

**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: FORTIETH SESSION

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NOTE

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

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I. INTRODUCTION

1. At its 99th plenary meeting on 13 December 1984, the General Assembly, on the recommendation of the Sixth Committee, 1/ adopted resolution 39/88 A, 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, 37/114 of 16 December 1982 and 38/141 of 19 December 1983,

"Taking note of the reports of the Secretary-General on the work of the Organization submitted to the General Assembly at its thirty-seventh 2/ and thirty-ninth 3/ sessions as well as of the views and comments expressed on them 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 1984, 4/

"Taking into account the elaboration by the Special Committee of the outline for the handbook on the peaceful settlement of disputes between States and the conclusions thereon, 5/

"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,

"Conscious of the fact that the year 1985 marks the fortieth anniversary of the United Nations,

"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 4 to 29 March 1985;

"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 5 below, for the adoption of such recommendations as the Assembly deems appropriate. In doing so, the Special Committee should continue its work on the working paper on the prevention and removal of threats to the peace and of situations which may lead to international friction or give rise to a dispute 6/ or any revision thereof, as well as other proposals which might be made;

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

"(i) To continue consideration of the proposal contained in the working papers on the establishment of a commission for good offices, mediation and conciliation; 7/

"(ii) To examine the progress report of the Secretary-General on the elaboration of the draft handbook on the peaceful settlement of disputes between States;

"4. Requests the Special Committee to keep the question of the rationalization of the procedures of the United Nations under review and to revert to its work on this topic when it deems appropriate;

"5. 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;

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

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

"8. 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);

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

"10. Requests the Secretary-General to prepare, on the basis of the outline elaborated by the Special Committee and in the light of the views expressed in the course of the discussions in the Sixth Committee and in the Special Committee, a draft handbook on the peaceful settlement of disputes between States, and to report to the Special Committee at its session in 1985 on the progress of work, before submitting to it the draft handbook in its final form, with a view to its approval at a later stage;

"11. Requests the Special Committee to submit a report on its work to the General Assembly at its fortieth session;

"12. Decides to include in the provisional agenda of its fortieth 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 1984 and 3499 (XXX) of 15 December 1975, the Special Committee was composed of the following member States:

Algeria	Italy
Argentina	Japan
Barbados	Kenya
Belgium	Liberia
Brazil	Mexico
China	Nepal
Colombia	New Zealand
Congo	Nigeria
Cyprus	Pakistan
Czechoslovakia	Philippines
Ecuador	Poland
Egypt	Romania
El Salvador	Rwanda
Finland	Sierra Leone
France	Spain
German Democratic Republic	Tunisia
Germany, Federal Republic of	Turkey
Ghana	Union of Soviet Socialist Republics
Greece	United Kingdom of Great Britain and Northern Ireland
Guyana	United States of America
India	Venezuela
Indonesia	Yugoslavia
Iran (Islamic Republic of)	Zambia
Iraq	

3. The Special Committee met at United Nations Headquarters from 4 to 29 March 1985. 8/

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. Mr. Georgiy F. Kalinkin, Director of the Codification Division of the Office of Legal Affairs, acted as Secretary of the Special Committee and of the Working Group; Miss Jacqueline Dauchy, Deputy Director for Research and Studies (Codification Division, Office of Legal Affairs), acted as Deputy Secretary of the

Special Committee and of the Working Group; Mr. Larry D. Johnson, Senior Legal Officer, Mr. Manuel Rama-Montaldo and Mr. Igor G. Fominov, Legal Officers, and Ms. Tania Y. Licari, Associate Legal Officer (Codification Division, Office of Legal Affairs), acted as assistant secretaries of the Special Committee and its Working Group.

6. At its 83rd and 84th meetings, on 5 March, the Special Committee, bearing in mind the terms of the agreement regarding the election of officers reached at its session in 1981, 9/ agreed upon the composition of the Bureau of the Committee as follows:

Chairman: Mr. Moritaka Hayashi (Japan)

Vice-Chairmen: Mr. Domingo Cullen (Argentina)
Mr. Andrzej Kakolecki (Poland)
Mr. Ridha Bouabid (Tunisia)

Rapporteur: Mr. Johan Swinnen (Belgium)

7. At its 83rd meeting, the Special Committee adopted the following agenda as contained in document A/AC.182/L.41.

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.
5. Consideration of the questions mentioned in General Assembly resolutions 39/79 and 39/88 of 13 December 1984, in accordance with the Committee's mandate set forth in resolution 39/88.
6. Adoption of the report.

8. At its 83rd meeting, on 5 March, the Special Committee took the following decision:

(a) The Working Group will devote its first 10 meetings to the question of peaceful settlement of disputes between States in order to consider the working paper submitted by Nigeria, the Philippines and Romania (A/C.6/39/L.2), and to examine the progress report of the Secretary-General on the elaboration of the draft handbook on the peaceful settlement of disputes between States (A/AC.182/L.42);

(b) The Working Group will devote its subsequent 15 meetings to the question of maintenance of international peace and security (see document A/AC.182/L.38/Rev.1);

(c) During the second week of the session, a maximum of two plenary meetings will be devoted to the question of the rationalization of existing procedures of the United Nations (see A/AC.182/L.43) and, if necessary, two additional meetings could be devoted to the peaceful settlement of disputes and/or the maintenance of international peace and security;

(d) The last two days of the session will be devoted to the consideration and adoption of the report, which will be distributed in all languages as of Wednesday, 27 March.

9. The Working Group carried out its work under the chairmanship of Mr. Moritaka Hayashi (Japan), Chairman of the Special Committee. The Vice-Chairmen of the Special Committee, Mr. Domingo Cullen (Argentina), Mr. Andrzej Kakolecki (Poland) and Mr. Ridha Bouabid (Tunisia), and the Rapporteur of the Special Committee, Mr. Johan Swinnen (Belgium), 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 83rd meeting, held on 5 March the Chairman informed the Special Committee that the Secretariat had received requests for observer status from the Permanent Missions of Australia, Democratic Yemen, Honduras, Morocco, Oman, Peru and Uruguay. The Special Committee decided to grant those requests pursuant to paragraph 7 of General Assembly resolution 39/88 A according to which the General Assembly decided that the Special Committee shall accept the participation of observers of Member States, including in the meeting of its working groups. At subsequent meetings, the Special Committee decided to grant similar requests received from the Permanent Missions of Chile, Cuba, the Dominican Republic, the Libyan Arab Jamahiriya, Mauritania, Portugal, Sao Tome and Principe and the Syrian Arab Republic.

11. Introducing the draft report, the Rapporteur recalled the criteria to be followed in the preparation of the report. In particular, he referred to General Assembly resolution 37/14 C in which the Assembly requested that subsidiary organs should strive to limit their reports to 32 pages. He also drew attention to the budgetary constraints underlying that rule. Furthermore, he questioned the usefulness of a report that was too detailed and too repetitive. He acknowledged, however, that the discussion had been extremely fruitful and that strict application of the 32-page rule might jeopardize the quality of the report. He nevertheless made an urgent appeal to all delegations to endeavour, when the draft report was considered, not to make it even longer.

12. Sections II, III and IV of the present report contain statements of the Rapporteur on the position reached in the Special Committee's work on the topics of the peaceful settlement of disputes, maintenance of international peace and security and rationalization of existing procedures of the United Nations. Section V contains a statement by the Special Committee at the end of its tenth session. At its last plenary meeting the Special Committee decided to include, as an annex to the present report, the statement made by its Chairman at the closure of the Special Committee's tenth session.

II. PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES

A. Consideration of the proposal contained in the working papers on the establishment of a commission for good offices, mediation and conciliation submitted to the General Assembly by Nigeria, the Philippines and Romania 10/

Statement of the Rapporteur

13. In accordance with the agreement reached by the Special Committee (see para. 8 above), the Working Group started its work with consideration of the proposal as presented in document A/C.6/39/L.2 to which it devoted seven meetings held from 7 to 12 March 1985. The Working Group decided to organize its consideration of the proposal into the following pattern: (a) statements of a general nature on the proposal; (b) paragraphs 1 to 3 (nature of the commission); (c) paragraphs 4 to 6 (establishment of the commission); (d) paragraphs 7 to 9 (composition of the commission); (e) paragraphs 10 to 17 (activities and procedures of the commission); (f) paragraphs 18 to 20 (relationship of the commission with United Nations organs and other means of peaceful settlement).

Statements of a general nature on the proposal

14. In introducing the proposal, a spokesman of the co-sponsors said that it started from the need to use more effectively the mechanism of the United Nations and give it the opportunity to contribute more substantially to the efforts for solving disputes among States. The commission for good offices, mediation and conciliation was proposed as a procedure fully integrated into the existing mechanism of the United Nations, flexible and auxiliary, as a new option at the disposal of the Member States and of the main United Nations organs for facilitating negotiations between parties and helping them in their search for peaceful solutions, in full conformity with the Charter of the United Nations.

15. Some delegations felt that the proposal, which had been preceded by similar but unsuccessful initiatives in the past, was in clear contradiction with the Charter and could therefore not generate general agreement. It did not respond to a practical necessity; on the contrary, the flexibility of the three procedures of good offices, mediation and conciliation would be hampered by their formalization. Furthermore, as was well known, the three procedures were distinct, and that did not seem to have been taken into consideration by the sponsors.

16. It was also stated that it was not the proposal itself, but the intensification of the efforts of all States towards eliminating the threat of nuclear war and securing an end to the arms race, first of all the nuclear-arms race, preventing it from spreading to outer space and improving the international situation, that should serve the cause of peaceful settlement of disputes.

17. The proposal, by empowering the General Assembly and the Secretary-General to set up such a commission, would undermine the prerogatives of the Security Council. It was in conflict with the concept of free choice of means and over-emphasized the third-party settlement.

18. It seemed unclear whether the commission would be an independent organ within the United Nations framework or a subsidiary body of a principal organ. It was also not clear at whose disposal the commission would be placed, the United Nations or the Member States. If the commission was established as an independent organ, it would require revision of the United Nations Charter. Thus, the proposal could lead to a restructuring of the United Nations and to an illegal expansion of the powers of the General Assembly and the Secretary-General as well as to the broadening of the imposition on States of the settlement of their disputes through a third party. It could lead, in fact, to the establishment of a permanent body with broad powers, including powers to determine the character of a dispute. Such a proposal was not necessitated by the present development of relations among States.

19. The financial side of this undertaking ought also to be examined. Obviously, to investigate a situation, sub-commissions for fact-finding and collection of information should be established. That experiment would be very costly.

20. Other delegations expressed an open-mind attitude vis-à-vis the proposal under consideration. They were, in principle, receptive to the idea behind any proposal which purported to enhance the effectiveness of the United Nations system in the field of peaceful settlement of disputes. The idea was interesting and deserved to be explored. These delegations did not believe that the real problems posed by the proposal had to do with its constitutionality vis-à-vis the United Nations Charter. If some incompatibilities might exist, they were not of an incurable nature. They did not believe that the proposal under consideration infringed on the balance of powers of the United Nations organs or on the principle of the free choice of means. They expressed the view that it was still premature at this stage to bring up questions regarding the compatibility of the proposal with the Charter or its financial aspects.

21. Yet these delegations also felt that there was a burden of proof on the part of the co-sponsors to demonstrate that their proposal would entail a significant amelioration in the use by States of peaceful settlement machinery. There was as yet no agreement on whether the idea was a useful one and whether the proposed commission would be more used and more effective than similar bodies in the past. Furthermore, they had some doubts as to the appropriateness of the codification of rules common on good offices, mediation and conciliation, three procedures by no means alike. It was not clear how the permanent element and the ad hoc element in the proposal could be reconciled, nor to what extent the tension between the element of automaticity and that of the consent of the parties could be eliminated.

22. Still other delegations, while adopting an overall positive attitude and generally acknowledging the careful study and examination in good faith deserved by the proposal, varied in the degree of their support for the proposal as currently drafted, particularly as regards its potential usefulness, and expressed the idea that a measure of caution should be applied to its consideration and eventual adoption.

23. It was stressed also that an effective application of the principle of peaceful settlement of disputes rested to a large extent on the good will and the efforts of the parties concerned and that the procedure to be established should be conducive to a fair solution to the problem in accordance with the principles of the Charter and international law ensuring that sovereignty and territorial integrity shall be respected.

24. Referring to the ideas expressed during the consideration of the proposal, its sponsors stressed that the basis for the proposal's examination rested with the Committee's mandate, which did not require general agreement for undertaking such an examination. General agreement was a goal to achieve in adopting proposals, but not an impediment to the consideration of any idea put forward. The proposed commission intended to be integrated into existing United Nations procedures for peaceful settlement and should report back to United Nations bodies, such as the General Assembly or the Security Council, if so requested by them. The agreement of the parties concerned was always required. Furthermore, the commission would work together with the parties to the dispute to try to find a solution to it. This new procedure did not resemble failed procedures of the past. It offered a new flexible machinery with specific characteristics, more attractive and acceptable to Member States. The proposal was not contrary to the Charter either in its nature or contents, and this had been a primary concern of the co-sponsors who were prepared to continue working on the paper to remove any possible doubt on that score. The political will of States was always important and necessary but effective procedures were also essential, and work should also be done in that direction. The proposal was complementary to, and not conflicting with, other proposals, such as the strengthening of the Security Council. The proposal also intended to promote negotiation between Member States. It did not bar other possible procedures of peaceful settlement such as judicial or arbitral procedures. The question of financing was not a real one; in principle such a procedure, being very flexible and confidential, in a commission with a limited number of members, would not entail financial implications for the United Nations. The commission covered good offices, mediation and conciliation because the three procedures were naturally interrelated and the commission could apply them in a graduated order. The co-sponsors were not trying to codify those methods nor were definitions being given in the proposal. The definitions, because of the flexible character of the proposal, were being left to the United Nations organs, to the States involved in the disputes and to the commission itself. There was no intention on the part of the co-sponsors to proceed to a formalization of the procedures but rather to make it easier for Member States to choose such a procedure of peaceful settlement. It would always be for the Security Council or the General Assembly to recommend, in accordance with the nature of the dispute, whether the proposed procedure should be followed or not. It was clear under Article 35 of the Charter that the General Assembly could recommend to States to use a given procedure of peaceful settlement. The co-sponsors were open and receptive to any idea directed at improving the proposal and hoped that in a not too distant future the proposal would be adopted by consensus in the General Assembly.

Paragraphs 1 to 3

25. Introducing paragraphs 1 to 3 of the proposal under consideration, the co-sponsors stated that those paragraphs were designed to describe the nature of the proposed commission. It was a procedure permanently available to Member States and competent bodies of the United Nations, although not a permanent body. It was permanent in the sense that everybody knew that they could always avail themselves of this procedure. Paragraph 1 also set out the objectives of the proposal, using language taken from the Manila Declaration on the Peaceful Settlement of International Disputes, 11/ although the sponsors were open-minded on this point. The meaning of paragraph 2 was that the reduced number of members of the commission (3 to 15) could democratically be composed of any of the Members of the United Nations. Paragraph 3 made it clear that, although the procedure could be used at

any time by Member States, it would function in an ad hoc manner. The text of paragraph 3 should be read in conjunction with paragraphs 4 and 5.

26. Paragraph 1, it was said, created a terminological confusion because a commission was not a procedure but a group of persons, however designated or elected. It was, therefore, not clear whether the proposal intended to create an institution or a procedure. It was suggested that instead of the paragraph stating that "a Commission for good offices, mediation and conciliation is opened within the United Nations", the paragraph should say that "a Commission is instituted", or in another view, that "a permanent procedure of good offices, mediation and conciliation is opened". In connection with the preceding observations, it was pointed out that, if the commission was to be conceived as a procedure, it would lead to changes in the present rules of procedure of the General Assembly and the Security Council. If that was the case, it should be made clear what those changes would consist of. If, on the other hand, the commission was going to be a United Nations organ, and assuming that the Charter would not be modified, which was not yet clear, then the question was asked whose subsidiary body the proposed commission would become. If the commission was intended as a joint organ, the question was raised how the co-sponsors would suggest reconciling in the commission the different roles of the General Assembly and the Security Council in the peaceful settlement of disputes.

27. The words "early" and "equitable" gave rise to reservations. The word "early" was viewed as connoting preventive action and was considered as unclear inasmuch as it could relate either to the final settlement of the dispute or to the time of setting up of the commission. The word "equitable" was viewed as having an imprecise and subjective content and it was suggested that it should be replaced by "in accordance with international law".

28. With regard to paragraph 2, the remark was made that some problems remained even if it was to be understood in the sense that all Member States were eligible to become members of the commission rather than being actually always members of the commission. It was not clear from the text whether the persons serving in the commission would serve as representatives of States or in their own capacity. Some delegations expressed the view that for such a commission to be successful it should not be comprised of States but of persons selected from a list of names submitted by States. It was observed in this connection that for many years international practice had produced forms of good offices, mediation and conciliation involving the use of individuals rather than States, and that the formula proposed in the paragraph was at variance with that practice. It was specifically suggested that the structure of the paragraph should be altered so as to provide for a panel of specialists or experts on different types of questions, to be nominated by States prepared to join the system, and to let the parties to a dispute or a situation use the services of the designated persons in a manner which would correspond to customary international law, an arrangement which would have limited financial implications for the United Nations. Questions were asked about the meaning of the phrase "taking into account the nature of the dispute or international situation". It was pointed out that in each case the commission should be comprised of experts for the specific fields of international disputes or situations, such as economic, political, human rights etc.

29. With regard to paragraph 3, the view was expressed that it was not clear legally who created or constituted the commission on a case-by-case basis - whether the General Assembly, the Security Council, the Secretary-General or the parties.

It was also felt that the reference to the commission being established for each particular case was actually in contradiction with paragraph 2 because bringing those factors to bear may lead to the conclusion that it was not a good idea to have a group of Member States as a third party involved in the discussion. It was also pointed out that the paragraphs created the risk that the Security Council, the General Assembly and the Secretary-General might wish to act on the same dispute by creating organs of the nature proposed. Those three principal organs of the United Nations had their competence clearly cut and their competence could not be delegated. The additional machinery proposed was therefore contrary to the United Nations Charter. Furthermore, functions such as fact-finding or investigation fell only under the competence of the Security Council in accordance with the Charter. With specific reference to the Secretary-General, the observation was made that it was doubtful whether he could take an initiative to establish a commission consisting of Member States. However wide a view one took of his powers and functions, it was not really certain that he possessed the kind of directing function authorizing him to set up a body of Member States.

30. Criticism was also directed at the phrase "States directly affected by the respective international situation". This concept, it was said, was a problematic one. Similar phrases occurred in the Charter and in the provisional rules of procedure of the Security Council and the Council had not been particularly successful in interpreting that sort of phrase which, therefore, was likely to lead to considerable problems. Often it was quite difficult to determine the parties to a dispute. That was a critical political issue. It was asked what would happen if there were 15 interested parties and one disagreed: what course of action would be taken and would the consent of all interested parties have to be met to create the commission in such a situation? Furthermore, it was said that the situation could arise in which an interested party could show up after the commission had been established by the Security Council and express its disagreement with the means chosen or the composition of the commission.

31. In response to the comments made by delegations on paragraphs 1 to 3, the sponsors of the proposal stated that there was no intention to modify the rules of procedure of the General Assembly or the Security Council. Those organs would use their current rules of procedure when establishing a commission. There was no modification of the Charter either. The commission was not a joint organ of the General Assembly or the Security Council. What it had in common with both organs was that those major organs could have recourse separately, according to their own decisions, to the procedure. The co-sponsors had believed that a commission composed of States rather than individuals would be more appealing to Member States, but this did not mean that, once appointed, the representative of the State could not act in a personal capacity. As to the ultimate juridical basis of the commission, it was the agreement of Member States. Regarding the nature of the dispute for which the creation of the commission would be recommended, this should be left to the General Assembly or the Security Council to decide. The same could be said of the phrase "States directly affected by the respective international situation". This was a matter of interpretation for the principal United Nations organs to settle. As to the financial aspect, there was no major cost involved in listening to the parties and making recommendations. There was no question of fact-finding activities or visiting missions. Concerning the functions of the Secretary-General under the proposal, what the sponsors had in mind were the contacts that he would normally have with representatives of Member States rather than his being competent to propose the creation of such a commission to Member States. As to the possibility that a dispute might, at the same time, be taken up

by the Security Council and the General Assembly, this possible conflict of competence was expressly solved in the Charter in favour of the Council as to the adoption of recommendations. As to the legality of the delegation of competence by the principal organs of the United Nations, the Charter expressly provided for the possibility of their establishing subsidiary bodies. All the Council and the Assembly could do was to recommend to Member States the creation of the commission. There was no delegation of competence. The proposal was perfectly in keeping with the Charter and the establishment of the commission was always subject to the consent of the Member States.

Paragraphs 4 to 6

32. Introducing paragraph 4, the sponsors stated that the intention behind it was to avoid a situation wherein the Security Council and the General Assembly would embark on a controversial debate on the dispute, and in exchange open the way to offering first of all to the parties to the dispute the procedure described in the proposal. The different wording used in subparagraphs 1 and 2 of paragraph 4 in describing the kind of disputes or situations before the Council and the Assembly reflected carefully the different terminology used by the Charter when referring to those organs' competence in matters of peaceful settlement. Paragraph 5 referred to contacts between the Secretary-General and the parties to a dispute and its language did not possess a mandatory character. Paragraph 6 stated that the commission was set up when the parties to a dispute expressed their consent to resort to the means of peaceful settlement suggested in the proposal.

33. Commenting on paragraph 4, a number of delegations criticized the wording contained in its two subparagraphs prescribing that the Council or the Assembly should consider "first of all" the opportunity to recommend to the parties the setting up of a commission like the one suggested in the proposal. It was felt that this might constitute an undue constraint on the Security Council, on the General Assembly and on the parties to the dispute. It also appeared to be in violation of Article 33 of the Charter which left open to the parties a wide and free leeway to settle the dispute by the means of their own choice. The possibility that the Council, without determining whether the continuation of the dispute or situation was likely to endanger the maintenance of international peace and security, would recommend setting up a commission was also categorized as strange. The Council could only urge the parties to seek a solution by peaceful means of their own choice. The paragraph, as well as paragraph 5, one delegation felt, seemed to contradict the atmosphere of confidentiality, delicate nature and flexibility which were of the essence of such means of peaceful settlement as good offices, mediation and conciliation by publicly rushing to offer this means of settlement to the parties, in an over-organized procedure. The view was also expressed, with respect to subparagraph 1 of paragraph 4, that the proposal did not make it clear by what criterion it was to be determined whether the continuance of a dispute was likely to endanger the maintenance of international peace and security.

34. One delegation stressed the carefully drawn distinction made in the wording of both subparagraphs of paragraph 4 as regards the kind of disputes they were referring to. In this connection, while sharing the reservations on the words "first of all" contained in subparagraph 1 dealing with disputes before the Security Council, this delegation felt that the same words in subparagraph 2 dealing with disputes before the Assembly were less objectionable from the point of view of the functions and powers as laid down in the Charter. Recent practice of

the General Assembly recommending specific methods to solve specific disputes tended to confirm the above distinction. Some delegations did not feel that the paragraph as a whole contained elements which might be considered in violation of the principle of the free choice of means or of any other aspect of the United Nations Charter, particularly if due account was taken of the competence of the Security Council under Article 36 of the Charter.

35. Commenting on paragraph 5, some delegations found that its drafting was not clear and aroused difficulties of interpretation and of compatibility with Charter provisions and rules of procedure of the Security Council. The Security Council, if it decided to deal with the dispute, might appoint the Secretary-General as Rapporteur and it was not clear how to reconcile this function with the role provided for him by paragraph 5 of conducting consultations with the parties. On the other hand, the view was also expressed that the word "may" in the paragraph created the feeling that it laid down an authorization while it should be clear that the Secretary-General, in keeping with his normal functions under the Charter, did not need any authorization to enter into contact with Member States of the Organization. Some criticism, which also applied to paragraph 6, was directed at the phrase: "States directly affected by a situation". It was felt that this could lead to complicated situations such as, for instance, the parties to a dispute rejecting the establishment of a commission and some States affected being in favour of such an establishment. Or it could even lead to the establishment of different commissions, by different organs at different initiatives, one for the parties to the dispute and another for the States affected.

36. Paragraph 6 was found to be not very clear regarding the exact procedure by which the commission would be set up after the recommendation of the organ concerned and the acceptance by the parties. There was something missing, a grey area, all the more so because of the ad hoc character of the commission. It was suggested that it should be the parties themselves that should agree on how actually to set up the commission and that the possibility should be left open for the parties to agree to proceed to mediation and conciliation efforts outside the United Nations bodies. The phrase "as defined in paragraph 4" was criticized because it indicated inaccurately that paragraph 4 defined the States directly affected by a situation.

37. Responding to comments made on paragraphs 4 to 6, the sponsors stressed that the words "first of all", in paragraph 4, did not intend to curtail the choice of means available to the parties but to avoid lengthy and protracted debate in the organ concerned by offering the parties this procedure with United Nations support before the onset of such a debate. It was up to the organs concerned whether to recommend this method or other methods of settlement. The sponsors did not have in mind, as the legal basis of the procedure, Article 33 (2) of the Charter which empowered the Council to decide on a means of settlement but rather Article 36 (1) which spoke of recommendations by the Council on specific methods. The question of confidentiality did not arise at the stage of recommending the commission's creation but at the stage of its actual work. It was for the Security Council to categorize a dispute as "likely to endanger international peace and security" not for the proposal. With regard to paragraph 5, there was no intended modification of rules and procedures of the Security Council or the General Assembly. If the Secretary-General had been appointed Rapporteur, then he would continue to report to the Council. This paragraph spoke of "contact with the parties" rather than "initiative of the Secretary-General". The sponsors were open to improving the drafting of the paragraph which did not intend to detract from the present

competence of any United Nations organ. The phrase "States directly affected by the situation" had been taken from the Charter and it was for the competent organs to interpret it. As to paragraph 6, it was for the parties themselves to fill in the details of the commission's setting up, such as, for instance, the number of its members. They could always resort to a method of settlement outside the United Nations, but the proposal's purpose was to facilitate a settlement within United Nations procedures.

Paragraphs 7 to 9

38. Introducing paragraphs 7 to 9 dealing with the composition of the commission, the sponsors stressed their flexibility, as reflected in paragraph 7 (1). Once designated, members of the commission would act in their personal capacity. The need for support within the United Nations for the designation of the commission's members was an idea reflected in the drafting of paragraph 7 (2). Paragraph 8 placed emphasis on the personal qualifications and experience of the commission's members. Paragraph 9 (2) reflected the fact that in all likelihood, and most often, the commission would be set up on the Security Council's recommendation.

39. Delegations, commenting on these paragraphs, felt that the number of the commission's members (3 to 15) referred to in paragraph 7 (subparagraph 1) was excessive, particularly in cases of good offices, and it could hamper the confidentiality and sensitive nature of the commission's functions as well as the effectiveness of its work. The view was expressed that States directly affected by the respective situation should not be excluded from membership since States from the same region could have a better understanding of the dispute concerned. It was felt that paragraph 7, subparagraph 2, should make designation of the commission dependent not upon consultation but upon agreement of the States parties to the dispute among themselves and with the organ concerned, both for reasons of customary international law and of confidence building in the commission. It was also said that it was not clear how the President of the Security Council or the General Assembly could appoint the commission's members if the character of the dispute had not yet been determined. There were also competence problems with regard to the President of the Assembly; if he acted in an inter-session period without the Assembly's mandate, and with regard to the Secretary-General who, on his own initiative, would undertake fact-finding and determine parties to a dispute on very delicate issues.

40. Paragraph 8, it was said, read in conjunction with paragraph 7, gave the impression that the commission was composed of representatives of States rather than of persons acting in a personal capacity. The existence of deputy members and the lack of guarantees of the member's independence seemed to confirm that conclusion. In another view, the existence of deputy representatives was not incompatible with a member acting in his personal capacity and could ensure a more varied specialization of the commission's membership. It was not clear, it was said, whether States could change the members they had appointed without the consent of the parties to the dispute. It was suggested that the designation of members could last more than one year. It was also suggested that the role of States in the designation process of a commission should be confined to the identification of categories of disputes and the submission of names of experts in the area involved in those categories. The Secretariat would then prepare a list of those experts from which the organ concerned, in consultation with the parties to a dispute, would then appoint the commission's members to act in a personal capacity. The view was also expressed that the criteria of Article 23 of the

Charter for the election of members of the Security Council should apply to the designation of the commission's members. In another view, the proposal of members by States should be made within a reasonable time after the commission's setting-up rather than every year, which appeared incompatible with the commission's ad hoc character.

41. With regard to the first sentence of paragraph 9, the view was expressed that the agreement of the parties to the dispute in the designation of the commission's chairman was not strictly necessary. Regarding the paragraph's second sentence, several delegations failed to perceive any reason why a permanent member of the Security Council could not be the commission's chairman.

42. Responding to comments made on paragraphs 7 to 9, the sponsors stressed that they were totally open-minded on the number of the commission's members, the figure given in paragraph 7 being only a suggestion. A flexible solution could be found, perhaps leaving to the parties to a dispute the determination of the number of members. Regarding the commission's designation, the intention of the sponsors had been that it should be done with the agreement of the parties to the dispute. As to whether the commission was composed of States or individuals, the sponsors wanted to give more political weight to the commission by not eliminating States from the designation process and not reducing it to a mere selection of individuals from a pre-constituted list. Hence the mixed procedure of members designated by States but acting in a personal capacity who could not be recalled by States without the agreement of the parties to the dispute. They were open-minded on the application of the criteria of Article 23 of the Charter to the designation process but qualifications and competence of members should also be considered. Paragraph 7 presupposed a decision by the organ concerned to set up a commission. The consultations to be initiated by the President of the organ concerned were confined to the designation of the commission's members but the organ in question remained ultimately responsible, keeping the issue on its agenda.

Paragraphs 10 to 17

43. Introducing paragraphs 10 to 17, the sponsors pointed out that they dealt with the activities and procedures of the commission, setting broad guidelines for the commission's flexible work with the parties to a dispute, trying to guide the situation towards a solution, encouraging negotiations between the parties and trying mediation if negotiations failed or conciliation if the mediation was not successful. Flexible time-limits, basic principles for a solution, duty of confidentiality and reporting obligations were also covered by these paragraphs. The commission would act on the basis of submissions made by States or information received from the Secretary-General.

44. With regard to paragraph 10, some delegations did not think New York should be specifically mentioned but any United Nations headquarters. Others found the paragraph flexible enough. In paragraph 11 the phrase "the commission will seek to determine the States parties to the dispute" (English version) was confusing since the parties were determined before the setting up of the commission. The idea should be that the commission should encourage or urge the parties or seek to bring them to enter into negotiations. It was suggested that subparagraph 2 of paragraph 11 should refer first of all to the duty of the parties to refrain from aggravating action or deeds. The word "adequate", referring to the solutions offered by the commission, was criticized as vague. With regard to paragraphs 12 and 13, it was wondered whether the passage from good offices to mediation and to

conciliation procedures should not give rise to different commissions, given the different expertise required by those procedures. The question was also asked whether the parties had the freedom to change the commission in accordance with the needs of a situation and the procedures involved. It was suggested that paragraph 14 could also refer to rules of procedure to regulate the commission's proceedings. The words "early", "equitable" and "justice" in paragraph 15, as well as the words "balanced solutions" in paragraph 13, were criticized as vague and likely to create difficulties of interpretation. The words "equitable" and "justice" might impair the confidence of the parties in the commission and were more appropriate for a court of arbitration than for a commission for good offices, mediation and conciliation which should rather seek to apply principles of international law. With reference to paragraph 17, it was wondered whether, bearing in mind paragraph 6, the Secretary-General should not also receive a report when the commission had been established following consultations with him.

45. Referring to the relationship of paragraphs 10 to 17 with the United Nations Charter, the view was expressed that the bulk of the commission's functions described in the paragraphs belonged to the Security Council; that was in contradiction with the Charter and it risked undermining the Council's position and disorganizing its work. The proposed machinery violated the principles of free choice of means, State sovereignty and non-intervention. The commission's connection with the Security Council was almost non-existent. There were risks of contradictory recommendations being made by a General Assembly's commission and the Security Council or by a commission and its parent organ and of fact-finding tasks being performed by a commission set up by the Secretary-General, all of which would violate the Charter. The paragraphs also lacked a decision-making procedure for the commission, a determination of the kind of disputes the commission would deal with, a regulation of the rights and duties of the parties to the dispute, a determination of the fact-finding means with which the commission would be endowed and provisions concerning the commission's staff.

46. Responding to comments made on paragraphs 10 to 17, the sponsors of the proposal said that they were open-minded on the question of indication of the commission's venue. Paragraph 11 did not refer to a determination of the parties to the dispute, which were already determined, but to an urging of the States parties to resume or begin negotiations. The combination of good offices, mediation and conciliation into a single organ was in agreement with the Charter. The passage from one procedure to the other depended to a large extent on the willingness of the parties, which could always stop the commission's work and choose another means of peaceful settlement. No complicated or detailed procedures had been introduced because the sponsors felt the commission needed some leeway to function correctly. The word "early" had been taken from the friendly relations Declaration, the word "equitable", from the Manila Declaration. They had not been defined in those documents and it was not clear why they should arouse objection in the proposal's context. All the commission did was to recommend solutions which the parties were free to reject. As to the possibility of a report from the commission to the Secretary-General, the sponsors felt that it should be up to the parties to decide whether such a report was necessary, although the sponsors were prepared to discuss this matter. As to the relationship with the Security Council, it was the Council itself which created the commission, there was no encroaching of functions, the Council kept the issue on its agenda and the commission would finally report to it. As to the question of interim reports, the sponsors felt that there should not be more reporting than actual working. No fact-finding or visiting of regions were envisaged by the proposal as functions of the commission.

The commission should make decisions as a collegial body; details to regulate this aspect did not appear necessary to the sponsors. The nature of the dispute could be determined by the organ creating the commission, although it was not frequent for the Security Council to determine the nature of a dispute before it.

Paragraphs 18 to 20

47. Introducing paragraphs 18 to 20, the sponsors stated that these paragraphs dealt with the relationship of the proposed commission with United Nations organs and other means of peaceful settlement. Paragraph 18 was based on the consideration that the States parties to a dispute had freely accepted the commission as a means of peaceful settlement. Paragraph 19 dealt with cases in which entities, not member States, were parties to a dispute and the parties had agreed to resort to this procedure. It was based on a similar provision contained in the Manila Declaration. Paragraph 19 answered some questions regarding compatibility between the commission's competence and the competence of its parent organs, and it should dispel certain doubts regarding the proposal's compatibility with the Charter.

48. Referring to paragraph 18, some delegations stated that it tried to impose a new machinery for peaceful settlement. The role of third-party involvement was over-emphasized and the powers of the Security Council in the area of peaceful settlement were being undermined. In another view, paragraph 18 should be placed immediately after paragraph 6. With regard to paragraph 19, it was suggested that the expression "peoples concerned" should be replaced by the more complete and more usual formulation "peoples under colonialist or racist régimes or subjected to other forms of foreign domination or foreign occupation"; and that the words "inter alia" should be added before the mention of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. ^{12/} It was also observed that the sponsors' intention was not entirely clear and that the above-mentioned Declaration did not appear to lend itself to their interpretation. Paragraph 20, it was said, confirmed the fact that the proposal provided for the establishment of a machinery which would function without any link to the principal United Nations organs. It also contained an unsubstantiated reference to the principle of the free choice of means. Concerning its second subparagraph, it was wondered whether account would be taken by the Security Council or the General Assembly of the possible progress already achieved by the commission. Concerning subparagraph 3, it was asked whether it might not also be desirable to add a sentence to the effect that the setting up of the commission would not prevent the Secretary-General from acting as Rapporteur if so requested by the Security Council.

49. Responding to comments made on paragraphs 18 to 20, the sponsors stressed that paragraph 18 had been included precisely because, in exercising their free choice of means, parties had chosen a commission and therefore were expected to support it acting in good faith. The idea of paragraph 19 was taken from the Manila Declaration on peaceful settlement, adopted by consensus. It covered the case in which parties other than United Nations Member States were also involved in a dispute. Although better language could be found, it was important not to lose sight of the framework provided by United Nations documents adopted by consensus. Paragraph 20 had been included precisely to allay the fears that the commission might run counter to the competence of the United Nations organs. The judgement of the Assembly and Council should be trusted to the effect that they would take into account the commission's progress and would not stop its work in midstream. The sponsors were open-minded on possible improvements or additions to the paragraphs.

B. Examination of the report of the Secretary-General on the progress of work on the draft handbook on the peaceful settlement of disputes between States

Statement of the Rapporteur

50. In accordance with the agreement reached by the Special Committee at its 84th meeting on the organization of its work (see para. 8 above), the Working Group devoted to this question its 6th and 8th meetings, held on 8 and 11 March 1985. It had before it the progress report prepared by the Secretary-General pursuant to General Assembly resolutions 39/79 and 39/88 A (A/AC.182/L.42).

51. In introducing the report, the Legal Counsel stressed that the work was being carried out on the basis of, and in accordance with, the outline approved by the Special Committee at its 1984 session, taking into account both the purposes and features of the handbook as set out in the introductory part of the outline, in particular the requirement that the draft handbook should be prepared in strict conformity with the Charter of the United Nations, and the views expressed in the course of the discussions in the Sixth Committee and in the Special Committee. Further to an invitation from a member of the Committee, he drew attention to certain questions which the Secretariat had come across in carrying out its task. He asked in particular whether the Secretariat should take into account pre-Charter documents, on the one hand, and documents or procedures which had not elicited general support in the United Nations, on the other, and whether the assistance of other international organizations should be sought. He finally indicated that the Special Committee would be kept duly informed at a later date of the difficulties which might be encountered in carrying out the task.

52. With respect to the first of the questions raised by the Legal Counsel, it was generally recognized that, although the handbook was intended to be a practical document and not a historical or academic exercise and should, therefore, ignore instruments or procedures which had fallen into oblivion or had become obsolete, those pre-Charter instruments or procedures which were relevant or still in use should be taken into account on a selective basis.

53. As to the second of the above-mentioned questions, some delegations pointed out that the handbook was to be prepared in strict compliance with the Charter and that the essential criterion in selecting the relevant materials was conformity with the Charter. It was pointed out that the value of the handbook would depend on its general acceptability and that here, as in all its other areas of work, the Special Committee should be mindful of the importance of reaching general agreement. As far as declarations and resolutions of the General Assembly were concerned, it was stressed that only such resolutions and declarations should be taken into account which were adopted on the basis of consensus and did not contradict the Charter and that there were a sufficient number of those which dealt comprehensively with the principle of peaceful settlement of disputes - e.g., the Declaration concerning Friendly Relations 12/ and the Manila Declaration on the Peaceful Settlement of International Disputes 11/ - and enjoyed general support.

54. Some delegations, on the other hand, pointed out that it was important that the reader should feel reasonably confident that the whole range of the possibilities available to Governments for the peaceful settlement of their disputes had been duly covered. The remark was further made that existing

documents and procedures did not lose their relevance because they were controversial and that innovative and precedent-setting documents should be duly taken into account.

55. Some delegations felt that the issue should be approached in a flexible manner, taking practice duly into account. The remark was made in this connection that, among the documents pertaining to the subject which were not universally accepted, some were part of the legal international order and could hardly be ignored, whereas others, including certain resolutions of the General Assembly, were of lesser legal value and ought to be left aside in the interest of consensus. It was noted that even major international conventions that had not been widely adhered to might not be objectionable and could be usefully mentioned, particularly if account were taken of the fact that they could serve as guidelines for negotiations of bilateral or regional agreements.

56. As to the third question raised by the Legal Counsel, namely, the possibility of consultations between the United Nations Secretariat and other international organizations, it prompted several delegations to comment on the scope of the handbook. While some representatives 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, other delegations disagreed with this approach which was, in their view, difficult to reconcile with the idea of a descriptive handbook.

57. Notwithstanding this difference of view, there was no objection to the United Nations Secretariat approaching other international organizations, provided the purpose of the consultation was limited to gathering information on relevant legal instruments and procedures without going into details.

58. As to the form of the assistance to be given by Member States to the Secretary-General in the performance of his task in accordance with paragraph (2) of the conclusions reached by the Special Committee at its 1984 session, 13/ the Working Group reached the following agreement:

(a) The "representative group of competent individuals from among the members of the Permanent Missions of the States Members of the United Nations" would be open to all members of the Special Committee;

(b) Meetings of the Group would be announced well in advance in the "Journal of the United Nations" and the announcement would provide information on how to obtain the relevant documentation;

(c) The Group would have purely consultative functions;

(d) The timing of meetings and the questions to be discussed would be left to the discretion of the Secretariat.

III. MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY

Statement of the Rapporteur

59. In accordance with the agreement reached by the Special Committee at its 83rd meeting (see para. 8 above), the Working Group devoted its 11th to 25th meetings, held between 13 and 25 March 1985, to the question of the maintenance of international peace and security.

60. The Special Committee had before it a revised version (A/AC.182/L.38/Rev.1) of the working paper submitted at the previous session by Belgium, the Federal Republic of Germany, Italy, Japan, New Zealand and Spain. That document dated 7 March 1985, read as follows:

"Explanatory note

"The present paper covers the stage of possible United Nations activities preceding the start of the pacific settlement of disputes under the Charter of the United Nations. Accordingly, means and methods relating to the pacific settlement of disputes proper (see Article 33 of the Charter) are not considered, although it is recognized that in reality the dividing line between the prevention of conflicts and the settlement of disputes may not be clear cut.

"In accordance with the Special Committee's mandate, the paper concentrates on how to strengthen the role of the United Nations and its main organs. Accordingly, questions relating to conduct and obligations of States outside the United Nations framework and their freedom to choose appropriate means of prevention of conflicts are not covered by this paper.

"In examining possible ways of strengthening the effectiveness of the main organs of the United Nations, the co-sponsors have taken utmost care to respect and maintain the balance established between the main organs by the Charter. Nothing of the following should, therefore, be construed as implying in any way enlarging or diminishing the scope of the Charter, including the balance established by it between the main organs.

"Prevention and removal by the United Nations of situations which may lead to international friction or give rise to a dispute and of matters which may threaten the maintenance of international peace and security

"I. Preparation of the relevant United Nations organs for preventive action

"1. Member States and international organizations should fully co-operate with the relevant United Nations organs and support them in their preparations for taking preventive action relating to situations which might lead to international friction or give rise to a dispute (hereafter: 'situation') and matters which may threaten the maintenance of international peace and security (hereafter: 'matter').

"2. The Secretary-General should consider sending, with the consent of the receiving State, his representative to areas where a situation exists or to which a matter relates in order to ascertain the views of the Governments concerned and to gather other relevant information.

"3. The information gathered by the Secretary-General should be conveyed to the Security Council at the request of the Council or on the initiative of the Secretary-General.

"4. The information gathered by the Secretary-General should be conveyed to the General Assembly at the request of the Assembly or on the initiative of the Secretary-General.

"5. The Security Council should consider holding periodic meetings or consultations to review the international situation.

"6. All States, pursuant to Article 35 (1) and (2), and the Secretary-General, pursuant to Article 99, should be encouraged to exercise their right to bring situations or matters to the attention of the Security Council at an early stage.

"7. When a specific situation or matter is brought to the attention of the Security Council without a meeting being requested, the Security Council should consider holding consultations with a view to examining the facts of the situation or matter and keeping it under review, with the assistance of the Secretary-General. In the course of these consultations, equal opportunity to present their views should be ensured to the States directly concerned.

"8. In order to prepare itself for preventive action, 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 specific question.

"9. In order to prepare the relevant United Nations organs for preventive action, greater use should be made, whenever appropriate, of the United Nations fact-finding capabilities, including the sending of fact-finding missions with the consent of the receiving State.

"II. Preventive action by the relevant United Nations organs

"1. Member States should co-operate fully with the principal United Nations organs and support their preventive action concerning situations and matters.

"2. States should be encouraged to approach the relevant United Nations organs in order to obtain suggestions on preventive means for dealing with situations and matters.

"3. If States directly concerned intend to formally request a meeting of the Security Council, they should consider approaching the Council at an early stage and, if appropriate, on a confidential basis.

"4. The Secretary-General, particularly if he intends to request a meeting of the Security Council, should consider approaching the Council at an early stage on a confidential basis.

"5. In order to respond quickly to such approaches made by States or by the Secretary-General, the Security Council should consider:

"(a) Employing such confidential means which it deems appropriate;

"(b) Making an appeal to the States concerned to refrain from any action which might lead to the further deterioration of the situation or matter; and/or

"(c) Recommending informal means of settlement.

"6. Where appropriate, the Security Council should consider sending, at an early stage, fact-finding or good offices missions or establishing appropriate forms of United Nations presence in the areas where a situation exists or to which a matter relates.

"7. The Security Council should consider using peace-keeping operations as a means of preventing the further deterioration of the situation or matter.

"8. The Security Council should consider encouraging and, where appropriate, endorsing efforts undertaken at the regional level to prevent and/or remove a situation or matter in the region concerned.

"9. The Secretary-General, if approached by a State or States directly concerned with a situation or matter, should respond swiftly in offering, as he deems appropriate, his good offices or other means at his disposal.

"10. The Secretary-General, before deciding to bring a matter to the attention of the Security Council, should consider approaching the States directly concerned in an effort to prevent it from becoming a threat to the maintenance of international peace and security.

"11. The Secretary-General should be encouraged to consider requesting the Security Council to meet on matters within the purview of Article 99.

"12. The General Assembly should be encouraged to make full use of the provisions of the Charter in order to discuss situations and matters and make appropriate recommendations without prejudice to Article 12.

"13. The General Assembly should encourage and, where appropriate, endorse efforts undertaken at the regional level to prevent and/or remove a situation or matter in the region concerned.

"14. The General Assembly or the Security Council, if they deem it appropriate for promoting the prevention and removal of situations and matters, should consider making early and full use of the possibility to request the International Court of Justice to give an advisory opinion on any legal question.

"15. When appropriate, the preventive action taken should be reviewed by the United Nations organ which has taken the action or a subsidiary organ thereof."

61. In introducing the revised working paper, a spokesman of the co-sponsors said that the overwhelmingly positive echo which the original version of the document had found, both in the Special Committee at the 1984 session and in the Sixth Committee at the thirty-ninth session of the General Assembly, had prompted the co-sponsors to present a revised version of their text in the light of the comments made, and taking into account, in particular, paragraph 5 of resolution 39/88 A according to which the Special Committee was requested to be mindful of the importance of reaching general agreement whenever that had significance for the outcome of its work. The co-sponsors hoped that the Special Committee would find it possible to reach general agreement on the particular aspect of the Committee's mandate dealt with in their paper, thereby offering its own contribution to the celebration of the fortieth anniversary of the United Nations.
62. By indicating ways and means within the constitutional framework of the Charter of enhancing the capabilities of the Organization and its various organs in the prevention and removal of situations which might lead to international friction or give rise to a dispute and of matters which might threaten the maintenance of international peace and security, the paper sought to combat what the Secretary-General had called the "erosion of multilateralism and internationalism".
63. The "Explanatory note" preceding the text of the working paper aimed at clarifying the perspective in which the paper had been elaborated. The first two paragraphs, dealing with the scope of the paper, emphasized that its purpose was a limited one. Other aspects of the larger question of the maintenance of international peace and security remained to be dealt with, perhaps in the framework of other working papers.
64. As indicated in the second paragraph, the co-sponsors had deliberately refrained from expanding on the role and conduct of States in general, although the paper naturally dealt with the obligations of Member States in relation to the organs of the United Nations. The co-sponsors recognized that the conduct of States in accordance with principles of international law was of vital importance for the prevention of conflicts and fully endorsed the principle of the freedom of States to choose appropriate means of prevention of conflicts. In their view, this important aspect might be the subject of a separate paper.
65. The third paragraph stressed that nothing in the paper should be construed as implying in any way enlarging or diminishing the scope of the Charter, including the balance established by it between the main organs.
66. The spokesman of the co-sponsors stressed that the substance of the original working paper had been largely preserved, but that in order to tighten the presentation and avoid repetitions, the various elements had been grouped under two main headings. He added that the text had been made more flexible, taking into account the need to preserve the freedom of choice of Member States. A new element was an additional paragraph on the role of the International Court of Justice.
67. Some delegations stated that, taking into account the fact that the working paper had been submitted a few days before the discussion, they could only express preliminary views thereon.
68. Many delegations expressed their appreciation to the co-sponsors for the praiseworthy effort they had made in trying to meet the concerns expressed in relation to the original version of their working paper.

69. The remark was made that, while the mandate of the Special Committee under paragraph 3 (a) of resolution 39/88 A was very broad, the General Assembly had singled out in that same paragraph the specific question of the prevention and removal of threats to the peace and situations which may lead to international friction and that the working paper squarely fell within this perspective. The working paper was described as a valid basis for further consideration of the above-mentioned question, inasmuch as it constituted a blueprint of preventive measures to be applied by the principal organs of the United Nations. It was furthermore viewed as a welcome complement to the proposal submitted by Nigeria, the Philippines and Romania on the establishment of a commission of good offices, mediation and conciliation. The two proposals, it was noted, dealt respectively with two of the three stages in the development of a conflict - namely, the embryonic stage and the stage of the arising of a dispute - the third one being that where a threat to the peace or a breach of the peace actually materialized. Several delegations noted that the co-sponsors had recognized that their working paper did not exhaust the subject and they expressed readiness to discuss proposals on other aspects such as the question of the conduct of States in their mutual relations outside the framework of the United Nations, the concept of freedom of choice of means and the question of the implementation of United Nations decisions. The view was expressed that one of the possible approaches in the consideration of these matters could be to determine specific rights and duties of States.

70. Some delegations, on the other hand, felt that the working paper reflected an unduly narrow approach to the question of the maintenance of international peace and security. It was recalled that, under its mandate as defined in paragraph 3 (a) of General Assembly resolution 39/88 A, the Special Committee was requested to consider this question "in all its aspects" and was not expected to limit itself to the prevention and removal by the United Nations of "situations" and "matters". Regret was expressed that the working paper should be silent on the question of the conduct and obligations of States in the area under consideration. Mention was made in this respect of the obligation of States to take measures to prevent nuclear war and the arms race in outer space, halt the arms race and support disarmament, of the need for States to take steps to effectively implement the principles of peaceful settlement of disputes, non-interference, State sovereignty and non-use of force in international relations and of their duty to observe scrupulously their obligations under the Charter, including the obligation to implement the decisions of the Security Council. The remark was further made that the role of the United Nations could not be looked at independently from the efforts of the individual States which were the primary subjects of international law. Such an approach was described as politically, legally and practically wrong. The delegations in question accordingly insisted that there could not be any question of submitting conclusions to the General Assembly until the essential aspect of the conduct and obligations of States had been adequately dealt with. They stressed that the discussion of the question of the maintenance of international peace and security should be concluded by the elaboration of a document of a declaratory character on the strengthening of the effectiveness of the United Nations in securing peace in accordance with the Charter and on the efforts of States in eliminating the threat of nuclear war, halting the arms race and improving the international situation. They added that their participation in the discussion of the individual elements of the working paper did not imply any agreement on their part to the restrictive approach reflected therein.

71. Other delegations stated that the strength of the working paper was that it focused on areas on which agreement was possible. It was pointed out in this connection that a discussion of controversial questions, such as the principle of the unanimity of the permanent members of the Security Council, which was criticized by some but viewed by others as a reflection of the realities of the world and as a guarantee of the survival of the Organization, did not have the slightest chance of leading to any positive result. Equally fruitless would prove, in the eyes of the delegations in question, attempts to bring within the ambit of the Committee ideas which other forums had so far found impossible to tackle with any degree of success - unless such attempts were accompanied by an earnest effort at streamlining the work of the subsidiary bodies reporting to the Sixth Committee.

72. Some delegations noted that the co-sponsors, as indicated by their spokesman in his introductory statement, had placed their proposal within the constitutional framework of the Charter and had taken utmost care to respect and maintain the balances established between the main organs by the Charter. Those delegations, however, held the view that in this endeavour the co-sponsors had not always been successful.

73. Other delegations criticized the paper for departing in a number of respects from the Charter. They stated that, as it appeared from the first paragraph of the explanatory note, the co-sponsors seemed to consider that at the embryonic stage of a dispute or a situation, the provisions of the Charter did not apply - a premise which was at variance with the Charter itself. It was also observed that, given the clear distinction drawn by the Charter between the role and functions of the main organs in the maintenance of peace and security, it was impossible without violating the Charter to equate and lump together - as the co-sponsors had done - the General Assembly, the Security Council and the Secretary-General in describing their preventive role. Those delegations stated that some provisions of the paper undermined the clear-cut division of powers among the main organs of the United Nations and first of all the prerogatives of the Security Council which bore the primary responsibility for the maintenance of international peace and security. In this connection strong opposition was expressed by some delegations to attempts at de facto revising the Charter which, far from expanding the area of agreement, would have exactly the opposite effect.

74. Doubts were expressed by several delegations on the wisdom of over-emphasizing the criterion of conformity with the Charter, an approach which seemed to be based on the sincere but erroneous belief that any departure from the letter of the Charter had necessarily dangerous consequences. It was pointed out that, as its name indicated, the Committee had been born from a desire to look into the Charter and to find ways of strengthening the role of the Organization, and that it was condemned to sterility if every proposal that came before it, no matter how well-intentioned, was rejected outright and its sponsors blasted as heretics for failure to follow the Charter word by word. The remark was made that in order to strengthen the role of the Organization it was necessary, if not to review the Charter, at least to interpret its provisions in a constructive way, as the Security Council had done, for example, in applying Article 27, paragraph 3. There were a number of other areas in which the Charter could be built on in an innovative and constructive way, among them Chapter XIII and the functions of the Secretary-General. A view was further expressed that while the institutional balances and the privileges established by the Charter had to be respected, the spirit of the Charter ought also to be respected by those who invoked it and that it was because the spirit of the Charter had too often been departed from that the Special Committee had been established.

75. Strong opposition was, on the other hand, expressed to attempts at calling the Charter into question. The remark was made in this connection that those who advocated unswerving compliance with the Charter were defending the common good inasmuch as the Charter had successfully stood the test of 40 years and was the only document to which all States had subscribed. They stressed that the Charter reflected the results of the historic victory of the peoples over fascism and nazism in the Second World War and their firm determination to save succeeding generations from the scourge of war. The Charter, it was observed, was the very foundation of the Organization and its activities. It contained a code of conduct for States, which applied to them irrespective of their economic and social systems, and it was the basis of numerous international agreements which regulated relations between States in the most varied fields. Exception was, furthermore, taken at a description of the situation of the permanent members of the Security Council under the Charter as a privileged one. The remark was made in this connection that if the Council were to take decisions without the concurrence of the permanent members of the Security Council it would, instead of preserving the peace, expose the world to the catastrophic consequences of nuclear war. The mission of the Special Committee, it was observed, was not to destroy the orderly system of relations between States and between States and the Organization which had been established by the Charter, but to strengthen it, a goal which could first and foremost be attained through a strengthening of the Security Council.

76. Some delegations noted, with respect to the title of the working paper, that the wording contained in paragraph 3 (a) of resolution 39/88 A, which had been the subject of protracted negotiations and to which all had subscribed, had been departed from in several important respects. Those changes were, it was stated, unacceptable. The remark was first made that the words "by the United Nations" which had been inserted after the word "removal" focused the attention on a limited aspect of the question at the expense of other equally important aspects, in particular the role of individual States in the prevention and removal of threats to the peace. It was further observed that, while the phrase "situations which may lead ... etc.", had been retained in the title, the expression "threat to the peace" had made way for another one, namely, "matters which may threaten the maintenance of international peace and security", which was borrowed from Article 99 of the Charter and was not to be found either in the opening provisions of the Charter or in Chapters VI or VII. These changes were viewed as entailing an unacceptable reorientation in the mandate of the Committee. It was furthermore observed that transposing the terminology used in certain provisions of the Charter to other provisions had the effect of blurring the distinctions made by the Charter between various concepts - thereby making the interpretation of provisions such as the concluding clause of Article 27, paragraph 3, extremely difficult - of altering the balances established by the Charter and of de facto amending the Charter. More specifically, it was stated, using, in the context of the prevention and removal of threats to the peace and of situations, a terminology borrowed from Article 99, had the unacceptable effect of expanding the powers of the Secretary-General far beyond what was envisaged in the Charter.

77. Other delegations observed that the co-sponsors had tried to identify, among the various areas encompassed by the broad mandate defined in paragraph 3 (a) of resolution 39/88 A, an area where general agreement seemed possible. The title of the working paper was intended to clearly delineate the scope of the area in question. The co-sponsors had acknowledged that their paper did not cover the whole mandate and would have to be supplemented by additional working papers. The hope was expressed in this connection that the delegations which placed special

emphasis on other and, in the view of the co-sponsors, less promising aspects of the mandate, would come up with their own proposals on these subjects. As far as the use of the word "matters" is concerned, it was indicated that the co-sponsors were flexible on the terminology aspect. The remark was none the less made that it was difficult to understand how the use of a word taken from the Charter, and which appeared not only in Article 99 but also in Article 10 and Article 27, could be viewed as an attempt to revise the Charter through the back door. Remarks to that effect were described as unacceptable and it was asked whether the argument did not stem from the theory that the Secretary-General did not have any preventive role under the Charter, a theory which was contrary to the Charter. The question was finally asked whether the Secretary-General had been wrong when, in his annual report on the work of the Organization 14/ to the General Assembly at its thirty-seventh session, he had expressed his intention of developing a wider and more systematic capacity for fact-finding in potential conflict areas in order to carry out effectively the preventive work foreseen for him under Article 99.

78. Some other delegations, while acknowledging the difference between the title of the working paper and the language used in paragraph 3 (a) of resolution 39/88 A, noted that the co-sponsors were flexible on this point and that the substance of the revised text of the paper was, in any case, largely identical to that of the original version. It was also stressed that the dividing lines between the various concepts involved were not always clear and that, since the focus was on prevention, the co-sponsors had been led to combine a notion which represented part of the sphere of application of Article 34 and a notion which covered the totality of the sphere of application of Article 99. Confidence was expressed that a generally acceptable solution to the problem could be found by the co-sponsors.

79. Doubts were expressed on the desirability of retaining the division of the paper in two sections. It was further suggested that, in the organization of the paper, due account should be taken of the action-oriented character of paragraphs 2, 3, 4 and 7 of section I and of the preparation-oriented character of paragraph 1 of section II.

Section 1

Paragraphs 1 to 5

80. In introducing this cluster of paragraphs, a spokesman of the co-sponsors indicated that an effort had been made to streamline the language by using references taken from the Charter which suited the specific object of the paper, namely, the prevention of international disputes. While the Charter did not deal with this particular aspect of the maintenance of international peace and security, it contained notions which could be built upon, namely, the notion of "situation" and that of "matters". Although the latter was taken from Article 99, its scope was not limited to the field of activity of the Secretary-General. In the light of the criticisms addressed to the original version of the paper, the emphasis had been shifted in the opening paragraph from the enhancement of the fact-finding capabilities of the United Nations system to the affirmation of the general obligation of Member States to co-operate with the United Nations organs in their preparations for preventive action, an obligation which included the duty to provide information. Paragraph 2 reflected the current practice of the Secretary-General. Paragraphs 3 and 4 were very similar to provisions contained in the original version of the paper. As to paragraph 5, it was based on Article 28, paragraph 2, although the co-sponsors had in mind not so much high-level extraordinary meetings as meetings of a routine character.

81. While the general thrust of these paragraphs was viewed by a number of delegations as useful and welcome, some delegations stated that the paragraphs were inconsistent with the main provisions of the Charter and undermined the authority of the Security Council by conferring upon the General Assembly and the Secretary-General powers not envisaged for them in the Charter.

Paragraph 1

82. This paragraph gave rise to reservations or objections on the part of several delegations. It was considered as insufficient to cover the matter of the conduct of States. Objections were also raised to the lumping together of various United Nations organs, each of which had, under the Charter, different functions and powers. Furthermore, the phrase "preparations for taking preventive action" was viewed as suggesting a complex of procedural and substantive moves, the content and the duration of which were unclear. It was further observed that, inasmuch as it encouraged States to take a specific course of action, the paragraph ran counter to the principle of free choice of means. Another remark was that the paragraph did not specify who would be empowered to determine whether a specific issue qualified as a "situation" or as a "matter", a prerogative which, under Article 34, belonged exclusively to the Security Council. It was also said that the word "matters" contradicted the Charter and should be deleted. Objections were further raised to the placing on an equal footing of Member States and international organizations and to the use of Charter terms, such as "action" and "matters", in a meaning different from the one they had under the Charter.

83. Other delegations said that paragraph 1 was worthy of consideration. Although recognizing that it suffered from various defects, they maintained that none of those defects was incurable.

84. In relation both to paragraph 1 and to the title of section I, the remark was made that the use of the word "action" was incompatible with the use of the plural form for the word "organs", since the Security Council was the only United Nations organ empowered to take action within the meaning of the Charter. The point was made, however, that under the Charter, the Security Council did not have the monopoly of preventive action and that an appeal by the General Assembly to States involved in an incipient conflict did not infringe upon the prerogatives of the Security Council. These remarks notwithstanding, several delegations held the view that it was preferable to avoid concepts or phrases otherwise loaded because of their use in the Charter. To this end, a suggestion was made to replace "taking preventive action relating to" by "contributions to the prevention of". Another suggestion was to substitute "activity" for "action". As to the word "matter", it was suggested that it should be replaced by "any matter", which was more general.

85. The reference to international organizations was viewed by several delegations as undesirable.

86. Doubts were expressed on the word "preparations", for which it was suggested substituting the word "role". As to the word "fully", it was considered as implying a criticism which was unwarranted, since States parties could have a legitimate reason, such as preference for bilateral negotiations, for dealing with their problem outside the framework of the United Nations.

Paragraph 2

87. Some delegations said that paragraph 2 was consonant with current practice and was, in substance, acceptable to them.

88. Others, however, felt that the paragraph raised serious questions. It was asked what would be the purpose and the time-frame for the information-gathering process and whether it would be wise for the Secretary-General, at the initial stage of development of a situation or dispute, to send a mission before he had consulted with the Governments concerned, possibly through their permanent representatives or other mutually-agreed channels. It was further stated that the Charter did not confer information-gathering powers upon the Secretary-General in the area under consideration and that, as a rule, the Secretary-General acted in this area at the request of the Security Council.

89. With respect to the phrase "gather other relevant information", objection was expressed to the idea of a representative of the Secretary-General holding consultations with a Government and at the same time gathering information from sources other than the Government itself. Another view was that the purpose of the mission should go beyond what was envisaged in paragraph 2 and include an independent assessment of the information gathered.

90. It was also observed that, since the sending of a mission by the Secretary-General was based on Article 99 of the Charter and that, since that article envisaged the possibility of future involvement of the Security Council, paragraph 2 should provide for consultations between the Council and the Secretary-General. With respect to the phrase "with the consent of the receiving State", the point was made that it could prove difficult to apply in relation to occupied territories. This question was raised again in the context of paragraph 9 (see para. 112 below).

Paragraphs 3 and 4

91. Some delegations considered that the paragraphs represented a wrong attempt at parallelism which raised constitutional problems and ignored the difference between the respective roles of the General Assembly and the Security Council. With respect to the phrase "or on the initiative of the Secretary-General", the view was expressed that it was unrealistic and contrary to the Charter to envisage the possibility of the Secretary-General withholding information from the Security Council.

92. Other delegations felt that the Secretary-General should have sufficient latitude, both in relation to the Security Council and to the General Assembly, in using the information he had gathered. The view was expressed in this connection that forcing the Secretary-General to divulge or share information in his possession at the embryonic stage of development of a conflict situation would have the effect of prematurely bringing matters onto the international scene and was, therefore, undesirable; and that forcing the Secretary-General to convey information to the General Assembly would compromise its confidentiality.

Paragraph 5

93. Delegations commenting on this paragraph said that it did not raise for them problems of principle. Gratification was expressed at the absence of emphasis on high-level meetings of the type envisaged in Article 28, paragraph 2, of the

Charter, the usefulness of which had proved questionable. It was recalled, in this connection, that no high-level meeting of the type in question had been arranged since 1970.

94. As far as the placement of the paragraph was concerned, it was suggested that it should be placed after paragraph 1, since both paragraphs were of a general nature.

95. The question was asked whether it would not be advisable to more clearly distinguish between "consultations", which were presumably of an informal character, and meetings of a formal nature. The remark was made, however, that although the two categories were different, the essential point was not the degree of formality but the desirability of the Security Council taking stock of the international situation from time to time. In this connection it was said that since political constraints might prevent Member States from initiating the meetings or consultations in question, the Secretary-General could play a useful role in this respect on the basis of Article 99 of the Charter.

96. Some delegations stressed that the General Assembly should refrain from formulating conclusions on the way in which the Security Council should conduct its proceedings and that the matter should be left to the Council's discretion. Attention was, however, drawn to the fact that the text was couched in flexible terms and left the discretion where it belonged, namely, in the Council.

97. Some delegations felt that the paragraph was too vague. While recognizing that it was difficult for the General Assembly to make suggestions to the Council, they wondered if the paragraph could not indicate how many periodic meetings the Council should hold each year. It was also suggested that the paragraph might include a reference to the level of participation in the envisaged meetings or consultations. Attention was drawn in this connection to a proposal which had been made in the Council, at the 2220th meeting, to the President (S/PV.2220, pp. 53-55). Mention was also made of the desirability of taking into account Article 28, paragraph 3, of the Charter.

98. A spokesman of the co-sponsors, after reiterating the co-sponsors' conviction that it was possible to strengthen the Organization and uphold its noble aims in full respect of the letter and the spirit of the Charter, provided the required good will was at hand, indicated that the objections raised in relation to the terminology used in the working paper were difficult to understand. He stressed in this connection that the working paper referred to a phase prior to the stage where the Council was called upon to make a determination on the basis of Article 39, and that its whole purpose was precisely to prevent things from reaching the point where Article 39 had to be resorted to. The co-sponsors had therefore to find a term describing the embryonic stage in question and had found it in Article 99, but they had in no way intended to enlarge or alter the powers of the Secretary-General. While they were aware that terms had an acquired meaning under the Charter, they had felt that the word "matter" was a very general one and that, in the area of prevention, it was justified to use a term borrowed from Article 99. This being said, the co-sponsors were flexible on terminology.

99. Turning to paragraph 1, he indicated that the co-sponsors were ready to eliminate the words "international organizations". With respect to the principle of freedom of choice, they acknowledged its fundamental importance but wished to point out that, at the very preliminary stage where United Nations organs were

starting to position themselves for carrying out preventive activities, Member States should not restrict or boycott these activities. As to the word "action", it could be replaced by "activity" to eliminate the difficulties stemming from its juxtaposition with the word "organs". On paragraph 2, he indicated that what was envisaged therein was an initiative of the Secretary-General under Article 99 which did not require the consent of the Security Council, even though the Secretary-General remained free to approach the Council before or after the sending of the mission. The case of occupied territories mentioned in connection with the phrase "with the consent of the receiving State" was a very exceptional one but the co-sponsors were open to any appropriate formula, provided the above-mentioned phrase was retained. As to the phrase "other relevant information", its vagueness was intentional inasmuch as sources such as private persons, eminent political figures etc. should not, in the view of the co-sponsors, be excluded provided they were relevant for the Secretary-General to decide whether to bring a situation or matter to the attention of the Security Council. With respect to paragraphs 3 and 4, the main concerns expressed could be met, possibly in the framework of a single paragraph, by starting from the premise that the conveying of information was normal, although not mandatory, in the case of paragraph 3 and exceptional, although possible, in the case of paragraph 4. But other delegations stated that only the Security Council was authorized according to Articles 34 and 39 to investigate any dispute or situation and to determine the existence of a threat to the peace.

Paragraphs 6 to 9

100. In introducing these paragraphs, a spokesman of the co-sponsors indicated that paragraph 6 differed from paragraph I, 2 (c) of the original version of the working paper in that the reference to Member States had been replaced by a reference to States and the words "should be encouraged to exercise" had been substituted for the words "should fully exercise". The wording of paragraph 7, which corresponded to paragraph I, 2, had been made flexible and the concept of equal opportunity had been included. In paragraph 8, which corresponded to paragraph I, 2 (a), the opening words had been included to link the idea contained therein to the purpose of the paper. As to paragraph 9, which corresponded to paragraph I, 2 (b), it had a broader scope than the original text and the required flexibility was provided by the clause "whenever appropriate".

101. Some delegations said that the general thrust of these paragraphs was acceptable and useful. Others, in addition to expressing doubt and objections to specific paragraphs as indicated below, said that in the absence of provisions on the rights and duties of States, the whole discussion suffered from a lack of orientation. It was also said that paragraphs 6 to 9 and section I as a whole unduly focused on the role of the Secretary-General, thereby ignoring the paramount importance of the role of States in the area of prevention and relegating the Security Council and the General Assembly to second position.

Paragraph 6

102. Several delegations felt that this paragraph contained a useful injunction, even though there were circumstances where premature airing of a problem might make it less amenable to solution. The remark was made in this connection that the paragraph was based on the assumption that States acted in good faith and would refrain from irresponsibly bringing matters before the United Nations. The view was further expressed that, in seeking the help of the Security Council, States should show consistency, irrespective of the turn of events, and should not, after

having brought a matter before the Council, oppose, at a later stage, consideration by the Council of the same matter, even though it remained as serious as before. While supporting the idea contained in the paragraph, some delegations felt it preferable to use the terminology of Article 35, paragraphs 1 and 2 ("disputes" and "situations"). It was further suggested adding at the end of the paragraph "if States deem it necessary, on a confidential basis".

103. Other delegations, however, expressed doubts on the advisability of encouraging States to bring issues before the United Nations at an early stage. Attention was drawn to the possibly counterproductive effect of such a course of action, and reference was made to paragraph 8 of section I of the Manila Declaration concerning the duty of States parties to a dispute to refrain from action which might aggravate the dispute. It was also said that the paragraph might be harmful to the spirit of co-operation that should exist between universal and regional organizations. The paragraph was furthermore viewed as extremely vague inasmuch as it did not indicate how or by whom States should be encouraged to take the course of action envisaged therein. Another remark was that the paragraphs lumped together the Security Council and the Secretary-General, with a consequential mixing up of Charter terminology which led to confusion. Attention was drawn in this respect to the importance of distinguishing between, on the one hand, the Security Council and the General Assembly - which paragraph 6 erroneously overlooked - and, on the other hand, the Secretary-General. In this connection, serious doubts were expressed on the advisability of encouraging the Secretary-General to bring matters before the Security Council, particularly at the inchoate stage. It was recalled that the Secretary-General had very rarely used his powers under Article 99 and that as serious and responsible a step as the bringing of a matter before the Council should only be taken once the threat to peace and security had sufficiently materialized.

Paragraph 7

104. With respect to the first sentence, the view was expressed that it reflected a current sensible practice, although the remark was made that the idea of the Council holding consultations should be without prejudice to efforts made at the regional level to encourage consultations and negotiations between the parties. Doubts were also expressed on the phrase "with the assistance of the Secretary-General": the observation was made that if the phrase referred to the assistance of the Secretary-General in the consultations, it was unnecessary since the idea was covered in the Charter. If, on the other hand, it qualified the word "review", it should be made more specific.

105. Some delegations felt that the paragraph seemed to address an injunction to the Council and that the phrase "should consider" ought to be toned down. Objections were, furthermore, raised to the use in this context of the word "matters". The idea of the Security Council holding consultations on an issue not formally included in its agenda and still at a very inchoate stage was viewed as violating the basic principle of free choice of means and objections were raised to a use of terminology which confused the respective functions of the Security Council and the Secretary-General. The remark was further made that it was not very realistic to expect the Security Council to monitor a situation on an ongoing basis.

106. The second sentence was viewed by several delegations as reflecting a genuine concern which should be duly taken into consideration. The remark was made that if one of the States concerned was not a member of the Security Council and was

excluded on that account from the consultations held by the Council, the outcome of the consultations was likely to be viewed as unfair, the effectiveness of the decision of the Council impaired and the States' responsiveness to the decision negatively influenced. It was recalled, in this connection, that in the recent past, the handling of an issue in the framework of consultations had resulted in one of the States concerned being denied a fair opportunity to make its position known and the other State being given a dual veto.

107. While recognizing that this sentence reflected a legitimate concern, some delegations suggested using a flexible formulation, avoiding words such as "equal" and "ensure", and leaving it to the members of the Security Council to find the solution most suited to the requirements of specific situations, bearing in mind the requirements of confidentiality. Doubts were expressed about the phrase "directly concerned", which was viewed as too loose, and which, it was suggested, could be replaced by "States parties and States directly affected".

Paragraph 8

108. The thrust of this paragraph was viewed as acceptable by a number of delegations. It was, however, felt that it should be drafted in more general terms and that the option envisaged in rule 23 of the provisional rules of procedure of the Security Council should be mentioned as one among others which were open to the Council. Attention was drawn in this respect to the courses of action mentioned in rules 28 and 39 as well as to various other possibilities (submission of periodic or occasional reports, sending of fact-finding missions under an explicit mandate of the Council or under Chapter VI, resort to the good offices of the Secretary-General etc.).

109. The view was expressed, however, that the paragraph as drafted addressed an injunction to the Security Council and infringed upon its discretionary powers and that it would be better to leave it to the Council to choose, on the basis of the facts, the course of action best suited to individual cases.

Paragraph 9

110. This paragraph was described by some delegations as useful and constructive even though the phrase "greater use" was viewed as suggesting an unwarranted criticism of the current practice. It gave rise, however, to reservations on the part of other delegations.

111. The remarks made in the context of paragraph 1 concerning the juxtaposition of the words "action" and "relevant United Nations organs" were repeated in the context of paragraph 9 (see para. 84 above) and preference was expressed for a less loaded term, such as "activity".

112. It was also stressed that the fact-finding missions dispatched by the Security Council under Article 34 were not, from the legal point of view, subject to the consent of the receiving State and that this nuance should be brought out in the text. Although agreeing with this analysis, one representative said that it would not be prudent nor realistic to suggest that the Security Council could freely send missions to countries without their consent and that too much insistence on precision might not result in an expansion of the area of agreement. The remark was further made that, at the preventive stage, it was legitimate to make the sending of fact-finding missions conditional upon the consent of the receiving

State in all cases to enhance the chances of success of the mission. It was also stressed that the sending of fact-finding missions must be by a resolution adopted by the Security Council or by the General Assembly. It was further noted that no indication was provided as to who should make greater use of United Nations fact-finding capabilities and that the vagueness of the wording was compounded by the inclusion of the words "whenever appropriate". In this connection, a suggestion was made to insert the words "it deems" before the word "appropriate" in order to indicate clearly that the United Nations organs are competent to decide upon the appropriateness of resorting to such fact-finding capabilities.

113. The doubts expressed in the context of paragraph 2 on the phrase "the receiving State" on account of the special situation of occupied territories were repeated in the context of this paragraph. In this context, it was suggested that "the receiving State" should be replaced by "the States concerned" or "the States parties to a dispute". Another suggestion was to insert the words "the Government of" before "receiving State". The phrase "the receiving State" was, on the other hand, viewed as offering a good solution to the problem. It was remarked in this connection that in the case of occupied territories the power to consent rested legally with the occupied State but had, in practice, to be obtained from the occupying State and that the problem was compounded if the existence of a situation of occupation was itself in dispute. The essential concern in dealing with the problem was, it was stated, to obtain the required degree of co-operation.

114. Other delegations objected to the general approach reflected in this paragraph which, like many others, lumped together distinct organs having different powers under the Charter. It was stressed, in this connection, that action in the area of the maintenance of international peace and security was the exclusive prerogative of the Security Council and that, if the text were to be reformulated on that basis, the words "with the consent of the receiving State" could be eliminated, as could also the phrase "whenever appropriate", since every case would be determined in accordance with the practice of the Security Council. If, on the other hand, the co-sponsors intended to cover the preventive role which the General Assembly could play in certain cases, they should adjust the wording accordingly.

115. Doubts were furthermore expressed on the desirability of institutionalizing fact-finding activities which, at the stage of prevention, could easily result in an aggravation of the situation and were far less likely to lead to a positive result than direct negotiations between the States concerned.

116. A spokesman of the co-sponsors indicated that paragraphs 6 to 9 reflected, on the one hand, an awareness of the undesirability of putting any pressure on the Security Council and, on the other, a concern for finding areas where the Charter could be strengthened. He referred in this context to the views expressed by the Secretary-General on the strengthening of his political role, which are reflected in paragraph 77 above. He added that the co-sponsors had taken note of a number of useful suggestions made in connection with paragraphs 6 to 9 and would give them sympathetic consideration.

Section II

Paragraphs 1 to 4

117. In introducing these paragraphs, a spokesman of the co-sponsors stressed that paragraph 1 of section II was the counterpart to paragraph 1 of section I and, in keeping with the general approach reflected in the paper, dealt not with the whole

range of obligations of States in the prevention of conflicts - an area where the possibility of reaching general agreement was dubious - but with one specific but pivotal obligation relating to the preventive role of United Nations organs, an obligation which had found expression in the Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. 12/ Paragraph 2 supplemented paragraph 1 by providing that States could obtain assistance from the relevant United Nations organs, either formally or informally. This assistance was to take the form of suggestions on appropriate preventive means rather than that of suggestions for the solution of the problem, in order not to prejudice Article 38. Paragraph 3 provided for the possibility of informally involving the Security Council and was worded so as to preserve the freedom of choice of the States concerned. Paragraph 4 did not contain the proviso appearing in paragraph 3 concerning the intention to request a meeting of the Council but, unlike paragraph 3, left no option to the Secretary-General as to the confidential nature of his approach to the Council. Paragraphs 3 and 4 had been drafted so as to avoid the premature internationalization of an incipient dispute and leave the States concerned free to resort to direct bilateral means of solving the problem.

118. The criticisms previously formulated with respect to the absence of provisions on the preventive role of States (see paras. 70 and 82 above) and to the use of the word "matters" (see para. 82) were reiterated in the context of paragraphs 1 to 4 of section II, as were also the views previously expressed on the applicability of the Charter to disputes and situations at all stages, including the very early ones (see para. 73).

119. The observation was made that paragraphs 1 to 4 appeared to refer to an essentially informal stage prior to the formal involvement of the Security Council and that there seemed to be a missing link between those paragraphs and paragraph 5, inasmuch as the Council's response could only come from formal meetings.

120. The view was also expressed that the dividing line between preparations for preventive action and the preventive action itself did not clearly emerge from the paper. It was said in this connection that the first three paragraphs of section II did not fall under preventive action. Another remark was that paragraph 2 belonged in section I.

121. The comments made in the context of previous paragraphs on the juxtaposition of the word "action" and the phrase "relevant United Nations organs" (see paras. 84 and 111 above) were reiterated in the context of the title of the section as well as of its paragraph 1. To allay the fears expressed in this connection, the suggestion was made to include in the text of the working paper a provision based on the third paragraph of the explanatory note.

Paragraph 1

122. The term "principal organs of the United Nations" gave rise to a number of criticisms. In particular, it was emphasized that the term included the International Court of Justice and that a State that had not recognized the compulsory jurisdiction of the Court could not be obliged to co-operate fully with it and to assist it in its preventive action without knowing what kind of preventive action was involved. The sponsors subsequently indicated that the term

"principal organs" had been used by mistake in paragraph 1 and should be replaced by "competent organs". It was noted, however, that the change did not remove the difficulties mentioned above.

123. The view was expressed that care should be taken not to go beyond Article 25 of the Charter and the relevant provisions of the Declaration concerning Friendly Relations. A suggestion that recommendations were more than recommendations would, it was stated, be counterproductive. The view was, on the other hand, expressed that recommendations in the area of maintenance of international peace and security should be given due recognition and respect and that there was nothing wrong in urging States to abide by such recommendations. Another remark was that the current wording was too sweeping and the suggestion was made to add at the end "brought to its attention".

124. With respect to the words "Member States", the view was expressed that even though paragraph 5 of Article 2 of the Charter of the United Nations was confined to the Members of the United Nations, sight should not be lost of paragraph 2 of Article 11 and paragraph 2 of Article 35. It was, therefore, suggested that paragraph 2 should be drafted so as to encompass all States.

125. It was suggested that the order of paragraphs 1 and 2 should be inverted, and paragraph 1 reworded as follows: "Member States should support the preventive steps taken by competent organs of the United Nations."

Paragraph 2

126. While some delegations supported this paragraph, others expressed doubts as to its practical usefulness. The view was expressed that the decisive factor was the political will of States to take preventive steps and that there was no lack of means in this area. The remark was further made that it might be counterproductive to encourage States to address United Nations organs at the embryonic stage of development of a conflict, a stage where undertaking negotiations appeared to be a wiser course of action, particularly since involvement of the United Nations could lead to decisions binding on the States concerned. The remark made, was on the other hand, that under the current wording States were not precluded from carrying out negotiations before approaching the relevant United Nations organs and that the phrase "at an early stage" was not intended to encourage States parties to approach relevant United Nations organs before a dispute had been identified and the portents of a threat to international peace and security had become visible.

127. Commenting on paragraphs 2 and 3, one delegation noted that those paragraphs created the erroneous impression that there were only two sets of circumstances in which States should be encouraged to approach the Security Council, namely, first if they wished to obtain suggestions for preventive means and secondly if they were thinking of formally requesting a meeting of the Security Council. To cure this defect, the suggestion was made either to merge paragraphs 2 and 3 or to return to the wording contained in the original version of the working paper.

Paragraphs 3 and 4

128. Some representatives held the view that paragraphs 3 and 4 should be brought more closely in line with each other. In this connection, it was said that the qualification relating to the intention to request a meeting of the Council was adequately drafted in paragraph 4 but was worded too restrictively in paragraph 3,

the result being that, compared to the Secretary-General, States were placed in a disadvantageous position. Another suggestion aimed at bringing the two paragraphs in line was to delete in paragraph 3 the words "if appropriate".

129. Other delegations asked whether it was advisable to place Member States and the Secretary-General on an equal footing. It was said in this connection that, whereas States involved in a particular incipient dispute or situation were fully aware of all the specifics and could take an informed decision, the Secretary-General did not have first-hand knowledge of the facts and might place himself in an awkward position if he intervened in delicate matters at an early stage before the Security Council had determined whether the continuation of the dispute or situation was likely to endanger the maintenance of international peace and security. Attention was drawn in this connection to Article 2, paragraph 7, of the Charter.

130. Comments relating specifically to paragraph 3 included the remark that, under the Charter and the provisional rules of procedure of the Security Council, only Member States and the Secretary-General were entitled to request a meeting of the Council and the observation that the phrase "States directly concerned" was too vague.

131. As to the reference to the "intention" of Member States or the Secretary-General to formally request a meeting of the Security Council, the remark was made that this was a novel concept which conflicted with the relevant provisions of the Charter and of the provisional rules of procedure of the Council and which disregarded the fact that under Article 99, the decisive criterion that the Secretary-General had to take into consideration in deciding whether to bring a matter before the Security Council was whether there existed, in his opinion, a threat to international peace and security.

132. Several delegations commented on the relationship between paragraphs 3 and 4 of section II, on the one hand, and paragraph 6 of section I, on the other. It was asked in this connection why a restriction was placed by the former provisions but not by the latter on the exercise by Member States and the Secretary-General of the prerogatives conferred upon them by Articles 35 and 99, respectively; why the same temporal element ("at an early stage") appeared in all three provisions, even though they referred to different points in time, and why paragraph 6 of section I, unlike paragraphs 3 and 4 of section II, did not allot for approaching the Security Council on a confidential basis. In view of those difficulties, the opinion was expressed that it would be preferable to remove the restrictions mentioned. Since paragraphs 3 and 4 of section II would then to a large extent duplicate paragraph 6 of section I, it would be advisable to delete them.

133. Comments on paragraph 4 included the remark that the words "on a confidential basis" were out of place inasmuch as the paragraph seemed to envisage not an initiative of the Secretary-General on the basis of Article 99 but a request for a meeting prompted by a State.

134. A spokesman of the co-sponsors indicated that the division into two sections, although much simpler than the structure of the original paper, seemed to create practical difficulties and could be done away with. At the time of reviewing the organization of the paper, including the reordering of paragraphs, consideration would be given to the various views expressed, including the remarks made on the relationship between paragraphs 3 and 4 of section II and paragraph 6 of section I,

on the phrase "at an early stage" and on the possibility of including a link between paragraphs 1 to 4 and paragraph 5 of section II. In the latter respect, however, he pointed out that the paragraphs dealt with the informal stage of conflict prevention and that a formal setting of the Security Council was not yet indispensable. As far as the wording is concerned, he agreed that the reference to "international organizations" should be deleted. He also agreed that paragraphs 3 and 4 could be brought more closely in line with each other or even be merged. In doing so, the co-sponsors would make sure that the modalities to be respected in approaching the Security Council would not generate any discrimination.

Paragraphs 5 to 8

135. The spokesman for the co-sponsors, in introducing this cluster of paragraphs, pointed out that the emphasis of the paragraphs was on the possibilities of Security Council action of an informal character in the early stages of crisis prevention. It was clear, however, that a more formal framework would be required if the Council proceeded to take decisions. Paragraph 5 was worded flexibly and was intended to clarify those steps which the Security Council could take in response to informal, initial approaches by Member States or the Secretary-General. Three possible responses were highlighted in the paragraph: subparagraph (a) dealt with the use of confidential means; subparagraph (c) with recommending informal means of settlement; and subparagraph (b) noted a more specific response. Regarding the use of confidential means (subparagraph (a)), the spokesman stressed that confidentiality did not signify "secret diplomacy", but rather the exercise of a high form of discretion, with no public exposure. The informal means of settlement which the Council could consider recommending (subparagraph (c)) referred to informal means for settlement raised with the States concerned within the context of Security Council deliberations; the Council could provide, in fact, a negotiating forum. This would be without prejudice to other means of settlement which the States concerned might freely choose. The specific element noted in subparagraph (b) was envisaged as an early, informal appeal to the States concerned, not the result of a formal Council meeting. Paragraphs 6 and 7 were also intended to highlight possibilities of an informal character available for consideration by the Council at this initial early stage of the dispute or situation, although formal meetings would be required for any ultimate decision-making. At this stage, the consideration of the possibilities mentioned did not create obligations either for the States concerned or for the Council, but constituted a means to assist those States with a view to preventing the situation, matter or dispute, from deteriorating. Paragraph 8, as well, created no obligations and was drafted flexibly, preserving the Council's freedom of action with regard to possible regional efforts.

136. Some representatives supported the substance of the paragraphs and believed them to be consonant with the provisions of the Charter. They were considered to be modest, generally prudent proposals dealing with a variety of situations as they arose and setting forth practical means by which the Council could become involved at the early stages of conflict prevention. The intention appeared to be to make the Security Council more effective than at present, a goal which should be shared by all. Other representatives, on the other hand, expressed reservations or doubts concerning the meaning and practicability of the paragraphs and believed they were not in conformity with the Charter or suffered from serious omissions and flaws.

137. It was suggested by some representatives who generally supported the thrust of the paragraphs, that a certain degree of overlapping existed with earlier paragraphs, such as those set out in section I of the paper. The line of demarcation between the two sections of the paper was not easily discernible from its present organization. It was also urged that, at some point, the co-sponsors would have to indicate an order of priority among the various means indicated, as a situation developed.

138. The co-sponsors were also urged to make clear their intention with regard to the formal or informal character of the Council's activities they were proposing. As drafted, according to some representatives, the paragraphs seemed to imply a preference or priority for informal Council meetings and activity over official and public meetings of the Council. How to make Council involvement effective in preventing a worsening of a situation or dispute was the key question. Whether that effectiveness could be achieved through confidential, informal means or through public, official means would depend on the circumstances of each particular case; no general rule could be established. In some cases, public meetings and official Council responses might be more conducive to achieving the desired goal. Moreover, for decisions to be taken, the Council would have to act in an official manner.

139. Clarification was also requested on the question of timing. It was unclear whether the paragraphs would come into play before or after formal meetings of the Council.

140. Some speakers mentioned the desirability of inserting references to specific provisions of the Charter. Among those mentioned were Articles 33, 34, 35, 36, 37, 38, 39 and 40. Other suggested additions included: the holding of Council meetings in the area or region of the potential conflict; the problem of compliance with Council resolutions and the related question of an appropriate reporting system on such compliance; and the procedural or substantive nature of the decisions to be taken with regard to the paragraphs in question. Concerning the holding of Council meetings away from Headquarters, the view was expressed that such a suggestion was a profoundly bad idea and could lead, if accepted, to complete disruption of the work of the Council. Regarding the question of decision-making in the Council, the view was maintained that Article 27 settled the question and any mention of it in this context would be erroneous and lead to confusion.

141. The paragraphs were criticized for not recognizing the interrelationships between preventive action and the process of the peaceful settlement of disputes. Also, it was said, they did not reflect a functional relationship between the actions to be taken by the United Nations organs concerned and the actions of States parties to a potential conflict.

142. Certain representatives stated that the paragraphs ignored applicable Charter provisions. Attention was drawn to Chapters VI and VII of the Charter and to various provisions of the Manila Declaration on the Peaceful Settlement of International Disputes. A basic flaw was the failure to recognize the clear obligations of States to make efforts to prevent situations or disputes from degenerating into threats to international peace and security. A corollary flaw was the disregard of the free choice of means available to States to assist them in their search for solutions to disputes, as well as of the generally positive experiences of the Organization in this field for over 40 years. Rather than being

firmly based on the relevant Charter provisions, the paragraphs seemed to be intended to invent something new, and did not address the vitally important question of the removal of threats to the peace. Unless those flaws were corrected, the paragraphs would only lead to confusion and would thus be unacceptable.

143. Criticisms previously voiced with regard to the use of the word "matter" were reiterated (see para. 82 above).

144. Finally, one representative believed that the paragraphs reflected an overly cautious approach in using throughout "the Security Council should consider". The great potentialities of the Charter should be exploited and practical ways to strengthen the Organization explored. The words "should consider" should thus, it was stated, be deleted in the paragraphs in question.

Paragraph 5

145. In connection with this paragraph, some representatives believed it provided a fairly prudent list, a repertoire of some of the possibilities open to the Security Council for taking steps in the field of preventive action. Other representatives expressed doubts and objections as noted below.

146. Some delegations reiterated their concerns (see para. 138 above) with regard to the apparent priority given to confidential or informal means over public and official means and, in that connection, to a possible inconsistency between subparagraphs (a) and (c), which spoke of confidential and informal means, and subparagraph (b), dealing with an appeal to the States concerned which implied a more formal response. On the other hand, it was stressed that the intention had never been to tie the hands of the Security Council to only one method of operating. All were aware of other more formal means; the point of paragraph 5 was to highlight other less often used means. Moreover, confidential and formal means were not mutually exclusive.

147. In that connection, the co-sponsors were urged to include all possibilities open to the Council in the field of preventive action, including those of a more formal nature. Mention was made of the Council recommending officially, in accordance with Articles 36 and 37 of the Charter, to the States concerned appropriate means for peaceful settlement, including terms for the settlement of the particular dispute or situation, or principles and guidelines for use by those States in settling the dispute or situation. It was also suggested that the Council could establish subsidiary organs to consider means of settlement. Certain delegations also expressed the view that the Security Council could consider holding meetings away from the seat of the Organization, in accordance with Article 28, paragraph 3, of the Charter, and in the vicinity of a place where a dispute or a situation was likely to become exacerbated. Some delegations expressed doubts about the usefulness of this suggestion.

148. According to another view, mention should also be made of the possibility of the Council acting under Article 39, determining the existence of a threat to the peace and making recommendations thereunder. Article 40 of the Charter could also be utilized by the Council in order to call upon the parties to comply with provisional measures. Such formal action might, it was urged, be effective even at

the preventive action stage and could contribute positively to compliance. In that regard the question of reporting to the Council on compliance with, and follow-up to, its resolutions should also be addressed.

149. Strong reservations were expressed with regard to paragraph 5 on the basis of arguments noted previously (see paras. 70 and 82 above) concerning the role of States in preventive action and the need to mention all the possible means of settlement which States could freely choose. In addition, the contents of the paragraph relied on "confidential" and "informal" means which were devoid of meaning and without effect. The Security Council could take preventive action on the basis of clear provisions of the Charter, such as Articles 34 and 39. The Charter did not provide means for the Council to act confidentially or informally. Questions of compliance, such as under Article 40, or of other measures available to the Security Council, such as under Articles 5 and 6, could only be addressed if the Council had acted officially and formally. To refer to the use of "confidential" or "informal" means by the Council was impractical and not feasible, and such words could not be found in the Charter of the United Nations.

150. Turning to the chapeau of paragraph 5, the phrase "respond quickly" was questioned by certain representatives. Stress was placed on the need for the Council to act effectively and efficiently, which might be of even more importance than speed; that aspect should be added. It was also remarked that a quick response to a confidential approach could be totally one-sided if based on information from one party only.

151. According to one view, the chapeau incorrectly equated approaches made by States with approaches made by the Secretary-General. The latter approaches should be deleted and placed elsewhere. Another view held was that the chapeau should allow for the Security Council itself initiating the steps mentioned in the paragraph.

Paragraph 6

152. Some representatives had no difficulty with the general thrust of paragraph 6 and noted its flexibility in calling on the Council simply to consider the possibilities enumerated in the paragraph. A formal meeting would be required for the taking of any decision. Approval was voiced in particular for the idea of sending fact-finding missions at an early stage of the situation or dispute. Other representatives believed that it might be premature for the Council to consider the actions suggested at this initial stage. The paragraph seemed to narrow the free choice of means available to States. Emphasis should first be placed on direct negotiations and the role of States in preventive action.

153. The phrase "appropriate forms of United Nations presence" was seen as vague and unclear, requiring clarification and, perhaps, elucidation in the paragraph.

154. It was also said that the paragraph duplicated paragraph 9 of section I.

Paragraph 7

155. Some representatives questioned the appropriateness of referring to the consideration of using peace-keeping operations at the preventive action stage. It was noted that such operations were usually established at a later stage, when a

dispute was very much in existence and a situation had deteriorated. It was considered unrealistic by some and unwise to consider their use at such an early stage. One representative suggested its deletion.

156. On the other hand, the possibility of using such operations at an earlier stage should not, it was urged, be totally excluded. Perhaps it was preferable to keep the peace before it was lost rather than to control a conflict which had actually broken out. Also, it was suggested that other measures might be examined for possible inclusion, such as the use of observers or establishment of buffer zones.

157. It was also stressed that only the Security Council was authorized to take decisions on initiating peace-keeping operations in conformity with the provisions of the Charter.

Paragraph 8

158. Several representatives supported the general idea reflected in the paragraph. The suggestion was made, however, to specify the agreement of the parties concerned to the efforts undertaken at the regional level. In this connection the view was expressed that the support given by the Security Council to regional efforts should not detract from the Council's obligations under the Charter if the situation deteriorated or if one of the parties involved wished to bring the matter before the Council. Certain representatives urged that the text be brought into line with the provisions of Chapter VIII of the Charter and reference was made as well to the relevant provision included in the Manila Declaration.

159. In response to points made in the debate on this cluster of paragraphs, a spokesman for the co-sponsors stressed their intention to respect and maintain the provisions of the Charter, in particular the balance between the main organs of the Organization. They also recognized that there was a narrow line between the conduct of States and that of United Nations organs in the preventive action field, between formal and informal procedures available to United Nations organs, and between confidential and public proceedings. He stressed that there was no intention whatever to place informal or confidential proceedings above the Security Council's general rights to take and possibilities for taking formal action at any point. In paragraph 5, emphasis was placed on flexibility and discretion; no general rule was proposed. While it focused on a few of the more informal possibilities less frequently used, the use of formal means was in no way excluded. Paragraphs 6 to 8 were based on more public or official acts but did not exclude more informal procedures as a result of confidential consultations with the parties concerned. Formal and informal procedures could be complementary. Account would be taken of the various drafting and organizational suggestions made.

160. With regard to paragraph 5, he agreed that the Council should respond efficiently as well as quickly and that initiatives on its own part should not be excluded. Confidentiality was necessary to enable discreet interaction between the States concerned and the organ in question. The appeal referred to in subparagraph (b) could be either formal or informal and could be supplemented by a reference to the obligation of States to assist in the resolution of the potential dispute. Subparagraph (c) referred to informal recommendations for means of settlement, which could contribute to building a basis of trust between the Council and the States concerned.

161. Paragraph 6 could involve, eventually, official action by the Security Council. The phrase "appropriate forms of United Nations presence" was difficult to spell out and the Council should be left discretion as to what forms such a presence could take.

162. The intention of the co-sponsors with regard to paragraph 7 was not to refer to the traditional peace-keeping operations used after a conflict had broken out, but to refer to their use at an earlier stage in order to avoid the outbreak of a conflict. A reference to observer missions could be added. Action under this paragraph could be combined with that taken under paragraph 6.

163. Certain representatives reiterated previous comments or made supplementary remarks following the spokesman's summation. It was maintained that certain inconsistencies and difficulties remained with regard to paragraph 5 and that paragraph 7 would require reformulation in order to reflect its intended meaning. It was also said that despite the co-sponsors' intentions, the paragraphs in question established no links between the role of States in the prevention and removal of threats to the peace and that of United Nations organs.

164. One representative suggested that, to add a touch of reality to the discussion, the Working Group should analyse case studies of concrete disputes and examine what the Council did or did not do. Such an analysis might assist in pin-pointing what measures could be taken to enhance the Council's and the Organization's effectiveness. While that suggestion was considered sympathetically by some representatives, they believed such a working method might lead to heated discussions and difficulties. It was recalled, however, that the Council itself was engaged in consultations on many of the issues being discussed within the Working Group.

Paragraphs 9 to 11

165. The spokesman for the co-sponsors, when introducing this cluster of paragraphs, stressed that they were intended to strengthen the effectiveness of the powers of the Secretary-General in connection with the prevention of threats to international peace and security, based upon the provisions of the Charter, the Security Council provisional rules of procedures and practice. There was no intention to widen or narrow in any sense the scope of the Charter or the institutional balance between any of the principal organs. Paragraph 9 dealt with the case of States directly contacting the Secretary-General. Such approaches were inspired by their sovereign political will and by their trust in the integrity, total discretion and objectivity of the office of the Secretary-General. On the other hand, paragraph 10 concerned the Secretary-General considering the possibility of contacting the States directly concerned, prior to his deciding to bring the matter to the attention of the Security Council under Article 99. This paragraph responds to suggestions made on the original working paper and reflects an attempt to carefully draft one possibility which the Secretary-General might use for the prevention of conflict, in close contact with the States directly concerned. Paragraph 11 refers to one of the principal examples of preventive action which the Secretary-General might take in accordance with the Charter. The importance of his role under Article 99 has been clearly recognized in practice and endorsed by the Security Council and the General Assembly.

166. Some representatives supported the cluster of paragraphs, viewing them as positive, worthwhile and useful. They dealt with a laudable and desirable goal. The Secretary-General must be encouraged to use his discretion and authority in order to help prevent conflicts from erupting. The paragraphs were said to be moderate, fully in conformity with the Charter, with no attempt to create anything new, and responsive to the Secretary-General's own appeals for political support of his efforts to assist in preventing the outbreak of conflict. It was essential to include such paragraphs in any paper on this subject being discussed.

167. On the other hand, other representatives expressed strong reservations concerning the three paragraphs which appeared to constitute an attempt to place the Secretary-General outside the Charter and compel him to act against it. His powers in this field were carefully delineated by Article 99 of the Charter beyond which he had no authority to act unless authorized by the Security Council. Article 24 accorded primary responsibility in the maintenance of international peace and security to the Council and the paragraphs had the effect of blurring the clear-cut balance of competences laid down in the Charter. It was stated that strict consistency with the Charter was required in order to avoid confusion and abuses, which had occurred in the past. As indicated earlier, the main lacuna was the failure to refer to the obligations, efforts and conduct of States in the preventive action area.

168. This view was not shared by other representatives. It was stressed that the paragraphs related to preventive action at the most preliminary stages of a dispute or situation. The Charter accorded no exclusive powers to any given organ at that stage. The paragraphs were expressions of preventive diplomacy possibilities open to the Secretary-General and were fully consistent with the Charter and United Nations practice as well as with his position as a major international figure who was head of one of the principal organs of the Organization. The paragraphs confirmed the confidence and trust which Member States held for the office and simply recognized a natural, major development to be welcomed and encouraged. Assertions of past abuses were groundless. It was in the interest of the Organization and of the universally held goal of enhancing its effectiveness in the maintenance of international peace and security that the Secretary-General should be encouraged to explore all possibilities consistent with the Charter to assist in conflict prevention and the peaceful resolution of disputes. Finally, the question of the rights and duties of States was a separate matter which could, if appropriate, be discussed at a later stage.

169. Questions were raised, however, concerning the interpretation of the paragraphs in relation to the timing of the Secretary-General's possible efforts referred to in paragraphs 9 and 10. They implied that the Secretary-General was required to be approached by, or to approach, the States directly concerned before deciding to bring the matter to the attention of the Security Council. Such an interpretation would be in conflict with the provisions of Article 24 and should be avoided in any event, since the Secretary-General's preventive action efforts might well be appropriate after the Council had met or after the question had been placed on the agenda of any United Nations organ. The paragraphs should be clarified.

170. According to one view put forward, the cluster of paragraphs revealed an overly-optimistic view of what the Secretary-General could do in this field. The paper seemed to imply that if only the parties came to the United Nations at an early stage, there would be a greater chance for resolution of problems or disputes. But various practical and political constraints must be borne in mind

and it was necessary that certain conditions should exist before United Nations organs could be effective. For the Secretary-General to be effective, one necessary condition was the capacity to gather information on a given situation which was fair, objective and unmotivated; that was extremely difficult given the often controversial and contradictory information made available to the Organization. Another condition was the agreement of all parties concerned in a given dispute or situation to seek the help of the Secretary-General. Finally, the Secretary-General needed the collegial and consensual support of the permanent members of the Council in order for him to act effectively.

171. This conclusion as to the over-optimistic nature of the paragraphs was not shared by others, who believed that the paragraphs had indeed taken into account reality and had recognized the constraints of the existing system.

172. Certain representatives stressed, however, the importance of the Secretary-General, when making efforts in the preventive action field, being in a position to gather information and facts so that he could make an informed judgement. He must be in a position to evaluate the situation, identify a potential conflict or dispute and make an autonomous judgement in order to take such initiatives as were provided for in the paragraphs. Paragraphs 9 and 10 seemed particularly designed to afford the Secretary-General possibilities for informing himself of the facts prior to making the judgement required for invoking Article 99.

173. In that connection, it was urged that this cluster should include a distinct reference to Article 98 of the Charter. In order to carry out the functions entrusted to him, including his Article 99 prerogatives, the Secretary-General needed a wider, systematic fact-finding capacity in the area of conflict. Reference could be made to the possibility of dispatching special representatives or observers who would report back to the Secretary-General and the Council. In addition, Article 98 highlighted the importance of the Secretary-General's reporting functions and the need for monitoring compliance.

174. Another suggestion made was to include a provision in this cluster concerning regional efforts in preventive action, along the lines of paragraphs 8 and 13 of section II. The Secretary-General was well placed to encourage such efforts and such a provision would underline another possibility open to him when exploring ways and means to prevent the outbreak of conflict. The latter proposal was criticized as not being compatible with Article 53 of the Charter.

Paragraph 9

175. Some representatives specifically supported the thrust of paragraph 9 and noted that it was fully consistent with the Charter and present practice and was based on the political will and agreement of the States concerned.

176. On the other hand, other representatives questioned the paragraph as being inconsistent with the Charter, ignoring Articles 34 and 39 and going well beyond the Secretary-General's authority under Article 99. Questions were raised as to how the Secretary-General would be "approached", and as to how he could respond in the manner suggested without the consent of all States concerned and without a decision taken by the Security Council. Also, the paragraph constituted pressure on the Secretary-General and violated the free choice of means as it referred specifically to only one means among many available. On this latter point, certain

representatives disagreed. The paragraph simply referred to an offer of good offices, which obviously any State was free to reject. In any event, "good offices" was entirely appropriate to mention if understood in its general, non-technical sense.

177. The drafting raised questions with regard to the intention of the co-sponsors. It was stressed by some representatives that, in order for the paragraph to be meaningfully applied, all States directly concerned should agree on approaching the Secretary-General. Certain representatives doubted the wisdom of his responding "swiftly", noting that the speed of response would depend on the given circumstances and that using "swiftly" implied a criticism that the Secretary-General was not acting with sufficient promptness. But other representatives favoured maintaining "swiftly", pointing out the reference in Article 24 to "prompt" action by the United Nations and the fact that, once States had approached him, the Secretary-General should not delay a response. Also, the suggestion was made to provide for his responding "intensively" as well as "swiftly".

178. References were also made to the phrase "other means at his disposal". Some representatives urged that it be clarified and such other means spelled out. Other representatives believed it should remain in general terms, allowing the Secretary-General a wide latitude of discretion.

Paragraph 10

179. Paragraph 10 was supported by some representatives which viewed it as an important element in preventive diplomacy and as a helpful signpost of possible Secretary-General initiatives in helping to avert the aggravation of disputes or situations. Nothing in the Charter prevented the Secretary-General from taking such initiatives which, given his discretion, objectivity and good judgement, should be welcomed by all. The paragraph recognized the important role that quiet diplomacy might play in averting a deterioration of a situation and was a confirmation of the relations of mutual confidence existing between the Secretary-General and other principal organs and between the Secretary-General and Member States.

180. Other representatives stressed that the Charter did not empower the Secretary-General to undertake the initiatives suggested. The paragraph encroached on the Security Council's primary responsibility; it risked placing the Secretary-General in a position contrary to the wishes of the sovereign States directly concerned and might lead to unforeseen or unfortunate consequences.

181. As to the meaning of the paragraph, it was remarked that it should be made clear that it was the preventive action stage at issue, and that required the co-operation of the States directly concerned. It was unnecessary to refer to "before deciding to bring a matter to the attention of the Security Council" which constituted a more formal step, possibly to be taken at a later stage.

182. Clarifications were also urged regarding the relationship of the paragraph with paragraph 2 of section II and with regard to various means which might be invoked, such as good offices.

Paragraph 11

183. Paragraph 11 was supported by some representatives as a helpful reminder of the possibility open to the Secretary-General to utilize Article 99. While that Article should of course be used with discretion, it was nevertheless useful to encourage the Secretary-General to consider its use in the early stages of a potential dispute. According to certain representatives, the Article should be used more often.

184. Other representatives held the view that the paragraph was an inappropriate pressuring of the Secretary-General. The use of Article 99 required due caution and reflection on his part. Sovereign States, especially at the initial stages of a situation, were best equipped to deal with the situation and to assess the means to be outlined to resolve it. The Secretary-General had no authority on his own to take any action, unless requested to do so by the appropriate organ or at the direct request of Member States. It was furthermore mentioned that the paragraph implied a criticism of the Secretary-General, suggesting that he was not aware of the possibility of employing Article 99.

185. Certain representatives urged clarification of the relationship between paragraph 11 and paragraph 6 of section I. A degree of overlapping or duplication appeared to exist. Also, it was suggested that the drafting of the paragraph should be brought into line with Article 99 and with rule 3 of the Council's provisional rules of procedure.

186. In commenting on the debate held on paragraphs 9 to 11, a spokesman for the co-sponsors said that a good number of delegations felt it appropriate to give thought to the means required to strengthen the role of the Secretary-General in conflict prevention, while other delegations believed there was danger in going too far. He stressed that the paragraphs provided criteria, not norms, which were based on the normal development of the role of the Secretary-General in his contacts with Member States. In general, while there were differing interpretations expressed on the issues raised by the paragraphs, in pragmatic terms perhaps such interpretations were not that far apart. As to strengthening the information-gathering capabilities of the Secretary-General, the spokesman referred to paragraphs 1 to 4 of section I which were designed to enlarge the quantity and quality of information available to the Secretary-General. As far as the Secretary-General's exercising monitoring functions over compliance with preventive action steps and United Nations resolutions in general was concerned, he suggested that the matter was for a later stage and referred, in particular, to paragraph 15 of section II.

187. Turning to paragraph 9, he said that the phrase "other means at his disposal" had been deliberately drafted in general terms to reflect confidence in the Secretary-General's discretion and neutrality in finding the most appropriate means. It was intended to cover all peaceful means mentioned in the Charter, including negotiation; all possibilities remained open. The word "swiftly" meant that the Secretary-General would give attention to the approach made by the States concerned. It was not intended to prejudge any particular type of means or to urge a rapid adoption of any particular means. Also, the paragraph was not couched in mandatory terms. The Secretary-General must respond realistically, in contact with, and at the request of, Governments.

188. With regard to paragraph 10, the spokesman stressed that it was to be assumed that the Secretary-General would never launch initiatives in the face of opposition from any State directly concerned. With regard to the relationship of the paragraph with Article 24, he said that there was no time hierarchy involved between Secretary-General and Security Council activities. The approaches to be undertaken by the Secretary-General could also take place after the Security Council had met. There was no requirement intended that such approaches must precede the Secretary-General's invocation of Article 99. Also, the approaches in question constituted "quiet diplomacy" and were not to be considered interference in the internal affairs of States.

189. Finally, regarding paragraph 11, the spokesman noted that Article 99 had been used by the Secretary-General only rarely. The paragraph did not attempt to pressure him in any way, but was designed simply to recall one of the important options which he should consider in any preventive activity. Paragraph 11 was made separate from paragraph 6 of section I in response to suggestions made last year with regard to the original working paper.

190. Following the spokesman's remarks, certain representatives reverted to points raised in the debate. One delegation suggested to the co-sponsors to reformulate paragraph 10 in the light of their intentions. Certain delegations requested them to consider the suggestion made earlier (see para. 174) concerning the Secretary-General's encouraging regional efforts. Still another delegation expressed misgivings with regard to the latter proposal which ignored the provisions of the Charter. The Security Council was the organ authorized to encourage or utilize efforts by regional arrangements, not the Secretary-General. The same delegation expressed doubts concerning a possible interpretation that under paragraph 9 the Secretary-General could suggest to States directly concerned the peaceful means enumerated in Article 33; only the Security Council could call upon the parties to settle their dispute by such means.

Paragraphs 12 to 15

191. A spokesman for the co-sponsors noted that this cluster of paragraphs concerned three different aspects. First, paragraphs 12 and 13 related to the General Assembly. Paragraph 12 encouraged the General Assembly to make full use of such Charter provisions as Articles 10, 11 and 14 and, by paragraph 13, the General Assembly would encourage regional efforts aimed at prevention or removal of situations or matters in the region concerned. Secondly, paragraph 14 dealt with a new subject-matter added in response to comments made by delegations in the Sixth Committee who thought that it would be helpful, in the prevention of conflict, for the Assembly or Council to consider making early and full use of the possibility of requesting an advisory opinion of the International Court of Justice on any legal question. Finally, paragraph 15 repeated an element mentioned in the original working paper on the review of preventive action taken.

192. Some representatives supported the thrust of this cluster of paragraphs and noted with satisfaction that they reflected a desire to encourage the General Assembly to make full use of its powers under the Charter in the field of maintenance of international peace and security. Besides those Articles mentioned by the spokesman of the co-sponsors, Article 15 was also highlighted as being relevant.

193. It was moreover suggested by certain representatives that, in the light of the specificity of previous paragraphs concerning the roles of the Security Council and the Secretary-General, further elaboration of the possibilities for a preventive role to be played by the General Assembly was necessary. In the development of the Organization over 40 years, the General Assembly had played in many cases an important preventive role, particularly when the Security Council had been prevented from acting and when the Secretary-General's efforts had not yielded results. Such an elaboration of the Assembly's role would reflect the importance attached by Member States to enhancing it and to encouraging the widest possible participation of Member States in the Organization's activities, particularly with regard to the all-important question of the maintenance of international peace and security. It was not a question of equating the roles of the Council and the Assembly with regard to that question, but of enhancing the Assembly's role envisaged in the Charter and as established in practice.

194. It was suggested that the paragraphs should include a reference to the fact that over the years the Assembly had exercised increasingly important responsibilities concerning the maintenance of international peace and security. Reference could also be made to the rules of procedure of the General Assembly on providing for the convening of emergency special sessions. Suggestions were also made to include reference to other aspects of the Assembly's role in the prevention of disputes or situations. Mention was made of the Assembly recommending means or modalities for the peaceful settlement of a dispute brought before it and the Assembly undertaking a process of consultations with the parties to a dispute or situation.

195. On the other hand, the view was maintained that the thrust of the paragraphs was wrong as they implied parity between the roles of the Security Council and the General Assembly in the field of maintenance of international peace and security, or even a superior role for the Assembly. This contradicted not only Charter provisions (such as Article 24) but also common sense. While it was agreed by all that the Assembly had an important residual role to play in the maintenance of international peace and security, the primary responsibility rested squarely with the Security Council, which was the only organ empowered to take binding decisions. Moreover, as the subject under discussion concerned preventive activity at the early stages of a situation or dispute, discretion and confidentiality were often of the greatest importance. Those aspects of quiet diplomacy could not be easily found in the context of the General Assembly. What could, therefore, be envisaged was a separate paragraph recognizing the Assembly's residual role in the field, which could be utilized at a given stage of a conflict if deemed necessary and desirable.

Paragraph 12

196. Some representatives found the paragraph generally unobjectionable as long as it was understood that "the provisions of the Charter" meant Articles 10, 11 and 14. It was suggested that a specific reference to Article 11 should be added. Also suggested by one representative was the deletion of the reference to Article 12 or, alternatively, the addition of a reference to practice. Objection to that suggestion was, however, made by another representative. Another suggestion regarding the reference to Article 12 was to change "without prejudice to" to "subject to". The view was also expressed that a reference should be made to the effect that the General Assembly in exercising the functions referred to in the paragraph should take into account relevant resolutions in that area,

particularly resolution 377 (V) of 3 November 1950 on uniting for peace. Another view was expressed that that resolution was contrary to the United Nations Charter and should be considered unlawful.

197. It was remarked that the paragraph implied that the Assembly had failed to act more forcefully in the preventive action field. But perhaps that implication was a necessary reflection of reality, given the nature of Assembly debates and its inability to contribute meaningfully to the solution of disputes at the preliminary stage of the development of a conflict or dispute.

198. The criticism of the term "matter" was reiterated (see para. 82 above); the term "question" was deemed more appropriate.

Paragraph 13

199. According to some representatives, the paragraph was acceptable as it reflected existing Assembly practice. But other representatives expressed strong reservations as it appeared to be in contravention with the provisions of Chapter VIII of the Charter. Articles 52 and 53 conferred certain powers and responsibilities only to the Security Council, not to other organs, with regard to efforts made under regional arrangements. The fact that the Charter did not explicitly contain a prohibition of the Assembly activity envisaged could not alter the fact that the Charter had conferred the powers and functions in question on one organ and not on the other.

Paragraph 14

200. According to one view expressed, the paragraph was of great importance and its addition to the paper welcomed. It was a recognition of the role of the International Court of Justice as the principal judicial organ of the Organization.

201. It was, however, noted that in cases of controversy between States, what was highly desirable was for those States to agree to refer the matter to the Court as a contentious case for binding decision. While that was the preferred course of action, there might, none the less, be some utility in providing for the submission of a request for an advisory opinion by the Council or Assembly where it was felt that such an opinion could be advantageous in moving towards a settlement of a dispute. Even if not binding, the weight and authority of a pronouncement by the Court could have a useful effect. While it would be most desirable if all parties agreed to the request, the Court was not precluded from offering advice to the Council or the Assembly even absent formal consent of all States concerned.

202. Certain representatives, however, expressed serious objections concerning paragraph 14 and urged its deletion. It attempted to circumvent the Charter, in particular Article 96 which did not provide the possibility for States to request advisory opinions. The paragraph constituted an unwarranted interference in the internal affairs of States and a violation of sovereignty and of the free choice of means available to States. States were free to choose their own means of settling a dispute, including judicial settlement, if they so desired. But to exert pressure on States to do so was inadmissible. In addition, it was doubted from the practical standpoint whether such advisory opinions would be helpful. Time elapsed before such opinions were delivered and it was not always possible to separate the legal aspects of a dispute from its political ones.

Paragraph 15

203. Paramount importance was attached to this paragraph by certain representatives. It was stressed that even at the initial stages of a conflict or dispute, when preventive action steps had been taken, a procedure for reviewing compliance was needed. The important issue of devising a systematic reporting system on compliance required full consideration. According to one view, the paragraph required strengthening and it was proposed to delete the phrase "when appropriate".

204. On the other hand, opposition was expressed to that latter suggestion and serious reservations made with regard to the entire paragraph. The concept of "review" was vague and required clarification. One view maintained that the paragraph was contrary to the provisions of the Charter and that it should be deleted from the paper.

205. Other representatives urged adjustments to the paragraph. One suggestion was to refer to preventive "efforts" rather than "action" and to place the emphasis on the continuity of such preventive efforts. Thus, it could provide that the preventive efforts taken in accordance with the above paragraphs should have the appropriate follow-up to avoid any worsening of the situation or its deterioration into conflict. Such a follow-up review or assessment would apply, it was added, only with regard to official preventive efforts, not those undertaken on an informal or confidential basis.

206. The use of the term "action" was again referred to (see para. 84 above). If maintained, such action could refer only to actions taken by the Security Council. The point was also made that to review compliance with General Assembly resolutions might deteriorate into recrimination. Assembly resolutions were only recommendatory and States were free to refuse to implement them if they felt there were good reasons for doing so.

207. Finally, questions were posed as to the meaning of the phrase "or a subsidiary organ thereof". It was doubtful to encourage subsidiary organs to monitor decisions taken by the principal organ, particularly in the case of preventive action.

208. The spokesman for the co-sponsors reiterated that it was not their intention to alter in any way the balance of functions and powers among the principal organs. It was recognized by all that the Assembly's role in the maintenance of international peace and security was residual and supplementary to the Council's primary role. As to paragraph 12, he said that its intention would be made clearer and that the manner of referring to Article 12 might be changed. Paragraph 13 attempted to recognize existing Assembly practice, which was not prohibited under the Charter. With regard to paragraph 14, he stressed that the language was not mandatory and left the disposition of the question totally up to the organ concerned. In paragraph 15, the word "review" had been chosen deliberately to cover various means of follow-up activities. Each organ concerned would decide on the concrete manner by which it wished to follow up its decisions. The inclusion of "subsidiary organ" was meant to cover any such body established for follow-up purposes by the Council or the Assembly, and drew from Security Council practice.

* * *

209. The last two meetings of the Working Group were devoted to a general assessment of the revised working paper and of the debate held thereon as well as to a discussion of future action in relation thereto.

210. There was general agreement that the question of the maintenance of international peace and security was worthy of the most attentive consideration. It was also widely recognized that the debate had been useful, constructive and business-like and that the co-sponsors deserved the Special Committee's appreciation for the effort they had made.

211. Several delegations said that they were basically in agreement with the thrust and content of the working paper and that the flaws they had detected therein were of a structural or drafting character and could be remedied. Other delegations, while acknowledging the difficulties of the task with which the co-sponsors had been confronted, felt that the working paper suffered from defects of a substantive nature and that some provisions of the paper were in contradiction with the United Nations Charter.

212. The scope of the working paper was viewed by some delegations as unduly restrictive. These delegations reiterated the views reflected in paragraph 70 above. It was recalled, in this connection, that the Committee was mandated to consider 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. Yet, it was observed, the paper sought to strengthen the role of the United Nations through essentially institutional and procedural devices of limited scope without taking any account of the paramount responsibility which befell the 159 Member States in the prevention of conflicts. The Special Committee, it was stated, could not leave aside the question of the obligations of States and should endeavour to draft a document of a declaratory nature relating to the strengthening of the effectiveness of the United Nations in securing peace in accordance with the Charter, and to the efforts of States to eliminate the threat of nuclear war, halt the arms race and improve the international situation - an admittedly complex task which would require the co-operation of all.

213. Other delegations stressed that, while the working paper reflected a modest step-by-step approach, it was perfectly consonant with the emphasis placed in resolution 39/88 A on the need to strengthen the role of the United Nations and that a modest approach was more likely to produce results than more ambitious ones. They objected to having the Special Committee transformed into a forum for the discussion of the rights and duties of States. It was noted that if certain other exercises such as the non-use of force were eliminated a broader scope might be envisaged in this Committee. Another remark was that it was not fair to criticize the co-sponsors for having failed to write down in their paper the ideas of others and that it was up to delegations advocating different approaches to put them before the Special Committee. Insisting on having all the aspects of this broad complex dealt with simultaneously was unreasonable and the Special Committee should not be precluded from looking at one specific aspect.

214. Some delegations recalled that the reorientation of the Committee's mandate, which had taken place two years before, had permitted the adoption of the relevant resolutions by consensus and had brought out the Committee's potentiality for usefully contributing to the improvement of the functioning of the organization on

which many States relied for their security and material advancement. This reorientation, it was observed, had been made possible by the creative act of the co-sponsors in bringing out the concept of preventive action and focusing attention on one aspect of the broad complex of the United Nations activities in the maintenance of international peace and security, an aspect which had proved to be less controversial than areas previously considered by the Committee. Nevertheless, the co-sponsors of the working paper faced a conceptual problem inasmuch as it was not always possible to separate the prevention of conflicts from the other aspects of the general question of the maintenance of international peace and security. In this respect the paper seemed based on a somewhat rigid schedule of steps which to some extent disregarded the fact that the development of conflicts did not follow established patterns. Furthermore, the compatibility of some aspects of the working paper with the provisions of the Charter was still questionable and should be looked at once more very closely by the co-sponsors while preparing a new revised version.

215. Some delegations said that the working paper was fully consonant with the provisions of the Charter and with the balance of powers of principal organs of the United Nations established therein. Misgivings were expressed in relation to the tendency of some delegations to interpret the Charter in a static and literal way, which had the effect of putting the Special Committee in an abstract world and depriving its discussions of any relationship with the reality and with the actual behaviour of States in the United Nations and towards the United Nations.

216. Other delegations questioned the compatibility of the working paper with the provisions of the Charter and recalled that many of their queries on this point had remained unanswered. The view was expressed that certain paragraphs were not compatible with Articles 24, 32, 34, the whole of Chapter VII, and Articles 52 and 53 and that lumping together the "relevant United Nations organs", as did several paragraphs, was at variance with the Charter approach. The inner balance of the working paper was quite different from that of the Charter. Objection was further expressed to attempts at distorting the meaning of Charter provisions through so-called dynamic interpretations. It was recalled that such interpretations could easily, as experience had shown, lead to violations of the Charter and to serious political and legal problems.

217. While supporting the efforts of the co-sponsors, some delegations felt that the paper needed to be expanded or supplemented in various respects. The additional elements which were mentioned included the right of States to freely choose appropriate means of prevention, principles of international law such as State sovereignty and territorial integrity and the conduct and obligations of States in their mutual relations.

218. Some delegations considered it useful to study the question of prevention in the framework of a gradual approach to consideration of the question of the maintenance of international peace and security. They however expressed the hope that the Committee would subsequently tackle the underlying and true causes which had prevented the United Nations from fully discharging its responsibilities. Attention was further drawn to the approach reflected in document A/AC.182/L.29 and to the possibility of trying at some stage to clarify certain concepts, such as the notion of threat to the peace. Other comments made in relation to the working paper included the observation that the distinction between the preparation for preventive action and the preventive action itself, although theoretically conceivable, was not always workable and had resulted in confusion and repetition.

The remark was also made that the dividing line between preventive measures and peaceful settlement of disputes was not very clear, probably because of the difficulty encountered in determining the very moment when a particular situation threatening to entail a disagreement would turn into a dispute. As far as the grouping of paragraphs is concerned, some delegations expressed the view that an organ-by-organ approach might prove more satisfactory.

219. As far as future action in relation to the working paper is concerned, the co-sponsors pointed out that they had taken it upon themselves to pave the way towards constructive dialogue and co-operation and that after two readings of their proposal, aimed at identifying areas where general agreement was possible, they felt that the further elaboration of the working paper should henceforth be the joint responsibility of the members of the Special Committee.

220. Some delegations said that the path taken by the co-sponsors had proved productive and urged them to pursue their effort with a view to further improving their working paper. They expressed readiness to continue with them a constructive dialogue. The view was expressed that the document should be upgraded so that it would no longer be a working paper of the original co-sponsors, but a working paper of the Committee as a whole.

221. Other delegations said that the revised working paper was a useful basis for the elaboration of a document on preventive action and asked the co-sponsors to prepare a new version of their document that would fill in the gaps and clarify the points referred to in the course of the discussion. The hope was expressed that it would be possible to produce a generally acceptable text which, after the Manila Declaration on the Peaceful Settlement of International Disputes and the agreed set of conclusions on the rationalization of the procedures of the United Nations, would represent a new achievement of the Committee in a field where it had not as yet come up with concrete results.

222. Still other delegations, while expressing readiness to co-operate with the co-sponsors in a constructive spirit to find appropriate solutions, in accordance with the mandate, to the many questions which had arisen during the debate, expressed their disagreement with the piecemeal approach which some delegations seemed to take in relation to the formulation of conclusions. They insisted that, in accordance with the mandate, it was necessary to tackle all the aspects of the question of international peace and security along the lines described at the end of paragraph 212 above.

IV. RATIONALIZATION OF EXISTING PROCEDURES OF THE UNITED NATIONS

Statement of the Rapporteur

223. In accordance with the decision referred to in paragraph 8 above, the Special Committee devoted its 90th and 91st meetings, held on 25 March 1985, to the consideration of the topic "Rationalization of existing procedures of the United Nations". In this connection, the Special Committee had before it a working paper submitted by France and the United Kingdom of Great Britain and Northern Ireland (A/AC.102/L.43).
224. In introducing the working paper, the co-sponsors indicated that they were not satisfied with the place assigned by resolution 39/88 A to the question under consideration in the overall mandate of the Special Committee but had been willing to accept it in the interest of achieving consensus.
225. The co-sponsors stressed the vital interplay between procedure and the substantive items on the Special Committee's agenda. In their view, the topic of rationalization of procedures was to be viewed as an integral part of the mandate of the Special Committee. A constant review of procedures was essential to meet the needs of a constantly adapting Organization, and it was natural in the fortieth anniversary year that much attention was being devoted to this in various forums.
226. The co-sponsors explained that the intention behind their working paper was to contribute to that process by presenting a clearer formulation of various items previously considered. They had relied heavily on previous discussions and proposals and particularly on those listed in the report on the 1984 session, as deserving further consideration at a later stage. 15/ They drew attention in particular to paragraphs 1, 7 and 8 of the working paper.
227. The co-sponsors concluded by stating that the Committee should resume active consideration of rationalization of procedures at its next session in the light of the working paper, as well as of any other proposals emerging from the fortieth anniversary, which the General Assembly should thereafter refer to the Special Committee for consideration.
228. Several delegations welcomed the working paper as a modest and sensible attempt by the co-sponsors to itemize various proposals which could rationalize the work of the Organization, and expressed the desire to comment more extensively on the content of the paper at a future session. Some delegations, while stressing that they would not at that stage discuss the proposals in detail, anticipated their reservations on the proposal contained in paragraph 1 which, in their opinion, exceeded the question of rationalization of procedures and affected a matter of substance.
229. While the vital interrelationship between procedures and substance was recognized, the view was expressed that the working paper contained certain proposals, the consistency of which with the Committee's objective of enhancing the effectiveness of the United Nations, might be questioned.

230. It was generally recognized that the rationalization of United Nations procedures was a useful and important topic. However, some delegations expressed the view that there was at that stage nothing to add to the results already achieved at the previous year's session as reflected in the conclusions listed in the previous year's report 16/ and doubted whether the time was ripe to resume consideration of such proposals at the Committee's next session. Others held that those conclusions did not respond sufficiently to all the problems of rationalization of procedures and that in any case the fact that the General Assembly had endorsed the conclusions did not rule out the Special Committee's giving due regard to the topic in the future.

V. STATEMENT OF THE SPECIAL COMMITTEE AT THE END OF ITS TENTH SESSION

231. Submitting its present report to the fortieth session of the General Assembly of the United Nations, the Special Committee reaffirmed the importance of continuing its work on the basis of the mandate entrusted by the General Assembly and of reaching general agreement whenever that had significance to the outcome of its work, with a view to strengthening the role of the United Nations to achieve its purposes.

232. During the consideration of various proposals within the Special Committee, its members stressed the validity and vitality of the purposes and principles of the Charter of the United Nations, and of the Charter itself and, in the first instance the duty of all Member States to fulfil in good faith the obligations assumed by them under the Charter, particularly those relating to the peaceful settlement of disputes and the maintenance of international peace and security.

233. The Special Committee expressed also the desirability that all States Members of the United Nations give full support to the efforts, in particular those of the Special Committee, aimed at strengthening the role of the United Nations as an instrument for maintaining international peace and security, and promoting co-operation among States in accordance with the Charter of the United Nations.

Notes

1/ Official Records of the General Assembly, Thirty-ninth Session, Annexes, agenda item 133, document A/39/781.

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

3/ Ibid., Thirty-ninth Session, Supplement No. 1 (A/39/1).

4/ Ibid., Supplement No. 33 (A/39/33).

5/ Ibid., para. 133.

6/ A/AC.182/L.38.

7/ A/38/343, annex, and A/39/C.6/L.2.

8/ For the membership list of the Committee at its 1985 session, see A/AC.181/INF/10 and Add.1 and 2.

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

10/ A/38/343 and A/C.6/39/L.2.

11/ General Assembly resolution 37/10 of 15 November 1982, annex.

12/ General Assembly resolution 2625 (XXV) of 24 October 1970, annex.

Notes (continued)

13/ Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 33 (A/39/33), para. 133.

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

15/ Ibid., Thirty-ninth Session, Supplement No. 33 (A/39/33), para. 160.

16/ Ibid., para. 151.

ANNEX

Statement of the Chairman of the Special Committee at the closure of the tenth session

Before declaring the closure of the present session, I should like to make a few observations regarding the work of the Special Committee at this session and the work of the Special Committee in general.

In the view of the Chair, thanks to the excellent working atmosphere as well as the generally business-like and constructive spirit on the part of all delegations, the Special Committee has this year achieved important progress on all three topics that the General Assembly entrusted to it.

Thus, on the topic of the peaceful settlement of disputes, the Special Committee has reached an agreement on the modality by which the Secretariat should periodically consult the representative group of members of the permanent missions in the preparation of the draft handbook on the peaceful settlement of disputes. Furthermore, the Special Committee has given additional clarifications regarding certain aspects of the draft handbook on which the Secretariat needed guidance.

With respect to the proposal on the establishment of a commission for good offices, mediation and conciliation, the Special Committee held, for the first time, a full and in-depth discussion of the working paper submitted by Nigeria, the Philippines and Romania. The co-sponsors are now in a position to analyse the very rich comments and suggestions made during the debate and to attempt to revise the working paper.

On the topic of the maintenance of international peace and security, the Special Committee thoroughly discussed the revised working paper of six co-sponsors on the prevention of conflicts, thereby completing its second reading. The general thrust and ideas contained in the working paper were widely supported; hopes were expressed that the paper would be further revised and it was suggested that its status could be upgraded, although reservations were also made by some delegations on the basic approach of the paper.

With regard to the topic of the rationalization of United Nations procedures, the Special Committee held a useful, albeit brief, discussion by way of reviewing the question in general, and with the help of a useful working paper submitted by France and the United Kingdom.

These are the results achieved during the session. The Chair is happy to report them to the General Assembly as representing an important progress. On the other hand, the Chair cannot but feel a certain amount of regret with the outcome of the present session inasmuch as the Special Committee, meeting for the tenth time, was unable to produce tangible conclusions on any of the questions before it to be presented on the occasion of the fortieth anniversary of this Organization.

It should be recalled that, with the necessary will on the part of all delegations, the Special Committee did produce important results in the past, in particular, by adopting the Manila Declaration on the Peaceful Settlement of International Disputes.

The fact that we have no gift to present to the General Assembly at its fortieth session, should not however discourage us from doing something else on this tenth anniversary of the Special Committee: I should like to make a special appeal to each and every member of the Special Committee, which has been entrusted by the Assembly with the task of examining ways and means to strengthen the role of the United Nations, and to demonstrate their political will to work together in order to fulfil that task in a most expeditious and efficient manner. With this renewed commitment to the cause of the United Nations and the work of this Special Committee, I hope the Committee will be able to produce another major achievement in the very near future.

Before concluding my remarks, I should like to express my sincere appreciation to my colleagues in the Bureau and to all the delegations for their co-operation with the Chair throughout the session.