

ARTICLE 33

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ARTICLE 33

TEXT OF ARTICLE 33

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.
2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

INTRODUCTORY NOTE

1. The present study of Article 33 follows previous *Repertory* treatment of the Article in limiting the material it presents to the question of the relationship between the obligation of the parties to seek the peaceful settlement of a dispute or situation and its handling by the Security Council. The relevant practice of the General Assembly and the International Court of Justice are treated in this study.
2. The study consists of a general survey and an analytical summary of practice, as well as an annex. Section A of the general survey discusses decisions of the Security Council which may be considered as having a direct bearing on Article 33 but did not give rise to differences of a constitutional nature. Instances in which the Article was invoked in the proceedings of and communications to the Council, including as a basis for the submission of a question to the Council, are also mentioned in section A. Section B deals with resolutions and deliberations in the General Assembly, as well as proposals considered by its special committees, insofar as they shed light on the application or interpretation of Article 33. In the new section C, reference is made to decisions of the International Court of Justice which explicitly invoked Article 33.
3. The analytical summary of practice contains two parts. The questions included in section A led to constitutional discussion in the Security Council concerning the extent to which parties to a dispute are obligated to seek peaceful settlement by way of resorting to regional agencies or arrangements before taking recourse to the Security Council. The material included in section B addresses the extent to which the recourse to machinery for mandatory third party dispute settlement conforms to Article 33. Given its importance, the Manila Declaration on the Peaceful Settlement of International Disputes is included in an annex to the study.
4. The present study should be read in conjunction with the studies on Articles 36 and 40 in this *Supplement* since during the period under review the Security Council adopted decisions which either recommended procedures previously agreed upon by the parties concerned or were aimed at the immediate restoration of conditions that would make further efforts aimed at peaceful settlement possible. The study on Article 52 in this *Supplement* might also be consulted in view of the parties' efforts to reach a peaceful settlement through regional agencies or arrangements. No constitutional significance should, however, be attached to this reference to other Articles of the Charter, which is made merely for the convenience of the reader. It should also be noted that the focused approach of this study does not lend itself to treatment of general references to Chapter VI of the Charter.

I. GENERAL SURVEY

A. Action by the Security Council

5. Two resolutions adopted by the Security Council during the period under review, as well as a draft resolution and a presidential statement, might be considered as falling implicitly within the scope of Article 33, without giving rise to constitutional arguments regarding the interpretation or application of the Article.

6. In connection with the detention of United States diplomatic personnel in Iran,¹ the Security Council on 4 December 1979 adopted resolution 457 (1979), by which it

¹The item, as included in the agenda, was entitled "Letter dated 25 November 1979 from the Secretary-General to the President of the Security Council and letter dated 22 December 1979 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council".

called on the Government of Iran to release the personnel of the Embassy of the United States of America being held at Teheran, and further called on the Governments of Iran and the United States "to take steps to resolve peacefully the remaining issues between them to their mutual satisfaction in accordance with the purposes and principles of the United Nations".² Subsequently, the United States submitted a draft resolution by which the Council would have reiterated the recommendation for Iran and the United States "to resolve peacefully the remaining issues" once the hostages had been safely released.³ The draft resolution was not adopted due to the negative vote of a permanent member.

7. In a presidential statement dated 23 September 1980 in connection with the situation between Iran and Iraq, the Council called on the Governments of Iran and Iraq "to settle their dispute by peaceful means".⁴ In its resolution 479 (1980), adopted on 28 September 1980, the Council reiterated that call, and urged Iran and Iraq "to accept any appropriate offer of mediation or conciliation or to resort to regional agencies or arrangements or other peaceful means of their own choice that would facilitate the fulfilment of their obligations under the Charter of the United Nations".⁵ Before and after the adoption of that resolution, a number of representatives appealed to Iran and Iraq to refrain from the use of armed force and urged the Council, in the discharge of its duties under the Charter, to assist the parties to the conflict in the restoration of conditions of peace and to help bring about a settlement of the dispute by peaceful means.⁶

8. Article 33 was explicitly referred to in a letter dated 10 September 1981 from the representative of Guatemala to the President of the Security Council, in which the representative drew the Council's attention to Guatemala's territorial dispute with the United Kingdom of Great Britain and Northern Ireland over Belize.⁷ The representative recalled that, in 1962, with the good offices of the United States, a round of negotiations had been held between Guatemala and the United Kingdom resulting in a declaration, in which both parties had acknowledged that Belize was "a territory in dispute". Subsequently, direct negotiations had been expanded at all levels, including Ministers for Foreign Affairs.

² S C resolution 457 (1979), para. 2.

³ S C (35), Suppl. for Jan.-March 1980, S/13735, preamb. para. 10.

⁴ S/14190, para. 4.

⁵ S C resolution 479 (1980), paras. 1-2.

⁶ S C (35), 2247th mtg.: Mexico, paras. 20-26; Norway, paras. 30-33; 2248th mtg.: Bangladesh, paras. 88-89; France, paras. 56-60; German Democratic Republic, paras. 104-105; Japan, paras. 137-140; Philippines, paras. 113-117; United States, paras. 43-44; USSR, paras. 78-82; 2250th mtg.: Cuba, paras. 55-57; 2252nd mtg.: German Democratic Republic, paras. 64-65; United States, paras. 30-36; 2253rd mtg.: Philippines, paras. 13-24; United Kingdom, paras. 5-11; 2254th mtg.: China, paras. 44-45 and 47; France, paras. 14-20; Jamaica, paras. 26-32; Portugal, paras. 77-82; Tunisia, paras. 64-72.

⁷ S C (36), Suppl. for July-Sept. 1981, S/14683 and Add.1.

He stated that, "in compliance with the provisions of Article 33 of the Charter of the United Nations", his country and the United Kingdom, during the past two years, had intensified their efforts to find a just and honourable solution for all parties. The representative of Guatemala maintained that the dispute was "a matter submitted for negotiation, i.e., a process of pacific settlement resulting in a formal undertaking accepted unreservedly by the parties". His Government therefore requested the Council "to investigate the dispute between Guatemala and the United Kingdom" and "to consider whether there [was] a need for it to make recommendations to the parties with a view to a pacific settlement".⁸ However, during the period under review, the Security Council did not include that issue in its agenda.

9. On a number of occasions, the Security Council called on the parties to a dispute to seek settlement by peaceful means. References to attempts at peaceful settlement prior to the referral of those questions to the Council were contained in communications, by which the parties⁹ to a dispute or the Secretary-General¹⁰ submitted the relevant issue to the Security Council for consideration. At the early stages of an item's consideration in the Council, representatives of the Member States often stated that recourse had been had or should have been had, before bringing the dispute to the Council, to negotiations, the good offices of third parties, mediation, the International Court of Justice, regional agencies or arrangements or border committees.¹¹

10. The issues, statements and communications mentioned above did not give rise to constitutional discussions regarding the interpretation or application of Article 33.

B. Action by the General Assembly

11. During the period under review, Article 33 was explicitly invoked in the Manila Declaration on the Peaceful Settlement of International Disputes,¹² approved by the

⁸ Ibid.

⁹ See, for example, S C (34), Suppl. for Oct.-Dec. 1979, S/13615; S C (35), Suppl. for July-Sept. 1980, S/14140; S C (36), Suppl. for July-Sept. 1981, S/14595; *ibid.*, S/14683 and Add.1; S C (37), Suppl. for Jan.-March 1982, S/14913; *ibid.*, Suppl. for April-June 1982, S/15123.

¹⁰ See, for example, S C (35), Suppl. for Oct.-Dec. 1979, S/14196; *ibid.*, S/14197; S C (37), Suppl. for April-June 1982, S/15099.

¹¹ See, for example, S C (35), Suppl. for Oct.-Dec. 1979, 2175th mtg.: United States, paras. 17 and 23; S C (35), 2246th mtg.: Malta, paras. 21-23; 2345th mtg.: Argentina, paras. 48-51, 60 and 71-72; United Kingdom, paras. 8-9 and 23-24; S C (39), 2513th mtg.: Honduras, paras. 46-47; 2520th mtg.: Sudan, para. 25; 2525th mtg.: Honduras, para. 120; 2541st mtg.: Saudi Arabia, paras. 39 and 41; 2557th mtg.: Nicaragua, para. 75; United States, paras. 59-61; 2558th mtg.: Lao People's Democratic Republic, para. 22; Thailand, paras. 51, 66 and 70.

¹² The Manila Declaration originated in a proposal (G A (34), Suppl. No. 33, para. 13) prepared by the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization at the request of the General Assembly

General Assembly in its resolution 37/10 of 15 November 1982. The General Assembly stated thereby that "Member States should strengthen the primary role of the Security Council so that it may fully and effectively discharge its responsibilities, in accordance with the Charter of the United Nations, in the area of the settlement of disputes or of any situation the continuance of which is likely to endanger the maintenance of international peace and security." To that end they should "be fully aware of their obligation to refer to the Security Council such a dispute to which they are parties if they fail to settle it by the means indicated in Article 33 of the Charter" and "bear in mind that the Security Council may, at any stage of a dispute of the nature referred to in Article 33 of the Charter or of a situation of like nature, recommend appropriate procedures or methods of adjustment".¹³

12. In connection with the item concerning the peaceful settlement of disputes between States, the General Assembly adopted a number of resolutions,¹⁴ which contained references to the Manila Declaration and thus may be considered as having a direct bearing on the subject matter of Article 33.

13. The Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations, pursuant to the mandate given to it by the General Assembly,¹⁵ examined a working paper¹⁶ which may have touched on the subject matter of Article 33. The proposal, entitled "Peaceful settlement of disputes", invited the Committee to examine an item entitled "Encouragement of all States parties to an international dispute to agree, if they are unable to solve the dispute through direct negotiations, on the recourse to third-party interposition, i.e., recourse to impartial bodies especially appointed to clarify the issues at stake, fact-finding commissions, conciliatory commissions,

(G A resolution 33/94, para. 3 (a)). The proposal was considered during the Special Committee's session held in 1979. During its sessions held from 1980 to 1982, in accordance with the mandate given to it by the General Assembly (G A resolutions 34/147, paras. 2 and 4; 35/160, para. 4; 35/164, paras. 2 and 4; 36/110, para. 4; 36/122, paras. 2 and 5), the Special Committee and its Working Group on the Peaceful Settlement of Disputes (for the reports of the Working Group, see A/C.6/35/L.21 and A/C.6/36/L.19) elaborated a draft declaration (A/C.6/37/L.2) which, following its consideration by the Sixth Committee, was submitted to the General Assembly for approval. For the text of the Manila Declaration, see the annex to the present study.

¹³ Manila Declaration, sect. II, para. 4 *chapeau*, and (a) and (f).

¹⁴ G A resolutions 34/102, paras. 1-2; 35/160, paras. 2-3; 36/110, paras. 2-3; 38/131, paras. 1-2; 39/79, paras. 1-2.

¹⁵ G A resolutions 34/13, para. 2; 35/50, para. 2; 36/31, para. 2; 37/105, para. 2; 38/133, para. 2; 39/81, para. 2.

¹⁶ G A (34), Suppl. No. 41, para. 129 (A/AC.193/WG/R.1). The working paper was submitted by Belgium, France, the Federal Republic of Germany, Italy and the United Kingdom of Great Britain and Northern Ireland.

etc."¹⁷ However, the Special Committee did not reach agreement on the proposal during the period under review.

C. Action by the International Court of Justice

14. In two instances, the International Court of Justice explicitly invoked Article 33 in connection with the question of the admissibility of an Application by a party to a conflict when other means had been resorted to in an effort to find a peaceful settlement.¹⁸

15. In the case concerning *United States Diplomatic and Consular Staff in Tehran*, the International Court of Justice examined the question of its competence in the light of the establishment by the Secretary-General of a commission to carry out a fact-finding mission to Iran and to allow for an early solution of the crisis between Iran and the United States.¹⁹ The Court held that the Secretary-General had created the commission as an "organ or instrument for mediation, conciliation or negotiation to provide a means of easing the situation of crisis existing between the two countries". The establishment of the commission by the Secretary-General could not, therefore, be considered in itself as "in any way incompatible with the continuance of parallel proceedings before the Court" because "negotiation, enquiry, mediation, conciliation, arbitration and judicial settlement [were] enumerated together in Article 33 of the Charter as means for the peaceful settlement of disputes". The jurisprudence of the Court provided various examples of cases in which "negotiations and recourse to judicial settlement by the Court [had] been pursued *pari passu*", the Court added.²⁰

16. In the case concerning *Military and Paramilitary Activities in and against Nicaragua*, the International Court of Justice, citing a section of the *Aegean Sea Continental Shelf* case with an explicit reference to Article 33, considered that even the existence of active negotiations between the parties to a dispute "should not prevent both the Security Council and the Court from exercising their separate functions under the Charter and the Statute of the Court."²¹

¹⁷ *Ibid.*

¹⁸ For the related question of the role of the Court as the principal judicial organ of the United Nations, see this *Supplement*, under Article 92, paras. 8 and 12.

¹⁹ *I.C.J. Reports 1980*, p. 23.

²⁰ *Ibid.*

²¹ *I.C.J. Reports 1984*, p. 440.

II. ANALYTICAL SUMMARY OF PRACTICE

A. In the Security Council: question of the extent to which parties to a dispute are obligated to seek a pacific settlement before recourse to the Security Council

17. During the period under review, constitutional arguments arose with respect to the question of the obligations of the parties to a dispute to seek a pacific settlement by way of resorting to a regional agency or arrangement before taking recourse to the Council.

1. COMPLAINT BY MOROCCO

18. The representative of Morocco, in connection with his letters²² dated 13 and 15 June 1979, stated that his country had become the "victim of deliberate acts of aggression ... against its national territory committed by armed bands from Algeria that returned to Algeria once they [had] committed their crimes".²³ Initially his Government had felt satisfied with informing the Secretary-General of "the importance and seriousness of the situation, without wishing to bring a formal complaint to the Security Council". It had tried "to exhaust other means before coming to the Council", but, in view of the deterioration of the situation, had thought it "indispensable to come to the Council with the problem".²⁴ The representative of Morocco asked the Council "to implement any measure it [deemed] useful to end [those] acts of aggression".²⁵

19. The representative of Algeria, however, asserted that Morocco's initiative in the Council seemed surprising to a number of delegations.²⁶ Morocco appeared "to pay only lip service" to the recognition that the bodies of the Organization of African Unity would "demonstrate the wisdom necessary to solve the explosive problem Morocco [had] created in the region through the occupation and partition of Western Sahara". Another representative stated that Morocco's initiative to put the matter before the Council was "inadmissible".²⁷ According to him, Morocco sought the sanction of the Council for its "refusal to permit any just and lasting political solution to the problem". He recalled the peace process between the Frente POLISARIO and Mauritania, which the former insisted must be joined by Morocco.

²² The item, as included in the agenda, was entitled "Letters dated 13 June 1979 and 15 June 1979 from the Permanent Representative of Morocco to the United Nations addressed to the President of the Security Council".

²³ S C (34), 2151st mtg.: Morocco, para. 12.

²⁴ *Ibid.*, para. 15.

²⁵ *Ibid.*, paras. 15 and 43.

²⁶ *Ibid.*, 2152nd mtg. para. 9.

²⁷ *Ibid.*, 2153rd mtg.: Frente POLISARIO, paras. 46-47.

20. At its 2154th meeting held on 25 June, the Security Council decided to adjourn further consideration of the question.²⁸

2. COMPLAINT BY NICARAGUA

21. In connection with the letter²⁹ dated 19 March 1982 from Nicaragua, one representative stated that Article 33 included, among the peaceful means to be employed by the parties to a dispute before bringing it to the Council, the resort to regional agencies or agreements.³⁰ Thus, "if a dispute were to arise between American countries linked by the regional system, that dispute or question was to be raised through the peaceful inter-American means actually in force or through recourse to the regional organization". A role for the Council "to intervene immediately to propose formulas for settlement" could be envisaged only after regional systems for the peaceful settlement of disputes had failed.³¹ Another representative, citing Article 33 in full, maintained that it should be recalled that "almost all States of the region concerned [were] members" of the Organization of American States (OAS).³² The parties must say, he noted, whether their dispute had already been the object of settlement efforts within OAS. If that was the case, "the Council must take the necessary steps to bring the parties to apply the provisions of Article 33". Otherwise, it would be up to the Council, in accordance with Article 52 (3), "to encourage examination of the situation by OAS".

22. On the other hand, one representative contended that no regional organization could be invoked "to the detriment of the supreme authority which the Charter [conferred] on the Security Council in connection with the maintenance of international peace and security".³³ In the view of his delegation, the question of Central America and the Caribbean was "fully germane and legitimate in the proceedings of the Council".

23. On 1 April 1982, Guyana and Panama introduced a draft resolution by which the Council would have appealed to all parties concerned "to have recourse to dialogue and negotiation, as contemplated in the Charter".³⁴ The draft

²⁸ *Ibid.*, 2154th mtg.: the President (USSR), para. 3.

²⁹ The item, as included in the agenda of the Security Council, was entitled "Letter dated 19 March 1982 from the Permanent Representative of Nicaragua to the United Nations addressed to the Secretary-General".

³⁰ S C (37), 2343rd mtg.: Chile, paras. 46-47 and 49.

³¹ For other relevant statements, see, for example: S C (37), 2335th mtg.: United States, para. 144; 2343rd mtg.: Colombia, para. 117; 2347th mtg.: Costa Rica, paras. 69-71; the President (Zaire), paras. 154-156; United States, paras. 14-17.

³² *Ibid.*, 2339th mtg.: Togo, paras. 64-65.

³³ *Ibid.*, 2337th mtg.: Cuba, paras. 31-33. See also, for example, *ibid.*, Guyana, para. 80; Mexico, para. 61; 2341st mtg.: Sri Lanka, para. 61.

³⁴ *Ibid.*, Suppl. for April-June 1982, S/14941.

was not adopted due to the negative vote of a permanent member.

24. On another occasion during the period under review, the complaint by Nicaragua³⁵ gave rise to a constitutional debate on whether the means for peaceful settlement provided by regional mechanisms had been exhausted before the Council was seized of the dispute.³⁶ The representative of the United States stated that "under the provisions of Chapter VI, Article 33, of the Charter of the United Nations, an effort should be made prior to bringing a dispute before the Security Council to exhaust certain other named remedies", including "resort to regional agencies".³⁷ He argued that, in the case of the Americas, the jurisdiction of the Organization of American States should be invoked in the first instance.

25. On the other hand, the representative of Nicaragua retorted that there were other Articles in the Charter which, apart from the existence of regional bodies, guaranteed any Member State the "right of recourse" to the Council "when confronted with a threatening situation and experiencing aggression".³⁸ No decision was taken as a result of the consideration of the item.

3. COMPLAINT BY CHAD

26. In connection with the letter dated 16 March 1983 from the representative of Chad, a representative stated that the continuation of the dispute between Chad and the Libyan Arab Jamahiriya which fell under the terms of Article 33 was likely to threaten the maintenance of international peace and security.³⁹ He maintained that the Council could not "stand idle in the face of [that] dispute and adjourn without recommending the use of one of the means for peaceful settlement provided by the Charter", including "recourse to the International Court of Justice to obtain its legal opinion".

27. Another representative pointed out, however, that the Organization of African Unity (OAU) had been and continued to be seized of the question under consideration.⁴⁰ In his view, OAU had not been "afforded the opportunity to exhaust the possibilities open to it in its search for a resolu-

³⁵ The item, as included in the agenda, was entitled "Letter dated 9 November 1984 from the Permanent Representative of Nicaragua to the United Nations addressed to the President of the Security Council".

³⁶ See S C (37), 2335th-2337th, 2339th, 2341st-2343rd and 2347th mtgs.; S C (38), 2420th-2427th mtgs.; *ibid.*, 2431st-2437th mtgs.; S C (39), 2562nd mtg.

³⁷ S C (39), 2562nd mtg., para. 48.

³⁸ *Ibid.*, para. 59.

³⁹ S C (38), 2419th mtg.: Ivory Coast, paras. 139 and 141. See also *ibid.*: Togo, paras. 110-112; 2428th mtg.: Netherlands, para. 40; Zaire, paras. 7-8.

⁴⁰ *Ibid.*, 2429th mtg.: Ethiopia, paras. 26-27. See also 2428th mtg.: Benin, paras. 63-67; Malta, paras. 48 and 50; 2429th mtg.: Ghana, para. 63; Syrian Arab Republic, para. 16.

tion of the problem". Citing Article 33 (1) in full, he urged the parties to the dispute "to exercise maximum restraint and to avail themselves of all peaceful means and in particular to give their regional organization, OAU, a chance to exhaust its possibilities and finalize the efforts it [had] undertaken in [that] respect." He expressed the hope that, meanwhile, the Council would "exercise maximum caution in the discharge of the responsibility entrusted to it" and "demonstrate its confidence in and respect for OAU" by acting on the basis of Article 33 (2), "which [enjoined] the Council to call upon the parties to settle their disputes by such means".

28. Subsequently, a draft resolution was submitted by which the Council would have appealed to Chad and the Libyan Arab Jamahiriya "to make full use of the machinery for the peaceful settlement of disputes available to them within the regional organization" and "of the machinery provided for in Article 33 of the Charter of the United Nations".⁴¹ The draft resolution was not put to the vote.

29. On 6 April 1983, the President of the Council issued a statement by which the members of the Council expressed their "concern that the differences between [the parties] should not deteriorate"; called on them "to settle [those] differences without undue delay and by peaceful means, on the basis of the relevant principles of the Charter of the United Nations and the Charter of the Organization of African Unity"; noted that the Organization of African Unity was already seized of the matter; and appealed to both parties "to make fullest use of the mechanism available within the regional organization for the peaceful settlement of disputes" and of the mechanisms "provided in Article 33 of the Charter of the United Nations".⁴²

B. In the General Assembly

**1. QUESTION OF THE OBLIGATION OF THE PARTIES UNDER ARTICLE 33 (1) IN RELATION TO THE INTERVENTION OF THE GENERAL ASSEMBLY

2. QUESTION OF THE APPLICATION OF ARTICLE 33 THROUGH PROCEDURES OF A GENERAL CHARACTER INSTITUTED BY THE GENERAL ASSEMBLY

30. At its 1979 session, the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations considered a working paper⁴³ in which the Special Committee was invited to examine an item entitled "The encouragement of all States

⁴¹ *Ibid.*, Suppl. for Jan.-March 1983, S/15672, para. 4.

⁴² *Ibid.*, Suppl. for April-June 1983, S/15688, paras. 2 and 4. For the discussion leading up to the adoption of the statement, see S C (38), 2419th and 2428th-2430th mtgs.

⁴³ The working paper submitted by Belgium, France, the Federal Republic of Germany, Italy and the United Kingdom was circulated as document A/AC.193/WG/R.1. For the text of the working paper, see G A (34), Suppl. No. 41, para. 129.

parties to an international dispute to agree, if they are unable to solve the dispute through direct negotiations, on the recourse to third-party interposition, i.e., recourse to impartial bodies especially appointed to clarify the issues at stake, fact-finding commissions, conciliatory commissions, etc.” In the discussion⁴⁴ of the item, some representatives stated that the principle of peaceful settlement implied the obligation on the part of States to agree to dispute settlement by third parties and that, if a matter was not expeditiously solved by negotiation, a refusal to accept third-party dispute settlement was a violation of the Charter obligation to settle disputes peacefully.

31. Other representatives disagreed by maintaining that Article 33 provided for parties to retain their complete freedom of choice with respect to the means they chose for the peaceful settlement of disputes.⁴⁵

32. At its 1983 session, the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, in accordance with the mandate given to it by the General Assembly,⁴⁶ considered a proposal⁴⁷ on the establishment of a permanent commission of the General Assembly on good offices, mediation and conciliation for the settlement of disputes and the prevention of conflicts among States, orally presented by Romania and the Philippines. The sponsors of the proposal pointed out that the prospective commission would serve to support the Security Council and the General Assembly “in the discharge of their responsibilities in the area of peaceful settlement in conformity with the Charter”. Several representatives supported the proposal as “a worthy contribution to the concretization of Chapter VI of the Charter, particularly Article 33 thereof” and “an appropriate follow-up on the Declaration on Friendly Relations and the Manila Declaration”.

33. On the other hand, some representatives stated that they were hesitant to accept the assumption underlying the proposal, namely, “that the means of settlement of disputes provided in Article 33 and the existing machinery were not being properly utilized” and that “something was lacking in the Charter system”. They also expressed the view that the proposal, “far from building upon Article 33”, undermined

the principle of freedom of choice “since it imposed third-party settlement upon States” and “disregarded the most effective method of settlement, namely negotiations”.⁴⁸ At its session in 1984, the Special Committee on the Charter continued its consideration of the item based on a working paper⁴⁹ submitted by Nigeria, the Philippines and Romania.⁵⁰

34. The Special Committee also considered a proposal for the elaboration of a handbook on the peaceful settlement of disputes between States.⁵¹ No agreement was reached in the Special Committee on the above proposals.

Annex

Manila Declaration on the Peaceful Settlement of International Disputes

“The General Assembly,

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

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

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

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

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

⁴⁴ G A (34), Suppl. No. 41, para. 141.

⁴⁵ *Ibid.*

⁴⁶ G A resolutions 33/94, para. 3 (a); 34/147, para. 4; 35/164, para. 4; 36/122, para. 6; 37/114, para. 5 (b); 38/141, para. 3 (b).

⁴⁷ For the proposal, see G A (34), Suppl. No. 33, para. 13 (b) (i). For the text of the working paper entitled “Establishment of a permanent commission on good offices, mediation and conciliation for the settlement of disputes and the prevention of conflicts among States”, submitted by Nigeria, the Philippines and Romania, see A/38/343, annex. For the text of the working paper entitled “Establishment of a commission for good offices, mediation and conciliation; functions and procedures”, submitted by Nigeria, the Philippines and Romania, see A/C.6/39/L.2. For a specific mandate by the General Assembly to the Special Committee, see G A resolutions 38/131, preamb. para. 6 and para. 3(a); 38/141, para. 3(b)(ii); 39/79, preamb. para. 7 and para. 3(a); and 39/88 A, para. 3(b)(i).

⁴⁸ For the discussion, see G A (38), Suppl. No. 33, paras. 97-106.

⁴⁹ A/38/343, annex.

⁵⁰ For the discussion which mirrored the arguments exchanged in the previous session, see G A (39), Suppl. No. 33, paras. 121-132.

⁵¹ For the proposal contained in a list of proposals prepared by the Special Committee pursuant to G A resolution 33/94, para. 3(a), see G A (34), Suppl. No. 33, para. 13 C. (iii). For working paper A/AC.182/L.24, entitled “Proposed outline of a handbook on the peaceful settlement of disputes”, submitted by France, see G A (36), Suppl. No. 33, para. 309. For discussion of that proposal, see G A (38), Suppl. No. 33, para. 110. For a “Preliminary outline on the possible content of a handbook on the peaceful settlement of disputes between States”, prepared by the Secretary-General pursuant to G A resolution 38/131, para. 4, see A/AC.182/L.36. For a discussion of that outline, see G A (39), Suppl. No. 33, paras. 133-150. For a specific mandate by the General Assembly to the Special Committee, see G A resolutions 38/131, para. 3(b); 38/141, para. 3(b)(ii); 39/79, para. 3(b); and 39/88 A, para. 3(b)(ii).

“*Reaffirming* the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,

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

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

“*Stressing* the need for all States to desist from any forcible action which deprives peoples, particularly peoples under colonial and racist regimes or other forms of alien domination, of their inalienable right to self-determination, freedom and independence, as referred to in the Declaration on Principles of International Law

concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,

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

“*Determined* to promote international cooperation in the political field and to encourage the progressive development of international law and its codification, particularly in relation to the peaceful settlement of international disputes,

“*Solemnly declares* that:

I

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

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

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

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

“5. States shall seek in good faith and in a spirit of cooperation an early and equitable settlement of their international

disputes by any of the following means: negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional arrangements or agencies or other peaceful means of their own choice, including good offices. In seeking such a settlement, the parties shall agree on such peaceful means as may be appropriate to the circumstances and the nature of their dispute.

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

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

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

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

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

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

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

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

II

“1. Member States should make full use of the provisions of the Charter of the United Nations, including the procedures and means provided for therein, particularly Chapter VI, concerning the peaceful settlement of disputes.

“2. Member States shall fulfil in good faith the obligations assumed by them in accordance with the Charter of the United Nations. They should, in accordance with the Charter, as appropriate, duly take into account the recommendations of the Security Council relating to the peaceful settlement of disputes. They should also, in accordance with the Charter, as appropriate, duly take into account the recommendations adopted by the General Assembly, subject to Articles 11 and 12 of the Charter, in the field of peaceful settlement of disputes.

“3. Member States reaffirm the important role conferred on the General Assembly by the Charter of the United Nations in the field of peaceful settlement of disputes and stress the need for it to discharge effectively its responsibilities. Accordingly, they should:

“(a) Bear in mind that the General Assembly may discuss any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations and, subject to Article 12 of the Charter, recommend measures for its peaceful adjustment;

“(b) Consider making use, when they deem it appropriate, of the possibility of bringing to the attention of the General Assembly any dispute or any situation which might lead to international friction or give rise to a dispute;

“(c) Consider utilizing, for the peaceful settlement of their disputes, the subsidiary organs established by the General Assembly in the performance of its functions under the Charter;

“(d) Consider, when they are parties to a dispute brought to the attention of the General Assembly, making use of consultations within the framework of the Assembly, with a view to facilitating an early settlement of their dispute.

“4. Member States should strengthen the primary role of the Security Council so that it may fully and effectively discharge its responsibilities, in accordance with the Charter of the United Nations, in the area of the settlement of disputes or of any situation the continuance of which is likely to endanger the maintenance of international peace and security. To this end they should:

“(a) Be fully aware of their obligation to refer to the Security Council such a dispute to which they are parties if they fail to settle it by the means indicated in Article 33 of the Charter;

“(b) Make greater use of the possibility of bringing to the attention of the Security Council any dispute or any situation which might lead to international friction or give rise to a dispute;

“(c) Encourage the Security Council to make wider use of the opportunities provided for by the Charter in order to review disputes or situations the continuance of which is likely to endanger the maintenance of international peace and security;

“(d) Consider making greater use of the fact-finding capacity of the Security Council in accordance with the Charter;

“(e) Encourage the Security Council to make wider use, as a means to promote peaceful settlement of disputes, of the subsidiary organs established by it in the performance of its functions under the Charter;

“(f) Bear in mind that the Security Council may, at any stage of a dispute of the nature referred to in Article 33 of the Charter or of a situation of like nature, recommend appropriate procedures or methods of adjustment;

“(g) Encourage the Security Council to act without delay, in accordance with its functions and powers, particularly in cases where international disputes develop into armed conflicts.

“5. States should be fully aware of the role of the International Court of Justice, which is the principal judicial organ of the United Nations. Their attention is drawn to the facilities offered by the International Court of Justice for the settlement of legal disputes, especially since the revision of the Rules of the Court.

“States may entrust the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future.

“States should bear in mind:

“(a) That legal disputes should as a general rule be referred by the parties to the International Court of Justice, in accordance with the provisions of the Statute of the Court;

“(b) That it is desirable that they:

“(i) Consider the possibility of inserting in treaties, whenever appropriate, clauses providing for the submission to the International Court of Justice of disputes which may arise from the interpretation or application of such treaties;

“(ii) Study the possibility of choosing, in the free exercise of their sovereignty, to recognize as compulsory the jurisdiction of the International Court of Justice in accordance with Article 36 of its Statute;

“(iii) Review the possibility of identifying cases in which use may be made of the International Court of Justice.

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

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

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

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

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

“Declares that nothing in the present Declaration could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on the Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist regimes or other forms of alien domination; nor the right of these

peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration;

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