



Repertoire  
of the  
Practice  
of the  
Security Council  
1946-1951

UNITED NATIONS  
DEPARTMENT OF POLITICAL AND SECURITY COUNCIL AFFAIRS

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## TABLE OF CONTENTS

	<i>Page</i>
<b>General introduction</b> .....	1
<b>Chapter I. Provisional rules of procedure of the Security Council</b>	
INTRODUCTORY NOTE .....	7
PART I. MEETINGS (RULES 1-5) .....	7
Note .....	8
1. Consideration of the adoption or amendment of rules 1-5 .....	9
2. Special cases concerning the application of rules 1-5 .....	10
PART II. REPRESENTATION AND CREDENTIALS (RULES 13-17) .....	11
Note .....	11
1. Consideration of the adoption or amendment of rules 13-17 .....	12
2. Special cases concerning the application of rules 13-17 .....	14
PART III. PRESIDENCY (RULES 18-20) .....	17
Note .....	17
1. Consideration of the adoption or amendment of rules 18-20 .....	18
2. Special cases concerning the application of rules 18-20 .....	18
PART IV. SECRETARIAT (RULES 21-26) .....	22
Note .....	22
1. Consideration of the adoption or amendment of rules 21-26 .....	23
2. Special cases concerning the application of rules 21-26 .....	23
PART V. CONDUCT OF BUSINESS (RULES 27-36) .....	25
Note .....	25
1. Consideration of the adoption or amendment of rules 27-36 .....	26
2. Special cases concerning the application of rules 27-36 .....	29
PART VI. VOTING (RULE 40) .....	49
Note .....	49
1. Consideration of the adoption or amendment of rule 40 .....	50
2. Special cases concerning the application of rule 40 .....	50
PART VII. LANGUAGES (RULES 41-47) .....	52
Note .....	52
1. Consideration of the adoption or amendment of rules 41-47 .....	53
2. Special cases concerning the application of rules 41-47 .....	54
PART VIII. PUBLICITY OF MEETINGS, RECORDS (RULES 48-57) .....	57
Note .....	57
1. Consideration of the adoption or amendment of rules 48-57 .....	58
2. Special cases concerning the application of rules 48-57 .....	59
PART IX. APPENDIX TO PROVISIONAL RULES OF PROCEDURE .....	59
Note .....	59
Consideration of the adoption or amendment of the procedure .....	60

## Chapter II. Agenda

INTRODUCTORY NOTE .....	
PART I. CONSIDERATION OF THE ADOPTION OR AMENDMENT OF RULES 6-12 .....	
PART II. THE PROVISIONAL AGENDA .....	6
Note .....	65
A. Rule 6: Circulation of communications by the Secretary-General .....	66
B. Rule 7: Preparation of the provisional agenda .....	66
C. Rule 8: Communication of the provisional agenda .....	67
PART III. ADOPTION OF THE AGENDA (RULE 9) .....	68
Note .....	68
A. Procedure of voting on adoption of the agenda .....	69
B. Consideration of	
1. Requirements for the inclusion of an item in the agenda .....	71
2. Effect of the inclusion of an item in the agenda .....	75
C. Other discussion on adoption of the agenda	
1. Order of discussion of items on the agenda .....	79
2. Scope of items on the agenda in relation to the scope of discussion .....	80
3. Phrasing of items on the agenda .....	82
4. Postponement of consideration of items .....	83
PART IV. THE AGENDA: MATTERS OF WHICH THE SECURITY COUNCIL IS SEIZED	83
Note .....	83
A. Rule 10 .....	84
B. Rule 11	
1. Retention and deletion of items from the Secretary-General's Summary Statement of matters of which the Security Council is seized .....	85
2. Proceedings of the Security Council regarding the retention and deletion of items from the agenda .....	92

## Chapter III. Participation in the proceedings of the Security Council

INTRODUCTORY NOTE .....	101
PART I. BASIS OF INVITATIONS TO PARTICIPATE .....	102
Note .....	102
A. In the case of persons invited in an individual capacity .....	103
B. In the case of representatives of United Nations organs or subsidiary organs .....	103
C. In the case of Members of the United Nations	
1. Invitation when the Member brought to the attention of the Security Council	
a. A matter in accordance with Article 35 (1) of the Charter .....	105
b. A matter not being either a dispute or a situation .....	108
2. Invitations when the interests of a Member were considered specially affected .....	108
3. Invitations denied .....	113
D. In the case of non-Member States and other invitations	
1. Invitations expressly under Article 32 .....	113
2. Invitations expressly under rule 39 of the provisional rules of proce- dure .....	114

	<i>Page</i>
B. Not involving, to facilitate their work, meetings at places away from the seat of the Organization	
1. Subsidiary organs established	
a. Standing Committees	
i. Committee of Experts .....	190
ii. Committee on Admission of new Members	
(a) Establishment and organization .....	194
(b) Form and content of reports to the Security Council .....	196
iii. Commission for Conventional Armaments .....	197
b. Drafting and other <i>Ad Hoc</i> Committees and Sub-Committees	
i. Reference to sub-committees to seek agreement after general discussion .....	199
ii. Other subsidiary organs .....	201
2. Subsidiary organs proposed but not established .....	202
PART II. CONSIDERATION OF PROCEDURES RELATIVE TO SUBSIDIARY ORGANS .....	202
Note .....	202
A. Consideration of procedure in the establishment of subsidiary organs .....	203
B. Consideration of the procedure of consultation between permanent members .....	205
C. Consideration of the procedure of delegation of functions .....	205
D. Consideration of the procedure of modification of terms of reference .....	207
E. Consideration of the procedure of termination .....	207
 <b>Chapter VI. Relations with other United Nations organs</b> 	
INTRODUCTORY NOTE .....	211
PART I. RELATIONS WITH THE GENERAL ASSEMBLY .....	211
Note .....	211
A. Practices and proceedings in relation to Article 12 of the Charter .....	211
B. Practices and proceedings in relation to the convocation of a special session of the General Assembly .....	217
C. Practices and proceedings in relation to Articles of the Charter involving recommendations by the Security Council to the General Assembly	
1. Appointment of the Secretary-General .....	217
2. Conditions of accession to the Statute of the International Court of Justice .....	218
3. Conditions under which a non-Member State, party to the Statute, may participate in electing members of the International Court of Justice .....	219
D. Practices and proceedings in relation to the election of members of the International Court of Justice .....	220
E. Relations with subsidiary organs established by the General Assembly .....	223
F. Reception of recommendations to the Security Council adopted by the General Assembly in the form of resolutions .....	225
G. Reports of the Security Council to the General Assembly .....	227
PART II. RELATIONS WITH THE ECONOMIC AND SOCIAL COUNCIL .....	227
A. Practices and proceedings in relation to Article 65 of the Charter .....	227
PART III. RELATIONS WITH THE TRUSTEESHIP COUNCIL .....	227
Note .....	227
A. Procedure under Article 83 (3) in application of Articles 87 and 88 of the Charter with regard to strategic areas under trusteeship .....	228
B. Transmission to the Security Council by the Trusteeship Council of questionnaires and reports .....	230



PART IV. RELATIONS WITH THE INTERNATIONAL COURT OF JUSTICE . . . . .	231
Note . . . . .	231
A. The conditions under which the International Court of Justice shall be open to States not parties to the Statute . . . . .	231
B. Practices and proceedings in relation to advisory opinions . . . . .	233
C. Practices and proceedings in relation to Article 94 (2) of the Charter and Article 41 (2) of the Statute . . . . .	235
PART V. RELATIONS WITH THE MILITARY STAFF COMMITTEE . . . . .	238
Note . . . . .	238
<b>Chapter VII. Practices relative to recommendations to the General Assembly regarding the admission of new Members</b>	
INTRODUCTORY NOTE . . . . .	243
PART I. TABLE OF APPLICATIONS, 1946-1951 . . . . .	244
Note . . . . .	244
PART II. CONSIDERATION OF THE ADOPTION OR AMENDMENT OF RULES 58, 59 AND 60 OF THE PROVISIONAL RULES OF PROCEDURE . . . . .	259
Note . . . . .	259
PART III. PRESENTATION OF APPLICATIONS . . . . .	263
Note . . . . .	263
PART IV. REFERENCE OF APPLICATIONS TO THE COMMITTEE ON THE ADMISSION OF NEW MEMBERS . . . . .	266
Note . . . . .	266
A. Before a recommendation has been forwarded or a report submitted to the General Assembly	
1. Applications referred to the Committee by the President . . . . .	267
2. Applications referred to the Committee by decision of the Security Council . . . . .	267
3. Applications considered by the Security Council without reference to the Committee . . . . .	268
4. Applications reconsidered by the Security Council after reference to the Committee . . . . .	268
B. After an application has been sent back by the General Assembly to the Security Council for reconsideration	
1. Applications referred to the Committee by the President . . . . .	269
2. Applications reconsidered by the Security Council without reference to the Committee . . . . .	269
PART V. PROCEDURES IN THE CONSIDERATION OF APPLICATIONS WITHIN THE SECURITY COUNCIL . . . . .	270
Note . . . . .	270
A. Discussion of applications	
1. Order of the discussion of applications . . . . .	274
2. Documentation submitted to the Security Council . . . . .	278
B. Voting on applications	
1. Omission of voting on applications when previous position of members is unchanged . . . . .	278
2. Time and order of voting on applications . . . . .	279
3. Submission of a draft resolution recommending the admission of a number of applicant States . . . . .	282

	<i>Page</i>
4. The question of submission of a draft resolution with a view to voting on an application .....	286
5. Conflict between a proposal to recommend admission and a proposal to postpone voting .....	287
<b>PART VI. THE ROLE OF THE GENERAL ASSEMBLY AND THE SECURITY COUNCIL..</b>	<b>288</b>
Note .....	288
<b>Chapter VIII. Consideration of questions under the Council's responsibility for the maintenance of international peace and security</b>	
INTRODUCTORY NOTE .....	295
<b>PART I</b>	
Analytical table of measures adopted by the Security Council .....	297
<b>PART II</b>	
The Iranian question (I) .....	300
The Greek question—USSR communication dated 21 January 1946 .....	301
The Indonesian question (I) .....	302
The Syrian and Lebanese question .....	302
The Iranian question (II) .....	303
The Spanish question .....	306
The Greek question—Ukrainian SSR communication dated 24 August 1946 .....	308
The Greek frontier incidents question .....	309
The question of the Statute of the Free Territory of Trieste .....	312
The Corfu Channel question .....	313
Appointment of a Governor for the Free Territory of Trieste .....	314
The Egyptian question .....	314
The Indonesian question (II) .....	315
The Palestine question .....	325
The India-Pakistan question .....	344
The Czechoslovak question .....	352
The question of the Free Territory of Trieste .....	353
The Hyderabad question .....	353
Identic notifications dated 29 September 1948 .....	354
Complaint of aggression upon the Republic of Korea .....	354
Complaint of armed invasion of Taiwan (Formosa) .....	358
Complaint of bombing by air forces of the territory of China .....	359
The Anglo-Iranian Oil Company case .....	360
<b>Chapter IX. Decisions in the exercise of other functions and powers</b>	
INTRODUCTORY NOTE .....	365
Reports of the Military Staff Committee .....	366
Reports of the Atomic Energy Commission .....	367
General Regulation and Reduction of Armaments and Information on Armed Forces of the United Nations .....	368
Reports of the Commission for Conventional Armaments .....	369
Strategic Areas under Trusteeship .....	372
<b>Chapter X. Consideration of the provisions of Chapter VI of the Charter</b>	
INTRODUCTORY NOTE .....	375

	<i>Page</i>
PART I. CONSIDERATION OF THE PROVISIONS OF ARTICLE 33 OF THE CHARTER . . .	376
Note . . . . .	376
PART II. CONSIDERATION OF THE PROVISIONS OF ARTICLE 34 OF THE CHARTER . . .	384
Note . . . . .	384
PART III. APPLICATION OF THE PROVISIONS OF ARTICLE 35 OF THE CHARTER . . .	401
Note . . . . .	401
PART IV. CONSIDERATION OF THE PROVISIONS OF ARTICLES 36-38 AND OF CHAPTER VI IN GENERAL . . . . .	410
Note . . . . .	410

**Chapter XI. Consideration of the provisions of Chapter VII of the Charter**

INTRODUCTORY NOTE . . . . .	421
PART I. CONSIDERATION OF THE PROVISIONS OF ARTICLES 39-40 OF THE CHARTER . . .	423
Note . . . . .	423
PART II. CONSIDERATION OF THE PROVISIONS OF ARTICLE 41 OF THE CHARTER . . .	442
Note . . . . .	442
PART III. CONSIDERATION OF THE PROVISIONS OF ARTICLES 42-47 OF THE CHARTER . . .	445
Note . . . . .	445
PART IV. CONSIDERATION OF THE PROVISIONS OF ARTICLES 48-51 OF THE CHARTER . . .	447
Note . . . . .	447

**Chapter XII. Consideration of the provisions of other Articles of the Charter**

INTRODUCTORY NOTE . . . . .	453
PART I. CONSIDERATION OF THE PROVISIONS OF ARTICLE 2 (7) OF THE CHARTER . . .	453
Note . . . . .	453
PART II. CONSIDERATION OF THE PROVISIONS OF ARTICLE 24 OF THE CHARTER . . .	478
Note . . . . .	478
PART III. CONSIDERATION OF THE PROVISIONS OF ARTICLE 25 OF THE CHARTER . . .	488
Note . . . . .	488
PART IV. CONSIDERATION OF THE PROVISIONS OF CHAPTER VIII OF THE CHARTER . . .	492
Note . . . . .	492
PART V. CONSIDERATION OF THE PROVISIONS OF ARTICLES 82-83 OF THE CHARTER . . .	494
Note . . . . .	494
PART VI. CONSIDERATION OF THE PROVISIONS OF CHAPTER XVII OF THE CHARTER . . .	496
Note . . . . .	496

## **Index**

<b>Note on the use of the Index</b> . . . . .	<b>503</b>
<b>Index by Articles of the Charter and by Provisional Rules of Procedure</b> . . . . .	<b>504</b>
<b>Subject Index</b> . . . . .	<b>508</b>

## GENERAL INTRODUCTION

The seventh regular session of the General Assembly, at its 400th plenary meeting on 5 December 1952, adopted, on the report of the Sixth Committee (A/2258), a resolution (686 (VII)) under the title "Ways and means for making the evidence of customary international law more readily available", which authorized the Secretary-General to undertake as soon as feasible the publication of a *Repertoire* of the practice of the Security Council. In conformity with proposals contained in the Secretary-General's Report (A/2170), the present volume covers the proceedings of the Security Council from the first meeting on 17 January 1946, to the 569th meeting on 19 December 1951. A second volume covering proceedings of subsequent meetings is in course of preparation. It is proposed to publish, at suitable intervals, further instalments covering the proceedings of future meetings.

### THE GENERAL CHARACTER OF THE *Repertoire*

In order to make it "more readily available" the voluminous material pertaining to the practice of the Security Council contained in the Official Records has been subjected to two processes. By the first process relevant material has been selected and summarized, and by the second arranged in categories under descriptive headings based upon features taken to be common to the various items of evidence. Material selected and summarized by the first process is not intended as a substitute for the records of the Security Council, which constitute the only comprehensive and authoritative account of its deliberations. The arrangement by categories in the second process is not intended to suggest the existence of procedures or practices which have not been clearly and demonstrably established by the Council itself. The Security Council is at all times, within the framework of the Charter, "master of its own procedure".

In view of the importance of this latter point for assessing the utility of the *Repertoire*, attention is invited to the Report of the Secretary-General of 18 September 1952 to the seventh session of the General Assembly (A/2170), paragraphs 102-106:

"The view has repeatedly been expressed in the Security Council that the Council is, and should remain, the master of its own procedure. It has been indicated that the Council should not commit itself to procedures which in practice might prove to be excessively rigid, since each dispute with which the Council has to deal has unique characteristics. Attention has been drawn to the danger that any premature formalization of the procedures of the Council might impede the latter in the discharge of its responsibilities under the Charter. Such an attitude, it has been contended, corresponds to the very nature of the work of the Security Council. . . . The following requirements would seem to be inherent in the nature of the task.

"Firstly, the *Repertoire* should avoid taking any position, even in the manner of classifying and presenting the material, on the question whether the practices of the Council constitute precedents which have any binding character for the future.

"In the second place, the classification must avoid posing theoretical problems which have not so far been met with in the experience of the Council. It would seem to follow from the discussions in the Sixth Committee that the *Repertoire* should confine itself to setting forth the practices to which the Security Council has actually had recourse, rather than analysing the wide range of procedures and decisions possible under the Charter.

"Lastly, the *Repertoire* should present, in a readily accessible form, all the relevant data regarding the practice and procedure of the Council, but should not itself constitute a work of codification or interpretation. It should be left entirely to the reader to draw conclusions as to the interpretation of the Charter and the provisional rules of procedure."

In the preparation of this volume every care has been taken to comply with these requirements, particularly in the arrangement of case histories by categories. In the process of classification the objective has been to avoid any denial of the essential authority of the Council such as would be implied by the formulation of practices and precedents in such manner as to intrude upon the freedom of the Council to determine its own procedures in each case as it arises. Where therefore in the following pages one case history has been associated with another under a descriptive title common to both, the object of the *Repertoire* will have been achieved if the reader, by using the descriptive title, is able to arrive at relevant proceedings in order to draw conclusions for himself as to the interpretation of the Charter and the provisional rules of procedure.

The present volume, though analytical, is therefore not evaluatory, of the proceedings of the Security Council. It is expository, and, by presenting the results of an empirical survey of the procedures of the Council in a way calculated to make reference easy, constitutes essentially a guide to the proceedings of the Council. It confines itself to setting forth in a readily accessible form the practices and procedures to which the Council has, in fact, had recourse and avoids of set purpose any examination of the wide range of procedures and decisions theoretically possible under the text of the Charter. No theoretical problems are posed, or any problems not already encountered in the experience of the Security Council. The manner of presentation and classification of the material has no bearing on the question whether the practices and procedures of the Council constitute precedents having an influence, much less a binding

character, on future occasions when the Council may be faced with problems more or less cognate.

In short, the methodology in the compilation of the *Repertoire* has been to assemble the relevant data in its entirety, and, on the basis thereof, to devise a framework within which the wide variety of practice to which the Council has had recourse, or which has been the subject of discussion, can be presented, without distortion through the adaptation of material to the exigencies of any logic extraneous to the wholly objective examination of the relevant field of experience.

#### METHOD OF ENTRY OF MATERIAL

In selecting and presenting in compact form evidence from the records, several experiments were made with various forms of presentation. At first the attempt was made to preserve the statements of representatives by means of verbatim quotations, followed by the decision of the Council in each case. The selection of quotations, however, was found to be not only a cumbersome, but also an invidious task, since it was found impossible to adopt any criterion of selection which would do full justice to the strength and variety of opinions expressed in the course of the oftentimes lengthy proceedings of the Council. It was accordingly decided to indicate in a summarized fashion the chain of proceedings, and to include in each case a footnote containing references to the places in the records where the statements of representatives speaking on the matter could be found. In order, however, not to lose in a summary the actual key words used in the course of the proceedings to define an issue or explain a point of view, quotations have been retained in some cases, especially in those instances in which paraphrase would not have done justice to the points expressed.

Where the chain of proceedings thus summarized led up to a decision of the Council, details of the decision have been included where appropriate. The term "decision" has necessarily been used throughout the *Repertoire* as a technical term in the construction of the *Repertoire* and should be understood solely in this sense, and not in the sense of its usage in the Charter. These decisions include not only "decisions" to which specific reference is made in the text of Articles of the Charter, but all significant steps decided upon by the Council, whether by vote or otherwise, in the course of consideration of a question. The units of information compiled from the Official Records in this way have been given consecutive numbers within each chapter to facilitate reference; the designation "case" has been used to describe them, not as constituting examples or instances of any general practice, but rather as factual accounts or histories of the proceedings of the Council on each particular occasion.

The bias of this volume, so far as it attempts to make the evidence available by the use of categories,

is in the direction of procedural exposition and away from a factual or historical presentation of agenda items. Nevertheless, every care has been taken to avoid distorting the actual proceedings by a generalized or analytical arrangement. Where, however, the historical presentation of material was not required for an understanding of the procedural points involved, no effort has been made to reproduce in complete detail the particular proceedings in the Council on a particular issue.<sup>1</sup>

So far as the general classification of the material is concerned, the exposition of the procedures of the Council has in the main necessitated an arrangement derived from the broad problems of practice involved rather than an arrangement of material under Articles of the Charter. Material relating to the exercise by the Council of its functions and powers, is however, arranged under Articles of the Charter in chapters X—XII; an explanation of the method adopted will be found in the introductory note to chapter VIII. The point of departure is the decision or other action of the Council, the relation between that point of departure and the text of the Charter being indicated not so much by the grouping or heading adopted, as by information given in the case history of such interpretation as the Council or its members have vouchsafed in the course of proceedings in that particular case. Throughout this volume care has been taken to avoid the ascription to Articles of the Charter of decisions or other proceedings of the Council which do not bear in themselves any decision of the Council ascribing them to particular Articles.

At the beginning of each chapter and at appropriate places inside each chapter notes have been inserted explanatory of the relation between the material and the arrangement adopted in the chapter. These introductory notes are intended first to explain and amplify the headings given in the table of contents, particularly in chapters where certain practices and procedures that might be regarded as variations from "normal" procedures appear to have received prominent treatment, and second, to draw together whatever information is available on points of procedure which are not adequately explained in the case histories in the chapter itself.

The concern of the Secretary-General in determining the structure and content of the present *Repertoire*, which differs significantly in form from repertoires hitherto compiled, has been fully to meet the request of the General Assembly while respecting the essential character of the Security Council as an organ charged with responsibility for the maintenance of international peace and security.

<sup>1</sup> For example, where the *Repertoire* deals with the question of the vote of a permanent member the identity of the permanent member casting a vote is not given unless that identity is important for a purpose other than that of producing an historical account of the event.

### Editorial Note

1. References to the Official Records of the meetings of the Security Council are given in the following form:

177th meeting: p. 1667.

The page number refers to the page number in the relevant volume of the Official Records.

2. S/ documents are identified by their serial number in the S/ series. Where the S/ document has been printed in the supplements to the Official Records, an additional reference has been given accordingly. For S/ documents printed only in the Official Records of meetings, reference is given to the meeting and page. S/ references without addition indicate that the text is available only in the S/ series.

3. References from one chapter of the *Repertoire* to other chapters are in the following form:

See chapter X, Case 11.

References to other cases in the same chapter are in the following form:

See Case 11.

4. In citing statements in case histories it has been considered necessary at certain points to distinguish between statements made by representatives on the Council and statements by representatives or other persons invited to participate. In such instances, an asterisk has been inserted to distinguish the latter.

5. Information of a routine character will be found in the "Check List of United Nations Documents, Part 2; No. 1—Security Council, 1946-1949". The Check List gives the following data: membership of the Security Council, 1946-1949; Presidents of the Security Council, 1946-1949; chronological list of meetings of the Council, with the official reference to the verbatim record of each meeting; and a list of S/ documents in serial order, with an indication of their subject and where republished.

**Chapter I**

**PROVISIONAL RULES OF PROCEDURE OF THE SECURITY COUNCIL**



## TABLE OF CONTENTS

	<i>Page</i>
INTRODUCTORY NOTE .....	7
 <b>PART I. MEETINGS (RULES 1-5)</b>	
Note .....	8
1. Consideration of the adoption or amendment of rules 1-5 .....	9
2. Special cases concerning the application of rules 1-5 .....	10
 <b>PART II. REPRESENTATION AND CREDENTIALS (RULES 13-17)</b>	
Note .....	11
1. Consideration of the adoption or amendment of rules 13-17 .....	12
2. Special cases concerning the application of rules 13-17 .....	14
 <b>PART III. PRESIDENCY (RULES 18-20)</b>	
Note .....	17
1. Consideration of the adoption or amendment of rules 18-20 .....	18
2. Special cases concerning the application of rules 18-20 .....	18
 <b>PART IV. SECRETARIAT (RULES 21-26)</b>	
Note .....	22
1. Consideration of the adoption or amendment of rules 21-26 .....	23
2. Special cases concerning the application of rules 21-26 .....	23
 <b>PART V. CONDUCT OF BUSINESS (RULES 27-36)</b>	
Note .....	25
1. Consideration of the adoption or amendment of rules 27-36 .....	26
2. Special cases concerning the application of rules 27-36 .....	29
 <b>PART VI. VOTING (RULE 40)</b>	
Note .....	49
1. Consideration of the adoption or amendment of rule 40 .....	50
2. Special cases concerning the application of rule 40 .....	50
 <b>PART VII. LANGUAGES (RULE 41-47)</b>	
Note .....	52
1. Consideration of the adoption or amendment of rules 41-47 .....	53
2. Special cases concerning the application of rules 41-47 .....	54
 <b>PART VIII. PUBLICITY OF MEETINGS, RECORDS (RULES 48-57)</b>	
Note .....	57
1. Consideration of the adoption or amendment of rules 48-57 .....	58
2. Special cases concerning the application of rules 48-57 .....	59
 <b>PART IX. APPENDIX TO PROVISIONAL RULES OF PROCEDURE</b>	
Note .....	59
Consideration of the adoption or amendment of the procedure .....	60

## INTRODUCTORY NOTE

Article 30 of the United Nations Charter provides that "The Security Council shall adopt its own rules of procedure, including the method of selecting its President." The Preparatory Commission of the United Nations discussed at some length whether they should recommend provisional rules of procedure or whether they should be formulated *ab initio* by the Council. The text of the rules as recommended was a compromise between those who desired more comprehensive rules and those who considered that the whole subject should be left to the Security Council.<sup>1</sup>

At the 1st meeting on 17 January 1946, the Council considered the provisional rules of procedure recommended by the Preparatory Commission and first adopted provisional rule 9, providing a method of selecting a President. After the representative of Australia had assumed the presidential chair in accordance with that rule, the Council adopted without change the remaining provisional rules of procedure as recommended by the Preparatory Commission. At the same meeting, the Council established a Committee of Experts composed of one expert for each member of the Council to examine and report on these rules of procedure.<sup>2</sup> At subsequent meetings, the Council considered and adopted recommendations made in reports of the Committee of Experts on alterations in the provisional rules of procedure, together with certain amendments proposed in the course of discussion in the Council.<sup>3</sup> Information regarding the Committee of Experts, including the chronology of their reports will be found in chapter V: Subsidiary Organs of the Security Council. Passages from reports of the Committee of Experts bearing on the provisional rules of procedure, together with the discussion in the Council, are included in the sequence of cases in this chapter under the heading: "Consideration of the adoption or amendment of rule ...".

This chapter contains material bearing upon the practice of the Security Council in relation to all the provisional rules of procedure with the exception of those rules which are dealt with in other chapters as follows: chapter II: Agenda (rules 6-12); chapter III: Participation in the Proceedings of the Council (rules 37-39); chapter VII: Admission of New Mem-

bers (rules 58-60); and chapter VI: Relations with other United Nations Organs (rule 61). Certain procedures of voting are dealt with in the present chapter. The application of Article 27 (rule 40) is dealt with in chapter IV.

The arrangement of each part is based upon the successive chapters of the provisional rules of procedure of the Security Council. In respect of each chapter of the provisional rules, the material is presented under two major headings. Attention is drawn under the first heading to the views expressed in the Council regarding the general purpose and scope of a relevant rule at the time it was provisionally adopted, when there was no concrete issue before the Council for determination under that rule; and to the consideration of such amendments to the provisional rules as have been suggested to, or approved by, the Council as a result of the experience of the Council in the working of a rule as provisionally adopted. Under the second heading are set out the proceedings of the Council when a question concerning the application of a rule has been raised during the consideration of a particular matter. The proceedings thus set out include, wherever appropriate, details of the discussion in the Council regarding the applicability of the rule, as well as information regarding the application of the rule as embodied in actual decisions taken by the Council. These proceedings have been collected together with a single rule as heading, even in cases where subsidiary or connected questions concerning the application of another rule, or of other rules, have been raised in the same case history. Each case history has been presented under that rule which appears to be principally at issue in the case.

The material entered in respect of each rule is necessarily limited to the evidence regarding the working of the rule which is afforded by the records of the Council. The view has been taken that practices in the operation of the provisional rules of procedure which are beyond the purview of the Official Records would not properly lie within the scope of the *Repertoire*.

The practice of the Council is guided by the provisional rules themselves. It has been considered inappropriate to record within this chapter the regular instances of the normal application of the rules. The inclusion of such cases would greatly expand the content of this chapter of the *Repertoire* without adding measurably to its utility. The case histories entered in respect of each rule are in the main those in which some question has arisen regarding the application of the rule, especially where discussion has taken place regarding a momentary variation of practice. The case histories in this chapter do not therefore constitute cumulative evidence of the practice of the Council, but are indications of the special problems which have arisen in the working of the Council under its provisional rules.

<sup>1</sup> For the full text of the rules recommended by the Preparatory Commission, see *O.R., 1st year, 1st series, Suppl. No. 1*, pp. 3-6.

<sup>2</sup> 1st meeting: p. 3.

<sup>3</sup> S/29, S/6, S/35, S/57, S/71, S/88; *O.R., 1st year, 1st series, Suppl. No. 2*, pp. 1-8, 15-30, 39-40, 41-43.

31st meeting: pp. 100-118 (adoption of rules 1-23 and annex A).

41st meeting: pp. 253-267 (adoption of rules 24-54).

42nd meeting: pp. 271-277 (adoption of rules 55-57).

44th meeting: pp. 310-311 (adoption of additional rules 21-22).

48th meeting: p. 382 (adoption of additional rule 20).

138th meeting: pp. 949-952 (adoption of rule 61).

197th meeting: pp. 2256-2266 and 222nd meeting: p. 2771 (adoption of revised rules 58 and 60).

468th meeting: pp. 9-11 (adoption of amendment to rule 13).

Where no material is entered in respect of a rule, this indicates that the application of the rule has not been found to have given rise to instances of discussion such as would necessitate entry in this chapter.

Each part of this chapter is preceded by a note giving a general explanation of the arrangement of the material contained in that part in relation to the practice of the Council. In particular, this note draws attention to the character of the case histories as deviations from or special applications of the provisional rules.

### Article 30 of the Charter

The Security Council shall adopt its own rules of procedure, including the method of selecting its President.

#### Part I

### MEETINGS (RULES 1-5)

#### NOTE

Chapter I of the provisional rules of procedure of the Security Council (rules 1-5) is entitled "Meetings", and reflects the provisions of Article 28 of the Charter. With a view to the fulfilment of the requirement of Article 28 that the Council "be so organized as to be able to function continuously", rule 1 provides that the interval between meetings shall not exceed fourteen days. Case 6 indicates that the 24th, 44th, 222nd, 357th and 424th meetings were held more than fourteen days after the date of the preceding meeting. Other meetings held more than fourteen days after the date of the preceding meeting were the 427th, 430th, 439th, 454th, 455th, 463rd, 471st, 472nd, 473rd, 477th, 531st, 532nd, 541st, 549th, 552nd, 559th, 566th and 567th meetings. It has become customary, when no particular item on the Council's agenda requires immediate consideration, for the President of the Security Council to consult with the representatives on the Council to ascertain whether there is any objection to his intention to waive rule 1. Case 6 refers to one such instance.

No periodic meeting, as provided for in rule 4, has been held during the period under review. General Assembly resolution 494 (V) of 20 November 1950, based upon the Secretary-General's Twenty-Year Programme for Achieving Peace through the United Nations (A/1304), was transmitted to the Security Council by the Secretary-General by letter dated 12 December 1950 (S/1948). The proposals of the Secretary-General which the Council was requested to consider included one calling for "Inauguration of periodic meetings of the Security Council, attended by Foreign Ministers, or Heads or other members of Governments, as provided by the United Nations Charter and the rules of procedure . . .". In this connexion, the Secretary-General stated in his memorandum that: "The periodic meetings of the Security Council provided for in Article 28 of the Charter have never been held. Such periodic meetings should be held semi-annually, beginning with the one in 1950."

PROVISIONAL RULES OF PROCEDURE REGARDING MEETINGS IN FORCE FROM THE 1ST MEETING ON 17 JANUARY 1946 TO THE 31ST MEETING ON 9 APRIL 1946<sup>1</sup>

#### "Rule 1

"The Security Council shall hold regular meetings at . . . intervals.

In view of the very large mass of material presented by the Official Records of the Security Council, some minor points of procedure have also, of necessity, been omitted. The outgoing President has, for example, fixed the date of a meeting to be held after the expiry of his term of office only after consulting the incoming President; it has also been the practice of the Council to make complimentary references to new representatives on the Council, and to the outgoing President on his relinquishing office. Material bearing upon these and similar minor points of procedure have not been included in the *Reper-toire*.

#### "Rule 2

"The Security Council shall hold the periodic meetings called for in the Charter (Article 28, paragraph 2) at quarterly intervals as soon after the first of the month as may be convenient.

#### "Rule 3

"The President may at any time call extraordinary meetings of the Security Council at . . . notice. He shall call such a meeting at the request of a member of the Security Council. He shall also call an extraordinary meeting as soon as he receives from any Member of the United Nations a communication drawing the attention of the Security Council to a dispute under the Charter, Article 35, paragraph 1."

RULES 1-5 OF THE PROVISIONAL RULES OF PROCEDURE OF THE SECURITY COUNCIL ADOPTED AT THE 31ST MEETING ON 9 APRIL 1946

#### "Rule 1

"Meetings of the Security Council shall, with the exception of the periodic meetings referred to in Rule 4, be held at the call of the President at any time he deems necessary, but the interval between meetings shall not exceed fourteen days.

#### "Rule 2

"The President shall call a meeting of the Security Council at the request of any member of the Security Council.

#### "Rule 3

"The President shall call a meeting of the Security Council if a dispute or situation is brought to the attention of the Security Council under Article 35 or under Article 11 (3) of the Charter, or if the General Assembly makes recommendations or refers any question to the Security Council under Article 11 (2), or if the Secretary-General brings to the attention of the Security Council any matter under Article 99.

#### "Rule 4

"Periodic meetings of the Security Council called for in Article 28 (2) of the Charter shall be held twice a year, at such times as the Security Council may decide.

<sup>1</sup> O.R., 1st year, 1st series, Suppl. No. 1, annex 1, p. 3.

*"Rule 5*

"Meetings of the Security Council shall normally be held at the seat of the United Nations.

"Any member of the Security Council or the Secretary-General may propose that the Security Council should meet at another place. Should the Security Council accept any such proposal, it shall decide upon the place, and the period during which the Council shall meet at such place."

**1. CONSIDERATION OF THE ADOPTION OR AMENDMENT OF RULES 1-5**

## CASE 1

In the report of 5 February 1946 on the alterations made by the Committee of Experts in the provisional rules of procedure of the Security Council, the Chairman of the Committee stated:<sup>2</sup>

"The draft of the Preparatory Commission mentioned 'regular', 'periodic', and 'extraordinary' meetings. Certain divergences of opinion appeared within the Committee regarding the meaning to be attached to each one of these expressions. It was difficult, in connexion with the blanks left in rules 1, 3 and 5 of the original draft, to lay down a clear distinction between 'regular' and 'extraordinary' meetings. In order to overcome this difficulty the Committee adopted a new and more flexible wording which does not expressly provide for 'extraordinary' meetings, while, however, leaving to the President of the Council the power to call meetings:

"(a) When he deems it necessary (rule 1);

"(b) At the request of any member of the Council (rule 2);

"(c) When it is provided for by the Charter (rule 3).

"This reference in rule 3 to the initiative given to the Secretary-General under Article 99 of the Charter led the Committee to omit from the new text the former rule 15 of the Preparatory Commission's draft, which was now superfluous. The Committee was anxious to stress, in rule 1, the permanent nature of the Security Council and, with this end in view, provided that the interval between any two meetings should not exceed fourteen days..."

## CASE 2

In the report of 5 April 1946 submitted by the Committee of Experts with regard to chapters I-IV of the provisional rules of procedure, the Chairman of the Committee stated:<sup>3</sup>

"The rules relating to meetings have been recast by the Committee. The rules now in force concerning meetings are based on a distinction between three types of meeting: regular, periodic and extraordinary. In the course of discussion it became apparent that no clear distinction between regular and extraordinary meetings could be drawn. The distinction is therefore abandoned in the rules attached to this report. The Committee has sought to

draw up rules which, by reason of the proposed frequency of meetings and of facility in the calling of meetings, may be deemed to give effect to the requirement of the Charter that the Security Council shall be so organized as to be able to function continuously. Rule 5, which makes provision for the application of Article 28 (3) of the Charter, has been added. The Committee has refrained from expressing any opinion as to the frequency of the periodic meetings provided for in Article 28 (2) of the Charter on the grounds that only representatives on the Security Council are qualified to form a judgment on this matter."

## CASE 3

At the 31st meeting on 9 April 1946, on consideration of the report of the Committee of Experts, the representative of the USSR, supported by the representatives of Australia, United States, Egypt, Brazil, Mexico, United Kingdom and Poland, proposed that "two periodic meetings of the Security Council... should take place each year". The representative of Australia proposed that the words "at such times as the Council may decide" be added, so rule 4 would read:

"Periodic meetings of the Security Council called for in Article 28, paragraph 2 of the Charter shall be held twice a year, at such times as the Council may decide."

The Australian amendment was supported by the representatives of the United States, United Kingdom, Egypt, Poland, Brazil, Mexico and the USSR. The representative of France stated:

"I wonder if it would not be better to provide for three periodic meetings of the Security Council, in view of the fact that one of these meetings will take place during the General Assembly, when the Ministers of Foreign Affairs and certain Prime Ministers will be present; moreover the Assembly and the Security Council will inevitably be in contact.

"It would be well for the Security Council, in addition to the September meeting, to hold a meeting at the beginning of January... and one in May. This would be conducive to the orderly handling of the routine questions which we shall have in the future, such as reports submitted by the Council's auxiliary bodies."

The representative of Poland proposed that the following sentence be added to rule 4:

"One of the periodic meetings should take place during the session of the General Assembly."

The majority of the members of the Council supported the USSR and Australian proposals to hold two periodic meetings "at such times as the Council may decide". As to the French proposal to hold three periodic meetings, and the Polish amendment to hold one of the periodic meetings during the General Assembly session, the majority of the representatives raised objections in the following terms:

The representative of the United Kingdom said:

"... I think if we prescribe here and now three meetings a year, we may find that more than a sufficient, whereas, if we do find the need of more than two, I suppose that the Council can in its wisdom decide to increase the number..."

<sup>2</sup> S/6, O.R., 1st year, 1st series, Suppl. No. 2, pp. 1-2

<sup>3</sup> S/29, p. 2.

The representative of Egypt said:

"...the Egyptian delegation shares the point of view of the Australian representative inasmuch as two sessions for the periodic meetings are sufficient. If the Council judges that there is some extraordinary matter which requires a further meeting, then the Council itself can fix the number of meetings necessary..."

Opinions along the same lines were expressed by the representatives of Australia, Brazil and Mexico. The representative of Poland said that he would not insist upon adding the sentence he had proposed to rule 4 to the effect that one of the meetings should be held during the session of the General Assembly, if the majority of the members felt that it was unnecessary. He was sure that that would happen anyhow, once the Council had the right to choose the date of the meetings. In reply to an inquiry by the President (China) as to his willingness to withdraw his proposal, the representative of France stated:

"I yield to the opinion of the majority. Nevertheless, I would remark that the Charter appears to me to be clear and that it would not be sufficient to say that periodic meetings will be held twice a year at the Council's discretion.

"By virtue of Article 28 of the Charter, the Security Council 'shall be so organized as to be able to function continuously', that is to say, to be able to meet any demand which may be made upon it from any source. That is the first point: the Security Council should be the sentry guarding the peace of the world.

"But there is a second paragraph to the effect that the Security Council 'shall hold periodic meetings'. I think it is rather a free interpretation of the Charter to say that the Council will meet twice a year when its members so desire.

"...I still believe that experience will show that from time to time it will be necessary to deal with an agenda drawn up a long time in advance at a session devoted to a study of all the Council's business, military, as well as political. Three such meetings a year would be preferable."<sup>4</sup>

**Decision:** *The Polish and French amendments having been withdrawn, rule 4, as amended by the representative of Australia, was adopted.*<sup>5</sup>

#### CASE 4

On 2 September 1947, the representative of the United Kingdom forwarded to the President of the Security Council a letter enclosing the following additional draft rules of procedure, designed to introduce "more order into the sittings of the Security Council".

"Meetings of the Security Council shall not normally extend beyond the hours of 1.00 p.m. in the case of a morning meeting and 6.30 p.m. in the case of an afternoon meeting. The meeting may be prolonged beyond those hours only by a vote of the Council.

"If the meeting has not been so prolonged, and if a member of the Council is still speaking at 1.00 p.m. or 6.30 p.m., he may resume his speech at the beginning of the next meeting, or the Council, at his request, may vote to extend the meeting by one quarter of an hour, within which period the speaker must complete his speech, and the sitting shall then be adjourned. The translation of his speech must be made at the next meeting.

"The Security Council shall endeavour, so far as may be possible, so to arrange its business as to provide that for two periods of the year, of three weeks each, it shall not occupy itself with important business. It shall endeavour to determine these periods some time in advance, in order to enable Delegations and members of the Secretariat to make their leave arrangements. It would be an advantage if one of these periods could be in the month of August."<sup>6</sup>

## 2. SPECIAL CASES CONCERNING THE APPLICATION OF RULES 1-5

### a. Rule 1

#### CASE 5

At the 213th meeting on 22 October 1947, in connexion with the Indonesian question (II), the President (United Kingdom) suggested that the Council should adjourn and meet on 28 October to afford time to study certain lengthy documents the circulation of which was to be completed within three days. As the Council was divided, the President asked for a vote on whether a meeting should be held on 24 October. There were 5 votes in favour, and the proposal was not adopted. The President then ruled that the Council should meet on 27 October. After further discussion, the President put to the vote the convening of a meeting on Saturday, 25 October. The proposal was not adopted. The President then stated:

"I think I shall therefore fall back on rule 1 of the provisional rules of procedure, which reads: 'Meetings of the Security Council shall, with the exception of the periodic meetings referred to in rule 4, be held at the call of the President at any time he deems necessary.' I therefore ask the Council to meet here on Monday, 27 October, at 3 p.m."<sup>7</sup>

#### CASE 6

At the 424th meeting on 10 May 1949, in connexion with the appointment of a Governor for the Free Territory of Trieste, the representative of the USSR stated:<sup>8</sup>

"The USSR delegation considers that it is too long—more than a month now—since the Security Council last met. This is contrary to the Charter, particularly to that Article which states that the Security Council shall function continuously; it is equally contrary to the rules of procedure of the Security Council..."

<sup>4</sup> For texts of relevant statements see:

31st meeting: Australia, pp. 103-104, 105-106, 107; Brazil, p. 106; Egypt, p. 105; France, pp. 104, 107; Mexico, p. 106; Poland, pp. 105-106; USSR, pp. 103, 106; United Kingdom, pp. 104-105; United States, p. 104.

<sup>5</sup> 31st meeting: p. 107.

<sup>6</sup> S/540.

<sup>7</sup> 213th meeting: pp. 2616-2621. On the question of the ruling, see Case 58.

<sup>8</sup> 424th meeting: p. 2.



The representative of Egypt stated:<sup>9</sup>

"... In my capacity as President of the Security Council during the month of April, I was in constant touch with the members of the Council, and neither the representative of the Soviet Union nor any other representative asked that a meeting be held.

"The representative of the Soviet Union said that we have gone counter to the Charter. No matter how many times I examine the Charter, I cannot see against what Article we have transgressed. The Charter states that the Security Council shall function continuously, but I imagine that no one assumes that we sit here day and night. Unless there is a call for a meeting, we do not meet. All the members of the Council were here and ready to meet in the event that any matter requiring discussion arose.

"The representative of the Soviet Union also mentioned our rules of procedure. I should simply like to say that, if my memory is correct, this is at least the fourth time the Security Council has not met for a period lasting more than a fortnight.<sup>10</sup> It happened once, I think, in connexion with the Council's meeting in London. I admit that that was before the adoption of rule I of the rules of procedure. But there have been at least two further precedents which took place after the adoption of that rule, in connexion with the Council's meetings in Paris last year."

### b. Rule 2

#### CASE 7

At the 386th meeting on 17 December 1948, the representative of the USSR asked the President (Belgium) "to give members of the Council three days' notice in the event of an extraordinary meeting being called during the next few days". The President said that the Council's desire in the matter would be met to the fullest possible extent.<sup>11</sup> On 19 December

<sup>9</sup> 424th meeting: p. 8.

<sup>10</sup> The 24th, 44th, 222nd and 357th meetings were held more than fourteen days after the date of the preceding meeting. (See also the Note regarding part I of chapter I.)

<sup>11</sup> 386th meeting: p. 37. This meeting was held in Paris, where the Security Council was still sitting following the adjournment on 12 December of the first part of the third session of the General Assembly. According to a statement by the President (387th meeting, p. 5), the members of the Council had agreed informally that they would hold no meetings during the second fortnight of December unless urgent problems arose. At the 396th meeting on 29 December, the President stated (396th meeting: p. 47) that the Council would adjourn and resume its discussions the following week at Lake Success.

1948, the representative of the United States requested an emergency meeting in connexion with the Indonesian question (II), and a meeting was called by the President for 20 December 1948. At the 387th meeting on 20 December 1948 a telegram from the Minister of Foreign Affairs of the Soviet Union requesting postponement of the meeting to 22 December was considered in the absence of the representatives of Colombia, the USSR and the Ukrainian SSR. The representative of the United States referred to Article 28, and suggested that, in view of the urgency and gravity of the situation, absent representatives should be asked to be present at a meeting on 21 December. The President explained that "it was my understanding that the request of the USSR representative for three days' advance notice applied not to questions already under discussion, but precisely to urgent problems". The representative of France thought the simplest way would be to postpone the meeting. The representative of the United States suggested that the President, if he replied to the telegram from the Government of the Soviet Union, might "feel it appropriate to mention that the informal meeting which we have had today" had indicated the Indonesian question to be a matter of great urgency.<sup>12</sup>

**Decision:** *There being no objection to the request of the USSR Government, the meeting was adjourned until 22 December.*<sup>13</sup>

#### CASE 8

At the 390th meeting on 23 December 1948, in connexion with the Indonesian question (II), the representative of Australia\* questioned the failure of the President (Belgium) to convene a meeting on the Indonesian question before 20 December although he had received a specific request from the representative of Indonesia\* on 14 December.<sup>14</sup> The President, replying to the criticism of the representative of Australia, pointed out that the request of the representative of Indonesia had been transmitted immediately to all members of the Council as an official document, but no member of the Council or the Australian delegation had seen fit to demand an extraordinary meeting of the Council or the inclusion of the question in the agenda for either of the meetings on 17 December.<sup>15</sup>

<sup>12</sup> For texts of relevant statements see:

387th meeting: President (Belgium), pp. 2, 5; China, p. 6; France, p. 7; Syria, pp. 2-3; United Kingdom, p. 5; United States, pp. 3-5.

<sup>13</sup> 387th meeting: p. 8.

<sup>14</sup> S/1120, O.R., 3rd year, Suppl. for Dec. 1948, pp. 210-211.

<sup>15</sup> For texts of relevant statements see:

390th meeting: President (Belgium), p. 17; Australia, p. 5.

## Part II

### REPRESENTATION AND CREDENTIALS (RULES 13-17)

#### NOTE

Case 15 exemplifies the practice of the Security Council before 1948 of including in the provisional agenda the report submitted by the Secretary-General in accordance with rule 15 of the provisional rules of procedure regarding his examination of the credentials of representatives on the Council, and, after the adop-

tion of the agenda, of approving the credentials if there had been no objection. Such reports were adopted after discussion at the 42nd, 43rd, 44th, 46th, 48th, 51st, 52nd, 76th, 88th, 92nd, 102nd, 105th, 169th, 220th, 222nd, 226th, 227th, 315th and 318th meetings. The reports of the Secretary-General on credentials have not appeared on the provisional agenda of the Security

Council since 1948. They have been circulated to all delegations on the Council, and, in the absence of any request that they be considered by the Council, have been considered approved without objection.

Case 16 exemplifies the practice of the Council before 1948 of including in the provisional agenda the report submitted by the Secretary-General, in accordance with rule 15 of the provisional rules of procedure, regarding his examination of the credentials of representatives appointed in accordance with rule 14, and, after the adoption of the agenda, of approving the credentials if there had been no objection. Such reports were also adopted after discussion at the 226th and 227th meetings. Case 17 exemplifies the approval of the Secretary-General's report without inclusion in the provisional agenda. Cases 12-14 represent the relaxation of the requirements of rule 14.

During the period under review, the question of the representation of China in the Security Council has been raised in the Council. This question impinged on certain matters the relationship of which to chapter III of the provisional rules of procedure has not been expressly determined in the course of the proceedings of the Council. For the purpose of the *Repertoire*, where material on this question appears to relate to a particular rule of procedure or is clearly relatable to the amendment of a rule, an appropriate case history has been arranged under that rule. For material where no such link is easily visible, however, it has been thought proper to give a brief account of the case as a whole, keeping its special features intact without endeavouring to assign details more precisely to other rules of procedure.

PROVISIONAL RULES OF PROCEDURE REGARDING REPRESENTATION AND CREDENTIALS IN FORCE FROM THE 1ST MEETING ON 17 JANUARY 1946 TO THE 31ST MEETING ON 9 APRIL 1946

There were no rules of procedure on this subject at this time.

RULES 13-17 OF THE PROVISIONAL RULES OF PROCEDURE OF THE SECURITY COUNCIL ADOPTED AT THE 31ST MEETING ON 9 APRIL 1946, WITH AMENDMENT TO RULE 13, ADOPTED AT THE 468TH MEETING ON 28 FEBRUARY 1950

"Rule 13

"Each member of the Security Council shall be represented at the meetings of the Security Council by an accredited representative. The credentials of a representative on the Security Council shall be communicated to the Secretary-General not less than twenty-four hours before he takes his seat on the Security Council. [The credentials shall be issued either by the Head of the State or the Government concerned or by its Minister of Foreign Affairs.]<sup>1</sup> The Head of Government or Minister of Foreign Affairs of each member of the Security Council shall be entitled to sit on the Security Council without submitting credentials.

"Rule 14

"Any Member of the United Nations not a member of the Security Council and any State not a Member of the United Nations, if invited to participate in a meeting or meetings of the Security

<sup>1</sup> Amendment adopted at the 468th meeting on 28 February 1950. (See Case 11.)

Council, shall submit credentials for the representative appointed by it for this purpose. The credentials of such a representative shall be communicated to the Secretary-General not less than twenty-four hours before the first meeting which he is invited to attend.

"Rule 15

"The credentials of representatives on the Security Council and of any representative appointed in accordance with Rule 14 shall be examined by the Secretary-General who shall submit a report to the Security Council for approval.

"Rule 16

"Pending the approval of the credentials of a representative on the Security Council in accordance with Rule 15, such representative shall be seated provisionally with the same rights as other representatives.

"Rule 17

"Any representative on the Security Council, to whose credentials objection has been made within the Security Council, shall continue to sit with the same rights as other representatives until the Security Council has decided the matter."

1. CONSIDERATION OF THE ADOPTION OR AMENDMENT OF RULES 13-17

Rule 13

CASE 9

In the report of 5 April 1946 submitted by the Committee of Experts with regard to chapters I-IV of the provisional rules of procedure, the Chairman of the Committee stated:<sup>2</sup>

"No rules relating to Credentials were submitted by the Preparatory Commission. The Committee recommends the addition to the Provisional Rules of a new chapter relating to the presentation and examination of credentials."

CASE 10

At the 31st meeting on 9 April 1946, the Chairman of the Committee of Experts stated:

"... The present body of rules now in force in the Security Council makes no provision for the examination of credentials. In the light of the experience gained in the meetings of the Security Council, however, the Committee considers it necessary to recommend these rules.

"In so doing the Committee desires (a) to facilitate the seating of the Prime Minister or the Minister of Foreign Affairs of a State which is a member of the Council, and (b) to distinguish between the credentials of representatives of members of the Council and representatives of States invited to participate in the discussions of the Council."<sup>3</sup>

<sup>2</sup> S/20, p. 3.

<sup>3</sup> Rule 13, as proposed by the Committee of Experts, read: "Each member of the Security Council shall be represented at the meetings of the Security Council by an accredited representative. The credentials of a representative on the Security Council shall be communicated to the Secretary-General not less than 24 hours before he takes his seat on the Security Council. The Prime Minister or Minister of Foreign Affairs of each member of the Security Council shall be entitled to sit on the Security Council without submitting credentials."

The representative of Australia, supported by the representative of the United States, proposed that in rule 13, after the words "he takes his seat on the Security Council", the following words be added:

"A credential may be in the form of a telegram signed by the Minister of Foreign Affairs and confirmed in writing."

He was proposing this addition as he believed that there should be an indication in that rule as to what a minimum credential should be.

Upon the objection of the representatives of Egypt, the USSR and Poland to the necessity of the addition proposed to rule 13, the representative of Australia withdrew his amendment. The representative of the United States proposed that the words "the Prime Minister" in rule 13 be changed to "the Head of Government" so as to enable the President of any republic which was a Member of the United Nations to sit at the Council table.<sup>4</sup>

**Decision:** At the 31st meeting on 9 April 1946, the Council unanimously adopted chapter III of the provisional rules of procedure with the United States amendment to rule 13.<sup>5</sup>

#### CASE II

At the 459th meeting on 10 January 1950, the representative of India said that the rules in chapter III seemed to him to be defective. With regard to the latter part of rule 13, he said:<sup>6</sup>

"... Suppose, for example, I come here and say that I am the Head of the Indian Government or the Foreign Minister of India. The rule says that I am entitled to sit in the Security Council without submitting credentials. The Council does not know whether I am the person I claim to be. Rule 15 does not help, because rule 15 refers to 'the credentials of representatives' which are to be examined by the Secretary-General, but I have put before the Council a case in which no credentials are required at all and in which rule 15 therefore does not apply. Nor does rule 17 help, because that applies only to a representative already seated . . . [but] whose right to continue to sit has been challenged" . . .

"The rules seem to me to be silent on this particular point. Clearly, in the hypothetical case that I have put, there must be some body, some authority, specifically designated to decide whether I am what I claim to be . . . I would suggest that the question of amending the rules might be studied in the meantime."

At the 460th meeting on 12 January 1950, the representative of India proposed that a "committee of experts be set up for the purpose of suggesting amendments to our rules of procedure regarding representation and credentials. In proposing amendments, the committee would doubtless take into account the desirability of so framing them that they might be adopted by the other organs of the United Nations . . ."<sup>7</sup>

At the 462nd meeting on 17 January 1950, the representative of India submitted the following draft amendment to chapter III of the provisional rules of procedure of the Security Council:<sup>8</sup>

"In rule 13, before the last sentence, insert the following:

"The credentials shall be issued either by the Head of the State or the Government concerned or by its Minister of Foreign Affairs."

"After rule 17 insert the following as rule 17-A:

"Where the right of any person to represent, or to continue to represent, a State on the Security Council, or at a meeting of the Security Council, is called in question on the ground that he does not represent, or has ceased to represent, the recognized government of that State, the President of the Council shall, before submitting the question to the decision of the Council, ascertain (by telegraph if necessary) and place before the Council, the views of the Governments of all the other Member States of the United Nations on the matter."<sup>9</sup>

The Council decided to refer the proposal of the delegation of India to the Committee of Experts for study and report.<sup>9</sup>

At the 468th meeting on 28 February 1950, the Chairman of the Committee of Experts, in presenting the Committee's report,<sup>10</sup> stated:<sup>11</sup>

"With regard to the proposed amendment to rule 13, the Committee felt that it should be incorporated in that rule, although it is for the Security Council to decide whether it should be adopted now or at a later date."

With regard to proposed rule 17-A, the Committee agreed that:

"Some uniform procedure should be established which could be adopted by all the organs of the United Nations, in order to avoid the taking of separate decisions. It was the opinion of the majority of the Committee, however, that the nature of the question was such that it was appropriate for the General Assembly to consider it and to obtain uniformity and co-ordination in procedure with regard to representation and credentials.

"I should like to add that in the course of deliberations the Committee based itself on the assumption that the right of the Security Council to consider any question relating to the representation or the credentials of one of its members was indisputable.

"In view of those considerations, the Committee considered that the Security Council should not, for the moment, take any decision on the proposed amendment to rule 17 of the provisional rules of procedure of the Security Council."

The representative of India proposed that the recommendation of the Committee of Experts to incorporate the text of his amendment in rule 13 be adopted immediately.<sup>12</sup>

<sup>4</sup> For texts of relevant statements see: 31st meeting: Australia, pp. 112, 115; Egypt, p. 113; Poland, p. 114; USSR, p. 114; United States, p. 112; Chairman of Committee of Experts, p. 102.

<sup>5</sup> 31st meeting: p. 115.

<sup>6</sup> 459th meeting: pp. 8-9.

<sup>7</sup> 460th meeting: pp. 6-7.

<sup>8</sup> S/1447, O.R., 5th year, Suppl. for 1 Jan.-31 May 1950, pp. 2-3.

<sup>9</sup> 462nd meeting: p. 13.

<sup>10</sup> S/1457 and Corr.1, O.R., 5th year, Suppl. for 1 Jan.-31 May 1950, p. 7.

<sup>11</sup> 468th meeting: p. 10.

<sup>12</sup> 468th meeting: pp. 10-11.



**Decision:** *The amendment to rule 13 was adopted without objection. Regarding the proposed Indian amendment to rule 17, the President suggested that the Council approve the conclusions of the Committee of Experts.*

**Decision:** *The President's proposal was adopted.*<sup>13</sup>

## 2. SPECIAL CASES CONCERNING THE APPLICATION OF RULES 13-17

### a. Rule 14

#### CASE 12

At the 171st meeting on 31 July 1947, in connexion with the Indonesian question (II), the representatives of the Netherlands and India took their seats at the Council table, immediately after being invited to participate in the discussion.

The President (Poland), after referring to the provision of rule 14 of the provisional rules of procedure regarding the submission of credentials, invited them to settle the matter with the Assistant Secretary-General.<sup>14</sup>

#### CASE 13

At the 181st meeting on 12 August 1947, in connexion with the Indonesian question (II), the representative of Poland moved that the representative of the Republic of Indonesia be invited to take part in the Council's discussion. The President (Syria) ruled that the question of the invitation of the representatives of the Republic of Indonesia could not be discussed, as it had not been included in the agenda. It was therefore necessary to submit a written proposal to that end;

"... moreover, the Secretary has not the credentials of the representatives of the Indonesian Republic, which would be necessary if they were to be recognized as representatives and invited to the Council table..."

The President then read a letter from the representative of the Indonesian Republic<sup>15</sup> stating that, in connexion with his Government's request to participate in the Council's consideration of the Indonesian question, if such invitation were extended, the Republic would accept in advance, for the purpose of that dispute, the obligations of a Member of the United Nations. The representative of the USSR, supporting the invitation of the representative of the Indonesian Republic, said:

"... I do not know what the position is from the procedural point of view as regards credentials, etc., but it is apparent from the letter read just now by the President that the representatives who are here have been empowered to state the views of their Government..."

The representative of Australia, speaking in support of the participation of the Republic of Indonesia, remarked:

"The letter which the President himself read this afternoon (S/487) indicates that the State concerned [*Republic of Indonesia*] has already undertaken certain obligations; therefore, when I speak about cir-

cumventing the rules of procedure, I refer to rule 14 regarding the submission of credentials. I would point out that, in this dispute, that rule was dispensed with in respect both of the Netherlands and of India; it was waived.<sup>16</sup> That is therefore a technicality."

The representative of the United States supported the participation of the representative of the Republic of Indonesia. As to the question of credentials, he said:<sup>17</sup>

"... I think it is entirely within the right of the Council, however, to satisfy itself that these persons do truly represent the Government of Indonesia. In that sense I think that the question of credentials, in whatever form they may be presented, or in whatever way the proper assurance may be given, is of prime importance... One cannot cursorily dismiss the matter of credentials by treating them as technicalities..."

**Decision:** *The Polish proposal to invite the representative of the Republic of Indonesia to participate in the Council's discussion was adopted by 8 votes to 3. A report regarding the credentials of the representative of the Indonesian Republic was submitted to the Council at the 184th meeting on 14 August 1947.*<sup>18</sup>

#### CASE 14

At the 184th meeting on 14 August 1947, in connexion with the Indonesian question (II), the representative of the Philippines was invited to participate in the discussion.<sup>19</sup> After he had taken his seat, the Assistant Secretary-General made the following remarks:<sup>20</sup>

"According to rule 14 of the provisional rules of procedure of the Security Council, the credentials of representatives who are invited to participate in a meeting or meetings of the Security Council shall be communicated to the Secretary-General not less than twenty-four hours before the first meeting which they are invited to attend. If we were to interpret this rule strictly, of course, the representative of the Philippines could not attend before the meeting following this one. But the exception was made in the case of the Netherlands and Indian representatives,<sup>21</sup> when the Council treated this matter on the occasion of the first meeting which they attended, and the Council requested that they should take their seats at the Council table immediately and send their credentials to the Secretary-General as soon as possible.

"It is perhaps a deviation from the strict letter of this rule, but I suppose that the Council, in view of the special circumstances, decided to interpret the rule broadly. I make this statement because it is my duty to direct the attention of the Council to the rules of procedure, but I repeat that an exception was made on the occasion of seating of the Netherlands and Indian representatives.

"May I add that rule 16 of the provisional rules of procedure seems to point in the same direction as rule 14."

<sup>13</sup> 171st meeting: p. 1618. See Case 12.

<sup>14</sup> For texts of relevant statements see:

181st meeting: President (Syria), pp. 1918-1919; Australia, p. 1931; USSR, pp. 1919-1920; United States, p. 1932.

<sup>15</sup> 184th meeting: p. 1979. See Case 17.

<sup>16</sup> 184th meeting: p. 1980.

<sup>17</sup> 184th meeting: p. 1980.

<sup>18</sup> 171st meeting: p. 1618.

<sup>19</sup> 468th meeting: p. 11.

<sup>20</sup> 171st meeting: p. 1618.

<sup>21</sup> S/487, 181st meeting: p. 1919.

## b. Rule 15

## CASE 15

At the 88th meeting on 31 December 1946, the reports by the Secretary-General to the President of the Security Council concerning the credentials of the representatives of Belgium, Syria and Colombia on the Security Council<sup>22</sup> were included as items 2, 3 and 4 on the provisional agenda. After the adoption of the agenda, the President (United States), proposed with respect to item 2, that "if there is no objection the report by the Secretary-General is adopted, in the sense that the credentials are satisfactory." Similar proposals were made with respect to items 3 and 4, and the three reports were adopted without objection.<sup>23</sup>

## CASE 16

At the 147th meeting on 27 June 1947, the report of the Secretary-General on the credentials of representatives to the Security Council for the discussion of the Greek question was included in the provisional agenda as item 2 (a). After the adoption of the agenda the President (France), stated that the supplementary report regarding the credentials of the alternate representative of Greece should be added to the report, and as there were no remarks, the report of the Secretary-General and the additional report were adopted.<sup>24</sup>

## CASE 17

At the 184th meeting on 14 August 1947, in connexion with the Indonesian question (II), the President (Syria), after the adoption of the agenda, referred to the decision of the Council at the 181st meeting to invite a representative of the Indonesian Republic to take his place at the Council table, and stated: "His credentials have been distributed to the members of the Council and, in the opinion of the Secretariat, the credentials are in order". The representative of the Republic of Indonesia was then invited to the table.<sup>25</sup>

## CASE 18

A cablegram dated 20 January 1950, bearing the signature of the Minister of Foreign Affairs of the People's Republic of China, informed the Secretary-General and the Members of the United Nations and the Security Council that his Government had appointed Chang Wen Tien as Chairman of its delegation to attend the meetings and to participate in the work of the United Nations, including the meetings and work of the Security Council. He asked when "the Kuomintang representative" would be expelled from the United Nations and from the Security Council, and when the delegation of the People's Republic of China could participate in the work of the United Nations and the Security Council. During the month of February 1950, the Secretary-General requested the preparation of a confidential memorandum on the legal aspects of the problem of the representation of States in the United Nations. Some of the representatives on the Security Council asked to see the memorandum,

and references to it appeared in the Press. On 8 March, the Secretary-General informed the President of the Council that he felt it appropriate that the full text be made available to all members of the Council. Accordingly, he circulated the memorandum to all members and released it to the Press.<sup>26</sup>

## c. Rules 13-17 in general

## CASE 19

At the 459th meeting on 10 January 1950, the representative of the USSR informed the Council that his Government supported the position taken by the Government of the People's Republic of China in considering that "the Kuomintang delegation" was illegal and in demanding its expulsion from the Council. He submitted the following draft resolution:<sup>27</sup>

*"The Security Council,*

*"Having considered the statement made by the Central People's Government of the Chinese People's Republic on 8 January 1950 to the effect that it considers the presence in the United Nations Security Council of the representative of the Kuomintang group to be illegal and insists on the exclusion of that representative from the Security Council,*

*"Decides not to recognize the credentials of the representative referred to in the statement by the Central People's Government of the Chinese People's Republic and to exclude him from the Security Council."*

The President (China) ruled that the proposal of the representative of the USSR should be circulated to members of the Council and considered at a subsequent meeting.

The representative of the USSR said that he could not regard as legal any ruling by a person who represented no one. He insisted that his proposal be put to the vote immediately, since the competence of the person concerned to remain in the Council and to serve as President had been challenged. The USSR delegation did not consider it possible that further meetings should be called under the presidency of a person who did not represent China and the Chinese people and whose presence in the Security Council was illegal.

**Decision:** *The President's (China) ruling was upheld by 8 votes to 2, with 1 abstention.*<sup>28</sup>

The representative of the USSR said that he could not agree to the ruling which had been adopted. He considered that it would be abnormal for the Security Council to consider any political or other questions when five of its members had severed relations with the group represented by the President who, from the point of view of common sense and legal principle, represented no one.

The representative of Yugoslavia proposed that the Council should adjourn until it was in a position to deal with the USSR draft resolution, which was a preliminary question, since it concerned the very membership of the Council.

<sup>22</sup> S/225, S/226, S/227, O.R., 1st year, 2nd series, Suppl. No. 13, pp. 233-234.

<sup>23</sup> 88th meeting: p. 709.

<sup>24</sup> S/385, S/385/Add.1, 147th meeting: p. 1116.

<sup>25</sup> 184th meeting: p. 1979.

<sup>26</sup> S/1466, O.R., 5th year, Suppl. for 1 Jan.-31 May 1950, pp. 18-23.

<sup>27</sup> S/1443, 459th meeting: p. 3.

<sup>28</sup> 459th meeting: p. 4.

The representative of the United States, speaking on the attitude taken by the representative of the USSR, stated:

"... I should like to point out that decent respect for orderly procedure would seem to have dictated a different course than that which has been followed here by the representative of the Soviet Union. I am referring to rule 17 of the provisional rules of procedure of the Security Council... It seems to my delegation that this rule should have been complied with in this case. It is therefore a matter of concern and regret that the representative of the Soviet Union has seen fit to disregard this rule."

Regarding the Yugoslav motion for adjournment, the representative of the United States said that his delegation, although not agreeing with the arguments advanced by the representative of Yugoslavia, favoured adjournment but without the intention to

"indicate in any way that we believed it would be desirable or proper or politic to suspend our deliberations until a decision were taken by the Security Council upon the credentials of the representative of China.

"... we wish to suggest postponement of the discussion of the item on today's provisional agenda only until the Soviet Union motion has come before the Security Council in accordance with the ruling of the Chair, and the Security Council has considered what action, if any, to take upon that motion."

The representatives of the United Kingdom and Ecuador agreed with the representative of the United States as to the applicability of rule 17 of the provisional rules of procedure. With regard to the Yugoslav motion for adjournment, the representative of the United Kingdom said that he found

"it difficult to accept the implication of that proposal, which is that, until we have settled this other question raised by the representative of the Soviet Union, the Council can proceed with no business. In the view of my Government, the proposal made by the representative of the Soviet Union has been raised prematurely..."

The Council adjourned without a vote being taken on the Yugoslav motion for adjournment.

At the 460th meeting on 12 January 1950, the representative of France stated that rule 17 applied precisely to the case in point, and that the rights of the representative of China under that rule included the right to preside.

The representative of China said that, when he had taken his seat in the Council, more than two years previously, his credentials had been duly certified to the Council as adequate. They had not been challenged until the USSR draft resolution had been presented. If the question before the Council was a matter of credentials, there could be no real question at all. Although the USSR draft resolution spoke of credentials, what it called into question was really the right of his Government to be represented at all. That was not a question of mere procedure but a political question of the utmost importance, and he would treat it as such.

The representative of the USSR said that it was obvious that any reference to the rules of procedure in connexion with the matter under discussion was groundless and irrelevant. The point at issue was not whether the credentials of the representative of the

Kuomintang group on the Council were or were not in order, but that the latter had no credentials at all and no legal right or reason to sit in the Security Council, because the Central People's Government of the People's Republic of China had urged his exclusion from the Council on the ground that his presence there was illegal. Rule 17 in no way applied to the case in point, and any references to it were merely feeble attempts to disguise all the odium of the position taken by the representatives of the United States, the United Kingdom and France. He considered that any participation in the voting on the part of the representative of "the Kuomintang group" would be illegal and would have no juridical value, for the Government of the People's Republic of China, which represented China and the Chinese people in the international field and in their relations with other States, considered his presence in the Council illegal and insisted upon his exclusion. That was an entirely new and special problem not covered by the rules of procedure.

The representative of Ecuador noted that, while devoting some attention to the question of credentials, the representatives of the USSR and China both seemed to consider that the question under consideration was not, in fact, a question of credentials. However, credentials had been received for the representative of China, certified by the Secretary-General as valid and accepted by the Council. Whatever important considerations were involved and whatever motives there might be for unseating a representative, it would be absolutely indispensable first to withdraw recognition of his credentials.

The representative of Cuba considered that the USSR draft resolution bore not only upon the validity of the credentials but also upon the very representation of a Member State. He referred to resolutions 291 (IV) and 292 (IV) dealing with the situation in China which the General Assembly had adopted at its fourth session, and believed it "would be premature and inappropriate at the present time for the Security Council to take a decision on the legal standing of the delegation of China."<sup>29</sup>

**Decision:** *At the 461st meeting on 13 January 1950, the USSR draft resolution<sup>30</sup> was put to the vote and was not adopted, having failed to obtain the affirmative vote of seven members. The result of the vote was 3 in favour, 6 against and 2 abstentions.<sup>31</sup>*

At the 480th meeting on 1 August 1950, the provisional agenda contained, as item 2:

"Recognition of the representative of the Central People's Government of the People's Republic of China as the representative of China."

The President (USSR) ruled that "the representative of the Kuomintang group seated in the Security Council does not represent China and cannot therefore take part in the meetings of the Security Council".

The President's ruling was challenged, the representative of the United Kingdom drawing the Presi-

<sup>29</sup> For texts of relevant statements see: 459th meeting: President (China), p. 3; Ecuador, p. 7; USSR, pp. 3, 4; United Kingdom, p. 6; United States, pp. 5, 9-10.

<sup>30</sup> 460th meeting: China, pp. 8-9; France, pp. 4-6; USSR, pp. 12, 15; United States, p. 6; Yugoslavia, pp. 2-3.

<sup>31</sup> S/1443, 459th meeting: p. 3.

<sup>32</sup> 461st meeting: p. 9.

dent's attention to rule 17, and to the fact that "the Security Council has not decided that the credentials of the representative of China at this table are not in order". He regarded the ruling of the President as an effort to overrule "the majority view in regard to the representative of China on the Security Council".

The President, speaking as the representative of the USSR, stated:

"It is clear from the wording of this rule [17] that it refers to the representation in the Security Council of a State Member of the United Nations. The rule applies to plenipotentiary representatives of Member States of the United Nations—member States of the Security Council—who have been duly accredited to the Council in accordance with rule 13 of its rules of procedure. In the event of objections being raised to the credentials of such a repre-

sentative—an accredited representative—rule 17 is of course applicable.

"The question we are considering has, however, no bearing on that rule. We are not here concerned with the accredited representative of a Member State of the United Nations . . . in the Security Council but with an impostor . . . with the representative of a group which in fact represents no one but itself . . . It therefore goes without . . . saying that rule 17 . . . has no bearing whatsoever on this question . . ."<sup>22</sup>

**Decision:** *The President's ruling was put to the vote and was overruled by 3 votes in favour and 8 against.*<sup>23</sup>

<sup>22</sup> For texts of relevant statements see:

480th meeting: President (USSR), pp. 1, 4; Cuba, p. 6; Ecuador, p. 7; Egypt, p. 6; France, p. 2; USSR, p. 4; United Kingdom, p. 2; United States, pp. 1-2.

<sup>23</sup> 480th meeting: p. 9.

### Part III

#### PRESIDENCY (RULES 18-20)

##### NOTE

The exercise by the President of his function of presiding over the meetings of the Council affects the practice of the Security Council in all its aspects. In presiding over the meetings of the Council the President applies the provisional rules of procedure to the business under consideration. Consequently material relevant to the discharge by the President of his functions in respect of the various aspects of the practice of the Council will be found under the appropriate headings in other parts of the *Repertoire*, especially in part V [*Conduct of Business*] of the present chapter. Material relating to rulings by the President in connexion with rule 30 will be found in Cases 55-67 in this chapter and in Cases 17, 18 and 100-106 in chapter IV [*Voting*], Cases 74, 81, 84, 97 and 110 of this chapter exemplify the settlement of disputed questions of procedure by vote of the Council on a motion formulated and put by the President. The functions of the President in connexion with the agenda are dealt with in chapter III [*Agenda*]. Regarding the reference of applications for membership to the Committee on the Admission of New Members, chapter VII, part IV, section A, should be consulted. For the role of the President in formulating conclusions reached in the course of debate or for other instances of the exercise of presidential functions in connexion with the question under consideration by the Council, chapter VIII should be consulted.<sup>1</sup>

Part III of this chapter is accordingly confined to material bearing directly on the office of President: notably the adjustment of the President's term of office to fit in with the terms of office of elected members of the Council (Case 22); the rights of a representative under rule 17 in relation to the right of Presidency (Case 23); and the temporary cession of the Chair under rule 20. In connexion with rule 19 are presented certain instances in which the Council has availed itself of the services of the President with a view to bringing about agreement between the parties to a dispute under consideration by the Council.<sup>2</sup> Certain pro-

cedural complexities connected with discussion within the Council on proposals submitted by the President acting as rapporteur are illustrated by Case 53.

PROVISIONAL RULES OF PROCEDURE REGARDING THE PRESIDENCY OF THE SECURITY COUNCIL, IN FORCE FROM THE 1ST MEETING ON 17 JANUARY 1946, TO THE 31ST MEETING ON 9 APRIL 1946<sup>3</sup>

##### "Rule 9

"The Presidency of the Security Council shall be held in turn by the members of the Security Council in the English alphabetical order of their names. Each President shall hold office for one calendar month.

##### "Rule 10

"The President shall preside over the meetings of the Security Council and, under the authority of the Council, shall represent it in its capacity as an organ of the United Nations.

RULES 18-20 OF THE PROVISIONAL RULES OF PROCEDURE OF THE SECURITY COUNCIL ADOPTED AT THE 31ST MEETING ON 9 APRIL 1946, WITH ADDITIONAL RULE 20 ADOPTED AT THE 48TH MEETING ON 24 JUNE 1946

##### "Rule 18

"The Presidency of the Security Council shall be held in turn by the members of the Security Council in the English alphabetical order of their names. Each President shall hold office for one calendar month.

##### "Rule 19

"The President shall preside over the meetings of the Security Council and, under the authority of the Security Council, shall represent it in its capacity as an organ of the United Nations.

##### "Rule 20

"Whenever the President of the Security Council deems that, for the proper fulfillment of the respon-

<sup>1</sup> See chapter VIII, pp. 301, 319 for instances.

<sup>2</sup> See also chapter X, Case 5.

<sup>3</sup> O.R., 1st year, 1st series, Suppl. No. 1, annex 1, p. 4.

sibilities of the Presidency, he should not preside over the Council during the consideration of a particular question with which the member he represents is directly connected, he shall indicate his decision to the Council. The Presidential chair shall then devolve, for the purpose of the consideration of that question, on the representative of the member next in English alphabetical order, it being understood that the provisions of this Rule shall apply to the representatives on the Security Council called upon successively to preside. This Rule shall not affect the representative capacity of the President as stated in Rule 19 or his duties under Rule 7."

#### 1. CONSIDERATION OF THE ADOPTION OR AMENDMENT OF RULES 18-20

##### CASE 20

At the 31st meeting on 9 April 1946, the representative of Egypt asked for an explanation of the latter part of the draft rule proposed by the Committee of Experts which read:

"The President shall . . . represent it [*the Security Council*] in its capacity as an organ of the United Nations."

The Chairman of the Committee of Experts gave the following explanation:<sup>4</sup>

"The latter part of this sentence, rule 19 . . . means that the President . . . can act as a representative of the Security Council as an organ of the United Nations.

"The Charter provides in Article 7, Chapter III, under the heading 'Organs': 'There are established as the principal organs of the United Nations: a General Assembly, a Security Council,' *et cetera*. Now, the Security Council acts as an organ of the United Nations and the present rule authorizes the President to represent the Security Council as an organ of the United Nations. I do not think any other interpretation is possible in regard to this part of the sentence."

##### CASE 21

In his report of 17 June 1946 on the question of the temporary cession of the Presidency of the Security Council, the Chairman of the Committee of Experts stated:<sup>5</sup>

"The Committee felt that it was necessary to formulate a rule . . . which would provide for the eventuality that the President would prefer to step down from the Presidency for the consideration of a particular question.

"The Committee felt that this contingency would arise, for example, whenever the Member State represented by the President was a party to a dispute, or was directly involved in a situation which might lead to international friction or give rise to a dispute. In the Committee's opinion, the President of the Security Council, by invoking this rule, would be able to leave the Presidential chair, if he considers it advisable, in cases where the Member he represents has brought a matter to the attention of the

Security Council in accordance with Article 35, paragraph 1, of the Charter.

"It should be pointed out that, while the proposed text leaves it to the discretion of the President himself to decide whether or not to leave the chair, the Committee unanimously agreed that, since the obligation in question was essentially a moral one, such a wording was alone suitable for the conception which the representatives on the Security Council have of their duties. Likewise, the Committee agreed that the President could leave the chair for the discussion of the agenda, whenever such a discussion seemed likely to lead to observations or to a debate on the substance of the question.

" . . .

"Finally, should the President in office be unable to preside for a personal reason, such as illness or absence, the Committee felt that, since rule 18 of the provisional rules of procedure confers the Presidency on the Member State and not on the representative of that State personally, the Presidency shall still attach to the Member State which the President represents and shall be assumed by an accredited representative of the same State."

#### 2. SPECIAL CASES CONCERNING THE APPLICATION OF RULES 18-20

##### a. Rule 18

##### CASE 22

At the 84th meeting on 16 December 1946, the Security Council had before it the following proposal by the representative of Australia:<sup>6</sup>

"As the General Assembly has decided that the terms of office of the elected members of the Security Council should commence on 1 January and end on 31 December, it would seem desirable that the monthly rotation of the Presidency should be adjusted so that the rotation would commence and end on the same dates. To this end, the Security Council resolves that the operation of rule 18 of the rules of procedure be suspended for a sufficient period to allow the representative of the United States of America to remain in office as President of the Council from 17 December until 31 December 1946."

The representatives of Poland and China supported the Australian proposal.<sup>7</sup>

The representative of the USSR, although seeing no need for the proposed change, stated that he would raise no objection, if the majority was of the opinion that it was necessary. The representative of Australia stated that the reason which had prompted his delegation to propose the resolution arose.

" . . . from the fact that the General Assembly had altered the term of office of the non-permanent members of this Council to run from 1 January to 31 December, instead of from 17 January to 17 January of the following year. It appears necessary to make some corresponding alteration in the President's term

<sup>4</sup> 31st meeting: pp. 115-116.

<sup>5</sup> S/88, O.R., 1st year, 1st series, Suppl. No. 2, annex 1 (h), p. 42.

<sup>6</sup> S/212, 84th meeting: pp. 1-2.

<sup>7</sup> For texts of relevant statements see:

84th meeting: Australia, pp. 586-587; China, p. 586; Poland, p. 586; USSR, p. 586.



of office; otherwise, you might, in future years, reach a situation where a member who has accomplished half his term of office as President of the Security Council would have to retire on account of the expiration of his term as an elected member. Similarly, you might have a new member who would have to take up half a term of office as soon as he had taken his seat on the Council. So it seems to be appropriate, and also conducive to the better working of the Council, to make some arrangement of this kind, this one in particular."

**Decision:** *The Council adopted the Australian proposal by 9 votes to none, with 2 abstentions.*<sup>8</sup>

#### CASE 23

At the 461st meeting on 13 January 1950, in connexion with the question of the representation of China in the Security Council, the representative of Yugoslavia proposed:

"... that the Council should decide that rule 18 of the rules of procedure shall not apply in the present situation, and that it should take another decision..."<sup>9</sup>

"..."

"To define my proposal more accurately, I suggest that the representative of Cuba should take up his duties as President of the Security Council, not on 1 February, but today, and should remain President until 15 February in order that his Presidency may last one month, and that the alphabetical rotation should then continue. The question of the Presidency of the Council thus would not arise again until 15 December..."

The representative of France considered that rule 18 had already been applied, "inasmuch as the representative of China has already taken office as President of the Council". It therefore seemed to him that the situation was now governed by rule 17; the words "with the same rights" in that rule meant "including the rights of Presidency". The President (China) asked the representative of Yugoslavia to submit his proposal in writing so that it could be distributed and a meeting set for its consideration.

At the 462nd meeting on 17 January 1950, the Council had before it, as the fourth item on the agenda, the following Yugoslav draft resolution:<sup>10</sup>

*"The Security Council,*

*"Considering the serious objections raised against the validity of the credentials of the present Chinese representative to the Security Council,*

*"Decides to suspend rule 18 of the provisional rules of procedure of the Council;*

*"Invites the representative of Cuba to take over the Presidency of the Council immediately, and to preside until 28 February 1950;*

*"Decides to return to the application of rule 18 of the provisional rules of procedure of the Council on 1 March 1950."*

The representative of Yugoslavia said that the draft resolution proposed by his delegation.

<sup>8</sup> 84th meeting: p. 587.

<sup>9</sup> See Cases 19 and 33.

<sup>10</sup> S/1448/Rev.1, O.R., 5th year, Suppl. for 1 Jan.-31 May 1950, p. 3.

"... should have precedence over any other question of substance the Council may have to discuss or decide upon. It should have priority because it involves a decision regarding the Presidency which would affect our method of work."

He therefore moved that item 4 should become item 2 immediately following item 1, the adoption of the agenda.

The President (China) stated that the agenda items were arranged according to the order of their submission. As to the Yugoslav item, while it might be important in the opinion of the representative of Yugoslavia, "it cannot be considered by its nature to be a privileged resolution in a parliamentary sense..."

**Decision:** *The Yugoslav motion to replace item 2 of the agenda by item 4 was rejected by 7 votes to 1, with 2 abstentions.*<sup>11</sup>

The representative of Cuba, speaking on the Yugoslav draft resolution, said that it involved a question definitely foreseen by the rules of procedure, so that, in order to accept that proposal, the Council would have to suspend not only the application of rule 18, but that of rule 17.<sup>12</sup>

"It is obvious that the Yugoslav proposal... raises once again... the question of the rights of the representative of China, the validity of whose powers has been questioned in the Council.

"In rejecting the USSR draft resolution [S/1443] at its 461st meeting, the Security Council settled the question and consequently the credentials of the said representative of China continue to be valid in this Council.

"For these reasons, the Cuban delegation considers that in the present circumstances any proposal intended to repudiate or limit the rights of the representative whose credentials have been questioned in certain quarters is out of order."

**Decision:** *At the 462nd meeting on 17 January 1950, the Council rejected the Yugoslav draft resolution by 6 votes to 1, with 3 abstentions.*<sup>13</sup>

#### CASE 24

At the 566th meeting on 10 November 1951, before the adoption of the agenda, the representative of the USSR stated that the representative of China in the United Nations could only be a person nominated by the Central People's Government of the People's Republic of China. His delegation therefore considered it illegal to confer the functions of President of the Security Council on the representative of "the Kuomintang group", who did not represent China and was illegally occupying a seat in the Security Council.

The President (China) ruled that:

"The Presidency of the Security Council is regulated by rule 18 of our rules of procedure. The remarks of the representative of the Soviet Union

<sup>11</sup> 462nd meeting: p. 3. One member (USSR) was absent.

<sup>12</sup> For texts of relevant statements see:

461st meeting: President (China), p. 15; France, p. 13; Yugoslavia, pp. 11-12.

462nd meeting: President (China), p. 3; Cuba, pp. 14-15; Yugoslavia, pp. 1-2.

<sup>13</sup> 462nd meeting: pp. 15-16. One member (USSR) was absent.

are contrary to that rule. He is, therefore, out of order."

No further comment being made by the representative of the USSR on this point, the President proceeded to make arrangements regarding the system of interpretation.<sup>14</sup>

#### b. Rule 19<sup>15</sup>

##### CASE 25

At the 174th meeting on 4 August 1947, in connexion with the Indonesian question (II), the President (Syria) informed the Council of the cessation of hostilities. As there had been some delay in transmitting the Council's cease-fire resolution of 1 August 1947 to the Indonesian authorities, the representative of Australia proposed<sup>16</sup> that in order to avoid such difficulties in the future and with a view to keeping the Council informed

"... the Presidency should be authorized to confer with the Secretary-General with a view to having some responsible officer of the Secretariat on the spot to keep the Security Council supplied with information and to assist in this settlement by peaceful means in accordance with the decision of the Security Council."

The President (Syria) stated:<sup>17</sup>

"The suggestion is duly noted, and the President of the Security Council will confer with the Secretary-General on the subject and see if arrangements can be made to keep the Security Council informed, in accordance with the resolution on this matter."

##### CASE 26

At the 229th meeting on 17 January 1948, in connexion with the India-Pakistan question, the representative of the United Kingdom, supported by the representatives of the United States and of the USSR, suggested that the President (Belgium) should invite the parties to meet under his chairmanship in order to find "some common ground on which the structure of a settlement may be built". The representatives of India\* and Pakistan\* supported the proposal.

**Decision:** *It was agreed that the President would get in touch with the parties and that the Council would meet again to hear from him, as well as from the parties, the result of the consultations.*<sup>18</sup>

At the 230th meeting on 20 January 1948, the President submitted a draft resolution<sup>19</sup> on his own behalf as the representative of Belgium, and also on behalf of the parties. The representative of the United States inquired whether the consultations between the parties would continue under the President's guidance after the Council had disposed of the pending draft resolution. The President replied that the parties had agreed to continue the consultations and that he would be at their disposal for the resumption of the consultations.<sup>20</sup>

<sup>14</sup> 566th meeting: p. 1.

<sup>15</sup> See also Case 20.

<sup>16</sup> 174th meeting: pp. 1717-1718.

<sup>17</sup> 174th meeting: p. 1718.

<sup>18</sup> For texts of relevant statements see:

229th meeting: President (Belgium), pp. 126, 128; India, p. 126; Pakistan, p. 127; USSR, pp. 127-128; United Kingdom, p. 125; United States, p. 126.

<sup>19</sup> S/654, 230th meeting: pp. 130-131.

<sup>20</sup> For texts of relevant statements see:

230th meeting: President (Belgium), pp. 132-133; United States, p. 132.

##### CASE 27

At the 235th meeting on 24 January 1948, in connexion with the India-Pakistan question, the representative of the United Kingdom, supported by the representatives of Canada, France, Syria and the United States, proposed that the parties should continue their negotiations under the auspices of the President (Belgium) and that this body should act "as a drafting committee of the Security Council" and present "a plan in outline" with a view to settling their differences. The President said:

"The wish has been expressed that the representatives of India and Pakistan should continue their discussions with a view to reaching a solution with the assistance of the President of the Council on the basis of any elements of agreement which may now exist... If that is the wish of the two parties and of the Council, I shall immediately approach the representatives of India and Pakistan again."

**Decision:** *It was so agreed.*<sup>21</sup>

##### CASE 28

By a resolution adopted on 1 April 1948, in connexion with the Palestine question, the Security Council called upon the parties<sup>22</sup>

"... to make representatives available to the Security Council for the purpose of arranging a truce between the Arab and Jewish Communities of Palestine..."

At the 282nd meeting on 15 April 1948, the President (Colombia) indicated that he had met "to discuss the possible terms of the truce with the accredited representatives of the two parties" on two occasions.<sup>23</sup>

##### CASE 29

At the 286th meeting on 21 April 1948, in connexion with the India-Pakistan question, the Security Council adopted a resolution which resolved that the UNCIP membership should be increased to five and that<sup>24</sup>

"... if the membership of the Commission [to be chosen by the parties to represent them on the Commission] has not been completed within ten days from the date of the adoption of this resolution, the President of the Council may designate such other Member or Members of the United Nations as are required to complete the membership of five."

At the 289th meeting on 7 May 1948, the President (France) said:<sup>25</sup>

"The exchanges of views that have taken place between the representatives of Argentina and Czechoslovakia [nominated by Pakistan and India respectively], with a view to completing the membership of the Commission, have been without result. As the

<sup>21</sup> For texts of relevant statements see:

235th meeting: President (Belgium), p. 264; Canada, p. 262; France, p. 263; Syria, p. 263; United Kingdom, p. 259; United States, p. 262. In February, March and April 1948, the incoming President assumed the responsibilities of his predecessor regarding the negotiations, and associated with himself his predecessors for the months of January-March; 242nd meeting: p. 54; 255th meeting: pp. 77-78; 277th meeting: p. 2.

<sup>22</sup> 277th meeting: p. 33.

<sup>23</sup> 282nd meeting: p. 2. See chapter VIII, p. 326.

<sup>24</sup> S/726, O.K., 3rd year, Suppl. for April 1948, pp. 8-12; 286th meeting: pp. 10-11. See chapter VIII, p. 346.

<sup>25</sup> 289th meeting: p. 8.

resolution of 21 April sets a time limit for the conclusion of this formality and makes the President of the Security Council responsible for it, I have nominated the United States of America to complete the membership of the Commission."

## CASE 30

At the 387th meeting on 20 December 1948, in connexion with the Indonesian question (II) and before the adoption of the agenda, the representative of Syria proposed that the President should "obtain fresh information from the Committee of Good Offices, with regard to the military operations which commenced on Saturday, 18 December", and should also "request the parties here that, if they have any documents to submit to the Security Council, they should hand them over to the Secretariat". The representative of the United States considered the "suggestion that the President—on his own initiative—might well ask the Committee of Good Offices for a further telegraphic report" to be "an excellent one". He said, "It is certainly within the powers of the President, and on previous occasions the Council, without taking formal action, has welcomed the initiative of the President in requesting reports from representatives in the field."

The President (Belgium) declared that, unless there was some objection, he would personally be quite willing to carry out the suggestion of the representative of Syria.<sup>28</sup>

## CASE 31

At the 457th meeting on 17 December 1949, in connexion with the India-Pakistan question, the representative of Norway, believing that it was necessary to make a new approach to the problem in order to make the mediation of the United Nations more successful, proposed:

"... that the President should meet informally with the two parties and examine with them the possibility of finding a mutually satisfactory basis for dealing with the Kashmir problem. This procedure was adopted at various times during the first four months of 1948 and led to the Council's resolution of 21 April of the same year [S/726]."

"...  
"In conclusion, may I say that if my suggestion is adopted we should request the President to report back to the Security Council for its consideration any proposal which might develop during his meetings with the parties."

The Norwegian proposal was supported by the representatives of the United Kingdom and France.

The representative of the USSR was of the opinion that the Council should hear the parties before deciding on the Norwegian proposal.

The President (Canada) considered the position taken by the representative of the USSR as a challenge to the decision the Council had reached "by consent" on the Norwegian suggestion. He therefore put it to a vote.<sup>27</sup>

<sup>27</sup> For texts of relevant statements see: 387th meeting: President (Belgium), p. 5; Syria, p. 3; United Kingdom, p. 3; United States, p. 4.

<sup>28</sup> For texts of relevant statements see: 457th meeting: President (Canada), pp. 6-7, 8; France, p. 6; Norway, pp. 4-5; USSR, p. 8; United Kingdom, pp. 5-6.

**Decision:** *The Norwegian proposal was adopted by 9 votes to none, with 2 abstentions.*<sup>28</sup>

## CASE 32

At the 458th meeting on 29 December 1949, in connexion with the India-Pakistan question, the representative of Norway suggested that the President (Canada) should, if willing, continue his mediation efforts between India and Pakistan, even after the expiration of his term as President. The representatives of France and China supported the suggestion of the representative of Norway. The representative of the USSR was of the opinion that the Norwegian proposal entailed considerable difficulties of a procedural nature. The meaning of that suggestion was that

"... the present President of the Security Council, the Canadian representative, will be charged with carrying out the function of the President when he no longer will be President, in obvious disregard of the fact that after 1 January 1950 Canada will no longer be a member of the Security Council... This would surely be an unprecedented situation..."

"...  
"Consequently the USSR delegation can see no grounds for supporting the suggestion of the Norwegian representative."

The President (Canada) while appreciating the attitude of the representative of Norway and others, wished to ask "in all sincerity and with a regard for what I think is the proper and expeditious handling of this matter, that we defer consideration of these particular problems until the new Security Council is in office". The representative of the United Kingdom agreed with the representative of the Soviet Union as to the procedural difficulties involved in the suggestion of the representative of Norway. He wondered whether the Council, as well as the parties, would agree that the President should act as a rapporteur. The President asked if the following procedure were acceptable to the Council:

"... that, until the expiration of my mandate as President of this Council, my services are at the disposal of the two parties, to help them in any way which is open to me... and that, as the new Council may wish to arrange for my report to come before it, I shall be glad to come myself in any capacity which the Council may desire, in order that the information may go forward."

The representatives of Pakistan\* and India\* stated that their delegations would welcome the continuation of the task which had been entrusted to the President, even after his term of office had expired, in any manner decided by the Security Council.<sup>29</sup>

c. Rule 20<sup>30</sup>

## CASE 33

At the 459th meeting on 10 January 1950, the representative of Ecuador proposed, in connexion with the question of the representation of China in the

<sup>27</sup> 457th meeting: p. 8.

<sup>28</sup> For texts of relevant statements see:

458th meeting: President (Canada), pp. 17-18, 19-20, 21; China, p. 15; France, p. 13; India, p. 22; Norway, p. 9; Pakistan, p. 21; USSR, pp. 16-17; United Kingdom, p. 18.

<sup>29</sup> See also Case 21. For a further instance of the application of rule 20 see:

361st meeting: pp. 1-2.



Security Council, that rule 20 should be considered by the Council. He felt sure that the President (China) had not

"...lost sight of the possibility of invoking that rule in order to facilitate the discussion and solution of the matter before us, the more so as the question in point directly and definitely concerns him as President..."

Rule 20 was invoked by the President (China) at the 460th meeting on 12 January 1950, when the Council began to consider the USSR draft resolution.<sup>81</sup> The President asked the representative of Cuba to preside over the meetings during the consideration of that item. At the 461st meeting on 13 January 1950, after the

<sup>81</sup> S/1443, 459th meeting: p. 3. See Case 19.

Council had rejected the USSR draft resolution, the Acting President (Cuba) ruled that:

"... since the vote has been taken on the proposal, submitted by the representative of the Soviet Union [S/1443], the Council has completed the item which led the representative of China to exercise the discretionary powers conferred by rule 20 of the rules of procedure and to vacate the chair. I therefore invite the representative of China to resume his place as President."

The representative of China resumed the Presidential chair.<sup>82</sup>

<sup>82</sup> For texts of relevant statements see:

459th meeting: Ecuador, p. 8.

460th meeting: President (China), pp. 1-2.

461st meeting: President (Cuba), p. 15.

## Part IV

### SECRETARIAT (RULES 21-26)

#### NOTE

Chapter V, entitled "Secretariat", of the provisional rules of procedure sets out in rules 21 to 26 the more specific functions and powers of the Secretary-General in connexion with the meetings of the Security Council. These rules reflect the provisions of Article 98 of the Charter in so far as they concern the requirements of the Security Council.

Other functions and powers of the Secretary-General in relation to the working of the Security Council, as, for example, the exercise of his powers under Article 99, the examination of the credentials of representatives, and the drawing up of the provisional agenda, are referred to elsewhere in the provisional rules of procedure. A special rule on the powers of the Secretary-General under Article 99 was contained in the provisional rules of procedure in force until the 31st meeting. Upon recommendation of the Committee of Experts,<sup>1</sup> this rule was replaced by the provision in rule 3 of the provisional rules.

The Security Council, within the period covered by this *Repertoire*, has not had recourse to rule 23, though the Secretary-General, in the case of certain specific or general questions that have come before the Council, has exercised his good offices or endeavoured in an informal manner to contribute to a settlement.

Under rule 24, the Secretary-General has provided the required staff to service meetings of the Security Council. He has also provided staff to service commissions and other subsidiary organs of the Council, both at Headquarters and in the field.<sup>2</sup> Clauses regarding the provision of staff have formed an element in resolutions of the Council establishing subsidiary organs in the field.

Certain other resolutions of the Security Council have imposed specific duties on the Secretary-General: to appoint a Plebiscite Administrator for Kashmir;<sup>3</sup> to report to the Council on the status of negotiations

between the Governments of Iran and the USSR concerning the withdrawal of troops;<sup>4</sup> to convene the Committee of Good Offices in Indonesia.<sup>5</sup> On one occasion, as a measure of emergency, the Secretary-General, with the approval of the President of the Council, appointed a career official of the Secretariat to assume provisionally the responsibilities of the United Nations Mediator for Palestine.<sup>6</sup>

Unlike other cases in this chapter, the cases exemplifying rule 22 are illustrations more of the regular application of the rule than of any distinct variation. They are included by virtue of their possible relation to Article 99.

PROVISIONAL RULES OF PROCEDURE OF THE SECURITY COUNCIL REGARDING THE SECRETARIAT, IN FORCE FROM THE 1ST MEETING ON 17 JANUARY 1946 TO THE 31ST MEETING ON 9 APRIL 1946<sup>7</sup>

#### "Rule 11

"The Secretary-General shall act in that capacity in all meetings of the Security Council. The Secretary-General may authorize a deputy to act in his place at meetings of the Security Council.

#### "Rule 12

"The Secretary-General shall provide the staff required by the Security Council. This staff shall form a part of the Secretariat.

#### "Rule 13

"The Secretary-General shall give representatives notice of meetings of the Security Council and its committees and of matters on the agenda of these meetings.

#### "Rule 14

"The Secretary-General shall be responsible for the preparation of documents required by the Security Council and shall, except in urgent circumstances,

<sup>1</sup> O.R., 1st year, 1st series, Suppl. No. 2, annex 1 (a), p. 2.

<sup>2</sup> 286th meeting: pp. 29-30.

<sup>3</sup> Regarding the provision of guards at the request of the Mediator, reference should be made to chapter XI, Case 19.

<sup>4</sup> 28th meeting: pp. 75-76, 82. See chapter VIII, p. 304.

<sup>5</sup> 207th meeting: p. 2503. See chapter VIII, p. 318.

<sup>6</sup> 358th meeting: p. 2. See chapter VIII, p. 334.

<sup>7</sup> O.R., 1st year, 1st series, Suppl. No. 1, annex 1, p. 4.

distribute them at least forty-eight hours in advance of the meeting at which they are to be considered.

*"Rule 15<sup>a</sup>*

"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."

RULES 21-26 OF THE PROVISIONAL RULES OF PROCEDURE OF THE SECURITY COUNCIL ADOPTED AT THE 31ST MEETING ON 9 APRIL 1946, WITH ADDITIONAL RULES 22 AND 23 ADOPTED AT THE 44TH MEETING ON 6 JUNE 1946

*"Rule 21*

"The Secretary-General shall act in that capacity in all meetings of the Security Council. The Secretary-General may authorize a deputy to act in his place at meetings of the Security Council.

*"Rule 22*

"The Secretary-General, or his deputy acting on his behalf, may make either oral or written statements to the Security Council concerning any question under consideration by it.

*"Rule 23*

"The Secretary-General may be appointed by the Security Council, in accordance with Rule 28, as rapporteur for a specified question.

*"Rule 24*

"The Secretary-General shall provide the staff required by the Security Council. This staff shall form a part of the Secretariat.

*"Rule 25*

"The Secretary-General shall give to representatives on the Security Council notice of meetings of the Security Council and of its commissions and committees.

*"Rule 26*

"The Secretary-General shall be responsible for the preparation of documents required by the Security Council and shall, except in urgent circumstances, distribute them at least forty-eight hours in advance of the meeting at which they are to be considered."

**1. CONSIDERATION OF THE ADOPTION OR AMENDMENT OF RULES 21-26**

**CASE 34**

In his report of 31 May 1946 on the question of the powers of the Secretary-General to make oral or written statements to the Security Council, the Chairman of the Committee of Experts stated that<sup>8</sup> the Committee had taken "rule 48 of the provisional rules of procedure of the General Assembly and rule 24 of the provisional rules of procedure of the Economic and Social Council... as a basis for examining this matter". The text proposed [*present rule 22*] recognized

<sup>8</sup> Regarding the omission of this text from the provisional rules of procedure adopted at the 31st meeting, see Case 1.

<sup>9</sup> S/71, O.R., 1st year, 1st series, Suppl. No. 2, annex (f), p. 39.

"... that the Secretary-General may make oral or written statements to the Council regarding any matter submitted to it for consideration. The Committee unanimously agreed that this power should be extended to the Secretary-General's deputy whenever he acts on behalf of the Secretary-General, and included this point in the draft rule.

"Although the text of the rule as adopted does not mention committees, commissions, or other subsidiary organs of the Security Council, the Committee unanimously agreed that the Secretary-General or his deputy should have the same power in relation to these organs which he enjoys in relation to the Security Council, unless the Council should decide otherwise. This omission resulted from a desire not to decide in advance a question concerning bodies, the rules for which have not yet been established."

In the same report, on the question of the appointment of the Secretary-General as rapporteur, the Chairman of the Committee of Experts stated:<sup>10</sup>

"The Committee was of the opinion that the text of rule 25 [*present rule 28*] should be maintained as adopted by the Security Council at its meeting of 16 May 1946, and that there should be inserted in Chapter V, concerning the Secretariat, an additional rule providing explicitly that the Secretary-General may be appointed by the Security Council as rapporteur. The Committee unanimously agreed, however, that such an appointment should clearly be subject to the consent of the Secretary-General in each case.

"Moreover, the Committee felt that the general wording of rule 25 [*present rule 28*], as it stands should be interpreted in the sense that, in principle, only the representatives on the Security Council and the Secretary-General should be appointed as rapporteur. In the course of discussion, however, it was agreed that it would not be advisable to exclude the possibility that the Council might, in exceptional circumstances, appoint as rapporteur another person whose duties especially qualified him for the task. It is impossible, at the present stage of the Council's experience, to foresee whether such a need might not conceivably occur at some future date."

**2. SPECIAL CASES CONCERNING THE APPLICATION OF RULES 21-26**

**a. Rule 21**

**CASE 35**

At the 207th meeting on 3 October 1947, in connexion with the Indonesian question (II), the representative of Australia submitted a draft resolution to request the Secretary-General "to act as convener of the Committee of Three and arrange for the organization of its work..."<sup>11</sup>

**Decision:** *The Australian draft resolution was adopted by 9 votes to none, with 2 abstentions,<sup>12</sup> and the Secretary-General convened the Committee of Good Offices on 8 October 1947.<sup>13</sup>*

<sup>10</sup> *Ibid.*, p. 40. See also 41st meeting: p. 254; 44th meeting: pp. 310-311.

<sup>11</sup> S/574, 207th meeting: p. 2503.

<sup>12</sup> 207th meeting: p. 2503.

<sup>13</sup> 209th meeting: p. 2527.

## b. Rule 22

## CASE 36

At the 33rd meeting on 16 April 1946, the Secretary-General submitted a memorandum<sup>14</sup> on the withdrawal of the Iranian question from the agenda of the Security Council.

**Decision:** *The Council decided unanimously to refer the Secretary-General's memorandum to the Committee of Experts for examination and report.*<sup>15</sup>

## CASE 37

At the 70th meeting on 20 September 1946, in connexion with the Ukrainian complaint against Greece, the representative of the United States placed before the Council a draft resolution<sup>16</sup> to establish a Commission of three individuals, to be nominated by the Secretary-General, to investigate the facts relating to the border incidents along the northern frontiers of Greece. During discussion of the draft resolution the Secretary-General stated:

"Just a few words to make clear my own position as Secretary-General and the rights of this office under the Charter. Should the proposal of the United States representative not be carried, I hope that the Council will understand that the Secretary-General must reserve his right to make such enquiries or investigation as he may think necessary, in order to determine whether or not he should consider bringing any aspect of this matter to the attention of the Council under the provisions of the Charter."<sup>17</sup>

**Decision:** *The United States draft resolution was not adopted. There were 8 votes in favour, 2 against (one vote against being that of a permanent member) and 1 abstention.*<sup>18</sup>

## CASE 38

At the 91st meeting on 10 January 1947, in connexion with the question of the Free Territory of Trieste, the Secretary-General submitted a statement concerning the legal issues which had been raised.<sup>19</sup>

## CASE 39

On 8 March 1950, in connexion with the question of the representation of China in the Security Council, the Secretary-General circulated a memorandum to members of the Council.<sup>20</sup>

On 13 March, the representative of China lodged his Government's formal protest against the Secretary-General's memorandum. He considered that the question of Chinese representation could not be held to "threaten the maintenance of international peace and security" within the meaning of Article 99 of the Charter—the only Article that assigned a sphere of political action to the Secretary-General.<sup>21</sup>

<sup>14</sup> S/39, 33rd meeting: pp. 143-145.

<sup>15</sup> 33rd meeting: p. 145. For text of the memorandum, see chapter II, Case 56.

<sup>16</sup> 70th meeting: p. 396.

<sup>17</sup> 70th meeting: p. 404.

<sup>18</sup> 70th meeting: p. 412.

<sup>19</sup> 91st meeting: pp. 44-45. For text of statement, see chapter XII, Case 20.

<sup>20</sup> S/1466, O.R., 5th year, Suppl. for 1 Jan.-31 May 1950, pp. 18-23.

<sup>21</sup> S/1470, O.R., 5th year, Suppl. for 1 Jan.-31 May 1950, pp. 23-26.

## CASE 40

At the 473rd meeting on 25 June 1950, in connexion with the complaint of aggression upon the Republic of Korea, the Secretary-General stated:<sup>22</sup>

"The report received by me from the Commission [United Nations Commission on Korea], as well as reports from other sources in Korea, make it plain that military actions have been undertaken by North Korean forces. These actions are a direct violation of the resolution of the General Assembly... as well as a violation of the principles of the Charter. The present situation is a serious one and is a threat to international peace. The Security Council is, in my opinion, the competent organ to deal with it. I consider it the clear duty of the Security Council to take steps necessary to re-establish peace in that area."

## c. Rule 24

## CASE 41

At the 284th meeting on 17 April 1948, in connexion with the India-Pakistan question, the representatives of Belgium, Canada, China, Colombia, the United Kingdom and the United States proposed that

"The Government of India should agree that a nominee of the Secretary-General of the United Nations will be appointed the Plebiscite Administrator... and that the terms of service of the Administrator should form the subject of a separate negotiation between the Secretary-General of the United Nations and the Government of India..."<sup>23</sup>

**Decision:** *At the 286th meeting on 21 April the first part of the joint draft resolution was adopted by 8 votes to none, with 3 abstentions, and the second part by 9 votes to none, with 2 abstentions.*<sup>24</sup>

## CASE 42

At the 458th meeting on 29 December 1949, in connexion with the India-Pakistan question, the representative of the USSR in objecting to certain proposals put forward by the President (Canada), in accordance with the instructions given by the Council on 17 December 1949, and providing that

"... the mediator shall be appointed by the Secretary-General of the United Nations, while the Plebiscite Administrator in Kashmir shall be appointed and shall take up his duties in accordance with the resolution of the United Nations Commission for India and Pakistan of 5 January 1949." stated:

"The USSR delegation believes that, should the appointment of a mediator or arbitrator be found expedient in the interests of the peaceful settlement of the dispute, it should be effected directly by the Security Council. As regards the functions and powers of such a mediator or arbitrator, they, too, should be determined by the Security Council."

He considered that the Security Council should not transfer or delegate these functions to "any other organ of the United Nations, including the Secretary-General".<sup>25</sup>

<sup>22</sup> 473rd meeting: p. 3.

<sup>23</sup> S/726, 284th meeting: pp. 28-30.

<sup>24</sup> 286th meeting: pp. 29-30.

<sup>25</sup> 458th meeting: p. 15.

**Decision:** At the 470th meeting on 14 March 1950 the Council resolved to "appoint a United Nations Representative" and, at the 471st meeting on 12 April 1950, approved the appointment of Sir Owen Dixon

as United Nations Representative for India and Pakistan by a vote of 8 to none, with 2 abstentions.<sup>26</sup>

<sup>26</sup>470th meeting: p. 4.

471st meeting: p. 5. One member (USSR) was absent.

## Part V

### CONDUCT OF BUSINESS (RULES 27-36)

#### NOTE

Part V sets out the cases bearing on rules 27 to 36. Cases relating to rules 37 to 39 are contained in chapter III: "Participation in the Proceedings of the Security Council". Chapter V, which deals with the subsidiary organs of the Council, should be consulted in connexion with rule 28.

Since the progress of discussion within the Security Council constitutes a continuous exemplification of the application of rules on the conduct of business, the observation in the introductory note to this Chapter that the case included are indicative mainly of the special problems which have arisen rather than of normal applications of the rules applies with special force both to this part and to part VII on Languages. No useful purpose would seem to be served by providing repetitive examples of the practical working of the clear letter of the rules. The effort has been made to assemble the cases of the following nature: decisions by the Council to depart from the rules; decisions on the conduct of business in situations not covered or not clearly covered by the rules; cases where the meaning or applicability of the rules was in doubt; and cases in which decisions were made between competing rules. The significance of the cases included can be correctly assessed only in the light of these observations.

Following the material bearing on the formulation and amendment of the rules (Cases 43-46), the cases are arranged in chronological order under references to the rules. To facilitate reference an indication is given here of the points on which they bear.

#### 1. Rule 27

(a) The order of intervention in the debate (Cases 50, 51);

(b) Termination of the general debate (Cases 47, 48);

(c) Termination of discussion of proposals (Cases 49, 52).

#### 2. Rule 28

(a) The appointment of a rapporteur (Case 46);

(b) The procedural position of proposals made by a rapporteur (Case 53).

#### 3. Rule 29

Case 54 concerns precedence to be accorded to a rapporteur.

#### 4. Rule 30

(a) The raising of points of order. Cases 55 and 67 relate to the interruption of a speech by the raising of a point of order. Cases 56 and 59 concern the definition of a point of order.

(b) Powers of the President with regard to rulings. Cases 58 and 61-65 bear on the proper circumstances and subject matter of rulings by the President.

(c) Challenge to a ruling. Case 57 bears on the refusal of the President to accept a challenge to a ruling, and Case 66 on the refusal to make a ruling after a point of order has been raised.

(d) Mode of putting the question for decision after a challenge to a ruling. Cases 60, 61 and 63 contain discussion of this problem. The central element of the problem is whether the ruling is to be put to the vote and upheld if seven or more votes are cast in favour, or whether the challenge is to be the subject of the vote. A listing of the occasions on which votes have been taken in connexion with rule 30 is given in a note at the outset of the material on rule 30. These instances do not permit presentation in consolidated form, owing to the varieties of terminology and procedure.

Cases regarding rule 30 in connexion with the question whether a matter is procedural are entered in chapter IV, Cases 100-106.

#### 5. Rule 31

(a) Requirement that proposals be in writing (Cases 68, 70);

(b) Effect of failure to submit a proposal in writing (Case 69);

(c) Significance of the expressions "proposed resolutions" and "substantive motions" (Case 44).

#### 6. Rule 32, para. 1

(a) Significance of the expression "principal motions and draft resolutions" (Case 44)

(b) Order of precedence (Cases 69, 71, 72, 77, 78);

(c) Changes in the order of precedence (Cases 79, 80, 81);

(d) Questions of procedure not covered by the rules. Case 74 is concerned with the problem whether priority should be granted to a draft resolution calling in question the competence of the Council.

#### 7. Rule 32, para. 2

(a) Request for the separation of vote (Case 75);

(b) Bearing of the application of rule 32, para. 2 on vote on the whole. Cases 73, 76 and 82 concern the procedure of voting on a resolution as a whole after it has been voted on in parts. Reference should also be made to the introductory note to rule 40: Voting.

#### 8. Rule 33, para 1, sub-paras. 1-6

Cases 83, 84-86, 88, 91, 92, 93 concern precedence of motions.

#### 9. Rule 33, para. 2

Cases 87, 89, 90, 93 and 94 concern exclusion of debate after motions for suspension or simple adjournment. Reference should also be made to Case 59.

#### 10. Rule 34

Case 95 indicates the initial occasion of dispensing with the seconding of a motion.

11. *Rule 35*

Case 96 concerns withdrawal of an amendment by the mover.

12. *Rule 36*

Case 97 concerns the distinction between a draft resolution and an amendment.

PROVISIONAL RULES OF PROCEDURE REGARDING THE CONDUCT OF BUSINESS OF THE SECURITY COUNCIL, IN FORCE FROM THE 1ST MEETING ON 17 JANUARY 1946 TO THE 41ST MEETING ON 16 MAY 1946<sup>1</sup>

*“Rule 16*

“Any recommendation to the General Assembly regarding the appointment of the Secretary-General shall be discussed and decided at a private meeting.

*“Rule 17*

“The Security Council may invite members of the Secretariat, or any person whom it considers competent for the purpose, to supply it with information or to give assistance in examining matters within its competence.”

RULES 27-36 OF THE PROVISIONAL RULES OF PROCEDURE OF THE SECURITY COUNCIL ADOPTED AT THE 41ST MEETING ON 16 MAY 1946

*“Rule 27*

“The President shall call upon representatives in the order in which they signify their desire to speak.

*“Rule 28*

“The Security Council may appoint a commission or committee or a rapporteur for a specified question.

*“Rule 29*

“The President may accord precedence to any rapporteur appointed by the Security Council.

“The Chairman of a commission or committee, or the rapporteur appointed by the commission or committee to present its report, may be accorded precedence for the purpose of explaining the report.

*“Rule 30*

“If a representative raises a point of order, the President shall immediately state his ruling. If it is challenged, the President shall submit his ruling to the Security Council for immediate decision and it shall stand unless overruled.

*“Rule 31*

“Proposed resolutions, amendments and substantive motions shall normally be placed before the representatives in writing.

*“Rule 32*

“Principal motions and draft resolutions shall have precedence in the order of their submission.

“Parts of a motion or of a draft resolution shall be voted on separately at the request of any representative, unless the original mover objects.

*“Rule 33*

“The following motions shall have precedence in the order named over all principal motions and draft resolutions relative to the subject before the meeting:

“1. To suspend the meeting;

“2. To adjourn the meeting;

“3. To adjourn the meeting to a certain day or hour;

“4. To refer any matter to a committee, to the Secretary-General or to a rapporteur;

“5. To postpone discussion of the question to a certain day or indefinitely; or

“6. To introduce an amendment.

“Any motion for the suspension or for the simple adjournment of the meeting shall be decided without debate.

*“Rule 34*

“It shall not be necessary for any motion or draft resolution proposed by a representative on the Security Council to be seconded before being put to a vote.

*“Rule 35*

“A motion or draft resolution can at any time be withdrawn, so long as no vote has been taken with respect to it.

“If the motion or draft resolution has been seconded, the representative on the Security Council who has seconded it may require that it be put to the vote as his motion or draft resolution with the same right of precedence as if the original mover had not withdrawn it.

*“Rule 36*

“If two or more amendments to a motion or draft resolution are proposed, the President shall rule on the order in which they are to be voted upon. Ordinarily, the Security Council shall first vote on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed until all amendments have been put to the vote, but when an amendment adds to or deletes from the text of a motion or draft resolution, that amendment shall be voted on first.”

## 1. CONSIDERATION OF THE ADOPTION OR AMENDMENT OF RULES 27-36

## CASE 43

In the report of 13 May 1946 on the work of the Committee of Experts, the Chairman stated:<sup>2</sup>

“The Committee of Experts was of the opinion that this chapter should contain some detailed provisions concerning the conduct of business, especially with respect to the order of speakers, points and motions of order, and the manner and order in which resolutions and amendments are to be introduced. The Committee also desired to provide that the Security Council may appoint a rapporteur for a specified question. Rules 24-30 [now rules 27-33] were drafted to take care of these points. During the consideration of the text relating to motions of order, the question of the closure of debate was raised.

<sup>1</sup> O.R., 1st year, 1st series, Suppl. No. 1, annex 1, pp. 4-5.

<sup>2</sup> S/57, O.R., 1st year, 1st series, Suppl. No. 2, p. 22.



Since this involved the very important problem of the limitation of the right of each representative to give full expression to his point of view, the Committee decided to postpone further examination of the question.

"Rules 29 and 33 [now rules 32 and 36] relate to the order in which principal resolutions and amendments are to be voted upon. Rule 32 [now rule 35] provides that the author of any motion or draft resolution may withdraw it at any time before a vote is taken with respect to it. It was pointed out in the course of discussion in the Committee that such withdrawal should not infringe the rights of the author of an amendment, who could still request that a vote be taken on the text as amended by his proposal, such text being then considered as a principal resolution taking precedence from the moment that the author of the amendment made the request."

#### CASE 44

At the 41st meeting on 16 May 1947, during the discussion of the Report of the Committee of Experts, the following views were stated as regards rules 28 and 29 (now rules 31 and 32).

The representative of the United Kingdom observed:

"... rule 28 refers to 'proposed resolutions' and 'substantive motions'. Rule 29 refers to 'principal motions and draft resolutions' . . . but if these two articles we are referring to mean the same thing, we ought to use the same words."

The Chairman of the Committee of Experts replied:

"Rule 29 speaks of 'principal motions' and this term covers both substantive motions and amendments. This expression fits into the context better since it enables a distinction to be made between principal motions and draft resolutions, on the one hand, and motions on points of order proper, on the other hand. It is quite true that there is a divergence in the terminology, but as the point to be decided is the order in which motions are to be put to the vote, we thought it preferable to use the expression 'principal motions' so as to bring out more clearly the distinction between principal motions and motions on a point of order proper."

The representative of the United Kingdom said:

"... might I ask . . . whether it excludes the use of the words 'principal motions' in rule 28 instead of 'substantive motions'. Could we not have 'principal motions' there, and then it would be in both rules . . ."

The representative of Australia said:

"... I am not quite clear what has happened regarding rules 28 and 29 as a result of the suggestion from the representative of the United Kingdom. But if the term 'substantive motions' in rule 28 has been changed to read 'principal motions', I think the sense of the rule has been altered.

"As I understand it, rule 28 means this: an attempt is made to list all the matters which might formally come before the Council in order to insist that those matters should be placed before it in writing. For that purpose the rule lists in order proposed resolutions, amendments and substantive motions. I think the meaning of 'substantive motions' is motions which

deal with matters of substance in contrast with proposed resolutions which might deal with any question.

"However, when we come to rule 29, the phrase 'principal motions' is intended in my opinion to refer to principal motions in contrast to amendments to principal motions. The purpose of using the phrase 'principal motions' there is to decide on the precedence in which motions shall be submitted. No precedence is determined with regard to the submission of amendments since that is not covered by this rule. The only question is precedence as between principal motions, that is, motions moved originally before any amendment is offered, and draft resolutions. If we alter 'principal motions' to read 'substantive motions' I think we shall have lost that distinction. If on the other hand, in rule 28 we alter 'substantive motions' to read 'principal motions', I think we shall have introduced a term which does not convey the sense of rule 28, because the purpose of rule 28 is simply to list all the sorts of matters which might come before the Council and to require that those matters be introduced in writing."

The representative of the United Kingdom said:<sup>a</sup>

"I am very grateful to the Australian representative for his explanation . . . This discussion will be on record, and I think that will explain the apparent conflict of terminology in the future."

#### CASE 45

At the 41st meeting on 16 May 1946, during the discussion of the Report of the Committee of Experts, the following points were made on rule 29 (now rule 32) as regards its second paragraph, which originally read:

"Parts of a motion or of a draft resolution shall be voted on separately if any representative requests that the motion or draft resolution be divided."

The representative of the Netherlands criticised the proposed rule

"because I can imagine many cases in which one part of a draft resolution or of a motion may be perfectly acceptable to every one, but on the other hand, that resolution or motion forms to such an extent an indivisible whole that you cannot really divide it and cut it into parts."

The representative of Poland considered the criticism valid and stated:

"... the proponent of a resolution may have good reason to object to his resolution being divided into parts. He may, for example, want the Council to go on record either as accepting the whole resolution he wants to put forward or as rejecting it, and it may be against his wishes that certain parts of it be taken and accepted and others be rejected."

He proposed the addition of the words "unless the proponent of the motion or draft resolution objects."

The representative of the United Kingdom proposed to substitute the word "mover" for the word "proponent", and the representative of China suggested the wording "parts of a resolution shall be voted on separately if any representative so requests, unless the original mover objects."

<sup>a</sup> For texts of relevant statements see: 41st meeting: Australia, p. 257; United Kingdom, pp. 255, 256, 257; Chairman of Committee of Experts, p. 255.

The representative of the Netherlands pointed out a further difficulty:

" . . . I can very well imagine a situation in which a member of the Council who is not a mover of a resolution or of a motion is in favour of some part of that resolution or motion and nevertheless feels constrained to vote against it because he objects to the cutting up of that draft resolution or motion. That is not covered by this rule as it now stands, even after the Polish improvement."

The representative of the USSR stated:

"It seems to me that it would be a good thing if the Security Council confirmed the text of rule 29 as it now stands, taking into account the amendment proposed by the representative of Poland. As I see the matter, Mr. van Kleffens' proposal, if adopted, might create even more difficulties for the members of the Security Council. Suppose this proposal is adopted. Then suppose there is a discussion on a text submitted to the members of the Council and that it is impossible to divide the text into two or three parts and to vote on them separately. Some members of the Council may support the first part of the text of this proposal and object to the rest of it. If the text cannot be divided into two or three parts, according to the circumstances, those members of the Security Council who support the first part and object to the rest will be obliged to vote against the whole text for the simple reason that we are not permitted to divide it. That might create even greater difficulties."

The representative of the Netherlands stated:<sup>4</sup>

" . . . I shall be very glad to adopt this rule as amended by the Polish and Chinese representatives as a provisional rule of procedure, on the understanding that the question is not considered as settled but will be further studied by the Committee of Experts . . . "

**Decision:** *The text of rule 29, with the amendments (present rule 32), was adopted.*

#### CASE 46

At the 472nd meeting on 24 May 1950, the Security Council considered General Assembly resolution 268 B (III) of 28 April 1949,<sup>5</sup> which recommended:

" . . . that the Security Council examine the utility and desirability of adopting the following practice:

"After a situation or dispute has been brought to the attention of the representatives on the Security Council in accordance with rule 6 of the provisional rules of procedure of the Security Council and not later than immediately after the opening statements on behalf of the parties concerned,

"(a) The parties shall be invited to meet with the President of the Security Council;

"(b) They shall attempt to agree upon a representative on the Security Council to act as rapporteur or conciliator for the case. The representative so agreed upon may be the President or any other representative of the Council who will thereupon be

appointed by the President to undertake the function of rapporteur or conciliator. The President shall inform the Security Council whether a rapporteur or conciliator has been appointed;

"(c) If a rapporteur or conciliator is appointed, it would be desirable for the Security Council to abstain from further action on the case for a reasonable interval during which actual efforts at conciliation are in progress;

"(d) The rapporteur or conciliator so agreed upon and appointed shall attempt to conciliate the situation or dispute, and shall in due course report to the Security Council."

The President (France) stated:

" . . . the Assembly's resolution means that the President will be asked to encourage the parties to agree upon the appointment of a member of the Council, who may be the President himself or any other member. As soon as the member is appointed, he shall carry out his work independently of his office, if he is President, and, if one judges by the discussions which took place here last December on the terms of reference to be given to General McNaughton, even independently of his membership in the Council."

The representative of the United Kingdom believed "that the general application of this practice would conduce to the good conduct of the proceedings of the Security Council, and would contribute to the solution of difficulties". He remarked, however, that the Council should not lay down "any too rigid or inflexible rule", since there might be instances when this practice could "even be undesirable". Such would be the case when hostilities have broken out or are threatened.

The representative of the United States stated:

" . . . The study of League of Nations experience showed that the practice of the League Council in using a rapporteur who had the function of a conciliator allowed for private conversations among parties, and hence avoided the crystallization of views at an early stage of the dispute, which often results from the taking of public positions. The General Assembly and the Interim Committee felt that similar advantages could be gained by the Security Council in building on this particular League experience . . . The discussion in the General Assembly and in the Interim Committee also disclosed the feeling that such a practice might result in the better preparation of cases brought before the Security Council, because the rapporteur would normally bring to the Security Council an analysis of the facts as presented by all the parties. He would follow the case in a more special and detailed way than his colleagues are able to do in the normal course, and he would study the documents related to the case and also have private talks with the parties. . .

" . . . As the President pointed out, we have . . . used that device effectively in the India-Pakistan case, in which General McNaughton, with energy, ability and understanding, worked with the parties on behalf of the Security Council . . . the parties themselves showed their feeling that this device was a useful one, in that they refrained from making detailed statements of their respective positions during the early meetings of the Security Council. This practice has developed in the Security Council . . .

<sup>4</sup> For texts of relevant statements see:

41st meeting: President (Egypt), p. 256; China, p. 258; Netherlands, pp. 256, 258, 259; Poland, p. 256; USSR, p. 259; United Kingdom, p. 258; United States, p. 258.

<sup>5</sup> *G.A.O.R., 3rd session, 2nd part, Resolutions, p. 12.*

quite informally. I believe that its usefulness depends to a considerable extent on that fact. I think that its usefulness also depends on the great flexibility of this device . . ."

The representatives of Egypt and China also supported the principles contained in the General Assembly recommendation. The representative of China remarked that the Council should not draw up "detailed regulations in regard to this practice", and should "always remain its own master in regard to procedure when a dispute is brought before it".

The representative of Ecuador declared:

" . . . It does not seem to us that such recourse should be compulsory and that the first step must be the preliminary action of the President of the Council or of a member appointed by the President. We do believe, however, that a restrained use of that measure will prove a most effective means of action by the Security Council . . ."

The representative of Yugoslavia also referred to the fact "that the General Assembly resolution which we are discussing was not adopted unanimously by the General Assembly", since apart from the USSR delegation, the representative of Yugoslavia had also raised objections, both "political and legal in nature".

He added:

"Our main objection . . . was that, under the General Assembly resolution, the Security Council would be obliged to renounce some of its prerogatives in favour of the representative of a single country, not as an exceptional procedure or a measure decided upon in a particular case, but as a normal procedure which the Council would have to follow before having examined the substance of the question and the nature of the dispute brought before it. We might take note of the General Assembly resolution without taking a formal decision on this delicate matter . . . Such an attitude on the part of the Council would . . . correspond to the nature of our work, which consists in dealing with unforeseen and unforeseeable situations."

After the representatives of Norway and India had expressed their general support for the principles embodied in the General Assembly recommendation, the President, as the representative of France, also declared his general agreement with those principles, as well as with the generally expressed "wish not to be bound to the letter of a text, not to assume obligations *ne varietur*, not to make new rules". He also stressed the need "to maintain the highly desirable flexibility and the unofficial and confidential nature of the action to be taken by mediators". The Council should not go into a detailed discussion and amendment of the text of the General Assembly recommendation. What the Council should do was "to reserve the possibility, without extensive debate, of resorting to that practice wherever it would appear useful and timely to do so," and "to ensure greater freedom for ourselves in the selection of the rapporteur or conciliator and in setting a term of office for his task". With these views in mind, the representative of France submitted the following draft resolution:<sup>8</sup>

"The Security Council,

"Having considered the communication from the Secretary-General of the United Nations dated 13 May 1949,

"Takes note of resolution 268 B (III) of the General Assembly dated 28 April 1949, and

"Decides, should an appropriate occasion arise, to base its action upon the principles contained therein."

**Decision:** *The French draft resolution was put to the vote and adopted.*<sup>8</sup>

## 2. SPECIAL CASES CONCERNING THE APPLICATION OF RULES 27-36

### a. Rule 27

#### CASE 47

At the 160th meeting on 17 July 1947, in connexion with the Greek frontier incidents question, the representative of the United States inquired whether the general debate had been closed and a detailed discussion of the resolution under consideration was to take place.

The President (Poland) stated:

"The rules of procedure do not give the President the power to close a debate, and I would be unable to prevent a speaker from discussing the general subject. . ."

However, he requested the members of the Security Council to avoid expounding general views and to concentrate upon the specific issues before them.

The representative of the United States then asked whether it would be consistent with the rules of procedure to interpolate general debate during discussion on the resolution, or whether it was possible to proceed in an orderly manner and to exclude general debate when the resolution was being considered.

The President stated:

"The rules of procedure make no provision with regard to this question. There is no point mentioned in connexion with the closure of the debate. However, I think it is a good and normal practice that the general debate should come to an end at some time, and then the concrete resolutions can be taken up. I think this practice has been followed more or less in the past, and I trust that the members of the Council will automatically adjust themselves to it in this case."

The representative of France stated:

"We might even go a little further in the interpretation of our rules of procedure. If I remember correctly, it is the duty of the President . . . to lead and conduct debates, the purpose of such direction being to assure their orderly procedure. It seems to me, therefore, that in view of this general rule, which applies to all Presidents, it would be possible to ask

<sup>8</sup> For texts of relevant statements see:

472nd meeting: President (France), pp. 4, 15-16; China, p. 8; Ecuador, p. 11; Egypt, pp. 6-8, 16; India, p. 14; Norway, p. 14; United States, pp. 5-6; United Kingdom, pp. 4-5; Yugoslavia, p. 13.

<sup>8</sup> 472nd meeting: p. 16.

<sup>8</sup> S/1486, 472nd meeting: p. 15.



at tomorrow's meeting, for example, if any member of the Council or other representative at the Council table wishes to speak again in the general debate.

"If no one wishes to speak, the general debate could be considered closed and we could proceed to a discussion of specific points."

The President then stated that he would follow the proposal of the representative of France; and would therefore ask, at the beginning of the following meeting, whether any representative desired to speak in the general debate, and, if there were no speakers, he would declare the general debate closed.<sup>9</sup>

#### CASE 48

At the 193rd meeting on 22 August 1947, in connexion with the Indonesian question (II), the representative of Australia stated that he understood the President to have ruled ten days before that the general debate was concluded and that discussion of the Australian draft resolution<sup>10</sup> was to take place. But, he added, the general debate seemed to have started again.

Later in the meeting, the President (Syria) made the following statement:<sup>11</sup>

"Some of the members have been complaining about the delay but the rules of procedure and the tradition of this Council are that speakers shall continue to speak as long as they desire to do so. There is no way to stop the discussion and to put a draft resolution to the vote before we have heard all those who desire to speak . . ."

#### CASE 49

At the 281st meeting on 12 April 1948, in connexion with the Czechoslovak question, the President (Colombia) stated that, if there were no further speakers, he would declare the discussion closed.

The representative of the United States asked whether the President by his ruling "had closed the discussion on the resolution".

The President stated:<sup>12</sup>

"Yes, but perhaps I should not have said exactly that. I meant to enquire whether any of the members of the Security Council desired to have the resolution put to a vote."

#### CASE 50

At the 519th meeting on 8 November 1950, in connexion with the complaint of aggression upon the Republic of Korea, precedence to speak was granted to the United States, at whose request the meeting had been called.

The President (Yugoslavia) stated:<sup>13</sup>

" . . . it is the established practice in the Security Council—a practice confirmed by a series of precedents—

that the delegation requesting a meeting of the Council should be called upon to speak first so that he can give explanations. . . "

#### CASE 51

At the 525th and 526th meetings on 27 and 28 November 1950, in connexion with (a) the complaint of armed invasion of Taiwan (Formosa) and (b) the complaint of aggression upon the Republic of Korea, discussion took place as to whether the representative of the People's Republic of China should, in order to state his case before the Council, be granted precedence over other speakers.

The representative of the United States was first on the list of speakers, and the President (Yugoslavia) gave him the floor.

The representative of the USSR objected, stating that, when he had asked the President to call the meeting, he was acting at the request of the representative of the People's Republic of China, who had asked that the Security Council be convened immediately to give his delegation an opportunity of expressing its view on the question submitted by his Government. He further stated: "

"It is the agreed practice of the Security Council that when any State places an item on the Council's agenda, its representative is the first to outline his position. First, the accuser, and then the accused, should be heard."

The President cited rule 27 and stated that this rule and the rules referring to rapporteurs and points of order laid down no other principle than that representatives should be called upon in the order in which they requested the floor. The delegation of the People's Republic of China had not informed him of its wish directly. He had been in touch with the delegations in the preparation for the meeting, and had been requested by the representative of the United States to include him in the list of speakers.

The President continued:

"We must therefore choose between the request made later on Saturday, by the delegation of the People's Republic of China, to be allowed to speak first, and the provision of rule 27 which gives delegations the right to speak in the order in which their names are inscribed on the list. I leave it to the Council to take a decision. I shall not make a ruling since there are obviously arguments on both sides."

The representative of the USSR stated:

" . . . In all the history of the Security Council's work, the first speaker at any meeting of the Council has been the representative who requested the convening of the Council, the one on whose initiative the meeting had been convened.

"In this case, the meeting has been convened on the initiative of the People's Republic of China and its delegation. Thus, under rule 27, the delegation of the People's Republic of China is entitled to speak first because it was the first to signify its desire to speak and because the United States representative apparently signified a like wish later."

The representative of Egypt referred to a practice of the Security Council according to which members

<sup>9</sup> For texts of relevant statements see: 160th meeting: President (Poland), p. 1387; France, p. 1368.

<sup>10</sup> S/488, 181st meeting: pp. 1917-1918.

<sup>11</sup> For texts of relevant statements see: 193rd meeting: President (Syria), p. 2187; Australia, pp. 2172-2173.

<sup>12</sup> For texts of relevant statements see: 281st meeting: President (Colombia), pp. 24, 25; United States, p. 24.

<sup>13</sup> 519th meeting: p. 14.

of the Council are called upon to speak before other participants.

The President put to the vote the question:

"... whether we should make an exception in this case to rule 27 of our rules of procedure, and whether we should ask the plaintiff with regard to sub-item (a) on our agenda, the representative of the People's Republic of China, to speak first."

The representative of the USSR expressed his dissent from the motion being called an exception.<sup>14</sup> The President then reformulated the question as follows:

"... Does the Council wish the representative of the People's Republic of China to speak first?" The proposal was rejected.<sup>15</sup>

#### CASE 52

At the 555th meeting on 27 August 1951, in connexion with the Palestine question, the representative of Egypt\* asked the President (United Kingdom) how much longer the meeting would last.

The President replied:<sup>16</sup>

"The President has no control over the wishes of the members of the Security Council. They have the right to ask for permission to speak at any time."

#### b. Rule 28<sup>17</sup>

#### c. Rule 29

#### CASE 53

At the 269th meeting on 18 March 1948, in connexion with the India-Pakistan question, the President (China), after consultation with the representatives of India and Pakistan, introduced a draft resolution<sup>18</sup> in his capacity as the representative of China.

The representative of Pakistan\* stated:

"... I would like some enlightenment on the following point: When the Kashmir matter was adjourned... the Security Council had before it two draft resolutions; one resolution sponsored by the representative of Canada, and the other... by the representative of Colombia. We now have this third draft resolution which has today been put forward by the representative of China.

"What exactly is the procedural position, so far as the Security Council sees it, with regard to the consideration of these draft resolutions?..."

The representative of Colombia asked for a clarification of the procedure. He understood the President's idea to be that the Council should go on to discuss his own draft resolution. Did that mean indefinite postponement or discarding of the other draft resolutions?

"I could understand the procedure if the President of the Security Council, acting on its behalf, had

conversations with the two delegations and they reached agreement as to the terms of settlement. A draft resolution containing those agreed points would naturally take precedence over the other ones. But as it happens, all we have been doing is accumulating draft resolutions presented by the President of the Security Council which... do not represent agreement between the two parties concerned."

The President, stating that there were indeed a number of draft resolutions before the Council, declared that all of them would be dealt with according to the rules of procedure. He added that he had inherited the present method from two predecessors, had consulted the Security Council on whether to continue it, and, for his part, would welcome its abandonment and a return to the usual method.

The representative of France expressed the hope that the Council, when it returned to the question, would deal with a draft resolution which was a kind of synthesis, as was the President's draft resolution, of draft resolutions previously submitted rather than with those draft resolutions themselves.

The representative of Colombia observed that the various proposals were not being dealt with according to the rules of procedure. He continued "The rules of procedure provide for the orderly discussion of the different proposals that are submitted. Then every delegation has the opportunity to say what amendments it thinks are necessary for the purpose of reaching an agreement and a satisfactory solution." He continued that it was desirable to be clear as to the procedure to be followed: whether the President's draft resolution was to be taken as the basis of discussion, and whether other draft resolutions were to be left in abeyance. He concluded:

"The primary object of the conversations of the President of the Security Council with the parties was to see if he could reach an agreement with them and come back with that news to the Security Council. What has actually happened is that, after every conversation, we get a new proposal, and thereby we have been accumulating proposals which we are not handling in the usual way."

The President stated:

"... so far as I am aware, the procedure adopted has not violated any particular rule of our rules of procedure.

"There is another minor difficulty which the representatives should keep in mind. Naturally, in this question the representatives of India and Pakistan are most directly concerned. Our rules of procedure limit their right to submit resolutions to the Security Council, since they are not members of this body. Unless a member of the Security Council sponsors their resolutions, they cannot be put to a vote. It is for this reason that I thought it might be useful for our present procedure to be continued. When I stated that I should appreciate it if the representatives of India and Pakistan would give me their ideas in writing, it was, of course, for the simple purpose of improving our work.

"I also stated that if members of the Security Council had any ideas in regard to the improvement of my draft resolution, I should welcome them. I did not mean by that statement that members should not submit their amendments to the Security Council."

<sup>14</sup> For texts of relevant statements see:

525th meeting: President (Yugoslavia), pp. 22-23; USSR, p. 21.

<sup>15</sup> 526th meeting: President (Yugoslavia), pp. 9, 10; Egypt, p. 7; USSR, pp. 2-4, 9-10.

<sup>16</sup> 526th meeting: p. 10

<sup>17</sup> 555th meeting: p. 5.

<sup>18</sup> Reference should also be made to Case 46.

<sup>19</sup> S/699, O.R., 3rd year, Suppl. for Jan., Feb. and March 1948, pp. 38-40.

cil in the usual way. That right always exists, and I certainly did not intend to abridge it in the least."

The representative of Canada stated that it was the belief in the possibility of an agreed settlement which had led his delegation to support the view that the procedure suggested by the President should be followed at that stage. So far as the draft resolution submitted by his delegation jointly with the delegation of Belgium was concerned, his view was that "those proposals might well be held in abeyance"; any part of their contents which would help to narrow the differences existing between the two parties would be available at the discretion of the President; and any member of the Security Council could make use of the material therein.

The representative of Colombia stated:

"As I understand it, both the proposal submitted jointly by Belgium and Canada and the Colombian proposal will be left in abeyance indefinitely."

The President stated:<sup>19</sup>

"Any member of the Security Council is free to discuss any of the proposals before the Security Council at any time."

#### CASE 54

At the 382nd meeting on 25 November 1948, in connexion with the India-Pakistan question, the point was raised whether the parties should be invited to the Council table before or after the presentation of a report from the United Nations Commission for India and Pakistan.

Following the extension of an invitation to the Rapporteur of the Commission, the representative of Syria proposed that the representatives of India and Pakistan be invited to the table.

The representative of Canada, supported by the representative of Colombia, stated that it would be well for the Council to hear the report of the Rapporteur of the Commission before inviting the parties to take their places at the table.

The representative of the Ukrainian SSR observed that whenever a question involving two parties had been discussed in the past, the Council had invited both parties to participate in the discussion. He saw no reason for the Council to deviate from that procedure.

The representative of China thought that while the Rapporteur of the Commission should be heard first, the representatives of India and Pakistan should be invited to the table.

The representatives of Canada and Colombia supported the suggestion of the representative of China.<sup>20</sup>

**Decision:** *It was agreed that the representatives would be invited to the Council table, but that the Rapporteur of the Commission would be heard first.*<sup>21</sup>

<sup>19</sup> For texts of relevant statements see: 269th meeting: President (China), pp. 134, 138, 140; Canada, p. 139; Colombia, pp. 133-134, 137-138, 140; France, p. 135; Pakistan\*, p. 125.

<sup>20</sup> For texts of relevant statements see: 382nd meeting: Canada, pp. 3, 4; China, pp. 3-4; Colombia, pp. 3, 4; Syria, p. 3; Ukrainian SSR, p. 3.

<sup>21</sup> 382nd meeting: p. 4.

#### d. Rule 30<sup>22</sup>

##### CASE 55

At the 67th meeting on 16 September 1946, in connexion with the Ukrainian complaint against Greece, while the representative of the Ukrainian SSR was speaking the representative of the United Kingdom asked permission to raise a point of order.

Discussion ensued as to whether this was permissible under the rules of procedure.

The President (Poland) stated:

"I have asked the Assistant Secretary-General to go into the rules of procedure to see whether we have any rule as to whether a speaker can interrupt another speaker on a point of order. We have rule 30, which states that if a representative raises a point of order, the President shall immediately state his ruling."

The representative of the USSR stated:

"I consider that to interrupt any speaker is to act not only against the rules of procedure, but also against ordinary common sense . . ."

The President stated:<sup>23</sup>

"According to the rules of procedure, as I interpret them, any representative can raise a point of order at any time, and it is a matter for his own judgment at what moment to do so.

Before the President asked the representative of the Ukrainian SSR to proceed, the representative of the United Kingdom was permitted by the President to make his point of order.<sup>24</sup>

##### CASE 56

At the 185th meeting on 15 August 1947, in connexion with the Indonesian question (II), the President (Syria) made the following statement concerning the nature of points of order:<sup>25</sup>

"A point of order is raised, as I understand it, when one of the members of the Council feels that the business of the Council is not being conducted in accordance with one of the rules of procedure. He therefore calls the President to order by citing that rule of procedure. If the procedure of the Council is in accordance with the rules of procedure, there is no point of order."

<sup>22</sup> Prior to August 1950 the Official Records indicate that on four occasions when a Presidential ruling was challenged, the President put his ruling to the vote as a proposal to uphold the ruling (49th meeting, pp. 421-422; 57th meeting, p. 132; 224th meeting, pp. 2816-17; 459th meeting, pp. 3-4); and on three occasions the President put the ruling to the vote as a proposal to overrule (303rd meeting, pp. 26-27; 330th meeting, pp. 8-9; 443rd meeting, pp. 27-28). Beginning with the 480th meeting on 1 August 1950, all votes resulting from challenges to Presidential rulings have been entered in the Official Records as votes on proposals to overrule. (480th meeting, p. 9; 482nd meeting, pp. 19-20; 492nd meeting, p. 16; 494th meeting, pp. 8, 11.) At the 507th meeting the President put his ruling to the vote as a proposal to overrule pp. 7-8.

<sup>23</sup> For the consideration of the use of rule 30 of the provisional rules of procedure in determining whether a matter is procedural for the purpose of Article 27, see chapter IV, Cases 100-106.

<sup>24</sup> For texts of relevant statements see: 67th meeting: President (Poland), pp. 337, 338; USSR, pp. 337-338; United Kingdom, pp. 336, 337.

<sup>25</sup> 67th meeting: pp. 337, 338.

<sup>26</sup> 185th meeting: p. 2024.

## CASE 57

At the 202nd meeting on 15 September 1947, in connexion with the Greek frontier incidents question, the representative of Yugoslavia\* stated that he opposed a draft resolution submitted by the representative of the United States to the effect that the Greek question be dropped from the list of matters of which the Security Council was seized.

On a point of order, the representative of the United States observed that the representative of Yugoslavia did not have a right to engage in discussion as to the agenda of the Council, and asked the President (USSR) to rule that the representative of Yugoslavia should withdraw from that discussion at once.

The President refused to grant the request and stated:

"I cannot do this. I cannot grasp the full meaning of the statement of the representative of Yugoslavia. I ask him to continue."

The representative of the United States challenged the President's ruling. The President said that he could not accept the challenge. The representative of the United Kingdom said that the President must accept the challenge from the representative of the United States. The President replied that he did not know what the representative of Yugoslavia was saying; that, when the representative of Yugoslavia had spoken, he had not grasped the full meaning of the statement, but that when this was translated he had concluded that the statement did not touch on the substance of the question; so he did not see any convincing reasons for the warning of the representative of the United States.

The representative of the United Kingdom stated:<sup>26</sup>

"Mr. President, you may be quite right in what you have just said, but there has, as I have seen, been a breach of our rules of procedure which I do not think should be allowed to pass in silence. Rule 30 states that if a representative raises a point of order the President immediately shall state a ruling. You remember the United States representative raised a point of order and you stated a ruling. If it—that is, the President's ruling—is challenged, the President shall submit his ruling to the Security Council for immediate decision, which will stand unless overruled. You refused to accept the challenge of the United States representative. You are not entitled to do that."

## CASE 58

At the 213th meeting on 22 October 1947, in connexion with the Indonesian question (II), the President (United Kingdom) stated that the next meeting would be held the following Monday, 27 October.

The representative of Colombia was opposed and asked "to have a vote on the President's proposal".

The President stated that he had ruled that the Security Council should meet next Monday and that, since the representative of Colombia had challenged his ruling, he would put the question to the vote.

The representative of Australia then stated:

\* For texts of relevant statements see: 202nd meeting: President (USSR), p. 2403; United Kingdom, pp. 2403-2404; United States, pp. 2402, 2403; Yugoslavia, p. 2402.

"I wish to raise a point of order. The President can rule only when a point of order has been raised. He cannot rule the date of the next meeting. I should like to know under what rule the President can rule that the next meeting shall be held on Monday."

The President then asked the representative of Australia to "suggest how the Council will fix the date for its next meeting".<sup>27</sup>

Several possibilities were then discussed and finally the President invoked rule 1 and fixed the date of the following meeting.

There was no further objection.

## CASE 59

At the 224th meeting on 19 December 1947, in connexion with a letter from the Chairman of the Committee of Experts reporting that it was not yet ready to report, the representative of Poland introduced a draft resolution containing instructions to the Committee of Experts.<sup>28</sup>

The representatives of France and the United Kingdom stated that they would not be prepared to discuss the draft resolution at once and that it would be better to wait until the Security Council had received a report from the Committee of Experts. The representative of Belgium claimed that his proposal to adjourn discussion until the report was received was entitled to priority under the rules of procedure. The representative of the USSR denied this claim, stating:

"The Belgian representative's proposal is not a proposal on a point of order. The first part—about adjourning the discussion—indeed relates to a point of order; but the second part—adjournment of the discussion until the Committee of Experts has submitted its report—is not a proposal on a point of order but an ordinary proposal, a draft resolution. Consequently, if the Belgian representative will delete the second part, the Council will be able to give his proposal precedence and discuss it."

The representative of Poland expressed the same view—that since the Belgian motion did not specify postponement to a certain day, it was not entitled to precedence under rule 33, para. 1, sub-para. 5, but should be put to the vote after his own motion.

The President (Australia) stated that he found himself in difficulty concerning the various motions for adjournment. He then ruled that the introduction and discussion of the Polish draft resolution was out of order in relation to the item under discussion and that the Security Council should proceed to the following item. The representative of the USSR contested that view.

**Decision:** The President put his ruling to the vote. The ruling was upheld.<sup>29</sup>

## CASE 60

At the 303rd meeting on 24 May 1948, in connexion with the Czechoslovak question, a ruling of the Presi-

<sup>27</sup> For texts of relevant statements see: 213th meeting: President (United Kingdom), pp. 2620, 2621; Australia, pp. 2620, 2621; Colombia, p. 2620. See also Case 5. <sup>28</sup> S/625, 224th meeting: p. 2812. <sup>29</sup> For texts of relevant statements see: 224th meeting: President (Australia), pp. 2812, 2814, 2815, 2816; Belgium, p. 2815; France, p. 2813; Poland, pp. 2812, 2813, 2815-2816; USSR, pp. 2813, 2814, 2815, 2816; United Kingdom, pp. 2813-2814.

dent (France) as regards the interpretation of a vote to determine whether a matter was procedural or not, was challenged.

The President announced that he would put his ruling to the vote. The representative of Belgium asked the President what procedure would be followed in the vote upon the ruling.

The President quoted rule 30 and stated:

"If my interpretation of this text is correct, what I should put to the vote is the annulment of the ruling I have given.

"...

"... Nevertheless, I should point out that in certain other cases of disagreement, it was the President's ruling which was put directly to the vote."

The representative of Syria stated that he agreed "with the President's last interpretation, that is, to put his ruling to the vote, and to have it either sustained or rejected".

The President said that, in order to solve the difficulty, he would first put the following question to the vote:

"In applying rule 30 of our rules of procedure, if the ruling given by the President is to be overruled, must this be done by means of a positive vote against it and in favour of the annulment?"

The representative of Syria stated that the words of rule 30 "... the President shall submit his ruling to the Security Council for immediate decision" meant that the ruling, and not the challenge, should have the required majority in order to stand.

The representative of the USSR stated that, whenever a Presidential ruling had been challenged, the question had been put in such a way as to establish who was against the ruling and not who was for it.

The President stated:

"To enable the Security Council to give its verdict, I shall put the question to the vote in the following form: Is it agreed that I should put to the vote the proposal that my ruling should be annulled?"

The representative of the USSR stated that, in his view, this would be an added complication, and said:

"It seems to me that the matter should be conducted according to precedent. If anybody disagrees with the President's ruling, the question must be put in the following way: 'Who wishes the President's ruling to be overridden?' and not 'Who wishes the President's ruling to be maintained?'"

Finally, the President put the question to the vote in the following way:

"Will those who object to my interpretation raise their hands?"<sup>30</sup>

#### CASE 61

At the 328th meeting on 1 July 1948, in connexion with the Indonesian question (II), the President (Ukrainian SSR) stated that, in view of the exchange of views that had taken place, he would request a certain document from the Chairman of the Committee of Good Offices. This course had been proposed

in a Chinese draft resolution introduced earlier in the meeting.

The President's proposal was opposed by the representative of Belgium; consequently the President decided to put the Chinese draft resolution to the vote.

The representative of the USSR then stated:

"If the statement of the President is to be regarded as a ruling, then I think it would be more logical to vote on who is in favour of reversing the President's ruling rather than who is in favour of the Chinese proposal.

"I think that would be more logical, in so far as the President's statement constitutes a ruling. In that case, it goes without saying that, should there be seven votes against the President's ruling, the Chinese proposal would not be accepted. If, on the other hand, there should not be seven votes to reverse the President's ruling, then the President will send his request to the Committee of Three."

The representative of the United Kingdom stated that in his opinion this question did not come under rule 30.

The representative of Syria stated:

"The matter does not come under rule 30 of the rules of procedure, because rule 30 states that if a representative raises a point of order, the President should immediately state his ruling on the point of order, and that ruling may be overruled or confirmed by a vote of the members of the Council. However, this is not the case here. We have a suggestion or proposal made by one representative and it should be voted upon."

The representative of the United States stated that the Chinese proposal should be put to the vote, as it was not a question of procedure to be disposed of by a Presidential ruling.

Asked his opinion by the President, the representative of the USSR stated:<sup>31</sup>

"I think the President can best settle that question. I have tried to interpret his statement. If it is to be regarded as a ruling given by the President, then the procedure should of course be as I have already said: seven votes would be necessary to reject it. If it is not to be regarded as a ruling, then of course we must resort to the usual procedure and first ascertain by voting who supports the Chinese proposal."

The President put the Chinese draft resolution to the vote.

#### CASE 62

At the 329th meeting on 6 July 1948, in connexion with the Indonesian question (II), the representatives of Australia\*, Indonesia\*, China and the USSR proposed that the Security Council request from the Committee of Good Offices detailed information on the existing restrictions on the domestic and international trade of Indonesia.

The President (Ukrainian SSR) accepted the proposal. The representative of Belgium objected.

The President stated:

<sup>30</sup> For texts of relevant statements see: 303rd meeting: President (France), pp. 23, 24, 26; Syria, pp. 24, 25; USSR, pp. 25, 26.

<sup>31</sup> For texts of relevant statements see: 328th meeting: President (Ukrainian SSR), pp. 32, 34; Syria, p. 33; USSR, pp. 32-33, 34; United Kingdom, p. 33; United States, p. 33.



"The President has made a ruling accepting the request of the representative of the Indonesian Republic that a telegram should be sent to the Committee of Good Offices with a request for a detailed report on the blockade. The Belgian representative has made an objection. I must now put the President's ruling to the vote."

The representative of the United Kingdom stated:

"It seems to me that an extraordinary procedure is growing up in the Council, in accordance with which if a matter of procedure, as opposed to a matter of substance, is raised here, there is no need for a resolution to be submitted and voted upon; the President can apparently simply rule on a point of procedure. Now that, if I may be allowed to say so, is not in accordance with the rules of procedure. There is a great deal of difference between a question of procedure and a point of order. It seems to me that this question we are discussing today is not a point of order, and that the President has no right to make a ruling."

The representative of the United States agreed with the representative of the United Kingdom, but added that in his view the Security Council need not go into a procedural debate but ought rather to try and agree on the dispatch of the telegram to the Committee of Good Offices.

After further discussion, a draft resolution introduced by the representative of China, containing a text to be telegraphed to the Committee of Good Offices, was put to the vote.<sup>22</sup>

#### CASE 63

At the 330th meeting on 7 July 1948, in connexion with the Palestine question, the President (Ukrainian SSR) stated at the beginning of the meeting:

"I now ask the representatives of the following States and interested parties to take their places at the Security Council table: the representatives of the States of Israel, Iraq, Egypt, and Lebanon; . . ."

Objections to the President's wording of this invitation, in so far as it referred to the State of Israel, were raised by the representatives of Belgium, Canada, China, Egypt\*, France, Syria and the United Kingdom.

The representative of the United States supported the President's action.

The President stated:

"... my right as President is to make a ruling, and the Security Council will decide whether the President's ruling was correct or not. I am putting this question to the vote. Those in favour of the President's proposal will please raise their hands."

The representative of the USSR stated:

"It seems to me that the correct way to proceed would be exactly the reverse. We should vote on the question: Who is against the President's ruling? The results of the vote would decide that question. If I am not mistaken, this would be more consistent with the rules of procedure."

The ruling of the President was put to the vote in the form suggested by the representative of the USSR, and upheld.

After the voting, the following views were stated:

The representative of the United States:

"... I should merely like to reserve the position of my delegation on the question of the interpretation of our rules of procedure, to whether the question involved here was a point of order."

The representative of the United Kingdom expressed the same view.

The representative of Canada:

"... our conception of the proper procedure which should have been followed is that this matter should have been put in the form of an affirmative resolution."<sup>23</sup>

#### CASE 64

At the 413th meeting on 3 March 1949, in connexion with the application of Israel for membership in the United Nations, the President (Cuba) put to the vote the question whether or not the application should be referred to the Committee on the Admission of New Members. The President declared that, as a result of the vote, the application would be dealt with by the Security Council.

The representative of China, on a point of order, invoked rule 59 as requiring the matter to be referred to the Committee on the Admission of New Members unless the Council decided otherwise—which, in his view, the Council had not done.

The representative of the United States stated that, in his view, the point of order was not well taken; that "the rule relates to what the President shall do". He added that the President had decided not to send the application to the Committee. The Council had voted on the motion to refer the matter back to the Committee and had decided not to do so.

The President ruled that Israel's application was under consideration and would continue to be discussed by the Security Council, as a sufficient number of votes had not been obtained for the motion to refer the application back to the Committee.

The representative of Egypt stated he agreed with the point of order made by the representative of China, and added that in his opinion no ruling had been made. He stated:

"What the President called 'a ruling', I consider to be an expression of opinion on his part. He is certainly entitled to this opinion, but I do not consider it a ruling. The President of the Security Council has no right to decide a question on which the Council has to vote. A vote has to be taken..."

The representative of the United States referred to rule 30 and stated:

"There is a ruling by the President, no matter what the representative of Egypt says about it; it cannot be changed simply by saying that it is not

<sup>22</sup> For texts of relevant statements see: 329th meeting: President (Ukrainian SSR), pp. 18-19, 20; Australia, pp. 16-17; Belgium, pp. 19, 20; China, p. 17; Indonesia, pp. 11, 15; United Kingdom, pp. 20-21; USSR, pp. 20, 21-22; United States, p. 21.

<sup>23</sup> For texts of relevant statements see: 330th meeting: President (Ukrainian SSR), pp. 2, 3, 8, 9; Belgium, p. 3; Canada, pp. 6-7, 9; China, p. 4; France, pp. 2-3; Egypt, pp. 5-6, 8; Syria, pp. 3, 3-4; United Kingdom, pp. 2, 9; USSR, pp. 8, 9; United States, pp. 7, 9.

a ruling, but only an opinion. It was a ruling on a point of order. Rule 30 states that, if a representative wishes to challenge such a ruling, he has the right to do so . . .

"I have not heard anybody challenge the ruling as yet; I have only heard complaints about it."

The President declared that he did not consider that the Security Council was dealing with a new application.

The representative of Egypt stated:

"I do not think anybody can reasonably say that the President of the Council can make any ruling at any moment on any matter. There are certain matters which can be the subject of a ruling from the President, and others which cannot. Therefore, we cannot just take rule 30 as something absolute and isolated from anything else, including the other rules of procedure which we have before us."

The representative of the USSR stated:

"The application has already been considered by the Committee; the Council has received the Committee's report and is now continuing the discussion on the substance of the question of Israel's admission to membership in the United Nations; yet, despite all this, a new proposal has been put forward, namely, that the question should again be referred to the Committee on the Admission of New Members. That proposal was put to the vote; it failed to obtain a majority and was consequently rejected. The Security Council is therefore continuing to examine the substance of the Israeli Government's application for admission to the United Nations."

The President stated that he considered the point of order had been settled, and if no one challenged his ruling, the discussion on that subject was closed.<sup>34</sup>

There was no further objection.

#### CASE 65

At the 480th meeting on 1 August 1950, in connexion with the question of the representation of China in the Security Council, the President (USSR) ruled, at the beginning of the meeting, that:

"... the representative of the Kuomintang group seated in the Security Council does not represent China and cannot therefore take part in the meetings of the Security Council."

The representative of the United States challenged the authority of any President "to rule by arbitrary fiat upon the status of the representative of a country that is a Member of the United Nations . . ."

The representative of the United Kingdom, citing rule 17, also challenged the ruling. The Security Council had not taken a decision that the credentials of the representative of China were not in order; consequently, it seemed to him essential to challenge the ruling.

The President declared that rule 17 could not limit in any degree the rights of the President in this instance.

"... Under the rules of procedure, the President has the right to rule on any question, and unless the

Security Council decides otherwise, that ruling remains in force . . ."

The representative of Egypt stated:

"The Egyptian delegation has always maintained that a question of the nature and importance of the one which the President raised at the beginning of this meeting cannot be disposed of by a mere ruling of the President, of any President of the Security Council . . ."

The representatives of Cuba and Ecuador made statements to the same effect. The representative of India indicated that he would "vote on the merits of the ruling apart from any considerations of procedure."<sup>35</sup>

**Decision:** *The President's decision was put to the vote and overruled.*<sup>36</sup>

#### CASE 66

At the 484th meeting on 8 August 1950, in connexion with the complaint of aggression upon the Republic of Korea, the representative of China raised the following point of order:

"Does the President consider it obligatory upon him to carry out the decision of the Security Council of 25 June (473rd meeting) by inviting the representative of the Republic of Korea to take his place at the Council table . . . That decision was not limited to any one meeting. It applied to all meetings at which the question of Korea was to be considered."

Citing rule 30, he requested the President to render a ruling immediately in regard to his point of order.<sup>37</sup>

The President (USSR) stated that at the 483rd meeting the question of inviting both parties had been raised and a proposal to that effect had been introduced and discussed. The Security Council would undoubtedly continue the discussion of this question and it would be premature for the President to announce any conclusion.

The representative of China insisted that the President give his ruling and again invoked rule 30.

The President stated that the question raised at the previous meeting was that of inviting both parties concerned in the internal conflict in Korea in order to give them both a hearing at the Security Council table. In discussing that question some delegations maintained that the representative of South Korea should be invited on the basis of previous decisions by the Council; other delegations, in particular the delegation of the USSR, thought that both parties should be invited. He added:

"But the President could not invite, either at the last meeting or at the present meeting, a representative against whom a delegation had raised an objection. Consequently the President finds himself in a position in which he cannot announce his final conclusions on the question until the discussion of this question, started at the previous meeting, is concluded . . . The President's conclusion regarding

<sup>34</sup> For texts of relevant statements see:

480th meeting: President (USSR), pp. 1, 4; Cuba, p. 6; Ecuador, p. 7; Egypt, p. 6; India, p. 5; United Kingdom, p. 2; United States, pp. 1-2.

<sup>35</sup> 480th meeting: p. 9.

<sup>36</sup> For the invitation to the Republic of Korea, see chapter III, Case 53.

<sup>37</sup> For texts of relevant statements see:

413th meeting: President (Cuba), pp. 15, 17, 19, 21; China, p. 16; Egypt, pp. 17, 20; USSR, p. 21; United States, pp. 16-17, 18-19.



the point of order which has been submitted is, therefore, that the question should be discussed in order that a definite decision may be reached as a result of that discussion... The President is not making a final ruling but is merely summing up the position which has arisen..."

The representative of the United States challenged the ruling of the President and expressed his support of the point of order made by the representative of China.

The representative of China stated:

"Although technically the President has avoided making a ruling, he has actually made the ruling because he is proceeding to conduct the business of the Security Council without inviting the representative of Korea to this table. That conduct is in itself a ruling. In fact it is a ruling in execution, not only a ruling on paper. In refusing to reverse his procedure and to give my question an answer, the President has violated rule 30. I demand an immediate ruling in accordance with rule 30."

The President stated that he would speak on the point of order in his capacity of representative of the USSR.

The representative of China objected and stated that after a point of order was raised:

"... the President must render his ruling without giving the floor to any other representative."

Speaking as the representative of the USSR, the President stated that, in his view:

"... before taking a decision on the Korean question, the Security Council should hear representatives of the Korean people, i.e., representatives of both parties, of the North Koreans and of the South Koreans..."

The representative of China insisted on his request for a ruling, and restated his point of order:

"My point is: does the President feel that he should invite the representative of Korea to the Security Council table or not?"

The President stated:

"In the circumstances which have arisen, the President cannot give a ruling on this question."

Speaking as the representative of the USSR, he added that his delegation did not regard the decision adopted on 25 June--which in his view was not actually a decision but merely permission granted to the representative of South Korea to attend the Security Council meeting--as valid for the present meeting, since there was no special decision on this question.

The representative of the United Kingdom stated that:

"... a large majority of the members of the Security Council wish the representative of the Republic of Korea to take his place at this table without further delay unless the President ruled to the contrary and his ruling was sustained..."

He added:<sup>89</sup>

"It is true, I think, that we cannot actually force our President to admit that he has made a ruling which, he says, he has not made, or to make a ruling which he declines to make..."

At the beginning of the 485th meeting the representative of China took up his point of order.

The representative of the United States supported the representative of China and requested the President "to rule upon the point of order..."

The President stated:

"As I mentioned in the short summary I made at the beginning of the meeting, the result of the unofficial exchange of views that has taken place between the members of the Security Council on questions arising at the previous meeting has been that the opinions of the parties have remained unchanged, and accordingly we have recognized that such unofficial exchanges of opinions would be advisable in the future. It is therefore hardly advisable to return to this question, for it is perfectly obvious to all members of the Security Council that, in the circumstances that have arisen, the President cannot possibly make the ruling upon which the representative of the United States and the representative of the Kuomintang group have been insisting so vehemently for the last two meetings."

The representatives of the United States and of the United Kingdom questioned the accuracy of the observations of the President.

To the reiterated request for a ruling, the President replied:

"The following situation has arisen. The representative of the United States has challenged a non-existent ruling. The President has made no ruling, and has announced very clearly and plainly that, in view of the situation which has arisen, he is unable to make a ruling. Therefore, as there is no ruling, the challenge cannot stand. Only a ruling can be challenged. In this case there was no ruling. The challenge therefore lacks an object."

The representative of Cuba observed:

"The ruling which the President has actually made is that he will not comply with the rules of procedure or take any account of the decision reached by the Council on 25 June. He says that he has taken no such decision, but it seems that in fact he has..."

"The delegation of Cuba therefore wishes to protest most strenuously... and insists... that the question before the Council should be solved in accordance with rule 30..."

The President declared that he had given no ruling, was not giving one and was not in a position to give one.<sup>90</sup>

At the 486th meeting on 11 August 1950, the President stated that the Security Council had before it two proposals: one submitted by the USSR delegation to invite representatives of North and South Korea and another proposal "that the permission granted the authorities of South Korea on 25 June (473rd meeting) to attend the meeting of the Security Council should extend also to the present meeting".

Speaking as the representative of the USSR, he requested that these proposals be put to the vote and that the Security Council then proceed to consider the substance of the matter.

<sup>89</sup> For texts of relevant statements see:

484th meeting: President (USSR), pp. 5, 6, 7, 8, 9, 14; China, pp. 5, 8, 14; United Kingdom, pp. 15, 16; United States, p. 7.

<sup>90</sup> For texts of relevant statements see:

485th meeting: President (USSR), pp. 11, 12, 14, 15; China, pp. 1-3; Cuba, pp. 13-14; United Kingdom, p. 12; United States, pp. 3, 11, 14.

The representative of the United Kingdom stated he did not agree with this procedure and preferred the one favoured by the great majority of the members of the Security Council.

The President stated that the Council should now proceed to a vote unless the majority did not wish to.

The representative of the United States challenged the President's ruling.

The President stated:

"I should like to ask the United States representative to state precisely which ruling by the President he is challenging. The point is that there is no ruling by the President. There is only the USSR delegation's request that a vote should be taken on its proposal. The President, being responsible for the conduct of the meeting and having regard to the insistent requests of the USSR delegation, put the following question to the Council: Does the Council wish to take a vote on this proposal or does it not? As he has not given a ruling, he is leaving it to the Council to decide this question. Where is the ruling which is being challenged?"

The representative of the United States stated that the ruling of the President had been the following:

"Unless the speakers wish to speak first, I will put to a vote the proposal of the Soviet Union."

That, he said, was a ruling and one to which he objected, since it had the effect of setting aside the regular order, that is, the prior point of order raised by the representative of China at the 483rd meeting. He insisted that his challenge be put to the vote.

The President stated:<sup>40</sup>

"The challenge cannot be accepted and put to the vote, as there has been no ruling. Only a ruling can be challenged, that is, provided one has been made."

At the 487th meeting on 14 August 1950 the representative of Ecuador protested that the rules of procedure had been repeatedly violated by the President. The representative of Norway stated:<sup>41</sup>

"By his unexplained refusal to discharge his duty under rule 30 of our rules of procedure, the President is preventing the Council from proceeding to an orderly discussion of the substantive matters before it..."

At the 488th meeting on 17 August 1950, the representative of China stated:<sup>42</sup>

"... In spite of the President's arbitrary refusal to give a ruling, I wish to state that my point of order remains the first question before the Security Council..."

#### CASE 67

At the 525th meeting on 27 November 1950, in connexion with (a) the complaint of armed invasion of Taiwan (Formosa) and (b) the complaint of aggression upon the Republic of Korea, the representative of the USSR expressed the wish to make a point of order immediately after the representative of the United States had begun to speak.

<sup>40</sup> For texts of relevant statements see:

486th meeting: President (USSR), pp. 3, 4; United Kingdom, p. 2; United States, pp. 3, 4.

<sup>41</sup> For texts of relevant statements see:

487th meeting: Ecuador, p. 1; France, p. 10; Norway, pp. 6, 7, 8.

<sup>42</sup> 488th meeting: p. 9.

The President (Yugoslavia) then stated:

"Yes, but with the speaker's permission. During this month I have adhered to the practice which has been followed by many Presidents, which is not to call on a speaker on a point of order while a statement is being made. We are a political organ, and I think that every speaker must be given an opportunity to state his views without being interrupted. I have refused to call on many representatives who wished to make a point of order during a speech..."

The representative of the USSR stated:

"There is no such rule in the rules of procedure. It is for the President to decide whether he can let me speak on a point of order or not, and I do not want to have to depend for this on any speaker..."

The representative of the United States yielded the floor to the representative of the USSR, and stated:

"... I yield to the representative of the Soviet Union on his point of order."

The representative of the USSR stated that he would not refer to the substance of the matter, but only to procedural questions.<sup>43</sup>

#### e. Rule 31<sup>44</sup>

##### CASE 68

At the 328th meeting on 1 July 1948, in connexion with the Indonesian question (II), several proposals were introduced in oral form. The President (Ukrainian SSR) made the following statement:<sup>45</sup>

"May I first point out that all proposals made under rule 35 [*sic: rule 31*] of the rules of procedure must be submitted in writing? Unfortunately not one of the speakers did submit his proposals in this way. As President, I can make allowances in this case because the President's duty is to sum up the debate and find a solution for this situation."

##### CASE 69

At the 329th meeting on 6 July 1948, in connexion with the Indonesian question (II), the representative of France observed that various proposals concerning a telegram to be sent to the Committee of Good Offices had been made orally.

The President (Ukrainian SSR) stated:

"In accordance with rule 31 of the rules of procedure, I must state I shall not put to the vote any oral proposals, as it is stipulated that proposals should be submitted in writing."

The representative of the USSR then introduced what he termed a "suggestion" that the Committee of Good Offices transmit information within five days if possible.

The representative of China formally moved that the Committee be asked for an "early report".

The President announced he would put the two draft resolutions to the vote in the order of submission, that is, first, the USSR draft resolution and second, the Chinese draft resolution.

<sup>43</sup> For texts of relevant statements see:

525th meeting: President (Yugoslavia), p. 20; USSR, pp. 20, 21; United States, p. 21.

<sup>44</sup> See also Case 44.

<sup>45</sup> 328th meeting: p. 25.

The representative of Canada stated:

"A few minutes ago, the President made a rule, which I think was very wise, that he would not entertain any further resolutions unless they were in writing. The only resolution in writing before the Security Council at the present moment is the resolution presented by the representative of China. Under the rules of procedure, I think, and I ask, that that resolution should now be put to the vote."

The representative of the USSR stated that he had no objection to the Chinese draft resolution being put to the vote first.

The President stated:<sup>48</sup>

"I must point out to the representative of Canada that, according to the rules of procedure, resolutions are put to the vote in the order of their submission. The USSR representative's resolution was read out because it was the first to be submitted. Now the representative of the USSR has no objection if the Chinese representative's proposal is taken first, and I am putting it to the vote."

The Chinese resolution was voted upon.

#### CASE 70

At the 338th meeting on 15 July 1948, in connexion with the Palestine question, the representative of China withdrew a suggestion which he had submitted orally.

The President (Ukrainian SSR) stated:<sup>47</sup>

"... In the future, in order to save time, may I ask that all amendments be submitted in writing; otherwise I shall not put them to the vote, as when they are first made orally and are then withdrawn or changed, our work is merely delayed."

#### f. Rule 32<sup>48</sup>

#### CASE 71<sup>49</sup>

At the 16th meeting on 11 February 1946, in connexion with the Indonesian question (I), a draft resolution was introduced by the representative of the Ukrainian SSR to set up a commission to carry out an enquiry on the spot, establish the facts and report to the Security Council.

At the 17th meeting on 12 February 1946, the representative of Egypt introduced another proposal as an amendment.

At the 18th meeting on 13 February 1946, the President (Australia) stated that he did not regard the proposal made by the representative of Egypt as an amendment to the draft resolution submitted by the representative of the Ukrainian SSR, since they seemed to be strictly independent in character.

<sup>47</sup> For texts of relevant statements see: 329th meeting: President (Ukrainian SSR), pp. 27, 29, 30; Canada, p. 29; China, p. 28; USSR, pp. 28, 29.

<sup>48</sup> For texts of relevant statements see: 338th meeting: President (Ukrainian SSR), p. 42; China, pp. 41, 42.

<sup>49</sup> Reference should also be made to Cases 44, 45, 69. For a listing of occasions on which draft resolutions have been voted upon in parts, see Introductory Note to part VI.

<sup>50</sup> This Case arose before the adoption of rule 32.

He added:<sup>50</sup>

"... There are as yet no rules of procedure governing a case where the Council has two independent proposals before it. However, having carefully considered both proposals, I think that we should put to the vote the proposals of the representative of the Ukraine..."

In the absence of any objection, the President then put the Ukrainian draft resolution to the vote.

#### CASE 72

At the 132nd meeting on 30 April 1947, in connexion with the application of Hungary for membership in the United Nations, the representative of Australia moved that the Council note the application and defer its consideration to "the appropriate time".

The representatives of Syria and the USSR objected to the Australian motion and suggested that the application should be referred to the Committee on the Admission of New Members.

The President (China) suggested that the representatives of Syria and the USSR submit their objections as amendments to the Australian proposal.

The representative of Poland formally moved that "... the application of Hungary be referred to the Committee on the Admission of New Members..."

At this point the agenda was adopted.

The President put the Australian proposal to the vote, whereupon the representative of Colombia raised the point of order that, in his opinion and according to rule 33, the motion submitted by the representative of Poland should have precedence.

The President stated:<sup>51</sup>

"The Chair rules that the Australian resolution has priority because it was submitted even before the meeting began. I shall ask the Council to vote on it first."

No further objection was raised.

#### CASE 73

At the 174th meeting on 4 August 1947, in connexion with the Greek frontier incidents question, a draft resolution introduced by the representative of the USSR was put to the vote paragraph by paragraph at his request. Before the voting was started, discussion took place as to whether the draft resolution should later be voted upon as a whole.

The representative of France referred to the precedent of the 170th meeting when such a procedure was followed.<sup>52</sup>

The President (Syria) also referred to this precedent, but pointed out that, if all the paragraphs of the USSR draft resolution were adopted, it would not be necessary to vote later upon it as a whole.

The representative of Australia expressed opposition to the proposed procedure, and asked the President whether it was his decision that a vote on the draft resolution as a whole should be taken later.

<sup>50</sup> For texts of relevant statements see:

16th meeting: Ukrainian SSR, p. 223.

17th meeting: Egypt, p. 251; United States, p. 251.

18th meeting: President (Australia), p. 257.

<sup>51</sup> For texts of relevant statements see:

132nd meeting: President (China), pp. 818, 821; Australia, pp. 814, 819, 821; Colombia, pp. 820-821; Poland, p. 819; Syria, p. 818; USSR, p. 818.

<sup>52</sup> See 170th meeting: p. 1612.

The President stated that he was making no ruling on the point but left it to the Security Council to decide.

The representative of the United Kingdom stated:

"I hope we shall not depart from the general custom which has been followed in the past in cases where we vote on a resolution paragraph by paragraph. Almost always we have voted on the resolution as a whole at the end. There are good reasons for this. There may be certain paragraphs of the resolution of which I entirely approve, but which I do not accept in the context in which they stand. If we voted paragraph by paragraph, I should be free to indicate my approval of certain paragraphs, and I should have an opportunity at the end to condemn the whole resolution.

"Similarly, one may vote against a particular paragraph because one sees some objection to it, and yet, because of the context and because of the importance of getting the whole resolution, one may vote for the whole resolution.

"I think it is essential that we should vote on the whole resolution. I am sure that that has been the general practice here, although there may be exceptions."

The representative of the USSR suggested that, after the vote paragraph by paragraph had been taken, the vote on the whole should be taken on what was left of the draft resolution after deletion of the paragraphs rejected.

The representative of Australia stated that he agreed to proceed in the manner suggested in this particular case, but he would not like to see this procedure established as an immutable practice.<sup>53</sup>

The President announced that the draft resolution would be voted upon paragraph by paragraph and then as a whole.<sup>54</sup>

There was no objection.

#### CASE 74

At the 194th meeting on 25 August 1947, in connexion with the Indonesian question (II), the representative of Belgium requested that his draft resolution<sup>55</sup> to ask the International Court of Justice for an advisory opinion on the jurisdiction of the Security Council on this matter, be voted upon before other draft resolutions submitted earlier which dealt with the substance of the question. He stated:

"... The question of jurisdiction is a preliminary question, a question which takes priority over all others... So long as this motion has not been discussed and put to the vote the Council cannot usefully pursue its consideration of certain motions pending before it. Those motions assume in advance that the question of jurisdiction has been decided in the affirmative. It would, therefore, be neither logical nor normal to put them to the vote before the Belgian motion suggesting that the Court should be consulted on this point had been discussed and decided upon..."

<sup>53</sup> For texts of relevant statements see:

174th meeting: President (Syria), pp. 1723, 1724; Australia, pp. 1723, 1725; France, pp. 1723, 1725; USSR, pp. 1723, 1725; United Kingdom, p. 1724.

<sup>54</sup> 174th meeting: pp. 1724, 1726.

<sup>55</sup> S/517, 194th meeting: p. 2193.

The President (Syria) stated:

"The Belgian representative has raised a point of order in connexion with the order of priority which the Chair has given to the resolutions presented. I must justify the way in which I have acted by quoting rule 32 of the rules of procedure..."

"The draft resolution submitted by the representative of Belgium was presented after the other resolutions which are now before the Council and I wish to act according to the rules of procedure.

"Rule 33 of the rules of procedure states which motions shall have precedence over all others and divides them into six categories. The Belgian resolution does not fall within any of these categories..."

"At the same time, I believe that the viewpoint put forward by the Belgian representative in regard to the priority of a motion of non-competence is adopted in practice by courts of justice or by any organs of justice though not by the Security Council. A motion of this type should have priority because, if it is agreed that the organ has no competence or jurisdiction in the case, then there is no use in continuing the discussion or in making proposals which would be out of order and cancelled afterwards.

"As our rules of procedure do not mention that category, I had intended to adhere to them, but if the Council now agrees that I should give priority to the Belgian proposal and dispose of it before dealing with the other proposals, I shall accept that suggestion because the principle underlying is not strange to us."

The representative of the USSR stated:

"I consider that the Belgian resolution should be taken in the general order of voting and that we should be guided in this matter only by the rules of procedure..."

The representative of Belgium cited rule 32 and stated:<sup>56</sup>

"As the motion which I have presented concerns the jurisdiction of the Security Council it should be considered as a principal motion, and I think that on that account it takes priority over the other draft resolutions."

**Decision:** *The President then put to the vote the motion to vote first on the Belgian draft resolution. The motion was not adopted.*

#### CASE 75

At the 205th meeting on 1 October 1947, in connexion with the question of admission of new Members to the United Nations, the representative of Belgium introduced a proposal that the Security Council resolve "to hold a separate and final vote on each application for membership".

At a previous meeting, the representative of Poland had introduced a draft resolution to recommend the admission of all five applicants.<sup>57</sup>

The representative of Poland stated that he could not see any possibility of dividing into five different

<sup>56</sup> For texts of relevant statements see:

194th meeting: President (Syria), pp. 2194-2195; 2195-2196; Belgium, pp. 2193-2194, 2195; USSR, p. 2195.

<sup>57</sup> See 204th meeting: p. 2412.

parts his draft resolution which he had submitted as a whole. He also opposed the procedure, suggested by the representative of the United Kingdom at the 205th meeting, that a vote should be taken to decide whether or not the Security Council should vote on the Polish draft resolution. He further proposed that, in order to meet the difficulties encountered by some representatives in deciding their votes, a vote should be taken first on the Polish draft resolution; and if this were defeated, then the Council should vote on each application separately.

The President (United Kingdom) stated that, by its very terms, the Belgian draft resolution had to be put to the vote first.

The representative of France referred to a previous decision of the Council that the applications should be discussed and voted upon separately, but stated that it was indifferent to him whether the Polish draft resolution was put to the vote before or after the separate votes had taken place.

The representative of Poland stated that since the Polish draft resolution would be put to the vote in any case, he felt that, if the separate votes on each application were taken first, it would be very difficult, after certain applications had been rejected or accepted, to proceed to a vote on the draft resolution as a whole.

The representative of Syria stated:

"I do not agree with the representative of Poland on the procedure which he suggested. I know there is a general principle according to which, when the whole is rejected, its component parts are rejected with it. If we took it that, by associating the applications of the States concerned, there was a unity of destiny or a unity of principle between the applicants, we could consider and vote on their applications *en bloc*. But there is no relation between them. If a vote is taken on their applications, and if these are rejected by the Security Council, we shall not fail to hear objections to the effect that parts of this draft resolution have been rejected and that we have no right to vote on them again. I do not want the Security Council to be exposed to such objections."

The representative of the USSR stated that in his opinion, no matter in which order the draft resolutions were voted upon, the practical result would be the same, but he thought it would be more logical to vote first on the Polish draft resolution, for the reason that this was of a more general nature than the Belgian draft resolution. He would, however, oppose voting upon the Belgian draft resolution before the Polish one, if this were intended to preclude a vote on the latter at any stage.

The representative of Poland stated:

"Rule 32 of the provisional rules of procedure of the Security Council provides that a draft resolution shall be divided into parts and those parts shall be voted on separately only when the original mover agrees thereto..."

He then insisted that the Polish draft resolution, which had been submitted first, should be voted upon in the first place, and "*in toto*, not in parts".

The President (United Kingdom) stated:

"The Polish representative has suggested, in fact, he has demanded, that his draft resolution should be voted on before we proceed to the separate votes

on the various applications. I personally should not mind doing that, provided it is quite understood that the rejection of the Polish draft resolution, if that occurred, would not debar us subsequently from electing one or more of the applicants..."

The representative of Brazil stated:

"... It is customary for the Council to vote separately on the different paragraphs of a draft resolution and then to take a final vote on the resolution as a whole; that is in accordance with rule 32 of our provisional rules of procedure. That holds true, however, only in the case of a draft resolution which has a certain unity of character, a resolution of which the different paragraphs are parts of a homogeneous whole.

"The Polish draft resolution, however, is not in that category. The Polish draft resolution is not homogeneous; on the contrary, it is a plurality of resolutions. That is why most of the members of the Council find it impossible to take a single vote on that draft resolution."

The representative of Poland stated that he could not agree that a vote be taken on the Belgian draft resolution, which he considered a violation of rule 32 in that, under that rule, any original mover had the right to object to having his draft resolution voted on in separate parts. He was, however, prepared to submit to the President's ruling as to the vote on the separate applications first. He reserved his right as to a proposal on the action to be taken with regard to the Polish draft resolution.

The representative of Belgium stated his disagreement with the representative of Poland's interpretation of rule 32. After quoting the rule, he stated:

"... This means that any proposal may be split up, which does not require a decision by the Council unless the original mover objects. But the Council is perfectly free to decide to split up the proposal."

The representative of Poland stated his opposition to the views expressed by the representative of Belgium, and said that he believed that rule 32 stated very clearly that no draft resolution might be voted upon in parts, unless the original mover agreed.

The representative of France stated:<sup>58</sup>

"We have two working languages; they are complementary and one serves to clarify the other. The French text of rule 32 is perfectly clear and, in my opinion, allows of no other interpretation than that given by the Belgian representative. The French text says: *La division est de droit, si elle est demandée, à moins que l'auteur de la proposition... ne s'y oppose*. That means that, if the mover of a proposal objects, division does not follow. It does not mean that the Council cannot decide to effect it.

"There is one guarantee for the mover of the proposal; he can always withdraw it if he prefers to do so rather than see it divided. But if he maintains his proposal, the Council can always decide to vote on its parts separately, I reserve the right to come back to this point if necessary later on."

<sup>58</sup> For texts of relevant statements see: 206th meeting: President (United Kingdom), pp. 2466, 2470, 2473; Belgium, p. 2472; Brazil, pp. 2470-2471; France, pp. 2466, 2473; Poland, pp. 2465, 2466, 2468-2469, 2471, 2472; Syria, p. 2467; USSR, pp. 2467-2468.



The President (United Kingdom) ruled that the Belgian draft resolution be voted upon forthwith. The ruling was not challenged.<sup>59</sup>

## CASE 76

At the 286th meeting on 21 April 1948, in connexion with the India-Pakistan question, after a draft resolution had been voted upon paragraph by paragraph, the President (Colombia) stated that a vote would be taken on the draft resolution as a whole.

The representatives of France and Argentina objected to this procedure.

The President stated:<sup>60</sup>

"I find that there is no rule which would require the Security Council to take a vote on this draft resolution as a whole unless some representative calls for it. Therefore, we shall proceed as suggested by the representatives of France and Argentina."

## CASE 77

At the 381st meeting on 16 November 1948, in connexion with the Palestine question, a draft resolution<sup>61</sup> was introduced jointly by the representatives of Canada, Belgium and France. The President (Argentina) stated that he considered that the suggestions of the Acting Mediator<sup>62</sup> had been submitted by the representative of the USSR as his own draft resolution<sup>63</sup> at an earlier date.

The representative of Canada objected that only after the joint draft resolution had been introduced had the representative of the USSR sponsored the Acting Mediator's suggestions.

The President stated that the representative of the USSR had in fact adopted the Acting Mediator's suggestions as his own during previous private meetings. He added:<sup>64</sup>

"... I cannot, therefore, in all fairness admit that the proposal of the USSR was not made before the proposal of the representatives of Belgium, Canada and France, because I myself presided at both the private and the public meetings."

The representative of Canada accepted the President's ruling.<sup>65</sup>

The USSR draft resolution was put to the vote first.

## CASE 78

At the 407th meeting on 7 February 1948, in connexion with the question of the general regulation and reduction of armaments, the representative of the USSR introduced a draft resolution containing instructions to be given the Commission for Conventional Armaments and the Atomic Energy Commission.<sup>66</sup>

At the 408th meeting on 10 February 1948, the representative of the United States introduced a draft resolution to transmit resolution 192 (III) of the

General Assembly to the Commission for Conventional Armaments "for action according to its terms".<sup>67</sup>

The President (China) then stated that he would put the USSR draft resolution to the vote.

The representative of the USSR stated that, as it appeared that the members of the Security Council did not wish to discuss the USSR draft resolution, he wished to introduce a procedural draft resolution to transmit the USSR draft resolution together with General Assembly resolution 192 (III) to the Commission for Conventional Armaments and to the Atomic Energy Commission.

The President asked:

"In view of this draft resolution with regard to procedure which has just been submitted by the representative of the USSR, do the members wish to proceed to a vote or do they wish to have further time for consideration?"

The representative of the United Kingdom objected; and then the President stated:

"My understanding is the following: the representative of the USSR is asking us to transmit his draft resolution to the Commission for Conventional Armaments and to the Atomic Energy Commission without voting on that resolution here. His resolution, therefore, becomes a procedural resolution. I ask therefore whether the Council wishes to vote on this procedural resolution or whether it wishes more time to consider it."

The representative of the USSR stated that both the United States draft resolution and the new USSR draft resolution were of a procedural nature. Since the latter referred to the previous USSR draft resolution, which had been introduced before the United States draft resolution, it should be voted upon first.

The President stated:<sup>68</sup>

"The proposal made by the representative of the USSR for the transmission of his draft resolution is identical in nature with the draft resolution presented by the United States delegation. When the Security Council has before it two proposals of the same category, that which was submitted first shall be voted upon first. That is my ruling and if the representative of the USSR wishes to challenge it, I shall be glad to put it to the vote."

The representative of the USSR did not challenge the ruling of the President.<sup>69</sup> The United States draft resolution was voted upon first.

## CASE 79

At the 492nd meeting on 29 August 1950, in connexion with the complaint of armed invasion of Taiwan (Formosa), the President (USSR), in his capacity as representative of the USSR, submitted a draft resolution to invite the Central People's Government of the People's Republic of China to send representatives to attend the meetings of the Security Council at which this question was to be discussed, and proposed that, by way of exception, this draft resolution be dealt with and voted upon immediately, before

<sup>59</sup> S/1248, 408th meeting: p. 2.

<sup>60</sup> For texts of relevant statements see:

408th meeting: President (China), pp. 3, 16, 17, 19; Canada, pp. 2, 3; USSR, pp. 16-17, 18; United Kingdom, pp. 17-18.

<sup>61</sup> 408th meeting: p. 19.

<sup>59</sup> 206th meeting: pp. 2473, 2475.

<sup>60</sup> 286th meeting: President (Colombia), p. 40.

<sup>61</sup> S/1079, 380th meeting: pp. 4-5.

<sup>62</sup> S/1076, 378th meeting: pp. 62-63.

<sup>63</sup> S/1077, 379th meeting: p. 64.

<sup>64</sup> For texts of relevant statements see:

381st meeting: President (Argentina), pp. 48, 50-51; Canada, p. 49.

<sup>65</sup> 381st meeting: p. 51.

<sup>66</sup> S/1246/Rev.1, 407th meeting: pp. 2-4.

proceeding with the normal course of discussion on the agenda items. He stated that in submitting this draft resolution, the USSR delegation made the express reservation that it was doing so as an exception, with no intention of violating the rules of procedure.

The representative of the United States opposed the proposal to give precedence to the draft resolution as out of order.

The President stated:<sup>70</sup>

"Since there has been a challenge of the President's ruling that the USSR proposal, submitted as an exception, should be put to the vote, the President must submit his ruling to the judgment of the Security Council."

**Decision:** *The ruling was upheld.*<sup>71</sup>

#### CASE 80

At the 497th meeting on 7 September 1950, in connexion with the complaint of bombing by air forces of the territory of China, the representative of the USSR requested a decision on his draft resolution to invite a representative of the People's Republic of China, before consideration was given to two other draft resolutions dealing with the substance of the matter, although these had been introduced at earlier dates.

The President (United Kingdom) enumerated the various draft resolutions that had been introduced, cited rule 32, paragraph 1, and stated:

"... A strict interpretation of that rule would suggest that we should take these draft resolutions in the order in which they were submitted, and that therefore we should proceed to an investigation of the substance of the matter before discussing whether we should or should not invite a representative of the Chinese People's Republic. It seems to me that it is for the Council to decide on that point as a previous question..."

The President then consulted the Security Council about the matter.

The representative of the United States said that his Government would have no objection to a change in the order of the consideration of the draft resolutions, if that was the will of the Council.

The representative of the USSR stated:

"It would be a highly unusual procedure for us first to discuss the substance of the question, first to adopt or reject the two preceding substantive draft resolutions, and then to proceed to consider the third draft resolution inviting a representative of the People's Republic of China to the Security Council at a stage when the questions of substance had already been discussed. I think it would be preferable to adhere to the customary procedure in such cases by first considering and reaching a decision on the question of an invitation, and then proceeding to consider the substance of the question."

The President stated his agreement with the views of the representative of the USSR and put the question to the vote.

Before the vote was taken, the representative of the USSR observed that in his view there was no need to put this procedural question to the vote if there were no objections.<sup>72</sup>

The vote was taken and it was decided to deal first with the USSR draft resolution to invite a representative of the People's Republic of China.<sup>73</sup>

#### CASE 81

At the 501st meeting on 12 September 1951, in connexion with the complaint of bombing by air forces of the territory of China, two draft resolutions were under consideration: (a) a USSR draft resolution<sup>74</sup> introduced on 31 August "Condemning the ... illegal acts of the Government of the United States of America, and placing on the Government of the United States full responsibility for the above-mentioned acts..."; and (b) a United States draft resolution<sup>75</sup> to establish a commission to investigate the incident on the spot.

The President (United Kingdom) stated:

"It was suggested by the representative of the United States ... that the best and most logical way of handling this problem would be first to take the United States draft resolution ... which suggests that the Council should establish a commission to investigate the incident on the spot. That, of course, would be a departure from our rules of procedure, but of course it could be done if the Security Council so desires. The rules of procedure are not immutable and if the majority of the Council desired the United States draft resolution to be taken up first, that can be done, provided that the Security Council indicates by vote that is its wish."

The representative of the USSR stated that he had insisted, "in accordance with the rules of procedure, to put the draft resolutions to the vote in the order in which they were submitted, that is to say, to vote first on the USSR draft resolution and then on the United States draft resolution, independently of their provisions".

The representative of Egypt stated:

"... I should like to express the hope that our Soviet Union colleague will not insist on a mechanical interpretation by the Council of the apparently mandatory terms of rule 32 of our rules of procedure. The Security Council always is master of its own procedure, and it can, in logic, if it so deems fit and proper, take in one order or the other the draft resolutions which are submitted to it."

The representative of France referred to the two draft resolutions under consideration, and stated:

"Nobody, I believe, is questioning the meaning of rule 32. This rule provides, in perfectly clear terms, that draft resolutions shall have precedence in the order of their submission. Nor would anyone, I am sure, think of questioning the Council's right to waive a rule which it has itself established. A rule must be followed unless the Council decides otherwise."

<sup>70</sup> For texts of relevant statements see: 497th meeting: President (United Kingdom), pp. 27, 28, 29; USSR, pp. 28, 29; United States, p. 28.

<sup>71</sup> 497th meeting: p. 29.

<sup>72</sup> S/1745/Rev.1, 501st meeting: p. 3.

<sup>73</sup> S/1752, 501st meeting: pp. 4-5.

<sup>74</sup> For texts of relevant statements see: 492nd meeting: President (USSR), pp. 15-16; China, p. 16; United States, p. 15.

<sup>75</sup> 492nd meeting: p. 16.



"... the French delegation considers that the provisions of rule 32 should be waived and that the United States draft resolution should be given priority. Consequently we shall support the United States draft resolution unless a better method of conducting the investigation is proposed."

The representative of the USSR stated:

"The Security Council is of course master of its procedure, but it should be a good and wise master and use its rights rationally..."

and insisted that, in this case, rule 32 should be observed.

The President put the motion to the vote in the following way: "that we should vote first on... the draft resolution submitted by the United States, and then on... the draft resolution submitted by the Soviet Union."<sup>76</sup>

**Decision:** *The motion was adopted.*<sup>77</sup>

#### CASE 82

At the 530th meeting on 30 November 1950, in connexion with the question of (a) complaint of armed invasion of Taiwan (Formosa); (b) complaint of aggression upon the Republic of Korea, a draft resolution<sup>78</sup> submitted by Cuba, Ecuador, France, Norway, the United Kingdom and the United States was voted upon in parts and rejected.

The President (Yugoslavia) then called upon the Security Council to vote on the draft resolution as a whole.

The representative of the USSR objected to this procedure and stated:

"We have nothing to vote on. Both parts of the draft resolution have been rejected. According to the general practice followed by the Security Council and by other United Nations organs, when all parts of a draft resolution have been rejected, the resolution is not put to the vote as a whole."

The President stated:

"The practice may have been as Mr. Malik says, but our rules of procedure contain no such provision and do not prohibit a vote. Moreover, I remember that on a number of occasions the representatives of the Soviet Union have asked the General Assembly to vote on a resolution as a whole even after all its parts had been rejected."

The representative of the USSR stated that the precedent cited by the President had no relation to the situation under consideration.

The President stated that he considered the intervention by the representative of the USSR as an objection and not as a point of order requiring a decision by the Council. He then renewed his invitation to the Security Council to vote on the resolution as a whole.

There was no further objection.<sup>79</sup>

<sup>76</sup> For texts of relevant statements see: 501st meeting: President (United Kingdom), pp. 2, 13; Egypt, pp. 9-10; France, pp. 11-12; USSR, pp. 9, 12.

<sup>77</sup> 501st meeting: p. 13.

<sup>78</sup> S/4894, 530th meeting: pp. 22-23.

<sup>79</sup> For texts of relevant statements see: 530th meeting: President (Yugoslavia), pp. 24, 25; USSR, pp. 24, 25.

#### g. Rule 33

##### CASE 83<sup>80</sup>

At the 18th meeting on 13 February 1946, in connexion with the Indonesian question (1), before a vote was taken on a draft resolution introduced by the representative of Egypt at the 17th meeting, the representative of the USSR introduced, as an amendment, a paragraph proposing that a commission be sent to Indonesia with a view to clarifying the situation and hastening the re-establishment of normal conditions.

The representative of the United Kingdom stated that, in his view, the text of the proposed amendment was the same as the draft resolution introduced by the representative of the Ukrainian SSR at the 17th meeting, which had already been rejected. The representative of the USSR said that his amendment differed from the Ukrainian draft resolution in that it contained only one provision; and that it was for the members of the Security Council to decide on that amendment, but he could see no grounds for objecting to its submission.

The President (Australia) made the following statement:<sup>81</sup>

"I should like to say to the Council, as its President, that in the absence of rules of procedure which might guide me in regard to the acceptance or otherwise of motions and amendments, I am not afforded the powers which are essential if I am to determine whether an amendment which has been submitted, or maybe even a motion, conforms to any terms of order. That being so, it means that, if any amendment which is proposed does not strictly conform to the provision for an amendment, and furthermore if it may be said to be, in substance, the same as a proposal already made, it can be only upon the resolution of some member of the Council that such an amendment or proposition is rejected. Therefore, I would say that, unless there is objection to my reception of the amendment that has been proposed by the representative of the Union of Soviet Socialist Republics, there is no alternative to having it placed before the meeting as an amendment to the resolution that has been moved by the representative of Egypt."

The amendment proposed by the representative of the USSR was then put to the vote.

##### CASE 84 (RULE 33, PARA. 1, SUB-PARA. 5)

At the 55th meeting on 28 August 1946, in connexion with the question of admission of new Members to the United Nations, a motion to defer action on the applications of Albania and the Mongolian People's Republic was made by the representative of the United States.

The general debate and the debate on individual applications continued. The representative of the United States acquiesced in this with the reservation, agreed to by the President (Poland), that

"... before any vote is taken as to whether or not the Security Council would recommend to the

<sup>80</sup> This Case occurred before the adoption of rule 33.

<sup>81</sup> For texts of relevant statements see: 18th meeting: President (Australia), p. 262; USSR, pp. 260, 261-262; United Kingdom, pp. 260-261.

Assembly the admission of Albania, a vote be taken on my proposal to postpone consideration."

At the 57th meeting on 29 August 1946, after all applications had been examined, the representative of the United States recalled his motion to postpone voting on Albania's and Mongolia's applications and indicated that his motion should have priority in the voting.

The representative of the USSR contended that eight months prior to the submission of the United States motion, the Yugoslav Government had proposed in written form the admission of Albania to the United Nations and that the proposals should be voted in the order in which they were submitted.

The President (Poland) stated:

"... We have here two questions which should be kept separately. We have, first, a resolution by the representative of Mexico, which, as he explains to us, recommends the admission of all States which have applied for admission, the emphasis being on the admission of all States together. It seems to me clear by logic that this resolution must be voted upon before we decide whether to proceed to vote on the particular members which we want or do not want to admit.

"The other question is that if we should vote on applicants separately, we have, in two cases, a motion to postpone action. It seems again clear by logic that the motion to postpone a vote must come before the vote itself..."

The representatives of Australia and France stated that in their view a proposal to postpone voting should be put to the vote before a vote was taken on the application itself.

The representatives of the Netherlands and France considered that if by virtue of rule 33 a mere motion to postpone discussion had precedence, a motion to postpone voting must *a fortiori* be given precedence.

The President put to the vote the question whether the United States draft resolution should be voted upon before the application of Albania. The result of the vote was affirmative.<sup>82</sup>

#### CASE 85 (RULE 33, PARA. 1, SUB-PARA. 5)

At the 93rd meeting on 15 January 1947, in connexion with the question of the general regulation and reduction of armaments and information on armed forces of the United Nations, the representative of the United States proposed to defer further consideration of the items under discussion to a later date.

The representative of Poland asked whether acceptance of the United States proposal would mean that representatives who were listed to speak at that meeting on the substance of the matter, "would have to postpone expression of their views..."

The representative of the United States stated that he had no objection to consideration of his proposal for postponement at the end of the meeting, "so that those members of the Council who had wished to speak

this afternoon and had expected to do so, may continue with the programme". He accordingly withdrew his proposal until a later hour.

In connexion with the above, the representative of the United Kingdom raised the following point:

"If the representative of the United States provisionally withdraws his resolution, does that mean that we are not able to discuss it until he suggests it again, or does it mean simply that the substance of the matter is open for discussion as well as the proposal which he has made?"

The President (Australia) stated:

"Of course, if the representative of the United States withdraws his resolution for postponement, then we proceed to the general discussion. But there is no rule that I know of that would deny to any member in the course of the general discussion, to indicate whether he feels this matter should be deferred until some later time, although it would not be in order to anticipate the resolution that was to be proposed at a later hour by the United States representative. It must be a part of the general discussion that takes place on the resolution itself. That being so, we would not be entitled to base a speech upon the questions that might be introduced by reason of the motion for deferment, but as a possible reference in a speech that might be made by any representative upon the question of substance."

The representative of the United States stated:

"The only object I had in suggesting the temporary withdrawal of this motion was that our resolution should not act as a bar to the statements which members of the Council wished to make."

The President (Australia) concluded:

"As the representative of the United States has said, the actual proposal of such a resolution would deny to representatives who wish to speak on the general resolution an opportunity to express their views in a more substantial way..."

"... If there is no objection, the motion for deferment of the discussion on this matter until a later time is adopted."

At a later stage during the same meeting, the representative of the United States reintroduced his proposal for deferment, consideration of which had been postponed at the suggestion of the President.

At the 95th meeting on 20 January 1947, consideration of the proposal for deferment took place.

The President (Australia) then stated:

"... a resolution has been submitted which, under the rules of procedure, has priority of consideration.

"... I should like to say from the Chair that when this item was previously before the Council, it will be remembered that I indicated I would be reluctant to interrupt the speech of any member who was speaking on the substance of the question.

"..."

"As the representative of the United States, at that stage, withdrew his resolution in order that those speeches might be completed, and as all members of the Council have already spoken on the substance of the question, I shall now ask members of the Council to speak strictly on the question which is now being submitted and which has priority of

<sup>82</sup> For texts of relevant statements see:  
55th meeting: United States, pp. 55, 68.  
57th meeting: President (Poland), p. 119; Australia, p. 117; France, pp. 117, 118; the Netherlands, p. 117; USSR, p. 116; United States, p. 116.

consideration: namely, as to whether items 2, 3 and 4 on the agenda shall be deferred until 4 February . . . "83

CASE 86 (RULE 33, PARA. 1, SUB-PARA. 2 AND RULE 33, PARA. 2)

At the 121st meeting on 21 March 1947, in connexion with the Corfu Channel question, after a motion for the simple adjournment of the meeting had been introduced, the representative of Australia asked permission to speak.

The President (Brazil) stated that, since a representative had asked for an adjournment, he could not "consider any other matter or accept any other statement."

The representative of Australia explained that his intention was to raise a point of order, and his request was then granted. The President stated: "If it is a point of order, you may speak."<sup>84</sup>

CASE 87 (RULE 33, PARA. 1, SUB-PARA. 2 AND RULE 33, PARA. 2)

At the 122nd meeting on 25 March 1947, in connexion with the Corfu Channel question, after the representative of the United Kingdom and the President had suggested the simple adjournment of the meeting, the floor was given to the representative of the USSR on a point of order.

The President (Brazil) stated:

"The Chair will allow the representative of the USSR to speak, in conformity with the liberal interpretation of rules always observed by this Council."

At the same meeting, the representative of Syria was also permitted to speak on a point of order, though the President had repeated his proposal for adjournment.<sup>85</sup>

CASE 88 (RULE 33, PARA. 1, SUB-PARA. 6)

At the 169th meeting on 29 July 1947, while discussing a United States draft resolution in connexion with the Greek frontier incidents question, the representative of France suggested that a vote be taken on that draft resolution first, and that, if it were not adopted, attempts be made to find a substitute formula. The representatives of Syria and Colombia expressed an opposite view as to the procedure.

The representative of Syria said:

"If any delegation wishes to present an amendment, it should be presented now before we proceed to vote on the original text."

The President (Poland) said:

"I shall follow the wishes of the representatives of Australia and France. If they wish to make a formal amendment, I shall submit it to the Council for discussion. If they prefer the other course, then we shall vote in due time on the paragraph of the

United States proposal in question. If it is not adopted, I shall then give them the opportunity to present any amendments they may desire."

The representative of Colombia stated:

"It seems to me rather important to decide whether or not we are establishing a precedent in the way in which we are conducting this discussion. If I interpret our rules correctly, the proper course of action to follow, after a proposal has been presented, is to submit amendments, if any, and to vote on the amendments first. Therefore, if there is a French or Australian amendment to the original United States proposal, according to our rules of procedure such an amendment should be formally submitted and voted on before a vote is taken on the proposal itself.

"Of course, we have been following a rather unprecedented procedure, because both the President and the Security Council have decided to overlook the rules. Whenever an amendment is introduced, our first step is to ask the United States delegation whether the amendment is acceptable to it. But the rules really provide that the Security Council itself should make the decision.

" . . . I believe it is extremely important for the Council to decide whether we are going to follow that procedure in other cases, or whether this procedure applies only to the discussion of the Greek question.

"With regard to the point under consideration, I also find that entirely different results may follow from different voting procedures . . ."

The President stated:

" . . . I do not think that we have in any way deviated from our rules of procedure. Whenever there is a formal proposal for an amendment, it is voted before the text of the resolution. Thus far not a single formal amendment to the United States text has been proposed, so that we could not have a vote on non-existent amendments.

"Furthermore, whenever any suggestion is made, whether formally or informally, it is quite natural for the original author of the resolution to be given the chance to accept or reject it, because it is his resolution. That is the procedure which we have usually adopted."

The representative of France then suggested certain modifications to the substance of the proposal, and the representative of the United Kingdom inquired:

"May I ask the French representative whether he intends to propose an amendment on this point before we finally vote on the text of the United States resolution; because if not, I wonder whether, in accordance with our rules of procedure, we can vote on his suggestion?"

The President stated:<sup>86</sup>

"The procedure will be to vote in due course upon this particular paragraph of the United States resolution. If it is accepted, the question is settled; if it is not accepted, then what the representative of France would present would not be an amendment but a new proposal. The same is true with regard to the representative of Australia."

\* For texts of relevant statements see:

169th meeting: President (Poland), pp. 1590, 1594, 1595; Australia, p. 1590; Colombia, p. 1591; France, pp. 1589, 1595; Syria, pp. 1589, 1590; United Kingdom, p. 1595.

\* For texts of relevant statements see:

93rd meeting: President (Australia), pp. 85, 85-86; Poland, p. 84; United Kingdom, p. 85; United States, pp. 85, 86.

95th meeting: President (Australia), pp. 117-118.

\* 121st meeting: p. 590.

\* For texts of relevant statements see:

122nd meeting: President (Brazil), pp. 609, 610, 611; Syria, p. 611; USSR, pp. 610, 611; United Kingdom, p. 609.

The representative of France agreed, and no further objection was raised.

CASE 89 (RULE 33, PARA. 2)

At the 170th meeting on 29 July 1947, in connexion with the Greek frontier incidents question, the representative of the United States moved for "an immediate adjournment of the meeting".

The President (Poland) said that the representative of the USSR had asked to be recognized, but, before granting him the floor, he would "point out that according to rule 33 of our rules of procedure a motion for adjournment has priority over any other motion".

The representative of Australia then raised the point of order that "there is no debate on a motion to adjourn".

The President cited rule 33, para. 2, and put the motion of adjournment to the vote.<sup>87</sup>

CASE 90 (RULE 33, PARA. 2)

At the 202nd meeting on 15 September 1947, in connexion with the Greek frontier incidents question, a United States draft resolution to refer the matter to the General Assembly was discussed.

The representative of Poland proposed "postponing this discussion until the next meeting".

The President (USSR) stated that a vote had to be taken on the Polish proposal first, in accordance with the rules of procedure.

The representative of the United States stated that, since there were no more speakers, he did not see why the Security Council could not proceed to a vote on the United States draft resolution.

The President stated that he wished to speak as the representative of the USSR, and would do so, unless the representative of Poland insisted on a vote being taken on his proposal immediately.

The representative of Poland agreed to modify his proposal in the following manner:

"...that the USSR representative should present his statement and, if there is any further discussion on it, that we then adjourn."

The President, speaking as the representative of the USSR, made his statement and, as new discussion ensued, the representative of Poland insisted on his proposal for adjournment. This was put to the vote and not adopted.

The representative of Syria then proposed to postpone the voting to another meeting.

The President asked whether the representative of Syria was repeating the proposal for adjournment on which a vote had already been taken.

The representative of Syria stated:<sup>88</sup>

"No. I am proposing that we should postpone the voting only, whereas the original proposal was to adjourn the meeting."

<sup>87</sup> For texts of relevant statements see: 170th meeting: President (Poland), p. 1612; Australia, p. 1612; United States, p. 1612.

<sup>88</sup> For texts of relevant statements see: 202nd meeting: President (USSR), pp. 2389, 2391, 2392, 2393, 2394; Australia, p. 2393; Poland, pp. 2389-2390, 2391; Syria, pp. 2391, 2393-2394; United States, p. 2394.

The President stated that in accordance with the rules of procedure he would put the Syrian proposal to the vote immediately, unless the representative of Syria agreed to hear the representatives of the United States and Australia—who had previously asked for the floor—before a vote was taken on his proposal.

The representative of Syria agreed.

CASE 91 (RULE 33, PARA. 1, SUB-PARA. 5)

At the 384th meeting on 15 December 1948, in connexion with the application of Israel for admission to membership in the United Nations, two motions to defer consideration were introduced: one by the representative of France, to defer consideration until a later day in the same week; and another by the representative of the United Kingdom, to postpone consideration indefinitely.

The question arose as to which of the two motions should be voted on first.

The representative of Colombia stated:

"I wish to speak on a point of order. According to rule 33, the suspension of the meeting *sine die* has precedence over adjournment to a certain day. In this case, however, there is no question of adjourning the meeting since neither the representative of France nor the representative of the United Kingdom has proposed that. They have proposed the deferment of a particular question, and that is dealt with under the fifth provision of rule 33, which states: 'to postpone discussion of the question to a certain day or indefinitely'."

"Thus no precedence of any sort is laid down in the rule, and therefore the proposal which was submitted first, namely, that of the representative of France, must be discussed first."

The President (Belgium) stated that he agreed with the interpretation of rule 33 by the representative of Colombia.

The French proposal was put to the vote first.<sup>89</sup>

CASE 92 (RULE 33, PARA. 1, SUB-PARA. 6)

At the 447th meeting on 16 September 1949, in connexion with letter of 29 July 1949 from the Chairman of the Atomic Energy Commission,<sup>90</sup> two draft resolutions were introduced in the following order: (a) a Canadian draft resolution to transmit the letter to the General Assembly and the Member nations;<sup>91</sup> (b) a USSR draft resolution to request the Atomic Energy Commission to continue its work with a view to fulfilling the tasks entrusted to it by the General Assembly.<sup>92</sup>

The representative of the USSR requested that his draft resolution be voted upon first because in his view it would, if adopted, produce exactly the opposite result from that of the Canadian draft resolution.

The representative of Canada, citing paragraph 1 of rule 32, insisted that his draft resolution be voted on first; he added that the draft resolution submitted

<sup>89</sup> For texts of relevant statements see: 384th meeting: President (Belgium), pp. 23, 24; Colombia, pp. 22-23; Syria, pp. 23-24.

<sup>90</sup> S/1377, O.R., 4th year, Suppl. for Sept., Oct., Nov., Dec. 1949, p. 8.

<sup>91</sup> S/1386, 445th meeting: pp. 47-48.

<sup>92</sup> S/1391/Rev.1, 446th meeting: p. 19.

by the representative of the Soviet Union, was in no sense an amendment to the Canadian draft.

The President (United Kingdom) stated:<sup>93</sup>

"I think there is great force in what the representative of Canada has just said. In addition, I would say to the representative of the USSR that I do not think there is a conflict between these two draft resolutions, or that they are mutually exclusive.

"If the Canadian delegation's draft resolution were put to the vote first, and if the Council approved it, I should see no objection to a vote being taken thereafter on the draft resolution presented by the delegation of the Soviet Union."

#### CASE 93 (RULE 33, PARA. 2)

At the 459th meeting on 10 January 1950, in connexion with the representation of China in the Security Council, the representative of Yugoslavia proposed "that the Council should meet again after an interval which will allow the requirements of the rules of procedure regarding the distribution of documents to be observed".

There followed a general exchange of opinion with regard to adjournment, during which the representatives of Ecuador, India, the United Kingdom and the United States stated their views.

The representative of the United Kingdom stated:

"I only want to explain my vote. I emphasize that I am speaking only for that purpose because rule 33 states that: 'any motion for the suspension or for the simple adjournment of the meeting shall be decided without debate'. I think that that does not exclude short explanations of vote..."

The representative of Egypt stated:

"I have noticed for quite a while, as has the representative of the United Kingdom, that we were proceeding without regard to rule 33, paragraph 2, of our rules of procedure concerning motions for adjournment, upon which a decision should be taken immediately without debate."

The President (China) stated:

"I find that the general sentiment of the Council is for adjournment, although delegations do not quite agree on the reasons for adjournment. Unless I hear objection from the Council, I shall soon adjourn the meeting without putting the motion to a vote."

There was no objection.<sup>94</sup>

#### CASE 94 (RULE 33, PARA. 2)

At the 503rd meeting on 26 September 1950, following consideration of the application for membership of the Republic of Indonesia, and before consideration of the next item on the agenda, the representative of Cuba proposed to adjourn the meeting.

The President (United Kingdom) stated:

"In accordance with our rules of procedure, a motion for adjournment should be voted on without discussion, I shall therefore put it to the vote."

<sup>93</sup> For texts of relevant statements see: 447th meeting: President (United Kingdom), p. 23; Canada, p. 22; USSR, pp. 22, 23.

<sup>94</sup> For texts of relevant statements see: 459th meeting: President (China), p. 11; Ecuador, pp. 6-8; Egypt, p. 10; India, pp. 8-9; United Kingdom, pp. 6, 10; United States, pp. 5-6, 9-11; Yugoslavia, pp. 4-5.

The representative of the USSR raised the following point of order:

"It has been decided by the majority to consider the second item today. The Cuban representative's proposal is, therefore, contrary to that decision. The rules of procedure do not apply to this case."

The President read rule 33, last paragraph, and added: "I therefore beg my colleagues not to debate this matter but to vote on it."

There was no further objection, and the vote on the motion to adjourn was then taken.<sup>95</sup>

#### h. Rule 34

##### CASE 95<sup>96</sup>

At the 7th meeting on 4 February 1946, in connexion with the Greek question, the President (Australia) asked whether there was a seconder to a motion introduced by the representative of the USSR. He added:

"Seeing that we have really no rules to guide us in regard to the acceptance of a seconder to propositions, I think, perhaps, that I should first of all ask the Council whether it regards it as essential that the proposals that have been submitted to the Council for consideration should be supported by a seconder."

The representative of Brazil stated that he did not think seconders were necessary since,

"In such a small group, when a proposal is made, it is almost a matter of courtesy that it should be discussed."

No opposite view having been expressed, the President declared adopted the principle that:<sup>97</sup>

"... it is the wish of the Council that we should not seek a seconder to a resolution but that we should accept as a matter for submission to the Council a resolution upon the motion of any member of the Council."

#### i. Rule 35

##### CASE 96

At the 131st meeting on 18 April 1947, in connexion with the Greek frontier incidents question, the representative of Poland, in view of the fact that some representatives had found difficulty in deciding how to vote on an amendment introduced by him to a USSR draft resolution, asked that his amendment be considered as a separate draft resolution, if this were agreeable to a majority of the Security Council.

The President (China) did not accede to the request of the representative of Poland and stated:

"The Polish amendment, having been submitted to the Council, has become the property of the Council, and we have to take the view of the Council as to whether a separate vote can be taken on it, as a separate resolution, or as a part of the Soviet resolution."

<sup>95</sup> For texts of relevant statements see: 503rd meeting: President (United Kingdom), pp. 28, 29; Cuba, p. 28; USSR, p. 28.

<sup>96</sup> This Case arose before the adoption of rule 34.

<sup>97</sup> For texts of relevant statements see: 7th meeting: President (Australia), p. 124; Brazil, p. 124.



The Polish motion was put to the vote as an amendment to the USSR resolution.<sup>98</sup>

### j. Rule 36

#### CASE 97

At the 49th meeting on 26 June 1946, in connexion with the Spanish question, the point was raised whether a proposal introduced by the representatives of Australia and the United Kingdom was an amendment to a Polish draft resolution or was to be regarded as a separate draft resolution.

The President (Mexico) stated that the Australian-United Kingdom proposal was an amendment to the Polish draft resolution.

<sup>98</sup> For texts of relevant statements see: 131st meeting: President (China), p. 807; Poland, p. 807.

The representative of Poland opposed the President's view and stated that the Australian-United Kingdom proposal should be considered as a separate draft resolution.

The President said he did not wish to impose his own opinion and would therefore put it to the Security Council to decide by a vote, whether the proposal in question was an amendment or a separate draft resolution.

**Decision:** *The Security Council decided that the Australian-United Kingdom proposal was an amendment to the Polish draft resolution.*<sup>99</sup>

<sup>99</sup> For texts of relevant statements see: 49th meeting: President (Mexico), pp. 410, 411, 412, 413; Australia, pp. 411, 412-413; Poland, pp. 410-411; USSR, pp. 410, 411, 413; Assistant Secretary-General, p. 411.

## Part VI

### VOTING (RULE 40)

#### NOTE

Rule 40 of the provisional rules of procedure makes no attempt to set forth detailed provisions covering the mechanics of the vote or the majorities by which the various decisions of the Council should be taken. Attention is simply invited to the relevant articles of the Charter and of the Statute of the International Court of Justice. Material concerning the practice of the Security Council under the Charter as regards the majorities by which the various decisions of the Council should be taken will be found in chapter IV: Voting. Material concerning certain matters regarding the mechanics of voting has already been presented elsewhere in this chapter. Part VI is concerned solely with that aspect of the mechanics of voting that concerns the recording of votes, covering the classification by the President of the categories of voting and the identification in the official records of the representatives voting.

It has not been the practice of the Council to vote by roll call. When an objection has been raised, the vote has been taken by show of hands, and, in the absence of rules governing the recording of votes, the proceedings of the Council indicate that the current practice is for the President to ask for the votes of those in favour, those against and those abstaining.<sup>1</sup>

From the 1st to 47th meetings of the Council inclusive, the President, in most instances, requested only those in favour to raise their hands, and the President then proceeded to draw his conclusion from the votes in favour. The official records for these meetings did not identify the members raising their hands. Thus, they afford no information whether the affirmative votes included those of the permanent members, or whether those not voting in favour would have abstained or voted against. Occasions on which attention was drawn to the necessity of fully counting the votes are to be found in Cases 99, 100 and 104. From the 48th meeting, members voting have been identified on

<sup>1</sup> The first request for all 3 votes was made by the President (Australia) at the 3rd meeting on 28 January 1946; 3rd meeting: p. 26. For abstention in relation to Article 27 (3) see also Case 101.

other than minor proposals, together with a numerical summary of the votes in the official record.

In the recording of votes, the official records have identified members as absent, as well as those in favour, those against, and those abstaining.<sup>2</sup> On one occasion the Council accepted the President's statement that an absent non-permanent member "must be counted as having abstained".<sup>3</sup>

Members have also been recorded as "not participating" in the vote.<sup>4</sup> On certain occasions members have explained that they had not received their instructions.<sup>5</sup> On certain occasions members accompanied non-participation in the vote by a protest against the validity of the proceedings,<sup>6</sup> or have questioned the manner in which the business of the Council was being conducted.<sup>7</sup>

Many decisions of the Council have been taken without votes. On many occasions the President has, when putting a proposal to the Security Council, asked if there were any objections, and has in the absence of objection, declared the proposal adopted. In such proceedings members have on occasion registered disagreement with the proposals and have requested the inclusion of their disagreement in the records of the meeting, but without raising objection to the pronouncement of the President that the proposal had

<sup>2</sup> For absence in relation to Article 27 (3) see chapter IV, part III.

<sup>3</sup> See Case 101.

<sup>4</sup> 122nd meeting: p. 609; 127th meeting: p. 727; 198th meeting: pp. 2302-2305 (United Kingdom); 201st meeting: p. 2362 (United Kingdom); 286th meeting: pp. 11-12 (United Kingdom); 354th meeting: p. 37 (United Kingdom); 462nd meeting: pp. 7-9 (Yugoslavia); 474th meeting: pp. 16-17 (Egypt and India); 494th meeting: pp. 11, 12, and 21 (Egypt); 501st meeting: pp. 13 and 28 (China); 503rd meeting: p. 23 (Norway); 505th meeting: p. 27 (France); 507th meeting: pp. 7-8 (none of the members were recorded as voting); see Case 111; 530th meeting: pp. 21, 22 and 23-25 (India).

<sup>5</sup> 474th meeting: pp. 14-17 (Egypt and India); 530th meeting: pp. 20-25 (India).

<sup>6</sup> 501st meeting: pp. 13, 27 and 28 (China); 507th meeting: p. 8 (China).

<sup>7</sup> 462nd meeting: pp. 7-9 (Yugoslavia); 353rd meeting: pp. 23-24; 354th meeting: p. 37 (United Kingdom).

been unanimously adopted.<sup>8</sup>

Votes on draft resolutions as a whole have with some frequency been taken after votes on parts, especially when a draft resolution was modified during the vote on parts or when a representative requested a vote on the whole text.<sup>9</sup> Nevertheless, certain Presidential rulings have been made to the effect that a vote on the text as a whole is not required after a vote on parts.<sup>10</sup>

**PROVISIONAL RULE OF PROCEDURE REGARDING VOTING IN THE SECURITY COUNCIL, IN FORCE FROM THE 1ST MEETING ON 17 JANUARY 1946, TO THE 41ST MEETING ON 16 MAY 1946**

*"Rule 19*

"Voting in the Security Council shall be in accordance with the relevant Articles of the Charter and of the Statute of the International Court of Justice."

**RULE 40 OF THE PROVISIONAL RULES OF PROCEDURE OF THE SECURITY COUNCIL ADOPTED AT THE 41ST MEETING, ON 16 MAY 1946**

"Voting in the Security Council shall be in accordance with the relevant Articles of the Charter and of the Statute of the International Court of Justice."

**1. CONSIDERATION OF THE ADOPTION OR AMENDMENT OF RULE 40**

**CASE 98**

In the report of 13 May 1946 on the work of the Committee of Experts the Chairman of the Committee stated:<sup>11</sup>

"It was the view of certain members of the Committee that this chapter should contain detailed pro-

<sup>8</sup> 453rd meeting: p. 4.

<sup>9</sup> (a) For the adoption of draft resolutions by a vote on parts only (without vote on the whole text) see: 49th meeting: p. 442; 82nd meeting: p. 559; 143rd meeting: p. 1061; 173rd meeting: p. 1712; 286th meeting: p. 40; 295th meeting: p. 47; 310th meeting: p. 63; 354th meeting: p. 51; 367th meeting: p. 38; 381st meeting: p. 56; and 406th meeting: p. 33.

(b) For the rejection of draft resolutions by a vote on parts only (without vote on the whole text) see: 70th meeting: p. 409; 200th meeting: p. 2340; 310th meeting: p. 37; 377th meeting: p. 46; 381st meeting: p. 53; 392nd meeting: p. 42; 456th meeting: p. 34.

(c) For votes on the whole text following favourable voting on parts see: 87th meeting: p. 700-701; 104th and 105th meetings: pp. 274; 124th meeting: p. 680; 170th meeting: p. 1612; 263rd meeting: p. 43-44; 283rd meeting: p. 41; 302nd meeting: p. 66; 338th meeting: p. 66; 377th meeting: p. 43; 392nd meeting: p. 38; 396th meeting: pp. 25-26; 473rd meeting: p. 18; and 506th meeting: p. 5.

(d) For votes on the original text after all parts had been rejected by votes on parts see: 47th meeting: p. 379; 174th meeting: pp. 1726-1730; 177th meeting: p. 1801; 445th meeting: p. 45; and 530th meeting: p. 25.

<sup>10</sup> At the 286th meeting, the President ruled that the Council was not required to vote on the draft resolution as a whole unless a member called for it. The ruling was not challenged. 286th meeting: pp. 39-40. See also 354th meeting: p. 51 and 377th meeting: p. 43.

Discussion on the point at the 286th meeting is given in Case 76; and discussion at the 174th and 530th meetings in Cases 73 and 82. These Cases are dealt with in relation to rule 32, para. 2.

<sup>11</sup> S/57, O.R., 1st year, 1st series, Suppl. No. 2, p. 23.

visions covering both the mechanics of the vote and the majorities by which the various decisions of the Council should be taken. There was a full and free exchange of views on this subject in the Committee. It was agreed to postpone the further study of this question and to recommend the retention for the time being of rule 27 of the provisional rules of procedure (document S/35), which now becomes rule 37.<sup>12</sup>

**2. SPECIAL CASES CONCERNING THE APPLICATION OF RULE 40**

**CASE 99**

At the 7th meeting on 11 February 1946, the President (Australia) asked those in favour of a proposal to raise their hands. His request for the votes against was interrupted by a statement by a member. The President then recalled that "we have not completed the voting." He continued, however, that "since there were only two supporting votes . . . that suggestion is not proceeded with."

The representative of the USSR objected:

"I consider the procedure irregular, since there was only a vote in favour of this proposal. No vote was taken to see who was against and who abstained. I request that this vote should be taken."

The President quoted Article 27(3), and explained: " . . . if there are not more than two who are expressing themselves in the affirmative, then the resolution definitely is lost."

The representative of the USSR agreed with the President.<sup>13</sup>

**CASE 100**

At the 48th meeting on 24 June 1946, in connexion with the Spanish question, the Security Council voted upon a draft resolution submitted by the representative of Poland. After asking for the votes of those in favour, the President (Mexico) announced that the number of votes was "not sufficient to carry the motion".

The representative of Australia stated:<sup>14</sup>

"Does not the President propose to take the votes against as well as those for? I ask that that be done because although four affirmative votes is not sufficient to carry the resolution, I think, in the interests of the record of the Security Council, that there should be a record of votes for, votes against and abstentions."

The President granted the request.

**CASE 101**

At the 392nd meeting held in Paris on 24 December 1948, in connexion with the Indonesian question (II), the Council voted upon a draft resolution in the absence of the representative of the Ukrainian SSR, who had been delayed in New York. After the President (Belgium) had announced the results of the

<sup>12</sup> On 2 September 1947, provisional draft rules of procedure relating to voting were submitted by the representative of the United States on the Committee of Experts (S/C.1/160).

<sup>13</sup> 7th meeting: pp. 125-126.

<sup>14</sup> 48th meeting: p. 388.



vote on the first paragraph of the draft resolution, the representative of the United States asked whether an absent member was to be counted as having abstained. In reply, the President asked the Council whether it was agreed that the absent member "must be counted as having abstained". There were no objections. The President continued to count the absent representative of the Ukrainian SSR as having abstained.<sup>16</sup>

## CASE 102

At the 480th meeting on 1 August 1950, the Security Council voted upon the ruling of the President (USSR) concerning the question of the representation of China in the Security Council. After the vote had been taken, the President declared:<sup>16</sup>

"The results of the vote are as follows: 7 against the President's ruling and 3 in favour of the ruling. I am not counting the vote of the representative of the Kuomintang group."

The representative of the United States challenged the President's ruling on the vote and stated that "there were eight votes against the ruling of the Chair".

The President then stated:<sup>17</sup>

"From my announcement as President it follows that eight votes were cast against the President's 'ruling', including the vote of the representative of the Kuomintang group..."

The representative of the United States thereupon stated that there was no necessity to vote upon his challenge since the President had corrected his statement to eight votes.<sup>18</sup>

## CASE 103

At the 505th meeting on 28 September 1950, in connexion with the complaint of armed invasion of Taiwan (Formosa), the representative of the United States stated that he would vote against the draft resolutions submitted by the representatives of Ecuador and the USSR on the understanding that they were procedural matters. He continued that, should the Security Council consider them non-procedural, he reserved the right to change his negative vote to an abstention. The representative of Egypt stated that he knew of "no precedent for voting in one way and reserving for one's delegation the right to change one's vote". The President (United Kingdom), while agreeing with the representative of Egypt "that it is a dubious point—and indeed an important one", requested that the Council consider the problem if and when the question arose after the vote was taken.

The Ecuadorian draft resolution was rejected. There were 6 votes in favour, 4 against and one abstention (Yugoslavia).

Immediately after the vote, the representative of Yugoslavia stated that, in view of the result of the voting, he wished to change his abstention to a vote in favour of the operative part of the draft resolution. The President recalled the statements of the representatives of Egypt and the United States, and declared:

"I should think that it would be in order for the Council—if it desires, naturally—to allow any representative to change his vote, more especially if it happens immediately—within a minute or two—after he had voted... Unless any representative wishes to say anything to the contrary, I shall assume that the procedure will be acceptable."

The representative of Egypt expressed "great doubt" regarding the procedure. He stated:

"It is not a question of a simple error which has been committed out of distraction and which should naturally, among gentlemen, be corrected without any hesitation. It is a question of a conscious, deliberate, calculated act... But then, after the vote is counted, he says: 'Well, considering the result, I want to change my vote'."

The representative of Egypt suggested that, had the representative of Yugoslavia voted in favour with the result that the draft resolution had passed, he would not have been free to change his vote, since approval of the resolution would have become "an acquired thing".

The representative of the United States expressed himself in favour of re-voting in order to solve the problem raised by the representative of Yugoslavia. He indicated that his own earlier reservation was justified to avoid "being cast into a vetoing position" and that these "unique circumstances" were not necessarily creating a precedent for the general process of the changing of votes.

The representative of Yugoslavia suggested the submission of a new operative part of the Ecuadorian draft resolution with a slight change, in order to justify a new vote. In view of the late hour, the President declined to give a ruling on the point, but stated:

"I should have thought that we might leave it that he will reintroduce the draft resolution and then we can have another vote."

At the 506th meeting on 29 September 1950, the draft resolution was resubmitted by the representative of Ecuador.<sup>19</sup>

## CASE 104

At the 521st meeting on 10 November 1950, the Security Council voted upon an amendment to change the order of items on the agenda. After one vote had been cast in favour, the President (Yugoslavia) declared that the proposal had been rejected. In reply to the request of the representative of the USSR that negative votes and abstentions be counted, the President stated:

"... I only asked for votes in favour of the amendment and not for those against because a minimum of seven votes in favour is required for a decision to be adopted."

The President, however, complied with the request of the representative of the USSR and asked those voting against to raise their hands.<sup>20</sup>

<sup>16</sup> For texts of relevant statements see:

505th meeting: President (United Kingdom), pp. 20, 24-25, 29; Egypt, pp. 20, 24, 25-26; USSR, pp. 25, 29; United States, pp. 20, 25; Yugoslavia, pp. 23-24.

506th meeting: Ecuador, p. 2.

<sup>20</sup> 521st meeting: p. 15.

<sup>16</sup> 392nd meeting: pp. 30-33.

<sup>17</sup> 480th meeting: p. 9.

<sup>18</sup> 480th meeting: p. 10.

<sup>19</sup> 480th meeting: p. 10.

## Part VII

## LANGUAGES (RULES 41-47)

## NOTE

The observation in the introductory note to this chapter that the cases entered are exceptional cases concerning the application of the rules and not the regular instances of normal application applies in special degree to part VII on Languages. Rules 42 and 43 regarding interpretation into the two working languages have been consistently applied; the innovation of simultaneous interpretation has, however, affected the practice with regard to the interpretation of the speeches of representatives invited to participate.

Where the Council's concern not to protract a meeting or to expedite discussion of a question has resulted in the omission of consecutive interpretation into French or English, or both, of a speech made by a member of the Council, the waiver for the occasion has been the subject of agreement within the Council, and care has been taken to have the view recorded that the exception would not constitute a precedent.

Since the 41st meeting on 16 May 1946 when the rules of procedure were provisionally adopted, technical facilities for interpretation have considerably improved. It is now possible to provide not only consecutive interpretation into the other working language after a speech has been made, but also simultaneous interpretation into the other four official languages while a speech is being delivered. Rules 42 and 43 require interpretation from, but not into, Chinese, Russian and Spanish. The improvement of facilities has made it possible for the Secretariat to provide simultaneous interpretation from one official language into all other four official languages, in addition to the interpretation into the working languages envisaged by rules 42 and 43. This technical advance has facilitated on occasion the waiver of consecutive interpretation.

The material may therefore be briefly summarized to the effect that it presents ten cases of waiver of consecutive interpretation into French (Case 108), two cases of waiver of such interpretation into English (Case 111), five cases of waiver of all consecutive interpretation,<sup>1</sup> and four cases in which consecutive interpretation was maintained and simultaneous interpretation was dispensed with, owing to shortages of staff.<sup>2</sup>

The general practice now is for speeches made by members of the Council in any one of the official languages to be interpreted not only consecutively into both working languages (or into the other working language if the original speech was made in a working language), but also simultaneously into the other four official languages. Although on occasions a different procedure has been followed, it is the general practice for speeches made by representatives who are invited to participate in the proceedings to be interpreted simultaneously into the other four official languages,

without being subsequently interpreted into a working language or languages (Case 114).<sup>3</sup>

The records do not always indicate precisely how certain speeches have been interpreted. There have been occasions on which invited representatives have participated in the discussion and no decisions regarding the interpretation of their statements have been recorded.<sup>4</sup>

PROVISIONAL RULES OF PROCEDURE REGARDING LANGUAGES IN FORCE FROM THE 1ST MEETING ON 17 JANUARY 1946, TO THE 41ST MEETING ON 16 MAY 1946

*"Rule 18"*

"The rules adopted at the San Francisco Conference regarding languages shall prevail until otherwise decided."

RULES 41-47 OF THE PROVISIONAL RULES OF PROCEDURE OF THE SECURITY COUNCIL ADOPTED AT THE 41ST MEETING ON 16 MAY 1946

*"Rule 41 [formerly Rule 38]"*

"Chinese, English, French, Russian and Spanish shall be the official languages of the Security Council, and English and French the working languages.

*"Rule 42 [formerly Rule 39]"*

"Speeches made in either of the working languages shall be interpreted into the other working language.

*"Rule 43 [formerly Rule 40]"*

"Speeches made in any of the three other official languages shall be interpreted into both working languages.

*"Rule 44 [formerly Rule 41]"*

"Any representative may make a speech in a language other than the official languages. In this case he shall himself provide for interpretation into one of the working languages. Interpretation into the other working language by an interpreter of the Secretariat may be based on the interpretation given in the first working language.

*"Rule 45 [formerly Rule 42]"*

"Verbatim records of meetings of the Security Council shall be drawn up in the working languages. At the request of any representative a verbatim record of any speech made in an official language other than the working languages shall be drawn up in the original language.

<sup>1</sup> For subsequent occasions on which the same procedure was followed see: 552nd, 555th, 556th, 558th, 559th, 564th, 565th and 566th meetings.

<sup>2</sup> See, for examples: 261st, 263rd, 266th, 270th, 282nd, 286th, 287th, 352nd, 354th, 359th, 373rd, 374th, 376th, 392nd, 393rd, 394th, 395th and 396th meetings.

<sup>3</sup> In connexion with rule 18, as adopted at the 1st meeting on 17 January 1946, the attention of the members of the Security Council was drawn to the Summary Record of the 8th meeting of the Technical Committee on the Security Council of the Preparatory Commission of the United Nations (O.R., Suppl. No. 1, annex I (b), pp. 6-8). See Case 105.

<sup>1</sup> 384th meeting: p. 2; 427th meeting: p. 10; 444th meeting: p. 2; 523rd meeting: pp. 12-15; 567th meeting: p. 1.

<sup>2</sup> 374th meeting: p. 6; 392nd meeting: pp. 1-2; 503rd meeting: p. 2; 524th meeting: p. 2.

*"Rule 46 [formerly Rule 43]*

"All resolutions and other important documents shall forthwith be made available in the official languages. Upon the request of any representative any other document shall be made available in any or all of the official languages.

*"Rule 47 [formerly Rule 44]*

"Documents of the Security Council shall, if the Security Council so decides, be published in any language other than the official languages."

1. CONSIDERATION OF THE ADOPTION OR AMENDMENT OF RULES 41-47

## CASE 105

An extract from the summary record of the 8th meeting of the Technical Committee on the Security Council was included in the report of 23 December 1945 on the recommendations of the Preparatory Commission concerning the Security Council. It read, in part:<sup>6</sup>

"...the Steering Committee recommended that the language rules... should be replaced in each case by the following paragraph:

"The rules adopted at the San Francisco Conference regarding languages shall prevail until otherwise decided."

"..."

"The representative of the United Kingdom moved that rules 17 to 25, inclusive, be deleted and replaced by the following rule: 'The rules adopted at the San Francisco Conference regarding languages shall prevail until otherwise decided.'... The suggested rule did not prejudice the question of principle, which was left open for decision by the Security Council. It was, however, necessary to formulate a provisional rule to operate until the Security Council was able to make permanent provisions.

"..."

"The proposal made by the representative of the United Kingdom was supported on the ground that it would enable the Security Council to start its work without delay. In favour of rules 17 to 25, it was observed that they had the merit of being clear, and they had provided a code of the San Francisco rules.

"The representative of the Soviet Union said that the question of working languages was especially important for the proceedings of the Security Council. In settling this question, one must bear in mind not only its practical side... but above all the question of principle. The Soviet Union and China were permanent members of the Security Council, which would also probably include Spanish-speaking countries; for this reason, French and English should not be given a preferential position. The use of English and French as working languages in the preparatory stages of the United Nations was perhaps rational, but different considerations applied once the permanent organs had been set up, more particularly in the case of the Security Council, in view of the limited number of its members. The procedure of the Security Council must be considered quite apart from that of the Gen-

eral Assembly. The whole section of the rules dealing with languages should be consequently referred to the Security Council itself, for decision at its first meetings.

"In support of this proposal, it was argued that in practice the San Francisco rules had not resulted in equality between the official languages...

"In opposition to the Soviet motion to insert no rules whatsoever, it was argued that the compromise rule unanimously agreed upon by the Steering Committee already left the language question to be decided by the Security Council... All that the Steering Committee had desired was to provide a rule of procedure for the Security Council to begin with...

"The Committee agreed with the Soviet representative that the rule proposed by the Steering Committee implied that the Security Council itself should decide its own rules on languages at one of its first meetings. On this understanding, the representative of the USSR agreed to accept the United Kingdom motion.

**Decision:** *It was unanimously agreed to delete rules 17 to 25 inclusive, and to replace them, in accordance with the motion of the representative of the United Kingdom, by the rule recommended by the Steering Committee.*

## CASE 106

In the report of 5 February 1946 on the alterations made by the Committee of Experts in the provisional rules of procedure, the Chairman of the Committee stated:<sup>7</sup>

"It was decided... to adopt for the Council the rules proposed to the Assembly by the First Committee. The Committee therefore included... rules 21 to 29—which, in a text fitted to the requirements of the Council, are in accordance with the rules mentioned above. Rule 26 has been included for the sake of uniformity in the text of the language rules.

## CASE 107

In the report of 13 May 1946 on the work of the Committee of Experts, the Chairman of the Committee stated:<sup>8</sup>

"...The provisional rules of procedure adopted by the Security Council in London provided that the Council should follow in this regard the practice of the San Francisco Conference. This practice, after having been reviewed in both its technical and political aspects, was embodied in the rules of procedure of the General Assembly. The Committee of Experts examined the matter on the basis of these facts. It also wished to bring about the

<sup>6</sup> At the 31st meeting on 9 April 1946 the Council considered only rules 1 to 20 of the draft rules attached to the report of 5 February 1946 (S/6, O.R., 1st year, 1st series, Suppl. No. 2, pp. 1-8), in which rules 21 to 29 related to languages. The Committee of Experts later prepared the further report of 13 May 1946 (S/57) in which rules 38 to 44 related to languages. These rules were adopted by the Council at its 41st meeting, and constitute the present text. In consequence, however, of the insertion of additional rules at the 44th and 48th meetings, the rules of procedure relating to languages became rules 41 to 47. The present text corresponds with the text recommended in the report of 5 February 1946, except that rules 26 and 27 were deleted and that the text of rule 25 (rule 42 as adopted at the 41st meeting and rule 45 in the present text) was modified.

<sup>8</sup> S/57, O.R., 1st year, 1st series, Suppl. No. 2, pp. 23-24.

<sup>6</sup> O.R., 1st year, 1st series, Suppl. No. 1, pp. 6-8.

greatest possible uniformity in the rules of the various organs of the United Nations, while bearing in mind at the same time the special needs of the Security Council. The proposed text, therefore, differs only slightly from that which was adopted by the General Assembly and accepted by the Committee of Experts in London.

"Something new is, nevertheless, introduced by rule 42; this rule provides that, in addition to the verbatim records drawn up in the working languages, a verbatim record in the original language of any speech made in an official language other than the working languages shall be prepared at the request of any representative on the Security Council. This addition was considered necessary in order to ensure faithful reporting of such a speech.

"Furthermore, the Committee thought it unnecessary to include rule 26, relating to summary records, which was proposed by the Committee of Experts in London, since the records of Security Council meetings should, in principle, be verbatim."

## 2. SPECIAL CASES CONCERNING THE APPLICATION OF RULES 41-47

### a. Rules 42 and 43

#### 1) Occasions on which the Security Council has made decisions regarding the method of interpretation of speeches made by representatives on the Council

##### CASE 108

At the 288th meeting on 29 April 1948, in connexion with the Czechoslovak question, after a statement by the representative of the Ukrainian SSR, the President (Colombia) said:

"We will dispense with the French translation."

The representative of France stated:

"It is very late, and I shall forego the French interpretation of the statement made by the representative of the Ukraine in order to take time, without unduly delaying the proceedings of the Security Council, to comment once again on his remarks."

At a later point in his speech he stated:<sup>9</sup>

"... I may have misunderstood the English interpretation... If I failed to understand the English, I should not have foregone the French interpretation and I shall have to ask for it to be given."

##### CASE 109

At the 344th meeting on 4 August 1948, in connexion with the question of the Free Territory of Trieste, after the speech by the representative of the Ukrainian SSR had been interpreted consecutively into English, the representative of the Ukraine said that he would not insist on its consecutive interpretation into French. With reference to the system of interpretation, however, he asked to have "some definite rules fixed independently of the technical aspects".

The representative of France declared that in principle both interpretations into English and French should be given in the same way, but in the present

<sup>9</sup> 288th meeting: p. 14. For other instances when representatives on the Security Council discussed whether to waive consecutive interpretation into French, see:

322nd meeting: pp. 13-14; 344th meeting (Case 109); 346th meeting: pp. 40-41; 408th meeting and 410th meeting (Case 118); 445th and 446th meetings (Case 112); 455th meeting: p. 28; 456th meeting (Case 113).

case he would have no objection to the French interpretation being simultaneous only to facilitate the work of the Council.

The President (USSR) said:

"In accordance with the rules of procedure and established practice, speeches by Council members must be interpreted consecutively into both working languages—English and French—no matter in what language they are made. With regard to speeches made by representatives of States invited to participate in the discussion of any matter in the Security Council, these are interpreted simultaneously into both working languages and into all other official languages.

"Recently, in special cases, it has been the practice to make exceptions owing to lack of time or other reasons. Such exceptions may be made in the future, too. But the firm rule of procedure that speeches by members of the Security Council must be interpreted into both working languages, remains in full force..."

It was agreed that the consecutive interpretation into French would not be given, but that "the basic rule that speeches by members of the Security Council are translated into both working languages" would be kept in the future.<sup>10</sup>

##### CASE 110

At the 361st meeting on 4 October 1948 (in Paris), prior to the consideration of the identic notifications dated 29 September 1948, the representative of Colombia proposed:

"In order to facilitate this discussion, I should like to ask that we should use the system of simultaneous interpretation—without prejudice, of course, to using consecutive interpretation—should representatives so desire."

During the discussion of this proposal there was an expression of views on the system of interpretation in general. The representative of France felt that in view of the importance of the matter that was about to be discussed, the Council should abide by the usual rule and have consecutive interpretation.

The representative of the USSR disagreed that consecutive interpretation was desirable in view of the importance of the matter under discussion. He said:

"... If simultaneous interpretation is inadequate for the discussion of serious questions, then how is it that the General Assembly uses simultaneous interpretation for the discussion of all questions with which it deals, including important ones? And again, how can simultaneous interpretation hamper the discussion of important problems? On the contrary this form of interpretation facilitates the discussion of such questions..."

The representative of Syria proposed that the Council adhere to the "practice... adopted in the United States", which was to have one consecutive interpretation, either into English or into French. A speech in Chinese, Russian or Spanish would be interpreted simultaneously into one working language, and consecutively into the other, while a speech in English or French would be interpreted into the other working language.

<sup>10</sup> For texts of relevant statements see:

344th meeting: President (USSR), p. 17; France, p. 16; Ukrainian SSR, p. 16.

The representative of France was "quite willing" to admit the argument regarding the practice followed in the General Assembly, put forward by the representative of the USSR. He pointed out, however, that the Security Council had always adhered to a different practice, because it was felt that in simultaneous interpretation "the interpreter often found it difficult to follow the rhythm of the speaker's words, so that there was a risk that gaps might occur". Moreover, consecutive interpretation "usually enables the speaker to some extent to follow and check up on the interpretation made". He was in favour of the Syrian proposal "to follow the practice observed in New York".

The representative of the United States agreed with the reasons adduced by the representative of France, for the practice of the Council which "pointed to the desirability of retaining consecutive interpretations even when simultaneous interpretations were also used".

The representative of the United Kingdom said:

"I am generally an advocate of simultaneous interpretation, which has many advantages. I recognize, however, that it is an innovation and that it was not foreseen in our original procedure. If representatives take exception to its adoption I do not think that we would wish to force it upon them. At the same time, I should like to support the suggestion made by the representative of Syria that in a case where a speech is made neither in French nor in English there should be one simultaneous interpretation into one of the working languages and then a consecutive interpretation into the other language. As far as I am concerned, as the representative of an English-speaking Government, I would say that if it were decided that the English interpretation should be given simultaneously, I should be quite content if that were the desire of the other members of the Council."

The representative of Canada proposed that . . .

" . . . one of the additional languages into which simultaneous interpretation was given should be Spanish so as to help the President in his deliberations and the conduct of this meeting."

The representative of the USSR considered this proposal unacceptable "on the grounds that, if it is a matter of departing from the usual procedure in the common interest, then there should be no discrimination against the other official languages", and he termed the Canadian proposal a "fresh attempt" at such discrimination.

The representative of Colombia further clarified his proposal "that simultaneous interpretation should be introduced, but that consecutive interpretation could be used if requested". He said if his proposal were adopted there would be consecutive interpretation into French since it had been requested by the representatives of France and Syria. If English consecutive interpretation were requested it would also be rendered. "This was the method employed on former occasions in the Security Council. Simultaneous interpretation was used and consecutive interpretation was given when suggested."

In reply to a query by the representative of the Ukrainian SSR, the President (Argentina) said the simultaneous interpretation would be into all the five official languages. He then put the Colombian proposal to the vote in the following terms:

"Will those representatives in favour of the proposal that simultaneous interpretation shall be used, without prejudice to consecutive interpretation into French or English if requested, raise their hands?"

**Decision:** *The proposal was adopted by unanimous vote.*<sup>11</sup>

#### CASE 111

At the 362nd meeting on 5 October 1948, (in Paris), in connexion with the identic notifications dated 29 September 1948, the representative of the United Kingdom said that "if the other English-speaking delegations agree, I would suggest that we might forego the consecutive interpretation into English when a simultaneous interpretation into that language has already been given". The representative of the United States and Canada agreed with the suggestion, reserving the "right to request a consecutive interpretation into English on future occasions".

The President (Argentina) declared that "from now on, there will be no consecutive interpretation into English at meetings concerned with the discussion of this question".<sup>12</sup>

#### CASE 112

At the 445th meeting on 15 September 1949, in connexion with the question of admission of new Members to the United Nations, there was to be no consecutive interpretation in accordance with a decision of the previous meeting.<sup>13</sup>

The representative of France proposed however that the Council should again have consecutive interpretation so that there would be more time to follow the rather complicated discussion.

The President (United Kingdom) thereupon said:

"If any member of the Security Council finds the system of simultaneous interpretation unsuitable or inconvenient, I think that probably we shall have to revert to the system of consecutive interpretation. I don't think it is a matter we can put to the vote."

After discussion the Council adopted an arrangement whereby speeches in English or French would be interpreted simultaneously into all other official languages and consecutively only into the other working language. Speeches in either Russian, Chinese or Spanish would be interpreted simultaneously into all other official languages but consecutively only into English.<sup>14</sup>

This procedure was also adopted at the 446th meeting on 16 September 1949.<sup>15</sup>

#### CASE 113

At the 456th meeting on 13 December 1949, in connexion with the Indonesian question (II), the Security

<sup>11</sup> For texts of relevant statements see:

361st meeting: President (Argentina), pp. 7, 8, 9; Belgium, p. 3; Canada, pp. 3, 6; Colombia, pp. 2, 7-8, 8-9; France, pp. 3, 4-5; Syria, pp. 4, 8; Ukrainian SSR, pp. 8-9; USSR, pp. 3-4, 6-7; United Kingdom, p. 6; United States, pp. 5-6, 7.

<sup>12</sup> 362nd meeting: p. 4. For another instance when representatives on the Security Council discussed whether to waive consecutive interpretation into English, see 361st meeting (Case 110).

<sup>13</sup> 445th meeting: pp. 30-31.

<sup>14</sup> For texts of relevant statements see:

445th meeting: President (United Kingdom), pp. 30-31; France, p. 30; Ukrainian SSR, p. 31; USSR, p. 31.

<sup>15</sup> 446th meeting: s. 2.



Council agreed with the President's (Canada) proposal "that simultaneous interpretation be used for all statements made by representatives on the Council, and that consecutive interpretations be used for procedural matters and for the actual voting on the various draft resolutions before us. Simultaneous interpretations will, of course, be used as usual for statements by all representatives other than members of the Security Council."

Later, at the same meeting, the President said:

"We now come to the vote, for the purpose of which I request that consecutive interpretation be resumed for the remarks of members of the Council."

After a statement by the representative of the USSR, the representative of the United Kingdom inquired whether the consecutive interpretation into French was necessary "in view of the fact that we had the French version simultaneously". The representative of France stated, "I will willingly forego it", and the meeting was adjourned.<sup>16</sup>

**ii) Occasions on which the Security Council has made decisions regarding the method of interpretation of speeches other than those by the representatives of members of the Council**

**CASE 114**

At the 227th meeting on 15 January 1948, in connexion with the India-Pakistan question, the President (Belgium) said:

"I think that the statements which the representatives of India and Pakistan intend to make will, naturally, be rather lengthy. It has been suggested that for these first statements, and for these first statements only, we should use simultaneous interpretation."<sup>17</sup>

**b. Rule 46**

**CASE 115**

At the 159th meeting on 17 July 1947, the President (Poland) read out the English original text of a letter from the Prime Minister and Minister of Foreign Affairs of Egypt to the Secretary-General. The representative of Australia suggested that "As we have the document before us both in English and French, it would hardly seem necessary to have the translation read."

There being no objection on the part of the representatives of Belgium and France, the Council dispensed with the translation.<sup>18</sup>

**CASE 116**

At the 463rd meeting on 7 February 1950, in connexion with the India-Pakistan question, the Security

<sup>16</sup> For texts of relevant statements see:

456th meeting: President (Canada), pp. 2, 33; France, p. 38; United Kingdom, pp. 37-38.

<sup>17</sup> 227th meeting: pp. 9-10, 30. For further illustrations of similar procedures for interpretation of statements by those invited to participate in the Council's proceedings, see:

228th meeting: p. 35; 232nd meeting: pp. 171, 203; 236th meeting: p. 271; 257th meeting: p. 343; 258th meeting: p. 344; 269th meeting: pp. 117-131; 271st meeting: pp. 168-170; 272nd meeting: pp. 175-191; 276th meeting: pp. 254-271; 284th meeting: p. 23; 285th meeting: p. 2; 313th meeting: pp. 22, 27; 328th meeting: p. 2; 367th meeting: p. 2; 457th meeting: p. 2; 469th meeting: p. 2; 470th meeting: p. 1 (illustrating an exception); 494th meeting: pp. 27-29; 524th meeting: p. 4; 550th meeting: p. 1.

<sup>18</sup> S/410, 159th meeting: pp. 1343-1345.

Council had before it a report submitted by the former President, General McNaughton (Canada). The President (Cuba) proposed "to read it immediately". The representative of Egypt enquired whether the report which consisted "of sixteen closely written pages" might be interpreted simultaneously. The President replied that there would be simultaneous interpretation for the reading of the report, and proceeded to read the text of the document in English.<sup>19</sup>

**c. Postponement of interpretation**

**CASE 117**

At the 398th meeting on 11 January 1949, in connexion with the Indonesian question (II), it was agreed after some discussion that the French consecutive interpretation of the speech by the representative of the USSR should be postponed until the next meeting, in view of the late hour.<sup>20</sup>

**CASE 118**

At the 409th meeting on 15 February 1949, the President (China) proposed that "the French interpretation of the statement of the representative of the USSR be given at the beginning of our next meeting" and, there being no objection, it was so decided.<sup>21</sup>

At the 410th meeting on 16 February 1949, the representative of France stated that, as far as he was concerned, he would not ask for the French interpretation, in order to facilitate the Council's work. The USSR representative said he would not press for the interpretation if there was a rule in the Council that it was given only for the French representative. He had believed, however, that French was a working language and speeches should be interpreted into French. The representative of France recalled previous occasions when the Council had modified its practice in relation to the rules of procedure in the matter of interpretation. He said:

"... Our rules of procedure are thus subject to very wide interpretation and the President has complete authority in that field."

The Council turned to the item on the agenda, and the French interpretation was not given.<sup>22</sup>

**CASE 119**

At the 502nd meeting on 18 September 1950, in connexion with the complaint of aggression upon the Republic of Korea, after the representative of the USSR had ended his speech, the President (United Kingdom) inquired of the Council if it would not be best, in view of the late hour, to postpone the English and French consecutive interpretations to the next meeting. The representative of the USSR suggested that the English interpretation be given at that meeting, and the French interpretation be postponed to the next. The representative of France was in agreement with the President's proposal, but since the representative of the USSR insisted on his own proposal, it was put to the vote.

<sup>19</sup> S/1453, 463rd meeting: p. 3.

<sup>20</sup> 398th meeting: pp. 26-27. For other occasions when consecutive interpretation in one or more languages of a statement has been postponed until the following meeting, see: 486th meeting: p. 24; 489th meeting: pp. 16-18; and the Cases which follow.

<sup>21</sup> 409th meeting: pp. 13, 14.

<sup>22</sup> 410th meeting: pp. 7-8.



**Decision:** *The proposal of the representative of the USSR was rejected, there being 1 vote in favour, 6 against and 4 abstentions. The Council then adjourned sine die.*<sup>23</sup>

At the next meeting on 26 September 1950, the item "Complaint of aggression upon the Republic of Korea" was not included in the provisional agenda. The President (United Kingdom) stated that "though the usual facilities for simultaneous and consecutive interpretations are available today, it may be very difficult for the Secretariat to provide these facilities during the period of the session of the General Assembly". He therefore put forward the "daring suggestion" that there should be simultaneous interpretation only, during the period of the General Assembly, in which case the interpretations of the statement of the representative of the USSR held over from the last meeting could be dispensed with. The representatives of China, France and the USSR were in favour of retaining consecutive rather than simultaneous interpretation, if a choice had to be made, and the President then asked for "the two interpretations of the speech which the representative of the Soviet Union made at the end of the last meeting". After some further discussion, the Council decided to hear the two interpretations on the understanding that "Complaint of aggression upon the Republic of Korea" would be item 1 on the provisional agenda.<sup>24</sup>

#### CASE 120

At the 528th meeting on 29 November 1950, in connexion with the complaint of armed invasion of Taiwan

<sup>23</sup> For texts of relevant statements see: 502nd meeting: President (United Kingdom), p. 36; France, p. 36; USSR, p. 36.  
<sup>24</sup> 503rd meeting: pp. 1-8.

(Formosa) and the complaint of aggression upon the Republic of Korea, the President (Yugoslavia) proposed that, to save time, interpretation of the speech made by the representative of the USSR might be waived since "translations into English and French will appear in the provisional verbatim records and the USSR delegation will be able to check their accuracy there." The representative of the USSR preferred to "hear the interpretation now" and stated:

"I have always held the view that my statements should always be interpreted, if only into English, since it is necessary to correct the interpretation."

The President inquired whether the Council agreed to "hold a meeting tomorrow morning devoted almost entirely to listening to interpretations". The representative of the USSR reminded the President that the question was not open to discussion since "according to the rules of procedure, speeches must be interpreted into the working languages". The representative of Egypt appealed to the Council to agree to waive both interpretations, "in the very grave circumstances which confront us". Since the representatives of the USSR and France were unable to agree to waive interpretations, it was decided to continue the established procedure, and to hear both interpretations at the next meeting.<sup>25</sup> At the 529th meeting on 30 November 1950, after the adoption of the agenda, the English and French translations of the speech made by the representative of the USSR at the 528th meeting were read, and the meeting was adjourned.<sup>26</sup>

<sup>25</sup> For texts of relevant statements see: 528th meeting: President (Yugoslavia), pp. 33, 34, 35; Egypt, p. 34; France, pp. 34, 35; India, p. 34; USSR, pp. 33, 34, 35; United Kingdom, p. 34.  
<sup>26</sup> 529th meeting: *passim*.

### Part VIII

#### PUBLICITY OF MEETINGS, RECORDS (RULES 48-57)

##### NOTE

The verbatim records of each meeting are made available to representatives on the Security Council, and to the representatives of any other States which have participated in the meeting, with a note showing the time and date of distribution, and the time limit for corrections. Corrections are requested in writing, preferably incorporated in mimeographed copies of the record, within two working days, and "should be accompanied by, or incorporated in a letter on headed note-paper, bearing the appropriate symbol number and enclosed in an envelope marked 'URGENT' ". If there is no objection, these corrections are included in the official record of the meeting, which is printed and distributed as soon as possible after the expiration of the time limit for corrections.

PROVISIONAL RULES OF PROCEDURE REGARDING PUBLICITY OF MEETINGS IN FORCE FROM THE 1ST MEETING, ON 17 JANUARY 1946, TO THE 41ST MEETING, ON 16 MAY 1946<sup>1</sup>

##### "Rule 20

"Unless it decides otherwise, the Security Council shall meet in public.

##### "Rule 21

"At the close of each private meeting, the Security Council shall issue a communiqué through the Secretary-General.

##### "Rule 22

"The verbatim record of public meetings and the documents relating thereto shall be published as soon as possible."

PROVISIONAL RULES OF PROCEDURE REGARDING RECORDS OF THE SECURITY COUNCIL IN FORCE FROM THE 1ST MEETING, ON 17 JANUARY 1946, TO THE 41ST MEETING, ON 16 MAY 1946

##### "Rule 23

"Subject to the provisions of rule 24, the Secretary-General shall keep a verbatim record of all meetings and shall send it as soon as possible to the representatives on the Council, who shall within forty-eight hours inform the Secretariat of any corrections they wish to have made.

<sup>1</sup> O.R., 1st year, 1st series, Suppl. No. 1, annex 1, p. 5.

*"Rule 24"*

"The Security Council may decide that, for a private meeting, a summary record in a single copy shall alone be made. This record shall be kept by the Secretary-General, and the representatives of States which have taken part in the meeting may have corrections made in their own speeches within a period of ten days. On the expiry of this period, the record shall be considered as approved, and shall be signed by the Secretary-General."

RULES 48-57 OF THE PROVISIONAL RULES OF PROCEDURE OF THE SECURITY COUNCIL ADOPTED AT THE 41ST MEETING, ON 16 MAY 1946

*"Rule 48"*

"Unless it decides otherwise, the Security Council shall meet in public. Any recommendation to the General Assembly regarding the appointment of the Secretary-General shall be discussed and decided at a private meeting.

*"Rule 49"*

"Subject to the provisions of Rule 51, the verbatim record of each meeting of the Security Council shall be made available in the working languages to the representatives on the Security Council and to the representatives of any other States which have participated in the meeting not later than 10 A.M. of the first working day following the meeting. The verbatim record of any speech made in any other of the official languages, which is drawn up in accordance with the provisions of Rule 45, shall be made available in the same manner to any of the above mentioned representatives at his request.

*"Rule 50"*

"The representatives of the States which have participated in the meeting shall, within two working days after the time indicated in Rule 49, inform the Secretary-General of any corrections they wish to have made in the verbatim record.

*"Rule 51"*

"The Security Council may decide that for a private meeting the record shall be made in a single copy alone. This record shall be kept by the Secretary-General. The representatives of the States which have participated in the meeting shall, within a period of ten days, inform the Secretary-General of any corrections they wish to have made in this record.

*"Rule 52"*

"Corrections that have been requested shall be considered approved unless the President is of the opinion that they are sufficiently important to be submitted to the representatives on the Security Council. In the latter case, the representatives on the

\*In connexion with rule 24, as adopted at the 1st meeting, on 17 January 1946, the attention of the members of the Security Council was drawn to the Summary Record of the fourth, sixth and seventh meetings of the Technical Committee on the Security Council of the Preparatory Commission of the United Nations (*O.R.*, 1st year, 1st series, Suppl. No. 1, annex 1 (c), pp. 8-16).

Security Council shall submit within two working days any comments they may wish to make. In the absence of objections in this period of time, the record shall be corrected as requested.

*"Rule 53"*

"The verbatim record referred to in Rule 49 or the record referred to in Rule 51, in which no corrections have been requested in the period of time required by Rules 50 and 51 respectively or which has been corrected in accordance with the provisions of Rule 52, shall be considered as approved. It shall be signed by the President and shall become the official record of the Security Council.

*"Rule 54"*

"The official record of public meetings of the Security Council, as well as the documents annexed thereto, shall be published in the official languages as soon as possible.

*"Rule 55"*

"At the close of each private meeting the Security Council shall issue a communiqué through the Secretary-General.

*"Rule 56"*

"The representatives of the Members of the United Nations which have taken part in a private meeting shall at all times have the right to consult the record of that meeting in the office of the Secretary-General. The Security Council may at any time grant access to this record to authorized representatives of other Members of the United Nations.

*"Rule 57"*

"The Secretary-General shall, once each year, submit to the Security Council a list of the records and documents which up to that time have been considered confidential. The Security Council shall decide which of these shall be made available to other Members of the United Nations, which shall be made public, and which shall continue to remain confidential."

#### I. CONSIDERATION OF THE ADOPTION OR AMENDMENT OF RULES 48-57

##### CASE 121

At the 1st meeting on 17 January 1946, in connexion with the presentation of the section of the Report of the Preparatory Commission which related to the Security Council, the representative of Poland said that, when drafting the provisional rules of procedure as regards access to records of private meetings of the Council, the Preparatory Commission had omitted the last sentence which read "Representatives of members who have taken part in the meeting shall have the right at all times to consult the records at the Secretariat," because they felt that the Security Council should define for itself the right of consulting the records of private meetings.<sup>3</sup>

The provisional rules of procedure, as adopted on the recommendation of the Preparatory Commission, and revised by the Committee of Experts, were con-

<sup>3</sup>1st meeting: p. 3.

sidered at the 41st meeting on 16 May 1946. The Committee of Experts brought together in one chapter the rules relating to the publicity of meetings and to records, since these matters were closely allied.

The representative of Australia, with regard to the holding of private meetings, said that it was his understanding that the decision whether or not a private meeting was to be held would be taken by the Council itself at a public meeting.<sup>4</sup>

#### CASE 122

In his report of 13 May 1946, in connexion with the provisional rules of procedure on the publicity of meetings and records recommended to the Security Council for adoption, the Chairman of the Committee of Experts stated:<sup>5</sup>

"As regards the publicity of meetings, rule 45 [present rule 48] reproduces the content of rule 28 of the provisional rules of procedure, with the addition, as was explained at the beginning of this report, of the text relating to the consideration in a private meeting of the appointment of the Secretary-General.

"Rules 46, 47, 49, 50 and 51 of the attached text [present rules 49, 50, 52, 53 and 54 respectively] reaffirm the principle that verbatim records of public meetings should be kept. They established, in addition, a procedure for making the records available to the representatives of the States which have participated in the discussions and also for such corrections as may be requested and accepted.

"With respect to corrections, the Committee was of the opinion that, in principle, the formal approval of records is the prerogative of the Security Council itself, but that it would be appropriate for the Council to delegate this power to the President except when a major difficulty necessitates an exchange of views within the Council. The above-mentioned rules lay down the limits within which these powers may be delegated.

"Rules 48 and 53 [present rules 51 and 56 respectively] refer to records of private meetings. The

<sup>4</sup> 41st meeting: p. 261.

<sup>5</sup> S/57, O.R., 1st year, 1st series, Suppl. No. 2, annex 1 (d), pp. 24-25.

procedure to be followed for their correction is the same as that for verbatim records, but the time limit for requesting corrections is extended to ten days, owing to the difficulty of consulting the record in those instances when the Council has decided that only a single copy of the record shall be kept.

"Rule 53 gives representatives of Members of the United Nations which have participated in a private meeting the right to consult the record. It also takes into account the need which may arise in certain cases to authorize other Members of the United Nations to consult the record. A special decision must be taken in each case. Any such decision may authorize consultation by one or more specified Members of the United Nations.

"Moreover, the Committee of Experts believed that the Council should review annually its records and documents, particularly with a view to authorizing the publication of those which have lost their confidential character. A special provision was drafted for this purpose and included as rule 54 [present rule 57]."

#### 2. SPECIAL CASES CONCERNING THE APPLICATION OF RULES 48-57

##### Rule 52

#### CASE 123

At the 524th meeting on 17 November 1950, in connexion with the complaint of aggression upon the Republic of Korea, the President's attention was drawn by the representative of the USSR to the fact that the provisional record of the previous meeting (523rd) did not include the text of a statement by the representative of the People's Republic of China which he had read at that meeting. He asked that it be included in the official record.

The President (Yugoslavia) said:

"The verbatim record which has been circulated is only provisional. The text will be included in the official record."<sup>6</sup>

<sup>6</sup> 524th meeting: President (Yugoslavia), p. 2; USSR, p. 2.

### Part IX

#### APPENDIX TO PROVISIONAL RULES OF PROCEDURE

##### NOTE

Part IX contains only cases relating to the adoption or amendment of the procedure for dealing with communications from private individuals and non-governmental bodies. There are no cases concerning the application of this procedure, since it has given rise to no discussion in the Security Council. Periodically a list is circulated to all representatives on the Security Council of communications from private individuals and non-governmental bodies relating to matters of which the Council is seized. Thereafter the communications so listed are kept available for consultation by any representative who so requests. This procedure has occasionally been varied, when a representative on the Security Council has transmitted a communication

from a non-governmental body with the request that it be circulated to all representatives. On such occasions the communication in question plus the letter of transmittal have either been reproduced as a document of the Security Council or have been transmitted to all Member Governments by the Secretary-General.

#### PROVISIONAL PROCEDURE FOR DEALING WITH COMMUNICATIONS FROM PRIVATE INDIVIDUALS AND NON-GOVERNMENTAL BODIES ADOPTED BY THE SECURITY COUNCIL AT THE 31ST MEETING ON 9 APRIL 1946

"A. A list of all communications from private individuals and non-governmental bodies relating to matters of which the Security Council is seized shall be circulated to all representatives on the Security Council.

"B. A copy of any communication on the list shall be given by the Secretariat to any representative on the Security Council at his request."

**CONSIDERATION OF THE ADOPTION OR AMENDMENT OF THE PROCEDURE**

**CASE 124**

At the 6th meeting on 1 February 1946, in connexion with items 2 and 3 of the agenda, the President (Australia) brought to the notice of the Security Council that a number of communications had "been received from non-governmental bodies and persons who have written regarding matters associated with the situation that is referred to in items 2 and 3 of the agenda". He proposed that the Committee of Experts be requested to indicate how they might be dealt with. The representative of Poland suggested that representatives of the Governments concerned with the matters referred to in the communications should be consulted. The President pointed out that all countries were represented on the Committee of Experts, and that the Committee would suggest only the procedure to be adopted regarding their receipt, and would not deal with the communications themselves.

**Decision:** *The procedure suggested by the President was adopted without objection.*<sup>1</sup>

<sup>1</sup> 6th meeting: p. 72.

**CASE 125**

At the 31st meeting on 9 April 1946, in connexion with the report of the Chairman of the Committee of Experts with regard to the provisional rules of procedure, the representative of Australia suggested, with reference to Annex A, first, that a list of all important communications should be drawn up, second, that there should be some indication of the subject matter, the person or the organization from which the communication emanates, and third, that the frequency of the circulation of the list should be determined. The Chairman of the Committee of Experts explained that the list would be considerably restricted by excluding communications relating to matters of which the Council was not seized, and by giving the Secretariat directions to exclude communications of a frivolous nature. He stated that the Committee was "quite convinced that these rules are workable rules" giving representatives on the Council the opportunity of referring to the communications and at the same time protecting the Secretariat "from the burden of having to handle thousands, or even tens of thousands, of documents, pamphlets, photographs, etc.". He also stated that the rules were substantially the same as those adopted by the Council of the League of Nations.

**Decision:** *Annex A was adopted without objection.*<sup>2</sup>

<sup>2</sup> 31st meeting: pp. 117-118.

## **Chapter II**

### **AGENDA**

## TABLE OF CONTENTS

	<i>Page</i>
INTRODUCTORY NOTE .....	63
PART I. CONSIDERATION OF THE ADOPTION OR AMENDMENT OF RULES 6-12 .....	64
PART II. THE PROVISIONAL AGENDA .....	
Note .....	65
A. Rule 6: Circulation of communications by the Secretary-General <sup>1</sup> .....	
B. Rule 7: Preparation of the provisional agenda .....	66
C. Rule 8: Communication of the provisional agenda .....	67
PART III. ADOPTION OF THE AGENDA (RULE 9)	
Note .....	68
A. Procedure of voting on adoption of the agenda .....	69
B. Consideration of	
1. Requirements for the inclusion of an item in the agenda .....	71
2. Effect of the inclusion of an item in the agenda .....	75
C. Other discussion on adoption of the agenda	
1. Order of discussion of items on the agenda .....	79
2. Scope of items on the agenda in relation to the scope of discussion .....	80
3. Phrasing of items on the agenda .....	82
4. Postponement of consideration of items .....	83
PART IV. THE AGENDA: MATTERS OF WHICH THE SECURITY COUNCIL IS SEIZED	
Note .....	83
A. Rule 10 .....	84
B. Rule 11	85
1. Retention and deletion of items from the Secretary-General's summary statement of matters of which the Security Council is seized .....	86
2. Proceedings of the Security Council regarding the retention and deletion of items from the agenda .....	92



## INTRODUCTORY NOTE

The present chapter of the *Repertoire* contains material concerning rules 6 through 11 of the provisional rules of procedure of the Security Council relating to agenda. Since the Security Council has not held periodic meetings, the chapter contains no treatment of rule 12.

The use of the term "agenda" in the Security Council gives rise to certain difficulties in classification, since the term has been used sometimes to denote the provisional agenda, sometimes the agenda as adopted, and, again, matters with which the Security Council has a continuing concern.

The provisional agenda is the document drawn up by the Secretary-General in accordance with rule 7 and approved by the President of the Security Council, which is placed before each meeting of the Council containing the list of matters suggested for consideration at that particular meeting.

The provisional agenda, as adopted by the Council, becomes the agenda in the sense of the list of matters which the Security Council has decided should be discussed at that particular meeting. In the application of rules 10 and 11, items once adopted on the agenda thereafter, in the absence of a decision by the Council to the contrary, stand on the agenda in the sense of the totality of matters of which the Council is seized, and continue to stand on this agenda, whether or not included in the agenda of the next meeting as required by rule 10. A summary statement of such matters and of the stage reached in their consideration is communicated each week by the Secretary-General to the representatives on the Security Council.<sup>1</sup>

Throughout this chapter, material is presented directly under the rule of procedure to which it relates. Part I presents certain explanations proffered at the time of the adoption of the provisional rules. Part II provides information concerning the preparation and communication of the provisional agenda (rules 6, 7 and 8). The material which follows is presented under two heads: part III: Adoption of the Agenda (rule 9), and part IV: The Agenda: Matters of which the Security Council is seized (rules 10 and 11).

Part III contains material on the procedure and practice of the Security Council in the adoption of the agenda. Section A is prefaced by a list of votes taken in adopting the agenda arranged by forms of proposals voted upon, the list being followed by selected case histories setting forth discussion in the Council concerning procedural aspects of the adoption of the agenda. Section B of part III presents case histories setting forth discussion in the Council of the requirements for the inclusion of an item in the agenda and

of the effects of such inclusion. Section C covers other questions which have arisen in the discussion of the adoption of the agenda such as the order of discussion, the phraseology of items and postponement of consideration.

Part IV relates to the list of matters of which the Security Council is seized. A tabulation is included of items which have appeared in the Secretary-General's summary statement of matters of which the Security Council is seized, with indications of first inclusion in the Security Council's agenda and in the Secretary-General's summary statement, the latest action of the Council and the retention or removal of the item in the summary statement. There follow case histories of the discussion in the Council of the various questions arising in connexion with the retention or removal of an item on the agenda.

### PROVISIONAL RULES OF PROCEDURE OF THE SECURITY COUNCIL REGARDING AGENDA IN FORCE FROM THE 1ST MEETING ON 17 JANUARY 1946 TO THE 31ST MEETING ON 9 APRIL 1946<sup>2</sup>

#### "Rule 4

"The provisional agenda for each meeting shall be drawn up by the Secretary-General and approved by the President of the Security Council.

#### "Rule 5

"The provisional agenda for each regular meeting shall be circulated by the Secretary-General to representatives on the Security Council . . . in advance.

#### "Rule 6

"The provisional agenda for each periodic meeting shall be circulated to the members of the Security Council at least twenty-one days before the opening of the meeting. Any subsequent change in or addition to this provisional agenda shall be brought to the notice of the members at least five days before the meeting. The Security Council may, however, in urgent circumstances, make additions to the agenda at any time during a periodic meeting.

#### "Rule 7

"The provisional agenda for an extraordinary meeting shall be communicated by the Secretary-General to the members of the Security Council and to their representatives on the Council simultaneously with the convocation of the extraordinary meeting.

#### "Rule 8

"The first item on the provisional agenda of any meeting of the Security Council shall be the adoption of the agenda."

<sup>1</sup> It is also the duty of the Secretary-General, under Article 12 (2) of the Charter, to notify the General Assembly at each session, with the consent of the Security Council, "of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council". Regarding these notifications, which are based upon the Summary Statement circulated under rule 11, reference should be made to chapter VI, note to part I, section A.

<sup>2</sup> O.R., 1st year, 1st series, Suppl. No. 1, annex 1, pp. 3-4.

PROVISIONAL RULES OF PROCEDURE OF THE SECURITY COUNCIL REGARDING AGENDA ADOPTED AT THE 31ST MEETING ON 9 APRIL 1946

*"Rule 6*

"The Secretary-General shall immediately bring to the attention of all representatives on the Security Council all communications from States, organs of the United Nations, or the Secretary-General concerning any matter for the consideration of the Security Council in accordance with the provisions of the Charter.

*"Rule 7*

"The Provisional Agenda for each meeting of the Security Council shall be drawn up by the Secretary-General and approved by the President of the Security Council.

"Only items which have been brought to the attention of the representatives on the Security Council in accordance with Rule 6, items covered by Rule 10, or matters which the Security Council has previously decided to defer, may be included in the Provisional Agenda.

*"Rule 8*

"The Provisional Agenda for a meeting shall be communicated by the Secretary-General to the representatives on the Security Council at least three days before the meeting, but in urgent circumstances it may be communicated simultaneously with the notice of the meeting.

*"Rule 9*

"The first item of the Provisional Agenda for each meeting of the Security Council shall be the adoption of the Agenda.

*"Rule 10*

"Any item on the Agenda of a meeting of the Security Council, consideration of which has not been completed at that meeting, shall, unless the Security Council otherwise decides, automatically be included in the Agenda of the next meeting.

*"Rule 11*

"The Secretary-General shall communicate each week to the representatives on the Security Council a summary statement of matters of which the Security Council is seized and of the stage reached in their consideration.

*"Rule 12*

"The Provisional Agenda for each periodic meeting shall be circulated to the members of the Security Council at least twenty-one days before the opening of the meeting. Any subsequent change in or addition to the Provisional Agenda shall be brought to the notice of the members at least five days before the meeting. The Security Council may, however, in urgent circumstances, make additions to the Agenda at any time during a periodic meeting.

"The provisions of Rule 7, paragraph 1, and of Rule 9, shall apply also to periodic meetings."

## Part I

### CONSIDERATION OF THE ADOPTION OR AMENDMENT OF RULES 6-12

#### CASE I

At the 31st meeting on 9 April 1946, in connexion with the report of the Committee of Experts on the provisional rules of procedure, the Chairman of the Committee of Experts observed:<sup>1</sup>

"(2) *Agenda*: With respect to the rules concerning the agenda, the Committee was desirous of clarifying (a) the manner in which matters should be brought to the attention of the Council, (b) the precise meaning of the term 'agenda' and (c) the procedure to be adopted by the Council with regard to unfinished or postponed business as opposed to new business.

"Rule 6, as recommended, provides that the function of bringing matters to the attention of the representatives on the Council shall be vested in the Secretary-General and makes the exercise of this function mandatory.

"The Council is protected from being confronted with matters of which the representatives have not been notified. This is effected by rule 7, which clearly specifies the category of matters which may appear on a provisional agenda.

"In the course of discussion in the Committee, it became apparent that there existed no clear definition of the term 'agenda'. On the one hand, it was

suggested that 'agenda' applied to the list of matters to be dealt with by the Council at a specified meeting. On the other hand, the opinion was expressed that this term might also apply to all matters which remained before the Council.<sup>2</sup>

"After careful consideration, it was decided that the term 'provisional agenda' should apply only to the list of matters suggested for the consideration of the Council at a specific meeting. For the convenience of the members of the Security Council, a summary statement of all matters of which the Council is seized shall be circulated weekly by the Secretary-General.

"The Committee has also sought to ensure that, unless the Council should specifically decide otherwise, items of unfinished business shall automatically appear on the agenda of the subsequent meeting. The term 'agenda' in rule 10 is used here advisedly. This rule means that the continued consideration of such business as is left over from one meeting shall constitute part of the agenda of the succeeding meeting.

"Naturally these items on the provisional agenda of a meeting shall not again be subject to debate

<sup>1</sup> See statement of 18 March 1946, submitted by the Secretariat to the Committee of Experts, S/12, O.R., 1st year, 1st series, Suppl. No. 2, pp. 8-10. See also 3rd meeting: pp. 29-30 for references to the "continuing agenda" and the "specific agenda".

<sup>1</sup> 31st meeting: pp. 101-102.

in connexion with the adoption of the agenda for that meeting. It was the view of the Committee that it should be left to the Secretary-General, in drawing up the provisional agenda of a meeting, to indicate, on the one hand, new matters brought to the attention of the Council under rule 6 and, on the other, matters which have been left over from the previous meeting or which the Council previously decided to consider at that meeting.

"With respect to the term 'provisional agenda' in rule 12 regarding periodic meetings, it is the opinion of the Committee that the term refers to all the sessions of a periodic meeting. The Council might find it necessary to meet several times in the course of a periodic meeting, and the adoption of the provisional agenda for a periodic meeting therefore covers all the separate sessions until the periodic meeting in question comes to an end."

The representative of the United States stated:

"I have a comment that I might make at this time relative to rule 11. We find these words, '... matters of which the Security Council is seized ...'. I think our legal authorities fully understand the meaning of the word 'seized', but to avoid any possible misunderstanding in translation into many languages and to be very sure that the members of the Council place the same interpretation on this phrase as our Committee of Experts did, I should like to read what I interpret 'is seized' to mean, which is as

follows: '... matters which have been on the agenda of previous meetings and have not been finally disposed of by the Security Council'."

The Chairman of the Committee of Experts stated in reply:<sup>3</sup>

"The remarks which I should like to make... have been, in essence, already said by Mr. Stettinius... Rule 11 concerns itself exclusively with matters on which the Council has already acted. In other words, the verb 'is seized' is used in order to avoid the very ambiguous term 'agenda'. We have had experience in having to distinguish between the two kinds of agenda: agenda for a particular meeting and the continuing agenda of the Council which may be valid for some time. The expression 'is seized' is intended to cover the latter case.

"It is not the wish of the Committee of Experts, I presume, that matters which have not come up for consideration by the Council should be put in the summary statement. This point has already been met by the provision requiring the Secretary-General to communicate matters to the representatives on the Security Council as provided for in rule 6.

"So, in order to preserve the integrity of rule 11, and with the understanding that this case is covered by rule 6, I should like to voice the opinion of the Committee of Experts that the present text should be maintained."

<sup>3</sup> 31st meeting: pp. 109-110.

## Part II

### THE PROVISIONAL AGENDA

#### NOTE

By the provisions of rule 6, the Secretary-General is under an obligation to "bring to the attention of all representatives on the Security Council all communications from States, organs of the United Nations, or the Secretary-General concerning any matter for the consideration of the Security Council in accordance with the provisions of the Charter". Effect is normally given to this rule by the distribution of communications as documents in the S/ series.<sup>1</sup> When the Secretary-General has been in doubt whether a communication came under the definition given in rule 6, he has either decided not to circulate a communication as a document<sup>2</sup> or has circulated the communication with a prefatory note stating that his action was not expressly in accordance with the terms of rule 6.<sup>3</sup> Certain communications originating from sources other than those described in rule 6 have also been circulated as documents in the S/ series on the basis of Article 54 of the Charter.<sup>4</sup> Certain matters have been brought to the attention of the Security Council through the medium of the S/ series and, though not placed on

the provisional agenda, have been included in the Report of the Security Council to the General Assembly.

Rule 7 entrusts the drawing up of the provisional agenda for each meeting to the Secretary-General, subject to the approval of the President of the Security Council. The Secretary-General's discretion with respect to the inclusion of new items is restricted to those items which have been brought to the attention of the Council under rule 6. In addition to the express provisions of rule 7, the Secretary-General has also taken into account whether a specific request to include the item has been made. Pursuant to rule 9, the first item on every provisional agenda is the adoption of the agenda. It is during the discussion relating to the adoption of the agenda that views are expressed with respect to the provisional agenda prepared by the Secretary-General. The order of other items appearing on the provisional agenda usually depends on the stage of consideration reached at the previous meeting and the urgency of new communications. In any event, it is for the Council to decide the order of items on its agenda, which need not coincide with the order of items as contained in the provisional agenda. Items on the provisional agenda other than item 1 are generally described either by the title of the relevant document, by a brief heading covering the subject matter followed by the title of the relevant document as a sub-heading, by a title which has been specifically requested, or by a title which has been previously approved by the Council. The wording of items on the agenda is also a matter for final approval by the Security Council itself. If several communications

<sup>1</sup> A list of documents in the S/ series through 1949 is to be found in the Check List of United Nations documents, Part 2, No. 1. Lists of documents issued since 1949 may be found in the supplements to the Official Records of the Security Council.

<sup>2</sup> See *O.R.*, 3rd year, *Suppl. for Jan., Feb. and Mar. 1948*, pp. 31-34 in connexion with the letter from Mr. Jan Papanek concerning the Czechoslovak question.

<sup>3</sup> See Cases 2 and 3.

<sup>4</sup> Communications from the Organization of American States and the Inter-American Commission for Peace have been distributed as documents in the S/ series whenever received.

relate to one question, the proposed agenda item is usually followed by sub-items corresponding to the individual communications.

The practice of the Secretary-General with regard to the circulation of communications, and of the Secretary-General and of the President of the Council with regard to the preparation of the provisional agenda, is only in small degree reflected in the Official Records of the Council. The cases entered in respect of rule 7 comprise instances in which a question has been raised on the adoption of the agenda directly relating to the discharge by the President or Secretary-General of their duties under this rule. Reference should also be made to other sections in which the proceedings on adoption of the agenda bear on the preparation of the provisional agenda, viz.: in respect of the mandatory character of rule 10;<sup>8</sup> the effect of rule 10 as regards the order of items;<sup>9</sup> the phrasing of items on the agenda.<sup>7</sup>

#### A. RULE 6: CIRCULATION OF COMMUNICATIONS BY THE SECRETARY-GENERAL

##### CASE 2

Three communications on the Hyderabad question, dated 21 August, 12 September and 13 September 1948, were circulated by the Secretary-General with the following prefatory note:<sup>8</sup>

"The Secretary-General, not being in a position to determine whether he is required by the rules of procedure to circulate this communication, brings it to the attention of the Security Council, for such action as the Security Council may desire to take."

These communications were received prior to the decision of the Security Council, at the 357th meeting on 16 September 1948, to include the Hyderabad question in the agenda. Following this decision, subsequent communications did not contain this note.

##### CASE 3

On 10 February 1949, the following note was included as an introduction to a communication received from the Democratic People's Republic of Korea:

"In view of the General Assembly resolution [195 (III)] of 12 December 1948, paragraph 2, the Secretary-General is circulating the following communication for the convenience of the members of the Security Council which may desire to be informed of it and not in the application of rule 6 of the provisional rules of procedure of the Security Council."

The communication was placed on the provisional agenda at the 409th meeting on 15 February 1949 at the request of the representative of the USSR.<sup>9</sup>

#### B. RULE 7: PREPARATION OF THE PROVISIONAL AGENDA<sup>10</sup>

##### CASE 4

At the 136th meeting on 22 May 1947, item 2 of the provisional agenda was the letter of 7 May 1947

<sup>7</sup> See Cases 53, 54, 55.

<sup>8</sup> See Cases 38, 39.

<sup>9</sup> See Cases 47, 49.

<sup>10</sup> S/986, S/998, S/1000, O.R., 3rd year, Suppl. for Sept. 1948, pp. 5, 6.

<sup>11</sup> S/1247, 409th meeting: pp. 12, 18; S/1256, 409th meeting: pp. 14-15.

<sup>12</sup> Reference should also be made to Cases 38, 39, 54 and 55 for material concerning rule 10 in relation to the preparation of the provisional agenda.

regarding the application of Italy for membership in the United Nations. The representative of Australia objected that the application "should not be entertained by the Council". At that stage, the representative of Syria replied that applications received by the Secretary-General should be referred to the Security Council and ought to be put on the agenda. The Secretary-General "cannot by himself decide on the acceptance or non-acceptance of such an application".

**Decision:** *The Council adopted the agenda without change.*<sup>11</sup>

##### CASE 5

At the 382nd meeting on 25 November 1948, the provisional agenda contained the Hyderabad question as item 2 and the India-Pakistan question as item 3. On the representative of Canada proposing to reverse the order of those two items, the President (Argentina) informed the members of the Council that "the Secretariat, in agreement with the President, prepared the agenda for today's meeting in the chronological order in which the documents on the questions were submitted".

**Decision:** *As there were no objections, the Council reversed the order of the items on the provisional agenda.*<sup>12</sup>

##### CASE 6

At the 492nd meeting on 29 August 1950, the representative of the United States stated:<sup>13</sup>

"... My question is whether, since this preliminary paper is still within the jurisdiction of the President—and I think it continues to be within his jurisdiction until the Security Council acts upon it—the President would find it wise and convenient to change paragraph 3 of the provisional agenda which now reads as follows:

"Statement of the Central People's Government of the People's Republic of China concerning armed invasion of the territory of China by the Government of the United States of America and concerning violations of the Charter of the United Nations."

"Would the President be willing to substitute for that wording in the provisional agenda to be considered by the Security Council, the language: 'Complaint regarding Formosa'?"

The President (USSR) replied:<sup>14</sup>

"The item on the agenda was worded in accordance with the contents of the statement received from the Central People's Government of the People's Republic of China... It is naturally for the Security Council to decide whether to adopt the agenda in its present form of words or in the form proposed by the United States representative. The President presumes that the best way to decide this question is to decide it by a vote."

**Decision:** *The item was changed to read "Complaint of armed invasion of Taiwan (Formosa)" by 7 votes in favour, 2 against, with 1 abstention and 1 member not participating in the vote.*<sup>15</sup>

##### CASE 7

At the 492nd meeting on 29 August 1950, the President, as representative of the USSR, proposed the

<sup>13</sup> 136th meeting: pp. 888-889.

<sup>14</sup> 382nd meeting: pp. 1-2.

<sup>15</sup> 492nd meeting: p. 2.

<sup>16</sup> 492nd meeting: p. 2.

<sup>17</sup> 492nd meeting: pp. 11-12.

inclusion in the agenda of a new item. On objection being raised to its inclusion in the agenda of that meeting on grounds of inadequate notice, the President stated:

"If there are no objections or observations, this question will be included in the provisional agenda of the next meeting of the Security Council."

The representative of the United States stated:

"The provisional agenda is entirely in the hands of the President. The Security Council has no business making an agreement about what will be in the provisional agenda. If the remarks of the President mean that he will exercise his office and put the question on the provisional agenda, that amounts to nothing but a notice. That is fair enough. It leaves us, the Security Council, with our power to decide on the provisional agenda in the usual way."

The President replied that he would do that.<sup>16</sup>

#### CASE 8

At the 525th meeting on 27 November 1950, the provisional agenda consisted of the following item:

"2. (a) Complaint of armed invasion of Taiwan (Formosa).

(b) Complaint of aggression upon the Republic of Korea."<sup>17</sup>

The President (Yugoslavia) explained that he had combined the two items as a single item with a view to their discussion together. Objection was raised by the representative of the USSR.<sup>17</sup>

**Decision:** *The Council rejected, by 1 vote in favour, 7 against and 3 abstentions, the proposal of the USSR to separate the two items, and adopted the agenda as submitted.*<sup>18</sup>

#### C. RULE 8: COMMUNICATION OF THE PROVISIONAL AGENDA<sup>19</sup>

##### CASE 9

At the 356th meeting on 30 August 1948, the provisional agenda contained three items: item 2, on the India-Pakistan question, concerning a message from the Chairman of UNCIP,<sup>20</sup> and item 3, on the Palestine question, concerning a cablegram from the Israeli Minister of Foreign Affairs.<sup>21</sup>

Objection was raised by the representative of the United States to the consideration of these items on

<sup>16</sup> 492nd meeting: pp. 13-14.

<sup>17</sup> For texts of relevant statements see:

525th meeting: President (Yugoslavia), pp. 1-2; India, p. 14; USSR, pp. 1-6, 12-14, 17; United Kingdom, pp. 10-12; United States, pp. 7-10, 16.

<sup>18</sup> 525th meeting: p. 19.

<sup>19</sup> For cases of communication of the agenda "in urgent circumstances", see 171st meeting, p. 1617; 473rd meeting, p. 1; 531st meeting, pp. 7-8.

Reference should also be made to rule 26. For the adjournment of a meeting before adoption of the agenda owing to lack of three days' advance communication of relevant documentation, see 454th meeting, pp. 1-4.

For decision to defer adoption of an item on the provisional agenda owing to lack of three days' notice, while adopting other items, see 90th meeting, pp. 22-24.

<sup>20</sup> S/987, O.R., 3rd year, Suppl. for Aug. 1948, p. 164.

<sup>21</sup> S/985, O.R., 3rd year, Suppl. for Aug. 1948, pp. 163-164.

the grounds that members of the Council had agreed that no further meetings would be held in New York unless an emergency arose; the items in question could not, he contended, be deemed to constitute an emergency. The President (USSR) replied that the meeting was necessary to obtain an exchange of views in the Council on the points raised. Objection was also raised by the representatives of Syria and Belgium on the grounds that it was inexpedient for the Security Council to reply to the questions raised in the cablegram from Israel. After further discussion, the President stated that the exchange of views had indicated the position of "a number of members of the Security Council" that the communications in question should be filed without being answered.

"Thus, in discussing the provisional agenda, we have touched on the very substance of the question, and have exchanged views on it, and that was in fact what was required in connexion with these two questions."

**Decision:** *The Council rejected the proposal to adopt the agenda by 2 votes in favour and 9 abstentions.*<sup>22</sup>

##### CASE 10

At the 365th meeting on 14 October 1948, the representative of Syria objected to the adoption of the agenda on the grounds that notice of the meeting had been received the previous evening, without any indication of the agenda. He expressed the view that no emergency had arisen to justify recourse to rule 8. The President (United States) indicated that he had, within the letter and the spirit of rule 8, taken the opportunity of a suspension of meetings of the First Committee to call a meeting of the Security Council for certain pressing business. The representative of the USSR observed that, contrary to the usual practice, no indication was given in the provisional agenda of the documents to be discussed.

**Decision:** *The Council adopted the agenda by 8 votes in favour and 3 abstentions.*<sup>23</sup>

##### CASE 11

At the 521st meeting on 10 November 1950, the "Complaint of aggression upon the Republic of Korea" constituted item 3 of the provisional agenda. The representative of the USSR proposed that item 3, which had not been included in the provisional agenda circulated three days before the meeting, should not be included in "the agenda of today's meeting". He considered that rule 2 of the rules of procedure concerned only the calling of a meeting and could not justify the addition of questions to the provisional agenda. The President (Yugoslavia) ruled:

"In my view rule 2 of the rules of procedure, taken together with Chapter II of those rules and in particular with rule 8, which deals with urgent circumstances, cannot be interpreted otherwise than as defining the duty of the President to place on the provisional agenda of a meeting already called

<sup>22</sup> For texts of relevant statements see: 356th meeting: Belgium, p. 3; Syria, pp. 2, 7-8; USSR, pp. 5-7; United Kingdom, p. 5; United States, pp. 3-5.

<sup>23</sup> For texts of relevant statements see: 365th meeting: President (United States), p. 2; Syria, pp. 1-2; USSR, p. 3.



any matter which a member of the Council requests him to place there as a matter of urgency."<sup>24</sup>

<sup>24</sup> For texts of relevant statements see: 521st meeting: President (Yugoslavia), pp. 2, 11-12; France, p. 2; India, pp. 12-13; USSR, pp. 4-11; United Kingdom, pp. 13-14.

**Decision:** The Council rejected the USSR amendment to delete item 3 from the agenda by 1 vote in favour and 10 against.<sup>25</sup>

<sup>25</sup> 521st meeting: p. 15.

### Part III

#### ADOPTION OF THE AGENDA (RULE 9)

##### NOTE

By rule 9 of the provisional rules of procedure, the first item of the provisional agenda for each meeting of the Security Council is the adoption of the agenda.<sup>1</sup> It has been the practice of the Council to adopt the agenda without vote, either with or without amendments to the provisional agenda, unless an objection has been raised.<sup>2</sup> Where the Council has adopted the agenda without a vote, no unusual features are presented, and it has, therefore, not been deemed profitable to catalogue all the numerous occasions on which no objection has been raised.

Part III is therefore devoted to the proceedings of the Council on those occasions on which objection has been raised to the adoption of the agenda. Section A deals with the manner in which the Council has taken decisions on the objections raised. The material is first presented in tabulated form. The decision of the Council has at times been taken by vote on the provisional agenda as a whole or on individual items therein, and at times by vote first on amendments to the provisional agenda followed by a decision of the Council, with or without vote, on the provisional agenda as amended. The information is provided as to the occasions on which the Council, in voting on items in the provisional agenda, voted on the proposal to include, and those on which it voted to delete, the item; and, in connexion with votes on the adoption of the agenda as a whole, the instances of votes on the proposal to adopt are distinguished from the instances of votes on the proposal not to adopt.

The tabulation is followed by selected entries of discussion in the Council on the procedure of voting on adoption of the agenda. The question of the adoption of the agenda has on no occasion been regarded

<sup>1</sup> Meetings of the Security Council on the same question held in the morning and in the afternoon have been considered to be separate meetings, but the agenda of the first meeting may be automatically applied to the second, and the Council may dispense with the formality of adopting the same agenda twice on the same day. (26th meeting: p. 22; 56th meeting: p. 98.) See also 289th meeting: p. 36, in connexion with the India-Pakistan question when the Security Council decided "to adjourn for a half hour and return at 2 o'clock". At the 290th meeting held that afternoon the agenda was that of the 289th meeting, document S/Agenda 289/Rev.1, and discussion of the India-Pakistan question was continued.

<sup>2</sup> See for example, (a) 90th meeting: p. 24. The representative of the USSR proposed to defer the adoption of item 4 of the provisional agenda concerning the first report of the Atomic Energy Commission to the Security Council. There being no objection to the proposal, the agenda with the exception of item 4, which was deferred to a later meeting, was adopted without vote. (b) 504th meeting: pp. 2-3. At the beginning of the meeting, called at the request of the USSR, the representative of the USSR asked for the item "Complaint of aggression upon the Republic of Korea" to be added to the provisional agenda. There being no objection to the request, the provisional agenda was adopted as amended, without vote.

by the Security Council as other than a procedural matter.<sup>3</sup> The cases also bear on the question whether an objection to the provisional agenda should be voted on as an amendment in accordance with rule 33, para. 1 (6).<sup>4</sup>

Section B presents case histories of the discussion in the Council when objection has been raised to the adoption of the agenda on grounds connected with the substance of the item on the provisional agenda. The case histories are not concerned with the grounds of objection, which are, however, briefly indicated; these grounds are stated more fully elsewhere in the *Repertoire*, notably in chapter X in connexion with Article 33 and in chapter XII in connexion with Articles 2 (7) and 106. The case histories in section B relate to the procedural aspects of such discussion at the stage of adoption of the agenda. The material is divided under two heads: firstly, consideration of requirements for the inclusion of an item in the agenda; and, secondly, the effect of the inclusion of an item in the agenda. Material from the same episode in the proceedings of the Council is entered under the one or other heading according to its bearing; but the eventual decision of the Council is recorded but once in one or the other sub-section. This arrangement of the material has seemed the more appropriate in that any conclusions from the evidence so afforded must be derived rather from the trend of the observations than from the decisions; and the significance of the observations can be the more readily appreciated when grouped under the two headings.

Material under the first heading relates mainly to considerations of form connected with the right of Members of the United Nations to submit questions to the Security Council. Where the view has been stressed that the submission of questions to the Security Council constitutes a right of Members of the United Nations under Article 35, this view has necessarily been accompanied by the contention that the Council should either dispense with requirements of form or set only minimum requirements in order not to infringe the right of submission.<sup>5</sup> Dispensation with stringent requirements for the inclusion of an item in the agenda has also been urged on other grounds: namely, that since consideration of objection to the inclusion of an item on grounds of lack of competence results in extensive discussion of that question or of the merits before the adoption of the agenda, it is more appropriate and expedient to place the question on the agenda first.

<sup>3</sup> See chapter IV, Cases 1-10.

<sup>4</sup> See Case 13 in which this point was expressly raised.

<sup>5</sup> For a suggestion by the representative of the Netherlands for the preliminary examinations of complaints by a committee of three rapporteurs before inclusion in the agenda, see 67th meeting: p. 326; 72nd meeting: p. 460.



In the second part of section B are entered observations on the significance of the inclusion of an item in the agenda—whether adoption of the agenda constitutes a judgment on the merits of the case, on the competence of the Security Council, or on the juridical status of the parties.

Other questions of procedure arising on adoption of the agenda are dealt with in section C. The provisional agenda in relation to the order of discussion of items is first dealt with; under this heading material is included relating to the bearing of rule 10 on priority in the discussion of items. Next is included material derived from proceedings on adoption of the agenda relating to the latitude of discussion on items of the agenda. The material in the third sub-section relates to considerations of form in the phrasing of agenda items. The fourth sub-section covers case histories of the postponement of the consideration of items at the stage of adoption of the agenda.

Matters relating to the ordering of the business of the Council have also on occasion been raised at this stage of the meeting of the Council.

#### A. PROCEDURE OF VOTING ON ADOPTION OF THE AGENDA

##### 1. Votes taken concerning individual items in the provisional agenda

When objection has been raised to the inclusion in the agenda of an item on the provisional agenda, the vote has been taken in one of three ways:

##### (i) On the proposal to include the item in the agenda

25th meeting, 26 March 1946; item 4: voted upon at the 26th meeting, 26 March 1946.<sup>6</sup>

54th meeting, 28 August 1946; item 3: voted upon at the 59th meeting, 3 September 1946.<sup>7</sup>

72nd meeting, 24 September 1946; item 2.<sup>8</sup>

132nd meeting, 30 April 1947; item 2.<sup>9</sup>

143rd meeting, 20 June 1947; item 2, and item 3.<sup>10</sup>

154th meeting, 10 July 1947; item 2.<sup>11</sup>

327th meeting, 25 June 1948; item 3.<sup>12</sup>

357th meeting, 16 September 1948; item 2.<sup>13</sup>

482nd meeting, 3 August 1950; item 2, and item 3.<sup>14</sup>

493rd meeting, 31 August 1950; item 4, and item 5.<sup>15</sup>

502nd meeting, 18 September 1950; item 2.<sup>16</sup>

##### (ii) On the proposal to delete the item from the provisional agenda

25th meeting, 26 March 1946; item 4: voted upon at the 26th meeting, 26 March 1946.<sup>17</sup>

384th meeting, 15 December 1948; item 3.<sup>18</sup>

<sup>6</sup> P. 27. The item was voted upon first as an amendment to the provisional agenda. After the rejection of this proposal, the Council voted to include the item in the agenda.

<sup>7</sup> P. 197.

<sup>8</sup> P. 460. See Case 18.

<sup>9</sup> P. 820.

<sup>10</sup> P. 1052.

<sup>11</sup> P. 1260.

<sup>12</sup> P. 9.

<sup>13</sup> P. 11.

<sup>14</sup> Pp. 22-23.

<sup>15</sup> P. 30.

<sup>16</sup> P. 14. See Case 14.

<sup>17</sup> P. 27.

<sup>18</sup> P. 4.

409th meeting, 15 February 1949; item 2.<sup>19</sup>

521st meeting, 10 November 1950; item 3.<sup>20</sup>

525th meeting, 27 November 1950; item 2 (b).<sup>21</sup>

In these instances above under (i) and (ii), with the exception of the 26th meeting, the agenda was adopted without vote after the vote on the individual item. In certain cases the vote has been taken directly on the adoption of the agenda as a whole.

##### (iii) On the adoption of the agenda as a whole and not on the individual item

95th meeting, 20 January 1947; objection to item 5.<sup>22</sup>

224th meeting, 19 December 1947; objection to item 4.<sup>23</sup>

268th meeting, 17 March 1948; objection to item 2.<sup>24</sup>

In other instances, the vote has been taken as follows:

##### 2. Votes taken on proposals to include in the agenda items not on the provisional agenda

352nd meeting, 18 August 1948.<sup>25</sup>

383rd meeting, 2 December 1948.<sup>26</sup>

386th meeting, 17 December 1948.<sup>27</sup>

482nd meeting, 3 August 1950.<sup>28</sup>

503rd meeting, 26 September 1950.<sup>29</sup>

##### 3. Votes taken on proposals to change the order of items

351st meeting, 18 August 1948.<sup>30</sup>

439th meeting, 7 September 1949.<sup>31</sup>

462nd meeting, 17 January 1950.<sup>32</sup>

521st meeting, 10 November 1950.<sup>33</sup>

568th meeting, 18 December 1951.<sup>34</sup>

##### 4. Votes taken on proposals to combine two or more items as a single item

568th meeting, 18 December 1951.<sup>34</sup>

In the instances under 2, 3 and 4 above, the agenda was subsequently adopted without vote, with the exception of the 568th meeting.

##### 5. Votes taken on the adoption of the agenda as a whole

##### (i) On the proposal that the agenda be adopted

356th meeting, 30 August 1948.<sup>35</sup>

365th meeting, 14 October 1948.<sup>36</sup>

427th meeting, 16 June 1949.<sup>37</sup>

568th meeting, 18 December 1951.<sup>38</sup>

<sup>19</sup> P. 3.

<sup>20</sup> P. 15. See Case 15.

<sup>21</sup> P. 19.

<sup>22</sup> P. 117.

<sup>23</sup> P. 2796.

<sup>24</sup> P. 101.

<sup>25</sup> P. 2.

<sup>26</sup> P. 7.

<sup>27</sup> P. 23.

<sup>28</sup> P. 20. See Case 13.

<sup>29</sup> Pp. 15, 23.

<sup>30</sup> Pp. 1-2.

<sup>31</sup> P. 5.

<sup>32</sup> P. 3.

<sup>33</sup> P. 15.

<sup>34</sup> P. 15.

<sup>35</sup> P. 10. See Case 12.

<sup>36</sup> P. 4.

<sup>37</sup> P. 10. See Case 10.

<sup>38</sup> P. 16. After rejection of two amendments.

(ii) *On the proposal that the agenda be not adopted*  
519th meeting, 8 November 1950.<sup>39</sup>

#### CASE 12

At the 356th meeting on 30 August 1948, when objection was raised to the adoption of the agenda, the President (USSR) requested the members "in favour of not considering these questions at today's meeting" to raise their hands.

The representative of the United Kingdom had stated that:

"... when the question comes to a vote, it is the adoption of the provisional agenda, and not its non-adoption, that must receive seven affirmative votes."

The representative of Syria reiterated this view. He observed:<sup>40</sup>

"According to our rules of procedure, the first point to be discussed is the adoption of the agenda. To turn this question about and vote on it in a negative manner is not correct."

The President indicated that he would put to the vote the adoption of the agenda.

**Decision:** *The Council rejected the proposal to adopt the agenda by 2 votes in favour and 9 abstentions.*<sup>41</sup>

#### CASE 13

At the 480th meeting on 1 August 1950, the provisional agenda contained as item 2, "Recognition of the representative of the Central People's Government of the People's Republic of China as the representative of China", and as item 3, "Peaceful settlement of the Korean question".

The representative of the United States introduced an amendment to the provisional agenda providing that the item following "Adoption of the Agenda" should be "Complaint of aggression upon the Republic of Korea", which did not appear on the provisional agenda. He stated:

"There were several reasons for putting this motion in writing in addition to the oral motion which I made previously. One reason was in order to make it perfectly clear exactly what the motion is, namely, an amendment proposed to the provisional agenda. The reason why I want to make that clear is in order to have a ruling under rule 33 of our provisional rules of procedure..."

"Another reason why this was put into writing was to make it perfectly clear that it cannot be confused with the items on the provisional agenda which are now numbered 2 and 3. It is distinct and separate from those items. Those items, of course, cannot be voted upon first because the provisional agenda has not been adopted. The provisional agenda cannot be adopted until we have disposed of the proposed amendment."

The President (USSR) replied:

"Up to the present, ... the agenda has always been approved by the President in accordance with

the rules of procedure and submitted for adoption by the Security Council. Never in the history of the Security Council have any amendments been submitted to the provisional agenda as approved by the President and submitted for adoption by the Security Council. The Security Council is free to adopt or reject the provisional agenda approved by the President. But to submit an amendment to the provisional agenda thus approved by the President, as the representative of the United States is trying to do, in violation of the rules of procedure, is to usurp the rights of the President and to do violence to the rules of procedure."

At the 482nd meeting on 3 August 1950, the representative of the United Kingdom drew attention to the precedent of the 352nd meeting as contrary to the President's statement.

The President ruled that the items would be voted upon in the order in which they had been submitted, the United States amendment being put to the vote after a decision had been taken on items 2 and 3.<sup>42</sup>

**Decision:** *The President's ruling was challenged. The Council rejected the ruling by 2 votes in favour, 7 against and 2 abstentions.*

*The United States amendment was then adopted by 7 votes in favour, 1 against and 2 abstentions.*

*Item 2 of the provisional agenda was rejected by 5 votes in favour, 5 against and 1 abstention.*

*Item 3 was rejected by 3 votes in favour, 7 against and 1 abstention.*

*The President stated that "as a result of the voting, the agenda comprises a single item". Speaking as the representative of the USSR, he declared that "my delegation considers this decision of the Security Council illegal".*<sup>43</sup>

#### CASE 14

At the 502nd meeting on 18 September 1950, the representative of the USSR objected to the inclusion of item 2, "Complaint of aggression upon the Republic of Korea".

The President (United Kingdom) asked those in favour of the adoption of the agenda to raise their hands. The representative of China objected, as a point of order, that the President should put to the Council the omission of item 2. The President replied:

"Recent precedent suggests that it would be preferable to put this question in the positive form, that is, who is in favour of including item 2 on the agenda."

The representative of the USSR concurred that such was the practice. The representative of China explained the grounds of his objection to the procedure. The President ruled that he would put the question to the vote in the positive form which he had in-

<sup>39</sup> For texts of relevant statements see:

480th meeting: President (USSR), pp. 12, 15-16; United States, pp. 12-13.

481st meeting: President (USSR), pp. 1-2, 5, 17-18; China, p. 16; Cuba, pp. 12-13; Ecuador, pp. 10-11; France, pp. 11-12; Norway, pp. 13-14; United Kingdom, pp. 2-5; United States, pp. 14-15.

482nd meeting: President (USSR), pp. 18, 19-20; Egypt, pp. 12, 19; India, pp. 10-12; United Kingdom, pp. 1-2, 18-19, 21-22; United States, pp. 13-15; Yugoslavia, p. 17.

<sup>40</sup> 482nd meeting: pp. 19-20, 22-23.

<sup>39</sup> P. 6.

<sup>40</sup> For texts of relevant statements see:  
356th meeting: President (USSR), pp. 7, 8; Canada, pp. 8-9; Syria, pp. 7-8; United Kingdom, p. 5.

<sup>41</sup> 356th meeting: p. 10.

licated. The ruling was not challenged, and the President so proceeded.<sup>44</sup>

#### CASE 15

At the 521st meeting on 10 November 1950, after the representative of France had proposed that the order of items 2 and 3 should be reversed, the representative of the USSR proposed that item 3 of the provisional agenda should not be included in the agenda. Before the President (Yugoslavia) put the proposal to the vote, the representative of the USSR made the following statement:

"I did not propose that item 3 should be deleted from the agenda because it has not yet been included in the agenda. We are now discussing the provisional agenda. I therefore propose that this item should not be included in the agenda of today's meeting and that it should not be discussed at this meeting."

The President replied:

"...I shall ask the Council to decide on the amendment submitted by the USSR representative which in his opinion requests us not to include item 3 in the definitive agenda and which I interpret to mean the deletion of item 3 from the provisional agenda."

**Decision:** *The Council rejected the USSR proposal by 1 vote in favour and 10 against. The French amendment was adopted by 9 votes in favour, 1 abstention and 1 member of the Council not participating in the vote.*<sup>45</sup>

### B. CONSIDERATION OF

#### 1. Requirements for the inclusion of an item in the agenda

##### CASE 16

At the 25th meeting on 26 March 1946, the provisional agenda included the letter dated 18 March 1946 from the representative of Iran bringing to the attention of the Security Council, under Article 35 (1), a dispute between Iran and the USSR. The representative of the USSR proposed that the question raised by the Iranian representative should not be included in the agenda. He maintained that negotiations had been undertaken between the two Governments, in accordance with the Council's resolution of 30 January 1946, and that an understanding had been reached. In his opinion the inclusion of the item in the agenda would be contrary to the facts and reality and would contradict the meaning and the spirit of that resolution. The representative of the United States observed:

"All that is contemplated now is the adoption of an agenda which would give to the Iranian Government an opportunity to present facts which in the opinion of that Government constitute a threat to international peace. Surely the Council cannot deny to any Member of the United Nations the opportunity to present a request of that kind, filed in complete accord with the provisions of the Charter."

<sup>44</sup> For texts of relevant statements see: 502nd meeting: President (United Kingdom), p. 9; China, pp. 11, 13; USSR, pp. 12, 13, 14. A similar statement was made by the President (Syria) at the 327th meeting on 25 June 1948, p. 6.

<sup>45</sup> 521st meeting: pp. 14-15.

The representative of Poland expressed the view that the inclusion of the item in the agenda would imply non-recognition of the statement of the representative of the USSR that the causes for dispute had disappeared. He proposed that the Council "drop the issue from the agenda of this particular meeting," while the matter should remain, in accordance with the resolution of 30 January 1946, on the list of matters of which the Council was seized.

The representative of the Netherlands, supported by the representative of Mexico, stated:

"That which is now before us is not a question of substance; it is simply a question which I think in French is called *la question préalable*—the preliminary question—whether or not the Iranian case is to be put on the agenda. That is all."

The representative of the USSR observed:

"There is no justification for considering that the situation which has existed and now exists in Iran is fraught with complications likely to lead to the violation of international peace and security . . . If that is so . . . there are no grounds for including the question raised by him in the Security Council's agenda."

"I should like to remind the members of the Council that up to the present the Security Council has received a number of letters and communications which it has not thought possible or found advisable to include in the agenda for consideration. The Security Council may receive such communications in the future. The Council cannot admit all kinds of communications for consideration, but only those which ought to be considered in virtue of the pertinent provisions of the Organization's Charter."<sup>46</sup>

**Decision:** *At the 26th meeting on 26 March 1946, the proposal of the representative of the USSR to delete the item was voted upon as an amendment to the provisional agenda, and was rejected by 2 votes in favour and 9 against. The Council then decided to include the item in the agenda, by 9 votes in favour to 2 against.*<sup>47</sup>

##### CASE 17

At the 54th meeting on 28 August 1946, the communication from the Ukrainian SSR dated 24 August 1946 regarding Greece<sup>48</sup> constituted item 3 of the provisional agenda. The representative of the Netherlands objected to its inclusion in the agenda in the form in which it had been presented. It was, he contended, a series of unsubstantiated accusations. He added:

"The Council must . . . before admitting a matter on the agenda begin by satisfying itself that there is sufficient *prima facie* evidence that the matter to which attention is called is a serious and genuine difficulty . . ."

"The admission of an item on the agenda is by no means automatic or an empty formality."

" . . . I submit that any state which comes here should show to our satisfaction, in its submission, that on the face of it, the case deserves to be heard."

<sup>46</sup> For texts of relevant statements see: 25th meeting: Mexico, p. 19; Netherlands, pp. 18-19; Poland, pp. 17-18; USSR, pp. 12-13, 20; United States, p. 14.

<sup>47</sup> 25th meeting: p. 27.

<sup>48</sup> S/137, O.R., 1st year, 2nd series, Suppl. No. 5, pp. 149-151.

For that, some initial substantiation is plainly required . . ."

The representative of the United Kingdom associated himself with the view that the representative of the Ukrainian SSR should be asked to recast and to amplify his communication.

The representative of the USSR stated:

"The Council cannot evade the examination of this question since it is the obligation of the Security Council to examine questions of this kind . . ."

"In order to ascertain whether a statement by any Government appealing to the Security Council is right or wrong, it is necessary to examine the statement . . ."

On the proposal of the President (Poland), the Council decided to adopt item 2 of the provisional agenda, and to postpone the adoption of item 3.

Consideration of the adoption of the item was resumed at the 58th meeting on 30 August 1946 and at the 59th meeting on 3 September 1946. At the 59th meeting the Council had before it a communication from the Minister of Foreign Affairs of the Ukrainian SSR dated 1 September 1946,<sup>48</sup> to the effect that the right to substantiate his complaint derived from Article 35 and rule 37, and from the established practice of the Council. The representative of the United States then urged that the complaint should be placed on the agenda; if the charges were not substantiated, the complaint should be dismissed after examination. He stated:

"The position of my Government has, consistently . . . been that the Council cannot deny to a Member of the United Nations who states that a condition exists which is likely to threaten international peace and security, the opportunity to present the case . . ."

"My Government thinks, without prejudice to the merits of the complaint or even to the good faith behind the complaint, that the Council should place a minimum of technical requirements in the way of consideration of situations brought to its attention.

" . . . In my opinion, the Council will be derelict in its duty if it does not examine the complaint and all that may be said and brought to substantiate the complaint . . ."

The representative of Mexico expressed the view that the adoption of the agenda in such cases was "just a matter of form". He stated:

"I do not think that the Security Council has the right or even the power to decide whether or not to admit to this table a State that has presented for the consideration of the Council a situation governed by Article 35, with the requisites of Article 34, simply because that complaint does not fill certain requirements of form or even because the charges made have not been substantiated. I think that the Council is free and that it is within its power, once it has heard the complainant State, to dismiss the case, but it has no right to defer the consideration of that question by invoking requisites of form."

The representative of France observed that the solution of refusing to place a question on the agenda was unsatisfactory.

" . . . it is somewhat of a contradiction to decide that a complaint is not sufficiently serious to be examined before having examined it . . ."

"If it is objected that the claim is not properly presented, then judgment is being made purely on a basis of form, which is far from satisfactory."<sup>49</sup>

**Decision:** *The Council decided by 7 votes in favour, 2 against, with 2 abstentions, to include the communication of the Ukrainian SSR in the agenda.*<sup>51</sup>

#### CASE 18

At the 57th meeting on 29 August 1946, the representative of the USSR made a statement concerning the presence of Allied troops on non-enemy territory and proposed the collection of certain information relating thereto. The statement was placed on the provisional agenda of the 71st and 72nd meetings on 23 and 24 September 1946.

At the 71st meeting debate took place on the adoption of the agenda but was not concluded. At the 72nd meeting, which was to have continued the discussion of whether to include the item, the agenda was adopted without discussion at the beginning of the meeting. Nevertheless representatives continued to speak on the question of inclusion of the item in the agenda.

In his statement before the Security Council at the 71st meeting, the representative of the USSR contended that the question raised by him fell within the scope of Articles 34 and 35. At the following meeting, he observed that the USSR proposals contemplated the presentation to the Council of information as to the numbers and disposition of the forces of Allied Powers and location of military bases on the territory of the countries indicated. The Council had every right to demand such information. The representative of Poland supported the inclusion of the item. He stated at the 71st meeting:

"In our view, admission to the agenda is a purely procedural question. In any case we do not need to pass judgment on whether or not there is any situation such as described in Articles 34 and 35; this will be discussed after the item has been admitted to the agenda."

At the 72nd meeting the representative of Poland added that a "fundamental right" of a Member of the United Nations was involved. This right was stated in Article 35. It would be a dangerous practice to allow a minority of five in the Council to suffice to defeat this right.

Objection to the inclusion of the matter in the agenda was raised by the representatives of the United Kingdom, Australia, the United States, the Netherlands, Brazil, Mexico and China.

The representative of Australia contended that, in acting in pursuance of Article 24 (2), the Council was required to "exercise specific functions in regard to specific matters". The situation to which the representative of the USSR desired to draw attention was lacking in precision. He continued:

<sup>48</sup> For texts of relevant statements see:

54th meeting: President (Poland), pp. 35, 39; Netherlands, pp. 33-34; USSR, pp. 36-38; United Kingdom, p. 36.

59th meeting: Australia, pp. 195-196; France, p. 191; Mexico, p. 177; United States, pp. 175-176. See also Case 28 for statements on effect of inclusion in the agenda.

<sup>51</sup> 59th meeting: p. 197.

<sup>49</sup> S/148, 59th meeting: pp. 173-175.

"A situation of the kind described in Article 34 seems to us to be a particular situation, not a general world situation . . . Before we can make up our minds as to the admission of the item, we should get some fairly precise indication as to the whereabouts of that situation. By 'precise indication', I do not suggest at this stage that we should go into the merits of the case, but rather that we should be told exactly what spot the representative of the USSR has in mind which constitutes a danger to peace or a possible cause of friction."

The representative of the United States also contended that the situation described by the representative of the USSR was too vague and generalized to constitute a situation within the meaning of Chapter VI. The representatives of the Netherlands and Brazil associated themselves with these observations; the representative of the Netherlands indicated that he would oppose "placing on the agenda what is quite obviously an unreal case", and the representative of Brazil indicated that, while not questioning the right of members of the Council to request the inclusion of any matter in the agenda, it was for the Council "to decide whether or not such a matter deserved to be placed on the agenda".

The representative of France opposed the view that the situation outlined by the representative of the USSR failed to fall within the terms of Article 34.

He stated:

"I do not think that this Article ought to be understood only in the sense of a very definite and specific situation concerning a given country. It seems to me that a 'situation', in the sense of Article 34, may be a state of affairs which extends, as in the case before us, to several countries; or, shall we say, that it is not because the question raised by the USSR delegation is broader in scope than those which we usually examine, that it does not, for that reason, constitute a 'situation' and that, if it threatens the peace of the world, we ought to abstain from dealing with it. An excessively narrow interpretation of the Charter in regard to this matter would involve a dangerous limitation of the powers of the Security Council and would not in reality correspond to the duties incumbent upon us according to the terms of the Charter."

The representative of France questioned the validity of prejudging as "propaganda" a question brought before the Security Council, since it was not for the Council "to judge the motives from which a question might be brought before the Security Council". Only after a thorough study of the question would the Council "be able to say whether or not it constituted a threat to the peace". The real question before the Council was whether the examination of a question of the nature submitted by the representative of the USSR was really the best means of surmounting the difficulties involved. He continued, "The question of whether the problem at issue ought to appear on the agenda becomes a question not of procedure but essentially of advisability in the political sphere." The representative of Mexico also objected on the grounds that, in the political circumstances of the time, no useful purpose would be served by approving the USSR request, and the representative

of China considered that it would be neither wise nor prudent to take the matter up.<sup>52</sup>

**Decision:** At the 72nd meeting on 24 September 1946, the Council rejected the USSR proposal by 2 votes in favour, 7 against, and 2 abstentions.<sup>53</sup> After the voting the representative of Poland observed that his understanding was that the Council had voted, not on the proposal, but on its inclusion in the agenda.

#### CASE 19

At the 95th meeting on 20 January 1947, item 5 of the provisional agenda was the letter from the representative of the United Kingdom concerning incidents in the Corfu Channel.<sup>54</sup> The representative of the USSR objected to the inclusion of the item in the agenda on the grounds that the requirements of Article 33 had not been observed and that no threat to the peace was involved. The representative of the United Kingdom denied these contentions.<sup>55</sup>

**Decision:** The Council adopted the agenda without change by 10 votes in favour and 1 abstention.<sup>56</sup>

#### CASE 20

At the 171st meeting on 31 July 1947, in connexion with the Indonesian question (II), the representative of Belgium stated with regard to the Australian and Indian communications:<sup>57</sup>

"These communications represent an initiative taken by two States Members of the United Nations who invoke certain provisions of the Charter in their appeal to the Council. For this reason alone, these communications seem to be admissible and thus to qualify for inclusion in the Council's agenda."<sup>58</sup>

#### CASE 21

At the 268th meeting on 17 March 1948, the letter dated 12 March 1948 from the representative of Chile relative to events in Czechoslovakia<sup>59</sup> constituted item 2 of the provisional agenda. The representative of the USSR objected to its inclusion in the agenda on grounds of competence, and on the grounds that the allegations were unfounded and slanderous.

The representative of France stated:

" . . . and if it is contended, as the representative of the USSR contended a moment ago, that a complaint submitted to the Council has no facts to sup-

<sup>52</sup> For texts of relevant statements see:

57th meeting: USSR, pp. 141-142.

71st meeting: Australia, p. 426; Brazil, pp. 441-442; Netherlands, p. 440; Poland, pp. 429, 450-451; USSR, pp. 437-438; United Kingdom, pp. 423-425; United States, pp. 427-428.

72nd meeting: Australia, pp. 453-454; China, pp. 449-450; France, pp. 444-448; Mexico, pp. 448-449; Netherlands, p. 460; USSR, pp. 458-459; United States, p. 452. See also Case 29 for statements on effect of inclusion in the agenda.

<sup>53</sup> 72nd meeting: p. 460.

<sup>54</sup> S/247, O.R., 2nd year, Suppl. No. 3, annex 8, p. 35.

<sup>55</sup> For texts of relevant statements see:

95th meeting: USSR, p. 115; United Kingdom, p. 116.

<sup>56</sup> 95th meeting: p. 117.

<sup>57</sup> S/449 and S/447, O.R., 2nd year, Suppl. No. 16, pp. 149-150.

<sup>58</sup> 171st meeting: p. 1617. See also Case 31 for statements on effect of inclusion in the agenda and decision.

<sup>59</sup> S/694, O.R., 3rd year, Suppl. for Jan., Feb. and March 1948, pp. 31-34.



port it, we must still be able to examine it to find out whether or not that is really the case; to do that, we must first of all include it in the agenda."

The representative of Belgium stated:

"In submitting this question to the Council, the representative of Chile has exercised a right accorded to him by the Charter, and the Security Council is not at liberty to refuse to include such an item in the agenda, once it has established that the request is made by a State Member and is based on an Article of the Charter."

The representative of the USSR stated:

"... The United Nations Charter does not call for action on, or investigation of, all statements or all questions which even a State may bring before the United Nations."<sup>60</sup>

#### CASE 22

At the 327th meeting on 25 June 1948, the provisional agenda included, as item 3, the Secretary-General's letter of 3 December 1947 drawing attention to General Assembly resolution 114 (II) of 17 November 1947, concerning relations of Members of the United Nations with Spain.<sup>61</sup>

The representative of Argentina objected to the inclusion of the item in the agenda on grounds of domestic jurisdiction. The representatives of the United Kingdom, United States and Canada expressed the view that consideration of the situation in Spain under the General Assembly resolution was not called for at that time. The representatives of the USSR and the Ukrainian SSR contended that the Council should discuss the matter to decide whether to adopt any decisions.<sup>62</sup>

**Decision:** The Council rejected the proposal to include the item in the agenda by 2 votes in favour, 1 against and 8 abstentions.<sup>63</sup>

#### CASE 23

At the 361st meeting on 4 October 1948, the identic notifications dated 29 September 1948,<sup>64</sup> constituted item 2 of the provisional agenda. In connexion with the objection raised by the representative of the USSR to their inclusion in the agenda, the representative of Belgium stated as a point of order:

"... The right of calling upon the Security Council is one of the rights of Member States under the terms of the Charter. When a Member State exercises that right, the Council is automatically seized of it. Consequently, the inclusion by the Council of the communications thus made on its agenda is merely a formality. The Council notes that the request in fact emanates from a Member State and

that, consequently, it has been seized of the matter in a regular fashion."

The representative of the USSR observed in reply:

"If rule 9 states that the first item on the provisional agenda for each meeting of the Security Council is the adoption of the agenda, this can mean only one thing, namely that the Security Council must discuss whether the agenda has been correctly drawn up, and whether certain questions should or should not be included on the agenda. If the agenda is correct it should be adopted; if it is incorrect, it should not; but the matter must first be discussed.

"What is involved in deciding whether or not certain questions should or should not be included in the agenda? It means taking a decision with regard to the reasons and grounds adduced in favour of the inclusion of certain items; or, on the other hand, rejecting the reasons put forward against the inclusion of these particular questions in the agenda."<sup>65</sup>

At the 362nd meeting on 5 October 1948, the representative of France stated:

"First of all, I wish to make a reservation with respect to the point of view expressed by the representative of Belgium.

"Although we perhaps do not go as far as he does, and although we do not perhaps consider that every item we are asked to inscribe on the agenda should be inscribed thereon, my delegation has always felt and maintained that, once a discussion was undertaken on a question, it would have been normal for that question to have been first included on the agenda."<sup>66</sup>

#### CASE 24

At the 492nd meeting on 29 August 1950, the statement by the People's Republic of China regarding armed invasion of Taiwan (Formosa)<sup>67</sup> constituted item 3 of the provisional agenda. The representative of China objected to the inclusion of the item. He observed:

"When a question is placed on the agenda of the Security Council, there must be at least some mild degree of a *prima facie* case. As regard this complaint, there is not even the flimsiest *prima facie* case."

He continued that his Government was in effective control of the island of Taiwan; that it knew of no aggression on the part of the United States, and had no complaint to make. The representative of the United Kingdom indicated that the People's Republic of China was in effective control of the greater part of China and that it had made a complaint against the United States Government, which had indicated that it would welcome consideration of the case by the United Nations. He concluded that the Council would "hardly be accomplishing its duty if it failed to place such a serious matter on its agenda". The representative of the USSR contended that the Council was required to consider the question arising from the statement by the People's Republic of China that "the United States Government

<sup>60</sup> For texts of relevant statements see: 268th meeting: Belgium, p. 100; Colombia, pp. 95-96; France, p. 98; Syria, p. 95; Ukrainian SSR, p. 96; USSR, pp. 90-93, 100; United Kingdom, pp. 93-94; United States, pp. 99-100. See also Case 32 for statements on effect of inclusion in the agenda and decision.

<sup>61</sup> S/622.

<sup>62</sup> For texts of relevant statements see: 327th meeting: Argentina, pp. 6-8; Canada, p. 8; Ukrainian SSR, pp. 4-6; USSR, pp. 2-3; United Kingdom, p. 4; United States, p. 4.

<sup>63</sup> 327th meeting: pp. 8-9.

<sup>64</sup> S/1020 and Add.1, O.R., 3rd year, Suppl. for Oct. 1948, pp. 9-45.

<sup>65</sup> For texts of relevant statements see:

361st meeting: Belgium, p. 16; USSR, p. 17. See also Case 34 for statements on effect of inclusion in the agenda and decision.

<sup>66</sup> 362nd meeting: pp. 1-2.

<sup>67</sup> S/1715, 490th meeting: pp. 9-10.



had committed an act of armed invasion of the territory of China".<sup>68</sup>

**Decision:** *The Council included the item in the agenda, in the form proposed by the representative of India, by 7 votes in favour, 2 against, 1 abstention, and one member not participating in the vote.*<sup>69</sup>

#### CASE 25

At the 493rd meeting on 31 August 1950, item 4 of the provisional agenda related to the complaint by the People's Republic of China concerning the air bombing of the territory of China.<sup>70</sup>

The representative of China objected to the inclusion of the item in the agenda on the grounds that no *prima facie* case had been made. The representative of Cuba also opposed it, stating that the matter had been submitted for the purpose of propaganda. The President (USSR), as the representative of the USSR, urged that it was the duty of the Security Council to consider the complaint since it related to "an unprovoked act of aggression". The representative of the United Kingdom expressed the view that the Council should "look into this matter and try to establish the facts".<sup>71</sup>

**Decision:** *The Council decided by 8 votes in favour and 3 against to include the item in the agenda.*<sup>72</sup>

#### CASE 26

At the 559th meeting on 1 October 1951, the provisional agenda included the item: "Complaint of failure by the Iranian Government to comply with provisional measures indicated by the International Court of Justice in the Anglo-Iranian Oil Company case", submitted by the representative of the United Kingdom in the letter dated 28 September 1951. The representatives of Yugoslavia and the USSR objected to the inclusion of the item in the agenda on grounds of domestic jurisdiction.

The representative of Ecuador, supported by the representative of Turkey, stated:

"If a Member of the United Nations submits a complaint regarding a situation or an action which in its view contains an inherent danger and may consequently threaten international peace and security, I do not see how the Security Council can refuse to include such a complaint in its agenda."

The representative of the United States observed:

"... Certainly it appears that there is a *prima facie* case to be presented to the Security Council; and if the Security Council is going to deny to the United Nations the right to consider this item on the agenda, it must be only after studying the item and reaching a decision after thorough consideration."

<sup>68</sup> For texts of relevant statements, see: 492nd meeting: China, p. 3; USSR, pp. 9-12; United Kingdom, pp. 8-9. See also Ecuador, 492nd meeting: p. 19; Cuba, 493rd meeting: p. 10. (For the modification of the text of the agenda item, see Case 48.)

<sup>69</sup> 492nd meeting: p. 12.

<sup>70</sup> S/1722, O.R., 5th year, Suppl. for June, July and August 1950, pp. 144-145.

<sup>71</sup> For texts of relevant statements see: 493rd meeting: China, p. 7; Cuba, p. 11; Egypt, p. 2; USSR, pp. 5, 12-14; United Kingdom, p. 22.

<sup>72</sup> 493rd meeting: p. 30.

The representative of China stated:

"... the representative of the United States... if I understood him correctly... seemed to say that this question may be a question of peace and security and that, since the Security Council has the primary responsibility in matters of peace and security, therefore the Security Council must put this matter on the agenda. That line of argument is not acceptable to my delegation. I do not regard this matter as being one of peace and security."<sup>73</sup>

**Decision:** *The Council adopted the agenda by 9 votes in favour to 2 against.*<sup>74</sup>

## 2. Effect of the inclusion of an item in the agenda

#### CASE 27

At the 2nd meeting on 25 January 1946, in connexion with the Iranian question, immediately after the President (Australia) had indicated that the letter dated 19 January 1946 from the Iranian Government and the letter dated 24 January 1946 from the USSR Government in reply to the Iranian communication had been included in the agenda of the Security Council, the representative of the USSR inquired:

"There is one point I would like to clarify: that is the inclusion of the Iranian question in the Security Council's agenda. Does this mean consideration of the substance of the question or discussion as to whether it should come before the Council at all?"

"If this item is placed on the agenda so that we may discuss whether the question should be considered, then I have no objection to its inclusion on the agenda for the next meeting. I should like to explain my reasons. The Soviet delegation, on the authority of the Soviet Government, has put forward reasons proving that the statement of the Iranian Government should not be considered by the Security Council.

"It therefore seems to me that we should, in the first place, thoroughly discuss this matter and, as the Chairman suggests, the Soviet delegation should in any case have the opportunity at the next meeting of putting forward its reasons why this question should not be considered by the Security Council." The President (Australia) ruled:

"In answer to the representative of the Union of Soviet Socialist Republics, I should like to say that the inclusion of the item in this agenda does give an opportunity for the Council to have a discussion, and that the USSR could, at the initial stage of that discussion, make such proposal as it might think proper. The inclusion would not deny to the USSR representative the opportunity of being able to move in whatever direction he might wish."<sup>75</sup>

#### CASE 28

At the 59th meeting on 3 September 1946, before the vote on the inclusion in the agenda of the Ukrain-

<sup>73</sup> For texts of relevant statements see: 559th meeting: China, p. 8; Ecuador, p. 2; Turkey, p. 3; USSR, p. 2; United States, p. 6; Yugoslavia, pp. 2-3. See also Case 37 for statements on effect of inclusion in the agenda.

<sup>74</sup> 559th meeting: p. 10.

<sup>75</sup> 2nd meeting: p. 16.

ian complaint against Greece, the representative of China stated:

"... our vote is not to be interpreted as approval or otherwise, of the substance or purpose of the application, or even the form in which it is presented."

The President (Poland), in putting the agenda to the vote, stated:

"By taking this vote, one way or the other, we do not pass judgment on the merits of the case."<sup>78</sup>

#### CASE 29

At the 71st meeting on 23 September 1946, in connexion with the question of information on Allied armed forces on enemy territory, the representative of Poland stated:

"... we do not need to pass judgment on whether or not there is any situation such as described in Articles 34 and 35; this will be discussed after the item has been admitted to the agenda."

At the 72nd meeting on 24 September 1946, the representative of France stated:

"... a reason which was given yesterday [for not considering the question] is that the situation in question would not involve a threat to the peace. This is a basic question and in my opinion it would not justify, *a priori*, the dismissal of the examination of the question. Only after studying it thoroughly should we be able to say whether or not it constituted a threat to the peace."<sup>77</sup>

#### CASE 30

At the 154th meeting on 10 July 1947, the provisional agenda included, as item 2, the letter dated 2 July 1947 concerning the application of Austria for membership in the United Nations.<sup>78</sup> The representative of the USSR objected to the inclusion of item 2 on the ground that it would be "inexpedient to consider the Austrian Government's application for admission to the United Nations at this stage". He observed: "The inclusion of this question in the agenda would mean that we accept it for consideration in the Security Council. I believe that this question is not proper for consideration by the Security Council." The President (Poland) expressed the view that it would be more in accordance with the provisional rules of procedure first to "adopt the agenda, and later take whatever decision the Council may desire on this item". He therefore proposed "that the Council should adopt the agenda as it now stands before the Council". He observed that "the Council can put the question on the agenda and still refuse to consider it".

**Decision:** *The Council decided to include item 2 in the agenda by 9 votes in favour and 2 abstentions.*<sup>79</sup>

<sup>77</sup> For text of relevant statements see: 59th meeting: President (Poland), p. 197; China, p. 196. See Case 17 for other discussion.

<sup>78</sup> For texts of relevant statements see: 71st meeting: Poland, p. 429. 72nd meeting: France, p. 446. See Case 18 for other discussion and decision.

<sup>79</sup> S/403.

<sup>80</sup> 154th meeting: pp. 1257-1260.

#### CASE 31

At the 171st meeting on 31 July 1947, the Indonesian question (II) constituted item 2 of the provisional agenda. The representative of Belgium stated:

"This decision on admissibility does not, however, prejudice the Council's competence in any way. By admitting their admissibility, the Council in no way decides whether the subject of the communications thus placed on the agenda does or does not fall within its competence..."

The President (Poland), in putting to the vote the inclusion of the item in the agenda, stated:

"I should like to make it clear that the adoption of this item on the agenda does not in any way prejudice either the competence of the Security Council in the matter or any of the merits of the case."

**Decision:** *The agenda was thereupon adopted without objection.*<sup>80</sup>

#### CASE 32

At the 268th meeting on 17 March 1948, the letter dated 12 March 1948 from the permanent representative of Chile regarding events in Czechoslovakia<sup>81</sup> constituted the second item on the provisional agenda. The representative of the USSR objected to the inclusion of the item in the agenda on the ground that the question was not within the competence of the Security Council. The representative of Syria stated:

"Including the question in the agenda of the Security Council does not mean that the Security Council is expressing any opinion on the substance of the matter, on the question of whether the events in Czechoslovakia are a matter of domestic jurisdiction or whether they may fall within the province of the Security Council..."

"At a later stage, after the Security Council has studied these matters, it will either remove the item from the agenda or give it further study in order to formulate a resolution on the subject."

The representative of France expressed the view that such a question should be included in the agenda in order to discuss it and ascertain the relevant facts; exception should be made only with regard to an "obviously frivolous" complaint.

<sup>80</sup> For texts of relevant statements, see:

171st meeting: President (Poland), p. 1617; Belgium, p. 1617. See also Case 20 for other discussion and decision.

At the 192nd meeting, the representative of France was unable to accept the view that "the fact that a question appears on the agenda makes the Council competent until it is decided otherwise". He thought it would be logical to take the view that "before any question—even the question of the Council's jurisdiction in this matter—can be discussed, it must appear on the agenda. The fact that it is placed and retained on the agenda does not, in itself, affect the question of jurisdiction". The President (Syria) stated that he fully agreed with the representative of France "that the existence of an item on the agenda does not decide the matter of competence and does not close the door to any opposition".

At the 193rd meeting the representative of Poland stated: "We settled the question of competence when we admitted this case to the agenda of the Security Council."

At the 194th meeting the representative of the USSR stated: "... The Security Council's right to deal with the question is established by the very fact that it undertook to examine it..."

192nd meeting: President (Syria), p. 2150; France, p. 2149.

193rd meeting: Poland, p. 2187.

194th meeting: USSR, p. 2210.

<sup>81</sup> S/694, O.R., 3rd Year, Suppl. for Jan., Feb., and Mar. 1948.

The representative of the United States stated:

"A decision on the question now pending is not a decision on the substance, and it would not constitute a judgment upon the merits of the question.

" . . . when a question is raised, as it is here, whether an item should be placed on the agenda for discussion or not, there must be a consideration of the character of the question in order to learn whether the competence of the Security Council reaches the item.

"Consequently, in order to be able to determine whether the case comes within the meaning of Article 2, paragraph 7, the Security Council must consider the Chilean complaint; and of course, it cannot consider the Chilean complaint if it is not put on the agenda."

The representative of Belgium stated:

" . . . inclusion in the agenda merely settles the question of admissibility and in no way prejudices a decision on the substance of the question, or even a decision regarding the competence of the Council."<sup>82</sup>

**Decision:** *The Council decided to include the item in its agenda by 9 votes in favour and 2 against.*<sup>83</sup>

### CASE 33

At the 357th meeting on 16 September 1948, "Communications from the Government of Hyderabad" constituted item 2 of the provisional agenda.

The representative of China requested adjournment of the meeting to enable him to secure instructions from his Government on the adoption of the item. The representative of the United States referred to the ruling of the President at the 171st meeting on 31 July 1947,<sup>84</sup> and added:

"In my opinion, that is a sound ruling and an adequate precedent for action by the Security Council. The agenda could be adopted without in any way prejudging either the competence of the Security Council or any of the merits of the case."

The representative of Argentina also expressed the view that "by adopting the agenda . . . we are in no way prejudging the position of the Security Council or any of its members . . ."

The representative of China replied:

"While it is true that placing a question on the agenda of the Security Council does not prejudice the merits of the question, while that is true, it is not equally true that placing the question on the agenda does not involve a certain view of the competency of the Security Council in regard to that question.

" . . . The admission of a question to the agenda does imply a certain view of the juridical status of

the parties to a dispute. I am not sure that even a ruling by the President on that aspect of this question can safely and completely guard the position of the Security Council with regard to the competency of the Council in relation to this matter. Certainly, in the absence of a presidential statement on that aspect of the question, my delegation feels that the adoption of the agenda does prejudice a very important aspect of this question."

The representative of Argentina, in view of the need for immediate consideration, moved that the agenda be adopted. The representative of France thereupon made the following observation:

"If I am correct, we are faced with a difficulty which we have previously encountered: to know the exact implication of adopting an item of the agenda. It may be maintained that, in order that an item of the agenda may be adopted, the Security Council must have determined its competency to deal with the question.

"It may, on the other hand, be thought that, in order to discuss its competency in the matter, the Council must first of all have decided to place the item on the agenda.

"The French delegation has always considered the latter procedure to be the more logical and the more consistent with the good ordering of the work of the Council.

"I believe that we have here one of these cases in which determination of the Council's competence is closely linked with substantive considerations, and that, in order to decide our competence, we have first to study the documents before us and perhaps even to give hearings.

" . . . it seems to me preferable to place the item on the agenda, it being understood . . . that while so doing we are at the same time reserving all subsequent decisions of the Council, including the possibility of its declaring itself incompetent in the matter."

The representative of the USSR indicated his view that, before including the item in its agenda, the Council should obtain information from the other party, the Government of India, regarding the substance of the question and the status of Hyderabad:

The Chinese proposal to adjourn was put to the vote and rejected by 1 vote in favour and 10 abstentions.

The President (United Kingdom) stated that he would put the agenda to the vote with the following reservation:

" . . . that the adoption of the agenda does not decide or affect in any way the question of the Security Council's competence and that we should have the right to revert to that question, if that is necessary and if we so desire, at a later stage."<sup>85</sup>

**Decision:** *The Council decided to include the item in its agenda by 8 votes in favour and 3 abstentions.*<sup>86</sup>

<sup>82</sup> For texts of relevant statements see: 268th meeting: Belgium, p. 100; France, pp. 98-99; Syria, p. 95; USSR, pp. 90-91; United Kingdom, pp. 93-94; United States, p. 99. See also Case 21 for other discussion. See also United States, 278th meeting, p. 2: "One of the aims of the Security Council proceedings is to establish whether or not the matter before the Security Council is essentially within the domestic jurisdiction of Czechoslovakia."

<sup>83</sup> 268th meeting: pp. 101-102.

<sup>84</sup> See Case 31.

<sup>85</sup> For texts of relevant statements see:

357th meeting: President (United Kingdom), p. 10; Argentina, p. 5; China, p. 5; France, p. 8; USSR, pp. 3-4, 9; United States, p. 4.

<sup>86</sup> 357th meeting: p. 11.

## CASE 34

At the 361st meeting on 4 October 1948, the identic notifications dated 29 September 1948<sup>87</sup> constituted item 2 of the provisional agenda. The representative of the USSR objected to the inclusion of the item in the agenda on the ground that it did not fall within the competence of the Security Council. The representative of Belgium stated:

"As such, the inclusion of the item on the agenda has no other significance. It does not imply any admission of competence on the part of the Council. The discussion on competence should follow the formal inclusion of the item on the agenda, but not precede it. Indeed, to discuss whether it is competent or not, the Council must first be in a position to consider the matter, and this it can only do by placing the item on its agenda, that is, among the items with which it is seized."

The representative of the USSR in reply stated the following view on rule 9 of the provisional rules of procedure:

"To approve an agenda means to recognize that it is appropriate, and that the questions to be included in its agenda are suitable and correspond to the competence of the body in question.

"If any other stand were adopted, the result would be this: the Security Council would first approve the agenda, then afterwards discover that a given question which had been included in that agenda, already approved, did not fall within its competence. What would you have us do then? Remove this question from the agenda? But such a course would be unthinkable and illogical."

Although the Belgian statement was made as "a point of order", discussion of the problem of competence proceeded, and the representatives of the United States, United Kingdom, France, Syria, USSR and Belgium addressed their remarks to this problem at the 361st and 362nd meetings. On the procedural question of the adoption of the agenda in relation to competence, observations were made as follows.

The representative of the United Kingdom stated:

"As I understand it, we are still engaged in discussing whether or not to adopt the provisional agenda which is before us. Objection to such adoption has been raised by one delegation, the delegation of the USSR, on the ground that the Security Council itself is not competent to discuss the question raised in the identic notes from the three Governments. The representative of Belgium suggested, I think, that we could actually put the question on the formal agenda and subsequently discuss the competence of the Security Council, and he seems to be of the opinion that that would be a proper procedure. I do not wish to pronounce myself on that. Actually it does not seem to me to make very much difference. If we were to put the matter on the agenda and then discuss competence and find that we were incompetent, I suppose we should then have to take the matter off the agenda again. Equally, if we found that we were competent before the question was

placed on the agenda, then logically, unless any other objection were raised, we should have to put it on our agenda.

"What is clear, however, is that the Security Council should address itself to this question of competence, since it has been raised, before embarking on a discussion of the substance of the matter."

The representative of France stated:

". . . Even in cases where the question of competence was raised, we have always felt and maintained that it was an efficient method of work, or in short, more or less common sense, to first place the item on the agenda before beginning to discuss the question; otherwise, we should be led to the result which was apparent yesterday, where a question which had not yet been included on the agenda was discussed for a whole meeting."

The representative of Syria stated:

". . . if we consult the regulations of all the other similar departments or organs, we find that the adoption of the agenda does not preclude discussion or contentions against the competence of the organ in a particular respect. The adoption of the agenda means the reception of a certain case to be put before the Security Council or before a court. In the courts of justice they accept the case, they discuss it, and then the defendant has the full right to raise the question of competence and to oppose the competence of the court. Then the court decides whether or not it was competent, but only after being seized of the case and having placed it under discussion.

"The whole discussion . . . yesterday was on the question of competence; it was centered upon Article 107 and other Articles of the Charter. I did not intend to take part in that discussion until the agenda had been adopted, but now I see that most of the arguments against or in favour of competence have been presented. In addition these arguments have been widely and fully discussed by most of the members as if they wished the vote on the adoption of the agenda to also include a decision on the question of competence. If that is so, then we have to discuss the matter of competence fully, before we adopt the agenda, although this is not the regular procedure in discussions in bodies such as ours. For this reason, I think that it would be better first to adopt the agenda and then pass on the discussion of the question of competence which has been raised by Mr. Vyshinsky."

The representative of Argentina stated:

"The Argentine delegation will accordingly vote for the adoption of the agenda, it being understood, however, that by this vote it does not express any opinion on competence, jurisdiction or substance of the matter."<sup>88</sup>

**Decision:** At the 362nd meeting on 5 October 1948, the Council adopted the agenda by 9 votes in favour and 2 against.<sup>89</sup>

<sup>87</sup> For texts of relevant statements see:

361st meeting: Belgium, pp. 16-17; USSR, p. 17; United Kingdom, pp. 27-28, 30; United States, p. 19-27.

362nd meeting: Argentina, p. 21; France, p. 2; Syria, pp. 5-6. See also Case 23 for other discussion.

<sup>88</sup> 362nd meeting: p. 21.

<sup>89</sup> S/1920 and Add.1, O.R., 3rd year, Suppl. for Oct. 1948, pp. 9-45.

## CASE 35

At the 409th meeting on 15 February 1949, the application of the Republic of Korea for admission to membership in the United Nations constituted item 2 of the provisional agenda. The representative of the USSR objected to the inclusion of item 2 in the agenda on the grounds that the "so-called Korean Republic" was an "illegal government".

The President observed that the statement of the representative of the USSR "went into the merits of the question". He continued: "That aspect of the question will be discussed later."

**Decision:** *The Council rejected the proposal to delete the item by 2 votes in favour, 8 against and 1 abstention.*<sup>90</sup>

## CASE 36

At the 493rd meeting on 31 August 1950, item 5 of the provisional agenda read:

"The unceasing terrorism and mass executions in Greece."

The President, speaking as the representative of the USSR, urged that the Security Council should intervene to protect the lives of certain members of the Greek "national resistance movement" who had been sentenced to death. The representative of China objected to the inclusion of the item in the agenda on the grounds that the question of human rights was not within the jurisdiction of the Council. The representative of the United Kingdom observed:

"It is perfectly clear that the Security Council has no jurisdiction in the matter at all, and that it would be wholly improper for the item to be included in the definitive agenda."

The representative of the United States contended that the item was based on a "strange communication" which contained "no single coherent suggestion that there is a threat to international peace". The representative of Egypt objected to the inclusion of the item on the grounds that the agenda had become unduly cumbersome, and the representative of Cuba on the grounds that the communication in question was mere propaganda. The representative of Yugoslavia indicated that he would vote in favour of the inclusion of the item "without prejudging the question of whether this Council is really competent to deal with such matters".

After the vote on the agenda, the representatives of India, Ecuador and Norway explained the grounds for their votes against the inclusion of that item.<sup>91</sup>

**Decision:** *The Council rejected the proposal to include the item in the agenda by 2 votes in favour and 9 against.*<sup>92</sup>

<sup>90</sup> 409th meeting: pp. 2-3.

<sup>91</sup> For texts of relevant statements see:

493rd meeting: China, p. 8; Cuba, p. 11; Ecuador, p. 31; Egypt, p. 2; India, p. 30; Norway, p. 31; USSR, p. 19; United Kingdom, pp. 22-28; United States, p. 27; Yugoslavia, p. 29.

<sup>92</sup> 493rd meeting: p. 30. See also chapter XII, Case 18, for grounds of objection.

## CASE 37

At the 559th meeting on 1 October 1951, in connexion with the Anglo-Iranian Oil Company case, objection having been raised by the representative of the USSR to the inclusion of the item in the agenda on the grounds that discussion would constitute interference in the internal affairs of Iran, the representative of India stated:

"Even to decide the issue of competence, of jurisdiction, we should have all the facts from both sides before us. Therefore, without prejudging any issue, keeping even the question of jurisdiction open, we can proceed to hear the parties."

The representatives of Ecuador, China, Turkey and the United Kingdom made statements to the same effect.

The representative of Yugoslavia stated:

"... If we decide now on our agenda, prejudging to a certain extent our competence to deal with this dispute by starting our discussion on the merits of the case, we shall take the decision on this aspect of the dispute without having heard one of the two parties, Iran."

The representative of the United States favoured the adoption of the agenda. He added that

"Presumably, the Government of Iran will be invited to sit at the Security Council table after the adoption of the agenda. Therefore, it seems to my Government that a decision on competence should come after the Government of Iran has been invited to the table."<sup>93</sup>

### C. OTHER DISCUSSION ON THE ADOPTION OF THE AGENDA

#### 1. Order of discussion of items on the agenda<sup>94</sup>

## CASE 38

At the 439th meeting on 7 September 1949, the representative of the USSR proposed that item 3 on the provisional agenda should be taken up as item 2, making item 2 "which is a new question with which the Council has not previously dealt, item 3 on our agenda". The representative of the Ukrainian SSR referred to rule 10 as supporting this proposal, since consideration of item 3 had not been completed.

The President (United Kingdom) stated that rule 10 did "not assign any particular priority to the question," and that it was for the Security Council to decide the order in which items should be taken.<sup>95</sup>

**Decision:** *The Council rejected the USSR proposal to reverse the order of the items by 3 votes in favour, 5 against, and 3 abstentions.*<sup>96</sup>

<sup>93</sup> For texts of relevant statements see: 559th meeting: China, p. 8; Ecuador, p. 2; India, p. 7; Turkey, p. 3; United Kingdom, p. 3; United States, p. 7; USSR, pp. 1-2; Yugoslavia, p. 9. See also Case 26 for other discussion and decision.

<sup>94</sup> See also chapter VII, Cases 29 and 30, for relevant discussions at the 427th meeting and 568th meeting.

<sup>95</sup> For texts of relevant statements see: 439th meeting: President (United Kingdom), p. 4; Argentina, p. 3; Canada, p. 3; Ukrainian SSR, p. 4; USSR, pp. 2-3, 4. See also the ruling by the President (United Kingdom) at the 503rd meeting, p. 7: "With all respect to rule 10... it does not say that it must automatically be included as item 1; whether it is to be included as item 1 is a matter for discussion when the Council comes to the discussion of the provisional agenda."

<sup>96</sup> 439th meeting: p. 5.



## CASE 39

At the 480th meeting on 1 August 1950, the representative of the United States suggested that the "Complaint of aggression upon the Republic of Korea" should be inserted as item 2 on the agenda. He stated:

"... the first item of business on today's agenda should be a continuation of the discussion which was started yesterday afternoon on the United States draft resolution."

At the 481st meeting on 2 August 1950, he put his proposal in the form of a written amendment, and supported it by reference to rule 10 of the provisional rules. The President (USSR) replied as follows:

"This rule, however, does not state that such an item must necessarily be considered first. In what rule of the rules of procedure has the United States representative found that an item which has been carried over from the previous meeting must be considered first?"

At the 482nd meeting, on 3 August 1950, the representatives of India and Egypt suggested that the Security Council should first decide on the items to be included in the agenda, and then decide the priority of the items included.

The President (USSR) then ruled:

"We shall vote on the inclusion of all the items in the agenda in the order in which they were received. After that, we shall decide the question of priority. If this is challenged, we shall take a vote on the ruling of the President."<sup>97</sup>

The representative of the United Kingdom challenged the President's ruling.

**Decision:** *On the vote being taken, the Council rejected the ruling by 2 votes in favour, 7 against and 2 abstentions.*<sup>98</sup>

## CASE 40

At the 503rd meeting on 26 September 1950, the provisional agenda of which contained four items, the representative of India proposed that the question of the admission of the Republic of Indonesia to the United Nations be added to the provisional agenda as the first item.

**Decision:** *The Council adopted the Indian proposal by 9 votes in favour and 2 abstentions.*<sup>99</sup>

The representative of India also proposed that a decision should be taken on the admission of Indonesia before consideration of the priority to be accorded to the other items on the provisional agenda. The representative of the USSR considered that the correct procedure would be to consider the priority of the various items after the adoption of the agenda. To facilitate immediate action on the application of Indonesia, the representative of China proposed that the agenda be limited to that single item. The representative of the United Kingdom proposed limitation to

<sup>97</sup> For texts of relevant statements see:  
480th meeting: United States, p. 13.  
481st meeting: President (USSR), p. 18.  
482nd meeting: President (USSR), p. 19; Egypt, p. 12; France, p. 15; India, p. 10; United Kingdom, pp. 1-2; United States, p. 13.  
<sup>98</sup> 482nd meeting: pp. 19-23. For further voting, see Case 13.  
<sup>99</sup> 503rd meeting: p. 15.

two specified items, and the representative of the USSR to three specified items. All three proposals were voted upon.<sup>100</sup>

**Decision:** *The Council decided, by 7 votes in favour, 1 against and 3 abstentions, that the agenda should be limited to two items, and proceeded to the consideration of the first substantive item on the agenda, the application of the Republic of Indonesia for membership.*<sup>101</sup>

## 2. Scope of items on the agenda in relation to the scope of discussion

## CASE 41

At the 123rd meeting on 28 March 1947, which had been called in response to a request put forward by the representative of the United States on 25 March 1947 "that the Greek question, which now appears on the list of matters of which the Security Council is seized, be placed on the provisional agenda of the next meeting", the representative of the USSR stated that the question on the list of matters of which the Security Council was seized related to incidents along the northern Greek frontiers and was "altogether different" from the new question raised in the letter from the United States representative. He considered that the question should be included in the agenda "not as the old restricted question of border incidents, but as a new question". He would not "in any circumstances consider this question as being merely the old question restricted to border incidents".

The President (Brazil) stated:

"Whether the matters inscribed on the agenda are old or new, the representatives will be free to talk about the old incidents or the new problems created by the Greek problem itself... We have the broadest way of considering new or old matters and of discussing the Greek problem in this Council."

**Decision:** *The Council adopted the agenda without objection.*<sup>102</sup>

## CASE 42

At the 231st meeting on 22 January 1948, item 2 of the provisional agenda read as follows:

"2. India-Pakistan question."

Three communications were appended as sub-items: the letter dated 1 January 1948 from the representative of India and letters dated 15 January 1948 and 20 January 1948 from the Minister of Foreign Affairs of Pakistan.<sup>103</sup>

The President (Belgium) drew attention to a letter from the representative of India in which he pointed out that hitherto the item on the agenda had read "The Jammu and Kashmir question", and expressed objection to the amendment of the description of the item.

<sup>100</sup> For texts of relevant statements see:  
503rd meeting: China, p. 18; Cuba, p. 12; Ecuador, p. 20; India, p. 10; USSR, p. 16.  
<sup>101</sup> 503rd meeting: pp. 22-23.  
<sup>102</sup> 123rd meeting: pp. 616-617.  
For a case of objection by members of the Council, in the course of proceedings, to a draft resolution on the grounds that it did not come within the scope of the question on the agenda, see 353rd meeting, pp. 22-26. See also 70th meeting: pp. 394, 397-398, 403, 406; and 68th meeting: pp. 704-706.  
<sup>103</sup> 231st meeting: pp. 143-144.



On the proposal of the President, the representative of India was invited to take part in the discussion on the adoption of the agenda.

The representative of India<sup>104</sup>, in his statement to the Council, observed that the justification for the amendment appeared to be the receipt of the letter of 20 January 1948 from the representative of Pakistan which requested the calling of a meeting of the Council to consider the situations, other than the Jammu and Kashmir situation, set out in his letter of 15 January 1948. The representative of India continued that India did not contend that these other situations should not be placed on the agenda of the Council, but only that that step had not been taken. The debate about to proceed should therefore be confined to the Jammu and Kashmir question. The original wording should therefore be restored. The Pakistani letter of 20 January 1948 should be placed on the agenda as a separate item, with the result that the additional questions would be discussed after the first item had been disposed of.

The representative of Syria expressed the view that the formulation of the agenda was correct on the grounds that a submission had been made by the Indian Government concerning the Jammu and Kashmir question, and the representative of Pakistan had submitted related counter-claims which in their view should be considered simultaneously. It was for the Security Council to decide whether the two claims were related to each other.

The representative of the USSR stated that the former Jammu-Kashmir item should be included in the agenda since "only the Council can delete any item from the Council's agenda". The question raised by the representative of Pakistan should constitute a separate item in the agenda since it would be incorrect to combine the question of the situation in Kashmir with the general problem of the relations between India and Pakistan.

The representative of Argentina contended that several questions were involved "in the India-Pakistan problem", and the Council could not ignore one and deal with another merely because only one had been officially brought before the Council.

The representative of Colombia pointed out that the request of the representative of India was essentially that only the Jammu and Kashmir situation should be dealt with at that meeting, in order that time could be allowed for preparation on other aspects.

The representative of the United States, drawing attention to rule 10 of the provisional rules, observed: "It seems clear that the item on this agenda should be exactly the same item that was on the last agenda because it falls within rule 10 of the rules of procedure, and it has not been concluded. To use the language of rule 10, consideration of the item has not been completed."

The representative of Pakistan\* indicated that he was "not concerned with the technicalities of the question". The heading was immaterial providing it was deemed that all questions referred to were on the agenda. He desired to have it established "that the Security Council is now seized of the situation between India and Pakistan, and that that situation has many facets, of which Kashmir and Jammu is only one".

The President indicated that the proposal of the representative of India was that the debate should

concern the Jammu and Kashmir question first, and that other questions should be discussed in due course. He added that the representative of Pakistan did not appear to oppose this order, and that he would ask the Council to proceed accordingly.<sup>104</sup>

**Decision:** *The Council then adopted the agenda without change.*<sup>105</sup>

#### CASE 43

At the 339th meeting on 27 June 1948, before the agenda was adopted, the representative of the United Kingdom stated that, in connexion with item 2, which was indicated simply as "the Palestine question", he would like in the course of the discussion to raise a particular point concerning the kidnapping of five British subjects in Jerusalem.

The President (USSR) stated:

"I think that, during the discussion of the Palestine question, the United Kingdom representative should be entitled to raise any other related questions he may deem appropriate."

**Decision:** *The Council then adopted the agenda.*<sup>106</sup>

#### CASE 44

At the 480th meeting on 1 August 1950, the provisional agenda contained the item "Peaceful settlement of the Korean question". The representative of the United States, after proposing the inclusion of the item "Complaint of aggression upon the Republic of Korea", stated:

"It is the item which has commanded the attention of the Council at all the meetings during the past five weeks . . .

"We have become accustomed, in this and other organs of the United Nations, to agenda items worded primarily with a view to their propaganda value. However, it is our long-standing practice to keep our agenda items very general and simple, and we believe that we should stick to that practice in the present instance."

The representative of the United Kingdom stated:

"I cannot suppose that our President has failed to keep himself informed of the Council's work since his withdrawal. He will no doubt be aware that the item under which the Council has so far considered the Korean question is entitled "Complaint of aggression upon the Republic of Korea". Now the item which the representative of the Soviet Union, in his capacity as President, has placed upon the provisional agenda is entitled "Peaceful settlement of the Korean question". The difference in wording seems to me to be significant. If we were to adopt the formula of the USSR, all reference to aggression would disappear. Yet it is the act of aggression which is responsible for bringing this matter before the Council, and it is the main factor with which we have to deal."

<sup>104</sup> For texts of relevant statements see:

231st meeting: President (Belgium), pp. 144, 163; Argentina, p. 150-152; India, p. 145; Pakistan, pp. 157-160; Syria, p. 149; USSR, p. 150; United Kingdom, pp. 147, 154; United States, p. 155.

<sup>105</sup> 231st meeting: p. 164.

<sup>106</sup> 339th meeting: pp. 1-2. For statement by President to the same effect, see 345th meeting: p. 2.

The President (USSR) stated:

"The USSR delegation has submitted a proposal for the peaceful settlement of the Korean question. Accordingly, if the Security Council, as an instrument of peace and an organ for the peaceful settlement of conflicts, really desires peace, it must consider the question of a peaceful settlement, and not replace it by any other item diametrically opposed in meaning."<sup>107</sup>

#### CASE 45

At the 525th meeting on 27 November 1950, before the vote was taken on the provisional agenda which included as sub-item (b) "Complaint of aggression upon the Republic of Korea", the representative of India asked:

"Before . . . the matter is put to the vote, I should like a ruling from the President whether the wording of sub-item (b) is wide enough to permit discussion of any counter-complaint of armed intervention in Korea which the representative of the Peking Government might wish to bring forward."

The President (Yugoslavia) replied:

"In my opinion, the item on the agenda covers the whole problem of Korea, and any member of the Council or any representative of the countries concerned may express his views on the problem of Korea."<sup>108</sup>

#### CASE 46

At the 519th meeting on 8 November 1950, the complaint of aggression upon the Republic of Korea constituted item 2 of the agenda. The representative of the USSR asked for clarification on what the Council would discuss, since it would be difficult for him "to agree to the adoption of the agenda, before knowing specifically what we are going to discuss today in connexion with the item on today's provisional agenda". The representative of the United Kingdom replied that the special report dated 5 November 1950 from the United Nations Command in Korea would be discussed.<sup>109</sup> The representative of the USSR referred to the proceedings of the 356th meeting as precedent for objection to the agenda on grounds of objection to the documentation attached. He continued:

"... in view of this and other precedents in the Council's practice, it is only natural that every member of the Council should have the right to find out what will be discussed in connexion with a given item on its agenda before agreeing to the adoption of that item. It is the right of a member of the Security Council to know what will be considered at a meeting of the Security Council, and it is therefore natural that the USSR delegation should be interested to know precisely what the Council will discuss at today's meeting."

<sup>107</sup> For texts of relevant statements see: 480th meeting: United States, pp. 12-15. 481st meeting: President (USSR), p. 18; United Kingdom, p. 3. For the decision, see Case 13.

<sup>108</sup> For texts of relevant statements see: 525th meeting: President (Yugoslavia), pp. 18-19; India, p. 14.

<sup>109</sup> S/1184.

The President (Yugoslavia), before calling for a vote, stated:

"... I should like to repeat that I do not consider the President to be bound by precedents . . . The question of Korea is on our provisional agenda and the Council is therefore free to discuss any aspect of the question."<sup>110</sup>

### 3. Phrasing of items on the agenda<sup>111</sup>

#### CASE 47

At the 473rd meeting on 25 June 1950, item 2 of the provisional agenda read "Aggression upon the Republic of Korea". The President (India) suggested that the item be amended to read "Complaint of aggression upon the Republic of Korea". This proposal was adopted.<sup>112</sup>

#### CASE 48

At the 492nd meeting on 29 August 1950, the representative of the United States questioned the terms in which the communication from the Minister of Foreign Affairs of the People's Republic of China was entered in the provisional agenda. He observed that:

"The language in which an item is to be couched is subject to agreement by the members of the Council. If there is something about the language which is obnoxious because it seems to prejudge an issue, it is then within the just and fair scope of the Security Council to correct such language and to put it into a form which is unobjectionable and yet, at the same time, does present the issue."

The representative of India stated that the wording of the item "should be brief and should not be capable of being misunderstood as a pronouncement upon the merits of the case". He proposed that the wording of the item should read: "Complaint of armed invasion of Taiwan (Formosa)".

**Decision:** The Council included the item in the agenda in the form proposed by the representative of India by 7 votes in favour, 2 against, 1 abstention and 1 member not participating.<sup>113</sup>

#### CASE 49

At the 545th meeting on 8 May 1951, the President (Turkey), when submitting the provisional agenda containing one item, the Palestine question, with nine different communications as sub-items, made the following statement:

"... I wish to repeat the ruling of previous Presidents of the Security Council that complaints

<sup>110</sup> For texts of relevant statements see: 519th meeting: President (Yugoslavia), p. 6; USSR, pp. 2, 3; United Kingdom, p. 3.

<sup>111</sup> For a case of phrasing an item on the agenda by combining several complaints under the item entitled "The Palestine question", see 502nd meeting, pp. 1-2; 503rd meeting: pp. 8-10; 511th meeting: p. 2. For summary, see chapter VIII, p. 339.

<sup>112</sup> 473rd meeting: p. 2. See also 502nd meeting, p. 15, for the same insertion in respect of another item; and 545th meeting, p. 3, for the reply by the President (Turkey) that he would consult the parties before making this modification.

<sup>113</sup> For texts of relevant statements see: 492nd meeting: President (USSR), pp. 2, 9-11; India, p. 11; United Kingdom, p. 8; United States, pp. 2, 11.

are listed in the provisional agenda as they are formulated by the interested parties, and no *prima facie* value exists in any item appearing on the provisional agenda. The items are intended only to identify the subject matter.<sup>114</sup>

#### 4. Postponement of consideration of items<sup>115</sup>

##### CASE 50

At the 60th meeting on 4 September 1946 in connexion with the question of information on Allied Forces on non-enemy territory, which appeared as item 3 in the provisional agenda, the President (Poland) stated:

"... unless there is any objection by this Council, I propose that we keep the third item on the provisional agenda as it is until our discussion of the second item is finished or until the Council decides to change this decision. Unless there is objection, I shall postpone discussion of the question of inclusion of the third item in the agenda."

**Decision:** *The suggestion of the President was adopted, item 3 being kept pending on the provisional agenda of this and subsequent meetings.*<sup>116</sup> Discussion on item 3 was resumed at the 71st meeting on 23 September 1946.

##### CASE 51

At the 82nd meeting on 10 December 1946, the application of Siam for membership in the United Nations was included as item 2 in the provisional

<sup>114</sup> 545th meeting: p. 2. See also the earlier statement by the President (United States) at the 511th meeting, p. 2, and 503rd meeting, pp. 8-10.

<sup>115</sup> For a case of inclusion of an item in the agenda on the understanding that consideration will be delayed, see 403rd meeting, pp. 1-2; for a case of information sought from the President regarding his intention with regard to proceedings on an item, see 222nd meeting, pp. 2270-2271.

<sup>116</sup> 60th meeting: p. 200. For further proceedings, see Case 18.

agenda. The representative of the USSR proposed that the item should not be included in the agenda of the meeting as he wanted to study the question more fully. The President (United States) suggested that, instead of voting on the USSR proposal, the item should be adopted and immediately placed on the list of matters of which the Council was seized. He would then include the item in the provisional agenda for the next meeting.

**Decision:** *There being no objection, the proposal of the President was approved.*<sup>117</sup>

##### CASE 52

At the 159th meeting on 17 July 1947, the letter dated 8 July 1947 from the Prime Minister and Minister of Foreign Affairs of Egypt<sup>118</sup> constituted item 2 of the agenda, and the Greek question constituted item 3.

The President (Poland) reminded the Council that by adopting the agenda "the Council does not necessarily commit itself to discussing both points today".

The representative of the United Kingdom, while raising no objection to the inclusion of the item in the agenda, indicated his desire for postponement of consideration in order to enable his Government to prepare its case.

The President stated: "It goes without saying that if one of the Governments needs some time in which to study a certain question, it is a matter of common courtesy that the Council should grant the time requested." The President therefore moved that the agenda be adopted, and that discussion of the Egyptian question be delayed until 5 August as desired by the representative of the United Kingdom. Accordingly, the Council proceeded to discussion of item 3, and postponed discussion of item 2.<sup>119</sup>

<sup>117</sup> 82nd meeting: pp. 525-529.

<sup>118</sup> S/410, 159th meeting: pp. 1343-1345.

<sup>119</sup> 159th meeting: p. 1345-1346.

## Part IV

### THE AGENDA: MATTERS OF WHICH THE SECURITY COUNCIL IS SEIZED

#### NOTE

Rule 10 was designed to make it possible for the Security Council to continue, at the next meeting, consideration of an item of unfinished business without that item being the subject of renewed debate in connexion with the adoption of the agenda.<sup>1</sup> In practice, the provisional agenda has not contained all items of unfinished business. The case histories inserted in section A under rule 10 cover those instances in which attention has been drawn to the mandatory character of the provision for the insertion of unfinished items of the agenda in the agenda of the next meeting. Discussion whether an item covered by rule 10 is entitled to priority of consideration at the next meeting is entered in part III, section C.I. of this chapter.

Reference has frequently been made in the proceedings of the Council and in its decisions, though not

<sup>1</sup> In connexion with part IV, reference should be made to the observations of the Chairman of the Committee of Experts at the 31st meeting on 9 April 1946 and the ensuing discussion on the significance of rules 10 and 11. See Case 1.

in the rules of procedure, to the "list of matters of which the Security Council is seized"; this terminology has in consequence been adopted at certain points in the *Repertoire* but has not been utilised in the construction of the present chapter. Since the Council has not often made express decisions concerning the retention or removal of items on the agenda, and the evidence relating to the retention and removal of items derived from the Official Records does not permit of classification under procedural headings, the Secretary-General's Summary Statement circulated weekly in accordance with rule 11 has been looked to for appropriate evidence, especially since it has been the practice of the Council to base its notifications to the General Assembly under Article 12 (1) on the current issue of the Summary Statement. The material has been presented in the form of a cumulative tabulation of items. Included in the tabulation are references to the first inclusion of the item in the Security Council's agenda, to the first appearance of the agenda item in the Secretary-General's statement, to the last action

of the Council preceding the removal or retention of the item, and to the final appearance of the item in the Summary Statement. The absence of an entry under the latter head signifies that the item had been retained in the Summary Statement as of December 1951. The Security Council has not itself reviewed the successive issues of the Summary Statement, the authority of which rests on the provisions of rule 11.

In consequence of the varying nature of the items on the agenda of the Council, the removal of matters from the Secretary-General's statement is necessarily based on considerations special to each item. Items have been retained in the Summary Statement without express decisions to that effect except after (1) express decisions to remove them, (2) non-procedural decisions disposing finally of them affirmatively or negatively, and (3) the rejection of proposals to retain them. They have also remained on the list of matters after the exhaustion of all proposals by rejection, where the tenor of the Council's discussion has revealed a continuing concern with the matter. Regarding the retention or deletion of applications for membership from the Summary Statement, chapter VII, part III, should be consulted.

For the early questions before the Council, such as the Greek question (USSR communication dated 21 January 1946)<sup>2</sup> and the Indonesian question (I),<sup>3</sup> the only evidence of termination of the Security Council's concern with an item is to be found in the Presidential statement closing the proceedings, since, at the date of the proceedings on those questions, rule 11 had not been instituted.

The provision in draft resolutions that the question before the Council remain on the list of matters of which the Council is seized, as well as the provision that parties to a dispute should inform the Council of the results of their negotiations, or that subsidiary bodies should report, have been interpreted by the movers of such draft resolutions to be apt ways of expressing the continuing concern of the Council with the matter under consideration.<sup>4</sup>

The case histories following the tabulation set forth the significant discussion in the Security Council of the retention or removal of items on the agenda taken in the sense of the list of matters of which the Security Council is seized. In general, the material is the procedural reflection of the Council's views of its

continued responsibility for the consideration of a question. The case histories cover discussion of such matters as the effect of withdrawal of a complaint and the consequences of the exhaustion of all proposals without reaching an affirmative decision. Finally, several cases are included touching the effects of removal of an item from the agenda. Deletion of items from the list of matters to enable the Assembly to make recommendations is dealt with in chapter VI, part I, section A. The relation of the Summary Statement issued under rule 11 to notifications made to the General Assembly under Article 12 (1) is dealt with in the note to chapter VI, part I, section A.

#### A. RULE 10

##### CASE 53

At the 383rd meeting on 2 December 1948, the Hyderabad question, consideration of which had not been completed at the 382nd meeting, did not figure on the provisional agenda. The representative of Syria considered that, in order to meet the requirements of rule 10, the item should have appeared on the provisional agenda, particularly as the Council had decided that the matter "would be put on the agenda of the next meeting— which is today". The Assistant Secretary-General explained that two considerations had governed the suggestions made by the Secretariat in drawing up the provisional agenda: first, that the Government of Israel wanted an urgent consideration of their application for admission to membership, and, second, that the Indian delegation still had "no qualified representative appointed to the Security Council to discuss these questions". The representative of the United States accepted the explanation and was "content to wait until the Secretary-General, with the approval of the President, inscribes it on our provisional agenda, on the basis of the information he will receive regarding the feasibility of considering it". The representative of Syria was of opinion that "in order to meet the requirements of rule 10, at least it should have appeared on the agenda even if the question could not have been discussed on account of an excuse which might have been presented to the Council by the Indian Government, by means of a written document".

**Decision:** *After explanations had been given to the Syrian representative, the President (Belgium) as-*

##### *Spanish question:*

Draft resolution by the representative of the USSR, 49th meeting, p. 434, adopted at the same meeting, p. 441; see chapter VIII, p. 307.

##### *Greek frontier incidents question:*

Draft resolution by the representative of the United States, 180th meeting, p. 1910, rejected, 188th meeting, p. 2098; see chapter VIII, pp. 311-312.

##### *Indonesian question II:*

Draft resolution by the representatives of Australia and China, 193rd meeting, pp. 2173-2174, adopted 194th meeting, p. 2200 (after rejection of USSR amendments including one to keep the Indonesian question on the list of matters, 194th meeting, pp. 2197-2200); see chapter VIII, pp. 316-317.

##### *Palestine question:*

Draft resolution by the representative of France, 434th meeting, p. 36, to "maintain the question of Palestine on its agenda pending the definitive conclusion of treaties of peace", withdrawn, 435th meeting, p. 2, in favour of a joint Canadian-French proposal providing, *inter alia*, for reports from the Chief of Staff, adopted, 437th meeting, p. 13; see chapter VIII, pp. 338-339.

<sup>2</sup> See chapter VIII, p. 302 and chapter X, Case 21.

<sup>3</sup> See chapter VIII, p. 302 and chapter X, Case 7.

<sup>4</sup> *Iranian question I:*

Draft resolution by the representative of the Netherlands, 5th meeting, p. 60, withdrawn in favour of similar draft resolution by the representative of the United Kingdom, 5th meeting, p. 64, unanimously adopted at the same meeting, p. 71, after agreement to omit the words "the matter remains on the agenda"; see chapter VIII, p. 301.

*Indonesian question I:*

Draft resolution of the representative of Egypt, 17th meeting, p. 251, rejected 18th meeting, p. 263; see chapter VIII, p. 302.

*Syrian and Lebanese question:*

(i) Draft resolution by the representative of the Netherlands, 21st meeting, p. 317, withdrawn 23rd meeting, p. 354; see chapter VIII, p. 303.

(ii) Draft resolution by the representative of Egypt, 22nd meeting, p. 323, rejected 23rd meeting, p. 364; see chapter VIII, p. 303.

(iii) Draft resolution by the representative of the United States, 22nd meeting, p. 332, failed of adoption, 23rd meeting, pp. 367-368; see chapter VIII, p. 303.

summed that "the incident may be considered closed" and the provisional agenda was adopted.<sup>5</sup>

## CASE 54

At the 480th meeting on 1 August 1950, the representative of the United States noted that, contrary to rule 10 of the provisional rules of procedure, the provisional agenda did not contain the item "Complaint of aggression upon the Republic of Korea", which had been under consideration at the previous meeting. The President (USSR) explained the omission from the provisional agenda as follows:

"The question . . . was not included in the provisional agenda which I circulated because I was not present at the Security Council's meeting yesterday . . . Since the representative of the United States is submitting his item for inclusion in the agenda and for continued consideration, it can be placed on today's agenda as a third item."

At the 481st meeting on 2 August 1950, the representative of the United States stated:

"This is mandatory. The rule says 'shall'. Legally, the question we were discussing on 31 July still constitutes an agenda item even though it does not appear on the provisional agenda . . ."

He moved that the item following "Adoption of the agenda" should be "Complaint of aggression upon the Republic of Korea". The President (USSR) stated:

"In accordance with the generally accepted rules, traditions and order of business to which the Security Council has adhered throughout its existence, the following procedure has been established. The provisional agenda is approved by the President and submitted to the Council. The Security Council has the right to accept or reject it in whole or in part. Every member of the Council has the right to submit an item for inclusion in the provisional agenda, but not to substitute another provisional agenda for the one approved by the President. The rules of procedure make no provision for this . . ."

<sup>5</sup> For texts of relevant statements see: 383rd meeting: President (Belgium), pp. 2, 4, 5, 7; Syria, pp. 2, 3, 5-7; United States, p. 5; Assistant Secretary-General, pp. 3, 4.

At the 482nd meeting on 3 August 1950, the representative of India stated that "there can hardly be any controversy that it must be included, because rule 10 of our provisional rules of procedure directs its automatic inclusion unless the Council otherwise decides. The Council has not decided otherwise and I have not heard any member speak against its inclusion."<sup>6</sup>

**Decision:** The motion by the representative of the United States was adopted by 8 votes in favour, 1 against and 2 abstentions.<sup>7</sup>

## CASE 55

At the 504th meeting on 27 September 1950, the President (United Kingdom) explained that he had placed on the provisional agenda only one item, the "Complaint of armed invasion of Taiwan (Formosa)". The representative of Egypt enquired whether the "other items which we had on yesterday's agenda will be placed on the agenda of our next meeting, and not relegated to what is usually known as the 'continuing agenda' of the Security Council". The President assured him that "That is my understanding". The representative of the USSR requested the inclusion of a second item "Complaint of aggression upon the Republic of Korea".

**Decision:** The Security Council unanimously adopted the agenda as amended, including the two items, and the representative of Egypt was assured by the President that "the right of the Egyptian delegation to ask for priority at the next meeting for the item known as 'The Palestine question' is undoubted".<sup>8</sup>

<sup>6</sup> For texts of relevant statements see: 480th meeting: President (USSR), pp. 16-21; United States, pp. 12-15.

<sup>7</sup> 481st meeting: President (USSR) pp. 1, 17-18; Cuba, p. 12; Ecuador, p. 7; France, p. 11; Norway, p. 13; United Kingdom, pp. 2-5; United States, pp. 14-15.

<sup>8</sup> 482nd meeting: President (USSR), p. 3; Egypt, p. 12; India, pp. 10-11; United Kingdom, pp. 1-2; United States, p. 13.

<sup>9</sup> 482nd meeting: p. 20.

<sup>10</sup> 504th meeting: pp. 1-3.

## B. RULE 11

### Retention and deletion of items from the Secretary-General's Summary Statement of matters of which the Security Council is seized

For consideration by the Security Council of the problem of the retention and deletion of matters from its agenda, reference should be made to the case histories following this tabulation. Since the question of the deletion of items has only exceptionally been the subject of discussion or explicit decision by the Council, the case histories necessarily afford incomplete evidence regarding the problem involved. The tabulation is therefore included to provide supplementary evidence covering the entire range of matters before the Council; but it should be borne in mind that the tabulation is a strict tabulation of the Summary Statements themselves rather than a record of decisions by the Council in the matter. In respect of applications for membership, data is entered as a matter of convenience of reference for each application; but since S/610 of 28 November 1947, the subject matter has regularly appeared in the Summary Statements under the generic heading "Applications for Membership".

Item*	First inclusion in the agenda	First entry in Summary Statement	Last action of the Council as of 31 December 1951	Final entry in Summary Statement as of 31 December 1951
1. The Iranian question	3rd meeting 28 January 1946	S/45 23 April 1946	Adopted Netherlands proposal to adjourn discussion and resume it at the request of any member 43rd meeting, 22 May 1946 <sup>9</sup>	

\* Items are listed in the order in which they have appeared in the Secretary-General's Summary Statement of matters of which the Security Council is seized. The titles used are

those occurring in the Secretary-General's Summary Statement except for occasional abridgments.

<sup>9</sup> See Case 56.



Item	First inclusion in the agenda	First entry in Summary Statement	Last action of the Council as of 31 December 1951	Final entry in Summary Statement as of 31 December 1951
2. The Spanish question	34th meeting 17 April 1946	S/45 23 April 1946	Adopted USSR draft resolution to maintain Spanish question upon list of matters 49th meeting, 26 June 1946 Adopted Polish draft resolution to take question off list of matters 79th meeting, 4 November 1946	S/189 1 November 1946
3. Statute and Rules of Procedure of Military Staff Committee	1st meeting 17 January 1946	S/45 23 April 1946	Referred report of Military Staff Committee to Committee of Experts 23rd meeting, 16 February 1946	
4. Special Agreements under Article 43 of the Charter	1st meeting 17 January 1946	S/45 23 April 1946	Discussed report of Military Staff Committee 157th meeting, 15 July 1947	
5. Rules of Procedure of the Security Council	1st meeting 17 January 1946	S/45 23 April 1946	Amended rules 468th meeting, 28 February 1950	
6. Application of Albania for membership in the United Nations	3rd meeting 28 January 1946	S/45 23 April 1946	Not recommended 57th meeting, 29 August 1946	S/136 23 August 1946
7. Resolution adopted at the 42nd meeting concerning the admission of new Members	42nd meeting 17 May 1946	S/82 7 June 1946	Expiration of terminal date named in resolution	S/136 23 August 1946
8. Definition of conditions under which the International Court of Justice shall be open to States not parties to the Statute	50th meeting 10 July 1946	S/104 12 July 1946	Adopted resolution stating conditions under which the International Court of Justice shall be open to States not parties to the Statute of the International Court of Justice 76th meeting, 15 October 1946	S/178 11 October 1946
9. Ukrainian complaint against Greece	59th meeting 3 September 1946	S/154 6 September 1946	Rejected Polish draft resolution to retain on list of matters <sup>a</sup>	S/164 20 September 1946
10. Conditions on which Switzerland might become a party to the Statute of the International Court of Justice	78th meeting 30 October 1946	S/189 1 November 1946	Adopted resolution concerning conditions on which Switzerland might become party to the Statute 80th meeting, 15 November 1946	S/190 8 November 1946
11. Resolution of the General Assembly concerning a Committee on Rules concerning the Admission of New Members	81st meeting 29 November 1946	S/202 29 November 1946	Adopted resolutions embodying recommendations of Committee of Experts and making changes in provisional rules of procedure 197th meeting, 27 August 1947	S/610 28 November 1947
12. Resolution 35 (I) of 19 November 1946 concerning re-examination of applications for membership. Albania Mongolian People's Republic Transjordan Ireland Portugal Retitled "Applications for Membership" in S/340, Summary Statement of 2 May 1947. The following applications were thereafter added:	81st meeting 29 November 1946	S/202 29 November 1946	Not recommended 186th meeting, 18 August 1947	S/519 22 August 1947
Hungary	132nd meeting 30 April 1947	S/340 2 May 1947	Not recommended 190th meeting, 21 August 1947	S/519 22 August 1947

<sup>a</sup> See Case 57.



Item	First inclusion in the agenda	First entry in Summary Statement	Last action of the Council as of 31 December 1951	Final entry in Summary Statement as of 31 December 1951
Italy	136th meeting 22 May 1947	S/358 23 May 1947	Not recommended 190th meeting, 21 August 1947	S/519 22 August 1947
Austria	154th meeting 10 July 1947	S/415 11 July 1947	Not recommended 190th meeting, 21 August 1947	S/519 22 August 1947
Roumania	161st meeting 18 July 1947	S/425 18 July 1947	Not recommended 190th meeting, 21 August 1947	S/519 22 August 1947
Yemen	168th meeting 28 July 1947	S/461 1 August 1947	Recommended 186th meeting, 18 August 1947	S/519 22 August 1947
Bulgaria	178th meeting 7 August 1947	S/480 9 August 1947	Not recommended 190th meeting, 21 August 1947	S/519 22 August 1947
Pakistan	186th meeting 18 August 1947	S/519 22 August 1947	Recommended 186th meeting, 18 August 1947	S/519 22 August 1947
13. The Greek question (Greek frontier incidents question)	82nd meeting 10 December 1946	S/214 13 December 1946	Adopted resolution to take the Greek frontier incidents question off the list of matters 202nd meeting, 15 September 1947	S/566 26 September 1947
14. The general regulation and reduction of armaments	88th meeting 31 December 1946	S/238 <sup>a</sup> 3 January 1947	Adopted resolution transmitting General Assembly resolution 300 (IV) to Commission for Conventional Armaments for further study 462nd meeting, 17 January 1950	
Information on armed forces of United Nations (General Assembly resolutions 41 (I) and 42 (I))	89th meeting 7 January 1947	S/246 <sup>a</sup> 10 January 1947		
15. First report of Atomic Energy Commission	92nd meeting 15 January 1947	S/255 17 January 1947	Adopted resolution giving further instructions to Atomic Energy Commission and calling for a second report	S/295 7 March 1947
16. Incidents in the Corfu Channel	95th meeting 20 January 1947	S/257 24 January 1947	Adopted resolution recommending reference of dispute to International Court of Justice 127th meeting, 9 April 1947 <sup>b</sup>	S/327 11 April 1947
17. Draft Trusteeship Agreement for the former Japanese Mandated Islands	113th meeting 26 February 1947	S/292 28 February 1947	Adopted Draft Trusteeship Agreement for the former Japanese Mandated Islands 124th meeting, 2 April 1947	S/321 4 April 1947
18. Application of Articles 11 and 12 of the Statute of the International Court of Justice	138th meeting 4 June 1947	S/370 6 June 1947	Adopted rule 61 of the Provisional Rules of Procedure 138th meeting, 4 June 1947	S/370 6 June 1947
19. Appointment of a Governor for the Free Territory of Trieste	143rd meeting 20 June 1947	S/382 20 June 1947	Rejected USSR draft resolution to appoint Colonel Flückiger as Governor 424th meeting, 10 May 1949	
20. The Egyptian question	159th meeting 17 July 1947	S/425 18 July 1947	Rejection of draft resolution 201st meeting, 10 September 1947 <sup>c</sup>	
21. The Indonesian question (II)	171st meeting 31 July 1947	S/461 1 August 1947	Failed to adopt Canadian draft resolution and rejected Ukrainian SSR draft resolution 456th meeting, 13 December 1949 <sup>d</sup>	

<sup>a</sup> Combined in S/279 of 14 February 1947 in accordance with the Security Council's decision to deal with the two items together.

<sup>b</sup> Combined in S/279 of 14 February 1947 in accordance with the Security Council's decision to deal with the two items together.

<sup>c</sup> See Case 58.

<sup>d</sup> See Case 59.

<sup>e</sup> See Case 61.

Item <sup>a</sup>	First inclusion in the agenda	First entry in Summary Statement	Last action of the Council as of 31 December 1951	Final entry in Summary Statement as of 31 December 1951
22. Voting Procedure in the Security Council	197th meeting 27 August 1947	S/533 29 August 1947	Presidential statement concerning outcome of meetings of five permanent members in accordance with General Assembly resolution of 14 April 1949, 195th plenary session 452nd meeting, 18 October 1949	
23. Applications for membership Finland	204th meeting 25 December 1947	S/566 26 September 1947	Not recommended 206th meeting, 1 October 1947	S/576 3 October 1947
Reconsideration: Italy Hungary Roumania Bulgaria	204th meeting 25 September 1947	S/566 26 September 1947	Not recommended 206th meeting, 1 October 1947	S/576 3 October 1947
24. Procedure in application of Articles 87 and 88 of the Charter with regard to the Pacific Islands under Strategic Trusteeship of the United States	220th meeting 15 November 1947		Adopted resolution concerning procedure to be employed in application of Articles 87 and 88 of the Charter to strategic areas under Trusteeship 415th meeting, 7 March 1949	
25. Applications for Membership Reconsideration (General Assembly resolution 113 (II), 17 November 1947): Italy Transjordan	221st meeting 22 November 1947	S/610 28 November 1947	Reported to General Assembly that there had been no change of position on either application (A/515) 221st meeting, 22 November 1947	
Burma	261st meeting 3 March 1948	S/692 5 March 1948	Recommended 279th meeting, 10 April 1948	S/853 23 June 1948
Reconsideration <sup>b</sup> Italy	279th meeting 10 April 1948	S/719 12 April 1948	Not recommended 279th meeting, 10 April 1948	
Albania Austria Bulgaria Finland Hungary Ireland Mongolian People's Republic Portugal Roumania Transjordan	279th meeting 10 April 1948	S/719 12 April 1948	Reported to the General Assembly that there had been no change of position on any of the applications 280th meeting, 10 April 1948	
Ceylon	318th meeting 11 June 1948	S/843 12 June 1948	Not recommended 18 August 1948 351st meeting,	
Israel	383rd meeting 2 December 1948	S/1106 4 December 1948	Recommended 414th meeting, 4 March 1949	S/1279 7 March 1949

<sup>a</sup> Reconsideration of the applications of Italy and Transjordan was requested by France, the United Kingdom and the United States by letter of 3 April 1948 (S/709). Reconsideration of the applications of Albania, Bulgaria, Finland, Hungary, Italy, the Mongolian People's Republic, Roumania was

requested by the Ukrainian SSR by letter of 5 April 1948 (S/712). Reconsideration of the applications of Austria, Ireland, and Portugal was requested by France, the United Kingdom, and the United States by letter of 7 April 1948 (S/715).

Item <sup>1</sup>	First inclusion in the agenda	First entry in Summary Statement	Last action of the Council as of 31 December 1951	Final entry in Summary Statement as of 31 December 1951
Reconsideration (General Assembly resolution 197 (III) I, December 1948) Ceylon	384th meeting 15 December 1948	S/1184 12 January 1949	Not recommended 384th meeting, 15 December 1948	
Republic of Korea	409th meeting 15 February 1949	S/2163 21 February 1949	Not recommended 423rd meeting, 8 April 1949	
Letter of 11 February 1949 from the representative of the USSR concerning application by the Democratic People's Republic of Korea	409th meeting 15 February 1949	S/2163 21 February 1949	Rejected USSR proposal to refer application to Committee on Admission of New Members 410th meeting, 16 February 1949	
26. The Palestine question	222nd meeting 9 December 1947	S/623 12 December 1947	Adopted resolution (S/2322) concerning passage through the Suez Canal of goods destined for Israel 358th meeting, 1 September 1951	
27. The India-Pakistan question <sup>1</sup>	226th meeting 6 January 1948	S/641 9 January 1948	Adopted resolution requesting United Nations representative to continue his efforts 566th meeting, 10 November 1951	
28. The Czechoslovak question	268th meeting 17 March 1948	S/700 22 March 1948	Discussed Argentine draft resolution 305th meeting, 24 May 1948	
29. Third Report of the Atomic Energy Commission	318th meeting 11 June 1948	S/843 16 June 1948	Adopted resolution (S/852) to transmit to the General Assembly the Commission's three reports 325th meeting, 22 June 1948	S/857 26 June 1948
30. Question of the Free Territory of Trieste	344th meeting 4 August 1948	S/959 10 August 1948	Rejected draft resolutions submitted by Yugoslavia and by Ukrainian SSR 354th meeting, 19 August 1948	
31. The Hyderabad question	357th meeting 16 September 1948	S/1010 22 September 1948	Heard statements by the representatives of India and Pakistan 425th and 426th meetings, 19 and 24 May 1949 <sup>2</sup>	
32. Conditions under which a State which is a party to the Statute of the International Court of Justice, but is not a Member of the United Nations may participate in electing members of the International Court of Justice	360th meeting 28 September 1948	S/1021 1 October 1948	Approved Belgian draft resolution 360th meeting, 28 September 1948	S/1021 1 October 1948
33. Identic Notifications dated 29 September 1948	362nd meeting 5 October 1948	S/1029 7 October 1948	Rejected joint draft resolution (S/1048) 372nd meeting, 25 October 1948	
34. Applications for Membership Nepal	423rd meeting 8 April 1949	S/1306 11 April 1949	Not recommended 439th meeting, 7 September 1949	

<sup>1</sup> The India-Pakistan question: This item was entitled the Kashmir question in S/641. This was changed to the Kashmir and Jammu question in S/653 of 17 January 1948. The present

title, India-Pakistan question, first appears in S/675 of 13 February 1948.

<sup>2</sup> See Case 60.

Item	First inclusion in the agenda	First entry in Summary Statement	Last action of the Council as of 31 December 1951	Final entry in Summary Statement as of 31 December 1951
35. Application of the Principality of Liechtenstein to become a party to the Statute of the International Court of Justice	423rd meeting 8 April 1949	S/1306 11 April 1949	Adopted resolution recommending Liechtenstein to become a party to the Statute 432nd meeting, 27 July 1949	S/1361 2 August 1949
36. Applications for Membership				
Reconsideration <sup>a</sup>				
Portugal	427th meeting 16 June 1949	S/1356 26 July 1949	Not adopted 443rd meeting, 13 September 1949	
Jordan				
Italy				
Finland				
Ireland				
Austria				
Ceylon				
Albania	427th meeting 16 June 1949	S/1356 26 July 1949	Not adopted 445th meeting (2 votes) 15 September 1949	
Mongolian People's Republic				
Bulgaria				
Roumania				
Hungary				
Reconsideration				
Nepal		S/1388 <sup>1</sup> 12 September 1949	Not adopted 445th meeting, 15 September 1949	
37. Travelling expenses and subsistence allowances of Alternate Representatives on certain Security Council Commissions	432nd meeting 27 July 1949	S/1361 2 August 1949	Adopted resolution (S/1401) 448th meeting, 27 September 1949	S/1402 4 October 1949
38. International Control of Atomic Energy <sup>2</sup>	444th meeting 15 September 1949	S/1394 <sup>a</sup> 21 September 1949	Adopted Canadian draft resolution, as amended, and rejected USSR draft resolution (S/1391/Rev.1) 447th meeting, 16 September 1949	
39. Cablegram dated 5 August 1949 from the Consular Commission at Batavia to the Secretary-General requesting that the United Nations assume future costs of military observers in Indonesia	446th meeting 16 September 1949	S/1394 21 September 1949	Adopted resolution (S/1404) referring the cablegram to the Secretary-General 449th meeting, 5 October 1949	S/1406 12 October 1949
40. The Question of Chinese representation in the Security Council <sup>3</sup>	460th meeting 12 January 1950	S/1450 16 January 1950	Rejected USSR draft resolution at 461st meeting, 13 January 1950, and Yugoslav draft resolution at 462nd meeting, 17 January 1950 <sup>4</sup>	S/1451 23 January 1950
41. Appointment of a rapporteur or conciliator for a situation or dispute brought to the attention of the Security Council (General Assembly resolution 268 B (III) of 28 April 1949)	472nd meeting 24 May 1950	S/1487 29 May 1950	Adopted French draft resolution (S/1486) 472nd meeting, 24 May 1950	S/1512 26 June 1950

<sup>a</sup> Under the agenda heading "Other applications for membership in the United Nations", the sub-items were the General Assembly resolutions 197 (III) A, B, C, D, E, F, G, H, of 8 December 1948, and communications renewing applications from Bulgaria (S/1012 and Add.1), Hungary (S/1017 and Add.1), Albania (S/1033 and S/1105), People's Republic of Mongolia (S/1035 and Add.1), and Roumania (S/1051 and Add.1).

<sup>1</sup> In virtue of revision of USSR draft resolution at 440th meeting, 9 September 1949, withdrawn at 442nd meeting, 13 September 1949, and original of 21 June 1949 reinstated with name of Nepal added after that of Ceylon (S/1340/Rev.2).

<sup>2</sup> The agenda item at the 444th through 447th meetings of the Security Council was entitled "Letter dated 29 July 1949 from the Chairman of the Atomic Energy Commission addressed to the President of the Security Council (S/1377)".

<sup>3</sup> An earlier summary statement, S/1388 of 12 September 1949, referred under the same heading to a Canadian draft resolution (S/1386) circulated in anticipation of the discussion of the question at a forthcoming meeting.

<sup>4</sup> The title of the agenda item was "Draft resolution submitted by the representative of the USSR at the 459th meeting of the Security Council on 10 January 1950 (S/1443).

<sup>5</sup> See Case 62.

Item	First inclusion in the agenda	First entry in Summary Statement	Last action of the Council as of 31 December 1951	Final entry in Summary Statement as of 31 December 1951
42. Complaint of aggression upon the Republic of Korea	473rd meeting 25 June 1950	S/1512 26 June 1950	Removed from the list of matters 531st meeting, 31 January 1951 <sup>a</sup>	S/2001 5 February 1951
43. Complaint of armed invasion of Taiwan (Formosa)	492nd meeting 29 August 1950	S/1774 7 September 1950	Rejected draft resolutions (S/1757 and S/1921) 530th meeting, 30 November 1950	
44. Complaint of bombing by air forces of the territory of China	493rd meeting 31 August 1950	S/1774 7 September 1950	Failed to adopt U.S. draft resolution (S/1752) and rejected USSR draft resolution (S/1745) 501st meeting, 12 September 1950	
45. Complaint of expulsion by Israel of thousands of Palestinian Arabs into Egyptian territory and the violation by Israel of the Egyptian-Israeli General Armistice Agreement	502nd meeting 18 September 1950	S/1811 26 September 1950	This item was discussed as part of the Palestine question and a resolution (S/1907 and Corr.1) adopted dealing with it, <i>inter alia</i> 524th meeting, 17 November 1950	S/1811 26 September 1950
46. Application for Membership Republic of Indonesia	503rd meeting 26 September 1950	S/1831 3 October 1950	Recommended 26 September 1950	S/2029 6 March 1951
47. Question of recommendation regarding the Secretary-General	509th meeting (private) 9 October 1950	S/1851 17 October 1950	Informed General Assembly of its inability to agree on recommendation 516th meeting (private), 30 October 1950	S/1888 8 November 1950
48. Complaint of failure by the Iranian Government to comply with provisional measures indicated by the International Court of Justice in the Anglo-Iranian Oil Company case	559th meeting 1 October 1951	S/2364 2 October 1951	Adopted French motion to adjourn the debate until the International Court had ruled on its own competence 565th meeting, 19 October 1951	
49. Application for Membership General Assembly Resolution of 7 December 1951 Reconsideration of Application of Italy	568th meeting 18 December 1951	S/2451 22 December 1951	Postponed indefinitely 569th meeting, 19 December 1951	
General Assembly Resolution 495 (V) of 4 December 1950	568th meeting 18 December 1951		Postponed indefinitely 569th meeting, 19 December 1951	

<sup>a</sup> See Case 63.

## 2. Proceedings of the Security Council regarding the retention and deletion of items from the agenda

### CASE 56

At the 32nd meeting on 15 April 1946, in connexion with the Iranian question, the Security Council considered a proposal of the representative of the USSR<sup>9</sup> that the question be removed from its agenda on the grounds that the resolution of the Security Council of 4 April was incorrect and illegal, being in conflict with the Charter, and that, as announced in a joint USSR-Iranian communique of 4 April, understanding on all points had been reached. At the same meeting, the Council had before it two communications from the Iranian Ambassador.<sup>10</sup> The first of these, dated 9 April 1946, stated that it was his Government's desire that the question remain on the Council's agenda as provided by the resolution of the Security Council of 4 April 1946. The second communication, dated 15 April 1946, announced conclusion of an agreement with the USSR for the evacuation of Soviet troops from Iranian territory by 6 May and added that "the Iranian Government has no doubt that this agreement will be carried out, but at the same time has not the right to fix the course the Security Council should take". In the same communication it was stated that subsequent instructions had been received "that the Iranian Government has complete confidence in the word and pledge of the Soviet Government and for this reason withdraws its complaint from the Security Council".

The representative of France introduced a draft resolution which, as revised at the 33rd meeting on 16 April 1946, took note of the Iranian representative's letter of 15 April and of the agreement reached between the Governments concerned and requested the Secretary-General "to collect the necessary information in order to complete the Security Council's report to the Assembly, in accordance with Article 24 of the Charter, on the manner in which it dealt with the case placed on its agenda on 26 March last at the request, now withdrawn, of the Government of Iran".<sup>11</sup>

At the 33rd meeting of 16 April 1946, the Council had before it, in addition to the documents mentioned above, a communication from the Secretary-General<sup>12</sup> concerning the legal aspects of the question of the retention of the Iranian case on the agenda of the Security Council in view of the fact that "both parties now have requested that it be removed".

"It is to be noted that the Security Council can be seized of a dispute or situation in one of three ways:

- "1. Under Article 35 by a State;
- "2. Under Article 34 by the Security Council itself;
- "3. Under Article 99 by the Secretary-General.

"In the present case, Article 99 is obviously not applicable. The Security Council has taken no action under Article 34, i.e., it has not ordered an investi-

gation, which is the only action possible under that Article. It is therefore not applicable at this time and cannot become applicable until an investigation is ordered.

"The Council was originally seized of the dispute under Article 35, paragraph 1. Now that Iran has withdrawn its complaint, the Council can take no action under Articles 33, 36, 37 or 38, since the necessary conditions for applying these Articles (namely, a dispute between two or more parties) do not exist. The only Article under which it can act at all is Article 34. But that Article, as has already been stated, can only be invoked by a vote to investigate, which has not been taken or even suggested in this case.

"It is therefore arguable that following withdrawal by the Iranian representative, the question is automatically removed from the agenda, unless:

"(a) The Security Council votes an investigation under Article 34; or

"(b) A member brings the matter up as a situation or dispute under Article 35; or

"(c) The Council proceeds under Article 36, paragraph 1, which would appear to require a preliminary finding that a dispute exists under Article 33, or that there is 'a situation of like nature'.

"An argument which may be made against the view of automatic removal from the agenda is that once a matter is brought to the attention of the Council, it is no longer a matter solely between the original parties, but one in which the Council collectively has an interest, as representing the whole of the United Nations. This may well be true; but it would appear that the only way in which, under the Charter, the Council can exercise that interest is under Article 34, or under Article 36, paragraph 1. Since the Council has not chosen to invoke Article 34 in the only way in which it can be invoked, i.e., through voting an investigation, and has not chosen to invoke Article 36, paragraph 1, by deciding that a dispute exists under Article 33 or that there is a situation of like nature, it may well be that there is no way in which it can remain seized of the matter."

The memorandum was referred by the Council to the Committee of Experts for examination and report.<sup>13</sup>

At the 36th meeting on 23 April 1946, the Council had before it the report of the Chairman of the Committee of Experts.<sup>14</sup> The Committee of Experts, which studied "from an abstract point of view the problem whether the Security Council can remain seized of a matter after the interested parties have requested its withdrawal", was unable to "formulate a common opinion".

"There was agreement in principle that when a matter has been submitted to the Security Council by a party, it cannot be withdrawn from the list of matters of which the Security Council is seized without a decision by the Security Council.

"It seemed all the more necessary to define these points exactly since the Secretary-General's memorandum, which was criticized in this respect by several representatives, referred to an automatic

<sup>9</sup> S/36, O.R., 1st year, 1st series, Suppl. No. 2, pp. 46-47.

<sup>10</sup> S/33, O.R., 1st year, 1st series, Suppl. No. 2, p. 47; S/37, 32nd meeting: pp. 122-123.

<sup>11</sup> 33rd meeting: pp. 142-143.

<sup>12</sup> S/39, 33rd meeting: pp. 143-145.

<sup>13</sup> 33rd meeting: p. 145.

<sup>14</sup> S/42, O.R., 1st year, 1st series, Suppl. No. 2, pp. 47-50.



process which seemed to exclude intervention by the Security Council.

"But the very freedom of decision of the Security Council was challenged, and the Committee was divided in this respect between two opposing views.

"While certain delegates were of the opinion that if the parties to a dispute ask the Security Council to drop the matter—particularly when they have reached an agreement—the Security Council must decide accordingly, other representatives, on the other hand, thought that the Security Council's freedom of judgment and decision remain unimpaired.

#### "I.

"Certain representatives observed in this connexion that the Secretary-General's memorandum had put the problem on too narrow a basis, since it referred only to a dispute and since it treated such a dispute merely as a lawsuit between two parties. Such a definition implied an inexact understanding, in the first place of the functions of the Security Council (which is not a Court of Justice) and in the second place of the nature of its competence, which includes the consideration of situations, and which in any case far exceeds the narrow framework within which the memorandum would tend to confine it.

"This was the opinion expressed with variations by the delegations of Australia, Brazil, China, Egypt, Mexico, the Netherlands, the United Kingdom and the United States. Some of these representatives observed that for the Security Council to drop the matter, it is not enough for the parties to the dispute to have come to an agreement . . .

"Several representatives in the same group drew the Committee's attention to the mistake which the memorandum seems to have made in failing to distinguish clearly between the decision by which the Security Council becomes seized of a question and any decision which it might take under Article 34. The decision by which the Security Council is seized of a question is absolutely independent of and distinct from the measures which it may decide to take under Article 34.

#### "II.

"On the other hand, according to the opinion of the representatives of France, Poland and the USSR, the rules governing the procedure for the withdrawal of a question submitted to the Security Council vary according to whether a dispute or situation is involved. The notion of a dispute is of a subjective nature. It is essentially a conflict between two or more States, which exists only by virtue of the opposition between the interested parties.

"The same delegates maintained that it is in conformity with common sense, logic, and law to affirm that if all the parties to a dispute have reached an agreement, the threat to the maintenance of peace from the prolongation of such a dispute thereby disappears. If the parties to a dispute have reached an agreement after negotiations which they have undertaken, either voluntarily or in fulfilment of a recommendation made by the Security Council in accordance with Article 33 of the Charter, and if they ask the Security Council to drop the dispute in question, the Security Council is bound to do so, after having noted that their agreement has put an end to the dispute.

"With regard to the notion of 'situation', it has, in the opinion of the same group, a clearly objective character. As in the case in which the attention of the Security Council is drawn to a dispute by a Member not a party to this dispute, a situation exists independently of the Member of the Organization which may have brought it to the attention of the Security Council. The Security Council may remain seized of it even if the Member which has brought it to the attention of the Security Council declares its desire to withdraw the communication which it had made in accordance with Article 35, paragraph 1, of the Charter."

**Decision:** *The President proposed that the French draft resolution be considered as an amendment to the earlier proposal of the USSR representative. The latter having signified his support of the French proposal, it was put to the vote and rejected by 3 votes in favour and 8 votes against.*<sup>15</sup>

At the 43rd meeting on 22 May 1946, in further connexion with the question whether the Iranian question should be removed from or retained on the agenda, a proposal by the representative of the Netherlands to adjourn "the discussion of the Iranian question until a date in the near future, the Council to be called together at the request of any member" was adopted by 9 votes in favour and 1 against.<sup>16</sup>

The question still remains on the list of matters of which the Security Council is seized.

#### CASE 57

In connexion with the Ukrainian complaint against Greece, which was included in the agenda of the Security Council at the 59th meeting on 3 September 1946, the following draft resolutions were submitted:

(1) By the representative of Australia at the 67th meeting on 16 September 1946 to "pass to the next item on the agenda".<sup>17</sup>

(2) By the representative of the USSR at the same meeting to find that the circumstances existing in Greece and on her frontiers created a situation envisaged by Article 34 of the Charter and "to retain on the agenda of the Security Council the question of the menacing situation brought about as the result of the activities of the Greek Government so long as the latter fails to carry out the recommendations proposed by the Security Council".<sup>18</sup>

(3) By the representative of the Netherlands at the 69th meeting on 18 September 1946 to invite the Secretary-General to notify the Governments of Greece, Yugoslavia, Albania and Bulgaria of the Council's hope that they would stop the frontier incidents taking place among them.<sup>19</sup>

<sup>15</sup> 36th meeting: p. 213. For texts of relevant statements see: 32nd meeting: Australia, p. 132; Brazil, p. 133; Egypt, p. 139; France, p. 135; Netherlands, pp. 127-128; Poland, pp. 137-138; USSR, pp. 133-134; United Kingdom, p. 130; United States, p. 127.

<sup>16</sup> 33rd meeting: President (China), p. 148; France, p. 149; Netherlands, pp. 147-148; USSR, p. 147; United States, p. 146.

<sup>17</sup> 36th meeting: Australia, p. 204; China, p. 211; France, pp. 206-207; Mexico, p. 210; Netherlands, p. 212; Poland, pp. 208-209; USSR, pp. 201-203; United Kingdom, pp. 207-208.

<sup>18</sup> 43rd meeting: pp. 304-305. One member (USSR) was absent.

<sup>19</sup> 67th meeting: p. 329.

<sup>20</sup> 67th meeting: pp. 334-335.

<sup>21</sup> 69th meeting: p. 390.

(4) By the representative of the United States at the 70th meeting on 20 September 1946 to establish a Commission under Article 34 of the Charter to investigate the facts.<sup>20</sup>

At the 70th meeting on 20 September 1946, the Council agreed to vote on the Australian draft resolution only after the votes on the other draft resolutions directly related to the question under consideration. The draft resolutions submitted by the representatives of the USSR, the Netherlands and the United States were then put to the vote. All three draft resolutions failed of adoption.<sup>21</sup>

Thereupon, the representative of Poland submitted a draft resolution to keep the situation brought to the Security Council's attention by the Ukrainian SSR under observation and to retain it on the list of the matters of which the Council is seized.

The President (USSR), declaring that the Polish draft resolution related to the substance of the question, put it to the vote.

**Decision:** *The Polish draft resolution was rejected by 2 votes in favour and 9 against.*<sup>22</sup>

The President put to the Council the question whether it was necessary to adopt the Australian draft resolution, inasmuch as the agenda itself obliged the Council to pass to the next item on the agenda.

The representative of Australia declared that to remove an item from the agenda, some formal decision by the Council was necessary. The Australian draft resolution was

"intended . . . to have the effect of a formal decision by this Council regarding this item on the agenda . . . the most appropriate decision which this Council could take regarding the Ukrainian letter is to remove it from the agenda."

He asked for a vote on his draft resolution.

The President observed that if the Australian draft resolution was not adopted it would not mean that the Security Council was unable to pass to the next item on the agenda.

" . . . taking into account the particular interpretation which was given by the Australian representative to his resolution—he repeatedly expressed the view that the adoption of his resolution would mean disapproval of the Ukrainian statement . . . this resolution cannot be regarded as procedural . . ."

"I wish also to remind the members of the Council that my proposal to leave the item on the agenda of the Security Council was not accepted and the proposal submitted by the Polish representative to leave the matter under the observation of the Security Council was not accepted either. The Australian representative is probably under the impression that the negative decisions on my own proposal and that of the Polish representative meant leaving the question on the agenda. That is precisely what I would like to have seen, but unfortunately the decision was a negative one."

Replying to the President, the Australian representative resubmitted his draft resolution, altered to read "remove this item from the agenda". He declared that

while the thought behind the draft resolution was to remove the item from the agenda because it was unsubstantiated, it was none the less a procedural proposal. "I think it is indisputable that if we admit items to the agenda by procedural vote, we also remove them by a procedural vote." He added that "if we understand from the Chair, that those two prior votes are a decision by 9 votes to 2, dismissing this item from the agenda of the Security Council, we see no need to press this motion, but short of that clear understanding we feel compelled to press it".

The President ruled:

" . . . in view of the negative vote on the fourth point of my draft resolution and in view of the negative vote taken on the Polish resolution, there is no need to take a vote on the proposal to retain the matter on the agenda or to exclude the matter from the agenda. Further, since the Security Council has no other proposal on the substance of the matter, beside those which have already been voted upon, the Security Council is ready to pass on to the next item on the agenda."

To the Australian representative's question whether the President's language meant that the item had already been removed from the agenda, the reply was that the statement was very clear. The Australian representative then pressed for a vote on the draft resolution.

At the suggestion of the representative of the United States, the Secretary-General was asked for his opinion, and particularly, whether if the President's ruling were accepted, "the Secretary-General would list this case on the matters of which the Council remains seized in that periodic paper which he circulates to the Council?"

The Secretary-General declared that

"If the Security Council follows the ruling of the President, in my opinion, the Council is no longer seized with this case and it will automatically be taken off the agenda."

"We had a case which was similar in London; it was the Indonesian case, and after all the proposals had been defeated, the result was that 'for the present the Council would pass on to its next item of business'. Since then, that case has never been on the agenda."

The representative of France, summarizing the discussion, declared

"By rejecting the Polish proposal, which aimed at retaining the question on the agenda, we have thus decided that the question is no longer on the agenda."

" . . . If my interpretation . . . is correct, I consider there is no need to vote on the Australian proposal, since this has already been adopted in principle by our vote against the Polish proposal."

The representative of Australia agreed

" . . . that the combination of the three statements makes it clear that this Council, by a vote of 9 to 2, has removed the Ukrainian item from its agenda, and since there is apparently no dissent to this opinion but agreement with it, I withdraw my resolution."

The President declared that

"The statement made by the Australian representative will be recorded in the minutes of the meeting, as well as all other statements."

<sup>20</sup>70th meeting: p. 396.

<sup>21</sup>70th meeting: pp. 406-408, 408-409, 409-410, 412. See chapter VIII, p. 308.

<sup>22</sup>70th meeting: p. 417.

The item did not thereafter appear in the list of matters.<sup>23</sup>

## CASE 58

At the 122nd meeting on 25 March 1947, in connexion with the Corfu Channel question, following a motion by the representative of the United Kingdom for adjournment, the following exchange of views took place.

The representative of Syria, on a point of order, inquired:

"...since the United Kingdom draft resolution has not been accepted, is this case to be dismissed altogether or is it to remain on the agenda until we find some other proposal or draft resolution which may please the permanent members of the Security Council?"

The President (Brazil) stated that the matter would remain on the agenda. The representative of the USSR then stated:

"The Security Council has not been able to reach a decision on this question. I therefore see no reason to retain this question on the agenda. The Security Council has discussed certain questions in the past on which it has been unable to reach positive decisions, and these questions fell into abeyance and ceased to be listed on the agenda of the Security Council or, as we say officially, on the list of questions of which the Security Council was seized. I do not think, therefore, that there is any reason to consider that this question is on the agenda of the Security Council."

The President, observing that the Council had not completed its consideration of the question, quoted rule 10 of the provisional rules of procedure in support of his decision.

The representative of the USSR declared that

"I do not consider that this question is still on the agenda, in view of the fact that the Council has not been able to reach a positive decision on this question. I shall not consider that it is on our agenda until the Security Council decides that it is necessary to retain this item on its agenda."

The representative of Syria stated:

"I consider that the Security Council is expected to find a solution or take a final decision on any subject or accusation presented to it. If the Security Council fails today to arrive at a final solution acceptable to all the members, especially the permanent members of the Security Council, that does not mean that the Security Council would fail tomorrow or some other time. The Security Council cannot consider anything as finally decided upon, unless a decision is taken for the dismissal of the question, or unless a decision is made which would be effective, according to the subject which is before it.

"I therefore consider that it is natural and goes without saying that, as long as the matter is not dismissed by the Security Council, it remains on the agenda. We do not expect that this subject,

which has not been decided upon today, cannot be settled tomorrow or that some other solution cannot be found in the future. I, therefore, consider that it remains on the agenda."

The item was included in the agenda as adopted at the 125th meeting.<sup>24</sup>

## CASE 59

At the 189th meeting on 20 August 1947, in connexion with the Egyptian question, the representative of Brazil declared that in the face of a situation which presented no immediate danger to international peace, his delegation was of the opinion that the Security Council was not justified in taking action, but should let the parties settle their differences by having recourse to the usual methods of settlement provided by international law. Accordingly, he submitted a draft resolution<sup>25</sup> to recommend to the two Governments that they resume direct negotiations, and, in paragraph (b), that they "keep the Security Council informed of the progress of these negotiations".

At the 196th meeting on 26 August 1947, the representative of Australia stated:

"If this resolution is adopted, we think the case should be removed from the agenda. If any member or any party can produce adequate reasons, such as a complete breakdown of negotiations, the case can again be put on the agenda. At the present time, however, there is no indication whatsoever that the negotiations will fail and no reason why they should fail."

At the 198th meeting on 28 August 1947, the representative of the United States stated that paragraph (b) of the Brazilian proposal was

"...technically ... a very strong statement... It is implicit in that paragraph that the matter remains a subject of which the Security Council is seized. Friction has arisen between these two countries. I think it is perfectly legitimate for the Security Council to remain seized of this question and to expect that its recommendation to the Governments of the United Kingdom and Egypt to the effect that they should keep the Security Council informed of the progress of their negotiations will be punctiliously carried out...

"I shall vote for the Brazilian resolution in the belief and understanding and hope that sub-paragraph 3 (b) means that the Security Council remains seized of this question..."

The representative of the United Kingdom emphasized that he had accepted paragraph 3 (b) of the Brazilian draft resolution; in view of that provision, he could, however, see no reason why the Security Council should "resort to the rather unusual procedure of keeping the matter on the agenda". He thought that with the "adoption of the resolution... the Council would have disposed of one phase of the discussion, and the matter would then automatically be removed from the agenda. In this case, there must be another phase... Therefore, the Council must come back to the question and examine it again." He did not agree to its retention on the agenda because it "would constitute not only a denial of my original claim that the

<sup>23</sup> For texts of relevant statements see: 70th meeting: President (USSR), pp. 419-420, 422; Australia, pp. 405, 406, 417, 422; France, p. 422; Netherlands, p. 418; Poland, pp. 413-414; United Kingdom, pp. 415-416; United States, p. 421; Secretary-General, p. 421.

<sup>24</sup> For texts of relevant statements see: 122nd meeting: President (Brazil), p. 611; Syria, pp. 611, 613; USSR, pp. 611-612; United Kingdom, p. 609.  
<sup>25</sup> S/507, 189th meeting: pp. 2108-2109.

case should have been dismissed, . . . but also an implication that the Egyptian claim was in some way justified . . . Therefore, I do hope that the Council will be content with the last clause of the Brazilian resolution and remove the matter formally from the agenda . . ."

The President (Syria), in putting the draft resolution to the vote, stated:

"I shall put the amended Brazilian resolution to the vote, on the understanding that the paragraph reading 'To keep the Security Council informed of the progress of these negotiations', means that the matter remains on the agenda . . . There is no way of holding a meeting of the Council and reporting to that meeting certain information, unless the matter in question is on the agenda."

The amended Brazilian resolution was put to the vote at the 198th meeting but was not adopted.<sup>24</sup>

The representative of Colombia then submitted a draft resolution<sup>27</sup> calling upon the parties to resume direct negotiations and "to keep the Security Council readily informed of the progress of their negotiations". At the 200th meeting on 29 August 1947, the Colombian resolution was put to the vote but was not adopted.<sup>28</sup> After the rejection of the Colombian draft resolution, the representative of the USSR stated:

"I certainly think this question should be considered as remaining on the Council's agenda and it seems to me that the majority of the other representatives on the Council are of the same opinion. If there are any contrary opinions on this matter, we shall have to take a decision. If we are all agreed, perhaps it would be sufficient for the President to make a statement to this effect."

The President (Syria) stated:

"The last paragraph of the Colombian resolution, which reads: 'To keep the Security Council readily informed of the progress of their negotiations', certainly would have been adopted if the whole resolution had been passed. As all the other paragraphs were rejected, this last one was also rejected. That does not mean, however, that the matter is taken off the agenda. That paragraph pertains only to the Colombian resolution. Therefore the matter is still on the agenda, and we have to wait for some other draft resolution or proposal to be submitted by one of the members in order that the matter be discussed further. We cannot dismiss the question as long as no decision has been taken by the Security Council. The Security Council cannot abandon any case, unless a decision is taken which is supported by the majority of the Council."

At the 201st meeting on 10 September 1947, a Chinese draft resolution recommending the parties to "keep the Security Council informed of the progress of these negotiations and report thereon to the Council in the first instance not later than 1 January 1948" was put to the vote and not adopted.<sup>29</sup>

Following this, the President (USSR) stated:

"The Security Council has been unable to adopt any decision on the Egyptian question so far. Since we have no other proposals before us at this meet-

ing, our work today is finished . . . Of course, the Egyptian question remains on the agenda of the Security Council and the Council may be called to continue consideration of the question at the request of any member of the Council or either of the two parties involved."

The representative of the United Kingdom stated:

"Is it the President's personal ruling that since the Council has failed to reach a conclusion in this case, the question is automatically retained on the agenda? Is that provided for in any rule of procedure, or, if the Council wishes to retain the question on its agenda, is a Council decision required?"

The President (USSR) stated:

"Naturally, until the Council decides to remove this question from the agenda, it remains on the agenda."<sup>30</sup>

#### CASE 60

At the 357th meeting on 16 September 1948, the Security Council decided to include the Hyderabad question in the agenda.

On 23 September 1948, a cablegram was received from the Nizam of Hyderabad which included the following statement:

"This morning I read with surprise in the newspapers that Mr. Zahir Ahmed stated before the Security Council that no instructions had been received by him asking him to withdraw the Hyderabad case from the Security Council. As a matter of fact, on the 18th September 1948, I sent a message which was duly communicated to Nawab Moin Nawaz Jung ordering him to withdraw Hyderabad's case from the Security Council. I also asked my Agent General in New Delhi to get in touch with Nawab Moin Nawaz Jung and communicate to him the said order. To resolve all doubts in the matter, I now formally address this letter to you and request you to note that the complaint made by my Government to the Security Council has been withdrawn by me . . ."<sup>31</sup>

At the 360th meeting on 28 September 1948, the representative of Argentina observed that "if the complaint is withdrawn, as the Nizam of Hyderabad requests, there is no problem before us, and no reason to continue the discussion". The representative of Colombia also stated that if the letter had been signed voluntarily by the Nizam "it has, of course, full legal value and should lead to the withdrawal of the delegation and also to the removal of the item from the agenda of the Security Council. If it was signed under compulsion, however, it has no value and cannot produce these results."

On 12 December 1948, the representative of Hyderabad submitted a letter to the President of the Security Council in which he made the following statement:

<sup>24</sup> For texts of relevant statements see:

189th meeting: Brazil, p. 2107.

196th meeting: President (Syria), p. 2304; China, pp. 2300-2301; Colombia, pp. 2287-2290; Egypt, pp. 2292-2295; France, 2290-2292; USSR, pp. 2283-2286; United Kingdom, pp. 2298-2299; United States, pp. 2296-2297.

200th meeting: President (Syria), pp. 2340-2341; USSR, p. 2340.

201st meeting: President (USSR), pp. 2362-2363; United Kingdom, p. 2363.

<sup>31</sup> S/1011, *OR.*, 3rd year, *Suppl. for Sept. 1948*, p. 7.

<sup>27</sup> 198th meeting: pp. 2304-2305.

<sup>28</sup> S/350, 198th meeting: p. 2305.

<sup>29</sup> 200th meeting: pp. 2339-2340.

<sup>30</sup> S/547, 201st meeting: p. 2344, 2362.

"The second question which requires elucidation in this connexion is one of law, namely, to what extent the Security Council can consider as valid the instructions, ordering the withdrawal of a complaint lodged before the United Nations, of the head of a State invaded and occupied by an aggressor. That question, which could be properly answered by the International Court of Justice, is of vital importance not only for Hyderabad but also, we believe, for the United Nations and we trust that the Security Council will not fail to take appropriate action in this regard."<sup>32</sup>

At the 424th meeting on 10 May 1949, the President (France) proposed, without objection, that the Council follow a suggestion by the representative of Egypt that the question of Hyderabad be retained on the agenda of the Security Council until it was completely disposed of.<sup>33</sup> At the 425th and 426th meetings on 19 and 24 May 1949, the Council heard the representatives of India and Pakistan.

## CASE 61

At the 456th meeting on 13 December 1949, in connexion with the Indonesian question (II), the last paragraph of a Canadian draft resolution concerning the report of the United Nations Commission for Indonesia on the Round Table Conference contained the following provision:

"And requests the United Nations Commission for Indonesia to continue to discharge the responsibilities entrusted to it by the Security Council, and, in particular, to observe and assist in the implementation of the agreements reached at the Round Table Conference, and to report thereon to the Security Council."<sup>34</sup>

The President (Canada) made the following statement after the draft resolution had been rejected:<sup>35</sup>

"... I would say ... that resolution would have no effect whatsoever on the previous decisions which have been taken by the Council unless it were adopted. If this resolution were defeated, as it has been, the previous resolutions in the Security Council remain in full force and effect."

**Decision:** *The President stated that he would "in my capacity as President, as a matter of procedure, request the Secretariat to transmit to our Commission*

<sup>32</sup> S/1118, O.R., 3rd year, Suppl. for Dec. 1948, pp. 209-210. See chapter VIII, pp. 353-354.

<sup>33</sup> For texts of relevant statements see:

360th meeting: President (United Kingdom), pp. 4-5, 9-10; Argentina, pp. 6-9, 11; China, p. 10; Colombia, pp. 5, 11-12; Syria, pp. 5-6.

424th meeting: President (France), p. 10; Egypt, p. 10.

<sup>34</sup> S/1431, O.R., 4th year, Suppl. for Sept.-Dec. 1949, pp. 13-14.

<sup>35</sup> 456th meeting: p. 35.

for Indonesia a copy of the proceedings . . . as guidance in the future action which remains to be carried out . . ."<sup>36</sup> On 9 January 1950, the Commission submitted to the Security Council its second interim report.<sup>37</sup>

## CASE 62

At the 463rd meeting on 7 February 1950, the representative of Yugoslavia requested that two telegrams from the Foreign Minister of the People's Republic of China, on the subject of the representation of China,<sup>38</sup> be distributed as official Security Council documents. The President (Cuba) stated that he could not have the documents circulated officially since the matter was not on the Council's agenda.

The representative of Yugoslavia stated:

"According to the established practice of the Council and the General Assembly any delegation is, I believe, entitled to request the circulation of a document in official form, particularly if that document relates to an item which is still on the agenda. The Council has never decided to remove the question of China from its agenda. A decision has been taken, but that does not mean that the question of China is no longer on the agenda."

The President replied that "this matter was already decided by the Council and is not on the permanent agenda. Consequently, the Chair feels that it cannot officially distribute the documents in question."<sup>39</sup>

## CASE 63

At the 531st meeting on 31 January 1951, the representative of the United Kingdom submitted a draft resolution "to remove the item 'Complaint of aggression upon the Republic of Korea' from the list of matters of which the Council is seized". He stated:

"... a decision to remove this item from the Council's agenda would not . . . invalidate in any way the actions which the Council has already taken on this question. Nor would it, of course, prevent the Council from taking the matter up again at any moment in the future, if it should so desire, by a simple procedural vote."<sup>40</sup>

<sup>36</sup> 456th meeting: p. 36.

<sup>37</sup> S/1449, O.R., 5th year, Special Suppl. No. 1.

<sup>38</sup> The question of the representation of China was discussed at the 460th through 462nd meetings between 12 January and 7 February 1950. Draft resolutions submitted by the representatives of the USSR and Yugoslavia failed of adoption.

<sup>39</sup> 463rd meeting: pp. 33-34.

The question of the representation of China on the Security Council appeared in the summary statement by the Secretary-General, S/1450, 16 January 1950, but was omitted from subsequent summary statements; see S/1451, 23 January 1950, and S/1452, 31 January 1950.

<sup>40</sup> 531st meeting: p. 8. For discussion in relation to Article 12, see chapter VI; Case 4; for text of decision, see chapter VIII, p. 358.

**Chapter III**

**PARTICIPATION IN THE PROCEEDINGS OF THE SECURITY COUNCIL**



**TABLE OF CONTENTS**

	<i>Page</i>
INTRODUCTORY NOTE .....	101
<b>PART I. BASIS OF INVITATIONS TO PARTICIPATE</b>	
Note .....	102
A. In the case of persons invited in an individual capacity .....	103
B. In the case of representatives of United Nations organs or subsidiary organs .....	103
C. In the case of Members of the United Nations .....	105
1. Invitation when the Member brought to the attention of the Security Council	
a. A matter in accordance with Article 35 (1) of the Charter .....	105
b. A matter not being either a dispute or a situation .....	108
2. Invitations when the interests of a Member were considered specially affected .....	108
3. Invitations denied .....	113
D. In the case of non-Member States and other invitations .....	113
1. Invitations expressly under Article 32 .....	113
2. Invitations expressly under rule 39 of the provisional rules of procedure .....	114
3. Invitations not expressly under Article 32 or rule 39 .....	116
a. Restricted in relation to the agenda item .....	116
b. Unrestricted in relation to the agenda item .....	117
4. Invitations denied .....	118
<b>PART II. CONSIDERATION OF THE TERMS AND PROVISIONS OF ARTICLE 32 OF THE CHARTER</b>	
Note .....	121
A. "Any Member of the United Nations which is not a member of the Security Council or any State which is not a Member of the United Nations..." .....	121
B. "... If it is a party to a dispute under consideration by the Security Council..." ..	122
C. "... Shall be invited to participate, without vote, in the discussion relating to the dispute." .....	125
D. "The Security Council shall lay down such conditions as it deems just for the participation of a State which is not a Member of the United Nations." .....	126
<b>PART III. PROCEDURES RELATING TO PARTICIPATION OF INVITED REPRESENTATIVES</b>	
Note .....	128
A. The stage at which invited States are heard .....	129
B. The duration of participation .....	131
C. Limitations of a procedural nature .....	133
1. Concerning the order in which the representatives are called upon to speak .....	133
2. Concerning the raising of points of order by invited representatives .....	134
3. Concerning the submission of proposals or draft resolutions by invited representatives .....	134
a. Before adoption of rule 38 of the provisional rules of procedure .....	134
b. After adoption of rule 38 of the provisional rules of procedure .....	135
D. Limitations on matters to be discussed by invited representatives .....	136
1. Adoption of the agenda .....	136
2. Extension of invitations .....	137
3. Postponement of consideration of a question .....	138
4. Other matters .....	138

## INTRODUCTORY NOTE

The texts of the relevant provisional rules of procedure of the Security Council and Articles of the Charter<sup>1</sup> particularize the following circumstances for invitations to non-members of the Security Council.

1. Where a Member of the United Nations brings a matter to the attention of the Council in accordance with Article 35 (1) (rule 37).

2. Where a Member of the United Nations, or any State which is not a Member of the United Nations, is a party to a dispute (Article 32).

3. Where the interests of a Member of the United Nations are specially affected (Article 31 and rule 37).

4. Where members of the Secretariat or other persons are invited to supply information or give other assistance (rule 39).

Of these four categories, 1 and 2 apply only to the proceedings of the Council in connexion with disputes and situations. Categories 3 and 4 are of general application. Categories 1, 2 and 3 have been applied to Members of the United Nations, and categories 2 and 4 to non-Members. Categories 1, 3 and 4 do not limit the discretion of the Council, whereas category 2 involves an obligation of the Council.

The material relevant to participation in the proceedings of the Council cannot, however, be satisfactorily arranged within a classification derived directly from these texts, since on many occasions the Council has considered itself called upon to extend an invitation in circumstances the correspondence of which to those envisaged in these texts has been the subject of no definite pronouncement by the Council. The classification adopted is designed to facilitate the presentation of the varieties of practice to which the Council has had recourse, while adhering where possible to a classification based on the texts of the provisional rules or of the Charter.

Part I consists of summary accounts of the proceedings of the Council in the consideration of all the proposals to extend an invitation, with emphasis more especially on consideration of the basis on which the invitation might be deemed to rest. Part II presents discussion relating to the terms and provisions of Article 32. Part III deals with procedures relating to the participation of representatives once the Council has decided to extend an invitation.

### Articles of the Charter

#### Article 31

Any Member of the United Nations which is not a member of the Security Council may participate, without vote, in the discussion of any question brought before the Security Council whenever the latter considers that the interests of that Member are specially affected.

#### Article 32

Any Member of the United Nations which is not a member of the Security Council or any state which is not a Member of the United Nations, if it is a party to a dispute under consideration by the Security Council, shall be invited to participate, without vote, in the discussion relating to the dispute. The Security Council shall lay down such conditions as it deems just for the participation of a state which is not a Member of the United Nations.

### Provisional rules of procedure of the Security Council

PROVISIONAL RULE OF PROCEDURE, IN FORCE FROM THE 1ST MEETING ON 17 JANUARY 1946 TO THE 41ST MEETING ON 16 MAY 1946:<sup>2</sup>

#### "Rule 17

"The Security Council may invite members of the Secretariat, or any person whom it considers competent for the purpose, to supply it with information or to give assistance in examining matters within its competence."

PROVISIONAL RULES OF PROCEDURE OF THE SECURITY COUNCIL:<sup>3</sup> ADOPTED AT THE 41ST MEETING ON 16 MAY 1946

#### "Rule 37 [34]"<sup>4</sup>

"Any Member of the United Nations which is not a member of the Security Council may be invited,

as the result of a decision of the Security Council, to participate, without vote, in the discussion of any question brought before the Security Council when the Security Council considers that the interests of that Member are specially affected, or when a Member brings a matter to the attention of the Security Council in accordance with Article 35 (1) of the Charter.

#### "Rule 38 [35]

"Any Member of the United Nations invited in accordance with the preceding Rule or in application of Article 32 of the Charter to participate in the discussions of the Security Council may submit proposals and draft resolutions. These proposals and draft resolutions may be put to a vote only at the request of a representative on the Security Council.

#### "Rule 39 [36]

"The Security Council may invite members of the Secretariat or other persons, whom it considers competent for the purpose, to supply it with information or to give other assistance in examining matters within its competence."

<sup>1</sup> Rules 37 and 39. Articles 31 and 32.

<sup>2</sup> O.R., 1st year, 1st series, Suppl. No. 1, annex 1, p. 5.

<sup>3</sup> S/62, O.R., 1st year, 1st series, Suppl. No. 2, p. 35.

<sup>4</sup> The numbering of these provisional rules was changed as from the 48th meeting, on 24 June 1946.

## Part I

## BASIS OF INVITATIONS TO PARTICIPATE

## NOTE

Part I includes all cases in which proposals to extend an invitation to participate in the discussion have been put forward in the Security Council. The general features of each case are shown, together with the decisions of the Council and the main positions taken in the course of debate. The instances are grouped to distinguish between invitations to persons invited in an individual capacity in section A; invitations to representatives of subsidiary organs or other United Nations organs in section B; invitations to Members of the United Nations in section C; and invitations to non-Member States, together with other invitations, in section D. The grouping is so arranged in order to bring together in section D a range of invitations within which the official records reveal no clear distinctions based on differentiation of status.

## IN THE CASE OF MEMBERS OF THE UNITED NATIONS

The arrangement of section C is derived from rule 37 of the provisional rules of procedure of the Council. In the case of Members of the United Nations, Article 31 makes provision for their participation when their interests are considered by the Council to be specially affected and Article 32 for their participation when parties to a dispute. At an early stage in the work of the Council, it was found expedient to have recourse to the intent of Article 31 as a basis of invitation to Members of the United Nations at whose instance a dispute or situation was brought before the Council. The practice so initiated was subsequently embodied in rule 37 of the provisional rules of procedure adopted at the 41st meeting on 16 May 1946.<sup>1</sup> Section C.1.a. therefore brings together the occasions on which Members of the United Nations submitting matters in accordance with Article 35 (1) have been invited to participate without vote in the discussion.

Rule 37 thus provides the basis for the separate classification of invitations in connexion with the submission of a dispute or situation by a Member of the United Nations in accordance with Article 35 (1). Matters may also be submitted by a Member that fall outside the provisions of Article 35 (1). Such cases have been entered separately in section C.1.b. Article 31 was expressly invoked in certain of these cases.<sup>2</sup>

Rule 37, in embodying the provisions of Article 31, also relates to invitation to Members of the United Nations on the ground that their interests are specially affected. Cases of invitation where a Member brought a matter to the attention of the Council having been included in section C.1., all other cases of invitation when the interests of a Member were considered specially affected are brought together in section C.2. Article 31 was expressly invoked in certain of these

cases also,<sup>3</sup> and in one case Article 32 was expressly invoked in conjunction with rule 37.<sup>4</sup>

When extending an invitation to a Member on the grounds that its interests were specially affected, the Council has made no distinction as to whether the matter involved was a dispute or situation, or a matter not of such nature. Nor do Article 31 or rule 37 make such a distinction. Therefore, all cases of invitations to Members whose interests were specially affected are grouped together in section C.2.

Instances of invitations denied are provided for in section C.3.

## IN THE CASE OF NON-MEMBER STATES AND OTHER INVITATIONS

Article 32 provides for the invitation of any non-Member State when it is a party to a dispute under consideration by the Council. Section D commences with the cases of invitation to non-Member States expressly under Article 32. The Council, however, has not always found it possible to invoke the letter of Article 32. The difficulties in this connexion are dealt with in part II, where discussion related to the interpretation of the terms and provisions of Article 32 is set out in detail.

The problem of the applicability of Article 32 to the varied circumstances which have confronted the Council has been interlinked in discussion with consideration of the applicability of rule 39 of the provisional rules of procedure in the case of invitations to non-Members. The cases listed in section D.2. exemplify the application of rule 39 in cases which are clearly distinguished from the instances of invitation to persons in their individual capacity, which are listed in sections A and B. The applicability of rule 39 in circumstances in which hesitation has been expressed regarding the application of Article 32 has been the subject of extensive consideration on several occasions.<sup>5</sup>

The procedural limitations which may be consequent on invitations expressly under rule 39 are indicated in part III.<sup>6</sup>

There have also been instances in which the Security Council has, for reasons which have varied from case to case, refrained from invoking the letter of either Article 32 or rule 39, but has extended invitations in the spirit of the rules or of the Charter. These cases have therefore been listed separately in section D.3. Section D.3.a. comprises two instances in which representatives of non-Member States were invited for the restricted purpose of making statements or declarations.

In section D.3.b. are entered other cases in which invitations to participate without vote in the discussion have been extended without the invocation of Article 32 or rule 39. In section D.4. are entered the cases in which proposals to invite have been rejected by the Council.

<sup>1</sup> In submitting rule 37 the Committee of Experts reported: "The Committee did not consider it advisable to provide in this rule for Members invited in accordance with Article 32 of the Charter because the invitation to a Member under this Article is mandatory." S/57, O.R., 1st year, 1st series, Suppl. No. 2, annex 1 (d), p. 22.

<sup>2</sup> Cases 11, 13 and 17.

<sup>3</sup> Cases 24-30, 32-37 and 40-47.

<sup>4</sup> Case 48.

<sup>5</sup> Cases 54, 55, 56, 59, 61, 65 and 66. See also Case 70 of part II.

<sup>6</sup> See part III, Note, together with Cases 90, 93, 94, 96, 109 and 113.

The main argumentation with regard to the impediments in the application of the texts of the Charter, notably of Article 32, took place in connexion with the cases in section D.3. In order to maintain uniform brevity in the case histories in part I, the discussion bearing on the text of Article 32 is presented separately in part II of the chapter. This discussion occupies a significant part in the development of the practice of the Council, but its outcome is not crystallized in the decisions of the Council. No need has arisen to present separately discussion relating to Article 31, since the significance of Article 31 in the practice of the Council is fully represented by the decisions recorded in the case histories of part I.

#### A. IN THE CASE OF PERSONS INVITED IN AN INDIVIDUAL CAPACITY

##### CASE 1

At the 268th meeting on 17 March 1948, in connexion with the Czechoslovak question, the representative of Chile,\* who had been invited to participate in the discussion, suggested that the Security Council under rule 39 invite Mr. Papanek, the former representative of Czechoslovakia to the United Nations, to supply the Council with information on the question. At the 272nd meeting on 22 March 1948, the representative of Argentina, in support of the suggestion made by the representative of Chile, proposed that the Council invite Mr. Papanek to the Council table. The representative of Canada supported the proposal of the representative of Argentina. The representative of the Ukrainian SSR opposed an invitation to Mr. Papanek on the ground that the Council should not hear or consider "slandorous statements" by private individuals. The representative of the USSR also protested against the proposal.<sup>7</sup>

**Decision:** *The proposal of the representative of Chile was adopted by 9 votes in favour and 2 against, and, at the invitation of the President (China), Mr. Papanek took his place at the Council table.<sup>8</sup>*

##### CASE 2

At the 360th meeting on 28 September 1948, in connexion with the Hyderabad question, the President (United Kingdom) referred to two documents<sup>9</sup> which raised doubts regarding "the validity of the credentials of the representative of Hyderabad", and invited the observations of the Security Council on whether the representative of Hyderabad should nevertheless be invited to take part in the discussion as before. After statements had been made by the representatives of Syria, China, Colombia and Argentina, the President suggested that the representative of Hyderabad should appear "under rule 39 of the rules of procedure, as an individual", and that the Council should hear Nawab Moin, who represented Hyderabad at the last meeting, on the point of credentials and on that point alone. The representative of China stated that if the President

should invite "the former representative of Hyderabad" under rule 39, his delegation would not raise any objection. The representative of France supported the suggestion of the President and observed that a precise indication of the rule under which the invitation was being issued would prejudice the very question on which the Council wanted his observations.<sup>10</sup>

**Decision:** *The President invited, without objection, the Nawab Moin Nawaz Jung of Hyderabad to take his place at the Council table in his individual capacity and to make a statement on the question of the validity of his credentials.<sup>11</sup>*

##### CASE 3

At the 517th meeting on 30 October 1950, in connexion with the Palestine question, the representative of the Hashemite Kingdom of Jordan\* requested that the Security Council invite Dr. Bunche, the former United Nations Acting Mediator, to enlighten the Council on certain aspects of the armistice negotiations.<sup>12</sup>

**Decision:** *The President's (United States) proposal to invite Dr. Bunche was unanimously adopted,<sup>13</sup> and at the 518th meeting on 6 November 1950, the President invited, without objection, the former United Nations Acting Mediator to the Council table.<sup>14</sup>*

#### B. IN THE CASE OF REPRESENTATIVES OF UNITED NATIONS ORGANS OR SUBSIDIARY ORGANS

##### CASE 4

On the following occasions the Security Council invited the Chairman, the Rapporteur, or members of one of its subsidiary organs to the table in order that they might give any information which the Council might require when considering a report from the subsidiary organ:

##### 1. Committee of Experts of the Security Council

- At the 31st meeting on 9 April 1946.<sup>15</sup>
- At the 41st meeting on 16 May 1946.<sup>16</sup>
- At the 42nd meeting on 17 May 1946.<sup>17</sup>
- At the 44th meeting on 6 June 1946.<sup>18</sup>
- At the 76th meeting on 15 October 1946.<sup>19</sup>
- At the 80th meeting on 15 November 1946.<sup>20</sup>
- At the 197th meeting on 27 August 1947.<sup>21</sup>
- At the 320th meeting on 15 June 1948.<sup>22</sup>
- At the 432nd meeting on 27 July 1949.<sup>23</sup>
- At the 468th meeting on 28 February 1950.<sup>24</sup>

<sup>7</sup> For texts of relevant statements see:

360th meeting: President (United Kingdom), pp. 3, 4, 9; Argentina, p. 8; China, pp. 5, 10; Colombia, pp. 5, 11-12; France, p. 13; Syria, pp. 3-4.

<sup>8</sup> 360th meeting: p. 13.

<sup>9</sup> 517th meeting: p. 23.

<sup>10</sup> 517th meeting: p. 31.

<sup>11</sup> 518th meeting: p. 6.

<sup>12</sup> 31st meeting: p. 100.

<sup>13</sup> 41st meeting: p. 253.

<sup>14</sup> 42nd meeting: p. 270.

<sup>15</sup> 44th meeting: p. 310.

<sup>16</sup> 76th meeting: p. 466.

<sup>17</sup> 80th meeting: pp. 501-502.

<sup>18</sup> 197th meeting: p. 2256.

<sup>19</sup> 320th meeting: p. 13.

<sup>20</sup> 432nd meeting: p. 1.

<sup>21</sup> 468th meeting: p. 9.

\* For texts of relevant statements see:

268th meeting: Chile, pp. 110-111.

272nd meeting: Argentina, pp. 173-174; Canada, p. 174; Ukrainian SSR, p. 174; USSR, pp. 174-175.

<sup>7</sup> 272nd meeting: p. 175.

<sup>8</sup> S/1011 and S/1019, O.R., 3rd year, Suppl. for Sept. 1948, pp. 7 and 9.

2. *Committee on the Admission of New Members*

- At the 54th meeting on 28 August 1946.<sup>25</sup>  
 At the 186th meeting on 18 August 1947.<sup>26</sup>  
 At the 279th meeting on 10 April 1948.<sup>27</sup>  
 At the 351st meeting on 18 August 1948.<sup>28</sup>

3. *The United Nations Commission of Investigation Concerning Greek Frontier Incidents*

- At the 147th meeting on 27 June 1947.<sup>29</sup>

4. *The Security Council Committee of Good Offices on the Indonesian question*

- At the 247th meeting on 17 February 1948.<sup>30</sup>  
 At the 248th meeting on 17 February 1948.<sup>31</sup>  
 At the 249th meeting on 18 February 1948.<sup>32</sup>  
 At the 251st meeting on 20 February 1948.<sup>33</sup>  
 At the 252nd meeting on 21 February 1948.<sup>34</sup>  
 At the 256th meeting on 26 February 1948.<sup>35</sup>  
 At the 259th meeting on 28 February 1948.<sup>36</sup>

5. *The United Nations Commission for India and Pakistan*

- At the 382nd meeting on 25 November 1948.<sup>37</sup>  
 At the 399th meeting on 13 January 1949.<sup>38</sup>  
 At the 457th meeting on 17 December 1949.<sup>39</sup>  
 At the 463rd meeting on 7 February 1950.<sup>40</sup>  
 At the 464th meeting on 8 February 1950.<sup>41</sup>  
 At the 465th meeting on 9 February 1950.<sup>42</sup>  
 At the 466th meeting on 10 February 1950.<sup>43</sup>  
 At the 467th meeting on 24 February 1950.<sup>44</sup>  
 At the 468th meeting on 28 February 1950.<sup>45</sup>  
 At the 469th meeting on 8 March 1950.<sup>46</sup>  
 At the 470th meeting on 14 March 1950.<sup>47</sup>  
 At the 471st meeting on 12 April 1950.<sup>48</sup>  
 At the 564th meeting on 18 October 1951.<sup>49</sup>  
 At the 570th meeting on 17 January 1952.<sup>50</sup>  
 At the 571st meeting on 30 January 1952.<sup>51</sup>  
 At the 572nd meeting on 31 January 1952.<sup>52</sup>

<sup>25</sup> 54th meeting: p. 39.  
<sup>26</sup> 186th meeting: p. 2030.  
<sup>27</sup> 279th meeting: p. 2.  
<sup>28</sup> 351st meeting: p. 3.  
<sup>29</sup> 147th meeting: p. 1116.  
<sup>30</sup> 247th meeting: p. 135.  
<sup>31</sup> 248th meeting: pp. 152-153.  
<sup>32</sup> 249th meeting: p. 172.  
<sup>33</sup> 251st meeting: p. 210.  
<sup>34</sup> 252nd meeting: p. 237.  
<sup>35</sup> 256th meeting: p. 303.  
<sup>36</sup> 259th meeting: p. 367.  
<sup>37</sup> 382nd meeting: p. 2.  
<sup>38</sup> 399th meeting: p. 1.  
<sup>39</sup> 457th meeting: p. 2.  
<sup>40</sup> 463rd meeting: p. 2.  
<sup>41</sup> 464th meeting: p. 1.  
<sup>42</sup> 465th meeting: p. 1.  
<sup>43</sup> 466th meeting: p. 1.  
<sup>44</sup> 467th meeting: p. 1.  
<sup>45</sup> 468th meeting: p. 1.  
<sup>46</sup> 469th meeting: p. 1.  
<sup>47</sup> 470th meeting: p. 1.  
<sup>48</sup> 471st meeting: p. 5.  
<sup>49</sup> 564th meeting: p. 1.  
<sup>50</sup> 570th meeting: p. 3.  
<sup>51</sup> 571st meeting: p. 2.  
<sup>52</sup> 572nd meeting: p. 1.

6. *Chief of Staff, Truce Supervision Organization in Palestine*

- At the 517th meeting on 30 October 1950.<sup>53</sup>  
 At the 518th meeting on 6 November 1950.<sup>54</sup>  
 At the 522nd meeting on 13 November 1950.<sup>55</sup>  
 At the 542nd meeting on 25 April 1951.<sup>56</sup>  
 At the 544th meeting on 2 May 1951.<sup>57</sup>  
 At the 545th meeting on 8 May 1951.<sup>58</sup>

## CASE 5

On the following occasions the Security Council invited the representative of a subsidiary organ, established by the General Assembly, the terms of reference of which included provision for reports to be made to the Council:

1. *Chairman of the United Nations Palestine Commission*

- At the 253rd meeting on 24 February 1948.<sup>59</sup>

2. *The United Nations Mediator for Palestine*

- At the 333rd meeting on 13 July 1948.<sup>60</sup>

3. *The United Nations Acting Mediator for Palestine*

- At the 365th meeting on 14 October 1948.<sup>61</sup>  
 At the 367th meeting on 19 October 1948.<sup>62</sup>  
 At the 373rd meeting on 26 October 1948.<sup>63</sup>  
 At the 374th meeting on 28 October 1948.<sup>64</sup>  
 At the 433rd meeting on 4 August 1949.<sup>65</sup>

## CASE 6

At the 9th meeting on 6 February 1946, during the voting on the election of Judges for the International Court of Justice, a difference of opinion arose regarding the procedure to be followed. The President (Australia) inquired if the Council wished to hear Mr. Spaak, the President of the General Assembly, with regard to the procedure that had been followed in the Assembly on this matter. He stated:

"It is, of course, necessary, if the President is to be able to speak, that it be at the request of the Council, in order that he might afford to us such information as possible."<sup>66</sup>

**Decision:** *The President invited, without objection, the President of the General Assembly to the Council table.*<sup>67</sup>

<sup>53</sup> 517th meeting: p. 2.  
<sup>54</sup> 518th meeting: p. 6.  
<sup>55</sup> 522nd meeting: p. 2.  
<sup>56</sup> 542nd meeting: p. 3.  
<sup>57</sup> 544th meeting: p. 2.  
<sup>58</sup> 545th meeting: p. 3.  
<sup>59</sup> 253rd meeting: p. 257.  
<sup>60</sup> 333rd meeting: p. 1.  
<sup>61</sup> 365th meeting: p. 4.  
<sup>62</sup> 367th meeting: p. 1.  
<sup>63</sup> 373rd meeting: p. 2.  
<sup>64</sup> 374th meeting: p. 1.  
<sup>65</sup> 433rd meeting: p. 2.

<sup>66</sup> For texts of relevant statements see:  
 9th meeting: President (Australia), p. 147; Egypt, pp. 147-148; Netherlands, pp. 148-149.  
<sup>67</sup> 9th meeting: p. 150.

## CASE 7

At the 142nd meeting on 18 June 1947, in connexion with special agreements under Article 43 of the Charter and organization of the United Nations armed forces, the President (France) proposed to invite the Chairman of the Military Staff Committee, or his representative, in order that he might furnish any explanation required and give the Committee's own interpretation of a particular article in the report which had been submitted by the Committee. The representative of the USSR had no objections to the Chairman of the Committee being invited to the meetings of the Council when necessary, but he doubted whether the Chairman would be in a position to give an interpretation on behalf of the other delegations in the Committee, since these delegations had not agreed on a common interpretation on the question. The President suggested the following procedure: first to reach a decision regarding the invitation to the Chairman of the Military Staff Committee; then to ask the representative of Australia to formulate his question for the information of the Council; and then to adjourn, to enable a reply to be given at a later meeting.<sup>68</sup>

**Decision:** *The Council decided, by 10 votes to none with 1 abstention, to invite the representative of the Chairman of the Military Staff Committee to the Council table.*<sup>69</sup>

## CASE 8

At the 462nd meeting on 17 January 1950, the President (China) requested the authorization of the Security Council to invite General McNaughton, who had undertaken consultations with India and Pakistan at the request of the Council during the previous December,<sup>70</sup> to take a seat at the Council table during the meeting which was to be called on the India-Pakistan question.<sup>71</sup>

**Decision:** *The President was authorized to extend the invitation to General McNaughton.*<sup>72</sup>

### C. IN THE CASE OF MEMBERS OF THE UNITED NATIONS

#### 1. Invitation when the Member brought to the attention of the Security Council

##### a. A matter in accordance with Article 35 (1) of the Charter

## CASE 9

At the 2nd meeting on 25 January 1946, after communications from Iran, the USSR and the Ukrainian SSR had been placed on the agenda, the representative of Egypt proposed that "the States which have presented complaints should be invited to participate in the work, in the sittings of the Security Council". After quoting Article 31, the representative of Egypt added:

<sup>68</sup> For texts of relevant statements see: 142nd meeting: President (France), pp. 1037, 1040; USSR, pp. 1038, 1039-1040.

<sup>69</sup> 142nd meeting: p. 1040-1041.

<sup>70</sup> General McNaughton, the representative of Canada, was President of the Council in December 1949. Canada, however, ceased to be a member of the Council on 1 January 1950.

<sup>71</sup> 462nd meeting: p. 16.

<sup>72</sup> At the 463rd meeting on 7 February 1950, the President announced that General McNaughton had preferred to submit a written rather than an oral report.

"Surely, there is more reason when the question brought before the Council is brought before it at the instance of a certain Member of the United Nations. That would certainly be a case much stronger than the one provided for by Article 31, and the presence of such complaining States would be considered as absolutely necessary."

Other members of the Council supported the viewpoint of the representative of Egypt.<sup>73</sup>

**Decision:** *The Egyptian proposal was adopted without vote.*<sup>74</sup>

At the 3rd meeting on 28 January 1946, when the Iranian question was considered, the President (Australia) drew the attention of the Security Council to that decision, and he invited, without objection, the representative of Iran "to come to the table".<sup>75</sup> Before inviting the representative of Iran, the President stated:

"I think it was the intention of the Council to act under Article 31 of the Charter. If the Council had not already decided to issue an invitation, it might have been necessary to consider at this stage, in view of the Iranian communication of 26 January, whether an invitation should be issued under Article 32 . . . I merely mention it so that our records will show that we have not been unmindful of it."

## CASE 10

At the 12th meeting on 7 February 1946, in connexion with the Indonesian question (I) to which the representative of the Ukrainian SSR had, by letter dated 21 January 1946,<sup>76</sup> drawn the attention of the Security Council under Article 35 (1), the President (Australia) stated:

"I should like to suggest that the procedure we adopt in regard to this item might be the same as that which we have adopted previously in regard to the cases concerning Iran and Greece; that is, that I should invite to the table the representative of the Ukrainian SSR delegation so that he may take part in the deliberations upon this matter. Is that the pleasure of the Council? Since there are no objections then it is adopted."<sup>77</sup>

**Decision:** *The President invited, without objection, the representative of the Ukrainian SSR to the Council table.*<sup>78</sup>

At the 16th meeting on 11 February 1946, the President, when referring to the circumstances in which an invitation had been extended to the Ukrainian SSR, stated:

"I take it to be the opinion of the Council that Article 32 has no application to the present matter. Indeed, the Council has not expressly decided whether Article 31 applies either.

"In inviting the representative of the Ukraine to take a seat at the Council table, the Council did not formally consider whether or not the interests of the

<sup>73</sup> For texts of relevant statements see: 2nd meeting: Egypt, pp. 18-19; USSR, p. 19; United Kingdom, pp. 16-17; United States, p. 18.

<sup>74</sup> 2nd meeting: p. 19.

<sup>75</sup> 3rd meeting: p. 31. For invitations to Greece and the Ukrainian SSR, see Cases 24 and 10 respectively.

<sup>76</sup> O.R., 1st year, 1st series, Suppl. No. 1, annex 4, p. 76.

<sup>77</sup> 12th meeting: p. 174.

<sup>78</sup> 12th meeting: p. 174.



Ukrainian Soviet Socialist Republic are especially affected by or in the matter now under discussion. The Council acted by general consent upon the broad proposition submitted by Mr. Bevin that any State which makes a claim before the Council has a right to come to the Council and be heard.<sup>79</sup>

#### CASE 11

At the 19th meeting on 14 February 1946, in connexion with the Syrian and Lebanese question, the President (Australia) referred to the letter from the Heads of the Lebanese and Syrian delegations<sup>80</sup> as an exercise of "their right as Members of the United Nations under Article 35, paragraph 1, of the Charter to bring a certain matter to the attention of the Council". After explaining, with regard to Articles 32 and 27 (3), the possible effects on procedure of a decision that a question was a dispute or a situation, the President suggested that

"It would be most inconvenient to attempt in any way, at this stage, to give an answer to the question whether, in the present case, a situation exists. It would be much more satisfactory, indeed in my opinion it is necessary, first to hear what the States immediately concerned have to say."

He stated that whether or not a dispute in the technical sense existed, Syria and Lebanon were manifestly States whose interests were specially affected by the discussion of the question before the Security Council. Therefore, he proposed that the Council should, under Article 31 of the Charter, "invite Syria and Lebanon, as we did in the case of Iran and Greece, to participate without vote in our discussion of this question". Statements were made by the representatives of Brazil, China, Egypt, Mexico and the Netherlands to the effect that, before deciding whether a question was a dispute or a situation, the Council should hear the invited Members.<sup>81</sup>

**Decision:** *The proposal of the President was adopted without vote, and the representatives of Syria and Lebanon were invited to the Council table.*<sup>82</sup>

#### CASE 12

At the 25th meeting on 26 March 1946, in connexion with the Iranian question, the Security Council considered a proposal by the representative of the USSR that the Iranian communication dated 18 March 1946,<sup>83</sup> bringing to the attention of the Council a dispute between Iran and the USSR which had arisen by reason of developments after the adoption of the Council resolution of 30 January 1946, should not be placed on the agenda. The representative of the United States enunciated the principle that the Security Council could not deny to a Member, which had stated that a condition existed likely to threaten international peace and security, the opportunity to present its case. He considered that the question should be placed on the agenda and the Iranian Government given an opportunity to state whether an agreement with the USSR had been

reached. The representative of Egypt expressed the view that the Council should receive the Iranian communication and should hear the representative of Iran before deciding whether to include the matter on the agenda.

At the 26th meeting on 26 March 1946, the representative of Mexico considered that the question of the participation of the Iranian representative in the discussion would only arise after the adoption of the agenda. The representative of the USSR agreed with this view.

The USSR proposal was rejected, and the Iranian question was placed on the agenda by 9 votes to 2. The representative of the USSR proposed that consideration be forthwith postponed until 10 April.

The representatives of Egypt, Mexico, the Netherlands, the United Kingdom and the United States considered that the Council should first hear the representative of Iran concerning the procedural question of postponement, since Iran was specially affected by such a decision. The representative of the USSR maintained that the question of postponement was a procedural one in a discussion of which the representative of Iran, as a non-member of the Security Council, could not take part. As the representative of the USSR, he could not participate in a discussion of the question should the Iranian representative be invited to the Council table, for the participation of the Iranian representative in the debate would amount to the opening of the discussion on the substance of the question.

At the 27th meeting on 27 March 1946, the USSR proposal to postpone consideration was rejected, having failed to obtain the affirmative votes of 7 members. The representative of Egypt proposed that:

"The Council receive the complaint of the Iranian Government . . . and ask that the Iranian representative appear at the Council so that we may hear his point of view concerning the question of postponement requested by the USSR representative."

The representative of the USSR stated that for reasons which he had explained in the two preceding meetings, he could not take part in a discussion of the Iranian question after his proposal had been rejected.<sup>84</sup>

**Decision:** *At the 27th meeting on 27 March 1946, the Egyptian proposal was adopted by 8 votes in favour.*<sup>85</sup>

#### CASE 13

At the 60th meeting on 4 September 1946, in connexion with the Ukrainian complaint against Greece which had been submitted to the Council under Article 35 (1),<sup>86</sup> the President (Poland), after quoting Article 31, stated that unless there was objection, he would ask the representative of the Ukrainian SSR "to come to the table".<sup>87</sup> The Minister of Foreign Affairs of the Ukrainian SSR had stated, by letters dated 29 August and 1 September 1946, that he would be ready,

\* For texts of relevant statements see:

25th meeting: Egypt, p. 16; USSR, pp. 10-13, 19-20; United States, pp. 13-14.

26th meeting: Egypt, pp. 40-41; Mexico, pp. 25, 35-36; Netherlands, p. 36; USSR, pp. 27, 30, 37; United Kingdom, pp. 33-34; United States, pp. 30-31, 36-37.

27th meeting: Egypt, pp. 57-58; USSR, pp. 54-55, 58.

\* 27th meeting: pp. 60-61.

\* S/137, O.R., 1st year, 2nd series, Suppl. No. 5, p. 150.

\* 60th meeting: pp. 200-201.

<sup>79</sup> 16th meeting: President (Australia), p. 223.

<sup>80</sup> S/S, O.R., 1st year, 1st series, Suppl. No. 1, pp. 82-83.

<sup>81</sup> For texts of relevant statements see:

19th meeting: President (Australia), pp. 272, 281-282; Brazil, pp. 274-275; China, p. 275; Egypt, p. 274; Mexico, p. 281; Netherlands, pp. 277-278.

<sup>82</sup> 19th meeting: p. 282.

<sup>83</sup> S/15, O.R., 1st year, 1st series, Suppl. No. 2, pp. 43-44.

in accordance with rule 37, to give any necessary explanations regarding his application.<sup>88</sup>

**Decision:** *The representative of the Ukrainian SSR was invited by the President, without objection, to the Council table.*<sup>89</sup>

## CASE 14

At the 82nd meeting on 10 December 1946, in connexion with the Greek frontier incidents question, the communication dated 3 December 1946 from the Government of Greece,<sup>90</sup> drawing the attention of the Security Council under Articles 34 and 35 to the situation in northern Greece, was placed on the agenda. The President (United States) assumed that since the Greek Government had brought the matter to the Security Council, the Council would wish to invite the representative of Greece to the Council table to participate in the discussion without a vote. The representative of China also referred to the submission of the complaint as the basis for an invitation to Greece. The representatives of Australia, the Netherlands and Poland supported the invitation on the basis of Article 31, on the general ground that the interests of Greece were specially affected. The representative of Mexico was of the opinion that all the parties concerned should be invited in accordance with Article 32, because that was the only Article applicable to both Members and non-Members of the United Nations.<sup>91</sup> The representative of the Netherlands submitted a draft resolution the first paragraph of which read:

"The representatives of Greece and of Yugoslavia are invited to participate in the discussion without vote."<sup>92</sup>

**Decision:** *The Council unanimously adopted the first paragraph of the Netherlands draft resolution.*<sup>93</sup>

## CASE 15

At the 159th meeting on 17 July 1947, the Security Council considered the letter dated 8 July 1947 from the Government of Egypt, submitting their dispute with the Government of the United Kingdom to the Council under Articles 35 and 37 of the Charter, and stating that the Egyptian Government would submit the necessary documentation when so invited according to Article 32.<sup>94</sup> The representative of the United Kingdom requested the Council not to begin the discussion of the question before 5 August 1947, in order to allow sufficient time for necessary preparations. The Council agreed with the President's (Poland) proposal to include the item in the agenda, but to delay the discussion of the Egyptian question until the date which had been indicated by the representative of the United Kingdom.

At the 175th meeting on 5 August 1947, the representative of the United States expressed confidence "that the Council will feel that it must accord a hearing

<sup>88</sup> S/145 and S/148.

<sup>89</sup> 60th meeting: p. 201. For invitation to Greece, see Case 27.

<sup>90</sup> S/203, O.R., 1st year, 2nd series, Suppl. No. 10, pp. 169-172.

<sup>91</sup> For texts of relevant statements see:

82nd meeting: President (United States), pp. 530-531, 547-548; Australia, pp. 546-547; China, pp. 539-540; Egypt, pp. 533-534; Mexico, pp. 534-536; Netherlands, pp. 532-533; Poland, pp. 538-539; USSR, p. 555.

<sup>92</sup> 82nd meeting: pp. 549-550, 558.

<sup>93</sup> 82nd meeting: p. 558. For invitation to Yugoslavia, see Case 28.

<sup>94</sup> S/410, 159th meeting: pp. 1343-1345.

this morning to the Egyptian Prime Minister, as this day was fixed some time ago for that purpose".<sup>95</sup>

**Decision:** *The President (Syria) invited, without objection, the representative of Egypt to the Council table.*<sup>96</sup>

## CASE 16

At the 171st meeting on 31 July 1947, in connexion with the Indonesian question (II) to which the Government of India had by letter dated 30 July 1947<sup>97</sup> drawn the attention of the Council under Article 35 (1), the representative of Belgium proposed that India "be called upon immediately to take part in our work".<sup>98</sup>

**Decision:** *The Belgian proposal was adopted without vote, and, at the invitation of the President (Poland), the representative of India took his seat at the Council table.*<sup>99</sup>

## CASE 17

At the 226th meeting on 6 January 1948, after the letter dated 1 January 1948<sup>100</sup> from the Government of India drawing the attention of the Security Council under Article 35 (1) to the situation in Jammu and Kashmir, had been included in the agenda, the President (Belgium) inquired whether there were any objections to India "being allowed under Article 31 to take part without voting in the discussion of the question".<sup>101</sup>

**Decision:** *The representative of India was invited by the President, without objection, to the Council table.*<sup>102</sup>

## CASE 18

At the 268th meeting on 17 March 1948, in connexion with the Czechoslovak question, the Security Council considered the letter dated 12 March 1948<sup>103</sup> from the representative of Chile requesting the Secretary-General, in accordance with Article 35, to refer to the Council the question of Czechoslovakia raised in a letter from Mr. Papanek, and asking the Council for permission, in conformity with Article 31, to participate in the discussion. The representative of Argentina proposed that the representative of Chile be invited to make a statement. The representative of the Ukrainian SSR objected on the ground that the Chilean letter was not a valid reason for an invitation and that Chile had no concern "with past and present events in Czechoslovakia". The President (China) said, "It has been our usual practice to accede to such requests for participation", and put the question to the vote.<sup>104</sup>

<sup>95</sup> For texts of relevant statements see:

159th meeting: President (Poland), pp. 1345-1346; United Kingdom, p. 1345.

175th meeting: United States, p. 1744.

<sup>96</sup> 175th meeting: p. 1745.

<sup>97</sup> S/447, O.R., 2nd year, Suppl. No. 16, p. 150.

<sup>98</sup> 171st meeting: pp. 1617-1618.

<sup>99</sup> 171st meeting: p. 1618. For invitation to the Netherlands, see Case 31.

<sup>100</sup> S/626, O.R., 3rd year, Suppl. for Nov. 1948, pp. 139-144.

<sup>101</sup> 226th meeting: p. 5.

<sup>102</sup> 226th meeting: p. 5. For invitation to Pakistan, see Case 35.

<sup>103</sup> S/694, O.R., 3rd year, Suppl. for Jan., Feb. and March, 1948, pp. 31-34.

<sup>104</sup> For texts of relevant statements see:

268th meeting: President (China), p. 102; Argentina, p. 102; Ukrainian SSR, p. 102.

**Decision:** *The Council decided, by a vote of 9 in favour and 2 against to grant the request of the representative of Chile<sup>105</sup> and, at the invitation of the President, the representative of Chile took his place at the Council table.<sup>106</sup>*

## CASE 19

At the 344th meeting on 4 August 1948, in connexion with the question of the Free Territory of Trieste, the President (USSR) after stating that "in accordance with the rules of procedure, representatives of Member States of the United Nations who have brought a matter to the notice of the Security Council are invited to participate in the discussion of that matter by the Security Council," proposed to call for a vote to determine whether the representative of Yugoslavia should be invited to the Council table to participate in the discussion of the problem which the Government of Yugoslavia had submitted to the Council. The representative of the Ukrainian SSR said that "according to established practice in the Security Council and on the basis of rules 37 and 38 of the rules of procedure, representatives of States which had lodged a complaint with the Security Council are invited to the Council table. In view of this, I think it unnecessary to put the question to the vote."

**Decision:** *The representative of Yugoslavia was invited by the President, without objection, to "participate in the discussion of the matter", and he took his seat at the Council table.<sup>107</sup>*

## CASE 20

At the 511th meeting on 16 October 1950, in connexion with the Palestine question, the Security Council considered four complaints by Israel against Egypt and Jordan based upon the Armistice Agreements. The representative of Israel in his communication to the Council requested that he be enabled to take part in any discussion in connexion with these matters, in accordance with Article 32 of the Charter.<sup>108</sup>

**Decision:** *The President (United States) invited, without objection, the representative of Israel to the Council table.<sup>109</sup>*

## CASE 21

At the 549th meeting on 26 July 1951, in connexion with the Palestine question, the Security Council considered a complaint by Israel against Egypt concerning restrictions on the passage of ships through the Suez Canal. The President (United Kingdom) proposed to invite the representative of Israel to participate without vote in the Council's discussions.<sup>110</sup>

**Decision:** *The proposal of the President was adopted without vote, and the representative of Israel took his place at the Council table.<sup>111</sup>*

b. A matter not being either a dispute or a situation

## CASE 22

At the 55th meeting on 28 August 1946, in connexion with the question of admission of new Members to

the United Nations, the Security Council considered the application of Albania which had been submitted through the delegation of Yugoslavia. By letter dated 9 February 1946, the Government of Yugoslavia had requested that its delegation be heard at the meeting of the Council "at which its proposal has to be examined".<sup>112</sup>

**Decision:** *The Council unanimously agreed to invite the representative of Yugoslavia to the Council table.<sup>113</sup>*

## CASE 23

At the 432nd meeting on 27 July 1949, during discussion of the letter<sup>114</sup> dated 17 June 1949 from the representatives of Australia, Belgium, Colombia and France concerning travelling expenses and subsistence allowances of alternate representatives on the Security Council commissions, the representative of Belgium asked to be given the floor in order to supply additional information, if it were desired. The representative of Argentina proposed that the representative of Belgium, "who is here in the Council Chamber and who is moreover an expert", should be invited to the table.

**Decision:** *The proposal of the representative of Argentina was adopted without vote, and the President (the Ukrainian SSR) invited the representative of Belgium "to take a seat at the Council table and to state his point of view".<sup>115</sup>*

## 2. Invitations when the interests of a Member were considered specially affected

## CASE 24

At the 2nd meeting on 25 January 1946, in connexion with the Greek question, which had been brought to the attention of the Security Council under Article 35 by the USSR,<sup>116</sup> the representative of Egypt, after citing Article 31, proposed that "the States which have presented complaints should be invited to participate in the work, in the sittings of the Security Council". The President (Australia) expressed the view that the Egyptian proposal might indirectly affect Greece. The representative of the United Kingdom observed that although Greece had not submitted the complaint, it would be affected and thus must be heard.<sup>117</sup>

**Decision:** *The Egyptian proposal was adopted without vote.<sup>118</sup> At the 6th meeting on 1 February 1946, when the Greek question was considered, the President (Australia) reminded the members of the Council of their decision, and he invited, without objection, the representative of Greece to the Council table.<sup>119</sup>*

## CASE 25

At the 50th meeting on 10 July 1946, in connexion with consideration of the provisional rules of procedure

<sup>105</sup> S/8, O.R., 1st year, 2nd series, Suppl. No. 4, p. 19.

<sup>106</sup> 55th meeting: p. 64. For invitation to Greece, see Case 26.

<sup>107</sup> S/1338, O.R., 4th year, Suppl. for July 1949, p. 1.

<sup>108</sup> 432nd meeting, p. 11.

<sup>109</sup> O.R., 1st year, 1st series, Suppl. No. 1, annex 3, pp. 73-74.

<sup>110</sup> For texts of relevant statements see:

2nd meeting: President (Australia), pp. 15-16, 17-18; Egypt, pp. 18-19; USSR, p. 16; United Kingdom, pp. 16-17, 19; United States, p. 18.

<sup>111</sup> 2nd meeting: p. 19.

<sup>112</sup> 6th meeting: p. 72. For invitations to Iran and the Ukrainian SSR, see Cases 9 and 10 respectively.

<sup>106</sup> 268th meeting: p. 102.

<sup>107</sup> 268th meeting: p. 102.

<sup>108</sup> 344th meeting: pp. 1-2.

<sup>109</sup> S/1794.

<sup>110</sup> 511th meeting: p. 2.

<sup>111</sup> 549th meeting: pp. 1-2.

<sup>112</sup> 549th meeting: p. 2. For invitations to Egypt and Iraq, see Case 47.

of the Atomic Energy Commission, the Security Council considered a request from the Government of Canada to participate, in accordance with Article 31 of the Charter, in the discussion. The representative of Australia proposed that Canada be invited "considering that the interests of Canada as a member of the Atomic Energy Commission are specially affected by the matter now before the Security Council". The representative of the USSR suggested that a decision should be deferred to the next meeting, since he did not wish to discuss the substance of the question without preparatory examination. After quoting Article 31, he stated:

"But before deciding the question whether the representative of Canada should be invited to participate in the meetings of the Security Council . . . the question of whether the special interests of Canada as a State are really affected should be decided first . . . A number of other questions arise, as for instance, until when should we consider that the special interests of Canada in these matters are affected? As long as Canada is in the Atomic Energy Commission, or for some other period of time?"<sup>120</sup>

**Decision:** *The Australian proposal was adopted by 9 votes in favour, 1 against and 1 abstention. After the President (Mexico) had ruled it a question of procedure under the Charter, he invited the representative of Canada to the Council table.*<sup>121</sup>

#### CASE 26

At the 55th meeting on 28 August 1946, in connexion with the application of Albania for admission to the United Nations, the President (Poland) read the letter dated 21 August 1946 from the representative of Greece,<sup>122</sup> requesting that he be invited to participate under Article 31, in the discussion on that matter, since the question of Albania's admission was a matter specially affecting the interests of Greece.<sup>123</sup>

**Decision:** *The President invited, without objection, the representative of Greece to the Council table.*<sup>124</sup>

#### CASE 27

At the 60th meeting on 4 September 1946, in connexion with the Ukrainian complaint against Greece, the President (Poland), after quoting Article 31, stated that unless there was objection, he would ask the representative of Greece "to come to the table".<sup>125</sup> The representative of Greece, in the telegram dated 26 August 1946 had stated that, in accordance with Article 31, Greece wished to participate in the debate of the Security Council concerning the application of the Ukrainian SSR.<sup>126</sup>

**Decision:** *The representative of Greece was invited by the President, without objection, to the Council table.*<sup>127</sup>

<sup>120</sup> 50th meeting: pp. 6-7.

For texts of relevant statements see:

50th meeting: Australia, pp. 2, 3; USSR, pp. 2-3, 4, 6-7.

<sup>121</sup> 50th meeting: p. 4.

<sup>122</sup> S/134, O.R., 1st year, 2nd series, Suppl. No. 4, pp. 42-43.

<sup>123</sup> 55th meeting: pp. 63-64.

<sup>124</sup> 55th meeting: p. 64. For invitation to Yugoslavia, see Case 22.

<sup>125</sup> 60th meeting: pp. 200-201.

<sup>126</sup> S/142.

<sup>127</sup> 60th meeting: p. 201. For invitation to the Ukrainian SSR, see Case 13.

#### CASE 28

At the 82nd meeting on 10 December 1946, in connexion with the Greek frontier incidents question, the President (United States) raised the question of how the Security Council would like to proceed in connexion with requests from Albania, Bulgaria and Yugoslavia to be heard by the Council. He assumed that the Council would wish, under Article 31, to invite the Government of Yugoslavia, as a Member of the United Nations, to participate without vote in the discussion of the question on the ground that its interests were specially affected. The representative of Mexico contended that all the parties concerned should be invited under Article 32. The representatives of Australia, China, Egypt, the Netherlands and Poland supported the President.<sup>128</sup> The representative of the Netherlands submitted a draft resolution the first paragraph of which read: "The representatives of Greece and of Yugoslavia are invited to participate in the discussion without vote".<sup>129</sup>

**Decision:** *The Security Council unanimously adopted the first paragraph of the Netherlands draft resolution.*<sup>130</sup>

#### CASE 29

At the 105th meeting on 13 February 1947, the President (Belgium) drew the attention of the Security Council to a request from the Government of Canada<sup>131</sup> to participate, under Article 31, in the discussion of the first report of the Atomic Energy Commission. The representative of the United States proposed that Canada be invited to the Council table when it considered the item.<sup>132</sup>

**Decision:** *The President invited, without objection, the representative of Canada to the Council table.*<sup>133</sup>

The representative of Canada,\* on being invited to the Council table, expressed his "appreciation that this Council has given recognition to the fact that Canada's interests are specially affected, in the meaning of Article 31 of the Charter, in connexion with the consideration of the first report of the Atomic Energy Commission . . ."<sup>134</sup>

#### CASE 30

At the 116th meeting on 7 March 1947, in connexion with the United States draft trusteeship agreement for the former Japanese mandated islands, the representative of Australia stated that, before a final decision was made on the question of administering these territories, all the Allies that were victorious belligerents in the Pacific war should be consulted. He was of the opinion that Article 31 of the Charter would enable the Security Council to invite the participation of those Members of the United Nations whose interests were affected by the question. The representatives of Bel-

\* For texts of relevant statements see:

82nd meeting: President (United States), pp. 530-531, 547-548; Australia, pp. 546-547; China, pp. 539-540; Egypt, pp. 533-534; Netherlands, pp. 532-533; Mexico, pp. 534-536; Poland, pp. 538-539; USSR, p. 555.

<sup>128</sup> 82nd meeting: pp. 549-550.

<sup>129</sup> 82nd meeting: p. 558. For invitation to Greece, see Case 14.

<sup>130</sup> S/242, O.R., 2nd year, Suppl. No. 5, annex 2, p. 57.

<sup>131</sup> 105th meeting: p. 275.

<sup>132</sup> 105th meeting: p. 275.

<sup>133</sup> 105th meeting: p. 276.



gium and the United States observed that no request to be heard had been received from those States.<sup>186</sup>

At the 118th meeting on 12 March 1947, the President (Brazil) brought to the attention of the Council the cablegram dated 13 March 1947 from the Prime Minister of New Zealand requesting that New Zealand participate, under Article 31, in the discussions on the draft trusteeship agreement. The New Zealand Government considered that the question was "a matter of interest" to those States which had taken an active part in the war against Japan, and, therefore, requested that those members of the Far Eastern Commission not represented on the Security Council (namely, the Netherlands, Canada, New Zealand, India and the Philippines, be invited to participate, if they so desired, in the discussions.<sup>186</sup> At the same meeting, the President received a letter dated 12 March 1947 from the Indian Liaison Officer of the Delegation of India to the United Nations, asking "for the privileges under Article 31 of the Charter, to enable the Council to be acquainted with the views of the Government of India whose interest in the matter is unquestioned".<sup>187</sup>

**Decision:** *The Security Council agreed that the Governments of India and New Zealand should be invited to participate in the "discussion concerning the former Japanese Mandated Islands", and also agreed that any other member of the Far Eastern Commission who might ask to be heard should be invited.*<sup>188</sup> At the 119th meeting on 17 March 1947, the President (Brazil) invited the representatives of Canada, India, the Netherlands, New Zealand and the Philippines to the Council table.<sup>189</sup>

#### CASE 31

At the 171st meeting on 31 July 1947, in connexion with the Indonesian question (II), after communications from Australia and India<sup>140</sup> had been placed on the agenda, drawing attention to hostilities in progress between armed forces of the Netherlands and the Republic of Indonesia, the representative of Belgium proposed that the Netherlands "be called upon immediately to take part in our work".

**Decision:** *The Belgian proposal was adopted without vote, and, at the invitation of the President (Poland), the representative of the Netherlands took his seat at the Council table.*<sup>141</sup>

#### CASE 32

At the 184th meeting on 14 August 1947, the Security Council considered a new<sup>142</sup> application from the Philippines requesting permission to participate in the discussion of the Indonesian question (II), in accordance with Article 31, and setting forth in greater detail the factors which, in the opinion of that Govern-

ment, justified the conclusion that its interests were specially affected by that question.

The request drew attention to the procedure followed in connexion with the trusteeship of the Japanese mandated islands when the requests of New Zealand and India had been granted without the latter having been required to give proof of special interest. The memorandum further drew attention to the statement by the representative of the United States, who had supported the invitation to New Zealand without having assented to the view advanced by New Zealand that, since the disposition of the islands was an essential part of any plan for the control of Japan and of the peace settlement, the interests of the co-belligerents were specially affected. The representative of the United States on this occasion had stated that the question was of the "highest ethical character" and that consequently the procedure of the Council should be free from too rigid an application of rules.<sup>143</sup> The representatives of Belgium and the United Kingdom expressed their support for inviting the representative of the Philippines in view of the detailed information that had been conveyed by the Philippine Government.<sup>144</sup>

**Decision:** *The President (Syria) put to a vote the question of inviting the representative of the Philippines, in accordance with the new application. The proposal was adopted by 9 votes in favour with 2 abstentions.*<sup>145</sup>

#### CASE 33

At the 186th meeting on 18 August 1947, in connexion with the application of Pakistan for membership in the United Nations, the Security Council considered the letter dated 18 August 1947<sup>146</sup> from the permanent Liaison Officer of the Government of India with the United Nations, stating that his Government, whose interests in that matter were well known, had appointed a representative to present its views under Article 31. The representatives of Australia and the United States expressed doubt as to whether Article 31 of the Charter applied in the case. The representative of Belgium maintained that in order to avoid the risk of creating a precedent, the Council should ascertain if the interests of India were particularly affected by this question. He thought that the Council should invite the representative of India on the basis of rule 39 of the provisional rules of procedure, and not on that of Article 31 of the Charter. The representative of France had no doubt that India was particularly concerned in the question, and he thought that, under the circumstances, the Council should accede to the request of the representative of India.<sup>147</sup>

**Decision:** *The President (Syria) invited, without objection, the representative of India to the Council table.*<sup>148</sup>

<sup>186</sup> For texts of relevant statements see:

116th meeting: Australia, pp. 465-466; Belgium, p. 480; United States, pp. 482-483.

<sup>187</sup> S/297, 118th meeting: p. 513.

<sup>188</sup> S/299, 118th meeting: p. 514.

<sup>189</sup> 118th meeting: p. 515.

<sup>190</sup> 119th meeting: p. 523.

<sup>140</sup> S/447, O.R., 2nd year, Suppl. No. 16, p. 150.

S/449, O.R., 2nd year, Suppl. No. 16, pp. 149-150.

<sup>141</sup> 171st meeting: pp. 1617-1618. For invitation to India, see Case 16.

<sup>142</sup> For the rejection of the Philippines request at the 178th meeting, see Case 49.

<sup>143</sup> S/485, 181st meeting: pp. 1914-1916.

<sup>144</sup> For texts of relevant statements see: 184th meeting: President (Syria), p. 1979; Belgium, pp. 1979, 1980; United Kingdom, p. 1979; United States, pp. 1979-1980.

<sup>145</sup> 184th meeting: p. 1980.

<sup>146</sup> S/499, 186th meeting: p. 2053.

<sup>147</sup> For texts of relevant statements see: 186th meeting: President (Syria), pp. 2053, 2054; Australia, p. 2053; Belgium, pp. 2053, 2054; France, p. 2054; United States, pp. 2053-2054.

<sup>148</sup> 186th meeting: p. 2054.

## CASE 34

At the 222nd meeting on 9 December 1947, in connexion with the Palestine question, the Security Council considered the telegrams dated 8 December 1947<sup>149</sup> from the Governments of Egypt and Lebanon, requesting permission, under Article 31 of the Charter and rules 14, 37, and 38 of the provisional rules of procedure, to participate in the sessions of the Council when the Palestine question was being discussed. The representative of Syria asked that the applications from the Governments of Egypt and Lebanon be considered and adopted before any discussions were held on the Palestine question.<sup>150</sup> The representative of the United States, who had proposed that the Council postpone the discussion of the Palestine question, stated that, whenever the Council discussed the question, it would need to grant the requests of the Governments of Egypt and Lebanon. The representative of Colombia, supported by the representative of Syria, suggested that the extension of invitations to the two Governments be included in the understanding agreed upon regarding the recommendation of the General Assembly as follows:

"The Security Council takes note of the resolution adopted by the General Assembly concerning the future government of Palestine, and decides to invite the representatives of Egypt and Lebanon to participate in the meetings of the Security Council at which the question of Palestine will be discussed."<sup>151</sup>

**Decision:** *The President (Australia) made the following statement:*

"There is no objection by the members of the Security Council to the participation of the two Governments which have already submitted requests, and if that were included in our understanding today, it would also be included that this action would not result in the exclusion of the consideration of further applications.

"As there is no objection, this formula is accepted."<sup>152</sup>

At the 253rd meeting on 24 February 1948, the representative of Syria proposed that Egypt and Lebanon be invited to participate, without vote, in the discussion.

**Decision:** *The President (Canada), referring to the original request that had been granted at the 222nd meeting, stated:*

"As there is no objection to the proposal of the representative of Syria to accept the applications of the Governments of Egypt and Lebanon, I take it the Security Council concurs."<sup>153</sup>

## CASE 35

At the 226th meeting on 6 January 1948, after the letter dated 1 January 1948<sup>154</sup> from the Government of India drawing the attention of the Security Council under Article 35 (1) to the situation in Jammu and Kashmir had been included in the agenda, the Presi-

dent (Belgium) inquired if there were any objections to Pakistan "being allowed, under Article 31 of the Charter, to take part without voting in the discussion of the question..."

**Decision:** *The representative of Pakistan was invited by the President, without objection, to the Council table.<sup>155</sup>*

## CASE 36

At the 247th meeting on 17 February 1948, in connexion with the Indonesian question (II), the Security Council considered the letter dated 12 February 1948, from the representative of Australia, requesting permission, under Article 31, to participate in the discussion of the question, since the interests of Australia were specially affected by the situation in Indonesia and Australia was a member of the Committee of Good Offices though no longer a member of the Council.<sup>156</sup>

**Decision:** *The representative of Australia was invited by the President, without objection, to the Council table.<sup>157</sup>*

## CASE 37

At the 278th meeting on 6 April 1948, in connexion with the Czechoslovak question, the representative of the United States submitted the following draft resolution:

"Pursuant to Article 31, the Government of Czechoslovakia is invited to participate without vote in the discussion of the Czechoslovak question now under consideration by the Security Council, and the Secretary-General is instructed to notify the Czechoslovak representative to the United Nations accordingly."<sup>158</sup>

When submitting the draft resolution, the representative of the United States pointed out that it had been a consistent practice for a State, non-member of the Security Council, against which charges had been made or the interests of which had been specially affected, to request permission to take part in the proceedings, but thus far no such request had been made by Czechoslovakia. The representative of Syria contended that, inasmuch as Czechoslovakia was a party to the dispute, Article 32 might be substituted for Article 31 in the draft resolution. While the representative of the United States could not agree to the substitution, he amended the draft resolution so as to omit the words "Pursuant to Article 31".<sup>159</sup>

**Decision:** *The draft resolution as amended was adopted by 9 votes in favour, with 2 abstentions.<sup>160</sup> (The representative of Czechoslovakia to the United Nations was notified accordingly by the Secretary-General, and in his reply<sup>161</sup> stated that his Government did not find it possible in any way to take part in the discussions, for the matters involved were exclusively within the domestic jurisdiction of Czechoslovakia.)*

<sup>149</sup> 226th meeting: p. 5. For invitation to India, see Case 17.

<sup>150</sup> S/674, O.R., 3rd year, Suppl. for Jan., Feb. and March 1948, p. 29.

<sup>151</sup> 247th meeting: p. 135.

<sup>152</sup> 278th meeting: p. 3.

<sup>153</sup> For texts of relevant statements see:

278th meeting: Argentina, pp. 3-4; Syria, pp. 4-5, 6; United States, pp. 1-3.

<sup>154</sup> 278th meeting: pp. 6-7.

<sup>155</sup> S/718, O.R., 3rd year, Suppl. for April 1948, p. 6. See chapter XII, Case 16.

<sup>149</sup> S/617, 222nd meeting: p. 2777.

S/618, 222nd meeting: p. 2777.

<sup>150</sup> 222nd meeting: pp. 2779, 2781.

<sup>151</sup> 222nd meeting: p. 2782.

<sup>152</sup> 222nd meeting: p. 2789.

<sup>153</sup> For texts of relevant statements see:

253rd meeting: President (Canada), p. 255; Syria, p. 256.

<sup>154</sup> S/628, O.R., 3rd year, Suppl. for Nov. 1948, pp. 139-144.



## CASE 38

At the 301st meeting on 22 May 1948, in connexion with the Palestine question, the Security Council considered inviting representatives of the Arab countries to which a questionnaire on the situation had been addressed.

**Decision:** *The representative of Iraq, being present in the Council chamber when the matter was discussed, was invited by the President (France), without objection, to the Council table.*<sup>162</sup>

## CASE 39

At the 357th meeting on 16 September 1948, the provisional agenda for which included the communications dated 21 August, 12 and 13 September 1948<sup>163</sup> from the Government of Hyderabad, reporting on the outbreak of hostilities and requesting urgent consideration by the Security Council, the representative of the USSR observed that the Council had at its disposal information from one party only, the Government of India not having submitted any information on the substance of the question placed before the Council. He considered it essential to obtain complete information before including the question on the agenda.<sup>164</sup>

**Decision:** *After the agenda had been adopted by 8 votes in favour and 3 abstentions, the President (United Kingdom) invited, without objection, the representative of India to the Council table.*<sup>165</sup>

## CASE 40

At the 382nd meeting on 25 November 1948, in connexion with the Hyderabad question, the Security Council considered the letter dated 6 October 1948 from the Government of Pakistan,<sup>166</sup> requesting permission to participate, under Article 31 and rule 37 of the provisional rules of procedure, in the discussion of the question. The representative of Syria proposed that the request to participate be granted. Consideration of the item was postponed.<sup>167</sup> At the 384th meeting on 15 December 1948, the President (Belgium) inquired if there were any objections to permission being granted to the representative of Pakistan to participate in the debate.<sup>168</sup>

**Decision:** *The President invited, without objection, the representative of Pakistan to the Council table.*<sup>169</sup>

## CASE 41

At the 397th meeting on 7 January 1949, in connexion with the Indonesian question (II), the President (Canada) brought to the attention of the Security Council the letter dated 6 January 1949 from the representative of Belgium requesting permission, pursuant to Article 31, to participate in the discussion of the question.<sup>170</sup> The President observed that the re-

quest "arises in consequence of Belgium's continued membership on the Committee of Good Offices and on the Consular Commission in Batavia".<sup>171</sup> Belgium had continued to be a member of the Committee of Good Offices after having ceased to be a member of the Security Council.

**Decision:** *The President invited, without objection, the representative of Belgium to the Council table.*<sup>172</sup>

## CASE 42

At the 398th meeting on 11 January 1949, in connexion with the Indonesian question (II), the Security Council considered the letter dated 11 January 1949, from the representative of Burma requesting permission, under Article 31 of the Charter, to participate in the discussion. In his letter, the representative of Burma referred to the fact that India, the Philippines and Australia, which were not members of the Security Council, had already been allowed to participate.<sup>173</sup>

**Decision:** *The representative of Burma was invited by the President, without objection, to the Council table.*<sup>174</sup>

## CASE 43

At the 417th meeting on 11 March 1949, in connexion with the Indonesian question (II), the Security Council considered the letter dated 9 March 1949 from the representative of Pakistan requesting permission, under Article 31 and rule 37 of the provisional rules of procedure, to participate in the discussion of the question.<sup>175</sup>

**Decision:** *The President (Cuba) declared, without objection, that "the request of the representative of Pakistan will be granted".*<sup>176</sup>

## CASE 44

At the 433rd meeting on 4 August 1949, in connexion with the Palestine question, the Security Council considered the letter dated 28 July 1949 from the representative of Israel requesting permission to participate in accordance with Article 31 and rules 37 and 38 of the provisional rules of procedure, "in any discussion which may take place on the report of the Acting Mediator".<sup>177</sup>

**Decision:** *The representative of Israel was invited by the President (USSR), without objection, to the Council table.*<sup>178</sup>

## CASE 45

At the 434th meeting on 4 August 1949, in connexion with the Palestine question, the Security Council considered the letter dated 4 August 1949 from the representative of Syria requesting permission, under Article 31 and rules 37 and 38 of the provisional rules of procedure, "to participate without vote in the discussions of the Council in connexion with the Report of the Acting Mediator..."<sup>179</sup>

<sup>162</sup> 301st meeting: p. 6.

<sup>163</sup> S/986, O.R., 3rd year, Suppl. for Sept. 1948, pp. 5-6.

<sup>164</sup> S/998, O.R., 3rd year, Suppl. for Sept. 1948, p. 6.

<sup>165</sup> S/1000, O.R., 3rd year, Suppl. for Sept. 1948, pp. 6-7.

<sup>166</sup> 357th meeting: p. 9.

<sup>167</sup> 357th meeting: p. 11. For invitation to the representative of Hyderabad, see Case 60.

<sup>168</sup> S/1027.

<sup>169</sup> 382nd meeting: p. 29.

<sup>170</sup> 384th meeting: p. 40.

<sup>171</sup> 384th meeting: p. 41.

<sup>172</sup> S/1192, O.R., 4th year, Suppl. for Jan. 1949, p. 18.

<sup>173</sup> 397th meeting: p. 3.

<sup>174</sup> 397th meeting: p. 4.

<sup>175</sup> S/1200, O.R., 4th year, Suppl. for Jan. 1949, pp. 47-48.

<sup>176</sup> 398th meeting: p. 2.

<sup>177</sup> S/1283, 417th meeting: p. 2.

<sup>178</sup> 417th meeting: p. 2.

<sup>179</sup> S/1360, O.R., 4th year, Suppl. for Aug. 1949, p. 8.

<sup>180</sup> 433rd meeting: p. 2.

<sup>181</sup> S/1363.

**Decision:** *The representative of Syria was invited by the President (USSR), without objection, to the Council table.*<sup>180</sup>

## CASE 46

At the 453rd meeting on 25 October 1949, in connexion with the Palestine question, with special reference to the demilitarization of the Jerusalem area, the President (United States) informed the Security Council that he had received "a request in proper form, from the representative of Israel to be allowed to participate, without the right to vote, in any discussion on this subject".<sup>181</sup>

**Decision:** *The representative of Israel was invited by the President, without objection, to the Council table.*<sup>182</sup>

## CASE 47

At the 549th meeting on 26 July 1951, in connexion with the Palestine question, with special reference to the complaint regarding restrictions on the passage of ships through the Suez Canal, the President (United Kingdom) remarked:<sup>183</sup>

"In dealing with the Palestine question, it has been the practice of the Security Council to invite those representatives of States in the area, who wish to do so, to participate without vote in the discussions of the Council, if they are not already members of the Council. The aspect of the Palestine question with which we are about to deal concerns a complaint by Israel against Egypt. Therefore, it follows that the representatives of Israel and of Egypt should be present when this matter is under discussion.

"The representative of Iraq has also asked, in a letter<sup>184</sup> which I received yesterday, to be allowed to participate. Although Iraq is, if I may say so, less directly concerned with the present complaint, I think it would be in accordance with the past practice of the Security Council, to which I have already referred, to grant this request."

**Decision:** *The representatives of Egypt and Iraq were invited by the President, without objection, "to participate without vote in the Council's discussion on the agenda item before it".*<sup>185</sup>

## CASE 48

At the 559th meeting on 1 October 1951, after the inclusion of the Anglo-Iranian Oil Company case in the agenda, the President (Brazil) stated:

"For the decision of the Security Council, I put the question whether the representative of Iran shall be invited in accordance with rule 37 of our provisional rules of procedure and Article 32 of the Charter, and also in keeping with previous decisions of the Security Council."

**Decision:** *The President invited, without objection, the representative of Iran to the Council table.*<sup>186</sup>

<sup>180</sup> 434th meeting: p. 19.

<sup>181</sup> S/1411. The request of Israel was submitted "in accordance with Article 31 and rule 37 of the provisional rules of procedure".

<sup>182</sup> 453rd meeting: p. 1.

<sup>183</sup> 549th meeting: pp. 1-2.

<sup>184</sup> S/2262, O.R., 6th year, Suppl. for July, Aug. and Sept. 1951, p. 16. Article 31 was cited in the request by Iraq.

<sup>185</sup> 549th meeting: p. 2. For invitation to Israel, see Case 20.

<sup>186</sup> 559th meeting: p. 11.

## 3. Invitations denied

## CASE 49

At the 178th meeting on 7 August 1947, the President (Syria) drew the attention of the Security Council to the telegram dated 1 August 1947 from the permanent representative of the Philippines requesting permission to participate in the discussion of the Indonesian question (II). The representative of the Philippines stated that his Government had made this request "because it is vitally interested in the maintenance of peace in that area and because of its humanitarian desire to prevent further bloodshed".<sup>187</sup> The representative of Belgium, calling the attention of the Council to the importance of the precedent which acceptance of the request of the Philippines would entail, maintained that it was the duty of the Council to ascertain whether "the interests of the Philippines are in this case specially affected within the meaning of Article 31 of the Charter". The representative of the United Kingdom did not think that "the document before us sufficiently shows that the Philippines is specially affected in the sense of Article 31". All Members of the United Nations would be "specially affected" by the first criterion, and the second was shared by a considerable number of States. He was of the opinion that the Council should be careful of the manner in which it applied Article 31. The representatives of Australia, India\*, and Colombia made statements in support of the Philippine request.<sup>188</sup>

**Decision:** *The President put to the vote the question of granting the request of the Philippines to participate in the discussion. The proposal was rejected by 6 votes in favour, and 5 abstentions.*<sup>189</sup>

## D. IN THE CASE OF NON-MEMBER STATES AND OTHER INVITATIONS

## 1. Invitations expressly under Article 32

## CASE 50

At the 95th meeting on 20 January 1947, in connexion with the Corfu Channel question, the President (Australia) commenced consideration of the question by quoting Article 32 and proposing that the Security Council "invite Albania to participate, without vote, in the discussion relating to the dispute...".<sup>190</sup>

**Decision:** *The Council adopted the proposal to invite Albania to participate, without vote, in the discussion relating to the question.*<sup>191</sup>

By cable dated 20 January 1947, the Acting Secretary-General informed the Republic of Albania of the decision, and stated that the decision was taken "in accordance with Article 32 of the Charter".<sup>192</sup>

## CASE 51

At the 511th meeting on 16 October 1950, in connexion with the Palestine question, the provisional

<sup>187</sup> S/458, 178th meeting: p. 1837.

<sup>188</sup> For texts of relevant statements see: 178th meeting: President (Syria), p. 1837; Australia, p. 1838; Belgium, p. 1837; Colombia, p. 1839; India, pp. 1838-1839; United Kingdom, pp. 1837-1838.

<sup>189</sup> 178th meeting: p. 1839. For the approval of the invitation to the Philippines at the 184th meeting, see Case 32.

<sup>190</sup> 95th meeting: p. 123. See Case 81.

<sup>191</sup> 95th meeting: p. 124.

<sup>192</sup> S/258 and S/258/Corr.1.

agenda contained items in which complaints were made by Israel against the Hashemite Kingdom of the Jordan (items c, d, e) and by Jordan against Israel (item f).

**Decision:** *After the adoption of the agenda, the President (United States) invited, without objection, the representative of the Hashemite Kingdom of the Jordan to the Council table.*

The President then informed the Security Council that an appropriate document had been filed by Jordan, in conformity with Articles 32 and 35 (2), wherein that State had undertaken the obligations of pacific settlement provided in the Charter.<sup>193</sup>

## 2. Invitations expressly under rule 39 of the provisional rules of procedure

### CASE 52

At the 253rd meeting on 24 February 1948, the President (Canada) drew the attention of the Security Council to the letter dated 11 December 1947 from the Jewish Agency for Palestine,<sup>194</sup> requesting permission to be heard in any discussions which might take place in the Council regarding the Palestine question. He recalled that, at the second session of the General Assembly, the Jewish Agency had been granted the opportunity to participate in the work of the Ad Hoc Committee on the Palestine question. The President, referring to rule 39 of the provisional rules of procedure, made the following suggestion:<sup>195</sup>

"... Applying this rule, and in order that the Security Council may have the fullest information, I propose that an invitation be extended by the Security Council to the Jewish Agency for Palestine to have its representative sit during the deliberations of the Security Council on the Palestine question, for the purpose of supplying such information and rendering such assistance as the Security Council may require..."

"I would add the suggestion that if an application is received from the Arab Higher Committee to be admitted to these discussions in the Security Council, it should be given the same consideration as that given to the application of the Jewish Agency for Palestine."

**Decision:** *The President's proposal was adopted, without discussion, and the representative of the Jewish Agency for Palestine took his place at the Council table.<sup>196</sup> At the 282nd meeting on 15 April 1948, the President (Colombia) invited, without objection, the representative of the Arab Higher Committee "to participate in the discussion" on the Palestine question.<sup>197</sup>*

At the 330th meeting on 7 July 1948, the representative of the Arab Higher Committee stated that since the President (Ukrainian SSR) had referred to the representative of the Jewish Agency as "the representative of the State of Israel", he could not "assist in these deliberations" as long as that denomination

was being used by the President. Thereupon, the representative of the Arab Higher Committee withdrew from the Council table.<sup>198</sup> By letter dated 8 July 1948, addressed to the President of the Security Council, the Vice Chairman of the Arab Higher Committee set forth the reasons for the withdrawal of the Committee from the deliberations of the Council, and contended that "in order to invite an alleged different person or body, so-called Provisional Government of Israel, which legally, morally or factually does not exist, a fresh proposal should have been submitted to invite such person, in accordance with rule 39..."<sup>199</sup>

### CASE 53

At the 473rd meeting on 25 June 1950, in connexion with the complaint of aggression upon the Republic of Korea, the representative of the United States proposed that "the representative of the Government of the Republic of Korea be permitted to sit at the Council table during consideration of this case". The President (India) stated:

"It is open to us to permit this under rule 39 of the Security Council rules of procedure. If there is no objection, I propose that we grant the necessary permission."

**Decision:** *The President invited, without objection, the representative of the Republic of Korea to the Council table.<sup>200</sup>*

At the 487th meeting on 14 August 1950, the President, speaking as the representative of the USSR, stated that the decision of 25 June 1950 violated Article 32, because both sides had not been invited.<sup>201</sup>

### CASE 54

At the 503rd to 507th meetings, between 26 and 29 September 1950, in connexion with the complaint of armed invasion of Taiwan (Formosa), the Security Council considered the question of inviting a representative of the People's Republic of China. At the 503rd meeting the representative of the USSR re-introduced his earlier draft resolution,<sup>202</sup> and at the 504th meeting drew attention to a telegram, dated 17 September 1950, from the Minister of Foreign Affairs of the People's Republic of China, which stated:<sup>203</sup>

"... the initiator of the proposal and the accuser in this case, has the right and necessity to send its delegation to attend and join the United Nations Security Council."

"..."

"Should the Security Council proceed to the above-mentioned item on the agenda without the attendance and participation in the discussion of the representative of the People's Republic of China, all its resolutions adopted will be illegal and therefore null and void."

The representative of the USSR supported that point of view and added that the Council was required, under Article 32 of the Charter, to invite the party lodging a complaint of aggression.

<sup>193</sup> 511th meeting: pp. 1-2.

<sup>194</sup> S/619.

<sup>195</sup> 253rd meeting: pp. 256-257.

<sup>196</sup> 253rd meeting: p. 257.

<sup>197</sup> 282nd meeting: pp. 1, 2. At the 277th meeting on 1 April 1948, the Security Council had unanimously adopted a resolution calling upon the Jewish Agency for Palestine and the Arab Higher Committee "to make representatives available to the Security Council for the purpose of arranging a truce".

277th meeting: pp. 33, 34.

<sup>198</sup> 330th meeting: pp. 2, 10.

<sup>199</sup> S/R90, O.R., 3rd year, Suppl. for July 1948, p. 35.

<sup>200</sup> 473rd meeting: p. 4.

<sup>201</sup> 487th meeting: p. 14.

<sup>202</sup> S/1732, 492nd meeting: p. 15; 503rd meeting: p. 21.

<sup>203</sup> S/1795, 504th meeting: pp. 4-5.

At the 504th meeting the representative of Ecuador submitted, as an amendment to a pending Chinese draft resolution concerning the deletion of the item from the agenda, the following:<sup>204</sup>

"The Security Council,

"...

"Considering that, in view of the divergency of opinion in the Council regarding the representation of China and without prejudice to this question, it may, in accordance with rule 39 of the rules of procedure, invite representatives of the Central People's Government of the People's Republic of China to provide it with information or assist it in the consideration of these matters,

"...

"Decides:

"(a) To defer consideration of this question until the first meeting of the Council held after 1 December 1950;

"(b) To invite a representative of the said Government to attend the meetings of the Security Council held after 1 December 1950 during the discussion of that Government's declaration regarding an armed invasion of the Island of Taiwan (Formosa)."

In submitting this proposal the representative of Ecuador contended that the representative of the People's Republic of China could not be heard under Article 32 of the Charter, since China was already represented on the Security Council. In his view rule 39 was applicable. He also explained that he would not have made a proposal to invite a representative of the People's Republic, if it had been engaged in an act of aggression against the United Nations. The representative of the United Kingdom expressed the view that, although the People's Republic of China had every right in equity, as opposed to law, to be present when its complaint was being considered, the invitation should legally be based on rule 39 rather than on Article 32 of the Charter. The representative of China contended that rule 39 was not applicable since his Government was in a position to give all necessary information regarding Taiwan; and Article 32 was not applicable because China was already a member of the Security Council. He also observed that the actions of the party making the complaint were against the principles of the Charter. The representative of the United States was of the opinion that the Council should create a commission of investigation, and that the question of inviting the Chinese People's Republic, under rule 39, should be considered after a report had been made by the commission on the facts. The representative of France stated that it was reasonable that a representative of the authorities submitting a complaint should be permitted to explain that complaint to the Council and reply to questions.<sup>205</sup>

**Decision:** At the 505th meeting on 28 September 1950, the draft resolution submitted by the representa-

<sup>204</sup> S/1817/Rev.1, 504th meeting: pp. 12-13.

<sup>205</sup> For texts of relevant statements see:

503rd meeting: USSR, pp. 21, 31, 34.

504th meeting: China, pp. 13-15, 17; Ecuador, pp. 7, 9-13; USSR, pp. 4-5; United Kingdom, pp. 18-19.

505th meeting: Ecuador, pp. 13, 15; USSR, p. 6; United States, pp. 8-9.

506th meeting: India, p. 8; United States, pp. 12-14.

507th meeting: France, p. 12.

five of the USSR<sup>206</sup> was rejected, having failed to obtain the affirmative votes of seven members. There were 6 votes in favour, 3 against, and 2 abstentions.<sup>207</sup>

The Ecuadorean amendment to the Chinese draft resolution was voted upon paragraph by paragraph. The operative part was rejected, having failed to obtain the affirmative vote of seven members. There were 6 votes in favour, 4 against, and 1 abstention.<sup>208</sup>

The representative of Ecuador reintroduced his proposal at the 506th meeting on 29 September 1950 as a separate draft resolution which was voted upon paragraph by paragraph and adopted as a whole, with the deletion of the last paragraph of the preamble, by 7 votes in favour, 3 against, and 1 abstention.<sup>209</sup>

#### CASE 55

At the 519th meeting on 8 November 1950, in connexion with the complaint of aggression upon the Republic of Korea and with reference to the special report of the United Nations Command in Korea transmitted by the letter dated 6 November 1950 from the representative of the United States,<sup>210</sup> the Security Council considered two draft resolutions concerning the invitation to a representative of the People's Republic of China.

The representative of the USSR submitted a draft resolution<sup>211</sup> proposing that "during the discussion of the Korean question it should be necessary to invite the representative of the People's Republic of China". He maintained that, in order to form a definite opinion, it was necessary to hear both sides in a spirit of sovereign equality. The representative of the United Kingdom introduced an amendment,<sup>212</sup> to "invite, in accordance with rule 39 of the rules of procedure, a representative of the Central Government of the People's Republic of China to be present during the discussion by the Council of the special report..." In presenting his counter-draft, the representative of the United Kingdom observed:

"... the Security Council should extend such an invitation on a general matter of equity and without any long and possibly contentious debate on the exact Article of the Charter on which an invitation should be based or on the exact meaning, for instance, of Article 32 in its application to present circumstances."

He thought that the attitude of the Government of the Chinese People's Republic toward the action taken by the United Nations to repel aggression in Korea could not justify the extension of a general invitation to be present at the Council table whenever the item was under consideration. However, the Chinese People's Republic, having been arraigned by the United Nations Command, ought in his view to be allowed to make a statement on its own behalf. The representative of China opposed the invitation on the ground that the Chinese communists were aggressors. Objections to the extension of an invitation of the sort characteristically tendered in disputes were voiced by the representative of the United States, who believed that the Communist

<sup>206</sup> S/1732, 505th meeting: p. 21.

<sup>207</sup> 505th meeting: p. 21.

<sup>208</sup> 505th meeting: p. 23.

<sup>209</sup> 506th meeting: p. 5. See chapter I, Case 103.

<sup>210</sup> S/1884, 518th meeting: pp. 4-5.

<sup>211</sup> S/1889, 519th meeting: p. 16.

<sup>212</sup> S/1890, 519th meeting: p. 16.



authorities ought to be summoned to afford explanations. The President, speaking as the representative of Yugoslavia, stated that the People's Republic of China was an interested party in the Korean question.

**Decision:** *At the 520th meeting on 8 November 1950, the USSR draft resolution was rejected by 2 votes in favour, 3 against, and 6 abstentions.*<sup>213</sup>

After the rejection of the USSR draft resolution, the representative of the USSR proposed an amendment to the United Kingdom draft resolution replacing the words "special report of the United Nations Command in Korea (S/1884)" by the words "the question submitted by the delegation of the United States of America (S/1884)".

**Decision:** *The USSR amendment was rejected by 1 vote in favour, 2 against, and 8 abstentions.*<sup>214</sup>

Before the United Kingdom draft resolution was put to the vote, the representative of the USSR stated that, while he would vote in favour of the draft resolution, his delegation did not recognize the United Nations Command.<sup>215</sup>

**Decision:** *The United Kingdom draft resolution was adopted by 8 votes in favour, 2 against, and 1 abstention.*<sup>216</sup>

### 3. Invitations not expressly under Article 32 or rule 39

#### a. Restricted in relation to the agenda item

##### CASE 56

At the 62nd and 64th meetings on 5 and 9 September 1946, in connexion with the Ukrainian complaint against Greece, the Security Council considered the letter dated 5 September 1946<sup>217</sup> from the representative of the People's Republic of Albania requesting permission, in accordance with Article 32, to present a factual statement before the Council. The President (Poland) explained that, since the case had been classified as a situation by the Ukrainian SSR, Article 32 could not be applied "unless we classify the subject as a dispute". He interpreted rule 39 as giving "the Council freedom to invite whomever it chooses to supply it with information or other assistance, as distinguished from participation in the discussion", stating that "it follows that the matter has to be considered on the basis of rule 39".

At the 64th meeting, the representatives of China and the Netherlands agreed that a State which was not a Member of the United Nations could not be invited to participate in the discussion unless the question under consideration was a dispute to which the non-Member was a party.<sup>218</sup> The representatives

of China, Mexico, the Netherlands, the United Kingdom and the United States observed that rule 39 was not applicable. The representatives of Mexico and the United States, however, added that to grant the Albanian request would be in the spirit of the Charter. The representative of China stated that he would support an invitation to Albania if some rule or method could be found to enable the representative of Albania to come to the Council table. The representative of the USSR supported the invocation of rule 39 to invite the representative of Albania. The representative of Australia maintained that, although rule 39 could be applied, it should follow a decision to investigate, which in itself might avoid the procedural difficulties. The President put to the vote the question "to invite the representative of Albania to come to the table for the purpose of making a factual statement".<sup>219</sup>

**Decision:** *The Council decided by 9 votes in favour, 1 against, with 1 abstention, to invite the representative of Albania. After the vote had been taken, the President stated:*

"I shall ask the representative of Albania to come to the table to make a factual statement. I also want to advise him that this does not imply the right to participate in the discussion."<sup>220</sup>

##### CASE 57

At the 82nd meeting on 10 December 1946, in connexion with the Greek frontier incidents question which had been brought before the Security Council by Greece as a "situation", the Council considered requests from the Governments of Albania, Bulgaria and Yugoslavia to attend the meetings of the Council when the question was under consideration.<sup>221</sup> The President (United States) assumed that the Council would invite Yugoslavia, as a Member of the United Nations, under Article 31. He observed that inasmuch as Albania and Bulgaria were not Members, they could not be dealt with on the same basis. He suggested:

"...at an appropriate stage in the proceedings, the Albanian and Bulgarian Governments should be invited to the Council table to present any facts bearing on the issues before the Council."

The representative of the USSR considered that all parties should be invited to participate equally in discussion of disputes and situations. The representative of the Netherlands observed that non-Members could not be invited under Article 32 unless the question was a dispute.<sup>222</sup> Several members were of the opinion that all States concerned should be heard before a decision was taken on whether the question was a dispute. The representative of Mexico observed that unless Article 32 was applied, the treatment of Albania

<sup>213</sup> 520th meeting: p. 5.

<sup>214</sup> 520th meeting: pp. 6-7.

<sup>215</sup> For texts of relevant statements see:

519th meeting: China, pp. 14-15; USSR, pp. 12-13; United Kingdom, pp. 15-16.

520th meeting: President (Yugoslavia), p. 5; Ecuador, pp. 7-8; Egypt, p. 8; France, pp. 4-5; USSR, pp. 2-4; United States, pp. 1-2.

<sup>216</sup> 520th meeting: pp. 7-8.

<sup>217</sup> S/151, 62nd meeting: p. 250.

<sup>218</sup> For consideration of whether a dispute existed, see Case 70.

<sup>219</sup> For texts of relevant statements see:

62nd meeting: President (Poland), pp. 249-250; Australia, pp. 250-252; USSR, pp. 252-254.

64th meeting: President (Poland), pp. 261, 266; Australia, pp. 263-264; China, pp. 261-262; Mexico, pp. 265-266; Netherlands, pp. 262-263; United Kingdom, pp. 260-261, 265; United States, p. 265.

<sup>220</sup> 64th meeting: pp. 266-267.

<sup>221</sup> S/207 (Albania), O.R., 1st year, 2nd series, Suppl. No. 10, annex 17, p. 191, and S/208 (Bulgaria), O.R., 1st year, 2nd series, Suppl. No. 10, annex 18, p. 191.

<sup>222</sup> For consideration of whether a dispute existed, see Case 71.

and Bulgaria might be "unjust and unfair".<sup>223</sup> The representative of the USSR submitted the following draft resolution:<sup>224</sup>

"The Security Council resolves:

"To invite the representatives of Greece, Yugoslavia, Bulgaria and Albania to participate in the consideration of the question raised by the Greek Government."

**Decision:** *The USSR draft resolution was rejected, having failed to obtain the affirmative vote of 7 members.*<sup>225</sup>

The representative of the Netherlands submitted a draft resolution to invite the representatives of Greece and Yugoslavia "to participate in the discussion without vote". As regards Albania and Bulgaria, the draft resolution provided:<sup>226</sup>

"2. That the representatives of Albania and Bulgaria will be invited to enable the Security Council to hear such declarations as they may wish to make.

"3. Should the Security Council find at a later stage that the matter under consideration is a dispute, the representatives of Albania and Bulgaria will be invited to participate in the discussion without vote."

The representative of Poland asked that the phrase "will be invited" in paragraph 2 be amended to read: "are invited". The representative of the Netherlands accepted the amendment.<sup>227</sup>

**Decision:** *Paragraph 2 of the Netherlands draft resolution, as amended, was adopted unanimously. Paragraph 3 was declared adopted "by a majority vote" and the representative of the USSR explained why he had voted against.*<sup>228</sup>

#### b. Unrestricted in relation to the agenda item

##### CASE 58

At the 84th meeting on 16 December 1946, in connexion with the Greek frontier incidents question, after the Security Council had heard the representatives of Albania, Bulgaria, Yugoslavia and Greece in accordance with the decision reached at the 82nd meeting,<sup>229</sup> the President (United States) raised the question as to the future participation of the representatives of Albania and Bulgaria in the discussion. He proposed that, in accordance with the spirit of Article 32 and with the spirit of justice with which the Charter was inspired, the Council invite Albania and Bulgaria to participate, without vote, during the remainder of the discussion, should these Governments accept in advance, for purposes of the case, the obligations of pacific settlement provided in the Charter.

The representatives of Mexico, the Netherlands, Poland and the USSR considered that Article 32

clearly applied to the case. The President stated that he had purposely avoided making reference to any Articles except to invoke the spirit of Article 32.<sup>230</sup>

**Decision:** *The Council unanimously adopted the proposal of the President to invite the representatives of Albania and Bulgaria to participate, without vote, during the remainder of the discussion, provided that they accepted the obligations of pacific settlement.*<sup>231</sup>

##### CASE 59

At the 171st meeting on 31 July 1947, in connexion with the Indonesian question (II), the representatives of Australia and the USSR proposed that an invitation be sent to the Republic of Indonesia, the former contending that this should be done pursuant to Article 32. The representative of the Netherlands\*, who had been invited to take part in the discussion without vote, opposed the proposal, stating that an invitation would prejudice the question, especially with reference to the competence of the Security Council, since the Republic of Indonesia was not a sovereign State.<sup>232</sup> In reply to a question from the representative of the United States, the President (Poland) stated that, according to rule 39, the Council could invite anybody for consultation, and that it was possible to invite the representative of the Indonesian Republic and later decide his legal status. Accepting suggestions made by the representatives of China and Colombia, the President ruled that the question of invitation would be postponed until after consideration of the Australian draft resolution concerning a cease-fire.

At the 181st meeting on 12 August 1947, after the adoption of the Australian draft resolution, the representative of Poland formally proposed to invite the representative of the Republic of Indonesia to take part in the discussion. The President (Syria) read a letter from the representative of the Republic of Indonesia, requesting permission to participate without vote in the discussion, and accepting, for the purpose of the dispute, the obligations of a Member of the United Nations.<sup>233</sup>

The representative of Colombia observed that it would be unjust to continue to address resolutions to both parties and to hear only one. The representatives of Belgium and the United Kingdom opposed the invitation because it would indirectly accord recognition to the Republic of Indonesia by admitting it as a sovereign and independent State. The representative of Australia stated that at times the Council had extended invitations in accordance with equity and justice. The representative of the United States supported the viewpoint that the proposal was in accordance with the spirit of Article 32, but added that, if members did not wish to apply Article 32, the representative of Indonesia could be invited in accordance with rule 39, if that rule were given a generous interpretation. The representative of the USSR was in favour of an unqualified invitation, and the representatives of China and India\* favoured a practical

<sup>223</sup> For texts of relevant statements, see: 82nd meeting: President (United States), pp. 530-531; Australia, pp. 546-547; China, pp. 539-540; Egypt, pp. 533-534; Mexico, pp. 534-535; Netherlands, pp. 532-533, 543-544; Poland, pp. 538-539; USSR, pp. 542-543, 555; United Kingdom, p. 552; United States, p. 548.

<sup>224</sup> 82nd meeting: p. 556.

<sup>225</sup> 82nd meeting: p. 556.

<sup>226</sup> 82nd meeting: pp. 556-557. For invitations to Greece and Yugoslavia, see Cases 14 and 28.

<sup>227</sup> 82nd meeting: pp. 556, 558.

<sup>228</sup> 82nd meeting: pp. 558-559.

<sup>229</sup> See Cases 14, 28 and 57.

<sup>230</sup> For texts of relevant statements see:

84th meeting: President (United States), pp. 607-608, 608-609, 610; Australia, pp. 608, 611, 612; Egypt, pp. 609-610; Mexico, pp. 611-612; Netherlands, p. 609; Poland, p. 611; USSR, pp. 609, 613.

<sup>231</sup> 84th meeting: p. 613. See also Case 80.

<sup>232</sup> For consideration of this provision of Article 32, see Case 67.

<sup>233</sup> S/487, 181st meeting: p. 1919.



rather than legal approach so that a representative of Indonesia might submit his observations in writing, thus reserving the legal question. The representative of the Netherlands\*, in addition to opposing an invitation under Article 32, drew attention to the terms of rule 39, the invocation of which he opposed. He pointed out that the rule provided that the Security Council could invite persons to supply it "with information or to give other assistance in examining matters within its competence", thus implying recognition of the Council's competence. In putting the matter to the vote, the President (Syria) stated:

"... we consider that the presence of representatives from Indonesia would be necessary and helpful for the just solution of this problem. For that reason I shall put to the vote only the question of extending an invitation to the representatives of the Indonesian Republic to appear before the Security Council during the discussion of this question, without any definition or determination of the sovereignty of that Republic."

**Decision:** *The proposal to invite the representative of the Republic of Indonesia was adopted by 8 votes in favour and 3 against.*<sup>234</sup>

After the vote had been taken a discussion took place regarding the legal basis of the decision. The representative of the Netherlands maintained that the Council had not invited the representative of the Republic of Indonesia under Article 32 or rule 39. The representative of Belgium stated that the invitation was based on general grounds of equity and justice. The representatives of Australia, Poland and the USSR regarded the invitation as an application of Article 32.

At the 184th meeting on 14 August 1947, the representative of the United Kingdom maintained that the action was a violation of Article 32. The representative of Colombia contended that the invitation had been extended because the Republic of Indonesia was a party to the dispute and hostilities had occurred. The representative of the United States was of the opinion that the President's remarks prior to the voting accurately expressed the views of the Council. The President observed that the proposal had been adopted on the basis of the principles which he had enunciated.<sup>235</sup>

#### CASE 60

At the 357th meeting on 16 September 1948, the provisional agenda included communications from the Government of Hyderabad, bringing to the attention of the Security Council, in accordance with Article 35 (2), a dispute which had arisen between Hyderabad and India.<sup>236</sup> In the communication, the Government

<sup>234</sup> 181st meeting; p. 1940. See also Case 82.

<sup>235</sup> For texts of relevant statements see:

171st meeting: President (Poland), pp. 1630, 1632-1633; Australia, pp. 1618, 1627; Belgium, p. 1633; China, p. 1633; Colombia, p. 1630; India, pp. 1627-1628, 1639; Netherlands, pp. 1619-1620; USSR, p. 1618; United States, p. 1632.

181st meeting: President (Syria), pp. 1920, 1939-1940, 1941; Belgium, pp. 1930, 1941, 1943; China, pp. 1935-1936; Colombia, pp. 1928-1929; France, pp. 1936-1939; Netherlands, pp. 1921-1923, 1940-1941; Poland, pp. 1918-1919, 1927-1928, 1941-1942; United Kingdom, p. 1923; United States, pp. 1931-1933, 1942-1943.

184th meeting: President (Syria), p. 1992; Australia, p. 1985; Colombia, pp. 1988-1989; United Kingdom, pp. 1984-1985.

<sup>236</sup> S/986, S/998, S/1000, O.R., 3rd year, Suppl. for Sept. 1948, pp. 5-7.

of Hyderabad had stated its acceptance "for the purpose of the dispute, of the obligations of pacific settlement provided in the Charter of the United Nations".

**Decision:** *After the agenda had been adopted, by 8 votes in favour and 3 abstentions, the President (United Kingdom) invited, without objection, the representative of Hyderabad to the Council table.*<sup>237</sup>

#### 4. Invitations denied

##### CASE 61

At the 181st and 184th meetings on 12 and 14 August 1947, in connexion with the Indonesian question (II), after the representative of the Republic of Indonesia had been invited to participate in the discussion, the representative of Belgium proposed that the Security Council invite, for similar reasons of equity, the representatives of East Indonesia and Borneo. The President (Syria) observed that, since East Indonesia and Borneo were neither parties to the dispute nor participants in the hostilities, the basis for invitations could not be the same. The representative of the Netherlands\* contended that the invitations should be extended for reasons of equity and justice without prejudice to juridical questions, since all three authorities were considered equal by his Government. The representatives of Australia, Colombia, Poland, Syria and the USSR questioned whether an invitation could be extended without the authority of an Article of the Charter or a rule of procedure. Support for the invocation of rule 39 of the rules of procedure was expressed by the representatives of Australia, Colombia and the United States, while the representatives of Poland and the USSR contended that rule 39 could not apply to representatives of Governments. At the close of the discussion, the representative of Belgium requested that the words "on the same grounds as the representative of the Indonesian Republic" be deleted from his proposal.<sup>238</sup>

**Decision:** *The Belgian draft resolution was rejected by 4 votes in favour with 7 abstentions.*<sup>239</sup> *At the 193rd meeting on 22 August 1947, a second draft resolution to the same effect was also rejected.*<sup>240</sup>

##### CASE 62

At the 473rd meeting on 25 June 1950, in connexion with the complaint of aggression upon the Republic of Korea, after the Security Council had heard a statement by the representative of the Republic of Korea, the representative of Yugoslavia submitted a draft resolution to invite "the Government of North Korea to state its case before the Security Council".<sup>241</sup> While voicing no opinion regarding the merits of the case, the representative of Yugoslavia observed that, before passing final judgment, the Council should hear a

<sup>237</sup> 357th meeting; p. 11. For invitation to the representative of India, see Case 39.

<sup>238</sup> For texts of relevant statements see:

181st meeting: President (Syria), p. 1943; Australia, pp. 1942, 1943-1944; Belgium, pp. 1941-1943; Netherlands, pp. 1940, 1941.

184th meeting: President (Syria), p. 1983; Australia, p. 1983; Belgium, pp. 1981, 1992; Colombia, pp. 1981, 1982, 1988-1989; Netherlands, pp. 1981-1982, 1987; Poland, p. 1990; USSR, pp. 1986-1987; United Kingdom, pp. 1984-1985; United States, pp. 1985-1986.

<sup>239</sup> 184th meeting; p. 1992.

<sup>240</sup> 193rd meeting; p. 2172.

<sup>241</sup> S/1500, 473rd meeting; p. 15.

representative of the party which had been accused of aggression.<sup>242</sup>

**Decision:** *The Yugoslav draft resolution was rejected by 1 vote in favour, 6 against, and 3 abstentions.*<sup>243</sup>

## CASE 63

At the 474th meeting on 27 June 1950, in connexion with the complaint of aggression upon the Republic of Korea, the representative of Yugoslavia submitted a draft resolution "to invite the Government of the People's Republic of Korea to send immediately a representative to the Headquarters of the United Nations with full powers to participate in the procedure of mediation".<sup>244</sup>

**Decision:** *The Yugoslav draft resolution was rejected by 1 vote in favour, 7 against and 2 members of the Council not voting.*<sup>245</sup>

## CASE 64

At the 483rd meeting on 4 August 1950, in connexion with the complaint of aggression upon the Republic of Korea, the President, as the representative of the USSR, submitted a draft resolution, the first paragraph of which read:<sup>246</sup>

"(a) To consider it necessary, in the course of the discussion of the Korean question, to invite the representative of the People's Republic of China and also to hear representatives of the Korean people."

The USSR draft resolution was discussed, without a decision being taken, during the month of August 1950 (483rd to 493rd meetings), in conjunction with the United States draft resolution<sup>247</sup> to condemn the North Korean authorities for continued defiance of the United Nations, and the point of order raised by the representative of China concerning the "standing decision" which the Council had taken, at its 473rd meeting on 25 June 1950 (see Case 53), to invite the representative of the Republic of Korea to participate in the discussions on the Korean question.

The representative of the USSR observed that it was the tradition and practice of the Council to invite both parties involved in hostilities, as well as the representatives of the States concerned, and that this procedure was in accordance with Article 32 of the Charter. The representatives of China, Cuba, Ecuador, India, Norway, the United Kingdom and the United States stressed the difference between the case of a dispute and the Korean case of aggression in violation of the Security Council's call for cessation of hostilities and withdrawal to the 38th parallel.<sup>248</sup> Objections were also raised against the USSR draft resolution by the representatives of China, Cuba, Egypt, France, India, Norway, United Kingdom and the United States on the ground that the decision of 25 June 1950, to invite the representative of the Republic of Korea, bound the President (USSR) first to invite the representative of the Republic of Korea, unless that decision was reversed by the Council. The representative of Ecuador

maintained that the People's Republic of China was not connected directly or indirectly with the question before the Council.<sup>249</sup>

At the 494th meeting on 1 September 1950, the President (United Kingdom), in accordance with the decision taken by the Council on 25 June, invited the representative of the Republic of Korea to take his place at the Council table.<sup>250</sup> After the President's ruling, on being put to the vote, had been upheld, the representative of the USSR introduced the following new draft resolution:<sup>251</sup>

*The Security Council*

*"Decides that during the discussion of the Korean question it shall be necessary to invite and hear at its meetings the representatives of the Korean people, i.e., the representatives of North and South Korea."*

The President ruled, and his ruling was upheld by 8 votes to 1, with 1 abstention and one member not participating, that if the USSR draft resolution was rejected, such a rejection should not prejudice the right of the representative of the Republic of Korea to be present at the Council table during the discussion of the Korean question.<sup>252</sup>

**Decision:** *At the 494th meeting, the second USSR draft resolution (S/1751) was rejected by 2 votes in favour, 8 against, with one member not participating in the voting.*<sup>253</sup> *At the 496th meeting on 6 September 1950, the President, in putting the first USSR draft resolution (S/1668) to the vote, made the same ruling which he had applied with regard to the second USSR draft resolution (S/1751).*<sup>254</sup> *The first USSR draft resolution (S/1668) was rejected by 1 vote in favour, 8 against, with 2 abstentions.*<sup>255</sup>

## CASE 65

At the 492nd meeting on 29 August 1950, immediately after the adoption of the agenda, in which the complaint of aggression upon the Republic of Korea and the complaint of armed invasion of Taiwan (Formosa) figured respectively as items 2 and 3, the President, as the representative of the USSR, submitted a draft resolution to invite the representative of the People's Republic of China to attend the meetings of the Security Council, in connexion with item 3 of the agenda.<sup>256</sup> He stated that his delegation was guided by Article 32 and the "previous experience and practice" of the Council, which, in considering disputes and conflicts

<sup>242</sup> For texts of relevant statements see: 483rd meeting: USSR, pp. 2-4, 14-17; United Kingdom, pp. 7-8; United States, pp. 4-6.

<sup>243</sup> 484th meeting: USSR, pp. 8-10.

<sup>244</sup> 485th meeting: China, p. 3.

<sup>245</sup> 486th meeting: United Kingdom, p. 8.

<sup>246</sup> 487th meeting: Ecuador, pp. 2-3; Norway, p. 7; USSR, p. 14.

<sup>247</sup> 488th meeting: Cuba, p. 2; Norway, pp. 14-16.

<sup>248</sup> 489th meeting: United Kingdom, pp. 21, 27; United States, p. 27.

<sup>249</sup> 492nd meeting: Ecuador, p. 20.

<sup>250</sup> 494th meeting: President (United Kingdom), p. 21; Cuba, p. 16; Ecuador, pp. 21-22; France, p. 20; India, pp. 15-16; USSR, p. 8.

<sup>251</sup> 494th meeting: p. 2.

<sup>252</sup> S/1751, 494th meeting: p. 8.

<sup>253</sup> 494th meeting: p. 11.

<sup>254</sup> 494th meeting: p. 21.

<sup>255</sup> 496th meeting: pp. 19-20.

<sup>256</sup> 496th meeting: p. 21.

<sup>257</sup> S/1732, 492nd meeting: p. 15.

<sup>242</sup> 473rd meeting: pp. 14-15.

<sup>243</sup> 473rd meeting: p. 18. One member (USSR) was absent.

<sup>244</sup> S/1509, 474th meeting: p. 7.

<sup>245</sup> 474th meeting: p. 17. One member (USSR) was absent.

<sup>246</sup> S/1668, 483rd meeting: pp. 1-2.

<sup>247</sup> S/1653, 479th meeting: pp. 7-8.

<sup>248</sup> For consideration of whether a dispute existed, see Case 73.

likely to prove a threat to international peace and security, had invited representatives of both sides. He explained that the request for extending the invitation, in advance of the consideration of the item on the agenda, was made as an exception because the length of time that would be required for the journey of the representative of the People's Republic of China from Peking. The representative of the United States opposed the USSR proposal and said that he could not agree with an exceptional and premature treatment of the item. He stated that the first order of business was item 2 of the agenda, and the question for immediate consideration was the invitation to the representative of the Republic of Korea. The representative of Ecuador could not accept the argument of the representative of the USSR based on Article 32, since his Government did not recognize the Government at Peking as the legitimate Government of China, but he did not rule out the applicability of rule 39. The representative of the United Kingdom was in favour of a representative of the Central People's Republic being present when the complaint was under discussion, but was of the opinion that the proper course would be to wait until the Council knew exactly when the question would be discussed.<sup>257</sup> The President's ruling that the USSR proposal could be considered as an exception and should be put to the vote immediately, was upheld, the challenge having failed to secure the affirmative votes of seven members.<sup>258</sup>

**Decision:** *The USSR draft resolution, with the addition of the words "when this question is under discussion" as suggested by the United Kingdom, was put to the vote and rejected by 4 votes in favour, 4 against, with 3 abstentions. The representative of the USSR reserved the right to reintroduce the draft resolution when the Council considered the complaint.*<sup>259</sup>

#### CASE 66

At the 495th meeting on 5 September 1950, in connexion with the complaint of bombing by air forces of the territory of China, the representative of the USSR submitted a draft resolution, "to invite the representative of the People's Republic of China to the meetings of the Security Council".<sup>260</sup>

At the 497th meeting on 7 September 1950, the representative of the USSR, referring to Article 32, drew the attention of the Council to the USSR draft resolution and proposed that, before considering the substance of the question, the Council should take a decision on inviting the representative of the People's Republic of China. After the USSR proposal had

been adopted by 7 votes to 3, with one abstention,<sup>261</sup> the representative of Ecuador stated that the States which had recognized the Nationalist Government of China did not feel bound, under Article 32, to invite at that time the representatives of the authorities in control of the territory concerned, for to compel those States to adopt a resolution in application of Article 32 would be tantamount to forcing them to take a decision on the question of the representation of China.

At the 499th meeting on 11 September 1950, the representative of China, supported by the representatives of Cuba, Ecuador and the United States, maintained that Article 32 was inapplicable to the case, since China was already a member of the Council and there was no question of dispute for consideration.<sup>262</sup> He said that the Council should not give a hearing to a party which had proclaimed its sympathies with an aggressor and had created difficulties for the United Nations in the execution of its duties. The representative of the USSR observed that any State which had approached the Council with a communication about aggression should be heard during the consideration of the communication. He stressed that this was the basic rule in the work of the Council, as provided in Article 32 as well as rule 39. The representative of Norway was of the opinion that the proposed invitation seemed reasonable and in conformity with the practice of the Council. He was unable, however, to agree with the contention that such an invitation was obligatory under Article 32, for the situation had not yet crystallized into a dispute. The representative of France observed that, having agreed to consider the complaint submitted by the People's Republic, the Council could not very well refuse to admit a representative of those authorities to defend their case, and that Article 32 was applicable. The representative of India, supporting the USSR draft resolution, stated that rule 39 could be applied to the case, even if some members of the Council regarded Article 32 inapplicable. The President, speaking as the representative of the United Kingdom, observed that so long as the Security Council held the view that the Central People's Government should not represent China in the Council, Article 32 could not be invoked with full effect. Neither did rule 39 of the rules of procedure oblige the Council to invite a representative of the Central People's Government, though it provided a good justification for inviting him if the Council so desired. He believed that, in equity, the right of the People's Government to submit its views to the Council, if it so wished, was undoubted.<sup>263</sup>

**Decision:** *The USSR draft resolution was rejected by 6 votes in favour, 3 against, and 2 abstentions.*<sup>264</sup>

<sup>257</sup> For texts of relevant statements see: 492nd meeting: President (USSR), pp. 14-15; Ecuador, p. 20; Egypt, p. 21; United Kingdom, pp. 15, 20-21; United States, pp. 15, 17-18.

<sup>258</sup> 492nd meeting: p. 16.

<sup>259</sup> 492nd meeting: p. 21. For the reintroduction of the USSR draft resolution, see Case 54.

<sup>260</sup> S/1759, O.R., 5th year, Suppl. for Sept.-Dec. 1950, p. 148; 495th meeting: p. 2.

<sup>261</sup> 497th meeting: p. 29.

<sup>262</sup> For consideration of the term "Member" in Article 32, see Case 68.

<sup>263</sup> For texts of relevant statements see:

497th meeting: Ecuador, pp. 29-30; USSR, pp. 20, 26-27.  
499th meeting: China, pp. 2-3; Cuba, p. 15; Ecuador, p. 14; France, pp. 14-15; India, p. 16; Norway, pp. 12-13; USSR, pp. 3, 4-5; United Kingdom, pp. 17-18; United States, pp. 9-10.

<sup>264</sup> 499th meeting: p. 19.

## Part II

## CONSIDERATION OF THE TERMS AND PROVISIONS OF ARTICLE 32 OF THE CHARTER

## NOTE

Part II singles out for separate presentation discussion which has taken place within the Security Council relating to the terms of Article 32. Article 32 is the only provision of the Charter which provides for invitations to non-Member States. When invitations to non-Members have been in question, certain implications of the terminology of Article 32 have on various occasions precluded a decision based explicitly on the Article. The terms of Article 32 provide the headings of part II. The discussion on Article 32 should be considered within the context of the proceedings summarized in part I. For this reason, each case of part II has attached, in the footnotes, a reference to the relevant case in part I.

Section A contains discussion arising in connexion with the significance of the phrase "Member of the United Nations"<sup>1</sup> and the meaning of the term "State" as applied to non-Members.<sup>2</sup>

Section B is concerned with the discussion of the limited applicability of Article 32 to the consideration of disputes. A formal decision by the Council to characterize the question before it as a dispute has been avoided.<sup>3</sup> Nevertheless, consideration of the terms of Article 32 has included discussion of the following three related problems:

1. Whether participation by a non-Member State was conditional on a finding that the question under consideration was a dispute.<sup>4</sup>

2. Whether a non-Member State might be heard with a view to enabling the Council to reach a finding on whether the case before it was a dispute.<sup>5</sup>

3. Whether Article 32 was applicable only in respect of questions relating to Chapter VI of the Charter.<sup>6</sup>

In section C is set forth the discussion relating to the phrase "shall be invited". Statements have been made in the Council as to whether the Council was obliged to invite non-Member States under the terms of Article 32,<sup>7</sup> and whether the Council must receive a request for such an invitation.<sup>8</sup>

In section D are given the cases in which the Council has discussed and made decisions regarding the conditions of participation which it is required to lay down under Article 32 when inviting non-Member States.<sup>9</sup>

In connexion with the discussion on the application of Article 32, consideration has been given to the meaning of the words "other persons" in rule 39 of the provisional rules of procedure. Where such discussion has been directly related to the problem of applying Article 32, it has been included.<sup>10</sup> Other discussion regarding rule 39 has been summarized in part I.<sup>11</sup>

<sup>1</sup> Case 68.

<sup>2</sup> Case 67.

<sup>3</sup> For consideration of this problem in connexion with Article 27 (3), see chapter IV, part III.

<sup>4</sup> Cases 69, 70, 71, 72 and 74.

<sup>5</sup> Cases 69, 70 and 71.

<sup>6</sup> Case 73.

<sup>7</sup> Cases 75, 76 and 78.

<sup>8</sup> Case 77.

<sup>9</sup> Cases 79, 80, 81, 82 and 83. See also Case 60.

<sup>10</sup> Case 70.

<sup>11</sup> Cases 54, 55, 56, 59, 65 and 66.

The question whether an invitation by the Council implied recognition on the part of the members of the Council has also arisen in connexion with Article 32. Where discussion on this point has taken place, appropriate references have been made in the cases of parts I and II, and in the footnotes to these cases will be found the references to the texts of relevant statements.<sup>12</sup>

**A. "ANY MEMBER OF THE UNITED NATIONS WHICH IS NOT A MEMBER OF THE SECURITY COUNCIL OR ANY STATE WHICH IS NOT A MEMBER OF THE UNITED NATIONS..."**

## CASE 67

At the 171st and 181st meetings on 31 July and 12 August 1947, in connexion with the Indonesian question (II), discussion centered on the question whether the Republic of Indonesia was a State within the meaning of Article 32. The representative of the Netherlands\* opposed an invitation under Article 32 to the Republic of Indonesia on the grounds that Indonesia was not a sovereign State.

The representative of Australia contended that the hostilities in progress constituted in fact armed conflict between two States in international law. The representative of India\*, in supporting the Australian position, quoted the following legal opinion:

"The requirement that, in order that it may be regarded as a State within the meaning of international law, the society must be a sovereign independent State is however in no way essential to the conception of juridical relations between States."

He distinguished between statehood within the meaning of Article 32 and "sovereign equality" referred to in Article 2 (1). He stated:

"The distinction that I make is that there can be States without full sovereignty which are States for the purposes of Chapter VII of the Charter."

The representatives of Australia, China, Syria, the USSR and the United States concurred in the view that the Charter did not stipulate that a State must be fully sovereign in order to be invited to participate in the discussion.

The representative of the United States stated:

"Article 32 refers to States, but the plain intent of that Article and of the authors of the Charter was that justice should be done to both parties to a dispute..."

"... the United States expressly reserves its position on the question of whether or not the Republic of Indonesia is a State in international law in the sense in which the matter has been discussed at this table. We shall also refrain from taking any position on the question as to whether or not we recognize the right of the Council to decide that point."

The representative of France observed:

"Although the expression 'sovereign State' is not used in Article 32, this obviously does not mean that

<sup>12</sup> Cases 52, 54, 55, 59, 60, 61, 65, 66 and 68.



the word 'State' should be understood otherwise than in its meaning in international law."

In summing up the discussion immediately prior to the voting on the draft resolution, the President (Syria) stated:

"... the invitation to participate in this discussion and to study the problem now presented to the Security Council does not necessitate that this State should enjoy all the prerogatives and exercise all the functions of sovereignty. The word 'State', which appears in Article 32, does not indicate what type of 'State' is being referred to."

Following the extension of an invitation to the Republic of Indonesia,<sup>13</sup> the matter was again discussed, at the 181st and 184th meetings on 12 and 14 August 1947, in connexion with a proposal by the representative of Belgium to invite representatives of East Indonesia and Borneo to participate in the discussion.<sup>14</sup>

The representatives of Australia and Colombia raised the question of the status of those Governments. The representative of the Netherlands\* replied:

"... the Netherlands Government has recognized those two Governments for what they are, namely, States in exactly the same positions as the Republic of Indonesia with which they are ultimately to take their place in the United States of Indonesia."

The representative of Poland stated:<sup>15</sup>

"I believe that under the Charter, East Indonesia and Borneo can be treated only as Non-Self-Governing Territories, and that is another reason why they cannot be dealt with under Article 32."

#### CASE 68

At the 497th and 499th meetings on 7 and 11 September 1950, in connexion with the complaint of bombing by air forces of the territory of China, the representative of the USSR submitted a draft resolution to invite the representative of the People's Republic of China<sup>16</sup> and based his proposal, in part, on Article 32.

The representative of China analysed the draft resolution at the 499th meeting. He stated:

"The present proposal is made on the strength of Article 32 of the Charter..."

"That Article is obviously not applicable to the present item. That Article speaks, first of all, of 'any Member of the United Nations which is not a member of the Security Council'. China is a member of the Security Council. China is a permanent member of the Security Council. Therefore that part of the Article is certainly irrelevant.

"Then Article 32 goes on to refer to 'any State which is not a Member of the United Nations'. China is a Member of the United Nations. Therefore

<sup>13</sup> For invitation to the Republic of Indonesia, see Case 59.

<sup>14</sup> For the rejection of the Belgian proposal, see Case 61.

<sup>15</sup> For texts of relevant statements see:

171st meeting: Australia, p. 1623; India, p. 1628; Netherlands, pp. 1619-1620; Syria, pp. 1628-1629.

181st meeting: President (Syria), p. 1939; Australia, pp. 1930, 1942; China, p. 1935; Colombia, p. 1928; France, p. 1937; India, p. 1924; Netherlands, p. 1923; Poland, pp. 1919, 1927-1928; United States, p. 1932; USSR, pp. 1933-1934.

184th meeting: Colombia, p. 1981; Netherlands, p. 1981; Poland, p. 1990.

<sup>16</sup> For the rejection of the USSR draft resolution, see Case 66.

that part of the Article is also inapplicable to the present case."

At the 497th meeting, the representative of Ecuador stated:

"It is clear that the countries which recognize the Nationalist Government of China do not feel bound under Article 32 of the Charter to invite at this time the representatives of the authorities which are now in control of the territories in which the damages from air bombings are supposed to have occurred. To compel us to adopt a resolution in application of this Article would, in the opinion of my delegation, be tantamount to forcing us to take a decision on the question of the representation of China."

At the 499th meeting, the President, speaking as the representative of the United Kingdom, stated:

"So long as the Security Council in fact holds the view that the Central People's Government should not represent China at this table, it seems to us that Article 32 of the Charter cannot be invoked with full effect in the present case."

In support of his draft resolution, the representative of the USSR stated:<sup>17</sup>

"It is wrong to assert that Article 32 essentially provides that invitations should be extended to Members of the United Nations which are not members of the Security Council, or to States which are not Members of the United Nations. This is not the whole substance of Article 32, and those who try to stress only the one point are deliberately distorting the meaning of the Article.

"Article 32 essentially provides that when international disputes are under consideration by the Security Council, both parties must be invited to be heard at its meetings."

#### B. "... IF IT IS A PARTY TO A DISPUTE UNDER CONSIDERATION BY THE SECURITY COUNCIL..."

##### CASE 69

At the 19th meeting on 14 February 1946, in connexion with the Syrian and Lebanese question, the Security Council considered whether the question was a dispute or a situation. The representative of Mexico was of the opinion that the question could not be decided before the parties had been heard. He stated:<sup>18</sup>

"... as far as the application of Article 32 is concerned, the right position is... A decision between a situation and a dispute can be made only after a party has exercised his right to be heard. If we, before listening to the facts and the statements of the parties concerned, decide here that this is a situation, then Article 32, I mean the letter of Article 32, can be applied and one of the parties concerned can be deprived of the right to come to the Council and state his case. For that reason, I think that it would be unwise to decide a question of this kind as a preliminary question, and that the party that has sent this letter should be invited to participate and state his case."

<sup>17</sup> For texts of relevant statements see:

497th meeting: Ecuador, pp. 29-30.

499th meeting: President (United Kingdom), p. 17; China, pp. 2-3; Ecuador, p. 14; USSR, p. 4.

<sup>18</sup> 19th meeting: p. 281. For invitations to Syria and Lebanon, see Case 11.

## CASE 70

At the 62nd and 64th meetings on 5 and 9 September 1946, in connexion with the Ukrainian complaint against Greece, the Security Council discussed whether an invitation to Albania was conditional on the finding that the question under consideration was a dispute. By letter dated 5 September 1946, the representative of Albania requested that he be invited "on the basis of Article 32 . . . for the purpose of presenting [his] factual statement . . .".<sup>19</sup>

At the 62nd meeting, the President (Poland) recalling the provisions of Articles 31 and 32 of the Charter and rule 39 of the provisional rules of procedure, stated:

"The case before us which has been brought by the Minister of Foreign Affairs of the Ukrainian Soviet Socialist Republic has been classified by him as a situation under Article 34. Accordingly, unless we classify the subject as a dispute, Article 32 cannot be applied."

The President considered that the Council could invite Albania under rule 39.

At the 64th meeting, the representative of the United Kingdom observed:

"Article 32 of the Charter is the one that relates to this particular case, because it is under Article 32 that a State which is not a Member of the United Nations may be summoned to the Council table. That may happen, in the words of Article 32, 'if it is a party to a dispute under consideration by the Security Council'. What the Security Council is today considering is explicitly not a dispute. The representative of the Ukraine has brought attention, in his original communication which is before us, to consideration of the existence of a situation. Therefore, on a strict reading of Article 32 of the Charter, it seems quite clear to me that we could not invite any Albanian representative to come to the Council table."

The representative of Mexico recalled his remarks in connexion with the Syrian and Lebanese question and reiterated his point of view.<sup>20</sup> Regarding the position of Albania, he stated:

"We have heard the Greek representative declare that a state of war exists between Greece and Albania. We have received claims of Greece against Albania, and we have heard of border incidents blamed on Albania, or on Greece. I think that, intrinsically, this question certainly has the characteristics of a dispute."

In view of the disagreement regarding the applicability of Article 32, the Council considered whether, in those circumstances, Albania could be invited under rule 39.

At the 62nd meeting, the President stated:

"My interpretation of rule 39 is that it gives the Council freedom to invite whomever it chooses to supply it with information or other assistance, as distinguished from participation in the discussion."

The representative of the United Kingdom disagreed with the President, and, at the 64th meeting, expressed the following opinion:

<sup>19</sup> S/151, 62nd meeting: p. 250.

<sup>20</sup> For the statement of the representative of Mexico at the 19th meeting, see Case 69.

"I do not think that that rule [39] was meant to override in any way the Charter itself, nor can I think that its wording would warrant us in believing that it was intended that under it, a representative of a Government not a Member of the United Nations could be summoned to the Council table. You will notice that it says: 'The Security Council may invite . . . other persons . . . to supply it with information . . .'"

The President maintained his opinion that rule 39 permitted an invitation to "any person". He stated:

"In the letter of the Albanian representative, we have a request to be allowed to present to us a factual statement. There is no request for participation in the discussion. As I interpret rule 39, it seems that it is entirely a matter of our opinion as to whether we think that allowing such a factual statement, or rather inviting him to make such a factual statement, is conducive to the clearing up of our debates or not.

"I should like to explain further that in case the Council should decide to allow the Albanian representative to make the factual statement, this in no case would imply that he has the right to participate in the discussion or present resolutions, as stated in rule 39."

The representative of China was of the opinion that the phrase "other persons" in rule 39 "does not include representatives of States". The representative of the Netherlands was of the opinion that the rule was drafted with experts in mind.<sup>21</sup>

## CASE 71

At the 82nd and 84th meetings on 10 and 16 December 1946, in connexion with the Greek frontier incidents question, the Security Council considered whether invitations to Albania and Bulgaria were conditional on the finding that the question under consideration was a dispute. In opening the discussion, the President (United States) recalled the "precedent" of the 64th meeting<sup>22</sup> and suggested that, "at an appropriate stage in the proceedings", those States should be invited "to present any facts bearing on the issues". The President distinguished between the position of Greece and Yugoslavia as Members and Albania and Bulgaria as non-Members.

The representative of the USSR expressed the view that a non-Member State should participate in the discussion of any question which concerns it regardless of a decision on the question whether it was a dispute or a situation.

The representative of the Netherlands, referring to the application of Article 31 in the cases of Greece and Yugoslavia, stated that, with regard to Albania and Bulgaria:

"Article 31, which refers only to Member States, does not apply in their case because it cannot. But there is Article 32. While Article 31 refers to any question brought before the Security Council, Article

<sup>21</sup> For texts of relevant statements see: 62nd meeting: President (Poland), p. 250; Australia, p. 251; 64th meeting: President (Poland), p. 261; Australia, p. 263; China, pp. 261-262; Mexico, p. 266; Netherlands, p. 262; United Kingdom, p. 260.

For invitation to Albania, see Case 56.

<sup>22</sup> See Cases 56 and 70.



32 refers to disputes . . . In the light of this text, the question as to whether Albania and Bulgaria should be admitted seems to me to hinge completely and exclusively on the point of whether or not there is a dispute.

"It is a fact that the Greek representative has drawn our attention not to a dispute, but to a situation, as results clearly from his letter to the Secretary-General. I therefore venture to suggest that, until and unless the Council decides that it is not a situation, but a dispute—and we have not decided that yet—Albania and Bulgaria cannot be invited to participate in the discussion."

The representative of Mexico observed that, if the action of the Council were to be based on the views expressed by the representative of the Netherlands, the representatives of Albania and Bulgaria might not be heard if the Council did not decide that the question was a dispute. He stated:

"My idea is that those States should be heard. If, after they have been heard, this Council decides that this is just a situation and that, therefore, those States should not take part without vote in the discussion, that is another matter. But I believe that we cannot decide the secondary question of whether or not this is a dispute."

The representatives of Australia, China, the Netherlands, Poland and the United States also supported the view that all parties would have to be heard before a decision could be taken as to whether the question was a dispute.

As regards the possibility of inviting the representatives of Albania and Bulgaria to "participate" before a decision as to whether the question was a dispute was taken, the representative of Australia stated:

"It seems to us that the Charter is quite clear that a non-Member of the United Nations can participate—and I stress the word 'participate'—only if it is a party to a dispute. That status of 'party to a dispute' is not simply a description of a condition; it is a status that carries obligation."

The representative of the Netherlands submitted a draft resolution to invite the representatives of Albania and Bulgaria forthwith to make such declarations as they might wish to make with the further provision that they be invited to participate in the discussion without vote at a later stage if the Council should find that the matter under consideration was a dispute. After the adoption of the Netherlands draft resolution, the representative of the USSR stated that he had voted against paragraph 3

" . . . because this paragraph also provides that in the event of the Security Council deciding that this is not a dispute but a situation, the representatives of Albania and Bulgaria will not be admitted to any further participation during the examination of this question."

In reply, the President, speaking as the representative of the United States, stated:

"May I observe . . . that there is no provision in the Charter which provides for the participation of non-Member States in discussion unless there is a dispute. I state that simply as my opinion of the meaning of the Charter."

At the 84th meeting, after preliminary statements had been made by all parties concerned, the President stated the following opinion:<sup>23</sup>

" . . . the case before the Council is of a nature which makes it appropriate for the Council to invite Albania and Bulgaria to participate, without vote, in our future discussions on the matter. Charges have been made against these Governments, and these Governments have contested these charges and made counter-charges. It seems to me that the principle contained in Article 32 of the Charter is clear—namely, that when non-Members of the United Nations are contesting charges made against them before the Security Council, equity and sound practice require that they be invited to participate without vote in the discussion' of the Council. I suggest that the case before us comes within the spirit and meaning of Article 32, whether or not it is technically labelled a situation or a dispute."

The representatives of Mexico, the Netherlands, Poland and the USSR were of the opinion that the question before the Council was a dispute.<sup>24</sup>

#### CASE 72

At the 184th meeting on 14 August 1947, in connexion with the Indonesian question (II), a Belgian proposal to invite the representatives of East Indonesia and Borneo on the same basis as the Republic of Indonesia gave rise to the question whether those Governments were parties to the dispute.

In response to the opinion of the representative of the United Kingdom that all parties ought to participate in the discussion, the President (Syria) observed:

"I think the representative of the United Kingdom omitted to mention that the Indonesian Republic is a party to the dispute under consideration."

The representative of the Netherlands\* maintained that all three were on a "footing of complete equality". In response to this remark, the representative of Colombia stated:<sup>25</sup>

"In the eyes of the Security Council, the Indonesian Republic is a party to an international dispute. We are acting in the matter of the Indonesian Republic because there is a threat to the peace. There are active hostilities between the Indonesian Republic and the Netherlands Government; but we have not heard that they extend to the territory of the other two members of the future Federation.

" . . .  
 "I believe that when one is a party to an international dispute which is under consideration by the Security Council, there is a very substantial difference between being involved in actual open hostilities and not being involved in such hostilities."

\* For texts of relevant statements see:

82nd meeting: President (United States), pp. 530-531, 548, 559; Australia, p. 545; China, pp. 539-540; Mexico, pp. 535-536, 541, 546; Netherlands, pp. 533, 544; Poland, pp. 538-539; USSR, pp. 531, 536-537, 542, 551-552, 553, 559.

84th meeting: President (United States), p. 607; Netherlands, p. 609; Poland, p. 611; USSR, p. 609.

\* For the decision to permit participation, see Case 58. The Security Council, however, took no decision on the question whether the matter was a dispute.

\* For texts of relevant statements see:  
 184th meeting: President (Syria), p. 1985; Colombia, p. 1988; Netherlands, p. 1987.

For the rejection of the Belgian proposal, see Case 61.

## CASE 73

At the 483rd to 496th meetings, between 4 August and 6 September 1950, in connexion with the complaint of aggression upon the Republic of Korea, the Security Council considered two draft resolutions submitted by the representative of the USSR to invite and hear the representatives of "the Korean people".<sup>28</sup>

At the 483rd meeting the President, speaking as the representative of the USSR, declared that it was "the practice of the Security Council as a rule to invite both parties involved in the hostilities to participate in the consideration and discussion of such questions". At the 487th meeting, he maintained that those who supported the decision of 25 June 1950 violated Article 32 since a representative of the Government of North Korea was not invited.

Referring to the statement on Article 32, the representative of Cuba, at the 488th meeting, stated that the right of any State which is a party to a dispute to be heard was not applicable in cases of aggression.

Citing the provisions of Article 32, the representative of Norway observed that the Council had been concerned with the Korean question under Chapter VII. He stated:

"No dispute has been submitted to the Council, and no dispute is under consideration. For the time being, the Council is concerned merely with the urgent task of repelling lawless aggression and the re-establishment of law and order . . . I would say that the Council is still acting merely as a policeman and not as judge or jury. That is why Article 32 of the Charter is not applicable."

At the 494th meeting, the representatives of Ecuador, France, India and the United Kingdom expressed similar views. In support of his draft resolutions, the representative of the USSR stated:<sup>27</sup>

"It is impossible to agree that Article 32 of the Charter is applicable only in the consideration of questions relating to Chapter VI. Article 40, in Chapter VII, provides that in case of international conflict, the Security Council should not rush headlong into that conflict, that it should not make the situation more complicated or allow aggression or military action to spread . . .

" . . . where in Chapter VII or elsewhere is it said that the representative of the party which, rightly or wrongly, legitimately or illegitimately, is accused of aggression has no right to be present at the meetings of the Council? . . . when questions falling within Chapters VI and VII are discussed, the representative of the party against which charges of aggression have been brought must attend in order that the Council may better clarify the facts of the dispute and take all the necessary measures to halt aggression and to prevent the war from spreading."

<sup>27</sup> For the rejection of the USSR draft resolutions (S/1751), see Case 64.

<sup>28</sup> For texts of relevant statements see:

483rd meeting: USSR, p. 2.  
487th meeting: USSR, pp. 14-16.  
488th meeting: Cuba, p. 2; Norway, pp. 15-16.  
494th meeting: President (United Kingdom), p. 21; Cuba, p. 16; Ecuador, pp. 21-22; France, p. 20; India, pp. 15-16; USSR, p. 17.

## CASE 74

At the 499th meeting on 11 September 1950, in connexion with the complaint of bombing by air forces of the territory of China, the representative of China opposed the USSR draft resolution to invite the representative of the People's Republic of China.<sup>28</sup> He stated:

"Article 32 . . . contains the words 'if it is a party to a dispute'. What is this dispute? We have here a case of the forces of the United Nations, in the execution of duties imposed by the United Nations, making a mistake. The party which made the mistake has declared that it is ready to make compensation for this mistake. No dispute should be allowed to exist."

The representative of Norway observed:

"In accordance with its clear wording, Article 32 applies only when a dispute is under consideration by the Security Council. In the present case, however, the Council is faced with what Article 34 calls a 'situation which might lead to international friction or give rise to a dispute'. The situation has not as yet crystallized into a dispute."

The representative of Cuba was of the opinion that since the charge was not denied by the United States there was no ground for stating that there was a dispute within the exact meaning of Article 32.<sup>29</sup>

**C. "... SHALL BE INVITED TO PARTICIPATE, WITHOUT VOTE, IN THE DISCUSSION RELATING TO THE DISPUTE."**

## CASE 75

At the 95th meeting on 20 January 1947, in connexion with the Corfu Channel question, which had been submitted to the Security Council by the representative of the United Kingdom as a "dispute . . . under Article 35",<sup>30</sup> the President (Australia), after quoting Article 32, stated:<sup>31</sup>

" . . . there would seem to be an obligation on the Council to invite Albania to participate in the discussion of this item of the agenda."

## CASE 76

At the 181st meeting on 12 August 1947, in connexion with the Indonesian question (II), the President (Syria) observed:<sup>32</sup>

"There is no necessity for a special application to be made by the nation which is not a Member if it is a party to the dispute under consideration. The Security Council is bound to invite such a State to participate, even if it does not apply for participation, because the Article of the Charter dealing with the matter does not insist that such a request should be made."

<sup>30</sup> For the rejection of the USSR draft resolution (S/1759), see Case 66.

<sup>31</sup> For texts of relevant statements see:

499th meeting: China, p. 3; Cuba, p. 15; Norway, pp. 12-13.  
<sup>32</sup> S/247, O.R., 2nd year, Suppl. No. 3, pp. 35-36.  
<sup>33</sup> 95th meeting: p. 123. For invitation to Albania, see Case 50.

<sup>34</sup> 181st meeting: p. 1920. For invitation to the Republic of Indonesia, see Case 59.

## CASE 77

At the 278th meeting on 6 April 1948, in connexion with the Czechoslovak question, the Security Council considered a United States draft resolution to invite the representative of Czechoslovakia under Article 31.<sup>85</sup> The representative of Syria stated:

"... Article 32 states that such members 'shall be invited to participate...'. The Security Council should not wait until such a party to a dispute makes an application to be heard. That party should be invited *ipso facto* without any request on its part. I consider that Article 32 was formulated to provide, in cases when a State which is a party to a dispute does not apply to be heard, that such State should be invited to participate in the discussion by the Security Council without waiting for its application"

## CASE 78

At the 494th meeting on 1 September 1950, in connexion with the USSR draft resolution to invite "the representatives of North and South Korea," the representative of India, referring to statements in support of the draft resolutions based on Article 32, stated:<sup>84</sup>

"It has been urged that Article 32 of the Charter requires us to invite the North Korean representative.

"... three conditions must be satisfied if the Article is to apply to the present case: North Korea must be a State; so must South Korea; and the Security Council must be considering a dispute between the two."

- D. "THE SECURITY COUNCIL SHALL LAY DOWN SUCH CONDITIONS AS IT DEEMS JUST FOR THE PARTICIPATION OF A STATE WHICH IS NOT A MEMBER OF THE UNITED NATIONS."

## CASE 79

At the 64th meeting on 9 September 1946, in connexion with the Ukrainian complaint against Greece, when the question of inviting Albania under rule 39, if Article 32 was not applicable, was being discussed, the representative of the Netherlands stated that Albania should be required, under Article 35, to accept in advance the obligations provided in the Charter. He further observed:<sup>85</sup>

"... if a non-Member is required to accept such an obligation, it surely should have his acceptance. It will have this great advantage: a non-Member who makes this request to the United Nations in the Security Council for this purpose is not placed in a position which, as compared to that of a Member, is a privileged position, in that it is not bound by our findings."

## CASE 80

At the 82nd meeting on 10 December 1946, in connexion with the discussion of whether the Greek frontier incidents question was a dispute for the pur-

pose of Article 32, the representatives of Australia and Mexico commented on the provision of Article 32 which requires the Council to lay down such condition as it deems just in connexion with an invitation to a non-Member State. The representative of Australia observed:

"That status of 'party to a dispute' is not simply a description of a condition; it is a status that carries obligations. If a State is described as a 'party to a dispute', it means that that State may be called upon by this Council to take certain action under Article 33. That State may also be expected to receive and consider most earnestly any recommendations made under Article 36. A party to a dispute accepts obligations by accepting that status."

The representative of Mexico, referring to the obligations under Article 35 (2) of a non-Member State which submits a dispute to the Council, stated:

"... the conditions to which the last paragraph of Article 32 refers cannot be heavier or more arduous, or furthermore any different from those imposed upon a State not a Member of the United Nations which itself brings a dispute before the Council."

The Council decided to issue invitations to the representatives of Albania and Bulgaria to make factual statements to the Council, and provided that, should the existence of a dispute be subsequently established, those States would be invited to participate in the discussion without vote.<sup>86</sup>

At the 84th meeting on 16 December 1946, the Council considered the question of the future participation of Albania and Bulgaria in the discussion, and the conditions which those States should be called upon to accept. In connexion with his proposal that Albania and Bulgaria be invited to participate "in the spirit of Article 32", the President (United States) stated:

"I suggest that the most appropriate condition for the Council to lay down would be the one suggested at our previous meeting by several members of the Council, namely, that Albania and Bulgaria should accept in advance, for the purposes of the case, the obligations of pacific settlement provided in the Charter."

He indicated that he would issue invitations to the representatives of Albania and Bulgaria as soon as the Secretary-General had received letters accepting these obligations on behalf of their Governments for the purposes of the case.

The proposal of the President was supported by other members of the Council. The representative of Australia requested further clarification of the meaning of the phrase: "accept the obligations of pacific settlement".

He said:

"I assume that this would mean that they accept the obligations, wherever they are found in the Charter, in respect to peaceful settlement, and not merely the obligations contained in Chapter VI."

The President replied:

"In making this suggestion to the Council, I had hoped that, by avoiding any specific reference, it would assist the Council to keep away from a technical discussion on this proposal. I do not wish to

<sup>85</sup> For invitations to Albania and Bulgaria, see Cases 57 and 58.

<sup>84</sup> For invitation to Czechoslovakia, see Case 37. 278th meeting: p. 5. See also statement by the representative of Syria in connexion with the Hyderabad question at the 360th meeting on 28 September 1948, p. 4.

<sup>85</sup> 494th meeting: p. 15. For the rejection of the USSR draft resolutions, see Cases 64 and 66.

<sup>86</sup> 64th meeting: p. 263. For invitation to Albania, see Case 56.

convey the impression that the obligations of Bulgaria and Albania would be in any way limited, but that they would be bound to accept the obligations, wherever found in the Charter, for pacific settlement, and that they would be in no more favorable position than the other two parties to this case which are Members of the United Nations. For that purpose, they should be on terms of equality . . ."

The representative of Australia explained that one of "the most important obligations" of a Member in the case under consideration was contained in Article 25. He observed:

"One of the things that may happen in the course of the process of pacific settlement, under Chapter VI, is that the Security Council may reach a decision. If it does reach a decision—and that is only one of the possibilities open to us—in that case, I suggest that Article 25 does apply, and that non-Members, as well as Members, are under an obligation to accept and carry out the decision made in respect of this matter of pacific settlement."

The representative of Egypt concurred that it was "a matter of deduction that the conditions stated in Article 35 should apply in the case of Article 32". The representatives of Mexico and the USSR<sup>87</sup> indicated that in their opinion Article 25 was not applicable.<sup>88</sup>

The Council adopted the proposal of the President that the representatives of Albania and Bulgaria be invited to participate without vote after delivering to the Secretary-General a letter accepting, on behalf of their Governments, for the purposes of the case, the obligations for pacific settlement provided in the Charter.

#### CASE 81

At the 95th meeting on 20 January 1947, in connexion with the Corfu Channel question, the President (Australia) commenced consideration of the question with the following statement:<sup>89</sup>

"Following the lead given by the Council in the recent complaint brought by Greece, it would seem appropriate that the conditions required from Albania should in this present case be that Albania should accept all those obligations which would apply to a Member of the United Nations in such a case."

By cable dated 20 January 1947, the Acting Secretary-General informed the Republic of Albania of the Council's decision to invite Albania under Article 32, in the following terms:<sup>90</sup>

" . . . the Security Council decided to invite the Albanian Government to participate, without a vote,

<sup>87</sup> For texts of relevant statements see:

82nd meeting: Australia, p. 545; Mexico, p. 547.

84th meeting: President (United States), pp. 608, 610; Australia, pp. 608, 611, 612-613; Egypt, pp. 609-610; Mexico, pp. 611-612; Poland, p. 611; USSR, pp. 609, 613.

<sup>88</sup> See Case 71. Earlier in the discussion, the representative of Albania stated that his Government was prepared "to accept all the obligations coming within the framework of the United Nations Charter", 84th meeting: p. 609.

<sup>89</sup> 95th meeting: p. 123. For invitation to Albania, see Case 50.

<sup>90</sup> S/258 and S/258/Corr.1.

in the proceedings with regard to this dispute, on condition that Albania accepts, in the present case, all the obligations which a Member of the United Nations would have to assume in a similar case."

In reply, the Minister of Foreign Affairs of Albania stated that the "Albanian Government accepts the Security Council decision."<sup>91</sup>

At the 127th meeting on 9 April 1947, before the Council voted upon the United Kingdom draft resolution to refer the question to the International Court of Justice, the President (China) observed:<sup>92</sup>

" . . . as Albania is not a Member of the United Nations, it could not be compelled to appear before the International Court of Justice. However, since its acceptance of the obligations of Members of the United Nations, as contained in the Council's invitation to it to participate in a discussion of this case, Albania is now, like any Member of the United Nations, obliged to comply with the provisions both of the Charter and of the Statute of the International Court of Justice."

#### CASE 82

At the 171st meeting on 31 July 1947, in connexion with the Indonesian question (II), when the question of inviting a representative of the Republic of Indonesia<sup>93</sup> was being discussed, the representative of Australia suggested that the invitation should be extended under Article 32,<sup>94</sup>

" . . . that is, on the same terms and conditions as those of the invitations extended to Albania and Bulgaria—namely, that the Republic of Indonesia accepts the obligations of settlement provided for in the Charter of the United Nations."

By letter dated 12 August 1947, the representative of the Republic of Indonesia stated:<sup>95</sup>

" . . . I am authorized by my Government to advise that, if an invitation is extended to the Republic of Indonesia to participate, the Republic of Indonesia accepts in advance, for the purposes of this dispute, the obligations of a Member of the United Nations."

#### CASE 83

At the 511th meeting on 16 October 1950, in connexion with the Palestine question, the President (United States), after inviting the representative of the Hashemite Kingdom of the Jordan to the table, stated:<sup>96</sup>

"An appropriate document has been filed by the representative of the Hashemite Kingdom of the Jordan, in conformity with Article 32, and Article 35, paragraph 2, of the Charter, wherein this State has undertaken the obligations for pacific settlement provided in the Charter."

<sup>91</sup> S/258.

<sup>92</sup> 127th meeting: p. 726.

<sup>93</sup> For invitation to Indonesia, see Case 59.

<sup>94</sup> 171st meeting: p. 1627.

<sup>95</sup> S/487, 181st meeting: p. 1919.

<sup>96</sup> 511th meeting: p. 2. For invitation to the Hashemite Kingdom of the Jordan, see Case 51.

## Part III

## PROCEDURES RELATING TO PARTICIPATION OF INVITED REPRESENTATIVES

## NOTE

Part III is concerned with procedures with regard to the participation of invited representatives after an invitation has been extended. It includes material relevant to participation by all invited representatives, whether Members of the United Nations or not.

With the exception of the provisions of rule 38 of the provisional rules of procedure regarding the right of proposition, the only explicit limitation upon Members is contained in the Charter itself; that is, that their participation shall be without vote, subject to the exception contained in Article 44.<sup>1</sup> Material relevant to the nature of the participation when the invited representatives have taken their places at the Council table has, therefore, in the case of Member and non-Member States and in the case of other invitations entered in part I, section D, been grouped together in part III.

Section A of part III concerns the timing of the initial hearing of invited representatives. Material is also included bearing on the connected question of the opportune moment for the Council to decide on the question of the representatives to be invited.

The precedent established in the early meetings of the Security Council that Members of the United Nations, whether invited by reason of having submitted a question or by reason of their special interest, should be heard at the commencement of the consideration of the question and before the initiation of general debate, has been followed.<sup>2</sup> Requests to be invited to participate have, however, in certain instances been received from the Members during a later phase of the Council's consideration of a question.<sup>3</sup> Members of the United Nations have also requested participation after ceasing to be members of the Security Council.<sup>4</sup> The representatives of non-Member States have been heard, but not invariably, at the commencement of the consideration of the agenda item.<sup>5</sup> The cases included in section A relate mainly to certain exceptional circumstances in which, for varied reasons, the question of not hearing an invited representative at the commencement of consideration or at the stage in question arose and discussion ensued regarding the practice of the Council.

Section B deals with the duration of the participation of representatives who have been invited to participate.

<sup>1</sup> Article 44: "When the Security Council has decided to use force it shall, before calling upon a Member not represented on it to provide armed forces in fulfillment of the obligations assumed under Article 43, invite that Member, if the Member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that Member's armed forces."

<sup>2</sup> See Case 84.

<sup>3</sup> e.g., In the Indonesian question (II) from the Philippine Republic (Cases 32 and 49); from Burma (Case 42); from Pakistan (Case 43).

<sup>4</sup> e.g., In the Indonesian question (II) Australia (Case 36) and Belgium (Case 41).

<sup>5</sup> In the Ukrainian complaint against Greece, the President (Poland) called attention at the 62nd meeting, to the request of Albania to participate, after the Council had heard statements at the 60th, 61st and 62nd meetings by the Ukrainian SSR, Greece and the United Kingdom. The representative of Albania made his statement at the 64th meeting (Case 56). In the Greek frontier incidents question the decision to hear Albania and Bulgaria was taken at the outset at the 82nd meeting (Case 57). For the initial hearing of the Republic of Indonesia in the Indonesian question (II), see Case 86.

The cases included are exceptional cases where discussion has arisen regarding the question of duration. These cases need to be considered within the context of the more normal course of the Council's proceedings.

Members of the United Nations invited to participate have continued to attend the meetings at which the question, in connexion with which the invitation was extended, was considered. Non-Member States invited to participate under Article 32 have also continued to attend meetings for the consideration of the question in connexion with which they were invited. The same duration was attached to certain invitations not expressly under Article 32.<sup>6</sup> Invitations under rule 39 have extended over the meetings at which the relevant question was considered where the terms of the invitation have so provided.<sup>7</sup> In the case where the invitation under rule 39 was limited to a specific aspect, the Council deemed it appropriate to remove the limitation in connexion with the combination of agenda items.<sup>8</sup>

Sections C and D are composed of cases indicative of certain limitations upon the participation of invited representatives other than the limitation imposed by Articles 31 and 32 of the Charter and rule 39 or by the invitation itself.<sup>9</sup> A distinction has been drawn between limitations of a procedural nature applicable throughout the process of participation, which are dealt with in section C, and limitations connected with aspects of the business of the Council in which it has been deemed inappropriate that invited representatives should participate, which are dealt with in section D.

These cases also need to be considered within the context of the regular proceedings of the Council which cannot be satisfactorily exemplified by case histories. Only one type of limitation among those presented have been incorporated in the provisional rules of procedure: viz., that relating to the right of proposition. The procedure of according, in the consideration of a question, a hearing first to the State submitting the matter to the Council, and then to the other State or States directly concerned in an adverse sense, was

<sup>6</sup> See part I, section D.3.b. The representatives of Albania and Bulgaria did not participate at the 123rd meeting on 28 March 1947, when the Security Council resumed its consideration of the Greek frontier incidents question. At the 126th meeting on 7 April 1947, the President (China) stated that the representatives of Albania and Bulgaria had not been invited to participate at the previous meeting by mistake. In the absence of objection, he invited them forthwith. 126th meeting: p. 697. Regarding the non-participation of the representatives of Albania and Bulgaria at the 100th and 101st meetings on 10 February 1947, when a communication from the Greek Frontier Incidents Commission was considered, see Case 120.

<sup>7</sup> See Case 52. For the question of the participation of the representative of the Republic of Korea, see Cases 53 and 93.

<sup>8</sup> The representative of the People's Republic of China, in pursuance of the invitations extended at the 506th meeting on 29 September 1950, and 520th meeting on 8 November 1950, participated at the 525th-530th meetings from 27 to 30 November 1950, at which the complaint of armed invasion of Taiwan (Formosa) and the complaint of aggression upon the Republic of Korea were listed together as part of the same agenda item. During the 525th-530th meetings, the representative of the People's Republic of China reiterated that the Republic would not participate in the discussion concerning the complaint of aggression upon the Republic of Korea. See Cases 54 and 55.

<sup>9</sup> Cases 52, 54, 55, 56 and 57 (of part I) concern instances of invitations expressly limiting the nature of participation.



initiated at the 3rd meeting of the Council.<sup>10</sup> When these statements had been made, the opportunity of a supplementary statement was afforded to each State. Thereafter the general debate commenced, and the initial hearing of the States directly concerned was followed by their participation in the general debate. The precedent established in connexion with the Iranian question was followed, on the proposal of the President, in connexion with the further questions which came before the Council.<sup>11</sup>

#### A. THE STAGE AT WHICH INVITED STATES ARE HEARD

##### CASE 84

At the 3rd meeting on 28 January 1946, in connexion with the Iranian question, after the decision of the Security Council to invite the representative of Iran "to participate, without vote, in the discussion", the President (Australia) invited him to the Council table, and then stated:<sup>12</sup>

"This is the first occasion on which the Security Council has been called upon to act under Chapter VI of the Charter . . . Our proceedings are likely to serve as a precedent for the Council's future action. Eventually, rules of procedure will no doubt be worked out on the basis of what the Council has actually done in this and similar matters . . .

"At present, our provisional rules do not deal at all with these matters. Today, therefore, we shall be obliged to decide on our procedure *ad hoc*. The matter is before the Council itself to determine . . . I shall venture to offer a suggestion which can serve as a basis for discussion. On the subject matter of this item, the Council has received certain written communications from the delegations of Iran and the Union of Soviet Socialist Republics, respectively. The world has the right to expect of this Security Council that it will deal with all such matters in a regular way, and in accordance with the principles of justice and fair play which are stated in the Charter. My suggestion, therefore, is first, that the Council should commence its consideration of this item by giving to the delegation for Iran, and then to the delegation for the USSR, an opportunity to make oral observations, either in explanation of or in supplementation of their written communications. In this way, the Council will be fully seized of the matter under consideration.

"The adoption of some such practice, as a general procedure initiating the discussion of matters such as this, may be thought to establish best the impartiality and the objectivity of the Council's consideration of the item.

<sup>10</sup> See Case 84.

<sup>11</sup> 6th meeting: p. 73; 7th meeting: pp. 91-92; 12th meeting: p. 174; 19th meeting: p. 281.

<sup>12</sup> 3rd meeting: pp. 31-32. The representative of Iran thereupon made his opening statement followed by the representative of the USSR (3rd meeting, pp. 32-43). The President then proposed, and the Council agreed (5th meeting, p. 46) that each representative be granted the opportunity to make a supplementary statement. After the supplementary statement by the representative of the USSR, the representative of Iran was again granted permission to address the Council in order to make a certain correction, but with the express restriction "that no fresh matter must be introduced at this stage" (5th meeting, p. 54). The President then stated that the matter was "open for discussion and for such proposals as the Council may think proper" (5th meeting, p. 54).

"Then, certainly, after these statements have been completed, the suggestion is that I should throw the subject open to discussion by the Council. It will then be the right of any member to move any relevant resolution within the powers conferred on the Council by the Charter."

The procedure proposed by the President was adopted without vote.

##### CASE 85

At the 95th meeting on 20 January 1947, in connexion with the Corfu Channel question, after the decision of the Security Council to invite Albania to participate in the discussion, the representative of the United Kingdom indicated that he would be prepared to begin his statement before the arrival of the representative of Albania. Discussion arose as to whether the Council would meet within a week and, even if the representative of Albania were not yet present, proceed to hear the statement of the representative of the United Kingdom. The representative of the USSR objected to beginning the consideration of the dispute with only one party present.

At the 96th meeting, the President (Australia) observed:

"Neither the Charter nor the principles of justice require us to defer the hearing of the case indefinitely until such time as the Albanian Government wishes the Council to proceed. It is for the Council to decide, having regard to all the circumstances, when it wishes to commence the hearing of this case and whether or not it will commence the hearing in the absence of the Albanian representative."<sup>13</sup>

At the 96th and 97th meetings on 28 and 31 January 1946 the Council decided to defer further discussion of the question to a date to be determined by the President.<sup>14</sup>

At the 107th meeting on 18 February 1947, when the representative of Albania had taken his seat at the table, the representative of the United Kingdom made his opening statement.<sup>15</sup>

##### CASE 86

At the 171st meeting on 31 July 1947, in connexion with the Indonesian question (II), the representative of Belgium, after the adoption of the agenda, stated:

" . . . the Council obviously cannot proceed further without the participation of the three States concerned . . . I think the Council should postpone all discussion until the Netherlands and India are represented on it, unless such representation can be arranged immediately. In that event, the question could be discussed without delay. Justice demands that these States should be able to make their views known to the Council from the outset."

The representatives of India and the Netherlands were thereupon invited to the table, and the Security Council proceeded to discuss the question of inviting a representative of the Republic of Indonesia.<sup>16</sup>

<sup>13</sup> For texts of relevant statements see: 95th meeting: President (Australia), pp. 126-127; USSR, pp. 126-127; United Kingdom, pp. 124-125.

<sup>14</sup> 96th meeting: President (Australia), p. 133.

<sup>15</sup> 96th meeting: pp. 135-136; 97th meeting: pp. 141-142.

<sup>16</sup> 107th meeting: pp. 293, 294. For invitation to Albania, see Case 50.

<sup>17</sup> 171st meeting: Belgium, pp. 1617-1618. For invitation to India, see Case 16; to the Netherlands, see Case 31.



The representative of the USSR stated:

"... The Council, therefore, should take a decision about inviting a representative of the Government of the Republic of Indonesia. Having settled the question of inviting all the Governments concerned to participate in the discussion of this question, the Security Council, I think, could go on discussing it even before the representative of the Republic of Indonesia arrives, on the understanding, of course, that he will arrive before we finish discussing this question. I do not think it would be expedient to postpone discussion on this matter until such time as the representative of the Republic of Indonesia arrives..."

The representative of Australia, after suggesting that an invitation should be extended to the Republic of Indonesia, submitted a draft resolution concerning the cessation of hostilities, which he proceeded to discuss apart from any consideration of the merits of the case. He stated that if the Council were going to discuss the merits of the case, it must await the arrival of the representative of the Republic of Indonesia.

The Council adopted a suggestion of the President (Poland), originally put forward by the representative of Colombia, that the question of inviting the Republic of Indonesia be deferred until after consideration of the Australian draft resolution.<sup>17</sup> At the 173rd meeting on 1 August 1947, the Council adopted a resolution calling upon the parties to cease hostilities and to settle their dispute by peaceful means. At the 181st meeting on 12 August 1947, the Republic of Indonesia was invited to participate in the discussion,<sup>18</sup> and the representative of the Republic of Indonesia made his statement at the 184th meeting.<sup>19</sup>

#### CASE 87

At the 492nd meeting on 29 August 1950, in connexion with the complaint of aggression upon the Republic of Korea, the President, as the representative of the USSR, proposed "as an exception, and with no intention of violating the rules of procedure", that the Security Council should take a decision regarding participation of the representative of the People's Government of China in the discussion of the Council in advance of consideration of the relevant item on the agenda, in order to make it possible for the representatives invited to arrive in time to participate in discussion on that item. He stated:

"... it is Security Council practice, and strictly in accordance with the Charter, that the representatives of both sides should be present and be heard at meetings of the Security Council when an international dispute is being considered."

The representative of the United States stated:

"The first item on the regular order of business is 'Complaint of aggression upon the Republic of Korea' . . . The business which ought to be transacted immediately is the invitation to the representative of the Republic of Korea. No other business is in order."

<sup>17</sup> For texts of relevant statements see:

171st meeting: President (Poland) p. 1630; Australia, pp. 1618, 1622-1627, 1639; Colombia, p. 1630; USSR, pp. 1618-1619.

<sup>18</sup> 181st meeting: pp. 1939-1940. For invitation to the Republic of Indonesia, see Case 59.

<sup>19</sup> 184th meeting: pp. 1995-2003.

The representative of the United Kingdom stated "the proper course, in any case, is to wait until we know exactly when the question, which is now item 3 on the agenda, will come up for discussion and then take a vote as regards the representation of the Central People's Government".<sup>20</sup>

The President's ruling that the USSR proposal, submitted as an exception, should be put to the vote, was upheld, the challenge having failed to secure the affirmative votes of seven members. The USSR draft resolution was rejected by 4 votes in favour, 4 against, and 3 abstentions.<sup>21</sup>

#### CASE 88

At the 499th meeting on 11 September 1950, in connexion with the complaint of bombing by air forces of the territory of China, the Council discussed whether a representative of the People's Republic of China should be heard during the discussion of the United States draft resolution to establish a commission of investigation.<sup>22</sup> The representative of the USSR considered that such questions as creating a commission and sending it to a country could not be decided without the participation of a representative of that country's Government. The representative of the United States was of the opinion that, after the commission had submitted its findings, it would be open to the Council to decide whether it wished to invite the representative of the People's Republic, under rule 39, to give the Council such information or assistance as the latter might require in considering the commission's report. The representative of Yugoslavia maintained that the Council was not in a position to consider incidents which had occurred on a territory over which a government exercised *de facto* control, or to send a commission, without having consulted that government by inviting it to send representatives to participate in the discussion. The representative of Norway observed that it would be advantageous for the Council to have a representative of the People's Government present during the discussion of the United States draft resolution, but he did not agree that it would be necessary or expedient to defer the establishment of the proposed commission until after the arrival of that representative.<sup>23</sup>

The United States draft resolution to establish a commission of investigation was put to the vote and not adopted.<sup>24</sup>

#### CASE 89

At the 505th meeting on 28 September 1950, in connexion with the complaint of armed invasion of Taiwan (Formosa), the representative of the United States, when discussing proposals to invite a representative of the People's Republic of China, was of the opinion that the question whether the representative should be heard in the Security Council under rule 39 should be considered only after the facts had been ascertained by the establishment of a committee or commission of the Council.<sup>25</sup>

<sup>20</sup> For texts of relevant statements see:

492nd meeting: President (USSR), p. 15; United Kingdom, pp. 20-21; United States, p. 15.

<sup>21</sup> 492nd meeting: p. 21. For consideration of the USSR draft resolution, see Case 65.

<sup>22</sup> S/1752, 501st meeting: pp. 4-5.

<sup>23</sup> For texts of relevant statements see:

499th meeting: Ecuador, p. 14; Norway, pp. 12-13; USSR, p. 7; United States, p. 12; Yugoslavia, p. 16.

<sup>24</sup> 501st meeting: p. 28.

<sup>25</sup> 505th meeting: pp. 9-10.

The Council adopted a revised Ecuadorian draft resolution deferring consideration of the complaint and inviting a representative of the People's Republic of China to assist in the consideration of the matter.<sup>20</sup>

## CASE 90

At the 520th meeting on 8 November 1950, in connexion with the complaint of aggression upon the Republic of Korea, after the decision had been taken to invite representatives of the People's Republic of China, the President (Yugoslavia) raised the question whether the Security Council would go into the substance of the question in the absence of the representative of that Government.

The representative of the United States considered that the business of the Council was "not to be delayed to await the coming of the witness or witnesses". The representative of the USSR saw no point in discussing the question in the absence of the representative of the State against which the charges were being brought, and objected, at the 521st meeting on 10 November 1950, to the inclusion of the question in the agenda on the ground that the Council could not discuss the report of the United Nations Command containing an accusation against the People's Republic of China without the participation of the representative of that Republic. The representative of India considered that the People's Republic of China should be given a reasonable time in which to send a representative. A guiding consideration was that in view of the dangerous and explosive situation existing in Korea, the Council could not commit itself not to discuss the item before their arrival.<sup>21</sup>

The proposal of the representative of the USSR not to include item 3 (Complaint of aggression upon the Republic of Korea) in the agenda was rejected by 10 votes to 1, and the proposal of the representative of France to take up the Korean question first was adopted by 9 votes in favour, 1 abstention and 1 member not voting.<sup>22</sup>

## B. THE DURATION OF PARTICIPATION

## CASE 91

At the 64th meeting on 9 September 1946, in connexion with the Ukrainian complaint against Greece, the representative of the United States agreeing with the President (Poland), was of the opinion that the representative of Albania should not be permitted by the Security Council "to ask any questions or to bring forward any proposals in any form for the consideration of the Council" but should simply be "permitted to make his statement".<sup>23</sup>

**Decision:** *The representative of Albania, having been invited to come to the table for the purpose of making a factual statement, withdrew from the Council table after he had made his statement.*<sup>24</sup>

<sup>20</sup> 50th meeting; pp. 3-5. See Case 54.

<sup>21</sup> For texts of relevant statements see:

520th meeting: President (Yugoslavia), p. 9; USSR, p. 11; United States, p. 9.

521st meeting: India, p. 12; USSR, p. 11.

<sup>22</sup> 521st meeting: p. 15. For invitation to the People's Republic of China, see Case 55.

<sup>23</sup> 64th meeting: p. 265.

<sup>24</sup> 64th meeting: pp. 267, 271. For invitation to Albania, see Case 56.

## CASE 92

At the 360th meeting on 28 September 1948, in connexion with the Hyderabad question, the President (United Kingdom) referred to certain documents from the Nizam of Hyderabad and from the delegation of Hyderabad which raised some doubt as to the rights to future participation of the representative of Hyderabad. He stated:

"In the normal course, before opening the discussion on this question, with the consent of the Security Council, I should have invited the representatives of the two parties to come to the table. Before I do that, however, in view of the doubt which has been cast on the credentials of the representatives of Hyderabad, I would ask the Security Council to consider that particular point, and I should like to ask the members whether they think that, in these circumstances, the representative of Hyderabad should be invited to take part in the discussion in the same way and on the same terms as at our former discussions of this question."

The representative of China considered that the delegation of Hyderabad should not be invited to the Council table. The representative of Colombia did not consider that the Council should reverse its decision with regard to the representation of the two parties.<sup>25</sup>

**Decision:** *After further discussion, the Council accepted the suggestion of the President to invite the Nawab Moin Mawaz Jung of Hyderabad to come to the table in his individual capacity to speak on the question of credentials.*<sup>26</sup>

## CASE 93

At the 483rd meeting on 4 August 1950, in connexion with the complaint of aggression upon the Republic of Korea, after the representative of the USSR had introduced a draft resolution to "... hear representatives of the Korean people", the representative of China, supported by the representative of Egypt, recalled the "standing decision" taken by the Security Council on 25 June to invite the representative of the Republic of Korea under rule 39 to participate in the meetings during the consideration of the Korean question.<sup>27</sup> They considered that the practice of extending such an invitation when the question was being discussed should be continued.

The representative of the United States stated:

"A decision was made on 25 June (473rd meeting) that throughout the hearing of this item, ... the representative of the Republic of Korea should sit at this table ... The decision to have him sit here has been made. Therefore the very first business in the regular order is to invite him to the table, and that ought to be done by the President. It is the President's duty."

The representative of the United Kingdom stated:

"The position with regard to the appearance at this table of the representative of the Republic of Korea is, I suggest, quite clear. I believe it is the

<sup>25</sup> For texts of relevant statements see:

360th meeting: President (United Kingdom), pp. 3, 12; Argentina, p. 8; China, p. 5; Colombia, pp. 11-12; Syria, pp. 3-4, 5-6. For invitation to Hyderabad, see Case 2.

<sup>26</sup> 360th meeting: pp. 12-13.

<sup>27</sup> For invitation to the Republic of Korea, see Case 53.

normal practice of the Council to repeat the invitation to a representative to come to the table at each meeting at which the subject with which he is concerned is to be discussed. I do not suggest, however, that the representative of the Korean Republic, once invited, has the automatic right to take his place at the table at all subsequent meetings on the subject of Korea. But the Council has followed the practice that, once it has decided at one meeting to invite a representative to the table, thereafter at meetings on the same subject it never disputes the President's suggestion at the opening of one of those subsequent meetings that the representative concerned should be invited. That certainly has been the precedent up to now."

The President (USSR) stated:

"... I am following the same course as my predecessor, who said: 'If there are no objections...'. I should have followed his example, had there been no objections to inviting a representative of South Korea. However, an objection has been raised by the USSR delegation. It is therefore my duty to place this question before the Security Council for discussion and it is the Security Council's duty to discuss the matter and to come to a decision. I am therefore taking the course which has been followed so far by all our Presidents."

The representative of Norway, who had been President of the Council during the month of July, stated:

"... I completely agree with the representative of China that the question was definitely dealt with in our meeting of 25 June, and during my presidency I acted accordingly: I never asked the opinion of the Council, I simply invited the representative of the Republic of Korea."

The representative of India stated:

"... the question to be put in this connexion is not really whether the representative of the Republic of Korea should be invited, but rather the reverse question, namely, whether the invitation which we decided to extend to him on that day should now be cancelled."

The President, speaking as the representative of the USSR, stated:

"As regards the statements of the representatives of India and Norway, the delegation of the Soviet Union considers that the decision of 25 June did not apply to all subsequent meetings. It was not meant to be of permanent validity."

"The question whether the representative of such and such a country concerned with the discussion of a question on the agenda should be invited arises at every meeting of the Security Council... I do not recollect any exception to this rule—the President announces: 'There is a proposal that the representatives of such and such countries should be invited. Are there any objections? If there are none, I invite...'. This is the usual, common form used at each meeting of the Security Council, and the Council decides whether to invite the sides or representatives of States not members of the Security Council; or, in accordance with rule 39 of its rules of procedure, the Security Council decides in each separate case at each separate meeting whether to invite 'members of the Secretariat or other persons'."

At the 484th meeting on 8 August 1950, the representative of China asked the President on a point of order:

"Does the President consider it obligatory upon him to carry out the decision of the Security Council of 25 June by inviting the representative of the Republic of Korea to take his place at the Council table?"

The President (USSR) stated:

"In the circumstances which have arisen, the President cannot give a ruling on this question."<sup>84</sup>

**Decision:** At the 494th meeting on 1 September 1950, the President (United Kingdom) ruled that:

"... In view of the decision taken by the Security Council at its [473rd] meeting of 25 June, the President considers that he is obliged to invite the representative of the Republic of Korea to take his place at the Council table."

The representative of the USSR objected to this ruling "on the basis of the precedents which have been established by the Council", stating that the President had omitted to make the usual reservation "provided there are no objections". The ruling was upheld by 9 votes in favour, 1 against with 1 abstention.<sup>85</sup>

#### CASE 94

At the 519th meeting on 8 November 1950, in connexion with the complaint of aggression upon the Republic of Korea, the representative of the United Kingdom, referring to a draft resolution submitted by the representative of the USSR, observed that the invitation to the People's Republic of China should not be a general invitation to be present whenever this general item was under discussion. He submitted a counter-draft resolution to invite, under rule 39, a representative of the People's Republic of China "during discussion by the Council of the special report of the United Nations Command in Korea [S/1884]".<sup>86</sup> At the 520th meeting, on 8 November 1950, the representative of France supported the United Kingdom draft resolution, observing that the People's Republic of China should be heard as the accused party on the actual facts of the accusation and not on the question of Korea as a whole. The United Kingdom draft resolution was adopted by 8 votes in favour, 2 against and 1 abstention.<sup>87</sup>

At the 525th meeting on 27 November 1950, at which the representative of the People's Republic of China was present, the President (Yugoslavia) proposed to combine as one item on the agenda the complaint of aggression upon the Republic of Korea, and the complaint of armed invasion of Taiwan (Formosa). He noted that rule 39 under which the invitation had been extended did not provide for any restriction, and

<sup>84</sup> For texts of relevant statements see: 483rd meeting: President (USSR), p. 4, 8, 10, 15; China, pp. 2, 4, 9; Egypt, p. 2; India, p. 11; Norway, pp. 10, 11; United Kingdom, pp. 7, 12; United States, pp. 4-5. 484th meeting: President (USSR), pp. 14-15; China, pp. 4-5. 485th meeting: China, pp. 1-3. 487th meeting: Norway, p. 7. 494th meeting: President (United Kingdom), p. 5; USSR, pp. 2, 5-7. <sup>85</sup> 494th meeting: p. 8. <sup>86</sup> S/1890, 519th meeting: p. 16. For consideration of the United Kingdom and USSR draft resolutions, see Case 55. <sup>87</sup> 520th meeting: pp. 7-8.

that the particular document S/1884 had never become a separate item on the agenda. The representative of the USSR objected that, although he had been in favour of full, not limited, participation, the resolution of 8 November had limited participation and he, accordingly, proposed that only the complaint of armed invasion of Taiwan (Formosa) be considered. The representative of the United Kingdom considered that the combination of the two items was in effect a modification of the original invitation made to the Peking Government.<sup>38</sup>

**Decision:** *The President's proposal to combine the two items was adopted after the USSR proposal had been rejected by 1 vote in favour, 7 against and 3 abstentions.*<sup>39</sup>

### C. LIMITATIONS OF A PROCEDURAL NATURE

#### 1. Concerning the order in which the representatives are called upon to speak

##### CASE 95

At the 330th meeting on 7 July 1948, in connexion with the Palestine question, the President (Ukrainian SSR), after inviting the representatives of Egypt, Iraq, Israel and Lebanon and the representative of the Arab Higher Committee to the Council table, proposed to call first on those members of the Security Council who wished to speak, and then on the invited non-members. The representative of Egypt objected to this procedure and stated:

"... the rules of procedure do not say any such thing. There is rule 37 which gives representatives of States which are not members of the Security Council the right to participate, when they are invited, in the discussions of the Council in a matter concerning them; the only limitation is that they will have no right to vote. Also they cannot present proposals, in that their proposals will not be voted upon except when they are submitted by a member of the Security Council. Outside of that, there is no limitation; this is as far as the rules of procedure concern us.

"Then there is the other point of putting the representatives of States Members of the United Nations on a footing of complete inequality instead of on one of equality with the other Members of the United Nations. In addition, there is the result, if such a procedure is followed, of impeding the representative of a State which is not a member of the Security Council from submitting his remarks or making his statement at the proper moment. This applies both logically and psychologically. If a representative of a State which is not a member of the Security Council is forced every time to defer his statement and his remarks and his answers until the Security Council, and also the President of the Security Council, make their remarks and conclusions and rulings, and then the representative of a State not a member of the Security Council is somehow asked to speak, that, I think, is not right and should not be followed."

<sup>38</sup> For texts of relevant statements see:  
519th meeting: USSR, p. 13; United Kingdom, p. 16.  
520th meeting: France, pp. 4-5.  
525th meeting: President (Yugoslavia), pp. 6, 7; USSR, p. 12; United Kingdom, p. 18.  
<sup>39</sup> 525th meeting: p. 19.

The representative of the USSR proposed that the Council hear first the representatives of the parties concerned.<sup>40</sup>

**Decision:** *There being no objection, the procedure proposed by the representative of the USSR was adopted.*<sup>41</sup>

##### CASE 96

At the 526th meeting on 28 November 1950, in connexion with the complaint of armed invasion of Taiwan (Formosa) and the complaint of aggression upon the Republic of Korea, the question arose of the application of rule 27 to the representative of the People's Republic of China.<sup>42</sup> The representative of Egypt observed:<sup>43</sup>

"... the usual practice of the Council ... is to the effect that the members of the Council are first asked whether they want to speak and, as long as some of them have something to say about the matter on the agenda, they are allowed to speak first, and then the other participants in the Council's debate are allowed to speak."

**Decision:** *The proposal to grant precedence to the representative of the People's Republic of China was rejected by 1 vote in favour, 8 against with 2 abstentions.*<sup>44</sup>

##### CASE 97

At the 540th meeting on 2 April 1951, in connexion with the India-Pakistan question, after a vote had been taken, the President (Netherlands), on a request of the representative of Pakistan\*, considered

"... it in order that the representative of Pakistan —who, under rule 37 of our rules of procedure, had been invited to participate without vote...—should be given an opportunity now to state the attitude of his Government towards the resolution<sup>45</sup> which has been adopted and concerning which the debate proper is closed."

During the speech of the representative of Pakistan, the representative of India raised a point of order:

"The discussion of the Indo-Pakistan question, as particularized in our agenda, was closed when the vote was taken. At this stage, even a member of the Security Council does not have the right to make any further address except possibly for the purpose of explaining his vote. Therefore, in inviting the representative of Pakistan to the table, the Council gave him a right which even a member of the Council does not enjoy: to make a speech other than for the purpose of explaining his vote. Pakistan has no vote to explain. Having been allowed an opportunity to state his Government's views, I submit to the President that the representative of Pakistan should confine himself strictly to that purpose. It would not be in order for him to go into matters of controversy which, if he had so chosen,

<sup>40</sup> For texts of relevant statements see:  
330th meeting: President (Ukrainian SSR), p. 2; Egypt, pp. 5-6; USSR, p. 9.

<sup>41</sup> 330th meeting: p. 10.

<sup>42</sup> See chapter I, Case 51.

<sup>43</sup> For texts of relevant statements see:  
526th meeting: President (Yugoslavia), pp. 2, 4-5, 9; Egypt, pp. 7-8; USSR, pp. 2-4, 5-7, 8-9, 9-10.

<sup>44</sup> 526th meeting: p. 10.

<sup>45</sup> S/2017/Rev.1, 539th meeting: p. 15.

he could have entered into before the vote was taken."

The President stated that, in view of what the representative of India had said, the representative of Pakistan wished to clarify his position briefly. Subsequently, the President reminded the representative of Pakistan to confine himself to the explanation of the attitude of his Government with regard to the resolution.<sup>46</sup>

#### CASE 98

At the 545th meeting on 8 May 1951, in connexion with the Palestine question, the President (Turkey), in referring to the order of speakers, said that the representatives of the United States, United Kingdom, France, and Turkey had asked for permission to speak as co-sponsors of a draft resolution, and that the representative of Brazil had also asked for permission to speak. He declared his intention of calling upon the representatives of Israel\* and Syria\*, in the order of their requests for permission to speak, if no other member of the Security Council should indicate a desire to take part in the discussion. After the representatives of the United States, United Kingdom, France, Turkey and Brazil had spoken, the President called upon the representative of the Netherlands, before calling upon the representatives of Israel and Syria.<sup>47</sup>

### 2. Concerning the raising of points of order by invited representatives

#### CASE 99

At the 82nd meeting on 10 December 1946, in connexion with the Greek frontier incidents question, the representative of Australia expressed the following opinion regarding the participation of Greece and Yugoslavia:<sup>48</sup>

"... By participation, we understand that they will have the right to speak whenever recognized by the President, that they will have the right to move resolutions and will even have the greatest privilege of all members of this Council, to raise points of order..."

#### CASE 100

At the 192nd meeting on 22 August 1947, in connexion with the Indonesian question (II), the President (Syria) ruled that an invited State did not have the privilege of raising points of order. With regard to an intervention by the representative of the Philippines, the President stated:<sup>49</sup>

"I am sorry but the raising of points of order is limited to members of the Council. I shall put the name of the representative of the Philippines on my list of speakers."

\* For texts of relevant statements see: 540th meeting: President (Netherlands), pp. 2, 4, 6; India, pp. 3-4; Pakistan, pp. 2-3, 4-6.

\* For texts of relevant statements see: 545th meeting: President (Turkey), pp. 4, 8-9; Brazil, pp. 9-10; France, pp. 6-8; Israel, pp. 11-18; Netherlands, pp. 10-11; Syria, pp. 18-27; United Kingdom, pp. 4-5; United States, pp. 4-5.

<sup>48</sup> 82nd meeting: p. 545.

<sup>49</sup> 192nd meeting: p. 2152.

### 3. Concerning the submission of proposals or draft resolutions by invited representatives

#### a. Before adoption of rule 38 of the provisional rules of procedure

#### CASE 101

At the 16th meeting on 11 February 1946, in connexion with the Indonesian question (I), the representative of the Ukrainian SSR, having been invited to participate without vote in the discussion, submitted a draft resolution to set up a commission of inquiry. The President (Australia), after explaining that there were no rules of procedure regarding the right of proposition by a non-member of the Security Council, invited the members of the Council to express their views. The representative of China, observing that Article 31 should be read in connexion with Article 35, considered that the representative of the Ukrainian SSR was entitled to full participation in the discussion without the right to vote. The representative of the USSR maintained that neither Article 31 nor Article 35, nor even Article 32 provided a solution, and that the Council must apply logic and common sense. It was inconceivable that the representative of the Ukrainian SSR should be given the right to participate in the discussion and draw attention to a situation, but not given the right to propose a solution. The representative of the United States, while believing that a formal draft resolution should only be submitted by a member of the Council, did not press his objection in this case.<sup>50</sup>

The Council decided that there was no objection to the right of the representative of the Ukrainian SSR to submit a draft resolution.

#### CASE 102

At the 19th meeting on 14 February 1946, in connexion with the Syrian and Lebanese question, the President (Australia) proposed to decide in advance the question which arose "at a late stage in our consideration of the Indonesian matter" and to give the invited representatives the right of proposition "without prejudice to any view which the Council may form on other occasions".

**Decision:** *The President's proposal was adopted without objection.*<sup>51</sup>

#### b. After adoption of rule 38<sup>a</sup> of the provisional rules of procedure

#### CASE 103

At the 392nd meeting on 24 December 1948, when the representative of the Netherlands had requested that a certain paragraph of a draft resolution be split

<sup>50</sup> For texts of relevant statements see: 16th meeting: President (Australia), pp. 223-224, 225, 226, 229, 231, 232; China, pp. 224-225; Egypt, pp. 224, 225, 226; France, p. 227; Netherlands, pp. 225-226, 231; Poland, p. 226; USSR, pp. 227-229, 230-231; United States, pp. 229, 231, 232.

<sup>51</sup> 19th meeting: pp. 272-273.

<sup>a</sup> For cases of application of rule 38, see:

(i) At the 268th meeting on 17 March 1948 and subsequent meetings, two draft resolutions presented by the representative of Chile in connexion with the Czechoslovak question were put to the vote upon the request of the representative of



into two parts to be voted upon separately, the representative of the United States made the following statement:<sup>53</sup>

"As a point of order, and as a matter of the precedent to be established in the Security Council, I should like to say that it is my understanding that non-members of the Council do not have the privilege of suggesting ways in which the Council should actually transact its business. It is only in the event of a member of the Council espousing the view of a non-member who is participating in a discussion that a proposal by the non-member could actually come before the Council for action."

The President (Belgium) thereupon referred to rule 38 of the provisional rules of procedure and stated:<sup>54</sup>

"The point at issue is whether the request made a little while ago by the representative of the Netherlands can be considered a proposal. It seems to me to be a proposal affecting procedure. I think the Council would be taking a very strict view of the matter if it considered such a proposal inadmissible in the circumstances..."

The ruling of the President was not challenged.

#### CASE 104

At the 282nd meeting on 15 April 1948, in connexion with the Palestine question, the representative of the Jewish Agency for Palestine made certain suggestions for amending a draft resolution before the Security Council. The representative of Syria thought that rule 39 of the rules of procedure was applicable, and that<sup>55</sup>

"... those who are invited under rule 39 of the rules of procedure are not to submit proposals or amendments of any kind; they may simply give advice or information when asked to do so. Only States Members which are invited to participate may submit proposals or resolutions and these may be supported by one of the members of the Security Council..."

At the 283rd meeting on 16 April 1948, the representative of the United States supported the amendments which had been suggested by the representative of the Jewish Agency.<sup>56</sup>

Argentina (268th meeting: p. 111; 272nd meeting: p. 175; 281st meeting: p. 2; 288th meeting: p. 15).

(ii) At the 375th meeting on 29 October 1948, in connexion with the Palestine question, an amendment presented by the representative of Egypt was put to the vote on the request of the representative of Syria (375th meeting: pp. 6-7).

(iii) At the 381st meeting on 16 November 1948, a request by the representative of Egypt for postponement of the debate on the Palestine question was put to the vote upon the request of the representative of Syria (381st meeting: pp. 45-46).

(iv) At the 390th meeting on 23 December 1948, and at the 392nd meeting on 24 December 1948, two amendments presented by the representative of Australia to draft resolutions on the Indonesian question (II) were put to the vote upon the request of the representative of Syria (390th meeting: pp. 15-16; 392nd meeting: pp. 33, 52 and 56).

(v) At the 400th meeting on 14 January 1949, a request by the representative of Belgium for a French interpretation of a speech by the representative of the USSR was supported by the representative of France (400th meeting: p. 2).

<sup>53</sup> 392nd meeting: p. 35.

<sup>54</sup> 392nd meeting: p. 36.

<sup>55</sup> 282nd meeting: p. 22.

<sup>56</sup> 283rd meeting: pp. 10, 14 and 26. For the invitation to the Jewish Agency for Palestine, see Case 52.

#### CASE 105

At the 381st meeting on 16 November 1948, the Security Council had before it two draft resolutions: (a) the suggestions which had been submitted, in the form of a draft resolution by the Acting Mediator at the 378th meeting on 9 November 1948,<sup>57</sup> and supported, with certain amendments, by the representative of the USSR at the 379th meeting of 10 November 1948,<sup>58</sup> and (b) a Canadian draft resolution which had been submitted at the 380th meeting on 15 November 1948.<sup>59</sup>

The representative of the USSR proposed that the draft resolution S/1076 should be put to the vote, the first four paragraphs together and the fifth paragraph with the amendments. In response to the request of the representative of the United States for clarification, the President (Argentina) confirmed that the representative of the USSR had made the draft resolution S/1076 his own motion. The representative of Canada observed that, in accordance with the rules of procedure, motions took precedence in the order of their submission. In his opinion, the recommendations which had been submitted by the Acting Mediator did not constitute a draft resolution before the Council, until the representative of the USSR had made them his own. Consequently, the draft resolution (S/1079) submitted by the representatives of Canada, Belgium and France had precedence before the Council. The President replied:

"... the representative of the Soviet Union submitted as his own the Acting Mediator's suggestions in document S/1076, with the modifications he proposed in document S/1077. That happened before the representative of Canada presented his draft proposal jointly with the delegations of Belgium and France."

In the opinion of the representative of France, however, the fact that the representative of the USSR had proposed amendments to the Acting Mediator's text did not seem precisely to mean that he had sponsored it, for only at the 380th meeting the representative of the USSR had stated that he would sponsor the Acting Mediator's text, subject to the amendments contained in document S/1077. The representative of Canada, quoting the verbatim record of the 380th meeting, maintained that the USSR delegation had expressed its readiness to sponsor the Acting Mediator's text after the Canadian delegation had submitted the draft resolution S/1079 which had, consequently, precedence under rule 32. The representative of the USSR observed that his delegation had supported the Acting Mediator's draft at a closed meeting of the Council and had moved thereto a number of amendments.<sup>60</sup> After further discussion, the President ruled, and the representative of Canada accepted the ruling, that the draft resolution (S/1076), which the delegation of the USSR had adopted as its own, should be put to the vote first.<sup>61</sup> The draft resolution was

<sup>57</sup> S/1076, G.A.O.R., 4th session, Suppl. No. 2, p. 47. 378th meeting: pp. 62-63.

<sup>58</sup> S/1077, G.A.O.R., 4th session, Suppl. No. 2, p. 47. 379th meeting: pp. 63-64.

<sup>59</sup> S/1079, 380th meeting: pp. 4-5.

<sup>60</sup> 379th meeting: pp. 63-64.

<sup>61</sup> For texts of relevant statements see: 381st meeting: President (Argentina), pp. 46, 47, 51; Canada, pp. 47, 49; France, pp. 48-49; USSR, pp. 46, 49-50; United States, p. 46.

voted on in parts and was rejected. The vote on all paragraphs was 2 in favour with 9 abstentions.<sup>62</sup>

#### CASE 106

At the 405th meeting on 27 January 1949, in connexion with the Indonesian question (II), the representative of the Netherlands\* requested adjournment of the debate. The President (Canada) pointed out that, although a motion for adjournment was put to the vote without debate, in this case rule 38 applied, by which a motion by a non-member of the Council could be voted upon only at the request of a member. In the absence of such a request, the debate continued.<sup>63</sup>

#### CASE 107

At the 434th meeting on 4 August 1949, in connexion with the Palestine question, with special reference to the draft resolution suggested by the Acting Mediator,<sup>64</sup> the representative of Canada stated that his delegation would sponsor that draft resolution. He submitted a draft resolution of his own which included, with some modifications, the text suggested by the Acting Mediator.<sup>65</sup> The representative of France submitted a number of amendments to the draft resolution suggested by the Acting Mediator.<sup>66</sup> At the 435th meeting on 8 August 1949, the representative of Canada withdrew his draft resolution and submitted a joint Canadian-French draft resolution, which had been prepared through consultations between the representatives of Canada and France and the Acting Mediator.<sup>67</sup> The representative of France withdrew the amendments which he had submitted at the previous meeting.<sup>68</sup>

At the 437th meeting on 11 August 1949, the representative of the USSR submitted several amendments to the joint draft resolution.<sup>69</sup> The Council rejected the USSR amendments, paragraph by paragraph, and adopted the Canadian-French draft resolution by a vote of 9 in favour with 2 abstentions.<sup>70</sup>

#### CASE 108

At the 496th meeting on 5 September 1950, in connexion with the complaint of aggression upon the Republic of Korea, the representative of the Republic of Korea, who had been invited to the table under rule 39, expressed the "hope that the members of the Council will support the United States draft resolution". The representative of the USSR thereupon requested the President (United Kingdom), to inform him that "he has been permitted, although illegally, to attend the meetings of the Council in order to make statements, and not to pass judgment on the draft resolutions submitted by members of the Council."<sup>71</sup>

#### CASE 109

At the 527th meeting on 28 November 1950, the representative of the People's Republic of China made three proposals to the Security Council.<sup>72</sup>

\* 381st meeting: pp. 51-53.

<sup>62</sup> 405th meeting: p. 32.

<sup>63</sup> S/1357, O.R., 4th year, Suppl. for August 1949, p. 7.

<sup>64</sup> S/1365, 434th meeting: p. 28.

<sup>65</sup> S/1364, 434th meeting: pp. 34-35.

<sup>66</sup> S/1367, 435th meeting: pp. 2-3.

<sup>67</sup> 435th meeting: p. 3.

<sup>68</sup> S/1375, O.R., 4th year, Suppl. for August 1949, p. 9; 437th meeting: pp. 10-11.

<sup>69</sup> 437th meeting: p. 13.

<sup>70</sup> 496th meeting: p. 14.

<sup>71</sup> 527th meeting: p. 25.

At the 530th meeting on 30 November 1950, the President (Yugoslavia) "put to the vote the draft resolution submitted by the representative of the Central People's Government of the People's Republic of China and sponsored by the Union of Soviet Socialist Republics".<sup>73</sup>

#### D. LIMITATIONS ON MATTERS TO BE DISCUSSED BY INVITED REPRESENTATIVES

##### 1. Adoption of the agenda

#### CASE 110

At the 58th meeting on 30 August 1946, in connexion with the Ukrainian complaint against Greece, the President (Poland) proposed that representatives of Greece and the Ukrainian SSR should be invited to answer such questions as the Security Council might wish to put to them, before deciding to include the item in the agenda. The representative of the United Kingdom considered that discussion of the adoption of the agenda was preliminary and procedural, and that, if representatives of Greece and the Ukrainian SSR were invited, a discussion of the substantive question might ensue. The representative of the USSR stated that, since the propriety of including the item in the agenda had been questioned on the ground that the application was unsubstantiated, it would logically result that the representative of the Ukrainian SSR should be invited to submit additional facts to the Council. The representative of France thought that the Council could not invite States not members of the Security Council to the table before first deciding to put the question on the agenda.<sup>74</sup>

**Decision:** The President's proposal was rejected, having failed to obtain the affirmative votes of 7 members.<sup>75</sup>

#### CASE 111

At the 202nd meeting on 15 September 1947, in connexion with the Greek frontier incidents question, the representative of Yugoslavia, who had been invited to the Council table, made a statement during the discussion of a United States draft resolution to take the dispute off the list of matters of which the Council was seized.<sup>76</sup> The representative of the United States then stated:<sup>77</sup>

"In my opinion the discussion was on a simple motion of the United States to drop the matter from the agenda. That is something which solely concerns the Security Council and in my opinion the Yugoslav representative had no status for speaking when that matter was under discussion."

#### CASE 112

At the 231st meeting on 22 January 1948, the provisional agenda included the "India-Pakistan question" which had previously been designated as "The Jammu and Kashmir question". The representative of India had indicated his dissatisfaction with that description. At the beginning of the meeting, the President (Belgium) stated:<sup>78</sup>

<sup>73</sup> S/1921, 530th meeting: p. 22.

<sup>74</sup> For texts of relevant statements see: 58th meeting: President (Poland), pp. 152, 153; France, p. 156; USSR, p. 153; United Kingdom, pp. 153, 156.

<sup>75</sup> 58th meeting: p. 156.

<sup>76</sup> 202nd meeting: p. 2402.

<sup>77</sup> 202nd meeting: p. 2404.

<sup>78</sup> 231st meeting: p. 144.

"It is not usual for parties not members of the Security Council to take part in the discussions on the adoption of the agenda. I propose, however, that the Security Council make an exception to this custom, in view of the delicate nature of the question that the Indian representative has raised."

**Decision:** *The representatives of India and Pakistan were thereupon invited to the table.*<sup>79</sup>

#### CASE 113

At the 525th meeting on 27 November 1950, in connexion with the complaint of armed invasion of Taiwan (Formosa) and the complaint of aggression upon the Republic of Korea, the President (Yugoslavia) proposed that the two problems should be discussed together. To this, the representative of the USSR was opposed, one reason being his belief that, if the President really wished to take into consideration the wishes of the Government of the People's Republic of China, he would have formulated the item in the way proposed by that Government. He submitted an amendment to the provisional agenda to substitute for the two sub-items a single item: "Complaint of armed invasion of Taiwan (Formosa)". The representative of the United States interpreted rule 39 as conferring upon those invited no right to participate in the making of the agenda, not even to the extent of a member of the Council putting through a plan or scheme on behalf of a person invited under rule 39 "that would control what is to be considered by the Security Council".<sup>80</sup>

**Decision:** *The amendment submitted by the representative of the USSR was rejected by 1 vote in favour, 7 against with 3 abstentions.*<sup>81</sup>

#### CASE 114

At the 559th meeting on 1 October 1951, in connexion with the Anglo-Iranian Oil Company case, objection was raised to the inclusion of the item in the agenda on the ground that the question fell within the domestic jurisdiction of Iran.

The representative of Yugoslavia stated:

"What is the way out of this contradiction: the desire of the Council to listen to the parties, its doubts whether it is competent or not and the dispute on its competency? I think that the only way out is to invite the Government of Iran to participate in our debate not on item 2 of our provisional agenda but on item 1—the adoption of this agenda—we shall thus really have dealt to a great extent with the question of our competence.

"I think that this would be in the spirit of our rules of procedure..."

The representative of the United Kingdom observed:

"... To my knowledge the Council never has—and I hope it never will—called upon a non-member of the Council to help it make up its mind on what is admittedly a pure question of procedure. I should have thought that it would be an extremely bad

precedent to create, and I am quite confident that my colleagues will not adopt it."<sup>82</sup>

**Decision:** *After the agenda had been adopted by 9 votes to 2, the President (Brazil) invited the representative of Iran to take a place at the Council table.*<sup>83</sup>

## 2. Extension of invitations

#### CASE 115

At the 171st meeting on 31 July 1947, in connexion with the Indonesian question (II), the representative of Australia indicated that he assumed that the Security Council, after granting the Netherlands and India the right to participate, would also immediately authorize the sending of an invitation to the Republic of Indonesia. The representative of Belgium did not think the question raised by the Australian representative should be discussed in the absence of the representatives of the Netherlands and India. The question of inviting the representative of Indonesia was postponed in order to give immediate consideration to the Australian draft resolution.<sup>84</sup>

#### CASE 116

At the 382nd meeting on 25 November 1948, in connexion with the Hyderabad question, the Security Council considered a request from the Government of Pakistan to participate in the discussion. The representative of Syria was of the opinion that such a question could be decided by the Council in the absence of the representatives of India and Hyderabad, who were not present, although they had been invited to participate at previous meetings. He considered that the question had no connexion with the two parties.<sup>85</sup>

**Decision:** *At the 384th meeting on 15 December 1948, the President (Belgium) invited, without objection and in the absence of representatives of India and Hyderabad, the representative of Pakistan to the Council table.*<sup>86</sup>

#### CASE 117

At the 514th meeting on 20 October 1950, in connexion with the Palestine question, when the President (United States) asked whether the Security Council consented to General Riley being invited to the next meeting, the representative of Israel, who had been invited to the Council table, wished to raise a point regarding the invitation. The President stated:

"I do not think that it is within the rights of visitors at this table to participate in the discussion of a question concerning the procedure of the Security Council, but if there is no objection to hearing the representative of Israel on this matter of procedure, I shall permit him to make a brief statement."

The representative of Egypt raised an objection:

"I have not the slightest desire to take advantage of my position as the representative of a member of

<sup>79</sup> For original invitations to India and Pakistan, see Cases 17 and 35.

<sup>80</sup> For texts of relevant statements see: 525th meeting: President (Yugoslavia), pp. 1, 5-6; USSR, pp. 1-5, 17-18; United States, pp. 6-10.

<sup>81</sup> 525th meeting: p. 19.

<sup>82</sup> For texts of relevant statements see: 559th meeting: United Kingdom, p. 10; Yugoslavia, p. 9. <sup>83</sup> 559th meeting: pp. 10-11. For invitation to Iran, see Case 48.

<sup>84</sup> For texts of relevant statements see: 171st meeting: Australia, p. 1618; Belgium, p. 1618. For invitation to Indonesia, see Case 59.

<sup>85</sup> 382nd meeting: p. 29.

<sup>86</sup> 384th meeting: pp. 40-41.

the Security Council as distinct from the position of those who are invited to the table, but the President will, of course, understand that our procedure is not a matter for any single member of the Council or for any group of members. We have to adhere to the procedure as laid down. If the President wishes to hear any of those who are invited to the table of the Security Council on other matters I shall not object, but I have a definite objection to anyone other than members of the Security Council participating in the discussion of matters of procedure."<sup>87</sup>

### 3. Postponement of consideration of a question

#### CASE 118

At the 26th meeting on 26 March 1946, the representative of the USSR proposed that consideration of the Iranian question be postponed until 10 April 1946, and urged that, since the procedural aspect of the question was under discussion, no invitation should be extended to the representative of Iran. The representatives of Egypt, Mexico, the Netherlands, the United Kingdom and the United States supported an invitation to the representative of Iran to make a statement concerning the question of postponement, since Iran was specially affected by such a decision.<sup>88</sup>

**Decision:** *At the 27th meeting on 27 March 1946, the USSR proposal for postponement was rejected, and the Security Council adopted the Egyptian proposal to invite the representative of Iran.*<sup>89</sup>

In the course of the statement by the representative of Iran\*, the representatives of Poland and the United States suggested that the statement be confined to the question of postponement.<sup>90</sup>

#### CASE 119

At the 226th meeting on 6 January 1948, in connexion with the India-Pakistan question, the Security Council considered a request for postponement from the Government of Pakistan. The President (Belgium), after inquiring whether the Council considered it necessary to invite the representatives of India and Pakistan to participate in the consideration of this request for a postponement, stated:

"I think I am justified in saying that the presence of these two representatives would enable us to ask the Pakistan representative to specify the extent of the postponement requested by his Government and would, moreover, give the Indian representative an opportunity to state the views of his Government on this subject."

**Decision:** *The President invited, without objection, the representatives of India and Pakistan to the Council table.*<sup>91</sup>

<sup>87</sup> For texts of relevant statements see: 514th meeting: President (United States), p. 19; Egypt, p. 19. No statement was made by the representative of Israel.

<sup>88</sup> For texts of relevant statements see: 26th meeting: Egypt, p. 41; Mexico, pp. 35-36; Netherlands, p. 38; USSR, p. 37; United Kingdom, pp. 33-34; United States, pp. 23, 31.

<sup>89</sup> 27th meeting: pp. 56, 61, 62.

<sup>90</sup> 27th meeting: p. 66, 67.

<sup>91</sup> 226th meeting: p. 5. See also Cases 17 and 35.

### 4. Other matters

#### CASE 120

At the 100th meeting on 10 February 1947, in connexion with the Greek frontier incidents question, the President (Belgium) raised the question whether the representatives of Albania, Bulgaria, Greece and Yugoslavia should be invited to participate in a meeting which had been called to consider a communication from the Secretary of the Greek Frontier Incidents Commission.<sup>92</sup> The representative of the USSR considered that the Council should adopt the view that the question of the participation of the representatives of those countries in the discussion should be settled automatically, because the relevant decision had already been taken. He was of the opinion that this was not a new question, but merely a stage in the consideration of the question. The representative of Australia considered that Article 32 did not apply and that the Council's previous decision did not automatically have effect. What was being discussed was not the substance of the dispute, but something related to the functioning of a subsidiary organ of the Council. The President (Belgium) also thought that the communication did not entail discussion of the substance of the dispute. The representative of France considered that if each request from the Commission were to raise a debate in the Security Council on the substance of the Balkan question, the Council's function would be completely paralysed and it would be unable to continue its work.<sup>93</sup>

**Decision:** *The proposal of the representative of the USSR to invite the representatives of Albania, Bulgaria, Greece and Yugoslavia to the Council table was rejected by 3 votes in favour and 8 against.*<sup>94</sup>

#### CASE 121

At the 519th meeting on 8 November 1950, in connexion with the complaint of aggression upon the Republic of Korea, the representative of the United Kingdom proposed that the invitation to the Central Government of the People's Republic of China under rule 39 should not be a general invitation to be present "whenever this general item is under discussion", but "during discussion by the Council of the special report of the United Nations Command in Korea (S/1884)". The representative of France supported the proposal, observing that the authorities would be heard as the accused party on the actual facts of the accusation and not on the question of Korea as a whole. The United Kingdom proposal was adopted by 8 votes to 2 with 1 abstention.

At the 525th meeting on 27 November 1950, the President (Yugoslavia) proposed to combine as one item on the agenda the complaint of aggression upon the Republic of Korea, and the complaint of armed invasion of Taiwan (Formosa). He noted that rule 39, under which the invitation had been extended, "does not provide for any restriction", and that the particular document S/1884 had never become a separate item on the agenda. The representative of the

<sup>92</sup> For the invitations extended in connexion with this question, see Cases 14, 28 and 57.

<sup>93</sup> For texts of relevant statements see: 100th meeting: President (Belgium), p. 175; Australia, pp. 174-175, 179; France, p. 178; USSR, pp. 174, 177; United States, p. 178.

<sup>94</sup> 100th meeting: pp. 179-180.

USSR objected that, although he had been in favour of full, not limited, participation, the resolution of 8 November had limited participation; he accordingly proposed that only the complaint of armed invasion of Taiwan (Formosa) be considered. The representative of the United Kingdom observed that representatives of the People's Republic of China had been invited to be present for the discussion of a specific point, but they had refused. The intention of combining the two items was to allow the invited representatives "complete liberty to say whatever they like on the whole subject of Korea". The representative of the United Kingdom concluded that the combina-

tion of the two items was in effect a modification of the original invitation made to the Communist Chinese Government.<sup>98</sup>

**Decision:** *The agenda as proposed by the President was adopted after the USSR amendment had been rejected by 1 vote in favour, 7 against and 3 abstentions.*<sup>99</sup>

<sup>98</sup> For texts of relevant statements see:

519th meeting: USSR, p. 13; United Kingdom, p. 16.

520th meeting: France, pp. 4-5.

525th meeting: President (Yugoslavia), p. 6; USSR, p. 12; United Kingdom, p. 18.

<sup>99</sup> 525th meeting: p. 19.



## **Chapter IV**

### **VOTING**

## TABLE OF CONTENTS

	<i>Page</i>
INTRODUCTORY NOTE .....	143
<b>PART I. PROCEDURAL AND NON-PROCEDURAL MATTERS</b>	
Note .....	143
A. Cases in which the vote indicated the procedural character of the matter .....	144
1. Inclusion of items in the agenda .....	144
2. Order of items on the agenda .....	144
3. Deferment of consideration of items on the agenda .....	144
4. Removal of an item from the list of matters of which the Security Council is seized .....	145
5. Rulings of the President of the Security Council .....	145
6. Adjournment of a meeting .....	145
7. Invitation to participate in the proceedings .....	145
8. Conduct of business .....	146
B. Cases in which the vote indicated the non-procedural character of the matter .....	147
1. In connexion with matters considered by the Security Council under its responsibility for the maintenance of international peace and security .....	147
2. In connexion with other matters considered by the Security Council:	150
a. In connexion with admission of new Members to the United Nations .....	150
b. In connexion with reports of the Atomic Energy Commission and the Commission for Conventional Armaments .....	154
<b>PART II. PROCEEDINGS OF THE SECURITY COUNCIL REGARDING VOTING UPON THE QUESTION WHETHER THE MATTER WAS PROCEDURAL WITHIN THE MEANING OF ARTICLE 27 (2) OF THE CHARTER</b>	
Note .....	154
A. Proceedings on occasions when the Security Council voted on "the preliminary question" .....	155
B. Consideration of procedures involved in voting on "the preliminary question" .....	157
1. Consideration of the order in which the matter itself, and the question whether the matter is procedural, should be voted upon .....	157
2. Consideration whether the decision that the matter is procedural is itself a procedural decision .....	159
3. Consideration of the use of rule 30 of the provisional rules of procedure of the Security Council in determining whether a matter is procedural .....	162
<b>PART III. ABSTENTION AND ABSENCE IN RELATION TO ARTICLE 27 (3) OF THE CHARTER</b>	
Note .....	165
A. Obligatory abstention .....	166
1. Cases in which members have abstained in accordance with the proviso of Article 27 (3) .....	166
2. Consideration of abstention in accordance with the proviso of Article 27 (3) .....	167
B. Voluntary abstention in relation to Article 27 (3) .....	170
1. Certain cases in which permanent members have abstained otherwise than in accordance with proviso of Article 27 (3) .....	170
2. Consideration of the practice of voluntary abstention in relation to Article 27 (3) .....	173
C. Absence of a permanent member in relation to Article 27 (3) .....	175
1. Cases in which the Security Council has taken decisions in the absence of a permanent member .....	175
2. Consideration of absence of a permanent member in relation to Article 27 (3) .....	177

## INTRODUCTORY NOTE

This chapter contains the material from the Official Records of the public meetings relating to the practice of the Council in connexion with Article 27 of the Charter. Part I presents evidence relating to the distinction between procedural and non-procedural matters. Part II is concerned with the practice of the Council regarding voting upon the question whether the matter is procedural within the meaning of Article 27 (2). Part III is concerned with the abstention or absence of a permanent member in relation to the requirements of Article 27 (3).

Discussion has arisen in the Council on the question of voting procedure at the 197th meeting on 27 August 1947, in connexion with General Assembly resolution 40 (I) of 13 December 1946; at the 224th meeting on

19 December 1947, in connexion with General Assembly resolution 117 (II) of 21 November 1947; and at the 452nd meeting on 18 October 1949, after the adoption by the General Assembly of resolution 267 (III) of 14 April 1949. These resolutions, though duly communicated to the Security Council,<sup>1</sup> are not reproduced in view of their availability in the Official Records of the General Assembly.<sup>2</sup>

Certain questions of procedure in connexion with voting are dealt with in chapter I, part VI. Material relating to voting on rulings by the President is inserted in chapter I, part V, and material relating to voting in connexion with the election of judges under Article 10 of the Statute of the International Court of Justice in chapter VI, part I, section D.

### Article 27 of the Charter

1. Each member of the Security Council shall have one vote.
2. Decisions of the Security Council on procedural matters shall be made by an affirmative vote of seven members.
3. Decisions of the Security Council on all other matters shall be made by an affirmative vote of seven members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.

<sup>1</sup> S/237; S/620, 224th meeting: p. 2792; S/1312.

<sup>2</sup> No. 40 (I), *G.A.O.R., 1st session, 2nd part, Resolutions*, p. 64.

No. 117 (II), *G.A.O.R., 2nd session, Resolutions*, p. 23.

No. 267 (III), *G.A.O.R., 3rd session, 2nd part, Resolutions*, p. 7.

### Part I

#### PROCEDURAL AND NON-PROCEDURAL MATTERS

##### NOTE

1. Part I is divided in two sections. In section A, cases are given in which the vote indicated the procedural character of the matter which was then under consideration. In section B are given cases in which the vote indicated the non-procedural character of the matter then under consideration.<sup>1</sup> In each case, the main argumentation on the procedural or non-procedural character of the matter is included, and in the footnotes references are given to the texts of all relevant statements.

2. The record of voting may be conclusive in two ways:

(a) Whether the matter was deemed procedural or non-procedural was clearly established in those instances where a proposal obtained seven or more votes, with one or more permanent members casting a negative vote. Adoption by the Council in such circumstances indicates the procedural character of the matter; rejection by the Council in such circumstances indicates the non-procedural character of the matter.

(b) When the Council has decided by vote that a matter is procedural or non-procedural (Cases 30, 40, 48, 49 and 55).

3. There have also been occasions on which the pro-

cedural or non-procedural character of the matter has been considered without a conclusive vote in the sense indicated. The discussion on such occasions is referred to at the relevant points in footnotes or in the text of parts II and III.<sup>2</sup>

4. The majority of occasions on which the Council has voted afford no indication as to the attitude of the Council regarding the procedural or non-procedural character of the matter voted upon. Where a decision has been arrived at by a unanimous vote, or with all permanent members voting in favour of the proposal, the matter so voted upon may have been procedural or it may have been non-procedural; but no indication of the view of the Council as to the procedural or non-procedural nature of the matter can be obtained from the vote in such a case. Nor can any indication be obtained from the cases where the proposal, having been put to the vote, has failed to obtain seven votes in its favour.

5. For convenience of reference, cases involving decisions on procedural matters have been grouped under headings derived from the subject matter dealt with in these decisions. The matters entered as procedural are, however, only the particular matters which were the subject of the vote on the occasions indicated. The

<sup>1</sup> Consideration of the procedural or non-procedural nature of "the preliminary question" is dealt with in part II.

<sup>2</sup> See Cases 96, 105, 116, 117, 118, 200; footnotes 16, 20, 60 of part I, and footnotes 17, 40, 88, 100 of part III.

headings do not constitute general propositions as to the procedural character of future proposals which may be deemed to fall under them.

6. As regards non-procedural matters, cases in which matters considered by the Council under its responsibility for the maintenance of international peace and security have been established as non-procedural are first set out in chronological order. These are followed by cases in which matters have been established as non-procedural in connexion with two other questions: namely, the admission of new Members to the United Nations, and Reports of the Atomic Energy Commission and the Commission for Conventional Armaments.

In those cases in which the procedural or non-procedural character of the draft resolution or proposal voted upon has been the subject of discussion, a brief summary of the content of the draft resolution or proposal is given, followed by an indication of the views expressed and a record of the vote. Where no discussion occurred regarding the procedural or non-procedural character of the decision, the entry is restricted to a reference by means of which the draft resolution or proposal and the vote thereon may be identified in the record of decisions in chapters VII-IX.

#### A. CASES IN WHICH THE VOTE INDICATED THE PROCEDURAL CHARACTER OF THE MATTER

##### 1. Inclusions of items in the agenda

###### CASES 1-10

On the following occasions items have been included in the agenda by vote of the Security Council, notwithstanding the negative vote of a permanent member:

###### Case 1

At the 59th meeting on 3 September 1946—the Ukrainian complaint against Greece;<sup>1</sup>

###### Case 2

At the 143rd meeting on 20 June 1947—the appointment of a Governor for the Free Territory of Trieste;<sup>2</sup>

###### Case 3

At the 224th meeting on 19 December 1947—the problem of voting in the Security Council;<sup>3</sup>

###### Case 4

At the 268th meeting on 17 March 1948—the Czechoslovak question;<sup>4</sup>

###### Case 5

At the 427th meeting on 16 June 1949—the admission of new Members to the United Nations;<sup>5</sup>

###### Case 6

At the 482nd meeting on 3 August 1950, 502nd meeting on 18 September 1950 and 519th meeting on 8

November 1950—the complaint of aggression upon the Republic of Korea;<sup>6</sup>

###### Case 7

At the 492nd meeting on 29 August 1950—the complaint of armed invasion of Taiwan (Formosa);<sup>7</sup>

###### Case 8

At the 493rd meeting on 31 August 1950—the complaint of bombing by air forces of the territory of China;<sup>8</sup>

###### Case 9

At the 559th meeting on 1 October 1951—the Anglo-Iranian Oil Company Case;<sup>9</sup>

###### Case 10

At the 568th meeting on 18 December 1951—the application of Italy for membership in the United Nations.<sup>10</sup>

## 2. Order of items on the agenda

### CASES 11 and 12

On the following occasions proposals relating to the order of items on the agenda were adopted by vote of the Security Council, notwithstanding the negative vote of a permanent member:

###### Case 11

At the 482nd meeting on 3 August 1950, when the proposal of the representative of the United States to place the complaint of aggression upon the Republic of Korea second on the provisional agenda was adopted.<sup>11</sup>

###### Case 12

At the 497th meeting on 7 September 1950, when the proposal of the representative of the United States to consider item 4 of the provisional agenda, "Complaint of bombing by air forces of the territory of China", before item 3, "Complaint of armed invasion of Taiwan (Formosa)" was adopted.<sup>12</sup>

## 3. Deferment of consideration of items on the agenda<sup>13</sup>

### CASES 13-15

On the following occasions the consideration of items on the agenda was deferred by vote of the Security Council, notwithstanding the negative vote of a permanent member.<sup>14</sup>

<sup>1</sup> 492nd meeting: p. 12.

<sup>2</sup> 493rd meeting: p. 30.

<sup>3</sup> 559th meeting: p. 10.

<sup>4</sup> 568th meeting: p. 16.

<sup>5</sup> 482nd meeting: pp. 19-20.

<sup>6</sup> 497th meeting: p. 26.

<sup>7</sup> For the decision to consider deferment of voting on applications for membership as a non-procedural matter, see Cases 55, 83 and 95.

<sup>8</sup> At the 18th meeting on 13 February 1945, the President (Australia) indicated that a motion to defer disposition of the application of Albania for admission to the United Nations was a procedural matter. The motion was declared adopted after seven members had voted in favour. 18th meeting: pp. 268, 270.

<sup>1</sup> 59th meeting: p. 197.

<sup>2</sup> 143rd meeting: p. 1052.

<sup>3</sup> 224th meeting: p. 2796.

<sup>4</sup> 268th meeting: pp. 101-102.

<sup>5</sup> 427th meeting: p. 10.

<sup>6</sup> 482nd meeting: p. 20; 502nd meeting: p. 14; 519th meeting: p. 6.

**Case 13**

At the 95th meeting on 20 January 1947, in connexion with the general regulation and reduction of armaments and information on armed forces of the United Nations, when the draft resolution submitted by the representative of the United States to defer further consideration of these items of the agenda until 4 February 1947 was adopted.<sup>17</sup>

**Case 14**

At the 506th meeting on 29 September 1950, in connexion with the complaint of armed invasion of Taiwan (Formosa), when the draft resolution submitted by the representative of Ecuador to defer consideration of the item until the first meeting of the Council to be held after 15 November 1950 was adopted.<sup>18</sup>

**Case 15**

At the 565th meeting on 19 October 1951, in connexion with the Anglo-Iranian Oil Company case, when the motion of the representative of France to adjourn debate on the matter until the International Court of Justice had ruled on its own competence was adopted.<sup>19</sup>

#### 4. Removal of an item from the list of matters of which the Security Council is seized

**CASE 16**

On the following occasion an item was removed from the list of matters of which the Council is seized by vote of the Security Council, notwithstanding the negative vote of a permanent member:

At the 202nd meeting on 15 September 1947, when the United States draft resolution to remove the Greek frontier incidents question from the list of matters of which the Council was seized was adopted.<sup>20</sup>

#### 5. Rulings of the President of the Security Council

**CASES 17 and 18<sup>21</sup>**

On the following occasions rulings of the President were challenged and put to the vote, and either upheld or overruled, notwithstanding the negative vote of a permanent member.

**Case 17**

At the 459th meeting on 10 January 1950, the President (China) ruled that a USSR draft resolution concerning the representation of China would be circulated and considered at a later meeting. The ruling was challenged and put to the vote as a proposal to uphold the ruling. The President's ruling was upheld notwithstanding the negative vote of a permanent member.

**Case 18**

At the 480th meeting on 1 August 1950, in connexion with the complaint of aggression upon the

Republic of Korea, the President (USSR) ruled that the representative of China present at that meeting could not take part. The ruling was challenged and put to the vote as a proposal to overrule. The President's ruling was overruled notwithstanding the negative vote of a permanent member.<sup>22</sup>

#### 6. Adjournment of a meeting

**CASES 19-22**

On the following occasions, motions to adjourn were adopted by vote of the Security Council, notwithstanding the negative vote of a permanent member.

**Case 19**

At the 484th meeting on 8 August 1950.<sup>23</sup>

**Case 20**

At the 501st meeting on 12 September 1950.<sup>24</sup>

**Case 21**

At the 503rd meeting on 26 September 1950.<sup>25</sup>

**Case 22**

At the 507th meeting on 29 September 1950.<sup>26</sup>

#### 7. Invitation to participate in the proceedings

**CASES 23-31**

On the following occasions invitations to participate in the proceedings were extended to non-members by vote of the Security Council, notwithstanding the negative vote of a permanent member.

**Case 23**

At the 50th meeting on 10 July 1946, in connexion with the first report of the Atomic Energy Commission, the representative of Australia submitted a proposal to invite Canada to participate in the proceedings. The request of the representative of the USSR that the vote on the proposal be delayed was denied and the proposal was put to the vote. There were 9 votes in favour, 1 against (the vote against being that of a permanent member) and 1 abstention.<sup>27</sup>

The representative of the USSR thereupon stated:

"... an invitation to participate in a meeting of the Security Council, even without a decisive vote, is undoubtedly not a question of procedure but one of substance. For this reason, the results of the voting show that this question was not decided today in the affirmative but in the negative."

The President (Mexico) declared:

"I consider it a question of procedure under the Charter, and so I invite the representative of Canada to take his place at the Council table."

After the representative of Canada took his place at the Council table, the representative of the USSR reiterated his contention that "invitations to participate in the meetings of the Security Council are not pro-

<sup>17</sup> 95th meeting: p. 123.

<sup>18</sup> S/1823/Corr.1, 506th meeting: pp. 3-5. See also Case 86.

<sup>19</sup> 565th meeting: p. 12.

<sup>20</sup> 202nd meeting: p. 2405. See also Case 40. For the discussion regarding the removal of the Ukrainian complaint against Greece from the agenda, see 70th meeting: pp. 419-420.

<sup>21</sup> For rulings on the question whether the matter was procedural, see Cases 100-106. For case 17, see 459th meeting, pp. 3-4.

<sup>22</sup> 480th meeting: p. 9.

<sup>23</sup> 484th meeting: p. 21.

<sup>24</sup> 501st meeting: pp. 29-30.

<sup>25</sup> 503rd meeting: p. 34.

<sup>26</sup> 507th meeting: pp. 15-16.

<sup>27</sup> 50th meeting: p. 4.



cedural ones but questions of substance". The representative of the United Kingdom stated:

"The point before us is whether the representative of a State directly interested in the work which we have before us should come to the Council table under Article 31 of the Charter. If you look at the Charter you will find there is a section of it, headed 'Procedure', which contains Articles 28 to 32, inclusive, and therefore, even in the Charter itself, it is explicitly stated that this is a matter of procedure."

The representative of Australia observed that section 1, paragraph 2, of the San Francisco Statement on Voting Procedure<sup>28</sup> contained the following reference:

"... the Council will, by a vote of any seven of its members... invite a Member of the Organization not represented on the Council to participate in its discussions when that Member's interests are specially affected;..."

The President maintained that the proposal had been adopted and that if his ruling was challenged he would put the challenge to the vote. The representative of the USSR elaborated on the questions which had to be considered before deciding to invite a non-Member under Article 31. He reserved "the right to revert to this question at the appropriate time".<sup>29</sup>

#### Case 24

At the 64th meeting on 9 September 1946, in connexion with the Ukrainian complaint against Greece, when the Council invited the representative of Albania to the table for the purpose of making a factual statement.<sup>30</sup>

#### Case 25

At the 82nd meeting on 10 December 1946, in connexion with the Greek frontier incidents question, when the Council adopted the third paragraph of the Netherlands draft resolution to invite the representatives of Albania and Bulgaria to participate in the discussion should the question be considered a dispute.<sup>31</sup>

#### Case 26

At the 181st meeting on 12 August 1947, in connexion with the Indonesian question (II), when the Council invited the representative of the Republic of Indonesia to participate in the discussion. Negative votes were cast by the two permanent members.<sup>32</sup>

#### Case 27

At the 268th meeting on 17 March 1948, in connexion with the Czechoslovak question, when the Council invited the representative of Chile to participate in the discussion.<sup>33</sup>

#### Cases 28-29

At the 272nd and 300th meetings on 22 March and 21 May 1948, in connexion with the Czechoslovak

question, when the Council invited Dr. Papanek to participate and give information.<sup>34</sup>

#### Case 30

At the 506th meeting on 29 September 1950, in connexion with the complaint of armed invasion of Taiwan (Formosa), when the Council invited a representative of the People's Republic of China to attend the meetings during consideration of the item.<sup>35</sup>

The representative of China contended that the question was non-procedural. Referring to the proviso of the San Francisco Statement on Voting Procedure to the effect that an invitation to parties to a dispute was a procedural matter, he stated:

"The San Francisco Declaration refers to the invitation of someone who is not a member of the Council; China is a member of the Council."

The representative of India observed that, since the invitation was to be issued under rule 39 of the rules of procedure, which were adopted under Article 30 of Chapter V (Procedure) of the Charter, the matter was "doubly procedural". The representatives of the USSR and the United States were of the opinion that the matter was procedural.<sup>36</sup> At the request of the representative of China the Council voted upon the question whether the Ecuadorean draft resolution was a procedural matter.<sup>37</sup> The representative of China maintained that the ruling of the President (United Kingdom), that the Council had decided to consider the matter procedural, was illegal.

#### Case 31

At the 520th meeting on 8 November 1950, in connexion with the complaint of aggression upon the Republic of Korea, when the Council invited a representative of the People's Republic of China to participate in the discussion concerning the special report of the United Nations Command.<sup>38</sup>

## 8. Conduct of business

### CASES 32-37

On the following occasions proposals with regard to the conduct of business were adopted by vote of the Security Council, notwithstanding the negative vote of a permanent member:

#### Case 32

At the 49th meeting on 25 June 1946, in connexion with the Spanish question, when the Council decided to consider the draft resolution submitted by the representatives of Australia and the United Kingdom as an amendment to the Polish draft resolution.<sup>39</sup>

#### Case 33

At the 57th meeting on 29 August 1946, in connexion with the admission of new Members to the

<sup>28</sup> "Statement by the Delegations of the Four Sponsoring Governments on Voting Procedure in the Security Council", *United Nations Conference on International Organization, Documents*, volume 11, pp. 711-714 (hereinafter referred to as the San Francisco Statement on Voting Procedure).

<sup>29</sup> For texts of relevant statements see: 50th meeting: President (Mexico), p. 4; Australia, p. 5; USSR, pp. 4, 6-7; United Kingdom, p. 5.

<sup>30</sup> 64th meeting: pp. 266-267.

<sup>31</sup> 82nd meeting: pp. 558-559.

<sup>32</sup> 181st meeting: p. 1940.

<sup>33</sup> 268th meeting: p. 102.

<sup>34</sup> 272nd meeting: p. 175; 300th meeting: p. 20.

<sup>35</sup> S/1823/Corr.1, 506th meeting: pp. 3-5.

<sup>36</sup> For texts of relevant statements see:

505th meeting: China, pp. 18-19; USSR, pp. 17-18.

506th meeting: India, p. 8; United States, pp. 12-13.

<sup>37</sup> For the vote on whether the matter was procedural, see Cases 86 and 99.

<sup>38</sup> 520th meeting: p. 8.

<sup>39</sup> 49th meeting: p. 413.

United Nations, when the Council decided to vote first on the United States motion to postpone voting on the applications of Albania and the Mongolian People's Republic.<sup>40</sup>

*Case 34*

At the 206th meeting on 1 October 1947, in connexion with the admission of new Members to the United Nations, when the Council decided to take a separate vote upon each application for membership.<sup>41</sup>

*Case 35*

At the 444th meeting on 15 September 1949, in connexion with the admission of new Members to the United Nations, when the Council decided to take a separate vote upon each application for membership.<sup>42</sup>

*Case 36*

At the 497th meeting on 7 September 1950, in connexion with the complaint of bombing by air forces of the territory of China, when the Council decided to consider first a USSR draft resolution concerning the representation of the People's Republic of China.<sup>43</sup>

*Case 37*

At the 567th meeting on 6 December 1951, in connexion with the election of members of the International Court of Justice, when the Security Council decided to take a second ballot.<sup>44</sup>

**B. CASES IN WHICH THE VOTE INDICATED THE NON-PROCEDURAL CHARACTER OF THE MATTER**

**1. In connexion with matters considered by the Security Council under its responsibility for the maintenance of international peace and security**

*CASE 38*

At the 22nd meeting on 16 February 1946, in connexion with the Syrian and Lebanese question, the representative of the United States submitted a draft resolution<sup>45</sup> to express "confidence that the foreign troops in Syria and Lebanon will be withdrawn as soon as practicable, and that negotiations to that end will be undertaken by the parties without delay", and to request the parties to inform the Council of the results of the negotiations.

**Decision:** *The United States draft resolution was put to the vote at the 23rd meeting on 16 February 1946. Seven votes were cast in favour. The President (Australia) declared:*<sup>46</sup> "It is therefore carried."

The representative of the USSR stated:

"I think a mistake has been made. Paragraph 3 of Article 27 lays down that 'decisions of the Security Council on all other matters' (that includes this matter) 'shall be made by an affirmative vote of seven members including the concurring votes of the permanent members'. I did not vote in favour of this proposal, I voted against it."

<sup>40</sup> 57th meeting: p. 129.

<sup>41</sup> 206th meeting: p. 2475.

<sup>42</sup> 444th meeting: p. 25.

<sup>43</sup> 497th meeting: p. 29.

<sup>44</sup> 567th meeting: pp. 16-17.

<sup>45</sup> 22nd meeting: pp. 332, 333.

<sup>46</sup> For texts of relevant statements see:

23rd meeting: President (Australia), pp. 367, 368; France, p. 368; United Kingdom, p. 368; USSR, p. 367.

After the representatives of France and the United Kingdom had concurred in the interpretation of the vote offered by the representative of the USSR, the President declared it to be the consensus of opinion that "the motion was not carried".<sup>47</sup>

*CASE 39*

At the 45th and 47th meetings on 13 and 18 June 1946, in connexion with the Spanish question, the Chairman of the Sub-Committee on the Spanish question (Australia), on behalf of the members of the Sub-Committee, submitted a draft resolution:<sup>48</sup>

(a) To endorse the three-Power declaration of 4 March 1946;

(b) To transmit documentation to the General Assembly, together with the recommendation that, unless conditions of political freedom were established and the Franco régime withdrawn, the Assembly recommend that Member States sever their diplomatic relations with Franco Spain;

(c) To direct the Secretary-General to communicate the recommendations to all Members and others concerned.

The draft resolution was voted upon paragraph by paragraph.

**Decision: Paragraph (a)**

*Paragraph (a) was not adopted. There were 10 votes in favour and one against (the vote against being that of a permanent member).*<sup>49</sup>

Before paragraph (b) was put to the vote, the representative of the United Kingdom explained that he would vote in favour of this part of the draft resolution because his Government would not wish to go against the will of the overwhelming majority. He stated that he was casting a vote against the defiance of the majority rather than in support of the draft resolution.

*Paragraph (b)*

*Paragraph (b) was not adopted. There were 9 votes in favour, one against (the vote against being that of a permanent member), and one abstention.*<sup>50</sup>

*Paragraph (c)*

*Paragraph (c) was not adopted. There were 9 votes in favour, one against (the vote against being that of a permanent member), and one abstention.*<sup>51</sup>

*A vote was then taken on the draft resolution as a whole. There were 9 votes in favour, one against (the vote against being that of a permanent member) and one abstention.*<sup>52</sup>

The President (Mexico) declared:

"The three recommendations of the Sub-Committee are adopted but, as one of the permanent members has cast a negative vote, the resolution is not carried."

The representative of the USSR stated:

"To say that the resolution is adopted and cannot be carried is incorrect. It is not adopted."

<sup>48</sup> 23rd meeting: p. 368.

<sup>49</sup> 45th meeting: p. 326. See chapter X, Case 22.

<sup>50</sup> 47th meeting: p. 378.

<sup>51</sup> 47th meeting: p. 379.

<sup>52</sup> 47th meeting: p. 379.

<sup>53</sup> 47th meeting: p. 379.

The President (Mexico) replied:<sup>53</sup>

"I do not want to discuss the matter... The majority of the Council adopted the resolution; it cannot be carried, however, on account of the USSR veto."

#### CASE 40

At the 49th meeting on 26 June 1946, in connexion with the Spanish question, the representatives of Australia and the United Kingdom, for the majority of a drafting committee, submitted a draft resolution the preamble of which recalled the conclusions of the Subcommittee on the Spanish question, and which sought to keep the situation in Spain under continuous observation and to maintain it on the list of matters of which the Council was seized without prejudice to the rights of the General Assembly under the Charter.<sup>54</sup> The draft resolution was voted upon as an amendment to the Polish draft resolution which was pending.

**Decision:** *There were 9 votes in favour and 2 against (one vote against being that of a permanent member). The President (Mexico) declared that the resolution had been adopted.*<sup>55</sup>

The representative of the USSR objected to the President's interpretation of the vote, contending that the amendment combined procedural and non-procedural matters. While agreeing to a separate procedural vote on the question of retaining the item on the agenda, the representative of the USSR observed:

"... first, the statement that the situation in Spain is one that is merely likely to endanger peace in the future... is of a non-procedural character..."

"Secondly, the beginning of the last paragraph contains the statement that the retention of the Spanish question on the agenda of the Security Council does not affect the rights of the General Assembly to examine this question... this statement is interpreted to mean that the General Assembly may examine the Spanish question and take action whether or not that question is sent to the General Assembly by the Security Council..."

The representative of Australia supported the interpretation of the President. He stated:<sup>56</sup>

"All the preliminary statements leading up to the operative part of the resolution are merely recitals, and then comes the operative part which keeps the situation in Spain on the list of matters before the Council. There can be no better illustration of a procedural question."

At the request of the representatives of Australia and the USSR, the Council voted upon the nature of the matter and decided that the draft resolution was non-procedural.<sup>57</sup> The draft resolution submitted by the representatives of Australia and the United Kingdom therefore was not adopted (one vote against being that of a permanent member).

#### CASE 41

**Decision** of 26 June 1946 (49th meeting): *Rejection of draft resolution submitted by the representative of Australia in connexion with the Spanish question.*<sup>58</sup>

#### CASE 42

At the 70th meeting on 20 September 1946, in connexion with the Ukrainian complaint against Greece, before the draft resolution submitted by the representative of the United States, to establish a commission of investigation under Article 34 of the Charter, was put to the vote, the President (USSR) stated that the vote would be in accordance with Article 27 (3). The representative of France observed:

"This motion, the intention of which is merely to establish a committee of investigation, is not a motion of substance, but rather of procedure."

"... this motion comes under the provisions of Article 29 of the Charter which... appears in Chapter V 'Security Council' under the heading 'Procedures'."

The President, speaking as the representative of the USSR, stated:

"... so far as the representatives of France, China, the United Kingdom, the United States and the Union of Soviet Socialist Republics are concerned, they assumed as far back as the San Francisco Conference a definite obligation to regard such questions, including all proposals relating to investigation, as questions of substance and not of procedure."

The representative of the United States agreed with the President's interpretation. The representative of Australia contended:

"... that document [San Francisco Statement on Voting Procedure] has no binding force on this Council."

"But even if we do look at that document, we find in its second paragraph, which deals with the items which may be covered by procedural vote, the words: '... establish such bodies or agencies as it may deem necessary for the performance of its functions'."

The representative of France did not insist that a vote be taken on the question whether the matter was procedural.<sup>59</sup>

**Decision:** *The United States draft resolution was not adopted. There were 8 votes in favour, 2 against (one vote against being that of a permanent member) and one abstention.*<sup>60</sup>

#### CASE 43

**Decision** of 25 March 1947 (122nd meeting): *Rejection of draft resolution submitted by the representative of the United Kingdom in connexion with the Corfu Channel question.*<sup>61</sup>

<sup>53</sup> 49th meeting: pp. 444, 446. For texts of relevant statements see:

49th meeting: President (Mexico), p. 438; Australia, p. 438; USSR, pp. 445-446. See also chapter VIII, p. 307.

<sup>54</sup> For texts of relevant statements see:

70th meeting: President (USSR), p. 410; Australia, p. 411; France, p. 410; United States, pp. 410-411. See chapter X, Case 10.

<sup>55</sup> 70th meeting: p. 412. At the 18th meeting on 13 February 1946, the President (Australia) considered that Article 27 (3) applied to a draft resolution to set up a commission of inquiry in connexion with the Indonesian question (I). 18th meeting: p. 258. See also Cases 85 and 118.

<sup>56</sup> 122nd meeting: pp. 608-609. See chapter X, Case 23.

<sup>57</sup> For texts of relevant statements see:

47th meeting: President (Mexico), pp. 379, 380; United Kingdom, p. 379; USSR, p. 380.

<sup>58</sup> 49th meeting: p. 401.

<sup>59</sup> 49th meeting: p. 413.

<sup>60</sup> For texts of relevant statements see:

49th meeting: President (Mexico), p. 414; Australia, pp. 415-416; France, p. 422; Netherlands, pp. 414-415; USSR, pp. 413-414, 417, 423-424.

<sup>61</sup> For the vote on whether the matter was procedural, see Cases 82 and 94.

## CASE 44

**Decision** of 29 July 1947 (170th meeting): *Rejection of draft resolution submitted by the representative of the United States in connexion with the Greek frontier incidents question.*<sup>62</sup>

## CASE 45

**Decision** of 19 August 1947 (188th meeting): *Rejection of draft resolution submitted by the representative of Australia in connexion with the Greek frontier incidents question.*<sup>63</sup>

## CASE 46

**Decision** of 19 August 1947 (188th meeting): *Rejection of draft resolution submitted by the representative of the United States in connexion with the Greek frontier incidents question.*<sup>64</sup>

## CASE 47

**Decision** of 25 August 1947 (194th meeting): *Rejection of USSR amendment to joint draft resolution submitted by the representatives of Australia and China in connexion with the Indonesian question (II).*<sup>65</sup>

## CASE 48

At the 202nd meeting on 15 September 1947, in connexion with the Greek frontier incidents question, the representative of the United States submitted a draft resolution to request the General Assembly, pursuant to Article 12, to consider and make recommendations with regard to the dispute.<sup>66</sup> The President (USSR) declared that the vote would be taken in accordance with Article 27 (3). The representative of the United States challenged the ruling and stated:

"It seems to me that the resolution is clearly procedural. All the Council is asked to do here is to request another organ of the United Nations to consider and take action in a dispute which has been brought to the United Nations. There is no colour of substance to this resolution. It relates to the internal procedure of the United Nations and to relations between its various organs. In this resolution the Council is not attempting in any way to indicate a view with regard to the merits of the dispute. In the view of my delegation it cannot be considered as a matter of substance to be covered by paragraph 3 of Article 27 of the Charter."

The representative of Poland contended that matters of procedure were<sup>67</sup>

"... matters of internal procedure of the Council. Here, however, we have a proposal that the Council ask another organ of the United Nations for an opinion, although it is really outside of the Council, and we therefore cannot consider this a matter of internal procedure. In addition, I think the importance of the proposal has also to be taken into consideration."

<sup>62</sup> 170th meeting: p. 1612. See chapter X, Cases 13 and 15.

<sup>63</sup> 188th meeting: pp. 2093-2094. See chapter XI, Case 3.

<sup>64</sup> S/486, 188th meeting: pp. 2098-2099. See chapter XI, Case 3.

<sup>65</sup> 194th meeting: pp. 2199-2200. See chapter V, Case 19.

<sup>66</sup> S/555, 202nd meeting: p. 2369.

<sup>67</sup> For texts of relevant statements see:

202nd meeting: President (USSR), pp. 2390, 2391; Australia, pp. 2372-2373, 2392; Poland, pp. 2389, 2395; United States, pp. 2368-2369, 2391.

**Decision:** *There were 9 votes in favour, and 2 against (one vote against being that of a permanent member). After the President (USSR) had declared that the draft resolution was not adopted, the proposal that the matter was procedural was put to the vote and rejected.<sup>68</sup> The United States draft resolution was not adopted.*

## CASE 49

At the 303rd meeting on 24 May 1948, in connexion with the Czechoslovak question, the draft resolution submitted by the representative of Chile was voted upon by the Security Council at the request of the representative of Argentina in accordance with rule 38 of the rules of procedure. The draft resolution proposed the appointment of a sub-committee to receive or hear evidence, statements and testimonies on the question, specifying in the preamble that such action should be without prejudice to future decisions taken in accordance with Article 34.<sup>69</sup>

The question whether the draft resolution was a procedural matter was discussed at the 288th meeting on 29 April 1948, 300th meeting on 21 May 1948 and 305th meeting on 26 May 1948. The representatives of Argentina, Canada, Syria and the United States were of the opinion that the appointment of a sub-committee came under Article 29 of Chapter V, which was entitled "Procedure". The representatives of the Ukrainian SSR and the USSR contended that the draft resolution was a non-procedural matter inasmuch as it proposed an investigation. The representative of the USSR maintained that his view was in accordance with paragraph 4 of part I of the San Francisco Statement on Voting Procedure, according to which a decision to investigate requires the concurring votes of the permanent members. The representatives of the United Kingdom and the United States considered that the draft resolution fell under paragraph 2 of part I of the Statement, which states that a procedural vote will govern the decision to establish such bodies or agencies as it may deem necessary for the performance of its functions. The proposal that the draft resolution was procedural was put to the vote.

After the vote on the preliminary question had been taken,<sup>70</sup> the President (France), in announcing that the matter was non-procedural, gave the following interpretation of the question:<sup>71</sup>

"With regard to the other parts of the Declaration [*San Francisco Statement on Voting Procedure*] which could be applied to the case now before the Council, paragraph 2 of part I states that a procedural vote will govern the establishment of 'such bodies or agencies as it'—that is, the Council—'may deem necessary for the performance of its functions'. Paragraph 4, part I, on the other hand, provides that certain decisions, which in themselves might be

<sup>68</sup> 202nd meeting: p. 2399. For the vote on whether the matter was procedural, see Cases 84 and 97.

<sup>69</sup> 303rd meeting: pp. 28-29.

<sup>70</sup> For the vote on whether the matter was procedural, see Cases 85 and 98. See also chapter V, Case 67.

<sup>71</sup> For texts of relevant statements see:

288th meeting: Argentina, pp. 25-27; Canada, p. 21; Syria, pp. 22-23; USSR, pp. 19, 21-22; United States, pp. 19-20.

300th meeting: Canada, pp. 39-40; USSR, pp. 41-42; United Kingdom, pp. 38-39.

303rd meeting: President (France), p. 20; Syria, p. 4; Ukrainian SSR, pp. 2-3; USSR, pp. 7-8; United States, pp. 4-5.

305th meeting: United Kingdom, p. 33.

procedural, must be considered substantive because of the 'major political consequences' which they might have, and it is further specified that 'This chain of events begins'—for instance—'when the Council decides to make an investigation...' I had wondered whether, in this paragraph, the word 'investigation' could not be interpreted as applying to the sending of a commission to conduct an inquiry on the spot, and whether, therefore, a distinction might not be drawn between that and an investigation to be carried out directly by a subsidiary organ of the Security Council.

"However, if we refer to paragraph 5 of part I of the Declaration, we find the following: 'To illustrate: in ordering an investigation, the Council has to consider whether the investigation—which may involve calling for reports, hearing witnesses, dispatching a commission of inquiry, or other means—might not further aggravate the situation.'

"In those circumstances, I consider that the word 'investigation', which appears in the first line of that paragraph, is used in its widest meaning, and I think it applies to the situation now before us."

**Decision:** *The Chilean draft resolution was not adopted. There were 9 votes in favour and 2 against (one vote against being that of a permanent member).*<sup>72</sup>

#### CASE 50

**Decision** of 25 October 1948 (372nd meeting): *Rejection of joint draft resolution submitted by the representatives of Argentina, Belgium, Canada, China, Colombia and Syria in connexion with the identic notifications dated 29 September 1948.*<sup>73</sup>

#### CASE 51

At the 456th meeting on 13 December 1949, in connexion with the Indonesian question (II), a draft resolution submitted by the representative of Canada was put to the vote in two parts:<sup>74</sup>

(i) The first part noted the report of UNCI regarding the Round Table Conference at The Hague; congratulated the parties; welcomed the forthcoming establishment of the Republic of the United States of Indonesia and commended the Commission.

**Decision:** *There were 9 votes in favour and 2 against (one vote against being that of a permanent member).*<sup>75</sup>

The President (Canada) declared that, in view of Article 27, this part of the draft resolution was not adopted, since one of the permanent members had voted against. Although the representative of Argentina disagreed with the President's statement, contending that the exchange of congratulations was a procedural matter, the President's ruling was not challenged.<sup>76</sup>

(ii) The second part of the draft resolution requested the Commission to continue to discharge its responsibilities; observe and assist in the implementation of the agreements; and report to the Security Council.

**Decision:** *The second part was not adopted. There were 8 votes in favour, 2 against (one vote against being that of a permanent member) and 1 abstention.*<sup>77</sup>

#### CASE 52

**Decision** of 6 September 1950 (496th meeting): *Rejection of draft resolution submitted by the representative of the United States in connexion with the complaint of aggression upon the Republic of Korea.*<sup>78</sup>

#### CASE 53

**Decision** of 12 September 1950 (501st meeting): *Rejection of draft resolution submitted by the representative of the United States in connexion with the complaint of bombing by air forces of the territory of China.*<sup>79</sup>

#### CASE 54

**Decision** of 30 November 1950 (530th meeting): *Rejection of draft resolution submitted by the representatives of Cuba, Ecuador, France, Norway, United Kingdom and United States in connexion with the complaint of aggression upon the Republic of Korea.*<sup>80</sup>

### 2. In connexion with other matters considered by the Security Council:

#### a. In connexion with admission of new Members to the United Nations

#### CASE 55

At the 55th meeting on 28 August 1946, in connexion with the applications of Albania and the Mongolian People's Republic for admission to the United Nations, the representative of the United States submitted a motion to postpone voting on those applications until the next occasion on which applications would be considered.

At the 57th meeting on 29 August 1946, the representative of the USSR contended that the United States motion was non-procedural inasmuch as it was a decision not to admit the applicant at that time. At the request of the President (Poland), the Secretary-General stated his opinion. He observed that, at the 18th meeting on 13 February 1946,<sup>81</sup> a vote on a proposal to retain the application of Albania on the agenda, while deferring disposition "pending further study until the Security Council convenes at the temporary headquarters", had been considered a procedural matter. The President stated:

"I do not doubt that the question is a question of procedure..."

"..."

"However, I would like to put one question to the representative of the United States. Though there is a clear-cut procedural difference between a vote against admission and a vote for postponement, the practical facts, with the exception of the small procedural details in the case where a new application has been presented are the same... In view

<sup>72</sup> 456th meeting: p. 34.

<sup>73</sup> S/1653, 479th meeting: pp. 7-8; 496th meeting: pp. 18-19. See chapter VIII, p. 357.

<sup>74</sup> S/1752, 501st meeting: pp. 4, 28. See chapter VIII, p. 359.

<sup>75</sup> S/1894, 530th meeting: pp. 22-25. See chapter VIII, p. 357.

<sup>76</sup> 18th meeting: pp. 268, 270. For the deferment of consideration of items on the agenda as a procedural matter, see Cases 13-15.

<sup>77</sup> 303rd meeting: pp. 28-29.

<sup>78</sup> S/1048, 370th meeting: pp. 5-6; 372nd meeting: p. 14. See chapter VIII, p. 354.

<sup>79</sup> S/1431, O.R., 4th year, Suppl. for Dec. 1949, pp. 13-14.

<sup>80</sup> 456th meeting: pp. 33-34.

<sup>81</sup> 456th meeting: p. 34.



of this, I would like to ask the representative for the United States if he wishes to maintain his request for a postponement."

The representative of the United States declined to withdraw his motion. He stated:

"I think there is a very great difference between simply postponing action on something that you hope to be able to act favourably on, and a completely negative action which requires the applicant to begin all over again. A negative vote will mean that all our proceedings on Albania are finished, whereas postponing the vote requires no action but a procedural vote of this Council, and I am not willing to withdraw."

Referring to the statement of the Secretary-General, the representative of the USSR stated:

"... we are now dealing not with the question of postponing consideration of Albania's application, but with the postponement of Albania's admission to the United Nations Organization."

The representative of China also contended that it was non-procedural and observed:<sup>82</sup>

"Of course, there may be other cases; such as, for instance, where it is proposed to postpone taking a vote for twenty-four hours. In such a case, the Council may agree that this is procedural. But this is postponing action for a year; the time element has something to do with it."

**Decision:** *The Council voted first upon the preliminary question and decided that the United States motion was a non-procedural matter.*<sup>83</sup> *The United States motion to postpone voting on Albania's application was rejected, having failed to obtain the affirmative votes of 7 members.*<sup>84</sup> *The representative of the United States then withdrew his motion to postpone voting on the application of the Mongolian People's Republic.*<sup>85</sup>

#### CASES 56-58

At the 56th meeting on 29 August 1946, in connexion with the applications of Albania, Ireland, the Mongolian People's Republic, Portugal, and Transjordan, the representative of China observed that members of the Security Council were apparently assuming that Article 27 (3) applied to the admission of new Members. He stated:<sup>86</sup>

"I do not know whether this particular Article really had this problem in mind when it was drafted."

The representative of the USSR replied:

"The question is perfectly clear and the Charter of the United Nations itself gives us the answer to it."

The draft resolutions to recommend Albania and the Mongolian People's Republic for membership were put to the vote at the 57th meeting on 29 August 1946 and rejected, having failed to obtain the affirmative

votes of 7 members. After each vote, however, the President (Poland) observed:<sup>87</sup>

"The motion is not carried since there are two permanent members among those who voted against."

#### Case 56

*The draft resolution to recommend Transjordan for membership was not adopted. There were 8 votes in favour, 2 against (one vote against being that of a permanent member) and 1 abstention.*<sup>88</sup>

#### Case 57

*The draft resolution to recommend Ireland for membership was not adopted. There were 9 votes in favour, 1 against (the vote against being that of a permanent member) and 1 abstention.*<sup>89</sup>

#### Case 58

*The draft resolution to recommend Portugal for membership was not adopted. There were 8 votes in favour, 2 against (one vote against being that of a permanent member) and 1 abstention.*<sup>90</sup>

#### CASE 59

**Decision** of 18 August 1947 (186th meeting) regarding the application of Transjordan.<sup>91</sup>

#### CASE 60

**Decision** of 18 August 1947 (186th meeting) regarding the application of Ireland.<sup>92</sup>

#### CASE 61

**Decision** of 18 August 1947 (186th meeting) regarding the application of Portugal.<sup>93</sup>

#### CASE 62

**Decision** of 21 August 1947 (190th meeting) regarding the application of Italy.<sup>94</sup>

#### CASE 63

**Decision** of 21 August 1947 (190th meeting) regarding the application of Austria.<sup>95</sup>

#### CASE 64

**Decision** of 1 October 1947 (206th meeting) regarding the application of Italy.<sup>96</sup>

#### CASE 65

**Decision** of 1 October 1947 (206th meeting) regarding the application of Finland.<sup>97</sup>

#### CASE 66

At the 279th and 280th meetings on 10 April 1948, the Security Council reconsidered the applications of Albania, Austria, Bulgaria, Finland, Hungary, Ireland, Italy, the Mongolian People's Republic, Portugal,

<sup>82</sup> 57th meeting: pp. 136, 138.

<sup>83</sup> 57th meeting: p. 139.

<sup>84</sup> 57th meeting: p. 139.

<sup>85</sup> 57th meeting: p. 139.

<sup>86</sup> 186th meeting: p. 2041.

<sup>87</sup> 186th meeting: p. 2041.

<sup>88</sup> 186th meeting: p. 2045.

<sup>89</sup> 190th meeting: p. 2127.

<sup>90</sup> 190th meeting: pp. 2130-2131. For texts of relevant statements see: 190th meeting: USSR, pp. 2134-2135; United States, pp. 2133-2134.

<sup>91</sup> 206th meeting: p. 2476.

<sup>92</sup> 206th meeting: p. 2476.

<sup>82</sup> For texts of relevant statements see:

55th meeting: United States, pp. 55, 68.

57th meeting: President (Poland), pp. 127, 132; China, p. 131; USSR, pp. 126, 128-129, 130-131; United States, pp. 127-128; Secretary-General, pp. 126-127.

<sup>83</sup> For the vote on whether the matter was procedural, see Cases 83 and 95.

<sup>84</sup> 57th meeting: pp. 135-136.

<sup>85</sup> 57th meeting: p. 137.

<sup>86</sup> For texts of relevant statements see:

56th meeting: Australia, p. 94; China, p. 95; USSR, p. 98.



Romania and Transjordan. Taking the applications in the order in which they had been resubmitted, the President (Colombia) opened discussion on the application of Italy. In the course of the discussion, the representative of Argentina stated:<sup>98</sup>

"... my delegation does not consider paragraph 3 of Article 27 of the Charter as applicable to votes on the admission of new Members."

**Decision:** *In the absence of a draft resolution, the President asked the Council to vote upon "the question of recommending to the General Assembly the admission of Italy". There were 9 votes in favour and 2 against (one vote against being that of a permanent member).*

The President stated:<sup>99</sup>

"As one of the permanent members has voted against the resolution, it is not carried."

#### CASE 67

At the 351st meeting on 18 August 1948, the representative of China proposed that the Security Council recommend to the General Assembly the admission of Ceylon to membership in the United Nations.

**Decision:** *The Chinese proposal was not adopted. There were 9 votes in favour, and 2 against (one vote against being that of a permanent member).*<sup>100</sup>

After the vote was taken, the representative of Argentina contended that "paragraph 3 of Article 27 is not applicable".<sup>101</sup> The representative of China considered the "veto to be arbitrary and not justified by the qualifications for membership stipulated by the Charter." The President, speaking as the representative of the USSR, rejected the observation of the representative of China "as unfounded and in contradiction with the United Nations Charter".

#### CASE 68

**Decision of 15 December 1948 (384th meeting) regarding the application of Ceylon.**<sup>102</sup>

#### CASE 69

At the 423rd meeting on 8 April 1949, the Security Council voted upon the draft resolution submitted by the representative of China to recommend the admission of the Republic of Korea. In the course of discussion, the representative of Argentina stated:<sup>103</sup>

"... the Argentine delegation will continue to consider that the application for admission of a new Member which receives any seven votes in the Security Council has been approved."

**Decision:** *The Chinese draft resolution was not adopted. There were 9 votes in favour and 2 against (one vote against being that of a permanent member).*<sup>104</sup>

<sup>98</sup> 279th meeting: p. 8.

<sup>99</sup> 279th meeting: pp. 15-16. The other applications were not put to the vote.

<sup>100</sup> 351st meeting: p. 22.

<sup>101</sup> For texts of relevant statements see:

351st meeting: President (USSR), p. 23; Argentina, p. 22; China, p. 23.

<sup>102</sup> 384th meeting: p. 39.

<sup>103</sup> 423rd meeting: p. 14.

<sup>104</sup> S/1305, 423rd meeting: p. 15.

#### CASES 70-76

At the 427th to 431st meetings and 440th to 443rd meetings between 16 June and 13 September 1949, the application of Article 27 to the admission of new Members to the United Nations was discussed in connexion with the recommendations of the General Assembly resolution 197 (III) of 8 December 1948 to the effect that the applications of Austria, Finland, Ireland, Italy, Portugal and Transjordan be reconsidered, and in connexion with renewals of the applications of Albania, Bulgaria, Hungary, Mongolian People's Republic and Romania.

At the 427th meeting, the representative of Argentina, in submitting seven draft resolutions<sup>106</sup> to recommend to the General Assembly the admission of Austria, Ceylon, Finland, Ireland, Italy, Portugal and Transjordan, contended:

"... The application of Article 27 is restricted; it is limited to the Council's specific functions and it cannot be extended to matters which the Council is not competent to settle.

"...

"Once the question has been put correctly, there is no doubt that the matter is not one of substance and that therefore paragraph 2 should apply. But the truth is that Article 27 should only apply to matters which fall under the exclusive jurisdiction of the Security Council. Since this case does not come under the exclusive jurisdiction of the Security Council, the decision should be taken by the simple majority of the members present and voting, or at most by an absolute majority of the members, since the Charter does not give a ruling on the matter.

"...

"In short, the recommendation which the Security Council must make in the case of admission of new Members is not a question of substance nor one of the procedural matters which fall within the specific competence of the Council; but, like other questions of procedure, it must obtain seven votes for the recommendation to be favourable."

At the 428th meeting the representative of the United States stated:

"... we have no intention in the future of permitting our vote to prevent the admission to membership of any applicant receiving seven affirmative votes in this Council.

"...

"[That] does not mean that the United States deems that the Council or its members should ignore the requirements of Article 4.

"...

"I agree with the President that, if the present views of the members of the Security Council indicate that there will be no change in the results of voting on these twelve applications, no useful purpose would be served by bringing the present matter to a vote."

The representative of the USSR, having referred to the seven draft resolutions submitted by the representative of Argentina, asked:

"Why... has he brought up these issues all over again? Could it be in order to provoke the applica-

<sup>106</sup> S/1331-S/1337, 443rd meeting: pp. 28-30.

tion of the so-called 'veto' in the Security Council, thus replenishing his arsenal for renewed attacks against one of the fundamental principles of the United Nations as expressed in the rule of unanimity of the permanent members of the Security Council in decisions on all important questions?"

The representative of the USSR submitted a draft resolution to recommend the admission of all twelve applicants.<sup>108</sup>

At the 429th meeting, on 24 June 1949, the representative of the United Kingdom, referring to those applications which his delegation did not support, stated:

"...even though their admission is not supported by us, it would not be blocked by the exercise of our privileged vote..."

At the 430th meeting the representative of the USSR recalled the statements of the representatives of the United Kingdom and the United States regarding their intention not to use their vote to prevent a recommendation for membership which received seven affirmative votes:

"Can there be any question of generosity when everyone knows that the United States and the United Kingdom, commanding a safe majority in the Security Council, can bring about the rejection of any proposal? To do that, they do not openly have to resort to the negative vote, as it is sufficient for any five members of the Security Council to abstain from voting to block a decision on any given question."

At the end of the 431st meeting, the President (Ukrainian SSR) announced:

"As no agreement has been reached on the question of the admission of twelve States to membership in the United Nations, this question will not be put to a vote in the Security Council."

At the 441st meeting, the representative of Argentina requested that the draft resolutions submitted by his delegation be put to the vote. At the 443rd meeting, after the representative of the USSR had recalled that previous Presidents (Norway and the Ukrainian SSR) and the representatives of Egypt, France, the United Kingdom and the United States had stated that no useful purpose would be served by taking a vote since no change of attitude had taken place, the draft resolutions to recommend the admission of Austria, Ceylon, Finland, Ireland, Italy, Portugal and Transjordan were put to the vote separately.<sup>107</sup>

#### Case 70

*The draft resolution to recommend the admission of Portugal was not adopted. There were 9 votes in*

<sup>108</sup> S/1340/Rev. 2, 443rd meeting: pp. 33-34.

<sup>109</sup> For texts of relevant statements see:

427th meeting: President (Norway), p. 5; Argentina, pp. 24-25.

428th meeting: China, p. 2; France, p. 13; Ukrainian SSR, pp. 15-16; USSR, p. 9; United States, pp. 5-7.

429th meeting: President (Norway), pp. 18-19; United Kingdom, pp. 3-4.

430th meeting: USSR, p. 8.

431st meeting: President (Ukrainian SSR), p. 12.

441st meeting: Argentina, pp. 17-18; China, pp. 16-17; Egypt, p. 17.

442nd meeting: United States, p. 7.

443rd meeting: Argentina, pp. 29-30.

For consideration of abstention in connexion with the "concealed veto", see Case 189.

*favour, and 2 against (one vote against being that of a permanent member).*<sup>108</sup>

After this vote had been taken, the representative of Argentina stated:

"I wish to place on record . . . that four permanent members voted in favour [of the application of Portugal] exactly as in the vote on the application for admission of the State of Israel which was submitted for consideration by the General Assembly.

"I know that it will be objected that while in the one case there was an abstention—that of the United Kingdom—in the other case there is an opposing vote by the Soviet Union.

"The Charter, however, does not distinguish between abstentions and negative votes. It says simply that the concurring votes of the five permanent members are necessary. In the voting on Portugal there were only four, as in the voting on Israel."

#### Case 71

*The draft resolution to recommend the admission of Transjordan was not adopted. There were 9 votes in favour, and 2 against (one vote against being that of a permanent member).*<sup>109</sup>

#### Case 72

*The draft resolution to recommend the admission of Italy was not adopted. There were 9 votes in favour, and 2 against (one vote against being that of a permanent member).*<sup>110</sup>

#### Case 73

*The draft resolution to recommend the admission of Finland was not adopted. There were 9 votes in favour, and 2 against (one vote against being that of a permanent member).*<sup>111</sup>

#### Case 74

*The draft resolution to recommend the admission of Ireland was not adopted. There were 9 votes in favour, and 2 against (one vote against being that of a permanent member).*<sup>112</sup>

#### Case 75

*The draft resolution to recommend the admission of Austria was not adopted. There were 9 votes in favour, and 2 against (one vote against being that of a permanent member).*<sup>113</sup>

#### Case 76

*The draft resolution to recommend the admission of Ceylon was not adopted. There were 9 votes in favour, and 2 against (one vote against being that of a permanent member).*<sup>114</sup>

#### CASE 77

At the 439th meeting on 7 September 1949, the Security Council voted upon the draft resolution submitted by the representative of China to recommend

<sup>108</sup> 443rd meeting: pp. 28-29. See also Case 187.

<sup>109</sup> 443rd meeting: p. 30.

<sup>110</sup> 443rd meeting: pp. 31-32.

<sup>111</sup> 433rd meeting: p. 32.

<sup>112</sup> 433rd meeting: p. 32.

<sup>113</sup> 433rd meeting: p. 33.

<sup>114</sup> 443rd meeting: p. 33.

the admission of Nepal to membership in the United Nations. The representative of the USSR announced that his delegation would vote against the admission of Nepal because it would be unfair to discriminate against the other pending applications.<sup>115</sup> The President, speaking as the representative of the United Kingdom, and the representative of the United States repeated their assurances that they would not permit their votes to prevent the admission to membership of any applicant receiving seven affirmative votes in the Council.

**Decision:** *The Chinese draft resolution was not adopted. There were 9 votes in favour and 2 against (one vote against being that of a permanent member).*<sup>116</sup>

b. In connexion with reports of the Atomic Energy Commission and the Commission for Conventional Armaments

CASE 78

**Decision** of 22 June 1948 (325th meeting): *Rejection of draft resolution submitted by the representative of the United States in connexion with the reports of the Atomic Energy Commission.*<sup>117</sup>

CASE 79

**Decision** of 11 October 1949 (450th meeting): *Rejection of draft resolution submitted by the representative of the United States in connexion with the report of the Commission for Conventional Armaments.*<sup>118</sup>

CASE 80

At the 452nd meeting on 18 October 1949, in connexion with the working paper relating to the future work of the Commission for Conventional Armaments,<sup>119</sup> a draft resolution was submitted by the representative of France, to approve the working paper adopted by the Commission for Conventional Armaments as the basis for a plan for the collection and verification of information; and to transmit the documentation to the General Assembly.<sup>120</sup>

Before the vote was taken the representative of the USSR stated:

"Under the established procedure, reports of the Commission for Conventional Armaments are sub-

<sup>115</sup> For texts of relevant statements see: 439th meeting: President (United Kingdom), p. 12; USSR, pp. 10-11; United States, p. 13.

<sup>116</sup> S/1385, 439th meeting: pp. 8, 16.

<sup>117</sup> S/836, 325th meeting: pp. 11-12. See chapter IX, p. 367.

<sup>118</sup> S/1398, 450th meeting: pp. 2-3, 14. See chapter IX, p. 370.

<sup>119</sup> S/1372, O.R., 4th year, Suppl. for Sept., Oct., Nov. and Dec. 1949, pp. 2-8.

<sup>120</sup> S/1399/Rev.1, O.R., 4th year, Suppl. for Sept., Oct., Nov. and Dec. 1949, pp. 12-13.

mitted to the General Assembly for information only, as are the reports of the Atomic Energy Commission. The fact that a draft resolution is here submitted to which the USSR delegation cannot agree, against which it voted in the Commission for Conventional Armaments, and against which it will vote again in the Security Council, gives reason to believe that this text has been presented to the Security Council only in order to provoke a veto on the part of the delegation of the Soviet Union."

The President (United States) offered to try to reach unanimous agreement on the procedure of merely transmitting the documents to the General Assembly, if the imputation of bad faith were deleted from the statement by the representative of the USSR. The response of the representative of the USSR did not satisfy the President, whereupon the French draft resolution was put to the vote.<sup>121</sup>

**Decision:** *The French draft resolution was not adopted. There were 9 votes in favour, and 2 against (one vote against being that of a permanent member).*<sup>122</sup>

CASE 81

At the 452nd meeting on 18 October 1949, in connexion with the working paper relating to the future work of the Commission for Conventional Armaments,<sup>123</sup> a second draft resolution was submitted by the representative of France, to recognize the principles concerning the collection and verification of information on conventional armaments, and to recall that the submission of full information on atomic material and facilities was an integral part of the United Nations plan of control and prohibition approved by the General Assembly on 4 November 1948.<sup>124</sup>

Before the draft resolution was put to the vote, the representative of the USSR declared that there was no real difference between the first and second French draft resolutions.<sup>125</sup>

**Decision:** *The French draft resolution was not adopted. There were 8 votes in favour, 2 against (one vote against being that of a permanent member) and 1 abstention.*<sup>126</sup>

<sup>121</sup> For texts of relevant statements see: 452nd meeting: President (United States), p. 21; USSR, pp. 20-21.

<sup>122</sup> 452nd meeting: pp. 21-22.

<sup>123</sup> S/1372, O.R., 4th year, Suppl. for Sept., Oct., Nov. and Dec. 1949, pp. 2-8.

<sup>124</sup> S/1408/Rev.1.

<sup>125</sup> 452nd meeting: pp. 22-23. For consideration of the first French draft resolution, see Case 80.

<sup>126</sup> 452nd meeting: p. 23.

Part II

PROCEEDINGS OF THE SECURITY COUNCIL REGARDING VOTING UPON THE QUESTION WHETHER THE MATTER WAS PROCEDURAL WITHIN THE MEANING OF ARTICLE 27 (2) OF THE CHARTER

NOTE

1. On certain occasions the Security Council has found it necessary to decide by vote the question whether or not the matter under consideration was

procedural within the meaning of Article 27 (2). This question has come to be termed, after the language used in the San Francisco Statement on Voting Procedure, "the preliminary question". Part II is con-

cerned with the proceedings of the Council in connexion with decisions on this question, and with the questions of procedure involved.

2. In section A is given an outline of the proceedings on each of the five occasions when a vote was taken on this "preliminary question". The outline for each case indicates the sequence in which the various steps were taken by the Council, with a view to reaching the final decision on whether or not the matter under consideration was procedural. The cases are presented with a view to indicating in summary form the varying procedures adopted by the Council in arriving at the decision.

3. In section B, three special problems of procedure, which are common to these five cases, are taken up separately. This supplementary information, which includes for each case the discussion on the procedure in question, forms, with the information contained in the outlines, complete case histories for these five instances. These three problems of procedure have also been discussed on four occasions when the question of voting on "the preliminary question" has been raised, but when no such vote has been taken.<sup>1</sup> The discussion on these occasions has also been included in these subsidiary sections.

4. The first point of procedure concerns the order in which the main proposal, and the question whether the main proposal is a procedural matter, should be put to the vote. The Security Council has on three occasions voted first on the main proposal, and thereafter on the question whether the main proposal was procedural (Cases 89, 91 and 93); on two occasions the Council has voted in the reverse order (Cases 90 and 92). The view that the preliminary question should be decided first has been advanced on the grounds, not only that the very phrase used in the Statement of the Sponsoring Powers so indicates, but also that a vote cannot usefully be taken on the main proposal without knowing whether it constitutes a matter of procedure or not. The contrary view has rested mainly on the contention that the necessity of deciding the preliminary question arises only when a proposal has received seven or more affirmative votes together with the negative vote of one or more permanent members; the necessity of deciding the preliminary question cannot therefore be known in advance. These considerations were extensively discussed at the 202nd meeting, on which occasion the Security Council decided by vote, contrary to the ruling of the President, to vote first on the main resolution (Case 91).

5. The second special problem of procedure concerns the question whether the decision that the matter is procedural is itself a procedural decision to be made by the affirmative vote of any seven members; or whether it is a non-procedural decision which requires, for its adoption, the concurring votes of the five permanent members—whether, in short, the preliminary question is subject to a vote in accordance with Article 27 (2), or Article 27 (3). In three of the five cases in which votes were taken to determine whether a matter was procedural, the proposal to consider the matter procedural was not adopted, notwithstanding the affirmative votes of 7 members, because of the negative vote of a permanent member (Cases 94, 97 and 98). In the fourth case, the proposal was rejected,

<sup>1</sup> See Cases 105, 116, 117 and 118.

having failed to obtain the affirmative votes of seven members. In this case, however, the President ruled that the concurring votes of the permanent members would have been necessary for the adoption of the proposal (Case 95). In the fifth case, the proposal to consider the matter procedural was declared adopted by the President, notwithstanding the negative vote of a permanent member (Case 99).<sup>2</sup>

6. Discussion on this question has been accompanied by the invocation of the San Francisco Statement on Voting Procedure<sup>3</sup> as the basis for classifying as non-procedural the decision whether a matter is procedural or non-procedural. Accordingly, statements in this connexion have been included in the case histories (Cases 94-99).

7. The third problem of procedure concerns the role of the President in the determination whether a matter is procedural, with special reference to the use of rule 30 of the provisional rules of procedure. Statements of view by the President that the matter under consideration by the Council was procedural or non-procedural have at times preceded the vote on the main question and at times have assumed the form of the President's interpretation to the Council of the vote taken on the main question. Such Presidential statements have on certain occasions been received by the Council without challenge.<sup>4</sup> On other occasions the question has arisen as to the relation of such Presidential statements to rulings by the President under rule 30 of the provisional rules of procedure. The proceedings of the Council on the five occasions (Cases 100, 101, 103, 104 and 106) where there has been discussion of this question and votes have been taken indicate the existence of different views and the application of different procedures.

#### A. PROCEEDINGS ON OCCASIONS WHEN THE SECURITY COUNCIL VOTED ON "THE PRELIMINARY QUESTION"

##### CASE 82

At the 49th meeting on 26 June 1946, in connexion with the Spanish question, the Security Council voted upon a draft resolution, submitted by the representatives of Australia and the United Kingdom for the majority of a drafting committee, the preamble of which recalled the conclusions of the Sub-Committee on the Spanish question, and which sought to keep the situation in Spain under continuous observation and to maintain it on the list of matters of which the Council was seized, without prejudice to the rights of the General Assembly under the Charter.<sup>5</sup>

There were 9 votes in favour, 2 against (one vote against being that of a permanent member).<sup>6</sup>

The President (Mexico) ruled that the draft resolution had been adopted.<sup>7</sup>

The representative of the USSR objected to the President's interpretation of the vote on the grounds that the resolution combined procedural and non-pro-

<sup>2</sup> For the challenge to the ruling, see Case 105.

<sup>3</sup> "Statement by the Delegations of the Four Sponsoring Governments on Voting Procedure in the Security Council", *United Nations Conference on International Organization, Documents*, volume 11, pp. 711-714.

<sup>4</sup> See Cases 42, 51, 105, 200; footnotes 16, 60 of part I.

<sup>5</sup> 49th meeting: p. 401.

<sup>6</sup> 49th meeting: p. 413.

<sup>7</sup> 49th meeting: p. 413.

cedural matters. The representatives of Australia and the USSR requested that the Council take a vote to decide whether the matter was procedural.<sup>8</sup>

**Decision:** *The ruling was put to the vote. There were 8 votes in favour, 2 against (the 2 votes against being those of permanent members) and 1 abstention.<sup>9</sup>*

The President declared that his ruling had been overruled for, to arrive at a decision that a question was procedural, the five permanent members must concur.<sup>10</sup>

#### CASE 83

At the 55th meeting on 28 August 1946, in connexion with the applications of Albania and the Mongolian People's Republic for admission to the United Nations, the representative of the United States submitted a motion to postpone voting until the next occasion on which the Security Council considered applications for membership.<sup>11</sup>

At the 57th meeting on 29 August 1946, the President (Poland) ruled that the motion was a procedural matter.<sup>12</sup>

The representatives of China and the USSR contended that the motion was a non-procedural matter. The representative of the USSR requested that the Council take a vote to decide whether the matter was procedural.<sup>13</sup>

**Decision:** *The President asked "all those who believe that it is a matter of procedure to raise their hands". There were 5 votes in favour, 4 against (the 4 votes against being those of permanent members) and 2 abstentions.<sup>14</sup>*

The President concluded that, as a result of the vote, the matter was to be considered non-procedural. The representative of the United States announced that, for *ad hoc* purposes, he accepted the ruling of the President, while the representatives of Australia and the Netherlands asked to go on record as disagreeing with the ruling.<sup>15</sup>

The Council then voted upon the United States motion. It was rejected, having failed to obtain the affirmative votes of 7 members. There were 6 votes in favour, 3 against and 2 abstentions.<sup>16</sup>

#### CASE 84

At the 202nd meeting on 15 September 1947, in connexion with the Greek frontier incidents question, the representative of the United States submitted a draft resolution to request the General Assembly, pursuant to Article 12 of the Charter, to consider and make recommendations with regard to the dispute.<sup>17</sup>

<sup>8</sup> For discussion of whether the matter was procedural, see Case 40.

<sup>9</sup> 49th meeting: p. 421.

<sup>10</sup> 49th meeting: pp. 421-422.

<sup>11</sup> 55th meeting: pp. 55, 68.

<sup>12</sup> 57th meeting: p. 132.

<sup>13</sup> For discussion of whether the matter was procedural, see Case 55.

<sup>14</sup> 57th meeting: p. 132.

<sup>15</sup> 57th meeting: pp. 132-135.

<sup>16</sup> 57th meeting: pp. 135-136.

<sup>17</sup> S/555, 202nd meeting: p. 2369.

<sup>18</sup> 202nd meeting: p. 2390.

Before putting the draft resolution to the vote, the President (USSR) declared that the vote would be taken in accordance with Article 27 (3).<sup>18</sup>

The representatives of Australia and the United States contended that it was a procedural matter. The representatives of Poland and the USSR contended that it was non-procedural.<sup>19</sup>

The representative of Syria proposed the postponement of voting on the draft resolution in order to study the preliminary question. The proposal was rejected, having failed to obtain the affirmative votes of 7 members.<sup>20</sup>

The representative of Belgium proposed that the Council vote first on the United States draft resolution. The President ruled, however, that before taking a decision on the United States draft resolution the Council had to decide whether the matter was procedural.<sup>21</sup>

The ruling was challenged and put to the vote. There were 2 votes in favour, 8 against and 1 abstention. The President's ruling was overruled.<sup>22</sup>

The United States draft resolution was put to the vote. There were 9 votes in favour and 2 against (one vote against being that of a permanent member).<sup>23</sup>

The President ruled that the United States draft resolution had been rejected.<sup>24</sup>

The representative of the United States challenged the ruling.<sup>25</sup>

**Decision:** *The President put the proposal that the question was procedural to the vote. There were 8 votes in favour, 2 against (one vote against being that of a permanent member), and 1 abstention.<sup>26</sup>*

The President ruled that the proposal to consider the United States draft resolution procedural had been rejected, since one of the votes against had been that of a permanent member.<sup>27</sup>

#### CASE 85

At the 281st meeting on 12 April 1948, in connexion with the Czechoslovak question, the representative of Chile\* submitted a draft resolution<sup>28</sup> to appoint a sub-committee to receive and hear statements and testimony on the question, specifying in the preamble that such action should be without prejudice to future decisions taken in accordance with Article 34.

The Security Council discussed whether the matter was procedural. The representative of the USSR requested that the Council take a vote to decide whether it was a procedural matter.<sup>29</sup>

<sup>18</sup> For discussion of whether the matter was procedural, see Case 48.

<sup>19</sup> 202nd meeting: p. 2394.

<sup>20</sup> 202nd meeting: p. 2395.

<sup>21</sup> 202nd meeting: p. 2397.

<sup>22</sup> 202nd meeting: p. 2399.

<sup>23</sup> 202nd meeting: p. 2400.

<sup>24</sup> 202nd meeting: p. 2400.

<sup>25</sup> 202nd meeting: p. 2400.

<sup>26</sup> 202nd meeting: p. 2400.

<sup>27</sup> 281st meeting: pp. 1-2.

<sup>28</sup> For discussion of whether the matter was procedural, see Case 49.



The proposal that the draft resolution was procedural was put to the vote at the 303rd meeting on 24 May 1948. There were 8 votes in favour, 2 against (one vote against being that of a permanent member) and 1 abstention.<sup>30</sup>

The President (France) ruled that the proposal had been rejected because of the negative vote of a permanent member.<sup>31</sup>

The President's ruling was challenged by the representatives of Argentina, Belgium, Canada and Colombia.<sup>32</sup>

**Decision:** *The President put the question to the vote in the following form: "Will those who object to my interpretation raise their hands?" There were 6 votes in favour of rejecting the ruling, 2 against (one vote against being that of a permanent member) and 3 abstentions.*<sup>33</sup>

The President's ruling was upheld.<sup>34</sup>

The Council then voted upon the Chilean draft resolution. It was not adopted.<sup>35</sup>

#### CASE 86

At the 506th meeting on 29 September 1950, in connexion with the complaint of armed invasion of Taiwan (Formosa), the representative of Ecuador resubmitted his draft resolution to defer consideration of the question until 15 November 1950, at which time a representative of the People's Republic of China would be invited.<sup>36</sup>

The representative of China contended that the matter was non-procedural and requested that the Council take a vote to decide whether the matter was procedural before voting on the draft resolution.<sup>37</sup>

The President (United Kingdom) denied the request of the representative of China that the vote to decide the majority required be taken before the vote on the draft resolution, and put the draft resolution to the vote. There were 7 votes in favour, 3 against (2 votes against being those of permanent members) and 1 abstention.<sup>38</sup>

The President announced that in his opinion the resolution had been adopted.<sup>39</sup>

The representative of China challenged the President's interpretation of the vote, observing that he had voted against the draft resolution.<sup>40</sup>

At the 507th meeting on 29 September 1950, the President asked the Council to vote on whether it regarded the vote taken on the Ecuadorian draft resolution as procedural. There were 9 votes in favour,

1 against (the vote against being that of a permanent member) and 1 abstention.<sup>41</sup>

The President declared that the proposal had been adopted.<sup>42</sup>

The representative of China, in view of the negative vote of a permanent member, objected to the President's ruling.<sup>43</sup>

The President ruled that, notwithstanding the objection of the representative of China, the vote which the Council had taken on the Ecuadorian draft resolution was procedural.<sup>44</sup>

The representative of China considered the ruling of the President *ultra vires* and offered to submit the question to the International Court of Justice.<sup>45</sup>

**Decision:** *The President put the challenge to his ruling to the vote, in accordance with rule 30 of the rules of procedure. There were no votes in favour, none against and no abstentions. The President declared the ruling stood.*<sup>46</sup>

The representative of China stated that the President's action was illegal.<sup>47</sup>

#### B. CONSIDERATION OF PROCEDURES INVOLVED IN VOTING ON "THE PRELIMINARY QUESTION"

##### 1. Consideration of the order in which the matter itself, and the question whether the matter is procedural, should be voted upon

#### CASE 87

At the 7th meeting on 4 February 1946, in connexion with the Greek question, the representative of the USSR contended that a proposal submitted by the representative of Egypt was a non-procedural matter. Before the vote was taken on the Egyptian proposal, the President (Australia) stated:<sup>48</sup>

"... at this stage it is desirable for the Council to indicate whether this is to be regarded as a procedural matter or if it is to be otherwise..."

No vote was taken, however, because the Council agreed to dispose of the matter by accepting a statement by the President which summarized the proceedings.

#### CASE 88

At the 19th meeting on 14 February 1946, in connexion with the Syrian and Lebanese question, the President (Australia) suggested that the Security Council postpone a decision as to whether the question under consideration was a dispute. While agreeing with the suggestion of the President, the representative of Egypt was of the opinion that the Council should first decide whether the decision as to whether a question was a dispute or a situation was a procedural matter, and submitted a motion to that effect. The representatives of China and the Netherlands were of the opinion that, inasmuch as the Committee of Experts was dealing with all questions of procedure of the Council, the Egyptian motion should be referred

<sup>30</sup> 303rd meeting: p. 19.

<sup>31</sup> 303rd meeting: p. 21.

<sup>32</sup> 303rd meeting: pp. 21-23.

<sup>33</sup> 303rd meeting: p. 26.

<sup>34</sup> 303rd meeting: pp. 26-27.

<sup>35</sup> 303rd meeting: pp. 28-29.

<sup>36</sup> S/1823/Corr.1, 506th meeting: pp. 3-5.

<sup>37</sup> For discussion of whether the matter was procedural, see Case 30.

<sup>38</sup> 506th meeting: p. 5.

<sup>39</sup> 506th meeting: p. 5.

<sup>40</sup> 506th meeting: pp. 5-7.

<sup>41</sup> 507th meeting: pp. 4-5.

<sup>42</sup> 507th meeting: p. 5.

<sup>43</sup> 507th meeting: p. 5.

<sup>44</sup> 507th meeting: p. 5.

<sup>45</sup> 507th meeting: pp. 5-6.

<sup>46</sup> 507th meeting: pp. 7-8.

<sup>47</sup> 507th meeting: p. 8.

<sup>48</sup> 7th meeting: pp. 128-129.

to the Committee for study. The representative of the Netherlands moved that no vote be taken at that stage in the proceedings on the motion submitted by the representative of Egypt. The Netherlands motion was adopted, and no action was taken subsequently on the motion submitted by the representative of Egypt.<sup>49</sup>

## CASE 89

At the 49th meeting on 26 June 1946, in connexion with the Spanish question, the Security Council voted upon the main draft resolution before the question whether it was a procedural matter was raised. After the President (Mexico) declared the resolution to have been adopted, the representative of the USSR contended that it "failed to be adopted because one of the permanent members of the Security Council voted against it." The President stated:

"The observations made by the representative of the USSR would have been timely before we voted, but he did not raise the question of substance until after the resolution had been voted and accepted."

The representative of the USSR replied:<sup>50</sup>

"The assertion that no statement had been made before the vote to the effect that this question could not be regarded as one of procedure does not alter the situation, because no statement to the contrary was made either."

At the request of the representatives of Australia and the USSR, the President's ruling that the matter was procedural was put to the vote. The President's ruling on this point was overruled.<sup>51</sup>

## CASE 90

At the 57th meeting on 29 August 1946, in connexion with the applications of Albania and the Mongolian People's Republic for admission to the United Nations, the representative of the USSR requested a vote to determine whether the United States motion to postpone voting was a procedural matter. Before putting the United States motion to the vote, the President (Poland) stated:<sup>52</sup>

"At this point, we have to decide whether it is a matter of procedure or of substance, because in accordance with this decision we shall determine the results of the voting."

The President put to the vote the question whether the motion was a procedural matter before putting the United States motion to the vote.

## CASE 91

At the 202nd meeting on 15 September 1947, in connexion with the Greek frontier incidents question, the President (USSR) stated that a vote on a draft resolution could not be taken without knowing whether the draft resolution was a procedural matter. The representative of Belgium proposed that the Security Council vote first on the draft resolution submitted by the representative of the United States.<sup>53</sup> The repre-

sentative of the United States explained this procedure in his statement in support of the Belgian proposal:

"Then, Mr. President, you would declare the result of that vote, whether it is passed or not passed. If it is not passed you would give your reason. If that reason should involve a question of whether or not it is procedural or substantive, that matter could then be put to the vote."

**Decision:** *The President (USSR) ruled that, before taking a decision on the United States draft resolution, the Council had to decide whether the matter was procedural.<sup>54</sup> The ruling was challenged by the representative of Belgium and put to the vote. There were 2 votes in favour, 8 against and 1 abstention.*

The President's ruling was overruled. The President, speaking "as the President and as the representative of the USSR", recalled the San Francisco Statement on Voting Procedure, and stated:

"... the question of whether a certain proposal is of procedural character or one of substance is regarded, according to this agreement, as a 'preliminary question' . . . and a decision on it should be taken before a decision is taken on the proposal itself."

The representative of the United Kingdom in reply recalled that, in connexion with the Spanish question, the

"... question was raised after the actual resolution or proposal had been voted upon. But 'preliminary' in that sense does not mean that on every occasion one must vote first on the question of whether it is substantive or procedural."

The representative of France maintained:

"It is only after a motion had been voted upon that one can tell if it should be defined whether it is a procedural or a substantive point. To explain: when a resolution is submitted and it is supported by seven members, including the five permanent members, no purpose is served by asking whether it is a procedural matter or a point of substance. It is, therefore, logical to begin by voting on the motion itself and to decide later whether it is a procedural or substantive matter."

The President, speaking as the representative of the USSR, considered the statements made by the representatives of the United Kingdom and France as contrary to the agreement reached at the San Francisco Conference.<sup>55</sup>

The Council voted upon the United States draft resolution before voting on the proposal that the matter was procedural.

## CASE 92

At the 300th and 303rd meetings on 21 and 24 May 1948, in connexion with the Czechoslovak question, the President (France) stated that he could ask the Security Council either to vote first on the Chilean draft resolution itself, or to decide, in advance of the vote, whether the draft resolution should be considered a procedural matter. He proposed the latter method because a Presidential ruling on the vote on

<sup>49</sup> For texts of relevant statements see: 19th meeting: China, pp. 275-276; Egypt, pp. 274, 279-280; Netherlands, p. 277.

<sup>50</sup> For texts of relevant statements see: 49th meeting: President (Mexico), p. 418; USSR, pp. 413, 418.

<sup>51</sup> 49th meeting: pp. 421-422.

<sup>52</sup> 57th meeting: p. 130.

<sup>53</sup> 202nd meeting: p. 2395.

<sup>54</sup> 202nd meeting: p. 2397.

<sup>55</sup> For texts of relevant statements see: 202nd meeting: President (USSR), pp. 2394, 2397-2398, 2399; Belgium, p. 2395; France, p. 2399; United Kingdom, pp. 2398-2399; United States, p. 2395.

the draft resolution itself might not be in accordance with the views held by the majority. This choice was not to "constitute any kind of precedent". At the 303rd meeting the representative of Syria favoured taking a vote on the draft resolution first since, if it failed to get seven affirmative votes, there would be no need to go into the question whether it was a procedural matter. The representative of the USSR supported the procedure suggested by the President and added that, if "in spite of the result of the vote on the preliminary question", it was still desired to vote on the main draft resolution, the Council could then proceed to do so. The President stated that, unless the representative of Syria maintained his view, he would follow the procedure which he had proposed. The representative of Syria replied that he had no objection to the President's procedure.<sup>66</sup> The Council then voted first on the question whether the draft resolution should be considered procedural.<sup>67</sup>

## CASE 93

At the 505th and 506th meetings on 28 and 29 September 1950, in connexion with the complaint of armed invasion of Taiwan (Formosa), and the draft resolutions submitted by the representatives of Ecuador and the USSR to invite a representative of the People's Republic of China to participate in the discussion, the representative of China stated that, in view of the difference of opinion regarding the majority required, "the preliminary question must be determined first".

The President (United Kingdom) suggested that the Security Council should vote first and then discuss "whether the vote is valid or not". He explained:<sup>68</sup>

"... It may well be that none of the draft resolutions ... will be accepted. They may all be rejected. ... if one of the draft resolutions should be carried, the important question as to whether it is carried by a procedural or a substantive vote could then be examined quite dispassionately."

The Council voted on the draft resolutions at the 505th meeting on 28 September 1950. Since neither text received seven affirmative votes, the question of the majority required did not arise. When, however, the Ecuadorian draft resolution was resubmitted and put to the vote at the 506th meeting on 29 September 1950, there were 7 votes in favour, 3 against (2 votes against being those of permanent members) and 1 abstention. After the President had declared the resolution adopted, the representative of China requested the Council to take a decision on the majority required. The President granted the request at the 507th meeting on 29 September 1950.<sup>69</sup>

## 2. Consideration whether the decision that the matter is procedural is itself a procedural decision

## CASE 94

At the 49th meeting on 26 June 1946, in connexion with the Spanish question, the representative of the

<sup>66</sup> For texts of relevant statements see:

300th meeting: President (France), p. 37.

303rd meeting: President (France), pp. 18-19; Syria, pp. 1-2, 19; USSR, pp. 10-11.

<sup>67</sup> 303rd meeting: p. 19.

<sup>68</sup> For texts of relevant statements see:

505th meeting: President (United Kingdom), pp. 17, 19-20.

506th meeting: President (United Kingdom), p. 3; China, p. 3.

<sup>69</sup> 507th meeting: pp. 4-5.

USSR objected to the statement of the President (Mexico) that a resolution had been adopted, notwithstanding the negative vote of a permanent member. The representative of Australia suggested that the Security Council vote on the President's ruling, while the representative of the USSR requested that his proposal as to whether the resolution was a procedural matter be voted upon. The President put his ruling that the resolution was a procedural matter to the vote, but stated that "the decision must be accepted by the five permanent members".

**Decision:** *There were 8 votes in favour of the ruling, 2 against (the 2 votes against being those of permanent members) and 1 abstention.*<sup>70</sup>

The President thereupon declared:

"The conclusion that I draw is that in accordance with the present circumstances, if it is to be decided whether a question is one of procedure or substance, it is necessary to accept one or another alternative by seven votes, but the five permanent members must concur. Here we have two of the permanent members deciding, against the others, that it is a question of substance."

The representatives of Australia and the Netherlands objected to the President's conclusion, observing that it was based on the San Francisco Statement on Voting Procedure and not on the Charter. The representative of Australia stated:

"... it is ... true that the sponsoring Powers at San Francisco gave a ruling to that effect; but ... that ruling was not accepted by any authority at San Francisco, not accepted by any committee, not accepted by any commission, and not accepted by the Conference in open session, and protests against its accuracy were made."

The representative of the USSR supported the President, contending that "all the permanent members of the Security Council are bound by the Declaration of the Four Powers at San Francisco to which France adhered".<sup>71</sup>

## CASE 95

At the 57th meeting on 29 August 1946, in connexion with the applications of Albania and the Mongolian People's Republic for admission to the United Nations, the President (Poland) ruled that the United States motion to postpone voting was a procedural matter. The representative of the USSR requested a vote on the question whether the motion was a procedural matter. He stated:

"I would like to remind the Security Council of the declaration by the Five Powers at the San Francisco Conference to the effect that the representatives of all the States who are permanent members of the Security Council cannot fail to agree that if any one of the permanent members of the Security Council objects to any particular proposal being regarded as procedural, no positive decision can be made."

The President replied:<sup>72</sup>

<sup>70</sup> 49th meeting: pp. 421-422.

<sup>71</sup> For texts of relevant statements see:

49th meeting: President (Mexico), pp. 421, 421-422; Australia, p. 425; Netherlands, p. 422; USSR, p. 424.

<sup>72</sup> For texts of relevant statements see:

57th meeting: President (Poland), pp. 127, 131, 132; Australia, pp. 134, 135; France, p. 135; Netherlands, pp. 132, 133, 135; USSR, pp. 130, 132-133.

"I want to state that there is in my mind no question that, in view of the fact that the representative of the Soviet Union has questioned the vote, in order to decide whether something is a matter of procedure or not, the concurrent vote of all the permanent members is necessary. The Charter is quite clear in that respect, as is the San Francisco commentary on this point by the original sponsoring powers."

**Decision:** *The President asked "those who believe it is a matter of procedure to raise their hands". There were 5 votes in favour, 4 against (the 4 votes against being those of permanent members) and 2 abstentions.*

The President then announced: "In order to declare that it is a matter of procedure, it requires the concurring votes of all the permanent members."<sup>57</sup> The representative of France "put in a reservation regarding the interpretation which [the representative of the USSR] placed on the San Francisco declaration". The representatives of Australia and the Netherlands asked to go on record as disagreeing with the Presidential ruling.

#### CASE 96

At the 114th meeting on 27 February 1947, in connexion with the Corfu Channel question, the representative of the USSR objected to the contention that the draft resolution to appoint a sub-committee was a procedural matter. Recalling the San Francisco Statement on Voting Procedure, he stated:

"A decision on this question can be considered as adopted only with the concurring votes of the permanent members of the Security Council."

The representative of the United States observed that the attitude of the United States with regard to the obligations or stipulations of that Statement was substantially the same as that of the Soviet Union.

No vote was taken on the preliminary question.<sup>58</sup>

#### CASE 97

At the 202nd meeting on 15 September 1947, in connexion with the Greek frontier incidents question, the representative of the United States objected to the statement of the President (USSR) that the United States draft resolution had been rejected because of the negative vote of a permanent member. He requested that the question whether the matter was procedural be voted upon. Recalling the discussion at San Francisco between the sponsoring Powers, the President, speaking "as the President and as the representative of the USSR", stated:

"... a decision was reached whereby if a question arises as to whether a certain proposal is of a procedural character or a substantive character, the affirmative decision that the proposal is procedural can be taken only when there are concurrent votes of all five permanent members of the Security Council. This agreement among the five Governments was expressed in a special statement approved by all five Governments."

While disagreeing with the President as regards the nature of the United States draft resolution, the representative of the United Kingdom replied:

"I fully accept the principle of that statement which was read to us by the representative of the Soviet Union."

**Decision:** *The President put to the vote the proposal that the United States draft resolution was a procedural matter. There were 8 votes in favour, 2 against (1 vote against being that of a permanent member) and 1 abstention.<sup>59</sup>*

The President ruled: "I consider that the proposal is rejected since one of the permanent members of the Security Council voted against it."

The representative of Australia stated:

"What the President is in effect relying on is an agreement between the five permanent members at San Francisco that is nowhere in the Charter. It was never put up to the other fifty members. It does not bind this Council. It does not bind the United Nations. I, for one, do not see how it can apply here now."

The President replied:

"... the agreement to which I made reference... does not bind any countries other than the five permanent members of the Security Council."

The representative of Poland was of the opinion that inasmuch as the San Francisco Statement on Voting Procedure did not bind the non-permanent members of the Council, it could not be invoked in deciding the preliminary question. Quoting the text of Article 27, the representative of Poland stated:

"... I do not think it is absolutely necessary to go into the matter of that agreement because the Charter provides us with a very clear statement..."

"Obviously, whether the matter is procedural or not is not a procedural matter. Consequently, paragraph 3 of Article 27 applies, and I think there is no need to invoke in any way, or even discuss the agreement among the five permanent members."

The representative of the United States supported the President and stated:<sup>60</sup>

"I think there is no doubt that under the existing agreements and under the Charter the President has been within his technical rights in deciding that this matter was, from his point of view, not a question of procedure."

#### CASE 98

At the 288th meeting on 29 May 1948, in connexion with the Czechoslovak question, a difference of opinion arose as to whether a draft resolution to appoint a sub-committee to receive or hear evidence, statements and testimonies was a procedural matter. In view of the disagreement, the representative of the USSR requested that the question whether the matter was procedural should be decided by the procedure laid down in the San Francisco Statement on Voting Procedure. He stressed that, according to that agreement, a matter could only be decreed procedural "by a vote of seven members of the Security Council, including the concurring votes of the permanent members".

The representative of the United States expressed the view that part II of the Statement concerning the

<sup>57</sup> 202nd meeting: p. 2400.

<sup>58</sup> For texts of relevant statements see:

202nd meeting: President (USSR), pp. 2397-2398, 2400, 2401; Australia, p. 2400; Poland, p. 2401; United Kingdom, p. 2398; United States, p. 2401.

<sup>59</sup> 57th meeting: p. 132.

<sup>60</sup> For texts of relevant statements see:

114th meeting: USSR, pp. 427-428; United States, p. 430.

vote to decide whether a matter was procedural could not apply to matters which were clearly procedural. He stated:

"...the Charter itself contains a clear indication that this type of matter is procedural. The express provisions of part I of the Four-Power Statement are to the same effect. It is quite obvious that it would be a misuse of the Four-Power Statement to resort to the preliminary determination under part II, paragraph 2, for the express purpose of evading the provisions of part I of the same Statement. To hold otherwise is to make ridiculous part I.

"Also, the effect of such a contention is to minimize the area governed by procedural votes under Article 27, paragraph 2 of the Charter. This section of the Charter has no meaning if it is possible for a permanent member of the Security Council to prevent utilization of the voting procedure contemplated in this connexion on any question without regard to the usual meaning of the word 'procedural', and without regard to the clear indications in the Charter of those matters which were intended to be procedural. Under such an interpretation, Article 27, paragraph 2 might just as well have been omitted."

The representative of Argentina observed that the Charter, which was the only document binding on all Members of the United Nations, made no mention of any procedure to decide the preliminary question. He reminded the Council that under Article 18, when the General Assembly has to decide whether a question is important or not, the decision is made by a simple majority. He concluded:

"Consequently, I maintain that if there is any doubt as to whether paragraph 2 or paragraph 3 of Article 27 is applicable, the majority required to settle that doubt is only any seven votes, so that there may be some conformity between the provisions governing the Security Council and those governing the General Assembly."

At the 300th meeting on 21 May 1948, the representative of Canada questioned the validity of the San Francisco Statement when read in the light of Article 103 of the Charter. He stated:

"If the Four-Power Declaration is regarded by the permanent members as in some sense constituting an international agreement, then surely the obligations, under the Charter, of the permanent members of the Security Council shall, as stated in Article 103, prevail over any obligations assumed under the Four-Power Declaration or 'any other international agreement'."

The representative of the USSR replied to the representatives of Argentina and Canada:

"The Declaration is an interpretation of the provisions of the Charter. It would therefore be altogether unjustifiable to set the obligations assumed under the Five-Power Declaration against those assumed under the Charter."

The representative of the United States reiterated a statement made by a member of his delegation to the First Committee of the General Assembly to the effect that the San Francisco Statement on Voting Procedure "was a statement of general attitude" and "did not purport to be an agreement, much less an agreement binding in perpetuity."

Before putting the preliminary question to the vote, the President (France) declared:

"...the President, as a representative of a permanent member of the Security Council, cannot ignore the San Francisco Declaration.

"...in the circumstances, the final provision of the Declaration, according to which the concurring vote of the five permanent members is necessary to decide whether a question is a matter of procedure, retains its importance."

**Decision:** *The President put to the vote the following question: "Should the vote to be taken on the draft resolution be considered a procedural vote?" There were 8 votes in favour, 2 against (1 vote against being that of a permanent member) and 1 abstention. The President stated, "I interpret the vote which has just taken place as a decision to consider the vote on the resolution as one of substance."*<sup>67</sup>

The representatives of Argentina, Belgium, Canada and Colombia challenged the President's ruling on the grounds that it was based on the San Francisco Statement. The challenge to the ruling was put to the vote. The ruling was upheld. The representative of the United States declared that he could not agree that a procedural matter could be transformed by the use of the so-called "double veto" and stated that his Government did not recognize this act as a precedent. At the 305th meeting on 26 May 1948, after the Chilean draft resolution had been rejected because of the negative vote of a permanent member, the representative of the United Kingdom declared:<sup>68</sup>

"...I am shocked at his misuse of the double veto... my Government stands by the San Francisco Declaration, although I do not know how it will be affected by the Union of Soviet Socialist Republics representative's use of one of its paragraphs to nullify another paragraph of the same document."

#### CASE 99

At the 505th, 506th and 507th meetings on 28 and 29 September 1950, in connexion with the complaint of armed invasion of Taiwan (Formosa), the representative of China contended that a draft resolution to invite a representative of the People's Republic of China to participate in the discussion was non-procedural, while other members maintained that it was a procedural matter under the rules of procedure and the San Francisco Statement on Voting Procedure. As regards the bearing of the San Francisco Statement, the representative of China observed that part I refers "to the invitation of someone who is not a member of the Council" as a procedural matter; China, he added, was a member. He contended that since there was a difference of opinion, the procedure laid down in part II of the Statement should be applied. He recalled that in the past members had differed in the interpretation of the Statement. "Some members

<sup>67</sup> 303rd meeting: pp. 19, 21.

<sup>68</sup> For texts of relevant statements see: 288th meeting: Argentina, pp. 26-27; Syria, p. 23; USSR, pp. 21-22; United States, pp. 24-25.

300th meeting: Canada, pp. 40-41; USSR, pp. 41-42; United Kingdom, p. 38.

303rd meeting: President (France), pp. 19-20; Argentina, p. 21; Belgium, p. 23; Canada, pp. 21-22; Colombia, p. 23; Ukrainian SSR, p. 3; United States, pp. 5-6.

305th meeting: United Kingdom, p. 33.



have stressed the importance of part I, paragraph 2; other members have stressed the importance of part II, paragraph 2." He reminded the members of the Council that, in connexion with the Czechoslovak question, the Council upheld the presidential ruling that a matter was non-procedural notwithstanding that the question was specifically mentioned in the San Francisco Statement as a procedural matter. The representative of China insisted that a vote be taken on the preliminary question.

**Decision:** *At the 507th meeting, the President (United Kingdom) declared: "The Council will now vote on whether it regards the vote taken this morning on the Ecuadoran resolution as procedural." There were 9 votes in favour, 1 against (the vote against being that of a permanent member) and 1 abstention. The President declared the proposal adopted.*<sup>69</sup>

The representative of China objected to the President's interpretation of the vote and, after quoting as precedents the proceedings of the Council in connexion with the Spanish question, the Greek frontier incidents question, and the Czechoslovak question, stated that the situation was covered by the San Francisco Statement on Voting Procedure, which provided that, should a difference of opinion arise, the decision whether a matter was procedural had to be taken with the concurring votes of the permanent members.

The President stated:

"The position is that a vote which is regarded as procedural by no less than nine members of the Security Council, for what seems to me, and, I suggest, to all reasonable people, to be patently valid reasons, is pronounced as substantive by one of our permanent members.

"I think that if such a situation as this is allowed to stand, a very grave precedent will have been created which may well impede the whole functioning of the United Nations in the future. I do not believe, therefore, that in the general interests of all of us it should be allowed to stand, and I consequently rule as President that, notwithstanding the objection of our Chinese colleague, the vote which the Council took this morning on the Ecuadoran resolution is procedural."

The representative of China considered the ruling of the President *ultra vires* and suggested that the following question be put to the International Court of Justice:

"... in view of the statement of 7 June 1945 by delegations of four sponsoring governments on voting procedure in the Security Council and in view of the precedents of the Council, is the claim of the representative of China to veto paragraph (b) of the operative part of the proposal of Ecuador of 29 September 1950 justified?"

**Decision:** *The President put to the vote the challenge to his ruling. There having been no votes in favour, none against and no abstentions, the President declared that his ruling stood.*<sup>70</sup>

The representative of China explained that he had not participated in the vote because it was itself illegal

Supporting the ruling of the President, the representative of the United States stated:<sup>71</sup>

"Section II, paragraph 2 of the San Francisco Declaration was never intended, and cannot properly be construed, as giving the five permanent members of the Security Council the right to use the device of the double veto to determine unilaterally as non-procedural, matters which according to the Charter, or by agreement contained in part I of the San Francisco Declaration, are procedural."

### 3. Consideration of the use of rule 30 of the provisional rules of procedure of the Security Council in determining whether a matter is procedural

#### CASE 100

At the 49th meeting on 26 June 1946, in connexion with the Spanish question, the President (Mexico) ruled that a resolution had been adopted, notwithstanding the negative vote of a permanent member. The representative of the USSR objected to the President's interpretation and submitted a proposal "as to whether the resolution in question is to be regarded as procedural or as a resolution affecting questions of substance". The representative of Australia contended that the vote should be upon the President's ruling that it was a procedural matter, and that, in accordance with the rules of procedure, it should stand, unless overruled. The President, before putting his ruling to the vote, stated:

"According to the rules of this Council, my ruling is going to be voted on and it is necessary to have the concurring vote of the five permanent members."

**Decision:** *The President put his ruling to the vote by asking: "Those who are in favour of the ruling that this is a question of procedure, please raise their hands." There were 8 votes in favour of the ruling, 2 against (the 2 votes against being those of permanent members) and 1 abstention. The President concluded that, since two permanent members had voted against his ruling, the matter was non-procedural.*<sup>72</sup>

The representative of Australia observed that "in spite of the fact that the President's ruling ... was upheld ... the President now rules, as a result of those two dissenting votes, that it is not a question of procedure." He considered this ruling "most important".<sup>73</sup>

#### CASE 101

At the 57th meeting on 29 August 1946, in connexion with the applications of Albania and the Mongolian People's Republic for admission to the United Nations, the President (Poland) ruled that the motion to postpone voting was procedural. The representative of the USSR objected to the ruling and requested that the Council decide whether the motion was procedural.

<sup>69</sup> For texts of relevant statements see:

505th meeting: China, pp. 18-19.

506th meeting: China, pp. 5-6; United States, pp. 13-14.

507th meeting: President (United Kingdom), p. 5; China, pp. 5 and 5-6; United States, pp. 9-10.

<sup>70</sup> 49th meeting: pp. 421-422.

<sup>71</sup> For texts of relevant statements see:

49th meeting: President (Mexico), pp. 421, 421-422; Australia, pp. 421, 424-425; USSR, p. 418.

<sup>69</sup> 507th meeting: pp. 4-5.

<sup>70</sup> 507th meeting: pp. 7-8.

As regards the procedure to be followed in voting on the question, the representative of the Netherlands stated:

"Mr. President . . . I heard you say that in your opinion, it was a question of procedure. I take that to be your ruling as President. Rule 30 of the rules of procedure says that if such a ruling is challenged, and it has been challenged by the representative of the Soviet Union, the President shall submit his ruling to the Security Council for immediate decision, and it shall stand, unless overruled."

The representative of the USSR stated:

"... a decision on the question whether any particular proposal is a matter of procedure or substance can only be made as a positive decision, if there are seven votes of the members of the Security Council in favour of it, including all the votes of the permanent members."

Before putting the preliminary question to the vote, the President stated:

"... my ruling that it is a matter of procedure was taken in order to maintain the continuity of presidential rulings..."

**Decision:** *The President requested "all those who believe that it is a matter of procedure to raise their hands". There were 5 votes in favour, 4 against (the 4 votes against being those of permanent members), and 2 abstentions.<sup>74</sup>*

The President ruled that the Council had voted to consider the main motion a non-procedural matter, since the concurring votes of the permanent members were necessary to declare the matter procedural. The representative of the Netherlands agreed with the President that the concurring votes of the permanent members were required, but, he contended:

"... your ruling is that it is a matter of procedure. In order to be overruled, the person or the representative who moves that it is not a matter of procedure must have the five concurring votes of the permanent members, and I submit that he has not got them."

The President observed that he had asked whether the members supported his ruling that the matter was procedural, and not the opposite. As four permanent members had voted against the ruling, it had not been upheld. The representative of Australia was of the opinion that, according to rule 30 of the provisional rules of procedure, a majority was required to overrule; therefore the President's ruling that the matter was procedural stood. The President formulated his conclusion in the form of the following ruling:

"According to my interpretation of the results of the vote just taken, I shall hold to the opinion that this is not to be considered a matter of procedure, and I would like those members of the Council who so desire to challenge this ruling."

The representative of the United States accepted the ruling "for *ad hoc* purposes" without any commitment regarding the "important matter of principle". The representatives of Australia and the Netherlands, although not challenging it, asked to go on record as disagreeing with the ruling.<sup>75</sup>

<sup>74</sup> 57th meeting: p. 132.

<sup>75</sup> For texts of relevant statements see:

57th meeting: President (Poland), pp. 127, 132, 133, 134, 135; Australia, pp. 134, 135; Netherlands, pp. 130, 132, 135; USSR, pp. 130-131; United States, p. 134.

## CASE 102

At the 114th meeting on 27 February 1947, in connexion with the Corfu Channel question, the President (Belgium) cited rule 30 of the provisional rules of procedure, and ruled that the pending draft resolution did not fall under Chapter VI of the Charter. The representative of the USSR objected to the President's application of rule 30 and maintained:

"... the President is not entitled to settle the question whether the decision we have to take is a matter of procedure or not."

The President observed that he had not referred to the question whether it was a procedural or non-procedural matter, but to whether the draft resolution was within the scope of Chapter VI. The representative of the USSR indicated that he would not press for a vote on the preliminary question, inasmuch as he did not wish to hinder the adoption of the main draft resolution.<sup>76</sup>

## CASE 103

At the 202nd meeting on 15 September 1947, in connexion with the Greek frontier incidents question, the President (USSR) stated that the Security Council would "follow the procedure defined in paragraph 3 of Article 27" in voting on the United States draft resolution. The representative of the United States declared:

"My delegation is obliged to challenge the ruling of the President that our draft resolution concerns a matter of substance rather than of procedure."

In supporting a proposal to vote first on his draft resolution, the representative of the United States added:

"The President could then pronounce his ruling as to whether it is a matter of substance or procedure, and we could debate whether the Council sustains him on that..."

The representative of Australia also contended that the President had ruled on the question whether it was a procedural matter. The President in reply to these statements maintained that he had only expressed his "opinion". He declared:

"... whether any proposal is one of a procedural character or one of substance is not subject to a ruling of any President of the Security Council. The President can only make a ruling on a point of order. The President cannot decide that the question is one of substance or procedure."

The Council voted first on the United States draft resolution. After the vote the President stated:

"I rule that this resolution is rejected because one of the permanent members of the Security Council voted against it."

The representative of the United States stated his challenge in the following manner:

"I would ask the President to accept the challenge which my delegation has put forward and to submit the matter again to be voted upon by the Council."

The President announced: "The vote is upon the proposal that the question is one of procedure." There

<sup>76</sup> For texts of relevant statements see:

114th meeting: President (Belgium), p. 426; USSR, pp. 427-428.

were 8 votes in favour, 2 against (1 vote against being that of a permanent member) and 1 abstention. He interpreted the results of the vote in the following words:

"I make the ruling that the last proposal, the proposal to consider the United States resolution to be of a procedural character, was rejected since one of the permanent members of the Security Council voted against it. Until I am overruled, this ruling stands."

This ruling was not challenged.<sup>77</sup>

#### CASE 104

At the 303rd meeting on 24 May 1948, in connexion with the Czechoslovak question, the President (France) put the following question to the vote: "Should the vote to be taken on the draft resolution be considered a procedural vote?" There were 8 votes in favour, 2 against (1 vote against being that of a permanent member) and 1 abstention.<sup>78</sup> The President ruled that the Security Council had decided to consider the main draft resolution non-procedural, as a result of the negative vote of a permanent member.<sup>79</sup> The ruling was challenged by the representatives of Argentina, Belgium, Canada and Colombia.

In reply to a question concerning the voting procedure to be followed on the vote on the challenge, the President (France) stated:

"... rule 30 of the rules of procedure was applicable, as I think we are dealing here with a point of order."

The representative of the USSR objected to this procedure, and stated:

"If the representative of any country were presiding over the Security Council and, in spite of the fact that one of the permanent members of the Council had voted against the proposal to consider the Chilean resolution as procedural, ruled that the resolution was procedural after all, his ruling would be legally invalid. The alternative would be that the question as to whether the resolution was procedural or non-procedural would, by the process of voting, by various stages be reduced to a point of order, which would be an absurdity."

The representative of Argentina observed:<sup>80</sup>

"Rule 30 of our rules of procedure makes no distinction, and it cannot be conceded that the President's ruling may be challenged on some occasions and not on others."

Before putting the challenge to his ruling to the vote, the President stated:

"The question submitted to the Council is essentially one connected with the application of the San Francisco Declaration. My interpretation was made in accordance with the Declaration which the permanent members adopted at San Francisco."

<sup>77</sup> For texts of relevant statements see: 202nd meeting: President (USSR), pp. 2390, 2391, 2394, 2400, 2401; Australia, p. 2392; United States, pp. 2390-2391, 2394, 2400.

<sup>78</sup> 303rd meeting: p. 19.

<sup>79</sup> 303rd meeting: p. 21.

<sup>80</sup> For texts of relevant statements see: 303rd meeting: President (France), pp. 23, 24, 25, 26; Argentina, p. 24; Belgium, p. 23; Canada, pp. 21-22; China, p. 27; Colombia, p. 23; Syria, p. 4; USSR, pp. 23-24, 27; United States, pp. 29-30.

**Decision:** *The President put the question to the vote in the following form: "Will those who object to my interpretation [of the vote on the preliminary question] raise their hands?" There were 6 votes in favour of rejecting the ruling (one vote in favour being that of a permanent member), 2 against (one vote against being that of a permanent member) and 3 abstentions.*

*The President's ruling was upheld, the motion for its rejection having failed to obtain the affirmative votes of seven members.<sup>81</sup>*

The representative of the USSR contended that, in voting against the presidential ruling, the representative of China had acted contrary to the obligations assumed by the signatories of the San Francisco Statement on Voting Procedure. The representative of China replied that he had voted against the ruling because he considered that it was based on a mistaken interpretation of the main proposal, namely, that it called for an investigation. He also observed that it was possible for the permanent members to be bound by the Statement and differ as to its interpretation. The representative of the United States explained that he had abstained on the vote on the challenge to the presidential ruling, notwithstanding the fact that the matter was clearly procedural, because "when the challenge is made to the ruling of the President, we are obliged, as I see it, to vote as we did".

#### CASE 105

At the 325th meeting on 22 June 1948, in connexion with the third report of the Atomic Energy Commission, the President (Syria) stated that the pending draft resolution was a procedural matter. In objecting to the statement by the President, the representative of the USSR stated:

"... the statement or agreement concluded between the five Powers cannot be the subject of a President's individual interpretation... The statement remains unaffected by anything the present President or any other President may have said."

The President replied as follows:<sup>82</sup>

"When the President of the Security Council has views that conflict with the permanent members... certainly the President of the Security Council has to use his own theory and make a declaration accordingly. Then, if that declaration is challenged it will be put to the vote, and the permanent members are free to vote against it, if the ruling is not in their favour."

The representative of the USSR indicated, however, that he would not request that a vote be taken on the preliminary question. He abstained from voting on the draft resolution.

#### CASE 106

At the 505th meeting on 28 September 1950, in connexion with the complaint of armed invasion of Taiwan (Formosa), the representative of China stated that the draft resolutions submitted by the representatives of Ecuador and the USSR to invite the People's Republic of China to take part in the discussion were

<sup>81</sup> 303rd meeting: pp. 26-27. The original S/P.V. records the President as stating: "Dans ces conditions, la décision que j'ai prise subsiste." S/P.V. 303, French, p. 76.

<sup>82</sup> For texts of relevant statements see: 325th meeting: President (Syria), pp. 17, 18; USSR, pp. 17-18.

non-procedural, and that, in the event of a difference of opinion, the question was not subject to a presidential ruling and could only be decided by a vote of the Security Council according to the San Francisco Statement on Voting Procedure.

At the 507th meeting on 29 September 1950, the President (United Kingdom) asked the Security Council to "vote on whether it regards the vote taken this morning on the Ecuadorean resolution as procedural". There were 9 votes in favour, 1 against (the vote against being that of a permanent member) and 1 abstention.<sup>83</sup>

After the President had declared the proposal adopted, the representative of China objected that his negative vote prevented the proposal to regard the question as procedural from being adopted. The President made the following statement:

"...I consequently rule as President that, notwithstanding the objection of our Chinese colleague, the vote which the Council took this morning on the Ecuadorean resolution is procedural."

The representative of China:

"I think the ruling of the President is *ultra vires*.

"...in the first place, I want to protest against the arbitrary ruling of the President. In the second place, I offer to the Security Council a proper and legal way of settling the question by sending it to the International Court of Justice and asking that body for an advisory opinion."

In reply to the President's interpretation of this statement to the effect that his ruling had not been challenged, though it had been described as arbitrary, the representative of China stated:

"When I offered to submit this question to the International Court of Justice, it was obvious that I could not agree that the present ruling should stand. The question to be submitted to the International Court of Justice is precisely that ruling."

The President interpreted the remarks of the representative of China as a challenge to his ruling. After citing the provisions of rule 30 of the rules of procedure, the President stated:

<sup>83</sup> 507th meeting: p. 4.

"The President's ruling has been challenged and must stand unless it is overruled. Therefore, subject to whatever the Chinese representative or any other representative wishes to state, I shall put that challenge to the vote."

The representative of China declared:

"The President and the other representatives in the Council know very well that a matter of this kind is not subject to a Presidential ruling. The President and the other representatives know full well that the device of a Presidential ruling is a clever but unsound manoeuvre, because the President knows he has seven votes to uphold his ruling. I think such tactics are unworthy of the great responsibility which rests on this body."

**Decision:** *The President put his ruling to the vote in the following form: "I ... put to the vote the challenge to my ruling and ask those members who are in favour of overruling my decision to please raise their hands."*

*There were no votes in favour, none against and no abstentions.*

*The President declared that, since there had been no vote in favour of overruling his decision, it stood.<sup>84</sup>*

The representative of China made the following statement:

"I did not choose to participate in a vote which is in itself illegal. I wish to have it recorded that the President's action is arbitrary and that the decisions he has arrived at are illegal and therefore invalid."

The representative of Egypt stated:<sup>85</sup>

"Although I entertain some doubts that the matter upon which the President has given a ruling was of a nature to make it subject to a decision through a mere ruling by him, I did not want and I thought it proper not to challenge his ruling."

<sup>84</sup> 507th meeting: pp. 7-8.

<sup>85</sup> For texts of relevant statements see:

505th meeting: China, p. 17.

507th meeting: President (United Kingdom), pp. 4, 7, 10; China, pp. 5, 6, 7, 8; Egypt, p. 10; United States, p. 10.

### Part III

## ABSTENTION AND ABSENCE IN RELATION TO ARTICLE 27 (3) OF THE CHARTER

### NOTE

By Article 27 (3) of the Charter the affirmative vote of seven members for decisions on matters other than procedural must include the concurring votes of the permanent members. Part III concerns the application of this requirement

- (i) In the light of the proviso of Article 27 (3);
- (ii) When a permanent member voluntarily abstains;
- (iii) When a permanent member is absent.

### OBLIGATORY ABSTENTION

The proviso of Article 27 (3) provides that

"In decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting."

There have been occasions on which this requirement has been met in that a member of the Council has abstained from voting or has been recorded as not participating in the vote,<sup>1</sup> when the decision was taken by the Council (Cases 107-114). These occasions are presented in section A.1. There have also been occasions on which the question of abstention in accordance with the proviso of Article 27 (3) has been raised, and significant discussion has ensued. These cases of discussion are presented separately in section A.2.

In the proceedings regarding the obligation of a member to abstain as a party to a dispute, various problems involved in the application of the proviso of Article 27 (3) have arisen, mainly in the earlier meetings of the Council. Such problems related to the

<sup>1</sup> On non-participation in voting, see chapter I, part VI, Note.

questions: (1) whether the matter under consideration was a dispute within the meaning of the proviso (Cases 116 and 117); (2) whether the decision to determine whether a question was a dispute was itself a procedural matter (Case 117); (3) how it should be decided whether a member was a party to a dispute (Case 120); and (4) what was the range of the decisions on which a member must abstain as a party to a dispute (Cases 115, 116 and 118).

Information on these problems has been included in the case histories of discussion, which have been arranged in simple chronological order.

#### VOLUNTARY ABSTENTION

Section B commences with a list of those occasions on which it would appear that a permanent member has abstained considering that no affirmative decision could be taken if he voted against the proposal. Since these occasions cannot with certainty be distinguished from instances of abstention on procedural matters, the list has been denoted: "Certain cases in which permanent members have abstained otherwise than in accordance with the proviso of Article 27 (3)." The entry is restricted to a reference by means of which the decision may be identified in the record of decisions in chapters VII, VIII and IX.

The list is limited to certain instances of abstention by permanent members of the Council, since where members abstaining were non-permanent members of the Council, their abstentions could not have prevented a decision of the Council unless all permanent members had cast an affirmative vote and the number of non-permanent members abstaining had been in excess of four. On the same grounds cases of abstention from voting by a permanent member when fewer than seven affirmative votes were cast in favour of a proposal, or when the matter was unanimously regarded as procedural, have been excluded.

Since the effect of abstention by permanent members has been discussed not only on certain of the occasions listed, but on other occasions as well, the consideration of the practice of abstention has been brought together separately from the listing of the relevant decisions.

That the practice of abstention of a permanent member does not preclude satisfaction of the requirements of Article 27 (3) has been affirmed in presidential rulings (Cases 183, 186 and 187) and by all the permanent members. One permanent member has placed before the Committee of Experts a proposal to embody this practice in a rule of procedure (Case 184). Certain non-permanent members of the Council have occasionally expressed doubts regarding the legality of decisions taken when a permanent member has abstained, on the grounds that the procedure fails to satisfy the requirements of the Charter (Cases 185, 187 and 188). The validity of the decisions so taken has not, however, been challenged.

#### ABSENCE OF A PERMANENT MEMBER

Section C concerns proceedings relating to the absence of, and the decisions taken in the absence of a permanent member. In connexion with the listing of the relevant decisions, the circumstances of absence are briefly recalled. Observations on the effect of the absence of a permanent member on the application of Article 27 are included in separate case histories.

#### A. OBLIGATORY ABSTENTION

##### 1. Cases in which members have abstained in accordance with the proviso of Article 27 (3)

###### CASE 107

At the 122nd meeting on 25 March 1947, in connexion with the Corfu Channel question, a draft resolution submitted by the representative of the United Kingdom to make recommendations for the settlement of the dispute was put to the vote as amended. The representative of Syria abstained. After the vote had been taken, the representative of the United Kingdom stated, "There is only one abstention. I am not voting."<sup>2</sup>

###### CASE 108

At the 127th meeting on 9 April 1947, in connexion with the Corfu Channel question, a draft resolution submitted by the representative of the United Kingdom to recommend the reference of the dispute to the International Court of Justice was put to the vote. The representative of the United Kingdom did not participate in the vote.<sup>3</sup>

###### CASE 109

At the 198th, 200th and 201st meetings on 28 August, 29 August and 10 September 1947, in connexion with the Egyptian question, draft resolutions concerning the resumption of direct negotiations submitted by the representatives of Brazil,<sup>4</sup> Colombia<sup>5</sup> and China,<sup>6</sup> and amendments thereto, were put to the vote. The representative of the United Kingdom did not take part in the voting.<sup>7</sup> In the course of the discussion, the representative of the United Kingdom stated: "I do not have a vote."<sup>8</sup>

###### CASE 110

At the 471st meeting on 12 April 1950, in connexion with the India-Pakistan question, the President (Egypt) put to the vote the appointment of Sir Owen Dixon as United Nations representative for India and Pakistan. The representative of India abstained on the vote. The President stated: "India is one of the countries abstaining, and I suppose that it considers its abstention as non-participation in the vote, on the ground that India is an interested party." The representative of India confirmed "the President's interpretation of India's abstention in the vote, in accordance with Article 27 of the Charter."<sup>9</sup>

###### CASE 111

At the 524th meeting on 17 November 1950, in connexion with the Palestine question, the Security Council voted upon a joint draft resolution submitted by the representatives of France, the United Kingdom and the United States,<sup>10</sup> to indicate certain steps to be taken by the Chief of Staff of the Truce Supervision Organization and to remind Israel, Jordan and Egypt

<sup>2</sup> 122nd meeting: p. 609.

<sup>3</sup> S/324, 127th meeting: p. 727.

<sup>4</sup> S/507, 189th meeting: pp. 2108-2109.

<sup>5</sup> S/530, 198th meeting: p. 2305.

<sup>6</sup> S/547, 201st meeting: p. 2344.

<sup>7</sup> 198th meeting: pp. 2302-2305; 200th meeting: pp. 2338-2340; 201st meeting: p. 2362.

<sup>8</sup> 201st meeting: p. 2348.

<sup>9</sup> For texts of relevant statements see:

471st meeting: President (Egypt), pp. 5-6; India, p. 11.

<sup>10</sup> S/1899, 522nd meeting: pp. 15-17; 524th meeting: p. 15.



of their obligations under the Charter and under the Armistice Agreements.

Before the vote was taken, the representative of Egypt stated:<sup>11</sup>

"...I have decided that, as a result of much thinking as to whether this matter is a dispute or a situation, and recalling what the doctrinaires have written about this question and its precedents or rather its lack of precedents, and in order to allay the legal worries of everybody, I shall abstain from voting by virtue of Article 27, paragraph 3 of the Charter. That abstention, of course, will not be the usual abstention, and it will not indicate my opinion as to the subject matter on which the Council is called upon to vote.

"... it will be clearly understood that if I abstain from voting today, that will not be binding at all as a legal position for the future with respect to my Government."

#### CASE 112

At the 539th meeting on 30 March 1951, in connexion with the India-Pakistan question, the President (Netherlands) put to the vote a revised joint draft resolution submitted by the representatives of the United States and the United Kingdom.<sup>12</sup> The representative of India abstained. After the vote had been taken, the representative of India stated: "India has abstained from voting in accordance with Article 27, paragraph 3 of the Charter."<sup>13</sup>

#### CASE 113

At the 543rd meeting on 30 April 1951, in connexion with the India-Pakistan question, the President (Netherlands) put to the vote the appointment of Mr. Frank P. Graham as United Nations representative for India and Pakistan. The representative of India abstained. After the vote had been taken, the representative of India stated:<sup>14</sup>

"I abstained from voting under Article 27 of the Charter... The proposed appointment is part of a decision under Chapter VI relating to the pacific settlement of disputes. As India was a party to the dispute, I abstained from voting."

#### CASE 114

At the 548th meeting on 29 May 1951, in connexion with the India-Pakistan question, the representative of the United Kingdom proposed that the President (Turkey) should address a letter to the two Governments transmitting and reaffirming the views of the Security Council. The representative of India abstained. Before the text was put to the vote, the representative of India indicated that he would, as a party to the dispute, abstain under Article 27 (3).<sup>15</sup>

## 2. Consideration of abstention in accordance with the proviso of Article 27 (3)

#### CASE 115

At the 3rd meeting on 28 January 1946, in connexion with the Iranian question, the Security Council

considered the letter dated 19 January 1946 from the representative of Iran which described the Iranian question as "a situation... which may lead to international friction".<sup>16</sup> After the States directly concerned had been heard, the President (Australia) stated:<sup>17</sup>

"May I indicate at this stage to the representative of the USSR delegation that, in view of the statement which has been made to the Council and the text of the written statement as well as the oral statement made by the Iranian representative today, there is a question whether a dispute exists. If the Council should accept the view that there is a dispute, then under the terms of paragraph 3 of Article 27, since the Soviet Union is named as the other party to this dispute, it will not be possible for the representative from the Soviet Union to exercise a vote during the consideration of this particular debate, in any of the decisions referred to in that paragraph. This does not apply, of course, to decisions on procedure or matters under paragraph 2 of Article 27."

#### CASE 116

At the 7th meeting on 4 February 1946, in connexion with the Greek question, the Security Council considered two proposals submitted by the representatives of Egypt and Poland to take note of the declaration of the representative of the United Kingdom that British troops would be withdrawn from Greece.<sup>18</sup> The Greek question had been submitted to the Council by the representative of the USSR, by letter dated 21 January 1946, "to discuss... the situation which has arisen in Greece" by the presence of British troops.<sup>19</sup>

When the President (Australia) put the Polish proposal to the vote, the representative of the Netherlands inquired whether "the parties to the dispute vote in this matter". The President replied:

"The Council has not declared the matter to be a dispute, and at such time as the Council declares any situation to be a question of dispute, it in that way brings into operation Article 27 of the Charter."

He asked the representative of the Netherlands whether he considered it "desirable to take a vote on the question as to whether this should be regarded as a dispute". The representative of the Netherlands stated that in view of the ruling of the President, he would not request a vote.

The President put the Polish proposal to the vote. There were 2 votes in favour. The President then ruled that the proposal had been rejected. In reply to the request of the representative of the USSR that the votes of those against and those abstaining be counted, the President stated that since there were only 2 votes in favour, it had been indicated that the proposal had been rejected. The representative of the USSR agreed with the President.

<sup>11</sup> S/1, O.R., 1st year, 1st series, Suppl. No. 1, pp. 16-17.

<sup>12</sup> 3rd meeting: p. 44. At the 19th meeting on 14 February 1946, in connexion with the Syrian and Lebanese question, the representative of Brazil referred to the Iranian question. He stated: "I think that in that case we heard the parties and then the President ruled, on a question of procedure, that it was a dispute. The Soviet delegation did not oppose that ruling, which of course meant that the Soviet delegation would not have a vote." 19th meeting: p. 275.

<sup>13</sup> 539th meeting: p. 15.

<sup>14</sup> 543rd meeting: p. 4.

<sup>15</sup> 548th meeting: p. 23.

<sup>16</sup> O.R., 1st year, 1st series, Suppl. No. 1, pp. 73-74.

<sup>11</sup> 524th meeting: pp. 7-8.

<sup>12</sup> S/2017/Rev.1, O.R., 6th year, Suppl. for Jan., Feb., and March 1951, p. 25.

<sup>13</sup> 539th meeting: p. 15.

<sup>14</sup> 543rd meeting: p. 4.

<sup>15</sup> 548th meeting: p. 23.

The President then put the Egyptian proposal to the vote. In addition to taking note of the declaration regarding the withdrawal of troops, this proposal contained the phrase "appreciating that the presence of British troops in Greece, in the present circumstances, does not constitute a threat to international peace and security". The representative of the USSR stated that he would vote against the Egyptian proposal. Furthermore, since the Council was "evidently going to vote in conformity with Article 27 . . . in particular with paragraph 3", his negative vote precluded the possibility of the adoption of the proposal. The President thereupon asked the Council to vote on the question whether the proposal was a procedural matter. Recalling the point of order raised earlier by the representative of the Netherlands, he stated:

"I then took it that it was recognized that we were dealing with what was to be regarded as a procedural matter, and I permitted all members of the Council to have the right to vote . . ."

The representative of the Netherlands maintained:

"The matter is raised under Chapter VI, and Article 27, paragraph 3, says ' . . . in decisions under Chapter VI . . . a party to a dispute shall abstain from voting'."

The President reiterated that he had ruled "that it was not a question of dispute and . . . it is therefore a procedural matter". In reply to the representative of the Netherlands, the representative of the USSR stated: "But we are not at present taking a decision under Chapter VI." He contended that that was "another matter, a special one".

The representative of Egypt quoted from Articles 33 and 34, and, recalling the claim of the representative of the USSR that the situation in Greece constituted a threat to international peace and security, stated:

" . . . We have seen a dispute crop up perhaps even here. Consequently, I see no other possibility than to apply Chapter VI. If we agree to apply Chapter VI, we avoid the possibility of the veto being used for every dispute. In that case, neither the representative of the United Kingdom nor the representative of the Soviet Union has the right to take part in the voting."

The representative of Brazil observed that the letter from the delegation of the USSR was "based on Article 35, and Article 35 comes under Chapter VI".<sup>20</sup>

At the 8th meeting on 5 February 1946, the Security Council accepted the suggestion of the President that the matter should be disposed of by accepting a statement by the President which summarized the proceedings. At the 10th meeting on 6 February 1946, the President read his statement, to which there was no objection. The Egyptian proposal was not put to the vote.<sup>21</sup>

#### CASE 117

At the 19th meeting on 14 February 1946, in connexion with the Syrian and Lebanese question, the

<sup>20</sup> For texts of relevant statements see:

7th meeting: President (Australia), pp. 125, 126, 129; Brazil, p. 132; Egypt, pp. 131-132; Netherlands, pp. 125, 129; USSR, pp. 126, 128, 129, 130.

8th meeting: President (Australia), pp. 132-133.

10th meeting: President (Australia), pp. 171-172; USSR, p. 172; United Kingdom, p. 173.

<sup>21</sup> 10th meeting: pp. 171-173.

President (Australia), in opening the discussion, observed that, in the letter dated 4 February 1946 by which the question was submitted to the Council,<sup>22</sup> the delegations of Lebanon and Syria "refer to this matter as a 'dispute'." He stated:

"As members of the Security Council are aware, the proviso at the end of Article 27, paragraph 3 . . . applies when a dispute is being considered by the Security Council. Frequently, however, the question whether a dispute exists cannot be given an automatic answer. The Security Council itself will, if necessary, have to decide this question."

The President suggested that it would be inconvenient to answer that question before the States immediately concerned had been heard. The representative of Egypt, while agreeing that the question whether the matter was a dispute should be deferred, moved that the decision "whether any question is a dispute or a situation" was a procedural matter. He stated:

"If it were left to one of the permanent members to decide whether the matter concerned is a situation or a dispute, he might come forward at any time and say: it is a situation. If it is not a question of procedure, he would have the right to vote to decide that it is a situation, and in so doing he would make of Article 27, paragraph 3, a dead letter, just as though the veto could be applied in every case. If it were permissible for the permanent members of the Council to say that a matter was a situation even when everybody considered that it was not, and if we held that it was not a question of procedure, we would give the permanent members of the Council the right of veto for all questions in which they might wish to use it. This is contrary to all the texts and to the spirit of the Charter, to all that we have said and to all the decisions that we have taken together."

The representative of the USSR stated:

" . . . the question as to whether a particular case is a dispute or a situation is a question of substance and not of procedure."

"Procedure is the manner of deciding a matter, a method of decision, but the question as to what the actual substance of a particular matter amounts to, whether it is a situation or a dispute, is not the manner of decision, not the method of deciding the matter, but relates in fact to the evaluation of the very substance of the matter. Therefore, such a matter must be decided not on the basis of Article 27, paragraph 2, which deals with procedural matters, but on the basis of Article 27, paragraph 3, which deals with the settlement of matters of a non-procedural character."

The representatives of China and the Netherlands suggested that the Egyptian motion be deferred to the Committee of Experts which was drafting provisional rules of procedure for the Council.

The representative of Mexico was of the opinion that the Council did not have to decide whether a question was a dispute, "that is a question that has to be decided by . . . the party that is bringing the matter to the Council." The representatives of the Netherlands and the USSR contended that in view of the consequences upon the voting procedure, the Council had

<sup>22</sup> S/5, O.R., 1st year, 1st series, Suppl. No. 1, pp. 82-83.

to decide whether a dispute existed. As regards the Egyptian motion, the representative of the Netherlands moved that no vote be taken "at this stage in the proceedings". The Netherlands motion was adopted.<sup>23</sup>

At the 23rd meeting on 16 February 1946, the President put to the vote several proposals relating to the presence of British and French troops in Syria and Lebanon. The representative of the USSR was in favour of applying the proviso of Article 27 (3). He asked the President "which delegations are entitled to take part in the vote". Recalling the discussion of the 19th meeting and "the consequences upon the voting in the Council of a decision that a dispute exists", the President stated:

"...if there is no objection, I shall take it to be the decision of the Council that a dispute does exist between Syria and Lebanon on the one hand and France and the United Kingdom on the other."

The representatives of France and the United Kingdom objected to the President's statement, but announced that they had intended to refrain from taking part in the vote. The representative of the United Kingdom added:

"... But I do it without prejudice on this occasion and await the final decisions of the experts on procedure to guide future meetings."

The President proposed:<sup>24</sup>

"Having regard to the declarations made by the representatives of France and the United Kingdom that, without prejudice to the question whether a dispute exists, they will not exercise their vote in this matter... the Council [shall] proceed to a vote... without taking any formal decision on the question of the voting rules."

The proposal was adopted without vote.<sup>25</sup>

#### CASE 118

At the 114th meeting on 27 February 1947, in connexion with the Corfu Channel question, the Security Council voted upon a draft resolution, submitted by the representative of Australia at the 111th meeting on 24 February 1947, to appoint a sub-committee "to examine all the available evidence" and "to make a report on the facts of the case as disclosed by such evidence".<sup>26</sup> Before the vote was taken the representative of the United Kingdom stated:

"As a party to this dispute, I am deprived of my vote under Article 27, paragraph 3, of the Charter when it is a matter of a decision under Chapter VI. I presume, though, that the vote which we are going to take is a purely procedural one and that I can exercise my vote. Is that the case?"

The representative of the USSR was of the opinion that a decision ensuing from the Australian draft resolution would be "a decision about an investigation", which was not a procedural matter. The President (Belgium) ruled:

<sup>23</sup> 19th meeting: p. 281.

<sup>24</sup> For texts of relevant statements see:

19th meeting: President (Australia), p. 272; Brazil, pp. 274-275; Egypt, pp. 273, 273-274, 274, 276; Mexico, p. 277; Netherlands, p. 277, 280; USSR, pp. 278-279, 280-281.

23rd meeting: President (Australia), pp. 357, 363; Egypt, pp. 358, 363-364; France, pp. 357-358; USSR, pp. 357, 360-362; United Kingdom, pp. 358, 359-360, 362-363.

<sup>25</sup> 23rd meeting: pp. 363-364.

<sup>26</sup> 111th meeting: pp. 364-365.

"I regret that I am unable to share the view of the representative of the USSR; I think that the answer to the question put by the representative of the United Kingdom must be in the affirmative.

"In so far as it sanctions an exception to the voting order, Article 27, paragraph 3, must, where applicable, be interpreted strictly; it cannot be stretched to cover cases which are not mentioned in Chapter VI of the Charter. If we study the various Articles of Chapter VI we shall see that the establishment of a sub-committee, such as that proposed by the Australian resolution, is not amongst the decisions and recommendations mentioned in that Chapter."

The representatives of Colombia, Syria and the United States supported the President on the ground that this would not be an investigation "in the sense of Article 34 of the Charter". The representative of Colombia stated:

"... if we confine ourselves to agreeing that we are not confronted with a decision under Chapter VI, but with a preliminary question, to assist us in the decision which we shall have to take under this Chapter VI, the matter will become easier to understand, and we shall be in a position to decide whether, in these circumstances, the representative of the United Kingdom is entitled to take part in the vote."

The representative of the United States considered that the draft resolution fell under Article 29. While maintaining that the decision was a non-procedural matter, the representative of the USSR declared that he would not vote against a motion to consider it a procedural matter since he did not wish "to hinder the adoption of the decision to establish a sub-committee".<sup>27</sup>

The representative of the United Kingdom cast his vote.<sup>28</sup>

#### CASE 119

At the 303rd meeting on 24 May 1948, in connexion with the Czechoslovak question, the President (France) ruled that a draft resolution to appoint a sub-committee to receive evidence had not been adopted, one vote against having been that of a permanent member. The representative of Chile\* contended that the representative of the USSR had abused the right of "veto". He continued:<sup>29</sup>

"... in the present case the USSR is a party to a dispute, for it must be assumed that there is a dispute not only when there is a direct conflict of interests between two Member States, but also when any difference arising from conflicting attitudes of one nation in respect of another nation is brought to the attention of the Security Council by any country. This is certainly the case when a State exercises its right under Article 35, and accuses another of violating the Charter, whether it has any direct interest in the matter or not. Paragraph 3 of Article 27 is merely intended to prevent a member of the Council from acting as judge in its own case and participating in the decision that may be taken against it. This is what the USSR has just done."

<sup>27</sup> For texts of relevant statements see:

114th meeting: President (Belgium), p. 426; Australia, p. 431; Colombia, pp. 428-429; Syria, pp. 429-430; USSR, pp. 425-426, 427, 428; United Kingdom, p. 425; United States, pp. 430-431.

<sup>28</sup> 114th meeting: p. 432.

<sup>29</sup> 303rd meeting: p. 35.

## CASE 120

At the 553rd and 555th meetings on 16 and 27 April 1951, in connexion with the Palestine question, the Security Council considered the restrictions imposed by Egypt on the passage of ships through the Suez Canal.

The representative of Egypt\* contended that the representatives of France, the Netherlands, Turkey, the United Kingdom and the United States, having submitted protests to the Egyptian Government on this matter, ought to abstain from voting in accordance with Article 27 (3) on the joint draft resolution submitted by the representatives of France, the United Kingdom and the United States, to find the Egyptian restrictions "inconsistent with the objectives of a peaceful settlement".<sup>30</sup>

The representative of Egypt recalled the definition of "dispute" and the interpretations of the proviso of Article 27 (3) considered by the Interim Committee of the General Assembly, and stated:

"This fundamental and Charterwise principle—namely, that no State shall be judge and party—should apply and command our respect in all cases, whether there are two or more parties to a question. Furthermore, the Council cannot rightly subscribe to any attempt to defeat the *raison d'être* of this principle by claiming that it would at times impede the Council from discharging its duties. . . ."

"We believe that an elementary principle of justice requires that a party to a dispute should not be a judge of it, and that it is this great principle which inspired the provision in Article 27 of the Charter that a party to a dispute should abstain from voting."

Speaking on behalf of the delegations of France, the Netherlands, Turkey, the United Kingdom and the United States, the representative of the United Kingdom maintained that even under the definitions of "dispute" cited by the representative of Egypt, a dispute existed under the Charter only when a State brought a complaint to the Security Council against another State and the State against which the complaint had been made rejected it. Although more than two States could be involved in those circumstances, only Egypt and Israel were parties to the dispute before the Council. He further rejected the analogy between the Security Council and a court of law as implied in the reference to "judge and party". The representative of the United Kingdom added:

"It is almost inevitable that in many, if not all, questions which come before the Council, a number of States members of the Council will be concerned to a greater or less degree, even though they may not be parties to the dispute with which the Council is dealing. In itself, this is certainly no reason why they should be debarred from voting."

He then held that "the Egyptian argument would produce quite incongruous results", since, if the State in question concerned itself to damage the interests of at least five members of the Council, the Council would be unable to take decisions. He continued:

"We have, therefore, come to the conclusion that Article 27, paragraph 3, in no way debars us from voting on the draft resolution before the Council.

On the contrary, to read such an interpretation into the Article would be, as we see it, to paralyze the Security Council so as to prevent it handling many controversies which, under the plan of the Charter, should come before it."

To which the representative of Egypt replied:

"His contention that we can extend the description of 'interested' to almost everyone in the world, to almost every State in the world is, to say the least, a very carefree contention. If we were to apply his criterion, there would never be an application of paragraph 3, Article 27 of the Charter. We would never find any party to which we could apply the description or definition of an interested party. The question of what is an interested party is a matter to be investigated."

In that connexion, he submitted a draft resolution<sup>31</sup> to have the Council request the International Court of Justice to give its advisory opinion on the following question:

"In the light of the Charter of the United Nations, particularly paragraph 3 of Article 27, and in view of the debate in the Security Council, are France, the Netherlands, Turkey, the United Kingdom and the United States of America obliged to abstain from voting on the question of the restrictions imposed by Egypt in relation to the passage through the Suez Canal of some war materials to Israel?"

At the 556th meeting on 29 August 1951, the representative of Egypt noted with regret that the five members of the Council had not reconsidered their position on the question of abstaining from voting in accordance with Article 27 (3). As long as they maintained that attitude, he concluded, it would serve no purpose for the Egyptian draft resolution to be sponsored by a member of the Council, since it would not be approved by the requisite majority.<sup>32</sup>

At the 558th meeting on 1 September 1951, the representatives of France, the Netherlands, Turkey, the United Kingdom and the United States were among those who voted in favour of the joint draft resolution.<sup>33</sup>

#### B. VOLUNTARY ABSTENTION IN RELATION TO ARTICLE 27 (3)

##### I. Certain cases in which permanent members have abstained otherwise than in accordance with the proviso of Article 27 (3)

(For texts of resolutions listed and record of votes, see chapters VIII and IX.)

#### SPANISH QUESTION

##### CASE 121

**Decision of 29 April 1946 (39th meeting): Australian draft resolution as amended.<sup>34</sup>**

<sup>30</sup> S/2313, 555th meeting: p. 16.

<sup>31</sup> For texts of relevant statements see:

553rd meeting: Egypt, pp. 23-25.

555th meeting: China, pp. 18-19, 20; Egypt, pp. 14-16; United Kingdom, pp. 1-4.

556th meeting: China, p. 5; Egypt, pp. 4-5.

<sup>32</sup> 558th meeting: pp. 2-3.

<sup>33</sup> 39th meeting: pp. 243, 245; for consideration of the abstention, see Case 180. For discussion regarding the establishment of the Sub-Committee, see chapter V, Case 65.

\* S/2298/Rev.1, 558th meeting: pp. 2-3; S/2322.

## GREEK FRONTIER INCIDENTS QUESTION

## CASE 122

**Decision of 19 December 1946 (87th meeting):** Paragraph 3 of United States draft resolution as amended by Mexico and United Kingdom.<sup>85</sup>

## CASE 123

**Decision of 19 December 1946 (87th meeting):** Paragraph 5 of United States draft resolution as amended by Poland.<sup>86</sup>

## CASE 124

**Decision of 19 December 1946 (87th meeting):** United Kingdom amendment as amended by Netherlands.<sup>87</sup>

## CASE 125

**Decision of 10 February 1947 (101st meeting):** United States draft resolution.<sup>88</sup>

## CASE 126

**Decision of 18 April 1947 (131st meeting):** United States draft resolution as amended by France and China.<sup>89</sup>

## CORFU CHANNEL QUESTION

## CASE 127

**Decision of 27 February 1947 (114th meeting):** Australian draft resolution.<sup>90</sup>

## CASE 128

**Decision of 9 April 1947 (127th meeting):** United Kingdom draft resolution.<sup>91</sup>

## INDONESIAN QUESTION (II)

## CASE 129

**Decision of 1 August 1947 (173rd meeting):** Australian draft resolution as amended (without Part II of the preamble).<sup>92</sup>

## CASE 130

**Decision of 25 August 1947 (194th meeting):** Australian-Chinese draft resolution.<sup>93</sup>

## CASE 131

**Decision of 25 August 1947 (194th meeting):** United States draft resolution.<sup>94</sup>

<sup>85</sup> 87th meeting: p. 681.

<sup>86</sup> 87th meeting: p. 688.

<sup>87</sup> 87th meeting: p. 699.

<sup>88</sup> 101st meeting: p. 189.

<sup>89</sup> 131st meeting: p. 800.

<sup>90</sup> 114th meeting: p. 432. Discussion took place on the question whether the matter was procedural. The representative of the USSR contended that it was a non-procedural matter because it was a decision to investigate. He stated, however, that he did not wish "to hinder the adoption of a decision to establish a Sub-Committee". (114th meeting: p. 428.) At the 300th meeting on 21 May 1948, the representative of the USSR stated that, if he had not abstained on that occasion, no decision would have been taken. (300th meeting: p. 42.) For discussion regarding the establishment of the Sub-Committee, see chapter V, Case 66.

<sup>91</sup> 127th meeting: p. 727.

<sup>92</sup> 173rd meeting: pp. 1700-1703. No vote was taken on the resolution as a whole after the paragraphs had been adopted. For consideration of the abstentions, see Case 183.

<sup>93</sup> 194th meeting: p. 2200.

<sup>94</sup> 194th meeting: p. 2209.

## CASE 132

**Decision of 26 August 1947 (195th meeting):** Polish draft resolution.<sup>95</sup>

## CASE 133

**Decision of 3 October 1947 (207th meeting):** Australian draft resolution.<sup>96</sup>

## CASE 134

**Decision of 1 November 1947 (219th meeting):** United States draft resolution as amended by Sub-Committee.<sup>97</sup>

## CASE 135

**Decision of 28 February 1948 (259th meeting):** Chinese draft resolution.<sup>98</sup>

## CASE 136

**Decision of 28 February 1948 (259th meeting):** Canadian draft resolution.<sup>99</sup>

## CASE 137

**Decision of 6 July 1948 (329th meeting):** Chinese proposal.<sup>100</sup>

## CASE 138

**Decision of 29 July 1948 (342nd meeting):** Chinese draft resolution.<sup>101</sup>

## CASE 139

**Decision of 24 December 1948 (392nd meeting):** Colombian-Syrian-United States draft resolution as amended.<sup>102</sup>

## CASE 140

**Decision of 28 December 1948 (395th meeting):** Chinese draft resolution as amended.<sup>103</sup>

## CASE 141

**Decision of 28 December 1948 (395th meeting):** Colombian draft resolution.<sup>104</sup>

## CASE 142

**Decision of 28 January 1949 (406th meeting):** Chinese-Cuban-Norwegian-United States draft resolution paragraph by paragraph.<sup>105</sup>

## CASE 143

**Decision of 23 March 1949 (421st meeting):** Canadian proposal.<sup>106</sup>

## INDIA-PAKISTAN QUESTION

## CASE 144

**Decision of 17 January 1948 (229th meeting):** Belgian draft resolution as amended.<sup>107</sup>

<sup>95</sup> 195th meeting: p. 2232.

<sup>96</sup> 207th meeting: p. 2503.

<sup>97</sup> 219th meeting: p. 2750.

<sup>98</sup> 259th meeting: p. 384.

<sup>99</sup> 259th meeting: p. 393.

<sup>100</sup> 329th meeting: p. 30.

<sup>101</sup> 342nd meeting: pp. 38-39.

<sup>102</sup> 392nd meeting: pp. 37-38.

<sup>103</sup> 395th meeting: p. 67.

<sup>104</sup> 395th meeting: p. 83.

<sup>105</sup> 406th meeting: pp. 21-24, 26, 28-33. No vote was taken on the draft resolution as a whole after each paragraph had been adopted.

<sup>106</sup> 421st meeting: pp. 25-26.

<sup>107</sup> 229th meeting: p. 125.



## CASE 145

**Decision of 20 January 1948 (230th meeting):** Belgian draft resolution.<sup>58</sup>

## CASE 146

**Decision of 21 April 1948 (286th meeting):** Belgian-Canadian-Chinese-Colombian-United Kingdom-United States draft resolution paragraph by paragraph.<sup>59</sup>

## CASE 147

**Decision of 23 April 1948 (287th meeting):** French proposal.<sup>60</sup>

## CASE 148

**Decision of 3 June 1948 (312th meeting):** Syrian draft resolution as amended by United Kingdom.<sup>61</sup>

## CASE 149

**Decision of 30 March 1951 (539th meeting):** United Kingdom-United States draft resolution.<sup>62</sup>

## CASE 150

**Decision of 30 April 1951 (543rd meeting):** United Kingdom-United States proposal.<sup>63</sup>

## CASE 151

**Decision of 29 May 1951 (548th meeting):** Text of President's letter.<sup>64</sup>

## CASE 152

**Decision of 10 November 1951 (566th meeting):** United Kingdom-United States draft resolution.<sup>65</sup>

## PALESTINE QUESTION

## CASE 153

**Decision of 5 March 1948 (263rd meeting):** United States draft resolution as amended.<sup>66</sup>

## CASE 154

**Decision of 1 April 1948 (277th meeting):** United States draft resolution.<sup>67</sup>

## CASE 155

**Decision of 16 April 1948 (283rd meeting):** Colombian draft resolution.<sup>68</sup>

## CASE 156

**Decision of 23 April 1948 (287th meeting):** United States draft resolution as amended.<sup>69</sup>

<sup>58</sup> 230th meeting: p. 143. For consideration of the abstention, see Case 185.

<sup>59</sup> 286th meeting: pp. 9-12, 15-21, 23, 25-30, 33-39. At the 286th meeting on 21 April 1948, in connexion with the India-Pakistan question, the representative of the United Kingdom did not participate in the vote on one paragraph of the joint draft resolution to instruct UNCIP to place its good offices and mediation at the disposal of the Governments of India and Pakistan. 286th meeting: pp. 11-12.

<sup>60</sup> 287th meeting: p. 3.

<sup>61</sup> 312th meeting: p. 21.

<sup>62</sup> 539th meeting: p. 15.

<sup>63</sup> 543rd meeting: p. 4.

<sup>64</sup> 548th meeting: p. 23.

<sup>65</sup> 566th meeting: p. 13.

<sup>66</sup> 263rd meeting: p. 44.

<sup>67</sup> 277th meeting: pp. 34-35.

<sup>68</sup> 283rd meeting: p. 41.

<sup>69</sup> 287th meeting: p. 33.

## CASE 157

**Decision of 22 May 1948 (302nd meeting):** United States draft resolution as amended.<sup>70</sup>

## CASE 158

**Decision of 29 May 1948 (310th meeting):** All paragraphs except paragraph 2 of United Kingdom draft resolution as amended.<sup>71</sup>

## CASE 159

**Decision of 7 July 1948 (331st meeting):** United Kingdom draft resolution.<sup>72</sup>

## CASE 160

**Decision of 15 July 1948 (338th meeting):** United States draft resolution as amended.<sup>73</sup>

## CASE 161

**Decision of 19 August 1948 (354th meeting):** Sub-paragraphs (c), (d) and (e) of Canadian-French-United Kingdom-United States draft resolution.<sup>74</sup>

## CASE 162

**Decision of 19 October 1948 (367th meeting):** Syrian amendment to paragraph 18 of Mediator's Report and the Syrian proposal as amended.<sup>75</sup>

## CASE 163

**Decision of 4 November 1948 (377th meeting):** Sub-Committee's proposal as amended. Paragraph by paragraph and resolution as a whole.<sup>76</sup>

## CASE 164

**Decision of 16 November 1948 (381st meeting):** Belgian-Canadian-French draft resolution in separate paragraphs.<sup>77</sup>

## CASE 165

**Decision of 29 December 1948 (396th meeting):** United Kingdom draft resolution as amended. Paragraph by paragraph and resolution as a whole.<sup>78</sup>

## CASE 166

**Decision of 11 August 1949 (437th meeting):** Canadian-French draft resolution.<sup>79</sup>

## CASE 167

**Decision of 17 November 1950 (524th meeting):** French-United Kingdom-United States draft resolution as revised.<sup>80</sup>

## CASE 168

**Decision of 8 May 1951 (545th meeting):** French-Turkish-United Kingdom-United States draft resolution.<sup>81</sup>

<sup>70</sup> 302nd meeting: p. 66.

<sup>71</sup> 310th meeting: pp. 38-39, 52-54, 61-63. No vote was taken on the draft resolution as a whole after the adoption of each paragraph.

<sup>72</sup> 331st meeting: p. 35.

<sup>73</sup> 338th meeting: p. 66.

<sup>74</sup> 354th meeting: pp. 50-51.

<sup>75</sup> 367th meeting: p. 37.

<sup>76</sup> 377th meeting: pp. 39-43.

<sup>77</sup> 381st meeting: pp. 54-55.

<sup>78</sup> 396th meeting: pp. 23-26.

<sup>79</sup> 437th meeting: p. 13.

<sup>80</sup> 524th meeting: p. 16.

<sup>81</sup> 545th meeting: p. 28.

## CASE 169

**Decision of 18 May 1951 (547th meeting):** French-Turkish-United Kingdom-United States draft resolution.<sup>82</sup>

## CASE 170

**Decision of 1 September 1951 (558th meeting):** French-United Kingdom-United States draft resolution.<sup>83</sup>

## GENERAL REGULATION AND REDUCTION OF ARMAMENTS

## CASE 171

**Decision of 13 February 1947 (105th meeting):** Draft resolution resulting from consultation of the President (Belgium) with representatives of Australia, Colombia, France, United States and USSR, as amended by the United Kingdom.<sup>84</sup>

## REPORTS OF THE COMMISSION FOR CONVENTIONAL ARMAMENTS

## CASE 172

**Decision of 8 July 1947 (152nd meeting):** Plan of work proposed by Commission for Conventional Armaments.<sup>85</sup>

## TRUSTEESHIP AGREEMENT FOR THE FORMER JAPANESE ISLANDS

## CASE 173

**Decision of 2 April 1947 (124th meeting):** Article 15 of the draft agreement.<sup>86</sup>

## CASE 174

**Decision of 7 March 1949 (415th meeting):** Draft resolution proposed by majority of the Committee of Experts.<sup>87</sup>

## REPORTS OF THE ATOMIC ENERGY COMMISSION

## CASE 175

**Decision of 18 June 1948 (325th meeting):** Canadian draft resolution.<sup>88</sup>

## ADMISSION OF NEW MEMBERS TO THE UNITED NATIONS

## CASE 176

**Decision of 4 March 1949 (414th meeting):** Israel:—United States draft resolution.<sup>89</sup>

## CASE 177

**Decision of 26 September 1950 (503rd meeting):** Indonesia:—President's (United Kingdom) proposal.<sup>90</sup>

<sup>82</sup> 547th meeting: p. 41.  
<sup>83</sup> 558th meeting: p. 3.  
<sup>84</sup> 105th meeting: p. 274.  
<sup>85</sup> 152nd meeting: p. 1227.  
<sup>86</sup> 124th meeting: p. 680.  
<sup>87</sup> 415th meeting: p. 9. For consideration of the abstention, see Case 188.  
<sup>88</sup> 325th meeting: p. 20. The representative of the USSR maintained that "resolutions of this kind are not procedural". The President (Syria) and other members of the Council were of the opinion that the draft resolution was a procedural matter. (325th meeting: pp. 13-19.)  
<sup>89</sup> 414th meeting: p. 14. For consideration of the abstention, see Case 187.  
<sup>90</sup> 503rd meeting: p. 28.

## APPLICATION OF LIECHTENSTEIN TO BECOME A PARTY TO STATUTE OF INTERNATIONAL COURT OF JUSTICE

## CASE 178

**Decision of 27 July 1949 (432nd meeting):** Proposal by a majority of the Committee of Experts.<sup>91</sup>

## REPORT OF THE SECURITY COUNCIL TO THE GENERAL ASSEMBLY

## CASE 179

**Decision of 12 September 1950 (500th meeting):** Proposal to approve the text of the Report.<sup>92</sup>

## 2. Consideration of the practice of voluntary abstention in relation to Article 27 (3)

## CASE 180

At the 39th meeting on 29 April 1946, in connexion with the Spanish question, the representative of the USSR, before the vote on which he abstained was taken, stated:

"...bearing in mind . . . that my voting against the Australian draft resolution would make its adoption impossible, I shall abstain from voting.

"I consider it necessary to draw the attention of the Security Council to the fact that my abstention from voting on this matter may in no way be regarded as a precedent capable of influencing in any way the question of the abstention of permanent members of the Security Council."

The representative of the Netherlands reserved the position of his Government with respect to whether it was a procedural matter. The representative of the United States stated:

"I wish to reserve the position of the United States of America on the statement the USSR representative has just made. With that understanding I am prepared to agree that Mr. Gromyko's abstention, should not create a precedent for the future."<sup>93</sup>

## CASE 181

At the 56th meeting on 29 August 1946, in connexion with the admission of new Members to the United Nations, the representative of China raised the question whether a permanent member was bound to vote either in favour of or against a proposal, or whether his abstention might not be counted as a neutral vote. At the request of the President (Poland) at the 57th meeting, the matter was not discussed.<sup>94</sup>

## CASE 182

At the 131st meeting on 18 April 1947, in connexion with the Greek question, the representative of the USSR submitted a draft resolution to establish a commission to supervise aid received by Greece from other Powers. In the course of a statement opposing the draft resolution, the representative of the United States declared:<sup>95</sup>

"I wish the record to show that the United States will not exercise a veto, and that the United States

<sup>91</sup> 432nd meeting: p. 6.  
<sup>92</sup> 500th meeting: p. 1.  
<sup>93</sup> For texts of relevant statements see: 39th meeting: Netherlands, p. 244; USSR, p. 243; United States, p. 245. See also Chapter V, Case 65.  
<sup>94</sup> 56th meeting: p. 95; 57th meeting: p. 98.  
<sup>95</sup> 131st meeting: p. 803.

has considerable regard for a practice which has grown in the Security Council, by usage, to constitute a very good practical construction of Article 27 of the Charter. And in this case, although the United States is opposed to the resolution, it will abstain, but will not veto it."

## CASE 183

At the 173rd meeting on 1 August 1947, in connexion with the Indonesian question (II), the representative of the United Kingdom explained, with regard to his abstention on the Australian draft resolution, that, while his Government was not opposed to the draft resolution, he was not able to vote in favour, but he did not want his abstention to be treated as a veto. The President (Syria) replied:<sup>95</sup>

"I think it is now jurisprudence in the Security Council—and the interpretation accepted for a long time—that an abstention is not considered a veto, and the concurrent votes of the permanent members mean the votes of the permanent members who participate in the voting. Those who abstain intentionally are not considered to have cast a veto."

The representative of France stated that while he opposed the draft resolution and had doubts regarding the competence of the Council, he abstained in order to facilitate the general progress of the work of the Council.

## CASE 184

At the 197th meeting on 27 August 1947, in connexion with the consideration of General Assembly resolution 40 (I) on voting procedures in the Security Council which recommended "the early adoption of practices and procedures, consistent with the Charter, to assist in reducing the difficulties in the application of Article 27", the President (Syria) stated that "...almost the only result of these recommendations of the General Assembly... has been that there have been abstentions in some cases, which proved helpful."

The representative of the United States stated:

"In the opinion of the United States delegation, the Council has developed, during the past year, one practice in regard to the voting of the permanent members which appears to be of real importance. I refer to the practice of abstention by a permanent member in order to permit the will of the majority of the Council to prevail."

After proposing that the third and fourth paragraphs of the General Assembly resolution should be referred to the Committee of Experts, he offered, in the form of a memorandum for the consideration of the members of the Council, certain draft proposals for additional rules of procedure of the Security Council on the subject of voting.

The representative of the USSR considered that the draft proposals were "aimed essentially at revising important provisions of the United Nations Charter" and were "doomed to failure". The representative of the United States declared that he was not advocating "the changing of the Charter or abrogation of the rule of veto", but endeavouring "to find, if possible, within the Charter, ways by which our work can be made a little more effective and a little more consonant

with the purposes of the framers of the Charter at San Francisco."

The representative of Australia, referring to the suggestion made during the course of the Assembly proceedings that "an abstention should not be regarded as a veto", stated:<sup>97</sup>

"We note that that practice has been recognized. I note that in the United States proposal it is placed in writing. I am not sure that that is altogether sound, because my delegation believes firmly in the principle that accepted practice and usage in many cases are far stronger than a too rigidly written form."

## CASE 185

At the 232nd meeting on 23 January 1948, the representative of Argentina, referring to the resolution of 20 January 1948, establishing UNCIP, stated:

"The resolution which was adopted at the [230th] meeting of 20 January 1948... did not obtain the concurring votes of the five permanent members of the Security Council.

"This is a substantive decision and is therefore governed by Article 27, paragraph 3, of the Charter.

"... I do not object to the permanent members of the Security Council foregoing the use of their privilege, if they consider it advisable, but if they do so, it should be done publicly.

"Abstention is a way of concealing the veto, either because it is not desired to vote affirmatively, in order to avoid establishing a harmful precedent with regard to contrary decisions in the future, or because it is not desired to vote in the negative, in order not to appear to oppose a good decision, or in order to decrease the size of the target which the privilege offers to those who combat it."

The representative of the United Kingdom stated:

"... Every written constitution is always developed by the practice of the institutional organs...

"Hitherto, as I understand it, the abstention by a permanent member of the Security Council in a vote on a matter of substance is, by practice and precedent in the Security Council, not considered a negative vote by that member, and I hope and trust that that understanding and practice will be adhered to."

The representative of France stated that his delegation had always maintained that abstention did not constitute a negative vote. The President (Belgium) stated that, while the Council might not care to enter into debate on the question at that time, the remarks of the representative of Argentina would probably call for reservations on the part of several members of the Council.<sup>98</sup>

## CASE 186

At the 303rd meeting on 24 May 1948, in connexion with the Czechoslovak question, the President (France) stated with regard to the vote which had taken place,

<sup>95</sup> For texts of relevant statements see:

197th meeting: President (Syria), p. 2267; Australia, p. 2273; USSR, p. 2270; United States, pp. 2269, 2271.

<sup>97</sup> For texts of relevant statements see:

232nd meeting: President (Belgium), p. 170; Argentina, pp. 169-170; France, pp. 170-171; United Kingdom, p. 170.

<sup>96</sup> For texts of relevant statements see:

173rd meeting: President (Syria), pp. 1711-1712; France, p. 1713; United Kingdom, p. 1711.

that "the abstention of a member does not prevent a decision being taken by the Council".<sup>99</sup>

## CASE 187

At the 414th meeting on 4 March 1949, in connexion with the admission of Israel to membership in the United Nations, the President (Cuba) stated with regard to the vote on the United States draft resolution to recommend the admission of Israel:

"In accordance with the principle established by the Security Council on resolutions subject to the unanimity rule, abstention by a permanent member of the Council does not render the Council's decision invalid. I therefore declare the United States draft resolution to be adopted."

The representative of Argentina made the following statement:

"I wish, however, to go on record as stating that, contrary to the view held by some, if not by practically all the permanent members of the Council, this resolution has not been supported by the five permanent members of the Council as required in Article 27, paragraph 3, of the Charter. While the President has referred to an established principle, I do not believe that the Security Council can establish principles to modify the Charter whenever it thinks fit."

The representative of Egypt stated:

"I wish to express my doubt as to certain interpretations of the way in which Article 27, paragraph 3, of the United Nations Charter should be applied."

The representative of the USSR stated:<sup>100</sup>

"I would merely like to draw the Council's attention to the fact that, in accordance with the established practice of the Security Council, when a permanent member of the Council abstains from voting, such action is not interpreted in the way that some are now endeavouring to interpret it."

## CASE 188

At the 415th meeting on 7 March 1949, in connexion with the trusteeship agreement for the former Japanese mandated islands, the representative of Argentina, with regard to the vote on the draft resolution submitted by the majority of the Committee of Experts, called attention to his observations at the preceding meeting and stressed the concern of his delegation with the "predominantly legal aspect". He continued:

"...our contention that revision of paragraph 3 of Article 27 is necessary is not inspired by the case of a particular member. We are animated by no purely political feeling against any particular country or any particular member of the Council, but we do object to the privileged position of the five permanent members which they exploit as and when they deem fit."

The representative of Egypt stated:<sup>101</sup>

"As far as interpretations and changes are concerned, whether in paragraph 3 of Article 27 or

any other part of the Charter, I consider that we have to know whether jurisprudence for such matters, which might constitute a change in the Charter, can be a source of legislation in the United Nations. Can we through jurisprudence and through methods not stipulated in the proper paragraph of the Charter relating to its modification, change the Charter?"

## CASE 189

At the 428th meeting on 21 June 1949, in connexion with the admission of new Members to the United Nations, the representative of the Ukrainian SSR discussed the question of the "hidden" or "concealed veto". He stated:

"Some of the representatives of various delegations who have spoken have stated that they do not intend to apply the 'veto' in the question of the admission of new Members to the United Nations, and that only the delegation of the Soviet Union applies the 'veto'. This statement is quite insincere, I should even say erroneous, for the representatives of the United States, the United Kingdom, French and Chinese delegations can apply a hidden 'veto' by abstaining from voting. We all know that to have legal force, a recommendation requires seven affirmative votes including those of the five permanent members of the Security Council. Abstention by the United States and other permanent members of the Security Council, as well as by those non-permanent members who support them in this matter, is in fact tantamount to a 'veto', as it can block any favourable recommendation made with regard to an applicant State. Consequently, all statements to the effect that the United States and the other permanent members of the Security Council do not make use of their right of 'veto' are empty, hypocritical and false."

At the 442nd meeting on 13 September 1949, referring to the "concealed veto", the representative of the United States stated:<sup>102</sup>

"No one can truthfully claim that refusal to cast a favourable vote is one and the same thing as casting a negative vote. We have repeatedly shown the direction of our interpretation by employing the abstention instead of voting negatively."

## C. ABSENCE OF A PERMANENT MEMBER IN RELATION TO ARTICLE 27 (3)

## 1. Cases in which the Security Council has taken decisions in the absence of a permanent member

## CASES 190-192

At the 27th meeting on 27 March 1946, in connexion with the Iranian question, the representative of the USSR stated that he could not participate in or attend meetings of the Security Council at which there was discussion of the substance of the question. He submitted a proposal to postpone consideration of the item until 10 April 1946, which was not adopted, having failed to obtain the affirmative votes of 7 members.<sup>103</sup>

The representative of the USSR then stated that he was unable to participate further in the discussion of

<sup>99</sup> 303rd meeting: p. 21.

<sup>100</sup> For texts of relevant statements see:

414th meeting: President (Cuba), p. 14; Argentina, p. 14; Egypt, p. 14; USSR, pp. 14-15.

<sup>101</sup> For texts of relevant statements see:

415th meeting: Argentina, pp. 9-10; Egypt, pp. 10-11.

<sup>102</sup> For texts of relevant statements see:

428th meeting: Ukrainian SSR, pp. 15-16.

429th meeting: United Kingdom, p. 3.

442nd meeting: United States, p. 7.

<sup>103</sup> 27th meeting: p. 56.

the Iranian question, and left the Council Chamber. He did not attend the next three meetings at which the item was discussed (28th to 30th meetings between 29 March and 4 April 1946), and resumed participation in the discussion of the Iranian question at the 32nd meeting on 15 April 1946. At the 36th meeting on 23 April 1946, the representative of the USSR stated that the decision of the Council to retain the Iranian question on its agenda was contrary to the Charter, and that he would therefore take no further part in the discussion. The representative of the USSR did not attend the subsequent meetings at which the item was discussed (40th and 43rd meetings on 8 and 22 May 1946).

#### Case 190

At the 27th meeting on 27 March 1946, the Council adopted in the absence of a permanent member, a proposal to invite the representative of Iran to state his point of view on the question of postponement; and to take subsequently such measures or action as it deemed fit.<sup>104</sup>

#### Case 191

At the 30th meeting on 4 April 1946, the Council adopted in the absence of a permanent member, a resolution to take note of the statements of the Governments of Iran and the USSR, and in particular of the assurance of the USSR that the withdrawal of troops would be completed within six weeks, and to defer proceedings on the Iranian question until 6 May 1946.<sup>105</sup>

By letter dated 6 April 1946, the representative of the USSR contended that the resolution of 4 April 1946 was "incorrect and illegal being in conflict with the Charter of the United Nations".<sup>106</sup>

#### Case 192

At the 40th meeting on 8 May 1946, the Council adopted in the absence of a permanent member, a resolution to defer further proceedings on the Iranian question, in order to permit Iran to make a complete report on the withdrawal of troops.<sup>107</sup>

#### CASES 193-199

At the 459th meeting on 10 January 1950, in connexion with the representation of China in the Security Council, the representative of the USSR submitted a draft resolution to decide not to recognize the credentials "of the representative of the Kuomintang group" and "to exclude him from the Security Council".<sup>108</sup> When the Council decided to circulate the USSR draft resolution and consider it at a subsequent meeting, the representative of the USSR stated:

"... I, as representative of the Soviet Union, cannot participate in the work of the Security Council or take part in this meeting of the Council until the Kuomintang representative has been excluded from membership in the Council."<sup>109</sup>

The Council commenced consideration of the USSR draft resolution at the 460th meeting on 12 January 1950. The draft resolution was voted upon at the 461st

meeting on 13 January 1950. It was not adopted, having failed to obtain the affirmative votes of 7 members.<sup>110</sup> After the vote had been taken, the representative of the USSR announced:

"... the Union of Soviet Socialist Republics will not recognize as legal any decision of the Security Council adopted with the participation of the representative of the Kuomintang group, and will not be guided by any such decisions."

He thereupon withdrew from the Council chamber. The representative of the USSR was absent from all subsequent meetings until the 480th meeting on 1 August 1950.

#### Case 193

At the 462nd meeting on 17 January 1950, in connexion with the work of the Commission for Conventional Armaments, the Council adopted, in the absence of a permanent member, a resolution to transmit the text of a General Assembly resolution<sup>111</sup> for further study to the Commission for Conventional Armaments.<sup>112</sup>

#### Cases 194 and 195

At the 470th meeting on 14 March 1950, in connexion with the India-Pakistan question, the Council adopted in the absence of a permanent member, a resolution<sup>113</sup> to terminate UNCIP and appoint a United Nations representative for India and Pakistan.<sup>114</sup> At the 471st meeting on 12 April Sir Owen Dixon was appointed the United Nations representative for India and Pakistan.<sup>115</sup>

#### Case 196

At the 473rd meeting on 25 June 1950, in connexion with the complaint of aggression upon the Republic of Korea, the Council adopted, in the absence of a permanent member, the proposal of the President (India) to invite the representative of the Republic of Korea.<sup>116</sup>

#### Case 197

At the 473rd meeting on 25 June 1950, in connexion with the complaint of aggression upon the Republic of Korea, the Council adopted, in the absence of a permanent member, a resolution<sup>117</sup> to determine the armed invasion of the Republic of Korea "a breach of the peace"; and to call for assistance from the Members of the United Nations.<sup>118</sup>

#### Case 198

At the 474th meeting on 27 June 1950, in connexion with the complaint of aggression upon the Republic of Korea, the Council adopted, in the absence of a permanent member, a resolution<sup>119</sup> to recommend that "Members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area."<sup>120</sup>

<sup>104</sup> 461st meeting: p. 9; for consideration of whether the matter was procedural, see 460th meeting, pp. 6 (France and United States), 8 (China) and 15 (USSR).

<sup>105</sup> S/1445, 461st meeting: p. 17.

<sup>106</sup> 462nd meeting: pp. 8-9. See Case 203.

<sup>107</sup> S/1461, *G.A.O.R.*, 5th session, *Suppl. No. 2*, p. 13.

<sup>108</sup> 470th meeting: p. 4.

<sup>109</sup> 471st meeting: p. 5.

<sup>110</sup> 473rd meeting: p. 4. See Case 204.

<sup>111</sup> S/1499, 473rd meeting: pp. 7-8, 13-14.

<sup>112</sup> 473rd meeting: pp. 17-18. See Case 204.

<sup>113</sup> S/1511, same as S/1508/Rev.1, 474th meeting: p. 4.

<sup>114</sup> 474th meeting: pp. 16-17. See Case 204.

<sup>104</sup> 27th meeting: pp. 57, 60-61. See Case 200.

<sup>105</sup> 30th meeting: pp. 88-89, 97.

<sup>106</sup> S/30, *O.R.*, 1st year, 1st series, *Suppl. No. 2*, p. 46.

<sup>107</sup> 40th meeting: pp. 247-248, 252. See Case 202.

<sup>108</sup> S/1443, 459th meeting: p. 3.

<sup>109</sup> 459th meeting: p. 4.



## Case 199

At the 476th meeting on 7 July 1950, in connexion with the complaint of aggression upon the Republic of Korea, the Council adopted, in the absence of a permanent member, a resolution<sup>121</sup> to recommend the establishment of the Unified Command.<sup>122</sup>

## 2. Consideration of absence of a permanent member in relation to Article 27 (3)

## CASE 200

At the 27th meeting on 27 March 1946, in connexion with the Iranian question, in putting an Egyptian proposal to the vote,<sup>123</sup> the President (China) stated:

"I understand that, since this is a purely procedural question, a decision can be taken even in the absence of the USSR representative. If that interpretation is correct, then we shall proceed with the voting."

There were no objections.<sup>124</sup>

## CASE 201

At the 32nd meeting on 15 April 1946, in connexion with the Iranian question, the representative of the Netherlands replied to the contention of the representative of the USSR that the resolution of 4 April 1946 was "incorrect and illegal" because both parties had not been heard. He stated:

"If, as in this case, a party does not avail itself of the opportunity to be heard, this does not preclude the Council from taking a decision in matters where the vote of the Member in question is not absolutely required. The veto right of the great Powers is a limited right and therefore cannot be extended beyond the terms of the Charter by the great Power which is a party to a question before the Council, simply by absenting itself from the Council's deliberations."<sup>125</sup>

## CASE 202

At the 40th meeting on 8 May 1946, in connexion with the Iranian question, the Council considered the effect of the absence of the representative of the USSR on the voting procedure, with special reference to the vote taken at that meeting.<sup>126</sup> The representative of Australia stated:

"It seems to us that if a member refuses to participate, or fails to participate, in the work of this Council, then for the time being he abandons the special powers which accrue to him as a member, and has no powers greater than those of any other Member of the United Nations.

"The Australian delegation does not admit that the absence of a member affects the voting procedure."

The representative of the United Kingdom referred to the "important points" discussed by the representative of Australia. He stated:

"... I believe we have no rule relating to a necessary quorum, unless you could infer something from the voting rule which requires that any actual res-

olution or decision requires an affirmative vote of at least seven members.

"... as regards the effect of absence upon the action of the Council or upon the voting, I cannot see that there is really any difference between absence from this table or presence at the table and abstention from a vote. It seems to me that the general effect is the same. There is a difference in some ways; that is to say, the absence certainly does imply some sort of evasion of responsibility or obligations, and may in some cases reduce the authority of the Council, but I cannot see that it has any actual effect upon the ability of the Council to take a decision, any more than has sitting in a chair and abstaining from voting."

The representative of the Netherlands discussed the nature of the matter before the Council, and stated:

"... in spite of the absence of the representative of the USSR we could legitimately adopt this resolution because it is clearly a matter of procedure, so that the affirmative vote of seven members, whether permanent or not, is sufficient."

As regards the general problem, he stated:<sup>127</sup>

"It cannot be the intention of the Charter to give to any member of the Council, whether permanent or not, the power to prevent a resolution from being adopted by the simple expedient of absenting himself."

## CASE 203

At the 462nd meeting on 17 January 1950, in connexion with the work of the Commission for Conventional Armaments, the representative of Yugoslavia stated that the absence of the representative of the USSR was one of the factors which had influenced his decision not to vote. The representative of the United States replied:<sup>128</sup>

"... the absence of a permanent member from the table... is an absence volunteered by the representative himself which, I think, the Council has clearly indicated it will not take as a deterrent to its proceeding in an orderly manner with its business."

## CASE 204

The question of the effect of the absence of a permanent member on the voting procedure of the Council was considered again, commencing in June 1950, in connexion with the complaint of aggression upon the Republic of Korea. The discussion regarding the validity of the decisions taken had two related aspects; first, the alleged absence of the legal representative of China, and second, the refusal of the representative of the USSR to participate in meetings of the Council until 1 August 1950.

By cablegram dated 29 June 1950<sup>129</sup> and by statements made by the representative of the USSR in the Council after 1 August 1950, the USSR contended that the action taken with regard to the complaint of aggression upon the Republic of Korea had no legal force. At the 480th meeting on 1 August 1950, the

<sup>121</sup> S/1588, same as S/1587, G.A.O.R., 5th session, Suppl. No. 2, p. 25.

<sup>122</sup> 476th meeting: p. 8. See Case 204.

<sup>123</sup> See Case 190.

<sup>124</sup> 27th meeting: p. 60.

<sup>125</sup> 32nd meeting: p. 128.

<sup>126</sup> See Case 192.

<sup>127</sup> For texts of relevant statements see:

40th meeting: Australia, p. 249; Netherlands, p. 252; United Kingdom, p. 251.

<sup>128</sup> For texts of relevant statements see:

462nd meeting: United States, p. 10; Yugoslavia, pp. 7-8.

<sup>129</sup> S/1517, O.R., 5th year, Suppl. for June, July and August 1950, pp. 29-30.

President, speaking as the representative of the USSR, stated:

"The Security Council is not the Security Council when it fails to act in strict conformity with the Charter and, in particular, with Article 27 of the Charter; when it acts in the absence of two of the five permanent members of the Security Council whose participation and unanimity are an essential prerequisite for the legality of the Council's decisions."

As regards the effect of the absence of the representative of the USSR, the representative of France, at the 475th meeting on 30 June 1950, discussed the cablegram from the Deputy Minister for Foreign Affairs of the USSR dated 29 June 1950. He stated:

"... the delegation of the Soviet Union, by abandoning the Council, has abandoned the Charter. When it returns to the one and to the other, it will find again its right of speech, of criticism, of vote and of veto. So long as it has not done so, the USSR Government has no legal or moral basis for contesting the action of the United Nations."

The representative of Cuba observed at the 476th meeting on 7 July 1950:

"... it is an established practice in the Council, and one that the USSR has accepted on many occasions, that the abstention of a permanent member from participation in decisions of the Council does not constitute a veto."

In reply to the statements made by the representative of the USSR after his return to the Council, the representative of the United Kingdom, at the 486th meeting on 11 August 1950, stated:

"Valid though I myself believe the theory of great Power unity to be—in the sense that the United Nations can ... only proceed in the long run on the basis of unanimity—I cannot conceive that any rational being would admit that the theory ought to be abused in such a way as this..."

By cablegram dated 29 June 1950, the Deputy Minister for Foreign Affairs of the USSR stated:<sup>150</sup>

"The Soviet Union Government notes that this resolution (S/1511 - 27 June 1950) was adopted by

six votes, the seventh vote being that of the Kuomintang representative ... who has no legal right to represent China, whereas the United Nations Charter requires that a Security Council resolution must be adopted by seven votes including those of the five permanent members of the Council..."

At the 486th meeting on 11 August 1950, the representative of the United Kingdom contended that the resolutions regarding Korea had been adopted unanimously by the representatives of the permanent members present at the meetings during the months of June and July 1950. He also stated:

"Nor can the fact that one of these permanent members represents a Government not recognized by a minority of members of the Security Council affect the issue at all. This point can only be decided by a majority; and if this is disputed—as it is disputed—it is difficult to see how the Security Council can function. For how can it decide anything, except by a process of voting?"

At the 487th meeting on 14 August 1950, the representative of France stated:<sup>151</sup>

"It is no use telling us that one or other of the decisions taken on 25 June is irregular because it was taken in the absence of two permanent members of the Council ... the Soviet Union representative, in supplying the President with this argument, is being self-contradictory. He himself is asking us to take certain urgent decisions. But from his own point of view, in accordance with his own argument, one of the permanent members of the Council is not represented here: then is what was false yesterday true today?"

<sup>150</sup> For texts of relevant statements see:

475th meeting: China, p. 15; France, pp. 7-8.

476th meeting: Cuba, p. 7.

480th meeting: President (USSR), pp. 15-16, 20.

482nd meeting: President (USSR), pp. 4, 8, 17.

486th meeting: President (USSR), p. 22; United Kingdom, pp. 6-7.

487th meeting: France, pp. 11-12; Norway, p. 8.

488th meeting: Cuba, p. 3.

494th meeting: France, p. 20.

519th meeting: USSR, p. 4.

523rd meeting: USSR, pp. 20-21, 22, 24.

526th meeting: United States, p. 16.

528th meeting: USSR, p. 20.

530th meeting: People's Republic of China, p. 19.

531st meeting: USSR, p. 9.

<sup>151</sup> S/1517, O.R., 5th year, Suppl. for June, July and August 1950, pp. 29-30.

**Chapter V**

**SUBSIDIARY ORGANS OF THE SECURITY COUNCIL**

## TABLE OF CONTENTS

	<i>Page</i>
INTRODUCTORY NOTE .....	181
<b>PART I. OCCASIONS ON WHICH SUBSIDIARY ORGANS OF THE SECURITY COUNCIL HAVE BEEN ESTABLISHED OR PROPOSED</b> .....	<b>181</b>
Note .....	181
A. Involving, to facilitate their work, meetings at places away from the seat of the Organization .....	182
1. Subsidiary organs established .....	182
2. Subsidiary organs proposed but not established .....	188
B. Not involving, to facilitate their work, meetings at places away from the seat of the Organization .....	190
1. Subsidiary organs established .....	190
a. Standing Committees .....	190
i. Committee of Experts .....	190
ii. Committee on Admission of new Members .....	194
(a) Establishment and organization .....	194
(b) Form and content of reports to the Security Council .....	196
iii. Commission for Conventional Armaments .....	197
b. Drafting and other <i>ad hoc</i> committees and sub-committees .....	199
i. Reference to sub-committees to seek agreement after general discussion ...	199
ii. Other subsidiary organs .....	201
2. Subsidiary organs proposed but not established .....	202
<b>PART II. CONSIDERATION OF PROCEDURES RELATIVE TO SUBSIDIARY ORGANS</b> .....	<b>202</b>
Note .....	202
A. Consideration of procedure in the establishment of subsidiary organs .....	203
B. Consideration of the procedure of consultation between permanent members .....	205
C. Consideration of the procedure of delegation of functions .....	205
D. Consideration of the procedure of modification of terms of reference .....	207
E. Consideration of the procedure of termination .....	207

## INTRODUCTORY NOTE

In this chapter is included material regarding procedures of the Security Council in establishing, under Article 29 of the Charter, subsidiary organs necessary for the performance of its functions. It has not been found possible to group this material under headings wholly of a procedural character, since in every instance the procedure followed in the establishment of the subsidiary organ, in its working and in the presentation of reports, has been procedure special to the subsidiary

organ in question. The material has therefore been arranged under two headings, part I containing case histories of all occasions on which subsidiary organs have been established by the Council, or proposed but for various reasons not subsequently established, and part II containing material drawn from those occasions when some special problem of procedure in relation to a subsidiary organ has been the subject of consideration in the Council.

### Article 29 of the Charter

The Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions.

### Rule 28 of the Provisional Rules of Procedure

The Security Council may appoint a commission or committee or a rapporteur for a specified question.

## Part I

### OCCASIONS ON WHICH SUBSIDIARY ORGANS OF THE SECURITY COUNCIL HAVE BEEN ESTABLISHED OR PROPOSED

#### NOTE

The case histories in part I have been designed to give, in chronological sequence, an account of the tasks proposed for, or entrusted to, subsidiary organs from time to time by the Security Council, together with an indication of the main arguments for or against the employment of subsidiary organs for these tasks. The case histories also contain a synopsis of discussion bearing on the question of their composition and indicate the manner in which the subsidiary organs have been terminated.

Since the functioning of subsidiary organs meeting at the seat of the Organization and in touch at all times with the Council itself may well present features markedly different from those presented by the functioning of subsidiary organs entrusted with tasks that the Council could not itself carry out without holding meetings at "places other than the seat of the Organization" (Article 28 (3)), advantage has been taken of this distinction to arrange the case histories in part I under the two sections (A and B) according to whether the establishment of the subsidiary organ involved, to facilitate its work, meetings at places away from the seat of the Organization or not.

Within the period under consideration, the subsidiary organs which have called for entry in section A 1 are those established by the Council in connexion with its discharge of responsibilities for the maintenance of international peace and security. The data entered relates to the occasion of the establishment of the subsidiary organ, discussion regarding its composition, and indications regarding its termination. The material is limited to the evidence of the Official Records of the Council.

The internal procedure and organization of such subsidiary organs is not dealt with. Such information will, however, be found in the series of memoranda prepared by the Secretary-General entitled: "Organization and Procedure of United Nations Commissions,"<sup>1</sup> where information is given under standardized headings, such as: A. Constitutional Origin. B. Organization: Arrangements for convening the first meeting; Name of Commission; Membership and composition; Qualifications of representatives; Payment of expenses of members; Chairmanship; Size of the delegations; Secretariat; Liaison with States and organizations concerned; Brief outline of Commission structure. C. Internal Procedure: Methods of adoption of rules of procedure; Documentation and distribution of records; How decisions were taken; Publicity of meetings; Relations between formal and informal discussions; Security arrangements. D. Relations with the principal organ.

Where subsidiary organs as established at Headquarters (in section B) constituted, in fact, Committees of the whole,<sup>2</sup> information regarding the substance of the question dealt with will be found in other chapters, this chapter containing merely such procedural material as relates to their establishment, and to the ways in which the Council has utilized the services of the subsidiary organ in question.

So far as the Committee of Experts is concerned, in the absence of detailed terms of reference, instances have been given of all occasions on which matters were referred to it, or proposed for reference to it. The

<sup>1</sup> United Nations publications 1949.X.1-9 and 1950.X.1-3.

<sup>2</sup> Committee of Experts; Committee on Admission of New Members; Commission for Conventional Armaments.



terms of reference of the Committee can be found by an examination of the range of questions thus referred to it from time to time by the Council. The case histories are not designed to include information regarding the internal working of the Committee, or the manner of execution of the various tasks assigned to it, since the Committee of Experts has met in private.

So far as the Committee on the Admission of New Members is concerned, the case histories have been grouped under two headings.<sup>3</sup> Under the first heading is contained material bearing on the constitutional origin of the Committee and the subsequent organization adopted by the Committee itself for the discharge of its functions. Under the second heading is contained material relating to the form and contents of the reports made by the Committee to the Council. The first five reports of the Committee to the Security Council (with the exception of the reports on the applications of Ceylon and Israel, which were very brief) contained a summary of the proceedings of the Committee, its decisions on matters of procedure, and a summary of the statements made by the various representatives. In the case of each application, the Committee stated its conclusions, indicating the formal attitude of various delegations on the desirability of admitting the applicant and informing the Security Council whether or not the material placed before the Committee and the ensuing discussion constituted a sufficient basis for the members of the Council to reach a decision. The two latest reports<sup>4</sup> were in conformity with the original pattern, but, instead of stating the formal attitudes of the representatives on the Committee toward each of the applications under examination, stated in the concluding paragraphs that votes had been taken, and recorded the result of the voting.

Other subsidiary organs at Headquarters have been sub-committees established to seek agreement after general discussion, either by reconsideration of points outstanding at the conclusion of discussion in the Council or by formulation of an agreed text for a draft resolution. All occasions on which subsidiary organs of this nature have been set up have been collected under a separate heading in section B.

#### A. INVOLVING, TO FACILITATE THEIR WORK, MEETINGS AT PLACES AWAY FROM THE SEAT OF THE ORGANIZATION

##### 1. Subsidiary organs established

###### CASE 1

###### Commission of Investigation concerning Greek Frontier Incidents

###### *Establishment*

At the 85th meeting on 18 December 1946, in connexion with the Greek frontier incidents question, the representative of the United States introduced a draft resolution to set up a commission of investigation.

At the 87th meeting on 19 December 1946, the Security Council resolved to establish a commission of investigation with authority to conduct its investigation

<sup>3</sup>Material bearing on procedures by which the Security Council has referred applications to the Committee will be found in chapter VII, part IV.

<sup>4</sup>Case 49 (i) and (ii): S/1281 (Republic of Korea), and S/1382 (Nepal).

in northern Greece and in such places in other parts of Greece, Albania, Bulgaria and Yugoslavia as the commission considered should be included in its investigation in order to elucidate the causes and nature of the alleged border violations and disturbances.<sup>5</sup>

###### *Composition*

The United States draft resolution specified that the commission should be composed of representatives of each of the permanent members of the Council and of Brazil and Poland.<sup>6</sup> The representative of France considered that the commission would be more efficient if it were a homogeneous body made up of a few officers belonging to a State not a member of the Council, which would organize the commission in agreement with the Council. The representative of Mexico considered that it would be wiser to compose the commission of representatives of every member of the Security Council.

The representative of the United States explained that, in drafting his proposal, the consideration had been that preferably the commission should be a small one, that the principle of unanimity and the advantages of unanimity would be preserved, and that it was necessary that the number should be uneven. He would, however, have no objections to constituting a commission of each member of the Council as it would stand on 1 January 1947. The representative of the USSR remarked that, if the commission were to include representatives of all States on the Council, one might well ask in what respect it would differ from the Council itself. In his view the United States proposal to include seven members was sensible, as it would serve to render the commission more operative and efficient. The representative of Poland drew attention to the danger of creating a precedent, in that the Council would never be able to set up a commission composed of less than eleven members. This would not be conducive to the future efficiency of the Council.<sup>7</sup> At the 87th meeting on 19 December 1946, the Council resolved that the commission would be composed of a representative of each of the members of the Security Council as it was to be constituted in 1947.<sup>8</sup>

###### *Termination*

The Commission of Investigation concerning the Greek frontier incidents question was terminated by the decision adopted by the Council at the 202nd meeting on 15 September 1947 whereby the Greek frontier incidents question was taken off the list of matters of which the Council is seized.<sup>9</sup>

###### CASE 2

###### Subsidiary Group of the Commission of Investigation concerning Greek Frontier Incidents

###### *Establishment*

At the 123rd meeting on 28 March 1947, the representative of the United States drew attention to the fact that the Commission of Investigation concerning Greek Frontier Incidents would leave Greece for Geneva on

<sup>5</sup>87th meeting: pp. 700-701. For the full text, see chapter VIII, p. 309.

<sup>6</sup>87th meeting: pp. 676-677.

<sup>7</sup>For texts of relevant statements see:

87th meeting: President (United States), pp. 677-680; France, p. 654; Egypt, pp. 677-678; Mexico, pp. 676-677, 679-680; Netherlands, pp. 678, 679; Poland, p. 680; USSR, p. 678; United Kingdom, pp. 678, 680.

<sup>8</sup>87th meeting: pp. 700-701.

<sup>9</sup>See Case 71.

7 April to prepare its report to the Security Council. He believed it important that the Commission should leave representatives in the border area to report immediately on any violations, to furnish the Commission and the Council with any additional information which might come to light, and to help stabilize the situation pending Council action. In his view the resolution creating the Commission gave it full authority to leave representatives in Greece, and it was implicit in the resolution that the Commission would continue in existence until the Council disposed of the Greek case or acted to terminate the Commission. At the 126th meeting on 7 April, the representative of the United States submitted a draft resolution which, as amended, provided: "that, pending a new decision of the Security Council, the Commission shall maintain in the area concerned a subsidiary group composed of a representative of each of the members of the Commission".<sup>10</sup>

At the 131st meeting on 18 April 1947, the representative of France proposed that the function of the subsidiary group would be "to continue to fulfil such functions as the Commission may prescribe" in accordance with its terms of reference,<sup>11</sup> and the United States draft resolution, as amended, was adopted.<sup>12</sup>

#### *Composition*

The Subsidiary Group was established by the Commission on 29 April 1947, in accordance with the Council's resolution of 18 April, and consisted of one representative of each member of the Council.

#### *Termination*

The Subsidiary Group was terminated by the decision of the Council of 15 September 1947, simultaneously with the termination of its parent body.<sup>13</sup>

### CASE 3

#### *Committee of Good Offices on the Indonesian Question*

##### *Establishment*

Following the adoption of a resolution on 1 August 1947 with regard to the Indonesian question (II) which called upon the parties to cease hostilities forthwith and to settle their dispute by arbitration or by other peaceful means, the Security Council held a series of meetings between 12 and 25 August 1947 to consider what method it should adopt to assist in achieving a peaceful settlement. In the course of these meetings, a number of draft resolutions were introduced, calling on the United States and Australia jointly, or for a Council commission, to act as mediator, or for an arbitration commission of three members consisting of one arbitrator selected by each party and one by the Council itself. These proposals reflected suggestions put forward by the two parties to the dispute; the representative of the Republic of Indonesia having suggested at the 184th meeting on 14 August that the Council appoint a commission to arbitrate on all points in dispute, and the representative of the Netherlands having urged, at the 185th meeting on 15 August, that the Republic accept the offer of good offices which had been made at the

outset of the question by the United States, or some other form of good offices exercised by an impartial State.

At the 193rd meeting on 22 August 1947, the representative of the United States introduced a draft resolution, whereby the Council would resolve to tender its good offices to the parties to assist in the pacific settlement of their dispute. If the parties so requested, the Council would be ready to assist in the settlement through a committee of the Council consisting of three of its members, each party selecting one, and the third to be designated by the two so selected.<sup>14</sup>

The representative of the USSR maintained that the adoption of the United States draft resolution would mean that the Council voluntarily stood aside and refrained from deciding the question. If the Council wished to deal seriously with the matter, it should appoint a commission composed of representatives of States members of the Council to arbitrate the matters in dispute between the parties.<sup>15</sup>

At the 194th meeting on 25 August, the United States draft resolution was adopted, setting up the Security Council Committee of Good Offices on the Indonesian question.<sup>16</sup>

At several meetings held between 3 October and 1 November 1947, the Council considered several proposals designed to assure implementation of the cease-hostilities clause of its resolution of 1 August. At the 219th meeting on 1 November 1947, the Council requested the Committee of Good Offices "to assist the parties in reaching agreement on an arrangement which will ensure the observance of the cease-fire resolution."<sup>17</sup>

#### *Composition*

In accordance with the terms of the Council's resolution of 25 August, the Government of the Netherlands selected Belgium as its representative on the Committee of Good Offices, the Government of the Republic of Indonesia selected Australia, and Australia and Belgium selected the Government of the United States of America as the third member of the Committee.<sup>18</sup>

During December 1947, the representative of Australia drew attention to the fact that after 31 December Australia would cease to be a member of the Council. No objection was raised to Australia continuing to be a member of the Committee, but the question of the concurrence in this arrangement by the original nominating party was raised. This concurrence was immediately achieved. It was also pointed out that the limitation in the resolution of 25 August confining the choice of the parties to Council members was merely a device which had provided a panel of nations eligible for membership, and that the choice and acceptance of the members of the Committee had been for the duration of the Committee's work. The observation was also made that the continuation of Australia on the Committee after leaving the Council should not be treated as a precedent, to avoid the possibility of a committee of the Council being composed of Governments not on the Council. The President expressed the understand-

<sup>10</sup> S/514, 193rd meeting: p. 2177.

<sup>11</sup> 193rd meeting: pp. 2181-2183.

<sup>12</sup> 194th meeting: p. 2209. For full text, see chapter VIII, p. 317.

<sup>13</sup> 219th meeting: pp. 2723-2724, 2750.

<sup>14</sup> S/545, S/564 and S/558, 206th meeting: p. 2481.

<sup>10</sup> 123rd meeting: pp. 618-619; 126th meeting: pp. 708, 714.

<sup>11</sup> 131st meeting: p. 796.

<sup>12</sup> 131st meeting: p. 800. For full text, see chapter VIII, p. 310.

<sup>13</sup> See Case 71.

ing of the Council that the membership of the Committee of Good Offices should continue unaltered.

#### Termination

At the 397th meeting on 7 January 1949, the Security Council had before it a report from the Committee of Good Offices stating that the Council's resolution of 24 December calling for cessation of hostilities and release of prisoners had not been implemented, and that the Committee had been without opportunities for observation owing to the failure of the Netherlands authorities to authorize or facilitate the return of the Committee's observers to the field. The report also asked for definition of the respective functions of the Committee and of the Consular Commission, since some questions had been raised following the Council's resolution of 28 December requesting the Consular Commission to report on the situation.<sup>19</sup> Finally, the report raised the question whether, in the circumstances, the continuance of the Committee would serve any useful purpose. At the 397th through 406th meetings, held between 7 and 28 January 1949, the Council considered ways and means of dealing with the new situation. By the resolution adopted at the 406th meeting on 28 January, the Committee of Good Offices was reconstituted as the United Nations Commission for Indonesia, with all the functions previously assigned to the Committee together with certain new functions.<sup>20</sup>

#### CASE 4

##### Consular Commission at Batavia

#### Establishment

On 5 August 1947, the Republic of Indonesia urged the Security Council "to appoint a committee composed of the representatives of several countries and to dispatch it to Indonesia as soon as possible for the purpose of ensuring the effective and smooth implementation of the cease-fire order"<sup>21</sup> which had been issued in response to the Council's resolution of 1 August. At the 181st meeting on 12 August, the representative of Australia proposed<sup>22</sup> "to establish a commission consisting of representatives of . . . who will report directly to the Security Council on the situation in the Republic of Indonesia following the resolution of the Council of 1 August 1947". He did not wish, at that stage, to determine the commission's membership, which could be decided once the parties had commenced negotiations.

At the 185th meeting on 15 August, the representative of the Netherlands suggested "that all the career consuls stationed in Batavia should jointly and immediately draw up a report on the present situation on the islands of Java, Sumatra and Madura". He supported a commission or an investigation, but held that the right to establish one did not lie with the Council.<sup>23</sup> The representative of Poland proposed that the commission be a commission of the Security Council.<sup>24</sup>

At the 187th meeting on 17 August, the representative of China proposed the deletion of the provision for

a commission, noting instead "that the Netherlands Government intends immediately to request the career consuls stationed in Batavia jointly to report on the present situation in the Republic of Indonesia, and to propose to the said Republic the appointment of an impartial State by two States to be designated, one by the said Republic, and one by the Netherlands Government, to inquire into the situation and to supervise the cease-fire". He further proposed "that the consular body at Batavia and the impartial State should be requested to forward copies of their reports to the Council".<sup>25</sup>

At the 193rd meeting on 22 August, the representatives of Australia and China introduced a draft resolution<sup>26</sup> to request "the Governments members of the Council which have career consular representatives in Batavia to instruct them to prepare jointly for the information and guidance of the Security Council reports on the situation in the Republic of Indonesia following the resolution of the Council on 1 August 1947, such reports to cover the observance of the cease-fire orders and the conditions prevailing in areas under military occupation or from which armed forces now in occupation may be withdrawn by agreement between the parties".

The representatives of the USSR opposed this draft resolution on the ground that it meant by-passing the United Nations, and at the 194th meeting on 25 August, as amendments to the joint Australian-Chinese draft resolution, he proposed the establishment of "a commission composed of the States members of the Security Council to supervise the implementation of the decision of the Security Council of 1 August".<sup>27</sup> The USSR amendment was not adopted, there being 7 votes in favour, 2 against (one vote against being that of a permanent member) and 2 abstentions.<sup>28</sup>

The Australian-Chinese joint draft resolution was adopted by 7 votes in favour, none against, and 4 abstentions.<sup>29</sup>

#### Composition

At the 187th meeting on 17 August 1947, the representative of Australia indicated willingness to incorporate in his draft resolution the Netherlands' suggestion of utilizing the services of consular representatives in Batavia. There were available representatives of Australia, Belgium, China, Czechoslovakia, France, the United Kingdom and the United States, from which a commission of five might well be appointed to act on behalf of the Council.<sup>30</sup> At the 193rd meeting on 22 August, the representative of the USSR opposed the joint Australian-Chinese draft resolution. He expressed the view that the majority of the Governments with consular representatives did not take a neutral position in the Indonesian question and could not be relied upon to reflect in any way the Council's opinion. There was no justification for the proposal that only five countries should ensure implementation of the cessation of hostilities. The career consuls were not representatives of the Security Council or a commission of the Council. It was a question of principle that a commission should consist of States represented on the Security Council,

<sup>19</sup> S/1189, O.R., 4th year, Suppl. for Jan. 1949, pp. 6-17.

<sup>20</sup> 406th meeting: pp. 21-33. See Case 5.

<sup>21</sup> S/469, 178th meeting: pp. 1841-1842, footnote 1.

<sup>22</sup> S/488, 181st meeting: pp. 1917-1918, footnote 2.

<sup>23</sup> 185th meeting: p. 2013.

<sup>24</sup> 185th meeting: p. 2017.

<sup>25</sup> 187th meeting: pp. 2070-2071.

<sup>26</sup> S/488/Add.2, 187th meeting: p. 2067.

<sup>27</sup> S/513, 193rd meeting: pp. 2173-2174, footnote 3.

<sup>28</sup> 194th meeting: p. 2197.

<sup>29</sup> 194th meeting: pp. 2199-2200.

<sup>30</sup> 194th meeting: p. 2200. For full text, see chapter VIII, p. 317.

whether all eleven were represented or a smaller number.<sup>31</sup> This position was supported by the representative of Poland who considered that six non-permanent members, five permanent members, or all eleven members would be satisfactory so long as the commission was composed of members of the Council.<sup>32</sup>

At the 194th meeting on 25 August, the joint Australian-Chinese draft resolution for the establishment of the commission was adopted.<sup>33</sup> The members of the Security Council during 1947 with career consular representatives in Batavia were Australia, Belgium, China, France, the United Kingdom and the United States. After receiving authorization from their respective Governments, these representatives constituted themselves into a Commission on 1 September 1947, and were known as the "Security Council Consular Commission at Batavia".

#### Termination

Following the receipt of the report<sup>34</sup> of the Consular Commission, the representative of India, at the 214th meeting on 27 October 1947, expressed the opinion that "with the submission of its report on the existing situation in Indonesia . . . the Commission has become *functus officio*". He thought that, with the Committee of Good Offices functioning on the scene, it would be free to utilize the services of military assistants and other agencies without a new lease on life being given to the Consular Commission.

At the 217th meeting on 31 October 1947, the representative of Australia observed that it had been the intention that the Consular Commission, with its military advisers, should continue to observe and report on the cease-fire orders, while the Commission itself appeared to have felt that it was called upon to submit one report and then dissolve.<sup>35</sup> The President (United Kingdom) recalled that the consuls had been instructed to prepare information reports on the situation, and that therefore the Council should expect to have periodic reports. He proposed the transmission to the Consular Commission of the verbatim records of discussion in the Council, inviting special attention to the President's statement about the continuing role of the Commission. He added that his ruling that the resolution of 25 August required reports from the Commission had not been challenged, and would stand.<sup>36</sup> The representative of Poland expressed doubt whether the Consular Commission continued, since he considered that its task had been fulfilled by the sending of the report. He did not intend to move for a dissolution of the Commission, but suggested that the problem of its future should be discussed at a later stage. The matter was left in abeyance, and on 1 November 1947, the Council requested the Consular Commission, together with its military assistants, to make its services available to the Committee of Good Offices.<sup>37</sup>

At the 406th meeting on 28 January 1949, the Council reconstituted the Committee of Good Offices as the United Nations Commission for Indonesia, and requested the Consular Commission to facilitate the work

of the new Commission "by providing military observers and other staff and facilities" and temporarily to suspend other activities.<sup>38</sup>

Thenceforward the Consular Commission confined its activities to obtaining the services of military observers from the Governments of its members and placing them at the disposal of the United Nations Commission for Indonesia. On 3 April 1951, the Commission for Indonesia reported that, in view of the satisfactory state of the implementation reached in the arrangements made for the withdrawal of Netherlands troops from Indonesia, it had decided on 14 March that the services of the military observers would no longer be required as from 6 April 1951.<sup>39</sup> The Consular Commission has therefore ceased to function, but has not been terminated by a formal decision of the Council.

#### CASE 5

##### United Nations Commission for Indonesia

#### Establishment

From the time of the receipt of the first interim report in February 1948 of the Committee of Good Offices on the Indonesian question, suggestions had been made that the Committee be given wider powers. In December 1948 hostilities again broke out, and the Committee itself raised the question whether its continuance would serve any useful purpose.<sup>40</sup>

At the 402nd meeting on 21 January 1949, Cuba, China, Norway and the United States proposed that the Committee of Good Offices should become the United Nations Commission for Indonesia, with new functions and wider powers.<sup>41</sup>

The representative of the United States recognized that a heavy burden was being placed on the Commission, but the sponsors had not sought to give it any power which the Council could not delegate. Experience had shown that a goal must be set for the consummation of negotiations, which should be assisted by an agency of the Council. The representative of the USSR opposed the proposal; any extension of the Committee's terms of reference would give the United States representative greater opportunities to intervene in the domestic affairs of Indonesia. The representative of the Netherlands maintained that the proposal required his Government to hand over certain vital rights to the Commission or to the Council. The provision that the Commission should take a decision by majority vote would mean that the decisive vote would lie with the United States. He had fundamental objections to empowering the Commission to deal with the establishment of a federal interim government, the holding of elections and the transfer of sovereignty; and to make recommendations to the Council for the return of certain areas to the Republican Government and for the withdrawal of Netherlands troops.<sup>42</sup>

The joint draft resolution was put to the vote paragraph by paragraph at the 406th meeting on 28 January 1949 and was adopted.<sup>43</sup>

<sup>31</sup> 193rd meeting: p. 30.

<sup>32</sup> S/2087, O.R., 6th year, Special Suppl. No. 1.

<sup>33</sup> S/1189, O.R., 4th year, Suppl. for Jan. 1949, p. 6.

<sup>34</sup> S/1219, O.R., 4 year, Suppl. for Jan. 1949, p. 53.

<sup>35</sup> For texts of relevant statements see:

402nd meeting: Belgium, pp. 2-5; China, pp. 10-14; Netherlands, pp. 14-15; USSR, pp. 15-19; United States, pp. 7-10.

<sup>36</sup> 406th meeting: p. 33. For full text, see chapter VIII, pp. 332-324.

<sup>37</sup> 193rd meeting: pp. 2180-2183.

<sup>38</sup> 193rd meeting: p. 2185.

<sup>39</sup> S/525, I, 194th meeting: pp. 2199-2200.

<sup>40</sup> S/586, O.R., 2nd year, Special Suppl. No. 4.

<sup>41</sup> 217th meeting: p. 2701.

<sup>42</sup> 217th meeting: pp. 2703-2704.

<sup>43</sup> 219th meeting: p. 2750.

### Composition

The United Nations Commission for Indonesia maintained the same membership as the Committee of Good Offices: Australia, Belgium and the United States. Objection was raised to this procedure by the representative of the USSR.

### Termination

At the 456th meeting on 13 December 1949, the Council failed to adopt a Canadian draft resolution<sup>44</sup> to request the Commission to continue to discharge its responsibilities and, in particular, to observe and assist in the implementation of the agreements reached between the parties. A Ukrainian SSR draft resolution, to dissolve the Commission for Indonesia and establish a new commission composed of representatives of the members of the Council, was also not adopted.<sup>45</sup> The President (Canada) expressed confidence that, under previous resolutions of the Council which remained in full effect, the Commission for Indonesia would continue to render assistance to the parties and to discharge its remaining obligations to the Council.

In a report dated 3 April 1951,<sup>46</sup> the Commission stated that, since no items remained on its agenda, it had decided that, while continuing to hold itself at the disposal of the parties, it would adjourn *sine die*.

### CASE 6

#### United Nations Commission for India and Pakistan

### Establishment

Between 1 January and 3 June 1948, in connexion with the India-Pakistan question, the Security Council adopted four resolutions, three of which dealt with the establishment of a commission of investigation and mediation and defined its terms of reference. The first of these three resolutions, adopted at the 230th meeting on 20 January 1948,<sup>47</sup> created the Commission and directed it to proceed to the spot "as quickly as possible".

The Commission was authorized to take its decisions by majority vote and to determine its own procedure.

At the 286th meeting on 21 April 1948, the Council adopted a second resolution which instructed the Commission "to proceed at once to the Indian sub-continent and place its good offices and mediation" at the disposal of the parties. This resolution also instructed the Commission to establish such observers as it might require.<sup>48</sup>

At the 312th meeting on 3 June 1948, the Council adopted a third resolution directing "the Commission of Mediation to proceed without delay to the areas of dispute with a view to accomplishing in priority the duties assigned to it by the resolution of 21 April 1948 . . ."<sup>49</sup>

### Composition

The resolution adopted by the Council at its 230th meeting on 20 January 1948 provided that: "A Com-

mission of the Security Council is hereby established composed of representatives of three Members of the United Nations, one to be selected by India, one to be selected by Pakistan, and the third to be designated by the two so selected."

The representatives of the USSR and the Ukrainian SSR abstained from voting because they disagreed with the principle underlying the formation of the Commission. The representative of the USSR said that the Commission would appear formally to be a commission of the Council, but would really be independent of it. He considered that it should be a Security Council commission composed of three, five or eleven States represented on the Council. He had no objection to the setting up of a commission as such composed of States represented on the Council. The representative of the Ukrainian SSR was of the opinion that the appointment of a commission by the Council from among its members "would make it possible for the Security Council to exert a real, constant and effective influence on the work of the Commission".

The representative of Colombia stated that the Council should be "only too glad to accept the principle of this initial step" since the two parties to the dispute had begun to establish the basis for an agreement in the appointment of the proposed Commission. The representative of the United Kingdom emphasized that the Commission would act under the authority of the Council, in accordance with its directions, and report to it. He said there might be differences of opinion on the form, but he believed that in substance the Council was in agreement.<sup>50</sup>

The resolution adopted at the 286th meeting on 21 April enlarged the membership of the Commission by adding two representatives, to be appointed later. If the membership of the Commission had not been completed within ten days, the President might designate another Member or Members of the United Nations to complete the membership of five. The President (Colombia) stated that it was proposed to increase the membership to five, having in mind the "very heavy work and responsibility" with which the Commission was to be entrusted.<sup>51</sup>

At the 287th meeting on 23 April, Belgium and Colombia were added to the Commission. On 10 February, India nominated Czechoslovakia, and on 30 April, Pakistan nominated Argentina. The nominees of the parties to the dispute failed to agree on a joint nomination to the Commission within the time limit set in the resolution of 21 April 1948, and on 7 May, the President (France) designated the United States to complete the membership.

### Termination

At the 457th meeting on 17 December 1949, in presenting the 32nd interim report, the Chairman of the Commission declared that the task of investigation of the facts had been completed, and doubted whether a five-member body was the most flexible and desirable instrument for continuing the other tasks. The report suggested that a single person with broad authority and undivided responsibility would be more effective.<sup>52</sup>

<sup>44</sup> S/1431, O.R., 4th year, Suppl. for Sept., Oct., Nov., and Dec. 1949, p. 13.

<sup>45</sup> S/1433, 455th meeting: p. 27.

<sup>46</sup> S/2087, O.R., 6th year, Special Suppl. No. 1.

<sup>47</sup> S/54, O.R., 3rd year, Suppl. for Nov. 1948, pp. 64-65. For full text, see chapter VIII, p. 345.

<sup>48</sup> S/726, O.R., 3rd year, Suppl. for April 1948, p. 12; 286th meeting: pp. 9-39.

<sup>49</sup> S/819, 312th meeting: p. 21.

<sup>50</sup> For texts of relevant statements see: 230th meeting: President (Belgium), p. 129; Colombia, pp. 139, 141-142; Ukrainian SSR, p. 141; USSR, pp. 139-140, 142; United Kingdom, pp. 138, 142-143.

<sup>51</sup> 284th meeting: p. 3.

<sup>52</sup> 457th meeting: pp. 2-4.



At the 470th meeting on 14 March 1950, the Council decided to appoint a United Nations Representative for India and Pakistan,<sup>53</sup> and to terminate the United Nations Commission for India and Pakistan one month after both parties had informed the United Nations Representative of their acceptance of the transfer to him of the powers and responsibilities of the United Nations Commission. Following the appointment of Sir Owen Dixon as United Nations Representative at the 471st meeting on 17 April,<sup>54</sup> and the announcement by the representatives of India and Pakistan at that meeting of the acceptance by their Governments of his appointment, the United Nations Commission was terminated on 17 May 1950. In conformity with the resolution of 14 March 1950, the Government of Pakistan on 15 May and the Government of India on 1 June notified their acceptance of the transfer to the United Nations Representative of the powers and responsibilities of the United Nations Commission for India and Pakistan.<sup>55</sup>

## CASE 7

## The United Nations Military Observer Group for India and Pakistan

At the 286th meeting on 21 April 1948, the Security Council adopted a resolution under which the United Nations Commission for India and Pakistan was authorized to establish in Jammu and Kashmir such observers as it might require "of any of the proceedings in pursuance of the measures" indicated in the resolution.<sup>56</sup> On 21 August, the Chairman of the Commission informed the Council that the Secretary-General had been requested to take immediate steps to appoint, at short notice, military observers for the supervision of the cease-fire in Kashmir. This message<sup>57</sup> was placed on the provisional agenda of the 356th meeting on 30 August 1948. The representatives of Syria, Belgium, and the United States objected to the inclusion of the item on the ground that under the terms of the resolution of 21 April the appointment of observers was a function of the Commission itself. The President (USSR) declared that the Council had no right to "sidetrack" the request for observers; that it was bound to consider the question and to decide how and on what principle these military observers were to be selected and which countries were to send them. The provisional agenda was not adopted. There were 2 votes in favour, with 9 abstentions.

On 15 September 1950 the United Nations Representative for India and Pakistan recommended that the party of the United Nations military observers established by the Commission be retained on the cease-fire line.<sup>58</sup> At the 539th meeting on 30 March 1951, the Council decided by 8 votes to none with 3 abstentions "that the military observer group shall continue to supervise the cease-fire in the State".<sup>59</sup> On 15 October 1951 the United Nations Representative stressed "the importance of the task of the United Nations team of military observers on the sub-continent in supervising

the cease-fire in the States of Jammu and Kashmir".<sup>60</sup> In the absence of further decision by the Council, the military observers have continued their task of supervision of the cease-fire in Kashmir.

## CASE 8

## United Nations Representative for India and Pakistan

(i) At the 470th meeting on 14 March 1950, the Security Council adopted a resolution<sup>61</sup> appointing a United Nations Representative to exercise all the powers and responsibilities devolving upon the United Nations Commission under existing resolutions of the Council and by reason of the agreement of the parties embodied in the resolutions of the Commission. At the 467th meeting on 24 February, the representative of the United Kingdom said, in introducing a draft resolution to appoint a United Nations Representative, that if the Council decided to appoint a representative, it would be appropriate to leave to him the procedure to be followed. The representative of the United States stated that he considered judgment of the Commission—that a single person could now most effectively conduct the negotiations and consultations with the parties—had the full support of his Government. At the 469th meeting on 8 March, the representative of India stated that his Government preferred that the functions envisaged for a United Nations Representative should be assigned to a group of three, one to be nominated by India, one by Pakistan, and the third, who would be Chairman, by the Council in consultation with the two Governments immediately concerned. Failing this, his Government desired that the person chosen as Representative should be acceptable to it. At the 470th meeting on 14 March, the representative of India said that, on the assumption that the Representative would be appointed in agreement with the parties, his Government was prepared to extend to him such co-operation as lay in its power. At the 469th and 470th meetings the representative of Pakistan said that the main features of the resolution were satisfactory in the view of his Government.<sup>62</sup> The resolution having been adopted at the 470th meeting on 14 March, the Council met at its 471st meeting on 12 April, and appointed Sir Owen Dixon of Australia United Nations Representative for India and Pakistan.<sup>63</sup>

The United Nations Representative for India and Pakistan transmitted his report to the Council on 15 September 1950, and requested the formal termination of his position as United Nations Representative. At the 503rd meeting on 26 September, the report of the United Nations Representative appeared on the provisional agenda. In his remarks on the agenda the President (United Kingdom) stated without objection that the Council would wish to congratulate Sir Owen Dixon and liberate him from the mission with which he was charged. At the 539th meeting on 30 March 1951 the Council adopted a resolution accepting Sir Owen Dixon's resignation "in compliance with his request".<sup>64</sup>

<sup>53</sup> 470th meeting: p. 4.

<sup>54</sup> 471st meeting: p. 5.

<sup>55</sup> S/1490.

<sup>56</sup> S/726, O.R., 3rd year, Suppl. for April 1948, p. 12. See chapter VIII, p. 347.

<sup>57</sup> S/987, O.R., 3rd year, Suppl. for August 1948, p. 164.

<sup>58</sup> S/1791, para. 108, O.R., 5th year, Suppl. for Sept. through Dec. 1950, p. 47.

<sup>59</sup> S/2017/Rev.1, para. 7, O.R., 6th year, Suppl. for Jan., Feb. and March 1951, p. 27.

<sup>60</sup> S/2375, para. 66, O.R., 6th year, Special Suppl. No. 2, p. 23.

<sup>61</sup> 470th meeting: p. 4. For full text, see chapter VIII, p. 349.

<sup>62</sup> For texts of relevant statements see:

477th meeting: United Kingdom, pp. 5-9; United States, pp. 12-17; China, pp. 18-21; France, pp. 9-12; Norway, pp. 2-5.

469th meeting: India, p. 5; Pakistan, pp. 5-13.

470th meeting: India, p. 2; Pakistan, pp. 2-3.

<sup>63</sup> 471st meeting: p. 5.

<sup>64</sup> S/2017/Rev.1, O.R., 6th year, Suppl. for Jan., Feb., and March 1951, pp. 25-27.



(ii) At the same meeting, the Council decided to appoint a United Nations Representative in succession to Sir Owen Dixon, and at the 543rd meeting on 30 April, Mr. Frank P. Graham was proposed by the representatives of the United Kingdom and the United States. The representative of the USSR inquired why the candidate for this office should necessarily be a representative of the United States or of any other permanent member of the Security Council. There were no other candidates proposed and Mr. Graham was appointed.<sup>65</sup>

## CASE 9

## Truce Commission for Palestine

At the 287th meeting on 23 April 1948, in connexion with the Palestine question, the Security Council established, on the proposal of the representative of the United States, a Truce Commission for Palestine "to assist the Security Council in bringing about the implementation of the resolution of the Security Council of 17 April 1948".<sup>66</sup> The resolution provided that the Truce Commission was to be "composed of representatives of those members of the Security Council which have career consular officers in Jerusalem, noting, however, that the representative of Syria has indicated that his Government is not prepared to serve on the Commission". Accordingly, the following three members of the Council composed the Truce Commission for Palestine: Belgium, France and the United States.

At the 295th meeting on 18 May, the representative of Belgium stated that the Commission "is to be composed of representatives of those members of the Security Council which have career consular officers in Jerusalem". The resolution did not provide "that it should be composed of all consular officers in Jerusalem". The representative of Colombia stated that the provisions of the resolution were "not the same as saying that the Truce Commission shall be composed of the career consuls of the countries represented in the Security Council".<sup>67</sup> At the 298th meeting on 20 May, the President (France) remarked that "the Truce Commission is composed of the representatives of three countries having consuls in Jerusalem, but its members need not have been the consuls themselves. The consuls were in fact appointed because they were on the spot and were acquainted with the situation".<sup>68</sup>

By General Assembly resolution 194 (III) of 11 December 1948, the Conciliation Commission for Palestine was instructed to undertake, upon the request of the Council, any of the functions then assigned to the Truce Commission by resolution of the Council.<sup>69</sup>

No decision was taken by the Council to terminate the Truce Commission for Palestine, which submitted reports to the Council on the situation in Jerusalem up to January 1949.<sup>70</sup>

<sup>65</sup> 543rd meeting: p. 4.

<sup>66</sup> 287th meeting: pp. 15-16. For full text, see chapter VIII, pp. 327-328.

<sup>67</sup> 295th meeting: Belgium, p. 29; Colombia, p. 30.

<sup>68</sup> 298th meeting: p. 33.

<sup>69</sup> S/1122 and A/807.

<sup>70</sup> S/1203.

## CASE 10

## United Nations Truce Supervision Organization

At the 310th meeting on 29 May 1948,<sup>71</sup> in connexion with the Palestine question, the Security Council decided to instruct "the United Nations Mediator for Palestine, in concert with the Truce Commission, to supervise the observance" of the cease-fire in Palestine and also decided "that they shall be provided with a sufficient number of military observers". A Truce Supervision Organization was created in pursuance of this resolution and, at the 435th meeting on 8 August 1949, the representatives of Canada and France proposed to request the United Nations Chief of Staff of the Truce Supervision Organization, on the termination of all remaining functions of the United Nations Mediator, "to report to the Security Council on the observance of the cease-fire in Palestine" and "to keep the Palestine Conciliation Commission informed on matters affecting the Commission's work". The representative of the USSR stated that there was no longer any need to maintain United Nations observers in Palestine, and that consequently the staff which had been established should be disbanded, leaving the parties to settle outstanding questions between themselves "without any interference from the Conciliation Commission or the observers".<sup>72</sup> The Canadian-French draft resolution was adopted at the 437th meeting on 11 August 1949.<sup>73</sup> In conformity with this decision the Chief of Staff of the Truce Supervision Organization submitted reports to the Security Council and was also invited to the Council table at several meetings of the Council when the Palestine question was being discussed.<sup>74</sup>

## 2. Subsidiary organs proposed but not established

## CASE 11

At the 16th meeting on 11 February 1946, in connexion with the Indonesian question (I), the representative of the Ukrainian SSR proposed<sup>75</sup> to establish a commission composed of representatives of the United States of America, the USSR, China, the United Kingdom and the Netherlands, to carry out an enquiry in Indonesia and report to the Security Council on the result of its work. The proposal was rejected, by 2 votes in favour and 9 abstentions.<sup>76</sup>

## CASE 12

At the 18th meeting on 13 February 1946, in connexion with the Indonesian question (I), the representative of the USSR proposed, as an amendment to an Egyptian draft resolution, that a commission of enquiry be sent to Indonesia, composed of the representatives of China, the Netherlands, the United Kingdom, the United States of America and the USSR.<sup>77</sup> The amendment was rejected, by 3 votes in favour and 8 abstentions.<sup>78</sup>

<sup>71</sup> 310th meeting: p. 54; S/801, O.R., 3rd year, Suppl. for May 1948, pp. 103-104. For the text of the resolution, see chapter VIII, pp. 329-330.

<sup>72</sup> 435th meeting: pp. 3-6.

<sup>73</sup> 437th meeting: p. 13; S/1367.

<sup>74</sup> See chapter III, Case 4, p. 104.

<sup>75</sup> 16th meeting: p. 223.

<sup>76</sup> 18th meeting: pp. 257-258.

<sup>77</sup> 18th meeting: p. 262.

<sup>78</sup> 18th meeting: p. 263.

## CASE 13

At the 70th meeting on 20 September 1946, in connexion with the Ukrainian complaint against Greece, the representative of the United States proposed to establish a commission of three individuals nominated by the Secretary-General to investigate the facts relating to the border incidents along the frontiers between Greece, on the one hand, and Albania, Bulgaria and Yugoslavia on the other, and to submit to the Security Council a report on the facts disclosed by its investigation. The draft resolution was not adopted. There were 8 votes in favour, 2 against (one vote against being that of a permanent member), and one abstention.<sup>79</sup>

## CASE 14

At the 126th meeting on 7 April 1947, in connexion with the Greek question, the representative of the USSR stated<sup>80</sup> that aid to Greece "could be carried out with the participation of a special commission of the Security Council which would supervise the proper realization of such aid in the interests of the Greek people". At the 131st meeting on 18 April, he proposed the establishment of a special commission, composed of representatives of the members of the Security Council, the task of which should be to ensure, through proper supervision, that aid which Greece might receive from the outside be used only in the interests of the Greek people. The draft resolution was rejected, by 2 votes in favour, 4 against, and 5 abstentions.<sup>81</sup>

## CASE 15

At the 153rd meeting on 8 July, in connexion with the Greek question, the representative of the USSR proposed the creation of a special commission which, by appropriate supervision, would ensure that foreign economic assistance to Greece be used only in the interests of the Greek people.<sup>82</sup> At the 174th meeting on 4 August, the USSR draft resolution was rejected by 2 votes in favour and 9 against.<sup>83</sup>

## CASE 16

At the 147th meeting on 27 June 1947, in connexion with the Greek frontier incidents question, the Security Council began the consideration of the Report of the Commission of Investigation which had, in the majority proposals, recommended the establishment of a small commission or a single commissioner.<sup>84</sup> At the same meeting, the representative of the United States submitted a draft resolution<sup>85</sup> to establish a commission composed of the members of the Security Council for the purpose of restoring normal conditions along the frontiers between Greece on the one hand and Albania, Bulgaria and Yugoslavia on the other. At the 165th meeting on 24 July 1947, the representative of France declared that it would be best if the proposed commission were composed of countries whose general political position was not directly concerned with the case. He opposed the idea of having a single commissioner in view of the difficulties involved in appointing such a person. He suggested the establishment of a

commission composed of seven members—six non-permanent members of the Council, appointed without reference to their status as members of the Council, and a seventh member such as Sweden. At the 166th meeting on 24 July 1947, the representative of the United States observed that a commission representing the entire Council would more effectively represent the moral as well as legal responsibilities for the maintenance of international peace and security with which the Council had been charged under the Charter. His position was supported by the representatives of China and the United Kingdom. The representative of Australia, who favoured a commission composed of the six non-permanent members of the Council, stated that, on the basis of past experience, a small commission would perform more effectively the functions of mediation and conciliation. The representatives of Belgium and Brazil supported the Australian view. The representative of Colombia suggested a commission composed of seven members, three permanent and four non-permanent members of the Council, which might act more effectively in bringing about an understanding between those permanent members of the Council which were interested in the question. The representative of Syria recalled that the report of the Commission of Investigation had proposed a single commissioner, and he thought that this solution might be preferable to others.<sup>86</sup>

At the 170th meeting on 29 July 1947, the United States draft resolution, as amended, was put to the vote, paragraph by paragraph and then as a whole, and was not adopted. There were 9 votes in favour and 2 against (one vote against being that of a permanent member).<sup>87</sup>

## CASE 17

At the 177th meeting on 6 August 1947, in connexion with the Greek question, the representative of Australia proposed that Greece, on the one hand, and Albania, Yugoslavia and Bulgaria on the other hand, should be directed to enter into direct negotiations at once in an endeavour to relieve tension and with a view to the resumption of normal and peaceful diplomatic relations. To ensure this decision being put into effect, there should be appointed observers with the duty of reporting directly to the Council.<sup>88</sup> At the 188th meeting on 19 August, the draft resolution was not adopted. There were 9 votes in favour and 2 against (one vote against being that of a permanent member).<sup>89</sup>

## CASE 18

At the 192nd meeting on 22 August 1947, in connexion with the Indonesian question (II), the representative of Australia proposed to request the Governments of the Netherlands and the Republic of Indonesia to submit all matters in dispute between them to arbitration by a commission consisting of one arbitrator selected by the Government of the Republic of Indonesia, one by the Government of the Netherlands,

<sup>79</sup> For texts of relevant statements see:

165th meeting: France, pp. 1499-1500.

166th meeting: Australia, pp. 1501-02; Belgium, p. 1510; Brazil, p. 1515; China, pp. 1511-12; Colombia, pp. 1505-06; Syria, pp. 1507-08; United Kingdom, pp. 1509-10; United States, pp. 1503-04.

<sup>80</sup> 170th meeting: p. 1612.

<sup>81</sup> 177th meeting: p. 1808.

<sup>82</sup> 188th meeting: p. 2094.

<sup>79</sup> 70th meeting: p. 412.

<sup>80</sup> 126th meeting: p. 701.

<sup>81</sup> 131st meeting: p. 808.

<sup>82</sup> 153rd meeting: p. 1255.

<sup>83</sup> 174th meeting: p. 1730.

<sup>84</sup> S/360, O.R., 2nd year, Sp. Suppl. No. 2.

<sup>85</sup> S/391, 147th meeting: pp. 1124-1125.

and one by the Security Council.<sup>90</sup> At the 194th meeting on 25 August, the draft resolution was rejected, by 3 votes in favour and 8 abstentions.<sup>91</sup>

#### CASE 19

At the 194th meeting on 25 August 1947, in connexion with the Indonesian question (II), the representative of the USSR submitted several amendments to a joint Australian-Chinese draft resolution, one of which provided for the establishment of a commission composed of the States members of the Security Council "to supervise the implementation of the decision of the Security Council of 1 August". The amendments were not adopted. There were 7 votes in favour, 2 against (one vote against being that of a permanent member) and 2 abstentions.<sup>92</sup>

#### CASE 20

At the 194th meeting on 25 August 1947, in connexion with the Indonesian question (II), the representative of Poland submitted an amendment to the Australian draft resolution<sup>93</sup> providing for the establishment of a commission composed of the eleven members of the Security Council who would act "in the capacity of mediators and arbitrators between the Government of the Netherlands and the Government of the Republic of Indonesia". The amendment was rejected, by 3 votes in favour, 4 against, and 4 abstentions.<sup>94</sup>

#### CASE 21

At the 320th meeting on 15 June 1948, in connexion with the Palestine question, the representative of the USSR proposed "1) To attach to the United Nations Mediator military observers from thirty to fifty persons. 2) The military observers should be appointed by member States of the Security Council wishing to participate in the designation of such observers, excluding Syria."<sup>95</sup> The draft resolution was rejected by 2 votes in favour and 9 abstentions.<sup>96</sup>

#### CASE 22

At the 392nd meeting on 24 December 1948, in connexion with the Indonesian question (II), the representative of the USSR proposed to set up a commission composed of all States members of the Security Council "to supervise the fulfilment of the resolution on the cessation of military operations and the withdrawal of troops, and to assist in settling the conflict as a whole between the Netherlands and the Indonesian Republic".<sup>97</sup> The draft resolution, voted upon paragraph by paragraph, was rejected, each paragraph having failed to obtain the affirmative votes of 7 members.<sup>98</sup>

#### CASE 23

At the 455th meeting on 12 December 1949, in connexion with the Indonesian question (II), the representative of the Ukrainian SSR submitted a draft

resolution to establish a commission "composed of representatives of the States members of the Security Council, which should observe the implementation of paragraphs 1 and 2 above and also to investigate the activities of the Netherlands authorities which have taken the form of brutal terrorism, murder and persecution of the democratic leaders of the Indonesian people..."<sup>99</sup> At the 456th meeting on 13 December, the draft resolution was rejected by 2 votes in favour and 9 against.<sup>100</sup>

#### CASE 24

At the 501st meeting on 12 September 1950, in connexion with the complaint of bombing by air forces of the territory of China, the Security Council considered a United States draft resolution "to establish a commission to investigate on the spot and report as soon as possible with regard to the allegations contained in documents S/1722 and S/1743. The commission shall be composed of two representatives appointed, one by the Government of India, and one by the Government of Sweden."<sup>101</sup> The draft resolution was not adopted. There were 7 votes in favour, 1 against (being that of a permanent member), 2 abstentions, and one member not participating.<sup>102</sup>

### B. NOT INVOLVING, TO FACILITATE THEIR WORK, MEETINGS AT PLACES AWAY FROM THE SEAT OF THE ORGANIZATION

#### 1. Subsidiary organs established

##### a. Standing Committees

##### i. Committee of Experts

#### CASE 25

At the 1st meeting on 17 January 1946, after the adoption by the Security Council of the provisional rules of procedure recommended by the Preparatory Commission,<sup>103</sup> the President (Australia) proposed that a "Committee of Experts", composed of a representative for each member of the Council, be set up for the consideration of the provisional rules of procedure and that the Committee should "submit a report to the Council as soon as possible".

The proposal of the President was adopted without objection.<sup>104</sup>

#### CASE 26

At the 6th meeting on 1 February 1946, in connexion with the communications received from non-governmental bodies and persons concerning the Greek and the Indonesian questions, the President (Australia) proposed that the Committee of Experts be requested to indicate how these communications should be dealt with. The President further stated that the Committee of Experts would not deal with the communications themselves but would "suggest what procedure should be adopted regarding their receipt and, if necessary, their distribution to members of the Council".

The proposal of the President was adopted without objection<sup>105</sup> and, at the 31st meeting on 9 April, the

<sup>90</sup> S/512, 193rd meeting: p. 2174, footnote 1.

<sup>91</sup> 194th meeting: p. 2209.

<sup>92</sup> 194th meeting: pp. 2197, 2199.

<sup>93</sup> S/448/Add.1, 187th meeting: p. 2058, footnote 1; 194th meeting, p. 2209.

<sup>94</sup> 194th meeting: p. 2209.

<sup>95</sup> S/841, 320th meeting: p. 8.

<sup>96</sup> 320th meeting: p. 11.

<sup>97</sup> S/1148 and S/1148/Add.1, 392nd meeting: p. 3.

<sup>98</sup> 392nd meeting: pp. 41-42.

<sup>99</sup> S/1433, 455th meeting: p. 27.

<sup>100</sup> 456th meeting: p. 35.

<sup>101</sup> S/1752, 501st meeting: pp. 4-5.

<sup>102</sup> 501st meeting: p. 28.

<sup>103</sup> S/28.

<sup>104</sup> 1st meeting: p. 11.

<sup>105</sup> 6th meeting: p. 72.

Council considered a report of the Committee of Experts and adopted, without objection, the provisional procedure for dealing with communications from private individuals and non-governmental bodies, which became an appendix to the provisional rules of procedure.<sup>106</sup>

## CASE 27

At the 23rd meeting on 16 February 1946, the President (Australia) suggested that consideration of the report of the Committee of Experts on the provisional rules of procedure<sup>107</sup> be postponed and that meanwhile the Committee of Experts should further review those rules in the light of the experience gained by the Security Council during its first month of activities. The President's proposal was adopted without objection.<sup>108</sup>

At the 31st meeting on 9 April, the Council considered the report of the Committee of Experts<sup>109</sup> and adopted, with amendments, chapters I to V of the provisional rules of procedure.<sup>110</sup> At the 41st meeting on 16 May, the Council considered the report of the Committee of Experts<sup>111</sup> and adopted, with amendments, chapters VI to IX of the provisional rules of procedure, deciding to defer discussion on chapter X, dealing with the admission of new Members.<sup>112</sup> At the 42nd meeting on 17 May, chapter X, as recommended by the Committee of Experts, was adopted by 10 votes in favour and 1 against.<sup>113</sup> At the 44th meeting on 6 June, the Council considered a report of the Committee of Experts<sup>114</sup> and adopted two additional provisions regarding the functions of the Secretary-General in relation to the Security Council.<sup>115</sup> At the 48th meeting on 24 June, the Council considered a report of the Committee of Experts<sup>116</sup> and adopted an additional rule concerning the Presidency of the Security Council.<sup>117</sup>

## CASE 28

At the 23rd meeting on 16 February 1946, the President (Australia) called attention to a report of the Military Staff Committee<sup>118</sup> submitting a draft Statute of the Military Staff Committee and draft Rules of Procedure of the Military Staff Committee and its Secretariat. The President proposed to refer that report to the Committee of Experts for examination and report to the Council. The proposal of the President was adopted without objection.<sup>119</sup>

On 24 July 1946, a revised text of the report of the Military Staff Committee was submitted to the Security Council and transmitted for examination to the Committee of Experts.<sup>120</sup> The Committee of Experts discussed the draft Statute and Rules of Procedure of the Military Staff Committee at twenty-seven meetings and submitted a report with recom-

mendations, including reservations made by various delegations. This report was circulated as an official document but was not placed on the agenda of the Council.<sup>121</sup>

## CASE 29

At the 33rd meeting on 16 April 1946, in connexion with the Iranian question, the President (China) proposed to refer to the Committee of Experts, for examination and report, a memorandum from the Secretary-General concerning the retention of the Iranian question on the agenda.<sup>122</sup> The representative of the USSR suggested, and the President agreed to include in his proposal, a time limit of two days for the conclusion of this task by the Committee.<sup>123</sup> The proposal of the President, as amended, was adopted without objection.<sup>124</sup> At the 36th meeting on 23 April, the President (Egypt) called attention to the report of the Committee of Experts,<sup>125</sup> and stated that "the Committee has not been able to reach a unanimous decision on the matter" and that he did not believe that "the question needs any further discussion".<sup>126</sup>

## CASE 30

At the 50th meeting on 10 July 1946, the President (Mexico) called attention to the letter dated 1 May 1946 from the President of the International Court of Justice to the Secretary-General with regard to the conditions under which the International Court of Justice should be open to States not Parties to the Statute.<sup>127</sup> A memorandum by the Secretary-General was attached. The President proposed to refer the question to the Committee of Experts for examination and report to the Council. The proposal of the President was adopted without objection.<sup>128</sup>

At the 76th meeting on 15 October, the Council considered the report of the Committee of Experts,<sup>129</sup> which included a draft resolution recommended for adoption by the Security Council. The Council adopted unanimously the draft resolution recommended by the Committee of Experts.<sup>130</sup>

## CASE 31

At the 78th meeting on 30 October 1946, the President (United Kingdom) called attention to the letter dated 26 October 1946 from the Chief of the Swiss Federal Political Department to the Secretary-General inquiring as to the conditions on which Switzerland might become a Party to the Statute of the International Court of Justice.<sup>131</sup> The representative of Mexico proposed that the matter be referred to the Committee of Experts for examination and report. The representative of the USSR proposed that a definite date be specified for the submission of the report of the Committee.<sup>132</sup> The proposal of the representative of Mexico, with the specification made by

<sup>106</sup> 31st meeting: p. 118; S/29, annex A. See also chapter I, part IX.

<sup>107</sup> S/6, O.R., 1st year, 1st series, Suppl. No. 2, pp. 1-8.

<sup>108</sup> 23rd meeting: p. 368.

<sup>109</sup> S/29.

<sup>110</sup> 31st meeting: pp. 100-116; S/35, O.R., 1st year, 1st series, Suppl. No. 2, pp. 15-20.

<sup>111</sup> S/57, O.R., 1st year, 1st series, Suppl. No. 2, pp. 20-30.

<sup>112</sup> 41st meeting: pp. 253-267.

<sup>113</sup> 42nd meeting: p. 277.

<sup>114</sup> S/71, O.R., 1st year, 1st series, Suppl. No. 2, pp. 39-40.

<sup>115</sup> 44th meeting: pp. 310-311.

<sup>116</sup> S/88, O.R., 1st year, 1st series, Suppl. No. 2, pp. 41-43.

<sup>117</sup> 48th meeting: p. 382.

<sup>118</sup> S/10.

<sup>119</sup> 23rd meeting: p. 369.

<sup>120</sup> S/115.

<sup>121</sup> S/421, S/576 and S/1456.

<sup>122</sup> S/39, 33rd meeting: pp. 143-145.

<sup>123</sup> 33rd meeting: p. 145.

<sup>124</sup> 33rd meeting: p. 145.

<sup>125</sup> S/42, O.R., 1st year, 1st series, Suppl. No. 2, pp. 47-50.

<sup>126</sup> 36th meeting: p. 201. For text of report, see chapter II, Case 56.

<sup>127</sup> S/99, O.R., 1st year, 2nd series, Suppl. No. 1, pp. 8-12.

<sup>128</sup> 50th meeting: pp. 7-8.

<sup>129</sup> S/169, O.R., 1st year, 2nd series, Suppl. No. 6, pp. 153-156.

<sup>130</sup> 76th meeting: p. 468. For text, see chapter VI, Case 25.

<sup>131</sup> S/185, O.R., 1st year, 2nd series, Suppl. No. 7, pp. 157-158.

<sup>132</sup> 78th meeting: p. 486.

the President of a short term for the submission of the report, was adopted without objection.<sup>138</sup> At the 80th meeting on 15 November 1946, the Council considered the report of the Committee of Experts which included a recommendation to be sent by the Council to the General Assembly,<sup>134</sup> and adopted the report without objection.<sup>135</sup>

## CASE 32

At the 81st meeting on 29 November 1946, the Security Council considered General Assembly resolution 36 (I) of 19 November 1946, requesting the Security Council to appoint a committee to confer with a committee of the General Assembly "with a view to preparing rules governing the admission of new Members".<sup>136</sup> The President (United States) proposed that the matter be referred to the Committee of Experts with the instruction that it "appoint a sub-committee from its number to meet with a committee on procedures of the General Assembly in order to obtain the views of the General Assembly on this subject". The sub-committee, the President further proposed, "should not carry specific proposals but should listen to the suggestions which may be made by the Assembly's committee and should then report on these suggestions back to the Council".<sup>137</sup> The President's proposal was adopted by the Council without objection.

At the 197th meeting on 27 August 1947, the Council considered the report of the Committee of Experts.<sup>138</sup> The Committee reported that the representatives of China (President), Brazil and Poland had been appointed to the sub-committee set up under the instructions of the Council of 29 November 1946. In submitting the report to the Council, the Rapporteur of the Committee of Experts stated that it was "based upon the report of the sub-committee of the Committee of Experts which met with the General Assembly committee, and upon the records of the Committee of Experts".<sup>139</sup> The report recommended certain amendments in the rules of procedure on the admission of new Members. These recommendations were sponsored by the majority of the Committee, the representatives of Australia and Colombia having reserved the position of their delegations. Amendments to the report of the Committee of Experts were submitted at the Council meeting by the representative of Australia.<sup>140</sup> A discussion ensued during which the representative of China submitted a draft resolution to the effect that the Council instruct the sub-committee of the Committee of Experts with regard to its future negotiations with the General Assembly committee on the rules of procedure governing the admission of new Members.<sup>141</sup> The four Australian amendments were rejected, having failed to obtain the affirmative votes of seven members of the Council.<sup>142</sup> The Chinese draft resolution was adopted by 10 votes in favour, none against, with 1 abstention. The Council further approved the report of the Committee of Experts without objection.<sup>143</sup>

<sup>138</sup> 78th meeting: p. 487.

<sup>134</sup> S/191, O.R., 1st year, 2nd series, Suppl. No. 8, pp. 159-161.

<sup>135</sup> 80th meeting: p. 502. For text, see chapter VI, Case 8.

<sup>136</sup> S/196.

<sup>137</sup> 81st meeting: pp. 503-504.

<sup>138</sup> S/520, O.R., 2nd year, Suppl. No. 19, pp. 157-164.

<sup>139</sup> 197th meeting: p. 2256.

<sup>140</sup> S/520/Add.1, O.R., 2nd year, Suppl. No. 19, pp. 164-165.

<sup>141</sup> 197th meeting: pp. 2256, 2266.

<sup>142</sup> 197th meeting: pp. 2263-2264.

## CASE 33

At the 138th meeting on 4 June 1947, the President (France) called attention to General Assembly resolution 88 (I) of 19 November 1946, concerning the application of Articles 11 and 12 of the Statute of the International Court of Justice.<sup>143</sup>

The representative of the United States proposed in a draft resolution that the Security Council should immediately adopt an identical rule of procedure. The President (France) stated: "Another method of procedure would be to refer the question, for a rapid study, to the Committee of Experts which is attached to us for the study of legal questions. In my opinion, the second method would be more in conformity with our customs." The representative of the USSR favoured the immediate examination and adoption of the United States draft resolution. However, "if even one member of the Security Council" had any doubt whatsoever, he would not object to referring the matter to the Committee of Experts "in conformity with our usual procedure, since resolutions are not usually adopted at the same meeting at which they are introduced". The President shared the view "that if one member of the Council asks that the text should be referred to the Committee of Experts, it should be done". No such request being made, the President noted "that the Council members are unanimous in wishing to examine this text at once" and invited comments on the substance of the draft resolution.<sup>144</sup>

## CASE 34

At the 197th meeting on 27 August 1947, the Council considered General Assembly resolution 40 (I) of 13 December 1946 with regard to voting procedure in the Security Council.<sup>145</sup> The representative of the United States proposed that certain recommendations included in the General Assembly resolution be referred to the Committee of Experts, with instructions to consider the matter and to report to the Council as to what action it might take to comply with the recommendations of the General Assembly. The representatives of the United Kingdom and France also favoured reference of the General Assembly resolution to the Committee of Experts.<sup>146</sup> The representative of Colombia raised objection, and the Council decided to refer the subject as a whole to the Committee of Experts by a vote of 7 in favour, none against and 4 abstentions.<sup>147</sup>

Draft rules of procedure of the Security Council relating to voting were submitted by the representative of the United States on the Committee of Experts.<sup>148</sup>

## CASE 35

At the 220th meeting on 15 November 1947, the Security Council considered the respective functions of the Security Council and the Trusteeship Council

<sup>143</sup> 197th meeting: p. 2266.

<sup>144</sup> 138th meeting: p. 949.

<sup>145</sup> 138th meeting: p. 951.

<sup>146</sup> S/237.

<sup>147</sup> For texts of relevant statements see:

197th meeting: President (Syria), pp. 2267-2268, 2277-2278, 2279, 2281; Australia, pp. 2271-2274, 2280-2281; Colombia, pp. 2278-2279, 2280; France, p. 2280; Poland, pp. 2274-2276; USSR, 2270; United Kingdom, 2280; United States, pp. 2268-2269, 2270-2271, 2276-2277, 2278.

<sup>148</sup> 197th meeting: p. 2281.

<sup>149</sup> S/C.1/160, 2 September 1947.



with regard to the trusteeship system as applied to strategic areas.<sup>149</sup> Discussion centred on a proposal submitted by the representative of the USSR to refer the question to the Committee of Experts, with instructions to submit a report with recommendations within a short period of time. The representative of Belgium suggested that "the Committee should be instructed to make a juridical analysis of the situation as it exists at present, for the information of the Security Council". The representative of Australia agreed that the matter "should be gone into carefully by the Committee of Experts with a view to apprising the Security Council fully of its position".<sup>150</sup> The President (United States) put to the vote the proposal of the representative of the USSR, with the direction that the report of the Committee should be submitted in four weeks, and the proposal was adopted unanimously.<sup>151</sup>

At the 224th meeting on 19 December 1947, the President (Australia) called attention to the letter dated 12 December 1947 from the Chairman of the Committee of Experts to the President of the Council,<sup>152</sup> explaining that because of "unexpected complications" encountered by the Committee it had not been able to report to the Council within the specified time. The President suggested that the Council should take note of the communication from the Committee. The representative of Poland submitted a draft resolution on the substance of the question. The President stated that the Polish draft resolution was out of order. His ruling was challenged by the representative of the USSR, but upheld by the Council<sup>153</sup> and the Council took note of the communication of the Committee of Experts.<sup>154</sup>

At the 324th meeting on 18 June 1948, the Council began consideration of the report of the Committee of Experts.<sup>155</sup> The Committee submitted a draft resolution, recommended by the majority and "applicable to strategic areas generally". Discussion continued at the 327th meeting on 25 June, and at the 415th meeting on 7 March 1949. At the latter meeting the report of the *Ad Hoc* Committee of the Council<sup>156</sup> designated to confer with a similar committee of the Trusteeship Council was also considered. The draft resolution recommended by the majority of the Committee of Experts was adopted by 8 votes in favour, none against, with 3 abstentions.<sup>157</sup>

## CASE 36

At the 305th meeting on 26 May 1948, in connexion with the Czechoslovak question, after a draft resolution to set up a sub-committee had been rejected,<sup>158</sup> the representative of Argentina reminded the Council of his draft resolution to instruct the Committee of Experts to obtain "further testimonial evidence, both

oral and written", regarding the situation in Czechoslovakia.<sup>159</sup> In justification of his proposal, he said that the Security Council, having been unable to entrust the task of collecting information to a body especially created for that purpose, could entrust it to a body already existing which dealt exclusively with procedural matters. The representative of the USSR contended that this proposal could hardly be distinguished from the proposal to set up a special body for the purpose. The purpose of both was the carrying out of an investigation.<sup>160</sup> The Argentine proposal was not discussed subsequently.

## CASE 37

At the 423rd meeting on 8 April 1949, the Council considered the letter dated 30 March 1949 from the Swiss Office for Liaison with the United Nations to the Secretary-General<sup>161</sup> transmitting a letter from the Head of the Government of the Principality of Liechtenstein concerning the latter's request to become a Party to the Statute of the International Court of Justice. The President (Egypt) proposed that, in accordance with precedent, the matter be referred to the Committee of Experts. The representative of the USSR raised certain objections on the grounds that Liechtenstein was not a free and independent State and could not, therefore, become a Party to the Statute of the International Court of Justice. He requested that the question of reference to the Committee be put to the vote.<sup>162</sup> The proposal of the President was adopted by 9 votes in favour, none against, with 2 abstentions.<sup>163</sup> At the 432nd meeting on 27 July, the Council considered the report of the Committee of Experts which included a recommendation to be sent to the General Assembly.<sup>164</sup> The President, in his capacity as representative of the Ukrainian SSR, and the representative of the USSR, raised objections to the recommendation of the Committee.<sup>165</sup> The recommendation contained in the report of the Committee of Experts was adopted by 9 votes in favour, none against, with 2 abstentions.<sup>166</sup>

## CASE 38

At the 462nd meeting on 17 January 1950, the Security Council considered an Indian draft amendment to the provisional rules of procedure concerning representation and credentials.<sup>167</sup> The President (China) suggested that the matter be referred to the Committee of Experts. The representative of India, who had previously suggested "that we should set up a committee—perhaps a committee of experts—for the purpose of suggesting amendments to our rules of procedure regarding representation and credentials", supported the President's suggestion, proposing further that a time limit be set for the Committee's report.<sup>168</sup>

<sup>149</sup> S/599, 220th meeting; pp. 2753-2754, footnote 1.

<sup>150</sup> For texts of relevant statements see:

220th meeting: President (United States), pp. 2754-2756, 2757, 2758-2761, 2762, 2763; Australia, pp. 2761-2762; Belgium, p. 2761; Syria, pp. 2757-2758; USSR, pp. 2756, 2763; United Kingdom, pp. 2756, 2757, 2761.

<sup>151</sup> 220th meeting: p. 2763.

<sup>152</sup> S/621, 224th meeting: p. 2792, footnote 3.

<sup>153</sup> 224th meeting: pp. 2812-2817.

<sup>154</sup> 224th meeting: p. 2817.

<sup>155</sup> S/642, *O.R.*, 3rd year, *Suppl. for June 1948*, pp. 1-10.

<sup>156</sup> S/916 and S/916/Add.1, *O.R.* 4th year, *Suppl. for March 1949*, pp. 1-5.

<sup>157</sup> 415th meeting: p. 9.

<sup>158</sup> See Case 64.

<sup>159</sup> S/782, *O.R.*, 3rd year, *Suppl. for May 1948*, p. 99.

<sup>160</sup> 305th meeting: p. 3.

<sup>161</sup> S/1298 and S/1298/Corr.1, *O.R.*, 4th year, *Suppl. for April 1949*, p. 6.

<sup>162</sup> 423rd meeting: pp. 16-17.

<sup>163</sup> 423rd meeting: p. 17.

<sup>164</sup> S/1342, *O.R.*, 4th year, *Suppl. for July 1949*, pp. 2-3.

<sup>165</sup> For texts of relevant statements see:

432nd meeting: President (Ukrainian SSR), pp. 2-3; Egypt, pp. 3-5; USSR, pp. 5-6.

<sup>166</sup> 432nd meeting: p. 6.

<sup>167</sup> S/1447, *O.R.*, 5th year, *Suppl. for 1 Jan. - 31 May 1950*, pp. 2-3.

<sup>168</sup> 452nd meeting: p. 12.

The Council agreed, without objection, to refer the proposed amendment of the representative of India to the Committee of Experts for study and report. The Committee was authorized to suggest to the Council alternative plans, and was requested to render an interim or a final report within one month's time.<sup>169</sup>

At the 468th meeting on 28 February, the Council considered the report of the Committee of Experts<sup>170</sup> recommending the adoption of the proposed amendment to rule 13 of the provisional rules of procedure concerning credentials; and the postponement of a decision on the proposed amendment to rule 17 concerning representation.<sup>171</sup>

The Council decided, without objection, to adopt the amendment to rule 13 of the provisional rules of procedure, and to approve the conclusions reached by the Committee of Experts with regard to the proposed amendment to rule 17.<sup>172</sup>

## ii. Committee on Admission of New Members<sup>173</sup>

### (a) Establishment and organization

#### CASE 39

At the 42nd meeting on 17 May 1946, the Council considered rules of procedure concerning the admission of new Members, which included the following provision:<sup>174</sup>

"The Secretary-General shall immediately place the application for membership before the representatives on the Security Council. Unless the Security Council decides otherwise, the application shall be referred by the President to a committee of the Security Council upon which each member of the Security Council shall be represented. The committee shall examine any application referred to it and report its conclusions thereon to the Council not less than thirty-five days in advance of a regular session of the General Assembly, or, if a special session of the General Assembly is called, not less than fourteen days in advance of such session."

This text (later rule 59 of the provisional rules of procedure) was provisionally adopted by the Council by 10 votes in favour and 1 against, along with other rules regarding the admission of new Members.<sup>175</sup>

#### CASE 40

At the 42nd meeting on 17 May 1946, the Council considered a draft resolution submitted by the representative of the United States to the effect that:<sup>176</sup>

"Applications for membership which have been or may be received by the Secretary-General not later than 15 July 1946 shall be referred to a committee composed of a representative of each of the members

of the Security Council for examination and report to the Council not later than 1 August 1946."

In support of his proposal, the representative of the United States stated that what was called for, in addition to the rules of procedure which had just been adopted, was "a resolution specifying further the procedure that the Security Council intends to follow in considering membership applications which have been received or will be received by August of this year". He added that the proposed resolution merely supplemented, to meet the immediate situation, the rules of procedure during the initial period of functioning of the Council, when "a number of applications will be presented" which should be given "the fullest consideration" and "should all, therefore, be referred to the committee provided for in the rules of procedure". The representative of the USSR remarked that the United States draft resolution "does not add anything new from the point of view of method and the basic rules of procedure", and, in fact, "duplicates the rules of procedure that have been adopted". The adoption of such a draft resolution by the Council "would be a useless and unnecessary act". However, should the other members favour the adoption, the representative of the USSR would not oppose it.<sup>177</sup> The representative of Australia proposed a drafting amendment which was accepted by the representative of the United States. The Council then adopted unanimously the United States draft resolution, as revised.<sup>178</sup> In view of the postponement of the opening of the General Assembly session, the Council, upon the proposal of the President (Netherlands), decided, at the 51st meeting on 24 July, to change the time limits indicated in its decision of 17 May 1946.<sup>179</sup>

#### CASE 41

At the 52nd meeting on 7 August 1946, the Council considered the letter<sup>180</sup> dated 2 August 1946 from the Chairman of the Committee on the Admission of New Members, referring to the Council the texts of two resolutions which the Committee had adopted by majority vote after a general discussion regarding its work. These resolutions, which had been submitted by the representatives of Australia and China respectively, read as follows:

1. "The Committee will consider written statements of facts from any of the applicant States or from any Member of the United Nations bearing on the applications which the Committee has been instructed to examine."

2. "The Committee considers that it has the right to ask information from Governments of Member States or applicants having bearing upon the applications before the Council."

The Committee requested that these resolutions be brought to the attention of the Council since the minority view was "that in adopting both resolutions the Committee went beyond its terms of reference".

The representatives of the USSR, objecting to these resolutions, stated:

<sup>177</sup> For texts of relevant statements see:

<sup>178</sup> 42nd meeting: Australia, pp. 283-284, 285; Poland, pp. 281-284, 285; USSR, pp. 282-283; United States, pp. 278-280, 281, 284-285.

<sup>179</sup> 42nd meeting: p. 285.

<sup>180</sup> 51st meeting: pp. 15-16.

<sup>181</sup> 52nd meeting: pp. 18-19.

<sup>169</sup> 462nd meeting: p. 13.

<sup>170</sup> S/1457, S/1457/Corr.1, O.R., 5th year, Suppl. for 1 Jan. - 31 May 1950, pp. 16-18.

<sup>171</sup> For texts of relevant statements see:

468th meeting: President (Cuba), pp. 9-10, 11; India, pp. 10-11; United States, p. 11.

<sup>172</sup> 468th meeting: p. 11.

<sup>173</sup> For the question of reference or non-reference of applications for membership to the Committee, see chapter VII, part IV.

<sup>174</sup> S/57, O.R., 1st year, 1st series, Suppl. No. 2, p. 30.

<sup>175</sup> 42nd meeting: p. 277.

<sup>176</sup> 42nd meeting: p. 279.

"... the Committee went a little further than it should have done and itself decided its own rights and functions with regard to the examination of applications for membership. I refer to the decision concerning the right of the Committee to apply directly to States to make appropriate enquiries. I repeat that in my opinion only the Security Council, the constitutional organ of the United Nations, should possess such a right and the Security Council may, if it deems it expedient and necessary, transmit to the Committee for examination all—I stress the word—all the material and documents relating to any application for membership."

The representative of Poland held "that the Committee, in adopting both resolutions, went beyond its rights and terms of reference", and drew attention to the precedent set in the case of the sub-committee on the Spanish question which had received "a special authorization from the Council to ask for information". In supporting both resolutions, the representative of the United States stated:

"The Committee was established by the Council as a committee of the whole, each member of the Council being represented on the Committee, and it was intended by the Council that this Committee should act as a reviewing body to screen the evidence and to offer its conclusions to the Council. We are reluctant to believe it was intended that, after the Committee had made its report to the Council, interested States should approach the Council itself with new evidence so that the Council would be forced to take the time and trouble to perform what should have been the Committee's function."

The representatives of China, Australia, France and Mexico remarked that both resolutions had been adopted by the Committee within its powers, as laid down by the Council. The representative of Egypt stated that his delegation had abstained from voting for either of the resolutions because of doubts "as to the power of the Committee to take exclusively in its own hands the interpretation of the mandate given to it by the Security Council". He considered, however, that in order to "expedite its work and do it thoroughly" the Committee "should have as much power and as wide a range of activity as possible".

At the end of the debate, the President (Netherlands) stated that the first clear conclusion from the discussion was "that applications from the Governments of States wishing to become Members of the United Nations will be referred to the Committee as a matter of course". The President further stated that there was no objection "to the Committee considering written statements from any of the applicant States, or from any Member of the United Nations, bearing on the applications which the Committee has been instructed to examine". The President referred finally to "a certain difference of opinion" among members of the Council "on whether the Committee may approach Governments of Member States or of applicants for the purpose of asking them for information having a bearing on the applications for admission before the Security Council". In this connexion, the President mentioned the need of avoiding unnecessary delays which would result from consultations between the Committee and its parent body, the Security Council. Should questions of principle arise, such consultations might be deemed necessary. The Commit-

tee was in such cases "bound to proceed prudently and circumspectly". It should be borne in mind that the members of the Committee "are at all times in a position to seek the views of the members of the Council whom they represent". In conclusion, the President stated that "since the two resolutions of the Committee did not provoke any counter-proposal in the sense that the Council was not asked to replace them by anything else, these two resolutions now stand and will henceforth govern the Committee's discussions, subject to the proviso that it will, of course, be guided by today's debate".<sup>181</sup>

There was no objection to this statement by the President.<sup>182</sup>

#### CASE 42

At the 54th meeting on 28 August 1946, the Council considered the first report of the Committee on the Admission of New Members. In the initial paragraphs of the report dealing with organizational and procedural questions,<sup>183</sup> it was stated that the terms of reference of the Committee originated in Article 4 of the Charter, in rules 58 to 60 of the provisional rules of procedure of the Security Council, and in the resolutions adopted by the Council at the 42nd and 51st meetings on 17 May and 24 July respectively.<sup>184</sup>

It was also stated in the report that the Committee had convened on 31 July, and had "adopted the system of rotating chairmanship in conformity with Security Council procedure". As to its constitution and attendance, the Committee "consisted of a representative from each member of the Security Council", and "each delegation was represented at every meeting".

In regard to the examination of applications, it was reported:

"The Committee adopted the chronological order in which the applications had been received by the Secretariat as the order for their discussion, but the discussion of any application was not closed until the final report of the Committee was approved."

The report also contained the following provision regarding the procedure of the Committee:

"The Committee decided to request the Secretary-General to send telegrams to the Governments of applicant States requesting that they appoint representatives in New York, in order to facilitate the procedure of obtaining additional information if required."

In connexion with the procedure for the examination of applications, it was stated in the report that in a number of cases,<sup>185</sup> the Committee had appointed a sub-committee to prepare a questionnaire which, once approved or amended by the full Committee, had been presented to the applicant State in order "to obtain additional information on various points as requested

<sup>181</sup> For texts of relevant statements see:

52nd meeting: President (Netherlands), pp. 27-28, 29; Australia, pp. 22-23; China, p. 22; Egypt, pp. 24, 28, 29; France, pp. 24-25; Mexico, pp. 25-27; Poland, p. 25; USSR, pp. 19-20, 28; United States, pp. 20-22.

<sup>182</sup> 52nd meeting: p. 29.

<sup>183</sup> S/133, S/133/Corr.1, O.R., 1st year, 2nd series, Suppl. No. 4, pp. 53-55.

<sup>184</sup> Full texts of these provisions are included in this report, pp. 53-54.

<sup>185</sup> S/133, S/133/Corr.1, O.R., 1st year, 2nd series, Suppl. No. 4, pp. 61, 66, 71.

by several of the representatives" in the course of the Committee discussion. The report also stated that "in order to facilitate the work of the Committee, the Secretariat prepared a working paper containing some basic facts" regarding each applicant State.

As to publicity of meetings, the first report of the Committee stated:

"In accordance with a resolution adopted at the first meeting, the meetings of this Committee were closed. After each meeting, a communique drawn up by the Chairman of the Committee and the Secretariat was released."

At the 152nd meeting on 8 July 1947, the Council decided, after a brief discussion on the matter, to leave the Committee "free to make its decisions" as to whether its meetings would be open or closed.<sup>186</sup>

The second report of the Committee stated:<sup>187</sup>

"The Committee decided that the meetings of the Committee would be open unless otherwise decided."

Concerning the record of meetings, the second report stated:<sup>188</sup>

"The Committee agreed that, as in 1946, summary records be kept. Any representative would have the right to request that the full text of any statement be included as an appendix."

#### CASE 43

At the 55th meeting on 28 August 1946, in the course of the general discussion on the first report of the Committee, the representative of the United States stated:<sup>189</sup>

"The Committee on the Admission of New Members of the Security Council is composed of a representative of each member of the Council. It is, therefore, a committee of the whole. This Committee is established pursuant to the rules of procedure to provide what was thought by the Council to be an effective machinery for the examination of applications and report thereon to the Council. It was clearly contemplated that problems seen by the members in connexion with any application should be brought forward in this committee of the whole so that an opportunity would exist for clarifying the issues, and if possible removing doubts, in advance of the formal proceedings in the Council."

#### (b) Form and content of the reports to the Security Council

##### CASE 44

At the 54th meeting on 28 August 1946, in presenting to the Council the first report of the Committee on the Admission of New Members, the Chairman of the Committee stated:<sup>190</sup>

"The report is a *résumé* of the examination by the Committee of all nine applications submitted to us by the Security Council. It was the leading principle of our work to examine the applications in the light of the requirements of the Charter, which means, first, the applicant State must be peace-loving;

secondly, the applicant State must formally accept the obligations of the Charter; thirdly, the applicant State must be able and willing to carry out the obligations of the Charter in the judgment of the Organization.

"In order to give the members of the Security Council sufficient basis to reach a decision, we tried to collect... all information available on applicant States. We discussed each application thoroughly and we decided to present in our report the *résumé* of all statements and to include some basic statements in full, as appendices. We hope that the report may help the Council and perhaps may shorten its discussions by avoiding repetition of declarations.

"Finally, we presented in every case the opinion of the Committee as to whether or not sufficient information has been placed before the Committee to form a basis for decision by members of the Security Council. We also included a statement of the formal attitudes of various delegations regarding the desirability of admission of applicant States."

The first report of the Committee on the Admission of New Members concerned the applications for membership of the following nine States: People's Republic of Albania, Mongolian People's Republic, Afghanistan, The Hashemite Kingdom of Transjordan, Ireland, Portugal, Iceland, Siam, Sweden. The report of the Committee being a description of the discussions and the conclusions reached in the case of every application examined by the Committee, the form of presentation of the applications in the report followed the order adopted by the Committee for the examination of applications, i.e., the chronological order in which they were received by the Secretariat.<sup>191</sup> Following the general discussion on the report, the Council proceeded to consider each individual application in the order indicated in the report.<sup>192</sup>

##### CASE 45

At the 152nd meeting on 8 July 1947, the Council considered the procedure to be followed with regard to the recommendation of General Assembly resolution 35 (I) of 19 November 1946, that the Council re-examine the applications for membership submitted by the following five States: People's Republic of Albania, Mongolian People's Republic, The Hashemite Kingdom of Transjordan, Ireland and Portugal. Upon the proposal of the President (Poland) that the Council "follow the usual procedure", the Council decided to instruct the Committee to re-examine these applications, and report to the Council within the time limit provided for in the rules of procedure.<sup>193</sup>

At the 186th meeting on 18 August 1947, the Council considered the second report of the Committee, concerning the re-examination of the applications of the five above-mentioned States, and, in addition, the examination of six new applications for membership from the following countries referred to the Committee by the Council: Hungary, Italy, Austria, Romania, Yemen and Bulgaria. In presenting the report to the Council, the Chairman of the Committee stated:<sup>194</sup>

<sup>186</sup> For texts of relevant statement see: 152nd meeting: President (Poland), pp. 1231, 1232; Australia, pp. 1229, 1230, 1231.

<sup>187</sup> S/479, O.R., 2nd year, Special Suppl. No. 3, p. 1.

<sup>188</sup> S/479, O.R., 2nd year, Special Suppl. No. 3, p. 1.

<sup>189</sup> 55th meeting: p. 54.

<sup>190</sup> 54th meeting: p. 40.

<sup>191</sup> S/133, O.R., 1st year, 2nd series, Suppl. No. 4, p. 56.

<sup>192</sup> 55th meeting: pp. 62-63.

<sup>193</sup> 152nd meeting: pp. 1229-1231.

<sup>194</sup> 186th meeting: p. 2031.

"The Committee...collected all the information available in order to give the members of the Security Council sufficient basis to reach a decision on these applications. Each application was thoroughly discussed; the report which the Committee is submitting to the Council contains a *résumé* of all statements, and the statements in full of some members of the Committee as appendices...

"The report also contains a summary of the discussion of each application, and a statement of the formal attitudes of various delegations regarding the desirability of the admission of applicant States.

"Finally, the application of the Kingdom of Yemen having met with no objection in the Committee, the the Committee considers that the Security Council may recommend to the General Assembly the admission of Yemen to membership in the United Nations.

"As regards all the other applications, the members of the Security Council will note from the report that unanimity was not reached in the Committee."

## CASE 46

At the 279th meeting on 10 April 1948, the Council considered the report of the Committee concerning the application of the Union of Burma.<sup>195</sup> In presenting the report to the Council, the Chairman of the Committee stated, in part:<sup>196</sup>

"As is stated in the report, the application of the Union of Burma for membership in the United Nations met with a favourable reception in the Committee. The support of the application voiced by each representative is, of course, not final, but subject to ratification by his delegation to the Security Council."

## CASE 47

At the 351st meeting on 18 August 1948, the Council considered the report of the Committee concerning the application of Ceylon.<sup>197</sup> In presenting the report to the Council, the Chairman of the Committee stated:

"The Committee has examined the application... and the majority of the members of the Committee have supported the application of the Government of Ceylon for membership. However, the representatives of the USSR and the Ukrainian SSR have abstained from supporting the application and have reserved the right of their delegations to discuss the matter in the Security Council."<sup>198</sup>

## CASE 48

At the 384th meeting on 15 December 1948, the Council considered the report of the Committee concerning the application of Israel.<sup>199</sup> The representative of France stated that it did not appear "to constitute the report which, under our rules of procedure, (the Committee) should have submitted to the Security Council", since the Committee had not made "a thorough examination of the application", and had indicated "it did not consider that it was at present in possession of the requisite information to enable it to come to any decision". He proposed that the

Committee be asked "to consider the matter again". He added:<sup>200</sup>

"It is possible that the Committee will not agree on any resolution or unanimous opinion, but it should at least provide us with the results of a thorough examination and, if necessary, with an analysis of the various views expressed in the Committee, in fact to put before us a report which really is a report."

The representative of the USSR remarked that the report of the Committee mentioned two alternatives: either to "refer the question back to the Committee, or take a decision on it itself". He considered the first procedure "a pointless formality".<sup>201</sup>

## CASE 49

(i) At the 423rd meeting on 8 April 1949, the Council considered the report of the Committee concerning the application of the Republic of Korea.<sup>202</sup> The representative of the United States stated:<sup>203</sup>

"Now we have before us this report... The Committee voted to record the attitudes of its members, and it will be noted that eight members voted in favour of the application and two—the USSR and the Ukrainian SSR—voted against it."

(ii) At the 439th meeting on 7 September 1949, the Council considered the report of the Committee concerning the application of Nepal, the concluding paragraph of which read:<sup>204</sup>

"A vote was taken on the attitude of the members of the Committee toward the application of Nepal. There were nine votes in favour to two against (Ukrainian SSR and the USSR)."

## iii. Commission for Conventional Armaments

## CASE 50

## Establishment

At the 88th meeting on 31 December 1946, the Security Council began its discussion of the recommendations contained in General Assembly resolution 41 (I) of 14 December 1946, concerning the general regulation and reduction of armaments and armed forces. In the course of subsequent meetings, various draft resolutions were submitted by the representatives of Australia, Colombia, France, the USSR and the United States, containing proposals for the establishment of a commission. At the 90th meeting on 9 January 1947, the representative of France said that it was not necessary, at that stage, to work out the general principles which should guide the proposed commission, which would be a subsidiary organ of the Council. The Council could, from time to time, instruct the commission in its work, and its discussions could be approved by the Council. He contemplated the establishment of a commission of members of the Council and representatives of the Military Staff Committee, the commission being left free to co-opt or seek the aid of technical experts. The representative of the United Kingdom thought that a political or civilian commission would be the best to undertake

<sup>195</sup> S/706, O.R., 3rd year, Suppl. for April 1948, pp. 1-3.

<sup>196</sup> 279th meeting: p. 2.

<sup>197</sup> S/859, O.R., 3rd year, Suppl. for August 1948, p. 78.

<sup>198</sup> 351st meeting: p. 3.

<sup>199</sup> S/1110, O.R., 3rd year, Suppl. for Dec. 1948, pp. 119-120.

<sup>200</sup> 384th meeting: p. 5.

<sup>201</sup> 384th meeting: p. 12.

<sup>202</sup> S/1281, O.R., 4th year, Suppl. for April 1949, pp. 1-5.

<sup>203</sup> 423rd meeting: p. 8.

<sup>204</sup> S/1382, O.R., 4th year, Suppl. for Sep.-Dec. 1949, pp. 10-12.



the general direction of the work, but doubted the advisability of adding representatives of the Military Staff Committee. At the 93rd meeting on 15 January 1947, the representative of the USSR thought it was up to each Government to appoint either civilian or military representatives. Every representative could have military advisers, and the Military Staff Committee could be consulted.<sup>205</sup>

At the 98th meeting on 4 February 1947, the representative of the United States proposed the establishment of a commission to make recommendations to the Security Council regarding practical measures for the general regulation and reduction of armaments and armed forces, except as regards atomic energy, and for the creation of a committee of the Council to make recommendations regarding the terms of reference of the proposed commission. The representative of the USSR could see no need for a special committee to lay down terms of reference for the proposed commission, which were clearly contained in the resolution of the General Assembly. In order to prepare a common text agreeable to all, the Council decided that the President should consult the authors of the various draft resolutions before the Council.<sup>206</sup> A draft resolution containing alternative texts for paragraph 3, since agreement concerning the jurisdiction of the proposed commission *vis-à-vis* the Atomic Energy Commission had not been reached, was submitted to the Council,<sup>207</sup> and at the 105th meeting on 13 February 1947 there was established, by 10 votes in favour, none against, with 1 abstention, a Commission for Conventional Armaments.<sup>208</sup>

#### Composition

The Commission consisted of representatives of members of the Security Council.

#### Terms of Reference

The Commission was instructed "to prepare and to submit to the Security Council, within the space of not more than three months", proposals (a) "for the general regulation and reduction of armaments and armed forces", and (b) "for practical and effective safeguards in connexion with the general regulation and reduction of armaments".<sup>209</sup> The Commission was also instructed to submit a plan of work to the Council for approval. Matters falling within the competence of the Atomic Energy Commission were excluded from the jurisdiction of this Commission.

At the 152nd meeting on 8 July 1947, the Council considered the Commission's report, to which was attached a plan of work submitted for the Council's approval,<sup>210</sup> and a plan for the organization of the Commission's work submitted for purposes of information. The plan of work, which proposed the consideration by the Commission, under six specific headings, of all suggestions already made, or that might be made, by various delegations for the plan of work, was approved by the Council by 9 votes in favour, none against, with 2 abstentions.<sup>211</sup> The President

(Poland) stated that the plan for the organization of the work did not call for a vote of approval by the Council since it had been submitted for purposes of information.

At the 408th meeting on 10 February 1949, the Council adopted by 9 votes to none, with 2 abstentions, the draft resolution of the representative of the United States<sup>212</sup> that General Assembly resolution 192 (III) of 19 November 1948 be transmitted to the Commission for action, according to its terms.

At the 462nd meeting on 17 January 1950, the Council adopted by 9 votes in favour, with one member not voting and one being absent, the draft resolution of the representative of France<sup>213</sup> that General Assembly resolution 300 (IV) of 5 December 1949 be transmitted to the Commission for further study in accordance with its plan of work.

#### Contents of Reports

The first report of the Commission to the Council and the Council's disposition of it is set forth above.

On 4 August 1949, the Council received the second progress report of the Commission and two resolutions<sup>214</sup> related to the Commission's work up to August 1948. On the same day it also received a working paper<sup>215</sup> adopted by the Commission concerning implementation of General Assembly resolution 192 (III).

At the 450th meeting on 11 October 1949, a United States draft resolution for approval and submission to the General Assembly of the resolution of the Commission attached to the second progress report was not adopted. There were 9 votes in favour and 2 against, one vote against being that of a permanent member.<sup>216</sup> A draft resolution submitted by the representative of the United Kingdom to transmit to the General Assembly the resolutions and report of the Commission was adopted by 9 votes in favour with 2 abstentions.<sup>217</sup>

With respect to the working paper concerning implementation of General Assembly resolution 192 (III), two French draft resolutions were not adopted owing to the negative vote of a permanent member.<sup>218</sup> Another French draft resolution to transmit to the General Assembly the proposals contained in the working paper together with the records of the Council and the Commission discussions was adopted by 9 votes in favour with 2 abstentions.<sup>219</sup>

On 10 August 1950 the Council received the third progress report<sup>220</sup> of the Commission. This report was not placed on the agenda of the Council or considered by the Council.

#### Termination

In accordance with the recommendation of the General Assembly contained in resolution 502 (VI),

<sup>205</sup> S/1248, 408th meeting: p. 19.

<sup>206</sup> 462nd meeting: pp. 8-9.

<sup>207</sup> S/1371, O.R., 4th year, *Suppl. for Sept., Oct., Nov., and Dec. 1949*, pp. 1-2.

<sup>208</sup> S/1372, O.R., 4th year, *Suppl. for Sept., Oct., Nov., and Dec. 1949*, pp. 2-8.

<sup>209</sup> S/1398, 450th meeting: pp. 2-3, 14.

<sup>210</sup> S/1403, 450th meeting: p. 15.

<sup>211</sup> S/1399/Rev.1, O.R., 4th year, *Suppl. for Sept., Oct., Nov., and Dec. 1949*, pp. 12-13, and S/1408/Rev.1, 451st meeting: p. 6; 452nd meeting: pp. 21-23.

<sup>212</sup> S/1410, 452nd meeting: pp. 24-25.

<sup>213</sup> S/1690.

<sup>206</sup> For texts of relevant statements see:

90th meeting: France, pp. 36-37; United Kingdom, p. 39.

93rd meeting: USSR, p. 77.

<sup>207</sup> 98th meeting: p. 157.

<sup>208</sup> S/268.

<sup>209</sup> 105th meeting: p. 274.

<sup>210</sup> S/268/Rev.1/Corr.1, O.R., 2nd year, *Suppl. No. 5*, pp. 58-59.

<sup>211</sup> S/387, 152nd meeting: pp. 1217-1218.

<sup>212</sup> 152nd meeting: p. 1227.

which established under the Security Council a Disarmament Commission, the Council at its 571st meeting on 30 January 1952 adopted a resolution<sup>221</sup> dissolving the Commission for Conventional Armaments.

b. Drafting and other *ad hoc* committees and sub-committees

i. Reference to sub-committees to seek agreement after general discussion

CASE 51

At the 26th meeting on 26 March 1946, in connexion with the Iranian question, the representative of France proposed the appointment of a sub-committee to examine three motions submitted by the representatives of the USSR, Egypt and Australia, and to report back to the Council the next day. The French draft resolution was adopted by 9 votes.<sup>222</sup> The President (China) nominated forthwith the representatives of the United States, the USSR and France to compose the sub-committee.<sup>223</sup> At the 27th meeting on 27 March, the President informed the Council that the representative of France, on behalf of the sub-committee, had reported to him that no agreement had been reached.<sup>224</sup>

CASE 52

At the 37th meeting on 25 April 1946, in connexion with the Spanish question, the representative of Poland proposed the appointment of a sub-committee, "the function of which would be to find a basis" for unanimous action by the Council. He further stated that his draft resolution, with other proposals, should be submitted to the proposed sub-committee "for study or draft" in order that in a short period it should report to the Council "with its recommendations as to the proper action to be taken". The representative of France remarked that "what the representative of Poland is really proposing is a drafting sub-committee". The representative of the United Kingdom stated that in that case no formal resolution should be adopted, and the representative of Poland agreed to waive a formal draft resolution.

The President (Egypt) stated, without objection, that the representatives of Australia, France and Poland would meet to try to reach an agreed proposal to place before the Council at its next meeting.<sup>225</sup>

At the 38th meeting on 26 April, the representative of Australia reported that, in pursuance of the decision of the Council, he had met with the representatives of France and Poland "with a view to reaching an agreed draft resolution", the text of which he submitted to the Council.<sup>226</sup>

CASE 53

At the 48th meeting on 24 June 1946, in connexion with the Spanish question, the representative of Poland proposed that the President appoint "a drafting committee of three or five members, at his discretion, who

should try to prepare a text which would be acceptable to this Council", and report before the next meeting.<sup>227</sup>

The President (Mexico) appointed as members the representatives of Australia, Poland and the United Kingdom.<sup>228</sup> At the 49th meeting on 26 June, the representative of Australia reported that no unanimous agreement had been reached and introduced a text agreed to by the majority, the representative of Poland dissenting.<sup>229</sup>

CASE 54

At the 99th meeting on 4 February 1947, in connexion with the general regulation and reduction of armaments, the representative of Australia proposed that the representatives on the Security Council who had submitted draft resolutions—USSR, United States, France, Colombia and Australia—meet under the guidance of the President, either formally or informally, in order to reach agreement on a joint text. The President (Belgium) agreed on the understanding that the proposed meeting of the drafting group would be an "unofficial meeting"<sup>230</sup> and the proposal was adopted without objection.<sup>231</sup> At the 102nd meeting on 11 February, the President stated that the exchange of views which had taken place had resulted in agreement on the joint text which was then before the Council.<sup>232</sup>

CASE 55

At the 174th meeting on 4 August 1947, in connexion with the Greek frontier incidents question, the representative of Colombia suggested "that a committee should be appointed, composed of the representatives of the delegations which have submitted proposals on the Greek question, in order to ascertain whether it is possible to formulate a new draft resolution which, in the opinion of this sub-committee, would be likely to meet with the approval of the Council."<sup>233</sup> At the 177th meeting on 6 August, after the representative of the United Kingdom had proposed an amendment to request the sub-committee to report its conclusions within a time limit of five days, the Colombian draft resolution, as amended, was adopted by 10 votes in favour, none against, with 1 abstention.<sup>234</sup> The President (Syria) stated that the sub-committee would be composed of the representatives of Australia, Colombia, France, Poland, the USSR, the United Kingdom and the United States. The representatives of Australia and Colombia submitted two draft resolutions which they suggested should be passed on for consideration by the sub-committee. The President agreed. The representative of the USSR expressed objection to such a procedure. The representative of China also objected that the reference of the draft resolutions to the sub-committee went beyond the terms of the resolution adopted. Later, when the President called upon the representative of Greece, the representative of the USSR objected to the procedure of allowing the representative of Greece to speak, since, once a sub-committee had been set up, "all discussion of any proposals

<sup>221</sup> 571st meeting: p. 2.

<sup>222</sup> 26th meeting: pp. 42-43.

<sup>223</sup> 26th meeting: p. 43.

<sup>224</sup> 27th meeting: p. 44.

<sup>225</sup> For texts of relevant statements see:

37th meeting: President (Egypt), p. 237; Australia, pp. 216-217, 229-230, 232-233, 237; Brazil, p. 225; France, pp. 234-235, 236, 238; Mexico, p. 233; Netherlands, pp. 236, 237; Poland, pp. 227-229, 235; USSR, pp. 219-223, 233-234, 235; United Kingdom, p. 235; United States, pp. 217-219.

<sup>226</sup> 38th meeting: pp. 238-239.

<sup>227</sup> 48th meeting: p. 399.

<sup>228</sup> 48th meeting: p. 400.

<sup>229</sup> 49th meeting: pp. 400-401.

<sup>230</sup> For texts of relevant statements see:

99th meeting: President (Belgium), p. 170; Australia, p. 166.

<sup>231</sup> 99th meeting: p. 172.

<sup>232</sup> 102nd meeting: p. 193.

<sup>233</sup> 174th meeting: p. 1734.

<sup>234</sup> 177th meeting: p. 1806.

whatsoever" on the Greek question should cease until the sub-committee's work had ended. The President ruled that general discussion concerning the Greek question could continue in the Council until the sub-committee presented its report.<sup>235</sup>

At the 180th meeting on 12 August 1947, the representative of Colombia reported that, after two meetings, the sub-committee had "failed entirely to find common ground for formulating a new draft resolution on the Greek question".<sup>236</sup>

#### CASE 56

At the 217th meeting on 3 October 1947, in connexion with the Indonesian question (II), the representative of the United States proposed that the President should appoint a small sub-committee to reconcile amendments to the United States draft resolution. The representatives of the USSR and Poland objected to a sub-committee, since its work would be exclusively based on the United States draft resolution. The President (United Kingdom) stated that he "intended to propose that the sub-committee should consider not only the United States draft resolution, but also the outstanding Polish draft resolution". This proposal, he observed, could only be made after the adoption of the draft resolution to set up the sub-committee.<sup>237</sup>

The United States draft resolution was then adopted by 7 votes in favour and 4 abstentions.<sup>238</sup> The President's proposal "that the terms of reference of that sub-committee should be extended in this way: that it should examine both the United States and Polish draft resolutions on an equal footing, together with the amendments which have already been submitted to the United States proposal" was rejected by 5 votes in favour, 2 against and 4 abstentions.<sup>239</sup>

The President's proposal that the sub-committee be composed of the representatives of the United States — as a mover of the draft resolution — together with Australia, Belgium and China who had proposed the amendments was adopted by 7 votes in favour and 4 abstentions.<sup>240</sup>

At the 218th meeting on 1 November, the representative of Australia read a draft resolution submitted by the sub-committee and the President (United States) announced that the other proposals made by the members who constituted the sub-committee had been withdrawn.<sup>241</sup>

#### CASE 57

At the 324th meeting on 18 June 1948, in connexion with the respective functions of the Security Council and the Trusteeship Council with regard to the trusteeship system as applied to strategic areas, the President (Syria) called attention to the resolution of 16 December 1947 of the Trusteeship Council,

authorizing a committee of three, composed of the President and two other members of the Trusteeship Council, "to confer with the President or a similar committee of the Security Council with a view to assuring that, before the Security Council makes a final decision on the arrangements to be made with regard to the functions of the Trusteeship Council in respect of strategic areas under trusteeship in relation to the political, social, economic and educational advancement of the inhabitants, the responsibilities of the Trusteeship Council be fully taken into account."<sup>242</sup> The President proposed that the Council authorize a similar committee "to meet the committee proposed by the Trusteeship Council and confer on this matter and report to the Security Council the agreement, or decision, or understanding of both Councils". The Council "would be free to accept such proposals or not to accept them". The representative of the United States suggested that the proposed committee include the President, the representative of Belgium — representing the majority view in the report on this question submitted by the Committee of Experts — and a representative of the minority point of view. The President suggested the representative of the USSR or the representative of the Ukrainian SSR since both had supported the report of the minority.

The representative of the USSR objected that the resolution of the Trusteeship Council was contrary to the Charter, since the question of trusteeship of strategic areas was to be discussed with the Security Council "on a basis of parity", while under the Charter "the necessary functions in respect of strategic areas must be exercised only by the Security Council".<sup>243</sup>

The proposal of the President was adopted by 9 votes in favour, none against, with 2 abstentions.<sup>244</sup>

At the 327th meeting on 25 June, the President informed the Council that the committee, established by the Council on 18 June 1948 and composed of the President, the representatives of Belgium and the Ukrainian SSR, had held on 22 June a joint meeting with the similar committee of the Trusteeship Council, and that no agreement had yet been reached. The members representing the Trusteeship Council had requested that the Security Council postpone its final decision on the question until the Trusteeship Council had held further discussion on it. After a brief discussion on the matter, the President asked the Council "to give the Trusteeship Council a chance to submit their final proposal", and, as there were no objections, he adjourned the meeting.<sup>245</sup>

At the 415th meeting on 7 March 1949, in connexion with the "Procedure in application of Articles 87 and 88 of the Charter with regard to the Pacific Islands under the strategic trusteeship of the United States", the Council considered a "Report of the Committee appointed by the Security Council on 18 June 1948 to confer with the Committee of the Trusteeship Council on the question of respective functions of the two Councils in regard to trusteeship of strategic areas".<sup>246</sup> A statement by the representative of the Ukrainian

<sup>235</sup> For texts of relevant statements see:

177th meeting: President (Syria), pp. 1806, 1813, 1816; China, p. 1814; Colombia, pp. 1801, 1813; USSR, pp. 1814, 1815; United Kingdom, p. 1806.

<sup>236</sup> 180th meeting: p. 1903.

<sup>237</sup> For texts of relevant statements see:

217th meeting: President (United Kingdom), pp. 2710, 2713-2714; Poland, pp. 2712-2713; USSR, p. 2711; United States, p. 2710.

<sup>238</sup> 217th meeting: p. 2715.

<sup>239</sup> 217th meeting: p. 2716.

<sup>240</sup> 217th meeting: p. 2717.

<sup>241</sup> 218th meeting: pp. 2723-2724.

<sup>242</sup> 324th meeting: p. 8.

<sup>243</sup> For texts of relevant statements see:

324th meeting: President (Syria), pp. 8-9, 10; USSR, pp. 10-11; United States, p. 9.

<sup>244</sup> 324th meeting: p. 17.

<sup>245</sup> 327th meeting: pp. 9-10.

<sup>246</sup> S/916, O.R., 4th year, Suppl. for March 1949, pp. 1-3.

SSR at the second joint meeting of the two committees appeared in an addendum to the report.<sup>247</sup>

After the adoption of a draft resolution on the question of substance, as submitted by the majority of the Committee of Experts, the President (Cuba) called attention to the report of the joint committee and stated that, since there were no objections, he would consider the interpretation of the resolution should be that which had been submitted by the majority of the Committee of the Trusteeship Council. There was no formal vote on the report.<sup>248</sup>

#### CASE 58

At the 355th meeting on 19 August 1948, the Council approved its draft report to the General Assembly, subject to the unanimous agreement of a sub-committee composed of representatives of France, the Ukrainian Soviet Socialist Republic, the Union of Soviet Socialist Republics, the United Kingdom and the United States on the corrections presented by them in the course of the meeting of the Council.<sup>249</sup> The sub-committee met on 20 August and unanimously approved the corrections to the report.

#### CASE 59

At the 375th meeting on 29 October 1948, in connexion with the Palestine question, the representative of Canada proposed that a draft resolution, together with all draft amendments, be referred to a sub-committee, composed of the two members which had proposed the draft resolution—the United Kingdom and China—together with Belgium, France and the Ukrainian SSR. The functions of this sub-committee would be "to consider all amendments and revisions to the draft resolution", and, in consultation with the Acting Mediator, to prepare a revised draft resolution. The representative of the Ukrainian SSR stated that he would abstain from voting, but was willing to serve on the sub-committee "if the President of the Security Council and the Council itself consider that all viewpoints should be represented on that sub-committee".<sup>250</sup>

The draft resolution of the representative of Canada was adopted without objection.<sup>251</sup>

At the 376th meeting on 4 November, the representative of Belgium, Chairman of the sub-committee, made a statement on the report of the sub-committee,<sup>252</sup> which included an amended draft resolution "to which the majority of the members of the sub-committee have adhered under the conditions specified in the report".<sup>253</sup> The conditions comprised reservations made by members of the sub-committee to various parts of the draft.

#### ii. Other subsidiary organs

#### CASE 60

At the 35th meeting on 18 April 1946, in connexion with the Spanish question, the representative of Australia proposed that the Security Council appoint "a

committee of five of its members", instructed to examine the statements made before the Council with regard to the situation in Spain.<sup>254</sup>

At the 37th meeting on 25 April, the representative of Australia submitted a revised draft resolution.<sup>255</sup> At the 38th meeting on 26 April, the representative of Australia submitted a final revision of the draft resolution, which maintained the fact-finding character of the sub-committee and, at the 39th meeting on 29 April, the draft resolution, with amendments, was adopted by 10 votes in favour, none against, with 1 abstention.<sup>256</sup> On the proposal of the President (Egypt), the Council agreed that the sub-committee would be composed of the representatives of Australia (Chairman), Brazil, China, France and Poland.<sup>257</sup>

At the 44th meeting on 6 June, the Chairman submitted a report<sup>258</sup> accompanied by a supplementary memorandum.<sup>259</sup>

#### CASE 61

At the 111th meeting on 24 February 1947, in connexion with the Corfu Channel question, the representative of Australia proposed that a sub-committee of three members be appointed "to examine the material which has already been presented" and to report its findings to the Council.<sup>260</sup> At the 114th meeting on 27 February, the representative of the USSR objected to the setting up of a sub-committee, but stated that, should the majority of the Council be in favour, he would not vote against its establishment.<sup>261</sup>

The Australian draft resolution was adopted by 8 votes in favour, none against, with 3 abstentions.<sup>262</sup> As regards the composition of the sub-committee, the representative of Australia suggested that members of the Council "rather remote from the actual scene of the dispute" should serve on the sub-committee. The representative of the USSR remarked that the geographical approach was "too mechanical". It would be "expedient" to exclude the permanent members of the Council. The President (Belgium) proposed Australia, Colombia and Poland as members of the sub-committee,<sup>263</sup> and this proposal was adopted by 7 votes in favour, none against, with 3 abstentions. The representative of the United Kingdom did not participate in the vote.<sup>264</sup>

At the 120th meeting on 20 March, the representative of Colombia (Chairman) submitted the sub-committee's report.<sup>265</sup>

<sup>247</sup> 35th meeting: pp. 197-198.

<sup>248</sup> 37th meeting: p. 216.

<sup>249</sup> 39th meeting: p. 245. For full text, see chapter VIII, p. 306. Regarding ancillary procedural discussion, see Case 65 and Note to part II.

<sup>250</sup> 39th meeting: p. 245.

<sup>251</sup> S/75, O.R., 1st year, 1st series, Special Suppl. for June 1946, pp. 1-12.

<sup>252</sup> S/76, O.R., 1st year, 1st series, Special Suppl. for June 1946, pp. 13-82.

<sup>253</sup> 111th meeting: p. 363.

<sup>254</sup> For texts of relevant statements see:

114th meeting: Australia, p. 420; USSR, p. 428.

<sup>255</sup> 114th meeting: p. 432.

<sup>256</sup> For texts of relevant statements see:

114th meeting: President (Belgium), p. 437; Australia, pp. 433, 437; Syria, p. 436; USSR, pp. 433-434.

<sup>257</sup> 114th meeting: p. 438. For full text, see chapter VIII, p. 313. Regarding ancillary procedural discussion, see Case 66 and Note to part II.

<sup>258</sup> S/300, O.R., 2nd year, Suppl. No. 10, pp. 77-100; 120th meeting: pp. 544-549.

<sup>241</sup> S/916/Add.1, O.R., 4th year, Suppl. for March 1949, pp. 3-5.

<sup>242</sup> 415th meeting: p. 9.

<sup>243</sup> 355th meeting: p. 56.

<sup>244</sup> For texts of relevant statements see:

375th meeting: President (United States), p. 20; Canada, pp. 19-20; Ukrainian SSR, p. 21.

<sup>245</sup> 375th meeting: p. 22.

<sup>246</sup> S/1064, O.R., 3rd year, Suppl. for Nov. 1948, pp. 1-6.

<sup>247</sup> 376th meeting: p. 2.

## CASE 62

At the 155th meeting on 10 July 1947, in connexion with the appointment of a Governor for the Free Territory of Trieste, the Security Council decided "to set up a committee composed of the representatives of Australia, Colombia and Poland to collect additional information about the candidates already suggested, as well as other possible candidates, and to report to the Security Council".<sup>266</sup> At the 201st meeting on 10 September, the representative of Australia informed the Council that the report of the sub-committee had been completed, transmitted to the Council and circulated on 10 September 1947.<sup>267</sup> At the 203rd meeting on 24 September, the Security Council "examined the report of the Sub-Committee appointed . . . to collect additional information about the candidates proposed for the post of Governor of Trieste, as well as a candidate proposed by the representatives of China". The Council decided "to ask the permanent members of the Council to hold an informal consultation", and to have the next meeting of the Council on the subject in a few days.<sup>268</sup>

## CASE 63

At the 374th meeting on 28 October 1948, in connexion with the Palestine question, the Security Council considered a draft resolution,<sup>269</sup> jointly submitted by the representatives of China and the United Kingdom, which included a paragraph appointing a "committee of the Council, consisting of the five permanent members together with Belgium and Colombia, to examine urgently and report to the Council on the measures which it would be appropriate to take under Article 41 of the Charter", should either party or both refuse to comply with the Acting Mediator's orders regarding the truce.<sup>270</sup> At the 376th meeting on 4 November, the representative of the United States proposed that the Committee should give "such advice as the Acting Mediator may require", and that reference to Chapter VII should be substituted for reference to Article 41. The representative of France objected to reference being made to any Article or Chapter of the Charter, and favoured broader powers for the proposed Committee. The representative of the United Kingdom supported the United States amendment under which the Acting Mediator would remain the servant of the Security Council, while enjoying, should he require it, "the advantage of the advice" of the Committee of the Council.<sup>271</sup>

At the 377th meeting on 4 November, the President (Argentina) enquired whether it was advisable "that

<sup>266</sup> 155th meeting: p. 1277.

<sup>267</sup> 201st meeting: p. 2364.

<sup>268</sup> 203rd meeting: p. 2407.

<sup>269</sup> S/1059/Rev.2, O.R., 3rd year, Suppl. for Oct. 1948, p. 72.

<sup>270</sup> 374th meeting: p. 33.

<sup>271</sup> For texts of relevant statements see:

376th meeting: France, pp. 8-9; United Kingdom, p. 24; United States, pp. 3-4.

the President should be excluded from a committee which, in the name of the Council, is going to try to intervene in mediation and give orders to the Acting Mediator".<sup>272</sup> There being no observations on this point the paragraph, as amended by the representative of the United States, was adopted by 8 votes in favour, 1 against, with 2 abstentions.<sup>273</sup> At the 396th meeting on 29 December, the following paragraphs were adopted by 8 votes in favour, none against, with 3 abstentions.<sup>274</sup>

"Instructs the Committee of the Council appointed on 4 November to meet at Lake Success on 7 January to consider the situation in Southern Palestine and to report to the Council on the extent to which the Governments concerned have by that date complied with the present resolution and with the resolutions of 4 and 16 November;

"Invites Cuba and Norway to replace as from 1 January the two retiring members of the Committee (Belgium and Colombia)".

On 7 January 1949, the Committee reported "that no further action by it was required at the moment".<sup>275</sup>

## 2. Subsidiary organs proposed but not established

## CASE 64

At the 281st meeting on 12 April 1948, in connexion with the Czechoslovak question, the representative of Chile<sup>276</sup> proposed the appointment of a sub-committee, with a membership to be determined by the Security Council, to receive and hear statements and testimony and to report to the Council at the earliest possible time, this action to be taken without prejudice to any decisions which might be taken in accordance with Article 34. The representative of the United States suggested that the sub-committee should consist of representatives of five members of the Council and that it should be authorized to hear the testimony of Czech political leaders.<sup>277</sup>

At the 288th meeting on 29 April, the representative of Argentina requested the Council to vote on the draft resolution submitted by the representative of Chile, and proposed that the sub-committee should be composed of three members.<sup>278</sup> At the 303rd meeting on 24 May, after a vote on the preliminary question of the majority required, the draft resolution was put to the vote and not adopted. There were 9 votes in favour and 2 against (one vote against being that of a permanent member).<sup>279</sup>

<sup>272</sup> 377th meeting: p. 42.

<sup>273</sup> 377th meeting: p. 42.

<sup>274</sup> 396th meeting: pp. 24-25.

<sup>275</sup> S/A191.

<sup>276</sup> 281st meeting: p. 2.

<sup>277</sup> 281st meeting: p. 33.

<sup>278</sup> 288th meeting: p. 15.

<sup>279</sup> 303rd meeting: p. 29. Regarding ancillary procedural discussion, see Case 67, and Note to part II.

## Part II

### CONSIDERATION OF PROCEDURES RELATIVE TO SUBSIDIARY ORGANS

#### NOTE

In part II are entered the major instances of deliberation within the Council regarding problems of procedure involved in the establishment or utilisation of subsidiary

organs by the Council. The instances of incidental discussion on such problems have been entered in the case histories in part I. Only exceptionally has the Council had occasion to examine at length such problems of pro-



cedure, and on most of these occasions the problem of procedure has been interwoven with consideration of the agenda item itself. The material is for this reason limited in scope and inconclusive in nature. Three case histories<sup>1</sup> bear on the distinction between the pure act of establishing a subsidiary organ as a matter of procedure under Article 29 and the process of investigation through the agency of a subsidiary organ under Article 34. Connected material on the vote required and on Article 34 will be found in chapters IV and X of the *Repertoire*.<sup>2</sup> The material inserted in part II of this chapter consists of the observations directed more especially to the character and functions of the proposed subsidiary organ *qua* subsidiary organ. It has also been considered appropriate to include the instance of objection raised to the process of consultation between permanent members being assimilated to the concept of subsidiary organ.<sup>3</sup> The extent to which a subsidiary organ can itself delegate powers vested in it by the Council,<sup>4</sup> and the question of the modification of original terms of reference in the light of subsequent developments<sup>5</sup> are the subject of two other case histories.

Where at the time a subsidiary organ was established a definite time limit for the completion of its task was set by the Security Council,<sup>6</sup> or where the nature of the task set by the Council was such that the subsidiary organ was, on its completion, without question regarded as "*functus officio*,"<sup>7</sup> it has not been necessary for the Council to take under consideration questions regarding the termination of a subsidiary organ. Three subsidiary organs established by the Council adjourned *sine die* without being formally terminated by the Council.<sup>8</sup> In the one instance in which special problems of procedure arose regarding the termination of a subsidiary organ, information on the consideration of the problem by the Council has been given under a separate heading in part II.<sup>9</sup>

#### A. CONSIDERATION OF PROCEDURE IN THE ESTABLISHMENT OF SUBSIDIARY ORGANS

##### CASE 65

At the 35th meeting on 18 April 1946, in connexion with the Spanish question, the representative of Australia proposed that the Security Council, in accordance with Article 34 of the Charter, make inquiries, through the instrumentality of a committee of five members, to determine whether the situation in Spain endangered international peace.<sup>10</sup> At the 37th meeting on 25 April, he submitted a revised text to "cut out the idea of a formal investigation under Article 34 of the Charter so as to enable the proposed body to be brought in under Article 29 as a subsidiary organ . . ." Discussion proceeded on the legitimate scope of the work of the sub-committee

as a subsidiary organ. The representative of Australia observed that some representatives considered "that the sub-committee should not and could not itself make a finding . . . or make recommendations . . . but should present the facts so that the Council itself could decide and make its own decision on the facts as ascertained and presented by the sub-committee."<sup>11</sup> The representative of the United States felt that the sub-committee in its report to the Council "should provide us with the facts ascertained by it, so that the Security Council itself may make its own determination, based upon those facts". The representative of France considered that the questions addressed to the sub-committee were too restrictive. He suggested that they be deleted and replaced by a direction to report "on the results of such studies and on the practical measures which the United Nations could take in this matter". He observed that he regarded the proposed body "not as a committee or commission but as a working sub-committee". The representative of Australia observed that "for a sub-committee to recommend practical measures" would mean, in effect, that the committee would make decisions instead of the Council. The representative of the United Kingdom, agreeing with the Australian proposal, stated that "the work of sifting evidence" could not be "conveniently or effectively" accomplished by the Council, and that it was, therefore, "a sensible and practical thing" to establish the proposed sub-committee. He opposed the French amendment on the grounds that it was "inadmissible" to instruct the sub-committee "to examine and sift evidence" and, at the same time, to ask it "what action to take against the accused party". This, he said, would be equivalent to "presuming guilt".<sup>12</sup> A drafting committee was appointed to reach agreement on the text of the proposal.<sup>13</sup> and the text recommended by the drafting committee was adopted by the Council at the 39th meeting on 29 April 1946. By the resolution adopted at the 39th meeting, the Council instructed the sub-committee of five members appointed by it "to examine the statements made before the Security Council concerning Spain, to receive further statements and documents, and to conduct inquiries as it may deem necessary, and to report to the Security Council before the end of May".<sup>14</sup>

At the 44th meeting on 6 June, the representative of Australia, Chairman of the sub-committee, stated:<sup>15</sup>

"In discharging its responsibility, the Sub-Committee has made enquiries. It has analysed the information obtained from those enquiries; it has attempted to describe with accuracy the nature of the present situation in Spain, and to indicate the practical measures which, in the light of that analysis and description, appear to be open to the Security Council . . . The Sub-Committee in examining the facts of the situation was concerned in assisting the Security Council to obtain a clearer picture of the situation in order that it might decide on action."

<sup>1</sup> Cases 65, 66 and 67. Case 65 is procedural discussion ancillary to Case 60, Case 66 ancillary to Case 61, and Case 67 ancillary to Case 64.

<sup>2</sup> See chapter IV, Cases 42, 49, 85, 98 and 118, and chapter X, Cases 8, 11, 16, 17 and 19.

<sup>3</sup> Case 68.

<sup>4</sup> Case 69.

<sup>5</sup> Case 70. For further details of the extent to which certain subsidiary organs have been given additional functions, see chapter VIII.

<sup>6</sup> See Cases 51, 52, 53, 55, 56, 60 and 61.

<sup>7</sup> See Cases 54, 57, 58, 59, 62 and 63.

<sup>8</sup> See Cases 4, 9, and 20.

<sup>9</sup> See Case 71.

<sup>10</sup> For text, see chapter X, Case 8, 35th meeting: pp. 197-198.

<sup>11</sup> 37th meeting: pp. 216-217.

<sup>12</sup> For texts of relevant statements see:

37th meeting: Australia, pp. 216-217, 229-230; Brazil, p. 225; Mexico, p. 233; France, pp. 226-227, 234-235, 236; Netherlands, pp. 224-225, 230-231, 236, 237; Poland, pp. 227-229, 230, 231, 233, 235; USSR, pp. 219-223; 234, 236; United Kingdom, pp. 231-232, 235; United States, pp. 217-219.

<sup>13</sup> See Case 52.

<sup>14</sup> 39th meeting: pp. 244-245. For full text see chapter VIII, p. 30. For the application of Article 27, see chapter IV, Case 180.

<sup>15</sup> 44th meeting: pp. 313, 315.

At the 45th meeting on 13 June 1946, the representative of Egypt, commenting on the report of the sub-committee, stated that "when the Sub-Committee made its recommendations to the Council, it went beyond its terms of reference".<sup>16</sup>

#### CASE 66

At the 111th meeting on 24 February 1947, in connexion with the Corfu Channel question, the representative of Australia proposed to appoint a sub-committee of three members "to examine the material which has already been presented to us, and report . . . on the case as it appears to its members after a close examination of the material before them and after further discussion with the parties concerned".<sup>17</sup> He explained that the proposed sub-committee was "a means of enabling the Security Council to carry out its obligation to bring about the peaceful settlement of this dispute". The sub-committee, "regarded as a preliminary step", should work on the evidence so far available "namely, the documents which have been brought to this Council and the statements which have been made before this Council", which should be supplemented by reference to the two parties concerned "but not by undertaking an investigation beyond those limits". Such a sub-committee "could also give some indication to the Council of the possible courses of action" open to the Council and, in particular, "which of those courses of action would seem to be most applicable to the facts of the dispute".<sup>18</sup>

The representative of the United States recalled the precedent established in connexion with the Spanish question. He observed that the proposed sub-committee could give the Council "the benefit of its analysis of the facts" and "of its recommendation as to a suitable course of action". The representative of Poland did not believe that the proposed sub-committee could find in New York "any convincing evidence". The representative of the USSR objected to the draft resolution on the ground that it was "incompatible with the need for keeping the Security Council's authority at a high level". The representative of Syria stated that he would not vote for the establishment of the sub-committee since there were no questions or points "which could not be solved, understood and appreciated in a plenary meeting of the Security Council". The representative of the United States stressed that the sub-committee "might provide a convenient mechanism for bringing together the contradictions in the statements" made by the parties at the Council table. The Council would thus have "a basis for formulating a final decision to dispose" of the question before it.<sup>19</sup>

At the 114th meeting on 27 February 1947, the representative of the United Kingdom considered that, as the establishment of such a subsidiary organ was a procedural matter, he was not required to abstain from voting by Article 27 (3). The President (Belgium) ruled that:<sup>20</sup>

"Article 27 . . . does not debar members of the Security Council who are parties to a dispute from voting, except with regard to decisions to be taken by the Council 'under Chapter VI'. But Chapter VI does not

mention decisions of the kind which we have now to take. We have to establish a purely advisory sub-committee, whose only task will be to assist the Council in the submission of facts; this body will take no decisions; it will confine itself to formulating conclusions intended to help the Council in taking a decision. The sole function of the future sub-committee will be to facilitate the Council's work by classifying information submitted to the Council; there is no question in this case of undertaking an investigation."

The representative of the USSR disagreed with the ruling of the President, and stated:<sup>21</sup>

"Decisions cease to be decisions of a procedural nature from the moment the Council begins to take a decision regarding investigation . . . Is not the establishment of a sub-committee to investigate facts a decision about an investigation? The representative of Australia in fact stated that the task of this sub-committee would consist in investigating facts relating to this question. This is therefore a decision about an investigation, regarding the supplementary investigation and elucidation of the facts. If this is so, then . . . this decision obviously cannot be a matter of procedure."

The representative of the United States, after expressing agreement with the President's statement, added:<sup>22</sup>

"It is unthinkable that the Security Council should not be able to establish a sub-committee, as the Council's own servant, to examine matters referred to it by the Council and to make recommendations and clarifications for the furtherance of the Council's own work. The Council's decision would be taken on the report of the sub-committee, which would have no power other than that of making recommendations."

"To adopt the view which has been expressed by the representative of the Soviet Union would mean that the Council could never, without the consent of every one of the five permanent members, set up any agency for the conduct of its business. I think that is, in fact, contrary to Article 29 of the Charter . . ."

The representative of the USSR having stated that he would not oppose the setting up of a sub-committee, should "the majority of the members of the Council consider it essential to take a decision regarding supplementary investigation of the facts",<sup>23</sup> the Australian draft resolution was adopted by 8 votes in favour, with 3 abstentions.<sup>24</sup>

#### CASE 67

At the 281st meeting on 12 April 1948, in connexion with the Czechoslovak question, the representative of Chile proposed "without prejudice of any decisions which may be taken in accordance with Article 34 of the Charter", to appoint a sub-committee to receive or to hear "evidence, statements and testimonies and to report to the Security Council at the earliest possible time".<sup>25</sup> At the 288th meeting on 29 April 1948, the

<sup>16</sup> 45th meeting: p. 330.

<sup>17</sup> 111th meeting: p. 363.

<sup>18</sup> 111th meeting: p. 365.

<sup>19</sup> For texts of relevant statements see:

111th meeting: Poland, p. 377; Syria, pp. 379-380; USSR, p. 377; United Kingdom, p. 383; United States, pp. 373, 383.

<sup>20</sup> 114th meeting: p. 426.

<sup>21</sup> 114th meeting: pp. 426, 427.

<sup>22</sup> 114th meeting: pp. 427, 431.

<sup>23</sup> 114th meeting: p. 428.

<sup>24</sup> 114th meeting: p. 432. For full text, see: chapter VIII, p. 313.

<sup>25</sup> 281st meeting: p. 2.

representative of Argentina proposed that the sub-committee should "consist of three members, to collect relevant information on this case". The Council considered whether the establishment of such a sub-committee would constitute a procedural decision. The representative of the United States stated that it was

"... clearly a procedural decision. It is a decision under Article 29 of the Charter, not under Chapter VI. The Charter contains a clear indication that this type of matter is procedural. Article 29 is one of the five articles in the portion of Chapter V of the Charter entitled 'Procedure'. Consequently, under the language of the Charter, a Security Council decision pursuant to Article 29 must be considered as procedural..."

"The adoption of this draft resolution would mean no more than a continuance by the Security Council of its consideration of the Czechoslovak question with the assistance of a sub-committee composed of its own members. The use of such a subsidiary organ to assist the Security Council in the performance of its functions is expressly provided for in Article 29 of the Charter."

The representative of Canada considered that the draft resolution represented "a convenient way of carrying on the further enquiries of the Security Council" and, as such, was "clearly a procedural matter under Article 29".

The representative of Argentina observed:

"... just as the Security Council set up the Committee of Experts, so it can appoint three of its members to collect information on the Czechoslovak case which has been brought before the Council before we begin to discuss the case itself, to give it due consideration or to adopt a resolution regarding it."<sup>26</sup>

The representative of the USSR stated:

"I consider that this resolution, if adopted, would necessitate investigations... I am not interested in how the resolution will be styled or how the committee will be named by those who desire to establish it and to carry out investigations, but I am concerned with the substance of the question of the proposed committee and the activities which it will have to undertake in virtue of the resolution if it is adopted."

At the 303rd meeting on 24 May 1948, the representative of Syria drew attention to rule 28, and affirmed that "conduct of business... cannot mean anything but questions of procedural methods".<sup>27</sup>

The Chilean draft resolution was put to the vote and was not adopted. There were 9 votes in favour and 2 against (one vote against being that of a permanent member).<sup>28</sup>

The representative of Argentina proposed to request the Committee of Experts to obtain "further testimonial evidence, both oral and written", regarding the situation in Czechoslovakia, and report back to the Council.<sup>29</sup> At the 305th meeting on 26 May 1948, he stated:<sup>30</sup>

"As we have been unable to entrust this task of collecting information to a body specially created for

the purpose, I hope we can entrust it to an already existing body which, as representatives have just heard, deals exclusively with procedural matters."

The representative of the USSR considered that the difference between the Chilean and Argentine proposals concerned only the composition of the subsidiary body, but that the purpose of both was the carrying out of an investigation.<sup>31</sup>

## B. CONSIDERATION OF THE PROCEDURE OF CONSULTATION BETWEEN PERMANENT MEMBERS

### CASE 68

At the 262nd meeting on 5 March 1948, in connexion with the Palestine question, the representative of the United States stated that, in view of the objections of the representative of the USSR to the paragraph of the United States draft resolution for the establishment of a committee of the Security Council formed by the permanent members of the Council, the paragraph should be amended to read: "To invite the five permanent members of the Security Council to consult..."<sup>32</sup>

The representative of the USSR stated that he would agree to the withdrawal of the proposal for setting up a committee and to the proposal that instead "the permanent members should carry out direct consultations among themselves".<sup>33</sup>

At the 263rd meeting on 5 March, the representative of the United States proposed

"to call on the permanent members of the Council to consult and to inform the Security Council regarding the situation with respect to Palestine..."<sup>34</sup>

The representative of the USSR stated that, while agreeing with the proposal that "there should be direct consultations among the permanent members of the Security Council", he did not agree with other provisions included in the revised text of the United States draft resolution.<sup>35</sup>

The draft resolution was adopted by 8 votes in favour, and 3 abstentions.<sup>36</sup>

At the 270th meeting on 19 March, the representative of the United States made a brief report on the consultations between the permanent members of the Council.

The representative of the USSR observed that the representative of the United States had spoken in his own name and not in the capacity of rapporteur, and proceeded to state his own view of the consultations between the permanent members on the Palestine question.<sup>37</sup>

## C. CONSIDERATION OF THE PROCEDURE OF DELEGATION OF FUNCTIONS

### CASE 69

At the 131st meeting on 18 April 1947, in connexion with the Greek frontier incidents question, the Security Council decided that<sup>38</sup>

<sup>26</sup> 305th meeting: p. 36.

<sup>27</sup> 262nd meeting: p. 31.

<sup>28</sup> 262nd meeting: p. 31.

<sup>29</sup> 263rd meeting: p. 43.

<sup>30</sup> 263rd meeting: pp. 36-37.

<sup>31</sup> 263rd meeting: p. 44. For text, see chapter VIII, p. 326.

<sup>32</sup> For texts of relevant statements see:

270th meeting: USSR, pp. 143-148; United States, pp. 141-

143.

<sup>33</sup> 131st meeting: pp. 799-800. On the application of Article 34, see chapter X, Case 12.

<sup>34</sup> For texts of relevant statements see:

288th meeting: Argentina, pp. 15, 27; Canada, p. 21; USSR, p. 23; United States, pp. 10-20.

<sup>35</sup> 303rd meeting: p. 4.

<sup>36</sup> 303rd meeting: pp. 28-29.

<sup>37</sup> S/782, O.R., 3rd year, Suppl. for May 1948, p. 99.

<sup>38</sup> 305th meeting: p. 35.

"... the Commission established by the resolution of the Council of 19 December 1946 shall maintain in the area concerned a subsidiary group composed of a representative of each of the members of the Commission, to continue to fulfil such functions as the Commission may prescribe in accordance with the terms of reference..."

In setting up the subsidiary group, the Commission stated that its terms of reference would

"... be those set out in the resolution of the Security Council of 19 December 1946 with the following qualifications:

"1. It shall only investigate such incidents as may be brought to its attention which have occurred since 22 May 1947;

"2. It shall not hear evidence which was or could have been available to the main Commission;

"3. No incident shall be investigated nor evidence heard except by formal decision of the Group."<sup>39</sup>

At the 133rd meeting on 12 May, the representative of the USSR stated that this decision of the Commission was "not compatible with the Security Council resolution of 18 April 1947", since it was evident from the records "that the Commission decided to delegate to the Subsidiary Group, automatically and fully, the functions assigned to it as a Commission".

He added:

"Thus, despite the fact that the group left in Greece was not the Commission charged with further work, but only a subsidiary group, in actual fact, if this decision of the Commission were implemented, the group left in Greece would not be a subsidiary group, but really the Commission, with all the functions and powers which are characteristic of a commission... It is impossible to approve of such a situation. The Soviet representative on the Commission has already drawn the attention of the members of the Commission to this fact, and has pointed out that it is impossible to delegate automatically to the Subsidiary Group, functions assigned to the Commission. In the contrary case, the establishment of the Subsidiary Group would lose its meaning, since the Subsidiary Group would, in fact, be another commission."

He also stated that the mandate given to the Subsidiary Group extended to future incidents, whereas the Council had only authorized the Commission of Investigation to enquire into those incidents to which the Greek Government had drawn the attention of the Council. He raised objection with regard to the procedure of the Commission in adopting its "decision regarding the powers and functions of the Subsidiary Group without the participation of the representatives of Yugoslavia, Bulgaria and Albania".<sup>40</sup>

The representative of the USSR introduced a draft resolution<sup>41</sup> providing that the Subsidiary Group would "carry out the investigation of facts only on the instructions of the Commission in each separate case", and that "the Commission should bring its decision on the terms of reference of the Subsidiary Group in conformity with this decision of the Security Council".

At the 134th meeting on 16 May, the representative of Belgium stated:<sup>42</sup>

"... In giving the Subsidiary Group functions similar to its own, although less extensive, the Commission respected the character of the Subsidiary Group which, as its name implies, should be a kind of deputizing organ. In principle, the Subsidiary Group has the same powers of initiative as the Commission itself; the exercise of its functions does not require prior authorization. It derives its powers from the Security Council which may define, modify or terminate them either directly or through the intermediary of the Commission. Its relationship to the Commission is not that of a sub-agent."

At the 135th meeting on 20 May, the representative of Australia observed that:

"... it is not correct, as has been stated... that the Commission delegated 'powers which it had received... without any change or modification'. There were modifications, and they are set out in the terms of reference of the Subsidiary Group."

He further remarked that "the Commission was perfectly free to adopt any rules of procedure it desired", and that, having received the Council resolution of 18 April as a mandate, "there was no question of inviting these liaison officers to discuss the terms of a mandate". In his opinion, "the Commission correctly interpreted the intentions and the spirit of the Council". He also recalled "that the Subsidiary Group derives its authority from the Security Council, through the Commission. It is the servant and the instrument of the Council".

The representative of Brazil stated:

"With regard to the delegation of powers contained in the resolution of the Security Council of 18 April, I do not find any juridical ground for invalidating it. The resolution of 18 April has the same value as a substitution of powers: the mandator, when conferring power on the mandatory, expressly authorizes it to extend those powers to another agent. That was the nature of the resolution of the Security Council... The only limit imposed upon the Commission in the exercise of that right lay in that its own powers may not, in any circumstances, be exceeded, under the self-evident theory that the mandatory cannot use powers which it does not possess. Such, however, is not the case of the Subsidiary Group whose powers, as defined by the Commission, do not exceed the powers of the Commission itself."<sup>43</sup>

At the 136th meeting on 22 May, the representative of the United Kingdom supported the view that the Commission of Investigation and the Subsidiary Group might have "exactly the same powers" in order to watch the situation in Northern Greece. He further stated:<sup>44</sup>

"... In point of fact, if we study the Subsidiary Group's terms of reference, we will see that the Commission has actually limited its powers. The Commission, in our view, acted properly under a Council decision. We have heard no really tangible suggestion as to any impropriety under this head, except the recurrence in Mr. Gromyko's statement of the word 'automatic'. I do not know what is thought to be so

<sup>39</sup> S/337, O.R., 2nd year, Suppl. No. 11, annex 26, p. 122.

<sup>40</sup> 133rd meeting: pp. 827-829.

<sup>41</sup> 133rd meeting: p. 832.

<sup>42</sup> 134th meeting: pp. 844-845.

<sup>43</sup> For texts of relevant statements see:

135th meeting: Australia, pp. 876-879; Brazil, pp. 880-881.

<sup>44</sup> 135th meeting: p. 896.

sinister about this word. If it means strict compliance with the Council's decision, I cannot see that it has any pejorative sense."

At the 137th meeting on 22 May, the representative of Syria expressed the view that, since it had not been instructed to that effect by the Security Council, the Commission of Investigation should not have established "new terms of reference or a new form of mandate for the Subsidiary Group". The composition of both investigating bodies being identical, the Subsidiary Group should have been given "all the authority which it should have had to continue its examination and investigation under the same mandate which was assigned to the Commission..."<sup>45</sup>

The USSR draft resolution was put to the vote at the 137th meeting on 22 May, and was rejected, having failed to obtain the affirmative votes of 7 members. There were 2 votes in favour, 6 against and 3 abstentions.<sup>46</sup>

#### D. CONSIDERATION OF THE PROCEDURE OF MODIFICATION OF TERMS OF REFERENCE

##### CASE 70

At the 394th meeting on 28 December 1948, in connexion with the Palestine question, the representative of the United Kingdom submitted a draft resolution concerning the maintenance of the truce and, more especially, a cease-fire in Southern Palestine. This draft resolution included a provision that the Security Council:<sup>47</sup>

"Instructs the Committee of the Council appointed on 4 November<sup>48</sup>... to consider the situation in Southern Palestine and to report to the Council on the extent to which the Governments concerned have... complied with the present resolution".

At the 396th meeting on 29 December 1948, the representative of the USSR stated:

"It should be added that the Committee was created exclusively as an advisory organ, for the sole purpose of being consulted by the Mediator in the event of the Mediator feeling the need of such consultation... Consideration of the situation in Southern Palestine, like the consideration of the Palestine question as a whole, is the function and prerogative of the Security Council. The proposal, therefore, that the Committee should resume its work and that new members should be added to it, not only has no legal basis but is devoid of any practical sense."

The representative of France proposed to call upon the Governments concerned to implement also the Security Council resolution of 16 November 1948, regarding immediate establishment of an armistice, and to ask the Committee "to report... on the way in which... the injunctions to implement the two resolutions—had been put into practice".

He considered that, as the Security Council "was entitled to define the original functions, it is obviously also entitled to alter them".

In opposing the French amendment, the representative of the USSR stated:

<sup>45</sup> 137th meeting: p. 911.

<sup>46</sup> 137th meeting: pp. 924-925.

<sup>47</sup> 394th meeting: p. 14.

<sup>48</sup> See Case 63.

"... Mr. Parodi said that the Security Council could assign any functions to the Committee of the Security Council on Palestine. This is, of course, true, but it is altering the constitution of the Committee itself [which would] no longer be an advisory committee, but a committee with entirely new functions. Hence a new constitution and new rules will have to be drawn up for it... In view of the fact that the Security Council itself will have to deal with the Palestine problem, is there any point in setting up a special committee on this problem, when we already have a Conciliation Commission?"

The representative of France replied:

"I do not think that my position is incompatible with that of the USSR representative. The text we are considering concerns the period before the Commission established by the General Assembly begins to function. We are still in a period during which we admit that the Mediator retains his powers, and during which, consequently, the Committee we had established to advise him still exists. In these circumstances, it seems to me that we can quite well instruct the Committee to bear in mind the implementation of the 16 November resolution as well as that of the 4 November resolution."<sup>49</sup>

#### E. CONSIDERATION OF THE PROCEDURE OF TERMINATION

##### CASE 71

At the 133rd meeting on 12 May 1947, in connexion with the Greek frontier incidents question, the draft resolution submitted by the representative of the USSR included the provision that "the Subsidiary Group will cease its activity with the liquidation of the Commission itself".<sup>50</sup>

At the 135th meeting on 20 May, the representative of the United States in this connexion stated:

"... the United States delegation never had any idea other than that the Subsidiary Group would cease its activity with the liquidation of the Commission itself... Nowhere is it precisely stated when the Commission will cease to exist, but common sense would seem to suggest that the Council may declare that the Commission is no longer in existence, once it has received its report and taken a final decision. At that time, unless the Council has in the meanwhile taken other action of an affirmative nature, the Subsidiary Group will automatically cease to exist."

At the 136th meeting on 22 May, the representative of the United Kingdom stated:

"... A subsidiary group dies with the parent organization but, in our view, death does not occur until the Council liquidates the parent... If we say that the Subsidiary Group dies with the Commission of Investigation, that cannot, of course, limit in any way the right of the Council to continue its existence or to substitute something similar in its place, if it should wish to do so."

<sup>49</sup> For texts of relevant statements see:

396th meeting: France, pp. 11-12, 22; USSR, pp. 7, 21-22; United Kingdom, p. 18. For the decision of the Council see Case 63.

<sup>50</sup> 133rd meeting: p. 832. For draft resolution referred to in this case, see chapter X, Case 12. For establishment of the Subsidiary Group, see Case 2.



The representative of France stated:

"In regard to the duration of the Subsidiary Group, it is quite evident that it cannot exceed that of the Commission, since the Group was created by the Commission in conformity with the provisions of its terms of reference. The powers of the Subsidiary Group will therefore expire at the same time as those of the Commission... After the dissolution of the Commission, the Council may establish any other supervisory group it may think necessary."

The representative of Poland stated:

"... It is quite understandable that the Subsidiary Group cannot live longer than the Commission from which it draws its power and mandate. Practically all the representatives have agreed on that..."<sup>61</sup>

At the 188th meeting on 19 August, after the Council had rejected the United States draft resolution based on the report of the Commission of Investigation, the President (Syria) referred to the resolution of the Council authorising the Subsidiary Group to fulfil certain functions "pending a new decision of the Security Council", and stated:

"... Unfortunately, the Security Council has failed up to this point to take any decision in that respect. I therefore have no alternative but to conclude that the Subsidiary Group will continue to exist and to exercise the same duties and functions which were assigned to it by the previous resolution."

The representatives of Poland and the USSR opposed this interpretation, and the latter stated that the tasks of the Commission and the Subsidiary Group having been exhausted, they must be considered dissolved and non-existent.

<sup>61</sup> For texts of relevant statements see:

135th meeting: United States, p. 873.

136th meeting: France, p. 905; Poland, p. 909; United Kingdom, p. 898.

The representative of the United Kingdom, objecting to the statement by the representative of the USSR, stated that both subsidiary organs "can be terminated only by an affirmative decision of the Council".

The representative of the United States stated:

"I entirely support the President's ruling that the Group and the Commission should remain in existence until the Council takes affirmative action."

At the 202nd meeting on 15 September 1947, the representative of the United States in submitting a draft resolution, under Article 12 of the Charter, to request the General Assembly to consider the dispute and to make recommendations, stated that such a procedure would avoid the necessity of terminating the Commission of Investigation or its Subsidiary Group on the spot. The draft resolution was rejected by 9 votes in favour and 2 against, one vote against being that of a permanent member.<sup>62</sup>

The representative of the United States thereupon introduced another draft resolution to remove the question from the list of matters of which the Security Council was seized. There could be no doubt, he observed, that in taking such a decision the Council would be destroying the Commission and its Subsidiary Group.<sup>63</sup>

At the same meeting, the United States draft resolution was adopted.<sup>64</sup>

The Greek question was accordingly removed from the list of matters and the Commission of Investigation terminated.

<sup>62</sup> 202nd meeting: pp. 2399-2400.

<sup>63</sup> For texts of relevant statements see: 188th meeting: President (Syria), p. 2100; Poland, pp. 2100-2101; USSR, pp. 2099, 2100; United Kingdom, p. 2099; United States, p. 2101.

<sup>64</sup> 202nd meeting: United States, pp. 2369, 2401-2402.

<sup>65</sup> 202nd meeting: p. 2405.

**Chapter VI**

**RELATIONS WITH OTHER UNITED NATIONS ORGANS**

**TABLE OF CONTENTS**

	<i>Page</i>
<b>INTRODUCTORY NOTE</b> .....	211
<b>PART I. RELATIONS WITH THE GENERAL ASSEMBLY</b>	
Note .....	211
A. Practices and proceedings in relation to Article 12 of the Charter .....	211
B. Practices and proceedings in relation to the convocation of a special session of the General Assembly .....	217
C. Practices and proceedings in relation to Articles of the Charter involving recommendations by the Security Council to the General Assembly .....	217
1. Appointment of the Secretary-General .....	217
2. Conditions of accession to the Statute of the International Court of Justice ....	218
3. Conditions under which a non-Member State, party to the Statute, may participate in electing members of the International Court of Justice .....	219
D. Practices and proceedings in relation to the election of members of the International Court of Justice .....	220
E. Relations with subsidiary organs established by the General Assembly .....	223
F. Reception of recommendations to the Security Council adopted by the General Assembly in the form of resolutions .....	225
G. Reports of the Security Council to the General Assembly .....	227
<b>PART II. RELATIONS WITH THE ECONOMIC AND SOCIAL COUNCIL</b>	
A. Practices and proceedings in relation to Article 65 of the Charter .....	227
<b>PART III. RELATIONS WITH THE TRUSTEESHIP COUNCIL</b>	
Note .....	227
A. Procedure under Article 83 (3) in application of Articles 87 and 88 of the Charter with regard to strategic areas under trusteeship .....	228
B. Transmission to the Security Council by the Trusteeship Council of questionnaires and reports .....	230
<b>PART IV. RELATIONS WITH THE INTERNATIONAL COURT OF JUSTICE</b>	
Note .....	231
A. The conditions under which the International Court of Justice shall be open to States not parties to the Statute .....	231
B. Practices and proceedings in relation to advisory opinions .....	233
C. Practices and proceedings in relation to Article 94 (2) of the Charter and Article 41 (2) of the Statute .....	235
<b>PART V. RELATIONS WITH THE MILITARY STAFF COMMITTEE</b>	
Note .....	238

## INTRODUCTORY NOTE

Chapter XI of the provisional rules of procedure of the Security Council, entitled "Relations with other United Nations Organs", contains only rule 61, governing certain procedures to be followed by the Council for the election of members of the International Court of Justice. The present chapter, which bears the same title, is wider in scope, since it concerns itself with the relations of the Security Council with all other organs.

The chapter deals in parts I, II, III and IV with the relations of the Council with each of the principal organs of the United Nations, with the exception of the Secre-

tarial. Functions of the Secretariat in relation to the Council in so far as they are governed by the provisional rules of procedure are dealt with in chapter I, part IV. Material relating to the appointment of the Secretary-General under Article 97 will be found in part I of this chapter under the heading "Relations with the General Assembly". So far as organs of the United Nations other than principal organs are concerned, this chapter includes in part V material relating to the Military Staff Committee, which has been placed, by Articles 45, 46 and 47 of the Charter, in a special relation with the Security Council.

### Part I

#### RELATIONS WITH THE GENERAL ASSEMBLY

##### NOTE

Part I of this chapter is devoted to relations of the Security Council with the General Assembly in cases where, under the Charter or Statute of the International Court of Justice, responsibility is either exclusive or shared; that is, where a final decision in a matter must, or must not, be made by one body without a decision being arrived at in the same matter by the other. Practices and proceedings of the Council in its relations with the Assembly in these cases fall into three groups. The first group includes cases where relations between the two organs are governed by provisions of the Charter limiting the exercise of authority by the General Assembly in respect of any dispute or situation while the Security Council is exercising the functions assigned to it by the Charter.<sup>1</sup> The other two groups concern matters governed by provisions of the Charter or Statute regulating the exercise of authority on certain matters by both organs acting jointly. The second group includes cases where the Security Council's decision must be taken before that of the General Assembly,<sup>2</sup> and the third group cases where the final decision depends upon action taken by both organs concurrently.<sup>3</sup>

In addition to cases in these three groups, part I contains material concerning the convocation of a special session of the General Assembly at the request of the Security Council.<sup>4</sup> It also includes material regarding subsidiary organs established by the General Assembly and either specifically placed by the Assembly in special relation with the Security Council, or utilized by the

Council in connexion with a question on its agenda. Part I concludes with a chronological tabulation of recommendations to the Security Council adopted by the General Assembly in the form of resolutions.

Additional explanatory notes will be found at the beginning of sections A, C 1, D, E, F, and G.

#### A. PRACTICES AND PROCEEDINGS IN RELATION TO ARTICLE 12 OF THE CHARTER

##### *"Article 12 of the Charter"*

"1. While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.

"2. The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters."

[*Note:* Section A brings together cases which bear on Article 12 (1) of the Charter. Several questions of practice are involved in these cases. The material has been arranged under the broad heading of Article 12 (1) rather than under distinctive headings of a narrower character in order to conserve the connected chain of proceedings whereby the material is the more readily followed in its context. The following are the subsidiary problems involved, and an indication is given of the relevant material:

(i) The meaning to be attached to the phrase: "While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter".<sup>5</sup>

<sup>1</sup> Article 12 (1).

<sup>2</sup> Admission of new Members, Article 4 (2); appointment of the Secretary-General, Article 97; conditions of accession to the Statute of the International Court of Justice, Article 93 (2); and conditions under which a non-Member State, party to the Statute, may participate in electing members of the International Court of Justice, Statute, Article 4 (3). Cases in the second group concerning the admission of new Members to the United Nations are dealt with in their proper context in chapter VII.

<sup>3</sup> Election of members of the International Court of Justice, Statute, Articles 4, 8, 10, 11 and 12.

<sup>4</sup> Article 20.

<sup>5</sup> See Case 1 (iv).

(ii) Requests by the Security Council to the General Assembly in accordance with the proviso of Article 12 (1).<sup>6</sup>

(iii) Retention on, or deletion of questions from, the agenda of the Council in relation to the power of the General Assembly

(a) To discuss a question<sup>7</sup>

(b) To make recommendations.<sup>8</sup>

Notifications to the General Assembly under Article 12 (2) by the Secretary-General, with the consent of the Council, of "matters relative to the maintenance of international peace and security which are being dealt with by the Security Council", and of matters with which the Council has ceased to deal, have been drafted on the basis of the "Summary Statement by the Secretary-General of matters of which the Security Council is seized and of the stage reached in their consideration" which is circulated each week under rule 11 of the provisional rules of procedure of the Council.

The agenda items listed in the notification issued prior to each session and the agenda items in the current "Summary Statement" have been the same, except that certain items in the Statement, such as the rules of procedure of the Council, the application of Articles 87 and 88 with regard to strategic areas, and applications for membership, are excluded from the notification, not being considered as "matters relative to the maintenance of international peace and security" for the purpose of Article 12 (2). The notification also lists any items with which the Council has ceased to deal since the previous session of the General Assembly.<sup>9</sup>

Since 1951, the notification has divided the matters being dealt with by the Council into two categories: first, matters which are being dealt with by the Council and which have been discussed during the period since the last notification, and second, matters of which the Council remains seized but which have not been discussed since the last notification.

In 1946 and 1947 the consent of the Council required by the provisions of Article 12 (2) was given at formal meetings.<sup>10</sup> Since 1947 the consent of the Council has been obtained through the circulation by the Secretary-General to the members of the Council of copies of draft notifications.<sup>11</sup>

#### CASE 1 (i)

At the 44th meeting on 6 June 1946, the Chairman of the Sub-Committee on the Spanish question (Australia) submitted to the Security Council the Sub-Committee's report,<sup>12</sup> which recommended as appropriate measures:

"(b) The transmitting by the Security Council to the General Assembly of the evidence and reports of this Sub-Committee together with the recommendation that, unless the Franco regime is withdrawn and the other conditions of political freedom set out in

the declaration are, in the opinion of the General Assembly, fully satisfied, a resolution be passed by the General Assembly recommending that diplomatic relations with the Franco regime be terminated forthwith by each Member of the United Nations."

At the 45th meeting on 13 June 1946, the representative of Australia, as the Chairman of the Sub-Committee, submitted a draft resolution<sup>13</sup> to adopt the recommendations of the Sub-Committee, subject to the addition to recommendation (b), after the words "each Member of the United Nations", of the following words: "or alternatively such other action be taken as the General Assembly deems appropriate and effective under the circumstances prevailing at the time". In this connexion, he stated:

"In my opinion, and I think this is the view of all members of the Sub-Committee, the adoption will represent no diminution of the powers of the Security Council, but will really represent an exercise by the Security Council of its power to recommend methods of adjustment or suitable procedures, and to refer a matter to other organs of the United Nations whenever the circumstances are thought fit by the Security Council."

The representative of the United States, in support of the suggested modification, observed:

"... it would be inappropriate for the Council to prejudge the precise course of action which the General Assembly should take."

The representative of Egypt was of the opinion that:

"... no Article of the Charter refers to recommendations to be made by the Council to the General Assembly, although Article 12 clearly mentions that recommendations may be made by the General Assembly to the Council.

"It is naturally within the rights of the Council to take up the whole matter and to make its own final decisions; but I should like to point out that if it chooses to do otherwise, and refers the matter to the General Assembly, with or without recommendations, the General Assembly's freedom of action cannot in any way be impaired."

The representative of the USSR, opposing the recommendations of the Sub-Committee, maintained that:

"... A decision to refer the Spanish question to the Assembly would be incompatible with the authority of the Security Council."

At the 46th meeting on 17 June 1946, the representative of the United Kingdom stated:

"... we should send the report and the material to the Assembly but not make any definite recommendations... Even if we make recommendations, even if we indicate what we think the Assembly ought to do, the Assembly is not bound to act on any recommendation of that kind."

He submitted an amendment to the Australian draft resolution to adopt the recommendations of the Sub-Committee, subject to the deletion of paragraph (b) after the words "reports of the Sub-Committee", and the addition of the words "together with the minutes of the discussion of the case by the Security Council".

The President, speaking as the representative of Mexico, and the representatives of Australia and France

<sup>13</sup> 45th meeting: p. 326.

<sup>6</sup> See Cases 1 (i), 2 (i).

<sup>7</sup> Case 3.

<sup>8</sup> See Cases 1 (ii), 1 (iii), 1 (iv), 2 (ii), and 4.

<sup>9</sup> See, however, Case 1 (iv) for discussion on this question at the 79th meeting on 4 November 1945, and statement by the representative of Mexico on 10 July 1946, 50th meeting, p. 9.

<sup>10</sup> 1946—77th meeting, p. 483. 1947—202nd meeting, p. 498.

<sup>11</sup> Circular issued on 14 September 1948 by Assistant Secretary-General, Department of Security Council Affairs.

<sup>12</sup> S/75, O.R., 1st year, 2nd series, Special Suppl., Report of the Sub-Committee on the Spanish Question.



expressed their disagreement with the amendment submitted by the United Kingdom.

At the 47th meeting on 18 June 1946, the representative of Poland stated that he, as a member of the Sub-Committee, had accepted the recommendations of the Sub-Committee in the interest of unanimity and with the proviso that:

"... acceptance of the Sub-Committee's recommendations should in no way prejudice the rights of the Security Council; nor should it ever be invoked as a precedent which would justify the Council, when faced with a difficult situation, in avoiding responsibility and referring the matter to another organ of the United Nations."

The representative of Australia, in connexion with the reference of the question to the General Assembly, observed that:

"... the Security Council has the right to adjust its procedures; to adopt procedures appropriate to the problem before it in order to find a true and just solution."

**Decisions:** *At the 47th meeting on 18 June 1946, the United Kingdom amendment was rejected by 2 votes in favour, 6 against, with 3 abstentions.*<sup>14</sup>

*After separate votes had been taken on each of the three recommendations of the Sub-Committee, the recommendation as a whole was put to the vote and failed of adoption. There were 9 votes in favour, 1 against (being that of a permanent member), with 1 abstention.*<sup>15</sup>

#### CASE 1 (ii)

At the 48th meeting on 24 June 1946, the representative of Poland submitted a draft resolution which provided, *inter alia*, that the Security Council "decides to keep the situation in Spain under continuous observation and keep the question on the list of matters of which it is seized...", that the Security Council "will take the matter up again not later than 1 September 1946, in order to determine what appropriate practical measures provided by the Charter should be taken".<sup>16</sup>

The representatives of Australia and the United Kingdom observed that, if the matter were retained on the agenda of the Council until the General Assembly met, there would be the danger that the Assembly might be prevented from making any recommendation on the matter, unless the item was removed from the agenda of the Council. The representative of the United Kingdom suggested the insertion, after the words in the draft resolution "decides to keep the situation in Spain under continuous observation and..." of the words "pending the meeting of the General Assembly next September".

The representative of Poland pointed out that it was not the intention of the draft resolution to prevent the General Assembly from discussing the matter or making recommendations. There was even the possibility that the Security Council might discuss the question during the meeting of the General Assembly and remove the item from its agenda, in order to let the Assembly act upon it. He believed that the United Kingdom amendment, if accepted, would divest the Security Council of its authority.

The representative of the USSR, in support of the draft resolution submitted by the representative of Poland, observed that, while the draft resolution did not contain any provision which would preclude the General Assembly from discussing the question, it proposed that the Security Council would decide what measures it should take when it returned to this question not later than 1 September 1946. He opposed the United Kingdom amendment, because he considered that:

"... it would be incorrect at the present time to agree on the one hand that the Spanish question remain on the agenda, and on the other hand to state that when the Security Council returns to this question it should transfer the Spanish question to the General Assembly. The one position excludes and contradicts the other."

The representative of France was of the opinion that the intention of the draft resolution was to keep the Spanish question under continuous observation by the Security Council until the question was taken up by the Council or the General Assembly, as the case might be. He could not agree with an interpretation that the General Assembly should be unable to take up the question itself, and he would oppose any text which would, in effect, prevent the General Assembly from considering the question at its next session.

The representative of the United States declared that he could not accept the draft resolution unless an amendment, similar to the one submitted by the representative of the United Kingdom, was adopted which would make it unequivocally clear that the General Assembly was entirely free to be seized of the question at its next session.

The President (Mexico) stated that:

"If the item is kept on the agenda, and if the Security Council is to exercise the functions assigned to it, some kind of action will be necessary; but merely to keep something, even this matter, on the agenda, is not to take action, and therefore not to exercise a function. Perhaps there will be an interpretation of Article 12 which will permit the matter to be kept on the agenda and at the same time leave the Assembly free to go into the matter..."

**Decision:** *At the 49th meeting on 26 June 1946, the Council adopted a draft resolution which, as amended, provided that the Security Council "decides to keep the situation in Spain under continuous observation and maintain it upon the list of matters of which it is seized..."*<sup>17</sup>

#### CASE 1 (iii)

At the 49th meeting on 26 June 1946, the representative of Australia submitted the following draft resolution:<sup>18</sup>

"That, in the opinion of the Security Council, the carrying of the resolution on the Spanish question, dated 26 June 1946, does not in any way prejudice the rights of the General Assembly under the Charter."

The representative of the USSR considered that the Australian draft resolution was unnecessary and that attempts to give a better or other definition of the rights

<sup>14</sup> 47th meeting: p. 378.

<sup>15</sup> 47th meeting: pp. 378-379.

<sup>16</sup> 48th meeting: p. 389.

<sup>17</sup> 49th meeting: pp. 400-401, 441-442. For full text, see chapter VIII, p. 307.

<sup>18</sup> 49th meeting: p. 444.

and functions of the General Assembly, than that given in the Charter, were doomed to failure. He believed that the intention in presenting the draft resolution was probably to take advantage, in some way, of that statement later in order to place the Spanish question before the General Assembly for consideration, even if there had been no corresponding decision on the part of the Security Council.

The representative of the United States, in support of the Australian draft resolution, observed:

"My object is to prevent the Assembly from being blocked by action of this Council from considering a matter which it would otherwise have the right to consider . . ."

**Decision:** *At the 49th meeting on 26 June 1946, the draft resolution submitted by the representative of Australia was not adopted. There were 9 votes in favour and 2 against (1 being that of a permanent member).<sup>19</sup>*

#### CASE 1 (iv)

At the 78th meeting on 30 October 1946, the representative of Poland stated that his delegation intended to present to the General Assembly draft resolutions containing certain recommendations on the Spanish question. He observed that he did not want to prejudice in any way the interpretation of Article 12 and that, in order to dispel any doubts as to whether the General Assembly was free to make recommendations on the matter, the delegation of Poland proposed that the Spanish question be taken off the list of matters of which the Security Council was seized. Accordingly, at the 79th meeting on 4 November 1946, the representative of Poland submitted a draft resolution.<sup>20</sup>

The representative of Australia, referring to the draft resolution which he had submitted at the 49th meeting to the effect that the retention of this item on the list did not limit the General Assembly's rights in the matter, declared that the action which the Council was now taking would not settle that question by implication or otherwise. He maintained that the crux of the matter was the exact meaning of the term used in Article 12 which could, in no sense, be interpreted by the action which was being proposed by the delegation of Poland.

The representative of the United States supported the draft resolution submitted by the representative of Poland. He observed that, since the Security Council was not in fact actively considering the Spanish question, a recommendation by the General Assembly would not interfere with the prerogatives of the Council under Article 12. He further stated that, while the list of matters of which the Council was seized should be considered as matters being dealt with by the Council within the meaning of Article 12 (1), it would be wise in the future if the Security Council would examine the list in order to determine whether any matters included could be made the subject of a recommendation by the General Assembly without interference with the Council's prerogatives under Article 12 (1).

The representative of France believed that the draft resolution submitted by the representative of Poland would eliminate any possible objections based on Article 12 which might have prevented the General Assembly from dealing with the Spanish question.

The representative of the USSR, citing the text of Article 12, observed that the representatives of Australia and the United States had touched on a question which was not directly connected with the subject under consideration.

The representative of Mexico observed:

"It seems to us that when the Security Council is not engaged in the study of a problem or in its solution, when it has not taken any interim measure such as charging the Secretariat with the task of gathering more information, but is merely leaving the matter on its agenda to show that it is keeping the said problem in mind or under its observation, then, in our opinion, it is not fitting to regard such procedure as constituting the continuous exercise of the Council's functions within the meaning of Article 12, because this would deprive the Assembly of the right to make recommendations on the problems involved, on the grounds that there must be no interference or conflict between the two organs when one is acting. In this case the Security Council is not taking any action."

The President (United Kingdom) stated that, in regard to the interpretation of Article 12, it might well be that there was a case for elucidation.

The representative of Egypt said that his delegation was particularly interested in the legal aspect of the problem. He considered that, since the Council was not dealing actively with the Spanish question, there was no reason why that question should not be removed from its agenda and brought before the Assembly.

The President suggested the addition of the following sentence to the draft resolution: "(The Security Council) requests the Secretary-General to notify the General Assembly of this decision."

**Decision:** *At the 79th meeting on 4 November 1946, the draft resolution submitted by the representative of Poland, with the addition suggested by the President, was adopted unanimously.<sup>21</sup>*

#### CASE 2 (i)

At the 202nd meeting on 15 September 1947, in connexion with the Greek frontier incidents question, the representative of the United States declared that, since the Greek question had been placed on the agenda of the General Assembly, the Security Council should assist the General Assembly in its efforts to bring about an improvement in the Balkan situation. The General Assembly, however, could not exert all the powers given

<sup>19</sup> For texts of relevant statements see:

44th meeting: Chairman of the Sub-Committee (Australia), pp. 311-312, 326.

45th meeting: Australia, pp. 326-327; Egypt, pp. 330-331; USSR, pp. 337-338; United States, p. 328.

46th meeting: President (Mexico), pp. 360-364; Australia, pp. 349-357; France, pp. 357-360; United Kingdom, pp. 347-348.

47th meeting: Australia, pp. 376-377; Poland, p. 373.

48th meeting: President (Mexico), p. 398; Australia, p. 391; France, p. 396; Poland, pp. 389, 392, 398; USSR, p. 395; United Kingdom, p. 394; United States, p. 397.

49th meeting: Australia, pp. 442-443; USSR, pp. 444, 445, 446; United States, p. 446.

78th meeting: Poland, pp. 487-488.

79th meeting: President (United Kingdom), pp. 497, 498; Australia, pp. 493-494; Egypt, pp. 497-498; France, p. 495; Mexico, pp. 496-497; Poland, pp. 491-492; USSR, pp. 495-496; United States, pp. 494-495.

<sup>19</sup> 49th meeting: p. 446.

<sup>21</sup> 79th meeting: p. 492.

it under the Charter in a situation of this nature so long as the Security Council was exercising its functions in respect of a given question, unless the Council made an appropriate request to the Assembly in accordance with Article 12 of the Charter. To this end, he submitted the following draft resolution:<sup>22</sup>

*"The Security Council, pursuant to Article 12 of the Charter,*

*"(a) Requests the General Assembly to consider the dispute between Greece on the one hand, and Albania, Yugoslavia and Bulgaria on the other, and to make any recommendations with regard to that dispute which it deems appropriate under the circumstances;*

*"(b) Instructs the Secretary-General to place all records and documents in the case at the disposal of the General Assembly."*

The representative of Australia, supporting the United States draft resolution, considered that the proposal was intended to remove a limitation upon the powers of the General Assembly which existed by reason of Article 12; while the Assembly would be enabled to make a recommendation if it so desired, the Security Council would still be seized of the dispute.

The President, speaking as the representative of the USSR, could not agree with the United States proposal, for in his opinion,

*"... the removal of the Greek question from the Security Council's agenda would mean that the Security Council is voluntarily abstaining from taking a decision on a matter with which it, as the body entrusted with the primary task of maintaining international peace, should in fact deal..."*

*"... Such a decision would not help to enhance the authority of the General Assembly, and it would at the same time impair the authority of the Security Council."*

The representative of Poland stated that the General Assembly had the right, in accordance with Article 10 of the Charter, to discuss the Greek question. In his opinion, however, the action proposed by the United States draft resolution went beyond that point, for it was a proposal for the Security Council to ask the General Assembly to solve a problem which the Council had been unable to solve itself. He understood fully that there might be situations wherein the Security Council might appeal to the General Assembly to make certain recommendations. He believed, however, that there was a difference between a request for a specific recommendation, as was the case in the Spanish question, in order to secure additional moral and political support for an action, and a request for any recommendation, as the United States draft resolution proposed, which would be universally interpreted as an abdication by the Security Council of its primary responsibilities under the Charter.

The representative of the United States observed:

*"This resolution is designed simply, by having recourse to Article 12 of the Charter, to give the Assembly the faculty of making recommendations. That is all. It is not a question of removing this question from the agenda of the Council. The Council may discuss the matter concurrently, if it chooses."*

<sup>22</sup> 202nd meeting: p. 2369.

The representative of France believed that in accordance with Article 12 the Security Council could either delete the matter from its agenda or it could request the General Assembly to make recommendations and, in this case, continue to deal with the question in parallel with the General Assembly. He said that he was not impressed by the argument that the latter alternative might result in contradictory decisions from the Security Council and the General Assembly.

The representative of Syria considered that as long as the Security Council was seized of the question, the recommendations expected from the General Assembly would be only to the Security Council.

**Decision:** *At the 202nd meeting on 15 September 1947, the United States draft resolution was not adopted. There were 9 votes in favour and 2 against (1 vote against being that of a permanent member).<sup>23</sup>*

#### CASE 2 (ii)

Following the rejection of the United States draft resolution, the representative of the United States submitted a new draft resolution<sup>24</sup> to remove the dispute from the list of matters of which the Council is seized. The President, speaking as the representative of the USSR, declared that, as he had already indicated, in connexion with the previous United States draft resolution, he could not agree to the removal of the Greek question from the agenda of the Council.

**Decision:** *At the 202nd meeting on 15 September 1947, the new United States draft resolution was adopted by 9 votes in favour and 2 against.<sup>25</sup>*

At the 202nd meeting on 15 September 1947, the Security Council, having removed the Greek question from the list of matters of which it was seized, adopted the draft notification from the Secretary-General to the General Assembly, after the Council had amended the draft notification with regard to the removal of the Greek question.<sup>26</sup>

#### CASE 3

At the 503rd meeting on 26 September 1950, in connexion with the complaint of armed invasion of Taiwan (Formosa), before the adoption of the agenda, the representative of Cuba stated that it might not be an appropriate moment for the Security Council to consider the complaint because that item was to be discussed by the General Assembly. He felt that, since the discussion of the question in the Assembly would shed light on the problem and facilitate its consideration by the Council, the Council should defer the consideration of the complaint.

The representative of China observed that the General Assembly at its 285th plenary meeting, held on 26 September 1950, had decided to include in its agenda an item, proposed by the delegation of the USSR, under the title "Complaint of aggression against China by the United States of America". In his opinion, the ex-

<sup>23</sup> 202nd meeting: p. 2399.

<sup>24</sup> 202nd meeting: p. 2401.

<sup>25</sup> S/355, O.R., 2nd year, No. 89; 202nd meeting, pp. 2404-2405. For text, see chapter VIII, p. 312.

<sup>26</sup> 202nd meeting: pp. 2405-2406. For texts of relevant statements see:

202nd meeting: President (USSR), pp. 2376-2377, 2402; Australia, pp. 2372-2373; France, pp. 2384-2385; Poland, pp. 2379-2380; Syria, p. 2387; United States, pp. 2368-2369, 2383, 2401.

planatory memorandum,<sup>27</sup> which the delegation of the USSR had submitted in support of the Assembly item, indicated that the item proposed for the Assembly also included the so-called invasion of Taiwan by the United States which was being discussed in the Security Council. The representative of China further stated:

"According to Articles 10 and 12 of the Charter, the Security Council and the General Assembly should not discuss the same problem simultaneously. There are very good and sound reasons for that provision in the Charter. If we do not observe the provisions of the Charter, the various organs of the United Nations will have conflicting decisions and recommendations. I therefore move that the Security Council cease consideration of its item during the consideration of this item by the General Assembly." The representative of the USSR observed:

"As regards the reference to Article 12 of the Charter, the representative of the Kuomintang group is interpreting it incorrectly. If we read this Article carefully and study it we find that it means that, while the Security Council is exercising the functions assigned to it by the Charter in respect of any dispute or situation, the General Assembly may not make any recommendations—I repeat: may not make any recommendations—with regard to that dispute or situation unless the Security Council so requests. There is no suggestion here that the General Assembly may not consider or discuss such questions..."

"The same applies to Article 10 of the Charter, which also dealt with recommendations but not with consideration or discussion..."

The representative of the United States observed:

"The letter contained in document S/1808 which is signed by Mr. Chou En-lai and... the reference by the representative of the Soviet Union to this letter again serves to confirm what is already obvious: that the same items, although titled differently in both bodies, cover precisely the same subject."

"... My delegation is willing to have the complaint aired and considered in the Security Council and in the General Assembly simultaneously, consecutively or in any other order which the members of both bodies desire..."

The representative of the United States, referring to the statement made by the representative of the USSR, that the General Assembly under the Charter might discuss the matter while the Security Council had the matter under consideration, enquired if the representative of the USSR considered that the General Assembly should discuss the complaint without making any recommendations on this matter. He wished to know this in order to be able to take a position with respect to the motion which had been made by the delegation of China.

At the 504th meeting on 27 September 1950, the representative of the USSR observed:

"Discussion of this question by the Security Council in no way prevents the General Assembly from discussing the question of United States aggression against China... It is the Council's duty and obligation under the Charter to carry out its functions; what the General Assembly does is the General Assembly's concern."

"References to Articles 10 and 12 of the Charter, in order to justify the proposal to remove this question from the Security Council's agenda, are worthless. Neither of these Articles contains any provisions forbidding the simultaneous discussion of one and the same question in the Security Council and the General Assembly. There are a number of precedents in the work of both the Security Council and the General Assembly which show that the same questions have been discussed in both these organs simultaneously..."

The representative of Ecuador believed that there was no need for the Security Council to discuss the charge of aggression against Formosa while it was being discussed in the General Assembly. On the other hand, he could not agree that the matter should be withdrawn from the agenda of the Council. He submitted an amendment to the motion made by the representative of China, providing that the Security Council "defer consideration of this question until the first meeting of the Council held after 1 December 1950".

The President, speaking as the representative of the United Kingdom, stated:

"... The Security Council is obliged under the Charter to deal with threats to the peace, and it would in our opinion be failing in its duty if it either decided not to deal with this one or to defer consideration of it for a long period. The mere fact that the question, or a very similar one, has been placed on the agenda of the General Assembly does not in our view affect the duty of the Security Council at all. In the first place, the General Assembly, as is well known, can only make recommendations on such matters and cannot take decisions. In the second place, the Security Council has, under the Charter, primary responsibility for the maintenance of international peace and security."

The representative of Egypt pointed out that this was not the first time that the General Assembly had considered a matter which had remained on the agenda of the Security Council. He recognized the wide competence of the General Assembly under Article 10 of the Charter, but did not consider that the Council should therefore relinquish its responsibilities. He suggested that paragraph (a) of the Ecuadorean amendment, which proposed the deferment of the consideration of the question, might be reconsidered so that a better approach might be found to serve the purpose of the Council in the discharge of its duties.

**Decision:** At the 505th meeting on 28 September 1950, the Council rejected the proposal submitted by the representative of China that the Council should cease the consideration of the complaint of armed invasion of Taiwan (Formosa) during the consideration of this item by the General Assembly. There were 2 votes in favour, 6 against, with 3 abstentions.<sup>28</sup>

**Decision:** At the 505th meeting on 28 September 1950, the Council rejected the operative part of the draft resolution submitted by the representative of Ecuador. There were 6 votes in favour, 4 against, with 1 abstention.<sup>29</sup>

<sup>27</sup> 505th meeting: pp. 20-21.

<sup>28</sup> 505th meeting: pp. 22-23.

At the 506th meeting on 29 September 1950, the representative of Ecuador reintroduced his proposal as a new draft resolution<sup>80</sup> substituting the date "15 November 1950" for "1 December 1950" in the operative part.

**Decision:** *At the 506th meeting on 29 September 1950, the draft resolution submitted by the representative of Ecuador, as amended, was adopted. There were 7 votes in favour, 3 against, with 1 abstention.*<sup>81</sup>

#### CASE 4

By letter dated 29 January 1951,<sup>82</sup> in connexion with the complaint of aggression upon the Republic of Korea, the representative of the United Kingdom pointed out that the item in the General Assembly's agenda, entitled "Intervention of the Central People's Government of the People's Republic of China in Korea", had figured in the discussions of the Security Council under the broader heading of "Complaint of aggression upon the Republic of Korea". Referring to the provisions of Article 12 (1), the United Kingdom delegation considered it desirable to remove any technical doubts that might be cast on the validity of any resolution adopted by the Assembly which contained recommendations to Members. The United Kingdom delegation proposed that a meeting of the Security Council should be held with the object of removing from the Council's agenda the item "Complaint of aggression upon the Republic of Korea".

At the 531st meeting on 31 January 1951, the representative of the United Kingdom pointed out:

"... the Chinese intervention in Korea was discussed by us at a number of meetings during November, and a draft resolution submitted jointly by six members of the Council was finally put to the vote on 30 November 1950 (530th meeting). Although the resolution received nine affirmative votes, it was not adopted owing to the negative vote of the Soviet Union. It might therefore be argued that since that date the Council has not, in effect, been exercising its functions in respect of this question within the meaning of Article 12 of the Charter. Nevertheless, the discussion which has since taken place in the General Assembly has ranged over a considerable field, and my own delegation, at any rate, feels that if the General Assembly were to adopt a resolution containing recommendations to Members and dealing with the question of Chinese intervention, or with the broader question of the complaint of aggression against the Republic of Korea, both questions having now become indistinguishable in practice, objections might then be raised that this would be an infringement of Article 12 of the Charter."

He submitted a draft resolution<sup>83</sup> to the effect that the Security Council remove the item "Complaint of aggression against the Republic of Korea" from the list of matters of which the Council was seized.

The representative of China felt that, although the Security Council had not exercised since November

1950 the functions assigned to it under Article 12 of the Charter with respect to this item, the removal of the item from the agenda was unnecessary and that it should not be cited as a precedent binding the Council on all future occasions.

**Decision:** *At the 531st meeting on 31 January 1951, the United Kingdom draft resolution was adopted unanimously.*<sup>84</sup> *On 5 February 1951, the Secretary-General informed the General Assembly of the removal of the item from the list of matters of which the Security Council was seized.*<sup>85</sup>

#### B. PRACTICES AND PROCEEDINGS IN RELATION TO THE CONVOCATION OF A SPECIAL SESSION OF THE GENERAL ASSEMBLY

##### "Article 20 of the Charter

"The General Assembly shall meet in regular annual sessions and in such special sessions as occasion may require. Special sessions shall be convoked by the Secretary-General at the request of the Security Council or of a majority of the Members of the United Nations."

#### CASE 5

At the 275th meeting on 30 March 1948, in connexion with the Palestine question, the representative of the United States submitted a draft resolution<sup>86</sup> to request the Secretary-General, "in accordance with Article 20 . . . to convoke a special session of the General Assembly to consider further the question of the future Government of Palestine." In the course of the discussion at the 277th meeting on 1 April 1948, the representative of Belgium expressed the following opinion:<sup>87</sup>

"... the convoking of the General Assembly would not prevent the Council from considering, in the meantime, any substantive proposals which it might be in a position to submit to the General Assembly."

**Decision:** *At the 277th meeting on 1 April 1948, the United States draft resolution was adopted by 9 votes in favour and 2 abstentions.*<sup>88</sup>

#### C. PRACTICES AND PROCEEDINGS IN RELATION TO ARTICLES OF THE CHARTER INVOLVING RECOMMENDATIONS BY THE SECURITY COUNCIL TO THE GENERAL ASSEMBLY<sup>89</sup>

##### 1. Appointment of the Secretary-General

##### "Article 97 of the Charter

"The Secretariat shall comprise a Secretary-General and such staff as the Organization may require. The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council. He shall be the chief administrative officer of the Organization."

<sup>80</sup> 531st meeting: pp. 12-13. For texts of relevant statements see:

<sup>81</sup> 531st meeting: China, p. 11; United Kingdom, pp. 7-8.

<sup>82</sup> S/2001.

<sup>83</sup> S/705, 275th meeting: pp. 247-248. For the proceedings of the Security Council from the reception by the Council of General Assembly resolution 181 (II) of 29 November 1947 to the decision of the Security Council to request the convocation of a special session, reference should be made to chapter XII, Case 21.

<sup>84</sup> 277th meeting: p. 5.

<sup>85</sup> 277th meeting: p. 35. On the same day the Secretary-General summoned a special session to meet on 16 April 1948 (A/530).

<sup>86</sup> For cases concerning Article 4 (2), see chapter VII.

<sup>80</sup> S/1823/Corr.1, 506th meeting: pp. 3-5.

<sup>81</sup> 506th meeting: pp. 3-5. For text of decision, see chapter VIII, p. 359. For texts of relevant statements see:

503rd meeting: China, p. 29; Cuba, pp. 18-19; USSR, pp. 30-31; United States, pp. 32-33.

504th meeting: President (United Kingdom), p. 18; Ecuador, pp. 11, 13; Egypt, pp. 20-21; USSR, pp. 5-6.

<sup>82</sup> S/1922.

<sup>83</sup> S/1995, 531st meeting: p. 8.



[Note: In accordance with rule 48 of the provisional rules of procedure, all meetings of the Security Council at which recommendations concerning the appointment of the Secretary-General have been considered have been held in private. The Council has voted by secret ballot in such manner as to ascertain whether any permanent member had cast a negative vote.<sup>40</sup> After each private meeting, communiqués have been issued by the Security Council, in accordance with rule 55 of the provisional rules of procedure. These communiqués, containing information as to the stage reached in the consideration of the recommendations, have been circulated in place of verbatim records.]

#### CASE 6

At the 4th meeting on 29 January 1946, the Security Council resolved to recommend the appointment of Mr. Trygve Lie as Secretary-General.<sup>41</sup> The President (Australia) communicated with Mr. Lie "in order to ascertain whether he would be prepared to accept this nomination"<sup>42</sup> and, by letter dated 31 January 1946, informed the President of the General Assembly of the recommendation.<sup>43</sup>

#### CASE 7

In view of the expiration on 1 February 1951 of the five-year term for which Mr. Trygve Lie had been appointed by the General Assembly in 1946, and in accordance with Article 97 of the Charter, the Security Council considered the question of making a recommendation to the General Assembly regarding the appointment of the Secretary-General at the 509th, 510th, 512th, 513th and 515th meetings between 9 and 25 October 1950.<sup>44</sup>

By letters dated 12 October<sup>45</sup> and 25 October<sup>46</sup> 1950, the President (United States) informed the President of the General Assembly that the Council had been unable to agree upon a recommendation.

At the 513th meeting on 20 and 21 October 1950, the Council requested the five permanent members to hold private consultations and to report to it not later than 24 October 1950.<sup>47</sup>

By letter dated 30 October 1950, the President (United States) informed the President of the General Assembly<sup>48</sup> that, at the 516th meeting on 30 October 1950, the Council had not agreed upon a USSR proposal to request the Assembly to postpone consideration of the item on its agenda relating to the appointment of a Secretary-General.<sup>49</sup>

## 2. Conditions of accession to the Statute of the International Court of Justice

### "Article 93 (2) of the Charter

"A state which is not a Member of the United Nations may become a party to the Statute of the

International Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council."

#### CASE 8

On 26 October 1946, the Swiss consul-general transmitted to the Secretary-General a letter from the Chief of the Swiss Federal Political Department of the Swiss Government requesting that the Security Council and the General Assembly be informed of the desire of the Swiss Federal Council to know the conditions on which Switzerland could become a Party to the Statute of the Court under Article 93 (2) of the Charter.<sup>50</sup>

At the 78th meeting on 30 October 1946, the Council referred the matter to the Committee of Experts for consideration and report.<sup>51</sup>

In its report, the Committee of Experts advised the Council to send the following recommendation to the General Assembly:<sup>52</sup>

"The Security Council recommends that the General Assembly, in accordance with Article 93, paragraph 2, of the Charter, determine the conditions on which Switzerland may become a Party to the Statute of the International Court of Justice, as follows:

"Switzerland will become a Party to the Statute on the date of the deposit with the Secretary-General of the United Nations of an instrument, signed on behalf of the Government of Switzerland and ratified as may be required by Swiss constitutional law, containing:

"(a) Acceptance of the provisions of the Statute of the International Court of Justice;

"(b) Acceptance of all the obligations of a Member of the United Nations under Article 94 of the Charter; and

"(c) an undertaking to contribute to the expenses of the Court such equitable amount as the General Assembly shall assess from time to time, after consultation with the Swiss Government."

The Committee attached certain observations to the recommendation:

"... In the opinion of the Committee, acceptance of the provisions of the Statute includes acceptance of any incidental jurisdiction exercisable by the Court under the provisions of the Statute...

"... The obligations imposed by Article 94 upon a Member of the United Nations should, in the opinion of the Committee, apply equally to non-members of the United Nations which become Parties to the Statute and to non-parties which are allowed access to the Court. In the opinion of the Committee, the obligations of a Member of the United Nations under Article 94 include the complementary obligations arising under Articles 25 and 103 of the Charter in so far as the provisions of those Articles may relate to the provisions of Article 94, and non-members of the United Nations which become parties to the Statute (and non-parties which have access to the Court) become bound by these complementary obligations under Articles 25 and 103 in relation to the

<sup>40</sup> S/185, *O.R.*, 1st year, 2nd series, Suppl. No. 7, annex 12.

<sup>41</sup> 78th meeting: pp. 486-487.

<sup>42</sup> S/191, *O.R.*, 1st year, 2nd series, Suppl. No. 8, annex 13. By resolution 91 (I) of 11 December 1946, the General Assembly adopted the recommendation of the Council.

<sup>40</sup> General Assembly resolution 11 (I) of 24 January 1946 provided that "a vote in either the Security Council or the General Assembly, if taken, should be by secret ballot".

<sup>41</sup> 4th meeting: p. 44.

<sup>42</sup> 4th meeting: p. 44.

<sup>43</sup> *O.R.*, 1st year, 1st series, Suppl. No. 1, p. 80.

<sup>44</sup> 509th meeting: p. 1; 510th meeting: p. 1; 512th meeting: p. 1; 513th meeting: p. 1; 515th meeting: p. 1.

<sup>45</sup> S/1844.

<sup>46</sup> S/1856.

<sup>47</sup> 513th meeting: p. 1.

<sup>48</sup> S/1875.

<sup>49</sup> 515th meeting: pp. 485-486.



provisions of Article 94 (but not otherwise), when they accept 'all the obligations of a Member of the United Nations under Article 94'."

The Committee observed that the conditions recommended above as appropriate in the case of Switzerland were not intended to constitute a precedent in any future case under Article 93 (2) of the Charter, by which conditions are to be determined in each case by the General Assembly upon the recommendation of the Security Council. The Committee advised that the Council should recommend generally applicable conditions under Articles 4 and 69 of the Statute after Switzerland or some other non-Member State had acceded to the Statute.

The report of the Committee was placed before the Security Council for consideration at its 80th meeting on 15 November 1946.

**Decision:** *In the absence of observations, the President declared the report adopted.*<sup>63</sup>

#### CASE 9

On 24 March 1949, the Swiss Office for Liaison with the United Nations transmitted to the Secretary-General a letter dated 8 March 1949 from the Head of the Government of the Principality of Liechtenstein expressing his desire to learn the conditions under which Liechtenstein might become a party to the Statute of the International Court of Justice.<sup>64</sup>

At the 423rd meeting on 8 April 1949, the Security Council referred the matter to the Committee of Experts.<sup>65</sup>

In its report,<sup>66</sup> the Committee of Experts advised the Council to send a recommendation to the General Assembly to apply in the case of Liechtenstein the same conditions as in the case of Switzerland.<sup>67</sup>

At the 432nd meeting on 27 July 1949, the Council considered the report of the Committee of Experts. The representatives of the Ukrainian SSR and the USSR indicated certain considerations in view of which Liechtenstein could not be considered a sovereign State as required by Article 93 (2) and, consequently, could not be admitted as a Party to the Statute of the International Court. The representative of Egypt contended that Liechtenstein was a State in the sense of international law and was entitled to become a Party to the Statute.<sup>68</sup>

**Decision:** *The Council decided, by 9 votes in favour, with 2 abstentions, to adopt the recommendation of the Committee of Experts.*<sup>69</sup>

### 3. Conditions under which a non-Member State, Party to the Statute, may participate in electing members of the International Court of Justice

*"Article 4 (3) of the Statute of the International Court of Justice*

*"The conditions under which a state which is a party to the present Statute but is not a Member of*

<sup>63</sup> 80th meeting; p. 502.

<sup>64</sup> S/1296 and Corr.1, O.R., 4th year, Suppl. for April 1949,

p. 6.

<sup>65</sup> 423rd meeting; pp. 16-17.

<sup>66</sup> S/1342, O.R., 4th year, Suppl. for July 1949, pp. 2-3.

<sup>67</sup> See Case 8.

<sup>68</sup> For texts of relevant statements see:

432nd meeting; Egypt, p. 4; Ukrainian SSR, p. 3; USSR,

pp. 5-6.

<sup>69</sup> 432nd meeting; pp. 2, 6.

the United Nations may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the General Assembly upon recommendation of the Security Council."

#### CASE 10

By letter dated 2 August 1948, the Acting Secretary-General informed the President of the Security Council that on 28 July 1948 Switzerland had become a Party to the Statute of the International Court of Justice in accordance with Article 93 (2) of the Charter and General Assembly resolution 91 (I) of 11 December 1946. He also drew the attention of the President to a recommendation made earlier by the Committee of Experts to the effect that, when Switzerland became a Party to the Statute, it might, under Articles 4 and 69 of the Statute, participate in electing members of the Court and in making amendments to the Statute, under conditions which the Assembly might prescribe upon the recommendation of the Security Council.<sup>69</sup>

By letter dated 12 August 1948, the representative of Belgium requested that the question be included in the provisional agenda to enable the Council to make the necessary recommendation to the General Assembly under Article 4 (3) of the Statute. He observed that circumstances did not necessitate an examination of the recommendations mentioned in Article 69 of the Statute. By the same communication the representative of Belgium submitted a draft resolution.<sup>71</sup>

**Decision:** *At the 360th meeting on 28 September 1948, the Council unanimously adopted the draft resolution submitted by the representative of Belgium in his communication of 12 August.*<sup>72</sup>

Having recited in the preamble that Switzerland had become a Party to the Statute and had "even, under Article 36 of the Statute, accepted the compulsory jurisdiction of the Court", the recommendation read as follows:

*"The Security Council*

*"Recommends to the General Assembly to determine as follows the conditions under which a State, a Party to the Statute of the Court but not a Member of the United Nations, may participate in electing the members of the International Court of Justice:*

*"1. Such a State shall be on an equal footing with the Members of the United Nations in respect to those provisions of the Statute which regulate the nominations of candidates for election by the General Assembly;*

*"2. Such a State shall participate, in the General Assembly, in electing the members of the Court in the same manner as the Members of the United Nations;*

*"3. Such a State, when in arrears in the payment of its contribution to the expenses of the Court, shall not participate in electing the members of the Court in the General Assembly, if the amount of its arrears equals or exceeds the amount of the contribution due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a State to*

<sup>69</sup> S/947, O.R., 3rd year, Suppl. for Sept. 1948, pp. 1-2.

<sup>71</sup> S/939, O.R., 3rd year, Suppl. for Sept. 1948, pp. 3-4.

<sup>72</sup> 360th meeting; p. 30. By resolution 264 (III) of 8 October 1948, the General Assembly adopted the recommendation without change.

participate in the elections, if it is satisfied that the failure to pay is due to conditions beyond the control of that State (Cf. Charter, Article 19)."

**D. PRACTICES AND PROCEEDINGS IN RELATION TO THE ELECTION OF MEMBERS OF THE INTERNATIONAL COURT OF JUSTICE**

STATUTE OF THE INTERNATIONAL COURT OF JUSTICE

"Article 4

"1. The members of the Court shall be elected by the General Assembly and by the Security Council from a list of persons nominated by the national groups in the Permanent Court of Arbitration..."

"Article 8

"The General Assembly and the Security Council shall proceed independently of one another to elect the members of the Court."

"Article 10

"1. Those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected.

"2. Any vote of the Security Council, whether for the election of judges or for the appointment of members of the conference envisaged in Article 12, shall be taken without any distinction between permanent and non-permanent members of the Security Council.

"3. In the event of more than one national of the same state obtaining an absolute majority of the votes both of the General Assembly and of the Security Council, the eldest of these only shall be considered as elected."

"Article 11

"If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place."

"Article 12

"1. If, after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three appointed by the General Assembly and three by the Security Council, may be formed at any time at the request of either the General Assembly or the Security Council, for the purpose of choosing by the vote of an absolute majority one name for each seat still vacant, to submit to the General Assembly and the Security Council for their respective acceptance.

"2. If the joint conference is unanimously agreed upon any person who fulfils the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Article 7.

"3. If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been elected shall, within a period to be fixed by the Security Council, proceed to fill the vacant seats by selection from among those candidates who have obtained votes either in the General Assembly or in the Security Council.

"4. In the event of an equality of votes among the judges, the eldest judge shall have a casting vote."

PROVISIONAL RULES OF PROCEDURE

Rule 61

*Relations with other United Nations Organs*

"Any meeting of the Security Council held in pursuance of the Statute of the International Court of Justice for the purpose of the election of members of the Court shall continue until as many candidates as are required for all the seats to be filled have obtained in one or more ballots an absolute majority of votes."

[Note: Following procedural difficulties which arose in connexion with Articles 11 and 12 during the first election of judges,<sup>63</sup> the Council, at its 138th meeting on 4 June 1947, adopted rule 61 of the provisional rules of procedure.

The new rule, which had been transmitted to the Council for its consideration, was first adopted by the Assembly "provisionally and subject to the concurrence of the Security Council".<sup>64</sup> The representative of the United States submitted a draft resolution in the Council to concur in the rule of procedure adopted by the Assembly, and to adopt a rule for the Council differing from the Assembly rule in the designation of the organ only. The United States draft resolution containing the new rule of procedure was adopted unanimously and transmitted to the General Assembly for its information in accordance with a provision of the resolution.<sup>65</sup>

The documents distributed in connexion with the elections were the same for the Council and the Assembly. For the elections in 1948 and 1951 the documents were distributed under joint symbols.<sup>66</sup>

At the 369th meeting on 22 October 1948, the President (United States) reminded members of the provision in the Statute to the effect<sup>67</sup>

"... that in balloting on candidates for the Court, no distinction shall be made between the ballot of permanent members and that of non-permanent members of the Council".]

CASE 11

At the 9th meeting on 6 February 1946, 15 candidates who received an absolute majority of votes were declared "duly elected by the Security Council".<sup>68</sup> Upon the suggestion of the President of the Assembly, the Council suspended its proceedings until 3 p.m. of the same day.<sup>69</sup> When the Council reconvened, the Presi-

<sup>63</sup> See Case 11.

<sup>64</sup> S/260; the Report of the 6th Committee of the General Assembly (A/191) which was forwarded to the Council together with the new rule of procedure recalled that "during the election of members of the International Court of Justice... differences led to a suggestion that the Court itself should be asked to give an advisory opinion as to the requirements of Articles 11 and 12", but the Committee did not recommend that "any action should be taken to request an advisory opinion on this matter".

<sup>65</sup> 138th meeting: pp. 949-952.

<sup>66</sup> For the 9th meeting, A/23 was reprinted in *O.R., 1st year, 1st series, Suppl. No. 1*, pp. 80-82; for the 369th meeting, A/623, S/991, S/991/Add.1, A/623/Add.1, S/991/Add.1/Corr.1, A/623/Add.1/Corr.1, S/991/Add.2, A/623/Add.2, S/991/Rev.1, A/623/Rev.1, S/991/Rev.2, A/623/Rev.2, S/991/Rev.2/Corr.1, A/623/Rev.2/Corr.1, S/991/Rev.2/Corr.2, A/623/Rev.2/Corr.2; for the 567th meeting, S/2339, A/1879, S/2352, A/1885.

<sup>67</sup> 369th meeting: p. 2.

<sup>68</sup> 9th meeting: pp. 136-137.

<sup>69</sup> 9th meeting: p. 137.

dent (Australia) announced that, according to the communications received from the President of the Assembly, thirteen candidates had obtained the necessary absolute majority in both organs. The second ballot in the Council to elect the other two judges resulted in an absolute majority for one candidate only.<sup>70</sup>

The President's subsequent announcement that the President of the Assembly had requested the results of each ballot gave rise to extensive consideration of the requirements of Articles 11 and 12 of the Statute, with special reference to the interpretation of the word "meeting" as used in Articles 11 and 12 in connexion with the joint conference provided for in the event of a deadlock. The discussion culminated in the adoption of rule 61 of the provisional rules of procedure at the 138th meeting on 4 June 1947.

The representative of Brazil was of the opinion that the President of the Assembly had the right to have the result "at the end of each meeting, but not the result of each ballot". The representatives of the USSR and the United States suggested that the Council inform the President of the Assembly of the results of the second ballot, and then proceed immediately to choose the last candidate. The representative of the United Kingdom observed that, under Articles 11 and 12 of the Statute, the Council had to make "three attempts to hold an election by common accord of this Council and the Assembly". He later added:

"In these three attempts, each of the constituent bodies must endeavour to select a complete list to fill all the vacant seats. We must, therefore, now complete a full list for the empty seats before we are informed of the selections which the Assembly has made . . . and the Assembly must also select its complete list. When both those processes have been completed, that will be one of the three attempts laid down in the Statute."

The President in reply commenced to refer to a communication from the President of the Assembly, but was interrupted on a point of order by the representative of the United Kingdom to the effect that the Council ought not to receive a communication from the Assembly until it has finished the elections. Although the President did not continue his statement, he advised the Council that, inasmuch as the Assembly had adjourned until 5 p.m., it could not in any event act on his communication. He suggested that the Council proceed to vote again for the one remaining name. After consideration of the question as to whether balloting in the Council and the Assembly had to proceed concurrently, another secret ballot was taken.<sup>71</sup>

Before declaring the results of the ballot, the President indicated that he wished it to be understood that, according to the legal experts of the Secretariat, the Council had taken its third ballot. The representative of the United Kingdom understood that advice to mean that, if all fifteen judges were not chosen as a result of the third ballot, the Council would proceed to a joint conference under Article 12 to choose the remainder of the Court. Referring to the provisions of Articles 11 and 12, he expressed the opinion that recourse should be had to the joint conference after three meetings and not after three ballots. The representatives of Mexico, the Netherlands and the USSR were of the opinion that the ballots were concurrent with the meetings.

<sup>70</sup>9th meeting: p. 139.

<sup>71</sup>9th meeting: p. 145.

There being no objection, the President invited the President of the Assembly, who was present in the Council chamber, to inform the Council "regarding the procedure that has been followed in the Assembly on this particular matter".

The President of the Assembly was of the opinion that the words "a meeting held for the purpose of the election (*séance d'élection*) . . . must be interpreted as meaning a ballot". As regards the convening of the joint conference, he stated:

" . . . Article 12 does not constitute an obligation. If the Assembly and the Security Council do not wish to apply it, they may continue to proceed with ballots till the result is achieved. It (Article 12) . . . is a measure of conciliation, a means of seeking a solution. Three members of the Security Council and three members of the Assembly work together and nominate a candidate for submission to the Assembly and the Security Council. These bodies must still proceed, with regard to this candidate, by the same methods and the same majority. Article 12 merely constitutes an intermediary measure to enable the two organs to find a candidate. But the last word rests with the Assembly and the Security Council."

The President of the Assembly added that, in his view, since the candidate elected on the Council's second ballot had failed to receive an absolute majority in the Assembly, the Council had to vote for two candidates, although the candidate elected on the second ballot by the Council could be voted upon again. The representative of China observed that it was not necessary for the Assembly and the Council to adopt the same procedure inasmuch as the Statute (Article 8) enjoins the two organs to proceed independently. His interpretation of Articles 11 and 12 was that "what is really meant is three comparisons of the results of the Council, on the one hand, and the results, in the Assembly, on the other".

The representative of the United Kingdom disagreed with the contention of the President of the Assembly that the Council had to fill two places. As regards the other points, he suggested the following compromise:<sup>72</sup>

" . . . we should, for this meeting only and on the very clear understanding that no precedent is created, accept the procedure advocated by the President of the Assembly and count this next vote as the third round; but, before the Assembly and the Council have to deal with the matter again, we should ask the International Court of Justice, which will be constituted and in action, to give us an advisory opinion upon the meaning of these clauses, so that next time this question will not arise."

After further discussion, the President asked:

"May I take it that the members of the Council accept this third ballot (to be regarded as without precedent) as equivalent to the third ballot and a third meeting, in conjunction with the first result?"

There being no objection, the President declared the suggestion adopted. The President thereupon declared the results of the ballot taken earlier in the meeting. One candidate received an absolute majority.<sup>73</sup>

<sup>72</sup>9th meeting: p. 156. For consideration of the request for an advisory opinion, see Case 26.

<sup>73</sup>9th meeting: pp. 159-160.

At the suggestion of the President of the Assembly, the Council suspended its meeting to await the results of the third ballot in the Assembly. Since the Assembly had to elect two candidates on the third ballot, and only one received an absolute majority, the Assembly informed the Council of its intention to proceed to a fourth ballot.<sup>74</sup> The representative of the United Kingdom agreed that the Council and Assembly were "perfectly competent" to proceed to a fourth ballot without a conference, but he was of the opinion that, if the fourth ballot did not end the election, a joint conference would be necessary. Before voting, the President announced the name of the candidate elected by the Assembly. The representative of Brazil stated that it was wrong to vote for a judge with the knowledge of the results of the vote in the Assembly. He declared that the case was "absolutely without precedent". The President replied:<sup>75</sup>

"I give my assurance to the Council that this vote, as one previous vote, is not to be regarded as a precedent, but is a matter on which there will be appeal to the International Court of Justice, with a view to clarifying the position relating to these matters before the next election may be required."

The fourth ballot resulted in the election of the fifteenth judge.<sup>76</sup>

#### CASE 12

At the 369th meeting on 22 October 1948, the Security Council proceeded to elect five members of the Court. This was the first ballot held under rule 61 of the provisional rules of procedure.

Six ballots were taken before five members were elected.<sup>77</sup> The President (United States) announced "informally" the results of the Assembly's ballot, which indicated that only three members had received an absolute majority. The Council adjourned on the understanding that it would reconvene if the Assembly did not concur in its elections.

The 371st meeting convened on the same date to fill one vacancy which remained. The Council elected on the second ballot a fifth member who also received the absolute majority of votes in the Assembly.<sup>78</sup>

#### CASE 13

At the 548th meeting on 29 May 1951, the Security Council noted with regret the death of Judge Barros e Azevedo and decided, under Article 14 of the Statute, that the election to fill the vacancy for the remainder of the term of the deceased should take place during the sixth session of the General Assembly prior to the regular elections to be held at the same session.<sup>79</sup> At the 567th meeting on 6 December 1951, the Council elected one candidate to fill the vacancy; the same candidate also received an absolute majority in the Assembly.<sup>80</sup>

<sup>74</sup> 9th meeting: p. 151.

<sup>75</sup> For texts of relevant statements see:

9th meeting: President (Australia), pp. 134-135, 137-138, 140, 141, 143, 145, 147, 159, 160, 163, 164; Brazil, pp. 140, 144, 164; China, pp. 152-153; Egypt, pp. 141, 142, 144, 145, 147-148, 156-157; France, pp. 149-150; Mexico, p. 149; Netherlands, pp. 148-149; USSR, pp. 146-147, 158-159; United Kingdom, pp. 141-142, 142, 144, 146, 154-156; United States, pp. 140, 157; President of the General Assembly (Mr. Spaak), pp. 150-151, 151-152.

<sup>76</sup> 9th meeting: p. 165.

<sup>77</sup> 369th meeting: pp. 1-4.

<sup>78</sup> 371st meeting: pp. 16-18. The candidate elected was not the same candidate as had been chosen by the Council on the previous ballot.

<sup>79</sup> S/2153, 548th meeting: p. 2.

<sup>80</sup> 567th meeting: p. 3.

#### CASE 14

At the 567th meeting on 6 December 1951, the Security Council proceeded to fill five regular vacancies. Before the balloting commenced, the President (Ecuador) stated:

"If more than five candidates obtain an absolute majority, the President will decide upon the procedure to be followed."

Six candidates obtained an absolute majority, three received seven votes and three received more than seven. Referring to the courses open to the Council, the President stated:

"It may happen that not all the six candidates will obtain a majority in the General Assembly, and that only five will have a majority. In that case one of the possible solutions would be for the Security Council simply to communicate to the General Assembly the names of the six candidates who have obtained the largest number of votes...

"Another solution would be for the Security Council to elect only two candidates by taking another vote to elect the two remaining candidates from all the names on the list, with the exception of those already elected at the first voting...

"Lastly, another solution would be for the Council to repeat the voting entirely with a view to succeeding in electing only five candidates."

After consulting with the members of the Council, the President ruled:

"... in view of Articles 8 and 13 of the Statute of the International Court of Justice, since the Security Council is responsible for electing five judges of the Court, it would appear incompatible with the Statute that the Security Council should submit to the General Assembly the names of six candidates which it has chosen."

The President's ruling was not challenged.

The representative of India proposed "that the Security Council awaits the receipt of the result of the ballot in the General Assembly before it takes a vote again on the matter".<sup>81</sup> The President was of the opinion that, in view of the legal position, the Council should not wait for the Assembly's decision. The Indian proposal was rejected.<sup>82</sup> The representative of the Netherlands suggested that the names of the six candidates which received an absolute majority should be put to the vote again. The representative of the USSR was of the opinion that the three candidates who received more votes than the others had already been elected. All that remained, in his view, was to vote again on the three candidates who received seven votes. Observing that one could not be dogmatic on this point, the representative of the United States stated:

"The question is whether there is a majority or no majority, and the size of the majority, at first sight at least, does not seem to be relevant; it certainly does not seem to be decisive."

He proposed "that the Council proceed now to take a ballot on all candidates".<sup>83</sup> Before asking for a vote on his proposal, however, he inquired "whether it is possible for the Council to be informed with regard to the

<sup>81</sup> 567th meeting: p. 9.

<sup>82</sup> 567th meeting: p. 10.

<sup>83</sup> 567th meeting: p. 15.

state of this matter in the General Assembly". The President replied:

"Yes; it is possible to say now that the Council will be informed about the results of the elections in the General Assembly after the Council makes its own decision on the matter."

An Indian motion to suspend the meeting for fifteen minutes for the purpose of consultation was rejected.<sup>84</sup> The United States proposal was then put to the vote and adopted by 9 votes in favour, 1 against and 1 abstention.<sup>85</sup>

After new ballots were distributed the Council voted again to elect five members from the original list of candidates. Five candidates received an absolute majority. The President declared:

"As the same candidates have been elected both by the Security Council and the General Assembly, I am sure that the President of the Assembly will declare that the five gentlemen chosen by both these organs are elected members of the International Court."

The representative of Yugoslavia asked why the President of the Security Council might not make the announcement. The President replied:<sup>86</sup>

"I should be greatly distressed if members of the Council were to think that I was surrendering the prerogatives of the Security Council but I understand that, at the 1948 election, the President of the General Assembly was the one to announce the election of the candidates. My object was to keep strictly to precedent."

The meeting was then adjourned.

#### E. RELATIONS WITH SUBSIDIARY ORGANS ESTABLISHED BY THE GENERAL ASSEMBLY

[*Note:* In addition to subsidiary organs established by the Security Council itself,<sup>87</sup> certain subsidiary organs established by the General Assembly have played a part in the proceedings of the Security Council, either when they have been placed in a special relation to the Council by resolution of the General Assembly, or when the Council found it necessary to make use of the services of a subsidiary organ already established by the Assembly without such provision being made. Section E lists these occasions in chronological order, giving a brief indication of the relation thus established and of subsequent developments.]

##### CASE 15

On 24 January 1946, the General Assembly, when establishing the Atomic Energy Commission,<sup>88</sup> instructed the Commission to submit its reports and recommendations to the Security Council. The Council was to issue directions to the Commission in matters affecting security, and on these matters the Commission was to be accountable for its work to the Council. The Commission was further directed to submit its rules of

procedure to the Council for approval and was, in general, instructed not to infringe upon the responsibilities of any organ of the United Nations, but to present recommendations for consideration.

At the 50th meeting on 10 July 1946, the Security Council approved the rules of procedure of the Atomic Energy Commission.<sup>89</sup>

##### CASE 16

On 29 November 1947, the General Assembly, when establishing the United Nations Palestine Commission, provided that "the Commission shall render periodic monthly progress reports, or more frequently if desirable, to the Security Council" and that "the Commission shall make its final report to the next regular session of the General Assembly and to the Security Council simultaneously".<sup>90</sup> The resolution also provided that "the Commission shall be guided in its activities by the recommendations of the General Assembly and by such instructions as the Security Council may consider necessary to issue," and that "the measures taken by the Commission, within the recommendations of the General Assembly, shall become immediately effective unless the Commission has previously received contrary instructions from the Security Council".<sup>91</sup>

At the 263rd meeting on 5 March 1948, the Security Council adopted a resolution calling on "the permanent members of the Council to consult and to inform the Security Council regarding the situation with respect to Palestine and to make, as a result of such consultations, recommendations to it regarding the guidance and instructions which the Council might usefully give to the Palestine Commission with a view to implementing the resolution of the General Assembly".<sup>92</sup> At the 271st meeting on 19 March 1948, the representative of the United States submitted three conclusions regarding the problem of Palestine, one of which read:

"Pending the meeting of the proposed special session of the General Assembly, we believe that the Security Council should instruct the Palestine Commission to suspend its efforts to implement the proposed partition plan."<sup>93</sup>

This proposition, however, was not made into a formal proposal.

At the 277th meeting on 1 April 1948, after a resolution to request the convocation of a special session of the General Assembly had been adopted by the Security Council, the President asked what instructions were to be given to the Palestine Commission. The representative of the USSR stated that the Council "can direct the Palestine Commission, but only with a view to implementing the General Assembly's decision on Palestine. It cannot and may not give any other instructions which would be contrary to, or not in accordance with, that decision." The representative of France stated that the question referred to by the President raised "a difficulty, namely, the problem of whether the Security Council is authorized to ask the Commission established by the

<sup>84</sup> 567th meeting: p. 15.

<sup>85</sup> 567th meeting: pp. 16-17.

<sup>86</sup> For texts of relevant statements see:

567th meeting: President (Ecuador), pp. 3, 4, 5, 7, 8, 9, 10, 15, 16, 17; India, pp. 8-9, 16; Netherlands, pp. 9-10, 11-12; Turkey, p. 12; USSR, pp. 5-6, 6-7, 11, 13; United States, pp. 12-13, 15; Yugoslavia, pp. 7-8, 17.

<sup>87</sup> See chapter V, *Subsidiary Organs of the Security Council*.

<sup>88</sup> General Assembly Resolutions 1946:1(I).

<sup>89</sup> For consideration of reports of the Atomic Energy Commission, see chapter IX, pp. 367-368.

<sup>90</sup> On the relations of the Palestine Commission and the Security Council, see also Memorandum of 9 February 1948 prepared by the Secretariat, *O.R.*, 3rd year, *Suppl. for Jan., Feb. and March 1948* pp. 14-24.

<sup>91</sup> General Assembly resolution 181 (II). See chapter XII, Case 21, for proceedings of the Council on the resolution.

<sup>92</sup> 263rd meeting: pp. 43-44.

<sup>93</sup> 271st meeting: p. 167.



General Assembly to cease its work", and suggested that the Commission "should be permitted to draw its own conclusions" from the decisions adopted by the Security Council. The President concluded that "it seems perfectly clear that the resolution which the Security Council has just adopted should offer a clear indication to the Palestine Commission as to how it should proceed . . . the Palestine Commission cannot fail to take due notice of the manner in which events are moving under the direction of the Security Council".<sup>94</sup>

#### CASE 17

On 14 May 1948, the office of United Nations Mediator for Palestine was created by the General Assembly<sup>95</sup> to function under instructions from both the General Assembly and the Security Council. The resolution instructed the United Nations Mediator "to render progress reports monthly, or more frequently as he deems necessary, to the Security Council and to the Secretary-General for transmission to the Members of the United Nations". The Security Council issued a number of instructions to the Mediator and the Acting Mediator which, conferring new functions upon them, also had the effect of widening their functions under General Assembly resolution. These instructions were concerned with the supervision of the two truces of the Security Council, the problem of refugees, the demilitarization of Jerusalem, the protection of the Holy Places, the maintenance of common services, the investigation into the assassination of the Mediator, and finally the negotiation and conclusion of armistice agreements.<sup>96</sup> Some functions of the office of Mediator under the General Assembly overlapped with functions under the Security Council, but on the whole with respect to the functions of mediation and with regard to matters relating to a political settlement between Arabs and Jews, the Mediator and Acting Mediator were responsible to the General Assembly, whereas in matters relating to the cease-fire, truce and armistice they were responsible to the Security Council. The interdependence of the truce and mediation functions and the impossibility of maintaining a clear line of demarcation between them, however, was evident in the fact that, in the resolutions adopted by each of the principal organs, reference was made to the functions conferred on the Mediator by the other organ.

General Assembly resolution 181 (S-2) made no reference to the termination of the office of Mediator. The Security Council resolution of 15 July 1948 ordered a truce for an indefinite period. Upon the assassination of the Mediator, Dr. Bunche was empowered to assume full authority "until further notice". On 19 November 1948, the General Assembly adopted resolution 212 (III), establishing the United Nations Relief for Palestine Refugees, thus relieving the Acting Mediator

of his humanitarian functions regarding refugees. On 11 December 1948, the General Assembly, by resolution 194 (III), transferred the mediation functions to a newly created Conciliation Commission which was empowered (by paragraph 2a) "to assume, in so far as it considers necessary in existing circumstances, the functions given to the United Nations Mediator on Palestine by resolution 186 (S-2) . . ."

While the Acting Mediator was thus relieved of his mediation tasks by the General Assembly, the office of Mediator remained in existence and he still retained his functions with respect to the truce effort under the Security Council's resolutions. The Assembly's resolution of 11 December, however, also provided for the ultimate termination of the office of Mediator. The Conciliation Commission was asked by paragraph 2c "to undertake, upon the request of the Security Council, any of the functions now assigned to the United Nations Mediator on Palestine . . . upon such request to the Conciliation Commission by the Security Council with respect to all the remaining functions of the United Nations Mediator on Palestine under Security Council resolutions, the office of the Mediator shall be terminated".

At the 435th meeting on 8 August 1949, in connexion with the report of the Acting Mediator,<sup>97</sup> the representatives of Canada and France proposed "that all functions assigned to the United Nations Mediator on Palestine having been discharged, the Acting Mediator is relieved of any further responsibility under Security Council resolutions".<sup>98</sup> The representative of the USSR proposed the following amendment:

"Terminates the office of the United Nations Mediator on Palestine."<sup>99</sup>

At the 437th meeting on 11 August 1949, the representative of the United States stated:

"The . . . Soviet Union amendment would end the Mediator's office . . . This the Security Council has no authority to do. The General Assembly established this office. The United States delegation believes that the draft of Canada and France more fittingly indicates that the functions of the Mediator have been discharged, and relieves the Acting Mediator of further responsibility under Security Council resolutions. Such a provision is consonant with the General Assembly resolution of 11 December 1948, which states that, when the Security Council relieves the Mediator of any further responsibilities, that office, established by the General Assembly, shall be automatically terminated."<sup>100</sup>

The representative of the USSR withdrew his amendment, and accepted the text of the joint Canadian-French draft which, he stated, "would lead precisely to the result desired".<sup>101</sup>

**Decision:** *The Council adopted the Canadian-French draft resolution by 9 votes in favour, none against, with 2 abstentions.*<sup>102</sup>

#### CASE 18

On 11 December 1948, the General Assembly established the United Nations Conciliation Commission for

<sup>94</sup> 277th meeting: pp. 38-39. The terms of reference under which the Commission had been established were not modified by the General Assembly or by the Security Council, and no instruction or directive was issued by the Council to the Commission.

<sup>95</sup> General Assembly resolution 186 (S-2).

<sup>96</sup> At the 310th meeting on 29 May 1948, the Council instructed the Mediator "to supervise the truce" and "to make a weekly report to the Security Council during the cease-fire"; and at the 338th meeting on 15 July 1948 "to continue his efforts to bring about the demilitarization of Jerusalem" and "to keep the Security Council currently informed concerning the operation of the truce, and when necessary to take appropriate action".

<sup>97</sup> S/1357, O.R., 4th year, Suppl. for Aug. 1949.

<sup>98</sup> 435th meeting: p. 3.

<sup>99</sup> 435th meeting: p. 7.

<sup>100</sup> 437th meeting: pp. 7-8.

<sup>101</sup> 437th meeting: p. 11.

<sup>102</sup> 437th meeting: p. 13.

Palestine. The Commission was instructed to carry out the specific functions and directives given to it by the resolution, and such additional functions and directives as might be given to it by the General Assembly or by the Security Council. The Commission was also to undertake any of the functions of the United Nations Mediator on Palestine "upon the request of the Security Council". The Commission was further instructed to communicate progress reports periodically to the Secretary-General for transmission to the Security Council and to the Members of the United Nations, and to report immediately to the Council any attempts to impede access to Jerusalem.<sup>103</sup>

## CASE 19

On 12 November 1948, the General Assembly established the United Nations Commission on Korea, and continued the Commission in being on 21 October 1949.<sup>104</sup> On 25 June 1950, the Commission informed the Secretary-General that attacks had been launched in strength by North Korean forces and suggested the possibility of bringing the matter to the attention of the Security Council.<sup>105</sup> A meeting was called the same day (473rd meeting on 25 June 1950) and the Council decided to request the Commission: "(a) to communicate its fully considered recommendations on the situation with the least possible delay, (b) to observe the withdrawal of the North Korean forces to the 38th parallel, and (c) to keep the Security Council informed on the execution of this resolution..."<sup>106</sup>

Four reports in compliance with this directive were submitted by the Commission and considered by the Council at the 474th meeting on 27 June 1950.<sup>107</sup> The Council adopted a resolution recommending:

<sup>103</sup> General Assembly resolution 194 (III). See also resolutions 302 (IV), 394 (V).

<sup>104</sup> General Assembly resolutions 195 (III), 293 (I').

<sup>105</sup> S/1946.

<sup>106</sup> 473rd meeting: pp. 14, 17.

<sup>107</sup> S/1503, S/1504, S/1505, S/1507, 474th meeting: p. 2.

"... that the Members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area" after

"Having noted from the report of the United Nations Commission for Korea that the authorities in North Korea have neither ceased hostilities nor withdrawn their armed forces to the 38th parallel and that urgent military measures are required to restore international peace and security..."<sup>108</sup>

The Commission completed its report to the General Assembly on 4 September 1950, and was terminated by the General Assembly on 7 October 1950.<sup>109</sup>

## F. RECEPTION OF RECOMMENDATIONS TO THE SECURITY COUNCIL ADOPTED BY THE GENERAL ASSEMBLY IN THE FORM OF RESOLUTIONS

[Note: Section F contains a tabulation of recommendations to the Security Council adopted by the General Assembly in the form of resolutions. The initial handling of recommendations from the General Assembly presents few, if any, procedural features peculiar to the material. In agreeing to consider General Assembly recommendations, the Council has on occasions formally decided to "accept" or "receive" a resolution,<sup>110</sup> but the omission of such formal acceptance on other occasions has not been a mark of refusal to consider. So far as the substantive handling of recommendations is concerned, the diverse nature of the subjects dealt with makes classification meaningless. The table accordingly shows chronologically in each case what were the initial proceedings of the Council prior to the adoption or non-adoption of the item on the agenda of the Council. References to the records and to other cases in the *Repertoire* are given, wherever appropriate, for further proceedings of the Council.]

<sup>108</sup> 474th meeting: p. 16. For full text see chapter VIII, p. 356.

<sup>109</sup> General Assembly resolution 376 (V).

<sup>110</sup> See Tabulation, Entry Nos. 2, 5, 6, 10 and 11.

## TABULATION OF RECOMMENDATIONS

Entry No.	General Assembly resolution	Subject of recommendation	Initial proceedings of the Security Council
1...1 (I)	24 January 1946	Report of Chairman of Atomic Energy Commission concerning provisional rules of procedure for the Commission	Included in the agenda at the 50th meeting on 10 July 1946 <sup>a</sup>
2...35 (I)	19 November 1946	Re-examination of certain applications for membership	Included in the agenda at the 81st meeting on 29 November 1946 <sup>b</sup>
3...36 (I)	19 November 1946	Rules governing the admission of new Members to the United Nations	Included in the agenda at the 81st meeting on 29 November 1946 <sup>c</sup>
4...40 (I)	13 December 1946	Voting procedure in the Security Council	Included in the agenda at the 197th meeting on 27 August 1947 <sup>d</sup>
5...41 (I)	14 December 1946	Principles governing the general regulation and reduction of armaments and armed forces	Included in the agenda at the 90th meeting on 9 January 1947 <sup>e</sup>
6...42 (I)	14 December 1946	Information on armed forces to be supplied by Members of the United Nations	Included in the agenda at the 105th meeting on 13 February 1947 <sup>f</sup>
7...113 (II)	17 November 1947	Reconsideration of the applications for membership of Transjordan and Italy	Included in the agenda at the 221st meeting on 22 November 1947 <sup>g</sup>
8...114 (II)	17 November 1947	Relation of Members of the United Nations with Spain	Included in the provisional agenda at the 327th meeting on 25 June 1948; the Council decided not to include the item in the agenda <sup>h</sup>
9...116 (II)	21 November 1947	Recommendation of new rules of procedure governing the admission of new Members	Included in the agenda at the 222nd meeting on 9 December 1947 <sup>i</sup>

## TABULATION OF RECOMMENDATIONS (continued)

Entry No.	General Assembly resolution	Subject of recommendation	Initial proceedings of the Security Council
10...	117 (II) 21 November 1947	Voting procedure in the Security Council	Included in the agenda at the 224th meeting on 19 December 1947 <sup>1</sup>
11...	181 (II) 29 November 1947	Future government of Palestine	Included in the agenda at the 222nd meeting on 9 December 1947 <sup>2</sup>
12...	231 (III) 8 October 1948	Payment of travelling expenses and subsistence allowances to alternate representatives on certain Security Council commissions	Included in the agenda at the 448th meeting on 27 September 1949 <sup>3</sup>
13...	192 (III) 19 November 1948	Prohibition of atomic weapons and reduction of armaments	Included in the agenda at the 408th meeting on 10 February 1949 <sup>4</sup>
14...	197 (III) 8 December 1948	Admission of new Members	Included in the agenda at the 427th meeting on 16 June 1949 <sup>5</sup>
15...	194 (III) 11 December 1948	Demilitarization of the Jerusalem area	Included in the agenda at the 453rd meeting on 28 October 1949 <sup>6</sup>
16...	267 (III) 14 April 1949	Problem of voting in the Security Council	Included in the agenda at the 452nd meeting on 18 October 1949 <sup>7</sup>
17...	268 B (III) 28 April 1949	Appointment of a rapporteur or conciliator for a situation or dispute brought to the attention of the Council	Included in the agenda at the 472nd meeting on 24 May 1950 <sup>8</sup>
18...	268 D (III) 28 April 1949	Creation of panel for inquiry and conciliation	Not placed on the provisional agenda <sup>9</sup>
19...	296 (IV) 22 November 1949	Admission of new Members	Not placed on the provisional agenda <sup>10</sup>
20...	300 (IV) 5 December 1949	Regulation and reduction of conventional armaments and armed forces	Included in the agenda at the 462nd meeting on 17 January 1950 <sup>11</sup>
21...	377 (V) 3 November 1950	Uniting for peace	Not placed on the provisional agenda <sup>12</sup>
22...	378 (V) 17 November 1950	Duties of States in the event of the outbreak of hostilities	Not placed on the provisional agenda <sup>13</sup>
23...	494 (V) 20 November 1950	Development of a 20-year programme for achieving peace through the United Nations	Not placed on the provisional agenda <sup>14</sup>
24...	495 (V) 4 December 1950	Admission of new Members	Council decided at the 568th meeting on 18 December 1951 to include in the agenda and consider after resolution 550 (VI), since this resolution made no mention of urgency <sup>15</sup>
25...	396 (V) 14 December 1950	Recognition by United Nations of representation of a Member State	Not placed on provisional agenda <sup>16</sup>
26...	550 (VI) 7 December 1951	Admission of Italy to membership	Council decided at the 568th meeting on 18 December 1951 to include this item first in the agenda because of urgency <sup>17</sup>
27...	502 (VI) 11 January 1952	Recommendation for dissolution of Commission for Conventional Armaments	Included in the agenda at the 571st meeting on 30 January 1952 <sup>18</sup>
28...	503 B (VI) 12 January 1952	Methods which might be used to maintain and strengthen international peace and security in accordance with purposes and principles of the Charter	Not placed on provisional agenda <sup>19</sup>

<sup>1</sup> 50th meeting: p. 7.

<sup>2</sup> No objection was raised when the President (United States) declared adopted the first part of a proposal calling for the acceptance by the Council of resolution 35 (I). 81st meeting: p. 522.

<sup>3</sup> 81st meeting: pp. 504-505. See chapter V, Case 32.

<sup>4</sup> 197th meeting: p. 2281. See chapter V, Case 34.

<sup>5</sup> No objection was raised when the President (Australia) proposed that the Council "formally register the acceptance by the Council" of resolution 41 (I). 90th meeting: pp. 41-42.

<sup>6</sup> The Council adopted a resolution the preamble of which affirmed that the Council "accepted" resolution 42 (I). 105th meeting: p. 274.

<sup>7</sup> 221st meeting: p. 2767. See also 280th meeting: p. 3.

<sup>8</sup> 327th meeting: p. 9.

<sup>9</sup> 222nd meeting: p. 2771.

<sup>10</sup> The Council accepted the proposal by the President (Australia) that the letter from the Secretary-General conveying resolution 117 (II) "be received" by the Council. 224th meeting: p. 2796.

<sup>11</sup> The President (Australia) stated that the Council had received the communication from the Secretary-General en-

closing resolution 181 (II) and, having been seized of the matter, had decided to postpone discussion. See chapter XII, Case 21. 222nd meeting: p. 2788.

<sup>12</sup> 448th meeting: p. 10.

<sup>13</sup> 408th meeting: p. 19.

<sup>14</sup> 427th meeting: p. 10.

<sup>15</sup> 453rd meeting: p. 4.

<sup>16</sup> 452nd meeting: p. 2.

<sup>17</sup> 472nd meeting: pp. 15-16.

<sup>18</sup> S/1323.

<sup>19</sup> S/1425.

<sup>20</sup> 462nd meeting: pp. 8-9.

<sup>21</sup> S/1905.

<sup>22</sup> S/1930.

<sup>23</sup> S/1948.

<sup>24</sup> 568th meeting: pp. 2-3.

<sup>25</sup> S/1978.

<sup>26</sup> 568th meeting: pp. 2-3.

<sup>27</sup> 571st meeting: pp. 1-2.

<sup>28</sup> S/2496.

## G. REPORTS OF THE SECURITY COUNCIL TO THE GENERAL ASSEMBLY

*Article 24 (3) of the Charter*

"The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration."

[*Note:* In accordance with Article 24 (3) of the Charter, the Security Council submits annual and, when necessary, special reports to the General Assembly. In accordance with Article 15 (1) of the Charter, the General Assembly receives and considers these reports which "shall include an account of the measures that the Security Council has decided upon or taken to maintain international peace and security".

The accepted procedure with regard to the preparation of the annual reports of the Security Council includes the following stages:

- (i) Formulation of the first draft by the Secretariat
- (ii) Circulation of this draft as a confidential document among the representatives to the Council
- (iii) Discussion, submission of observations and amendments, and proposals for deletions at a closed meeting of the Council
- (iv) Final approval at a closed meeting of the Council, following which the annual report of the Security Council is published as a General Assembly document and submitted for its consideration.<sup>111]</sup>

<sup>111</sup>At the 500th meeting on 12 September 1950, held in private, the Council approved the Fifth Annual Report by 10 votes to 1, with 1 abstention (500th meeting: p. 1).

## Part II

## RELATIONS WITH THE ECONOMIC AND SOCIAL COUNCIL

## A. PRACTICES AND PROCEEDINGS IN RELATION TO ARTICLE 65 OF THE CHARTER

*Article 65*

"The Economic and Social Council may furnish information to the Security Council and shall assist the Security Council upon its request."

## CASE 20

At the 354th meeting on 19 August 1948, in connexion with the Palestine question, the representative of China observed that, while the question of refugees could be dealt with by the Security Council in view of its close connexion with the truce, the task of solving the problem as a whole was in the hands of the General Assembly. The representative of the United Kingdom, referring to the remarks of the representative of China, proposed that the record of the Council's discussion on the subject of refugees be transmitted to the Economic and Social Council and the International Refugee Organization "for any action that they may be able to take".<sup>1</sup>

**Decision:** *The United Kingdom proposal was adopted without vote.*<sup>2</sup>

<sup>1</sup> 354th meeting: pp. 54-56.

<sup>2</sup> 354th meeting: p. 56.

## CASE 21

By letter dated 14 March 1949, the Secretary-General transmitted to the President of the Security Council resolution 214 B (VIII) adopted by the Economic and Social Council on 16 February 1949, together with the relevant documentation concerning human rights in Palestine.<sup>3</sup>

## CASE 22

At the 479th meeting on 31 July 1950, the representative of the Republic of Korea\* drew the attention of the Council to the hardships and privations to which the people of Korea were being subjected as a result of hostilities. The President (Norway), on behalf of the representatives of France, Norway and the United Kingdom, submitted a joint draft resolution concerning Korean relief.<sup>4</sup> The representative of the United States observed that the draft resolution invoked Article 65 for the first time.

**Decision:** *The joint draft resolution was adopted by 9 votes in favour, with 1 abstention.*<sup>5</sup>

\* S/1291.

<sup>4</sup> S/1652, 479th meeting: p. 3.

<sup>5</sup> 479th meeting: p. 5. One member (USSR) was absent. For text of the decision, see chapter VIII, p. 357.

## Part III

## RELATIONS WITH THE TRUSTEESHIP COUNCIL

## NOTE

One trusteeship agreement has been submitted to and approved by the Security Council in accordance with Article 83 of the Charter. A summary statement of proceedings leading to the approval of the agreement is entered in chapter IX, and ancillary discussion bearing on Article 83 (1) has been entered in chapter XII. The approval of the agreement necessitated consideration of procedures for the application of Articles 87 and 88 concerning the functions of the Trusteeship Council. Proceedings on this aspect are entered in the present part of this chapter.

*Article 83 of the Charter*

"1. All functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the Security Council.

" . . .

"3. The Security Council shall, subject to the provisions of the trusteeship agreements and without prejudice to security considerations, avail itself of the assistance of the Trusteeship Council to perform those functions of the United Nations under

the trusteeship system relating to political, economic, social, and educational matters in the strategic areas."

**A. PROCEDURE UNDER ARTICLE 83 (3) IN APPLICATION OF ARTICLES 87 AND 88 OF THE CHARTER WITH REGARD TO STRATEGIC AREAS UNDER TRUSTEESHIP**

**CASE 23**

By letter of 7 November 1947,<sup>1</sup> the Secretary-General observed that, as a result of the entry into force of the Trusteeship Agreement for the Pacific Islands on 18 July 1947,

"...it would seem essential therefore that procedures should now be formulated to govern the detailed application of Articles 87 and 88 of the Charter to this strategic area. Such procedures would seem, by the terms of Article 83 of the Charter, to require the approval of the Security Council."

The Security Council began consideration of the question at the 220th meeting on 15 November 1947. At that meeting, the President, speaking as the representative of the United States, submitted a draft resolution<sup>2</sup> requesting the Trusteeship Council:

"(a) To take such action as is called for by article 13 of the Agreement, to carry out the functions set forth in Articles 87 and 88 of the Charter in the Trust Territory of the Pacific Islands; and

"(b) To keep the Security Council informed through regular reports on action taken by the Trusteeship Council with respect to the Trust Territory of the Pacific Islands."

In introducing the draft resolution, he declared that the Council

"... should not undertake to establish a general rule for all strategic trusteeship agreements. I can conceive of strategic trusteeships, to be set up in the future, which might not be exactly like this one. Therefore, I think we ought to exercise care and not hastily lay down general rules that might affect such trusteeships in the future."

Upon the suggestion of the representative of the USSR, the whole question raised by the letter of the Secretary-General was referred to the Committee of Experts for study and report within four weeks.<sup>3</sup>

On 12 January 1948, the Committee of Experts submitted a preliminary report<sup>4</sup> to the Security Council on the respective functions of the Security Council and the Trusteeship Council with regard to the Trusteeship System as applied to strategic areas. After discussing whether it should recommend to the Security Council the adoption of a resolution alone or rules of procedure alone, or both, the Committee decided by a majority to discuss first a draft resolution for recommendation to the Council. The Committee did not submit to the Council draft rules of procedure. The Committee also decided to recommend to the Council the adoption of a resolution applicable to strategic areas generally.

The majority of the Committee recommended to the Council the adoption of the following draft resolution:

"Whereas Article 83, paragraph 3, of the Charter provides that

"The Security Council shall, subject to the provision of the trusteeship agreements and without prejudice to security considerations, avail itself of the assistance of the Trusteeship Council to perform those functions of the United Nations under the trusteeship system relating to political, economic, social, and educational matters in the strategic areas",

"The Security Council

"Resolves:

"1. That the Trusteeship Council be requested, subject to the provisions of Trusteeship Agreements or parts thereof in respect of strategic areas, and subject to the decisions of the Security Council made having regard to security considerations from time to time, to perform in accordance with its own procedures, on behalf of the Security Council, the functions specified in Articles 87 and 88 of the Charter relating to the political, economic, social and educational advancement of the inhabitants of such strategic areas.

"2. That the Trusteeship Council be requested to send to the Security Council, one month before forwarding to the Administering Authority, a copy of the questionnaire formulated in accordance with Article 88 of the Charter and any amendments to such questionnaire which may be made from time to time by the Trusteeship Council.

"3. That the Secretary-General be requested to advise the Security Council of all reports and petitions received from or relating to strategic areas under trusteeship, and to send copies thereof, as soon as possible after receipt, to the Trusteeship Council for examination and report to the Security Council.

"4. That the Trusteeship Council be requested to submit to the Security Council its reports and recommendations on political, social, economic and educational matters affecting strategic areas under trusteeship."

To the report was annexed the following draft resolution which had been submitted by the Polish member of the Committee and supported by the USSR member for recommendation to the Security Council:

"Taking into consideration the entry into force of the Trusteeship Agreement for the Pacific Islands on 18 July 1947, the Security Council decides:

"1. Pursuant to Article 83, paragraph 1, of the Charter, to exercise all functions of the United Nations relating to strategic areas under trusteeship; and

"2. To avail itself of the assistance of the Trusteeship Council in the performance of its functions under the Trusteeship System relating to political, economic, social and educational matters in the strategic areas, subject to the provisions of the above-mentioned Trusteeship Agreement and without prejudice to security considerations after having examined in each case separately the circumstances of the task to be performed;

"3. To instruct the Committee of Experts to prepare within three weeks for the approval of the Security Council a draft questionnaire provided for

<sup>1</sup> S/599, 220th meeting; p. 2753, footnote 1.

<sup>2</sup> 220th meeting; p. 2757-2760.

<sup>3</sup> 220th meeting; p. 2763.

<sup>4</sup> S/642, O.R., 3rd year, Suppl. for June 1948, pp. 1-10.



by Article 88 of the Charter, adapted to the conditions and needs of strategic areas under trusteeship;

"4. To request the Secretary-General to submit to the Security Council all petitions received from or relating to strategic areas under trusteeship for examination by the Security Council itself, or through the Trusteeship Council, as the case may be;

"5. To provide for periodic visits to the strategic areas under trusteeship and to perform them either itself or through the Trusteeship Council as the case may be."

The report of the Committee of Experts was considered by the Security Council at its 320th meeting on 15 June 1948. At the same meeting, attention of the Council was drawn to a letter from the President of the Trusteeship Council of 17 December 1947,<sup>5</sup> transmitting a resolution of the latter organ. The resolution authorized a Committee of the Trusteeship Council

"... to confer with the President or a similar Committee of the Security Council with a view to assuring that, before the Security Council makes a final decision on the arrangements to be made with regard to the functions of the Trusteeship Council in respect of strategic areas under trusteeship in relation to the political, social, economic and educational advancement of the inhabitants, the responsibilities of the Trusteeship Council be fully taken into account."

At the 324th meeting on 18 June 1948, a proposal made by the President (Syria) to establish a committee of three to consult with the committee of the Trusteeship Council was adopted.<sup>6</sup>

At the 327th meeting on 25 June 1948, the President reported that agreement had not been reached at the first joint meeting of the committees of the two Councils. It was agreed not to fix a date for further discussion of the question until the Trusteeship Council had held a plenary meeting to define its attitude on the matter.<sup>7</sup>

At the 415th meeting on 7 March 1949, the Council had before it the report of its committee on the second joint meeting of 22 July 1948.<sup>8</sup> At the joint meeting the President of the Trusteeship Council had presented the views of the latter as follows:

"Having discussed the matter in some detail, the Trusteeship Council has authorized its Committee to inform you that the arrangements envisaged in the draft resolution recommended to the Security Council by its Committee of Experts would, subject to what I am about to say, be generally acceptable to the majority of the members of the Trusteeship Council—indeed, to all the members save one.

"The Trusteeship Council notes that, under the first paragraph, the Council retains wide freedom of action in relation to strategic areas under trusteeship in all matters not concerned with questions of security, including consideration of reports, ex-

amination of petitions and sending of visiting missions—subject, of course, to the terms of the relevant Trusteeship Agreements. Such an arrangement would be entirely acceptable to the Trusteeship Council.

"The second paragraph of the draft resolution would require the Trusteeship Council to send to the Security Council, one month before forwarding it to the Administering Authority concerned, a copy of the Questionnaire formulated by the Trusteeship Council with respect to a strategic area under trusteeship. The purpose of such prior scrutiny by the Security Council is not explicitly stated, but we understood at the previous meeting of our two Committees that the Questionnaire would be forwarded for approbation, as you put it, by the Security Council. The view of the Trusteeship Council is that the Security Council alone is competent to judge of security considerations, and that if, for security reasons, it desired to delete certain questions from such a questionnaire formulated by the Trusteeship Council, or to add certain questions, the Trusteeship Council could raise no objection. If, on the other hand, the Security Council were to request the Trusteeship Council to reframe, add or delete questions concerning, say, the educational advancement of the inhabitants of a strategic area under trusteeship—not for security reasons, but merely because the Security Council considered that the modifications it proposed were better designed to elucidate the state of educational advancement in the area—then the Trusteeship Council would not feel itself obliged to accede to such a request if it deemed that the request was not justified; since, where no considerations of security are involved, the Trusteeship Council believes that it alone is the competent judge in such matters.

"The third paragraph of the draft resolution would confer on the Trusteeship Council the duty to examine all reports and petitions received from strategic areas under trusteeship, and to report thereon to the Security Council. Here it is not clear whether the Trusteeship Council would be at liberty to proceed to dispose of all such reports and petitions in accordance with its normal procedure before reporting to the Security Council, or whether its functions would be strictly limited to examining and reporting to the Security Council. If the former interpretation be the correct one, the paragraph is entirely acceptable to the Trusteeship Council. The Trusteeship Council appreciates, of course, that in these, as in all other matters, it has no competence to handle questions involving considerations of security, and it would not therefore dispose of a report or petition which touched on such matters. The Trusteeship Council feels, however, that, as the Security Council would be advised of all such reports and petitions immediately upon their arrival, it would have ample opportunity to forestall any action by the Trusteeship Council on any report, petition or part thereof which involved security considerations.

"The fourth and final paragraph of the draft resolution is entirely acceptable to the Trusteeship Council..."

**Decision:** At the 415th meeting on 7 March 1949, the Council adopted the draft resolution proposed by

<sup>5</sup> S/632, O.R., 3rd year, Suppl. for Jan., Feb. and March 1948, p. 1.

<sup>6</sup> 324th meeting: pp. 16-17.

<sup>7</sup> 327th meeting: pp. 9-10.

<sup>8</sup> S/916, O.R., 4th year, Suppl. for March 1949, pp. 1-3.

the majority of the Committee of Experts<sup>9</sup> by 8 votes in favour, with 3 abstentions.<sup>10</sup>

At the same meeting the President (Cuba) stated, without objection, that the interpretation of the resolution "shall be that which was submitted by the majority of the Committee of the Trusteeship Council"<sup>11</sup> (statement of the President of the Trusteeship Council, *supra*).

By letter of 25 March 1949,<sup>12</sup> the President of the Trusteeship Council transmitted for the information of the Security Council the text of the following resolution adopted by the Trusteeship Council at its forty-sixth meeting:

"The Trusteeship Council,

"Having considered the resolution adopted by the Security Council at its 415th meeting on 7 March 1949 on the question of the functions of the Trusteeship Council in respect of strategic areas under trusteeship;

"Noting that this resolution was recommended to the Security Council by its Committee of Experts and that the interpretation given to it by the Trusteeship Council as set forth in document S/916 has met with the approval of the Security Council;

"Decides to undertake, in accordance with Article 83 (3) of the Charter and in the light of the Security Council's resolution and the interpretation given to it by the Trusteeship Council, those functions of the United Nations under the International Trusteeship System relating to political, economic, social and educational matters in the strategic areas under trusteeship;

"Decides to transmit to the Security Council a copy of the Provisional Questionnaire adopted by the Trusteeship Council at the 25th meeting of the first session for its consideration in accordance with paragraph 2 of the above-mentioned resolution;

"Requests the Secretary-General, if no observations are made by the Security Council within one month, to transmit the Provisional Questionnaire to the Government of the United States of America as the Administering Authority for the Trust Territory of the Pacific Islands."

#### ANNEX

At the 415th meeting on 7 March 1949, in connexion with the procedure under Article 83 (3) in application of Articles 87 and 88 of the Charter with regard to strategic areas under trusteeship, the representative of the United States stated:<sup>13</sup>

"The Security Council of course would retain full and ultimate responsibility for all action which the United Nations may take in regard to strategic areas. In so far as the Trusteeship Council would act in this matter, it would act on behalf of the Se-

curity Council. The Security Council, if it passed this resolution, would not in any way give up its responsibilities or its right to make further requests or recommendations to the Trusteeship Council in connexion with any matters dealt with in the proposal. It would merely recognize that, in view of the fact that the Trusteeship Council is far better fitted to perform the functions specified in Articles 87 and 88 of the Charter, and in view of the obligation—I say 'obligation'—of the Security Council to avail itself in this respect of the assistance of the Trusteeship Council, the most sensible arrangement would be to do so by a general request.

"... Such a course of action would be in keeping with the responsibilities of the Trusteeship Council as one of the principal organs of the United Nations, and would avoid that constant friction between the two Councils which we fear would result if, each time a problem arose, we had to decide which organ was to deal with it."

The representative of the USSR stated:<sup>14</sup>

"The USSR delegation feels obliged to point out, however, that the draft resolution of the Committee of Experts has one shortcoming: it is too general. According to its terms, the Security Council would determine its relation with the Trusteeship Council not only as regards strategic areas in the Pacific Ocean under United States trusteeship, for which the Security Council has approved a Trusteeship Agreement, but also as regards all areas which might be placed under trusteeship in the future under terms that are as yet unknown. Because of this defect, the USSR delegation feels unable to vote for the draft resolution proposed by the majority of the Committee of Experts, although it does not object to the definition of the work of the Trusteeship Council as regards strategic areas under United States trusteeship which that resolution provides."

#### B. TRANSMISSION TO THE SECURITY COUNCIL BY THE TRUSTEESHIP COUNCIL OF QUESTIONNAIRES AND REPORTS

##### CASE 24

At the request of the Trusteeship Council, the Secretary-General transmitted to the Security Council a Provisional Questionnaire drawn up by the Trusteeship Council relating to the Trust Territory of the Pacific Islands, designated as a strategic area.<sup>15</sup> No observations having been made on the Provisional Questionnaire by the Security Council within one month, it was transmitted to the Government of the United States of America as Administering Authority on 3 May 1949.

As of 31 December 1951, the Secretary-General had transmitted to the Security Council the following Reports of the Trusteeship Council on the exercise of its functions in respect of strategic areas under trusteeship:

First Report adopted during the fifth session of the Trusteeship Council, 22 July 1949;<sup>16</sup>

<sup>13</sup> 415th meeting: pp. 8-9.

<sup>14</sup> S/1358.

<sup>15</sup> S/1358.

<sup>9</sup> S/642, 415th meeting: pp. 6-7.

<sup>10</sup> 415th meeting: p. 9.

<sup>11</sup> 415th meeting: p. 9. For texts of relevant statements see: 220th meeting: President (United States), pp. 2754-2757.

324th meeting: Ukrainian SSR, pp. 1-3; USSR, pp. 3-7, 10-11; United Kingdom, pp. 11-12.

415th meeting: Egypt, pp. 10-11; USSR, pp. 7-9; United States, pp. 2-5.

<sup>12</sup> S/1301.

<sup>13</sup> 415th meeting: pp. 2-5.

Second Report adopted during the seventh session of the Trusteeship Council, 14 July 1950;<sup>17</sup>

Third Report adopted during the eighth session of the Trusteeship Council, 12 March 1951.<sup>18</sup>

<sup>17</sup> S/1628.

<sup>18</sup> S/2069.

## Part IV

### RELATIONS WITH THE INTERNATIONAL COURT OF JUSTICE

#### *Article 94 of the Charter*

"1. Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.

"2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment."

#### *Article 96 of the Charter*

"1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.

"2. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities."

#### STATUTE OF THE INTERNATIONAL COURT OF JUSTICE

#### *Article 35 of the Statute*

"1. The Court shall be open to the states parties to the present Statute.

"2. The conditions under which the Court shall be open to other states shall, subject to the special provisions contained in treaties in force, be laid down by the Security Council, but in no case shall such conditions place the parties in a position of inequality before the Court."

#### *Article 41 of the Statute*

"1. The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.

"2. Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and to the Security Council."

#### NOTE

Section A presents the conclusions of the Security Council regarding the conditions under which the International Court of Justice should be open to states not parties to the Statute.

Section B presents the considerations adduced in the Security Council regarding requests for advisory opinions.

Section C presents the argumentation in connexion with a proposal for measures by the Security Council to ensure the observance of provisional measures indicated by the Court under Article 41 of the Statute of the International Court of Justice.

Material relating to Article 36 (3) of the Charter is included under that Article in chapter X.

As of December 1951, the International Court had not handed down an advisory opinion on the request of the Security Council. On one occasion a formal proposal to request an advisory opinion was adopted, but the Court had no occasion to render an advisory opinion since the Legal (Sixth) Committee of the General Assembly proposed a rule of procedure on the problem which proved acceptable to the Security Council.<sup>1</sup> Other draft resolutions to request an advisory opinion have been voted upon and rejected.

The following proposals to request advisory opinions were formally submitted to the Council, but were not voted upon:

(i) By the representative of China in connexion with the voting procedure of the Security Council during consideration of the complaint of armed invasion of Taiwan (Formosa), at the 507th meeting on 29 September 1950;<sup>2</sup>

(ii) By the representative of Egypt\* in connexion with the voting procedure of the Security Council during consideration of the Palestine question, at the 555th meeting on 27 August 1951.<sup>3</sup>

There have also been suggestions made by members of the Council not in the form of formal proposals. Such suggestions were made on the following occasions:

(i) By the representative of the United Kingdom in connexion with the Spanish question, at the 46th meeting on 17 June 1946;<sup>4</sup>

(ii) By the representative of the Netherlands in connexion with the admission of new Members, at the 56th meeting on 29 August 1946;<sup>5</sup>

(iii) By the representative of Pakistan in connexion with the Hyderabad question, at the 426th meeting on 24 May 1949;<sup>6</sup>

(iv) By the representative of Ecuador in connexion with the Anglo-Iranian Oil Company case, at the 562nd meeting on 17 October 1951.<sup>7</sup>

#### A. THE CONDITIONS UNDER WHICH THE INTERNATIONAL COURT OF JUSTICE SHALL BE OPEN TO STATES NOT PARTIES TO THE STATUTE

##### CASE 25

By letter dated 1 May 1946,<sup>8</sup> the President of the International Court of Justice requested information

<sup>1</sup> Case 26.

<sup>2</sup> 507th meeting: pp. 5-7. For discussion on the Chinese proposal see chapter IV, Cases 99 and 106.

<sup>3</sup> S/2313, 555th meeting: p. 16. For discussion of the Egyptian draft resolution see chapter IV, Case 120.

<sup>4</sup> 46th meeting: p. 347.

<sup>5</sup> 56th meeting: pp. 95-96.

<sup>6</sup> 426th meeting: p. 8.

<sup>7</sup> 562nd meeting: pp. 156-160.

<sup>8</sup> S/99, O.R., 1st year, 2nd series, Suppl. No. 1, pp. 8-12.

on any decision the Security Council might see fit to take in accordance with Article 35 (2) of the Statute of the International Court of Justice, in the matter of access to the Court by States not parties to the Statute.

At its 50th meeting on 10 July 1946, the Council referred the matter to the Committee of Experts.<sup>9</sup>

At the 76th meeting on 15 October 1946, the Council had before it the report of the Committee in which the Committee submitted a draft resolution with certain observations thereon. The Committee indicated that the draft resolution constituted a solution of the problem analogous to the resolution adopted by the Council of the League of Nations on 17 May 1922, with modifications necessary to adapt the text to the provisions of the Charter and the new Statute.

"Thus, the last sentence of the first paragraph of that resolution, providing that the Court is open to any non-member State of the League of Nations or not mentioned in the Annex to the Covenant, on condition that 'such State shall not resort to war against a State complying with the decisions' (of the Court), has been omitted, because that condition was based upon a provision of the Covenant which underlies the Charter as a principle and for that reason does not appear in the corresponding section of that document. Another provision, which requires a State not party to the Statute to accept all the obligations imposed upon a Member of the United Nations by Article 94 of the Charter, has been substituted for the former condition.

"The second paragraph of the draft resolution refers to the types of declaration which may be made by a State not party to the Statute in order to obtain access to the Court.

"In this connexion, it should be emphasized that the mere deposit of a declaration does not suffice to confer on the Court jurisdiction over a specific case. A State party to the Statute cannot, without its consent, be brought before the Court by a State not party to the Statute. The mutual consent of both parties to the dispute, either for a particular case or generally for future cases, is required for the Court to be seized of a dispute.

"An express reservation has been made in paragraph 2 of the draft resolution to prevent a State party to the Statute, having recognized the Court's compulsory jurisdiction, from being bound by the fact that a State not a party to the Statute accepts the compulsory jurisdiction of the Court under Article 36, paragraph 2, of the Statute.

"The Committee accepted a revision whereby the passage 'and to such other States as the Court may determine', which appears in the text of the 1922 resolution, was deleted and replaced, in the third paragraph of the draft resolution, by the words 'and to such other States as shall have deposited a declaration under the terms of this resolution'. The Committee considers that notification of declarations by the Court is of a purely informative nature and does not change the status of a State so notified in relation to the Court."<sup>10</sup>

At the 76th meeting on 15 October 1946, the Security Council adopted unanimously the draft resolution submitted by the Committee of Experts.<sup>11</sup> The resolution read as follows:

"The Security Council of the United Nations in virtue of the powers conferred upon it by Article 35, paragraph 2, of the Statute of the International Court of Justice, and subject to the provision of that Article,

"Resolves that:

"(1) The International Court of Justice shall be open to a State which is not a party to the Statute of the International Court of Justice, upon the following condition, namely: that such State shall previously have deposited with the Registrar of the Court a declaration by which it accepts the jurisdiction of the Court, in accordance with the Charter of the United Nations and with the terms and subject to the conditions of the Statute and rules of the Court, and undertakes to comply in good faith with the decision or decisions of the Court and to accept all the obligations of a Member of the United Nations under Article 94 of the Charter.

"(2) Such declaration may be either particular or general. A particular declaration is one accepting the jurisdiction of the Court in respect only of a particular dispute or disputes which have already arisen. A general declaration is one accepting the jurisdiction generally in respect of all disputes or of a particular class or classes of disputes which have already arisen, or which may arise in the future.

"A State, in making such a general declaration may, in accordance with Article 36, paragraph 2, of the Statute, recognize as compulsory, *ipso facto*, and without special agreement, the jurisdiction of the Court, provided, however, that such acceptance may not, without explicit agreement, be relied upon *vis-à-vis* State parties to the Statute, which have made the declaration in conformity with Article 36, paragraph 2, of the Statute of the International Court of Justice.

"(3) The original declarations made under the terms of this resolution shall be kept in the custody of the Registrar of the Court, in accordance with the practice of the Court. Certified true copies thereof shall be transmitted, in accordance with the practice of the Court, to all States parties to the Statute of the International Court of Justice, and to such other States as shall have deposited a declaration under the terms of this resolution, and to the Secretary-General of the United Nations.

"(4) The Security Council of the United Nations reserves the right to rescind or amend this resolution by a resolution which shall be communicated to the Court and, on the receipt of such communication and to the extent determined by the new resolution, existing declarations shall cease to be effective except in regard to disputes which are already before the Court.

"(5) All questions as to the validity or the effect of a declaration made under the terms of this resolution shall be decided by the Court."

<sup>9</sup> 50th meeting: pp. 7-8.

<sup>10</sup> S/169, O.R., 1st year, 2nd Series, Suppl. No. 6, pp. 153-156.

<sup>11</sup> 76th meeting: p. 468.

## B. PRACTICES AND PROCEEDINGS IN RELATION TO ADVISORY OPINIONS

## CASE 26

At the 9th meeting on 6 February 1946, in connexion with the first election of judges of the International Court of Justice, divergent views were expressed concerning the requirements of Articles 11 and 12 of the Statute. In submitting a compromise proposal for the conduct of elections at the 9th meeting, the representative of the United Kingdom indicated his intention of proposing that the Council ask the Court for an advisory opinion on this matter. After the election result had been announced, the representative of the United Kingdom moved<sup>12</sup> that the Council

"... propose to the Assembly that we should ask, either as separate bodies, or the Assembly should ask, for an advisory opinion of the Court, when it is established, on this point."

The proposal was adopted without vote.<sup>13</sup> The representatives of the USSR inquired whether the question to be transmitted to the Court would concern the election of a particular judge or "a more general question." The President (Australia) replied that "a more general question relating to the interpretation of the Charter" would be submitted to the Court.<sup>14</sup>

At the 138th meeting on 4 June 1947, the Security Council considered a draft rule of procedure on this subject which had been adopted by the General Assembly on the recommendation of the Sixth Committee.<sup>15</sup> The report of the Sixth Committee, which was transmitted to the Council,<sup>16</sup> took note of the "suggestion that the Court itself should be asked to give an advisory opinion as to the requirements of Articles 11 and 12", but concluded:

"At the present stage the Sixth Committee does not recommend any action should be taken to request an advisory opinion on this matter from the International Court of Justice."

The Security Council, concurring in the resolution of the Assembly, adopted rule 61 concerning the application of Articles 11 and 12 of the Statute.<sup>17</sup>

## CASE 27

At the 194th and 195th meetings on 25 and 26 August 1947, in connexion with the Indonesian question (II), the Council considered a Belgian draft resolution<sup>18</sup> to request the International Court of Justice, under Article 96 of the Charter, to give an advisory opinion on whether the Security Council was competent to deal with the question.<sup>19</sup>

Statements in support of the Belgian draft resolution were made by the representatives of France and

the United Kingdom on the grounds that it would help build up a body of rules concerning the question of competence, based on the opinion of the highest legal authority under the Charter. The representative of the United States had doubts only on the question whether the Council had competence "to impose a particular method of peaceful settlement" but, for reasons of courtesy and out of consideration for the doubts of others, he supported the Belgian draft resolution to refer the broader questions of jurisdiction to the Court for an advisory opinion.<sup>20</sup>

In the course of the discussion the following points concerning the request for an advisory opinion were discussed:

## i. Method of initiating a request

The method of initiating a request for an advisory opinion had been discussed earlier at the 173rd meeting on 1 August 1947, in connexion with a French suggestion that the Council request an advisory opinion from the Court as to whether the Council had competence in the case before it to take decisions beyond "an appeal on humanitarian grounds" for the cessation of hostilities. In opposing any reservation regarding the Council's competence, as suggested by the representatives of France and the Netherlands, the representative of Colombia observed that:

"... the Netherlands Government can, at any time after making its reservations here, apply to the Court to test the legality of the resolution. That seems to be the ordinary course."

The representative of the Netherlands\* replied:<sup>21</sup>

"... advisory opinions can be requested only by a body authorized to that effect by or in accordance with the Charter of the United Nations. The Security Council or certain other organs can, but a Member State cannot." No action was taken on the French suggestion.<sup>22</sup>

## ii. The effect of a request for an advisory opinion upon continued consideration by the Council and upon implementation of prior decisions in the case

The representative of the USSR observed that the adoption of the Belgian draft resolution would cast doubt on the decision taken at the 173rd meeting.<sup>23</sup> The representative of the United Kingdom was of the opinion that a request for an advisory opinion could not "possibly present or delay action on the resolutions already adopted by this Council". The representative of the United States supported the Belgian draft resolution while his own draft resolution (S/514) to provide good offices was pending. He was of the opinion that

"Pending a ruling from the International Court, the question of jurisdiction will not arise at any stage of the exercise of these good offices because they will be exercised by the Council at the request of the parties concerned."

<sup>12</sup> 9th meeting: pp. 156-160.

<sup>13</sup> 9th meeting: p. 160.

<sup>14</sup> 9th meeting: p. 164.

<sup>15</sup> Members of the General Assembly had raised the question of obtaining an advisory opinion independently. This item was placed on the agenda of the General Assembly and transmitted to the Sixth Committee. *G.A.O.R., plenary meetings, 1st part, 1st session*, p. 666.

<sup>16</sup> A/191 was transmitted with S/260.

<sup>17</sup> For the consideration of rule 61, see part I, section D.

<sup>18</sup> S/517, 194th meeting: p. 2193.

<sup>19</sup> For text, see chapter XII, Case 9.

<sup>20</sup> For texts of relevant statements see:

194th meeting: Belgium, p. 2194.

195th meeting: Belgium, p. 2214; France, pp. 2214-2215; United Kingdom, pp. 2218-2219; United States, p. 2222.

<sup>21</sup> For texts of relevant statements see: 173rd meeting: Colombia, p. 1693; France, p. 1678; Netherlands, p. 1695.

<sup>22</sup> 173rd meeting: pp. 1712-1713.

<sup>23</sup> 173rd meeting: p. 1710.



The representative of France, recalling the adoption of the United States draft resolution at the 194th meeting, was of the opinion that reference to the International Court could not in the circumstances in any way retard or embarrass such decisions as the Council might take subsequently. The representative of China was of the opinion that the appropriate occasion for a resolution requesting an advisory opinion had passed. He maintained, however, that if the Council did request an advisory opinion it did not have to cease all action in the matter since it would not be seeking a judgment but an opinion. As regards the consequences of an opinion, he stated:

"... Once it was presented to us, we could not very well disregard it. Legally, we are not bound to accept such an opinion; morally, however, it would be a very grave matter indeed if such an opinion were to be set at naught by the Council."

The representative of India also stressed the continuing responsibility of the Council after the Court had handed down an opinion. In reply to those who contended that the adoption of the Belgian draft resolution would serve as a useful precedent, the representative of Australia observed that in every case the facts and circumstances were different.<sup>24</sup>

### iii. *Whether the question was legal or political*

The representative of Belgium maintained that the subject of the advisory opinion fell within the competence of the Court. The representative of Australia stated:

"If this were a purely legal, technical question, my delegation would support such a resolution. But this is not purely a legal question; it has grave political implications and affects world security."

The representative of the USSR observed that the adoption of the Belgian draft resolution would divert attention "from the substance of the question to legal considerations of secondary importance". The representative of India questioned whether a legal question was involved. The representative of Poland stated:<sup>25</sup>

"The Belgian representative invoked Article 96 of the Charter. Article 96 states that the General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question. The question of competence, however, is not a legal question; it is a political question; it is a question on which a decision can be taken only by the Security Council."

### iv. *Regarding the priority to be given to a draft resolution to request an advisory opinion*

At the 194th meeting, several draft resolutions were pending concerning the settlement of the Indonesian question (II). The representative of Belgium raised a point of order in connexion with the priority which the President had given to the pending draft resolutions. He maintained that the question of jurisdiction

was a preliminary question which took priority over all others. All other motions, he observed, assumed in advance that the question of jurisdiction had been decided in the affirmative.<sup>26</sup> The representative of Belgium moved that his draft resolution be given priority in accordance with rule 32.<sup>27</sup> The Belgian motion was rejected, having failed to obtain the affirmative votes of 7 members.<sup>28</sup>

At the 194th meeting, the representative of the United Kingdom submitted an amendment to the Belgian draft resolution. He was of the opinion that while the draft resolution asked for "a simple answer, yes or no", it would be more useful for the Council "to have the rather more extensive and reasoned opinion which we might expect from the International Court of Justice". The representative of the United Kingdom proposed that the operative part of the draft resolution be amended to request an "advisory opinion concerning the competence of the Security Council to deal with the aforementioned question".<sup>29</sup> The representative of Belgium accepted the United Kingdom amendment.<sup>30</sup> Before his draft resolution was put to the vote at the 195th meeting, the representative of Belgium remarked that, if the views of those who had opposed his request were upheld, the Court might "remain in its present state of inactivity and . . . become a useless institution".<sup>31</sup>

**Decision:** *The Belgian draft resolution, as amended, was rejected, having failed to obtain the affirmative votes of seven members.*<sup>32</sup>

### CASE 28

At the 334th meeting on 13 July 1948, in connexion with the Palestine question, the representative of Syria submitted a draft resolution<sup>33</sup> to request

"... the International Court of Justice, pursuant to Article 96 of the Charter, to give an advisory legal opinion as to the international status of Palestine after the termination of the Mandate".

In introducing the draft resolution, the representative of Syria observed that a pending United States draft resolution,<sup>34</sup> raised the question of the international status of Palestine. He also referred to the relation of this question to the action which was contemplated under Chapter VII, suggested several questions to be submitted to the Court<sup>35</sup> and mentioned the possibility of establishing a sub-committee to draw up the questions. He also recalled General Assembly resolution 171 (II) which recommended that more use be made of the International Court of Justice.

Discussion on the Syrian and United States draft resolutions took place from the 334th to 338th meetings from 13 through 15 July 1948. Consideration of the Syrian draft resolution continued, after the adoption of the United States draft resolution as amended,<sup>36</sup> at the 339th and 340th meetings on 27 July 1948. In

<sup>24</sup> 194th meeting: p. 2193.

<sup>25</sup> For consideration of the application of rules 32 and 33 in this case, see chapter I, Case 74.

<sup>26</sup> 194th meeting: p. 2196.

<sup>27</sup> 194th meeting: p. 2210.

<sup>28</sup> 195th meeting: p. 2214.

<sup>29</sup> 195th meeting: p. 2224.

<sup>30</sup> 195th meeting: p. 2224.

<sup>31</sup> S/894, 334th meeting: pp. 52-53.

<sup>32</sup> S/890, 334th meeting: pp. 40-41.

<sup>33</sup> 334th meeting: pp. 52-53; 337th meeting: p. 12.

<sup>34</sup> S/902, O.R., 3rd year, Suppl. for July 1948, p. 76.

<sup>24</sup> For texts of relevant statements see:

194th meeting: USSR, pp. 2210-2211; United States, p. 2201.

195th meeting: Australia, pp. 2215-2217; China, pp. 2217-2218; France, p. 2215; India, pp. 2219-2220; United Kingdom, p. 2218.

<sup>25</sup> For texts of relevant statements see:

194th meeting: USSR, p. 2211.

195th meeting: Australia, pp. 2215-2217; Belgium, p. 2214; Poland, p. 2222.



the course of the discussion, the following points concerning the request for an advisory opinion were discussed:

i. *The effect of a request for an advisory opinion upon continued consideration by the Council and upon implementation of prior decisions in the case*

The representatives of Belgium and Colombia, speaking in support of both the United States and the Syrian draft resolutions, were of the opinion that a request would not delay either the cessation of hostilities or the settlement of the question. The representative of the USSR, speaking after the adoption of the United States draft resolution, declared that the Syrian draft resolution was unacceptable since it might affect the implementation of the decisions taken by the Council as well as General Assembly resolution 181 (II) of 29 November 1947. In reply the representative of Syria stated:<sup>37</sup>

"... I confirm it now, that this resolution would not hinder the implementation of the other resolution (S/902)... The purpose of this resolution is merely to obtain a legal advisory opinion; the resolution which was adopted this evening would proceed in its own way. There is no danger that one would obstruct the other."

At the 339th meeting the representative of Colombia submitted an amendment<sup>38</sup> to add to the Syrian draft resolution the following sentence:

"This request should be made provided it will not delay or impair the normal process of mediation."

In explaining the purpose of the amendment, the representative of Colombia mentioned that under his amendment the Mediator himself might be able to refer questions of a judicial nature to the Court. The representative of Syria accepted the Colombian amendment.<sup>39</sup>

ii. *Whether the question was legal or political*

As regards the contention that this was a political question, the representative of Syria observed:

"If the Court decides that this is a political question and that the Court should have nothing to do with it, it may do so and return the question to us as not within the competence of the Court..."

He also drew the attention of the Council to the basis of his request. The request was not made under Article 36 (3) concerning the pacific settlement of a question, but under Article 96, which, he contended, covered "any legal aspect of any question that comes before the Security Council at any time". Having recalled that his delegation had supported an earlier unsuccessful proposal in the General Assembly to request an advisory opinion, the representative of France expressed the view that the Palestine question had become too complex and was "obviously of much too political a character to hope that it could be settled by judges bound only by law". The representative of

the USSR was of the opinion that a request for an advisory opinion under Article 96 "should be made before and not after a decision is taken". As regards the request for an advisory opinion under Article 96 regarding the status of Palestine, the representative of Israel<sup>40</sup> stated that the Court could only be asked legal questions and that "it is certain that the existence of a State is a question of fact and not of law".<sup>40</sup>

iii. *Relations of the Security Council with the International Court of Justice*

The representative of Syria maintained that among the differences between his draft resolution and the Belgian draft resolution in connexion with the Indonesian question (II) was that, since the rejection of that draft resolution,<sup>41</sup> the General Assembly had adopted a resolution recommending recourse to the Court for the interpretation of the Charter and all matters with legal aspects. The President, speaking as the representative of the Ukrainian SSR, stated that the International Court of Justice could not be regarded as a kind of court of appeal from the decisions of the General Assembly and the Security Council.<sup>42</sup>

When the President (Ukrainian SSR) put the Syrian draft resolution, as amended by the representative of Colombia, to the vote, the representative of Syria deleted the words "after the" and substituted the words "arising from" (the termination of the mandate).<sup>43</sup>

**Decision:** *The Syrian draft resolution was rejected, having failed to obtain the affirmative votes of seven members.*<sup>44</sup>

C. PRACTICES AND PROCEEDINGS IN RELATION TO ARTICLE 94 (2) OF THE CHARTER AND ARTICLE 41 (2) OF THE STATUTE

CASE 29<sup>45</sup>

On 11 July 1951, pursuant to Article 41, paragraph 2, of the Statute of the International Court of Justice, a copy of the Order of 5 July 1951 indicating, at the request of the United Kingdom, interim measures of protection in the Anglo-Iranian Oil Company case, was transmitted to the members of the Security Council.<sup>46</sup>

By letter dated 29 September 1951,<sup>47</sup> the representative of the United Kingdom requested the Security Council to consider the complaint "of failure by the Iranian Government to comply with provisional meas-

<sup>37</sup> For texts of relevant statements see:

336th meeting: France, p. 24.

338th meeting: Israel, p. 69; Syria, p. 67; USSR, p. 67.

339th meeting: Syria, pp. 2-9; USSR, p. 15.

340th meeting: Israel, p. 29.

<sup>38</sup> For consideration of the Belgian draft resolution, see Case 27.

<sup>39</sup> For texts of relevant statements see:

337th meeting: Syria, p. 11.

338th meeting: President (Ukrainian SSR), pp. 30, 68; USSR, p. 67.

339th meeting: Syria, p. 5.

<sup>40</sup> 340th meeting: p. 33.

<sup>41</sup> 340th meeting: pp. 33-34.

<sup>42</sup> For discussion on the claim of domestic jurisdiction, see chapter XII, Case 19.

<sup>43</sup> S/2239, O.R., 6th year, Suppl. for Oct., Nov. and Dec. 1951, p. 1.

<sup>44</sup> S/2357, O.R., 6th year, Suppl. for Oct., Nov. and Dec. 1951, pp. 1-2.

<sup>45</sup> See also chapter VIII, for the proceedings of the Council.

<sup>37</sup> For texts of relevant statements see:

335th meeting: Belgium, pp. 4-5; China, pp. 6, 34; Egypt, p. 13.

336th meeting: Colombia, p. 26; France, p. 24.

338th meeting: Egypt, p. 68; Syria, p. 67; USSR, p. 67.

339th meeting: Argentina, pp. 12-13; Canada, pp. 11-12; China, p. 14; Colombia, p. 10; USSR, p. 15; United Kingdom, p. 13.

<sup>38</sup> S/921, 339th meeting: p. 12.

<sup>39</sup> 339th meeting: p. 18.

ures indicated by the International Court of Justice in the Anglo-Iranian Oil Company case".

In the consideration of the question by the Council two issues arose concerning the relations of the Council with the International Court of Justice.

i. *The responsibilities of the Security Council in respect of provisional measures indicated by the International Court of Justice under Article 41 of the Statute*

Appended to the letter of submission of the United Kingdom was a draft resolution the preamble of which recited the events consequent on the indication of provisional measures by the International Court of Justice. By the operative clauses, the Security Council was to call upon the Government of Iran "to act in all respects in conformity with the provisional measures recommended by the Court and, in particular, to permit the continued residence in Abadan of the staff affected by the recent expulsion orders..."

At the 559th meeting on 1 October 1951, in connexion with the inclusion of the item in the agenda, the representative of the United Kingdom urged that the decision of the Court on interim measures would alone justify the Council in taking up the matter since it gave rise to international obligations under the Charter which it was "the right and duty of the Security Council to uphold". He contended that the notification to the Council of provisional measures in accordance with Article 41, paragraph 2, of the Statute of the Court clearly implied "that the Security Council has the power to deal with matters arising out of such interim measures". The representative of the United Kingdom further contended that the Council had "special functions in relation to decisions of the Court" not only under Article 94 (2) of the Charter, but in connexion with Article 41 (2) of the Statute. He stated:<sup>48</sup>

"It may of course be argued ... that Article 94, paragraph 2, of the Charter only applies to final judgments of the Court and, consequently, not to decisions on interim measures ... I can only point out that the whole object of interim measures — as, indeed, Article 41 of the Statute clearly indicates — is to preserve the respective rights of the parties pending the final decision; in other words, to prevent a situation from being created in which the final decision would be rendered inoperative or impossible of execution because of some step taken by one of the parties in the meantime with the object of frustrating that decision ... It is, therefore, a necessary consequence, we suggest, of the bindingness of the final decision that the interim measures intended to preserve its efficacy should equally be binding."

At the 560th meeting on 15 October 1951, the representative of Iran<sup>49</sup> contended that, under Article 94 of the Charter, before a party to a case before the International Court of Justice was obliged to comply with a decision of the Court, that decision had to be final and binding. He further stated:<sup>49</sup>

"If we look to Article 41 of the Statute of the Court, which confers on the latter power to indicate provisional measures, it appears that these cannot be final since Article 41 states that they are to be

suggested 'pending the final decision'. It is only to the final judgment, however, that the Statute (Article 59) attributes binding force. It is only the final judgment which is a binding decision, and it is only with respect to such binding decisions that Members of the United Nations have, by Article 94 of the Charter, given undertakings of compliance — and then only in cases to which they are parties.

"The United Kingdom representative [559th meeting], indeed, argues that there would be no point in making a final decision binding if one of the parties could frustrate that decision in advance and so render the final judgment nugatory. This is an argument *de lege ferenda* rather than one declaratory of existing law. Indeed, the language of Article 41 itself negatives the inference which the United Kingdom representative would have the Security Council draw. That language is exhortative and not obligatory. The provisional measures indicated by the Court would have binding force only if the parties were bound by an arbitration treaty expressly obligating them to respect such measures.

"The United Kingdom representative also attempts to derive the Security Council's authority from the provision in paragraph 2 of Article 41 of the Statute that the Court shall notify the Council of interim measures indicated by it. The inference is far-fetched and encounters the insuperable objection that an international instrument which concerns exclusively the rights and duties of the International Court cannot be construed to confer powers on the Security Council by implication. The meaning of the requirement of notice to the Security Council would appear to be obvious. It is designed to further that co-operation which is required of all organs of the United Nations. Situations may well be conceived in which it may be of interest or importance to the Security Council in the exercise of its own authority under the Charter — for it has none under the Statute — to be informed of provisional measures indicated by the Court."

The representative of Iran maintained that the Council had no competence to lend its authority to the provisional measures indicated by the International Court of Justice.<sup>50</sup> He recalled that his Government in their Note of 9 July 1951<sup>51</sup> had informed the Secretary-General that, in their opinion, the indication of the Court was invalid in view of the fact that the Court had no jurisdiction in the case and because the indication was clearly outside the terms of the Iranian declaration of 2 October 1930, recognizing the compulsory jurisdiction of the Court, which the Government of Iran was withdrawing.<sup>52</sup>

At the 560th meeting on 15 October 1951, the representative of the United Kingdom submitted a revised draft resolution<sup>53</sup> the preamble of which drew attention to the provisional measures indicated by the Court. By the operative clauses the Council was to resolve the differences between the parties,

"... in accordance with the principles of the provisional measures indicated by the International Court of Justice unless mutually agreeable arrange-

<sup>48</sup> 560th meeting: p. 11.

<sup>49</sup> U.N. Registry No. 46/04, (8).

<sup>50</sup> 560th meeting: p. 9.

<sup>51</sup> S/2358/Rev.1, O.R., 6th year, Suppl. for Oct., Nov. and Dec. 1951, pp. 3-4.

<sup>48</sup> 559th meeting: p. 20.

<sup>49</sup> 560th meeting: p. 12.

ments are made consistent with the Purposes and Principles of the United Nations Charter."

The representatives of India and Yugoslavia submitted amendments to the revised United Kingdom draft resolution<sup>54</sup> which, by the deletion of all reference to the provisional measures indicated by the Court, were designed to avoid the legal issues of the competence of the Council in respect of those measures.

The representative of Ecuador expressed inability to support the revised United Kingdom draft resolution as amended. He stated:<sup>55</sup>

"In regard to the power of the Council under Article 94, paragraph 2, of the Charter to make recommendations or decide upon measures to be taken to give effect to a judgment rendered by the Court, it seems to me that the wording of Article 94 implies that the power of the Council comes into being only when the International Court of Justice gives a final judgment, and not when it merely indicates provisional measures, even though, according to the Court, these are intended to ensure that effect shall be given to a later final judgment.

"Consequently, the failure of a State to observe provisional measures indicated by the Court does not empower the Security Council to make recommendations under Article 94, paragraph 2, of the Charter. But . . . my Government would be prepared to vote in favour of a decision by the Council to refer this question to the Court itself; that is to say, the question whether the Council may make recommendations under Article 94, paragraph 2, of the Charter if one of the parties has failed to comply with provisional measures."<sup>56</sup>

## ii. Competence of the International Court in relation to the competence of the Security Council

At the 559th meeting, during the discussion concerning competence in connexion with the adoption of the agenda, the representative of the United Kingdom maintained that the Court, in its finding on interim measures, had indicated that it considered that the case was, "at least *prima facie*, internationally justiciable, and not therefore a mere matter of domestic jurisdiction". He was of the opinion that by Article 93 of the Charter "this decision of the Court regarding its jurisdiction is binding on all Members" and it followed that the Council had "the right and duty . . . to uphold" such obligations.

The representative of the United States stated that, because the question was the subject of litigation in the International Court of Justice, the Council had a reason for not accepting the objection that the matter was essentially within the domestic jurisdiction of Iran.

The representative of Yugoslavia maintained that the Council was not bound by decisions which other United Nations organs had taken with regard to competence.

The representative of India observed that the Court had not finally decided the question of jurisdiction. He stated:

"It may not therefore be wise or proper for us to pronounce on this question while substantially the same question is *sub judice* before the International Court of Justice. Just as the International Court of Justice indicated provisional measures without prejudging the question of jurisdiction, it may be possible for this Council also to ask for the resumption of negotiations between the parties without prejudging that question in any way."

At the 562nd meeting on 17 October 1951, the representative of Ecuador considered that as the Court had not finally ruled on the question of competence it would be inadvisable for the Council to take a decision on this point at that time. He also maintained that, if the Court declared itself competent and gave a final judgment,

" . . . then, if either Iran or the United Kingdom refuses to comply with the judgment, the other State will clearly be entitled to appeal to the Security Council in accordance with Article 94, paragraph 2, of the Charter. If, on the other hand, the Court decides that it is not competent because the case falls within the domestic jurisdiction, the Security Council should not then intervene in a legal matter, as this would be against the authority of the highest judicial organ of the United Nations."

The representative of Ecuador submitted a draft resolution<sup>57</sup> to advise the re-opening of negotiations while expressly reserving the question of the Council's competence. He observed that he had inserted the second paragraph in the preamble, stating that "the Court is to express its opinion" on the question of jurisdiction, "because it gives the legal reason why we should not rule on our competence here and now".<sup>58</sup> He was, however, willing to have this paragraph deleted, if the majority considered it undesirable.

At the 565th meeting on 19 October 1951, the representative of France proposed that the Security Council adjourn its debate until the International Court of Justice had ruled on its own competence in the matter.<sup>59</sup>

The representative of the United Kingdom stated:

"I should think that any doubts of a legal character which rested with any members of the Council would be set at rest as regards the competence of this body if the Court should decide—I admit it may not decide—that it is in fact competent to deal with the matter and should therefore hand down its judgment. At that moment, I suggest there would be, or could be, no legal doubts left, about the competence of the Council in this matter. . . ."

The representative of China stated:

"The competence of the Security Council and the competence of the International Court of Justice are not identical. Should the Court decide that it is not competent to render judgment on this question, that would not automatically mean that the Security Council is also not competent to deal with the question. On the other hand, should the Court decide that it is competent to render judgment on this question, that also would not automatically mean that the Security Council is competent."

The representative of India stated that he supported the French proposal since "the question whether the

<sup>54</sup> S/2379, 561st meeting: pp. 15-16.

<sup>55</sup> 562nd meeting: p. 8.

<sup>56</sup> For texts of relevant statements see:

559th meeting: United Kingdom, p. 20.

560th meeting: Iran, pp. 9-12, 27; United Kingdom, p. 2.

561st meeting: India, p. 17; Iran, pp. 5, 7; United Kingdom,

p. 23; Yugoslavia, pp. 18-19.

562nd meeting: Ecuador, pp. 5-6, 8-9.

<sup>57</sup> S/2380, 562nd meeting: p. 10.

<sup>58</sup> 562nd meeting: p. 10.

<sup>59</sup> 565th meeting: pp. 2-3.

matter is essentially domestic in character is now *sub judice*".

The French proposal was adopted.<sup>50</sup> In explaining his abstention, the representative of Yugoslavia stated:

"I had to abstain because I felt that the motion implied that the question of competence of the Security Council depends, at least to a certain degree, on the decision of another United Nations body, an opinion which I do not share."

<sup>50</sup> 565th meeting: p. 12.

The other draft resolutions were not put to the vote.<sup>51</sup>

<sup>51</sup> For texts of relevant statements see:

559th meeting: Netherlands, p. 5; United Kingdom, p. 4; United States, p. 6; Yugoslavia, p. 3.

560th meeting: Iran, pp. 3, 9, 12.

562nd meeting: Ecuador, pp. 5-6.

563rd meeting: President (Brazil), p. 40; Netherlands, p. 32.

565th meeting: China, p. 5; Ecuador, p. 5; France, pp. 2-3; India, pp. 9-10; United Kingdom, pp. 6-7; Yugoslavia, p. 13.

## Part V

### RELATIONS WITH THE MILITARY STAFF COMMITTEE

#### NOTE

The material in this part consists of evidence from the Official Records of the Security Council regarding the constitutional relations of the Security Council and the Military Staff Committee. Decisions of the Council on reports of the Military Staff Committee in the discharge of its functions are entered in chapter IX. Material bearing on Article 43 of the Charter is inserted in chapter XI.

The draft statute and draft rules of procedure of the Military Staff Committee, submitted to the Security Council on 14 February 1946, were issued as restricted documents.<sup>1</sup> Certain matters relating to the draft statute

and the draft rules of procedure were taken up in correspondence between the Secretary-General and the Military Staff Committee,<sup>2</sup> as a result of which a revised draft statute and revised draft rules of procedure were transmitted to the Council on 1 August 1946.<sup>3</sup> The draft statute and draft rules having been referred to the Committee of Experts by directives of the Security Council of 16 February and 26 March 1946,<sup>4</sup> questions relating to these documents were the subject of further correspondence between the Committee of Experts and the Military Staff Committee.<sup>5</sup> The report of the Committee of Experts was issued on 17 July 1947.<sup>6</sup>

#### Article 47 (1) and 47 (2) of the Charter

1. There shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament.

2. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires the participation of that Member in its work.

#### CASE 30

At the 2nd meeting on 25 January 1946, the Security Council adopted the draft directive to the Military Staff Committee proposed by the Preparatory Commission<sup>7</sup> which read as follows:<sup>8</sup>

"By Article 47 of the Charter the United Nations have agreed that there shall be established a Military Staff Committee to advise and assist the Security Council, and that the Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives.

"Therefore

"1. The Security Council requests the permanent members of the Security Council to direct their Chiefs of Staff to meet or to appoint representatives who shall meet at London prior to 1 February 1946;

"2. The Security Council directs that the Chiefs of Staff or their representatives when so assembled shall constitute the Military Staff Committee referred to above;

"3. The Security Council directs the Military Staff Committee thereupon as its first task to draw up proposals for its organization (including the appropriate secretariat staff) and procedure and to submit these proposals to the Security Council."

At the 23rd meeting on 16 February 1946, the Council requested the Military Staff Committee to meet in New York simultaneously with the first meeting of the Council at the temporary headquarters, and the Military Staff Committee was directed as to the first task it should undertake.<sup>9</sup>

#### CASE 31

By letter dated 14 February 1946,<sup>10</sup> the Chairman of the Military Staff Committee informed the Presi-

<sup>1</sup> S/10 (Restricted).

<sup>2</sup> S/124, S/124/Add.1 (Restricted).

<sup>3</sup> S/115 (Restricted).

<sup>4</sup> 23rd meeting: p. 369; 25th meeting: p. 10.

<sup>5</sup> S/165, S/187, S/325, S/356 (Restricted).

<sup>6</sup> S/421 (Restricted).

<sup>7</sup> 2nd meeting: p. 14.

<sup>8</sup> O.R., 1st year, 1st series, Suppl. No. 1; annex 1a, section 3, pp. 2-3.

<sup>9</sup> 23rd meeting: p. 369.

<sup>10</sup> S/10, (Restricted).

dent of the Security Council that, in accordance with the Council's directive of 25 January 1946, the Military Staff Committee had been established on 4 February 1946. The letter forwarded a draft statute of the Military Staff Committee, and draft rules of procedure for the Military Staff Committee and its secretariat. At the 23rd meeting on 16 February 1946, the Council decided to refer the draft statute and the draft rules of procedure to the Committee of Experts. It was also agreed that "pending the approval by the Council of the rules of procedure and of the statute of the Military Staff Committee it be authorized to carry on provisionally along the lines of the proposals which it has submitted".<sup>11</sup>

## CASE 32

At the 141st meeting on 16 June 1947, a proposal was made to request the Military Staff Committee to continue its work concurrently with the examination of its report by the Security Council, and without waiting for a decision on all the existing points of disagreement.<sup>12</sup> The representative of the United States considered that "it would be useful if the Military Staff Committee could be requested by the Council to continue its work on the military aspects of our problem simultaneously with the consideration which the Council will give in detail to the present report".<sup>13</sup> The President (France), though in agreement with the representative of the USSR that the Military Staff Committee was already engaged on this work, was of the opinion that "it would be desirable that the work now being done by the Military Staff Committee should be based on a decision by the Security Council".<sup>14</sup> The representative of Australia pointed out that the members of the Military Staff Committee were present at the Council's meeting, and not in session themselves, so that, if a matter arising out of the Military Staff Committee's report was referred back to it, it would have a full knowledge of the discussion in the Council.<sup>15</sup>

The representative of Poland suggested that, while the report was being discussed, the Military Staff Committee should review the points on which it had been unable to agree and, if it were possible for it to seek agreement, the Security Council should be informed during the discussion. He then said:<sup>16</sup>

"The Military Staff Committee consists of the permanent members of the Council. I think that the work of the non-permanent members would be substantially facilitated if some of the points of disagreement among the permanent members could, in the meantime, be settled in the Military Staff Committee."

The President thereupon remarked:<sup>17</sup>

"I do not think that it is for the Security Council to make suggestions regarding the organization of the Military Staff Committee's work. The request made by the Polish representative has been heard, but I do not think it is within the Security Council's competence to take a decision in this connexion."

<sup>11</sup> 23rd meeting: p. 369. The Military Staff Committee has continued to function under the terms of the draft statute and the draft rules of procedure.

<sup>12</sup> 141st meeting: p. 1018. See 104th meeting, pp. 233, 237, for observations concerning lack of information on the work of the Committee.

<sup>13</sup> 141st meeting: p. 1018.

<sup>14</sup> 141st meeting: p. 1018.

<sup>15</sup> 141st meeting: p. 1019.

<sup>16</sup> 141st meeting: p. 1019.

<sup>17</sup> 141st meeting: p. 1019.

The representative of Australia then stated:<sup>18</sup>

"I take it that the Military Staff Committee is purely the advisor of the Council, and that we can give it instructions accordingly."

"If we, as the Council, make a decision that the Military Staff Committee shall reconsider those items on which there is disagreement, we, as the Council, are fully entitled to take that or any other decision."

The President considered that he was not in disagreement with this view but, if he had understood the Polish statement, it did not purport to refer the question to the Military Staff Committee at once, but to ask the Committee for an additional exchange of views among its members.<sup>19</sup>

The proposal that the Military Staff Committee continue its work concurrently with the consideration of the report by the Council was adopted.<sup>20</sup>

## CASE 33

At the 145th meeting on 24 June 1947, the Security Council decided to consult the Military Staff Committee on article 18 of its report. In this connexion, the representative of Australia stated that under the relevant Articles of the Charter "the Military Staff Committee is to assist and advise this Council", and he contended that "a member, particularly a non-permanent member, should at least be given the courtesy or have the right, if it so desires, to ask for interpretation, explanation, or assistance".

He said:<sup>21</sup>

"If the question comes to a vote, to which we object in principle, it means that we do not have the right to obtain the benefit of that advice... If a vote is taken, it means that that right can be overruled."

He further stated that the right of members of the Council to ask questions or seek clarification from the Military Staff Committee should be "recognized as a matter of course", and "there should be no objection, particularly on the part of a permanent member..."<sup>22</sup>

## CASE 34

The report of the Military Staff Committee on the implementation of Article 43 was included in the agenda of the Security Council at the 138th meeting. In the consideration of the report certain questions of procedure arose.

At the 139th meeting on 6 June 1947, the representative of Australia said that members of the Security Council, who shared the primary responsibility for the maintenance of international peace and security, must be "fully and constantly apprised of the progress which has been made in the organization of the armed forces" of the United Nations. He pointed out that the Military Staff Committee had been meeting in secret for over a year, and, "apart from brief communiqués which indicated little beyond the fact that there were disagreements among members, no information has been available to the non-permanent members of the Council as to the matters under discussion. He said

<sup>18</sup> 141st meeting: p. 1019.

<sup>19</sup> 141st meeting: p. 1019.

<sup>20</sup> 141st meeting: p. 1018.

<sup>21</sup> 145th meeting: p. 1090.

<sup>22</sup> 145th meeting: p. 1090.



it was impossible under these conditions for the non-permanent members of the Council to discharge their obligations under the Charter, and his Government believed that they should be associated with the Military Staff Committee during their term of office. He remarked that non-permanent members of the Security Council could not even attend the Military Staff Committee as observers, and all attempts in the Committee of Experts to amend the rules of procedure of the Military Staff Committee to make this possible had been without success.<sup>23</sup>

At the 142nd meeting on 18 June 1947, during the detailed discussion of the Military Staff Committee's report, a proposal was made that articles 5 and 6 be referred back to the Committee. In this connexion the representative of the United States opined that it would facilitate the work of the Military Staff Committee if the Council took a positive decision on the two articles and did not refer them back to the Committee.<sup>24</sup>

The President (France) then proposed that the Chairman of the Military Staff Committee or his representative could be invited to the Council table to offer any explanation.<sup>25</sup> The Chairman of the Military

Staff Committee took his place at the Council table. The representative of the USSR expressed doubt whether the Chairman could give an interpretation of an article of the Committee's report, and whether he could do so in the name of the other four members of the Military Staff Committee. He said that specific questions should be put to the Military Staff Committee for answer, and that it should be approached directly since it was functioning. He doubted if the Chairman of the Military Staff Committee "no matter what country he represents" could supply an interpretation if the Committee had not agreed on it.<sup>26</sup>

The President thereafter addressed two letters<sup>27</sup> to the Military Staff Committee requesting clarification of articles 5 and 6 of its report in line with questions raised in the Council. In partial reply a letter dated 19 June 1947 was received from the Chairman of the Military Staff Committee and placed before the Council at the 143rd meeting, in the course of which another letter dated 20 June, agreed to by four members excepting the USSR, was received from the Military Staff Committee in answer to questions not treated in the first letter.<sup>28</sup>

<sup>23</sup> 139th meeting: pp. 983-984.

<sup>24</sup> 142nd meeting: p. 1036.

<sup>25</sup> 142nd meeting: p. 1037.

<sup>26</sup> 142nd meeting: p. 1038.

<sup>27</sup> S/380, 143rd meeting: p. 1053.

<sup>28</sup> 143rd meeting: pp. 1054, 1061-1062.

**Chapter VII**

**PRACTICES RELATIVE TO RECOMMENDATIONS TO THE GENERAL  
ASSEMBLY REGARDING THE ADMISSION OF NEW MEMBERS**

## TABLE OF CONTENTS

	<i>Page</i>
INTRODUCTORY NOTE .....	243
PART I. TABLE OF APPLICATIONS, 1946-1951	
Note .....	244
PART II. CONSIDERATION OF THE ADOPTION OR AMENDMENT OF RULES 58, 59 AND 60 OF THE PROVISIONAL RULES OF PROCEDURE	
Note .....	259
PART III. PRESENTATION OF APPLICATIONS	
Note .....	263
PART IV. REFERENCE OF APPLICATIONS TO THE COMMITTEE ON THE ADMISSION OF NEW MEMBERS	
Note .....	266
A. Before a recommendation has been forwarded or a report submitted to the General Assembly .....	267
1. Applications referred to the Committee by the President .....	267
2. Applications referred to the Committee by decision of the Security Council .....	267
3. Applications considered by the Security Council without reference to the Com- mittee .....	268
4. Applications reconsidered by the Security Council after reference to the Committee	268
B. After an application has been sent back by the General Assembly to the Security Council for reconsideration .....	269
1. Applications referred to the Committee by the President .....	269
2. Applications reconsidered by the Security Council without reference to the Com- mittee .....	269
PART V. PROCEDURES IN THE CONSIDERATION OF APPLICATIONS WITHIN THE SECURITY COUNCIL	
Note .....	270
A. Discussion of applications .....	274
1. Order of the discussion of applications .....	274
2. Documentation submitted to the Security Council .....	278
B. Voting on applications .....	278
1. Omission of voting on applications when previous position of members is un- changed .....	278
2. Time and order of voting on applications .....	279
3. Submission of a draft resolution recommending the simultaneous admission of a number of applicant States .....	282
4. The question of submission of a draft resolution with a view to voting on an application .....	286
5. Conflict between a proposal to recommend admission and a proposal to postpone voting .....	287
PART VI. THE ROLE OF THE GENERAL ASSEMBLY AND THE SECURITY COUNCIL	
Note .....	288

## INTRODUCTORY NOTE

The material concerning the practice of the Security Council in connexion with the admission of new Members to the United Nations may, for the purpose of the *Repertoire*, be divided into three categories, the first showing what decisions were arrived at by the Security Council, the second the procedures adopted by the Security Council in arriving at those decisions, and the third the considerations invoked by members of the Council in arriving at those decisions. Information regarding the first category is presented in the form of the Table of Applications in part I, wherein the successive stages in the consideration of applications is noted. Considerable difficulty is however encountered in presenting material under the second category, and almost insuperable difficulty in presenting material under the third category. Material under the second category constitutes the body of this chapter (parts II-VI), but material under the third category does not admit of similar treatment and is examined in the note to part V, "Procedures in the Consideration of Applications within the Security Council".

Parts II, III, IV, V and VI contain material drawn from proceedings of the Security Council to illustrate procedures adopted by the Council for implementing the obligation laid upon it by Article 4 (2) of the Charter. Material bearing on this question, including material showing the viewpoints of representatives on the Council on certain constitutional issues involved in arriving at decisions regarding suitable procedures to be followed, is to be found in the general discussion that took place prior to the adoption, on 1 January 1948, of chapter X of the provisional rules of procedure in its present form, and is contained in part II. Material bearing on this question in the proceedings of the Council when considering particular applications, both before and after 1 January 1948, is contained in parts III, IV and V. Finally in part VI is included information bearing on procedural relations between the Council and the General Assembly in the exercise of their responsibilities in the matter of admission of new Members.

### Article 4 of the Charter

1. Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.
2. The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.

PROVISIONAL RULES OF PROCEDURE OF THE SECURITY COUNCIL REGARDING ADMISSION OF NEW MEMBERS<sup>1</sup> IN FORCE FROM THE 1ST MEETING ON 17 JANUARY 1946 TO 42ND MEETING ON 17 MAY 1946

#### "Rule 25

"Any State which desires to become a Member of the United Nations shall submit an application to the Secretary-General. This application shall be accompanied by a declaration of its readiness to accept the obligations contained in the Charter.

#### "Rule 26

"The application for membership in the United Nations shall be placed by the Secretary-General before the Security Council, which shall decide whether in its judgment the applicant is a peace-loving State and is able and willing to carry out the obligations contained in the Charter.

#### "Rule 27

"Should the Security Council decide to recommend the applicant State for membership of the United Nations, this recommendation shall be placed before the General Assembly by the Secretary-General."

PROVISIONAL RULES OF PROCEDURE OF THE SECURITY COUNCIL REGARDING ADMISSION OF NEW MEMBERS ADOPTED AT THE 42ND MEETING ON 17 MAY 1946

#### "Rule 58

"Any State which desires to become a Member of the United Nations shall submit an application to the Secretary-General. This application shall be accompanied by a declaration of its readiness to accept the obligations contained in the Charter.

#### "Rule 59

"The Secretary-General shall immediately place the application for membership before the representative on the Security Council. Unless the Security Council decides otherwise, the application shall be referred by the President to a committee of the Security Council upon which each member of the Security Council shall be represented. The committee shall examine any application referred to it and report its conclusions thereon to the Council not less than thirty-five days in advance of a regular session of the General Assembly or if a special session of the General Assembly is called, not less than fourteen days in advance of such session.

#### "Rule 60

"The Security Council shall decide whether in its judgment the applicant is a peace-loving State and is

<sup>1</sup> O.R., 1st year, 1st series, Suppl. No. 1, annex 1, pp. 5-6.

able and willing to carry out the obligations contained in the Charter, and accordingly whether to recommend the applicant State for membership.

"In order to assure the consideration of its recommendation at the next session of the General Assembly following the receipt of the application, the Security Council shall make its recommendations not less than twenty-five days in advance of a regular session of the General Assembly, nor less than four days in advance of a special session.

"In special circumstances, the Security Council may decide to make a recommendation to the General Assembly concerning an application for membership subsequent to the expiration of the time limits set forth in the preceding paragraph."

PROVISIONAL RULES OF PROCEDURE OF THE SECURITY COUNCIL REGARDING THE ADMISSION OF NEW MEMBERS ADOPTED AT THE 222ND MEETING ON 9 DECEMBER 1947

"Rule 58

"Any State which desires to become a Member of the United Nations shall submit an application to the Secretary-General. This application shall contain a declaration made in a formal instrument that it accepts the obligations contained in the Charter.

"Rule 59

"The Secretary-General shall immediately place the application for membership before the representatives on the Security Council. Unless the Security Council decides otherwise, the application shall be referred by the President to a committee of the Security Council upon which each member of the Security Council shall

be represented. The Committee shall examine any application referred to it and report its conclusions thereon to the Council not less than thirty-five days in advance of a regular session of the General Assembly or if a special session of the General Assembly is called, not less than fourteen days in advance of such session.

"Rule 60

"The Security Council shall decide whether in its judgment the applicant is a peace-loving State and is able and willing to carry out the obligations contained in the Charter, and accordingly whether to recommend the applicant State for membership.

"If the Security Council recommends the applicant State for membership, it shall forward to the General Assembly the recommendation with a complete record of the discussion.

"If the Security Council does not recommend the applicant State for membership or postpones the consideration of the application, it shall submit a special report to the General Assembly with a complete record of the discussion.

"In order to ensure the consideration of its recommendation at the next session of the General Assembly following the receipt of the application, the Security Council shall make its recommendation not less than twenty-five days in advance of a regular session of the General Assembly, nor less than four days in advance of a special session.

"In special circumstances, the Security Council may decide to make a recommendation to the General Assembly concerning an application for membership subsequent to the expiration of the time-limits set forth in the preceding paragraph."

Part I

TABLE OF APPLICATIONS, 1946-1951

NOTE

The Table of Applications brings together in compact form the sequence of decisions by the Security Council in the consideration of applications for membership.

The decisions of the Council regarding the applications may be briefly summarized:

I

In the period preceding 31 December 1951, the Security Council recommended the following States for admission to membership in the United Nations:

(i) At the 57th meeting on 29 August 1946, Afghanistan was recommended by 10 votes in favour, none against, with 1 abstention.<sup>1</sup>

(ii) At the 57th meeting on 29 August 1946, Iceland was recommended by 10 votes in favour, none against, with 1 abstention.<sup>2</sup>

(iii) At the 57th meeting on 29 August 1946, Sweden was recommended by 10 votes in favour, none against, with 1 abstention.<sup>3</sup>

(iv) At the 83rd meeting on 12 December 1946, Thailand (Siam) was unanimously recommended.<sup>4</sup>

(v) At the 186th meeting on 18 August 1947, Yemen was unanimously recommended.<sup>5</sup>

(vi) At the 186th meeting on 18 August 1947, Pakistan was unanimously recommended.<sup>6</sup>

(vii) At the 279th meeting on 10 April 1948, Burma was recommended by a vote of 10 in favour with 1 abstention.<sup>7</sup>

(viii) At the 414th meeting on 4 March 1949, Israel was recommended by a vote of 9 in favour, 1 against, with 1 abstention.<sup>8</sup>

(ix) At the 503rd meeting on 26 August 1950, Indonesia was recommended by a vote of 10 in favour with 1 abstention.<sup>9</sup>

The following applications failed of recommendation:

<sup>1</sup> 83rd meeting: p. 562.

<sup>2</sup> 186th meeting: p. 2052.

<sup>3</sup> 186th meeting: p. 2055.

<sup>4</sup> 279th meeting: p. 5.

<sup>5</sup> 414th meeting: p. 14.

<sup>6</sup> 503rd meeting: p. 28.

<sup>1</sup> 57th meeting: p. 138.

<sup>2</sup> 57th meeting: p. 140.

<sup>3</sup> 57th meeting: p. 140.



Albania <sup>10</sup>	Japan <sup>11</sup>
Austria <sup>11</sup>	Hashemite Kingdom of Transjordan (Jordan) <sup>11</sup>
Bulgaria <sup>10</sup>	Laos <sup>11</sup>
Cambodia <sup>11</sup>	Libya <sup>11</sup>
Ceylon <sup>11</sup>	Mongolian People's Republic <sup>10</sup>
Democratic People's Republic of Korea <sup>12</sup>	Nepal <sup>11</sup>
Democratic Republic of Viet-Nam <sup>10</sup>	Portugal <sup>11</sup>
Finland <sup>11</sup>	Republic of Korea <sup>11</sup>
Hungary <sup>10</sup>	Romania <sup>10</sup>
Ireland <sup>11</sup>	Viet-Nam <sup>11</sup>
Italy <sup>11</sup>	

The time-limits set out in provisional rule 60 for forwarding recommendations or for the submission of special reports to the General Assembly made it possible for the Security Council each year to examine in a series of meetings all new applications submitted in the interval between two successive regular sessions of the General Assembly, or before a special session, as well as pending applications referred back to it by the General Assembly, or put on the provisional agenda at the request of representatives on the Council. The proceedings of the Council may therefore appropriately be divided into successive debates for the purpose of analysing the procedures of the Security Council in the consideration of applications for membership. This distinction between the successive debates is utilized in the construction of the Table of Applications and of parts IV and V of this chapter. A brief indication of the series of debates follows; for greater detail the Table of Applications should be consulted.

#### Debate I

The first debate of 1946 was concerned with eight new applications. It covered four meetings (54th-57th) on 28 and 29 August 1946.

#### Debate II

The second debate of 1946 was concerned with one new application at the 83rd meeting on 12 December 1946.

#### Debate III

The first debate of 1947 was concerned with seven new applications and five pending applications. It covered two meetings (186th and 190th) on 18 and 21 August 1947.

#### Debate IV

The second debate of 1947 was concerned with one new application and four pending applications. The debate covered four meetings (203rd-206th) from 24 September to 14 October 1947.

#### Debate V

The third debate of 1947 was concerned with two pending applications, which were discussed, and postponed indefinitely, at the 221st meeting on 22 November 1947.

#### Debate VI

The first debate of 1948 was concerned with one new application and eleven pending applications. It

covered two meetings (279th and 280th) on 10 April 1948.

#### Debate VII

The second debate of 1948 was concerned with one new application which was discussed and voted upon at the 351st meeting on 18 August 1948.

#### Debate VIII

The third debate of 1948 was concerned with one new application, which was discussed at four meetings (383rd-386th) and voted upon at the 386th meeting on 17 December 1948, and one application reconsidered, for the first time, at the urgent request of the General Assembly, which was re-examined and voted upon at the 384th meeting on 15 December 1948.

#### Debate IX

The first debate of 1949 was concerned with one application, reconsidered at the applicant's request, which was discussed and voted upon at the 414th meeting on 4 March 1949.

#### Debate X

The second debate of 1949 was concerned with one new application which was discussed and voted upon at the 423rd meeting on 8 April 1949.

#### Debate XI

The third debate of 1949 was concerned with one new application and with twelve pending applications. It covered twelve meetings (427th-431st and 439th-445th) between 16 June and 15 September 1949.

#### Debate XII

The only debate of 1950 was concerned with one new application, which was discussed and voted upon at the 503rd meeting on 26 September 1950.

#### Debate XIII

The only debate of 1951 was concerned with one application, which was reconsidered for the fifth time at the 569th meeting on 19 December 1951, although the agenda also included thirteen other pending applications. The application was discussed and postponed indefinitely.

## II

### GUIDE TO THE TABLE OF APPLICATIONS FOR MEMBERSHIP 1946-1951 AND OF ACTIONS TAKEN THEREON BY THE SECURITY COUNCIL AND THE GENERAL ASSEMBLY

#### Purpose of the table

The purpose of the present table is to concentrate all the pertinent information and documentation concerning the applications for membership submitted to the United Nations from 1946 until the end of 1951. The table will help the readers to follow the chain of proceedings concerning those applications from the date on which they were submitted until their eventual disposition or up to the stage they had reached at the end of 1951.

#### Horizontal divisions

The table is divided into 13 debates numbered I to XIII. Debates are separated from one another by a continuous solid line. When a debate is concerned with original applications and with applications under reconsideration, the new applications are separated

<sup>10</sup> Received less than 7 affirmative votes.

<sup>11</sup> Failed to obtain a recommendation owing to the negative vote of a permanent Member.

<sup>12</sup> This application has not been voted upon as such by the Security Council.

from the applications under reconsideration by a continuous dotted line.

### Vertical divisions

#### A. Columns

The table consists of 11 columns, representing mainly the successive phases through which an application normally passes from the time of its original submission until the General Assembly acts thereon.

Columns 2 and 3 refer to the submission of the application itself and to the documents relating thereto. Columns 4 and 5 cover the phase of reference of the application to the Committee on the Admission of New Members. Columns 6, 7, 8 deal with the action of the Security Council on the application while columns 9, 10, 11 concern the action of the General Assembly. Thus, in following horizontally all the indications appearing in the eleven columns of the table concerning a given applicant, the reader will be able, at a glance, to visualize a series of related actions taken in regard to that applicant.

*Col. 1* indicates the year, during which an application was submitted and acted upon, the names of the applicant States and various reference numbers, the meaning of which is to be found below under subparagraph B 2.

*Col. 2* shows the date on which an application was submitted, and the reference to the document where the text of the application was reproduced.<sup>13</sup>

*Col. 3* contains the same information as in col. 2, but concerning the declaration made by the applicant State in a formal instrument that it accepts the obligations contained in the Charter.<sup>14</sup>

*Col. 4* shows the date and the meeting at which the Security Council (or the President of the Council) decided to refer or not to refer the application to the Committee on the Admission of New Members, and the reference to the document where the decision is to be found.

According to rule 59, "unless the Security Council decides otherwise, the application shall be referred by the President to" the Committee on the Admission of New Members. Where there is no such decision of the Security Council and the application was referred to that Committee by the President, col. 4 contains the mention: "President's action"; where the Security Council has specifically decided to refer the application to the Committee, col. 4 contains the mention: "Security Council's decision to refer"; where the Security Council has decided not to refer the application to that Committee, col. 4 mentions: "Decision not to refer, or 'agreement not to refer'"; where there has been no decision of the Council not to refer the application to the Committee and the application has not been referred to it by the President, col. 4 mentions: "not referred".

<sup>13</sup> The information relevant to col. 2 and 3 appears only once, irrespective of the number of times that the Security Council or the General Assembly has acted on an application throughout the years. Such information is to be found in the table at the place corresponding to the time when the application or the renewal of an application was submitted.

<sup>14</sup> As regards the following countries: Afghanistan, Iceland, Siam (Thailand), Sweden, Yemen and Pakistan which were admitted before 31 December 1947, i.e., at a time when former rule 107 of the provisional rules of procedure of the General Assembly was in force, the mention appearing on col. 3 refers to the formal instrument of adherence provided for in the former rule 107.

*Col. 5* shows the date on which the Committee on the Admission of New Members has submitted its report to the Security Council, and the reference to the document containing the report in question.

*Col. 6* indicates the date and the meeting at which the Security Council has acted on the application (either on the original application, or on a request for reconsideration), and the reference to the document where the decision of the Council may be found.

*Col. 7* shows the breakdown of the vote in the Security Council, in the sub-columns entitled "For, Against, Abstentions". When the figure appearing in sub-column "For" is 7 or more, and the mention appearing in col. 7 shows that the applicant State has not been recommended for admission, this means that a permanent member of the Security Council has voted against the recommendation.

*Col. 8* shows the date on which the action of the Security Council was brought to the attention of the General Assembly and the reference to the document containing the recommendation or the report of the Council. According to rule 60, the notification made by the Security Council when it makes no recommendation or postpones consideration of the application is called a "Special Report". Sometimes, however, it has been entitled "Note" or "Letter". It is referred to in col. 8 under the heading appearing on the original document.

*Col. 9* indicates the date and the meeting at which the General Assembly has acted upon a recommendation of the Security Council or upon the application itself, and the reference to the text of the resolution of the General Assembly — or to the document where it may be found.

*Col. 10* indicates the nature of the decisions taken by the General Assembly. The mention "Request for reconsideration by the Security Council on the merits" shows that the General Assembly has not expressed its opinion as to whether the applicant State satisfied the conditions for admission laid down in Article 4 (1). The mention: "Request for reconsideration by the Security Council — admission favoured" shows that the General Assembly has determined that the applicant State satisfied the requirements of Article 4 (1) and requested the Security Council to reconsider the application in the light of that determination.

*Col. 11* indicates the date on which the resolution of the General Assembly was transmitted to the Security Council and the reference to the document containing the notification in question. Sometimes the notification is a letter addressed by the President of the General Assembly to the President of the Security Council; but, in general, it is a letter of the Secretary-General addressed to the President of the Security Council and transmitting the text of the relevant resolution of the General Assembly.

The column in which appears the last of a series of related actions taken on an application (normally it is col. 11) shows between parentheses the reference number where the next series of related actions taken on that application may be found in the table.

#### B. Figures appearing in col. 1

##### 1. Figure preceding the name of the applicant State

Each series of related actions concerning a given applicant appears in chronological order in the table.

The figure preceding the name of an applicant State is the number, in chronological order, of a series of such related actions.

Normally, a series of related actions ending by the admission of an application would be contained in a single horizontal line, the last action being the decision of admission by the General Assembly in col. 10. This happened, however, only eight times in the period covered by the *Repertoire* (see Nos. 3, 7, 8, 9, 14, 16, 29, 60).<sup>15</sup>

In all other cases, the related actions concerning a single application may cover as many as three or four horizontal lines, since the General Assembly, on various occasions, requested the Security Council to reconsider applications on which the latter failed to make recommendations. In such a case, the last action may be found usually in col. 11, i.e., notification of the General Assembly resolution to the Security Council. It has also happened that members of the Security Council requested reconsideration of applications before the General Assembly so requested (Nos. 23-26). It happened once that an applicant formulated such a request before any action of the General Assembly (No. 44, Israel). It may also happen that, although an application is reconsidered, the series of actions related thereto does not pass through all the normal phases. At any rate, it is easy for the reader to find immediately the next series of related actions concerning that application. The column in which appears the last action taken refers the reader to the number where the next series of related actions begins (see also sub-paragraph B 2).

### 2. Figures following the name of the applicant State

The first figure indicates where the next series of related actions may be found; the second figure concerns the preceding series of related actions when it exists; the third figure is the number of the application in chronological order. The first time an application is mentioned, the third number appears in Roman cipher. In the subsequent series of related actions concerning the same applicant, the number appears in Arabic cipher. When the name of an applicant State is italicized, this means that, as of 31 December 1951, the State in question has not yet been admitted to membership. Italicizing is done only once, when the applicant's name appears for the first time in the table, i.e., when the chronological number of the application appears in Roman cipher.

*Example:* No. 21 Portugal (36) (6) (6)

This means that the twenty-first series of related actions concerns Portugal, that the next series is to be found under No. 36 and that the preceding series appears under No. 6.

<sup>15</sup> The related actions having ultimately led to the admission of Israel cover two horizontal lines (Nos. 42, 44) since the first series of related actions ended inconclusively.

The complete references concerning Portugal are thus:

No. 6 Portugal (21) ( ) (VI)

No. 21 Portugal (36) (6) (6)

No. 36 Portugal (48) (21) (6)

No. 48 Portugal (61) (36) (6)

No. 61 Applicant States referred to under Nos. 45, 47-59.

### 3. Other signs appearing in the columns

Ditto signs indicate that the information is the same as the one given above. A solid line inside a column means that there is no action to report.

### III

LIST SHOWING IN CHRONOLOGICAL ORDER THE TWENTY-SEVEN APPLICATIONS SUBMITTED TO THE UNITED NATIONS FROM 1946 UNTIL 1951, AT THE NUMBERS WHERE THEY APPEAR FOR THE FIRST TIME IN THE TABLE OF APPLICATIONS

1. *Albania* (17) ( ) (I)
2. *Mongolia* (18) ( ) (II)
3. *Afghanistan* ( ) ( ) (III)
4. *Transjordan* (19) ( ) (IV)
5. *Ireland* (20) ( ) (V)
6. *Portugal* (21) ( ) (VI)
7. *Iceland* ( ) ( ) (VII)
8. *Sweden* ( ) ( ) (IX)
9. *Siam* ( ) ( ) (VIII)<sup>16</sup>
10. *Hungary* (23) ( ) (X)
11. *Italy* (24) ( ) (XI)
12. *Austria* (40) ( ) (XII)
13. *Romania* (25) ( ) (XIII)
14. *Yemen* ( ) ( ) (XIV)
15. *Bulgaria* (26) ( ) (XV)
16. *Pakistan* ( ) ( ) (XVI)
22. *Finland* (38) ( ) (XVII)
29. *Burma* ( ) ( ) (XVIII)
41. *Ceylon* (43) ( ) (XIX)
42. *Israel* (44) ( ) (XX)
45. *Republic of Korea* (61) ( ) (XXI)
46. *Democratic People's Republic of Korea* ( ) ( ) (XXII)
47. *Nepal* (61) ( ) (XXIII)
60. *Indonesia* ( ) ( ) (XXIV)
62. *Viet-Nam* ( ) ( ) (XXV)
63. *Libya* ( ) ( ) (XXVI)
64. *Democratic Republic of Viet-Nam* ( ) ( ) (XXVII)

<sup>16</sup> Siam's application preceded that of Sweden, but its consideration was postponed. (See part I, debates I and II.)

**Table of applications for Membership in the United Nations 1946-1951 and**

1 Year—Country Reference numbers	2 Applications		3 Formal Declaration		4 Reference to Committee		5 Committee Report		6 Security Council Action	
	Date	Document	Date	Document	Date	Document	Date	Document	Date	Document
<b>DEBATE I (1946) 54th-57th MEETINGS, 28-29 AUGUST 1946</b>										
<i>New applications</i>										
1. Albania (17)(I)	25.1	OR Suppl.4 1st year. 2nd ser. Annex 6, p. 17		See No. 55 col. 3	17.5 (42nd mtg.)	OR 2, 1st year 1st ser. pp. 279, 285. (SC's decision to refer)	21.8	OR Suppl.4 1st year 2nd ser. Annex 7, p. 64 (S/133)	29.8 (57th mtg.)	OR 5, 1st year 2nd ser. p. 136
2. Mongolia (18)(II)	24.6	OR Suppl.4 1st year. 2nd ser. Annex 6(31) p. 48 (S/95)		See No. 56 col. 3	"	"	"	" p. 67	"	" p. 138
3. Afghanistan ( ) (III)	2.7	OR Suppl.4 1st year. 2nd ser. Annex 6(14) p. 49 (S/98)	19.11	UN Treaty series. Vol. I, I.7, p. 39 (Instrument of adherence)	"	"	"	" p. 67	"	" p. 136
4. Transjordan (19)(IV)	26.6	OR Suppl.4 1st year. 2nd ser. Annex 6(5) p. 50 (S/101)		No declaration submitted so far	"	"	"	" p. 71	"	" p. 139
5. Ireland (20)(V)	2.8	OR Suppl.4 1st year. 2nd ser. Annex 6(6) p. 50 (S/116)		No declaration submitted so far	24.7 (51st mtg.)	OR 2, 1st year 2nd ser. p. 16 (SC's decision to refer)	"	" p. 72	"	" p. 139
6. Portugal (21)(VI)	2.8	OR Suppl.4 1st year. 2nd ser. Annex 6(7) p. 51 (S/119)		No declaration submitted so far	"	"	"	" p. 74	"	" p. 139
7. Iceland ( ) (VII)	2.8	OR Suppl.4 1st year. 2nd ser. Annex 6(8) p. 51 (S/120)	19.11	UN Treaty series. Vol. I, I.8, p. 41 (Instrument of adherence)	"	"	"	" p. 75	"	" p. 140
8. Sweden ( ) (IX)	9.8	OR Suppl.4 1st year. 2nd ser. Annex 6(9) p. 52 (S/125)	16.11	UN Treaty series. Vol. I, I.9, p. 43 (Instrument of adherence)	"	"	"	" p. 78	"	" p. 140
<b>DEBATE II (1946) 83rd MEETING, 12 DECEMBER 1946</b>										
9. Siam ( ) (VIII)	3.8	OR Suppl.4 1st year. 2nd ser. Annex 6(2c) pp. 46-47 (S/121)	16.12	UN Treaty series. Vol. I, I.11, p. 47 (Instrument of adherence)	"	"	"	" p. 77	12.12 (83rd mtg.)	OR 25, 1st year 2nd ser. p. 562
<b>DEBATE III (1947) 186th AND 190th MEETINGS, 18 AND 21 AUGUST 1947</b>										
<i>New applications</i>										
10. Hungary (23)(X)	22.4	OR 38, 2nd year p. 811 (fn) (S/333)		See No. 59 col. 3	30.4 (132d mtg.)	OR 38, 2nd year p. 821. (SC's decision to refer)	11.8	OR Sp. Suppl.3 2nd year p. 22 (S/478&Corr.1)	21.8 (190th mtg.)	OR 81, 2nd year p. 2119
11. Italy (24)(XI)	7.5	OR Suppl.12 2nd year. Annex 33, pp. 129-130 (S/355)		No declaration submitted so far	22.5 (137th mtg.)	OR 42, 2nd year p. 1946. (SC's decision to refer)	"	" p. 23-24	"	" p. 2127
12. Austria (40)(XII)	2.7	OR Suppl.12 2nd year, p. 1258 (S/403)	8.8	S/2741	10.7 (154th mtg.)	OR 56, 2nd year p. 1266. (President's action)	"	" p. 24	"	" p. 2130
13. Roumania (25)(XIII)	10.7	OR 60, 2nd year p. 1390 (S/411)		See No. 58 col. 3	18.7 (161st mtg.)	OR 60, 2nd year p. 1391. (President's action)	"	" p. 25	"	" p. 2131
14. Yemen ( ) (XIV)	21.7	S/436	30.9	UN Treaty series. Vol. 8, I.113, p. 59 (Instrument of adherence)	29.7 (168th mtg.)	OR 65, 2nd year p. 1550. (President's action)	"	" p. 25	18.8 (186th mtg.)	OR 78, 2nd year p. 2052
15. Bulgaria (28)(XV)	26.7	OR Suppl.18 2nd year. Annex 43 pp. 155-156 (S/467)			7.8 (178th mtg.)	OR 72, 2nd year p. 1828. (President's action)	"	" p. 26	21.8 (190th mtg.)	OR 81, 2nd year p. 2133
16. Pakistan ( ) (XVI)	15.8	OR 78, 2nd year p. 2027 (S/498)	30.9	UN Treaty series. Vol. 8, I.112, p. 51 (Instrument of adherence)	16.8 (186th mtg.)	OR 78, 2nd year p. 2029-2030. (Agreement not to refer)			18.8 (188th mtg.)	OR 78, 2nd year p. 2055

of actions taken thereon by the Security Council and the General Assembly

7 Result of the Vote in the Security Council			8 Security Council Special Report to General Assembly		9 General Assembly Action		10 Nature of General Assembly Decision	11 Transmission of General Assembly Decision to Security Council	
For	Against	Abstentions	Date	Document	Date	Document		Date	Document
Not recommended 5	3	3	15.10	A/108-Sp. Report	19.11	Resol.35 (I) (49th mtg.)	Request for reconsideration by the SC on the merits	26.11	S/197-Letter SG to Pres. SC transmitting Resol.35 (I) (see No. 17)
Not recommended 6	3	2	"	"	"	"	"	"	" (see No. 18)
Recommended 10	0	1	"	"	9.11	Resol.34 (I) (47th mtg.)	Admitted		
Not recommended 8	2	1	"	"	19.11	Resol.35 (I) (49th mtg.)	Request for reconsideration by the SC on the merits	26.11	S/197-Letter SG to Pres. SC transmitting Resol.35 (I) (see No. 19)
Not recommended 9	1	1	"	"	"	"	"	"	" (see No. 20)
Not recommended 8	2	1	"	"	"	"	"	"	" (see No. 21)
Recommended 10	0	1	"	"	9.11	Resol.34 (I) (47th mtg.)	Admitted		
Recommended 10	0	1	"	"	"	"	Admitted		
Recommended 11	0	0	12.12	A/256-Letter from Pres. SC to Pres. GA	15.12	Resol.101 (I) (87th mtg.)	Admitted		
Not recommended 1	1	9	22.8	A/350-Note of SC to members of GA (see No. 23)					
Not recommended 9	1	1	"	" (see No. 24)					
Not recommended 8	1	2	"	"	17.11	Resol.113 H (II) (43-8-1) mtg.)	Request for reconsideration by SC-admission favored	18.11	S/607-Letter SG to Pres. SC transmitting Resol.113 H (II) (see No. 40)
Not recommended 1	0	10	"	" (see No. 25)					
Recommended 11	0	0	"	"	30.9	Resol.108 (II) (92nd mtg.)	Admitted		
Not recommended 1	1	9	"	" (see No. 28)					
Recommended 11	0	0	"	"	30.9	Resol.108 (II) (92nd mtg.)	Admitted		

**Table of applications for Membership in the United Nations 1946-1951 and of actions**

1 Year—Country Reference numbers	2 Applications		3 Formal Declaration		4 Reference to Committee		5 Committee Report		6 Security Council Action	
	Date	Document	Date	Document	Date	Document	Date	Document	Date	Document
<i>Reconsideration by SC under GA Resol.35 (1)</i>										
17. Albania (31)(1)(1)					8.7 (152d mtg.)	OR 55, 2nd year p. 1231. (President's action)	11.8	OR Sp. Suppl.3 2nd year, p. 8 (S/479&Corr.1) p. 13	18.8 (186th mtg.)	OR 78, 2nd year p. 2037.
18. Mongolia (34)(2)(2)					"	"	"	" p. 13	"	" p. 2039
19. Transjordan (27)(4)(4)					"	"	"	" p. 15	"	" p. 2041
20. Ireland (39) (5)(5)					"	"	"	" p. 16	"	" p. 2041-42
21. Portugal (36)(6)(6)					"	"	"	" p. 17	"	" p. 2045
<b>DEBATE IV (1947) 203RD-206TH MEETINGS; 24 SEPT.-1 OCTOBER 1947</b>										
<i>New application</i>										
22. Finland (38)( ) (XVII)	19.9	OR 90, 2nd year p. 2408; fn.1 (S/536)		No declaration made so far	1.10 (206th mtg.)	OR 92, 2nd year p. 2461-2. (Agreement not to refer)			1.10 (206th mtg.)	OR 92, 2nd year p. 2476
<i>Reconsideration by SC on request of U.S.A. for Italy (OR 90, 2nd year p. 2408; fn. 2) (S/562)</i>										
<i>Poland for Hungary, Italy, Roumania, Bulgaria (OR 90, 2nd year p. 2408; fn.3) (S/563)</i>										
23. Hungary (33)(10)(10)						Not referred			1.10 (206th mtg.)	OR 92, 2nd year p. 2475
24. Italy (28)(11)(11)						Not referred			"	" p. 2476
25. Roumania (35)(13)(13)						Not referred			"	" p. 2476
26. Bulgaria (32)(15)(15)						Not referred			"	" p. 2476
<b>DEBATE V (1947) 221ST MEETING; 23 NOVEMBER 1949</b>										
<i>Reconsideration by SC under GA Resol.113 C, F (11)</i>										
27. Transjordan (37)(19)(4)						Not referred			22.11 (221st mtg.)	OR 105, 2nd year p. 2767
28. Italy (30)(24)(11)						Not referred			"	"
<b>DEBATE VI (1948) 279TH-280TH MEETINGS; 10 APRIL 1948</b>										
<i>New application</i>										
29. Burma ( ) ( ) (XVIII)	27.2	OR Suppl. Jan., Feb., March 1948, 3rd year pp. 29-30 (S/687)	17.3	UN Treaty series, Vol. 15, No. 225 p. 4	3.3 (261st mtg.)	OR 36-51, 3rd year, p. 2 (President's action)	30.3	OR Suppl. April 1948, 3rd year pp. 1-3 (S/706)	10.4 (279th mtg.)	OR 54, 3rd year p. 5
<i>Reconsideration by SC under GA Resol.113 (11) and at the request of members of the SC S/709, S/712, S/715 (OR Suppl. April 1948 3rd year)</i>										
[30. Italy -- 40. Austria: See p. 252]										



taken thereon by the Security Council and the General Assembly (continued)

7 Result of the Vote in the Security Council			8 Security Council Special Report to General Assembly		9 General Assembly Action		10 Nature of General Assembly Decision	11 Transmission of General Assembly Decision to Security Council	
For	Against	Abstentions	Date	Document	Date	Document		Date	Document
Not recommended 3	4	4	22.8	A/350-Note of SG to members of GA	17.11 (118th mtg.)	Resol.113 A (II)	Recom. to permanent members of SC to consult to reach agreement	20.11	Letter SG to permanent members of SC transmitting Resol.113 A (II) (see No. 31) (see No. 34)
Not recommended 3	3	5	"	"	"	Resol.113 E (II) (44-8-0)	Request for reconsideration before end of 2nd session of GA-admission favored	18.11	S/608-Letter SG to Pres. SC transmitting Resol.113 E (II) (see No. 27)
Not recommended 9	1	1	"	"	"	Resol.113 C (II) (43-8-1)	Request for reconsideration by SC-admission favored	"	S/607-Resol.113 C (II) (see No. 39)
Not recommended 9	2	0	"	"	"	Resol.113 D (II) (40-9-3)	Request for reconsideration by SC-admission favored	"	S/607-Resol.113 D (II) (see No. 36)
Not recommended 9	2	0	9.10	A/406-Sp. Report	17.11 (118th mtg.)	Resol.113 G (II) (44-8-0)	Request for reconsideration by SC-admission favored	18.11	S/607 Resol.113 G (II) (see No. 38)
Not recommended 5	0	6	9.10	A/406-Sp. Report	17.11 (118th mtg.)	Resol.113 A (II)	Recom. to permanent members of SC to consult to reach agreement	20.11	Letter SG to permanent members of SC transmitting Resol.113 A (II) (see No. 31)
Not recommended 9	2	0	"	"	"	Resol.113 F (II) (43-8-1)	Request for reconsideration by SC before the end of 2nd session of GA-admission favored	18.11	S/606-Letter SG to Pres. SC transmitting Resol.113 F (II) (see No. 28)
Not recommended 4	0	7	"	"	"	Resol.113 A (II)	Recom. to permanent members of SC to consult to reach agreement	20.11	Letter SG to permanent members SC transmitting Resol.113 A (II) (see No. 35) (see No. 37)
Not recommended 1	3	7	"	"	"	"	"	"	"
Postponed indefinitely to allow consultation among permanent members			22.11	A/515-Letter Pres. SC to Pres. GA (see No. 37)					
Postponed indefinitely to allow consultation among permanent members			"	" (see No. 30)					
Recommended 10	0	1	12.4	A/533-Letter Pres. SC to SG	19.4 (131st mtg.)	Resol.156-(S-2) (unanimous)	Admitted		

Table of applications for Membership in the United Nations 1946-1951 and of actions

1 Year-Country Reference numbers	2 Applications		3 Formal Declaration		4 Reference to Committee		5 Committee Report		6 Security Council Action	
	Date	Document	Date	Document	Date	Document	Date	Document	Date	Document
30. Italy (50)(28)(11)						Not referred			10.4	OR 54, 3rd year (279th p. 15 mtg.)
31. Albania (55)(17)(1)						"			10.4	OR 55, 3rd year (280th p. 3 mtg.)
32. Bulgaria (57)(20)(15)						"			"	"
33. Hungary (59)(23)(10)						"			"	"
34. Mongolia (56)(18)(2)						"			"	"
35. Roumania (58)(25)(13)						"			"	"
36. Portugal (48)(21)(6)						"			"	"
37. Transjordan (49)(27)(4)						"			"	"
38. Finland (51)(27)(17)						"			"	"
39. Ireland (52)(20)(5)						"			"	"
40. Austria (53)(12)(12)						"			"	"
DEBATE VII (1948) 351ST MEETING; 18 AUGUST 1948										
<i>New application</i>										
41. Ceylon (43)( ) (XIX)	25.5	OR Suppl. June 48, 3rd year pp. 76-77 (S/820)	16.6	Declaration not issued as a doc- ument but cir- culated.	11.6	OR 83, 3rd year (318th p. 2. (Presi- dent's action). mtg.)	29.6	OR Suppl. Aug. 48, 3rd year, p. 78 (S/859)	18.8	OR 108, 3rd year (351st p. 23 mtg.)
DEBATE VIII (1948) 364TH-366TH MEETINGS; 15-17 DECEMBER 1948										
<i>New application</i>										
42. Israel (44)( ) (XX)	29.11	OR Suppl. Dec. 48, 3rd year, p. 118 (S/1093)	29.11	Same document as in column 2 UN Treaty series, Vol. 30, I. No. 448, p. 33	2.12	OR 128, 3rd year (363rd p. 25. (Presi- dent's action). mtg.)	7.12	OR Suppl. Dec. 48, 3rd year, pp. 119-120 (S/1110 & Corr.1)	17.12	OR 130, 3rd year (366th p. 37 mtg.)
<i>Reconsideration by SC under GA Resol. 197 I (III)</i>										
43. Ceylon (54)(41)(19)						Not referred			15.12	OR 129, 3rd year (364th p. 36 mtg.)
DEBATE IX (1949) 414TH MEETING; 4 MARCH 1949										
<i>Reconsideration by SC on request of applicant (S/1267) (OR Suppl. March 1949 4th year)</i>										
44. Israel ( ) (42)(20)						3.3	OR 16, 4th year p. 15. (Decision not to refer)		4.3	OR 17, 4th year (414th p. 14 mtg.)
DEBATE X (1949) 423RD MEETING; 8 APRIL 1949										
<i>New application</i>										
46. Rep. of Korea (61)( ) (XXI) *	19.1	OR Suppl. Feb. 49, 4th year, p. 5 (S/1238)		Same document as in column 2	15.2	OR 12, 4th year (406th p. 12. (SC's de- cision to refer) mtg.)	9.3	OR Suppl. April 49, 4th year, pp. 1-5 (S/1281)	8.4	OR 26, 4th year (423rd p. 15 mtg.)
48. Democ. People's Rep. of Korea ( ) ( ) (XXII)	9.2	OR 12, 4th year p. 18 (S/1247)	11.2	Declaration not issued as a doc- ument and not circulated	16.2	OR 13, 4th year (410th p. 15. (Decision not to refer) mtg.)				No action

taken thereon by the Security Council and the General Assembly (continued)

7 Result of the Vote in the Security Council			8 Security Council Special Report to General Assembly		9 General Assembly Action		10 Nature of General Assembly Decision	11 Transmission of General Assembly Decision to Security Council	
For	Against	Abstentions	Date	Document	Date	Document		Date	Document
Not recommended 9	2	0	23.8	A/617-Sp. Report	8.12 (177th mtg.)	Resol.197 E (III) (37-6-1)	Request for reconsideration by SC-admission favored	31.12	OR Suppl. June 1949, 4th year pp. 7-10. (S/1170). Letter dated 11.12.48 from SG to Pres. SC transmitting Resol. 197B to H (III) (I) (see No. 50)
			"	"	"	Resol.197 B (III) (33-0-10)	Request for reconsideration by SC on the merits	"	" (see No. 55)
			"	"	"	" (33-0-10)	"	"	" (see No. 57)
			"	"	"	" (33-0-10)	"	"	" (see No. 59)
			"	"	"	" (37-0-10)	"	"	" (see No. 56)
			"	"	"	" (33-0-10)	"	"	" (see No. 58)
			"	"	"	Resol.197 C (III) (39-6-1)	Request for reconsideration by SC-admission favored	"	" (see No. 48)
			"	"	"	Resol.197 D (III) (40-6-1)	"	"	" (see No. 49)
			"	"	"	Resol.197 F (III) (38-6-1)	"	"	" (see No. 51)
			"	"	"	Resol.197 G (III) (38-6-1)	"	"	" (see No. 52)
			"	"	"	Resol.197 H (III) (37-6-2)	"	"	" (see No. 53)
Not recommended 9	2	0	23.8	A/618-Sp. Report	8.12 (177th mtg.)	Resol.197 I (III) (41-6-0)	Request for reconsideration by SC at earliest possible moment. Admission favored. (41-6-0)	9.12	S/1113-Letter from Pres. GA to Pres. SC transmitting Resol.197 I (III)(I) (see No. 43)
Not recommended 5	1	5		No special report (see No. 44)					
Not recommended 9	2	0	24.3 49	A/823 - Letter Pres. SC to Pres. GA	13.4 49 (102nd mtg.)	GAOR-Plenary Mtgs.of GA-Third session-Part II, p. 48	Taken note of (see No. 54)		
Recommended 9	1	1	7.3	A/818 - Letter from Pres. SC to Pres. GA	11.5 (207th mtg.)	Resol.273 (III) (37-12-9)	Admitted		
Not recommended 9	2	0	2.9	A/968-Sp. Report	22.11 (252nd mtg.)	Resol.296 G (IV) (50-6-3)	Request for reconsideration by SC. Admission favored	1.12	S/1425 - Letter from SG to Pres. of SC. (Resol.296 A to K) (see No. 61)

**Table of applications for Membership in the United Nations 1946-1951 and of actions**

Year—Country	2 Applications		3 Formal Declaration		4 Reference to Committee		5 Committee Report		6 Security Council Action	
	Reference numbers	Date Document	Date Document	Date Document	Date Document	Date Document	Date Document	Date Document		
<b>DEBATE XI (1949) 427TH-431ST MEETINGS; 16 JUNE-21 JULY 1949</b>										
<i>New application</i> 439TH-445TH MEETINGS; 7 SEPT.-15 SEPT. 1949										
47. Nepal (61)( ) (XXII)	13.2	(S/1266)	10.3	S/1266/Add.1	8.4	OR 26, 4th year (423rd p. 16. (Presi-mtg.) deat's action)	29.8	OR Suppl. Sept., Oct., Nov., Dec. 49, 4th year, pp. 10-12 (S/1382)	7.9	OR 39, 4th year (439th p. 16 mtg.)
<i>Reconsideration by SC under GA Resol. 197 B (III) 197 C to I (III)</i>										
48. Portugal (61)(36)(6)						Not referred			13.9	OR 41, 4th year (443rd p. 29 mtg.)
49. Transjordan (61)(37)(4)						Not referred			"	" p. 30
50. Italy (61)(20)(11)						Not referred			"	" pp. 31-32
51. Finland (61)(38)(17)						Not referred			"	" p. 32
52. Ireland (61)(39)(5)						Not referred			"	" p. 33
53. Austria (61)(40)(12)						Not referred			"	" p. 33
54. Ceylon (61)(43)(19)						Not referred			"	" p. 33
55. Albania (61)(31)(1) <sup>b</sup>	13.10	OR Suppl. June 49 48 4th year, p. 3 (S/1033)(renewal of application)	2.12	OR Suppl. June 49 48 4th year, p. 6 (S/1105)		Not referred			15.9	OR 42, 4th year (445th p. 40 mtg.)
56. Mongolia (61)(34)(2) <sup>b</sup>	12.10	OR Suppl. June 49 48 4th year, p. 4 (S/1035)(renewal of application)	25.10	OR Suppl. June 49 48 4th year, pp. 4-5 (S/1035/Add.1)		Not referred			"	" p. 40
57. Bulgaria (61)(32)(15) <sup>b</sup>	22.9	OR Suppl. Sept. 48 48 3rd year, pp. 7-9 (S/1012)(renewal of application)	4.10	OR Suppl. June 49 48 4th year, p. 1 (S/1012/Add.1)		Not referred			"	" pp. 40-41
58. Roumania (61)(35)(13) <sup>b</sup>	12.10	OR Suppl. June 49 48 p. 5. (S/1051) (renewal of application)	9.11	OR Suppl. June 49 48 4th year, p. 6 (S/1051/Add.1)		Not referred			"	" p. 41
59. Hungary (61)(33)(10) <sup>b</sup>	27.9	OR Suppl. June 49 48 pp. 1-2 (S/1017) (ren. of applic.)	5.10	OR Suppl. June 49 48 4th year, p. 2 (S/1017/Add.1)		Not referred			"	" p. 41
<b>DEBATE XII (1950) 503RD MEETING; 26 SEPT. 1950</b>										
<i>New application</i>										
60. Indonesia ( ) ( ) (XXIV)	25.9	OR 45, 5th year pp. 10-11 (S/1809)	Same document as in col. 2			Agreement not to refer (Same document as in col. 6)			28.9	OR 45, 5th year (503rd p. 23 mtg.)
<i>Request for Reconsideration under GA Resol. 296 (IV)</i>										
61. Applicant States referred to under Nos. 45, 47-59 <sup>c</sup>										No action
<i>New applications</i>										
62. Viet-Nam ( ) ( ) (XXV)	17.12	S/2446	7.8	S/2756 52						No action
63. Libya ( ) ( ) (XXVI)	24.12	S/2467	Same document as in col. 2							"
64. Democratic Rep. of Viet-Nam ( ) ( ) (XXVII.)	i) 22.11	S/2780 48 (published on 17.9.52) <sup>d</sup>	Same document as in col. 2							"
	ii) 29.12	S/2466 51 (renewal of application)								

taken thereon by the Security Council and the General Assembly (continued)

7 Result of the Vote in the Security Council			8 Security Council Special Report to General Assembly		9 General Assembly Action		10 Nature of General Assembly Decision	11 Transmission of General Assembly Decision to Security Council	
For	Against	Abstentions	Date	Document	Date	Document		Date	Document
Not recommended 9	2	0	12.9	A/874-Sp. Report	22.11 (252nd mtg.)	Resol.296 I (IV) (52-5-1)	Request for reconsideration by SC. Admission favored	1.12	S/1425 - Letter from SG to Pres. of SC. (Resol.296 A to K) (see No. 61)
Not recommended 9	2	0	19.9	A/882-Sp. Report	22.11 (252nd mtg.)	Resol.296 H (IV) (53-5-1)	Request for reconsideration by SC. Admission favored	1.12	S/1425 - Letter from SG to Pres. of SC. (Resol.296 A to K) (see No. 61)
Not recommended 9	2	0	"	"	"	Resol.296 F (IV) (50-5-2)	"	"	" (see No. 61)
Not recommended 9	2	0	"	"	"	Resol.296 E (IV) (51-6-1)	"	"	"
Not recommended 9	2	0	"	"	"	Resol.296 C (IV) (53-5-1)	"	"	"
Not recommended 9	2	0	"	"	"	Resol.296 D (IV) (51-5-1)	"	"	"
Not recommended 9	2	0	"	"	"	Resol.296 A (IV) (51-5-2)	"	"	"
Not recommended 9	2	0	"	"	"	Resol.296 B (IV) (53-5-1)	"	"	"
Not recommended 2	1	8	"	"	"	Resol.296 K (IV)	Request to SC to keep application under consideration	"	"
Not recommended 2	2	7	"	"	"	"	"	"	"
Not recommended 3	1	7	"	"	"	"	"	"	"
Not recommended 3	1	7	"	"	"	"	"	"	"
Not recommended 3	1	7	"	"	"	"	"	"	"
Recommended 10	0	1	27.9	A/1402-Letter Pres. SC to Pres. GA	28.9 (289th mtg.)	Resol.491 (V) (unanimous)	Admitted		
					4.12 (318th mtg.)	Resol.495 (V) (46-5-2)	Request to SC to keep applications under consideration	11.12	S/1936-Letter of SG to Pres. of SC transmitting Resol. 495 (V) (see No. 60)
						No action			
						"			
						"			

**Table of applications for Membership in the United Nations 1946-1951 and of actions**

1 Year—Country Reference numbers	2 Applications		3 Formal Declaration		4 Reference to Committee		5 Committee - Report		6 Security Council's Action	
	Date	Document	Date	Document	Date	Document	Date	Document	Date	Document
DEBATE XIII (1951) 569TH MEETING; 19 DECEMBER 1951										
Reconsideration under GA Resol. 550 (VI) EE. Italy (66)(61)(11) *										19.12 OR 569, 6th year (369th p. 33 mtg.)
Request for Reconsideration under GA Resol. 495 (V) EE. Applicant States referred to under No. 61 †										

\* (No. 45): The application was renewed on 22.12.51 (S/2432).

† (a) After a separate vote had already been taken on each of the applicant States mentioned under reference numbers 47 through 54, a Soviet draft resolution (S/1340/Rev.2) recommending to the General Assembly the admission *en bloc* of all applicant States mentioned under reference numbers 47 through 59 came up for voting. The Security Council decided to put the Soviet draft resolution to the vote in parts; and did not deem it necessary to vote again on the applications already voted upon (i.e., Nos. 47-54). A separate vote was thus taken on the applications of each State mentioned under reference numbers 55 through 59. The Soviet draft resolution S/1340/Rev.2 was then put to the vote as a whole and rejected, the result of the vote being as follows: 2 in favor, 4 against, 4 abstentions, 1 (Argentina) not participating in the vote (OR 42, 4th year, p. 45).

(b) At the 252nd plenary meeting of the General Assembly, a Soviet draft resolution (A/1079) proposing the admission *en bloc* of the applicant States mentioned under reference numbers 47 through 59 came up for voting after the General Assembly had already voted on the applications of the States mentioned under reference numbers 45 and 47 through 54. The Soviet draft resolution was rejected by 12 votes in favor, 32 against and 13 abstentions.

† At the 318th plenary meeting of the General Assembly, a Soviet draft resolution proposing to admit *en bloc* the thirteen applicant States mentioned under reference numbers 47 through 59 came up for voting after the General Assembly had already adopted



taken thereon by the Security Council and the General Assembly (continued)

7 Result of the Vote in the Security Council			8 Security Council Special Report to General Assembly		9 General Assembly Action		10 Nature of General Assembly Decision	11 Transmission of General Assembly Decision to Security Council	
For	Against	Abstentions	Date	Document	Date	Document		Date	Document
						No action in 1951 (see No. 66)			
						No action in 1951			

resolution 495 (V) (see No. 61) which requested the Security Council to keep under consideration the applicant States mentioned under reference numbers 45 and 47 through 54. The Soviet draft resolution was rejected by 18 votes in favor, 22 against, and 15 abstentions.

<sup>a</sup> Document S/2780 was circulated at the request of the representative of the USSR (OR. 600, 7th year).

<sup>b</sup> Resolution 550 (VI) was adopted on the report of the Fourth Committee of the General Assembly concerning an item entitled: "Question of the full participation of Italy in the work of the Trusteeship Council". Resolution 550 (VI) recommended to the Security Council "to give urgent consideration to the present resolution with a view to recommending the immediate admission of Italy to membership in the United Nations, because Italy had been charged by the United Nations with the administration of the trust territory of Somaliland.

<sup>c</sup> By a letter dated 6 December 1950, the Secretary-General transmitted to the President of the Security Council the text of General Assembly resolution 495 (V) which concerned the applications of States mentioned in No. 61 of the Table. This letter appeared on the agenda of the 568th meeting of the Security Council on 18 December 1951. Consideration of that item was not reached in 1951.



## Part II

CONSIDERATION OF THE ADOPTION OR AMENDMENT OF RULES 58, 59 AND 60  
OF THE PROVISIONAL RULES OF PROCEDURE

## NOTE

For an understanding of the sequence of events leading up to the adoption by the Security Council at the 222nd meeting on 9 December 1947 of chapter X of the provisional rules of procedure governing the admission of new Members, it is necessary to have in mind the sequence of events leading up to the adoption by the General Assembly at the 122nd plenary meeting on 21 November 1947 of chapter XIV of the rules of procedure of the General Assembly. The case histories in this part are therefore accompanied by brief notes on proceedings in the General Assembly, thus departing from the principle adopted in other chapters of not entering into the proceedings of the General Assembly. Use has also been made of certain material derived from the "Memorandum on the Historical Background of the question of the admission of new Members",<sup>1</sup> and therefore this chapter, unlike other chapters, also contains references to the discussion of the Committee of Experts.

## CASE I (i)

At the 1st meeting on 17 January 1946, the Security Council adopted rules 25, 26 and 27 of the provisional rules of procedure prepared by the Preparatory Commission and referred them to its Committee of Experts for study and report.

In the Committee of Experts the following amendment to rule 26 was submitted by the representative of the USSR:

"The application for membership in the United Nations shall be placed by the Secretary-General before the Security Council, which immediately considers the application in order that, if the Security Council is holding its session simultaneously with a session of the Assembly, the application could be submitted to the session of the General Assembly or—if the Security Council is not holding its session simultaneously with a session of the Assembly—to the next session of the Assembly. While considering the application, the Security Council shall decide whether, in its judgment, the applicant is a peace-loving State and is able and willing to carry out the obligations contained in the Charter."

The representative of the United States did not think that when the Assembly was in session the Security Council should be obliged to act with such rapidity, or that it should be obliged to act immediately when the next session of the Assembly was a long way off. It was desirable, in his view, that the Council should consider at the same time all the applications filed during a year, on a particular date and in time for its recommendations to be submitted together to the Assembly. He further considered it preferable that applications be considered at first in private, and this could be better accomplished by a committee on which all members of the Council would be represented, rather than by the Council itself at a private meeting. He consequently proposed two new rules to replace the original rule 26, as follows:

"The Secretary-General shall immediately bring the application for membership to the attention of all representatives on the Security Council in accordance with rule 6. The President of the Security Council shall thereupon, unless otherwise directed by the Council, refer the application for examination to a committee of the Council composed of a representative of each of the members of the Council. The committee shall, at least thirty days in advance of each session of the General Assembly, report to the Security Council on all applications received more than forty-five days prior to that session. When there is less than thirty days notice for any session of the General Assembly or when an application has been filed less than forty-five days prior to a session, the Security Council shall determine the time at which the committee shall report on applications before it.

"The Security Council shall decide whether in its judgment the applicant is a peace-loving State, and is able and willing to carry out the obligations contained in the Charter, and whether to recommend the applicant State for membership."

Several representatives agreed with the United States view that the Council should not be forced to take a hasty decision, because in the interval between consideration of the application by the Council and the decision of the Assembly, the political conditions of the applicant country might change. The representatives of Mexico and Australia pointed out that the act by which a State was admitted to membership was a collective act of the Assembly and the Council, and they felt the USSR proposal divided the act of admission into two stages that were too remote from each other.

The Committee then considered whether the initiative regarding the admission of new Members belonged to the General Assembly or to the Security Council. The representative of Australia maintained that the initiative belonged to the General Assembly, whereas the representative of Poland urged that in reality the initiative belonged to the applicant State. The representative of the United Kingdom opposed the Australian point of view and stressed that, according to the Charter, it was for the General Assembly to decide on admission upon the Council's recommendation. The representative of China pointed out that, even if the Assembly could receive an application, it must refer it to the Council for consideration and could not take any decision without the Council's recommendation. The representative of France strongly opposed the Australian view that initiative was to be taken by the Assembly, considering it in direct contradiction with the Charter.

The representative of the USSR opposed the United States proposal for a committee. He said that the League Council had always itself discussed applications because it was thought that problems of high policy were involved, and the committee now proposed would only be an exact replica of the Council with the Press absent. He did not understand why the Council should have to postpone consideration of an application. Once

<sup>1</sup> A/AC.64/L.1 (22 April 1953).

a recommendation had been made by the Council, an extraordinary session of the Assembly could be convened within a short space of time. A compromise could be reached, however, if it safeguarded the following principles: the recommendation from the Council had to be submitted to the next Assembly session following the receipt of the application; the Council could not postpone consideration of an application without very good reason; and the Council was bound to consider applications as a matter of urgency.

A sub-committee was accordingly asked to prepare a draft text reconciling the views of the United States and the USSR. The sub-committee redrafted the United States proposals regarding a committee on admission of new Members and revised the time schedules originally proposed.

The Committee of Experts then adopted provisionally the original text of rule 25 and the two United States proposals replacing rule 26, as amended by the sub-committee, and further rearranged in the Committee of Experts. With regard to the original rule 27, the Committee decided to omit it having failed to achieve a compromise text. The difficulty arose over whether the Council should place its decision before the Assembly when the decision was against the admission of an application. The Committee rejected an Australian proposal that the Committee's report should contain a sentence pointing out that the Committee had decided to study at a later date the question of whether the Council should place its decision before the Assembly when such a decision had been unfavorable.

At a later meeting, the Committee of Experts again revised the time limits for reports by the committee on admissions, and approved the rules already adopted in principle. The Australian delegation was unable to agree to the rules. The Australian view was that, since admission was a collective act, the initiative belonged to the Assembly which should determine when, how and by whom applications should be considered. The Council could only consider applications when they were referred to it by the Assembly. Moreover, the Australian delegation considered that applications should be discussed at public meetings. The Australian reservation was recorded in the report of the Committee of Experts.<sup>2</sup>

#### CASE 1 (ii)

At the 41st meeting on 16 May 1946, in connexion with the section of the report of the Committee of Experts<sup>3</sup> relating to rules on the admission of new Members, the representative of Australia opposed the adoption of the proposed text of Chapter X, holding that the recommendation of the Council could concern only matters relating to security. It was for the Assembly to weigh the merits of the case and the fitness of the candidate in respect of all other aspects of the Charter and, notwithstanding a recommendation of the Council, the Assembly could reject an application for membership on other grounds. Outlining appropriate procedure, he suggested that: (a) the applicant address a communication to the Secretary-General, who would immediately inform all Members, or transmit the

communication to the President of the General Assembly if a session were in progress; (b) the Assembly would decide whether the application should be entertained, and if so, would immediately remit it to the Security Council; (c) the Council would immediately consider it and report on the admissibility of the applicant; and (d) the Assembly would immediately consider the report and, in the light thereof and of other factors which it might have to weigh, would decide whether or not to admit the applicant. He proposed that the question of the adoption of Chapter X be deferred, that the President of the Council and the President of the Assembly discuss the possibility of having the draft examined by an appropriate organ of the General Assembly, and that the matter be decided by the two organs during the first week of the Assembly's session in September 1946.<sup>4</sup>

At the 42nd meeting on 17 May 1946, the representatives of China, Mexico, the United Kingdom, the USSR, and the United States opposed the procedure proposed by the representative of Australia. The representative of the United Kingdom observed that, under the Charter, the admission of a new Member could not be effected except upon recommendation of the Council. He disagreed with the view that recommendations of the Council could concern only matters relating to security, and cited the rule of the Council in the appointment of the Secretary-General, under Article 97, and in the expulsion of a Member, under Article 6. The representative of the USSR stated that the suggestion that the General Assembly should consider the application before receiving a recommendation from the Council was purposeless, since, under the Charter, the Assembly could not take a decision without a recommendation from the Council.<sup>5</sup>

The Australian proposal was rejected, having failed to obtain the affirmative votes of 7 members. The Council thereupon adopted Chapter X of the provisional rules of procedure.<sup>6</sup>

#### CASE 2

[Note: The General Assembly, at its second plenary meeting on 11 January 1946, provisionally adopted rules 104-107 of the provisional rules of procedure, as recommended by the Preparatory Commission.<sup>7</sup> In

<sup>2</sup>41st meeting: p. 267.

<sup>3</sup>For texts of relevant statements see:

41st meeting: Australia, pp. 261-267;

42nd meeting: Mexico, pp. 273-274; USSR, pp. 274-275; United Kingdom, pp. 271-273; United States, p. 277.

<sup>4</sup>42nd meeting: p. 277.

<sup>5</sup>The text read as follows:

PROVISIONAL RULES OF PROCEDURE FOR THE GENERAL ASSEMBLY  
"XVII. ADMISSION OF NEW MEMBERS TO THE UNITED NATIONS"

"Rule 104

"Any State which desires to become a Member of the United Nations shall submit an application to the Secretary-General. This application shall be accompanied by a declaration of its readiness to accept the obligations contained in the Charter.

"Rule 105

"If the applicant State so requests, the Secretary-General shall inform the General Assembly, or the Members of the United Nations if the General Assembly is not in session, of the application.

"Rule 106

"If the Security Council recommends the applicant State for membership, the General Assembly shall consider whether the applicant is a peace-loving State and is able and willing to carry out the obligations contained in the

<sup>7</sup>See A/AC.64/L.1. For report of Committee of Experts relating to rules regarding admission of new Members see S/57, O.R., 1st year, 1st series, Suppl. No. 2, p. 25.

<sup>8</sup>S/57, O.R., 1st year, 1st series, Suppl. No. 2, pp. 29-30.

the second part of the first session of the General Assembly, the representative of Australia proposed that the Assembly request the Security Council to appoint a committee to confer with an Assembly committee on procedures with a view to preparing rules governing the admission of new Members which would be acceptable both to the Assembly and to the Council. In the preparation of such rules, regard should be paid to the following principles:

"(a) the admission of new Members is a corporate act; (b) the General Assembly has primary and final responsibility in the process of admission; (c) the Security Council, not having been given any general power covering all matters within the scope of the Charter, its recommendation for the admission of an applicant to membership should be based solely on the judgment of the Council that the applicant State is able and willing to carry out its obligations under those sections of the Charter which come within the competence of the Security Council."

The purpose of the Australian proposal was to recognize that the admission of new Members was a solemn act which ought to be above the ordinary methods of compromise; it was an attempt to get rid of defects in the existing procedure, not to revise or amend the Charter. The two main organs of the United Nations must assume jointly the responsibilities common to both.

The Australian proposal was supported by the representatives of Brazil and Uruguay. Other representatives supported the idea of conferences but opposed the statement of principles. A number of delegations supported the view expounded by the representative of China, who said that if the "corporate act" mentioned in principle (a) meant that, under Article 4, the phrase "in the judgment of the Organization" should be given special importance and that the word "Organization" was intended to refer to the General Assembly, he doubted the soundness of such an interpretation. With regard to principle (b), he felt that responsibility for admissions was shared between the Assembly and the Council, and that the Assembly could not be said to have primary responsibility, even though it might reject a Council recommendation, since the Charter required the Assembly to act upon the recommendation of the Council. With regard to principle (c), even graver doubts arose, since it appeared to add something to the Charter and to interpret the Council's powers in a very restricted sense, while he felt that it was the Council's duty to reach decisions on the basis of the whole Charter.

The representative of Australia accordingly revised his draft resolution to provide simply for a request to the Council to appoint a committee to confer with an Assembly committee on procedures, and it was adopted by the Assembly on 19 November 1946 as resolution 36 (I).]

Charter, and shall decide, by a two-thirds majority of the Members present and voting, upon its application for membership.

*"Rule 107"*

"The Secretary-General shall inform the applicant State of the decision of the General Assembly. If the application is approved, membership will become effective on the date on which the applicant State presents to the Secretary-General an instrument of adherence."

CASE 2 (i)

At the 81st meeting on 29 November 1946, in connexion with General Assembly resolution 36 (I) of 19 November 1946, requesting the Council to appoint a committee to confer with an Assembly committee on procedures regarding the rules governing the admission of new Members, the Security Council instructed the Committee of Experts to name a small sub-committee to meet with and listen to the proposals which the Assembly committee might have to make, and to report on those proposals to the Council for further instructions.<sup>8</sup>

In the joint meetings of the two committees the representative of Australia submitted a set of nine draft rules providing that the Assembly should first consider the application and, if it found that the applicant had shown its willingness to carry out the obligations of the Charter, should refer it to the Security Council for recommendation. The Security Council should examine the application and send its recommendation to the Assembly with a complete record of its discussion and the evidence submitted to it. The recommendation should be based on the consideration of the ability of the applicant to carry out Charter obligations, so far as such obligations related to matters within the jurisdiction of the Council, and of the question whether the applicant was a peace-loving State. Finally, if the Council recommended the applicant, the Assembly should decide by a two-thirds vote upon its application, while if the Council recommended non-admittance, the Assembly might refer the application, together with a full report of the Assembly's discussion, back to the Council for further consideration. The joint meetings of the two committees also took into consideration certain proposals from the Argentine delegation based on the belief that the General Assembly might decide to admit an applicant State, no matter what might be the recommendation of the Security Council.

After an exchange of views in the joint meetings, the Committee of the General Assembly did not accept the main points of the Australian proposals,<sup>9</sup> and went on to recommend the addition of a new rule to the General Assembly's rules, and of two new paragraphs

<sup>8</sup>81st meeting: p. 505. After the decision, the President stated that he would undertake "to advise the President of the General Assembly, through usual channels and according to custom, of the decision of the Council". For the establishment of the sub-committee of the Committee of Experts, see chapter V, Case 32.

<sup>9</sup>The report of the Committee of Experts reproduced a letter dated 30 June 1947 from the Chairman of the General Assembly Committee to the Chairman of the sub-committee of the Committee of Experts, informing him of the understanding reached in the Assembly Committee after a discussion on the Australian and Argentine proposals:

"It was agreed unanimously that the General Assembly was not entitled, under Article 4, paragraph 2, of the Charter, to decide to admit a new Member except upon a recommendation in the affirmative by the Security Council. The delegation of Cuba reserved the position of his Government on this point. The following decisions were agreed upon by a majority of the Committee (India, Norway, and the Union of Soviet Socialist Republics voting for, and Australia and Cuba voting against):

"(a) That the Committee could not suggest any procedural rules which would have the effect of defining or limiting the powers and jurisdiction of the Security Council in relation to the admission of new Members;

"(b) That the Security Council was entitled to consider the application first"

S/520, O.R., 2nd year, Suppl. No. 19, p. 162

to rule 60 of the Security Council's rules. According to this addition, the Council would be required to do what it had previously done voluntarily, namely, to forward a complete record of its discussion when it recommended an applicant for membership, and to submit in addition a special report to the Assembly if it did not recommend admission or postponed consideration of the application. The proposed new rule for the Assembly asserted its right to send back to the Council for further consideration and recommendation or report applications which had failed to obtain the recommendation of the Council.

When the Committee of Experts considered the report of its sub-committee on these joint meetings, the representative of Belgium pointed out that, according to the Charter, an applicant became a Member upon a decision of the General Assembly, while the rules of procedure required that thereafter the applicant submit an instrument of adherence to the Charter. Accordingly he suggested that rule 58 be amended to provide that a formal instrument accepting the obligations contained in the Charter must accompany an application for admission. The Committee of Experts, in its report<sup>10</sup> to the Security Council, recommended that rule 58 be amended to read, "Any State which desires to become a Member of the United Nations shall submit an application to the Secretary-General. This application shall contain a declaration, made in a formal instrument, that it accepts the obligations contained in the Charter." The Assembly's rule 117 (formerly rule 107), it pointed out, would have to be amended accordingly to provide that membership would become effective on the date on which the Assembly took its decision on the application. The Committee of Experts agreed with the Assembly committee's recommendations for the addition of two paragraphs to rule 60 of the Security Council's provisional rules of procedure.

#### CASE 2 (ii)

At the 197th meeting on 27 August 1947, the representative of China submitted a draft resolution<sup>11</sup> approving the recommendations of the Committee of Experts regarding the amendments to rule 60 of the Council's rules and accepting the proposed changes in the provisional rules of procedure of the Assembly. The representative of Australia, in accordance with the views he had expressed at the 41st meeting, proposed amendments to the Council's rules, providing mainly for prior consideration of applications by the General Assembly and for limiting the Council's consideration of applications for membership to the two following questions: (a) whether the applicant was a peace-loving State, and (b) whether the applicant State was able to carry out the obligations contained in the Charter of the United Nations so far as such obligations related to the maintenance of international peace and security.

The Australian amendments were rejected, having failed to obtain the affirmative votes of seven members.

Referring to the Chinese draft resolution, the representative of the USSR doubted the necessity of a new rule for the Assembly, since that organ already had the right to send any question back to the Council. To be consistent the Council would have to propose similar

rules for all cases in which the Assembly's action depended upon the Council's recommendation. The President (Syria) agreed that the Assembly was entitled to refer a matter back to the Council but considered that a new rule would not be harmful since there might be future objections in the Council on the ground that the Council's action was final. The Council thereupon, with Australia abstaining, instructed the sub-committee of the Committee of Experts to negotiate with the General Assembly Committee on Procedure for acceptance of rule 58 as tentatively revised and for its undertaking to effect necessary accompanying changes in rules 113 and 117 of the Assembly's rules of procedure. The Council also resolved to accept the other recommendations of the Committee of Experts and of the General Assembly Committee.<sup>12</sup>

The sub-committee of the Committee of Experts met with the General Assembly Committee on Procedure and explained the position taken by the Security Council with regard to rules 58 and 60. The Assembly Committee agreed with the additional changes approved by the Security Council, and submitted a report to the General Assembly concerning its work and the changes proposed for the provisional rules of procedure of the General Assembly and the Security Council.<sup>13</sup>

#### CASE 2 (iii)

[Note: At the second session of the General Assembly, the representative of India explained to the First Committee the work that had been done, pointing out that the main changes, in rule 60 of the Security Council and in rule 116 of the General Assembly, were not innovations but merely the application of precedents established the previous year. He added that the proposals would not solve the problems which certain Members had had in mind in requesting an examination of the rules of procedure. The revisions would in no way restrict the powers of the Council, and he considered that problems arising from certain basic provisions of the Charter, could not be solved by amendments to the rules of procedure. The representative of Argentina thought that the Assembly had full powers to accept or reject a Security Council recommendation, whether favourable or unfavourable, and expressed the hope that the Assembly would re-examine its attitude in that respect.

The First Committee decided to recommend to the General Assembly the new texts proposed by the Committee on Procedure for rules 113, 114, 116 and 117 of the provisional rules of procedure. At its 122nd plenary meeting on 21 November 1947, the General Assembly adopted these recommendations.<sup>14</sup>]

<sup>10</sup> 197th meeting: p. 2266. For texts of relevant statements see:

197th meeting: President (Syria), pp. 2260, 2266; Australia, pp. 2256-2259, 2261-2262; USSR, pp. 2250-2261, 2262, 2263-2266; United States, p. 2260.

<sup>11</sup> A/384.

<sup>12</sup> Now Chapter XIV, Rules 133-137, of the Rules of Procedure of the General Assembly.

XIV. ADMISSION OF NEW MEMBERS TO THE UNITED NATIONS

#### Applications

##### Rule 133

Any State which desires to become a Member of the United Nations shall submit an application to the Secretary-General. This application shall contain a declaration, made in a formal

<sup>13</sup> S/520, O.R., 2nd year, Suppl. No. 19, p. 157.

<sup>14</sup> S/528, 197th meeting: p. 2266.



On 2 December 1947 the Assistant Secretary-General in charge of the Department of Security Council Affairs addressed a letter to the President of the Security Council drawing attention to the Council's previous approval of the report of the Committee of Experts and to the decision taken by the General Assembly on 21 November 1947. Since the rules of both the Council and the Assembly were drafted so

instrument, that it accepts the obligations contained in the Charter.

#### *Notification of applications*

##### *Rule 134*

The Secretary-General shall send for information a copy of the application to the General Assembly, or to the Members of the United Nations if the General Assembly is not in session.

#### *Consideration and decision by the General Assembly*

##### *Rule 135*

If the Security Council recommends the applicant State for membership, the General Assembly shall consider whether the applicant is a peace-loving State and is able and willing to carry out the obligations contained in the Charter, and shall decide, by a two-thirds majority of the Members present and voting, upon its application for membership.

that there would be no contradiction between them, he said that the Council should take action to include in its rules of procedure the rules on the admission of new Members which concerned the Council as presented in the Assembly's report.

At the 222nd meeting on 9 December 1947, the Security Council adopted these rules, which have not subsequently been amended.<sup>15</sup>

##### *Rule 136*

If the Security Council does not recommend the applicant State for membership or postpones the consideration of the application, the General Assembly may, after full consideration of the special report of the Security Council, send back the application to the Security Council, together with a full record of the discussion in the General Assembly, for further consideration and recommendation or report.

#### *Notification of decision and effective date of membership*

##### *Rule 137*

The Secretary-General shall inform the applicant State of the decision of the General Assembly. If the application is approved, membership will become effective on the date on which the General Assembly takes its decision on the application.

<sup>15</sup> S/612, 222nd meeting: p. 2771.

## Part III

### PRESENTATION OF APPLICATIONS

#### NOTE

Material concerning the presentation of applications up to the point at which the Security Council considers an item on the agenda, that is, the submission of applications to the Secretary-General, their communication to representatives on the Council and their subsequent inclusion in the provisional agenda, is presented together in part III.

Provisional rules in force before the adoption of the present provisional rules of the Security Council at the 222nd meeting on 9 December 1947 did not require the declaration of acceptance to be made in a formal instrument. At that time the rules of procedure of the General Assembly provided that membership became effective only after the applicant State had presented to the Secretary-General an instrument of adherence to the Charter following the decision of the General Assembly to admit the applicant. The revised procedure incorporated two changes, one affecting the rules of procedure of the Security Council; the other, those of the General Assembly. The combined effect of those changes was to make membership of an applicant State effective as soon as the General Assembly adopted its decision on the application. In order to make membership effective, the applicant State had to accept formally and without reservation all obligations contained in the Charter, and a declaration of those obligations, made in a formal instrument, was to be submitted in advance of the decision of the General Assembly, together with the application.

Before the entry into force of the revised procedure on 1 January 1948, six States: Afghanistan, Iceland, Siam, Sweden, Yemen and Pakistan had become Members of the United Nations.<sup>1</sup> The first applicant State

<sup>1</sup> Under the former rules, the instrument of adherence was drafted as a declaration by which the admitted State accepted the obligation contained in the Charter. A typical example of

to become a Member of the United Nations under the revised rules was Burma.<sup>2</sup>

The formal instrument of acceptance of the obligations contained in the Charter is to be signed on behalf of the applicant State by a representative who has received full power to that effect from his Government, and submits credentials to the Secretary-General. Formal instruments of acceptance together with the credentials are deposited with the Secretariat of the United Nations. In the event the applicant is admitted, the text of the declaration is reproduced in full in the Treaty Series of the United Nations, together with a reference to the relevant resolution of the General Assembly.

Rule 59 imposes an obligation upon the Secretary-General to place applications immediately before the representatives on the Security Council. This has on

such an instrument of adherence is the one submitted by Afghanistan, Iceland, Sweden and Siam, the text of which reads as follows:

"The Government of . . . , having received from the Secretary-General of the United Nations the information that the General Assembly of the United Nations has approved the application for membership of . . . , hereby presents to the Secretary-General this instrument of adherence in accordance with rule 116 of the provisional rules of procedure of the General Assembly."

"The Government of . . . hereby states that it accepts the obligations contained in the Charter of the United Nations."

<sup>2</sup> Burma presented its instrument of acceptance on 19 March 1948 to the Secretary-General in the following terms:

"In the name of Burma, being duly authorised by virtue of the full powers vested in me by the Minister of Foreign Affairs of the Government of the Union of Burma, I declare that Burma hereby accepts without any reservation the obligations of the Charter of the United Nations and promises to keep them inviolably from the day when it becomes a Member of the United Nations." (U.N. Treaty Series, Vol. 15, No. 225, p. 4.)

occasion been interpreted<sup>3</sup> to mean that the Secretary-General is required not only to bring the applications to the attention of all representatives on the Council, but also to place the item immediately on the provisional agenda.

After their first appearance on the agenda, applications have been regarded as pending in the following circumstances:<sup>4</sup>

(1) After a decision to defer consideration has been taken by the Security Council;

(2) After a decision to recommend an applicant has been taken by the Security Council;

(3) After a decision failing to recommend an applicant has been taken by the Security Council;

(4) After an application has been sent back to the Council by resolution of the General Assembly;

(5) After a communication renewing the application has been received from the applicant State;

(6) After a request for reconsideration has been received from a representative on the Council;

(7) After a request for reconsideration has been received from the applicant State.

Applications which have failed of recommendation have been reconsidered by the Security Council not only at the request of the General Assembly, but also at the request of members of the Security Council,<sup>5</sup> and, in one instance, at the request of the applicant State.<sup>6</sup>

In one instance the application for membership, circulated by the Secretary-General otherwise than in

application of rule 6, was placed on the provisional agenda at the request of a member.<sup>7</sup>

The historical data regarding the presentation of applications may be briefly summarized as follows:

- (i) In 1946<sup>8</sup>
1. The People's Republic of Albania ..... 25 January 1946
  2. Thailand (Siam) ..... 20 May 1946<sup>9</sup>
  3. The Mongolian People's Republic ..... 24 June 1946
  4. Hashemite Kingdom of Transjordan ..... 26 June 1946
  5. Afghanistan ..... 2 July 1946
  6. Iceland ..... 2 August 1946
  7. Portugal ..... 2 August 1946
  8. Ireland ..... 2 August 1946
  9. Sweden ..... 9 August 1946
- (ii) In 1947<sup>10</sup>
1. Hungary ..... 22 April 1947
  2. Italy ..... 7 May 1947
  3. Austria ..... 2 July 1947
  4. Romania ..... 10 July 1947
  5. Yemen ..... 21 July 1947
  6. Bulgaria ..... 26 July 1947
  7. Pakistan ..... 15 August 1947
  8. Finland ..... 19 September 1947

<sup>3</sup> See Case 5.

<sup>4</sup> Albania: O.R., 1st year, 2nd series, Suppl. No. 4, annex 6 (1), p. 17;

Siam: S/73, O.R., 1st year, 2nd series, Suppl. No. 4, annex 6 (2), p. 43;

Mongolia: S/95, O.R., 1st year, 2nd series, Suppl. No. 4, annex 6 (3), p. 48;

Transjordan: S/101, O.R., 1st year, 2nd series, Suppl. No. 4, annex 6 (5), p. 50;

Afghanistan: S/98, O.R., 1st year, 2nd series, Suppl. No. 4, annex 6 (4), p. 49;

Iceland: S/120, O.R., 1st year, 2nd series, Suppl. No. 4, annex 6 (8), p. 51;

Portugal: S/119, O.R., 1st year, 2nd series, Suppl. No. 4, annex 6 (7), p. 51;

Ireland: S/116, O.R., 1st year, 2nd series, Suppl. No. 4, annex 6 (6), p. 50;

Sweden: S/125, O.R., 1st year, 2nd series, Suppl. No. 4, annex 6 (9), p. 52.

<sup>5</sup> In the Committee on Admission of New Members, France opposed the admission of Siam on the ground that, in 1941, Siam by a treaty signed in Tokyo, had obtained cession of territories which had belonged to French Indo-China. Until current negotiations between France and Siam for the restoration of these territories had been completed, France would continue to consider herself *de facto* in a state of war with Siam.

On 3 August 1946 a formal application was submitted by Siam (S/121, O.R., 1st year, 2nd series, Suppl. No. 4, annex 6 (2c), pp. 46-47). On 28 August Siam requested that consideration of the application be deferred (S/139, O.R., 1st year, 2nd series, Suppl. No. 4, annex 6 (2e), p. 48). On 29 November Siam requested that consideration of the application be proceeded with (S/201, O.R., 1st year, 2nd series, Suppl. No. 10, annex 15, p. 169).

<sup>6</sup> Hungary: S/333, O.R., 2nd year, No. 38, p. 811;

Italy: S/355, O.R., 2nd year, Suppl. No. 12, annex 33, pp. 129-130;

Austria: S/403, O.R., 2nd year, Suppl. No. 12, p. 1258;

Romania: S/411, O.R., 2nd year, No. 60, p. 1390;

Yemen: S/436;

Bulgaria: S/467, O.R., 2nd year, Suppl. No. 18, annex 43, pp. 155-156;

Pakistan: S/498, O.R., 2nd year, No. 78, p. 1027;

Finland: S/559, O.R., 2nd year, No. 90, p. 2408.

<sup>3</sup> At the 154th meeting on 10 July 1947, the President (Poland) stated:

"According to rule 59 of the provisional rules of procedure, the Secretary-General shall immediately place an application for membership before the Security Council. For that reason, I have put it on the agenda of today's meeting as the first point after the adoption of the agenda."

<sup>4</sup> The statements in this paragraph are based on such evidence as is afforded by Summary Statements issued by the Secretary-General under rule 11. It has not been thought necessary, for the purposes of the *Repertoire*, to analyse in this section proceedings in connexion with the admission of new Members whether in the Official Records, or in secondary sources such as the Summary Statements prepared by the Secretary-General under rule 11, in order to determine the exact point at which a particular application was included in the agenda, or retained on or removed from the list of matters of which the Security Council is seized. Before October 1947, the Summary Statements did not include in the list of matters of which the Security Council is seized details of applications regarding which a decision, whether recommending or not, had been taken by the Security Council. In October 1947, after decisions not recommending the applications of Finland, Hungary, Italy, Romania and Bulgaria had been taken at the 206th meeting on 1 October 1947, the Summary Statement (S/576) indicated that consideration of the item "Applications for Membership" had been completed on 1 October and that the Council was no longer seized of it.

In August 1948, however, after the application of Ceylon had been considered at the 351st meeting on 18 August 1948 and the Council had failed to make a recommendation, the Summary Statement (S/988) did not indicate that the Council was no longer seized of the item. In September 1949, after the Security Council had failed to make recommendations after reconsidering 13 applications, the Summary Statement (S/1394) related the proceedings of the Council up to and including the votes recorded on 15 September 1949, and subsequent Summary Statements made no mention of the deletion of any of these applications.

Since 28 November 1947 (S/610), the Summary Statements have regularly included the item "Applications for Membership".

<sup>5</sup> See Cases 3, 4 and 7.

<sup>6</sup> See Case 6.

(iii) In 1948<sup>11</sup>

1. Burma ..... 27 February 1948
2. Ceylon ..... 25 May 1948
3. Israel ..... 29 November 1948

(iv) In 1949<sup>12</sup>

1. The Republic of Korea ..... 19 January 1949
2. The Democratic People's Republic of Korea ..... 9 February 1949
3. Nepal ..... 13 February 1949

(v) In 1950<sup>13</sup>

1. Indonesia ..... 25 September 1950

(vi) In 1951<sup>14</sup>

1. Viet-Nam ..... 17 December 1951
2. Libya ..... 24 December 1951
3. Democratic Republic of Viet-Nam ..... 29 December 1951

Applications for admission were renewed as follows:

- |                                 |       |                                 |
|---------------------------------|-------|---------------------------------|
| Bulgaria                        | ..... | 22 September 1948 <sup>15</sup> |
| Hungary                         | ..... | 27 September 1948 <sup>16</sup> |
| The Mongolian People's Republic | ..... | 12 October 1948 <sup>17</sup>   |
| Romania                         | ..... | 12 October 1948 <sup>18</sup>   |
| Albania                         | ..... | 13 October 1948 <sup>19</sup>   |

## CASE 3

The provisional agenda of the 204th meeting on 25 September 1947 included two letters addressed to the President of the Council by the representatives of the United States and of Poland, the first requesting reconsideration of Italy's application, the second presenting a similar request concerning Italy, Romania, Bulgaria and Hungary.<sup>20</sup>

These four applications had already been examined by the Security Council and had failed of recommendation at the 190th meeting on 21 August 1947. One of the main objections then raised against any recommendation had been that the peace treaties had not been ratified. A special report of the Security Council to the General Assembly was established in this connexion on 22 August 1947; but, before it could be examined by the General Assembly, the peace treaties with the four applicant States were ratified. Requests for reconsideration were then made by the members of the Security Council as stated above.

<sup>11</sup> Burma: S/687, O.R., 3rd year, Suppl. for Jan., Feb. and March 1948, pp. 29-30;

Ceylon: S/820, O.R., 3rd year, Suppl. for June 1948, pp. 76-77;

Israel: S/1093, O.R., 3rd year, Suppl. for Dec. 1948, p. 118.

<sup>12</sup> Republic of Korea: S/1238, O.R., 4th year, Suppl. for Feb. 1949, p. 5;

Democratic People's Republic of Korea: S/1247, O.R., 4th year, No. 12, p. 18;

Nepal: S/1266.

<sup>13</sup> S/1809, O.R., 5th year, No. 45, pp. 10-11.

<sup>14</sup> Viet-Nam: S/2446, O.R., 7th year, Suppl. for Jan., Feb., and March 1952, p. 1;

Libya: S/2467, O.R., 7th year, Suppl. for Jan., Feb. and March 1952, p. 4;

Dem. Rep. of Viet-Nam: S/2466, O.R., 7th year, Suppl. for Jan.-March 1952, p. 3. See also S/2780 (letter of 22 November 1948) circulated on 17 September 1952, O.R., 7th year, Suppl. for July-Sept. 1952, pp. 57-58.

<sup>15</sup> S/1012, O.R., 3rd year, Suppl. for Sept. 1948, pp. 7-9.

<sup>16</sup> S/1017, O.R., 4th year, Suppl. for June 1949, pp. 1-2.

<sup>17</sup> S/1035, O.R., 4th year, Suppl. for June 1949, pp. 4-5.

<sup>18</sup> S/1051, O.R., 4th year, Suppl. for June 1949, p. 6.

<sup>19</sup> S/1033, O.R., 4th year, Suppl. for June 1949, p. 6.

<sup>20</sup> S/562, S/563, 204th meeting: p. 2408, footnotes 2-3.

## CASE 4

At the 221st meeting on 22 November 1947, the applications of Italy and Transjordan were unsuccessfully reconsidered by the Council under General Assembly resolution 113 C and F (II) which requested the Council to reconsider them before the end of the second regular session. In view of the unchanged position of the members of the Council, reconsideration of the applications was postponed indefinitely. Under resolutions 113 D, E, G, H (II), the applications of Portugal, Finland, Ireland and Austria remained to be reconsidered by the Security Council. On the other hand, the Assembly had made no recommendation concerning the applications of Albania, Bulgaria, Hungary, Mongolia and Rumania.

The provisional agenda of the 279th meeting on 10 April 1948 mentioned all the then pending applications, including those of Italy and Transjordan, the latter at the request of France, the United Kingdom and the United States; those of Austria, Ireland and Portugal at the request of the same countries; those of Albania, Bulgaria, Finland, Hungary, Italy, Mongolia and Rumania at the request of the Ukrainian SSR.<sup>21</sup>

## CASE 5

By telegram of 9 February 1949 the Minister of Foreign Affairs of the Democratic People's Republic of Korea submitted an application requesting admission of the Republic to membership in the United Nations.

In circulating the telegram on 10 February 1949 the Secretary-General attached the following note:<sup>22</sup>

"In view of the General Assembly resolution of 12 December 1948, paragraph 2, the Secretary-General is circulating the following communication for the convenience of the members of the Security Council which may desire to be informed of it and not in the application of rule 6 of the provisional rules of procedure of the Security Council."

By request of the representative of the USSR, the application was placed on the provisional agenda of the 409th meeting on 15 February 1949.

The representative of the United States criticised it in the following terms:

"... In the first place, members of the Council will note that it is nothing but a telegram; it has no authenticity at all; anybody can send a telegram... Certainly it is not adequate for an application for membership under the Charter.

"... it is not even signed by a Government or a purported Government... No organization or régime that claims to have the power to certify a man as the representative of that régime has said anything to the Security Council or authorized anybody to say anything to the Security Council, unless you can take this letter from the representative of the Union of Soviet Socialist Republics... as a letter from somebody who really has authority in that field."<sup>23</sup>

<sup>21</sup> S/709, S/712, S/715, O.R., 3rd year, Suppl. for May 1948, pp. 3-5. The provisional agenda of the 279th meeting did not include the letters (S/606 and S/607) whereby the Secretary-General transmitted the full text of General Assembly resolution 113 (II) to the President of the Security Council, although the applications of Austria, Ireland, Portugal and Finland had not yet been reconsidered by the Council under resolution 113 (II).

<sup>22</sup> S/1247.

<sup>23</sup> 409th meeting: pp. 12-15.

The representative of the USSR stated:

"The application is addressed to the Secretary-General of the United Nations. The Secretary-General acted irregularly in not distributing, as an official document, that legitimate application setting forth the request of the Government of the Democratic People's Republic of Korea for admission to the United Nations, and in issuing it for the consideration of the members of the Security Council, as has been indicated here.

"In order to redress the balance of justice, the USSR delegation transmitted an official letter to the President of the Security Council containing a request that the question should be included on the Council's agenda. As a result of that move the question and the application are being duly considered by the Security Council in full conformity with its rules of procedure. There is absolutely no foundation for all the attempts which have been made to question, by reference to the rules of procedure, the Council's competence to examine this question."<sup>24</sup>

At the 410th meeting on 16 February, the USSR draft resolution to refer this application to the Committee on the Admission of New Members was rejected by 2 votes in favour, 8 against and one abstention.<sup>25</sup>

#### CASE 6

At the 414th meeting on 4 March 1949, the provisional agenda contained the letter of the representative of Israel dated 24 February 1949<sup>26</sup> requesting that:

"... renewed consideration be given to this application by the Security Council..."

This application had failed of recommendation at the 386th meeting on 17 December 1948.

#### CASE 7

At the 427th meeting on 16 June 1949, the President (Norway) stated:<sup>27</sup>

<sup>24</sup> 409th meeting: p. 18.

<sup>25</sup> 410th meeting: p. 15.

<sup>26</sup> S/1267, O.R., 4th year, March 1949, p. 7.

<sup>27</sup> 427th meeting: pp. 5-6.

"... As far as Ceylon is concerned, it is true that we have already reconsidered this application (384th meeting) once after the General Assembly requested us to do so. I think, however, that it would be proper for the Council to include the application of Ceylon together with the other applications in the reconsideration at our meeting today. It might be useful in this connexion to recall that a similar procedure was adopted in 1947-1948. At the request of the General Assembly, the Security Council then reconsidered separately (221st meeting) the applications of Italy and Transjordan during the same session when the request was made, and yet, those applications were included again, together with all the other applications, when these were reconsidered by the Security Council in April 1948 (279th and 280th meetings)."<sup>28</sup>

No objection was raised.

The reconsideration of Ceylon's application mentioned by the President had taken place at the 384th meeting on 15 December 1948, under General Assembly resolution 197 I (III) which requested the Council to reconsider this application at the earliest possible moment. On the other hand, resolution 197 B (III) requested the Security Council to reconsider all of the twelve then pending applications, i.e., including that of Ceylon, in taking into account the circumstances in each particular case. Thus, in addition to resolution 197 I (III) which recommended specifically Ceylon's admission, resolution 197 B (III) included Ceylon's application among the others, if only by way of reference.

The Security Council agreed to discuss and vote on the application of Ceylon.<sup>29</sup>

<sup>28</sup> The common element between the case of Ceylon and those of Italy and Transjordan is that these applications were reconsidered again by the Security Council after having already been reconsidered once under a specific General Assembly resolution. In neither of those two cases, however, had the Security Council to take an exceptional decision to include them on its agenda. Ceylon's application appeared regularly on the provisional agenda of the 427th meeting as part of item 2a referring to resolution 197 I (III). Italy and Transjordan's applications were also part of the provisional agenda of the 279th meeting, since they were mentioned in document S/709 included in that agenda.

<sup>29</sup> 427th meeting: p. 6.

### Part IV

## REFERENCE OF APPLICATIONS TO THE COMMITTEE ON THE ADMISSION OF NEW MEMBERS

#### NOTE

Part IV concerns the manner in which the Security Council has utilized the Committee on the Admission of New Members by the reference to it of applications for admission to membership in the United Nations. The President, by the provisional rules of procedure, is required to refer applications to the Committee "unless the Security Council decides otherwise" (rule 59). The material, therefore, is arranged to distinguish occasions on which an application was referred to the Committee from occasions on which the Council considered an application without reference to the Committee. On each occasion, the President has placed the matter before the Council, and has himself referred the application to the Committee without putting the matter to a vote only in the absence of any objection or

of any other proposal of a procedural nature. Such instances are accordingly arranged separately from instances where the Council decided explicitly to refer an application to the Committee.

The provisional rules of procedure of the Security Council do not indicate whether reference is to be made to the Committee in cases where an application is returned to the Security Council by the General Assembly. Although rule 136 of the rules of procedure of the General Assembly provides for sending back to the Council "for further consideration and recommendation or report" an application not recommended by the Council, the General Assembly has not stated in its resolutions that it was sending back or referring such applications to the Security Council. It has used expressions such as "requests the Security Council to

reconsider...". The material has, therefore, been distributed under two headings. The first relates to proceedings of the Council prior to the submission of a recommendation or report to the General Assembly, and includes an instance where the Security Council itself reconsidered a previous decision after a reference to the Committee but before submitting a recommendation or report to the Assembly.<sup>1</sup> The second heading relates to proceedings of the Council after an application had been sent back by the General Assembly to the Council for reconsideration.

**A. BEFORE A RECOMMENDATION HAS BEEN FORWARDED OR A REPORT SUBMITTED TO THE GENERAL ASSEMBLY**

**1. Applications referred to the Committee by the President**

**CASE 8**

At the 154th meeting on 10 July 1947, in connexion with the application of Austria, the representative of Syria stated:

"... the President is not obliged to wait for any formal proposal to be presented. Rule 59 clearly specifies that the application should be referred to the Committee without any further discussion as long as there is no formal proposal presented on it."

The President (Poland) declared:

"The question before us is whether we have a formal motion not to refer the application to the Committee on the Admission of New Members... I understand that there is no such motion before us. Consequently... I shall follow rule 59 and refer the letter to the Committee on the Admission of New Members."

The application of Austria was referred to the Committee by the President.<sup>2</sup>

**2. Applications referred to the Committee by decision of the Security Council**

**CASE 9**

At the 42nd meeting on 17 May 1946, the Security Council decided<sup>3</sup>

"That applications for membership which have been or may be received by the Secretary-General before 15 July 1946 shall be referred to a committee composed of a representative of each of the members of the Security Council for examination and report to the Council not later than 1 August 1946."

At the 51st meeting on 24 July 1946, because the opening of the second part of the First Session of the General Assembly had been postponed until 29 September 1946, the Security Council decided<sup>4</sup>

<sup>1</sup> See Case 17.

<sup>2</sup> 154th meeting: p. 1266. The applications submitted by Romania, Yemen, Bulgaria, Burma, Ceylon, Israel and Nepal were also referred to the Committee by the President in the absence of objections to reference to the Committee, and in the absence of other proposals of a procedural nature. 161st meeting: p. 1391 (Romania); 168th meeting: p. 1550 (Yemen); 178th meeting: p. 1828 (Bulgaria); 261st meeting: p. 2 (Burma); 318th meeting: p. 2 (Ceylon); 383rd meeting: p. 25 (Israel); 423rd meeting: p. 16 (Nepal).

<sup>3</sup> 42nd meeting: pp. 279, 285.

<sup>4</sup> 51st meeting: p. 16. Applications for membership were received before 15 July 1946 from Albania, Mongolia, Afghanistan and Transjordan. The extension of the period authorized the reference to the Committee of the applications of Ireland, Portugal, Iceland, Siam and Sweden.

"... that all the dates in the resolution [of 17 May] would also be put back as many days as the interval between the day on which the Assembly was originally to be convened and the day on which it actually will be convened."

**CASE 10**

At the 132nd meeting on 30 April 1947, the representative of Australia submitted the following draft resolution before the adoption of the agenda:<sup>5</sup>

"Resolved that the application of Hungary for admission to the United Nations be noted and deferred for consideration until the appropriate time."

The President (China) declared:<sup>6</sup>

"The Secretariat informs me that when this item was placed on the agenda, it was intended, in accordance with our usual procedure, that we should not enter into a discussion on the subject at this time. In the past, the procedure has always been to refer such applications to the Committee of the Security Council on Admission of New Members. The points raised by the representative of Australia may be fully discussed by that Committee, if and when that Committee sees fit.

"It was the intention of the Chair simply to refer this item to the Committee on Admission of New Members, and whether or not that Committee, of which Australia is a member, decides to take it up or takes any decision on it, would be left to the Committee."

After the adoption of the agenda, the Australian draft resolution was rejected by 1 vote in favour, 9 against and 1 abstention.<sup>7</sup>

The following draft resolution was submitted by the representative of Syria:

"Resolved that the application of Hungary for admission to membership in the United Nations dated 22 April 1947 should be referred to the Committee on Admission of New Members for studying and reporting to the Security Council at the appropriate time."

The draft resolution was adopted by 10 votes in favour and 1 against.<sup>8</sup>

**CASE 11**

At the 137th meeting on 22 May 1947, in connexion with the application of Italy, the representative of China submitted the following draft resolution:

"The Security Council resolves

"That the application of Italy to the Security Council for membership in the United Nations be referred to the Security Council's Committee on Admission of New Members, for study and report to the Security Council."

The draft resolution was adopted by 10 votes in favour, none against and 1 abstention.<sup>9</sup>

**CASE 12**

At the 409th meeting on 15 February 1949, in connexion with the application of the Republic of Korea, the President (China) stated:

<sup>5</sup> 132nd meeting: pp. 812-815, 820.

<sup>6</sup> 132nd meeting: p. 815.

<sup>7</sup> 132nd meeting: p. 821.

<sup>8</sup> 132nd meeting: p. 821.

<sup>9</sup> 137th meeting: pp. 945-946.



"According to the usual procedure of the Security Council, such an application is referred to the Committee on the Admission of New Members. If there is no objection to following the usual procedure, it will be handled in that manner."

The representative of the USSR stated:<sup>10</sup>

"The USSR delegation objected to the inclusion of this question in the Security Council's agenda and objects to its being referred to the Committee for further study."

The President declared:<sup>11</sup>

"Since objection has been raised to the adoption of the usual procedure, which is to refer the matter to the Committee on the Admission of New Members, I shall have to put the question to the vote after the completion of the debate.

"...I shall put to the vote the proposal to refer the application of the Republic of Korea to the Committee on the Admission of New Members."

The proposal was adopted by 9 votes in favour and 2 against.<sup>12</sup>

### 3. Applications considered by the Security Council without reference to the Committee

#### CASE 13

At the 186th meeting on 18 August 1947, in connexion with the application of Pakistan, the President (Syria) stated:<sup>13</sup>

"I suggest that this application should be treated ... without referring it to the Committee on the Admission of New Members, and that the Security Council should take a decision on the application."

The application of Pakistan was put to the vote and the admission of Pakistan to membership was recommended.

#### CASE 14

At the 206th meeting on 1 October 1947, in connexion with the application of Finland, the President (United Kingdom) suggested that the Council dispense with referring the application to the Committee.

There being no objection, the application of Finland was immediately discussed by the Council which, however, failed to make a recommendation.<sup>14</sup>

#### CASE 15

At the 409th meeting on 15 February 1949, in connexion with the application of the Democratic People's Republic of Korea,<sup>15</sup> the representative of the United States stated that the item on the agenda was not a genuine application for membership; firstly, because the document purporting to be an application was irregular, and secondly, because the General Assembly had decided that the Government of the Republic of Korea was the only Government in Korea based upon valid elections. The President (China) declared:

"I construe the statement of the representative of the United States of America as an argument against referring this item to the Committee on the Admis-

sion of New Members. Since that objection has been raised, I shall put that question to the vote after the completion of the debate."

At the 410th meeting on 16 February 1949, the representative of Norway stated:<sup>16</sup>

"In our opinion the Democratic People's Republic of Korea has shown that it is not willing and able to carry out the obligations in the Charter. We are, therefore, forced to vote against the reference of this application to the Committee on the Admission of New Members. We shall do this though we do not like to make a decision of substance in the form of a decision on procedure.

"...if it is not an application, the question of whether to send it to the Committee on the Admission of New Members cannot even be discussed."

The representative of the USSR submitted a draft resolution to refer the application to the Committee. The draft resolution of the USSR was rejected by 2 votes in favour, 8 against and 1 abstention. No proposal was submitted to recommend admission, and no further action was taken by the Council.<sup>17</sup>

#### CASE 16

At the 503rd meeting on 26 September 1950, the Security Council, having decided to add the application of Indonesia to the provisional agenda, decided further to consider it before other items on the agenda. The representative of India proposed that the Council decide not to refer the application to the Committee on the Admission of New Members, citing the case of Pakistan at the 186th meeting on 18 August 1947.

The Council, without taking a vote on the Indian proposal, proceeded to discuss the application and to vote on it.<sup>18</sup>

### 4. Applications reconsidered by the Security Council after reference to the Committee

#### CASE 17

At the 413th meeting on 3 March 1949, the Security Council considered the request by the representative of Israel for renewed consideration of the application submitted by Israel on 29 November 1948.<sup>19</sup>

The representative of China, supported by the representative of Norway, stated:

"... that the Security Council should handle this item in the usual way, which is to refer it to the Committee on the Admission of New Members. In the Committee there can be a thorough examination of the merits of the question, particularly from the point of view of technical law and the facts.

"... I put forward my suggestion because it appeared to me that at this juncture the Security

<sup>10</sup> For texts of relevant statements see: 409th meeting: President (China), p. 16; United States, pp. 12-16.

<sup>11</sup> 410th meeting: Canada, p. 14; Cuba, pp. 11-12; Egypt, p. 12; Norway, pp. 10-11; Ukrainian SSR, p. 9; USSR, p. 8.

<sup>12</sup> 410th meeting: p. 15.

<sup>13</sup> 503rd meeting: pp. 11, 28. For the inclusion of the application of Indonesia in the agenda, see chapter II, Case 40.

<sup>14</sup> The recommendation in favour of the application put to the vote at the 386th meeting on 17 December 1948 had failed of adoption.

<sup>15</sup> 409th meeting: p. 3.

<sup>16</sup> 409th meeting: pp. 9, 12.

<sup>17</sup> 409th meeting: p. 12.

<sup>18</sup> 186th meeting: p. 2029.

<sup>19</sup> 206th meeting: pp. 2461-2462.

<sup>20</sup> S/1247, 409th meeting: p. 18.



Council should not have a heated, controversial discussion on this issue."

The representative of Egypt, while stressing that the application should have been discarded for substantive reasons, stated that the Council should at least refer the matter back to the Committee. The representative of the United States considered that there was no cause "for again referring the application back to the Committee" because there was no "real substantial issue of fact about the qualifications of this applicant for membership", and therefore the matter did not require further discussion in the Committee. The representative of the USSR saw no reason for postponing the consideration of the question since there already existed every reason for reaching a favourable decision on the admission of Israel when it was examined the first time by the Security Council, and also "in view of the fact that the Israeli Government's application has already been examined by the Committee on the Admission of New Members".

The President (Cuba) put the question to the vote as follows:

"May I remind members of the Council that we are not discussing the substance of Israel's application, but simply whether or not it should be referred to the Committee on the Admission of New Members."

The proposal was not adopted, there being 4 votes in favour, 3 against and 4 abstentions. The President declared:

"As a result of the vote, the application will be dealt with by the Council."

The representative of Egypt said:

"I have certain doubts concerning the procedure we have just followed. It seems to me that we have voted on two proposals, one to refer the matter to the Committee on the Admission of New Members, which did not secure the necessary votes, the other to discuss the matter in the Security Council without reference, which also did not secure the necessary number of votes. For the correctness of our record, I wish this point to be clarified before we proceed any further."

The representative of China, in raising a point of order, stated:

"In order ... to avoid the step of sending this application to the Committee, the Council must decide otherwise. The Council has not decided otherwise. According to rule 59, it appears to me that it is natural to refer this matter to the Committee."

The representative of the USSR stated:

"The application has already been considered by the Committee; the Council has received the Committee's report and is now continuing the discussion on the substance of the question of Israel's admission to membership in the United Nations; yet, despite all this, a new proposal has been put forward, namely, that the question should again be referred to the Committee on the Admission of New Members. That proposal was put to the vote; it failed to obtain a majority and was consequently rejected. The Security Council is therefore continuing to examine the substance of the Israeli Government's application for admission to the United Nations."

The President ruled as follows:

"Israel's application is under consideration and will continue to be discussed by the Council. A sufficient number of votes was not obtained to enable the application to be referred to the Committee on the Admission of New Members, and the Council will therefore continue to discuss the question."

The President stated further:

"This application was sent to the Committee at the proper time... I consider that we are dealing with a renewal of the application, as is shown on the agenda, and that rule 59 is therefore not applicable, unless anyone challenges my ruling."

No representative challenged the President's ruling.<sup>20</sup>

## B. AFTER AN APPLICATION HAS BEEN SENT BACK BY THE GENERAL ASSEMBLY TO THE SECURITY COUNCIL FOR RECONSIDERATION

### 1. Applications referred to the Committee by the President

#### CASE 18

At the 152nd meeting on 8 July 1947, in connexion with the re-examination of applications recommended under General Assembly resolution 35 (I) of 19 November 1946 the applications of Albania, Mongolia, Transjordan, Ireland and Portugal were referred to the Committee by the President, with the instruction to the Committee "to present its report on 10 August, or earlier if possible". No objection was indicated.<sup>21</sup>

### 2. Applications reconsidered by the Security Council without reference to the Committee

#### CASE 19

At the 206th meeting on 1 October 1947, the Security Council reconsidered the applications of Hungary, Italy, Romania and Bulgaria at the request of the representative of the United States (for Italy) and of the representative of Poland (for Hungary, Italy, Romania and Bulgaria).<sup>22</sup> No proposal was made, nor any action taken with a view to referring these applications to the Committee.<sup>23</sup>

#### CASE 20

At the 221st meeting on 22 November 1947, at the request of the General Assembly, the Security Council reconsidered the applications of Transjordan and Italy. No proposal was made, nor any action taken with a view to referring these applications to the Committee.<sup>24</sup>

#### CASE 21

At the 279th and 280th meetings on 10 April 1948, the applications of Italy, Albania, Bulgaria, Hungary, Mongolia, Romania, Portugal, Transjordan, Finland, Ireland and Austria were reconsidered by the Security Council at the request of the General Assembly and

\* For texts of relevant statements see:

413th meeting: President (Cuba), pp. 15, 19; China, pp. 9, 12, 16; Egypt, pp. 9-10, 15-16; Norway, p. 9; USSR, pp. 20-21; United States, pp. 10-11, 16-17.

<sup>21</sup> 152nd meeting: pp. 1229-1231.

<sup>22</sup> S/562 and S/563, 204th meeting: p. 2408.

<sup>23</sup> 206th meeting: p. 2475.

<sup>24</sup> General Assembly resolutions 113 E, F (II) of 17 November 1947, 221st meeting: pp. 2765-2767.

of some members of the Council.<sup>25</sup> No proposal was made, nor any action taken with a view to referring these applications to the Committee.<sup>26</sup>

#### CASE 22

At the 384th meeting on 15 December 1948, at the request of the General Assembly, the Security Council reconsidered the application of Ceylon. The General Assembly asked the Council to re-examine the application at the earliest possible moment.<sup>27</sup> No proposal was submitted, nor any action taken with a view to referring this application to the Committee.<sup>28</sup>

#### CASE 23

At the 427th meeting on 16 June 1949, the applications of Portugal, Transjordan, Italy, Finland, Ireland, Austria, Ceylon, Albania, Mongolia, Bulgaria, Romania and Hungary were included in the agenda under General Assembly resolution 197 (III) of 8 December 1948. The President (Norway) stated:

"The situation with which we are now confronted is that all of these applications have at least twice

\* General Assembly resolution 113 A-H (II) of 17 November 1947; S/709, S/712, S/715, O.R., 3rd year, Suppl. for April 1948, pp. 3-5.

\* 279th meeting: p. 15; 280th meeting: p. 3.

\* General Assembly resolution 197 (III) of 8 December 1948, S/1113, O.R., 3rd year, Suppl. for Dec. 1948, pp. 120-121.

\* 384th meeting: p. 39.

been considered by the Security Council, without obtaining a recommendation, but that the General Assembly has requested us to reconsider them anew. Apart from the request of the General Assembly there are, to my knowledge, only two new developments in the matter: first, the advisory opinion of the International Court of Justice; secondly, the fact that three new Member States have taken their seats in the Security Council.

"... I do not think that any practical purpose could be served by referring these applications again to the Committee on the Admission of New Members, or even by discussing them again in the Security Council, since this discussion would involve only a repetition of previous arguments. If the other members of the Council are in agreement, I would therefore now like merely to ask if there are any representatives who have changed their position from that which now stands on the record, or who desire to bring out any new points in connexion with these applications... I also think it would be useful if the three new members of the Security Council who have not previously had an opportunity to state their views in the Council in regard to these applications would now state their positions."

No representative on the Council objected to the suggestion of the President.<sup>29</sup>

\* 427th meeting: pp. 4-5.

### Part V

## PROCEDURES IN THE CONSIDERATION OF APPLICATIONS WITHIN THE SECURITY COUNCIL

### NOTE

#### I

Part V, sections A and B, in order to show how consideration of applications by the Security Council has been affected by the fact that the Council has frequently considered more than one application at a time, makes extensive use of the scheme of presentation based on a series of "Debates", details of which have been given in the Note to part I. This fact has led to procedural problems of some consequence, particularly in connexion with the voting on applications.

In the course of the earlier proceedings, after the close of the general debate, the Security Council considered each application separately, whether the application was being considered for the first time or was under reconsideration.

In the course of later proceedings, however, the Security Council developed the practice of considering at the same time all the applications submitted or re-submitted to it during the interval between two regular sessions of the General Assembly. This development gave rise in turn to other dependent practices concerning the following procedural questions:

(a) The order in which the applications should be discussed;

(b) The phase of the debate at which applications should be voted upon;

(c) The order in which applications should be voted upon;

(d) The submission of draft resolutions to recommend the simultaneous admission of a number of applicants.

During 1946 and 1947, during debates I, III and IV, the Security Council discussed the applications separately and successively in the order in which they had been received by the Secretary-General. The specific debate on each of a number of applications was usually preceded, and sometimes followed, by a general debate. In 1948, during debates VI and VIII, the Council did not discuss the applications in the chronological order of their submission. New applications were considered first (in debate VI, the application of Burma; in debate VIII, the application of Ceylon) before previous pending applications. In debate VI, after discussing a new application first, the Security Council proceeded to discuss the pending applications in the order in which they had been re-submitted to it. In 1949, during debate XI which dealt with thirteen applications, the Council examined a new application (Nepal) during the debate concerning the twelve other pending applications. The latter then were discussed in no defined order, the statements made by the members of the Council bearing not on one applicant at a time, but on groups of applicants.

As to the phase of the debate when the voting took place and as to the order in which the votes were taken, the Council decided in 1946, during debate I, to submit to the vote all the applications after the general debate and the specific debate on each of them were finished. Each of the applications was then voted upon, in the chronological order of their submission.

In 1947, during debate III, the Council decided to vote separately on each of a number of applications immediately after the discussion of each application

was finished. During debate IV, the Council followed the same procedure as in debate I: it deferred voting on each of a number of applications until after the general debate and the specific debate on each application were both finished. Each of the applications was then voted upon in the chronological order of their submission.

The discussion of applications in the order of their original submission precluded any question arising either as to the order of discussion or of voting. But in 1948, the practice tended to change. In debate VI, the Council examined first, and voted first, on the most recent application (i.e., the original application of Burma) and, in voting thereafter on Italy's application, it began voting on the pending applications, not in the chronological order of their original submission, but in the order in which they had been re-submitted to the Council by its members, this order being different from the order in which they had been listed in General Assembly resolution 113 (II) requesting their reconsideration by the Council. After having voted on Italy's application, the Council decided not to vote on the other applications because the members of the Council had not changed their previous position.

In 1949, during debate XI, which bore on thirteen applications, the Council voted on a new application (Nepal) immediately after its discussion was finished. It then voted on each of a group of seven pending applications. Thereafter, the Council voted on each of a group of five other pending applications.

Furthermore, the submission of draft resolutions for recommending the simultaneous admission of a group of applicant States has resulted in additional procedural complexities.

In 1946, such draft resolutions were submitted and then withdrawn successively by the representatives of the United States and Mexico. In 1947, during debate III, such a draft resolution was submitted by the representative of Syria and then withdrawn; another such draft resolution was submitted by the representative of Poland during debate IV. The procedural complications arising from the submission of draft resolutions to recommend the simultaneous admission of a number of applicants were not fully experienced in 1946, 1947 and 1948. All such draft resolutions submitted in 1946 and 1947 were withdrawn and, in 1948, after the Council decided to vote in parts on a similar resolution, the original mover (Poland) did not insist that it be put to the vote. In 1949, however, a similar draft resolution submitted by the representative of the USSR, during debate XI, had to be put to the vote.

The submission of such draft resolutions gave rise to protracted debates bearing mainly on the contention that the simultaneous admission of a group of applicants was contrary to the principle laid down in Article 4 (I), that the admissibility of each applicant should be judged on its own merits independently from other applicants, whereas, according to another point of view, the simultaneous admission of a group of applicants was the only practical solution of the problem. In these debates the following procedural questions have assumed prominence:

(a) Discussion as to whether several applications may be voted on simultaneously or should be voted on separately;

(b) The question whether the mover of a draft resolution to admit simultaneously a number of appli-

cants may oppose the division of his draft resolution in as many parts as it contains applications, or whether the Council may decide to vote on such a draft resolution in parts despite the opposition of the original mover;

(c) A secondary procedural issue, indirectly linked with this problem arose in 1949, during debate XI—namely: the conflict between the practice followed in 1946 and 1947 of voting on the applications in the chronological order of their submission and the procedure adopted in debate XI to vote on the applications in the order in which they appeared in draft resolutions, the latter being put to the vote in the order of their submission according to rule 32.

The decisions adopted by the Security Council since 1946 indicate a tendency to vote on each application on its individual merits and, therefore, to divide draft resolutions tending to the simultaneous admission of a group of applicants into as many parts as they contained applicants (whenever such draft resolutions were not withdrawn), irrespective of the opposition of the original mover to such a division. The Security Council has nevertheless put to the vote these draft resolutions as a whole, after they had been voted upon in parts.

Broadly speaking, the order in which applications have been discussed has respected the order in which they were listed in the agenda, while the order of voting on the applications has duplicated the order of discussion. In 1946-1947, applications were listed in the agenda in the chronological order of their submission; but, in 1948, the tendency emerged of listing, first, new applications and, second, pending applications, the latter no longer in the order of their original submission to the Council, but in the order of their re-submission to the Council by its members or by the General Assembly.

Several less important procedural problems have arisen concerning discussion of voting: such as (a) whether representatives of Members, not members of the Council, would be heard if they requested to submit a statement concerning an application; (b) whether it was necessary to submit a draft resolution in order to vote on an application; (c) whether it was necessary to take a vote when it appeared that the position previously adopted by members of the Security Council on a given application had remained unchanged.

The documents before the Security Council have generally consisted of the application itself, the formal declaration of acceptance of the obligations contained in the Charter, and the report of the Committee on the Admission of New Members which, in several cases, included as annexes, statements made by representatives on the Committee and the text of questionnaires addressed to applicant States together with the latter's replies and appendices.

In one instance, in 1948, the documents before the Security Council included, in addition to those mentioned, the summary records of the debates of the Committee on the Admission of New Members, and a letter from the representative of the applicant State addressed to the President of the Security Council transmitting information concerning the applicant.

## II

The material in part V relates to questions of procedure in the consideration of applications. A special

problem arises regarding substantive material bearing on Article 4 (1) of the Charter, for the examination of the proceedings of the Security Council is productive of little light upon the views of the Council as such concerning the application of Article 4 (1) to the admission of new Members.

The task of obtaining information and reporting to the Council on the question whether applicants for membership meet the standards described in Article 4 (1), was conferred at an early stage on the Committee on the Admission of New Members. In exercise of the authority conferred upon it by the Council, the Committee has inquired into the qualifications of applicants in the light of the requirements of Article 4 (1), varying the matters into which it deemed necessary to inquire in accordance with the particular situation of the individual applicants. In some cases, the Committee has had before it summaries of information prepared by the Secretariat concerning the applicant State. On occasion, the Committee has seen fit to draw up and communicate to the applicant for reply a questionnaire concerning various matters on which the Committee wished to be informed in arriving at its conclusion.

The application of Article 4 (1) to the admission of new Members has confronted the Security Council and its subsidiary organ, the Committee on the Admission of New Members, with the problem of measuring facts external to the Organization by the yardstick of the Charter. Since these facts vary from case to case and since there have been no reasoned collective judgments by the Security Council or the Committee concerning the requirements of Article 4 (1), it is difficult to generalize the proceedings of the Council under that paragraph in terms of practice.

The proceedings suggest that each member of the Council has exercised freedom to judge for itself the extent to which an applicant for admission to membership meets the requirements of Article 4 (1), although there have been some suggestions concerning the appropriateness of various considerations adduced by members of the Council when discussing the eligibility of applicants for admission to membership. Thus, suggestions have been made that Article 2, paragraph 7, of the Charter sets a limit to the matters which members may take into account in considering applications; it has been suggested that the eligibility of applicants is to be measured by objective tests rather than by subjective standards; and there has been some discussion of the necessity of stating the reasons for a judgment concerning the eligibility of a particular candidate. Finally, there has been discussion of the appropriateness of invoking what are characterized as standards of eligibility external to Article 4 and of the permissibility of what has been regarded by some members of the Council as discrimination against applicants equally eligible with other States for admission to membership in the Organization.

The form employed by the Security Council itself in deciding to recommend or in failing to recommend an applicant for membership, like the reports of the Committee on the Admission of New Members, consists, in the case of recommendations, of a bare statement of the decision, accompanied by words in the preamble indicating that the applicant possesses the qualifications required in Article 4, paragraph 1. In none of these decisions, however, is there a statement

of the particular basis for such judgment. In cases of failure to recommend, the special reports to the General Assembly reveal no more than the vote by which the proposal to recommend failed of adoption.

In these circumstances, it becomes necessary when seeking to ascertain the practice of the Council under Article 4 (1), to attempt to find appropriate generalizations under which to group the considerations adduced by members of the Council in weighing the qualifications of applicants for admission.

Discussion of the eligibility of applicants for admission to membership has turned upon the following matters, each of which is rooted in the language of paragraph 1 of Article 4: (1) the statehood of the applicant; (2) the peace-loving character of the applicant; (3) the acceptance by the applicant of the obligations contained in the Charter; (4) the ability of the applicant to carry out the obligations of the Charter; (5) the willingness of the applicant to carry out the obligations of the Charter.

In weighing the applicant's qualifications in each such respect, members of the Council have pointed to the circumstances listed below as supporting their conclusions concerning the extent to which an applicant meets the standards of Article 4, paragraph 1. In view of the fact that the circumstances involved in each application vary widely or narrowly from case to case, the circumstances mentioned evidence only the range of considerations which members of the Security Council have deemed to be appropriate in the consideration of applications. This listing of references has only the value of an illustrative index, and no constitutional significance in terms of the Charter should be deemed to attach to the headings adopted or the entries thereunder, although terminology derived from the Charter has, as a matter of convenience, been adopted in the preparation of the listing.

In connexion with the statehood of the applicant, reference has been made to such matters as the following: The possession or lack of settled frontiers<sup>1</sup>; the mode of the establishment of the State<sup>2</sup>; the bearing of a General Assembly decision<sup>3</sup>; foreign occupation of its territory<sup>4</sup>; relations with a former sovereign<sup>5</sup>; independent management of its foreign policy<sup>6</sup>; the extent of the applicant's sovereignty<sup>7</sup>; the necessity of

<sup>1</sup> Application of Israel; 383rd meeting: USSR, p. 22; United States, p. 11.

<sup>2</sup> 385th meeting: Syria, p. 3.

<sup>3</sup> 386th meeting: USSR, pp. 30-31.

<sup>4</sup> Application of Transjordan; United Kingdom, *O.R., Suppl. No. 4, 1st year, 2nd series*, p. 133; Poland, *O.R., Suppl. No. 4, 1st year, 2nd series*, pp. 134, 142.

<sup>5</sup> Application of Democratic People's Republic of Korea; 409th meeting: United States, pp. 14, 15.

<sup>6</sup> 410th meeting: China, p. 10; Ukrainian SSR, pp. 8, 9; USSR, p. 15.

<sup>7</sup> Application of the Republic of Korea.

<sup>8</sup> 409th meeting: United States, p. 15; USSR, p. 2.

<sup>9</sup> Application of Ceylon; 351st meeting: Ukrainian SSR, p. 1; USSR, pp. 12, 13; United Kingdom, p. 7.

<sup>10</sup> Application of Indonesia; 503rd meeting: United States, p. 26.

<sup>11</sup> Application of Ceylon; 351st meeting: USSR, p. 12; United Kingdom, pp. 7, 15.

<sup>12</sup> Application of Mongolia; Australia, *O.R., Special Suppl. No. 3, 2nd year*, p. 11; Belgium, *O.R., Special Suppl. No. 3, 2nd year*, p. 12.

<sup>13</sup> Application of Israel; 383rd meeting: United States, p. 10.

ratification of peace treaties with ex-enemy applicants<sup>8</sup>; disabilities resulting from the Second World War<sup>9</sup>; the legitimacy of statehood obtained through aggression and conquest<sup>10</sup>; defence arrangements with other powers<sup>11</sup>; the *de jure* or *de facto* status of the applicant and its Government<sup>12</sup>; recognition of the applicant by Members of the United Nations<sup>13</sup>; the maintenance of diplomatic relations with other States<sup>14</sup>.

In connexion with assessment of the peace-loving character of the applicant, the considerations adduced have included the following: references to the history of the State<sup>15</sup>; the conduct of the applicant during the Second World War<sup>16</sup>; continued existence of a technical state of war between the applicant and a Member State<sup>17</sup>; continued possession of territories acquired through aggression in the Second World War<sup>18</sup>; compliance with the recommendations of the United Na-

tions<sup>19</sup>; the instigation of border incidents<sup>20</sup>; interference with peaceful foreign shipping in the applicant's territorial waters<sup>21</sup>; willingness to employ pacific methods in the settlement of boundary disputes<sup>22</sup>.

In connexion with the acceptance of the obligations contained in the Charter, the following matters have been considered: adherence to the principles and purposes of the Charter in respect of human rights<sup>23</sup> or of Article 1, paragraph 3<sup>24</sup>.

In considering the ability of the applicant to carry out the obligations contained in the Charter, the following matters have been referred to: military occupation of the applicant's territory<sup>25</sup>; the applicant's governmental institutions and its ability to conduct foreign relations<sup>26</sup>; the designation of the applicant as an administrative authority of a trust territory<sup>27</sup>.

In connexion with the willingness of the State to carry out the obligations contained in the Charter, the range of matters referred to included: the existence of diplomatic relations with certain other States<sup>28</sup>; fulfilment of treaty obligations<sup>29</sup>; compliance with the decisions of international organizations in which the applicant was a member<sup>30</sup>; compliance with the recommendations of the Security Council in a dispute to which the applicant was a party<sup>31</sup>; association with

\* Applications of Hungary, Italy, Romania and Bulgaria; 186th meeting: Poland, p. 2049; USSR, p. 2045; United Kingdom, p. 2052; United States, pp. 2048-2049, 2052.

Application of Hungary; 132nd meeting: Australia, pp. 813-814, 186th meeting: United Kingdom, p. 2051; United States, p. 2052.

Application of Italy; 190th meeting: Australia, p. 2127; USSR, p. 2127.

Applications of Romania and Bulgaria; 190th meeting: USSR, p. 2131.

Application of Austria; 154th meeting: Syria, p. 1262; United States, p. 1263, 190th meeting: Australia, pp. 2130-2131.

Application of Israel; 385th meeting: Syria, pp. 7, 9.

Application of Transjordan; Poland, *O.R., Suppl. No. 4, 1st year, 2nd series*, p. 136; United Kingdom, *O.R., Suppl. No. 4, 1st year, 2nd series*, p. 68.

Application of Israel; 384th meeting: Syria, pp. 25-26, 385th meeting: Syria, pp. 4, 5; United States, p. 12.

Application of Israel; 385th meeting: Argentina, p. 14; Syria, pp. 5, 6; United States, p. 12.

Application of Israel; 383rd meeting: United States, p. 13.

Applications of Hungary, Italy, Romania and Bulgaria; 190th meeting: Syria, p. 2118.

Application of Albania; France, *O.R., Suppl. No. 4, 1st year, 2nd series*, p. 60; USSR, *O.R., Suppl. No. 4, 1st year, 2nd series*, p. 60.

Application of Albania; Greece, *O.R., Suppl. No. 4, 1st year, 2nd series*, p. 59; USSR, *O.R., Suppl. No. 4, 1st year, 2nd series*, p. 57.

Application of Ireland; USSR, *O.R., Special Suppl. No. 3, 2nd year*, p. 15; United States, *O.R., Special Suppl. No. 3, 2nd year*, p. 16.

Application of Mongolia; 56th meeting: USSR, pp. 88-89; China, *O.R., Special Suppl. No. 3, 2nd year*, p. 12.

Application of Portugal; 57th meeting: USSR, pp. 105-106; United States, pp. 104-105; Poland, *O.R., Suppl. No. 4, 1st year, 2nd series*, p. 73; United Kingdom, *O.R., Suppl. No. 4, 1st year, 2nd series*, p. 73.

Application of Afghanistan; United States, *O.R., Suppl. No. 4, 1st year, 2nd series*, p. 67.

Application of Sweden; *O.R., Suppl. No. 4, 1st year, 2nd series*, p. 77.

Applications of Hungary, Italy, Austria, Romania and Bulgaria; Australia, *O.R., Special Suppl. No. 3, 2nd year*, p. 3; USSR, *Special Suppl. No. 3, 2nd year*, p. 2; United States, *O.R., Special Suppl. No. 3, 2nd year*, p. 11.

Application of Albania; 55th meeting: Australia, p. 62; Greece, pp. 75-76.

Reply of the Albanian Government to the Questionnaire; *O.R., Suppl. No. 4, 1st year, 2nd series*, pp. 93-95;

56th meeting: Australia, p. 813.

136th meeting: Australia, p. 889.

Application of Austria; 154th meeting: Australia, p. 1261; Syria, p. 1262; United States, p. 1262.

Application of Thailand; France, *O.R., Suppl. No. 4, 1st year, 2nd series*, p. 76;

Applicant's request to postpone consideration until agreement concluded with France, 31st meeting on 9 April 1946, p. 562.

Application of Israel; 383rd meeting: Syria, p. 19; USSR, p. 22; United States, pp. 11-12.

386th meeting: Canada, p. 24; USSR, pp. 28-29.

Application of Albania; 55th meeting: Greece, pp. 77-78.

Application of Albania; 55th meeting: Greece, p. 75; USSR, *O.R., Suppl. No. 3, 2nd year*, p. 5; United Kingdom, *O.R., Suppl. No. 4, 1st year, 2nd series*, pp. 57-58.

Application of Albania; France and Mexico, *O.R., Suppl. No. 4, 1st year, 2nd series*, p. 60; Poland, *O.R., Suppl. No. 4, 1st year, 2nd series*, p. 60.

Applications Nos. 48-59 [see Table of Applications]; 428th meeting: United States, p. 6.

429th meeting: Ukrainian SSR, p. 7.

430th meeting: United States, pp. 10, 13.

206th meeting: Syria, p. 2460.

205th meeting: United Kingdom, p. 2433.

Application of Italy; United States, *O.R., Special Suppl. No. 3, 2nd year*, p. 22.

Application of Austria; United States, *O.R., Special Suppl. No. 3, 2nd year*, p. 24; Appendix 11, pp. 49-50.

Application of Mongolia; 56th meeting: United Kingdom, pp. 90, 91.

Application of Israel; 383rd meeting: United States, pp. 12-13.

413th meeting: France, p. 8.

Application of Italy; 569th meeting: Brazil, pp. 4-5; France, p. 2; Netherlands, pp. 12, 13; Turkey, pp. 19, 20; USSR, p. 23.

Applications of Ireland, Portugal, Thailand and Transjordan; Australia, *O.R., Suppl. 1st year, 2nd series*, p. 74; USSR, *O.R., Suppl. No. 4, 1st year, 2nd series*, pp. 70, 72, 74, 77; *O.R., Special Suppl. No. 3, 2nd year*, p. 14.

56th meeting: p. 92; *O.R., Suppl. No. 3, 2nd year*, p. 00.

Application of Albania; USSR, *O.R., Suppl. No. 4, 1st year, 2nd series*, p. 62; *O.R., Special Suppl. No. 3, 2nd year*, p. 4; Australia, Egypt, France and United States, *O.R., Suppl. No. 4, 1st year, 2nd series*, p. 63; United States, *O.R., Special Suppl. No. 3, 2nd year*, pp. 6-7.

Applications of Hungary, Romania and Bulgaria; United States, *O.R., Special Suppl. No. 3, 2nd year*, Appendix 8, pp. 44-45; United States, United Kingdom and Brazil, *O.R., Special Suppl. No. 3, 2nd year*, pp. 25-26, 44-45.

206th meeting: France, p. 2454; USSR, pp. 2456-2458; United Kingdom, pp. 2458-2459; United States, pp. 2452-2454.

430th meeting: USSR, p. 17.

431st meeting: France, pp. 3-5.

Application of Albania; 55th meeting: Greece, pp. 76-77; Brazil, Colombia, Australia, United States and France, *O.R., Special Suppl. No. 3, 2nd year*, pp. 5-7.

Application of Israel; 414th meeting: Egypt, p. 6; USSR, p. 9; United Kingdom, pp. 2-3.

Application of Albania; Brazil, Colombia, Australia, United States and France, *O.R., Special Suppl. No. 3, 2nd year*, pp. 5-7.



Franco Spain<sup>32</sup>; the internal political structure of the applicant<sup>32</sup>.

#### A. DISCUSSION OF APPLICATIONS

##### 1. Order of the discussion of applications

###### CASE 24

###### *Debate I*<sup>34</sup>

At the 54th meeting on 28 August 1946, a draft resolution for the simultaneous admission of eight applicants was submitted by the representative of the United States, but was withdrawn after discussion. At the 55th meeting on the same day, the representative of the United States moved that the Security Council "take no action at this time on the applications of Albania and the Mongolian People's Republic". The representative of France suggested that the Council proceed to discuss the three applications on which agreement appeared possible those of Afghanistan, Iceland and Sweden--while deferring consideration of the other five until the following year. The representative of the USSR contended that the applications should be discussed in the order in which they had been received by the Secretary-General. The President (Netherlands) ruled that the applications would be discussed in the order indicated in the report of the Committee, i.e., in the chronological order of their receipt by the Secretary-General.<sup>33</sup>

###### CASE 25

###### *Debate III*<sup>36</sup>

At the 186th meeting on 18 August 1947, the President (Syria) stated:

"If there is no objection, we shall decide upon the case of Pakistan immediately."

The representative of the USSR observed:

"I propose that these applications be considered in the order in which they were received."

The President then ruled:

"I said that if there were no objection, we should consider the admission decided upon, but as there is an objection, we shall postpone the question and consider the application of Pakistan in its chronological order along with the other applications."

The Council proceeded accordingly to consider each of the twelve applications separately and successively in the chronological order of their submission.<sup>37</sup>

###### CASE 26

###### *Debate II*<sup>38</sup>

At the 204th meeting on 25 September 1947, the President (USSR) suggested:

<sup>32</sup> Application of Portugal; 57th meeting; Brazil, p. 110; Poland, p. 109.

<sup>33</sup> Application of Italy; 279th meeting; USSR, pp. 10-12.

<sup>34</sup> This debate was concerned with the consideration of eight new applications.

<sup>35</sup> For texts of relevant statements see:

55th meeting; President (Netherlands), p. 62; Egypt, p. 59; France, pp. 56-57; USSR, pp. 58, 60; United States, pp. 54-55.

<sup>36</sup> This debate was concerned with the consideration of seven new applications and with the reconsideration of five pending applications.

<sup>37</sup> For texts of relevant statements see:

186th meeting; President (Syria), p. 2030; France, p. 2030; USSR, p. 2030.

<sup>38</sup> This debate was concerned with the consideration of a new application (Finland) and with the reconsideration of four pending applications.

"...that we discuss and take decision on the applications in the order in which they were submitted to the Security Council..."

At the 205th meeting on 29 September, the Security Council agreed, on the proposal of the President, to discuss each of the applications in the order in which they had been submitted to the Council and, after the discussion on each of them, to take separate votes on each application.<sup>39</sup>

###### CASE 27

###### *Debate VI*<sup>40</sup>

At the 279th meeting on 10 April 1948, the application of Burma was discussed first. After the resolution recommending the admission of Burma had been adopted, the President (Colombia) ruled as follows:

"The Security Council comes next to item 3 on its agenda which is the reconsideration of several applications for membership in the United Nations in the order in which they have been re-submitted to the Council."

No objection was raised.

The first application to be reconsidered was that of Italy, which was the first application re-submitted to the Security Council. The Council voted upon the application of Italy, but at the 280th meeting on the same day, the Council decided without further discussion on the applications to report to the Assembly that none of the members had changed its position.<sup>41</sup>

###### CASE 28

###### *Debate VIII*<sup>42</sup>

At the 384th meeting on 15 December 1948, the provisional agenda included the application of Israel as item 2 and the application of Ceylon as item 3. The application of Ceylon had been referred back to the Security Council by General Assembly resolution 197 I (III) which requested the Council to reconsider it "at the earliest possible moment". The representative of the USSR proposed that item 3 of the provisional agenda be removed because there was no reason why Ceylon's application should not be examined at the same time as the other pending applications. The representative of the United Kingdom observed that resolution 197 I (III) requested the Council to reconsider the application of Ceylon at the earliest possible moment. The USSR proposal was rejected, and the agenda was adopted without change.

During the same meeting, the representative of the USSR expressed the view in connexion with General Assembly resolution 197 B (III), which related to the twelve pending applications, that the Council should proceed to reconsider the applications in the order in which they had been submitted and take a decision in each case.

<sup>39</sup> For texts of relevant statements see:

204th meeting; President (USSR), p. 2423; 205th meeting; Poland, p. 2435; United States, pp. 2435-2436.

<sup>40</sup> This debate was concerned with the consideration of a new application (Burma) and with the reconsideration of eleven pending applications.

<sup>41</sup> For texts of relevant statements see:

279th meeting; President (Colombia), p. 5; USSR, pp. 19-14; United Kingdom, pp. 14-15. 280th meeting; President (Colombia), p. 3.

<sup>42</sup> This debate was concerned with the consideration of the new application of Israel and the reconsideration of the pending application of Ceylon.



The Council proceeded to examine the applications of Israel and Ceylon in the order in which they appeared on the agenda. After the Council had decided to postpone for two days consideration of Israel's application, Ceylon's application was discussed and voted upon at the 384th meeting.<sup>43</sup>

CASE 29  
*Debate XI*

[*Note:* This debate, which was concerned, at twelve meetings, with the reconsideration of twelve pending applications (listed in A/617 and A/618) and one new application (Nepal, at the 434th meeting on 9 September 1949) occupied meetings 427-431 and 439-445, from 16 June to 15 September 1949, with an interruption from 21 July to 7 September 1949. A complex situation arose from the fact that seven draft resolutions were submitted to the Security Council recommending the admission of seven applicants, the draft resolutions being numbered consecutively in the order in which the General Assembly had requested reconsideration in resolutions 197 C to I (III), while a draft resolution submitted later in the debate recommended the simultaneous admission of all thirteen applicants. An added complication arose from the fact that the General Assembly, while favouring the immediate admission of seven applicants in separate specific resolutions (197 C to I (III)), had requested the Council in its resolution 197 B (III) to reconsider,

"taking into account the circumstances in each particular case, the applications... mentioned in the said Special Reports"

The Special Reports in question were A/617 and A/618; the first one listed eleven pending applications in alphabetical order; the second one concerned Ceylon's application only. By resolution 197 I (III), the General Assembly had requested the Council to reconsider Ceylon's application at the earliest possible moment. The Council reconsidered Ceylon's application at its 384th meeting on 15 December 1948 without adopting a recommendation. Ceylon's application was not included in the provisional agenda of the 427th meeting on 16 June 1949, but at the President's suggestion, it was included in the agenda. Meanwhile, Nepal's application, submitted on 13 February 1949, was reported upon by the Committee on 29 August 1949. This report appeared in the provisional agenda of the 439th meeting on 7 September 1949 as item 2, while the other pending applications were in item 3 under the heading: "Other applications for membership in the United Nations".

The main feature of debate XI was that the previous practice of voting in the chronological order of the submission of the original applications by the applicants was pitted against the new practice of voting on the applications in the chronological order of their re-submission to the Council by its members. This occurred when it became clear that the Council would vote on the seven draft resolutions recommending the admission of the seven applicants whose admission was favoured by the General Assembly. The absence of any specific debate on each of the pending applications and the practice of the members of the Council of

making statements bearing on groups of applicants at a time were due to the two following factors:

(a) The pending applications had already been discussed from two to four times;

(b) The General Assembly, in its resolutions 197 C to I (III), singled out seven applicants, thus dividing the pending applications into two groups: one, the admission of which it favoured; the other, consisting of applications whereof the General Assembly requested reconsideration on their individual merits.]

CASE 29 (i)  
*Debate XI*

*First phase of the debate: 427th-431st meetings*

At the 427th meeting on 16 June 1949, the applications before the Security Council were divided by the President (Norway) into three chronological groups:

"... first, the applications of 1946 from the People's Republic of Albania, the Mongolian People's Republic, the Hashemite Kingdom of Transjordan, Ireland and Portugal; secondly, the applications of 1947 from Hungary, Italy, Romania, Bulgaria, Finland and Austria; thirdly, the application of 1948 from Ceylon."

The representative of the USSR declared:

"... I gather from what the President has just said that he wishes the Security Council to consider the question of the admission of new Members in chronological order."

The President replied:

"... As I said in my opening remarks, I think we should first have a general debate, and then we shall have to decide whether or not it is necessary to take a vote. At that time, we can return to the question of the order in which we shall vote."

The representative of the USSR stated:

"... I am surprised that the President should consider the agenda as adopted, as I was about to speak on the order in which the items should be considered, and not on the order of voting on them. The order of voting will naturally depend on the order in which the items are considered."

He then made the following proposal:

"The USSR delegation therefore proposes that the applications of all States for membership in the United Nations should be considered in strict accordance with the aforementioned General Assembly resolution [197 B (III)] and in the order in which they were received by the United Nations,<sup>44</sup> and that the Council should begin by considering that of Albania; further, that the agenda for today's meeting, and for subsequent meetings devoted to the question of the admission of new Members, should be drawn up in that same chronological order."

Before putting the provisional agenda to the vote, the President assured the representative of the USSR that

"The adoption of the agenda does not in any way prejudice the question of the order in which each application for membership will be put to the vote. I can assure the representative of the USSR that,

<sup>43</sup> For texts of relevant statements see: 384th meeting; France, p. 38; Ukrainian SSR, p. 3; USSR, pp. 2, 4, 36-37; United Kingdom, p. 3; United States, p. 4.

<sup>44</sup> Resolution 197 B (III) mentioned the pending applications only by way of reference to the Security Council's Special Report (A/617) in which the applicant States were listed alphabetically.

if the need arises for a discussion on each application separately, I shall put to the Council the question of the order in which each application should be discussed and voted upon.<sup>47</sup>

The agenda was adopted by 9 votes to 2.

The representative of Argentina submitted seven draft resolutions<sup>48</sup> recommending the admission of the seven applicant States in the order in which they were mentioned in resolution 197 C to I (III). At the 428th meeting on 21 June 1949, the representative of the USSR submitted an eighth draft resolution<sup>49</sup> proposing the simultaneous admission of twelve applicants: Albania, Mongolia, Bulgaria, Romania, Hungary, Finland, Italy, Portugal, Ireland, Jordan, Austria and Ceylon.

At the 429th meeting on 24 June 1949, the President stated:

"... At the end of the general discussion, I shall put to the Council for decision the two procedural points which have been brought up: first, the order in which the applications shall be discussed and voted upon; and secondly, whether the draft resolution submitted by the Union of Soviet Socialist Republics shall be voted upon as a whole."<sup>50</sup>

At the 431st meeting, the President (Ukrainian SSR) reiterated the suggestion made at the 429th meeting on 24 June by the former President (Norway) that no vote should be taken at that time.

The representative of Argentina stated that he would not oppose a postponement of the vote "in order to see whether in the meantime some agreement can be reached".<sup>51</sup>

Accordingly, the President adjourned the meeting *sine die*, without putting any draft resolution or other proposal to the vote.<sup>52</sup>

#### CASE 29 (ii)

##### Debate XI

###### *Second phase of the debate: 439th meeting*

Discussion was resumed at the 439th meeting on 7 September 1949, when a report of the Committee concerning the application of Nepal appeared on the provisional agenda as item 2, whereas the other pending applications appeared under item 3.

The representative of the USSR protested against the priority granted to an application which was the last from a chronological point of view. He proposed the reversal of the order of items appearing in the provisional agenda. This proposal was rejected by 5 votes against, 3 in favour, and 3 abstentions and the agenda was adopted.<sup>53</sup>

<sup>47</sup> S/1331-S/1337, O.R., 49<sup>th</sup> year, Suppl. for June 1949, pp. 11-14.

<sup>48</sup> S/1340, 428th meeting: p. 12. The twelve applicants were not listed therein in the chronological order of the submission of their applications, nor in the alphabetical order of their names.

<sup>49</sup> For texts of relevant statements see: 427th meeting: President (Norway), pp. 5, 6-7, 10; Argentina, p. 6; Cuba, p. 9; Ukrainian SSR, p. 7; USSR, pp. 6, 7, 8-9.

<sup>50</sup> 429th meeting: President (Norway), p. 2; Argentina, p. 13; Egypt, pp. 14-15; France, p. 12; United Kingdom, p. 4.

<sup>51</sup> 431st meeting: President (Ukrainian SSR), pp. 8-9; Argentina, p. 9.

<sup>52</sup> 431st meeting: p. 12.

<sup>53</sup> 439th meeting: p. 5.

Nepal's application was then immediately discussed and voted upon, the Council failing to make a recommendation because of the negative vote of a permanent member.<sup>54</sup>

#### CASE 29 (iii)

##### Debate XI

###### *Third phase of the debate: 440th-445th meetings*

At the 440th meeting on 9 September 1949, the representative of the USSR submitted a second version of his draft resolution in which the applicant States, including Nepal, were listed in the chronological order of the submission of their original applications.<sup>55</sup> At the 442nd meeting on 13 September, the representative of the USSR submitted a third version of his draft resolution in which twelve applicant States were listed in the order appearing in the first version, but with Nepal added to the list.<sup>56</sup>

During this phase of the debate, the Security Council discussed the various pending applications, but no attempt was made to discuss them separately in the chronological order of their submission.

No decision was taken on the order in which the applications should be discussed. At a late phase of the debate, the representatives of the USSR and the Ukrainian SSR, at the 441st meeting on 9 September, declared that, if separate votes were taken on the twelve applicant States listed in the Soviet draft resolution, they

"... will insist on the discussion of each application separately, as it would be quite irregular to take a vote without first having done so."

The President (United Kingdom) indicated that, since the representative of Argentina insisted on having his draft resolutions put to the vote, he had no alternative but to comply with his request.

The representatives of the USSR and of the Ukrainian SSR insisted that each member of the Council was entitled to discuss separately each application or to explain his vote before voting on any one of the applications.

After the President had stated that members of the Council had already had ample opportunity to say everything they wanted to say in favour of the candidates or against them, the representative of Egypt declared:

"... Until now, at the many meetings we have had on this matter... we treated the applications in a general way. We did not go into the detail of discussing each and every one of them separately, as we should certainly do."

At the 442nd meeting on 13 September, the President stated:

"The representatives of the USSR and the Ukrainian SSR have demanded (441st meeting) that we take up and vote upon the candidates in the order of the date of submission of their original applications. I can see no ground whatever for that. The representative of the Ukrainian SSR said that applications should be considered in the order of

<sup>54</sup> 439th meeting: p. 16.

<sup>55</sup> S/1340/Rev.1, 440th meeting: p. 8.

<sup>56</sup> S/1340/Rev.2.

their submission. That may be so in the case of original applications, but it surely cannot apply to a request by the General Assembly for reconsideration of certain specific applications. The representative of Argentina has put forward seven draft resolutions relating to the seven countries whose applications the General Assembly has specifically asked us to reconsider, and I notice that the representative of Argentina has followed the order observed by the General Assembly.

"The representatives of the USSR and the Ukrainian SSR have asked: 'Why put Portugal first?' They should, it seems to me, put that question to the General Assembly."

At the 443rd meeting on the same day, after the President had ruled that he would put to the vote the various draft resolutions before the Council in the order of their submission, and a challenge to his ruling had been defeated, the Argentine draft resolutions<sup>53</sup> concerning the applications of Portugal, Transjordan, Italy, Finland, Ireland, Austria and Ceylon were put to the vote in the order corresponding to the order of resolutions 197 C to I (III) of the General Assembly.

Before the votes were taken in connexion with the applications of Portugal and Transjordan, a brief explanation of vote was given by the representative of the Ukrainian SSR. Brief explanations of vote were given by the representatives of Argentina and Egypt in relation to the application of Italy.

After the Council had decided to vote separately on each of the five applications not already voted upon and listed in the Soviet draft resolution, the representative of Norway, at the 445th meeting on 15 September, made a brief statement in order to explain his position on these five applications (Albania, Mongolia, Hungary, Romania and Bulgaria). The representative of Cuba also made a brief statement concerning all of the applicants. The representative of the Ukrainian SSR stated:

"... The representatives of various countries are taking the floor here and objecting to a whole group of countries—the Mongolian People's Republic, Bulgaria, Romania, Hungary and Albania.

"...

"This is yet another violation: it is a violation of our rules of procedure and of the decision taken by a majority this morning. We strove for the admission of all the thirteen members enumerated in the USSR resolution. We were told that that could not possibly be done for the simple reason that it would mean accepting and discussing the matter *en bloc*. It was therefore decided to take a separate vote on each application, that is, to discuss each application separately."

The President ruled as follows:

"... For my part, I cannot see any objection to their putting their explanations in regard to each of these individual applications into one statement. I do not see why they should be asked to make

separate interventions and separate statements before each applicant is voted on."<sup>54</sup>

No other statements or explanations of vote were made on the above-mentioned five applications.

#### CASE 30

#### *Debate XIII*<sup>55</sup>

At the 568th meeting on 18 December 1951, the representative of the USSR proposed to reverse the order of items 2 and 3, because item 3 concerned resolutions adopted by the General Assembly a year earlier than the resolution mentioned in item 2. The President (Ecuador) explained that resolution 550 (VI) had been included as item 2 because it contained an urgent request to the Security Council to reconsider Italy's application, whereas resolution 495 (V) was<sup>56</sup>

"... one of the series of resolutions that the General Assembly has passed at intervals since 1947 recommending that the Security Council should reconsider the question."

The representatives of the United Kingdom, France, United States, Netherlands, Turkey, China and Brazil approved the sequence of the items on the provisional agenda for similar reasons.

The representative of the USSR stated that his proposal to reverse the order of items was put forward, not only from chronological considerations, but also because "the Soviet Union delegation proposes that a resolution to admit all the thirteen States to the United Nations be adopted".

An exchange of views between the representatives of the United States, the USSR and the Netherlands took place as to why the representative of the USSR felt it necessary, in the present case, to examine Italy's application in conjunction with the other pending applications, while in 1950, the USSR had not insisted that Indonesia's application be discussed in connexion with other pending applications. The representative of the USSR having remarked that Indonesia's case was a special one, the representative of the Netherlands pointed out that there was also in the case of Italy a special reason to deal with the matter expeditiously, i.e., Italy's status as administering authority and the need for its possessing full rights of membership in order for it to execute its duties completely.<sup>57</sup>

<sup>53</sup> For texts of relevant statements see:

441st meeting: President (United Kingdom), pp. 20, 21; Egypt, pp. 22-23; Ukrainian SSR, pp. 12, 18, 21; USSR, pp. 13-14, 16, 23-24, 25.

442nd meeting: President (United Kingdom), p. 3; Argentina, p. 9; Egypt, p. 12; United States, p. 4.

443rd meeting: President (United Kingdom), p. 25; Argentina, p. 29; Norway, p. 26; Ukrainian SSR, p. 24; USSR, pp. 17, 18-20, 27.

445th meeting: President (United Kingdom), pp. 34; Cuba, pp. 32-33; Ukrainian SSR, pp. 33-34.

<sup>54</sup> This debate was concerned with the reconsideration of Italy and of thirteen other pending applications. The provisional agenda of the 568th meeting on 18 December 1951 listed Italy's application as item 2 (Reconsideration of Italy's application had been requested urgently by the General Assembly in its resolution 550 (VI) adopted on 7 December 1951). The other pending applications were included in item 3 (Reconsideration of these applications had been requested twice by the General Assembly in its resolutions 296 A to I and K (IV) and 495 (V)).

<sup>55</sup> 568th meeting: p. 3.

<sup>56</sup> For texts of relevant statements see:

568th meeting: President (Ecuador), p. 2; Brazil, p. 14; China, p. 13; France, p. 5; India, p. 11; Netherlands, p. 10; Turkey, p. 13; USSR, pp. 1, 6-7; United Kingdom, p. 3; United States, p. 5; Yugoslavia, p. 11.

The Council rejected a motion proposed by the representative of Yugoslavia and supported by the representative of India that the agenda consist of only one item: admission of new Members, with a sub-paragraph (a) concerning the application of Italy, and a sub-paragraph (b) referring to the documents relating to the general question of the admission of new Members.

The agenda was then adopted.<sup>58</sup> The Council proceeded to reconsider Italy's application at its 569th meeting on 19 December 1951.

## 2. Documentation submitted to the Security Council

### CASE 31

#### *Debate VII<sup>59</sup>*

At the 351st meeting on 18 August 1948, in addition to the usual documentation, consisting of the application, the formal declaration, the report of the Committee and its annexes, the Security Council had before it the summary record of the debates in the Committee and a letter directly addressed to the President of the Council by the applicant's representative transmitting information regarding the applicant. The reason for the transmission of the summary record of the debate in the Committee was that, after Ceylon's application had been discussed at the 25th meeting of the Committee and a report circulated, a new meeting of the Committee was convened by the President (Ukrainian SSR), at which the representative of the USSR proposed postponement of the consideration of the question, pending receipt of information from the applicant's Government. While the Committee refused to re-open the discussion, it decided that the summary record of its meetings would be transmitted to the Council for its information.

## B. VOTING ON APPLICATIONS

### 1. Omission of voting on applications when previous position of members is unchanged

#### CASE 32

#### *Debate I<sup>60</sup>*

At the 221st meeting on 22 November 1947, the representative of the USSR declared:

"There is no change in the USSR delegation's position with regard to these countries' applications."

The President (United States) ruled that, in view of the fact "that none of the members has changed his position on either of those applications", the Security Council would report to the General Assembly that its reconsideration had produced no result and "that the Security Council has postponed further reconsideration of these two applications in order to allow consultation among the permanent members".<sup>61</sup>

This ruling was not challenged and a Special Report was drawn up to this effect.<sup>62</sup>

#### CASE 33

#### *Debate VI<sup>63</sup>*

At the 280th meeting on 10 April 1948, the representative of Syria proposed postponing further voting, in view of the negative result of the vote on Italy's application, and of the unchanged attitudes of the members of the Security Council. After the representative of the United States had recalled that, in a similar situation, the Council, at its 221st meeting, had set the precedent of adjourning the matter if no change had occurred in the attitude of any member of the Council, the President (Colombia) inquired from

"... the representatives on the Security Council if any of them have changed their position from that which now stands on the record."

In the absence of any reply, it was agreed that consideration of the applications be postponed indefinitely.<sup>64</sup>

#### CASE 34 (i)

#### *Debate XI<sup>65</sup>*

#### *First phase of the debate: 427th-431st meetings*

At the 427th meeting on 16 June 1949, the President (Norway) suggested:

"that if statements which might be made at this meeting do not reveal any such change of position as would make it possible for the Council to recommend the admission of any or all of the applicant States, it would not be necessary for us to take a formal vote."

At the 429th meeting on 24 June, the representatives of the United Kingdom, Egypt, France and the United States held a similar view, and the President made the following formal proposal, which was not acted upon immediately.

"I therefore now formally ask the Security Council whether all representatives would be in agreement if we were now to conclude the debate without a vote and merely report to the General Assembly that we have reconsidered the applications for membership, but that the discussion has not revealed any change of attitude on the part of the members of the Council which would make it possible to make a recommendation for the admission to membership of any of the twelve States the applications of which we have been asked to reconsider."

At the 431st meeting on 20 July, the President (Ukrainian SSR) inquired whether the Council preferred not to vote at all and mentioned that such a position was apparently supported by the representative of Argentina.

The representative of Argentina, who had submitted seven draft resolutions, agreed.<sup>66</sup>

<sup>58</sup> This debate was concerned with the consideration of the new application of Burma and with the reconsideration of twelve pending applications.

<sup>59</sup> 280th meeting: p. 3.

<sup>60</sup> This debate was concerned with the consideration of a new application (Nepal) and with the reconsideration of twelve pending applications.

<sup>61</sup> For texts of relevant statements see:

427th meeting: President (Norway), p. 5.

429th meeting: President (Norway), pp. 18-19; Egypt, p. 15; France, p. 12; United Kingdom, pp. 3-4; United States, p. 16.

431st meeting: President (Ukrainian SSR), pp. 8-9; Argentina, pp. 9-11.

<sup>58</sup> 568th meeting: pp. 11, 16.

<sup>59</sup> This debate was concerned with the consideration of the application of Ceylon.

<sup>60</sup> This debate was concerned with the reconsideration of the pending applications of Italy and Transjordan.

<sup>61</sup> 221st meeting: p. 2767.

<sup>62</sup> A/515.

"that the Council should wait a certain time in order to show that, before replying to the Assembly that the situation has not changed, it has waited as long as possible before the date of the next session of the Assembly; however, it is understood that the Council may meet before then, to vote or to take some other decision."

Accordingly, the President, at the 431st meeting, adjourned the meeting indefinitely, without putting to the vote any draft resolution.<sup>67</sup>

#### CASE 34 (ii)

##### Debate XI

##### *Third phase of the debate: 440th-445th meetings*

When the Security Council began to reconsider the twelve pending applications at the 440th meeting on 9 September 1949, the President (United Kingdom) asked that the Council authorize him, as President, "to report to the General Assembly that prolonged discussion here has shown that there is no change from previously adopted attitudes". The representative of Argentina asked the President to put to the vote at least one of the draft resolutions submitted by him. The representative of the USSR indicated that, if the Council decided to proceed to a vote, he would submit an amended version of his original draft resolution listing the pending applications in the chronological order of their submission and would ask that this draft resolution be also put to the vote. In reply to the proposal made by the representative of Argentina to take a vote on the admission of at least one applicant State, he made the proposal that the vote should begin with Albania whose application was the first to have been submitted to the United Nations.

At the 441st meeting on the same day, the representative of the USSR recalled that the representatives of Norway, United Kingdom, United States, France, Egypt, without counting the USSR and the Ukrainian SSR, had been of the opinion that it was not necessary to take a formal vote.

The representative of China formally moved that the Council postpone voting on the draft resolutions relating to the admission of new Members. The representative of Argentina raised objections to the Chinese motion and intimated that should the Council decide to postpone the vote requested by the Argentine delegation, he would withdraw from the Council until he had received new instructions from his Government. He also considered that the adoption of the Chinese motion would establish "a very bad precedent".

"They would allow any majority — not of a fixed bloc but of any chance bloc of seven members where a question of procedure is at issue — to prevent the minority of four from being heard and from inducing the Council to make a clear statement through the vote of its members."

After the representative of China had withdrawn his motion, the President ruled that, in view of the request of the movers of substantive draft resolutions to proceed to a vote, he had no other alternative but to put all of the eight draft resolutions to the vote.<sup>68</sup>

<sup>67</sup> 431st meeting: p. 12.

<sup>68</sup> For texts of relevant statements see:

440th meeting: President (United Kingdom), p. 7; Argentina, p. 7; Egypt, p. 11; USSR, pp. 8-9.

441st meeting: Argentina, pp. 17-18; China, pp. 16-17; Egypt, p. 17; Ukrainian SSR, p. 18; USSR, p. 15.

## 2. Time and order of voting on applications

### CASE 35

#### Debate I<sup>69</sup>

##### *Time of voting*

At the 54th meeting on 28 August 1946, a United States draft resolution<sup>70</sup> to admit eight applicants was submitted and, at the 55th meeting on the same day, it was withdrawn. Immediately thereafter, the representative of the United States proposed to defer voting on the applications of Albania and Mongolia until the following year. The Council then examined when this draft resolution should be put to the vote; especially, whether Albania's application should be discussed before the United States motion for deferment was put to the vote. The President (Poland) suggested that the United States motion for deferment be voted upon immediately after Albania's application had been discussed.<sup>71</sup> The representative of Mexico stated:<sup>72</sup>

"...I would prefer that the Council does not vote immediately upon Albania. When we have discussed the eight applications, then the question will be raised whether, instead of voting on the applications of Albania and Outer Mongolia, as has been proposed by the United States, that action should not be deferred. If the Council then decides not to defer action, then we will take the vote on Albania and Outer Mongolia and on all the other six applicants."

There being no objection, the Council proceeded in conformity with the Mexican proposal: it discussed each application and deferred voting on them separately until after the discussion on all the eight applications was ended.

##### *Order of voting*

The applications were put to the vote in the chronological order of the receipt of the applications.

### CASE 36

#### Debate III<sup>73</sup>

##### *Time of voting*

At the 186th meeting on 18 August 1947, on the basis of the decision to discuss the applications in the chronological order of their submission, the first applications to be discussed were those of Albania, Mongolia, Transjordan, Ireland and Portugal. Immediately after discussion of Albania's application ended, the President (Syria) put the application to the vote.<sup>74</sup> He followed the same procedure in respect of each of the five applications.

After these five applications had been discussed and voted upon, the question arose whether consideration of the applications of Hungary, Italy, Austria, Romania and Bulgaria should be postponed since the peace treaties with those countries had not been ratified or, in one instance, agreed upon.

<sup>69</sup> This debate was concerned with the consideration of eight new applications.

<sup>70</sup> 54th meeting: pp. 42-43.

<sup>71</sup> 55th meeting: p. 68.

<sup>72</sup> 56th meeting: p. 87.

<sup>73</sup> This debate was concerned with the consideration of seven new applications and with the reconsideration of five pending applications.

<sup>74</sup> 186th meeting: p. 2037.



A proposal to postpone discussion of those applications "until a subsequent meeting, when it will be more appropriate" was not adopted.<sup>75</sup>

Discussion thus began on Hungary's application. Objections were again raised against its admissibility on the grounds that the peace treaty with that country had not been ratified. The President stated:

"I prefer to put to the vote the postponement of the application of Hungary."

The President took a vote on this proposal. It was not adopted.<sup>76</sup>

The President then undertook to put to the vote "the admission of Hungary to membership in the United Nations".

After discussion, the President suggested that the debate on the five applicants be postponed until the next meeting. No objection was raised. He then passed on to the applications of Yemen and Pakistan. Each was recommended unanimously for admission.<sup>77</sup> At the 190th meeting on 21 August 1947, the Council examined the five applications the consideration of which had been postponed; it voted on each of them successively, immediately upon the conclusion of each specific debate.

#### *Order of voting*

At the 186th meeting on 18 August 1947, the first five applications to be considered were successively voted upon immediately upon the conclusion of each specific debate, according to the order of the discussion of each application. At the 190th meeting on 21 August 1947, the Council followed the same procedure with regard to the five other applications which remained to be considered.

#### CASE 37

##### *Debate IV*<sup>78</sup>

At the 206th meeting on 1 October 1947, in conformity with the President's (United Kingdom) proposals, each of the five applications before the Security Council was voted upon separately in the order in which the applications had been submitted to the Council, but after the discussion on all applications had been terminated.

#### CASE 38

##### *Debate VI*<sup>79</sup>

At the 279th meeting on 10 April 1948, the new application of Burma was put to the vote immediately after its discussion was finished.<sup>80</sup> Italy's application was also put to the vote immediately after its discussion was terminated. Consideration of the other pending applications was postponed indefinitely.<sup>81</sup>

<sup>75</sup> 186th meeting: p. 2049.

<sup>76</sup> 186th meeting: p. 2051.

<sup>77</sup> 186th meeting: pp. 2052, 2055.

<sup>78</sup> This debate was concerned with the consideration of a new application (Finland) and with the reconsideration of four pending applications.

<sup>79</sup> This debate was concerned with the consideration of a new application (Burma) and with the reconsideration of eleven pending applications.

<sup>80</sup> 279th meeting: p. 5.

<sup>81</sup> 279th meeting: p. 15.

#### CASE 39

##### *Debate XI*<sup>82</sup>

#### *Time of voting*

At the 431st meeting on 20 July 1949, the first phase of the debate ended without any vote being taken. When discussion was resumed at the 439th meeting on 7 September 1949, Nepal's application was voted upon immediately after its discussion was finished.<sup>83</sup> Of the twelve pending applications, seven were put to the vote successively and separately at the 443rd meeting on 13 September 1949, at the end of a discussion which began at the 440th meeting and concerned them as well as other procedural or substantive matters.<sup>84</sup> The five remaining pending applications were put to the vote successively and separately, at the 445th meeting on 15 September 1949, at the end of a discussion which began at the 444th meeting and concerned them as well as various procedural and substantive matters.<sup>85</sup>

#### *Order of voting*

From the outset of the debate, eight draft resolutions were before the Security Council. The representative of Argentina submitted at the 427th meeting on 16 June 1949, seven separate draft resolutions recommending the admission of seven applicants.

These draft resolutions<sup>86</sup> dealt with the applicants in the order in which they were listed in General Assembly resolutions 197 C to I (III) (i.e., Portugal, Transjordan, Italy, Finland, Ireland, Austria, Ceylon).

At the 428th meeting on 21 June 1949, the representative of the USSR submitted a draft resolution to recommend the simultaneous admission of twelve applicants.<sup>87</sup> The representative of the Ukrainian SSR stated that "the USSR proposal should be the first to be put to the vote" inasmuch as it covered the applications of the seven States mentioned in the Argentine draft resolutions as well as the other five applicants.

The representative of France remarked that, at the 427th meeting, the representative of the USSR had urged that all applications should be examined in the chronological order of their submission, but that the Soviet draft resolution did not mention the twelve applicants in chronological order.

The representative of the United States referred to the precedent of 1947 when the USSR and the Ukrainian SSR and other members of the Council had agreed to take a separate vote on each application, although a Polish draft resolution before the Council proposed the simultaneous admission of Hungary, Italy, Romania, Bulgaria and Finland. He finally proposed that a separate vote be taken on the pending applications.

The representative of Argentina observed that his draft resolutions should be put to the vote first, as they had been submitted before the USSR draft resolutions.

<sup>82</sup> This debate was concerned with the consideration of a new application (Nepal) and with the reconsideration of twelve pending applications.

<sup>83</sup> 439th meeting: p. 16.

<sup>84</sup> 443rd meeting: pp. 29-33.

<sup>85</sup> 445th meeting: pp. 40-41.

<sup>86</sup> S/1331 - S/1337.

<sup>87</sup> S/1340.



After the suspension of the debate, at the 431st meeting (without any vote having been taken), Nepal's application was voted on at the 439th meeting on 7 September 1949.<sup>88</sup> The discussion on the twelve pending applications was resumed at the 440th meeting on 9 September. The President (United Kingdom) proposed to take no vote as there was no change in the position of the members of the Council. The representative of Argentina insisted that a vote be taken at least on the first of his draft resolutions, dealing with Portugal. The representative of the USSR stated that he did not understand "the purpose of such symbolism". He declared:

"A vote must be taken on all twelve applications, in chronological order, beginning with the application of Albania, that is to say, in the order in which they were submitted to the United Nations."

He then presented to the Council a revised text of his draft resolution, in which the applicant States were listed in the chronological order of the submission of their original applications.<sup>89</sup>

The representative of Argentina replied:<sup>90</sup>

"If the representative of the Soviet Union insists, then, even at the risk of exhausting the President's patience, I shall request that the seven draft resolutions I submitted should be put to the vote."

"The draft resolutions referring to the specific recommendations of the General Assembly, to which, it seems, we do not all show the same consideration and respect, should be voted on first, and then all the other drafts which have been submitted."

The representative of the United States intimated:<sup>91</sup>

"If the delegation of the Soviet Union insists upon a consideration of its draft resolution by a vote, then the United States will insist upon its preliminary motion, which is that a separate vote shall be taken upon each application."

The President, referring to provisional rule 32 (paragraph 1), said that the draft resolutions would be put to the vote in the chronological order of their submission. He had no other alternative as the proposers of the draft resolutions had insisted that they should be put to the vote.<sup>92</sup>

A Chinese motion not to proceed to a vote was submitted but withdrawn at the 441st meeting on 8 September.<sup>93</sup>

The representatives of the USSR and the Ukrainian SSR insisted that the vote be taken according to the order of the submission of the original applications and invoked the practice followed in this respect by the Council and other organs of the United Nations. Criticizing the proposal to proceed to a vote according to the chronological order of the submission of the draft resolutions, the representative of the USSR said:

"Thus we see that this policy of discrimination against some countries and of favouritism to others makes itself felt even in the question of the order in which the Council should consider and vote upon

the applications received. In deciding this question those who pursue that policy do not wish to take into account the dates at which the applications were submitted."

At the 442nd meeting on 13 September, the President stated that the practice referred to by the representative of the USSR might be valid for new applications, but that it could not apply to pending applications.<sup>94</sup>

At the 442nd meeting, the representative of the USSR withdrew his amended draft resolution and introduced another revision which was identical with the original draft with "one small addition to the document, namely to add the word 'Nepal' after the word 'Ceylon'".<sup>95</sup>

The representative of Egypt observed that there was nothing mandatory as regards the order of voting on applications.

At the 443rd meeting on 13 September 1949, the representative of the USSR stated that the Argentine draft proposals were contrary to the "long established practice of voting on the applications in the order of their submission". He mentioned various precedents of 1946 and 1947.

The President, referring to provisional rule 32 (paragraph 1), ruled as follows:<sup>96</sup>

"I have already twice intimated that I propose to put the draft resolutions to the vote, when that time comes, in that order. That is my ruling, and if it is distasteful to any member of the Security Council, he can challenge it..."

The representative of the Ukrainian SSR challenged the President's ruling.<sup>97</sup>

The representative of Norway stated that he could not follow the President's ruling for the following reasons:<sup>98</sup>

"The President's point of departure is that we have eight draft resolutions before us and that the precedence among them should be determined according to rule 32 of the rules of procedure. Rule 32 provides that draft resolutions shall have precedence in the order of their submission. As I read this rule, however, it prescribes only the priority between several motions and resolutions relating to one and the same agenda question. It would seem a clear departure from accepted parliamentary rules if the order in which independent questions were to be voted upon could be modified by motions and draft resolutions. I therefore submit that we should address our attention in this connexion not to the draft resolutions and their order of submission, but to the agenda itself. I think that the President will agree with me that we have twelve distinct questions before us, namely, the twelve applications for membership. Unfortunately, however, the agenda does not list these twelve questions as separate items: they are all included under sub-item 2 (a), and five of them are also listed as sub-items 2 (b) to 2 (f). In other words, the agenda does not solve the problem.

"In these circumstances it would seem the most reasonable procedure to rely on the only objective

<sup>88</sup> 439th meeting: p. 16.

<sup>89</sup> S/1340/Rev.1

<sup>90</sup> 40th meeting: p. 9.

<sup>91</sup> 440th meeting: p. 10.

<sup>92</sup> 441st meeting: p. 13.

<sup>93</sup> 441st meeting: pp. 17-18.

<sup>94</sup> 442nd meeting: p. 3.

<sup>95</sup> 442nd meeting: p. 4.

<sup>96</sup> 443rd meeting: p. 23.

<sup>97</sup> 443rd meeting: p. 24.

<sup>98</sup> 443rd meeting: p. 26.

criterion we have — namely, the chronological order of the submission of the applications for membership. I repeat that I fail to see how the priority between separate and distinct substantive questions could be determined by draft resolutions, even when the agenda is unclear and silent in this regard.<sup>100</sup>

The challenge to the President's ruling was rejected by 3 votes in favour, 5 against, with 3 abstentions.<sup>100</sup>

The seven Argentine draft resolutions were then put to the vote in the chronological order of their submission beginning with the draft resolution on Portugal. None of them was adopted because of the negative vote of a permanent member of the Council.

A USSR motion to declare out of order the United States motion to vote in parts on the USSR draft resolution (S/1340/Rev.2) was rejected<sup>101</sup> and, subsequently, the United States motion was adopted.<sup>102</sup>

At the 445th meeting on 15 September 1949, the Council failed to make any recommendation on the applications of Albania, Mongolia, Bulgaria, Romania and Hungary,<sup>103</sup> and rejected the USSR draft resolution (S/1340/Rev.2) as a whole.<sup>104</sup>

### 3. Submission of a draft resolution recommending the admission of a number of applicant States

#### CASE 40 (i)

##### Debate I<sup>105</sup>

At the 54th meeting on 28 August 1946, the representative of the United States submitted a draft resolution to recommend to the General Assembly that it admit to membership eight applicants.<sup>106</sup>

At the 55th meeting on the same day, the representative of the USSR opposed the United States draft resolution and stated:

"We are bound to discuss each concrete application separately taking into consideration all the facts and circumstances relating to the application in question."

The representative of Australia declared that the Security Council and the General Assembly should deal singly and separately with each application on its merits. The representative of the United Kingdom opposed the United States draft resolution because his Government had doubts concerning the qualifications of two applicants. The representatives of China and the Netherlands favoured the United States draft resolution as a practical measure, but without establishing a precedent. On a suggestion formulated by

the representative of the USSR, the representative of the United States withdrew his draft resolution and declared:

"I am agreeable to accepting the suggestion of the representative of the Soviet Union to withdraw my motion. I am particularly ready and willing to accept that suggestion because it comes from him, and as it is quite evident that it would be the vote of the Soviet Union which would block the passage of this resolution, I therefore withdraw it."

#### CASE 40 (ii)

At the 57th meeting on 29 August, after the Security Council had ended the discussion of each of the eight applications, the representative of Mexico submitted a draft resolution that the Council recommend to the General Assembly that it admit to membership all eight applicants. He added:

"We, the members of the Security Council, the Governments, and the peoples of the applicant States, as well as each one of the Members of the United Nations, and public opinion at large know that not one single objection has been made to any of the applicants that, in a spirit of justice and fairness, could be qualified as insurmountable."

The representatives of the USSR, the United Kingdom and Australia reiterated their objections to such a proposal.

As a result of an appeal addressed to him by the representative of China the representative of Mexico withdrew his draft resolution.<sup>107</sup>

#### CASE 41

##### Debate III<sup>108</sup>

At the 186th meeting on 18 August 1947, the President (Syria) recalled that his delegation had made in the Committee on the Admission of New Members a proposal to admit the five States which had applied for membership in 1946 and had not been recommended to the General Assembly. The Committee had not, however, discussed the proposal because of lack of time. He stated:

"If it is approved and supported by some of the members, it may be discussed here."

His suggestion was opposed by the representatives of Australia and China, who expressed the opinion that qualifications for membership should be examined separately for each applicant. The President stated:<sup>109</sup>

"As long as this resolution is opposed by one of the permanent members of the Security Council, we shall not discuss it any further."

<sup>100</sup> For texts of relevant statements see:

438th meeting: Argentina, p. 20; France, p. 17; Ukrainian SSR, p. 17; United States, pp. 18-20.

440th meeting: President (United Kingdom), pp. 6-7, 10; Argentina, pp. 7, 9; USSR, p. 8; United States, p. 10.

441st meeting: President (United Kingdom), p. 20; China, pp. 16-17; Ukrainian SSR, p. 18; USSR, pp. 14, 23-25.

442nd meeting: President (United Kingdom), p. 3; Argentina, pp. 9-10; Egypt, p. 12; United States, p. 4.

443rd meeting: President (United Kingdom), p. 23; Norway, p. 26; Ukrainian SSR, p. 24; USSR, p. 18.

<sup>101</sup> 443rd meeting: p. 27-28.

<sup>102</sup> 444th meeting: p. 21.

<sup>103</sup> 444th meeting: p. 25.

<sup>104</sup> 445th meeting: pp. 40-41.

<sup>105</sup> 445th meeting: p. 45.

<sup>106</sup> This debate was concerned with the consideration of eight new applications.

<sup>107</sup> 54th meeting: pp. 42-43.

<sup>108</sup> For texts of relevant statements see:

55th meeting: Australia, p. 50; China, p. 51; Netherlands, p. 52; USSR, p. 47; United Kingdom, p. 52; United States, p. 53.

57th meeting: President (Poland), pp. 121, 124; Australia, p. 123; China, pp. 123-124; Mexico, pp. 114-115, 124; USSR, p. 120; United Kingdom, p. 122.

<sup>109</sup> This debate was concerned with the consideration of seven new applications and with the reconsideration of five pending applications.

<sup>110</sup> For texts of relevant statements see:

186th meeting: President (Syria), pp. 2032-2033; Australia, p. 2033; China, p. 2033.

## CASE 42

Debate IV<sup>110</sup>

At the 204th meeting on 25 September 1947, the representative of Poland submitted a draft resolution to recommend that five applicants (Bulgaria, Finland, Hungary, Italy and Romania) be admitted as Members of the United Nations. He stated that there was ample reason to vote on the five applications at the same time: at the Paris Conference of 1946 and again at the Council of Foreign Ministers, the problem of peace treaties with these five States had been discussed as a whole. They had also been signed the same day. Furthermore, the signatories of the peace treaties had assumed the obligation to support the applications of these countries for membership in the United Nations.

"I am led to conclude that the admission of Bulgaria, Finland, Hungary, Italy and Romania to the United Nations can now be dealt with only as a whole."

The representatives of Australia, the United States and the United Kingdom insisted that the duty laid upon the Security Council was to examine separately the qualifications of each applicant for admission.

The representative of the United States stated:

"We consider that it is the duty of the President to place each individual application for membership before the Council for a vote, and that all these applications should be voted on separately, if any member so requests."

The President (USSR), speaking as the representative of the USSR, stated:

"We are ready to agree to the admission of Italy to the United Nations, but only on the condition that all other countries which are in the same position — namely, Bulgaria, Romania, Hungary and Finland — are also admitted. We consider that it is impossible to make any separate decision on the Italian application, or to consider this case separately from other similar cases."

He also insisted that the Potsdam agreement made it mandatory on the signatory States to support the application of the former enemy States and to treat them without discrimination: that to consider the application of one State, such as Italy, separately was to deviate from the Potsdam agreement. The representative of the United States considered that each applicant had, by its conduct, to meet the qualifications of Article 4 regardless of the Potsdam agreement and stated:

"Those stipulations of the Charter are of overriding authority in all applications, in the opinion of my Government."

The representative of Belgium observed that the procedure envisaged by the Polish proposal

"would, in fact, amount to making the admission of one State dependent on the admission of one or more other States, and there is no provision for this in Article 4 of the Charter. It would mean adding to the conditions laid down in Article 4."

The representative of Poland then agreed that the vote be taken separately on each application, provided

that thereafter the President submitted the Polish draft resolution to the vote.

At the 205th meeting on 24 September 1947, the Council considered the effect of such a procedure.

The representative of Syria observed:

"... if the joint vote on all the applicants were to fail, all those applicants who previously had the affirmative vote would also fail of admission. That is impossible. No such procedure could be admissible."

The representative of Poland confirmed the interpretation given by the representative of Syria. The representative of the United Kingdom stressed that the procedure suggested by the representative of Poland would place them "in a ridiculous position," because, after voting in favour of an applicant, they would be compelled to vote against it when voting against the Polish resolution. The representative of the USSR recalled that in 1946 the United States had made a proposal to admit simultaneously to the United Nations a number of applicants, and that, if the position taken in 1947 by the USSR was regarded as "a horse-trade", the same should be said of the United States. The representative of the United States objected to a comparison of the two proposals:

"There was no 'horse-trading' proposed at a former meeting by the United States which involved a threatened use of the veto to keep a country that is qualified from being admitted into the United Nations. That is the dangerous situation in which we now find ourselves. We are apparently making a record which indicates to all the world that the veto will be used unless a certain procedure can be imposed upon this Security Council in such a manner that countries will have to vote against certain countries that they deem qualified, or for certain countries that they deem not qualified, in order to get any action taken."

After the discussion of all the applications had ended and before they were put separately to the vote, the representative of Belgium, at the 206th meeting on 1 October 1947, submitted the following proposal in order that the implication of the votes about to be cast be made clear:

"The Security Council resolves to hold a separate and final vote on each application for membership."

The representative of Poland insisted that any procedure which would tend to prevent a proposal from being submitted to the vote would "make it impossible for a draft resolution to be submitted to the Council by a minority". He requested therefore that the Belgian proposal be withdrawn and suggested that the Polish proposal be put first to the vote, after which the five applications would be voted on separately. The representative of Syria stated that the Polish draft resolution was irregular in that it implied that "there was a unity of destiny or a unity of principle between the applicants", whereas each application had to be judged on its own merits and voted on separately. He further declared that if the Polish resolution was put to the vote and rejected, the contention would probably be raised that, in view of the "general principle, according to which, when the whole is rejected, its component parts are rejected with it," the Council would have no right to vote on the separate applications, "which,

<sup>110</sup> This debate was concerned with the consideration of a new application (Finland) and with the reconsideration of five pending applications.

in the opinion of the Polish representative, were considered as inherent parts of his resolution for wholesale admission of the five applicants".

The representative of Poland then withdrew his previous consent that his draft resolution be put to the vote in parts, because the condition under which he had made such consent had not been respected. He therefore requested that the Polish draft resolution be voted upon *in toto* and not in parts especially since there was no draft resolution before the Council except the Polish proposal.

Discussion took place between the representatives of Belgium, Brazil, France, on the one hand, and the representative of Poland on the other hand, as to the interpretation of rule 32 of the provisional rules of procedure. The representative of Poland argued that it was optional and discretionary with the original mover to accept or reject the request of a representative that a resolution be voted in parts. The representative of Brazil pointed out that the draft resolutions referred to in rule 32 were those presenting a certain unity of character, whereas the Polish proposal was in reality a *plurality* of separate resolutions.

The representatives of Belgium and France stated that rule 32 merely meant that the vote on a resolution in parts was granted automatically on request without any decision of the Council, if the original mover did not object, but that the Council was always free to take procedural decisions and thus to split up a proposal, if it found that such a course of action was advisable.

The President (United Kingdom) ruled

"... that we should vote upon the Belgian proposal forthwith. If any member wishes to challenge that ruling, the way is open to him to do so."

and intimated that he would, if necessary, rule the Polish draft resolution out of order. The President stated:

"... I did not understand that there was a proposal to divide his (Poland's) draft resolution. The situation is that the Council has before it separate applications, in some cases submitted separately, from a number of applicants."

The President's ruling was not challenged. The representative of Poland stated:

"We are willing that the Belgian proposal, to the effect that each application should be voted upon separately, should be put to the vote first; we shall decide what to do regarding our draft resolution after that voting is completed. Perhaps we shall ask for a vote on our draft resolution, or perhaps we shall withdraw it."

The Belgian draft resolution to hold a separate and final vote on each application was adopted by 9 votes to 2.<sup>111</sup>

The applications of Italy and Finland were rejected because of the negative vote of a permanent member; those of Hungary, Bulgaria and Romania were rejected for failure to obtain the affirmative votes of seven members.<sup>112</sup>

The representative of Poland did not ask for a vote on his draft resolution, which was therefore not put to the vote.

After the voting on the various applications had finished, the representative of Poland gave the following explanation of his votes:<sup>113</sup>

"The Polish delegation voted in favour of the application of Hungary. After that application was rejected, however, we abstained from voting or opposed the other applications. The non-admission of Hungary has made a complete change in our original intention, which was to admit five States which are returning to normal conditions and normal diplomatic relations with all other nations."

#### CASE 43 (i)

##### Debate XI<sup>114</sup>

###### First phase of the debate: 427th-431st meetings

At the 428th meeting on 21 June 1949, after the representative of the USSR had submitted his draft resolution recommending the simultaneous admission of twelve applicants,<sup>115</sup> the representative of the United States submitted the following motion which he based on a precedent of 1947:<sup>116</sup>

"... I move as a procedural matter, that the action of the Security Council on this draft resolution S/1340, be taken up by separate consideration and a separate vote taken on the different applications made by the countries named in the draft resolution, so that each member of the Security Council may reflect the attitude of his country on each applicant..."

The representative of France considered that the USSR draft resolution was not compatible with Article 4 which

"... obliges us to judge whether those conditions of admission are fulfilled which, obviously, can only be done by taking each case separately.

"The draft is moreover contrary to the opinion of the International Court of Justice..."

No action was taken on the USSR draft resolution during the first phase of the debate.<sup>117</sup>

#### CASE 43 (ii)

##### Debate XI

###### Third phase of the debate: 440th-445th meetings

At the 442nd meeting on 13 September 1949, the representative of the United States recalled the instance

<sup>111</sup> For texts of relevant statements see:

204th meeting: Australia, pp. 2413, 2421; Belgium, p. 2421; Poland, pp. 2411-2412, 2422; USSR, pp. 2414-2415; United Kingdom, p. 2418; United States, pp. 2414, 2416.

205th meeting: Australia, pp. 2441-2442; Belgium, p. 2438; China, pp. 2439-2440; France, p. 2438; Poland, pp. 2437, 2443; Syria, p. 2436; USSR, p. 2441; United Kingdom, p. 2439; United States, p. 2442.

206th meeting: President (United Kingdom), pp. 2473, 2474; Belgium, p. 2464; France, p. 2466; Poland, pp. 2465, 2469, 2475, 2477; Syria, p. 2467; USSR, p. 2473; United States, p. 2468.

For discussion on the interpretation of rule 32, see 206th meeting: pp. 2471-2473, see chapter I, Case 75.

<sup>112</sup> This debate was concerned with the consideration of a new application (Nepal) and with the reconsideration of twelve pending applications.

<sup>113</sup> S/1340; 428th meeting, p. 12.

<sup>114</sup> 428th meeting, p. 20. For the precedent of 1947, see Case 26.

<sup>115</sup> For texts of relevant statements see:

428th meeting: Argentina, p. 14; Canada, p. 15; France, pp. 12-13; Ukrainian SSR, p. 16; USSR, p. 12; United States, pp. 18-20.

429th meeting: Egypt, pp. 14-15; France, pp. 11-12; Ukrainian SSR, pp. 8, 10, 11; United Kingdom, pp. 2-3; United States, pp. 16-17.

<sup>111</sup> 206th meeting: p. 2475.

<sup>112</sup> 206th meeting: pp. 2475-2476.



of 1946 when the representative of the USSR had opposed the admission of a number of applicants to membership as then proposed by the United States and had insisted first, that applications be voted upon separately, and second, that the United States proposal be withdrawn. The representative of the United States stated that since that time the United States had always stood for a separate consideration of applications for membership unless there was a special reason for joint consideration. He also referred to rule 60 as requiring that each application be considered on its own merits.

At the 443rd meeting on 13 September 1949, the representative of the USSR invoked rule 32 (paragraph 2), and opposed the United States motion to vote in parts on the USSR draft resolution. He also criticized the reference made by the representative of the United States to rule 60:

"There is nothing in that rule to exclude the acceptance of recommendations for the admission to membership in the United Nations of several States by a single resolution.

"The delegation of the Soviet Union cannot agree that a vote should be taken in parts in regard to each country enumerated in its proposal, and insists that its draft resolution (S/1340/Rev.2) be put to the vote as a whole, as it was submitted..."

The representative of Norway thought that rule 32 was not applicable in the present case, as

"...the second part of rule 32 applies only to a proposal which refers to one separate question. If one draft resolution refers to several distinct substantive questions, the author has no right to object to the breaking up of the draft resolution..."

The representative of the United States stated:

"I think it is a fair interpretation of rule 32 to say that it does not apply when seven members — an ordinary majority of the Security Council — act instead of one member. It is always within the power of a legislative body to handle the conduct of its affairs..."

He again referred to the precedent of 1947.

The Security Council then proceeded to vote on the seven Argentine draft resolutions in the order in which they had been submitted.<sup>118</sup> Immediately thereafter, the President (United Kingdom) proceeded to put to the vote the USSR draft resolution. The representative of the Ukrainian SSR stated:

"If you wish to vote on the resolution in parts, kindly put to the vote the applications of the five States not yet voted on and then vote on the draft resolution as a whole."

The representative of the USSR, however, objected to such a procedure and stated:

"We hold that our resolution can be put to the vote only as an integral whole. No separate votes on different parts of the resolution or on single countries can be permitted."

At the 444th meeting on 15 September, the representative of Egypt pointed out the inconsistency of voting on the Soviet draft resolution as a whole since some of the members of the Council would in voting

against that resolution find themselves voting against some applicant States whose applications they had voted for previously, and *vice versa*. He expressed doubt, however, as to how the text of the draft resolution could be divided and asked how the Council would divide it. The President suggested that, for the purpose of voting on the USSR draft resolution in parts, the wording of the latter draft resolution be kept but that instead of thirteen applicant States, the name of one applicant State at a time would be inserted and a vote taken on each draft resolution. The representative of Egypt wondered whether the procedure proposed by the representative of the United States was an amendment, but felt that, at any rate, it was not a division in the sense of rule 32 (paragraph 2). The representative of the United States replied:

"If that is meant as a question, I should like to answer by simply saying that there is a great difference between the status of a motion to amend and the status of this motion presented by the United States. The difference is in its effect. For example, a motion to amend could in all probability be vetoed, but this is a procedural motion and it cannot be vetoed. In making this motion, the United States was very particular to distinguish between an amendment and a motion of procedure..."

Speaking of the interpretation given by the representatives of the United States and Canada to rule 32, the representative of the USSR said that it was "false, far-fetched and illegal".

He referred again to the instance of 1946 when the representative of the United States had favoured the admission of eight applicants and recalled that the Secretary-General of the United Nations had supported that proposal, as well as the representatives of Brazil, Mexico, Egypt, China and the Netherlands.

"...the proposal submitted by the United States representative is not, in fact, of a procedural character. It is fraught with political implications and it is rather doubtful whether it can be regarded as a procedural proposal. If we adopted that proposal we would, in fact, be faced with thirteen draft resolutions instead of one..."

The President replied that one change which had intervened since 1946 was the advisory opinion of the International Court of Justice. He also intimated that he regarded the USSR draft resolution as "unconstitutional" as it purported to make the admission of certain States dependent on the admission of others "which is expressly barred by the opinion of the International Court of Justice". Finally, referring to rule 32, he said that its purpose was to avoid a discussion at each time but that the Council was not barred thereby from taking a vote on its procedure if it wished to do so as it remained master of its own procedure.

The representative of the Ukrainian SSR stated that the President's reference to the opinion of the International Court was unfounded.

The representatives of China and Egypt, referring to their position of 1946 on the question of admission of a number of applicants, said that "at that time, the United Nations was considering the first applications for membership, and we wanted to make exceptions". Furthermore they had made their support of the admission of a number of applicants conditional on approval being unanimous, a condition which had not been satisfied.

<sup>118</sup> S/1331-S/1337, O.R., 4th year, Suppl. for June 1949, 443rd meeting: pp. 29-33.

The representative of the USSR objected again to his draft resolution being divided, and stated that the United States motion was impracticable since it would result in thirteen draft resolutions instead of one. The representative of the USSR submitted a motion that the United States motion was out of order.

The USSR motion to declare the United States motion out of order was rejected by 2 votes in favour, 8 against, with one abstention.<sup>119</sup>

The representative of the USSR stated immediately after the voting:

"...by recognizing that the United States motion is in order, the majority of the Security Council has legalized illegality and arbitrariness. I should like this statement to be included in the record: the majority of the Security Council has taken an arbitrary step and in violation of rule 32 of the Council's rules of procedure..."

The United States draft motion to vote separately on the applications mentioned in the Soviet draft resolution was adopted by 8 votes to 3.<sup>120</sup>

At the 445th meeting on 15 September 1949, the Council voted separately on the five applications not yet voted upon (i.e., Albania, Mongolia, Bulgaria, Romania and Hungary) and did not adopt any proposal recommending their admission.<sup>121</sup>

The Soviet draft resolution (S/1340/Rev.2) was then put to the vote as a whole, and was rejected by 4 against, 2 votes in favour, with 4 abstentions.<sup>122</sup>

The representatives of the United Kingdom, France, and Canada stated that, in opposing the Soviet draft resolution they were opposing the principle underlying it: "that of making the admission of certain states dependent and conditional upon the admission of certain others". In their opinion, the Soviet draft resolution was "in conflict with the Charter of the United Nations and in disregard of the advisory opinion of the International Court of Justice". The representative of the USSR reasserted that the attitude of the United Kingdom and of the United States was inspired by their policy of discrimination against some countries and favouritism towards others and that the Soviet draft resolution was the only means to find a way out of the dead-end in which the Council found itself, although the Soviet Union had various serious misgivings and objections to several of the States patronized by the United States and the United Kingdom.<sup>123</sup>

#### CASE 44

##### *Debate XIII*<sup>124</sup>

At the 569th meeting on 19 December 1951, the representative of the USSR submitted a draft resolution to recommend the simultaneous admission of the thirteen applicants.<sup>125</sup> Immediately thereafter, the Security

<sup>119</sup> 444th meeting: p. 21.

<sup>120</sup> 444th meeting: p. 25.

<sup>121</sup> 445th meeting: pp. 40, 41.

<sup>122</sup> 445th meeting: p. 45. One member cast no vote.

<sup>123</sup> For texts of relevant statements see:

442nd meeting: Argentina, p. 10; United States, pp. 6, 8.

443rd meeting: Norway, p. 26; Ukrainian SSR, p. 34; USSR, pp. 22, 35; United States, pp. 37-38.

444th meeting: President (United Kingdom), p. 12; Canada, pp. 3-4; China, p. 14; Egypt, pp. 5, 6, 15; Ukrainian SSR, p. 13; USSR, pp. 7, 8, 9, 10, 18, 21; United States, p. 6.

445th meeting: President (United Kingdom), p. 42; Canada, p. 43; France, pp. 42-43; USSR, pp. 43-44, 45.

<sup>124</sup> This debate was concerned with the reconsideration of Italy's application and of thirteen other pending applications.

<sup>125</sup> S/2449.

Council agreed to postpone discussion of the applications indefinitely.<sup>126</sup>

#### 4. The question of submission of a draft resolution with a view to voting on an application

##### CASE 45

##### *Debate I*<sup>127</sup>

At the 57th meeting on 29 August 1946, the President (Poland), before putting the various applications separately to the vote, proposed to use a form of resolution submitted earlier and then withdrawn by the representative of Mexico for the collective admission of the eight applicants. He proposed to do so by removing the names of the eight applicants and by substituting successively the name of each applicant on which the vote was to be taken.<sup>128</sup>

This proposal met with no objection and was followed.

##### CASE 46

##### *Debate II*<sup>129</sup>

At the 186th meeting on 18 August 1947, when votes were taken on several applications, no draft resolution was submitted by any member of the Security Council.

At the 190th meeting on 21 August 1947, no draft resolution was submitted with regard to the voting on the applications of Hungary, Romania and Bulgaria. Two separate draft resolutions were, however, submitted concerning the applications of Italy<sup>130</sup> and Austria.<sup>131</sup> After all the applications had been voted upon, the Council approved unanimously a draft resolution stating that the Council had taken due notice of the opinions of its members in regard to all the applications and had recommended the admission of Yemen and Pakistan.<sup>132</sup>

##### CASE 47

##### *Debate IV*<sup>133</sup>

At the 204th meeting on 25 September 1947, the representative of the United States insisted that each application be put separately to the vote.<sup>134</sup> The President (USSR) observed that no United States resolution was before the Security Council. The representative of the United States replied:

"...The President is quite correct in saying that there is no United States resolution before the Council with regard to the admission of Italy. In our opinion, however, subject to the view of the Council and to what the President may decide, it is

<sup>126</sup> 569th meeting: p. 33. For texts of relevant statements see: 569th meeting: France, p. 33; USSR, pp. 26-27; United States, pp. 30-31.

<sup>127</sup> This debate was concerned with the consideration of eight new applications.

<sup>128</sup> 57th meeting: pp. 124-125.

<sup>129</sup> This debate was concerned with the consideration of seven new applications and with the reconsideration of five pending applications.

<sup>130</sup> 190th meeting: p. 2127.

<sup>131</sup> 190th meeting: p. 2130.

<sup>132</sup> 190th meeting: p. 2136-2137.

<sup>133</sup> This debate was concerned with consideration of one new application (Finland) and with reconsideration of four pending applications.

<sup>134</sup> The representative of Poland had submitted a draft resolution recommending the admission of all five applicants (204th meeting: p. 2412).



not necessary to have a resolution. We consider that it is the duty of the President to place each individual application for membership before the Council for a vote, and that all these applications should be voted on separately, if any member so requests."

At the 206th meeting on 1 October, the representative of Poland remarked:

"Before the Council, there is only one draft resolution, namely the Polish draft of 25 September. No other draft resolution has been submitted; and we must now proceed, in accordance with the provisional rules of procedure, to vote on resolutions in the order in which they were introduced."

At the same meeting, the applications were put to the vote as follows by the President (United Kingdom):<sup>135</sup>

"We shall now proceed to vote separately on each of the applications. The first application on which we have to vote is that of Hungary."

The votes were taken on each application in the same manner, without any draft resolution being submitted.<sup>136</sup>

## CASE 48

*Debate VI*<sup>137</sup>

At the 279th meeting on 10 April 1948, a draft resolution to recommend the admission of Burma was submitted in writing by China,<sup>138</sup> and was adopted.

The President (Colombia) put the application of Italy to the vote as follows:<sup>139</sup>

"We shall now proceed to vote on the question of recommending to the General Assembly the admission of Italy."

## CASE 49

*Debate XI*<sup>140</sup>

At the 445th meeting on 15 September 1949, the Security Council had before it a USSR draft resolution to recommend the simultaneous admission of all applicants.<sup>141</sup> After discussion on the procedure of voting, the Council adopted a United States motion to vote on the USSR draft resolution in parts, with the object, as stated by the President (United Kingdom), of enabling "each member of the Security Council to

<sup>135</sup> 206th meeting: p. 2475.

<sup>136</sup> For texts of relevant statements see:

204th meeting: President (USSR), p. 2414; United States, p. 2414.

206th meeting: Poland, p. 2469.

<sup>137</sup> This debate was concerned with the consideration of one new application (Burma) and with the reconsideration of eleven pending applications.

<sup>138</sup> S/717, 279th meeting: p. 4.

<sup>139</sup> 279th meeting: p. 15.

<sup>140</sup> This debate was concerned with the consideration of one new application (Nepal) and with the reconsideration of twelve pending applications.

<sup>141</sup> At the 443rd meeting on 13 September 1949, seven draft resolutions submitted by the representative of Argentina concerning the admission of Portugal, Transjordan, Italy, Finland, Ireland, Austria and Ceylon (S/1331-S/1337) had been voted upon, and another draft resolution submitted by the representative of China concerning Nepal (S/1385) had also been voted upon at the 439th meeting on 7 September 1949.

reflect the attitude of his country on each applicant". In response to a request by the representative of the USSR that the President read the text on which the Council would vote, the President recited the words used at the 206th meeting on 1 October 1947 when the Council had decided to vote separately on the applications listed in a Polish draft resolution for the simultaneous admission of five applicants. At the request of the representative of the Ukrainian SSR, the meeting was recessed in order that written texts might be placed before the Council. The representative of the USSR declared that he wished "to state formally for the record that we are about to vote on the proposals of the President. This is not the draft resolution of the Soviet Union..."

The President put to the vote each of the five applications not yet voted upon:<sup>142</sup>

"Will those members of the Council who are in favour of recommending to the General Assembly that . . . be admitted to the United Nations, please raise their hands."<sup>143</sup>

### 5. Conflict between a proposal to recommend admission and a proposal to postpone voting

## CASE 50

*Debate I*<sup>144</sup>

At the 57th meeting on 29 August 1946, the Security Council considered the order in which a recommendation in favour of Albania's application and a United States motion to defer voting on the application for a year would be put to the vote. The representative of the United States requested the President (Poland) to rule on the order of the voting, his own view being that his motion would have priority in the voting. The representative of the USSR considered that a recommendation in favour of Albania's admission which had been made in writing eight months before the presentation of the United States motion should receive priority in the vote over the United States motion. He stated that the rules of procedure required proposals to be voted upon in the order in which they were received. The representative of Australia considered that the simple common sense of the situation "was that a proposal to postpone voting on an application should be put to the vote before a vote was taken on the application itself". The representative of the Netherlands stated that rule 33 applied, since, he stated:

"If the mere motion to postpone discussion has precedence, I certainly feel sure that a motion to postpone voting has precedence."

The representative of the USSR considered the case entirely different from that contemplated in rule 33, and stated:

"This rule of procedure covers the postponement of the discussion of a particular case. But in this

<sup>142</sup> 445th meeting: p. 40.

<sup>143</sup> For texts of relevant statements see:

444th meeting: President (United Kingdom) pp. 25, 26; USSR, p. 26. 445th meeting: President (United Kingdom), pp. 37, 38, 40; Canada, p. 38; Egypt, p. 35; Ukrainian SSR, pp. 36, 38; USSR, pp. 36, 40.

<sup>144</sup> This debate was concerned with the consideration of eight new applications.

case . . . we are now concerned with taking a decision. How can two entirely different situations be confused?"

The President stated:

" . . . It seems again clear by logic that the motion to postpone a vote must come before the vote itself."

The United States motion was put to the vote and was not adopted.<sup>146</sup>

<sup>146</sup> For texts of relevant statements see: 57th meeting: President (Poland), pp. 119, 127, 129, 132; China, p. 131; Australia, p. 135; Netherlands, pp. 117, 135; USSR, pp. 116, 117, 130-131; United States, pp. 116, 127-128, 134.

## Part VI

### THE ROLE OF THE GENERAL ASSEMBLY AND THE SECURITY COUNCIL

#### NOTE

Under Article 4 of the Charter, admission is effected by a decision of the General Assembly upon the recommendation of the Security Council. Basic questions of principle underlying procedures to facilitate the discharge of these responsibilities were discussed at the time draft rules of procedure governing the admission of new Members were being drawn up at the joint meetings of the committees established by the Security Council and the General Assembly.<sup>1</sup> Subsequent proceedings in the Security Council contain no material that would justify a detailed presentation of the practice of the Council in respect of matters then made the subject of agreed procedures.

Practice in respect of matters already made the subject of agreed procedures centres around the form and contents of reports submitted to the General Assembly by the Security Council in accordance with rule 60 of the provisional rules of procedure. Under this rule, the Security Council is to forward a recommendation to the General Assembly with a complete record of the discussion. If there is no recommendation, or if consideration of the application is postponed, a special report is to be forwarded with a complete record of the discussion. Notifications, whether in the form of letters or of special reports, have been forwarded to the General Assembly in respect of all applications placed before representatives on the Security Council by the Secretary-General. These notifications have been submitted before the expiration of the time limits fixed in rule 60 except in such special circumstances as the holding of a second part of a regular session, the signing of peace treaties with former enemy States, or in case of requests for urgent reconsideration of pending applications addressed to the Security Council by the General Assembly.<sup>2</sup> Although rule 60 refers only to time limits to be respected for the notification of recommendations, similar time limits have in the practice of the Security Council also been respected for the submission of special reports.

<sup>1</sup> See Part II on consideration of the adoption or amendment of the provisional rules regarding admission of new Members.

<sup>2</sup> In some cases, the General Assembly determined that the applicant State satisfied the requirements of Article 4 (1) and requested reconsideration of the application in the light of this determination of the General Assembly (Resolutions 113 C to H (II), 197 C to I (III), 296 A to I (IV) and 550 (VI)).

In other cases, the General Assembly requested reconsideration without making such a determination (Resolutions 35 (I) and 197 B (III)) or requested the Security Council to keep applications under consideration (Resolutions 296 K (IV) and 495 (V)). Resolutions 113 E and F (II) requested the Council to reconsider the applications of Italy and Transjordan before the end of the second session of the Assembly. Resolution 197 I (III) requested the Council to reconsider the application of Ceylon at the earliest possible moment.

When the Security Council has decided to recommend an applicant State for admission, the notification to the General Assembly has been contained in a letter from the President of the Security Council addressed to the President of the General Assembly, transmitting the text of the recommendation, the report, if any, of the Committee on the Admission of New Members, and the record of the discussion of the Council.<sup>3</sup>

When the Security Council has failed to recommend an applicant or has decided to postpone consideration of an application, the notification to the General Assembly has been contained in a "Special Report",<sup>4</sup> with the following information:

- (a) The names of the applicants concerned;
- (b) How the applications were included in the agenda of the Council;
- (c) An indication of the positions of the representatives on the Council;
- (d) The decision of the Council on the applications;
- (e) A reference to the verbatim records of the relevant meetings of the Council, which, in accordance with rule 60, are transmitted to the General Assembly for its information.

Proceedings of the Security Council bearing upon questions of the relationship of Council and Assembly under Article 4 which are not governed by agreed rules of procedure contain material of greater significance for an appreciation of the attitudes of individual members of the Security Council than for the analysis of the practice of the Council. The problems involved in the relationship of the Council and the General Assembly in the matter of the admission of new Members cannot indeed satisfactorily be studied in the light of the records of the Council alone, since these problems have been debated more comprehensively in the General Assembly than in the Security Council, and have been the subject of two advisory opinions of the International Court of Justice rendered at the request of the General Assembly.<sup>5</sup> The inclusion within

<sup>3</sup> A/256, A/533, A/818, A/1402. Before 1 January 1948, the notification was sometimes referred to as a special report (S/177-A/108), or contained in a Note from the Secretary-General to Members of the General Assembly (S/479-A/350).

<sup>4</sup> A/406, A/617, A/618, A/968, A/974, A/982. The failure of the Council to make recommendations in favour of Italy, Transjordan and Ceylon was notified by the President of the Security Council to the President of the General Assembly by means of letters (A/515, A/823).

<sup>5</sup> By resolution 113 B (II) of 17 November 1947, the General Assembly requested the International Court of Justice to give an advisory opinion on the following question:

"Is a Member of the United Nations which is called upon, in virtue of Article 4 of the Charter, to pronounce itself by its vote, either in the Security Council or in the General Assembly, on the admission of a State to membership in the United Nations, juridically entitled to make its consent

the present *Repertoire* of material derived from other organs of the United Nations having been deemed in general impracticable, the present note and the attached case histories will be confined to presenting the exiguous material on this point derived from the records of the Security Council.

Much debate, especially in the General Assembly, has centered on the question whether an affirmative recommendation of the Security Council in favour of an applicant is necessary for the General Assembly to admit the applicant so recommended.

In cases where a permanent member voted negatively while seven or more members voted affirmatively, or where the required majority of seven was not obtained, the Security Council reported the decision to the General Assembly, usually in the following form:

"On ... the Security Council (re)considered the application(s) of ... After a discussion, the Council voted on the proposal to recommend the admission ... to the United Nations. The result of the vote was ... As ... the proposal was not adopted."

No decisions have been taken in the form of a recommendation not to admit an applicant State. During the review of the rules of procedure concerning the admission of new Members undertaken together by the General Assembly and the Security Council, the two committees rejected a text proposed by Australia to provide that the Council could recommend the non-admittance of an applicant State. On this point, reference should be made to the report of the Committee of Experts of 25 August 1947.<sup>6</sup> In the combined action of the two organs, recommendation by the Council has, in practice, been considered a prior, integral and indispensable part of the procedure of admission, the last phase of which is the decision of the General Assembly.

#### CASE 51

At the 81st meeting on 29 November 1946, the Security Council considered General Assembly resolution 35 (I) of 19 November 1946,<sup>7</sup> which recommended that the Council re-examine the applications for membership from Albania, Ireland, Mongolia,

to the admission dependent on conditions not expressly provided by paragraph 1 of the said Article? In particular, can such a Member, while it recognizes the conditions set forth in that provision to be fulfilled by the State concerned, subject its affirmative vote to the additional condition that other States be admitted to membership in the United Nations together with that State?"

By resolution 296 J (IV) of 22 November 1949 the General Assembly requested the Court to give an advisory opinion on the following question:

"Can the admission of a State to membership in the United Nations, pursuant to Article 4, paragraph 2, of the Charter, be effected by a decision of the General Assembly when the Security Council has made no recommendation for admission by reason of the candidate failing to obtain the requisite majority or of the negative vote of a permanent member upon a resolution so to recommend?"

For the advisory opinions of the Court, see: *Admission of a State to the United Nations (Charter, Art. 4)*, *Advisory Opinion: I.C.J. Reports 1948*, p. 57.

Whereas the advisory opinion of the Court of 24 May 1948 was endorsed by the General Assembly and brought to the attention of the Security Council by Resolution 197 A (III), the advisory opinion of the Court of 3 March 1950, while discussed in the General Assembly, was not the subject of a formal resolution and was, therefore, not brought to the attention of the Council by the Assembly.

<sup>6</sup> See Case 2 (i).

<sup>7</sup> S/197, 81st meeting: pp. 507-508.

Portugal and Transjordan "on their respective merits as measured by the yardstick of the Charter, in accordance with Article 4". In the course of the discussion, statements were made as to whether the Council was under an obligation to adopt the recommendation of the Assembly. It was also suggested that, since the Council had already instructed its Committee of Experts to establish a sub-committee to meet with the Assembly Committee on Procedure to review the provisional rules of procedure relating to the admission of new Members, consideration of the Assembly's recommendations could be postponed until the Council had acted on the new rules.<sup>8</sup>

The representative of Australia proposed that "the Council adopt the Assembly's recommendation and refer the question to the Committee on the Admission of New Members".<sup>9</sup>

The representative of Poland stated:

"... We do not consider that the Security Council is legally bound to adopt the recommendation of the General Assembly because, as one of the representatives has already stated, the General Assembly is in no way an institution of appeal for the decisions of the Security Council. If we vote for adoption of that, we do it as a free decision because we think that such a decision is politically advisable and wise."

The representative of France stated:

"... I too agree that we should accept the General Assembly's resolution. To do so would not appear to violate any of the rules, and the establishment between the organs of the United Nations of joint working methods is quite natural and highly desirable. The recommendation contemplates one such form of collaboration, and we must therefore accept it."

In summarizing the discussion, the President (United States) stated:

"It seems clear from the discussion ... that the unanimous opinion of the Council is that we should accept the resolution sent us by the General Assembly. In my view, the Council is under no legal or juridical obligation to accept that resolution. The courtesy, however, which is due from one of the principal organs of the United Nations to another principal organ of the United Nations, in which all Members are represented, would seem to make it imperative, unless the Council has overriding and important reasons of substance for refusing to accept a resolution passed by the General Assembly to the Council, that it do so ..."

The representative of the Netherlands requested that the Australian draft resolution be voted upon in two parts in accordance with rule 32, to permit him to amend the second part to postpone action on the applications until after the revised rules of procedure on the admission of new Members had been accepted by the Council and the Assembly. He also suggested that, in the first part, the word "adopt" be deleted and the word "accept" be substituted, because he was uncertain whether it was for the Council to adopt the recommendation of the Assembly. The representative

<sup>8</sup> See Case 2 (i). Rule 136 of the General Assembly rules of procedure had not been adopted.

<sup>9</sup> 81st meeting: pp. 508-509.

of Australia accepted the Netherlands' amendment to the first part, but not to the second.

At the request of the President, the representative of Australia withdrew the second part of his draft resolution and the representative of the Netherlands did not press his suggestion.<sup>10</sup>

The amended Australian draft resolution to "accept" the recommendation of the General Assembly was adopted without vote.<sup>11</sup>

At the 82nd meeting on 10 December 1946, the President's proposal that reconsideration of the applications be placed temporarily on "the list of matters of which the Security Council is seized" was adopted without vote.<sup>12</sup>

#### CASE 52

At the 190th meeting on 21 August 1947, after the Council had rejected proposals to recommend the applications of several States, the representative of the United States submitted a draft resolution<sup>13</sup> to request the General Assembly to consider the qualifications of the rejected applicants with the understanding that the Council would

"... immediately recommend to the General Assembly the admission of any of the above-mentioned applicants which the General Assembly shall have considered qualified for admission."

He stated:

"... My Government has opposed certain applications and in the General Assembly will continue to oppose them unless the reasons for our opposition change. However, in an instance of this type we should not desire our opposition to be the determining factor in keeping out of the Organization a State which, in the opinion of a two-thirds majority of the Members of the United Nations, would meet the qualifications. I submit that any other permanent member should consider taking the same attitude."

The representative of Australia supported the United States resolution:

"... My delegation warmly welcomes the United States proposal and the principle embodied in it. The members of the Council will appreciate that for two years Australian representatives have been striving for an objective which this resolution partly meets—that is, to obtain an amendment to the rules of procedure of the General Assembly and of the Security Council, in order to make the Assembly more truly sovereign on this question of the admission of new Members."

In opposing the United States draft resolution, the representative of the USSR stated:

"What is being suggested here is a reverse procedure, according to which the General Assembly must first decide whether a particular State deserves admission to the United Nations, and the Security Council must then at once approve this decision of the General Assembly. That is a direct contradiction of the procedure provided by the Charter."

<sup>10</sup> For texts of relevant statements see: 81st meeting: President (United States), pp. 519-520; Australia, p. 508; Egypt, p. 509; France, p. 516; Netherlands, p. 515; Poland, p. 511.

<sup>11</sup> 81st meeting: p. 522.

<sup>12</sup> 82nd meeting: p. 524.

<sup>13</sup> 190th meeting: p. 2134.

The representative of the United States withdrew his draft resolution in view of the fact that "the USSR has indicated an unalterable opposition."<sup>14</sup>

#### CASE 53

At the 427th meeting on 16 June 1949, in connexion with the consideration of the various applications for admission to the United Nations then pending, the representative of Argentina argued that the view that the General Assembly had no right to admit an applicant State to membership notwithstanding the failure of the Council to recommend the applicant was "erroneous". He observed that Article 4 (2) referred to the word "recommendation" without qualifying it by any adjective such as "favourable". In his opinion, the word "recommendation" might be either favourable or unfavourable, and in either case, the General Assembly had to take the final decision either to accept or reject the application. He was of the opinion that, in view of the obligation to make a recommendation to the Assembly, the Council, by postponing consideration of the application, prevented the Assembly from exercising the power which it alone possessed. Referring to observations made in the Assembly by the representative of the USSR to the effect that rule 136 (formerly 126) of the rules of procedure of the General Assembly provided that, if the Council did not make a favourable recommendation, the Assembly could not take any decision thereon, the representative of Argentina remarked that this provision authorized the Assembly to send the matter back to the Council, but could not, without violating the Charter, deprive the Assembly of the power of decision conferred upon it. He stated:

"It had been contended that applications for admission require the approval of both the General Assembly and the Security Council. This argument is not clear. If it is contended that the Council must voice its approval by a recommendation and that the Assembly must voice its approval by a decision, then we are in agreement. If, however, it is contended that both organs must take a decision on the basis of complete equality, then the contention is erroneous and contrary to the Charter, which states that the Council shall only recommend, while the Assembly shall have the power to decide."

He maintained that an examination of Articles 18 and 24 indicated that the power to decide on the admission of new Members was expressly granted to the General Assembly alone; the power to make recommendations appeared neither among the specific powers of the Council nor among its powers in Chapter V. He also referred to the consideration given to this question at the United Nations Conference on International Organization in 1945, and recalling the view of the Advisory Committee of Jurists at San Francisco regarding the provision which became Article 4 (2), cited the text of their opinion:

"... 'the Committee was advised that the new text did not, in the view of the Advisory Committee of Jurists, weaken the right of the Assembly to accept or reject a recommendation for the admission of a new Member, or—I draw the particular attention of the members of the Council to what fol-

<sup>14</sup> For texts of relevant statements see: 190th meeting: Australia, pp. 2137-2138; Poland, p. 2136; USSR, pp. 2138-2139; United States, p. 2134.

lows:—'a recommendation to the effect that a given State should not be admitted to the United Nations'."

At the 429th meeting on 24 June, the representative of the United Kingdom, referring to the statement of the representative of Argentina, observed:<sup>15</sup>

"If the framers of the Charter really had meant

that whatever the Security Council's recommendation might be, favourable or unfavourable, the General Assembly could admit a candidate, surely they could not have been very content with the text of Article 4 of the Charter as they left it... If we consider the very great care which the framers of the Charter exercised to prevent overlapping of the functions of the General Assembly and the Security Council and, still more, to avoid conflict between those two organs, I cannot bring myself to believe that that was their intention."

<sup>15</sup> For texts of relevant statements see:  
427th meeting: Argentina, pp. 14-29.  
429th meeting: United Kingdom, p. 4.

**Chapter VIII**

**CONSIDERATION OF QUESTIONS UNDER THE COUNCIL'S RESPONSIBILITY  
FOR THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY**



## TABLE OF CONTENTS

	<i>Page</i>
INTRODUCTORY NOTE .....	295
PART I. ANALYTICAL TABLE OF MEASURES ADOPTED BY THE SECURITY COUNCIL	
Note .....	297
PART II	
The Iranian question (I) .....	300
The Greek question—USSR communication dated 21 January 1946 .....	301
The Indonesian question (I) .....	302
The Syrian and Lebanese question .....	302
The Iranian question (II) .....	303
The Spanish question .....	306
The Greek question—Ukrainian SSR communication dated 24 August 1946 .....	308
The Greek frontier incidents question .....	309
Question of the Statute of the Free Territory of Trieste .....	312
The Corfu Channel question .....	313
Appointment of a Governor for the Free Territory of Trieste .....	314
The Egyptian question .....	314
The Indonesian question (II) .....	315
The Palestine question .....	325
The India-Pakistan question .....	344
The Czechoslovak question .....	352
Question of the Free Territory of Trieste .....	353
The Hyderabad question .....	353
Identic notifications dated 29 September 1948 .....	354
Complaint of aggression upon the Republic of Korea .....	354
Complaint of armed invasion of Taiwan (Formosa) .....	358
Complaint of bombing by air forces of the territory of China .....	359
The Anglo-Iranian Oil Company case .....	360

## INTRODUCTORY NOTE

In chapters I-VI specific aspects of the procedure of the Security Council in the discharge of its functions under Chapters VI and VII of the Charter have been dealt with as general problems in the procedure of the Council. Aspects of practice which arise in the consideration of the substance of questions placed before the Council do not admit of presentation under generalized headings, since the proceedings in each case have necessarily been adapted, within the broad framework of the Charter, to the special circumstances of the case.

Accordingly this chapter indicates the chain of proceedings on the substance of each question included within the Report of the Security Council to the General Assembly under the heading: "Questions Considered by the Security Council under its Responsibility for the Maintenance of International Peace and Security". The range of questions covers broadly those which may be deemed to fall under Chapters VI and VII of the Charter. In chapters X, XI, XII of the *Repertoire* is presented ancillary material from the Official Records bearing on relevant Articles of the Charter. References to the ancillary material are given at the appropriate points in the entries for each question in this chapter.

### I. THE ARRANGEMENT OF CHAPTER VIII

The questions are dealt with in the chronological order of their inclusion in the agenda of the Council. In respect of each question, there is given at the outset a summary of the case presented to the Council as stated in the letter of submission and the initial statement to the Council, together with a summary of the contentions made in rebuttal. The effort has been made to state these issues in the light of their legal and constitutional bearing on the Charter rather than in terms of the political contentions stated before the Council. An indication is also given of the Articles cited in the submission of the question to the Council.<sup>1</sup>

The framework of the material for each question is provided by the succession of affirmative and negative decisions within the purview of this chapter. Decisions related to the subject matter of chapters I-VI of the *Repertoire* are, with certain exceptions, omitted as not relevant to the purpose of this chapter or of the ancillary chapters X-XII. The decisions are entered in uniform manner. Affirmative decisions are entered under a heading indicative of the content of the decision, and negative decisions are entered under a heading indicative solely of the origin of the proposal or draft resolution. Affirmative decisions have been reproduced in full as constitutive of the practice of the Council, while negative decisions are indicated in summarized form. Where the negative decision relates to a draft resolution in connexion with which discussion has taken place concerning the application of the Charter, the text of the relevant parts of the draft resolution will in most instances be found in chapters X-XII.

<sup>1</sup>For a tabulation of the data on submission, see chapter X, part III.

The decisions on each question are linked by a brief indication of the proceedings of the Council designed to draw attention to the immediate background of each decision. Where a decision has been preceded by consideration of amendments, these amendments are, for the most part, entered in connexion with the decision; but certain minor textual amendments and certain proposals not voted upon by the Council have been omitted where these are of no import in connexion with the ancillary material relating to the Articles of the Charter which is entered in chapters X-XII.

Chapter VIII, as an outline of the proceedings of the Council in respect of the issues placed before it, constitutes the framework within which the ancillary legal and constitutional discussion recorded in chapters X-XII may be considered. The chapter is an aid to the examination of the deliberations of the Council expressly related to the provisions of the Charter within the context of the chain of proceedings on the agenda item.

For this reason, certain material, notably relating to Articles 1 and 2 of the Charter, will be found entered in this chapter where its significance in relation to the proceedings of the Council can be the more readily appreciated.<sup>2</sup>

The decisions of the Council entered in respect of each question constitute the pronouncements deriving, directly or indirectly, from the issues submitted in the first instance. The issues before the Council in connexion with a particular question have not infrequently undergone a process of development and transformation in the course of its consideration, with or without change with respect to the Article of the Charter on the basis of which the Council's consideration of the question has been proceeding; and where such development has occurred, the relevant information has been entered. In this manner, the chapter, in conjunction with chapters X-XII, presents the evidence regarding the Articles of the Charter on which the proceedings of the Council have been based in the successive stages in the consideration of the agenda items dealt with in this chapter.

Consideration of the practice of the Council in the discharge of its responsibilities for the maintenance of international peace and security must be based in the first instance on the examination of the issues placed before and considered by the Council and on the texts of the decisions relating thereto. The Council itself has defined in few instances only the relation of these decisions to the individual Articles of the Charter. For this reason, few decisions can be ascribed to specific Articles of the Charter without a certain element of interpretation. In the absence of conclusive evidence in the Records, the attribution of decisions to the Articles of the Charter is a task of interpretation beyond the scope of the *Repertoire*. Indeed, statements in the Council and the texts of decisions are in many instances indicative of the view that the Council has sought to discharge its responsibility for the maintenance of international peace and security by basing its actions on the general

<sup>2</sup>See also chapter XII, Note to part II.

powers conferred upon it by the Charter. In locating the decisions of the Council within the context of the Council's proceedings on the individual questions before it, the intention has been to make available the texts of decisions in a manner which facilitates the assessment of their constitutional significance.

## II. ARRANGEMENT OF CHAPTERS X-XII

In the chapters X, XI and XII of the *Repertoire* is presented material from the Official Records of the Council bearing on the Articles of the Charter defining the powers and the functions of the Council which are not covered in earlier chapters. The following paragraphs state the criteria of relevance which have governed the assembly of this material.

All proceedings of the Council in the consideration of disputes and situations may be deemed to constitute material for a review of the application of the relevant Articles of the Charter. The statements and counter-statements by parties to a dispute, together with the observations by representatives on the Council regarding the validity or invalidity of such claims, constitute evidence of the range of considerations which the Council has deemed appropriate to entertain in the discharge of its functions. The constitutional significance of these proceedings can, however, be appraised only in the light of the full record.

Nor is it possible within the limitations of the *Repertoire of Practice* to engage in analysis of the varied measures which the Council has taken in connexion with the questions submitted to it. The adoption or non-adoption of such measures is dependent upon the circumstances of the time, and their efficacy and appropriateness can be appraised only in relation to those circumstances and to developments in the area concerned. In order, however, to afford an empirical guide to the varied measures taken by the Council, there has been included in this chapter an analytical table of measures adopted by the Council arranged broadly according to the type of measure. This table should, however, be regarded as of the nature of an index to chapter VIII; and no constitutional significance should be attached to the headings adopted in the compilation of this table nor to the inclusion of particular measures under the individual headings.

Much of the activity of the Council in connexion with chapters VI and VII of the Charter has taken place through the instrumentality of commissions established to operate in the area of the dispute. These commissions have established their own methods of organization and procedure in accordance with the functions assigned to them. No attempt has been made to reproduce, within the *Repertoire of Practice*, material relating to the organization and procedures of such commissions save where questions of organization and procedure relating to the commissions have constituted an aspect of the proceedings of the Council itself. Information regarding the organization and procedure of the United Nations Commissions in question will, however, be found in the series of memoranda prepared by the Secretary-Gen-

eral entitled: Organization and Procedure of United Nations Commissions.<sup>3</sup> References to these publications are given at the appropriate points in chapter VIII of the *Repertoire*.

The material included in chapters X, XI and XII consists of those episodes in the proceedings where the Council has found it necessary to address itself to the relationship of the question before the Council to the terms of the Articles of the Charter. In principle, the material included consists of those instances in which a draft resolution submitted to the Council has raised a problem concerning the application of the Charter, resulting in a connected chain of discussion on the problem of interpretation. The material is arranged under Articles of the Charter, not by reference to the constitutional significance of the eventual decision, but by reference to the problem of interpretation raised by the draft resolution put to the Council. It follows that case histories under each Article of the Charter will include certain incidental material bearing on other Articles of the Charter, wherever, in the consideration of the draft resolution related to one Article, the bearing of other Articles has been adverted to. This method of presenting the material has been adopted as appropriate to the *Repertoire of Practice* since the significance of particular statements on the application of the Charter can be assessed only in the light of their context.

Though the principle has been adopted that the case histories should commence with draft resolutions expressly related to the Charter, it has not been possible to apply this principle with consistency throughout, either as a method of selection or of arrangement. In certain instances discussion on the bearing of the text of the Charter evoked by a proposal has continued over several meetings of the Council and has ranged over several Articles of the Charter. To maintain the integrity of the chain of proceedings in such instances would afford little assistance in the examination of the material bearing on the individual Articles; and, consequently, in such instances, the effort has been made to present a master history under the Article of the Charter predominantly involved and to include the material bearing on other Articles of the Charter rather in the form of a series of statements. In other instances, protracted debate has taken place on the relationship between the agenda item under consideration by the Council and the text of the Charter. In such instances also the material will be found to consist of a series of related statements, and not of the consideration of a draft resolution, and the reader should refer to chapter VIII in order to assess the significance of this discussion within the context of the proceedings of the Council on the agenda item as a whole. The many instances in which merely incidental reference has been made to the text of the Charter in the statements of representatives on the Council are excluded as not germane to the *Repertoire of Practice*.

<sup>3</sup> *Organization and Procedure of United Nations Commissions*. United Nations publications, 1949-1950.X.1-12.

## Part I

## ANALYTICAL TABLE OF MEASURES ADOPTED BY THE SECURITY COUNCIL

## NOTE

The entries in this tabulation are restricted to a reference to the question, the date of the decision and the serial number of the decision in the S/ series. Reference to subsidiary organs has also been included where appropriate. In most instances paragraph numbers have been indicated to facilitate reference to the texts of resolutions in part II of this chapter. The paragraph numbers have been determined in the following manner:

(i) Where a resolution has numbered paragraphs, they have been used in the tabulation;

(ii) Where paragraphs of a resolution are not numbered, the paragraph noted in the tabulation can be located by counting the paragraphs of the *entire* resolution, beginning with the first paragraph which follows the introductory words—"The Security Council".

## I. Preliminary measures for the elucidation of fact

- A. Hearing of interested governments and authorities.  
(For invitations extended for the restricted purpose of obtaining information see chapter III, Cases 52, 54, 55, 56, 57. For unrestricted invitations to participate without vote, see the other cases in chapter III, part I, sections C and D.)
- B. Appointment of a sub-committee to examine evidence and to conduct an inquiry.
- (i) Spanish question:  
Decision of 29 April 1946.
- (ii) Corfu Channel question:  
Decision of 27 February 1947.
- C. Establishment of a commission of investigation pursuant to Article 34.
- (i) Greek frontier incidents question:  
Decision of 19 December 1946 (S/339).  
Decision of 18 April 1947 (S/330/Corr.1).
- (ii) India-Pakistan question:  
Decision of 20 January 1948 (S/654).

## II. Determination of the nature of the question

- A. Determination of the existence of a dispute or situation the continuance of which is likely to endanger the maintenance of international peace and security.
- (i) India-Pakistan question:  
Decision of 21 April 1948 (S/725), para. 5 of preamble.
- B. Determination of the existence of a threat to the peace, breach of the peace, or act of aggression.
- (i) Palestine question:  
Decision of 15 July 1948 (S/902), para. 2.
- (ii) Complaint of aggression upon the Republic of Korea:  
Decision of 25 June 1950 (S/1501), para. 2.

## III. Injunctions to governments and authorities involved in hostilities

- A. Precautionary action.
- (i) Palestine question:  
Decision of 5 March 1948 (S/691), para. 3.
- (ii) India-Pakistan question:  
President's request of 6 January 1948 (S/636).  
Decision of 17 January 1948, para. 4 (S/651).
- B. Cessation of hostilities.
- (i) Indonesian question (II):  
Decision of 1 August 1947 (S/459), para. 2.

Decision of 26 August 1947, para. 3.  
Decision of 1 November 1947 (S/597), para. 3.  
Decision of 24 December 1948 (S/1142), para. 3.  
Decision of 28 January 1949 (S/1219), para. 1.

- (ii) Palestine question:  
Decision of 1 April 1948 (S/714/1), para. 4.  
Decision of 17 April 1948 (S/723), para. 1 (a).  
Decision of 22 May 1948 (S/773), para. 2.  
Decision of 29 May 1948 (S/801), paras. 1-5.  
Decision of 15 July 1948 (S/902), paras. 3, 6.  
Decision of 29 December 1948 (S/1169), para. 2.  
Decision of 11 August 1949 (S/1376/II), para. 4.  
Decision of 8 May 1951 (S/2130), para. 3.
- (iii) India-Pakistan question:  
Decision of 21 April 1948 (S/726), para. 3 of preamble and part A.
- (iv) Complaint of aggression upon the Republic of Korea:  
Decision of 25 June 1950 (S/1501), part I.

## C. Arrangement, maintenance or prolongation of truce.

- (i) Indonesian question (II):  
Decision of 29 July 1948 (S/931), para. 2.
- (ii) Palestine question:  
Decision of 1 April 1948 (S/714/1), para. 3.  
Decision of 7 July 1948 (S/875), para. 2.  
Decision of 15 July 1948 (S/902), para. 9.

## D. Establishment of an armistice.

- (i) Palestine question:  
Decision of 16 November 1948 (S/1080), paras. 4-5.  
Decision of 11 August 1949 (S/1376/II), paras. 1-3.

## IV. Measures in connexion with injunctions to be taken by the governments and authorities directly involved in hostilities

- A. Withdrawal of fighting personnel.
- (i) Indonesian question (II):  
Decision of 1 November 1947 (S/597), para. 6.  
Decision of 28 December 1948 (S/1160).
- (ii) Palestine question:  
Decision of 19 October 1948 (S/1044), para. 1 (a).  
Decision of 4 November 1948 (S/1070), para. 5 (1).  
Decision of 16 November 1948 (S/1080), para. 5 (b).
- (iii) India-Pakistan question:  
Decision of 21 April 1948 (S/726), part A, paras. 1, 2.
- B. Demilitarization of an area.
- (i) Palestine question:  
Decision of 15 July 1948 (S/902), para. 7.  
Decision of 4 November 1948 (S/1070), para. 5 (2).  
Decision of 25 October 1949.  
Decision of 18 May 1951 (S/2157), paras. 3, 4, 10, 11, 12.
- (ii) India-Pakistan question:  
Decision of 14 March 1950 (S/1469), paras. 1, 2.  
Decision of 30 March 1951 (S/2017/Rev.1), para. 7 (a) of preamble and paras. 3-5.  
Decision of 10 November 1951 (S/2392), para. 2.
- C. Delineation of demarcation lines.
- (i) Palestine question:  
Decision of 16 November 1948 (S/1080), para. 5 (a).
- D. Restriction on the introduction of new fighting personnel into the area of hostilities.
- (i) Palestine question:  
Decision of 17 April 1948 (S/723), para. 1 (b).  
Decision of 29 May 1948 (S/801), para. 3.
- (ii) India-Pakistan question:  
Decision of 21 April 1948 (S/726), part A, para. 1 (a).

- E. Restriction on the importation or furnishing of war materials.**
- (i) Palestine question:
    - Decision of 17 April 1948 (S/723), para. 1 (c).
    - Decision of 29 May 1948 (S/801), para. 5.
  - (ii) India-Pakistan question:
    - Decision of 21 April 1948 (S/726), part A, para. 1 (a).
- F. Restriction on the mobilization of men of military age.**
- (i) Palestine question:
    - Decision of 29 May 1948 (S/801), para. 4.
- G. Release of political prisoners.**
- (i) Indonesian question (II):
    - Decision of 24 December 1948 (S/1142, S/1145), para. 3 (b).
    - Decision of 28 December 1948 (S/1164), para. 2.
    - Decision of 28 January 1949 (S/1234), para. 2.
- H. Protection of Holy Places.**
- (i) Palestine question:
    - Decision of 17 April 1948 (S/723), para. 1 (f).
    - Decision of 29 May 1948 (S/801), para. 6.
    - Decision of 15 July 1948 (S/902), para. 7.
- I. Protection of life and property.**
- (i) Indonesian question (II):
    - Decision of 1 November 1947 (S/597), para. 3.
- J. Freedom of movement and safe conduct of supervision personnel.**
- (i) Indonesian question (II):
    - Decision of 25 August 1947 (S/525), para. 6.
  - (ii) Palestine question:
    - Decision of 19 October 1948 (S/1045), paras. 1, 6.
    - Decision of 29 December 1948 (S/1169), para. 2 (iii).
    - Decision of 18 May 1951 (S/2157), paras. 13, 14.
- K. Prevention and punishment of breaches of the truce.**
- (i) Palestine question:
    - Decision of 1 April 1948 (S/714/1), para. 3.
    - Decision of 15 July 1948 (S/903), para. 8.
    - Decision of 19 August 1948 (S/983), para. 3 (b) (c) (d).
    - Decision of 19 October 1948 (S/1045), para. 6 (c).
- L. Termination of the exercise of the right of visit, search and seizure.**
- (i) Palestine question:
    - Decision of 1 September 1951 (S/2322), paras. 5-10.
- V. Measures in connexion with injunctions to be taken by other governments and authorities**
- A. Prevention of the introduction of fighting personnel.**
- (i) Palestine question:
    - Decision of 17 April 1948 (S/723), para. 3.
    - Decision of 29 May 1948 (S/801), paras. 3, 13.
- B. Prevention of the importation of war materials.**
- (i) Palestine question:
    - Decision of 17 April 1948 (S/723), para. 3.
    - Decision of 29 May 1948 (S/801), paras. 5, 13.
- C. Restriction on assistance by Members to one of the authorities involved.**
- (i) Complaint of aggression upon the Republic of Korea:
    - Decision of 25 June 1950 (S/1501), part III.
- D. Provision of assistance by Members in circumstances of a breach of the peace.**
1. Relief and support of civilian population.
    - (i) Complaint of aggression upon the Republic of Korea:
      - Decision of 31 July 1950 (S/1657).
  2. Provision of assistance to repel an armed attack.
    - (i) Complaint of aggression upon the Republic of Korea:
      - Decision of 27 June 1950 (S/1511), para. 6.
  3. Availability of military forces for a Unified Command.
    - (i) Complaint of aggression upon the Republic of Korea:
      - Decision of 7 July 1950 (S/1588), para. 3.
  4. Designation of the Commander of the Unified Command.
    - (i) Complaint of aggression upon the Republic of Korea:
      - Decision of 7 July 1950 (S/1588), para. 4.
- VI. Measures for settlement**
- A. Compliance with purposes and principles of the Charter.**
- (i) Palestine question:
    - Decision of 17 November 1950 (S/1907), para. 10.
    - Decision of 8 May 1951 (S/2130), para. 3.
    - Decision of 18 May 1951 (S/2157), paras. 11, 15.
  - (ii) India-Pakistan question:
    - President's request of 6 January 1948 (S/636).
- B. Procedures of pacific settlement noted, advised or recommended.**
1. Direct negotiations.
    - (i) Iranian question (I):
      - Decision of 30 January 1946, paras. 3, 4.
    - (ii) Iranian question (II):
      - Decision of 4 April 1946, para. 2.
    - (iii) Indonesian question (II):
      - Decision of 1 November 1947 (S/597), para. 3.
      - Decision of 28 January 1949 (S/1234), para. 3.
      - Decision of 23 March 1949.
    - (iv) Palestine question:
      - Decision of 19 October 1948 (S/1044), para. 1 (c).
      - Decision of 4 November 1948 (S/1070), para. 5 (2).
      - Decision of 16 November 1948 (S/1080), para. 5.
      - Decision of 11 August 1949 (S/1376/II), para. 2.
    - (v) India-Pakistan question:
      - Decision of 17 January 1948 (S/651).
      - Decision of 17 December 1949.
  2. Good offices, mediation or conciliation.<sup>1</sup>
    - (i) Indonesian question (II):
      - Decision of 25 August 1947 (S/525).
      - Decision of 28 January 1949 (S/1234), para. 4.
    - (ii) Palestine question:
      - Decision of 29 May 1948 (S/801), para. 8.
      - Decision of 15 July 1948 (S/902), para. 10.
      - Decision of 16 November 1948 (S/1080), para. 5.
    - (iii) India-Pakistan question:
      - Decision of 20 January 1948 (S/654), para. C (2).
      - Decision of 21 April 1948 (S/726), para. 7.
      - Decision of 14 March 1950 (S/1469), para. 2 (6) (c).
  3. Arbitration.
    - (i) Indonesian question (II):
      - Decision of 1 August 1947 (S/459).
    - (ii) India-Pakistan question:
      - Decision of 30 March 1951 (S/2017/Rev.1), para. 6.
  4. Judicial settlement.
    - (i) Corfu Channel question:
      - Decision of 9 April 1947 (S/324), para. 2.
- C. Provisions bearing on issues of substance, including terms of settlement.**
1. Determination of accession of territory by plebiscite.
    - (i) India-Pakistan question:
      - Decision of 21 April 1948 (S/726), part B.

<sup>1</sup> For establishment of subsidiary organs in connexion with these procedures see *infra*, VII B2.

- Decision of 14 March 1950 (S/1469), para. 3.  
 Decision of 30 March 1951 (S/2017/Rev.1), paras. 3, 4.  
 Decision of 29 May 1951.
2. Establishment of a governmental authority.  
 (i) Indonesian question (II):  
 Decision of 28 January 1949 (S/1234), para. 3 (a).
3. Transfer of sovereignty.  
 (i) Indonesian question (II):  
 Decision of 28 January 1949 (S/1234), para. 3 (c).
4. Evacuation of foreign troops.  
 (i) Iranian question (II):  
 Decision of 4 April 1946, paras. 6, 7.
5. Election of a constituent assembly.  
 (i) Indonesian question (II):  
 Decision of 28 January 1949 (S/1234), para. 3 (b).  
 (ii) India-Pakistan question:  
 Decision of 30 March 1951 (S/2017/Rev.1), paras. 2-5 of preamble.
6. Protection of civil liberties in connexion with elections.  
 (i) Indonesian question (II):  
 Decision of 28 January 1949 (S/1234), para. 4 (e).  
 (ii) India-Pakistan question:  
 Decision of 21 April 1948 (S/726), paras. 12, 14.
7. Repatriation.  
 (i) Palestine question:  
 Decision of 17 November 1950 (S/1907), paras. 5-7.  
 Decision of 18 May 1951 (S/2157), para. 12.  
 (ii) India-Pakistan question:  
 Decision of 21 April 1948 (S/726), para. 14.
8. Interim administration of territory in dispute.  
 (i) Indonesian question (II):  
 Decision of 28 January 1949 (S/1234), para. 2.  
 (ii) Palestine question:  
 Decision of 18 May 1951 (S/2157), para. 10.  
 (iii) India-Pakistan question:  
 Decision of 21 April 1948 (S/726), part B.
9. Release of political prisoners.  
 (i) Indonesian question (II):  
 Decision of 24 December 1948 (S/1142, S/1145), para. 3 (b).  
 Decision of 28 December 1948 (S/1164), para. 2.  
 Decision of 28 January 1949 (S/1234), para. 2.  
 (ii) India-Pakistan question:  
 Decision of 21 April 1948 (S/726), para. 14.
10. Compliance with treaties and agreements setting forth the basis for a political settlement.  
 (i) Indonesian question (II):  
 Decision of 25 August 1947 (S/525), para. 2.  
 Decision of 29 July 1948 (S/931), para. 2.  
 Decision of 28 January 1949 (S/1234), para. 3.  
 (ii) India-Pakistan question:  
 Decision of 30 March 1951 (S/2017/Rev.1), para. 6.  
 Decision of 29 May 1951.
- D. In connexion with the General Assembly.  
 (i) Spanish question:  
 Decision of 4 November 1946.  
 (ii) Greek Frontier Incidents question:  
 Decision of 15 September 1947 (S/555).  
 (iii) Palestine question:  
 Decision of 1 April 1948 (S/7714/II).
- VII. Measures to promote the implementation of resolutions of the Security Council
- A. Notice of possible action under Chapter VII of the Charter.  
 (i) Palestine question:  
 Decision of 29 May 1948 (S/801), para. 12.
- Decision of 15 July 1948 (S/902), para. 4.  
 Decision of 4 November 1948 (S/1070), para. 6.
- B. Establishment or employment of subsidiary organs.
1. For observation or supervision in connexion with the ending of hostilities.  
 (i) Indonesian question (II):  
 Decision of 25 August 1947 (S/525), para. 5 (Consular Commission at Batavia).  
 Decision of 24 December 1948 (S/1142, S/1145) (Committee of Good Offices).  
 Decision of 28 January 1949 (S/1234), para. 4 (United Nations Commission for Indonesia, and Consular Commission at Batavia).  
 (ii) Palestine question:  
 Decision of 23 April 1948 (S/727) (Truce Commission).  
 Decision of 12 May 1948 (Truce Commission).  
 Decision of 29 May 1948 (S/801), para. 7 (Mediator and Truce Commission).  
 Decision of 15 July 1948 (S/902), para. 8 (Mediator).  
 Decision of 16 November 1948 (S/1080), para. 5 (Acting Mediator).  
 Decision of 11 August 1949 (S/1376/II), para. 7 (Chief of Staff of the Truce Supervision Organization).  
 (iii) India-Pakistan question:  
 Decision of 12 April 1948 (S/726), para. 17 (United Nations Commission for India and Pakistan).  
 Decision of 14 March 1950 (S/1469), para. 2 (a) (United Nations Commission for India and Pakistan).  
 Decision of 30 March 1951 (S/2017/Rev.1), paras. 3, 7 (United Nations Representative for India and Pakistan).  
 (iv) Complaint of aggression upon the Republic of Korea:  
 Decision of 25 June 1950 (S/1501), part II, para. 2 (United Nations Commission on Korea).
2. For good offices, mediation or conciliation.  
 (i) Indonesian question (II):  
 Decision of 25 August 1947 (S/525/II) (Committee of Good Offices).  
 Decision of 28 January 1949 (S/1234), para. 4 (United Nations Commission for Indonesia).  
 (ii) Palestine question:  
 Decision of 29 May 1948 (S/801), para. 8 (Mediator).  
 Decision of 15 July 1948 (S/902), para. 10 (Mediator).  
 Decision of 16 November 1948 (S/1080), para. 5 (Acting Mediator).  
 (iii) India-Pakistan question:  
 Decision of 20 January 1948 (S/654), para. C (United Nations Commission for India and Pakistan).  
 Decision of 21 April 1948 (S/726) (United Nations Commission for India and Pakistan).  
 Decision of 3 June 1948 (S/819) (United Nations Commission for India and Pakistan).  
 Decision of 14 March 1950 (S/1469), para. 2 (b) (c) (United Nations Representatives for India and Pakistan).
3. For the organization of a plebiscite.  
 (i) India-Pakistan question:  
 Decision of 21 April 1948 (S/726), part B (Plebiscite Administrator).
- C. Intercession by the President.  
 (i) Palestine question:  
 Report of the President of 15 April 1948.  
 (ii) India-Pakistan question:  
 President's request of 6 January 1948 (S/636).  
 Decision of 17 January 1948 (S/651).  
 Decision of 17 December 1949.  
 (iii) Identical notifications dated 29 September 1948:  
 Action of the President on 30 November 1948 (Press Release SC/908).
- D. Endorsement of decisions of subsidiary organs.  
 (i) Palestine question:  
 Decision of 15 June 1948 (S/837).



- Decision of 19 October 1948 (S/1044).  
 Decision of 29 December 1948 (S/1169), para. 2 (ii).  
 Decision of 18 May 1951 (S/2157), paras. 5, 10.  
 Decision of 1 September 1951 (S/2322), paras. 3, 10.
- (ii) India-Pakistan question:  
 Decision of 25 November 1948.  
 Decision of 10 November 1951 (S/2392), para. 2 of preamble.
- E. Time limits fixed for compliance.
- (i) Iranian question (II):  
 Decision of 8 May 1946, para. 3.
- (ii) Indonesian question (II):  
 Decision of 28 December 1948 (S/1164), para. 2.  
 Decision of 28 January 1949 (S/1234), para. 3.
- (iii) Palestine question:  
 Decision of 22 May 1948 (S/773), para. 2.  
 Decision of 24 May 1948.  
 Decision of 29 May 1948 (S/801), para. 11.  
 Decision of 2 June 1948 (S/814).  
 Decision of 15 July 1948 (S/902), para. 3.
- (iv) India-Pakistan question:  
 Decision of 14 March 1950 (S/1469), para. 1.
- F. Reaffirmation of previous decisions.
- (i) Indonesian question (II):  
 Decision of 26 August 1947 (S/521).
- (ii) Palestine question:  
 Decision of 19 October 1948 (S/1045), para. 4.  
 Decision of 16 November 1948 (S/1080), para. 1.  
 Decision of 11 August 1949 (S/1376/II), para. 4.  
 Decision of 8 May 1951 (S/2130), paras. 1, 3.  
 Decision of 18 May 1951 (S/2157), para. 1.  
 Decision of 1 September 1951 (S/2322), paras. 1, 2.
- (iii) India-Pakistan question:  
 Decision of 21 April 1948 (S/726), para. 6 of preamble.  
 Decision of 3 June 1948 (S/819), para. 2.  
 Decision of 30 March 1951 (S/2017/Rev.1), para. 4 of preamble.
- VIII. Measures to ensure further consideration and to ascertain compliance
- A. Request for information on the progress of settlement.
1. From the parties.
- (i) Iranian question (I):  
 Decision of 30 January 1946, para. 4.
- (ii) Iranian question (II):  
 Decision of 4 April 1946.  
 Decision of 8 May 1946, para. 3.
- (iii) Palestine question:  
 Decision of 18 May 1948 (S/753).  
 Decision of 8 July 1948.
- (iv) India-Pakistan question:  
 Decision of 17 January 1948, para. 5.
2. From the Secretary-General.
- (i) Iranian question (II):  
 Decision of 29 March 1946.
3. From subsidiary organs.
- (i) Indonesian question (II):  
 Decision of 28 February 1948 (S/678), para. 5.  
 Decision of 28 February 1948 (S/689).  
 Decision of 6 July 1948.  
 Decision of 24 December 1948 (S/1150), para. 4.  
 Decision of 28 January 1949 (S/1234), para. 4.
- (ii) Palestine question:  
 Decision of 23 April 1948 (S/727), para. 3.  
 Decision of 22 May 1948 (S/773), para. 4.  
 Decision of 29 May 1948 (S/801), para. 10.  
 Decision of 8 July 1948.  
 Decision of 15 July 1948 (S/902), para. 8.  
 Decision of 4 November 1948 (S/1070), para. 6.  
 Decision of 29 December 1948 (S/1169), para. 3.  
 Decision of 11 August 1949 (S/1376/II), para. 8.  
 Decision of 17 November 1950 (S/1907), para. 11.  
 Decision of 18 May 1951 (S/2157), para. 17.
- (iii) India-Pakistan question:  
 Decision of 20 January 1948 (S/654), para. C.2.  
 Decision of 21 April 1948 (S/726), paras. 7, 8.  
 Decision of 3 June 1948 (S/819), para. 3.  
 Decision of 14 March 1950 (S/1469), para. 2 (c).  
 Decision of 10 November 1951 (S/2392), para. 4.
- (iv) Complaint of aggression upon the Republic of Korea:  
 Decision of 25 June 1950 (S/1501), part II.
- B. Retention of the question by express decision on the list of matters of which the Security Council is seized.
- (i) Spanish question:  
 Decision of 26 June 1946.
- C. Provision by express decision to consider the matter further.
- (i) Iranian question (II):  
 Decision of 4 April 1946, para. 7.
- (ii) Indonesian question (II):  
 Decision of 25 August 1947 (S/525/I), para. 7.

## Part II

### THE IRANIAN QUESTION (I)

#### INITIAL PROCEEDINGS

By letter dated 19 January 1946,<sup>1</sup> Iran stated that, owing to interference of the Soviet Union in the internal affairs of Iran, a situation had arisen which might lead to international friction. The communication continued:

"In accordance with Article 33 of the Charter of the United Nations, the Iranian Government has repeatedly tried to negotiate with the Government of the Soviet Union, but has met with no success."

Iran, in accordance with Article 35 (1), was therefore bringing the matter to the attention of the Security Council so that the Council might "investigate the situation and recommend appropriate terms of settlement".

By letter dated 24 January 1946,<sup>2</sup> the USSR denied the allegation that it had interfered in the internal affairs of Iran and stated that the Iranian Government had

entered into negotiations with the USSR Government. Alleging that hostile propaganda tolerated by the Iranian Government had created for the Azerbaijan SSR and for Baku a danger of organized hostile actions, the USSR concluded that

"... questions of this kind, which affect the relations between two neighbouring States, the USSR and Iran, can and should be settled by means of bilateral negotiations between the Soviet Government and the Iranian Government. The Soviet Government did not and does not refuse to accept this method of settling such questions arising between Allied Governments.

"In view of these facts, and taking into consideration that in this particular case the conditions envisaged by Articles 34 and 35 of the Charter of the United Nations are lacking, the Soviet delegation regards the appeal of the Iranian delegation to the Security Council as devoid of any foundation and is categorically opposed to the consideration of the above-mentioned appeal of the Iranian delegation by the Security Council."

<sup>1</sup> O.R., 1st year, 1st series, Suppl. No. 1, pp. 16-17.

<sup>2</sup> O.R., 1st year, 1st series, Suppl. No. 1, pp. 17-19.

By letter dated 26 January 1946,<sup>3</sup> Iran replied that the conditions envisaged by Article 25 (sic) were present.

At its 2nd meeting on 25 January 1946, the Council included the question in the agenda.<sup>4</sup>

The Council considered the question at its 3rd and 5th meetings on 28 and 30 January 1946.

At the 3rd meeting on 28 January, the representative of Iran urged the Council to recommend in accordance with Article 2 (4) that, pending the completion of the withdrawal of the Soviet forces, Soviet authorities should cease to interfere in the internal affairs of Iran and should not prevent Iranian forces and officials from proceeding freely in and through territory in which Soviet forces were stationed or from the full exercise of their duties.<sup>5</sup>

At the same meeting, the representative of the USSR declared that negotiations had taken place between the Iranian and USSR Governments in November 1945 and had produced satisfactory results.<sup>6</sup> He stated that there were no grounds for considering the substance of the Iranian statement, and suggested that the USSR and Iran should be given the opportunity to settle the matter.<sup>7</sup>

*Decision of 30 January 1946 (5th meeting): Request to the USSR and Iran to inform the Council of the results of negotiations between them*

At the 5th meeting on 30 January 1946, the representative of the United Kingdom submitted a draft resolution, the last paragraph of which read:<sup>8</sup>

"Requests the parties to inform the Council of any result achieved, and the Council in the meanwhile retains the right at any time to request information as to the progress of the negotiations. In the meantime the matter remains on the agenda."

After withdrawal by the representative of the United Kingdom of the provision to retain the matter on the agenda, the draft resolution was adopted unanimously.<sup>9</sup> The resolution as adopted read:<sup>10</sup>

"The Council,

"Having heard the statements by the representatives of the Soviet Union and Iran in the course of its meetings of 28 and 30 January, and

"Having taken cognizance of the documents presented by the Soviet and Iranian delegations and those referred to in the course of the oral debates;

"Considering that both parties have affirmed their readiness to seek a solution of the matter at issue by negotiation; and that such negotiations will be resumed in the near future,

"Requests the parties to inform the Council of any results achieved in such negotiations. The Council in the meanwhile retains the right at any time to request information on the progress of the negotiations."

<sup>3</sup> S/1, O.R., 1st year, 1st series, Suppl. No. 1, pp. 19-24.

<sup>4</sup> 2nd meeting: p. 16. On the inclusion of the question in the agenda, see chapter XI, Case 27.

<sup>5</sup> 3rd meeting: p. 38.

<sup>6</sup> 3rd meeting: pp. 39-41.

<sup>7</sup> 5th meeting: pp. 42-43. Concerning the continuance of negotiations in relation to the competence of the Council, see chapter X, Case 1.

<sup>8</sup> 5th meeting: p. 64.

<sup>9</sup> 5th meeting: p. 71.

<sup>10</sup> 5th meeting: pp. 70, 71. Regarding retention on the agenda in relation to the resumption of negotiations, see chapter X, Case 20.

#### THE GREEK QUESTION: USSR COMMUNICATION DATED 21 JANUARY 1946

##### INITIAL PROCEEDINGS

By letter dated 21 January 1946,<sup>11</sup> the USSR, under Article 35 of the Charter, brought the situation in Greece to the attention of the Security Council. It charged that the presence of United Kingdom troops in Greece and ensuing interference in the internal affairs of that State was causing "extreme tension fraught with the possibility of serious consequences both for the Greek people and for the maintenance of peace and security". The USSR requested the Council to discuss the question and "take the measures provided for by the Charter to put an end to the situation".

At the 3rd meeting on 28 January 1946, the Council included the communication from the USSR Government in the agenda.

The Council considered the question at its 6th to 8th and 10th meetings, between 1 and 6 February 1946.

*Decision of 4 February 1946 (7th meeting): Rejection of proposal submitted by the representative of Poland*

Following statements by representatives of the USSR, the United Kingdom and Greece, the representative of the United States suggested at the 7th meeting on 4 February that no formal action be taken in this case and that the three Governments be thanked for the statements that had been made in explanation of the position.<sup>12</sup>

At the same meeting, the President (Australia) suggested that, since no motion was before the Council, it was the sense of the Council that there was nothing inherent in the Greek situation at that time likely to lead to international friction or to endanger the maintenance of international peace and security and that the matter was therefore closed.<sup>13</sup>

The representatives of Poland,<sup>14</sup> Egypt<sup>15</sup> and the USSR<sup>16</sup> then made proposals as to a statement to be made by the President expressing the sense of the Council. The representative of the USSR later withdrew his proposal<sup>17</sup> in favour of the Polish proposal according to which the Council would take

"... note of the statements setting out the declarations of the Soviet Union, Great Britain and Greece, and of the assurance given by the representative of the United Kingdom that British troops in Greece will be withdrawn as soon as possible, and considers the question as closed."

At the 7th meeting on 4 February, the proposal submitted by the representative of Poland was rejected, having failed to obtain the affirmative votes of 7 members. There were 2 votes in favour.<sup>18</sup>

*Decision of 6 February 1946 (10th meeting): Taking note of declarations made and views expressed*

At the 10th meeting on 6 February 1946, the President (Australia) read a statement<sup>19</sup> which, in his view, might be accepted as a statement of the Council.

<sup>11</sup> O.R., 1st year, 1st series, Suppl. No. 1, pp. 73-74.

<sup>12</sup> 7th meeting: p. 112.

<sup>13</sup> 7th meeting: p. 122.

<sup>14</sup> 7th meeting: p. 122.

<sup>15</sup> 7th meeting: pp. 122-123.

<sup>16</sup> 7th meeting: p. 123.

<sup>17</sup> 7th meeting: p. 124.

<sup>18</sup> 7th meeting: pp. 125-126.

<sup>19</sup> 10th meeting: p. 165.

At the same meeting, the President withdrew his statement in favour of the following text of a statement to be made by the President, prepared by the representatives of the USSR and the United States:<sup>20</sup>

"I feel we should take note of the declarations made before the Security Council by the representatives of the Union of Soviet Socialist Republics, the United Kingdom and Greece, and also the views expressed by the representatives of the following members of the Security Council: The United States of America, France, China, Australia, Poland, the Netherlands, Egypt and Brazil, in regard to the question of the presence of British troops in Greece, as recorded in the proceedings of the Council, and consider the matter as closed."

The President stated<sup>22</sup> that it was his understanding that it would be the wish of the Council to proceed to the next item on the agenda.<sup>22</sup>

#### THE INDONESIAN QUESTION (I)

##### INITIAL PROCEEDINGS

By letter dated 21 January 1946,<sup>23</sup> the Ukrainian SSR\*, in accordance with Article 35 (1), drew the attention of the Security Council to the situation which had arisen in Indonesia. Military operations had been directed against the local population—operations in which regular British troops as well as Japanese forces had been taking part. In the opinion of the Ukrainian Government, the situation constituted "a threat to the maintenance of international peace and security . . . covered by Article 34". The Ukrainian SSR asked the Council to carry out the necessary investigation and to take the measures provided for by the Charter in order to put an end to the situation which had arisen.

At its 2nd meeting on 25 January 1946, the Council included the question in the agenda.

The question was considered by the Council at the 12th to 18th meetings held between 7 and 13 February 1946.<sup>24</sup>

*Decision of 13 February 1946 (18th meeting): Rejection of draft resolution submitted by the representative of the Ukrainian SSR*

At the 16th meeting on 11 February 1946, the representative of the Ukrainian SSR submitted a draft resolution<sup>25</sup> to set up a commission to carry out an inquiry on the spot.

At the 18th meeting on 13 February, the Ukrainian draft resolution was rejected, having failed to obtain the affirmative votes of 7 members. There were 2 votes in favour.<sup>26</sup>

*Decision of 13 February 1946 (18th meeting): Rejection of draft resolution submitted by the representative of Egypt*

At the 17th meeting on 12 February 1946, the representative of Egypt submitted a draft resolution<sup>27</sup> to declare that it was clearly understood that British troops would not be used in any circumstances against the Indonesian national movement and that they would be withdrawn after the completion of their duties. The Council would also express its will to be informed in a short time of the results of the negotiations going on between the Netherlands and the Indonesian leaders and reserve to itself the right to take such further action as it thought proper.

At the 18th meeting on 13 February, the representative of the USSR submitted an amendment<sup>28</sup> to the Egyptian proposal to add a provision to set up a commission to clarify the Indonesian situation and hasten the re-establishment of normal conditions.

At the same meeting, the USSR amendment was rejected, having failed to obtain the affirmative votes of 7 members. There were 3 votes in favour. The Egyptian draft resolution was rejected, having failed to obtain the affirmative votes of 7 members. There were 2 votes in favour.<sup>29</sup>

The President (Australia) thereupon declared that the matter was closed.

#### THE SYRIAN AND LEBANESE QUESTION

##### INITIAL PROCEEDINGS

By letter dated 4 February 1946,<sup>30</sup> Syria and Lebanon brought to the attention of the Security Council, under Article 34, the presence of French and British troops in Syria and Lebanon which, they contended, constituted a grave infringement of the sovereignty of two States Members of the United Nations. The letter stated that the Governments of Syria and Lebanon had expected that these foreign troops would be withdrawn immediately upon the cessation of hostilities with Germany and Japan, but that the Franco-British Agreement of 13 December 1945 had made the withdrawal of troops subject to conditions which were inconsistent with the spirit and letter of the United Nations Charter. In bringing the dispute to the attention of the Council, the Syrian and Lebanese delegations requested the Council to recommend the total and simultaneous evacuation of the foreign troops from the territories of Syria and Lebanon.

At its 19th meeting on 14 February 1946, the Council included the question in the agenda.<sup>31</sup>

The Council considered the Syrian and Lebanese question at the 19th to 23rd meetings between 14 and 16 February 1946.<sup>32</sup>

At the 20th and 21st meetings on 15 February 1946, the representatives of Syria and Lebanon declared that the presence of the foreign troops, without the consent of the two States concerned, had created a dispute threatening international peace and had become a source of possible intervention in the internal affairs of the two States Members of the United Nations. They maintained that the Agreement of 13 December 1945 was in

<sup>20</sup> 10th meeting: pp. 171-172.

<sup>21</sup> 10th meeting: p. 172.

<sup>22</sup> For consideration of the relation of the proceedings to chapter VI of the Charter, see chapter X, Case 21.

<sup>23</sup> O.R., 1st year, 1st series, Suppl. No. 1, p. 76.

<sup>24</sup> For the question of domestic jurisdiction in connexion with this case, see chapter XII, Case 1; for the applicability of Article 34, see chapter X, Case 7.

<sup>25</sup> 16th meeting: p. 223.

<sup>26</sup> 18th meeting: p. 258.

<sup>27</sup> 17th meeting: p. 251.

<sup>28</sup> 18th meeting: p. 260.

<sup>29</sup> 18th meeting: p. 263.

<sup>30</sup> S/5, O.R., 1st year, 1st series, Suppl. No. 1, pp. 82-83.

<sup>31</sup> 19th meeting: p. 271.

<sup>32</sup> For consideration of this question in relation to Article 33, see chapter X, Case 2.

violation of the principle of sovereign equality of the Members of the United Nations and contrary to the terms of Article 2 of the Charter. Their delegations were prepared to consider a solution which, based on the principles of the Charter, would provide for the simultaneous and unconditional withdrawal of the troops, subject to the time required for making the necessary technical and material arrangements, and would recognize that the question should be settled under the auspices of the Council until the withdrawal had been fully carried out.<sup>33</sup>

In the opinion of the representative of France, the fact that the Syrian and Lebanese Governments had invoked Article 34, without having stated precisely who were the parties to the possible dispute, and had not referred to Articles 35 and 33, indicated that there was no dispute, and that the existing situation in Syria and Lebanon could not in good faith be considered as likely to endanger international peace and security.<sup>34</sup> He further stated:

"The Agreement of 13 December is not interpreted by the signatories as implying any intention to maintain troops in the Levant indefinitely in the absence of a decision on the part of the Security Council. My Government is prepared to examine the question with the Syrian and Lebanese Governments with a view to settling with them the details of this solution."

The representative of the United Kingdom associated himself with the interpretation given by the representative of France to the Agreement of 13 December 1945.<sup>35</sup>

*Decisions of 16 February 1946 (23rd meeting): Rejection of draft resolutions submitted by the representatives of Mexico, Egypt and the United States*

During the consideration of the question, four draft resolutions were submitted to the Council:

(i) A Netherlands draft resolution, submitted at the 21st meeting on 15 February, to express confidence that, as a result of negotiations or otherwise, the foreign troops in Syria and Lebanon would be withdrawn at no distant date, and to request the parties to inform the Council when that had been done.<sup>36</sup>

(ii) A Mexican draft resolution, submitted at the 22nd meeting on 16 February, to recommend that the date of the simultaneous evacuation of British and French troops should be fixed by the parties through negotiations concerned with the necessary military-technical arrangements, and to request the parties to inform the Council when that was done.<sup>37</sup>

(iii) An Egyptian draft resolution, submitted at the same meeting, to recommend the parties to enter into negotiations as soon as possible with a view to establishing the technical details of the simultaneous withdrawal of French and United Kingdom troops, including the fixing of the date of its completion, and to request them to keep the Council informed of the result of those negotiations.<sup>38</sup>

(iv) A United States draft resolution, submitted at the same meeting, to express confidence that foreign troops in Syria and Lebanon would be withdrawn as soon as practicable and that negotiations to that end

would be undertaken by the parties without delay, and to request the parties to inform the Council of the results of the negotiations.<sup>39</sup>

At the 23rd meeting on 16 February, the Netherlands draft resolution was withdrawn.<sup>40</sup> The Mexican and Egyptian draft resolutions were rejected, having failed to obtain the affirmative votes of 7 members. There were 4 votes in favour of each draft resolution.<sup>41</sup>

The United States draft resolution was not adopted. There were 7 votes in favour, 1 against (the vote against being that of a permanent member) and 3 abstentions.<sup>42</sup>

The representatives of France and the United Kingdom stated that they would, however, give effect to the United States draft resolution.<sup>43</sup>

By letters dated 30 April and 1 May 1946, the representatives of France and the United Kingdom respectively informed the Council of arrangements made for the withdrawal of forces in fulfilment of the undertaking regarding the United States proposal.<sup>44</sup>

## THE IRANIAN QUESTION (II)

### INITIAL PROCEEDINGS

By letter dated 18 March 1946,<sup>45</sup> the representative of Iran informed the Security Council, under Article 35 (1), that a new dispute had arisen between Iran and the USSR as a result of the maintenance of Soviet troops in Iranian territory after 2 March 1946, contrary to the provisions of the Tripartite Treaty of Alliance of 29 January 1942, and the continued interference of the USSR in the internal affairs of Iran. By letter dated 20 March 1946,<sup>46</sup> he added that negotiations conducted pursuant to the resolution of 30 January had failed.

At the 26th meeting on 26 March 1946, the Council included the question in the agenda.<sup>47</sup>

The Security Council considered the question at its 26th through 30th meetings between 26 March and 4 April, 32nd and 33rd meetings on 15 and 16 April, 36th meeting on 23 April, 40th meeting on 8 May and 43rd meeting on 22 May 1946.

At the 26th and 27th meetings on 26 and 27 March, the Council had under consideration the USSR proposal to postpone consideration of the Iranian communication until 10 April.<sup>48</sup>

On the rejection of this proposal at the 27th meeting on 27 March,<sup>49</sup> the representative of the USSR, having stated that he was not in a position to take part in a discussion of the Iranian question after the rejection of his proposal, left the Council chamber.<sup>50</sup>

<sup>33</sup> 22nd meeting: pp. 332-333.

<sup>34</sup> 23rd meeting: p. 354.

<sup>35</sup> 23rd meeting: p. 364.

<sup>36</sup> 23rd meeting: pp. 367-368.

<sup>37</sup> 23rd meeting: p. 368.

<sup>38</sup> S/52, Security Council Journal No. 33, p. 639; S/51, Security Council Journal No. 33, p. 641. For communications by Syria and Lebanon, see S/64, Security Council Journal No. 36, p. 712; S/90, Security Council Journal No. 41, p. 815.

<sup>39</sup> S/15, O.R., 1st year, 1st series, Suppl. No. 2, pp. 43-44.

<sup>40</sup> S/18, O.R., 1st year, 1st series, Suppl. No. 2, p. 45.

<sup>41</sup> 26th meeting: p. 27. For consideration of the inclusion of the question in the agenda, see chapter II, Case 16.

<sup>42</sup> 26th meeting: p. 30.

<sup>43</sup> 27th meeting: p. 56.

<sup>44</sup> 27th meeting: p. 58.

<sup>39</sup> 20th meeting: pp. 284-289; 21st meeting: p. 300.

<sup>40</sup> 20th meeting: pp. 292-293.

<sup>41</sup> 20th meeting: p. 295.

<sup>42</sup> 21st meeting: p. 317.

<sup>43</sup> 22nd meeting: p. 319.

<sup>44</sup> 22nd meeting: pp. 323-324.

The representative of Iran was invited, on the proposal of the representative of Egypt,<sup>51</sup> to take his seat at the Council table and to state his point of view concerning the question of postponement.<sup>52</sup> He declared that he knew of no agreement or understanding between his Government and the Government of the USSR with respect to any matters involved in the dispute referred to the Council. He opposed any postponement of consideration of the question.<sup>53</sup>

*Decision of 29 March 1946 (28th meeting): Request to the Secretary-General to report on the existing status of negotiations between the Iranian and USSR Governments*

At the 28th meeting on 29 March 1946, the representative of the United States suggested that the President (China) request the Secretary-General to ascertain at once from the Governments of the USSR and Iran, and to report to the Council on 3 April, the existing status of the negotiations between the two Governments, and particularly whether or not the reported withdrawal of troops was conditional upon the conclusion of agreements on other subjects.<sup>54</sup>

The suggestion was adopted unanimously, with one member being absent.<sup>55</sup>

*Decision of 4 April 1946 (30th meeting): Deferring proceedings on the Iranian appeal until 6 May and requesting a report from the Iranian and USSR Governments*

At its 29th meeting on 3 April 1946, the Council received from the Secretary-General a report<sup>56</sup> in accordance with the decision of 29 March, including copies of communications from the representatives of Iran and the USSR. By letter dated 3 April 1946,<sup>57</sup> the representative of the USSR had replied that negotiations had already led to an understanding regarding the withdrawal of USSR troops from Iran and that other questions were not connected with the question of withdrawal. By letter dated 2 April 1946,<sup>58</sup> the representative of Iran had replied that negotiations pursuant to the Council resolution of 30 January had achieved no positive results, and that there had been and could be no negotiation concerning the withdrawal of USSR troops from Iran. The USSR had informed Iran on 24 March that the troops would be evacuated within five or six weeks, unless unforeseen circumstances should occur, but Iran had objected to the condition and no understanding had been arrived at.

At the same meeting, the representative of Iran informed the Council that, if the representative of the USSR withdrew the condition concerning unforeseen circumstances and assured the Council that the unconditional withdrawal of the troops would be effected by 6 May, Iran would not at that time press the matter provided that it remained on the agenda of the Council for consideration at any time.<sup>59</sup>

At the 30th meeting on 4 April, the representative of the United States submitted a draft resolution<sup>60</sup> to defer further proceedings on the question until 6 May, at which time the Governments of the USSR and Iran were requested to report to the Council whether the withdrawal of all USSR troops from Iran had been completed.

At the same meeting, the Council adopted the United States draft resolution by 9 votes in favour, 1 abstention, and one member being absent.<sup>61</sup> The resolution read as follows:

*"The Security Council,*

*"Taking note of the statements by the Iranian representative that the Iranian appeal to the Council arises from the presence of USSR troops in Iran and their continued presence there beyond the date stipulated for their withdrawal in the Tri-partite Treaty of 29 January 1942;*

*"Taking note of the replies dated 3 April of the Government of the Union of Soviet Socialist Republics and the Iranian Government pursuant to the request of the Secretary-General for information as to the state of the negotiations between the two Governments and as to whether the withdrawal of USSR troops from Iran is conditional upon agreement on other subjects;*

*"And in particular taking note of and relying upon the assurances of the USSR Government:*

*"That the withdrawal of USSR troops from Iran has already commenced;*

*"That it is the intention of the USSR Government to proceed with the withdrawal of its troops as rapidly as possible;*

*"That the USSR Government expects the withdrawal of all USSR troops from the whole of Iran to be completed within five or six weeks; and*

*"That the proposals under negotiation between the Iranian Government and the USSR Government 'are not connected with the withdrawal of USSR troops';*

*"Being solicitous to avoid any possibility of the presence of USSR troops in Iran being used to influence the course of the negotiations between the Governments of Iran and the Union of Soviet Socialist Republics; and*

*"Recognising that the withdrawal of all USSR troops from the whole of Iran cannot be completed in a substantially shorter period of time than that within which the USSR Government has declared it to be its intention to complete such withdrawal;*

*"Resolves that the Council defer further proceedings on the Iranian appeal until 6 May, at which time the USSR Government and the Iranian Government are requested to report to the Council whether the withdrawal of all USSR troops from the whole of Iran has been completed and at which time the Council shall consider what, if any, further proceedings on the Iranian appeal are required;*

*"Provided, however, that if in the meantime either the USSR Government or the Iranian Government or any member of the Security Council reports to the Secretary-General any developments which may retard or threaten to retard the prompt withdrawal of*

<sup>51</sup> 27th meeting: p. 61.

<sup>52</sup> For consideration of the invitation to Iran, see chapter III, Case 12.

<sup>53</sup> 27th meeting: pp. 63, 68.

<sup>54</sup> 28th meeting: pp. 75-76.

<sup>55</sup> 28th meeting: p. 82.

<sup>56</sup> S/26, O.R., 1st year, 1st series, Suppl. No. 2, pp. 83-86.

<sup>57</sup> S/24, 29th meeting: p. 84.

<sup>58</sup> S/25, 29th meeting: pp. 85-86.

<sup>59</sup> 29th meeting: p. 87.

<sup>60</sup> 30th meeting: pp. 88-89.

<sup>61</sup> 30th meeting: p. 97.



USSR troops from Iran, in accordance with the assurances of the USSR to the Council, the Secretary-General shall immediately call to the attention of the Council such reports, which shall be considered as the first item on the agenda."

*Decision of 23 April 1946 (36th meeting): Rejection of draft resolution submitted by the representative of France*

By letter dated 6 April 1946,<sup>62</sup> the representative of the USSR proposed that the Iranian question be removed from the agenda of the Council. He stated that an understanding on all points had been reached between the Governments of the USSR and Iran, and that the resolution of 4 April was incorrect and illegal since the position in Iran had not threatened international peace and security.

By letter dated 9 April 1946, the representative of Iran informed the Council that it was his Government's desire that the question remain on the agenda of the Council as provided by the resolution of 4 April 1946.<sup>63</sup>

By letter dated 15 April 1946, the representative of Iran informed the Council that his Government had complete confidence in the pledge of the USSR to withdraw unconditionally the Soviet forces from Iranian territory and that, therefore, Iran was withdrawing its complaint from the Security Council.<sup>64</sup>

These communications were considered at the 32nd and 33rd meetings on 15 and 16 April and at the 36th meeting on 23 April.

At the 33rd meeting on 16 April, the representative of France submitted a draft resolution<sup>65</sup> to take note of the letter from the representative of Iran informing the Council of the withdrawal of his complaint, to note that agreement had been reached between the two Governments concerned, and to request the Secretary-General to collect the necessary information in order to complete the report of the Council to the General Assembly.<sup>66</sup>

At the 36th meeting on 23 April, the Council rejected the French draft resolution by 3 votes in favour and 8 against.<sup>67</sup>

The representative of the USSR stated that the decision to retain the Iranian question on the agenda was contrary to the Charter and that his delegation could not in future take part in discussions of the question by the Council.<sup>68</sup>

*Decision of 8 May 1946 (40th meeting): Deferring further proceedings and requesting a report from the Iranian Government*

By letter dated 6 May 1946,<sup>69</sup> the representative of Iran informed the Council that his Government had been able to verify the evacuation of USSR troops from four provinces but, because of the interferences complained of, it could not verify the evacuation from Azerbaijan.

<sup>62</sup> S/30, O.R., 1st year, 1st series, Suppl. No. 2, pp. 46-47.

<sup>63</sup> S/33, O.R., 1st year, 1st series, Suppl. No. 2, p. 47.

<sup>64</sup> S/37, G.A.O.R., 1st session, 2nd part, Suppl. No. 1, (A/93), annex 3, pp. 104-105.

<sup>65</sup> 33rd meeting: pp. 142-143.

<sup>66</sup> For consideration of procedure regarding the removal of the Iranian question from the agenda, see chapter II, Case 5<sup>e</sup>. For discussion in relation to Article 24, see chapter XII, Case 20.

<sup>67</sup> 36th meeting: p. 213.

<sup>68</sup> 36th meeting: p. 214.

<sup>69</sup> S/53, O.R., 1st year, 1st series, Suppl. No. 2, pp. 50-51.

The Council considered the communication at its 40th meeting on 8 May 1946.

The representative of the United States submitted a draft resolution<sup>70</sup> to defer further proceedings and to request the Iranian Government to submit a complete report on the withdrawal of USSR troops immediately upon the receipt of information and, in case it was unable to obtain such information by 20 May, to report on that date such information as was available to it.

At the same meeting, the United States draft resolution was adopted by 10 votes in favour, with one member being absent.<sup>71</sup> The resolution read as follows:

*"The Security Council,*

*"Having considered the statement made by the Iranian Government in its preliminary report of 6 May, submitted in compliance with the resolution of 4 April 1946, that it was not able as of 6 May to state whether the withdrawal of all USSR troops from the whole of Iran had been completed,*

*"Resolves,*

*"To defer further proceedings on the Iranian matter in order that the Government of Iran may have time in which to ascertain through its official representatives whether all USSR troops have been withdrawn from the whole of Iran;*

*"To request the Iranian Government to submit a complete report on the subject to the Security Council immediately upon the receipt of the information which will enable it so to do; and, in case it is unable to obtain such information by 20 May, to report on that day such information as is available to it at that time; and*

*"To consider immediately following the receipt from the Iranian Government of the report requested, what further proceedings may be required."*

*Decision of 22 May 1946 (43rd meeting): Adjournment of discussion on Iranian question*

In accordance with the resolution of 8 May 1946, the representative of Iran submitted two communications dated 20 May and 21 May respectively.<sup>72</sup> In the latter communication he stated that an Iranian commission of investigation had investigated carefully the regions of Azerbaijan and found no trace of USSR troops, equipment or means of support.

The Council considered the communication at its 43rd meeting on 22 May 1946. The representative of Poland proposed that the President (France) be commissioned to send a telegram to the Government of Iran asking it if it was satisfied that USSR troops had been withdrawn.<sup>73</sup> The representative of the Netherlands proposed that the Council "adjourn the discussion of the Iranian question until a date in the near future, the Council to be called together at the request of any member".<sup>74</sup>

At the same meeting, the Netherlands proposal was adopted by 9 votes in favour to 1 against and 1 member

<sup>70</sup> 40th meeting: pp. 247-248.

<sup>71</sup> 40th meeting: p. 252.

<sup>72</sup> S/66 and S/68, O.R., 1st series, Suppl. No. 2, pp. 52-53, 53-54.

<sup>73</sup> 43rd meeting: p. 304.

<sup>74</sup> 43rd meeting: p. 304.



being absent.<sup>75</sup> The Polish proposal was rejected by 2 votes in favour, 8 against, with 1 member absent.<sup>76</sup>

The Iranian question remained on the list of matters of which the Security Council is seized.

### THE SPANISH QUESTION

#### INITIAL PROCEEDINGS

By letter dated 9 April 1946,<sup>77</sup> the representative of Poland, after referring to General Assembly resolution 32 (I) of 9 February 1946, stated:

"Since then a series of developments has made it clear that the activities of the Franco Government have already caused international friction and endangered international peace and security."

"In view of the foregoing, the situation in Spain must be considered not as an internal affair of that country but as a concern of all the United Nations. Article 2 of the Charter in paragraph 6 provides that the United Nations Organization shall insure that States not Members of the United Nations act in accordance with the principles of the Organization so far as may be necessary for the maintenance of international peace and security. The situation in Spain makes the application of this provision imperative.

"The Polish delegation, therefore, under Articles 4 and 35 of the Charter, requests the Security Council to place on its agenda the situation arising from the existence and activities of the Franco régime in Spain for consideration and for adoption of such measures as are provided for in the Charter."

At its 32nd meeting on 15 April 1946, the Council included the question in the agenda.<sup>78</sup>

The Council considered the Spanish question at its 34th to 39th and 44th to 49th meetings between 17 April and 26 June 1946.<sup>79</sup>

At the 34th meeting on 17 April 1946, the representative of Poland contended that the situation due to the existence and activities of the Fascist régime in Spain was of the nature referred to in Article 34, and that it was the duty of the Organization to take appropriate steps in accordance with Article 2, paragraph 6. The representative of Poland submitted a draft resolution<sup>80</sup> that the Security Council call upon Members of the United Nations to sever diplomatic relations with the Franco Government "in accordance with the authority vested in it under Articles 39 and 41 of the Charter".

*Decision of 29 April 1946 (39th meeting): Establishment of a sub-committee to conduct inquiries*

At the 35th meeting on 18 April 1946, the representative of Australia submitted an amendment to the Polish draft resolution providing for a committee "to make further inquiries" in accordance with Article 34.<sup>81</sup>

<sup>75</sup> 43rd meeting: p. 305.

<sup>76</sup> 43rd meeting: p. 305.

<sup>77</sup> S/34, O.R., Suppl. No. 2, 1st year, 1st series, p. 55.

<sup>78</sup> 32nd meeting: p. 122.

<sup>79</sup> For consideration of the question of domestic jurisdiction in connexion with the Spanish question, see chapter XII, Case 2.

<sup>80</sup> 34th meeting: p. 167. For text, see chapter XI, Case 1.

<sup>81</sup> 35th meeting: p. 198. For consideration of the relevance of Article 34, see chapter X, Case 8; and for considerations of domestic jurisdiction in connexion with the establishment of the sub-committee, see chapter XII, Case 2.

At the 37th meeting on 25 April, the Australian amendment was replaced by a draft resolution<sup>82</sup> which was re-submitted in revised form accepted by the representatives of Australia, France and Poland at the 38th meeting on 26 April 1946.<sup>83</sup>

At the 39th meeting on 29 April, the draft resolution was adopted with further amendments by 10 votes in favour, none against, and 1 abstention.<sup>84</sup> The resolution, as adopted, read:<sup>85</sup>

"The attention of the Security Council has been drawn to the situation in Spain by a Member of the United Nations acting in accordance with Article 35 of the Charter, and the Security Council has been asked to declare that this situation has led to international friction and endangers international peace and security.

"Therefore the Security Council, keeping in mind the unanimous moral condemnation of the Franco regime in the Security Council, and the resolutions concerning Spain which were adopted at the United Nations Conference on International Organization at San Francisco and at the first General Assembly of the United Nations; and the views expressed by members of the Security Council regarding the Franco régime,

"Hereby resolves: to make further studies in order to determine whether the situation in Spain has led to international friction and does endanger international peace and security, and if it so finds, then to determine what practical measures the United Nations may take.

"To this end, the Security Council appoints a Sub-Committee of five of its members and instructs this Sub-Committee to examine the statements made before the Security Council concerning Spain, to receive further statements and documents, and to conduct such inquiries as it may deem necessary, and to report to the Security Council before the end of May."

#### REPORT OF THE SUB-COMMITTEE ON THE SPANISH QUESTION

The report of the Sub-Committee on the Spanish question, dated 1 June 1946, included conclusions and recommendations, as well as reservations by two of its members.<sup>86</sup>

After an Introduction and Parts II and III concerning "Relevant Facts" and "Franco Spain and the United Nations", respectively, the Sub-Committee's report in Part IV dealt with "Jurisdiction of the Security Council and its power to take action under Chapter VII of the Charter". It was stated that "in the opinion of the Sub-Committee the Security Council cannot, on the present evidence, make the determination required by Article 39". In Part V on "Other measures available to the United Nations", the Sub-Committee reported that "the present situation in Spain . . . is a situation the continuance of which is in fact likely to endanger the maintenance of international peace and security."<sup>87</sup>

<sup>82</sup> 37th meeting: p. 216.

<sup>83</sup> 38th meeting: p. 239.

<sup>84</sup> 39th meeting: p. 245.

<sup>85</sup> 39th meeting: p. 244.

<sup>86</sup> S/75, O.R., Special Suppl., 1st year, 1st series, Rev. ed. On the character of the sub-committee, see chapter V, Case 65.

<sup>87</sup> O.R., Special Suppl., 1st year, 1st series, Rev. ed., pp. 1-10.

The Sub-Committee, in Part VI, "Conclusions and recommendations addressed to the Security Council", stated,<sup>89</sup> *inter alia*, that "the Security Council is . . . empowered by paragraph 1 of Article 36 to recommend appropriate procedures or methods of adjustment" and it recommended, *inter alia*, that, unless certain conditions were satisfied, the General Assembly pass a resolution recommending that each Member of the United Nations terminate forthwith diplomatic relations with the Franco régime.

*Decision of 18 June 1946 (47th meeting): Rejection of draft resolution submitted by the Chairman of the Sub-Committee*

At the 45th meeting on 13 June 1946, the Chairman of the Sub-Committee submitted a draft resolution for the adoption of the Sub-Committee's recommendations, subject to one addition.<sup>89</sup>

At the 46th meeting on 17 June, the representative of the United Kingdom submitted an amendment.<sup>90</sup>

At the 47th meeting on 18 June, the United Kingdom amendment was rejected, by 2 votes in favour, 6 against, with 3 abstentions.<sup>91</sup> After separate votes had been taken on each of the three recommendations, the draft resolution as a whole was not adopted. There were 9 votes in favour, 1 against (that of a permanent member) and 1 abstention.<sup>92</sup>

*Decision of 24 June 1946 (48th meeting): Rejection of the draft resolution submitted by the representative of Poland*

At the 48th meeting on 24 June 1946, the representative of Poland presented the draft resolution submitted by him at the 34th meeting with the reference to Articles 39 and 41 of the Charter deleted.

At the same meeting, the Polish draft resolution was rejected by 4 votes in favour and 7 against.<sup>93</sup>

*Decision of 26 June 1946 (49th meeting): To keep the situation in Spain under observation*

(i) At the 48th meeting on 24 June 1946, the representative of Poland submitted a draft resolution<sup>94</sup> to "keep the situation in Spain under continuous observation and keep the question on the list of matters . . ."

After consideration of the draft resolution in relation to recommendation by the General Assembly on the question at the next session, a drafting committee composed of the representatives of Australia, Poland and the United Kingdom was appointed to examine the new Polish draft resolution.<sup>95</sup>

(ii) At the 49th meeting on 26 June, the representatives of Australia and the United Kingdom sub-

mitted an amended text,<sup>96</sup> the representative of Poland dissenting.

At the same meeting, the Security Council upheld<sup>97</sup> the President's (Mexico) ruling that this text be considered as an amendment to the Polish draft resolution. This amended resolution was not adopted.<sup>98</sup> There were 9 votes in favour, 2 against (one being that of a permanent member).

(iii) Also at the 49th meeting, the representative of the USSR submitted amended texts.<sup>99</sup> After an amendment submitted by the representative of the USSR had been rejected, the following resolution was adopted:<sup>100</sup>

"Whereas the Security Council on 29 April 1946 appointed a Sub-Committee to investigate the situation in Spain,

"And whereas the investigation of the Sub-Committee has fully confirmed the facts which led to the condemnation of the Franco régime by the Potsdam and San Francisco Conferences, the General Assembly at the first part of its first session, and by the Security Council by resolution of the date mentioned above,

"The Security Council decides to keep the situation in Spain under continuous observation and maintain it upon the list of matters of which it is seized in order that it will be at all times ready to take such measures as may become necessary to maintain international peace and security. Any member of the Security Council may bring the matter up for consideration by the Council at any time."

*Decision of 26 June 1946 (49th meeting): Rejection of draft resolution submitted by the representative of Australia*

At the 49th meeting on 26 June 1946, the representative of Australia submitted a draft resolution providing that<sup>101</sup>

"... in the opinion of the Security Council, the carrying of the resolution on the Spanish question, dated 26 June, does not in any way prejudice the rights of the General Assembly under the Charter."

The draft resolution was not adopted. There were 9 votes in favour, 2 against (one being that of a permanent member).<sup>102</sup>

*Decision of 4 November 1946 (79th meeting): Removal of the question from the list of matters of which the Council is seized*

At the 79th meeting on 4 November 1946, the draft resolution submitted by the representative of Poland, as amended by the addition of a sentence at the end, suggested by the President (United Kingdom) and accepted by the representative of Poland, was adopted unanimously.<sup>103</sup> The resolution as adopted read:

"The Security Council resolves that the situation in Spain is to be taken off the list of matters of which the Council is seized, and that all records and documents of the case be put at the disposal of the General Assembly.

<sup>89</sup> 49th meeting: p. 401. For text, see chapter X, Case 9.

<sup>90</sup> 49th meeting: p. 413.

<sup>91</sup> 49th meeting: p. 413.

<sup>92</sup> 49th meeting: p. 434.

<sup>93</sup> 49th meeting: pp. 441-442.

<sup>94</sup> 49th meeting: p. 444.

<sup>95</sup> 49th meeting: p. 446. For discussion, see chapter VI, Case

1 (iii).

<sup>96</sup> 79th meeting: p. 498. For discussion, see chapter VI, Case

1 (iv).

<sup>89</sup> O.R., *Special Suppl., 1st year, 1st series, Rev. ed.*, pp. 10-11. For consideration of the Report in relation to Chapter VI of the Charter, see chapter X, Case 22; and in relation to Chapter VII of the Charter, see chapter XI, Cases 1 and 16.

<sup>90</sup> 45th meeting: p. 326. For consideration of this draft resolution in relation to Article 24, see chapter XII, Case 21; in relation to Article 12, see chapter VI, Case 1 (i); and in relation to Chapter VI of the Charter, see chapter X, Case 22.

<sup>91</sup> 46th meeting: pp. 348-349.

<sup>92</sup> 47th meeting: p. 378.

<sup>93</sup> 47th meeting: p. 379.

<sup>94</sup> 48th meeting: p. 388.

<sup>95</sup> 48th meeting: p. 389. For text, see chapter X, Case 9; for discussion in relation to Article 12, see chapter VI, Case 1 (ii).

<sup>96</sup> 48th meeting: p. 400.

"The Security Council requests the Secretary-General to notify the General Assembly of this decision."

The question was accordingly removed from the list of matters of which the Security Council is seized.

**THE GREEK QUESTION: UKRAINIAN SSR COMMUNICATION DATED 24 AUGUST 1946**

**INITIAL PROCEEDINGS**

By telegram dated 24 August 1946,<sup>104</sup> the Ukrainian SSR brought to the attention of the Security Council, under Article 35 (1), "as being of the nature covered by Article 34... the situation in the Balkans which has resulted from the policy of the Greek Government, and which endangers the maintenance of international peace and security..." The principal factor "conducive to the situation in the Balkans, as created by this policy of the present Greek Government" was the "presence of British troops in Greece and the direct intervention of British military representatives in the internal affairs" of Greece. The Council was requested to adopt measures without delay "in order to eliminate this threat to peace".

After discussion at the 54th, 57th, 58th and 59th meetings, the Security Council included the question in the agenda at the 59th meeting on 3 September 1946.<sup>105</sup>

The Council considered the question at the 60th to 62nd, and the 64th to 70th meetings, between 4 and 20 September 1946.

*Decision of 20 September 1946 (70th meeting): Postponement of vote on draft resolution submitted by the representative of Australia*

At the 67th meeting on 16 September 1946, the representative of Australia submitted a draft resolution that the Council pass to the next item on the agenda.<sup>106</sup>

At the 70th meeting on 20 September, at the suggestion of the President (USSR) and with the agreement of the representative of Australia, the Security Council decided to vote on the Australian draft resolution after the other draft resolutions directly related to the question under consideration had been voted upon.<sup>107</sup>

*Decisions of 20 September 1946 (70th meeting): Rejection of draft resolutions submitted respectively by the representatives of the USSR, the Netherlands, the United States and Poland<sup>108</sup>*

*(i) USSR draft resolution*

At the 67th meeting on 16 September 1946, the representative of the USSR submitted a draft resolution<sup>109</sup> to establish that "a situation envisaged by Article 34 of the Charter" had been created in Greece; to call upon the Greek Government to take certain

measures; and "to retain on the agenda of the Security Council the question of the menacing situation..."

At the 70th meeting on 20 September 1946, the USSR draft resolution was rejected by 2 votes in favour, 9 votes against.<sup>110</sup>

*(ii) Netherlands draft resolution*

At the 69th meeting on 18 September 1946, the representative of the Netherlands submitted a draft resolution<sup>111</sup> to invite the Secretary-General to notify the Governments of Albania, Bulgaria, Greece and Yugoslavia that the Council, "without pronouncing any opinion on the question of responsibility, earnestly hopes that these Governments... will do their utmost... to stop" the frontier incidents "by giving appropriate instructions to their national authorities and by making sure that these instructions are rigidly enforced".

The Netherlands draft resolution was voted upon at the 70th meeting and was rejected by 6 votes in favour, 3 against and 2 abstentions.<sup>112</sup>

*(iii) United States draft resolution*

At the 70th meeting on 20 September, the representative of the United States submitted a draft resolution<sup>113</sup> under which the Council, acting under Article 34, would establish a commission of three individuals to investigate in the area concerned the facts relating to the incidents along the frontier between Greece on the one hand, and Albania, Bulgaria and Yugoslavia on the other.

The United States draft resolution was voted upon at the same meeting and was not adopted. There were 8 votes in favour, 2 against (1 vote against being that of a permanent member) and 1 abstention.<sup>114</sup>

*(iv) Polish draft resolution*

Following the rejection of the USSR, Netherlands and United States draft resolutions at the 70th meeting, the representative of Poland submitted a draft resolution<sup>115</sup> to keep the situation under observation and to retain it on the list of matters of which the Council is seized.

At the same meeting the Polish draft resolution was rejected by 2 votes in favour and 9 votes against.<sup>116</sup>

Following statements at the 70th meeting by the President of the Council (USSR),<sup>117</sup> the Secretary-General<sup>118</sup> and the representative of France,<sup>119</sup> the representative of Australia withdrew his draft resolution.<sup>120</sup>

The question was removed from the list of matters of which the Council is seized.

<sup>104</sup> 70th meeting: pp. 407-409.

<sup>105</sup> 69th meeting: p. 390.

<sup>106</sup> 70th meeting: pp. 409-410.

<sup>107</sup> 70th meeting: p. 395. For text, see chapter X, Case 10.

<sup>108</sup> 70th meeting: p. 412.

<sup>109</sup> 70th meeting: p. 413. For text, see chapter X, Case 10.

<sup>110</sup> 70th meeting: p. 417.

<sup>111</sup> 70th meeting: p. 420.

<sup>112</sup> 70th meeting: p. 421.

<sup>113</sup> 70th meeting: p. 422.

<sup>114</sup> 70th meeting: p. 422. For discussion preceding the withdrawal of the Australian draft resolution, see chapter II, Case 57.

<sup>104</sup> S/137, O.R., 1st year, 3rd series, Suppl. No. 5, pp. 149-151.

<sup>105</sup> For consideration of inclusion of the question in the agenda, see chapter II, Cases 17 and 28.

<sup>106</sup> 67th meeting: p. 329. For consideration of the Australian draft resolution, see chapter II, Case 57.

<sup>107</sup> 70th meeting: pp. 405-407.

<sup>108</sup> For constitutional considerations advanced in connexion with the draft resolutions, see chapter X, Case 10; in connexion with Article 2 (7), see chapter XII, Case 3.

<sup>109</sup> 67th meeting: pp. 334-335.

## THE GREEK FRONTIER INCIDENTS QUESTION

## INITIAL PROCEEDINGS

By letter dated 3 December 1946,<sup>121</sup> Greece brought to the attention of the Security Council, under Articles 34 and 35 (1), a "situation which is leading to friction between Greece and her neighbours, by reason of the fact that the latter are lending their support to the violent guerrilla warfare now being waged in northern Greece against public order and the territorial integrity" of Greece.

At the 82nd meeting on 10 December 1946, the Security Council included the question in the agenda.

The Security Council considered the question between 10 December 1946 and 15 September 1947, at the following meetings: 82nd-87th, 100th, 101st, 122nd, 123rd, 126th, 128th-131st, 133rd-137th, 147th, 148th, 150th, 151st, 153rd, 156th, 158th-170th, 174th, 175th, 176th, 177th, 178th, 180th, 183rd, 188th and 202nd.

*Decision of 19 December 1946 (87th meeting): Establishment of a Commission of Investigation*<sup>122</sup>

In his statement before the Council at the 83rd meeting on 12 December 1946, the representative of Greece requested that the Council take the measures necessary to put an end to the situation which was likely to endanger the maintenance of international peace and security.<sup>123</sup> At the 83rd and 84th meetings, the representatives of Yugoslavia,<sup>124</sup> Albania<sup>125</sup> and Bulgaria<sup>126</sup> denied the Greek charges.

At the 85th meeting on 18 December 1946, the representative of the United States submitted a draft resolution<sup>127</sup> to establish, under Article 34 of the Charter, a commission of investigation. Amendments to the draft resolution were submitted by the representatives of Mexico, Poland and the United Kingdom at the 86th and 87th meetings.

At the 87th meeting on 19 December 1946, the Council voted on the draft resolution, paragraph by paragraph, and on the amendments. The draft resolution, as amended during the vote, was then adopted unanimously.<sup>128</sup> The resolution read as follows:<sup>129</sup>

"*Hiercas* there have been presented to the Security Council oral and written statements by the Greek, Yugoslav, Albanian and Bulgarian Governments relating to disturbed conditions in northern Greece along the frontier between Greece on the one hand and Albania, Bulgaria and Yugoslavia on the other, which conditions, in the opinion of the Council, should be investigated before the Council attempts to reach any conclusions regarding the issues involved:

<sup>121</sup> S/203, S/203/Add.1, O.R., 1st year 2nd series, Suppl. No. 10, pp. 169-190.

<sup>122</sup> For discussion on investigation under Article 34, see chapter X, Case 11. See also chapter V, Case 1. On the working of the Commission, see: Organization and Procedure of United Nations Commissions, United Nations Commission of Investigation concerning Greek Frontier Incidents (United Nations publications 1949.X.3).

<sup>123</sup> 83rd meeting: p. 570.

<sup>124</sup> 83rd meeting: pp. 570-581.

<sup>125</sup> 84th meeting: pp. 590-595.

<sup>126</sup> 84th meeting: pp. 595-599.

<sup>127</sup> 85th meeting: pp. 630-631.

<sup>128</sup> 87th meeting: p. 701.

<sup>129</sup> S/339, 87th meeting: pp. 700-701.

*The Security Council*

*Resolves:*

"That the Security Council under Article 34 of the Charter establish a Commission of Investigation to ascertain the facts relating to the alleged border violations along the frontier between Greece on the one hand and Albania, Bulgaria and Yugoslavia on the other;

"That the Commission be composed of a representative of each of the members of the Security Council as it will be constituted in 1947;

"That the Commission shall proceed to the area not later than 15 January 1947, and shall submit to the Security Council at the earliest possible date a report of the facts disclosed by its investigation. The Commission shall, if it deems it advisable or if requested by the Security Council, make preliminary reports to the Security Council;

"That the Commission shall have authority to conduct its investigation in northern Greece and in such places in other parts of Greece, in Albania, Bulgaria and Yugoslavia as the Commission considers should be included in its investigation in order to elucidate the causes and nature of the above-mentioned border violations and disturbances;

"That the Commission shall have authority to call upon the Governments, officials and nationals of those countries, as well as such other sources as the Commission deems necessary, for information relevant to its investigation;

"That the Security Council request the Secretary-General to communicate with the appropriate authorities of the countries named above in order to facilitate the Commission's investigation in those countries;

"That each representative on the Commission be entitled to select the personnel necessary to assist him and that, in addition, the Security Council request the Secretary-General to provide such staff and assistance to the Commission as it deems necessary for the prompt and effective fulfilment of its task;

"That a representative of each of the Governments of Greece, Albania, Bulgaria and Yugoslavia be invited to assist in the work of the Commission in a liaison capacity;

"That the Commission be invited to make any proposals that it may deem wise for averting a repetition of border violations and disturbances in these areas."

*Decision of 10 February 1947 (101st meeting): Communication to the Commission of Investigation concerning suspension of death sentences*

At the 100th and 101st meetings on 10 February 1947, the Council considered a cablegram of 6 February from the Commission<sup>130</sup> enquiring whether its action in requesting the Greek Government to postpone executions for political offences was covered by its terms of reference laid down by the resolution of 19 December 1946, which, in part, empowered the Commission to call upon nationals of the States concerned who might assist the Commission with information relevant to its investigation.

<sup>130</sup> S/266, O.R., 2nd year, Suppl. No. 4, pp. 51-52.

At the 100th meeting, the representative of the United States submitted a draft resolution<sup>131</sup> to advise the Commission that it was not empowered to request postponement of executions of any persons unless the Commission believed that examination of such persons as witnesses would assist the Commission's work. The representatives of the USSR and Poland introduced amendments, which were voted upon and rejected. The United States draft resolution was adopted by 9 votes in favour, none against and 2 abstentions.<sup>132</sup>

The resolution read as follows:<sup>133</sup>

"Whereas the Commission of Investigation established by the Security Council by the resolution adopted on 19 December 1946 has referred to the Council the question of whether the Commission's request to the Greek Government to postpone the execution of persons sentenced to death by that Government for political offences is covered by the terms of reference of such resolution,

"It is resolved that the Security Council request the Secretary-General to advise the Commission of Investigation that it is the sense of the Security Council that the Commission, acting under the resolution adopted by the Council on 19 December 1946, is not empowered to request the appropriate authorities of Greece, Albania, Bulgaria and Yugoslavia to postpone the execution of any persons sentenced to death, unless the Commission has reason to believe that the examination of any such person as a witness would assist the Commission in its work, and makes its request on this ground."

*Decisions of 18 April 1947 (131st meeting):*

- (i) *Establishment of a Subsidiary Group of the Commission of Investigation;*
- (ii) *Rejection of draft resolution submitted by the representative of the USSR*

At the 123rd meeting on 28 March 1947, the Council resumed its consideration of the Greek question at the request of the representative of the United States.<sup>134</sup> He proposed that the Commission should continue its work along the northern Greek border until the Council had disposed of the Greek case. The representative of the United States stated that, following urgent appeals from the Governments of Greece and Turkey, the Government of the United States had under legislative consideration a temporary emergency programme of economic assistance to those countries, which, in his view, together with effective action by the Security Council in the case of the northern Greek frontiers, would materially advance the cause of peace.<sup>135</sup>

At the 126th meeting on 7 April 1947, the representative of the United States submitted a draft resolution<sup>136</sup> to direct the Commission of Investigation to maintain a subsidiary group during its absence from the area in which it had conducted its investigations. The draft resolution was subsequently amended<sup>137</sup> to provide that, pending a new decision of the Council, the Commission should maintain a subsidiary group

in the area concerned to continue to fulfil functions which might be prescribed by the Commission in accordance with its terms of reference.

At the same meeting, the representative of the USSR, contending that the measures taken by the United States in respect to Greece and Turkey were in contradiction with the principles of the Charter, submitted a draft resolution<sup>138</sup> to establish a special commission "to ensure, through proper supervision, that aid which Greece might receive from the outside should be used only in the interests of the Greek people". The representative of Poland submitted an amendment to the USSR draft resolution, adding to its text that, in accordance with General Assembly resolution 48 (I), "such aid cannot be used as a political weapon and shall be distributed without discrimination because of race, creed, or political belief".<sup>139</sup>

At the 131st meeting on 18 April 1947, the amended United States draft resolution was adopted by 9 votes in favour, none against and 2 abstentions.<sup>140</sup>

The resolution read as follows:<sup>141</sup>

"The Security Council resolves that, pending a new decision of the Security Council, the Commission established by the resolution of the Council of 19 December 1946 shall maintain in the area concerned a subsidiary group, composed of a representative of each of the members of the Commission, to continue to fulfil such functions as the Commission may prescribe, in accordance with its terms of reference."

At the same meeting, the Polish amendment to the USSR draft resolution was rejected by 2 votes in favour, none against and 9 abstentions.<sup>142</sup> The USSR draft resolution was rejected by 2 votes in favour, 4 against and 5 abstentions.<sup>143</sup>

*Decision of 22 May 1947 (137th meeting): Rejection of draft resolution submitted by the representative of the USSR*

At the 133rd meeting on 12 May 1947, the Council resumed consideration of the Greek question at the request of the representative of the USSR<sup>144</sup> who, at the same meeting, submitted a draft resolution<sup>145</sup> to modify the terms of reference of the Subsidiary Group defined by a decision of the Commission of Investigation of 29 April 1947.<sup>146</sup>

At the 137th meeting on 22 May, the USSR draft resolution was rejected by 2 votes in favour, 6 against and 3 abstentions.<sup>147</sup>

<sup>131</sup> 126th meeting: p. 717; 131st meeting: p. 808. See chapter XII, Case 5.

<sup>132</sup> 130th meeting: p. 784; 131st meeting: p. 807.

<sup>133</sup> 131st meeting: p. 800. On the working of the Subsidiary Group, see: Organization and Procedure of United Nations Commissions, the Subsidiary Group of the United Nations Commission of Investigation concerning Greek Frontier Incidents (United Nations publications, 1949.X.4).

<sup>134</sup> S/330/Corr.1.

<sup>135</sup> 131st meeting: p. 807.

<sup>136</sup> 131st meeting: p. 808.

<sup>137</sup> S/347, O.R., 2nd year, Suppl. No. 11, p. 125.

<sup>138</sup> 133rd meeting: p. 832.

<sup>139</sup> S/337, O.R., 2nd year, Suppl. No. 11, pp. 121-122.

<sup>140</sup> 137th meeting: p. 924. For text and related discussion, see chapter X, Case 12; and chapter V, Case 69. For related discussion regarding Article 25, see chapter XII, Case 25.

<sup>131</sup> 100th meeting: p. 176.

<sup>132</sup> 101st meeting: pp. 188-189. See also chapter XII, Case 4, for discussion on the question of domestic jurisdiction.

<sup>133</sup> 100th meeting: p. 176.

<sup>134</sup> S/309, 123rd meeting: footnote 1, p. 615.

<sup>135</sup> 123rd meeting: pp. 618-622.

<sup>136</sup> 126th meeting: p. 708.

<sup>137</sup> 131st meeting: pp. 796, 799-800.



*Decisions of 29 July and 4 August 1947 (170th and 174th meetings):*

- (i) *Rejection of draft resolution submitted by the representative of the United States;*
- (ii) *Rejection of draft resolution submitted by the representative of the USSR*

The report of the Commission of Investigation<sup>148</sup> was submitted at the 147th meeting on 27 June 1947. It contained recommendations stated to have been framed in the spirit of Chapter VI and which had been subscribed to by nine members of the Commission, the representatives of Poland and the USSR dissenting.

At the same meeting, the representative of the United States submitted a draft resolution<sup>149</sup> to adopt these recommendations and to establish a commission to exercise its good offices and make investigations in the area. It was revised by amendments submitted by the representatives of Australia, Belgium, Colombia, France and the United Kingdom at the 162nd to 168th meetings, and accepted by the sponsor. As amended,<sup>150</sup> the draft resolution provided that the Council would find that a dispute existed, the continuance of which was likely to endanger the maintenance of international peace and security. The Council, therefore, following the proposals made by the majority of the Commission members, (1) would recommend that the Governments of Albania, Bulgaria, Greece and Yugoslavia establish as soon as possible normal diplomatic relations; and (2) would establish a commission which would use its good offices, by the means mentioned in Article 33, to settle controversies between the Governments concerned and to assist them in the negotiation and conclusion of frontier conventions. The proposed commission would also be empowered to investigate any alleged frontier violations.

At the 153rd meeting on 8 July, the representative of the USSR submitted a draft resolution<sup>151</sup> to establish that the Greek authorities were to blame for the frontier incidents which were a result of the internal situation in Greece. The Council, therefore, would recommend that: (1) the Greek Government put an end to frontier incidents on the borders with Yugoslavia, Bulgaria and Albania; (2) normal diplomatic relations be established or restored between Greece and the three States concerned; (3) foreign troops and military personnel be recalled from Greece; and (4) a special commission be established to ensure the use, in the interests of the Greek people, of foreign economic assistance extended to Greece.

At the 170th meeting on 29 July, the amended United States draft resolution was not adopted. There were 9 votes in favour and 2 against (one vote against being that of a permanent member).<sup>152</sup>

At the 174th meeting on 4 August 1947, the USSR draft resolution was rejected by 2 votes in favour and 9 against.<sup>153</sup>

*Decision of 6 August 1947 (177th meeting): Rejection of draft resolution submitted by the representative of Poland*

At the 174th meeting on 4 August 1947, the representative of Poland submitted a draft resolution<sup>154</sup> to recommend that the Governments of Albania, Bulgaria, Greece and Yugoslavia do their utmost to establish normal good-neighbourly relations, that diplomatic relations be established between Greece and Albania and Bulgaria and be normalized between Greece and Yugoslavia and that the Governments concerned renew old or enter into new bilateral frontier conventions. The Council would also recommend that the four Governments concerned settle the problem of refugees in the spirit of friendly, mutual understanding.

At the 177th meeting on 6 August, the draft resolution was rejected by 2 votes in favour, none against and 9 abstentions.<sup>155</sup>

*Decisions of 19 August 1947 (188th meeting):*

- (i) *Rejection of draft resolution submitted by the representative of Australia;*
- (ii) *Rejection of draft resolution submitted by the representative of the United States*

At the 175th meeting on 5 August 1947, the Council had before it in addition to the report of the Commission of Investigation a letter dated 31 July 1947 from the representative of Greece<sup>156</sup> requesting the Council to take into consideration the earlier Greek communication of 26 June 1947<sup>157</sup> whereby the formal charge had been submitted by the Greek Government "that there existed a threat to the peace, breach of the peace or act of aggression". The representative of Greece indicated that subsequent acts had confirmed "the necessity of enforcement measures under Chapter VII of the Charter".

At the 177th meeting on 6 August 1947, the representative of Australia submitted a draft resolution<sup>158</sup> which was amended at the 188th meeting at the suggestion of the representative of the United States. As amended,<sup>159</sup> it provided that the Security Council would determine that the situation on the northern borders of Greece constituted a threat to peace under Article 39, call upon the parties involved to cease all acts of provocation and direct, in accordance with Article 40, that Greece on the one hand, and Albania, Yugoslavia and Bulgaria on the other hand, should at once enter into direct negotiations.

At the 180th meeting on 12 August 1947, the representative of the United States submitted a draft resolution<sup>160</sup> to determine that support and assistance given by Albania, Bulgaria and Yugoslavia to the guerrillas fighting against the Greek Government constituted a threat to the peace within the meaning of Chapter VII, to call upon the three Governments to

<sup>148</sup> S/360/Rev.1, O.R., 2nd year, Special Suppl. No. 2.

<sup>149</sup> S/391, 147th meeting: pp. 1124-1126.

<sup>150</sup> 170th meeting: pp. 1602-1611.

<sup>151</sup> S/404, 153rd meeting: pp. 1254-1255.

<sup>152</sup> 170th meeting: p. 1612. For related discussion in connexion with Article 34, see chapter X, Cases 13, 14, 15; in connexion with Article 39, see chapter XI, Case 2; in connexion with Article 2 (7), see chapter XII, Case 6.

<sup>153</sup> 174th meeting: p. 1730.

<sup>154</sup> S/464, 174th meeting: pp. 1731-1732.

<sup>155</sup> 177th meeting: p. 1801.

<sup>156</sup> S/451, O.R., 2nd year, Suppl. No. 17, pp. 151-153.

<sup>157</sup> S/389.

<sup>158</sup> S/471, 177th meeting: p. 1808. For text, see chapter XI, Case 3.

<sup>159</sup> S/471/Add.1, 188th meeting: pp. 2093-2094.

<sup>160</sup> S/486, 180th meeting, footnote, pp. 1910-1911. For text, see chapter XI, Case 3.



cease and desist from rendering any further assistance to the guerrillas and to co-operate with Greece in the settlement of their disputes by peaceful means, and to direct the Subsidiary Group to report to the Council on the compliance of Albania, Bulgaria and Yugoslavia.

At the 188th meeting on 19 August 1947, the Australian draft resolution was not adopted. There were 9 votes in favour and 2 against (one vote against being that of a permanent member).<sup>161</sup>

At the same meeting, the United States draft resolution was not adopted. There were 9 votes in favour and 2 against (one vote against being that of a permanent member).<sup>162</sup>

*Decision of 15 September 1947 (202nd meeting): Rejection of draft resolution submitted by the representative of the United States*

At the 202nd meeting on 15 September, the representative of the United States submitted a draft resolution<sup>163</sup> to request the General Assembly to consider the dispute between Greece on the one hand, and Albania, Yugoslavia and Bulgaria on the other, and to make any appropriate recommendations.

At the same meeting, the draft resolution was not adopted. There were 9 votes in favour and 2 against (one vote against being that of a permanent member).<sup>164</sup>

*Decision of 15 September 1947 (202nd meeting): Removal of the Greek question from the list of matters of which the Council is seized*

At the 202nd meeting, the representative of the United States submitted a draft resolution<sup>165</sup> to remove the dispute between Greece on the one hand and Albania, Bulgaria and Yugoslavia on the other, from the list of matters of which the Council is seized, and to instruct the Secretary-General to place all records and documents in the case at the disposal of the General Assembly.

At the same meeting, the draft resolution was adopted by 9 votes in favour and 2 against.<sup>166</sup>

The resolution<sup>167</sup> read as follows:

*"The Security Council*

*"(a) Resolves that the dispute between Greece on the one hand, and Albania, Yugoslavia and Bulgaria on the other, be taken off the list of matters of which the Council is seized; and*

*"(b) Requests that the Secretary-General be instructed to place all records and documents in the case at the disposal of the General Assembly"*

The Greek question was accordingly removed from the list of matters of which the Security Council is seized.

<sup>161</sup> 188th meeting: p. 2094.

<sup>162</sup> 188th meeting: pp. 2098-2099. For related discussion in connexion with Articles 39 and 40, see chapter XI, Case 3.

<sup>163</sup> S/552, 202nd meeting: p. 2379. For discussion in connexion with Article 12, see chapter VI, Case 2 (i).

<sup>164</sup> 202nd meeting: pp. 2399-2400.

<sup>165</sup> 202nd meeting: p. 2401.

<sup>166</sup> 202nd meeting: p. 2405.

<sup>167</sup> S/555, 202nd meeting: p. 2401.

#### THE QUESTION OF THE STATUTE OF THE FREE TERRITORY OF TRIESTE

**Letter from the Chairman of the Council of Foreign Ministers to the Secretary-General, received 20 December 1946, concerning the Statute of Trieste**<sup>168</sup>

##### INITIAL PROCEEDINGS

By letter dated 12 December 1946, the Chairman of the Council of Foreign Ministers, the Secretary of State of the United States, transmitted the relevant Articles and Annexes of the Draft Peace Treaty with Italy which established a Free Territory of Trieste "whose independence and integrity would be ensured by the Security Council of the United Nations" and stated that the four Foreign Ministers "are desirous that the texts submitted on the terms of the Treaty for approval by the Security Council be decided on by the latter before 15 January as the signing of the Treaty of peace with Italy is to occur at the beginning of February".

At the 89th meeting on 7 January 1947, the Council included the question in the agenda.<sup>169</sup>

The Council considered the question at its 89th and 91st meetings on 7 and 10 January 1947.

*Decision of 10 January 1947 (91st meeting): Approval of the three Annexes to the Draft Peace Treaty with Italy and acceptance of the responsibilities thereunder*

At the 89th meeting, the representative of the United States submitted a draft resolution<sup>170</sup> which, after revision at the 91st meeting, was adopted at that meeting by ten votes in favour, none against, and one abstention.<sup>171</sup>

The resolution, as adopted, read:<sup>172</sup>

*"The Security Council, having received and examined the Annexes to the proposed Peace Treaty with Italy relating to the creation and government of the free Territory of Trieste (including an arrangement for the Free Port), hereby records its approval of the three following documents:*

*"1. The instrument for the provisional régime of the Free Territory of Trieste;*

*"2. The permanent Statute for the Free Territory of Trieste;*

<sup>168</sup> S/224/Rev.1, O.R., 2nd year, Suppl. No. 1, annex 2.

<sup>169</sup> 89th meeting: p. 4.

<sup>170</sup> 89th meeting: p. 12. For consideration of the powers of the Council in connexion with this decision, see chapter XII, Cases 22 and 26.

<sup>171</sup> 91st meeting: p. 61.

<sup>172</sup> 91st meeting: p. 60.

These responsibilities concerned the provisional régime and the permanent statute of the Free Territory of Trieste, and the Free Port of Trieste (O.R., 2nd year, Suppl. No. 1, pp. 12-28a). Under the permanent Statute the Security Council's assurance of "the integrity and independence" of the Free Territory included responsibility for ensuring the observance of the Statute and the protection of the basic human rights of the inhabitants, and responsibility for the maintenance of public order and security (annex VI, Article 2). The Governor, as the Council's representative, was to be responsible only to the Security Council (annex VI, Articles 17, 25) and legislative or administrative difficulties were to be referred by him to the Council (annex VI, Articles 19, 20). Under the instrument for the Free Port, disagreements on the appointment of a Director of the Free Port were also to be referred to the Security Council (annex VIII, Article 18).

"3. The instrument for the Free Port of Trieste; and its acceptance of the responsibilities devolving upon it under the same."

#### THE CORFU CHANNEL QUESTION

##### INITIAL PROCEEDINGS

By letter dated 10 January 1947,<sup>173</sup> enclosing copies of an exchange of notes between the United Kingdom and the People's Republic of Albania regarding an incident in the Corfu Channel in which two British warships had been mined on 22 October 1946, the United Kingdom submitted this question as a dispute under Article 35.

At its 95th meeting on 20 January 1947, the Security Council included the question in the agenda.<sup>174</sup>

The Security Council considered the question at its 95th, 107th, 109th, 111th, 114th, 120th to 122nd, 125th and 127th meetings between 20 January and 9 April 1947.<sup>175</sup>

At the 107th meeting on 18 February 1947, the representative of the United Kingdom requested that the Council, taking into consideration the failure of attempts at settlement through diplomatic correspondence, should recommend under Article 36 a settlement of the dispute by direct negotiation between the two Governments, on the basis of a finding by the Council that an unnotified mine field had been laid in the Corfu Straits by the Albanian Government or with its connivance. He also requested that the Council should retain the dispute on its agenda until both the parties certified that it had been settled to their satisfaction, and that the Council should remind all States that it was incumbent on them to see that their territorial waters were free from mines.<sup>176</sup>

At the 109th meeting on 19 February, the representative of Albania stated that the Albanian Government had not laid, or known who had laid, the mines and that the British warships had violated Albanian sovereignty over its territorial waters with a view to provoking incidents.<sup>177</sup>

*Decision of 27 February 1947 (114th meeting): Appointment of a sub-committee*

At the 111th meeting on 24 February 1947, the representative of Australia submitted a draft resolution for the appointment of a sub-committee of three members to make a report on the facts of the case.<sup>178</sup>

At the 114th meeting on 27 February, the representative of China suggested, and the representative of Australia accepted,<sup>179</sup> an amendment to the draft resolution.

At the same meeting the draft resolution, as amended, was adopted by eight votes, with three abstentions.<sup>180</sup> The resolution, as adopted, read:

"As a preliminary step in the consideration of the incidents in the Corfu Channel which are the sub-

ject of a dispute between the United Kingdom and Albania,

"The Security Council

"Resolves:

"To appoint a sub-committee of three members to examine all the available evidence concerning the above-mentioned incidents and to make a report to the Security Council, not later than 10 March 1947, on the facts of the case as disclosed by such evidence.

"The sub-committee is empowered to request further information as it deems necessary from the parties to the dispute, and the representatives of the United Kingdom and Albania are requested to give every assistance to the sub-committee in its work."

*Decision of 25 March 1947 (122nd meeting): Rejection of draft resolution submitted by the representative of the United Kingdom*

At the 120th meeting on 20 March 1947, the Chairman of the sub-committee submitted<sup>181</sup> its report.<sup>182</sup>

At the same meeting, the representative of the United Kingdom submitted a draft resolution.<sup>183</sup> At the 121st and 122nd meetings on 21 and 25 March 1947, the representatives of the United States and France submitted amendments which the representative of the United Kingdom accepted.

The draft resolution as amended provided that the Security Council should find that an "unnotified mine field" had been laid which "could not have been laid without the knowledge of the Albanian authorities"; should recommend that the two Governments "settle the dispute on the basis of the Council's finding" and that either party might apply to the Council for further consideration in the event of failure to settle; and should resolve "to retain this dispute on its agenda until both parties certify that it has been settled to their satisfaction".

At the 122nd meeting on 25 March, the United Kingdom draft resolution, as amended, was not adopted. There were 7 votes in favour, 2 against (1 vote being that of a permanent member), 1 abstention, and 1 member not participating in the vote.<sup>184</sup>

*Decision of 9 April 1947 (127th meeting): Recommendation that the two Governments refer the dispute to the International Court of Justice*

At the 125th meeting on 3 April 1947, the representative of the United Kingdom submitted a draft resolution<sup>185</sup> to recommend that the two Governments refer the dispute to the International Court of Justice.

At the 127th meeting on 9 April 1947, the United Kingdom draft resolution was adopted by 8 votes in favour, none against, with two abstentions and 1 member not participating in the vote.<sup>186</sup> The resolution, as adopted, read:<sup>187</sup>

"The Security Council,

"Having considered statements of representatives of the United Kingdom and of Albania concerning a

<sup>173</sup> S/247, O.R., 2nd year, Suppl. No. 3.

<sup>174</sup> 95th meeting: p. 117.

<sup>175</sup> For observations on the bearing of Article 33, see chapter X, Case 3; and of Article 36 (3), see chapter X, Case 23.

<sup>176</sup> 107th meeting: pp. 305-307.

<sup>177</sup> 109th meeting: pp. 326, 334.

<sup>178</sup> 111th meeting: pp. 364-365.

<sup>179</sup> 114th meeting: p. 418 and p. 422.

<sup>180</sup> 114th meeting: p. 432. For discussion on the character of the sub-committee, see chapter V, Case 6.

<sup>181</sup> 120th meeting: p. 544.

<sup>182</sup> S/300, O.R., 2nd year, Suppl. No. 10.

<sup>183</sup> 120th meeting: p. 567. For text, see chapter X, Case 23.

<sup>184</sup> 122nd meeting: p. 609. For discussion regarding retention on the agenda, see chapter II, Case 58.

<sup>185</sup> 125th meeting: pp. 685-686.

<sup>186</sup> 127th meeting: p. 727.

<sup>187</sup> 127th meeting: pp. 726-727.

dispute between the United Kingdom and Albania, arising out of an incident on 22 October 1946 in the Straits of Corfu, in which two British ships were damaged by mines with resulting loss of life and injury to their crews.

"*Recommends* that the United Kingdom and the Albanian Governments should immediately refer the dispute to the International Court of Justice in accordance with the provisions of the Statute of the Court."

#### APPOINTMENT OF A GOVERNOR FOR THE FREE TERRITORY OF TRIESTE

##### (a) Letter dated 13 June 1947 from the representative of the United Kingdom to the President of the Security Council (document S/374)<sup>188</sup>

#### INITIAL PROCEEDINGS

By letter dated 13 June 1947 addressed to the President of the Security Council the representative of the United Kingdom requested the fixing of a date "during the coming week for the discussion by the Security Council of the question of the appointment of a governor of the Free Territory of Trieste", in accordance with Article 11, paragraph 7, of the Statute approved by the Council on 10 January 1947.

At the 143rd meeting on 20 June 1947, the Council included the question in the agenda.<sup>189</sup>

The Council considered the question in private at its 144th, 155th, 203rd, 223rd, 233rd and 265th meetings between 20 June 1947 and 9 March 1948.

At the 265th meeting on 9 March 1948, the Council agreed to postpone consideration and to take up the question at the request of any member of the Council.<sup>190</sup>

The Security Council resumed consideration of the question at its 411th, 412th, 422nd and 424th meetings between 17 February and 10 May 1949.

*Decision of 10 May 1949 (424th meeting): Rejection of draft resolution submitted by the representative of the USSR*

At the 411th meeting on 17 February 1949, the representative of the USSR submitted a draft resolution to appoint Colonel Fluckiger as Governor of the Free Territory of Trieste.<sup>191</sup>

At the 424th meeting on 10 May 1949, the draft resolution submitted by the representative of the USSR was rejected, by 2 votes in favour, none against, with 9 abstentions.<sup>192</sup>

#### THE EGYPTIAN QUESTION

#### INITIAL PROCEEDINGS

By letter dated 8 July 1947,<sup>193</sup> Egypt stated that British troops were maintained on Egyptian territory against the will of the people, contrary to the principle of sovereign equality of the Members of the United Nations and the General Assembly resolution 41 (I)

of 14 December 1946. Egypt also complained that the United Kingdom had occupied the Sudan and had endeavoured to impair the unity of the Nile Valley. A dispute had consequently arisen between the two countries, the continuance of which was likely to endanger the maintenance of international peace and security. Attempts at reaching a fair settlement in conformity with Article 33 of the Charter had failed since the United Kingdom had striven to avail itself of the Anglo-Egyptian Treaty of 1936 "that cannot bind Egypt any longer, having outlived its purposes, besides being inconsistent with the Charter". Consequently, Egypt was bringing the dispute before the Council under Articles 35 and 37 of the Charter, and requested the Council to direct:

1. The total and immediate evacuation of British troops from Egypt, including the Sudan;
2. The termination of the present administrative régime in the Sudan.

At its 159th meeting on 17 July 1947, the Council included the question in the agenda.

The Council considered the Egyptian question at its 175th, 176th, 179th, 182nd, 189th, 193rd, 196th and 198th to 201st meetings between 5 August and 10 September 1947.<sup>194</sup>

In his statements to the Council at the 175th and 179th meetings on 5 and 11 August, the representative of Egypt submitted that the actions of the United Kingdom had created a conflict between the Governments of Egypt and the United Kingdom, and a constant state of friction between the population and the occupying forces. With its repercussions beyond the frontiers of Egypt, the prevailing tension between the two countries was a potential threat to peace and security. He held that Egypt had not been a free agent in concluding the Treaty of 1936, which violated the principle of sovereign equality of the Members of the United Nations, and was an obstacle to Egypt's discharge of its obligations under the Charter to cooperate in suppressing aggression. It was a perpetual alliance, and such alliances were precluded by the Charter. In choosing to abide by the obligations of the Charter rather than by the obligations of the Treaty, Egypt was merely living up to her commitment under Article 103 of the Charter. He added that the Council was not called upon to adjudicate on the legal rights of the parties to the Treaty of 1936, nor to pronounce upon the Treaty, but to take account of the "bald political facts" with a view to the maintenance of international peace and security.<sup>195</sup>

The representative of the United Kingdom replied at the 176th, 179th and 182nd meetings on 5, 11 and 13 August, that no proof had been offered that international peace and security had been under any threat, unless the Egyptian Government contemplated creating it. Since both the Egyptian demands concerned the Treaty of 1936, the "one real issue" before the Council was the legal issue of the validity of the Treaty. He observed that the argument based on the doctrine of *rebus sic stantibus* was lacking in legal validity, that the Treaty had been freely concluded, that it was in no way inconsistent with the Charter, that the question of sovereignty was not involved, and that the main-

<sup>188</sup> 143rd meeting: p. 1043.

<sup>189</sup> 143rd meeting: p. 1052.

<sup>190</sup> 265th meeting: p. 65.

<sup>191</sup> S/1260, 411th meeting: pp. 14-15.

<sup>192</sup> 424th meeting: p. 10.

<sup>193</sup> S/410, 159th meeting: pp. 1343-1345.

<sup>194</sup> For statements regarding recourse to Article 33, see chapter X, Case 4.

<sup>195</sup> 175th meeting: pp. 1746, 1753-1757; 179th meeting: pp. 1861-1863, 1866-1868, 1873.

tenance of British troops in Egypt and the Sudan was not contrary to the General Assembly resolution 41 (I) of 14 December 1946. He denied that the United Kingdom had adopted a policy designed to sever the Sudan from Egypt. He concluded that the Charter had provided that international disputes should be settled in accordance with international law and justice and, therefore, the Security Council was not entitled to override treaty rights. Mindful of the principle of *facta sunt servanda*, the Security Council should find that the Egyptian Government had failed to make a case and should remove the matter from the agenda.<sup>196</sup>

The representative of Poland, Syria and USSR expressed the view that a dispute existed within the meaning of the Charter.<sup>197</sup>

*Decision of 28 August 1947 (198th meeting): Rejection of draft resolution submitted by the representative of Brazil*

At the 189th meeting on 20 August 1947, the representative of Brazil submitted a draft resolution<sup>198</sup> to recommend to the parties to resume direct negotiations and, in the event of their failure, to seek a solution by other peaceful means of their own choice; and to keep the Council informed of the progress of the negotiations. The representative of Belgium submitted an amendment<sup>199</sup> to the Brazilian draft resolution to specify among the peaceful means available to the disputants reference of disputes concerning the validity of the Treaty of 1936 to the International Court of Justice.

At the 193rd meeting on 22 August 1947, the representative of Australia proposed an amendment that, in so far as the negotiations affected the future of the Sudan, they should include consultation with the Sudanese.<sup>200</sup> The Australian amendment was supported by the representative of the United Kingdom. The representative of Egypt opposed it and stated that the relations between the peoples inhabiting the two parts of the Nile Valley were an internal domestic matter which would not be discussed with the United Kingdom.<sup>201</sup>

The representative of China introduced, at the 189th meeting and at the 198th meeting, two amendments<sup>202</sup> to the Brazilian draft resolution, which were both accepted by the representative of Brazil.<sup>203</sup>

At the 198th meeting on 28 August, the Belgian amendment was rejected by 4 votes in favour, none against and 6 abstentions.<sup>204</sup> The Australian amendment was rejected by 2 votes in favour, none against and 8 abstentions.<sup>205</sup> The Brazilian draft resolution, as revised, was rejected by 6 votes in favour, 1 against and 3 abstentions.<sup>206</sup>

<sup>196</sup> 176th meeting: pp. 1768, 1773-1782, 1784; 179th meeting: pp. 1891-1893, 1896, 1897; 182nd meeting: pp. 1954-1956.

<sup>197</sup> 182nd meeting: p. 1965; 196th meeting: pp. 2237, 2249; 189th meeting: p. 2109.

<sup>198</sup> S/507, 189th meeting: pp. 2108-2109.

<sup>199</sup> S/507/Add.1, 189th meeting: p. 2115. For related discussion in connexion with Article 36 (3), see chapter X, Case 24.

<sup>200</sup> S/516, 193rd meeting: p. 2169.

<sup>201</sup> 19th meeting: pp. 2247, 2254.

<sup>202</sup> S/507/Add.1, 189th meeting: p. 2112; 198th meeting: p. 2301.

<sup>203</sup> 196th meeting: p. 2234; 198th meeting: p. 2301.

<sup>204</sup> 198th meeting: pp. 2302-2303.

<sup>205</sup> 198th meeting: p. 2303.

<sup>206</sup> 198th meeting: pp. 2304-2305.

*Decision of 29 August 1947 (200th meeting): Rejection of draft resolution submitted by the representative of Colombia*

At the 198th meeting on 28 August 1947, the representative of Colombia submitted a draft resolution to call for the resumption of direct negotiations, to define the objectives of the negotiations and to provide for the Council to be kept informed of their progress.<sup>207</sup>

At the 200th meeting on 29 August, the Colombian draft resolution was voted on in parts and rejected.<sup>208</sup>

*Decision of 10 September 1947 (201st meeting): Rejection of draft resolution submitted by the representative of China*

At the 201st meeting on 10 September 1947, the representative of China submitted a draft resolution to recommend the resumption of negotiations and the submission of a report to the Council in the first instance not later than 1 January 1948.<sup>209</sup>

At the same meeting, the Chinese draft resolution was rejected by 2 votes in favour, none against, 8 abstentions and 1 member not participating in the vote.<sup>210</sup>

The Egyptian question was retained on the list of matters of which the Security Council is seized.<sup>211</sup>

## THE INDONESIAN QUESTION (II)

### INITIAL PROCEEDINGS

By letter dated 30 July 1947,<sup>212</sup> Australia drew the attention of the Security Council to the hostilities in progress in Java and Sumatra between armed forces of the Netherlands and of the Republic of Indonesia, which in its view constituted a breach of the peace under Article 39. Australia proposed, as a provisional measure under Article 40, that the Council call upon the two Governments, without prejudice to their respective rights, claims or positions, to cease hostilities forthwith and to commence arbitration in accordance with Article XVII of the Linggadjati Agreement which the two Governments had signed on 25 March 1947.

By letter dated 30 July 1947,<sup>213</sup> India drew the Council's attention to the Indonesian situation under Article 35, and requested the Council to take the necessary measures provided by the Charter to put an end to the situation.

At its 171st meeting on 31 July 1947, the Council included the question on its agenda.<sup>214</sup>

The Council considered the Indonesian question (II) at 69 meetings held between 31 July and 13 December 1949: 171st, 172nd, 173rd, 178th, 181st, 184th, 185th, 187th, 192nd-195th, 206th-211th, 213th-219th, 222nd, 224th-225th, 247th-249th, 251st-252nd, 256th, 259th, 316th, 322nd-323rd, 326th, 328th-329th, 341st-342nd,

<sup>207</sup> S/530, 198th meeting: p. 2305.

<sup>208</sup> 200th meeting: pp. 2338-2340.

<sup>209</sup> S/547, 201st meeting: p. 2344.

<sup>210</sup> 201st meeting: p. 2362.

<sup>211</sup> 201st meeting: p. 2363. For discussion regarding retention on the agenda, see chapter II, Case 59.

<sup>212</sup> S/449, O.R., 2nd year, Suppl. No. 16, annex 40.

<sup>213</sup> S/447, O.R., 2nd year, Suppl. No. 16, annex 41.

<sup>214</sup> 171st meeting: p. 1617. On inclusion in the agenda, see chapter II, Cases 30 and 31.

387th-393rd, 395th-398th, 400th-406th, 416th-421st, 455th-456th meetings.<sup>215</sup>

The representative of the Netherlands, in his statement to the Council at its 171st meeting,<sup>216</sup> maintained that the Council lacked competence to deal with the situation in Indonesia. He contended that what was going on in Indonesia was a "police action". Article 2 (1) indicated that the Charter was designed to operate between sovereign States, and it could not be contended that the Indonesian Republic had full sovereignty. Furthermore, the matter was one essentially within the domestic jurisdiction of the Netherlands and thus, under Article 2 (7), excluded from the Council's competence. Even assuming for the sake of argument that the Charter was applicable, he maintained that there was no threat to international peace and security, much less a breach of the peace or an act of aggression such as would have to exist if Chapter VII were to be applied.

At the same meeting, the representative of Australia stated<sup>217</sup> that, when hostilities broke out, his Government had immediately taken action, in consultation with other Members, to persuade the belligerents to cease hostilities and to seek agreement by the peaceful means which Members were bound, under Article 33, to use in the first instance. Since hostilities were nevertheless continuing, the situation had been drawn to the Council's attention for its urgent consideration under Article 39, and he hoped the Council would not attempt to reach any decision with regard to the merits of the case but would confine its deliberations to deciding on a course of action to bring about a cessation of hostilities. He stated that his Government's interests were especially affected by the dispute, which was a situation of international concern with far-reaching repercussions affecting the well-being and stability of the whole area. Since it was well established that hostilities were in progress, there was no occasion for the Council to undertake an investigation of the facts under Article 34. Further, he emphasized that the hostilities represented not merely a "police action" but an armed conflict between two States.

The representative of India\* explained<sup>218</sup> that his Government had asked for consideration under Chapter VI because it felt that, not being a member of the Council, it was not entitled to invoke Chapter VII.

*Decision of 1 August 1947 (173rd meeting): Calling upon the parties to cease hostilities forthwith and to settle their disputes by arbitration or by other peaceful means*

At the 171st meeting on 31 July 1947, the representative of Australia submitted a draft resolution,<sup>219</sup> which was revised at the 171st and 172nd meetings at the suggestion of the representatives of China<sup>220</sup> and the United States,<sup>221</sup> to call upon the parties to cease

hostilities forthwith and to settle their disputes by arbitration or other peaceful means in accordance with Article XVII of the Linggadjati Agreement.

The Council also had before it a USSR amendment<sup>222</sup> to call for the withdrawal of the forces of both parties to the positions they occupied before the beginning of military operations, a French amendment<sup>223</sup> to specify that the Council action would not in any way decide the juridical questions concerning the competence of the Council, and a Polish amendment<sup>224</sup> to call upon the parties to keep the Council informed of the progress of the settlement.

At the 173rd meeting, the Council voted on the revised draft resolution and the amendments to it. The French and USSR amendments were rejected, and the Polish amendment was adopted. The draft resolution was adopted in a paragraph by paragraph vote.<sup>225</sup> The resolution read as follows:<sup>226</sup>

*"The Security Council,*

*"Noting with concern the hostilities in progress between the armed forces of the Netherlands and the Republic of Indonesia,*

*"Calls upon the parties:*

*"(a) To cease hostilities forthwith, and*

*"(b) To settle their disputes by arbitration or by other peaceful means and keep the Security Council informed about the progress of the settlement."*

*Decision of 25 August 1947 (194th meeting): Establishment of the Consular Commission at Batavia<sup>227</sup>*

At the 181st meeting on 12 August 1947, the representative of Australia suggested that, since there were conflicting reports regarding the situation in Indonesia and the observance of the cease-fire orders, an agency of the Council should be set up to observe and help stabilize the situation.<sup>228</sup>

At the 193rd meeting on 22 August, taking into account certain suggestions made by the representatives of the Netherlands and the Republic of Indonesia, the representatives of Australia and China submitted a joint draft resolution<sup>229</sup> to request the Governments members of the Council that had career consular representatives in Batavia to ask them to prepare reports jointly for the Council.

The USSR representative submitted an amendment<sup>230</sup> to delete the provisions regarding the consular investigation and to establish a commission composed of the States members of the Council to supervise the implementation of the decision of 1 August.

At the 194th meeting on 25 August, the USSR amendment was rejected, and the joint draft resolution was adopted by 7 votes in favour, none against and 4 abstentions.<sup>231</sup> The resolution read as follows:<sup>232</sup>

<sup>215</sup> 172nd meeting: p. 1665.

<sup>216</sup> 173rd meeting: p. 1678.

<sup>217</sup> 173rd meeting: p. 1710.

<sup>218</sup> 173rd meeting: pp. 1700-1703, 1710.

<sup>219</sup> S/459, 178th meeting: p. 1839, n. 1.

<sup>220</sup> On the working of the Commission, see: "Organization and Procedure of United Nations Commissions: IV, The Security Council Consular Commission at Batavia" (United Nations publications 1949.X.6). See also chapter V, Case 4.

<sup>221</sup> 181st meeting: pp. 1917-1918.

<sup>222</sup> S/513, 193rd meeting: pp. 2173-2174.

<sup>223</sup> 194th meeting: p. 2197.

<sup>224</sup> 194th meeting: pp. 2199-2200. For discussion on the claim of domestic jurisdiction, see chapter XII, Case 8.

<sup>225</sup> S/525.

<sup>226</sup> At 10 meetings of the Council, while the Indonesian question (II) was not included in the agenda, references were made to matters concerning the question: 186th, 201st, 212th, 229th, 288th, 410th, 422nd, 431st, 454th, and 517th meetings.

<sup>227</sup> 171st meeting: pp. 1639-1648.

<sup>228</sup> 171st meeting: pp. 1616-1617, 1622-1627.

<sup>229</sup> 171st meeting: p. 1620.

<sup>230</sup> S/454, 171st meeting: p. 1626. For discussion in relation to Article 39, see chapter XI, Case 4; and on the claim of domestic jurisdiction, see chapter XII, Case 7.

<sup>231</sup> 171st meeting: p. 1633.

<sup>232</sup> 172nd meeting: p. 1648.



"Whereas the Security Council on 1 August 1947 called upon the Netherlands and the Republic of Indonesia to cease hostilities forthwith,

"And whereas communications have been received from the Governments of the Netherlands and of the Republic of Indonesia advising that orders have been given for the cessation of hostilities,

"And whereas it is desirable that steps should be taken to avoid disputes and friction relating to the observance of the 'cease fire' orders, and to create conditions which will facilitate agreement between the parties,

*"The Security Council*

"1. Notes with satisfaction the steps taken by the parties to comply with the resolution of 1 August 1947,

"2. Notes with satisfaction the statement by the Netherlands Government issued on 11 August, in which it affirms its intention to organize a sovereign, democratic United States of Indonesia in accordance with the purpose of the Linggadjati Agreement,

"3. Notes that the Netherlands Government intends immediately to request the career consuls stationed in Batavia jointly to report on the present situation in the Republic of Indonesia,

"4. Notes that the Government of the Republic of Indonesia has requested appointment by the Security Council of a commission of observers,

"5. Requests the Governments members of the Council who have career consular representatives in Batavia to instruct them to prepare jointly for the information and guidance of the Security Council reports on the situation in the Republic of Indonesia following the resolution of the Council of 1 August 1947, such reports to cover the observance of the 'cease-fire' orders and the conditions prevailing in areas under military occupation or from which armed forces now in occupation may be withdrawn by agreement between the parties,

"6. Requests the Governments of the Netherlands and of the Republic of Indonesia to grant to the representatives referred to in paragraph 5 all facilities necessary for the effective fulfilment of their mission,

"7. Resolves to consider the matter further should the situation require."

*Decisions of 25 August 1947 (194th meeting):*

- (i) Rejection of draft resolution submitted by the representative of Australia;
- (ii) Establishment of a Committee of Good Offices<sup>238</sup>

At the 193rd meeting on 22 August 1947, the representative of Australia submitted a draft resolution<sup>234</sup> to request the two parties to submit all matters in dispute between them to arbitration by a Commission consisting of one arbitrator selected by the Republic of Indonesia, one by the Netherlands, and one by the Council.

At the 193rd meeting on 22 August, the representative of the United States submitted a draft resolution

<sup>234</sup> On the working of the Committee of Good Offices, see: "Organization and Procedure of United Nations Commissions: V. The Security Council Committee of Good Offices on the Indonesian Question." (United Nations publications, 1949.X.7.) See also chapter V, Case 3.

<sup>235</sup> S/512, 193rd meeting: p. 2174.

whereby the Council would resolve to tender its good offices to the parties to assist in the pacific settlement of their dispute.<sup>235</sup>

At the 194th meeting on 25 August, the representative of Poland submitted an amendment to the Australian draft resolution to establish a commission of the Council to act as mediator and arbitrator.<sup>236</sup>

At its 194th meeting on 25 August, the Council, after rejecting the Polish amendment, rejected the Australian draft resolution by 3 votes in favour, none against and 8 abstentions.<sup>237</sup>

At the same meeting, the Council adopted the United States draft resolution by 8 votes in favour, none against and 3 abstentions.<sup>238</sup> The resolution read as follows:<sup>239</sup>

*"The Security Council*

*"Resolves to tender its good offices to the parties in order to assist in the pacific settlement of their dispute in accordance with paragraph (b) of the resolution of the Council of 1 August 1947. The Council expresses its readiness, if the parties so request, to assist in the settlement through a committee of the Council consisting of three members of the Council, each party selecting one, and the third to be designated by the two so selected."*

*Decisions of 26 August 1947 (195th meeting):*

- (i) Rejection of draft resolution submitted by the representative of Belgium;
- (ii) Calling upon the parties to adhere strictly to the Council's recommendation of 1 August 1947

At the 194th meeting on 25 August 1947, the representative of Belgium submitted a draft resolution to request the International Court of Justice for an advisory opinion concerning the Council's competence to deal with the Indonesian question.<sup>240</sup>

At the 195th meeting on 26 August, the representative of Poland introduced a draft resolution to remind the parties of the Council's resolution of 1 August 1947.<sup>241</sup>

At the 195th meeting on 26 August, the Belgian draft resolution was rejected by 4 votes in favour, one against, and 6 abstentions.<sup>242</sup> The Polish draft resolution was adopted at the same meeting by 10 votes in favour, none against and 1 abstention.<sup>243</sup> The resolution read as follows:<sup>244</sup>

*"The Security Council,*

*"Taking into consideration that military operations are being continued on the territory of the Indonesian Republic;*

*"1. Reminds the Government of the Netherlands and the Government of the Indonesian Republic of its resolution of 1 August 1947, concerning the 'cease-fire order' and peaceful settlement of their dispute;*

<sup>238</sup> S/514, 193rd meeting: p. 2179.

<sup>239</sup> 194th meeting: pp. 2203-2204.

<sup>240</sup> 194th meeting: p. 2209.

<sup>241</sup> 194th meeting: p. 2209.

<sup>242</sup> S/525.

<sup>243</sup> S/517, 194th meeting: p. 2193. For text and discussion, see chapter XII, Case 9, and chapter VI, Case 27.

<sup>244</sup> S/521, 195th meeting: pp. 2224-2225.

<sup>245</sup> 195th meeting: p. 2234.

<sup>246</sup> 195th meeting: p. 2232.

<sup>247</sup> S/525.



"2. Calls upon the Government of the Netherlands and the Government of the Indonesian Republic to adhere strictly to the recommendation of the Security Council of 1 August 1947."

*Decision of 3 October 1947 (207th meeting): Requesting the Committee of Good Offices to proceed to exercise its functions with the utmost dispatch*

Following reports from the parties that clashes were still occurring between their respective armed forces, the Council resumed consideration of the Indonesian question at its 206th meeting on 1 October 1947.

At its 207th meeting on 3 October, the representative of Australia submitted a draft resolution which was adopted at the same meeting by 9 votes in favour, none against and 2 abstentions.<sup>245</sup> The resolution read as follows:

*"The Security Council resolves:*

"That the Secretary-General be requested to act as convener of the Committee of Three and arrange for the organization of its work; and

"That the Committee of Three be requested to proceed to exercise its functions with the utmost dispatch."

*Decisions of 31 October 1947 (217th meeting): Rejection of draft resolutions submitted by the representatives of Australia and the USSR*

The Consular Commission, established under the Council's decision of 25 August 1947, submitted two interim reports, dated 22 September and 13 October 1947<sup>246</sup> and later a full report, dated 14 October 1947.<sup>247</sup> Between 3 October and 1 November 1947, the Council discussed the situation in Indonesia, in the light of the Consular Commission's reports.

At the 207th meeting on 3 October, the representative of the USSR submitted a draft resolution<sup>248</sup> to consider it necessary that the troops of both sides should be immediately withdrawn to the positions they occupied before the beginning of military operations.

At the 210th meeting on 11 October, the representative of Australia submitted a draft resolution,<sup>249</sup> which was subsequently revised,<sup>250</sup> to call upon the parties to withdraw their respective forces at least 25 kilometres behind the positions held on 1 August 1947.

At the 217th meeting on 31 October, the USSR draft resolution was rejected by 4 votes in favour, 4 against and 3 abstentions.<sup>251</sup>

At the same meeting, the Australian draft resolution was rejected by 5 votes in favour, 1 against and 5 abstentions.<sup>252</sup>

*Decisions of 1 November 1947 (219th meeting): (i) Interpreting the resolution of 1 August 1947 and requesting the Committee of Good Offices to assist the*

*parties to implement its terms; (ii) Rejection of draft resolution submitted by the representative of Poland*

At its 218th meeting on 1 November, the Council had before it a draft resolution prepared by a sub-committee of the Council which had been set up to consider a United States draft proposal and amendments submitted thereto by Australia, Belgium and China.<sup>253</sup>

At its 219th meeting on 1 November, the draft resolution was adopted by 7 votes in favour, 1 against and 3 abstentions.<sup>254</sup> The resolution read as follows:<sup>255</sup>

*"The Security Council,*

*"Having received and taken note of the report of the Consular Commission dated 14 October 1947, indicating that the Council's resolution of 1 August 1947 relating to the cessation of hostilities has not been fully effective;*

*"Having taken note that according to the Report no attempt was made by either side to come to an agreement with the other about the means of giving effect to that resolution;*

*"Calls upon the parties concerned forthwith to consult with each other, either directly or through the Committee of Good Offices, as to the means to be employed in order to give effect to the cease-fire resolution, and, pending agreement, to cease any activities or incitement to activities which contravene that resolution, and to take appropriate measures for safeguarding life and property;*

*"Requests the Committee of Good Offices to assist the parties in reaching agreement on an arrangement which will ensure the observance of the cease-fire resolution;*

*"Requests the Consular Commission, together with its military assistants, to make its services available to the Committee of Good Offices;*

*"Advises the parties concerned, the Committee of Good Offices, and the Consular Commission that its resolution of 1 August should be interpreted as meaning that the use of the armed forces of either party by hostile action to extend its control over territory not occupied by it on 4 August 1947, is inconsistent with the Council resolution of 1 August 1947; and*

*"Invites the parties, should it appear that some withdrawals of armed forces be necessary, to conclude between them as soon as possible the agreements referred to in its resolution of 25 August 1947."*

At the same meeting, the Council also voted on a draft resolution,<sup>256</sup> submitted by the representative of Poland at the 215th meeting, to call upon the Netherlands to withdraw its forces and administration from the territory of the Indonesian Republic and to call the attention of the Netherlands to the fact that its failure to comply with the Council's measures would create a situation which might lead to the application of enforcement measures. It was rejected by 2 votes in favour, 4 against and 5 abstentions.

<sup>245</sup> S/574, 207th meeting: p. 2503.

<sup>246</sup> S/573, 205th meeting: p. 2427; S/581, 211th meeting: pp. 2570-2571.

<sup>247</sup> S/586, O.R., 2nd year, Special Suppl. No. 4.

<sup>248</sup> S/575, 207th meeting: p. 2491. For discussion in relation to Article 39, see chapter XI, Case 5.

<sup>249</sup> S/579, 210th meeting: p. 2555.

<sup>250</sup> S/579/Rev.1, 215th meeting: p. 2668.

<sup>251</sup> 217th meeting: p. 2698.

<sup>252</sup> 217th meeting: p. 2700.

<sup>253</sup> S/594, 218th meeting: pp. 2723-2724.

<sup>254</sup> 219th meeting: pp. 2749-2750. For discussion in relation to the competence of the Council, see chapter XII, Case 10.

<sup>255</sup> S/597.

<sup>256</sup> S/589, 215th meeting: pp. 2661-2662. For discussion in relation to Article 40, see chapter XI, Case 6.

*Decision of 19 December 1947 (224th meeting): Statement by the President concerning the composition of the Committee of Good Offices*

At the 224th meeting on 19 December 1947, the President (Australia) stated that it was the understanding of the Council that the membership of the Committee of Good Offices should remain unchanged, despite Australia ceasing to be a member of the Council after 31 December of the year.<sup>257</sup>

*Decision of 28 February 1948 (259th meeting): Commending the Committee and maintaining the Council's offer of good offices*

At the 247th and 248th meetings on 17 February 1948, the Committee of Good Offices reported on its work leading up to the signature of a truce agreement (the Renville Truce Agreement) between the parties and acceptance by them of a set of political principles forming an agreed basis for the negotiation of a political settlement.

At the 249th meeting on 18 February, the representative of Canada submitted a draft resolution<sup>258</sup> to commend the work of the members of the Committee, to maintain the Council's offer of good offices and to request both parties and the Committee to keep the Council directly informed about the progress of the political settlement.

At the 252nd meeting on 21 February, the representative of Colombia submitted an amendment<sup>259</sup> to invite the parties to strive towards full and early implementation of the agreed political principles and avail themselves of the Committee's services for the solution of any difference, and to request the Committee to continue to assist the parties to reach a settlement.

At the 259th meeting on 28 February, the Colombian amendment was voted upon in parts and rejected.<sup>260</sup> The Canadian draft resolution was adopted by 7 votes in favour, none against and 4 abstentions.<sup>261</sup> The resolution read as follows:

*"The Security Council,*

*"Having considered the report of the Committee of Good Offices, informing the Council of the steps taken by the Netherlands Government and the Government of the Republic of Indonesia to comply with the Council's resolution of 1 August 1947;*

*"Notes with satisfaction the signing of the Truce Agreement by both parties and the acceptance by both parties of certain principles as an agreed basis for the conclusion of a political settlement in Indonesia;*

*"Commends the members of the Committee of Good Offices for the assistance they have given the two parties in their endeavours to settle their dispute by peaceful means;*

*"Maintains its offer of good offices contained in the resolution of 25 August 1947, and, to this end,*

*"Requests both parties and the Committee of Good Offices to keep the Council directly informed about the progress of the political settlement in Indonesia."*

*Decision of 28 February 1948 (259th meeting): Requesting the Committee to report on political developments in Western Java and Madura*

At the 252nd and 256th meetings on 21 and 26 February, the representative of the Republic of Indonesia stated that the Netherlands had plans to create new States in West Java, Madura and East Sumatra, without the plebiscite called for in the agreements recently concluded between the parties under the auspices of the Committee of Good Offices.

At the 259th meeting on 28 February, the representative of China submitted a draft resolution<sup>262</sup> which was adopted at the same meeting by 8 votes in favour, none against and 3 abstentions.<sup>263</sup> The resolution read as follows:

*"The Security Council*

*"Requests the Committee of Good Offices to pay particular attention to the political developments in Western Java and Madura and to report to the Council thereon at frequent intervals."*

*Decision of 17 June 1948 (322nd meeting): Request to the Committee for information concerning the suspension of negotiations*

During the consideration of the Second Interim Report of the Committee of Good Offices and its reports on the political developments in Western Java and Madura at the 322nd meeting on 17 June, the Council was informed by the representative of Australia\* that negotiations in Indonesia had been discontinued for the time being by the Netherlands delegation in view of the publication of the contents of a confidential Australian-United States working paper submitted to it.<sup>264</sup> At the 323rd meeting on 17 June, the Council agreed without objection that the President (Syria) should request information from the Committee regarding the suspension of negotiations, forwarding to the Committee at the same time a record of the Council's proceedings concerning this matter.<sup>265</sup>

*Decision of 23 June 1948 (326th meeting): Request to the Committee to continue to help bring about a peaceful settlement*

At its 326th meeting on 23 June, the Council, after considering the Committee's Third Interim Report as well as another report concerning the impasse in the negotiations, agreed without objection to the suggestion of the President (Syria) that he communicate the record of the discussion to the Committee and ask it to continue its efforts towards the attainment of a peaceful adjustment between the parties, keeping the Council informed of the progress of events.<sup>266</sup>

*Decision of 1 July 1948 (328th meeting): Rejection of a proposal submitted by the representative of China*

At the 328th meeting on 1 July, following a report to the effect that the parties had been unable to find a formula that would enable them to discuss the Australian-United States Working Paper, the unauthorized publication of the contents of which had earlier led to the suspension of negotiations, the

<sup>257</sup> 224th meeting: p. 2799.

<sup>258</sup> S/678, 249th meeting: pp. 187-88.

<sup>259</sup> S/682, 252nd meeting: p. 253.

<sup>260</sup> 259th meeting: p. 393/

<sup>261</sup> 259th meeting: pp. 392-393.

<sup>262</sup> S/689.

<sup>263</sup> 259th meeting: pp. 376-377, 384.

<sup>264</sup> 322nd meeting: pp. 23-24.

<sup>265</sup> 323rd meeting: pp. 37-49.

<sup>266</sup> 326th meeting: p. 35.

representative of China proposed that the Committee be asked to make available to the Council the paper in question.<sup>267</sup> At the same meeting, the proposal was rejected by 6 votes in favour, none against, and 5 abstentions.<sup>268</sup>

*Decision of 6 July 1948 (329th meeting): Request to the Committee for information on trade restrictions in Indonesia and on the implementation of the Truce Agreement*

On 6 July 1948 the Council received chapters II to VI of the Third Interim Report of the Committee of Good Offices;<sup>269</sup> these chapters described the stage reached in the work of the Political, Social and Administrative, Economic and Financial, and Security Committees, and other matters dealt with by the conference of the parties under the auspices of the Committee.

At its 329th meeting on 6 July, after statements from the representatives of the two parties on the allegation that an economic blockade had been imposed on the Indonesian Republic, the representative of China proposed "That the President (Ukrainian SSR) of the Security Council cable to the Committee of Good Offices for an early report on the existence of restrictions on the domestic and international trade of Indonesia, and the reasons for the delay in the implementation of Article 6 of the Truce Agreement".<sup>270</sup>

At the same meeting, the proposal as stated above was adopted by 9 votes in favour, none against, and 2 abstentions.<sup>271</sup>

*Decision of 29 July 1948 (342nd meeting): Calling upon the parties to observe, with the assistance of the Committee, the military and economic articles of the Truce Agreement, and to implement fully and early the agreed political principles*

By cablegram dated 23 July 1948,<sup>272</sup> the Committee of Good Offices reported that from that date the Republican delegation would participate only in the work relating to the implementation of the Truce Agreement. The Republican delegation had pointed out that there had been a complete standstill in political negotiations during the preceding eight weeks and that the Netherlands delegation had categorically refused to discuss the Australian-United States draft outline of an over-all political settlement, whereas the Republican Government considered that the proposals in that draft outline constituted the only possible means of resolving the deadlock. The Netherlands delegation, on the other hand, had maintained that there was no standstill in the political negotiations.

In response to the Council's decision of 6 July 1948, the Committee submitted, on 24 July, a report<sup>273</sup> on the restrictions on the trade of Indonesia and the reason for delay in the implementation of article 9 of the Truce Agreement.

At the 341st meeting on 29 July 1948, the representative of China submitted a draft resolution<sup>274</sup> which was adopted at the next meeting held on the

same day by 9 votes in favour, none against and 2 abstentions.<sup>275</sup> The resolution read as follows:

"The Security Council,

"Having considered the Committee of Good Offices' Report on the Federal Conference opened in Bandung on 27 May 1948 (S/842), Third Interim Report (S/848 and S/848/Add.1), Report on Standstill in Political Negotiations (S/918) and Report on Restrictions on Trade in Indonesia (S/919);

"Calls upon the Governments of the Netherlands and the Republic of Indonesia with the assistance of the Council's Committee of Good Offices, to maintain strict observance of both the military and economic articles of the 'Renville' Truce Agreement, and to implement early and fully the Twelve 'Renville' Political Principles and the Six Additional Principles."

*Decision of 20 December 1948 (387th meeting): Request to the Committee of Good Offices for further information regarding military operations in Indonesia*

On 15 November 1948, the Committee of Good Offices submitted its Fourth Interim Report.<sup>276</sup> On 12 and 18 December, the Committee submitted special supplementary reports<sup>277</sup> (S/1117 and S/1129). These reports described the Committee's unsuccessful efforts to bring about a resumption of negotiations and the collapse of direct talks between the parties. The Committee expressed doubts that truce enforcement could be maintained at even the unsatisfactory level then existing as the possibility of political agreement became more remote.

By letter dated 19 December 1948,<sup>278</sup> the representative of the United States requested that the Council convene in emergency session on 20 December to consider the question further in the light of the military operations which, according to reports received by the United States Government, had commenced in Indonesia on 18 December.

At the 387th meeting on 20 December, the Council decided, on the suggestion of the representative of Syria, to cable the Committee of Good Offices requesting further information regarding military operations in Indonesia.<sup>279</sup>

*Decision of 24 December 1948 (392nd meeting): Calling upon the parties to cease hostilities forthwith and to release immediately political prisoners: rejection of draft resolution submitted by the representative of the USSR*

The Committee of Good Offices submitted two reports<sup>280</sup> which the Council received on 20 and 22 December. The Committee expressed the view that, in commencing military operations on 19 December, the Netherlands Government had acted in violation of its obligations under the Renville Truce Agreement and

<sup>267</sup> 328th meeting: pp. 38-39.

<sup>268</sup> S/1085 and S/1085/Add.1 O.R., 3rd year, Suppl. for Dec. 1948, pp. 1-117.

<sup>269</sup> S/1117 and S/1117/Add.1, O.R., 3rd year, Suppl. for Dec. 1948, pp. 122, 126; S/1129 and S/1129/Add.1, O.R., 3rd year, Suppl. for Dec. 1948, pp. 215-228.

<sup>270</sup> S/1128, O.R., Suppl. for Dec. 1948, p. 214.

<sup>271</sup> 329th meeting: pp. 3, 8.

<sup>272</sup> S/1129 and S/1129/Add.1, O.R., 3rd year, Suppl. for Dec. 1948, pp. 215, 224; S/1138, O.R., 3rd year, Suppl. for Dec. 1948, p. 287. See also S/1144 and S/1146, O.R., 3rd year, Suppl. for Dec. 1948, pp. 295, 297.

<sup>273</sup> 328th meeting: p. 15.

<sup>274</sup> 328th meeting: pp. 34-35.

<sup>275</sup> S/848/Add.1, O.R., 3rd year, Suppl. June 1948, p. 122.

<sup>276</sup> 329th meeting: pp. 28, 30.

<sup>277</sup> 329th meeting: p. 30.

<sup>278</sup> S/918, O.R., 3rd year, Suppl. for July 1948.

<sup>279</sup> S/919, O.R., 3rd year, Suppl. for July 1948, p. 89.

<sup>280</sup> S/931, 341st meeting: p. 22.

that the possibilities of negotiations under the auspices of the Committee had not been exhausted nor even adequately explored.

At the 389th meeting on 22 December, the representatives of Colombia, Syria, and the United States submitted a draft resolution<sup>281</sup> to call upon the parties to cease hostilities at once and to withdraw their forces to their former positions.

At the 390th meeting on 23 December, the representative of Australia submitted an amendment to the joint draft resolution calling for the release of the President of the Indonesian Republic and other political prisoners arrested since 18 December.<sup>282</sup>

At the 392nd meeting on 24 December, the representative of the USSR submitted a draft resolution<sup>283</sup> to condemn the aggression of the Netherlands Government, to require the cessation of the military operations and the withdrawal of Netherlands troops to positions held before the renewed outbreak of hostilities, and to set up a commission representative of the whole Council to supervise the implementation of the resolution and to assist in settling the dispute.

At the same meeting, the joint draft resolution and the amendment to it were voted upon paragraph by paragraph and the resulting text was adopted by 7 votes in favour, none against, with 4 abstentions.<sup>284</sup> The USSR draft resolution was rejected by a vote taken in parts.<sup>285</sup> The resolution adopted read as follows:

"The Security Council,

"Noting with concern the resumption of hostilities in Indonesia and,

"Having taken note of the reports of the Committee of Good Offices,

"Calls upon the parties:

"(a) To cease hostilities forthwith, and

"(b) Immediately to release the President and other political prisoners arrested since 18 December;

"Instructs the Committee of Good Offices to report to the Security Council fully and urgently by telegraph on the events which have transpired in Indonesia since 12 December 1948, and to observe and report to the Security Council on the compliance with sub-paragraphs (a) and (b) above."

*Decision of 24 December 1948 (392nd meeting): Rejection of draft resolution submitted by the representative of Canada*

At its 392nd meeting on 24 December, the representative of Canada submitted a draft resolution<sup>286</sup> which, as revised at the suggestion of the representative of the United States,<sup>287</sup> would instruct the Committee of Good Offices to report in order to enable the Council to decide on the practicable steps it might take to establish peace in Indonesia.

The representative of Syria submitted an amendment<sup>288</sup> to instruct the Committee to report on the technical possibility of withdrawing armed forces to pre-hostilities positions, and sponsored an Australian amendment<sup>289</sup> to request the Consular Commission to continue to make available the services of its military assistants.

At the same meeting, the two amendments were rejected. The revised draft resolution was rejected by 6 votes in favour, none against and 5 abstentions.<sup>290</sup>

*Decisions of 27 December 1948 (393rd meeting): Rejection of draft resolutions submitted by the representatives of the Ukrainian SSR and USSR*

By cablegrams dated 25 and 26 December,<sup>291</sup> the Committee of Good Offices reported to the Council pursuant to its resolution of 24 December. The reports outlined the chief events since 12 December, summarized the military operations since 19 December, analyzed facts relating to the truce and the general role of the Committee, and set out the texts of letters addressed to the parties concerning the Council's resolution of 24 December.

At the 393rd meeting on 27 December, the representative of the Ukrainian SSR submitted a draft resolution<sup>292</sup> to consider it necessary that Netherlands troops should be withdrawn to the positions held by them before the second outbreak of hostilities.

The representative of the USSR, considering that a statement made by the Netherlands representative earlier at the same meeting constituted a direct refusal on the part of his Government to cease hostilities against the Republic, submitted a draft resolution<sup>293</sup> to note that the Netherlands had so far failed to cease military operations against the Indonesian Republic and to order the cessation of military operations within 24 hours.

At the same meeting, the Ukrainian SSR draft resolution was rejected by 5 votes in favour, none against and 6 abstentions.<sup>294</sup>

The USSR draft resolution was rejected by 4 votes in favour, none against and 7 abstentions.<sup>295</sup>

*Decision of 28 December 1948 (395th meeting): Calling upon the Netherlands to set free forthwith the President of the Republic of Indonesia and all other political prisoners*

At the 395th meeting on 28 December, the representative of China submitted a draft resolution<sup>296</sup> which was adopted at the same meeting by 8 votes in favour, none against and 3 abstentions.<sup>297</sup> The resolution read as follows:<sup>298</sup>

"The Security Council,

"Noting that the Netherlands Government has not so far released the President of the Republic of

<sup>281</sup> S/1142, O.R., 3rd year, Suppl. for Dec. 1948, p. 294.

<sup>282</sup> S/1145, 390th meeting: pp. 15-16.

<sup>283</sup> S/1148 and Corr.1, 392nd meeting: p. 3.

<sup>284</sup> 392nd meeting: pp. 30-38.

<sup>285</sup> 392nd meeting: pp. 39-42. For discussion in relation to

Article 39, see chapter XI, Case 7; and on the claim of domestic jurisdiction, see chapter XII, Case 11.

<sup>286</sup> S/1149, O.R., Suppl. for December 1948, p. 298.

<sup>287</sup> 392nd meeting: p. 51.

<sup>288</sup> S/1154, S/1156, O.R., 3rd year, Suppl. for Dec. 1948, pp. 305, 307.

<sup>289</sup> S/1158, 393rd meeting: p. 6.

<sup>290</sup> S/1159, 393rd meeting: p. 8.

<sup>291</sup> 393rd meeting: p. 35.

<sup>292</sup> 393rd meeting: p. 35.

<sup>293</sup> S/1162, 395th meeting: p. 51.

<sup>294</sup> 395th meeting: p. 67.

<sup>295</sup> S/1164.

Indonesia and all other political prisoners, as required by the resolution of 24 December 1948,

"Calls upon the Netherlands Government to set free these political prisoners forthwith and report to the Security Council within 24 hours of the adoption of the present resolution."

*Decision of 28 December 1948 (395th meeting): Requesting the Consular Commission to report on the situation in the Republic of Indonesia*

At the 395th meeting on 28 December, the representative of Colombia submitted a draft resolution<sup>290</sup> to call for a report from the Consular Commission on the withdrawal of troops. In order to overcome the objection that the character of the Committee of Good Offices might be changed if it were assigned such a task, he explained that he had followed the Council's resolution of 25 August 1947 in asking the consular representatives in Batavia to report.

At the same meeting, the Colombian draft resolution, with drafting changes accepted by the Colombian representative, was adopted by 9 votes in favour, none against and 2 abstentions.<sup>300</sup> The resolution read as follows:

"The Security Council

"Requests the consular representatives in Batavia referred to in paragraph 5 of the resolution adopted on 25 August 1947, at the 194th meeting of the Council, to send as soon as possible, for the information and guidance of the Security Council, a complete report on the situation in the Republic of Indonesia, covering in such report the observance of the cease-fire orders and the conditions prevailing in areas under military occupation or from which armed forces now in occupation may be withdrawn."

*Decision of 28 January 1949 (406th meeting): Establishing the United Nations Commission for Indonesia and recommending the procedures and terms of a settlement*<sup>301</sup>

At its 397th meeting on 7 January 1949, the Council had before it a report from the Committee of Good Offices<sup>302</sup> stating neither sub-paragraph (a) nor (b) of the resolution of 24 December had been implemented. It requested the Council to define the respective functions of the Committee and of the Consular Commission under the resolutions of 24 and 28 December, and raised the question whether the continuance of the Committee in the present circumstances would serve any useful purpose. The Council also received a request from the Consular Commission for clarification of its position in relation to the Committee.

By cablegram dated 8 January,<sup>303</sup> the Committee of Good Offices reported that arrangements had been approved by Netherlands authorities for the dispatch of military observers to various areas in Java and Sumatra. On 14 January the Committee of Good Offices forwarded the first report<sup>304</sup> of its military observers following their return to the field.

By cablegram dated 23 January 1949,<sup>305</sup> the Foreign Minister of India transmitted to the Council a resolu-

tion adopted by the Conference on Indonesia held in New Delhi from 20-23 January and attended by representatives and observers of 17 Members of the United Nations from Africa, Asia and the Pacific region, in addition to representatives and observers of two non-Member Governments.

On 24 January, the Committee of Good Offices forwarded to the Council an analysis<sup>306</sup> of the military situation in Indonesia. The report concluded that, to be completely effective, a cessation of hostilities necessarily must be agreed upon by both parties. Since the Republican Government had been prevented from functioning, there was no authority on the Republican side to implement the Security Council resolution. Despite the Netherlands orders to its troops to cease hostilities, such cessation had not been and could not be attained in the prevailing situation.

At the 402nd meeting on 21 January, the representative of Cuba submitted a draft resolution on behalf of the delegations of Cuba, China, Norway and the United States,<sup>307</sup> and at the 405th meeting on 27 January, the representative of China, on behalf of the sponsors, introduced certain amendments.<sup>308</sup> At the latter meeting, the representative of Canada submitted an amendment, which was accepted by the sponsors.<sup>309</sup>

At the 406th meeting on 28 January, the representative of the USSR submitted an amendment<sup>310</sup> to replace the first paragraph of the operative part by a provision that Netherlands troops should immediately be withdrawn to the Renville Truce positions.

At the same meeting on 28 January, the USSR amendment was rejected and the revised joint draft resolution was adopted by a vote in parts.<sup>311</sup> The resolution read as follows:<sup>312</sup>

"The Security Council,

"Recalling its resolutions of 1 August 1947, 25 August 1947, and 1 November 1947, with respect to the Indonesian question;

"Taking note with approval of the reports submitted to the Security Council by its Committee of Good Offices for Indonesia;

"Considering that its resolutions of 24 December 1948 and 28 December 1948 have not been fully carried out;

"Considering that continued occupation of the territory of the Republic of Indonesia by the armed forces of the Netherlands is incompatible with the restoration of good relations between the parties and with the final achievement of a just and lasting settlement of the Indonesian dispute;

"Considering that the establishment and maintenance of law and order throughout Indonesia is a necessary condition to the achievement of the expressed objectives and desires of both parties;

"Noting with satisfaction that the parties continue to adhere to the principles of the Renville Agreement and agree that free and democratic elections should be held throughout Indonesia for the purpose

<sup>290</sup> S/1160, 395th meeting: p. 80.

<sup>291</sup> 395th meeting: pp. 80, 82.

<sup>292</sup> Regarding the Commission, see chapter V, Case 5.

<sup>293</sup> S/1189, O.R., 4th year, Suppl. for Jan. 1949, p. 6.

<sup>294</sup> S/1193, O.R., 4th year, Suppl. for Jan. 1949, p. 19.

<sup>295</sup> S/1212, O.R., 4th year, Suppl. for Jan. 1949, p. 49.

<sup>296</sup> S/1222, *Ibid.*, p. 56.

<sup>306</sup> S/1223, *Ibid.*, p. 60.

<sup>307</sup> S/1219, *Ibid.*, p. 53.

<sup>308</sup> S/1230, *Ibid.*, p. 65.

<sup>309</sup> S/1232, *Ibid.*, p. 66.

<sup>310</sup> S/1233, *Ibid.*, p. 66.

<sup>311</sup> 406th meeting: pp. 21-33. For discussion on the competence of the Council, see chapter XII, Case 12.

<sup>312</sup> S/1234, O.R., 4th year, Suppl. for Feb. 1949.



of establishing a constituent assembly at the earliest practicable date, and further agree that the Security Council should arrange for the observation of such elections by an appropriate agency of the United Nations; and that the representative of the Netherlands has expressed his Government's desire to have such elections held not later than 1 October 1949;

"Noting also with satisfaction that the Government of the Netherlands plans to transfer sovereignty to the United States of Indonesia by 1 January 1950, if possible, and, in any case, during the year 1950;

"Conscious of its primary responsibility for the maintenance of international peace and security, and in order that the rights, claims and position of the parties may not be prejudiced by the use of force;

"1. Calls upon the Government of the Netherlands to ensure the immediate discontinuance of all military operations, calls upon the Government of the Republic simultaneously to order its armed adherents to cease guerrilla warfare, and calls upon both parties to co-operate in the restoration of peace and the maintenance of law and order throughout the area affected.

"2. Calls upon the Government of the Netherlands to release immediately and unconditionally all political prisoners arrested by it since 17 December 1948 in the Republic of Indonesia; and to facilitate the immediate return of officials of the Government of the Republic of Indonesia to Jogjakarta in order that they may discharge their responsibilities under paragraph 1 above and in order to exercise appropriate functions in full freedom, including administration of the Jogjakarta Area, which shall include the city of Jogjakarta and its immediate environs. The Netherlands authorities shall afford to the Government of the Republic of Indonesia such facilities as may reasonably be required by that Government for its effective function in the Jogjakarta area and for communication and consultation with all persons in Indonesia.

"3. Recommends that, in the interest of carrying out the expressed objectives and desires of both parties to establish a federal, independent and sovereign United States of Indonesia at the earliest possible date, negotiations be undertaken as soon as possible by representatives of the Government of the Netherlands and representatives of the Republic of Indonesia with the assistance of the Commission referred to in paragraph 4 below on the basis of the principles set forth in the Linggadjati and Renville Agreements, and taking advantage of the extent of agreement reached between the parties regarding the proposals submitted to them by the United States representative on the Committee of Good Offices on 10 September 1948; and in particular, on the basis that:

"(a) The establishment of the interim federal government which is to be granted the powers of internal government in Indonesia during the interim period before the transfer of sovereignty shall be the result of the above negotiations and shall take place not later than 15 March 1949;

"(b) The elections which are to be held for the purpose of choosing representatives to an Indonesian constituent assembly should be completed by 1 October, 1949; and

"(c) The transfer of sovereignty over Indonesia by the Government of the Netherlands to the United States of Indonesia should take place at the earliest possible date and in any case not later than 1 July 1950;

"Provided that if no agreement is reached by one month prior to the respective dates referred to in sub-paragraphs (a), (b), and (c) above, the Commission referred to in paragraph 4 (a) below or such other United Nations agency as may be established in accordance with paragraph 4 (c) below, shall immediately report to the Council with its recommendations for a solution of the difficulties.

"4. (a) The Committee of Good Offices shall henceforth be known as the *United Nations Commission for Indonesia*. The Commission shall act as the representative of the Security Council in Indonesia and shall have all of the functions assigned to the Committee of Good Offices by the Security Council since 18 December, and the functions conferred on it by the terms of this resolution. The Commission shall act by majority vote, but its reports and recommendations to the Security Council shall present both majority and minority views if there is a difference of opinion among the members of the Commission.

"(b) The Consular Commission is requested to facilitate the work of the United Nations Commission for Indonesia by providing military observers and other staff and facilities to enable the Commission to carry out its duties under the Council's resolutions of 24 and 28 December 1948 as well as under the present resolution, and shall temporarily suspend other activities.

"(c) The Commission shall assist the parties in the implementation of this resolution, and shall assist the parties in the negotiations to be undertaken under paragraph 3 above and is authorized to make recommendations to them or to the Security Council on matters within its competence. Upon agreement being reached in such negotiations, the Commission shall make recommendations to the Security Council as to the nature, powers, and functions of the United Nations agency which should remain in Indonesia to assist in the implementation of the provisions of such agreement until sovereignty is transferred by the Government of the Netherlands to the United States of Indonesia.

"(d) The Commission shall have authority to consult with representatives of areas in Indonesia other than the Republic, and to invite representatives of such areas to participate in the negotiations referred to in paragraph 3 above.

"(e) The Commission or such other United Nations agency as may be established in accordance with its recommendation under paragraph 4 (c) above is authorized to observe on behalf of the United Nations the elections to be held throughout Indonesia and is further authorized, in respect of the territories of Java, Madura and Sumatra, to make recommendations regarding the conditions necessary (a) to ensure that the elections are free and democratic, and (b) to guarantee freedom of assembly, speech and publication at all times, provided that such guarantee is not construed so as to include the advocacy of violence or reprisals.



"(f) The Commission should assist in achieving the earliest possible restoration of the civil administration of the Republic. To this end it shall, after consultation with the parties, recommend the extent to which, consistent with reasonable requirements of public security and the protection of life and property, areas controlled by the Republic under the Renville Agreement (outside of the Jogjakarta area) should be progressively returned to the administration of the Government of the Republic of Indonesia, and shall supervise such transfers. The recommendations of the Commission may include provision for such economic measures as are required for the proper functioning of the administration and for the economic well-being of the population of the areas involved in such transfers. The Commission shall, after consultation with the parties, recommend which, if any, Netherlands forces shall be retained temporarily in any area (outside of the Jogjakarta area) in order to assist in the maintenance of law and order. If either of the parties fails to accept the recommendations of the Commission mentioned in this paragraph, the Commission shall report immediately to the Security Council with its further recommendations for a solution of the difficulties.

"(g) The Commission shall render periodic reports to the Council, and special reports whenever the Commission deems necessary.

"(h) The Commission shall employ such observers, officers and other persons as it deems necessary.

"5. Requests the Secretary-General to make available to the Commission such staff, funds and other facilities as are required by the Commission for the discharge of its functions.

"6. Calls upon the Governments of the Netherlands and the Republic of Indonesia to co-operate fully in giving effect to the provisions of this resolution."

*Decision of 23 March 1949 (421st meeting): Directive conveying the Council's sense that its Commission should assist the parties in reaching agreement on the implementation of its resolution of 28 January 1949 and on the time and conditions for holding the proposed conference at The Hague*

The Council met on 10 March 1949 to consider the Commission's report of 1 March 1949<sup>313</sup> concerning the non-compliance of the Netherlands Government with the basic prerequisite for further action under the Council's resolution of 28 January and giving details of a proposal by the Netherlands Government to convene a Round Table Conference on the Indonesian question at The Hague in the very near future.

At the 421st meeting on 23 March, the representative of Canada submitted the text of a draft directive to be transmitted by the President (Cuba) to the Commission.<sup>314</sup> It was adopted at the same meeting by 8 votes in favour, none against and 3 abstentions.<sup>315</sup> It read as follows:

"It is the sense of the Security Council that the United Nations Commission for Indonesia, in accordance with the Council's resolution of 28 January

1949, and without prejudicing the rights, claims and positions of the parties, should assist the parties in reaching agreement as to (a) the implementation of the Council's resolution of 28 January, and in particular paragraphs 1 and 2 of the operative part thereof; and (b) the time and conditions for holding the proposed conference at The Hague, to the end that the negotiations contemplated by the resolution of 28 January may be held as soon as possible. It is further the sense of the Council that, if such an agreement is reached, the holding of such a conference and the participation by the United Nations Commission for Indonesia in accordance with its terms of reference, would be consistent with the purposes and objectives of the Council's resolution of 28 January 1949."

*Decisions of 13 December 1949 (456th meeting): Rejection of draft resolutions submitted by the representatives of Canada and the Ukrainian SSR*

On 9 May 1949, the Commission reported<sup>316</sup> that both parties had accepted its invitation to discussions pursuant to the Council's directive of 23 March. The Commission announced on 23 June the results of the discussions. The Netherlands agreed to the restoration of the Republican Government and its return to its capital, and the Republican delegation agreed to make proposals to the Republican Government for a cessation of hostilities and in regard to the time and conditions of the proposed round-table conference at The Hague.

On 4 August, the United Nations Commission for Indonesia submitted its first interim report<sup>317</sup> setting out the agreements reached between the parties on (1) the restoration of the Republican Government to its capital; (2) the cessation of hostilities and the arrangements to implement the cease-hostilities order; and (3) the time and conditions for The Hague conference.

On 8 November 1949, the Commission for Indonesia submitted a special report on the Round Table Conference held at The Hague from 23 August to 2 November 1949.<sup>318</sup> The Commission informed the Council that the Conference had been "eminently successful", and reported that, under the agreements reached, the Netherlands, by 30 December 1949 at the latest, would unconditionally transfer complete sovereignty to the Republic of the United States of Indonesia. The Commission further stated that it "would continue to carry out its functions in accordance with its terms of reference, and would observe in Indonesia the implementation of the agreements reached at the Round Table Conference".

At its 455th meeting on 12 December 1949, the representative of Canada submitted a draft resolution<sup>319</sup> to note the successful completion of The Hague Conference and welcome the forthcoming establishment of the Republic of the United States of Indonesia as an independent and sovereign State, to request the Commission to continue to discharge the responsibilities entrusted to it by the Council, and, in particular, to observe and assist in the implementation of the agreements reached at the Conference, and to report thereon to the Council.

<sup>313</sup> S/1320.

<sup>314</sup> S/1373, O.R., 4th year, Special Suppl. No. 5.

<sup>315</sup> S/1417 and Corr.1, O.R., 4th year, Special Suppl. No. 6.

<sup>316</sup> S/1431, O.R., 4th year, Suppl. for Sep.-Dec. 1949, p. 13.

<sup>317</sup> S/1270 and Corr.1, O.R., Suppl. for March 1949, p. 8.

<sup>318</sup> 421st meeting: p. 5.

<sup>319</sup> 421st meeting: pp. 25-26.

At the same meeting, the representative of the Ukrainian SSR submitted a draft resolution<sup>320</sup> by which the Council, with a view to regulating the position in Indonesia, would deem it essential that the following measures be taken: (a) to withdraw Netherlands forces to their Renville Truce positions; (b) to demand that the Netherlands release all political prisoners; (c) to propose the establishment of a Commission composed of representatives of States members of the Council, which body should observe the withdrawal of the Netherlands forces and the release of the political prisoners; (d) to instruct the Commission to submit proposals for the settlement of the conflict; and (e) to dissolve the existing Commission for Indonesia.

At the 456th meeting on 13 December, the Canadian draft resolution was put to a vote in parts and rejected. The first part received 9 votes in favour and 2 against (one vote against being that of a permanent member of the Council). The second part received 8 votes in favour, 2 against and 1 abstention (one vote against being that of a permanent member).<sup>321</sup>

At the same meeting, the Council rejected the Ukrainian SSR draft resolution by 2 votes in favour and 9 against.<sup>322</sup>

On 9 January 1950, the Commission submitted to the Council its second interim report<sup>323</sup> describing negotiations and activities in relation to the implementation of the cease-hostilities agreement, the release of political prisoners and prisoners of war, questions of administration and supply in Indonesia, and the arrangements for the transfer of sovereignty, which the Commission reported took place on 27 December 1949. The report concluded that the Commission, in virtue of its terms of reference and in accordance with the covering resolution of the Round Table Conference, would observe and assist in the implementation of the agreements reached at The Hague.

On 28 July 1950, the Commission reported<sup>324</sup> that the Royal Netherlands Indonesian Army and the Netherlands Army High Command in Indonesia had been dissolved on 26 July following an agreement reached between the Governments of the Netherlands and the Republic of Indonesia on 15 July.

On 11 October 1950, the Commission submitted a telegraphic report<sup>325</sup> outlining events which had taken place in South Moluccas since the proclamation, on 25 April 1950, of a "South Moluccas Republic" by a group of persons who had seized authority in the islands.

On 28 October 1950, the Commission submitted a telegraphic report<sup>326</sup> informing the Council that the Contact Committee of Netherlands and Indonesian representatives, under the chairmanship of the Commission, had met on 25 October to consider, among other matters, problems connected with the demobilization and repatriation of troops belonging to the former Royal Netherlands Indies Army.

At the 517th meeting on 30 October 1950, the President (United States) drew the attention of the Security Council to the reports of the Commission dated 11 and 28 October 1950 and asked whether any member wished to express any views in the Council on the question of the timing of the consideration of the reports. The Council took no position on the question raised by the President, and in the period covered by this *Repertoire* there was no further discussion in the Council on the matter of the Indonesian question.

On 3 April 1951, the Commission submitted to the Security Council a report on its activities since the transfer of sovereignty.<sup>327</sup> In the concluding part of the report, the Commission stated that, since the military problems were now virtually solved, since no other matters had been submitted by the parties and since no items remained on the agenda, it had decided that, while continuing to hold itself at the disposal of the parties, it would adjourn *sine die*.

At the end of the period covered by this *Repertoire*, the Security Council remained seized of the Indonesian question (II).

## THE PALESTINE QUESTION

### INITIAL PROCEEDINGS

By letter dated 2 December 1947,<sup>328</sup> the Secretary-General transmitted to the President of the Security Council the text of General Assembly resolution 181 (II) of 29 November 1947 concerning "the future government of Palestine" and invited the attention of the Security Council particularly to paragraphs (a), (b) and (c) of the operative part of the resolution.

At its 222nd meeting on 9 December 1947, the Council included the question in the agenda. After discussion, the Council decided to postpone consideration.<sup>329</sup>

The Security Council considered the Palestine question at the following meetings: 1947: 222nd; 1948: 243rd, 253rd to 255th, 258th, 260th to 263rd, 265th, 267th, 270th, 271st, 274th, 275th, 277th, 282nd, 283rd, 287th, 289th, 291st to 299th, 301st to 303rd, 305th to 311th, 313th, 314th, 317th, 320th, 329th to 340th, 343rd, 349th, 352nd to 354th, 356th, 358th, 360th, 365th, 367th, 373rd to 382nd, 386th, 394th to 396th; 1949: 413th, 422nd, 433rd to 435th, 437th, 452nd, 453rd; 1950: 502nd, 503rd, 511th, 514th, 517th, 518th, 521st, 522nd, 524th; 1951: 541st, 542nd, 544th to 547th, 549th to 553rd, 555th, 556th, 558th.

At the 243rd meeting on 10 February 1948, the Council agreed that it should take note of the first monthly report of the Palestine Commission<sup>330</sup> and postpone further discussion until it had received the first special report to the Security Council.

*Decision of 5 March 1948 (263rd meeting): To call on the permanent members to consult and to report*

At its 253rd meeting on 24 February 1948, the Security Council began consideration of the first

<sup>320</sup> S/1433, 455th meeting: p. 27.

<sup>321</sup> 456th meeting: pp. 33-35. See chapter II, Case 61, for President's statement regarding effect on previous decisions.

<sup>322</sup> 456th meeting: p. 35.

<sup>323</sup> S/1449.

<sup>324</sup> S/1663.

<sup>325</sup> S/1842, O.R., 5th year, Suppl. for Sept.-Dec. 1950, pp. 78-80.

<sup>326</sup> S/1873 and Corr.1, O.R., 5th year, for Sept.-Dec. 1950, pp. 94-95.

<sup>327</sup> S/2087.

<sup>328</sup> S/614, O.R., 2nd year, Suppl. No. 20, p. 172.

<sup>329</sup> For summary of proceedings, see chapter XII, Case 23 (i).

<sup>330</sup> S/663, O.R., 3rd year, Special Suppl. No. 2, pp. 1-10. On the working of the Palestine Commission, see: "Organization and Procedure of United Nations Commissions. The United Nations Palestine Commission." (United Nations publications, 1949.X.8.)

monthly progress report and the first special report<sup>321</sup> submitted to it by the Palestine Commission.

At the 254th meeting on the same day, the representative of Colombia submitted a draft resolution<sup>322</sup> providing for consultations among the permanent members of the Council under Article 106.

At the 255th meeting on 25 February, the representative of the United States submitted a draft resolution<sup>323</sup> regarding the acceptance of the requests by the General Assembly and the establishment of a committee of the five permanent members.

At the 258th meeting on 27 February, an amendment<sup>324</sup> to the United States draft resolution was introduced by the representative of Belgium. At the same meeting, the representative of Colombia withdrew his draft resolution.

After consultations between the representatives of the USSR and the United States, the representative of the United States submitted his draft resolution in modified form at the 263rd meeting on 5 March.<sup>325</sup>

At the same meeting, the Belgian amendment was rejected. The United States draft resolution was voted on paragraph by paragraph. Three paragraphs were rejected, having failed to obtain the affirmative votes of seven members. The resulting United States draft resolution was adopted by 8 votes in favour, none against, with 3 abstentions.<sup>326</sup> The resolution<sup>327</sup> read as follows:

*"The Security Council,*

*"Having received resolution 181 (II) of the General Assembly of 29 November 1947 on Palestine, and having received from the United Nations Palestine Commission its first monthly report and its first special report on the problem of security in Palestine;*

*"Resolves to call on the permanent members of the Council to consult and to inform the Security Council regarding the situation with respect to Palestine and to make, as the result of such consultations, recommendations to it regarding the guidance and instructions which the Council might usefully give to the Palestine Commission with a view of implementing the resolution of the General Assembly. The Security Council requests the permanent members to report to it on the results of their consultations within ten days;*

*"Appeals to all Governments and peoples particularly in and around Palestine, to take all possible action to prevent or reduce such disorders as are now occurring in Palestine."*

At the 270th meeting on 19 March, the representative of the United States reported, on behalf of China, France and the United States, the results of the consultations among the permanent members, and discussion proceeded thereon.

*Decisions of 1 April 1948 (277th meeting):*

- (i) Calling for a truce in Palestine*
- (ii) Requesting a special session of the General Assembly*

At the 275th meeting on 30 March 1948, the representative of the United States submitted two draft resolutions<sup>328</sup> in pursuance of recommendations presented to the Council as a result of the consultations between the permanent members.

At the 277th meeting on 1 April, the United States draft resolution calling for a truce (S/704), as amended on the suggestion of the representative of the Ukrainian SSR, was adopted unanimously.<sup>329</sup> The resolution<sup>330</sup> read as follows:

*"The Security Council,*

*"In the exercise of its primary responsibility for the maintenance of international peace and security,*

*"Notes the increasing violence and disorder in Palestine and believes that it is of the utmost urgency that an immediate truce be effected in Palestine;*

*"Calls upon the Jewish Agency for Palestine and the Arab Higher Committee to make representatives available to the Security Council for the purpose of arranging a truce between the Arab and Jewish communities of Palestine; and emphasizes the heavy responsibility which would fall upon any party failing to observe such a truce;*

*"Calls upon Arab and Jewish armed groups in Palestine to cease acts of violence immediately."*

At the same meeting, the United States draft resolution on the convocation of a special session of the General Assembly (S/705) was adopted by 9 votes in favour, none against, with 2 abstentions.<sup>331</sup> The resolution<sup>332</sup> read as follows:

*"The Security Council,*

*"Having received, on 9 December 1947, the resolution of the General Assembly concerning Palestine dated 29 November 1947;*

*"Having taken note of the United Nations Palestine Commission's First and Second Monthly Progress Reports and First Special Report on the problem of security;*

*"Having called, on 5 March 1948, on the permanent members of the Council to consult;*

*"Having taken note of the reports made concerning these consultations,*

*"Requests the Secretary-General in accordance with Article 20 of the United Nations Charter, to convoke a special session of the General Assembly to consider further the question of the future government of Palestine."*

*Decision of 17 April 1948 (283rd meeting): Calling for measures to bring about a truce in Palestine*

At the 282nd meeting on 15 April 1948, the President (Colombia) informed the Security Council that he had met representatives of the Arab Higher Com-

<sup>321</sup> S/676, O.R., 3rd year, Special Suppl. No. 2, pp. 10-19.

<sup>322</sup> S/684, 254th meeting: pp. 292-293. For discussion on the Colombian draft resolution, see chapter XII, Case 29.

<sup>323</sup> S/685, 255th meeting: pp. 294-295.

<sup>324</sup> S/688, O.R., 3rd year, Suppl. for Jan.-March, 1948, pp. 30-31; 258th meeting: pp. 356-358.

<sup>325</sup> See chapter V, Case 68.

<sup>326</sup> 263rd meeting: pp. 38-43.

<sup>327</sup> S/691, 263rd meeting: p. 43. For discussion in connexion with this resolution, see chapter XII, Case 23 (ii).

<sup>328</sup> S/704, S/705, 275th meeting: pp. 247-248. See chapter XII, Case 23 (iii).

<sup>329</sup> 277th meeting: p. 34.

<sup>330</sup> S/714/I, O.R., 3rd year, Suppl. for April 1948, pp. 4-5.

<sup>331</sup> 277th meeting: pp. 34-35.

<sup>332</sup> S/714/II, O.R., 3rd year, Suppl. for April 1948, p. 5.

mittee and of the Jewish Agency for Palestine to discuss the possible terms of a truce, and that he had been unable to bring about agreement between the parties.

Speaking as the representative of Colombia, the President submitted a draft resolution<sup>343</sup> which had been drawn up as a result of informal conversations among the members of the Security Council with a view to bringing about "a standstill in the present conditions in Palestine" during the short period necessary for the General Assembly to consider the matter further.

Amendments were submitted at the 283rd meeting on 16 April by the representatives of the USSR and the United States.

At the same meeting, the United States amendments were adopted unanimously; the USSR amendment and paragraph 4 of the Colombian draft resolution were rejected. The resolution as amended was adopted by 9 votes in favour, none against, with 2 abstentions.<sup>344</sup> The resolution<sup>345</sup> read as follows:

"Considering the Council's resolution of 1 April 1948 and the conversations held by its President with the representatives of the Jewish Agency for Palestine and the Arab Higher Committee with a view to arranging a truce between Arabs and Jews in Palestine;

"Considering that, as stated in that resolution, it is of the utmost urgency to bring about the immediate cessation of acts of violence in Palestine, and to establish conditions of peace and order in that country;

"Considering that the United Kingdom Government, so long as it remains the Mandatory Power, is responsible for the maintenance of peace and order in Palestine and should continue to take all steps necessary to that end; and that, in so doing, it should receive the co-operation and support of the Security Council in particular as well as of all the Members of the United Nations;

"The Security Council:

"1. Calls upon all persons and organizations in Palestine and especially upon the Arab Higher Committee and the Jewish Agency to take immediately, without prejudice to their rights, claims, or positions, and, as a contribution to the well-being and permanent interest of Palestine, the following measures:

"(a) Cease all activities of a military or paramilitary nature, as well as acts of violence, terrorism and sabotage;

"(b) Refrain from bringing and from assisting and encouraging the entry into Palestine of armed bands and fighting personnel, groups and individuals, whatever their origin;

"(c) Refrain from importing or acquiring or assisting or encouraging the importation or acquisition of weapons and war materials;

"(d) Refrain, pending further consideration of the future government of Palestine by the General Assembly, from any political activity which might

prejudice the rights, claims, or positions of either community;

"(e) Co-operate with the Mandatory authorities for the effective maintenance of law and order and of essential services, particularly those relating to transportation, communications, health, and food and water supplies;

"(f) Refrain from any action which will endanger the safety of the Holy Places in Palestine and from any action which would interfere with access to all shrines and sanctuaries for the purpose of worship by those who have an established right to visit and worship at them.

"2. Requests the United Kingdom Government, for so long as it remains the Mandatory Power, to use its best efforts to bring all those concerned in Palestine to accept the measures set forth under paragraph 1 above and, subject to retaining the freedom of action of its own forces, to supervise the execution of these measures by all those concerned, and to keep the Security Council and the General Assembly currently informed on the situation in Palestine.

"3. Calls upon all Governments and particularly those of the countries neighbouring Palestine to take all possible steps to assist in the implementation of the measures set out under paragraph 1 above, and particularly those referring to the entry into Palestine of armed bands and fighting personnel, groups and individuals and weapons and war materials."

*Decision of 23 April 1948 (287th meeting): Establishing a truce commission*<sup>346</sup>

At the 287th meeting on 23 April 1948, the Security Council heard statements by the representatives of the Arab Higher Committee,\* the Jewish Agency for Palestine\* and the Mandatory Power regarding implementation of the resolution of 17 April 1948.

The representative of the United States, having suggested that it was essential that the Council should receive additional reports regarding the truce from an agency of its own, submitted a draft resolution to establish a truce commission for Palestine.

The draft resolution, with amendments introduced in the course of discussion, was adopted by 8 votes in favour, none against, with 3 abstentions.<sup>347</sup> The resolution<sup>348</sup> read as follows:

"Referring to its resolution of 17 April 1948, calling upon all parties concerned to comply with specific terms for a truce in Palestine,

"The Security Council

"Establishes a truce commission for Palestine composed of representatives of those members of the Security Council which have career consular officers in Jerusalem, noting, however, that the representative of Syria has indicated that his Government is not prepared to serve on the Commission. The function of the Commission shall be to assist the Security Council in supervising the implementation by the

<sup>343</sup> S/722, G.A.O.R., 3rd session, Suppl. No. 2, p. 83.

<sup>344</sup> 283rd meeting: p. 41. (The meeting lasted beyond midnight, and the resolution was adopted on 17 April).

<sup>345</sup> S/723, O.R., 3rd year, Suppl. for April 1948, pp. 7-8.

<sup>346</sup> On the working of the Truce Commission, see: "Organization and Procedure of United Nations Commissions. The Security Council Truce Commission for Palestine." (United Nations publications, 1949.N.2.) See also chapter V, Case 9.

<sup>347</sup> 287th meeting: p. 33.

<sup>348</sup> S/727, 287th meeting: pp. 32-33.



parties of the resolution of the Security Council of 17 April 1948;

"Requests the Commission to report to the President of the Security Council within four days regarding its activities and the development of the situation, and subsequently to keep the Security Council currently informed with respect thereto.

"The Commission, its members, their assistants and its personnel, shall be entitled to travel, separately or together, wherever the Commission deems necessary to carry out its tasks.

"The Secretary-General of the United Nations shall furnish the Commission with such personnel and assistance as it may require, taking into account the special urgency of the situation with respect to Palestine."

*Decision of 12 May 1948 (291st meeting): Authorizing the Truce Commission to use discretionary powers for truce supervision*

At the 289th meeting on 7 May 1948, the President (France) informed the Security Council that he had received a telegram from the Jewish Agency for Palestine<sup>349</sup> alleging that foreign regular forces had invaded the territory of Palestine and appealing for appropriate action by the Council to arrest the invasion in its initial stages. In reply to the President's inquiry, the Security Council Truce Commission for Palestine cabled<sup>350</sup> that it had been unable to confirm the information from the Jewish Agency.

At the 291st meeting on 12 May, the President brought to the attention of the Council two messages from the Truce Commission concerning negotiations for a truce in Jerusalem and for its control and supervision. The Commission asked whether it would be possible for the United Nations to send the officers necessary to effect such control, or whether the latter should be ensured by the International Committee of the Red Cross. The Secretary-General stated that it was possible to send control officers to Palestine, but it would have to be quite clear that they were going at the request, and with the full support, of both parties in Palestine. In the course of the discussion it became apparent that, in view of the short time remaining for action until the expiration of the Mandate on 15 May, and in the absence of sufficient information, the initiative rested with the Truce Commission on the spot. Accordingly, the Council authorized the President to advise the Truce Commission that it should explore and adopt such means of assistance as it might require in the performance of its functions.<sup>351</sup>

*Decision of 18 May 1948 (295th meeting): To address a questionnaire to the parties*

At the 292nd meeting on 15 May 1948, the President (France) informed the Security Council that he had received a communication<sup>352</sup> from the Jewish Agency for Palestine charging acts of aggression on the part of Transjordan, and a cablegram<sup>353</sup> from the Government of Egypt stating that Egyptian armed forces had started to enter Palestine, after the British Mandate had ended, to establish security and order there.

At the 293rd meeting on 17 May, the Security Council had before it three further communications regarding the situation in Palestine. A cablegram<sup>354</sup> from the League of Arab States declared that the Arab States were compelled to intervene in Palestine for the sole purpose of restoring peace and security and establishing law and order. A cablegram<sup>355</sup> from the Provisional Government of Israel transmitted the proclamation establishing the independent State of Israel. A message<sup>356</sup> from the King of Transjordan stated that his armed forces were compelled to enter Palestine to protect the Arabs there.

At the same meeting, the representative of the United States submitted a draft resolution to order the immediate cessation of military operations,<sup>357</sup> and a questionnaire to be put to the parties concerned.

At the 293rd to 295th meetings on 17 to 18 May, the Security Council considered the text of the questionnaire, and at the 295th meeting on 18 May, the Security Council adopted the questionnaire in an amended form.<sup>358</sup>

*Decision of 22 May 1948 (302nd meeting): Calling upon the parties to issue a cease-fire order<sup>359</sup>*

At the 296th to 299th and 301st to 302nd meetings between 19 and 22 May, the Security Council considered the United States draft resolution.

At the 296th meeting on 19 May, the representative of the United Kingdom introduced an amendment to eliminate the reference to article 39.<sup>360</sup>

At the 299th meeting on 20 May, the President informed the Security Council that the permanent members of the Council had decided to appoint a Mediator in Palestine<sup>361</sup> in pursuance of General Assembly resolution 186 (S-2) of 14 May 1948.

At the 301st meeting on 22 May, the representatives of Egypt,\* Iraq,\* Lebanon,\* Syria and the Jewish Agency for Palestine\* presented the replies of their Governments to the questionnaire of the Council. The President announced that replies were still awaited from Saudi Arabia and Yemen, while Transjordan had refused to reply. The representative of the Arab Higher Committee\* said that he would submit his replies at a later date.

At the 302nd meeting on 22 May, the Security Council adopted the United States draft resolution in an amended form by 8 votes in favour, none against, with 3 abstentions.<sup>362</sup> The resolution<sup>363</sup> read as follows:

"The Security Council

"Taking into consideration that previous resolutions of the Security Council in respect to Palestine

<sup>349</sup> S/745, O.R., 3rd year, Suppl. for May 1948, pp. 83-88.

<sup>350</sup> S/747, O.R., 3rd year, Suppl. for May 1948, pp. 88-89.

<sup>351</sup> S/748, O.R., 3rd year, Suppl. for May 1948, p. 90.

<sup>352</sup> S/749, 293rd meeting: p. 2.

<sup>353</sup> S/753, O.R., 3rd year, Suppl. for May 1948, pp. 90-91.

For the question of domestic jurisdiction in connexion with the questionnaire, see chapter XII, Case 13.

<sup>354</sup> For the preceding discussion concerning the applicability of Articles 39 and 40, see chapter XI, Case 9.

<sup>355</sup> S/755, 294th meeting: p. 6.

<sup>356</sup> 299th meeting: pp. 4-5. On the working of the Mediator and the Acting Mediator, see: "Organization and Procedure of United Nations Commissions, The United Nations Mediator (and Acting Mediator) for Palestine." (United Nations publications, 1950.X.3.)

<sup>357</sup> 302nd meeting: p. 66.

<sup>358</sup> S/773, O.R., 3rd year, Suppl. for May 1948, p. 97.

<sup>349</sup> S/730, O.R., 3rd year, Suppl. for May 1948, pp. 37-38.

<sup>350</sup> S/733, O.R., 3rd year, Suppl. for May 1948, p. 40.

<sup>351</sup> 291st meeting: p. 21.

<sup>352</sup> S/744, 292nd meeting: p. 2.

<sup>353</sup> S/743, 292nd meeting: p. 3.

have not been complied with and that military operations are taking place in Palestine;

"Calls upon all Governments and authorities, without prejudice to the rights, claims or position of the parties concerned, to abstain from any hostile military action in Palestine and to that end to issue a cease-fire order to their military and para-military forces to become effective within thirty-six hours after midnight New York Standard Time, 22 May 1948;

"Calls upon the Truce Commission and upon all parties concerned to give the highest priority to the negotiation and maintenance of a truce in the City of Jerusalem;

"Directs the Truce Commission established by the Security Council by its resolution of 23 April 1948 to report to the Security Council on the compliance with the two preceding paragraphs of this resolution;

"Calls upon all parties concerned to facilitate by all means in their power the task of the United Nations Mediator appointed in execution of the resolution of the General Assembly of 14 May 1948."

*Decision of 24 May 1948 (303rd meeting): Extending the time-limit for cease-fire order*

At the 303rd meeting on 24 May, the President (France) drew the attention of the Security Council to a cablegram<sup>304</sup> from the Jewish Agency for Palestine to the effect that the Provisional Government of Israel had accepted the resolution of 22 May and issued a cease-fire order to its troops. He also read the replies of the Governments of Iraq, Lebanon and Syria informing the Council of a delay in the receipt of the resolution of 22 May and requesting an extension of the time-limit to enable the Arab Governments to consult.

The Security Council agreed to extend the time-limit of the cease-fire order by 48 hours, to expire on 26 May at noon, New York Standard Time.<sup>305</sup>

*Decisions of 29 May 1948 (310th meeting):*

- (i) Rejection of draft resolution submitted by the USSR
- (ii) Calling for cessation of hostilities for a period of four weeks<sup>306</sup>

At the 305th meeting on 26 May 1948, the President (France) informed the Security Council that he had received a communication<sup>307</sup> from the Jewish Agency for Palestine conveying the decision of the Provisional Government of Israel to reissue a cease-fire order to its forces if the other side acted likewise. The representative of Egypt\* stated that his Government was unable to accept the resolution of 22 May 1948.<sup>308</sup> The representative of Iraq\* read a communication<sup>309</sup> from the League of Arab States to the same effect.

At the 306th meeting on 27 May, the representative of the USSR submitted a draft resolution for the

ordering of the cessation of military operations. The draft resolution was subsequently revised.<sup>310</sup> At the same meeting, the representative of the United Kingdom submitted a draft resolution which, as revised at the 310th meeting,<sup>311</sup> called for a cessation of all acts of armed force for a period of four weeks.

At the 308th meeting on 28 May, the President, as the representative of France, submitted a draft resolution<sup>312</sup> for the cessation of hostilities in Jerusalem.

At the 310th meeting on 29 May, the USSR draft resolution was voted on in parts and was rejected.<sup>313</sup> At the same meeting, the Security Council proceeded to vote on the United Kingdom draft resolution paragraph by paragraph. Amendments were proposed in the course of the discussion by Colombia, the United States, France, Canada and Syria, and some, having been accepted, were incorporated in the text. The United Kingdom draft resolution, as finally amended, was adopted.<sup>314</sup> The resolution<sup>315</sup> read as follows:

"The Security Council,

"Desiring to bring about a cessation of hostilities in Palestine without prejudice to the rights, claims and position of either Arabs or Jews; [8 votes to none, with 3 abstentions],

"Calls upon all Governments and authorities concerned to order a cessation of all acts of armed force for a period of four weeks; [10 votes to none, with 1 abstention],

"Calls upon all Governments and authorities concerned to undertake that they will not introduce fighting personnel into Palestine, Egypt, Iraq, Lebanon, Saudi Arabia, Syria, Transjordan and Yemen during the cease-fire; and

"Calls upon all Governments and authorities concerned, should men of military age be introduced into countries or territories under their control, to undertake not to mobilize or submit them to military training during the cease-fire; [7 votes to none, with 4 abstentions],<sup>316</sup>

"Calls upon all Governments and authorities concerned to refrain from importing war material into or to Palestine, Egypt, Iraq, Lebanon, Saudi Arabia, Syria, Transjordan and Yemen during the cease-fire; [9 votes to none, with 2 abstentions],

"Urges all Governments and authorities concerned to take every possible precaution for the protection of the Holy Places and of the City of Jerusalem, including access to all shrines and sanctuaries for the purpose of worship by those who have an established right to visit and worship at them; [11 votes to none, with no abstentions],

"Instructs the United Nations Mediator for Palestine in concert with the Truce Commission to supervise the observance of the above provisions, and decides that they shall be provided with a sufficient

<sup>304</sup> S/794/Rev.2, O.R., 3rd year, Suppl. for May 1948, pp. 101-102.

<sup>305</sup> S/795/Rev.2, O.R., 3rd year, Suppl. for May 1948, pp. 102-103.

<sup>306</sup> S/798/Rev.2, 308th meeting: p. 40.

<sup>307</sup> 310th meeting: pp. 36-37.

<sup>308</sup> 310th meeting: pp. 38-63.

<sup>309</sup> S/801, O.R., 3rd year, Suppl. for May 1948, pp. 103-104.

<sup>310</sup> For the claim of domestic jurisdiction in connexion with the discussion on this paragraph and the preceding one, see chapter XII, Case 14.

<sup>311</sup> S/779, O.R., 3rd year, Suppl. for May 1948, p. 98.

<sup>312</sup> 303rd meeting: p. 41.

<sup>313</sup> For the preceding discussion regarding the applicability of Articles 39 and 40, see chapter XI, Case 10. For the preceding discussion concerning the applicability of Articles 52 and 53, see chapter XII, Case 27.

<sup>314</sup> S/789, 305th meeting: pp. 43-44.

<sup>315</sup> 305th meeting: pp. 44-46.

<sup>316</sup> S/792, 305th meeting: pp. 47-49.



number of military observers; [9 votes to none, with 2 abstentions].

"Instructs the United Nations Mediator to make contact with all parties as soon as the cease-fire is in force with a view to carrying out his functions as determined by the General Assembly; [9 votes to none, with 2 abstentions].

"Calls upon all concerned to give the greatest possible assistance to the United Nations Mediator; [9 votes to none, with 2 abstentions].

"Instructs the United Nations Mediator to make a weekly report to the Security Council during the cease-fire; [9 votes to none, with 2 abstentions].

"Invites the States members of the Arab League and the Jewish and Arab authorities in Palestine to communicate their acceptance of this resolution to the Security Council not later than 6 p.m. New York Standard Time on 1 June 1948; [8 votes to none, with 3 abstentions].

"Decides that if the present resolution is rejected by either party or by both, or if, having been accepted, it is subsequently repudiated or violated, the situation in Palestine will be reconsidered with a view to action under Chapter VII of the Charter. [7 votes to none, with 4 abstentions].

"Calls upon all Governments to take all possible steps to assist in the implementation of this resolution." [8 votes to none, with 3 abstentions].

After the United Kingdom draft resolution had been adopted, the French draft resolution was withdrawn.<sup>277</sup>

*Decision of 2 June 1948 (311th meeting): Authorizing the Mediator to set the effective date for the cease-fire*

At the 311th meeting on 2 June 1948, the President (Syria) informed the Security Council that he had received the replies of the parties concerned accepting the terms of the resolution of 29 May 1948. The communication<sup>278</sup> of the Provisional Government of Israel stated that a cease-fire order had been issued to the Israeli forces effective on 2 June, 3 a.m. Israeli time, provided the other side acted likewise. The communication<sup>279</sup> of the Foreign Minister of Egypt, which contained the reply of the League of Arab States on behalf of all Arab States, expressed readiness to cease fire as soon as the effective date was determined. At the same meeting, the representative of the Arab Higher Committee\* stated that, as a member of the League of Arab States, his Committee upheld the statement communicated by the Egyptian Government.

The Council also had before it a message<sup>280</sup> from the United Nations Mediator suggesting that the date of the application of the resolution should be set by the Mediator in consultations with the two parties and the Truce Commission.

With 2 abstentions, the Security Council approved the suggestion of the Mediator regarding the setting of the time-limit for the actual cessation of hostilities and agreed that this time-limit should be as short as possible.<sup>281</sup>

*Decision of 3 June 1948 (313th meeting): Concerning the authority of the United Nations Mediator*

At the 313th meeting on 3 June 1948, the President (Syria) drew the attention of the Security Council to paragraph 3 of General Assembly resolution 186 (S-2) which

"Directs the United Nations Mediator to conform in his activities ... with such instructions as the General Assembly or the Security Council may issue."

Since the Council had conferred certain powers upon the Mediator in the implementation of its resolution of 29 May 1948, he requested the views of the members as to whether instructions should now be given to the Mediator.

The Council agreed that no instructions should be issued to the Mediator pending examination of his first report, and that the Mediator should have full authority to act within the terms of the resolution and interpret it in a way he deemed correct. Only if that interpretation were challenged should the matter be submitted to the Council for further consideration.<sup>282</sup>

*Decisions of 15 June 1948 (320th meeting):*

(i) *Concerning execution of the truce*

(ii) *Rejection of draft resolution submitted by the USSR*

At the 320th meeting on 15 June 1948, the Council had before it a message<sup>283</sup> from the Mediator suggesting that all communications from interested parties concerning the execution of the cease-fire and truce agreement, which had gone into effect on 11 June 1948, be submitted to the Mediator and that he should exercise discretion in reporting them to the Security Council.

In another communication<sup>284</sup> the Mediator requested the Security Council to call on Member and non-Member States to report on the steps taken to implement the resolution of 29 May and to assist the Mediator in his task.

The Council approved the procedure suggested by the Mediator and agreed that this would not preclude the parties from addressing communications directly to the Council. It also agreed to take appropriate action in connexion with the Mediator's request (S/840).<sup>285</sup>

At the same meeting, the representative of the USSR submitted a draft resolution<sup>286</sup> to attach to the Mediator from thirty to fifty military observers to be appointed "by Member States of the Security Council wishing to participate in the designation of such observers, excluding Syria". The President, speaking as the representative of Syria, proposed to delete the words "excluding Syria". The USSR draft resolution was rejected<sup>287</sup> by 2 votes in favour, none against, and 9 abstentions.

*Decision of 7 July 1948 (330th meeting): Concerning the representative of the State of Israel*

At the 330th meeting on 7 July 1948, the President (Ukrainian SSR), in his invitation to representatives

<sup>277</sup> 310th meeting: p. 63.

<sup>278</sup> S/804, 311th meeting: pp. 2-3.

<sup>279</sup> S/810, 311th meeting: pp. 4-6.

<sup>280</sup> S/814, 311th meeting: p. 16.

<sup>281</sup> 311th meeting: pp. 23-24.

<sup>282</sup> 313th meeting: pp. 28-29.

<sup>283</sup> S/837, 320th meeting: p. 2.

<sup>284</sup> S/840, 320th meeting: p. 3.

<sup>285</sup> 320th meeting: pp. 4-6.

<sup>286</sup> S/841, 320th meeting: p. 8.

<sup>287</sup> 320th meeting: p. 11.

of the interested parties to take their seats at the Security Council table, included also the representative of the State of Israel who had previously been referred to as the representative of the Jewish Agency for Palestine.

The ruling of the President was challenged and submitted to the vote. There were 5 votes in favour of overruling the decision of the President. The President declared his ruling sustained.<sup>385</sup>

In protest against the decision of the President, the representative of the Arab Higher Committee withdrew from the Council table.<sup>386</sup>

*Decision of 7 July 1948 (331st meeting): Appealing for a prolongation of the truce*

At the 330th meeting on 7 July 1948 the Security Council had before it a message<sup>387</sup> from the Mediator requesting the Council to appeal to the parties for a prolongation of the truce.

At the same meeting, the representative of the United Kingdom submitted a draft resolution to that effect.<sup>388</sup>

At the 331st meeting on 7 July, the Security Council adopted the United Kingdom draft resolution by 8 votes in favour, none against, with 3 abstentions. The resolution<sup>389</sup> read as follows:

"The Security Council,

"Taking into consideration the telegram from the United Nations Mediator dated 5 July 1948,

"Addresses an urgent appeal to the interested parties to accept in principle the prolongation of the truce for such period as may be decided upon in consultation with the Mediator."

*Decision of 8 July 1948 (332nd meeting): To request information*

At the 332nd meeting on 8 July 1948 the President (Ukrainian SSR) brought to the attention of the Security Council a statement<sup>390</sup> of the Mediator on the replies of the parties to his proposal for the prolongation of the truce. He also informed the Security Council of a communication<sup>391</sup> from the Provisional Government of Israel charging resumption of hostilities by Egyptian forces before the expiration of the truce.

The Council agreed that the President should request from the parties concerned and the Mediator immediate information regarding the actual situation in Palestine and in particular their attitude towards the observance and prolongation of the truce.<sup>392</sup>

*Decision of 15 July 1948 (338th meeting): Determining the situation in Palestine a threat to the peace within the meaning of Article 39 and ordering, in pursuance of Article 40, the cessation of military action<sup>393</sup>*

<sup>385</sup> 330th meeting: pp. 2-9.

<sup>386</sup> 330th meeting: p. 10.

<sup>387</sup> S/865, O.R., 3rd year, Suppl. for July 1948, pp. 24-25.

<sup>388</sup> S/867.

<sup>389</sup> S/875, 331st meeting: p. 35.

<sup>390</sup> S/873, 332nd meeting: pp. 4-5.

<sup>391</sup> S/871, 332nd meeting: p. 2.

<sup>392</sup> 332nd meeting: pp. 21-23.

<sup>393</sup> For discussion in connexion with this resolution, see chapter XI, Case 11.

Prior to the 333rd meeting on 13 July 1948, the Security Council received additional information concerning the prolongation of the truce and also the text of an appeal<sup>394</sup> by the Mediator on 9 July for an unconditional cease-fire in Palestine for a period of 10 days. This appeal was accepted by the Provisional Government of Israel<sup>395</sup> but in the absence of acceptance by the Arab States, the four-week truce expired on 9 July.<sup>396</sup>

At the same meeting, the Mediator<sup>397</sup> made a statement in connexion with his report dated 12 July<sup>398</sup> which contained a review of both the truce effort and the mediation effort during the four-week truce. He concluded by stating that, for the time being, he had exhausted all the powers at his disposal, and that it was up to the Security Council to adopt measures to put an end to the renewal of hostilities in Palestine. He thought that the Security Council might order an immediate cease-fire in Palestine and the demilitarization of Jerusalem and should make clear its determination to apply the provisions of Articles 41 and 42 in case of non-compliance.<sup>399</sup>

At the 334th meeting on the same day, the representative of the United States submitted a draft resolution<sup>400</sup> which determined that the situation in Palestine constituted a threat to peace within the meaning of Article 39 and ordered the governments and authorities concerned, pursuant to Article 40, to desist from further military action and to issue cease-fire orders to their forces to that effect. As a matter of special and urgent necessity, the draft resolution ordered an immediate and unconditional cease-fire in Jerusalem.

The Council considered the United States draft resolution at the 334th to 338th meetings from 13 to 15 July.

At the 338th meeting on 15 July, the Council voted on the United States draft resolution and amendments thereto paragraph by paragraph.

An amendment submitted by Syria to substitute the words "Taking into consideration the report of the United Nations Mediator..." for the first paragraph of the United States draft resolution which referred to the acceptance of the prolongation of the truce by the Provisional Government of Israel and its rejection by the Arab States, was rejected by 4 votes in favour, none against, and 7 abstentions.<sup>401</sup>

A United Kingdom amendment to refer to the Provisional Government of Israel as "the other party" was rejected by 3 votes in favour, 1 against, with 7 abstentions.<sup>402</sup>

An amendment proposed orally by Canada to delete from the third paragraph the time-limit of three days for the parties to issue cease-fire orders was rejected by 5 votes in favour, none against, and 6 abstentions.<sup>403</sup>

<sup>394</sup> S/878, O.R., 3rd year, Suppl. for July 1948, pp. 33-34.

<sup>395</sup> S/884, O.R., 3rd year, Suppl. for July 1948, pp. 43-44.

<sup>396</sup> O.R., 3rd year, Suppl. for July 1948, pp. 31-47.

<sup>397</sup> S/888, O.R., 3rd year, Suppl. for July 1948, pp. 47-63.

<sup>398</sup> 333rd meeting: pp. 7-8.

<sup>399</sup> S/890, 334th meeting: pp. 40-41.

<sup>400</sup> S/901, 338th meeting: pp. 42-43.

<sup>401</sup> S/895, 338th meeting: p. 43.

<sup>402</sup> 338th meeting: pp. 46-47.

An amendment submitted by the USSR to propose to both parties that they withdraw their forces from Jerusalem instead of instructing the Mediator, as the United States draft resolution provided, to bring about demilitarization of that city, was rejected by 2 votes in favour, 1 against, and 8 abstentions.<sup>406</sup>

A Chinese amendment, which was subsequently revised by the representative of the United States and accepted by the representative of China,<sup>407</sup> to add a paragraph reiterating the appeal to the parties to continue conversations with the Mediator "in a spirit of conciliation and mutual concession", was adopted by 9 votes to none, with 2 abstentions.<sup>408</sup>

Two additional paragraphs suggested by the Secretary-General and dealing with administrative and financial arrangements were adopted by 8 votes in favour, none against, with 3 abstentions.

The amended United States draft resolution as a whole was adopted by 7 votes in favour, 1 against, with 3 abstentions.<sup>409</sup> The resolution<sup>410</sup> read as follows:

*"The Security Council,*

*"Taking into consideration that the Provisional Government of Israel has indicated its acceptance in principle of a prolongation of the truce in Palestine; that the States members of the Arab League have rejected successive appeals of the United Nations Mediator, and of the Security Council in its resolution of 7 July 1948, for the prolongation of the truce in Palestine; and that there has consequently developed a renewal of hostilities in Palestine; [8 votes to 1, with 2 abstentions],*

*"Determines that the situation in Palestine constitutes a threat to the peace within the meaning of Article 39 of the Charter; [8 votes to 1, with 2 abstentions],*

*"Orders the Governments and authorities concerned, pursuant to Article 40 of the Charter of the United Nations, to desist from further military action and to this end to issue cease-fire orders to their military and para-military forces, to take effect at a time to be determined by the Mediator, but in any event not later than three days from the date of the adoption of this resolution; [9 votes to 1, with 1 abstention],*

*"Declares that failure by any of the Governments or authorities concerned to comply with the preceding paragraph of this resolution would demonstrate the existence of a breach of the peace within the meaning of Article 39 of the Charter requiring immediate consideration by the Security Council with a view to such further action under Chapter VII of the Charter as may be decided upon by the Council; [8 votes to 1, with 2 abstentions],*

*"Calls upon all Governments and authorities concerned to continue to co-operate with the Mediator with a view to the maintenance of peace in Palestine in conformity with the resolution adopted by the*

*Security Council on 29 May 1948; [9 votes to none, with 2 abstentions],<sup>411</sup>*

*"Orders as a matter of special and urgent necessity an immediate and unconditional cease-fire in the City of Jerusalem to take effect 24 hours from the time of the adoption of this resolution, and instructs the Truce Commission to take any necessary steps to make this cease-fire effective; [11 votes to none, with no abstentions],*

*"Instructs the Mediator to continue his efforts to bring about the demilitarization of the City of Jerusalem, without prejudice to the future political status of Jerusalem, and to assure the protection of and access to the Holy Places, religious buildings and sites in Palestine; [8 votes to none, with 3 abstentions],*

*"Instructs the Mediator to supervise the observance of the truce and to establish procedures for examining alleged breaches of the truce since 11 June 1948, authorizes him to deal with breaches so far as it is within his capacity to do so by appropriate local action, and requests him to keep the Security Council currently informed concerning the operation of the truce and when necessary to take appropriate action; [9 votes to none, with 2 abstentions],*

*"Decides that, subject to further decision by the Security Council or the General Assembly, the truce shall remain in force, in accordance with the present resolution and with that of 29 May 1948, until a peaceful adjustment of the future situation of Palestine is reached; [8 votes to 1, with 2 abstentions],*

*"Reiterates the appeal to the parties contained in the last paragraph of its resolution of 22 May and urges upon the parties that they continue conversations with the Mediator in a spirit of conciliation and mutual concession in order that all points under dispute may be settled peacefully; [9 votes to none, with 2 abstentions],*

*"Requests the Secretary-General to provide the Mediator with the necessary staff and facilities to assist in carrying out the functions assigned to him under the resolution of the General Assembly of 14 May, and under this resolution;<sup>412</sup> and*

*"Requests that the Secretary-General make appropriate arrangements to provide necessary funds to meet the obligations arising from this resolution." [8 votes to none, with 3 abstentions].*

*Decision of 27 July 1948 (340th meeting): Rejection of draft resolution submitted by the representative of Syria*

At the 339th and 340th meetings on 27 July 1948, the Council considered a draft resolution<sup>413</sup> submitted by the representative of Syria to request the International Court of Justice, "pursuant to Article 96, to give an advisory legal opinion as to the international

<sup>406</sup> S/896, 338th meeting: pp. 52-53.

<sup>407</sup> S/897, 338th meeting: p. 60.

<sup>408</sup> 338th meeting: p. 63.

<sup>409</sup> 338th meeting: p. 65.

<sup>410</sup> S/902, O.R., 3rd year, Suppl. for July 1948, pp. 76-77.

<sup>411</sup> The phrase in the draft resolution "pursuant to Article 40 of the Charter" after "Governments and authorities concerned" was rejected by 6 votes in favour, 1 against and 4 abstentions (338th meeting: p. 50).

<sup>412</sup> For discussion on the authority of the Secretary-General, see chapter XI, Case 19.

<sup>413</sup> S/894, 334th meeting: pp. 52-53.

status of Palestine after the termination of the Mandate". The representative of Syria accepted a Colombian amendment<sup>414</sup> to specify that the request to the International Court "will not delay or impair the normal process of mediation".

At the 340th meeting on 27 July, the Syrian draft resolution, as amended, was rejected by 6 votes in favour and 1 against, with 4 abstentions.<sup>415</sup>

*Decision of 2 August 1948 (343rd meeting): Request for information regarding Jewish displaced persons and Arab refugees*

At the 343rd meeting on 2 August 1948, the representative of the United Kingdom raised the question of Jewish displaced persons in Europe and Arab refugees in Palestine and adjacent countries and stated that these two aspects of the Palestine problem directly affected the chances of finding an equitable solution for it.<sup>416</sup> At the same meeting, the Council decided, without objection, on the proposal of the President (USSR) to request information from the Mediator and from the Governments concerned regarding the questions raised in the course of the discussion, namely (a) the Jewish displaced persons in Europe, (b) the Arab refugees, (c) possible assistance to both those groups, and (d) the Jews detained in Cyprus.<sup>417</sup>

*Decision of 13 August 1948 (349th meeting): Request to the Mediator to make all efforts to ensure water supply for Jerusalem*

At the 349th meeting on 13 August 1948, following the receipt of a cablegram from the Mediator concerning the destruction of the pumping station at Latrun,<sup>418</sup> the President (USSR) proposed that the Council authorize him to send a telegram to the Mediator requesting him to take steps to ensure water supply to the population of Jerusalem.<sup>419</sup>

At the same meeting, the President's proposal was adopted by 8 votes in favour, 1 against, with 2 abstentions.<sup>420</sup>

*Decisions of 19 August 1948 (354th meeting):*

- (i) *Indicating obligations of Governments and authorities concerned under the resolution of 15 July 1948*
- (ii) *Transmitting to the Economic and Social Council and the International Refugee Organization the record of the Council's discussion on the problem of Palestinian Arab refugees and Jewish displaced persons*

By cablegram dated 18 August 1948,<sup>421</sup> the Mediator informed the Security Council that further de-

terioration of the situation in Jerusalem might lead to a general resumption of hostilities and requested the Council to take prompt action with a view to giving effect to its resolution of 15 July.

At the 354th meeting on 19 August 1948, the representatives of Canada, France, the United Kingdom and the United States submitted a joint draft resolution,<sup>422</sup> incorporating suggestions of the Mediator, to indicate the responsibilities of the parties with regard to truce violations, reprisals and retaliations, and to provide that no party was entitled to gain advantage through violation of the truce.

At the same meeting, the joint draft resolution was adopted in a paragraph by paragraph vote.<sup>423</sup> The resolution<sup>424</sup> read as follows:

"The Security Council,

"Taking into account communications from the Mediator concerning the situation in Jerusalem,

"Directs the attention of the governments and authorities concerned to the resolution of the Security Council of 15 July 1948, and

"Decides pursuant to its resolution of 15 July 1948, and so informs the governments and authorities concerned, that:

"(a) Each party is responsible for the actions of both regular and irregular forces operating under its authority or in territory under its control;

"(b) Each party has the obligation to use all means at its disposal to prevent action violating the Truce by individuals or groups who are subject to its authority or who are in territory under its control;

"(c) Each party has the obligation to bring to speedy trial and in case of conviction to punishment, any and all persons within their jurisdiction who are involved in a breach of the Truce;<sup>425</sup>

"(d) No party is permitted to violate the Truce on the ground that it is undertaking reprisals or retaliations against the other party;

"(e) No party is entitled to gain military or political advantage through violation of the Truce."

At the same meeting, the Council also decided, without objection, on the proposal of the representative of the United Kingdom, to transmit the record of its discussion on the question of Palestinian Arab refugees and Jewish displaced persons to the Economic and Social Council and the International Refugee Organization.<sup>426</sup>

*Decisions of 18 September 1948 (358th meeting):*

- (i) *Approval of designation of Dr. Ralph Bunche as Acting Mediator*
- (ii) *Request for a report from the Chief of Staff of the Mediator on the assassination of the Mediator*
- (iii) *Tribute to the Mediator*

By cablegram dated 17 September 1948, Dr. Ralph Bunche, Personal Representative of the Secretary-

<sup>414</sup> S/921, 339th meeting: p. 11.

<sup>415</sup> 340th meeting: pp. 33-34. For discussion preceding this resolution, see chapter XI, Case 11; and chapter VI, Case 29.

<sup>416</sup> 343rd meeting: pp. 4-7.

<sup>417</sup> 343rd meeting: pp. 21-22. For replies see S/948, from the United Nations Mediator; S/957, from the Arab Higher Committee; S/946, S/949 and S/965, from the Provisional Government of Israel; and S/962, from the representative of the United Kingdom (O.R., 3rd year, Suppl. for August 1948, pp. 100-109, 148-151 and 155-159).

<sup>418</sup> S/963, O.R., 3rd year, Suppl. for Aug. 1948, pp. 155-156.

<sup>419</sup> S/970, 349th meeting: p. 45.

<sup>420</sup> 349th meeting: p. 46.

<sup>421</sup> S/977, 354th meeting: pp. 40-41.

<sup>422</sup> S/981.

<sup>423</sup> 354th meeting: pp. 50-51.

<sup>424</sup> S/983.

<sup>425</sup> For the question of domestic jurisdiction in connexion with this paragraph, see chapter XII, Case 15.

<sup>426</sup> 354th meeting: pp. 55-56.

General to the United Nations Mediator, informed the Secretary-General that the Mediator, Count Folke Bernadotte, and Colonel Andre P. Serot, United Nations Observer, had been assassinated on that date by "Jewish assailants" in the new City of Jerusalem.<sup>427</sup>

At the 358th meeting on 18 September, the Security Council approved without vote, two cablegrams<sup>428</sup> which the Acting Secretary-General had sent on the previous day with the approval of the President of the Council empowering Dr. Ralph Bunche to assume full authority over the Palestine Mission until further notice and requesting the Chief of Staff of the Mediator to make the fullest investigation of the circumstances of the assassination.<sup>429</sup>

At the same meeting, the Council unanimously adopted a draft resolution submitted by the representative of Argentina.<sup>430</sup> The resolution read as follows:

*"The Security Council,*

"Deeply shocked by the tragic death of the United Nations Mediator in Palestine, Count Folke Bernadotte, as the result of a cowardly act which appears to have been committed by a criminal group of terrorists in Jerusalem while the United Nations Representative was fulfilling his peace-seeking mission in the Holy Land,

*"Resolves*

"(1) To request the Secretary-General to keep the flag of the United Nations at half-mast for a period of three days;

"(2) To authorize the Secretary-General to meet from the Working Capital Fund all expenses connected with the death and burial of the United Nations Mediator;

"(3) To be represented at the interment by the President or the person whom he may appoint for the occasion."

The Council was accordingly represented at the funeral of the Mediator by its President.<sup>431</sup>

*Decisions of 19 October 1948 (367th meeting):*

- (i) *Endorsement of the conclusions of the Acting Mediator's report on the situation in the Negeb as amended*
- (ii) *Relating to the investigation of the assassination of the Mediator, and the observance of the resolutions of 15 July and 19 August 1948*

By cablegram dated 27 September 1948,<sup>432</sup> the Acting Mediator submitted to the Council, in response to its request of 18 September to the Chief of Staff, a further report on the deaths of Count Bernadotte and Colonel Serot.

By cablegram dated 30 September 1948,<sup>433</sup> the Acting Mediator drew the attention of the Council to the "increasingly serious situation in Palestine as regards the authority, prestige and even the safety of

the personnel engaged in the truce supervision work", and suggested that the Council might indicate to the parties that all the obligations set forth in the resolutions of 15 July and 19 August were to be fully discharged.

By cablegram dated 30 September 1948,<sup>434</sup> the Chairman of the Truce Commission in Palestine informed the Council that a deliberate Jewish campaign led by the Military Governor of the part of Jerusalem under Jewish control was endeavouring to discredit the Truce Commission and the Acting Mediator.

The Council began consideration of these documents at the 365th meeting on 14 October 1948. At the same meeting, the representatives of China and the United Kingdom submitted a draft resolution<sup>435</sup> relating to the investigation of the assassinations of the Mediator and Colonel Andre P. Serot, and to the fulfilment of the resolutions of 15 July and 19 August 1948.

At the 367th meeting on 19 October 1948, the Council also considered two complaints by Egypt alleging violations of the truce by Jewish forces;<sup>436</sup> a complaint by the Provisional Government of Israel alleging breach of the truce by Egyptian forces;<sup>437</sup> and a report dated 18 October by the Acting Mediator concerning the Negeb situation.<sup>438</sup> The Acting Mediator drew the attention of the Council to the serious fighting which had been taking place in the Negeb and presented his conclusions on the situation.

The Acting Mediator's conclusions were amended and sponsored by the representative of Syria and adopted by the Security Council by a vote on parts. The first part of the conclusions calling for an immediate and effective cease-fire in the Negeb was adopted unanimously. The remainder of the conclusions regarding negotiations after the cease-fire were adopted by 9 votes in favour, with 2 abstentions.<sup>439</sup> The resolution<sup>440</sup> read as follows:

*"The present situation in the Negeb is complicated by the fluid nature of military dispositions making the demarcation of truce lines difficult, the problem of the convoys to the Jewish settlements, as well as the problems of the dislocation of large numbers of Arabs and their inability to harvest their crops. In the circumstances, the indispensable condition to a restoration of the situation is an immediate and effective cease-fire. After the cease-fire, the following conditions might well be considered as the basis for further negotiations looking toward insurance that similar outbreaks will not again occur and that the truce will be fully observed in this area:*

*"(a) Withdrawal of both parties from any positions not occupied at the time of the outbreak;*

<sup>427</sup> S/1002, O.R., 3rd year, Suppl. for Oct. 1948, pp. 48-50.

<sup>428</sup> S/1032, 365th meeting: pp. 28-29.

<sup>429</sup> S/1038 and S/1041, O.R., 3rd year, Suppl. for Oct. 1948, pp. 54 and 54-55.

<sup>430</sup> S/1043, *Ibid.*, pp. 63-67.

<sup>431</sup> S/1042, *Ibid.*, pp. 55-63.

<sup>432</sup> 367th meeting: p. 38.

<sup>433</sup> S/1044.

<sup>434</sup> S/1002.

<sup>435</sup> S/1003, 358th meeting: p. 2.

<sup>436</sup> 358th meeting: pp. 2-3.

<sup>437</sup> S/1006, 358th meeting: p. 10.

<sup>438</sup> 360th meeting: pp. 1-2.

<sup>439</sup> S/1018, O.R., 3rd year, Suppl. for Oct. 1948, pp. 4-9.

<sup>440</sup> S/1022, O.R., 3rd year, Suppl. for Oct. 1948, pp. 46-48.



"(b) Acceptance by both parties of the conditions set forth in the Central Truce Supervision Board decision number twelve affecting convoys;

"(c) Agreement by both parties to undertake negotiation through United Nations intermediaries or directly as regards outstanding problems in the Negev and the permanent stationing of United Nations Observers throughout the area."

At the same meeting, the representatives of China and the United Kingdom accepted a USSR amendment to the joint draft resolution submitted by them at the 365th meeting. The amendment was to remind the Mediator of the desirability of an equitable distribution of United Nations observers on the territories of both parties.<sup>441</sup>

The joint draft resolution, as amended, was then adopted unanimously.<sup>442</sup> The resolution<sup>443</sup> read as follows:

*"The Security Council,*

*Having in mind the report of the Acting Mediator concerning the assassinations on 17 September of the United Nations Mediator Count Folke Bernadotte and United Nations Observer Colonel André Sérot (document S/1018), the report of the Acting Mediator concerning difficulties encountered in the supervision of the truce (document S/1022); and the report of the Truce Commission for Palestine concerning the situation in Jerusalem (document S/1023).*

*"Notes with concern that the Provisional Government of Israel has to date submitted no report to the Security Council or to the Acting Mediator regarding the progress of the investigation into the assassinations;*

*"Requests that Government to submit to the Security Council at an early date an account of the progress made in the investigation and to indicate therein the measures taken with regard to negligence on the part of officials or other factors affecting the crime;*

*"Reminds the Governments and authorities concerned that all the obligations and responsibilities of the parties set forth in its resolutions of 15 July and 19 August 1948 are to be discharged fully and in good faith;*

*"Reminds the Mediator of the desirability of an equitable distribution of the United Nations observers for the purpose of observing the truce on the territories of both parties;*

*"Determines, pursuant to its resolutions of 15 July and 19 August 1948, that the Governments and authorities have the duty:*

*"(a) To allow duly accredited United Nations observers and other Truce Supervision personnel bearing proper credentials, on official notification, ready access to all places where their duties require them to go including airfields, ports, truce lines and strategic points and areas;*

*"(b) To facilitate the freedom of movement of Truce Supervision personnel and transport by sim-*

*plifying procedures on United Nations aircraft now in effect, and by assurances of safe-conduct for all United Nations aircraft and other means of transport;*

*"(c) To co-operate fully with the Truce Supervision personnel in their conduct of investigations into incidents involving alleged breaches of the truce, including the making available of witnesses, testimony and other evidence on request;*

*"(d) To implement fully by appropriate and prompt instructions to the commanders in the field all agreements entered into through the good offices of the Mediator or his representatives;*

*"(e) To take all reasonable measures to ensure the safety and safe-conduct of the Truce Supervision personnel and the representatives of the Mediator, their aircraft and vehicles, while in territory under their control;*

*"(f) To make every effort to apprehend and promptly punish any and all persons within their jurisdictions guilty of any assault upon or other aggressive act against the Truce Supervision personnel or the representatives of the Mediator."*

*Decisions of 4 November 1948 (377th meeting):*

*(i) Calling for the withdrawal of forces to positions held on 14 October 1948 and for the establishment of permanent truce lines and demilitarized zones and appointing a Committee of the Council to advise the Acting Mediator*

*(ii) Rejection of draft resolution submitted by the representative of the Ukrainian SSR*

The Acting Mediator reported to the Council on 23 October 1948 that, in response to the resolution of 19 October, the Egyptian Government and the Provisional Government of Israel had informed him that cease-fire orders had been issued to their forces.<sup>444</sup>

By letter dated 23 October 1948,<sup>445</sup> Egypt requested an urgent meeting of the Council to consider alleged constant and increasing violations of the truce by "the Zionist forces in Palestine".

At the 373rd meeting on 26 October 1948, the Council received from the Acting Mediator a letter transmitting communications from the Government of Egypt and the Provisional Government of Israel concerning convoys to the Negev settlements<sup>446</sup> and a report on the observance of the truce in the Negev and in the Lebanese sector.<sup>447</sup>

At the same meeting, the Acting Mediator informed the Council<sup>448</sup> that, on 25 October 1948, his Chief of Staff had requested the Government of Egypt and the Provisional Government of Israel that the forces of both sides be withdrawn to the truce lines as they existed in the Negev sector on 14 October.

At the 374th meeting on 28 October 1948, the Council had before it the reply of the Provisional Government of Israel to the Acting Mediator stating that the Council, in its resolution of 19 October, had

<sup>441</sup> S/1049.

<sup>442</sup> S/1052, 373rd meeting: p. 2.

<sup>443</sup> S/1053, 373rd meeting: pp. 2-3.

<sup>444</sup> S/1055, 373rd meeting: p. 3-7.

<sup>445</sup> 373rd meeting: pp. 23-24.

<sup>446</sup> 367th meeting: p. 39.

<sup>447</sup> 367th meeting: p. 40.

<sup>448</sup> S/1045, O.R., 3rd year, Suppl. for Oct. 1948, pp. 67-68.



defined the withdrawal of both parties as a possible subject for further negotiations and not as an absolute injunction.<sup>449</sup> It had also before it a communication from Egypt agreeing to the contents of the message of 25 October.<sup>450</sup>

At the same meeting, the representatives of China and the United Kingdom submitted a joint draft resolution,<sup>451</sup> of which a revision was submitted at the 375th meeting on 29 October 1948.<sup>452</sup> On the proposal of the representative of Canada, the Council appointed a sub-committee to consider amendments and revisions which had been or might be submitted and in consultation with the Acting Mediator to prepare a revised draft resolution.<sup>453</sup>

At the 376th meeting on 4 November 1948, the Council received the report of the Sub-Committee<sup>454</sup> which included a new text of the draft resolution as approved by a majority with reservations specified in the report.

At the same meeting, the representative of the United States submitted amendments to the Sub-Committee's text<sup>455</sup> and the representative of the Ukrainian SSR submitted a draft resolution<sup>456</sup> calling upon the two parties to begin negotiations on the basis of the resolution of 19 October with a view to the peaceful settlement of unresolved questions.

At the 377th meeting on 4 November 1948, the Council adopted the draft resolution submitted by the Sub-Committee and the United States amendment by a paragraph by paragraph vote and by a vote on the amended draft resolution as a whole. The amended draft resolution as a whole was adopted by 9 votes in favour, 1 against, with 1 abstention.<sup>457</sup> The resolution<sup>458</sup> read as follows:

*"The Security Council,*

*"Having decided on 15 July that, subject to further decision by the Security Council or the General Assembly, the truce shall remain in force in accordance with the resolution of that date and with that of 29 May 1948 until a peaceful adjustment of the future situation of Palestine is reached;*

*"Having decided on 19 August that no party is permitted to violate the truce on the ground that it is undertaking reprisals or retaliations against the other party, and that no party is entitled to gain military or political advantage through violation of the truce; and*

*"Having decided on 29 May that, if the truce was subsequently repudiated or violated by either party or by both, the situation in Palestine could be reconsidered with a view to action under Chapter VII of the Charter;<sup>459</sup>*

*"Takes note of the request communicated to the Government of Egypt and the Provisional Government of Israel by the Acting Mediator on 26 October (S/1058) following upon the resolution adopted by the Security Council on 19 October 1948; and*

*"Calls upon the interested Governments, without prejudice to their rights, claims or position with regard to a peaceful adjustment of the future situation of Palestine or to the position which the Members of the United Nations may wish to take in the General Assembly on such peaceful adjustment:*

*"(1) To withdraw those of their forces which have advanced beyond the positions held on 14 October, the Acting Mediator being authorized to establish provisional lines beyond which no movement of troops shall take place;*

*"(2) To establish, through negotiations conducted directly between the parties, or failing that, through the intermediaries in the service of the United Nations, permanent truce lines and such neutral or demilitarized zones as may appear advantageous, in order to ensure henceforth the full observance of the truce in that area. Failing an agreement, the permanent lines and neutral zones shall be established by decision of the Acting Mediator; and*

*"Appoints a Committee of the Council, consisting of the five permanent members together with Belgium and Colombia, to give such advice as the Acting Mediator may require with regard to his responsibilities under this resolution and, in the event that either party or both should fail to comply with sub-paragraphs (1) and (2) of the preceding paragraph of this resolution within whatever time-limits the Acting Mediator may think it desirable to fix, to study as a matter of urgency and to report to the Council on further measures it would be appropriate to take under Chapter VII of the Charter."*

At the same meeting, the Ukrainian draft resolution was voted upon in parts and rejected by 2 votes in favour and 1 against, with 8 abstentions.<sup>460</sup>

*Decisions of 16 November 1948 (381st meeting):*

- (i) Calling for the establishment of an armistice<sup>461</sup>*
- (ii) Rejection of draft resolution submitted by the representative of the USSR*

At the 377th meeting on 4 November 1948, the representative of Lebanon\* raised the question whether the resolution adopted at that meeting applied to incidents in Galilee as well as to those in the Negeb. Following discussion, the representative of the United Kingdom proposed a draft resolution<sup>462</sup> to extend the scope of the resolution to the situation in northern Palestine.

At the 378th meeting, held in private on 9 November, the Acting Mediator\* submitted suggestions in the form of a draft resolution,<sup>463</sup> to which amendments<sup>464</sup> were submitted by the representative of the USSR at

<sup>449</sup> S/1057, O.R., 3rd year, Suppl. for Oct. 1948, p. 69.

<sup>450</sup> 374th meeting: p. 4.

<sup>451</sup> S/1059, 374th meeting: pp. 12-13.

<sup>452</sup> S/1059/Rev.2, O.R., 3rd year, Suppl. for Oct. 1948, p. 72.

<sup>453</sup> 375th meeting: p. 22.

<sup>454</sup> S/1064, O.R., 3rd year, Suppl. for Nov. 1948, pp. 1-6.

<sup>455</sup> S/1067.

<sup>456</sup> S/1065, 376th meeting: p. 6.

<sup>457</sup> 377th meeting: pp. 38-43.

<sup>458</sup> S/1070, O.R., 3rd year, Suppl. for Nov. 1948, p. 7.

<sup>459</sup> For discussion in connexion with this paragraph, see chapter XI, Case 17.

<sup>460</sup> 377th meeting: pp. 45-46.

<sup>461</sup> See chapter XI, Case 12, for observations on the conclusion of the armistice agreements in relation to the provisions of the Charter.

<sup>462</sup> S/1069, 377th meeting: p. 53.

<sup>463</sup> S/1076, 378th meeting: pp. 62-63.

<sup>464</sup> S/1077, 379th meeting: p. 64.

the 379th meeting, also held in private, on 10 November. As amended, this draft resolution would call upon the parties directly involved in the conflict in Palestine to undertake immediate negotiations directly or through the good offices of the Acting Mediator concerning the settlement of all outstanding problems of the truce and the establishment of a formal peace.

At the 380th meeting on 15 November, the representatives of Belgium, Canada and France submitted a joint draft resolution<sup>465</sup> on the establishment of an armistice in Palestine.

At the 381st meeting on 16 November, the representative of the United Kingdom withdrew his draft resolution and the representative of Syria proposed an amendment<sup>466</sup> to the joint draft resolution to provide that the resolution of 4 November should be applied to the Galilee area.

At the same meeting, the draft resolution submitted by the Acting Mediator, as revised by the representative of the USSR, was voted upon in parts and rejected by 2 votes in favour and 9 abstentions.<sup>467</sup>

At the same meeting, the Syrian amendment to the joint draft resolution was rejected by 3 votes in favour and 8 abstentions.<sup>468</sup>

At the same meeting, the joint draft resolution was voted on in parts and adopted. There were 8 votes in favour and 3 abstentions on the first three paragraphs and 8 votes in favour, 1 against and 2 abstentions on the fourth and fifth paragraphs.<sup>469</sup> The resolution<sup>470</sup> read as follows:

*"The Security Council,*

*"Reaffirming its previous resolutions concerning the establishment and implementation of the truce in Palestine, and recalling particularly its resolution of 15 July 1948 which determined that the situation in Palestine constitutes a threat to the peace within the meaning of Article 39 of the Charter;*

*"Taking note that the General Assembly is continuing its consideration of the future government of Palestine in response to the request of the Security Council of 1 April 1948 (S/714);*

*"Without prejudice to the actions of the Acting Mediator regarding the implementation of the resolution of the Security Council of 4 November 1948,*

*"Decides that, in order to eliminate the threat to the peace in Palestine and to facilitate the transition from the present truce to permanent peace in Palestine, an armistice shall be established in all sectors of Palestine;*

*"Calls upon the parties directly involved in the conflict in Palestine, as a further provisional measure under Article 40 of the Charter, to seek agreement forthwith, by negotiations conducted either directly or through the Acting Mediator on Palestine, with a view to the immediate establishment of the armistice including:*

*"(a) The delineation of permanent armistice demarcation lines beyond which the armed forces of the respective parties shall not move;*

*"(b) Such withdrawal and reduction of their armed forces as will ensure the maintenance of the armistice during the transition to permanent peace in Palestine."*

*Decision of 29 December 1948 (396th meeting): Calling for an immediate cease-fire and implementation of the resolution of 4 November 1948*

By cablegram dated 23 December 1948<sup>471</sup> and letter dated 24 December 1948,<sup>472</sup> Egypt informed the Council that Jewish forces had launched a new large-scale attack and requested an urgent meeting to examine the situation resulting from alleged repeated violations by Jewish forces of the cease-fire orders of the Council.

By cablegrams dated 25 December and 27 December 1948,<sup>473</sup> the Acting Mediator transmitted reports concerning the fighting in the Negev. He stated that he was unable to supervise effectively the truce in the Negev, since United Nations observers were being refused access to the area on the Israeli side; and that the intransigent attitude assumed by Israeli authorities on the situation at Al Faluja was a major factor in preventing progress toward implementation of the Council resolution of 16 November.

The Council considered these communications at the 394th, 395th and 396th meetings on 28 and 29 December 1948.

At the 394th meeting, the representative of the United Kingdom submitted a draft resolution<sup>474</sup> which was revised at the 396th meeting on the suggestions of the representatives of France and China.<sup>475</sup>

At the same meeting, the draft resolution as revised was voted upon in parts, and adopted as a whole by 8 votes in favour and 3 abstentions.<sup>476</sup> The resolution<sup>477</sup> read as follows:

*"The Security Council,*

*"Having considered the report of the Acting Mediator (document S/1152) on the hostilities which broke out in Southern Palestine on 22 December,*

*"Calls upon the Governments concerned:*

*"(i) to order an immediate cease-fire;*

*"(ii) to implement without further delay the resolution of 4 November and the instructions issued by the Acting Mediator in accordance with paragraph 5(1) of that resolution; and*

*"(iii) to allow and facilitate the complete supervision of the truce by the United Nations observers;*

*"Instructs the Committee of the Council appointed on 4 November to meet at Lake Success on 7 January to consider the situation in Southern Palestine and to report to the Council on the extent to which the*

<sup>471</sup> S/1147.

<sup>472</sup> S/1151, O.R., 3rd year, Suppl. for Dec. 1948, pp. 299-300.

<sup>473</sup> S/1152 and S/1153, O.R., 3rd year, Suppl. for Dec. 1948, pp. 300-305.

<sup>474</sup> S/1163, 394th meeting: pp. 13-14.

<sup>475</sup> S/1169, 396th meeting: pp. 23-26.

<sup>476</sup> 396th meeting: pp. 23-26.

<sup>477</sup> S/1169.

<sup>465</sup> S/1079, 380th meeting: pp. 4-5.

<sup>466</sup> 381st meeting: p. 54.

<sup>467</sup> 381st meeting: pp. 51-53.

<sup>468</sup> 381st meeting: p. 55.

<sup>469</sup> 381st meeting: pp. 53-55.

<sup>470</sup> S/1080, O.R., 3rd year, Suppl. for Nov. 1948, pp. 13-14.

Governments concerned have by that date complied with the present resolution and with the resolutions of 4 and 16 November;

"Invites Cuba and Norway to replace as from 1 January the two retiring members of the Committee (Belgium and Colombia); and

"Expresses the hope that the members of the Conciliation Commission appointed by the General Assembly on 11 December will nominate their representatives and establish the Commission with as little delay as possible."

*Decisions of 11 August 1949 (137th meeting):*

- (i) *Tributes to the Mediator, Acting Mediator and their staffs*
- (ii) *Reaffirming the cease-fire order, relieving the Acting Mediator of further responsibility under Council resolutions, and calling on the parties to insure observance of the armistice agreements*

By letter dated 21 July 1949,<sup>478</sup> the Acting Mediator submitted a report on the status of the armistice negotiations and the truce in Palestine. He stated that as a result of armistice agreements between Israel and the neighbouring states an armistice applied at that time to all of the fighting fronts in Palestine. The Council's resolution of 16 November 1948 had thus been fulfilled by the parties to the Palestine dispute. He annexed to his report suggestions in the form of a draft resolution.

The report was considered by the Council at the 433rd to 435th and 437th meetings between 4 and 11 August 1949.

At the 433rd meeting on 4 August, the representatives of Canada and Norway submitted a joint draft resolution<sup>479</sup> to pay tribute to the United Nations Mediator on Palestine.

At the 434th meeting on 4 August, the representative of Canada submitted a draft resolution sponsoring the Acting Mediator's suggestions, and incorporating certain amendments.<sup>480</sup> The representative of France submitted amendments to the Canadian draft resolution.<sup>481</sup> At the 435th meeting on 8 August, three texts were replaced by a joint Canadian-French draft resolution.<sup>482</sup>

At the 437th meeting on 11 August, the representative of the USSR submitted amendments<sup>483</sup> to the joint Canadian-French draft resolution to delete references to the Conciliation Commission for Palestine, to recall the United Nations observers from Palestine, and to disband the staff of the United Nations Truce Supervision Organization.

At the same meeting, the joint draft resolution submitted by Canada and Norway at the 433rd meeting was adopted without objection.<sup>484</sup> The resolution<sup>485</sup> read as follows:

*"The Security Council,*

*"Having taken note of the report of the Acting United Nations Mediator on Palestine, submitted upon the completion of his responsibilities,*

*"Desires to pay special tribute to the qualities of patience, perseverance and devotion to the ideal of international peace of the late Count Folke Bernadotte, who stabilized the situation in Palestine and who, together with ten members of his staff, gave his life in the service of the United Nations, and*

*"Desires to express its deep appreciation of the qualities of tact, understanding, perseverance and devotion to duty of Dr. Ralph J. Bunche, Acting United Nations Mediator on Palestine, who has brought to a successful conclusion the negotiation of armistice agreements between Egypt, Jordan, Lebanon and Syria on the one hand, and Israel on the other, and,*

*"Desires also to associate in this expression of appreciation the members of the staff of the United Nations Mission in Palestine, including both the members of the United Nations Secretariat and the Belgian, French, Swedish and United States Officers who served on the staff and as military observers in Palestine."*

At the same meeting, the USSR amendments to the joint Canadian-French draft resolution were rejected. The first two amendments received 2 votes in favour and 2 against, with 7 abstentions. The third amendment received 2 votes in favour and 6 against, with 3 abstentions.<sup>486</sup>

At the same meeting, the joint Canadian-French draft resolution was adopted by 9 votes in favour, none against, with 2 abstentions.<sup>487</sup> The resolution<sup>488</sup> read as follows:

*"The Security Council,*

*"Having noted with satisfaction the several armistice agreements concluded by means of negotiations between the parties involved in the conflict in Palestine in pursuance of its resolution of 16 November 1948 (S/1080);*

*"Expresses the hope that the Governments and authorities concerned, having undertaken by means of the negotiations now being conducted by the Palestine Conciliation Commission, to fulfil the request of the General Assembly in its resolution of 11 December 1948 to extend the scope of the armistice negotiations and to seek agreement by negotiations conducted either with the Conciliation Commission or directly, will at an early date achieve agreement on the final settlement of all questions outstanding between them;*

*"Finds that the armistice agreements constitute an important step toward the establishment of permanent peace in Palestine and considers that these agreements supersede the truce provided for in the resolutions of the Security Council of 29 May and 15 July 1948;*

<sup>478</sup> S/1357, O.R., 4th year, Suppl. for Aug. 1949, pp. 1-7.

<sup>479</sup> S/1362, O.R., 4th year, Suppl. for Aug. 1949, pp. 8-9.

<sup>480</sup> S/1363, 434th meeting: p. 28.

<sup>481</sup> S/1364, 434th meeting: pp. 35-36.

<sup>482</sup> S/1367, 435th meeting: pp. 2-3.

<sup>483</sup> S/1373, O.R., 4th year, Suppl. for Aug. 1949, p. 9.

<sup>484</sup> 437th meeting: p. 12.

<sup>485</sup> S/1376-I.

<sup>486</sup> 437th meeting: pp. 12-13.

<sup>487</sup> 437th meeting: p. 13.

<sup>488</sup> S/1376-II. For discussion in connexion with this resolution, see chapter XI, Case 12.

"Reaffirms, pending the final peace settlement, the order contained in its resolution of 15 July 1948 to the Governments and authorities concerned, pursuant to Article 40 of the Charter of the United Nations, to observe an unconditional cease-fire and, bearing in mind that the several armistice agreements include firm pledges against any further acts of hostility between the parties and also provide for their supervision by the parties themselves, relies upon the parties to ensure the continued application and observance of these agreements;

"Decides that all functions assigned to the United Nations Mediator on Palestine having been discharged, the Acting Mediator is relieved of any further responsibility under Security Council resolutions;

"Notes that the armistice agreements provide that the execution of those agreements shall be supervised by mixed armistice commissions whose Chairman in each case shall be the United Nations Chief of Staff of the Truce Supervision Organization or a senior officer from the observer personnel of that organization designated by him following consultation with the parties to the agreements;

"Requests the Secretary-General to arrange for the continued service of such of the personnel of the present Truce Supervision Organization as may be required in observing and maintaining the cease-fire, and as may be necessary in assisting the parties to the armistice agreements in the supervision of the application and observance of the terms of those agreements, with particular regard to the desires of the parties as expressed in the relevant articles of the agreements;

"Requests the Chief of Staff mentioned above to report to the Security Council on the observance of the cease-fire in Palestine in accordance with the terms of this resolution; and to keep the Palestine Conciliation Commission informed of matters affecting the Commission's work under the General Assembly resolution of 11 December 1948."

*Decision of 25 October 1949 (453rd meeting): Adjournment of further discussion on the question of the demilitarization of the Jerusalem area*

At the request of the representative of Egypt, the Security Council, at the 450th meeting on 11 October 1949, included on the agenda the question of the "demilitarization of the Jerusalem area, with special reference to General Assembly resolution 194 (III), dated 11 December 1948".<sup>489</sup>

The question was considered at the 453rd meeting on 25 October. At the same meeting, the Council decided, without objection, on the proposal of the President (United States), to adjourn further discussion of the question indefinitely and to leave the item, pending the discussion in the General Assembly, on the list of matters of which the Security Council was seized.<sup>490</sup>

<sup>489</sup> 450th meeting: pp. 1-2.

<sup>490</sup> 453rd meeting: p. 4.

*Decision of 17 November 1950 (524th meeting): Reference to the Mixed Armistice Commissions of complaints submitted to the Council by the parties*

Complaints regarding alleged violations of armistice agreements were submitted for inclusion in the agenda of the Council by Egypt by letter dated 15 September 1950,<sup>491</sup> by Israel by telegram dated 16 September 1950,<sup>492</sup> and by Jordan by letter dated 21 September 1950.<sup>493</sup>

At the 502nd meeting on 18 September 1950, the Council decided to include the Egyptian complaint in its agenda.<sup>494</sup> At the 503rd meeting on 26 September, it decided, at the suggestion of the President (United Kingdom) to combine the complaints submitted by Egypt and by Israel under the heading "The Palestine question".<sup>495</sup> At the 511th meeting on 16 October, the Council adopted without objection the following item in the agenda:<sup>496</sup>

"The Palestine question:

"(a) Expulsion by Israel of thousands of Palestinian Arabs into Egyptian territory, and violation by Israel of the Egyptian-Israeli General Armistice Agreement (S/1790);

"(b) Violation by Egypt of the Egyptian-Israeli General Armistice Agreement through the maintenance for seventeen months of blockade practices inconsistent with the letter and spirit of the armistice agreement (S/1794);

"(c) Violation by Jordan of the General Armistice Agreement between the Hashemite Kingdom of the Jordan and Israel through non-implementation for nineteen months of article VIII of the armistice agreement (S/1794);

"(d) Violation by Egypt and Jordan of their respective armistice agreements with Israel by officially and publicly threatening aggressive action contrary to article 1, paragraph 2, of the aforesaid agreements (S/1794);

"(e) Non-observance by Egypt and Jordan of the procedures laid down in article X, paragraph 7, and article XI, paragraph 7, of their respective armistice agreements with Israel, stating that claims or complaints presented by either party shall be referred immediately to the Mixed Armistice Commission through its Chairman (S/1794);

"(f) Complaint of aggression perpetrated by Israel on 28 August 1950 and of its occupation of Jordan territory situated near the confluence of the rivers Yarmuk and Jordan (S/1824)."

The Council considered the complaints at the 511th, 514th, 517th, 518th, 522nd and 524th meetings between 16 October and 17 November 1950.

At the 522nd meeting on 13 November, the representatives of France, the United Kingdom and the United States submitted a joint draft resolution<sup>497</sup> to

<sup>491</sup> S/1790, O.R., 5th year, Suppl. for Sept.-Dec. 1950, pp. 23-24.

<sup>492</sup> S/1794, O.R., 5th year, Suppl. for Sept.-Dec. 1950, p. 55.

<sup>493</sup> S/1824, O.R., 5th year, Suppl. for Sept.-Dec. 1950, pp. 63-69.

<sup>494</sup> 502nd meeting: p. 15.

<sup>495</sup> 503rd meeting: p. 10.

<sup>496</sup> 511th meeting: p. 2.

<sup>497</sup> S/1899, 522nd meeting: pp. 15-17.

refer the complaints to the corresponding Mixed Armistice Commissions.

At the 524th meeting on 17 November, the representative of Egypt made several suggestions for amending the draft resolution,<sup>499</sup> and at the same meeting, the sponsors submitted a revised draft resolution.<sup>499</sup>

At the same meeting, the revised joint draft resolution was adopted by 9 votes in favour, with 2 abstentions.<sup>500</sup> The resolution<sup>501</sup> read as follows:

*"The Security Council,*

*"Recalling its resolution of 11 August 1949 wherein it noted with satisfaction the several armistice agreements concluded by means of negotiations between the parties involved in the conflict in Palestine; expressed the hope that the Governments and authorities concerned would at an early date achieve agreement on final settlement of all questions outstanding between them; noted that the various armistice agreements provided that the execution of the agreements would be supervised by Mixed Armistice Commissions whose chairman in each case would be the United Nations Chief of Staff of the Truce Supervision Organization or his designated representative; and, bearing in mind that the several armistice agreements include firm pledges against any further act of hostility between the parties and also provide for their supervision by the parties themselves, relied upon the parties to ensure the continued application and observance of these agreements,*

*"Taking into consideration the views expressed and the data given by the representatives of Egypt, Israel, and the Hashemite Kingdom of Jordan and the Chief of Staff of the Truce Supervision Organization on the complaints submitted to the Council: (S/1790, S/1794, S/1824);*

*"Notes that with regard to the implementation of article VIII of the Israel-Jordan General Armistice Agreement the Special Committee has been formed and has convened and hopes that it will proceed expeditiously to carry out the functions contemplated in paragraphs 2 and 3 of that article;*

*"Calls upon the parties to the present complaints to consent to the handling of complaints according to the procedures established in the armistice agreements for the handling of complaints and the settlement of points at issue;*

*"Requests the Israel-Egyptian Mixed Armistice Commission to give urgent attention to the Egyptian complaint of expulsion of thousands of Palestine Arabs;*

*"Calls upon both parties to give effect to any finding of the Israel-Egyptian Mixed Armistice Commission regarding the repatriation of any such Arabs who in the Commission's opinion are entitled to return;*

*"Authorizes the Chief of Staff of the Truce Supervision Organization with regard to the movement of nomadic Arabs to recommend to Israel, Egypt and to such other Arab States as may be appropriate, such steps as he may consider necessary to control the movement of such nomadic Arabs across international frontiers or armistice lines by mutual agreement;*

*"Calls upon the Government concerned to take in the future no action involving the transfer of persons across international frontiers or armistice lines without prior consultation through the Mixed Armistice Commissions;*

*"Takes note of the statement of the Government of Israel that Israel armed forces will evacuate Bir Qattar pursuant to the 20 March 1950 decision of the Special Committee, provided for in article X, paragraph 4, of the Egyptian-Israel General Armistice Agreement, and that the Israel armed forces will withdraw to positions authorized by the Armistice Agreement;*

*"Reminds Egypt and Israel as Member States of the United Nations of their obligations under the Charter to settle their outstanding differences, and further reminds Egypt, Israel, and the Hashemite Kingdom of Jordan that the armistice agreements to which they are parties contemplate 'the return of permanent peace in Palestine', and, therefore, urges them and the other States in the area to take all such steps as will lead to the settlement of the issues between them;*

*"Requests the Chief of Staff of the Truce Supervision Organization to report to the Security Council at the end of ninety days, or before if he deems necessary, on the compliance given to this resolution and upon the status of the operations of the various Mixed Armistice Commissions, and further requests that he submit periodically to the Security Council reports of all decisions made by the various Mixed Armistice Commissions and the Special Committee provided for in article X, paragraph 4, of the Egyptian-Israel General Armistice Agreement."*

*Decision of 8 May 1951 (515th meeting): Calling for cessation of fighting in and around the demilitarized zone established by the Syrian-Israel General Armistice Agreement<sup>502</sup>*

The representative of Syria, by letters dated 6 April<sup>503</sup> and 9 April 1951,<sup>504</sup> and the representative of Israel, by telegram dated 7 April 1951,<sup>505</sup> requested the Council to include several complaints regarding violations of the Syrian-Israel General Armistice Agreement of 20 July 1949 in the agenda. The second Syrian letter held that the matters brought by it to the notice of the Council fell under Articles 34 and 35 of the Charter.

<sup>499</sup> For the preceding discussion concerning the applicability of Articles 39 and 40, see chapter XI, Case 13.

<sup>500</sup> S/2075, O.R., 6th year, Suppl. for April-June 1951, p. 38.

<sup>501</sup> S/2078, O.R., 6th year, Suppl. for April-June 1951, pp. 39-40.

<sup>502</sup> S/2077, O.R., 6th year, Suppl. for April-June 1951, pp. 38-39.

<sup>499</sup> 524th meeting: pp. 6-7.

<sup>499</sup> 524th meeting: pp. 9-10.

<sup>500</sup> 524th meeting: p. 16.

<sup>501</sup> S/1907, O.R., 5th year, Suppl. for Sept.-Dec. 1950, pp. 122-124.



At the 541st meeting on 17 April 1951, these complaints were included in the agenda, without objection,<sup>506</sup> in the following form:

"The Palestine question:

"(a) Violations of the General Armistice Agreement (Starting and continuing operations for draining the Huleh swamps within the demilitarized zone against the wishes of Syria, Arab landowners and United Nations Supervisors, thus violating repeatedly the terms of the Armistice Agreement and defying the recommendation and advice of the United Nations Supervisors) (S/2075, S/2078);

"(b) Military Occupation by Israel of demilitarized zones (Occupation of demilitarized zones by Israel forces and deliberate attack against a Syrian post by Israel police patrols; Israel attempt to occupy Haunneh where they were repulsed with loss) (S/2075, S/2078);

"(c) Firing on Syrian posts (Firing of automatic weapons and mortars on Syrian military posts) (S/2075, S/2078);

"(d) Evacuation of Arab inhabitants (Evacuation of the Arab inhabitants by force within the demilitarized zones) (S/2075, S/2078);

"(e) Bombing and demolishing incidents (Bombing of Syrian military posts and demolishing of Arab villages on Syrian territory on 5 April 1951) (S/2075, S/2078);

"(f) Complaint of Syrian violation of the General Armistice Agreement between Israel and Syria by persistent firing on civilian workers in the demilitarized zone in Israel territory near Banat Yakub on 15 March 1951 and between 25 and 28 March 1951 (S/2077);

"(g) Complaint of Syrian violation of the General Armistice Agreement between Israel and Syria by the entry of Syrian armed forces into the demilitarized zone in Israel territory between El Haunna and Khirbeth Tewfig on 3 April 1951 (S/2077);

"(h) Complaint of Syrian violation of the General Armistice Agreement between Israel and Syria by the action of Syrian armed forces in opening fire on Israel civilian policemen near El Haunna in Israel territory on 4 April 1951, killing seven Israel civilian policemen and wounding three (S/2077)."

The Council considered the complaints at the 541st and 542nd meetings on 17 and 25 April and at the 544th to 547th meetings between 2 and 18 May 1951.

By telegram dated 6 May 1951,<sup>507</sup> the permanent representative of Israel requested that the Council be convened urgently to include in the agenda and to discuss the following item:

"Israel complaint of Syrian aggression against Israel territory since 2 May 1951 and persistent Syrian attacks on the demilitarized zone."

At the 545th meeting on 8 May, the Council included the complaint in the agenda as sub-item (i) under "The Palestine question".<sup>508</sup>

At the same meeting, the representatives of France, Turkey, the United Kingdom and the United States submitted a joint draft resolution<sup>509</sup> which was adopted by 10 votes in favour, with 1 abstention.<sup>510</sup> The resolution read as follows:

"The Security Council,

"1. *Recalling* its resolutions of 15 July 1948, 11 August 1949, and 17 November 1950.

"2. *Noting* with concern that fighting has broken out in and around the demilitarized zone established by the Syrian-Israel General Armistice Agreement of 20 July 1949 and that fighting is continuing despite the cease-fire order of the Acting Chief of Staff of the United Nations Truce Supervision Organization issued on 4 May 1951.

"3. *Calls upon* the parties or persons in the areas concerned to cease fighting, and brings to the attention of the parties their obligations under Article 2, paragraph 4, of the Charter of the United Nations and the Security Council's resolution of 15 July 1948 and their commitments under the General Armistice Agreement, and accordingly calls upon them to comply with these obligations and commitments."

*Decision of 18 May 1951 (517th meeting): Calling upon the Governments of Israel and Syria for action on various matters which had been brought before the Security Council*

The Council then continued consideration of the complaints before it.

At the 546th meeting on 16 May 1951, the representatives of France, Turkey, the United Kingdom and the United States submitted a joint draft resolution<sup>511</sup> indicating measures to be taken by the parties in connexion with matters brought before the Council.

At its 547th meeting on 18 May 1951, the joint draft resolution was adopted by 10 votes in favour, with 1 abstention.<sup>512</sup> The resolution<sup>513</sup> read as follows:

"The Security Council,

"*Recalling* its past resolutions of 15 July 1948, 11 August 1949, 17 November 1950 and 8 May 1951 relating to the General Armistice Agreements between Israel and the neighboring Arab States and to the provisions contained therein concerning methods for maintaining the armistice and resolving disputes through the Mixed Armistice Commission participated in by the parties to the General Armistice Agreements,

"*Noting* the complaints of Syria and Israel to the Security Council, statements in the Council of the representatives of Syria and Israel, the reports to the Secretary-General of the United Nations by the Chief of Staff and the Acting Chief of Staff of the United Nations Truce Supervision Organization for Palestine and statements before the Council by the Chief of Staff of the United Nations Truce Supervision Organization for Palestine,

<sup>506</sup> S/2130, 545th meeting: p. 4.

<sup>507</sup> 545th meeting: p. 28.

<sup>508</sup> S/2152/Rev.1, 546th meeting: pp. 2-5.

<sup>509</sup> 547th meeting: p. 41.

<sup>510</sup> S/2157.

<sup>506</sup> 541st meeting: p. 2.

<sup>507</sup> S/2121, O.R., 6th year, Suppl. for April-June 1951, pp. 100-101.

<sup>508</sup> 545th meeting: p. 3.



"Noting that the Chief of Staff of the Truce Supervision Organization in a memorandum of 7 March 1951, and the Chairman of the Syria-Israel Mixed Armistice Commission on a number of occasions have requested the Israel delegation to the Mixed Armistice Commission to ensure that the Palestine Land Development Company, Limited, is instructed to cease all operations in the demilitarized zone until such time as an agreement is arranged through the Chairman of the Mixed Armistice Commission for continuing this project, and,

"Noting further that article V of the General Armistice Agreement between Israel and Syria gives to the Chairman the responsibility for the general supervision of the demilitarized zone,

"Endorses the requests of the Chief of Staff and the Chairman of the Mixed Armistice Commission on this matter and calls upon the Government of Israel to comply with them;

"Declares that in order to promote the return of permanent peace in Palestine, it is essential that the Governments of Israel and Syria observe faithfully the General Armistice Agreement of 20 July 1949;

"Notes that under article VII, paragraph 8, of the Armistice Agreement, where interpretation of the meaning of a particular provision of the agreement, other than the preamble and articles I and II, is at issue, the Mixed Armistice Commission's interpretation shall prevail;

"Calls upon the Governments of Israel and Syria to bring before the Mixed Armistice Commission or its Chairman, whichever has the pertinent responsibility under the Armistice Agreement, their complaints and to abide by the decisions resulting therefrom;

"Considers that it is inconsistent with the objectives and intent of the Armistice Agreement to refuse to participate in meetings of the Mixed Armistice Commission or to fail to respect requests of the Chairman of the Mixed Armistice Commission as they relate to his obligations under article V and calls upon the parties to be represented at all meetings called by the Chairman of the Commission and to respect such requests;

"Calls upon the parties to give effect to the following excerpt cited by the Chief of Staff of the Truce Supervision Organization at the 542nd meeting of the Security Council on 25 April 1951, as being from the summary record of the Syria-Israel Armistice Conference of 3 July 1949, which was agreed to by the parties as an authoritative comment on article V of the General Armistice Agreement between Israel and Syria:

"The question of civil administration in villages and settlements in the demilitarized zone is provided for, within the framework of an Armistice Agreement, in sub-paragraphs 5 (b) and 5 (f) of the draft article. Such civil administration, including policing, will be on a local basis, without raising general questions of administration, jurisdiction, citizenship, and sovereignty.

"Where Israeli civilians return to or remain in an Israeli village or settlement, the civil administra-

tion and policing of the village or settlement will be by Israelis. Similarly, where Arab civilians return to or remain in an Arab village, a local Arab administration and police unit will be authorized.

"As civilian life is gradually restored, administration will take shape on a local basis under the general supervision of the Chairman of the Mixed Armistice Commission.

"The Chairman of the Mixed Armistice Commission, in consultation and co-operation with the local communities, will be in a position to authorize all necessary arrangements for the restoration and protection of civilian life. He will not assume responsibility for direct administration of the zone.

"Recalls to the Governments of Syria and Israel their obligations under Article 2, paragraph 4, of the Charter of the United Nations and their commitments under the Armistice Agreement not to resort to military force and finds that:

"(a) Aerial action taken by the forces of the Government of Israel on 5 April 1951, and

"(b) Any aggressive military action by either of the parties in or around the demilitarized zone, which further investigation by the Chief of Staff of the Truce Supervision Organization into the reports and complaints recently submitted to the Council may establish,

"constitute a violation of the cease-fire provision provided in the Security Council resolution of 15 July 1948 and are inconsistent with the terms of the Armistice Agreement and the obligations assumed under the Charter;

"Noting the complaint with regard to the evacuation of Arab residents from the demilitarized zone:

"(a) Decides that Arab civilians who have been removed from the demilitarized zone by the Government of Israel should be permitted to return forthwith to their homes and that the Mixed Armistice Commission should supervise their return and rehabilitation in a manner to be determined by the Commission; and

"(b) Holds that no action involving the transfer of persons across international frontiers, armistice lines or within the demilitarized zone should be undertaken without prior decision of the Chairman of the Mixed Armistice Commission.

"Noting with concern the refusal on a number of occasions to permit observers and officials of the Truce Supervision Organization to enter localities and areas which were subjects of complaints in order to perform their legitimate functions, considers that the parties should permit such entry at all times whenever this is required, to enable the Truce Supervision Organization to fulfil its functions, and should render every facility which may be requested by the Chairman of the Mixed Armistice Commission for this purpose;

"Reminds the parties of their obligations under the Charter of the United Nations to settle their international disputes by peaceful means in such manner that international peace and security are not endangered, and expresses its concern at the failure of the Governments of Israel and Syria to achieve progress pursuant to their commitments

under the Armistice Agreement to promote the return to permanent peace in Palestine;

"Directs the Chief of Staff of the Truce Supervision Organization to take the necessary steps to give effect to this resolution for the purpose of restoring peace in the area, and authorizes him to take such measures to restore peace in the area and to make such representations to the Governments of Israel and Syria as he may deem necessary;

"Calls upon the Chief of Staff of the Truce Supervision Organization to report to the Security Council on compliance given to the present resolution;

"Requests the Secretary-General to furnish such additional personnel and assistance as the Chief of Staff of the Truce Supervision Organization may request in carrying out the present resolution and the Council's resolutions of 8 May 1951 and 17 November 1950."

*Decision of 1 September 1951 (558th meeting): Calling upon Egypt to terminate the restrictions on the passage of international commercial shipping through the Suez Canal*

By letter dated 11 July 1951,<sup>513</sup> the permanent representative of Israel requested that the following item be placed on the agenda of the Council for urgent discussion:

"Restrictions imposed by Egypt on the passage of ships through the Suez Canal."

He stated that the Government of Egypt, in contravention of international law, of the Suez Canal Convention of 1888 and of the Egyptian-Israeli Armistice Agreement of 1949, continued to detain, visit and search ships seeking to pass through the Suez Canal on the grounds that their cargoes were destined for Israel. In his report to the Council,<sup>514</sup> the Chief of Staff of the Truce Supervision Organization had characterized such interference as an aggressive and hostile action contrary to the spirit of the Armistice Agreement. The Government of Israel was bringing the question to the Council as a matter endangering the peace and security of the Middle East.

At the 549th meeting on 26 July 1951, the Council decided to include the complaint in the agenda under the general heading: "The Palestine question".<sup>515</sup>

The question was considered by the Council at the 549th to 553rd meetings between 26 July and 16 August 1951, 555th meeting on 27 August, 556th meeting on 29 August and 558th meeting on 1 September 1951.

The representative of Egypt contended at the 549th, 550th and 553rd meetings that Egypt was not violating the Armistice Agreement, that the Egyptian-Israeli Special Committee established by the Armistice Agreement had made a final decision on 12 June 1951<sup>517</sup> denying the right of the Mixed Armistice Commission to demand from the Egyptian Government that it

should not interfere with the passage of goods to Israel through the Suez Canal, and that the Israel complaint was non-receivable.

At the 552nd meeting on 16 August, the representatives of France, the United Kingdom and the United States submitted a joint draft resolution, which was revised at the 553rd meeting on the same day.<sup>518</sup>

At the 558th meeting on 1 September, the revised joint draft resolution was adopted by 8 votes in favour, none against, with 3 abstentions.<sup>519</sup> The resolution<sup>520</sup> read as follows:

"The Security Council,

"1. Recalling that in its resolution of 11 August 1949 (S/1376) relating to the conclusion of Armistice Agreements between Israel and the neighboring Arab States it drew attention to the pledges in these Agreements 'against any further acts of hostility between the Parties',

"2. Recalling further that in its resolution of 17 November 1950 (S/1907) it reminded the States concerned that the Armistice Agreements to which they were parties contemplated 'the return of permanent peace in Palestine', and therefore urged them and the other States in the area to take all such steps as would lead to the settlement of the issues between them,

"3. Noting the report of the Chief of Staff of the Truce Supervision Organization to the Security Council of 12 June 1951 (S/2194),

"4. Further noting that the Chief of Staff of the Truce Supervision Organization recalled the statement of the senior Egyptian delegate in Rhodes on 13 January 1949, to the effect that his delegation was 'inspired with every spirit of co-operation, conciliation and sincere desire to restore peace in Palestine', and that the Egyptian Government has not complied with the earnest plea of the Chief of Staff made to the Egyptian delegate on 12 June 1951, that it desist from the present practice of interfering with the passage through the Suez Canal of goods destined for Israel,

"5. Considering that since the armistice regime, which has been in existence for nearly two and a half years, is of a permanent character, neither party can reasonably assert that it is actively a belligerent or requires to exercise the right of visit, search, and seizure for any legitimate purpose of self-defence,

"6. Finds that the maintenance of the practice mentioned in paragraph 4 above is inconsistent with the objectives of a peaceful settlement between the parties and the establishment of a permanent peace in Palestine set forth in the Armistice Agreement;

"7. Finds further that such practice is an abuse of the exercise of the right of visit, search and seizure;

"8. Further finds that the practice cannot in the prevailing circumstances be justified on the ground that it is necessary for self-defence;

<sup>513</sup> S/2241, O.R., 6th year, Suppl. for July-Sept. 1951, pp. 9-10.

<sup>514</sup> S/2194, O.R., 6th year, Suppl. for April-June 1951, pp. 162-164.

<sup>515</sup> 549th meeting: p. 1.

<sup>516</sup> S/2194, O.R., 6th year, Suppl. for April-June 1951, pp. 162-164.

<sup>517</sup> S/2298/Rev.1, 558th meeting: pp. 2-3.

<sup>518</sup> 558th meeting: p. 3.

<sup>519</sup> S/2322. For the preceding discussion concerning the applicability of Article 51, see chapter XI, Case 21. For objection to the draft resolution as contrary to the Purposes and Principles of the Charter, see Chapter XII, Case 24.

"9. And further noting that the restrictions on the passage of goods through the Suez Canal to Israel ports are denying to nations at no time connected with the conflict in Palestine valuable supplies required for their economic reconstruction, and that these restrictions together with sanctions applied by Egypt to certain ships which have visited Israel ports represent unjustified interference with the rights of nations to navigate the seas and to trade freely with one another, including the Arab States and Israel:

"10. Calls upon Egypt to terminate the restrictions on the passage of international commercial shipping and goods through the Suez Canal wherever bound and to cease all interference with such shipping beyond that essential to the safety of shipping in the Canal itself and to the observance of the international conventions in force."

The Palestine question remained on the list of matters of which the Security Council is seized.

#### THE INDIA-PAKISTAN QUESTION<sup>521</sup>

##### INITIAL PROCEEDINGS

On 1 January 1948, the Government of India reported to the Security Council details of a situation existing between India and Pakistan owing to the aid which invaders, consisting of nationals of Pakistan and tribesmen from the territory immediately adjoining Pakistan on the north-west, were drawing from Pakistan for operations against Jammu and Kashmir, a State which, having acceded to the Dominion of India, the Government of India declared to be part of India. The Government of India considered the giving of this assistance by Pakistan to be an act of aggression against India, and likely to endanger the maintenance of international peace and security, since in self-defence India might be compelled to enter Pakistan territory in order to take military action against the invaders. The Government of India, being anxious to proceed according to the principles and aims of the Charter, brought the situation to the attention of the Security Council under Article 35 of the Charter.<sup>522</sup>

On 15 January 1948 the Government of Pakistan emphatically denied that they were giving aid and assistance to the so-called invaders, or had committed any act of aggression against India. The Azad (Free) Kashmir Government was struggling for liberty, and was possibly being helped by a certain number of independent tribesmen and persons from Pakistan as volunteers. The complaint of India under Article 35 of the Charter contained a threat of direct attack against Pakistan. Under Article 35 of the Charter the Government of Pakistan further brought to the attention of the Security Council a situation existing between India and Pakistan which had already given rise to disputes tending to endanger the maintenance of international peace and security. The Pakistan Government had unsuccessfully tried over a period of many months to seek a solution of the dispute by the

methods described in Article 33 of the Charter. The main points of the charges concerned India's action in the State of Jammu and Kashmir, the unlawful occupation of the State of Junagadh and other States by Indian forces, the mass destruction of Muslims in a prearranged programme of genocide, and failure to implement agreements between the two countries.<sup>523</sup>

The question was included in the agenda at the 226th meeting on 6 January 1948 under the title "The Jammu and Kashmir question".<sup>524</sup>

The Security Council considered the question at the 226th-232nd, 234th-237th, 239th-246th, 250th-257th, 264th-266th, 269th, 284th-287th, 289th, 290th, 304th, 305th, 311th, 312th, 315th, 382nd, 399th, 457th, 458th, 463rd-471st, 532nd-540th, 543rd, 564th and 566th meetings, between 6 January 1948 and 31 December 1951.

*Decision of 17 January 1948 (229th meeting): Request to the two parties not to take any steps which might aggravate the situation*

By cablegram dated 6 January 1948, the President (Belgium) asked the Governments of India and Pakistan to refrain from any step incompatible with the Charter and liable to result in an aggravation of the situation, thereby rendering more difficult any action by the Security Council.<sup>525</sup>

At the 227th meeting on 15 January 1948, the representative of India\* declared that, having failed to achieve a settlement of the question through negotiations with the Government of Pakistan, the Government of India had to invoke the assistance of the Council to persuade the Government of Pakistan not to give direct or indirect aid to forces fighting in the State of Jammu and Kashmir.<sup>526</sup>

At the 228th and 229th meetings on 16 and 17 January respectively, the representative of Pakistan\* declared that it was impossible to appraise the issues referred to the Council under Article 35 of the Charter without direct reference to the background of the matter, which he proceeded to state in some detail. He declared that the Jammu-Kashmir Government had refused or ignored offers of friendly discussions and had called in Indian troops without informing Pakistan of its intended action. He called for the evacuation of all elements foreign to the State, including tribesmen and Indian army troops as the best step to a solution of the question.<sup>526</sup>

At the 229th meeting on 17 January, the President submitted a draft resolution<sup>527</sup> which, with one amendment to the preamble, was adopted by 9 votes in favour and none against, with 2 abstentions.<sup>528</sup> The resolution<sup>529</sup> read as follows:

"The Security Council,

"Having heard statements on the situation in Kashmir from representatives of the Governments of India and Pakistan,

<sup>521</sup> S/646, and Corr.1, O.R., 3rd year, Suppl. for Nov. 1948, pp. 67-87.

<sup>522</sup> S/636, 226th meeting: p. 4.

<sup>523</sup> 227th meeting: pp. 11-28.

<sup>524</sup> 228th and 229th meetings: pp. 90-120.

<sup>525</sup> 229th meeting: pp. 120-121.

<sup>526</sup> 229th meeting: p. 125. For the President's consultation with the parties, see chapter 1, Case 26.

<sup>527</sup> S/651.

<sup>528</sup> For the claim of the right of self-defence in conformity with Article 51 in connexion with this question, see chapter XI, Case 20.

<sup>529</sup> S/628, O.R., 3rd year, Suppl. for Nov. 1948, pp. 139-144.

"Recognizing the urgency of the situation,

"Taking note of the telegram addressed on 6 January by its President to each of the parties and of their replies thereto; and in which they affirmed their intention to conform to the Charter,

"Calls upon both the Government of India and the Government of Pakistan to take immediately all measures within their power (including public appeals to their people) calculated to improve the situation, and to refrain from making any statements and from doing or causing to be done or permitting any acts which might aggravate the situation;

"And further requests each of those Governments to inform the Council immediately of any material change in the situation which occurs or appears to either of them to be about to occur while the matter is under consideration by the Council, and consult with the Council thereon."

At the same meeting, at the suggestion of the representative of the United Kingdom, it was further decided that discussion of the question be adjourned until 20 January 1948 and that, during the interim period, the President should hold joint discussions with the representatives of India and Pakistan.<sup>530</sup>

*Decision of 20 January 1948 (230th meeting): Establishment of the United Nations Commission*

At the 230th meeting on 20 January, the President, as the representative of Belgium, submitted a draft resolution<sup>531</sup> which was adopted at the same meeting by 9 votes in favour and none against, with 2 abstentions.<sup>532</sup> The resolution read as follows:

"The Security Council,

"Considering that it may investigate any dispute or any situation which might, by its continuance, endanger the maintenance of international peace and security; that, in the existing state of affairs between India and Pakistan, such an investigation is a matter of urgency,

"Adopts the following resolution:

"A. A Commission of the Security Council is hereby established, composed of representatives of three Members of the United Nations, one to be selected by India, one to be selected by Pakistan, and the third to be designated by the two so selected.

"Each representative on the Commission shall be entitled to select his alternates and assistants.

"B. The Commission shall proceed to the spot as quickly as possible. It shall act under the authority of the Security Council and in accordance with the directions it may receive from it. It shall keep the Security Council currently informed of its activities and of the development of the situation. It shall report to the Security Council regularly, submitting its conclusions and proposals.

"C. The Commission is invested with a dual function:

"(1) to investigate the facts pursuant to Article 34 of the Charter;

"(2) to exercise, without interrupting the work of the Security Council, any mediatory influence likely to smooth away difficulties; to carry out the directions given to it by the Security Council; and to report how far the advice and directions, if any, of the Security Council have been carried out.

"D. The Commission shall perform the functions described in clause C:

"(1) in regard to the situation in the Jammu and Kashmir State set out in the letter of the Representative of India addressed to the President of the Security Council, dated 1 January 1948, and in the letter from the Minister of Foreign Affairs of Pakistan addressed to the Secretary-General, dated 15 January 1948; and

"(2) in regard to other situations set out in the letter from the Minister of Foreign Affairs of Pakistan addressed to the Secretary-General, dated 15 January 1948, when the Security Council so directs.

"E. The Commission shall take its decision by majority vote. It shall determine its own procedure. It may allocate among its members, alternate members, their assistants, and its personnel such duties as may have to be fulfilled for the realization of its mission and the reaching of its conclusions.

"F. The Commission, its members, alternate members, their assistants and its personnel, shall be entitled to journey, separately or together, wherever the necessities of their tasks may require, and, in particular, within those territories which are the theatre of the events of which the Security Council is seized.

"G. The Secretary-General of the United Nations shall furnish the Commission with such personnel and assistance as it may consider necessary."

*Decision of 22 January 1948 (231st meeting): Adoption of agenda changing the title to "India-Pakistan question"*

On 20 January 1948, the Government of Pakistan requested consideration of matters in the Pakistan complaint other than the Jammu-Kashmir question. At the 231st meeting on 22 January 1948, the title in the agenda "Jammu and Kashmir question" was altered to the "India-Pakistan question", with the understanding that the Kashmir question would be discussed first as a particular case of the India-Pakistan dispute, though this would not mean that consideration of the issues in the Pakistan complaint would be postponed until consideration of the Kashmir question had been completed.<sup>533</sup> The President (Belgium), after further negotiations with the parties,<sup>534</sup> submitted draft resolutions at the 237th meeting. The request of India to adjourn proceedings was discussed at the 243rd-246th meetings, and the Council thereafter discussed other aspects of the question.

<sup>530</sup> 229th meeting: pp. 125-128. See chapter X, Case 5, for these conversations in relation to Article 33.

<sup>531</sup> S/654, 230th meeting: pp. 129-131.

<sup>532</sup> 230th meeting: p. 143. For discussion in relation to Article 34, see chapter X, Case 16. On the working of the Commission, see Organization and Procedure of United Nations Commissions: XI. The United Nations Commission for India and Pakistan (United Nations publications, 1950.X.1). See also chapter V, Case 6.

<sup>533</sup> S/655, 231st meeting: pp. 143-168. See chapter II, Case 42.  
<sup>534</sup> See chapter I, Case 27. Draft resolutions submitted were S/661, S/662, S/667, S/671 and S/679.

*Decision of 21 April 1948 (286th meeting): Modification of instructions to the United Nations Commission for India and Pakistan*

On the return of the Indian delegation the Council continued consideration of the question. The draft resolutions submitted to the Council eventually were replaced at the 284th meeting on 17 April by a joint draft resolution submitted by the representatives of Belgium, Canada, China, Colombia, the United Kingdom and the United States,<sup>535</sup> which was voted upon paragraph by paragraph and adopted at the 286th meeting on 21 April 1948.<sup>536</sup> The resolution read as follows:<sup>537</sup>

*"The Security Council,*

*"Having considered the complaint of the Government of India concerning the dispute over the State of Jammu and Kashmir,*

*"Having heard the representative of India in support of that complaint and the reply and counter complaints of the representative of Pakistan,*

*"Being strongly of opinion that the early restoration of peace and order in Jammu and Kashmir is essential and that India and Pakistan should do their utmost to bring about a cessation of all fighting,*

*"Noting with satisfaction that both India and Pakistan desire that the question of the accession of Jammu and Kashmir to India or Pakistan should be decided through the democratic method of a free and impartial plebiscite,*

*"Considering that the continuation of the dispute is likely to endanger international peace and security,*

*"Reaffirms the Council's resolution of 17 January,*

*"Resolves that the membership of the Commission established by the resolution of the Council of 20 January 1948 shall be increased to five and shall include in addition to the membership mentioned in that resolution, representatives of \_\_\_\_\_ and \_\_\_\_\_, and that if the membership of the Commission has not been completed within ten days from the date of the adoption of this resolution the President of the Council may designate such other Member or Members of the United Nations as are required to complete the membership of five;*

*"Instructs the Commission to proceed at once to the Indian sub-continent and there place its good offices and mediation at the disposal of the Governments of India and Pakistan with a view to facilitating the taking of the necessary measures, both with respect to the restoration of peace and order and to the holding of a plebiscite, by the two Governments, acting in co-operation with one another and with the Commission, and further instructs the Commission to keep the Council informed of the action taken under the resolution, and to this end,*

*"Recommends to the Governments of India and Pakistan the following measures as those which in*

the opinion of the Council are appropriate to bring about a cessation of the fighting and to create proper conditions for a free and impartial plebiscite to decide whether the State of Jammu and Kashmir is to accede to India or Pakistan.

*"A. Restoration of peace and order*

*"1. The Government of Pakistan should undertake to use its best endeavours:*

*"(a) To secure the withdrawal from the State of Jammu and Kashmir of tribesmen and Pakistani nationals not normally resident therein who have entered the State for the purposes of fighting, and to prevent any intrusion into the State of such elements and any furnishing of material aid to those fighting in the State;*

*"(b) To make known to all concerned that the measures indicated in this and the following paragraphs provide full freedom to all subjects of the State, regardless of creed, caste, or party, to express their views and to vote on the question of the accession of the State, and that therefore they should co-operate in the maintenance of peace and order.*

*"2. The Government of India should:*

*"(a) When it is established to the satisfaction of the Commission set up in accordance with the Council's Resolution of 20 January that the tribesmen are withdrawing and that arrangements for the cessation of the fighting have become effective, put into operation in consultation with the Commission a plan for withdrawing their own forces from Jammu and Kashmir and reducing them progressively to the minimum strength required for the support of the civil power in the maintenance of law and order;*

*"(b) Make known that the withdrawal is taking place in stages and announce the completion of each stage;*

*"(c) When the Indian forces shall have been reduced to the minimum strength mentioned in (a) above, arrange in consultation with the Commission for the stationing of the remaining forces to be carried out in accordance with the following principles:*

*"(i) That the presence of troops should not afford any intimidation or appearance of intimidation to the inhabitants of the State;*

*"(ii) That as small a number as possible should be retained in forward areas;*

*"(iii) That any reserve of troops which may be included in the total strength should be located within their present base area.*

*"3. The Government of India should agree that, until such time as the Plebiscite Administration referred to below finds it necessary to exercise the powers of direction and supervision over the State forces and police provided for in paragraph 8, they will be held in areas to be agreed upon with the Plebiscite Administrator.*

*"4. After the plan referred to in paragraph 2 (a) above has been put into operation, personnel recruited locally in each district should so far as possible be utilized for the re-establishment and maintenance of law and order with due regard to*

<sup>535</sup> 284th meeting: p. 2; S/726, O.R., 3rd year, Suppl. for April 1948, pp. 8-12.

<sup>536</sup> 286th meeting: pp. 9-40.

<sup>537</sup> India and Pakistan communicated their views on the resolution in S/734/Corr.1 and in S/735 respectively (O.R., 3rd year, Suppl. for Nov. 1948, p. 66, and for May 1948, pp. 40-42). For communications between the Secretary-General and India regarding the plebiscite administrator, see S/756 (O.R., 3rd year, Suppl. for May 1948, pp. 92-93).



protection of minorities, subject to such additional requirements as may be specified by the Plebiscite Administration referred to in paragraph 7.

"5. If these local forces should be found to be inadequate, the Commission, subject to the agreement of both the Government of India and the Government of Pakistan, should arrange for the use of such forces of either Dominion as it deems effective for the purpose of pacification.

#### "B. Plebiscite

"6. The Government of India should undertake to ensure that the Government of the State invite the major political groups to designate responsible representatives to share equitably and fully in the conduct of the administration at the Ministerial level, while the plebiscite is being prepared and carried out.

"7. The Government of India should undertake that there will be established in Jammu and Kashmir a Plebiscite Administration to hold a plebiscite as soon as possible on the question of the accession of the State to India or Pakistan.

"8. The Government of India should undertake that there will be delegated by the State to the Plebiscite Administration such powers as the latter considers necessary for holding a fair and impartial plebiscite including, for that purpose only, the direction and supervision of the State forces and police.

"9. The Government of India should, at the request of the Plebiscite Administration, make available from the Indian forces such assistance as the Plebiscite Administration may require for the performance of its functions.

"10. (a) The Government of India should agree that a nominee of the Secretary-General of the United Nations will be appointed to be the Plebiscite Administrator.

"(b) The Plebiscite Administrator, acting as an officer of the State of Jammu and Kashmir, should have authority to nominate his assistants and other subordinates and to draft regulations governing the plebiscite. Such nominees should be formally appointed and such draft regulations should be formally promulgated by the State of Jammu and Kashmir.

"(c) The Government of India should undertake that the Government of Jammu and Kashmir will appoint fully qualified persons nominated by the Plebiscite Administrator to act as special magistrates within the State judicial system to hear cases which in the opinion of the Plebiscite Administrator have a serious bearing on the preparation for and the conduct of a free and impartial plebiscite.

"(d) The terms of service of the Administrator should form the subject of a separate negotiation between the Secretary-General of the United Nations and the Government of India. The Administrator should fix the terms of service for his assistants and subordinates.

"(e) The Administrator should have the right to communicate directly with the Government of the State and with the Commission of the Security Council and, through the Commission, with the

Security Council, with the Governments of India and Pakistan and with their representatives with the Commission. It would be his duty to bring to the notice of any or all of the foregoing (as he in his discretion may decide) any circumstances arising which may tend, in his opinion, to interfere with the freedom of the plebiscite.

"11. The Government of India should undertake to prevent, and to give full support to the Administrator and his staff in preventing, any threat, coercion or intimidation, bribery or other undue influence on the voters in the plebiscite, and the Government of India should publicly announce and should cause the Government of the State to announce this undertaking as an international obligation binding on all public authorities and officials in Jammu and Kashmir.

"12. The Government of India should themselves and through the Government of the State declare and make known that all subjects of the State of Jammu and Kashmir, regardless of creed, caste or party, will be safe and free in expressing their views and in voting on the question of the accession of the State and that there will be freedom of the Press, speech and assembly and freedom of travel in the State, including freedom of lawful entry and exit.

"13. The Government of India should use and should ensure that the Government of the State also use their best endeavours to effect the withdrawal from the State of all Indian nationals other than those who are normally resident therein or who on or since 15 August 1947 have entered it for a lawful purpose.

"14. The Government of India should ensure that the Government of the State release all political prisoners and take all possible steps so that:

"(a) All citizens of the State who have left it on account of disturbances are invited, and are free, to return to their homes and to exercise their rights as such citizens;

"(b) There is no victimization;

"(c) Minorities in all parts of the State are accorded adequate protection.

"15. The Commission of the Security Council should at the end of the plebiscite certify to the Council whether the plebiscite has or has not been really free and impartial.

#### "C. General Provisions

"16. The Governments of India and Pakistan should each be invited to nominate a representative to be attached to the Commission for such assistance as it may require in the performance of its task.

"17. The Commission should establish in Jammu and Kashmir such observers as it may require of any of the proceedings in pursuance of the measures indicated in the foregoing paragraphs.

"18. The Security Council Commission should carry out the tasks assigned to it herein."



*Decision of 23 April 1948 (287th meeting): Nomination of members of the United Nations Commission*

At the 287th meeting on 23 April 1948, the Council added Belgium and Colombia<sup>538</sup> to the United Nations Commission for India and Pakistan.

At the 289th meeting on 7 May the President (France) nominated the United States<sup>539</sup> as the fifth member of the Commission.<sup>540</sup>

*Decision of 3 June 1948 (312th meeting): Instructions to the Commission*

After further consideration, beginning at the 289th meeting on 7 May 1948, of other matters in the India-Pakistan question, the President (Syria) stated at the 312th meeting on 3 June that the best solution would be to enlarge the Commission's terms of reference to cover these matters, so that at a later date they could either be dealt with by the Commission or taken up again in the Council. He submitted a draft resolution which, with an amendment submitted by the representative of the United Kingdom, was adopted at the same meeting by 8 votes in favour and none against, with 3 abstentions.<sup>541</sup> The resolution<sup>542</sup> read as follows:

*"The Security Council*

*Reaffirms its resolutions of 17 January 1948, 20 January 1948 and 21 April 1948;*

*Directs the Commission to proceed without delay to the areas of dispute with a view to accomplishing in priority the duties assigned to it by the resolution of 21 April 1948,*

*And directs the Commission further to study and report to the Security Council when it considers it appropriate on the matters raised in the letter of the Foreign Minister of Pakistan, dated 15 January 1948, in the order outlined in Paragraph D of the resolution of the Council dated 20 January 1948."*

*Decision of 8 June 1948 (315th meeting): Explanation of Council's resolution of 3 June 1948*

At the 315th meeting on 8 June 1948, the President (Syria) stated that he had received a letter from the representative of India<sup>543</sup> conveying a message from the Prime Minister of India expressing the surprise of his Government that the Council should have thought fit, in its resolution of 3 June 1948, to direct the Commission to study and report on matters other than the Jammu and Kashmir question.

At the suggestion of the representative of China, the Council agreed that the President should reply to the Indian Prime Minister explaining that "what the Security Council did . . . was to tell the Commission to go ahead, to deal first with the Kashmir question, and then, when it deemed it appropriate, to study and

report on the other three questions raised by the delegation of Pakistan".<sup>544</sup>

*Decision of 25 November 1948 (382nd meeting): Expression of support for the United Nations Commission and endorsement of its appeal to both parties to refrain from any prejudicial action*

The Commission proceeded to the sub-continent of India in July 1948 and submitted an Interim Report on 9 November 1948.<sup>545</sup> The report was discussed at the 382nd meeting of the Council on 25 November 1948.

The representative of Pakistan\* informed the Council that Pakistan forces, which had entered Kashmir during the previous six months, had taken a purely defensive action, but recent Indian military advances in Kashmir might force Pakistan to take new military counter measures.

The Council agreed, on the suggestion of the President (Argentina), that he convey to the Commission the following: "Firstly, it (the Security Council) desires to inform the Commission appointed to intervene in the dispute between India and Pakistan that it (the Commission) can count on the full support of the Security Council and that the Council wishes it to continue its work for the purpose of arriving at a peaceful solution. Secondly, it desires to bring to the attention of the Governments of India and Pakistan the need for refraining from any action which might aggravate the military or the political situation and consequently prejudice the negotiations which are at present being carried on for the purpose of arriving at a final and peaceful understanding in the matter."<sup>546</sup>

*Decision of 13 January 1949 (399th meeting): Instructions to the United Nations Commission to return to the sub-continent of India*

The Commission obtained a suspension of hostilities in the state of Jammu and Kashmir, and the cease-fire order came into effect on 1 January 1949.

By letter dated 10 January 1949, the Chairman and the Rapporteur of the Commission forwarded to the President of the Council the Commission's Second Interim Report covering the period of the Commission's activities from 25 September 1948 to 5 January 1949, when it adopted a resolution embodying the basic principles for a plebiscite in the state of Jammu and Kashmir.<sup>547</sup>

At the 399th meeting on 13 January 1949, the Council considered the report and the President (Canada) expressed the view of the Council that the Commission should "return to the sub-continent of India, at its earliest convenience, in order to continue the work which it has already so far advanced".<sup>548</sup>

*Decision of 17 December 1949 (457th meeting): Request to the President of the Council to meet informally with the two parties*

At the 457th meeting on 17 December, the Third Interim Report of the United Nations Commission was

<sup>538</sup> 287th meeting: p. 3.

<sup>539</sup> 289th meeting: p. 8.

<sup>540</sup> By letter (S/669) dated 10 February 1948, the representative of India had transmitted a message to the Secretary-General from the Prime Minister of India naming Czechoslovakia as his Government's nominee on the Commission. By letter (S/735) dated 30 April 1948, addressed to the President of the Security Council, the Foreign Minister of Pakistan stated that his Government had nominated Argentina as Pakistan's nominee on the Commission.

<sup>541</sup> 312th meeting: pp. 16-21.

<sup>542</sup> S/819, 312th meeting: p. 21.

<sup>543</sup> S/825, O.R., 3rd year, Suppl. for June 1948, pp. 78-79.

<sup>544</sup> 315th meeting: pp. 2-7.

<sup>545</sup> S/1100, O.R., 3rd year, Suppl. for Nov. 1948, pp. 17-144.

<sup>546</sup> 382nd meeting: pp. 2-26.

<sup>547</sup> S/1196, O.R., 4th year, Suppl. for Jan. 1949.

<sup>548</sup> 399th meeting: p. 8.

presented to the Council by the Chairman of the Commission.<sup>549</sup> The Commission considered that a single person could more effectively conduct further negotiations. He should be given broad authority to endeavour to bring the two Governments together on all issues and should have an undivided responsibility. The representative of Czechoslovakia on the Commission submitted a minority report<sup>550</sup> recommending the establishment of a new commission, composed of representatives of all States members of the Security Council, to carry out its mediation task without delay, at Headquarters, and the parties availing themselves of the opportunity to reach an understanding as to differences in connexion with the Commission's resolutions of 13 August 1948 and 5 January 1949.

At the same meeting, the Council by a vote of 9 in favour and none against, with 2 abstentions, adopted a suggestion by the representative of Norway, that the President (Canada) should meet informally with the representatives of India and Pakistan, examine the possibilities of finding a mutually satisfactory basis and report to the Security Council.<sup>551</sup>

At the 458th meeting on 29 December, the Council heard from its President (Canada), General McNaughton, an account of his talks with the representatives of India and Pakistan and agreed that he should continue his negotiations with the two parties, if necessary, even after the expiration of his term of office as President of the Council on 31 December 1949.<sup>552</sup>

*Decision of 14 March 1950 (470th meeting): Appointment of a United Nations Representative for India and Pakistan*

In response to an invitation agreed upon by the Security Council at its 462nd meeting on 17 January 1950,<sup>553</sup> General McNaughton on 3 February 1950 communicated a full report of his negotiations with the parties since 17 December 1949.

At its 463rd meeting on 7 February, the Council began consideration of General McNaughton's report.<sup>554</sup>

At the 467th meeting on 24 February, the representatives of Cuba, Norway, the United Kingdom and the United States submitted a joint draft resolution<sup>555</sup> which was adopted at the 470th meeting on 14 March by 8 votes in favour and none against, with 2 abstentions.<sup>556</sup>

The resolution read as follows:

"Having received and noted the reports of the United Nations Commission for India and Pakistan, established by the resolutions of 20 January and 21 April 1948;

"Having also received and noted the report of General A. G. L. McNaughton on the outcome of his discussions with the representatives of India and

Pakistan which were initiated in pursuance of the decision taken by the Security Council on 17 December 1949;

"Commending the Governments of India and Pakistan for their statesmanlike action in reaching the agreements embodied in the United Nations Commission's resolutions of 13 August 1948 and 5 January 1949 for a cease fire, for the demilitarization of the State of Jammu and Kashmir and for the determination of its final disposition in accordance with the will of the people through the democratic method of a free and impartial plebiscite and commending the parties in particular for their action in partially implementing these resolutions by

"(1) The cessation of hostilities effected 1 January 1949

"(2) The establishment of a cease-fire line on 27 July 1949 and

"(3) The agreement that Fleet Admiral Chester W. Nimitz shall be Plebiscite Administrator,

"Considering that the resolution of the outstanding difficulties should be based upon the substantial measure of agreement on fundamental principles already reached, and that steps should be taken forthwith for the demilitarization of the State and for the expeditious determination of its future in accordance with the freely expressed will of the inhabitants;

*The Security Council,*

"1. Calls upon the Governments of India and Pakistan to make immediate arrangements, without prejudice to their rights or claims and with due regard to the requirements of law and order, to prepare and execute within a period of five months from the date of this resolution a programme of demilitarization on the basis of the principles of paragraph 2 of General McNaughton's proposal or of such modifications of those principles as may be mutually agreed;

"2. Decides to appoint a United Nations Representative for the following purposes who shall have authority to perform his functions in such place or places as he may deem appropriate:

"(a) To assist in the preparation and to supervise the implementation of the programme of demilitarization referred to above and to interpret the agreements reached by the parties for demilitarization,

"(b) To place himself at the disposal of the Governments of India and Pakistan and to place before those Governments or the Security Council any suggestions which, in his opinion, are likely to contribute to the expeditious and enduring solution of the dispute which has arisen between the two Governments in regard to the State of Jammu and Kashmir,

"(c) To exercise all of the powers and responsibilities devolving upon the United Nations Commission by reason of existing resolutions of the Security Council and by reason of the agreement of the parties embodied in the resolutions of the United Nations Commission of 13 August 1948 and 5 January 1949,

<sup>549</sup> S/1430/Rev.1, O.R., 4th year, Special Suppl. No. 7.

<sup>550</sup> S/1430/Add.3, O.R., 4th year, Special Suppl. No. 7, pp. 195-204.

<sup>551</sup> 457th meeting: pp. 5-8.

<sup>552</sup> 458th meeting: pp. 4-21. See chapter I, Cases 31 and 32.

<sup>553</sup> 462nd meeting: p. 16.

<sup>554</sup> S/1453, O.R., 5th year, Suppl. for Jan.-May 1950, pp. 3-16.

<sup>555</sup> S/1469.

<sup>556</sup> 470th meeting: p. 4. One member was absent. On the United Nations Representative for India and Pakistan, see chapter V, Case 8.

"(d) to arrange at the appropriate stage of demilitarization for the assumption by the Plebiscite Administrator of the functions assigned to the latter under agreements made between the parties,

"(e) to report to the Security Council as he may consider necessary submitting his conclusions and any recommendations which he may desire to make;

"3. Requests the two Governments to take all necessary precautions to ensure that their agreements regarding the cease fire shall continue to be faithfully observed, and calls upon them to take all possible measures to ensure the creation and maintenance of an atmosphere favourable to the promotion of further negotiations;

"4. Extends its best thanks to the members of the United Nations Commission for India and Pakistan and to General A. G. L. McNaughton for their arduous and fruitful labours;

"5. Agrees that the United Nations Commission for India and Pakistan shall be terminated, and decides that this shall take place one month after both parties have informed the United Nations Representative of their acceptance of the transfer to him of the powers and responsibilities of the United Nations Commission referred to in paragraph 2 (c) above."

At the 471st meeting on 12 April 1950, the Council appointed Sir Owen Dixon of Australia as United Nations Representative for India and Pakistan by 8 votes in favour, none against, with 2 abstentions.<sup>557</sup>

*Decision of 30 March 1951 (539th meeting): Appointment of a United Nations Representative for India and Pakistan in succession to Sir Owen Dixon: instructions to the United Nations Representative*

By letter dated 15 September 1950,<sup>558</sup> Sir Owen Dixon, United Nations Representative for India and Pakistan, transmitted his report to the Council and requested formal termination of his position as United Nations Representative.

At the 532nd meeting on 21 February 1951, when the Council took up for consideration the report of the United Nations Representative, the representatives of the United Kingdom and the United States submitted a joint draft resolution which, as revised on 21 March,<sup>559</sup> was adopted at the 539th meeting on 30 March 1951 by 8 votes in favour and none against, with 3 abstentions.<sup>560</sup> The resolution read as follows:

"The Security Council,

"Having received and noted the report of Sir Owen Dixon, the United Nations Representative for India and Pakistan, on his mission initiated by the Security Council resolution of 14 March 1950,

"Observing that the Governments of India and Pakistan have accepted the provisions of the United Nations Commission for India and Pakistan resolutions of 13 August 1948 and 5 January 1949, and

have reaffirmed their desire that the future of the State of Jammu and Kashmir shall be decided through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations,

"Observing that on 27 October 1950 the General Council of the 'All Jammu and Kashmir National Conference' adopted a resolution recommending the convening of a constituent assembly for the purpose of determining the 'future shape and affiliations of the State of Jammu and Kashmir'; observing further from statements of responsible authorities that action is proposed to convene such a constituent assembly and that the area from which such a constituent assembly would be elected is only a part of the whole territory of Jammu and Kashmir,

"Reminding the Governments and authorities concerned of the principle embodied in the Security Council resolutions of 21 April 1948, 3 June 1948 and 14 March 1950 and the United Nations Commission for India and Pakistan resolutions of 13 August 1948 and 5 January 1949, that the final disposition of the State of Jammu and Kashmir will be made in accordance with the will of the people expressed through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations,

"Affirming that the convening of a constituent assembly as recommended by the General Council of the 'All Jammu and Kashmir National Conference', and any action that Assembly might attempt to take to determine the future shape and affiliation of the entire State or any part thereof would not constitute a disposition of the State in accordance with the above principle,

"Declaring its belief that it is the duty of the Security Council in carrying out its primary responsibility for the maintenance of international peace and security to aid the parties to reach an amicable solution of the Kashmir dispute and that a prompt settlement of this dispute is of vital importance to the maintenance of international peace and security,

"Observing from Sir Owen Dixon's report that the main points of difference preventing agreement between the parties were:

"(a) The procedure for and the extent of demilitarization of the State preparatory to the holding of a plebiscite, and

"(b) The degree of control over the exercise of the functions of government in the State necessary to ensure a free and fair plebiscite,

"1. Accepts, in compliance with his request, Sir Owen Dixon's resignation and expresses its gratitude to Sir Owen for the great ability and devotion with which he carried out his mission;

"2. Decides to appoint a United Nations Representative for India and Pakistan in succession to Sir Owen Dixon;

"3. Instructs the United Nations Representative to proceed to the sub-continent and, after consultation with the Governments of India and Pakistan,

<sup>557</sup> 471st meeting: p. 5. One member was absent.

<sup>558</sup> S/1791, O.R., 5th year, Suppl. for Sept.-Dec. 1950.

<sup>559</sup> S/2017/Rev.1, O.R., 6th year, Suppl. for Jan.-March 1951, pp. 25-27; and Special Suppl. No. 2, pp. 24-26.

<sup>560</sup> 539th meeting: p. 15.

to effect the demilitarization of the State of Jammu and Kashmir on the basis of the United Nations Commission for India and Pakistan resolutions of 13 August 1948 and 5 January 1949;

"4. Calls upon the parties to co-operate with the United Nations Representative to the fullest degree in effecting the demilitarization of the State of Jammu and Kashmir;

"5. Instructs the United Nations Representative to report to the Security Council within three months from the date of his arrival on the sub-continent; if, at the time of this report, he has not effected demilitarization in accordance with paragraph 3 above, or obtained the agreement of the parties to a plan for effecting such demilitarization, the United Nations Representative shall report to the Security Council those points of difference between the parties in regard to the interpretation and execution of the agreed resolutions of 13 August 1948 and 5 January 1949 which he considers must be resolved to enable such demilitarization to be carried out;

"6. Calls upon the parties, in the event of their discussions with the United Nations Representative failing in his opinion to result in full agreement, to accept arbitration upon all outstanding points of difference reported by the United Nations Representative in accordance with paragraph 5 above, such arbitration to be carried out by an arbitrator, or a panel of arbitrators, to be appointed by the President of the International Court of Justice after consultation with the parties;

"7. Decides that the military observer group shall continue to supervise the cease fire in the State;

"8. Requests the Governments of India and Pakistan to ensure that their agreement regarding the cease fire shall continue to be faithfully observed and calls upon them to take all possible measures to ensure the creation and maintenance of an atmosphere favourable to the promotion of further negotiations and to refrain from any action likely to prejudice a just and peaceful settlement;

"9. Requests the Secretary-General to provide the United Nations Representative for India and Pakistan with such services and facilities as may be necessary in carrying out the terms of this resolution."

At the 543rd meeting on 30 April 1951, the Council appointed Dr. Frank P. Graham as United Nations Representative for India and Pakistan by 7 votes to none, with 4 abstentions.<sup>601</sup>

*Decision of 29 May 1951 (548th meeting): Message from the President of the Security Council to the Governments of India and Pakistan concerning reports that a constituent assembly would be convened in Kashmir*

By letters dated 4 and 10 May 1951,<sup>602</sup> the representative of Pakistan brought to the attention of the

Council reports that the authorities in Jammu and Kashmir were convening a constituent assembly to decide the future of the state. The Council was requested to stop the course of action which would prejudice further negotiations between India and Pakistan and create an explosive situation.

At the 548th meeting on 29 May 1951, the President (Turkey) submitted to the Council a proposed text of the letter which various delegations suggested should be sent by him to the Governments of India and Pakistan.

The text of the President's letter read as follows:<sup>603</sup>

"I have the honour to call your attention to the important principles regarding the India-Pakistan question restated in the Security Council resolution of 30 March 1951 (S/2017/Rev.1).

"Members of the Security Council, at its 548th meeting held on 29 May 1951, have heard with satisfaction the assurances of the representative of India that any constituent assembly that may be established in Srinagar is not intended to prejudice the issues before the Security Council or to come in its way.

"On the other hand, the two communications to me, as President of the Council, from the representative of Pakistan, set forth in documents S/2119 and S/2145, contain reports which, if they are correct, indicate that steps are being taken by the Yuvaraja of Jammu and Kashmir to convoke a constituent assembly, one function of which, according to Sheikh Abdulla, would be 'a decision on the future shape and affiliation of Kashmir'.

"It is the sense of the Security Council that these reports, if correct, would involve procedures which are in conflict with the commitments of the parties to determine the future accession of the State by a fair and impartial plebiscite conducted under United Nations auspices.

"It seems appropriate to recall the request contained in the resolution of 30 March that the parties create and maintain 'an atmosphere favourable to the promotion of further negotiations and to refrain from any action likely to prejudice a just and peaceful settlement'. The Council trusts that the Governments of India and Pakistan will do everything in their power to ensure that the authorities in Kashmir do not disregard the Council or act in a manner which would prejudice the determination of the future accession of the State in accordance with the procedures provided for in the resolutions of the Council and of the United Nations Commission for India and Pakistan.

"As President of the Security Council, I have attempted to summarize the general line of the Security Council's discussion on this matter, a full record of which is attached."

At the same meeting, the text of the letter was adopted by 9 votes in favour and none against, with 2 abstentions.<sup>604</sup>

<sup>601</sup> 543rd meeting: p. 4.

<sup>602</sup> S/2119 and S/2145, O.R., 6th year, Suppl. for April-June 1951, pp. 98-99 and 121-122.

<sup>603</sup> 548th meeting: pp. 21-22.

<sup>604</sup> 548th meeting: p. 23.

*Decision of 10 November 1951 (566th meeting): Instruction to the United Nations Representative for India and Pakistan to continue his efforts to obtain agreement on a plan for demilitarizing Jammu and Kashmir, and to report to the Security Council within six weeks*

By letter dated 15 October 1951<sup>565</sup> the United Nations Representative for India and Pakistan transmitted his first report to the Security Council.

At the 566th meeting on 10 November, the representatives of the United Kingdom and the United States submitted a joint draft resolution which was adopted<sup>566</sup> at the same meeting by 9 votes in favour, none against, with 2 abstentions.<sup>567</sup> The resolution read as follows:

*"The Security Council,*

*"Having received and noted the report of Dr. Frank Graham, the United Nations Representative for India and Pakistan, on his mission initiated by the Security Council resolution of 30 March 1951, and having heard Dr. Graham's address to the Council on 18 October,*

*"Noting with approval the basis for a programme of demilitarization which could be carried out in conformity with the previous undertakings of the parties, put forward by the United Nations Representative in his communication of 7 September 1951 to the Prime Ministers of India and Pakistan,*

*"1. Notes with gratification the declared agreement of the two parties to those parts of Dr. Graham's proposals which reaffirm their determination to work for a peaceful settlement, their will to observe the cease-fire agreement and their acceptance of the principle that the accession of the State of Jammu and Kashmir should be determined by a free and impartial plebiscite under the auspices of the United Nations;*

*"2. Instructs the United Nations Representative to continue his efforts to obtain agreement of the parties on a plan for effecting the demilitarization of the State of Jammu and Kashmir;*

*"3. Calls upon the parties to co-operate with the United Nations Representative to the fullest degree in his efforts to resolve the outstanding points of difference between them;*

*"4. Instructs the United Nations Representative to report to the Security Council on his efforts, together with his views concerning the problems confided to him, not later than six weeks after this resolution comes into effect."*

By letter dated 18 December 1951, the United Nations Representative transmitted his second report<sup>568</sup> in accordance with the resolution.

<sup>565</sup> S/2375 and S/2375/Corr.1, O.R., 6th year, Special Suppl. No. 2, pp. 1-38.

<sup>566</sup> S/2392.

<sup>567</sup> 566th meeting: p. 19.

<sup>568</sup> S/2448, O.R., 7th year, Special Suppl. No. 1, pp. 1-37.

<sup>569</sup> S/694, O.R., 3rd year, Suppl. for Jan., Feb., Mar. 1948, pp. 31-34.

## THE CZECHOSLOVAK QUESTION

### INITIAL PROCEEDINGS

By letter dated 12 March 1948,<sup>569</sup> Chile requested the Secretary-General, under Article 35 (1), to refer to the Security Council the communication of 10 March 1948 from Mr. Papanek, "permanent representative of Czechoslovakia", alleging that the political independence of Czechoslovakia had been violated by the threat of the use of force by the USSR in violation of Article 2 (4). The representative of Chile requested that the Council, in accordance with Article 34, should investigate the reported events which constituted "a threat to international peace and security".

At the 268th meeting on 17 March 1948 the Council included the question in the agenda.<sup>570</sup> In the debate on the adoption of the agenda, the representatives of the United Kingdom and the United States stressed<sup>571</sup> that the question before the Council was essentially the complaint of recourse by the USSR to the threat of the use of force, contrary to Article 2 (4).<sup>572</sup> The representative of the USSR repudiated the allegation.<sup>573</sup>

The Council considered the Czechoslovak question at its 268th, 272nd, 273rd, 276th, 278th, 281st, 288th, 300th, 303rd and 305th meetings between 17 March and 26 May.

*Decision of 24 May 1948 (303rd meeting): Rejection of draft resolution submitted by the representative of Chile and sponsored by the representative of Argentina*

At the 281st meeting on 12 April 1948, the representative of Chile\* submitted a proposal<sup>574</sup> providing for the Security Council "to appoint a sub-committee of . . . members" and instruct "this sub-committee to receive or to hear . . . evidence, statements and testimonies and to report to the Security Council at the earliest possible time".

At the 288th meeting on 29 April, the representative of Argentina proposed that a vote be taken upon the proposal made by the representative of Chile and that the sub-committee should consist of three members.<sup>575</sup>

At the 303rd meeting on 24 May, the proposal was not adopted. There were 9 votes in favour and 2 against (1 vote against being that of a permanent member).<sup>576</sup>

At the same meeting, the representative of Argentina submitted a draft resolution (S/782) to entrust

<sup>570</sup> 268th meeting: pp. 101-102. For consideration of the inclusion of the question in the agenda, see chapter II, Case 32; on the claim of domestic jurisdiction, see chapter XII, Case 16.

<sup>571</sup> 268th meeting: pp. 94, 99.

<sup>572</sup> In the discussion at the 281st and 288th meetings, the representatives of the United States and Belgium referred in similar terms to Article 2 (4) in connexion with the question before the Council. See 281st meeting: pp. 25-26; 288th meeting: p. 18.

<sup>573</sup> 281st meeting: pp. 3-4.

<sup>574</sup> 281st meeting: p. 2. For text, see chapter X, Case 17.

<sup>575</sup> 288th meeting: p. 15.

<sup>576</sup> 303rd meeting: pp. 28-29. For consideration of voting procedure and of the relation of Article 34 to the proposal, see chapter IV, Case 49; chapter V, Case 67; chapter X, Case 17.



the Committee of Experts with the task of obtaining further testimonial evidence.

The Czechoslovak question remained on the list of matters of which the Security Council is seized.

#### THE QUESTION OF THE FREE TERRITORY OF TRIESTE

**Letter dated 28 July 1948 from the representative of Yugoslavia to the Secretary-General transmitting a Note from the Government of the Federal People's Republic of Yugoslavia concerning the Free Territory of Trieste (S/927)**

##### INITIAL PROCEEDINGS

By letter dated 28 July 1948, Yugoslavia brought to the attention of the Security Council the "consistent acts of violations of the clauses of the Treaty of Peace with Italy regarding the Free Territory of Trieste on the part of the Allied Military Command"<sup>577</sup> by which "a situation is created likely to endanger the maintenance of international peace and security", and requested the Council "to assure the respect by the Governments of the United States of America and the United Kingdom of their international obligations, thus guaranteeing the independence of the Free Territory of Trieste".<sup>578</sup>

At the 344th meeting on 4 August 1948 the Security Council included the question in the agenda.<sup>579</sup>

The Security Council considered the question at its 344th to 346th, 348th, 350th, 353rd and 354th meetings between 4 August and 19 August 1948.

*Decisions of 19 August 1948 (351th meeting): Rejection of draft resolutions submitted by the representatives of Yugoslavia and the Ukrainian SSR*

At the 344th meeting on 4 August 1948, the representative of the United States stated that the charges made by the representative of Yugoslavia were "utterly devoid of substance".<sup>580</sup>

At the 348th meeting on 13 August 1948, the representative of Yugoslavia submitted a draft resolution to declare that certain agreements concluded between the Allied Military Command and the Republic of Italy were "incompatible with the status of the Free Territory of Trieste" and to render them "null and void".<sup>581</sup>

At the 353rd meeting on 19 August 1948, the representative of the Ukrainian SSR submitted a draft resolution that it was "urgently necessary to settle the question of the appointment of a Governor of the Free Territory of Trieste".<sup>582</sup>

At the 354th meeting on 19 August 1948, the draft resolution submitted by the representative of Yugoslavia was rejected by two votes in favour, none against, with nine abstentions.<sup>583</sup>

At the same meeting, the draft resolution submitted by the representative of the Ukrainian SSR was rejected by 4 votes in favour, none against, with 6

abstentions, and 1 member not participating in the voting.<sup>584</sup>

#### THE HYDERABAD QUESTION

##### INITIAL PROCEEDINGS

By cablegram dated 21 August 1948,<sup>585</sup> Hyderabad informed the Security Council, under Article 35 (2), that a grave dispute had arisen between Hyderabad and India, which, unless settled in accordance with international law and justice, was likely to endanger the maintenance of international peace and security. The letter stated that "Hyderabad, a State not a Member of the United Nations, accepts for the purposes of the dispute the obligations of pacific settlement provided in the Charter of the United Nations". By subsequent communications dated 12 and 13 September, Hyderabad informed the Council of the imminence and subsequently of the occurrence of invasion.<sup>586</sup>

At the 357th meeting on 16 September 1948, the Security Council included the question in the agenda.<sup>587</sup>

The Security Council considered the question, or made reference to it, at its 357th, 359th, 360th, 382nd, 383rd, 384th, 425th and 426th meetings between 16 September 1948 and 24 May 1949.

At the 357th meeting on 16 September 1948, the representative of Hyderabad\* urged that the situation demanded immediate action by the Security Council, not only under Chapter VI of the Charter, but also under Articles 39 and 40.<sup>588</sup>

By cablegram dated 22 September 1948<sup>589</sup> the Nizam of Hyderabad informed the Secretary-General that he had withdrawn the complaint, and that the delegation to the Security Council, which had been sent at the instance of his former Ministry, had ceased to have any authority to represent him or his State.

At the 359th and 360th meetings on 20 and 28 September 1948, discussion centered on three questions: (a) the validity of the credentials of the Hyderabad delegation; (b) whether the withdrawal of the case by the Nizam of Hyderabad had been made voluntarily or under duress; and (c) what attitude the Council should adopt if the State and Government of Hyderabad were to disappear completely.

By letter dated 6 October 1948,<sup>590</sup> the head of the Indian delegation informed the Council that the complaint, "which Hyderabad never had the right to make, now stood expressly withdrawn", and there existed no longer any reason for his Government to maintain a delegation in Paris for dealing with the question.

At the resumption of the discussion during the 425th and 426th meetings held on 19 and 24 May 1949, the representative of Pakistan suggested that, with regard to the question of the competence of the Council to deal with the matter, an advisory opinion of the International Court of Justice under Article 96 of the Charter might be sought.<sup>591</sup> He further suggested that, as a provisional measure envisaged under

<sup>577</sup> O.R., 3rd year, Suppl. for Aug. 1948, p. 79.

<sup>578</sup> O.R., 3rd year, Suppl. for Aug. 1948, p. 84.

<sup>579</sup> 344th meeting: p. 1.

<sup>580</sup> 344th meeting: pp. 8-9.

<sup>581</sup> 348th meeting: p. 14.

<sup>582</sup> 353rd meeting: pp. 18-19.

<sup>583</sup> 354th meeting: p. 36.

<sup>584</sup> 354th meeting: p. 37.

<sup>585</sup> S/986, O.R., 3rd year, Suppl. for Sept. 1948, p. 3.

<sup>586</sup> S/998, S/1000, O.R., 3rd year, Suppl. for Sept. 1948, pp. 6-7.

<sup>587</sup> For consideration of the inclusion of the item in the agenda, see chapter II, Case 33.

<sup>588</sup> 357th meeting: pp. 12-13.

<sup>589</sup> S/1011, O.R., 3rd year, Suppl. for Sept. 1948, p. 7.

<sup>590</sup> S/1089, 382nd meeting: pp. 27-28.

<sup>591</sup> 426th meeting: pp. 28-30.



Article 40 of the Charter, the Council might cause to be ordered a general amnesty for certain persons and organizations, and that a plebiscite be taken under the guidance, supervision and control of the United Nations to decide whether Hyderabad should accede to India or remain independent.

The Hyderabad question remained on the list of matters of which the Security Council is seized.<sup>592</sup>

**IDENTIC NOTIFICATIONS DATED 29 SEPTEMBER 1948 FROM THE GOVERNMENTS OF THE FRENCH REPUBLIC, THE UNITED KINGDOM AND THE UNITED STATES OF AMERICA**

**INITIAL PROCEEDINGS**

By identic notifications,<sup>593</sup> France, the United Kingdom and the United States drew attention to the serious situation which they considered had arisen as a result of the unilateral imposition by the Government of the Union of Soviet Socialist Republics of restrictions on transport and communications between the Western Zones of Occupation in Germany and Berlin. The notifications stated that this action was not only in conflict with the rights of the British, French and the United States Governments, but was also contrary to the obligations of the Soviet Government under Article 2 of the Charter of the United Nations, and created a threat to the peace within the meaning of Chapter VII of the Charter. The three Governments further stated that the Government of the USSR, by its illegal actions, had been attempting to secure political objectives to which it was not entitled and which it could not achieve by peaceful means. The Government of the USSR was considered responsible for creating a situation in which further recourse to the means of settlement prescribed in Article 33 of the Charter was not possible in the existing circumstances, and which constituted a threat to international peace and security.

After discussion at the 361st and 362nd meetings on 4 and 5 October 1948, the Council included the question in the agenda.<sup>594</sup>

After the adoption of the agenda, the representatives of the USSR and the Ukrainian SSR stated that the decision represented a violation of Article 107 of the Charter and that they would not take part in the discussion of the question.

The Council considered the question further at its 363rd, 364th, 366th, 368th, 370th and 372nd meetings between 6 October and 25 October 1948.<sup>595</sup>

The representatives of France, the United Kingdom and the United States contended that the restrictions on transport and communications established by the Government of the USSR in Berlin constituted, contrary to its obligations under Article 2 (4) of the Charter, recourse to "threat of force to prevent the

other occupying Powers from exercising their legitimate rights and discharging their legal and humanitarian responsibilities". The three Powers had, therefore, brought the matter to the Security Council "as a clear threat to the peace within the meaning of Chapter VII of the Charter".

The representative of the USSR contended that the allegation "that the situation which had arisen in Berlin constituted a threat to peace and security, was without any foundation whatsoever" and that the allegation of a threat to the peace had been devised in order to by-pass Article 107 and to make it appear that the Security Council was competent.<sup>596</sup>

*Decision of 25 October 1948 (372nd meeting): Rejection of draft resolution submitted by the representatives of Argentina, Belgium, Canada, China, Colombia and Syria*

At the 370th meeting on 22 October 1948, the representatives of Argentina, Belgium, Canada, China, Colombia and Syria submitted a draft resolution<sup>597</sup> which, citing Article 40 of the Charter, called upon the four occupying Powers to prevent any incident of a nature to aggravate the situation in Berlin; "to put into effect, simultaneously" the steps required for immediate removal of restrictions on transport and commerce and an immediate meeting of the four Military Governors, to arrange for the unification of currency in Berlin; and thereafter to reopen the negotiations in the Council of Foreign Ministers on all outstanding problems concerning Germany as a whole.

At the 372nd meeting, on 25 October 1948, the draft resolution was not adopted.<sup>598</sup> There were 9 votes in favour, and 2 against (1 vote against being that of a permanent member of the Council).<sup>599</sup>

By letter dated 4 May 1949<sup>600</sup> to the Secretary-General, the representatives of France, the United Kingdom and the United States stated that their Governments had concluded with the Government of the USSR an agreement on the question as indicated in a communiqué attached to the letter.

The question remained on the list of matter of which the Security Council is seized.

**COMPLAINT OF AGGRESSION UPON THE REPUBLIC OF KOREA**

**INITIAL PROCEEDINGS**

On 25 June 1950, the Deputy Representative of the United States transmitted to the Secretary-General a report from the United States Ambassador to the Republic of Korea that North Korean forces had invaded the territory of the Republic of Korea at several points in the early morning hours of 25 June (Korean time).<sup>601</sup>

<sup>592</sup> 362nd meeting: p. 22; 364th meeting: p. 35.

<sup>593</sup> S/1048, 370th meeting: pp. 5-6.

<sup>594</sup> 372nd meeting: p. 14.

<sup>595</sup> On 30 November 1948 the President of the Security Council "in the exercise of his powers" instituted a Technical Committee on Berlin Currency and Trade from experts nominated by neutral members of the Security Council to study, and make recommendations within thirty days upon, the establishment of a single currency in Berlin (Press Release SC/908, Enclosure 1). On 27 December 1948 the President of the Council extended the life of the Committee which made public its report on 15 March 1949 (Press Release SC/908).

<sup>596</sup> S/1316, O.R., 4th year, Suppl. for May 1949, pp. 1-2.

<sup>597</sup> S/1495, 473rd meeting: p. 1.

<sup>598</sup> For the retention of the question, see also chapter II, Case 60.

<sup>599</sup> S/1020 and Add.1, O.R., 3rd year, Suppl. for Oct. 1948, pp. 9-45.

<sup>600</sup> 362nd meeting: p. 21. For procedural discussion on inclusion in the agenda, see chapter II, Cases 23 and 34.

<sup>601</sup> For statements regarding recourse to Article 33, see chapter X, Case 6; for the discussion regarding Article 107, see chapter XII, Case 30; for the invocation of Chapter VII of the Charter, see chapter XI, Case 14.

At the 473rd meeting on the same day, the message was included in the agenda under the title, "Complaint of Aggression upon the Republic of Korea", together with a cablegram from the United Nations Commission on Korea concerning the same question.<sup>602</sup> In this cablegram the Commission, after describing the military situation in Korea, drew the attention of the Secretary-General to the "serious situation developing which is assuming character of full-scale war and may endanger the maintenance of international peace and security".

The question was considered at the 473rd to 490th, 492nd to 497th, 502nd to 508th, 518th to 521st, and 523rd to 531st meetings between 25 June 1950 and 31 January 1951.

At the 525th to 530th meetings, the question was discussed jointly with the "Complaint of Armed Invasion of Taiwan (Formosa)".

*Decision of 25 June 1950 (473rd meeting): Determining the action by North Korean forces a breach of the peace, and calling for immediate cessation of hostilities*

At the 473rd meeting on 25 June 1950, the Secretary-General stated<sup>603</sup> that the report he had received from the Commission, as well as reports from other sources in Korea, made it plain that military actions had been undertaken by North Korean forces. These actions were "a direct violation" of General Assembly resolution 293 (IV) of 21 October 1949, "as well as a violation of the principles of the Charter".

At the same meeting the representative of the United States submitted a draft resolution<sup>604</sup> which, as amended after consultations among some of the representatives,<sup>605</sup> was voted upon in parts and finally adopted as a whole by 9 votes in favour with 1 abstention, one member of the Council being absent.<sup>606</sup>

The resolution read as follows:<sup>607</sup>

"The Security Council,

"*Recalling* the finding of the General Assembly in its resolution of 21 October 1949 that the Government of the Republic of Korea is a lawfully established government 'having effective control and jurisdiction over that part of Korea where the United Nations Temporary Commission on Korea was able to observe and consult and in which the great majority of the people of Korea reside; and that this Government is based on elections which were a valid expression of the free will of the electorate of that part of Korea and which were observed by the Temporary Commission; and that this is the only such government in Korea';

"*Mindful* of the concern expressed by the General Assembly in its resolutions of 12 December 1948 and 21 October 1949 of the consequences which might follow unless Member States refrained from acts derogatory to the results sought to be achieved by the United Nations in bringing about the complete

independence and unity of Korea; and the concern expressed that the situation described by the United Nations Commission on Korea in its report menaces the safety and well-being of the Republic of Korea and of the people of Korea and might lead to open military conflict there;

"*Noting* with grave concern the armed attack upon the Republic of Korea by forces from North Korea,

"*Determines* that this action constitutes a breach of the peace,

"I. *Calls* for the immediate cessation of hostilities; and

"*Calls upon* the authorities of North Korea to withdraw forthwith their armed forces to the 38th parallel;

"II. *Requests* the United Nations Commission on Korea

"(a) To communicate its fully considered recommendations on the situation with the least possible delay;

"(b) To observe the withdrawal of North Korean forces to the 38th parallel; and

"(c) To keep the Security Council informed on the execution of this resolution;

"III. *Calls upon* all Members to render every assistance to the United Nations in the execution of this resolution and to refrain from giving assistance to the North Korean authorities."

*Decision of 25 June 1950 (473rd meeting): Rejection of draft resolution submitted by the representative of Yugoslavia*

At the 473rd meeting on 25 June 1950, the representative of Yugoslavia submitted a draft resolution<sup>608</sup> to call for an immediate cessation of hostilities and withdrawal of forces, and to invite the Government of North Korea to state its case before the Security Council.<sup>609</sup> The draft resolution was rejected by 1 vote in favour, 6 against, with 3 abstentions, one member of the Council being absent.<sup>610</sup>

*Decision of 27 June 1950 (474th meeting): Recommendation to Member States to furnish assistance to the Republic of Korea<sup>611</sup>*

At the 474th meeting on 27 June 1950, the Council had before it four cablegrams<sup>612</sup> from the United Nations Commission on Korea submitted in response to the Council decision of 25 June. At the same meeting, the representative of the United States submitted a draft resolution<sup>613</sup> which was put to the vote and

<sup>602</sup> S/1500, 473rd meeting: p. 15.

<sup>603</sup> For the invitation to the representative of the Republic of Korea to participate, see chapter III, Case 53 and Case 93. For discussion on participation of the representative of the People's Republic of Korea, see chapter III, Case 64 and Case 73.

<sup>604</sup> 473rd meeting: pp. 15, 18.

<sup>605</sup> For statement on relevance of this decision and the decision of 25 June to Article 39, see chapter XI, Case 15. For the applicability of Art. 2 (?), see chapter XII, Case 17.

<sup>606</sup> S/1503, S/1504, S/1507, 474th meeting: p. 2; S/1505/Rev.1, O.R., 5th year, Suppl. for June, July and Aug. 1950, pp. 23-26.

<sup>607</sup> S/1508/Rev.1, 474th meeting: p. 4.

<sup>608</sup> S/1496, 473rd meeting: p. 2.

<sup>609</sup> 473rd meeting: p. 3. See chapter I, Case 40.

<sup>610</sup> S/1497, 473rd meeting: pp. 7-8.

<sup>611</sup> S/1499, 473rd meeting: pp. 13-14.

<sup>612</sup> 473rd meeting: pp. 15-18.

<sup>613</sup> S/1501.

adopted by 7 votes in favour, 1 against, with 2 members of the Council not voting, and 1 member being absent.<sup>614</sup> The resolution read as follows:<sup>615</sup>

*"The Security Council*

*"Having determined that the armed attack upon the Republic of Korea by forces from North Korea constitutes a breach of the peace,*

*"Having called for an immediate cessation of hostilities, and*

*"Having called upon the authorities of North Korea to withdraw forthwith their armed forces to the 38th parallel, and*

*"Having noted from the report of the United Nations Commission for Korea that the authorities in North Korea have neither ceased hostilities nor withdrawn their armed forces to the 38th parallel, and that urgent military measures are required to restore international peace and security, and*

*"Having noted the appeal from the Republic of Korea to the United Nations for immediate and effective steps to secure peace and security,*

*"Recommends that the Members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area."*

*Decision of 27 June 1950 (474th meeting): Rejection of draft resolution submitted by the representative of Yugoslavia*

At the 474th meeting on 27 June 1950, the representative of Yugoslavia submitted a draft resolution<sup>616</sup> to renew the call for an immediate cessation of hostilities, to initiate a procedure of mediation between the parties involved, and to invite the Government of the People's Republic of Korea to send immediately a representative to the United Nations with full powers to participate in the procedure of mediation. The draft resolution was rejected by 1 vote in favour, 7 against, with 2 members not participating in the voting and one member being absent.<sup>617</sup>

*Decision of 7 July 1950 (476th meeting): Establishment of a unified command*

At the 475th meeting on 30 June 1950 and at the 476th meeting on 7 July 1950, the Council had before it communications from Member Governments concerning their attitudes with regard to the Council resolutions of 25 and 27 June 1950.<sup>618</sup>

<sup>614</sup> 474th meeting: pp. 16-17. At the 475th meeting on 30 June 1950, the representative of Egypt, who had not participated in the voting, stated that, had he received instructions in time, he would have abstained. The President, speaking as the representative of India, who also had not participated in the voting, informed the Council that his Government had accepted the resolution. By cablegram dated 29 June 1950 (S/1517, O.R., 5th year, Suppl. for June, July and Aug. 1950, pp. 29-30), the USSR, the Council member which had been absent, stated that the resolution of 27 June had no legal force since it had been passed in the absence of two permanent members, the USSR and China, the latter having not been duly represented.

<sup>615</sup> S/1511.

<sup>616</sup> S/1509, 474th meeting: pp. 6-7.

<sup>617</sup> 474th meeting: p. 17.

<sup>618</sup> S/1515 to S/1586, O.R., 5th year, Suppl. for June, July and August 1950, pp. 28-74.

At the 476th meeting, the representatives of France and the United Kingdom submitted a joint draft resolution<sup>619</sup> which was adopted by 7 votes in favour, none against, with 3 abstentions, one member being absent.

The resolution read as follows:<sup>620</sup>

*"The Security Council,*

*"Having determined that the armed attack upon the Republic of Korea by forces from North Korea constitutes a breach of the peace,*

*"Having recommended that Members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area,*

*"1. Welcomes the prompt and vigorous support which governments and peoples of the United Nations have given to its Resolutions of 25 and 27 June 1950 to assist the Republic of Korea in defending itself against armed attack and thus to restore international peace and security in the area;*

*"2. Notes that Members of the United Nations have transmitted to the United Nations offers of assistance for the Republic of Korea;*

*"3. Recommends that all Members providing military forces and other assistance pursuant to the aforesaid Security Council resolutions make such forces and other assistance available to a unified command under the United States;*

*"4. Requests the United States to designate the commander of such forces;*

*"5. Authorizes the unified command at its discretion to use the United Nations flag in the course of operations against North Korean forces concurrently with the flags of the various nations participating;*

*"6. Requests the United States to provide the Security Council with reports as appropriate on the course of action taken under the unified command."*

*Decision of 31 July 1950 (479th meeting): Concerning Korean Relief*

At the 477th meeting on 25 July 1950, the representative of the United States informed the Council that, in pursuance of its resolution of 7 July 1950, the Unified Command had been established with Headquarters in Tokyo. At the same meeting, the Council had before it the first report, dated 24 July 1950, submitted by the Government of the United States on the course of action taken under the Unified Command.<sup>621</sup>

At the 479th meeting on 31 July 1950, the President, speaking as the representative of Norway, submitted on behalf of his delegation, as well as those of France and the United Kingdom, a joint draft resolution<sup>622</sup> which was adopted at the same meeting by 9 votes in favour, with 1 abstention, one member being absent.

<sup>619</sup> S/1587, 476th meeting: pp. 5, 8.

<sup>620</sup> S/1588.

<sup>621</sup> 477th meeting: pp. 3-9.

<sup>622</sup> S/1652, 479th meeting: pp. 3, 7.

The resolution read as follows:<sup>623</sup>

*"The Security Council,*

*"Recognizing* the hardships and privations to which the people of Korea are being subjected as a result of the continued prosecution by the North Korean forces of their unlawful attack; and

*"Appreciating* the spontaneous offers of assistance to the Korean people which have been made by governments, specialized agencies, and non-governmental organizations;

*"Requests* the Unified Command to exercise responsibility for determining the requirements for the relief and support of the civilian population of Korea, and for establishing in the field the procedures for providing such relief and support;

*"Requests* the Secretary-General to transmit all offers of assistance for relief and support to the Unified Command;

*"Requests* the Unified Command to provide the Security Council with reports, as appropriate, on its relief activities;

*"Requests* the Secretary-General, the Economic and Social Council in accordance with Article 65 of the Charter, other appropriate United Nations principal and subsidiary organs, the specialized agencies in accordance with the terms of their respective agreements with the United Nations, and appropriate non-governmental organizations, to provide such assistance as the Unified Command may request for the relief and support of the civilian population of Korea, and as appropriate in connexion with the responsibilities being carried out by the Unified Command on behalf of the Security Council."

*Decision of 6 September 1950 (496th meeting): Rejection of draft resolution submitted by the representative of the United States*

At the 479th meeting on 31 July 1950, the representative of the United States submitted a draft resolution<sup>624</sup> to condemn the North Korean authorities for their continued defiance of the United Nations, to call upon all States to use their influence to prevail upon the authorities of North Korea to cease this defiance, and to call upon all States to refrain from assisting or encouraging the North Korean authorities and to refrain from action which might lead to the spread of the Korean conflict to other areas. At the 496th meeting on 6 September 1950, the draft resolution was put to the vote and was not adopted. There were 9 votes in favour and 1 against, with 1 abstention, the vote against being that of a permanent member.<sup>625</sup>

*Decision of 7 September 1950 (497th meeting): Rejection of draft resolution submitted by the representative of the USSR*

At the 484th meeting on 8 August 1950, in connexion with the alleged bombing by the United States Air Force of towns and other populated areas in Korea, the representative of the USSR submitted a draft resolution<sup>626</sup> to call upon the Government of the United States to cease and not permit in future the

bombing by the Air Force, or by other means, of towns and populated areas and also the shooting from the air of the peaceful population of Korea. At the 497th meeting on 7 September 1950, the draft resolution was rejected by one vote in favour, 9 against, with 1 abstention.<sup>627</sup>

*Decision of 30 September 1950 (508th meeting): Rejection of draft resolution submitted by the representative of the USSR*

At the 503rd meeting on 26 September 1950, the representative of the USSR submitted a draft resolution<sup>628</sup> similar to the one which had been rejected at the 497th meeting (S/1679). At the 508th meeting on 30 September 1950, the draft resolution was rejected by one vote in favour, 9 against, with 1 abstention.<sup>629</sup>

*Decision of 30 November 1950 (530th meeting): Rejection of draft resolution submitted by the representatives of Cuba, Ecuador, France, Norway, United Kingdom and United States*

At the 518th meeting on 6 November 1950, the representative of the United States read to the Council a special report dated 5 November 1950<sup>630</sup>, submitted by the United Nations Command, that the United Nations fighting forces were "in hostile contact with Chinese communist military units deployed for action against the forces of the Unified Command."

At the 519th meeting on 8 November 1950, the representative of the USSR objected to the Council considering the special report, on the ground that the resolution of 7 July establishing the United Nations Command had been taken in violation of the Charter.<sup>631</sup>

At the 521st meeting on 10 November, the representatives of Cuba, Ecuador, France, Norway, the United Kingdom and the United States submitted a joint draft resolution<sup>632</sup> to call upon all States and authorities to refrain from assisting or encouraging the North Korean authorities, to prevent nationals or individuals or units of their armed forces from giving assistance to the North Korean forces and to cause the immediate withdrawal of any such nationals, individuals or units which may presently be in Korea. At the 530th meeting on 30 November 1950, the draft resolution, as a whole, was not adopted, having received 9 votes in favour and 1 against, (being that of a permanent member), with 1 member not participating in the voting.<sup>633</sup>

*Decision of 30 November 1950 (530th meeting): Rejection of draft resolution submitted by the representative of the People's Republic of China and sponsored by the representative of the USSR*

At the 527th meeting on 28 November 1950, the representative of the Central People's Government of

<sup>623</sup> 497th meeting: pp. 17-18.

<sup>624</sup> S/1812, 503rd meeting: p. 14.

<sup>625</sup> 508th meeting: pp. 5, 11.

<sup>626</sup> S/1884, 518th meeting: pp. 3-5.

<sup>627</sup> 519th meeting: pp. 4-6. For invitation to the representative of the People's Republic of China to participate during discussion of the special report, see chapter III, Cases 55 and 121. For the refusal of the Government of the People's Republic of China, see S/1889-11, O.R., 5th year, Suppl. for Sept. through Dec. 1950, pp. 113-114.

<sup>628</sup> S/1894, 521st meeting: p. 16.

<sup>629</sup> 530th meeting: pp. 22-25.

<sup>623</sup> S/1657.

<sup>624</sup> S/1653, 479th meeting: pp. 7-8.

<sup>625</sup> 496th meeting: pp. 18-19.

<sup>626</sup> S/1679, 484th meeting: p. 20.

the People's Republic of China, taking part in the discussion under rule 39 of the rules of procedure, submitted a draft resolution<sup>634</sup> which in part called for "the withdrawal from Korea of the armed forces of the United States of America and all other countries, and to leave the people of North and South Korea to settle the domestic affairs of Korea themselves so that a peaceful solution of the Korean question might be achieved".<sup>635</sup> The draft resolution was sponsored by the representative of the USSR.

At the 530th meeting on 30 November, the draft resolution was rejected by 1 vote in favour, 9 against, with 1 member not participating in the voting.<sup>636</sup>

*Decision of 31 January 1951 (531st meeting): Removal of the item from the list of matters of which the Council is seized*

At the 531st meeting on 31 January 1951, the representative of the United Kingdom, recalling his letter of 29 January 1951<sup>637</sup> to the President of the Council, stated that, in order to avoid any technical doubts that might arise regarding an infringement of Article 12 of the Charter, he proposed that the item be taken off the agenda of the Council. At the same meeting, he submitted a draft resolution<sup>638</sup> which was adopted unanimously.<sup>639</sup> The resolution read as follows:

"The Security Council,

"Resolves to remove the item 'Complaint of aggression upon the Republic of Korea' from the list of matters of which the Council is seized."

#### COMPLAINT OF ARMED INVASION OF TAIWAN (FORMOSA)

##### INITIAL PROCEEDINGS

By cablegram dated 24 August 1950,<sup>640</sup> the Minister for Foreign Affairs of the People's Republic of China stated that, on 27 June 1950, the President of the United States had announced the decision of his Government to prevent with armed forces the liberation of Taiwan by the Chinese People's Liberation Army. The United States 7th Fleet had moved toward the Straits of Taiwan and contingents of the United States Air Forces had arrived on Taiwan, in open encroachment on the territory of the People's Republic of China. That action was a direct armed aggression on the territory of China and a total violation of the United Nations Charter. The Foreign Minister proposed to the Security Council, as the organ charged with the maintenance of international peace and security and the upholding of the dignity of the Charter, that it was its duty to condemn the United States Government for its "criminal" act and to take immediate measures to bring about the complete withdrawal of all United States armed invading forces from Taiwan and from other territories belonging to China.

In his statement to the Council, at the 527th meeting on 28 November 1950, the representative of the People's Republic of China contended that Taiwan was an integral part of the territory of China, of which the Central People's Government was the "sole legal Government". The occupation of Taiwan by United States armed forces constituted "an act of open, direct armed aggression against China by the Government of the United States".

At the same meeting, the representative of the People's Republic submitted a draft resolution<sup>641</sup> whereby the Council would recognize the occupation of Taiwan by United States armed forces as "open and direct aggression against Chinese territory" and would condemn the United States Government accordingly; and would demand the withdrawal of United States forces from Taiwan and from Korea.

By letter dated 25 August,<sup>642</sup> the representative of the United States replied, in part, that:

1. The United States had not encroached on the territory of China, nor taken aggressive action against China.

2. The action of the United States had been an impartial, neutralizing action, addressed both to the forces in Formosa and on the mainland. It was an action designed to keep the peace and therefore was in full accord with the Charter of the United Nations. The United States had no designs on Formosa and the action was not inspired by any desire to acquire a special position.

3. The action of the United States was expressly stated to be without prejudice to the future political status of the island.

4. The United States would welcome United Nations consideration of the case of Formosa and would approve full United Nations investigation at Headquarters or on the spot.

At the 492nd meeting on 29 August 1950, the question was included in the agenda under the title "Complaint of Armed Invasion of Taiwan (Formosa)".<sup>643</sup> The question was considered at the 490th, 493rd, 503rd-507th and 525th-530th meetings,<sup>644</sup> held between 25 August and 30 November 1950.

*Decision of 29 September 1950 (506th meeting): To defer consideration of the question and to invite a representative of the People's Republic of China to attend the Council discussions on the question*

At the 504th meeting on 27 September 1950, the representative of Ecuador submitted a draft resolution,<sup>645</sup> in the form of an amendment to a pending Chinese proposal that the item be deleted from the agenda. Under the Ecuadorean amendment, the Coun-

<sup>634</sup> S/1921, 527th meeting: p. 22.

<sup>635</sup> S/1716, 490th meeting: pp. 6-9.

<sup>636</sup> In the debate on the adoption of the agenda, the representative of the USSR contended that the complaint was raised under Article 2 (4) of the Charter (492nd meeting, p. 9). On inclusion in the agenda, see chapter II, Case 24.

<sup>637</sup> At the 525th-530th meetings, the item was considered jointly with the "Complaint of aggression upon the Republic of Korea".

<sup>638</sup> S/1817/Rev.1, 504th meeting: pp. 12-13. For discussion in relation to Article 12, see chapter VI, Case 3; and in relation to Article 34, see chapter X, Case 18.

<sup>639</sup> S/1921, 527th meeting: p. 25.

<sup>640</sup> For other parts of this draft resolution, see below: "Complaint of Armed Invasion of Taiwan (Formosa)".

<sup>641</sup> 530th meeting: p. 22.

<sup>642</sup> S/1992, O.R., 6th year, Suppl. for Jan., Feb. and March 1951, pp. 10-11. For other observations, see chapter VI, Case 4.

<sup>643</sup> S/1995, 531st meeting: p. 8.

<sup>644</sup> 531st meeting: pp. 11-12.

<sup>645</sup> S/1715, 490th meeting: pp. 9-10.



cil would defer consideration of the question and would invite a representative of the People's Republic of China to attend when the question was discussed. The Council also had before it a USSR draft resolution,<sup>646</sup> reintroduced at the 503rd meeting on 26 September 1950, to invite a representative of the People's Republic of China to participate forthwith in the discussion on the question.

At the 505th meeting on 28 September, the Council voted first on the Chinese proposal, which was rejected by 2 votes in favour, 6 against, and 3 abstentions. The Council then rejected the USSR draft resolution, as amended by the United Kingdom, by 6 votes in favour, 3 against, and 2 abstentions. Finally, the Council voted on the Ecuadorean proposal, the operative part of which was rejected by 6 votes in favour, 4 against and 1 abstention. The Council member who abstained later explained his vote and stated that his vote should be considered as favourable to the operative part of the draft resolution. Objections to this procedure having been made, the Council meeting adjourned.<sup>647</sup>

At the 506th meeting on 29 September, the representative of Ecuador reintroduced his draft resolution<sup>648</sup> which was put to the vote, paragraph by paragraph. The Council then voted on the draft resolution as a whole, as amended, with the omission of the last paragraph of the preamble, and adopted it by 7 votes in favour, 3 against, and 1 abstention.<sup>649</sup> The resolution read as follows:

*"The Security Council,*

*"Considering that it is its duty to investigate any situation likely to lead to international friction or to give rise to a dispute in order to determine whether the continuance of such dispute or situation may endanger international peace and security, and likewise to determine the existence of any threat to peace; [9 votes to none, with 2 abstentions]*

*"Considering that, in the event of a complaint regarding situations or facts similar to those mentioned above, the Council may hear the complainants; [8 votes to none, with 3 abstentions]*

*"Considering that, in view of the divergency of opinion in the Council regarding the representation of China and without prejudice to this question, it may, in accordance with rule 39 of the rules of procedure, invite representatives of the Central People's Government of the People's Republic of China to provide it with information or assist it in the consideration of these matters; [7 votes to 2, with 2 abstentions]*

*"Having noted the declaration of the People's Republic of China regarding the armed invasion of the Island of Taiwan (Formosa); [7 votes to 1, with 3 abstentions]*

*"Decides:*

*"(a) To defer consideration of this question until the first meeting of the Council held after 15 November 1950;*

*"(b) To invite a representative of the said Government to attend the meetings of the Security Council held after 15 November 1950 during the discussion of that Government's declaration regarding an armed invasion of the Island of Taiwan (Formosa)".<sup>650</sup> [7 votes to 4]*

*Decisions of 30 November 1950 (530th meeting): Rejection of draft resolution submitted by the representative of the USSR and of draft resolution by the People's Republic of China*

On 2 September 1950, the representative of the USSR submitted a draft resolution<sup>651</sup> to condemn the acts of the United States Government as an act of aggression and an intervention in the internal affairs of China, and to propose to the United States Government the immediate withdrawal of all its air, sea and land forces from the island of Taiwan and from other territories belonging to China.

At the 530th meeting on 30 November 1950, the USSR draft resolution and the draft resolution submitted by the People's Republic of China and sponsored by the representative of the USSR were rejected by 1 vote in favour, 9 against and 1 member not participating in the vote.<sup>652</sup>

The question remained on the list of matters of which the Security Council is seized.

#### COMPLAINT OF BOMBING BY AIR FORCES OF THE TERRITORY OF CHINA

##### INITIAL PROCEEDINGS

By cablegram dated 27 August 1950,<sup>653</sup> the People's Republic of China charged that, on 27 August, military aircraft of the United States forces in Korea had invaded the air of the People's Republic of China and caused material damage. He proposed that the Council condemn the United States forces in Korea for invading China's air, and that the Council "take immediate measures to bring about the complete withdrawal of all the United States aggression forces from Korea" in order to avoid an aggravation of the situation and to facilitate the peaceful settlement of the Korean question by the United Nations.

At the 493rd meeting on 31 August, the Council included the question in the agenda under the title, "Complaint of bombing by air forces of the territory of China".

The Council discussed the question at its 493rd, 497th, 499th and 501st meetings, held between 31 August and 12 September 1950.

*Decision of 12 September 1950 (501st meeting): Rejection of draft resolution submitted by the representative of the United States*

At the 501st meeting on 12 September 1950, the representative of the United States submitted a draft

<sup>646</sup> For discussion regarding participation, see chapter III, Case 54 and Case 65.

<sup>647</sup> S/1757, 530th meeting: p. 21.

<sup>648</sup> 530th meeting: pp. 21-22.

<sup>649</sup> S/1722, O.R., 5th year, Suppl. for June-Aug. 1950, pp. 144-145; see also S/1743, cablegram dated 30 August 1950, O.R., 5th year, Suppl. for June-Aug. 1950, p. 156. On inclusion in the agenda, see chapter II, Case 25.

<sup>650</sup> S/1732, 492nd meeting: p. 15.

<sup>651</sup> 505th meeting: pp. 20-29.

<sup>652</sup> S/1823/Corr.1, 506th meeting: pp. 3-5.

<sup>653</sup> 506th meeting: p. 5. For discussion on the legal effect of this vote, see chapter IV, Case 99.



resolution<sup>654</sup> to establish a commission to investigate on the spot and report as soon as possible with regard to the allegations.

At the same meeting, the draft resolution was not adopted. There were 7 votes in favour, 1 against (being that of a permanent member), 2 abstentions, and 1 member not participating in the vote.<sup>655</sup>

*Decision of 12 September 1950 (501st meeting): Rejection of draft resolution submitted by the representative of the USSR*

The representative of the USSR submitted on 31 August 1950 a draft resolution<sup>656</sup> to condemn the "illegal acts of the Government of the United States of America", to place on that Government "full responsibility" and to call upon the United States "to prohibit such illegal acts".

At the 501st meeting on 12 September 1950, the draft resolution was rejected by 8 votes in favour, 1 against, with 1 abstention, and 1 member not participating in the vote.<sup>657</sup>

The question remained on the list of matters of which the Security Council is seized.

#### THE ANGLO-IRANIAN OIL COMPANY CASE<sup>658</sup>

##### INITIAL PROCEEDINGS

By letter dated 29 September 1951,<sup>659</sup> the United Kingdom requested the inclusion of the following item on the provisional agenda of the Security Council:

"Complaint of failure by the Iranian Government to comply with provisional measures indicated by the International Court of Justice in the Anglo-Iranian Oil Company Case."

The United Kingdom recalled that the International Court of Justice had notified the Council of the provisional measures indicated by the Court on 5 July 1951 under Article 41 (2) of its statute.<sup>660</sup> The United Kingdom had accepted the findings of the Court, but Iran had rejected them and had ordered the expulsion from Iran of all the remaining staff of the Company, contrary to the provisional measures indicated by the Court. The letter continued:

"His Majesty's Government in the United Kingdom are gravely concerned at the dangers inherent in this situation and at the threat to peace and security that may thereby be involved."

Appended to the letter of submission was a draft resolution<sup>661</sup> to call upon the Government of Iran to act in conformity with the provisional measures indicated by the International Court and to request it to

inform the Council of the steps taken to carry out the resolution of the Council.

At the 559th meeting on 1 October 1951, after the Council had included the question in the agenda, the representative of the United Kingdom stated:<sup>662</sup>

"The Council will, of course, bear in mind the position of the Court as the principal judicial organ of the United Nations; both Article 92 of the Charter and Article 1 of the Court's Statute establish this. Its position in this capacity has been affirmed by the Court itself; I would direct representatives' attention, for instance, to the Peace Treaties case. To act in conformity with the decisions and findings of the Court must, therefore, necessarily be to act in conformity with purposes and principles of the United Nations. This is a cardinal reason justifying both the present recourse to the Security Council on the part of the United Kingdom Government and its request for support, on the part of the other members of the Council, of the draft resolution which it has submitted..."

The Council considered the question at the 559th through 563rd meetings between 1 and 17 October and at the 565th meeting on 19 October 1951.<sup>663</sup>

*Decision of 19 October 1951 (565th meeting): Adjournment of debate*

At the 560th meeting on 15 October, the representative of the United Kingdom, in view of the changed situation, including the expulsion of the remaining Anglo-Iranian Oil Company staff, submitted a revised draft resolution.<sup>664</sup> Amendments submitted jointly by the representatives of India and Yugoslavia at the 561st meeting on 16 October<sup>665</sup> were accepted by the representative of the United Kingdom at the 562nd meeting on 17 October. The draft resolution, in its second revision<sup>666</sup> called for the resumption of negotiations in order to make further efforts to resolve the differences in accordance with the Purposes and Principles of the Charter and the avoidance of any action which would have the effect of further aggravating the situation or prejudicing the positions of the parties.

At the 562nd meeting on 17 October, the representative of Ecuador submitted a draft resolution the operative part of which read:<sup>667</sup>

"The Security Council,

"Without deciding on the question of its own competence,

"Advises the parties concerned to reopen negotiations as soon as possible with a view to making a fresh attempt to settle their differences in accordance with the Purposes and Principles of the United Nations Charter."

<sup>654</sup> S/1752, 501st meeting: pp. 4-5. For consideration of the draft resolution, see chapter X, Case 19.

<sup>655</sup> 501st meeting: p. 28.

<sup>656</sup> S/1745/Rev.1, 501st meeting: p. 3.

<sup>657</sup> 501st meeting: p. 28.

<sup>658</sup> For consideration of the competence of the Council in relation to Article 41 of the Statute of the International Court, see chapter VI, Case 29. For the claim of domestic jurisdiction, see chapter XII, Case 19, p. 29.

<sup>659</sup> S/2357, O.R., 6th year, Suppl. for Oct., Nov., Dec. 1951, pp. 1-2.

<sup>660</sup> S/2239, O.R., 6th year, Suppl. for Oct., Nov., Dec. 1951, p. 1.

<sup>661</sup> S/2358, O.R., 6th year, Suppl. for Oct., Nov., Dec. 1951, pp. 2-3.

<sup>662</sup> 559th meeting: pp. 21-22. On inclusion in the agenda, see chapter II, Cases 26 and 37.

<sup>663</sup> For discussion in relation to Chapter VI of the Charter, see chapter X, Case 26.

<sup>664</sup> S/2258/Rev.1, O.R., 6th year, Suppl. for Oct., Nov., Dec. 1951, pp. 3-4.

<sup>665</sup> S/2279, 561st meeting: pp. 15-16.

<sup>666</sup> S/2258/Rev.2, O.R., 6th year, Suppl. for Oct., Nov., Dec. 1951, pp. 4-5.

<sup>667</sup> S/2380, 562nd meeting: p. 10.

At the 565th meeting on 19 October, the representative of France proposed that the Council adjourn its debate on the question until the International Court of Justice had ruled on its own competence in the matter.<sup>688</sup>

<sup>688</sup> 565th meeting: pp. 2-3.

At the same meeting, the French motion was adopted.<sup>689</sup>

The question remained on the list of matters of which the Security Council is seized.

<sup>689</sup> 565th meeting: p. 12.

**Chapter IX**

**DECISIONS IN THE EXERCISE OF OTHER FUNCTIONS AND POWERS**

**TABLE OF CONTENTS**

	<i>Page</i>
INTRODUCTORY NOTE .....	365
Reports of the Military Staff Committee .....	366
Reports of the Atomic Energy Commission .....	367
General Regulation and Reduction of Armaments and Information on Armed Forces of the United Nations .....	368
Reports of the Commission for Conventional Armaments .....	369
Strategic Areas under Trusteeship .....	372

## INTRODUCTORY NOTE

Decisions of the Security Council relative to recommendations to the General Assembly regarding the admission of new Members have been dealt with in chapter VII, and the decisions on questions considered under the Council's responsibility for the maintenance of international peace and security in chapter VIII. In chapter IX are brought together decisions of the Council in the exercise of other functions and powers under the Charter.<sup>1</sup>

<sup>1</sup> With the exception of decisions concerning the relations of the Security Council with other organs of the United Nations arising from Articles 47 (1) and (2), 94 (2), 96 (1), and 97 (1) of the Charter and Articles 4-12 and 41 of the Statute of the International Court of Justice. For these decisions, see chapter VI: Relations with other Organs of the United Nations.

The pattern adopted in the presentation of the material is identical, *mutatis mutandis*, with the pattern adopted in the preceding chapter, to which reference should be made for an explanation of the method followed.

In this chapter, as in the preceding chapter, the discussion within the Council on the subject matter under consideration has not been regarded as germane to the *Repertoire*. At certain points, however, in the consideration of these questions, problems have arisen regarding the relationship to the Charter of proposals before the Council. Such discussion is treated in the same manner as the ancillary material to chapter VIII of the *Repertoire*, and is entered under the appropriate Articles of the Charter in chapter XII.<sup>2</sup>

<sup>2</sup> On Article 43, see chapter XI, Case 18.

### Articles of the Charter

#### *Article 26*

In order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources, the Security Council shall be responsible for formulating, with the assistance of the Military Staff Committee referred to in Article 47, plans to be submitted to the Members of the United Nations for the establishment of a system for the regulation of armaments.

\* \* \*

#### *Article 43*

1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.

2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.

3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.

#### *Article 44*

When the Security Council has decided to use force it shall, before calling upon a Member not represented on it to provide armed forces in fulfillment of the obligations assumed under Article 43, invite that Member, if the Member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that Member's armed forces.

#### *Article 45*

In order to enable the United Nations to take urgent military measures, Members shall hold immediately available national air-force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action shall be determined, within the limits laid down in the special agreement or agreements referred to in Article 43, by the Security Council with the assistance of the Military Staff Committee.



*Article 46*

Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee.

\* \* \*

*Article 82*

There may be designated, in any trusteeship agreement, a strategic area or areas which may include part or all of the trust territory to which the agreement applies, without prejudice to any special agreement or agreements made under Article 43.

*Article 83*

1. All functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the Security Council.

2. The basic objectives set forth in Article 76 shall be applicable to the people of each strategic area.

3. The Security Council shall, subject to the provisions of the trusteeship agreements and without prejudice to security considerations, avail itself of the assistance of the Trusteeship Council to perform those functions of the United Nations under the trusteeship system relating to political, economic, social, and educational matters in the strategic areas.

**REPORTS OF THE MILITARY STAFF COMMITTEE<sup>1</sup>**

*Decision of 25 January 1946 (2nd meeting): To postpone consideration until Military Staff Committee is constituted*

At the 2nd meeting on 25 January 1946, the provisional agenda contained the following item:

"Discussion of the best means of arriving at the conclusion of the special agreements referred to in the Charter, Article 43."

The Security Council decided at the suggestion of the President to defer consideration of this item until "a later time when the Military Staff Committee may possibly have met".<sup>2</sup>

*Decision of 16 February 1946 (23rd meeting): Directive to examine Article 43 and report*

At the 23rd meeting on 16 February 1946, the Security Council adopted a proposal by the representative of the United Kingdom requesting the Military Staff Committee to meet in New York simultaneously with the first meeting of the Council at the temporary headquarters in New York, and the Military Staff Committee was directed "as its first task, to examine from the military point of view the provisions contained in Article 43 of the Charter, and to submit the results of the study and any recommendations to the Council in due course".<sup>3</sup>

*Decision of 13 February 1947 (105th meeting): Request for recommendations regarding the organization of United Nations armed force*

At the 105th meeting on 13 February 1947, in its resolution on the implementation of the General Assembly resolutions 41 (I) and 42 (I) of 14 December 1946 concerning the general regulation and reduction of armaments, and information on armed forces of the United Nations, the Council requested the Military

Staff Committee to submit as soon as possible, as a matter of urgency, and not later than 30 April 1947, its recommendations with regard to the basic principles which should govern the organization of the United Nations armed force.<sup>4</sup>

*Decision of 16 June 1947 (141st meeting): Request to Military Staff Committee to continue work*

By letter dated 30 April 1947, the Chairman of the Military Staff Committee submitted its report on the general principles governing the organization of the armed forces to be made available to the Council by Member Nations.<sup>5</sup>

The report was discussed at the 138th, 139th, 140th and 141st meetings from 4 to 16 June 1947.

The Council then adopted a Syrian motion that, the general discussion on the report of the Military Staff Committee having been concluded, the report would be taken as a working paper and its articles studied "one by one" in the Security Council.<sup>6</sup>

The Council also approved a suggestion by the President that the Military Staff Committee should be requested to continue its work concurrently with the Council's examination of its report, and without waiting for a decision on all the existing points of disagreement.<sup>7</sup> The Council agreed upon a detailed examination of the report of the Military Staff Committee at the 142nd meeting on 18 June 1947 which was continued at the 143rd, 145th, 146th, 149th, 154th and 157th meetings, between 20 June and 15 July 1947.

*Decisions of 18, 20, 24 and 30 June 1947 (142nd, 143rd, 145th and 149th meetings): Adoption of certain articles of the report*

The report of the Military Staff Committee contained 41 articles, of which it had reached agreement on twenty-five and failed to agree on sixteen.

<sup>1</sup> See also chapter VI, part V, for the constitutional relations of the Military Staff Committee and the Security Council.

<sup>2</sup> 2nd meeting: p. 14.

<sup>3</sup> 23rd meeting: p. 369.

<sup>4</sup> S/268/Rev.1, O.R., 2nd year, Suppl. No. 5, p. 59; 105th meeting: p. 274.

<sup>5</sup> S/33, O.R., 2nd year, Special Suppl. No. 1, pp. 1-32.

<sup>6</sup> 141st meeting: p. 1015.

<sup>7</sup> 141st meeting: p. 1018.

In the course of discussion at the 142nd, 143rd, 145th and 149th meetings between 18 and 30 June 1947, the Security Council adopted the articles agreed upon in the Military Staff Committee, viz.: articles 1, 2, 3, 4, 5, 6, 9, 10, 12, 13, 14, 15, 18, 19, 22, 23, 24, 29, 30, 35, 36, 37, 38, 39 and 40. Minor corrections of language in the English or the French text were made in articles 13, 23, 24, 29 and 35. Articles 5 and 6 were adopted with drafting and clarification amendments. Article 6 was amended to bring the expression "armed forces made available to the Security Council" in line with the language of the Charter by adding the phrase "on its call". This amendment bore a consequential effect and was also applied to articles 10, 13, 22 and 36. Articles 5, 6 and 18 were adopted after clarification had been sought and received from the Military Staff Committee. Article 18 as finally adopted carried as a footnote part of the Military Staff Committee's letter of interpretation.<sup>10</sup>

At the 149th meeting on 30 June 1947, the Council began discussion of article 11 and requested the Military Staff Committee for clarification. Discussion of this article, in conjunction with a letter of interpretation from the Military Staff Committee, was continued at the 154th meeting on 10 July 1947 and also at the 157th meeting on 15 July 1947, but without agreement.

#### REPORTS OF THE ATOMIC ENERGY COMMISSION

##### *Decision of 10 March 1947 (117th meeting): First Report of the Atomic Energy Commission*

By letter dated 30 December 1946,<sup>11</sup> the Chairman of the Commission transmitted the first report of the Atomic Energy Commission to the Security Council.<sup>12</sup>

At the 92nd meeting on 15 January 1947, the Security Council included the letter transmitting the first report in the agenda<sup>13</sup> after having deferred its inclusion at the 90th meeting on 9 January.<sup>14</sup>

The Council considered the report at the 105th, 106th, 108th, 110th, 112th, 115th and 117th meetings between 13 February and 10 March.

At the 108th meeting on 18 February, the representative of the USSR submitted amendments and additions to the first report.<sup>15</sup>

At the 117th meeting on 10 March, the Council adopted unanimously a revised United States draft resolution, as amended.<sup>16</sup> It provided:

*"The Security Council,*

*"Having received and considered the first report of the Atomic Energy Commission, dated 31 December 1946, together with its letter of transmittal of the same date,*

*"Recognizes that any agreement expressed by the members of the Council to the separate portions of the report is preliminary, since final acceptance of any*

part by any nation is conditioned upon its acceptance of all parts of the control plan in its final form;

*"Transmits the record of its consideration of the first report of the Atomic Energy Commission to the Commission;*

*"Urges the Atomic Energy Commission, in accordance with the General Assembly resolutions of 24 January and 14 December 1946, to continue its inquiry into all phases of the problem of the international control of atomic energy and to develop as promptly as possible the specific proposals called for by section 5 of the General Assembly resolution of 24 January 1946, and by the resolution of the General Assembly of 14 December 1946, and in due course to prepare and submit to the Security Council a draft treaty or treaties or convention or conventions incorporating its ultimate proposals;*

*"Requests the Atomic Energy Commission to submit a second report to the Security Council before the next session of the General Assembly."*

##### *Decision of 22 June 1948 (325th meeting): Rejection of draft resolution submitted by the representative of the United States*

By letter dated 11 September 1947,<sup>17</sup> the Chairman of the Commission transmitted the second report of the Atomic Energy Commission to the Security Council.

By letter dated 26 May 1948,<sup>18</sup> the Chairman of the Commission transmitted the third report of the Atomic Energy Commission to the Security Council.

At the 318th meeting on 11 June, the Council included the letter transmitting the third report in the agenda.<sup>19</sup>

The Council considered the report at the 318th, 321st and 325th meetings between 11 June and 22 June.

At the 318th meeting on 11 June, the representative of the United States submitted a draft resolution<sup>20</sup> to accept the three reports of the Commission, to approve the general findings (part I C) and recommendations (part III) of the first report, the specific proposals of part II of the second report, and the "report and recommendations" (part I) of the third report, and to direct the Secretary-General to transmit to the General Assembly and to the Member Nations the three reports together with the record of the Council's approval thereof.

At the 325th meeting on 22 June, the United States draft resolution was not adopted. There were 9 votes in favour and 2 against (one vote against being that of a permanent member).<sup>21</sup>

##### *Decision of 22 June 1948 (325th meeting): Transmittal of Reports to the General Assembly*

At the same meeting, the Council adopted a Canadian draft resolution by 9 votes in favour, none against, with 2 abstentions.<sup>22</sup> It provided:<sup>23</sup>

<sup>10</sup> 149th meeting: p. 1168.

<sup>11</sup> S/239, O.R., 2nd year, Suppl. No. 5, pp. 59-60.

<sup>12</sup> AEC/18/Rev.1, A.E.C.O.R., 1st year, Special Suppl., pp. 1-141.

<sup>13</sup> 105th meeting: pp. 267-268.

<sup>14</sup> 90th meeting: p. 24.

<sup>15</sup> S/283, O.R., 2nd year, Suppl. No. 7, pp. 63-68.

<sup>16</sup> S/296, 117th meeting: p. 512.

<sup>17</sup> S/557, A.E.C.O.R., 2nd year, Special Suppl., pp. 1-263.

<sup>18</sup> S/812, O.R., 3rd year, Suppl. for June 1948, p. 75; AEC/31/Rev.1, A.E.C.O.R., 3rd year, Special Suppl., pp. 1-71.

<sup>19</sup> 318th meeting: p. 1.

<sup>20</sup> S/836, G.A.O.R., 3rd session, Suppl. No. 2, pp. 122-123.

<sup>21</sup> 325th meeting: p. 12.

<sup>22</sup> 325th meeting: p. 20.

<sup>23</sup> 325th meeting: pp. 19-20.

*"The Security Council,*

*"Having received and examined the First, the Second, and the Third Reports of the United Nations Atomic Energy Commission,*

*"Directs the Secretary-General to transmit to the General Assembly and to the Member nations of the United Nations, the First, Second and Third Reports of the Atomic Energy Commission, together with the record of the deliberations of the Security Council on this subject, as a matter of special concern."*

*Decision of 16 September 1949 (447th meeting): Transmittal of resolutions of the Atomic Energy Commission to the General Assembly*

By letter dated 29 July 1949,<sup>24</sup> the Chairman of the Commission transmitted to the Security Council the texts of two resolutions adopted by the Atomic Energy Commission on 29 July, which concluded that no useful purpose could be served by further discussions in the Commission in the absence of a basis for agreement among the six permanent members.

At the 444th meeting on 15 September, the Council included the letter transmitting the two resolutions in the agenda.<sup>25</sup>

The Council considered the question at the 445th to 447th meetings, inclusive, on 15 and 16 September.

At the 445th meeting on 15 September, the representative of Canada submitted a draft resolution<sup>26</sup> which, as amended on the proposal of the representative of the Ukrainian SSR at the 447th meeting on 16 September,<sup>27</sup> was adopted at that meeting by 9 votes in favour, none against, with 2 abstentions.<sup>28</sup> The resolution read as follows:

*"The Security Council,*

*"Having received and examined the letter dated 29 July 1949 from the Chairman of the Atomic Energy Commission, transmitting two resolutions (AEC/42 and AEC/43) adopted at the 24th meeting of the Commission on 29 July 1949,*

*"Directs the Secretary-General to transmit this letter and the accompanying resolutions together with the records of the discussion on this question in the Atomic Energy Commission to the General Assembly and to the Member States of the United Nations."*

*Decision of 16 September 1949 (447th meeting): Rejection of draft resolution submitted by the representative of the USSR*

At the 446th meeting on 16 September 1949, the representative of the USSR submitted a draft resolution<sup>29</sup> to request the Atomic Energy Commission to continue its work with a view to fulfilling the tasks entrusted to it by General Assembly resolutions 1(I) and 41(I) of 24 January and 14 December 1946.

At the 447th meeting on 16 September, the USSR draft resolution was rejected by 2 votes in favour, none against, with 9 abstentions.<sup>30</sup>

**GENERAL REGULATION AND REDUCTION OF ARMAMENTS AND INFORMATION ON ARMED FORCES OF THE UNITED NATIONS**

*Decision of 9 January 1947 (90th meeting): Acceptance of General Assembly resolution 41 (I)*

By letter dated 27 December 1946,<sup>31</sup> the representative of the USSR requested the Secretary-General to include in the provisional agenda of the next meeting of the Security Council, on 31 December, consideration of the proposal made on behalf of his Government concerning the implementation of General Assembly resolution 41 (I) of 14 December 1946.

At the 88th meeting on 31 December 1946, the Council included the letter in the agenda.<sup>32</sup>

At the same meeting, the President, as the representative of the United States, submitted a draft resolution<sup>33</sup> on the implementation of General Assembly resolution 41 (I).

The Council considered General Assembly resolution 41 (I) and the related proposals at the 88th, 90th, 92nd, 93rd, 95th, 98th, 99th, 102nd, 103rd, 104th and 105th meetings between 31 December 1946 and 13 February 1947.

At the 90th meeting on 9 January 1947, the President, as the representative of Australia, proposed that the Council formally accept General Assembly resolution 41 (I) on the principles governing the general regulation and reduction of armaments. The proposal was adopted without objection.<sup>34</sup>

*Decisions of 12 and 13 February 1947 (104th and 105th meetings): Establishment of Commission for Conventional Armaments; consideration of the report of the Atomic Energy Commission; and instructions to the Military Staff Committee*

Draft resolutions on the implementation of General Assembly resolution 41 (I) were further submitted by the representative of France at the 90th meeting on 9 January 1947,<sup>35</sup> by the representative of Australia at the 92nd meeting on 15 January,<sup>36</sup> by the representative of Colombia at the 93rd meeting on 15 January,<sup>37</sup> and by the representative of the United States at the 98th meeting on 4 February.<sup>38</sup> The French and Colombian draft resolutions also dealt with the implementation of General Assembly resolution 42 (I) of 14 December 1946.<sup>39</sup>

At the 99th meeting on 4 February 1947, the Council accepted without objection the proposals by the

<sup>24</sup> 447th meeting: p. 28.

<sup>25</sup> S/229, O.R., 2nd year, Suppl. No. 2, pp. 29-30; S/231, O.R., 2nd year, Suppl. No. 2, pp. 30-33.

<sup>26</sup> 88th meeting: p. 709.

<sup>27</sup> S/233, O.R., 2nd year, Suppl. No. 2, p. 33.

<sup>28</sup> 90th meeting: pp. 40-41.

<sup>29</sup> 90th meeting: p. 35; S/243, O.R., 2nd year, Suppl. No. 2, pp. 33-34.

<sup>30</sup> S/249, 92nd meeting: p. 69.

<sup>31</sup> S/251.

<sup>32</sup> 98th meeting: p. 151.

<sup>33</sup> S/230, O.R., 2nd year, Suppl. No. 2, p. 30.

<sup>24</sup> S/1377, O.R., 4th year, Suppl. for Sept. to Dec. 1949, pp. 8-10.

<sup>25</sup> 444th meeting: p. 2.

<sup>26</sup> S/1386, 445th meeting: pp. 47-48.

<sup>27</sup> 447th meeting: p. 24; S/1392, 447th meeting: p. 23.

<sup>28</sup> 447th meeting: p. 24.

<sup>29</sup> S/1391/Rev.1, 446th meeting: p. 19.

representative of Australia that the five representatives who had introduced draft resolutions meet with the President in order to prepare a common text.<sup>40</sup>

At the 102nd meeting on 11 February 1947, the President, as representative of Belgium, suggested that item 3, "The resolution of the General Assembly concerning 'information on armed forces of the United Nations'" be combined with item 2, "Resolution of the General Assembly on the 'principles governing the general regulation and reduction of armaments' and proposals regarding its implementation". The proposal was adopted without objection.<sup>41</sup>

The Council considered the draft resolution resulting from the consultations of the President with the representatives of Australia, Colombia, France, the United States and the USSR<sup>42</sup> at the 102nd to 105th meetings, inclusive, between 11 and 13 February 1947.

At the 104th and 105th meetings on 12 and 13 February, the Council voted on the draft resolution and amendments paragraph by paragraph. The draft resolution as a whole was adopted by 10 votes in favour, none against, with 1 abstention.<sup>43</sup> It provided:

*"The Security Council,*

*"Having accepted the resolution of the General Assembly of 14 December 1946 and recognizing that the general regulation and reduction of armaments and armed forces constitute a most important measure for strengthening international peace and security, and that the implementation of the resolution of the General Assembly on this subject is one of the most urgent and important tasks before the Security Council,*

*"Resolves,*

"1. To work out the practical measures for giving effect to the resolutions of the General Assembly on 14 December 1946 concerning, on the one hand, the general regulation and reduction of armaments and armed forces, and the establishment of international control to bring about the reduction of armaments and armed forces and, on the other hand, information concerning the armed forces of the United Nations;

"2. To consider as soon as possible the report submitted by the Atomic Energy Commission and to take suitable decisions in order to facilitate its work;

"3. To set up a Commission consisting of representatives of the members of the Security Council with instructions to prepare and to submit to the Security Council within the space of not more than three months, the proposals: (a) for the general regulation and reduction of armaments and armed forces; (b) for practical and effective safeguards in connexion with the general regulation and reduction of armaments, which the Commission may be in a position to formulate in order to ensure the implementation of the above-mentioned resolutions of the General Assembly of 14 December 1946, in

so far as these resolutions relate to armaments within the new Commission's jurisdiction;

"The Commission shall submit a plan of work to the Council for approval;

"Those matters which fall within the competence of the Atomic Energy Commission as determined by the General Assembly resolutions of 24 January 1946 and 14 December 1946 shall be excluded from the jurisdiction of the Commission hereby established;

"The title of the Commission shall be the Commission for Conventional Armaments;

"The Commission shall make such proposals as it may deem advisable concerning the studies which the Military Staff Committee and possibly other organs of the United Nations might be asked to undertake;

"4. To request the Military Staff Committee to submit to it, as soon as possible, and as a matter of urgency, the recommendations for which it has been asked by the Security Council on 16 February 1946 in pursuance of Article 43 of the Charter, and as a first step, to submit to the Security Council not later than 30 April 1947, its recommendations with regard to the basic principles which should govern the organization of the United Nations armed force."

#### REPORTS OF THE COMMISSION FOR CONVENTIONAL ARMAMENTS

##### *Decision of 8 July 1947 (152nd meeting): Adoption of the Plan of Work*

By letter dated 25 June 1947,<sup>44</sup> the Chairman transmitted the "Report to the Security Council of the Commission for Conventional Armaments". The Plan of Work adopted by the Commission and the Plan for the Organization of the Work of the Commission were attached as appendices to the report.

At the 152nd meeting on 8 July, the Council included the letter transmitting the report in the agenda.<sup>45</sup>

The Council considered the report at the 152nd meeting on 8 July.

At the same meeting, the Plan of Work was adopted by 9 votes in favour, none against, with 2 abstentions.<sup>46</sup> It read:

"1. Consider and make recommendations to the Security Council concerning armaments and armed forces which fall within the jurisdiction of the Commission for Conventional Armaments.

"2. Consideration and determination of general principles in connexion with the regulation and reduction of armaments and armed forces.

"3. Consideration of practical and effective safeguards by means of an international system of control operating through special organs (and by other means) to protect complying States against the hazards of violations and evasions.

"4. Formulate practical proposals for the regulation and reduction of armaments and armed forces.

<sup>40</sup> 99th meeting: pp. 166, 172.

<sup>41</sup> 102nd meeting: p. 194.

<sup>42</sup> S/268/Rev.1, O.R., 2nd year, Suppl. No. 5, pp. 58-59.

<sup>43</sup> 105th meeting: p. 274.

<sup>44</sup> S/387, O.R., 2nd year, Suppl. No. 14, pp. 141-143.

<sup>45</sup> 152nd meeting: p. 1217.

<sup>46</sup> 152nd meeting: p. 1227.

"5. Extension of the principles and proposals set forth in paragraphs 2, 3 and 4 above to States which are not Members of the United Nations.

"6. Submission of a report or reports to the Security Council including, if possible, a draft convention.

"It is proposed that under the six headings listed above all of the references by the various delegations suggested for the plan of work will be considered.

"It is also understood that this plan of work does not limit the freedom of individual delegations to make additional suggestions at a later time."

The President (Poland) stated that the Plan for the Organization of the Work of the Commission had been submitted for the information of the members of the Security Council and not for approval.<sup>45</sup>

*Decision of 10 February 1949 (408th meeting): Transmittal to the Commission for Conventional Armaments of General Assembly resolution 192 (III) of 19 November 1948. Rejection of draft resolutions submitted by the representative of the USSR*

At the 407th meeting on 7 February 1949, the Security Council included in the agenda the letter dated 14 January<sup>45</sup> from the Secretary-General transmitting General Assembly resolution 192 (III) of 19 November 1948.

The Council considered the resolution at the 407th and 408th meetings on 7 and 10 February.

At the 407th meeting on 7 February, the representative of the USSR submitted a draft resolution<sup>46</sup> to instruct the Commission for Conventional Armaments and the Atomic Energy Commission to prepare appropriate plans and draft conventions by 1 June 1949 as parts of a general plan. It also emphasized the need for an international control body and for the submission of data on armed forces and armaments of all types, including atomic weapons.

At the 408th meeting on 10 February, the representative of the United States submitted a draft resolution.<sup>47</sup>

At the same meeting, the representative of the USSR submitted a draft resolution<sup>48</sup> to transmit the USSR draft resolution as well as the General Assembly resolution to the Commission for Conventional Armaments and to the Atomic Energy Commission.

At the 408th meeting on 10 February 1949, the United States draft resolution was adopted by 9 votes in favour, none against, with 2 abstentions.<sup>49</sup> It provided:

*"The Security Council*

*"Resolves that the resolution of the General Assembly of 19 November 1948, as contained in document S/1216, be transmitted to the Commission for Conventional Armaments for action according to its terms."*

At the 408th meeting on 10 February 1949, the USSR draft resolution on matters to be transmitted to the Commission for Conventional Armaments was rejected, by 3 votes in favour, none against, with 8 abstentions.<sup>53</sup> The other USSR draft resolution was also rejected, by 2 votes in favour, none against, with 9 abstentions.<sup>54</sup>

*Decision of 11 October 1949 (450th meeting): Rejection of draft resolution submitted by the representative of the United States*

By letter dated 4 August 1949,<sup>55</sup> the Chairman of the Commission for Conventional Armaments transmitted to the President of the Security Council the second progress report of the Commission and two resolutions of the Commission relating to its work up to August 1948, and by letter of the same date<sup>56</sup> a working paper adopted by the Commission concerning implementation of General Assembly resolution 192 (III).

At the 449th meeting on 5 October, the Council included the letters in the agenda.<sup>57</sup>

The Council considered the items at its 450th, 451st, 452nd, 461st and 462nd meetings between 11 October 1949 and 17 January 1950.

At the 450th meeting on 11 October, the representative of the United States submitted a draft resolution<sup>58</sup> to approve the resolutions concerning items 1 and 2 of the Commission's Plan of Work adopted by the Commission at its 13th meeting on 12 August 1948, which were attached to the report, and to direct the Secretary-General to transmit this report, its annexes and accompanying resolutions, together with the record of the Security Council's consideration of this subject, to the General Assembly for its information.

The United States draft resolution was not adopted. There were 9 votes in favour and 2 against (one vote against being that of a permanent member).<sup>59</sup>

*Decision of 11 October 1949 (450th meeting): Transmittal to the General Assembly of the Second Progress Report*

At the 450th meeting on 11 October 1949, the representative of the United Kingdom introduced a draft resolution which was adopted at the same meeting by 9 votes in favour, none against, with 2 abstentions.<sup>60</sup> The resolution provided:

*"The Security Council,*

*"Having received and examined the second progress report of the Commission for Conventional Armaments, together with the annexes and resolutions concerning items 1 and 2 of the Commission's established plan of work adopted by the Commission at its 13th meeting on 12 August 1948, which are attached to the report (S/1371),*

<sup>45</sup> 408th meeting: p. 19.

<sup>46</sup> 408th meeting: p. 20.

<sup>47</sup> S/1371, O.R., 4th year, Suppl. for Sept. to Dec. 1949, pp. 1-2.

<sup>48</sup> S/1372, O.R., 4th year, Suppl. for Sept. to Dec. 1949, pp. 2-8.

<sup>49</sup> 449th meeting: pp. 1-2.

<sup>50</sup> 450th meeting: pp. 2-3.

<sup>51</sup> 450th meeting: p. 14.

<sup>52</sup> S/1403, 450th meeting: p. 15.

<sup>45</sup> 152nd meeting: p. 1229.

<sup>46</sup> S/1216, O.R., 4th year, Suppl. for Jan. 1949, pp. 52-53; 407th meeting: p. 1.

<sup>47</sup> S/1246/Rev.1, 407th meeting: pp. 2-4.

<sup>48</sup> S/1248, 408th meeting: p. 2.

<sup>49</sup> S/1249, 408th meeting: p. 17.

<sup>50</sup> 408th meeting: p. 19.



"Directs the Secretary-General to transmit this report, its annexes and accompanying resolutions, together with the record of the Security Council's consideration on the subject, to the General Assembly for its information."

*Decisions of 18 October 1949 (452nd meeting): Rejection of draft resolutions submitted by the representative of the USSR and by the representative of France*

At the 450th meeting on 11 October 1949, the representative of France submitted a draft resolution<sup>61</sup> to approve the proposals concerning information on armed forces and conventional armaments contained in the Commission's working paper and to transmit those proposals and the records of the discussions of the Council to the General Assembly. At the same meeting, the representative of the USSR submitted a draft resolution<sup>62</sup> to recognize as essential the submission by States both of information on conventional armaments and of information on atomic weapons. A revision of this draft resolution called also for submission of information on armed forces.<sup>63</sup>

At the 451st meeting on 14 October, the representative of France submitted a revised draft resolution<sup>64</sup> to provide that the relevant records of the Commission for Conventional Armaments should also be transmitted to the General Assembly. At the same meeting, the representative of France submitted a separate draft resolution<sup>65</sup> to recognize as an essential part of any effective system of disarmament the submission by States of full information on conventional armaments and armed forces together with adequate procedures for complete verification of such information and which would have recalled that the submission of full information on atomic material and facilities, including atomic weapons, is an integral part of the United Nations plan for atomic energy.

At the 452nd meeting on 18 October 1949, the first French draft resolution was not adopted. There were 9 votes in favour and 2 against (one vote against being that of a permanent member).<sup>66</sup> The USSR draft resolution was rejected by 3 votes in favour, 1 against, with 7 abstentions.<sup>67</sup> The second French draft resolution was not adopted. There were 8 votes in favour, 2 against (one vote against being that of a permanent member), and 1 abstention.<sup>68</sup>

*Decision of 18 October 1949 (452nd meeting): Transmittal to the General Assembly of proposals and records on the implementation of General Assembly resolution 192 (III) of 19 November 1948*

At the 452nd meeting on 18 October 1949, the representative of France submitted a draft resolution which was adopted at the same meeting by 9 votes in favour, none against and 2 abstentions.<sup>69</sup> It provided:

"The Security Council,

"Having received and examined the proposals contained in the working document on the implementation of General Assembly resolution 192 (III) of 19 November 1948, adopted by the Commission for Conventional Armaments at its 19th meeting, held on 1 August 1949,

"Requests the Secretary-General to transmit these proposals and the records of the discussions on this question in the Security Council and the Commission for Conventional Armaments to the General Assembly."

*Decision of 17 January 1950 (462nd meeting): Transmittal of General Assembly resolution 300 (IV) to Commission for Conventional Armaments*

At the 460th meeting on 12 January 1950, the Security Council included the letter dated 6 December 1949 from the Secretary-General<sup>70</sup> transmitting General Assembly resolution 300 (IV) of 5 December<sup>71</sup> in the agenda.<sup>72</sup>

The Council considered the letter at the 461st and 462nd meetings on 13 and 17 January.

At the 461st meeting on 13 January, the representative of France submitted a draft resolution<sup>73</sup> which was adopted at the 462nd meeting on 17 January by 9 votes in favour, none against, and no abstentions.<sup>74</sup> One representative did not vote and one was absent. It provided:

"The Security Council,

"Having received the text of the resolution concerning the regulation and general reduction of conventional armaments and armed forces adopted by the General Assembly at its 268th plenary meeting on 5 December 1949,

"Decides to transmit the said document to the Commission for Conventional Armaments for further study in accordance with the Commission's plan of work."

*Decision of 30 January 1952 (571st meeting): Dissolution of the Commission for Conventional Armaments*

At the 571st meeting on 30 January 1952, the Security Council included in the agenda the letter dated 12 January 1952 from the Secretary-General<sup>75</sup> transmitting General Assembly resolution 502 (VI) of 11 January 1952 which established a Disarmament Commission and recommended the dissolution of the Commission for Conventional Armaments.

At the same meeting, the President (France) submitted a draft resolution<sup>76</sup> which was adopted without objection.<sup>77</sup> It provided:

<sup>61</sup> S/1399, O.R., 4th year, Suppl. for Sept. to Dec. 1949, pp. 12-13.

<sup>62</sup> S/1405, O.R., 4th year, Suppl. for Sept. to Dec. 1949, p. 13.

<sup>63</sup> S/1405/Rev.1, 450th meeting: p. 24.

<sup>64</sup> S/1399/Rev.1, 451st meeting: p. 2.

<sup>65</sup> S/1408/Rev.1, 451st meeting: p. 6.

<sup>66</sup> 452nd meeting: pp. 21-22.

<sup>67</sup> 452nd meeting: p. 22.

<sup>68</sup> 452nd meeting: p. 23.

<sup>69</sup> 452nd meeting: p. 25; S/1410, 452nd meeting: p. 24.

<sup>70</sup> S/1429.

<sup>71</sup> G.A.O.R., 4th session, Resolution, p. 22.

<sup>72</sup> 460th meeting: p. 1.

<sup>73</sup> S/1445, 461st meeting: p. 17.

<sup>74</sup> 462nd meeting: p. 9.

<sup>75</sup> S/2478.

<sup>76</sup> S/2506, 571st meeting: p. 2.

<sup>77</sup> 571st meeting: p. 2.



*"The Security Council,*

*"In view of the recommendation contained in paragraph 2 of the resolution adopted on 11 January 1952 by the General Assembly,*

*"Dissolves the Commission for Conventional Armaments."*

#### STRATEGIC AREAS UNDER TRUSTEESHIP<sup>28</sup>

*Decision of 2 April 1947 (124th meeting): Approval under Article 83 of the Charter of the Trusteeship Agreement for the former Japanese mandated islands*

By letter dated 17 February 1947,<sup>79</sup> the representative of the United States requested the Secretary-General to include in the provisional agenda of the Security Council, at an early date, the text of a draft trusteeship agreement for the Pacific islands formerly under Japanese mandate, which the Government of the United States was submitting for the approval of the

<sup>79</sup> For constitutional relations of the Security Council and the Trusteeship Council in respect of Strategic Areas under Trusteeship, see chapter VI, part III. For certain constitutional issues raised during the detailed consideration by the Council of the terms of the Trusteeship Agreement for the former Japanese mandated islands, see chapter XII, Case 28.

<sup>80</sup> S/281, O.R., 2nd year, Suppl. No. 8, pp. 69-74.

Security Council in accordance with Article 83 of the Charter.

At the 113th meeting on 26 February 1947, the question was put on the agenda. General discussion on the question started at that meeting and continued at the 116th and 118th meetings on 7 and 12 March 1947. At the 119th meeting on 17 March 1947, the President (Brazil) in conformity with the decision of the Council at the 118th meeting,<sup>80</sup> invited the representatives of Canada, India, the Netherlands, New Zealand and the Philippines to the Council table, to participate in consideration of the draft trusteeship agreement. Detailed consideration of the terms of this agreement proceeded at the 119th meeting, and at the 123rd meeting on 28 March 1947. At the 124th meeting on 2 April 1947, after approving several amendments, the Council adopted the trusteeship agreement, as a whole, by a unanimous vote.<sup>81</sup>

<sup>80</sup> 118th meeting: pp. 515-516. For discussion regarding participation, see chapter III, Case 30.

<sup>81</sup> 124th meeting: p. 680. For the approved text see S/318 and G.A.O.R., 2nd session, Suppl. No. 2 (Report of the Security Council to the General Assembly, 1946-1947), pp. 96-98. The date of entry into force of the agreement was communicated to the Security Council by letter dated 23 July 1947 from the Secretary of State of the United States transmitting to the United Nations the corresponding Instrument of Approval signed on 18 July 1947 by the President of the United States (S/448, 30 July 1947).

**Chapter X**

**CONSIDERATION OF THE PROVISIONS OF CHAPTER VI OF THE CHARTER**

**TABLE OF CONTENTS**

	<i>Page</i>
INTRODUCTORY NOTE .....	375
PART I. CONSIDERATION OF THE PROVISIONS OF ARTICLE 33 OF THE CHARTER	
Note .....	376
PART II. CONSIDERATION OF THE PROVISIONS OF ARTICLE 34 OF THE CHARTER	
Note .....	384
PART III. APPLICATION OF THE PROVISIONS OF ARTICLE 35 OF THE CHARTER	
Note .....	401
PART IV. CONSIDERATION OF THE PROVISIONS OF ARTICLES 36-38 AND OF CHAPTER VI IN GENERAL	
Note .....	410

## INTRODUCTORY NOTE

The considerations governing the construction of chapter X are stated in the second part of the introductory note to chapter VIII. The case histories on each question require to be examined within the context of the chain of proceedings on the question presented in chapter VIII.

The material in this chapter constitutes only part of the material relevant to the examination of the operation of the Council under Chapter VI of the Charter. The view may be held that the activity of the Security Council in the field of pacific settlement is exemplified in its proceedings in the consideration of disputes or situations from the moment of their admission to the agenda. On this assumption the procedures of the Council reviewed in chapters I-VI, where they relate to the consideration of disputes and situations, would fall to be regarded as integral to the application of Chapter VI of the Charter. Chapter X is limited to presenting the instances of deliberate consideration by the Council of the relation of its proceedings or of measures proposed to the text of Chapter VI. For the

convenience of the reader, the decisions following each instance of consecutive discussion are recorded in this chapter, but the decision should not be deemed a pronouncement on the constitutional issues dealt with in this chapter, since these decisions are not taken only in the light of the constitutional considerations relevant to this chapter. For these reasons the chapter is entitled: "Consideration of the provisions of Chapter VI of the Charter". The reader is intended to draw on the content of this and other chapters, especially of chapter VIII, in the study of the practice of the Council in the application of Chapter VI of the Charter.

An exceptional title, however, has been given to part III of this chapter bearing on Article 35 since the material is presented in the form of a Note, with a Tabulation, bringing together the instances of the utilization of the Articles of the Charter in the submission of questions to the Council, together with references to relevant discussion entered elsewhere in the *Repertoire*.

### Chapter VI of the Charter. Pacific Settlement of Disputes

#### *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.

#### *Article 34*

The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.

#### *Article 35*

1. Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.
2. A state which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter.
3. The proceedings of the General Assembly in respect of matters brought to its attention under this Article will be subject to the provisions of Articles 11 and 12.

#### *Article 36*

1. The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.

2. The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties.

3. In making recommendations under this Article the Security Council should also take into consideration 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.

#### Article 37

1. Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.

2. If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.

#### Article 38

Without prejudice to the provisions of Articles 33 to 37, the Security Council may, if all the parties to any dispute so request, make recommendations to the parties with a view to a pacific settlement of the dispute.

### Part I

## CONSIDERATION OF THE PROVISIONS OF ARTICLE 33 OF THE CHARTER

#### NOTE

States submitting disputes to the Security Council in most instances indicated in their initial communications the prior efforts made by them to seek a peaceful solution,<sup>1</sup> though Article 33 was not expressly cited in every instance. In some cases, before consideration by the Council commenced, the State against which the complaint was directed submitted a memorandum stating its own record of these efforts.<sup>2</sup> In statements before the Council, the States concerned have drawn attention to the stage reached in efforts toward a settlement as evidence of the necessity for taking, or not taking, action under Chapter VI.

On one occasion in 1946, the President took note of letters from Siam and France describing the settlement of their dispute by means of negotiations which were conducted, in accordance with Article 33, through the good offices of two members of the Council.<sup>3</sup>

<sup>1</sup> Siam in letter dated 15 July 1946 in connexion with Siamese-French relations, S/105, referring to letter dated 31 May 1946, S/72; United Kingdom in letter dated 10 January 1947 in connexion with the Corfu Channel question, S/247, O.R., 2nd year, Suppl. 3, pp. 35-36; Egypt in letter dated 8 July 1947 in connexion with the Egyptian question, S/410, 159th meeting, pp. 1343-1345; Pakistan in letter dated 15 January 1948 in connexion with the India-Pakistan question, S/646 and Corr.1, O.R., 3rd year, Suppl. for Nov. 1948, pp. 68, 75, 81-82.

Article 33 (1) refers to "parties to any dispute". For references to prior efforts in letters submitting a question designated as a situation or a threat to or breach of the peace: see Iran in letter dated 19 January 1946 in connexion with the Iranian question, O.R., 1st year, 1st series, Suppl. 1, pp. 16-17, 22-24; Greece in letter dated 3 December 1946 in connexion with the Greek frontier incidents question, S/203, O.R., 1st year, 2nd series, Suppl. 10, pp. 173, 174, 175; India in letter dated 1 January 1948 in connexion with the India-Pakistan question, S/628, O.R., 3rd year, Suppl. for Nov. 1948, pp. 142-143; Identic notifications dated 29 September 1948, submitted by France, S/1020, O.R., 3rd year, Suppl. for Oct., pp. 9-10.

<sup>2</sup> USSR in letter dated 24 January 1946 in connexion with the Iranian question, O.R., 1st year, 1st series, Suppl. 1, pp. 17-19; Pakistan in letter dated 15 January 1948, in connexion with the India-Pakistan question, S/646 and Corr.1, O.R., 3rd year, Suppl. for Nov. 1948, pp. 81-82.

<sup>3</sup> See Note to Article 35, p. 402, footnote 21; also 81st meeting: pp. 505-507.

The observations on the means to which parties have had recourse provide an indication of the views taken regarding compliance with the obligation of effort at peaceful settlement before submission of a question to the Council. Contentions regarding the adequacy of these efforts at settlement before recourse to the Council have constituted a significant aspect of the initial discussion on many questions. The contentions advanced have centred around:

(1) The allegation of refusal to enter into or resume negotiations.<sup>4</sup>

(2) The allegation of the failure to reach a satisfactory settlement through negotiation.<sup>5</sup>

(3) The allegation of refusal of proper recourse to procedures of settlement stipulated by special agreement binding on the parties.<sup>6</sup>

(4) The allegation that the emergence of a threat to the peace precluded further recourse to the means of settlement prescribed by Article 33.<sup>7</sup>

The scope of the obligation imposed by Article 33 (1) has been the subject of consideration in connexion with the problem of the appropriate stage at which a dispute should become the proper concern of the Council. The principle has been advanced that, before any intervention by the Council, the means of settlement indicated in Article 33 (1) should all have been exhausted by

<sup>4</sup> See Case 1 (Iranian question); Case 2 (Syrian and Lebanese question).

<sup>5</sup> See Case 4 (Egyptian question); Case 5 (i) (India-Pakistan question); Case 6 (Identic notifications dated 29 September 1948). In the Corfu Channel question the United Kingdom alleged unsatisfactory response to diplomatic notes. (See Case 3; and United Kingdom letter dated 10 January 1947, S/247, O.R., 2nd year, Suppl. 3, pp. 35-36).

<sup>6</sup> Hyderabad, in connexion with the Hyderabad question, 357th meeting: pp. 17-18. Netherlands, in connexion with the Indonesian question (II), on the applicability of the arbitration provisions of the Linggadjati Agreement, 171st meeting, p. 1642.

<sup>7</sup> See Case 6 (Identic notifications dated 29 September 1948); see also chapter XI, Case 4, in connexion with the Indonesian question (II).

the parties.<sup>8</sup> Other statements have questioned whether Article 33 (1) implies an obligation of exhaustive recourse to the several means of peaceful settlement enumerated therein,<sup>9</sup> and have stressed the right of the Council to intervene under Article 36 at any stage in a dispute.

On certain occasions the absence of prior resort to peaceful means of settlement in accordance with Article 33 (1) has been adduced as a ground on which the Council should decline to consider the question.<sup>10</sup>

The significance of Article 33 in the pacific settlement of disputes in accordance with the Charter rests not only on the discharge by the parties themselves of their obligation under the Article, but also on the recourse by the Council to Article 33, or to the spirit of Article 33, in the discharge of its responsibilities for pacific settlement of disputes after submission to the Council.

In this connexion reference should be made to the observations in part IV of this chapter regarding the encouragement by the Council of negotiations between the parties; and to the entries under "Measures for Settlement" in the Analytical Table of Measures adopted by the Security Council.<sup>11</sup> Reference should also be made to the draft resolutions submitted expressly under Article 33, in connexion with the Corfu Channel and the Egyptian questions, to call upon the parties to resume direct negotiations;<sup>12</sup> and to the proceedings on the Syrian and Lebanese question.<sup>13</sup> In certain instances, in circumstances in which reservations have been entered regarding the competence of the Council, the Council has sought nevertheless to bring about settlement by peaceful means of the parties' own choice. Notably in the Indonesian question (II), the Council at first called upon the parties to settle their disputes by arbitration or other peaceful means, and rested its assistance to the parties on the concept of good offices.<sup>14</sup>

#### CASE 1.<sup>15</sup> THE IRANIAN QUESTION (I)

[*Note:* Discussion arose on the competence of the Council in the light of the differing views of the parties regarding the stage reached in negotiations in accordance with Article 33.]

In submitting the Iranian question, Iran contended that prior efforts to negotiate "in accordance with

<sup>8</sup> See statements by Brazil, Poland and the USSR in connexion with the Corfu Channel question, Case 3; by Brazil in connexion with the Egyptian question, Case 4; by Syria in connexion with the India-Pakistan question, Case 5 (i).

<sup>9</sup> See statement by Iran in connexion with the Iranian question (I), Case 1; see statement by United Kingdom in connexion with the Corfu Channel question, Case 3; and by Egypt in connexion with the Egyptian question, Case 4.

<sup>10</sup> United Kingdom, 71st meeting: p. 425; and United States, 72nd meeting: p. 453, in connexion with the question of information on Armed Forces of the United Nations. See also United Kingdom letter dated 17 February 1946 concerning Polish armed forces in Italy, S/12; United Kingdom, in connexion with USSR communication dated 21 January 1946 on the Greek question, 6th meeting: p. 84. (These questions were not submitted to the Council as disputes.)

<sup>11</sup> Chapter VIII, part I.

<sup>12</sup> See Polish draft resolution in connexion with the Corfu Channel question, Case 3; and Brazilian draft resolution in connexion with the Egyptian question, Case 4.

<sup>13</sup> See chapter VIII, pp. 302-303.

<sup>14</sup> See Case 25.

<sup>15</sup> For texts of relevant statements see:

3rd meeting: Iran, pp. 33-38; USSR, pp. 39-43.

5th meeting: Iran, pp. 46-48; USSR, pp. 49-53.

Article 33" had met with no success. The USSR contended in reply that, negotiations having been entered into by the parties, the matter should continue to be dealt with in that manner. The representative of the USSR agreed to the inclusion of the item in the agenda on the understanding that the Council would then discuss whether the question was to be considered.<sup>16</sup>

At the 3rd and 5th meetings on 28 and 30 January 1946, statements were made by the parties concerning the exchange of notes before submission of the question to the Council. The representative of Iran contended that an exchange of notes which ended in rejection of the request for withdrawal of troops did not constitute negotiations within the meaning of Article 33; and that, even if such an exchange of notes did constitute negotiations, the obligations of the Iranian Government under Article 33 were nevertheless fulfilled in view of the provision that the parties to the dispute must "first of all seek a solution by negotiations . . ."

The representative of the USSR stated that there was no foundation for consideration of the question by the Council since, under Article 33, Members were required "to attempt to settle disputes by means of negotiation, et cetera . . .". In the circumstances of the case, the Council was not entitled to call upon the USSR to take any steps provided for by the second paragraph of Article 33.

After both parties had indicated agreement to the resumption of negotiations, discussion centred on whether, as Iran favoured, the negotiations should be under the aegis of the Council.<sup>17</sup>

CASE 2.<sup>18</sup> THE SYRIAN AND LEBANESE QUESTION: In connexion with draft resolutions calling upon the parties to negotiate; voted upon and rejected on 16 February 1947

[*Note:* The demand for the withdrawal of forces without preliminary negotiation resulted in discussion on the hearing of Article 33 on the settlement of the dispute.]

In submitting the question to the Security Council, Syria\* and Lebanon\* requested the Council to recommend the total and simultaneous evacuation of foreign troops from the territories of Syria and Lebanon.<sup>19</sup> At the 19th to 23rd meetings between 14 and 16 February 1946, the representatives of Syria and Lebanon contended that negotiations were unnecessary; they considered that it would be sufficient for the Council to recommend that the evacuation of troops should be carried out within a limited time, and that the matter should remain on the agenda of the Council until evacuation was completed. The question of evacuation, they maintained, concerned only the Governments of

<sup>16</sup> For the submission of the question, see chapter VIII, p. 300. Regarding inclusion of the question in the agenda, see chapter II, Case 27.

<sup>17</sup> Regarding the question of retention on the agenda, see Case 20; and for the decision of the Council, see chapter VIII, p. 301.

<sup>18</sup> For texts of relevant statements see:

20th meeting: France, pp. 292-293.

21st meeting: Australia, pp. 310-311; United States, pp. 300-301.

22nd meeting: Syria, pp. 323, 330-331; France, pp. 325-326.

23rd meeting: Lebanon, p. 342; France, pp. 338, 357-358; USSR, pp. 360-361.

<sup>19</sup> S/5, O.R., 1st series, Suppl. No. 1, pp. 80-83. For the submission of the question, see chapter VIII, p. 302.



the United Kingdom and France which had to arrange for it. They observed that, after the troops had been withdrawn, they would not refuse to enter into negotiations, but they declined to negotiate on the question of withdrawal in conjunction with other matters.

At the 22nd and 23rd meetings on 16 February, the representative of France, recalling that the representatives of Syria and Lebanon had expressed their refusal to negotiate on the evacuation of troops, declared that either there was a dispute, in which case the parties were required, under Article 33, to negotiate with a view to seeking a solution; or else, if there were no negotiations and if there was a refusal to negotiate, the assumption ought to be that there was no dispute.

The representative of the USSR maintained that this argument was "unfounded and mistaken". He said:

"A dispute does clearly exist, but the parties in this case are simply refusing one of the means provided for solving it, and that is all the interpretation of Article 33 permits. Article 33 provides other means of solution besides negotiation."

At the 21st meeting on the same day, the representative of the United States observed that the possibilities of negotiation to find a peaceful solution in accordance with Article 33 had not yet been exhausted and that the Council should reserve the right to request information regarding the progress of negotiations and the results achieved. The representative of Australia observed that negotiation was one of the methods of settlement recognized by Article 33, and that it would be sufficient if the Council took note of the statements of the parties and invited them to continue negotiations with a view to reaching an agreed solution of the problem speedily. The results of the negotiations should be reported to the Council and, if they were not satisfactorily concluded within a reasonable time, the Council might then consider what further action it would wish to take.

During the discussion of the question, four draft resolutions were submitted which provided for negotiations and varied according to the statement of the conditions and purposes of the negotiations.<sup>20</sup>

### CASE 3.<sup>21</sup> THE CORFU CHANNEL QUESTION

[*Note:* Inclusion of the question in the agenda was opposed on the grounds that one party had not complied with the obligation imposed by Article 33. After the adoption of the agenda, further observations were made on the bearing of Article 33 on the consideration of the question by the Council. The proceedings concluded with the recommendation for reference of the dispute by the parties to the International Court of Justice.]

At the 95th meeting on 20 January 1947, the representative of the USSR objected to the inclusion of the Corfu Channel question in the agenda on the

grounds that no proper effort had been made by the Government of the United Kingdom to bring about a settlement of the dispute in accordance with Article 33 of the Charter.<sup>22</sup> The representative of the United Kingdom replied that his Government had resorted to direct diplomatic exchange of views, which was, in its view, the correct procedure, but that in view of the unsatisfactory result of its attempt to settle the matter, his Government had decided to place it before the Council.

At the 95th meeting, the Council included the question in its agenda.

At the 111th meeting on 24 February, the representative of the USSR, in connexion with the draft resolution submitted by the representative of Australia for the appointment of a sub-committee,<sup>23</sup> drew attention to the rejection by the British Government of the Albanian proposal of 11 November 1946, for the establishment of a mixed commission. This showed, in his view, that the British Government had not taken the course of settling the question by bilateral negotiation with the Government of Albania, and had thus acted without regard to Article 33, paragraph 1. The representative of the United Kingdom replied that the mixed commission had been proposed for the limited purpose of defining the Channel, not for the settlement of the whole dispute.

At the 120th meeting on 20 March 1947, the representative of Poland expressed the view that, the accusations against Albania not having been substantiated, the normal procedure would be simply to dismiss the case; but that, in the special circumstances, he would not intend so to proceed.

Having cited Article 33, he continued:

"I think this is the most appropriate action which this Council can take, namely, to invoke Article 33, paragraph 2, and call upon the parties to settle their dispute by the means set forth in paragraph 1 of that article. During the process of settlement, we shall be able to examine additional evidence and information which may still be collected."

At the 122nd meeting on 25 March 1947, the representative of Poland submitted a draft resolution<sup>24</sup> whereby the Council, "taking into consideration that the parties did not exhaust the means of peaceful settlement before bringing their case to the Council", would, pursuant to Article 33 of the Charter, call upon the parties to the dispute

"to settle their dispute by any means of peaceful settlement of disputes provided by the above-mentioned Article of the Charter, subject to their own agreed choice".

At the same meeting, the representative of Syria stated:

"In this instance, I consider that the United Kingdom justly presented this case to the Security Council, because it believed that its rights had been encroached upon; instead of trying to restore its position by force, the United Kingdom came to the Security Council under the provisions of the Charter. However, the United Kingdom Government could have collected certain evidence or facts before coming to the Security Council, in order to facilitate the solution of such a problem. The Security Council is

<sup>20</sup> For the draft resolutions see chapter VIII, p. 303.

<sup>21</sup> For texts of relevant statements see:

95th meeting: USSR, p. 115; United Kingdom, p. 116.

107th meeting: United Kingdom, p. 306.

111th meeting: Australia, pp. 362, 364; Poland, p. 376; USSR, pp. 365-366, 371, 378; United Kingdom, pp. 384-385.

120th meeting: Poland, pp. 556-557; United Kingdom, pp. 567-568.

122nd meeting: China, p. 601; Poland, p. 600; Syria, pp. 605-606.

125th meeting: Brazil, pp. 686-688; Poland, pp. 688-689; Syria, p. 688; United Kingdom, pp. 684-685.

<sup>22</sup> For the submission of the question, see chapter VIII, p. 313.

<sup>23</sup> 111th meeting: pp. 364-365.

<sup>24</sup> 122nd meeting: p. 600.

not able to collect and investigate all this evidence. Had the British Government taken steps under Article 33 of the Charter before coming to the Security Council, it would have been able, perhaps, to collect certain evidence to eliminate all the doubts and ambiguities which exist in the matter.

"I do not see how I can participate in accusing an independent sovereign State, contrary to its declaration of faith. I should prefer that the matter be studied further, and that the parties to the dispute try some other means, such as mediation, for instance, as mentioned in Article 33 of the Charter. This would give them another chance and would keep the dispute on the agenda of the Security Council for further reference in case these new endeavours failed to reach a conciliatory solution."

After the vote on the United Kingdom draft resolution,<sup>21</sup> the representative of Poland withdrew his proposal.<sup>22</sup>

At the 125th meeting on 3 April 1947, after submission of a new United Kingdom draft resolution for reference of the dispute to the International Court, the representative of Brazil expressed the view that Articles 34, 35 and 36 were applicable only, first, when the requirements of Article 33 had been complied with, and secondly, when the dispute or situation was likely to endanger the maintenance of international peace and security.<sup>23</sup> In the particular case, it was the opinion of the representative of Brazil that:

"Albania and the United Kingdom had not exhausted such means when they referred their case to the United Nations, on 29 October 1946 and on 10 January 1947, respectively. In my opinion, consequently, the provisions of the Charter had not been observed when the Council decided to consider this dispute before the parties had exhausted the resources set forth in our constitutional document. The Council was thus transformed into a court of arbitration, contrary to its specific functions."

**CASE 4.<sup>24</sup> THE EGYPTIAN QUESTION:** In connexion with draft resolutions to recommend direct negotiations submitted by the representatives of Brazil and China: voted upon and rejected on 28 August and 10 September 1947.

[*Note:* In the consideration of the Egyptian question, observations were made, notably by the representative of Brazil, regarding the circumstances in which disputes might appropriately be brought before the Security Council. Article 33 was cited in connexion with the proposed recommendation by the Council of direct negotiations, and certain remarks were directed to the distinction between recommendations under Article 33

and under Article 36.<sup>25</sup> All draft resolutions were, however, rejected.]

In the letter of submission dated 8 July 1947, Egypt\* stated that attempts to reach a settlement by direct negotiations, in conformity with Article 33 of the Charter, had failed.<sup>26</sup>

In their initial statements before the Council, the representative of Egypt at the 175th and 179th meetings on 5 and 11 August 1947, and the representative of the United Kingdom at the 176th, 179th and 182nd meetings on 5, 11 and 13 August, described the negotiations which had been conducted between the two Governments. The representative of the United Kingdom stated that his Government had agreed to enter into negotiations for the revision of the Anglo-Egyptian Treaty of 1936 "as a matter of grace", and that Egypt could not acquire a right to negotiations by bringing an ill-founded claim before the Council.

The draft resolution for the resumption of direct negotiations, submitted by the representative of Brazil at the 189th meeting on 20 August, read as follows:<sup>27</sup>

*"The Security Council,*

*"Having considered the dispute between the United Kingdom and Egypt, brought to its attention by the letter of the Prime Minister of Egypt, dated 8 July 1947,*

*"Noting that the methods of adjustment provided for by Article 33 of the Charter have not been exhausted, and believing that the settlement of the dispute may best be attained, under present circumstances, through recourse to those methods,*

*"Recommends to the Governments of the United Kingdom and Egypt:*

*"(a) To resume direct negotiations and, should negotiations fail, to seek a solution of the dispute by other peaceful means of their own choice:*

*"(b) To keep the Security Council informed of the progress of these negotiations."*

In submitting the draft resolution, the representative of Brazil contended that the situation presented no immediate danger to international peace, and that all possibilities of agreement, by direct negotiations or other customary methods of settlement, had not been exhausted.

Objection was raised to the draft resolution by the representative of the USSR on the grounds that the question had come before the Council because no positive result had been achieved from direct negotiation: that negotiations could not rightly proceed during the occupation of the territories of Egypt and the Sudan; and that the draft resolution avoided expression of an opinion on the substance of the question. The representative of Colombia stated that, should direct negotiations between the United Kingdom and Egypt again fail to achieve their ends, the Council should have the opportunity of making a new recommendation regarding the means of settling the dispute in the light of the conditions in which it might come back for examination. The representative of the United Kingdom accepted the Brazilian draft resolution and stated that his Government was very willing to resume negotiations. The representative of Egypt opposed the draft resolu-

<sup>21</sup> 122nd meeting: pp. 608-609. For the United Kingdom draft resolution, see Case 23.

<sup>22</sup> 122nd meeting: p. 609.

<sup>23</sup> See Case 23 for further observations bearing on consideration of the dispute by the Council.

<sup>24</sup> For texts of relevant statements see:

175th meeting: Egypt, pp. 1746-1748.

176th meeting: United Kingdom, pp. 1769-1772, 1776, 1783-1784.

189th meeting: Brazil, pp. 2105-2109.

193rd meeting: Egypt, pp. 2164-2167.

196th meeting: Australia, p. 2252; Poland, p. 2249; United Kingdom, p. 2254.

198th meeting: Colombia, p. 2290; USSR, pp. 2284-2285.

201st meeting: Syria, p. 2349; United Kingdom, pp. 2347-2348.

<sup>25</sup> See also Case 24 for observations bearing on Article 36 (3).

<sup>26</sup> S/410, 159th meeting: pp. 1343-1345. For the submission of the question, see chapter VIII, p. 314.

<sup>27</sup> 189th meeting: pp. 2108-2109.

tion as an evasion of the Council's primary responsibility since it declined to deal with the merits of the dispute. The representative of Poland held that, under the Charter, the Council could act in an early stage of a dispute and did not need to wait until an unequivocal menace to peace had arisen.

At the 193rd meeting on 22 August, the representative of Australia proposed an amendment that, in so far as the negotiations affected the future of the Sudan, they should include consultation with the Sudanese.<sup>32</sup> The representative of Belgium opposed the amendment on the grounds that it provided for methods which implied taking a position on the substance of the dispute. If the Council were to adopt the amendment, it would depart from the system provided for in Article 33.

At the 198th meeting on 28 August, the Australian amendment and the Brazilian draft resolution were rejected.

In connexion with the draft resolution for the resumption of direct negotiations submitted by the representative of China at the 201st meeting on 10 September,<sup>33</sup> the representative of the United Kingdom stated that the last paragraph of the preamble, which read:

*"Having confidence that the re-establishment of direct contact between the parties will result in early evacuation of remaining British armed forces"*,

appeared to assign priorities to certain aspects of the negotiations, and that the draft resolution would thus shift the Council from the sphere of Article 33 to that of Article 36. The representative of Syria stated that the more urgent issue of evacuation would come within Article 36, while other issues of the dispute could be dealt with under Article 33.

At the same meeting, the Chinese draft resolution was rejected.

The following statements were made in the course of these proceedings:

The representative of Brazil stated (189th meeting, 20 August 1947):

"The powers which the Charter confers upon the Security Council for the exercise of its functions do not exclude, however, the traditional methods of international law for the peaceful adjustment of conflicts. On the contrary, these powers presuppose recourse to such methods, to which both Chapter VI and Chapter VII of the Charter give priority. Only after these have failed is the Security Council allowed to intervene and impose obligations on the parties. Negotiation, good offices, mediation and arbitration assume within the Charter the character of normal instruments of adjustment, in the initial stages of pacific settlement. Articles 33, 36 and 37 make it quite clear that it is incumbent upon the parties to seek the settlement of their dispute by the traditional methods of adjustment, while the Council is to maintain a watchful attitude in the initial stage of settlement.

"The framers of the Charter of the United Nations very properly and wisely adopted a duality of methods for the peaceful settlement of disputes: the traditional method of international law and the specific method of the Security Council. There is no contradiction between these; rather, they complement each other, giving the Security Council great flexi-

bility in the exercise of its function of conciliation and permitting it to resort to either one or the other according to the circumstances of the case. If, on the contrary, the Charter had established its own method for peaceful settlement, to the exclusion of all devices developed through centuries of practice of international law, the rigidity which would then ensue would be detrimental to the proper adjustment of disputes.

"In fact, not all situations or disputes are open to adjudication by the Security Council. Cases are brought before that body only in so far as they concern security. They are usually presented in an isolated form, unconnected with any other aspects of the question. The Council intervenes then to prevent a situation or dispute from becoming a menace to international peace and security. Hence the insufficiency of the Council's action wherever it is exercised outside that scope in complex situations involving mutual relations and interests of States devoid of the urgent character which justifies the action of the Security Council.

"In the sphere of diplomatic relations, questions often arise between States as the outcome of their divergent interests and political and economic interdependence. Not infrequently they involve a long record of political relations and present complex aspects with political, economic and social implications. The aspect of security may also be present, though without any character of immediateness and urgency which might call for summary action by the international agency. Questions such as these cannot be dealt with advantageously by the Security Council. We are here in a domain where the traditional methods of international law provide the most convenient instrument for adjustment in the interests not only of the parties directly concerned but also of the harmonious development of international relations.

"...  
"Considering the complexity of present international relations and the ever-growing interdependence among States, as well as the frequent divergencies ensuing from this interdependence, one may legitimately doubt the existence of a single dispute the continuance of which might not eventually be capable of affecting international peace and security. Such a broad interpretation of the language of the Charter, which, be it said, is vague and imprecise, would furthermore lead the Council to convert into a rule that which should constitute an exception, namely, its intervention in the relations between States to adjust matters which would be handled with better results through direct negotiation or other means afforded by diplomacy. In our opinion, such intervention by the international agency should take place only when the parties have shown themselves incapable of arriving at a satisfactory settlement or have exhausted the ways of diplomacy, i.e., when the dispute, in the light of the particular circumstances of each case, may be deemed grave enough to constitute an unequivocal menace to international peace and security.

"Recourse to an international agency has its disadvantages as well as its advantages. Among the former, we might mention the tendency it has to accentuate divergencies. That is why it should not be allowed as a form of pressure or threat to bring about or to influence negotiations. Its use should be restricted to questions presenting a character of im-

<sup>32</sup> 193rd meeting: p. 2169.

<sup>33</sup> 201st meeting: p. 2344.

mediateness and urgency, which do not permit sufficient time for more extended treatment, but which must be handled at once to avoid the materialization of a threat to the peace. The intervention of the Security Council should be considered in that respect as an *ultima ratio* or heroic remedy, to be resorted to only after all others have been tried and found inadequate. To seek redress in the Security Council before the traditional means of settlement have been exhausted would amount to transferring to that body all the diplomatic difficulties emerging from the relations between States.

“The Anglo-Egyptian Treaty of 1936 contains provisions for revision. In fact, both parties initiated negotiations to that effect without, however, reaching an agreement. The circumstances do not seem to justify the opinion that all possibilities of agreement, whether by direct negotiation or by resort to other customary methods of settlement, have been exhausted.

“In face of a situation which presents no immediate danger to international peace, the Brazilian delegation is of the opinion that the Security Council is not justified in taking action, setting aside a treaty, but rather that it should let the parties settle their differences ‘in conformity with the principles of justice and international law’, namely by having recourse to the usual methods of settlement provided by international law.

“In view of the above-stated reasons, the Brazilian delegation, without passing upon the merits of the case or upon the duties and obligations of the parties in consequence of the Treaty of 1936, is of the opinion that the Security Council is not justified in taking action in the matter, but rather that it should invite both Governments to resume direct negotiations with a view to the peaceful settlement of their dispute in accordance with the traditional methods of international law.”

The representative of Egypt, having stated that the representative of Brazil had placed unjustified emphasis on “traditional methods” of handling international disputes, continued (193rd meeting, 22 August 1947):

“To say that the Security Council can intervene ‘only after these methods have failed’ is to deny to the Security Council the role assigned to it by Article 36, paragraph 1, of the Charter.

“Egypt brought this dispute to the attention of the Council under Articles 35 and 37 of the Charter. The Security Council has considered the dispute under those Articles. Its competence to do so, its competence to ‘call upon the parties to settle their dispute’ by the means set out in Article 33, and its competence to ‘recommend appropriate procedures or methods of adjustment’ under either Article 36 or Article 37 is a special competence. It applies only to disputes ‘the continuance of which is likely to endanger the maintenance of international peace and security’. I think, therefore, that I am entirely justified in my deduction that the Security Council finds this to be such a dispute; this being the case, the very basis of the resolution disappears.

“The draft resolution asserts that ‘the methods of adjustment provided for by Article 33 of the Charter

have not been exhausted’ in this case. I think it cannot be contended that all of the methods mentioned in Article 33 must have been exhausted. The text refers to them not as cumulative but as alternative methods. It does not enjoin an endless procedure. A party to a dispute is not obliged first to try negotiation; then that failing, to go on to enquiry; and that failing, to proceed successively to mediation, conciliation, arbitration, judicial settlement, and other peaceful means.”

The representative of Poland stated: (196th meeting, 26 August 1947):

“No one can confine the competence of this Council to cases which constitute only an unequivocal menace to peace. According to the terms of the Charter, the Security Council is not allowed to wait until a dispute becomes an unequivocal menace to peace. It is the primary duty of this Council to act in an early stage of a dispute, before it has become an unequivocal menace to peace. The Council cannot wait until hostilities begin or until the situation has gone beyond the control of the Egyptian and United Kingdom Governments.”

#### CASE 5 (i).<sup>34</sup> THE INDIA-PAKISTAN QUESTION

[Note: Article 33 was cited in connexion with the conversations between the parties under the aegis of the President.]

At the 227th meeting on 6 January 1948, the representative of India\* stated that his Government had been compelled to bring this question before the Council by the failure to reach agreement in direct negotiations which had resulted from the intransigence and lack of co-operation of the Government of Pakistan.

At the 228th and 229th meetings held on 16 and 17 January, the representative of Pakistan\* denied the charge that the Government of Pakistan had refused to co-operate in bringing about a settlement of the Kashmir question. After giving a detailed account of the various attempts made by the Government of Pakistan to get the Indian authorities to participate in direct talks on Kashmir, the representative of Pakistan added that the Government of India had not really tried to settle the issues by direct negotiation.

At the 229th meeting held on 17 January, the representative of the United Kingdom suggested that the President should invite the representatives of India and Pakistan for direct talks under his guidance to find some common ground for a settlement of the dispute. In this he was supported by the representatives of the United States and the USSR. The suggestion was also accepted by the representatives of India and Pakistan.

At the 230th meeting on 20 January, as a result of the conversations held by the representatives of the parties under his chairmanship, the President (Belgium) submitted a draft resolution to establish a commission. In

\* For texts of relevant statements see:

227th meeting: India, p. 11.

228th meeting: Pakistan, p. 87.

229th meeting: India, p. 126; Pakistan, pp. 90-94, 127; USSR, pp. 127-128; United Kingdom, pp. 125-126; United States, p. 126.

230th meeting: President (Belgium), pp. 129-133.

231st meeting: President (Belgium), pp. 164-165.

235th meeting: United Kingdom, pp. 259-260.

236th meeting: President (Belgium), p. 279; United States, p. 279.

241st meeting: Syria, pp. 13-14.

so doing, he stated that both parties had signified their approval of the draft resolution.<sup>35</sup> The President also stated that it had been agreed with the parties that the conversations would continue in order to clarify the essential points of a settlement.

At the 231st meeting on 22 January, the President reported to the Council on the main topics covered in the conversations conducted by him with the representatives of India and Pakistan.

At the 235th meeting on 24 January, the representative of the United Kingdom suggested that the discussions between the representatives of India and Pakistan should continue under the auspices of the President of the Council. This suggestion met with the general approval of the representatives on the Council.

At the 236th meeting on 28 January, the President reported to the Council on the conversations that he had continued with the parties. At the same meeting, the representative of the United States inquired as to whether "we [have] arrived at that parliamentary stage in this question where the parties are unable to do anything under Article 33". He added that, if the parties had arrived only at a partial agreement, then the Council "is bound by the Charter to consider that partial agreement if it proceeds under Article 37, because Article 36, paragraph 2, commends the Security Council to 'take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties'."

In his reply to the representative of the United States, the President declared that the representatives of India and Pakistan had not given up hope of reaching an agreement through direct negotiations under the guidance of the President of the Council. These talks had, however, been suspended in order to give members of the Council "an opportunity to express their views on points which had been discussed between the parties".

At the 241st meeting on 5 February, the representative of Syria stated that, before submitting this question to the Council, the Governments of India and Pakistan "had not met all the conditions set forth in Article 33 of the Charter, namely, exhausting all the means for arriving at a settlement by negotiations between themselves. All that happened was, as we understand from the various statements made, that there had been an exchange of letters and telegrams between them. Although that exchange of letters did not settle the question, it contained serious points which might assist very well in the final solution". The representative of Syria believed that the direct talks between the parties might be renewed under the guidance of the President of the Council on the basis of the detailed memorandum submitted by the representative of Colombia at the same meeting. Upon the suggestion of the President (Canada), consultations with the parties were jointly continued, with the representative of Belgium acting as Rapporteur.

#### CASE 5 (ii).<sup>36</sup>

At the 457th meeting on 17 December 1949, the Council adopted the suggestion of the representative

<sup>35</sup> For text of the draft resolution, which was adopted at the same meeting, see chapter VIII, p. 345.

<sup>36</sup> For text of relevant statement see: 458th meeting: United States, p. 20.

of Norway that the President of the Council should meet informally with the representatives of India and Pakistan in order to come to an agreement on some proposal which was mutually satisfactory to the two parties concerned.<sup>37</sup>

At the 458th meeting on 29 December, the representative of the United States declared that the matter of greatest importance was that the wishes of the parties should be given priority by the Council and that "no suggestions should be made which would put obstacles in the way of the selection of the parties of those means, under Article 33 of the Charter, which seem to them most effective and most suitable to settle this dispute by peaceful methods". He added that "it does not seem to us that any settlement has been made of any procedural issue here this afternoon. We do not think that we have foreclosed the possibility of raising at a subsequent time the question whether the decision of 17 December does not constitute a valid basis for continuing authority . . . I think that I am perfectly correct in saying that it has not been foreclosed, nor do I think that it has been the sense of the Council or of the President, if I may venture to interpret his remarks to make certain that I understood them, that the force of Article 33 of the Charter would preclude him or anyone else acting, upon the request of the parties, if that is what is considered by them a suitable method of procedure".

#### CASE 6.<sup>38</sup> IDENTIC NOTIFICATIONS DATED 29 SEPTEMBER 1948

[*Note:* The question was submitted to the Council as a threat to the peace within the meaning of Chapter VII. The three Governments submitting the question stressed their efforts to bring about a settlement of the question before recourse to the Council. The reply was made that these Governments had failed to avail themselves of the special machinery established by international agreement for dealing with the question submitted. Discussion on the bearing of Article 33 took place mainly after the adoption of the agenda.]<sup>39</sup>

The identic notifications dated 29 September 1948 from the Governments of France, the United Kingdom and the United States drew attention to the efforts made by those Governments to bring about a settlement before submitting the question to the Council:<sup>40</sup>

"It is clear from the protracted exchange of notes and the conversations which have taken place on the initiative of the three Governments between them and the Soviet Government that the three Governments, conscious of their obligations under the Charter to settle their disputes by peaceful means, have

<sup>37</sup> 457th meeting: p. 8.

<sup>38</sup> For text of relevant statements see:

361st meeting: USSR, pp. 12-13; United States, p. 21.

362nd meeting: USSR, pp. 9, 16-17.

363rd meeting: United States, pp. 2-4, 10-11, 19-21, 26.

364th meeting: France, pp. 39, 41, 45; United Kingdom, pp. 31, 33, 35-36.

366th meeting: United States, p. 9.

368th meeting: France, pp. 63, 67; United Kingdom, pp. 49-50; United States, pp. 51, 53, 55-56, 60-62.

370th meeting: Belgium, p. 13; Canada, p. 14.

372nd meeting: France, p. 3.

<sup>39</sup> For discussion before adoption of the agenda on the relevance of Article 107, see chapter XI, Case 30. For the draft resolution to recommend renewal of negotiations after fulfilment of certain conditions, see chapter XI, Case 14.

<sup>40</sup> S/1020, O.R., 3rd year, Suppl. for October 1948, pp. 9-10. For the submission of the question, see chapter VIII, p. 354.



made every effort to resolve their differences directly with the Soviet Government."

In these notifications reference was made to a note addressed at an earlier date by the three Governments to the Government of the USSR. In this note the three Governments made the following statement:<sup>42</sup>

"The Soviet Government has thereby taken upon itself sole responsibility for creating a situation in which further recourse to the means of settlement prescribed in Article 33 of the Charter of the United Nations is not, in existing circumstances, possible, and which constitutes a threat to international peace and security. In order that international peace and security may not be further endangered, the Governments of the United States, the United Kingdom and France, therefore, while reserving to themselves full rights to take such measures as may be necessary to maintain in these circumstances their position in Berlin, find themselves obliged to refer the action of the Soviet Government to the Security Council of the United Nations."

In their statements in the Security Council the representatives of the United States and the United Kingdom indicated the efforts which had been made by them in accordance with Article 33 to secure a settlement of the question, and stressed their view that the continuation of direct negotiations was precluded by the recourse of the Government of the USSR to measures of force. The representative of the United Kingdom stated at the 364th meeting on 6 October 1948:

"Efforts to secure agreement on the lifting of the blockade, which were made continuously between 23 June and 3 July, were equally unsuccessful . . .

"The further course of the discussion between His Majesty's Government and the Government of the USSR is set out in the documents which have been submitted to the Security Council. These documents show conclusively that His Majesty's Government, in initiating direct discussions with the Government of the USSR in Moscow, and subsequently in Berlin, and by an exchange of notes through the diplomatic channel, was determined to abide by its obligations under Article 33 of the Charter . . .

"We fulfilled to the limit Article 33 of the Charter, which I have already quoted. We failed to achieve any satisfactory result. Article 37 of the Charter lays down that 'should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.' We complied with Article 37."

The representatives of France and the United States referred to the omission of the USSR to institute negotiations prior to the imposition of the blockade measures in Berlin.

At the 363rd meeting on 5 October, the representative of the United States drew attention to Article 36 (3) as indicating an appropriate method of settlement. He observed:

"If the Government of the USSR believed that the three Western Governments had lost the rights which they admittedly had possessed, the course of action

open to the Government of the USSR, in conformity with its obligations under the Charter, would have been clear. Under the Charter it would have been obliged to resort to negotiation or other peaceful procedures for the determination of the question. Since a matter of rights was involved, the Soviet Union might well have taken into consideration the principle enunciated in Article 36, paragraph 3, of the Charter. This principle is 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'.

"The Government of the USSR would not have found the Government of the United States hesitant to submit the question of its rights to the determination of the judicial organ of the United Nations or to any other convenient means of pacific settlement for the settlement of this question. In any such situation, it is clearly the obligation of the party asserting a change in the legal position to propose a means of peaceful settlement."

At the 361st meeting on 4 October, the representative of the USSR replied that the question had not been raised before the Council of Foreign Ministers, which was the organ duly established by international agreement for dealing with such a question. He stated:

"For the solution of such matters, by the international agreements to which I have just referred, a special control machinery for Germany was established: the Four Power Control Council and the Council of Foreign Ministers . . . If we are to keep to the terms of the above-mentioned international agreements, and to respect the signature appended to them, then it cannot be recognized as either legal or correct to refer to the Security Council any question concerning Germany, including that of Berlin. A decision to refer any such question to the Security Council would constitute a direct violation of the provisions of the United Nations Charter and of the international agreements I have mentioned. Most blatantly of all, it would be a violation of the agreements signed at Yalta and Potsdam, in accordance to which the question of Germany falls within the sole competence of the four Powers bearing the responsibility for the occupation of Germany.

"In virtue of the treaties signed by them, the Governments of the United States of America, the United Kingdom and France have at their disposal all the necessary legal means to enable them to submit their claims and to rectify by legal means any grievances arising in connection with Germany.

"The Governments of the United Kingdom, the United States of America, and France must therefore choose the legal way, the way or procedure established in the international agreements signed by them, and by others at a later date. That is the legal method. Those who follow it will not violate either the Charter of the United Nations, or the international instruments which those Governments have signed."

At the 366th meeting on 15 October, the President of the Council addressed a series of questions to the Powers concerned. The representatives of the United States, United Kingdom, France and the USSR were asked to explain "in detail the agreement involved

<sup>42</sup> S/1020/Add.1, O.R., 3rd year, Suppl. for October 1948, Annex XI, identic notes dated 26 and 27 September 1948, p. 45.



in the instructions given to the military governors of the four Powers in Berlin, and to give the precise reasons which prevented its implementation".<sup>42</sup> In reply the representatives of the United Kingdom, the United States and France presented statements concerning their

attempts to secure a settlement through negotiations and the reasons why these negotiations had failed.<sup>43</sup>

<sup>42</sup> 366th meeting: p. 8.

<sup>43</sup> 368th meeting: pp. 40-50, 50-62, 62-67.

## Part II

### CONSIDERATION OF THE PROVISIONS OF ARTICLE 34 OF THE CHARTER

#### NOTE

The case histories entered in part II of this chapter are those in which issues have arisen related to Article 34 of the Charter. The diverse character of the case histories arises from the broad significance of Article 34 in the structure of Chapter VI of the Charter. By Article 34, the Security Council is empowered to investigate any dispute, or any situation of the character indicated, in order to determine whether the dispute or situation falls within the category of those in respect of which the Council is empowered to make recommendations under Articles 36 and 37 of the Charter.

In connexion with the Iranian question the interpretation was affirmed that Article 34 empowers the Council to take up of its own initiative a dispute or situation not brought to its attention under Article 35.<sup>1</sup> Though in respect of many questions submitted to the Council the contention has been advanced that the dispute or situation under consideration was not one the continuance of which was likely to endanger the maintenance of international peace and security,<sup>2</sup> only in certain instances have the proceedings of the Council or its decisions rested explicitly on the power conferred by Article 34 to investigate any dispute, or any situation which might lead to international friction or give rise to a dispute.<sup>3</sup> Consideration has been given to the question whether investigation under Article 34 or an express finding of the nature envisaged in Article 34 is a condition of the exercise by the Council of its powers under Articles 36 and 37.<sup>4</sup> On two occasions the Council has appointed commissions of investigation expressly under Article 34 of the Charter, but on neither occasion was the investigation confined to the purpose stated in Article 34.<sup>5</sup> On other occasions proposals for investigation have given rise to discussion regarding the circumstances in which investigation is appropriate, without resulting, however, in an affirmative decision.<sup>6</sup> Considerable discussion has centred on the distinction between investigation under Article 34 and the establishment of a sub-committee to examine the facts, and on certain occasions recourse has been had to the establishment of such a sub-committee;<sup>7</sup> the distinction is necessarily inter-related with the problem of the procedural or non-procedural character of the decision involved.<sup>8</sup> The questions have been debated whether the Council's power of investigation is exhausted with a finding under Article 34 of the Charter,<sup>9</sup> and whether

a decision to investigate is a binding decision within the terms of Article 25.<sup>10</sup>

#### CASE 7.<sup>11</sup> THE INDONESIAN QUESTION (I)

[*Note:* In the Indonesian question, after discussion on whether the circumstances brought to the attention of the Council endangered international peace and warranted the establishment of a commission of inquiry, the Council, after rejecting the draft resolutions submitted, closed the proceedings on the question.]<sup>12</sup>

At the 12th meeting on 7 February 1946, the representative of the Ukrainian SSR contended that the action of British forces in Indonesia was in contravention of Article 1 (2) of the Charter and had resulted in a situation which, under Article 34 of the Charter, threatened the maintenance of international peace and security. At the 16th meeting on 11 February 1946, the representative of the Ukrainian SSR introduced a draft resolution<sup>13</sup> to set up a commission to carry out an enquiry on the spot, establish the facts in Indonesia, and report to the Council on the result of its work.

The representative of the USSR supported the sending of a commission as a means of obtaining impartial information. The representative of the United Kingdom insisted that no endangerment to international peace was involved — a view supported by the representatives of the Netherlands, United States, France and Brazil. The representative of Australia, while emphasizing the importance of appropriate recourse to commissions of inquiry, concluded that, in the case under discussion, there was no basis for action under Article 34, since the military action of the British troops in Indonesia did not threaten the maintenance of international peace and security. The representative of the United States stated that "the power of investigation under Article 34" was of especial importance as one of the means whereby the Council could determine whether or not it should undertake to deal with a particular situation or dispute. In determining whether or not a situation warranted investigation, the Security Council should have reason to believe, on the circumstances before it, that the continuance of the situation was likely to endanger international peace and security. The representative of the United States concluded that in the existing circumstances the Security Council should

<sup>11</sup> See Cases 13, 15: see also chapter XII, Case 25.

<sup>12</sup> For texts of relevant statements see:

12th meeting: Ukrainian SSR, pp. 174-178; Netherlands, p. 187; United Kingdom, pp. 178-182.

15th meeting: Egypt, p. 214; United Kingdom, pp. 215-217.

16th meeting: Australia, p. 234; United States, pp. 235-237.

17th meeting: Mexico, p. 242; France, pp. 243-244; Brazil, pp. 244-245; Netherlands, pp. 246-247.

18th meeting: Netherlands, pp. 258-259; United Kingdom, pp. 260-261.

<sup>13</sup> On the question of domestic jurisdiction, see chapter XII, Case 1.

<sup>14</sup> 16th meeting: p. 223. For the submission of the question, see chapter VIII, p. 302.

<sup>1</sup> See chapter II, Case 56.

<sup>2</sup> See part IV: Note, p. 410.

<sup>3</sup> See Case 18. See also Cases 11 and 16.

<sup>4</sup> See Case 13, and also Case 9.

<sup>5</sup> See Cases 11 and 16.

<sup>6</sup> See Cases 7, 10 and 18.

<sup>7</sup> See Cases 8 and 17: see also chapter V, Cases 65, 66 and 67.

<sup>8</sup> See chapter IV, Cases 43, 49, 85, 96, 98, 118, 119 and 180.

<sup>9</sup> See Case 14.

not undertake an investigation or take any further action.

At the 17th meeting on 12 February, the representative of Mexico suggested that the first organ to be set up under Article 29 should be "an instrument to produce the necessary information as to the facts involved in any definite question brought before us". A temporary commission should therefore be established under Article 29 to ascertain the facts and bring them to the notice of the Council. The commission, while not interfering with the rights of the Netherlands Government as a sovereign Power, could also, "if the Dutch Government desired, be of help as a mediator in the negotiations between the Dutch Government and the legitimate leaders of the nationalist movement".

At the 18th meeting on 13 February, the proposal of the Ukrainian SSR to set up a commission of inquiry was rejected by 2 votes in favour.<sup>14</sup>

In speaking on the Egyptian draft resolution, the representative of the Netherlands reiterated that no threat to international peace was involved in the action of British troops, and that the situation created by the Indonesian nationalist movement was not on the agenda. The representative of the United Kingdom expressed his rejection of the criticism implied in the Egyptian draft resolution.<sup>15</sup> On the rejection of the draft resolution, the President (Australia) declared the matter closed.

CASE 8.<sup>16</sup> THE SPANISH QUESTION: In connexion with decision of 29 April 1946 to establish a Sub-Committee to conduct inquiries.

[Note: The Security Council had before it on 18 April 1946 an Australian draft resolution to make inquiries in accordance with Article 34, through the instrumentality of a committee of five members, to determine whether the situation in Spain endangered international peace or security, a conclusion enunciated in the Polish draft resolution submitted the preceding day. In the resolution adopted the reference to Article 34 was omitted and consequential changes introduced.]

At the 35th meeting on 18 April 1946, the representative of Australia submitted a draft resolution for the establishment of a committee on the Spanish question in accordance with Article 34. The draft resolution provided:<sup>17</sup>

*"The Security Council,*

*"Having had its attention drawn to the situation in Spain by a Member of the United Nations acting in accordance with Article 35 of the Charter, and*

*"Having been asked to declare that this situation has led to international friction and endangers international peace and security,*

*"Hereby resolves, in accordance with Article 34 of the Charter, to make further inquiries in order to determine whether or not such a situation exists, and to this end*

<sup>14</sup> 18th meeting; p. 258.

<sup>15</sup> For the Egyptian draft resolution, see chapter VIII, p. 302.

<sup>16</sup> For texts of relevant statements see:

35th meeting: Australia, pp. 195, 197-198.

37th meeting: Australia, pp. 216-217, 233, 239; Brazil, p. 225; France, pp. 226-227; Mexico, p. 233; Netherlands, p. 224, 231; USSR, pp. 220-221, 223, 242-243; United Kingdom, pp. 231-232; United States, pp. 218-219.

39th meeting: Australia, p. 242; Mexico, p. 243; Poland, pp. 241-242; USSR, pp. 242-243.

<sup>17</sup> 35th meeting; p. 198.

*"Appoints a committee of five of its members and*

*"Instructs this committee to examine the statements made before the Security Council concerning Spain, to call for further written statements and documentary evidence from Members of the United Nations and from the Franco regime, and to make such other inquiries as it may deem fit in order that the committee may report to the Security Council not later than 17 May 1946, on the following questions: . . ."*<sup>18</sup>

In presenting the draft resolution, the representative of Australia stated:

"The mere existence of a fascist government as such does not . . . give us the right to discuss it. We have to have an investigation and proof that its policy and activities are of international concern, and therefore within the ambit of the Charter."

" . . .

"Now, the Polish representative brought his case under Chapter VI. But Chapter VI calls for investigation. It requires investigation before we can take any action. We have to take a decision and ascertain facts. But he jumps straight away into Chapter VII, Articles 39 and 41, which operate only against a proved aggressor."

At the 37th meeting on 25 April, the representative of Australia presented a revised draft resolution which omitted the reference to Article 34; described the proposed body as a "Sub-Committee" instead of a "Committee"; deleted the words: "to call for further written statements and documentary evidence from Members of the United Nations and from the Franco regime", and substituted the following text: "to call for further statements, documents and evidence and to conduct such inquiries as it may deem necessary"; amended the words "report . . . on the following questions" to read "report . . . on the results of such studies and especially the facts bearing on the following questions".<sup>19</sup> In presenting the revised draft resolution, the representative of Australia said:

" . . . first of all, I have cut out the idea of a formal investigation under Article 34 of the Charter so as to enable the proposed body to be brought in under Article 29 as a subsidiary organ; . . .

" . . . it was felt by some representatives that the Sub-Committee should not and could not itself make a finding on those three questions, or make recommendations on them, but should present the facts so that the Council itself could decide and make its own decision on the facts ascertained and presented by the sub-committee".

Discussion continued regarding the necessity of such preliminary inquiry, in the course of which the representative of France expressed the view that the three questions addressed to the Sub-Committee were too restrictive, and should be replaced by a broad direction to report "on the results of such studies and on the practical measures which the United Nations could take in this matter".

On the revised text submitted at the 38th meeting on 26 April, after consultation with the representatives of France and Poland, the representative of Australia said:

<sup>18</sup> For the text of questions, see chapter XII, Case 2.

<sup>19</sup> 37th meeting; p. 216.

"The main substance of this resolution is that it is for this Council, and not the Sub-Committee, to determine what practical measures the United Nations might take on the finding that it has led to international friction and does endanger international peace and security.

"In the fourth paragraph it will be seen that very wide powers of discretion are given to the Sub-Committee to conduct such inquiries as it may deem necessary; that is, it will itself decide how and when and where the inquiry is to be made."

The resolution, as adopted at the 39th meeting on 29 April, provided for the appointment of a sub-committee to conduct inquiries as a means to determination by the Council whether the situation in Spain endangered international peace.<sup>20</sup>

CASE 9.<sup>21</sup> THE SPANISH QUESTION: In connexion with the Australian-United Kingdom amendment to the Polish draft resolution; voted upon and rejected on 26 June 1949; and decision of 26 June 1946 to keep the situation in Spain under observation.

[Note: The Sub-Committee on the Spanish question having reported the situation in Spain to be of the nature referred to in Article 34, draft resolutions on the question were submitted by the Chairman of the Sub-Committee<sup>22</sup> and by the representative of Poland, but were rejected. Further discussion related to the terms in which the Council should express its continued concern with the question and its consequent retention on the agenda.]

In its report submitted on 1 June 1946, the Sub-Committee on the Spanish question stated:<sup>23</sup>

"24. Chapter VI of the Charter empowers the Security Council to examine 'any situation which might lead to international friction' . . . In the opinion of the Sub-Committee, the Spanish situation is one which has already led to international friction. The investigation has convinced the Sub-Committee, not only that international friction has occurred, but that it is almost bound to recur.

" . . . such activities [of the Franco regime] do constitute a situation which is a potential menace to international peace and security and which therefore is a situation 'likely to endanger the maintenance of international peace and security' within the meaning of Article 34 of the Charter."

At the 48th meeting on 24 June, after the rejection of the first Polish draft resolution, the representative of Poland submitted a draft resolution which in its preamble noted that the investigation of the Sub-Committee established that "Franco's fascist regime is a serious danger to the maintenance of international

peace and security".<sup>24</sup> He observed that he used these words because, though in his opinion the matter fell within Article 39, he did not wish to make it impossible for members who disagreed with this view to vote for the draft resolution now submitted.

The operative clauses of the draft resolution read as follows:

"The Security Council, therefore, decides to keep the situation in Spain under continuous observation and keep the question on the list of matters of which it is seized, in order to be able to take such measures as may be necessary in the interests of peace and security.

"The Security Council will take the matter up again not later than 1 September 1946, in order to determine what appropriate practical measures provided by the Charter should be taken. Any member of the Security Council has a right to bring the matter up before the Security Council at any time before the mentioned date."

The representative of Australia objected to the preamble that it departed from the finding of the Sub-Committee, and the representative of the United Kingdom expressed concern that the question should be considered at the next session of the General Assembly.

At the 49th meeting on 26 June, the representatives of Australia and the United Kingdom submitted an amended text, which read:<sup>25</sup>

"And whereas the Sub-Committee was of opinion that the situation in Spain is one the continuance of which is likely to endanger the maintenance of international peace and security,

"It is hereby resolved that without prejudice to the rights of the General Assembly under the Charter, the Security Council keeps the situation in Spain under continuous observation and maintains it upon the list of matters of which it is seized in order that it will be at all times ready to take such measures as may become necessary to maintain international peace and security. Any member of the Security Council may bring the matter up for consideration by the Council at any time."

The representative of Australia observed that the reference to the rights of the Assembly were inserted as a reminder that, at the proper time, the question should be removed from the agenda of the Council to enable the General Assembly to make recommendations. The representative of Poland indicated that his draft resolution had included, as an indication to the Spanish people, a date by which the Council was to take the matter up again.

At the same meeting, the amended draft resolution was not adopted. There were 9 votes in favour and 2 against (one vote against being that of a permanent member).<sup>26</sup>

After further discussion, the text of the decision of 26 June 1946 to keep the situation in Spain under observation was adopted.<sup>27</sup>

<sup>20</sup> 39th meeting: p. 244. For the text of the resolution, see chapter VIII, p. 306. On the character of the Sub-Committee, see also chapter V, Case 65.

<sup>21</sup> For texts of relevant statements see: 48th meeting: Australia, p. 391; Poland, p. 392; United Kingdom, p. 393.

49th meeting: Australia, p. 435; Poland, p. 404.

<sup>22</sup> See Case 22.

<sup>23</sup> S/75, O.R., 1st year, 1st series, Suppl., Rev. ed., pp. 9-10. See also Case 22 for discussion on the measures proposed by the Sub-Committee.

<sup>24</sup> 48th meeting: p. 389.

<sup>25</sup> 49th meeting: p. 407.

<sup>26</sup> 49th meeting: p. 413.

<sup>27</sup> For text, see chapter VIII, p. 307.

CASE 10.<sup>28</sup> THE GREEK QUESTION: Ukrainian SSR communication dated 24 August 1946: In connexion with the draft resolutions submitted by the representatives of the USSR, United States and Poland: voted upon and rejected on 20 September 1946.

[*Note:* The question arose whether the situation described in the Ukrainian SSR communication constituted a situation within the terms of Chapter VI of the Charter. Draft resolutions were submitted for measures of investigation under Article 34—by one member on the situation as submitted in the Ukrainian SSR communication, and by another member on a situation otherwise defined. Discussion took place on the circumstances in which investigation by the Council would be appropriate, and on the significance of retention of a question on the agenda. The draft resolutions were not adopted and the proposal to retain the question on the agenda was rejected.]

At the 67th meeting on 16 September 1946, the representative of Australia submitted a draft resolution "that the Security Council pass to the next item on the agenda."<sup>29</sup> The representative of Australia recalled his statement at the 64th meeting on 9 September to the effect that "the Council should never allow its machinery to be set in motion for frivolous or vexatious reasons", and that in the present case the Council should indicate its disapproval by passing to the next item on the agenda. The representative of Australia continued that, whereas his Government would take the view that the normal procedure would be to proceed to investigation, he did not believe that in the case under consideration the interests of peace or the interests of the Council would be served by the usual form of investigation. Having reiterated his reservations regarding the manner in which the complaint had been presented, the representative of Australia continued that Chapter VI of the Charter left it entirely to the wisdom of the Council "to devise the appropriate methods of adjustment in regard to a situation". He expressed the view that it would be "extremely difficult" for the Council to devise any method to adjust the situation without in some measure passing judgment on the Governments whose names had been mentioned in the Ukrainian complaint. The charges were, in the view of the Australian Government, unsubstantiated. If the Council proceeded to pass to the next item on the agenda, other ways would remain open to the Council for taking cognizance of the situation in the Balkans if peace should be threatened.

At the same meeting the representative of the USSR submitted the following draft resolution:<sup>30</sup>

<sup>28</sup> For texts of relevant statements see:  
62nd meeting: Australia, pp. 251-254; United Kingdom, p. 249.  
64th meeting: Australia, pp. 276-281; United States, p. 276.  
65th meeting: Brazil, p. 296.  
67th meeting: Australia, pp. 329-333; Netherlands, p. 326; USSR, pp. 334-335.  
68th meeting: Poland, p. 351.  
69th meeting: Australia, pp. 376-379, 390-391; France, p. 381; USSR, pp. 381-382; United States, pp. 366-367, 386-387.  
70th meeting: Australia, pp. 406, 414-415; France, p. 400; Poland, pp. 413-414; USSR, p. 397; United Kingdom, pp. 415-416; United States, pp. 394-395.

<sup>29</sup> 67th meeting: p. 329. For the proceedings before the submission of the Australian draft resolution, see chapter VIII, p. 308.

<sup>30</sup> 67th meeting: pp. 334-335.

"The Security Council established the fact:

"That on the Greco-Albanian border there have recently been an increasing number of frontier incidents provoked by aggressive Greek monarchist elements . . .

"That the persecution of national minorities in Greece by the Greek Government, by provoking national strife, is bringing strain in the relations between Greece and her other neighbours;

"That the unbridled propaganda of the aggressive Greek monarchist elements, demanding the annexation of territories belonging to these neighbours, threatens to complicate the situation in the Balkans . . .

"That in their policy of aggression, the aggressive Greek monarchist elements are striving to exploit the results of the falsified plebiscite held on 1 September under terroristic conditions . . . They are likewise exploiting the presence of British troops on Greek territory . . .

"That all these circumstances create a situation envisaged by Article 34 of the Charter of the United Nations and endanger peace and security.

"For the above-mentioned reasons, the Security Council resolves to call upon the Greek Government:

"(1) to take measures in accordance with Article 2, paragraph 4, of the Charter of the United Nations for the immediate cessation of the provocative activities of the aggressive monarchist elements on the Greco-Albanian frontier;

"(2) to call upon the Greek Government to put an end to the agitation regarding the state of war which is said to exist between Greece and Albania, in spite of the fact that Albania is endeavouring to establish normal peaceful relations with Greece;

"(3) to terminate the persecution of national minorities in Greece, which is contrary to Article 1, paragraphs 2 and 3, of the Charter of the United Nations;

"(4) to retain on the agenda of the Security Council the question of the menacing situation brought about as the result of the activities of the Greek Government so long as the latter fails to carry out the recommendations proposed by the Security Council."

At the 69th meeting on 18 September 1946, the representative of the United States expressed the view that the evidence indicated a disquieting situation along the northern frontiers of Greece, for which Greece was not primarily responsible. The representative of the United States urged that the situation along the entire length of the northern frontier of Greece called for the consideration and attention of the Council. This situation was, he observed, separate from the charges brought by the representative of the Ukrainian SSR which the United States rejected as unfounded.

At the 70th meeting on 20 September, the representative of the United States submitted the following draft resolution:<sup>31</sup>

"Resolved,

"That the Security Council, acting under Article 34 of the Charter, establish a commission of three individuals to be nominated by the Secretary-General, to represent the Security Council on the basis of their competence and impartiality, and to be confirmed by the Security Council;

<sup>31</sup> 70th meeting: p. 396.

"That the Security Council instruct the commission:

"(1) To investigate the facts relating to the border incidents along the frontier between Greece, on the one hand, and Albania, Bulgaria and Yugoslavia on the other;

"(2) To examine the statements submitted to the Security Council concerning these incidents and such further information from other sources as it deems necessary;

"(3) To submit to the Security Council as soon as practicable a report on the facts disclosed by its investigation;

"That the commission shall have authority to conduct its investigation in the area and to call upon Albania, Bulgaria, Greece and Yugoslavia for information relevant to its investigation;

"That the Security Council request the Secretary-General to communicate with the appropriate authorities in the countries involved in order to obtain permission for the commission to conduct its investigation in these countries."

At the same meeting, the representative of the USSR contended that the United States draft resolution could not and should not be adopted by the Security Council since the Council had not examined such questions as those relating to the situation on the Greek-Yugoslav and Greek-Bulgarian frontiers. He continued:

"It is a fact that the creation of an investigation commission is not merely a formal act: the creation of a commission and the decision to establish such a commission is a political decision which in itself implies that the Security Council is satisfied that the accusations in regard to one country or the other are substantiated. Therefore, the very decision of the Security Council to create an investigation commission is already a decision which to some extent casts a shadow on a certain country . . ."

He contended that the purpose of the United States draft resolution was to divert attention from the seriousness of the situation brought about in the Balkans as a result of the aggressive policy of the Greek Government.

The representative of France expressed the view that "the very fact of proposing such an investigation in itself implies that a judgment has not yet been made".

The representative of Australia at the 69th meeting reiterated his contentions in favour of passing to the next item on the agenda. He recalled that the communication of the Ukrainian SSR had been admitted to the agenda in its entirety, and that it consisted of "a general accusation that there is a threat to the peace and a spirit of aggression on the part of two Governments". He expressed the view that, although it would be within the competence of the Council to select a particular aspect of the letter for attention, the Council should not follow such a course in the absence of "overpowering reasons". The representative of Australia drew attention to the constitutional consideration that the step proposed by the representative of the United States would "extend to the investigation of matters which . . . are not formally before this Council at this present time". He concluded that, in his view, the proper course was to dismiss the case so as to prevent the Council from being used for purposes otherwise than in the

sense of Chapter VI of the Charter. He therefore opposed the draft resolution for investigation on principle.

At the 70th meeting, the USSR draft resolution was rejected by 2 votes in favour and 9 against.<sup>32</sup> The United States draft resolution was not adopted. There were 8 votes in favour, 2 against, (one vote against being that of a permanent member)<sup>33</sup> and 1 abstention.

After the rejection of these draft resolutions, the representative of Poland submitted at the 70th meeting the following draft resolution.<sup>34</sup>

"The Security Council, having considered the situation brought to its attention by the Ukrainian Soviet Socialist Republic, decides to keep the situation under observation and to retain it on the list of the matters with which the Council is seized."

The representative of Poland recalled the retention of the Spanish question on the agenda, and expressed the view that acceptance of his draft resolution would not involve any "judgment on the situation". The representative of Australia observed that, by its vote on the draft resolution submitted by the representative of the USSR, a majority of the Council had indicated its view of the charges brought by the Ukrainian SSR. He observed that it was for the Council to pronounce its opinion one way or the other on the communication of the Ukrainian SSR. He recalled the Australian draft resolution, and indicated that its sense was "to dismiss the Ukrainian letter from the agenda of the Security Council". The representative of the United Kingdom also expressed opposition to retention of the item on the agenda. The representative of the USSR expressed support of the Polish draft resolution, which would "merely oblige the Security Council to take an interest in the situation".

The Polish draft resolution was rejected by 2 votes in favour and 9 votes against.<sup>35</sup> The Council passed to the consideration of the draft resolution submitted by the representative of Australia.<sup>36</sup>

CASE 11.<sup>37</sup> THE GREEK FRONTIER INCIDENTS QUESTION: In connexion with decision of 19 December 1946 to establish a commission of investigation.

[Note: The decision of 19 December 1946 was expressly taken under Article 34. The measure was also supported as a procedure of inquiry in accordance with Article 33.]

In the letter of submission dated 3 December 1946,<sup>38</sup> Greece requested the Security Council under Articles 34 and 35 (1) to consider the situation which was "leading to friction between Greece and her neighbours, by reason of the fact that the latter are lending their support to the violent guerrilla warfare now being

<sup>32</sup> 70th meeting: pp. 407-409.

<sup>33</sup> 70th meeting: p. 412.

<sup>34</sup> 70th meeting: p. 413.

<sup>35</sup> 70th meeting: p. 413.

<sup>36</sup> For consideration of the Australian draft resolution, see chapter II, Case 57.

<sup>37</sup> For texts of relevant statements see:

85th meeting: Australia, pp. 633-634; United Kingdom, p. 631; United States, pp. 629-631.

86th meeting: Egypt, p. 647; USSR, pp. 645-647.

87th meeting: China, p. 657; France, p. 654; Poland, p. 652; United States, p. 666.

<sup>38</sup> S/203, S/203/Add.1, O.R., 1st year, 2nd series, Suppl. No. 10, pp. 169-190. For the submission of the question, see chapter VIII, p. 309.

waged in northern Greece against public order and the territorial integrity" of Greece, and drew the attention of the Council to the urgent need for an investigation on the spot.

At the 85th meeting on 18 December 1946, the representative of the United States submitted a draft resolution<sup>42</sup> to establish a commission of investigation under Article 34. In submitting his proposal, he observed that all the four Governments concerned had made allegations that border violations had taken place. These border violations could not be ignored by the Security Council, and therefore it seemed to him to be "the inescapable and self-evident duty of the Security Council to investigate the facts pertaining to these border violations without attempting at this time, on the basis of present information, to prejudge the issues". The representative of the United States continued that such an investigation was an "essential first step in the Council's proceedings in this case". Other representatives made observations on the appropriateness of an investigation in the circumstances.

The representative of the United Kingdom stated:

"... We have no means of verifying the charges made on one side or the other. But that work could be done by a commission commanding the confidence of the Security Council, sent to the spot to investigate the local situation and, on the basis of such a commission's report, I should hope that the Security Council would be able to reach a just conclusion on which to base any recommendation which it may see fit to make."

At the 87th meeting on 19 December 1946, the representative of Poland held that under Article 33 the Council had, in the case before it, a certain obligation to resort to an investigation before taking further decisions. He stated:

"... since, by implication, we have decided that the case before us is in the nature of a dispute, before we take further decisions we must comply with Article 33 of the Charter, which says that in case of disputes the parties shall seek all methods of adjustment before they call upon the Security Council to take a decision; and as one of these methods, it mentions an enquiry. So, in a way, we are really under an obligation, and the same applies to the parties concerned in the dispute, to take certain steps before we make a final decision. I think that is a very weighty argument in favour of setting up our commission of investigation."

At the same meeting, the Council voted on the draft resolution, paragraph by paragraph. The draft resolution, as amended during the vote, was adopted unanimously.<sup>43</sup>

In its report to the Council, the Commission of Investigation concerning Greek Frontier Incidents presented conclusions, as requested by the Council, on the validity of the charges and counter-charges.<sup>44</sup> It also, in accordance with the terms of reference, presented proposals, agreed upon by the majority, stated to be framed "in the spirit of Chapter VI of the Charter of the United Nations with a view, first, to prevent any

aggravation of the situation, and, secondly, to alleviate it and eventually to restore it to normal". The Commission indicated certain activities which in the future "should be considered by the Security Council as a threat to the peace within the meaning of the Charter of the United Nations".<sup>45</sup>

CASE 12.<sup>46</sup> THE GREEK FRONTIER INCIDENTS QUESTION: In connexion with the draft resolution submitted by the representative of the USSR to modify the terms of reference of the Subsidiary Group, voted upon and rejected on 22 May 1947.

[Note: The Council had before it on 12 May 1947 a draft resolution to amend the terms of reference of the Subsidiary Group. The question was debated whether investigation should relate only to incidents anterior to the establishment of the Commission, and whether the Commission had acted correctly in defining the terms of reference of the Subsidiary Group. The draft resolution was rejected.]

At the 131st meeting on 18 April 1947, the Security Council adopted an amended United States draft resolution<sup>47</sup> to provide that, pending a new decision of the Council, the Commission of Investigation should maintain in the area concerned a subsidiary group to continue to fulfil such functions as might be prescribed by the Commission in accordance with its terms of reference. In support of the draft resolution at the time of submission, the representative of the United States stated that "the Commission should continue its work, including its investigations along the northern Greek border, until the Security Council itself has disposed of the Greek case" and that it was "of the utmost importance that the Commission should leave representatives in the border area" while its report was being prepared and while the report was being considered by the Council.

At the 133rd to the 137th meetings, between 12 and 22 May, the Council, at the request of the representative of the USSR,<sup>48</sup> considered the functions and powers assigned to the Subsidiary Group under the directive of the Commission of Investigation of 29 April 1947.<sup>49</sup> The Council also had before it a cablegram dated 5 May 1947 from the Chairman of the Commission of Investigation referring to the Council the question raised by the refusal of the liaison representatives of Albania, Bulgaria and Yugoslavia to participate in the work of the Subsidiary Group.<sup>50</sup>

<sup>42</sup> S/360/Rev.1, O.R., 2nd year, Special Suppl. No. 2, vol. 1, pp. 152-156. The majority proposals are in part IV of the Report. For consideration of these proposals in relation to the Charter, see Case 13, and chapter XI, Case 2.

<sup>43</sup> For texts of relevant statements see:  
125rd meeting: United States, pp. 618-619.  
133rd meeting: USSR, pp. 828-829, 831.  
134th meeting: Belgium, pp. 844-845; Yugoslavia, pp. 847, 848-849.

135th meeting: Albania, pp. 866-868; Australia, p. 877; Brazil, pp. 880-881; China, pp. 882-883; Greece, p. 869; United States, pp. 873-875.

136th meeting: Bulgaria, p. 892; France, p. 905; Poland, pp. 907-908; United Kingdom, pp. 896-897; Yugoslavia, p. 901.

137th meeting: Australia, pp. 919-920; Syria, pp. 911-912; USSR, pp. 913-914.

<sup>44</sup> 131st meeting, pp. 799-800. See chapter VIII, p. 310.

<sup>45</sup> S/347, O.R., 2nd year, Suppl. No. 11, p. 125.

<sup>46</sup> S/237, O.R., 2nd year, Suppl. No. 11, pp. 121-122. For discussion, see also chapter X, Case 12.

<sup>47</sup> S/343, S/341/Corr.1, S/342/Corr.1, S/345, O.R., 2nd year, Suppl. No. 11, pp. 123-125, 126-128.

<sup>48</sup> 85th meeting, pp. 630-631.

<sup>49</sup> 87th meeting, pp. 700-701. For text of adopted resolution, see chapter VIII, p. 369. For consideration of the composition of the commission, see chapter V, Case 2.

<sup>50</sup> For texts of conclusions see S/360/Rev.1, O.R., 2nd year, Special Suppl. No. 2, vol. 1, pp. 106-152.



At the 133rd meeting on 12 May, the representative of the USSR objected to the decision of the Commission of 29 April 1947, stating that it was "not compatible with the Security Council resolution of 18 April 1947" since it was evident from the records "that the Commission decided to delegate to the Subsidiary Group, automatically and fully, the functions assigned to it as a Commission". He stated further:

"... the terms of reference of the Commission of Investigation naturally could not relate to future incidents, of which no one could possibly know; they related to past incidents, to which our attention has been drawn by the Governments of Greece, Yugoslavia, Bulgaria and Albania in the course of the discussion of this question in the Security Council... It is perfectly clear that the powers and functions assigned to the Commission of Investigation by previous decisions of the Security Council could not be applied automatically in future, even in so far as this Commission is concerned since these powers were the result of a discussion of the question of past incidents. Moreover, the Commission could not automatically delegate its powers to a subsidiary group established by the Commission itself."

At the same meeting, the representative of the USSR introduced the following draft resolution:<sup>6</sup>

*"The Security Council,*

*Having discussed the decision taken by the Commission of Investigation concerning Greek Frontier Incidents on 29 April 1947, about the terms of reference of the Subsidiary Group of the Commission,*

*Resolves*

"1. That the Subsidiary Group will carry out the investigation of facts only on the instructions of the Commission in each separate case and will report to the Commission about the results of such investigation;

"2. That the Subsidiary Group will have its headquarters in Athens and will carry out such functions as the Commission of the Security Council will assign to the Subsidiary Group in accordance with the provisions of the above paragraph 1;

"3. That the Subsidiary Group will cease its activity with the liquidation of the Commission itself;

"4. That the Commission should bring its decision on the terms of reference of the Subsidiary Group in conformity with this decision of the Security Council."

At the 134th meeting on 16 May, the representative of Yugoslavia, in supporting the USSR draft resolution, stated:

"Considering that the Commission was instructed to define the competence of the Subsidiary Group only within the scope of its original terms of reference, it was only entitled to entrust the Subsidiary Group, as its substitute, with the completion of the inquiry which it might not have brought to an end; but by no means was it in the position to create a new commission of inquiry to investigate future incidents that might arise... The Commission of Investigation was not entitled to take such a decision because it was not empowered to create new terms of reference..."

"The Security Council, under Article 34 of the Charter, can order an inquiry by reason of a dispute

which has already arisen or by reason of a situation which has already been created. The Security Council has done so in the present case by establishing the Commission of Investigation. The Security Council would have been entitled to take provisional measures under Article 40, if one of the cases envisaged in Article 39 had occurred: namely, a threat to peace or an act of aggression. Considering that the cases mentioned in Article 39 do not exist now, and since it has not been established that such cases even existed, the Security Council was not in a position to order any provisional measures in the sense of Article 40. In that connexion, the Commission of Investigation has assumed a right which even the Security Council does not possess.

"..."

"All this shows that the decision of the Committee of Investigation of 29 April 1947 is not lawfully founded. It is in flagrant contradiction to the Charter. It was not based on the provisions concerning the procedures prescribed both in the Charter and in the rules of procedure of the Security Council, nor has it remained within the scope of the terms of reference which were given to the Commission by the Security Council."

The representatives of Poland, Albania, and Bulgaria concurred with these views.

Statements in support of the decision of the Commission of Investigation and opposing the USSR draft resolution were made by the representatives of Belgium, Greece,\* the United States, Australia, Brazil, China, the United Kingdom, France and Syria, who contended that a Council decision to investigate under Article 34 imposed legal obligations on Members of the United Nations. It was also maintained that these obligations extended to non-Members which accepted for the purpose of the dispute the obligations of pacific settlement provided in the Charter.

The representative of Belgium stated at the 134th meeting:

"Since the Council's resolution of 18 April is binding on the four States, they are in principle bound by the decision of 29 April taken by the Commission of Investigation in pursuance of instructions it received by this resolution..."

"..."

"The decision of 29 April would, of course, not have any binding character if it overstepped the powers conferred on the Commission of Investigation by the resolution of 18 April but a most careful study has not enabled me to discover any trace of these powers being exceeded, except on one single point. I think that the decision should not have provided, in paragraph IV—at least not in imperative terms—for liaison representatives to be attached to the Subsidiary Group. In my opinion, as I have already pointed out, whilst the States concerned are to facilitate all useful contacts, they are not obliged to do this by means of liaison representatives permanently attached to the Subsidiary Group.

"... In giving the Subsidiary Group functions similar to its own, although less extensive, the Commission respected the character of the Subsidiary Group which, as its name implies, should be a kind of deputizing organ. In principle, the Subsidiary Group has the same powers of initiative as the Com-

<sup>6</sup> 133rd meeting: p. 832.

mission itself; the exercise of its functions does not require prior authorization. It derives its powers from the Security Council which may define, modify or terminate them either directly or through the intermediary of the Commission . . ."

The representative of the United States observed at the 135th meeting on 20 May that he was "in entire agreement" with the "exposition of the legal aspects of this matter" by the representative of Belgium.

With regard to the argument "that the terms of reference of the Subsidiary Group refer to future and not to past incidents", the representative of Australia remarked:

" . . . The representative of Yugoslavia based his main argument on the supposition that this Council violated Article 34 of the Charter which deals with the investigation of a dispute. In other words, if I understood his argument correctly, the Charter speaks of a dispute, of incidents which have already taken place; therefore, an investigation should be confined to that alone and, if it goes beyond that, the Charter is violated. However, the whole tenor of the debates and the language used indicated that the Commission was to deal with all incidents right up to the time when its report came before this Council. That was clearly the intention."

At the 137th meeting on 22 May, the representative of Australia also emphasized that there was "a very great difference" between the powers of the Commission and those of the Subsidiary Group:

" . . . It is clearly laid down that the Group is to investigate only certain incidents, to hear evidence only on certain incidents, and to report on them . . . The Group is not to report to this Council, as is the case with the full Commission, but to the Commission only . . . The powers are not the same. The Subsidiary Group has neither right nor authority to make any proposals or recommendations . . ."

With regard to the delegation of powers contained in the resolution of the Security Council of 18 April, the representative of Brazil did "not find any juridical ground for invalidating it". He stated at the 135th meeting:

" . . . The only limit imposed upon the Commission in the exercise of that right lay in that its own powers may not, in any circumstances, be exceeded, under the self-evident theory that the mandatory cannot use powers which it does not possess. Such, however, is not the case of the Subsidiary Group whose powers, as defined by the Commission, do not exceed the powers of the Commission itself."

The representative of China expressed the view that:

"In creating the Subsidiary Group, the Council undeniably acted within its competence and in accordance with its rules of procedure . . ."

" . . . the Subsidiary Group should have authority, by a formal decision, to investigate any incident that may occur, without having to await an order in each case from the Commission of Investigation or from the Security Council. That Group is to be stationed in Greece. It should have the power to make on-the-spot investigations as it sees fit."

At the 136th meeting on 22 May, the representative of the United Kingdom held that there was "no reason

why the Subsidiary Group . . . might not have had exactly the same powers as the Commission itself as regards watching the situation" in northern Greece. The Commission, however, had actually limited the powers of the Subsidiary Group. With regard to the USSR proposal to refer back to the Commission each separate incident to be investigated, he believed that "its effect would be to stultify the whole purpose of the Council's decision" establishing the Subsidiary Group.

The representative of Syria contended at the 137th meeting that, since the composition of the Commission and that of the Subsidiary Group were identical, the terms of reference of the latter should not have been different from the original terms of reference given to the Commission itself. He believed that the Council should consider that "the directives limiting the scope of the Subsidiary Group's capacity are unnecessary", and that the Subsidiary Group should be authorized "to do whatever it deems proper for the continuation of its investigation and for the fulfilment of the duties assigned to the Commission by the first resolution of the Security Council".

At the 137th meeting, the USSR draft resolution was rejected by 2 votes in favour, 6 against and 3 abstentions.<sup>59</sup>

CASE 13.<sup>60</sup> THE GREEK FRONTIER INCIDENTS QUESTION: In connexion with the French amendment to the preamble of the United States draft resolution to establish a commission of investigation and good offices: preamble voted upon and adopted on 29 July 1947; draft resolution as a whole rejected on 29 July 1947.

[Note: When the Council had under consideration the draft resolution for the continuance of investigation through the agency of a commission, the position was taken by representatives invited to participate that a decision to this effect, taken under Chapter VI of the Charter, was not binding on them. In view of this contention, an amendment was submitted on 22 July 1947 to add to the preamble the finding that the dispute was of the nature envisaged in Article 34. The view was expressed that such a finding was necessary as a basis of the measures to be adopted under Chapter VI of the Charter. Discussion also continued to centre on the question whether a decision under Article 34 constituted a binding decision. The preamble as amended was adopted, but the draft resolution as a whole failed of adoption.]

<sup>59</sup> 137th meeting: pp. 924-925.

<sup>60</sup> For texts of relevant statements see: 147th meeting: Greece, pp. 1125-1127; United States, pp. 1124-1125.

150th meeting: Belgium, pp. 1199-1200.

156th meeting: Bulgaria, p. 1280; United States, pp. 1290-1291.

135th meeting: Yugoslavia, pp. 1371-1372.

160th meeting: USSR, pp. 1379, 1383.

152nd meeting: Australia, pp. 1418-1420; Brazil, p. 1422; Colombia, pp. 1420-1421; France, pp. 1416, 1425-1425; United States, pp. 1422-1423.

163rd meeting: Yugoslavia, pp. 1432-1433.

166th meeting: United States, pp. 1522-1523, 1526-1527.

167th meeting: President (Poland), p. 1547; Australia, pp. 1544-1545; USSR, pp. 1541-1542; United States, pp. 1540-1541.

168th meeting: United Kingdom, pp. 1556-1558.

169th meeting: Albania, p. 1599; Colombia, pp. 1592-1593.

176th meeting: President (Poland), p. 1611.

At the 147th meeting on 27 June 1947, the Security Council had before it the report of the Commission of Investigation concerning Greek Frontier Incidents, in which the majority of the members of the Commission had made proposals stated to be "framed in the spirit of Chapter VI of the Charter".<sup>51</sup>

The representative of the United States submitted a draft resolution to establish a commission of good offices and investigation.<sup>52</sup> In submitting the draft resolution, the representative of the United States stated:

"... The authority of the Security Council under Chapter VI carries with it the full weight of the United Nations. The Members of the United Nations, and those who look forward to becoming Members, must also be deeply conscious of the obligation of Members under Article 25..."

The representatives of Albania,\* Bulgaria,\* and Yugoslavia<sup>53</sup> contended that Article 25 was not applicable to recommendations provided for in Chapter VI, but only to decisions of the Council taken under Chapter VII.

At the 156th meeting on 11 July, the representative of Bulgaria stated that under Chapter VI, the Security Council "is only called upon to make recommendations" which require the consent of the parties in order to be implemented, while under Chapter VII the decisions of the Council could be applied without the consent of the parties. He contended:

"The establishment of the proposed commission represents more than a recommendation; this is a decision to be imposed regardless of the consent of the parties..."

At the same meeting, the representative of the United States remarked that the principle involved in the observation of the representative of Bulgaria had arisen in connexion with the question of the Free Territory of Trieste, and that in the statement submitted by the Secretary-General at the 91st meeting, on 10 January 1947,<sup>54</sup> it was considered that the records of the San Francisco Conference demonstrated "that the powers of the Council under Article 24 are not restricted to the specific grants of authority contained in Chapters VI, VII, VIII and XII" of the Charter.

At the 160th meeting on 17 July, the representative of the USSR, in opposing the United States draft resolution stated:

"... It is clear that any decision on this question is a decision taken in conformity with Chapter VI of the Charter, relating to the pacific settlement of disputes. This means that any decision we may take in the Council on this question will be in the nature of a recommendation and will have nothing in common with the decisions provided for in Article 25 of the Charter..."

The representative of the USSR held that the explanation given by the representative of the United States "was at variance with the Charter". He observed that the problem which had arisen in connexion with the Trieste question concerned "not... the nature of the Security Council's decisions", but "the extent of the Security Council's powers" which "puts the matter on an absolutely different plane".

At the 162nd meeting on 22 July, the representative of France introduced an amendment to the preamble of the draft resolution whereby the preamble would read as follows:<sup>55</sup>

"The Security Council,

"Having primary responsibility for the maintenance of international peace and security by virtue of Article 24 of the Charter, and having considered the report submitted by the Commission of Investigation established by the Council's resolution of 19 December 1946,

"Finds that a dispute exists, the continuance of which is likely to endanger the maintenance of international peace and security. The Security Council therefore, following the proposals made by the majority of the members of the Commission of Investigation,

"Resolves that..."

At the same meeting, the representative of Australia, in supporting the French amendment to the preamble, drew attention to the arguments put forward by the representatives of Albania, Bulgaria and Yugoslavia, and by the representative of the USSR, to the effect that only recommendations could be adopted under Chapter VI and that the action proposed in the United States draft resolution would not be binding on the parties unless made as a decision under Chapter VII. He observed that these contentions needed to be met in order to avoid doubt "as regards the whole of the authority and power and duties of the Security Council under Chapter VI". The representative of Australia expressed doubt whether these contentions could be met by reference to the "so-called wide reserve powers" of the Council under Article 24. He continued:

"... in Chapter VI itself and in other places in the Charter, we find ample justification for all the action proposed in the United States resolution..."

"... A decision to investigate—and that has never been challenged—is surely more than a recommendation..."

The representative of Australia stated that under Chapter VI the Council could take many decisions; the original decision to set up the commission of investigation was a decision, and not a recommendation; therefore, he contended, Article 25 applied. He continued:

"... whether it is a decision or a recommendation that is involved—and we have indicated that we can make both under Chapter VI—we cannot make either until we have determined that the continuation of the situation does endanger international peace and security... That determination must be made under Article 34, in order to take any of the steps which the resolution contemplates under Article 33..."

The representative of Australia concluded that for these reasons he supported the French amendment.

At the 162nd meeting, the representative of Brazil also contended that the power of the Security Council to order investigation could not be challenged without "eliminating Article 34 of the Charter and ignoring the role assigned the Security Council by the Charter as the mainstay of security". The contention that the Security Council, in acting under Chapter VI, had to limit itself to adopting recommendations was entirely unfounded. He observed:

\* Text as voted upon, 170th meeting: p. 1602.

<sup>51</sup> S/360/Rev.1, O.R., 2nd year, Special Suppl. No. 2, pp. 153, 154-157.

<sup>52</sup> S/391, 147th meeting: pp. 1124-1126.

<sup>53</sup> For this statement, see chapter XII, Case 22.

"... Measures proposed as a means of conciliation have the character of recommendations, but even those measures carry great weight if the Council finds that we are faced with a situation which is likely to endanger peace and security. The determination of such a situation establishes the jurisdiction of the Council in the matter and creates an obligation on the parties concerned to settle a dispute, under penalty of having the situation become a threat to the peace, in which case Chapter VII would apply."

The representative of the United States, accepting the French amendment to the preamble, stated:

"I think it is generally admitted that the primary role of the Security Council is to be the guardian organ of the United Nations for international peace and security. Under Article 34 of the Charter, the Security Council itself could go to the region which we have been discussing and conduct investigations. It follows, therefore, that it can set up a subsidiary organ to perform those functions. To argue that, in setting up such an organ, it would have the power only to recommend to countries that the commission should be allowed to function, and that those countries could refuse to accept it and to co-operate with it, or refuse to give it facilities, would seem to me to undermine the very foundations of the Charter and would stultify whatever influence and power the Security Council might have for the preservation of international peace..."

At the 163rd meeting on 22 July, the representative of Yugoslavia cited the following passage of the Report to the President by the Chairman of the United States Delegation to the San Francisco Conference:<sup>25</sup>

"It is to be noted that the members of the Organization agree to carry out the decisions of the Security Council 'in accordance with the present Charter'. Thus the precise extent of the obligations of Members under Article 25 can be determined only by reference to other provisions of the Charter, particularly Chapters VI, VII, VIII and XII (Article 24, paragraph 2). Decisions of the Security Council take on a binding quality only as they relate to the prevention or suppression of breaches of the peace. With respect to the pacific settlement of disputes, the Council has only the power of recommendation..." The representative of Yugoslavia continued:

"It seems to me that this is an express and clear statement that the measures assigned to the Security Council—which, by virtue of Chapter VI, debates them—are solely in the nature of recommendations and are not decisions."

At the 166th meeting on 24 July 1947, the representative of the United States stated that his draft resolution did not exceed the bounds of Chapter VI. He added:

"... The representative of Yugoslavia claims that the Council can set up a commission to make investigations in Yugoslavia under Chapter VI only if Yugoslavia consents. I think that is completely erroneous as an interpretation of the Charter, and it would nullify the whole operative intent of Chapter VI."

"... consistent with what we believe to be the real intent and meaning of Chapter VI, judged in the

light of its history and its formation, and even in the light of the statement of the Secretary of State... Article 34 gives the Security Council the right to investigate any dispute regardless of whether or not the State investigated approves or likes it; and other stipulations of the Charter impose on the State being investigated the duty to accept the investigation whether or not it likes it, and to co-operate loyally."

At the 167th meeting on 25 July, the representative of the United States, after further emphasizing the "operating powers" of the Council under Article 34, stated:

"There remains only the question of the measure and degree of obligation which the Members of the United Nations are under, within the purview of Chapter VI, to co-operate with such an investigation. That obligation, I believe, is imposed in Article 25. I do not think it can be denied that, under Chapter VI, certain forms of decisions can be taken; and that under Article 25, it is the duty of the Members of the United Nations to conform to those decisions."

Asserting that there was "a limitation of the Security Council's powers" under Chapter VI, the representative of the USSR stated:

"... that is the point of Chapter VI. The steps which can be taken by the Council under Chapter VI are of a limited character. The Council's powers in this connexion are inevitably limited. That is precisely the difference between Chapter VI and Chapter VII."

"... Compulsory decisions are those taken under Chapter VII, not decisions taken under Chapter VI, still less the actual preliminary decisions—decisions to conduct an investigation."

The representatives of Belgium, Brazil and Colombia also expressed the view that recommendations under Chapter VI, such as those proposed in the United States draft resolution, were binding upon Member States and upon States parties to a dispute who had assumed obligations of Member States for the purposes of this dispute.

Remarking that Article 27 specifically refers to "decisions under Chapter VI", the representative of Australia stated at the meeting:

"... Article 25 does not differentiate as to decisions under Chapter VI or Chapter VII. On the other hand, we have the specific fact that the Charter does refer to 'decisions under Chapter VI', and nowhere does the Charter state that this Council can make recommendations only."

"... it is very clear that we have a right, and even a duty, to take various decisions under Chapter VI. Under Article 29, in establishing subsidiary organs, the Security Council is taking decisions. They are not at all decisions to make recommendations. We have to make decisions with regard to all kinds of questions. Furthermore, under Article 25 all those decisions, regardless of whether they infringe upon or impair the sovereignty of any States, are binding."

At the 168th meeting on 28 July, the representative of the United Kingdom expressed his agreement with the view that a decision to establish a commission of investigation under Article 34 of the Charter was a decision within the meaning of Article 25. With regard

<sup>25</sup> Report to the President on the results of the San Francisco Conference by the Chairman of the United States Delegation, the Secretary of State (Department of State Conference Series No. 71, No. 2349), p. 79.

to the continuance of investigation, he expressed himself in the following terms:

"... it seems clear that it would be the duty of the Council—having made its findings—in the first place, to propose such measures to conciliation as might seem to be appropriate, and, in the second place, to continue to watch over the dispute in order to keep itself informed of any developments which might constitute a deterioration of the situation and thereby endanger peace. Only thus . . . can it fulfil its primary responsibility."

At the 170th meeting on 29 July, the United States draft resolution, as amended, was voted upon, paragraph by paragraph. The preamble, as amended, was adopted by 9 votes to 1, with 1 abstention.<sup>56</sup> The draft resolution as a whole was not adopted. There were 9 votes in favour and 2 against (one vote against being that of a permanent member).<sup>57</sup>

**CASE 14.<sup>58</sup> THE GREEK FRONTIER INCIDENTS QUESTION:** In connexion with a text proposed by the representative of Syria for the preamble to the United States draft resolution to establish a commission of investigation and good offices.

[*Note:* A text was submitted based on the view that a finding that the dispute under consideration was of the nature envisaged in Article 34 would exhaust the Council's power of investigation. The text submitted was withdrawn.]

At the 162nd meeting on 22 July 1947, the representative of Syria objected to the French amendment<sup>59</sup> to the preamble of the United States draft resolution to establish a commission of investigation and good offices<sup>60</sup> on the grounds that it would convey the implication that "it has already been determined that the continuance of the situation is likely to endanger peace and security". If adopted, the French preamble meant that the Council "would be prejudging the case", and that "the act of investigation would be over", there being "no necessity for continuing the investigation". Therefore, he proposed to amend the proposed French text to read, after "19 December 1946":<sup>61</sup>

"... finds that further action must be taken by the Security Council under Article 34 of the Charter in order to determine whether the continuance of that situation is likely to endanger the maintenance of international peace and security".

Explaining his proposal, the representative of Syria stated:

"This wording makes it clear that we have not yet made a determination; the further action of setting up a commission would therefore be justified on the grounds that we are attempting to determine whether

the continuance of the situation in question is likely to endanger the maintenance of international peace and security. The continuance of the action which was begun by the Commission of Investigation would also be in conformity with Article 34 of the Charter, as well as with the other Articles of the Charter."

The representative of the United States stated that he did not accept "in its entirety the interpretation" of the representative of Syria:

"... the power of the Security Council to conduct an investigation, or to order an investigation conducted under Article 34, is not necessarily stopped because, at one stage in the development of a dangerous situation, an investigating group has found that a situation exists the prolongation of which might threaten the maintenance of international peace and security. If the Council can order and carry out an investigation leading to such a conclusion, it seems to my delegation that it is inherent in the powers conferred by Article 34, and conferred by other provisions of the Charter relating to the duties and functions of the Security Council, that it may continue to make such investigations as long as it thinks that that situation exists . . ."

The representative of France, replying to the objection raised by the representative of Syria, stated:

"... In my opinion that is too literal, too narrow an interpretation of Article 34 . . . I feel that if the Security Council has had the power to initiate an investigation for the purpose of obtaining information, and of ascertaining whether a situation endangering peace exists, it is reasonable to suppose that it can continue this investigation when the situation itself seems likely to continue. For such a situation can become aggravated, can become more threatening to peace; it can disappear, or on the contrary it can become more serious. It would be rather paradoxical, I think, that an investigation could be continued if it did not find there was a threat to the peace, if it left the matter in doubt, but could not be continued in the most serious situation, that is, one in which a threat to the peace was found to exist.

"In other words, I feel that the most reasonable interpretation of the text of Article 34 is to go beyond its simple and literal interpretation. Since we have established a Commission and find that the same situation exists, that it may continue and become more or less dangerous, we have, I feel, the power to continue to apply Article 34, that is, to request further information."

At the 163rd meeting on 22 July, the representative of Brazil expressed disagreement with the literal interpretation of Article 34. He stated:

"After the Security Council has determined, on the basis of an investigation, that the situation is likely to endanger peace, the Council's power of investigation does not stop there. That situation might improve; it might remain stationary; it might grow worse. The Security Council, under those conditions, might find it necessary to use its power of investigation to verify those circumstances in order to decide whether the situation had become a menace or a threat to peace . . ."

Clarifying his view, the representative of Syria stated:

<sup>56</sup> 170th meeting; pp. 1602-1603.

<sup>57</sup> 170th meeting; p. 1612.

<sup>58</sup> For texts of relevant statements see:

162nd meeting: President (Poland), pp. 1424, 1427; France, pp. 1426-1427; Syria, pp. 1423-1424; United States, pp. 1424-1425.

163rd meeting: President (Poland), pp. 1431, 1435, 1436, 1437; Australia, pp. 1433-1434, 1436-1437; Belgium, p. 1430; Brazil, pp. 1428-1429, 1435, 1437; France, pp. 1430-1431, 1434, 1436-1437; Syria, pp. 1429-1430, 1434-1435, 1436; United Kingdom, p. 1435; United States, pp. 1431, 1434, 1435.

<sup>59</sup> S/430, O.R., 2nd year, Suppl. No. 15, pp. 146-147. For text, see Case 13.

<sup>60</sup> S/391, 147th meeting; pp. 1124-1126.

<sup>61</sup> 162nd meeting; pp. 1423-1424.



"I did not mean . . . to limit or restrict the powers and jurisdiction of the Security Council in any way . . . The Security Council is always free to take any action which is allowed by the Charter . . . I simply want to add Article 34 of the Charter of the United Nations to the resolution concerning the Commission of Investigation. This would not interfere in any way with the competence of the Security Council as defined in Article 24 and Article 36 of the Charter—that is, the right of the Security Council to make recommendations with respect to methods of adjustment in order to maintain peace and security . . ."

" . . ."

"The draft resolution which we are considering is composed of these two elements: the constitution of a commission of inquiry and recommendations for methods of adjustment. Articles 34 and 36 in Chapter VI cover these two functions . . ."

Accordingly, the representative of Syria modified his proposal and suggested that the text of the preamble should read as follows:

" . . . finds it necessary that further action be taken by the Security Council under Articles 34 and 36 of the Charter".

At the same meeting, the representatives of France and the United States accepted the amendment proposed by the representative of Syria.<sup>61</sup> The representative of France, however, reverted to the text he had originally proposed as an amendment to the preamble of the United States draft resolution. In doing so he explained:

" . . . Article 36 is contingent on Article 37. In Article 37, paragraph 2, it is stated: 'If the Security Council deems that the continuation of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.'

"Therefore, in so far as reference is made to Article 36, it is to be concluded that the Council first considered that Article 37 was applicable. But, as I have just recalled, the latter brings Article 36 into play, because the Security Council is presumed to consider that the continuance of the dispute endangers the maintenance of international peace and security.

"The result is that the contradiction referred to by the Syrian representative, if it exists, appears in full force when the two Articles are placed side by side in the same text."

The representative of the United States expressed his preference for the original French amendment to the preamble.

The representative of Syria stated he would have preferred that the Council should establish that it was to take action under Articles 34 and 36, it being tacitly understood that, as long as Article 36 was applied, Article 37 had been taken into consideration. He added that he would not insist upon a vote on his proposal, since it was not favoured by most of the Council members.

<sup>61</sup> 163rd meeting: pp. 1430-1431.

CASE 15.<sup>63</sup> THE GREEK FRONTIER INCIDENTS QUESTION: In connexion with an amendment to the United States draft resolution to establish a commission of investigation and good offices; draft resolution voted upon and rejected on 29 July 1947.

[Note: In pursuance of the report of the Commission of Investigation a draft resolution was submitted on 24 July 1947 providing for the continuance of investigation through the instrumentality of a commission. A discussion arose as to whether a decision of the Council to this effect gave rise to an obligation on the part of the Member concerned to implement the decision. The paragraph in question was adopted in modified form, but the draft resolution as a whole failed of adoption.]

At the 166th meeting on 24 July 1947, the Security Council had before it the Report of the Commission of Investigation concerning Greek Frontier Incidents,<sup>64</sup> the United States draft resolution<sup>65</sup> based on the proposals subscribed to by the majority of the members of the Commission, and amendments to this draft resolution submitted by the representatives of the United Kingdom<sup>66</sup> and France.<sup>67</sup>

The United States draft resolution contained the following provision:

"3. . . ."

"b. The duties and powers of the commission shall be:

"(1) To use its good offices for the settlement by the means mentioned in Article 33 of the Charter, of:

"(a) Controversies arising from frontier violations;

"(b) Controversies directly connected with the application of the frontier conventions recommended to the four Governments under this resolution;

"(c) Complaints regarding conditions on the border which may be brought to the attention of the commission by one Government against another; and

"In order to carry out these tasks, the commission is empowered to make an investigation of any frontier violations that occur and of any complaints brought by one Government against another in connexion with the application of the frontier conventions or regarding conditions on the border,

" . . ."

"(6) To have such other duties and powers as the Security Council may determine from time to time."

<sup>63</sup> For texts of relevant statements see:

166th meeting: France, pp. 1523-1524; United States, pp. 1522-1523, 1526-1527; Yugoslavia, pp. 1519-1522, 1524-1525.

167th meeting: President (Poland), p. 1547; Australia, pp. 1544-1545; Belgium, pp. 1539-1540; Brazil, p. 1530; Bulgaria, p. 1535; France, p. 1540; Greece, pp. 1542-1544; USSR, pp. 1536-1539, 1541-1542; United States, pp. 1540-1541; Yugoslavia, pp. 1545-1546.

168th meeting: Colombia, pp. 1568-1569; France, pp. 1551-1556, 1569-1570; United Kingdom, pp. 1556-1558; United States, p. 1568; Yugoslavia, p. 1570.

169th meeting: Albania, pp. 1598-1599; Yugoslavia, pp. 1597-1598.

<sup>64</sup> S/360/Rev.1, O.R., 2nd year, Special Suppl. No. 2, vols. 1, II.

<sup>65</sup> S/391, 147th meeting: pp. 1124-1126.

<sup>66</sup> S/429, O.R., 2nd year, Suppl. No. 15, pp. 145-146.

<sup>67</sup> S/430, O.R., 2nd year, Suppl. No. 15, pp. 146-148.



The amendment to sub-paragraph 3 (b) of the United States draft resolution, submitted by the representative of France at the 162nd meeting on 22 July, deleted the sub-paragraph following paragraph (1) (c). The new texts proposed read as follows:<sup>64</sup>

"3. Sub-paragraph 3 (b)

"The functions of the Commission shall be those of conciliation and investigation in order:

"...

"(b) Whenever the Commission may deem it necessary in the performance of the duties defined in the foregoing paragraph 5 and in order to keep the Security Council informed, going to the spot and there making all useful investigations. Its authority with respect to investigation shall be identical to that vested in the Commission established under the resolution of the Security Council of 19 December 1946."

During the consideration of this amendment at the 166th meeting, the representative of Yugoslavia, raising "the question of principle regarding the competence of the commission", stated:

"The United States resolution and the amendments contemplate a commission set up in advance which would be imposed upon the States concerned and which would be empowered to undertake investigations.

"My Government's opinion is that, under the Charter, such a commission cannot be set up: Chapter VI of the Charter provides for investigation only as a method of procedure, and any decision taken by the Security Council regarding an investigation is a decision *pro foro interno*."

"...

"It is obvious . . . that the existence of a commission such as that provided for in the United States resolution restricts the sovereignty of the States concerned. That is why the United States proposal is contrary not only to the letter of Chapter VI, but to the very principle of the Charter.

"...

"The authors of the Charter clearly established a distinction between two kinds of procedure: that provided for by Chapter VI and that provided for by Chapter VII. In drawing up the measures contained in Chapter VI, they took special care not to restrict the sovereignty of States. It was only in connexion with a serious situation that they thought fit to restrict this sovereignty."

The representative of the United States disagreed with this interpretation. He stated at the same meeting:

"Chapter VI of the Charter contains two Articles, Articles 33 and 34 which, in my opinion, are complementary and are not interdependent. Article 33 imposes a moral and—if one may say so—a legal obligation on individual Members of the United Nations, obligations which flow basically from Articles 1 and 2 of the Charter.

"...

"However, the Security Council . . . has also other means at its disposal for carrying out its duties under the Charter as the guardian of international peace. It is Article 34, which confers full and complete authority on the Security Council to investigate any

dispute or any situation which might lead to international friction or give rise to a dispute.

"If, in order to make such an investigation, the Security Council feels it necessary to go itself to the territory of some Member State, or to the territory of some non-Member State, which for the purposes of the dispute has accepted its obligations, the Security Council has the right to ask that State for certain facilities and for co-operation . . .

"...

"The Council certainly has powers and rights of conciliation and, unless the doctrine just proposed by the representative of Yugoslavia is rejected, it would have no power under Article 34 to make investigations. The Council has the power to make those investigations whether or not the country being investigated likes it: that is the fundamental issue . . ."

The representative of Yugoslavia stated that the matter to be decided was "whether the Security Council is empowered not only to conduct an investigation, but also to set up a commission and to impose it on the countries concerned". He added:

"... the right to conduct an investigation in the territory of a State inevitably constitutes a restriction of that State's sovereignty. The Charter, however, lays down that national sovereignty should be limited only in very specific conditions: if there is a threat to the peace, a breach of the peace, or aggression".

The representative of the United States held that there was "a clear distinction" between the conciliatory actions of the Council which could not be enforced upon the States concerned and actions of an investigatory nature which could be taken irrespective of the attitude of any individual State. He stated further:

"It is obviously the duty of the Security Council to attempt to conciliate opposing parties under certain conditions. It is equally obvious that, under the Charter, it is the duty of those opposing parties at least to lend an ear to the admonitions of the Council. Thirdly, it is obvious that the Council cannot force two opposing parties to conciliate their views. Conciliation implies voluntary will on the part of those who oppose each other; and it is suggested only that the Security Council, in the spirit of the Charter, might act as a catalytic agent.

"As regards functions of investigation, however, the situation is entirely different. There the Council has a duty—or may have a duty—to the entire United Nations which would override the consideration of the desires of any individual States."

At the 167th meeting on 25 July, the representative of Brazil, while agreeing that Chapter VI "does not permit enforcement", and "has made great allowance for the sovereignty of States", expressed the view that it did, however, impose obligations upon States. He added:

"... Article 34 authorizes the Security Council to make investigations, and the power of investigation imposes an obligation upon the States to collaborate with the Commission of Investigation. But Chapter VI goes still further. Once the Security Council decides, under Article 34, that a dispute or a situation is likely to endanger peace, it establishes thereby the obligation of the parties to settle that dispute. In doing that, they can still resort to their

<sup>64</sup> S/430, O.R., 2nd year, Suppl. No. 15, pp. 147-148.

own methods, but they are obliged to settle the dispute. Their failure to do so compels the Security Council to go still further and apply Chapter VII.

"... It is true that Chapter VI is somewhat inadequate. But if we eliminate whatever obligations Chapter VI carries, the result will be its nullification; and that will involve the Security Council in the immediate application of Chapter VII. That would be contrary to the method devised in the Charter itself, which establishes two phases for the procedure for preventing conflicts: the phase of peaceful settlement, and the phase of enforcement."

At the same meeting the representative of the USSR contended that "the idea that Security Council decisions to conduct an investigation are obligatory is contrary to Chapter VI of the Charter". He stated:

"... the USSR delegation cannot share the view of certain representatives that decisions in connexion with the pacific settlement of disputes (under Chapter VI of the Charter) are of a compulsory character. If we take that path, we shall inevitably reach the conclusion that, if a State does not fulfil certain recommendations, some other measures must automatically be applied to it. The question then arises: what other measures? Obviously, compulsory measures. But, in that event, the whole of Chapter VI regarding the pacific settlement of disputes loses its significance and meaning. All that should be left in the Charter, then, is Chapter VII, which provides for taking compulsory decisions. Such is the absurd conclusion to which this concept leads.

"On one point, we can agree with those who defend this concept: we can agree with them that, in the case also of Council decisions for the pacific settlement of disputes, i.e., in the case of recommendations, States which do not comply with those recommendations bear a moral responsibility..."

The representative of France asked the representative of the USSR to clarify his view on Article 34:

"I should like to ask the USSR representative if he considers that this Article gives the Security Council only the power to recommend an investigation, or also the power to decide it will take place."

In this connexion, the representative of the USSR stated:

"No one doubts the Security Council's right to decide to conduct an investigation or inquire into the facts connected with a particular dispute or situation. That is a right conferred upon the Security Council by the Charter. However, all decisions taken under Chapter VI, including decisions to conduct an investigation, are in the nature of recommendations, from the point of view of the attitude taken towards these decisions or recommendations by the countries they affect.

"... A country which does not fulfil even the recommendations bears a certain moral responsibility, but no more than a moral responsibility.

"... Compulsory decisions are those taken under Chapter VII, not decisions taken under Chapter VI, still less the actual preliminary decisions—decisions to conduct an investigation.

"This is where the Security Council is most restricted. It is only later on, when the dispute or situation becomes more serious, that the weight and

significance of the Security Council's decisions increase until they become compulsory, since they are taken under Chapter VII of the Charter."

The representative of France considered "that the Security Council has indeed the right to decide upon an investigation". In regard to the comments of the representative of the USSR, he stated at the 168th meeting on 28 July:

"Article 34 of the Charter... says: 'The Security Council may investigate...' These terms appear sufficiently clear in themselves and seem to me perfectly definite when taken in conjunction with the other provisions of Chapter VI.

"The terms used by the authors of the Charter in the other Articles of Chapter VI dealing with the powers of the Security Council are all extremely precise. Article 33, paragraph 2, says that the Security Council, when it deems it necessary, shall 'call upon' the parties. Article 36, paragraph 1, says that the Security Council may, at any stage, 'recommend', and paragraph 3 of the same Article begins with the words 'In making recommendations...' In Article 37 we find the word 'recommend'. In Article 38 there is again the word 'recommendations'.

"The authors of the Charter have therefore, with great precision, made use of terms to which they gave an extremely clear meaning. These different Articles speak of 'recommending' which is not the same thing as 'deciding'.

"When, on the other hand, these terms are compared with those of Article 34, it at once appears that Article 34 is quite differently drafted. Here there is no question of 'recommending' an investigation, or of 'calling upon' the parties to accept an investigation... It appears to me that the text of these different Articles itself settles the question: the drafting is too different... The terms used in Chapter VI have obviously been too carefully weighed for the difference in wording between Article 34 and the other Articles not to have a meaning.

"... I do not very well see the 'gradation' from Chapter VI to Chapter VII. On the one hand we have Chapter VI with one series of measures; and then we have Chapter VII with another series of measures. On the other hand, is it singular, is it inexplicable that, in Article 34 which deals with the power of investigation, the Security Council should have greater power than when it reaches the end and the conclusions of its investigation? This appears to me to be easily explained. Article 34 refers only to an investigation for the sole purpose of providing the Security Council with information. It is an entirely preliminary measure preceding all the measures which the Security Council may later contemplate. It is a simple measure of enquiry, and it is quite natural that here the Security Council should have greater power—even within the province of Chapter VI—and that it should be able to decide, and not merely recommend, that an investigation should be made."

The representative of France concluded that the Council was empowered to give the proposed commission two kinds of functions—good offices and investigation. The former "by definition... cannot encroach upon what the various States may finally decide to accept or reject". He added:

"The Commission's other task is based on Article 34 . . . and it consists of keeping the Council informed. Here . . . it is not a question of recommendations but of the Security Council's power of decision; but this power of decision must be based on Article 34 and can therefore be brought into action only in accordance with the terms of that Article. Consequently, it may be advisable to state that the commission can act in the capacity of a commission of investigation only with a view to giving the Security Council information."

Accordingly, the representative of France submitted a modified text of section (6) of his amendment<sup>69</sup> to sub-paragraph 3 (b) to the United States draft resolution, which was accepted by the representative of the United States.<sup>70</sup> The amended text read as follows:

"(6) In order to keep the Security Council informed, the Commission shall:

"(a) Whenever it may deem useful, investigate any frontier violation reported to it;

"(b) Investigate the facts of the frontier situation on the complaint of any of the Governments concerned, whenever it considers these facts likely to lead to an aggravation of the situation."

At the 170th meeting on 29 July 1947, the United States draft resolution, as amended, was voted upon, paragraph by paragraph. Paragraph 6, which included the French amendment accepted by the representative of the United States, was adopted by 9 votes in favour, 1 against, with 1 abstention. The draft resolution as a whole was not adopted. There were 9 votes in favour and 2 against (one vote against being that of a permanent member).<sup>71</sup>

**CASE 16.<sup>72</sup> THE INDIA-PAKISTAN QUESTION:** In connexion with decisions of 20 January 1948 establishing the United Nations Commission for India and Pakistan; of 21 April 1948 modifying the Council's instructions to the Commission; and of 8 June 1948 authorizing the President to explain the Council's decision of 3 June 1948 to the Government of India.

[*Note:* After the initial proceedings, the Council established a Commission to investigate, under Article 34, the facts related to the situation in the Jammu and Kashmir State, as well as the facts regarding other situations brought to the Council's attention by the Government of Pakistan. During discussion on the setting up of the Commission, as well as in connexion with other decisions of the Council clarifying the terms of reference of the Commission, objections were raised by India as to the scope of the activities of the Commission in the exercise of its powers of investigation.]

At the 230th meeting on 20 January 1948, the President, speaking as the representative of Belgium, submitted a draft resolution<sup>73</sup> to establish a Commission of the Security Council, composed of representatives of three Members of the United Nations, with the function of investigating the facts "pursuant to Article 34 of the Charter".

<sup>69</sup> 168th meeting: p. 1555.

<sup>70</sup> 168th meeting: p. 1560.

<sup>71</sup> 170th meeting: pp. 1611-1612.

<sup>72</sup> For texts of relevant statements see:

230th meeting: President (Belgium), pp. 129-131; India, pp. 135-136; Syria, pp. 136-137; USSR, pp. 139-140; Ukrainian SSR, pp. 140-141.

<sup>73</sup> 230th meeting: pp. 130-131.

The representative of India<sup>74</sup> stated that the proposed Commission could be invested with jurisdiction to deal only with matters connected with the Jammu and Kashmir question as other matters brought to the attention of the Council by the representative of Pakistan had not been discussed by the Council and the Government of India had not yet submitted its case on those matters. The representative of Syria declared that it was not necessary for the proposed Commission to wait for other directions from the Council: the Commission could start its work in accordance with the proposed terms of reference "to investigate the facts pursuant to Article 34 of the Charter". In other words, it would investigate any fact or situation likely to endanger the maintenance of international peace and security. The representative of the USSR expressed the view that, if the Council set up a commission, it should be a Security Council Commission, composed of three, five or eleven States represented in the Council. It would then be clear to everyone that the Council had decided to investigate the dispute because it considered that it deserved attention and because the situation which had arisen in Jammu and Kashmir was sufficiently serious to warrant such investigation.

The draft resolution was adopted by 9 votes in favour and none against, with 2 abstentions.<sup>75</sup>

At the 286th meeting on 21 April 1948, the Council adopted a resolution increasing to five the membership of the Commission and modifying the Council's instructions to the Commission.<sup>76</sup>

At the 312th meeting on 3 June 1948, the Council adopted a resolution<sup>77</sup> giving further instructions to the Commission.

At the 315th meeting on 8 June, the President (Syria) stated that he had received a message from the Government of India, protesting against the enlargement of the scope of the Commission's activities by the resolution of the Council of 3 June 1948, and expressing surprise that "the Council should have thought it fit to direct the Commission to study and report" on matters relating to Junagadh, genocide, and agreements between India and Pakistan.<sup>78</sup> The Council agreed that the President should write to the Indian Prime Minister, explaining that the Security Council had not come to a decision on those other questions: that it had only instructed the Commission, when it deemed appropriate, to gather further information concerning them and to report.

**CASE 17.<sup>79</sup> THE CZECHOSLOVAK QUESTION:** In connexion with the draft resolution to appoint a sub-committee to hear evidence: voted upon and rejected on 24 May 1948.

<sup>74</sup> 230th meeting: p. 143. For text, see chapter VIII, p. 345.

<sup>75</sup> 286th meeting: pp. 9-39. For text, see chapter VIII, pp. 346-347.

<sup>76</sup> 312th meeting: p. 21. For text, see chapter VIII, p. 348.

<sup>77</sup> S/825, O.R., 3rd year, Suppl. for June 1948, p. 79; 315th meeting: p. 2.

<sup>78</sup> For texts of relevant statements see:

268th meeting: USSR, pp. 92, 100-101; United Kingdom, p. 94.

276th meeting: Canada, pp. 271, 273; China, p. 275; Syria, p. 277.

281st meeting: USSR, pp. 18-20; United States, pp. 26, 32-33.

288th meeting: Argentina, pp. 15, 26-27; Belgium, p. 18; Canada, p. 21; Syria, p. 23; USSR, pp. 21-22; United States, pp. 19-21.

303rd meeting: Argentina, p. 21; China, pp. 27-28; France, p. 20; Syria, p. 17.

305th meeting: Argentina, p. 35; France, p. 35; USSR, p. 36; United Kingdom, p. 33.

[Note: The question arose of the circumstances in which the Security Council might proceed to an investigation in accordance with Article 34, and the relation to Article 34 of the establishment of a sub-committee to hear evidence.]<sup>19</sup>

In his letter dated 12 March 1948 addressed to the Secretary-General the representative of Chile<sup>20</sup> indicated that his Government was requesting the submission of the case to the Security Council in order that, in accordance with Article 34, the Council might investigate the events in Czechoslovakia.

At the 268th meeting on 17 March 1948, the representative of the USSR contended that reference to Article 34 was "completely unfounded" since that Article provided "for the investigation of any situation which might lead to international friction or give rise to a dispute . . . for the purpose of determining whether [its] continuance was likely to endanger the maintenance of international peace and security". In the present case, "the prerequisites justifying any sort of investigation" were "entirely absent". The representative of the United Kingdom observed that a "very serious charge" had been made and the Security Council should give to those who had made it a chance of substantiating it and to the Soviet Union the possibility of refuting it. In reply, the USSR representative commented that were it "assumed that the existence of a demand or desire for an investigation affords sufficient grounds for such an investigation . . . a State or even, as in the present case, a private individual . . . need only lodge such a request, and the Security Council will consider the question of an investigation".

At the 276th meeting on 31 March, the difficulties confronting the Council in conducting an investigation in the case were expressed by the representative of Syria:

" . . . It might be considered that the Security Council would discharge its functions and duties by applying Article 34 of the Charter and by establishing a commission of inquiry or investigation. This might have been good procedure had we been assured that the *de facto* authority in Czechoslovakia would be ready to grant such a commission all facilities for carrying out its duties. This is not the case, however, and the Security Council has no representative of that *de facto* authority before it to state what would be the attitude of the present Government of Czechoslovakia to such a commission. In these circumstances, we should simply be adding yet another commission to those which are already waiting on the borders of certain areas without being allowed to enter in order to carry out the observation and other tasks assigned to them. In view of this, it is useless to consider the matter from that angle . . .

"I believe it would be convenient, if the Security Council would agree to accept this suggestion, for a fact finding sub-committee, composed of not more than three members, to be constituted by the Security Council, to study this matter and collect facts in a way it deems proper and to report to the Security Council about the situation in Czechoslovakia, about what has taken place in the past and how things have

developed. If this suggestion were accepted, I believe it would be a good way to collect the information which may be useful to the Security Council."

At the 281st meeting on 12 April the representative of Chile submitted the following draft resolution:

"*Whereas* the attention of the Security Council has been drawn by a Member of the United Nations, in accordance with Articles 34 and 35 of the Charter, to the situation in Czechoslovakia which may endanger international peace and security; and the Security Council has been asked to investigate this situation; and

"*Whereas* during the debate which took place in the Council the existence of further testimonial and documentary evidence with regard to this situation has been announced; and

"*Whereas* the Security Council considers it advisable that such further testimonial and documentary evidence should be heard,

"*Therefore*, to this end, and without prejudice of any decisions which may be taken in accordance with Article 34 of the Charter,

"*The Security Council*

"*Resolves* to appoint a sub-committee of . . . members and instructs this sub-committee to receive or to hear such evidence, statements and testimonies and to report to the Security Council at the earliest possible time."

The representative of the USSR contended that Article 34 was inapplicable to the case. Certain definite conditions—the existence of a situation which might lead to international friction or give rise to a dispute—were required before an investigation could be carried out. In the absence of such conditions there was no justification for investigation.

The representative of the United States stated that he "would not consider the activity of such a sub-committee to be in any way an investigation".

At the 288th meeting on 29 April, he further stated that the draft resolution to establish a sub-committee was "a decision under Article 29 of the Charter, not under Chapter VI". The representative of the USSR stated that "this resolution, if adopted, would necessitate investigations".

At the 303rd meeting on 24 May, the draft resolution was not adopted. There were 9 votes in favour and 2 against (one vote against being that of a permanent member).<sup>21</sup>

At the same meeting, the representative of Argentina also submitted a draft resolution<sup>22</sup> to entrust the the Committee of Experts with the task of obtaining further testimonial evidence regarding the Czechoslovak situation and to report back to the Security Council at the earliest opportunity.

At the 305th meeting on 26 May, the representative of Argentina said that, by this means, the Council would be prevented "from wasting time by dealing with the matter itself".

At the same meeting, the representative of the USSR stated that "the Argentine resolution cannot be regarded otherwise than as a new attempt to procure, by all means, an investigation of the Czechoslovak question".

<sup>19</sup> On voting procedure in connexion with the draft resolution, see chapter IV, Case 49; for other observations regarding the character of the sub-committee, see chapter V, Case 67.

<sup>20</sup> S/394, O.R., 3rd year, Suppl. for Jan., Feb., Mar. 1948, pp. 31-34.

<sup>21</sup> 303rd meeting; pp. 28-29.

<sup>22</sup> S/782.

CASE 18.<sup>83</sup> COMPLAINT OF ARMED INVASION OF TAIWAN (FORMOSA): In connexion with decision of 29 September 1950 to invite the representative of the People's Republic of China.

[*Note:* Discussion centred on the question of the responsibility of the Council to consider the question, taking into account the item on the agenda of the General Assembly. In view of the provisions of Article 34, the Council set a date for hearing the People's Republic of China.]<sup>84</sup>

At the 503rd-506th meetings on 26-29 September 1950, the Security Council considered the complaint of armed invasion of Taiwan (Formosa). Discussion centred on the question how the Council should proceed in view of the comparable item included in the agenda of the General Assembly. The representative of the USSR insisted that Article 12 did not debar the General Assembly from discussing disputes or situations with which the Security Council was concerned; and that the Security Council should discharge its obligation under the Charter by hearing a representative of the People's Republic of China. The representative of Ecuador stressed that the Council "should not refuse to examine complaints submitted on subjects which are related to the maintenance of international peace and security"; he proposed that the Council defer consideration to a fixed date to enable the Council to benefit by any investigation by the Assembly. The representative of Ecuador stressed his concern with the principle "that the Council must be ready to hear complaints about situations which may threaten the maintenance of peace". The representative of the United Kingdom emphasized the primary responsibility of the Council to deal with the matter as a possible threat to the peace. The representative of the United States and the USSR opposed delay; the representative of the United States indicated that, since the Council had decided to hear the complaint, it should be "swiftly disposed of" through the establishment of a commission to evaluate the charges.

At the 506th meeting on 29 September 1950, the Council decided to defer consideration of the question but to invite the People's Republic of China to attend the meetings of the Council on the question after the assigned date. The preamble of the resolution read as follows:

*"The Security Council,*

*"Considering that it is its duty to investigate any situation likely to lead to international friction or to*

give rise to a dispute in order to determine whether the continuance of such dispute or situation may endanger international peace and security, and likewise to determine the existence of any threat to peace;

*"Considering that, in the event of a complaint regarding situations or facts similar to those mentioned above, the Council may hear the complainants;"*<sup>85</sup>

CASE 19.<sup>86</sup> COMPLAINT OF BOMBING BY AIR FORCES OF THE TERRITORY OF CHINA: In connexion with draft resolution to establish a commission of investigation: voted upon and rejected on 12 September 1950.

By letter dated 29 August 1950,<sup>87</sup> the United States stated that it would welcome an investigation on the spot by a commission appointed by the Security Council into the charges made by the People's Republic of China.

At the 493rd meeting on 31 August 1950, the representative of the United States added:

*"For their part, the United States military authorities would extend to the commission full co-operation, including access to pertinent records. The commission, when established, can make an immediate investigation of the incident alleged in the complaint to have occurred on 27 August. If it is found that an attack did in fact occur, my Government is prepared to make payment to the Secretary-General, for appropriate transmission to the injured parties, of such damages as the commission shall find to be fair and equitable. In such case my Government will see to it that appropriate disciplinary action is taken."*

At the 499th meeting on 11 September, the representative of Norway, supporting the United States proposal for the establishment of a commission of investigation, stated that the Council was faced "with what Article 34 called a 'situation which might lead to international friction or give rise to a dispute'."

At the 501st meeting on 12 September, the representative of the USSR stated that such questions as creating a commission and sending it to a country could not be decided without the participation of a representative of that country's Government. He added that the representative of the United States had admitted the invasion of Chinese air space, and consequently there was no need to set up any special commission of investigation.

At the same meeting, the United States draft resolution was not adopted.<sup>88</sup>

<sup>83</sup> For texts of relevant statements see:

503rd meeting: China, p. 29; USSR, pp. 30-31; United States, pp. 31-32.

504th meeting: Ecuador, pp. 7-9; Egypt, p. 20; USSR, pp. 4-5; United Kingdom, pp. 18-19.

505th meeting: Ecuador, pp. 12-16; Cuba, pp. 6-7; United States, pp. 8-9.

<sup>84</sup> For consideration in relation to Article 12, see chapter VI, Case 3; for discussion on the invitation to the People's Republic of China, see chapter III, Case 54.

<sup>85</sup> For full text, see chapter VIII, p. 359.

<sup>86</sup> For texts of relevant statements see:

493rd meeting: United States, p. 26.

499th meeting: Norway, p. 13.

501st meeting: USSR, pp. 7, 16; India, p. 24; Ecuador, pp. 24-25.

<sup>87</sup> S/1727, O.R., 5th year, Suppl. for June-Aug. 1950, p. 146.

<sup>88</sup> 501st meeting: p. 28.

## Part III

## APPLICATION OF THE PROVISIONS OF ARTICLE 35 OF THE CHARTER

## NOTE

Questions relating to the maintenance of international peace and security have been brought to the attention of the Security Council by Members of the United Nations,<sup>1</sup> by States not Members of the United Nations,<sup>2</sup> by the General Assembly,<sup>3</sup> by the Secretary-General,<sup>4</sup> and by the Council of Foreign Ministers.<sup>5</sup> The relevant data regarding submission has been summarized in the appended Tabulation.<sup>6</sup> This Note, however, is concerned only with the implementation of Article 35 by Members and States not Members of the United Nations.

## SUBMISSION BY MEMBERS OF THE UNITED NATIONS

In submitting disputes and situations Members have usually indicated in their initial communications or in their statements to the Council that they were acting in accordance with Article 35 (1).<sup>7</sup> Article 37 was invoked once by a party to a dispute in conjunction with Article 35.<sup>8</sup> In the initial communications, States have in most instances indicated not only the nature of the question, but also the action requested of the Council.<sup>9</sup>

The Tabulation indicates that in five instances Members submitted questions to the Council as disputes,<sup>10</sup> and in eleven as situations.<sup>11</sup> In each instance of the submission of a dispute by a Member, the Member submitting the dispute was itself a party, but situations were in most instances submitted to the Council by Members not directly involved.<sup>12</sup> Questions submitted

as disputes were usually accompanied by requests for specific measures by the Council related to the claims of the party; submissions of situations have not always contained such indication of the measures sought.

On three occasions a Member submitted a question to the Council in the first instance as a threat to the peace,<sup>13</sup> breach of the peace,<sup>14</sup> or act of aggression,<sup>15</sup> without adverting to Article 35. However, when the Indonesian question (II) was submitted by Australia as a threat to the peace under Chapter VII, India submitted the same question as a situation under Article 35 (1) on the assumption that only members of the Council were entitled to invoke Chapter VII.<sup>16</sup>

Although consideration of the Greek frontier incidents question was initiated by Greece under Article 35, at a later stage that Government submitted a communication requesting the Council to take the question up under Article 39.<sup>17</sup> The absence of any clearly discernible distinction in the chain of proceedings of the Council consequent upon the invocation of Article 39 at the time of submission is reflected in the uniform mode of treatment adopted for all questions in chapter VIII of the *Repertoire*. Chapter VIII should be consulted for evidence of the extent to which, in the practice of the Council, the chain of proceedings is governed by the terms of the initial communication.

On two occasions when a Member has submitted matters relating to the question of Trieste, which was originally brought to the Security Council by the Council of Foreign Ministers,<sup>18</sup> the articles of the treaties and special agreements concerning Trieste have been invoked as a basis of submission.<sup>19</sup>

## STATES NOT MEMBERS OF THE UNITED NATIONS

Article 35 (2) was invoked on two occasions.<sup>20</sup> In the question of Siamese-French relations, the complaint duly circulated in accordance with rule 6 was not placed

incidents question to the Council as a situation, but the Council considered whether it was a dispute, and invitations to participate were extended with the implication that the question before the Council was a dispute. (Entry 12.) The United Kingdom submitted the Anglo-Iranian Oil Company case as a situation, but, during consideration by the Council, draft resolutions were submitted to determine the existence of a dispute. (Entry 16.) See also the question of the Free Territory of Trieste submitted by Yugoslavia. (Entry 28.)

<sup>1</sup> See Tabulation: Section C, Entry 18.

<sup>2</sup> See Tabulation: Section C, Entries 17 and 19.

<sup>3</sup> See Tabulation: Section C, Entry 19.

<sup>4</sup> 171st meeting: p. 1620. The question whether there is a distinction between the rights of members of the Council and of other Members of the United Nations to submit questions also arose in connexion with a question which was not placed on the provisional agenda. When Yugoslavia drew the attention of the Council to the presence of Polish forces in Italy by means of a letter to the representative of the USSR requesting him to forward a Yugoslav *aide-memoire* to the Council, the representative of the United Kingdom observed that Yugoslavia "could exercise the right of any Member of the United Nations of bringing the matter themselves before the Security Council under Article 35". See S/11 and S/12.

<sup>5</sup> See chapter XI, Case 3.

<sup>6</sup> See Tabulation: Section H, Entries 27 and 28.

<sup>7</sup> Yugoslavia, however, in submitting its complaint regarding Trieste, employed language derived from Articles 34 and 35. See Tabulation: Section H, Entry 28.

<sup>8</sup> See Tabulation: Section D.

<sup>1</sup> See Tabulation: Sections A, B, C and Section H, Entries 27 and 28.

<sup>2</sup> See Tabulation: Sections D and E.

<sup>3</sup> See Tabulation: Section F.

<sup>4</sup> See Tabulation: Section G.

<sup>5</sup> See Tabulation: Section H.

<sup>6</sup> The data entered in the Tabulation, with the exception of entries in brackets, are derived from the initial communications of submission. The headings for the sections of the Tabulation and the insertion of entries thereunder are also based on the terminology used in these initial communications.

<sup>7</sup> Syria and Lebanon in submitting their dispute with France and the United Kingdom referred to Article 34 only.

<sup>8</sup> By Egypt in connexion with the Egyptian question: see Entry 4.

<sup>9</sup> The relevant information for this aspect of each question is summarized in the Tabulation under the heading "Action requested of the Security Council".

<sup>10</sup> See Tabulation: Section A.

<sup>11</sup> See Tabulation: Section B.

<sup>12</sup> See Tabulation: Section B, entries 7, 8, 9, 10, 11, 13 and 15. As for the four other cases in Section B in which questions were submitted as situations by States directly concerned: Iran submitted the Iranian question (I) as a situation, but in a subsequent communication the question was referred to as a dispute (*O.R., 1st year, 1st series, Suppl. No. 1, pp. 22-24*), and, in the initial communication, the Council was requested to "recommend appropriate terms of settlement". (Entry 6.) India submitted the complaint against Pakistan as a situation under Article 35, alleging that aid given by Pakistan to the "invaders" was "an act of aggression". In the voting India abstained as a party to the dispute in accordance with Article 27 (3); Pakistan's counter-complaint was submitted as a dispute (Entries 5 and 14). Greece submitted the Greek frontier



on the provisional agenda of the Council.<sup>21</sup> In the Hyderabad question, the Secretary-General circulated the initial communications from Hyderabad with a prefatory note stating that he was not in a position to determine whether he was required to circulate the communications under rule 6.<sup>22</sup> The Council included the Hyderabad question in the agenda subject to reservations on the question of competence.<sup>23</sup> Both Siam and Hyderabad accepted in advance, in accordance with the provisions of Article 35 (2), the obligations of pacific settlement provided in the Charter.

On two occasions, the People's Republic of China submitted complaints against the United States alleging acts of aggression. In these cases, Article 35 was not cited.<sup>24</sup>

#### PROCEDURAL CONSEQUENCES OF SUBMISSION UNDER ARTICLE 35

Disputes and situations have been submitted to the Council by communications addressed to the Secretary-General or to the President of the Council. They have been dealt with in accordance with rule 3 and rules 6-9 of the provisional rules of procedure. Regarding rule 3, chapter I, Case 1, should be consulted. Material relating to the application of rules 6-9 is covered in chapter II of the *Repertoire*. Material on the practice of the Council in the implementation of Article 35 at the stage of adoption of the agenda will be found in chapter II, part III.<sup>25</sup>

The distinction between a "dispute" and a "situation" involves procedural consequences not only as regards submission, under Article 35, of questions by States

<sup>21</sup> Further communications were made in connexion with the application of Siam for membership. By letters to the Secretary-General dated 19 August 1946 (S/132); 28 August 1946 (S/139); and 24 August 1946 (O.R., 1st year, 2nd series, *Suppl. No. 4*, pp. 47-48, 145-148), the representative of Siam, in connexion with his Government's application for membership, kept the Council informed of the details of the negotiations which were taking place through the good offices of the United States and the United Kingdom. At the 9th meeting of the Committee on the Admission of New Members on 13 August 1946, the representative of France stated that France would not support the pending application of Siam so long as an agreement had not been reached on the procedure for the solution of the territorial dispute. He also explained the French view of the origins of the dispute. (O.R., 1st year, 2nd series, *Suppl. No. 4*, pp. 75-76.) Consideration of the application was suspended at the request of Siam by letter dated 28 August 1946 because of the dispute. (S/139.) At the 81st meeting on 29 November 1946, without the question having been put on the provisional agenda, the President (United States) took note of letters to the Secretary-General dated 28 November 1946 from the representatives of France and Siam (S/200 and S/199), drawing the attention of the Council to a Settlement Agreement and Protocol of 17 November 1946 signed in accordance with Article 33 (1) of the Charter. The representative of Siam was instructed by his Government "to withdraw the above complaint before the Security Council". The President thereupon announced that Siam's request that the application, which had been suspended because of the dispute, be again put before the Council, would be granted. 81st meeting: pp. 505-507.

<sup>22</sup> See chapter II, Case 2.

<sup>23</sup> The representative of India considered that Hyderabad was not competent to bring the question before the Council inasmuch as Article 35 (2) refers to States. 357th meeting: p. 19. See the initial proceedings concerning the Hyderabad question in chapter VIII, p. 353; for the inclusion of the question in the agenda, see chapter II, Case 33.

<sup>24</sup> See Tabulation: Section E; for consideration of invitations to the People's Republic of China, see chapter III, Cases 54 and 66.

<sup>25</sup> On the question of the procedure of the Council subsequent to the submission of a dispute or situation, see also chapter I, Cases 46 and 50.

not Members, but also as regards voting requirements under Article 27 (3) and participation, under Article 32, of States not members of the Council.<sup>26</sup> The acceptance by the Council of the designation "dispute" or "situation" for the purposes of one Article may imply acceptance of the same designation as regards the other Articles. In considering what designation to accept for the purposes of Article 35 (1) the Council has considered whether a decision should be taken at all, and if so, at what stage and whether the Council should itself decide or simply accept the designation given by the State submitting the question.<sup>27</sup> On one occasion the Council decided not to vote on a proposal to determine whether a question was a dispute.<sup>28</sup> On another the Council made participation in the discussion by States not Members of the United Nations conditional upon a subsequent finding that the question was a dispute; but the invitation was extended at a later stage without an explicit decision to this effect.<sup>29</sup> In the early meetings of the Council, criteria for distinguishing a "dispute" from a "situation" were advanced by the Committee of Experts<sup>30</sup> and by members of the Council in the course of discussion.<sup>31</sup> There are no decisions embodying such criteria.

In the early meetings of the Council and before the adoption of rule 37 of the provisional rules of procedure, the question of the participation of non-members of the Council in the proceedings gave rise to consideration whether the submission of a situation under Article 35 (1) fulfilled the requirements of Article 31 for the extension of an invitation; namely, that the interests of the Member are specially affected.<sup>32</sup> Since the adoption of rule 37 it has been the practice of the Council to extend invitations to participate in the discussion to all Members submitting matters to the Council in accordance with Article 35 (1).

At a later date the question of participation under Article 32 of States not Members of the United Nations gave rise to debate on the procedural consequences of the differentiation of disputes from questions dealt with as breaches of the peace.<sup>33</sup> The practice with respect to such States has varied with the circumstances of the case.<sup>34</sup>

<sup>26</sup> The relevant material on voting is in chapter IV, Cases 107-120, and on participation in chapter III, part II. In addition, the distinction between dispute and situation has arisen in connexion with the right to withdraw a complaint; this material is in chapter II, Case 5.

<sup>27</sup> See 19th meeting: pp. 272-282 (Syrian-Lebanese question); 82nd meeting: pp. 535, 537, 541, 546, 548 (Greek frontier incidents question). The memorandum of 18 March 1946 by the Secretariat concerning the procedure of the Council contained the following observations on these questions:

"The consensus of opinion within the Council was that the Security Council itself should decide whether a matter submitted under Article 35 of the Charter is a 'dispute' or a 'situation'."

"The Security Council has acted on the view that the decision whether a dispute or situation is in question should not be taken until after the initial hearing of the States directly concerned." O.R., 1st year, 1st series, *Suppl. No. 2*, p. 15.

<sup>28</sup> 19th meeting: p. 281 (Syrian and Lebanese question).

<sup>29</sup> For the invitation to Albania and Bulgaria in connexion with the Greek frontier incidents question, see chapter III, Cases 57, 58 and 71.

<sup>30</sup> See chapter II, Case 56.

<sup>31</sup> See chapter II, Case 18. See also 19th meeting: p. 276 (Syrian and Lebanese question), and 82nd meeting: p. 537; 84th meeting: p. 607 (Greek frontier incidents question).

<sup>32</sup> See chapter III, Cases 9, 10, 11; see also 16th meeting: pp. 223-232.

<sup>33</sup> See chapter III, Case 73.

<sup>34</sup> See chapter III, part I, Section D, and Part II.

## Tabulation of questions submitted to the Security Council (1946-1951)

### SECTION A. QUESTIONS SUBMITTED BY MEMBERS AS DISPUTES

Question	Submitted by	Other parties	Articles invoked as basis for submission	Description of question in letter of submission	Action requested of the Security Council	Reference
1. Syrian and Lebanese question	Syria and Lebanon 4 Feb. 1946	France, United Kingdom	34	"The presence of [French and British] troops . . . may give rise to serious disputes" and "have been a constant menace to peace and security in this region".	"To adopt a decision recommending the total and simultaneous evacuation of the foreign troops from the territories of Syria and Lebanon."	S/5, <i>O.R.</i> , 1st year, 1st series, <i>Suppl. 1</i> , pp. 82-83.
2. Iranian question (II) <sup>a</sup>	Iran 18 Mar. 1946	USSR	35 (1)	"A dispute . . . the continuance of which is likely to endanger the maintenance of international peace and security . . . has arisen by reason of new developments since the adoption by the Security Council of resolution of January 30, 1946."	"The immediate and just solution of this dispute by the Security Council."	S/15, <i>O.R.</i> , 1st year, 1st series, <i>Suppl. 2</i> , pp. 43-44.
3. Corfu Channel question	United Kingdom 10 Jan. 1947	Albania	35	"An incident in which two of His Majesty's ships were damaged by mines in the Corfu Channel..."	[At the 107th meeting on 18 February the United Kingdom asked the Council "to recommend under Article 36... settlement . . . by direct negotiations, after making the finding of fact . . ."]	S/247, <i>O.R.</i> , 2nd year, <i>Suppl. 3</i> , pp. 35-36; 107th meeting, p. 306.
4. Egyptian question	Egypt 8 July 1947	United Kingdom	35 and 37	"The occupation of the Nile Valley by the British armed forces and the pursuance of the... hostile policy . . . have given rise to a dispute . . . the continuance of which is likely to endanger the maintenance of international peace and security."	"To direct: (a) The total and immediate evacuation of British troops from Egypt including the Sudan; (b) The termination of the present administrative regime in the Sudan."	S/410, 159th meeting, pp. 1343-1345.
5. India-Pakistan question	Pakistan <sup>b</sup> 15 Jan. 1948	India	35	"A situation has existed between . . . India and . . . Pakistan which has given rise to disputes that are likely to endanger the maintenance of international peace and security . . . Pakistan . . . bring to the attention of the Security Council the existence of these disputes..."	"To adopt appropriate measures for the settlement of these disputes and the restoration of friendly relations between the two countries."	S/646. <sup>c</sup>

<sup>a</sup> For submission of Iranian question (I) as a situation, see Tabulation entry 6.  
<sup>b</sup> See also complaint by India dated 1 January 1948 submitted as a situation, Tabulation entry 14.

<sup>c</sup> The full text was reproduced as Annex 6 in Document S/1100. See *O.R.*, 3rd year, *Suppl. for Nov. 1948*, pp. 67-87.

## SECTION B. QUESTIONS SUBMITTED BY MEMBERS AS SITUATIONS\*

Question	Submitted by	States involved	Articles invoked as basis for submission	Description of question in letter of submission	Action requested of the Security Council	Reference
6. Iranian question (I)	Iran <sup>b</sup> 19 Jan. 1946	USSR, Iran	35 (1)	"A situation . . . which may lead to international friction."	"Investigate the situation and recommend appropriate terms of settlement."	<i>O.R., 1st year, 1st series, Suppl. 1, pp. 16-17.</i>
7. Greek question	USSR 21 Jan. 1946	United Kingdom, Greece	35	"A situation . . . has given rise to extreme tension fraught with the possibility of serious consequences both for the Greek people and for the maintenance of peace and security."	"To discuss . . . and to take the measures provided for by the Charter to put an end to the situation."	<i>Ibid., pp. 73-74.</i>
8. Indonesian question (I)	Ukrainian SSR 21 Jan. 1946	United Kingdom, Japan, Netherlands	35 (1)	"The situation constitutes a threat to the maintenance of international peace and security . . . covered by Article 34 . . ."	"To carry out the necessary investigation and to take the measures provided for by the Charter in order to put an end to the situation that has arisen."	<i>Ibid., p. 76.</i>
9. Spanish question	Poland <sup>c</sup> 9 April 1946	Spain	34 and 35	A situation arising from the existence and activities of the Franco regime in Spain "which have already caused international friction and endangered international peace and security".	To consider and adopt "such measures as are provided for in the Charter".	S/32 and S/34, <i>O.R., 1st year, 1st series, Suppl. 2, pp. 54-55.</i>
10. Ukrainian complaint against Greece	Ukrainian SSR 24 Aug. 1946	Greece, United Kingdom, Albania	35 (1)	A "situation as being of the nature covered by Article 34 which has resulted from the policy of the Greek Government and which endangers the maintenance of international peace and security".	"Measures to be adopted . . . without delay in order to eliminate this threat to peace."	S/137, <i>O.R., 1st year, 2nd series, Suppl. 5, pp. 149-151.</i>
11. Information on Armed Forces of the United Nations	USSR <sup>d</sup> 29 Aug. 1946	Certain Powers Members of the United Nations	34 and 35	"The situation" created through continued "presence of Allied troops . . . on the territories of Members of the United Nations and of other States . . ."	"Adopt a resolution requiring States Members of the United Nations to submit . . . information [concerning the disposition of their armed forces] to the Security Council within two weeks."	S/144, <i>O.R., 1st year, 2nd series, Suppl. 5, pp. 151-152.</i>
12. Greek frontier incidents question	Greece 3 Dec. 1946	Yugoslavia, Bulgaria, Albania, Greece	34 and 35 (1)	"A situation which is leading to friction between Greece and her neighbours . . . This situation . . . is likely to endanger the maintenance of international peace and security."	"Urgent necessity for an investigation to be undertaken on the spot, in order that the causes of this situation may be brought to light."	S/203, <i>O.R., 1st year, 2nd series, Suppl. 10, pp. 169-172.</i>

13. Indonesian question (11)	India <sup>a</sup> 30 July 1947	Netherlands, Republic of Indonesia	35 (1)	"This situation endangers the maintenance of international peace and security which is covered by Article 34 . . ."	"To take the necessary measures provided by the Charter to put an end to the present situation."	S/447, O.R., 2nd year, Suppl. 16, Annex 41, p. 150.
14. India-Pakistan question	India <sup>a</sup> 1 Jan. 1948	Pakistan, India	35	"A situation . . . whose continuance is likely to endanger the maintenance of international peace and security . . . exists between India and Pakistan owing to the aid which invaders . . . are drawing from Pakistan . . ."	"To call upon Pakistan to put an end immediately to the giving of such assistance which is an act of aggression."	S/628, O.R., 3rd year, Suppl. for Nov. 1948, Annex 28, pp. 139-144. <sup>a</sup>
15. Czechoslovak question	Chile 12 Feb. 1948	Czechoslovakia, USSR	35 (1)	"The events which had taken place in [Czechoslovakia] since 22 February [1948] on the grounds that they constitute a situation endangering the maintenance of international peace and security."	"Investigate the events reported by the Permanent Representative of Czechoslovakia, Mr. Jan Papanek, which constitute a threat to international peace and security."	S/694, O.R., 3rd year, Suppl. for Jan., Feb., and Mar. 1948, pp. 31-34.
16. Anglo-Iranian Oil Co. case <sup>b</sup>	United Kingdom 29 Sept. 1951	Iran, United Kingdom	35 <sup>c</sup>	"Failure by the Iranian Government to comply with provisional measures indicated by the ICJ . . . [gave rise to] dangers inherent in this situation, and [a] threat to peace and security . . . may thereby be involved."	"Speedy discussion of this question." [In a draft resolution annexed to the letter of submission the United Kingdom asked the Council to call upon Iran to act in all respects in conformity with the provisional measures and to permit the staff to continue to reside at Abadan.]	S/2357, S/2358, O.R., 6th year, Suppl. for Oct., Nov., Dec. 1951, pp. 1-3.

<sup>a</sup> Yugoslavia submitted the question of the Free Territory of Trieste as a "situation . . . likely to endanger the maintenance of international peace and security"; for basis for submission, see Tabulation entry 28.

<sup>b</sup> In a subsequent communication dated 26 January 1946, the representative of Iran referred to the question as a dispute. *O.R., 1st year, 1st series, Suppl. 1*, pp. 22-24. For submission of Iranian question (II) as a dispute, see Tabulation entry 2.

<sup>c</sup> By letter dated 3 December 1947 (S/622), the Secretary-General brought to the attention of Council members the paragraph of General Assembly resolution 114 (II) concerning the Security Council's responsibilities in regard to the Spanish question. At the 327th meeting the Council decided not to include the letter in its agenda. (327th meeting, pp. 1-9.)

<sup>d</sup> This question was submitted by statement at the 57th meeting, pp. 141-142. For discussion on the inclusion in the agenda, see chapter II, Case 18.

<sup>e</sup> See also submission by Australia under Chapter VII, Tabulation entry 17. At the 171st meeting India explained that it had asked for consideration under Chapter VI because it believed that not being a member of the Council it was not entitled to invoke Chapter VII. (171st meeting, p. 1620.)

<sup>f</sup> See also submission by Pakistan of counter complaint as a dispute, Tabulation entry 5.

<sup>g</sup> The full text was reproduced as Annex 28 in Document S/1100.

<sup>h</sup> During consideration of the inclusion of the item in the agenda, and in revised texts of the United Kingdom draft resolution (S/2358), the question was referred to by the United Kingdom as a dispute. See 559th meeting, p. 4; S/2358/Rev.1 and Rev.2, *O.R., 6th year, Suppl. for Oct., Nov., Dec. 1951*, pp. 3-5.

<sup>i</sup> At the 559th meeting the representative of the United Kingdom stated that "the formal basis of the . . . reference to the Council [was] . . . Article 35". (559th meeting, p. 4.)

## SECTION C. QUESTIONS SUBMITTED BY MEMBERS AS THREATS TO THE PEACE, BREACHES OF THE PEACE OR ACTS OF AGGRESSION

Question	Submitted by	States involved	Articles invoked as basis for submission	Description of question in letter of submission	Action requested of the Security Council	Reference
17. Indonesian question (II)	Australia <sup>a</sup> 30 July 1947	Netherlands, Republic of Indonesia	None	"Hostilities [in Java and Sumatra] constitute a breach of the peace under Article 39."	"Take immediate action to restore international peace and security. As a provisional measure . . . should call upon the Governments . . . to cease hostilities forthwith."	S/449, O.R., 2nd year, Suppl. 16, Annex 40, pp. 149-150.
18. Identic notifications dated 29 Sept. 1948	France, United Kingdom, United States 29 Sept. 1948	USSR, France, United Kingdom, United States	None	"The serious situation which has arisen as the result of the unilateral imposition by the [USSR] of restrictions on transport and communications between the Western Zones of Occupation in Germany and Berlin . . . This action by the Soviet Government is contrary to its obligations under Article 2 . . . and creates a threat to the peace within the meaning of Chapter VII."	"Consider this question at the earliest opportunity."	S/1020, O.R., 3rd year, Suppl. for Oct. 1948, pp. 9-11.
19. Complaint of aggression upon the Republic of Korea	United States <sup>b</sup> 25 June 1950	North Korea, Republic of Korea	None	"An attack of the forces of the North Korean regime . . . constitutes a breach of the peace and an act of aggression."	[At the 473rd meeting the representative of the United States submitted a draft resolution (S/1497) to determine the action a breach of the peace and to call for an immediate cessation of hostilities and withdrawal of armed forces of North Korea to the 38th parallel.]	S/1495, 473rd meeting, pp. 1. 7-8.

<sup>a</sup> See also submission by India, Tabulation entry 13.

<sup>b</sup> See also submission by the Secretary-General, Tabulation entry 25.

## SECTION D. QUESTIONS SUBMITTED BY STATES NOT MEMBERS AS DISPUTES

Question	Submitted by	Other parties	Articles invoked as basis for submission	Description of question in letter of submission	Action requested of the Security Council	Reference
20. Siamese-French relations	Siam* 15 July 1946	France	35 (2): accepted obligations contained therein	"A state of affairs on the Indo-chinese-Siamese frontiers which ... menaced the maintenance of peace in [that] area ... territorial problems ... still remain to be solved."	"For consideration under the pertinent Articles of the Charter [of] those matters in dispute between the Republic of France and the Kingdom of Siam".	S/106
21. Hyderabad question	Hyderabad 21 Aug. 1948 12 Sept. 1948 13 Sept. 1948	India	35 (2): accepted obligations contained therein*	"Grave dispute ... which, unless settled in accordance with international law and justice, is likely to endanger the maintenance of international peace and security" (S/986). "imminent invasion" (S/998). "invasion ... now taking place" (S/1000).	To consider the question. (At the 357th meeting, the representative of Hyderabad urged the Council to take action under Articles 39 and 40 of Chapter VII as well as Chapter VI.)	S/986, S/998, S/1000. <i>O.R.</i> , 3rd year, <i>Suppl. for Sept. 1948</i> , pp. 5-7; 357th meeting, pp. 12-13.

\* On 25 May 1946 Siam informed the United Nations of tensions on the Indo-chinese-Siamese frontiers (S/72). Siam at the time was not a Member of the United Nations. This question was not included in the agenda. See p. 402, footnote 21.

\* During Council discussion the representative of India contended that Hyderabad was not a State within the meaning of Article 35 (2).

## SECTION E. QUESTIONS SUBMITTED BY STATES NOT MEMBERS AS THREATS TO THE PEACE, BREACHES OF THE PEACE OR ACTS OF AGGRESSION\*

Question	Submitted by	States involved	Articles invoked as basis for submission	Description of question in letter of submission	Action requested of the Security Council	Reference
22. Complaint of armed invasion of Taiwan	People's Republic of China 24 Aug. 1950	United States, People's Republic of China	None	"Armed aggression" by the United States Government [Movement of United States 7th Fleet toward the Straits of Taiwan] "on the territory of China".	"To condemn the United States Government for its criminal act ... to take immediate measures to bring about the complete withdrawal of all the United States armed invading forces from Taiwan and from other territories belonging to China."	S/1715, 490th meeting, pp. 9-10.
23. Complaint of bombing by air forces of the territory of China	People's Republic of China 27 Aug. 1950	United States, People's Republic of China	None	"Provocative ... acts of invading the air of China on the part of the United States ... are a serious criminal action of encroaching upon China's sovereignty..."	"To condemn the United States aggression forces in Korea ... to take immediate measures to bring about the complete withdrawal of all the United States forces from Korea..."	S/1722, <i>O.R.</i> , 5th year, <i>Suppl. for June, July, and Aug.</i> , pp. 144-145.

\* See also submission of Hyderabad question, Tabulation entry 21.



SECTION F. QUESTIONS SUBMITTED BY THE GENERAL ASSEMBLY<sup>a</sup>

Question	Resolution of Assembly	Date of submission to Council	Articles invoked as basis for submission	Description of question in Assembly resolution	Action requested of the Security Council	Reference
24. Palestine question <sup>b</sup>	Resolution 181 (II) 29 Nov. 1947	By letter dated 2 Dec. 1947	None	"Situation in Palestine is one which is likely to impair the general welfare and friendly relations among nations..."	[For text of request, see chapter XII, Case 23 (i)]	S/614, O.R., 2nd year, Suppl. 20, p. 172; G.A.O.R. 2nd Session, Resolution 181 (II), pp. 131-132.

<sup>a</sup> For letter of Secretary-General transmitting General Assembly resolution 114 (II) concerning the Spanish question, see Tabulation entry 9, footnote c.

<sup>b</sup> Complaints by the parties of alleged violations of the Armistice Agreements were subsequently considered as sub-items of "the Palestine question". See Egyptian,

Jordanian and Israeli complaints, 502nd meeting, p. 15; 503rd meeting, p. 10; 511th meeting, p. 2; 549th meeting, p. 11. For Syrian and Israeli complaints, see 541st meeting, p. 2. The Syrian letter dated 9 April 1951 (S/2078) invoked Articles 34 and 35 as the basis for submission.

## SECTION G. QUESTIONS SUBMITTED BY THE SECRETARY-GENERAL

Question	Date of submission	States involved	Articles invoked as basis for submission	Description of question in letter of submission	Action requested of the Security Council	Reference
25. Complaint of aggression upon the Republic of Korea	25 June 1950 <sup>a</sup>	North Korea, Republic of Korea	None	Text of cablegram from UNCOK which drew attention "to serious situation developing which is assuming character of full-scale war and may endanger the maintenance of international peace and security".	[At the 473rd meeting the Secretary-General declared "it is the clear duty of the Security Council to take steps necessary to re-establish peace in that area"]	S/1496, 473rd meeting, pp. 2-3.

<sup>a</sup> See also submission by United States, Tabulation entry 19.

## SECTION H. QUESTIONS SUBMITTED BY THE COUNCIL OF FOREIGN MINISTERS\*

Question	Submitted by	States involved	Articles invoked as basis for submission	Description of question in letter of submission	Action requested of the Security Council	Reference
26. Statute of the Free Territory of Trieste	Council of Foreign Ministers 12 Dec. 1946	Yugoslavia, Italy, France, USSR, United Kingdom, United States	None	The Draft Peace Treaty with Italy established "a Free Territory of Trieste whose independence and integrity would be ensured by the Security Council of the United Nations".	"To study the texts in question [and] for approval..."	S/224, O.R., 2nd year, Suppl. 1, pp. 1-2.
27. Appointment of a governor of the Free Territory of Trieste	United Kingdom 13 June 1947		Art. 11, paragraph 1, of the Permanent Statute approved by the Council 10 Jan. 1947	"The appointment of a governor of the Free Territory of Trieste, in accordance with article 11, paragraph 1, of the . . . Statute."	[See description of question]	S/374, 143rd meeting, p. 1043.
28. Question of the Free Territory of Trieste	Yugoslavia 28 July 1948	Italy, United Kingdom, United States, Yugoslavia	Art. 21 (1) and Art. 2, Annex VI of the Peace Treaty with Italy	"Measures [of the Allied Military Command] which were a . . . breach of the Treaty of Peace and which placed the independence of the Free Territory of Trieste in jeopardy", and agreements "between the Anglo-American Zone and the Republic of Italy" by which "a situation is created likely to endanger the maintenance of international peace and security".	"To undertake measures . . . necessary and sufficient to nullify the . . . agreements between the Anglo-American zone and the Republic of Italy", and "to assure the respect by the Governments of the United States and the United Kingdom of their international obligations".	S/927, O.R., 3rd year, Suppl. for Aug. 1948, pp. 79-84.

\* This list includes questions submitted by Members consequent on the action taken by the Security Council on the original item submitted by the Council of Foreign Ministers.

## Part IV

## CONSIDERATION OF THE PROVISIONS OF ARTICLES 36-38 AND OF CHAPTER VI IN GENERAL

## NOTE

The case histories included in part IV of this chapter comprise those in which discussion has arisen regarding the responsibility of the Security Council for the settlement of the particular dispute or situation under consideration in the light of the provisions of Chapter VI of the Charter. Part IV does not cover all the activity of the Council in the pacific settlement of disputes, for the debates preceding the major decisions of the Council in this field have dealt almost exclusively with the actual issues before the Council and the relative merits of measures proposed without discussion regarding the juridical problem of their relation to the provisions of the Charter. As a guide to the decisions of the Council in the pacific settlement of disputes, the reader should turn to the appropriate headings of the Analytical Table of Measures adopted by the Security Council.<sup>1</sup> Not only has the relation of these decisions to the provisions of Articles 36-38 rarely been the subject of deliberation within the Council, but on no occasion have Articles 36-38 been invoked in the text of decisions. The case histories which fall to be included in part IV of the present chapter are therefore those in which, by reason of divergence of opinion regarding the propriety of the Council's concern with the particular question, discussion has been directed to the text of Chapter VI of the Charter for guidance regarding the appropriate course to be followed by the Council in the particular circumstances of the case.

The competence of the Council has been called in question on varying grounds. In connexion with several questions submitted to the Council, the competence of the Council to deal with the question has been contested on grounds of domestic jurisdiction,<sup>2</sup> and in some questions on grounds connected with Article 33 or with Article 107.<sup>3</sup> In several cases also the contention has been advanced by one of the parties or States directly concerned, or by one or more representatives on the Council, that the dispute or situation before the Council was not one the continuance of which was likely to endanger the maintenance of international peace and security and not therefore within the competence of the Council under Articles 36-37.<sup>4</sup> The Council has in most instances refrained from direct pronouncement on such contentions;<sup>5</sup> and discussion on the issue of competence has been incidental to consideration of the appropriate measures to be adopted by the Council<sup>6</sup> or of the manner in which proceedings on the question should be brought to a close.<sup>7</sup> These case

histories of questions on the borderline of the Council's competence provide the main subject matter of part IV; but, by reason of the unity of the provisions of Chapter VI of the Charter, related material will be found in parts I and II.

The issues arising in the cases entered in part IV therefore relate only in minor degree to the real import of the provisions of Articles 36-37 in the working of the Council. Discussion has related rather to the significance of the retention of questions on the list of matters of which the Security Council is seized—discussion which has resulted from the qualification in Articles 36-37 of the character of the disputes and situations to which these Articles relate.<sup>8</sup> The willingness of States to continue direct negotiations in connexion with disputes allegedly not of sufficient consequence for the maintenance of international peace and security to warrant the intervention of the Council has given rise to a second but related issue: namely, the role of the Council in relation to such negotiations. In this connexion also the retention of matters on the agenda has constituted a significant issue as a step indicative of the concern of the Council with the progress and outcome of such negotiations.<sup>9</sup>

On certain occasions stress has been laid on the specific and predominant concern of the Council in the pacific settlement of disputes with the maintenance of international peace and security.<sup>10</sup> It is these issues which assume prominence in the cases entered in part IV. By reason of the general character of these problems, this part has been entitled: Consideration of the provisions of Articles 36-38 and of Chapter VI in general.

On certain occasions the question has arisen as to the powers which the Council may exercise under Chapter VI of the Charter. The question whether the Council can, under Chapter VI of the Charter, make decisions within the meaning of Article 25, has been raised mainly in relation to Article 34; the observations on this problem have not, however, been restricted to Article 34.<sup>11</sup> The observations on these occasions require, however, to be considered within the context of the stress laid on the need to base the action of the Council on the promotion of agreement between the parties.<sup>12</sup> Also relevant in this connexion is the material

<sup>1</sup> Material on procedure regarding the retention of questions on the list of matters is entered in chapter II, part IV. For substantive discussion regarding the retention of questions on the agenda, see Cases 9 and 10 of this chapter; chapter II, Case 58, regarding the Corfu Channel question; chapter XII, Case 20, for discussion on the retention of the Iranian question; and also the further references in the following footnote.

<sup>2</sup> See Case 20. See also Case 2; Case 4 (together with chapter II, Case 59) and Case 25.

<sup>3</sup> Statements by the representative of Brazil: Case 23, and also Case 4.

<sup>4</sup> See Cases 13, 14 and 15, and chapter XII, Case 25.

<sup>5</sup> Reference may be made to the discussion on the powers of the Council in the pacific settlement of disputes which arose in connexion with the proposals by Australia (S/512, 193d meeting: p. 2174) and Poland (194th meeting: pp. 2203-2204) for the establishment of a commission of arbitration to deal with the Indonesian question (II), and similar discussion at a later date in connexion with the functioning of the Committee of Good Offices.

193rd meeting: United States, pp. 2177-2178.

194th meeting: United States, pp. 2203-2205.

325rd meeting: Belgium, p. 33.

326th meeting: France, pp. 21-22.

328th meeting: Belgium, p. 23; United Kingdom, pp. 17-18.

<sup>1</sup> Chapter VIII, part I.

<sup>2</sup> See Chapter XII, part I.

<sup>3</sup> For objection on grounds of Article 33, see part I of this chapter, and on grounds of Article 107, see chapter XII, part VI.

<sup>4</sup> Notably in connexion with the following questions: Iranian question (see Case 20); Greek question: USSR communication dated 21 January 1946 (see Case 21); Indonesian question (I) (see Case 7); Syrian and Lebanese question (see Case 2); Greek question: Ukrainian SSR communication dated 24 August 1946 (see Case 10); Corfu Channel question (see Case 5); Egyptian question (see Cases 4 and 24); Czechoslovak question (see Case 17); Complaint of armed invasion of Taiwan (Formosa) (see Case 18); and Anglo-Iranian Oil Company case (see Case 26).

<sup>5</sup> For the determination on the India-Pakistan question as a dispute of the nature referred to in Article 34, see chapter VIII, p. 34.

<sup>6</sup> See statement by the President at the 562nd meeting (Case 26).

<sup>7</sup> See Case 21. See also Case 10.

bearing on the exercise by the Council of its powers under Chapter VI of the Charter with a view to bringing about the cessation of hostilities which will be found in chapter XI, where it is entered by reason of its origin in proposals put to the Council under Chapter VII of the Charter.<sup>13</sup> A specific problem as to the nature of the measures falling within the scope of Article 36 arose in connexion with the recommendations of the Sub-Committee on the Spanish question.<sup>14</sup>

During consideration of the India-Pakistan question, discussion took place on whether the Council, having been seized of the question by both parties and having based recommendations on conversations by the President with representatives of the parties, had been acting under Article 38.<sup>15</sup>

The consideration of steps for the pacific settlement of disputes has, in respect of many questions before the Council, centred on the encouragement by the Council of negotiations between the parties. Incidental observations have been made, in connexion with draft resolutions with this objective, regarding the transition from Article 33 (2) to recommendation under Article 36;<sup>16</sup> but discussion of this nature has been exceptional. Problems ancillary to the promotion of negotiations between the parties—such as the request for a report to the Council on the outcome of negotiations, the inclusion of a time schedule, the establishment of conditions to be satisfied before the initiation of negotiations, the definition of bases of negotiation, or the account to be taken of procedures incumbent on the parties by reason of agreements between them—have been examined in the light of the circumstances of each case and not as general problems of procedure under the Charter. For this reason such problems have not been regarded as germane to the *Repertoire*. In its reception to General Assembly resolution 268 B (III) of 28 April 1949, the Council indeed gave general expression to its concern to retain flexibility in the discharge of its functions in connexion with the peaceful settlement of disputes.<sup>17</sup>

Other discussion within the Council relating to procedures of pacific settlement has been concerned mainly with the question of the composition and functioning of committees or commissions proposed or established in pursuance of the pacific settlement of disputes. Data regarding the composition and termination of these subsidiary organs will be found in chapter V, part I, of the *Repertoire*. Information is also given regarding the proposed composition of subsidiary organs proposed but not established. For information regarding their internal organization and procedure, and their methods of operation, the series: "Organization and Procedure of United Nations Commissions" should be consulted.<sup>18</sup>

CASE 20. THE IRANIAN QUESTION (I): In connexion with decision of 30 January 1946 requesting Iran and USSR to inform the Council of the results of negotiations between them.

<sup>13</sup> See chapter XI, Case 9.

<sup>14</sup> Case 22.

<sup>15</sup> See statements by the representative of Colombia, 245th meeting: pp. 115-116, and by the representative of the United States, 304th meeting: p. 21. For conversations between the President and the representatives of India and Pakistan, see Case 5.

<sup>16</sup> Cf. Cases 3 and 23: see also Cases 4 and 5.

<sup>17</sup> See chapter I, Case 46.

<sup>18</sup> United Nations Publications, 1949-1950.X.

[Note: Since both parties were favourably inclined to renewed efforts to settle the question by direct negotiation, discussion centred on the manner in which the Council might ensure the fulfilment of its own responsibilities in connexion with the adoption of this procedure.]

At the 3rd meeting on 28 January 1946, the President (Australia) observed that this was the first occasion on which the Council had been called upon to act under Chapter VI of the Charter and that the proceedings were likely to set a precedent for the future. The representative of the USSR, after having outlined the exchanges which had preceded the submission of the question to the Council, claimed that neither Articles 33, 34, 36 nor 37 were applicable in this case.<sup>19</sup>

At the 5th meeting on 30 January, the representative of Iran observed that Iran would be prepared to enter into direct negotiations with the USSR if this procedure were recommended by the Council.<sup>20</sup> He insisted that the negotiations should proceed under the aegis of the Council and that their progress and results should be reported to the Council. Discussion ensued on the relation between the direct negotiations to be undertaken between the parties and the continuing responsibility of the Council in respect of the dispute. The representative of China maintained that, in view of the willingness of the parties to negotiate, a recommendation by the Council on the procedure of negotiation was not necessary. The President, speaking as the representative of Australia, made the following statement:

"It is now clear that both parties have declared their willingness to negotiate. When, however, the jurisdiction of the Council has been invoked, it is the view of the Australian Government that the Council should remain seized of the matter, so that it will be in a position to deal with it again at any time it deems appropriate. If, therefore, the Council agrees to defer further consideration of this matter pending negotiations between the parties, it is the view of my Government that the Council should be kept informed of the progress of these negotiations and, in particular, of the nature of any settlement arrived at between the parties.

"An opportunity will then be given for any member of the Council to raise such matters as he deems appropriate, and to bring any proposal before the Council for its consideration. In this way, the world at large will be kept fully informed of the results of the negotiations . . ."

The representative of the United Kingdom submitted a draft resolution the last paragraph of which included a provision that the matter remain on the agenda.<sup>21</sup> He stated that the adoption of a resolution for settlement by bilateral negotiation would not constitute the discharge by the Council of its duty and that, until a report on the results of negotiations was received, the question should remain before the Council.

The representative of the USSR demurred that any recommendation under Article 37 carried the implication of endangerment to the maintenance of interna-

<sup>19</sup> For texts of relevant statements see:

3rd meeting: President (Australia), p. 31; USSR, pp. 42-43. 5th meeting: President (Australia), p. 61; China, pp. 58-59; Iran, pp. 48-49; France, p. 59; United Kingdom, pp. 56, 66-67, 70; United States, p. 58; China, p. 58; USSR, pp. 65, 70.

<sup>20</sup> For discussion bearing on Article 33, see Case 1. For the submission of the question, see chapter VIII, p. 300.

<sup>21</sup> 5th meeting: p. 64.

tional peace and security. Retention on the agenda, he commented, conveyed this implication in veiled form. In reply to a question by the representative of the United Kingdom, the representative of the USSR stated that, if no results were achieved in the negotiations, the question could again be discussed by the Security Council in accordance with the terms of the Charter. The representative of the United Kingdom then agreed to delete from his resolution the provision that the matter remain on the agenda. Thus amended, the draft resolution was adopted unanimously.<sup>22</sup>

CASE 21.<sup>23</sup> THE GREEK QUESTION: USSR communication dated 21 January 1946: In connexion with decision of 6 February 1946 taking note of declarations made and views expressed.

[Note: Discussion whether the question under consideration was a situation within the meaning of Chapter VI led to the closing of proceedings by presidential statement.]

During the consideration by the Security Council of the complaint of the USSR that the presence of United Kingdom troops in Greece and the ensuing interference in the internal affairs of that State was causing tension fraught with grave consequences for the maintenance of peace and security, at the 6th meeting on 1 February 1946, the representative of the United Kingdom replied that the question was "an internal matter" for the Greek Government in its relations with the Government of the United Kingdom, since the United Kingdom forces were present in Greece by agreement with the Government; and that he was unable to find any Article of the Charter under which a "civil action" of that kind could be brought before the Council, unless the allegation was made that the presence of British forces in Greece was endangering the peace of the world. The representative of the United Kingdom requested a "straight answer" to this question.

At the 7th meeting on 4 February 1946, the representative of the United States expressed the view that no reasonable grounds existed for the belief that the presence of United Kingdom troops in Greece constituted a situation likely to endanger the maintenance of international peace and security; that the Council therefore would not be justified in making any finding to that effect under Chapter VI of the Charter; and that "without such a finding the Council has no authority to recommend appropriate procedures or methods of adjustment".

At the same meeting the President, speaking as the representative of Australia, concurred that action might be taken by the Council only if there were a dispute the continuance of which threatened the maintenance of international peace and security. He proposed that the question should be closed by means of a presidential statement containing this affirmation.

At the 10th meeting on 6 February 1946, the representative of the United Kingdom, having drawn attention to the views expressed by the representatives of the United States, France, China, Poland, Egypt, Brazil

and the Netherlands that the presence of United Kingdom troops in Greece did not constitute a situation likely to endanger the maintenance of international peace and security, withdrew his insistence on a formal resolution to this effect. The matter was closed by means of a presidential statement prepared by the representatives of the United States and the USSR which took note of the declarations made and views expressed.<sup>24</sup>

CASE 22.<sup>25</sup> THE SPANISH QUESTION: In connexion with draft resolution to recommend that the General Assembly pass a resolution on severance of diplomatic relations with the Franco régime; voted upon and rejected on 18 June 1946.

[Note: The draft resolution based on the recommendations of the Sub-Committee gave rise to the objection that it was not proper indirectly to recommend one of the sanctions provided for in Chapter VII, since the Sub-Committee had come to the conclusion that Article 39 was not at present applicable. The answer was made that the procedure of taking the matter to the General Assembly under Article 36 differed from an order by the Council under Chapter VII.<sup>26</sup>

The amendment to delete the recommendation regarding the severance of diplomatic relations was rejected, but the draft resolution as a whole was not adopted.]

The Sub-Committee on the Spanish question in its report of 1 June 1946, found that "the present situation in Spain, though not an existing threat within the meaning of Article 39, is a situation the continuance of which is in fact likely to endanger the maintenance of international peace and security".

"The situation in Spain thus falls to be dealt with by the Security Council under Chapter VI of the Charter, which covers measures of peaceful settlement and adjustment.

"28. The Security Council is empowered under Article 36 to recommend appropriate procedures or methods of adjustment of such a situation. It is not vested with executive authority, as in the case of Chapter VII, but it has the duty of devising methods of adjustment adequate to meet the given situation."

Accordingly, the Sub-Committee recommended, *inter alia*:<sup>27</sup>

"... (b) The transmitting by the Security Council to the General Assembly of the evidence and reports of this Sub-Committee, together with the recommendation that unless the Franco régime is withdrawn and the other conditions of political freedom set out in the declaration are, in the opinion of the General Assembly, fully satisfied, a resolution be passed by the General Assembly recommending that diplomatic relations with the Franco régime be terminated forthwith by each Member of the United Nations."

<sup>22</sup> For text, see chapter VIII, p. 302.

<sup>23</sup> For texts of relevant statements see:

45th meeting: Australia, p. 327; Egypt, p. 330; USSR, pp. 336-337.

46th meeting: Australia, pp. 352-353; United Kingdom, pp. 346-347.

<sup>26</sup> For discussion relating to Chapter VII of the Charter, see chapter XI, Case 1; and in relation to Article 12, see chapter VI, Case 1 (i).

<sup>27</sup> S/75, O.R., 1st year, 1st series, Special Suppl., Rev. ed., pp. 10-11.

<sup>24</sup> 5th meeting: p. 71. For text, see chapter VIII, p. 301.

<sup>25</sup> For texts of relevant statements see:

6th meeting: USSR, p. 74; United Kingdom, pp. 87-88.

7th meeting: President (Australia), pp. 116, 121; France, p. 113; Poland, p. 116; United States, p. 111.

10th meeting: United Kingdom, p. 170; USSR, p. 172.

At the 45th meeting on 13 June 1946, the representative of Australia, speaking as Chairman of the Sub-Committee, stated that the Council, if it followed the Sub-Committee's recommendations, would exercise "its power to recommend methods of adjustment or suitable procedures, and to refer a matter to other organs of the United Nations whenever the circumstances are thought fit by the Security Council".

Also at the 45th meeting, the Chairman of the Sub-Committee submitted a draft resolution for the adoption of the Sub-Committee's recommendations, subject to the addition to recommendation (b), after the words: "each Member of the United Nations" of the following provision: "or alternatively such other action be taken as the General Assembly deems appropriate and effective under the circumstances prevailing at the time".<sup>28</sup>

At the 46th meeting on 17 June, the United Kingdom representative noted the admission of the Sub-Committee that "none of the series of enforcement measures set out in Articles 41 and 42 can, at the present time, be directed by the Security Council", and expressed "grave doubts as to the juridical validity" of the Council, "having invoked Chapter VI", indirectly to recommend "one of the so-called sanctions provided for in Chapter VII of the Charter", namely, the severance of diplomatic relations.

At the same meeting, the representative of the United Kingdom also submitted an amendment to delete the recommendation to the Assembly regarding a resolution for the severance of diplomatic relations.<sup>29</sup>

In reply, the representative of Australia, at the same meeting, emphasized the difference between an order by the Council, under Chapter VII, that diplomatic relations be severed and a procedure, under Chapter VI, taking "the matter to the supreme governing body of the United Nations". He contended that "procedures aimed at somewhat analogous results" to those pursued under Chapter VII could be adopted within the framework of Chapter VI.

At the 47th meeting on 18 June, the United Kingdom amendment was rejected by 6 votes in favour, 2 against, with 3 abstentions.<sup>30</sup> After separate votes had been taken on each of the three recommendations, the draft resolution as a whole was not adopted. There were 9 votes in favour, 1 against (that of a permanent member) and 1 abstention.<sup>31</sup>

CASE 23.<sup>32</sup> THE CORFU CHANNEL QUESTION: In connexion with decision of 9 April 1947 recommending reference of the dispute to the International Court of Justice.

[Note: In the course of discussion observations were made on the circumstances in which the consideration of a dispute by the Council was warranted, and the circumstances in which, in accordance with Article 36 (3),

<sup>28</sup> 45th meeting: p. 378.

<sup>29</sup> 46th meeting: pp. 348-349.

<sup>30</sup> 47th meeting: p. 378.

<sup>31</sup> 47th meeting: p. 379.

<sup>32</sup> For texts of relevant statements see:

111th meeting: Australia, p. 364; Poland, pp. 376-377.

120th meeting: Colombia, p. 549.

121st meeting: Colombia, p. 588.

125th meeting: Belgium, p. 690; Brazil, pp. 686-688; Poland, p. 689; Syria, p. 688; United Kingdom, p. 685; United States, p. 686.

127th meeting: Australia, pp. 722-723; China, p. 726; USSR, pp. 724-726.

reference to the International Court of Justice was appropriate.]<sup>33</sup>

At the 107th meeting on 18 February 1947, the representative of the United Kingdom requested a recommendation by the Council under Article 36 of the Charter.<sup>34</sup> At the 120th meeting on 20 March 1947, after presentation of the report of the sub-committee to examine the evidence, the representative of the United Kingdom submitted a draft resolution,<sup>35</sup> which, as amended on the suggestion of the representatives of France and the United States, read:

"The Security Council

" . . .

"1. Considers that the laying of mines in peacetime without notification is unjustified and an offence against humanity;

"2. Finds that an unnotified minefield was laid in the immediate vicinity of the Albanian coast, resulting in serious injury to two of His Majesty's ships with loss of life and injury to their crews; that this minefield could not have been laid without the knowledge of the Albanian authorities;

"3. Recommends that the United Kingdom and Albanian Governments should settle the dispute on the basis of the Council's findings in paragraph 2 above, and that, in the event of failure to settle, either party may apply to the Council for further consideration of the matter;

"4. Resolves to retain this dispute on its agenda until both parties certify that it has been settled to their satisfaction."

The draft resolution was rejected at the 122nd meeting by 7 votes in favour, 2 against (one being that of a permanent member) and 1 abstention, and one member not participating in the vote.<sup>36</sup>

At the 125th meeting on 3 April, the representative of the United Kingdom submitted a second draft resolution<sup>37</sup> to recommend the reference of the dispute to the International Court of Justice.

At the 125th meeting, the representative of Brazil made the following statement in support of the United Kingdom draft resolution:

"In the course of our extensive and repeated discussions, as well as in the interim report of the Sub-Committee and in the consideration of the facts and aspects of this case, the feeling gathered from what was said, what was set forth, and the conclusion reached, was that the Council was functioning at times as a court of arbitration and at others as a tribunal of justice.

"The Security Council is not and cannot be a tribunal. It is *par excellence* the political and executive organ of the United Nations. Ours is not a judicial function, nor do we meet here as international judges. It would be hard otherwise to explain why the International Court of Justice has been maintained and why its functions have been amplified at San Francisco.

"Our functions have been well defined in the Charter, and we can neither broaden them nor reduce

<sup>33</sup> For observations on Article 33, see Case 3.

<sup>34</sup> See chapter VIII, p. 313, regarding the submission of the question.

<sup>35</sup> 120th meeting: p. 567.

<sup>36</sup> 122nd meeting: p. 609.

<sup>37</sup> 125th meeting: pp. 685-686.



them. Should misconception or misapplication bring about an attempt to do so, the result will be practical disarticulation of our Organization. While vesting the Council with ample and even elastic functions, the Charter circumscribed them within the provision that they must be discharged in accordance with the principles and purposes of the United Nations. Whatever the nature of a dispute, it can become the object of the Council's consideration only if its continuance is likely to endanger the maintenance of international peace and security.

"... it is beyond doubt that, even in taking into consideration a dispute or a situation likely to endanger peace and security, the Council has no power to judge but only to investigate and to recommend appropriate procedures or methods of adjustment. In the examination of disputes and situations, the Council is not restricted, as a court or tribunal would be, to the consideration of proofs, facts, circumstances, and laws. Our function is political, not judicial. Our consideration of a dispute or situation should limit itself to that part of the one or the other which may endanger the maintenance of international peace and security. Our attributions, therefore, preclude the consideration of any other disputes or situations, under penalty of the enlargement of our competence beyond the limits fixed by the Charter.

"... it is not our function to conciliate parties, to harmonize differences, to negotiate understandings, to arbitrate disputes, to pronounce sentence. We act principally to protect and ensure international peace and security, whenever these are threatened. We have no powers to condemn or to absolve. Our decisions are based exclusively on the interests of international peace and security, and not on other considerations. It is not our prerogative either to punish or fail to punish, to listen to prosecution and defence, or finally, like a body of international jurymen to deliver a verdict.

"The hope of the Brazilian delegation is, therefore, that in the future the Council will admit for consideration, after the peaceful resources recommended in Article 33 are exhausted, only those disputes whose continuance is likely to endanger international peace and security, provided such menace is ascertained by previous investigation.

"For these reasons, we give our full support to the resolution now before us, and we hope that in the future, when dealing with similar cases, the Council will bear in mind the provisions of Article 36, and refer such disputes, from the beginning, to the International Court of Justice."

At the 127th meeting on 9 April 1947, the representative of Australia stated:

"What... does the resolution propose? The resolution asks that the matter be referred to the International Court of Justice. However, the representative of Albania says that we did not have sufficient proof and that we did not give due regard to the evidence. But the International Court of Justice can do very fully the very things we were not able to do here. It can collect additional evidence and, particularly in the oral hearings provided under Article 43, it can call in witnesses, experts, counsel and advocates. It can obtain material witnesses for examination and cross-examination so that justice shall be done."

At the same meeting, the representative of the USSR stated:

"... I think I must express a negative attitude to Sir Alexander Cadogan's proposal which was submitted to us in draft form at the last meeting of the Security Council. Albania is innocent of the crime with which it is charged by the representative of the United Kingdom. We have no justification, therefore, for dragging Albania before the International Court of Justice because, in order to bring any country before the International Court of Justice, some sort of justification is necessary".

At the 127th meeting, the United Kingdom draft resolution was adopted.<sup>35</sup>

CASE 24.<sup>36</sup> THE EGYPTIAN QUESTION: In connexion with the draft resolution submitted by the representative of Brazil for the settlement of the dispute between the parties by peaceful means of their own choice: voted upon and rejected on 28 August 1947.

[Note: An amendment to the draft resolution gave rise to observations regarding the appropriateness of recommending the reference of a specific aspect of the question to the International Court of Justice.]

At the 189th meeting on 20 August 1947, the representative of Belgium submitted an amendment<sup>40</sup> to the Brazilian draft resolution to specify among the peaceful means available to the disputants reference of disputes concerning the validity of the Anglo-Egyptian Treaty of 1936 to the International Court of Justice.

The representative of Brazil stated that, while his delegation had no substantial objections, it saw a disadvantage in the amendment since it would single out the legal aspect of the question. The amendment might convey the impression that the Council was inclined to agree with the view that the validity of the Treaty was the sole issue before it. The representative of Syria held that the question before the Council could not be deemed a legal dispute and that, therefore, the Belgian amendment had no place in the present case. He stated:

"It would not be wise to overlook the legitimate wishes of Member States to live freely within their borders. We are concerned with a strategic area, surrounded by millions who share the feelings of its people and sympathize with their national aspirations. The validity or non-validity of the Treaty, in the face of the existing threat to peace, may be termed purely academic. When the presence of foreign forces in the homeland of a Member State constitutes a menace to international peace and security and prejudices the sacred principles of sovereign equality, it is to be considered as conflicting with the provisions of the Charter. Such a dispute cannot be deemed a legal dispute to be judged by the International Court of Justice under Article 36, paragraph 3, of the Charter. The Court may be seized of disputes which are exclusively legal, but it has

<sup>35</sup> 127th meeting: p. 727. For text, see chapter VIII, pp. 313-314.

<sup>36</sup> For texts of relevant statements see: 189th meeting: Belgium, p. 2115; United Kingdom, p. 2113. 193rd meeting: Egypt, p. 2166; United Kingdom, p. 2169. 196th meeting: President (Syria), pp. 2242-2243; Belgium, p. 2252; Brazil, pp. 2235-2236; United Kingdom, pp. 2252-2253. 198th meeting: France, pp. 2291-2292.

See also Case 4 for statements regarding recourse to Article 33.

<sup>40</sup> 189th meeting: p. 2115.

no jurisdiction in political disputes. Therefore, I believe the Belgian amendment has no place in the present case."

The representative of Egypt\* considered that the amendment would serve no useful purpose, since Article 33 included judicial settlement in its enumeration. The representative of the United Kingdom urged acceptance of the Belgian amendment as in accordance with Article 36, paragraph 3, of the Charter. He stated:

"The Council has not formally pronounced on this Egyptian contention because, as I understand the matter, without passing on the merits of the case or on the duties and obligations of the parties in consequence of the Treaty of 1936, it has accepted the view, so clearly expressed by the representative of Brazil, that, in the face of a situation which presents no immediate danger to international peace, it is not justified in taking any action in the matter, but rather that it should invite both Governments to resume direct negotiations with a view to peaceful settlement in accordance with traditional methods of international law. The Belgian amendment would constitute an expression of opinion by this Council that any question concerning the validity of this Treaty is a legal question, and that recourse to the International Court of Justice is the proper method of settling it."

At the 198th meeting on 28 August 1947, the Belgian amendment was rejected.

#### CASE 25.<sup>11</sup> THE INDONESIAN QUESTION (II)

[NOTE: In the circumstances of the question the assistance offered to the parties by the Council rested on the concept of good offices, which was at one stage related by a representative on the Council to Article 38.]

At the 172nd meeting on 1 August 1947, in the discussion of the Australian draft resolution<sup>12</sup> to call upon the Netherlands and the Republic of Indonesia, under Article 40 of the Charter, to cease hostilities and to settle their disputes by arbitration, the representative of the Netherlands\* stated that his Government warmly welcomed the offer of good offices made by the Government of the United States on 31 July 1947. The representative of the United Kingdom observed that not Article 39, but Articles 34 and 35 were applicable to the case, "not as a dispute" between the Netherlands and the Indonesian Republic, but because the fighting in progress might well create "a situation leading to international friction". He continued:

"If the members of the Security Council are in agreement, it would seem to my delegation that this Council, instead of proceeding on the lines of the

Australian proposal, should take note of this offer of good offices and leave the question on the list of matters of which the Council is seized, so that in due course, and as soon as possible, we may receive a report on all developments."

By the decision of 1 August 1947, the Security Council called upon the parties to "settle their disputes by arbitration or by other peaceful means and keep the Security Council informed about the progress of the settlement".<sup>13</sup>

At the 178th meeting on 7 August 1947, the representative of Australia indicated that his Government would be prepared to act jointly with the United States Government in the capacity of mediator and arbitrator. The representative of the Republic of Indonesia\* at the 184th meeting on 14 August announced that his Government accepted the United States offer of good offices and Australia's mediation or arbitration. At the 187th meeting on 19 August, the representative of the United States indicated that his Government's offer of good offices had been an attempt to implement the cease-fire resolution within the spirit of Article 33. He added that, from a legal point of view, a distinction might well be drawn between the two aspects of the question—the cessation of hostilities, and the final peaceful settlement.

By the decision of 25 August 1947, the Security Council tendered its good offices and expressed its readiness to assist in the settlement of the dispute through a committee of the Council.<sup>14</sup> In introducing the resolution, the representative of the United States observed that the question of competence would not arise in the exercise of good offices, since the services of the Council would be rendered upon the express request of the parties themselves.

At the 213th meeting on 22 October, the representative of the United States indicated that, since no attempt had been made by the parties to reach an agreement for the cessation of hostilities, the Committee of Good Offices should give its aid in this respect. At the 217th meeting on 31 October, the representative of Brazil expressed the view that the proposed task was within the competence of the Committee of Good Offices, since the Committee could not achieve its essential function of bringing the parties to a final settlement of the dispute without first securing the complete cessation of hostilities. By the decision of 1 November 1947, the Council called upon the parties to consult with each other as to the means to be employed to give effect to the cease-fire resolution and requested the Committee of Good Offices to assist the parties in reaching an agreement.<sup>15</sup> On 17 January 1948, the Chairman of the Committee of Good Offices informed the President of the Council that the parties would that day sign a truce agreement and an agreement on political principles which would serve as a basis for discussion in the settlement of the dispute.

At the 247th meeting on 17 February 1948, in reviewing the work of the Committee of Good Offices, the representative of Australia on the Committee, who had been invited to the Council table, observed that he felt that, in the future, the Committee should make public its suggestions to the parties without necessarily

<sup>11</sup> For texts of relevant statements see:

171st meeting: United States, p. 1648.

172nd meeting: Netherlands, p. 1653; United Kingdom, pp. 1656-1657; United States, pp. 1657-1658.

178th meeting: Australia, p. 1854.

184th meeting: Indonesia, p. 2003.

187th meeting: United States, pp. 2068-2069.

194th meeting: United States, pp. 2200-2201, 2203-2205.

213th meeting: United States, pp. 2602-2603.

217th meeting: Brazil, pp. 2692-2693.

247th meeting: Netherlands, pp. 151-152. Australia, member of the Committee of Good Offices, pp. 145-149.

249th meeting: USSR, pp. 175-187.

251st meeting: United States, pp. 211-212.

<sup>12</sup> For text, see chapter VIII, p. 316; for discussion in relation to Article 39, see chapter XI, Case 4, and in relation to Article 2 (7), see chapter XII, Case 7.

<sup>13</sup> For text, see chapter VIII, p. 316.

<sup>14</sup> For text, see chapter VIII, p. 317.

<sup>15</sup> For text, see chapter VIII, p. 318.

waiting for both parties to invite it to do so. The representative of the Netherlands observed that the Committee could vary its procedure, but could not change its nature as a committee of good offices. At the 249th meeting on 18 February 1948, the representative of the USSR expressed criticism of the work of the Consular Commission and of the Committee of Good Offices, which, he contended, had not been an organ of the Security Council. At the 251st meeting on 21 February, the representative of the United States made the following statement on the status of the Committee of Good Offices:

"The Charter of the United Nations contemplates that the solutions of controversies between parties will be arrived at by their independent negotiation, unassisted; by negotiation, assisted by the Security Council, as in the present case; or by recommendations of the Security Council in which the parties could acquiesce, even though they could not come to an original agreement upon them . . .

"I wish to state my view of the situation with respect to the Security Council Committee of Good Offices."

Referring to the resolutions of 1 August and 25 August 1947, the representative of the United States continued:

"There are two notable points in these two resolutions which I have cited. One point is the use of the verb 'assist' in the resolution of 25 August 1947. The word 'assist' is not a passive word but a word of action. This should be interpreted with reference to the objective, which is the pacific settlement not of one dispute but of all of the disputes. The word 'disputes' occurs twice, as I have indicated to the members of the Security Council. The resolution of 1 August, paragraph (b), says 'to settle their disputes . . .'; and the resolution of 25 August, section II, says 'assist in the pacific settlement of their dispute in accordance with paragraph (b) . . .'. Therefore, the two must be considered together.

"Each party to this dispute named one member to the Committee of Good Offices, and the Committee so chosen selected the third member. Thus, we are in the situation which falls under Article 38 of the Charter, where the same authority prevails in the Security Council as would have prevailed if the parties had submitted their request to the Security Council before it passed these resolutions.

"Therefore, the foundation of the power of the Committee of Good Offices is the agreement of the parties, which is, in effect, the request by them to have specific terms of reference recommended by the Security Council. The Committee of Good Offices is the hand of the Security Council."

After further discussion on the right of the Committee of Good Offices to make suggestions to the parties, the Council adopted the decision of 28 February 1948 whereby it maintained its offer of good offices.<sup>46</sup>

#### CASE 26.<sup>47</sup> THE ANGLO-IRANIAN OIL COMPANY CASE

[Note: The question arose whether the matter constituted a dispute of the character envisaged in Article

<sup>46</sup> For text, see chapter VIII, p. 319.

<sup>47</sup> For texts of relevant statements see:

559th meeting: China, p. 21; India, pp. 15-17; Yugoslavia, pp. 17-19.

562nd meeting: President (Brazil), p. 2; Ecuador, pp. 7-9.

34 and of the appropriate course for the Council to follow in the circumstances.]<sup>48</sup>

In the draft resolution<sup>49</sup> appended to the letter of submission to the Security Council, the United Kingdom concentrated attention upon the request to the Council to call upon the Government of Iran to act in all respects in conformity with the provisional measures indicated by the Court. Consequent upon the expulsion from Iran of the remaining Anglo-Iranian Oil Company staff, contrary to the provisional measures in question, the revised draft resolution submitted by the United Kingdom at the 560th meeting on 15 October 1951<sup>50</sup> recited in the preamble that "a dispute has arisen between the Government of the United Kingdom and the Government of Iran regarding the oil installations in Iran, the continuance of which dispute is likely to threaten the maintenance of international peace and security". The operative clauses provided:

"The Security Council,

"Calls for:

"1. The resumption of negotiations at the earliest practicable moment in order to make further efforts to resolve the differences between the parties in accordance with the principles of the provisional measures indicated by the International Court of Justice unless mutually agreeable arrangements are made consistent with the Purposes and Principles of the United Nations Charter;

"2. The avoidance of any action which would have the effect of further aggravating the situation or prejudicing the rights, claims or positions of the parties concerned."

In the consideration of the draft resolution, the representative of the United States affirmed that the question was a dispute within the meaning of Chapter VI. Accordingly, the representative of the United States expressed his willingness to support the draft resolution. The provisions in the draft resolution concerning the provisional measures of the Court were deleted on the proposal of the representatives of India and Yugoslavia on the grounds that in this respect the competence of the Council was in doubt. The representatives of Ecuador and China expressed the view that the question was not a dispute of a character likely to threaten the maintenance of international peace and security. The representative of Ecuador questioned whether the Council was empowered under Article 24, paragraph 1, or Article 25 of the Charter "to make recommendations in cases where there is no dispute between two States, or where the dispute or situation does not constitute a threat to the peace". The representative of Ecuador concluded that the Council was not competent in this case to make recommendations "of the kind mentioned in Chapter VI". Accordingly, he objected to the phrase "calls upon" in the United Kingdom draft resolution on the ground that such phraseology, derived from the Charter, conveyed the implication that the Council had competence in the matter. The representative of China observed that, if

<sup>48</sup> On the claim of domestic jurisdiction, see chapter XII, Case 19; and on the question of the competence of the Council under Article 94, see chapter VI, Case 29.

<sup>49</sup> S/2358, O.R. Suppl. for Oct., Nov., Dec. 1951, pp. 2-3.

<sup>50</sup> S/2358/Rev.1; O.R., Suppl. for Oct., Nov., Dec. 1951, pp. 3-4.

the Council were not competent, the draft resolution should be "framed to render what we might call 'the friendly services' of the Security Council". The representatives of Ecuador and China accordingly proposed that the Council should advise, and not call for, the resumption of negotiations in order to avoid the implication of the latter phrase that the Council had "a certain authority over this dispute".

At the 562nd meeting on 17 October 1951, when summarizing the draft resolutions before the Council with a view to indicating the appropriate procedure in circumstances in which the competence of the Council was questioned, the President (Brazil) drew attention to the statement which the President (Syria) had

made at the 172nd meeting on 1 August 1947, and added:

"Such an approach to the question of competence recognizes that the Council will not be able to determine whether it is competent or not to deal with the specific question on its agenda unless it has thoroughly investigated the matter and is actually called upon to decide on any particular course of action under the Charter. This derives from the fact that, before the question of competence is decided, the Security Council still has the power to call upon the parties to seek, of their own accord, a peaceful settlement of their dispute."

The United Kingdom draft resolution was not put to the vote.

**Chapter XI**

**CONSIDERATION OF THE PROVISIONS OF CHAPTER VII OF THE CHARTER**

**TABLE OF CONTENTS**

	<i>Page</i>
INTRODUCTORY NOTE .....	421
PART I. CONSIDERATION OF THE PROVISIONS OF ARTICLES 39-40 OF THE CHARTER	
Note .....	423
PART II. CONSIDERATION OF THE PROVISIONS OF ARTICLE 41 OF THE CHARTER	
Note .....	442
PART III. CONSIDERATION OF THE PROVISIONS OF ARTICLES 42-47 OF THE CHARTER	
Note .....	445
PART IV. CONSIDERATION OF THE PROVISIONS OF ARTICLES 48-51 OF THE CHARTER	
Note .....	447



## INTRODUCTORY NOTE

Chapter XI does not constitute a review of the action of the Security Council under Chapter VII of the Charter. In principle it presents the instances in the proceedings of the Council in which proposals placed before the Council have evoked discussion regarding the application of Chapter VII. Appropriate references are given to chapter VIII to facilitate the

consultation of the material in conjunction with the record of decisions contained in that chapter. Further observations on the method adopted in the compilation of this chapter will be found in the introductory note to chapter VIII, and the reservation in the introductory note to chapter X regarding the entry of decisions in that chapter applies also to chapter XI.

### **Chapter VII of the Charter. Action with respect to threats to the peace, breaches of the peace, and acts of aggression**

#### *Article 39*

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

#### *Article 40*

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

#### *Article 41*

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

#### *Article 42*

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

#### *Article 43*

1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.

2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.

3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.

#### *Article 44*

When the Security Council has decided to use force it shall, before calling upon a Member not represented on it to provide armed forces in fulfillment of the obligations assumed under Article 43, invite that Member, if the Member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that Member's armed forces.

*Article 45*

In order to enable the United Nations to take urgent military measures, Members shall hold immediately available national air-force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action shall be determined, within the limits laid down in the special agreement or agreements referred to in Article 43, by the Security Council with the assistance of the Military Staff Committee.

*Article 46*

Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee.

*Article 47*

1. There shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament.

2. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires the participation of that Member in its work.

3. The Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. Questions relating to the command of such forces shall be worked out subsequently.

4. The Military Staff Committee, with the authorization of the Security Council and after consultation with appropriate regional agencies, may establish regional subcommittees.

*Article 48*

1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.

2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.

*Article 49*

The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.

*Article 50*

If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.

*Article 51*

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

## Part I

## CONSIDERATION OF THE PROVISIONS OF ARTICLES 39-40 OF THE CHARTER

## NOTE

The inter-connexion of discussion on Articles 39 and 40 within the Security Council has rendered impracticable the separate presentation of material relating to these Articles.

The questions in connexion with which draft resolutions related to Articles 39 and 40 were submitted to the Council were: the Spanish question;<sup>1</sup> the Greek frontier incidents question;<sup>2</sup> the Indonesian question (II);<sup>3</sup> the Palestine question;<sup>4</sup> the identic notifications dated 29 September 1948;<sup>5</sup> and the complaint of aggression upon the Republic of Korea.<sup>6</sup>

Decisions explicitly under Chapter VII of the Charter have been exceptional.<sup>7</sup> In connexion with certain questions before the Council, the Council has found it necessary to address itself to the problem of bringing about the cessation of attendant hostilities through the instrumentality of its own resolutions or through the activity on the spot of its subsidiary organs. As a guide to the steps of this nature, reference should be made to the Analytical Table of Measures in chapter VIII, and for information regarding the operation of the subsidiary organs in question, reference should be made to the series: "Organization and Procedure of United Nations Commissions".<sup>8</sup> Conclusions regarding the relation of these steps to Chapter VI or to Chapter VII of the Charter require to be based on the evidence of the relevant proceedings as a whole. Such evidence will be found in the present chapter and in related material concerning Article 2 (7) in chapter XII, part I.<sup>9</sup>

No distinction of procedure would appear to have been introduced to differentiate proceedings under Chapter VI from proceedings under Chapter VII of the Charter.<sup>10</sup> Not the invocation of one or the other Chapter, but the Council's appraisal of the character of the question before it, in the light of its primary responsibility for the maintenance of peace, and the Council's evaluation of the facts adduced in each case, have been determinative of its procedure. The procedure followed has been general and appropriate to the consideration of questions both under Chapter VI and Chapter VII.<sup>11</sup>

The invocation of Article 39 has given rise to discussion whether the circumstances under consideration by the Council corresponded to those envisaged in that Article,<sup>12</sup> and whether, in consequence, the proposed action of the Council was excepted, by the proviso of Article 2 (7), from the principle of non-intervention in matters of domestic jurisdiction.<sup>13</sup> While discussion has mainly consisted of the appreciation, in terms of Article 39, of the actual situation before the Council, observations have on occasion been directed towards the general meaning to be attached to the terms of Article 39: notably, in the report of the Sub-Committee on the Spanish Question and in the ensuing discussion, regarding the distinction between imminent and potential "threat to the peace";<sup>14</sup> in connexion with the Greek frontier incidents question, regarding the designation in advance of certain actions as falling within the meaning of Article 39;<sup>15</sup> in connexion with the Palestine question, regarding the significance of the omission of the term "international" from the first part of the text of Article 39.<sup>16</sup>

On certain occasions the Council has, when confronted with a draft resolution under Articles 39 or 40, concluded its consideration by the adoption of a decision without reference to a specific Article of the Charter.<sup>17</sup> Subsequent discussion has in consequence arisen regarding the relation of the decision to the Charter; and divergent views have been expressed regarding the criteria to be applied in determining whether the decision was, or was not, a decision under Chapter VII.<sup>18</sup> Interest also attaches to the changes of terminology which were on certain occasions consequential

<sup>1</sup> Spanish question; Indonesian question (II) (see Cases 4 and 7); Palestine question.

<sup>2</sup> Spanish question; Indonesian question (II); Complaint of aggression upon the Republic of Korea. For relevant case histories, see chapter XII, part I.

<sup>3</sup> Case 1.

<sup>4</sup> Case 2. See also chapter XII, Case 23.

<sup>5</sup> Case 9. See also Case 11 and chapter XII, Case 23 (ii).

<sup>6</sup> Case 4. See also Case 9.

<sup>7</sup> Throughout the consideration of the Indonesian question (II) by the Council, the Netherlands, one of the parties, contended that the Council did not possess competence to intervene in the matter, much less to apply measures under Chapter VII of the Charter. The contention of the Netherlands was based primarily on two grounds: (a) the matter of the Indonesian question came within the domestic jurisdiction of the Netherlands; and (b) the Indonesian question and developments in connexion therewith did not present any danger to international peace or security, and did not result in breaches of the peace or acts of aggression in the sense of the Charter. Therefore, under Article 2 (7) of the Charter, the Council was precluded from intervening in the matter. In the discussions related to a number of proposals and decisions, some representatives referred to or invoked specific Articles in Chapter VII of the Charter as providing the authority for the proposals submitted or the decisions taken. The standpoint that some of the decisions were taken under the authority of certain Articles in Chapter VII of the Charter was contested by some other representatives. They held that inasmuch as the texts of the resolutions adopted did not mention under what particular authority the decisions were taken, such decisions could not be construed as having been taken under Chapter VII of the Charter. Only the Council acting as a body, they contended, could specify under what authority a decision was taken.

<sup>1</sup> Case 1.

<sup>2</sup> Cases 2 and 3.

<sup>3</sup> Cases 4-7.

<sup>4</sup> Cases 8-13.

<sup>5</sup> Case 14.

<sup>6</sup> Case 15.

<sup>7</sup> Palestine question: decision of 15 July 1948 (Determination under Article 39); decisions of 15 July and 16 November 1948 (Measures under Article 40). Cf. complaint of aggression upon the Republic of Korea: decision of 25 June 1950 (Determination of breach of the peace).

<sup>8</sup> United Nations Publications, 1949-1950.X.

<sup>9</sup> See Cases 9 and 10.

<sup>10</sup> Reference should, however, be made to chapter III, Cases 64 and 73, for discussion regarding Article 32 in relation to chapter VII.

<sup>11</sup> See especially Cases 9 and 10. See also Case 14.

upon the adoption of a resolution under Chapter VI rather than under Chapter VII.<sup>19</sup>

Discussion has also turned on the purposes for which the powers of Chapter VII may be exercised, and the distinction has been stressed between the use of those powers to remove a threat to the peace and their use in the enforcement of terms of settlement.<sup>20</sup>

With regard to the material relating to Article 40, attention may be drawn to the consideration of the character of provisional measures under that Article<sup>21</sup> and the significance to be attached to the provision that such measures shall not prejudice the rights, claims, or position of the parties.<sup>22</sup>

CASE I.<sup>23</sup> THE SPANISH QUESTION: In connexion with the recommendations of the Sub-Committee on the Spanish Question presented on 1 June 1946

<sup>19</sup> See Cases 9 and 10. See also Case 17. On certain occasions attention has been directed to questions of terminology not arising from the text of the Charter. For consideration of the distinction between "cessation of hostilities" and "cease-fire", see the following statements in connexion with the Indonesian question (II):

208th meeting: Poland, p. 2512.

213th meeting: Philippines, p. 2598; United States, p. 2604.

214th meeting: India, p. 2624.

215th meeting: France, p. 2666; Poland, p. 2656.

217th meeting: Syria, p. 2714; United States, p. 2709. For consideration of the distinction between a resolution ordering a cease-fire and one calling upon the parties to cease fire, see the following statements in connexion with the Palestine question:

296th meeting: United Kingdom, p. 4; United States, pp. 6-7.

297th meeting: Syria, p. 9.

374th meeting: France, p. 37; United Kingdom, p. 38; Acting Mediator, p. 31.

For consideration of the distinction between "cessation of hostilities" and "truce", see the following statements in connexion with the Palestine question:

275th meeting: United States, pp. 1-4.

277th meeting: Egypt, pp. 24-25; United States, p. 31.

282nd meeting: United States, p. 7.

283rd meeting: France, pp. 6-9.

317th meeting: United States, pp. 38-39.

433rd meeting: Acting Mediator, p. 6.

For consideration of the distinction between "truce" and "armistice", see the following statements in connexion with the Palestine question:

374th meeting: United Kingdom, p. 10; Acting Mediator, pp. 8-9.

380th meeting: France, p. 23; USSR, pp. 15-16; United States, p. 27; Acting Mediator, p. 9.

381st meeting: Canada, p. 25; Colombia, pp. 23-24; Lebanon, p. 28.

433rd meeting: Acting Mediator, p. 6.

<sup>20</sup> See chapter XII, Case 23.

<sup>21</sup> See Cases 3, 4, 6, 9, 14.

<sup>22</sup> See Case 5. In addition, the following statements in connexion with the Indonesian question (II) bearing on withdrawal of troops as a provisional measure may be cited:

172nd meeting: USSR, p. 1665.

173rd meeting: Netherlands, p. 1705; United States, p. 1704.

208th meeting: India, p. 2507.

209th meeting: Philippines, p. 2535; United States, p. 2527.

210th meeting: Australia, pp. 2554-2555; Brazil, p. 2548.

211th meeting: Poland, p. 2575.

393rd meeting: Colombia, p. 20.

397th meeting: Indonesia, p. 13.

403rd meeting: Norway, p. 11.

<sup>23</sup> For texts of relevant statements see:

35th meeting: United Kingdom, pp. 184-185.

44th meeting: Australia, p. 314; France, p. 322; Poland, p. 323.

46th meeting: Mexico, p. 363; France, p. 359.

47th meeting: Australia, pp. 375-376; Poland, pp. 370-371.

[Note: The Sub-Committee on the Spanish Question reported that the situation in Spain did not warrant a determination under Article 39, but that it was a situation the continuance of which was likely to endanger the maintenance of international peace and security. Discussion arose on the question whether a potential threat to the peace came within the scope of Article 39, and on the applicability of the terms of Articles 34 and 39 to the situation in Spain.]

#### CASE I (i)

At the 34th meeting on 17 April 1946 the representative of Poland submitted a draft resolution which provided, *inter alia*,<sup>24</sup>

"The Security Council

"Declares that the existence and activities of the Franco régime in Spain have led to international friction and endangered international peace and security;

"Calls upon, in accordance with the authority vested in it under Articles 39 and 41 of the Charter, all Members of the United Nations who maintain diplomatic relations with the Franco Government to sever such relations immediately;"

At the 35th meeting on 18 April 1946 the representative of the United Kingdom stated:

"The severance of diplomatic relations is one of the first enforcement measures prescribed in Chapter VII of the Charter, which is not invoked here, and can only be invoked if the Council determines 'the existence of any threat to the peace, breach of the peace, or act of aggression'.

"I cannot admit that the case so far made against the Spanish Government has established the existence of such a threat to the peace, breach of the peace, or act of aggression..."

After the introduction of the Polish draft resolution, discussion centred on the terms of reference of the Sub-Committee which, it was proposed by the representative of Australia, should make further inquiries.<sup>25</sup>

The Sub-Committee on the Spanish Question stated in its report of 1 June 1946 in part V on "Other measures [than under Chapter VII] available to the United Nations":<sup>26</sup>

"30...

"(a) Although the activities of the Franco régime do not at present constitute an existing threat to the peace within the meaning of Article 39 of the Charter and therefore the Security Council has no jurisdiction to direct or to authorize enforcement measures under Article 40 or 42, nevertheless such activities do constitute a situation which is a potential menace to international peace and security and which therefore is a situation 'likely to endanger the maintenance of international peace and security' within the meaning of Article 34 of the Charter."

<sup>24</sup> 34th meeting: p. 167. For the submission of the Spanish question, see chapter VIII, p. 306.

<sup>25</sup> For consideration of the terms of reference of the Sub-Committee, see chapter X, Case 8, and chapter XII, Case 2.

<sup>26</sup> S/75, O.R., 1st year, 1st series, Special Suppl., rev. ed., p. 10. For the structure of the report, see chapter VIII, pp. 306-307; for statements on Article 41, see Case 15; and on domestic jurisdiction, see chapter XII, Case 2.

With regard to the Sub-Committee's finding on Article 39 of the Charter, the meaning of the words "threat to the peace" gave rise to a difference of opinion both in the Sub-Committee and in the Council.

The report of the Sub-Committee contained the following statement in part IV on "Jurisdiction of the Security Council and its power to take action under Chapter VII of the Charter":<sup>27</sup>

"20. The juridical meaning of Article 39 is that the Security Council has to measure the situation as at the moment of the proposed action on its part, it being the clear intention of the Charter that the Security Council should only call for direct enforcement measures, which include the actual waging of war, provided it is affirmatively satisfied that a threat to the peace, or a breach of the peace, or an act of aggression has actually come into existence.

"21. A very sharp instrument has been entrusted to the Security Council by the United Nations under Chapter VII of the Charter, and the Security Council must be careful that this instrument is not blunted nor used in any way which would strain the intentions of the Charter or which would not be applicable in all similar cases.

"22. In the opinion of the Sub-Committee the Security Council cannot, on the present evidence, make the determination required by Article 39. No breach of the peace has yet occurred. No act of aggression has been proved. No threat to the peace has been established. Therefore, none of the series of enforcement measures set out in Articles 41 and 42 can at the present time be directed by the Security Council."

The representative of Poland, however, made a reservation to the report on the grounds that the report conveyed the view that an incipient menace would not fall within the scope of Article 39. He declared:<sup>28</sup>

"The Polish representative believes that paragraphs 20-23 of the Sub-Committee's report contain implicitly a legal doctrine concerning the powers and duties of the Security Council under Article 39 of the Charter. This doctrine is reflected in the conclusions reached in paragraphs 27 and 30 (a) of the report. While accepting the analysis of facts and the recommendations of the Sub-Committee he reserves his opinion as to the legal doctrine mentioned.

"The functions of the Security Council are preventive as well as repressive. The Security Council is free, within the purposes and principles of the Organization, to determine whether a situation is a threat to the peace in the sense of Article 39. The Charter does not demand that such a situation, in order to be recognized as a threat to the peace, be an immediate danger of a breach of peace or act of aggression within the next few days, weeks or even months. Potential, as well as imminent, dangers can be construed as a threat to the peace in the sense of Article 39... Unless threats to the peace are taken care of by the Security Council at an early stage while they still are potential and easy to remove, the United Nations may find themselves in face of situations beyond their power to control.

"The enumeration in Article 41 of the Charter of steps such as interruption of postal, telegraphic and radio communications and the severance of diplomatic relations indicates clearly that potential threats to the peace are also covered by Article 39. If only imminent threats to the peace were envisaged in Article 39, measures short of economic and military sanctions would be meaningless.

"For the reasons indicated, the Polish representative cannot agree with the statement that the activities of the Franco regime do not represent a threat to the peace within the meaning of Article 39 of the Charter and that the Security Council has no jurisdiction to direct, in this case, severance of diplomatic relations. While he supports the recommendations of the Sub-Committee he does so without prejudice to the rights of the Security Council."

In the discussion following the submission of the Sub-Committee's report, the President, speaking as the representative of France, expressed the view that the reservation by the representative of Poland was based on an erroneous construction of part IV of the report. He observed:

"His reservation [*the reservation of the representative of Poland on the report of the Sub-Committee*] places a special interpretation on the recommendation contained in the report; he takes the recommendation to imply that the Security Council has no direct jurisdiction to act in cases where the threats to peace are only potential. Article 39 of the Charter contains the word 'threat'; by itself, this word seems to me to imply necessarily a state of affairs which is no more than a virtual possibility. So long as there is no act of aggression and so long as there is only a threat, such a threat is perforce contingent, latent or, in other words, 'potential'. The French text of Article 34 of the Charter, however, contains the words '*si... cette situation semble devoir menacer le maintien de la paix*', and the English text speaks of a situation 'likely to endanger... peace'. Consequently, Article 34 of the Charter also refers to a threatening or dangerous situation.

"If the two Articles of the Charter referred to are compared, it seems to me that the report merely meant to say that we ought to rely on Article 39 or Article 34, according to whether the threat is more or less remote, or more or less imminent. The report relies on Article 34, because of its estimate of the facts and as a result of assessing the more or less imminent nature of the threat. But this does not mean that Article 39 is not applicable except when a threat is already on the point of being transformed into action. If a different interpretation were admitted, I could understand the Polish representative's reservation, for such an interpretation might result in a situation somewhat like the following one.

"If we cast our minds back, we shall see that the situation brought about by the Fascist or Hitlerite régimes could never have given rise to a decision based on Article 39 of the Charter until the very last moment. We know by experience that at the last moment it is too late to act.

"I do not think that that is really what the report means. It simply means that, according to whether the threat is more or less serious, we may rely either on Article 39 or on Article 34; and the report after judging the facts elected to rely on Article 34."

<sup>27</sup> S/75, O.R., 1st year, 1st series, Special Suppl., rev. ed., pp. 8-9.

<sup>28</sup> S/75, O.R., 1st year, 1st series, Special Supplement, rev. ed., pp. 11-12.



At the 46th meeting on 17 June, he stated:

"There is a threat which is not yet an actual threat, that is to say, which has not yet been translated into acts of aggression but is a potential threat."

Dissent from this aspect of the Sub-Committee's report was further expressed by the representatives of the USSR and Poland in the discussion. At the 45th meeting on 13 June the representative of the USSR stated:

"While bringing forward a considerable array of facts confirming that the Franco régime is a menace to peace, the Sub-Committee nevertheless has not dared to draw the right conclusion from all the material it has used. It is stated in the Sub-Committee's proposal that the situation in Spain does not at present constitute a threat to peace and that this situation does not come under the definition of Article 39 of the Charter.

"Such a conclusion is incorrect. It is due to a restrictive interpretation of Article 39. The Sub-Committee came to the conclusion that the situation in Spain constituted merely a potential threat to peace. In introducing the idea of a potential threat to peace, the Sub-Committee renounced the precise sense of Article 39. Such a conclusion may be the basis for an incorrect and dangerous doctrine, capable of diminishing the significance of the relevant Articles of the Charter, in so far as the action of the Security Council on the strength of these Articles is concerned. The outcome is that a real threat to peace would exist only if fascist Spain took practical action of a military nature. But this would not be merely a threat to peace; it would be an act of aggression."

At the 47th meeting on 18 June 1946, the representative of Poland declared:

"In signing the Sub-Committee's report, I have made a reservation as to the interpretation of Article 39 of the Charter, and I should like to repeat it here and to explain my reasons.

"The report of the Sub-Committee makes a distinction between a potential and an actual threat to peace, and then interprets Article 39 to mean that the term 'threat to the peace' used there refers only to an actual threat and not to a potential threat. I find it impossible to make sense of such a distinction. Any threat to the peace is potential by nature. It may mature tomorrow, after tomorrow, or in five years. It is a question of time. If the threat to the peace is no longer potential, then we have to do with actual aggression.

"Furthermore, if we should restrict our interpretation of Article 39 to mean that potential threats are not covered by it, which would mean that we should have to wait for open acts of aggression, then the whole organization of the United Nations, and particularly the Security Council as that branch of the United Nations which is entrusted with the maintenance of peace, would become ineffective. Under this narrow interpretation of Article 39, namely, that it does not cover a potential threat to the peace, the Security Council would be unable to act in such cases as that of Fascist Italy prior to the actual invasion of Ethiopia, or Nazi Germany prior to the actual dropping of bombs on Polish cities.

"It would seem, moreover, that the sanctions enumerated in Article 41 clearly indicate that when Article 39 speaks of a threat to peace, it refers not

only to an act of aggression which has already been committed, or to a threat which might materialize in a few weeks or months, but to any threat, however potential. Otherwise such sanctions as the interruption of postal, telegraphic, radio and other means of communication and the severance of diplomatic relations would have no meaning. If the threat to the peace is so immediate that it is about to materialize into actual warfare, the only sanctions which have any meaning are military sanctions. Article 41, however, clearly sets out weaker forms of sanctions, and I think we have to keep this in mind in our interpretation of Article 39..."

In answer to the remarks made by the representative of Poland, the representative of Australia stressed that the issue lay not on any difference of legal interpretation but on the differing appreciation of the facts of the situation. He said:

"I would say that the difference of opinion which was made evident this afternoon was not really a difference of legal interpretation at all. The representative of Poland has emphasized that a threat to the peace may occur long before an actual breach of the peace. We do not dissent from that. The Sub-Committee has never dissented from it, and in a statement made by the representative of France, Mr. Parodi, that was made abundantly clear. There may be facts which show that there is a threat to the peace and it may well be that the actual breach of the peace may not occur until some time later. It all depends upon the circumstances of the case, and it requires an examination and investigation of the facts.

"In this case the Sub-Committee appointed by the Council to look into the facts found on the evidence submitted to it that the situation did not come within the meaning of Article 39 and that there was no existing threat to the peace. It is not, therefore, a question of legal interpretation; it is a question of evidence, a question of proving things. Certain statements were made at the Security Council originally which have not been borne out by the evidence. It may well be that the evidence can be brought forward on some future occasion in order to disturb those findings and show that another finding should be made but we shall have to wait for such an occasion."

At the 48th meeting on 24 June 1946, the representative of Poland presented the draft resolution submitted by him at the 34th meeting, with the reference to Articles 39 and 41 of the Charter deleted.<sup>29</sup> The representative of Australia observed that the Polish draft resolution was an attempt to get the Council to act under Chapter VII of the Charter. The draft resolution was in direct contradiction to the report of the Sub-Committee, which had revealed that the necessary basis for the proposed action under Chapter VII did not exist. The question was not how far governments were prepared to go, but to what extent the facts within the meaning of Article 39 had been proved to exist. The representative of China also spoke to this effect. The representatives of France, Mexico and the USSR expressed support of the draft resolution. The draft resolution was put to the vote and rejected by 4 votes in favour and 7 against.<sup>30</sup>

<sup>29</sup> 48th meeting: p. 383.

<sup>30</sup> 48th meeting: p. 388.



CASE 2.<sup>81</sup> THE GREEK FRONTIER INCIDENTS QUESTION: In connexion with United Kingdom amendment to United States draft resolution for the establishment of a commission of investigation and good offices: amended paragraph voted upon and adopted on 29 July 1947; draft resolution as a whole rejected on 29 July 1947.

[Note: In pursuance of a draft resolution submitted on 27 June 1947 to implement a majority recommendation of the Commission of Investigation, discussion arose as to whether the Council might designate in advance certain types of action as a threat to the peace. An amended text designed to accentuate the requirement of a definitive finding on action committed was adopted, but the draft resolution as a whole failed of adoption.]

At the 147th meeting on 27 June 1947, the Security Council had before it the United States draft resolution<sup>82</sup> for the establishment of a commission of investigation and good offices in pursuance of the majority recommendations of the Commission of Investigation concerning Greek Frontier Incidents.<sup>83</sup> At the 162nd meeting on 22 July, the representative of the United Kingdom proposed as an amendment to the United States draft resolution the insertion of the following text derived from the recommendations of the Commission:<sup>84</sup>

"2. ... In view of the gravity of the present situation, if in the future one of the four States concerned is found to be supporting armed bands formed on its territory which cross into the territory of one of the other States, or if such State is found to be refusing, in spite of the demands of that other State, to take the necessary measures on its own territory to deprive such bands of any aid or protection, that shall be considered by the Security Council as a threat to the peace within the meaning of the Charter of the United Nations."

At the 164th meeting on 23 July, the representative of the United States accepted the wording of the United Kingdom amendment.<sup>85</sup>

At the 159th meeting on 17 July, the representative of Poland expressed his objection, "as a matter of principle", to the recommendation of the Commission in this respect. He stated:

"... The recommendation is really equivalent to proposing a definition of the concept of 'threat to the peace'... The San Francisco Conference deliberately decided not to accept any definition of a 'threat to the peace' which would bind the Security Council in the future... because it was thought unwise to bind the Security Council by general defini-

tions which might be applicable in one place but entirely out of place in another."

At the 164th meeting, the representative of the USSR also opposed the proposal on the grounds that it was "at variance with the Charter of the United Nations". He stated:

"The Security Council cannot describe, as a breach of the peace, an act which has not yet taken place. The Charter does not authorize the Security Council to do so..."

The representative of France considered that the proposal would be open to certain criticism:

"It is that, by the wording thus proposed, the Security Council is committing itself in advance; it is deciding beforehand that if such things occur, it will consider them to be a threat to the peace. When the Commission made this recommendation in the report it was, I feel, quite normal. It meant that, if such things did occur one day, the Commission would recommend the Security Council to consider them as a threat to the peace. If the Security Council itself now decides that, in the event of such things happening tomorrow or the day after, it will consider them to be a threat to the peace, I fear it would be committing itself and prejudging the decision it would have to take if those things actually did occur."

In supporting the proposal as worded in the United Kingdom amendment to the draft resolution, the representative of the United States stated:

"The proposal contained in that sentence is really a declaration; it is an exhortation and a warning. It has no operative or executory power. That would require a decision by the Security Council, and that is the meaning of the language used. The Security Council has got to find that those facts exist before that situation becomes an admitted threat to the peace."

The representative of China contended that the Council was "perfectly within its rights in issuing warnings in certain circumstances" He added:

"... That is what we are trying to do here. After all, the Security Council is a political body; and as such and by virtue of its responsibility to maintain peace in every part of the world, it has the right, in this particular case, to warn or to remind the four countries concerned that if one or more of them does certain things, it will be violating provisions of the Charter, and rather serious consequences may result. That is the purpose of this paragraph; it is not laying down the law or attempting to interpret the Charter in advance; it is simply a warning from the Council by virtue of its responsibilities."

Also at the 164th meeting, the representative of Australia formally submitted, and the representatives of the United States and the United Kingdom accepted, the following text:<sup>86</sup>

"Giving support to armed hands formed on any one of the four States concerned and crossing into the territory of another State, or refusal by any one of the four Governments in spite of the demands of the State concerned to take the necessary measures to deprive such bands of any aid or protection, shall be avoided by the Governments of Albania, Bulgaria,

<sup>81</sup> For texts of relevant statements see:

147th meeting: United States, pp. 1123-1124.

158th meeting: Colombia, pp. 1322-1323.

159th meeting: Poland, p. 1353.

160th meeting: USSR, pp. 1377-1378.

161st meeting: Bulgaria, pp. 1396-1397.

164th meeting: Australia, pp. 1469-1470; Bulgaria, p. 1461; China, pp. 1464-1465; Colombia, p. 1467; France, pp. 1454-1456; Poland, p. 1466; USSR, p. 1457; United States, p. 1458.

<sup>82</sup> S/391, 147th meeting: pp. 1124-1126. See chapter VIII, p. 311.

<sup>83</sup> S/360/Rev. I, O.R., 2nd year, Special Suppl. No. 2, p. 154.

<sup>84</sup> S/429, O.R., 2nd year, Suppl. No. 15, p. 145.

<sup>85</sup> 164th meeting: p. 1454.

<sup>86</sup> 164th meeting: pp. 1469, 1470.

Greece and Yugoslavia, as a threat to the peace within the meaning of the Charter of the United Nations."

The representative of Australia stated in support of this amendment:

"It is an expression of our point of view at the moment; that is, we are in a serious position at the moment, and we regard any one of those acts as constituting a threat to the peace. However, it does not bind the Council in any way in the future, because the Security Council, on any report before it, must make a definitive finding to that effect before any action or further action can be contemplated by the Security Council under Chapter VII of the Charter."

At the 170th meeting on 29 July 1947, the amended paragraph of the United States draft resolution was adopted by 9 votes in favour, 1 against, with 1 abstention. At the same meeting the United States draft resolution, as a whole, was not adopted. There were 9 votes in favour and 2 against (one vote against being that of a permanent member).<sup>37</sup>

CASE 3.<sup>38</sup> THE GREEK FRONTIER INCIDENTS QUESTION: In connexion with draft resolutions submitted by the representatives of Australia and the United States: voted upon and not adopted on 19 August 1947.

[Note: In the course of proceedings on the Greek frontier incidents question, Greece requested on 31 July 1947 that the Security Council consider the question under Articles 39 and 40. Draft resolutions based upon Articles 39 and 40 were submitted by the representatives of Australia and the United States. Both draft resolutions failed of adoption.]

By letter dated 26 June 1947,<sup>39</sup> the representative of Greece outlined briefly the situation in Greece as viewed by his Government and, while advocating the adoption by the Council of the recommendations of the Commission of Investigation, expressed the view that the Council should "prepare the way for decisive action in case these recommendations by themselves prove to be inadequate". The letter concluded:

"The state of affairs described by Greece in her original complaint as one 'likely to endanger the peace', under the circumstances now prevailing is a definite and existing threat to the peace, breach of the peace or act of aggression. If it becomes the view of the Council that to make the necessary determination there has to be a charge by one of the concerned that such a threat, breach of the peace or act of aggression exists, it is requested that this statement be accepted as such a charge."

By letter dated 31 July 1947,<sup>40</sup> the representative of Greece requested the Council to take up consideration of this communication.

At the 177th meeting on 6 August 1947, the Security Council had before it the report of the Commission of Investigation concerning Greek Frontier Incidents,<sup>41</sup> and the letter dated 31 July 1947 from the representative of Greece<sup>42</sup> transmitting a letter from the Minister of Foreign Affairs of Greece of the same date requesting

"... that the Council first determine the undeniable fact that there exists a threat to the peace, breach of the peace or act of aggression within the meaning of Article 39 of the Charter. This having been determined, Greece requests that the Council then take immediate provisional measures under Article 40 calling upon the parties to cease their attacks and to comply with their obligations under the Charter. . ."

The representative of Australia submitted a draft resolution<sup>43</sup> which, as amended at the 188th meeting at the suggestion of the representative of the United States, read as follows:<sup>44</sup>

"The Security Council,

"Having received and considered the report of the Commission of Investigation established by the resolution of the Council dated 19 December 1946,

"1. Determines that the situation on the northern borders of Greece constitutes a threat to the peace under Article 39 of the Charter of the United Nations;

"2. Calls upon the parties involved, namely Greece, Albania, Yugoslavia and Bulgaria, to cease all acts of provocation, and frontier violations along the borders of Greece on the one hand and Yugoslavia, Bulgaria, and Albania on the other;

"3. Directs, in accordance with Article 40 of the Charter of the United Nations, that Greece on the one hand, and Albania, Yugoslavia and Bulgaria on the other hand, should at once enter into direct negotiation in an endeavour to relieve the tension at present existing and with a view to the resumption of normal and peaceful diplomatic relations;

"4. Calls upon the Governments concerned to report before 6 September 1947 the steps taken to give effect to this resolution.

"To ensure that this decision is put into effect there shall be appointed observers with the duty of reporting directly to the Security Council. Pending the appointment of such observers by the Council and their arrival on the spot, the Subsidiary Group of the Commission of Investigation is directed to report to the Council regarding the compliance of the parties with this decision."

In support of the draft resolution, the representative of Australia stated at the 180th meeting on 12 August 1947:

"... Other representatives here, either directly or by implication, have stated that there is a threat to the peace, although not specifically mentioning Article 39 and so bringing it under Chapter VII."

Having recalled the statements by representatives that the situation was a threat to the peace, the representative of Australia continued:

"So let us face up to the fact that we have all admitted and stated that the situation constitutes a

<sup>37</sup> S/360/Rev.1, O.R., 2nd year, Special Suppl. No. 2, Vols. I and II.

<sup>38</sup> S/451, O.R., 2nd year, Suppl. No. 17, pp. 151-153.

<sup>39</sup> S/471, 177th meeting: p. 1808.

<sup>40</sup> S/471/Add.1, 188th meeting: pp. 2093-2094.

<sup>37</sup> 170th meeting: pp. 1604, 1612.

<sup>38</sup> For texts of relevant statements see:

177th meeting: Australia, pp. 1807-1809; Colombia, pp. 1809-1810; Greece, pp. 1817-1821; President (Syria), pp. 1821-1822; Yugoslavia, pp. 1822-1824.

180th meeting: Australia, pp. 1905-1906; Bulgaria, pp. 1912-1913; United States, pp. 1908-1910.

183rd meeting: USSR, pp. 1968, 1972-1973, 1976.

188th meeting: Australia, pp. 2076-2078; Albania, pp. 2081-2084; Poland, pp. 2085-2086; Bulgaria, pp. 2094-2096.

<sup>39</sup> S/389. See chapter VIII, p. 311.

<sup>40</sup> S/451, O.R., 2nd year, Suppl. No. 17, pp. 151-153.

threat to the peace. We accept that determination, and it automatically brings the situation under Chapter VII, which compels us squarely to face the situation.

"In accordance with the provisions of Article 39, we could immediately proceed to recommend. But we do not do that: we put the question on the basis of Article 40 by proposing certain provisional measures. What are those provisional measures? To enter into direct negotiation — direct negotiation is an obligation under the Charter — to relieve the tension at present existing, with a view to the resumption of normal and peaceful diplomatic relations. That is not a serious obligation. Nobody is blamed there. Nobody is condemned. We merely direct the parties to do certain things which they have all said they are prepared to do."

At the 177th meeting on 6 August, after the representative of Greece had made a statement calling upon the Security Council "to take as quickly as possible practical and effective action against the Balkan aggressors", the President (Syria) stated:

"...I should explain that the Security Council has not yet decided to deal with this matter under Chapter VII. We are dealing with it under Chapter VI."

At the 180th meeting on 12 August, the representative of the United States, while submitting minor amendments to its text, expressed his support of the Australian draft resolution. The representative of the United States also submitted a draft resolution which, he indicated, would be withdrawn in case the Australian draft resolution was adopted by the Council. The United States draft resolution read as follows:<sup>45</sup>

*"The Security Council,*

*"Having considered the report of the Commission of Investigation established by resolution of the Council of 19 December 1946, and having considered the information supplied by the Subsidiary Group of the Commission of Investigation and the oral and written statements made to the Council by Albania, Bulgaria, Greece and Yugoslavia,*

*"Finds that Albania, Bulgaria and Yugoslavia have given assistance and support to the guerrillas fighting against the Greek Government and have continued to do so subsequent to the period covered by the report of the Commission of Investigation;*

*"Determines that such assistance and support to the guerrillas by Albania, Bulgaria and Yugoslavia constitute a threat to the peace within the meaning of Chapter VII of the Charter;*

*"Calls upon Albania, Bulgaria and Yugoslavia to cease and desist from rendering any further assistance or support in any form to the guerrillas fighting against the Greek Government;*

*"Directs the Subsidiary Group to report to the Security Council on the compliance of Albania, Bulgaria and Yugoslavia with this order;*

*"Calls upon Albania, Bulgaria and Yugoslavia to co-operate with Greece in the settlement of their disputes by peaceful means and to keep the Security Council informed of the progress of the settlement.*

*"The Security Council remains seized of the question and will take such further action in con-*

*nexion with the enforcement of its order and the settlement of the dispute as may from time to time be necessary."*

At the 183rd meeting on 14 August, the representative of the USSR, in opposing the Australian draft resolution, referred to its provision for the "resumption of normal and peaceful diplomatic relations", which, he stated, "would seem to be a proposal that could be welcomed". He added:

"...In the Australian resolution, however, this provision is made conditional on the adoption of another unacceptable provision, according to which the resumption of diplomatic relations is to be effected in accordance with Article 40 of the Charter of the United Nations, i.e., an Article which can apply only if the Security Council has already decided that the dispute or situation constitutes a threat to international peace."

The representative of the USSR further stated that the Australian draft resolution was "practically identical" with the United States draft resolution, to which he also objected.

At the 188th meeting on 19 August 1947, the Australian draft resolution was not adopted. There were 9 votes in favour and 2 against (one vote against being that of a permanent member).<sup>46</sup> At the same meeting, the United States draft resolution was not adopted. There were 9 votes in favour and 2 against (one vote against being that of a permanent member).<sup>47</sup>

CASE 4.<sup>48</sup> THE INDONESIAN QUESTION (II): In connexion with decision of 1 August 1947 calling upon the parties to cease hostilities and to settle their disputes by peaceful means.<sup>49</sup>

[Note: The question was brought before the Council under Article 39 as a breach of the peace, and a draft resolution was submitted which provided for a determination to this effect and called for compliance with specified provisional measures under Article 40. In consequence of doubts expressed regarding the applicability of Article 39, reference to specific Articles of the Charter was omitted from the resolution as adopted. Views were expressed at later meetings on whether the resolution had or had not been adopted under Article 39 or under Article 40.]

<sup>45</sup> 188th meeting: p. 2324.

<sup>46</sup> 188th meeting: pp. 2098-2109.

<sup>47</sup> For texts of relevant statements see:

171st meeting: Australia, pp. 1622-1627; China, p. 1633; India, p. 1620; Netherlands, p. 1645.

172nd meeting: Belgium, pp. 1653-1654; USSR, pp. 1659-1665; United Kingdom, pp. 1655-1656; United States, pp. 1657-1659.

173rd meeting: Australia, p. 1708; Brazil, pp. 1682-1683; France, pp. 1676-1678; India, pp. 1683-1684; USSR, pp. 1689-1692; United Kingdom, pp. 1674-1675.

184th meeting: Colombia, p. 1988.

185th meeting: Poland, p. 2015.

192nd meeting: Netherlands, p. 2144.

193rd meeting: United States, pp. 2175-2176.

195th meeting: Australia, pp. 2215-2217.

209th meeting: Poland, p. 2222; United States, p. 2526.

210th meeting: Australia, p. 2553.

215th meeting: Australia, p. 2665.

306th meeting: Australia, p. 1.

308th meeting: Belgium, p. 11; United States, p. 3.

<sup>48</sup> For consideration of the claim of domestic jurisdiction, see chapter XII, Case 7.

<sup>49</sup> S/486, 180th meeting: pp. 1910-1911 (footnote).

By letter dated 30 July 1947, the representative of Australia drew the attention of the Council "to the hostilities in progress in Java and Sumatra between the armed forces of the Netherlands and the Republic of Indonesia", and stated that his Government considered that "these hostilities constitute a breach of the peace under Article 39".<sup>50</sup>

At the 171st meeting on 31 July 1947, the representative of Australia submitted the following draft resolution:<sup>51</sup>

*The Security Council,*

*Noting with concern the hostilities in progress between the armed forces of the Netherlands and of the Republic of Indonesia, and*

*Having determined that such hostilities constitute a breach of the peace under Article 39 of the Charter of the United Nations,*

*Calls upon the Governments of the Netherlands and of the Republic of Indonesia, under Article 40 of the Charter of the United Nations, to comply with the following measures, such measures to be without prejudice to the rights, claims or position of either party:*

*(a) To cease hostilities forthwith, and*

*(b) To settle their disputes by arbitration in accordance with article XVII of the Linggadjati Agreement, signed at Batavia on 25 March 1947."*

In submitting his proposal, the representative of Australia stated:

"It is with a deep sense of responsibility that the Australian Government has drawn the attention of the Council under Article 39 of the Charter of the United Nations to the situation in Indonesia. We had certainly hoped that circumstances would never arise which would make it necessary for Chapter VII to be invoked, and we have done so only after making strenuous attempts, in consultation with other Governments, particularly the United Kingdom, the United States and India, to bring about a solution by negotiation and mediation.

"However, although the parties to any dispute are bound to seek a solution by mediation and negotiation under Article 33, all attempts to bring the parties together have failed, and it is felt that further delay is not justified because of the loss of life being sustained...

"This is the first time a case has been brought before the Council under Chapter VII. Under Article 39, we are alleging a breach of the peace, but we assume that this means a breach of international peace and applies to cases where hostilities are occurring, but where it is not alleged that one particular party is the aggressor or has committed an act of aggression."

The representative of Australia continued that, since it was well established that hostilities were in progress, there was no occasion for the Council to undertake an investigation of the facts under Article 34. Further he emphasized that the hostilities represented not merely "police action" but were "in fact warfare; that is, in international law, armed conflict between two States".

The representative of China pointed out that the Australian draft resolution expressly excluded "prejudging the rights, claims or position of either party", and that it called on the Council to perform its primary duty, which was to stop the fighting and to solve the dispute by peaceful means.

The representative of the Netherlands\* denied that Chapter VII was applicable to the situation. He stated:

"Assuming purely and simply for argument's sake that the Charter is applicable -- which I deny -- to what is now taking place in Java and Sumatra, where then, I ask, is there any danger to international peace or security, let alone breaches of the peace or acts of aggression in the sense of the Charter? In what countries outside the Netherlands' territory are there any signs of danger to peace caused by this action?"

At the 172nd meeting on 1 August, the representative of Belgium expressed the view that the Council would not, under the Charter, be justified in applying Article 40 without first having determined the existence of a threat to the peace, a breach of the peace or an act of aggression, in accordance with the actual terms of Article 39. The representative of the United Kingdom stated that it was not Article 39 but rather Articles 34 and 35 which would be applicable to the case, "not as a dispute between the Netherlands and the Indonesian Republic, but because the fighting in progress may well create a situation leading to international friction". The representative of the United States at the 172nd meeting submitted an amendment to the Australian draft resolution which contained no reference to any Article of the Charter,<sup>52</sup> and which the representative of Australia accepted. Referring to the Australian draft resolution, the representative of the United States stated:

"The invocation of Articles 40 and 39, however, raises very complex and serious questions of law. The question of sovereignty, and the question of the competence of the Council to deal with the case, have been brought up by the representative of the Netherlands and, in our opinion, also merit the respectful attention of the Council. These are very important questions. The fact that there is shooting and that men are being killed in that region of the world is also very important. Thus it is a legitimate concern of the Council, no matter what concept of sovereignty is involved or what may ultimately be decided to be the fact."

The representative of the USSR characterized the actions of the Netherlands "as a breach of the peace", and stated that the Council was obliged, by its primary responsibility for the maintenance of international peace, to take decisions which would restore peace and "put an end to aggression". He submitted a proposal, by way of an addition to the United States amended version of the Australian draft resolution, to consider it necessary that the troops of both sides should be immediately withdrawn to the positions they occupied before the beginning of military operations. This proposal was rejected at the 173rd meeting on 1 August 1947.<sup>53</sup>

At the same meeting, the Council adopted the United States amended version of the Australian draft resolution together with a Polish amendment.<sup>54</sup>

<sup>50</sup> S/449, O.R., 2nd year, Suppl. No. 16, annex 40, pp. 149-150.

<sup>51</sup> S/454, 171st meeting: p. 1626.

<sup>52</sup> 172nd meeting: p. 1658.

<sup>53</sup> 173rd meeting: p. 1710.

<sup>54</sup> For text of the decision, see chapter VIII, p. 316.



At subsequent meetings when the Indonesian question was discussed, several members made statements in regard to their understanding of the Articles of the Charter under which the decision of 1 August 1947 had been taken.

At the 184th meeting on 14 August, the representative of Colombia stated his understanding that the Council had taken action under Article 39.

At the 185th meeting on 15 August, the representative of Poland stated:

"By admitting the case under Article 39 of the Charter, the Security Council accepted the situation as a breach of international peace, and recognized the competence of the Security Council to deal with it. Although the resolution (of 1 August 1947) did not expressly mention Article 39, it is quite clear that under this Article, and only under this Article, can the case be dealt with here, and measures provided by the Charter be applied."

At the 193rd meeting on 22 August, the representative of the United States, adverting to the resolution of 1 August, stated:

"My Government believes that the Security Council acted properly and in entire conformity with the Charter in calling upon the parties to cease hostilities. We consider that so far as the Charter is concerned, paragraph (a) of the Council's resolution of 1 August 1947 is a provisional measure under Article 40. In our view that decision was properly taken and did not prejudice the contentions of the parties with regard to whether or not the Indonesian Republic was an independent State under international law."

At the 195th meeting on 26 August, the representative of Australia stated:

"Although the resolution of 1 August omitted reference to Articles 39 and 40 of the Charter, it is very clear that the Indonesian question was brought before the Council under Chapter VII of the Charter, and it is very clear that action was taken under Article 40 in that certain provisional measures were taken or decisions made.

"In his speech the other day, the United States representative accepted that premise. He even went on to say that if the parties did not carry out the decision of 1 August 1947, the Council would have to decide what further action was necessary; and further action could take the form only of enforcement measures...

"Therefore it is very clear that it is well within the competence of this Council to take further action at this very moment under Chapter VII, and it follows automatically that this matter is outside the sphere of domestic jurisdiction covered by Article 2, paragraph 7."

Following the outbreak of hostilities in Indonesia for a second time, the representative of the United States, at the 398th meeting on 11 January 1948, remarked:

"In our view, the Netherlands military action is in conflict with the Renville Truce Agreement and with the Security Council resolutions of 1 August and 1 November 1947. As the delegation of the United States has frequently made clear, it is our opinion that these two Security Council resolutions were adopted under the provisions of Article 40, Chapter VII of the Charter, and that, therefore, in

accordance with Article 25 of the Charter, the Netherlands Government was and is under obligation to comply with their provisions."

The representative of Belgium contested the viewpoint of the representative of the United States, and made the following statement:

"The resolutions of 1 August and 1 November 1947 do not make the slightest mention of Article 40 of the United Nations Charter. There is no doubt whatever that if the members of the Security Council had intended to take such a serious step as to apply Chapter VII, they would have felt it necessary to say so and to justify such a step.

"When the resolutions of 1 August and 1 November were adopted, there were some extremely spirited debates on the question of the competence of the Security Council; it was even agreed that that question remained entirely unprejudiced.

"The Security Council could not possibly be bound by the interpretation given by the United States delegation; such an interpretation must be considered as the opinion of its author, and his alone."

CASE 5.<sup>50</sup> THE INDONESIAN QUESTION (II): In connexion with draft resolutions for the withdrawal of forces submitted by the representatives of Australia and the USSR: voted upon and rejected on 31 October 1947.

[Note: On 1 August 1947, the Security Council had called for the immediate cessation of hostilities, but military conflicts continued. At the commencement of October, the question arose whether to require the withdrawal of the military forces to their initial positions could, in view of the possibly prejudicial character of such a step, be rightly regarded as a provisional measure under Article 40 or whether such a step was incumbent on the Council to bring about compliance with the earlier resolution.]

At the 207th meeting on 3 October 1947, the representative of the USSR submitted a draft resolution to consider it necessary that "the troops of both sides, the Netherlands and the Indonesian Republic, should be immediately withdrawn to the positions which they occupied before the beginning of military operations".<sup>50</sup>

The representative of the United States, at the 209th meeting on 9 October, stated:

"The United States delegation assumes that this proposal is also made under Article 40 of the Charter; that is, that it is made in consideration of the fact that the Security Council should take into account failure to comply with the provisional measures, namely, the orders to cease hostilities. Therefore, we have to examine our position in this matter as a judicial body—quasi-judicial at least. We must first see what authority we have to pass a draft resolution such as the one before us.

"Article 40 contains the following provision: 'Such provisional measures shall be without prejudice to

<sup>50</sup> For texts of relevant statements see:

207th meeting: USSR, pp. 2488-2492.

208th meeting: Poland, pp. 2509-2514.

209th meeting: USSR, pp. 2537-2543; United States, p. 2527.

210th meeting: Australia, pp. 2552-2555; Poland, pp. 2549-2552.

<sup>51</sup> 207th meeting: p. 2491. See Chapter VIII, p. 318.

the rights, claims or position of the parties concerned.' At once the question arises as to whether the Security Council has any adequate evidence that the conclusion implicit in this draft resolution and the action for which it provides would, if carried out, affect the rights, claims or position of the parties concerned. Unless such evidence is established, I believe the Security Council should not, in law or in reason, pass this draft resolution. The position that the United States delegation takes in the matter is that we do not have such evidence. We do not have any foundation for concluding that it is necessary for these troops, on both sides, to be withdrawn; and we do not have any evidence that would justify a conclusion by us that the withdrawal of troops would not prejudice the rights, claims or position of the parties concerned."

The representative of the USSR, at the same meeting, replied:

"... the United States representative's argument is without foundation, if only because we are dealing precisely with the question of how to implement a provisional measure taken by the Security Council, that is to say, how to implement the decision on the cessation of hostilities.

"We know that the decision is not being implemented and that the Security Council is therefore faced with the problem of taking further measures designed to remedy this situation. Thus the decision which the Security Council must take should no longer be simply a provisional measure. It should be a decision which would ensure the implementation of the former decision on the cessation of hostilities; that former decision which could in fact be considered as a provisional measure. The United States representative's reference to Article 40 is therefore irrelevant, since it proves nothing, or, if anything, it proves precisely the contrary of what was intended, namely, that the Security Council should take measures to ensure that one side was not placed in an unfavourable position in relation to the other in the settlement of the questions arising from the situation which has occurred in Indonesia."

At the 210th meeting on 11 October 1947, the representative of Poland stated that he did not see "how the resolution for a withdrawal of forces to the positions occupied before the commencement of hostilities can possibly be opposed on the basis of an interpretation of Article 40". We maintained that it was "in the spirit of Article 40 that all measures be provided for a peaceful settlement which would be effective without prejudging the rights of any of the parties", and that no one could dispute the fact that the occupation of a large part of the territory of the Republic of Indonesia was prejudging the rights of the Republic to a great extent.

The representative of Australia expressed his delegation's sympathy with the USSR draft resolution because of its conformity with that part of the Charter which stated that provisional measures "shall be without prejudice to the rights, claims or positions of the parties concerned", but submitted a draft resolution of his own, since in his view the USSR draft resolution was impracticable.

Both the USSR and Australian draft resolutions were rejected at the 217th meeting on 31 October 1947.

CASE 6.<sup>57</sup> THE INDONESIAN QUESTION (II): In connexion with the draft resolution submitted by the representative of Poland relating to failure to comply with provisional measures: voted upon and rejected on 1 November 1947.

[*Note:* The report of the Consular Commission dated 14 October 1947 provided evidence that the cease-fire resolution of 1 August 1947 had not been fully effective.<sup>58</sup> A draft resolution was submitted which invoked the final provision of Article 40 and foreshadowed the application of enforcement measures. The Council rejected this draft resolution on 1 November 1947. On the same day, the Council conferred upon the Committee of Good Offices the task of assisting the parties in reaching agreement on an arrangement to ensure the observance of the cease-fire resolution. Observations were made on this occasion and at a later meeting regarding the character of certain provisions of the resolution of 1 November 1947 as provisional measures.]

At the 215th meeting on 29 October 1947, the representative of Poland stated that the Council possessed "full proof of action contrary to its recommendations on the part of the Netherlands Government", and, therefore, was justified in proceeding to stronger measures. He continued:

"The Committee of Good Offices must take due note of this defiance, in accordance with the last part of Article 40 of the Charter, and due warning must be given to the Government of the Netherlands that it is making a situation which necessitates, under the terms of the Charter, the application of enforcement measures provided by Articles 41 and 42 of the Charter."

The representative of Poland then submitted a draft resolution, the operative part of which read as follows:<sup>59</sup>

"The Security Council

"Finds that the forces of the Government of the Netherlands have failed to comply with the resolutions of the Security Council of 1 August and 26 August 1947;

"Calls upon the Government of the Netherlands to withdraw all armed forces and civil administration from the territory of the Republic of Indonesia, instructs the Consular Commission in Batavia to supervise the compliance by the Government of the Netherlands and the Government of the Republic of Indonesia with the resolutions of the Council of 1 August and 26 August 1947, and with the present resolution, and report thereupon to the Security Council;

"Requests the Committee of Good Offices of the Security Council in the dispute to take into consideration, under Article 40 of the Charter, the fact that the Government of the Netherlands did not comply with the resolutions of the Security Council of 1 August and 26 August 1947;

"Calls the attention of the Government of the Netherlands to the fact that the failure to comply

<sup>57</sup> For texts of relevant statements see:

215th meeting: Poland, pp. 2653, 2661.

217th meeting: United States, pp. 2706-2710.

398th meeting: Belgium, pp. 10-11; United States, pp. 2-10.

<sup>58</sup> See chapter VIII, p. 318.

<sup>59</sup> S/589, 215th meeting: pp. 2661-2662.



with the provisional measures shall, under Article 40 of the Charter, be taken into account by the Security Council and that it creates a situation which, under the requirements of the Charter, may lead to the necessity of applying enforcement measures."

At its 219th meeting on 1 November 1947, the Council rejected the Polish draft resolution.

At the same meeting, the Council adopted the resolution whereby it called upon the parties concerned to consult with each other as to the means to be employed in order to give effect to the cease-fire resolution and, pending agreement to cease any activities contravening that resolution; and advised the parties concerned and the Committee of Good Offices that the resolution of 1 August should be interpreted as meaning that the use of armed forces to extend control over territory not occupied on 4 August 1947 was inconsistent with the resolution of 1 August 1947.<sup>60</sup>

Referring to this resolution, the representative of the United States stated that it represented only a provisional measure, and that it did not amount to a final measure or a finding of facts or a finding of guilt. The resolution was being offered to clarify the situation and expedite the carrying out of the original provisional measure. It was designed "to supply the defect which was said to be the cause of the failure of the original provisional measure".<sup>61</sup>

At the 398th meeting on 11 January 1949, the representative of the United States, commenting on the second outbreak of hostilities in Indonesia, stated that the Netherlands military action was in conflict with the resolution of 1 November 1947, which, in the opinion of the United States, was adopted under the provisions of Article 40, Chapter VII of the Charter.<sup>62</sup> At the same meeting, the representative of Belgium\* contested the United States interpretation; he stated that the resolution did not "make the slightest mention of Article 40 of the United Nations Charter", and said that the Council "could not possibly be bound by the interpretation given by the United States delegation; such an interpretation must be considered as the opinion of its author and his alone".<sup>63</sup>

**CASE 7.<sup>64</sup> THE INDONESIAN QUESTION (II):** In connexion with decision of 24 December 1948 calling upon the parties to cease hostilities and to release political prisoners.<sup>65</sup>

[*Note:* Following the second outbreak of hostilities in Indonesia, the Council had before it on 22-23 December 1948 a draft resolution,<sup>66</sup> with amendments, certain provisions of which were rejected, and certain provisions adopted as in the decision of 24 December 1948. Observations were made on whether the situation in Indonesia corresponded to the circumstances provided for in Article 39 of the Charter. Among the parts

<sup>60</sup> For text of the resolution, see chapter VIII, p. 318.

<sup>61</sup> 217th meeting: p. 2707.

<sup>62</sup> 398th meeting: p. 3.

<sup>63</sup> 398th meeting: p. 11. See also Chapter XII, Case 10.

<sup>64</sup> For texts of relevant statements see:

388th meeting: Netherlands, pp. 2-31.

389th meeting: Indonesia, pp. 31-42; United States, pp. 42-49.

390th meeting: Australia, pp. 5-14; China, pp. 1-5.

391st meeting: USSR, pp. 29-41.

392nd meeting: Canada, p. 12; France, pp. 7-12; United Kingdom, pp. 3-7.

<sup>65</sup> For the claim of domestic jurisdiction, see chapter XII, Case 11.

<sup>66</sup> See chapter VIII, p. 321.

of the three-Power joint draft resolution and the Australian amendment rejected by the Council were the following: The Security Council (a) "considers such resumption of hostilities to be in conflict with the resolution adopted by the Security Council at its 171st meeting of 1 August 1947"; (b) "calls upon the parties immediately to withdraw their armed forces to their respective sides of the demilitarized zones established under the truce agreement of 17 January 1948"; and (c) "instructs the Committee of Good Offices to report assessing the responsibility for the outbreak of hostilities".]

In the discussion preceding the adoption of the resolution of 24 December 1948, the representative of the Netherlands\*, questioning the competence of the Council to intervene, stated at the 388th meeting on 22 December 1948:

"Under the Charter the Security Council can take action only when international peace and security are endangered. It is evident that the events in Indonesia, however regrettable they may seem, do not constitute a danger to the maintenance of international peace and security in the sense of Articles 33 and 34, let alone a threat to the peace or breach of the peace or act of aggression in the sense of Article 39 of the Charter. What happened in Indonesia was not a breach of international peace, but rather a breach of internal peace. Breaches of internal peace, whether they are labeled strikes, mutiny, revolution, rebellion or whatever other name may be applied to a given situation, are and remain the exclusive responsibility of the Members of the United Nations on the territory of which those unfortunate occurrences take place.

"Since there exists no threat to the peace, breach of the peace or act of aggression, as required for the application of Chapter VII, paragraph 7 of Article 2 applies in full force without the limitation contained in its final clause."

The representative of Indonesia\* at the 389th meeting held, on the other hand, that war had broken out in Indonesia, and that there was no longer a threat to the peace; a breach of the peace had occurred.

The representative of the United States recalled that, in the view of his Government, the cease-hostilities resolution of 1 August 1947 was taken as a provisional measure under Article 40, and stated: "My Government considers that the Security Council today is faced with at least as grave a situation as that of August 1947, and we believe the Council must act accordingly." He further stated:

"The simple, massive fact is that the Council's own order of 1 August 1947 has been contravened. This is a matter with which the Security Council must deal immediately and without awaiting any further reports from the Committee. As I said earlier, this is not a situation in which there can be any uncertainty as to whether there has in fact been any outbreak of hostilities. It seems to me that the Council is obligated under the Charter at this stage of its deliberations immediately to order a cessation of hostilities in Indonesia and to require the armed forces of both parties immediately to withdraw to their own sides of the demilitarized zones which are delineated in detail in the truce agreement of 17 January 1948. I must reiterate my Government's view that the Council's cease-fire resolution of 1

August 1947 continues to be binding on both parties and that it has been violated by the recent armed action taken by the Netherlands authorities in Indonesia."

At the 391st meeting, the representative of the USSR characterized the acts of the Netherlands as "a calculated and planned act of aggression carried out in violation of the decisions and principles of the United Nations", and concluded that they constituted "a breach of international peace and security". He demanded that the Council "condemn the aggression committed in Indonesia by the Government of the Netherlands". Furthermore, his delegation considered that the hostilities should end immediately and that the Council should demand the withdrawal of the Netherlands forces to the positions occupied before the resumption of hostilities as a preliminary step towards the settlement of the dispute.

The representative of the United Kingdom at the 392nd meeting considered that "the Indonesian situation is surely one which, in the terms of the Charter, may lead to international friction, and that it has for some time past shown signs of so doing". He said that he would support the three-Power draft resolution, and added that his Government

"does not commit itself to any view of the legal issues which have been argued on both sides as regards the Council's competence or the particular clauses of the Charter which authorize this or that action... The question of Indonesia is not the only one with which this Council has had to deal in which the legal issues have been doubtful and in which more than one view has been admissible as to what the proper role of the United Nations should be, but we hope that both parties to the present unhappy dispute will understand our attitude in the spirit in which I have defined it. We believe that if the Council adopts the resolution before us it will avoid the reproach either -- as the representative of China has suggested -- of washing its hands of a situation which cries out for remedy, or of exceeding its powers in matters which are solemnly protected by the domestic jurisdiction clause of the Charter."

**CASE 8. THE PALESTINE QUESTION:** In connexion with the consideration by the Council of the special report of the Palestine Commission of 16 February 1948 on the problem of security in Palestine.

[*Note:* At the 253rd meeting on 24 February 1948, the Security Council had before it the special report of the Palestine Commission wherein the Commission indicated that it would be unable to implement the plan of partition recommended by the General Assembly without the assistance of an effective international force. In the ensuing discussion the view was expressed that attempts to alter by force the settlement envisaged by the General Assembly resolution might be deemed to constitute a threat to the peace; but that armed forces might not be used to enforce a political settlement. The question was also raised whether the situation as regards public order within Palestine could be regarded as relating to the maintenance of international peace.]<sup>67</sup>

<sup>67</sup> Owing to the inter-relation of the discussion with the general problem of the responsibility of the Council for the maintenance of international peace and security, the material is included in relation to Article 24 in chapter XII, Case 23.

**CASE 9.<sup>68</sup> THE PALESTINE QUESTION:** In connexion with decision of 22 May 1948 calling upon the parties to issue a cease-fire order.

[*Note:* By the decision of 1 April 1948, the Security Council had sought to arrange a truce by negotiation between the Jewish Agency for Palestine and the Arab Higher Committee; by the decision of 17 April 1948, it had called upon these organizations to take certain specified measures with a view to the establishment of peace and order; by the decision of 23 April 1948, it had established the Truce Commission for Palestine.

At the 293rd meeting on 17 May 1948, the Security Council had before it a draft resolution to determine the situation in Palestine a breach of the peace and to order the cessation of military action. Discussion arose whether the determination required by Article 39 related to international peace rather than to peace not so qualified; and whether the situation in Palestine could rightly be denoted a threat to international peace. Observations were also made on the inexpediency of engaging in the circumstances on the application of Chapter VII of the Charter rather than relying on continued mediatory effort in accordance with Chapter VI. The determination under Article 39 was rejected by the Council; whereafter the wording of the draft resolution relating to the cessation of military action was modified, notably by the substitution of the phrase "calls upon" for the term "orders". In this modified form the draft resolution was approved by the Council.]

At the 292nd and 293rd meetings on 15 and 17 May 1948, the Security Council had before it the communications regarding developments in Palestine subsequent to the expiration of the Mandate.<sup>69</sup> At the 292nd meeting, the representative of the Jewish Agency for Palestine\* urged the Council to determine the existence in Palestine of a threat to international peace, a breach of the peace, and acts of aggression, and to call upon the Arab States to desist from aggression on penalty of action under Chapter VII of the Charter. The representative of the Arab Higher Committee\* questioned the right of the Jewish Agency to term as aggression the entry of Arab forces which had been invited by the Arab Higher Committee to assist them in maintaining law and order. With the termination of the Mandate, Palestine had become an independent nation and the Jews constituted a rebellious minority.

At the 293rd meeting, the representative of the United States stated that the Council had adequate information to find that the situation with respect to Palestine constituted a threat to the peace and a breach

<sup>68</sup> For texts of relevant statements see:

292nd meeting: Arab Higher Committee, pp. 7-9; Jewish Agency for Palestine, pp. 4-7.

293rd meeting: Colombia, p. 9; USSR, p. 8; United States, p. 2.

294th meeting: Syria, p. 9; Ukrainian SSR, pp. 2-3, 13-14.

295th meeting: Colombia, pp. 24-26; USSR, pp. 39-41.

296th meeting: Belgium, pp. 11-12; China, p. 22; United Kingdom, pp. 2-5; United States, pp. 7, 9.

297th meeting: Syria, pp. 8-9; Ukrainian SSR, pp. 5, 8.

298th meeting: Argentina, pp. 31-32; Canada, pp. 14-15; Colombia, p. 30; France, pp. 17-19; Syria, pp. 20-22.

299th meeting: USSR, p. 7.

302nd meeting: Syria, p. 48; United States, pp. 43-44.

306th meeting: United States, pp. 14-15.

<sup>69</sup> See chapter VIII, p. 328.

of the peace within the meaning of Article 39. Accordingly, he submitted the following draft resolution:<sup>70</sup>

*"The Security Council,*

*"Taking into consideration that previous resolutions of the Security Council in respect to Palestine have not been complied with and that military operations are taking place in Palestine,*

*"Determines that the situation in Palestine constitutes a threat to the peace and a breach of the peace within the meaning of Article 39 of the Charter;*

*"Orders all Governments and authorities to cease and desist from any hostile military action and to that end to issue a cease-fire and stand-fast order to their military and para-military forces to become effective within thirty-six hours after the adoption of this resolution;*

*"Directs the Truce Commission established by the Security Council by its resolution of 23 April 1948 [Document S/727] to report to the Security Council on the compliance with these orders."*

In introducing the draft resolution, the representative of the United States explained that the order to the parties concerned should be issued as a provisional measure under Article 40. Considering, however, that additional information would be desirable before the Security Council made a decision, he submitted a questionnaire to be put to all the parties concerned. He subsequently explained that it was not intended to suspend action by the Council until the replies had been received.

In the course of the discussion on the text of the questionnaire at the 293rd to 295th meetings, the representatives of Colombia, the Ukrainian SSR and the USSR stated that there was no need for a questionnaire. The information at the disposal of the Council enabled it to take immediate action in order to remedy the alarming situation in Palestine.

The representative of Syria thought that the questions were intended to clarify the situation and the position of the respective parties. The replies to these questions should therefore be available before the Council passed any resolution.

At the 295th meeting on 18 May, the Security Council adopted the questionnaire in an amended form.<sup>71</sup> The questions were addressed to the Governments of Egypt, Iraq, Lebanon, Saudi Arabia, Syria, Transjordan and Yemen, also to the Arab Higher Committee and to the Jewish authorities in Palestine. The Council requested replies to these questions within 48 hours as from noon, 19 May 1948, New York Standard Time.

Discussion on the United States draft resolution was continued at the 296th to 299th meetings and 301st to 302nd meetings between 19 and 22 May.

At the 296th meeting on 18 May, the representative of the United Kingdom questioned the wisdom and expedience of invoking Article 39 "at this stage". He stated:

"I may be wrong, but I think that in all other passages in the Charter where peace and security are mentioned, these words are qualified by the adjective 'international', which does not figure in the

first part of this Article 39. Certainly, that adjective does appear in the cases of Articles 33, 34 and 37. I believe that the omission of the word 'international', in the first part of Article 39, may be due to an oversight. This belief is strengthened by the fact that that same Article 39 goes on to prescribe what may be done 'to maintain or restore international peace and security'. If that is so, what the Security Council has to do, under this Article, is to determine that there is a threat to, or breach of, international peace and security."

He added that, since the juridical status of Palestine, after the termination of the mandate, was uncertain, his Government had doubts whether there was a threat to, or breach of, the international peace. Secondly, invocation of Article 39 would raise the question of whether there had been an "act of aggression" involving the search for a definition of the aggressor which would lead to "interminable and probably unprofitable wrangles". Thirdly, it would launch the Security Council on Chapter VII, under which the Council might have to take action with forces it did not yet possess. Accordingly, he submitted an amendment:<sup>72</sup> (a) to insert the following paragraph at the beginning of the preamble: "*Bearing in mind* the change in the juridical status of Palestine consequent upon the termination of the Mandate and the necessity for further clarification of this status"; (b) to eliminate the reference to Article 39; and (c) to substitute the words "Calls upon all parties concerned in Palestine." for the words "Orders all Governments and authorities".

The representative of the United States did not agree with the interpretation offered by the representative of the United Kingdom and opposed the amendment. In referring to the contention that the omission of the word "international" in the first part of Article 39 might be due to an oversight, he stated:

"... How can that be when another very significant word was substituted for it: namely, the word 'any'? 'Any' includes 'international' and includes all other kinds of threats to the peace, breaches of the peace, or acts of aggression. I would claim that that word was substituted with great care and with full understanding of its importance, so that the Security Council, having found 'any threat to the peace', might be able to proceed to the inquiry with respect to the application of remedies, or a prevention of that further step of extension of the conflagration into a breach of international peace, for this Article further says 'and shall make recommendations. . .'; then we strike something astonishing—the distinctive 'or'—or decide what measure shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."

The representative of the United States further contended that application of Article 39 did not require search for the aggressor:

"We do not have to determine . . . , who is the aggressor, who is at fault, if both parties are at fault, or which one is more at fault than the other. But as the guardians of the peace of the world, it is our primary duty to find out, under Article 39, whether there exists any threat to the peace."

The representative of the United States observed that the adoption of the United Kingdom amendment "would

<sup>70</sup> S/749, 293rd meeting: p. 2.

<sup>71</sup> S/753, *Op.R.*, 3rd year, *Suppl. for May 1948*, pp. 90-91.

<sup>72</sup> S/755, 296th meeting: p. 6.

transfer this case from Chapter VII of the Charter into Chapter VI". To this he was opposed on the ground that the Council had repeatedly tried to act under Chapter VI alone, and it had failed to obtain the necessary results. After having recalled the resolutions of 5 March, 1 April, 17 April and 23 April 1948, which called for a cessation of hostilities in Palestine without success, he emphasized that the Council had carried out its function of recommendation provided for in Chapter VI of the Charter and was now confronted with a draft resolution which would take it into Chapter VII in order to cope with an international situation calling for action to prevent a conflagration.

The representatives of Belgium, China, Canada and Argentina supported the United Kingdom amendment and maintained that the Security Council should continue its efforts of negotiation and mediation. They argued against the invocation of Chapter VII of the Charter, stating that the uncertain juridical status of Palestine made it difficult to determine whether international peace was involved, and that it was inadvisable to embark upon measures of coercion without agreement among the permanent members of the Council and without adequate means of enforcement.

At the 297th meeting on 20 May, the representative of the Ukrainian SSR stated that there was no doubt that a threat to peace and a breach of the international peace existed in Palestine. The situation was that several States had sent their armed forces into Palestine. On the other hand, the State of Israel, which was recognized by a number of governments, decided to defend itself with its own armed forces. He added that the interpretation given by the representative of the United Kingdom to Article 39 was arbitrary.

The representative of Syria supported the interpretation given by the representative of the United Kingdom. He expressed the view that the word "any" in Article 39 was an adjective qualifying the threat or breach, but not the peace itself. "Any" threat to peace or "any" breach of peace did not mean "any" peace. It was therefore clear that, although the word "international" was omitted in the first part of Article 39, the meaning was international peace. Consequently, Article 39 could not be applied in the case of Palestine. He stated:

"... the international status of Palestine should be studied to ascertain whether or not international peace is being disturbed. It would be disturbed, for example, by a dispute between two or more States fighting over a certain situation; but such is not the case in Palestine. . ."

The representative of Syria also objected to the use of the word "orders" in the United States draft resolution and suggested that "calls upon" or "recommends" would be more in keeping with the terms of the Charter:

"The Charter always refers to the Security Council's 'making recommendations' or 'calling upon'. Certainly those who drafted the Charter paid attention to the point that it would not be consistent with the sovereignty of the States to address orders to them."

At the 298th meeting on the same day, the President, speaking as the representative of France, favoured the invocation of Article 39 on the following grounds: (a) The hostilities in Palestine had assumed the character

of a threat to the international peace the moment the regular forces of several countries crossed their frontiers and entered a territory which, whatever its status, was not their own. (b) The Security Council could not, under Article 39, refuse to note the existence of a threat to the peace when such a threat existed, and such a recognition would not be inconsistent with further efforts of negotiation and mediation. (c) The United States draft resolution made no reference to aggression and therefore avoided the involved and problematic question of naming the aggressor. The representative of France also contended that continued efforts of pacific settlement under Chapter VI, as proposed by the United Kingdom, were not inconsistent with the recognition that there was a threat to peace as envisaged in the United States draft resolution within the framework of Chapter VII. He believed that adoption of the draft resolution would increase the effectiveness of the instruments at the disposal of the Council, the Mediator and the Truce Commission, who would thus "be better equipped to receive due attention from the parties concerned".

The representative of the USSR at the 299th meeting on 21 May, considered that the Security Council should determine that a threat to international peace existed in connexion with the hostilities in Palestine in which eight States were involved. It could not be argued that the relatively limited scale of military operations did not constitute a serious threat, in view of the fact that minor incidents in the past had resulted in great wars.

At the 302nd meeting on 22 May, the representative of the United States offered further evidence to establish the fact that there was a threat to the peace and a breach of the peace in Palestine. After having referred to the proclamation by the Arab States of a blockade of the territorial waters of Palestine, he stated:

"It is impossible to maintain that foreign shipping off the coast of Palestine is subject to the exercise of belligerent rights, and at the same time, to assert that there is no threat to the peace or breach of the peace within the meaning of Article 39 of the Charter."

At the same meeting, the representative of Syria further defined the position of the Arab States as follows:

"We never acknowledged that there was a threat to the peace. We explained very clearly that we were there at the application of the majority of the people of Palestine, a country which has no international status to enable it to be considered as another State of the Arab States, so that entering it could not be considered as an act of aggression or a threat to peace."

The first paragraph of the preamble of the United Kingdom amendment, referring to the necessity for further clarification of the juridical status of Palestine, was rejected by 6 votes in favour, none against and 5 abstentions.<sup>74</sup>

The first paragraph of the operative part of the United States draft resolution, which invoked Article 39, was rejected by 5 votes in favour, none against and 6 abstentions.<sup>75</sup>

<sup>74</sup> 302nd meeting, p. 40.

<sup>75</sup> 302nd meeting, p. 54.



The representative of the United States then accepted the United Kingdom amendment to the second operative paragraph which substituted the words "Calls upon" for the word "Orders". The representative of the United Kingdom, in turn, agreed to the suggestion made by the representative of the United States to substitute the phrase: "Calls upon all Governments and authorities to abstain from any hostile military action in Palestine" for the words: "Calls upon all parties concerned in Palestine to abstain from acts of armed force against each other". The representatives of the United States and of the United Kingdom also accepted a Chinese oral amendment to insert the phrase "without prejudice to the rights, claims or position of the parties concerned" after the word "authorities".<sup>75</sup>

The United Kingdom amendment, as further amended by the representatives of the United States and China, was adopted by 10 votes in favour, none against, with 1 abstention. It read<sup>76</sup> as follows:

"Calls upon all Governments and authorities, without prejudice to the rights, claims or position of the parties concerned, to abstain from any hostile military action in Palestine, and to that end to issue a cease-fire order to their military and para-military forces, to become effective thirty-six hours after midnight, New York Standard Time, on 22 May 1948."

Referring to this resolution at a subsequent meeting, the representative of the United States explained that he had finally gone along with the United Kingdom amendment which invoked Chapter VI, in the hope that it would bring about a cease-fire.<sup>77</sup>

CASE 10.<sup>78</sup> THE PALESTINE QUESTION: In connexion with decision of 29 May 1948, calling for the cessation of hostilities for a period of four weeks.

[Note: At the 306th meeting on 27 May 1948, the Council had before it two draft resolutions: one to make a determination under Article 39 and to order the cessation of military operations, the other for a final effort to bring about the cessation of fighting without recourse to Chapter VII. Further observations were made on the applicability of Article 39 to the situation in Palestine. The Council rejected the determination under Article 39, but called upon the Governments and authorities concerned to cease acts of force during a period of four weeks and to observe certain standstill arrangements.]

At the 306th meeting on 27 May, the representative of the USSR submitted the following draft resolution which was subsequently revised:<sup>79</sup>

<sup>75</sup> 302nd meeting: pp. 54-55, 58.

<sup>76</sup> 302nd meeting: p. 59. For full text of resolution, see chapter VIII, pp. 328-329.

<sup>77</sup> 306th meeting: pp. 14-15.

<sup>78</sup> For texts of relevant statements see:

300th meeting: USSR, pp. 17-18; United Kingdom, pp. 28-29.

307th meeting: China, pp. 1-2; Jewish Agency for Palestine, pp. 11-13; Ukrainian SSR, pp. 16-17; Canada, p. 17; United States, pp. 19-22.

308th meeting: Colombia, pp. 26-27; France, pp. 40-41; United States, p. 43.

309th meeting: USSR, pp. 8-9; United Kingdom, pp. 11-13; Belgium, p. 13.

310th meeting: Syria, pp. 24-25; Colombia, pp. 32-33; France, pp. 33-34.

<sup>79</sup> S/794/Rev.2, 306th meeting: pp. 17-18.

309th meeting: p. 9; O.R., 3rd year, Suppl. for May 1948, pp. 101-102. See chapter VIII, p. 329.

"Considering that the Security Council's resolution of 22 May on the cessation of military operations in Palestine has not been carried out in view of the refusal of the Arab States to comply with this decision,

"Considering that military operations in Palestine in view of this are increasing in intensity and that the number of casualties is growing, and

"Considering that, as a result of these events, the situation in Palestine constitutes a threat to peace and security within the meaning of Article 39 of the Charter of the United Nations,

"The Security Council

"Orders the Governments of the States involved in the present conflict in Palestine to secure the cessation of military operations within thirty-six hours after the adoption by the Security Council of this resolution."

At the same meeting, the representative of the United Kingdom submitted a draft resolution<sup>80</sup> calling for a cessation of hostilities for a period of four weeks as a preliminary act of mediation. The last paragraph read as follows:

"Decides that, if the present resolution is rejected by either party or by both, the situation in Palestine will be reconsidered with a view to action under Chapter VII of the Charter."

In presenting his draft resolution, the representative of the United Kingdom stated:

"My Government recognizes, in view of the failure of previous recommendations under Chapter VI, that if the proposals which I am about to submit do not prove effective, it will be necessary to invoke Chapter VII."

At a later meeting he explained that the purpose of including in the draft resolution the threat to resort to Chapter VII was "to bring pressure for peace and a last breathing space in which peace could be sought, without landing us immediately into what is known as 'enforcement action'".<sup>81</sup>

At the 307th meeting on 28 May, in supporting the USSR draft resolution, the representative of the United States, after having recalled the original draft resolution (S/749) which he had submitted at the 293rd meeting and which invoked Article 39, stated:

"We believe, of course, that when we offered our resolution—and when it was rejected—there existed the fact of a threat to the peace and a breach of the peace. We did not at first discuss whether it was of an international character, but subsequently we saw that it was . . . We began on the assumption that it was 'any threat', as stated in Article 39 of the Charter. But gradually the evidence of its international character became more persuasive, until nobody was able to deny it."

He then referred to statements of the Governments of the Arab States admitting that the purpose of their intervention was to create a united Palestinian State as clear evidence that their political objective was international in its character.

At the 308th meeting on 28 May, the President, speaking as the representative of France, submitted a

<sup>80</sup> S/795, 306th meeting: pp. 29-30.

<sup>81</sup> 309th meeting: p. 10.

draft resolution<sup>82</sup> to order a cessation of hostilities in Jerusalem and envisaging action under Chapter VII of the Charter in case of non-compliance by the parties.

At the suggestion of the representative of Belgium, the President later agreed to substitute the words "Calls upon" for the word "Orders".<sup>83</sup>

At the 309th meeting on 29 May, in objecting to the USSR draft resolution, the representative of Belgium stated:

"The determination of the existence of a breach of the peace in accordance with Article 39 has no meaning unless it is connected with the whole series of enforcement measures provided for in Chapter VII. As soon as that finding is reached, the Council must be prepared to apply those enforcement measures, including armed force if necessary. We have no objection to that in principle, but we doubt whether the application of such measures would be possible or effective in the present state of international relations."

At the 310th meeting on 29 May, the President, speaking as the representative of France, remarked that if a threat to the peace was an established fact—as, in his opinion, was the case with the Palestine hostilities—"it is the duty of the Security Council to declare it". The consideration of "measures of execution", provided for in Articles of Chapter VII other than Article 39, could be taken up later by the Council, if necessary.

The USSR draft resolution was voted upon paragraph by paragraph, with the first paragraph being divided into two parts, and was rejected, having failed to obtain the affirmative votes of seven members. The first part, up to the words "has not been carried out", obtained 5 votes in favour, none against, and 6 abstentions. The second part, ". . . in view of the refusal of the Arab States to comply with this decision", obtained 2 votes in favour, none against, and 9 abstentions. The remaining paragraphs received 5 votes in favour, none against, and 6 abstentions.<sup>84</sup>

The United Kingdom draft resolution, as revised at the 310th meeting,<sup>85</sup> was adopted in an amended form, paragraph by paragraph. The paragraph contemplating action under Chapter VII in case of non-compliance with the resolution was adopted by 7 votes in favour, none against, with 4 abstentions.<sup>86</sup>

The French draft resolution was subsequently withdrawn.

CASE 11.<sup>87</sup> THE PALESTINE QUESTION: In connexion with decision of 15 July 1948 determining the situation in Palestine a threat to the peace within the meaning of Article 39 and ordering, in pursuance of Article 40, the cessation of military action.

<sup>82</sup> S/798, 308th meeting: p. 40.

<sup>83</sup> 308th meeting: pp. 45-46.

<sup>84</sup> 310th meeting: pp. 36-37.

<sup>85</sup> 310th meeting: p. 37; S/795/Rev.2; O.R., 3rd year, Suppl. for May 1948, pp. 102-103.

<sup>86</sup> 310th meeting: pp. 38-63. For text, see chapter VIII, pp. 329-330.

<sup>87</sup> For texts of relevant statements see:

<sup>88</sup> 334th meeting: Syria, pp. 43, 44, 46, 52-53; United Kingdom, pp. 54-55; United States, pp. 39-41.

[Note: In the discussion preceding this decision, reference to the International Court for an advisory opinion was proposed with a view to ascertaining whether the situation in Palestine came within the scope of Chapter VII. In connexion with this proposal, observations were made on the legality of the decision of 15 July 1948. The proposal for recourse to the International Court was rejected.]

At the 330th meeting on 7 July 1948, the Security Council began consideration of measures for the prolongation of the four-weeks truce in Palestine. At the 331st meeting on the same day, the Council adopted a resolution<sup>88</sup> containing "an urgent appeal" to that effect, in pursuance of which the Mediator unsuccessfully first proposed an extension of the truce for thirty days and then appealed for an unconditional cease-fire for a period of ten days. By the 333rd meeting the Mediator had reported that hostilities had been resumed in Palestine.

At the 334th meeting on 13 July, the representative of the United States submitted a draft resolution<sup>89</sup> to invoke Article 39 and to order, under Article 40, an immediate cease-fire in Palestine.

In opposing the United States draft resolution on the ground that Article 39 applied to a threat to international peace and not to a civil war, as was the case in Palestine, the representative of Syria submitted a draft resolution to request the International Court of Justice, pursuant to Article 96 of the Charter, "to give an advisory legal opinion as to the international status of Palestine after the termination of the Mandate". He explained that such an opinion might enable the Security Council to determine whether the Arab action in Palestine should be considered as an aggression to be dealt with under Chapter VII of the Charter.<sup>90</sup>

The representative of France stated that the Syrian proposal to seek legal advice would necessarily entail a cessation of hostilities, otherwise it would be of no use "if at the same time recourse was again had to arms to determine the solution of the Palestine question".<sup>91</sup>

At the 338th meeting on 15 July, the United States draft resolution was voted upon paragraph by paragraph and adopted with amendments.<sup>92</sup> The first paragraph of the operative part, invoking Article 39, was adopted by 8 votes to 1, with 2 abstentions. The second operative paragraph, ordering, pursuant to Article 40, a cessation of hostilities, was adopted by 9 votes to 1, with 1 abstention. The third paragraph, contemplating action under Chapter VII in case of non-compliance, was adopted by 8 votes to 1, with 2 abstentions. The

<sup>88</sup> 335th meeting: Belgium, p. 4; Canada, p. 5; China, pp. 6-7.

<sup>89</sup> 336th meeting: China, pp. 34-35; Colombia, p. 26; France, pp. 22-25; USSR, pp. 30, 33.

<sup>90</sup> 337th meeting: Argentina, p. 9; Syria, pp. 11-12.

<sup>91</sup> 338th meeting: Ukrainian SSR, p. 30.

<sup>92</sup> 339th meeting: Argentina, pp. 12-13; Canada, p. 12; China, pp. 13-14; United Kingdom, p. 13; United States, pp. 14-15; USSR, pp. 16-17.

<sup>93</sup> 340th meeting: Egypt, pp. 19, 27; Israel, pp. 29, 32.

<sup>94</sup> S/875, 331st meeting: p. 35. See chapter VIII, p. 331.

<sup>95</sup> S/890, 334th meeting: pp. 40-41.

<sup>96</sup> S/894, 334th meeting: pp. 43-44, 52-53. For discussion, see also chapter VI, Case 28.

<sup>97</sup> 337th meeting: p. 12.

<sup>98</sup> 336th meeting: p. 24.

<sup>99</sup> 338th meeting: p. 66. For text, see chapter VIII, p. 332.



fourth paragraph, calling upon the parties for co-operation with the Mediator with a view to the maintenance of peace, was adopted by 9 votes to none, with 2 abstentions, after the phrase "pursuant to Article 40 of the Charter" had been rejected, having failed to obtain the affirmative votes of seven members. The fifth operative paragraph, ordering an immediate and unconditional cease-fire in Jerusalem, was adopted un-animously.

At the 339th meeting on 27 July, the representative of Syria, speaking in support of his draft resolution on recourse to the International Court, stated that the legality of the resolution adopted by the Council at its previous meeting on 15 July, was doubtful since the Arab States were "defending the lawful inhabitants" of Palestine and could not, therefore, be considered as aggressors. The International Court should clarify the international status of Palestine "before the Security Council proceeds with any other measures".

The representative of Colombia proposed, and the representative of Syria accepted, an amendment to specify that the request to the International Court should not delay or impair the normal course of mediation.<sup>93</sup>

In opposing the Syrian draft resolution, the representative of Canada remarked that recourse to the International Court "would inevitably hinder and postpone the negotiations for a peaceful settlement" in Palestine.

The representative of Israel\* held that the juridical status of Palestine had no relevance to any determination of a threat to the peace or an act of aggression within the meaning of Chapters VI or VII, since the word "State" did not occur in either of those Chapters in connexion with the definition of threats to the peace and acts of aggression.

The Syrian draft resolution as amended, was voted upon at the 340th meeting on 27 July, and rejected by 6 votes in favour, 1 against, with 4 abstentions.<sup>94</sup>

**CASE 12.<sup>95</sup> THE PALESTINE QUESTION:** In connexion with decisions of 16 November 1948, calling for the establishment of an armistice; of 29 December 1948, calling for an immediate cease-fire in southern Palestine; and of 11 August 1949, reaffirming the cease-fire order and calling upon the parties to ensure observance of the armistice agreements.

<sup>93</sup> 339th meeting: pp. 11, 18.

<sup>94</sup> 340th meeting: pp. 33-34.

\* For texts of relevant statements see:

380th meeting: Belgium, pp. 20-21; France, p. 23; Syria, p. 6.

381st meeting: Canada, pp. 25-26; Egypt, pp. 20-22; Lebanon, pp. 28-30; Syria, pp. 8-9.

394th meeting: United Kingdom, pp. 13-14; President (Belgium), p. 27.

395th meeting: France, p. 43; Syria, p. 33.

396th meeting: China, p. 23; Egypt, p. 10; France, pp. 11-12, 18-20; USSR, pp. 5-7; United Kingdom, pp. 15-17, 18-20, 23.

433rd meeting: France, pp. 3-4.

434th meeting: Canada, pp. 28-30; France, pp. 35-36.

435th meeting: President (USSR), pp. 6-7.

437th meeting: President (USSR), pp. 8-11; France, pp. 2-4; United States, pp. 5-8.

[*Note:* In connexion with the establishment of the armistices in Palestine the distinction was emphasized between the decision on the establishment of an armistice and the negotiation of its terms. Consequent upon the conclusion of the armistice agreements, the question arose of the terms in which the Council should reaffirm the order of 15 July 1948 on the cease-fire in Palestine.]

At the 380th meeting on 15 November 1948, the representatives of Belgium, Canada and France submitted a draft resolution,<sup>96</sup> based upon the suggestions of the Acting Mediator, to decide that an armistice be established in Palestine, and to call upon the parties, "as a further provisional measure under Article 40", to negotiate, either directly or through the Acting Mediator, with a view to the establishment of an armistice.

The representative of Syria contended that "an armistice cannot be imposed or ordered". It could only be accepted by the parties "when they find that it is according to their interest". In reply, the representative of France stated that, although the draft resolution "establishes the principle of an armistice in imperative terms", the last paragraph specified "that all the terms of the armistice shall be arranged by negotiations".

At the 381st meeting on 16 November 1948, the representative of Syria held that negotiation was not applicable in the case of the Palestine hostilities. He remarked that "to enter into negotiations would entail recognition by the Arabs . . . of the Jews in Palestine as a State". For the Arabs, it would mean dropping their claims, their rights, and relinquishing their position. This would be contrary to Article 40 and other Articles of the Charter which provided that any measures adopted should be without prejudice to the claims, rights and position of the parties.

The representative of Canada expressed his view that "a truce . . . can be imposed" but that "an armistice can only result from agreement". He added that "the call for an armistice which is contained in this resolution is urgent and imperative". It was "a further provisional measure under Article 40". He observed that for an answer to the "political questions on which the transition from an armistice to a state of permanent peace will depend", it would be necessary to look to the deliberations of the Assembly, since they were not matters within "the purview of the Council".

At the same meeting, the joint draft resolution was voted in parts and adopted.<sup>97</sup>

Consequent upon the resumption of hostilities in the Negev, the Council adopted the decision of 29 December 1948 calling upon the Governments concerned to order an immediate cease-fire and to implement the decision of 4 November 1948.<sup>98</sup>

In response to the Security Council resolution of 16 November 1948, bilateral negotiations were entered into under United Nations chairmanship concerning the implementation of the Security Council resolutions

<sup>96</sup> For the text of the draft resolution, which was identical with the decision of 16 November 1948, see chapter VIII, p. 337.

<sup>97</sup> 381st meeting: pp. 53-55. For text, see chapter VIII, p. 337.

<sup>98</sup> 396th meeting: pp. 23-26. For text, see chapter VIII, pp. 337-338.

of 4 and 16 November 1948. These negotiations resulted in the conclusion of the four armistice agreements.<sup>99</sup>

Article 1 of each armistice agreement stated certain principles to be observed by both parties during the armistice. The first principle, common to the four armistice agreements, read as follows:

"The injunction of the Security Council against resort to military force in the settlement of the Palestine question shall henceforth be scrupulously respected by both parties."

The agreements declared that, in pursuance of the principles stated and of the resolution of the Security Council of 16 November 1948, a general armistice between the armed forces of the parties to each agreement was established.

In his report of 21 July 1949,<sup>100</sup> "on the present status of the armistice negotiations and the truce in Palestine", the Acting Mediator observed that the practical application of the Security Council's truce in Palestine had been substituted by effective armistice agreements voluntarily negotiated by the parties. He observed that since these agreements were self-enforcing and established the necessary machinery for its supervision, it was no longer necessary to impose upon the States concerned the restrictive conditions of the Security Council's truce. He suggested that the Council might review the situation in the light of the new conditions and take appropriate action consistent with the realities of the new situation while safeguarding the basic objective that fighting in Palestine should not be resumed. To this effect he attached to his report a draft resolution the third and fourth paragraphs of which read as follows:

"Declares that the armistice agreements, as an important step in the transition from truce to permanent peace in Palestine, render unnecessary the prolongation of the truce as provided in the resolution of the Security Council of 15 July 1948 (S/902);

"Reaffirms the order set forth in its resolution of 15 July 1948 to the Governments and authorities concerned, pursuant to Article 40 of the Charter of the United Nations, to desist from further military action, and calls upon them to continue to observe an unconditional cease-fire;"

At the 433rd meeting on 4 August 1949, the representative of France stated that the armistice agreements recently concluded by the parties created a legal situation replacing the truce imposed by the resolution of 15 July 1948 and that it was hardly suitable for the Council to impress upon the parties injunctions with which they had in fact just complied. At the 434th meeting, on the same day, he submitted several amendments<sup>101</sup> to the two paragraphs of the Acting Mediator's suggestions which had been incorporated in a draft resolution submitted by the representative of Canada.<sup>102</sup>

<sup>99</sup> For texts, see: *Egyptian-Israeli General Armistice Agreement* (S/1264/Rev.1; O.R., 4th year, Special Suppl. No. 3, pp. 1-14); *Israeli-Lebanese General Armistice Agreement* (S/1296/Rev.1; O.R., 4th year, Special Suppl. No. 4, pp. 1-7); *Jordan-Kingdom-Israel: General Armistice Agreement* (S/1302/Rev.1; O.R., 4th year, Special Suppl. No. 1, pp. 1-10); *Israeli-Syrian General Armistice Agreement* (S/1353/Rev.1; O.R., 4th year, Special Suppl. No. 2, pp. 1-11).

<sup>100</sup> S/1357, O.R., 4th year, Suppl. for Aug. 1949, pp. 1-7.

<sup>101</sup> S/1364, 434th meeting: p. 35.

<sup>102</sup> S/1365, 434th meeting: p. 28.

In support of his amendments, the representative of France said that the obsolescence of the truce should be stated specifically and that the wish of other members of the Council to reaffirm the cease-fire order of 15 July 1948 could be expressed in a more acceptable manner than originally proposed by the Acting Mediator.

At the 435th meeting on 8 August, the representatives of Canada and France submitted a joint draft resolution<sup>103</sup> in which the two paragraphs were revised as follows:

"Finds that the Armistice Agreements constitute an important step toward the establishment of permanent peace in Palestine and considers that these Agreements supersede the truce provided for in the resolutions of the Security Council of 29 May and 15 July 1948;

"Reaffirms pending the final peace settlement, the order contained in its resolution of 15 July 1948 to the Governments and authorities concerned, pursuant to Article 40 of the Charter of the United Nations, to observe an unconditional cease-fire and, bearing in mind that the several Armistice Agreements include firm pledges against any further acts of hostility between the Parties and also provide for their supervision by the Parties themselves, relies upon the Parties to ensure the continued application and observance of these Agreements;"

At the 437th meeting on 11 August, the joint draft resolution was adopted by 9 votes in favour, none against, with 2 abstentions.<sup>104</sup>

CASE 13.<sup>105</sup> THE PALESTINE QUESTION: In connexion with decision of 8 May 1951 calling for cessation of fighting in and around the demilitarized zone established by the Israeli-Syrian General Armistice Agreement.

[Note: In the preceding discussion, observations were made to the effect that, before investigation of the facts involved in the complaint, the Council should order an immediate and unconditional cease-fire. Attention was drawn to the consideration that the situation was similar to that which preceded the decision of 15 July 1948 ordering, pursuant to Article 40, the cessation of further military action. In calling upon the parties to cease fighting, the decision of 8 May 1951 drew their attention to their obligations under the decision of 15 July 1948, and under Article 2 (4) of the Charter as well as to their commitments under the terms of the Armistice Agreement.]

At the 545th meeting on 8 May 1951, the Council considered, among several other complaints of violation of the armistice agreements in Palestine, an Israeli complaint<sup>106</sup> of "repeated assaults" by Syrian armed forces in and around the demilitarized zone established under the terms of the Israeli-Syrian Armistice Agreement. The complaint stated that, "while continuing

<sup>103</sup> S/1367, 435th meeting: pp. 2-3.

<sup>104</sup> 437th meeting, p. 13. For text, see chapter VIII, pp. 328-330.

<sup>105</sup> For texts of relevant statements see:

545th meeting: President (Turkey), pp. 8-9, 28; Brazil, pp. 9-10; France, pp. 7-8; Israel, pp. 11-12; Netherlands, pp. 10-11; Syria, pp. 18, 27, 28; United Kingdom, pp. 5-7; United States, pp. 4-5.

<sup>106</sup> S/2121, O.R., 6th year, Suppl. for April-June 1951, pp. 100-101. See chapter VIII, p. 341.

to defend itself vigorously in accordance with Article 51 of the Charter", the Government of Israel "once again calls upon the United Nations to secure a cessation of this flagrant Syrian aggression". In reply to these allegations, the representative of Syria held that the Israeli Government had provoked the armed clashes in order to carry out the work of draining the region of Huleh, within the demilitarized zone, in contravention of an order by the Chairman of the Mixed Armistice Commission to stop that work pending acceptable arrangements between the parties concerned, in accordance with the provisions of the Armistice Agreement.

The President (Turkey) drew attention to the draft resolution jointly submitted by France, Turkey, the United Kingdom and the United States to call for compliance with the obligations of Article 2 (4) of the Charter and the commitments under the Armistice Agreement.<sup>107</sup>

The representative of France, at the same meeting, recalled that the Council had adopted a resolution on 15 July 1948<sup>108</sup> expressly recognizing that the position then existing in Palestine constituted a threat to the peace within the meaning of Article 39 and ordering the Governments and authorities concerned, pursuant to Article 40, to desist from further military action and to issue cease-fire orders to their military and para-military forces. He stated that the present situation in Palestine was not fundamentally different from that with which the resolution of 15 July 1948 had been concerned. It would be useless for the Council to continue consideration of the complaints of violation of the Israeli-Syrian General Armistice Agreement, unless it began by a firm declaration that the immediate cessation of hostilities was absolutely obligatory for the two States concerned.

The representative of the United States stated that the situation demanded immediate action. The action that the Council would take in this matter should be understood to be without prejudice to further Council deliberation. In assessing responsibility for the outbreak of fighting in those later deliberations, the Council might well wish to take into account the readiness of the parties to comply with Council directives. Whether or not Syria and Israel were directly responsible or implicated in the conflict, the Council should issue an unconditional cease-fire order, and the fighting should be ended by prompt, open compliance on the part of all concerned. No other course of action by the Council was permitted in view of the apparent threat to the peace and the obvious breach of the Armistice Agreement. Only then could the matter be properly investigated.

At the same meeting, the joint draft resolution was adopted by 10 votes in favour, with 1 abstention.<sup>109</sup>

CASE 14.<sup>110</sup> IDENTIC NOTIFICATIONS DATED 29 SEPTEMBER 1948: Proceedings subsequent to submission of the question under Chapter VII of the Charter.

[Note: After submission of the question under Chapter VII of the Charter, attention was drawn to the continued applicability of "the machinery of pacific

settlement". Without a prior determination under Article 39, the Council voted upon a draft resolution under Article 40. The draft resolution, which called for certain steps as a precedent to the resumption of negotiations, was not adopted.]

This question was submitted to the Security Council by the representatives of France, the United Kingdom and the United States as a threat to the peace within the meaning of Chapter VII of the Charter.<sup>111</sup>

At the 363rd meeting on 6 October 1948, the representative of the United States stated:

"... the fact this matter comes before the Council under Chapter VII of the Charter does not mean that the Council is precluded from using any of the machinery of pacific settlement suggested in any other part of the Charter. In this case, as in all cases that come before it, the Security Council has the greatest flexibility of action in order to carry out the primary responsibility conferred upon it for the maintenance of peace."

After general discussion within the Council, the President (Argentina) conferred with the representatives of Belgium, Canada, China, Colombia and Syria, as a result of which certain questions were addressed to the Powers concerned by the President at the 366th meeting on 15 October 1948. After certain replies had been received at the 368th meeting on 19 October 1948, the President conferred further with the above-mentioned representatives.

At the 370th meeting on 22 October 1948, a draft resolution was submitted by the representatives of Argentina, Belgium, Canada, China, Colombia and Syria.<sup>112</sup> The draft resolution read as follows:

"The Security Council,

"Having carefully considered the series of events which have led to the present grave situation in Berlin,

"Conscious of the Council's primary responsibility for the maintenance of international peace and security, and

"Acting in accordance with Article 40 of the Charter in order to prevent an aggravation of the situation in Berlin, in particular, by preparing the way to its settlement,

"Calls upon the four Governments who have responsibilities in Germany and in Berlin as occupying Powers, France, the United Kingdom, the United States of America and the Union of Soviet Socialist Republics:

"(1) To prevent any incident which would be of a nature such as to aggravate the present situation in Berlin;

<sup>107</sup> For texts of relevant statements see:

361st meeting: USSR, p. 18; United States, pp. 20, 23.

362nd meeting: Belgium, p. 20; USSR, pp. 18, 22.

363rd meeting: United States, pp. 2-4, 6, 19, 25, 26-27.

364th meeting: France, pp. 37, 41, 45-46; United Kingdom, pp. 28, 35.

366th meeting: France, p. 11; Syria, pp. 6-7; USSR, p. 12; United States, p. 9.

368th meeting: United Kingdom, pp. 48-49; United States, pp. 55, 61-62.

372nd meeting: United States, pp. 10-12.

<sup>111</sup> See chapter VIII, p. 354, for the submission of the case to the Council and the course of proceedings.

<sup>112</sup> S/1048, 370th meeting, pp. 5-6.

<sup>108</sup> S/2130, 545th meeting, p. 4.

<sup>109</sup> S/902, O.R., 3rd year, Suppl. for July 1948, pp. 76-77.

<sup>110</sup> 545th meeting, p. 28. For text, see chapter VIII, p. 341.

"(2) To put into effect, simultaneously, namely on the day of the notification of this resolution to the four Governments concerned, the steps required for the fulfilment of points (a) and (b) which are set forth hereunder:

"(a) Immediate removal by all parties of all restrictions on communications, transport and commerce between Berlin and the Western Zones of Germany and the restrictions on transport and commerce to and from the Soviet Zone of Germany, it being understood that said restrictions are the ones applied by the parties after 1 March 1948;

"(b) An immediate meeting of the four Military Governors to arrange for the unification of currency in Berlin on the basis of the German mark of the Soviet Zone. The four Military Governors will fix the conditions for the introduction, circulation and continued use of the German mark of the Soviet Zone, as the sole currency for the whole of Berlin, and arrange for the withdrawal of the Western mark 'B';

"All the foregoing to be in accordance with the terms and conditions defined in the joint directive delivered to the four Military Governors in Berlin, agreed upon by the four Governments in Moscow, and issued on 30 August 1948, and to be carried out under the control of the Quadripartite Financial Commission, whose organization, powers and responsibilities are therein described.

"This measure must be totally fulfilled by the date indicated in paragraph (c);

"(c) The date referred to in the last part of paragraph (b) shall be 20 November 1948.

"(3) Within ten days following the fulfilment of the measures provided for in section (2), or on such date as is mutually agreed between the four Governments, to reopen the negotiations in the Council of Foreign Ministers on all outstanding problems concerning Germany as a whole."

At the 372nd meeting on 25 October, the draft resolution was rejected, one vote against being that of a permanent member of the Council.<sup>113</sup>

<sup>113</sup> 372nd meeting: p. 14.

CASE 15. COMPLAINT OF AGGRESSION UPON THE REPUBLIC OF KOREA: In connexion with decision of 7 July 1950: establishment of a Unified Command.

[*Note:* The representative of the United Kingdom referred to the recommendations to Members in the resolutions of 25 and 27 June 1950 as having been made under Article 39.]

At the 476th meeting on 7 July 1950, the representative of the United Kingdom, having stated that further steps were necessary to co-ordinate the assistance which the resolution of 27 June recommended that the Members of the United Nations should furnish to the Republic of Korea, made the following statement in submitting the draft resolution for the establishment of a unified command:<sup>114</sup>

"Had the Charter come fully into force and had the agreement provided for in Article 43 of the Charter been concluded, we should, of course, have proceeded differently, and the action to be taken by the Security Council to repel the armed attack would no doubt have been founded on Article 42. As it is, however, the Council can naturally act only under Article 39, which enables the Security Council to recommend what measures should be taken to restore international peace and security. The necessary recommendations were duly made in the resolutions of 25 and 27 June, but in the nature of things they could only be recommendations to individual Members of the United Nations. It could not, therefore, be the United Nations or the Security Council which themselves appointed a United Nations commander. All the Security Council can do is to recommend that one of its members should designate the commander of the forces which individual members have now made available."

He saw no need for the constitution of further machinery by the Council, at least at the present time.

"In any event, since we believe the Security Council is acting under Article 39 of the Charter, its function is not an operative one; all it should do is to make sure that the individual efforts of the Members concerned are properly co-ordinated."

<sup>114</sup> 476th meeting: pp. 3-4.

Reference should also be made to chapter III, Cases 64 and 73, for consideration of Article 32 in relation to Chapter VII of the Charter.

## Part II

### CONSIDERATION OF THE PROVISIONS OF ARTICLE 41 OF THE CHARTER

#### NOTE

The case histories entered in part II are those in which Article 41 was the central point of discussion. The note prefaced to each case suffices to indicate the bearing of the case on this Article.

CASE 16.<sup>1</sup> THE SPANISH QUESTION: In connexion with draft resolutions for the severance of diplomatic relations: voted upon and rejected on 24 June 1946.

<sup>1</sup> For texts of relevant statements see:

45th meeting: USSR, p. 337.

46th meeting: Australia, p. 350.

47th meeting: Australia, pp. 374-375; USSR, p. 367.

[*Note:* The presentation of a draft resolution to call upon Members of the United Nations, in accordance with Articles 39 and 41, to sever diplomatic relations with Spain gave rise to discussion on the distinction between action under Articles 41 and 42 of the Charter. The view was stated that action under Article 41 was preventive action. The view was also stated that action under Articles 41 or 42 constituted alternative courses dependent upon an initial determination under Article 39. The draft resolution, re-submitted with the omission of reference to the Articles of the Charter, was rejected.]



At the 34th meeting on 17 April 1946, the representative of Poland submitted a draft resolution, which read in part:<sup>2</sup>

*"The Security Council...*

*"Calls upon, in accordance with the authority vested in it under Articles 39 and 41 of the Charter, all Members of the United Nations who maintain diplomatic relations with the Franco Government to sever such relations immediately."*

The Sub-Committee on the Spanish question, in its report of 1 June 1946, stated that:<sup>3</sup>

*"... the activities of the Franco régime do not at present constitute an existing threat to the peace within the meaning of Article 39 of the Charter and therefore the Security Council has no jurisdiction to direct or to authorize enforcement measures under Article 40 or 42..."*

At the 45th meeting on 13 June, the representative of the USSR referred to the

*"... incorrect conclusion to the effect that the Security Council has not the right or, as the Sub-Committee expresses it, the jurisdiction to take decisions regarding the severance of diplomatic relations with Franco, that is, to act in conformity with Article 41 of the Charter"*.

At the 46th meeting on 17 June, the Australian representative stated:

*"[The representative of the USSR]... would order and direct the Members of the United Nations, under Chapter VII, to break off diplomatic relations. But once you start on that course, which can only be lawfully taken in the event of a threat to the peace or an act of aggression or breach of the peace, then the Charter makes it abundantly clear that you have to go on to the last stage in order to remove that threat. The last stage is, as I have said, the actual waging of war, and I am using an expression that cannot be misunderstood—military measures by air, land or sea—in order to achieve the desired objective."*

In answer to this statement, the representative of the USSR at the 47th meeting on 18 June declared:

*"Mr. Evatt, to whose remarks I listened with interest, stated that a measure such as the rupture of diplomatic relations with the Franco Government, if a decision to that effect were taken, might serve as a basis for the automatic adoption of further, more decisive measures, as he expressed it, for starting military action against Franco Spain. Such was the sense of Mr. Evatt's remarks."*

*"It seems to me that such an inference is based on an unfortunate misunderstanding. The fact is that a step such as the rupture of diplomatic relations, to which reference is made in Article 41 of the Charter, together with the other measures designed to remove any threat to peace which may arise, differs in character from the measures recommended in Article 42 of the Charter. I would emphasize that the measures recommended in Article 41 of the Charter are of a preventive character, while the meas-*

*ures prescribed by Article 42 of the Charter are applicable in cases of breaches of the peace and acts of aggression. It is no mere chance, therefore, that the Chapter containing the said Articles 41 and 42 is entitled: 'Action with respect to threats to the peace, breaches of the peace, and acts of aggression'. Consequently, various Articles under that head provide for measures of different kinds according to the extent of the threat to peace and also according to whether there exists a mere threat to peace or a breach of the peace—an act of aggression."*

*"I repeat that the inference drawn by Mr. Evatt seems to me to be based on some misunderstanding, since such an inference does not follow from the relevant Articles of Chapter VII of the Charter. The measures enumerated in Article 41 have as their object and purpose not the aggravation or intensification of the threat to peace, but, on the contrary, its removal. How is it possible, then, to argue that the adoption of measures in accordance with Article 41 of the Charter inevitably entails, or must entail further, more energetic measures, even to the extent of military measures against the Government concerned?"*

At the same meeting, the Australian representative answered this statement as follows:

*"I am not going to deal at any length with the technical question of the interpretation of Articles 41 and 42 of the Charter. Mr. Gromyko gave his interpretation of them this afternoon in order to make the point that action by the Security Council under Article 41 is preventive action, whereas action under Article 42 is action of a military character taken after a breach of the peace has occurred. But that interpretation cannot be established simply by asserting that it is the correct interpretation. If members will look at Article 41, they will find that one of the sanctions that may be adopted by the Security Council is the complete interruption of economic relations, that is to say, economic sanctions."*

*"It seems to me that a fair interpretation of the two Articles is this: once the Security Council has determined that there is a threat to the peace or a breach of the peace, it may decide to take action in accordance with either Article 41 or Article 42 and to apply all the measures contained in both these Articles in order, as Article 42 says, 'to maintain or restore international peace and security'; that is to say, to maintain peace if there has been no actual breach of the peace and to restore peace if there has been an actual breach."*

*"Once it is determined that a threat to the peace exists under Article 39, the Security Council is entitled to proceed towards any measures mentioned in Articles 41 or 42 in order to prevent a breach of the peace or to maintain international peace and security."*

At the 48th meeting on 24 June 1946, the representative of Poland presented the draft resolution submitted by him at the 34th meeting with the reference to Articles 39 and 41 of the Charter deleted.<sup>4</sup>

At the same meeting, the Polish draft resolution was rejected by 4 votes in favour and 7 against.<sup>5</sup>

<sup>2</sup> 34th meeting, p. 167. See chapter VIII, p. 306. For other discussion in relation to article 39, see Case 1.

<sup>3</sup> S/75, O.R., 1st year, 1st series, Special Suppl., rev. ed., p. 10.

<sup>4</sup> 48th meeting: pp. 383-384.

<sup>5</sup> 48th meeting: p. 388.

CASE 17.<sup>6</sup> THE PALESTINE QUESTION: In connexion with decision of 4 November 1948 calling for the withdrawal of forces and appointing a Committee of the Council to advise the Acting Mediator.

[Note: By the decision of 19 October 1948, the Council had defined certain measures incumbent on the Governments and authorities concerned under the decisions of the Council of 15 July and 19 August 1948. Following upon the decision of the Council of 19 October, the Acting Mediator requested the parties to withdraw their forces to the truce lines as they existed in the Negev sector on 14 October. By the decision of 4 November 1948, the Council called upon the parties to comply with the request addressed to them by the Acting Mediator, and appointed a Committee of the Council to advise the Acting Mediator and to report to the Council on "further measures" under Chapter VII. Whereas the original draft resolution referred in this connexion solely to Article 41, the paragraph in question was amended to relate broadly to Chapter VII on the grounds that future action by the Council might not be confined within the terms of Article 41.]

At the 374th meeting on 28 October 1948, following a report by the Acting Mediator on the implementation of the decision of 19 October, the representatives of China and the United Kingdom submitted a joint draft resolution which, in its revised text introduced at the 375th meeting<sup>8</sup> after referring to the resolutions of 15 July and 19 August, read in part:

"Having decided on 29 May that, if the truce was subsequently repudiated or violated by either party or by both, the situation in Palestine would be reconsidered with a view to action under Chapter VII of the Charter;

"Endorses the request communicated to the Government of Egypt and the Provisional Government of Israel by the Acting Mediator on 26 October (S/1058); and

"Calls upon them to withdraw their military forces to the positions they occupied on 14 October, with a view to the establishment of a permanent truce line; and

"Appoints a committee of the Council, consisting of the five permanent members together with Belgium and Colombia, to examine urgently and report to the Council on the measures which it would be appropriate to take under Article 41 of the Charter if either party or both fail to comply with the preceding paragraph of this resolution within whatever time limit the Acting Mediator may think it desirable to fix."

The draft resolution was opposed by the representative of the USSR on the grounds that the Acting Mediator had not exhausted all possible ways and means under the previous resolution and that it would be premature to adopt the joint draft resolution.

<sup>6</sup> For texts of relevant statements see:

374th meeting: Canada, p. 29; France, p. 37; USSR, p. 35; United Kingdom, pp. 12-13, 38.

375th meeting: France, pp. 3-6; United Kingdom, pp. 2-3; China, pp. 15-16.

376th meeting: Belgium, p. 2; France, pp. 7-8; Israel, pp. 14-15; United States, pp. 3-4.

<sup>7</sup> See chapter VIII, p. 335.

<sup>8</sup> S/1059/Rev.2, O.R., 3rd year, Suppl. for Oct. 1948, p. 72.

The composition of the sub-committee was supported by the representative of Canada who stated that, since it was to consider some form of enforcement action, the main responsibility during its deliberations must rest with the permanent members of the Security Council. The representatives of Belgium and Colombia could give useful assistance.

The representative of France held that it might be contradictory to refer to measures provided for in Article 41 in the last paragraph, and to a "request" addressed to the parties in a previous paragraph. The representative of the United Kingdom replied that, once the Council endorsed the request of the Acting Mediator and made it its own, it appeared unnecessary to alter the wording in the last paragraph.

Commenting on a statement by the representative of Israel<sup>9</sup>, the representative of China stated at the 375th meeting:

"Then there is the other complaint that the sponsors of this resolution sit supine when the Arab armies entered Palestine, that at that moment the sponsors of the present resolution did not call for action under Article 41 of Chapter VII, but that now, on the contrary, the sponsors are so very eager to apply Chapter VII... So far as my delegation is concerned, from the very beginning of this dispute, we have stood for submitting this question to the International Court of Justice for an opinion on the juridical status of Palestine after the withdrawal of the Mandatory Power. Without such an authoritative determination on that point, I submit that this Council could not have pronounced any party an aggressor in this matter.

"It is for that reason that this Council, even up to now, has not named any party as the aggressor in this whole conflict. When, on 29 May, we passed that resolution (S/801) to enforce peace *per se* without attaching any specific scheme on Palestine, my delegation supported the application of Chapter VII for that objective. On that occasion my delegation made it very clear that it was a simple action to enforce peace without any *arrière-pensée* with regard to the eventual settlement of the Palestine question. I think that the representative of the Provisional Government of Israel misunderstood and misinterpreted the motives of my delegation in joining with the delegation of the United Kingdom in sponsoring this resolution."

At the 376th meeting on 4 November, the Council had before it a new text of the draft resolution, submitted in the report of the Sub-Committee<sup>9</sup> which had been established at the previous meeting.

The representative of the United States introduced several amendments,<sup>10</sup> one of which was to replace the reference to Article 41 in the last paragraph by a reference to Chapter VII of the Charter. In support of this amendment, he stated that it would allow the proposed committee to consider the situation in the light of Chapter VII as a whole and would not restrict its work within the framework of Article 41.

The representative of France held that it was inadvisable to anticipate that the resolution might not be carried out and to make from the beginning a definite reference to the terms of Article 41, thus

<sup>9</sup> S/1064, O.R., 3rd year, Suppl. for Nov. 1948, pp. 1-6.

<sup>10</sup> S/1067.



being confined *a priori* within the terms of that Article. The proposed committee "should eventually take its stand on Chapter VII of the Charter as that would simply be the application of a previous resolution of the Security Council". However, it was possible that it might decide to take provisional measures under Article 40, or the more severe measures provided for in the Charter. Therefore, if the reference to Article 41 was suppressed, the resolution "would not lose any of its authority".

The representative of Israel stated:

"The draft resolution appears to us to be inconsistent not only with the surrounding conditions but also with itself and with the Charter. In particular, the last paragraph which implicitly contemplates the application of sanctions to the party which should fail to observe the conditions prescribed in a previous paragraph of the resolution seems to us to be in violation of the Charter. This paragraph proceeds on the assumption that non-compliance with provisional measures by a party to a dispute authorizes the Security Council to apply the provisions of Chapter VII against that party. This theory seems to us to be without foundation. Article 40, dealing with provisional measures, provides that the Security Council shall 'duly take note of failure to comply with provisional measures'. Whatever that phrase means it does not mean that the Security Council may apply the provisions of Chapter VII for non-compliance with provisional measures. The provisional measures under Article 40 are not ordered. The parties are called upon in the language of recommendation to accept them, and it seems clear that only in the case of a threat to

the peace, or if there is a determined breach of the peace or act of aggression may a consideration of the provisions of Chapter VII be undertaken by the Security Council, following on the provisions of Article 39.

"It is, I think, commonly recognized that the application of those provisions of the Charter is such an incisive interference by the international community in the life of Member States or non-member States, whose sovereign equality has to be respected, that it could only be used in the most extraordinary and exceptional cases. The subject now before the Security Council is not a breach of the peace, a threat to the peace or an act of aggression — nor is it even a report of continuing warfare.

"The subject is an anticipated or contingent violation of the Acting Mediator's instructions within the framework of the truce. The truce, however, is not peace. It is an incident of war and an interruption of hostilities. It seems to us to be most far-fetched to attempt the application of sanctions for non-compliance with certain regulations which belong to provisional measures concerning the conduct of a defensive war."

At the 377th meeting on 4 November 1948, the Council adopted the draft resolution recommended in the report of the Sub-Committee, as amended by the representative of the United States. The amendment, in which reference to Chapter VII was substituted for reference to Article 41, was adopted by 8 votes in favour, 1 against, with 2 abstentions.<sup>12</sup>

<sup>12</sup> 377th meeting: pp. 38-43. For text, see chapter VIII, p. 336.

### Part III

#### CONSIDERATION OF THE PROVISIONS OF ARTICLES 42-47 OF THE CHARTER

##### NOTE

The case histories entered in part III are those in which Articles 42-47 were the central point of discussion.

Reference should also be made to the report of the Military Staff Committee of 30 April 1947 on the general principles governing the organization of the armed forces to be made available by the Members of the United Nations. For a summary of the decisions of the Security Council in respect of individual articles of the report, reference should be made to chapter IX, pp. 366-367. The report included both recommendations agreed upon by all five permanent members of the Council, and the proposals of individual delegations on which unanimous decision had not been achieved in the Military Staff Committee. It has been considered inappropriate to insert passages from the report in the *Repertoire*, since the report requires consideration as a whole. In Case 18 are given those statements made in the Council during consideration of the report which bear more directly on the provisions of the Charter.

#### CASE 18.<sup>1</sup> REPORT OF THE MILITARY STAFF COMMITTEE

[Note: On 30 April 1947, the Military Staff Committee submitted its report on the general principles governing the organization of the armed forces to be

made available by the Members of the United Nations, as the first stage of its study of the provisions of Article 43.<sup>2</sup> In the consideration of the report by the Council certain statements were made directly bearing on Article 43 of the Charter.]

At the 138th meeting on 4 June 1947, the representative of the United States stated that the United Nations was not a world government, but was based on the principle of sovereign equality of all its Members. It could not, therefore, have a permanent standing armed force of its own in the same sense that individual nations possessed such forces. On the other hand, the founders of the United Nations had decided that the United Nations should not repeat the experience of the League of Nations, which had relied solely upon the individual action of Member States to carry out sanctions. It had therefore been decided

<sup>1</sup> For texts of relevant statements see: 138th meeting: Belgium, pp. 957-961; United States, pp. 953-957.

139th meeting: Australia, pp. 981-987; USSR, pp. 964-980.

140th meeting: Brazil, pp. 990-992; China, pp. 998-1002; Syria, pp. 996-997; United Kingdom, pp. 993-995.

141st meeting: President (France), pp. 1005-1009; Poland, pp. 1009-1012.

143rd meeting: President (France), pp. 1056, 1057; Belgium, pp. 1055-1056.

<sup>2</sup> S/336, O.R., 2nd year, Special Suppl. No. 1, pp. 1-32. For consideration of the report by the Council see chapter IX, p. 366.

that each nation should agree in advance to provide forces and facilities upon which the Security Council could call in order to prevent or suppress any act of aggression or breach of peace. To stop an aggressor, military bases were of vital importance to all three elements of armed forces—army, navy and air.

At the 139th meeting on 6 June 1947, the representative of the USSR agreed that "the experience of the past, and particularly that of the League of Nations, demonstrated that peace-loving nations may be required to carry out joint and effective action, including military action, in the interests of the maintenance of peace and security". The importance of the question was "determined by the place which Article 43 occupies in the Charter". Although "the necessity of incorporating into the Charter the provisions contained in this Article caused no doubts on the part of anyone" when the Charter was being drawn up, serious divergencies of opinion had appeared in the Military Staff Committee on the question of the general principles governing the organization of armed forces made available to the Council. There had been a divergence in the first place, on the question of the contributions of armed forces by permanent members of the Council. The USSR proposed that the five Powers should make available armed forces not only of equal over-all strength but also of the same composition. This principle of equality should be adopted because it preserved the equality of status conferred on the five Powers by the Charter. The permanent members, holding a special position in comparison with other nations, at the same time "occupy an equal position in relation to one another. They have equal rights in deciding all the important questions relating to the maintenance of peace." Secondly, there had been the question of bases, and the proposals concerning bases were unacceptable for several reasons, one of which was that there was no mention of bases in Article 43 or elsewhere in the Charter. Thirdly, there had been the proposal for "general guarantees of rights of passage", which was also inconsistent with the Charter. Under the Charter that right might be granted by a special agreement to be ratified by the signatory States.

The representative of Australia considered as most extraordinary the theory advanced by the representative of the USSR that the five Powers had been placed in a special position by the Charter. Such a theory was a direct contradiction of the Charter.

At the 140th meeting on 10 June 1947, the representative of China referred to three points in which no basic conflict in principle or policy existed, but which represented different interpretations of the provisions of the Charter. There were: first, the question whether Articles 43 and 45 should be considered simultaneously or successively; secondly the reservation arising from Article 51; and thirdly the question whether military bases came under the term "assistance and facilities" in Article 43. The representative of the United Kingdom, after observing that any one of the permanent members of the Council could arrest the movement of the United Nations forces, said that a partial answer was provided by Article 51, under which the remainder of the United Nations would be entitled to take action against that member. He considered that the forces already made available to the Council could legitimately be jointly employed to

that end for so long as the Council failed to take measures to maintain international peace and security.

At the 141st meeting on 16 June, the representative of Poland saw the possibility of the principle of equivalent contributions being used as a means of attempting to alter the distribution of military power among the permanent members of the Council, and the possibility of situations in which the implementation of Article 43 might be used for extraneous purposes not intended by the authors of the Charter.

At the 143rd meeting on 20 June, the representative of Belgium stated that, under Article 43, Members of the United Nations would be obliged to hold in reserve certain armed forces which they had undertaken to place at the disposal of the Security Council on its call. The Council would be able to make that call only in conformity with special agreements which would have already been duly concluded. The obligation to make armed forces available to the Security Council thus presupposed not only the conclusion of special agreements, but also a call from the Security Council. The armed forces could pass under the authority of the Council only after the Council had requested that they should be made available to it. The President (France) considered Article 43 to mean that the Council would be able to determine in advance what forces would be at its disposal should the necessity arise, on the basis of the special agreements negotiated between the Council and Members or groups of Members. The Council would have to pronounce a decision in each separate instance in order to make use of these forces.

CASE 19.<sup>3</sup> THE PALESTINE QUESTION: In connexion with decision of 15 July 1948, which included provision of staff to assist the Mediator in the performance of his functions.

[Note: By reason of the dispatch to Palestine of fifty armed guards to assist the Mediator in the exercise of control functions during the truce, the question arose of the powers under which the Secretary-General had acted in providing the Mediator with those guards. The observation was made that the performance of United Nations duties by an armed force should only occur under Article 43 of the Charter. After a statement by the Secretary-General invoking his authority under Assembly and Council decisions relative to the Mediator's functions, and his powers under Article 97 of the Charter, the proposals of the Secretary-General for administrative arrangements concerning the operation of the truce were approved by the Council.]

At the 331st meeting on 7 July 1948, during the consideration by the Council of a request from the Mediator that the Council appeal to the parties for a prolongation of the truce, the representative of the USSR objected to the decision that had been taken by the Secretary-General to dispatch to Palestine fifty United Nations guards. The question had neither been discussed in the Council nor raised by any of its members. He therefore considered that practice "as being quite illegal".

<sup>3</sup> For texts of relevant statements see:

331st meeting: USSR, pp. 32-33; representative of the Secretary-General, pp. 33-34.

338th meeting: President (Ukrainian SSR), p. 63; USSR, pp. 63, 64-65; representative of the Secretary-General, pp. 63-64.

In reply to these objections, the representative of the Secretary-General read a statement on his behalf, to the effect that the Secretary-General had been requested by the Mediator to supply him with fifty guards to assist the Mediator in the exercise of control functions in connexion with the Palestine truce. Subsequent to consultation with the Legal Department, the Secretary-General had called for volunteers from among the guards stationed at Headquarters and other members of the Secretariat, and had dispatched to Palestine fifty men, with side arms. However, the men had not been authorized to use those arms "except on instructions from the Mediator". Among the conclusions reached by the Legal Department was that the Secretary-General was empowered under General Assembly resolution 186 (S-2) of 14 May 1948 to "provide the Mediator with the necessary staff to assist in carrying out functions assigned to the Mediator by the General Assembly". The Secretary-General's statement, after referring to the powers of the Mediator under the Council decision of 29 May 1948, added:<sup>4</sup>

"This resolution of the Security Council was adopted under Chapter VI of the Charter and presumably in the exercise of Article 36, which provides that the Security Council may at any stage of a dispute or a situation recommend appropriate procedures or methods of adjustment. The truce provisions of the Security Council resolution of May 29, and of certain further recommendations by the Mediator to implement the Truce, were agreed to by the parties to the dispute. It is clear from the resolution of the General Assembly that the Secretary-General is authorized to provide the Mediator with the necessary staff to assist him in carrying out his official functions. These functions include the functions approved in the Assembly resolution and such other functions as may devolve on him in consequence of instructions from the Security Council. The checking and controlling of the observance of the truce terms agreed to by the parties to the dispute are unquestionably lawful functions of the Mediator.

"... If, in the judgment of the Mediator, he requires guards as part of his staff in the fulfilment of his functions, these guards are clearly part of such staff as the Organization may require within the meaning of Article 97 of the Charter. The Secretary-General, therefore, is authorized both under the Charter and under the resolution of the General Assembly to furnish such guards to the Mediator to perform the functions previously described."

At the 338th meeting on 15 July 1948, during the consideration by the Security Council of the United States draft resolution invoking Articles 39 and 40 in regard to the situation in Palestine, the Council had before it two additional paragraphs suggested by the Secretary-General concerning administrative and finan-

<sup>4</sup> 331st meeting: pp. 33-34

cial arrangements for the operation of the truce. The first of these paragraphs read as follows:<sup>5</sup>

"Requests the Secretary-General to provide the Mediator with the necessary staff and facilities to assist in carrying out the functions assigned to him under the resolution of the General Assembly of 14 May, and under this resolution."

In replying to a request of the representative of the USSR for clarification regarding the word "staff" used in this paragraph, the representative of the Secretariat referred to the statement of the Secretary-General and reiterated that "those guards could be considered as staff necessary to facilitate the performance of the duties of the Mediator".

The representative of the USSR then stated that "the practice of sending Secretariat members for armed guard duties" was "irregular and devoid of legal foundation," and added:

"The constitution of an armed force for the maintenance of international peace and security and the execution of all duties connected with that task are the prerogative of the Security Council under Article 43 of the Charter. As we know, such an armed force has not yet been formed, and it would be inconsistent with the Charter to entertain the fantastic notion of creating some sort of an armed force within the United Nations Secretariat. The creation of an armed force recruited from the Secretariat would be inconsistent both with the Charter and with the dictates of common sense.

"Furthermore, the United Nations Charter provides for situations arising before Article 43 is implemented and a Security Council force is established. Such provision is made in Article 106...

"The functions it is proposed to lay upon the Secretariat guards are essentially duties connected with the maintenance of international peace and security...

"All these facts taken together fully justify the USSR delegation's contention that this proposal is unacceptable, and that, in accordance with established practice and the General Assembly's previous decisions in such cases, the Secretariat should confine itself to the dispatch of clerical, technical and subsidiary staff, but not of sentries or armed guards."

The two additional paragraphs proposed by the Secretary-General were thereupon put to the vote and adopted by 8 votes in favour, none against, with 3 abstentions.<sup>6</sup>

<sup>5</sup> 338th meeting: p. 63. For text of resolution, see chapter VIII, p. 332. For other discussion concerning the draft resolution, see Case 11, pp. 438-439.

<sup>6</sup> 338th meeting: p. 66.

## Part IV

### CONSIDERATION OF THE PROVISIONS OF ARTICLES 48-51 OF THE CHARTER

#### NOTE

Only two case histories, in which Article 51 was the subject of observation within the Security Council, call for entry in part IV.

Reference should, however, also be made to the report of the Military Staff of 30 April 1947 on the general principles governing the organization of the armed forces to be made available by Members of the

United Nations.<sup>1</sup> Article 31 of the report contains conclusions bearing on Article 49 of the Charter, and Article 17 of the report contains conclusions bearing on Article 51 of the Charter. To Articles 17 and 31 of the report each of the five permanent members of the Council attached statements of position.

**CASE 20 (i), (ii), (iii) and (iv). THE INDIA-PAKISTAN QUESTION:** In connexion with decision of 21 April 1948 and with consideration by the Council of reports dated 22 November 1948, 5 December 1949, 3 February 1950 and 15 September 1950 relative to the situation in the State of Jammu and Kashmir.

[*Note:* During the consideration by the Council of measures envisaged in the decision of 21 April 1948, and thereafter of information concerning hostilities in the State of Jammu and Kashmir, the right of self-defence was invoked on various occasions. Observations were made regarding the limitations imposed by the Charter on the exercise of the right of self-defence under Article 51.]

#### CASE 20 (i)<sup>2</sup>

At the 284th meeting on 17 April 1948, the representatives of Colombia, Belgium, Canada, China, the United Kingdom and the United States submitted a draft resolution indicating measures to be taken by the parties to bring about a cessation of the fighting and to create proper conditions for a free and impartial plebiscite to decide whether the State of Jammu and Kashmir was to accede to India or Pakistan.<sup>3</sup>

Commenting on the draft resolution, the representative of China stated that, although it did not "recognize specifically the right of the Dominion of India and its duty of defending Jammu and Kashmir", there was nothing in the draft resolution which impaired the inherent right of self-defence in the event that the calculations of the sponsors were wrong and a large invasion of Jammu and Kashmir were to take place. The Dominion of India could fall back on the provisions of the Charter and "one of the Articles of the Charter (Article 51) specifically assures to all Members the inherent right of self-defence".

At the 286th meeting on 21 April, the joint draft resolution was adopted. Paragraph A. 1. (a), relating to the "withdrawal from the State of Jammu and Kashmir of tribesmen and Pakistani nationals not normally resident therein who have entered the State for the purpose of fighting" etc., was adopted by 8 votes in favour with 3 abstentions. Paragraph A. 2. (a), relating to the progressive reduction of Indian Army forces "to the minimum strength required for the support of the civil power in the maintenance of law and order", was adopted by 8 votes in favour with 3 abstentions.<sup>4</sup>

<sup>1</sup> S/336, O.R., 2nd year, Special Suppl. No. 1, pp. 1-32.

<sup>2</sup> For texts of relevant statements see:

284th meeting: China, p. 9.

285th meeting: India, p. 16.

286th meeting: United Kingdom, pp. 16-17.

<sup>3</sup> See chapter VIII, pp. 346-348.

<sup>4</sup> 286th meeting: pp. 15, 17.

#### CASE 20 (ii)<sup>5</sup>

At the 382nd meeting on 25 November 1948, the Council considered an interim report of the United Nations Commission for India and Pakistan and a letter dated 22 November from its Chairman,<sup>6</sup> transmitting certain information received by the Government of Pakistan concerning military action in the State of Jammu and Kashmir.

At the same meeting, the representative of Pakistan\* informed the Council that during the first half of May, Pakistan, as the result of similar action then taken by the Indian military forces, had to send its troops to halt the Indian forces at certain points beyond the Pakistan borders to stop streams of refugees that had started pouring into Pakistan. He stated that the situation in the State was deteriorating in view of the action of the Indian Government and that Pakistan could not afford to continue to look on and let the situation go on deteriorating.

The representative of India\* declared that since a suggestion had been made that India was acting aggressively in Kashmir, it was only fair to point out to the Security Council that "since May, according to the statement that the representative of Pakistan made to the Commission of the Security Council, and perhaps somewhat earlier according to our own information, Pakistan forces have been and still are in the territory of Jammu and Kashmir, which we regard as Indian territory". The Indian military action was of a defensive character and no major offensive had been contemplated. He said:

"In all our statements before the Security Council, we made it clear that we reserved to ourselves the right of self-defence, the right of expelling from our territory those who had no right to be there... if we are told... that because of imagined offensives and alleged hostile intentions of the Government of India there is going to be a fresh effort by Pakistan in the sense of a counter-offensive, we must in these circumstances naturally exercise the prerogative that belongs to every Member of the United Nations: the prerogative of self-defence."

#### CASE 20 (iii)<sup>7</sup>

At the 466th meeting on 10 February 1950, during the consideration of the third interim report dated 5 December 1949 from the United Nations Commission for India and Pakistan and the report of 3 February from General McNaughton, the representative of India stated that Pakistan's admissions proved that it was rendering some assistance even before 20 April 1948 to the tribesmen invading the State of Jammu and Kashmir. He added:

"... the justification pleaded by Pakistan is that the sending of the troops was necessitated by considerations of self-defence. Such a plea might have passed muster in the old days, but now, fortunately, we have the United Nations and its Charter."

After quoting the text of Article 51, he continued:

"This Article imposes two limitations upon the right of self-defence; first, there must be an armed

<sup>5</sup> For texts of relevant statements see:

382nd meeting: Pakistan, pp. 12-13; India, pp. 15-19.

<sup>6</sup> S/1087, O.R., 3rd year, Suppl. for Nov. 1948, pp. 14-17.

<sup>7</sup> For texts of relevant statements see:

466th meeting: India, pp. 4-5; Pakistan, pp. 18-19.

attack upon the Member that exercises the right; and, secondly, measures taken in the exercise of the right of self-defence must immediately be reported to the Security Council. In the present instance there was no armed attack on Pakistan, and admittedly the sending of the army into Kashmir was not reported to the Security Council.

"I am not making a small legal point. I am pointing this out because, if the matter had been reported at that stage to the Security Council, we should not have been in the difficult position in which we find ourselves today. I feel sure that the Pakistan Army would not have been allowed to go in, and the subsequent mischief to which the invasion led would have been avoided."

#### CASE 20 (iv)<sup>8</sup>

At the 536th meeting on 9 March 1951, during the consideration of the report dated 15 September 1950 from the United Nations Representative for India and Pakistan, the representative of India stated:

"I drew attention last year to Article 51 of the Charter. Let me draw attention to it once again. Under that Article, the right of self-defence begins only when there is an armed attack against a Member. In the present case there was never an armed attack against Pakistan by the Indian Army. Secondly, under that Article, measures taken by Members in the exercise of self-defence must be immediately reported to the Security Council. Pakistan did not inform the Security Council; indeed it was only after the United Nations Commission for India and Pakistan arrived on the sub-continent, nearly two months later, and the facts could no longer be concealed, that the Commission was informed of the presence in the State of regular Pakistan troops. Thirdly, and this is very important, under the Charter the right of self-defence continues only until the Security Council has taken measures necessary to maintain international peace and security.

"In the present case the Security Council, through the United Nations Commission for India and Pakistan, took the necessary measures and, in fact, the Commission succeeded in getting the parties to agree to the two resolutions which I have already mentioned. Under these resolutions a cease-fire has been achieved, a cease-fire line has been demarcated, and there are military observers to supervise the observance of the cease-fire order. None of the alleged grounds on which the Pakistan Army marched into Kashmir in May 1948 have any longer any validity. The line which that army was meant to hold, and more than that line, is now secured under the cease-fire arrangements already imposed."

CASE 21.<sup>9</sup> THE PALESTINE QUESTION: In connexion with decision of 1 September 1951 calling upon Egypt to terminate the restrictions on the passage of ships through the Suez Canal.

[Note: In the preceding discussion, Egypt invoked Article 51 in justification of interference with the passage through the Suez Canal of goods destined for Israel. Observations were made to the effect that, under the terms of Article 51, application of the right

of self-defence was restricted to cases of armed attack, and was limited in time until the Security Council had taken action under the Charter. It was remarked that, in the existing circumstances, Egypt's practice did not correspond to the conditions set forth in Article 51, and it was so specified in paragraph 8 of the decision of 1 September 1951.]

At the 550th meeting on 1 August 1951, during the consideration of the complaint by Israel\* regarding "restrictions imposed by Egypt on the passage of ships through the Suez Canal",<sup>10</sup> the representative of Egypt\* held that Egypt's right of self-preservation and self-defence recognized by Article 51 transcended all other rights. He stated:

"Self-preservation and self-defence has, even in our days, impelled some Powers to restrict the importation of many war materials, or as they are more usually called, strategic war materials, to areas covering many countries with which there was and there is no state of war. The importation into those areas of those strategic materials is not allowed, or, in other words, the exportation of such materials to those areas is not allowed..."

The representative of Egypt then quoted the following passage:

"... Article (51 of the Charter) safeguards the right of self-defence which is referred to as being 'inherent'. By so doing, it follows a long line of precedents where in connexion with international agreements of this kind the right of self-defence has been tacitly or explicitly reserved. In connexion with the Kellogg-Briand Pact of 1928, which contained no explicit reservation of the right of self-defence, the American Secretary of State, Mr. Kellogg, observed that the right was inherent and that there was no necessity of stating it expressly."

He continued:

"It is even stated by the same authors that: 'the provisions of Article 51 do not necessarily exclude this right of self-defence in situations not covered by this Article', and that this right is only subject to the undertaking by the Members of the United Nations to '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'.<sup>11</sup>

He then adduced the following quotation:

"Although the right of self-defence is supposed to be established by a rule of general international law which has the character of '*jus cogens*' so that it cannot be affected by any treaty, it has been considered not as superfluous to stipulate this right expressly in the Charter. Neither the Covenant of the League of Nations nor the Pact of Paris contained an analogous provision..."

\* For texts of relevant statements see:

549th meeting: Egypt, p. 21.

550th meeting: Egypt, pp. 6-8; United Kingdom, p. 20.

551st meeting: Israel, pp. 10-11.

552nd meeting: Brazil, p. 13; United Kingdom, p. 3.

553rd meeting: Ecuador, p. 27; Egypt, pp. 14-15; Netherlands, pp. 4-5.

<sup>10</sup> S/2241, O.R., 3rd year, Suppl. for July-Sept. 1951, pp. 9-10. For the submission of this question, see chapter VIII, p. 343.

<sup>11</sup> L. Goodrich and E. Hambro: *Charter of the United Nations, Commentary and Documents*, 1949, pp. 299, 301.

<sup>8</sup> For text of relevant statements see: 336th meeting: India, pp. 5-6.



"The right of self-defence... is the right of an individual, or a State, to defend his person, property, or honour against a real or imminent attack. It is a right of the attacked or threatened individual or State, and of no other individual or State. Article 51 confers the right to use force not only upon the attacked State but also upon other States which unite with the attacked State in order to assist in its defence..."<sup>12</sup>

The representative of Egypt observed:

"This right, this sublimely primordial right, asserts itself all the more when it is seriously endangered. The fact that it is so endangered in relation to the role which is assumed in the Middle East by world political Zionism through Israel, is a nightmare for those who sleep and an ugly fact for those who are awake."

The representative of the United Kingdom held that Article 51 was not applicable since the conditions set forth in that Article were absent in the present case. He remarked that Article 51 provided that the right of self-defence could only be exercised "until the Security Council has taken the measures necessary to maintain international peace and security". He further stated:

"If Egypt were involved in actual hostilities, it would no doubt be justified in taking measures for its own defence. This is not, however, the situation at the present time.

"Hostilities are not in progress and have not been in progress for two and a half years. It cannot even be maintained that Egypt is under any imminent threat of attack from Israel. We must therefore conclude that the claim to exercise belligerent rights for the defence of Egypt cannot now be sustained and must be considered as an abuse of belligerent rights as these rights are recognized in international law."

The representative of Israel\*, at the 551st meeting on 1 August 1951, after referring to the "convincing refutation" which had already been made regarding the juridical aspect of this question, observed:

"Article 51 of the Charter allows a nation to undertake action of self-defence only on two conditions, both of which are absent here. One of them is that that country shall be the victim of armed attack, and not even the Egyptian representative himself has invoked any such prospect. The second is that the Security Council has not yet assumed responsibility for the maintenance of international peace and security in that area. The Security Council has undertaken its responsibilities in that area by underwriting the General Armistice Agreements and calling upon the parties to ensure their continued fulfilment."

At the 553rd meeting on 16 August, the representative of the Netherlands contended that the restrictions exercised by the Egyptian Government were contrary not only to the spirit of the Armistice Agreements, but also to international law. He added:

"As regards international law, we believe that it cannot be maintained with reason that Egypt—or Israel for that matter—could consider itself actively a belligerent more than two years after the signing of an Armistice Agreement, and we are consequently

of the opinion that Egypt does not require to exercise the belligerent right of visit, search and seizure for any legitimate purpose of self-defence. Besides, as far as self-defence is concerned, something has changed in our world since the closing years of the nineteenth century. Today we, the Members of the United Nations, live—or at least should live—by the Charter of our Organization. On the right of self-defence, this Charter in Article 51, to which some preceding speakers have already made reference, is very explicit. It says *inter alia*: 'Nothing in the present Charter shall impair the inherent right of individual or collective self-defence.' But it limits this right of unilateral or joint action in self-defence by adding: 'if an armed attack occurs against a Member of the United Nations', and 'until the Security Council has taken the measures necessary to maintain international peace and security'. Has there at this stage been an armed attack, and has such action been brought to the attention of the Security Council? I am not aware of it. On the contrary, there is an Armistice Agreement, which has now been in force for over two years. On the other hand, the Security Council has been dealing repeatedly with situations which arose out of the Armistice Agreements in order to bring about loyal observance thereof by all the parties concerned. Can it seriously be maintained, in those circumstances, that one party—or all parties for that matter—should invoke the defensive right of unilateral action, to the detriment of the other party and, moreover, to the detriment of other countries which were at no time connected with the conflict at all? We believe that the answer to that question can be only in the negative."

At the same meeting the representative of Egypt further pointed out "the fact that neither in Article 51 nor in any other Article does the Charter exclude or even impair the right of self-preservation and self-defence", and added: "Nor could Article 51 or any other Article of the Charter in fairness be cut away, as if with a pair of scissors, and isolated from the rest. Less still could we in fairness be asked to forego the unimplemented stipulations of the Charter, such as those dealing with human rights, with the United Nations system of collective defence or, as contained in Article 106, with the responsibilities of the parties to the Four-Nation Declaration for the purpose of maintaining international peace and security."

In submitting a draft resolution jointly sponsored by France, the United Kingdom and the United States at the 552nd meeting on 16 August, the representative of the United Kingdom stated that it was not necessary for the Council to go into the debatable legal issues. The draft resolution was revised<sup>13</sup> at the 553rd meeting on 16 August and adopted at the 558th meeting on 1 September 1951, by 8 votes in favour, none against with 3 abstentions.<sup>14</sup> Paragraph 8 of the resolution provided that the Security Council "further finds that the practice (the Egyptian practice of interfering with the passage through the Suez Canal of goods destined for Israel) cannot in the prevailing circumstances be justified on the ground that it is necessary for self-defence".

<sup>12</sup> S/2298/Rev.1, 558th meeting: pp. 2-3.

<sup>14</sup> 558th meeting: p. 3. For text, see chapter VII, pp. 343-344.

\* Kelsen: *The Law of the United Nations*, 1950, pp. 791-792.



**Chapter XII**

**CONSIDERATION OF THE PROVISIONS OF OTHER ARTICLES  
OF THE CHARTER**

**TABLE OF CONTENTS**

	<i>Page</i>
INTRODUCTORY NOTE .....	453
PART I. CONSIDERATION OF THE PROVISIONS OF ARTICLE 2 (7) OF THE CHARTER	
Note .....	453
PART II. CONSIDERATION OF THE PROVISIONS OF ARTICLE 24 OF THE CHARTER	
Note .....	478
PART III. CONSIDERATION OF THE PROVISIONS OF ARTICLE 25 OF THE CHARTER	
Note .....	488
PART IV. CONSIDERATION OF THE PROVISIONS OF CHAPTER VIII OF THE CHARTER	
Note .....	492
PART V. CONSIDERATION OF THE PROVISIONS OF ARTICLES 82-83 OF THE CHARTER	
Note .....	494
PART VI. CONSIDERATION OF THE PROVISIONS OF CHAPTER XVII OF THE CHARTER	
Note .....	496

## INTRODUCTORY NOTE

Chapter XII covers the consideration by the Security Council of Articles of the Charter not dealt with in the preceding chapters. Appropriate references are given to chapter VIII to facilitate the consultation of the material in conjunction with the record of decisions contained in that chapter. Further observations on the method adopted in the compilation of this chapter will be found in the introductory note to chapter VIII, and the reservations in the introductory note to chapter X apply also to chapter XII.

### Part I

## CONSIDERATION OF THE PROVISIONS OF ARTICLE 2 (7) OF THE CHARTER

### NOTE

The provisions of Article 2 (7), constituting a limitation on the competence of the Security Council, as of other organs of the United Nations, belong to Chapter I of the Charter dealing with the "Purposes and Principles of the United Nations". It was emphasized in the discussions at the San Francisco Conference that there was no intention of defining the scope of domestic jurisdiction by any rigid or legal formula. The intention was to state a general principle.

Problems connected with this narrowing of the field of action of the Security Council by the exclusion from it of matters essentially within the domestic jurisdiction of States have arisen, or been discussed, on a number of occasions in the course of the work of the Council. It has not been considered appropriate to classify the material on the basis of the criteria stated by representatives on the Council to distinguish between matters which are, and matters which are not, "essentially within the domestic jurisdiction of any State".

This section accordingly presents, in strictly chronological order, individual case histories of occasions on which problems connected with the subject of domestic jurisdiction have arisen or been discussed in the Security Council, and, since the tendency of the Council has been to avoid making explicit or formal decisions on the application of Article 2 (7), pays particular attention to a presentation of the procedures followed by the Council in the course of proceedings when the question of domestic jurisdiction has been raised.

This note contains references to, and summaries of, positions taken during the consideration of problems which have been common to two or more cases where the implementation of Article 2 (7) has been in question.

Objections were raised concerning the competence of the Council to deal with the item as a whole in the Indonesian question (I and II),<sup>1</sup> the Spanish question,<sup>2</sup> the Czechoslovak question,<sup>3</sup> the Anglo-Iranian Oil Company case<sup>4</sup> and the Korean question.<sup>5</sup> Objections

were made that the Security Council was not competent to consider certain aspects of the question or to take certain specific action in regard to questions already on the agenda during the consideration of the Ukrainian complaint against Greece,<sup>6</sup> the Greek frontier incidents question<sup>7</sup> and the Palestine question.<sup>8</sup>

Three main points made in these debates may be outlined as follows:

(i) With regard to the general concept of domestic jurisdiction, views were expressed that the line between matters of international and domestic concern was not fixed, being mutable,<sup>9</sup> and that matters within the domestic jurisdiction of a State which bordered or encroached directly upon its external political relations might threaten international peace and security.<sup>10</sup>

(ii) It was stressed that, in itself, the régime or form of government in a State was a matter of domestic jurisdiction,<sup>11</sup> but that such government or régime might become a "matter of international concern" if it were of so aggressive a nature that its activities created a situation which would be a potential menace to international peace and security.<sup>12</sup>

(iii) The view was expressed that "the very existence" of a fascist régime represented a "threat to the peace".<sup>13</sup> Other members of the Council maintained that, although such a régime by its actions and its policy, both domestic and foreign, might threaten international peace, it was necessary to prove this fact before the Security Council could consider the item as a matter of international concern. The question further arose whether such a régime, as a situation the continuance of which was likely to endanger the maintenance of

<sup>1</sup> Cases 1, 7, 8, 9, 10, 11 and 12.

<sup>2</sup> Case 2.

<sup>3</sup> Case 16.

<sup>4</sup> Case 19.

<sup>5</sup> Case 17.

<sup>6</sup> Case 3.

<sup>7</sup> Cases 4, 5 and 6.

<sup>8</sup> Cases 13, 14 and 15.

<sup>9</sup> 35th meeting: Australia, p. 195.

<sup>10</sup> Case 1, 14th meeting: USSR, p. 206.

<sup>11</sup> 34th meeting: Netherlands, p. 177.

35th meeting: Brazil, p. 194.

46th meeting: United Kingdom, p. 345.

26th meeting: USSR, p. 90.

<sup>12</sup> Report of the Sub-Committee on the Spanish Question, O.R., 1st year, 2nd series, Special Suppl., pp. 1, 5. See Case 2.

34th meeting: Mexico, p. 173.

35th meeting: Australia, p. 195.

46th meeting: France, p. 357.

<sup>13</sup> 6th meeting: USSR, p. 304.

international peace and security, ceased to be essentially a matter of domestic jurisdiction.<sup>14</sup>

The problem, whether matters essentially within the domestic jurisdiction of a State might become matters of international concern by reason of their international repercussions, arose in connexion with hostilities which, it was contended, took place within a single political entity. In this case, the competence of the Council to intervene was challenged on the basis of Article 2 (7) of the Charter.<sup>15</sup> The competence of the Council was supported on the grounds that the Council was confronted with a situation resulting from fighting on such a scale that it could lead to international friction and endanger the peace of the world; that repercussions of the hostilities in Indonesia amounted to a threat to international peace and security; that relations between the Indonesian Republic and the Netherlands had gone beyond the limits of a domestic dispute and had become an international problem;<sup>16</sup> that the Security Council was obliged to act in order to maintain peace and security wherever disturbances of the peace had occurred in the world;<sup>17</sup> and that the Council regained its competence when internal difficulties had assumed such proportions that they were liable to give rise to international difficulties.<sup>18</sup>

It was also contended that where persons of "the same race and of the same national status" were concerned, the provisions of Article 2 (7) restricting competence were applicable; but that it was "quite another matter" when "different races and different statuses" were involved.<sup>19</sup>

Objections to the Council's competence based on Article 2 (7) were also raised in connexion with the following specific matters: investigation of frontier violations by a special subsidiary organ of the Council;<sup>20</sup> supervision of international plebiscites and of national elections;<sup>21</sup> control of foreign economic aid;<sup>22</sup> nationalization of foreign property and rights and treatment of aliens;<sup>23</sup> execution of death sentences;<sup>24</sup> obligations of each party to a truce to bring to trial persons involved in a breach of the truce.<sup>25</sup> The question of domestic jurisdiction also arose in connexion with certain provisions in the first report of the Atomic Energy Commission at the 115th meeting.

With regard to the nature of intervention in matters essentially within the domestic jurisdiction of a State, the question has arisen on certain occasions whether a discussion in the Council of the internal affairs of a

Member State would constitute intervention (the Ukrainian complaint against Greece;<sup>26</sup> the Czechoslovak question<sup>27</sup>).

As regards the procedure of the Council, the question has been debated on several occasions whether adoption of the agenda constitutes a pronouncement on competence in respect of the items included.<sup>28</sup>

Discussion has also arisen as to whether the Council, dealing continually with a matter and having adopted certain resolutions, has decided by implication that it is competent. A number of representatives indicated that their vote in favour of certain resolutions carried the reservation that their action was not to be construed as implying any decision regarding the question of competence of the Council.<sup>29</sup> Other representatives expressed the view that by adopting certain resolutions the Council had decided that it was competent to deal with the matter.<sup>30</sup>

On several occasions it has been suggested, without any formal proposal having been submitted, that the Council, before deciding the question of its competence, should request the International Court of Justice for an advisory opinion in this respect.<sup>31</sup> A formal proposal to this effect was made during the consideration of the Indonesian question (II) and was rejected by the Security Council.<sup>32</sup> The arguments in favour of this proposal were of a general nature.<sup>33</sup> The arguments opposing the proposal stressed the political character of the issue—its "grave political repercussions",<sup>34</sup> diversion of attention "from the substance of the question to legal considerations of secondary importance".<sup>35</sup> Attention was also drawn to the possible effects of the advisory opinion upon the proceedings of the Council,<sup>36</sup> and to the problem of the position of the Council during the intermediary period between the submission of a request for an advisory opinion to the International Court of Justice and the delivery thereof.<sup>37</sup>

In another matter, where the dispute had already been submitted to the International Court of Justice, the Security Council decided to adjourn its debate until the Court had "ruled on its own competence" in the

<sup>14</sup> Case 3. 61st meeting: Greece, p. 219.

<sup>15</sup> Case 16. 268th meeting: Ukrainian SSR, pp. 96-97; USSR, p. 90; Czechoslovakia, S/718, O.R., 3rd year, Suppl. for April 1948, p. 6.

<sup>16</sup> See chapter II, part III, section B (2).

<sup>17</sup> 181st meeting: France, p. 1936; United States, pp. 1942-1943.

194th meeting: Belgium, p. 2193; France, p. 2214.

195th meeting: China, p. 2217; United Kingdom, p. 2218; United States, pp. 2177-2178.

<sup>18</sup> 181st meeting: Poland, pp. 1927-1928.

194th meeting: USSR, p. 2210.

195th meeting: USSR, p. 2222.

<sup>19</sup> Case 1. 15th meeting: Netherlands, p. 218.

Case 2. 46th meeting: United Kingdom, p. 347; see also 426th meeting: United Kingdom, p. 28 (Hyderabad question).

<sup>20</sup> Case 9. See also chapter VI, Case 27.

<sup>21</sup> 194th meeting: Belgium, p. 2194.

195th meeting: Belgium, p. 2214; France, pp. 2214-2215; United Kingdom, pp. 2218-2219; United States, p. 2222.

<sup>22</sup> 195th meeting: Australia, pp. 2215-2216; India, pp. 2219-2221; Poland, pp. 2222-2223.

<sup>23</sup> 194th meeting: USSR, p. 2211.

<sup>24</sup> 195th meeting: Australia, p. 2217; China, pp. 2217-2218; India, p. 2220.

<sup>25</sup> 194th meeting: Belgium, pp. 2193-2194.

195th meeting: China, p. 2217; France, pp. 2214-2215; Poland, pp. 2222-2223; United Kingdom, p. 2218; United States, p. 2178.

<sup>14</sup> See Case 2.

<sup>15</sup> Cases 7 and 11. 171st meeting: Netherlands, p. 1645.

<sup>16</sup> 172nd meeting: France, p. 1658; United Kingdom, p. 1656. 390th meeting: Australia, p. 14.

391st meeting: USSR, pp. 39-40.

<sup>17</sup> 391st meeting: Syria, p. 22.

<sup>18</sup> 392nd meeting: France, p. 10.

<sup>19</sup> See Case 1. 15th meeting: Egypt, p. 213.

<sup>20</sup> Case 6.

<sup>21</sup> Case 3. See also India-Pakistan question:

239th meeting: India, p. 327.

240th meeting: Pakistan, pp. 353-354; United States, pp. 370-371.

241st meeting: France, p. 4.

242nd meeting: India, pp. 36-37.

<sup>22</sup> Case 5.

<sup>23</sup> Case 19.

<sup>24</sup> Case 4.

<sup>25</sup> Case 15.

case.<sup>48</sup> It was argued that the Council was not competent to deal with this matter since it was within the domestic jurisdiction of Iran<sup>49</sup> and that the question of international or domestic jurisdiction was to be decided by the Court; therefore, it would be inadvisable for the Council to rule on its own competence.<sup>50</sup> On the other side, it was contended that the ruling of the Court on provisional measures had indicated that the

matter was at least *prima facie* justiciable,<sup>51</sup> and that, being a subject of litigation in the International Court of Justice, there was reason for not accepting the objection that the matter was essentially within the domestic jurisdiction of Iran.<sup>52</sup>

On occasion the President has stated the position that representatives on the Council would register their view on competence by their vote on the specific proposals involving a recommendation by the Council.<sup>53</sup>

<sup>48</sup> Case 19.

<sup>49</sup> 559th meeting: USSR, pp. 1-2; Yugoslavia, pp. 2-3.

560th meeting: Iran, pp. 6-7.

561st meeting: Yugoslavia, pp. 17-18.

562nd meeting: Ecuador, p. 2.

<sup>50</sup> 561st meeting: India, pp. 16-17.

562nd meeting: Ecuador, pp. 5, 6.

<sup>51</sup> 559th meeting: United Kingdom, p. 4.

<sup>52</sup> 559th meeting: United States, pp. 6-7.

563rd meeting: Netherlands, pp. 32-34.

<sup>53</sup> See Case 7, and chapter X, Case 26.

### Article 2 (7) of the Charter

7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

#### CASE 1.<sup>44</sup> THE INDONESIAN QUESTION (I)

[Note: The question of domestic jurisdiction arose in connexion with the proposal to send a commission; and with the question whether the matter on the agenda covered Dutch-Indonesian relations.]

By letter dated 21 January 1946, the representative of the Ukrainian SSR drew the Security Council's attention to the fact that military action had been directed against the local population by the British and Japanese forces in Indonesia, and it was the opinion of his Government that that situation threatened the maintenance of international peace and security.<sup>45</sup>

At the 12th meeting on 7 February 1946, the representative of the United Kingdom said that the question of who was the sovereign authority in Indonesia should be made clear. It was the definite decision of the Allies to restore the territory taken by the enemy to the sovereign power. The question of sending commissions should be dealt with by the sovereign power, namely, the Netherlands. At the 13th meeting on 9 February 1946, the representative of the United Kingdom said that, in all the statements he had heard, the sovereignty of the Netherlands had not been questioned; an important point of principle had been raised on which a conclusion should be reached. After referring to Article 2 (7), he declared that he could not agree that a commission should be sent to investigate and deal with the problems arising inside the territory of a sovereign power. The representative of the Netherlands pointed out that he had no objection to the question being dealt with as worded, i.e., the question of military action directed against the local population. There was no question of fighting against the Indonesians; there was only the need for subduing armed bands who tried to prevent the British troops from disarming the Japanese and obtaining their surrender.

<sup>44</sup> For texts of relevant statements see:

12th meeting: United Kingdom, p. 179.

13th meeting: United Kingdom, pp. 193-194.

14th meeting: USSR, pp. 206-207.

15th meeting: Egypt, pp. 212-213, 218; Netherlands, p. 218.

17th meeting: Netherlands, p. 246.

<sup>45</sup> See chapter VIII, p. 302. For consideration regarding the applicability of Article 34, see chapter X, Case 7.

At the 14th meeting on 10 February 1946, the representative of the USSR denied that Article 2 (7) was applicable to the situation in Indonesia. He said:

"There are matters, however, which though formally comprised in the domestic jurisdiction of a given State, border upon external political relations, or even encroach directly upon external political relations, threatening the peace and security of the peoples. Such matters cannot be left to be settled by the State itself, notwithstanding the principle of sovereignty."

He cited the sending of an international commission to Greece to control the carrying out of the elections, the commission on Polish affairs consisting of a USSR, a United Kingdom and a United States member, and the mission of Sir Archibald Clark Kerr to Indonesia.

At the 15th meeting on 10 February 1946, the representative of Egypt contended that the Security Council was fully entitled to deal with the Indonesian situation. He stated that Article 1 (2) and Chapter XI imposed an obligation not only on States administering dependent territories, but also a more general obligation on all Members of the United Nations. He agreed with the representative of the United Kingdom that, bearing in mind Article 2 (7), it would not be right to send commissions of investigation when internal troubles arose in a certain country. But he considered that a distinction had to be made between cases "where persons of the same race and the same national status" were concerned, in which event Article 2 applied unquestionably, and cases where "different races and different statutes" were involved, and when, as a result of the conflict, there was a threat to international peace.

The representative of the Netherlands considered that the interpretation given by the representative of the USSR whittled away completely Article 2 (7), and he should "like to see what, for instance, the International Court of Justice would have to say with regard to that point".

At the 18th meeting on 13 February 1946, the Ukrainian proposal for a commission of inquiry and the Egyptian draft resolution whereby the Council was to be kept informed of the results of the Netherlands-

Indonesian negotiations then going on were both rejected.<sup>46</sup>

CASE 2.<sup>47</sup> THE SPANISH QUESTION: In connexion with the terms of reference of the Sub-Committee on the Spanish Question established 29 April 1946; and the recommendations of the Sub-Committee presented 1 June 1946.

[Note: In the establishment of the Sub-Committee the question arose whether the question of domestic jurisdiction should be expressly referred to it for report (Case 2 (i)). After the submission of the report, discussion arose on the finding of the Sub-Committee that the situation in Spain, while not a threat to the peace within the meaning of Article 39, was nevertheless of international concern such as to warrant a recommendation under Article 36 (Case 2 (ii)).]

#### CASE 2 (i)

At the 34th meeting on 17 April 1946, the representative of Poland, in his introductory statement, referred to General Assembly resolution 32 (I) of 9 February 1946, and declared that "by this act alone it was established that the question of the Franco régime is not an internal affair of interest to Spain alone but an international problem which concerns all the United Nations". Reasons why the Franco régime was "a matter of concern to all the United Nations" were given.

At the same meeting, the representative of Poland submitted a draft resolution which, citing Articles 39 and 41 of the Charter, called upon members of the United Nations to sever diplomatic relations with the Franco Government.<sup>48</sup>

Consideration of the draft resolution gave rise to discussion at the 34th and 35th meetings whether the situation in Spain was essentially a matter within the domestic jurisdiction of Spain and whether the Franco régime fell, as a threat to the peace, within the proviso of Article 2 (7).

At the 35th meeting on 18 April, the representative of Australia submitted an amendment to the draft resolution submitted by the representative of Poland. In submitting his amendment, the representative of Australia observed that "the question of domestic jurisdiction has been raised" and "we have to have an investigation and proof that its [the Franco Government's] policy and activities are of international concern, and therefore within the ambit of the Charter."<sup>49</sup> The amendment provided for the appointment of a

committee of five members "to report . . . on the following questions:"<sup>50</sup>

"1. Is the Spanish situation one essentially within the jurisdiction of Spain?

"2. Is the situation in Spain one which might lead to international friction or give rise to a dispute?

"3. If the answer to question 2 is 'Yes', is the continuance of the situation likely to endanger the maintenance of international peace and security?"

At the 37th meeting on 25 April, the representative of Australia replaced his amendment by a draft resolution for the appointment of a sub-committee to report on the facts bearing on three questions:

"1. Is the existence of the Franco régime a matter of international concern and not one essentially within the jurisdiction of Spain?"<sup>51</sup>

The second and third questions remained unchanged.

At the 38th meeting on 26 April, the representative of Australia submitted a revised text of the draft resolution<sup>52</sup> which, with further amendments, was adopted at the 39th meeting on 29 April 1946. It read in part:<sup>53</sup>

" . . . the Security Council,

"Keeping in mind the unanimous moral condemnation of the Franco régime . . . and the views expressed by members of the Security Council regarding the Franco régime,

"Hereby resolves: to make further studies in order to determine whether the situation in Spain has led to international friction and does endanger international peace and security, and if it so finds, then to determine what practical measures the United Nations may take.

"To this end, the Security Council appoints a Sub-Committee of five of its members . . . to report to the Security Council before the end of May."

The specific questions regarding domestic jurisdiction were not included in the terms of reference: the representative of Australia explained, however, that the phrase "Keeping in mind . . . the views expressed by members of the Security Council regarding the Franco régime" referred to "all the views in the whole of the debate for and against, and the question of domestic jurisdiction."<sup>54</sup>

The following statements were made before the establishment of the Sub-Committee:

The representative of Poland (34th meeting, 17 April 1946):

"The Franco régime in Spain is not merely an internal affair of interest to that country alone. It is a matter of concern to all the United Nations for the following reasons:

"1. The Franco régime was placed in power with the support of Fascist Italy and Nazi Germany against the will of the Spanish people . . .

<sup>46</sup> 35th meeting: p. 198.

<sup>47</sup> 37th meeting: p. 216.

<sup>48</sup> 38th meeting, p. 239.

<sup>49</sup> 39th meeting, p. 244. See chapter X, Case 8, for discussion in relation to Article 34; and chapter V, Case 65, for discussion on the character of the Sub-Committee.

<sup>50</sup> S/75, O.R., 1st year, 1st series, Special Suppl., rev. ed., pp. 1-2.

<sup>46</sup> See chapter VIII, p. 302.

<sup>47</sup> For texts of relevant statements see:

34th meeting: France, pp. 168-169; Mexico, pp. 173-174; Netherlands, pp. 176-177; Poland, pp. 156-159, 164, 166.

35th meeting: Australia, pp. 195, 197-198; Brazil, pp. 193-194; USSR, pp. 185-186; United Kingdom, p. 181.

37th meeting: Netherlands, p. 231; Poland, pp. 227-228.

44th meeting: Australia, pp. 317-320.

45th meeting: Egypt, pp. 328-329; USSR, p. 331.

46th meeting: Australia, pp. 351-355; France, pp. 357-359; Mexico, pp. 360-362; United Kingdom, pp. 345-346.

47th meeting: United States, p. 365.

48th meeting: Poland, pp. 382, 388.

<sup>49</sup> 34th meeting: p. 167. See chapter VIII, p. 306 for submission of the Spanish question. For text of draft resolution, see chapter XI, Case 1.

<sup>50</sup> 35th meeting: p. 195.



"2. The Franco régime was an active partner in the Axis war against the United Nations . . .

"3. The Franco régime caused a state of international friction by compelling the French Republic to close its borders with Spain and by massing troops along the borders of France.

"4. The Franco régime allowed the territory of Spain to become a haven for German assets, for German personnel and for German scientists engaged in pursuits dangerous to the peace of mankind . . ."

The representative of France (34th meeting):

"A second objection is that the Spanish problem is claimed to be an internal one coming under Article 2, paragraph 7, of the Charter. The United Nations itself at San Francisco and London, and the three Great Powers at Potsdam, have already disposed of this argument by branding the Spanish régime as being incompatible with the new international order."

The representative of Mexico (34th meeting):

"My Government believes that the fear of intervening in the domestic affairs of Spain is wholly groundless, particularly at the present juncture. The United Nations and several States, singly or in groups, have acted already against Franco's régime. Nobody, except Franco, has to this date raised the objection that such acts are against Article 2, paragraph 7, of the Charter. If any nations have been guilty of intervention in the domestic affairs of Spain those nations are Germany and Italy . . .

"I may add that if we have recognized in fact that there is in Spain a situation that threatens international peace, we cannot likewise maintain that this is a matter essentially within the domestic jurisdiction of the Spanish State. This, indeed, would be an absurd conclusion, one contrary to the letter and to the spirit of the Charter of the United Nations.

"Of the eleven members of the Council, the five permanent members have adopted positions hostile to Franco . . . Of the six non-permanent members, only two maintain diplomatic relations with Franco.

"Other Members of the United Nations, namely, Bolivia, Guatemala, Panama, and Venezuela, have severed relations with that spurious Government. It has been reported that other States, both Members and non-members, will soon act in the same manner. On the other hand, there is a Spanish Republican Government-in-exile that has been recognized by several States. Is it logical to maintain that this peculiarly anomalous international situation is essentially within the domestic jurisdiction of the Spanish State?"

The representative of the Netherlands (34th meeting):

"So long as Franco does not really threaten international peace and security, whether Spain wants to keep that régime or not is a matter for Spain and for Spain alone. It is, in my opinion, in the language of the Charter, a matter which is essentially within Spain's domestic jurisdiction. On this point I must disagree with my friend, the representative of Mexico.

"I may recall in this respect the definition given, with regard to precisely this term, by the Permanent

Court of International Justice in 1923. In giving a unanimous opinion on the dispute between France and Great Britain, the Court then said: 'The words *solely within the domestic jurisdiction* seem rather to contemplate certain matters which, though they may very closely concern the interests of more than one State, are not, in principle, regulated by international law. As regards such matters, each State is sole judge.'

"And I also recall that, while the Dumbarton Oaks plan spoke of 'matters solely within the domestic jurisdiction of States', this was considered as being too narrow and too restricted and therefore was changed in the Charter to 'matters . . . essentially within the domestic jurisdiction of any State'.

"So long as there is no evidence that the Franco régime really threatens international peace and security, and I do not think there is such evidence, the question as to whether it should or should not be continued, rests solely with the Spanish people . . ."

The representative of the United Kingdom (35th meeting):

"Previous speakers have called attention to paragraph 6 of Article 2 of the Charter, but I must point out that this paragraph is immediately followed by a further statement, in paragraph 7, to the effect that nothing in this Charter authorizes the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State. The nature of the régime in any given country is indisputably a matter of domestic jurisdiction.

"But those who drafted the Charter wisely made one exception to this rule, designed to meet the case where a régime such as the Nazi régime in Germany might be of so aggressive a nature as plainly to threaten the peace and security of other countries. The paragraph I have quoted also lays down that this principle, that is to say, the principle of non-intervention in matters of domestic jurisdiction, shall not prejudice the application of enforcement matters under Chapter VII. That is the Chapter of the Charter which deals with enforcement measures and the first article of that Chapter, Article 39, governs the whole Chapter . . .

" . . .

"I cannot admit that the case so far made against the Spanish Government has established the existence of such a threat to the peace, breach of the peace, or act of aggression . . ."

The representative of the USSR (35th meeting):

"It has been claimed that the Polish statement constitutes interference in the domestic affairs of Spain, and that such interference is prohibited under Article 2, paragraph 7, of the Charter. Such assertions are, however, ill-founded and a distortion of the true facts. The Charter indeed contains a provision with reference to non-interference on the part of the United Nations in the domestic affairs of any State. But it is clearly stated in the Charter that interference by the United Nations in the domestic affairs of a State should not take place in normal circumstances, that is to say, when the internal situation in any State does not constitute a threat to international peace and security. The Charter admits and provides for the necessity of taking definite measures with regard to States when

their internal situation constitutes a threat to international peace and security. This is also clearly stated in Article 2 of the Charter. So the Charter leaves no doubt whatever under which circumstances the United Nations cannot and should not intervene in the internal affairs of sovereign States and under which circumstances the United Nations both can and should take certain measures required by the situation arising even out of the internal affairs of a State when these internal affairs constitute a menace to international peace and security."

#### CASE 2 (ii)

In the introduction to its report, dated 1 June 1946, the Sub-Committee on the Spanish Question stated:

"3. There can be no question that the situation in Spain is of international concern. That fact is sufficiently evidenced by the resolution of the first part of the first session of the General Assembly in London, the resolution of the Security Council and the joint declaration of the United States, United Kingdom and France dated 4 March 1946 . . .

"4. It is also plain that the facts established by the evidence before the Committee are by no means of essentially local or domestic concern to Spain. What is imputed to the Franco régime is that it is threatening the maintenance of international peace and security and that it is causing international friction. The allegations against the Franco régime involve matters which travel far beyond domestic jurisdiction and which concern the maintenance of international peace and security and the smooth and efficient working of the United Nations as the instrument mainly responsible for performing this duty."

At the 45th to 47th meetings between 13 and 18 June 1946, the Security Council had under consideration the draft resolution for the adoption of the Sub-Committee's recommendations, which, together with the United Kingdom amendment, were rejected at the 47th meeting.<sup>48</sup> The recommendations gave rise to discussion on several questions of interpretation: whether the proviso of Article 2 (7) relating to enforcement measures under Chapter VII constituted the sole exception to the principle of non-intervention; whether measures within the scope of Chapter VI of the Charter could rightly be adopted in respect of the situation in Spain on the grounds that the situation was not essentially a matter within the domestic jurisdiction of Spain; and whether the measures proposed by the Sub-Committee came within the scope of Chapter VI or within the scope of Chapter VII.

The following statements were made after the submission of the report of the Sub-Committee:

The representative of Australia as the Chairman of the Sub-Committee (44th meeting):

"It will be noticed that the majority of the Sub-Committee takes the view that the situation in Spain is not of the kind described in Chapter VII: that is, that there is no existing threat to peace. As a consequence of that decision, the question has been raised whether or not the proposed action by the Council

would be contrary to the provisions of Article 2, paragraph 7, of the Charter, namely that the United Nations cannot intervene in a matter essentially within the jurisdiction of a State. Now, in my opinion, this argument springs from fallacious logic and it should be pointed out quite clearly that Article 2, paragraph 7, of the Charter does not say that the United Nations shall not intervene in any matter which does not fall within Chapter VII. What it does say is that the United Nations shall not intervene in a matter essentially within the domestic jurisdiction of a State. When considering this point we can forget about Chapter VII. We should concern ourselves only with the terms of Article 2, paragraph 7, and ask ourselves whether or not this question is essentially within the domestic jurisdiction of Spain. That is a question of fact. It depends upon the circumstances of the particular case.

" . . .

"What are the facts? The facts are that there is a situation the continuance of which, in the finding of the Sub-Committee, is likely to endanger the maintenance of international peace and security . . . The situation, I submit, is the complete antithesis of an essentially domestic situation."

The representative of the United Kingdom (46th meeting):

"I must say that my Government has very grave doubts indeed as to the juridical right of the Security Council to intervene in the internal affairs of a country unless there is a clear threat to the maintenance of international peace and security. We should be creating a precedent, and it is clearly essential that the United Nations should act on a perfectly sound legal basis.

" . . .

"I think it is quite plain from that language what the framers of the Charter meant to effect. It was to prevent the United Nations from intervening in matters of purely domestic jurisdiction. But in their wisdom, those who framed the Charter did add an exception. They added at the end of that paragraph, 'but this principle' -- that is to say, the principle of non-intervention in matters of domestic jurisdiction -- 'shall not prejudice the application of enforcement measures under Chapter VII'. That, no doubt, is why the Polish draft resolution submitted in the thirty-fourth meeting suggested that action should be taken under Articles 39 and 41."

The representative of France (46th meeting):

"I must confess that I do not understand this argument very well: it seems to me to lack validity since it refers to paragraph 7 of Article 2. There is no question of our intervening in the domestic affairs of Spain: once this point is conceded, the whole argument put to us lacks foundation. The really important question is whether the facts contained in the Sub-Committee's report and endorsed by that Sub-Committee unanimously amount to intervention in the domestic affairs of Spain, or whether or not they constitute a threat to the peace.

"It is quite obvious that events which, though taking place within the frontiers of one country, endanger world peace cease to be domestic affairs. From that point onwards, the overriding considera-

<sup>48</sup> For discussion of the recommendations in relation to Chapter VI of the Charter, see chapter X, Case 22; and in relation to Chapter VII of the Charter, see chapter XI, Cases 1 and 16.

tion is their international aspect; Article 2, referred to by the United Kingdom representative, does not refer merely to matters within the domestic jurisdiction of a State, but to matters 'essentially' within such jurisdiction. The first point to be decided is whether the recommendations proposed to us constitute interference in the domestic affairs of Spain and whether there is really a threat to world peace."

After the rejection of the draft resolution based on the recommendations of the Sub-Committee, no further discussion of the problem of domestic jurisdiction took place. At the 49th meeting on 26 June 1946, the Security Council decided "to keep the situation in Spain under continuous observation and maintain it upon the list of matters of which it is seized".<sup>50</sup>

CASE 3.<sup>51</sup> THE GREEK QUESTION: Ukrainian SSR communication dated 24 August 1946.

[Note: The contention was advanced that internal developments may, by giving rise to a threat to the peace, warrant the adoption of measures by the Security Council.]

The complaint brought to the attention of the Security Council by the Ukrainian SSR,<sup>52</sup> charging that the situation in the Balkans which endangered the maintenance of international peace and security had resulted from the policy of the Government of Greece, was placed on the provisional agenda of the 54th meeting on 28 August 1946. During the discussions as to whether this item should be included in the agenda, the representatives of Australia, Brazil, the Netherlands and the United Kingdom maintained that the Ukrainian SSR communication contained accusations against Greece unsubstantiated by sufficient facts. The representatives of the Netherlands and the United Kingdom opposed adoption of the item. The representative of the USSR contended that the Government of the Ukrainian SSR had submitted to the Council a very important and serious question directly connected with the maintenance of international peace and security. In this connexion he stated at the 58th meeting on 30 August 1946:

"... It may be said that the state of affairs in Greece is an internal Greek affair ...

"As soon as an internal state of affairs causes a serious external complication and gives rise to a threat to peace, the Charter of the United Nations obliges the Security Council to consider the situation even if it arises out of the internal position. In the present case precisely such a situation occurs."

Before the vote on the adoption of the item at the 59th meeting on 3 September the representative of Australia stated:

"... Before we admit a situation for examination, we have to have a reasonable certainty that it is not

going to involve us in any of the difficulties which are raised by Article 2, paragraph 7, relating to intervention in matters of domestic jurisdiction.

"We cannot entertain a situation which is one of domestic jurisdiction, and for that reason, and for a number of other reasons, we must have a clear and careful description of the situation which we are expected to consider. Regrettably, we feel that the situation has not been so described."

At the 59th meeting, the item was included in the agenda by 7 votes in favour, 2 against, with 2 abstentions.<sup>53</sup>

During the general debate on the question it was maintained by the representatives of the Ukrainian SSR\* and the USSR that the internal affairs of Greece, aggravated by the presence of United Kingdom troops, had become a threat to the peace and justified intervention by the Security Council under Article 2 (7).

In this connexion, at the 60th meeting on 4 September the representative of the Ukrainian SSR said:

"Article 2, paragraph 7, of the United Nations Charter denies other Governments the right to intervene in the internal affairs of a foreign country. In that case, however, this Article and paragraph are directed against the British authorities who have violated the Article. Action in the present case by the Security Council is not intervention in the internal affairs of Greece, but it is the duty of the Security Council to prevent intervention by a foreign government in the internal affairs of another country and the creation of such conditions, in accordance with Article 2, paragraph 7, of the Charter of the United Nations, as to guarantee that the plebiscite remains an internal affair of the Greek people only."

The representative of the USSR, referring to Article 2 (7), stated at the 66th meeting on 11 September that:

"... the meaning of this paragraph of the Charter is absolutely clear. It permits the United Nations to undertake appropriate measures for removing a threat to the peace or a violation of the peace, even though such a threat might have arisen from the internal situation in a particular country. This paragraph not only justifies but also obliges the Security Council to undertake measures against countries having a fascist régime, the very existence of which represents a threat to the peace.

"It is impossible, on the basis of this paragraph in the Charter, to justify foreign intervention in the internal affairs of Greece, all the more so because it is a matter of an intervention which is responsible to a considerable extent for the aggressive policy of ruling Greek circles."

The representatives of Greece and the United Kingdom maintained that United Kingdom troops had landed in Greece "at the time of the liberation" in 1944 and had "remained in Greece since then" at the request of the Greek Government. In reply to the representatives of the Ukrainian SSR and the USSR, the representative of Greece stated at the 61st meeting on 5 September that:

"We regard as inadmissible any public discussion of our internal affairs, because under Article 2,

\* 59th meeting, p. 197. On inclusion in the agenda, see also chapter II, Cases 17 and 28.

<sup>50</sup> 49th meeting: p. 441. For text, see chapter VIII, p. 307.

<sup>51</sup> For texts of relevant statements see:

58th meeting: USSR, p. 170.

59th meeting: Australia, p. 196; USSR, p. 186.

60th meeting: Ukrainian SSR, p. 209.

61st meeting: Greece, pp. 218-219.

62nd meeting: United Kingdom, pp. 246-247.

66th meeting: USSR, p. 304; United Kingdom, p. 314.

<sup>52</sup> S/137, O.R., 1st year, 2nd series, Suppl. No. 5, pp. 149-151. For the submission of the question, see chapter VIII, p. 308.

paragraph 7, of the United Nations Charter, this constitutes intervention in the internal matters of a sovereign State, a proud and independent Member of the United Nations. But we cannot allow the charges brought by this Council against our country to go unanswered."

At the 66th meeting, the representative of the United Kingdom, referring to Article 2 (7), said:

"He [*the representative of the USSR*] then said, or I understood him to say, that I had tried to justify British action in Greece by invoking paragraph 7, Article 2, of the Charter. I really did nothing of the kind. . . . [*The representative of the Ukrainian SSR*] said that paragraph 7, Article 2, of the Charter forbade a nation to intervene in matters coming within the domestic jurisdiction of another nation. I pointed out that it does not, but it forbids the United Nations as a body from doing so. I added that it was not intervention of one nation in the affairs of another nation, if the latter had requested the former to maintain troops upon its territory."

Following the rejection of draft resolutions submitted by the representatives of the USSR, the Netherlands, the United States and Poland, the item was removed from the list of matters of which the Council is seized.<sup>87</sup>

CASE 4.<sup>81</sup> THE GREEK FRONTIER INCIDENTS QUESTION: In connexion with United States draft resolution to advise the Commission of Investigation concerning Greek Frontier Incidents that it was not empowered to request authorities of Greece, Albania, Bulgaria and Yugoslavia to postpone any executions unless examination of any such person as a witness might assist the Commission in its work: voted upon and adopted on 10 February 1947

[*Note: The question arose whether the requests of the Commission involved interference in the domestic jurisdiction of Greece.*]

By cablegram dated 6 February 1947, the Secretary of the Commission of Investigation concerning Greek Frontier Incidents<sup>82</sup> requested the Security Council to inform the Commission whether its action in requesting the Greek Government to postpone executions of eleven persons for political offences was covered by the terms of reference of the resolution of the Council of 19 December 1946,<sup>83</sup> which empowered the Commission to call upon nationals of the States concerned who might assist the Commission with information relevant to its investigation.

By letter dated 7 February 1947,<sup>84</sup> the representative of Greece to the United Nations stated that the Greek Government had "altogether exceptionally consented for the last time to order that the executions be postponed by forty-eight hours". While it was "willing to facilitate to its utmost the work of the Commission" it was "unable, however, to agree to the abolition of the sovereign rights of the State by the postponement of the execution of the tribunal's sentences".

The Greek Government, therefore, lodged

"... the most emphatic protest in regard to the interference of the Commission of Investigation in the domestic affairs of . . . [Greece] contrary to Article 2, paragraph 7, of the Charter of the United Nations and the terms of reference of the Commission as they were established by the resolution of 19 December 1946 of the Security Council . . ."

On 8 February 1947, the Secretary-General requested the Government of Greece to postpone the executions in question until the Council had had time to consider and discuss the Greek representative's letter of 7 February 1947.<sup>85</sup>

At the 100th meeting the representative of the United States stated:

"... the terms of reference of the Commission do not empower the Commission to intervene with the Greek Government for the suspension of sentences against condemned persons simply because they happen to be political offenders. That is a very delicate question of alleged interference in the internal affairs of other countries . . ."

In this connexion, the representative of the United States submitted a draft resolution.<sup>86</sup> The representatives of Australia, France and the United Kingdom expressed their support of the United States draft resolution as a correct reply to the Commission.

The representative of Australia stated at the 100th meeting:

"... it appears that the informal request was based on the view that the Commission's work would be facilitated if the Greek Government postponed certain executions. It seems to us that the Greek Government was under no obligation, juridically speaking, to comply with that request; but we are very pleased to note . . . that, in fact, the Greek Government did comply with the informal request made to it . . ."

At the 101st meeting on 10 February, the representative of France stated that the United States draft resolution contained a double warning: to the Commission of Investigation on the one hand, and to the Greek Government on the other. He added:

"This resolution reminds the Commission of Investigation that it has no right to interfere in the internal affairs of Greece. It reminds the Greek Government that the Commission of Investigation has been empowered to interrogate all persons whose testimonies are necessary for the accomplishment of its mission . . ."

Amendments to the United States draft resolution were submitted by the representatives of Poland<sup>87</sup> and

<sup>87</sup> 70th meeting: pp. 420-422. For the draft resolutions, see chapter VIII, p. 308; for consideration of the draft resolutions in relation to Chapter VI of the Charter, see chapter X, Case 10; for removal of the question from the list of matters, see chapter II, Case 57.

<sup>81</sup> For texts of relevant statements see:

100th meeting: Australia, pp. 183-184; Poland, p. 184; USSR, pp. 182-183; United Kingdom, p. 182; United States, pp. 175-176.

101st meeting: Brazil, pp. 186-187; France, p. 187; USSR, pp. 186, 187.

<sup>82</sup> S/266, O.R., 2nd year, Suppl. No. 4, pp. 51-52.

<sup>83</sup> S/399, 87th meeting: pp. 700-701. For text, see chapter VIII, p. 309.

<sup>84</sup> S/271, O.R., 2nd year, Suppl. No. 4, pp. 52-54.

<sup>85</sup> S/271, O.R., 2nd year, Suppl. No. 4, p. 55.

<sup>86</sup> 100th meeting: p. 176.

<sup>87</sup> 101st meeting: p. 184.

the USSR<sup>60</sup> respectively at the 101st meeting. At the same meeting the USSR amendment was rejected by 1 vote in favour, 9 votes against, with 1 abstention. The Polish amendment was rejected by 2 votes in favour, 7 against, with 2 abstentions.

Also at the 101st meeting the United States draft resolution was adopted by 9 votes in favour, none against, with 2 abstentions.

**CASE 5.<sup>61</sup> THE GREEK FRONTIER INCIDENTS QUESTION :**  
In connexion with the decision of 18 April 1947, establishing the Subsidiary Group of the Commission of Investigation concerning Greek Frontier Incidents

[Note: Incidental to the establishment of the Subsidiary Group of the Commission of Investigation concerning Greek Frontier Incidents, the objection was raised that intervention in the internal affairs of Greece was involved in the matter of the administration of foreign aid.]

At the 123rd meeting on 28 March 1947, the representative of the United States made a statement informing the Council of the proposed United States programme of assistance to Greece and Turkey in response to requests from both Governments. He stated that this programme of assistance, together with effective action by the Security Council in the case of the northern Greek frontiers, would materially advance the cause of peace.

At the 126th meeting on 7 April, the representative of the United States submitted a draft resolution<sup>62</sup> providing that, in the absence of the Commission of Investigation concerning Greek Frontier Incidents from the area in which it had conducted its investigation, the Commission should maintain a subsidiary group in the area concerned.

At the same meeting, the representative of the USSR submitted a draft resolution<sup>63</sup> which read as follows:

"As a result of the discussion which took place in the Security Council on the question raised by the representative of the United States in his statement of 28 March 1947,<sup>64</sup>

"The Security Council resolves to establish a special commission, composed of representatives of the member States of the Security Council, the task of which shall be to ensure, through proper supervision, that aid which Greece may receive from the outside be used only in the interests of the Greek people."

At the same meeting, the representative of the USSR contended with regard to the United States draft resolution that a decision to maintain the Commission in northern Greece might be construed

"... as an attempt to set up a screen behind which

activities will be pursued by the United States Government which are not in the interests of the United Nations because they constitute intervention in the internal affairs of Greece."

At the 128th meeting on 10 April, the representative of the United States, replying to the representative of the USSR, declared that the proposed programme of assistance was pursuant to requests from the Governments of Greece and Turkey and that the report of the Committee on Foreign Relations recommending favourable action by the Senate on the Bill providing for assistance to Greece and Turkey stated that:

"... before assistance is furnished, the Governments of Greece and Turkey shall agree to certain reasonable undertakings, consistent with the sovereign independence of these countries, which provide the United States with proper safeguards against the improper utilization of assistance furnished."

The representative of the United States continued that:

"... any agreements entered into with the Governments of Greece and Turkey in this matter, pursuant to this legislation, if passed, will be registered with the United Nations, and the Members of the United Nations will therefore be fully provided with an opportunity to determine if there is any unwarranted interference in the internal affairs of Greece and Turkey.

"The report mentioned further states: 'Such conditions are not, of course, intended to impair in any manner the sovereign independence or internal security of the two countries.'"

Also at the 128th meeting on 10 April, the representative of Poland stated with regard to the assistance programme to Greece that there was

"... no justification for sending military supplies or personnel to Greece or for granting credits to be used for military purposes. Such acts would imply unwarranted intervention in the internal affairs of Greece. It would violate the Charter of the United Nations..."

The representative of Yugoslavia, speaking at the 129th meeting on 14 April, declared:

"... As regards general aid to Greece and Turkey ... no one can prevent any one State from granting it. That is a sovereign right of the State concerned..."

"... It is the sovereign right of the United States to decide to whom it will grant relief, but nobody can prove that its proposal is along the lines of the resolution of 11 December of the General Assembly."<sup>65</sup>

At the 130th meeting on 18 April, the representative of Brazil stated:

"The United Nations does not constitute a State superstructure with derogation of sovereignties. The Charter is a pact between sovereign nations, intended to promote the interests of the Member States in regard to peace, security, and general well-being. They are not forbidden the pursuance of normal relations by means of bilateral or multi-lateral treaties aiming at the most varied objectives and interests, including those of military defence.

<sup>65</sup> General Assembly resolution 48 (I): Relief Needs after the termination of UNRRA; *C.A.O.R.*, 1st year, 2nd series, Resolutions, pp. 74-76.

<sup>60</sup> 101st meeting: pp. 185-186. For text of adopted resolution, see chapter VIII, p. 310.

<sup>61</sup> For texts of relevant statements see:

123rd meeting: United States, p. 622.

126th meeting: Australia, p. 705; USSR, pp. 700-701, 715-716; United Kingdom, p. 703.

128th meeting: Poland, p. 739; United States, pp. 746, 747.

129th meeting: Albania, p. 755; Yugoslavia, p. 764.

130th meeting: Brazil, p. 772.

131st meeting: Belgium, p. 786; China, p. 798.

<sup>62</sup> 126th meeting: pp. 708, 711-712. See chapter VIII, p. 310.

<sup>63</sup> 126th meeting: p. 715. For text of the draft resolution, see 131st meeting: p. 808.

<sup>64</sup> 123rd meeting: pp. 617-625.



"There is no disposition in the Charter of the United Nations that might be invoked directly or indirectly as being preclusive of the concession of the assistance under consideration. On the contrary, the Charter presupposes, as necessary for the maintenance of peace and security, the creation in all countries of conditions of stability and well-being. Furthermore, under the terms of Article 56, the Members of the Organization are bound to act, either jointly or individually, to achieve that purpose.

"It should be definitely and clearly understood, therefore, that, in our opinion, nations are not precluded from requesting or receiving the assistance of other nations, nor from extending such help to others; and furthermore, that there is nothing in our Charter to warrant that such requests or the granting of such help should be submitted to any interference of the United Nations or its agencies."

At the 131st meeting on 18 April 1947, the United States draft resolution, as amended, was adopted by 9 votes in favour, none against and 2 abstentions.<sup>74</sup> At the same meeting, the USSR draft resolution was rejected by 2 votes in favour, 4 against and 5 abstentions.<sup>75</sup>

**CASE 6.<sup>76</sup> THE GREEK FRONTIER INCIDENTS QUESTION:** In connexion with the draft resolution submitted by the representative of the United States to establish a commission of investigation and good offices: voted upon and rejected on 29 July 1947

[*Note:* The report of the Commission of Investigation was submitted to the Security Council at the 147th meeting on 27 June 1947. At this meeting, the representative of the United States submitted a draft resolution to adopt the recommendations contained in the report of the Commission of Investigation and to establish a commission which would use its good offices, by the means mentioned in Article 33, to settle controversies between the Governments concerned and would also be empowered to investigate alleged frontier violations.

During the consideration of the United States draft resolution the question was discussed whether the establishment of a commission of investigation and good offices would limit the sovereignty of States in violation of Article 2 (7).]

During the consideration by the Security Council of the United States draft resolution submitted at the 147th meeting on 27 June 1947, and based on the recommendations contained in the report of the Commis-

sion of Investigation subscribed to by the majority of its members, the representatives of Bulgaria,\* the USSR, Yugoslavia\* and Albania\* contended that the adoption of the draft resolution under which a commission of investigation and good offices would be established, would constitute an infringement upon the sovereignty of States, contrary to Article 2 (7) of the Charter.

At the 156th meeting on 11 July 1947, the representative of Bulgaria\* remarked that Chapter VI of the Charter, under which the Greek question was being considered, only referred to "recommendations" which the Council could make, taking into consideration the sovereignty of States, while under Chapter VII the Council could take "decisions" which did not require the consent of the parties. He added:

"... Admittedly under the Charter it is possible to override the sovereignty of States; but the Charter is very careful to limit this possibility to the far more serious cases provided for in Chapter VII . . .

"... In this case . . . we are concerned with a commission with extensive powers, a commission which is not being proposed to us, but which it is desired to impose upon us, and this without our previous consent and even against our will . . ."

The representative of the USSR stated at the 160th meeting on 17 July 1947:

"... The functions of the commission, as presented in the United States resolution, are such that, firstly, they go beyond the limits of the functions and powers assigned to the Security Council and, secondly, they are contrary to those provisions of the Charter which protect the sovereign rights of States Members of the United Nations. For instance, if we take its functions with regard to frontier incidents, we shall see that, according to this proposal, the Security Council is to set up its own frontier observers along the Greek frontier, on Greek, Albanian, Yugoslav and Bulgarian territories. Such a proposal is unjustifiable both from the point of view of the actual situation in these countries and on these frontiers and, as I have already pointed out, from the point of view of the Charter of the United Nations. The adoption of such a proposal would constitute a flagrant infringement of the provisions of the Charter which protect the sovereign rights of States.

At the 166th meeting on 24 July, the representative of Yugoslavia\* observed:

"... if we translate the last provision of Article 2, paragraph 7, into positive terms, we should say: the Charter restricts the sovereignty of States only in the case of the measures provided for in Chapter VII.

"It is obvious, however, that the existence of a commission such as that provided for in the United States resolution restricts the sovereignty of the States concerned. That is why the United States proposal is contrary not only to the letter of Chapter VI, but to the very principles of the Charter.

"... It is obvious that the right to conduct an investigation in the territory of a State inevitably constitutes a restriction of that State's sovereignty. The Charter, however, lays down that national sovereignty should be limited only in very specific condi-

<sup>74</sup> 131st meeting: pp. 799-800. For text, see chapter VIII, p. 310.

<sup>75</sup> 131st meeting: p. 808.

<sup>76</sup> For texts of relevant statements see:

150th meeting: Belgium, pp. 1198-1199.

151st meeting: Brazil, p. 1211; United Kingdom, p. 1208.

156th meeting: Bulgaria, pp. 1280-1281.

158th meeting: China, p. 1319; Syria, p. 1330.

160th meeting: USSR, pp. 1378-1379.

166th meeting: United States, pp. 1522-1523, 1526-1527; Yugoslavia, pp. 1520-1521, 1525.

167th meeting: Brazil, pp. 1530-1531; USSR, p. 1542.

168th meeting: United Kingdom, pp. 1556-1557.

169th meeting: Albania, pp. 1598, 1599.

See also chapter VIII, p. 311 and chapter X, Case 13, for discussion in relation to Article 34.



tions: if there is a threat to the peace, a breach of the peace, or aggression . . .

" . . . But the Charter clearly states in what conditions national sovereignty can be limited, and it can only be limited as laid down in Chapter VII . . ."

The representatives of Belgium, Brazil, the United Kingdom and the United States, in supporting the draft resolution, considered that the establishment of the proposed commission did not infringe upon Article 2 (7) of the Charter.

At the 150th meeting on 1 July, the representative of Belgium recalled "that the right to accept international restrictions has always been considered, in theory and in practice, one of the essential attributes of sovereignty". He continued:

"It is precisely because they are sovereign that States can bind themselves by treaty and legally accept restrictions on their liberty. To contest the power of any State to take such action would be to deny its sovereignty. To recommend States to cooperate with an international commission does not therefore, mean that it is proposed to infringe their sovereign rights . . ."

The representative of the United Kingdom observed at the 151st meeting on 3 July that:

" . . . In the course of time many international conventions have been entered into, and each one of these detracts, in lesser or greater degree, from national sovereignty. The Charter itself makes very considerable inroads on the theory of national sovereignty. Article 36, and perhaps still more Article 25, are instances of this . . ."

At the 166th meeting on 24 July, the representative of the United States held that, under Article 34, the Council had "the right to investigate any dispute regardless of whether or not the State investigated approves or likes it".

The representative of Brazil stated at the 167th meeting on 25 July 1947:

" . . . With regard to the United States resolution now under discussion, the commission to be set up would be a commission of conciliation, and it would have the power of investigation, under Article 34, as a preliminary to conciliation. The only obligation placed on the States concerned under the draft resolution, therefore, would be the obligation to collaborate with the Commission in its function of investigation . . ."

The United States draft resolution, as amended, was voted upon at the 170th meeting on 29 July 1947, and was not adopted. There were 9 votes in favour and 2 against (one vote against being that of a permanent member).<sup>77</sup>

<sup>77</sup> 170th meeting: p. 1612.

<sup>78</sup> For texts of relevant statements see:

171st meeting: Netherlands, pp. 1639-1648.  
172nd meeting: President (Syria), p. 1667; Belgium, pp. 1652-1655; USSR, pp. 1659-1665; United Kingdom, pp. 1655-1657; United States, pp. 1657-1659, 1667-1668.  
173rd meeting: President (Syria), pp. 1701-1702; Australia, p. 1694; Belgium, p. 1712; China, pp. 1684-1685; Colombia, pp. 1692-1694; France, pp. 1676-1678, 1695-1696; India, pp. 1683-1684; Netherlands, pp. 1688-1689, 1695; USSR, pp. 1689-1692; United Kingdom, pp. 1674-1675, 1696; United States, pp. 1687-1688.

CASE 7.<sup>78</sup> THE INDONESIAN QUESTION (II): In connexion with decision of 1 August 1947 calling upon the parties to cease hostilities forthwith and to settle their disputes by arbitration or by other peaceful means

[*Note:* During the discussion preceding the decision of 1 August 1947, the contention was advanced that the matter of the Indonesian question was within the domestic jurisdiction of the Netherlands, and that, in view of the absence of any threat to international peace, the proviso of Article 2 (7) did not apply. In certain statements the competence of the Council was upheld. The text of the resolution was advocated on the grounds that the omission of specific reference to any Article of the Charter obviated the question of competence; but a proposal expressly to reserve the question of competence was rejected.]

At the 171st meeting on 31 July 1947, the representative of Australia submitted a draft resolution by which the Council, having determined that the hostilities in Indonesia constituted a breach of the peace under Article 39 of the Charter, would call upon the Governments of the Netherlands and the Republic of Indonesia, under Article 40 of the Charter, to cease hostilities and settle their disputes by arbitration.<sup>79</sup>

At the same meeting, the representative of the Netherlands\* contended that the form of action in Indonesia was one with which the Council had no concern. He stated that the Charter was designed to operate between sovereign States, and that, therefore, it was not applicable to what was happening in Indonesia, inasmuch as the latter was not a sovereign State. He added: " . . . we consider . . . that this is a matter essentially within the domestic jurisdiction of the Netherlands". After quoting Article 2 (7), the representative of the Netherlands observed:

"Now I come to Chapter VII. Assuming purely and simply for argument's sake that the Charter is applicable—which I deny—to what is now taking place in Java and Sumatra, where then, I ask, is there any danger to international peace or security, let alone breaches of the peace or acts of aggression in the sense of the Charter? In what countries outside the Netherlands' territory are there any signs of danger to peace caused by this action?"

At the 172nd meeting on 1 August, the representative of the United States submitted an amended version of the Australian draft resolution, omitting all references to the provisions of the Charter included in the Australian draft. "In this amendment", the representative of the United States said, "there is no mention of any Article of the Charter and there is no commitment regarding the sovereignty of the Netherlands over the region in question. All of those questions are left open and without prejudice to any determination which the Council may later reach." He thought that the Council's sentiment was that it wanted "the fighting there stopped without prejudice to the position which any member of this Council may feel he must take on the important juridical principles involved".

At the same meeting, the representative of the USSR observed that the Council was obliged in such cases

<sup>79</sup> S/454, 171st meeting: p. 1626. See chapter VIII, p. 315 for submission of the question; for text and for consequent discussion relating to chapter VII of the Charter, see chapter XI, Case 4.

to take decisions which would "restore peace and put an end to aggression". He contended further that the Netherlands itself had given *de facto* recognition to the Indonesian Government, and added:

"I want to draw the Security Council's attention to the fact that we should be making a gross mistake if we transferred the centre of our attention from the basic issue to its legal aspect, and tried by various kinds of legal definitions to conceal the fact that military operations are being carried out in Indonesia by the Netherlands and that a war is going on.

"Yesterday, at the 171st meeting, we heard a statement by Mr. van Kleffens who tried to justify the position of the Netherlands Government. In the first place, he denied the right of the Security Council to consider this question: that is quite inadmissible. Such an assertion is at variance with the Charter and with the obligation laid by it on the Security Council for the maintenance of international peace and security."

The President (Syria), intervening in the debate in connexion with the urgent plea of the Polish representative that the Council should either adopt a recommendation calling for a cessation of hostilities or decide that the matter was outside its competence, stated:

"Had any motion in regard to competence been submitted, I would have given it priority, because it would then have been necessary to decide first whether or not the Security Council was competent to deal with this question. If that had been decided affirmatively, we should then have proceeded to any other recommendation that might have been made. The fact is, however, that the question of competence has simply been mentioned by some of the speakers in the course of the discussion. If any member had submitted a formal proposal stating that this matter was outside the competence of the Security Council and that therefore this item ought to be deleted from the Council's agenda, that proposal would have received priority over any other. However, no such proposal has been made.

"I shall therefore call for further discussion on the proposal of the Australian delegation, as amended by the delegations of the United States and the Union of Soviet Socialist Republics. The vote on that proposal will, after all, reveal the views of the members on the question of competence. Those who believe that the matter is within the competence of the Council may vote affirmatively or negatively on the Australian resolution; however, those who believe that the matter is outside the competence of the Council will certainly vote against the resolution."

At the 173rd meeting on 1 August, the representative of the United Kingdom, referring to the United States amendment to the Australian draft resolution, stated that it also did not avoid prejudging the legal issues involved. He said: "It does, on the contrary, prejudge the legal position, because to call on parties to cease fighting is definitely to imply that Article 2, paragraph 7, of the Charter does not apply".

At the same meeting, the representative of France, questioning the competence of the Council, stated:

"We cannot be competent to deal with this question unless there is a threat to the peace. The events taking place in Java and Sumatra might constitute

such a threat either if—being considered to be of an internal nature—they were liable to give rise to international complication, on account of their repercussions on external affairs . . . or if, upon an examination of the facts themselves, we were to consider them as acts of war between two distinct and sovereign states.

"The explanations given yesterday show that, with regard to the second alternative—the existence of two sovereign states—the answer is, to say the least, extremely doubtful."

The representative of France, while of the view that it would be difficult to leave aside legal or technical questions, stated that he would support the United States amendment if the following insertion were made in its text: "Reserving entirely the question of the Council's competence as regards the application of the Charter but prompted by a wish to see the cessation of bloodshed in the two islands".

At the same meeting, the representative of India\* said that, according to his understanding, Article 2 (7) meant that "it would be within the jurisdiction of the Security Council to treat of and take the necessary action on even matters which are essentially within the domestic jurisdiction of a State, if those matters have a bearing upon international peace and security. Accordingly, even if, for argument's sake, we agreed with the representative of the United Kingdom that this is a domestic matter, the Security Council would, in the light of the circumstances prevailing today, be justified in taking action under Article 39 of the Charter."

The representative of the USSR, at the same meeting, said that he could not agree with the French amendment. He said: "In the first place, this would reduce the weight of such decisions, and in the second place, it would create an undesirable precedent for the future, as it would mean that the Security Council might consider a particular question though it was not certain that the question came within its jurisdiction". He had no doubt whatsoever that this question came within the Council's jurisdiction. It was just the kind of question to which the Council was obliged by the Charter to give priority consideration.

The representative of Colombia, also at the same meeting, said that he could not agree with the French amendment. He held that the Council "cannot very properly pass a resolution, saying that it is not sure whether or not it has the competence to pass it".

The representative of the Netherlands\* said that he warmly applauded the idea "that some clause should be inserted which would reserve the legal position as regards the competence of the Council". He added, however, that the Council would implicitly declare its competence to deal with this question "if it does not make in the body of the resolution a certain reservation to the effect that its competence is at least doubtful".

The President, speaking as the representative of Syria, expressed the belief that the Council was competent to deal with the matter before it. "whether it is considered as a humanitarian task in the maintenance of international peace and security or whether the problem is considered on the basis of the independence of Indonesia." Speaking as President he added, however, that he did not consider that the question (of competence) had been settled, but that it had been left in abeyance.

At the same meeting, when voting took place on the United States amended version of the Australian draft resolution, the French amendment reading "and without in any way deciding the juridical question concerning the competence of the Security Council in this regard" was rejected by 5 votes in favour and 6 abstentions. With this exception, the draft resolution, together with a Polish amendment, was adopted.<sup>80</sup>

The representative of Belgium, in explaining his vote, stated that he felt obliged to abstain in the vote since "the Council did not feel able, in deference to the French delegation's suggestion, to consult the International Court of Justice or to reserve the legal question without postponing an appeal for a cessation of hostilities". He further stated that his delegation made "the most express reservation regarding the Council's competence in this matter".

CASE 8.<sup>11</sup> THE INDONESIAN QUESTION (II): In connexion with decision of 25 August 1947 establishing the Consular Commission at Batavia and the Committee of Good Offices

[Note: In the discussion preceding the decision of 25 August 1947 the claim of domestic jurisdiction was again raised. The jurisdiction of the Council with regard to large-scale hostilities in Indonesia was urged as justification for the establishment of the Consular Commission, and uncertainty regarding jurisdiction in the constitutional question of Indonesia as grounds for recourse to the method of good offices. Observations were made on the manner in which the Council might register competence.]<sup>82</sup>

At its 185th meeting on 15 August 1947, the representative of the Netherlands\*, in connexion with the Australian draft resolution<sup>83</sup> to establish a Commission to report on the situation in the Indonesian Republic following the resolution of 1 August 1947, stated that the "all-important question of jurisdiction" was involved in the consideration of that proposal. He proposed that the Council should first decide on that preliminary question.

Asserting that his Government had accepted the "cease-fire invitation" expressed in the resolution of 1 August 1947 on humanitarian grounds, and not because it recognized the jurisdiction of the Council, the representative of the Netherlands stated that the Coun-

cil did not have the right to establish a commission in view of the categorical objection raised by his Government which was the sovereign power in Indonesia. He thereupon submitted certain proposals of his own.

The President (Syria), intervening in the discussion at the same meeting, stated:

"... I should like to give an explanation with regard to the matter of the Council's jurisdiction and the procedure I intend to follow.

"The representative of the Netherlands has been opposing the assumption of jurisdiction by the Council since the beginning. However, he has not made any formal proposal supported by a member of the Council in order to have formal action taken.

"... the Indonesian question has been on the agenda since the last day of last month. It cannot therefore be considered that the Council has no jurisdiction unless presentation is made of a formal proposal, which would state that since the Indonesian question does not come under the jurisdiction of the Security Council, it should be deleted from the agenda."

In a further statement, the President explained that as long as the question was on the agenda and the agenda had been adopted, he would allow the subject and resolutions concerning it to be discussed in the Council, unless some formal proposal was presented to the contrary. He added: "In case a proposal is presented to the contrary—that is, to take the matter off the agenda—we shall discuss it and vote upon it. We cannot do otherwise.

The representative of Belgium thereupon stated that he reserved fully his position on "the question of the Council's competence as a whole".

The representative of the United States, also reserving the position of his delegation on the implications of the President's statement, observed that, when a matter was on the agenda, it did not necessarily mean that the question of the jurisdiction of the Council on that matter could not be raised. He added: "... it would seem inequitable that it (the Council) must be considered competent unless the member who contests it can muster seven votes, including those of the five permanent members, in order to remove it from the agenda. That would mean that one veto would make the Council competent, and determine the Council's jurisdiction". He was, however, "not in any way contesting the power and authority of the Council to determine its jurisdiction in a given matter".

The representative of the Philippines\* argued that "the dispute in question is not a matter essentially within the domestic jurisdiction of the Netherlands", and stated that the question of whether or not a particular matter was essentially within the domestic jurisdiction of any State was one to be decided by the organs of the United Nations concerned and by the Members themselves, on the merits of each particular case.

At the 192nd meeting on 22 August, the representative of the Netherlands\*, again referring to the Australian draft resolution and the amendments thereto, stated as follows:

"When the vote is taken on the Australian proposal in any of the forms now before us (one of which

<sup>80</sup> For text, see chapter VIII, p. 316. For subsequent discussion of the resolution in relation to Chapter VII of the Charter, see chapter XI, Case 4.

<sup>81</sup> For texts of relevant statements see: 185th meeting: President (Syria), pp. 2017, 2025; Belgium, pp. 2024-2025; Netherlands, pp. 2006-2014; Philippines, pp. 2017-2024; Poland, pp. 2014-2017; United States, p. 2025.

187th meeting: China, pp. 2064-2068; USSR, pp. 2058-2063. 192nd meeting: President (Syria), pp. 2147-2148, 2150; Belgium, pp. 2150-2151; Colombia, pp. 2157-2160; France, pp. 2149-2150; India, pp. 2153-2157; Netherlands, pp. 2144-2147; USSR, pp. 2151-2152.

193rd meeting: Poland, pp. 2183-2187; United States, pp. 2175-2179.

194th meeting: Belgium, pp. 2193-2194; Indonesia, pp. 2190-2192.

<sup>82</sup> Further discussion on the problem of domestic jurisdiction arose in June 1948 in connexion with the working of the Committee of Good Offices. For texts, see:

316th meeting: Netherlands, pp. 25-34. 323rd meeting: Belgium, pp. 23-35. 326th meeting: France, pp. 21-23. 328th meeting: Indonesia, pp. 2-7; Netherlands, pp. 7-10; United Kingdom, pp. 16-19.

<sup>83</sup> See chapter VIII, p. 316.

is the moderate Chinese amendment), each member of this Council who casts an affirmative vote thereby states implicitly but clearly that the Council has jurisdiction in this case . . .

" . . . In view of the gravity of the movement, permit me to recapitulate very briefly: first, we consider that the Charter is applicable only to disputes between sovereign States generally recognized as such. Secondly, even if it is assumed that the Charter is applicable, we regard this matter as a domestic question which quite clearly does not endanger international peace . . . Thirdly, and then I shall have finished with the question of jurisdiction—again assuming the Charter to be applicable to a case such as this—the Government of the Netherlands says that since it has become clear that there is no danger to international peace and security, Chapters VI and VII of the Charter are not applicable."

The representative of the United States, speaking at the 193rd meeting on 22 August in connexion with the Australian proposal, observed:

" . . . my Government's view is that there are two very definite and different aspects of the question before the Council. The first relates to the problems which arise in connexion with the cessation of hostilities. My Government believes that the Security Council acted properly and in entire conformity with the Charter in calling upon the parties to cease hostilities . . .

"In our view, the Council's jurisdiction rested on the fact that large-scale hostilities were being carried on in Indonesia, the repercussions of which were so serious that they amounted to a threat to international peace and security.

"In the view of the Government of the United States, the Security Council has ample power to send observers, if necessary, to supervise its cease-fire order and to make certain that new hostilities do not break out which would threaten international peace and security."

Referring to "the problem of reaching a solution of the constitutional issues" which were in dispute between the parties, the United States representative added:

"The view of the United States delegation is that there is legitimate room for doubt as to the Council's jurisdiction in so far as a settlement of the constitutional issues of the Indonesian question is concerned. My Government would not be prepared, under existing circumstances, to support action by the Council based on the conclusion that it has such jurisdiction.

"We suggest that the Council itself should tender its good offices to the parties. Due to the nature of the offer of good offices, such a solution would not raise any question whatsoever as to the Council's competence or jurisdiction in the matter."

The representative of the United States thereupon submitted a draft resolution resolving to tender the Council's good offices to the parties in the pacific settlement of their dispute.<sup>84</sup>

At the 194th meeting on 25 August, the representative of Belgium observed that the question of jurisdiction was a preliminary question which took priority

over all others. He submitted a draft resolution and urged that it be given priority in the voting.<sup>85</sup>

At the same meeting, the Belgian draft resolution having failed to obtain priority in the vote, the Council adopted the joint Australian-Chinese draft resolution establishing a Consular Commission at Batavia to report on the situation in the Indonesian Republic.<sup>86</sup> The Council, at the same meeting, adopted the United States draft resolution establishing a Committee of Good Offices.<sup>87</sup>

Case 9.<sup>88</sup> **THE INDONESIAN QUESTION (II)**: In connexion with a draft resolution submitted by the representative of Belgium to request the International Court of Justice for an advisory opinion concerning the competence of the Council in the matters voted upon and rejected on 26 August 1947

[*Note*: The draft resolution to request the International Court of Justice for an advisory opinion concerning the competence of the Council to deal with the Indonesian question gave rise to discussion on the merits of this procedure. The view was expressed that previous decisions constituted an affirmation of competence, and the distinction was again drawn between the ordering of the cessation of hostilities and the recommendation of measures for pacific settlement. The draft resolution was rejected.]<sup>89</sup>

At the 194th meeting on 25 August 1947, as indicated in the preceding Case, the representative of Belgium submitted a draft resolution concerning the competence of the Council in the matter of the Indonesian question. The draft resolution, as amended by the representative of the United Kingdom, read as follows:<sup>90</sup>

*"The Security Council,*

*"Having been seized by the Governments of Australia and India of the situation in Indonesia;*

*"Considering the debates which have taken place on this subject in the Security Council,*

*"Considering that in invoking Article 2, paragraph 7 of the Charter, the Government of the Netherlands contests the competence of the Security Council to deal with the question of which it has thus been seized;*

*"Requests the International Court of Justice, under Article 96 of the Charter, to give it, as soon as possible, an advisory opinion concerning the competence of the Security Council to deal with the aforementioned question;*

*"Instructs the Secretary-General to place the documentation submitted to the Security Council regarding the question and the records of the meetings devoted to it at the disposal of the International Court of Justice."*

<sup>84</sup> S/517, 194th meeting: p. 2193; see also Case 9.

<sup>85</sup> 194th meeting: p. 2200. For text, see chapter VIII, p. 317.

<sup>86</sup> 194th meeting: p. 2209. For text, see chapter VIII, p. 317.

<sup>87</sup> For texts of relevant statements see:

194th meeting: Belgium, pp. 2193-2194; USSR, pp. 2210-2211.

195th meeting: President (Syria), p. 2223; Australia, pp. 2215-2217; China, pp. 2217-2218; France, pp. 2214-2215; India, pp. 2219-2221; Poland, pp. 2222-2223; United Kingdom, pp. 2218-2219; United States, pp. 2221-2222.

<sup>88</sup> See also chapter VI, Case 27, for discussion in connexion with the relation of the Security Council and the International Court of Justice.

<sup>89</sup> S/517, 194th meeting: p. 2193. See also chapter VIII, p. 317.

<sup>84</sup> S/514, 193rd meeting: p. 2179.



The representative of the USSR maintained that if the Belgian draft resolution were to be adopted, "it would mean that the Security Council was thereby casting a reflection on its own (previous) decisions". He added: "The fact that the Security Council began to examine the Indonesian Question and took a decision on 1 August shows that the Council recognizes that it has every right to act in this matter as it deems necessary in the light of the situation in Indonesia."

At the 195th meeting on 26 August, the representative of France, stating that "the first duty of any body having functions, powers and responsibilities is to have a proper respect for its own competence", supported the Belgian draft resolution.

The representative of Australia contended that the question of competence was not a purely legal question, and that it had grave political implications and affected world security. Maintaining that the resolution of 1 August 1947 represented action taken under Chapter VII of the Charter, he argued that "it follows automatically that this matter is outside the sphere of domestic jurisdiction covered by Article 2, paragraph 7". He considered: "... in every case that has come before the Council, this question of competence or jurisdiction has been raised. If we decide on every occasion to refer a question to the International Court before we decide to take any action whatever, the result would be that we would never take any action."

The representative of China, at the same meeting, observed that although the question of the competence of the Council had been raised in connexion with many matters brought before it, in no case had the Council gone so far as to seek advice from the International Court. He thought that "a legal opinion rendered to the Council might turn out to be a very tight strait-jacket", and added: "If we put on this strait-jacket, we may find it very inconvenient when we attempt to face the problems of a world which is changing very rapidly."

The representative of the United States said:

"First of all, we have no doubts whatever concerning the Security Council's competence and authority to issue an order to cease hostilities—no doubts whatever. What concerns us is the question as to whether the Security Council has competence to impose a particular method of peaceful settlement in a case of this type. As other representatives, however, some of whom are permanent members who have the veto power, have grave legal doubts on the matter, we prefer, for reasons of courtesy and out of consideration for those sincere doubts, to support reference of the entire case to the International Court of Justice for an advisory opinion, rather than to request that it should be broken down into its component parts."

The representative of Poland stated, at the same meeting, that the question of competence in the case of the Indonesian question was not a legal one. It was a political question which could be decided only by the Council.

The Council, at the same meeting, rejected the Belgian draft resolution by 4 votes in favour, 1 against and 6 abstentions.<sup>91</sup>

CASE 10.<sup>92</sup> THE INDONESIAN QUESTION (II): In connexion with decision of 1 November 1947 requesting the Committee of Good Offices to assist the parties in the implementation of the terms of the resolution of 1 August 1947

[*Note:* In the discussion preceding this decision, the question was again raised whether previous decisions related in substance to that of the draft resolution under consideration constituted a pronouncement on the competence of the Council.]

At its 218th meeting on 1 November 1947, in connexion with the draft resolution submitted by a sub-committee of the Council, composed of Australia, Belgium, China and the United States,<sup>93</sup> the question of the competence of the Council was touched upon by a number of representatives.

The representative of China observed that, while he personally considered the Council competent to deal with the question, his delegation and other delegations had endeavoured to follow a course "free of technical questions"—a course to which the draft resolution submitted was "a logical development".

The representative of Colombia, referring to a clause in the preamble of the draft resolution which read: "Having received and taken note of the report of the Consular Commission, dated 14 October 1947, indicating that the Council's resolution of 1 August 1947, relating to the cessation of hostilities, has not been fully effective", stated his impression that, if the Council accepted the draft, it would implicitly be accepting the thesis that it had no competence to deal with the matter. If, on the other hand, it had competence in the matter, he added, "it should be of very deep concern to the Security Council to be content to say that it is taking note that, according to the reports, no attempt has been made on either side to comply with the recommendations or the wishes of the Security Council".

The President (United States) replied:

"... I wish to say that no action has been taken by the Security Council on the question of general jurisdiction. No decision whatever has been made upon the challenge of competence or jurisdiction of the Security Council in this matter.

"On the contrary, whatever action has occurred because of decisions taken in the Security Council has been characterized by a definite understanding in the record that no such decision is being made. On that understanding, the very first decision on 1 August, which was of a provisional character, called upon the parties

"(a) to cease hostilities forthwith, and (b) to settle their disputes by arbitration, or by other peaceful means, and keep the Security Council informed about the progress of the settlement.

"Subsequently, the action taken on 25 August was with the distinct reservation that no decision was being made upon the general jurisdiction of the Secu-

<sup>91</sup> For texts of relevant statements see: 218th meeting: President (United States), pp. 2732-2733; China, pp. 2724-2725; Colombia, pp. 2731-2732, 2733-2734. 219th meeting: President (United States), pp. 2736, 2748; Belgium, p. 2748; Colombia, pp. 2746-2747; France, pp. 2747-2748; USSR, pp. 2734-2736.

<sup>92</sup> See chapter VIII, p. 318.

<sup>93</sup> 195th meeting: p. 2224.

rity Council in this case. That action was taken with the consent, assent and agreement of both parties, who actually participated in it to the extent of nominating members to the Committee of Good Offices.

"We now come to the present resolution. That resolution does not decide that the Security Council has no competence or jurisdiction. The resolution does not decide that the Council has competence or jurisdiction beyond the point of adopting this as another provisional measure which undertakes to carry out the previous two provisional measures. Therefore, I understand that the general question of the Council's jurisdiction regarding the different aspects of the case is not being passed upon by this resolution. The President has no doubt that the Security Council has jurisdiction to act as indicated in this resolution."

At the 219th meeting on 1 November 1947, the representative of the USSR stated that the rejection of the Belgian draft resolution showed that "the question of competence was thereby decided in the affirmative, for, if we were to take the opposite view, we should be forced to the completely absurd conclusion that the Security Council has been dealing with the Indonesian question for three months absolutely in vain, with neither the right nor the power to do so".<sup>94</sup>

The representative of the USSR added further:

"I am therefore unable to agree with the statement made by the President at the 218th meeting — presumably in his capacity as representative of the United States — that no decision has yet been taken by the Security Council on the question of competence. It is true that there has been no formal decision, but the Council rejected a proposal which cast doubt on the competence of the Security Council; thus the situation was clarified, for otherwise the Security Council would not have dealt with the Indonesian question and would not have continued to deal with it."

With reference to the statement of the representative of Colombia, the representative of the USSR stated his view that the adoption of the draft resolution before the Council "would certainly in no way cast doubt on the competence of the Security Council".

The President (United States) stated that there was "no issue now pending in the Security Council regarding the general jurisdiction by the Security Council over the Indonesian question", and he asked the Council to refrain from entering that field and to adhere to the resolution that was before it.

The representative of Colombia, reiterating his objection to the first clause in the preamble of the resolution, stated that the Council could not accept the draft as it stood, unless it accepted, by implication, the views of those who questioned the competence of the Council.

The representative of Belgium, referring to the earlier rejection of the Belgian draft resolution, maintained that the Council thereby, "decided only whether the Court's opinion should be asked on this subject; it did not decide the actual question of competence".

The draft resolution submitted by the Sub-Committee of the Council was voted upon at the same meeting, and was adopted by 7 votes in favour, 1 against, and 3 abstentions.<sup>95</sup>

<sup>94</sup> For the Belgian draft resolution, see Case 9.

<sup>95</sup> 219th meeting: p. 2750. For text, see chapter VIII, p. 318.

CASE 11.<sup>96</sup> THE INDONESIAN QUESTION (II): In connexion with decision of 24 December 1948 calling upon the parties to cease hostilities forthwith and to release political prisoners

[*Note:* Following the renewed outbreak of hostilities between the armed forces of the Netherlands and the Republic of Indonesia on 18-19 December 1948, the Security Council on 24 December 1948 adopted the draft resolution submitted two days earlier calling upon the parties to cease hostilities forthwith, and instructing the Committee of Good Offices to report on compliance therewith. During the consideration of the matter, the representative of the Netherlands restated the grounds on which his Government had declined to recognize the competence of the Council. The counter-contention was advanced that the question before the Council was that of armed conflict between States. The question was also raised whether the hostilities fell within the competence of the Council by reason of their international repercussion.]<sup>97</sup>

At the 388th meeting on 22 December 1948, the representative of the Netherlands\* stated that the declared aim of his Government was and remained "the promotion of the freedom of Indonesia in order to create a sovereign federation of Indonesia linked in voluntary and equal partnership with the Kingdom of the Netherlands in a Netherlands-Indonesia Union". His Government was prepared to keep the Council regularly informed concerning the progress made towards that goal. After reviewing the events that led to the renewal of hostilities, the representative of the Netherlands reiterated his Government's opinion that the Council was "under the terms of the Charter, not competent to deal with the Indonesian question". He asserted that "the competence of the Council in the Indonesian dispute was never recognized by the Netherlands and never decided by the Council itself".

The representative of the Netherlands maintained that in accepting the aid of the Committee of Good Offices, his Government did not admit "even by implication that the competence of the Security Council was valid in this matter". He reiterated the arguments advanced by the Netherlands delegation at the 171st meeting of the Council on 31 July 1947 in denying the competence of the Council, and declared that they were "as valid today as they were last year".<sup>98</sup> Holding that Article 2 (7) applied in full force "without limitation contained in its final clause", the representative of the Netherlands stated:

"... I must conclude, with regard to the competence of the Security Council, that the Indonesian question is outside that competence, first, because the Charter deals only with relations between sovereign States; secondly, because this is a matter within the domestic jurisdiction of the Netherlands; and, thirdly, because

\* For texts of relevant statements see:

388th meeting: Netherlands, pp. 2-31.

389th meeting: United States, pp. 42-49.

390th meeting: Australia, pp. 5-14; China, pp. 1-5.

391st meeting: India, p. 29; Syria, pp. 18-24; USSR, pp. 29-41.

392nd meeting: President (Belgium), pp. 24-27; China, p. 28; France, pp. 7-12; Netherlands, pp. 20-22; United Kingdom, pp. 3-7.

<sup>96</sup> For discussion in relation to Article 39, see chapter XI, Case 7.

<sup>97</sup> See Case 7.



the situation does not endanger international peace and security."

At the 389th meeting on 22 December, the representative of the United States, after stating that his Government considered "that the Security Council today is faced with at least as grave a situation as that of August 1947", said:

"It seems to me that the Council is obligated under the Charter at this stage of its deliberations immediately to order a cessation of hostilities in Indonesia and to require the armed forces of both parties immediately to withdraw to their own sides of the demilitarized zones . . . I must reiterate my Government's view that the Council's cease-fire resolution of 1 August 1947 continues to be binding on both parties and that it has been violated by the recent armed action taken by the Netherlands authorities in Indonesia".

The representative of the United States thereupon submitted a draft resolution<sup>29</sup> sponsored also by Colombia and Syria, by which the Council would, *inter alia*, call upon the parties to cease hostilities forthwith.

At the 390th meeting on 23 December, the representative of China recalled that in the preamble of the United States amended version of the Australian draft resolution submitted on 1 August 1947, the clause proposed by the representative of France reading "and without in any way deciding the juridical question concerning the competence of the Security Council in this regard" was rejected, and he stated:

"I therefore submit that, by that vote of 1 August 1947, the Security Council decided not to make any reservations as to its competence to deal with the Indonesian question, although I am well aware that certain delegations made strong reservations at the time."

At the 391st meeting on 23 December, the representative of Syria said that although at the time of the adoption of the resolution of 1 August 1947 no positive decision was taken about the competence or incompetence of the Council, "we did consider that the Republic of Indonesia was recognized as exercising certain of the authorities and prerogatives of sovereignty in Indonesia . . .". And he added:

"Now, after nineteen months during which the Security Council has been seized of the question, is not the time to return to the question of competence. The Security Council is obliged to act in order to keep peace and security wherever disturbances of the peace occur in the world. The Security Council has taken such actions in other places and its competence has not been contested."

At the same meeting, the representative of the USSR, in connexion with the question of competence raised by the representative of the Netherlands, stated:

" . . . The Indonesian question has long been an international problem and the Netherlands Government cannot pretend that it is a Dutch domestic concern. The Republican Government has been recognized *de facto* by the Netherlands under the Linggadjati Agreement. The Security Council invited the Government of the Republic to take part in the discussion of the dispute between the Republic and the Netherlands,

thereby formally recognizing the Republic as an entirely equal party to the dispute.

"The Indonesian Republic was officially proclaimed in August 1945 and possesses all the principal attributes of an independent sovereign State. It has territory, a people, a government, armed forces and so forth. Its relations with the Netherlands have gone far beyond the stage of a domestic dispute and have become an international problem.

"Dutch colonial aggression loosed against the Republic is without doubt a breach of the peace and represents a threat to peace and security throughout Eastern Asia. From the standpoint of international law, it is an armed conflict between two States and none of the references made by the Netherlands Government to the so-called police measures can alter the international nature of the conflict. The Security Council is fully justified and competent to consider the Indonesian question and to take a decision on it."

At the 392nd meeting on 24 December, the representative of the United Kingdom, adverting to the question of competence, said:

" . . . The facts are that ever since the occurrence of the developments of 1945-46 the Indonesian question has, whether rightly or wrongly, had repercussions in many parts of the world and has been brought on more than one occasion before the United Nations. I am not prepared to say more at this moment on the question of the competence of the Security Council than was said by the United Kingdom delegation in 1947 (172nd and 173rd meetings), except to suggest that the Indonesian situation is surely one which, in the terms of the Charter, may lead to international friction, and that it has for some time past shown signs of so doing.

"In all the circumstances my Government proposes to support the joint Colombian-Syrian-United States draft resolution [S/1142] which is before the Council. In so doing it does not commit itself to any view of the legal issues which have been argued on both sides as regards the Council's competence or the particular clauses of the Charter which authorize this or that action . . .

" . . . We believe that if the Council adopts the resolution before us it will avoid the reproach either . . . of washing its hands of a situation which cries out for remedy, or of exceeding its powers in matters which are solemnly protected by the domestic jurisdiction clause of the Charter."

At the same meeting, the representative of France contended that the Charter was concerned "with relations between States in terms of international law", and that the Republic of Indonesia did not qualify "as a State in the meaning of the Charter on the level of international law". He said: "The reason for this is that its sovereignty had yet to be created and that very sovereignty was intended solely for the benefit of a federal State in which the Republic was to be only a federated State". He further stated:

"When the Security Council acted in this matter of Indonesia, it did so as a good officer in order to reach a settlement in a purely friendly way, confining itself to what was acceptable to both parties. That was, in my opinion, the only attitude the Council could legitimately adopt. If it departs from that attitude, it will

<sup>29</sup> S/1142, O.R., 3rd year, Suppl. for Dec. 1948, p. 294. See chapter VIII, p. 321.

come up against all the objections which I have just recalled.

"A little while ago another argument was invoked, one which I agree would be valid, namely that, owing to its importance, the conflict might give rise to international complications. Having myself defended that point of view in relation to the Spanish question over two years ago, I fully recognize that when internal difficulties in a country assume such proportions that they are liable to give rise to international difficulties, the Council regains its competence. It gains it not because it is seized with an internal conflict in a given country, but because it is faced with the genuine responsibility of complications between that State and other States.

"I can see nothing among the documents before us to warrant the presumption that we are faced with a situation of that kind. There has been nothing to show that such an opinion was well founded, and I repeat, I can see nothing among all the facts at our disposal to show that such a danger does actually exist.

"The French delegation, for its part, considers that the essential question is that of competence, as I pointed out a short while ago. For, however unfortunate—and I repeat, shocking—the intervention of the Netherlands authorities may have been, feeling on that score cannot affect the legal aspect, the question of competence."

At the same meeting, the President, speaking as the representative of Belgium, associated himself with the conclusions reached by the representative of France in regard to the question of the Council's competence.

The representative of China, at the same meeting, explaining why the Council decided not to make a reservation in regard to its competence where that question was first raised, stated:

"I think it would be naive to believe that the matter could easily be settled by reference to the International Court of Justice... In my opinion this is not a juridical or legal matter, pure and simple. The decision of the Security Council was based largely upon political considerations, and in fact it was a political decision. If we or the Court were to adopt any particular definition of a sovereign State, it would be difficult to apply such a definition to certain States which are already Members of the United Nations."

The Council, at the same meeting (392nd), adopted by 7 votes in favour, none against, with 4 abstentions, the joint Colombian-Syrian-United States draft resolution, and an Australian amendment thereto, after they had been voted upon in parts and amended.<sup>100</sup>

CASE 12.<sup>101</sup> THE INDONESIAN QUESTION (II): In connexion with decision of 28 January 1949 establishing the United Nations Commission for Indonesia and recommending the procedures and terms of a settlement.

[Note: On 21 January 1949, China, Cuba, Norway and the United States submitted a joint draft resolution

which was adopted, after revision and amendment, on 28 January 1949. In the discussion the question of the competence of the Council was again surveyed. Certain paragraphs of the draft resolution were described as invasions of domestic jurisdiction. In the later discussion on the proposed Round Table Conference at The Hague, views were expressed on the decision of 28 January 1949 as an affirmation of competence.]<sup>102</sup>

At the 402nd meeting on 21 January 1949, the representatives of China, Cuba, Norway and the United States introduced a joint draft resolution<sup>103</sup> on the Indonesian question (II).

The representative of Belgium\*, at the same meeting, said he felt bound to draw the Council's attention to certain paramount considerations in view of the fact that the Indonesian question seemed to him about to enter upon a new phase. He recalled that the Netherlands had been contesting the Council's competence on the basis of Article 2 (7) ever since the submission of the Indonesian question, and that a number of other delegations had similarly questioned the Council's competence or, at any rate, had entertained doubts in regard to its competence. The Council lost an opportunity to verify its competence when it failed to adopt an earlier Belgian draft resolution<sup>104</sup> to submit the question to the International Court of Justice. In what it had done hitherto, however, the Council could not be accused of "complete lack of caution". The Council had remained within the limits of good offices and it "should not depart from this cautious attitude in its forthcoming attempt to find ways of settling the Indonesian question", and, in particular, it "should not contemplate other measures before having made sure, by reference to the Court, that it is empowered to take them".

At the same meeting, the representative of the United States stated that there was "no question but that the Council must continue to concern itself with the Indonesian question". He said:

"My delegation is not able to accept the views on the jurisdiction of the Council which have just been so eloquently stated by the representative of Belgium. We agree with the recent statement [400th meeting] of the representative of the United Kingdom that in the light of recent events we now have a situation in which the Security Council must feel compelled to make recommendations. As matters stand, I think the majority of the members of the Council

<sup>100</sup> 402nd meeting: Belgium, pp. 2-5; United States, pp. 6-10.

<sup>101</sup> 403rd meeting: India, pp. 3-8; United Kingdom, pp. 15-17.

<sup>102</sup> 404th meeting: Indonesia, pp. 2-3.

<sup>103</sup> 405th meeting: Belgium, pp. 29-31.

<sup>104</sup> 406th meeting: Argentina, pp. 2-3; Netherlands, pp. 6-19.

<sup>105</sup> 417th meeting: India, p. 3.

<sup>106</sup> 420th meeting: Belgium, pp. 19-24; Egypt, pp. 24-28.

<sup>107</sup> Further observations on the question of competence were made at the 455th and 456th meetings on 12, 13 December 1949 in connexion with the Special Report by the United Nations Commission for Indonesia on the Round Table Conference. For texts of relevant statements see:

<sup>108</sup> 455th meeting: President (Canada), pp. 2-3; China, pp. 30-31; Indonesia, pp. 11-13; Netherlands, pp. 3-7.

<sup>109</sup> 456th meeting: Argentina, pp. 27-28; Burma, pp. 22-23; Egypt, p. 13; France, p. 25.

<sup>110</sup> S/1219, O.R., 4th year, Suppl. for Jan. 1949, p. 53. See chapter VIII, p. 322.

<sup>111</sup> See Case 9.

<sup>100</sup> For text, see chapter VIII, p. 321.

<sup>101</sup> For texts of relevant statements see:

<sup>102</sup> 398th meeting: China, pp. 11-13; United States, pp. 2-10.

<sup>103</sup> 400th meeting: Netherlands, pp. 2-15; United Kingdom, pp. 15-18.

will agree that we have an obligation to continue our efforts to assist in arriving at a solution as a whole. The time has passed for a piecemeal approach.

"A second basic premise of ours is that there were and are two parties before us. Discussions concerning the legal inequality in their status have not at any point prevented the Council from dealing with them as parties. The fact that they both in good faith signed an agreement under the auspices of our agency is sufficient, apart from any other consideration, to establish both as parties with which we can legitimately concern ourselves, as we have done hitherto. As we understand the factual situation at the moment, however, it is necessary for the Council to seek to reestablish the position of one of the parties to a point where it can resume *bona fide* negotiations with the other. Naturally, the Council cannot accept the contention that, in its present situation, the Government of the Republic is able to enter upon negotiations in any real sense of the word. Clearly, it must be enabled to negotiate with the Netherlands freely and thus to have a voice in the discussion of the future of Indonesia."

In regard to the new terms of reference to be given to the agency of the Council in Indonesia under the joint draft resolution, the United States representative added:

"We all recognize that in our draft resolution we have placed a heavy burden on the Commission. We have not, on the other hand, sought to give it any power which the Security Council cannot delegate. In the final analysis, the responsibility rests with the Council. We are convinced, however, that it is necessary to give our agency on the spot sufficient authority in the first instance to enable it to meet the new situation there."

At the 403rd meeting on 25 January 1949, the representative of India\* said he was "astonished" that "in these times anybody could urge that the Indonesian question was a domestic issue, when it has produced the gravest repercussions throughout the world, and has forced 19 countries in Asia and in the Pacific to meet at very short notice and to pass a unanimous resolution indicating the gravity of the situation, and the possibilities of a menace to world peace".

At the 406th meeting on 28 January, prior to the vote on the four-Power draft resolution and the amendments to it, the representative of the Netherlands\* objected to it again on the ground that it represented "a drastic and deep interference in the domestic affairs of a State, such as no Member of the United Nations ever accepted when signing the United Nations Charter". He pointed out, by way of example; the provisions of paragraph 3 and sub-paragraph 4 (f) of the joint draft resolution, and stated that the Council by asking the parties to comply with those terms was, in effect, asking the Netherlands to renounce some of its most fundamental and vital sovereign rights. He said:

"... Even if the competence of the Security Council to deal with the Indonesian question, which we deny, were fully conceded by us and all others, even then the Council would be barred by the Charter from interfering in this way in our domestic affairs.

"If this resolution is adopted, this provision (Article 2 (7)), which is one of the cornerstones of the United Nations Charter, will from now on be a dead letter."

The representative of the Netherlands, objecting to another provision (sub-paragraph 4 (a)) of the draft resolution which provided that in the future the United Nations Commission for Indonesia should take its decisions by a majority vote, stated:

"... Since there is on the Commission one member chosen by the Netherlands and one member by the Republic of Indonesia, the decisive vote would as a rule lie with the third member, the United States of America. This is not changed by the provision that minority opinions can be brought to the knowledge of the Security Council. Thus, the real effect of the resolution would be that the Netherlands would, during the interim period, hand over fundamental rights, constituting part of its sovereignty over Indonesia, to the United States of America. Such a concession, I submit, cannot be asked from any State."

At the same meeting, the four-Power draft resolution, as amended by Canada, was adopted after having been voted upon in parts.<sup>105</sup>

Following the decision of 28 January 1949, the Council, at its 416th meeting on 10 March 1949, had before it a proposal<sup>106</sup> from the representative of the Netherlands which, according to him, if accepted by the Council, would "lead to statehood for Indonesia within a very few months", and to "the achievement of the Security Council's own aim at a much earlier date".<sup>107</sup> Accordingly, the representative of the Netherlands stated that a round table conference of all the interested parties was proposed to be held at The Hague, and that invitations had been issued to all interested parties, including the United Nations Commission for Indonesia. He appealed to the Council to render possible, on its part, the execution of his Government's plan.

At the 420th meeting on 23 March, in the course of the discussion following the submission of the Netherlands proposal<sup>108</sup> at the end of which the Council adopted, by 8 votes in favour, none against and 3 abstentions, the text of a directive proposed by Canada, the representative of Belgium\* observed that those who were of the view that the Council "should exclude the Netherlands proposals from the discussion and consider them as non-existent", and who pressed "for the literal application of the Council's last resolution (of 28 January 1949)", did not "take into account the fact that the Council's competence was challenged from the beginning, that its competence was never either verified or established, although several members of the Council, among whom were three permanent members, had supported the proposal to do so and although the Netherlands declared itself ready to bow to the opinion of the International Court of Justice".

At the same meeting, the representative of Egypt, in connexion with the statement of the representative of Belgium, stated that "when, by a large majority, the Security Council adopted its resolution of 28 January of this year, it gave the most unequivocal proof of its conviction that it is competent to deal with this matter". He added:

<sup>105</sup> 406th meeting: pp. 21-33. For text, see chapter VIII, pp. 322-324.

<sup>106</sup> S/1274, O.R., 4th year, Suppl. for March 1949, pp. 35-41.

<sup>107</sup> 416th meeting: pp. 9-12. See chapter VIII, p. 324.

<sup>108</sup> See chapter VIII, p. 324.

"Unless and until we have proof to the contrary as to the competence of the Council—a proof, according to my views, which ought to be approved by the Council itself—the Council's competence remains unchallenged seriously by anyone. I say 'unchallenged seriously' not in any sense of minimizing the importance of the observations made by the representative of Belgium, but in the sense that the Council's competence is not validly and properly challenged until the Council decides that it is no longer competent to deal with the question of Indonesia. Until that happens, its competence remains and its decisions stand. If any member wishes to refer a question to the International Court of Justice for an advisory opinion, that is quite another matter."

CASE 13.<sup>100</sup> THE PALESTINE QUESTION: In connexion with decision of 18 May 1948: adoption of the text of a questionnaire to be put to the parties concerned.

[Note: The issue arose whether certain questions would constitute an invasion of domestic jurisdiction.]

At the 293rd meeting on 17 May 1948, the representative of the United States submitted a questionnaire to be addressed by the Security Council to the parties concerned for the purpose of ascertaining the facts of the situation in Palestine.<sup>100</sup> Of the questions to be put to the Governments of Egypt, Iraq, Lebanon, Saudi Arabia, Syria, the Hashemite Kingdom of the Jordan, and Yemen, questions (f) and (g) read as follows:<sup>101</sup>

"(f) Have the Arab Governments entered into any agreement among themselves with respect to Palestine?"

"(g) If so, what are the terms of the agreement?"

At the 294th meeting on 18 May, the representative of Lebanon\* objected to the inclusion of the above questions. At the 295th meeting on the same day, the President (France) stated that the two questions related to the maintenance of peace, which was "precisely within the province of the Security Council". The representative of Argentina cited Article 2 (7) and suggested that inclusion of the two questions in the questionnaire should be decided by vote. Questions (f) and (g) were not adopted, having failed to obtain the affirmative votes of seven members. There were 4 votes in favour.<sup>102</sup>

At the same meeting, the representative of Syria proposed the following additional question to be addressed to the Jewish authorities in Palestine:<sup>103</sup>

"Do you have among your armed forces foreigners who are not Palestinian citizens? If so, how many or in what percentage?"

The representative of the Jewish Agency for Palestine\* suggested that, since the immigration policy of Israel was a matter of domestic jurisdiction under Article 2 (7), it should also be excluded from the

questionnaire. The Syrian proposal was not adopted, having failed to obtain the affirmative votes of seven members. There were 3 votes in favour.<sup>104</sup>

CASE 14.<sup>105</sup> THE PALESTINE QUESTION: In connexion with decision of 29 May 1948 calling for the cessation of military operations for a period of four weeks.

[Note: The wording of certain provisions was changed in consequence of objections on grounds of domestic jurisdiction.]

At the 306th meeting on 27 May 1948, the representative of the United Kingdom submitted a draft resolution,<sup>105</sup> which, in the second paragraph of its operative part, provided that the Security Council would call upon<sup>106</sup>

"... both parties to undertake that they will not introduce fighting personnel or men of military age into Palestine during the cease-fire."

At the 307th meeting on 28 May, the representative of the Jewish Agency for Palestine\*, having cited Article 2 (7), contended that the Council would be exceeding its powers if it attempted to intervene in the immigration policy of Israel. The representative of the Ukrainian SSR supported the view that the question of immigration into the State of Israel was an internal affair of that State and that the Council had "neither the right nor the power to encroach upon the sovereign rights of a State".

At the 310th meeting on 29 May, the representative of the United States suggested that the paragraph should be amended to read as follows:<sup>107</sup>

"... Calls upon all Governments and authorities concerned to undertake that they will not introduce fighting personnel or men of military age into Palestine, Egypt, Iraq, Lebanon, Saudi Arabia, Syria, Transjordan or Yemen during the cease-fire."

The President (France) proposed a further amendment to delete the words "or men of military age" and to insert an additional paragraph providing that such men of military age as would be introduced into those countries should not be mobilized or trained militarily during the cease-fire.<sup>108</sup>

The two paragraphs, as amended, were adopted by 7 votes in favour, none against with 4 abstentions.<sup>109</sup>

CASE 15.<sup>110</sup> THE PALESTINE QUESTION: In connexion with decision of 19 August 1948 indicating certain obligations of governments and authorities concerned during the truce.

[Note: The provision regarding the punishment of persons involved in a breach of the truce was questioned on grounds of domestic jurisdiction.]

<sup>100</sup> 295th meeting: p. 45.

<sup>101</sup> For texts of relevant statements see:

306th meeting: United Kingdom, p. 29.

307th meeting: Ukrainian SSR, p. 15; Jewish Agency for Palestine, pp. 10-11.

310th meeting: President (France), pp. 41-42; United Kingdom, pp. 47-48; United States, p. 40; Jewish Agency for Palestine, pp. 26-27.

<sup>102</sup> S/795. See chapter VIII, p. 329.

<sup>103</sup> 306th meeting: p. 29.

<sup>104</sup> 310th meeting: p. 40.

<sup>105</sup> 310th meeting: pp. 41-42.

<sup>106</sup> 310th meeting: p. 52. For text, see chapter VIII, p. 329.

<sup>107</sup> For texts of relevant statements see:

354th meeting: USSR, pp. 45-46; United Kingdom, p. 47.

<sup>100</sup> For texts of relevant statements see:

293rd meeting: United States, p. 3.

294th meeting: Lebanon, p. 19.

295th meeting: President (France), p. 35; Argentina, p. 35; Syria, p. 27; Jewish Agency for Palestine, pp. 44-45.

<sup>101</sup> See chapter VIII, p. 328.

<sup>102</sup> 293rd meeting: p. 3.

<sup>103</sup> 295th meeting: p. 36.

<sup>104</sup> 295th meeting: p. 27.

At the 354th meeting on 19 August 1948, in connexion with a draft resolution<sup>122</sup> concerning truce violations submitted by the representatives of Canada, France, the United Kingdom and the United States, the representative of the USSR held that paragraph (c) was contrary to Article 2 (7). The paragraph read:

"Each party has the obligation to bring to speedy trial and in case of conviction to punishment, any and all persons within their jurisdiction who are involved in a breach of the Truce."

The representative of the United Kingdom replied that recalling the obligation of authorities and governments concerned would not constitute intervention. The Council was not proposing that it would intervene and attempt to punish individuals or groups that were guilty of evading this obligation.

At the same meeting, paragraph (c) of the draft resolution was adopted by 8 votes in favour, none against with 3 abstentions.<sup>123</sup>

#### CASE 16.<sup>124</sup> THE CZECHOSLOVAK QUESTION

[Note: The question of domestic jurisdiction arose at four stages of the debate on the Czechoslovak question:

- (i) Adoption of the agenda;
- (ii) Invitation to the Government of Czechoslovakia to participate without vote in the discussion;
- (iii) Draft resolution submitted by the representative of Chile at the 281st meeting;
- (iv) Draft resolution submitted by the representative of Argentina at the 303rd meeting.]

##### (i) Adoption of the agenda<sup>125</sup>

In objecting to the inclusion of the question in the agenda, the representative of the USSR stated at the 268th meeting on 17 March 1948, that "discussion of the Chilean communication would be crass interference by the Security Council in the internal affairs of Czechoslovakia, a Member of the United Nations, and such interference is flatly prohibited by the United Nations Charter". He continued that "only the people of Czechoslovakia can determine the composition of their government and all other questions which are within the domestic jurisdiction of Czechoslovakia as a sovereign State".

Representatives who spoke in favour of consideration of the question raised two inter-connected points. First, it was denied that the question brought before the Council was essentially within the domestic jurisdiction of Czechoslovakia; hence consideration of the

question would not be a violation of Article 2 (7). Secondly, observations were made to the effect that the question arose whether Article 2 (7) had not been violated already in connexion with the events in Czechoslovakia, with the consequence that Article 2 (7) would not bar but might rather constitute the basis for United Nations action.

The representative of the United Kingdom stated that the United Nations was not being asked to intervene in matters of domestic jurisdiction in Czechoslovakia, but that what was before the Council was "an allegation made by a Member of the United Nations — the Government of Chile — to the effect that another Member of the United Nations — the USSR — has intervened in the affairs of another State". The representative of France stated that "the complaint before the Council concerns external interference in the affairs of the Czechoslovak people and therefore, in the form in which it is submitted, does not concern the internal affairs of Czechoslovakia".

The representative of Syria stated:

"... The charge is made that pressure and the threat of force have been exerted by one Member State against another in order to change the domestic régime of that second State. If it were proved that that had actually been done, the action of the first State would be considered a violation of Article 2, paragraph 7, of the Charter."<sup>126</sup>

In answer to the charge that the changes in the Government of Czechoslovakia had been brought about by the intervention of the Government of the USSR, the USSR representative stated that such assertions were "pure slander against the USSR" and that the "Soviet delegation flatly rejects them".

##### (ii) Invitation to the Government of Czechoslovakia to participate without vote in the discussion<sup>127</sup>

Following the adoption by the Security Council at its 278th meeting on 6 April 1948, of a resolution inviting the Government of Czechoslovakia to participate without vote in the discussion of the Czechoslovak question, the representative of Czechoslovakia, in a letter dated 8 April 1948, stated:<sup>128</sup>

"The discussion of internal matters before the Security Council is in contradiction to the provisions of the Charter. Such matters are exclusively within the domestic jurisdiction of any State. The Czechoslovak Government therefore rejects with indignation the unfounded complaint which has been put before the Security Council..."

"Since the discussion of internal matters of Czechoslovakia in the Security Council is contrary to the basic principles of the Charter, inspired by the aim of protecting the sovereignty and independence of States, the Czechoslovak Government does not find it possible to take part in any way in such discussion."

<sup>122</sup> S/981, G.A.O.R., 4th Session, Suppl. No. 2, pp. 40-41.  
<sup>123</sup> 354th meeting: p. 50.  
<sup>124</sup> For texts of relevant statements see: 268th meeting: Colombia, p. 95; France, p. 98; Syria, pp. 94-95; Ukrainian SSR, pp. 96-97; USSR, pp. 90-91; United Kingdom, p. 94; United States, p. 99.  
 272nd meeting: Argentina, p. 173; Ukrainian SSR, pp. 198-199, 200-201, 203; United Kingdom, pp. 191-192.  
 273rd meeting: USSR, p. 210; United States, pp. 226-227.  
 276th meeting: Ukrainian SSR, pp. 279-280.  
 278th meeting: Argentina, p. 3; United States, p. 2.  
 281st meeting: USSR, pp. 14-15, 19, 21; United States, pp. 26, 32.  
 288th meeting: Ukrainian SSR, pp. 6-7.  
 300th meeting: USSR, pp. 36, 42.  
 303rd meeting: USSR, p. 33.  
 305th meeting: USSR, pp. 36-38.

<sup>125</sup> On the inclusion of the item in the agenda, see chapter II, Case 32; for the submission of the question, see chapter VIII, p. 352.

<sup>126</sup> Subsequent to adoption of the agenda, the representative of Argentina also stated, at the 278th meeting on 6 April 1948, that "the situation which has been brought to the notice of the Security Council by the representative of Chile arises from the fact that one State is alleged to have interfered in the domestic affairs of another. Such an action is forbidden by Article 2, paragraph 7". (278th meeting: p. 3.)

<sup>127</sup> For the proposal to invite Czechoslovakia, see chapter III, Case 37.

<sup>128</sup> S/718, O.R., 3rd year, Suppl. for April 1948, p. 6.



At the 281st meeting on 12 April 1948, the representative of the United States, after commenting on the circumstances of the case, concluded:

"All of these circumstances lead to the basic question: Has the Government of Czechoslovakia been subverted with the assistance, direct or indirect, of an outside Power? Has a threat of the use of force or other pressure or interference by an outside Power been directed against the political independence of Czechoslovakia? If the answer is in the affirmative, then we are confronted with a situation which very definitely is outside the scope of Article 2, paragraph 7 of the Charter and which concerns the Security Council. . .

"This invitation has now been rejected. Why? The rejection is based on the thesis that this case comes under Article 2, paragraph 7. This, as I have pointed out, is a matter for determination by the Security Council."

(iii) *Draft resolution submitted by the representative of Chile at the 281st meeting*<sup>129</sup>

At the 281st meeting on 12 April 1948, the representative of Chile submitted a draft resolution which provided for the appointment of a sub-committee to study evidence and report to the Security Council.<sup>130</sup> The representative of the USSR referred to:

"...the absolute inadmissibility, in this field, of any foreign intervention in the internal affairs of Czechoslovakia; whether such intervention emanates from separate countries or groups of countries, or from the Security Council, which a particular group of countries is attempting to use as its blind instrument for purposes which have nothing in common with the task of maintaining international peace and security."

At the same meeting, the representative of the United States stated that the charges made before the Security Council against both the USSR and the Czechoslovak Governments

"... are based on the allegation of an illegal intervention by one State in the internal affairs of another State, leading to the impairment of its political independence. Moreover, the restoration and maintenance of democratic institutions in liberated Europe, including Czechoslovakia, was the subject of an international Agreement concluded at Yalta by Marshal Stalin, Prime Minister Churchill and President Roosevelt in February 1945. Consequently, if the charges are true, Article 2, paragraph 7 clearly could not be a bar to Security Council jurisdiction over this question. The taking of evidence is the way to settle whether or not the charges are a premeditated quota of slander, as charged by the Union of Soviet Socialist Republics."

At the 300th meeting on 21 May 1948, the representative of the USSR stated that if the draft resolution submitted by the representatives of Chile and sponsored by the representative of Argentina were adopted, it could not "be interpreted otherwise than as a crude attempt to interfere in Czechoslovakia's internal affairs". In connexion with the voting procedure under Article 27, the representative of the USSR at the 300th meeting stated that

"... in rejecting all attempts to interfere in Czechoslovakia's internal affairs, we are defending the perfectly legitimate rights and interests of the people of Czechoslovakia and of the Czechoslovak State."

(iv) *Draft resolution submitted by the representative of Argentina at the 303rd meeting*

At the 303rd meeting on 24 May, the representative of Argentina submitted a draft resolution<sup>131</sup> which provided for the Committee of Experts to obtain testimonial evidence both oral and written regarding the Czechoslovak question, and to report to the Security Council at the earliest opportunity.

At the 305th meeting on 26 May, the representative of the USSR declared:

"The USSR delegation can in no case agree to any proposals of that kind. They constitute attempts to interfere in the internal affairs of the sovereign State of Czechoslovakia."

CASE 17.<sup>132</sup> COMPLAINT OF AGGRESSION UPON THE REPUBLIC OF KOREA: In connexion with draft resolution to condemn the North Korean authorities for defiance of the United Nations: voted upon and rejected on 6 September 1950.

[Note: The representative of the USSR claimed that the Council's action regarding the situation in Korea involved intervention in the domestic affairs of Korea, where the conflict had the characteristics of a civil war. The representative of the United Kingdom stated that, under the Council's responsibility for the maintenance of international peace and security, it was authorized by the Charter to intervene, if need be, in the internal affairs of any country.]

At the 479th meeting on 31 July 1950, the representative of the United States submitted a draft resolution<sup>133</sup> to condemn the North Korean authorities for their continued defiance of the United Nations.

At the 482nd meeting on 3 August, the President, speaking as the representative of the USSR, commenting on the situation in Korea, stated:

"... It is clear to anyone . . . that a civil war is in progress in Korea between the North and South Koreans. The military operations between the North and South Koreans are of an internal character; they bear the character of a civil war. There is therefore no justification for regarding these military operations as aggression . . .

"As is known, the United Nations Charter also directly prohibits intervention by the United Nations in the domestic affairs of any State when the conflict is an internal one between two groups within a single State and a single nation. Accordingly, the United Nations Charter provides for intervention by the Security Council only in events of an international rather than of an internal nature . . ."

At the 486th meeting on 11 August, the representative of the United Kingdom stated that the represen-

<sup>129</sup> S/782, O.R., 3rd year, 303rd meeting, p. 33.

<sup>130</sup> For texts of relevant statements see:

482nd meeting: USSR, pp. 6, 8.

486th meeting: United Kingdom, pp. 5-6.

489th meeting: USSR, p. 3; United Kingdom, pp. 20-21.

<sup>131</sup> 479th meeting - pp. 7-8. See chapter VIII, p. 357.

<sup>132</sup> For consideration of the draft resolution, see chapter V, Case 67; and chapter X, Case 17.

<sup>133</sup> 281st meeting: p. 2. See chapter VIII, p. 352.



tative of the USSR had omitted to draw attention to the fact that the Government of the Republic of Korea had already been declared the lawful Government of that country by the United Nations; that United Nations observers were stationed on its *de facto* northern frontier; and that, therefore, the whole State was, as it were, existing under the mantle of the United Nations. He added:

"... Quite apart from this, there is absolutely no reason to suppose that wars between people of the same race, even if they do not involve a government which has been set up under the aegis of the United Nations, are necessarily exempt from the decisions of the Security Council. A civil war in certain circumstances might well, under Article 39 of the Charter, constitute a 'threat to the peace', or even a 'breach of the peace', and if the Security Council so decided, there would be nothing whatever to prevent its taking any action it liked in order to put an end to the incident, even if it should involve two or more portions of the same international entity. Indeed, paragraph 7 of Article 2 of the Charter so provides..."

He continued that the last few words of that paragraph "make it quite clear that the United Nations has full authority to intervene actively in the internal affairs of any country if this is necessary for the purpose of enforcing its decisions as regards the maintenance of international peace and security".

At the 496th meeting on 6 September, the United States draft resolution was not adopted. There were 9 votes in favour, 1 against (being that of a permanent member), with 1 abstention.<sup>124</sup>

CASE 18.<sup>125</sup> In connexion with the proposal on 31 August 1950 to include in the agenda the item "The unceasing terrorism and mass executions in Greece."

[Note: Objection to the inclusion of the item in the agenda was raised on grounds of domestic jurisdiction and on other grounds. The Council rejected the proposal to include the item.]

At the 493rd meeting on 31 August 1950, the representative of the USSR, in his capacity as President, included in the provisional agenda an item on "The unceasing terrorism and mass executions in Greece". During the discussion on the adoption of the agenda, he submitted a draft resolution<sup>126</sup> to request the Greek Government "to suspend the execution of the death sentence on 45 active members of the national resistance movement who have been sentenced to death, to prohibit any further executions of political prisoners and not to allow the transfer of tubercular political prisoners to desert islands with an unhealthy climate".

In opposing the inclusion of this item in the agenda, the representative of the United Kingdom stated:

"... It is perfectly clear that the Security Council has no jurisdiction in the matter at all, and that it would be wholly improper for the item to be included

in the definitive agenda. The matters with which the communications from the President deal, obviously do not constitute a threat to the peace. They are clearly within the sphere of Greek domestic jurisdiction, and the United Nations under Article 2, paragraph 7 of the Charter, is therefore precluded from discussing them."

Objection was also raised by the representative of the United States on the grounds that there was "no single coherent suggestion that there is a threat to international peace or even an international dispute".

The Council rejected the proposal to include the item in the agenda by 2 votes in favour, and 9 against.<sup>127</sup>

After the vote, the following statements were made:

By the representative of India:

"While in certain circumstances the subject matter... may be a matter for the consideration of the General Assembly or some other organ of the United Nations, my delegation is not satisfied that it is a matter for the Security Council."

By the representative of Ecuador:

"I voted against the inclusion of this item in the agenda because the Assembly will shortly open, because I take into account the wording of Article 13, paragraph 1 (b) of the Charter, and because whatever action is required to ensure that human rights are observed as far as possible in Greece and in all other countries can be taken in the Assembly."

By the representative of Norway:

"... my delegation voted against the inclusion in the agenda... because, in my opinion, the item as proposed is completely outside the jurisdiction of the Security Council whether the General Assembly is in session or not. This is so because this item has nothing to do with the maintenance of international peace and security."

CASE 19.<sup>128</sup> THE ANGLO-IRANIAN OIL COMPANY CASE: In connexion with draft resolutions submitted by the representative of the United Kingdom to call upon the Government of Iran to act in conformity with provisional measures indicated by the International Court of Justice.

[Note: On 5 July 1951, the Court granted interim measures of protection in accordance with Article 41 of the Statute in the course of proceedings instituted by the United Kingdom against Iran in connexion with the application of the Agreement of 1933 between the Imperial Government of Persia and the Anglo-Persian Oil Company, Limited. The order stated that the indication of such measures in no way prejudged the ques-

<sup>124</sup> 496th meeting: p. 30. See also chapter II, Case 36, for procedural argumentation.

<sup>125</sup> For texts of relevant statements see:

559th meeting: China, pp. 8-9; Ecuador, p. 2; France, p. 5; India, pp. 7-8; Netherlands, p. 5; Turkey, p. 3; USSR, pp. 1-2; United Kingdom, pp. 3-4, 20; United States, pp. 5-7; Yugoslavia, pp. 2-3, 8-10.

560th meeting: Iran, pp. 6-7, 12-13.

561st meeting: China, pp. 19-21; India, pp. 16-17; Iran, pp. 5, 31; USSR, p. 22; United Kingdom, pp. 8-9, 23; Yugoslavia, pp. 17-18.

562nd meeting: Ecuador, pp. 3, 5-10; United Kingdom, p. 3.

563rd meeting: China, pp. 34-35; Netherlands, pp. 32-34; United States, p. 3.

565th meeting: China, p. 5; France, pp. 2-3; Yugoslavia, pp. 2, 13.

<sup>126</sup> 496th meeting: pp. 18-19.

<sup>127</sup> For texts of relevant statements see:

493rd meeting: Ecuador, pp. 30-31; France, pp. 28-29; India, p. 30; Norway, p. 31; USSR, pp. 15-20; United Kingdom, pp. 22-23; United States, pp. 26-27; Yugoslavia, p. 29.

<sup>128</sup> S/1746/Rev. I, 493rd meeting: pp. 19-20.

tion of the jurisdiction of the Court to deal with the merits of the case, but was intended to preserve the respective rights of the parties pending the Court's decision. Objection was raised to the United Kingdom request on grounds of domestic jurisdiction before, and again after, the adoption of the agenda.]<sup>139</sup>

At the 559th meeting on 1 October 1951, when the Security Council decided to include the item in the agenda, as well as at five subsequent meetings, between 15 and 19 October 1951, when the Council considered draft resolutions submitted by the representative of the United Kingdom,<sup>140</sup> several representatives made statements regarding the competence of the Council to deal with the question.

At the 559th meeting, the representatives of the USSR and Yugoslavia objected to the inclusion of the item in the agenda. The representatives of the Netherlands, the United Kingdom and the United States made statements to uphold the competence of the Council. The representatives of China, Ecuador, India and Turkey spoke in favour of including the item in the agenda, but reserved their positions both on the question of competence and the merits of the case.

The representative of the USSR maintained that the discussion of the United Kingdom complaint would constitute interference in the internal affairs of Iran contrary to the provisions of Article 2 (7). He opposed the United Kingdom draft resolution and all amendments thereto on the ground that their aim was to force Iran to conduct negotiations and to make a question which was exclusively within its domestic jurisdiction the subject of international discussion in violation of Article 2 (7). The representative of Yugoslavia contended that the action taken or contemplated by Iran with regard to the Anglo-Iranian Oil Company was a matter essentially within the domestic jurisdiction of Iran.

In discussion on the inclusion of the item in the agenda, the representative of the United Kingdom outlined his views, regarding the competence of the Council, which he elaborated in later stages of the debate. He maintained that the expropriation of foreign property and rights and the treatment of aliens were matters governed by rules of international law. It was thus a confusion of the issue to plead the general right of nationalization. Moreover, the United Kingdom's claim that Iran had broken certain treaties between the two countries was sufficient by itself to remove the dispute from the realm of domestic jurisdiction. He suggested that the finding of the International Court of Justice on provisional measures, indicating the existence of a case at least *prima facie* internationally justiciable and not therefore a pure matter of domestic jurisdiction, gave rise to international obligations which it was the right and duty of the Council to uphold. He adduced grounds for concluding that this decision of the Court regarding its jurisdiction was binding on all Members of the United Nations. Citing Articles 93 (1) and 94 (1) of the Charter, he maintained that the indication by the Court of provisional measures under Article 41 of the Statute of itself gave rise to obligations which

it was the duty of the Security Council to uphold and which could not be regarded as being solely within the domestic jurisdiction of one of the parties. In addition, the Council had special functions in relation to the decisions of the Court, both under Article 94 (2) of the Charter and Article 41 (2) of the Statute of the Court, and possessed the power to deal with matters arising out of provisional measures which the Court had not notified to it. He maintained that Article 94 (2) applied not only to final judgments of the Court, but to decisions on interim measures as well, for there would be no point in making the final judgment binding if one of the parties could frustrate that judgment in advance by actions which would render it nugatory. He further stressed that the formal basis of the reference to the Council was Article 35 of the Charter and, in these circumstances and quite apart from the decision of the Court, there was a dispute which should receive urgent consideration by the Council.

The representative of Iran\* observed that the Security Council had no competence to deal with the question because the exercise of Iran's sovereign rights in such matters of domestic jurisdiction could neither be abridged nor interfered with by any foreign State or international body. That principle of international law was also the law of the United Nations by virtue of Articles 1 (2) and 2 (7) which exempted the Members from any requirement to submit such matters to settlement under the Charter. Apart from the bar to the Council's jurisdiction interposed by Article 2 (7), the Council could not, as the United Kingdom asked, enforce compliance under Article 94 with the provisional measures indicated by the Court under Article 41 of its Statute, because the Statute attributed binding force only to final judgments under its Article 59. The argument of the representative of the United Kingdom that there would be no point in making a final decision binding if one of the parties could frustrate that decision in advance, was an argument *de lege ferenda* rather than one declaratory of existing law. The language of Article 41 of the Statute was exhortative and not declaratory, and the provisional measures would have binding force only if the parties had been bound by an arbitration treaty which would expressly obligate them to respect such measures. As to the suggestion that the Security Council ought to have jurisdiction because of the existence of a threat or potential threat to peace and security, the representative of Iran declared that a nation as weak and small as Iran could not endanger world peace, that whatever danger there might be to peace lay in the actions of the Government of the United Kingdom, and that the only dispute between Iran and the United Kingdom related to the latter's attempts to interfere in the internal affairs of Iran. Under the rules of international law, the expropriation of the property of aliens was governed only by one condition, compensation, a condition which had been specifically provided for in the nationalization statute, and Iran had repeatedly expressed its willingness to negotiate for a settlement.

Certain other statements bore rather on the competence of the Council in the light of the situation arising from the legal issues in the dispute. The representative of Yugoslavia, in opposing the inclusion of the item in the agenda, contended that questions involving the applicability or non-applicability of Article 2 (7) to cases brought before the Council had always been decided by

<sup>139</sup> For submission of the question, see chapter VIII, p. 360. For discussion in relation to Chapter VI of the Charter, see chapter X, Case 26; in relation to Article 41 of the Statute, see chapter VI, Case 29.

<sup>140</sup> S/2357 and S/2358/Rev.1 and Rev.2.

the Council itself in accordance with the legal precept that interpretation was co-extensive with application. The Council was, therefore, not bound by decisions which other organs of the United Nations had taken with regard to competence. At the 561st meeting on 16 October 1951, he stated that the Council was not competent to deal with the matter which came essentially within the domestic jurisdiction of Iran. However, he stated that if the Council felt that it could make a useful contribution to settlement between the parties themselves, his delegation considered the general approach of the United Kingdom draft resolution,<sup>19</sup> to which he had proposed joint amendments, to be fundamentally sound.

The representative of India, at the same meeting, observed that because the question of international jurisdiction had not yet been finally decided by the International Court of Justice and was, in fact, *sub judice* at the moment, it might not be wise or proper for the Council to pronounce on the question while the latter was under consideration by the Court. He submitted amendments,<sup>20</sup> jointly proposed by India and Yugoslavia, the aim of which was to provide a basis for negotiations which would safeguard the legitimate position of each party, without prejudicing the question of the Council's competence.

The representative of China suggested additional amendments to the revised United Kingdom draft resolution, designed to avoid the characterization of the dispute as a threat to international peace and security, to delete references to the International Court of Justice, and to have the Council "advise", instead of "call for", negotiations so that the resolution might not prejudice the question of the Council's competence.

The representative of Ecuador, at the 562nd meeting on 17 October 1951, observed that the eventual decision of the Security Council would constitute an important precedent because it was the first time that the Council had dealt with a question arising out of a dispute between a State and a foreign company. Basing his views on certain provisions of inter-American agreements which constituted, in his opinion, part of international law governing the relations between a State and foreign capital and undertaking, he made a detailed statement on the general authority of the Council as well as the question of domestic jurisdiction. He maintained that the question of international or domestic jurisdiction with regard to the dispute was to be decided by the International Court of Justice and, therefore, it would be inadvisable for the Council to rule at present on its own competence. Should the Court, having declared its competence, render a final judgment, the applicability of Article 94 (2) would arise if one of the parties refused to comply with the final judgment. However, if the Court decided that it had no competence because the case was one of domestic jurisdiction, the Council should not then intervene in a legal matter against the opinion of the judicial organ of the United Nations. The nationalization of the oil industry in Iran was a domestic matter between the Iranian Government and a foreign concern, and legally unassailable provided it was accompanied by fair compensation, and could not of itself afford ground for a complaint to the Security Council.

Moreover, a denial of justice had to be established before any diplomatic action, apart from the mere exercise of good offices, could be taken by a Government attempting to protect the rights of its nationals. His delegation considered that there had not yet been a denial of justice and that the Iranian Government had not refused to pay compensation. There could be no violation of international law where, as in this case, a contract concluded by a sovereign State with an individual or company was broken in consequence of a general statute. So far, he had heard of no evidence that the Iranian Government had violated any treaty with the United Kingdom. It was highly questionable whether the mere exercise of diplomatic protection transformed a dispute between a State and a foreign company into a dispute between two States within the meaning of Chapter VI of the Charter. In his opinion the failure of a State to observe provisional measures indicated by the Court did not empower the Council to make recommendations under Article 94 (2), for that article, by its wording, pertained only to final judgments of the Court.

The representative of the United States, at the 563rd meeting on 17 October 1951, declared that there could be no question about the competence of the Council in this case, because there clearly existed a dispute between the United Kingdom and Iran the continuance of which was likely to endanger international peace and security. The representative of the Netherlands observed that the Council was undoubtedly competent to deal with a situation which had arisen out of Iran's failure to comply with the provisional measures indicated by the Court. His delegation supported the second revised United Kingdom draft resolution, but opposed the Ecuadorian draft resolution which, in his opinion did not differentiate the complaint brought before the Council by the United Kingdom from the legal case on the fundamentals which ought to be left to the Court.

The representative of China, while expressing doubts in regard to the competence of the Council, indicated that it was not clear to him that the nationalization of the oil industry in Iran was entirely within the domestic jurisdiction of Iran. He could not accept the thesis that all the consequences of that nationalization were beyond the jurisdiction of the Council, for such an assertion would impair the utility of the United Nations and would render useless the recognized right of diplomatic protection. At the 565th meeting on 19 October, the representative of Yugoslavia stated that his delegation had been prepared to support an appeal by the Council to the parties if the members of the Council had been in a position to provide "an overwhelmingly positive answer" to the question of competence. This, however, had not been the case, and, therefore, the situation called for new suggestions.

The representative of France proposed to adjourn the debate on the revised United Kingdom draft resolution "until the International Court of Justice has ruled on its own competence in the matter".

The representative of China, who supported the French proposal, believed that the competence of the Council and the competence of the Court were not identical or interdependent. However, the decision of the Court and the reasons on which it would be based might throw some light on the question of the competence of the Council.

<sup>19</sup> S/2358/Rev.1.

<sup>20</sup> S/2379.

The motion of the representative of France was adopted by 8 votes to 1, with 2 abstentions.<sup>143</sup>

The representative of Yugoslavia explained that his delegation had abstained because the motion implied that the question of the competence of the Council depended, at least to a certain degree, on the decision of another United Nations body, an opinion which he did not share.

By letter dated 19 August 1952,<sup>144</sup> the Secretary-General transmitted, for the information of the mem-

<sup>143</sup> 565th meeting: p. 12.

<sup>144</sup> S/2746.

bers of the Security Council, a copy of the judgment of the International Court of Justice,<sup>145</sup> given on 22 July 1952, in which the Court, by 9 votes to 5 found that it had no jurisdiction in the case. It was noted in the letter that the Court's Order of 5 July 1951, indicating Provisional Measures of protection in the Anglo-Iranian Oil Company case, had ceased to be operative upon the delivery of this judgment and that the Provisional Measures had lapsed at the same time.

<sup>145</sup> Anglo-Iranian Oil Company case, Judgment of 22 July 1952; *International Court of Justice Reports, 1952*, pp. 93-171.

## Part II

### CONSIDERATION OF THE PROVISIONS OF ARTICLE 24 OF THE CHARTER

#### NOTE

Article 24, while the subject of frequent reference in the Security Council, has only on certain occasions been the subject of extended debate. Part II accordingly presents the main instances of discussion bearing on this Article of the Charter. In two cases discussion centred on the question of the general power deemed to inhere in the Security Council by virtue of Article 24 irrespective of the specific powers indicated in Chapters VI, VII, VIII and XII of the Charter.<sup>1</sup> Incidental reference has also been made to this question on other occasions, notably in the consideration of the recommendations of the Commission of Investigation concerning Greek Frontier Incidents.<sup>2</sup> Attention has also been directed to the primary responsibility of the Council in relation to the functions of the General Assembly regarding the maintenance of international peace and security. Discussion of this nature which arose in connexion with the recommendations of the Sub-Committee on the Spanish question has been entered in this Part.<sup>3</sup> Cognate material on the relation of the Council and the General Assembly in matters of international peace and security will be found in chapter VI, part I, section A, where it is entered in connexion with Article 12 of the Charter. It has also been considered appropriate to enter in part II of this chapter the proceedings of the Council consequent on the request of the General Assembly in November 1947 to assume certain responsibilities in connexion with Palestine.<sup>4</sup> Attention may also be directed to certain decisions of the Council which, by reason of the inclusion of the terms of Article 24 in the preamble, might be deemed to have been taken on the basis of the general responsibility of the Council for the maintenance of international peace and security.<sup>5</sup>

<sup>1</sup> Cases 20 and 21. Statements corresponding to the view expressed by the representative of Australia in the question of the Statute of the Free Territory of Trieste were also made by the representative of Australia on the following occasions:

71st meeting: pp. 425-426.

72nd meeting: pp. 453-454.

162nd meeting: p. 1919.

<sup>2</sup> See chapter X, Case 13.

<sup>3</sup> Case 21.

<sup>4</sup> Case 23.

<sup>5</sup> Cf. Palestine question: decision of 1 April 1948; India-Pakistan question: decision of 30 March 1951; Indonesian question (II): decision of 28 January 1949.

Though allusion has from time to time been made to the representative character of membership of the Security Council by virtue of Article 24 (1),<sup>6</sup> no case history calls for entry in connexion with the provision that the Security Council, in discharging its responsibility for the maintenance of international peace and security, acts on behalf of the Members of the United Nations.

The Purposes and Principles of the Charter, in accordance with which the Security Council is enjoined to act, do not form the subject of any one section of the *Repertoire*. The Purposes and Principles have been extensively invoked in the course of discussion; but most frequently the language of the Purposes and Principles has been utilized incidentally in discussion to characterize the various external situations to which representatives on the Council have wished to refer. Material relating to the Purposes and Principles included within the *Repertoire* is limited to such material as constitutes an integral element in the presentation of a case to the Council or in the consideration of a question by the Council. With one exception,<sup>7</sup> the relevant references have been entered in chapter VIII of the *Repertoire*. The main instances are:

#### ARTICLE 2 (1)

*Syrian and Lebanese question:* Contention by the representatives of Syria and Lebanon that the presence of French and British troops was a violation of the principle of sovereignty.<sup>8</sup>

*Egyptian question:* Contention by the representative of Egypt that occupation in time of peace of the territory of a Member of the United Nations, without its consent, is contrary to the principle of sovereign equality.<sup>9</sup>

*Indonesian question (II):* Contention by the representative of the Netherlands that the relations of the

<sup>6</sup> Argentina, 360th meeting: p. 6.

Australia, 26th meeting: p. 39; 40th meeting: p. 249.

Ecuador, 472nd meeting: p. 11.

Syria, 310th meeting: p. 24.

USSR, 47th meeting: p. 368; 406th meeting: p. 6.

United Kingdom, 40th meeting: p. 251.

United States, 59th meeting: p. 176; 405th meeting: p. 35.

<sup>7</sup> See Case 24.

<sup>8</sup> 20th meeting: pp. 284, 285, 287. Also 21st meeting: China, p. 309; Egypt, p. 311; Netherlands, p. 316; USSR, p. 305. See chapter VIII, pp. 302-303.

<sup>9</sup> 175th meeting: p. 1753. See chapter VIII, p. 314.



Netherlands and the Republic of Indonesia were not within the scope of the Charter because "the Charter was designed to operate between sovereign States".<sup>10</sup>

#### ARTICLE 2 (4)

*Iranian question:* Contention by the representative of Iran that, in accordance with Article 2 (4), the Security Council should make a recommendation regarding Soviet forces in Iran.<sup>11</sup>

*Czechoslovak question:* Contention by the representative of Chile that the political independence of Czechoslovakia had been violated by the threat of the use of force in contravention of Article 2 (4).<sup>12</sup>

<sup>10</sup> 388th meeting: p. 25. Also 392nd meeting: France, p. 58; Belgium, p. 26. See also chapter VIII, p. 316.

<sup>11</sup> See chapter VIII, p. 301.

<sup>12</sup> 268th meeting: Belgium, p. 18; Chile, p. 104; France, p. 99; United Kingdom, p. 94.

*Identical notifications dated 28 September 1948:* Contention by the representatives of France, the United Kingdom and the United States that the threat by the USSR of recourse to force contrary to Article 2 (4) created a threat to the peace.<sup>13</sup>

*Palestine question:* Decisions of the Security Council of 8 May and 18 May 1951.<sup>14</sup>

#### ARTICLE 2 (6)

*The Spanish question:* Contention by the representative of Poland that Article 2 (6) should be applied to "the fascist regime in Spain".<sup>15</sup>

<sup>13</sup> 364th meeting: France, p. 41; United Kingdom, p. 35. See chapter VIII, p. 354.

<sup>14</sup> See chapter VIII, pp. 341-343.

<sup>15</sup> O.R., 1st series, 1st year, Suppl. No. 2, p. 55. See chapter VIII, p. 306.

### Article 24 of the Charter

1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

2. In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII.

3. The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration.

CASE 20.<sup>16</sup> THE IRANIAN QUESTION (II): In connexion with the proposal to withdraw the question from the agenda.

[Note: The problem was discussed whether the Council was entitled to retain the Iranian question on the agenda despite the request of the parties for its withdrawal, and, in justification of the retention of the question on the agenda, the responsibility of the Security Council under Article 24 was cited.]

In consequence of the USSR communication of 6 April 1946 and the Iranian communication of 15 April 1946,<sup>17</sup> the Security Council considered at the 32nd and 33rd meetings on 15 and 16 April 1946 the question whether it was obliged to remove the item from the agenda or whether it could legitimately retain the item on the agenda.

At the 32nd meeting on 15 April, the representative of the USSR contended that the Iranian question could not be deemed to be a dispute or situation the continuance of which was likely to endanger the maintenance of international peace and security, and observed that the Council had taken no decision to this effect.

<sup>16</sup> For texts of relevant statements see: 32nd meeting: Australia, pp. 131-132; Brazil, pp. 132-133; France, pp. 135-136; Egypt, p. 139; Netherlands, p. 127; Poland, pp. 137-138; USSR, pp. 123-125; United Kingdom, pp. 129-130; United States, p. 126.

33rd meeting: France, p. 149; Netherlands, p. 147; Poland, p. 153; USSR, p. 145; United States, p. 152.

36th meeting: France, p. 200; Mexico, p. 210; Netherlands, p. 212; Poland, p. 209; USSR, p. 201; United Kingdom, pp. 207-208; United States, p. 203.

<sup>17</sup> See chapter VIII, p. 305. For procedural argumentation on the withdrawal of the Iranian question from the agenda, see chapter II, Case 56.

He concluded that the Council's task was simply to note that the Iranian problem was removed from the agenda. The representative of the United States observed that a complaint such as the Iranian complaint presented grave issues under Article 2 (4) of the Charter, and when such complaints were presented to the Security Council it was not permissible for the Council to take the position that the continuation of the conditions complained of would not endanger international peace and security. The representative of the Netherlands considered that the Council would be open to legitimate criticism if it dropped a matter before the settlement had actually been carried into effect, since the Council had a responsibility of its own and was under an obligation to report to the General Assembly on its actions. The representative of Australia contended that, once a State presented a case to the Council, its Government had a duty, in the interest of the Organization, to see that relevant information was not withheld. Any Member of the United Nations alleging that the presence of foreign troops in its territory was a threat to international peace and security had a right to bring the matter before the Security Council, and the Council had a duty to investigate it. It then became the property of the Council, even though both parties requested its withdrawal. The representative of Brazil considered it "a valid and indisputable legal principle" that it did not rest with the parties concerned to decide whether or not the question should be withdrawn from the agenda. The representative of France, referring to the obligation of the Council to submit reports to the General Assembly, submitted a draft resolution to instruct the Secretary-General to collect the necessary information for such a report.<sup>18</sup>

<sup>18</sup> 33rd meeting: pp. 142-143.

At the 33rd meeting on 16 April, a statement by the Secretary-General was read to the Council.<sup>19</sup> Discussion continued on the withdrawal of the Iranian question. The representative of the Netherlands stressed that the view that the parties were sole judges as to whether or not a matter should be retained on the agenda might well give rise to abuse, especially in disputes between great Powers and small Powers in which diplomatic pressure might be exercised to bring about the withdrawal of the question from the agenda. It was decided to postpone further consideration until the Report of the Committee of Experts had been received.

At the 36th meeting on 23 April, the Council had before it the Report of the Committee of Experts. The Committee of Experts reported that they had been unable to formulate a common opinion on the question put to it by the Council. With regard to the powers of the Council under the Charter, the delegations of Australia, Brazil, China, Egypt, Mexico, the Netherlands, the United Kingdom and the United States made, with certain variations, the following observations:<sup>20</sup>

"... It would be a mistake, in their opinion, to regard the problem from a purely legalistic point of view. The Charter has in fact invested the Security Council especially under Article 24 with certain political functions of primary importance by conferring on it the primary responsibility for the maintenance of international peace and security. Moreover, Article 1, to which Article 24 refers, stipulates that the pacific settlement of disputes shall be brought about in conformity with the principles of justice and international law. The Security Council may hold that, even after an agreement has been reached between the parties, circumstances may continue to exist (for example the conditions under which the agreement has been negotiated) which might still leave room for fears regarding the maintenance of peace and which justify the question's being retained among the matters entrusted to its care.

"The Security Council may, even when the parties announce that they have reached an agreement, find it necessary to remain seized of the matter until the whole or part of the agreement has been executed, or even longer.

"Several representatives in the same group drew the Committee's attention to the mistake which the memorandum seems to have made in failing to distinguish clearly between the decision by which the Security Council becomes seized of a question and any decision which it may take under Article 34. The decision by which the Security Council is seized of a question is absolutely independent of and distinct from the measures which it may decide to take under Article 34.

"Several representatives in the same group questioned the argument in the memorandum which seemed to imply that unless the Security Council takes a decision under Article 34 or 36 it cannot remain seized of a dispute the withdrawal of which has been requested.

"Several representatives in the same group expressed the opinion that Article 35, paragraph 1, proves that the action of the Security Council in its

role as guardian of the peace is quite independent of the strictly legal circumstances in which a dispute develops since, according to that text, it is not necessarily a party to a dispute which has to bring it to the attention of the Security Council. Any Member of the Organization may draw the Security Council's attention both to situations and to disputes involving certain specified States."

The Committee reported further that, in the opinion of the representatives of France, Poland and the USSR, the rules governing the withdrawal of a question varied according to whether a dispute or situation was involved.<sup>21</sup>

The representatives of France, Poland and the USSR concluded:

"Moreover, two hypotheses should be envisaged: the case in which the dispute originally submitted to the Security Council has reached the point where other parties are concerned than those originally involved; and the case in which a new situation has arisen out of the original dispute. In each case the question is a different one from that originally submitted to the Security Council. It may be brought to the attention of the Security Council by a Member of the Organization under Article 35, paragraph 1, of the Charter, or else the Security Council itself may take it up under Article 34 of the Charter."

In the discussion of the Report the representative of the United States indicated his view that the argument in the Secretary-General's memorandum disclosed a concept of the functions of the Security Council which was far too limited. He added that the United Nations placed very great responsibilities for the maintenance of peace and security upon the Security Council, and the Charter had given the Council powers commensurate with these responsibilities.

The representative of Australia drew attention to the power given to the Council by Article 34 of the Charter, whereby the Council can "investigate and act without complaint from any parties". The representative of the United Kingdom indicated his doubt whether it would be wise to lay down a general rule to govern the Council in all cases; each case should be considered on its merits. The representative of Poland contended that it was an unwise and dangerous doctrine to maintain that a country had no right to withdraw a complaint from the Council. The representative of Mexico said that his Government's opinion that the Council might remain seized of a dispute after the parties to it had withdrawn their complaints was based on Article 24, paragraph 2, of the Charter. He continued:<sup>22</sup>

"We base this opinion on the letter and the spirit of Article 24, paragraph 2, first sentence, of the Charter, which invests the Council with implied powers wider in scope than the specific powers laid down in Chapters VI, VII, VIII, and XII, to which the second sentence of the same paragraph and article refers.

"We subscribe to the view that the decision by which the Security Council is seized of a question may be independent of any measures taken under Article 34.

<sup>19</sup> For text, see chapter II, Case 56.

<sup>20</sup> S/42, O.R., 1st year, 1st series, Suppl. No. 2, pp. 47-50. See also chapter II, Case 56.

<sup>21</sup> For these observations see chapter II, Case 56.

<sup>22</sup> 36th meeting: p. 210.



"We consider that this interpretation is desirable in order to implement the powers inherent in the Security Council's mandate, powers with which the Council was vested to enable it to fulfil adequately its primary responsibility for the maintenance of international peace and security."

The representative of the Netherlands contended that the Council had the duty to supervise a case once it was placed before it until a settlement was achieved.

The French draft resolution to take note of the Iranian letter of 15 April 1946 regarding the withdrawal of the complaint was rejected by 8 votes in favour and 3 against.<sup>23</sup>

**CASE 21.<sup>24</sup> THE SPANISH QUESTION:** In connexion with the recommendation by the Sub-Committee to refer the Spanish question to the General Assembly.

[Note: Objection was raised on the basis of Article 24 of the Charter to the draft resolution, based upon the recommendation of the Sub-Committee on the Spanish question, to refer the question to the General Assembly.]<sup>25</sup>

At the 45th meeting on 13 June 1946, the Chairman of the Sub-Committee on the Spanish question stated that, in his opinion, adoption of its recommendation<sup>26</sup> to refer the matter to the General Assembly would "represent no diminution of the powers of the Security Council, but will really represent an exercise by the Security Council of its power to recommend methods of adjustment or suitable procedures".

The representative of the USSR, at the same meeting, stated:

"... in asserting that the Security Council has not the right, in the present case, to take a decision regarding the severance of relations with Franco, and in recommending that the Assembly should take such a decision, the Sub-Committee seems, in regard to the present question, to confuse the functions of the Security Council and the General Assembly. The Security Council has the primary responsibility for the maintenance of peace, and precisely for this reason the Security Council should, and is appointed to, decide the question of the measures to be taken regarding the Franco regime. The Security Council is precisely the organ which should take the decision regarding action in connexion with questions dealing with the maintenance of peace. The Security Council has the necessary powers for this, which are provided, in particular, by Article 24, paragraph 1, of the Charter. The Sub-Committee's proposal is contrary to this Article.

"I wish to emphasize strongly that such a decision would not merely be undesirable, but would even be dangerous, because it might constitute a precedent capable of seriously prejudicing the authority and prestige not only of the Security Council, but of the whole United Nations, on whose behalf

the Security Council acts. In the event of serious questions arising in the future, recommendations may be made, on the strength of this precedent, to refer other serious and pressing questions to the General Assembly or to some other organ of the United Nations for consideration, instead of taking practical measures on such questions in the Security Council."

Also at the 45th meeting, the representative of the Netherlands declared:

"... If the Council has both the right to act and good reasons for taking action, by all means let us take action now, or in September. To this extent I am in agreement with what the representative of the USSR has just told us. But, if we take action, let us take action ourselves and not refer the matter to another organ of the United Nations.

"It is this Council which has the primary responsibility for matters such as these, under Article 24 of the Charter, and I think we should discharge that responsibility ourselves. But, if we have no right to act or no good grounds for taking action, by all means let us refrain from doing so. If, nevertheless, the Assembly wants to take up the matter, it is for the Assembly to decide."

At the 47th meeting on 18 June the representative of the USSR further declared:

"... Mr. Evatt stated in one of his speeches that reference of the Spanish question to the General Assembly was based on and justified by the fact that that question concerned not only the members of the Security Council, but all the Members of the United Nations. In itself that thesis is correct. It is true that the solution of the Spanish question concerns not only the members of the Security Council, but all the Members of the United Nations.

"However, the problem is incorrectly stated. The fact is that the adoption by the Security Council of decisive, practical measures directed towards the removal of the threat to peace, as represented in Spain by Franco's fascist regime, is not inconsistent with the thesis that the existing situation in Spain concerns not only the members of the Security Council, but all the Members of the United Nations."

After quoting from the text of Article 24, he continued:

"That is to say, the Security Council acts on behalf of all the Members of the United Nations. Consequently the inconsistency mentioned here by Mr. Evatt is an imaginary one; it does not exist in reality."

At the same meeting, the representative of Poland, in accepting the recommendations of the Sub-Committee as amended, pointed out that he "did so with two provisos":

"In the first place, I want it to be fully understood that acceptance of the Sub-Committee's recommendations should in no way prejudice the rights of the Security Council; nor should it ever be invoked as a precedent which would justify the Council, when faced with a difficult situation, in avoiding responsibility and referring the matter to another organ of the United Nations..."

"I accept the recommendations of the Sub-Committee only because I realize that the Spanish ques-

<sup>23</sup> 36th meeting: p. 213.

<sup>24</sup> For texts of relevant statements see:

45th meeting: Australia, p. 327; Netherlands, p. 339; USSR, pp. 337-338.

47th meeting: Poland, p. 373; USSR, pp. 367-368.

<sup>25</sup> For consideration of the draft resolution in relation to Article 12, see chapter VI, Case I (1).

<sup>26</sup> See chapter VIII, pp. 306-307.

tion is of a very special nature and because my delegation wants positive action to be taken unanimously."

Also at the 47th meeting, the draft resolution submitted by the Chairman of the Sub-Committee, as amended at the 45th meeting, was not adopted. There were 9 votes in favour and 1 against (that of a permanent member), with 1 abstention.<sup>27</sup>

CASE 22.<sup>28</sup> THE QUESTION OF THE STATUTE OF THE FREE TERRITORY OF TRIESTE: In connexion with decision of 10 January 1947: Approval of the three annexes to the draft Peace Treaty with Italy and acceptance of responsibilities thereunder

[Note: The Security Council was requested to assume certain responsibilities relating to the Free Territory of Trieste, notably that of ensuring its independence and integrity. The question was raised whether the Council had authority under the Charter to assume these responsibilities which, it was contended, were not compatible with the Principles and Purposes of the Charter, and involved administrative responsibilities not connected with the maintenance of international peace and security.]

The Council accepted the responsibilities in question.<sup>29</sup>

In accordance with the draft Peace Treaty with Italy which established a Free Territory of Trieste "whose independence and integrity would be ensured by the Security Council of the United Nations", the Chairman of the Council of Foreign Ministers, by letter dated 12 December 1946, submitted the relevant parts of the Treaty to the Security Council for its approval.<sup>30</sup>

At the 89th meeting on 7 January 1947, an exchange of views took place regarding "constitutional questions" which, in the view of the representative of Australia, were raised by the proposals placed before the Council in accordance with the draft Treaty of Peace with Italy. The representative of Australia stated:

"The proposal that the Security Council should assure the integrity and independence of the Free Territory of Trieste is accompanied by other responsibilities, which would mean, in effect, that the Security Council would act as the supreme governing body of the Territory and would have the ultimate authority over the functioning of the Government which will be established by the permanent Statute."

With regard to the question whether the Security Council had in fact been endowed "with sufficient power to discharge itself of the new duty which it is proposed to lay upon it", the representative of Australia continued:

"... Chapter V of the Charter contains the general powers and functions of the Security Council, and it is further stated in Article 24, paragraph 2, that specific powers granted to the Council for the discharge of its duty to maintain international peace and security are laid down in Chapters VI, VII, VIII, and XII. Chapters VIII and XII are not relevant to the present case. Turning to Chapters VI and VII, we find that neither of these chapters authorizes the Council to give any general guarantee of integrity and independence to a particular territory. It is only in the particular circumstances referred to in those chapters that the Council acquires and can acquire jurisdiction. Before the Council may act, there must be a dispute or a situation which might lead to international friction or give rise to a dispute or a threat to the peace, or a breach of peace. These powers of the Security Council, under the Charter, operate independently of any peace treaties drawn up by the Council of Foreign Ministers, and they operate in respect of all territories, including Trieste.

"The proposals now before the Security Council, however, are to the effect that the Council should accept various new responsibilities and, in particular, the responsibility of assuring the integrity and the independence of the Free Territory. The acceptance of such responsibilities is clearly not authorized by the Charter ...

"It might be claimed that because the Security Council had a primary responsibility under the Charter for the maintenance of international peace and security, it enjoys an authority which is sufficiently wide to permit it to give a general assurance regarding the integrity and the independence of Trieste. In our view, this claim is not justifiable. There are other articles in the proposed permanent Statute of the Free Territory under which the Security Council would appear to assume functions having no direct connexion with the maintenance of international peace and security, for example, under Article 10 of the Statute. If there is a conflict between the Statute and the Constitution of the Free Territory, appeal can be made to the Security Council by a decision of the Governor of the Territory.

"Further, under Article 37, the Statute confers upon the Security Council power to amend the Statute itself on petition from the popular Assembly. These are functions which relate to the ordinary good government of the Territory, and not to the maintenance of peace and security.

"..."

The representative of Syria also questioned the legality of the assumption by the Council of the responsibilities deriving from the Peace Treaty with Italy.

"I... reviewed all the Chapters of the Charter to find some Article which might authorize the Security Council to take charge of the direct administration of any State or territory. I failed to find such an Article, with the exception of Chapter XII of the Charter which concerns strategic areas which are put under the system of trusteeship ..."

In answer to these objections, attention was drawn by other representatives either to implicit powers of the Council or to the spirit of the Charter. The representative of the United Kingdom deprecated

<sup>27</sup> 47th meeting: p. 379.

<sup>28</sup> For texts of relevant statements see:

89th meeting: Australia, pp. 5-8; China, pp. 17-18; Colombia, p. 18; France, pp. 15-16; Poland, pp. 14-15; Syria, pp. 8-9; USSR, p. 9; United Kingdom, pp. 9-11; United States, pp. 11-12.

91st meeting: Australia, pp. 56-58; France, pp. 58-59; Secretary-General, pp. 44-45.

<sup>29</sup> For discussion regarding Article 25, see Case 26.

<sup>30</sup> S/224, O.R., 2nd year, Suppl. No. 1. For submission of the question, see chapter VIII, p. 312.

"...any kind of precedent which in future would debar the Council from accepting any responsibilities which were not specifically laid upon it in the Charter, because I think very difficult questions may often arise, in which it really will be necessary to turn to the Council for assistance."

The representatives of Colombia and of Poland referred to the spirit of the Charter as a basis for the Council's decision. The representative of Poland observed:

"We do not have any legal qualms about the Security Council accepting the responsibilities it is asked to accept. I know that it may be somewhat difficult to point to a specific phrase in the Charter which would justify the taking over of the functions we are asked to assume. However, I think it would be entirely within the general spirit of the Charter of the United Nations, if it were decided to form a Free Territory under a quasi-international administration. We believe it is only proper that the United Nations, as an Organization, should be given the responsibility of supervision over its administration. And since it is a matter which involves international peace and security, we believe that the Security Council is the logical organ to carry out these functions."

The representative of China contended "that the Charter confers sufficiently broad powers on the Security Council for undertaking such a responsibility, and that it is only through the Security Council undertaking this responsibility that this solution could be made workable."

The representative of France had recourse to the phraseology of Article 24 in his statement:

"In my opinion, the text of the Charter confers upon the Security Council a very general mission: that of maintaining peace. Moreover, we are not faced by an instance where the provisions of the Charter should be interpreted in a restricted sense because they clash with another principle, such as, for example, the sovereignty of a State. Indeed, world opinion would certainly not understand it, if the Security Council were to give the impression of evading a responsibility so closely related to the maintenance of international peace and security, as it is precisely the main task and responsibility of the Security Council."

The representative of the USSR invoked more explicitly Article 24:

"As regards the powers and rights of the Security Council, I consider it to be obvious that the right and power of the Security Council to assume responsibility for the fulfilment of the tasks specified in the document submitted by the Council of Foreign Ministers are provided for by several of the terms of the United Nations Charter, in particular by Article 24 of the Charter."

The representative of the United States stated:

"...The Council of the United Nations is charged, as its highest responsibility by the Charter, with the duty of watching over and maintaining international peace and security. Any spot on the surface of the earth where, for whatever reason, conflicts may break out and where men may be at each other's throats, is a spot of legitimate concern to the Security Council.

"...

"The Security Council should not, in my view, be afraid of leaping to take such a responsibility. It is in the fulfilment of such a responsibility that the United Nations justifies its existence."

At the 91st meeting on 10 January 1947, a statement by the Secretary-General relating to "the authority of the Security Council to accept the responsibilities" in question was read to the Council.

The relevant passages were:

"I. *Authority of the Security Council*

"It has been suggested that it would be contrary to the Charter for the Security Council to accept the responsibilities proposed to be placed on it by the permanent Statute for the Free Territory of Trieste and the two related instruments. This position has been suggested on the ground that the powers of the Security Council are limited to the specific powers granted in Chapters VI, VII, VIII and XII of the Charter, and that these specific powers do not vest the Council with sufficient authority to undertake the responsibilities imposed by the instruments in question."

Regarding the text of Article 24, the Secretary-General observed:

"The words, 'primary responsibility for the maintenance of international peace and security', coupled with the phrase, 'acts on their behalf', constitute a grant of power sufficiently wide to enable the Security Council to approve the documents in question and to assume the responsibilities arising therefrom.

"Furthermore, the records of the San Francisco Conference demonstrate that the powers of the Council under Article 24 are not restricted to the specific grants of authority contained in Chapters VI, VII, VIII and XII. In particular, the Secretary-General wishes to invite attention to the discussion at the fourteenth meeting of Committee III/1 at San Francisco, wherein it was clearly recognized by all the representatives that the Security Council was not restricted to the specific powers set forth in Chapters VI, VII, VIII and XII. (I have in mind document 597, Committee III/1/30.) It will be noted that this discussion concerned a proposed amendment to limit the obligation of Members to accept decisions of the Council solely to those decisions made under the specific powers. In the discussion, all the delegations which spoke, including both proponents and opponents of this amendment, recognized that the authority of the Council was not restricted to such specific powers. It was recognized in this discussion that the responsibility to maintain peace and security carried with it a power to discharge this responsibility. This power, it was noted, was not unlimited, but subject to the purposes and principles of the United Nations.

"It is apparent that this discussion reflects a basic conception of the Charter, namely, that the Members of the United Nations have conferred upon the Security Council powers commensurate with its responsibility for the maintenance of peace and security. The only limitations are the fundamental principles and purposes found in Chapter I of the Charter."

At the same meeting, the representative of Australia made the following reply:

"The question is not whether a particular situation now existing is of concern to the Security Council, but whether the Security Council has power to act in a certain way in the future. The political arguments, however real they may be, do not dispose of the constitutional difficulties. The real issue is whether—if there is general competence of the Security Council under Article 24 in respect of matters affecting international peace and security—this competence is of such a character as to cover those precise functions which the Security Council will be required to undertake after the setting up of the Free Territory of Trieste.

"Let us assume for our present purpose that Article 24 does confer a general responsibility for the maintenance of international peace and security over and above the specific powers listed in Chapters VI, VII, VIII and XII of the Charter. This general authority would not, in our view, authorize the assumption by the Council of the functions assigned to it in the Trieste Statute.

"The reasons for taking this view are the following:

"1. The functions to be assigned to the Council by the Statute are not necessarily limited to the maintenance of international peace and security.

"2. The giving of a categorical guarantee of the integrity and independence of the Free Territory goes farther than is warranted by the purposes and principles of the United Nations, and the Security Council is specifically required by Article 24 to act in accordance with such purposes and principles.

"The statement read this afternoon on behalf of the Secretary-General contained the following sentence: 'The only limitations are the fundamental principles and purposes found in Chapter I of the Charter'. It is precisely that limitation to which the Australian delegation now refers. It is, in our submission, a limitation which is very real, and if the statement of the Secretary-General had not stopped at that point, but had proceeded to an examination of Chapter I, it would inevitably have revealed that such a limitation does in fact exist.

"Regarding the first of these two points, the Australian delegation wishes to point out that the proposed Statute for the Free Territory designates the Security Council as the supreme administrative and legislative authority and gives it wide powers, not only to assure the integrity and independence of the Territory in the international sphere and in its international relations, but also to ensure the maintenance of public order and security and good conduct of its Government in the ordinary domestic affairs.

"We submit that this question may affect the peace or the welfare and good government of the Territory without in any sense affecting international peace and security.

"Regarding the second of these two points, I would recall what we said in our previous statement, that both the Dumbarton Oaks and San Francisco Conferences rejected proposals for the inclusion in the purposes and principles of the United Nations of a guarantee of territorial integrity, and chose instead a method by which Members undertook not

to use force or threat of force against the integrity or independence of a territory."

After this statement, the representative of France expressed a wish to say "more precisely" why, in his view, action by the Council was in order. He declared:

"I pointed out that Article 24 of the Charter, which is drafted in very general terms, did not, in the case now before us, come up against any principle which might justify a narrow or limited interpretation of its terms.

"The case is not one where the principle of the sovereignty of States, the rule according to which there must be no interference in a country's domestic affairs, is at stake. That principle can only be invoked by those States whose peace treaties have already been drawn up. Now, the task entrusted to us relates precisely to the examination of a peace treaty which has not yet been ratified. Consequently we cannot run against any provision or principle of this kind.

"I should also like to bring forward another argument. The case of Trieste is extremely delicate and intricate. It is one of those cases which are liable to create difficulties and even endanger peace. The case was not referred to us under that aspect, but in connexion with the drafting of the peace treaties. We did not draw up these treaties ourselves, but we are nevertheless aware that the question, by its very nature, constitutes a danger to peace. I think we should look at it from this angle.

"If the question has been brought before us under Chapter VI and, particularly, Chapter VII, we should be invested with extremely wide powers extending even to, these are the very words of Article 42, demonstrations and the use of force.

"It would be rather extraordinary, if in a case really liable to endanger, if not peace itself, at least the maintenance of peace, the Security Council, which, in that event, would have such extensive powers of intervention, should not even be able to take administrative measures, far less serious than the use of force, in order to ensure the maintenance of peace.

"As I said the other day, we are dealing with a case where the Security Council must take a full view of its responsibilities. It is responsible for the maintenance of peace. It is my opinion that we should not shrink from the task, however delicate, which the drafters of the peace treaty have asked us to assume."

At the 91st meeting, the draft resolution submitted by the representative of the United States at the 89th meeting which provided for "acceptance" by the Security Council of "the responsibilities devolving upon it under" the annexes to the draft Peace Treaty with Italy was adopted.<sup>21</sup>

CASE 23. THE PALESTINE QUESTION: In connexion with decisions of 5 March 1948 calling on the permanent members of the Council to consult and to report, and of 1 April 1948 calling for a truce in Palestine and requesting a special session of the General Assembly.

{Note: The Security Council was requested by General Assembly resolution 181 (II) of 29 November

<sup>21</sup> 91st meeting: p. 61. For text, see chapter VIII, pp. 312-313.



1947 to assume certain responsibilities in connexion with Palestine. On receiving the request at the 222nd meeting on 9 December 1947, the Council refrained from proceeding further than to become seized of the matter. At the close of February 1948, the special report of the Palestine Commission on the disorders in Palestine gave rise to discussion regarding the authority of the Council to comply with the request of the General Assembly, and notably concerning the circumstances in which and the purposes for which the powers of Chapter VII of the Charter might be exercised. Endorsement of the General Assembly request at this stage was withheld by the Council, which confined its immediate action to eliciting from the permanent members recommendations regarding the implementation of the General Assembly resolution. On 1 April 1948, having received such recommendations, the Council, in the exercise of its primary responsibility for the maintenance of peace and security, called for a truce in Palestine and for the convocation of a special session of the General Assembly to consider further the question of the future government of Palestine.]

CASE 23 (i)<sup>32</sup>

By resolution 181 (II) of 29 November 1947, which recommended for Palestine the Plan of Partition with Economic Union, the General Assembly requested that

"(a) The Security Council take the necessary measures as provided for in the plan for its implementation;<sup>33</sup>

"(b) The Security Council consider, if circumstances during the transitional period require such consideration, whether the situation in Palestine constitutes a threat to the peace. If it decides that such a threat exists, and in order to maintain international peace and security, the Security Council should supplement the authorization of the General Assembly by taking measures, under Articles 39 and 41 of the Charter, to empower the United Nations Commission, as provided in this resolution, to exercise in Palestine the functions which are assigned to it by this resolution;

"(c) The Security Council determine as a threat to the peace, breach of the peace or act of aggression, in accordance with Article 39 of the Charter, any attempt to alter by force the settlement envisaged by this resolution: . . ."

The transmission by the Secretary-General of the text of the resolution gave rise to discussion at the 222nd meeting on 9 December 1947 regarding the terms in which the Council should register receipt of the communication.

The President (Australia) stated that his intention in including the item in the provisional agenda had been

that "the Security Council should note the receipt of the letter from the Secretary-General, thereby becoming seized of the question of Palestine". This suggestion gave rise to consideration of the implications of this phraseology. The representative of Syria held that the Security Council, before taking note of the General Assembly resolution, or soon thereafter, should carefully consider the relation of the request made by the Assembly to the provisions of the Charter. The President observed that the resolution of the General Assembly came to the Security Council "in the form of a recommendation and a request". It was, therefore, entirely proper for the Security Council to discuss, when circumstances required it, the method of implementing and putting the request into effect. The representative of the USSR favoured a clear indication that the Security Council should implement the resolution of the General Assembly and that it would be seized of the Palestine question "from now on". The representative of the United States stressed that in his view it was premature to enter into any substantive discussion of the Palestine question.

The Security Council agreed on the formula suggested by the President that "the Security Council had received the communication from the Secretary-General and having been seized of the matter, agreed to postpone further discussion".<sup>34</sup>

CASE 23 (ii)<sup>35</sup>

At the 253rd meeting on 24 February 1948, the Security Council had before it the special report<sup>36</sup> of the Palestine Commission on the problem of security in Palestine. The Commission stated that, in view of the aggravated security situation in Palestine and the deliberate efforts of one party to alter by force the settlement envisaged by the General Assembly resolution, it would be unable to implement the plan of partition with economic union without the assistance of an effective international force.

The representative of the United States stressed that the interpretation of the terms of the Charter in the Palestine issue would seriously affect the future actions of the United Nations in other cases. He maintained that the Security Council was authorized to take the necessary measures for the implementation of the General Assembly resolution. The Security Council, although not bound under the Charter to accept and carry out General Assembly recommendations, was nevertheless expected to give great weight to them. Attempts to frustrate such recommendations by the threat or use of force were contrary to the Charter. He continued:

"The Security Council is given the responsibility under the Charter to 'determine the existence of any threat to the peace, breach of the peace or act of aggression'. If it makes such a determination with

<sup>32</sup> For texts of relevant statements see:

222nd meeting: President (Australia), pp. 2776-2777, 2779, 2788; France, p. 2785; Poland, p. 2788; Syria, pp. 2778-2779, 2780-2781, 2787; USSR, p. 2789; United States, p. 2782.

<sup>33</sup> The Plan of Partition with Economic Union provided for the establishment in Palestine, upon termination of the United Kingdom Mandate but not later than 1 October 1948, of independent Arab and Jewish States and a special international régime for the City of Jerusalem. A commission consisting of five Member States was set up to implement the plan and to take over the administration of Palestine during the transitional period between 29 November 1947 and 1 October 1948 under the instructions of the Security Council.

<sup>34</sup> 222nd meeting: p. 2788.

<sup>35</sup> For texts of relevant statements see:

253rd meeting: United Kingdom, p. 273; United States, pp. 284-2-9.

254th meeting: Syria, pp. 275-276, 281-282, 287, 291-292.

258th meeting: Belgium, pp. 356-358; Syria, p. 365.

260th meeting: Syria, pp. 395-398; United Kingdom, p. 405; United States, pp. 398-401.

261st meeting: Canada, p. 3; China, p. 6; France, pp. 22-23; USSR, p. 30.

<sup>36</sup> S/476, O.R., 3rd year, Special Suppl. No. 2 pp. 19-19.

respect to the situation in Palestine, the Security Council is required by the Charter to act. Its finding and subsequent action might arise either in connexion with incursions into Palestine from the outside or from such internal disorder as would itself constitute a threat to international peace.

"If the Security Council finds that a threat to international peace or breach of the peace exists, the Charter authorizes it to follow various lines of action . . . The Security Council is required to follow one or more of these lines of action. It may pursue these lines of action in any sequence it deems proper.

"Although the Security Council is empowered to use, and would normally attempt to use, measures short of armed force to maintain the peace, it is authorized under the Charter to use armed force if it considers other measures inadequate. A finding by the Security Council that a danger to peace exists places all Members of the United Nations, regardless of their views, under obligation to assist the Security Council in maintaining peace. If the Security Council should decide that it is necessary to use armed force to maintain international peace in connexion with Palestine, the United States would be ready to consult under the Charter with a view to such action as may be necessary to maintain international peace. Such consultation would be required in view of the fact that agreement has not yet been reached making armed forces available to the Security Council under the terms of Article 43 of the Charter.

"The Security Council is authorized to take forceful measures with respect to Palestine to remove a threat to international peace. The Charter of the United Nations does not empower the Security Council to enforce a political settlement whether it is pursuant to a recommendation of the General Assembly or of the Security Council itself.

"What this means is this: The Security Council, under the Charter, can take action to prevent aggression against Palestine from outside. The Security Council, by these same powers, can take action to prevent a threat to international peace and security from inside Palestine. But this action must be directed solely to the maintenance of international peace. The Security Council's action, in other words, is directed to keeping the peace and not to enforcing partition."

The representative of the United Kingdom stated that, while it had no intention of opposing the recommendations of the General Assembly, his Government could not undertake, either individually or collectively in association with others, to impose those recommendations by force.

At the 254th meeting on the same day, the representative of Syria observed that the resolution of the General Assembly could not be of any effect

" . . . on the Security Council in the exercise of its duties since the functions of the Security Council were limitatively defined in the Charter . . . The resolutions of the General Assembly may not in any way add to, delete from or modify those functions . . . The Security Council is an independent organ of the United Nations, endowed with complete liberty to act within the provisions of the Charter, irre-

spective of any recommendations or instructions given to it by any other body . . ."

The representative of Syria concluded that the recommendations of the Assembly were therefore subject to reconsideration by the Council.

At the 255th meeting on 25 February, the representatives of Colombia and the United States submitted draft resolutions. The Colombian draft resolution was subsequently withdrawn.<sup>37</sup> The United States draft resolution<sup>38</sup> provided that the Security Council should resolve:

"1. To accept, subject to the authority of the Security Council under the Charter, the requests addressed by the General Assembly to it in paragraphs (a), (b) and (c) of Section A of the General Assembly resolution of 29 November 1947;

"2. To establish a committee of the Security Council comprising the five permanent members of the Council whose functions will be:

"(a) To inform the Security Council regarding the situation with respect to Palestine and to make recommendations to it regarding the guidance and instructions which the Council might usefully give to the Palestine Commission;<sup>39</sup>

"(b) To consider whether the situation with respect to Palestine constitutes a threat to international peace and security, and to report its conclusions as a matter of urgency to the Council, together with any recommendations for action by the Security Council which it considers appropriate;

"(c) To consult with the Palestine Commission, the Mandatory Power, and Representatives of the principal communities of Palestine concerning the implementation of the General Assembly recommendation of 29 November 1947."

The draft resolution concluded with an appeal to all Governments and peoples to take action to prevent disorders.

At the 260th meeting on 2 March, the representative of the United States explained that the United States draft resolution implied "the limitation that armed force cannot be used for the implementation of the plan, because the Charter limits the use of United Nations forces expressly to threats to and breaches of the peace and aggression affecting international peace". Measures of implementation would therefore be peaceful measures. By the resolution the Security Council would be required to consider, in pursuance of request (b) of the General Assembly, whether the situation in Palestine constituted a threat to the peace; and, if so found, the Council might empower the United Nations Palestine Commission to assist the Council in maintaining peace, and might take steps under Articles 40 to 42 of the Charter. With regard to request (c) of the General Assembly, the understanding would be that the Council might "regard attempts to alter by force the settlement envisaged by this resolution as constituting such a threat"; but this attitude must fol-

<sup>37</sup> For discussion on the Colombian draft resolution, see Case 29.

<sup>38</sup> S/684, 255th meeting: pp. 294-295.

<sup>39</sup> Para. 2 (a) was amended by the United States at the 263rd meeting. See chapter V, Case 68. On the relations of the Security Council and the Palestine Commission, see chapter VI, Case 16.



low from "the Council's own process of determination" and not solely at the request of the General Assembly.

At the 258th meeting on 27 February, the representative of Belgium submitted an amendment to the United States draft resolution<sup>40</sup> the effect of which would be to delete from the United States draft resolution the provision for acceptance of the requests of the General Assembly. He explained that the object of eliminating that provision was to enable the Security Council to pronounce itself on the question of compliance with the General Assembly resolution after it had taken into account the report of the proposed committee, and to leave the committee entirely free in its deliberations. At the 261st meeting on 3 March, the representative of Canada supported the Belgian amendment on the grounds that, before consideration of the situation under Article 39, the Council should satisfy itself by its own inquiries that the situation had passed beyond the possibilities of pacific settlement under Chapter VI of the Charter.

The representative of Syria favoured the Belgian amendment on the grounds that: (a) the Security Council was not empowered to enforce political settlements. Suppression of the opposition of one party to the General Assembly resolution would amount to implementing a political settlement. (b) The internal security situation of Palestine was outside the competence of the Security Council whose functions were limited to the maintenance of international peace. The representative of Syria also contended that Article 39 could not be invoked with respect to the situation in Palestine since the term "peace" meant international peace and not public order in a territory.

At the 263rd meeting on 5 March, the Belgian amendment was rejected by 5 votes in favour, none against and 6 abstentions. Paragraphs 1 and 2 (b) and 2 (c) of the amended United States draft resolution were also rejected. The decision of 5 March 1948 was confined to calling upon the permanent members to consult and to make recommendations to the Council regarding instructions to the Palestine Commission.<sup>41</sup>

#### CASE 23 (iii)<sup>42</sup>

At the 270th meeting on 19 March, the representative of the United States reported, on behalf of China, France and the United States, the results of the consultations among the permanent members.

The report made the following recommendations:<sup>43</sup>

"1. As a result of the consultations of the permanent members regarding the situation with respect to Palestine, they find and report that a continuation of the infiltration into Palestine, by land and by sea, of groups of persons with the purpose of taking part in violence would aggravate still further the situation and recommend

"(a) That the Security Council should make it clear to the parties and Governments concerned that the Security Council is determined not to permit the existence of a threat to international peace in Palestine, and

"(b) That the Security Council should take further action by all means available to it to bring about the immediate cessation of violence and the restoration of peace and order in Palestine."

The representative of the USSR stated that he had agreed to both recommendations (a) and (b), but had not accepted the preamble which treated on an equal footing the infiltration into Palestine "by land and sea".

At the 271st meeting on 19 March, the representative of the United States submitted on behalf of his Government alone, "additional conclusions and recommendations concerning Palestine". These suggested that, since the plan of partition could not be implemented by peaceful means, and in order not only to maintain the peace but also to afford a further opportunity to reach an agreement between the interested parties, the Security Council should recommend to the General Assembly and to the Mandatory Power the establishment of a temporary trusteeship for Palestine. A special session of the General Assembly should be convoked for that purpose, and the Palestine Commission should be instructed by the Security Council to suspend in the meantime its efforts to implement the proposed partition plan. The representative of the United States urged that, under the Charter, the Security Council had "an inescapable responsibility and full authority to bring about a cease-fire in Palestine". He added that the powers of Articles 39 to 42 were very great, and the Security Council "should not hesitate to use them—all of them—if necessary to bring about peace". The temporary trusteeship should be established to maintain the peace, and would be without prejudice to the character of the eventual political settlement.

The representative of the USSR disputed the United States statement that there was general agreement that partition could not be implemented by peaceful means. He emphasized that there was nothing in common between the United States proposal and the formulations agreed upon as a result of the consultations among the permanent members.

In pursuance of the recommendations of four of the permanent members, the representative of the United States submitted, at the 275th meeting on 30 March, two draft resolutions. The first draft resolution,<sup>44</sup> which, invoking the primary responsibility of the Security Council for the maintenance of international peace and security, called for the arrangement of a truce in Palestine. At the 277th meeting on 1 April, the representative of the United States explained that the object of this draft resolution was in full harmony with the provision contained in paragraph 1 of Article 80 and that, as long as the Mandate existed in Palestine, the Security Council had the responsibility of trying to maintain order and peace there. The second draft resolution requested the Secretary-General to convocate a special session of the General Assembly to consider further the question of the future government of Palestine.<sup>45</sup> Both draft resolutions were adopted at the 277th meeting.<sup>46</sup>

<sup>40</sup> S/688, O.R., 3rd year, Suppl. for Jan., Feb. and March 1948, pp. 30-31.

<sup>41</sup> For text of the resolution, see chapter VIII, p. 326.

<sup>42</sup> For texts of relevant statements see:

270th meeting: USSR, pp. 146-147; United States, pp. 141-143.

271st meeting: China, pp. 170-171; USSR, pp. 171-172; United States, pp. 166-168.

275th meeting: USSR, pp. 249-253; United States, pp. 246-248.

277th meeting: United States, pp. 31-32.

<sup>43</sup> 270th meeting: pp. 142-143.

<sup>44</sup> S/704, 275th meeting: p. 247.

<sup>45</sup> S/705, 275th meeting: pp. 247-248.

<sup>46</sup> 277th meeting: pp. 34-35. For texts of the resolutions, see chapter VIII, p. 326.

CASE 24.<sup>47</sup> THE PALESTINE QUESTION: In connexion with decision of 1 September 1951 calling upon Egypt to terminate the restrictions on the passage of international commercial shipping through the Suez Canal.

[*Note:* In consequence of the complaint by Israel concerning the detention by Egypt of ships passing through the Suez Canal en route to Israel,<sup>48</sup> the Council had before it on 16 August 1951 a draft resolution which affirmed that, under the Armistice régime, neither party could reasonably claim that it was actively a belligerent or required to exercise "the right of visit, search or seizure for any legitimate purpose of self defence". The representative of Egypt contested this view.]

At the 553rd meeting on 16 August 1951, the representative of Egypt made the following statement:

"Although we do not want to pretend that the functions and powers of the Security Council are limited to those specific powers mentioned in paragraph 2 of Article 24 of the Charter, yet we affirm that those powers and duties are limited and should be strictly regulated and governed by the fundamental principles and purposes laid down in Chapter I of the Charter. Paragraph 2 of Article 24, on the 'functions and powers' of the Security Council reminds us that 'In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations'. Those Purposes and Principles of the United Nations are laid down in Chapter I of the Charter; Article 1, paragraph 1, demands that the adjustment or settlement of international disputes should be 'in conformity with the principles of justice and international law'. The joint draft resolution submitted by the delegations of France, the United Kingdom and the United States is a flagrant violation of the purposes

<sup>47</sup> For texts of relevant statements see:

553rd meeting: Egypt, pp. 22-25.

555th meeting: Egypt, pp. 16-17.

<sup>48</sup> For submission of the question, see chapter VIII, p. 343.

of the United Nations, as formulated in Article 1 of the Charter, which govern the functions and powers of the Security Council. The proposed action to be taken by the Security Council, in accordance with this draft resolution, is mainly based on the termination or the denial of belligerency exercised by Egypt in conformity with the stipulations of the Armistice Agreement and the principles of international law.

"The Egyptian-Israel General Armistice Agreement does not include any provision on the termination of the legal or technical state of war between Egypt and Israel. Nor does international law, in its principles or in its practice, deny a country its belligerent rights before any peace settlement is concluded. This draft resolution, which is mostly based on denying Egypt its belligerent rights before any peace settlement has been concluded with Israel, in fact proposes that the Council violate the principles and the practice of international law and the stipulations of Articles 1 and 24 of the Charter of the United Nations . . .

"Any arbitrary resolution of the Council denying Egypt its belligerent rights would be an attempt by the Council to impose on Egypt a political settlement. The Council is not empowered to enforce political settlements . . .

"We believe that if, nevertheless, the Security Council takes it upon itself to decide on this dispute, the Council is bound by the stipulations of the United Nations Charter, including those which enjoin it to act in conformity with the principles of justice and international law and in accordance with the Purposes and Principles of the United Nations.

"We believe that the Security Council has no authority to abrogate the rights of States or of individuals."

At its 558th meeting on 1 September, the joint draft resolution was adopted by 8 votes in favour, none against, with 3 abstentions.<sup>49</sup>

<sup>49</sup> 558th meeting: p. 3. For text, see chapter VIII, pp. 343-344. Reference should be made to paras. 5-7 of the resolution.

### Part III

## CONSIDERATION OF THE PROVISIONS OF ARTICLE 25 OF THE CHARTER

### NOTE

Discussion regarding Article 25 has mainly arisen in connexion with the question of the binding character of decisions of the Security Council under Article 34 of the Charter. Material relating to Article 25 will, therefore, also be found in chapter X, part II. Only in one case has it been considered appropriate to segregate from this material the material relating to Article 25 for insertion in part III of the present chapter.

Discussion regarding Article 25 arose mainly at two stages in the consideration of the Greek frontier incidents question. In the first stage, the resolution of 18 April 1947, as implemented by the resolution of the Commission of Investigation of 29 April 1947,<sup>1</sup> was challenged as invalid by reason of inherent defects and of non-compliance with the provisions of the Charter.<sup>2</sup>

Observations were made on this occasion regarding the obligation to accept the decision of the Council to investigate.<sup>3</sup> At a later stage, in the discussion on the United States draft resolution to establish a Commission of Investigation and Good Offices,<sup>4</sup> the binding character of resolutions under Chapter VI of the Charter was in general denied, and discussion centred on this point and, more precisely, on the question whether a decision under Article 34 constituted a binding decision.<sup>5</sup>

Observations regarding Article 25 in relation to decisions under Chapter VII of the Charter have been made in connexion with the second outbreak of hostilities in Indonesia.<sup>6</sup> The question of the bearing of Arti-

<sup>1</sup> See Case 25, and chapter X, Case 12.

<sup>2</sup> See chapter VIII, p. 311.

<sup>3</sup> See chapter X, Cases 13 and 15.

<sup>4</sup> See chapter XI, Case 4, for statement by United States (398th meeting: p. 3). See also chapter XI, Case 7, and the following statements by Australia: 390th meeting: p. 7; 395th meeting: p. 62; 397th meeting: p. 27.

<sup>1</sup> See chapter VIII, p. 310.

<sup>2</sup> See chapter X, Case 12.

cle 25 on decisions of the Council in general arose in connexion with the question of the Statute of the Free Territory of Trieste.<sup>7</sup>

Discussion on the question of the obligation of Article 25 as one of the obligations of pacific settlement to

<sup>7</sup> See Case 25.

be accepted by non-Members of the United Nations in pursuance of Article 32 or 35 of the Charter has been included in the case history on participation in connexion with which this discussion arose.<sup>8</sup>

<sup>8</sup> See chapter III, Case 80. See also chapter VI, Case 8, for Article 25 in relation to Article 94.

### Article 25 of the Charter

The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

CASE 25.<sup>9</sup> THE GREEK FRONTIER INCIDENTS QUESTION: In connexion with the USSR draft resolution to modify the terms of reference of the Subsidiary Group: voted upon and rejected on 22 May 1947.

[Note: In consequence of the refusal of Albania, Bulgaria and Yugoslavia to participate in the work of the Subsidiary Group, the question arose whether the decision on the establishment of the Group was a binding decision within the terms of Article 25. The draft resolution in connexion with which this discussion arose was rejected.]

At the 133rd meeting on 12 May 1947, the Security Council had before it a cablegram dated 5 May 1947<sup>10</sup> from the Chairman of the Commission of Investigation concerning Greek Frontier Incidents informing the Council that the liaison representatives of Albania, Bulgaria and Yugoslavia had stated that they would not participate in the work of the Subsidiary Group established by the Commission under the authority of the resolution adopted by the Council at its 131st meeting on 18 April 1947.<sup>11</sup> In referring the matter to the Council, the Chairman of the Commission reported the views of the representatives of the United States and the USSR on the Commission. The representative of the United States

"... considered that obligations of the four countries concerned to Subsidiary Group arise from resolution of 19 December and while considering that the four countries concerned are not obliged to appoint their representatives on Subsidiary Group they are nevertheless obliged to facilitate its work, Yugoslavia and Greece under Article 25 of the Charter, Bulgaria and Albania under letters which they have submitted to the Security Council prior to their participation in Security Council discussion."

The representative of the USSR, disputing this contention, recalled his objections to directives to the Subsidiary Group on the grounds that the Commission "was not competent to transfer its terms of reference to Subsidiary Group". He added that "there were also no directives" in the resolution of 18 April under which the Subsidiary Group was established, "which would allow this Commission to draw conclusion that obligation which liaison representatives accepted under

resolution" of the Council of 19 December 1946 setting up the Commission "should automatically apply to them regarding Subsidiary Group".<sup>12</sup>

At the same meeting, the representative of the USSR, after submitting to the Council his views on the matter referred by the Commission, introduced a draft resolution<sup>13</sup> which would modify the terms of reference of the Subsidiary Group.

At the 134th meeting on 16 May, the representative of Belgium held "that the resolution of 18 April, like that of 19 December 1946, is applicable to Yugoslavia Albania and Bulgaria, as it is to Greece". He added:

"... Is this resolution applicable to them as an injunction or as a simple recommendation? It would definitely seem to be an injunction. The terms of Article 34 show that it is a decision involving an obligation; the Article does not speak of recommending an investigation, but definitely specifies that 'the Security Council may investigate' . . .

"Consequently, according to the most reasonable interpretation, the States parties to a dispute, namely Greece, Yugoslavia, Albania and Bulgaria, are bound to comply with the resolution of 18 April.

"This conclusion is supported by Article 25 of the Charter which . . . is applicable to Greece and Yugoslavia which signed and ratified the Charter; it applies to Albania and Bulgaria which not only accepted the Council's invitation to take part in the discussion but, at the same time assumed, for the purposes of the dispute, the obligations imposed by the Charter.

"Since the Council's resolution of 18 April is binding on the four States, they are in principle bound by the decision of 29 April taken by the Commission of Investigation . . . This decision in no way requires their agreement; it is sufficient that it was taken . . ."

The representative of the United States stated at the 135th meeting on 20 May, that "Yugoslavia was bound, as a Member of the United Nations, to accept the decisions taken", and that "Albania and Bulgaria accepted the obligations of membership and the stipulations of the Charter for the purposes of this case". He further stated:

"... it is entirely inadmissible that this Council should accept their refusal to co-operate, whether or not they send representatives to act as liaison officers. It seems to me that, if they refuse to co-operate when requested to do so by the Subsidiary Group, they will put themselves in the grave position of a deliberate defiance of the United Nations, which,

\* For texts of relevant statements see:  
133rd meeting: USSR, p. 830.  
134th meeting: Belgium, pp. 842-844; Yugoslavia, p. 846.  
135th meeting: Albania, pp. 867-868; Brazil, pp. 880-881; China, pp. 882-883; United States, pp. 874-875.  
136th meeting: Bulgaria, p. 892; France, pp. 905-906; United Kingdom, p. 899; Yugoslavia, pp. 900-902.  
137th meeting: USSR, pp. 917-918.

<sup>10</sup> S/343, S/341/Corr.1, S/342/Corr.1, S/345, O.R., 2nd year, Suppl. No. 11, pp. 123-125, 126-128. See chapter VIII, p. 310.

<sup>11</sup> 131st meeting: pp. 799-800.

<sup>12</sup> S/343, O.R., 2nd year, Suppl. No. 11, pp. 123-124.

<sup>13</sup> 133rd meeting: p. 832. For text and for other discussion in relation to Article 34, see chapter X, Case 12.

in the case of Yugoslavia, would be a refusal by a Member to carry out obligations; in the case of the other countries, it would be a refusal to abide by the obligations which they voluntarily assumed for the purposes of the present situation."

The representative of Brazil, after quoting Article 25, stated:

"Albania and Bulgaria accepted the invitation of the Security Council to participate in the discussion. By doing that, they expressly accepted the jurisdiction of the Security Council, and thereby assumed the obligation to abide by its decision. Any other interpretation would be illogical. The acceptance of the invitation to participate in the discussion has no other effect than that of extending the jurisdiction of the Council to the participating States. If it were not so, the whole mechanism of the peaceful solution of disputes, established in Chapter VI of the Charter, would cease to work, and the functions of the Security Council as an instrument of peaceful solution would be completely nullified.

"In the matter submitted for our examination, Albania and Bulgaria, which are non-member States which accepted participation in the discussion without vote, find themselves in the same situation as Yugoslavia and Greece, which are Member States, as regards the obligation to carry out the decisions of the Council."

At the same meeting, the representative of China expressed the view that the opposition of the three countries concerned and their refusal to assist in the work of the Subsidiary Group were "no more valid than their original opposition to the establishment of the main Commission itself". He continued:

"... my delegation thinks that Albania, Bulgaria and Yugoslavia are, both legally and morally, under obligation to assist the Subsidiary Group in its work. Yugoslavia is a Member of the United Nations. Under Article 25 of the Charter, Yugoslavia agreed to accept and carry out the decisions of the Security Council. Albania and Bulgaria, though non-members, have already accepted the obligations imposed upon them by the Charter."

At the 136th meeting on 22 May, the representative of the United Kingdom expressed the hope that if, as a result of the discussion, the Council rejected the USSR draft resolution, the three States concerned would

"... conform to the Council's decision and not persist in an attitude which, in our view, would constitute a breach of Article 25 of the Charter."

The representative of Yugoslavia remarked that Article 25 specifically directed Member States to accept and to apply decisions of the Security Council "in accordance with the present Charter". The application of this phrase, he declared, was "the essence of the issue". He further stated:

"... Article 25, however, refers to the decisions only of the Security Council as binding upon the Members of the United Nations. This Article does not compel the Members of the Organization to accept and apply the decisions of any other body...

"... it is not only outside the scope of the Charter regulations to delegate authority from the Security Council to other organs, but it is also against the

spirit of the Charter. To charge that a Member State did not carry out the decision of the competent organ because it did not carry out and because it does not accept as authoritative the decision of a non-competent organ—to which the competent organ delegated its authority for a specific occurrence without being empowered to do so—represents a mistake in reasoning.

"It cannot be maintained that a decision of the Commission is a decision of the Council. Accordingly, a decision of the Commission cannot be dealt with on the basis of Article 25 of the Charter, nor can compulsory power over Members of the Organization be attributed to such a Commission.

"... if the Council delegates its authority to other organs, every guarantee extended to the States which are non-members of the Security Council, according to Article 31 of the Charter, becomes illusory in all cases where Article 31 would apply. The Council would simply be deciding to establish subsidiary bodies, while these subsidiary bodies would be making the actual decisions. Thus, Article 31 of the Charter would be reduced to a guarantee to interested countries that they may be present at discussions in the Council when subsidiary bodies are being established, but not present at the deliberations of those bodies. If we add to this the assertion of some members of the Council that the decisions of such subsidiary bodies have full authority in accordance with Article 25, then we can come to the conclusion that interested nations would not be participating in the reaching of decisions of substance; or in other words, the guarantees of participation of non-members of the Security Council in activities covered by Article 31 would be reduced to considerations of procedure."

The representative of the USSR stated at the 137th meeting on 22 May:

"... It has been stated here that the representatives of the three countries—Yugoslavia, Bulgaria and Albania—agreed to implement the Security Council's decisions on the Greek question. It is perfectly true that these countries did agree to implement the Security Council's decisions. But we are discussing the decisions, not of the Security Council, but of the Commission. The representatives of these countries, after all, never undertook to implement the Commission's decisions, still less the decisions of the Subsidiary Group..."

At the 137th meeting on 22 May, the USSR draft resolution was rejected by 2 votes in favour, 6 against, and 3 abstentions.<sup>14</sup>

CASE 26.<sup>15</sup> THE QUESTION OF THE STATUTE OF THE FREE TERRITORY OF TRIESTE: In connexion with decision of 10 January 1947: Approval of the three annexes to the draft Peace Treaty with Italy and acceptance of responsibility thereunder.

[Note: In consequence of the request to the Security Council to accept certain responsibilities concern-

<sup>14</sup> 137th meeting: pp. 924-925.

<sup>15</sup> For texts of relevant statements see:

89th meeting: Australia, p. 7; United Kingdom, p. 10.

91st meeting: Australia, pp. 57-58; Secretary-General, p. 45.

ing the Free Territory of Trieste, the question was raised as to the States on which these responsibilities would devolve, and, specifically, whether they would be borne by a non-permanent member after it had ceased to be a member of the Council. The view was expressed that Article 25 related to decisions of the Council under Article 24 and under the Chapters conferring specific powers on the Council.<sup>19</sup>

The Chairman of the Council of Foreign Ministers having submitted certain parts of the draft Peace Treaty with Italy to the Security Council for its approval, the representative of Australia said certain "constitutional questions" were involved. After questioning whether the Council had authority under the Charter to accept the responsibilities envisaged in the draft Peace Treaty, the representative of Australia continued:

"Another important question which will arise, should the Security Council approve the resolution which has been suggested, concerns the obligations accepted not only by the Security Council as one of the principal organs of the United Nations, but by the Members of the United Nations. Which countries will be bound by the obligation to ensure the integrity and independence of the Free Territory? Will that obligation bind countries which were non-permanent members of the Council at the time the resolution was adopted, but find themselves no longer members at the time the obligation is implemented? Will it bind countries which are members of the Security Council when the obligation is carried out, but which are not members of the Council at the time the resolution accepting the obligations is adopted? Will it bind countries which were neither members of the Council when the resolution was adopted, nor when the obligation is implemented?"

"It would appear to be straining the provisions of the Charter too far, to assume that all these countries will be bound, especially when the action which it is now proposed the Security Council should take, does not have the backing of the General Assembly..."

In answer to this question, the representative of the United Kingdom stated:

"The Security Council has already certain broad responsibilities and any State elected as a non-permanent member assumes those duties when it joins the Council, and, I suppose, it is divested of them when its term of office comes to an end. Should we lay on the Security Council any additional specific duties, it seems to me that the situation would be identical, and that the State elected to the Council would, during its term of office, share in those responsibilities; but at the end of its term of office, it would revert to its former status of a Member of the United Nations on behalf of whom the Security Council acts. I think that is the right answer."

<sup>19</sup> For submission of the question, see chapter VIII, p. 312; for discussion in relation to Article 24, see Case 22.

The statement by the Secretary-General read at the 91st meeting on 10 January 1947 contained the following passage:

"2. Obligation of the Members to accept and carry out the decisions of the Security Council.

"The question has been raised as to 'what countries will be bound by the obligation to ensure the integrity and independence of the Free Territory'. The answer to this is clear. Article 24 provides that in carrying out its duties, the Security Council acts in behalf of Members of the United Nations. Moreover, Article 25 expressly provides that 'the Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter'.

"The record at San Francisco also demonstrates that this paragraph applies to all the decisions of the Security Council. As indicated above, there was a proposal in Committee III/1 to limit this obligation solely to those decisions of the Council undertaken pursuant to the specific powers enumerated in Chapters VI, VII, VIII and XII of the Charter. This amendment was put to a vote in the Committee and rejected (document 597, III/1/30). The rejection of this amendment is clear evidence that the obligation of the Members to carry out the decisions of the Security Council applies equally to decisions made under Article 24 and to the decisions made under the grant of specific powers."

The representative of Australia, at the same meeting, declared:

"... we do not feel that a satisfactory answer has been given to the question raised as to what countries would be bound by the obligations to ensure the integrity and independence of the Free Territory. As I have already pointed out, there is no obligation on Members, under the Charter, to ensure the integrity and independence of any territory, and this omission is deliberate.

"If the Security Council now, by its own act, gives such an assurance, on whom will the obligation rest? The representative of the United Kingdom suggested that it would fall upon the Security Council as an organ and that the responsibility would be shared by those Members of the United Nations who happened to be members of the Security Council at any particular time. Does this mean that the present members of the Council, and in particular the non-permanent members, are now being asked to assume obligations which they themselves may not have to bear in the future and which some other Member of the United Nations which is not participating in the present decision would be required to bear? That would seem to be the position in view of the fact that the action which it is now proposed the Security Council should take does not have the backing of the General Assembly."<sup>21</sup>

<sup>21</sup> For the decision of the Council, see chapter VIII, pp. 312-313.



## Part IV

## CONSIDERATION OF THE PROVISIONS OF CHAPTER VIII OF THE CHARTER

## NOTE

In consequence of the obligation placed by the Charter upon Members of the United Nations and upon regional arrangements or agencies,<sup>1</sup> the attention of the Security Council has been drawn to the following communications, which have been circulated by the Secretary-General to the representatives of the Council, but have not been included on the provisional agenda:

1. *Communications from the President of the Council of the Organization of American States*

- (i) Dated 15 December 1948: transmitting resolutions adopted by the Council concerning Costa Rica and Nicaragua<sup>2</sup>
- (ii) Dated 24 December 1948: transmitting resolution adopted by the Council on the same case<sup>3</sup>
- (iii) Dated 23 February 1949: on Pact of Friendship signed between Costa Rica and Nicaragua<sup>4</sup>
- (iv) Dated 23 May 1950: transmitting Report by Investigating Committee and Decisions taken by the Council with regard to cases submitted by Haiti and the Dominican Republic<sup>5</sup>

2. *Communications from the Chairman of the Inter-American Peace Committee*

- (i) Dated 7 April 1949: concerning alleged conflict between Haiti and the Dominican Republic<sup>6</sup>
- (ii) Dated 20 June 1949: concerning settlement of same case<sup>7</sup>
- (iii) Dated 7 September 1949: transmitting text of a Note sent to the representatives of States Members of the Organization of American States<sup>8</sup>
- (iv) Dated 7 September 1949: concerning the outcome of the situation which had arisen between Cuba and Peru<sup>9</sup>
- (v) Dated 15 September 1949: transmitting text of conclusions regarding the Caribbean situation<sup>10</sup>

<sup>1</sup> For communications from the Secretary-General of the League of Arab States, all of them directly connected to the Palestine question, see S/745, O.R., 3rd year, Suppl. for May 1948, pp. 83-88; S/906, O.R., 3rd year, Suppl. for July 1948, pp. 79-80; S/908, O.R., 3rd year, Suppl. for July 1948, pp. 82-86; S/958, O.R., 3rd year, Suppl. for August 1948, p. 151.

<sup>2</sup> S/1171.

<sup>3</sup> S/1172.

<sup>4</sup> S/1268.

<sup>5</sup> S/1492.

<sup>6</sup> S/1307.

<sup>7</sup> S/1346.

<sup>8</sup> S/1389.

<sup>9</sup> S/1390.

<sup>10</sup> S/1407.

3. *Communications from the Secretary-General of the Organization of American States*

- (i) Dated 24 January 1949: transmitting text of Inter-American Treaty of Reciprocal Assistance, with reference to resolutions taken by the Council of the Organization of American States concerning Costa Rica and Nicaragua<sup>11</sup>
- (ii) Dated 10 July 1950: transmitting report of the Special Committee on the Caribbean<sup>12</sup>
- (iii) Dated 21 May 1951: transmitting second and final reports of the Special Committee on the Caribbean<sup>13</sup>
- (iv) Dated 11 September 1951: transmitting official text of the Final Act of the Fourth Meeting of Consultation of Ministers of Foreign Affairs<sup>14</sup>

4. *Communications from States parties to disputes or situations*

- (i) Dated 18 August 1948: Dominican Republic, transmitting application made to the Inter-American Peace Committee<sup>15</sup>
- (ii) Dated 7 October 1948: Dominican Republic, transmitting suggestions made by the Inter-American Peace Committee on the same case<sup>16</sup>
- (iii) Dated 12 December 1948: Costa Rica, informing on alleged invasion by armed forces coming from Nicaragua<sup>17</sup>
- (iv) Dated 28 November 1951: Cuba, giving text of a Note addressed to the Inter-American Peace Committee<sup>18</sup>
- (v) Dated 27 December 1951: Cuba, informing on action taken by the Inter-American Peace Committee on the same case and its results.<sup>19</sup>

In addition to the circulation to the representatives on the Council of these communications, it has been the practice to include in the Reports of the Security Council to the General Assembly summary accounts of the disputes or situations referred to in those communications.<sup>20</sup>

<sup>11</sup> S/1239.

<sup>12</sup> S/1607.

<sup>13</sup> S/2180.

<sup>14</sup> S/2344.

<sup>15</sup> S/982.

<sup>16</sup> S/1036.

<sup>17</sup> S/1115.

<sup>18</sup> S/2425.

<sup>19</sup> S/2460.

<sup>20</sup> See Report of the Security Council to the General Assembly, 1948-1949 (G.A.O.R., 4th session, Suppl. No. 2), p. 97; Report of the Security Council to the General Assembly, 1949-1950 (G.A.O.R., 5th session, Suppl. No. 2), p. 64; Report of the Security Council to the General Assembly, 1950-1951 (G.A.O.R., 6th session, Suppl. No. 2), p. 93.

## Chapter VIII of the Charter. Regional Arrangements

## Article 52

1. Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.

2. The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.

3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.

4. This Article in no way impairs the application of Articles 34 and 35.

#### Article 53

1. The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state.

2. The term enemy state as used in paragraph 1 of this Article applies to any state which during the Second World War has been an enemy of any signatory of the present Charter.

#### Article 54

The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.

CASE 27.<sup>23</sup> THE PALESTINE QUESTION: In connexion with decision of 29 May 1948 calling for cessation of hostilities for a period of four weeks.

[Note: At the 296th meeting the Security Council had before it, in consequence of the outbreak of hostilities in Palestine, a draft resolution to determine the situation a threat to the peace and a breach of the peace within the meaning of Article 39.<sup>22</sup> This provision of the draft resolution failed of adoption. In the course of discussion on this provision, the question arose whether the entry of the armed forces of Egypt and Jordan into Palestine was warranted by the terms of Articles 51 or 52.]

At the 296th meeting on 18 May 1948, the representative of Belgium contended that the communications of the Governments of Egypt and Transjordan informing the Security Council that their armed forces had entered the territory of Palestine were not in themselves sufficient to justify the application of Article 39 to those States. He stated:

"... the mere fact that the armed forces of a State enter foreign territory does not necessarily imply that the State is guilty of a breach of the peace or an act of aggression. If that were so, then what of the right of individual or collective self-defence recognized by Article 51 of the Charter? The same argu-

ment also applies to a state or a nation fighting on its own soil."

The representative of the Jewish Agency for Palestine\* stated that Article 51 could not be applied to the existing situation in Palestine. Under the Charter there were two categories of legitimate use of armed force by Member States. The first related to resistance in self-defence. Article 51 recognized the "inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations", but no such attack had been made or threatened against Egypt or Transjordan whose forces had been despatched to Palestine. The second concerned military action undertaken by Member States with the authorization of the United Nations, which was not given in the case of Palestine.

At the 297th meeting on 20 May, the representative of the Arab Higher Committee\* maintained that the Arab majority of Palestine possessed the unquestionable right of sovereignty over the country after the termination of the Mandate.

"When the Jewish minority rebelled and declared its intention of establishing a separate State, it created a dangerous threat to the peace of the whole country. Under the circumstances we were obliged to solicit the assistance of the surrounding countries, with which we are linked by all national ties as well as by the pact of the Arab League, for the restoration of peace and order of the whole population of Palestine."

At the 299th meeting on 21 May, the representative of Syria stated that the intervention of the Arab States in Palestine had been undertaken in conformity with Article 52 of the Charter. Palestine was an associate member of the Arab League which constituted a regional arrangement. The Arab League States had inter-

<sup>22</sup> For texts of relevant statements see: 296th meeting: Belgium, p. 11; Jewish Agency for Palestine, pp. 13-14.

297th meeting: Arab Higher Committee, pp. 12-13.

298th meeting: Syria, p. 20.

299th meeting: Syria, pp. 13-15.

302nd meeting: Syria, p. 48; United States, pp. 42-43.

307th meeting: United States, p. 22.

<sup>23</sup> See chapter VIII, pp. 328-329. For discussion on the applicability of Articles 39 and 40, see chapter VI, Case 10.

vened in Palestine in response to the request of the majority of its people to assist in the suppression of an armed insurrection. He referred to Article 52 (2) as authorizing the Arab League to pacify the local dispute in Palestine. The nature of such pacification depended upon the methods used by the disturbing party. If those methods were peaceful, pacification might be achieved in one way. If they were violent, then pacification meant "restoring peace... suppressing the disturbance by applying the necessary measures".

After citing Article 52 (3) and referring to the failure of the Security Council to perform its task to settle the dispute in Palestine, he stated:

"It is not only because there are no armed forces now available to the Security Council, but because this is considered to be a local dispute, and not an international dispute between two different nations. In such a case, the Security Council is not supposed to interfere. But those Members of the United Nations entering into regional arrangements are obliged

to interfere on behalf of the United Nations, and in the name of peace and the security of the world".

At the 302nd meeting on 22 May, the representative of the United States argued that the invasion of Palestine by the Arab armies was in violation of the Charter. Articles 51 and 52 were no justification for this invasion, because Article 53 provided that no enforcement action should be taken under regional arrangements or by regional agencies without the authorization of the Security Council. Referring to the Syrian contention that the Arab States had acted at the invitation of the majority of the people of Palestine, he stated:

"... that part of Palestine which is under the *de facto* government of the Provisional Government of Israel is not a part of the regional organization... This is hostility by a group, a coalition, a region—call it a regional organization if you like—against an organized community which, at least, claims before us that it is a State..."

## Part V

### CONSIDERATION OF THE PROVISIONS OF ARTICLES 82-83 OF THE CHARTER

#### NOTE

One trusteeship agreement has been submitted to, and approved by, the Security Council. An outline of the proceedings leading to the approval of the agreement will be found in chapter IX. In part V of the present chapter are entered observations made in the course of

these proceedings which bear more directly on the terms of Articles 82-83 of the Charter. In chapter VI, part III, of the *Repertoire* will be found material relating to the relations of the Security Council and the Trusteeship Council arising from the entry into force of the trusteeship agreement.

#### Article 82

There may be designated, in any trusteeship agreement, a strategic area or areas which may include part or all of the trust territory to which the agreement applies, without prejudice to any special agreement or agreements made under Article 43.

#### Article 83

1. All functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the Security Council.

2. The basic objectives set forth in Article 76 shall be applicable to the people of each strategic area.

3. The Security Council shall, subject to the provisions of the trusteeship agreements and without prejudice to security considerations, avail itself of the assistance of the Trusteeship Council to perform those functions of the United Nations under the trusteeship system relating to political, economic, social, and educational matters in the strategic areas.

CASE 28. In connexion with decision of 2 April 1947 approving the Trusteeship Agreement for the former Japanese-mandated islands.

[*Note:* Certain questions were raised concerning the constitutional position of the Council as regards the trusteeship of strategic areas: (i) the competence of the Council to place the islands under trusteeship, in view of their status as a mandated territory, and since no peace settlement with Japan had been concluded; (ii) amendments to the preamble designed to give a legal basis to the termination of the Japanese mandate; (iii) the rights of the Council to modify the terms of the trusteeship agreement.

The amendment on the question of competence was subsequently withdrawn. The amendments to the pre-

amble and on the right of the Council to modify the terms of the agreement were rejected.]

#### CASE 28 (i)<sup>1</sup>

At the 113th meeting on 26 February 1947, the representative of the United States, in submitting for the approval of the Council the text of a draft trusteeship agreement for the former Japanese-mandated islands,<sup>2</sup>

<sup>1</sup> For texts of relevant statements see: 113th meeting: Australia, p. 414; United States, pp. 407-414; USSR, p. 415.

116th meeting: Australia, p. 465; China, p. 467; Poland, pp. 468-470; Syria, pp. 470-471; United Kingdom, pp. 463-465.

119th meeting: President (Brazil), p. 518; Australia, pp. 519-522; United States, pp. 523-528.

123rd meeting: Australia, pp. 627-628.

<sup>2</sup> See chapter IX, p. 372.

declared that these islands—Marshalls, Marianas and Carolines—constituted an integrated strategic physical complex that was vital to the security of the United States, and should, in accordance with Article 82, be designated a strategic area, and be placed under the trusteeship of the United States. The final disposal of the islands would have to await the peace settlement with Japan. The representative of the USSR considered that the question of the former Japanese-mandated islands was within the competence of the Security Council and that the Council was entitled to take a decision upon it without delay.

The representative of the United Kingdom was of the opinion that it was not strictly within the competence of the Council under the Charter to approve a trusteeship agreement for the islands at that stage, in advance of the peace treaty with Japan which would decide on their disposal. The representative of the United States explained that Japan had never had sovereignty over the mandated islands, and that the trusteeship was in the hands of the United Nations as the successor of the League of Nations. No question of residual title would arise, once disposal had been effected in accordance with the draft trusteeship agreement.

The representative of Australia stated that approval should be subject to confirmation in the interim or final treaty of peace between Japan and the allied Powers victorious in the war against Japan, and submitted an amendment to this effect at the 118th meeting.<sup>9</sup> Representatives of States invited to participate in the discussion took their places at the Council at the 119th meeting on 17 March. The President (Brazil) pointed out that the Australian amendment gave rise to a constitutional point related to the competence of the Security Council on trusteeship questions in strategic areas. He stated:

"In view of the powers conferred upon the Security Council by Article 83, paragraph 1, of the Charter, relating to trusteeship matters for strategic areas, it appears to me to be very difficult to accept the idea that a decision of the Council on such matters may be conditioned by confirmation of any other international body—be it linked with the United Nations or not. It is my opinion that if we approve the trusteeship agreement before us, that decision is final as far as the United Nations is concerned, and can only be revoked by another decision of the Security Council itself. We should always bear in mind that we act in these matters on behalf of all Members of the United Nations, as provided for in Article 24 of the Charter. There can be no higher authority than the Security Council on these questions. . . . On the other hand, it seems to me highly undesirable for us to give a directive . . . to a conference which purposely is not held under the auspices of the United Nations."

The representative of Australia submitted a redraft of the original text to the effect that the agreement would enter into force on the date on which a peace treaty became binding on Japan. The representative of the United States challenged the Australian amendment as an unconstitutional effort to take away authority from the United Nations and to give it to somebody else. At the 123rd meeting on 28 March, the represen-

tative of Australia did not press his proposal for amendment, since his point had been met by the invitations issued by the Council to representatives of other nations that had fought against Japan, to participate in the discussions of the Council.<sup>4</sup>

#### CASE 28 (ii)<sup>5</sup>

At the 124th meeting on 2 April 1947, the Council began its detailed consideration of the terms of the draft trusteeship agreement for the former Japanese-mandated islands by discussing several amendments to the preamble. In its original form, the preamble read as follows:

"Whereas Article 75 of the Charter of the United Nations provides for the establishment of an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent agreements; and

"Whereas under Article 77 of the said Charter the trusteeship system may be applied to territories now held under mandate; and

"Whereas on 17 December 1920 the Council of the League of Nations confirmed a mandate for the former German islands north of the equator to Japan, to be administered in accordance with Article 22 of the Covenant of the League of Nations; and

"Whereas Japan, as a result of the Second World War, has ceased to exercise any authority in these islands;

"Now, therefore, the Security Council of the United Nations, having satisfied itself that the relevant articles of the Charter have been complied with, hereby resolves to approve the following terms of trusteeship for the Pacific Islands formerly under mandate to Japan."

The representative of Poland submitted an amendment to add, after the fourth paragraph, the following clause:

"Whereas Japan has violated the terms of the above mandate of the League of Nations and has thus forfeited her mandate."

In support of his amendment, the representative of Poland stated that, through her action in leaving the League of Nations, and by starting a war of aggression against China, in breach of the Covenant of the League, Japan had forfeited all her rights as a Member of the League, including her rights as a mandatory power. The representative of Australia held that the proposed addition was undesirable. It was not correct in law since a breach of the mandate in itself did not constitute forfeiture. In his view, the original text of the preamble was preferable. The representative of the USSR also expressed a preference for the preamble in its original form. He contended that, there being no continuity, either legal or otherwise, between the mandatory system of the League of Nations and the trusteeship system of the United Nations, there was no justification for the Security Council to discuss or to decide on the question of the mandates.

In accepting the Polish amendment, the representative of the United States remarked that the question

<sup>4</sup> 123rd meeting; pp. 627-628.

<sup>5</sup> For texts of relevant statements see:

124th meeting: Australia, pp. 645-646; Netherlands, pp. 650-651, 656; Poland, pp. 647, 656; USSR, pp. 648, 657; United States, pp. 648-650, 656.

<sup>9</sup> 118th meeting; p. 516.

before the Council dealt with trusteeship, not with title. After referring to Article 77 of the Charter as a basis for the acceptance by the United States of the Polish amendment, he stated that it

"added a term that clarified the preamble and settled the question of the mandatory rights which the Japanese had over these islands. This amendment declares a forfeiture, and a forfeiture always occurs when the essence of an agreement is broken."

The representative of the Netherlands opposed the view that a mandate lapsed by the mere fact of violation, and remarked that the proper authority had to declare that that was so. He suggested that the Polish amendment be replaced by the following clause:

"Whereas, as a result of the signature by Japan of an act of unconditional surrender, the mandate held by Japan for these islands has come to an end."

The representative of the United States then proposed a new text to be added in place of the Polish and the Netherlands amendments. This text, which was accepted by the representatives of Poland and the Netherlands, read as follows:

"Whereas the mandate held by Japan for these islands has come to an end."

This United States amendment was put to the vote and was rejected by 5 votes in favour with 6 abstentions. The preamble as a whole, in its original form, was then adopted unanimously.<sup>6</sup>

#### CASE 28 (iii)<sup>7</sup>

At the 124th meeting on 2 April 1947 the Council considered a USSR amendment to the text of Article 15 of the draft trusteeship agreement. In its original form, as submitted by the United States, Article 15 read:

"The terms of the present agreement shall not be altered, amended or terminated without the consent of the Administering Authority."

<sup>6</sup> 124th meeting: p. 658.

<sup>7</sup> For texts of relevant statements see:

124th meeting: President (China), pp. 674-675; Australia, p. 671; Belgium, p. 671; Poland, p. 676; Syria, pp. 672-673; USSR, pp. 669, 671-672, 678; United Kingdom, pp. 676, 678; United States, p. 670.

The representative of the USSR proposed that Article 15 should be redrafted as follows:

"The terms of the present agreement may be altered and amended or the terms of its validity discontinued by the decision of the Security Council."

He emphasized that this would bring the text of Article 15 more in accordance with the powers and rights of the Council with regard to the approval of trusteeship agreements concerning strategic areas. The representative of the United States declared the amendment unacceptable, since there must be two parties to any trusteeship agreement, and it would be an astonishing interpretation of the Charter to maintain that the function of determining the terms of the agreement should be given exclusively to the party which, under the Charter, had only the function of approval. To give the power of termination to the Security Council alone would be in violation of the spirit of the Charter and of the theory of the agreement. The representative of the USSR maintained that since the Council had the power to approve a draft trusteeship agreement at the time of its conclusion, it followed that it had also the right to take later a decision that the agreement had become out of date and should be amended, discontinued, or replaced by a new agreement. His amendment was intended to ensure that the rights of the Council were observed. The representative of Poland presented another amendment, as follows:

"The terms of the present agreement shall not be altered, amended, or terminated except as provided by the Charter."

The representative of the United Kingdom objected to this amendment on the ground that the Charter said nothing on the subject.<sup>1</sup>

The USSR and the Polish amendments were not adopted having failed to obtain the affirmative votes of seven members. Article 15 was approved in its original form by 8 votes in favour, none against, with 3 abstentions.<sup>2</sup>

<sup>1</sup> 124th meeting: pp. 679-680.

## Part VI

### CONSIDERATION OF THE PROVISIONS OF CHAPTER XVII OF THE CHARTER

#### NOTE

Occasion for the invocation of Article 106 arose in connexion with the Palestine question, and the relevant case history has been segregated from the material included under Article 24<sup>1</sup> for separate presentation in part VI of the present chapter.<sup>2</sup>

<sup>1</sup> See Case 23 (ii).

<sup>2</sup> Case 29. For further incidental observations bearing on Article 106, see Colombia, 274th meeting: p. 242; 292nd meet-

ing: p. 24; 298th meeting: p. 27; 308th meeting: pp. 26-27; and Belgium, 309th meeting: pp. 13-14.

<sup>3</sup> S/336, O.R., 2nd year, Special Suppl. No. 1, pp. 1-32.

### Chapter XVII of the Charter. Transitional Security Arrangements

#### Article 106

Pending the coming into force of such special agreements referred to in Article 43 as in the opinion of the Security Council enable it to begin the exercise of its responsibilities under Article 42, the parties to the Four-Nation Declaration,



signed at Moscow, October 30, 1943, and France, shall, in accordance with the provisions of paragraph 5 of that Declaration, consult with one another and as occasion requires with other Members of the United Nations with a view to such joint action on behalf of the Organization as may be necessary for the purpose of maintaining international peace and security.

#### Article 107

Nothing in the present Charter shall invalidate or preclude action in relation to any state which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of that war by the Governments having responsibility for such action.

CASE 29.<sup>4</sup> THE PALESTINE QUESTION: In connexion with draft resolution invoking Article 106 submitted by the representative of Colombia and subsequently withdrawn.

[*Note:* In consequence of the report of the Palestine Commission that it would be unable to implement the plan of partition recommended by the General Assembly without the assistance of an effective armed force,<sup>5</sup> a draft resolution was submitted at the 254th meeting on 24 February 1948, to invite the permanent members of the Council, in pursuance of Article 106, to consult with a view to joint action on behalf of the Organization. The draft resolution was withdrawn at the 258th meeting on 27 February 1948, in favour of another draft resolution to request the permanent members, constituted as a committee of the Council, to make recommendations to the Council.]<sup>6</sup>

At the 253rd meeting on 24 February 1948, in the course of discussion on the situation in Palestine reported by the Palestine Commission, the representative of the United States observed:

"If the Security Council should decide that it is necessary to use armed force to maintain international peace in connexion with Palestine, the United States would be ready to consult under the Charter with a view to such action as may be necessary to maintain international peace."

Such consultation would be required, he added, since armed forces were not available under the terms of Article 43 of the Charter.

At the 254th meeting on the same day, the representative of Colombia submitted a draft resolution<sup>7</sup> which, recalling that the Palestine Commission had referred to the Security Council the problem of providing armed assistance to enable the Commission to discharge its responsibilities, recited:

"That Articles 39 and 41 of the Charter . . . envisage measures to be taken in the case of conflicts or disputes between States, but do not authorize the Security Council to create special forces for the purposes indicated by the United Nations Palestine Commission;"

<sup>4</sup> For texts of relevant statements see:

253rd meeting: United States, p. 267.

254th meeting: Colombia, pp. 292-293.

255th meeting: United States, pp. 294-295.

258th meeting: Belgium, pp. 356-357; Colombia, pp. 361-365.

260th meeting: USSR, p. 406.

262nd meeting: Syria, p. 29; China, p. 30.

<sup>5</sup> See chapter VIII, pp. 325-326, and Case 23 (ii).

<sup>6</sup> For the consideration of this draft resolution, see also chapter V, Case 68.

<sup>7</sup> S/684, 254th meeting: pp. 292-293.

By the draft resolution, the Council would invite "according to Article 106 of the Charter, the parties to the Four-Nation Declaration, signed at Moscow, 30 October 1943, and France, to consult with one another with a view to such joint action on behalf of this Organization as may be necessary to prevent or remove any threat to the peace, breach of the peace or act of aggression arising from the implementation of the General Assembly's resolution of 29 November 1947."

At the 258th meeting on 27 February 1948, the representative of Colombia contended that, in the absence of any agreement under Article 43,

"... if any joint action on behalf of this Organization is necessary for the purpose of maintaining international peace and security in Palestine, that responsibility devolves primarily upon the permanent members of the Security Council."

At the 255th meeting on 25 February, the representative of the United States opposed the Colombian draft resolution and submitted instead a draft resolution<sup>8</sup> to establish a committee of the five permanent members of the Security Council to study the situation with respect to Palestine and report its conclusions and recommendations to the Council.

At the 258th meeting on 27 February, the representative of Belgium expressed support for the United States proposal on the grounds that, in the particular case of Palestine and at the initial stage of establishing the facts, it was appropriate that

"... such a committee should be composed of the permanent members of the Council, inasmuch as the possibility of coercive measures has been mentioned and the responsibility for enforcing such measures would devolve, according to Article 106 of the Charter, on the five great Powers."

At the same meeting, the representative of Colombia withdrew his draft resolution with a view to expediting the work of the Council.<sup>9</sup>

At the 260th meeting on 2 March, the representative of the USSR, while objecting to the establishment of a committee of the five permanent powers, as proposed in the United States draft resolution, stated:

"We think that the five Powers should conduct direct consultations quite outside any committee. Since the permanent members of the Security Council have not yet shown any initiative in this matter, the Council might call upon them or request them to begin such consultations immediately and report on the results within ten or fifteen days."

<sup>8</sup> S/685, 255th meeting: pp. 294-295.

<sup>9</sup> 258th meeting: pp. 364-365.

In the opinion of the representative of Syria, Article 106 was applicable only when the Security Council decided that a case required the use of armed force. At the 262nd meeting on 5 March, he stated:

"... action by the permanent members under that Article will always be in order when the Security Council decides that a situation exists which endangers international peace and security, when other methods and means have been tried and proved to be inadequate, and when action under Article 42 of the Charter is necessary. Then, as long as Article 43 is not implemented, the five permanent members would convene to determine what action to take."

The representative of Syria accordingly endorsed the suggestion that the permanent members of the Security Council should consult among themselves provided they did so not under Article 106.

The President, speaking as the representative of China, said:

"I have stated that I should be glad to participate in a committee or in a consultation of the five permanent members. I would do that not by virtue of Article 106. I consider that such consultation or committee action at the present moment is not related to Article 106 of the Charter."

At the 263rd meeting on the same day, the Security Council adopted a resolution calling upon the permanent members of the Council to consult and report within ten days their recommendations regarding the implementation of the General Assembly resolution on Palestine.<sup>10</sup>

CASE 30.<sup>11</sup> IDENTIC NOTIFICATIONS: In connexion with the decision on 5 October 1948 to include the question in the agenda.

[Note: Objection to consideration by the Security Council of the question submitted was based on Article 107. The reply was made that the question submitted did not concern action in relation to a former enemy State, but related to a threat to the peace occasioned by measures of duress by one occupying Power against other occupying Powers.]<sup>12</sup>

At the 361st meeting on 4 October 1948 the representative of the USSR opposed the inclusion of this question in the agenda on the grounds that the question did not fall within the competence of the Security Council and could not, therefore, be the subject of discussion in the Council.

The representative of the USSR contended that, according to Article 107 of the Charter, all questions arising in connexion with the control of Germany, including the situation in Berlin, fell within the competence of the Governments responsible for the occupation of Germany under the relevant international agreements. He stated:

"To refer the Berlin question to the Security Council would be a direct violation of Article 107 . . . According to Article 107 of the United Nations Charter, the Berlin question, forming as it does a part of the question of Germany as a whole, belongs to the competence of those Governments which are responsible for the occupation of Germany, and consequently, it is not a matter which can be considered by the Security Council.

"In fact, as regards Germany in general and Berlin in particular, there exists a whole series of important international agreements and treaties signed by the four Powers . . . Thus in view of the special international agreements and treaties signed by the great Powers, the whole problem of Germany, including the Berlin question, is a matter to be settled by the Governments which bear the responsibility for the occupation of Germany; this problem cannot, therefore, be allowed to come up for consideration before any other body than that defined in the international agreements under which are the signatures of the great Powers . . .

"That, in short, is the principle proclaimed in Article 107 . . ."

The "only legal way of dealing with the matter", the representative of the USSR contended, was "to have the Council of Foreign Ministers examine the Berlin question." He continued:

"... it is said . . . that there has arisen a threat to peace and security which, in other words, makes it a matter of direct concern to the Security Council.

"But, even if there did exist a threat to peace and security, Article 107 of the Charter excludes intervention in this matter by the United Nations Organization. This is the meaning of Article 107. But does such a threat in fact exist, or is it . . . merely a pretext for trying to transfer responsibility for examination of this question by the four Powers--in accordance with the provisions of the international agreement--to the Security Council, which never undertook to examine the German question, and which indeed, in view of Article 107, never could have assumed this responsibility."

The representative of the United Kingdom replied:

"... The USSR action, of which the Western Powers are complaining, has not . . . been taken in relation to Germany. It is essentially action taken in relation to the Western Powers themselves by cutting off their communications with a part of Germany where they have the right to be and by attempting to deny them access to it or to compel their withdrawal. That the locale of this action is Germany and that the population of Berlin is affected by it does not suffice to constitute it as action taken in relation to Germany or to bring it under Article 107. The term used . . . 'in relation to' is clearly intended to mean action of which the enemy State is the object and not merely the subject, the occasion or the locale. The object of the USSR action in the case of Berlin is clearly the three Western Powers and their position . . . For these reasons, it cannot be claimed that the action of the Government of the USSR in Berlin escapes the application of the Charter, or that it is taken out of the Charter by Article 107, since it is not at all the type of action contemplated in that provision."

<sup>10</sup> 263rd meeting: pp. 43-44. For text, see chapter VIII, p. 326.

<sup>11</sup> For texts of relevant statements see:

361st meeting: USSR, pp. 10-14, 18-19; United Kingdom, pp. 28-30; United States, pp. 20-21, 23-27.

362nd meeting: Belgium, pp. 18-19; France, pp. 2-3; Syria, pp. 5-7; Ukrainian SSR, pp. 22-23; USSR, pp. 8-16, 22.

364th meeting: United Kingdom, p. 36.

365th meeting: USSR, pp. 12-13.

372nd meeting: USSR, p. 6.

<sup>12</sup> For the submission of the Identical Notifications, see chapter VIII, p. 354.

The representative of the United States made the following statement:

"The arguments put forward by the representative of the USSR make it appear that the question brought before the Security Council is the entire problem of Germany . . . That is not the case. The question before this Council is a different one, namely, the threat to international peace and security caused by the imposition and maintenance of the USSR blockade of Berlin and other measures of duress taken against the three other occupying Powers."

"...

"Article 107 of the Charter was not designed to prevent any disputes among the victorious Powers from coming to the Security Council, but to prevent interference by the former enemy States in any action taken by the victorious Powers within the agreed realm of their responsibility. In other words, Article 107, while precluding appeals to United Nations organs by defeated enemy States concerning action taken against them during the period of military occupation by the responsible allied Powers, does not prevent one of the allied Powers from bringing its differences with other allied Powers to the attention of United Nations organs for consideration according to the provisions of Chapters IV, VI or VII of the Charter; much less would it preclude consideration by the Security Council of action by a Member of the United Nations constituting a threat to peace."

The representative of the USSR replied that the three Western Governments had carried out "actions" which harmed "the economy of the Soviet Zone of

Occupation, that is, the interests of the population of that zone."

At the 362nd meeting on 5 October 1948, the Council adopted the agenda which included the identic notifications by 9 votes to 2.<sup>13</sup> Before the adoption of the agenda, the representative of Argentina made the following statement:

"The Argentine delegation will . . . vote for the adoption of the agenda, it being understood, however, that by this vote it does not express any opinion on competence, jurisdiction, or substance of the matter."

After the adoption of the agenda, the representative of the USSR made the following statement:

"The delegation of the USSR states on behalf of the USSR Government that the inclusion of this question in the Security Council's agenda, by a majority of the Council, represents a violation of Article 107 according to which such a question is to be resolved by the Governments having responsibility for the occupation of Germany and cannot be referred to the Security Council.

"In view of the above considerations the delegation of the USSR declares that it will not take part in the discussion of the Berlin question in the Security Council."<sup>14</sup>

The representative of the Ukrainian SSR associated himself with the above statement and said that he would not take part in the discussion of this question.

<sup>13</sup> 362nd meeting: p. 21.

<sup>14</sup> For statements, more especially after adoption of the agenda, regarding recourse to Article 33, see chapter X, Case 6. For the draft resolution to recommend renewal of negotiations in the Council of Foreign Ministers after fulfilment of certain conditions, see chapter XI, Case 14.