

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

**GENERAL ASSEMBLY**

OFFICIAL RECORDS: THIRTY-NINTH SESSION

SUPPLEMENT No. 33 (A/39/33)



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New York, 1984

## **NOTE**

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

[14 May 1984]

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## I. INTRODUCTION

1. At its 101st plenary meeting, on 19 December 1983, the General Assembly, on the recommendation of the Sixth Committee, 1/ adopted resolution 38/141, which read as follows:

"The General Assembly,

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

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

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

"Recalling especially its resolution 3499 (XXX) of 15 December 1975, by which it established the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, and its resolutions 31/28 of 29 November 1976, 32/45 of 8 December 1977, 33/94 of 16 December 1978, 34/147 of 17 December 1979, 35/164 of 15 December 1980, 36/122 of 11 December 1981 and 37/114 of 16 December 1982,

"Taking note of the report of the Secretary-General on the work of the Organization submitted to the General Assembly at its thirty-seventh session, 2/ as well as of the views and comments expressed on it by Member States,

"Having considered the report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization on the work of the session it held in 1983, 3/

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

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

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

"2. Decides that the Special Committee shall convene its next session from 2 to 27 April 1984;

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

"(a) To accord priority by devoting more time to the question of the maintenance of international peace and security in all its aspects in order to

strengthen the role of the United Nations, in particular the Security Council, and to enable it to discharge fully its responsibilities under the Charter in this field; this necessitates the examination, inter alia, of the prevention and removal of threats to the peace and of situations which may lead to international friction or give rise to a dispute; the Special Committee will work on all questions with the aim of submitting its conclusions to the General Assembly, in accordance with paragraph 4 below, for the adoption of such recommendations as the Assembly deems appropriate;

"(b) To continue its work on the question of the peaceful settlement of disputes between States and in this context:

"(i) To consider the proposal contained in the working paper entitled 'Establishment of a permanent commission on good offices, mediation and conciliation for the settlement of disputes and the prevention of conflicts among States'; 4/

"(ii) To continue, in conformity with the agreement reached by the Special Committee, the consideration of the proposal concerning the elaboration of a handbook on the peaceful settlement of disputes between States; 5/

"(c) To finalize its present work on the question of the rationalization of existing procedures with a view to submitting its conclusions to the General Assembly at its thirty-ninth session;

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

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

"6. Decides that the Special Committee shall accept the participation of observers of Member States, including in the meetings of its working groups;

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

"8. Requests the Secretary-General to render all assistance to the Special Committee;

"9. Requests 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 the Charter of the United Nations and on the Strengthening of the Role of the Organization'."

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

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

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

3. The Special Committee met at United Nations Headquarters from 2 to 27 April 1984. 6/

4. On behalf of the Secretary-General, the Director and Deputy to the Under-Secretary-General, in charge of the Office of Legal Affairs, opened the session of the Special Committee and made a statement.

5. Miss Jacqueline Dauchy, Deputy Director for Research and Studies (Codification Division, Office of Legal Affairs), acted as Secretary of the Special Committee and as Secretary of the Working Group. Mr. Larry D. Johnson, Mr. Lucjan Lukasik, Mr. Manuel Rama-Montaldo, Mr. Sergei B. Shestakov, Legal Officers, and Mr. Gudmundur Alfredsson, Associate Legal Officer (Codification Division, Office of Legal Affairs), acted as Assistant Secretaries to the Special Committee and the Working Group.

6. At its 73rd, 74th and 76th meetings, on 2 and 4 April, the Special Committee, bearing in mind the terms of the agreement regarding the election of officers reached at its session in 1981, 7/ agreed upon the composition of the officers of the Committee as follows:

Chairman: Mr. Bengt Broms (Finland)

Vice-Chairmen: Mr. Yasin A. Aena (Iraq)  
Mr. Carlos Bernal (Mexico)  
Mr. Ramdane Lamamra (Algeria)

Rapporteur: Mr. Jiří Pavlovsky (Czechoslovakia)

7. At its 74th meeting, the Special Committee adopted the following agenda as contained in document A/AC.182/L.35, as amended.

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.
5. Consideration of proposals of Governments on the questions mentioned in General Assembly resolutions 38/131 and 38/141, in accordance with the Committee's mandate set forth in resolution 38/141.
6. Adoption of the report.

8. At its 74th meeting, on 2 April, the Special Committee decided that its Working Group should devote its first 6 meetings to the question of rationalization of existing procedures of the United Nations, the subsequent 7 meetings to the question of peaceful settlement of disputes between States, and the following 13 meetings to the question of maintenance of international peace and security, with the remaining 3 meetings to be allocated at a later time, in the light of the progress of work on the three above-mentioned topics.

9. The Working Group carried out its work under the chairmanship of Mr. Bengt Broms (Finland), Chairman of the Special Committee. The Vice-Chairmen of the Special Committee, Mr. Yasin A. Aena (Iraq), Mr. Carlos Bernal (Mexico) and Mr. Ramdane Lamamra (Algeria), and the Rapporteur of the Special Committee, Mr. Jiří Pavlovsky (Czechoslovakia), served as Vice-Chairmen and Rapporteur, respectively, of the Working Group. There were also various meetings of intensive informal consultations of members of the Working Group.

10. At the 74th and 76th meetings, held on 2 and 4 April, respectively, the Chairman informed the Special Committee that the Secretariat had received requests for observer status from the Permanent Missions of Australia, Chile, Cuba, the Dominican Republic, Honduras and Morocco. In that connection, the view was expressed that such requests should be granted as well as any requests to the same effect from any other State that is not a member of the Committee. The view was expressed, on the other hand, that that question should be decided by the Special Committee in each particular case and that it could not be decided by the ruling of the Chairman since it exceeded his competence. At the 76th meeting, the Chairman ruled that the requests for observer status received from those Permanent Missions should be granted in accordance with the past practice of the Special Committee and on the basis that any delegation had the right to be admitted as an observer if it so requested. At the 77th and 78th meetings, held on 13 and 26 April, respectively, the Special Committee decided, in accordance with the ruling made by the Chairman at the 76th meeting, to grant requests for observer status received from the Permanent Missions of Benin, the Libyan Arab Jamahiriya and Peru.

11. At the 75th meeting, the representative of China made a statement in which he stressed that, although there had been progress by the Committee during the last decade, such as the Manila Declaration on the Peaceful Settlement of International Disputes, adopted by the General Assembly in 1982 (resolution 37/10, annex), the



Committee's work still had not met the expectations of the medium-sized and smaller countries. He further expressed the hope that the Committee would now be able to produce concrete conclusions for adoption by the Assembly, adding that despite the new mandate of the Committee it was not necessary to begin the work again from scratch. After stressing that the maintenance of international peace and security merited special attention by the Committee, he said that his country would like to see the permanent members of the Security Council accept their responsibilities and support the work of the Committee.

12. At the 77th meeting, the representative of the Philippines delivered, on behalf of His Excellency General Carlos P. Romulo, former Minister for Foreign Affairs of the Philippines, a statement stressing that unless the members of the Special Committee not only took an active interest in the proceedings but saw to it that political will was exercised by their leaders, the labours of the Committee would be in vain. The message further urged the members of the Committee to do their utmost to exercise the will of the majority, which was to make the Charter of the United Nations more effective by carrying out the objectives and purposes which the founders of the Organization had in mind in 1945.

13. The position reached in the Special Committee's work on the topics of the maintenance of international peace and security, the peaceful settlement of disputes and rationalization of existing procedures of the United Nations is reflected respectively in sections II, III and IV of the present report. The Committee wished to draw the attention of the General Assembly in particular to the conclusions it reached in connection with the topics of the peaceful settlement of disputes (see para. 133 below) and rationalization of existing procedures of the United Nations (see para. 151 below).

## II. MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY

### Statement of the Rapporteur

14. In accordance with the decision of the Special Committee reflected in paragraph 8 above, the Working Group considered the question of maintenance of international peace and security at its 13th to 25th meetings, held between 11 and 23 April 1984. During the first part of the debate, many speakers focused on the new mandate of the Special Committee as contained in paragraph 3 (a) of General Assembly resolution 38/141 of 19 December 1983. The mandate was generally welcomed and several delegations emphasized that the said resolution had been adopted by the Sixth Committee and the Assembly without a vote. Some delegations considered the mandate to be clear and precise enough not to allow room for varying interpretations. A view was expressed, however, concerning the need to define clearly the framework of the deliberations in the Special Committee as well as to examine various questions and their relationship with the maintenance of international peace and security and to specify the nature of the final document to be worked out by the Committee.

15. Many delegations expressed the opinion that, in the examination called for in paragraph 3 (a) of General Assembly resolution 38/141, of the prevention and removal of threats to the peace and of situations which may lead to international friction or give rise to a dispute, the Special Committee should consider how to enhance the conflict prevention role of the relevant major United Nations organs, including the Security Council, the General Assembly and the Secretary-General as head of the Secretariat, and all the machinery available to them. Some of the questions raised to which answers were sought dealt with how potentially dangerous situations could be brought to the attention of those organs, what kind of situations the Organization should get involved in, how to speed up the actions of the Organization, and the relationships and co-operation between the various organs concerning their respective responsibilities. The delegations in question felt that priority should be given at the present stage of the discussion on the question of maintenance of international peace and security to prevention and removal of threats to the peace and of situations which may lead to international friction or give rise to a dispute.

16. On the basis of the wording of paragraph 3 (a) of Assembly resolution 38/141, it was suggested by many delegations that the Working Group should focus on the earliest stages of a situation which might lead to international friction or give rise to a dispute. That should be done in a chronological order. The discussion should concentrate on the prevention of conflicts which was clearly distinguishable from conflict management. It was pointed out that preventing a potential conflict ought to be easier than to stop an ongoing one. The remark was made that the distinction between situations which could lead to international friction and those implying threats to the peace was a fine one. With regard to specific means to ensure conflict prevention, emphasis was placed, inter alia, on periodic meetings and informal consultations of the Security Council as well as on enhancing the early-warning capacity of the United Nations through information-gathering, information-monitoring, fact-finding missions, missions of inquiry, the systematic use of acquired information and facts. Further, importance was given to quiet diplomacy, good offices missions, civilian and military observers and various other forms of United Nations presence. It was stressed that such presence should only be undertaken with the consent of the receiving States. Reference was also made to

the need to encourage States to approach the United Nations at the earliest possible stage in order to enable the Organization to defuse potentially dangerous situations. The view was held by those delegations that the United Nations was too often being used as a last resort and that existing Charter machinery, providing for earlier responses was not being fully employed. It was stated that the role of the States involved in the potential conflict and their co-operation were essential for conflict prevention and in accordance with Articles 33 and 37, paragraph 1, of the Charter of the United Nations. The need for the consent of the States parties was envisaged as an important principle for the activities of the organs of the United Nations in conflict prevention. Furthermore, in connection with the role of the United Nations in conflict prevention, frequent references were made to the reports of the Secretary-General on the work of the Organization (A/37/1 and A/38/1), 8/ to a letter dated 10 June 1983 from the representatives of the Nordic countries to the United Nations addressed to the Secretary-General (A/38/271-S/15830), to the results of a series of informal consultations by the Security Council held in 1983, in response to the report of the Secretary-General on the work of the Organization mentioned above (A/37/1), contained in the note by the President of the Council (S/15971) and to a meeting of the Security Council which was held in 1970 at the initiative of Finland in accordance with Article 28, paragraph 2, of the Charter.

17. Other delegations thought, on the other hand, that the Working Group should engage in a comprehensive approach to the problem and not limit itself to conflict prevention by the United Nations. The role of States as primary actors in conflict prevention was thus emphasized and the conduct of States in accordance with such principles as the non-use of force, non-intervention in the internal affairs of States, sovereign equality of States, self-determination of peoples and good-neighbourliness, was described as a vital aspect of any Working Group discussion of the topic. The principles of pacta sunt servanda and the inherent right of individual or collective self-defence were also mentioned. There could be no peaceful solutions to disputes if the States parties thereto did not want to co-operate in prevention efforts. Hence, it was essential to respect the sovereignty of the States parties to a dispute, as well as their freedom to choose among the variety of means available to them for settling their disputes. References were also made to regional organizations which were said to have an important role to play because of their proximity to a potential conflict area. Furthermore, the Charter itself provided a number of opportunities for conflict prevention through the collective security system established therein. What was needed was for States genuinely to utilize the existing opportunities and reaffirm their commitment to the collective security system. Some delegations, while recognizing that the role of States in connection with any aspect of the question of maintenance of international peace and security should not be disregarded, said that the Committee should at the present stage focus its attention on the question of conflict prevention.

18. A view was expressed, however, that it was not advisable for the Committee to present results on only one aspect of such a fundamental and vital question as the maintenance of international peace and security; results could be meaningfully arrived at only after an overall examination of the entire question and could be embodied in a document on the strengthening of the effectiveness of the United Nations in the maintenance of peace and in the development of peaceful co-operation between States. Special attention was drawn to the protection from nuclear catastrophe as a major task of conflict prevention, because the very existence of mankind hinged on the prevention of nuclear war. In that connection, attention was

drawn to a proposal that provided for an agreement between nuclear-weapon States which should include, inter alia, commitments to regard the prevention of nuclear war as the main objective of the foreign policy of nuclear-weapon States and to renounce the propaganda for nuclear war, not to be the first to use nuclear weapons, not to use such weapons against non-nuclear-weapon States, to encourage the formation of nuclear-free zones, to prevent the proliferation of nuclear weapons and to bring about nuclear disarmament.

19. Some delegations emphasized that the work of the Special Committee should not result in direct or indirect amendments to the Charter, such as blurring the primary responsibility of the Security Council in the maintenance of international peace and security or in any reordering of the functions and importance of the various United Nations organs. The existing balance of powers, functions and responsibilities of the principal organs of the United Nations, as provided in the Charter, must, it was noted, be strictly maintained. The point of view was also expressed that it would not be appropriate or productive for the Special Committee to attempt to tell the Security Council how to arrange or conduct its business. Other delegations, referring to Article 10 of the Charter, disagreed with that view.

Working paper submitted by Belgium, the Federal Republic of Germany, Italy, Japan, Spain, later joined by New Zealand (A/AC.182/L.38)

20. At its 19th meeting, the Working Group began its consideration of a working paper entitled "Prevention and removal of threats to the peace and of situations which may lead to international friction or give rise to a dispute" (A/AC.182/L.38), which read as follows:

"Prevention and removal of threats to the peace and of situations which may lead to international friction or give rise to a dispute"

"The following are points for discussion and proposals regarding the possible enhancement of the functions of the United Nations organs for the prevention of international conflicts, in particular those of the Security Council and the Secretary-General under the relevant provisions of the Charter of the United Nations, as well as the strengthening of co-operation between the main United Nations organs:

"I. Preparation of the relevant United Nations organs for early measures with a view to defusing potential conflicts and specific situations of imminent conflict

"1. Enhancement of the information-gathering capabilities of the United Nations system by improving the means and techniques at the disposal of the relevant United Nations organs.

"(a) Periodic meetings or consultations of the Security Council should be held to review the international situation.

"(b) The information gathered by the Secretary-General could be conveyed, as appropriate, to the Security Council:

- "(i) At the request of the Security Council;
  - "(ii) On the initiative of the Secretary-General.
  - "(c) The information gathered by the Secretary-General could be conveyed, as appropriate, to the General Assembly.
  - "(i) At the request of the General Assembly;
  - "(ii) On the initiative of the Secretary-General.
- "2. When a specific situation or dispute is brought to the attention of the Security Council without a meeting being requested, the Council may hold informal consultations with a view to ascertaining the facts of the situation and keeping it under review, with the assistance of the Secretary-General. The participation of the parties concerned should be ensured.
- "(a) The Security Council should consider making more frequent use of rule 23 of its provisional rules of procedure in appointing the Secretary-General as rapporteur for a specified question.
  - "(b) Increased use should be made of United Nations fact-finding missions in the areas concerned with the consent of the receiving State.
  - "(c) All Member States, pursuant to Article 35, paragraph 1, of the Charter, and the Secretary-General, pursuant to Article 99, should fully exercise their right to bring matters to the Security Council.

## "II. Preventive action by the relevant United Nations organs

- "1. Quiet diplomacy with the parties directly concerned, inter alia, informal and confidential contacts with the parties, good offices, etc.:
- "(a) States should be encouraged to approach the Security Council at an early stage, if appropriate, on a confidential basis. In order to respond quickly to such an approach, the Security Council might wish to establish methods and informal procedures;
  - "(b) The Secretary-General, if approached by a State or States parties to a potential dispute, should respond swiftly, as he deems it appropriate, in offering his good offices or other informal means at his disposal;
  - "(c) The Secretary-General, whenever he deems that peace is being threatened, should take the initiative to contact the States concerned in an effort to prevent a worsening of the situation.

"2. Other modalities of preventive action

"(a) The Security Council:

"(i) Should consider acting swiftly and in a responsive way in sending good-offices missions, military and civilian observers or other forms of United Nations presence to areas of potential conflict;

"(ii) Might wish to consider using peace-keeping operations and observer missions as a means of preventing the further deterioration of the situation;

"(iii) Should consider encouraging and, where appropriate, endorsing efforts undertaken at the regional level to prevent conflicts in the region concerned.

"(b) The Secretary-General:

"(i) Should consider sending information-gathering missions into potential conflict areas;

"(ii) Should be encouraged, whenever he deems it appropriate, to draw the attention of the Security Council to a potential conflict situation and request a meeting of the Security Council in accordance with Article 99 of the Charter.

"(c) The General Assembly:

"(i) Should make full use of the provisions of the Charter in order to discuss and take appropriate action for the prevention of international conflicts;

"(ii) Should endorse, where appropriate, efforts undertaken at the regional level to prevent conflicts in the region concerned.

"III. Monitoring and reassessment of action taken

The effectiveness of methods and procedures used by the respective United Nations organs for the prevention of a specific situation should be reviewed periodically by the organ which has taken the action.

"IV. Start of pacific settlement of disputes methods and procedures according to Chapter VI of the Charter of the United Nations."

(a) Comments on the working paper as a whole

21. Subsequent to the introduction of the working paper by the co-sponsors who stressed, inter alia, the preliminary nature of the paper which was the product of intensive consultations with many delegations from different quarters and their intention that it serve to facilitate the discussion in the Working Group, the Chairman stated that, on the basis of his discussions with the co-sponsors and other interested delegations, it was his understanding that the working paper had been put forward as a draft basis for discussion on the question of the prevention

and removal of threats to the peace and of situations which may lead to international friction or give rise to a dispute. It was understood, he said, that the question was one of the aspects of the problem of the maintenance of international peace and security as set forth in paragraph 3 (a) of General Assembly resolution 38/141 and that discussion of the working paper was without prejudice to the right of any delegation to submit additional papers for consideration on the same level on that or other aspects of the mandate.

22. Many delegations thanked the co-sponsors for their worthy effort to provide the Working Group with a sound basis for considering that important aspect of the question of maintenance of international peace and security. The general thrust and ideas contained in the working paper would, it was said, no doubt significantly contribute to progress in the work of the Special Committee, in accordance with the new mandate contained in paragraph 3 (a) of Assembly resolution 38/141.

23. With regard to highlighting the role of States and the need for their co-operation in this initial stage of conflict prevention, the spokesman for the co-sponsors agreed that that aspect was an important one which could be dealt with in a number of ways. For example, each section of the working paper could include a separate proviso on the role of States, or an entirely new and separate part could be drafted and added to the paper. The co-sponsors therefore welcomed any initiatives in that regard which could command broad support.

24. There was widespread support for the ideas underlying the working paper. The view was expressed, however, that conflict prevention could not be confined to the functioning of the United Nations organs and should deal also with the obligations of States.

(b) Comments on specific sections and paragraphs of the working paper

25. With respect to the introductory paragraph, it was agreed that the discussion thereof should be deferred to a later stage following the examination of the various sections and paragraphs of the working paper.

Section I

26. With regard to the wording "defusing potential conflicts and specific situations of imminent conflict", it was said that a clear definition would be needed of the conflicts and situations referred to, as well as a clear indication of what organ should be responsible for determining when such conflicts or situations existed. It was proposed that a first section of a document on that subject should be devoted to the conduct of States for the prevention and removal of threats to the peace and of situations which might lead to international friction or give rise to a dispute.

Paragraph 1

27. The view was expressed that paragraph 1 consisted really of four different proposals because its chapeau dealt with subject-matter distinct from that referred to in subparagraphs (a), (b) and (c). The phrase "the United Nations system" was viewed by some delegations as too broad and it was suggested to replace it by the word "Organization".

28. With regard to "information-gathering capabilities" referred to in the chapeau, the central role of States as being the origin and source of information to be provided the Organization concerning imminent or potential conflicts, particularly in their respective regions, was highlighted. In that connection, it was suggested that a new subparagraph be added to paragraph 1 referring to the need for close co-operation between Member States and the Organization in United Nations information-gathering.

29. Several delegations were of the opinion that numerous possibilities existed to enhance information-gathering capabilities and perhaps such details should be added to the chapeau. Mention was made of utilizing Articles 22 and 29 of the Charter of the United Nations to establish subsidiary organs, of the Secretary-General appointing special representatives and of the Security Council utilizing rule 23 of its provisional rules of procedure. It would also be possible to specify that such activities should be undertaken with the consent of the parties concerned and within the framework of the Charter. It was, however, noted that information-gathering by United Nations organs constituted a new activity, not mentioned as such anywhere in the Charter. Its purpose should not be to create a data bank or automaticity in setting the United Nations machinery in motion which must be based upon resolutions of the Security Council or the General Assembly. It was stressed that information should be supplied by Member States and that the information-gathering missions should be sent only on the basis of prior consultations with, and consent of, the States concerned. It was also stated that, in accordance with Article 34 of the Charter, investigation of disputes and factual situations which might endanger international peace and security could be dealt with only by the Security Council, and that information-gathering was nothing new in the United Nations activity.

30. The idea of "enhancing" such capabilities "by improving the means and techniques at the disposal of the relevant United Nations organs" was said to require considerable clarification. Questions were raised not only with respect to the possible sources of such information, and the channels through which it was to be obtained, but also as to what means and techniques were in fact available to the relevant organs. In that connection, it was noted that lack of information was not the source of the problem. Doubt was also expressed as to whether the establishment of investigative committees by the General Assembly would correspond to the Charter.

31. As to the Secretary-General, it was recalled that he already had the capability of submitting reports to the Assembly or the Council on their request. In that connection, the question was posed whether the co-sponsors had in mind the establishment of a new Secretariat unit for information-gathering, which would involve considerable expense for a doubtful enterprise. Doubt was expressed that the United Nations was actually suffering from a lack of information; there was, in fact, more than ample information available and what was required was better means and methods of dissemination. Moreover, doubts were expressed concerning information-gathering by the Secretary-General on his own initiative; it might prove detrimental to conflict prevention in certain circumstances.

32. At the end of the initial discussion in the Working Group of paragraph 1, a spokesman for the co-sponsors stressed that the working paper had been prepared from a chronological point of view and that the idea of enhancing the information-gathering capabilities of the United Nations system by improving means



and techniques at the disposal of relevant United Nations organs was not intended to suggest that new Secretariat units should be established for the purpose of information-gathering. The question was rather a proper utilization of existing resources in order to use better the wealth of information available to the United Nations. Furthermore, he indicated that the word "system" was to be understood in the context of the subject-matter under discussion and hence its meaning was limited to those United Nations organs which had been accorded competences in the matter. No objection, however, was made to the suggestion that "system" be replaced by "Organization".

33. As to the phrase "improving the means and techniques at the disposal of the relevant United Nations organs", the spokesman agreed with some speakers that one of the most important sources of information was Member States themselves, although use of other means to gather information should not be excluded, such as the more prompt and effective use of information already available, gathering specific pieces of information relevant to a particular trouble spot, greater co-ordination among existing organs concerning information, etc. As to the placing of the contents of the chapeau, no objection was made to converting it into a subparagraph of paragraph 1.

34. With regard to subparagraph (a), relating to periodic meetings or consultations of the Security Council to review the international situation, certain delegations were of the view that it should appear as a separate paragraph in the paper because such Council discussions served a wider purpose in terms of an exchange of views. In that connection it was stated that the proposal should be supplemented by the ideas contained in the relevant part of the letter from the representatives of the Nordic countries addressed to the Secretary-General (A/38/271-S/15830). There was no apparent link between the subject-matter of paragraph 1, on information-gathering, and the contents of subparagraph (a). On the other hand, it was felt that such meetings and consultations could usefully serve the purpose of bringing information to the attention of the Council; it was considered useful to provide for an interplay between Council discussions of the international situation and the information-gathering activities of the Secretary-General mentioned in subparagraphs (b) and (c).

35. Suggestions were made that the phrase "should be held" ought to be softened, perhaps to "should be considered". It was stressed that the General Assembly could not tell the Security Council how to fulfil its functions or how best to use its internal working methods. In that connection, attention was drawn to the rights of the Assembly under Article 10 of the Charter. It was also urged that a clear distinction should be drawn between formal meetings of the Council whether public or private and informal consultations between the President of the Council and its members. It was stressed, however, that the holding of Council meetings which were open to all States concerned should be encouraged.

36. It was also suggested that the subparagraph should refer to Article 28, paragraph 2, of the Charter which provided for the possibility of the Council holding periodic meetings. However, the view was expressed that that fact alone did not mean it was prudent to systematically encourage the convening of such meetings. The resolution of some disputes or situations could be achieved by direct negotiation among the parties concerned, who might be reluctant to subject the matter to widespread discussion.

37. A spokesman for the co-sponsors remarked that there were different ways to view the importance and place of the idea contained in subparagraph (a). With regard to the latter question, he took note of the comments made by some speakers that the question of periodic meetings or consultations of the Security Council was distinct from the question of information-gathering and hence could be a separate paragraph itself. He stressed, however, that the intention of the co-sponsors was to highlight that the periodic meetings or consultations referred to would constitute a means for gathering information and for ascertaining the need for additional information, although it should be understood that periodic meetings or consultations could be very useful for other purposes as well. He also remarked that the public or private nature of such meetings or consultations was to be decided by the Security Council itself on a case-by-case basis. He also explained that there was no objection to mentioning Article 28, paragraph 2, of the Charter in the context of subparagraph (a).

38. The spokesman also commented on the more general question of how the General Assembly could address itself to the activities and internal working methods and procedures of the Security Council. It was not the intention of the co-sponsors, he said, that the Assembly should tell the Council what to do and how to discharge its functions. Rather, the intention was inspired by the provisions of Article 10 of the Charter. The result of Assembly discussions need, however, not necessarily be in the form of the Assembly "recommending" to the Council but could be in the form of other language which could command general agreement, such as the Assembly "encouraging" the Council.

39. Concerning subparagraphs (b) and (c), some delegations welcomed the idea of information-gathering by the Secretary-General. Emphasis was placed on the functions assigned to the Secretary-General under Articles 98, 99 and 100 of the Charter, on the existing practices of the Secretary-General in that regard and on the relevant remarks he had included in his 1982 annual report. The Secretary-General could be trusted to perform such tasks with impartiality, discretion and confidentiality.

40. Other delegations, however, found the subparagraphs too wide and vague because they did not spell out the sources of gathering such information, the modalities of its collection and transmittal and the methods of compilation and use. It was felt particularly necessary to clarify how the Secretary-General was to gather such information, perhaps by adding a new subparagraph on that question. Further stress was also placed on the need to protect the confidentiality of information supplied to the Secretary-General on a confidential basis and to distinguish between objective and subjective information.

41. In addition, the question was raised as to the basis for the Secretary-General gathering information on his own initiative. Such activity was not authorized specifically under the Charter and in most cases he acted pursuant to a request as envisaged in Article 98. Doubts were expressed as to whether the Secretary-General had the right under the Charter to engage in such activity on his own initiative and the view was expressed that the text should make it clear that he gathered information at the request of a competent organ. In that connection, a spokesman for the co-sponsors remarked that Article 99 of the Charter provided, by necessary implication, the basis for information-gathering by the Secretary-General on his own initiative.

42. The suggestion was made that subparagraphs (b) and (c) should be combined, but it was stressed that in doing so, the apparent parallelism between the functions of the Security Council and the General Assembly must be dispelled.

43. In that connection, certain representatives pointed out that subparagraph (c) appeared to ignore the fact that the Security Council bore, under Article 24 of the Charter, on behalf of the entire membership, the primary responsibility for the maintenance of international peace and security. On the other hand, other representatives pointed out that the General Assembly could, under Articles 10, 11 and 14 of the Charter, discuss any questions, including the peaceful adjustment of any situation or dispute. In practice, the Assembly had frequently requested the Secretary-General to gather information in that regard. It was remarked, however, that what was needed was a call for co-operation among various organs. As decision-making was not envisaged at the early preventive stage of information gathering, jurisdictional questions should not arise nor should they be the focus of attention.

44. In his statement on behalf of the co-sponsors, their spokesman stressed the importance and delicacy of the questions of what kind of information would be gathered and how its objectivity could be assured. Those matters also touched upon the important aspect of the confidentiality of the information gathered. The Secretariat, he believed, could be entrusted with information-gathering tasks. Finally, none of the provisions included in the working paper were intended to go beyond the various existing competences of the relevant United Nations organs as set out in the Charter.

#### Paragraph 2

45. In introducing paragraph 2 of the working paper, a spokesman for the co-sponsors stressed that it dealt with the case where a specific situation or dispute was being brought to the attention of the Security Council without a request for a formal meeting. He observed that the holding of informal consultations would be left to the discretion of the President of the Council. The participation of parties directly involved should be encouraged.

46. Some delegations stressed that the wording should be flexible since the question of what specific situations or disputes would be brought before the Security Council had to be left to the judgement of Member States, based upon the criteria provided in the Charter of the United Nations. Attention was drawn, in that connection, to the balance to be maintained between the desirability of involving the Security Council at an early stage, in order to allow it to play an effective role in the settlement of disputes, and the need not to internationalize a difference which could be effectively settled by the parties themselves. While the relevant organs of the Organization might monitor such situations, they should do so without doing violence to the wishes of the parties concerned.

47. It was observed that paragraph 2 could not be examined in isolation but had to be viewed within the context of the overall question of the maintenance of international peace and security; conflict prevention was to be approached from a broad angle, bearing in mind the primary role of the Security Council in the peaceful settlement of disputes and the criteria and circumstances of each case. Strict compliance with the provisions of the Charter was a sine qua non for all improvements in that field, including those envisaged in the working paper. The paragraph being discussed was silent on the type of disputes involved; it failed to reflect the fundamental fact that the Council's activities and those of Member States were linked and had to be co-ordinated to maintain successfully the peace,

and it disregarded the freedom of sovereign States in choosing means to settle not only actual but also emerging disputes. In addition, the paragraph failed to take into account the provisions of Article 2, paragraph 7, of the Charter. Finally, it was stressed that the subject-matter of paragraph 2 fell entirely within the discretion of the Security Council and that other organs were precluded from prescribing to the Council how it should settle or prevent disputes.

48. Concerning the chapeau to section 2, the meaning of "specific situation or dispute" was considered unclear and it was asked why, according to the text, facts were to be ascertained concerning a "situation", but not a "dispute". Some delegations suggested to add the word "dispute" after "situation", but other delegations felt that once an actual dispute existed, a more formal handling of the matter was called for.

49. Some delegations noted that the text should specify that it was up to the States parties to a situation or dispute to bring it to the attention of the Security Council in order to avoid the automatic holding of informal consultations on the basis of second-hand information. Other delegations favoured going beyond the proviso that the Council "may" hold such consultations and suggested that the language be made more imperative or at least that the Council be encouraged to hold such consultations.

50. The observation was also made that it might be preferable to provide for Security Council meetings, public or even private, as well as informal consultations, so as to allow for more open discussions. For other delegations, however, it was necessary to maintain a high degree of informality at the present stage of conflict prevention; as long as no formal meeting had been requested and a dispute or threat to the peace had not actually arisen, it was preferable to restrict discussions to an informal consultation setting. It was recalled that the Council could only take decisions at formal meetings, so that no danger of secret decisions or actions existed. A number of delegations referred to the nature of informal consultations, stressing that they represented a working method of the Security Council and did not constitute an institution or established procedure. For that reason, the members of the Council could not be put under pressure concerning their working methods of an internal character. Those delegations stressed that it was the invariable practice for the members of the Council and its President to keep in constant contact with the parties to a particular dispute or situation of which the Council was actually seized.

51. It was urged that further thought should be given to the indicated purpose of such consultations, namely, "with a view to ascertaining the facts of the situation and keeping it under review". The remark was made that the purpose of informal consultations could not be to establish facts but rather to examine them. It was said that the thrust of the sentence indicated some ignorance of the existing working methods of the Security Council; for example, considerable activity aimed at ascertaining the facts of a given situation was conducted at the level of the President of the Council. The point should be to encourage the Council to act on the basis of proper knowledge of facts, a matter quite distinct from the use of informal consultations.

52. To some representatives, the qualification that informal consultations were to be held for the purpose of ascertaining the facts of the situation and keeping it under review was too restrictive. The objective of such consultations should also be to examine ways and means of finding a prompt solution to the situation or

dispute and preventing an aggravation thereof. Reference was made to the Security Council utilizing all the means mentioned in Article 33 of the Charter, including good offices, and to the possibility that informal consultations could lead to informal recommendations and assistance to the parties in resolving their dispute. It was stressed that the Council should invite States parties to participate in such consultations. It was suggested moreover not to indicate in the text a specific purpose for the informal consultations.

53. The serious doubts which were expressed in regard to paragraph 2 of section I as a whole (see para. 47 above) were reiterated in relation to the chapeau. Ascertaining facts by means of informal consultations in which only one of the parties might be involved would lead to a one-sided presentation of facts. Moreover, informal consultations were part of the Council's working methods and should be left to its discretion.

54. In reply to the comments made, the spokesman for the co-sponsors expressed preference for the flexible approach reflected in the word "may" since the Security Council had to be given sufficient latitude in every case and should be trusted to exercise its good judgement. Secondly, paragraph 2 of section II dealt with preparing the groundwork for possible measures and not with the taking of action; it seemed appropriately confined to informal consultations and the gathering of the necessary information. The present text could be reworded to make it clear that the purpose of informal consultations was to gather information and to keep the situation or dispute under review. He did not share the opinion that such a purpose would conflict with Article 2, paragraph 7, since the Council was free to gather the facts necessary for a proper discharge of its functions under the Charter.

55. As to the second sentence of the chapeau, it was supported by those delegations who deemed it important to give all States parties to a situation or dispute equal access to the Security Council. Encouraging all parties concerned to take part in the consultations would not, it was felt, reduce the effectiveness of the Council but would ensure that the Council had before it all the facts and information, not just those made available by one of the parties concerned. The remark was made in that connection that the limited proposal submitted earlier by France <sup>9/</sup> did not go far enough and that its consideration had in any event been suspended. Since it was conceivable that a State party to a dispute might refuse to participate in formal meetings of the Council, it was essential to provide a forum such as informal consultations in which all parties would be prepared to take part.

56. Other delegations, however, voiced reservations or objections with regard to the sentence, which in their opinion reflected an unawareness of the extent to which the parties were, in current practice, involved in the activities of the Security Council and given opportunities to make their views known. On its face, the proposal went too far and indicated a view of the functioning of the Council which was at variance with the terms of the Charter; the Council was entrusted to act on behalf of all Member States. To increase as a general rule the active level of participation at the stage of informal consultations would thwart the ability of the Council to deal efficiently and expeditiously with matters brought to its attention. The Council must, it was maintained, retain the possibility of meeting, as it deemed fit, in seclusion, if it so wished.

57. Attention was drawn to the formula proposed by France at a previous session of the Special Committee. 9/ It was recalled that the discussion of that proposal had been suspended pending examination by the Security Council of a similar proposal submitted to it.

58. According to another view, the idea contained in the second sentence violated the principle that States are free to choose the means they deem most appropriate to settle their disputes, infringed upon the sovereign right of States and constituted an inadmissible interference in the internal affairs of States.

59. The spokesman for the co-sponsors commented that the sentence was based on general principles of law, equity and justice under which, before a decision was taken by an organ, both parties to a dispute were given direct access to the decision-making body in order to present their assessment of facts and their position. That important principle of law inspired Articles 31 and 32 of the Charter and should also be complied with in informal consultations.

60. Turning to subparagraph (a), a number of delegations considered the ideas contained therein worthy of serious study. The possibility of the Security Council appointing the Secretary-General as rapporteur for a specified question was clearly provided for in rule 23 of the Council's provisional rules of procedure. Some delegations urged that the origin of rule 23 and its implementation in practice should be studied in order to reach a clearer understanding of what the drafters of the rule had intended. It was unclear whether, when the Council appointed the Secretary-General rapporteur for a specified question, that function implied anything more than a request of the Secretary-General to prepare a report on a given matter.

61. Attention was drawn to the link between rule 23 and rule 28 of the Council's provisional rules of procedure which provided that the Council may appoint a commission or committee or a rapporteur for a specified question. That provision, it was stated, seemed to indicate that the functions of a rapporteur under those rules went beyond the reporting by the Secretary-General on his implementation of, or follow-up measures taken pursuant to, Council requests and decisions. The relationship between rules 23 and 28 could indicate involvement of the Secretary-General as rapporteur prior to the taking of decisions by the Council.

62. It was also stressed that it was not appropriate or practical to encourage greater use of the possibility existing under rule 23. More frequent use thereof did not necessarily imply a beneficial result. It was always necessary to take account of the nature and circumstances of the dispute or situation in question. Furthermore, it was said that the Security Council itself should decide on the best method of consideration it should use.

63. A spokesman for the co-sponsors noted the link between rules 23 and 28 of the provisional rules of procedure of the Security Council and believed the subparagraph could be expanded to take account of both rules. The intention behind subparagraph (a) was to activate the Council in areas hitherto infrequently used and to indicate political support.

64. With regard to subparagraph (b), relating to increased use of United Nations fact-finding missions, agreement was expressed by some delegations as to the general thrust of the proposal, although the matter was a complicated one in terms of when such a mission could and should be sent and the issue of the consent of the

receiving State. It was recalled that in the early years of the Organization, the Security Council had established fact-finding missions which had proven very helpful to the Council in reaching decisions and reducing tensions in certain trouble spots.

65. Some delegations urged that the emphasis be placed more on the usefulness of fact-finding missions under certain circumstances. It was suggested that a proviso be added such as "whenever appropriate and considered useful". Increasing the frequency of the use of fact-finding missions could not be made an end in itself. It was necessary to have uppermost in mind the need for the co-operation of the States concerned and in particular the consent of the receiving State or States.

66. The view was maintained that, as it stood, the text was too imprecise and vague since it did not distinguish between the various possible kinds of missions. Those fact-finding missions as such established by a non-procedural decision taken by the Security Council under Article 27, paragraph 3, of the Charter were binding and did not require the consent of the parties concerned although such consent was highly desirable; they could not be equated with information missions sent by the Secretary-General to obtain information and ascertain facts, which did require the consent of the States concerned.

67. The view was also expressed that only the Security Council could establish so-called "fact-finding missions" and that it did so under Article 34 of the Charter which carefully circumscribed the purpose of such missions. It was also emphasized that no other organ of the United Nations had such powers under the Charter. The use of the expression "areas concerned" was to an extent a distortion of the Charter.

68. The spokesman for the co-sponsors explained that their intention had been to provide a comprehensive formula to cover both fact-finding missions established by the Security Council and missions dispatched by the Secretary-General to gather information. In their view, the Secretary-General was competent to dispatch the latter kind of missions. Through drafting adjustments, it would be possible, he said, to distinguish between the two cases, as well as to provide the suggested emphasis on the usefulness of such missions and the duty of States to co-operate with such missions. The phrase "areas concerned" was a geographical reference and subject to further refinement.

69. In discussing subparagraph (c), some delegations supported the proposition that Member States fully exercise their right under Article 35, paragraph 1, of the Charter to bring certain matters to the attention of the Security Council, but urged that the text must fully reflect that Charter provision and include the right of Members to bring such matters also to the attention of the General Assembly. Similarly, support was expressed for the Secretary-General fully exercising his rights under Article 99 to bring certain matters to the attention of the Council.

70. Caution was voiced with regard to giving the impression that there were obligations or duties under Article 35, paragraph 1, and Article 99 to bring certain matters to the Council's attention. It was stressed that both Articles were facultative, in that neither Member States nor the Secretary-General were obliged to bring matters referred to in those Articles to the Council's attention. Some discretion must be exercised, particularly by the Secretary-General, when deciding to bring a matter to the Council. However, if matters were brought to the Council's attention under Article 35, paragraph 1, or Article 99, it should be done

in a timely fashion in order to enhance the possibilities for effective action by the Council. Under Article 35, paragraph 1, any Member State, not just parties to a dispute or situation, may bring to the attention of the Council a dispute or situation of the nature referred to in Article 34, and all Members should, it was said, not be pressured to take such a step, but should bear the possibility in mind.

71. While agreeing that the text should be carefully worded so as not to imply that obligations flowed from Article 35, paragraph 1, and Article 99, some delegations felt it unfortunate to imply that there existed no obligations whatever to bring matters to the Council. It was recalled, on the other hand, that such an obligation existed in the case envisaged in Article 37 under which the parties to a dispute, the continuation of which was likely to endanger the maintenance of international peace and security, should refer the dispute to the Council if they had failed to settle it by the means indicated in Article 33.

72. Serious doubts were expressed with the proposition that Member States or the Secretary-General should be pushed to bring certain matters to the Security Council, as was implied by the expression "fully exercise". First, only those most serious disputes or situations described in Article 34 could be considered for reference to the Council. Secondly, bringing such matters to the attention of the Council was not for information purposes but for action or decision purposes. Hence, extremely sensitive elements were involved in bringing such matters to the Council, requiring careful consideration of all the consequences and implications involved. It was, therefore, seen as inappropriate and impractical to encourage the Secretary-General in particular to exercise extensively his rights under Article 99. Practice had proven the wisdom of his utilizing those rights on only rare occasions.

73. A spokesman for the co-sponsors stressed that subparagraph (c) was not intended to pressure either Member States or the Secretary-General into invoking their rights under Article 35, paragraph 1, and Article 99, respectively. The purpose of the text was to indicate the political support and encouragement for the exercise of those rights by Member States and by the Secretary-General when the circumstances so warranted. Finally, he indicated that adding to the text a reference to bringing matters to the attention of the General Assembly under Article 35, paragraph 1, would seem logical.

## Section II

### Paragraph 1

74. In introducing paragraph 1 of section II, the spokesman for the co-sponsors noted that section II, dealing with quiet diplomacy by the relevant United Nations organs, was the most important, yet most sensitive, aspect of conflict prevention by the United Nations. The ideas contained in that section and in section I were linked in many aspects and sometimes overlapped. That was due to the chronological approach taken by the paper which would be re-examined after the conclusion of the debate.

75. Paragraph 1 dealt with quiet diplomacy which called for utmost flexibility and discretion on the part of all concerned in particular the Security Council and the Secretary-General and required that action be taken in the interest of the parties to a potential dispute. As to the chapeau to paragraph 1, "quiet diplomacy" did not mean secret diplomacy, but rather an activity aimed at offering the parties to



a potential dispute discrete assistance in resolving it. Such parties were only those directly concerned with a potential dispute, not States concerned or interested in the matter in a wider sense. Informal and confidential procedures were of the essence to quiet diplomacy; thus the relevant United Nations organs mainly involved in that activity were the Security Council and the Secretary-General. He also stressed that all the proposals in that paragraph were based upon the free choice of means available to resolve potential disputes, as understood in a broad sense.

76. The view was expressed that the ideas reflected in the paragraph pointed to the right areas for discussion in the conflict-prevention field and were generally presented in a helpful manner. Subject to drafting changes and greater precision, all the subparagraphs identified areas which merited further consideration and contained descriptions of activities which had been conducted and approved in the past. None involved any activity contrary to the provisions of the Charter of the United Nations, it was stressed.

77. Particular emphasis was placed by some delegations on the need for the Security Council and Secretary-General to become more actively involved in informal processes to prevent a potential dispute from erupting into conflict. If that need was to be met, more was required than reliance on formal debates and meetings of the Council and Article 99 of the Charter; preventive action should take place prior to involving formal mechanisms which were unwieldy for the purpose under discussion.

78. On the other hand, it was said that if the proposals set forth in the paragraph were followed, the goal of conflict prevention would not be served. Serious doubts and reservations were expressed concerning that paragraph of the paper, which contained imprecise language, infringed on the free choice of means available to States to settle their differences and envisaged activities contrary to the Charter.

79. With regard to the chapeau of paragraph 1, quiet diplomacy was said to be based on confidentiality, discretion and the greatest possible degree of flexibility so as to adjust to the needs of the specific situation. Over-generalization with regard to any one method being best suited in all circumstances was to be avoided. As to the terminology, it was suggested that the phrase "quiet diplomacy" should not be interpreted to mean secret diplomacy and that perhaps a better phrase would be "preventive diplomacy" or "discreet diplomacy". However, according to another view, neither "quiet" nor "preventive" diplomacy was acceptable; such terms had no basis in international law and were the subject of differing interpretations.

80. Emphasis was placed by a number of representatives on the central role played in quiet diplomacy by the parties directly concerned; their co-operation was essential. It was also necessary to bear in mind, it was said, that contacts with the parties could not only be direct but also indirect through intermediaries. The view was also expressed to include in that paragraph an idea according to which the Security Council should, for any dispute or situation, through unofficial consultations, promote the start or resumption of negotiations or the recourse to other peaceful means. Other delegations reiterated their opposition to those views.

81. The spokesman for the co-sponsors noted that the expression "quiet diplomacy" could be reformulated as long as the emphasis was not on secrecy, but on discretion.

82. Regarding subparagraph (a), several delegations believed that the States which ought to be encouraged to approach the Security Council were those who were parties to a potential dispute and that the word "States" should be qualified as such. It was remarked that, while it would be preferable for all such parties to approach the Council, the approach of one party should be sufficient for the Council to begin quiet diplomacy and informally contact other parties. The matter of how the Council was to be approached was also raised. Mention was made of contacting the President of the Council or any of its members; in any event, the matter should be left to the discretion of the parties concerned. One view expressed was that the proviso that such an approach be made "at an early stage" was too rigid and that the phrase should be changed to "as soon as possible".

83. The indication that the approach to the Security Council should be made "if appropriate, on a confidential basis" raised, in the view of some delegations questions as to how effective the Council could be in quiet diplomacy where confidentiality was normally of the essence. Security Council members were not divorced from their own national interests nor from the rest of the membership of the Organization. Furthermore, the Council could, it was remarked, provide a setting too formal to ensure confidentiality. The Council could only act in a decision-making sense through means of a formal, normally open meeting which would destroy the desired aspect of confidentiality. It was stressed that the Secretary-General should play the central role in quiet diplomacy.

84. Reference was also made to the Council establishing methods and informal procedures in order to respond to the approach by a party to a potential dispute. It was thought that beyond establishing methods and informal procedures, the Council could also recommend to the parties informal ways and means to settle the potential dispute. Moreover, it was considered inappropriate to utilize the words "establishing" and "procedures", both of which implied a formal element. The phrase should be redrafted to indicate an invitation to the Council to "resort" to methods. It was stressed that the point was to encourage the Council to adopt or adjust its working methods to the possibility of informal contacts with parties wishing to approach it. Finally, it was maintained that the idea of the Council establishing methods and informal procedures in the context of quiet diplomacy was not useful as it was not possible to predetermine, a priori, methods or procedures to be used in informal consultations.

85. While it was noted that the general thrust of subparagraph (a) was acceptable, the view was nevertheless held that more nuance was needed in order to take account of the fact that while States had a free choice of means in settling their differences, parties to a dispute of the nature mentioned in Article 33 were, if they could not settle as mentioned in that article, obliged under Article 37, paragraph 1, to refer it to the Council. It would be useful to encourage Security Council quiet diplomacy activities with regard to both circumstances prior to bringing the dispute in question to the Council in a more formal manner.

86. Doubts and reservations were expressed with regard to subparagraph (a). It was viewed as unreasonable to pressure States to immediately approach the Security Council without allowing them the opportunity to settle their differences themselves. Such an approach constituted an infringement on the free choice of means available to States to settle their differences.

87. The spokesman for the co-sponsors agreed that the word "States" at the beginning of the subparagraph should refer to the parties to the potential dispute

and that it might be possible to change the reference to the Security Council establishing methods and informal procedures to a reference to an invitation that it resort to methods and informal procedures. He stressed, in addition that there was no intention to predetermine the working methods or procedures to be resorted to but to ensure a large measure of flexibility to the Council.

88. With regard to subparagraphs (b) and (c), a number of delegations stressed the irreplaceable role which the Secretary-General played in quiet diplomacy, a role based on his moral authority and not limited to Article 99 of the Charter. He was in the best position to make confidential and discreet contact with parties to a potential dispute. It was necessary that his efforts be conducted in close co-operation with, and with the consent of, such parties and that he keep the Security Council informed on a confidential basis of his quiet diplomacy activities.

89. With regard specifically to subparagraph (b), it was said that Article 98 of the Charter provided the framework within which the Security Council should entrust the Secretary-General to carry out the activities envisaged. It was furthermore remarked that such activities had to some extent already developed in practice. On the other hand, the view was expressed that it was an extremely sensitive matter to prompt the Secretary-General to react in any given manner to an approach made, particularly if made by only one party. The Charter gave the Secretary-General the right under Article 99 to bring certain matters to the Council's attention, but did not provide for other actions to be taken by him unless authorized.

90. Concerning subparagraph (c), some delegations noted that the reference therein to the Secretary-General taking the initiative whenever he "deems that peace is being threatened" should be changed, as the determination of the existence of a threat to the peace was for the Security Council to decide. Caution was also urged with regard to the Secretary-General taking the initiative to contact the States concerned when they had not approached him. Discretion was required so as to avoid complicating or prejudicing other means being pursued by the parties to settle the situation themselves, or involving himself in matters not falling within the competence of the United Nations, for example under Article 2, paragraph 7, of the Charter.

91. It was also observed that subparagraph (c) was contrary to the Charter as it infringed on the Security Council's exclusive right to determine the existence of a threat to the peace and went beyond the provisions of Article 99 regarding the powers of the Secretary-General in that field. He was not authorized to make any contacts or take any preventive measures in the absence of a Council decision.

92. As to the relationship between subparagraphs (b) and (c), according to one view, they should be combined and given a new orientation so that a new subparagraph would provide that the Secretary-General should respond swiftly, coming into contact with the States concerned, in offering his good offices or other informal means at his disposal in an effort to prevent a worsening of the situation. That formulation would leave open the possibility for the Secretary-General to act when approached by a party to a potential dispute or when he deemed it appropriate.

93. The spokesman for the co-sponsors noted that in subparagraph (c), the reference to the Secretary-General taking the initiative to contact the States concerned was not meant to indicate the establishment of any systematic rules or

procedures for the parties or the Secretary-General. The matter was to be left entirely to the discretion of the Secretary-General.

## Paragraph 2

94. In introducing paragraph 2 of section II, a spokesman for the co-sponsors stressed that the ideas therein related to the more formal and open measures to be taken by the organs concerned, including the Assembly. The role of the General Assembly was set out in Articles 10, 11 and 14 of the Charter of the United Nations but was subject to the provision of Article 12. One of the constructive means for the prevention of conflicts was the encouragement and, if appropriate, the support of efforts undertaken to this end at the regional level. Moreover, that would be an expression of the freedom of choice of means to which all co-sponsors attached great importance. The spokesman further stressed the other underlying motivations for the measures proposed under paragraph 2: ensure a quick and responsive action of the Security Council and encourage the Secretary-General to make fuller use of his functions under the Charter. As to the suggestions that the paragraph should not be structured according to principal organs, the spokesman took note of them and said the paragraph had been so organized in order to expedite the discussion in the Working Group. The Working Group proceeded to a separate discussion of each of the three subparagraphs of paragraph 2.

### Subparagraph (a)

95. Several delegations agreed with the main ideas contained in subparagraph (a). Some other delegations said that the contents of subparagraph (a) did not, generally speaking, pose serious difficulties, although the drafting should be improved. Emphasis was also placed on highlighting to a greater degree the need to leave the Security Council the necessary freedom of action in deciding which measures to consider in the light of the circumstances of each case. It was also remarked that the subparagraph did not indicate how a situation or potential dispute happened to come to the Council in the first place. It would be necessary to clarify the threshold question of what prompted the Council to consider the measures indicated.

96. In that connection, some delegations were of the view that the subparagraph should deal with the case when the Council was unable to act due to the negative vote of a permanent member; the possibility of convening an emergency session of the General Assembly should be mentioned. On the other hand, it was said that that matter should be considered in connection with subparagraph (c) of paragraph 2.

97. According to one view, subparagraph (a) should include at the beginning three additional subparagraphs which would indicate that the Security Council: should examine the opportunity to recommend to the States directly concerned appropriate means for the peaceful settlement of their dispute, including, if necessary, the terms of settlement; should consider the possibility of becoming itself involved as a forum for negotiation, with the participation of the States concerned, in the settlement of the dispute or situation, or should set guidelines for solutions or negotiations and recommend those guidelines to the parties concerned; and should consider the opportunity of establishing subsidiary bodies in accordance with the Charter to consider the situation or dispute and to report to the Council thereon.

98. Some delegations found the above-mentioned suggestions interesting and worthy of further clarification and discussion. There was possibly merit in the idea of

the Council laying down broad principles to provide a framework for the States concerned in their search for solutions and reviewing how those principles were being implemented, particularly if the parties concerned were involved in the discussions.

99. With respect to subparagraph (i), support was expressed for the general idea it expressed, but the flexibility required by the Security Council in choosing among the actions listed was stressed. Several delegations highlighted the need for the co-operation of the States concerned and for the consent of the States receiving missions, observers or other forms of United Nations presence, except in the case of decisions taken under Chapter VII of the Charter.

100. Serious reservations were however expressed concerning the vague and imprecise language used. The meaning of such expressions as "good offices missions", "civilian observers", "United Nations presence" and "areas of potential conflict" was viewed as unclear.

101. As to subparagraph (ii), some delegations believed it reflected well-established practice and could be strengthened by indicating at the outset that the Council "should" consider using the means indicated. On the other hand, the view was held that the use of such peace-keeping operations and observer missions could worsen the situation and frustrate the exercise by the States concerned of their freedom of choice with respect to means of settling their differences. Moreover, use of peace-keeping operations constituted provisional measures taken under Article 40 of the Charter and did not properly fall within the purview of preventive action.

102. According to one view, subparagraph (iii) should be strengthened by recommending that the Council support and encourage regional efforts. Another view held that caution was necessary in order to avoid automatic support by the Council of all such efforts; developing links of co-operation should be the primary focus. It was preferable to rely on the wisdom of the sovereign States and regional organizations concerned which must be left room to deal with matters in their own region. It was also suggested to include a separate subparagraph concerning the co-operation of Member States, which was essential for any efficient action of the Security Council.

103. With regard to subparagraph (iii), a spokesman for the co-sponsors agreed that subparagraph (a) should be brought more clearly in line with the language of Articles 52 and 53 of the Charter concerning the role of the Security Council in its dealing with regional organizations. Furthermore, he took note of specific proposals made with regard to subparagraph (a) as a whole, as well as to its subparagraphs, and said that problems of drafting, definition, procedures and modalities would have to be considered in more detail at a later stage.

#### Subparagraph (b)

104. Several delegations expressed their agreement with the general idea and thrust of subparagraph (b). They felt that, if the Secretary-General was empowered to draw the attention of the Security Council to any matter which in his opinion might threaten the maintenance of international peace and security, as provided for in Article 99 of the Charter, his right to seek information about such matters was clearly implied. Such information gathering was also said to be important for swift handling by the Security Council. On the other side, it was stressed by some

delegations that subparagraph (b) should emphasize the imaginative and creative use by the Secretary-General of his power strictly within the framework of existing practice and of the relevant provisions of the Charter.

105. With regard to subparagraph (i), it was said that the exact meaning of the terms "information-gathering", "missions" and "potential conflict areas" had to be clarified, and that the subject-matter of this subparagraph should be clearly distinguished from that of paragraph 2 (b) of section I concerning fact-finding missions. There was also the view that information gathering was properly within the competence of the Security Council which decided upon the investigation of particular disputes and which could request the Secretary-General to submit reports thereon. According to that view, it appeared that subparagraph (i) circumvented the Charter and could force the hand of the Secretary-General who should not be pushed into doing what he might consider unwise.

106. As to subparagraph (ii), it was suggested that the word "encouraged" might not be necessary or that it should be softened. It was pointed out that, although the Secretary-General had only twice made use of his powers under Article 99 of the Charter, it did not mean that he was not active enough. In that regard, it was pointed out that the words "whenever he deems it appropriate" provided sufficient flexibility, especially if the same words were inserted later in the sentence, for example after "situation". Reference was also made to paragraph 12 of the Special Committee's report on its 1983 session 10/ in which support and encouragement were voiced for the efforts which the Secretary-General might make under Article 99, although the discussion at that session had been held in a broader context. The observation was also made that a distinction existed between drawing the Security Council's attention to potential conflicts and requesting meetings in accordance with Article 99 and that this distinction should appear more clearly in the text.

107. Other delegations saw no point in altering the clear terms of Article 99 under which the Secretary-General already had authority to bring matters to the Security Council and which had proven its effectiveness. The procedure foreseen in Article 99 should remain the exception and its importance should not be reduced by too frequent use.

108. A spokesman for the co-sponsors, in his response, took note of the suggestions made, including the need for respecting the full objectivity of the Secretary-General's initiatives and information-gathering activities. With regard to subparagraph (ii), he agreed that it could be brought more closely in line with Article 99 of the Charter and that a clear distinction should be made between drawing the attention of the Security Council to a potential conflict situation and requesting a meeting in accordance with Article 99. In his view, a distinction could be made between information-gathering missions by the Secretary-General requiring the consent of the Security Council and those which required no such consent.

#### Subparagraph (c)

109. Some delegations expressed firm support for General Assembly involvement in the maintenance of international peace and security and viewed subparagraph (c) as useful in that context although its wording should be made more precise. It was emphasized that the approach reflected in the proposal was solidly based on the Charter, namely Articles 10, 11 and 14. References were also made to General Assembly resolution 377 A, section V ("Uniting for peace"). The Security Council,

it was said, had primary responsibility in that field but not an exclusive role. Consequently, it was suggested that subparagraph (c) should be higher on the list in paragraph 2 of section II.

110. It was suggested that subparagraph (c) could enumerate a series of possible actions to be undertaken by the General Assembly. Subparagraph (c) should start with a general statement, such as the one currently contained in subparagraph (i), to be followed by a mention of specific possibilities such as: placing the potential conflict on the agenda as soon as possible; discussing the matter as soon as possible; holding consultations with the parties concerned, at the initiation of the President of the Assembly, in order to encourage negotiations or other peaceful means for preventing a conflict; establishing subsidiary bodies to consider specific conflict; adopting recommendations to the parties within the limits of Article 12, paragraph 1, of the Charter, including recommendations to resort to negotiations or other peaceful means of settlement; calling the attention of the Security Council to situations which are likely to endanger international peace and security; making a better use of emergency special sessions in accordance with Article 20 of the Charter and when the Council failed to exercise its primary responsibility. Reference was also made to the legislative role which the Assembly could play with regard to the maintenance of international peace and security as it has done in the field of decolonization, human rights and disarmament. It was also proposed to add a subparagraph concerning co-operation of the Member States.

111. Other delegations felt that subparagraph (c) marred an otherwise excellent working paper. It was said that the subparagraph, due to its imprecise and misleading wording, did not properly reflect the respective powers of the Security Council and the General Assembly in the maintenance of international peace and security. Suggestions were made to the effect that the subparagraph should be removed or that it should follow closely the language of the Charter with regard to the powers of the Assembly. In that regard, it was pointed out that the word "action" in subparagraph (i) was not in keeping with the letter of the Charter; the Charter made it abundantly clear, in particular in Article 37, paragraph 2, that it was for the Security Council and not the Assembly to take action. References were also made to the proposal contained in document A/AC.182/L.25 which read as follows:

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

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

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

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

"(3) In rule 19:

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

It was indicated that this proposal was still before the Special Committee.

112. Turning to subparagraph (ii), several delegations supported the idea contained therein. It was suggested that the phrase "should endorse" was not appropriate; it could be replaced by "should consider encouraging". Furthermore, it was considered important that the drafting of the subparagraph should take into account the provisions of the Charter contained in Article 52, paragraph 2, and Article 53, paragraph 1, concerning the role of the Security Council.

113. In his response, the spokesman for the co-sponsors reiterated their position that the General Assembly had a role to play in the maintenance of international peace and security subject to the reservation in Article 12, paragraph 1, of the Charter. He agreed that the word "action" used in the English version of subparagraph (i) might advantageously be replaced by "measures" in line with Article 14. Furthermore, he thought that a neutral reference to the possibility of convening emergency special sessions should have a place in the subparagraph without going into details.

#### Sections III and IV

114. One delegation stated with regard to section III that it could neither accept its chapeau nor its contents.

115. At the suggestion of a spokesman for the co-sponsors, it was decided not to discuss those parts further at the current session of the Special Committee. He said that, in the view of the co-sponsors, widespread support for the main ideas of the working paper was encouraging and should form the basis of the continuation of the work of the Special Committee concerning the question of conflict prevention. He added, given the extremely helpful and constructive comments that had been made in relation with the working paper (A/AC.182/L.38), the co-sponsors were confident that the future work on that paper would produce positive results.

116. At the concluding stage of the debate, the proposal formulated some years ago by some members of the Committee, concerning the elaboration and adoption of a universal code of conduct of States was reaffirmed. Stressing the importance of the conduct of States for the maintenance of international peace and security, one delegation reserved its right to return to that proposal. At the same time, it was stated that the inclusion in the working paper of a section concerning the conduct of States was an essential element in the Special Committee's consideration of conflict prevention, as well as of other aspects of the question of the maintenance of international peace and security.

117. It was also stated that the consideration of the question of conflict prevention cannot be confined to procedural measures relating to the functioning of the United Nations organs.

118. It was also pointed out that the General Assembly, by its resolution 38/141, had instructed the Special Committee to accord priority and more time to that question. In order to live up to the expectations of the Assembly, the Committee should have devoted more time to the topic and, in accordance with its very rationale, it should aim at strengthening the role of the Organization and not just confine itself to repeating Charter provisions.

119. The view was expressed, on the other hand, that the Special Committee should strictly follow the Charter without trying to reformulate or circumvent specific Charter provisions. The remark was further made that the working paper in its



current form dealt only with one aspect of the Committee's mandate relating to the maintenance of international peace and security and that a future work would have to cover all the aspects of the topic, including the roles of the principal organs of the United Nations, and in particular, that of the Security Council, the role of Member States, the prevention of nuclear war, and the improvement of the international climate.

### III. PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES

120. In accordance with the calendar of work agreed upon at the beginning of the session (see para. 8 above), the Working Group devoted its 7th to 12th meetings, held between 6 and 11 April 1984, to the continuation of its work on the question of the peaceful settlement of disputes between States. In compliance with paragraph 3 (b) (ii) of General Assembly resolution 38/141 and paragraph 3 (b) of Assembly resolution 38/131, the Working Group, at its 7th, 8th, 10th and 12th meetings, continued, in conformity with the agreement reached by the Special Committee at its 1983 session, 11/ the consideration of the proposal concerning the elaboration of a handbook on the peaceful settlement of disputes between States. In compliance with paragraph 3 (b) (i) of General Assembly resolution 38/141 and paragraph 3 (a) of Assembly resolution 38/131, the Working Group considered at its 9th, 11th and 12th meetings the proposal contained in the working paper entitled "Establishment of a permanent commission on good offices, mediation and conciliation for the settlement of disputes and the prevention of conflicts among States". 12/

- A. Consideration of the proposal contained in the working paper entitled "Establishment of a permanent commission on good offices, mediation and conciliation for the settlement of disputes and the prevention of conflicts among States", submitted to the General Assembly at its thirty-eighth session by Nigeria, the Philippines and Romania 12/

#### Statement of the Rapporteur

121. The delegations sponsoring the proposal pointed out that the need to strengthen the role of the Organization in the area of peaceful settlement of disputes was recognized in the last paragraph of the Manila Declaration on the Peaceful Settlement of International Disputes (General Assembly resolution 37/110, annex), as well as in the Political Declaration adopted by the non-aligned countries at the New Delhi Conference. The purpose of the proposal was to strengthen the capabilities of the United Nations to act more effectively and less formally in order to find solutions for international disputes and situations by means of permanent ongoing contacts with States, thus promoting negotiated solutions between the parties. The proposed commission would perform activities in the field of preventive diplomacy in order to forestall the aggravation of disputes and situations. With a view to clarifying and specifying certain aspects of the proposal the sponsoring delegations stressed in the first place that, in keeping with the principle of the free choice of means, the prior consent of the States parties to a dispute or of the States directly affected by an international situation was in each specific case a necessary requirement for the matter to be considered by the proposed commission. Secondly, the proposed commission would not be a permanent institution with headquarters and its own secretariat but rather a mechanism, of an inexpensive nature, which would be at all times available to United Nations bodies following recommendations, for instance, of the Security Council or the General Assembly, in accordance with Article 12 of the Charter. It would also be available to Member States at their own initiative or following consultations with the Secretary-General. The proposed commission would be constituted for each specific case involved. Thirdly, the commission would be a

subsidiary body and was in no way intended to encroach upon the competences of the Council or the Assembly or to alter the balance of functions or powers between them. Furthermore, it was a mechanism designed to complement other existing United Nations mechanisms in the field of peaceful settlement. The co-sponsors announced their intention to submit a paper designed not to replace the document presented to the General Assembly, 12/ but to clarify and explain it along the lines indicated above.

122. A number of delegations expressed their appreciation for the proposal under consideration, underscoring its far-reaching significance which deserved careful analysis. They viewed the proposal as a valuable follow-up to the Manila Declaration and expressed in general terms their support for an initiative designed to improve international relations by facilitating a quick and effective solution of international disputes and situations, and by preventing them from degenerating into armed conflicts. The proposed mechanism would, it was stated, contribute to an equitable settlement of international disputes and would facilitate negotiations between States; it would also help avoid violations of the norms of international law as well as check situations leading to international friction or disputes. It would play an important role in multilateral preventive diplomacy.

123. However, qualifications, doubts or reservations were expressed regarding certain aspects of the proposal.

124. The view was held that the causes for the ineffectiveness of the United Nations in the area of peaceful settlement were manifold and would not be settled by a mandatory conciliation procedure. It was also said that the automatic procedure envisaged clashed with the principle of free choice of means and that the role of the commission should be confined to contacting the parties concerned and offering its services in compliance with a decision of the Security Council or the General Assembly or upon the proposal of the Secretary-General. The remark was further made that the report of the commission should not contain binding decisions but recommendations designed to facilitate negotiations between the parties and that the commission should be a subsidiary body of the Assembly to complement the functions of the Assembly and of the Security Council, within the terms of the Charter of the United Nations. A guideline in the commission's action should be the interrelationship between the principle of peaceful settlement of disputes and the consequences of other principles of international law such as the cessation of armed aggression and the withdrawal of foreign troops.

125. It was also pointed out that the procedure of good offices, mediation and conciliation, being a flexible form of dispute settlement which required the prior agreement of the States concerned, was difficult to institutionalize.

126. Furthermore, the relationship between the proposed commission and the General Assembly, the Security Council and the Secretary-General should be carefully examined. Its function in relation to established United Nations organs in the field of peaceful settlement was not entirely clear. Its institutional position was also doubtful since it was not clear whether it would constitute a subsidiary organ of the Assembly or of the Council, or a new organ established "within the United Nations", in which case an amendment of the Charter would be necessary. In that connection, the drafting of paragraph II.7 was ambiguous and left room for improvement. It was also suggested that paragraph II.4 should be reconsidered; the commission should not take cognizance of a specific case at its own initiative

to avoid hurting political sensitivities. The view was also held that the words "with the confirmation by the parties concerned" should be deleted from paragraph II.8.c in fine. The permanent or temporary character of the proposed commission as well as the recommendatory or binding character of its decisions were also mentioned among the aspects which required clarification.

127. It was felt that the proposal required further analysis and study to clarify all possible doubts and that its sponsors should further elaborate and articulate the ideas contained in it.

128. Another group of delegations expressed their sympathy with the intentions behind the proposal. Those intentions were fully in agreement with the need to enhance the effectiveness of the principle of peaceful settlement of disputes as well as with the wording of the Manila Declaration. However, the question was whether the proposed new mechanism would be more likely to succeed than the present existing machinery in obtaining the desired result. In that connection, a measure of conservatism as well as of scepticism was in order, and the advantages of the new proposal remained to be seen. The proposal could be evaluated both through a negative and a positive criterion - negative in the sense that it should not detract from the machinery established by the Charter itself, affect it legally or complicate its procedures, positive in the sense that the proposal should contain some objective features constituting advantages over previous procedures. The sponsors should be encouraged to clarify their proposal in the light of a positive criterion. The three points orally explained by the sponsors had been sound, useful and appropriate. The view was expressed, however, that the proposed commission did not really imply any new mechanism and its creation might upset the functions of the principal organs of the Charter of the United Nations, particularly because of its proposed universal composition similar to that of the General Assembly and because of some of its proposed powers, similar to those of the Security Council. The role of the proposed commission in the prevention of conflicts was not clear either.

129. It was also pointed out that the proposed commission should constitute a smaller body than the universal membership originally suggested and that it should have an ad hoc rather than a permanent character, although the procedure itself could be a standing one. Guidelines or rules of procedure should be drafted. Although the consent of the parties was decisive, the commission should be endowed with a self-triggering mechanism because sometimes time did not permit waiting for the consent of the parties to undertake the procedure. The reasons should be studied why past mechanisms had not functioned well. It was possible that some of those mechanisms could be updated and incorporated in the new one.

130. The wish was expressed that a revised written version of the proposal should be distributed as soon as possible. Regarding the proposal as it stood now it was suggested that paragraph II.8.a on the composition of a special chamber was not clear since there remained an area of uncertainty as to its membership. As to paragraph II.8.e, the concept therein contained of "unanimously accepted norms and principles of international law" was not clear. Furthermore, the proposed commission was on "good offices, mediation and conciliation" and the concept of applicable law concerning the proposals and recommendations of the commission was more appropriate for permanent panels of arbitration or courts of justice. Equality of parties and equity were more in keeping with the general purpose of the proposed commission.

131. Still other delegations found themselves in total disagreement with the proposal under consideration. They regretted that the announced new written version of the proposal had not yet been presented, leaving them no choice but to comment on the initial version of the proposal as orally explained. In their opinion the creation of a new mechanism in the field of peaceful settlement of disputes was not necessary and might detract from the efficiency of existing machinery. Present United Nations mechanisms were entirely adequate. The proposal was artificial since it was not dictated by the practical requirements of the development of international relations at the present stage. In most cases what was lacking was the effective political will on the part of States to resort to peaceful means for solving disputes. The foregoing presupposed the adoption by States of effective measures aimed at averting nuclear catastrophe, improving the international climate and establishing material, legal and political guarantees for a durable peace in the world. In the opinion of those delegations, the Charter provided for highly developed and flexible means for the peaceful settlement of disputes while conferring upon the Security Council a special role in that respect. The proposal was altering that role by postulating a subsidiary body of the General Assembly with competences that not even the Assembly itself possessed in the field of peaceful settlement, such as, for instance, the power to investigate a dispute or situation (fact-finding). The proposal therefore, if adopted, would be in violation of the Charter of the United Nations, particularly Article 12, and would upset the division of competence between the General Assembly, the Security Council and the Secretary-General. The explanation given by the sponsors concerning the needed consent of States for the proposed commission to intervene was not convincing. It did not completely rule out the concept of an automatic or self-triggering mechanism, which would not only infringe upon the prerogatives of the Security Council and affect its functioning but also constitute a violation of the principle of the free choice of means.

132. Referring to the doubts and reservations expressed during the discussion, the sponsors explained that the proposal aimed in no way at amending the Charter. The proposed body would be of a subsidiary nature, created anew for each specific dispute through the permanent procedure to be established. Nothing in the decision-making of the proposed commission would be binding upon the parties to a dispute or States affected by a situation. The lack of political will on the part of States to solve disputes was a real problem but it should not be a stumbling block in the search for effective means for peaceful settlement. As for the existing mechanism, it was stated that a debate, often controversial, followed by a resolution of the Security Council on a dispute, which sometimes merely contained a condemnation, and was not implemented, did not constitute an effective settlement of a dispute. The proposed body would be subsidiary and would assist United Nations bodies in their activities to promote peaceful settlement by negotiation, if they deemed fit to resort to it and when the parties to a dispute agreed. The existence of an atmosphere of trust in international relations in the area of peaceful settlement was important, but the creation of an effective mechanism of peaceful settlement was in itself a way of promoting trust. Existing mechanisms were not being discarded by the proposal but, as stated in the two latest reports of the Secretary-General, they had to be improved. The proposal did not seek either to ignore the functions of the Security Council or to violate the Charter. In many instances, it would be the Council itself which would recommend the creation of the commission. When evaluating the relationship between the proposal and the Charter, all Charter articles should be taken into account and not only a few selected ones. The creation of subsidiary bodies had often been resorted to in

the past, both by the General Assembly and by the Security Council, and it was not considered to be against the Charter. Whenever the Council would be dealing with a specific dispute, the commission could stop its activities. Moreover, once it had been created by a recommendation of the General Assembly, it would be barred from making recommendations as provided in Article 12 of the Charter. The proposal did not contain any provision to the effect of endowing the commission with fact-finding functions. The facts would be given to the commission by the parties concerned themselves. The proposal should not be artificially distorted and deserved to be examined in a future-oriented perspective.

B. Continuation of the consideration of the proposal concerning the elaboration of a handbook on the peaceful settlement of disputes between States

1. Conclusions of the Special Committee

133. At the 78th meeting, the Special Committee agreed on the following:

(a) Preparation of the handbook on the peaceful settlement of disputes between States

(1) The Special Committee has reached the conclusion that the Secretary-General should be requested by the General Assembly to prepare, on the basis of the outline reproduced below and in the light of the views expressed in the course of the Special Committee's discussions, a draft handbook on the peaceful settlement of disputes between States.

(2) In order to obtain assistance in the performance of his task, the Secretary-General should consult periodically a representative group of competent individuals from among the members of the Permanent Missions of the States Members of the United Nations.

(3) The Secretary-General should report on the progress of work to the Special Committee at its next session before submitting to it the draft handbook in final form, with a view to its approval at a later stage.

(b) Outline for the handbook on the peaceful settlement of disputes between States

Introduction: purpose and features of the handbook

- (1) To contribute to the peaceful settlement of disputes between States;
- (2) To help to increase compliance with international law;
- (3) To assist States in selecting and applying procedures;
- (4) Limited to disputes between States;
- (5) Preparation in strict conformity with the Charter of the United Nations;

(6) Descriptive in nature, not a legal instrument;

(7) Practical and specific.

I. Principle of the peaceful settlement of disputes between States

(1) Charter of the United Nations;

(2) Declarations and resolutions of the General Assembly;

(3) Corollary and related principles;

(4) Free choice of means.

II. Means of settlement

(1) Negotiations and consultations;

(2) Enquiry; good offices; mediation, conciliation;

(3) Arbitration;

(4) Judicial settlement;

(5) Resort to regional agencies or arrangements;

(6) Other means.

III. Procedures envisaged in the Charter of the United Nations: primary role of the Security Council; important role of the General Assembly; role of other principal organs of the United Nations

IV. Procedures envisaged in other international instruments

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Bibliography

2. Statement of the Rapporteur

(a) Proceedings within the Working Group

134. In connection with the proposed handbook, the Working Group had before it a "Preliminary outline on the possible content of a handbook on the peaceful settlement of disputes between States" (A/AC.182/L.36), prepared by the Secretary-General pursuant to the request contained in paragraph 4 of General Assembly resolution 38/131. The Working Group also had before it the working paper submitted by France at the 1981 session of the Special Committee entitled "Proposed outline of a handbook on the peaceful settlement of disputes" (A/AC.182/L.24), 13/ as well as the summary of the views expressed in relation to that working paper at

the 1983 session of the Committee. 14/ In addition, the Working Group had before it a working paper submitted by France entitled "Outline of research for the preparation of a handbook on the peaceful settlement of disputes between States" (A/AC.182/L.37).

135. The discussion focused on two points: on the one hand, the approach to and the contents of the proposed handbook and, on the other, the manner in which it should be prepared.

136. All delegations expressed support for the idea of drafting a handbook on the peaceful settlement of disputes. Such an undertaking was viewed as a way of enhancing the principle of peaceful settlement of disputes and strengthening international peace. The observation was further made that a review of the wide range of existing means and mechanisms and the provision of concrete information on how to proceed in relation to any given means or mechanism would be helpful to States, particularly smaller States which did not have the benefit of long-established and experienced legal departments. Many delegations stressed that the handbook should not be a theoretical document duplicating existing treatises of international law but should be practically oriented. Another general remark was that the handbook was not intended to be a legal text and would not commit States in any way. The purpose, it was stated, was not to remind States of their obligation to settle their disputes by peaceful means or to place additional obligations on them in that respect, but to help them to comply with existing obligations.

137. Some delegations stressed that the handbook should be primarily based on the Charter of the United Nations as the main source of international law. Others took the view that a mere reiteration of the provisions of the Charter would serve no useful purpose.

138. With respect to the scope of the handbook, it was generally agreed that only disputes between States should be covered. Some delegations felt that the focus should be on disputes of the type referred to in Article 33, namely disputes the continuation of which was likely to endanger the maintenance of international peace and security, and that trying to cover all disputes, including economic, financial and commercial ones, would prove unworkable. Other delegations considered this restrictive approach as misconceived. Moreover, such an approach was difficult to reconcile with the idea of a factual and descriptive handbook and disregarded the fact that all disputes required to be settled to enable peaceful co-operation between States.

139. It was widely held that, in order to define the legal context within which the manual was intended to be used, all relevant principles should be restated in an opening chapter. In addition to the principle of peaceful settlement of disputes itself, other related principles were mentioned in this context, including, in particular, the principle of non-use of force in international relations, the principle of good faith in international relations, the principle of the sovereign equality of States, the principle of non-interference in the internal affairs of States, the principle of mutual benefit and the principle that States parties to a dispute are free to choose the means which they deem most appropriate for the settlement of their disputes. Attention was drawn in that connection to Article 33 of the Charter and the remark was made that the "other means" referred to in that article included consultations and good offices.



140. Some delegations stated that, without prejudice to the principle of free choice of means, the handbook should help States select the means which best met their requirements from the point of view of expeditiousness and cost and depending on whether they wished a settlement based on law or equity and whether the desired solution was to be binding or non-binding. Other delegations struck a note of caution in that respect: they stressed that giving advice to States would be taking too much responsibility and that a neutral approach placing all existing means on an equal footing was the most appropriate.

141. Concrete comments on individual means of peaceful settlement of disputes included the remark that serious, constructive and equitable negotiations offered the most effective and flexible way of settling international disputes. It was further observed that negotiations could only be effective if they were meaningful. It was stated, on the other hand, that the settlement of disputes by third parties and, in particular by arbitration and judicial settlement, best protected the interests of all concerned.

142. Among existing mechanisms, some delegations highlighted the Security Council. It was recalled, in that connection, that of the more than 150 disputes of which the United Nations had been seized since 1946, 75 per cent had been referred to the Security Council and that out of these 130 disputes only a dozen remained unsolved - a record which ought to be pondered by the critics of the Security Council. Attention was also drawn to the role of the General Assembly under Article 14 of the Charter. Emphasis was further placed by some delegations on the International Court of Justice.

143. All delegations stressed that the description of the modus operandi of the various means and mechanisms for the peaceful settlement of disputes should draw on international practice and experience. It was suggested in that connection to provide indications as to the intensity of use and record of effectiveness of each of those means and mechanisms. One delegation warned that only the practice in keeping with the Charter should be taken into account.

144. Comments of a more technical nature included the remark that the handbook should provide in annexes samples of documents such as model arbitration agreements, and the observation that, for the sake of brevity, references rather than full texts should be provided and the suggestion that the handbook should be periodically brought up to date.

145. As far as arrangements for the preparation of the handbook were concerned, various alternatives were envisaged although there was general agreement that the basic work should be carried out by the Secretariat. Some delegations favoured the establishment of a small group of representatives of Member States, to be selected among the members of the Special Committee, which would periodically provide guidance to the Secretariat in the carrying out of the task. Others mentioned the possibility of appointing a Special Rapporteur who would be assisted by the Secretariat. Still others suggested that the Special Committee should prepare the handbook with the assistance of the Secretariat.

146. As a result of informal consultations which were conducted under the Chairmanship of the representative of France, the Working Group reached the conclusions which are reflected in paragraph 133 above.

(b) Proceedings within the Special Committee

147. At its 78th meeting, the Special Committee endorsed the conclusions of the Working Group which are reflected in paragraph 133 above. At the same meeting, several delegations indicated that they were not entirely satisfied with the title of section III of part (b) of the outline for the handbook which, in their opinion, did not appropriately reflect the role of the International Court of Justice as the principal judicial organ of the United Nations. It was also said that the title of that section should not be retained in the handbook.

148. Also at the same meeting, the Under-Secretary-General, the Legal Counsel, made a statement in which he indicated, inter alia, that the Secretariat would inform the Special Committee at its next session of the progress of work and of the difficulties which might be encountered in carrying out the task within the limits of existing resources.

149. Some delegations indicated that it was their understanding that the preparation of the handbook would involve no additional financial expenditures. It was furthermore the understanding of some of those delegations that the Secretariat would submit to the Special Committee not only a progress report but also the portions of the handbook which would be ready by then, so as to enable the Committee to consider them and revise them if necessary.

150. Other delegations stressed that some questions raised by the Under-Secretary-General, the Legal Counsel, fell within the competence of the General Assembly to which the Special Committee submitted its conclusions. They furthermore disagreed with the interpretation given above of the agreement on the elaboration of the handbook with respect to the way in which it should be approved by the Special Committee.

#### IV. RATIONALIZATION OF EXISTING PROCEDURES OF THE UNITED NATIONS

##### A. Conclusions of the Special Committee

151. The Special Committee agreed on the following:

The agenda of the sessions of the General Assembly should be simplified as much as possible by grouping or merging related items, after consultation and with the agreement of the delegations concerned.\*

Specific items should be referred, where relevant, to other United Nations organs or specialized agencies. The right of States to request that specific items be discussed in the General Assembly should remain unimpaired.

The recommendation in paragraph 28 of annex V of the rules of procedure of the General Assembly, according to which the Assembly should ensure, as far as possible, that the same question, or the same aspects of a question, are not considered by more than one Main Committee, should be more fully implemented, except when it would be helpful for the Sixth Committee to be consulted on the legal aspects of questions under consideration by other committees.

The General Committee should more fully play its role under rule 42 and paragraphs 1 and 2 of decision 34/401, reviewing periodically the work of the General Assembly and making the necessary recommendations.

The Chairmen of the Main Committees should take, in the light of past experience, the initiative to propose the grouping of similar or related items and the holding of a single general debate on them.

The Chairmen of Main Committees should propose to the Committee the closing of the list of speakers on each item at a suitably early stage.

Agreed programmes of work should be respected. To this end meetings should start at the scheduled time and meeting time should be fully utilized.

The Bureau of each Main Committee should periodically review the progress of work. In case of need, it should propose appropriate measures to ensure that the work remains on schedule.

Negotiation procedures should be carefully selected to suit the particular subject matter.

The Secretariat should facilitate informal consultations by providing adequate conference facilities.\*\*

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\* The view was expressed that the agreement of the delegations concerned was not an essential condition.

\*\* The view was expressed that this recommendation was not intended to have any financial implications whatsoever, and was approved subject to that condition.

The mandate of subsidiary bodies should be carefully defined in order to avoid overlapping and duplication of work. The General Assembly should also review periodically the usefulness of its subsidiary bodies.

Resolutions should be as clear and succinct as possible.

#### B. Statement of the Rapporteur

152. In accordance with the decision referred to in paragraph 8 above, the Working Group started its work with the consideration of the topic "Rationalization of existing procedures of the United Nations", to which it devoted 8 meetings, held between 2 and 26 April 1984.

153. With respect to that topic, the Special Committee was requested, under paragraph 3 (c) of General Assembly resolution 38/141, "to finalize its present work on the question of the rationalization of existing procedures with a view to submitting its conclusions to the General Assembly at its thirty-ninth session".

154. It may be recalled that at its 1983 session, the Special Committee, in accordance with the request contained in paragraph 5 (c) of General Assembly resolution 37/114, considered proposals made by Member States on that question, using as a basis of its work the draft list prepared by the Philippines and Romania (A/AC.182/WG/39). 15/ The proposals in question included working papers submitted by Mexico (A/AC.182/WG/3), 16/ Romania (A/AC.182/WG/13), 17/ the United Kingdom of Great Britain and Northern Ireland (A/AC.182/WG/14), 18/ France (A/AC.182/WG/15), 19/ Egypt (A/AC.182/WG/16), 20/ the Philippines (A/AC.182/WG/19), 21/ the United States of America (A/AC.182/WG/28 and Add.1), 22/ Mexico and El Salvador (A/AC.182/WG/25), 23/ Greece (A/AC.182/WG/26), 24/ Romania and Turkey (A/AC.182/WG/27), 25/ Egypt (A/AC.182/WG/52), 26/ France (A/AC.182/WG/53) 27/ and Yugoslavia (A/AC.182/WG/54 and Corr.1). 28/ The result of the work carried out at the 1983 session is to be found in paragraphs 17 to 21 of the Committee's report. 29/

155. At the 1984 session, the Working Group decided to resume consideration of the draft list (A/AC.182/WG/39) referred to in paragraph 154 above, starting from where it had left off at the previous session, namely with section (f). It considered proposals on "Decision-making process and implementation of resolutions", "Conduct of business", "Presiding officers", "Subsidiary bodies" and "the Secretariat".

156. In the light of the debate, the Chairman of the Special Committee presented to the Working Group informal papers containing, in their original or in an amended form, proposals which could, in his opinion, meet with general agreement.

157. The result of the work carried out by the Working Group in pursuance of the task referred to in paragraph 153 above is reflected in paragraph 151 above.

158. At the concluding stage of the debate, attention was drawn to a proposal contained in the list of proposals submitted by the Philippines and Romania 30/ which read:

"The General Assembly should supervise, in accordance with its procedures, the practical application of its own resolutions and other decisions."

and which, as orally amended at a subsequent stage, read:

"The General Assembly should, whenever appropriate, assess from time to time the effect of its past resolutions and decisions".

159. Some delegations supported this proposal in its original form while others supported the revised version. Opposition was however expressed to both versions. No agreement was reached.

160. Attention was further drawn to other proposals which were viewed as deserving further consideration at a later stage, namely:

"When a Committee of the General Assembly discusses the transfer of an item inscribed on its agenda to another Committee, consultations must take place before the Chairman of that Committee and the Chairman of the Committee to which it is proposed that the item be transferred in order to ascertain the ability of the latter Committee to undertake its consideration in a serious manner." 31/

"Agenda items should be discussed in depth in the existing subsidiary bodies or in ad hoc working groups, with the direct participation of all interested States, efforts being exerted to reach a consensus so as to be able to submit to the General Assembly specific conclusions and solutions which are generally acceptable."

"Decisions should be taken by consensus whenever possible or, at least, by a sufficient majority so comprised as not only to lend them moral force, but to engender the likelihood that they will be carried out."

"The concept of seeking consensus should be incorporated into the rules of procedure of the Assembly."\* 32/

The General Committee shall engage in the careful consideration of questions related to the next General Assembly session before its opening. Thus, it would use its experience and expertise to make recommendations to the subsequent General

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\* The following reformulations were proposed with the understanding that the possibility of including a definition of consensus in the rules of procedure of the General Assembly will be reviewed at a later stage:

"Without prejudice to the provisions of the Charter of the United Nations on voting, resolutions and decisions of the General Assembly should be adopted whenever possibly by consensus. Informal consultations with the widest possible participation of Member States should be carried out to that effect".

"Without prejudice to the provisions of the Charter of the United Nations on voting, efforts should be exerted towards reaching consensus through informal consultations or within subsidiary bodies or ad hoc working groups with the direct participation of all interested States. This would facilitate the adoption by the General Assembly of conclusions and solutions which are generally acceptable and, therefore, more likely to be implemented."

Committee for the possible organization and rationalization of the work of the next General Assembly session. 33/

161. Some delegation held that the Special Committee should, at the appropriate moment, revert to the topic of rationalization of procedures of the United Nations, including the above proposals. They reserved the right to propose returning to proposals which had been discussed in the Special Committee but on which agreement had not yet been reached.

162. Other delegations pointed out that the matter fell within the competence of the General Assembly and stressed that the conclusions contained in paragraph 151 above represented, in their opinion the finalization of the work on the topic as provided in paragraph 3 (c) of General Assembly resolution 38/141.

#### Notes

1/ Official Records of the General Assembly, Thirty-eighth Session, Annexes, agenda item 134, document A/38/674.

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

3/ Ibid., Thirty-eighth Session, Supplement No. 33 (A/38/33).

4/ A/38/343, annex.

5/ Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 33 (A/36/33), para. 309.

6/ For the membership list of the Committee at its 1984 session, see A/AC.182/INF.9 and Corr.1.

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

8/ Ibid., Thirty-seventh Session, Supplement No. 1 (A/37/1); and *ibid.*, Thirty-eighth Session, Supplement No. 1 (A/38/1).

9/ Ibid., Thirty-eighth Session, Supplement No. 33 (A/38/33), para. 90.

10/ Ibid., para. 12.

11/ Ibid., para. 109.

12/ A/38/343, annex.

13/ For the printed text, see Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 33 (A/36/33), para. 309.

14/ Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 33 (A/38/33), para. 110.

15/ Ibid., Thirty-fourth Session, Supplement No. 33 (A/34/33), para. 17.

Notes (continued)

16/ Ibid., para. 16, subparas. 5, 13, 17, 21, 25, 29, 32, 34 and 37.

17/ Ibid., subparas. 41, 44, 47, 51 and 53.

18/ Ibid., subpara. 55.

19/ Ibid., subparas. 63, 66, 69, 72 and 75.

20/ Ibid., subpara. 78.

21/ Ibid., subparas. 86, 89 and 91.

22/ Ibid., subpara. 93.

23/ Ibid., subpara. 22.

24/ Ibid., subpara. 40.

25/ Ibid., subpara. 48.

26/ For the text, see Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 33 (A/38/33), para. 21, proposal (30).

27/ Idem, proposal (31).

28/ For the text, see the alternative proposal reproduced in the commentary to proposal (15) (Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 33 (A/38/33), para. 21).

29/ Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 33 (A/38/33).

30/ Ibid., Thirty-fourth Session, Supplement No. 33 (A/34/33), para. 17, subpara. 3.

31/ Ibid., Thirty-eighth Session, Supplement No. 33 (A/38/33), para. 21, proposal (30).

32/ Ibid., Thirty-fourth Session, Supplement No. 33 (A/34/33), para. 17, subpara. 3.

33/ Ibid., Thirty-eighth Session, Supplement No. 33 (A/38/33), para. 21, an alternative to proposal (15).

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