered and approved the report of the Working Group (see sect. III below). The report of the Committee was adopted at its 109th meeting, on 16 March.

## II. GENERAL EXCHANGE OF VIEWS

18. The general exchange of views reflected three main approaches to the mandate and work of the Committee.
19. Several representatives expressed their support for the initiative of the Soviet Union to conclude, at the earliest possible date, a world treaty on the non-use of force in international relations. It was felt that the current session of the Special Committee, the primary task of which was to draft such a treaty, was being held under conditions characterized by the dangerous heightening of international tension and the increased threat of the outbreak of nuclear war. During the eight years which had elapsed, the significance of the Soviet Union proposal had grown enormously, especially in view of the grave erosion of the very foundations of international relations and a hazardous destabilization of the political situation in the various regions of the world. It was felt, therefore, that that initiative was now more appropriate and timely than ever and was indeed consistent with the real interests of all States, regardless of their social systems.
20. It was emphasized in that regard that the extremely complex and grave international situation called for the adoption of a world treaty on the non-use of force as one of the most urgent and effective measures aimed at the preservation of world peace, strengthening of international security, renunciation of the policy of force, diktat and confrontation, and reaffirmation and effective implementation of the universally recognized principles of contemporary international law. The solution should be sought through disarmament, peaceful coexistence, mutually advantageous co-operation and constructive dialogue between nations.
21. In view of that dangerous situation, which was characterized by a massive violation of the fundamental principle of the prohibition of threat or use of force in international relations, the initiative of the Soviet Union constituted an answer to the questions of what had to be done for the maintenance of peace, the preservation of the principle of peaceful coexistence, the reduction of tensions and the decrease in military confrontation and for the preservation of the most fundamental human right, the right to life.
22. It was also pointed out that the conclusion of a world treaty would demonstrate the possibility, under existing conditions, of elaborating within a United Nations framework important international treaties and agreements on highly sensitive questions. It would make a significant contribution to enhancing the effectiveness of the United Nations in promoting, in accordance with its Charter, the peaceful settlement of disputes and conflict situations, the elimination of the threat to international peace and security, the transformation of the United Nations into a genuine centre for co-ordinating the actions of nations and the development of peaceful relations and co-operation among all States Members of the Organization. A world treaty, it was stressed, would be a natural continuation of the efforts of the United Nations aimed at strengthening the international legal system of the non-use of force. Its conclusion would be conducive to the further strengthening of the international legal order. At the same time, the universality of such a treaty would be a guarantee and a basic prerequisite for its effectiveness as an outstanding instrument of the world collective security system, established in the Charter of the United Nations.

23. The necessity of concluding a world treaty was particularly underscored by those representatives in view of the potential danger of a nuclear conflict. The use in war of nuclear and other types of weapons of mass destruction would, in their opinion, pose a threat not only to the belligerent parties but actually to all States and peoples of the Earth. It was therefore emphasized that the proposal of the Soviet Union for the conclusion of a world treaty on the non-use of force in international relations was designed in essence to exclude the use of force from the practice of international relations and to make the renunciation of the use of both nuclear and conventional weapons an absolute law of international life. Within the framework of a world treaty, which was designed to prevent the use of military force in any sphere, in any form and by any State, the problem of prohibiting the use of nuclear weapons could also be decisively solved. The conclusion of a world treaty, it was stressed, would be an act carried out on a global scale which would make it possible to create a qualitatively new situation in the world by guaranteeing a dependable and peaceful future. An important step, it was added, towards achieving this final goal - the conclusion of a world treaty - would be a commitment not to be the first to use nuclear weapons, which at the same time would be a far-reaching measure to strengthen confidence and security. Such a step, as was pointed out by several representatives, had already been taken by the Soviet Union, which had made a universal commitment that it would not be the first to use nuclear weapons. Reference was also made in that regard to a series of far-reaching and fundamental initiatives put forward recently by the proponent of the treaty, designed to strengthen peace through halting the accumulation of nuclear weapons and undertaking efforts to eliminate and reduce these weapons. Particular mention was made of General Assembly resolutions on the condemnation of nuclear war and on the freeze on nuclear weapons as well as on the prevention of an arms race in outer space, which had been adopted on the initiative of the Soviet Union.

24. It was pointed out in that regard that when States possessed such devastating weapons of mass destruction as nuclear weapons, the use of which would represent an utter catastrophe for mankind, the outbreak of even a limited conflict with the use of conventional weapons was fraught with unforeseeable consequences. The strengthening by means of a world treaty of the general prohibition of the use of force laid down in the Charter of the United Nations would therefore be exceptionally important, since the parties to the treaty would include not only the nuclear Powers but also others, large and small, both militarily powerful States and States possessing less significant armed forces. The conclusion of a world treaty would constitute a unique preventive measure designed to avert both nuclear war and armed conflict in general. This, it was added, would in no way diminish the obligations of States concerning the non-use of force which were contained in the Charter and a number of multilateral, regional and bilateral treaties and agreements of the post-war period. A world treaty would strengthen these obligations by establishing not only a general prohibition of the use of force or the threat of force, but also the inadmissibility of the use of any types of weapons, either nuclear or conventional. The proposal put forward in January 1983 by the Socialist countries for the conclusion of a treaty concerning mutual renunciation of the use of military force and the maintenance of peaceful relations between States members of the Warsaw Pact and those of the North Atlantic Treaty Organization was considered of significant importance in achieving those goals.

25. The representatives in question further stressed that the treaty would make yet another solid contribution to peace based on a legal order which would guarantee security for all States. By reaffirming the "reign of law" in relations

among States instead of the "reign of force", the treaty would create favourable pre-conditions for achieving practical measures to reduce, and in the long term to eradicate, the threat of war by limiting and reducing armaments.

26. In the view of the advocates of the treaty, its conclusion would be consistent with the practice of drawing up treaties and other instruments aimed at putting into practice the principles of the Charter and establishing specific obligations based on those principles. It was pointed out in that regard that the Charter itself stipulated not only the possibility but also the necessity of elaborating and adopting such international instruments. The Charter empowered the General Assembly to consider the general principles of co-operation in the maintenance of international peace and security and also to make recommendations for the purpose of "encouraging the progressive development of international law and its codification" (Article 13, paragraph 1 (a)). In pursuance of that provision of the Charter, the Assembly had drafted and adopted scores of international conventions, treaties and agreements in various fields of international affairs. That was also the goal of the proposal of the Soviet Union, since so far the principle of non-use of force had not been subject to large-scale codification work. Hence, it was felt that the initiative should be viewed as an expression of the efforts of the Member States to elaborate one of the basic principles embedded in the Charter of the United Nations which, far from being its mere repetition, represented the further development and codification of that principle in the current international situation.

27. As to the question of the compatibility of the world treaty with the relevant provisions of the Charter and the allegations of certain delegations that the consideration and further development of the principle of non-use of force could undermine, weaken or supersede the fundamental obligations concerning that principle as enshrined in the Charter, it was pointed out that the conclusion of such a treaty in the form of a binding international legal instrument would reaffirm, specify and elaborate further the generally acknowledged principle of non-use of force, set forth in Article 2, paragraph 4, without affecting by any means its pre-eminence as a jus cogens norm of international law. That would be a natural continuation of the efforts of the United Nations aimed at strengthening the international legal system of non-use of force. The proposed treaty, it was added, would by no means "weaken" or "undermine" the Charter. On the contrary, its authority would even be strengthened. It was recalled in that regard that the countries of those delegations which had adduced the arguments concerning the alleged incompatibility of the proposed treaty with the Charter and the possibility of its being weakened or undermined had been ready to include the principle of non-use of force in bilateral agreements or in the Final Act of the 1975 Conference on Security and Co-operation in Europe without raising the above arguments.

28. In the view of the representatives in question, an analysis of the achievements of the 1983 session of the Special Committee indicated that, as a result of the emergence of a spirit of compromise and co-operation on the part of its members, the Committee had achieved a certain measure of progress in its work which created the necessary conditions for further progress at the 1984 session. A number of factors were, in their opinion, conducive to the achievement of practical results in the Special Committee's work at the current time and those factors should be fully utilized with a view to further revitalizing its work. An ever-growing number of States recognized that the alarm and concern at the dangerous turn in world affairs should act as a stimulus to joint action, above all in the direction of reinforcing the principle of non-use of force. All groups of States

States participating in the Committee's work had by now made their comments on the principle of non-use of force - that fundamental principle of international law and of the Charter of the United Nations - and had in essence agreed with the elaboration of the basic elements of that principle. It was therefore stressed that the main task of the Committee was to draw up a composite working document containing detailed formulations of the basic elements of the principle of non-use of force on the basis of the three official documents which had been submitted to it. That would be a practical contribution to the discharge of the mandate entrusted to the Committee by the General Assembly.

29. The remark was further made that, in the light of the sharp deterioration of the current international situation, the speediest elaboration of the treaty had become an increasingly urgent task that brooked no delay. It would be an unforgivable mistake if the Special Committee were to allow itself to be diverted in the direction of fomenting an atmosphere of enmity and confrontation, of fruitless discussions bereft of any positive or constructive results such as those which the peoples of the world expected from the United Nations in a field so vital for the maintenance of international peace and security. An appeal was therefore made to lay aside all selfish considerations and to utilize to the fullest the substantial opportunities open to the Special Committee for completing its work on a new international legal instrument which would be of such importance for the preservation of peace and would embody the principle of the non-use of force in international relations. It was also emphasized that the actual work of preparing the document prohibiting the use of force in settling international disputes and conflicts was of great significance from the standpoint of strengthening mutual understanding and bringing the positions and approaches of States closer together in the solution of that fundamental problem.

30. For their part, assuming that the Committee had at its disposal all the requisites for achieving the final goal and that all that was needed now was for the members of the Committee to show good will and a constructive spirit, the representatives in question expressed readiness to do their utmost in order to achieve, together with the delegations of other countries, the speediest fulfilment of the crucial task of giving material and legal form to the rigorous obligation not to use force in settling disputes and disagreements between States. The fortieth anniversary of the foundation of the United Nations, to be commemorated in 1985, should be an additional stimulus and obligation to all members of the Committee to achieve its goal.

31. The second main approach could be summarized as follows. The representatives taking that approach rejected the notion that the solution to the problem of the use of force could lie in the conclusion of a new treaty to reiterate its prohibition; on the contrary, they asserted that another treaty would, in fact, be counter-productive. They proposed alternative approaches which, in their opinion, could realistically be expected to enhance the effectiveness of the principle under consideration. Thirdly, they commented on the work of the Special Committee at its current and subsequent sessions. These three points will be dealt with in turn.

32. In the first place, those representatives denied that the solution to the problem was the conclusion of a world treaty to prohibit again the use of force in international relations. It was pointed out that a review of the instances of the use of force since 1945 should be undertaken in order to establish the nature of the problem before considering such a dubious solution as another treaty. It was suggested that failure to settle disputes by peaceful means before they exploded

into violence, lack of faith in the collective security system, violations of human rights and expansionism were in fact the primary causes of the problem, not some legal lacunae that could be cured by a treaty.

33. The delegations holding that view further expressed their intention to continue to oppose solutions which would, in reality, have an adverse effect on the effectiveness of the principle of non-use of force. It was observed that the principle of non-use of force was already embodied in the Charter, which was a genuinely universal treaty whose solemn value could not be surpassed by any new instrument and to which all other treaties were subordinated by virtue of its Article 103. There was, therefore, in the view of those delegations, no point in restating a well-established norm in a new instrument which could never possibly have the solemnity, the universality nor the overriding force of the Charter. It was observed that repeating the relevant provisions of the Charter would, in the current instance, add nothing to the existing law but would suggest that two treaties were better than one, thereby undercutting the rule pacta sunt servanda, casting doubts on the continuing validity of the original formulation of the principle and jeopardizing the authority of the Charter as a whole. If, on the other hand, the treaty were to deviate from the Charter, it would indirectly and illegally amend the Charter. It would also create a parallel régime which would, judging from its background, be accepted by a fraction only of the membership of the United Nations and which would, in any event, create doubts and confusion concerning the principle itself, opening the door to divergent interpretations of the norm, sowing confusion in the relations between the States parties to the new treaty and third States not bound by it and leading to profoundly destabilizing consequences. The remark was made that the proposed new treaty would, by singling out one specific principle and leaving out the principle of the peaceful settlement of disputes and the collective security system, destroy the careful balance established by the Charter. It was noted that some would apparently like to elaborate a number of treaties on the non-use of force. It was observed that perhaps such treaties had replaced non-aggression pacts of the 1920s and 1930s as favourite vehicles for the foreign policy of some. It was suggested that the historical failure of the non-aggression pacts of the inter-war period to protect the security of those who placed their confidence in them should be remembered.

34. The representatives in question also recalled that the work of the Special Committee had, from the outset, been impeded by a fundamental divergence of views as to the ways of achieving the desired objective, namely, the enhancement of the effectiveness of the prohibition of the use of force, and they regretted the insistence of some delegations on the idea of a treaty, notwithstanding the opposition of others to such an idea, deemed by them dangerous and inappropriate. It was pointed out that even if it had been possible to suspend judgement to allow time for the case in favour of a treaty to be made, it was now irrevocably clear that its proponents had failed by words and actions to do so. They had appealed to States to cease insisting on the objective of a treaty and instead to seek common ground, but unfortunately their hopes had been disappointed. The continued divided vote on the General Assembly resolutions relating to the Special Committee, the reports of the Special Committee and the debates in the Assembly left little room for doubt that the exercise was, as a matter of substance, where it was in December of 1977 and that, although the forms had been somewhat altered, the substantive gap remained unchanged and as wide as ever. It was pointed out that the unbelievably wide range of beneficial results which it was claimed, without substantiation, would follow from the conclusion of a so-called world treaty would inevitably give rise to well-founded scepticism in the mind of any unprejudiced observer.

35. With regard to the possibility of elaborating a document other than a treaty, different nuances could be perceived among the representatives in question. One view was that the idea of a normative instrument aimed at reiterating the content of the basic norm was as unnecessary and unacceptable as the idea of a treaty and that if the Committee allowed itself to be misled into viewing as a rational compromise the production of a normative or quasi-normative instrument of a non-binding character, it would at best continue to waste its time and might even compromise the Charter. The view was expressed that the difficulties experienced by the Committee in the preparation of the drafting of a treaty would, at least in part, emerge again in the framework of the elaboration of any international document other than a treaty which would have a normative or quasi-normative character, but that one should not close the door to the possibility of drafting a resolution directed at ways and means of making the rule expressed in Article 2, paragraph 4, of the Charter more effective. Still another view was that, to enhance the effectiveness of the principle of non-use of force without diluting the relevant provisions of the Charter by elaborating concurrent constitutive legal instruments, the political declaration to be drafted should be comprehensive and form the basis for practical measures aimed at making the words more credible and ensuring that conduct tallied with words. Lastly, it was pointed out that the proposals which had been accepted by everyone and which would be likely to contribute to enhancing the effectiveness of the principle of non-use of force could be embodied, depending on their nature, in a resolution or a declaration.

36. Several of the representatives in question stressed that an early understanding of the possible outcome of the work would give the Committee a new basis and facilitate real progress. It was noted in that connection that the fundamental disagreement on the objectives of the Committee directly impinged on the work and on the negotiating attitude of delegations and that the margins of flexibility of delegations - and therefore the prospects of success - were all the more narrow if some insisted on a final product which was to be binding. Therefore, it was observed, leaving for a later stage the decision on the legal nature of the document to be produced might be counter-productive in reaching the objective of letting emerge as many points of convergence as possible. The hope was expressed that in order to reach the desired early understanding of the Committee's objective, maximum positions would not be insisted upon.

37. Those representatives stated that rejecting the idea of a treaty or norm-oriented exercise of any kind did not mean that there were no measures which could or should be taken to enhance the effectiveness of the principle of the prohibition of the use of force. They proposed practical measures aimed at encouraging States to rely on alternatives to the use of force. It was urged that those measures be matched to the likely reasons for which the norm had not been more effective, i.e. failure to settle disputes, lack of faith in the collective security system, the denial of human rights and expansionism.

38. It was further proposed to reflect on the importance of violations of human rights in impeding the effectiveness of the prohibition of the use or threat of force. The remark was made in that connection that lack of adequate respect for fundamental human rights had a negative impact on the effectiveness of the principle contained in Article 2, paragraph 4, of the Charter, as evidenced by recent uses of force across international borders, the proclaimed object of which was to overthrow a government said to be engaging in massive violations of human rights. The denial of the right to self-determination was mentioned as another violation of human rights which had led to violence, and attention was drawn to the symbiotic relationship between internal repression and external aggression.

39. Another proposal was to explore steps aimed at creating the necessary political will of all Governments to abide scrupulously by the existing prohibition of the use of force. Attention was further drawn to the need to promote the peaceful settlement of disputes - the corollary of the non-use of force - for example by increasing the number of disputes for which compulsory means of settlement could be resorted to, as well as to the desirability of strengthening the mechanisms provided for in the Charter regarding collective security and peace-keeping. Those aspects were, it was noted, covered in the working paper submitted by five Western European States at the 1979 session. 7/

40. Still another area which was mentioned as a promising one concerned confidence and security-building measures, in relation to which formal proposals had already been made in other forums.

41. One question which, it was maintained, the Committee should stay away from was that of disarmament which, in any event, was being dealt with in other specifically mandated forums. It was stated in that connection that some measures envisaged in that area by a group of delegations would not reduce the danger threatening mankind but would make apparent the danger of a strategic and political destabilization with incalculable consequences for the independence and freedom of the nations concerned, together with the consequences that would result for the rest of the world.

42. Finally, the representatives in question noted that the discussion of the seven "headings" in the working paper submitted by the former Chairman of the Special Committee, Mr. El Araby from Egypt, which had taken place at the preceding session had been conducted in a business-like atmosphere and that the results of that detailed debate should provide a good basis for the continuation of the work at the current session.

43. Still another group of delegations, for the reasons reflected in paragraph 9 above, were not in favour of the holding of a general exchange of views and therefore decided not to participate in such an exchange.

44. That exchange having nevertheless taken place, four of those delegations took the floor. According to some of them, the principle of the non-use of force was a jus cogens or peremptory norm of international law.

45. Yet the manifestations of international lawlessness were rampant in the world, new acts of aggression were taking place, indigenous peoples were being expelled from their homes, attempts were being made to change the demographic character of countries through the use of force, and territories and countries continued to remain under foreign occupation. The principle was being repeatedly violated in all parts of the world and the United Nations had not been able to prevent it. The intensification of the arms race was a factor leading to an unprecedented increase in international tension and to the menace of a new world war. Furthermore, the increase in international tension had also been stimulated by the world economic crisis and the high interest rates of the foreign debt of developing countries, which had led to an even greater gap separating the latter countries from developed ones.

46. All that demonstrated the need for an instrument dealing with and further elaborating the principle of the non-use of force in international relations which would contribute towards an atmosphere of mutual trust between States as well as



towards a complete and lasting peace. Since the drafting of the Charter, it was maintained, there had been an accumulation of wealth of jurisprudence and practice concerning the principle. If this wealth could be collected, and distilled and the gaps and loopholes which had allowed for violations of the principle of non-use of force could be filled, this would be a worthy achievement and would ultimately justify the Special Committee in accomplishing its task. Some delegations favoured the idea of the conclusion of a world treaty on the non-use of force. Other delegations, without necessarily ruling out the idea of a world treaty, felt that the task of the Committee was to agree first on formulas to be contained in a future instrument on the matter, leaving for a later stage the determination of its form.

47. More important than the verbal reaffirmation of the principle of non-use of force was the action to be taken to ensure its effective implementation, which was linked to the question of compliance with the norms of international law in general and of United Nations resolutions in particular. In that connection, it was pointed out that the respect for the sovereignty of States and the inviolability of the State territory demanded the non-recognition ab initio of all consequences, including territorial acquisitions, derived from the use or threat of force; the view was also held that the principle of compliance in good faith with international obligations should apply only to those "validly contracted" so as to exclude those emanating from the use or threat of force.

48. With reference to concrete aspects of the work of the Special Committee and its Working Group, the view was held that at its 1983 session the Working Group had already discussed the seven "headings" contained in the informal paper submitted by the Chairman of the Special Committee's 1982 session, a discussion which was reflected in the report of the Special Committee to the General Assembly at its thirty-eighth session. <sup>5/</sup> In order to proceed further, the discussions of the previous session should not be repeated and a step forward should be taken by concentrating on specific problems with a view to solving them. It was felt that the Committee should proceed to a concrete examination of ways and means leading to the actual strengthening of the principle of non-use of force, thereby getting closer to the fulfilment of the mandate contained in General Assembly resolution 38/133. Therefore, at the end of its work, the Working Group should attempt to reach conclusions on the work it had achieved so far, which would be conveyed to the Sixth Committee to enable it to guide the work of the Special Committee in a practical way.

### III. REPORT OF THE WORKING GROUP

49. As indicated in paragraph 11 above, the Special Committee decided at its 97th meeting to reconstitute a Working Group with the same officers as the Committee.

50. The Working Group held 15 meetings between 28 February and 9 March 1984.

51. At the meeting on 1 March, the Chairman, after consultations with the other officers, proposed the following understanding concerning the work of the Working Group:

"1. The Working Group will carry out until Tuesday afternoon included a discussion of the 'headings' in Ambassador El Araby's paper pursuant to the agreement reached at the 1983 session on the basis of the proposals of the Chairman adopted by consensus at that session. In opening the debate on each 'heading', the Chairman will summarize and identify the points of disagreement about each 'heading' as well as the amendments and proposed new 'headings'.

"2. The discussion will concentrate on the problems identified in the Chairman's presentation.

"3. Meanwhile, consultations will be held on how to proceed further on the basis of the proposals of the Chairman of the 1983 session."

52. At the same meeting, the Working Group accepted that understanding by consensus.

53. The Working Group therefore conducted a further discussion in accordance with the understanding recorded above. In opening the debate on each "heading", the Chairman summarized and identified the points of disagreement about each "heading" as well as the amendments and proposed new "headings". The Chairman also recalled the proposals made at the 1983 session on the allocation of elements of the proposals officially submitted to the Committee under each one of the "headings". Some delegations in their analysis of the "headings" stated that those proposals remained valid. Some delegations stated that no final conclusions were possible in the absence of some understanding as to all of the "headings" and agreement on the nature of the document that might be drafted.

#### "Heading" A

54. This "heading" was worded as follows in Mr. El Araby's paper:

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

55. Some delegations considered it difficult to express a positive or negative opinion on the "heading" so long as the specific goal of the Committee's work remained undefined. It was observed in that regard that if the aim was to prepare a normative text the word "manifestations" would doubtless be sufficient, but that if the aim was to deal with the subject in greater depth the use of the three nouns was justified.

56. Other delegations observed that each of the "headings" was intended to provide a general frame of reference. They noted that the Working Group was still at a procedural stage, that of identifying the elements to be taken into consideration, and that it was not necessary to analyse the concepts involved in detail until it reached a more advanced stage.

57. Yet other delegations considered that the semantic analyses in which some representatives were engaging were pointless, since in their view everyone understood the general meaning of "heading" A. They felt that the immediate task facing the Working Group was to place the texts before it under the various "headings". In that connection, attention was drawn to paragraph 75 of the 1983 report. 5/

58. Misgivings were voiced about the word "étendue" in the French text, which did not seem to be an exact translation of the word "dimensions" used in the English text. It was suggested that this word be deleted as redundant. It was also suggested that the scope of "heading" A should be defined more clearly by adding at the end the words "in international relations" so as to limit the focus to the issues at hand. No objections were raised to that suggestion. Lastly, it was suggested that in the Spanish text the word "alcance" should be replaced by "ambito de aplicación".

59. Some delegations inquired whether this "heading" covered the possibility of carrying out a study of the type mentioned in paragraph 63 of the 1983 report. 5/

60. Some representatives expressed support for such a study. It was stated in that connection that an analysis of specific problems aimed at finding practical solutions would do much more to enhance the effectiveness of the principle of non-use of force than verbal formulations of a declaratory or propaganda nature and that if the Committee had not yet found solutions to the problems it was called upon to study it was because it had not asked the right questions, questions which the proposed study would tend to highlight. It was observed that if the study in question was carried out in a working group without summary records, it would be possible to identify certain areas of agreement regarding the nature of the problem, on the basis of which generally acceptable solutions could be devised for at least some aspects of the problem. It was stated that the first element of the proposed study would involve consideration of specific manifestations of the use of force since 1945 with a view to determining whether such cases of the use of force were due to the ineffectiveness of the collective security system, a lack of confidence in the intentions of a specific State, disregard of human rights, the expansionist aims of other States or - a possibility which, according to the delegations in question, should not be excluded although it was highly unlikely - any uncertainty concerning the content of the applicable norms. It was explained that the proposed study would not seek to determine which of the two parties had been right and which had been wrong and would therefore not encroach upon the prerogatives of the Security Council. It was noted in that connection that, according to the Charter, the Security Council did not have a monopoly of the question of the non-use of force - whose scope far exceeded the aspects mentioned in Chapter VII - and that if, notwithstanding Article 13 of the Charter, it was assumed that any discussion relating to the use of force should be reserved for the Council, the initiative which had led to the establishment of the Committee should itself be considered out of order.

61. Some delegations were in favour of all three elements of the proposed study as described in paragraph 63 of the report on the 1983 session. <sup>5/</sup> Other delegations supported some of the elements but had reservations about others. With regard to the first element, it was said in particular that a study of the causes of the use of force might lead the Committee somewhat astray and would not produce any significant results, for each country viewed the history of international relations in a different light. The second element, the analysis of the forms of use of force, was considered useful by some representatives but others thought it might raise the delicate question of defining the concept of the use of force, a concept which, it was emphasized, undoubtedly encompassed armed force but in other respects gave rise to serious differences of opinion. In that connection, the fear was expressed that venturing into that area might lead to a revision of Article 2, paragraph 4, of the Charter. The question was also raised whether the proposed analysis would involve the formulation of a definition of each of the forms of use of force, namely the use of armed force, indirect aggression, attempts at subversion and so on. The third element, a study of the reasons advanced by States to justify use of force, was supported by some representatives, but others thought it might be detrimental to the climate of confidence necessary for the smooth progress of the work.

62. Other representatives, firmly opposed the proposed study and felt that it had no relationship with the mandate of the Committee and might be useful for theorists only. They considered that it would be a Utopian undertaking and that it would be inadvisable to engage in a political exercise in a legal committee. They wished to know who would prepare the proposed study, what materials would be used for that purpose, what the relationship would be between the study and the activities of the Security Council, how the Committee could examine a conflict situation between two States without making matters worse, exacerbating passions and undermining the confidence of the States concerned in the Organization, and why the starting point of the study should be 1945 rather than 1914 or an even earlier date. According to those representatives, the Committee was not supposed to prepare studies on irrelevant matters but to prepare legal guarantees that would promote peace and, in the immediate future, to perform the task defined in paragraph 3 of General Assembly resolution 38/133.

63. Some delegations suggested that "heading" A should be placed second, immediately after "heading" B.

64. At the end of the debate, some delegations said they thought it would be unwise to take a decision on "heading" A at the current stage, on the one hand because the debate had revealed differences of interpretation regarding not only the scope of the terms used but also the question as to whether a study of the type envisaged fell within the scope of the "heading", and on the other hand because it was impossible to take a decision on a specific "heading" until an overall picture of all the "headings" had been obtained.

65. Other representatives emphasized that "heading" A was merely indicative and entailed no commitment regarding the substance. They therefore considered that the Working Group should agree provisionally to consider "heading" A as acceptable, subject to the amendments proposed in regard to this wording as reflected in paragraph 58 above, and on the understanding that the final decision would be taken at a later stage in the light of the decisions on the other proposed "headings".

## "Heading" B

66. This "heading" was worded as follows in Mr. El Araby's paper:

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

67. The inclusion of this "heading" gave rise to objections on the part of some delegations. It was considered that by inviting the Committee to reformulate or restate the principle of non-use of force the "heading" would lead it in the wrong direction and furthermore in a direction which offered no prospect of achieving agreement. It was also emphasized that the existence of the principle should be taken for granted - as was clear from the title of the Committee itself - and might at the most be mentioned in the preamble of any document that might constitute the end-product of the Committee's work, or in a saving clause. It was also observed that by inviting the Committee to study the main elements of the principle, the General Assembly in its resolution 38/133 precluded it from regarding the principle itself as one of the elements to be studied and that the Committee's task was not to prepare a glossary on the principle of non-use of force, such as that contained in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, but to enhance the effectiveness of the principle itself.

68. Other delegations said they were opposed to the deletion of "heading" B, which, in their view encapsulated the basic purpose of the Committee's work as indicated in its name and its mandate. They emphasized that the international situation fully justified reference to the principle of non-use of force, which was the outcome of a long evolutionary process in which the most important milestones were the Covenant of the League of Nations, the Briand-Kellogg Pact and the Charter of the United Nations itself. It was also observed that to delete "heading" B would be tantamount to eliminating from the list of "headings" an element so important that it would necessarily be one of the pivots of the end-product of the Committee's work, whatever that might be - a treaty, a declaration or a resolution. Surprise was expressed at the claim that a reaffirmation of the principle might weaken it, and it was recalled that since 1945 the international community had prepared a long series of instruments covering the most diverse sectors (human rights, disarmament, law of the sea, peaceful settlement of disputes, friendly relations among States), which were all derived from the Charter but had developed its provisions in accordance with the requirements of the evolution of international life. It was felt that the same effort should be made in the case of the principle of non-use of force, which should be developed in the light of contemporary realities and the emergence of nuclear weaponry and its increase into an enormous complex of different types. It was suggested that within the context of that effort it should be made clear that the principle in question was peremptory in nature and admitted of no derogation, that no political, military, economic or other consideration justified the threat or use of force, and that the principle possessed a universal value for all States without exception.

69. Irrespective of the problem whether to include the "headings" or not it was observed that the current wording was particularly infelicitous in that it could be construed as calling in question Article 2, paragraph 4, of the Charter, and it was recalled that the following wording had been proposed: "Principle of non-use of force as stated in the Charter of the United Nations".

70. The word "general" was criticized by a number of delegations which regarded it as misleading. They felt that inclusion of the word "general" created confusion about the scope of the principle of the prohibition of the use of force. Some of them felt that it was inconsistent with "heading" D and that it disregarded the fact that the use of force was sometimes legitimate under the Charter.

71. Other delegations warned against the temptation to attach too much importance to the wording of the "headings", which were intended only to provide a frame of reference. They explained that the word "general" had been used because the "headings" had originally been prepared in such a way as to make it possible to group beneath them all the elements of the proposals submitted to the Committee. It was noted that the word in question was intended to suggest a comprehensive approach to the whole problem of non-use of force and that, contrary to what some thought, it made allowance for possible exceptions. In that connection, it was suggested that "heading" D should be placed immediately after "heading" B. It was also suggested that the "heading" should be reworded as follows: "Prohibition of all forms of the threat or use of force".

72. Concerning the possible addition of a reference to the Charter, some felt that it would be inappropriate unless confined to a reference to Article 2, paragraph 4. It was emphasized that the principle of non-use of force had evolved since the adoption of the Charter and that it was unreasonable to try to freeze the norm in the form in which it had existed in 1945, because since that time various documents - including the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, the Definition of Aggression and the Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States - had filled certain gaps in the Charter.

73. It was suggested that the wording of "heading" B should be amended to read "Recognition and strengthening of the prohibition of the threat or use of force" a formula which, according to its sponsor, would have the advantage of taking the principle for granted while at the same time highlighting the finality of the Committee's work. The new wording was supported by some delegations but criticized by others, who expressed the fear that it might have the effect of weakening the principle or be interpreted as an invitation to modify the Charter.

74. A new "heading" entitled "Relationships between violations of human rights and the threat or use of force" was proposed. This "heading" was supported by some delegations and objected to by others.

75. It was emphasized that there had been many examples in history of massive violations of human rights perpetrated in a national context which had had international repercussions and had led to the threat or use of force. In that connection it was pointed out that the human rights field was no longer part of the exclusive preserve of States. Mention was made of the fact that in the fairly recent past, a unilateral declaration of independence which would normally have been greeted with widespread enthusiasm had been considered by the international community to constitute a threat to international peace and security and to justify the application of Chapter VII of the Charter, since it had been made in the context of a heinous violation of human rights.

76. Other delegations, however, questioned whether such phenomena as civil war did not deserve at least as much as human rights violations to be mentioned in that

context. It was noted that the proposed new "heading" raised the general problem of the relation between the violation of a norm of international law and the use of force and that, if it were acknowledged that such a violation authorized the use of force, each State would be permitted to act as the judge of other States and domination by the stronger would be validated.

77. Certain delegations stated that they were ready to accept the new "heading" as a subdivision of "heading" B, F or A. Others rejected that approach.

78. A new "heading" entitled "Prevention of the threat or use of force" was proposed. This "heading" was supported by some delegations and objected to by others. Several delegations stressed that it went to the very heart of the Committee's mandate and should appear higher in the list of "headings", and in any case should be treated as a separate "heading".

79. It was emphasized that the use of force represented the climax in the evolution of a dispute and that, if the evolution could be arrested in time, the use of force could be averted. It was added that the United Nations as well as regional organizations which under the Charter of the United Nations represented a first stage in the peaceful settlement of disputes had an important role to play in that preventive effort. The comment was made in that regard that the intervention of the Security Council had often been too late and that the Secretary-General had rightly underscored in his two latest reports on the work of the Organization the need to expand the preventive activities of multilateral diplomacy. Mention was made in that regard of the inquiry functions of the Security Council and the political role of the Secretary-General, and it was stressed that the relevant provisions of the Charter admitted of a flexible interpretation which would open up to the United Nations a vast area of activity in the field of crisis prevention.

80. Some delegations suggested that the new "heading" might be treated as a subdivision of "heading" B, pointing out that it was because the outbreak of a dispute was in danger of leading to a violation of the principle of the non-use of force that preventive efforts were legitimate and necessary. Other delegations rejected the claim that the new "heading" presupposed "heading" B and reiterated that opposition to the latter "heading".

81. In response to the question whether the new "heading" constituted a subdivision of "heading" B, it was noted that this "heading" covered the Committee's entire mandate and that, since the Working Group was engaged in an analysis aimed at isolating the various elements to be taken into account, it was better to retain that wording as a separate "heading".

82. It was suggested that the new "heading" might be linked with "heading" G (Disarmament and confidence-building measures). The comment was made, however, that the possession of arms was not a violation of the principle of the non-use of force - as was borne out by Article 51 of the Charter - and that, while both confidence-building measures and preventive measures were aimed at tackling the problem at an early stage, the former were designed to improve the general atmosphere of international relations and thus reduce the likelihood of resort to force, whereas preventive measures involved the pressure which could be exerted by the international community in order to induce States to respect their obligations. One delegation held the view that the reformulation of "heading" B included in paragraph 73 above covered this new "heading".

83. Without denying the value of the proposed new "heading", certain delegations observed that the concept of crisis prevention was part of the mandate of the Special Committee on the Charter of the United Nations and on the Strengthening of the Organization and therefore it should neither be the subject of a separate "heading" nor constitute a focal point for the thinking of the Committee.

84. A new "heading" entitled "General obligation of States to settle their disputes by peaceful means" was proposed. This "heading" was regarded by some delegations as constituting a particular aspect of the general topic of the prohibition of the use and the threat of force and hence as one which should be considered in the context of "heading" B.

85. Other delegations were of the view that a direct link between that proposed new "heading" and "heading" B would highlight the fundamental difference of approach that existed within the Committee as to the way in which to bring the work to a realistic conclusion.

86. It was indicated that that new "heading" would be unnecessary if "heading" B were deleted. Finally it was suggested, as an alternative, to include, immediately after "heading" A two "headings" entitled "General obligation of States not to resort to the threat or use of force" and "General obligation of States to settle their disputes by peaceful means".

#### "Heading" C

87. This "heading" was worded as follows in Mr. El Araby's paper:

"Consequences of the threat or use of force".

88. This "heading" was viewed as indispensable by some delegations for reasons of logic and in the light of the realities of international life. It was recalled that the question of the consequences of the use or threat of force was the subject of specific provisions of the Declaration on Friendly Relations and of the Definition of Aggression. It was stressed that the main consequences of aggression were the political and material responsibility of States which committed acts of aggression and the criminal responsibility of the persons who were guilty of unleashing the aggression.

89. Other delegations indicated that their views were clearly reflected in the report of the previous session and that they would not repeat them except to reiterate their belief that the "heading" should be deleted. They noted in response to comments made that the principle of the non-recognition of territorial acquisitions resulting from the use or threat of force applied both to cases where force had been illegally used and to cases where it had been used in the exercise of the right of self-defence, which meant that no State could benefit from the use of force.

90. Some representatives wondered whether it was wise to venture in the field covered by "heading" C. It was pointed out in this respect that dealing in a non-exhaustive fashion with the consequences of the use of force could only create uncertainties in relation to those consequences which were left aside. To illustrate this point the question was asked why only international responsibility should be envisaged even though the concept of individual responsibility was recognized in international law for a growing number of acts such as genocide or



the fact of waging or preparing a war of aggression. It was felt all the more inadvisable to examine the question of responsibility as it was under study in other forums, in particular in the International Law Commission and in the Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries.

"Heading" D

91. This "heading" was worded as follows in Mr. El Araby's paper:

"Legitimate use of force".

92. With respect to this "heading", several delegations indicated that they objected to its retention for the same reasons they had expressed in relation to "heading" B. In their view, both the principle of the non-use of force in international relations and the exceptions to this principle were clearly stated in the Charter so that there was no need to re-state them in the new document. The proposed "heading", it was pointed out, contained the danger of expanding the scope of the exceptions to the principle of non-use of force beyond what was defined in the Charter. They however agreed that there was a conceptual link between the principle of non-use of force and its legitimate use, and that as long as "heading" B concerning the general prohibition of the threat or use of force was kept in the text, "heading" D could not be eliminated. The view was expressed that since the Committee was dealing with the principle of the non-use of force as laid down in the Charter, it was logical that in considering the legitimate use of force, it should confine itself to the cases explicitly provided by the Charter. Consequently the proposal made at the 1983 session for the inclusion at the end of "heading" D of the words "in accordance with the Charter of the United Nations" was supported by some delegations.

93. Specific mention was made of the right of colonial peoples and national liberation movements to resort to armed struggle in order to gain self-determination and independence. It was stated that this right was explicitly recognized in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. Referring to the interpretation placed by certain delegations on provisions of the Declaration on Friendly Relations concerning the right of peoples to self-determination, it was pointed out that those provisions had been very carefully drafted and should not be construed in a way going beyond their actual wording. Those provisions, it was added, had never been intended as an exception to the principle of non-use of force as enshrined in the Charter.

94. Other delegations favoured the retention of "heading" D in its present form and objected to the suggested new wording which in their view raised serious problems. Attention was drawn to uses of force which had been recognized as legitimate during the past two decades by general international law and in legal instruments adopted after the Charter. In the view of those delegations, the present wording of "heading" D was sufficiently general to encompass all the exceptions to the principle under consideration recognized by international law. The "heading" in question, it was added, was not meant to result in an expansion of the list of exceptions but to establish a comprehensive list of all the legitimate uses of force as recognized by international law.

95. In view of the close relation between "headings" B and D and in order to establish a direct link between them it was proposed to reword the latter as follows: "Legitimate use of the threat or the use of force in accordance with the United Nations Charter".

96. Delegations supporting this amendment stressed that, if force could be legitimately used in certain cases, the same was a fortiori true of the threat of the use of force.

97. This proposal gave rise to objections on the part of some delegations. It was pointed out in this regard that the idea of the legitimate use of the threat of force was a novelty in international law and was not envisaged by Article 51 of the Charter.

#### "Heading" E

98. This "heading" was worded as follows in Mr. El Araby's paper:

"Peaceful settlement of disputes".

99. With regard to this "heading", a number of delegations reiterated their view expressed at the 1983 session that the subject under this "heading" was of fundamental importance to the work of the Special Committee since it was closely related to the principle of non-use of force. Some of them felt that this subject, together with the question of the prevention of conflicts, constituted a central element of the work and they stressed that both principles were recognized as corner-stones of the Charter - the legal instrument which guided the Committee's work.

100. In this connection it was pointed out that the principle of non-use of force contained an obligation of abstention and did not easily lend itself to further strengthening and elaboration, whereas the peaceful settlement of disputes was a positive obligation and could therefore be strengthened in particular by improving the methods and machinery. Since the principle of the peaceful settlement of disputes was a part of the jus cogens norm of the prohibition of the use of force, strengthening it would have dual effect: it would not only strengthen the principle of the non-use of force but would also offer new ways out of international conflicts. A number of the proposals made at the 1983 session of the Working Group were reintroduced, some of them in an amended form.

101. Some delegations supported the proposal contained in paragraph 107 of the report on the previous session <sup>5/</sup> to replace "heading" E by three "headings" or subheadings reading, "Principle of the peaceful settlement of disputes and its scope", "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". Some delegations pointed out that the role of regional organizations also deserved study.

102. It was further proposed to bring the second of the above-mentioned subheadings more closely in line with the Charter and to that effect to reword it as follows: "Methods and procedures for the peaceful settlement of disputes". Another proposal was to reformulate the third of these subheadings to read "Strengthening of the role of the United Nations in the peaceful settlement of disputes".

103. It was also proposed that the "heading" E should be divided into two subheadings, namely, "General obligation to resort to peaceful settlement of disputes" and "Practical measures for the peaceful settlement of disputes".

104. Other delegations warned against over-emphasizing the principle of the peaceful settlement of disputes in this context since, in their opinion, the mandate of the Committee focused on the strengthening of the principle of non-use of force. In this connection the view was expressed that the role of "heading" E in Mr. El Araby's paper was merely to highlight the link existing between the two principles.

105. Reservations were also expressed about the various proposals referred to above inasmuch as "heading" E in its present form covered all aspects of the principle of peaceful settlement of disputes. The intention behind the "heading" was not, it was stated, to analyse the scope of the principle or to improve available methods or the functioning of existing machinery. Those tasks, it was observed, fell within the competence of the Special Committee on the Charter of the United Nations and on the Strengthening of the Organization, which had elaborated the draft of the Manila Declaration on the Peaceful Settlement of International Disputes and was the proper forum for considering new ideas in this field.

106. Concern was also expressed that over-emphasizing in this context the obligation of States to settle their disputes by peaceful means could be interpreted as authorizing the use of force in case of failure of the peaceful settlement process, in violation of paragraph 13 of part I of the Manila Declaration.

107. It was proposed to make "heading" E more precise by rewording it as follows: "Obligation of States to settle their disputes by peaceful means". In order to bring "heading" E more closely in line with "heading" B and to link it more tightly to the prohibition of the use of force, the following reformulation was also proposed: "General obligation to settle disputes by peaceful means and means reaching that goal in relation with the principle of non-use of force". This new "heading" was not objected to and some delegations supported it.

108. A new "heading" entitled "Respect for and fulfilment in good faith of international obligations" was proposed. It was pointed out that its origin was to be found in paragraph 15 of the revised non-aligned working paper 9/ to the extent that it clearly established a relationship between the strengthening of the effectiveness of the principle of non-use of force and the fulfilment in good faith of international obligations. It was clear that the proposed "heading" in no way implied that in cases of non-fulfilment of an international obligation on the part of one State, this authorized the other State to use force in return. Apart from the situation contemplated in Article 51 of the Charter of the United Nations, it was pointed out that that behaviour would be contrary to international law.

109. Another view expressed sympathy and understanding for the idea which appeared to be contained behind the proposed "heading", namely the notion that the respect for and fulfilment in good faith of international obligations should be promoted so that the chances of disputes arising would be minimized. However, the same view felt that in order to avoid misunderstandings the way the new proposed "headings" would be brought into relationship with "heading" E should be carefully analysed.

## "Heading" F

110. This "heading" was worded as follows in Mr. El Araby's paper:

"Role of the United Nations".

111. This "heading" was generally well received. The remark was made that it was an invitation to reflect on the capability of the United Nations to fulfil its responsibilities and to strengthen the components of the system which States must be able to rely upon if they were expected to adhere more strictly to the principle of the non-use of force. The strengthening of the various aspects of the collective security system and the fuller use of the provisions of Article 99 of the Charter are among the elements which were mentioned as coming within the purview of "heading" F.

112. The present wording of "heading" F was viewed as somewhat vague, and it was suggested - a suggestion which had already been presented at the 1983 session of the Committee - to reformulate it as follows: "Role of the United Nations in enhancing the effectiveness of the principle of non-use of force". This suggestion was favourably commented upon by those delegations which referred to it.

113. While endorsing the view that "heading" F had its place in the list of "headings", certain delegations expressed opposition to any proposal implying a revision of the Charter. According to them, "heading" F should provide a framework for the examination of ways of ensuring optimum use of the possibilities offered by the Charter and not be an occasion for attempting to enlarge the powers of certain principal organs - including the Secretary-General - beyond the limits provided in the Charter. Attention should, it was added, focus on the attitude of States and on the strengthening of the collective security system of which the Security Council was the fundamental element.

114. Analysing the contents of "heading" F, one delegation mentioned three elements, namely (a) the role of the United Nations prior to the use of force (the stage at which the Secretary-General had the possibility of using the powers conferred upon him by Article 99 of the Charter and the Organization had the possibility of defusing a potential crisis by providing a forum for a conciliation effort), (b) the role of the Organization in the case of an actual use of force - an eventuality in which the Security Council had the responsibility of examining the problem and finding solutions and (c) the role of the Organization after the use of force. In more general terms, the United Nations could contribute to the creation of a more peaceful world by eliminating sources of tension, promoting the cause of human rights, in particular economic and social rights, ensuring respect for the principle of the peaceful settlement of disputes and encouraging the North-South dialogue.

## "Heading" G

115. This "heading" was worded as follows in Mr. El Araby's paper:

"Disarmament and confidence-building measures".

116. In connection with this "heading", some delegations pointed out that the basic purpose of a draft treaty on the non-use of force was to stimulate efforts to solve the central problem facing the international community today, namely removing the

threat of a nuclear catastrophe. This could only be achieved by creating propitious conditions for disarmament. Although it could be argued which should come first, the creation of an atmosphere of trust or disarmament or vice versa, there was no denying that the effective achievement of general disarmament was of cardinal importance for effectively enhancing the principle of the non-use of force since that would eliminate the material means for waging war. Disarmament was the radical means to improve the international situation and to eliminate the nuclear threat. As to confidence-building measures, the elaboration of a document on the non-use of force would permit to settle radically the problem of the prohibition of the use of nuclear weapons and would be extremely important in creating an atmosphere of trust and mutual understanding. The Special Committee should see to it that its work should promote the establishment of such trust and mutual understanding.

117. Other delegations, without denying that there was a certain correlation between the renunciation of the use of force and disarmament, since the latter dealt with a reduction of the means of the use of force, felt that they were different matters since the possession of arms alone if in proportion to realistically assessed defence needs, that is to say, the maintenance of a State's right and duty to defend itself, to maintain its sovereignty and independence was in accordance with Article 51 of the Charter and did not constitute a violation of the obligation of non-use of force. It was the maintenance of the balance of forces, on the lowest possible level, and accompanied by the pursuit of arms control negotiations that was a pre-condition for enhancing the effectiveness of the principle of the non-use of force. As to confidence-building measures, in order to be meaningful, they had to be directly related to the security concerns and they had to reduce those security concerns in a militarily significant manner. In order to do so, they had to be concrete, binding and verifiable. Only if those criteria were met, would they be able to replace mistrust and fear by creating more openness, transparency and predictability in international relations. Although the matters of disarmament and confidence-building measures should better be left to the arms controllers, the Committee might nevertheless discuss the ways in which those areas and that of the renunciation of the use of force mutually influence and restrict each other.

118. It was also pointed out by some delegations that the area of disarmament should be entirely left outside the scope of discussion of the Special Committee among other reasons because there existed the risk of encroaching upon the competence of other United Nations organs dealing with disarmament. Furthermore the emphasis on nuclear disarmament without equal reference to conventional weapons did not appear to cover sufficiently the need for security of all nations. The mention of "confidence-building measures", instead, could be retained. In this connection, sections of the Final Act of Helsinki entitled "Document on confidence-building measures and certain aspects of security and disarmament" and "Cooperation in humanitarian and other fields" could provide useful ideas.

119. It was suggested that the "heading" should be replaced by "Confidence-building measures". It was also suggested to reword it as follows: "Conditions of security and confidence-building measures" for reasons reflected in paragraph 133 of the report of the Special Committee's 1983 session. 5/

120. Still other delegations thought that the link between the questions of disarmament and the non-use of force was as inevitable as the link between the principle of non-use of force and that of the peaceful settlement of disputes,

because tensions and particular conflict situations could arise if States were not encouraged to control their unbridled desire to seek security through weapons. However, it was felt that this was an area which the Committee could deal with in a very economical way, minimizing its treatment of the question, almost in a cross-reference way, given the ample attention which the question of disarmament was being paid in other forums. As to the confidence-building measure, that was a concept which should be encouraged under that "heading".

121. At the 66th meeting, a delegation requested the Chairman to present his conclusions.

122. At the 68th meeting, on 7 March, the Chairman made the following statement:

"When I adjourned the meeting this morning, I indicated that it would enable the holding of consultations that might bring about an agreement on how to proceed further with our work on the basis of the proposals of the Chairman of the 1983 session of the Special Committee.

"Under the existing circumstances that no agreement seems to be at hand, I wish to make my statement to present my point of view as the Chairman of the Special Committee.

"Yesterday, at the meeting of the Working Group, following the discussion of the 'headings', when some technical details were considered, that is at what time we should start the meeting of the Working Group and at what time the meeting of the Bureau should be held, the distinguished representative of Egypt requested the Chairman to present formally his conclusions stemming from the said discussion as well as his proposals.

"We had a number of meetings of the Working Group that were devoted to the discussion of the 'headings', in accordance with the previous agreement.

"The Chairman carefully, and with keen attention, listened to all statements made. The willingness of all delegations to make full use of the time-limit and to complete the discussion has been highly appreciated by the Chair.

"In the opinion of the Chair, the debate in itself was useful. It is possible to draw the following general conclusions from it:

"First, the discussion had as a result the better knowledge of the position of the delegations;

"Secondly, a certain level of provisional agreement has been achieved;

"Thirdly, the discussion was not a waste of time, for the picture of approaches towards the issues and problems became more clear.

"In the course of the discussion, the Chairman gave a lot of thought as to how to facilitate the Committee's work in accordance with its mandate given by the General Assembly in its resolution.

"On the basis of the said discussion, as well as on the basis of numerous consultations held by the Chair with the regional groups, members of the

Bureau and the individual members of the Committee, the Chair feels that it has strong obligations to the Committee to use most effectively the time that is left for the work of the Working Group.

"It is my duty, as Chairman of the Special Committee, to do my best to attain this goal.

"In my opinion, one of the means on that road could be the compilation of officially made proposals. Such a compilation would allow the delegations to see both the existing differences and the areas of possible agreement, and areas of disagreement as well.

"Being of a purely technical character, such a compilation does no harm whatsoever to the position of any delegation.

"Being presented in an objective manner and encompassing - or better to say embracing - in fact different proposals, the compilation as such does not represent the view of any particular group or any particular delegation.

"It is the duty of the Chair to try to pave the way for progress in our work and for making it easier to overcome the existing difficulties that the Committee has long been confronted with.

"In presenting such a compilation I wanted to keep in line with the tradition and the practice of my predecessors, the distinguished Chairmen of this Committee, as well as with the mandate entrusted to all of us.

"Like the distinguished Ambassador El Araby of Egypt and the distinguished Ambassador Garvalov of Bulgaria, I want to make a contribution to the work of the Committee.

"Ambassador Garvalov's statement says 'We will have a discussion of what is termed, in Ambassador El Araby's informal paper, seven "headings" in conjunction with the three officially submitted proposals before the Committee'.

"It is my hope that the Working Group could come to the next stage, that is, of discussion and consideration of the proposed texts within the framework of the 'headings'.

"In the opinion of the Chair, the proposal should bring us closer to the full implementation of the agreement that had been previously reached.

"It is self-evident that this statement and its contents would be subject to further discussion, exchange of views and comments.

"This compilation in no way will prejudice the position of any delegation, for it is only a factual, mirror-like reflection of the main approaches contained in the documents that were presented.

"The said compilation constitutes the integral part of my statement and the text will be distributed as soon as the Secretariat is able to type it and multiply the copies."

123. Subsequently, the Chairman circulated to the Working Group the following informal paper:

"Heading' A: 'Manifestations, scope and dimensions of the threat or use of force'

"(a) Draft World Treaty on the Non-Use of Force in International Relations (Supplement No. 41 (A/34/41), annex):

"The High Contracting Parties,

"Solemnly reaffirming their objective of promoting better relations with each other, ensuring a lasting peace on earth and safeguarding the peoples against any threat to or attempt upon their security,

"Seeking to eliminate the danger of the outbreak of new wars and armed conflicts between States,

"Proceeding on the basis of their obligations under the Charter of the United Nations to maintain peace and to refrain from the threat or use of force,

"Bearing in mind that the definition of aggression formulated and adopted by the United Nations provides new opportunities for the principle of the non-use of force or the threat of force to be consolidated in inter-State relations,

"Taking into consideration the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations and other resolutions of the United Nations expressing the will of States strictly to abide by the principle of the non-use of force or the threat of force,

"Noting with satisfaction that the principle of the non-use of force or the threat of force has been formalized in a series of bilateral and multilateral international instruments, treaties, agreements and declarations,

"Recalling in this connection that the States participating in the Conference on Security and Co-operation in Europe have declared in the Final Act their intention to conduct relations with all States in the spirit of the principles of primary significance set forth therein, among which the principle of the non-use of force or the threat of force holds its rightful place,

"Recalling also that the non-aligned States have expressed themselves in their highest forums in favour of strict observance of the principle of the non-use of force or the threat of force in international relations,

"Inspired by the desire to make renunciation of the use or threat of force in international relations involving all types of weapons a law of international life,



"Have agreed as follows:

"...

"They shall accordingly refrain from the use of armed forces involving any types of weapons, including nuclear or other types of weapons of mass destruction, on land, on the sea, in the air or in outer space, and shall not threaten such use.

"(b) Working paper of five Western European countries (Supplement No. 41 (A/34/41)):

"The Committee might wish, after discussion of the causes or reasons which lead States to the recourse to force, to examine the following items on the peaceful settlement of disputes and the non-use of force:

"(c) Revised working paper of the non-aligned countries (Supplement No. 41 (A/36/41)):

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

"3. All States shall refrain from:

"(a) All acts or threats of invasion, occupation or bombardment of a territory of another State; the use of armed forces against the territory of another State as well as other acts and manifestations of the use or threat of use of force aimed against the territorial unity and integrity and independence of another State;

"(b) Any attack against the land, sea or air forces, or marine and air fleets of another State;

"(c) All forms of intervention, in particular military intervention, reprisal by force or the threat thereof against another State;

"(d) Using armed force to deprive peoples of their right to self-determination, freedom and independence, or to disrupt territorial integrity;

"(e) Hostile propaganda directed against a State or a group of States;

"(f) Engaging in covert attempts to destabilize other Governments;

"(g) All forms of coercion or political, economic or military pressure or any other form thereof against another State;

"(h) Sending, organizing or encouraging the organization of irregular forces or armed bands, including mercenaries;

"(i) Organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts.

"Heading' B: 'General prohibition of the threat or use of force'

"(a) Draft World Treaty on the Non-Use of Force in International Relations (Supplement No. 41 (A/34/41), annex):

"Article I

"1. The High Contracting Parties shall strictly abide by their undertaking not to use in their mutual relations, or in their international relations in general, force or the threat of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations.

"They shall accordingly refrain from the use of armed forces involving any types of weapons, including nuclear or other types of weapons of mass destruction on land, on the sea, in the air or in outer space, and shall not threaten such use.

"2. They agree not to assist, encourage or induce any States or groups of States to use force or the threat of force in violation of the provisions of this Treaty.

"3. No consideration may be adduced to justify resort to the threat or use of force in violation of the obligations assumed under this Treaty.

"(b) Working paper of five Western European countries (Supplement No. 41 (A/34/41)):

"The Committee might also wish to consider:

"(1) The reaffirmation of the principle according to which all Member States of the United Nations shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations;

"(2) The reaffirmation that the principle mentioned under point (1) applies also to groups of States, and that no State shall assist, encourage or induce any State or group of States to use force or the threat of force in violation of the political independence, territorial integrity or sovereignty of other States;

"(3) The reaffirmation that compliance with the principle mentioned under point (1) includes refraining from the use of force in violation of such principle irrespective of the weapons used or the place chosen, as well as the use of any weapons, on land, on the sea, in the air or in outer space, or the threat of their use;

"(c) Revised working paper of the non-aligned countries (Supplement No. 41 (A/36/41));

"2. In accordance with general international law and the pertinent provisions of the Charter of the United Nations, the complete prohibition of the use of force or the threat thereof in international relations constitutes an imperative norm which shall not be derogated from.

"16. The use of force or the threat of use of force against another State cannot be justified under any pretext, in any circumstance, or for any political, economic, military or any other reason whatsoever.

"'Heading' C: 'Consequences of the threat or use of force'

"Provisions related to this "heading" are to be found only in the revised paper of the non-aligned countries (Supplement No. 41 (A/36/41)):

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

"5. The use of force gives rise to international responsibility.

"8. The duty of States to support the victim of the use of force as defined in paragraph 3 above by all means at their disposal - material or moral - until all consequences of such use of force are eliminated.

"'Heading' D: 'Legitimate use of force'

"(a) Draft World Treaty on the Non-Use of Force in International Relations (Supplement No. 41 (A/34/41), annex):

"Article III

"Nothing in this Treaty shall affect the rights and obligations of States under the Charter of the United Nations and treaties and agreements concluded by them earlier.

"(b) Working paper of five Western European countries (Supplement No. 41 (A/34/41)):

"(4) The reaffirmation of the principle embodied in Article 51 of the Charter according to which nothing in the Charter of the United Nations shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a State Member of the United Nations, until the Security Council has taken measures necessary to maintain peace and security.

"(c) Revised working paper of the non-aligned countries (Supplement No. 41 (A/36/41)):

"5. The use of force gives rise to international responsibility.

"10. Reaffirmation of the right of all States to defend their unity, territorial integrity and independence.

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

"Heading' E: 'Peaceful settlement of disputes'

"(a) Draft World Treaty on the Non-Use of Force in International Relations (Supplement No. 41 (A/34/41), annex):

"Article II

"The High Contracting Parties reaffirm their undertaking to settle disputes among them by peaceful means in such a manner as not to endanger international peace and security.

"For this purpose they shall use, in conformity with the United Nations Charter, such means as negotiation, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice, including any settlement procedure agreed to by them.

"The High Contracting Parties shall also refrain from any action which may aggravate the situation to such a degree as to endanger the maintenance of international peace and security and thereby make a peaceful settlement of the dispute more difficult.

"(b) Working paper of five Western European countries (Supplement No. 41 (A/34/41)):

"On peaceful settlements of disputes

"(1) The obligations of the parties to a dispute, if they fail to reach an early and just solution by any one of the peaceful means embodied in the Charter of the United Nations, to continue to seek a settlement of the dispute by other peaceful means;

"(2) The obligation of the parties to international disputes - which, notwithstanding resort to the various procedures for the peaceful settlement of disputes, remains unsettled - to bring such disputes before the Security Council in accordance with the relevant provisions of the United Nations Charter;

"(3) The obligation to conduct negotiations in view of settlement of a dispute in good faith and in a spirit of co-operation and, to this end, early contacts should take place when a dispute is likely to break out between two or more States, or immediately following its outbreak;

"(4) The encouragement of all States parties to an international dispute to agree, if they are unable to solve the dispute through direct negotiations, on the recourse to third-party interposition; i.e., recourse to impartial bodies especially appointed to clarify the issues at stake, fact-finding commissions, conciliatory commissions, etc.;

"(5) The encouragement of parties to international disputes to settle them through recourse to the effective machinery provided for by regional arrangements in conformity with Article 52 of the United Nations Charter, and without prejudice to the competence of the Security Council in this field;

"(6) The encouragement of States to include, in bilateral or multilateral agreements to which they become parties, provisions for the settlement of disputes relating to the interpretation or application of the agreement by an arbitral tribunal or by the International Court of Justice;

"(7) The identification of categories of disputes which Member States of the United Nations would consider particularly fit for arbitration or judicial settlement;

"(8) The preparation of a list of authorities of proven competence, probity and impartiality who, in conformity with the agreement among all parties to a dispute, would be willing to appoint arbiters or chairmen of arbitral tribunals envisaged by international agreements between the parties concerned.

"The Committee might also wish to consider:

"(1) The reaffirmation of the principle according to which Member States of the United Nations shall settle international disputes by peaceful means, in such a manner that international peace and security, and justice are not endangered;

"(2) The restatement of the list of peaceful means for dispute settlement which shall include, inter alia, negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, recourse to regional agencies or arrangements and, in general, all kinds of peaceful means chosen by the parties to a dispute;

"(3) The reaffirmation of the obligation to respect the decision rendered on an international dispute by an authority to which the parties have resorted voluntarily;

"(4) The reaffirmation of the obligation of the parties to an international dispute to refrain from any action which may aggravate the existing situation, or the dispute, in such a way as to endanger the maintenance of international peace and security.

"(c) Revised working paper of the non-aligned countries (Supplement No. 41 (A/36/41)):

"14. The peaceful settlement of disputes is a necessary corollary to the principle of non-use of force in international relations. The content of the substance relevant to the peaceful settlement of disputes is to be derived basically from the provisions of the Charter and the general principles of international law.

"Heading' F: 'Role of the United Nations'

" (b) Working paper of five Western European countries (Supplement No. 41 (A/34/41)):

" (2) The study of means or facilities available or needed to identify and avoid possible crises;

" (3) The enhancement of the United Nations peace-keeping capacity as a means of preventing or defusing international conflicts and providing an alternative to the use of force between States. In particular, States should consider increased use of observer missions, for purposes both of fact-finding and of deterrence;

" (4) The enhancement of the fact-finding capacity of the Security Council, in accordance with the Charter of the United Nations, on an ad hoc basis;

" (5) The wider use of the possibilities offered to the Security Council by Articles 28 and 29 of the United Nations Charter, as well as the encouragement of the practice of informal consultations for the discharge of the Security Council's functions under Chapter VI of the United Nations Charter;

" (6) The underlining of the obligation of United Nations Member States to support United Nations peace-keeping operations decided upon in accordance with the Charter and conducted, within this context, with the consent of the host countries;

" (7) The underlining of the responsibility of Member States to share equitably the financial burden of United Nations peace-keeping operations;

" (8) The encouragement of Member States to create facilities for training personnel for the peace-keeping operations of the United Nations and to share experience already gained in such operations and in national programmes for peace-keeping training;

" (9) The encouragement of Member States to consider supplying the Secretary-General with up-to-date information relating to possible stand-by capacities, including logistics, which could, without prejudice to the sovereign decision of the Member State on the given occasion, be made available if required.

" (c) Revised working paper of the non-aligned countries (Supplement No. 41 (A/36/41)):

"6. The United Nations responsibility under the Charter in the effective maintenance of international peace and security is fundamental to the enhancement of the effectiveness of the principle of the non-use of force in international relations.

"Such responsibility should be discharged by:

" (a) Making full use of Articles 10, 11, 13 and 14 of the Charter as well as the relevant resolutions of the General Assembly and the rules of procedure of the General Assembly;

" (b) Utilizing and updating the fact-finding mechanisms set up by the General Assembly;

" (c) Full use of the fact-finding functions of the Security Council under Article 34 of the Charter;

" (d) Full recourse to Chapter VII of the Charter by the Security Council and implementation of its provisions;

" (e) Establishing clear rules and principles governing the military activities of the United Nations;

" (f) Giving early consideration by the Security Council to the provisions of Article 43 of the Charter;

" (g) The establishment of peace-keeping forces;

" (h) Encouraging the Secretary-General to discharge his responsibilities under Articles 98 and 99 of the Charter.

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

" (a) Exploring the possibility of earmarking contingents for the United Nations peace-keeping reserve of national contingents trained in peace-keeping functions, or if they are not in a position to do so, considering earmarking other facilities or providing logistic support;

" (b) All States should honour all aspects of the collective security system, including both the need to bring matters to the Security Council and the obligation to report promptly any and all measures taken under Article 51 of the Charter;

" (c) All States should facilitate the implementation of Article 43 of the Charter by making available to the Security Council on its call and in accordance with a special agreement or agreements, armed forces, assistance and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.

"'Heading' G: 'Disarmament and confidence-building measures'

" (a) Draft World Treaty on the Non-Use of Force in International Relations (Supplement No. 41 (A/34/41), annex):

#### "Article IV

"The High Contracting Parties shall make all possible efforts to implement effective measures for lessening military confrontation and for disarmament which would constitute steps towards the achievement of the ultimate goal - general and complete disarmament under strict and effective international control.

#### "Article v

"Each High Contracting Party shall consider the question of what measures must be taken, in accordance with its constitutional procedure, for ensuring the fullest compliance with its obligations under this Treaty.

"(b) Working paper of five Western European countries (Supplement No. 41 (A/34/41)):

"(1) The encouragement to States to make all possible efforts to implement effective measures towards disarmament and lessening of military confrontation; this being in view of the ultimate goal of general and complete disarmament under effective international control;

"(c) Revised working paper of the non-aligned countries (Supplement No. 41 (A/36/41)):

"12. The progress towards the realization of the goal of general and complete disarmament under strict and effective international control will enhance the effectiveness of the principle of non-use of force in international relations. To this end, States possessing nuclear arms must refrain from the use or the threat of use of nuclear arms against non-nuclear States. The nuclear-weapon States must refrain from any activity in the nuclear field which would jeopardize the security and well-being of the peoples of non-nuclear-weapon States. They must also refrain from being the first to use nuclear arms against other nuclear-weapon States."

124. Some representatives strongly objected to that statement and the material circulated by the Chairman. They questioned the propriety of, or expressed surprise at, an initiative which, unlike those of the previous Chairmen of the Special Committee, had not been preceded by consultations and appeared as an attempt to force controversial ideas on the Working Group. They emphasized that the Statement of the Chairman, far from bringing the Committee closer to agreement, could only deepen the fundamental divergence of views with which the Committee had been plagued since its inception and nullify the efforts made by the two previous Chairmen to find a common denominator between existing positions. They further indicated that if the Chairman's proposal purported to group the elements of the officially submitted proposals under Mr. El Araby's seven "headings", it was unacceptable and grossly inadequate in meeting the needs of the Working Group for the following reasons: first, such an approach would be contrary to the consensus adopted by the Working Group during the 1983 session to reach "general agreement on which kind of 'headings' there will be" and to "allocate the substantive texts that might eventually accompany each respective 'heading'". Secondly, an approach along those lines would disregard the many proposals for new "headings" or for the reformulation of existing ones which delegations, availing themselves of the discretion left them under the existing agreement of 1983, had submitted since the



presentation of Mr. El Araby's paper, thereby ignoring completely the work of two years. Thirdly, such an approach would necessarily fail to take into consideration the views of some of the sponsors of existing proposals as to the way in which their proposals should be broken down under the seven "headings", since some of these sponsors had not yet taken any stand in this connection. Fourthly, it would presuppose that the three officially submitted proposals represented the only material available - which was by no means the case. Furthermore, it was added, some of the proposals in question might prove irrelevant once the Committee had decided what form the end product of its work would take so that any compilation of the type described above was premature. Without opposing the idea of producing a document at the concluding stage of the current session, those delegations insisted that such a document should reflect a genuine agreement and genuine progress. A possible approach which was mentioned in that connection was to present the General Assembly with a sort of photographic image of the results of the debate by regrouping, following the sequence proposed by Mr. El Araby, the various alternatives suggested for each "heading" as well as the proposed new "headings", using wherever necessary the technique of square brackets.

125. That approach was objected to by one representative who recalled the doubts he had previously expressed in relation to the carrying out of a second reading of the "headings" and objected to a third reading which would be just as fruitlessly time-consuming as the second one.

126. Other representatives described the statement by the Chairman as an important and constructive contribution to the future work and to the fulfilment of the mandate of the Special Committee. In their view, not only was that statement perfectly consonant with the agreement reached within the Special Committee and an adequate reflection of the factual results achieved by the Working Group, but it also represented a valuable contribution to the strengthening of the principle of the non-use of force in international relations in accordance with paragraph 3 of General Assembly resolution 38/133. These delegations referred to the agreement achieved on the basis of Mr. Garvalov's proposal to the effect that the discussion of the "headings" proposed by Mr. El Araby should be conducted in conjunction with the three officially submitted proposals before the Committee. In the view of these delegations, the statement of the Chairman was the implementation in practice of the agreement reached at the 1983 session. Commenting on the Chairman's statement, those delegations stressed that it was of a strictly practical nature and that the breaking down under Mr. El Araby's seven "headings" of the various elements of the documents before the Committee would greatly contribute to reconciling the existing differences and to working out generally acceptable formulations. They observed that the preparation of a compilation was a familiar phase of the process of progressive development of international law inasmuch as there usually came a stage in that process where the material represented by the different official proposals had to be organized in a logical framework in order to facilitate the comparative analysis of those proposals and allow for a more focused discussion. Afterwards, it was added, the "headings", having served their technical purpose, could be removed. That technique, it was recalled, had been used for the preparation of the Definition of Aggression. Furthermore, a thorough analysis of the material compiled under the seven "headings" in the Chairman's statement, apart from helping to identify the concrete elements of the principle of non-use of force, would shed more light on the content of particular "headings" and help the Committee to move from the stage of the discussion of abstract ideas to the consideration of the concrete views presented by various groups of countries and the elaboration of concrete formulations of the elements of the principle of

non-use of force. It would furthermore facilitate the identification of a common denominator, thereby demonstrating the soundness of the approach reflected in Mr. El Araby's paper. Those delegations stressed that the Chairman's statement did not prejudice the position of any delegation. They, therefore, welcomed a statement which provided a most useful framework for further work and should, like the initiatives taken by previous Chairmen, guide the Committee in its future endeavours.

127. Still other representatives expressed appreciation for the Chairman's initiative which, in their opinion, bore witness to his sense of duty and sincere eagerness to contribute to the progress of the work and present the General Assembly with something more than a repetition of last year's debate. Referring to the Chairman's statement, a number of delegations noted with satisfaction the Chairman's conclusion that a certain level of provisional agreement had been reached. They felt, however, that the points on which, in the Chairman's opinion, such a provisional agreement existed, should have been specified. Another delegation added that there was in its opinion no doubt as to the acceptance by all States of Article 2, paragraph 4, of the Charter. As to the Chairman's statement, the delegations in question expressed the fear that it might give the Assembly the impression that no progress had been made since 1982, which contradicted the above-mentioned conclusion. While acknowledging that the compilation of proposals contained in the Chairman's statement conveniently regrouped proposals which were scattered in several documents, they stressed that it had the drawback of putting on the same level ideas which were of a fundamentally different nature. Furthermore, it took no account of the proposals made in 1983 and 1984 in relation to the "headings" and their possible content. Reference was made in that connection to the absence of any mention under "heading" D of the right of colonial peoples and national liberation movements to use force in their struggle for self-determination and independence. Commenting on what the next stage should be, one delegation stressed that either the Chairman might envisage bringing his compilation up to date by reflecting therein the amendments and proposals made in 1983 and 1984, or his statement could be included in the report, accompanied by a reflection of the reactions it had given rise to, or - a course of action which gained the support of a number of delegations - an effort should be made to concretize, in the interest of future work, the floating agreement which existed on certain "headings". In that connection, the remark was made that while a few generally agreed "headings" might appear as a rather meagre result to present to the General Assembly, a mere reproduction of what existed in the books would be an even more limited achievement. Regret was expressed that the Working Group could not have succeeded in putting more substantive content in the discussion and that the remaining time was not adequately used to concretize the provisional agreement on some "headings".

#### IV. EVALUATION OF THE WORK DONE

128. One group of delegations expressed frustration at the lack of concrete results evidenced by the Special Committee at the current session. The holding of a general exchange of views, which had been opposed by these delegations, had proved to be futile and a repetition of statements made at previous sessions. The Special Committee was dead-locked between delegations favouring the idea of a world treaty on the non-use of force but willing to defer the consideration of the form of the document while discussing concrete formulations and delegations opposing the discussion of concrete formulations without a previous agreement on the end-result of the Committee's work.

129. The "headings" contained in the papers by the Chairmen of the 1982 and 1983 sessions were of a methodological and instrumental nature to facilitate the discussions and some of them might even disappear in the future; a mere second reading of them did not justify the holding of a session. Prompt agreement on the "headings" would be useful if it led to the progress of the Committee's work and if the "headings" were linked to substantive proposals. The initiative of the Chairman to make a statement was welcomed to the extent that it tried to facilitate the Committee's work.

130. It was also pointed out that an underlying incipient agreement on certain "headings" could be perceived, although it had been thwarted by the deadlock affecting the Committee's work. In the view of one delegation, the following three "headings", as amended by some delegations, did not raise substantive objections: "Manifestations, scope and dimensions of the threat or use of force in international relations"; "Role of the United Nations Organization in the area of the non-use of force" and "General obligation to settle disputes by peaceful means and means reaching that goal in relation with the principle of non-use of force".

131. The view was also expressed that the Special Committee might agree on a pragmatic approach, progressively delimiting certain areas of practical interest regarding the non-use of force and adopting pragmatic norms on them, in the hope that at a future stage a document more comprehensive and acceptable to all States could be obtained.

132. Delegations involved in the Special Committee's deadlock should engage in a constructive dialogue which might enable the Committee to embark on a discussion of substance. The decision to proceed to an evaluation exercise as well as the whole organization of the work should in no way be taken as a precedent for future sessions of the Special Committee and of other legal committees of the General Assembly.

133. Another group of delegations emphasized that in general some progress, although more modest than it appeared, had been achieved in the work of the Special Committee. It was observed that there had been no need to hold meetings of the Special Committee devoted to an evaluation, which were used by some delegations simply to curtail the time needed for the consideration of substantive issues, and that such an evaluation was usually made at the General Assembly session.

134. The view was expressed that some delegations had tried to reduce the proceedings of the Working Group to a discussion of various kinds of procedural and artificial questions and thereby to divert the attention of the Working Group from

the performance of its main task - to draw up a composite working document containing the main elements of the non-use of force - and that was contrary to the Committee's mandate and the agreement reached in the Committee on the basis of a consensus in 1983.

135. The delegations in question considered the statement of the Chairman and the proposed paper it contained as a good basis for the future work of the Committee. In their opinion, that statement was entirely consistent with the provisions of General Assembly resolution 38/133 and a further implementation in practice of the agreement reached on the basis of a consensus in 1983, and it was fully in keeping with the practice followed by the Chairmen of the Committee at its two previous sessions. The proposed paper, which was of a strictly practical nature, again repeated proposals made earlier; and was useful inasmuch as the discussion of "headings" without consideration of specific texts was a waste of time. In their opinion, it had the further advantage of bringing out areas of agreement.

136. This group of delegations strongly opposed changing or diluting the mandate or terminating the Committee. In their opinion, at its next session the Committee should continue to draw up a composite working document containing formulations of the basic elements of the principle of non-use of force in international relations on the basis of the statement of the Chairman of the Special Committee at its session in 1984. Profound regret was expressed that some delegations had moved away from the agreement reached in 1983.

137. It was also stressed that some delegations over a number of sessions of the Special Committee had persistently attempted by various procedural means to obstruct the implementation of the mandate given to the Committee by the General Assembly. It was also observed that the unconstructive and obstructionist position of those delegations was at variance with the clearly expressed wishes of the overwhelming majority of States Members of the United Nations. That negative attitude was a reflection of the foreign policy course pursued by those countries.

138. Another group of delegations found that the meagre results obtained by the Committee so far should serve for reflection and reorientation of its work for the future. The debates of the Working Group had been conducted in a constructive atmosphere and they showed that there still existed possibilities of continuing the work on the basis of the proposals submitted by the Chairmen of the Special Committee at their 1982 and 1983 sessions.

139. It should also be recognized that the continuation of the work on the above-mentioned basis was approaching its end and could not go beyond a certain point, which was the point when concrete formulations were to be discussed. The statement and proposed paper submitted by the current Chairman of the Special Committee were premature, since actual agreements on the "headings" had not yet been achieved, as well as incomplete, since they had not taken into account all proposals, for instance those made at the Sixth Committee.

140. An agreement on the "headings" was indispensable to future undertakings of the Committee since they constituted the underlying structure of the future work to be done. However, such an agreement required a strong will on all parties involved, including the Chairman, to help crystallize the nascent points of convergence between delegations; the existence of those points should not be unnecessarily underestimated. It was felt that by grouping in one single document all proposals concerning the identification of "headings" it would be possible to achieve a basis for the future work of the Committee.

141. The question of the form of a future instrument on the non-use of force presented substantive aspects because of the different legal effects involved. There would be no consensus to enter the phase of concrete formulations until the mandate of the Committee had been revised on a consensus basis and a new goal, different from the drafting of a treaty, had been agreed upon.

142. In connection with the view expressed in paragraph 134 one delegation stated that the reason the Committee had made no progress in its seven years of existence was that there was no agreement on the mandate, no agreement on the goals or how to pursue them. It was also noted that the entire exercise was redundant in the light of other ongoing exercises.

143. It was observed that one possible conclusion to be drawn from the present situation was that the Special Committee was not capable of useful results and should be disbanded. It was pointed out in this connection that most if not all of the areas in which useful work might be done lay already within the mandate of other committees or bodies. Nevertheless it was significant that so many delegations had spoken in favour of a change in the mandate of the Special Committee which should in future be adopted by consensus.

#### Notes

1/ Official Records of the General Assembly, Thirty-eighth Session, Annexes, agenda item 126, document A/38/666.

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

3/ Ibid., Thirty-eighth Session, Supplement No. 41 (A/38/41), para. 59.

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

5/ Ibid., Thirty-eighth Session, Supplement No. 41 (A/38/41).

6/ For the membership of the Special Committee at its 1984 session, see A/AC.193/INF.7

7/ See Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 41 (A/34/41 and Corr.1), para. 120.

8/ Ibid., Thirty-sixth Session, Supplement No. 41 (A/36/41), para. 259.

9/ See Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 41 (A/38/41), para. 259.

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