Department of Political and Security Council Affairs

Repertoire

of the

Practice

of the

Security Council

Supplement 1959-1963

UNITED NATIONS
New York, 1965

NOTE

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

ST/PSCA/1/Add.3

UNITED NATIONS PUBLICATION

Sales No.: 65. VII. 1

Price: $U.S. 4.00
(or equivalent in other currencies)

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GENERAL INTRODUCTION

The present volume constitutes the third supplement to the Repertoire of the Practice of the Security Council, 1946-1951, which was issued in 1954. It covers the proceedings of the Security Council from the 845th meeting on 30 January 1959 to the 1085th meeting on 27 December 1963. Further supplements covering the proceedings of later meetings will be issued at suitable intervals.

In order to make it easier to trace the Security Council's practice in respect of any given topic over the entire period covered by the four volumes, the headings under which the practices and procedures of the Security Council were presented in the original volume have been generally maintained unchanged in this supplement. New headings have been inserted where required. Topics which the Council has not discussed anew during this time are identified by double asterisks.

The methods employed and the principles observed in the preparation of this supplement have been the same as for the original volume of the Repertoire. They are explained in the General Introduction to that volume. The Repertoire is an expository work, which presents the results of an empirical survey of the procedures of the Council in a way calculated to make reference easy, and constitutes essentially a guide to the proceedings of the Council.

As was observed in the original volume, the Repertoire 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 categories employed to arrange the material are not intended to suggest the existence of procedures or practices which have not been clearly or demonstrably established by the Council itself. The Security Council is at all times, within the framework of the Charter, "master of its own procedure". The object of the Repertoire will have been achieved if the reader, by using the descriptive titles of the headings under which the material is presented, is enabled to find relevant proceedings in order to draw conclusions for himself concerning the practice of the Council.

Details of the decisions of the Council have been included where appropriate in the accounts of its proceedings which make up this volume. The term "decision" has again been used to mean not only those "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 reader should refer for full explanations of the organization and presentation of material to the explanatory matter in the original volume. An effort has been made to avoid unnecessary repetition of such explanations in this supplement.

EDITORIAL NOTE

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

861st meeting: para. 40.

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. The original volume of the Repertoire should be cited as Repertoire of the Practice of the Security Council 1946-1951. The present volume should be cited as Repertoire of the Practice of the Security Council, Supplement 1959-1963.

6. Appended here below is a list of short titles for agenda items considered by the Security Council throughout the period 1959-1963.

Short title	*Official title*
The Palestine question	Letter dated 26 January 1959 from the Representative of Israel to the President of the Security Council (S/4151 and Corr.1)
	Letter dated 1 April 1961 from the Permanent Representative of the Hashemite Kingdom of Jordan addressed to the President of the Security Council (S/4777)
	Letter dated 20 March 1962 from the Permanent Representative of the Syrian Arab Republic addressed to the President of the Security Council (S/5096); Letter dated 21 March 1962 from the Permanent Representative of Israel addressed to the President of the Security Council (S/5098)
	Letter dated 20 August 1963 from the acting Permanent Representative of Israel addressed to the President of the Security Council (S/5394); Letter dated 21 August 1963 from the acting Permanent Representative of Israel addressed to the President of the Security Council (S/5396); Letter dated 21 August 1963 from the Permanent Representative of the Syrian Arab Republic addressed to the President of the Security Council (S/5395)
Report by the Secretary-General relating to Laos	Report by the Secretary-General on the letter received from the Minister for Foreign Affairs of the Royal Government of Laos, transmitted by a note from the Permanent Mission of Laos to the United Nations, 4 September 1959 (S/4212, S/4213, S/4214)

Short title	*Official title*
Election of members of the International Court of Justice	Election of a member of the International Court of Justice to fill the vacancy caused by the death of Judge José Gustavo Guerrero (S/4204 and Corr.1, S/4205)
	Date of election to fill a vacancy in the International Court of Justice (S/4312)
	Election of a member of the Court to fill the vacancy caused by the death of Sir Hersch Lauterpacht (S/4457 and Corr.1, S/4479, S/4483 and Add.1 to 3 and Rev.1);
	Election of five members of the Court (S/4457 and Corr.1, S/4474/Rev.1 and Rev.1/Add.1 and 2, S/4479 and Add.1)
	Election of five members of the International Court of Justice (S/5388 and Corr.1 and 2 and Add.1 to 7, S/5389 and Corr.1 and Add.1, S/5390, S/5441, S/5442 and Corr.1)
Admission of new Members	Letter dated 13 January 1960 from the Prime Minister of the State of Cameroon addressed to the Secretary-General (S/4256);
	Letter dated 20 January 1960 from the Permanent Representative of France addressed to the President of the Security Council (S/4257)
	Telegram dated 20 May 1960 from the Prime Minister of the Republic of Togo addressed to the Secretary-General (S/4318);
	Letter dated 21 May 1960 from the Permanent Representative of France to the United Nations addressed to the President of the Security Council (S/4320);
	Letter dated 24 May 1960 from the Permanent Representative of Tunisia to the United Nations addressed to the President of the Security Council (S/4324);
	Telegram dated 23 June 1960 from the President of the Federal Government of Mali addressed to the Secretary-General (S/4347);
	Letter dated 23 June 1960 from the Permanent Representative of France to the United Nations addressed to the President of the Security Council (S/4348);
	Telegram dated 26 June 1960 from the President of the Malagasy Republic addressed to the Secretary-General (S/4352/Rev.1, S/4353, S/4354, S/4358)
	Telegram dated 1 July 1960 from the Provisional President of the Republic of Somalia addressed to the Secretary-General (S/4360, S/4362, S/4363, S/4364, S/4366)
	Telegram dated 1 July 1960 from the Prime Minister of the Government of the Republic of the Congo addressed to the Secretary-General (S/4361)
	Letter dated 2 August 1960 from the Prime Minister of the Republic of Dahomey addressed to the Secretary-General (S/4428);
	Letter dated 7 August 1960 from the President of the Council of Ministers of the Republic of the Niger addressed to the Secretary-General (S/4429);
	Letter dated 7 August 1960 from the President of the Republic of the Upper Volta addressed to the Secretary-General (S/4430);

Short title	*Official title*
Admission of new Members (continued)	Letter dated 7 August 1960 from the Chief of State of the Republic of the Ivory Coast addressed to the Secretary-General (S/4431);
	Telegram dated 15 August 1960 from the President of the Republic of the Congo addressed to the Secretary-General (S/4433);
	Letter dated 12 August 1960 from the President of the Government of the Republic of Chad addressed to the Secretary-General (S/4434);
	Telegram dated 17 August 1960 from the President of the Gabon Republic addressed to the Secretary-General (S/4436);
	Telegram dated 22 August 1960 from the President of the Government of the Central African Republic addressed to the Secretary-General (S/4455);
	Telegram dated 16 August 1960 from the President of the Republic of Cyprus addressed to the Secretary-General (S/4435)
	Letter dated 20 September 1960 from the Minister for Foreign Affairs of the Republic of Senegal addressed to the President of the Security Council and to the Secretary-General (S/4530 and Corr.1);
	Telegram dated 22 September 1960 from the President of the Government of the Republic of Mali to the Secretary-General (S/4535)
	Telegram dated 1 October 1960 from the Prime Minister and Minister of Foreign Affairs and Commonwealth Relations of the Federation of Nigeria to the Secretary-General (S/4545)
	Telegram dated 28 November 1960 from the Prime Minister of the Islamic Republic of Mauritania to the Secretary-General (S/4563 and Corr.1)
	Letter dated 27 April 1961 from the Minister for External Affairs of Sierra Leone addressed to the Secretary-General (S/4797)
	Letter dated 3 December 1960 from the Deputy Permanent Representative of the Union of Soviet Socialist Republics addressed to the President of the Security Council (S/4569);
	Letter dated 6 May 1961 from the Permanent Representative of the Union of Soviet Socialist Republics addressed to the President of the Security Council (S/4801)
	Letter dated 30 June 1961 from the State Secretary of Kuwait, addressed to the Secretary-General (S/4852)
	Letter dated 9 December 1961 from the Prime Minister of Tanganyika addressed to the Secretary-General (S/5017)
	Letter dated 27 June 1962 from the Minister for Foreign Affairs of the Republic of Rwanda addressed to the Secretary-General (S/5137);
	Letter dated 1 July 1962 from the Minister for Foreign Affairs of the Republic of Rwanda addressed to the Secretary-General (S/5137/Add.1);
	Cable dated 2 July 1962 from the President of the Republic of Rwanda addressed to the Secretary-General (S/5137/Add.2)

Short title	*Official title*
Admission of new Members (continued)	Cable dated 4 July 1962 from the Prime Minister of the Kingdom of Burundi addressed to the Secretary-General (S/5139); Letter dated 4 July 1962 from the Prime Minister of the Kingdom of Burundi addressed to the Secretary-General (S/5139/Add.1)
	Telegram dated 6 August 1962 from the Prime Minister and Minister of External Affairs of Jamaica addressed to the Secretary-General (S/5154); Telegram dated 6 September 1962 from the Prime Minister and Minister of External Affairs of the State of Trinidad and Tobago addressed to the Secretary-General (S/5162); Telegram dated 8 September 1962 from the Acting Prime Minister and Minister of External Affairs of the State of Trinidad and Tobago addressed to the Secretary-General (S/5162/Add.1)
	Telegram dated 30 September 1962 from the Head of Government of the Democratic and Popular Republic of Algeria addressed to the Secretary-General (S/5172/Rev.1)
	Telegrams dated 9 October 1962 from the Prime Minister of Uganda addressed to the Secretary-General (S/5176)
	Letter dated 20 April 1963 from the Minister for Foreign Affairs of Kuwait addressed to the Secretary-General (S/5294)
	Telegram dated 10 December 1963 from the Prime Minister of Zanzibar addressed to the Secretary-General (S/5478); Telegram dated 12 December 1963 from the Prime Minister of Kenya addressed to the Secretary-General (S/5482)
Complaint concerning South Africa (letter of 25 March 1960)	Letter dated 25 March 1960 from the representatives of Afghanistan, Burma, Cambodia, Ceylon, Ethiopia, Federation of Malaya, Ghana, Guinea, India, Indonesia, Iran, Iraq, Japan, Jordan, Laos, Lebanon, Liberia, Libya, Morocco, Nepal, Pakistan, Philippines, Saudi Arabia, Sudan, Thailand, Tunisia, Turkey, United Arab Republic and Yemen addressed to the President of the Security Council (S/4279 and Add.1)
Complaint by the USSR (U-2 incident)	Cable dated 18 May 1960 from the Minister for Foreign Affairs of the Union of Soviet Socialist Republics addressed to the President of the Security Council (S/4314, S/4315)
Letter of 23 May 1960 from the representatives of Argentina, Ceylon, Ecuador and Tunisia	Letter dated 23 May 1960 from the representatives of Argentina, Ceylon, Ecuador and Tunisia addressed to the President of the Security Council (S/4323)
Complaint by Argentina (Eichmann Case)	Letter dated 15 June 1960 from the representative of Argentina addressed to the President of the Security Council (S/4336)

Short title	*Official title*
Situation in the Republic of the Congo [1]	Letter dated 13 July 1960 from the Secretary-General addressed to the President of the Security Council (S/4381)
Complaint by Cuba (letter of 11 July 1960)	Letter dated 11 July 1960 from the Minister for Foreign Affairs of Cuba addressed to the President of the Security Council (S/4378)
Complaint by the USSR (RB-47 incident)	Telegrams dated 13 July 1960 from the Minister for Foreign Affairs of the Union of Soviet Socialist Republics addressed to the Secretary-General (S/4384, S/4385)
Letter of 5 September 1960 from the USSR (Action of the OAS relating to the Dominican Republic)	Letter dated 5 September 1960 from the First Deputy Minister for Foreign Affairs of the Union of Soviet Socialist Republics addressed to the President of the Security Council (S/4477)
Complaint by Cuba (letter of 31 December 1960)	Letter dated 31 December 1960 from the Minister for External Relations of Cuba to the President of the Security Council (S/4605)
Situation in Angola	Letter dated 20 February 1961 from the representative of Liberia addressed to the President of the Security Council (S/4738)
	Letter dated 26 May 1961 addressed to the President of the Security Council by the representatives of Afghanistan, Burma, Cambodia, Cameroon, Central African Republic, Ceylon, Chad, Congo (Brazzaville), Congo (Leopoldville), Cyprus, Dahomey, Ethiopia, Federation of Malaya, Gabon, Ghana, Guinea, India, Indonesia, Iran, Iraq, Ivory Coast, Japan, Jordan, Laos, Lebanon, Liberia, Libya, Madagascar, Mali, Morocco, Nepal, Nigeria, Philippines, Saudi Arabia, Senegal, Somalia, Sudan, Togo, Tunisia, United Arab Republic, Upper Volta, Yemen and Yugoslavia (S/4816 and Add.1)
Complaint by Kuwait, Complaint by Iraq	Complaint by Kuwait in respect of the situation arising from the threat by Iraq to the territorial independence of Kuwait, which is likely to endanger the maintenance of international peace and security (S/4845, S/4844); Complaint by the Government of the Republic of Iraq in respect of the situation arising out of the armed threat by the United Kingdom to the independence and security of Iraq, which is likely to endanger the maintenance of international peace and security (S/4847)
Complaint by Tunisia	Telegram dated 20 July 1961 addressed to the President of the Security Council by the Secretary of State for Foreign Affairs of the Republic of Tunisia (S/4861); Letter dated 20 July 1961 from the Permanent Representative of Tunisia addressed to the President of the Security Council (S/4862)
Complaint by Cuba (letter of 21 November 1961)	Letter dated 21 November 1961 from the Permanent Representative of Cuba addressed to the President of the Security Council (S/4992)

[1] For a complete listing of the sub-items relating to the Situation in the Republic of the Congo, see chapter X, part III, footnote v.

Short title	*Official title*
Complaint by Portugal (Goa)	Letter dated 18 December 1961 from the Permanent Representative of Portugal addressed to the President of the Security Council (S/5030)
The India-Pakistan question	Letter dated 11 January 1962 from the Permanent Representative of Pakistan to the President of the Security Council (S/5058); Letter dated 16 January 1962 from the Permanent Representative of India to the President of the Security Council (S/5060 and Corr.1); Letter dated 29 January 1962 from the Permanent Representative of Pakistan to the President of the Security Council (S/5068)
Complaint by Cuba (letter of 22 February 1962)	Letter dated 22 February 1962 from the Permanent Representative of Cuba addressed to the President of the Security Council (S/5080)
Letter of 8 March 1962 from the representative of Cuba concerning the Punta del Este decisions	Letter dated 8 March 1962 from the Permanent Representative of Cuba addressed to the President of the Security Council (S/5086)
Complaints by representatives of Cuba, USSR and USA (22–23 October 1962)	Letter dated 22 October 1962 from the Permanent Representative of the United States of America addressed to the President of the Security Council (S/5181); Letter dated 22 October 1962 from the Permanent Representative of Cuba addressed to the President of the Security Council (S/5183); Letter dated 23 October 1962 from the Deputy Permanent Representative of the Union of Soviet Socialist Republics addressed to the President of the Security Council (S/5186)
Complaint by Senegal	Letter dated 10 April 1963 from the Chargé d'affaires a.i. of the Permanent Mission of Senegal addressed to the President of the Security Council (S/5279 and Corr.1)
Complaint by Haiti	Telegram dated 5 May 1963 from the Minister for Foreign Affairs of the Republic of Haiti addressed to the President of the Security Council (S/5302)
Reports by the Secretary-General concerning Yemen	Reports of the Secretary-General to the Security Council concerning developments relating to Yemen (S/5298, S/5321, S/5323 and S/5325)
Situation in territories in Africa under Portuguese administration	Letter dated 11 July 1963 addressed to the President of the Security Council by the representatives of Algeria, Burundi, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Congo (Leopoldville), Dahomey, Ethiopia, Gabon, Ghana, Guinea, Ivory Coast, Liberia, Libya, Madagascar, Mali, Mauritania, Morocco, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Tanganyika, Togo, Tunisia, Uganda, United Arab Republic and Upper Volta (S/5347) Report by the Secretary-General in pursuance of the resolution adopted by the Security Council at its 1049th meeting on 31 July 1963 (S/5448 and Add.1–3)

Short title	*Official title*
Situation in territories in Africa under Portuguese administration (continued)	Letter dated 13 November 1963 from the representatives of Algeria, Burundi, Cameroon, Central African Republic, Congo (Brazzaville), Congo (Leopoldville), Dahomey, Ethiopia, Gabon, Ghana, Guinea, Ivory Coast, Liberia, Madagascar, Mali, Mauritania, Morocco, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Togo, Tunisia, Uganda, United Arab Republic and Upper Volta addressed to the President of the Security Council (S/5460)
Question of race conflict in South Africa	Letter dated 11 July 1963 addressed to the President of the Security Council by the representatives of Algeria, Burundi, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Congo (Leopoldville), Dahomey, Ethiopia, Gabon, Ghana, Guinea, Ivory Coast, Liberia, Libya, Madagascar, Mali, Mauritania, Morocco, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Tanganyika, Togo, Tunisia, Uganda, United Arab Republic and Upper Volta (S/5348)
	Report by the Secretary-General in pursuance of the resolution adopted by the Security Council at its 1056th meeting on 7 August 1963 (S/5438 and Add.1-5);
	Letter dated 23 October 1963 from the representatives of Algeria, Central African Republic, Ceylon, Congo (Brazzaville), Congo (Leopoldville), Dahomey, Ethiopia, Gabon, Ghana, Guinea, India, Indonesia, Ivory Coast, Liberia, Madagascar, Malaysia, Mali, Mauritania, Morocco, Niger, Nigeria, Pakistan, Senegal, Sierra Leone, Somalia, Sudan, Tanganyika, Togo, Tunisia, Uganda, United Arab Republic and Upper Volta addressed to the President of the Security Council (S/5444 and Add.1)
Situation in Southern Rhodesia	Letter dated 2 August 1963 from the representatives of Ghana, Guinea, Morocco and the United Arab Republic addressed to the President of the Security Council (S/5382); and letter dated 30 August 1963 from the Chargé d'affaires of the Permanent Mission of the Congo (Brazzaville) addressed to the President of the Security Council on behalf of the representatives of Algeria, Burundi, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Congo (Leopoldville), Dahomey, Ethiopia, Gabon, Ivory Coast, Liberia, Libya, Madagascar, Mali, Mauritania, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Tanganyika, Togo, Tunisia, Uganda and Upper Volta (S/5409)
Complaint by Cyprus	Letter dated 26 December 1963 from the Permanent Representative of Cyprus addressed to the President of the Security Council (S/5488)

Chapter I

PROVISIONAL RULES OF PROCEDURE OF THE SECURITY COUNCIL

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INTRODUCTORY NOTE

The present chapter of this Supplement covering the period 1959-1963 contains material pertaining to 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 Members (rules 58-60); and chapter VI: Relations with other organs (rule 61). Certain procedures of voting are dealt with in this chapter, while material relating to the application of Article 27 (rule 40) is presented in chapter IV.

The major headings under which the material is entered in this chapter follow the classification previously adopted for the Repertoire. The arrangement of each part is based on the successive chapters of the provisional rules of procedure of the Security Council.

During the period under review, the Council has not considered the adoption or amendment of rules of procedure. Consequently, the case histories entered in respect of each rule are confined entirely to those proceedings of the Council in which a question has arisen regarding the application of the rule, especially where discussion has taken place regarding a temporary variation from the usual practice. As was noted in the previous volumes, the case histories in this chapter do not constitute cumulative evidence of the practice of the Council, but are indicative of special problems which have arisen in the proceedings of the Council under its provisional rules.

Part I

MEETINGS (RULES 1-5)

NOTE

The material assembled in this section reflects the provisions of Article 28 of the Charter and indicates the special instances in which the interpretation or application of rules 1-5 was challenged, discussed or otherwise questioned. During the period under review, questions arose concerning:

(a) The authority of the President to call meetings under rule 1 (Case 1);

(b) The Presidential practice of consultation with members of the Council on the calling of meetings and the dates and times of such meetings (rule 1, Cases 2 and 3; rule 2, Case 4);

(c) Request for meetings to be held at sites other than the seat of the Council (rule 5, Cases 7 and 8).

On one occasion, one of the few instances in which he invoked Article 99, the Secretary-General requested an urgent meeting of the Council under rule 3 of the provisional rules of procedure (Case 6). On another, a situation arose in which the Secretary-General, in requesting an urgent meeting of the Security Council, explicitly stated that he was not asking for a meeting under rule 3 of the provisional rules of procedure (Case 5).

There were no cases concerning the application of rule 4.

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

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

a. Rule 1

CASE 1

At the 847th meeting on 7 September 1959, in connexion with the report by the Secretary-General relating to Laos, the President (Italy) explained that his call for a meeting had been based on rule 1 of the provisional rules of procedure. It had followed a formal request by the Secretary-General and consultations with Council members. The representative of the USSR claimed that the applicable rule was not rule 1, but rules 2 and 3, which specified the conditions under which meetings of the Council were to be called. Rule 1 referred only to the intervals at which meetings of the Security Council were to be called.[1] The President repeated that his request had been based not on rule 2 or rule 3, but on rule 1,

> "... a rule which, in my opinion and according to my judgement, and to the literal interpretation of the rule, gives to the President of the Security Council complete discretion in calling meetings at any time he deems necessary. It is true that there is a second clause related to the interval between meetings, but that clearly is not intended

[1] For a further development of these arguments, see Cases under rules 6 (chapter II) and 22 (this chapter).

to imply a limitation of the powers of the President to call a meeting at any time he deems necessary."[2]

CASE 2

At the 911th meeting on 3/4 December 1960, in connexion with the admission of new Members, a revised provisional agenda was circulated which included as a second sub-item an application[3] on behalf of the Mongolian People's Republic. The President, speaking as the representative of the USSR, proposed that this sub-item be considered before the first sub-item, the application of the Republic of Mauritania. In support of his proposal, he referred to the fact that "the Mongolian People's Republic submitted its first application for admission to the United Nations over fourteen years ago" and cited a number of documents[4] in which that country had repeatedly raised the question of its admission to the United Nations.

In reply, the representative of Italy said: "... may I remind you, Mr. President, that it is the constant practice of the Chair to consult the members of the Council whenever a meeting is going to take place." He said, further, that although he did not wish to inject a personal note at that point, the President (USSR) should certainly remember that during the whole month of September, he had made considerable efforts to consult each and every member every time they were going to meet, on the three different subjects they had to debate. In conclusion, he added that on one occasion he went to

> "... considerable pains to try to accommodate everybody so that, knowing what was the subject of the agenda, we could properly meet at the right time. This is not a rule but it is a practice and I think it is a practice of courtesy which should prevail in our proceedings and for our deliberations."[5]

CASE 3

At the 973rd meeting on 13 November 1961, in connexion with the situation in the Republic of the Congo, the representative of the United States, after acknowledging the President's authority to call meetings whenever he deemed necessary, said that "... the practice has grown up over the years that the time for meetings is set only after adequate consultation between the President and the Council members" and observed that "While there was general consultation to the effect that there should be a Council meeting sometime this week, we, at least, were not consulted about the specific date for a meeting", although there had been ample time and opportunity for such consultations.

The President (USSR) explained that the day following receipt of a letter dated 3 November 1961 from the representatives of Ethiopia, Nigeria and the Sudan, he held consultations with the Acting Secretary-General which led him to the conclusion that the Council should be convened at a very early date; after further consultations with the representative of Ethiopia and with individual members of the Council, he thought that the meeting should be called for the middle of the following week, not later. He then requested the Secretariat to "sound" the members as to the possibility of convening the Council on 9 or 10 November. He added that, according to information given to him by the Secretariat, most members of the Council advocated that a meeting of the Council should not be called for 10 November but should be deferred to the beginning of the following week. By that time he had received a request from the representative of Belgium that the meeting should be held not on 10 November but on 13 November and this seemed agreeable to the representative of Ethiopia. With "both sides" favouring the meeting on 13 November, the President said, he thought it entirely reasonable to convene the Council on that date, and so informed all the members. He added that he would continue to consult all the members of the Council on the calling of meetings and he thought that all the members would co-operate.[6]

b. Rule 2

CASE 4

At the 1034th meeting on 7 May 1963, in connexion with the admission of new Members, when the application of Kuwait for membership in the United Nations was considered, the representative of Morocco commented on a statement of the representative of Iraq, who expressed his disappointment at the meeting of the Council being held contrary to the wishes of several directly concerned Members of the United Nations, including Morocco, which was also a member of the Council, and in departure from the practice of the Council of taking into consideration the views held by such Members in deciding the timing of meetings. He said that he had expressed in the preliminary consultations preceding the meeting his delegation's wish and that of other delegations, which he represented, that the meeting be postponed until a later date.

> "Usually, however, in the course of preliminary consultations a general trend of opinion makes itself felt, and it is because we are sensitive to this courteously expressed general trend that my delegation has decided that it would not be right to press for a postponement of this meeting."

He added that while members of the Council had given the request for postponement their sympathetic consideration, when a "certain trend of opinion" is

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[2] For texts of relevant statements, see:
847th meeting: President (Italy), paras. 5-8, 30; USSR, para. 20.
In a memorandum submitted later, the representative of the USSR noted that the way in which the question of Laos had been brought to the Council was illegal as no member of the Council had requested that the matter be brought before it. S/4222, O.R., 14th year, Suppl. for July-Sept. 1959, pp. 13-15, paras. 3, 4.

[3] Letter dated 3 December 1960 from the Deputy Permanent Representative of the USSR to the President of the Security Council (S/4569, O.R., 15th year, Suppl. for Oct.-Dec. 1960, p. 66).

[4] S/95, O.R. 1st year, Second Series, Suppl. No. 4; S/1035 and Add.1, ibid., 4th year, Suppl. for June 1949; S/3873 and Add.1, ibid., 12th year, Suppl. for July-Sept. 1957.

[5] For texts of relevant statements, see:
911th meeting: President (USSR), paras. 3-5; Italy, para. 31. See also chapter II, part II, Case 5.

[6] For texts of relevant statements, see:
973rd meeting: President (USSR), paras. 17-20; United States, para. 6.

detected in preliminary consultation "It is likewise a proof of courtesy to take it into account".[7]

c. Rule 3

CASE 5

In response to a letter[8] from the Foreign Minister of Laos requesting that an emergency force be dispatched to that country to halt an aggression involving elements from the Democratic Republic of Viet-Nam and that the Secretary-General take the appropriate procedural action, the Secretary-General by letter[9] dated 5 September 1959 requested that the President convene urgently the Security Council for the consideration of an item entitled:

> "Report by the Secretary-General on the letter received from the Minister for Foreign Affairs of the Royal Government of Laos, transmitted on 4 September 1959 by a note from the Permanent Mission of Laos to the United Nations."

At the 847th meeting on 7 September 1959, when the Council was considering the adoption of the agenda, the Secretary-General observed that his request for the meeting was

> "not based on the explicit rights granted to the Secretary-General under Article 99 of the Charter. If it had been so based, the Council, under rule 3 of the provisional rules of procedure, would not have been free to refuse the Secretary-General to address it—as it is now free to do—and it would have meant the inscription by the Secretary-General of a substantive issue on the agenda."

and this in turn would have involved a judgement of the facts for which, in the present situation, the Secretary-General did not have a sufficient basis.

He said he was instead basing his request on the practice which had developed over the years in the Council. According to that practice, the Secretary-General, when he requested it, was granted the floor to make such statements on subjects within the range of the responsibility of the Council as he considered necessary under the terms of his own responsibilities; in so doing he did not introduce formally on the agenda anything beyond his own wish to "report" to the Council.[10]

CASE 6

By letter dated 13 July 1960 requesting an urgent meeting of the Security Council, the Secretary-General informed the President that he wished to bring to the attention of the Council a matter which, in his opinion, "... may threaten the maintenance of international peace and security". He suggested that the meeting be called at 8.30 p.m. the same night to hear his report on a demand for United Nations action in relation to the Republic of the Congo.[11]

d. Rule 5

CASE 7

By telegram dated 8 September 1960,[12] the Prime Minister of the Republic of the Congo urged that, in order to give members of the Security Council an opportunity to see for themselves the situation existing in the Republic of the Congo as a result of the United Nations authorities' interference in the Congo's domestic problems, the Secretary-General "... agree to Leopoldville as the venue of the Security Council's next meeting, when the problem of the Congo [will] be taken up for the fifth time".

At the 896th meeting on 9/10 September 1960, the representative of the USSR introduced a draft resolution[13] in support of the Congo's request, suggesting, inter alia, that leading personalities of the Congo would find it difficult to attend meetings in New York since the situation in the country remained very complex and demanded the constant presence of the Head of Government and his aides.

> "It would therefore appear advisable for the Security Council—for the additional reason of helping the Government of the Congo to re-establish law and order in the country as soon as possible—to hold its meeting at Leopoldville, the capital of the Republic."

The representative of Argentina contended that while the provision which enabled the Council to travel to places where its work and its judgement could be more effective was a "very wholesome provision", if the Council "... were to go ahead now and act favourably on the Soviet proposal, its action would somehow be interpreted as an endorsement and confirmation of the terms" of the telegram of the Congo Government, "even though such may not have been the actual intention of the author of the proposal". The representative of Ceylon, on the other hand, while disagreeing with the language in which the telegram had been couched, observed that "... by accepting the draft resolution submitted by the representative of the Soviet Union, we are not subscribing to the wording of this telegram from the Prime Minister of the Republic of the Congo". The representative of the USSR then expressed his willingness to delete from the draft resolution everything that the representative of Argentina found disturbing, leaving only the portion which read:

> "The Security Council,
>
> "Decides, in accordance with Article 28 of the Charter of the United Nations, to hold immediately a special meeting of the Security Council on the question of the situation in the Congo at Leopoldville, the capital of that State."

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[7] For texts of relevant statements, see:
1034th meeting: Iraq," paras. 11–12; Morocco, paras. 20–21.

[8] S/4212, O.R., 14th year, Suppl. for July-Sept. 1959, pp. 7–8.

[9] S/4213, ibid., p. 8.

[10] For texts of relevant statements, see:
847th meeting: Secretary-General, paras. 11, 12. See also: Cases 1 and 17; chapter II, Case 1.

[11] S/4381, O.R., 15th year, Suppl. for July-Sept. 1960, p. 11.
Reference should also be made to letter dated 7 September 1960, by which the Secretary-General again requested a meeting of the Security Council for consideration of its fourth report on the question of the Congo (S/4488, ibid., p. 145).

[12] S/4486, O.R., 15th year, Suppl. for July-Sept. 1960, p. 145.

[13] S/4494, 896th meeting: para. 13.

After several representatives had expressed views both favouring and opposing the Soviet draft resolution, the representative of the United States reminded the Council that it had convened at the request of both the Secretary-General and the representative of Yugoslavia on a note of urgency but was now confronted with a suggestion that would further delay consideration of the substance of the matter. Besides, he concluded, "if we should decide to go [to Leopoldville] in the present circumstances, we would be casting serious doubt on the conduct of the United Nations operations in the Congo up to this point ..."[14]

Decision: *The draft resolution was rejected by 3 votes in favour to 6 against, with 2 abstentions.*[15]

CASE 8

At the 941st meeting on 20 February 1961, in connexion with the situation in the Republic of the Congo, the representative of Liberia submitted a draft resolution[16] to have the Council

"... hold its next sitting in the Congo, or in any nearby country upon the invitation of that Government, for the purpose of meeting the political leaders of the Congo with a view to establishing the United Nations prestige and authority as well as reaching some point of reconciliation in that turbulent country, the Congo".

The President (United Kingdom) suggested that the Council continue discussions of the draft resolutions which were already before it and take up the Liberian draft resolution after there had been time to study it.

At the close of the 942nd meeting on 20/21 February 1961, the President, after noting the suggestion of Liberia that a special meeting be called to discuss the possibility of a Council's visit to the Congo, declared that he would enter into consultations with other members of the Council with a view to calling such a meeting if that was the general desire.[17]

[14] For texts of relevant statements, see:
899th meeting: Argentina, paras. 36, 37, 39, 40; Ceylon, paras. 43, 44, 47, 48; China, paras. 51, 52; Poland, paras. 64, 67, 68; Tunisia, paras. 57, 60, 61; USSR, paras. 11, 12, 32, 34, 54; United States, paras. 71, 72.

[15] 899th meeting: para. 84.

[16] 941st meeting: para. 23.

[17] For texts of relevant statements, see:
941st meeting: President (United Kingdom), para. 25; Liberia, paras. 23, 24;
942nd meeting: President (United Kingdom), para. 247.

Part II

REPRESENTATION AND CREDENTIALS (RULES 13-17)

NOTE

Since 1948, the reports of the Secretary-General on the credentials of the representatives on the Security Council have been circulated to the delegations of all the Council members and, in the absence of a request that they be considered by the Council, have been considered approved without objection.

In one instance during the period under review, the question of the validity of the credentials of the representative of a Member State invited to participate in the discussions of the Council was raised. The discussion centered on three questions: (a) which of two communications referred to in the Secretary-General's letter could be considered as credentials of an officially appointed representative of the Government in question; (b) whether the authority to issue such credentials was vested in the Head of State or the Prime Minister of the Government concerned in a case where the real effectiveness of their exercise of authority was open to question; and (c) whether rule 39 was applicable in this regard.

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

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

Rules 13-17 in general

CASE 9

At the 899th meeting on 14 September 1960, in connexion with the situation in the Republic of the Congo,[18] the Security Council had before it a letter[19] of 11 September from the Secretary-General informing it of the receipt of two communications. The first, a cable from the Prime Minister of the Republic of the Congo, Mr. Lumumba, informed the Secretary-General that Minister Thomas Kanza had been designated as representative of the Central Government of the Republic of the Congo to attend the Council meetings. The second, a cable from the President of the Republic of the Congo, Mr. Kasavubu, informed the Secretary-General of the appointment of Mr. Bomboko, Minister for Foreign Affairs, as official delegate of the Republic of the Congo and asserted that no one else represented the "legal Government" of the Republic.

The representative of the USSR maintained that the Council was dealing with the Government of the Republic of the Congo, represented by the delegation sent by Prime Minister Lumumba, and considered that it was not possible to recognize any other delegation. The delegation referred to in Mr. Kasavubu's cable did not represent the Republic of the Congo and was not legitimate.

The representative of the United States observed that since there was no question concerning the identity of the Head of State of the Republic of the

[18] The agenda comprised the following documents:
S/4381, O.R., 15th year, Suppl. for July-Sept. 1960, p. 11.
S/4482 and Add.1-3, ibid., pp. 138-142.
S/4485, ibid., pp. 143-144.
S/4490, ibid., pp. 160-162.

[19] S/4504, ibid., p. 157.

Congo it was proper to look to the Head of State for authoritative information concerning the Government of the Congo. The President of the Republic of the Congo had given a perfectly clear expression on this and had informed the Council that Mr. Bomboko was the representative of the Congo. The representative of the United States added, however, that it would be argued that under the Council's rules credentials could be signed by the Prime Minister as well as the Chief of State and the Foreign Minister. He thought the Council should not delay discussions of the substance of the matter in order to argue the propriety of asking either or both of the delegations to participate. The United States was inclined to favour an agreement by the Council, on an informal basis, that for the time being neither delegation should be invited to the table.

The representative of Poland submitted that the question of representation was an artificial one since there was and, from the beginning, had been only one lawful Government in the country, the Central Government headed by Mr. Lumumba, to which the Council had promised assistance. Moreover, the governmental system in the Congo was a parliamentary one; the Prime Minister had repeatedly obtained votes of confidence from the Parliament. What more was needed to prove the lawfulness of his Government? The Council should proceed to invite to the Council table Mr. Kanza, the officially appointed representative of the Central Government of the Republic, who had, from the beginning of the conflict in the Congo, participated and spoken in the Council as a representative of his Government.

The representative of Argentina observed that the question of the legitimacy of the Government of the Congo was outside the competence of the Council, which had before it simply the question whether or not it was right and fitting to invite to the Council table one or both of the delegations claiming to represent the Government of the Congo. He continued:

> "For a State to obtain international recognition, it is axiomatic that only two conditions are required to be fulfilled: it must be able to exercise authority effectively and it must be in a position to fulfil its international obligations. It does not have to prove that it came into being legitimately in accordance with its national institutions."

Since the real effectiveness of the exercise of authority in the Congo was open to question and was not clearly established, the Council could not invite the participation of delegations which were not in a position to establish that at least one of the requirements was fulfilled.

At the 900th meeting on the same day, the representative of Poland stated that what he had submitted at the previous meeting was a formal proposal to invite to the Council table Mr. Kanza, the officially appointed representative of the Central Government of the Republic of the Congo.

The representative of the USSR supported the Polish proposal. He maintained that the question of the representation of the Republic of the Congo should not have given rise to the controversy because the Council throughout had dealt only with one Government, that from which it received a request for assistance. He further cited a letter from the Minister-Delegate to the President of the Security Council stating that both Legislative Chambers of the Republic of the Congo had given overwhelming support to the Prime Minister, Mr. Patrice Lumumba, and declared outlawed any other Central Government which might claim to exist in the Republic of the Congo. He believed this statement was of great importance to the Council in resolving this question. The representative of Ceylon, speaking in favour of the Polish proposal, observed that it was difficult to go into the question of the legitimate Government of the Congo. In any case, the Council should not reject the representative it had invited many times before to take part in its deliberations. The representative of China, on the other hand, opposed the Polish proposal. He thought it impossible at that moment to determine who constituted the Government of the Republic of the Congo, whether de facto or de jure. A decision of the kind proposed by the representative of Poland would prejudge that question and be tantamount to Security Council interference in the domestic affairs of the Republic of the Congo.

The representative of Argentina held the view that the Council must leave open the question of who was exercising lawful authority. In order that the representatives of the Congo could be heard, his delegation would not oppose a proposal to hear both delegations under rule 39 of the provisional rules of procedure, not as representatives but as persons whose opinions the Council wished to hear. The representative of Poland, however, contended that the question was not whether the Council should hear a person just arrived from the Congo to give the Council information for which only he would be responsible; the question to be decided was the representation of the Government of the Republic of the Congo.[20]

Decision: *At the 900th meeting on 14 September 1960, the Polish proposal was not adopted. There were 3 votes in favour, none against, with 8 abstentions.*[21]

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[20] For texts of relevant statements, see:

899th meeting: President (Italy), paras. 5, 21; Argentina, paras. 45-58; Poland, paras. 24, 26, 27, 34; USSR, paras. 8, 22; United States, paras. 10-14; Yugoslavia, paras. 17-45.

900th meeting: President (Italy), para. 52; Argentina, paras. 75-79, 81-82; Ceylon, paras. 71-73; China, paras. 65, 67; Poland, paras. 53-54, 86; USSR, paras. 57-58, 61-64.

[21] 900th meeting: para. 87.

Part III

PRESIDENCY (RULES 18-20)

NOTE

Part III of this chapter is confined to the proceedings of the Council relating directly to the office of the President. Material relevant to other aspects of the practice of the Council in relation to the exercise by the President of his functions under the rules of procedure is presented in part V of this chapter.

The functions of the President in connexion with the agenda are dealt with in chapter II.

The only case falling within the scope of rules 18-20 relates to the question of the temporary cession of the Chair (rule 20).

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

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

Rule 20

CASE 10

At the 912th meeting on 7 December 1960, in connexion with the situation in the Republic of the Congo, the provisional agenda read:

"2. Urgent measures in connexion with the latest events in the Congo:
Statement dated 6 December 1960 by the Government of the Union of Soviet Socialist Republics concerning the situation in the Congo (S/4573);
Note by the Secretary-General (S/4571)."[22/]

The representative of the United States, invoking rule 20 of the provisional rules of procedure of the Council, said that in view of the statement (S/4573) issued by the USSR delegation when requesting the meeting, it was hard to see how the representative of the USSR could preside over the Council. He suggested that the President disqualify himself under rule 20 of the provisional rules of procedure. The President (USSR) observed that since rule 20 dealt with the occupancy of the presidential chair during the Council's consideration of a particular question, a reply to the point raised by the representative of the United States would be premature until the agenda had been adopted. He then asked the members of the Council whether they had any objections to the adoption of the provisional agenda. The representative of the United States contended that since the language used in the statement by the USSR Government related to the item on the provisional agenda, the United States was justified in questioning the fairness and lack of prejudice of the presiding officer while the adoption of the agenda was being discussed. He therefore felt that his suggestion was in order and that, if rule 20 was to be considered in any way by the President, it should be considered before the discussion on the agenda.

Following the adoption of the agenda,[23/] the President, reverting to the point raised by the representative of the United States, observed:

"Let me draw your attention to two points. First, the question whether he should preside or not is left to the decision of the President. Secondly, the President can raise the matter and take his decision on it during the consideration of a particular question with which the State he represents is directly concerned. And in that event, under rule 20, '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.'"

The USSR was concerned with the latest events in the Congo in the same way as other members of the Security Council with an interest in strengthening peace in the Congo. Events in the Congo had absolutely nothing to do with the activities of the USSR Government; they were the result of the activities of other Governments, including that of the United States. He noted that during the Council's consideration of the Suez question in 1956, France had presided, although the question under discussion was directly connected with the activities of the French Government; yet the representative of the United States did not then question the propriety of having France preside. In the present case, however, there were absolutely no grounds for challenging the occupancy of the presidential chair by the representative of the USSR. The USSR Government had committed no act of aggression and had no direct part in any of the latest events in the Congo. The President, therefore, speaking as the representative of the USSR, saw no justification for altering his decision to preside over the Security Council. The President then declared that, on the basis of rule 20 of the provisional rules of procedure, as President of the Security Council, he saw no reason for altering his decision to preside over the meeting.

The representative of the United States did not press the matter further.[24/]

[22/] S/4571, O.R., 15th year, Suppl. for Oct.-Dec. 1960, pp. 67-73. S/4573, ibid., pp. 75-80.

[23/] For discussion of the phrasing of the item on the agenda, see chapter II, Case 9.

[24/] For texts of relevant statements, see:
912th meeting: President (USSR), paras. 1, 5, 11-13, 101-116, 122; Poland, para. 10; United States, paras. 3-4, 7-8, 16, 117-119.

Part IV

SECRETARIAT (RULES 21-26)

NOTE

Part IV relates to rules 21-26 of the provisional rules of procedure, which delineate the more specific functions and powers of the Secretary-General in connexion with the meetings of the Security Council.

Under rule 21 are included certain proceedings of the Council bearing upon these functions of the Secretary-General by virtue of their possible relationship to Article 98 of the Charter in so far as it provides that "the Secretary-General shall act in that

capacity in all meetings ... of the Security Council".[25]

Other proceedings are summarized under rule 22, empowering the Secretary-General to make "either oral or written statements to the Security Council concerning any question under consideration by it".

Those proceedings are divided into two categories:

(i) The first category contains proceedings[26] relating to the activities of the Secretary-General which appear to fall under Article 98 of the Charter in so far as it provides that the Secretary-General "shall perform such other functions as are entrusted to him" by the Security Council.[27]

(ii) In the second category are included proceedings[28] by virtue of their possible relationship to Article 99 of the Charter.

The statements of the Secretary-General included in the first category under rule 22 were made in connexion with the mandate conferred upon him by the Council to report or to implement specific decisions of the Security Council. In those instances[29] where the statements of the Secretary-General could be considered to have a bearing on those decisions, or vice versa, the decisions are referred to in a summarized form.

The views of the Secretary-General on the applicability and/or interpretation of specific Articles of the Charter are recorded in chapters X-XII of the present Supplement.

Within the period under review, the Security Council has authorized the Secretary-General to provide the Government of a Member State with necessary military assistance in consultation with the Government concerned;[30] to take necessary action concerning the withdrawal of military troops of one State from the territory of another;[31] to determine modalities for an immediate withdrawal of foreign troops from a defined territory of a State, and to implement a resolution of the Council;[32] to take vigorous action, including the use of the requisite measure of force, if necessary, for the apprehension, detention and deportation of all foreign military and paramilitary personnel, political advisers not under the United Nations Command, and mercenaries from the territory of a State and to take all necessary measures to prevent the entry or return of such elements, and also of arms, equipment or other material in support of secessionist activities.[33] In another instance the Secretary-General was requested by the Council to establish an observation operation called for by the terms of a "disengagement" agreement entered into by certain Member States.[34] In connexion with a question involving race conflict in a Member State, the Secretary-General was requested to make such arrangements, in consultation with the Government of that State, as would adequately help in upholding the purposes and principles of the Charter;[35] subsequently he was requested to establish under his direction a group of experts to examine methods of resolving the current situation in that State.[36] In another instance, in connexion with the situation in the territories under administration of a Member State, the Secretary-General was requested to ensure the implementation of the provisions of the resolution and to furnish such assistance as he might deem necessary.[37]

Under rule 23 is included a possible instance[38] of the Security Council's recourse to that rule in connexion with a mandate given to the Secretary-General under a resolution of the Council. In the report on the implementation of this resolution, and in the course of further discussion in the Council, an indication was given of the role of the Secretary-General in initiating contacts between the parties, and in the "conversations" or "negotiations" that ensued.

Under rule 24, the Secretary-General has provided the required staff to service the meetings of the Council, as well as the commissions and subsidiary organs, both at Headquarters and in the field. This rule might be considered as relevant also in connexion with the provision by the Secretary-General of civilian and military personnel for the United Nations Operation in the Congo, including the United Nations Force in the Congo, and for the observation operation in Yemen.

Under rule 26, the Secretary-General prepared documents for consideration by the Council and distributed them, except in urgent circumstances, at least forty-eight hours in advance of the meeting at which they were to be discussed.[39]

The material included in this part of the Repertoire is only a selection determined by the fact that the Repertoire "constitutes essentially a guide to the proceedings of the Council".[40]

25/ Cases 11-17. Not included are instances when the Secretary-General performed functions of a routine nature, such as drawing the attention of the Council to a certain communication (904th meeting, para. 73); stating that a report could not yet be circulated (913th meeting, paras. 12-14); informing the Council about a communication received (914th meeting, para. 7); announcing when a report will be circulated (915th meeting, paras. 149-151, 169); reading a communication (920th meeting, paras. 3, 4); or stating that communications would be distributed immediately (976th meeting, para. 116).

26/ Cases 18-43.

27/ Article 98 provides that the Secretary-General "shall perform such other functions as are entrusted to him" by the General Assembly, the Security Council, the Economic and Social Council and the Trusteeship Council.

28/ Cases 44-51.

29/ Cases 12, 23, 29, 36.

30/ Resolutions S/4387, operative paragraph 2, and S/4426, operative paragraph 1 (O.R., 15th year, Suppl. for July-Sept. 1960, pp. 16, 92).

31/ Resolutions S/4405, operative paragraph 1, and S/4426, operative paragraph 1 (ibid., pp. 34, 92).

32/ Resolution S/4426, operative paragraphs 2, 6 (ibid., p. 92).

33/ Resolution S/5002, operative paragraphs 4, 5 (O.R., 16th year, Suppl. for Oct.-Dec. 1961, p. 149).

34/ Resolution S/5331, operative paragraph 1 (O.R., 18th year, Suppl. for April-June 1963, p. 53).

35/ Resolution S/4300, operative paragraph 5 (O.R., 15th year, Suppl. for April-June 1960, p. 2).

36/ Resolution S/5471, operative paragraph 6 (O.R., 18th year, Suppl. for Oct.-Dec. 1963, p. 103).

37/ Resolution S/5380 (O.R., 18th year, Suppl. for July-Sept. 1963, pp. 63-64), and resolution S/5481 (O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 110-111).

38/ Case 52.

39/ For a statement of the Secretary-General outlining criteria for the circulation of documents, see chapter II, Note, p. 39.

40/ Repertoire, 1946-1951, p. 1.

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

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

a. Rule 21

CASE 11

At the 896th meeting on 9/10 September 1960, in connexion with the situation in the Republic of the Congo, the representatives of the USSR and of Ceylon, commenting upon the telegram[41] from the Prime Minister of the Republic of the Congo urging the Secretary-General to agree to Leopoldville as the place for the next meeting of the Security Council, pointed out that no representatives of the Republic of the Congo were present at the Council's meeting.

The Secretary-General observed:

"One or two speakers have mentioned that it is regrettable that there is no representative of the Congo here present. I should like to inform the members of the Security Council that, by letter of 22 August to the Foreign Minister, I invited the Government to station here in New York a liaison officer who could maintain contact with the Secretariat and with the Advisory Committee. By letter of 27 August I repeated and amplified this invitation. So far I have not received any reply."[42]

CASE 12

At the 933rd meeting on 13 February 1961, in connexion with the situation in the Republic of the Congo, the Secretary-General stated that he had received information from Elisabethville of such a character as to render necessary a full and impartial investigation and requested that the report[43] of his Special Representative in the Congo regarding Mr. Lumumba be added to the agenda.

At the 934th meeting on 15 February 1961, the representative of the USSR submitted a draft resolution[44] providing:

"The Security Council,

"...

"5. Deems it essential to dismiss Dag Hammarskjöld from the post of the Secretary-General of the United Nations as a participant in and organizer of the violence committed against the leading statesmen of the Republic of the Congo."

At the 935th meeting on 15 February 1961, the Secretary-General quoted the statement[45] by Mr. Khrushchev in the General Assembly on 3 October 1960 and his reply[46] to Mr. Khrushchev, and stated:

"What I thus said in reply to Chairman Khrushchev I can restate today. And so as to leave no ambiguity, I want to point out that in line with what I stated[47] during the Suez crisis, I would consider the withdrawal of the confidence of one of the permanent members of the Security Council as a reason why the Secretary-General should resign, were it not for the fact that in this case the Soviet Union, while refusing its confidence to the Secretary-General, has at the same time taken a stand which makes it absolutely clear that, were the present Secretary-General to resign, no new Secretary-General could be appointed, and the world would have to bow to the wish of the Soviet Union to have this Organization, on its executive side, run by a triumvirate which could not function and which most definitely would not provide the instrument for all the uncommitted countries of which they are in need.

"... Whatever the Members of this Organization may decide on the subject will, naturally, be my law.

"I said in the intervention in the General Assembly to which I have referred that I deplored that the attitude of the Soviet Union had tended to personalize an issue which, in fact, concerns an institution. In doing so again, the Soviet Union has again forced me to speak about my own attitude. I regret that I have had to do so, as the issue remains one concerning the institution and not the man. And I regret it even more in a situation in which much more is at stake than this or that organization of the United Nations or this or that organ of the United Nations. Indeed, the United Nations has never been and will never be more than an instrument for Member Governments in their effort to pave the way towards orderly and peaceful co-existence. It is not the man, it is not even the institution, it

41/ S/4486, O.R., 15th year, Suppl. for July-Sept. 1960, p. 145.

42/ For texts of relevant statements, see:

896th meeting: Ceylon, para. 46, USSR, para. 33, Secretary-General, para. 49.

For the statements of the Secretary-General, see also Cases 27, 28 and 29. For the consideration of the provisions of Article 2 (7), see chapter XII, Case 13, for the consideration of the provisions of Articles 25 and 49, see chapter XII, Case 23, and chapter XI, part IV, Note.

43/ S/4688 and Add.1, O.R., 16th year, Suppl. for Jan.-Mar. 1961, pp. 88-97.

44/ S/4700, 934th meeting: para. 112.

45/ "... I should like to repeat: we do not, and cannot, place confidence in Mr. Hammarskjold. If he himself cannot muster the courage to resign in, let us say, a chivalrous way, we shall draw the inevitable conclusions from the situation" (Fifteenth Session (Part I), Plenary Meetings, vol. I, 882nd meeting: para. 30).

46/ "I said the other day that I would not wish to continue to serve as Secretary-General one day longer than such continued service was considered to be in the best interests of the Organization. The statement this morning seems to indicate that the Soviet Union finds it impossible to work with the present Secretary-General. This may seem to provide a strong reason why I should resign. However, the Soviet Union has also made it clear that if the present Secretary-General were to resign now, it would not wish to elect a new incumbent but insist on an arrangement which—and this is my firm conviction based on broad experience—would make it impossible to maintain an effective executive. By resigning I would, therefore, at the present difficult and dangerous juncture throw the Organization to the winds. I have no right to do so because I have a responsibility to all those Member States for which the Organization is of decisive importance—a responsibility which overrides all other considerations." (Ibid., 883rd meeting: para. 10.)

47/ For the statements of the Secretary-General at the 751st meeting on 31 October 1956 and the 754th meeting on 4 November 1956, see Repertoire, Supplement 1956-1958, chapter I, Cases 12 and 13.

is that very effort that has now come under attack . . ."[48]

At the 942nd meeting on 20/21 February 1961, the USSR draft resolution was rejected by 1 vote in favour to 8 against, with 2 abstentions.[49]

CASE 13

At the 982nd meeting on 24 November 1961, in connexion with the situation in the Republic of the Congo, the Acting Secretary-General stated:[50]

"I must . . . say, without opening up any new debates or entering into a defence of the United Nations Secretariat—for I think it needs none—that I welcome constructive criticism of the Secretariat and that I will be the first to admit its faults and errors and try to do all possible to correct them. Without specific reference to persons or events and without admitting any particular charge, I would grant that mistakes have undoubtedly been made in the Congo; no operation of that scope and complexity could be free of them. But to allege discrimination is quite a different matter, for it is a harsh and ugly charge. I am sorry that it has been made at all, and especially that it should be done publicly without any prior reference to me. I do not think that that charge is justified."

CASE 14

At the 1057th meeting on 23 August 1963, in connexion with the Palestine question,[51] after the representatives of Israel and Syria had made their introductory statements, the Secretary-General said[52] that he was "deeply concerned about the new troubles that have arisen in a long-troubled area" and that he would submit to the Council a report from the Chief of Staff of the United Nations Truce Supervision Organization in Palestine on the investigation made by the UNTSO Observers in the incidents referred to in the complaints of the two parties.

CASE 15

At the 1058th meeting on 28 August 1963, in connexion with the Palestine question, the Secretary-General, referring to his statement made at the 1057th meeting, said[53] that in general the cease-fire was being observed and that the Chief of Staff had informed him of the completion on 26 August of the inspection visits to the defensive areas and the demilitarized zone. The purpose of the inspection

"was to determine whether or not either party had developed a concentration of troops, equipment and weapons in the areas concerned. No evidence of a military build-up on either side was found in the demilitarized zone nor of any build-up or concentration by either side in the defensive areas in excess of the military strength permissible under the Israel-Syrian General Armistice Agreement."

CASE 16

At the 1063rd meeting on 3 September 1963, in connexion with the Palestine question, the representative of Morocco stated that it would be useful for the Security Council if the Secretary-General were to instruct the Chief of Staff of the United Nations Truce Supervision Organization in Palestine to prepare a report describing in detail how far the Armistice Agreements were being applied along the demarcation lines and in all the demilitarized zones, and how far the Armistice had been observed by the parties concerned.

The Secretary-General stated:

"I have listened carefully to the request just made by the representative of Morocco. If my understanding is correct, he proposes a report on the actual status, and state of observance by the parties concerned, of the Armistice Agreements. I take note with satisfaction that it is an entirely factual, and not a political, report that is sought. I will, of course, on the assumption that there is no objection by this Council, ask the Chief of Staff of UNTSO to have such a report prepared and submitted to me for transmission by me to this Council. In view of the fact that General Bull and his colleagues have much daily work to do, and that the preparation of such a report is a time-consuming work, I would not wish to promise submission of the report to the Council in less than two months."

The representative of the United States observed that he would not consider the proposal of the representative of Morocco and the Secretary-General's statement "in any sense binding on the Council" and would study the proposal as soon as it was issued in writing.[54]

CASE 17

At the 847th meeting on 7 September 1959, the Security Council had before it the following provisional agenda:

"Report by the Secretary-General on the letter received from the Minister for Foreign Affairs of the Royal Government of Laos, transmitted by a note from the Permanent Mission of Laos to the United Nations, 4 September 1959 (S/4212, S/4213, S/4214)."

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[48] *For texts of relevant statements, see:*
933rd meeting: Secretary-General, paras. 2, 4;
935th meeting: Secretary-General, paras. 17-22.
For the statement of the Secretary-General, see also Cases 39 and 40; in connexion with the limitations of the powers of the United Nations Force with regard to the use of force, see chapter V, Case 2 (vi); for the consideration of the provisions of Article 2 (7), see chapter XII, Case 15.

[49] 942nd meeting: para. 89.

[50] 982nd meeting: para. 109. For the statement of the Acting Secretary-General, see also Case 41; in connexion with the limitations of the powers of the United Nations Force with regard to the use of force, see chapter V, Case 2 (vii), in connexion with his authorization in oper. paras. 4 and 5 of resolution S/5002, see chapter VIII, p. 183.

[51] The item consisted, under sub-item (a) of letters dated 20 and 21 August 1963 from the acting Permanent Representative of Israel (S/5394, S/5396) and, under sub-item (b) of a letter dated 21 August 1963 from the Permanent Representative of the Syrian Arab Republic (S/5395).

[52] 1057th meeting, para. 71.

[53] 1058th meeting, paras. 3-4.

[54] *For texts of relevant statements, see:*
1063rd meeting: Morocco, para. 72; United States, para. 100; Secretary-General, para. 78.

Before proceeding to the adoption of the agenda, the President (Italy) called upon the Secretary-General to make an explanatory statement.

In his statement the Secretary-General said:[55]

"In asking for the inscription on the agenda of the item entitled 'Report by the Secretary-General on the letter received from the Minister for Foreign Affairs of the Royal Government of Laos, transmitted by a note from the Permanent Mission of Laos to the United Nations, 4 September 1959,' I have based my action on a practice which has developed over the years in the Security Council. According to this practice, the Secretary-General, when he requests it, is granted the floor in the Council in order to make such statements on subjects within the range of the responsibility of the Council as he considers called for under the terms of his own responsibilities. Just as the Secretary-General can ask for, and is granted the floor in the Council, I feel that he is entitled to request an opportunity to address the Council publicly on a matter which he considers necessary personally to put before the Council. In doing so within the framework to which I have just referred, the Secretary-General does not introduce formally on the agenda of the Council anything beyond his own wish to report to the Council. Naturally, the Council retains the same rights in relation to such initiative of the Secretary-General as it has regarding any request of his to address the Council.

"What I said should be enough to clarify the constitutional situation when, in this case, I have asked for an opportunity to report to the Council. It should, thus, be clear that the request is not based on the explicit rights granted to the Secretary-General under Article 99 of the Charter. If it had been so based, the Council, under rule 3 of the provisional rules of procedure, would not have been free to refuse the Secretary-General to address it—as it is now free to do—and it would have meant the inscription by the Secretary-General of a substantive issue on the agenda. In this latter respect it would necessarily also have involved a judgement as to facts for which, in the present situation, I have not a sufficient basis."

Subsequently, in reply to an intervention by the representative of the USSR, who quoted rule 22 of the provisional rules of procedure and said that the question proposed to be dealt with by the Council was not yet under consideration and consequently rule 22 was not fully applicable to the case, the Secretary-General stated: "As I think it is clear from my initial statement, I do not request the right to make a statement to the Security Council until and unless the Security Council has decided to take up the question I have raised for consideration."[56]

[55] 847th meeting: paras. 11, 12. See also Case 5, and chapter II, Case 1.

[56] For texts of relevant statements see:
847th meeting: USSR, para. 19, Secretary-General, para. 26.

b. (i) Rule 22

CASE 18

At the 847th meeting on 7 September 1959, in connexion with the report by the Secretary-General relating to Laos, after the adoption of the agenda, the Secretary-General made a statement in which he said[57] that in order to meet the demand of the Government of Laos to apply the appropriate procedure to the request for the dispatch of an emergency force to Laos, he had to report to the Council for such considerations and initiatives as the Council might find called for, and continued:

"I have found that this could not be done simply by circulating the letter to the Secretary-General as a Security Council document, but that I should, to the information thus given to the members of the Council, add orally the information regarding my previous contacts with the question, which I have now put before you.

"I have, in the best form available to me, briefed the Council on those aspects of the question which have been and are within the purview of the Secretary-General, thus enabling the Council to consider what should be its approach to the problem which has arisen for the United Nations, and to do so with as complete knowledge of it as I can provide."

CASE 19

At the 877th meeting on 20/21 July 1960, in connexion with the situation in the Republic of the Congo, the Secretary-General stated[58] that, although the Council had not authorized or requested him to take specific steps for the implementation of withdrawal, his representatives in the Congo had taken the initiative for the co-ordination of the implementation of the Council's decision on the United Nations Force with the implementation of its decision on withdrawal. Although he did not consider it necessary, the Council might find it useful to clarify his mandate on this point.

At the 879th meeting on 21/22 July 1960, the Security Council adopted a resolution[59] whereby it called upon the Government of Belgium "... to implement speedily the Security Council resolution of 14 July 1960 on the withdrawal of its troops and authorizes the Secretary-General to take all necessary action to this effect" (oper. para. 1).

CASE 20

At the 877th meeting on 20/21 July 1960, in connexion with the situation in the Republic of the Congo, the Secretary-General stated:[60]

[57] 847th meeting: paras. 54, 55. For the rest of the statement, see chapter VIII, p. 155.

[58] 877th meeting: para. 18. For the statement of the Secretary-General, see also Case 20; in connexion with the definition of the area of operation of the United Nations Force, see chapter V, Case 2; in connexion with the limitations of the powers of the United Nations Force with regard to the principle of non-intervention in domestic matters, see chapter V, Case 2 (i).

[59] S/4405, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 34-35.

[60] 877th meeting: para. 19.

"Through the decision of the Security Council of last Wednesday, the United Nations has embarked on its biggest single effort under United Nations colours, organized and directed by the United Nations itself. I already had reason to pay a tribute to Member Governments for what they have done to render the task of the Organization possible. May I say here and now that I will have—as a spokesman for the Security Council and on behalf of the United Nations—to ask for much, much more from Member nations, in the military field as well as in the civilian field. There should not be any hesitation, because we are at a turn of the road where our attitude will be of decisive significance, I believe, not only for the future of this Organization, but also for the future of Africa. And Africa may well, in present circumstances, mean the world. I know these are very strong words, but I hope that this Council and the Members of this Organization know that I do not use strong words unless they are supported by strong convictions."

CASE 21

At the 884th meeting on 8 August 1960, in connexion with the situation in the Republic of the Congo, the Secretary-General stated [1] that "what temporarily may appear as a deadlock" required the consideration of the Council. The Central Government had shown great impatience and distrust and it did not help the United Nations effort if it had to live under a threat of any one, or more, contributing Governments breaking away from the United Nations Force and pursuing unilateral policies. These were the main difficulties encountered by the United Nations in the Congo. However, it was necessary that this effort be carried to a successful conclusion. In his second report[2] the Secretary-General had given his views as to the direction in which the Council might take useful action:

"The Council should, for the sake of clarity, reaffirm its aims and demands as stated in the previous resolutions. It may wish to clarify its views on the methods to be used and on the time-limits which should be our target. It may also wish to state explicitly what so far has been only implied . . that its resolutions apply fully and in all parts also to Katanga. It should . . . request the immediate and active support by all Member Governments, no one excluded. It should also find its way to formulate principles for the United Nations presence, which, in accordance with the Purposes and Principles of the Charter, would safeguard democratic rights and protect the spokesmen of all different political views within the large entity of the Congo so as to make it possible for them to make their voice heard in democratic forms . . ."

Thus, the Secretary-General envisaged a result which guaranteed the speedy and complete withdrawal of the Belgian troops and through which the basic unity of the whole Congo was made manifest in the presence of the United Nations all over its territory. It was in accordance with the intentions of the Council that everywhere in the Congo the withdrawal of Belgian troops should be immediately followed, or even preceded, by the entry of the United Nations troops, shouldering the responsibility for the maintenance of security and order. So it had been everywhere outside Katanga, where

"this principle has led to the development of a vicious circle. The entry of the United Nations troops is obstructed and, correspondingly, the withdrawal of the Belgian troops is rendered impossible if the principle is to be maintained that, at the withdrawal, the responsibility for security must be taken over at once by United Nations troops. However, the opposition to the United Nations is raised in the shadow of the continued presence of the Belgian troops."

This vicious circle had to be broken and further delays in the entry of United Nations troops, due to armed opposition, could not any longer be permitted to delay the withdrawal of the Belgian troops. The initiative lay with the members of the Council and the Council itself.

CASE 22

At the 884th meeting on 8 August 1960, in connexion with the situation in the Republic of the Congo, the Secretary-General called for a successful conclusion to the United Nations effort in the Congo. He stated: [1]

"By a 'successful conclusion' I mean a conclusion preserving the unity of the Congo people, while protecting the democratic rights of everybody to let his influence bear, in democratic forms, on the final constitution for the Republic to be determined only by the Congolese people themselves.

"I further mean by that term the speediest possible withdrawal of Belgian troops in accordance with the Security Council resolutions, as the presence of those troops now is the main cause of continued danger, a withdrawal that must be complete and unconditional; once the end in this respect is definitely in hand—and that should be possible immediately—methods and time-tables are practical matters which must be considered in the light of, for example, the fact that a Congolese population of some 15,000 depends economically on the Kamina base and that, therefore, with the return of Belgian troops from the base to Belgium, immediate arrangements must be made by the United Nations for the maintenance of this big population.

"Finally, I mean by a satisfactory solution one which will permit the Congolese people to choose freely its political orientation in our world of today, independent of any foreign elements the presence and role of which would mean that through the Congo we might get conflicts extraneous to the African world introduced on the continent."

[1] 884th meeting: paras. 10, 14–17, 27–31, 34. For the statement of the Secretary-General, see also cases 29 and 45; in connexion with the definition of the area of operation of the United Nations Force, see chapter V, case 2; in connexion with the limitations of the powers of the United Nations Force with regard to the use of force, see chapter V, case 2 (iii); for the consideration of the provisions of Articles 25 and 49, see chapter XII, case 21, and chapter XI, part IV, Note.

[2] S/4417, O.R., 15th year, Suppl. for July–Sept. 1960, pp. 45–53.

[1] 884th meeting: paras. 18–20.

CASE 23

At the 885th meeting on 8 August 1960, in connexion with the situation in the Republic of the Congo, the representative of the USSR stated that, according to the second report of the Secretary-General on the implementation of Security Council resolutions S/4387 of 14 July 1960 and S/4405 of 22 July 1960,[64] the Command of the United Nations Force had refrained from sending its troops into Katanga. He stated further that it appeared that the question of sending troops into Katanga was not to be decided by the Central Government of the Congo in conjunction with the Secretary-General as required by the Security Council resolutions but by "the Belgian aggressor through its puppet" Tshombé. In the event of failure by the Command of the United Nations Force in the Congo to abide by the Security Council's decision to act in consultation with the Central Government of the Republic of the Congo and to provide it with necessary military assistance, the Command should be replaced by a new one which would carry out honestly the obligations laid upon it by the Security Council's decisions.

The Secretary-General in his reply expressed the belief that the statement of the representative of the USSR with regard to the first point was based on a misunderstanding and stated:

> "The order to stop the entry of the United Nations forces into Katanga was given by me, not by the Command, as the Command is under instructions of the Secretary-General acting on the authority of the Security Council. The Command would have taken any kind of order which I gave. I have reported the matter in my report to the Security Council and I would shoulder, naturally, full responsibility if the Security Council were to find that my order was wrong."

The Secretary-General stated further that the limits to his authority were found in his first report, which had been commended by the Security Council with the concurring vote of the Soviet delegation. He did not remember having heard any objection to his interpretation of the status, functions and competence of the Force.[65] He stated further that the Force should assist the Central Government in the maintenance of order, but not as a political instrument. That had never been the intention and went against the very principle on which the Force had been established.[66]

At the 886th meeting on 8/9 August 1960, the Security Council adopted a resolution[67] wherein, having noted the second report of the Secretary-General on the implementation of the resolutions of 14 and 22 July 1960 and his statement before the Council (preamble, second para.), it (a) confirmed the authority given to the Secretary-General by the Security Council resolutions of 14 July and 22 July 1960 and requested him to continue to carry out the responsibility placed on him thereby; and (b) reaffirmed that the United Nations Force in the Congo "will not be a party to or in any way intervene in or be used to influence the outcome of any internal conflict, constitutional or otherwise" (oper. paras. 1, 4).

CASE 24

At the 887th meeting on 21 August 1960, in connexion with the situation in the Republic of the Congo, the Secretary-General stated[68] that during his first visit to Leopoldville the Council of Ministers had preferred that the contact of the United Nations with Mr. Tshombé be established not by the Secretary-General but by his personal representative.[69] Thus, the question of the United Nations contact with Mr. Tshombé, which had been recognized as desirable,

> "... was then regarded as a question of form and presentation. The question arose in this form, if I understood the situation correctly, in large part because of the ambiguity regarding Katanga which still might be said to be found in the resolutions of the Security Council."

During the discussion[70] on the Katanga problem after the failure of the mission of the Secretary-General, the words "vicious circle" had been used. To break the "vicious circle" two things had been necessary: the first one was not to separate the civilian approach from the military one; the second was to make the civilian approach on a level where the full weight of the United Nations had been brought to bear on the issue, this "irrespective of any objections as to the form". An approach of this type had been facilitated by the fact that the resolution of 9 August 1960[71] had eliminated all ambiguity and that, therefore, no question of presentation should any longer exist in the way which had hampered the United Nations at the previous stage. The Secretary-General had felt that he had had to try to achieve a speedy withdrawal of Belgian troops by staging a break-through for the United Nations Force into Katanga with token units accompanying him personally. The approach had worked and, currently, the resolu-

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64/ S/4417, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 45-53.

65/ See chapter V, Cases 2 (i) and 2 (iii).

66/ For texts of relevant statements, see:

855th meeting: USSR, paras. 93, 97, 119. Secretary-General, paras. 122, 123, 126-128, 130.

For the statement of the Secretary-General in connexion with the limitations of the powers of the United Nations Force with regard to the use of force, see chapter V, Case 2 (iii); in connexion with a proposal concerning the establishment of a group of observers in the Congo, see chapter V, Case 6 and chapter XI, Case 4.

67/ S/4426, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 91-92.

68/ 887th meeting: paras. 14-22. For the statement of the Secretary-General, see also Cases 25, 26 and 46; in connexion with the limitations of the powers of the United Nations Force with regard to the principle of non-intervention in domestic affairs, see chapter V, Case 2 (ii); with regard to the use of force, see chapter V, Case 2 (iii); in connexion with a proposal concerning the establishment of a group of observers in the Congo, see chapter V, Case 6; in connexion with the legal status of the Kamina and Kitona bases, see chapter XI, part I, Note.

69/ In his letter dated 14 August 1960 to the Secretary-General, the Prime Minister of the Republic of the Congo stated that the Secretary-General had dealt with the rebel government of Katanga in violation of the Security Council's resolution of 14 July 1960 which did not permit him to deal with the local authorities until after he had consulted with the Central Government of the Congo. The Secretary-General was acting as though the Central Government, which was the repository of legal authority and was alone qualified to deal with the United Nations, had not existed. S/4417/Add.7, document II, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 71-73.

70/ 886th meeting: para. 95.

71/ S/4426, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 91-92.

tion of the Council was being "fully implemented in Katanga".

CASE 25

At the 887th meeting on 21 August 1960, in connexion with the situation in the Republic of the Congo, the Secretary-General pointed out that the actions and attitudes of the United Nations and, in particular, of the Secretary-General had come "under severe criticism" from the Prime Minister of the Congo[72] and stated:[73]

> "In order to carry out my mandate, I have been forced to act with great firmness in relation to many parties. One of them has been the Central Government itself. . . . I do not excuse myself for having stated clearly the principles of the Charter and for having acted independently on this basis, mindful of the dignity of the Organisation—and to have done so whether it suited all those we are trying to help or not. Nor have I forgotten that the ultimate purpose of the United Nations services to the Congo is to protect international peace and security and that, to the extent that the difficulties facing the Republic are not of a nature to endanger international peace, they are not of our concern."

CASE 26

At the 887th meeting on 21 August 1960, in connexion with the situation in the Republic of the Congo, the Secretary-General, reporting on the withdrawal of Belgian troops, stated[74] that before the break-through into Katanga, all Belgian troops had been withdrawn from the five other provinces of the Congo, except for the Kitona base. In Katanga, they had been reduced from 8,600 to 3,600, including 1,000 technicians essential to civilian activities in Kamina. The Secretary-General had received the formal assurance of the Belgian Government of the completion of the withdrawal of all its combat troops within, at the most, eight days. Thus, this question could be regarded as definitely resolved. Some delay in the evacuation from Kamina and Kitona of non-combatant personnel would result from the United Nations responsibility of assisting the country in the maintenance of the substantial Congolese population fully dependent on the bases for the security of their work and income. The United Nations should, however, ensure that the bases would not be used and that the personnel retained would not engage in political activities and that there would be no interference in the internal affairs of the State.

CASE 27

At the 896th meeting on 9/10 September 1960, in connexion with the situation in the Republic of the Congo, the Secretary-General introduced his fourth report[75] on the implementation of Security Council resolutions S/4387 of 14 July 1960, S/4405 of 22 July 1960 and S/4426 of 9 August 1960. He stated[76] that on 5 September 1960 the Head of State had revoked the mandate of Prime Minister Lumumba and had charged the President of the Senate with the task of forming a new Cabinet, while the Prime Minister had dismissed the Head of State on the grounds that he had acted illegally. In this situation the instructions to the United Nations representatives in the Congo had been ". . . to avoid any action by which, directly or indirectly, openly or by implication, they would pass judgement on the stand taken by either one of the parties in the conflict". They had had to act "on their own responsibility, within their general mandate, in order to meet the emergency which they were facing". In that situation, "as an emergency measure under the mandate, for the maintenance of law and order", the United Nations representatives had closed the radio station and the airports for all but United Nations operations in order that "the United Nations would be able to operate in fulfilment of its mandate, whatever happened".

> "The two far-reaching steps of an emergency nature which were taken by the United Nations representatives were . . . not preceded by a consultation with the authorities. Nor could they have been. But further, they were not preceded by any reference of the matter to me, because of the extreme urgency of the problem our people were facing on the spot . . .
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> "As I said, I was not consulted, but I fully endorse the action taken and I have not seen any reason so far to revise the decisions of my representatives. Naturally, I assume full personal responsibility for what has been done on my behalf, and I do it convinced of the wisdom of the actions and of their complete accordance with the spirit and the letter of the Security Council decisions, adjusted to a situation of unique complication and, of course, utterly unforeseeable when the resolutions of the Council were adopted.
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> "It was my hope, after the votes taken in the House of Representatives and in the Senate, and with the resulting pressure for a reconciliation of differences and a compromise solution, that matters

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72/ See: Letter dated 14 August 1960 and letters dated 15 August 1960 from the Prime Minister of the Republic of the Congo to the Secretary-General, S/4417/Add.7, documents II, IV, VI, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 71-76.

73/ 887th meeting: paras. 8, 11.

74/ 887th meeting: paras. 27-30. In connexion with the withdrawal of Belgian troops, see also the statement of the Secretary-General at the 888th meeting, para. 89; in connexion with the question of the Kamina and Kitona bases, see 887th meeting, para. 31.

75/ In the report the Secretary-General requested the establishment, within the United Nations, of an international account for contributions by States willing to help in the restoration of economic life in the Congo, this financial assistance to be channelled through the United Nations. He also requested that the Council urge the parties concerned within the Congo to seek by peaceful means a solution to their internal problems, and appealed for the reaffirmation by the Council of its request to all states to refrain from any action which might tend to impede the restoration of law and order or to aggravate the differences. The Secretary-General appealed further for a clarification of the mandate of the United Nations Force, special emphasis to be placed on the interests of all to assist towards a peaceful solution of the conflicts without further disruption and threats to civilian life, secondly, emphasis was to be put on the protection of the lives of the civilian population, which might necessitate the temporary disarming of those military units which were obstacles to the re-establishment of law and order. S/4482, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 135-139.

76/ 896th meeting: paras. 83-98. For the statements of the Secretary-General, see also Cases 11, 28 and 29; for the consideration of the provisions of Article 2 (7), see chapter XII, Case 14; for the consideration of the provisions of Articles 25 and 49, see chapter XII, Case 23 and chapter XI, part IV, Note.

would become stabilized and that, therefore, the two steps by the United Nations . . . could be cancelled, and that thus the airports and the radio station could have been opened without delay. However, the situation remains such that I feel that I have to submit the question of the closing of the airports and the closing of the national radio to the Security Council for its consideration and instruction. . . ." [77]

CASE 28

At the 896th meeting on 9/10 September 1960, in connexion with the situation in the Republic of the Congo, the Secretary-General referred to difficulties in implementing the wish of the Security Council that, in fulfilment of its mandate, the Secretary-General should act in consultation with the Central Government, and stated[78] that in the United Nations there were rich experiences of such consultations in all parts of the world and for all purposes within the sphere of its responsibilities. So far any difficulties in consultations had been easily overcome. When the matter had been arranged with a responsible minister, the government had honoured its word.

"Or when we had helped responsible ministers to favourable results in a negotiation, we were not accused of plotting against the government. . . . When we had, correctly, informed the Foreign Minister about our moves, we were not said to have neglected the government . . . while we had to wait for reactions on which we could build, life did not stand still and urgent action . . . finally had to be taken—in the very interest of those for whose support we had appealed in vain."

CASE 29

At the 896th meeting on 9/10 September 1960, in connexion with the situation in the Republic of the Congo, the Secretary-General stated[79] that, as regards the authorities in Katanga, he had in important cases not been able to enforce the rules flowing from the general obligations of the United Nations in the Congo.

The Secretary-General referred further to actions by the personnel of the Armée nationale congolaise in the Kasai region, which involved a most flagrant violation of elementary human rights and had the characteristics of the crime of genocide, since they appeared to be directed towards the extermination of a specific ethnic group, the Balubas, and asked whether it should be supposed that the duty of the United Nations to observe strict neutrality in the domestic conflicts and to assist the Central Government meant that the United Nations could not take action in such cases.

As regards the situation in Katanga, the Secretary-General said that he had to protest against the import of arms, contrary to the Security Council resolutions, and deplored the continued use of foreign elements in the forces organized in Katanga. However, the Belgians were not alone in supplying assistance to Katanga. Others also followed a similar line, justifying their policy as assistance to the constitutional Government of the country. Although there was a difference between the two actions and the latter actions were not covered by explicit requests in the Security Council decisions, it should be recognized that

"this is no longer a question of form and legal justification, but a question of very hard realities, where the use to which the assistance is put is more important than the heading in an export list under which it is registered, or the status of the one to whom it is addressed".

The Security Council had thus come to a point "where it must take a clear line as regards all assistance to the Congo". It would achieve its aims only if it requested that

". . . such assistance should be channelled through the United Nations, and only through the United Nations. It would, thereby, solve the problem of military assistance to Katanga, and it would also solve the problem of abuse of technical assistance in other parts of the Congo, thus at the same time serving the vital interest in a localization of the conflict and the interest in a peaceful solution of the domestic problems of the Congo, without any interference from outside influencing the outcome."

At the 906th meeting on 17 September 1960, after the rejection[80] of a USSR draft resolution,[81] and the failure to adopt[82] a Ceylonese-Tunisian draft resolution[83] (one of the negative votes being that of a permanent member), while a United States draft resolution[84] was not pressed to a vote,[85] the Security Council adopted[86] a draft resolution[87] whereby it decided to call an emergency special session of the General Assembly, as provided in General Assembly

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[77] At the 897th meeting on 10 September 1960, the Secretary-General, recalling his statement made at the 896th meeting with regard to the order closing the airports in the Congo and the radio station in Leopoldville, said:

"I told the Council that, for my part, I would be happy to see it reversed as soon as possible but that, frankly, I did not feel that the situation was such that I should take the responsibility upon myself, with all the consequences that move might have.

"The members of the Council are in a position to judge for themselves. They have before them communications (S/4504, annexes I and II, O.R., 15th year, Suppl. for July-Sept. 1960, p. 157) from two authorities in the country, from two authorities that are still in sharp opposition to each other. I have referred my responsibility, as I think I should, to the Security Council, and I think that the Security Council should shoulder its responsibility." (897th meeting: paras. 63, 66.)

At the 904th meeting on 16 September 1960, the Secretary-General, commenting on a statement (para. 51) by the representative of Poland that the United Nations Force Command had found it "possible and opportune" to hand over the radio station in Leopoldville to "rebel elements", said:

"If the situation has to be described as a handing over to any body, it was thus a case of the handing over of the radio station to Parliament, represented by Mr. Kasongo and Mr. Okito . . ." (paras. 70, 71).

[78] 896th meeting: para. 99.

[79] 896th meeting: paras. 100-102, 104, 108, 110.

[80] 906th meeting: para. 148.

[81] S/4519, 903rd meeting: para. 93.

[82] 906th meeting: para. 157.

[83] S/4523, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 172-173.

[84] S/4510, 902nd meeting: para. 45.

[85] 906th meeting: para. 169.

[86] 906th meeting: para. 198.

[87] Resolution S/4526, O.R., 15th year, Suppl. for July-Sept. 1960, p. 174.

resolution 377 A (V), in order to make appropriate recommendations.

CASE 30

At the 896th meeting on 9/10 September 1960, in connexion with the situation in the Republic of the Congo, the representative of Yugoslavia stated that because of

> "a certain interpretation of the non-interference of the United Nations in the internal discords of a constitutional or other character in the Republic of the Congo, the United Nations Command has not found . . . ways of preventing military and other outside help from being given to the secessionist ringleaders in Katanga".

The Secretary-General, exercising his right of reply, stated:

> "The representative of Yugoslavia addressed a criticism against the United Nations Command. The Command had, according to him, not implemented correctly the resolutions of the Security Council. The address is mistaken, because the Command has acted under my instructions, and if there are any mistakes in the interpretation of the resolutions, they are mine." [88]

CASE 31

At the 901st meeting on 14/15 September 1960, in connexion with the situation in the Republic of the Congo, the Secretary-General stated: [89]

> "I maintain the rule in the debates of various organs of the United Nations, including the Security Council, not to enter into the debate, but to limit myself to explanations and clarifications of facts."

The Secretary-General thought that the members of the Council would understand if, in view of the circumstances, he departed for a few minutes from that rule.

CASE 32

At the 901st meeting on 14/15 September 1960, in connexion with the situation in the Republic of the Congo, the representative of the USSR stated that under the resolution of 14 July 1960, [90] the Secretary-General had been authorized to take, in consultation with the Government of the Republic of the Congo, measures of a military character in the Congo which had been planned only "'until,'" as provided in the resolution, "'through the efforts of the Congolese Government with the technical assistance of the United Nations, the national security forces may be able, in the opinion of the Government'—and not in the opinion of Mr. Hammarskjöld—'to meet fully their tasks'". The representative of the USSR stated further that in his fourth report the Secretary-General had asked that neither of the "parties" in the Congo should receive any help from abroad, one of the "parties" supposedly being the Central Government. Such an approach to the question was clearly a distortion of the Security Council resolutions, which ruled out the granting of assistance to the enemies of the Government of the Congo but not to the Government itself.

At the same meeting the Secretary-General, exercising his right of reply, stated:

> "Another criticism was based on the fact that, according to the resolution of 14 July, it is for the Government only to decide when the troops shall be withdrawn. Obviously it was felt that I now somehow had reserved that right to myself. I have not. But the Security Council may wish to remember not only Article 2, paragraph 2, of the Charter and the first report commended by it at its meeting on 22 July, but also the basic agreement concluded with the Government of the Congo. [91] All these three documents bind the Government of the Congo to a good faith interpretation of the purposes of the United Nations measures."

The Secretary-General stated further:

> "In reference to the fourth report it was mentioned that I considered it desirable that all assistance should be channelled through the United Nations, but it was not mentioned that this has a background in the first report, which was commended by the Council with the concurring vote of the Soviet Union." [92]

CASE 33

At the 913th meeting on 7 December 1960, in connexion with the situation in the Republic of the Congo, the Secretary-General stated [93] that the United Nations had sent troops and civilian technicians to the Congo for clearly defined Charter aims and under clearly defined Charter principles. These aims and principles had been strictly maintained by the Secretary-General and his collaborators all through the operation. There had been no shifts in policy or changes of approach.

> "Of course, we have been accused of all this, and from all sides. . . .
>
> "However, this is no excessive price to be paid for avoiding the thing for which no one in my position should be forgiven: to compromise, in any political interest, with the aims and principles of this Organization. It has not been done and it will not be done with my knowledge or acquiescence. I can only repeat what I said in the General Assembly, that I would rather like to see the Office of the Secretary-General break on this principle than drift on compromise . . ."

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[88] For texts of relevant statements, see:
896th meeting: Yugoslavia, para. 130; Secretary-General, para. 153.

[89] 901st meeting: para. 71. For the statement of the Secretary-General, see also Case 32.

[90] S/4387, O.R., 15th year, Suppl. for July-Sept. 1960, p. 10.

[91] S/4389 and Add.5, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 16-24, 27-28.

[92] For texts of relevant statements, see:
901st meeting: USSR, paras. 18, 40, 41; Secretary-General, paras. 79, 83.

[93] 913th meeting: paras. 15, 17-19, 22, 44, 47, 50-54, 57-60. For the statement of the Secretary-General in connexion with the limitations of the powers of the United Nations Force with regard to the use of force, see chapter V, Case 2 (v); for the consideration of Chapter VII of the Charter, see chapter XI, Case 4, for the consideration of the provisions of Article 2 (7), see chapter XII, Case 14.

The Secretary-General stated further that "the change in the political alignments both in Leopoldville and in the provinces has given an entirely new and different setting for the operation of the United Nations". Referring to statements that the United Nations operation in the Congo had failed or was facing failure, he said that of its two original objectives, the withdrawal of Belgian troops had been achieved before the end of August, and the maintenance of protection for life and property was "reasonably well achieved at about the same time as the last Belgian troops departed". Therefore criticism of the operation could refer only to the period beginning in early September and "... seems based on the idea that it was for the United Nations to create a stable government within the framework of the Constitution". This task was not the one envisaged by the Council in July 1960, nor could it be, as, according to the Charter of the United Nations, only the people of the Congo itself were entitled to create such a government. The duty of the United Nations could only be

> "to unburden the authorities of the immediate responsibility for the protection of life and security and to eliminate foreign military intervention so as, in those respects, to create a framework within which the people of the Congo could find its way to a stable government, enjoying adequate nation-wide authority".

The failure to create normal political life within the country was not that of the United Nations, but that of the leaders of the Congo and its people.

The real problem, he stated, was one of "... what the true functions are of the United Nations in the changed situation". The need for the United Nations military presence in the Congo which had existed in July still existed, and renewed efforts were required to make the Army capable of taking care of the situation itself. The United Nations could not, however, contribute to this result if the Army were to play a political role outside the Constitution and override democratic rules of government. The Secretary-General concluded that it was necessary for the United Nations to stand by the mandate already laid down, interpreted strictly in accordance with the principles of the Charter, "but adjusted to the peculiar circumstances at present prevailing in the Congo. This adjustment unavoidably leads to a serious curtailment for the present of our activities and to great restraint as regards the assistance we can grant."[94] Only through the efforts of the Congolese people themselves could the United Nations assistance make its full contribution.

CASE 34

At the 917th meeting on 10 December 1960, in connexion with the situation in the Republic of the Congo, the representative of Ceylon stated that the United Nations Command seemed to have changed its policy, having taken action to protect the people whose lives had been threatened in Stanleyville.

At the same meeting the Secretary-General, exercising his right of reply, stated:

> "... It is not a change of policy. It is exactly the same stand which we took regarding Mr. Lumumba when he requested protection, regarding Mr. Kamitatu when he requested protection, regarding Mr. Gizenga, in Stanleyville, when he did the same, and regarding Mr. Welbeck, the Chargé d'Affaires of Ghana at Leopoldville, when he did the same. That is to say it is, in that respect, a constant policy which we have adopted, and if the representative of Ceylon is satisfied with the present stand I understand that he is satisfied with the interpretation we have given to our duty to protect law and order in the sense of protection of life and property."

Referring to statements concerning the liberation by the United Nations Force of Mr. Lumumba, disarming of "illegal armies" as well as furthering the meeting of both houses of Parliament and a round-table conference, the Secretary-General stated that "in all these various respects it is quite obvious that the Council—and, may I add, the Secretary-General—is bound by the Charter provisions. I am sure that the members of the Council wish to take that into account."[95]

CASE 35

At the 919th meeting on 12 December 1960, in connexion with the situation in the Republic of the Congo, the Secretary-General stated[96] that it had been hinted by a speaker in the debate that there might be an element of discrimination, the United Nations having shown greater concern for the group threatened in the Stanleyville situation than for other ethnic groups. He could assure the members of the Council that

> "the protection which we tried to give to the population in Stanleyville, who happen to be white, was exactly the same as that which, for example, we tried to give at an earlier stage to the Baluba. I cannot agree that we, any of us, have ever made any racial distinctions in the policy which has been developed."

CASE 36

At the 920th meeting on 13/14 December 1960, in connexion with the situation in the Republic of the Congo, the Secretary-General stated[97] that strong

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[94] In explanation of this last statement, the Secretary-General, at the 918th meeting on 9/10 December 1960, stated that the need for "great restraint" referred

> "to very practical circumstances, which I think I can most easily illustrate by saying that, of course, we cannot continue the training of an army which has become a political instrument, nor can we help financially with the budget if expenditure is partly of a character which runs counter to our aims" (paras. 132, 133).

[95] For texts of relevant statements, see:

917th meeting: Ceylon, para. 30; Secretary-General, paras. 61, 63, 65, 66.

For the statement of the Secretary-General in connexion with the limitations of the powers of the United Nations Force with regard to the use of force, see chapter V, Case 2 (v); for the consideration of Chapter VII of the Charter in general, see chapter XI, Case 4; for the consideration of the provisions of Article 2 (7), see chapter XII, Case 14.

[96] 919th meeting: para. 168.

[97] 920th meeting: paras. 61-62, 85, 97. For the statement of the Secretary-General, see also Cases 37 and 47; in connexion with the limitations of the powers of the United Nations Force with regard to the use of force, see chapter V, Case 2 (v); for the consideration of chapter VII of the Charter, see chapter XI, Case 4; for the consideration of the provisions of Article 2 (7), see chapter XII, Case 14.

statements had been made regarding the responsibility of the Secretariat as well as of the Belgians and of other foreign Powers alleged to be supporting them.

> "But few words have been heard about the responsibility of those major organs of the United Nations which have formulated the mandate and which, if the interpretation of the mandate now put forward by the critics were correct, would at least have had the responsibility to state it explicitly—not to speak about their obvious responsibility, in such circumstances, to provide the executive organs with the means by which such a broader mandate could be handled.
>
> "Nor have we, from the same quarters, heard anything about any responsibility for the political leaders in the Congo."

With regard to the legal rights of the Security Council to liberate Mr. Lumumba, disarm forces or recall Parliament, the Secretary-General "... can use and has used, all diplomatic means at his disposal, to achieve results in line with the resolutions of the Security Council".

The Secretary-General stated further that he would ask the Security Council to clarify its mandate; whether it was its collective view that an extension was necessary beyond the current one; and he would invite the Council to consider certain arrangements whereby Member nations would assume formally their part of the responsibility for the policy pursued from day to day in the Congo.

At the same meeting a joint draft resolution[98] submitted by Argentina, Italy, the United Kingdom and the United States failed of adoption[99] (one of the negative votes being that of a permanent member). A draft resolution[100] submitted by the USSR was rejected.[101]

A Polish draft resolution,[102] subsequently submitted, was rejected.[103]

CASE 37

At the 920th meeting on 13/14 December 1960, in connexion with the situation in the Republic of the Congo, the Secretary-General referred[104] to his two "démarches" dated 8 October 1960, to the Government of Belgium and Mr. Tshombé personally. In those communications[105] which were circulated to the Members of the United Nations, the Secretary-General had given his interpretation of operative paragraph 5 (a) of General Assembly resolution 1474 (ES-IV) of 20 September 1960. On the basis of that paragraph, the Secretary-General had pressed for the elimination of the Belgian political element in Katanga and for a switch-over from the bilateral assistance from Belgium to assistance within the framework of the United Nations operation. His stand had been met from the Belgian side with the most emphatic criticism. In this connexion the Secretary-General stated:

> "However, I am certain of the correctness of my interpretation of the intentions of the General Assembly, and back of the General Assembly, the Security Council. But so far my 'démarches' have received no formal support from any one of those two organs. Admittedly, I have not asked for such support but the lack of it should be noted and on record when criticism is voiced against my policy in relation to Belgium."

He added that unless the United Nations disposed of the necessary funds, it could not insist on the withdrawal of Belgian technicians provided on a bilateral basis to meet essential needs and claim that they should be employed under the United Nations flag or that the United Nations should in other forms provide the necessary assistance.

CASE 38

At the 928th meeting on 1 February 1961, in connexion with the situation in the Republic of the Congo, the Secretary-General stated[106] that the task of the United Nations in the Congo was to deal only with interference from outside the country and with the maintenance of law and order within the country. With regard to these two points, the Organization had to stay strictly within the limits established by the Charter, just as the Secretary-General and the United Nations Force had, in their turn, to stay strictly within the limits of the mandate established by the Security Council and the General Assembly. The Organization could not be blamed for an attitude in the past which had been dictated by its wish to avoid any interference in the domestic affairs; it could be blamed, however, if it had not reassessed its policy in the light of experience and had not considered whether, in the interest of peace and security, more far-reaching measures were not called for to overcome the increasing lack of cohesion, even if such measures might be felt by some as coming close to a kind of interference. While the withdrawal of all Belgian combat troops was accomplished at the end of August, "outside interference has recurred in new and subtler but not less dangerous forms". The military potential of various factions both as regards arms and men had been reinforced from outside and foreign mercenaries had been recruited on an increasing scale; this development, it should be assumed, had "at least been tolerated by some foreign Governments". It was necessary that such interference be stopped but the Secretary-General had not so far found "a sufficient legal basis in the resolutions for effective counter-measures by the United Nations". He wondered whether it was too much to hope

> "that at the present serious phase of the development the United Nations will be able to count on

98/ S/4578/Rev.1, O.R., 15th year, Suppl. for Oct.-Dec. 1960, pp. 82-83.

99/ 920th meeting: para. 156.

100/ S/4579, 914th meeting: para. 62.

101/ 920th meeting: para. 159.

102/ S/4598, 920th meeting: para. 160.

103/ 920th meeting: para. 177.

104/ 920th meeting: paras. 66, 69.

105/ S/4557, part II, sections I, 2, 4 and 5, O.R., 15th year, Suppl. for Oct.-Dec. 1960, pp. 44, 45, 47-49.

106/ 928th meeting: paras. 67, 69-72, 75, 76, 79, 83-85, 88, 90, 91. For the statement of the Secretary-General, see also Case 48. In connexion with the limitations of the powers of the United Nations Force with regard to the use of force, see chapter V, Case 2 (vi); for the consideration of the provisions of Article 2 (7), see chapter XII, Case 15.

all its Members so that they would not only avoid giving any military assistance themselves but, furthermore, take the necessary steps, which undoubtedly are within their power, to stop any such assistance in other forms, less accessible for counter-action through the United Nations and its organs".

As regards the internal situation, from the point of view of law and order, the disintegration of the "force publique" had continued and even the loyalties of various private armies must be put in question. In this situation "military assistance in men and 'matériel', on a governmental or non-governmental basis, given to any one of the various factions of the army at present is a dangerous and negative element" leading away from conciliation and the creation of national unity. In these circumstances

"the Council should give serious consideration especially to what the United Nations line should be regarding the ANC, in all its factions ... [and] must provide a basis for arrangements which would eliminate the present threat from the army, or units thereof, against efforts to re-establish a normal political life and against law and order".

The Secretary-General stated further that the most important contribution in the direction of conciliation in the interest of national unity

"would be to revert to the initial stand of the United Nations and get it enforced with the co-operation of the leaders concerned. This would mean to return the army to its proper role and to give it as quickly and effectively as possible a chance to fulfil it."

If this effort proved successful, it would mean that the army had stepped out of the current political conflicts and had devoted itself to its own reorganization to become again a national instrument of a government representing the central authority of the Republic. For the United Nations to revive this original concept would mean to express in positive terms its neutrality in relation to all domestic conflicts in the Congo and to make an effective contribution towards reconciliation. For these reasons the Secretary-General would welcome

"a decision by the Council requesting the Secretary-General to take urgently appropriate measures for assistance in the reorganization of the national army, preventing it, or units thereof, from intervening in the present political conflicts in the Congo".

Referring to requests for an armed intervention by the United Nations Force, the Secretary-General observed that it was clear what problems would arise were the mandate of the Force to be widened as proposed. Such a widening of the mandate

"could not be considered without a much clearer and fuller definition of the objectives to be pursued by the United Nations. Nor, of course, could the mandate be changed in relation to earlier decisions short of giving countries which have contributed troops on the basis of those first decisions an opportunity to withdraw were they not to approve of the new stand."

The Secretary-General concluded his statement by saying that the risk of a civil war had come closer.

"Were it to break out in spite of the restraining influence of the presence of the United Nations ... the right thing to do would be for the United Nations Force to withdraw, as it cannot interpose itself effectively and permit itself to become a third party between contending forces."

CASE 39

At the 935th meeting on 15 February 1961, in connexion with the situation in the Republic of the Congo, the Secretary-General in his statement dealt with "the points" which "should determine the judgement regarding the relations of the United Nations to the fate of Mr. Lumumba" and, in consequence, the responsibility of the Organization or its various organs. He stated [107] that Mr. Lumumba had been protected by the United Nations at the place of his residence in keeping with the principle upheld by the United Nations as regards domestic conflicts. When he had escaped from his residence in a way unknown to the United Nations and had travelled east, there had been no possibility for the Organization to protect him. He had been arrested in the country without any possibility for the United Nations to stop this action. The United Nations had neither the power nor the right to liberate Mr. Lumumba from his imprisonment in Thysville. The action of the Organization had to be concentrated on the efforts to give Mr. Lumumba all possible legal and humanitarian protection. Mr. Lumumba's transfer to Katanga had been entirely outside the control of the United Nations organs. When, on 10 February, the authorities in Elisabethville announced that Mr. Lumumba had, in their words, escaped from his place of detention, the instructions had been issued, on 11 February, that if Mr. Lumumba were to seek protection from any United Nations unit, he would immediately be given asylum. It did not seem to the Secretary-General to be asking too much if those who talked about the responsibility of the United Nations or more especially of its Secretary-General, were requested to state clearly when and how the representatives of the Organization had not used all the means put at their disposal, in accordance with the mandate as established by the Members of the United Nations and the Security Council. It was not the Secretary-General who had determined the mandate, nor was it the Secretariat which had decided on what means they should use to fulfil it. There was no escape from the responsibility which flowed from this. The statements to the effect that this or that Member gave the mandate another interpretation could not change the decision of a major organ.

CASE 40

At the 935th meeting on 15 February 1961, in connexion with the situation in the Republic of the Congo, the Secretary-General outlined [108] measures

[107] 935th meeting: paras. 4, 7-14. For the statement of the Secretary-General, see also Cases 12 and 40; in connexion with the limitations of the powers of the United Nations Force with regard to the use of force, see chapter V, Case 2 (VII); for the consideration of the provisions of Article 2 (7), see chapter XII, Case 15.

[108] 935th meeting: paras. 25-35.

to be pursued with regard to the solution of the Congo problem. He had already suggested an international investigation of the circumstances concerning the assassination of Mr. Lumumba and his colleagues, given instructions that the United Nations Force should protect the civilian population against attacks from Congolese armed units, that in case of a threat of a clash between armed units, the United Nations should use all means, short of force, to forestall such a clash. Should such a clash develop, the United Nations could not permit itself to become a thirty party to such a conflict. However, the use of force in support of a cease-fire arrangement should not be excluded. He had further proposed at the 928th meeting that the United Nations take appropriate steps for the reorganization of the Armée nationale congolaise and lastly, on 8 October 1960, he had addressed himself to the Government of Belgium and to Mr. Tshombé, pointing out the necessity to eliminate the Belgian political element in the Congo.[109] On these points the Secretary-General would like to have an endorsement that only in part had been forthcoming in the past.

He went on to state that the United Nations had no right to inspect trains and aircraft coming to the Congo so as to see to it that no arms were imported and movements of funds and capital were definitely outside its control and asked what authority, if any, was the Council prepared to give its representatives in this field. He further pointed out that there was also a constitutional question. It was important as a basis for reorganization of the political life of the nation to get Parliament together. However, he asked whether, if the Conciliation Commission had not succeeded by means of persuasion, the Council was prepared to override the sovereign rights of the Republic of the Congo and in the interest of peace and security to order the reconvening of Parliament. With regard to the first five points, no legal mandate was required; the last three points were, however, of a different nature.

> "They are points on which it is for this Council and only for this Council to decide what it feels entitled to do and what it wants to do. The Secretary-General cannot act short of a clear decision by the Council. In this case, at least, there is no question about where the responsibility lies. As regards arms imports, as regards the transfer of funds, as regards enforced constitutional measures, it is for the Security Council to determine the ends and to decide on the means, in full awareness of its responsibility for the maintenance of peace and security, but also of its duty to respect the sovereignty of a Member nation. It cannot shirk its responsibilities by expecting from the Secretariat action on which it is not prepared to take decisions itself."

CASE 41

At the 982nd meeting on 24 November 1961, in connexion with the situation in the Republic of the Congo, after the adoption of resolution S/5002,[110] the Acting Secretary-General made this statement:[111]

> "All the United Nations responsibilities flowing from past resolutions on the Congo continue with new emphasis, since these resolutions have all been reaffirmed in the action just taken. Assistance must be given to the Central Government in the maintenance of law and order. Everything possible must be done to avert civil war, even by the employment of force, should this prove necessary as a last resort. This, I believe, necessarily implies a sympathetic attitude of a part of ONUC towards the efforts of the Government to suppress all armed activities against the Central Government and secessionist activities. Supporting the territorial integrity of the country, the United Nations position, it seems to me, is automatically against all armed activities against the Central Government and against secessionist forces. This, of course, is reinforced by our confidence in Mr. Adoula and his Government. More determined and effective steps must be taken with regard to the training and reorganization of the Congolese armed forces under the terms of the previous resolutions adopted by this Council. The United Nations programme of technical assistance should be steadily expanded, particularly as conditions in the country permit the military assistance to be reduced."

The Acting Secretary-General went on to say that it might be a useful step for him to designate a special representative of high standing to devote his energies exclusively to the purpose of national reconciliation for a limited time, if the Government of the Republic of the Congo so desired. He stated further that it was his duty to give full effect to the resolutions of the General Assembly and of the Council relating to the Congo and he would devote himself to that purpose.

CASE 42

At the 1037th and 1038th meetings on 10 and 11 June 1963, when the Security Council considered the Reports by the Secretary-General concerning Yemen,[112] the Secretary-General made statements[113] in which he referred to his four reports on consultations held with the representatives of the Arab Republic of Yemen, Saudi Arabia and the United Arab Republic with regard to the situation in Yemen. According to these reports, the consultations had been undertaken with a view to ensuring against "any developments in that situation which might threaten the peace of the area". Certain measures involving United Nations action might, in his view, urgently need to be taken in fulfilment of the terms of disengagement accepted by the parties. These measures would entail a United Nations observation function which would be provided on the basis of the agreement of the parties concerned

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[109] S/4557, part II, sections I and 5, O.R., 15th year, Suppl. for Oct.-Dec. 1960, pp. 44, 48-49.

[110] O.R., 16th year, Suppl. for Oct.-Dec. 1961, pp. 146-150, see also chapter VIII, p. 183.

[111] 982nd meeting: paras. 104, 106, 107. For the statement of the Secretary-General, see also Case 13; in connexion with the Secretary-General's authorization in operative paragraphs 4 and 5 of resolution S/5002, see chapter VIII, p. 183.

[112] S/5298, O.R., 18th year, Suppl. for April-June 1963, pp. 33-34. S/5321, ibid., pp. 46-48. S/5333, ibid., pp. 48-50; S/5325, ibid., pp. 50-51. For a complete outline of the Council's proceedings, see chapter VIII, part II, pp. 207-208.

[113] 1037th meeting: paras. 6-7.
1038th meeting: paras. 3-6.

which would bear the cost of the operation for a period of two months and possibly for a total of four months, should it become necessary. As a result of informal consultations with the Council members, the Secretary-General held that "everyone agrees that the observation function called for should be provided". On his part, he was prepared to commence the operation immediately. He added:

"The Council is already aware that it will be a modest mission, not exceeding 200 people, including some carefully selected and experienced military officer-observers and a small number of other ranks. Its duration should not exceed four months, and it could be concluded in two. In the event more than two months should be required, I would certainly report this fact to the Council in advance.

"Finally, I should like to warn that there is growing evidence that the agreement on the terms of disengagement may be jeopardized if the United Nations observation personnel are not on the spot. I earnestly hope, therefore, that the Council will find it possible to achieve prompt agreement on this matter."

At the 1039th meeting on 11 June 1963, a Ghana-Morocco draft resolution[114] was adopted[115] which contained in its first and third operative paragraphs the following mandate:

"The Security Council,

"...

"1. Requests the Secretary-General to establish the observation operation as defined by him;

"...

"3. Requests the Secretary-General to report to the Security Council on the implementation of this decision."

CASE 43

At the 1057th meeting on 23 August 1963, in connexion with the Palestine question, the Secretary-General stated[116] that the Chief of Staff had obtained the agreement of both parties to a simultaneous investigation by the UNTSO Observers of the defensive areas on both sides. The parties had also responded favourably to the Chief of Staff's appeal that the cease-fire be observed. The Secretary-General stated further:

"I take this opportunity to request the Governments of Israel and Syria to exert every possible precaution to ensure that the cease-fire will be actually and fully observed and to prevent the occurrence of any futher incidents. This would have the additional advantage of enabling the Council to consider this issue in an atmosphere free of any new tension."

b (ii). Rule 22

CASE 44

At the 873rd meeting on 13/14 July 1960, in connexion with the situation in the Republic of the Congo, the President of the Security Council (Ecuador) stated that the meeting had been called at the request of the Secretary-General in order to hear his report on a request for United Nations assistance made to him by the Government of the Republic of the Congo.

The Secretary-General stated:[117] "The reason for my request, under Article 99 of the Charter, for an immediate meeting of the Security Council is the situation which has arisen in the newly independent Republic of the Congo."

CASE 45

At the 884th meeting on 8 August 1960, in connexion with the situation in the Republic of the Congo, the Secretary-General stated[118] that:

"The resolutions of the Security Council of 14 July [S/4387] and 22 July [S/4405] were not explicitly adopted under Chapter VII, but they were passed on the basis of an initiative under Article 99 ... and I repeat what I have already said in this respect: in a perspective which may well be short rather than long, the problem facing the Congo is one of peace or war—and not only in the Congo."

CASE 46

At the 887th meeting on 21 August 1960, in connexion with the situation in the Republic of the Congo, the Secretary-General reported[119] on the Belgian withdrawal and stated:[120]

"Indeed, with this short summary of the Belgian withdrawal, and with the resulting vacuum filled by the United Nations, we should be entitled to regard the chapter of the Congo story which describes the situation as one of a threat to international peace and security as being close to the end. This is said in the firm expectation, of course, that we need not envisage a risk from any new developments in the Congo outside the framework firmly established by the Security Council and contrary to the attitude on action by foreign troops that the Council has taken in this as in other cases. It is said also in the firm expectation that the Government of the Republic will take such measures as are within its power to assist the United Nations Force in carrying out the Council's decision and, thus, helping to bring about the order and stability necessary to avoid future eruptions."

CASE 47

At the 920th meeting on 13/14 December 1960, in connexion with the situation in the Republic of the Congo, the Secretary-General replied[121] as follows

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114/ S/5331, O.R., 18th year, Suppl. for April-June 1963, pp. 52-53, see also chapter V, Case 3.

115/ 1039th meeting: para. 7.

116/ 1057th meeting: paras. 72, 73.

117/ 873rd meeting: para. 18. For the statement of the Secretary-General in connexion with the establishment and composition of the United Nations Force in the Congo, see chapter V, Case 2 in connexion with the action recommended by the Secretary-General to the Security Council, see chapter VIII, p. 162; in connexion with the limitations of the powers of the United Nations Force with regard to the principle of non-intervention in domestic matters, see chapter V, Case 2 (i); with regard to the use of force, see chapter V, Case 2 (iii).

118/ 884th meeting: paras. 21, 26. See also chapter XI, Case 4.

119/ 887th meeting: paras. 28-30.

120/ 887th meeting: para. 32.

121/ 920th meeting: para. 76.

to an assertion that from the telegrams of Mr. Kasavubu and Mr. Lumumba (S/4382) it appeared that the aims of the operation had been distorted by him:

"These telegrams were what provoked me to action under Article 99. The resolution of 14 July [S/4387] was in response to my proposals and the main operative paragraph was in fact, for all practical purposes, a quote from my statement. I believe that it is, in these circumstances, appropriate to ask those who talk about distortion to look again at my proposal as being as least of equal significance as the cables which, by the way, did not even figure on the agenda."

CASE 48

At the 928th meeting on 1 February 1961, in connexion with the situation in the Republic of the Congo, the Secretary-General stated [122] that the serious divisions of the Congo continued and had in some respects been widened and reinforced. The army remained broken up in factions with varying loyalties and partly outside the control of any responsible authority. Foreign backing and support had led to a strengthening of military potentials, offensive steps had been taken and alliances between groups discussed. In these circumstances the risk of a civil war had come closer Civil war would be unavoidable if the United Nations Force were withdrawn.

"Were it to break out in spite of the restraining influence of the presence of the United Nations ... the right thing to do would be for the United Nations Force to withdraw, as it cannot interpose itself effectively and permit itself to become a third party between contending forces."

In this situation several Member States had withdrawn, or had stated their intention to withdraw, their contingents in the Force. As a result of such withdrawals, the United Nations Force would be clearly insufficient.

"That also would be a reason for withdrawal unless a fundamental change could be brought about in the situation, which would permit us to continue. Such a change would result if the various factions of the ANC were brought back to their normal role as parts of a unified, disciplined army, outside politics and under the ultimate control of a functioning constitutional government. This would also be an effective step in support of national reconciliation. It may also be a necessary step if new withdrawals are to be prevented.

"Certainly nobody overlooks the difficulties ahead of the United Nations along the lines which circumstances now seem to point out, but the alternative is forbidding, as a breakdown would open the door to a wider conflict and might well threaten all with the dangers against which this Organization and its Members have mobilized their best efforts since 14 July 1960, when this Council unanimously decided to step in in order to avert the developing threat to peace and security."

[122] 928th meeting: paras. 90-94.

CASE 49

At the 962nd meeting on 22 July 1961, in connexion with the complaint of Tunisia, the President (Ecuador) called on the Secretary-General for a statement immediately after opening the meeting.

The Secretary-General made the following statement: [123]

"News reaching us from Tunisia indicates that the serious and threatening development which the Council took up for consideration yesterday continues, with risks of irreparable damage to international peace and security. In view of the obligations of the Secretary-General under Article 99 of the Charter, I consider it my duty in the circumstances to make an urgent appeal to this Council. Whatever the problems which may arise in an effort to get a complete and definitive resolution, there is need for immediate action which cannot wait for the more time-consuming consideration necessary in order to reach an agreed conclusion to this debate.

"I therefore take the liberty to appeal to the Council to consider without delay, taking an intermediary decision pending the further consideration of the item and conclusion of the debate. Such a decision should not prejudge the final outcome of the deliberations of the Council, as it should, in my view, only request of the two sides concerned an immediate cessation, through a cease-fire, of all hostile action. Naturally, this demand should be combined with a demand for an immediate return to the status quo ante, as otherwise the cease-fire would be likely to prove too unstable to satisfy the urgent needs of the moment. I repeat that this is an appeal which is related exclusively to the immediate dangers and does not pretend to indicate the direction in which a solution to the wider conflict should be sought."

CASE 50

At the 964th meeting on 28 July 1961, in connexion with the complaint of Tunisia, the representative of Liberia requested [124] the President (Ecuador) to call upon the Secretary-General to make a statement in relation to his visit to Tunisia.

The Secretary-General pointed out that the scope and character of his visit had been defined: (1) by the invitation [125] of the President of Tunisia for a direct and personal exchange of views regarding the developments following the interim resolution of the Security Council of 22 July 1961 and (2) by his own reply [126] that he considered the question of substance to fall outside his personal competence since it was pending before the Council. He added: [127]

"Quite apart from the fact that it is naturally the duty of the Secretary-General to put himself at the

[123] 962nd meeting: paras. 2, 3.

[124] 964th meeting: para. 83.

[125] S/4885, section I, O.R., 16th year, Suppl. for July-Sept. 1961, p. 26.

[126] S/4885, section II, O.R., 16th year, Suppl. for July-Sept. 1961, p. 26.

[127] 964th meeting: para. 86. For the rest of the statement, see chapter VIII, p. 195.

disposal of the Government of a Member State, if that Government considers a personal contact necessary, my acceptance of the invitation falls within the framework of the rights and obligations of the Secretary-General, as Article 99 of the Charter authorizes him to draw to the attention of the Security Council what, in his view, may represent a threat to international peace and security, and as it is obvious that the duties following from this Article cannot be fulfilled unless the Secretary-General, in case of need, is in a position to form a personal opinion about the relevant facts of the situation which may represent such a threat."

CASE 51

At the 1024th meeting on 24 October 1962, in connexion with complaints by the representatives of Cuba, the USSR and the United States (22-23 October 1962), the Acting Secretary-General stated[128] that at the request of the permanent representatives of a large number of Member Governments who had discussed the matter with him, he had sent identically worded messages to the President of the United States of America and the Chairman of the Council of Ministers of the USSR.[129]

In the course of his statement the Secretary-General also addressed an urgent appeal to the President and Prime Minister of the Revolutionary Government of Cuba.

He went on to say:

"It is after considerable deliberation that I have decided to send the two messages to which I have referred earlier, and likewise I have decided to make this brief intervention tonight before the Security Council including the appeal to the President and Prime Minister of Cuba."

c. Rule 23

CASE 52

At the 1049th meeting on 31 July 1963, in connexion with the situation in territories in Africa under Portuguese administration, an amended draft resolution was adopted[130] under which the Security Council, inter alia, after determining that the situation in the territories under Portuguese administration was seriously disturbing peace and security in Africa, urgently called upon Portugal to undertake certain measures. The last operative paragraph of the resolution read:

"The Security Council,

"...

"7. Requests the Secretary-General to ensure the implementation of the provisions of this resolution, to furnish such assistance as he may deem necessary and to report to the Security Council by 31 October 1963."

In pursuance of this mandate, the Secretary-General submitted a report[131] on 31 October 1963 in which he gave an account of his initial consultations with the Government of Portugal, followed by "talks" held upon his initiative and under his auspices between the representatives of Portugal and nine African Member States, as a measure to ensure the implementation of the resolution.

At the 1079th meeting on 6 December 1963, the Security Council resumed its consideration of the question in the light of the report of the Secretary-General and of the letter[132] to the President of the Council from twenty-nine African Member States.

In the course of the discussion of the question, the President (United States) and several other members of the Council, as well as the representatives of Liberia, Madagascar, Portugal, Sierra Leone and Tunisia, who had been invited to participate, made repeated references to the exploratory contacts initiated by the Secretary-General and the "conversations" or "negotiations" in which nine African States participated on one side, and Portugal on the other. The issues dealt with in the course of such negotiations—which, Portugal stressed, should be regarded as mere "conversations"—constituted the substance of the discussion in the Council.

Speaking at the 1081st meeting, the representative of Portugal* extended an invitation to the Secretary-General to visit the territories of Angola and Mozambique "at his discretion and convenience", on the understanding that he would be accorded "all facilities required for him to carry out those visits".

At the 1082nd meeting, the representative of Ghana, in introducing a draft resolution, submitted jointly by Ghana, Morocco and the Philippines, emphasized the meaning of paragraph 7 which requested the Secretary-General to continue with his efforts and report to the Council not later than 1 June 1964, and stated that the Council would "leave it to the discretion of the Secretary-General to adopt what measures he may deem necessary to bring about the desired results".

At the 1083rd meeting on 11 December 1963, the Council adopted the joint draft resolution,[133] which included the following paragraphs:

"The Security Council,

"Having considered the Secretary-General's report as contained in document S/5448 and addenda,

"...

"Noting with appreciation the efforts of the Secretary-General in establishing contact between representatives of Portugal and representatives of African States,

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128/ 1024th meeting: paras. 119-125.

129/ For the text of the messages, see chapter VIII, part II, under the agenda item.

130/ S/5380, O.R., 18th year, Suppl. for July-Sept. 1963, pp. 63-64.

131/ S/5448, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 55-80. In three addenda (S/5448/Add.1-3), ibid., pp. 80-84, the Secretary-General further communicated information submitted by Member States concerning action taken or proposed to be taken by their Governments in the context of the resolution.

132/ S/5460, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 94-95.

133/ S/5480, same text as S/5481, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 110-111; 1083rd meeting, para. 158.

"1. Regrets that this contact has not achieved the desired results, because of failure to reach agreement on the United Nations interpretation of self-determination;

"...

"7. Requests the Secretary-General to continue with his efforts and report to the Council not later than 1 June 1964."

At the same meeting, after the adoption of the resolution, other references were made concerning further consultations and renewed negotiations to be held, through the continued efforts of the Secretary-General, to ensure the implementation of the Council's resolutions.[134]

[134] For texts of relevant statements, see:
1049th meeting: Ghana, paras. 25-26;
1079th meeting: President (United States), paras. 3-5; Liberia,* paras. 9-11; Tunisia,* paras. 44-49, 64, 66, 75;
1080th meeting: Madagascar,* paras. 5-7; Sierra Leone,* paras. 22-23, 29-30;
1081st meeting: Ghana, paras. 52-56, 77; Portugal,* paras. 11-12, 27-34, 48-49;
1082nd meeting: Ghana, paras. 103-105; Liberia,* paras. 29-32, Morocco, paras. 3-9;
1083rd meeting: President (United States), paras. 139-142, 147, 154; Brazil, paras. 91-100; China, para. 109; Ghana, para. 160, Norway, paras. 112-117; Portugal,* paras. 174-175, Tunisia,* paras. 167-168, Venezuela, paras. 84-86.

Part V

CONDUCT OF BUSINESS (RULES 27-36)

NOTE

As in the previous volumes of the Repertoire, the material assembled in this part is indicative of the special problems which have arisen in the application of rules on the conduct of business, rather than of the routine practice of the Security Council. The special cases which have been entered here relate to such matters as the following: 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; instances where the meaning or applicability of the rules was in doubt; and cases in which decisions were made between competing rules. The cases, arranged in chronological order under the respective rules, concern the following points:

1. Rule 27

The order of intervention in the debate (Cases 53-58).

2. Rule 28

The procedural nature of a decision to establish a sub-committee (Case 59).[135]

3. Rule 30

(a) Challenge to a ruling: the President's interpretation that once his ruling has been challenged it should be put to the vote immediately, without discussion (Case 60).[136]

(b) Mode of putting the question for decision after a challenge to a ruling (Cases 61 and 62).

4. Rule 31

Vote on formal amendments not submitted in writing (Cases 63 and 64).

5. Rule 32, para. 2

Request for a separation of vote (Case 65).[137]

6. Rule 33

Discussion held after motion to adjourn had been adopted (Cases 66 and 67). These instances are not strict applications of rule 33 since they do not relate to precedence or debate of procedural motions.

7. Rule 33, para. 2

Precedence of motion to adjourn the meeting over the adoption of the agenda (Case 68).[138]

8. Rule 33, para. 3

Debate of a motion to adjourn to a certain day or hour (Cases 69-71).

9. Rule 35

Case 72 concerns an occasion when an amendment was not pressed to the vote but not withdrawn by the mover. Case 73 deals with an attempt at withdrawal of the remainder of a draft resolution after a part had been voted upon.[139]

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

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

a. Rule 27

CASE 53

At the 873rd meeting on 13/14 July 1960, in connexion with the situation in the Republic of the Congo, the President (Ecuador), after a vote had been taken on several amendments to a draft resolution submitted by Tunisia, stated that the Council would proceed to vote on the draft resolution itself.

The representative of France requested that a separate vote be taken on each paragraph of the draft resolution.

The representative of Tunisia, the sponsor of the draft resolution, invoking rule 32 of the provisional

[135] Rule 33 was also mentioned in this connexion. For discussion on whether the matter was procedural, see chapter IV, Case 6.

[136] For an occasion when the President's ruling, although challenged, was discussed and not put to a vote since the challenge was withdrawn, see also under rule 31 (Case 65).

[137] Reference should also be made to chapter III, Case 7.

[138] Reference should also be made to: Case 60; chapter II, part III, Note, foot-note 25.

[139] Reference should also be made to chapter III, rule 38, Case 7.

rules of procedure, objected to the proposal for a separate vote.

The President thereupon declared that the Council would vote on the draft resolution as a whole.

The representative of France stated:

"I am not challenging the President's decision, which it is for him, as President, to take. I should simply like to make this explanation . . ."

He then proceeded to make a statement on the substance of the matter before the Council.

The representative of Tunisia objected:

"I apologize for speaking again after the President has made his decision and the voting has begun. I regret, however, that the representative of France offered an explanation of his vote while the voting was in progress, for the vote on the amendments had already been taken and the vote on the draft resolution itself should have followed . . ."

The President proceeded to put to the vote the draft resolution as a whole.[140]

CASE 54

At the beginning of the 874th meeting on 18 July 1960, in connexion with the complaint by Cuba (Letter of 11 July 1960), the President (Ecuador), after inviting the representative of Cuba to the Council table, stated:

"Before we begin considering this matter I should also like to say that several members of the Council have already placed their names on the list of speakers and will speak after the Cuban Minister for Foreign Affairs has made his statement.

"In order to expedite the proceedings I intend to give the floor to the members of the Council who have placed their names on the list of speakers and not to call on representatives wishing to exercise the right of reply until after the list has been exhausted."[141]

CASE 55

At the 893rd meeting on 8 September 1960, in connexion with the letter of 5 September 1960 from the USSR (Action of the OAS relating to the Dominican Republic), the representative of Venezuela* requested the opportunity to make a statement.

The President (Italy) stated:

"I am aware that the usual practice in the circumstances would be for members of the Council to speak first, but since I have consulted those representatives whose names are inscribed on the list of speakers for today and they are willing to yield, I shall, if I hear no objection from the Council, call upon the representative of Venezuela now."

The representative of Venezuela then made a statement.[142]

CASE 56

At the 975th meeting on 16 November 1961, in connexion with the situation in the Republic of the Congo, the President (USSR) stated that it had been proposed that the meeting be adjourned until the next day, when the consecutive interpretation of his remarks would be heard. He added that the request of the Foreign Minister of Belgium* for the floor could not be granted since the Council was postponing the interpretation of the previous statement until the next day.

The representatives of the United Kingdom and France observed that the representative of Belgium had asked to exercise his right of reply, and suggested that he be given an opportunity to do so before the Council decided on its adjournment.

The President then stated:

"I see no reason to depart from the usual procedure of the Council. If the majority of Council members think it necessary to change that procedure, I shall of course bow to that opinion on the part of the majority. And if the members of the Council insist on changing the procedure and giving the floor to the Belgian representative—out of turn, so to speak—I shall of course not object, particularly as he is only asking for two minutes. Let us not argue, then, but let him have the two minutes for which he asks."

The representative of Belgium* expressed his readiness to postpone his statement until the next day.[143]

CASE 57

At the 993rd meeting on 15 March 1962, in connexion with the letter of 8 March 1962 from the representative of Cuba concerning the Punta del Este decisions, it was proposed that the consecutive interpretation of a statement made by the representative of the USSR in exercise of his right of reply should be postponed until the next meeting. The President (Venezuela) observed that since the representative of Cuba* had also asked to speak in exercise of the right of reply at that meeting, a right which he could not grant that representative before the interpretation of the Soviet statement, he had no alternative but to request that the consecutive interpretation be given forthwith.

The representative of Chile observed that the order to be followed for the interpretation and the right of reply could not be altered. He suggested adjournment of the meeting, if the representative of Cuba* had no objection, on the understanding that at the next meeting the interpretation of the

[140] For texts of relevant statements, see:
873rd meeting: President (Ecuador), paras. 226, 229, 232. France, paras. 227, 230; Tunisia, paras. 228, 231.

[141] For texts of relevant statements, see:
874th meeting: President (Ecuador), paras. 4, 5.

[142] See also chapter III, Case 12.
For texts of relevant statements, see:
893rd meeting: President (Italy), paras. 27, 71; Venezuela, paras. 72-83.

[143] For texts of relevant statements, see:
975th meeting: President (USSR), paras. 118-120, 123, 126; Belgium, paras. 127-129. France, para. 124. United Kingdom, para. 122.

USSR statement would be heard first, and then the reply of the representative of Cuba.

The representative of Ghana, when moving the adjournment of the meeting, suggested that if there was no objection the President might inquire of the representative of Cuba* whether he agreed with what had been proposed.

The representative of Cuba* agreed to defer the exercise of his right of reply to the next meeting.

The President then adjourned the meeting.[144]

CASE 58

At the 1022nd meeting on 23 October 1962, in connexion with the complaints by the representatives of Cuba, the USSR and the United States (22-23 October 1962), after the initial statements by these three representatives, the representative of Ghana suggested that in the absence of objection those representatives who wished to attend a meeting on "this grave situation" with other delegations outside the Council chamber, might leave, and have their deputies remain at the Council table while the consecutive interpretation was being given. He made the suggestion on the assumption that no one else would speak.

The President (USSR) stated that the Council could agree with the suggestion provided that a decision be also taken to resume the meeting next morning at 10.30 a.m.

The representative of the United States requested permission to speak before some representatives left the Council chamber.

The President stated:

"I find myself in some difficulty for I can only call on representatives to speak on a point of order. If the substance of the matter is to be dealt with, we shall have to wait for the interpretation, after which I shall, of course, call on the representative of the United States."

After a further request to speak by the representative of the United States, the President (USSR) observed that the general practice of the Security Council made this request objectionable. He, himself, as representative of the USSR also objected to the granting of this request.

The Council agreed to postpone the consecutive interpretation until its next meeting, and adjourned without the representative of the United States being granted an opportunity to make a further statement.[145]

b. Rule 28

CASE 59

At the 848th meeting on 7 September 1959, in connexion with the report by the Secretary-General relating to Laos, the President (Italy) stated that he considered that the draft resolution before the Council clearly fell within the scope of Article 29 of the Charter. That Article appeared under the heading of "Procedure"; in consequence, the question was procedural.

After the draft resolution was voted upon the President stated that he considered it adopted.

The representative of the USSR asserted that the President's statement was not in accordance with the Charter-prescribed voting procedure. The draft resolution dealt with a substantive question; a vote had been cast against it by a permanent member of the Council. It could not therefore be regarded as adopted.

The representative of the United States, who concurred with the President's view, added that a further evidence of the procedural nature of the resolution was offered by rules 28 and 33 of the rules of procedure which treated the appointment of a committee and referral of matters to it as procedural.[146]

c. Rule 30

CASE 60

At the 989th meeting on 30 January 1962, in connexion with the situation in the Republic of the Congo, the agenda had not yet been adopted when the representative of the United States formally proposed the adjournment of the meeting under rule 33.

After an exchange of views between the President (United Kingdom) and the representative of the USSR concerning the propriety at that stage of a motion to adjourn, the former stated that the rules of procedure of the Council left him no choice but to put to the vote the motion for adjournment.

The representative of the USSR held the ruling of the President to be at variance with the rules of procedure. He continued:

"As he insists on his ruling, I challenge it, and in accordance with rule 30 of the provisional rules of procedure he must give us the floor, since the challenged ruling must be submitted to the Security Council. Every member of the Council should have full opportunity to discuss this matter on the basis of rule 30... With that understanding I shall express my views concerning the President's ruling..."

The President observed:

"I hesitate to interrupt the representative of the Soviet Union once again, but it is quite clear that, under rule 30, if the ruling of the President is challenged, he must submit his ruling for immediate decision. I understand that the representative of the Soviet Union now wishes... to challenge my ruling. I therefore have no option but to put his challenge to the vote."

144/ For texts of relevant statements, see:
993rd meeting: President (Venezuela), paras. 165, 174, 178, Chile, para. 166; Cuba,* para. 176; Ghana, para. 173.

145/ For texts of relevant statements, see:
1022nd meeting: President (USSR), paras. 188, 191, 193, 200, 201; France, para. 196; Ghana, paras. 190, 197; United States, paras. 190, 192, 199.

146/ See also chapter V, Case 9.
For texts of relevant statements, see:
848th meeting: President (Italy), paras. 127, 132; USSR, paras. 133-134, 158, 161; United States, paras. 149-150.

The representative of the USSR remarked that rule 30, in the Russian version, read as follows:

"'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 for consideration by the Security Council for immediate decision . . .'"

He then inquired:

"If the submission of the ruling is to be 'considered' by the Security Council, how can this be done without the ruling being discussed by the Council? That is incomprehensible. It is therefore my understanding that rule 30 affords full opportunity for a discussion of this question, after which the President will be entitled to call for a vote on his ruling and on the challenge to that ruling."

The President then stated:

"The representative of the Soviet Union has read out the Russian text of rule 30. The English text of rule 30, which governs our present discussion, as well as the French text, make it quite clear that the President is bound, once his ruling has been challenged, to submit the matter for the immediate decision of the Security Council. Accordingly, I now put to the vote the motion made by the representative of the Soviet Union who has contested my ruling . . ." [147]

Decision: *The President put the motion challenging his ruling to the vote. It was rejected by 2 votes in favour to 7 against, with 2 abstentions.* [148]

CASE 61

At the 998th meeting on 23 March 1962, in connexion with the letter of 8 March 1962 from the representative of Cuba concerning the Punta del Este decisions, a ruling of the President interpreting rule 35 [149] was challenged by the representative of the USSR. The President (Venezuela) stated that he would put his ruling to the Council for its consideration under rule 30 of the provisional rules of procedure in the following form: "Will those who are in agreement with the Soviet representative's objection please raise their hands?"

The representative of the USSR objected to the President's formulation, declaring that "Since this Organization was founded . . . the practice has always been to put the President's ruling to the vote, and not challenges to such a ruling."

The President agreed with the representative of the USSR:

"According to rule 30 of the provisional rules of procedure, it is the President's ruling which should be voted on, and that is what I shall do . . . I therefore put to the vote the ruling on rule 35 which has already been stated by the President."

The Council then proceeded to vote on the President's ruling, which was upheld by 7 votes in favour, 2 against, with 2 abstentions. [150]

CASE 62

At the 1016th meeting on 22 June 1962, in connexion with the India-Pakistan question, after the draft resolution submitted by Ireland had been voted upon and rejected, the representative of the United States made a statement concerning the vote. The representative of the USSR, on a point of order, asked the President (France) to use his powers as President of the Council to request the representative of the United States to remain within the item on the agenda.

The President stated that he did not have the power to call the representative of the United States to order, since it was the practice of the Council to allow its members to express their views after a vote had been taken. He appealed, however, to all members of the Council to keep to the subject under discussion.

After the representative of the United States had resumed his statement, the representative of the USSR again raised a point of order, observing that the representative of the United States was discussing the reasons for the vote of the USSR in explanation of his own vote. This, he remarked, was something no one had any right to do. He challenged the ruling of the President in refusing to call the representative of the United States to order, and he requested that it be put to the vote.

The President then stated that the representative of the Soviet Union had challenged the interpretation of the practice of the Council, which he gave. His ruling had been challenged and, hence, in accordance with rule 30, he had to submit this to the vote.

Therefore, he requested those members of the Council who disagreed with his interpretation of the Council's practice to be good enough to signify the same by raising their hands.

The representative of the USSR requested the President to put his ruling to the vote in positive form, as required by rule 30 of the provisional rules of procedure. The ruling had to receive seven votes in favour for it to be upheld.

The President referred to the proceedings at the 330th meeting of the Security Council as a precedent for his formulation. On that occasion the representative of the USSR had contended that the question to be put should be who opposed the President's ruling, and the results of the vote would decide that question. [151]

He would, therefore, put to the vote his challenge to the President's ruling that "there are no rules in the rules of procedure on this question of speakers who take the floor after a vote". He added:

"... I see nothing that can oblige me, or that even makes it my duty, to prevent these speakers from taking the floor if they so request.

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[147] For texts of relevant statements, see:
989th meeting: President (United Kingdom), paras. 49, 62, 71, 74. USSR, paras. 52, 56-57, 69-70, 72-75; United States, para. 30. See also Case 74.

[148] 989th meeting: para. 74.

[149] For the discussion concerning rule 35, see Case 73.

[150] For texts of relevant statements, see:
998th meeting: President (Venezuela), paras. 146, 150-151, 155-156. USSR, paras. 147, 149, 154.

[151] S/C., O.R., Third year, No. 93; 330th meeting: page 8.

"This was the interpretation I gave. I shall put this interpretation to the vote. ... These are the exact provisions of rule 30. That is my decision."

The representative of the USSR stated that in order to put an end to the question, he withdrew his challenge.[152]

d. Rule 31

CASE 63

At the 942nd meeting on 20/21 February 1961, in connexion with the situation in the Republic of the Congo, the President (United Kingdom) proposed to put to the vote an amendment to a draft resolution proposed verbally by the representative of the United States.

The representative of the USSR observed that he had the right, like other members of the Council, to receive the written text of any amendment or resolution. However, since the President had directed that a vote be taken, in violation of the rules of procedure, he wished to know on what the vote was to be taken.

The President in his reply stated:

"... I do not think I am in breach of the provisional rules of procedure. ... There have been a number of instances where amendments have been made which were not in writing and which were accepted."

After reading the text of the amended paragraph once more and stating wherein the amendment consisted, the President put the United States amendment to the vote.[153]

CASE 64

At the 966th meeting on 29 July 1961, in connexion with the complaint by Tunisia, before the Council proceeded to vote on the draft resolutions before it the representative of the USSR asked the representative of Turkey whether he would accept the addition, as a result of the discussion, of two amendments to operative paragraphs 1 and 2 of his draft resolution (S/4905). The representative of Turkey was not, however, prepared to accept any amendments at that stage.

The representative of the USSR thereupon declared that he formally submitted the amendments on behalf of his delegation. He added:

"Since they are very simple, I think there is no need for me to submit a written text. If, however, you wish me to submit a written text, I am prepared to do so."

The President (Ecuador) informed the representative of the USSR that the formal proposals he had made would be duly taken into account when the vote was taken.

When the vote was being taken, the President put to the vote the two amendments submitted orally by the representative of the USSR.[154]

e. Rule 32

CASE 65

At the 998th meeting on 23 March 1962, in connexion with the letter of 8 March 1962 from the representative of Cuba concerning the Punta del Este decisions, the representative of Ghana requested a separate vote on the third paragraph of a draft resolution submitted by Cuba* and sponsored by the representative of the USSR, in accordance with rule 38.

The representative of the UAR suggested that the President ask whether the mover of the question was agreeable to having a separate vote. The President (Venezuela), noting the provisions of the second paragraph of rule 32 and the fact that it was the USSR delegation that had requested that the Cuban draft resolution be put to the vote, asked the representative of the USSR whether he had any objection to the separate vote requested by the representative of Ghana.

The representative of the USSR was unable to find anything in the rules which would end the participation of an invited representative at the time when the Council started voting.[155] The fact that he had requested that the draft resolution be put to the vote did not make him its sponsor; nor did it make him responsible and accountable in respect of all questions which related to the text of the resolution or the procedure for voting upon it.

The President submitted the question to the Council. Several representatives expressed agreement with the President's interpretation of the rules of procedure, but took the position that out of courtesy to the representative of Cuba, and as an exceptional measure, not setting a precedent, he should be given the opportunity to express himself on the matter.

The President stated:

"I should like to thank the representatives who have expressed their views on this question of procedure. Since there are no objections as an exception and with the reservations which I have already formulated, I shall call upon the representative of Cuba to say whether, in accordance with the provisions of rule 32 of the provisional rules of procedure, he agrees to a separate vote on paragraph 3 of his draft resolution, as proposed by the representative of Ghana."

The representative of Cuba agreed to the request, and paragraph 3 of the draft resolution was put to the vote separately.[156]

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[152] For texts of relevant statements, see:
1016th meeting: President (France), paras. 106, 107, 119, 120, 134, 141, 142; USSR, paras. 102, 104. United States, paras. 94-98, 114-116, 128, 129, 143.

[153] For texts of relevant statements, see:
942nd meeting: President (United Kingdom), paras. 167-168, 171-172, 175; USSR, paras. 170, 174; United States, paras. 128, 169.

[154] For texts of relevant statements, see:
998th meeting: President (Ecuador), paras. 63, 66; Turkey, para. 61; USSR, paras. 59, 62.

[155] See also: chapter III, Case 1.

[156] For texts of relevant statements, see:
998th meeting: President (Venezuela), paras. 85-86, 91-92, 97, 102, 108, 113; Chile, paras. 105, 106; France, paras. 98, 99; Ghana, para. 78, 80; Ireland, para. 101; USSR, paras. 88-89, 94-95; United Arab Republic, paras. 83, 103, 112; United Kingdom, para. 100.

f. Rule 33

CASE 66

At the 897th meeting on 10 September 1960, in connexion with the situation in the Republic of the Congo, the representative of Tunisia proposed, in accordance with rule 33, sub-paragraph 3, of the provisional rules of procedure, that the Council adjourn until 3 p.m. on 12 September.

Following the adoption of the motion, the President (Italy) made a statement in his capacity as President of the Council. He said he was making the statement in consideration of the decision to adjourn the meeting and of the responsibility assumed by the Council in postponing its deliberations. He was certain that he interpreted the consensus of opinion of the members of the Council in making the statement.

The representative of the USSR thereupon expressed the position of his delegation in connexion with the statement by the President. The latter then declared the meeting adjourned.

The representative of Poland having asked for the floor, the President reminded the members of the Council that the meeting was adjourned. The representative of Poland asked whether he might explain the position of his delegation in connexion with the statement made by the President.

The President stated:

"If there is no objection, I will grant that right to the representative of Poland. I hear no objection, and I give the floor to the representative of Poland."

The representative of Poland made his observations, following which the President made another brief statement before closing the meeting.[157/]

CASE 67

At the 898th meeting on 12 September 1960, in connexion with the situation in the Republic of the Congo, before the adoption of the agenda, the representative of the United States formally proposed a simple adjournment of the meeting under rule 33, sub-paragraph 2, of the provisional rules of procedure.

After the proposal had been adopted, the representative of the USSR formally moved that the Council meet again at 8.30 in the evening.

On a point of order the representative of the United States contended that with the adoption of his motion the meeting had adjourned; a further proposal such as that of the representative of the USSR was out of order.

The representative of the USSR replied that since the President had not adjourned the meeting, it was therefore still in progress; he requested that his formal motion be put to the vote.

The representative of the United States took the following position:

"Upon adoption of the motion to adjourn, no further motions are in order. When a motion to adjourn has been adopted under rule 33, sub-paragraph 2, the Council ... can be called into session again by the President—not as a result of a motion made during the same meeting at which the motion of adjournment was adopted."

The President (Italy) stated that the procedural position was as follows:

"The Council has adopted a motion for adjournment, and therefore the Council must consider itself adjourned. I do not think that any further motion can be submitted after the motion for adjournment has been adopted. Therefore, my ruling is that the meeting is adjourned. I am sure that the representative of the Soviet Union can convey his wishes through the normal channels, those channels being either the Secretariat or the President of the Security Council, and that they will be considered in the light of the circumstances.

"I therefore consider the meeting adjourned."[158/]

CASE 68

At the 989th meeting on 30 January 1962, in connexion with the situation in the Republic of the Congo, before the adoption of the agenda, the representative of the United States, speaking on a point of order, formally moved the adjournment of the meeting under rule 33:

The President (United Kingdom) stated:

"The representative of the United States has ... moved the simple adjournment of the meeting. This is covered by rule 33 of the provisional rules of procedure, and I am bound by those rules to put the motion to the vote without further debate."

The representative of the Soviet Union asked to speak on a point of order, and the President gave him the floor on the understanding that his remarks would be strictly limited to the question of the vote. The representative of the USSR began to speak on the adoption of the agenda, and was interrupted twice by the President on the ground that his remarks were not within the President's ruling.

When the President indicated that he would put to the vote the motion before the Council, the representative of the USSR again asked to speak on a point of order. Citing rule 9 in chapter II of the rules of procedure he said:

"Thus we should have proceeded to the adoption of the agenda.

"The United States representative, however, has submitted a proposal on the basis of rule 33. That rule relates to the stage of the Council's work when the agenda has already been adopted, for chapter VI comes after chapter II, and it is not until chapter VI that the conduct of the business is dealt with. We have not, however, reached the

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157/ For texts of relevant statements, see:
897th meeting: President (Italy), paras. 80, 82-85, 88, 90, 92, 96-97; Poland, paras. 89, 91, 93-95; Tunisia, para. 79; USSR, paras. 81, 86-87.

158/ For texts of relevant statements, see:
898th meeting: President (Italy), paras. 9, 25-26; USSR, paras. 16, 22; United States, paras. 8, 13, 19, 24.

stage of conducting our business, for we have not yet discussed the agenda. Hence the President's ruling that we should proceed in accordance with rule 33 and not discuss the United States representative's proposal is contrary to the rules of procedure. That is why I say that the President has acted incorrectly as regards both substance and procedure, and we have every justification for discussing the agenda first. Afterwards, the United States representative or anyone else may move the adjournment of the meeting—they are entitled to do so—but that is not supposed to be done before the adoption of the agenda."

The President stated:

"Rule 9 of the provisional rules of procedure ... relates to the drawing up of the agenda. Rule 33, on the other hand, appears in that portion of the rules which govern the conduct of business, and is the governing rule for present purposes. My ruling is that the motion to adjourn, of the representative of the United States, which was made under rule 33, must be put to the vote without delay."

The representative of the USSR drew attention to the exact text of rule 33 and stated:

"This means principal motions and draft resolutions submitted in the course of a meeting which has already opened and adopted its agenda.

"The President wishes to apply this rule 33 to our preliminary exchange of views on the agenda at a stage when the agenda has not yet been adopted and when, of course, there are not and cannot be any principal motions or draft resolutions inasmuch as the substance of the item has not been discussed. Is it not clear that the President is violating the rules of procedure and seeking to apply rule 33 to the situation which we have here at this meeting although the meeting has not yet formally begun and there is still no agenda? He is seeking to apply a rule that relates to a meeting which has already approved its agenda and at which principal motions and draft resolutions can be submitted." [159]

The representative of the USSR, having challenged the President's ruling, asked the challenge to be put to the vote.

Decision: *The challenge was rejected* [160] *by 2 votes in favour to 7 against, with 2 abstentions.* [161]

CASE 69

At the 913th meeting on 7 December 1960, in connexion with the situation in the Republic of the Congo, the representative of Argentina moved formally, under rule 33, para. 3, of the rules of procedure, that the meeting be adjourned and resumed the following day at 3 p.m. He added that his motion should be put to the vote without debate.

The President (USSR) asked the representative of Argentina whether he insisted on having his proposal put to the vote immediately or whether the Council could discuss his proposal and perhaps other proposals concerning the further proceedings of the Council.

The representative of Argentina felt that discussion of his proposal would violate the rules of procedure, and therefore requested the President to put his motion to the vote without further delay and without giving the floor to any other speaker.

The representative of Poland, speaking on a point of order, said:

"the motion under rule 33, sub-paragraph 3, 'to adjourn the meeting to a certain day or hour' is subject to debate. The last paragraph of rule 33 reads: 'Any motion for the suspension or for the simple adjournment of the meeting shall be decided without debate.' But this concerns only two sub-paragraphs of rule 33. Now, as I understand it, the representative of Argentina made his motion under sub-paragraph 3, which is debatable".

The President stated:

"I am bound to point out that the Polish representative's reminder regarding the last paragraph of rule 33 of the Provisional Rules of Procedure, which makes it perfectly clear that 'any motion for the suspension or for the simple adjournment of the meeting shall be decided without debate', is entirely correct. Since what is being proposed is the adjournment of the meeting and the convening of a new meeting at a specific date and hour, then, in accordance with the provisions of rule 33, the debate is now open." [162]

A debate on the substance of the motion followed.

CASE 70

At the 979th meeting on 21 November 1961, in connexion with the situation in the Republic of the Congo, the representative of the United States indicated that failing agreement on certain proposals before the Council it might be better to adjourn. After further discussion he moved adjournment under the "last paragraph" of rule 33. The President thought there should be a decision concerning the time for resumption of the debate and declared that there was a proposal to meet again the same day at 8.30 p.m. The representative of the United States observed that it was not necessary to fix the time of the next meeting then and suggested that the President put to the vote his motion for adjournment sine die.

The representative of Liberia invoking rule 33, paragraph 3, then proposed that the Council adjourn to meet again on 24 November.

When the President invited discussion of the Liberian proposal, the representative of Ecuador stated that since the United States motion was made under rule 33, paragraph 2, and the Liberian motion under rule 33, paragraph 3, the former had precedence. Only if

[159] See chapter II, Part III, footnote 25 e.

[160] 959th meeting: para. 74. In connexion with the challenge to the President's ruling, see also Case 60.

[161] For texts of relevant statements, see:
959th meeting: President (United Kingdom), paras. 31, 62, 75; USSR, paras. 50-57, 63-64, 69; United States, para. 30.

[162] For texts of relevant statements, see:
913th meeting: President (USSR), paras. 68, 70, 75; Argentina, paras. 66, 67, 71; Poland, para. 74.

the United States motion were rejected would the motion of the representative of Liberia be considered.

The representative of the United States thought the interpretation of the representative of Ecuador correct. However, he welcomed and accepted the Liberian proposal.

The President (USSR) invited discussion on the matter, since motions under rule 33, paragraph 3, might be debated.

The President then declared that in the absence of objection he would adjourn the meeting and hold the next one on 24 November 1961.

Before adjourning the meeting the President drew attention to comments relating to a matter other than the one on the agenda. After some discussion concerning the best time to meet, the President announced that he would convene the Council the following day. The meeting then rose.[163]

CASE 71

At the 982nd meeting on 24 November 1961, in connexion with the situation in the Republic of the Congo, following the vote on several amendments to a draft resolution before the Council, the representative of the United States moved under rule 33 to suspend the meeting for ten minutes before the vote on the draft resolution, as amended.

The representative of Liberia stated his understanding of the rules of procedure to be that once a vote had commenced it could not be interrupted except in respect of the conduct of voting. If the object of the suspension was to secure unanimity he could perhaps concede the request of the representative of the United States but he much preferred to proceed with the vote. The representative of the United States asked for such a concession by the representative of Liberia.

The President (USSR) stated:

"Under the provisional rules of procedure I am supposed to continue the voting, since it has already begun. If any member insists on a suspension of the meeting, I shall have to put his motion to the vote, but the rules of procedure do not allow for the suspension of meetings during the voting. If no one insists on suspension, we shall proceed to vote on the draft resolution."

The representative of the United States insisted that his motion for suspension of the meeting be put to the vote, and the motion was adopted by 9 votes in favour to 1 against, with one abstention.[164]

The meeting was suspended for 15 minutes.

Rule 35

CASE 72

At the 863rd meeting on 27 May 1960, in connexion with the letter of 23 May 1960 from the representatives of Argentina, Ceylon, Ecuador and Tunisia, before the Council took a vote on amendments submitted by the USSR[165] and on a revised four-Power draft resolution[166] the President (Ceylon) stated:

"Before proceeding, I would advise the Council that I have been informed that the Soviet Union does not wish to press its third amendment to the vote, and we may therefore consider that the amendment in paragraph 3 of document S/4326 is withdrawn."

The representative of the USSR noted that his delegation had in fact agreed not to press for a vote on its third amendment, but this did not mean its withdrawal. The rules of procedure provided that a proposal did not have to be pressed to a vote if a delegation did not insist on it, but this did not mean that the proposal was withdrawn.

The President stated his agreement with the interpretation of the representative of the USSR.[167]

CASE 73

At the 998th meeting on 23 March 1962, in connexion with the letter of 8 March 1962 from the representative of Cuba concerning the Punta del Este decisions, following rejection by the Council of operative paragraph 3 of a draft resolution[168] sponsored by Cuba and put to the vote at the request of the USSR, the representatives of Cuba and the USSR indicated that they did not wish to press the remainder of the draft resolution to a vote.[169]

The representative of the United States objected to the withdrawal of the draft resolution and stated that the rules of procedure were very clear:

"Rule 35 says that a motion or draft resolution can at any time be withdrawn, so long as no vote has been taken with respect to it. A vote has been taken with respect to it. Therefore, the draft resolution can no longer be withdrawn and I move that it be put to a vote, as a whole, forthwith."

The representative of the USSR contended that the first paragraph of rule 35 applied to the withdrawal of a draft resolution on which a vote had been taken and not to withdrawal of a draft resolution following a vote as a result of which no part of the draft resolution had yet been adopted. He stated:

"If at the beginning of the vote the Cuban representative, or anyone else, had said: 'I wish to interrupt the conduct of the voting because I want to withdraw the draft resolution and not put any part of it to the vote', that situation would indeed have fallen under the provision of the first paragraph of

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163/ For texts of relevant statements, see:
979th meeting: President (USSR), paras. 57, 60, 65, 67, 73, 74, 79; Ecuador, paras. 61-63; Liberia, para. 59; United States, paras. 53, 56, 58, 66.

164/ For texts of relevant statements, see:
982nd meeting: President (USSR), paras. 88, 92, 94; Liberia, para. 90; United States, paras. 87, 91, 93.

165/ S/4326, O.R., 15th year, Suppl. for April-June 1960, pp. 18-19.

166/ S/4323, ibid., pp. 13-14.

167/ For texts of relevant statements, see:
863rd meeting: President (Ceylon), paras. 43, 46; USSR, para. 45.

168/ S/5095, O.R., 17th year, Suppl. for Jan.-March 1962, pp. 96-97.

169/ See also chapter III, Case 6.

rule 35, and the United States representative would have been justified in his anxiety on this occasion to ensure that the legality of our United Nations procedures should prevail.

"The situation, however, is different; this situation is not covered by the first paragraph of rule 35."

Asserting that the objection to withdrawal was unprecedented, he added that it would be the first attempt in the history of the United Nations to put to the vote a draft resolution against the will of its sponsor while certain provisions by which the sponsor set great store had been rejected, and the remaining part of the draft resolution was in a form unacceptable to the sponsor.

The President (Venezuela) stated:

"According to the very explicit terms of the first paragraph of rule 35, that time [i.e., when the right of withdrawal may be exercised] has already expired because a vote has already been taken on the draft resolution and rule 35 states quite clearly that a motion or draft resolution can be withdrawn at any time, as long as no vote has been taken on it.

"Consequently, since a vote has already been taken with respect to the draft resolution and since one of its paragraphs has been voted on and rejected, the President considers that at this point no one is entitled to withdraw the draft resolution. I shall therefore put the rest of the draft resolution to the vote."

The representative of the USSR challenged the ruling of the President on the ground that the first paragraph of rule 35 related to a motion or draft resolution as a whole, and not to parts of any proposal.[170]

Decision: *The ruling of the President was put to the vote and upheld by 7 votes in favour to 2 against, with 2 abstentions.*[171]

[170] For texts of relevant statements, see:
998th meeting: President (Venezuela), paras. 142-145; Cuba*, para. 123; USSR, paras. 129-131, 136, 147, 149; United States, paras. 124-125.

[171] 998th meeting: para. 156.

Part VI

VOTING (RULE 40)

NOTE

Rule 40 of the provisional rules of procedure contains no detailed provisions concerning the mechanics of the vote or the majorities by which the various decisions of the Council should be taken. It simply provides that voting in the Council shall conform to the relevant Articles of the Charter and of the Statute of the International Court of Justice. Material concerning the majorities by which the decisions of the Council should be taken will be found in chapter IV: Voting. Material concerning certain aspects of the mechanics of voting has already been presented elsewhere in this chapter.

As previously in the Repertoire, part VI concerns that aspect of the mechanics of voting that concerns the recording of votes. An occasion on which attention was drawn by a non-member of the Council to the necessity of fully counting the votes is to be found in Case 76. Another case, perhaps not strictly involving the mechanics of voting, turns on the question of whether in the absence of formal objection a procedural proposal is to be submitted to the Council for decision by vote or may be regarded by the President as approved in the absence of such formal objection (Case 74). The remaining cases in part VI throw light on other aspects of the practice of the Council relating to the taking of decisions without votes.

On certain occasions[172] members of the Council have referred to a rule—which does not appear in the provisional rules of procedure of the Council but in the rules of the General Assembly—under which once voting is in progress it may not be interrupted except for reasons relating to the actual conduct of the voting.

On certain other occasions,[172a] members of the Council have been recorded, as in the past, as not participating in the vote on resolutions declared to have been adopted.

[172] See Cases 53 and 71.

**1. CONSIDERATION OF THE ADOPTION OR AMENDMENT OF RULE 40

2. SPECIAL CASES CONCERNING THE APPLICATION OF RULE 40

CASE 74

At the 899th meeting on 14 September 1960, in connexion with the situation in the Republic of the Congo, the President (Italy) drew the Council's attention to the request for the floor made by the representative of Guinea, a non-member of the Council who had been invited to participate in the discussion.

At the 900th meeting, held on the same day, the President stated that since there was a divergence of opinions on the question he had no choice but to put it to a vote and ask those in favour of the request made by the representative of Guinea so to signify.

[172a] 868th meeting: para. 52 (Argentina); 962nd meeting: para. 58 (France); 971st meeting: para. 70 (China); 998th meeting: para. 158 (Ghana).

The representative of the USSR observed:

"... if someone is proposing that the representative of Guinea should not be allowed to speak, we should like it to be indicated who has made such a proposal, and then we can proceed to a vote. But if there is no proposal to refuse him the right to speak, it follows that there are no objections and that the President may allow him to do so without opposition from the members of the Security Council."

The President replied:

"... I am bound from the Chair to take a decision on the next course to take, and the next course for me is to take under advice the request of the representative of Guinea to speak. Therefore, the formulation of the vote to be taken, as I put it before, responds, in the opinion of the Chair, to the present status of the situation, the formulation being: those who are in favour of this request of the representative of Guinea, please raise their hands."

The representative of the USSR stated:

"Under the rules of procedure, all those invited to take part in meetings of the Security Council have the right to speak on any question... This means that if the representative of Guinea has asked to speak, then, according to the rules of procedure, the President must allow him to do so...

"But the President says that the representatives of some States—the United Kingdom, the United States and France—have expressed objections. I agree they have expressed their opinion, but they are not requesting a vote on a proposal that the representative of Guinea should not be allowed to speak...

"...

"In these circumstances it seems to me that it is the President's simple duty to observe the rules of procedure and not to try and create new rules. Under the rules of procedure someone has asked him for permission to make a statement; no one has made a formal proposal that such permission should not be granted; hence he is obliged to grant it, since no formal objections have been raised."

The representative of China remarked that the President could have settled the discussion by a ruling from the Chair. However, he had a perfect right to put the matter to the vote, as he proposed to do.

The President commented further:

"In proceeding to a vote, I have to be guided by the character of the question as governed by the actual circumstances, which is a request by the representative of the Republic of Guinea to be given the floor now.

"I would add that in listening to all the various opinions, I never heard the word 'formally' but once, which was from the representative of the Soviet Union who stated... that his delegation 'formally requests that the representative of the Republic of Guinea should be invited to speak on the question now before us.'" [899th meeting, para. 67.]

"I feel, therefore, that the representative of the Soviet Union should not take offence if I translate this formal request of his in the following way to the members in proceeding to a vote: Those in favour of the request of the representative of the Republic of Guinea to speak at the present juncture, please raise their hands. That is my ruling and I will now proceed to the vote."[173]

Decision: *The result of the vote was 4 in favour, 5 against, and 2 abstentions. The motion was not adopted.*[174]

CASE 75

At the 958th meeting on 5 July 1961, in connexion with the Complaints by Kuwait and by Iraq, the Security Council considered a request by Kuwait[175] to participate in the proceedings.

The representative of the USSR held that Kuwait could not be considered as properly a sovereign State; the Council should therefore not invite the Kuwait delegation to the Council table.

The President (Ecuador) stated his understanding of the opposition expressed by the representative of the USSR as simply a denial of his support to the proposal to invite the representative of Kuwait, and declared:

"As there is no objection to the request... I consider that the request for the representative of Kuwait to take a place at the Council table has been granted."

The representative of the USSR then remarked:

"Is it your interpretation, Mr. President, that all the members of the Council are voting in favour of inviting the representative of Kuwait except for the representative of the Soviet Union, who has expressed his opinion in this matter? If so, we shall, of course, regard this as being on the record unless there are any objections."

The President stated:

"The representative of the Soviet Union made a statement which he and all of us here considered to be sufficiently clear. At my request, he then repeated his opinion, which has been recorded. I therefore consider that all the members of the Council, with the exception of the representative of the Soviet Union, agree that the representative

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173/ For texts of relevant statements, see:

899th meeting: President (Italy), paras. 39, 45; Ceylon, paras. 51, 53; France, paras. 55-56; Poland, paras. 42-43; USSR, paras. 65-67; United Kingdom, paras. 40-41; United States, paras. 48-49.

900th meeting: President (Italy), paras. 9, 12, 14-15, 20-22, 35-38; Ceylon, paras. 6-7; China, paras. 32-34; Poland, paras. 16-17; USSR, paras. 10-11, 13, 18-19, 23-31; United Kingdom, paras. 2-4.

174/ 900th meeting: para. 38.

175/ S/4851, O.R., 16th year, Suppl. for July-Sept. 1961, p. 4.

of Kuwait should be invited to take a place at the Council table."[176]

At the invitation of the President, the representative of Kuwait took a place at the Council table.[177]

CASE 76

At the 962nd meeting on 22 July 1961, in connexion with the complaint by Tunisia, when the Council was about to proceed to the vote on a draft resolution[178] submitted by Liberia, the representative of France declared that his delegation would abstain and added a statement of the reasons.

The President (Ecuador) stated:

"I have taken note of the French representative's statement. If there is no objection from other members of the Council, I shall consider that the draft resolution would be approved on the conditions already explained, that is, taking note of the statement made by the representative of France."

The representative of Tunisia observed:

"Since I am not entitled to participate in the vote I do not intend to intervene on this point. I should merely like to point out to the President... that it might be advisable to hold a formal vote and to count the votes."[179]

Decision: *The Liberian draft resolution was voted upon and adopted by 10 votes in favour and none against. France did not participate in the voting.*[180]

[176] For texts of relevant statements see: President (Ecuador), paras. 14, 17, 19, 21; USSR, paras. 15-16, 18, 20.

[177] 958th meeting, para. 21.

[178] S/4880, 962nd meeting, para. 43.

[179] For texts of relevant statements, see:
962nd meeting: President (Ecuador), paras. 56, 58; France, para. 55; Tunisia, para. 57.

[180] 962nd meeting: para. 58.

CASE 77

At the 968th meeting on 26 September 1961, in connexion with the admission of new Members, the Security Council voted upon proposals to change the order of sub-items of the provisional agenda, which included, in that order, the applications of Mauritania, Outer Mongolia and Sierra Leone. After the Council had decided that sub-item (c), dealing with the application of Sierra Leone, should become sub-item (a), the Council voted upon and rejected a proposal that sub-item (b), relating to the application of Outer Mongolia, should remain in the second place on the provisional agenda. Instead it adopted a proposal that the application of Mauritania should come second.

The President (Liberia) then proposed to put to the vote the agenda as a whole.

The representative of the USSR suggested that the question remained to be decided whether the application of Outer Mongolia was to be included in the agenda at all.

The President observed that in the absence of objection to the inclusion of the application of Outer Mongolia in the agenda, no vote was needed. That was why he had proposed a vote on the agenda as a whole. However, if the Council considered that the agenda had been adopted as a whole he would so rule.

The representative of the USSR stated that if it was understood by all members of the Council that the application of Outer Mongolia was included in the agenda, he would agree with the President's ruling.

The President thereupon stated that since there had been no objection to the inclusion of the application of Outer Mongolia in the agenda, he declared the agenda, as amended, adopted.[181]

[181] For texts of relevant statements, see:
968th meeting: President (Liberia), paras. 63-68, 70, 73-74, 76, 78; USSR, paras. 69, 71-72, 75, 77.

Part VII

LANGUAGES (RULES 41-47)

NOTE

During the period under review, Rules 42-43 regarding interpretation into the working languages (English and French) have been generally applied. On certain occasions consecutive interpretation was either waived or postponed as an exceptional measure in order to expedite discussion or lighten the heavy work schedule at the time. Case 78 is an illustration of an exception to rule 43, when the consecutive interpretation into both working languages was dispensed with. Other instances of waiver of interpretation required by rule 42 and rule 43, are collected in a footnote to that case. An instance of postponement of interpretation is reported in case 79. References to other cases of postponement will be found in a footnote to case 79.

**1. CONSIDERATION OF THE ADOPTION OR AMENDMENT OF RULES 41-47

2. SPECIAL CASES CONCERNING THE APPLICATION OF RULES 41-47

Rules 42-43

CASE 78

At the 946th meeting on 15 March 1961, in connexion with the situation in Angola, the President (United States) inquired whether in view of the late hour and the desirability of reaching a vote at that meeting, the representative of the USSR would consider waiving the interpretation of his statement into English and French.

The representative of the USSR stated that he would agree to this procedure as an exception.

It was so decided.[182]

[182] 946th meeting, paras. 152-154. At the same meeting, the President inquired of the representative of Liberia whether he would forego the interpretation of his remarks. There was no objection and it was so decided, paras. 163-165. Similar decisions related to either rule 42 or 43 were taken by the Council at the 958th meeting, paras. 135-137; 971st meeting, paras. 152-153; 982nd meeting, paras. 156-157; 998th meeting, paras. 56-57, 71-72, 96, 107, 120, 164; 1016th meeting, paras. 177-179; 1036th meeting, paras. 142, 149; 1045th meeting, paras. 97, 105; 1052nd meeting, para. 64; 1054th meeting, paras. 59, 95-96, 108-109; 1056th meeting, para. 12; 1069th meeting, para. 81; 1076th meeting, para. 58; 1078th meeting, paras. 131, 136; 1082nd meeting, paras. 71-72; 1083rd meeting, paras. 56-57, 81-82, 110-111, 122-123, 134-135, 155.

CASE 79

At the 894th meeting on 9 September 1960, in connexion with the letter of 5 September 1960 from the USSR (Action of the OAS relating to the Dominican Republic), the President (Italy) stated that, in view of the late hour and since other members of the Council had expressed a desire for adjournment, the interpretation into the French language of the statement made by the representative of the USSR would be postponed until the next meeting.[183]

[183] 894th meeting, para. 77. Similar decisions related to rule 43 were taken by the Council at the 994th meeting, para. 79; 1022nd meeting, para. 197; and 1028th meeting, para. 145.

Part VIII

**PUBLICITY OF MEETINGS, RECORDS (RULES 48-57)

Part IX

**APPENDIX TO PROVISIONAL RULES OF PROCEDURE

Chapter II

AGENDA

TABLE OF CONTENTS

INTRODUCTORY NOTE

The present chapter contains material concerning rules 6 to 11, inclusive, of the provisional rules of procedure of the Security Council.

As in the previous volumes of the Repertoire, the material in the present chapter is presented directly under the rule of procedure to which it relates. The chapter is divided into four parts: part I, Consideration of the adoption or amendment of rules 6-12; part II, The Provisional Agenda; 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).

No material has been entered under part I, since the Council has not had occasion to consider any change in rules 6 to 12.

Part II provides information concerning the circulation of communications by the Secretary-General (rule 6), the preparation of the provisional agenda (rule 7) and the communication of the provisional agenda (rule 8).

Part III contains material on the procedure and practice of the Security Council in connexion with the adoption of the agenda. Section A includes a list of votes taken in adopting the agenda arranged by forms of proposals voted upon. This list is followed by case histories summarizing the discussion in the Council concerning a procedural aspect of the adoption of the agenda. Section B 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 been discussed in connexion with the adoption of the agenda, such as the order of discussion of items and the scope of items in relation to the scope of the discussion.

Part IV relates to the list of matters of which the Security Council is seized. The tabulation in Section B (rule 11) brings up to date the tabulations in the previous volumes of the Repertoire and includes items which have appeared in the Secretary-General's Summary Statement on matters of which the Security Council is seized during the period 1959 to 1963, inclusive.

Part I

**CONSIDERATION OF THE ADOPTION OR AMENDMENT OF RULES 6-12

Part II

THE PROVISIONAL AGENDA

NOTE

The questions raised in this section concern the application of the provisional rules of procedure to the preparation, approval and circulation of the provisional agenda and the circulation by the Secretary-General of communications concerning matters for consideration by the Security Council. The proceedings reported in this part involved questions concerning (1) the circulation of communications by the Secretary-General, (2) the "language" of communications circulated as official Security Council documents, (3) the conditions governing the inscription of items on the provisional agenda, and (4) the requirements for inclusion in the provisional agenda of references to documents.

Under the provisions of rule 6, the Secretary-General is obliged to bring to the attention of members of the Council all communications from States, organs of the United Nations, or the Secretary-General concerning any matter for the consideration of the Security Council.

However, during the period under review, there was one instance in which the Secretary-General informed the Council that he had refrained from circulating certain information when he found that, according to diplomatic rules regarding the interests of Member States, it would not be in order to do so.1/

On one occasion questions were raised concerning the propriety of the language of communications circulated as official Security Council documents and the obligation, if any, resting on the Organization in this connexion, to require propriety in the use of language in documents intended for circulation (Case 2). Communications from others than accredited representatives of a government or a foreign minister or head of State have been circulated by the Secretary-General only at the request of a member of the Council.2/ Certain communications originating from sources other than those described in rule 6 have also been

1/ For the Secretary-General's statement, see 920th meeting, para. 78.

2/ See 970th meeting, 17 November 1961, paras. 114-116, concerning the circulation of a communication from Mr. Tshombé in connexion with the situation in the Republic of the Congo. See also S/4908-S/4911, O.R., 16th year, Suppl. for July-Sept. 1961, pp. 52-55 concerning circulation of a message from Mr. Antoine Gizenga in connexion with the same question.

circulated as documents in the S/ series on the basis of Article 54 of the Charter.[3]

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 compatibility with rules 6 and 7 of additions to the provisional agenda at the state of consideration by the Council has been the subject of discussion (Case 3). A related question concerned the propriety of adding to a provisional agenda under consideration a reference to communications from a government without authorization from the latter and in the absence of a request by it for a Security Council meeting (Case 4). In another instance, inclusion in the agenda of a question of which notice had not been given in accordance with rule 8 was rejected by the Council (Case 5), although the matter to which the item in question related concerned an application for admission to membership, which was on the list of matters of which the Security Council is seized. 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 the items in the provisional agenda.[4] 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 subheading, 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 relate to one question, the proposed agenda item is usually followed by sub-items corresponding to the individual communications.

A. RULE 6: CIRCULATION OF COMMUNICATIONS BY THE SECRETARY-GENERAL

CASE 1

At the 847th meeting on 7 September 1959, when a request for the inclusion in the agenda of an item entitled:

> "Report by the Secretary-General on the letter received from the Minister for Foreign Affairs of the Royal Government of Laos, transmitted by a note from the Permanent Mission of Laos to the United Nations, 4 September 1959"

was being considered, the representative of the USSR said that he wished to draw the attention of the President and other members of the Council to a number of irregularities of a procedural nature in the convening of the meeting.

He pointed out that under rule 6 the Secretary-General should bring to the attention of all representatives matters for the consideration of the Security Council. However, if the relevant note of 4 September 1959 from the permanent representative of Laos were read, no indication would be found that the Government of Laos was submitting the matter for the consideration of the Security Council. Admittedly, the Secretary-General was himself entitled to bring any matter to the attention of the Security Council under Article 99, but

> "we have just heard the Secretary-General state that he does not propose to do this, that he is not submitting the question raised in the Laotian representative's note for the consideration of the Security Council on the basis of Article 99 of the Charter. He has said that he is not submitting the question.
>
> "What then is the position? The Government of Laos is not submitting the question to the Security Council nor is the Secretary-General doing so on the strength of the rights granted to him by the Charter. Who then is submitting the question? It is nevertheless the Secretary-General."

Replying to the statement of the representative of the USSR, the Secretary-General read out 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 ...".

He added:

> "... I have received a message which ends by asking the Secretary-General to apply the appropriate procedure to the request of the Government of Laos ... the message from the Government of Laos containing that request, combined with my letter to the President containing the request for a meeting, constitute the full documentation for this question, all communications which are relevant under rule 6—and they have been duly brought to the attention of the Security Council."

The President (Italy) reminded the Council of his two-fold responsibility, to call meetings, and to approve the provisional agenda drawn up by the Secretary-General. Commenting on the statement by the representative of the USSR that rule 6 of the rules of procedure could not apply to the case in question because there was no request by a State to convene the Council, he read out the rule and pointed out that "Rule 6 clearly speaks of communications from States and not of formal requests from those States in order to have the Council convened." Consequently, he considered that the requirements of rule 6 had been fully

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[3] Communications from the Organization of American States and the Inter-American Peace Committee have been distributed as documents in the S/ series whenever received.

[4] For a discussion of this problem, see chapter I, Case 77.

taken into consideration in convening the Council and in establishing the provisional agenda.[5/]

CASE 2

By letter dated 11 March 1963 addressed to the President of the Security Council, the permanent representative of Cuba requested that a letter[6/] dated 4 March 1963 from the Minister for Foreign Affairs of Cuba addressed to the Secretary-General be circulated as an official Security Council document. The letter[7/] was circulated in accordance with the request of the Government of Cuba. Venezuela,[8/] Costa Rica[9/] and Paraguay,[10/] by letters dated 14 March, 15 March and 20 March 1963, respectively, protested against the circulation of the Cuban letter because of insulting language contained in it. These letters were also circulated as Security Council documents in accordance with the requests of their authors.

The representative of Venezuela in his letter of 14 March 1963 asserted that it was

> "the right and duty of the United Nations to require that the language used in documents intended for reproduction or circulation by it should be consistent with the importance and dignity of the highest international organization."

The President (Brazil) in his reply[11/] of 15 March 1963 to the representative of Venezuela declared that:

> "It has been the established practice of the Security Council to circulate, at the request of a Member State, any document concerning an item inscribed on the agenda of the Council."

In a further communication[12/] under date of 18 March 1963, the representative of Venezuela pointed out that his earlier letter had related

> "... to the language which should be used in documents intended for reproduction or circulation by the United Nations..."

He added that the practice referred to by the President was known to the Venezuelan Government and accepted by it. This letter also was circulated as an official Security Council document.

Replying to the second communication from the representative of Venezuela, the President, in a letter of 19 March 1963[13/] declared that he would

> "only like to add that, as you are aware, the language used in communications is the responsibility of the Government from which the communication emanates."

A third letter under date of 21 March 1963[14/] from the representative of Venezuela reiterated the grounds of protest quoted above and added that his Government

> "does not accept the view that the United Nations is under an obligation to reproduce and circulate communications even if they contain insults".

In a letter[15/] of 25 March 1963 to the representative of Venezuela, the President declared that he was bound by the practice of the Security Council concerning the publication, as Council documents, of communications from Member States relating to items on the Council's agenda the contents of which were the responsibility of the State which sent them, and,

> "not being empowered to modify the language of a communication received from a Member State, it was my duty as President of the Security Council to circulate document S/5259 as worded by the Member State from which it emanated."[16/]

B. RULE 7: PREPARATION OF THE PROVISIONAL AGENDA

CASE 3

At the 873rd meeting on 13/14 July 1960, in connexion with the situation in the Republic of the Congo, the provisional agenda included a letter dated 13 July 1960 from the Secretary-General addressed to the President of the Security Council (S/4381). The President (Ecuador) asked if there were any objections to the adoption of the proposed agenda.

The representative of the USSR stated that he had asked to speak, not in order to object to the proposed agenda, but to suggest an addition to make it more precise. "We are asked," he said,

> "to place on our agenda a letter from the Secretary-General in which the Security Council is requested to hear a report of the Secretary-General on a demand for United Nations action in relation to the Republic of the Congo [S/4381]. The Secretary-General's letter does not, however, indicate that this demand for United Nations action emanates from the Congolese Government."

However, the members had before them two telegrams from the Government of the Congo, stating that United Nations assistance was needed because aggression had been committed against the Congo by Belgium (S/4382). He therefore proposed that the item be expanded to include a

> "Telegram dated 12 July 1960 from the President of the Republic of the Congo and Supreme Commander of the National Army and the Prime Minister and Minister of National Defence addressed to the Secretary-General of the United Nations (S/4382)."

The agenda, he concluded, would then be complete.

5/ For the text of relevant statements, see:
847th meeting: President (Italy), paras. 28-29; USSR, paras. 14-19; Secretary-General, paras. 24-25.

6/ This letter had been circulated by the Secretary-General on 7 March 1963 by means of a note verbale, no request having been made for its circulation as an official Security Council document. The circulation of the letter by the Secretariat was the subject of a protest by the representative of Venezuela. See S/5272, letter dated 27 March 1963 from the Permanent Representative of Venezuela addressed to the President of the Security Council, in which reference is made to that protest (O.R., 18th year, Suppl. for Jan.-March 1963, pp. 146-147).

7/ S/5269, ibid., p. 145.

8/ S/5260, ibid., p. 130.

9/ S/5264, ibid., pp. 141-142.

10/ S/5271, ibid., pp. 145-146.

11/ S/5262, ibid., p. 133.

12/ S/5266, ibid., p. 143.

13/ S/5267, ibid., pp. 143-144.

14/ S/5268, ibid., pp. 144-145.

15/ S/5269, ibid., p. 145.

16/ In further communications of 27 and 28 March 1963, S/5272 and S/5273, the representative of Venezuela and the President of the Security Council maintained their respective positions (O.R., 18th year, Suppl. for Jan.-March 1963, pp. 146-147).

In reply, the Secretary-General explained that the two telegrams to which the representative of the USSR had referred had been circulated as a Security Council document (S/4382), and

> "the reason why I, as Secretary-General, did not propose a reference to those two cables in the agenda is simply that there is in the two telegrams no reference to the Security Council; they are addressed to the Secretary-General. However, that formal aspect of course in no way bars the Security Council from deciding to take them up as documents of reference in the agenda."

Replying to the President's question whether, in view of the Secretary-General's explanation, he wished to press his proposal that the agenda be amended, the representative of the USSR said that it seemed to him that the Secretary-General did not object to his proposal. The Secretary-General replied that he had simply made a distinction between what was proper for the Secretary-General to do and what was proper for the Security Council to do. "I should," he said,

> "follow the indication given by the Governments which addressed me. They have not themselves made it a Security Council issue and their documents Security Council documents. Under such circumstances I felt that I should not do it."

The representative of the USSR then said that if no member of the Council objected it would be desirable for the agenda to include reference to the document S/4382.

The representative of the United States maintained that the Government of the Republic of the Congo had not asked for a meeting of the Security Council, although it was perfectly capable of asking for one if it wanted to. Nor had the Secretary-General asked for a meeting of the Security Council on behalf of the Government of the Republic of the Congo.

The representative of the USSR replied that

> "... in accordance with the Council's rules of procedure ... any member of the Security Council may propose for the inclusion in the agenda an item such as the one ... in document S/4382. This is precisely what I am doing. If the members of the Council take exception to my proposal, I shall not press it."

The representative of the United States said that a dangerous precedent would be created if a member of the Security Council were allowed to bring a nation before the Council and become a sort of spokesman for it without the authorization of that nation, particularly when that nation was capable of asking for consideration itself.

The President (Ecuador) stated that the representative of the USSR had made a suggestion with regard to the agenda which the Chair regarded as entirely within the rights of the representative of the USSR. He stated, further, that in view of the reactions to this suggestion, the representative of the USSR had stated that he would not press it. The President asked the Council whether it was prepared to adopt the provisional agenda as submitted.[17]

Decision: *The agenda as submitted was adopted.*[18]

CASE 4

At the 934th meeting on 15 February 1961, in connexion with the situation in the Republic of the Congo, while adoption of the agenda was being considered, the representative of Liberia requested "the addition to the present provisional agenda ... of the question of the recent disturbances in the territory of Angola." He urged that the Council "take immediate cognizance of what is happening in Angola so that, for once, we may have our minds made up and our processes of conciliation worked out before the next crisis is upon us." Quoting from a statement issued by his Government, noting the violation of human rights in Angola, the representative continued:

> "The Liberian Government has ... directed its representative on the Security Council to request the inscription of the item on the Security Council's agenda under Article 34 of the Charter of the United Nations."

The President (United Kingdom) pointed out that the rules of procedure governing the inscription of items on the agenda were set out in the provisional rules of procedure, particularly rules 6 and 7, and having examined those rules, it seemed to him that the proposal made by the representative of Liberia raised considerable difficulty. "I am unable," he said,

> "to see that, under the rules as they at present stand, it is legitimate to add an item to the agenda in the manner now suggested. I therefore feel bound to rule that, under the existing rules of procedure of the Security Council, I cannot agree to add this item as requested by the representative of Liberia."[19]

C. RULE 8: COMMUNICATION OF THE PROVISIONAL AGENDA

CASE 5

At the 911th meeting on 3/4 December 1960, in connexion with the admission of new Members, the President (USSR) stated that "The provisional agenda for tonight's meeting will be found in document S/Agenda/911/Rev. 1, which has already been circulated to the Council." Then, speaking as the representative of the USSR, he proposed that the application of the Mongolian People's Republic, the second sub-item under item 2, be taken up as the first sub-item, since "The Mongolian People's Republic submitted its first application for admission to the United Nations over fourteen years ago" and had resubmitted it a number of times since.

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[17] For the text of the relevant statements, see:
873rd meeting: President (Ecuador), paras. 1, 6, 13-16. USSR, paras. 2-4, 7, 9, 11; United States, paras. 10, 12; Secretary-General, paras. 5, 8.

[18] 873rd meeting: para. 16.

[19] For the text of relevant statements, see:
934th meeting: President (United Kingdom), para. 11; Liberia, paras. 4-10. In a letter dated 20 February 1961 the representative of Liberia referring to his statement at the 934th meeting requested "... a meeting of the Council after the present session, to deal with the crisis in Angola, ..." (S/4738, O.R., 16th year, Suppl. for Jan.-March 1961, p. 145). The Council considered the question at its 943rd to 946th meetings held between 10 and 15 March 1961.

The representative of France pointed out that

"Today, at the beginning of the meeting, a revised agenda was distributed. The original agenda appeared in document S/Agenda/911.

"... I do not quite see how we could discuss at such short notice the admission of the Mongolian People's Republic, still less why we should place it before a question which has been included in the agenda since 29 November. ... I ask that we should respect the agenda distributed to us—it remains the existing agenda—in which the admission of the Islamic Republic of Mauritania appears as the first item." [20]

The representative of the United States said that he had noted in the provisional revised agenda "submitted this evening at 9 o'clock, that reference was made to a letter which was not at that moment before the Security Council and which refers to a draft resolution (S/4570) which was not before the Security Council but which came in later, as the meeting proceeded; all of this ... is highly irregular." He said, further, that he came to the meeting with the understanding that it was to be conducted on the basis of the agenda distributed on 1 December and "it is my desire, and I believe the desire of the other members of the Council, to deal with that agenda".

The representative of Italy pointed out that

"We have the Provisional Rules of Procedure which are set forth rather clearly and we have the practice which has been followed constantly. ... Rule 8 of the Provisional Rules of Procedure states:

"'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'."

Continuing, he said:

"We did not get any advice of this new item to be inserted in our agenda. Certainly we did not get it three days before the meeting. I do not question the urgency, because it is for the Council to decide whether it is urgent or not, but I certainly question the fact that it was not communicated simultaneously with the notice of the meeting. So I think that from a de jure point of view we are not in order."

The President, speaking as representative of the USSR, asked why, since item 2 of the provisional agenda was entitled "Admission of new Members to the United Nations", the admission of any new Member could not be considered. He said that

"... even if no paper had been circulated to the members of the Security Council, any member of the Council can, during the discussion of the agenda, propose the inclusion in the agenda of any question whatever. Other members may disagree with the proposal and that is their right; but any member of the Security Council is entitled to propose any item for the agenda and the other members cannot prevent him."

The representative of Argentina, after concurring with the views expressed by the representative of Italy, said:

"I think that we should bear in mind that we must abide by the written rules governing our work, the more so since, as in this case, there are very good reasons for the rules. Why does this rule exist? For a simple reason: because we are not Heads of State and we do not conduct the foreign policy of our countries. We are representatives; we obey instructions from our Governments and we can act only on such instructions, which we are bound to follow." [21]

Decision: *The proposal of the United States to include in the agenda the first sub-item on the question of the admission of Mauritania was adopted by 9 votes to 2. The second sub-item relating to the inclusion in the agenda of the question of the admission of the Mongolian People's Republic was rejected by 4 votes in favour, 5 against, with 2 abstentions.* [22]

[20] The proposal to discuss the application of the Mongolian People's Republic was contained in a revised provisional agenda distributed the day of the Security Council meeting which contained a reference to a letter from the representative of the USSR to the President of the Security Council.

[21] For the texts of relevant statements, see:
911th meeting: President (USSR), paras. 3-5, 42. Argentina, paras. 50-51, 54-55. France, paras. 11-13. Italy, paras. 29-30; United States, paras. 15, 19.

[22] 911th meeting: paras. 97-98.

Part III

ADOPTION OF THE AGENDA (RULE 9)

NOTE

Under rule 9, the first item of the provisional agenda for each meeting of the Security Council is the adoption of the agenda. Unless an objection has been raised, [23] the Council usually adopts the provi-

[23] On one occasion during the period under review in connexion with the Secretary-General's report relating to Laos, the Council voted to adopt the provisional agenda over the objections of a permanent member, who voted against the adoption (847th meeting, para. 42). At the next meeting on the same question (848th meeting, paras. 1-5), the objections of the permanent member were reiterated but without a request for a vote on the adoption of the agenda; the President declared that since no vote

sional agenda without vote, either with or without amendment.[24]

As in previous volumes of the Repertoire, part III is therefore devoted to the proceedings of the Council on those occasions when objection was raised to the adoption of the agenda.[25] Section A deals with the manner in which the Council has taken decisions on the objections raised. The material is presented in tabular form.

Section B presents case histories (Cases 6 and 7) of the discussion in the Council when objection had been raised to the adoption of the agenda on grounds related to the substance of the item on the provisional agenda. The case histories in this section are related to procedural aspects of such discussion at the stage of the adoption of the agenda; the grounds of substance for objection are stated more fully elsewhere, especially in chapters X and XII.

Section C covers other questions of procedure relating to the adoption of the agenda, such as the order of discussion of items on the agenda (Case 8), and the phrasing of items on the agenda (Case 9).[26]

Matters relating to the conduct of the business of the Council have also on occasion been raised at this stage of the meeting of the Council.[27] Participation in the discussion of the adoption of the agenda has been limited by the Council to its members.[28]

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 two ways:

(i) *On the proposal to include the item in the agenda*

911th meeting, 3/4 December 1960: first sub-item and second sub-item of item 2, voted upon at the same meeting.[29]

(ii) *On the adoption of the agenda as a whole and not on the individual item*[30]

In other instances, the vote has been taken as follows:

2. Votes taken on proposals to determine or change the order of items

911th meeting, 3/4 December 1960[31]

968th meeting, 26 September 1961[32]

was requested, the agenda was considered as adopted. For other occasions of objection to the provisional agenda by a permanent member of the Council, without formal opposition, where the agenda was declared by the President as adopted, see: 921st meeting: paras. 31-53; 957th meeting: paras. 10-12; 984th meeting: paras. 3, 5; 985th meeting: para. 1; 999th meeting: paras. 3-5; 1064th meeting: paras. 3-8.

[24] See for example: (a) 928th meeting, para. 55. The President (United Kingdom), before stating that the agenda was adopted, drew attention to a communication (S/4650) by which Libya had requested to be included as a co-signatory of the letter (S/4641), relating to the situation in the Republic of the Congo, which appeared in the provisional agenda; (b) 956th meeting, para. 1. The President (China) referred to the provisional agenda contained in document S/Agenda/956 and stated that Pakistan wished to be one of the sponsors of the item (situation in Angola). Therefore, unless there were any objections he would declare the agenda adopted, as amended, with the addition of Pakistan as one of the signatories of the letter dated 26 May 1961 (S/4816 and Add.1). The agenda, as amended, was adopted; (c) 973rd meeting, paras. 3-16. Upon the proposal of the representative of Liberia, the provisional agenda was amended to include the letter dated 13 July 1960 from the Secretary-General (S/4381) by which he originally brought the situation in the Congo to the attention of the Security Council. The agenda, thus amended, was adopted.

[25] On two occasions, while no objection was made to the adoption of the agenda, other questions were raised at this stage of the meeting but the Council decided to proceed first to the adoption of the agenda: (a) at the 899th meeting, paras. 8-29, the question of holding an extraordinary meeting of the Council at Leopoldville, Republic of the Congo, was raised before the adoption of the agenda. Precedence was requested for an agenda item concerning this question. The Council decided to include the item as the first item in its agenda for the meeting; (b) at the 912th meeting, paras. 3-17, before the adoption of the agenda, a point of order was raised requesting the President to disqualify himself under rule 20. When rule 9 was invoked, asking the Council to proceed first to the adoption of the agenda, it was stated that there was "just as much reason for questioning the complete fairness and lack of prejudice of a presiding officer during the time when the discussion of the agenda is taking place, as there is during the time when the discussion of a question is taking place." Upon the suggestion of the President (USSR), the Council proceeded to deal first with the adoption of the agenda.

[26] See also chapter VII, Cases 6, 7 and 8, concerning the order of discussion of applications for membership at the 911th, 968th and 971st meetings. These cases have not been included here to avoid duplication.

[27] See for example: (a) 898th meeting, paras. 7-25. A proposal was made for a simple adjournment of the meeting under rule 33 (2). It was observed that under this rule the motion was not debatable. The motion was voted upon and adopted, and the meeting adjourned shortly thereafter without the agenda having been adopted; (b) 933rd meeting, paras. 1-32. The Secretary-General, speaking on a point of order, reported to the Council on the death of Patrice Lumumba and two of his colleagues. After a brief discussion, a proposal was made to adjourn the meeting under rule 33 (3). The motion was voted upon and adopted, and the meeting was adjourned without the agenda having been adopted; (c) 940th meeting, paras. 1-26. The Secretary-General made a statement reporting to the Council the execution of various political personalities in South Kasai, Republic of the Congo. A proposal was then made for an adjournment of the meeting under rule 33 (3). After a brief discussion, the President (United Kingdom) stated that unless there was any objection the meeting would be adjourned. It was so decided without the agenda having been adopted; (d) 970th meeting, paras. 4-10. After objections had been raised by one member of the Council, another member proposed an adjournment of the meeting to allow for further consultations. The President (Turkey) stated that under rule 33 a motion to adjourn had precedence over other motions, and since there were no objections, the meeting was adjourned without the agenda having been adopted; (e) 989th meeting, paras. 26-75. A proposal was made for an adjournment of the meeting under rule 33. The President (United Kingdom) ruled that the motion to adjourn had to be put to the vote without debate. A challenge to this ruling, which was made on the grounds of rule 9, was voted upon and rejected. Thereupon the motion to adjourn was adopted, and the Council adjourned without the agenda having been adopted.

[28] See for example: (a) 851st meeting, paras. 5-8; (b) 943rd meeting, para. 5, and (c) 950th meeting, para. 7. On all three occasions Member States who were not members of the Council were afforded an opportunity to make statements on the adoption of the agenda after its adoption when debate on the substance of the question had been opened. See chapter III, Cases 18, 19, 20. On one occasion, at the 991st meeting, paras. 101-114, a discussion was held on the request of a Member State, non-member of the Council, to participate in the debate on the adoption of the agenda. A motion to permit such participation was not adopted for failure to obtain the affirmative votes of seven members. See chapter III, Case 21.

[29] 911th meeting: paras. 97-98.

[30] During the period under review there were no instances of objections to the inclusion of an item followed by a vote on the agenda as a whole. There was, however, one instance (968th meeting, para. 78) when after the Council had voted on changing the order of two other sub-items, the President ruled that since no objection had been raised there would be no vote on the third sub-item, and the agenda as a whole was thus adopted. See chapter VII, Case 7.

[31] 911th meeting: para. 93.

[32] 968th meeting: paras. 70, 73.

3. Votes taken on the adoption of the agenda as a whole

847th meeting, 7 September 1959[33]

987th meeting, 18 December 1961[34]

991st meeting, 27 February 1962[35]

B. CONSIDERATION OF:

1. Requirements for the inclusion of an item in the agenda

CASE 6

At the 987th meeting on 18 December 1961, the Security Council had before it the following provisional agenda:

"Letter dated 18 December 1961 from the Permanent Representative of Portugal to the President of the Security Council (S/5030)."[36]

In opposing the adoption of the provisional agenda, the representative of the USSR stated that he could not regard the letter of the representative of Portugal, qualifying the events in Goa as an aggression by India, as a basis for a discussion of the question by the Security Council. The situation in territories which were part of a sovereign State could not, under the Charter, be a subject for consideration by any United Nations organ, including the Security Council. The current matter fell exclusively within the domestic jurisdiction of India because Goa and the other Portuguese colonies in Indian territory could not be regarded as other than temporarily under the colonial domination of Portugal.[37] The President, speaking as the representative of the United Arab Republic, also expressed his reservations regarding the letter.

Decision: *The agenda was put to the vote and adopted by 7 votes in favour to 2 against, with 2 abstentions.*[38]

CASE 7

At the 991st meeting on 27 February 1962, the Security Council had the following before it as item 2 of its provisional agenda:

"Letter dated 22 February 1962 from the Permanent Representative of Cuba to the President of the Security Council (S/5080)".

The representative of the United Kingdom, objecting to the inclusion of the item in the agenda, stated:

"It is not often done in this Council to question the adoption of the agenda proposed for it. Indeed, I think it is right that there should be a predisposition in favour of inscribing any complaint brought to the Security Council and of giving full hearing to the complainant. But each case must be examined on its merits and there have been instances in the past, and there undoubtedly will be again in the future, when it would not be right to adopt the proposed agenda automatically. In particular this is the case where it seems possible that resort to this Council may be abused. This we should be particularly vigilant to avoid. It can do this Council nothing but harm if it lends itself to efforts to use its authority for purely propaganda exercises.

"In the present case, my delegation has reluctantly concluded that there can be no other purpose in the letter from the representative of Cuba [S/5080] which is listed as item 2 of the agenda whose adoption we are now considering than to reiterate charges and theses which have already been debated fully."

The representative of Chile stated:

"We have weighed the reasons for and against convening this meeting of the Security Council and we are not convinced that a reopening of the debate could make any contribution to the cause of peace.

"These doubts and considerations will determine our vote on the adoption of the agenda. . . ."

Supporting the adoption of the agenda, the representative of Ghana noted that Articles 34 and 35 had been invoked in the letter of submission, and stated that

"there is a real grievance on the part of a Member State of the United Nations and this grievance has been brought before the Council.

"Without going into the substance of the grievance, I think the Security Council is duty bound to listen to the Member Government which has made this approach. I think we derive our inspiration largely from Article 35 of the Charter."

The representative of the USSR expressed the view that the main reason why the representative of the United Kingdom objected to the adoption of the agenda was essentially political. He added:

". . . one might ask, why should the United Kingdom representative try to divine why the item is being proposed? Why not adopt the agenda, listen to the representative who proposed the item, and find out that way why it was proposed? . . .

"Under the Charter, any State has a full right to bring up any question, no matter how annoying it may be to any country represented around this table. We must ensure the exercise of that right . . . If we want the United Nations to live up to its full potential, if we want Governments to come to it, instead of acting behind its back, we are in duty bound to give a hearing to any country, any Government, which brings a question before the Security Council. Otherwise there will be no United Nations. . . ."

The representative of the United Arab Republic observed that:

"As a matter of principle our delegation cannot deny any Member State the right of access to this Council, the right of presenting its case and obtaining the opportunity for the fullest discussion and the fairest review of such a case by this body. This

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[33] 847th meeting: para. 42.

[34] 987th meeting: para. 7.

[35] 991st meeting: para. 144.

[36] O.R., 16th year, Suppl. for Oct.-Dec. 1961, pp. 205-206.

[37] For texts of relevant statements, see:
987th meeting: President (UAR), para. 6; USSR, paras. 2-5.

[38] 987th meeting: para. 7.

we feel is an obligation inherent in the spirit and letter of our Charter, and for these reasons we support the adoption of the agenda. . . ."

In the view of the representative of Romania, objections to the adoption of the agenda violated the fundamental rights of Member States, as set forth in Articles 34 and 35 of the Charter, especially the right to ask the Council to debate and resolve questions which endangered the security and independence of States. The President, speaking as the representative of the United States, stated:

"My Government believes deeply in the principle that all nations, large or small, deserve a hearing in this Organization; but my Government also believes that the workings of our Organization should not be perverted and disrupted by constant repetition for propaganda purposes of groundless and self-serving charges that have already been thoroughly considered and thoroughly rejected."39/

Decision: *The Council rejected the provisional agenda by 4 votes in favour, none against, with 7 abstentions.*40/

**2. Effect of the inclusion of an item in the agenda

C. OTHER DISCUSSION ON THE ADOPTION OF THE AGENDA

1. Order of discussion of items on the agenda

CASE 8

At the 896th meeting on 9 September 1960, item 2 of the provisional agenda read as follows:

"Letter dated 13 July 1960 from the Secretary-General addressed to the President of the Security Council (S/4381); fourth report of the Secretary-General on the implementation of Security Council resolutions S/4387 of 14 July 1960, S/4405 of 22 July 1960 and S/4426 of 9 August 1960 (S/4482 and Add.1); letter dated 8 September 1960 from the Permanent Representative of Yugoslavia to the United Nations addressed to the President of the Security Council (S/4485)."

Before the adoption of the agenda, the representative of the USSR drew attention to a telegram41/ from the Prime Minister of the Republic of the Congo inviting the Security Council to hold its next meeting on the question of the situation in the Congo in Leopoldville, and proposed that the telegram should be considered before any other question. He submitted a draft resolution42/ to this effect. Concurring with the representative of the USSR, the President (Italy) proposed to inscribe the telegram of the Prime Minister on the agenda since otherwise it could not be discussed. He also proposed, in view of the procedural character of the item, to place it first.

The representative of Ecuador did not think that the item proposed by the USSR should be considered first; rather, the provisional agenda should be adopted without change, and once the Council had heard the Secretary-General and, possibly, the representative of Yugoslavia, priority could be given to the proposal of the USSR under item 2 of the agenda.

The representative of Poland took the view that since the proposal of the representative of the USSR concerned the place for holding the meeting of the Council it should be disposed of first. The representative of Ecuador did not press his point. No objection having been expressed to the inclusion of the telegram from the Prime Minister of the Congo as the first item in the agenda, it was adopted, as amended, without vote.43/

**2. Scope of items and sub-items on the agenda in relation to the scope of discussion

3. Phrasing of items on the agenda

CASE 9

At the 912th meeting on 7 December 1960, the provisional agenda included as item 2 the following text:

"Urgent measures in connexion with the latest events in the Congo:

"Statement dated 6 December 1960 by the Government of the Union of Soviet Socialist Republics concerning the situation in the Congo (S/4573).

"Note by the Secretary-General (S/4571)."

The representative of France remarked that the provisional agenda was based on a document of the Government of the USSR the text of which had a tone that could be described as being not worthy of the Council.

The representative of Italy concurred, and stated that the document could not be the basis of discussion by the Council. The agenda should be modified to read as follows:

"Letter dated 13 July 1960 from the Secretary-General addressed to the President of the Security Council (S/4381);

"Urgent measures in connexion with the latest events in the Congo:

"Note by the Secretary-General (S/4571)."

In the opinion of the representative of Poland, the document submitted by the USSR Government was entirely acceptable and should be included in the agenda. Should the document be excluded, he added,

"then we would have for the future a very dangerous situation where, by the mere procedure of a vote, the representatives of certain Governments here would be able to take away the rights of the representatives of other States and Governments to present any view or any opinions . . . for the attention of the Security Council."

39/ For texts of relevant statements, see:
991st meeting: President (United States), paras. 95, 144; Chile, paras. 19-20; Ghana, paras. 23-24; Romania, para. 71; USSR, paras. 27, 29, 39-40; United Arab Republic, para. 65; United Kingdom, paras. 2-3.

40/ 991st meeting: para. 144.

41/ S/4486, O.R., 15th year, Suppl. for July-Sept. 1960, p. 145.

42/ S/4494, 896th meeting: para. 13.

43/ 896th meeting: para. 29.
For texts of relevant statements, see:
896th meeting: President (Italy), paras. 8, 14, 16, 24, 29; Ecuador, paras. 17-20, 25, 28; Poland, paras. 22-23; USSR, paras. 9-13, 15, 26-27.

The President, speaking as the representative of the USSR, remarked that the Council had been convened at the request of his Government to consider the situation in the Congo and to endeavour to improve that situation. He went on to say that

> "... any document submitted by the Government of any country must be included in the documents appended to the corresponding item of the agenda ... In other words, there can be no circumstances in which the Government of any country is unable to raise any question in the Security Council or is unable to submit any document for consideration in the Security Council, however distasteful it may be to one or another delegation."

The representative of Ceylon declared that the Council was not concerned with the substance of the document at that stage. He proposed to meet the objection to its inclusion in the agenda by referring to it at the end of the agenda. It would then be one of the documents appearing in that agenda, and would not form a basis for discussion.

The representative of France stated that his delegation had never objected to the circulation of a document, and held that the circulation of a document was one thing and the establishment of the Council's agenda was another. The two things were not directly related. He continued:

> "When a question is submitted to the Council by any Member of the United Nations, the Council is fully entitled to consider the question ... in the form which it deems appropriate. The wording of agenda items is a matter for the Council to decide. And while my delegation is prepared to listen to what delegations have to say concerning the question of the Congo, we are not prepared to accept an unsatisfactory wording for the agenda item."

The representative of Italy was ready to accept the suggestion of the representative of Ceylon not to use the Soviet document as a basis for the Council's discussions. On that understanding he proposed the following wording for the agenda:

> "Letter dated 13 July 1960 from the Secretary-General addressed to the President of the Security Council (S/4381);
>
> "Urgent measures in connexion with the latest events in the Congo:
>
> "Note by the Secretary-General (S/4571);
>
> "Statement dated 6 December 1960 by the Government of the Union of Soviet Socialist Republics concerning the situation in the Congo (S/4573)."

The President, speaking as the representative of the USSR, found this arrangement of the agenda illogical. However, in the absence of objections by others, he did not press his points.[44]

Decision: *The agenda, as amended, was adopted.*[45]

**4. Postponement of consideration of items

[44] For texts of relevant statements, see:
912th meeting: President (USSR), paras. 40, 42-43, 46, 50-54, 64, 67, 72, 79, 98-100; Ceylon, paras. 56, 58-63. France, paras. 14, 69-70; Italy, paras. 23-26, 73-74, 87. Poland, paras. 34, 84-85.

[45] 912th meeting: para. 101.

Part IV

THE AGENDA: MATTERS OF WHICH THE SECURITY COUNCIL IS SEIZED (RULES 10 AND 11)

NOTE

Rule 10 of the provisional rules of procedure was designed to enable the Security Council to continue, at its next meeting, the consideration of an item of unfinished business without subjecting that item to renewed debate in connexion with the adoption of the agenda. In practice, however, the provisional agenda has not contained all items of unfinished business. The case history inserted in section A (Case 10) is related to an instance when a proposal was made by a member of the Council that the provisional agenda be modified to include in it a letter, in order to show that the proposed item was part of the unfinished business of the Council.

In the volume of the Repertoire covering the period 1946 - 1951, it was noted[46] that items on the agenda of the Council have remained on the Secretary-General's Summary Statement of matters of which the Security Council is seized when the tenor of the Council's discussion has revealed a continuing concern with the matter. During the period under review, additional evidence supporting such retention has been provided when the President of the Council has announced, upon the conclusion of the debate, that the Council remained seized of a question or that it had disposed of the matter (Cases 11 and 12).

The tabulation appearing in section B.1 brings up to date those appearing in previous volumes of the Repertoire.

A. RULE 10

CASE 10

At the 973rd meeting on 13 November 1961, the Security Council had on its provisional agenda a letter[47] dated 3 November 1961 from the representatives of Ethiopia, Nigeria and Sudan to the President of the Security Council requesting him to convene the Council to consider the situation prevailing in the province of Katanga (Republic of the Congo) caused by the lawless acts of mercenaries.

The representative of Liberia, on a point of order, drew the attention of the Council to the letter[48] of

[46] Repertoire of the Practice of the Security Council, 1946-1951, p. 84.

[47] S/4973, O.R., 16th year, Suppl. for Oct.-Dec. 1961, p. 66.

[48] S/4381, O.R., 15th year, Suppl. for July-Sept. 1960, p. 11.

13 July 1960 from the Secretary-General and observed:

"I have noted that from the 873rd meeting of the Security Council, on 13-14 July 1960, until the 942nd meeting on 20/21 February 1961, during which period there were, I believe, forty-five meetings of the Council devoted to the Congo, the agenda has borne this item: 'Letter dated 13 July 1960 from the Secretary-General addressed to the President of the Security Council (S/4381).'

"I note that today the provisional agenda omits that letter, and I think that it is desirable and imperative that the agenda of our meeting today should include that item in order to enable the Council to refer back to the letter in question and to the situation which has arisen from the consideration by the Council of the situation in the Congo as the result of the Secretary-General's letter.

"... therefore my delegation proposes that the agenda should be modified to include the letter from the Secretary-General contained in document S/4381."

In expressing his support for this proposal, the representative of the United Kingdom stated:

"We think the point is an important one because the United Nations involvement in the affairs of the Congo has been a continuing process and goes right back to that original request from the Secretary-General ....

"... In our discussions here, and possibly in any decisions we may reach, we shall want to take account of all the developments which have happened over the last year, and we can more fittingly and more efficiently do so if the title on the item of our agenda is worded as it has been before. It will then naturally be appropriate to list the document containing the letter from the Permanent Representatives of Ethiopia, Nigeria and Sudan [S/4973] immediately beneath, if this is the wish."

The representative of the United States, concurring with the representatives of Liberia and the United Kingdom, stated:

"Consideration of this situation in the Congo began with the letter of 13 July 1960 [S/4381] from the Secretary-General to the President of the Security Council; and it is under this agenda item that all previous resolutions of the Council have been adopted. We are not beginning, as I understand it, a new programme today. We are attempting to continue one, and if possible, to improve what has been done up to now. We, therefore, see no reason to change the title of the agenda item from the one which we have used heretofore.

"... I would urge, therefore, that we keep a general agenda item which will cover all types of cases and all types of problems, as we have in the past."

The President, speaking as the representative of the USSR, observed that he would not object to this proposal put forward by the representative of Liberia to place the Secretary-General's letter on the agenda.

Then, speaking as President (USSR), he stated that if there were no objections, he would regard the agenda as adopted in the form proposed by the representative of Liberia. [49]

Decision: *The Council thereupon adopted the agenda, as amended.* [50]

[49] For texts of relevant statements, see:
973rd meeting: President (USSR), paras. 2, 11-16. Liberia, paras. 3-5; United Kingdom, paras. 6-7; United States, paras. 9, 10.

[50] 973rd meeting: para. 16.

B. RULE 11

1. Retention and deletion of items from the Secretary-General's Summary Statements on matters of which the Security Council is seized

This tabulation, which supplements those appearing in the Repertoire, 1946-1951, pp. 85-91, the Supplement, 1952-1955, pp. 33-40, and the Supplement, 1956-1958, pp. 38-45, covers matters appearing in the Secretary-General's Summary Statements during the period 1959-1963. The items included are (1) those of which the Security Council was seized at the close of the period covered by the earlier tabulations, and (2) items of which the Council has been seized since that time. Items are listed in the order in which they have appeared in the Summary Statement. Items to the end of 1958 are numbered to conform with the numbering in the earlier tabulation. The titles used are those occurring in the Summary Statement except for some abridgments.

Item	First inclusion in the agenda	First entry in Summary Statement	Last action of the Council as of 31 December 1963	Final entry in Summary Statement as of 31 December 1963
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 [a]	
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, 26 February 1950	
14. The general regulation and reduction of armaments	88th meeting, 31 December 1946	S/238, [b] 3 January 1947	Dissolved Commission for Conventional Armaments in accordance with recommendation in General Assembly resolution 502 (VI) 571st meeting, 30 January 1952	
Information on armed forces of United Nations (General Assembly resolutions 41 (I) and 42 (I))	89th meeting, 7 January 1947	S/246, [b] 10 January 1947		
19. Appointment of a Governor of the Free Territory of Trieste	143rd meeting, 20 June 1947	S/362, 20 June 1947	Postponed discussion of the item 647th meeting, 14 December 1953	
20. The Egyptian question	159th meeting, 17 July 1947	S/425, 18 July 1947	Rejected Chinese draft resolution 201st meeting, 10 September 1947 [c]	
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 [d]	
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	

[a] See Repertoire of the Practice of the Security Council 1946 - 1951, Case 56, pp. 92-93.

[b] Combined in S/278 of 14 February 1947 in accordance with the Security Council's decision to deal with the two items together.

[c] See Repertoire of the Practice of the Security Council 1946 - 1951, Case 59, pp. 95-96.

[d] Ibid., Case 61, p. 97.

Item	First inclusion in the agenda	First entry in Summary Statement	Last action of the Council as of 31 December 1963	Final entry in Summary Statement as of 31 December 1963
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	S/603, 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 [a] Republic of Korea	409th meeting, 15 February 1949	S/1244, 7 February 1949	Not recommended 423rd meeting, 8 April 1949	See items 62, 77 and 85 below
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/1257, 14 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	Failed to adopt United Kingdom-United States draft resolution (S/5407) 1063rd meeting, 3 September 1963	
27. The India-Pakistan question [b]	226th meeting, 6 January 1948	S/641, 9 January 1948	Failed to adopt Irish draft resolution (S/5134) 1016th meeting, 22 June 1962	
28. The Czechoslovak question	268th meeting, 17 March 1948	S/700, 22 March 1948	Discussed Argentine draft resolution (S/782) 305th meeting, 26 May 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 the 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 [c]	
33. Identic Notifications dated 29 September 1948	362nd meeting, 5 October 1948	S/1029, 9 October 1948	Rejected joint draft resolution (S/1048) 372nd meeting, 25 October 1948	
38. International Control of Atomic Energy [d]	444th meeting, 15 September 1949	S/1394, [e] 21 September 1949	Adopted Canadian draft resolution, as amended, and rejected USSR draft resolution (S/1391/Rev.1) 447th meeting, 16 September 1949	
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	

[a] Listed under this heading are only those applications which failed to obtain recommendations as others were admitted by the Council's later actions as of 31 December 1963.

[b] 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/651 of 17 January 1948. The present title, India-Pakistan question, first appears in S/675 of 15 February 1948.

[c] See Repertoire of the Practice of the Security Council 1946 - 1951, case 60, pp. 96-97.

[d] 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/1343)".

[e] An earlier Summary Statement, S/1458 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.

Item	First inclusion in the agenda	First entry in Summary Statement	Last action of the Council as of 31 December 1963	Final entry in Summary Statement as at 31 December 1963
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/Rev.1) 501st meeting, 12 September 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	
50. New applications for membership. Viet-Nam (S/2446)	594th meeting, 2 September 1952	S/2770, 8 September 1952	Not recommended 603rd meeting, 19 September 1952	
Democratic Republic of Viet-Nam (S/2466)	594th meeting, 2 September 1952	S/2770, 8 September 1952	Not recommended 603rd meeting, 19 September 1952	
51. Question of appeal to States to accede to and ratify the Geneva Protocol of 1925 for the prohibition of the use of bacterial weapons	577th meeting, 18 June 1952	S/2679, 23 June 1952	Rejected USSR draft resolution 583rd meeting, 26 June 1952	
52. Question of request for investigation of alleged bacterial warfare	581st meeting, 23 June 1952	S/2687, 1 July 1952	Rejected USSR draft resolution 585th meeting, 1 July 1952 Failed to adopt U.S. draft resolution 587th meeting, 3 July 1952 Failed to adopt U.S. draft resolution 590th meeting, 9 July 1952	
56. Letter dated 29 May 1954 from the acting permanent representative of Thailand to the United Nations addressed to the President of the Security Council (S/3220)	672nd meeting, 3 June 1954	S/3224, 8 June 1954	Failed to adopt Thailand draft resolution (S/3229) 674th meeting, 18 June 1954	
57. Cablegram dated 19 June 1954 from the Minister of External Relations of Guatemala addressed to the President of the Security Council (S/3232)	675th meeting, 20 June 1954	S/3257, 29 June 1954	Failed to adopt Brazilian-Colombian draft resolution (S/3236/Rev.1) Adopted French draft resolution (S/3237) 675th meeting, 20 June 1954 1/	
59. Letter dated 8 September 1954 from the representative of the U.S. addressed to the President of the Security Council	679th meeting, 10 September 1954	S/3289, 13 September 1954	Adjourned to meet again upon request of any delegation 680th meeting, 10 September 1954	

1/ At the 676th meeting on 25 June 1954, the Council failed to adopt the agenda. For case history, see the Supplement, 1952-1955, Cases 22 and 24, pp. 33, 40.

Item	First inclusion in the agenda	First entry in Summary Statement	Last action of the Council as of 31 December 1961	Final entry in Summary Statement as of 31 December 1961
61. Letter dated 28 January 1955 from the representative of New Zealand addressed to the President of the Security Council concerning the question of hostilities in the area of certain islands off the coast of the mainland of China Letter dated 30 January 1955 from the representative of the USSR addressed to the President of the Security Council concerning the question of acts of aggression by the U.S. against the People's Republic of China in the area of Taiwan and other islands of China	689th meeting, 31 January 1955	S/3359, 7 February 1955	Postponed consideration of matters contained in the letter from the representative of New Zealand 691st meeting, 14 February 1955 Rejected USSR motion to consider the next item on the agenda 691st meeting, 14 February 1955	
62. Applications for membership [k/]				
Reconsideration. Mongolian People's Republic	701st meeting, 10 December 1955	S/3507, 13 December 1955	Rejected USSR amendment (S/3517) to United Kingdom draft resolution (S/3513) and postponed further consideration of latter 708th meeting, 21 December 1955	See items 73, 77 and 112 below
Reconsideration. Republic of Korea, Viet-Nam	703rd meeting, 13 December 1955	S/3515, 15 December 1955	Not recommended 704th meeting, 13 December 1955	See items 77 and 85 below
68. Letter dated 23 September 1956 from the representatives of France and the United Kingdom addressed to the President of the Security Council (S/3654)	734th meeting, 26 September 1956	S/3661, 1 October 1956	After adopting the first part of the joint draft resolution (S/3671), the Council rejected the second part as amended by Iran 743rd meeting, 13 October 1956	
69. Letter dated 24 September 1956 from the representative of Egypt addressed to the President of the Security Council (S/3656)	734th meeting, 26 September 1956	S/3661, 1 October 1956	Rejected a motion to discuss this item simultaneously with the preceding one submitted by France and the United Kingdom 734th meeting, 26 September 1956	
70. Letter dated 27 October 1956 from the representatives of France, the United Kingdom and the United States addressed to the President of the Security Council (S/3690)	746th meeting, 28 October 1956	S/3738, 6 November 1956	Adopted United States draft resolution (S/3733) to call an emergency special session of the General Assembly 754th meeting 4 November 1956	
71. Letter dated 25 October 1956 from the representative of France addressed to the Secretary-General (S/3689 and Corr.1)	747th meeting, 29 October 1956	S/3738, 6 November 1956	Adjourned its discussion to a further date 747th meeting, 29 October 1956	

[k/] Under this agenda heading, the applications remaining on the list are only those which failed to obtain a recommendation.

Item	First inclusion in the agenda	First entry in Summary Statement	Last action of the Council as of 31 December 1963	Final entry in Summary Statement as of 31 December 1963
72. Letter dated 30 October 1956 from the representative of Egypt addressed to the President of the Security Council (S/3712)	750th meeting, 30 October 1956	S/3738, 6 November 1956	Adopted Yugoslav draft resolution (S/3719) 751st meeting, 31 October 1956	
73. Admission of new Members 1/				
Mongolian People's Republic	756th meeting, 12 December 1956	S/3759, 17 December 1956	Rejected USSR draft resolution (S/3755) 756th meeting, 12 December 1956	See items 77 and 112 below
77. Admission of new Members				
Republic of Korea	789th meeting, 9 September 1957	S/3888, 17 September 1957	Rejected USSR amendment (S/3887) to recommend simultaneous admission of Democratic People's Republic of Korea and of the Republic of Korea Not recommended 790th meeting, 9 September 1957	See item 85 below
Viet-Nam	789th meeting, 9 September 1957	S/3888, 17 September 1957	Not recommended 790th meeting, 9 September 1957	See item 85 below
Mongolian People's Republic	789th meeting, 9 September 1957	S/3888, 17 September 1957	Not recommended 790th meeting, 9 September 1957	See item 112 below
78. The Tunisian question (I): Letter dated 13 February 1958 from the permanent representative of Tunisia to the President of the Security Council concerning: "Complaint by Tunisia in respect of an act of aggression committed against it by France on 8 February 1958 at Sakiet-Sidi-Youssef" Letter dated 14 February 1958 from the permanent representative of France to the President of the Security Council concerning: "Situation resulting from the aid furnished by Tunisia to rebels enabling them to conduct operations from Tunisian territory directed against the integrity of French territory and the safety of the persons and property of French nationals"	811th meeting, 18 February 1958	S/3967, 26 February 1958	Adjourned the meeting under rule 33 811th meeting, 18 February 1958	

1/ Under this agenda heading, the applications remaining on the list are only those which failed to obtain recommendation.

Item	First inclusion in the agenda	First entry in Summary Statement	Last action of the Council as of 31 December 1963	Final entry in Summary Statement as of 31 December 1963
79. Letter dated 20 February 1958 from the representative of the Sudan addressed to the Secretary-General	812th meeting, 21 February 1958	S/3967, 26 February 1958	Decided that the next meeting, if necessary, would be called after consultation among members and the parties concerned 812th meeting, 21 February 1958	
80. Complaint of the representative of the USSR	814th meeting, 29 April 1958	S/3996, 28 April 1958	Failed to adopt United States draft resolution (S/3995), as amended by Sweden, and rejected USSR draft resolution (S/3997) 817th meeting, 2 May 1958	
82. The Tunisian question (II): Letter dated 29 May 1958 from the representative of Tunisia to the President of the Security Council concerning: "Complaint by Tunisia in respect of acts of armed aggression committed against it since May 1958 by the French military forces stationed in its territory and in Algeria" Letter dated 29 May from the representative of France to the President of the Security Council concerning: (a) "The complaint brought by France against Tunisia on 14 February 1958 (document S/3954)" (b) "The situation arising out of the disruption, by Tunisia, of the modus vivendi which had been established since February 1958 with regard to the stationing of French troops at certain points in Tunisian territory"	819th meeting, 2 June 1958	S/4021, 9 June 1958	Statements made by the representatives of France and Tunisia concerning the agreement reached by their Governments 826th meeting, 18 June 1958	
83. Letter dated 17 July 1958 from the representative of Jordan addressed to the President of the Security Council concerning: "Complaint by the Hashemite Kingdom of Jordan of interference in its domestic affairs by the United Arab Republic"	831st meeting, 17 July 1958	S/4061 21 July 1958	Agreed to consider simultaneously the complaints submitted by Lebanon and Jordan 831st meeting, 17 July 1958	
85. Admission of new Members Republic of Korea	842nd meeting, 9 December 1958	S/4135 16 December 1958	Rejected USSR amendments (S/4132) to joint	

Item	First inclusion in the agenda	First entry in Summary Statement	Last action of the Council as of 31 December 1963	Final entry in Summary Statement as of 31 December 1963
			draft resolution (S/4129/Rev.1) Not recommended 843rd meeting, 9 December 1958	
Viet-Nam	842nd meeting, 9 December 1958	S/4135 16 December 1958	Not recommended 843rd meeting, 9 December 1958	
86. Report by the Secretary-General on the letter received from the Minister for Foreign Affairs of the Royal Government of Laos, transmitted by a note from the Permanent Mission of Laos to the United Nations, 4 September 1959 (S/4212, S/4213, S/4214)	847th meeting, 7 September 1959	S/4220 21 September 1959	Adopted joint draft resolution (S/4214) 848th meeting, 7 September 1959	
87. Election of a member to fill the vacancy in the International Court of Justice	849th meeting, 29 September 1959	S/4225, 5 October 1959	Recommended Mr. Ricardo J. Alfaro to fill the vacancy left by Mr. José Gustavo Guerrero 849th meeting, 29 September 1959	S/4225, 5 October 1959
88. Admission of new Members Cameroon	850th meeting, 26 January 1960	S/4262, 1 February 1960	Recommended 850th meeting, 26 January 1960	S/4262, 1 February 1960
89. Letter dated 25 March 1960 from the representatives of Afghanistan, Burma, Cambodia, Ceylon, Ethiopia, Federation of Malaya, Ghana, Guinea, India, Indonesia, Iran, Iraq, Japan, Jordan, Laos, Lebanon, Liberia, Libya, Morocco, Nepal, Pakistan, Philippines, Saudi Arabia, Sudan, Thailand, Tunisia, Turkey, United Arab Republic and Yemen addressed to the President of the Security Council (S/4279 and Add.1	851st meeting, 30 March 1960	S/4301, 4 April 1960	Adopted Ecuadorian draft resolution (S/4299) 856th meeting, 1 April 1960	
90. Cable dated 18 May 1960 from the Minister for Foreign Affairs of the Union of Soviet Socialist Republics addressed to the President of the Security Council (S/4314, S/4315)	857th meeting, 23 May 1960	S/4329, 31 May 1960	Rejected USSR draft resolution (S/4321) 860th meeting, 26 May 1960	
91. Letter dated 23 May 1960 from the representatives of Argentina, Ceylon, Ecuador and Tunisia addressed to the President of the	861st meeting, 26 May 1960	S/4329, 31 May 1960	Adopted revised four-Power draft resolution (S/4323/Rev.2) 863rd meeting, 27 May 1960	

Item	First inclusion in the agenda	First entry in Summary Statement	Last action of the Council as of 31 December 1963	Final entry in Summary Statement as of 31 December 1963
Security Council (S/4323)				
92. Admission of new Members				
Togo	864th meeting, 31 May 1960	S/4332, 6 June 1960	Recommended 864th meeting, 31 May 1960	S/4332, 6 June 1960
93. The date of election to fill a vacancy in the International Court of Justice	864th meeting, 31 May 1960	S/4332, 6 June 1960	Adopted resolution (S/4331) 864th meeting, 31 May 1960	S/4332, 6 June 1960
94. Letter dated 15 June 1960 from the representative of Argentina addressed to the President of the Security Council (S/4336)	865th meeting, 22 June 1960	S/4351, 28 June 1960	Adopted Argentina draft resolution (S/4349) as amended 868th meeting, 23 June 1960	
95. Admission of new Members				
Mali	869th meeting, 28 June 1960	S/4372, 7 July 1960	Recommended 869th meeting, 28 June 1960	S/4372, 7 July 1960
Madagascar (Malagasy Republic)	870th meeting, 29 June 1960	S/4372, 7 July 1960	Recommended 870th meeting, 29 June 1960	S/4372, 7 July 1960
Somalia	871st meeting, 5 July 1960	S/4379, 13 July 1960	Recommended 871st meeting, 5 July 1960	S/4379, 13 July 1960
Congo (Leopoldville)	872nd meeting, 7 July 1960	S/4379, 13 July 1960	Recommended 872nd meeting, 7 July 1960	S/4379, 13 July 1960
96. Letter dated 13 July 1960 from the Secretary-General addressed to the President of the Security Council (S/4381)	873rd meeting, 13/14 July 1960	S/4391, 18 July 1960	Adopted resolution (S/5002) 982nd meeting, 24 November 1961	
97. Letter dated 11 July 1960 from the Minister for Foreign Affairs of Cuba addressed to the President of the Security Council (S/4378)	874th meeting, 18 July 1960	S/4408, 25 July 1960	Adopted joint draft resolution (S/4392) 876th meeting, 19 July 1960	
98. Telegrams dated 13 July 1960 from the Minister for Foreign Affairs of the Union of Soviet Socialist Republics addressed to the Secretary-General (S/4384, S/4385)	880th meeting, 22 July 1960	S/4408, 25 July 1960	Rejected USSR draft resolution (S/4406) and failed to adopt United States and Italian draft resolutions (S/4409/Rev.1, S/4411) 883rd meeting, 26 July 1960	S/4413, 1 August 1960
99. Admission of new Members				
Dahomey	890th meeting, 23 August 1960	S/4472, 29 August 1960	Recommended 891st meeting, 23 August 1960	S/4472, 29 August 1960
Niger	890th meeting, 23 August 1960	S/4472, 29 August 1960	Recommended 891st meeting, 23 August 1960	S/4472, 29 August 1960
Upper Volta	890th meeting, 23 August 1960	S/4472, 29 August 1960	Recommended 891st meeting, 23 August 1960	S/4472, 29 August 1960
Ivory Coast	890th meeting, 23 August 1960	S/4472, 29 August 1960	Recommended 891st meeting, 23 August 1960	S/4472, 29 August 1960

Item	First inclusion in the agenda	First entry in Summary Statement	Last action of the Council as of 31 December 1963	Final entry in Summary Statement as of 31 December 1963
Chad	890th meeting, 23 August 1960	S/4472, 29 August 1960	Recommended 891st meeting, 23 August 1960	S/4472, 29 August 1960
Congo (Brazzaville)	890th meeting, 23 August 1960	S/4472, 29 August 1960	Recommended 891st meeting, 23 August 1960	S/4472, 29 August 1960
Gabon	890th meeting, 23 August 1960	S/4472, 29 August 1960	Recommended 891st meeting, 23 August 1960	S/4472, 29 August 1960
Central African Republic	890th meeting, 23 August 1960	S/4472, 29 August 1960	Recommended 891st meeting, 23 August 1960	S/4472, 29 August 1960
Cyprus	892nd meeting, 24 August 1960	S/4472, 29 August 1960	Recommended 892nd meeting, 24 August 1960	S/4472, 29 August 1960
100. Letter dated 5 September 1960 from the First Deputy Minister for Foreign Affairs of the Union of Soviet Socialist Republics addressed to the President of the Security Council (S/4477)	893rd meeting, 8 September 1960	S/4510, 13 September 1960	Adopted joint draft resolution (S/4484) 895th meeting, 9 September 1960 [m]	S/4510, 13 September 1960
101. Telegram dated 8 September 1960 from the Prime Minister of the Republic of the Congo addressed to the Secretary-General (S/4486)	896th meeting, 9 September 1960	S/4510, 13 September 1960	Rejected draft resolution (S/4494) 896th meeting, 9 September 1960	S/4510, 13 September 1960
102. Admission of new Members				
Senegal	907th meeting, 28 September 1960	S/4546, 3 October 1960	Recommended 907th meeting, 28 September 1960	S/4546, 3 October 1960
Mali	907th meeting, 28 September 1960	S/4546, 3 October 1960	Recommended 907th meeting, 28 September 1960	S/4546, 3 October 1960
Nigeria	908th meeting, 7 October 1960	S/4550, 11 October 1960	Recommended 908th meeting, 7 October 1960	S/4550, 11 October 1960
103. Election of members to fill vacancies in the International Court of Justice	909th meeting, 16 November 1960	S/4562, 22 November 1960	Recommended Sir Gerald Fitzmaurice to succeed to vacancy resulting from the death of Sir Hersch Lauterpacht Recommended five candidates to fill vacancies 909th and 910th meetings, 16 and 17 November 1960	S/4562, 22 November 1960
104. Admission of new Members				
Mauritania	911th meeting, 3/4 December 1960	S/4572, 5 December 1960	Not recommended 911th meeting, 3/4 December 1960	See item 110 below
105. Letter dated 31 December 1960 from the Minister for External Relations of Cuba to the President of the Security Council (S/4605)	921st meeting, 4 January 1961	S/4617, 13 January 1961	Discussed Chile-Ecuador joint draft resolution (S/4612) 923rd meeting, 5 January 1961	

[m] See Case 11.

Item	First inclusion in the agenda	First entry in Summary Statement	Last action of the Council as of 31 December 1963	Final entry in Summary Statement as of 31 December 1963
106. Letter dated 20 February 1961 from the representative of Liberia addressed to the President of the Security Council (S/4739)	944th meeting, 10 March 1961	S/4765, 14 March 1961	Adopted joint draft resolution (S/4835) as amended 956th meeting, 9 June 1961	
107. Complaint by Kuwait in respect of the situation arising from the threat by Iraq to the territorial independence of Kuwait, which is likely to endanger the maintenance of international peace and security (S/4845, S/4844)	957th meeting, 2 July 1961	S/4858, 10 July 1961	Failed to adopt United Kingdom draft resolution (S/4855) 960th meeting, 7 July 1961	
108. Complaint by the Government of the Republic of Iraq in respect of the situation arising out of the armed threat by the United Kingdom to the independence and security of Iraq, which is likely to endanger the maintenance of international peace and security (S/4847)	957th meeting, 2 July 1961	S/4858, 10 July 1961	Failed to adopt United Arab Republic draft resolution (S/4856) 960th meeting, 7 July 1961	
109. Telegram dated 20 July 1961 addressed to the President of the Security Council by the Secretary of State for Foreign Affairs of the Republic of Tunisia (S/4861). Letter dated 20 July 1961 from the Permanent Representative of Tunisia addressed to the President of the Security Council (S/4862)	961st meeting, 21 July 1961	S/4867, 24 July 1961	Rejected two joint draft resolutions (S/4903, S/4904) and Turkish draft resolution (S/4905) 966th meeting, 29 July 1961[a]	
110. Admission of new Members				
Sierra Leone	968th meeting, 26 September 1961	S/4956, 2 October 1961	Recommended 968th meeting, 26 September 1961	S/4956, 2 October 1961
Reconsideration Mongolia	968th meeting, 26 September 1961	S/4956, 2 October 1961	Recommended 971st meeting, 25 October 1961	S/4970, 30 October 1961
Reconsideration Mauritania	968th meeting, 26 September 1961	S/4956, 2 October 1961	Recommended 971st meeting, 25 October 1961	S/4970, 30 October 1961
111. Question of recommendation regarding the Acting Secretary-General	972nd meeting, (private) 3 November 1961	S/4974, 7 November 1961	Recommended 972nd meeting, 3 November 1961	S/4974, 7 November 1961
112. Letter dated 21 November 1961 from the Permanent Representative of Cuba ad-	980th meeting, 22 November 1961	S/5008, 30 November 1961	Decided to retain the Item on the agenda 983rd meeting, 28 November 1961	

[a] See Case 12.

Item	First inclusion in the agenda	First entry in Summary Statement	Last action of the Council as of 31 December 1963	Final entry in Summary Statement as of 31 December 1963
dressed to the President of the Security Council (S/4992)				
113. Admission of new Members				
Kuwait	984th meeting, 30 November 1961	S/5102, 5 December 1961	Not recommended 985th meeting, 30 November 1961	See item 120 below
Tanganyika	986th meeting, 14 December 1961	S/5037, 21 December 1961	Recommended 986th meeting, 14 December 1961	S/5037, 21 December 1961
114. Letter dated 18 December 1961 from the Permanent Representative of Portugal to the President of the Security Council (S/5030)	987th meeting, 18 December 1961	S/5042, 28 December 1961	Rejected joint draft resolution (S/5032) and failed to adopt joint draft resolution (S/5033) 988th meeting, 18 December 1961	
115. Letter dated 8 March 1962 from the Permanent Representative of Cuba to the President of the Security Council (S/5086)	992nd meeting, 14 March 1962	S/5099, 22 March 1962	Rejected Cuban draft resolution (S/5095) 998th meeting, 23 March 1962	S/5105, 28 March 1962
116. Admission of new Members				
Rwanda	1017th meeting, 26 July 1962	S/5151, 31 July 1962	Recommended 1017th meeting, 26 July 1962	S/5151, 31 July 1962
Burundi	1017th meeting, 26 July 1962	S/5151, 31 July 1962	Recommended 1017th meeting, 26 July 1962	S/5151, 31 July 1962
Jamaica	1018th meeting, 12 September 1962	S/5168, 19 September 1962	Recommended 1018th meeting, 12 September 1962	S/5168, 19 September 1962
Trinidad and Tobago	1018th meeting, 12 September 1962	S/5168, 19 September 1962	Recommended 1018th meeting, 12 September 1962	S/5168, 19 September 1962
Algeria	1020th meeting, 4 October 1962	S/5175, 8 October 1962	Recommended 1020th meeting, 4 October 1962	S/5175, 8 October 1962
Uganda	1021st meeting, 15 October 1962	S/5184, 23 October 1962	Recommended 1021st meeting, 15 October 1962	S/5184, 23 October 1962
117. Letter dated 22 October 1962 from the Permanent Representative of the United States of America addressed to the President of the Security Council (S/5181); letter dated 22 October 1962 from the Permanent Representative of Cuba addressed to the President of the Security Council (S/5183); letter dated 23 October 1962 from the Deputy Permanent Representative of the Union of Soviet Socialist Republics ad-	1022nd meeting, 23 October 1962	S/5201, 31 October 1962	Adjournment of meeting pending outcome of Secretary-General's appeal 1025th meeting, 25 October 1962	

Item	First inclusion in the agenda	First entry in Summary Statement	Last action of the Council as of 31 December 1963	Final entry in Summary Statement as of 31 December 1963
dressed to the President of the Security Council (S/5186)				
118. Question of recommendation regarding the Secretary-General	1026th meeting (private), 30 November 1962	S/5213, 3 December 1962	Recommended 1026th meeting, 30 November 1962	S/5213, 3 December 1962
119. Letter dated 10 April 1963 from the Chargé d'affaires a.i. of the Permanent Mission of Senegal addressed to the President of the Security Council (S/5279 and Corr.1)	1027th meeting, 17 April 1963	S/5291, 22 April 1963	Adopted joint draft resolution (S/5292) 1033rd meeting, 24 April 1963	
120. Admission of new Members				
Reconsideration Kuwait	1034th meeting, 7 May 1963	S/5313, 13 May 1963	Recommended 1034th meeting, 7 May 1963	S/5313, 13 May 1963
121. Telegram dated 5 May 1963 from the Minister for Foreign Affairs of the Republic of Haiti addressed to the President of the Security Council (S/5302)	1035th meeting, 8 May 1963	S/5313, 13 May 1963	Postponed indefinitely 1036th meeting, 9 May 1963	
122. Reports by the Secretary-General to the Security Council concerning developments relating to Yemen (S/5298, S/5321, S/5323, S/5325)	1037th meeting, 10 June 1963	S/5334, 17 June 1963	Adopted joint draft resolution (S/5330) 1039th meeting, 11 June 1963	
123. Letter dated 11 July 1963 addressed to the President of the Security Council by the representatives of Algeria, Burundi, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Congo (Leopoldville), Dahomey, Ethiopia, Gabon, Ghana, Guinea, Ivory Coast, Liberia, Libya, Madagascar, Mali, Mauritania, Morocco, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Tanganyika, Togo, Tunisia, Uganda, United Arab Republic and Upper Volta (S/5347)	1040th meeting, 22 July 1963	S/5377, 30 July 1963	Adopted joint draft resolution (S/5480) 1083rd meeting, 11 December 1963	
124. Letter dated 11 July 1963 addressed to the President of the Security Council by the representatives of Algeria, Burundi, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Congo (Leo-	1040th meeting, 22 July 1963	S/5377, 30 July 1963	Adopted Norwegian draft resolution (S/5469) 1078th meeting, 4 December 1963	

Item	First on list of items on the agenda	First entry in Summary Statement	Last action of the Council as of 31 December 1963	Final entry in Summary Statement as of 31 December 1963
poldville), Dahomey, Ethiopia, Gabon, Ghana, Guinea, Ivory Coast, Liberia, Libya, Madagascar, Mali, Mauritania, Morocco, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Tanganyika, Togo, Tunisia, Uganda, United Arab Republic and Upper Volta (S/5348)				
125. Letter dated 2 August 1963 from the representatives of Ghana, Guinea, Morocco, and the United Arab Republic addressed to the President of the Security Council (S/5382); and letter dated 30 August from the Chargé d'affaires of the Permanent Mission of the Congo (Brazzaville) addressed to the President of the Security Council on behalf of the representatives of Algeria, Burundi, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Congo (Leopoldville), Dahomey, Ethiopia, Gabon, Ivory Coast, Liberia, Libya, Madagascar, Mali, Mauritania, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Tanganyika, Togo, Tunisia, Uganda, and Upper Volta (S/5409)	1064th meeting, 9 September 1963	S/5429, 16 September 1963	Failed to adopt joint draft resolution (S/5425/Rev.1) 1069th meeting, 13 September 1963	
126. Election of members to fill vacancies in the International Court of Justice	1071st meeting, 21 October 1963	S/5446, 28 October 1963	Recommended five candidates to fill vacancies 1071st and 1072nd meetings, 21 October 1963	S/5446, 28 October 1963
127. Admission of new Members				
Zanzibar	1084th meeting, 16 December 1963	S/5489, 27 December 1963	Recommended 1084th meeting, 16 December 1963	S/5489, 27 December 1963
Kenya	1084th meeting, 16 December 1963	S/5489, 27 December 1963	Recommended 1084th meeting, 16 December 1963	S/5489, 27 December 1963
128. Letter dated 26 December 1963 from the Permanent Representative of Cyprus addressed to the President of the Security Council (S/5488)	1085th meeting, 27 December 1963	S/5500, 31 December 1963	Decided that the Council would be reconvened, on consultation by the President, whenever it was deemed appropriate 1085th meeting, 27 December 1963	

2. Proceedings of the Security Council regarding the retention and deletion of items from the agenda

CASE 11

At the 893rd meeting on 8 September 1960, in connexion with the letter [51] dated 5 September 1960 from the First Deputy Minister for Foreign Affairs of the Union of Soviet Socialist Republics, the Council had before it two draft resolutions: one [52] submitted by the USSR, and the other [53] by Argentina, Ecuador and the United States.

At the 895th meeting on 9 September 1960, the Council, after acceding to the request of the representative of Ecuador that the three-Power draft resolution be given priority, adopted [54] it by 9 votes in favour, none against, with 2 abstentions. The representative of the USSR then stated that, in the light of the discussion and the vote, the majority of the members were not ready to vote for the USSR draft resolution and, therefore, he would not press for a vote on his draft resolution. He further stressed that resolutions such as that adopted by the Organization of American States (OAS) fell completely within the purview of Article 53 of the Charter and were subject to approval by the Council. The members who were evading the consideration of the substantive issue were leaving the door open so that in other circumstances they might fully support the provisions of the Charter to the effect that regional agencies might apply sanctions only with the concurrence of the Council.

The representative of the United States, in reference to the interpretation of Article 53 given by the representative of the USSR, maintained that the three-Power draft resolution was not submitted under Article 53. He continued:

> "As to the principle of the matter being left open for future consideration by the Council, my delegation considers this particular item completed, and in the future we shall judge proposals on their merits." [55]

The President (Italy) stated: [56]

> "We can consider our examination of this question completed. Having heard the statements of the members of the Council, I take it that I may now declare that the Council has disposed of the matter."

CASE 12

At the 961st meeting on 21 July 1961, the Council included in its provisional agenda an item:

> "Telegram [57] dated 20 July 1961 addressed to the President of the Security Council by the Secretary of State for Foreign Affairs of the Republic of Tunisia (S/4861). Letter [58] dated 20 July 1961 from the Permanent Representative of Tunisia addressed to the President of the Security Council (S/4862)."

Following the adoption of the agenda, the President (Ecuador) invited the representative of Tunisia to the Council table to take part in the Council's discussion of the item. [59]

At the 962nd meeting on 22 July 1961, the Council had before it three draft resolutions: the first [60] submitted by Liberia and the United Arab Republic; the second [61] by the United Kingdom and the United States; and the third [62] by Liberia.

The representative of Liberia, in requesting that priority be given to his draft resolution over the other two, stated that, in view of the circumstances, the Council should adopt this preliminary decision immediately and without discussion. As soon as this draft resolution was adopted, the Council could then speedily resume its discussion on the Tunisian complaint. The draft resolution provided that the Council, pending the conclusion of the debate of the item, would call for an immediate cease-fire and a return of all armed forces to their original positions.

The Council, after acceding to the request of the representative of Liberia, took a vote on the draft resolution submitted by Liberia (S/4880), which was adopted [63] by 10 votes in favour and none against.

At the 963rd meeting on 22 July 1961, the Council rejected [64] the other two draft resolutions before it; the one submitted by Liberia and the United Arab Republic (S/4878), and the other by the United Kingdom and the United States (S/4879).

The representative of Tunisia, in summarizing the situation confronting the Council, stated that

> "... in order to prevent an extremely serious international situation, and also in order not to disappoint all the hopes which have always turned to our Organization, I venture to request that the question should remain before the Security Council."

The representatives of Ceylon and the United Arab Republic shared the view of the representative of Tunisia that the Council should remain seized of the question they had considered and should hold itself in readiness to meet at any time should circumstances warrant such a meeting.

The President (Ecuador), in summing up the Council's proceedings on this question, stated that

> "... the fact that both draft resolutions have been put to the vote and neither has been adopted does not mean that the debate on this matter is over; firstly, because it is on the agenda and must therefore stand in its present form; and secondly, because the draft resolution adopted at the last meeting states clearly, in operative paragraph 2: 'Decides to continue the

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51/ S/4477, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 134-135.

52/ S/4481/Rev.1; 893rd meeting: para. 25.

53/ S/4484: see S/4491, O.R., 15th year, Suppl. for July-Sept. 1960, p. 145.

54/ 895th meeting: para. 18.

55/ For texts of relevant statements, see:
895th meeting: USSR, paras. 19, 22-23. United States, paras. 31-32.

56/ 895th meeting: para. 33.

57/ S/4861, O.R., 16th year, Suppl. for July-Sept. 1961, p. 6.

58/ S/4862, ibid., pp. 7-9.

59/ 961st meeting: para. 3.

60/ S/4878, O.R., 16th year, Suppl. for July-Sept. 1961, pp. 22-23.

61/ S/4879, ibid., p. 23.

62/ S/4880, 962nd meeting: para. 43.

63/ 962nd meeting: para. 58.

64/ 963rd meeting: paras. 113-114.

debate,' I do not consider that the fact that neither of the two draft resolutions submitted today has been adopted can be taken to mean that the matter is now finished."

He further held himself in readiness to convene the Council again, at the request of any member or of any State Member of the United Nations, whenever that was deemed necessary.[65]

[65] For texts of relevant statements, see: 960th meeting: President (Ecuador), paras. 143-144; Ceylon, para. 139; Tunisia, para. 131; United Arab Republic, para. 138.

Chapter III

PARTICIPATION IN THE PROCEEDINGS OF THE SECURITY COUNCIL

TABLE OF CONTENTS

INTRODUCTORY NOTE

As indicated previously in the Repertoire, Articles 31 and 32 of the Charter and rules 37 and 39 of the provisional rules of procedure provide for invitations to non-members of the Security Council in the following circumstances: (1) where a Member of the United Nations brings a dispute or a situation to the attention of the Security Council in accordance with Article 35 (1) (rule 37); (2) where a Member of the United Nations, or a 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); and (4) where members of the Secretariat or other persons are invited to supply information or give other assistance (rule 39). Of these four categories, only category (2) involves an obligation of the Council. In extending these invitations, the Council, as earlier, has made no distinction between a complaint involving a dispute within the meaning of Article 32, or a situation, or a matter not of such nature.

The classification of the material relevant to participation in the proceedings of the Security Council is designed to facilitate the presentation of the varieties of practice to which the Council has had recourse, adhering where possible to a classification based on Articles 31 and 32 of the Charter and rules 37 and 39 of the provisional rules of procedure. The reasons why the material cannot be satisfactorily arranged within a classification derived directly from the texts of these Articles and rules of procedure have been set forth in the Repertoire, 1946-1951.

Part I includes a summary account of the proceedings of the Council in the consideration of all the proposals to extend an invitation to participate in the discussion, with special emphasis on consideration of the basis on which the invitation might be deemed to rest.

In part II there are no entries as there has been no discussion of the terms and provisions of Article 32 during the period under review.

Part III presents summary accounts of procedures relating to the participation of invited representatives after the Council has decided to extend an invitation.

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 types and varieties of practice to which the Council has had recourse in connexion with the extension of invitations are dealt with in three sections: section B: Invitations to representatives of subsidiary organs or other United Nations organs;[1] section C: Invitations to Members of the United Nations; section D: Invitations to non-member States, together with other invitations. During the period under review the Council extended no other invitations. Presented in case histories are the general features of each case, together with the decision of the Council and the main positions taken in the course of the debate.

In most instances in which Member States submitting matters to the Council in accordance with Article 35 (1) have asked to participate in the deliberations of the Council, the invitation has been extended as a matter of course and without discussion. This has been true also of invitations under Article 31 to Members of the United Nations to participate in the discussion of a question when their interests were considered by the Council to be specially affected. Of the 120 instances in which such routine invitations were extended 59 have been recorded in tabular form in section C 1.a. whereas, the other 61 appear in Section C.2.a. The tabulation is chronologically arranged to provide information on the following points: (1) agenda item; (2) State invited; (3) request for invitation; and (4) decision of the Council. Included also is an instance[2] in which thirty-two African States, in submitting a question to the Council, delegated the Foreign Ministers of Liberia, Madagascar, Sierra Leone and Tunisia to lay before the Council the concern of all the peoples of Africa.[3] Three case histories following the tabulation present the proceedings in those instances in which the decision concerning the extension of an invitation was accompanied by discussion. On one occasion[4] there has been discussion of the question whether the extension of an invitation to one party required simultaneous extension of an invitation to another party, whose interests were considered to be specially affected. In two other instances[5] reference was made to the question whether invitations should be extended without closer scrutiny of the interests said to be specially affected. In section D are reported proceedings[6] involving the extension of an invitation to a non-member State of the United Nations.

[1] See Case 1.

[2] See tabulation C.1.a., entry 12.

[3] S/5347, O.R., 18th year, Suppl. for July-Sept. 1963, pp. 9-10.

[4] See Case 2.

[5] See Cases 3 and 4.

[6] See Case 5.

**A. IN THE CASE OF PERSONS INVITED IN AN INDIVIDUAL CAPACITY

B. IN THE CASE OF REPRESENTATIVES OF UNITED NATIONS ORGANS OR SUBSIDIARY ORGANS

CASE 1

The following was the only occasion during the period under review on which the Security Council invited a representative of one of its subsidiary organs to the Council table to give information required in connexion with consideration of a report from the subsidiary organ:

Chief of Staff, Truce Supervision Organization in Palestine

At the 1000th meeting on 3 April 1962.[2]

[2] 1000th meeting: paras. 11-13, 18.

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

Question[a]	State invited	Initiation by[b]	Request for invitation	Decision of the Council: Invitations extended and renewed[c]
1. The Palestine question*	Israel		S/4151 and Corr.1, O.R., 14th year, Suppl. for Jan.-June 1959, pp. 3-4	845th mtg.
	Jordan		S/4777, O.R., 16th year, Suppl. for April-June 1961, p. 1	947th mtg. (948th-949th mtgs.)
	Syrian Arab Republic		S/5097, O.R., 17th year, Suppl. for Jan.-Mar. 1962, p. 98	999th mtg. (1000th-1006th mtgs.)
	Israel		S/5098, S/5104, ibid., pp. 98-99, 110	999th mtg. (1000th-1006th mtgs.)
	Israel		S/5394, S/5400, O.R., 18th year, Suppl. for July-Sept. 1963, pp. 76-77, 83	1057th mtg. (1058th-1063rd mtgs.)
	Syrian Arab Republic		S/5397, ibid., p. 82	1057th mtg. (1058th-1063rd mtgs.)
2. Complaint concerning South Africa* (letter of 25 March 1960)	India		S/4281, O.R., 15th year, Suppl. for Jan.-Mar. 1960, pp. 59-60	851st mtg. (852nd-856th mtgs.)
	Ethiopia		S/4283, ibid., p. 60	851st mtg. (852nd-856th mtgs.)
	Ghana		S/4290, ibid., p. 60	851st mtg. (852nd-856th mtgs.)
	Pakistan		S/4293, ibid., p. 63	851st mtg. (852nd-856th mtgs.)
	Guinea		S/4294, ibid., p. 63	851st mtg. (852nd-856th mtgs.)
	Liberia		S/4295, ibid., p. 64	851st mtg. (852nd-856th mtgs.)
	Jordan		S/4297, ibid., p. 64	853rd mtg. (854th-856th mtgs.)
3. Complaints by Cuba	Cuba		S/4378, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 9-10	874th mtg. (875th-876th mtgs.)
			S/4605, O.R., 15th year, Suppl. for Oct.-Dec. 1960, pp. 107-109	921st mtg. (922nd-923rd mtgs.)
			S/4992, S/4995, O.R., 16th year, Suppl. for Oct.-Dec. 1961, pp. 139-142	980th mtg. (981st, 983rd mtgs.)
			S/5086, S/5088, O.R., 17th year, Suppl. for Jan.-Mar. 1962, pp. 88-91	992nd mtg. (993rd-998th mtgs.)
4. Situation in the Republic of the Congo*	Yugoslavia		S/4465, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 143-144	896th mtg. (897th, 899th-906th mtgs.)
			S/4654, O.R., 16th year, Suppl. for Jan.-Mar. 1961, p. 75	928th mtg. (929th-932nd, 934th-939th, 941st-942nd mtgs.)

Question a/	State invited	Initiation by b/	Request for invitation	Decision of the Council: invitations extended and renewed c/
	Congo (Leopoldville		S/4639, O.R., 16th year, Suppl. for Jan.-Mar. 1961, pp. 59-60	928th mtg. (929th-932nd, 934th-939th, 941st-942nd mtgs.)
	Ghana		S/4660, ibid., pp. 77-78	928th mtg. (929th-932nd, 934th-939th, 941st-942nd mtgs.)
	Guinea		S/4659, ibid., p. 77	928th mtg. (929th-932nd, 934th-939th, 941st-942nd mtgs.)
	Libya		S/4665, ibid., p. 79	928th mtg. (929th-932nd, 934th-939th, 941st-942nd mtgs.)
	Mali		S/4646, ibid., p. 67	928th mtg. (929th-932nd, 934th-939th, 941st-942nd mtgs.)
	Morocco		S/4664, ibid., p. 78	928th mtg. (929th-932nd, 934th-939th, 941st-942nd mtgs.)
	Ethiopia		S/4977, O.R., 16th year, Suppl. for Oct.-Dec. 1961, p. 130	973rd mtg. (974th-979th, 982nd mtgs.)
5. Situation in Angola	India		S/4819, O.R., 16th year, Suppl. for April-June 1961, p. 60	950th mtg. (951st-956th mtgs.)
	Ghana		S/4822, ibid., p. 61	950th mtg. (951st-956th mtgs.)
	Congo (Leopoldville)		S/4825, ibid., p. 65	950th mtg. (951st-956th mtgs.)
	Congo (Brazzaville)		S/4826, ibid., p. 65	950th mtg. (951st-956th mtgs.)
	Nigeria		S/4827, ibid., p. 65	950th mtg. (951st-956th mtgs.)
	Mali		S/4829, ibid., p. 66	952nd mtg. (953rd-956th mtgs.)
	Ethiopia		S/4831, ibid., p. 66	953rd mtg. (954th-956th mtgs.)
	Morocco		S/4832, ibid., p. 66	953rd mtg. (954th-956th mtgs.)
6. Complaint by Iraq	Iraq		S/4846, O.R., 16th year, Suppl. for July-Sept. 1961, p. 2	957th mtg. (958th-960th mtgs.)
7. Complaint by Tunisia*	Tunisia		S/4868, ibid., p. 15	961st mtg. (962nd-966th mtgs.)
8. Complaint by Portugal* (Goa)	Portugal		S/5030, O.R., 16th year, Suppl. for Oct.-Dec. 1961, pp. 205-206	987th mtg. (988th mtg.)
9. India-Pakistan question*	Pakistan		S/5073, O.R., 17th year, Suppl. for Jan-Mar. 1962, p. 63	990th mtg. (1007th-1016th mtgs.)
	India		S/5074, ibid., p. 63	990th mtg. (1007th-1016th mtgs.)
10. Complaint by Cuba, USSR and USA (22-23 Oct. 1962)	Cuba		S/5185, O.R., 17th year, Suppl. for Oct.-Dec. 1962, p. 149	1022nd mtg. (1023rd-1025th mtgs.)
11. Complaint by Senegal*	Senegal		S/5279, O.R., 18th year, Suppl. for April-June, 1963, pp. 16-17	1027th mtg. (1028th-1033rd mtgs.)
12. Complaint by Haiti*	Haiti		S/5302, ibid., pp. 38-39	1035th mtg (1036th mtg.)

Question[a]	State invited	Initiation by[b]	Request for invitation	Decision of the Council: Invitations extended and renewed[c]
13. Situation in territories in Africa under Portuguese administration*	Tunisia		S/5351, O.R., 18th year, Suppl. for July-Sept. 1963, p. 16	1040th mtg. (1041st-1049th mtgs.)
	Liberia		S/5354, ibid., pp. 16-17	1040th mtg. (1041st-1049th mtgs.)
	Sierra Leone		S/5357, ibid., p. 17	1040th mtg. (1041st-1049th mtgs.)
	Madagascar (Malagasy Republic)		S/5359, ibid., p. 18	1040th mtg. (1041st-1049th mtgs.)
	Madagascar (Malagasy Republic)		S/5463, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 99-100	1079th mtg. (1080th-1083rd mtgs.)
	Tunisia		S/5472, ibid., pp. 105-106	1079th mtg. (1080th-1083rd mtgs.)
	Liberia		S/5474, ibid., p. 106	1079th mtg. (1080th-1083rd mtgs.)
	Sierra Leone		S/5475, ibid., p. 107	1079th mtg. (1080th-1083rd mtgs.)
14. The question of race conflict in South Africa	Tunisia		S/5352, O.R., 18th year, Suppl. for July-Sept. 1963, p. 16	1050th mtg. (1051st-1056th mtgs.)
	Liberia		S/5354, ibid., pp. 16-17	1050th mtg. (1051st-1056th mtgs.)
	Sierra Leone		S/5357, ibid., p. 17	1050th mtg. (1051st-1056th mtgs.)
	Madagascar (Malagasy Republic)		S/5359, ibid., p. 18	1050th mtg. (1051st-1056th mtgs.)
	India		S/5459, O.R., 18th year, Suppl. for Oct.-Dec. 1963, p. 93	1073rd mtg. (1074th-1078th mtgs.)
	Liberia		S/5462, ibid., p. 99	1073rd mtg. (1074th-1078th mtgs.)
	Madagascar		S/5463, ibid., pp. 99-100	1073rd mtg. (1074th-1078th mtgs.)
	Tunisia		S/5465, ibid., p. 100	1073rd mtg. (1074th-1078th mtgs.)
	Sierra Leone		S/5466, ibid., pp. 100-101	1073rd mtg. (1074th-1078th mtgs.)
15. Situation in Southern Rhodesia	Mali		S/5417, O.R., 18th year, Suppl. for July-Sept. 1963, p. 160	1064th mtg. (1065th-1069th mtgs.)
	Tanganyika		S/5419, ibid., p. 160	1064th mtg. (1065th-1069th mtgs.)
	United Arab Republic		S/5420, ibid., pp. 160-161	1064th mtg. (1065th-1069th mtgs.)
	Uganda		S/5422, ibid., p. 161	1066th mtg. (1067th-1069th mtgs.)
16. Complaint by the Government of Cyprus	Cyprus		S/5490, O.R., 18th year, Suppl. for Oct.-Dec. 1963, p. 114	1085th mtg.

[a] Questions entered in this tabulation are arranged under agenda items. The items appearing herein are listed chronologically according to the sequence of the first meeting held on each item. Any reconsideration of an item or discussion of a sub-item under the general heading at subsequent meetings does not reappear as a new agenda item, but has been grouped under the item which first appeared. Questions in respect of which invitations were extended to other Members because their interests were considered to be specially affected are indicated by an asterisk and the invitations are listed separately in a tabulation entitled: Invitations when the interests of a Member were considered specially affected, as explained in the Introductory Note (see C. 2 below).

[b] In this column are listed only those invitations which were extended at the initiative of a member, not those routinely initiated by the President.

[c] The meetings at which the invitations were renewed are indicated by parentheses.

**b. A MATTER NOT BEING EITHER A DISPUTE OR A SITUATION

2. Invitations when the interests of a Member were considered specially affected

a. TO PARTICIPATE WITHOUT VOTE IN THE DISCUSSIONS

Question [a]	State invited	Initiation by	Request for invitation	Decision of the Council: Invitations extended and renewed [b]
1. The Palestine question	United Arab Republic			845th mtg.
	Israel			947th mtg. (948th-949th mtgs.)
2. Complaint concerning South Africa	Union of South Africa		S/4280, O.R., 15th year, Suppl. for Jan.-Mar. 1960, p. 59	851st mtg. (852nd, 854th-856th mtgs.)
3. Complaint by Argentina	Israel		S/4338, O.R., 15th year, Suppl. for Apr.-June 1960, pp. 28-29	865th mtg. (866th-868th mtgs.)
4. Admission of new Members:				
Republic of the Congo	Belgium		S/4367, S/4370, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 5-6	872nd mtg.
Republic of Cyprus	Greece	United Kingdom	892nd mtg., para. 2	892nd mtg.
	Turkey	United Kingdom	Ibid.	892nd mtg.
Islamic Republic of Mauritania	Morocco		S/4568, O.R., 15th year, Suppl. for Oct.-Dec. 1960, p. 66	911th mtg.
Reconsideration of Islamic Republic of Mauritania's application	Ivory Coast		S/4944, O.R., 16th year, Suppl. for July-Sept. 1961, p. 123	971st mtg.
	Senegal		S/4946, ibid., p. 123	971st mtg.
	Morocco		S/4952, ibid., p. 125	971st mtg.
Kuwait	Iraq		S/5005, O.R., 16th year, Suppl. for Oct.-Dec. 1961, p. 162	984th mtg. (985th mtg.)
Republic of Rwanda	Belgium		S/5146, O.R., 17th year, Suppl. for July-Sept. 1962, p. 45	1017th mtg.
Kingdom of Burundi	Belgium		Ibid.	1017th mtg.
Kuwait	Iraq		S/5305, O.R., 18th year, Suppl. for April-June 1963, p. 40	1034th mtg.
5. Situation in the Republic of the Congo	Belgium [c]		873rd mtg., para. 32	873rd mtg. (877th-879th, 884th-886th, 889th mtgs.)
			S/4495, O.R., 15th year, Suppl. for July-Sept. 1960, p. 146	902nd mtg. (903rd-906th mtgs.)
			924th mtg., para. 1	924th mtg. (925th-927th mtgs.)
			S/4557, O.R., 16th year, Suppl. for Jan.-Mar. 1961, pp. 76-77	928th mtg. (929th-932nd, 934th-939th, 941st-942nd mtgs.)
			S/4978, O.R., 16th year, Suppl. for Oct.-Dec. 1961, p. 130	973rd mtg. (974th-979th, 982nd mtgs.)
	Cameroon		S/4582, O.R., 15th year, Suppl. for Oct.-Dec. 1960, p. 84	913th mtg. (914th-920th mtgs.)
			S/4685, O.R., 16th year, Suppl. for Jan.-Mar. 1961, p. 87	934th mtg. (935th-939th, 941st-942nd mtgs.)
	Central African Republic		S/4710, ibid., p. 120	935th mtg. (936th-939th, 941st-942nd mtgs.)
	Congo	USSR	USSR proposal, Council's decision (873rd mtg., paras. 35, 71, 72)	877th mtg. (878th-879th, 884th-889th mtgs.)

Question[a]	State invited	Initiation by	Request for invitation	Decision of the Council Invitations extended and renewed[b]
	Congo (Leopoldville)		S/4576, O.R., 15th year, Suppl. for Oct.-Dec. 1960, p. 81	913th mtg. (914th-920th, 928th-932nd, 934th-939th, 941st-942nd mtgs.)
			S/4980, O.R., 16th year, Suppl. for Oct.-Dec. 1961, p. 131	973rd mtg. (974th-979th, 982nd mtgs.)
	Congo (Brazzaville)		S/4689, O.R., 16th year, Suppl. for Jan.-Mar. 1961, p. 101	934th mtg. (935th-939th, 941st-942nd mtgs.)
	Czechoslovakia		S/4712, ibid., p. 120	936th mtg. (937th-939th, 941st-942nd mtgs.)
	Ethiopia		S/4521, O.R., 15th year, Suppl. for July-Sept. 1960, p. 172	906th mtg.
	Gabon		S/4693, O.R., 16th year, Suppl. for Jan.-Mar. 1961, p. 106	934th mtg. (935th-939th, 941st-942nd mtgs.)
	Ghana		S/4499, O.R., 15th year, Suppl. for July-Sept. 1960, p. 152	897th mtg. (899th-906th mtgs.)
	Guinea[c]		S/4452, ibid., pp. 115-116	887th mtg. (888th-889th mtgs.)
			S/4509, ibid., p. 163	899th mtg. (900th-906th mtgs.)
			S/4575, O.R., 15th year, Suppl. for Oct.-Dec. 1960, p. 81	913th mtg. (914th-920th mtgs.)
	India		S/4587, ibid., p. 93	914th mtg. (915th-920th mtgs.)
			S/4652, O.R., 16th year, Suppl. for Jan.-Mar. 1961, p. 73	928th mtg. (929th-932nd, 934th-939th, 941st-942nd mtgs.)
			S/4979, O.R., 16th year, Suppl. for Oct.-Dec. 1961, p. 130	973rd mtg. (974th-979th, 982nd mtgs.)
	Indonesia		S/4492, O.R., 15th year, Suppl. for July-Sept. 1960, p. 146	896th mtg. (897th, 899th-906th mtgs.)
			S/4577, O.R., 15th year, Suppl. for Oct.-Dec. 1960, p. 82	913th mtg. (914th-920th mtgs.)
			S/4655, 4658, O.R., 16th year, Suppl. for Jan.-Mar. 1961, pp. 75-76, 77	928th mtg. (929th-932nd, 934th-939th, 941st-942nd mtgs.)
	Iraq		S/4711, ibid., p. 120	935th mtg. (936th-939th, 941st-942nd mtgs.)
	Liberia		S/4522, O.R., 15th year, Suppl. for July-Sept. 1960, p. 172	906th mtg.
	Madagascar (Malagasy Republic)		S/4679, S/4680, O.R., 16th year, Suppl. for Jan.-Mar. 1961, p. 84	934th mtg. (935th-939th, 941st-942nd mtgs.)
	Mali		S/4574, O.R., 15th year, Suppl. for Oct.-Dec. 1960, pp. 80-81	913th mtg. (914th-920th mtgs.)
	Morocco		S/4513, ibid., p. 164	899th mtg. (900th-906th mtgs.)
			S/4591, O.R., 15th year, Suppl. for Oct.-Dec. 1960, p. 96	916th mtg. (917th-920th mtgs.)
	Nigeria		S/4672, O.R., 16th year, Suppl. for Jan.-Mar. 1961, p. 82	934th mtg. (935th-939th, 941st-942nd mtgs.)
	Pakistan		S/4730, ibid., p. 140	941st mtg. (942nd mtg.)
	Poland		S/4665, ibid., pp. 78-79	928th mtg. (929th-932nd, 934th-939th, 941st-942nd mtgs.)
	Senegal		S/4692, S/4694, ibid., p. 106, 107	934th mtg. (935th-939th, 941st-942nd mtgs.)
	Sudan		S/4675, ibid., p. 83	934th mtg. (935th-939th, 941st-942nd mtgs.)
	Sweden		S/4986, O.R., 16th year, Suppl. for Oct.-Dec. 1961, p. 134	974th mtg. (975th-979th, 982nd mtgs.)

Question [a]	State invited	Initiation by	Request for invitation	Decision of the Council Invitations extended and renewed [b]
	Upper Volta		S/4709, O.R., 16th year, Suppl. for Jan.-Mar. 1961, p. 119	936th mtg. (936th-939th, 941st-942nd mtgs.)
	United Arab Republic		S/4518, O.R., 15th year, Suppl. for July-Sept. 1960, p. 172	903rd mtg. (904th-906th mtgs.)
			S/4588, O.R., 15th year, Suppl. for Oct.-Dec. 1960, p. 93	914th mtg. (915th-920th mtgs.)
	Yugoslavia		S/4583, ibid., p. 84	913th mtg. (914th-920th mtgs.)
6. Letter of 5 September 1960 from the USSR (Action of the OAS relating to the Dominican Republic)	Venezuela		893rd mtg., para. 27	893rd mtg. (894th-895th mtgs.)
7. Situation in Angola	Portugal [c]		S/4760, O.R., 16th year, Suppl. for Jan.-Mar. 1961, pp. 227-228	944th mtg. (945th-946th mtgs.)
			S/4821, O.R., 16th year, Suppl. for Apr.-June 1961, pp. 60-61	950th mtg. (951st-956th mtgs.)
	Ghana		S/4764, S/4767, O.R., 16th year, Suppl. for Jan.-Mar. 1961, p. 248	945th mtg. (946th mtg.)
	Congo (Brazzaville)		S/4766, ibid., p. 248	945th mtg. (946th mtg.)
8. Complaint by Kuwait	Iraq		S/4846, O.R., 16th year, Suppl. for July-Sept. 1961, p. 2	957th mtg. (958th-960th mtgs.)
9. Complaint by Tunisia	Senegal		S/4895, ibid., p. 38	964th mtg. (965th-966th mtgs.)
	Libya		S/4901, ibid., p. 46	964th mtg. (965th-966th mtgs.)
10. Complaint by Cuba (letter of 21 November 1961)	Dominican Republic		S/4996, 980th mtg., para. 49	980th mtg. (981st, 983rd mtgs.)
11. Complaint by Portugal (Goa)	India		S/5031, O.R., 16th year, Suppl. for Oct.-Dec. 1961, p. 206	987th mtg. (988th mtg.)
12. Complaint by Senegal	Portugal		S/5284, O.R., 18th year, Suppl. for Apr.-June 1963, pp. 25-26	1027th mtg. (1028th-1033rd mtgs.)
	Congo (Brazzaville)		S/5286, ibid., p. 26	1028th mtg. (1030th-1033rd mtgs.)
	Gabon		S/5288, ibid., p. 29	1028th mtg. (1030th-1033rd mtgs.)
13. Complaint by Haiti	Dominican Republic		S/5311, ibid., pp. 43-44	1035th mtg. (1036th mtg.)
14. Situation in territories in Africa under Portuguese administration	Portugal		S/5355, O.R., 18th year, Suppl. for July-Sept. 1963, p. 17	1040th mtg. (1041st-1049th mtgs.)
			S/5473, O.R., 18th year, Suppl. for Oct.-Dec. 1963, p. 106	1079th mtg. (1080th-1083rd mtgs.)
15. The question of race conflict in South Africa	South Africa	Ghana	1040th mtg. para. 11	1041st mtg. [d]
16. Complaint by the Government of Cyprus	Turkey		S/5493, ibid., p. 116	1085th mtg.
	Greece		S/5494, ibid., p. 116	1085th mtg.

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[b] The meetings at which invitations were renewed are indicated by parentheses.

[c] See Case 2.

[d] See Case 1.

[e] See Case 14 in part III (A).

[f] See Case 26.

CASE 2

At the 873rd meeting on 13 July 1960, in connexion with the situation in the Republic of the Congo, the Security Council considered a request[8/] from the representative of Belgium to be invited to participate in the Council's discussion on this item.

The representative of the USSR, supported by the representative of Poland, said that the USSR had no objection to an invitation to the representative of Belgium, but in the case under consideration there was another party, the Congolese Government. Should the Council consider it necessary to invite the representative of Belgium, it should also invite a representative of the other party, the Congo. There were two parties and the Council was obliged, under the Charter and the rules of procedure, to invite both to participate in the discussion.

The representative of the United States maintained that the Government of the Republic of the Congo, in its telegram to the Secretary-General, clearly stressed its desire to have action taken speedily and without delay, and did not ask to be invited. He could not understand how the representatives of the USSR and Poland suddenly acquired the right to request an invitation to the Government of the Republic of the Congo when that Government did not itself ask for one. He further stated that he would resist having such a procedure used as a device for delaying the Council's action on this very critical question.

The representative of Poland contended that the very first thing the Council should do was to send an invitation to the Government which was most concerned with the results of the Council's proceedings.

The Secretary-General observed:

"I can say with certainty, understanding the situation in the country, on the basis of the very full reports which we have received, that the Government of the Congo would be the first one to regret if, out of a gesture to them, a decision on their demands would be delayed. . . .

". . . I ask myself if a decision now on an invitation to the two parties—if we talk about parties—could not be interpreted in this sense: we recognize that one of the parties has no representative here, but the invitation is cabled to the Government on the understanding that in forthcoming meetings of the Council the first decision would be followed up and they would have their place at the table. What would then happen is only that they would not be able to speak here at the table tonight. But they have spoken through their two cables which are before the Council and I feel that their legitimate interests are best safeguarded if on the one side they get a speedy decision and, on the other hand, they will have the opportunity to be heard and to speak at later occasions when the Council is likely to consider the same question."

The President (Ecuador) then asked the Council whether it had any objection to inviting both Belgium and the Republic of the Congo, on the understanding that that day's discussion would not be suspended pending the arrival of the representative of the Republic of the Congo.

The representative of Tunisia suggested that the Council should decide to invite the Belgian Government and the Government of the Republic of the Congo to take part in the Council's discussion but at a later date, so that the representative of Belgium would not actually take part in the debate until the Congolese Government had officially received the Council's invitation. He wished to amend the President's proposal and invite the two Governments to take part in the debate, on the understanding that neither of them would participate in the first meeting of the Council dealing with the question.

The representative of the United Kingdom stated that it would be unprecedented for the Council to refuse a request from a Member State to be seated at the Council table when the subject under discussion was of such close interest to the Government of a Member State, in this case Belgium, particularly when no request for an invitation had been received from the Congo. However, he supported the proposal to invite the Congo provided the business of the Council was not delayed meanwhile. The representative of France stated that a distinction must be drawn between the case of Belgium and that of the Congo. As the Secretary-General had pointed out, Belgium had asked to be heard but so far the Council had received no such request from the Republic of the Congo.

The President declared:

"The members of the Council appear to be agreed that an invitation should be extended both to the representative of Belgium and to a representative of the Republic of the Congo. The only point at issue is when they should be seated at the Council table."

The representative of Tunisia wished to make a clarification of his proposal. He explained that he did not mean to bar the representative of Belgium from the Council's discussion until the representative of the Congo reached New York, but that, before hearing the representative of Belgium, the Council should be assured that the invitation had reached the Congolese Government. With this clarification, he urged the Council to put his proposal to the vote.

The President then stated that the following information might be helpful in settling the matter:

"At the opening of the meeting, when the representative of Belgium asked me to convey to the Council his request for a hearing, he stated that he wished to speak after all the members of the Council had spoken. Thus, in any case, even if the representative of Belgium were seated at the Council table today, he would not take part in the discussion until all the members of the Council had spoken. By that time the Government of the Republic of the Congo will presumably have received the Security Council's invitation, so that the question we are discussing may have become purely academic and in practice the two proposals will have the same result."

He then asked the representative of Tunisia whether, in the light of this information, he would still wish to have his proposal put to the vote. After being assured

8/ 873rd meeting: para. 32.

that the principle was that the Secretary-General should address a simultaneous invitation to the two parties concerned, the representative of Tunisia agreed to accept the President's proposal.[9/]

Decision: *It was decided that the Government of the Congo would be informed by cable and telephone of the Council's decision. In the meantime the President invited, without objection, the representative of Belgium to the Council table.*[10/]

CASE 3

At the 887th meeting on 21 August 1960, in connexion with the situation in the Republic of the Congo, the President (France) informed the Council that the representative of Guinea had requested permission to take a place at the Council table in order to make a statement on the question under discussion.

Decision: *The President (France) invited, without objection, the representative of Guinea to the Council table.*[11/]

The President then stated that he would like to make a comment as the representative of France:

"I did not wish to raise objections, with regard to the decision which has just been taken, that might have been interpreted by some people as directed against the representative of the Republic of Guinea or his Government, for—and I want to emphasize this point—I have no such criticism in mind. But as a general rule, and independently of this particular case, my Government does not consider it a felicitous practice to enlarge the Council's debates by permitting the participation of States whose interests do not seem to be closely involved in conformity with rule 37 of the Council's provisional rules of procedure." [12/]

CASE 4

At the 1028th meeting on 18 April 1963, in connexion with the complaint by Senegal, the President (China) informed the Council that the representatives of the Congo (Brazzaville) and Gabon had requested permission to be heard on the question under discussion. The President suggested that the Council might defer its decision on these requests until the appropriate stage of its discussion.

The representative of Ghana expressed the view that normally under rule 37 of the provisional rules of procedure, once a Member State had requested permission to speak before the Security Council without a vote, a decision was taken promptly and the representative of such a Member State was allowed to be seated either at the Council table or somewhere else waiting to be called upon to speak. Since there was no objection from any member of the Council, there was no reason why a decision should not be taken then.

The representatives of the United States and the United Kingdom shared the view that the Council, in making any decision on these applications, should adhere strictly to the principle contained in rule 37 which provided that the Council considered that the interests of that Member were specially affected.

The representative of the Philippines held that rule 37 was but an implementation of Article 31 of the Charter which reads:

"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."

He believed that the Council should proceed first to hear the views of the parties to the dispute, then decide whether the interests of any particular Member State would be affected before granting their requests for participation.

The representatives of France and Morocco held the view that a too restrictive interpretation of rule 37 tended to set aside requests for participation by delegations not represented on the Council, which would not be in conformity with the past practice of the Security Council.

The President stated that the discussion had clarified the implication of rule 37.[13/]

Decision: *The Council decided without objection to invite the representatives of Congo (Brazzaville) and Gabon to participate in the discussion and to make their statements at the appropriate time.*[14/]

**b. TO SUBMIT WRITTEN STATEMENTS

**3. Invitations denied

D. IN THE CASE OF NON-MEMBER STATES AND OTHER INVITATIONS

**1. Invitations expressly under Article 32

**2. Invitations expressly under rule 39 of the provisional rules of procedure

3. Invitations not expressly under Article 32 or rule 39

CASE 5

At the 958th meeting on 5 July 1961, in connexion with complaints by Kuwait and Iraq, the Council had before it a telegram[15/] from the State Secretary of Kuwait addressed to the Secretary-General requesting that Mr. Abdel Aziz Husseln, the representative of Kuwait, be invited to participate in the discussion of the items on the Council's agenda.

9/ For texts of relevant statements, see:
873rd meeting: President (Ecuador), paras. 32, 33, 47, 59, 66, 67, 71-72; France, paras. 55-58; Poland, paras. 36, 40-43, 65; Tunisia, paras. 48-50, 61-62, 69; USSR, paras. 34-35, 53; United Kingdom, paras. 51-52; United States, para. 39; Secretary-General, paras. 44-46.

10/ 873rd meeting: para. 72.

11/ 887th meeting: para. 4.

12/ 887th meeting: para. 6.

13/ For texts of relative statements, see:
1028th meeting: President (China), paras. 10, 25; France, paras. 20-21; Ghana, paras. 13-14; Morocco, para. 22; Philippines, paras. 18-19; United Kingdom, para. 16; United States, para. 15.

14/ 1028th meeting: para. 26.

15/ S/4851, O.R., 16th year, Suppl. for July-Sept. 1961, p. 4.

The representative of the USSR objected to the extension of an invitation to the representative of Kuwait and said:

"The Soviet delegation considers that in the present situation, namely, the fact that Kuwait is completely occupied by United Kingdom troops, the Kuwait delegation could hardly act as the representative of a sovereign State, since the real power in that country is exercised by the occupying forces of the United Kingdom. The Soviet delegation is of the opinion that for the representative of Kuwait to take part in the debate in such circumstances would not contribute to an objective consideration of the Kuwait question by the Security Council. It therefore believes that the proper course would be to refrain from inviting that delegation, and hence it cannot support the proposal to invite the representative of Kuwait to take a place at the Council table."

The President (Ecuador) declared that all the members of the Council, with the exception of the representative of the USSR, had agreed that the representative of Kuwait should be invited to take a place at the Council table.[16/]

Decision: *The President (Ecuador) invited the representative of Kuwait to the Council table.*[17/]

**4. Invitations denied

[16/] For texts of relevant statements, see:
958th meeting: President (Ecuador), para. 21; USSR, paras. 15–16.
[17/] 958th meeting: para. 21.

Part II

**CONSIDERATION OF THE TERMS AND PROVISIONS OF ARTICLE 32 OF THE CHARTER

Part III

PROCEDURES RELATING TO PARTICIPATION OF INVITED REPRESENTATIVES

NOTE

Part III is concerned with procedures relating to the participation of invited representatives after an invitation has been extended. It includes material on participation by Members and non-members of the United Nations.

Section A includes proceedings concerned with the related questions of the opportune moment for the Council to extend invitations to participate, and the timing of the initial hearing of the invited representative. The section includes one instance[18/] in which, as an exception to its usual practice, the Council agreed to hear an invited representative before all Council members had spoken. An instance[19/] is also included when, as an exceptional case, and after discussion, an invited representative was twice allowed to speak on the question of the conduct of the voting. On another occasion,[20/] an invited representative was not allowed to speak on the Council's decision to invite other non-members of the Council to participate. The section finally includes an instance[21/] concerning the question of admission of new Members, when the invited representative of a non-member of the Council was first allowed to speak, and thereupon the Council agreed to a request to participate by the non-member State whose application for admission was being considered. In a departure from its usual practice, the Council, on three occasions,[22/] allowed invited representatives to speak on the adoption of the agenda, immediately after the item had been inscribed. On another occasion, the Council declined to extend an invitation to a non-member to participate in the discussion on the adoption of the agenda.[23/] These instances have been recorded in section D concerning "Limitations on matters to be discussed by invited representatives", under sub-heading "1. Adoption of the agenda."

No question concerning the duration of participation (section B) has arisen during the period under review. The practice has been maintained according to which the President, when consideration of a question has extended over several meetings, has renewed the invitation at each consecutive meeting immediately after the adoption of the agenda.[24/]

Section C deals with limitations of a procedural nature affecting invited representatives throughout the process of participation in the proceedings of the Security Council. During the period under review there were five cases illustrative of the limitations concerning the order in which the invited representatives are called upon to speak. On one occasion[25/] when two members of the Council had asked to speak, the President restated the practice of the Council under which members of the Council spoke before the invited representatives. In two instances[26/] the President, after referring to this practice, stated that he had consulted with the speakers on his list and they had agreed to yield the floor to the invited representatives. In two other instances,[27/] when no member of the Council wished to speak, the President

[18/] Case 6.
[19/] Case 7.
[20/] Case 8.
[21/] Case 9.
[22/] See Cases 18, 19, 20.
[23/] See Case 21.
[24/] In this connexion, see tabulation above, part I, C, 1a, foot-note c/.
[25/] Case 10.
[26/] Cases 11 and 12.
[27/] Cases 13 and 14.

called upon the invited representative who had indicated a desire to speak. One instance[28] is recorded when a representative who had been invited to participate in the discussion raised a point of order concerning the conduct of the voting.

On two other occasions questions were raised concerning the limitations affecting the submission of proposals or draft resolutions by the invited representatives. On the first occasion[29] discussion arose as to who was the sponsor of a draft resolution submitted by an invited representative and put to the vote at the request of a member in accordance with rule 38 of the provisional rules of procedure. On the second occasion[30] the President sought clarification from an invited representative as to whether he was proposing the adjournment of a meeting.

Section D is concerned with those limitations connected with aspects of the business of the Council in which it has been deemed inappropriate that invited representatives should participate.

The discussion in three cases[31] included under the sub-heading "Adoption of the agenda" dealt principally with the question of whether the invited representatives may speak on the question of the adoption of the agenda.

Under the sub-heading "Extension of invitations" two instances[32] are recorded in which invited representatives asked to be heard on the question of the extension of invitations.

Under section E, which has been added to the present Supplement, with the sub-heading "Effect of extension of invitations," three case histories[33] have been included which indicate that an invited representative has been considered to be free to decide whether or not to participate, and also to decide at which stage of the proceedings he would cease to participate, once he had made his initial statement.

A. THE STAGE AT WHICH INVITED STATES ARE HEARD

CASE 6

At the 893rd meeting on 8 September 1960, in connexion with the letter of 5 September 1960 from the USSR (Action of the OAS relating to the Dominican Republic), after the adoption of the agenda and the initial statement by the representative of the USSR, the President (Italy) stated that he had received a letter from the representative of Venezuela requesting to be invited to participate in the Council's discussion on the question before it. In accordance with the Charter and the provisional rules of procedure of the Council, and with its consent, he would invite the representative of Venezuela to take a place at the Council table.

After statements on the substance of the question had been made by the representatives of Argentina, the United States and Ecuador, the President stated that the representative of Venezuela had asked to speak. The usual practice in the circumstances would be for the other Council members to speak first.[34] However, since he had consulted with those representatives inscribed in the list of speakers and they were willing to yield their turn to speak, he would recognize the representative of Venezuela, unless any objection was raised.[35]

The representative of Venezuela thereupon made his statement.[36]

CASE 7

At the 998th meeting on 23 March 1962, in connexion with the letter of 8 March 1962 from the representative of Cuba concerning the Punta del Este decisions, the representative of the USSR requested, under rule 38 of the provisional rules of procedure, that the Council take a vote on the draft resolution[37] which had been submitted by the representative of Cuba, who had been invited to participate in the discussion of the question.[38]

The representative of Ghana asked the Council to take a separate vote on paragraph 3 of the draft resolution, in accordance with rule 32 of the provisional rules of procedure.

The representative of the United Arab Republic requested that the President first ask whether the mover of the question was agreeable to having a separate vote.

The President (Venezuela) stated that in view of the provisions of rule 32, and of the fact that it was the USSR representative who had asked that the draft resolution be put to the vote, he wished to ask the USSR representative whether he had any objection to the separate vote that had been requested. He added:

> "The representative of Cuba has just asked to speak, but at this point, when the debate on the substance of the matter has been closed and statements may only be made on purely procedural questions relating to the voting, I cannot give the floor to the representative of a State which is not a member of the Security Council."

The representative of the USSR observed that there was nothing in the rules of procedure of the Council to the effect that representatives invited to participate "in the entire examination of the question" should cease this participation just at the time when the Council started to vote. This ruling did not correspond to the Council's precedents. He continued:

> "All that the rules of procedure say is that a draft resolution submitted for consideration by a non-member of the Council may be put to the vote if only one member of the Council so requests. . . . A member making such a request does not, however, become

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[28] Case 15.
[29] Case 16.
[30] Case 17.
[31] Cases 18, 19 and 20.
[32] Cases 22 and 23.
[33] Cases 24, 25 and 26.
[34] See also Case 7.
[35] For texts of relevant statements, see: 893rd meeting: President (Italy), paras. 27, 71.
[36] 893rd meeting: paras. 71, 72 et seq.
[37] S/5095, O.R., 17th year, Suppl. for Jan.-March 1962, pp. 76-77.
[38] For a statement on the procedure regarding the submission of draft resolutions by invited representatives, see Case 16.

the sponsor of the draft resolution, as you have just tried to make out, and is not responsible for answering questions about the text or the procedure for voting on it."

The President suggested that, in order to avoid a procedural discussion, the representative of the USSR, who must know the views of the representative of Cuba, should say whether he agreed to operative paragraph 3 of the draft resolution being put to the vote separately. He added:

"With regard to the question whether the representative of Cuba should be allowed to speak at this stage of the proceedings, I do not think it is the time for an invited State to intervene in the debate."

The representative of the USSR challenged the President's interpretation of the rules of procedure. The rules made "absolutely no provision" for the procedure to be followed in such cases; the rules "merely provide that at the time of voting it is out of order to speak on anything that does not relate to the conduct of the voting." The representative of Ghana had raised a question concerning the conduct of the voting, and thus if the representative of Cuba wished to make observations concerning the conduct of the voting on his draft resolution—of which he remained the sponsor according to the rules of procedure—then he could do so.

The President stated that in order to avoid any impression that he was trying to impose his views, he should like to hear the opinion of other members of the Council. If there was no objection, he would recognize the representative of Cuba to speak, although he had reservations about doing so.

The President's interpretation of the rules of procedure was supported by the representatives of France, the United Kingdom and Chile who also shared the President's views that to avoid the impression that they were taking a stand against the representative of Cuba, he should be allowed to speak with the reservation made by the Chair, and only as an exceptional case.

The representatives of Ireland and the United Arab Republic were also in favour of granting the representative of Cuba permission to speak.

The President then stated that, as an exception and with the reservations he had formulated, he called upon the representative of Cuba to say whether he agreed to the requested separate vote.

Thereupon, the Cuban* representative answered in the affirmative the question put to him.[39]

After the vote had been taken, and the paragraph rejected, the President stated:

"I must remind the Cuban representative who has just asked for the floor that I cannot give it to him at this stage because we have started the voting."

The representative of the USSR challenged this ruling, observing that the Council had already once allowed the representative of Cuba to speak on the conduct of the voting. The representative of Cuba wished to speak again on the procedure to be followed in the voting on his own draft resolution, which he had submitted and of which he remained the sponsor. Speaking officially on behalf of the Cuban representative, the representative of USSR stated that if given the floor, the representative of Cuba would have said that, since the key paragraph of his resolution had been rejected, he would not insist on a vote on the remaining parts of the resolution.

The President stated that when he gave the Cuban representative the floor, it was an exception subject to certain reservations, and that in the case in point the proper person to decide whether or not the draft resolution was to be put to the vote was the representative of the USSR. Since, in accordance with rule 38 of the provisional rules of procedure, the draft resolution had been put to the vote at the request of the representative of the USSR, only he was then authorized to withdraw the draft resolution and to request that it should not be put to the vote. For this reason he had decided "that it would be improper to call upon the Cuban representative" at that point. He added:

"... since we know what the request will be and since the Soviet representative does not wish to press for a vote on the draft resolution, if there is no objection from the other members I shall make an exception as before and ask the Cuban representative to confirm what has just been said by the representative of the Soviet Union."[40]

The representative of Cuba[41] stated that in view of the result of the vote which had just been taken, he would not press for a vote on the draft resolution.

CASE 8

At the 1028th meeting on 18 April 1963, in connexion with the complaint by Senegal, after the adoption of the agenda, the Council invited the representatives of Senegal and Portugal to take part in the discussion on the question.

After a procedural discussion,[42] the Council also decided to invite the representatives of the Republic of the Congo (Brazzaville) and of Gabon to participate in the discussion. The representative of Portugal* then requested permission to make a statement on the decision that had just been taken by the Council.

The representative of Ghana questioned whether since Portugal was not a member of the Council, its representative could participate in the discussion of a procedural question.

In view of this objection, the President (China) considered it preferable that the representative of Portugal should make his statement at another stage of the discussion.[43]

39/ 998th meeting: Cuba*, para. 110.

40/ For texts of relevant statements, see:
998th meeting: President (Venezuela), paras. 85-86, 91-93, 97, 102, 108-109, 114, 121-122; Chile, paras. 104-106; France, paras. 98-99; Ghana, para. 78; Ireland, para. 101; USSR, paras. 3, 88-89, 94-95, 117-119; United Arab Republic, paras. 83, 103; United Kingdom, para. 100.

41/ 998th meeting: Cuba*, para. 123.

42/ See Case 4.

43/ For texts of relevant statements, see:
1028th meeting: President (China), para. 33; Ghana, para. 30; Portugal*, paras. 27, 32.

CASE 9

At the 1034th meeting on 7 May 1963, in connexion with the admission of new Members (Application of Kuwait), after the agenda had been adopted, the President (France) stated that the representative of Iraq had addressed a letter [44] to him requesting an invitation to participate in the Council's discussion of the agenda item. No objection having been expressed, he invited the representative of Iraq to take a seat at the Council table. The President further stated that the representative of Iraq had requested to be heard as the first speaker. There was a list of speakers already inscribed and, in accordance with the rules of procedure, the Council members would be consulted as to whether there was any objection to having the representative of Iraq speak first.

In the absence of any objection, the President then gave the floor to the representative of Iraq.

After the statement of the representative of Iraq,* the President read a letter he had just received from the representative of Kuwait, as follows:

"Mr. President, in view of the statement just made by the representative of Iraq, may I request permission to give the views of my Government on some of the matters raised by the representative of Iraq."

The President stated that if no objection was raised he would invite the representative of Kuwait to take a seat at the Council table. Thereupon, in the absence of any objection, the representative of Kuwait took a place at the Council table.

After a statement had been made by the representative of Morocco, the President declared that if there was no objection he proposed to give the floor to the representative of Kuwait who had asked to be heard. There being no objection, the representative of Kuwait took the floor. [45]

**B. THE DURATION OF PARTICIPATION

C. LIMITATIONS OF A PROCEDURAL NATURE

1. Concerning the order in which the representatives are called upon to speak

CASE 10

At the 851st meeting on 30 March 1960, in connexion with the complaint concerning South Africa, the President (United States) stated:

"We now come to the letter dated 25 March 1960 from the representatives of twenty-nine Member States [S/4279 and Add.1]. Two members of the Council, Tunisia and Ceylon, have already indicated that they wish to speak. Of course, they will speak before the non-members of the Security Council, according to the custom of the Council. I therefore propose that the members I have named, and any other members who wish to speak today, be recognized, and then the non-members who have expressed a wish to participate. That has been the regular practice of the Security Council." [46]

CASE 11

At the 888th meeting on 21 August 1960, in connexion with the situation in the Republic of the Congo, the President (France) stated:

"The representative of Guinea has asked permission to address the Council at this stage of the discussion. The usual practice of the Security Council has been to give the floor to representatives of States which are invited to participate, but which are not directly concerned in the dicussion, after the members of the Council have spoken. However, I have consulted my colleagues and they agree to give up their turn to speak in favour of the representative of Guinea. Therefore, unless there are objections, I shall now ask the representative of Guinea to speak." [47]

CASE 12

At the 893rd meeting on 8 September 1960, in connexion with the letter of 5 September 1960 from the USSR (Action of the OAS relating to the Dominican Republic) the President (Italy) stated:

"As I informed the Council previously, the representative of Venezuela has asked to be allowed to speak. I am aware that the usual practice in the circumstances would be for members of the Council to speak first, but since I have consulted those representatives whose names are inscribed on the list of speakers for today and they are willing to yield, I shall, if I hear no objection from the Council, call upon the representative of Venezuela now." [48]

CASE 13

At the 929th meeting on 2 February 1961, in connexion with the situation in the Republic of the Congo, the President (United Kingdom), with the permission of the Council, called upon the representative of Mali and subsequently the representative of India as no member of the Council wished to speak. [49]

CASE 14

At the 973rd meeting on 13 November 1961, in connexion with the situation in the Republic of the Congo, after the adoption of an amended agenda, the President (USSR) asked: "Would any member of the Council like to begin the discussion of this item?" He then stated that "As no member of the Council wishes to speak, I shall call first on the representative of Ethiopia, who has asked to speak on this item." [50]

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[44] S/5305, O.R., 18th year, Suppl. for April-June 1963, p. 40.

[45] For texts of relevant statements, see:
1034th meeting: President (France), paras. 4, 6, 16-17, 23; Iraq*, paras. 7-15; Kuwait*, paras. 24-27.

[46] For texts of relevant statements, see:
851st meeting: President (United States), para. 82.

[47] For texts of relevant statements, see:
888th meeting: President (France), para. 12.

[48] For texts of relevant statements, see:
893rd meeting: President (Italy), para. 71.

[49] For texts of relevant statements, see:
929th meeting: President (United Kingdom), paras. 22, 65.

[50] For texts of relevant statements, see:
973rd meeting: President (USSR), para. 26.

2. Concerning the raising of points of order by invited representatives

CASE 15

At the 962nd meeting on 22 July 1961, in connexion with the complaint by Tunisia, when the Council was about to proceed to the vote on a cease-fire draft resolution [51] submitted by Liberia, the representative of France declared that owing to the political reasons he had explained his delegation would not participate in the voting.

The President (Ecuador) stated:

"I have taken note of the French representative's statement. If there is no objection from other members of the Council, I shall consider that the draft resolution would be approved on the conditions already explained, that is, taking note of the statement made by the representative of France."

The representative of Tunisia,* who had been invited to participate in the discussion, observed:

"Since I am not entitled to participate in the vote I do not intend to intervene on this point. I should merely like to point out to the President ... that it might be advisable to hold a formal vote and to count the votes." [52]

Decision: *The Liberian draft resolution was voted upon and adopted by 10 votes in favour and none against. France did not participate in the voting.* [53]

3. Concerning the submission of proposals or draft resolutions by invited representatives

CASE 16

At the 995th meeting on 20 March 1962, in connexion with the letter of 8 March 1962 from the representative of Cuba concerning the Punta del Este decisions, the President (Venezuela) called attention

"to the letter dated 19 March 1962 [S/5095] [54] addressed to the Chair by the representative of Cuba, transmitting a draft resolution submitted in accordance with rule 38 of the Council's provisional rules of procedure."

At the 996th meeting on 21 March 1962, the representative of the United Arab Republic stated that under rule 38 of the provisional rules of procedure the draft resolution "'may be put to a vote only at the request of a representative on the Security Council'" and suggested that if Cuba so desired, his delegation would be willing to make the request.

At the 998th meeting on 23 March 1962, the representative of the USSR said that his delegation supported the draft resolution [S/5095] submitted by Cuba and considered that it should be put to a vote in the Council in accordance with rule 38 of the provisional rules of procedure. Upon completion of the statement by the representative of the USSR, the President said:

"Before I give the floor to the next speaker, and in order to make this procedure quite clear, I should like to ask the representative of the Soviet Union whether I am correct in interpreting his statement to mean that he has exercised his right under rule 38 of the provisional rules of procedure to ask that the draft resolution submitted to the Council by Cuba may be put to the vote."

The representative of the USSR replied that the President's interpretation was correct. [55]

CASE 17

At the 1005th meeting on 6 April 1962, in connexion with the Palestine question, the representative of Israel* observed that the draft resolution [56] submitted that afternoon directly concerned his Government. He asked the Council to take into account, in the organizing of its work and the arranging of its time-table, the fact that he would be unable to make a statement before Monday, 8 April, after consultation with his Government.

The representative of Syria* said that he had intended to make a statement on the substance of the matter under consideration, but "we now have before us a request for the adjournment of the debate so that the representative of Israel can clarify his position." Because he was the representative of a Power invited to attend the Council's debate, he would not discuss that procedural point, although his delegation would be in favour of continuing the debate without interruption, and voting on the texts which had been submitted to the Council.

The representative of the United Arab Republic said that it was difficult for him to object when any member asked for a postponement, especially for the purpose of consulting his Government. However, in the case of a non-member of the Council who did not participate in the voting anyhow, it would be very easy for him to send a declaration, at any time, of what he wanted to say.

After quoting rule 38 of the provisional rules of procedure, the President (Chile) said: "In view of what the representative of Israel has said, would he be so good as to explain whether his remarks constituted a proposal to adjourn the meeting and meet again on Monday?"

The representative of Ghana said that the representative of Israel should be accorded the courtesy of a postponement. The representative of the United States said that his delegation would not object. The representative of the United Arab Republic said if the Council and Ghana so desired he would make no further objection to postponement.

The President then stated that it was his understanding, "from the discussion that has just taken place that the consensus is that the meeting should be

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51/ S/4880, 962nd meeting: para. 43.

52/ For texts of relevant statements, see:
962nd meeting: President (Ecuador), paras. 56; France, para. 55; Tunisia, para. 57.

53/ 962nd meeting, para. 58.

54/ O.R., 17th year, Suppl. for Jan.-March 1962, pp. 96-97.

55/ For texts of relevant statements, see:
995th meeting: President (Venezuela), para. 3;
996th meeting: United Arab Republic, paras. 51-52;
998th meeting: President (Venezuela), para. 58; USSR, paras. 3, 59.

56/ S/5110 and Corr.1, see S/5111, O.R., 17th year, Suppl. for April-June 1962, pp. 95-96.

adjourned now and that we should meet again on Monday. If I am wrong, I should like to be so informed." There was no objection.[57]

D. LIMITATIONS ON MATTERS TO BE DISCUSSED BY INVITED REPRESENTATIVES

1. Adoption of the agenda

CASE 18

At the 851st meeting on 30 March 1960, the President (United States) stated that he had received a request from the representative of the Union of South Africa[58] to participate in the discussion of the request for the inclusion in the Council's agenda of the item concerning the Union of South Africa. The President further stated that the representative of South Africa had indicated that in view of the standard practice of the Council on invitations to non-members, he would like to speak after the vote on the adoption of the agenda.

After the adoption of the agenda, the President asked if there was any objection to hearing, at that stage, a statement by the representative of South Africa on the adoption of the agenda. The representatives of Tunisia, Ceylon and the USSR pointed out that the normal procedure would have been to call first on those delegations which had brought the question before the Council and thus give them an opportunity to explain the situation. The representative of Tunisia stated that while he would not formally oppose the request, its acceptance should not be construed as a precedent. The representative of the USSR reserved his position on the matter, and the representative of Ceylon stated that he had no objection.[59]

Decision: *The President recognized the representative of the Union of South Africa to speak on the matter of the adoption of the agenda.*[60]

CASE 19

At the 943rd meeting on 10 March 1961, in connexion with the situation in Angola, the President (United States) stated that he had received a request[61] from the representative of Portugal to be heard in the discussion on the inscription of the item on the provisional agenda. Noting that it had been standard Council practice not to permit invited members to participate in the discussion of the adoption of the agenda, the President suggested that the Council should

> "follow the Council's procedure at its 851st meeting, when it received a similar request on an item related to the Union of South Africa. Should the Council vote to adopt the agenda, the representative of Portugal would be recognized after the vote to speak in connexion with the agenda. After that the Council would begin its discussion of the substance of the question before it."

At the 944th meeting on the same date, after the adoption of the agenda, the President proposed to invite the representative of Portugal to the Council table in accordance with his request. There being no objection, the representative of Portugal took a place at the Council table and was recognized by the President "to make a statement on the adoption of the agenda."[62]

CASE 20

At the 950th meeting on 6 June 1961, in connexion with the situation in Angola, the President (China) stated that the representative of Portugal in his letter[63] had asked to be heard in the discussion on the adoption of the agenda. While noting that, in accordance with the general practice of the Council, non-members did not participate in the discussion on the adoption of the agenda the President recalled that special provisions had been made for that purpose at the 851st meeting and at the 943rd meeting.[64] He proposed, if it was agreeable to the Council, that after the debate had been opened an opportunity be accorded to the representative of Portugal to make a statement on the adoption of the agenda.

After the adoption of the agenda and after statements on the substance of the question had been made by the representatives of Liberia and the United Arab Republic, the President called on the representative of Portugal "for the specific purpose of submitting a statement on the adoption of the agenda."[65]

CASE 21

At the 991st meeting on 27 February 1962 in connexion with the letter of 22 February 1962 from the representative of Cuba[66] concerning the Punta del Este decisions, the President (United States) said that the representative of Cuba had requested an invitation under rule 37 of the provisional rules of procedure to participate both in the discussion of the question proposed for the agenda and the discussion on the adoption of the agenda itself. He pointed out, however, that it had been the practice of the Council that matters of procedure such as the adoption of the agenda should be decided upon by the Council's members themselves without the participation of non-Council members and cited two instances in which such requests were rejected by the Council. Nevertheless, if any member of the Council wished to propose that the representative of Cuba be seated for that purpose, he would put the question to the Council for its decision.

The representative of the USSR contended that inasmuch as the representative of Cuba had fulfilled all the requirements under rule 37 of the provisional

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[57] For texts of relevant statements, see:
1005th meeting: President (Chile), paras. 81–82, 86; Ghana, para. 83; Israel,* para. 75; Syria,* para. 76; United Arab Republic, paras. 78, 85; United States, para. 84.

[58] S/4280, O.R., 15th year, Suppl. for Jan.-March 1960, p. 59.

[59] For texts of relevant statements, see:
851st meeting: President (United States), paras. 5–6, 33; Ceylon, paras. 40–41; Tunisia, paras. 34–35; USSR, paras. 36–39.

[60] 851st meeting: para. 42.

[61] S/4760, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 227–228.

[62] For texts of relevant statements, see:
943rd meeting: President (United States), para. 5;
944th meeting: President (United States), paras. 31–32.

[63] S/4821, O.R., 16th year, Suppl. for Apr.-June 1961, pp. 60–61.

[64] See Cases 18 and 19.

[65] For texts of relevant statements, see:
950th meeting: President (China), paras. 2, 79.

[66] S/5080, O.R., 17th year, Suppl. for Jan.-March 1962, pp. 82–84.

rules of procedure, the Council should invite him to participate in the discussion on the question of the adoption of the agenda. He maintained further that although there had been cases in which the Council declined to invite non-Council members to participate in the discussion of procedural questions, as indicated by the President, nevertheless, there had been a recent exception when during one of the discussions of the question of the Congo an invitation had been extended in which a non-member of the Council had been permitted to take part in a procedural discussion.[67] He then made a formal motion on the basis of rule 37 of the provisional rules of procedure and the existing precedent that the representative of Cuba be allowed to participate without vote in the discussion of the adoption of the agenda.

The representative of France stated that:

"It is an established practice that no Member of the United Nations which is not a member of the Security Council can be invited to take a place at the Council table until the agenda has been adopted. There are no exceptions to this rule, which the Council has always interpreted very strictly, even if, in the debate before the adoption or rejection of the agenda, one or more members of the Council have tried to evade the rules of procedure by coming immediately to the substance of the question. Even then the President must strictly adhere to the rule laid down in Article 31 of the Charter and rule 37 of the provisional rules of procedure of the Security Council ..."

With regard to the example cited by the representative of the USSR, he stated that in that case the President had "made a mistake".

The representative of the United Arab Republic, while agreeing that it was not usual for non-members of the Council to be invited during the discussion on the adoption of the agenda, recalled that during the discussion of the Kashmir question, in January 1948, an exception had been made to this practice.[68]

Decision: *The motion was not adopted having failed to obtain the affirmative vote of seven members.*[69]

2. Extension of invitations

CASE 22

At the 899th meeting on 14 September 1960, in connexion with the situation in the Republic of the Congo, the Council discussed the question of the representation of the Congo in its proceedings.[70]

The President (Italy) observed that he had received a request from the representative of Yugoslavia, a non-member of the Council invited to participate in the discussion, "to be allowed to take the floor on this particular point." The President then observed:

"Normally, on matters of procedure, representatives of States other than members of the Council are not called upon to speak, and I would therefore ask the Council whether there is any objection to the representative of Yugoslavia's doing so on this occasion."

There being no objection, the representative of Yugoslavia* was called upon to speak.

The President subsequently drew the Council's attention to a request from the representative of the Republic of Guinea, who had been invited to participate in the Council's discussion, that he be given the floor. The President commented:

"As I stated before, it is the practice of the Security Council that non-members of the Council should not participate in the discussion of procedural matters. I should not wish to depart from this practice unless the Council decides otherwise. I feel that members may not have raised objection to having the representative of Yugoslavia take the floor because of the fact that his delegation was one of the two delegations which asked for the meeting. In the case of the request of the representative of the Republic of Guinea, I would like to be guided by the wish of the Council."

The representative of the United Kingdom stated:

"As I understand the position, it has never been the practice of the Security Council ... to allow non-members to take part in the discussion of procedural matters when they have been invited to the Council table to take part in the discussions of substance.

"Speaking for my delegation, I would associate myself with what you yourself said, Mr. President, and would suggest that it would be wise for the Council not to depart from its practice in the present case and to restrict the discussion by non-members of the Security Council to matters of substance."

The representative of Poland stated that:

"neither in rule 37, under which representatives of non-members of the Security Council are invited, nor under rule 38 which further guides their participation, is there any exclusion or limitation as to the participation of non-members of the Security Council in the discussion in the Council. As I understand it, this also covers the question of participation in the procedural debate.

"There is a further question which results from this point, namely, whether we are involved at the moment in a procedural debate or not. My delegation feels that we have touched on such important issues that they are certainly not of a procedural character."

The President in reply commented:

"I do not think ... it can be maintained that the invitation to speak extended to non-members of the Council is a question other than that of a procedural character ... it is in the light of this particular character of the matter that I have invited the opinion of the Council. It is up to the Council to

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[67] See Case 22 below.

[68] For texts of relevant statements, see:
991st meeting: President (United States), para. 101; France, paras. 108, 109; United Arab Republic, paras. 112-113; USSR, paras. 102-106.

[69] 991st meeting: para. 114. For the decision of the Council on the adoption of the agenda, see chapter II, Case 37.

[70] S/4504 and Add.1, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 157-158.

decide and to come to a conclusion on this particular point."

The representative of Poland suggested that the President should ask the Security Council whether anyone objected to giving the floor to the representative of Guinea.

The representative of the United States observed that the objection which was voiced by the representative of the United Kingdom was that non-members of the Council would not be expected or, in fact, allowed to speak on matters of procedure. He said:

"It is merely a question of an orderly procedure, of following our normal customs, and I should like, therefore, to register my own objection on this limited basis. It is not an objection to the Guinean representative's speaking, because I fully expect and look forward to his speaking, but I would ask that, if he plans to speak on this procedural matter, that should not be allowed."

The representative of Ceylon stated:

"I am prepared to concede that there may have been a practice which discriminated between substance and procedure, but it is for that reason that I appeal that we should not go into that question at this stage, because one of the representatives invited to the Council to participate has been permitted the right to speak on procedure, and I do not wish to associate myself with any decision of this Council which would deny to another representative the right to speak on procedure, since there is no distinction between the claims on which they are here before us...

"It may be that there is a certain practice, but I shall not go into that question. The President would be in a better position to rule and to decide on the question of practice, but in this case particularly I appeal that the objection which has been voiced should not be pressed."

The representative of France agreed with the representatives of the United Kingdom and the United States, and remarked:

"I find it particularly strange to depart from that rule now when an invitation is precisely what we are discussing. It is quite anomalous that States which have themselves been invited should speak on a matter involving an invitation."

The representative of the USSR contended that there were no formal grounds whatsoever for refusing to give the floor to the representative of Guinea. He added:

"Rule 37 of the provisional rules of procedure concerns participation without vote in the discussion of any question—I repeat, any question—brought before the Security Council. Accordingly, there are absolutely no formal grounds on which the representative of the Republic of Guinea could be prevented from participating in the discussion on the question now under consideration.

"...

"The Soviet delegation considers this discriminatory attitude towards the representative of an African State completely inadmissible and formally requests that the representative of the Republic of Guinea should be invited to speak on the question now before us."

At the 900th meeting on the same day, the representative of the United Kingdom, in reply to the suggestion raised by the Ceylonese representative at the previous Council meeting, stated that the admission of non-members to a procedural debate would create a precedent which might lead to a great deal of confusion in the future.

The representative of Ceylon agreed with the observations made by the representative of the United Kingdom with regard to the question of permitting invited representatives to participate in the discussion on purely procedural questions. However, on this occasion he felt the Council should depart from that policy in order not to create the impression that a distinction was being drawn between one invited Member and another invited Member. He suggested that:

"in the circumstances that have developed... the others who desire to do so on this occasion may be permitted to participate, without creating a precedent, and registering the emphatic opinion that, under our provisional rules of procedure or according to our practice, such participation is not generally allowed and should not be allowed in the future; in other words, that this should not be taken as a precedent for future occasions."

The President stated:

"the problem which now confronts the Chair is intricate and complex. ... However, the views which have been put forward are, in the opinion of the Chair, so strikingly different that I think that the Chair has no choice but to put the question to a vote. In this connexion I should like to emphasize very strongly the thoroughly procedural character of this vote."

Before the question was put to the vote, the representative of the USSR asked for a clarification on whether there was a formal motion before the Council not to permit the representative of Guinea to speak.

The President replied:

"the point under discussion is whether or not at the present juncture the representative of Guinea should be given the floor during this procedural debate. Therefore, I should like to put the question to the vote in the following way: Those in favour of having the representative of Guinea take the floor at this juncture, please raise their hands." [71]

After some discussion concerning the formulation of the question to be put to the vote, the President made the ruling and the vote took place. [72]

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[71] For texts of relevant statements, see:

899th meeting: President (Italy), paras. 15-16, 39, 44-45; Ceylon, paras. 50-54; France, paras. 55-56; Poland, paras. 42-46; USSR, paras. 65-67; United Kingdom, paras. 40-41, United States, paras. 48-49.

900th meeting: President (Italy), paras. 9, 12; Ceylon, paras. 6-7; USSR, paras. 10-11; United Kingdom, paras. 2-4.

[72] For consideration of the question in terms of the application of rule 40, see chapter I, Case 74.

Decision: *The result of the vote was 4 in favour, 5 against, and 2 abstentions. The motion was rejected.* [73]

CASE 23

At the 958th meeting on 5 July 1961, in connexion with the complaint by Kuwait, after the agenda had been adopted and the representative of Iraq had been invited to the Council table, the President (Ecuador) drew attention to the request [74] of the representative of Kuwait to take part in the Council's discussion on the question. [75] Before submitting this matter to the Council he remarked that the representative of Iraq had asked to be allowed to speak on the same matter.

The representative of the United Kingdom contended that in accordance with the Council's past practice the representative of Iraq, as a non-member of the Council, could not take part in the discussion on the request by the representative of Kuwait. He would be entitled under the provisional rules of procedure and the Council's practice to comment, but not before any decision had been taken.

In the opinion of the representative of the USSR, the representative of Iraq was justified in asking for permission to speak on a question which affected Iraq's interests. Since the Council was the master of its own procedure, there would be no complications should it agree to this request. [76]

Decision: *The proposal to invite the representative of Iraq to speak on the request of Kuwait to participate in the Council's discussions was not adopted. There was 1 vote in favour, none against, and 10 abstentions.* [77]

**3. Postponement of consideration of a question

**4. Other matters

(*)E. EFFECT OF THE EXTENSION OF INVITATIONS

CASE 24

At the 851st meeting on 30 March 1960, in connexion with the complaint concerning South Africa, after the Council had adopted the agenda and agreed to the request of the representative of South Africa to speak on the matter of the adoption of the agenda, [78] the latter made a statement at the end of which he declared that since the question had been placed on the Council's agenda, he was obliged to report to his Government for instructions. He then withdrew from the Council table.

The representative of Tunisia expressed his regret that the representative of South Africa had left the Security Council meeting when he had concluded his statement, thus refusing to co-operate with the Council in the maintenance of international peace and security.

At a later stage of the discussion, during the 852nd meeting on the same date, the representative of Tunisia stated that a further statement by the representative of South Africa on the substance of the question before the Council would assist it considerably in discharging its responsibilities under the Charter. He proposed formally that the President should ask the representative of South Africa, who was then absent from the Council table, whether he was prepared to reply and to state his views on the situation, and thereby continue to co-operate with the Council in the discussion which was taking place.

The President (United States), commenting on this proposal, stated:

"The Council has voted to invite the representative of the Union of South Africa to take a place at the Council table, and he, of course, has the right to conduct himself with regard to this Council in any way that he wishes. I would not think that there was any way of avoiding his taking his own decisions on matters involving his own conduct."

The representative of the United Kingdom assumed that the representative of South Africa would be receiving instructions from his Government and would eventually be in a position to answer whether he would return to the Council table. [79]

Decision: *The proposal of the representative of Tunisia was not adopted. There were 6 votes in favour, none against, and 5 abstentions.* [80]

CASE 25

At the 887th meeting on 21 August 1960, in connexion with the situation in the Republic of the Congo, after the adoption of the agenda the President (France) stated [81] that at the 873rd meeting the Council had decided to invite the representatives of Belgium and of the Republic of the Congo to participate in the discussion. [82] However, he added that the representative of Belgium had indicated that he did not intend to take his place at the Council table during the current debate because of the reasons given in his letter of 19 August 1960. The President then read out the letter:

"Sir,

"The Security Council, at its 873rd meeting, decided, at the request of my Government, to invite Belgium to participate without vote in its deliberations on the Congo.

"As the next Security Council debate will be concerned with aspects of the Congolese problem in which Belgium should not be involved, and as the withdrawal of Belgian troops is well under way

(*) New sub-heading.

[73] 900th meeting: para. 38.

[74] S/4851, O.R., 16th year, Suppl. for July-Sept. 1961, p. 4.

[75] For a discussion of this request, see Case 5.

[76] For texts of relevant statements, see:
958th meeting: President (Ecuador), paras. 1-3, 8-9, 12-13; USSR, paras. 10-11; United Kingdom, para. 4.

[77] 958th meeting: para. 13.

[78] See Case 18.

[79] For texts of relevant statements, see:
851st meeting: President (United States), para. 42; South Africa, para. 80; Tunisia, para. 85;
852nd meeting: President (United States), paras. 168, 170; Tunisia, paras. 165-167, 169; United Kingdom, paras. 172-173.

[80] 852nd meeting: para. 174.

[81] 887th meeting: paras. 1-2.

[82] See Case 2.

and is continuing, my Government does not consider it necessary to participate in the proceedings. However, I reserve my right to be heard in accordance with the decision already taken by the Security Council, should Belgium be implicated during these meetings ..."

The President further stated that, subject to the Council's agreement, he would, for the time being, [83] invite only the representative of the Republic of the Congo to take a place at the Council table.

CASE 26

At the 1040th meeting on 22 July 1963, the Security Council adopted an agenda which included (1) a letter dated 11 July 1963 addressed by the representatives of thirty-two African States concerning territories in Africa under Portuguese administration, [84] and (2) a letter dated 11 July 1963 addressed by the representatives of thirty-two African States concerning the policies of apartheid in the Republic of South Africa. [85]

After the President (Morocco) had invited [86] the representatives of Tunisia, Liberia, Portugal, Sierra Leone and Madagascar to take seats at the Council table to participate in the discussion on the first of the aforementioned agenda items, the representative of Ghana, after quoting Article 32 of the Charter, asked the Council to address an invitation to the representative of South Africa "to appear before the Council in connexion with the second item" on the agenda.

The President remarked that the Council had not received any request to participate from the Government of the Republic of South Africa. [87] Consultations would take place in order to evaluate the proposal that an invitation be extended. He informed the Council that the representative of South Africa was awaiting instructions from his Government in this respect.

At the 1041st meeting on 23 July 1963, the President (Morocco) referred to the consultations he had made with members of the Council on the proposal of the representative of Ghana. After expressing that it was the consensus of the Council that it was desirable to address an invitation to participate to the representative of South Africa, the President proposed and the Council approved the text of a cablegram addressed to the Minister for Foreign Affairs of the Republic of South Africa extending the invitation.

At the 1050th meeting on 31 July, the President (Morocco), after recalling that the Council had decided to invite the Republic of South Africa to take part in the discussion of the agenda item concerning South Africa, announced that a reply had been received that afternoon from the South African Government. The Secretary of the Council read out the reply [88] in which it was stated that the South African Government had "decided not to participate in the discussion of matters relating to South African policy which fall solely within the domestic jurisdiction of a Member State".

At the 1055th meeting on 7 August 1963, the representative of Tunisia, commenting on this reply, stated:

"I believe this is the first time in the annals of the Council that such an invitation has been refused by a State Member of the United Nations. ...

"The participation of a representative of the South African Government in the present debate could have been useful. The presence and co-operation of such a representative might have facilitated the consideration of a problem which has been of deep concern not only to the African States but to all the States Members of the United Nations since 1948—that is, since well before the great majority of the African nations had recovered their sovereignty. The Council would then have known how far South Africa was ready to co-operate with the United Nations. The rejection by that country's Government of the Council's formal invitation is in itself a serious matter. ... It constitutes a delinquency which the Council cannot overlook." [89]

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[83] The participation of the representative of Belgium was resumed at the 924th meeting on 12 January 1961. At the beginning of that meeting, the President (United Arab Republic) referred to the telegram dated 9 January 1961 by which the Belgian Minister for Foreign Affairs notified that the Permanent Representative of Belgium to the United Nations had been appointed to represent Belgium at the meetings devoted to the item on the agenda. After this statement, and with the consent of the Council, the President invited the Belgian representative to the Council table (924th meeting: para. 1).

[84] S/5347, O.R., 15th year, Suppl. for July-Sept. 1963, pp. 6-10.

[85] S/5348, ibid., pp. 11-14.

[86] See tabulation C.1.a., entry 12.

[87] See tabulation C.2.a., entry 15.

[88] S/5381, 1050th meeting, para. 6.

[89] For texts of relevant statements, see:
1040th meeting: President (Morocco), para. 12; Ghana, para. 11.
1041st meeting: President (Morocco), paras. 89-90.
1050th meeting: President (Morocco), para. 5.
1055th meeting: Tunisia, paras. 29-31.

Chapter IV '

VOTING

TABLE OF CONTENTS

INTRODUCTORY NOTE

This chapter contains material from the Official Records relating to the practice of the Council under Article 27 of the Charter. The arrangement of the material in this chapter follows that of the corresponding chapter in earlier volumes of the Repertoire.

Part I presents evidence relating to the distinction between procedural and non-procedural matters. Part II is concerned with the proceedings of the Council in connexion with decisions on the question whether or not the matter under consideration was procedural within the meaning of Article 27 (2). Part III deals with the abstention or absence of a Council member in relation to the requirements of Article 27 (3).

Certain questions of procedure in connexion with voting are dealt with in chapter I, part VI, relating to rule 40 of the provisional rules of procedure. Material relating to voting in connexion with the election of judges under Article 10 of the Statute of the International Court of Justice is included in chapter VI, part I, section D. Chapter VII, parts I and V, includes material on the voting procedure employed by the Council in connexion with applications for admission to membership in the United Nations.

As noted in preceding volumes of the Repertoire, most of the occasions on which the Council has voted afford no indication of 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, 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. Nor can any indication be obtained from proceedings in which a proposal, having been put to the vote, has failed to obtain seven votes in its favour.

Part I, section A, comprises those instances (Cases 1-7) wherein the adoption of a proposal, obtained through seven or more votes, with one or more permanent members casting a negative vote, indicated the procedural character of the decision. Cases in this section have been grouped under headings derived from the subject matter dealt with in the decisions; the headings do not constitute general propositions as to the procedural character of future proposals which might be deemed to fall under them.

Part I, section B, includes those instances in which the rejection of a proposal, which had obtained seven or more votes with one or more permanent members casting a negative vote, indicated the non-procedural character of the matter under consideration. The entries in this section (Cases 8-22) are restricted to a reference whereby the draft resolution or proposal and the vote thereon may be identified in the record of decisions in other parts of this Supplement.

The case histories in part II concern an occasion when the Council voted on the "preliminary question" whether the matter was procedural within the meaning of Article 27 (2). In section A (Case 23) will be found an outline of the proceedings with an indication of the sequence of steps leading to the final decision on whether or not the matter under consideration was procedural. In section B are presented two special problems of procedure: Case 24 concerns the discussion on the order in which the main proposal and the preliminary question should be put to the vote; Case 25 is a summary of the discussion on the question whether the decision that a matter was procedural was itself a procedural decision. Statements invoking the San Francisco Statement on Voting Procedure[1] in connexion with the determination of this question have been included in this case history.

The case history (Case 26) in part III, section A, concerns an occasion when a member of the Council made reference to Article 27 (3) in connexion with the question of participation in the vote.

Part III, section B, covers instances (Cases 27-45) in which permanent members have abstained voluntarily considering that no affirmative decisions could have been taken had they voted against the proposals.

1/ "Statement by the Delegations of the Four Sponsoring Governments on Voting Procedure in the Security Council", United Nations Conference on International Organization, Documents, Volume II, pp. 711-714; see also Repertory of Practice of United Nations Organs, vol. II, 1955 (U.N.P. 1955.V.2), pp. 104-106.

Part I

PROCEDURAL AND NON-PROCEDURAL MATTERS

A. CASES IN WHICH THE VOTE INDICATED THE PROCEDURAL CHARACTER OF THE MATTER

1. Inclusion of items in the agenda

On the following three occasions an item has been included in the agenda by a vote of the Council, notwithstanding the negative vote of a permanent member:

CASE 1

At the 847th meeting on 7 September 1959—report by the Secretary-General relating to Laos.[2]

2/ *847th meeting: para. 42.* Also, at the *848th meeting, para. 4,* the representative of the USSR stated that he maintained his objections to the inclusion in the agenda of the item concerning Laos.

CASE 2

At the 911th meeting on 3/4 December 1960—admission of new Members to the United Nations (application of Mauritania).[3]

CASE 3

At the 987th meeting on 18 December 1961—complaint by Portugal (Goa).[4]

2. Order of items on the agenda

CASE 4

On the following occasion a proposal relating to the order of items on the agenda was adopted by vote of the Security Council, notwithstanding the negative vote of a permanent member:

At the 968th meeting on 26 September 1961—admission of new Members to the United Nations (application of Mauritania).[5]

**3. Deferment of consideration of items on the agenda

**4. Removal of an item from the list of matters of which the Security Council is seized

**5. Rulings of the President of the Security Council

6. Suspension of a meeting

CASE 5

On the following occasion a proposal that the Security Council should suspend a meeting for a specified time was adopted by a vote of the Council, notwithstanding the negative vote of a permanent member:

At the 982nd meeting on 24 November 1961.[6]

7. Adjournment of a meeting

CASE 6

On the following occasions a motion to adjourn was adopted by a vote of the Security Council, notwithstanding the negative vote of a permanent member:

At the 898th meeting on 12 September 1960.[7]

At the 917th meeting on 10 December 1960.[8]

At the 939th meeting on 17 February 1961.[9]

At the 987th meeting on 18 December 1961.[10]

At the 989th meeting on 30 January 1962.[11]

**8. Invitation to participate in the proceedings

**9. Conduct of business

10. Convocation of an emergency special session of the General Assembly

CASE 7

On the following occasion a proposal to convoke an emergency special session of the General Assembly, as provided in General Assembly resolution 377 A (V), was adopted by vote of the Security Council, notwithstanding the negative vote of a permanent member:

At the 906th meeting on 16 September 1960, in connexion with the situation in the Republic of the Congo, when the Council adopted a draft resolution submitted by the representative of the United States, calling for an emergency special session of the General Assembly.[12]

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 8

Decision *of 26 July 1960 (883rd meeting): Rejection of draft resolution submitted by the United States in connexion with the complaint by the USSR (RB-47 incident).*[13]

CASE 9

Decision *of 26 July 1960 (883rd meeting): Rejection of draft resolution submitted by the representative of Italy in connexion with the complaint by the USSR (RB-47 incident).*[14]

CASE 10

Decision *of 17 September 1960 (906th meeting): Rejection of draft resolution submitted by Ceylon and Tunisia in connexion with the situation in the Congo.*[15]

CASE 11

Decision *of 14 December 1960 (920th meeting): Rejection of draft resolution submitted by Argentina, Italy, the United Kingdom and the United States in connexion with the situation in the Republic of the Congo.*[16]

CASE 12

Decision *of 21 February 1961 (942nd meeting): Rejection of United States amendments to draft resolution submitted by Ceylon, Liberia and the United Arab Republic in connexion with the situation in the Congo.*[17]

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[3] 911th meeting: para. 97.
[4] 987th meeting: para. 7.
[5] 968th meeting: para. 73.
[6] 982nd meeting: para. 94.
[7] 898th meeting: para. 14.
[8] 917th meeting: paras. 249 and 250.
[9] 939th meeting: para. 121.
[10] 987th meeting: para. 161.
[11] 989th meeting: para. 75.
[12] S/4525, 906th meeting: para. 173; 906th meeting: para. 198. See chapter VI, case 1.
[13] S/4409/Rev.1, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 35-36; 883rd meeting: para. 188. See chapter VIII, p. 186.
[14] S/4411, 883rd meeting, para. 42; 883rd meeting: para. 189. See chapter VIII, p. 186.
[15] S/4523, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 172-173; 906th meeting: para. 157.
[16] S/4578/Rev.1, O.R., 15th year, Suppl. for Oct.-Dec. 1960, pp. 82-83; 920th meeting: para. 156.
[17] S/4740, 942nd meeting: para. 97; 942nd meeting: para. 139.

CASE 13

Decision *of 21 February 1961 (942nd meeting): Rejection of United States amendment to draft resolution submitted by Ceylon, Liberia and the United Arab Republic in connexion with the situation in the Congo.*[18]

CASE 14

Decision *of 7 July 1961 (960th meeting): Rejection of draft resolution submitted by the United Kingdom in connexion with the complaint by Kuwait.*[19]

CASE 15

Decision *of 24 November 1961 (982nd meeting): Rejection of third United States amendment to draft resolution submitted by Ceylon, Liberia and the United Arab Republic in connexion with the situation in the Congo.*[20]

CASE 16

Decision *of 24 November 1961 (982nd meeting): Rejection of sixth United States amendment to draft resolution submitted by Ceylon, Liberia and the United Arab Republic in connexion with the situation in the Congo.*[21]

CASE 17

Decision *of 18 December 1961 (988th meeting): Rejection of draft resolution submitted by France, Turkey, the United Kingdom and the United States in connexion with the question of Goa.*[22]

CASE 18

Decision *of 22 June 1962 (1016th meeting): Rejection of draft resolution submitted by the representative of Ireland in connexion with the India-Pakistan question.*[23]

CASE 19

Decision *of 3 September 1963 (1063rd meeting): Rejection of draft resolution submitted by the United Kingdom and the United States in connexion with the Palestine question, with special reference to the complaints of Israel and Syria.*[24]

CASE 20

Decision *of 13 September 1963 (1069th meeting): Rejection of draft resolution submitted by the representatives of Ghana, Morocco and the Philippines in connexion with the question of Southern Rhodesia.*[25]

2. In connexion with other matters considered by the Security Council

a. IN CONNEXION WITH ADMISSION OF NEW MEMBERS TO THE UNITED NATIONS

CASE 21

Decision *of 3 December 1960 (911th meeting): The joint draft resolution submitted by the representatives of France and Tunisia to recommend Mauritania for membership was not adopted.*[26]

CASE 22

Decision *of 30 November 1961 (985th meeting): The draft resolution submitted by the United Arab Republic to recommend Kuwait for membership was not adopted.*[27]

**b. IN CONNEXION WITH APPOINTMENT OF THE SECRETARY-GENERAL

[18] 942nd meeting: para. 169; 942nd meeting: para. 175.

[19] S/4855, O.R., 16th year, Suppl. for July-Sept. 1961, p. 5, 960th meeting: para. 44. See chapter VIII, p. 192.

[20] S/4989/Rev.2, O.R., 16th year, Suppl. for Oct.-Dec. 1961, pp. 137-138. 982nd meeting: para. 81.

[21] S/4989/Rev.2, *ibid.*; 982nd meeting: para. 84.

[22] S/5033, 988th meeting: para. 97, 988th meeting: para. 129. See chapter VIII, p. 197.

[23] S/5134, O.R., 17th year, Suppl. for April-June 1962, p. 104; 1016th meeting: para. 92.

[24] S/5407, O.R., 18th year, Suppl. for July-Sept. 1963, p. 149, 1063rd meeting, para. 64.

[25] S/5425/Rev.1, O.R., 18th year, Suppl. for July-Sept. 1963, pp. 164-165; 1069th meeting: para. 64.

[26] S/4567/Rev.1, O.R., 15th year, Suppl. for Oct.-Dec. 1960, p. 65, 911th meeting: para. 246.

[27] S/5088, 984th meeting: para. 20; 985th meeting: para. 44.

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

A. PROCEEDINGS ON OCCASIONS WHEN THE SECURITY COUNCIL VOTED ON "THE PRELIMINARY QUESTION"

CASE 23

At the 847th meeting on 7 September 1959, in connexion with the report by the Secretary-General relating to Laos, the representative of the United States submitted a draft resolution,[28] jointly sponsored with the representatives of France and the United Kingdom, under which the Security Council would:

> "... appoint a sub-committee consisting of Argentina, Italy, Japan and Tunisia ... to examine the statements made before the Security Council concerning Laos, to receive further statements and documents and to conduct such inquiries as it may determine necessary, and to report to the Council as soon as possible."

The representative of the United States stated that the proposed sub-committee would be a subsidiary organ of the Council under Article 29 of the Charter.

[28] S/4214, same text as S/4216, O.R., 14th year, Suppl. for July-Sept. 1959, pp. 8-9. See also Cases 24 and 25; for the consideration of procedure in the establishment of subsidiary organs, see chapter V, Case 9.

The Council discussed the question whether the draft resolution was procedural or non-procedural at the 847th and 848th meetings. The representative of the USSR contended that the proposal could not be regarded as procedural.

On a motion submitted by the representative of the USSR, the Council took a preliminary vote to decide whether the vote on the draft resolution should be regarded as a procedural one.

Decision: *The President (Italy) asked that those who considered that the draft resolution was procedural should vote in favour. There were 10 votes in favour and 1 against (that of a permanent member).*

The President ruled that, as a result of the vote, the draft resolution should be considered procedural.[29]

The Council then voted upon the draft resolution submitted by France, the United Kingdom and the United States.[30]

Decision: *There were 10 votes in favour and 1 against. The President declared that he considered the draft resolution adopted.*[31]

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 24

At the 848th meeting on 7 September 1959, in connexion with the report by the Secretary-General relating to Laos, the President (Italy) invited the members of the Council to take a decision on the draft resolution[32] submitted by France, the United Kingdom and the United States to establish a sub-committee instructed to conduct inquiries and to report to the Council.

The representative of the USSR raised the question of the procedure to be followed in voting on the draft resolution, and asserted that the proposal was substantive and not procedural.

The President stated that the question raised by the representative of the USSR "could more properly be taken up after the vote on the draft resolution". This was a practice, he added, which had some precedent within the Council. The first step for the Council should be, therefore, to proceed to the vote on the draft resolution.

The representative of the USSR contended that the practice of the Council had varied, and that there had been a number of cases in which the Council, before voting on a draft resolution, had taken a decision on whether the vote was to be of a procedural or a non-procedural character. He requested that a vote should be taken on the question whether the vote on the draft resolution was to be considered a procedural vote.

The President stated:

"I would like to note again that the cases in which the votes on the draft resolution have been taken first are quite numerous and I think that they outnumber the cases of the reverse order by at least one. But in any case, I think that I understand correctly that the Soviet representative wants me to put to a formal vote the question whether the draft resolution under consideration is a procedural one, and we shall proceed accordingly. I will now put to the vote of the Council the following question: Should the vote on this draft resolution be considered a procedural one?

"...

"Those who believe that it is a procedural matter will say 'yes' and raise their hands."[33]

Decision: *There were 10 votes in favour and 1 against (that of a permanent member), and the President ruled that the draft resolution should be considered procedural.*[34]

2. Consideration whether the decision that the matter is procedural is itself a procedural decision

CASE 25

At the 848th meeting on 7 September 1959, in connexion with the report by the Secretary-General relating to Laos, the representative of the USSR asserted that the draft resolution introduced by France, the United Kingdom and the United States[35] to establish a sub-committee to conduct inquiries was non-procedural. He said that if anyone had any doubt on the point, the procedure for resolving the doubt was that indicated in the last sentence of the San Francisco Statement on Voting Procedure, namely, to decide by a vote of seven members of the Security Council, including the concurring votes of the permanent members. He added that the Council had no alternative but to decide the question by this procedure.

The preliminary question was put to the vote. The President then declared:

"The result of the vote is as follows: 10 in favour and 1 against. Therefore, the resolution should be considered procedural. ... The Chair can act only in accordance with the Charter and the rules of procedure, and this is my ruling."

The representative of the USSR objected to this ruling:

"The President's interpretation of the vote is at variance with the Charter of the United Nations, at variance with the procedure laid down in the four-

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29/ 848th meeting: paras. 78-79.

30/ For texts of relevant statements, see:
847th meeting: Argentina, paras. 101-104; Canada, paras. 95-96; China, paras. 114-115; Tunisia, para. 123; United States, paras. 59-64;
848th meeting: President (Italy), paras. 74, 76, 78, 125-130; USSR, paras. 30, 51-69, 72-73, 114-123; United Kingdom, paras. 103-113; United States, para. 77.

31/ 848th meeting: paras. 131-132.

32/ S/4214, same text as S/4210, O.R., 14th year, Suppl. for July-Sept. 1959, pp. 8-9.

33/ For texts of relevant statements, see:
848th meeting: President (Italy), paras. 50, 71, 74, 78; USSR, paras. 51-52, 68, 72-73.

34/ 848th meeting: paras. 78-79.

35/ S/4214, same text as S/4210, O.R., 14th year, Suppl. for July-Sept. 1959, pp. 8-9.

Power declaration issued at the San Francisco Conference on 7 June 1945 and at variance with the whole practice of the Security Council. . . .

"I have just quoted from the four-Power declaration of 7 June 1945 in which the four Powers, with the adherence of France, established the procedure for deciding the preliminary question whether a procedural vote might be taken in a particular case. That procedure provides that such a vote shall be subject to the unanimity rule, in other words, the adoption of an affirmative decision shall require the concurring votes of all the permanent members.

"In the vote which has just taken place, a vote on this very question which is dealt with in the declaration and to which the procedure I have mentioned applies, the Soviet Union, a permanent member of the Security Council, voted 'against'.

"Consequently, the President's interpretation is at variance with the Charter, with the declaration of which I have just spoken and with the practice of the Security Council. Hence I protest against his ruling. I consider that he has announced the results of the vote incorrectly. The vote on the draft resolution, which he intends to put to the vote, will be a vote not on a procedural matter but on a matter of substance, to which the unanimity rule is applicable.

"I am surprised at the attitude of the representatives of the United States, the United Kingdom and France, who were parties to the San Francisco declaration of 7 June 1945. . . .

". . .

"Accordingly, I should now like to ask the representatives of France and the United Kingdom whether they uphold their statements that they continue to regard the San Francisco declaration as being in force. . . ."

The representative of France replied as follows:

"I should like to dispel any incorrect interpretations which might arise from the vote we have just taken. Every matter put before this Council must be regarded as a separate case; every resolution adopted by the Council is first of all subject to individual appraisal by every State represented here, in the light of the texts which are binding on all the Members of the United Nations, of the purpose of the resolution and of the consequences which it involves.

". . .

". . . I am convinced that the resolution before us is procedural in character, and that this character arises out of the Charter, our rules of procedure, the San Francisco declaration and the role we intend to assign to the sub-committee."

The representative of the United Kingdom declared:

"Of course, we stand by the San Francisco declaration, but what we stand by is its applicability to cases to which it applies. This is not one of them. . . ."

The representative of the USSR welcomed the United Kingdom representative's declaration of continued support for the San Francisco Statement but urged that he support it in its entirety. Concerning the statement of the representative of France, he observed:

"He expressed the view that the resolution before us is a procedural resolution. He is entitled to hold that opinion and I respect it. Nevertheless, in accordance with the San Francisco declaration, to which France subscribed, all the permanent members must be unanimous on this point. If any permanent member takes a different view, what happens then? Then, obviously, the other permanent members, who signed that declaration, must respect the opinion of the member of the Security Council who thinks differently, for the simple reason that, under the terms of the declaration in question, they undertook to decide whether a particular question is or is not procedural by a vote which is subject to the unanimity rule. For that reason, I say that I respect the opinion of the representative of France. If, however, the French Government stands by this declaration, I ask that, in accordance with its terms, respect should be shown for the opinion of another member of the Security Council who takes a divergent position on this question and who considers that the resolution before us is not procedural. This situation is specifically covered by the San Francisco declaration."

The representative of the United Kingdom, in the course of a further statement, made the following observations concerning the bearing of the San Francisco statement:

"The representative of the Soviet Union also referred to the last sentence of the San Francisco declaration and argued that this is a case when the question of whether a matter is procedural must be decided by a vote of seven members of the Security Council, including the concurring votes of the permanent members. We should also read paragraph 1 of part II of the declaration which immediately precedes that paragraph. It says:

"'In the opinion of the delegations of the sponsoring Governments, the draft charter'—as it then was—'itself contains an indication of the application of the voting procedures to the various functions of the Council.'

"The second paragraph of part II on which the Soviet representative relied was therefore clearly intended to apply only when the Charter did not give any guidance; it was intended to apply to those cases where there was genuine doubt as to whether a matter was procedural or substantive. In the present case, Article 29 of the Charter gives a clear indication, namely, that, as a matter of procedure and administrative convenience, the Security Council can appoint such sub-committees of its members as is now proposed.

"It is for these reasons . . . that in my view your ruling, Mr. President, was entirely correct and the representative of the Soviet Union was not entitled to claim that the question of whether the draft resolution was procedural should be settled in accordance with the practice under the San Francisco declaration which provided for a different set of circumstances."

The representative of the USSR commented as follows on the statement by the representative of the United Kingdom:

"One thing that is hard to understand is why Sir Pierson Dixon accepts paragraphs 2 and 3, yet refers in, to my mind, extremely indefinite terms to the second part of that same San Francisco declaration, which deals with this very question of how to resolve any doubt which may arise as to whether a given matter is or is not procedural. The Charter does not touch on this directly. That was why the declaration, which was confirmed by the San Francisco Conference, was drafted. That declaration specifies the action to be taken if any doubt arises in the Council as to whether a particular matter is or is not procedural.

"As far as the question of voting is concerned, the declaration has the same force as the Charter itself ... that has hitherto been universally recognized ... it has been the practice to apply the declaration in its entirety, including the part which deals with the question of determining whether or not a matter is procedural. ..."

The President commented as follows on the observations of the representative of the USSR concerning the San Francisco Statement:

"... I repeat that the Chair can act only in accordance with the Charter and with the rules of procedure. Any other document cannot be binding if its interpretation might run contrary to the Charter itself."

The President then put the draft resolution to the vote and announced the result as follows: "There are 10 votes in favour, 1 against, and no abstentions. I consider therefore the draft resolution adopted."[36]

The representative of the USSR stated that because of the illegal voting procedure followed by the Council the USSR delegation regarded the resolution as non-existent, illegal and not binding upon anyone. He said:

"The San Francisco declaration is an interpretation of the Charter and cannot be opposed to the Charter, since it is an interpretation upon which formal agreement was reached. It is the only document adopted at the conference concerned with the interpretation of specific provisions of the Charter, and by virtue of that fact those parts of it which relate to the Charter are as important as the Charter itself."

The representative of the United States declared:

"... I happen to think that the San Francisco declaration is significant largely as a matter of attitude. I agree with the President that the thing that governs us here is the Charter and the rules of the Security Council ...

"...

"The United States has consistently taken the view that the so-called double veto cannot be used to make substantive a matter declared by the four-Power statement to be procedural. ..."

The representative of the USSR rejoined:

"A declaration is a declaration, and it is not possible to accept one part and not to accept another, in this instance, the part which has the greatest relevance to the Security Council's present deliberations and which specifically indicates how a controversial issue is to be settled."[37]

**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

[36] 848th meeting: paras. 131-132.

[37] For texts of relevant statements, see:
848th meeting: President (Italy), paras. 79, 129. France, paras. 90, 93; USSR, paras. 64, 80-84, 89, 95-96, 122, 123, 134, 135, 160; United Kingdom, paras. 94, 111-113; United States, paras. 145, 148.

Part III

ABSTENTION AND ABSENCE IN RELATION TO ARTICLE 27 (3) OF THE CHARTER

A. OBLIGATORY ABSTENTION

1. Cases in which members have abstained in accordance with the proviso of Article 27 (3)

CASE 26

At the 868th meeting on 23 June 1960, in connexion with the complaint by Argentina (Eichmann Case), a draft resolution[38] submitted by the representative of Argentina, incorporating two amendments[39] submitted by the representative of the United States and accepted by the original sponsor, was put to the vote. Before the vote was taken, the representative of Argentina stated:

"Article 27, paragraph 3, of the Charter states that 'a party to a dispute shall abstain from voting.' My delegation does not wish to enter into a legal or procedural analysis of the application of that wording to the case we are considering, but for reasons of tact, which I am sure the Council will understand, my delegation requests the President and, through him, the Council for permission not to take part in the vote."

The President (China) observed that the representative of Argentina had "a perfect right to refrain from participation in the vote."[40]

Decision: *The draft resolution, as amended, was adopted by 8 votes in favour to none against, with 2 abstentions.*[41]

[38] S/4345, 865th meeting: para. 47.

[39] S/4346, 866th meeting: paras. 78-79.

[40] For texts of relevant statements, see:
868th meeting: President (China), para. 52. Argentina, para. 51.

[41] 868th meeting: para. 52.

**2. Consideration of abstention in accordance with the proviso of Article 27 (3)

B. VOLUNTARY ABSTENTION IN RELATION TO ARTICLE 27 (3)

1. Certain cases in which permanent members have abstained otherwise than in accordance with the proviso of Article 27 (3)

SITUATION IN THE REPUBLIC OF CONGO

Case 27

Decision of 14 July 1960 (873rd meeting): *Tunisian draft resolution.*[42]

Case 28

Decision of 9 August 1960 (886th meeting): *Ceylonese-Tunisian draft resolution.*[43]

Case 29

Decision of 17 September 1960 (906th meeting): *Ceylonese-Tunisian draft resolution.*[44]

Case 30

Decision of 17 September 1960 (906th meeting): *United States draft resolution.*[45]

Case 31

Decision of 21 February 1961 (942nd meeting): *Ceylonese-Liberian-United Arab Republic draft resolution.*[46]

Case 32

Decisions of 24 November 1961 (982nd meeting):

(i) First United States amendment to the Ceylonese-Liberian-United Arab Republic draft resolution.[47]

(ii) Second United States amendment (paragraph 1) to the Ceylonese-Liberian-United Arab Republic draft resolution.[48]

(iii) Second United States amendment (paragraph 2) to the Ceylonese-Liberian-United Arab Republic draft resolution.[49]

(iv) Third United States amendment to the Ceylonese-Liberian-United Arab Republic draft resolution.[50]

(v) Fourth United States amendment to the Ceylonese-Liberian-United Arab Republic draft resolution.[51]

(vi) Ceylonese-Liberian-United Arab Republic draft resolution as amended by the United States.[52]

PALESTINE QUESTION

Case 33

Decision of 11 April 1961 (949th meeting): *United Arab Republic-Ceylon draft resolution as amended.*[53]

Case 34

Decision of 9 April 1962 (1006th meeting): *Draft resolution submitted by the United Kingdom and the United States.*[54]

THE SITUATION IN TERRITORIES IN AFRICA UNDER PORTUGUESE ADMINISTRATION

Case 35

Decision of 31 July 1963 (1049th meeting): *Draft resolution submitted by Ghana, Morocco and the Philippines.*[55]

Case 36

Decision of 11 December 1963 (1083rd meeting): *Draft resolution submitted by Ghana, Morocco and the Philippines (vote on operative paragraph 3).*[56]

Case 37

Decision of 11 December 1963 (1083rd meeting): *Draft resolution submitted by Ghana, Morocco and the Philippines (vote on draft resolution as a whole).*[57]

QUESTION OF RACE CONFLICT IN SOUTH AFRICA

Case 38

Decision of 7 August 1963 (1056th meeting): *Draft resolution submitted by Ghana, Morocco and the Philippines.*[58]

ADMISSION OF NEW MEMBERS TO THE UNITED NATIONS

Case 39

Decision of 25 October 1961 (971st meeting): *Mongolia: Draft resolution submitted by the USSR.*[59]

42/ S/4383, same text as S/4387, O.R., 15th year, Suppl. for July-Sept. 1960, p. 16; 873rd meeting: para. 232.

43/ S/4424, same text as S/4426, ibid., pp. 91-92; 886th meeting: para. 272.

44/ S/4523, ibid., pp. 172-173; 906th meeting: para. 157.

45/ S/4525, same text as S/4526, ibid., p. 174; 906th meeting: para. 198.

46/ S/4722, same text as S/4741, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 147-148; 942nd meeting: para. 95.

47/ S/4989/Rev.2, O.R., 16th year, Suppl. for Oct.-Dec. 1961, pp. 137-138; 982nd meeting: para. 78.

48/ S/4989/Rev.2, ibid.; 982nd meeting: para. 79.

49/ S/4989/Rev.2, ibid.; 982nd meeting: para. 80.

50/ S/4989/Rev.2, ibid., 982nd meeting: para. 81.

51/ S/4989/Rev.2, ibid.; 982nd meeting: para. 82.

52/ S/4985/Rev.1, as orally amended, see S/5002, O.R., 16th year, Suppl. for Oct.-Dec. 1961, pp. 148-150; 982nd meeting: para. 99.

53/ S/4784, 948th meeting: para. 20; 949th meeting: para. 76.

54/ S/5110 and Corr.1, same text as S/5111, O.R., 16th year, Suppl. for April-June 1962, pp. 95-96; 1006th meeting: para. 106.

55/ S/5372, 1044th meeting: para. 4, as amended by S/5379; 1048th meeting: para. 21; 1049th meeting: para. 17.

56/ S/5480, same text as S/5481, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 110-111, 1083rd meeting: para. 157.

57/ S/5480, ibid.; 1083rd meeting: para. 158.

58/ S/5384, 1054th meeting: para. 62; 1056th meeting: para. 18.

59/ S/4950, 971st meeting: para. 15; 971st meeting: para. 70.

Case 40

Decision of 25 October 1961 (971st meeting): *Mauritania: Draft resolution submitted by France and Liberia.* 60/

Case 41

Decision of 4 October 1962 (1020th meeting): *Algeria: Draft resolution submitted by Chile, France, Ghana, Ireland, Romania, USSR, United Arab Republic, United Kingdom, United States and Venezuela.* 61/

60/ S/4967, same text as S/4969, O.R., 16th year, Suppl. for Oct.-Dec. 1961, p. 60; 971st meeting: para. 228.

61/ S/5173, same text as S/5174, O.R., 17th year, Suppl. for Oct.-Dec. 1962, p. 143. 1020th meeting: para. 90.

REPORTS BY THE SECRETARY-GENERAL CONCERNING YEMEN

Case 42

Decision of 11 June 1963 (1039th meeting): *Draft resolution submitted by Ghana and Morocco.* 62/

**2. Consideration of the practice of voluntary abstention in relation to Article 27 (3)

**C. ABSENCE OF A PERMANENT MEMBER IN RELATION TO ARTICLE 27 (3)

62/ S/5330, 1038th meeting: para. 27; 1039th meeting: para. 7.

Chapter V

SUBSIDIARY ORGANS ESTABLISHED BY OR IN PURSUANCE OF SECURITY COUNCIL RESOLUTIONS

TABLE OF CONTENTS

INTRODUCTORY NOTE

The material included in this chapter pertains to procedures of the Security Council in establishing, or authorizing the establishment of, subsidiary organs deemed necessary for the performance of its functions. Part I, "Occasions on which subsidiary organs of the Security Council have been established or proposed," includes one case history in which the Council established the subsidiary organ, three case histories in which the Council decided to authorize the Secretary-General to set up the subsidiary organs, and four case histories giving accounts of occasions on which proposals to establish a subsidiary organ were not adopted by the Council. With respect to the case histories in which subsidiary organs were established or set up by the Secretary-General pursuant to Council resolution, no implication is intended as to whether these bodies do or do not come within Article 29.

In chapter VIII, under the Palestine question, is found a decision of the Council giving further directives to the subsidiary organ previously established in connexion with the question, and under the "situation in the Republic of the Congo" in that chapter are found directives to the subsidiary organs the establishment of which is dealt with in part I of this chapter.

In part II of this chapter is included a case history of an occasion on which a special problem of procedure in relation to a subsidiary organ was considered 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

During the period under review the Security Council: (1) established the Sub-Committee under the resolution of 7 September 1959 in connexion with the report by the Secretary-General relating to Laos;[1] (2) decided to authorize the Secretary-General to take the necessary steps in order to provide the Government of the Republic of the Congo with military assistance, this authorization having been implemented by the Secretary-General by the setting-up of the United Nations Force in the Congo;[2] (3) requested the Secretary-General to establish "the observation operation" in Yemen, this request having been implemented by the Secretary-General by the setting-up of the United Nations Yemen Observation Mission;[3] and (4) requested the Secretary-General to establish under his direction and reporting to him a small group of experts on South Africa.[4]

For the Sub-Committee, the Council decided the composition and terms of reference. In the case of the United Nations Force in the Congo, the Secretary-General determined the composition and the scope of the Force and the limitations of its powers. In the instance of "the observation operation in Yemen," the Secretary-General was empowered by the Council to establish the subsidiary organ "as previously defined by him" in his reports to the Council, including its composition and terms of reference. With regard to the Group of Experts on South Africa, the Council, while defining the terms of reference of the Group, left to the Secretary-General decisions regarding the number of experts and their appointment.

Of the subsidiary organs established in connexion with the Security Council's discharge of responsibilities for the maintenance of international peace and security, the United Nations Representative for India and Pakistan and the United Nations Truce Supervision Organization in Palestine continued in existence during the period under review. In one instance the Council requested the latter organ to report as appropriate concerning the situation.[5]

During the period covered by this Supplement, the Security Council in four instances had not adopted proposals for the establishment of subsidiary organs.[6]

The Council has not, during the period under review, entrusted every task in connexion with activities at "places other than the seat of the Organization" to subsidiary organs. Besides the organizational functions entrusted to the Secretary-General in connexion with the establishment of the organs mentioned above (see Cases 2, 3, 4), the Council, in connexion with the situation in the Congo, requested the Secretary-

[1] Case 1.
[2] Case 2.
[3] Case 3.
[4] Case 4.

[5] Decision of 9 April 1962 (Resolution S/5111, O.R., 17th year, Suppl. for April-June 1962, pp. 95-96).
[6] Cases 5, 6, 7, 8.

General to report,[7] authorized him to take action concerning Belgium's implementation of the resolution of 14 July 1960,[8] requested him to implement the resolution of 9 August 1960,[9] and authorized him to take vigorous action with regard to all foreign military and paramilitary personnel, political advisers not under the United Nations Command and mercenaries.[10] In connexion with the complaint concerning South Africa (letter of 25 March 1960) the Secretary-General was requested by the Council to make arrangements which would assist in upholding the purposes and principles of the Charter and to report thereon;[11] in connexion with the question of race conflict in South Africa the Secretary-General was requested to keep the situation in South Africa under observation and to report to the Council within a certain period;[12] in connexion with the complaint by Senegal the Council requested the Secretary-General to keep the development of the situation under review;[13] and in connexion with the situation in territories in Africa under Portuguese administration the Secretary-General was requested to ensure the implementation of the resolution of 31 July 1963, to furnish necessary assistance and to report within a certain period.[14] The reports from the United Nations Truce Supervision Organization in Palestine continued to be submitted to the Security Council through the Secretary General.

A. INVOLVING, TO FACILITATE THEIR WORK, MEETINGS AT PLACES AWAY FROM THE SEAT OF THE ORGANIZATION

1. Subsidiary organs established

CASE 1

Sub-Committee under resolution of 7 September 1959 in connexion with the report of the Secretary-General relating to Laos

At the 847th meeting on 7 September 1959, in connexion with the report of the Secretary-General relating to Laos, the representative of the United States introduced a draft resolution[15] sponsored jointly with France and the United Kingdom which proposed the appointment of a sub-committee consisting of Argentina, Italy, Japan and Tunisia with instructions to examine the statements made before the Council concerning Laos, to receive further statements and documents and to conduct such inquiries as it might determine necessary, and to report to the Council as soon as possible.

The representative of France noted that Laos, as a Member of the United Nations, was entitled to apply to the Organization when it deemed it appropriate. Turning to the question of the Geneva agreements, in so far as they affected Laos, he stated that they sanctioned the independence of Laos and in no way placed it under permanent trusteeship. The International Commission for Supervision and Control was set up to verify the implementation of the clauses of the armistice agreement and was not given exclusive powers of jurisdiction.

The representative of the United Kingdom, expressing himself along similar lines, noted that the Government of Laos maintained that, since a political settlement had been achieved, it was no longer obliged to submit to the supervision of the International Commission; the United Kingdom believed that the Government of Laos was entitled to take this view.

At the 848th meeting on the same day, the representative of the USSR objected to the proposal, stating that the Council could not be a party to measures which would undermine the validity of existing international agreements.[16]

At the same meeting, the draft resolution submitted by France, the United Kingdom and the United States was put to the vote and adopted[17] by 10 votes in favour, 1 against, and no abstentions.[18]

CASE 2

United Nations Force in the Congo

Establishment

At the 873rd meeting on 13/14 July 1960, the convening of which was requested[19] by the Secretary-General in order to hear his report on a demand for United Nations action in relation to the Republic of the Congo, the Secretary-General pointed out[20] that his request was made under Article 99 of the Charter, and recommended to the Council

> "to authorize the Secretary-General to take the necessary steps, in consultation with the Government of the Congo, to provide the Government with military assistance during the period which may have to pass before, through the efforts of the Government with the technical assistance of the United Nations, the national security forces are able to fully meet their tasks."

"Were the United Nations to act as proposed," the Secretary-General said, "the Belgian Government would see its way to a withdrawal."[21]

7/ Decisions of 14 July, 22 July and 9 August 1960 (Resolutions S/4387, S/4405 and S/4426, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 16, 34-35 and 41-42).

8/ Decisions of 22 July and 9 August 1960.

9/ Decision of 9 August 1960.

10/ Decision of 24 November 1961 (Resolution S/5002, O.R., 16th year, Suppl. for Oct.-Nov. 1961, pp. 148-150).

11/ Decision of 1 April 1960 (S/4300, O.R., 15th year, Suppl. for April-June 1960, pp. 1-2).

12/ Decisions of 7 August and 4 December 1963 (S/5356, O.R., 18th year, Suppl. for July-Sept. 1963, pp. 73-74); and (S/5471, O.R., 18th year, Suppl. for Oct.-Dec., pp. 101-102).

13/ Decision of 24 April 1963 (S/5293, O.R., 18th year, Suppl. for April-June 1963, pp. 30-31).

14/ Decisions of 31 July and 11 December 1963 (S/5380, O.R., 18th year, Suppl. for July-Sept. 1963, pp. 63-64; and S/5461, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 108-109).

15/ S/4214, 847th meeting: para. 59.

16/ For texts of relevant statements, see:
847th meeting: France, paras. 65-73; United Kingdom, paras. 74-85; United States, paras. 57-64.
848th meeting: USSR, paras. 28-31.

17/ 848th meeting: para. 131. Resolution S/4216, O.R., 14th year, Suppl. for July-Sept. 1959, pp. 8-9.

18/ For related discussion in connexion with procedural questions related to voting, see chapter IV, Cases 6, 23 and 24, in connexion with consideration of procedures in the establishment of subsidiary organs, see Case 9.

19/ S/4381, O.R., 15th year, Suppl. for July-Sept. 1960, p. 11.

20/ 873rd meeting: para. 18.

21/ Ibid., para. 27.

The Secretary-General stated further that, were the Security Council to act on his recommendation, he would base his actions on the principles set out in his report to the General Assembly "on the conclusions drawn from previous experiences in the field,"[22] and outlined the principles pertinent for the authority and composition of the United Nations Force.[23]

The recommendations of the Secretary-General were embodied in the resolution[24] adopted by 8 votes in favour to none against, with 3 abstentions at the same meeting,[25] in which the Security Council decided

> "to authorize the Secretary-General to take the necessary steps, in consultation with the Government of the Republic of the Congo, to provide the Government with such military assistance as may be necessary until, through the efforts of the Congolese Government with the technical assistance of the United Nations, the national security forces may be able, in the opinion of the Government, to meet fully their tasks" (operative paragraph 2).

On 18 July 1960 the Secretary-General submitted his first report on the implementation of Security Council resolution S/4387 of 14 July 1960.[26]

At the 879th meeting on 21/22 July 1960, the Security Council unanimously commended "the Secretary-General for the prompt action he had taken to carry out resolution S/4387 of the Security Council, and for his first report."[27]

Composition

At the 873rd meeting on 13/14 July 1960, the Secretary-General stated[28] that the selection of personnel for the United Nations Force should be such as to avoid complications because of the nationalities used. In the prevailing situation this did not exclude the use of units from African States while, on the other hand, it did exclude recourse to troops from any of the permanent members of the Security Council. It was his intention to get, in the first place, assistance from African nations.

At the same meeting the representative of the USSR submitted an amendment[29] to operative paragraph 2 of the Tunisian draft resolution[30] to insert after the words "such military assistance," the words "provided by the African States Members of the United Nations." He stated[31] that this addition was necessary because the Security Council should give the Secretary-General instructions on where he should procure the military assistance for the Republic of the Congo. Such assistance should be provided by the independent States of Africa which had expressed their readiness to furnish it. A clarification of this kind would not hamper the Secretary-General but, on the contrary, would assist him in making the necessary arrangements.

The amendment was not adopted. There were 4 votes in favour to 5 against, with 2 abstentions.[32]

At the 888th meeting on 21 August 1960, the Secretary-General, referring to the composition of the United Nations Force, stated[33] that in his first report he had applied the rule approved previously in the case of the United Nations Emergency Force.[34] That rule had been that forces from any of the perma-

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22/ Official Records of the General Assembly, Thirteenth Session, Annexes, agenda item 65 (United Nations Emergency Force), document A/3943, Summary study of the experience derived from the establishment and operation of the Force: report of the Secretary-General, pp. 8–33.

23/ 873rd meeting: para. 28.

24/ Resolution S/4387, O.R., 15th year, Suppl. for July-Sept. 1960, p. 16; see also chapter VIII, p. 162.

25/ 873rd meeting: para. 232.

26/ S/4389, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 16–24. In this report, the Secretary-General stated that the resolution had been adopted in response to his initial statement (873rd meeting: paras. 18–29; see also chapter VIII, p. 162) which, therefore, might be regarded "as a basic document on the interpretation of the mandate". However, important points had been left open for an interpretation in practice. In submitting his report the Secretary-General wanted not only to bring to the knowledge of the Council what had been achieved so far but also what lines he had followed concerning the implementation of the authorization. Although the United Nations Force under the resolution was dispatched to the Congo at the request of the Government and would be present in the Congo with its consent and although it might be considered "as serving as an arm of the Government for the maintenance of order and protection of life," the Force "... is necessarily under the exclusive command of the United Nations, vested in the Secretary-General under the control of the Security Council. This is in accordance with the principles generally applied by the Organization. The Force is thus not under the orders of the Government..."

27/ 879th meeting: para. 108. Resolution S/4405 (oper. para. 3), O.R., 15th year, Suppl. for July-Sept. 1960, pp. 34–35.

28/ 873rd meeting: para. 28.

29/ S/4386, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 15–16; 873rd meeting: para. 205.

30/ S/4383, same text as resolution S/4387, O.R., 15th year, Suppl. for July-Sept. 1960, p. 16.

31/ 873rd meeting: para. 206.

32/ 873rd meeting: para. 225.

33/ 888th meeting: paras. 95, 96.

34/ In his first report on the implementation of the Security Council resolution S/4387 of 14 July 1960 (S/4389, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 16–24, paras. 16–30), the Secretary-General in the section entitled "the composition of the Force," referring to his statement at the 873rd meeting, said that to the extent that the Republic of the Congo needed international assistance, such assistance should, within the framework of the United Nations, in the first instance be given by African nations as an act of African solidarity. However, this natural reliance on regional solidarity for the solution of a problem of that kind should be qualified by an element of universality, essential to any United Nations operation. Therefore, while the Force should be built around a core of military units from African States, it should also, to the extent which might be found practical, include units from other areas which met the general conditions for the composition of a United Nations Force. Elements from other regions included in the Force might be considered as assistance given in the spirit of the Charter to the African community of nations by nations of those other regions. It would be unjustified to interpret the United Nations action in the sense that nations from outside the region stepped into the Congo situation, using the United Nations as their instrumentality, because of the incapability of the Congo and of the African States themselves to make the basic contribution to the solution of the problem. The efforts of the Secretary-General to build up the Force had been guided by that interpretation of the United Nations operation. Apart from being influenced by the factors mentioned, the Secretary-General had been guided by considerations of availability of troops, language and geographical distribution within the region. The offers of the Governments of Ghana, Guinea, Morocco, Tunisia, Ethiopia and Mali to put military units at the disposal of the United Nations had been accepted. The Secretary-General had appealed further for assistance in the form of troops from three European, one Asian and one Latin American country, meeting the general conditions applying to a United Nations Force. The Secretary-General stated further that in broad outline that completed the picture of the geographical distribution sought for the Force in implementation of the decision of the Security Council on the basis of the principles outlined by him. It reflected his wish to give the African community of nations the central position while maintaining the universal character of a United Nations operation.

nent members should be excluded and he had read the word "forces" "in a very extensive sense, that is to say, it includes units or higher command of any kind. Beyond that the Security Council has not given me any guidance as to composition." There was also the rule that no country which could be considered as having a direct interest in the conflict should be permitted to send forces. In the specific situation, as regards the Congo, this rule had not limited the Secretary-General's choice. For practical reasons he had to get technicians, preferably bilingual, who could not be found in any other country than Canada. The Secretary-General did not look at membership in either NATO or the Warsaw Pact or any other grouping as excluding a country from participating in the operation. He wished to maintain a balanced geographical composition in any event: the countries with which he was having negotiations concerning added units were the United Arab Republic, Indonesia, Sudan, India, Ceylon and Burma.[35/]

At the 889th meeting on 21/22 August 1960, the representative of Ecuador pointed out[36/] that from time to time the Congolese authorities had said that they wanted the United Nations contingents to consist solely of African troops. However, any attempt to split the United Nations up according to racial or continental criteria conflicted with the Organization's universal nature and specific terms of the Charter and would destroy the spirit of universal co-operation and non-discrimination on which the Charter was based. In the view of the representative of the United States[37/] it was unthinkable that the United Nations should draw a racial line with regard to the composition of the United Nations Force. The President, speaking as the representative of France, observed[38/] that one of the major principles of the Charter was that no distinction should be made between individuals on grounds of race, sex, language or religion. It was, therefore, wise that, in selecting units for the United Nations Force, only contingents from the States directly concerned should be excluded from consideration. Any other distinction would be inadmissible.

The Secretary-General continued to report periodically on the composition and strength of the United Nations Force in the Congo.[39/]

Area of operation

At the 877th meeting on 20/21 July 1960, the Secretary-General stated that no hesitation could exist as regards what was the area of operation for the United Nations Force. The resolution of 14 July 1960 (S/4387) in response to the appeal from the Government of the Congo, clearly applied to the whole of the territory as it had existed when the Security Council had recommended the Congo for admission to the United Nations (S/4377). Thus, the Force, under the resolution and on the basis of the request of the Government of the Congo, was entitled to access to all parts of the territory in fulfilment of its duties. The Secretary-General stated further that in his reply to a communication from Mr. Tshombé, he had made it clear that actions of the United Nations through the Secretary-General in respects covered by the resolution must, in view of the legal circumstances which he had to take into account, be considered by him as actions referring to the Republic of the Congo as an entity.[40/]

At the 879th meeting on 21/22 July 1960, the Security Council adopted a resolution[41/] in which the Council expressed recognition that it had recommended the admission of the Republic of the Congo to membership in the United Nations as a unit.

At the 884th meeting on 8 August 1960, the Secretary-General stated that in his second report[42/] he had given his views as to the direction in which the Security Council might take useful action. The Council might also wish to state explicitly what so far had been only implied, that its resolutions applied "fully and in all parts also to Katanga."[43/]

At the 886th meeting on 8/9 August 1960, the Security Council adopted a resolution[44/] whereby, having noted the second report of the Secretary-General and his statement before the Council, and noting that the United Nations had been prevented from implementing the resolutions of 14 July and 22 July 1960 in the province of Katanga although it had

35/ At the 877th meeting on 20/21 July 1960, the Secretary-General, introducing his first report on the implementation of Security Council resolution S/4387 of 14 July 1960 (S/4389, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 16-24), stated that, as regards the military operation, the United Nations Force had been brought up to a strength which should serve as a satisfactory basis for the continued effort to assist the Government of the Republic of the Congo. However, its major expansion should not be excluded. The enterprise was far bigger and far more complicated than the United Nations Emergency Force, "... many more nations being involved, a multilingual basis to be used, military units with very different traditions to cooperate, and a vast area to be covered" (877th meeting, paras. 7, 9).

36/ 889th meeting: para. 62.

37/ 889th meeting: para. 100.

38/ 889th meeting: para. 139.

39/ More recently such information has been given in the form of United Nations press releases.

40/ 877th meeting: paras. 15, 16.

41/ S/4405, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 34-35, sixth preambular paragraph.

42/ In his second report, dated 6 August 1960, to the Security Council on the implementation of Security Council resolutions S/4387 of 14 July 1960 and S/4405 of 22 July 1960 the Secretary-General stated that no objection had been raised during the 877th meeting against his interpretation concerning the applicability of the resolution to the territory of the Republic of the Congo as a whole, and the interpretation had been confirmed in the resolution of 22 July 1960. On 2 August 1960, the Secretary-General had emphasized to the Congolese Cabinet Committee for Co-operation with the United Nations that the obligations and rights laid down by the Security Council with full and prompt application to the entire territory of the Congo were meeting no opposition from any Government, including the Government of Belgium. The Secretary-General reported that Mr. Tshombé had informed him that the Katanga government was unanimous in its determination to resist by every means "the Lumumba Government" and the dispatch of the United Nations Force to Katanga. In his reply to Mr. Tshombé, the Secretary-General had stated that his position that the Security Council's resolutions applied to the entire territory of the Congo had been unanimously approved by the Council. The conclusions to be drawn from this and from the Charter provisions were obvious. The Secretary-General stated further that the Council resolutions regarding withdrawal and the sending of United Nations military units were intended to apply to the whole territory of the Congo as recommended for admission to the United Nations. In implementation of his mandate under the resolution of 22 July this had been the way in which the Secretary-General had understood his instructions and this also had been the direction in which he had operated (S/4417, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 45-53, paras. 2, 4, 6, 10).

43/ 884th meeting: para. 27.

44/ S/4426, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 91-92; 886th meeting: para. 272.

been ready, and in fact attempted to do so (preamble, second and fifth paras.), the Council (a) confirmed the authority given to the Secretary-General by the resolutions of 14 July and 22 July 1960 and requested him to carry out the responsibility placed upon him (oper. para. 1); and (b) declared that the entry of the United Nations Force into the province of Katanga was necessary for the full implementation of this resolution (oper. para. 3).

Limitations of the powers of the United Nations Force

[NOTE. Following the decision of the Security Council of 14 July 1960 to authorize the Secretary-General to take the necessary steps to provide the Government of the Republic of the Congo with military assistance, the Secretary-General proceeded with the establishment of the United Nations Force and at the same time defined its powers. In connexion with the latter task, the limitations of the powers and functions of the Organization, of the Security Council and of the Secretary-General himself had to be taken into consideration and had to be reflected in the limitations of the powers of the Force.

The case histories included below deal with the limitations of the powers of the United Nations Force in the Congo with regard to: (a) the principle of non-intervention in domestic matters; and (b) the use of force.]

(a) Limitations of the powers of the United Nations Force with regard to the principle of non-intervention in domestic matters

[NOTE. The two case histories dealt with in this sub-section concern the limitation of powers of the United Nations Force in the Congo with regard to internal conflicts. In the first instance, the debate was related to the statement of the Secretary-General in his first report on the implementation of Security Council resolution of 14 July 1960, in which the Secretary-General referred to his definition of the principle of non-intervention by the Force in internal conflicts and stated that on this basis the Force could not intervene in the conflict between local authorities in Katanga and the Central Government. In the second instance, the Secretary-General drew the attention of the Council to a challenge to his interpretation of operative paragraph 4 of the resolution of 9 August 1960, which reaffirmed the limitations of the powers of the Force with regard to the principle of non-intervention in domestic matters, and he requested a clarification of the attitude of the Council in the light of views presented in the challenge.]

CASE 2 (i)

The situation in the Republic of the Congo: in connexion with the first report of the Secretary-General on the implementation of Security Council resolution S/4387 of 14 July 1960

In his first report on the implementation of Security Council resolution S/4387 of 14 July 1960, referring to his statement [45] at the 873rd meeting on 13/14 July 1960, that the United Nations Force "may not take action which would make them a party to internal conflicts in the country," the Secretary-General stated that the units of the United Nations Force in the Congo must not become a party in internal conflicts, that "they cannot be used to enforce any specific political solution of pending problems or to influence the political balance decisive to such a solution." [46]

At the 877th meeting on 20/21 July 1960, the Secretary-General recalled that "the United Nations Force cannot be a party to any internal conflict nor can the United Nations Force intervene in a domestic conflict".

At the same meeting the representative of the USSR observed that the United Nations Force should in no way interfere in the domestic affairs of the Congolese people.

At the 878th meeting on 21 July 1960, the representative of Ceylon stated that the United Nations was not dealing with the internal affairs of the Congo but with certain matters connected with the internal affairs of the Congo, that is the internal administration of the Congo only because of the request made by the Republic of the Congo to the United Nations for its assistance.

The representative of Argentina expressed the view that the problem of partition of the Congo concerned only the inhabitants of the Congo and they themselves must solve it. Neither the United Nations nor any State had the right either to recommend or order integration or to encourage secession.

At the 879th meeting on 21/22 July 1960, the representative of the United Kingdom said that the relationship between the province of Katanga and the other provinces of the Congo was a domestic problem which could not satisfactorily be resolved by the intervention of the United Nations or outside States. The representative recalled the statement of the Secretary-General that "the United Nations Force cannot be a party to any internal conflict nor can the United Nations Force intervene in a domestic conflict".

The representative of France stated that the French delegation considered particularly important the repeated assurances by the Secretary-General that the United Nations Force was necessarily under the exclusive command of the United Nations and could not "in any circumstances become a party to any internal dispute or be used to put through any political solution".

The representative of the USSR stated that he was unable to subscribe to certain aspects of the interpretation given by the Secretary-General to the resolution of 14 July. That resolution and the ensuing action for its implementation could not be regarded as endowing the United Nations with the right to interfere in the domestic affairs of a State and to assume responsibility for its domestic laws and regulations. That was not, nor could it be, part of the functions of the United Nations as defined in the Charter. The fundamental purpose of that resolution was to be

45/ 873rd meeting: para. 2b.

46/ S/4389, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 16-24, paras. 7, 13.

found in its demand for the withdrawal of the Belgian forces.[47]

In the resolution[48] adopted unanimously at the 879th meeting, the Security Council commended the Secretary-General "for the action he has taken to carry out resolution S/4387 of the Security Council, and for his first report" (operative paragraph 3).

CASE 2 (ii)

The situation in the Republic of the Congo: in connexion with the memorandum dated 12 August 1960 of the Secretary-General on the implementation of the Security Council resolution of 9 August 1960, operative paragraph 4, with a letter dated 14 August 1960 from the Prime Minister of the Republic of the Congo to the Secretary-General, and with the President's statements concluding the discussion in the Security Council

At the 887th meeting of the Security Council on 21 August 1960, convened at the Secretary-General's request to deal further with the situation in the Congo, the Secretary-General, referring to the challenge to his interpretation[49] of operative paragraph 4 of the resolution of 9 August 1960 by the Prime Minister of the Republic of the Congo in a letter[50] dated 14 August 1960, stated that his interpretation seemed to him to be incontestable in the light of the Charter, of the debate preceding the adoption of the resolution of 14 July, of the relevant paragraphs of his first report which the Council "commended" in the resolution of 22 July and in subsequent debates and resolutions, and of previous Security Council practice.

In the light of the legal history of the matter there was no reason for the Security Council to confirm the Secretary-General's interpretation in the respect challenged. He added, "Should ..., any member of the Council be at variance with my interpretation on the basis indicated by the Prime Minister of the Republic of the Congo, or on any other basis, I am sure that they may wish to give expression, in a draft resolution, to what they consider to be the right interpretation."

Evaluating the arguments in criticism of his interpretation, the Secretary-General stated that there was nothing in the record leading up to the resolution of 14 July which indicated that the Council, in discussing such assistance "as may be necessary" as provided in operative paragraph 2 of that resolution, had intended that such assistance be used to subdue the revolt in the province of Katanga. It would have been necessary, as a minimum, that the Council should have stated explicitly such an intention if the Secretary-General had been expected to act in a way contrary to his express statement that the United Nations Forces in the Republic of the Congo could "not take any action which would make them a party to internal conflicts in the country."[51]

> "This statement, it is emphasized, was not challenged by any member of the Council in the debate which preceded the adoption of the resolution of 14 July 1960. Certainly, the Council cannot be deemed to have instructed the Secretary-General, without stating so explicitly, to act beyond the scope of his own request or contrary to the specific limitation regarding non-intervention in internal conflicts which he stated to the Council."

This interpretation was further borne out by the Secretary-General's subsequent reports and the debates and resolutions of the Council. Finally, in operative paragraph 4 of the resolution of 9 August, the Council reaffirmed that the United Nations Force would not be used to influence the outcome of any internal conflict.

> "The use of the word 'reaffirms' shows that the Council was expressly stating what had previously been the understanding of the earlier resolutions and, in this sense, operative paragraph 4 of the resolution of 9 August must be considered as decisive in interpreting the military assistance 'as may be necessary' referred to in the resolution of 14 July [S/4387]."

47/ For texts of relevant statements, see:
877th meeting: Secretary-General, para. 17; USSR, para. 170;
878th meeting: Argentina, para. 130; Ceylon, para. 70;
879th meeting: France, para. 68; USSR, para. 120; United Kingdom, para. 25.

48/ S/4405, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 34-35; 879th meeting: para. 108.

49/ "Memorandum on the implementation of the Security Council resolution of 9 August 1960, operative paragraph 4" sent to the Central Government of the Republic of the Congo and the provincial government of Katanga (S/4417/Add.6, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 64-71, paras. 8-11).

In the memorandum the Secretary-General wrote:

> "... the United Nations Force cannot be used on behalf of the Central Government to subdue or to force the provincial government to a specific line of action."

He added that:

> "The policy line stated here, in interpretation of operative paragraph 4, represents a unilateral declaration of interpretation by the Secretary-General. It can be contested before the Security Council. And it can be changed by the Security Council through an explanation of its intentions in the resolution of 9 August. The finding is not subject to agreement or negotiation.
>
> "The Secretary-General presents his findings, as to the significance of the operative paragraph in question, to the Central Government and to the provincial government. If, as expected, the provincial government, on the basis of this declaration, were to admit the free deployment of the United Nations Force in Katanga, but if, on the other hand, the finding and its consequences were to be challenged before the Security Council by others, and the Council were to disapprove of the finding, this would obviously mean a change of assumptions for the actions of the provincial government which would justify a reconsideration of its stand, having been taken in good faith on the basis of the interpretation given by the Secretary-General.
>
> "Were the findings of the Secretary-General, as regards operative paragraph 4, to be challenged either by the Central or by the provincial government, the Secretary-General would immediately report to the Security Council with a request that it consider the interpretation and pronounce itself on its validity. Naturally, the Secretary-General in this context would draw the attention of the Council to its previous stand [the stand of the Security Council in the cases of Lebanon and Hungary, see paras. 2-5 of Memorandum] and strongly recommend its confirmation of this interpretation."

50/ S/4417/Add.7, document II, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 71-73.

In this letter the Prime Minister of the Republic of the Congo wrote the Secretary-General that the Government of the Republic could in no way agree with the Secretary-General's personal interpretation of operative paragraph 4 of the resolution of 9 August 1960, which was "unilateral and erroneous." The resolution of 14 July 1960 expressly stated that the Security Council had authorized the Secretary-General "to provide the Government [of the Republic of the Congo] with such military assistance as may be necessary" in consultation with the Government. It was, therefore, clear that in its intervention in the Congo the United Nations was not to act as a neutral organization but rather that the Security Council was to place all its resources at the disposal of the Government of the Republic of the Congo.

51/ 873rd meeting: para. 28.

In the developments leading up to the resolution of 22 July, it had been the Secretary-General who had given the interpretation that the resolutions of the Council referred to the whole territory of the Republic of the Congo on the formal ground that that territory had been so established at the time when the Republic had been recommended by the Council for admission to the United Nations. This interpretation had been confirmed by the Council in the last paragraph of the preamble of its resolution of 22 July, however, without any indication as to how the Council had regarded the conflict between local authorities in Katanga and the Central Government. It had not been until in the Secretary-General's introductory statements in the debate leading up to the resolution of 9 August that the issue of Katanga had been presented for decision, and it had been then so presented

> "in order to arrive at the reaffirmation of the right of the United Nations Force to enter Katanga and the obligation of the Belgian troops to leave Katanga. It was made clear in my own statements and in those of a majority of the members of the Council that, given the withdrawal of the Belgian troops from Katanga, the conflict between the Central Government and the provincial authorities was an internal matter, constitutional or otherwise. Neither in my presentation nor from the sponsors or supporters of the resolution did it emerge that United Nations troops—in contradiction to the whole history of the case up to that stage—would be introduced in order to impose the authority of the Central Government on the rebellious provincial leaders. On the contrary, the current of thought characterizing the debate was that the United Nations Force could not and should not force its way into Katanga, but should arrive there on a basis of acceptance by the Katanga authorities of the Security Council decisions as worded. It is for that reason characteristic that operative paragraph 3, which requested the presence of United Nations troops in Katanga, was combined with operative paragraph 4 'reaffirming' that the Force would not 'be used to influence the outcome of any internal conflict, constitutional or otherwise.' Why should that have been said in this context, if not in order to make it clear that the presence of the United Nations troops in Katanga, as requested, was not intended to be an instrument to be used to influence the conflict of the provincial authorities with the Central Government?"

The Secretary-General stated that he would not ask for a confirmation by the Council of the obvious. In requesting a meeting at that stage his aim was to arrive at a clarification of the attitude of the Council in the light of the views presented by the Prime Minister of the Republic of the Congo.

At the 888th meeting on 21 August 1960, the representative of Guinea* said that the United Nations should take all necessary steps to put down the rebellion in Katanga. This action could not be interpreted as interference by the United Nations in the domestic affairs of the Republic of the Congo, since the attitude of the provincial president was one aspect of Belgian aggression in the Congo.

The representative of the USSR contended that the Secretary-General's interpretation, both in the memorandum of 12 August 1960 and in his statement at the 887th meeting, basically conflicted with the resolutions of the Council because it put Mr. Tshombé in the same position, as it were, as the Government of the Congo. The Government of the USSR reaffirmed its disagreement with this interpretation. The Security Council had given the Secretary-General no mandate to interpret its resolution of 9 August. In this case, therefore, the interpretation of the Council's resolution was his personal opinion and had "no legal, binding significance". Only the decisions adopted by the Council were valid currently and only the Council could modify those decisions. For the principle stated in operative paragraph 4 of the resolution of 9 August to be made applicable to the specific situation in Katanga, the Security Council would have to recognize the resistance of the "Belgian protegé... Tshombé" as an action to be considered a purely internal conflict, constitutional or otherwise, in the wording of that paragraph. However, what had happened in Katanga was undisguised foreign aggression. The States backing Belgium were trying to prove that operative paragraph 4 of the resolution of 9 August

> "gives Tshombé's treason the status of a purely internal conflict having no connexion with Belgian aggression in the Congo, and therefore precludes the United Nations Force from giving military assistance to the Government of the Congo for the purpose of extending the restoration of law and order to Katanga."

The position of the USSR delegation was based on the resolutions of 14 and 22 July and 9 August and unless the Council adopted some new, specific decision, the interpretation proposed by the Secretary-General "... does not have and never will have any legal significance. That interpretation must under no circumstances be considered as reflecting the view of the Security Council."

Exercising his right of reply, the Secretary-General observed that in his memorandum of 12 August 1960 it was stated:

> "we cannot, we will not, and we have no right to raise any resistance to any move made by the Central Government to assert its authority in Katanga. The other thing is that we cannot lend our active support, contrary to the principles announced here on a couple of occasions, to efforts of the Central Government. The two things should be kept apart. It should not be concluded from the fact that we cannot lend active support to the Central Government that we lend any kind of support to the other party, strengthen its hand or resist any moves from the Central Government."

The Secretary-General stated further:

> "I come now to a somewhat difficult question of law and the position of the Security Council.... Let me simply point out that the Security Council has asked me to implement the resolution. Implementation obviously means interpretation in the first instance. I gave an interpretation and that interpretation was challenged. I have referred the matter back to the Security Council. I have the right to expect guid-

ance. That guidance could be given in many forms. But it should be obvious that if the Security Council says nothing I have no other choice than to follow my conviction."

The representative of Argentina expressed the view that in the light of the resolution of 9 August 1960 there could only be one interpretation and that was the Secretary-General's. On the other hand, there was no precedent justifying United Nations action to prop up the power of a Member State's domestic authorities. The Secretary-General's interpretation was the same as that of the Council members who had spoken on the matter when the resolution had been adopted at the 886th meeting. To take the opposite view would be to detract from the purposes of the United Nations action and would mean interfering in the domestic affairs of the Congo.

At the 889th meeting on 21/22 August 1960, the representative of Italy maintained that the legal stand taken by the Secretary-General and the way in which he was fulfilling his mandate seemed scrupulously in line with the Security Council's resolutions. Their interpretation, which could be found in the Secretary-General's words, documents and actions, derived clearly from the Council's debates and was consistent with the sense of the Council's deliberations. In the resolution of 9 August, the strict neutrality of the United Nations had finally been clearly defined. The United Nations Force had been created with the proviso that it should avoid interference in the internal affairs of the Congo and devote itself solely to the mission of re-establishing respect for law and for the enforcement of order in the Republic of the Congo. The solution of the internal problems of the Congo could not fall under the jurisdiction of the United Nations and be part of its responsibilities. The domestic situation in the Congo should be the concern of the United Nations only if there was a possibility that it might become a threat to the peace and security of the world.

The representative of Ceylon contended that there could be very little doubt as to the meaning to be attached to the resolutions of the Security Council, particularly the resolution of 9 August. It was quite clear what the Security Council had meant when it had said in operative paragraph 4 of that resolution that the United Nations Force would not be used to influence the outcome of any internal conflict, constitutional or otherwise, or in any way intervene in such a conflict.

The representative of Ecuador observed that the demand of the Government of the Republic of the Congo that the United Nations Force should provide it with means of transport and should co-operate to settle the Katanga problem ran counter to the Council's resolution of 9 August, which the Secretary-General had interpreted rightly. The resolution, and his interpretation of it, must be upheld.

The representative of the United Kingdom stated that in the view of his delegation the Secretary-General's interpretation of operative paragraph 4 of the resolution of 9 August was undeniably correct. The resolution was abundantly clear and there could be no doubt that when the forces of the United Nations had entered the province, the provincial authorities of Katanga had been satisfied, as a result of the adoption of this resolution, that the Security Council had not intended that those forces should be used in any way to influence the outcome of the dispute between the provincial authorities and the Central Government of the Republic.

The representative of Poland expressed grave concern over the fact that the direct discussions of the Secretary-General with Mr. Tshombé together with the interpretation given in the memorandum of operative paragraph 4 of the resolution of 9 August, gave the impression of recognition of Mr. Tshombé's status as an equal party in the dispute with the Government of the Republic of the Congo. The representative disagreed with that interpretation of paragraph 4, the sole purpose of which was to contend that the principle of non-intervention into internal conflicts should be applied to the case of Tshombé. He agreed that the United Nations Force should not interfere in the internal differences between the Government of the Republic of the Congo and local provincial authorities in so far as those differences were really in the nature of an internal conflict. This, however, was not the case in the province of Katanga, where authority had rested completely with the Belgian troops which supported Tshombé's rebellion. In those circumstances, to refrain from giving the assistance requested by the Central Government to restore law and order in the whole territory of the Republic of the Congo and to ensure its territorial integrity would indicate indirect support of Belgian intervention and direct acquiescence in the Belgian-inspired opposition to the Government of the Republic. In turn, such support would constitute an intervention in the internal affairs of the Republic of the Congo. The representative stated further that the current local administration of Katanga had been established as a result of armed aggression and, therefore, as a result of an illegal act. For this reason the principle of restitutio in integrum, which required restoration of the conditions which had existed before the illegal act had been committed, should be applied in the case of the province of Katanga.

The representative of China observed that the Charter forbade intervention in a domestic controversy of the Katanga type. The resolutions of the Security Council expressly barred any involvement. The Secretary-General's interpretation of the limits of the United Nations action in the Congo was the only possible interpretation.

The President, speaking as the representative of France, pointed out that the Council's resolutions were careful to define the mission of the United Nations Force so as to rule out any interference in the domestic affairs of the Congo. It was obvious that they must be interpreted in that spirit, which was the spirit of the provisions of the Charter which ruled out intervention by the United Nations in matters which were within the domestic jurisdiction of States.

After the conclusion of the debate, the President, in his "final observation," stated that the Council had listened to different and sometimes conflicting opinions. He believed that on both sides everything had been said to bring out the respective points of view

and he was convinced that the Secretary-General would have found in the debate the clarification which he had desired, and that it would assist him in the pursuit of his mission. [52]

(b) Limitations of the powers of the United Nations Force with regard to the use of force

[NOTE. The five case histories included below deal with the proceedings in the Council concerning the powers of the Force and the circumstances under which it was authorized to use force. During consideration of the issue, the view was advanced that, since the Council had not specifically adopted enforcement measures under Articles 41 and 42 of the Charter, the Force was prohibited from taking any initiative in the use of force and was only entitled to act in self-defence.

On the other hand, it was contended that the Force was also entitled to resort to the use of force in self-defence in overcoming armed resistance met in the fulfilment of the task entrusted to it by the Council. This principle was implied in the relevant decisions of the Council and was reaffirmed by the Council when it had approved the Secretary-General's interpretation of the powers of the Force. It was also stated that the mandate of the Force included the authorization to disarm Belgian troops and private armies in the Republic of the Congo.

Subsequently, the Security Council authorized in two of its decisions: (a) the use of force "in the last resort"; and (b) the taking of "vigorous action including the use of requisite measure of force." In this connexion it was asserted that the decisions were not made under Articles 41 and 42.]

CASE 2 (iii)

The situation in the Republic of the Congo: in connexion with the first report of the Secretary-General on the implementation of Security Council resolution S/4387 of 14 July 1960 and with his second report on the implementation of Security Council resolutions S/4387 of 14 July 1960 and S/4405 of 22 July 1960

At the 873rd meeting on 13/14 July 1960, the Secretary-General stated [53] that the United Nations Force "would not be authorized to action beyond self-defence". In amplification of this statement, the Secretary-General, in his first report on the implementation of Security Council resolution S/4387 of 14 July 1960, quoted [54] the following passage from his report [55] on the United Nations Emergency Force:

> "... men engaged in the operation may never take the initiative in the use of armed force, but are entitled to respond with force to an attack with arms, including attempts to use force to make them withdraw from positions which they occupy under orders from the Commander,"

acting under the authority of the Security Council and within the scope of its resolution. "The basic element involved is clearly the prohibition against any initiative in the use of armed force."

By his second report [56] on the implementation of Security Council resolutions S/4387 of 14 July 1960 and S/4405 of 22 July 1960, the Secretary-General informed the Council that on 4 August 1960, replying to a message from Mr. Tshombé that the Katanga government was determined to resist by every means the Lumumba Government and its representatives and the dispatch of United Nations forces to Katanga, he had drawn Mr. Tshombé's attention to the principles which applied to the United Nations operation in the Congo, as to any other para-military operation of the United Nations, and had stated:

> "...
>
> "(iii) United Nations military units are not entitled to act except in self-defence. This rule categorically prohibits the troops participating in the operation from taking the initiative of resorting to armed force, but permits them to reply by force to an armed attack, in particular to any attempts to resort to force which might be made with the object of compelling them to evacuate positions which they occupy on orders of their commander. ..."

Commenting further on the report of his Special Representative in the Congo, who recommended the Secretary-General to stop the Katanga operation in view of the opposition of provincial authorities in Katanga and their warnings that the United Nations troops would be opposed by Katanga forces, the Secretary-General reported that it was clear that the entry of United Nations military units into Katanga would have had to be achieved by the use of force. The Secretary-General pointed out further that the United Nations Force was not entitled to take such military initiative and action as would be necessary for an implementation of the Security Council decisions with regard to Katanga. For this reason he had to ask for instructions from the Security Council and for such decisions as the Council might find appropriate in order to achieve its aims. The Secretary-General went on to state, on the one hand, that the Council resolutions regarding withdrawal and the sending of United Nations military units were intended to apply to the whole territory of the Congo as recommended for admission to the United Nations. In implementation of his mandate under the resolution of 22 July 1960, this had been the way in which he had understood his instructions, and this also had been the direction in which he had operated.

> "On the other hand, it is now clear that ... the aims of the resolutions cannot be achieved by the use of the United Nations Force, as its mandate

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52/ For texts of relevant statements, see:
887th meeting: Secretary-General, paras. 37-51;
888th meeting: Argentina, paras. 149, 150, 152; Guinea*, para. 34; USSR, paras. 55-65; Secretary-General, paras. 99, 100;
889th meeting: President (France), paras. 138, 144, 145; Ceylon, paras. 45, 48; China, para. 114; Ecuador, para. 59; Italy, paras. 8, 10, 11, 15; Poland, paras. 84-87; United Kingdom, paras. 70, 71.

53/ 873rd meeting: para. 28.

54/ S/4389, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 16-24, para. 15.

55/ GAOR, Thirteenth Session, Annexes, agenda item 65, document A/3943, Summary study of the experience derived from the establishment and operation of the Force: report of the Secretary-General, para. 179.

56/ S/4417, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 45-53, paras. 6, 9, 10.

has been defined. If the Council, as it is assumed, wishes to maintain its objectives, the Council must, therefore, either change the character of the Force, which appears to me to be impossible, both for constitutional reasons and in view of the commitments to the contributing Governments, or resort to other methods which would enable me to carry through the implementation of its resolution without going beyond my instructions as regards the Force."

At the 884th meeting on 8 August 1960, the Secretary-General stated that the Katanga authorities had introduced an unexpected element of organized military opposition by Congolese forces against the entry of the United Nations Force. Such opposition would require military initiative from the Force to which the Secretary-General would not be entitled to resort short of a formal authorization of the Council, using in this case only contingents representing Governments which would accept such a new stand by the Council.

At the 885th meeting on 8 August 1960, the representative of the USSR, commenting on the second report of the Secretary-General, stated that in explanation of the reasons for refraining from sending troops into Katanga it was argued that any attempt to send them into the territory of Katanga would lead to armed resistance on the part of Mr. Tshombé. However, it must be emphasized that the troops sent to the Republic of the Congo

"in accordance with the Security Council's decision have the right and the duty to remove—for that is why they have been sent there—any obstacles which may arise to impede the fulfilment of the tasks entrusted to them by the Security Council. If any armed resistance is offered to them, they are fully justified in using weapons on their side for purposes of defence, as contemplated in the Security Council's decision and confirmed when the Council approved the Secretary-General's interpretation of the troops' functions.

"...

"Consequently, if in the course of their operations for entering the province of Katanga the United Nations troops should meet with the armed resistance, then, in accordance with the Security Council's decision ... they are entitled to eliminate such resistance by any means available to them."

At the same meeting, the Secretary-General observed that in his first report, which had been commended by the Security Council with the concurring vote of the USSR delegation, he had stated the reasons why the United Nations Force should not take any military initiative and should be regarded in that respect as limited to action in self-defence.

"I do not remember having heard any objection to that interpretation of its status, functions and competence; and that being the case, I would certainly have acted beyond my competence as established by the Security Council if I had ... given an order, or rather, confirmed an order which would have meant that our forces would have been forced to military initiative."

At the 886th meeting on 8/9 August 1960, the representative of Ecuador commented that the Security Council, for reasons of a juridical nature and because of the maintenance of peace in Africa, must keep inviolate the principle that the United Nations military units were not entitled to act except in self-defence, even if the Governments which had contributed the various military units had been prepared to authorize their use in a military action other than in self-defence.

The representative of Argentina expressed the view that the character of the United Nations Force in the Congo should not be altered. Operations which, in view of threats of organized military resistance in Katanga, might have led to hostilities on a large scale would have been incompatible with the nature of the United Nations Force and with the purposes for which it had been sent. The Council's directive to the Force should state the principle that troops should not act as belligerents in large-scale military operations.

The representative of Poland said that it was difficult to understand why the United Nations troops would have to shoot their way into Katanga if not attacked before and, if attacked, they would have to defend themselves. This would take place without the necessity of changing the character of the Force, as suggested in the report of the Secretary-General.

The representative of Italy stated that there could not be the slightest doubt about the propriety of the interpretation given by the Secretary-General concerning the character of the Force and of the United Nations operation in the Congo. In this respect the first report of the Secretary-General constituted the political and legal basis for the interpretation of the resolution of 22 July 1960.

The representative of the USSR said that, in accordance with the resolutions of 14 and 22 July 1960, if the troops introduced into the territory of the Republic of the Congo by decision of the Security Council met with armed resistance, they might overcome it by any means available to them. This meant that the United Nations troops could and should resort to arms for the purpose of overcoming armed resistance as a matter of protection or of self-defence, when fulfilling the task entrusted to them by the Security Council. This was the only possible construction which could be placed on the resolutions of 14 and 22 July 1960 and the Secretary-General's interpretation.[57]

At the 886th meeting on 8/9 August 1960, the Security Council adopted[58] by 9 votes in favour to none against, with 2 abstentions, a draft resolution[59] submitted by Ceylon and Tunisia, confirming the authority given to the Secretary-General by the resolutions of 14 July and 22 July 1960 and requesting him to continue to carry out the responsibility placed upon him.

57/ For texts of relevant statements, see:
884th meeting: Secretary-General, para. 12.
885th meeting: USSR, paras. 97, 105-110; Secretary-General, para. 128;
886th meeting: Argentina, paras. 72, 80; Ecuador, paras. 42, 44; Italy, para. 116; Poland, para. 101; USSR, para. 227.

58/ 886th meeting: para. 272.

59/ S/4426, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 91-92, oper. para. 1.

CASE 2 (iv)

The situation in the Republic of the Congo: in connexion with the memorandum dated 12 August 1960 of the Secretary-General on the implementation of the Security Council resolution of 9 August 1960, operative paragraph 4, and with the letter dated 14 August 1960 from the Prime Minister of the Republic of the Congo to the Secretary-General

By memorandum dated 12 August 1960,[60] the Secretary-General informed the Security Council of the interpretation he had given to the Central Government of the Congo, as well as the provincial government of Katanga, of operative paragraph 4 of the resolution of 9 August 1960. The interpretation of the Secretary-General was challenged by the Prime Minister of the Congo in his letter dated 14 August 1960. The Secretary-General requested the President of the Security Council to call a meeting, the aim of the request being in the light of the views presented by the Prime Minister of the Republic of the Congo, to arrive at a clarification of the attitude of the Council.

At the 887th meeting on 21 August 1960, the Secretary-General, referring to the claim of independence by the provincial authorities of Katanga, stated that in the light of the domestic jurisdiction limitation of the Charter, it must be assumed that the Council would not authorize the Secretary-General to intervene with armed troops in an internal conflict when the Council had not specifically adopted enforcement measures under Articles 41 and 42 of Chapter VII of the Charter.

At the 888th meeting on 24 August 1960, the Secretary-General, referring to the observations of his Special Representative in the Congo on the directive on "Protection of internal security,"[61] said: "I think that this quotation makes it perfectly clear that we have applied a most restrictive intepretation of the right of self-defence."[62]

CASE 2 (v)

The situation in the Republic of the Congo: in connexion with the USSR draft resolution: voted upon and rejected on 14 December 1960

At the 913th meeting on 7 December 1960, the Secretary-General stated that the United Nations Force had exercised its military power to protect political leaders of various factions from outright violence, even though such acts of protection had given rise to vigorous objection from the opposing side as having been interference in political events. On the other hand, it had been considered beyond the scope of the mandate for the United Nations to interpose its Force against the national Congolese army acting under the authority of a Chief of State whose representatives now had been accepted by the General Assembly.

At the 914th meeting on 8 December 1960, the President, as the representative of the USSR, submitted a draft resolution[63] whereby the Security Council would call upon the Secretary-General to secure the immediate release of Mr. Lumumba, Prime Minister of the Republic of the Congo, and his colleagues and to take all the necessary steps to ensure the resumption of the activities of the lawful Government and Parliament of the Republic of the Congo, and to request the Command of the United Nations Force "immediately to disarm the terrorist bands of Mobutu".

At the 917th meeting on 10 December 1960, the representative of Ceylon stated that it was with full regard to the legal as well as the military implications of the consequences that he stated the view that the United Nations Command must be directed to take all necessary measures to disarm any private armies through the territory operating under the orders of authorities which had no basis in the constitution of the Congo. He stated categorically the desire to confer on the Secretary-General a mandate to make use of the armed forces at his disposal so as to carry out the purpose of maintaining law and order in the territory of the Congo by all the means that appeared to him to be necessary.

At the same meeting the Secretary-General stated that any action by force to liberate Mr. Lumumba would mean overriding by force the authority of the Chief of State. This would also be the case if the United Nations were to decide to disarm "illegal armies".

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[60] S/4417/Add.6 and 7, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 64-76; see Case 2 (ii).

[61] In a message dated 19 August 1960, the President of Ghana forwarded to the Secretary-General a report by Major-General H. D. Alexander, in which it was stated that no clear concise orders had ever been given to the Ghanaian Force troops in Leopoldville. The Brigade Commander had repeatedly pointed out that he could not protect United Nations personnel, if his orders were to be passive resistance and non-interference with the "Force publique". He had also pointed out that he had been specifically ordered not to use force. On 17 August the United Nations Headquarters had issued orders concerning the action of the United Nations troops to deal with incidents. They had not given United Nations troops any liberty of action, even for the use of minimum force. (S/4445, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 99-101.)

Commenting on the report of Major-General Alexander, the Special Representative of the Secretary-General in the Congo, in his observations to the Secretary-General, said:

"... As the Special Representative of the Secretary-General in the Congo, I am the responsible United Nations official for interpreting to the Command of the Force the resolutions of the Security Council and the directives of the Secretary-General in pursuance of those resolutions. In so doing, from the outset, I have described the Force in the Congo to my military colleagues as a 'peace force, not a fighting force.' I have stressed always that the arms carried by the members of this international army are to be used only in self-defence, and that the Force is in the Congo to do harm to no one, if it can be avoided...

"The United Nations Command has issued orders to its troops which are very clear on the subject of the employment of force. The operations directive, familiar to everyone associated with the Force, states, under the heading 'Use of arms': 'At all levels, commanders are to be instructed to the effect that, on no account, are weapons to be used unless in cases of great and sudden emergency and for the purpose of self-defence. In such cases, the commander on the spot will ensure that the greatest care and control are used.'

"Again, in its directive on 'Protection of internal security,' the United Nations Command states: 'The principal purpose of the United Nations Force in the Congo, as defined in the proposal to the Security Council, is to assist the Government in maintaining law and order. In pursuing this purpose, the United Nations operation in the Congo should exhaust all possible peaceful means of keeping order before any resort to force. Every effort should be exerted to avoid harm to anyone, since public reaction to the employment of force by United Nations personnel might well prove disastrous to the success of the entire United Nations operation. Firing, even in self-defence, should be resorted to only in extreme instances. Any effort to disarm members of the United Nations Force is to be regarded as a legitimate cause for self-defence. This principle should be interpreted in the light of the overriding force of principle one above.'

"... The United Nations Force is in the Congo as a friend and partner, not as an army of occupation...." (S/4451, ibid., pp. 113-115).

[62] For texts of relevant statements, see:
887th meeting: Secretary-General, para. 44.
888th meeting: Secretary-General, paras. 93-94.

[63] S/4579, 914th meeting: para. 62.

The Secretary-General pointed out further that, by diplomatic means, by political persuasion, the United Nations could try to further the meeting of both houses of Parliament and a round table conference, but this was an entirely different proposition from saying that the United Nations could put might behind such an invitation. This would open vistas which the Council would like to consider most seriously.

At the 920th meeting on 13/14 December 1960, the Secretary-General stated [64] that the Council had not invoked Articles 41 and 42 of Chapter VII of the Charter, which provided for enforcement measures and which would override the domestic jurisdiction limitation of Article 2 (7). It was certain that the Council in no way directed that the United Nations Force should proceed beyond the legal basis of Article 40 and into the coercive action covered by Articles 41 and 42.

The representative of Ceylon stated that the overriding invitation by the lawful Government of the Republic of the Congo had been sufficient to make the action taken by the Security Council lawful action and to entitle the United Nations to send its forces into the Congo. Once the United Nations were in the Congo it "should take action which should go beyond the mere facile part which the Security Council has been playing, in some respects and in some cases relating to law and order." [65]

At the 920th meeting on 13/14 December 1960, the USSR draft resolution was rejected [66] by 2 votes in favour to 8 against, with 1 abstention.

CASE 2 (vi)

The situation in the Republic of the Congo: in connexion with the draft resolution submitted by the USSR: voted upon and rejected on 21 February 1961; with the joint draft resolution (S/4722) submitted by Ceylon, Liberia and the United Arab Republic: voted upon and adopted on 21 February 1961, and with the joint draft resolution (S/4733) submitted by Ceylon, Liberia and the United Arab Republic: voted upon, as amended, and not adopted on 21 February 1961

At the 928th meeting on 1 February 1961, the Secretary-General stated that the time had come when the Council must provide a basis for arrangements which would eliminate the threat from the Armée nationale congolaise, or units thereof, against efforts to re-establish normal political life and against law and order. The Secretary-General stated that he would welcome a decision of the Security Council requesting him to take urgently appropriate measures for assistance in the re-organization of the national army, preventing it, or its unit, from intervening in the current political conflicts in the country.

"As is well known, the mandate of the United Nations Force does not permit it to take military initiative. This limitation has repeatedly been challenged and demands have been raised for a revision of the mandate to include such military initiative. In a couple of the documents now before the Security Council, demands are made that the United Nations resort to the use of force for certain specific purposes. Thus, President Kasa-Vubu wants the United Nations to use force against the units of the ANC which are serving Mr. Gizenga, and he threatens to ask for military assistance from other countries if the request is not met, thus neglecting the stand of the General Assembly at its fourth emergency special session in its resolution of 20 September [1474 (ES-IV)] which should exclude other countries from granting such assistance. Further, the Belgian Government requests the use of force for protection of its nationals in Oriental and Kivu, including obviously eight Belgian soldiers detained in Stanleyville.

"The Security Council will remember that similar requests for the use of force have previously been made for other purposes. Thus, the question was raised by members of the Organization with a view to the liberation of Mr. Lumumba, and, at a still earlier stage, the Central Government asked for the use of force against the units of the army which were loyal to Mr. Tshombé.

"I believe that a look at the four cases of requests for armed intervention which I have recalled, and their different purposes, will bring out clearly to everybody what problems would arise were the mandate to be widened as proposed. Certainly such a widening of the mandate could not be considered without a much clearer and fuller definition of the objectives to be pursued by the United Nations. Nor, of course, could the mandate be changed in relation to earlier decisions short of giving countries which have contributed troops on the basis of those first decisions an opportunity to withdraw were they not to approve of the new stand."

At the 932nd meeting on 7 February 1961, the representative of France stated that the Secretary-General had reported to the Council that he had not considered himself empowered to use force to prevent the acts of violence being perpetrated in the Congo, since the resolutions establishing his terms of reference had been based on Article 40, and not on Articles 41 and 42, which provided for measures of coercion. The representative agreed that whenever the circumstances permit it, persuasion was preferable to force, but was persuasion alone sufficient to maintain law and order? "Are not the United Nations contingents in duty bound to resort to coercion, if there is no other way to prevent degradating violations of the law of nations?"

At the 934th meeting on 15 February 1961, the representative of the USSR submitted a draft resolution, [67] according to which

"The Security Council

"...

"2. Deems it essential that the sanctions provided under Article 41 of the Charter of the United Nations

[64] For the statement of the Secretary-General, see chapter XI, Case 4.

[65] For texts of relevant statements, see:
913th meeting: Secretary-General, paras. 29, 30;
917th meeting: Ceylon, paras. 53, 56; Secretary-General, paras. 62, 63, 65;
920th meeting: Ceylon, para. 107; Secretary-General, paras. 73-75.

[66] 920th meeting: para. 159.

[67] S/4706, 934th meeting: para. 112.

should be applied to Belgium as to an aggressor which by its actions is creating a threat to international peace, and calls on the States Members of the United Nations for the immediate application of these sanctions;

"3. Enjoins the Command of the troops that are in the Congo pursuant to the decision of the Security Council immediately to arrest Tshombé and Mobutu in order to deliver them for trial, to disarm all the military units and 'gendarmerie' forces under their control, and to ensure the immediate disarming and removal from the Congo of all Belgian troops and all Belgian personnel;

"..."

At the 935th meeting on 15 February 1961, the Secretary-General summed up measures which seemed to him must be pursued in the prevailing situation. He stated that instructions had been given to the Force to protect the civilian population against attacks from armed units; this was on the outer margin of the mandate of the United Nations but already in September the Secretary-General had said that this must be considered as a natural part of the duties of the Organization, and he had not met with any objections. Further, instructions had been given that

"in case a clash between armed units is threatening, the United Nations should use all means, short of force, to forestall such clashes through negotiations, through the establishment of neutralized zones, through cease-fire arrangements and through similar measures. Negotiations to those ends can be conducted on the basis of the military force at the disposal of the United Nations. The chance of success is greater, the bigger is the force. If this method of preventing civil-war risks by peaceful means is to be successful, it is indeed desirable that the United Nations Force should be strengthened. The weakening of the Force through withdrawal may make the efforts useless. I have also already stated that, were clashes between armed units to develop, the United Nations could not permit itself to become a third party to such a conflict. But the use of force in support of cease-fire arrangements should not therefore be excluded."

For his stand the Secretary-General would like to have an endorsement which only in part had been forthcoming in the past.

At the 937th meeting on 16 February 1961, the representative of Poland stated that the resolutions of the Council had given the Secretary-General a sufficient mandate for the disarming of Belgian troops and other personnel and their removal from the Congo, and for the disarming of the "military bands" under the command of Kasa-Vubu, Tshombé, Mobutu and Kalonji.

At the 938th meeting on 17 February 1961, the representative of the United Arab Republic introduced a draft resolution[68] submitted jointly with Ceylon and Liberia, providing:

"A

"The Security Council,

"...

"1. Urges that the United Nations take immediately all appropriate measures to prevent the occurrence of civil war in the Congo, including arrangements for cease-fires, the halting of military operations, the prevention of clashes, and the use of force, if necessary, in the last resort;

"..."

The representative stated that if the steps to prevent civil war in the Congo and to evacuate the Belgian and other foreign military and para-military forces not under the United Nations Command were not taken and if the United Nations did not receive the necessary co-operation in this matter, the sponsors of the three-Power draft resolution would be compelled to demand that "measures be taken under Chapter VII of the United Nations Charter to achieve that objective." The representative added that he was referring to sanctions.

The representative of Czechoslovakia maintained that Belgium's continued colonial aggression against the Republic of the Congo created a new situation, which required that the United Nations should use all the sanctions and other means available to it under the Charter against the aggressor. The USSR draft resolution represented the only way out of the current situation.

At the 939th meeting on 17 February 1961, the representative of Yugoslavia maintained that the Security Council must ensure the immediate withdrawal of all Belgian military and para-military personnel in the Congo and of all other foreigners in the service of armed units other than those of the United Nations Force. If Belgium had not complied with this demand, effective sanctions should be taken against Belgium in accordance with the Charter.

At the 941st meeting on 20 February 1961, Ceylon, Liberia and the United Arab Republic submitted a joint draft resolution,[69] in which it was provided:

"The Security Council,

"...

"3. Calls upon the United Nations authorities in the Congo to take all possible measures to prevent the occurrence of such outrages [the unlawful arrests, deportations and assassinations of political leaders of the Congo] including, if necessary, the use of force as a last resort;

"..."

At the same meeting, the representative of the United States, referring to joint draft resolution S/4722, stated that the United Nations was in the Congo to provide assistance to a Member of the Organization. It was not there, and could not be there to take action against that State. "Nothing has been done to authorize the taking of measures against it under Article 42 of the Charter, nor has the Security Council made findings necessary under the Charter which would justify such measures." Referring to the term "appropriate measures" in operative para-

[68] S/4722. Same text as S/4741, O.R., 16th year, Suppl. for Jan.-Mar. 1961, pp. 147, 148; see also chapter VIII, p. 177.

[69] S/4733/Rev.1, O.R., 16th year, Suppl. for Jan.-Mar. 1961, pp. 142-143; see also chapter VIII, p. 175.

graph 1 of part A of the draft resolution, the representative stated that what was "appropriate" must be governed by the provisions of the Charter, which placed restrictions upon the use of force and which prohibited the Organization from intervening in internal affairs. It was the understanding of his delegation that authorization to use force only "in the last resort" meant that every effort would be made to accomplish the purposes of this paragraph by agreement among the contending elements in the Congo. "Clearly, this resolution means that force can not be used until agreement has been sought by negotiation, conciliation and all other political measures."

The representative of China said that to authorize the United Nations Command to use force in the Congo was a measure which was against the Charter; he requested that the phrase "including, if necessary, the use of force as a last resort" in operative paragraph 3 of the joint draft resolution S/4733 be put to the vote separately.

The representative of Turkey maintained that paragraph 5 of part A of the joint draft resolution S/4722, by reaffirming all previous resolutions of the Security Council and of the General Assembly on the Congo, brought the Security Council back in a strengthened way to the principle of non-interference in connexion with any of the aspects of the Congo problem and the same was true of other fundamental principles. Also from paragraph 5 came the mandate of the Secretary-General as a result of the reaffirmation of the previous resolutions.

The representative of Pakistan stated that the solution of the problem created by the current situation in the Congo could be found by a decision of the Council that the continuing presence in the Congo of Belgian military and paramilitary personnel and of all foreign personnel not in the country under the authority or with the consent of the United Nations would lead to the application of sanctions prescribed under Articles 41 and 42 of the Charter.

The representative of Morocco observed that sanctions must be applied to Belgium if it persisted in ignoring the United Nations resolutions.

At the 942nd meeting on 20/21 February 1961, the President, speaking as the representative of the United Kingdom, stated that it was his understanding, like that of the representative of the United States, that under part A, operative paragraph 1 of joint draft resolution S/4722 "there will be no question of using force until agreement has been sought by negotiation, conciliation and other peaceful measures." This interpretation was supported by the reference in the draft resolution to previous resolutions of the Security Council and the General Assembly, which all established the principles of consultation and impartiality and emphasized that the mission of the United Nations was to assist in the maintenance of law and order and to safeguard the unity, territorial integrity and political independence of the Congo. It was in the light of these provisions of earlier resolutions that the operative paragraphs of both parts of the draft resolution should be interpreted. Specifically as regards paragraph 1 of part A, the interpretation which the United Kingdom delegation put on the words "and the use of force, if necessary, in the last resort" was that "force will only be used by the United Nations to prevent a clash between hostile Congolese troops. There can be no question of empowering the United Nations to use its forces to impose a political settlement."

The representative of Chile stated that to provide for the use of force was contrary to the Charter and to the objectives of the operation that had been undertaken.

The representative of China stated that he shared the interpretation of the representatives of Turkey, the United States and the United Kingdom on operative paragraph 1 of part A of joint draft resolution S/4722.

The representative of Ecuador stated that he would vote in favour of the joint draft resolution S/4722 on the understanding that it would be interpreted in conformity with the views expressed by the representatives of the United Kingdom, the United States and Turkey.

At the 942nd meeting on 20/21 February 1961, the USSR draft resolution was rejected [70] by 1 vote in favour to 8 against, with 2 abstentions. At the same meeting the joint draft resolution submitted by Ceylon, Liberia and the United Arab Republic was adopted [71] by 9 votes in favour to none against, with 2 abstentions.

At the same meeting the representative of the United States submitted an amendment [72] to operative paragraph 3 of the draft resolution S/4733/Rev.1 to add after the words "measures", the words "in accordance with the Charter". He explained that all action of the United Nations in the Congo, and especially the use of force, was circumscribed by the provisions of the Charter. "Force cannot be used against the State in the absence of specific findings of the Security Council under Article 42. . . ."

At the 942nd meeting on 20/21 February 1961, the President put to the vote the retention of the words "including, if necessary, the use of force as a last resort" in operative paragraph 3 of the draft resolution S/4733/Rev.1, as requested by the representative of China. The result of the vote was 5 in favour, 1 against, with 5 abstentions. The proposal that the words be included was not adopted. [73]

The representative of the USSR drew attention to the fact that the United States amendment to operative paragraph 3 of the joint draft resolution S/4733/Rev.1 lost its meaning because the amendment "'in accordance with the Charter' was coupled with 'the use of force as a last resort'", which phrase had been deleted. To add the words "in accordance with the Charter" would, therefore, be "meaningless".

The representative of the United States observed that to delete the words "in accordance with the Charter" would seem to suggest the possibility of actions which were not in accordance with the Charter. Every resolution the Council adopted, every action it authorized, should be in accordance with the Charter, not only the use of force.

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[70] 942nd meeting: para. 89.

[71] 942nd meeting: para. 95.

[72] S/4740, para. 3, 942nd meeting: para. 97.

[73] 942nd meeting: para. 129.

The representative of China pointed out that there were other means, not only the use of force, which should be used only in accordance with the Charter, such as the use of economic sanctions or diplomatic sanctions.

The representative of the USSR, replying to the statement of the representative of the United States, said that he would not oppose the phrase "in accordance with the Charter."

At the 942nd meeting on 20/21 February 1961, the joint draft resolution S/4733/Rev.1 submitted by Ceylon, Liberia and the United Arab Republic was not adopted: [74]/ the result of the vote was 6 in favour, none against, with 5 abstentions.

The representative of the USSR, explaining his vote on draft resolution S/4722, stated that his delegation regarded the provision in operative paragraph 1 of part A concerning the use of force in the last resort

> "... as a positive decision directed primarily against Tshombé and Mobutu. If, however, the United Nations Command were to avail itself of this paragraph in order to use force against units of the Congo's legal Government, we would consider such action to be a violation of this resolution, since the resolution plainly indicates the context in which such measures should be taken."

The Secretary-General, recalling the series of developments finally leading to the assassination of Mr. Lumumba and his colleagues, pointed out that the members of the Advisory Committee had not at any time proposed that the Secretary-General take military action against the Katanga authorities to bring about Mr. Lumumba's release and had not suggested that the Secretary-General had been in a position to order military measures against the authorities for that purpose. This attitude of the Member States most directly concerned with the Congo and with the fate of Mr. Lumumba coincided with the position of the Secretary-General. It had been clearly recognized that

> "the resolutions of the Security Council, authorizing the United Nations Force to assist in the maintenance of law and order, did not constitute an 'enforcement' measure calling for coercive military action against governmental authorities. The fact that the Council did not take any action under Article 41 and Article 42 of the Charter had been expressly pointed out to the Council at an earlier stage, and no Government expressed any dissent."

The Secretary-General pointed out further that in the second three-Power draft resolution (S/4733/Rev.1)

> "... there was a reference to the use of force which, obviously, was regarded by the sponsors as a new departure giving new rights, presumably with Article 42 as a basis. That being so, it is clear a contrario that such a right to military intervention to liberate prisoners detained by local authorities, de facto or de jure, was not considered as having existed in previous resolutions, and the draft thus confirmed the interpreation maintained so far.

> "The stand in the draft resolution, as well as the interpretation by the main organs of previous resolutions, therefore, supports the position that whatever differences there might be regarding the interpretation of the Charter it could hardly be doubted that military action by the United Nations to free prisoners charged with crime must be regarded as prohibited by the Charter except when such military action constitutes part of an enforcement measure and is expressly adopted by the Council under Chapter VII of the Charter." [75]/

CASE 2 (vii)

The situation in the Republic of the Congo: in connexion with the joint draft resolution submitted by Ceylon, Liberia and the United Arab Republic, voted upon and adopted on 24 November 1961

At the 974th meeting on 15 November 1961, the representative of Liberia introduced a draft resolution [76]/ submitted jointly with Ceylon and the United Arab Republic, in which it was provided:

> "The Security Council,
>
> "Recalling its resolutions S/4387, S/4405, S/4426 and S/4741,
>
> "...
>
> "4. Authorizes the Secretary-General to take vigorous action, including the use of requisite measure of force, if necessary, for the immediate apprehension, detention pending legal action and/or deportation of all foreign mercenaries and hostile elements as laid down in part A, paragraph 2, of the Security Council resolution of 21 February 1961;
>
> "..."

At the same meeting, the representative of France stated that the military operation organized by the United Nations Force in August and at the beginning of September [1961] had illustrated the danger of action going beyond the mandate given to the Secretariat. It was obviously by different means and in different circumstances, by persuasion and not by force, that Katanga would be re-integrated into the Congo as a whole.

The representative of Sweden maintained that the United Nations action in the Congo ought to be of a limited nature. It should attempt to keep order in the country and to prevent, if possible, clashes between the forces of hostile parties. It was not charged with the tasks of participating in civil war. "Neither the

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74/ 942nd meeting: para. 181.

75/ For texts of relevant statements, see:
928th meeting: Secretary-General, paras. 79, 85-88;
932nd meeting: France, para. 89;
935th meeting: Secretary-General, paras. 25, 27, 28, 31;
937th meeting: Poland, paras. 9, 11, 12;
938th meeting: Czechoslovakia, paras. 48, 49; United Arab Republic, paras. 24-26;
939th meeting: Yugoslavia, paras. 14, 15;
941st meeting: China, para. 102; Turkey, para. 91; Morocco, para. 155; Pakistan, para. 122; United States, paras. 81-84;
942nd meeting: President (United Kingdom), paras. 20, 21; Chile, para. 35; China, paras. 53, 134; Ecuador, para. 57; USSR, paras. 131, 136, 194, 195; United States, paras. 101, 133; Secretary-General, paras. 225, 226, 228-231.

76/ S/4985/Rev.1, O.R., 16th year, Suppl. for Oct.-Dec. 1961, pp. 132-134.

Charter . . . nor the declarations made at the start of the intervention entitle the United Nations to such an extension of its role." When force had been used by the United Nations it had been in self-defence or in similar situations. The goal of the United Nations was, as it had been in the past, to create peace and stability in the country through negotiation.

The representative of Belgium expressed the view that, according to the Charter, force could only be used when all possibilities for conciliation had been completely exhausted, and that in the draft resolution should be inserted a provision in the direction of conciliation. It was not by speaking of force nor by contemplating the use of force that the United Nations was genuinely served; it was by following the path of reconciliation that the Council was true to the spirit and letter of the Charter.

At the 976th meeting on 17 November 1961, the representative of the United Kingdom stated that the purpose of operative paragraph 4 of the joint draft resolution was to give the Secretary-General additional powers to intervene, if necessary by force, in order to seize and expel the mercenaries in Katanga. In the view of the United Kingdom delegation, this paragraph went dangerously far in authorizing the use of force. The principal role of the United Nations in the Congo should be the role of pacification and conciliation. There were some circumstances in which force by the United Nations was indispensable, for example, in self-defence or by virtue of the resolution of 21 February 1961, strictly interpreted in the manner in which the representative of the United Kingdom and the majority of members of the Council had interpreted it in the debate at that time. Having quoted from his statement [77] at the 942nd meeting, the representative stated that the point which he wished to emphasize was that "the role of the United Nations in the Congo must be the role of the pacifier and the conciliator. That is the only role consistent with the purposes of the Charter. . . ."

The representative of Ethiopia noted that the term used in operative paragraph 4 of the joint draft resolution, "requisite measure of force", meant, according to his understanding and, he was sure, to the understanding of all the members of the Council, that "force will be used only if necessary". The United Nations was not being converted into a fighting force merely because it was said that police action was necessary to evict the mercenaries from Katanga.

At the 978th meeting on 21 November 1961, the representative of the United States submitted amendments to the joint draft resolution of Ceylon, Liberia and the United Arab Republic, including an amendment [78] to its operative paragraph 4, to read:

> "4. Authorizes the Secretary-General to take vigorous action, including the use of a requisite measure of force, if necessary, for the immediate apprehension, detention pending legal action and/or deportation of all foreign military and paramilitary personnel and political advisers not under the United Nations Command, and mercenaries as laid down in part A, paragraph 2, of the Security Council resolution of 21 February 1961."

At the 979th meeting on 21 November 1961, the representative of the United Kingdom expressed "very strong reservations" concerning the United States amendment to operative paragraph 4 of the joint draft resolution. In discharging this particular part of their mandate, the Secretary-General and the United Nations forces and officials in the Congo must not act in such a way that the outcome was further fighting. The United Kingdom delegation could not associate itself with any wording which could be interpreted as encouraging the local command "to use an added measure of force" which might endanger the uneasy peace prevailing in Katanga and lead to a further series of reprisals and counter-reprisals. The proper task for the United Nations was conciliation and pacification. The representative expressed hope that the Secretary-General "will interpret this particular part of his mandate with that principle in mind. However, the wording of operative paragraph 4 as amended, still seems . . . to go too far."

At the 982nd meeting on 24 November 1961, the United States amendment to operative paragraph 4 of the joint draft resolution was adopted [79] by 8 votes in favour, none against, with 3 abstentions.

The draft resolution submitted jointly by Ceylon, Liberia and the United Arab Republic (S/4985/Rev.1), as amended, was adopted [80] by 9 votes in favour to none against, with 2 abstentions.

At the same meeting, the Acting Secretary-General stated that the members of the Council and all interested parties were entitled to know what they might expect of him with respect to those provisions of the resolution which called for action by the Secretary-General. It was intolerable that efforts to prevent civil war and to achieve reconciliation in the Congo should be obstructed and thwarted by professional adventurers. He intended, therefore, to discharge the responsibilities entrusted to him in paragraph 4 of the resolution with determination and vigour. The Acting Secretary-General stated further that all the United Nations responsibilities flowing from the past resolutions on the Congo continued with new emphasis, since those resolutions had all been reaffirmed in the adopted resolution. Everything possible must be done to avert civil war, "even by the employment of force, should this prove necessary as a last resort." [81]

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[77] 942nd meeting: paras. 20, 21.

[78] S/4985, O.R., 16th year, Suppl. for Oct.-Dec. 1961, pp. 136-137. (In the United States revised amendments (S/4985/Rev.1 and 2) the text of the amendment to operative paragraph 4 of the joint draft resolution was not changed). 978th meeting: para. 13.

[79] 982nd meeting: para. 82.

[80] 982nd meeting: para. 98. Resolution S/5002, O.R., 16th year, Suppl. for Oct.-Dec. 1961, pp. 148-150; see also chapter VIII, p. 183.

[81] For texts of relevant statements, see:
974th meeting: Belgium, paras. 143, 151, 152; France, para. 73; Liberia, para. 15; Sweden, paras. 51, 52.
975th meeting: Ceylon, paras. 26, 37.
976th meeting: Ethiopia, paras. 187, 189; United Kingdom, paras. 177-180;
979th meeting: United Kingdom, paras. 19, 20;
982nd meeting: Acting Secretary-General, paras. 101, 102, 104.

Termination

In his report dated 29 June 1964[82] on the withdrawal of the United Nations Force in the Congo and other aspects of the United Nations Operation there the Secretary-General stated that by its resolution 1885 (XVIII) of 18 October 1963, the General Assembly had made financial provision for the maintenance of a reduced United Nations Force in the Congo during the first half of 1964. In accordance with this resolution, the Secretary-General had taken the necessary steps to extend the stay of the Force until 30 June 1964. Its withdrawal would be completed by that date. The Secretary-General stated further that the completed withdrawal of the United Nations Force from the Congo marked the end of only the military phase of the United Nations Operation in the Congo. The resolutions of the Security Council concerning the Congo "continue to be applicable, since they have no terminal date".

CASE 3

United Nations Yemen Observation Mission

Establishment

At the 1039th meeting on 11 June 1963, in connexion with reports of the Secretary-General concerning Yemen, the Security Council, noting with satisfaction the initiative of the Secretary-General as mentioned in his report S/5298[83] "about certain aspects of the situation in Yemen of external origin", aimed at achievement of a peaceful settlement and "ensuring against any developments in that situation which might threaten the peace of the area;" noting further the statement[84] of the Secretary-General before the Security Council on 10 June 1963, requested the Secretary-General "to establish the observation operation as defined by him" and to report to the Council in the implementation of this decision.[85] On 4 September 1963, the Secretary-General reported[86] that the operation of the United Nations Yemen Observation Mission was considered as having begun on 4 July 1963. The Secretary-General had noted that "by the provisions of the agreement on disengagement, UNYOM's functions are limited to observing, certifying and reporting". The agreement on disengagement involved only Saudi Arabia and the United Arab Republic since the former expressed the intention to end activities in support of the royalists from Saudi Arabian territory and the latter to withdraw its troops from Yemen. The Observation Mission was not concerned with Yemen's internal affairs generally, neither with actions of the Government of Yemen nor with its relations with other Governments and bordering territories. Nor did the Observation Mission have any authority to issue orders or directions. The parties themselves were solely responsible for fulfilling the terms of disengagement on which they had agreed.

Composition

In the same report,[87] the Secretary-General stated that the Observation Mission consisted of a small civilian staff and a small military headquarters staff based in Sana. On the military side, a reconnaissance unit consisted of 114 Yugoslav officers and other ranks transferred from the Yugoslav contingent serving with the United Nations Emergency Force; and an air unit, of about fifty officers and other ranks, had been provided by the Royal Canadian Air Force. Six military observers were stationed in Hodeia and Sana. On 2 January 1964, the Secretary-General reported[88] that the main task of observation had been carried out by Military Observers and staff from Denmark, Ghana, India, Italy, Netherlands, Norway, Pakistan, Sweden and Yugoslavia.

Termination

At the 1038th meeting on 11 June 1963, the Secretary-General stated[89] that the duration of the Observation Mission in Yemen should not exceed four months, and it could be concluded in two. In the event more than two months would be required, the Secretary-General would report this fact to the Council in advance. On 28 October 1963, the Secretary-General reported[90] that since the disengagement agreement had not been fulfilled and the United Nations observation was therefore still required, the Governments of Saudi Arabia and the United Arab Republic had undertaken to meet the expenses of the Observation Mission for a further period as from 4 September 1963, until 4 November 1963. The Observation Mission has been continued for two-month periods until 4 September 1964.[91] On 2 September 1964 the Secretary-General informed the Security Council that in view of the wishes of the parties to the disengagement

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82 S/5764, paras. 5, 6, 132.

83 In this report dated 29 April 1960 (O.R., 18th year, Suppl. for April-June 1963, pp. 33-34, paras. 3 and 4), the Secretary-General informed the Council that he had received from the Governments of Yemen, Saudi Arabia and the United Arab Republic, in separate communications, formal confirmation of their acceptance of identical terms of disengagement in Yemen. A demilitarized zone to a distance of twenty kilometres on each side of the demarcated Saudi-Arabian-Yemen border was to be established from which military forces and equipment were to be excluded. In this zone, on both sides, in partial observers were to be stationed to check on the observance of the terms of disengagement and who would also have the responsibility of travelling beyond the demilitarized zone, as necessary, in order to certify the suspension of activities in support of the Royalists from the Saudi Arabian territory and the outward movement of the United Arab Republic forces and equipment from the airports and seaports of Yemen. (For the other terms of disengagement, see chapter VIII, p. 207). In his report dated 27 May 1963 (S/5321, ibid., pp. 46-48), the Secretary-General stated that the military personnel in the Yemen operation would be employed under conditions similar to those applying to other United Nations operations of this nature (para. 4 (f)). By a report dated 7 June 1963 (S/5325, ibid., pp. 50-51, para. 1), the Secretary-General informed the Council that Saudi Arabia and the United Arab Republic had agreed to meet the financial expenses of the operation.

84 1038th meeting, paras. 6-8, see also chapter I, Case 42.

85 Resolution S/5331 (preamble, paras. one and two operative paras. 1, 3-5, O.R., 18th year, Suppl. for April-June 1963, pp. 52-53.

86 Report of the Secretary-General to the Security Council on the functioning of the United Nations Yemen Observation Mission and the implementation of the terms of disengagement, dated 4 September 1963, S/5412, O.R., 18th year, Suppl. for July-Sept. 1963, pp. 152-157, paras. 5-7.

87 S/5412, ibid., paras. 3, 4.

88 S/5501, paras. 7, 8.

89 1038th meeting: para. 5.

90 S/5447, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 48-51, para. 2c.

91 S/5477/Add.1 and 2, ibid., pp. 51-54; S/5501 and Add.1; S/5572 and Add.1; S/5681; S/5794 and Add.1. Since November 1963, the Secretary-General has consulted members of the Security Council informally with regard to the extension of the Observation Mission in Yemen for two-month periods and, having found that there have been no objections, has instructed that the Mission be continued.

agreement and in accordance with his previously stated views, it was his intention to terminate the activities of the United Nations Observation Mission in Yemen on 4 September 1964.[92] On 11 September 1964 the Secretary-General reported to the Security Council that his decision to terminate the activities of the Mission on 4 September 1964 had been put into effect and the Mission ended its activities on that date.[93]

CASE 4

Group of Experts on South Africa

Establishment

At the 1076th meeting on 3 December 1963, in connexion with the question of race conflict in South Africa, the representative of Norway introduced a draft resolution[94] under which the Security Council would decide, to request the Secretary-General "to establish under his direction and reporting to him a small group of recognized experts to examine methods of resolving the present situation in South Africa through full, peaceful and orderly application of human rights and fundamental freedoms to all inhabitants of the territory as a whole, regardless of race, colour or creed, and to consider what part the United Nations might play in the achievement of that end."

In commenting on the proposed text, the representative of Norway stated[95] that it was "the result of careful consideration and consultation, particularly with the Secretary-General, who has indicated that he will be in a position to respond to the request, should the Security Council make such a request to him". He further stated that the purpose of this proposal was "to seek an alternative, positive course leading to the full application of human rights and fundamental freedoms for all inhabitants of South Africa, and to consider what part the United Nations might play in that connexion".

At the 1078th meeting on 4 December 1963, the Security Council, in adopting[96] the Norwegian draft resolution, decided to request the Secretary-General to establish the Group of Experts on South Africa.

Composition

In pursuance of the Security Council resolution, the Secretary-General reported to the Council[97] that he had announced in January 1964 that he had appointed the following persons to form the Group of Experts: Mrs. Alva Myrdal, Sir Edward Asafu-Adjaye, Mr. Josip Djerdja, Sir Hugh Foot and Mr. Dey Ould Sidi Baba.

In March 1964, Mr. Djerdja submitted his resignation from the Group which was accepted with regret by the Secretary-General. Mrs. Alva Myrdal was elected Chairman and Sir Hugh Foot Rapporteur of the Group of Experts. Their report, submitted to the Secretary-General on 20 April 1964, was annexed to the report[98] submitted by the Secretary-General to the Security Council on 20 April 1964, in pursuance of the Council resolution of 4 December 1963.

Termination

In commenting on the draft resolution under which the Group of Experts was established, the representative of Norway stated at the 1076th meeting[99] that the term of six months had been provided in the last operative paragraph of the resolution for the Secretary-General to submit to the Council his report. This, in his view, was "the minimum of time within which the Group of Experts, under the control and direction of the Secretary-General, could usefully carry out the task suggested" in the resolution.

In their report to the Secretary-General,[100] the Group of Experts stated:

"You requested us to report not later than 15 May 1964, and at one time we considered making a short visit to the capitals of certain African States to hear the views of South Africans in exile, but we have already been able to meet the leaders of representative African organizations in New York and London and the rapidly increasing gravity of the situation has led us to cancel our visit to Africa and to submit our recommendations to you on grounds of urgency in advance of the date by which you originally asked us to report.

"We have been increasingly impressed by the dangers which are now imminent, dangers which involve all Africa and must have far-reaching international repercussions. It is the extent and imminence of these dangers which make new action imperative to give effect to the Security Council's initiative."

2. Subsidiary organs proposed but not established

CASE 5

At the 881st meeting on 25 July 1960, in connexion with the RB-47 incident, the United States submitted a draft resolution,[101] according to which the Security Council would recommend that the Governments of the USSR and the United States undertake to resolve their differences arising out of the incident of 1 July 1960.

"... (a) through investigation of the facts by a commission composed of members designated in equal numbers, by the United States, by the Soviet Union, and by a Government or authority acceptable to both parties, charged with inquiring into the incident by inspecting the site, examining such remains of the plane as may be located, and interrogating survivors and other witnesses. ..."

The representative of the USSR said that the Soviet Union was categorically opposed to the establishment of the commission of investigation proposed by the

92/ S/5927, para. 12.

93/ S/5959.

94/ S/5469, same text as S/5471, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 103-105.

95/ 1076th meeting, para. 66.

96/ 1078th meeting: para. 137; S/5471, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 103-105.

97/ S/5658.

98/ S/5658, annex.

99/ 1076th meeting: para. 68.

100/ S/5658, annex, paras. 5 and 6.

101/ S/4409. Revised as S/4409/Rev.1, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 35-36.

United States since the Security Council had already been furnished with exhaustive data attesting clearly and definitively to the aggressive character of the flight of the United States RB-47 bomber "which was brought down in the Soviet Union's air space".

At the 882nd meeting on 26 July 1960, the representative of Argentina observed that the facts were not sufficiently clear to enable the Council to determine where the responsibility lay. Moreover, as the organ empowered to investigate any dispute which might lead to international friction, the Security Council had full authority to establish subsidiary bodies for the better investigation of the facts set before it. The Council, however, was not being asked to set up such machinery,

> ". . . it is merely suggested that it should urge the parties to settle their dispute by means of an international inquiry. That power is specifically attributed to the Security Council in Article 33, paragraph 2 of the United Nations Charter, and has been confirmed by the established practice of this Organization."[102]

At the 883rd meeting on 26 July 1960, the representative of Ceylon, commenting on the absence of proof owing to the lack of evidence, suggested that the Council pursue the matter of trying to find the evidence, by the constitution of a commission. Such a body would be in a position to find that evidence and submit its findings to the Council; the charge could then be examined in the light of whatever evidence was available.

At the same meeting, the representative of the USSR stated that the United States proposal could be interpreted only as an attempt to deprive the Soviet Union of its sovereign right to take whatever steps were necessary to ensure the inviolability of its frontiers, and to transfer that right to an international commission. He added that there was no question of a dispute between two parties, but instead a clear-cut case of aggressive acts by one party against the other. Consequently, there was nothing to investigate.[103]

At the 883rd meeting on 26 July 1960, the draft resolution[104] of the United States failed of adoption;[105] there were 9 votes in favour and 2 against (one of the negative votes being that of a permanent member of the Council).

CASE 6

At the 885th meeting on 8 August 1960, in connexion with the situation in the Republic of the Congo, the representative of the USSR stated that among other measures which might facilitate the Secretary-General's task of implementing the decisions of the Security Council was the proposal[106] made by the Prime Minister of the Republic of the Congo to dispatch to the Congo a group of observers to ensure the strict application of the decisions concerning the withdrawal of Belgian troops from the whole of the Congolese national territory, including Katanga, and to ensure the territorial integrity and political independence of the Congo.

The Secretary-General observed that he saw in the proposal a certain value, to be judged in the light of practical needs, and expressed the view that observers from Morocco, Ethiopia, Ghana and India, which had supplied top-ranking officers for the United Nations Force, perhaps with one or two additions, could make a useful contribution.

At the 887th meeting on 21 August 1960, the Secretary-General, referring to the statement of the representative of the USSR at the 885th meeting, stated that it was his intention to invite the representatives of the countries contributing units to the United Nations Force in the Congo to serve as members of an advisory committee to the Secretary-General personally, following the pattern established by the Advisory Committee functioning for the United Nations Emergency Force in the Middle East.

The representative of the Republic of the Congo* maintained that the Congolese Government would like to see the Secretary-General sharing his responsibilities with a group appointed by the Security Council which would be made up of nationals of neutral Asian and African countries and would operate permanently on Congolese territory in close co-operation with the Central Government of the Congo and the Commander of the United Nations Force.

At the 888th meeting on 21 August 1960, the representative of Guinea* expressed the view that the Security Council should decide to send to the Congo a commission of observers instructed to ensure, together with the Secretary-General, implementation of the Security Council decisions, in agreement and solely with the Central Government of the Congo in order to help it to settle its dispute with Belgium. The commission would be at the disposal of the Central Government and would not be authorized to deal with provincial governments or with any other Congolese or foreign organization in the Congo, without the previous consent of the Government.

The representative of the USSR submitted a draft resolution[107] whereby the Security Council would: (a) decide to establish a group consisting of representatives of those Member States which, in accordance with the decision of the Security Council, had supplied armed forces to assist the Republic of the Congo, in

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[102] See chapter X, Case 3.

[103] For texts of relevant statements, see:
881st meeting: USSR, para. 40; United States, para. 29.
882nd meeting: Argentina, paras. 8, 9, 11;
883rd meeting: Ceylon, para. 73; USSR, paras. 118, 178.

[104] S/4409/Rev.1, which included a second operative paragraph added at the suggestion of the President, speaking as the representative of Ecuador. 883rd meeting: Ecuador, para. 96.

[105] 883rd meeting: para. 188.

[106] S/4421, Telegram dated 7 August 1960 from the Prime Minister of the Republic of the Congo to the President of the Security Council, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 90-91. The group of observers would be composed of the representatives of India, Ceylon, Ghana, Ethiopia, Morocco, Guinea, United Arab Republic, Afghanistan, Indonesia and Burma. In letter dated 15 August 1960 to the Secretary-General, the Prime Minister of the Republic of the Congo requested the Security Council to send to the Congo a group of observers representing Morocco, Tunisia, Ethiopia, Ghana, Guinea, the United Arab Republic, Sudan, Ceylon, Liberia, Mali, Burma, India, Afghanistan and Lebanon (S/4417/Add.7, document VI, ibid., pp. 75-76).

[107] S/4453, O.R., 15th year, Suppl. for July-Sept. 1960, p. 116.

order that this group, acting in conjunction with the Secretary-General, might ensure on the spot and without delay the execution of the decisions of the Council, including the withdrawal of Belgian troops from the territory of the Congo and the safeguarding of the territorial integrity and political independence of the Congo; (b) deem it necessary that the Secretary-General and the above-mentioned group should consult daily with the lawful Government of the Congo during their implementation of the decisions of the Security Council; (c) instruct the Secretary-General to furnish the Security Council with a report on the implementation of this resolution.

The Secretary-General stated that in various interventions, reference had been made to "the question of some kind of group" to be sent to the Congo. However, the Secretary-General had proposed

> "a parallel to the Advisory Committee established in the case of the United Nations Emergency Force; that is to say, an advisory committee meeting with the Secretary-General, it may be here or, in some cases, it may be in the Congo.[108] But to station it in the Congo when I have to be here either for the Security Council or for the General Assembly would deprive me of the advantages of current consultation."

At the 889th meeting on 21/22 August 1960, the representatives of Italy, Ceylon and the United Kingdom supported the intention of the Secretary-General to establish an advisory committee composed of the representatives of the States contributing to the United Nations Force.

The representative of Poland expressed support for the USSR draft resolution.

At the same meeting the representative of the USSR stated that he would not press for a vote on the USSR draft resolution since most of the members of the Council were not prepared to support it.[109]

CASE 7

At the 945th meeting on 14 March 1961, in connexion with the situation in Angola, the representative of Liberia introduced a draft resolution,[110] co-sponsored by Ceylon and the United Arab Republic, proposing the appointment of a Sub-Committee with a membership to be determined by the Security Council to examine the statements made before the Security Council concerning Angola, to receive further statements and documents, to conduct such inquiries as it might deem necessary and to report to the Security Council as soon as possible.

At the 946th meeting on 15 March 1961 the draft resolution was put to the vote and not adopted,[111] there being 5 votes in favour, none against and 6 abstentions.

CASE 8

At the 1022nd meeting on 23 October 1962, in connexion with complaints by representatives of Cuba, the United States and the USSR, the representative of the United States proposed[112] the dispatch to Cuba of a United Nations observer corps to assure and report on compliance with its demand for the immediate dismantling and withdrawal from Cuba of all missiles and other offensive weapons. The United States, however, did not press for a vote on its draft resolution.

**B. NOT INVOLVING, TO FACILITATE THEIR WORK, MEETINGS AT PLACES AWAY FROM THE SEAT OF THE ORGANIZATION

[108] No objections having been raised by the Security Council or by any of its members to the Secretary-General's intention, he proceeded with the establishment of the Advisory Committee. On 23 August 1960 the Secretary-General invited the permanent representatives of States contributing units to the United Nations Force in the Congo to meet with him as members of the Advisory Committee for current consultations on the United Nations operation in the Congo, in accordance with the intentions he expressed in the Security Council on 21 August. The following States were invited to serve: Canada, Ethiopia, Ghana, Guinea, India, Indonesia, Ireland, Liberia, the Federation of Mali, Morocco, Pakistan, Sudan, Sweden, Tunisia, and the United Arab Republic. ("Summary Chronology of United Nations Action relating to the Congo, Part II:" August 1-31, 1960, United Nations Review, vol. 7, No. 4, October 1960, p. 66). Subsequently, when other States contributed units to the United Nations Force in the Congo, their representatives were invited to participate in the work of the Advisory Committee. The Committee met with the Secretary-General in closed meetings and the records of the meetings were classified as confidential. The cooperation of the Advisory Committee with regard to the settlement of internal problems in the Congo was authorized by the General Assembly by resolution 1474 (ES-IV) adopted at the 863rd meeting on 20 September 1960. In that resolution, the General Assembly appealed to all Congolese within the Republic of the Congo to seek a speedy solution by peaceful means of all their internal conflicts for the unity and integrity of the Congo, "with the assistance, as appropriate, of Asian and African representatives appointed by the Advisory Committee on the Congo, in consultation with the Secretary-General, for the purpose of conciliation (oper. para. 3)".

[109] For texts of relevant statements, see:

885th meeting: USSR, paras. 115, 117; Secretary-General, paras. 131, 132;

887th meeting: Congo,* paras. 78, 79, 95; Secretary-General, para. 36;

888th meeting: Guinea,* para. 31; USSR, paras. 79, 80; Secretary-General, para. 108;

889th meeting: Ceylon, para. 53; Italy, paras. 22-24; Poland, para. 91; USSR, para. 142; United Kingdom, para. 68.

[110] S/4769, 945th meeting: para. 107.

[111] 946th meeting: para. 165.

[112] S/5182, 1022nd meeting: para. 80.

Part II

CONSIDERATION OF PROCEDURES RELATIVE TO SUBSIDIARY ORGANS

NOTE

In this part is entered an instance of deliberation in the Security Council regarding a problem of procedure involved in the establishment and utilization of a subsidiary organ by the Council. The case history, however, while dealing with the procedures involved in the establishment of a subsidiary organ also has a bearing on the distinction between the simple 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 of the Charter. Material relevant to the voting procedure will be found in chapter IV.

A. CONSIDERATION OF PROCEDURE IN THE ESTABLISHMENT OF SUBSIDIARY ORGANS

CASE 9

At the 847th meeting on 7 September 1959, in connexion with the report of the Secretary-General relating to Laos, the representative of the United States introduced a draft resolution [113] co-sponsored by France and the United Kingdom, according to which the Security Council would decide to appoint a sub-committee consisting of Argentina, Italy, Japan and Tunisia with instructions to examine the statements made before the Council concerning Laos, to receive further statements and documents and to conduct such inquiries as it might determine necessary, and to report to the Council as soon as possible. The United States representative stated that the resolution was within the provisions of Article 29 of the Charter and the subsidiary organ, in effect, would "provide for the continuation of the Council's consideration of this subject".

The representative of Japan expressed the view that the establishment of the sub-committee under the terms of Article 29 was a matter of procedure. The representative of Argentina noted that the purpose of the proposed sub-committee was to collect information "so that the Council may have a first-hand account from qualified persons and may then be in a position to reach a final conclusion". It would be difficult for the Council itself to go to the scene of events to see what was happening; the sub-committee was therefore nothing more than an extension of the Council and, as such, clearly came within the procedural powers vested in the Council by Article 29.

At the 848th meeting on 7 September 1959, the representative of the USSR expressed his disagreement that the proposal was procedural. The proposal was in his view "a question of substance and a question of great importance, on which no decision should be taken without full consideration of all its possible political consequences".

The representative of Panama stated that in his delegation's opinion the setting up of the sub-committee, which could not draw conclusions or submit recommendations but would confine itself to submitting the facts to the Council, did not imply any judgement whatever of the situation described; its establishment was fully covered by the procedures authorized under Article 29 of the Charter and was "in accordance with rule 28 and rule 33, paragraph 4 of the rules of procedure of the Security Council".

The representative of the USSR reaffirmed his position. He cited earlier cases to show that the Council had treated the question of establishing a sub-committee to assist in the performance of its functions of maintaining international peace and security not as a procedural but as a substantive matter.

He stated that the proposed sub-committee was "essentially a sub-committee for investigation," and quoted paragraph 4 of the San Francisco declaration [114] in which it was stated:

> "... decisions and actions by the Security Council may well have major political consequences and may even initiate a chain of events which might, in the end, require the Council under its responsibilities to invoke measures of enforcement under Section B, Chapter VIII. This chain of events begins when the Council decides to make an investigation ... It is to such decisions and actions that unanimity of the permanent members applies. ..."

The President (Italy) stated that the question raised by the Soviet representative could more properly be taken up after the vote on the draft resolution. The representative of the USSR thereupon requested the President to settle the question of the voting procedure before putting the draft resolution to the vote.

After the vote had been taken on the question whether the vote on the draft resolution should be considered a procedural one, the President stated that it was "the interpretation of the Chair, shared by the overwhelming majority of the members, that the draft resolution falls clearly under Article 29 of the Charter. ..." Since Article 29 appeared in the Charter under the heading of "Procedure", that could not mean anything but that all matters included in it were of a procedural nature.

The representative of the USSR stated that the President's interpretation of the vote was at variance with the Charter, the four-Power declaration and the practice of the Security Council. As an illustration of the latter contention, he referred to the action taken in the Council at its 303rd meeting [115] on 24 May 1948, when a vote on the same question had been taken.

The representative of France maintained that the Security Council was taking a preliminary step consisting of setting up a subsidiary organ of the Council for the purpose of studying its debates, collecting information and reporting back to the Council. This preliminary step, designed to enable the Council to carry out its functions, did not prejudge its future decisions. The decision taken was based on Article 29 of the Charter. It affected only members of the Council and provided them with appropriate means to cast further light on the situation. Accordingly, the resolution before the Council was in his view procedural in character.

The representative of the United Kingdom expressed the view that the Council was not considering a proposal to establish an investigating body, but a proposal under Article 29 of the Charter for the Council to establish a sub-committee of itself. There were no doubts that it was in accord with the letter and the spirit of the Charter that a decision of the Council to establish such a body to assist the Council in its work should be treated as a matter of procedure. Paragraph 2 of the San Francisco declaration dealt

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[113] S/4214, same text as resolution S/4216, O.R., 14th year, Suppl. for July-Sept. 1959, pp. 8-9; 847th meeting: para. 59.

[114] Statement by the Delegations of the four sponsoring Governments [the United States, the United Kingdom, the USSR and the Republic of China] on Voting Procedure in the Security Council, United Nations Conference on International Organization Documents, vol. II, pp. 711-714, para. 14; see also Repertory of Practice of United Nations Organs, vol. II, 1955, pp. 104-106 (U.N.P. 1955.V.2).

[115] 303rd meeting: para. 19.

with the decisions which could be taken by a procedural vote, including among these the establishment by the Council of "such bodies or agencies as it may deem necessary for the performance of its functions". This paragraph covered the establishment of sub-committees such as the one for which provision was made in the draft resolution before the Council.

The representative of the USSR stated that the Committee of Experts, for instance, was a body established in accordance with paragraph 2 of the San Francisco declaration. The task of the Committee, to formulate the rules of procedure, was the sort of action envisaged in the paragraph referred to. However, in saying that the sub-committee to be established should examine statements, receive further statements and conduct such inquiries as it might deem necessary, the sponsors of the draft resolution were saying the same thing as paragraph 4 of the San Francisco declaration which specified the action to be taken if any doubt arose in the Council as to whether a particular matter was or was not procedural.

The President observed that, with regard to the past practice of the Council, a similar action had taken place at the 507th meeting[116] of the Council on 29 September 1950. It was his conviction that the draft resolution fell within the scope of Article 29, which appeared under the heading of "Procedure", which meant that all matters included in it were procedural. The tasks entrusted to the sub-committee clearly defined its nature and its work. The sub-committee "should not itself conduct investigations or make recommendations". It "should collect information and present the facts in order to clarify the present situation and to enable the Council itself to make decisions".[117]

At the 848th meeting on 7 September 1959, the draft resolution submitted by France, the United Kingdom and the United States was put to the vote; there were 10 votes in favour, 1 against, with no abstentions. The President stated that the draft resolution was adopted.[118]

**B. CONSIDERATION OF THE PROCEDURE OF CONSULTATION BETWEEN PERMANENT MEMBERS

**C. CONSIDERATION OF THE PROCEDURE OF DELEGATION OF FUNCTIONS

**D. CONSIDERATION OF THE PROCEDURE OF MODIFICATION OF TERMS OF REFERENCE

**E. CONSIDERATION OF THE PROCEDURE OF TERMINATION

116/ Repertory of Practice of United Nations Organs, vol. II, 1955, p. 80.

117/ For texts of relevant statements, see:
847th meeting: Argentina, paras. 100-103; Japan, para. 90; United States, paras. 59, 60;
848th meeting: President (Italy), paras. 71, 79, 126-128; France, paras. 91, 92; Panama, paras. 37, 38; USSR, paras. 30, 52-58, 63, 73, 80, 83, 85, 86, 116, 119, 122; United Kingdom, paras. 104, 107, 109, 110.

118/ 848th meeting: paras. 131-132.

Chapter VI

RELATIONS WITH OTHER UNITED NATIONS ORGANS

TABLE OF CONTENTS

INTRODUCTORY NOTE

As previously in the Repertoire, the present chapter, dealing with the relations of the Security Council with all the other organs of the United Nations, is broader in scope than chapter XI of the provisional rules of procedure of the Security Council (rule 61) which governs only certain procedures related to the election by the Council of members of the International Court of Justice.

This chapter presents material bearing on the relations of the Security Council with the General Assembly (part I), and also brings up to date the account given in the previous volumes of the Repertoire of the transmission by the Trusteeship Council to the Security Council of questionnaires and reports (part III). No material has been found for the period under review which would require entry in parts II, IV and V relating respectively to relations with the Economic and Social Council, the International Court of Justice and the Military Staff Committee.

The functions of the Secretariat in relation to the Security Council, to the extent that they are governed by the provisional rules of procedure of the Council, are covered in chapter I, part IV. Proceedings regarding the appointment of the Secretary-General under Article 97 are treated in part I of this chapter.

Part I

RELATIONS WITH THE GENERAL ASSEMBLY

NOTE

In part I, concerning the relations of the Security Council with the General Assembly, the arrangement of the material remains the same as in the previous volumes of the Repertoire.

Part I is mainly concerned with instances in which the responsibility of the Security Council and of the General Assembly is, under the provisions of the Charter or the Statute of the International Court of Justice, either exclusive or mutual; that is, where a final decision is or is not to be taken by one organ without a decision to be taken in the same matter by the other. The proceedings in these instances fall into three broad categories.

The first category, treated in section A, includes practices and proceedings in relation to Article 12 (1), limiting the authority of the General Assembly in respect of any dispute or situation while the Council is exercising the functions assigned to it by the Charter. No material for inclusion in this section was found for the period covered by this Supplement. The section, therefore, contains only a note concerning notifications by the Secretary-General to the General Assembly under Article 12 (2) of the Charter. In section B, practices and proceedings relating to the convocation of special sessions of the General Assembly have been dealt with.[1] The second category of instances in which the responsibility of the Security Council and the General Assembly is mutual, and in which the decision must be taken by the Security Council before that of the General Assembly, i.e., appointment of the Secretary-General[2] and conditions of accession to the Statute of the International Court of Justice, has been treated in Section C. The third category, including cases where the final decision depends upon action to be taken by both the Security Council and the General Assembly concurrently, such as the election of members of the International Court of Justice,[3] has been dealt with in section D. In section E are included two case histories[4] giving accounts of the relations of the Security Council with subsidiary organs established by the General Assembly.

A continuation of the tabulation of recommendations to the Security Council adopted by the General Assembly in the form of resolutions will be found in section F, and references to the annual and special reports of the Security Council submitted to the General Assembly in section 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."

1/ Case 1.

2/ Cases 2 and 3.

3/ Cases 4-7.

4/ Cases 8 and 9.

[*Note:* During the period under review there was no discussion in the Security Council on the question of the respective competence of the Security Council and the General Assembly to deal with a matter relating to the maintenance of international peace and security, which the Council had considered and then referred to the General Assembly.

Notifications to the General Assembly under Article 12 (2) by the Secretary-General, with the consent of the Security 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 on matters of which the Security Council is seized and on the stage reached in their consideration" which is circulated each week by the Secretary-General in accordance with rule 11 of the provisional rules of procedure.

The notification issued before each regular session of the General Assembly contains the same agenda items as those in the current Summary Statement, except that certain items in the Statement which are not considered as "matters relative to the maintenance of international peace and security" for the purpose of Article 12 (2) are excluded from the notification, e.g., rules of procedure of the Council, applications for membership, and the application of Articles 87 and 88 with regard to strategic areas. In addition, the notification contains a list of any items with which the Council has ceased to deal since the previous session of the General Assembly.[5]

Matters being dealt with by the Security Council have been listed in the notification, since 1951, in two categories: (1) matters which are being dealt with by the Council and which have been discussed during the period since the last notification; and (2) matters of which the Council remains seized but which have not been discussed since the last notification.[6]

Since 1947, the consent of the Council required by Article 12 (2) has been obtained through the circulation by the Secretary-General to the members of the Council of copies of draft notifications.]

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."

[*Note:* No special session of the General Assembly was convened at the call of the Security Council during the period under review. On one occasion the Security Council called an emergency special session of the General Assembly. In the decision adopted by the Council specific reference to resolution 377 A (V)[7] was made and the decision stated that the lack of unanimity of the permanent members of the Council had prevented it from exercising its primary responsibility for the maintenance of international peace and security. The relevant proceedings of the Council are set forth in the case history entered below.

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[5] In the notifications issued before the convening of the sixteenth and eighteenth sessions of the General Assembly (A/4875, 16 September 1961; and A/5517, 16 September 1963) there were no items listed with which the Security Council had ceased to deal. In the notification issued before the convening of the fourteenth session (A/4216, 14 September 1959), among the matters of which the Council remained seized and which were not discussed was listed the following item: "Letter dated 17 July 1958 from the representative of Jordan to the President of the Security Council concerning: 'Complaint by the Hashemite Kingdom of Jordan of interference in its domestic affairs by the United Arab Republic.'" Under that item the following was stated: "It will be recalled that, on 25 November 1958, the Secretary-General notified the General Assembly (A/4008) that the Security Council has ceased to deal with the following matter: 'Letter dated 22 May 1958 from the representative of Lebanon addressed to the President of the Security Council concerning: "Complaint by Lebanon in respect of a situation arising from the intervention of the United Arab Republic in the internal affairs of Lebanon, the continuance of which is likely to endanger the maintenance of international peace and security." '" In the notification issued before the convening of the fifteenth session (A/4493, 15 September 1960), among the matters which had been discussed during the period since the previous notification under the heading: "Letter dated 13 July 1960 from the Minister for Foreign Affairs of the Union of Soviet Socialist Republics addressed to the Secretary-General," the following was included: "At the 883rd meeting of the Security Council on 26 July 1960, the President stated that the Council had concluded its consideration of this item"; and under the heading: "Letter dated 5 September 1960 from the First Deputy Minister for Foreign Affairs of the Union of Soviet Socialist Republics addressed to the President of the Security Council," the following was included: "At the 895th meeting of the Security Council on 9 September 1960, the President stated that the Council had disposed of the matter." In the notification issued before the convening of the seventeenth session of the General Assembly (A/5224, 17 September 1962), among the matters discussed during the period since the previous notification, under the heading: "Letter dated 8 March 1962 from the Permanent Representative of Cuba addressed to the President of the Security Council," the following was included: "At the 998th meeting of the Security Council on 23 March 1962, the President stated that the consideration of this matter had been terminated."

[6] In the notifications issued before the convening of the fourteenth, fifteenth, sixteenth, seventeenth and eighteenth sessions of the General Assembly (A/4216, 14 September 1959; A/4493, 15 September 1960; A/4875, 16 September 1961; A/5224, 17 September 1962; A/5517, 16 September 1963), among the matters which had not been discussed by the Security Council during the period since the previous notifications, but of which the Council remained seized, the following agenda item was listed: "The situation in Hungary," which was dealt with, during the period under review, at the fourteenth, fifteenth, sixteenth and seventeenth sessions of the General Assembly. In the notifications issued before the convening of the sixteenth and seventeenth sessions, among the matters which had been discussed by the Council during the period since the last notification was listed the following agenda item: "Letter dated 13 July 1960 from the Secretary-General of the United Nations addressed to the President of the Security Council," which was dealt with under the heading: "Question considered by the Security Council at its 906th meeting on 16 September 1960" at the fourth emergency special session of the General Assembly, and under the heading: "The situation in the Republic of the Congo" at the fifteenth session of the General Assembly.

[7] The relevant passage from resolution 377 A (V) follows: "The General Assembly, ... 1. Resolves that if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security. If not in session at the time, the General Assembly may meet in emergency special session within twenty-four hours of the request therefor. Such emergency special session shall be called if requested by the Security Council on the vote of any seven members, or by a majority of the Members of the United Nations."

Under the "Uniting for peace" resolution, emergency special sessions of the General Assembly are convened upon the request of the Security Council, on the vote of any seven of the members.

In the case presented below a negative vote was cast by a permanent member on the ground that resolution 377 A (V) was adopted in violation of the Charter, which requires unanimity in the Security Council in the matter of convening emergency sessions.]

CASE 1

At the 906th meeting on 17 September 1960, in connexion with the situation in the Republic of the Congo, after the Security Council had voted upon, and not adopted, a joint draft resolution[9] on the substance of the question submitted by Ceylon and Tunisia, the representative of the United States submitted the following draft resolution:[8]

"The Security Council,

"Having considered the item on its agenda as contained in document S/Agenda/906,

"Taking into account that the lack of unanimity of its permanent members at the 906th meeting of the Security Council has prevented it from exercising its primary responsibility for the maintenance of international peace and security,

"Decides to call an emergency special session of the General Assembly as provided in General Assembly resolution 377 A (V), of 3 November 1950, in order to make appropriate recommendations."

The representative of Poland observed that it was not true as stated in the draft resolution that the Security Council was prevented from exercising its primary responsibility for the maintenance of international peace and security. Neither was it true that there was no decision on the question of the Congo. There were three approved resolutions which had to be implemented.

The representative of the USSR stated:

"... we cannot, in this vote, be guided by resolution 377 A (V) to which the draft resolution refers, since that resolution was adopted in violation of the United Nations Charter which requires unanimity in the Security Council in the matter of convening emergency sessions.

"We shall therefore regard the adoption of any such resolution as illegal, unless it is approved unanimously by all the permanent members of the Security Council."[10]

Decision: *The Council adopted the United States draft resolution by 8 votes in favour to 2 against, with 1 abstention.*[11]

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

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."

[*Note:* In accordance with rule 48 of the provisional rules of procedure, the meetings of the Security Council to consider the question of a recommendation to the General Assembly regarding the appointment of a Secretary-General have been held in private, and the Council has voted by secret ballot. A communiqué circulated at the end of each meeting, in accordance with rule 55, has indicated the stage reached in the consideration of the recommendation. During the period under review, the Council considered and unanimously adopted two recommendations of this kind.]

CASE 2

At the 972nd meeting held in private on 3 November 1961, the Security Council considered the problem of filling the office of the Secretary-General for the term fixed by the General Assembly, expiring 10 April 1963, and unanimously decided to recommend to the General Assembly that the permanent Representative of Burma to the United Nations, Ambassador U Thant be appointed as acting Secretary-General of the United Nations for the unexpired portion of the term previously fixed by the General Assembly. On the same date, the President (USSR) transmitted this recommendation to the President of the General Assembly and by letter dated 3 November 1961 communicated to U Thant the Council's decision to recommend his appointment as acting Secretary-General for the unexpired portion of the term of office of the Secretary-General as fixed by the General Assembly, expiring 10 April 1963.[12]

CASE 3

At the 1026th meeting held in private on 30 November 1962, the Security Council considered the question of a recommendation for the appointment of the Secretary-General of the United Nations, and unanimously decided to recommend to the General Assembly that U Thant be appointed as Secretary-General of the United Nations for a term expiring on 3 November 1966.[13] On the same day, the President (United Arab Republic) transmitted this recommendation to the President of the General Assembly.[14]

**2. Conditions of accession to the Statute of the International Court of Justice

8/ S/4523, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 172-173.

9/ S/4525, 906th meeting: para. 173.

10/ For texts of relevant statements see:
906th meeting: Poland, para. 188; USSR, paras. 195-196.

11/ 906th meeting: para. 198. Resolution S/4526, O.R., 15th year, Suppl. for July-Sept. 1960, p. 174.

12/ 972nd meeting: official communiqué.

13/ 1026th meeting: official communiqué.

14/ A/5322.

**3. Conditions under which a non-member State, party to the Statute, may participate in electing members of the International Court of Justice

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."

Article 14

"Vacancies shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-General shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Security Council."

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."

CASE 4

At the 849th meeting on 29 September 1959, the Security Council proceeded to the election of a member of the International Court of Justice to fill the vacancy in the Court caused by the death of Judge José Gustavo Guerrero.[15] Prior to the balloting, the President stated that in accordance with Article 10, paragraph 1, of the Statute of the Court, the candidate who obtained an absolute majority of votes in the Council and in the General Assembly would be considered elected as a member of the Court.

A vote was then taken by secret ballot which resulted in the election of Mr. Ricardo J. Alfaro, who obtained an absolute majority of votes in the Council.[16] After stating that he would transmit the result of the voting to the President of the General Assembly, the President (Italy) suspended the meeting.

When the meeting was resumed the President announced that he had received a letter from the President of the General Assembly informing him that Mr. Ricardo J. Alfaro had received the required majority in the voting in the General Assembly, and stated that he was sure that the President of the General Assembly would declare Mr. Alfaro elected to the International Court of Justice.[17]

CASE 5

At the 864th meeting on 31 May 1960, the Security Council noted with regret the death of Sir Hersch Lauterpacht and decided, under Article 14 of the Statute, that an election to fill the vacancy for the remainder of the term of Judge Lauterpacht should

15/ S/4204 and Corr.1, S/4205 (also issued as documents A/4179 and Corr.1 and A/4180, GAOR, 14th Session, a.i. 18).

16/ 849th meeting: para. 4.

17/ 849th meeting: paras. 7, 8.

take place during the fifteenth session of the General Assembly.[18]

At the 909th meeting on 16 November 1960, to fill the vacancy, the Council elected Sir Gerald Fitzmaurice, who also received an absolute majority of votes in the General Assembly.[19]

CASE 6

At the 909th meeting on 16 November 1960, the Security Council proceeded to the election of five members of the International Court of Justice to fill the seats which were to become vacant on 5 February 1961.[20] Prior to the balloting, the President (Tunisia) stated:

"... I should like to remind you that the Secretary-General's memorandum [S/4457] indicates the procedure to be followed for the election. According to Article 10, paragraph 1 of the Statute of the Court, those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected. Therefore, those candidates who receive a minimum of six votes in the Council will be considered as elected by the Council. If more than five candidates obtain the required majority, the procedure which has been followed in the past is outlined in paragraph 14 of the Secretary-General's memorandum. This procedure is in harmony with rule 61 of the provisional rules of procedure of the Security Council."[21]

A vote was then taken by secret ballot and five candidates obtained the required majority in the Council. After stating that he would transmit the result of the election to the President of the General Assembly, the President suspended the meeting. When the meeting was resumed, the President announced that he had been notified by the President of the General Assembly that five candidates had been elected by the General Assembly to fill the vacancies. Four of the five candidates who received a majority of votes in the Assembly also obtained the required majority in the Council and were therefore declared elected.[22] The President then declared that, in view of the fact that the General Assembly and the Security Council were not in agreement about the fifth candidate, under rule 61 of the provisional rules of procedure, the Security Council had to hold a further meeting to fill the fifth vacancy.

At the 910th meeting on 17 November 1960, the Council proceeded to an election to fill the fifth seat. On the first ballot the Council elected to fill the vacancy a candidate who also received an absolute majority of votes in the Assembly.[23]

CASE 7

At the 1071st meeting on 21 October 1963, the Security Council proceeded to the election of five members of the International Court of Justice to fill five seats which were to become vacant on 5 February 1964. Prior to the balloting, the President (USSR) drew the attention of the Council to a memorandum[24] of the Secretary-General in which the procedure to be followed in the election was outlined.

A vote was then taken by secret ballot which resulted in more than five candidates receiving the required majority.[25] The President declared that the Council had to proceed to another ballot on all the candidates, in accordance with the procedure set out in paragraph 14 of the memorandum of the Secretary-General:

"Cases have arisen in which more than the required number of candidates have received an absolute majority on the same ballot. In the election of five judges at the 567th meeting of the Security Council on 6 December 1951, on the first ballot six candidates received an absolute majority. After a discussion, the Council voted to hold a new vote on all the candidates and a second ballot produced a majority for only five."

It was not until the third ballot that only five candidates obtained the required majority in the Council.[26] The President then informed the Council that he would transmit the result of the voting to the President of the General Assembly. Before suspending the meeting, he told the Council that the meeting would be resumed when the President of the General Assembly informed the Council of the result obtained in the Assembly. When the meeting was resumed, the President announced that he had been notified by the President of the General Assembly that, at its 1249th plenary meeting on the same date, five candidates had obtained the required majority of votes in the Assembly. Four of these candidates had already received the required majority in the Council and therefore were declared elected. He added that the Council would hold a further meeting to fill the remaining vacancy.[27]

At the 1072nd meeting on the same date, the Security Council met specially for the purpose of filling the fifth vacancy. After the election of the fifth candidate who obtained the required majority in the Council, the President suspended the meeting. When the meeting was resumed, the President announced[28] that he had been notified by the President of the General Assembly that the same candidate had also obtained the required majority of votes in the Assembly and had therefore been declared elected.[29]

E. RELATIONS WITH SUBSIDIARY ORGANS ESTABLISHED BY THE GENERAL ASSEMBLY

[*Note:* The first case history included in this section gives an account of an action of the Security Council

18/ 864th meeting: paras. 94-96.

19/ 909th meeting: paras. 9, 11.

20/ 909th meeting: para. 12.

21/ 909th meeting: para. 14.

22/ 909th meeting: paras. 17-18.

23/ 910th meeting: paras. 2, 5-6.

24/ S/5390 (also issued as A/5480, GAOR, Eighteenth Session, Annexes, a.i. 15).

25/ 1071st meeting: para. 8.

26/ 1071st meeting: para. 11.

27/ 1071st meeting: paras. 12-14.

28/ 1072nd meeting: para. 1-3.

29/ In a letter to the President of the Security Council dated 22 October 1963, the representative of Lebanon stated that the voting procedure followed in accordance with paragraph 14 of the memorandum of the Secretary-General (S/5390) at the 1071st meeting of the Security Coun-

in ordering an investigation for which, subsequently, preliminary steps were taken by the Secretary-General, and of a later decision of the General Assembly setting up a subsidiary organ of its own to conduct the respective investigation.

The second case history deals with a decision of the Security Council requesting that a subsidiary organ established by the General Assembly implement its mandate without delay and report also to the Council.]

CASE 8

At the 942nd meeting on 21 February 1961, in connexion with the situation in the republic of the Congo, the Security Council decided that "an immediate and impartial investigation be held in order to ascertain the circumstances of the death of Mr. Lumumba and his colleagues ..."[30/]

In his report[31/] dated 27 February 1961 on certain steps taken in regard to the implementation of Security Council resolution S/4741 of 21 February 1961, the Secretary-General informed the Security Council that the members of the Advisory Committee were of the opinion that, as a first step toward implementing part A, operative paragraph 4, of the resolution, a panel of three independent judges—an African serving as the Chairman, an Asian and a Latin American—should be appointed.

By report[32/] dated 20 March 1961, the Secretary-General informed the Security Council that the Advisory Committee had recommended that the terms of reference of the Investigation Commission envisaged in part A, operative paragraph 4 of the Security Council resolution of 21 February 1961 should be to hold an impartial investigation in order to ascertain the circumstances of the death of Messrs. Lumumba, Npolo and Okito and to fix responsibility therefor. The Advisory Committee had further recommended that the Commission be composed of four members nominated by the Governments of Burma, Ethiopia, Mexico and Togo.

By resolution 1601 (XV) adopted at the 985th meeting on 15 April 1961, the General Assembly, recalling part A, operative paragraph 4 of the Security Council resolution of 21 February 1961, and taking note of the Secretary-General's report S/4771 and Add.1, decided to establish a Commission of Investigation consisting of the following members: Justice U Aung Khine (Burma), Mr. Teschome Hailemariam (Ethiopia), Mr. Salvador Martínez de Alva (Mexico) and Mr. Ayité d'Almeida (Togo) and requested the Commission to proceed as early as possible to carry out the task entrusted to it.

By letter[33/] dated 12 June 1961 the acting Chairman of the Commission of Investigation established under the terms of General Assembly resolution 1601 (XV) informed the President of the Security Council of the state of its work.

On 11 November 1961 the Commission of Investigation submitted its report.[34/]

CASE 9

At the 950th meeting on 6 June 1961, in connexion with the situation in Angola, the representative of Liberia introduced a draft resolution[35/] submitted jointly by Ceylon and the United Arab Republic requesting that the Sub-Committee appointed under General Assembly resolution 1603 (XV) implement its mandate without delay and report to the Security Council and the General Assembly as soon as possible. The Sub-Committee, composed of five members appointed by the President of the General Assembly, had been instructed to examine the statements made before the Assembly concerning Angola, to receive further statements and documents and to conduct such inquiries as it may deem necessary.

At the 956th meeting on 9 June 1961, after the adoption by the Council of amendments[36/] proposed by the representative of Chile which extended the scope of the preamble and expanded the operative part of the resolution to encourage a solution of the problem by peaceful means, the joint draft resolution submitted by Ceylon, Liberia and the United Arab Republic, as amended, was adopted.[37/]

F. RECEPTION OF RECOMMENDATIONS TO THE SECURITY COUNCIL ADOPTED BY THE GENERAL ASSEMBLY IN THE FORM OF RESOLUTIONS

[*Note:* The Security Council, in agreeing to consider a General Assembly recommendation, has done so by placing the recommendation of the Assembly on the Council's agenda.]

cil in connexion with the election of five candidates of the International Court of Justice was "incorrect, unjust and undemocratic". This procedure resulted in failure to elect Mr. Fouad Ammoun of Lebanon, although he had received 7 votes on the first ballot in the Security Council and 62 votes on the first ballot in the General Assembly, whereas two of the candidates finally elected had received fewer votes than Mr. Ammoun on the first ballot both in the Security Council and in the General Assembly, namely 6 votes each on the first ballot in the Security Council and 58 and 42 votes on the first ballot in the General Assembly, respectively (S/5445, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 42-43). A memorandum circulated by the Secretariat on 31 October 1963 gave an account of how the current practice had been established. It dealt with the situations which had arisen at the 567th and 681st meetings on 6 December 1951 and 7 October 1954, respectively. These had been dealt with in the same manner as in the current case (S/5449, ibid., pp. 84-85). In a further letter to the Secretary-General dated 21 November 1963, the representative of Lebanon reiterated his belief that the procedure adopted at the 1071st meeting of the Security Council in connexion with the election of five candidates of the International Court of Justice "should be revised in the future in the interests of justice and of maintaining confidence in the democratic procedures and rules of the United Nations, and particularly the confidence of the small nations." (S/5461, ibid., pp. 93-97).

30/ Resolution S/4741, part A, oper. para. 4, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 147-148.

31/ S/4752, ibid., pp. 176-190, para. 9.

32/ S/4771 and Add.1-3, ibid., pp. 259-261.

33/ S/4836, O.R., 16th year, Suppl. for April-June 1961, p. 68.

34/ S/4976, O.R., 16th year, Suppl. for Oct.-Dec. 1961, pp. 67-129. Also distributed to the General Assembly as document A/4964.

35/ S/4828, oper. paras. 2, 4. 950th meeting: para. 38.

36/ S/4833/Rev.1, 955th meeting: paras. 65-66 and 68.

37/ 956th meeting: para. 159. Resolution S/4835, O.R., 16th year, Suppl. for April-June 1961, p. 67.

TABULATION OF RECOMMENDATIONS

Entry No.	General Assembly resolution	Subject of recommendation	Initial proceedings of the Security Council
1	1602 (XV) 19 April 1961	Admission of new Members (Mongolia and Mauritania)	None [a]
2	1746 (XVI) 27 June 1962	Admission of new Members (Rwanda and Burundi)	None [b]
3	1761 (XVII) 6 November 1962	The policies of apartheid of the Government of the Republic of South Africa	Included in the agenda under a letter dated 11 July 1963 submitted by 32 Member States at the 1040th meeting on 22 July 1963. The consideration of the item began at the 1050th meeting on 31 July 1963
4	1807 (XVII) 14 December 1962	Territories under Portuguese administration	Included in the agenda under a letter dated 11 July 1963 submitted by 32 Member States at the 1040th meeting on 22 July 1963
5	1810 (XVII) 17 December 1962	The situation with regard to the implementation of the Declaration on the granting of independence to colonial countries and peoples	Not placed on the provisional agenda
6	1819 (XVII) 18 December 1962	The situation in Angola	Included in the agenda at the 1040th meeting on 22 July 1963

[a] The General Assembly recommendation was not included in the agenda of the Security Council. References to it were made at the 971st meeting on 25 October 1961 in statements by France (para. 61), Liberia (para. 90), USSR (para. 13), United Kingdom (para. 211), and United States (para. 39).

[b] The General Assembly recommendation was not included in the agenda of the Security Council. Reference to it was made at the 1017th meeting on 26 July 1962 in a statement by the President (Ghana) at the beginning of the meeting (para. 6).

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), the Security Council has continued, during the period under review, to submit annual reports to the General Assembly.[38] In addition to transmitting to the General Assembly its recommendations concerning several applications for membership,[39] pursuant to paragraph 2 of rule 60 of its provisional rules of procedure, the Security Council has, following its 911th meeting on 3/4 December 1960 and also following its 985th meeting on 30 November 1961, submitted special reports[40] to the General Assembly concerning the question of admission of a new Member, in accordance with paragraph 3 of rule 60 of the provisional rules of procedure.]

[38] Annual reports were approved by the Security Council at the following meetings held in private: 14th report, 846th meeting, 20 August 1959; 15th report, 899th meeting, 14 September 1960; 16th report, 967th meeting, 12 September 1961; 17th report, 1019th meeting, 13 September 1962; and 18th report, 1070th meeting, 16 September 1963.

[39] Cameroon (A/4358, 1 February 1960); Togo (A/4372, 1 June 1960); Federation of Mali (A/4387, 29 June 1960; later became two separate States, Mali and Senegal which were recommended separately; Malagasy (A/4388, 30 June 1960); Somalia (A/4393, 6 July 1960); Congo (Leopoldville) (A/4398, 8 July 1960); Dahomey (A/4453, 24 August 1960); Niger (A/4454, 24 August 1960); Upper Volta (A/4455, 24 August 1960); Ivory Coast (A/4456, 24 August 1960); Chad (A/4457, 24 August 1960); Congo (Brazzaville) (A/4458, 24 August 1960); Gabon (A/4459, 24 August 1960); Central African Republic (A/4460, 24 August 1960); Cyprus (A/4462, 24 August 1960); Senegal (A/4513, 28 September 1960); Mali (A/4514, 28 September 1960); Nigeria (A/4533, 7 October 1960); Sierra Leone (A/4888, 26 September 1961); Mongolian People's Republic (A/4940, 25 October 1961); Islamic Republic of Mauritania (A/4941, 25 October 1961); Tanganyika (A/5033, 14 December 1961); Burundi (A/5151, 27 July 1962); Rwanda (A/5152, 27 July 1962); Jamaica (A/5188, 13 September 1962); State of Trinidad and Tobago (A/5189, 13 September 1962); Algeria (A/5251, 4 October 1962); Uganda (A/5258, 15 October 1962); Kuwait (A/5417, 8 May 1963); Zanzibar (A/5677, 16 December 1963); and Kenya (A/5678, 16 December 1963).

[40] A/4656 (GAOR, 15th session, Annexes, a.i. 20) and A/5012 (GAOR, 16th session, Annexes, a.i. 92).

Part II

**RELATIONS WITH THE ECONOMIC AND SOCIAL COUNCIL

Part III

RELATIONS WITH THE TRUSTEESHIP COUNCIL

**A. PROCEDURE UNDER ARTICLE 83 (3) IN APPLICATION OF ARTICLES 87 AND 88 OF THE CHARTER WITH REGARD TO STRATEGIC AREAS UNDER TRUSTEESHIP

B. TRANSMISSION TO THE SECURITY COUNCIL BY THE TRUSTEESHIP COUNCIL OF QUESTIONNAIRES AND REPORTS

During the period under review, no questionnaires have been transmitted to the Security Council by the Trusteeship Council. The reports of the latter body on the exercise of its functions in respect of the strategic areas under trusteeship have, therefore, continued to be based on the revised questionnaire transmitted to the Security Council on 24 July 1953.[41/]

Between 1 January 1959 and 31 December 1963 the Secretary-General transmitted to the Security Council the following reports of the Trusteeship Council on the Trust Territory of the Pacific Islands, which has continued to be the only territory designated as a strategic area:

Eleventh Report adopted during the twenty-fourth session of the Trusteeship Council, 6 August 1959.[42/]

Twelfth Report adopted during the twenty-sixth session of the Trusteeship Council, 30 June 1960.[43/]

Thirteenth Report adopted during the twenty-seventh session of the Trusteeship Council, 19 July 1961.[44/]

Fourteenth Report adopted during the twenty-ninth session of the Trusteeship Council, 16 July 1962.[45/]

Fifteenth Report adopted during the thirtieth session of the Trusteeship Council, 25 June 1963.[46/]

41/ S/3065.

42/ S/4206, O.R., 14th year, Special Supplement No. 1.
43/ S/4350, O.R., 15th year, Special Supplement No. 1.
44/ S/4890, O.R., 16th year, Special Supplement No. 1.
45/ S/5143, O.R., 17th year, Special Supplement No. 1.
46/ S/5340, O.R., 18th year, Special Supplement No. 1.

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:* A proposal by the representative of Cuba[47/] to request an advisory opinion in connexion with the question whether the Organization of American States under the terms of its Charter was a regional agency within the meaning of Chapter VIII of the United Nations Charter, and related questions was formally submitted to the Council during consideration of the Complaint by the Government of Cuba at the 998th meeting on 23 March 1962,[48/] but was not voted on.

47/ S/5095, O.R., 17th year, Suppl. for Jan.-March 1962, pp. 96-97.
48/ See chapter XII, Case 25.

Part V

**RELATIONS WITH THE MILITARY STAFF COMMITTEE

Chapter VII

PRACTICES RELATIVE TO RECOMMENDATIONS TO THE GENERAL ASSEMBLY REGARDING THE ADMISSION OF NEW MEMBERS

TABLE OF CONTENTS

INTRODUCTORY NOTE

The material covered in this chapter is dealt with on lines similar to those followed in the previous supplements to the Repertoire. Part I sets forth in tabular form the applications considered and the decisions taken by the Council during the period under review. The other parts of this chapter concern the procedures employed by the Council in dealing with questions of admission.

Compared with the corresponding chapter in the previous volumes of the Repertoire, the proceedings of the Council in respect of admission of new Members in the years 1959-1963 have not involved so large a range of constitutional or procedural questions. However, during the period under review, the number of applications recommended by the Council has been considerably larger than in comparable periods in the past. Since the Council has not adopted new rules of procedure nor amended the existing rules relating to the admission of new Members, there is nothing to include under part II of the present chapter.

Part I

TABLE OF APPLICATIONS, 1959-1963, AND OF ACTIONS TAKEN THEREON BY THE SECURITY COUNCIL AND THE GENERAL ASSEMBLY

NOTE

The following table is a continuation of the one in the previous volumes, which should be consulted for an explanation of its organization. The modifications in the table introduced in the second supplement have been maintained. In addition, a slight modification has been introduced to include the information previously contained in part III in section E of the table, since the material is substantially the same.

A. APPLICATIONS RECOMMENDED BY THE SECURITY COUNCIL

In the period 1 January 1959-31 December 1963, the Security Council recommended the following States for admission to membership in the United Nations:

(i) At the 850th meeting on 26 January 1960, Cameroon was unanimously recommended.

(ii) At the 864th meeting on 31 May 1960, Togo was unanimously recommended.

(iii) At the 869th meeting on 28 June 1960, Mali (Federation of Mali) was unanimously recommended. 1/

(iv) At the 870th meeting on 29 June 1960, Madagascar (Malagasy Republic) was unanimously recommended. 2/

(v) At the 871st meeting on 5 July 1960, Somalia was unanimously recommended.

(vi) At the 872nd meeting on 7 July 1960, Congo (Leopoldville) was unanimously recommended. 3/

(vii) At the 891st meeting on 23 August 1960, Dahomey was unanimously recommended.

(viii) At the 891st meeting on 23 August 1960, Niger was unanimously recommended.

(ix) At the 891st meeting on 23 August 1960, Upper Volta was unanimously recommended.

(x) At the 891st meeting on 23 August 1960, the Ivory Coast was unanimously recommended.

(xi) At the 891st meeting on 23 August 1960, Chad was unanimously recommended.

(xii) At the 891st meeting on 23 August 1960, Congo (Brazzaville) was unanimously recommended. 4/

(xiii) At the 891st meeting on 23 August 1960, Gabon was unanimously recommended.

(xiv) At the 891st meeting on 23 August 1960, the Central African Republic was unanimously recommended.

(xv) At the 892nd meeting on 24 August 1960, Cyprus was unanimously recommended.

(xvi) At the 907th meeting on 28 September 1960, Senegal was unanimously recommended.

(xvii) At the 907th meeting on 28 September 1960, Mali was unanimously recommended.

(xviii) At the 908th meeting on 7 October 1960, Nigeria was unanimously recommended.

(xix) At the 968th meeting on 26 September 1961, Sierra Leone was unanimously recommended.

(xx) At the 971st meeting on 25 October 1961, Mongolia was recommended by 9 votes in favour, none against, with 1 abstention. 5/

1/ The Federation of Mali later became two States (Senegal and Mali) which requested and were granted recommendations for admission separately (see (xvi) and (xvii)).

2/ The name "Malagasy Republic" was used in the first Security Council documents concerning this State. However, in subsequent documents it has been designated as "Madagascar".

3/ Concerning a possible duplication of names between the Republic of the Congo whose application for admission was being considered at the 872nd meeting, and the name of a neighbouring State whose application for admission would be forthcoming, the President (Ecuador) stated that any change in name resulting from consultations between the two neighbouring States would not invalidate the Council's decision. [872nd meeting, paras. 117-119.]

4/ Ibid.

5/ One member of the Council did not participate in the vote.

(xxi) At the 971st meeting on 25 October 1961, Mauritania was recommended by 9 votes in favour, 1 against, with 1 abstention.

(xxii) At the 986th meeting on 14 December 1961, Tanganyika was unanimously recommended.

(xxiii) At the 1017th meeting on 26 July 1962, Rwanda was unanimously recommended.

(xxiv) At the 1017th meeting on 26 July 1962, Burundi was unanimously recommended.

(xxv) At the 1018th meeting on 12 September 1962, Jamaica was unanimously recommended.

(xxvi) At the 1018th meeting on 12 September 1962, Trinidad and Tobago was unanimously recommended.

(xxvii) At the 1020th meeting on 4 October 1962, Algeria was recommended by 10 votes in favour, none against, with 1 abstention.

(xxviii) At the 1021st meeting on 15 October 1962, Uganda was unanimously recommended.

(xxix) At the 1034th meeting on 7 May 1963, Kuwait was unanimously recommended.

(xxx) At the 1084th meeting on 16 December 1962, Zanzibar was unanimously recommended.

(xxxi) At the 1084th meeting on 16 December 1963, Kenya was unanimously recommended.

B. APPLICATIONS WHICH FAILED TO OBTAIN A RECOMMENDATION

During the period under review the following applications failed to obtain the Council's recommendation upon their initial consideration but were recommended upon reconsideration.

(i) Mauritania[6]

(ii) Kuwait[7]

C. DISCUSSION OF THE QUESTION IN THE COUNCIL FROM 1959-1963

[As in the Supplement, 1956-1958, the system of grouping the discussion under "debates", used for the sake of convenience in the earlier volumes, is not followed in the present chapter as it is unsuited to the nature of the proceedings of the Council during the period under review.]

The Council has held a total of twenty-five meetings[8] on questions of admission during this period of five years; except in one case[9] all involved discussion of the applications of newly independent States.

6/ At the 911th meeting on 3/4 December 1960, Mauritania failed to obtain a recommendation owing to the negative vote of a permanent member. The application was reconsidered and a recommendation adopted at the 971st meeting.

7/ At the 985th meeting on 30 November 1961, Kuwait failed to obtain a recommendation owing to the negative vote of a permanent member. The application was reconsidered and a recommendation adopted at the 1034th meeting.

8/ 850th (26 January 1960), 864th (31 May 1960), 869th (28 June 1960), 870th (29 June 1960), 871st (5 July 1960), 872nd (7 July 1960), 890th and 891st (both on 23 August 1960), 892nd (24 August 1960), 907th (28 September 1960), 908th (7 October 1960), 911th (3/4 December 1960), 968th and 969th (both on 26 September 1961), 970th (2 October 1961), 971st (25 October 1961), 984th and 985th (both on 30 November 1961), 986th (14 December 1961), 1017th (26 July 1962), 1018th (12 September 1962), 1020th (4 October 1962), 1021st (15 October 1962), 1034th (7 May 1963), and 1084th (16 December 1963).

9/ Mongolia, whose application had first been considered by the Security Council at its 57th meeting on 29 August 1946.

D. APPLICATIONS PENDING ON 1 JANUARY 1959

Applicant	Date of application	Document
Mongolian People's Republic	24 June 1946	O. R., Suppl. 4, 1st yr., 2nd series, annex 6 (3), pp. 48-49 (S/95)
Republic of Korea . .	19 January 1949	O. R., Suppl. Feb. 1949, 4th yr., p. 5 (S/1238)
Democratic People's Republic of Korea .	9 February 1949	O. R., 12, 4th yr., p. 18 (S/1247)
Viet-Nam.	17 December 1951	O. R., 7th yr., Suppl. for Jan.-Mar. 1952, p. 1 (S/2446)
Democratic Republic of Viet-Nam.	(i) 22 November 1948[a]	O. R., 7th yr., Suppl. for July-Sept. 1952, pp. 57-58 (S/2780)
	(ii) 29 December 1951	O. R., 7th yr., Suppl. for Jan.-Mar. 1952, pp. 3-4 (S/2466)

a/ Circulated on 17 September 1952 as S/2780. (See Repertoire, Suppl. 1952-1955, p. 91, Case 1.)

E. APPLICATIONS SUBMITTED BETWEEN 1 JANUARY 1959 AND 31 DECEMBER 1963[a]

Applicant	Date of application	Document[b]
(xii) IN 1959		
(No applications were submitted in 1959)		
(xiii) IN 1960		
Cameroon	13 January 1960	O. R., 15th yr., Suppl. for Jan.-Mar. 1960, pp. 1-2 (S/4256)
Togo	20 May 1960	O. R., 15th yr., Suppl. for Apr.-June 1960, p. 12 (S/4318)
Mali (Federation of Mali)	23 June 1960	Ibid., p. 34 (S/4347)
Madagascar (Malagasy Republic)	26 June 1960	Ibid., pp. 35-36 (S/4352/Rev.1)
Somalia	1 July 1960	O. R., 15th yr., Suppl. for July-Sept. 1960, p. 1 (S/4360)
Congo (Leopoldville)	1 July 1960	Ibid., p. 2 (S/4361)
Dahomey	2 August 1960	Ibid., p. 95 (S/4428)
Niger	7 August 1960	Ibid., p. 95 (S/4429)
Upper Volta	7 August 1960	Ibid., p. 96 (S/4430)
Ivory Coast	7 August 1960	Ibid., p. 96 (S/4431)
Chad	12 August 1960	Ibid., p. 97 (S/4434)
Congo (Brazzaville)	15 August 1960	Ibid., p. 97 (S/4433)
Cyprus	16 August 1960	Ibid., p. 98 (S/4435)
Gabon	17 August 1960	Ibid., p. 98 (S/4436)
Central African Republic	22 August 1960	Ibid., p. 116 (S/4455)
Senegal	20 September 1960	Ibid., pp. 175-176 (S/4530)
Mali	22 September 1960	Ibid., p. 206 (S/4535)
Nigeria	1 October 1960	O. R., 15th yr., Suppl. for Oct.-Dec. 1960, pp. 1-2 (S/4545)
Mauritania	28 November 1960	Ibid., p. 59 (S/4563)
(xiv) IN 1961		
Sierra Leone	27 April 1961	O. R., 16th yr., Suppl. for Apr.-June 1961, p. 37 (S/4797)
Kuwait	30 June 1961	O. R., 16th yr., Suppl. for July-Sept. 1961, p. 4 (S/4852)
Tanganyika	9 December 1961	O. R., 16th yr., Suppl. for Oct.-Dec. 1961, p. 182-183 (S/5017)
(xv) IN 1962		
Rwanda	27 June 1962	O. R., 17th yr., Suppl. for July-Sept. 1962, p. 41 (S/5137)
Burundi	4 July 1962	Ibid., pp. 42-43 (S/5139)
Jamaica	6 August 1962	Ibid., pp. 48-49 (S/5154)
Trinidad and Tobago	6 September 1962	Ibid., pp. 51-52 (S/5162 and Add.1)

E. APPLICATIONS SUBMITTED BETWEEN 1 JANUARY 1959 AND 31 DECEMBER 1963[a] (cont'd)

Applicant	Date of application	Document[b]
Algeria	30 September 1962	O. R., 17th yr., Suppl. for Oct.-Dec. 1962, p. 143 (S/5172/Rev.1)
Uganda	9 October 1962	Ibid., p. 144 (S/5176)
(xvi) IN 1963		
Kuwait.	20 April 1963[c]	O. R., 18th yr., Suppl. for Apr.-June 1963, p. 31 (S/5294)
Zanzibar	10 December 1963	O. R., 18th yr., Suppl. for Oct.-Dec. 1963, p. 109 (S/5478)
Kenya	12 December 1963	Ibid., pp. 111-112 (S/5482)

[a] The material set forth in this table is a continuation, for the period covered by this Supplement, of the historical data included in Part III of previous volumes concerning presentation of applications.

[b] Includes the formal declaration in each case.

[c] Letter from Foreign Minister of Kuwait which referred to the previously submitted application (S/4852) and requested that it be reconsidered by the Security Council.

F. VOTES IN THE SECURITY COUNCIL (1959-1963) ON DRAFT RESOLUTIONS AND AMENDMENTS CONCERNING APPLICATIONS FOR ADMISSION TO MEMBERSHIP IN THE UNITED NATIONS

Draft resolution, etc.	Subject of vote	Vote			Meeting and date	Result of vote[a]
		For	Against	Abstention		
CAMEROON, French-Tunisian d.r. (S/4258 and Add.1) recommending admission	Same	Unanimous			850th, 26.1.60	Adopted
TOGO, French-Tunisian d.r. (S/4322/Rev.2) recommending admission	Same	Unanimous			864th, 31.5.60	Adopted
MALI (Fed. of Mali), French-Tunisian d.r. (S/4350) recommending admission	Same	Unanimous			869th, 28.6.60	Adopted
MADAGASCAR, French-Tunisian d.r. (S/4354) recommending admission	Same	Unanimous			870th, 29.6.60	Adopted
SOMALIA, Italian-Tunisian-U.K. d.r. (S/4363) recommending admission	Same	Unanimous			871st, 5.7.60	Adopted
CONGO (Leopoldville), Tunisian d.r. (S/4369) recommending admission	Same	Unanimous			872nd, 7.7.60	Adopted
DAHOMEY, French-Tunisian d.r. (S/4438) recommending admission	Same	Unanimous			891st, 23.8.60	Adopted
NIGER, French-Tunisian d.r. (S/4439) recommending admission	Same	Unanimous			891st, 23.8.60	Adopted
UPPER VOLTA, French-Tunisian d.r. (S/4440) recommending admission	Same	Unanimous			891st, 23.8.60	Adopted
IVORY COAST, French-Tunisian d.r. (S/4441) recommending admission	Same	Unanimous			891st, 23.8.60	Adopted

F. VOTES IN THE SECURITY COUNCIL (1959-1963) ON DRAFT RESOLUTIONS AND AMENDMENTS CONCERNING APPLICATIONS FOR ADMISSION TO MEMBERSHIP IN THE UNITED NATIONS (cont'd)

Draft resolution, etc.	Subject of vote	Vote			Meeting and date	Result of vote[a]
		For	Against	Abstention		
CHAD, French-Tunisian d.r. (S/4442) recommending admission	Same	Unanimous			891st, 23.8.60	Adopted
CONGO (Brazzaville) French-Tunisian d.r. (S/4443) recommending admission	Same	Unanimous			891st, 23.8.60	Adopted
GABON, French-Tunisian d.r. (S/4444) recommending admission	Same	Unanimous			891st, 23.8.60	Adopted
CENTRAL AFRICAN REPUBLIC French-Tunisian d.r. (S/4456) recommending admission	Same	Unanimous			891st, 23.8.60	Adopted
CYPRUS, Ceylon-U.K. d.r. (S/4458) recommending admission	Same	Unanimous			892nd, 24.8.60	Adopted
SENEGAL, French-Tunisian d.r. (S/4538) recommending admission	Same	Unanimous			907th, 28.9.60	Adopted
MALI, Ceylon-French-Tunisian d.r. (S/4539) recommending admission	Same	Unanimous			907th, 28.9.60	Adopted
NIGERIA, Ceylon-Tunisia-U.K. d.r. (S/4548) recommending admission	Same	Unanimous			908th, 7.10.60	Adopted
MAURITANIA, French-Tunisian d.r. (S/4567/Rev.1) recommending admission	Same	8	2[b]	1	911th, 3/4.12.60	Not adopted
SIERRA LEONE, Ceylon-Liberia-U.K. d.r. (S/4951) recommending admission	Same	Unanimous			968th, 26.9.61	Adopted
MONGOLIA, USSR d.r. (S/4950) recommending admission	Same	9	0	1[c]	971st, 25.10.61	Adopted
MAURITANIA, French-Liberian d.r. (S/4967) recommending admission	Same	9	1	1	971st, 25.10.61	Adopted
KUWAIT, United Arab Republic d.r. (S/5006) recommending admission	Same	10	1[d]	0	985th, 30.11.61	Not adopted
TANGANYIKA, Ceylon-Liberia-U.A.R.-U.K. d.r. (S/5021) recommending admission	Same	Unanimous			986th, 14.12.61	Adopted
RWANDA, France-Ghana-Ireland-U.A.R.-Venezuela d.r. (S/5147) recommending admission	Same	Unanimous			1017th, 26.7.62	Adopted
BURUNDI, France-Ghana-Ireland-U.A.R.-Venezuela d.r. (S/5148) recommending admission	Same	Unanimous			1017th, 26.7.62	Adopted
JAMAICA, Ghana-U.K. d.r. (S/5164) recommending admission	Same	Unanimous			1018th, 12.9.62	Adopted

F. VOTES IN THE SECURITY COUNCIL (1959-1963) ON DRAFT RESOLUTIONS AND AMENDMENTS CONCERNING APPLICATIONS FOR ADMISSION TO MEMBERSHIP IN THE UNITED NATIONS (cont'd)

Draft resolution, etc.	Subject of vote	Vote			Meeting and date	Result of vote[a]
		For	Against	Abstention		
TRINIDAD AND TOBAGO, Ghana-U.K. d.r. (S/5165) recommending admission	Same	Unanimous			1018th, 12.9.62	Adopted
ALGERIA, Chile-France-Ghana-Ireland-Romania-U.S.S.R.-U.A.R.-U.K.-U.S.A.-Venezuela d.r. (S/5173) recommending admission	Same	10	0	1	1020th, 4.10.62	Adopted
UGANDA, Ghana-U.A.R.-U.K. d.r. (S/5177) recommending admission	Same	Unanimous			1021st, 15.10.62	Adopted
KUWAIT, no draft resolution was submitted. The President announced the decision of the Council	—	Unanimous			1034th, 7.5.63	Adopted
ZANZIBAR, Ghana-Morocco-U.K. d.r. (S/5483 and Add.1) recommending admission	Same	Unanimous			1084th, 16.12.63	Adopted
KENYA, Ghana-Morocco-U.K. d.r. (S/5484 and Add.1) recommending admission	Same	Unanimous			1084th, 16.12.63	Adopted

[a] Both the subject and the result of the vote are usually given in the form announced by the President.

[b] Includes negative vote cast by permanent member.

[c] One permanent member did not take part in the voting.

[d] Negative vote cast by permanent member.

G. VOTES IN THE GENERAL ASSEMBLY (1959-1963) ON DRAFT RESOLUTIONS CONCERNING SECURITY COUNCIL RECOMMENDATIONS FOR ADMISSION TO MEMBERSHIP IN THE UNITED NATIONS

Applications and G.A. resolutions	Plenary meeting and date	Vote			Result of proceedings
		For	Against	Abstentions	
1960					
Cameroon[a]	864th plen.mtg., 20.9	Acclamation			Admitted
Togo[b]	864th plen.mtg., 20.9	Acclamation			Admitted
Malagasy[c]	864th plen.mtg., 20.9	Acclamation			Admitted
Somalia[d]	864th plen.mtg., 20.9	Acclamation			Admitted
Congo (Leopoldville)[e]	864th plen.mtg., 20.9	Acclamation			Admitted
Dahomey[f]	864th plen.mtg., 20.9	Acclamation			Admitted
Niger[g]	864th plen.mtg., 20.9	Acclamation			Admitted
Upper Volta[h]	864th plen.mtg., 20.9	Acclamation			Admitted
Ivory Coast[i]	864th plen.mtg., 20.9	Acclamation			Admitted
Chad[j]	864th plen.mtg., 20.9	Acclamation			Admitted
Congo (Brazzaville)[k]	864th plen.mtg., 20.9	Acclamation			Admitted
Gabon	864th plen.mtg., 20.9	Acclamation			Admitted
Central African Republic[m] . .	864th plen.mtg., 20.9	Acclamation			Admitted
Cyprus[n]	864th plen.mtg., 20.9	Acclamation			Admitted
Senegal[o]	876th plen.mtg., 28.9	Acclamation			Admitted
Mali[p]	876th plen.mtg., 28.9	Acclamation			Admitted
Nigeria[q]	893rd plen.mtg., 7.10	Acclamation			Admitted
1961					
Sierra Leone[r]	1018th plen.mtg., 27.9	Acclamation			Admitted
Mongolia[s]	1043rd plen.mtg., 27.10	Acclamation			Admitted
Mauritania[t]	1043rd plen.mtg., 27.10	68	13	20	Admitted
Tanganyika[u]	1078th plen.mtg., 14.12	Acclamation			Admitted

G. VOTES IN THE GENERAL ASSEMBLY (1959-1963) ON DRAFT RESOLUTIONS CONCERNING SECURITY COUNCIL RECOMMENDATIONS FOR ADMISSION TO MEMBERSHIP IN THE UNITED NATIONS (cont'd)

Applications and G.A. resolutions	Plenary meeting and date	Vote			Result of proceedings
		For	Against	Abstentions	
1962					
Rwanda [v]	1122nd plen.mtg., 18.9	Acclamation			Admitted
Burundi [w]	1122nd plen.mtg., 18.9	Acclamation			Admitted
Jamaica [x]	1122nd plen.mtg., 18.9	Acclamation			Admitted
Trinidad and Tobago [y]	1122nd plen.mtg., 18.9	Acclamation			Admitted
Algeria [z]	1146th plen.mtg., 8.10	Acclamation			Admitted
Uganda [aa]*	1158th plen.mtg., 25.10	Acclamation			Admitted
1963					
Kuwait [bb]	1203rd plen.mtg., 14.5	Acclamation			Admitted
Zanzibar [cc]	1281st plen.mtg., 16.12	Acclamation			Admitted
Kenya [dd]	1281st plen.mtg., 12.16	Acclamation			Admitted

[a] G. A. res. 1476 (XV).
[b] G. A. res. 1477 (XV).
[c] G. A. res. 1478 (XV).
[d] G. A. res. 1479 (XV).
[e] G. A. res. 1480 (XV).
[f] G. A. res. 1481 (XV).
[g] G. A. res. 1482 (XV).
[h] G. A. res. 1483 (XV).
[i] G. A. res. 1484 (XV).
[j] G. A. res. 1485 (XV).
[k] G. A. res. 1486 (XV).
[l] G. A. res. 1487 (XV).
[m] G. A. res. 1488 (XV).
[n] G. A. res. 1489 (XV).
[o] G. A. res. 1490 (XV).
[p] G. A. res. 1491 (XV).
[q] G. A. res. 1492 (XV).
[r] G. A. res. 1623 (XVI).
[s] G. A. res. 1630 (XVI).
[t] G. A. res. 1631 (XVI).
[u] G. A. res. 1667 (XVI).
[v] G. A. res. 1748 (XVII).
[w] G. A. res. 1749 (XVII).
[x] G. A. res. 1750 (XVII).
[y] G. A. res. 1751 (XVII).
[z] G. A. res. 1754 (XVII).
[aa] G. A. res. 1758 (XVII).
[bb] G. A. res. 1872 (S-IV).
[cc] G. A. res. 1975 (XVIII).
[dd] G. A. res. 1976 (XVIII).

Part II

**CONSIDERATION OF THE ADOPTION OR AMENDMENT OF RULES 58, 59 AND 60 OF THE PROVISIONAL RULES OF PROCEDURE

Part III

PRESENTATION OF APPLICATIONS

NOTE

The material concerning the presentation of applications is substantially the same, for the period under review, as the list of applications submitted between 1 January 1959 and 31 December 1963 which appears in part I, section E of the Table of applications. Therefore, to avoid duplication, the historical data relating to the presentation of applications which appeared in part III in previous volumes may be found here in section E of the above Table.

Part IV

REFERENCE OF APPLICATIONS TO THE COMMITTEE ON THE ADMISSION OF NEW MEMBERS

NOTE

During the period covered by this volume, the Security Council did not refer any application to its Committee on the Admission of New Members, nor was any proposal to refer applications to the Committee made during this period. An instance of Presidential reference to the matter is included (Case 1) to illustrate the Council's established practice not to refer applications for admission to the Committee; in several instances [10] the Council acted directly on the applications without adverting to the question of reference to the Committee. Another case (Case 2) deals with the action taken by the Council in connexion with the application of States, which had previously been under United Nations Trusteeship, recommended by General Assembly resolution for admission. A further case (Case 3) concerns reconsideration by the Council of applications of States which, after failing to win the recommendation of the Council, had been declared by the General Assembly to fulfil the conditions for membership set forth in Article 4 of the Charter.

[10] See foot-note 11 below.

A. BEFORE A RECOMMENDATION HAS BEEN FORWARDED OR A REPORT SUBMITTED TO THE GENERAL ASSEMBLY

**1. Applications referred to the Committee by the President

**2. Applications referred to the Committee by decisions of the Security Council

3. Applications considered by the Security Council without reference to the Committee

CASE 1

At the 850th meeting on 26 January 1960, in connexion with the application of Cameroon, the President in accordance with the procedure adopted by the Security Council in similar cases suggested:

"that the Council should decide, as provided for in rule 59 of the provisional rules of procedure, to examine this application by Cameroon directly, without referring it to the Committee on the Admission of New Members."

There being no objection, the Council so decided and proceeded to consider and to adopt a draft resolution recommending the admission of Cameroon.[11]

CASE 2

At the 1017th meeting on 26 July 1962, in connexion with the applications of Rwanda and Burundi, the President recalled General Assembly resolution 1746 (XVI) of 27 June 1962, in which the Assembly recommended:

"that, after the proclamation of independence on 1 July 1962, Rwanda and Burundi should be admitted as Members of the United Nations under Article 4 of the Charter."

The President stated:

"In view of that recommendation of the General Assembly, it would appear to me that the Council might well decide, in accordance with the provisions of rule 59 of the provisional rules of procedure, that it is unnecessary to refer these two applications to the Committee on the Admission of New Members."

There being no objection, the Council so decided and proceeded to consider and to adopt the draft resolutions recommending the admission of Rwanda and Burundi.[12]

**4. Applications reconsidered by the Security Council after reference to the Committee

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

2. Applications reconsidered by the Security Council without reference to the Committee

CASE 3

At the 971st meeting on 25 October 1961, in connexion with the applications of Mongolia and Mauritania, the representative of the USSR recalled General Assembly resolution 1602 (XV) of 19 April 1961, in which the Assembly declared that:

"the Mongolian People's Republic is a peace-loving State within the meaning of Article 4 of the Charter of the United Nations, that it is able and willing to carry out the obligations of the Charter, and that it should, in consequence, be admitted to membership in the United Nations."

The representative of France also referred to this General Assembly resolution and the declaration therein that:

"the Islamic Republic of Mauritania is a peace-loving State within the meaning of Article 4 of the Charter, that it is able and willing to carry out the obligations of the Charter and that it should, in consequence, be admitted to membership in the United Nations."

The General Assembly resolution was also mentioned by the representatives of Liberia and the United Kingdom.

The Council voted on the draft resolutions[13] to recommend admission of Mongolia and Mauritania. No suggestion or proposal was made that either application should be referred to the Committee on the Admission of New Members.[14]

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[11] 850th meeting: para. 23. Similar suggestions were made by the President and adopted by the Council in connexion with the application of Togo (864th meeting, para. 2); Mali (Federation of Mali), at the 869th meeting, para. 2; Madagascar (870th meeting, para. 2); Somalia (871st meeting, para. 8); Congo (Leopoldville), at the 872nd meeting, paras. 5-6; Dahomey, Niger, Upper Volta, Ivory Coast, Congo (Brazzaville), Chad, Gabon and Central African Republic (890th meeting, para. 2); Cyprus (892nd meeting, para. 1); Senegal and Mali (907th meeting, para. 7) and Nigeria (908th meeting, para. 6). In several other instances, the Council did not consider the question of referral at all nor was mention made of rule 59 by the President. These instances were in connexion with the applications of Mauritania (911th meeting); Sierra Leone, Mongolia and Mauritania (968th meeting); Kuwait (984th meeting); Tanganyika (986th meeting); Jamaica, and Trinidad and Tobago (1015th meeting); Algeria (1020th meeting); Uganda (1021st meeting); Kuwait (reconsideration, 1034th meeting); Zanzibar and Kenya (1084th meeting).

[12] 1017th meeting: paras. 6-7.

[13] USSR draft resolution recommending admission of Mongolia (S/4950, same text as S/4908, O.R. 16th year, Suppl. for Oct.-Dec. 1961, p. 65); French-Liberian draft resolution recommending admission of Mauritania (S/4967, same text as S/4969, ibid., p. 66).

[14] For texts of relevant statements, see: 971st meeting: France, para. 61; Liberia, para. 90; USSR, para. 13; United Kingdom, para. 211; United States, para. 34.

Part V

PROCEDURES IN THE CONSIDERATION OF APPLICATIONS WITHIN THE SECURITY COUNCIL

NOTE

During the period under review, the Council generally voted upon applications in the chronological order of their submission. Votes on applications were taken separately in the order in which the applications appeared on the agenda. In five instances [15] applications were discussed simultaneously.

The order in which applications should figure on the agenda was discussed on three occasions.[16] In the last of these instances, the Council reversed the order in which the applications had previously appeared on the agenda and decided to consider them in the chronological order of their submission. Council members, however, when indicating their positions on the first application at the same time stated their positions on the second application.

In another instance,[17] the Council first voted on an application and at the next meeting heard statements by Council members in connexion with that application, already recommended.

In every case but one, submission of a draft resolution has preceded the vote on an application. On one occasion,[18] when none of the Council members had taken the initiative of such submission, the President declared, without objection, that the statements made in the Council warranted the conclusion that it recommended the admission of the applicant State.

A. DISCUSSION OF APPLICATIONS

1. Order of the discussion of applications

CASE 4

At the 890th meeting on 23 August 1960, the Council adopted the following agenda:

"Admission of new Members to the United Nations

"Letter dated 2 August 1960 from the Prime Minister of the Republic of Dahomey addressed to the Secretary-General (S/4428);

"Letter dated 7 August 1960 from the President of the Council of Ministers of the Republic of the Niger addressed to the Secretary-General (S/4429);

"Letter dated 7 August 1960 from the President of the Republic of Upper Volta addressed to the Secretary-General (S/4430);

"Letter dated 7 August 1960 from the Chief of State of the Republic of the Ivory Coast addressed to the Secretary-General (S/4431);

"Telegram dated 15 August 1960 from the President of the Republic of the Congo addressed to the Secretary-General (S/4433);

"Letter dated 12 August 1960 from the President of the Republic of Chad addressed to the Secretary-General (S/4434);

"Telegram dated 17 August 1960 from the President of the Gabon Republic addressed to the Secretary-General (S/4436);

"Telegram dated 22 August 1960 from the President of the Central African Republic addressed to the Secretary-General (S/4455)"

The President (France) noted that eight draft resolutions had been submitted jointly by France and Tunisia recommending the admission of the eight applicants to membership in the United Nations (S/4438, S/4439, S/4440, S/4441, S/4442, S/4443, S/4444 and S/4456), and suggested that the applications be considered directly, without reference to the Committee on the Admission of New Members. This procedure having been adopted, the Council considered the eight applications simultaneously. At the 891st meeting on the same day, the Council concluded its consideration of the applications and voted on them separately in the order in which they appeared on the agenda.[19]

CASE 5

At the 907th meeting on 28 September 1960, in connexion with the applications of Senegal and Mali, the President (Italy) stated:

"In connexion with the two applications before the Council, a draft resolution has been submitted by the delegations of France and Tunisia [S/4538] relating to the application of the Republic of Senegal, and another draft resolution has been submitted by the delegations of Ceylon, France and Tunisia [S/4539] relating to the application of the Republic of Mali."

The representative of France recalled that the Security Council at its 869th meeting on 28 June 1960 had adopted[20] a draft resolution[21] jointly submitted by France and Tunisia recommending to the General Assembly the admission of the Federation of Mali. Since then, events had led to the separation of the Federation into two independent parts, Senegal and Mali. This occurrence caused the General Assembly on 20 September 1960[22] to postpone its examination of the Security Council's recommendation of 28 June 1960. Thereafter Senegal and Mali had submitted two separate requests for admission.

The Council proceeded to consider the two requests for admission simultaneously and to vote on them

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[15] See Cases 4, 5, 9, 10 and foot-note 40.

[16] See Cases 6, 7 and 8.

[17] See Case 11.

[18] See Case 12.

[19] 890th meeting: President (France), paras. 1-2; 891st meeting: paras. 119-128.

[20] 869th meeting: para. 86.

[21] S/4350, same text as S/4357, O. R. 15th year, Suppl. for Apr.-June 1960, p. 37.

[22] GAOR, Fifteenth Session, Plenary Meetings, 864th meeting, paras. 55, 56.

separately in the order in which they appeared on the agenda.[23]

CASE 6

At the 911th meeting on 3 December 1960, the revised text of the provisional agenda included under item 2, Admission of new Members to the United Nations, the sub-items "Telegram dated 28 November 1960 from the Prime Minister of the Islamic Republic of Mauritania to the Secretary-General (S/4563 and Corr.1)" and "Letter dated 3 December 1960 from the Deputy Permanent Representative of the Union of Soviet Socialist Republics to the President of the Security Council (S/4569)".

The President, speaking as the representative of the USSR, proposed that the Council should take up first, as the first sub-item, the letter dated 3 December 1960 concerning the application of Mongolia for admission to the United Nations. In support of his proposal he pointed out that Mongolia had first submitted its application for admission in 1946 and had resubmitted it a number of times since. The second sub-item on the agenda would then be the application of Mauritania for admission.

Several members of the Council objected to the USSR proposal on the ground that the provisional agenda had originally included only the application of Mauritania; the revised provisional agenda, with the sub-item on Mongolia, had not been communicated to the members of the Council in time. The representative of the United States proposed to take a separate vote on the inclusion of the two sub-items appearing in the provisional agenda.

The USSR proposal, put to the vote first, was rejected.[24]

In the votes on the proposal of the United States, the Council decided to include the first sub-item relating to the admission of Mauritania,[25] and to reject inclusion of the second sub-item relating to the admission of Mongolia.[26]

The agenda, so amended, was then adopted,[27] and the Council proceeded[28] to consider and to vote on the application of Mauritania for admission.

CASE 7

At the 968th meeting on 26 September 1961, the provisional agenda included under item 2, Admission of new Members to the United Nations, the following sub-items:

"(a) Telegram dated 28 November 1960 from the Prime Minister of the Islamic Republic of Mauritania addressed to the Secretary-General (S/4563 and Corr.1);

"(b) Letter dated 3 December 1960 from the Deputy Permanent Representative of the Union of Soviet Socialist Republics addressed to the President of the Security Council (S/4569); letter dated 6 May 1961 from the Permanent Representative of the Union of Soviet Socialist Republics addressed to the President of the Security Council (S/4801);

"(c) Letter dated 27 April 1961 from the Minister for External Affairs of Sierra Leone addressed to the Secretary-General (S/4797)."

The representative of Ceylon requested that the application of Sierra Leone which appeared as sub-item (c) of item 2 of the agenda be transposed as sub-item (a). In the absence of objections it was so decided.[29]

The representative of the USSR proposed that sub-item (b) be retained in the same place as in the provisional agenda, and that the Council then decide on the inclusion of the remaining sub-item on Mauritania.

The proposal of the USSR concerning the place of the application of Outer Mongolia in the agenda was not adopted.[30]

In a separate vote, the Council included the sub-item relating to the application of Mauritania, which became sub-item (b).[31]

The Council then adopted[32] the agenda, as a whole, which thus included, in that order, the applications of Sierra Leone, Mauritania and Mongolia.[33]

CASE 8

At the 971st meeting on 25 October 1961, the provisional agenda included under item 2, Admission of new Members to the United Nations, the following sub-items:

"(a) Telegram dated 28 November 1960 from the Prime Minister of the Islamic Republic of Mauritania addressed to the Secretary-General (S/4563 and Corr.1)

"(b) Letter dated 3 December 1960 from the Deputy Permanent Representative of the Union of Soviet Socialist Republics addressed to the President of the Security Council (S/4569); letter dated 6 May 1961 from the Permanent Representative of the Union of Soviet Socialist Republics addressed to the President of the Security Council (S/4801)."

When opening the discussion on the adoption of the agenda, the President (Turkey) stated:

"... the two applications for membership included in our provisional agenda have been pending before the United Nations for some time. The Chair has considered it its duty to conduct a series of private

[23] For texts of relevant statements, see: 907th meeting: President (Italy), para. 8; France, paras. 11-16.

[24] 911th meeting: para. 93.

[25] Ibid., para. 97.

[26] Ibid., para. 98.

[27] Ibid., para. 98.

[28] For texts of relevant statements, see: 911th meeting: President (USSR), para. 4; Ceylon, paras. 35-36; France, para. 13; Italy, paras. 29-32; Poland, paras. 24-27; United States, paras. 18-20.

[29] 968th meeting: para. 65.

[30] Ibid., para. 70.

[31] Ibid., para. 73.

[32] Ibid., para. 78.

[33] For texts of relevant statements, see: 968th meeting: Ceylon, paras. 9, 13; USSR, paras. 21, 22; United Kingdom, para. 14.

consultations during the past weeks on these applications. It gives me great pleasure to announce that, as a result of these consultations, the Chair is now in a position to state its confidence that the outcome of our deliberations today will give satisfaction both to Mauritania and to the Mongolian People's Republic, the two applicants for membership. Again as a result of these consultations, the Chair has come to the conclusion that our proceedings today would be facilitated if we considered the two applications in the chronological order in which the respective countries applied for membership to the United Nations. This conclusion of the Chair has absolutely no other significance except as a practical and objective suggestion made, bearing in mind the duties of the Chair to give a fair chance to both applicants. I would therefore suggest that the Council take up first the application of the Mongolian People's Republic and, after we have concluded that part of our debate and voted upon the draft resolution on that item, that we should take up the item on the Islamic Republic of Mauritania. However, as is known, these two applications have figured in the same agenda for some time in the past. The Chair therefore considers that it would be of great help to our proceedings if, while we are discussing the item on the Mongolian People's Republic, the members of the Council would briefly indicate their respective positions regarding the next item, which will be the application of Mauritania. Needless to say, the members will have ample time to state their positions in greater detail during the subsequent debate."

The representative of China observed:

"The order of debate and voting which you, Mr. President, have just suggested is the so-called chronological order. In fact that reverses the order as established in the provisional agenda. That agenda was the result of a debate in this Council. I must state, Sir, that the procedure you have outlined is, to say the least, very unusual. I must, therefore, place on the record of the Council my objection. In view of the circumstances which you, Mr. President, were good enough to explain in your opening statement, I will not press the point."

The President repeated that his suggestion "had no significance except as regards the practical consideration" which he had outlined.

The agenda, as amended, was then adopted,[34] and the Council proceeded to consider the two applications in accordance with the President's suggestion, and to vote on them separately in the order which had been agreed upon.[35]

CASE 9

At the 1017th meeting on 26 July 1962, in connexion with the applications of Rwanda and Burundi, the President (Ghana) after his statement[36] concerning the recommendation in General Assembly resolution 1746 (XVI), proposed that "in order to expedite the discussion I should like to propose that representatives address themselves to the applications together in their speeches". He added that once the discussion had been concluded, the Council would take separate votes on the two applications.[37]

The Council so decided, and proceeded to consider simultaneously both applications and to vote on them separately in the order in which they had been submitted.[38]

CASE 10

At the 1018th meeting on 12 September 1962, in connexion with the applications of Jamaica and Trinidad and Tobago, the President (Romania) stated that "with a view to speeding up the discussions ... in their statements representatives may, if they wish, deal with both the applications before the Council". He added that "after the discussion the Council will vote separately on the two applications for admission".[39]

The Council proceeded to consider the two applications in accordance with the President's suggestion and to vote on them separately in the order in which they had been submitted.[40]

**2. Documentation submitted to the Security Council

B. VOTING ON APPLICATIONS

**1. Omission of voting on applications when previous position of members is unchanged

2. Time and order of voting on applications

CASE 11

At the 968th meeting on 26 September 1961, following the Council's decision[41] to place the item relating to the application of Sierra Leone first on the agenda, the representative of Ceylon requested that, in view of the unanimity which seemed to exist with regard to the admission of Sierra Leone, the Council take up and conclude consideration of that item before adjourning.

The representative of the USSR then proposed that a vote be taken on this question, and that all speeches on this admission be postponed until the following meeting of the Council.

The Council so decided, and at the same meeting voted to recommend the admission of Sierra Leone to membership.[42]

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[34] 971st meeting: para. 5.

[35] For texts of relevant statements, see: 971st meeting: President (Turkey), paras. 2-5; China, para. 4.

[36] See Case 2.

[37] 1017th meeting: para. 9.

[38] 1017th meeting: paras. 123-124.

[39] 1018th meeting: para. 9.

[40] 1018th meeting: paras. 119-119. An essentially identical instance occurred in connexion with the applications of Zanzibar and Kenya, 1084th meeting: paras. 1, 121-123.

[41] See Case 7.

[42] 968th meeting, paras. 84-85.

At its 969th meeting, on the same day, the Council heard the statements of members of the Council on the application of Sierra Leone and then adjourned.[43]/

**3. Consideration of a proposal recommending the admission of a number of applicant States

4. The question of submission of a draft resolution with a view to voting on an application

CASE 12

At the 1034th meeting on 7 May 1963, in connexion with the request by Kuwait that its application for admission be reconsidered by the Council, the representative of Morocco stated:

"Today the Council has met to reconsider Kuwait's application for membership. It is important to note that, this time, the Arab delegation serving on the Security Council has not taken the initiative in proposing that Kuwait should be admitted to membership. My delegation is sure, however, that the authority and esteem which Kuwait has won for itself in the last two years, even outside the Arab family, and the importance attached to its participation in the work of the United Nations, make such a step on our part unnecessary. The widely representative nature of this Council will give the opinions expressed in it on this question particular value and importance."

After all the other Council members had expressed their views on the matter, the President (France) stated:

"I take it that in view of the statements which have just been made by the members of the Security Council, I may conclude that the Council unanimously recommends the admission of the State of Kuwait to the United Nations."

He then read out the text of a communication he proposed to address to the Secretary-General of the United Nations, in accordance with paragraph 2 of rule 60 of the provisional rules of procedure of the Council, and after inquiring whether the members of the Council had "any objections to make to the conclusions which I have drawn from their statements", declared that the Council had so decided.[44]/

**5. Conflict between a proposal to recommend admission and a proposal to postpone voting

**6. Consideration of a draft resolution to note the qualifications of an applicant for membership

[43]/ For texts of relevant statements, see: 968th meeting: President (Liberia), paras. 84-86; Ceylon, para. 80; USSR, para. 82; United Arab Republic, para. 81; United Kingdom, para. 83; 969th meeting: President (Liberia), paras. 1, 58; Ecuador, paras. 59-61.

[44]/ For texts of relevant statements, see: 1034th meeting: President (France), paras. 98-100; Morocco, para. 41.

Part VI

**THE ROLE OF THE GENERAL ASSEMBLY AND THE SECURITY COUNCIL

Chapter VIII

CONSIDERATION OF QUESTIONS UNDER THE COUNCIL'S RESPONSIBILITY FOR THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY

TABLE OF CONTENTS

INTRODUCTORY NOTE

The principles underlying the organization and presentation of the material presented in chapters VIII-XII of this Supplement are the same as for the previous volumes of the Repertoire. Those volumes should be consulted for a full statement of such principles.

Chapter VIII indicates the chain of proceedings on the substance of each of the questions included in 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 and 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.

Chapter VIII, as an outline of the proceedings of the Council in respect of the questions included in its agenda, constitutes a framework within which the ancillary legal and constitutional discussion recorded in chapters X to XII may be considered. The chapter is, therefore, 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.

The questions are dealt with in the chronological order of their inclusion in the agenda of the Council [1/] and with regard to the Palestine question [2/] and the India-Pakistan question, [3/] which were included in the Council's agenda before the period under review, in the order of resumption of their consideration by the Council. In respect of each question, there is given at the outset a summary of the case presented to the Council, together with a summary of the contentions made in rebuttal.

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 practise 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.

As in the previous volumes of the Repertoire, an analytical table of measures adopted by the Council arranged broadly by type of measure has been included as part I of chapter VIII. This table should 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. Although the main headings are the same as those appearing in the Repertoire, Supplement 1956-1958, the sub-headings have been considerably expanded to include types of measures not previously adopted by the Council.

Much of the activity of the Council in connexion with Chapters VI and VII of the Charter has taken place through the instrumentality of subsidiary organs established to operate in the area of the dispute. As previously, no attempt has been made to reproduce within the Repertoire material relating to the organization and procedures of such subsidiary bodies save where questions relating to their organization and procedure have constituted an aspect of the proceedings of the Council itself.

1/ For a tabulation of the data on submission, see chapter X, part III. As indicated in the Editorial Note, the questions included in the agenda of the Council during the years 1959 to 1963 appear under conventional short titles.

2/ Repertoire of the Practice of the Security Council 1946-1951, pp. 325-344; ibid., Supplement, 1952-1955, pp. 110-118; ibid., Supplement, 1956-1958, pp. 93-105.

3/ Repertoire of the Practice of the Security Council, 1946-1951, pp. 344-352; ibid., Supplement 1952-1955, pp. 107-109; ibid., Supplement, 1956-1958, pp. 112-115.

Part I

ANALYTICAL TABLE OF MEASURES ADOPTED BY THE SECURITY COUNCIL

NOTE

As in the previous volumes of the Repertoire, 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 documents.

I. PRELIMINARY MEASURES FOR THE ELUCIDATION OF FACT

A. Hearing of interested governments and authorities.
(For invitations extended to interested governments and authorities, see chapter III).

B. Appointment of a sub-committee to examine evidence and to conduct inquiries.

Report by the Secretary-General relating to Laos:
Decision of 7 September 1959 (S/4216).

C. Holding of an investigation.
The situation in the Republic of the Congo:
Decision of 21 February 1961 (S/4741), part A, para. 4.

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) Complaint concerning South Africa (Letter of 25 March 1960):
Decision of 1 April 1960 (S/4300), para. 1.
(ii) Complaint by Argentina (Eichmann Case):
Decision of 23 June 1960 (S/4349), para. 1.
(iii) The situation in Angola:
Decision of 9 June 1961 (S/4835), preamble.
(iv) The situation in territories in Africa under Portuguese administration:
Decision of 31 July 1963 (S/5380), para. 4.
(v) Question of race conflict in South Africa:
Decision of 7 August 1963 (S/5386), preamble.
Decision of 4 December 1963 (S/5471), preamble.

III. INJUNCTIONS TO GOVERNMENTS AND AUTHORITIES INVOLVED IN HOSTILITIES

A. Precautionary action.
(i) Complaint by Senegal:
Decision of 24 April 1963 (S/5293), para. 2.
(ii) Reports by the Secretary-General concerning Yemen:
Decision of 11 June 1963 (S/5331), para. 2.

B. Cessation of hostilities.
(i) Complaint by Tunisia:
Decision of 22 July 1961 (S/4882), para. 1.
(ii) The Palestine question:
Decision of 9 April 1962 (S/5111), preamble and para. 5.

C. Establishment and maintenance of an armistice.
The Palestine question:
Decision of 11 April 1961 (S/4788), para. 3.
Decision of 9 April 1962 (S/5111), paras. 6 and 7.

IV. MEASURES IN CONNEXION WITH INJUNCTIONS TO BE TAKEN BY THE GOVERNMENTS AND AUTHORITIES DIRECTLY INVOLVED IN HOSTILITIES

A. Withdrawal of fighting personnel.
Complaint by Tunisia:
Decision of 22 July 1961 (S/4882), para. 1.

B. Co-operation of the parties to prevent recurrences of incidents.
(i) The Palestine question:
Decision of 9 April 1962 (S/5111), para. 3 (second part).
(ii) Reports by the Secretary-General concerning Yemen:
Decision of 11 June 1963 (S/5331), para. 2.

V. MEASURES IN CONNEXION WITH INJUNCTIONS TO BE TAKEN BY OTHER GOVERNMENTS AND AUTHORITIES

A. Prevention of supply of war materials or means for their manufacture.
(i) The situation in the Republic of the Congo:
Decision of 24 November 1961 (S/5002), para. 6.
(ii) Question of race conflict in South Africa:
Decision of 7 August 1963 (S/5386), para. 3.
Decision of 4 December 1963 (S/5471), para. 5.

B. Avoidance of actions impeding the exercise of governmental authority and undermining the territorial integrity and political independence of a State.
The situation in the Republic of the Congo:
Decision of 22 July 1960 (S/4405), para. 2.

C. Prevention of departure and denial of transit to fighting and certain other personnel not under United Nations Command.
The situation in the Republic of the Congo:
Decision of 21 February 1961 (S/4741), part A, para. 3.

D. Avoidance of support to activities against the United Nations.
The situation in the Republic of the Congo:
Decision of 24 November 1961 (S/5002), para. 7.

E. Avoidance of actions likely to increase tensions between the parties.
Complaint by Cuba (letter of 11 July 1960):
Decision of 19 July 1960 (S/4395), para. 3.

F. Withholding of assistance including supply of arms which would enable a Government to continue repressive actions in a Non-Self-Governing Territory.
The situation in Territories in Africa under Portuguese administration:
Decision of 31 July 1963 (S/5380), para. 6.
Decision of 11 December 1963 (S/5481), para. 2.

G. Avoidance of actions contrary to the policies and purposes of the United Nations.
The situation in the Republic of the Congo:
Decision of 24 November 1961 (S/5002), para. 11.

H. Compliance with decisions of the Council in accordance with Articles 25 and 49 of the Charter.
The situation in the Republic of the Congo:
Decision of 9 August 1960 (S/4426), para. 5.

VI. MEASURES FOR SETTLEMENT

A. Compliance with purposes and principles of the Charter.
(i) Complaint concerning South Africa (letter of 25 March 1960):
Decision of 1 April 1960 (S/4300), preamble and para. 5.
(ii) Letter of 23 May 1960 from the representatives of Argentina, Ceylon, Ecuador and Tunisia:
Decision of 27 May 1960 (S/4328), paras. 1 and 2.
(iii) Complaint by Argentina (Eichmann Case):
Decision of 23 June 1960 (S/4349), para. 2.
(iv) Complaint by Cuba (letter of 31 December 1960):
Decision: President's statement of 5 January 1961.
(v) The Palestine question:
Decision of 9 April 1962 (S/5111), para. 1.
(vi) Complaint by Senegal:
Decision of 24 April 1963 (S/5293), preamble and para. 2.
(vii) Complaint by Haiti:
Decision: President's statement of 9 May 1963.
(viii) Question of race conflict in South Africa:
Decision of 4 December 1963 (S/5471), para. 2.

B. Expression of hope for a peaceful solution.
The situation in Angola:
Decision of 9 June 1961 (S/4835), para. 4.

C. Injunctions concerning human rights and fundamental freedoms.
(i) Complaint concerning South Africa (letter dated 25 March 1960):
Decision of 1 April 1960 (S/4300), preamble.
(ii) The situation in the Republic of the Congo:
Decision of 21 February 1961 (S/4741), part B, preamble.
(iii) The situation in Angola:
Decision of 9 June 1961 (S/4835), preamble and paras. 1 and 3.
(iv) The situation in territories in Africa under Portuguese administration:
Decision of 31 July 1963 (S/5380), para. 5.
Decision of 11 December 1963 (S/5481), para. 6.
(v) Question of race conflict in South Africa:
Decision of 7 August 1963 (S/5386), paras. 1 and 2.
Decision of 4 December 1963 (S/5471), preamble and paras. 2 and 4.

D. Injunctions concerning the granting of independence to colonial countries and peoples.
(i) The situation in Angola:
Decision of 9 June 1961 (S/4835), preamble and para. 1.
(ii) The situation in territories in Africa under Portuguese administration:
Decision of 31 July 1963 (S/5380), preamble and paras. 1, 2 and 5.
Decision of 11 December 1963 (S/5481), preamble and paras. 3, 5 and 6.

E. Procedures of pacific settlement noted, advised or recommended.
1. Direct negotiations.
Letter of 23 May 1960 from the representatives of Argentina, Ceylon, Ecuador and Tunisia:
Decision of 27 May 1960 (S/4328), paras. 1 and 4.
2. Resort to regional agencies or arrangements.
(i) Complaint by Cuba (letter of 11 July 1960):
Decision of 19 July 1960 (S/4395), paras. 1 and 2.
(ii) Letter of 5 September 1960 from the USSR (Action of OAS relating to Dominican Republic):
Decision of 9 September 1960 (S/4491).

F. Provisions bearing on issues of substance, including terms of settlement.
1. Evacuation of foreign troops.
The situation in the Republic of the Congo:
Decision of 14 July 1960 (S/4387), para. 1.
Decision of 22 July 1960 (S/4405), para. 1.
Decision of 9 August 1960 (S/4426), preamble.

2. Measures for evacuation of certain foreign personnel not under the United Nations Command.
   The situation in the Republic of the Congo:
   Decision of 21 February 1961 (S/4741), part A, para. 2.
3. Request that appropriate reparation be made.
   Complaint by Argentina (Eichmann Case):
   Decision of 23 June 1960 (S/4349), para. 2.
4. Request to parties concerned to observe fully the terms of disengagement.
   Reports by the Secretary-General concerning Yemen:
   Decision of 11 June 1963 (S/5331), para. 2.
5. Convening of the Parliament.
   The situation in the Republic of the Congo:
   Decision of 21 February 1961 (S/4741), part B, preamble and para. 1.
6. Re-organization of armed units and personnel.
   The situation in the Republic of the Congo:
   Decision of 21 February 1961 (S/4741), part B, para. 2.
7. Release of political prisoners.
   Question of race conflict in South Africa:
   Decision of 7 August 1963 (S/5386), para. 2.
   Decision of 4 December 1963 (S/5471), para. 4.
8. Compliance with General Assembly resolutions setting forth the basis for a settlement.
   (i) Letter of 23 May 1960 from the representatives of Argentina, Ceylon, Ecuador and Tunisia:
   Decision of 27 May 1960 (S/4328), para. 3.
   (ii) The situation in Angola:
   Decision of 9 June 1961 (S/4835), paras. 1 and 3.
   (iii) The situation in territories in Africa under Portuguese administration:
   Decision of 31 July 1963 (S/5380), paras. 1, 2, 3 and 5.
   (iv) Question of race conflict in South Africa:
   Decision of 7 August 1963 (S/5386), preamble.
   Decision of 4 December 1963 (S/5471), preamble and para. 3.

VII. MEASURES TO PROMOTE THE IMPLEMENTATION OF RESOLUTIONS OF THE SECURITY COUNCIL

A. Establishment or employment of subsidiary organs.
   1. For investigation.
      The situation in Angola:
      Decision of 9 June 1961 (S/4835), para. 2.
   2. For observation or supervision in connexion with the ending of hostilities.
      Reports by the Secretary-General concerning Yemen:
      Decision of 11 June 1963 (S/5331), para. 1.
   3. For examination of methods of resolving the situation in the territory of a Member State.
      Question of race conflict in South Africa:
      Decision of 4 December 1963 (S/5471), para. 6.

B. Endorsement of decisions of subsidiary organs.
   The Palestine question:
   Decision of 11 April 1961 (S/4788), para. 1.

C. Call upon the parties to co-operate fully with subsidiary organs.
   (i) The Palestine question:
   Decision of 11 April 1961 (S/4788), para. 2.
   Decision of 9 April 1962 (S/5111), para. 4.
   (ii) The situation in Angola:
   Decision of 9 June 1961 (S/4835), preamble and para. 1.

D. Invitation to the Government of a Member State to avail itself of the assistance of a subsidiary organ.
   Question of race conflict in South Africa:
   Decision of 4 December 1963 (S/5471), para. 7.

E. Observation by the President.
   The India-Pakistan question:
   President's statement of 1 February 1962.
   The situation in the Republic of the Congo:
   President's statement of 22 August 1960.

F. Authorizations to the Secretary-General.
   1. To provide a Government with military assistance.
      The situation in the Republic of the Congo:
      Decision of 14 July 1960 (S/4387), para. 2.
   2. To evacuate military forces.
      The situation in the Republic of the Congo:
      Decision of 22 July 1960 (S/4405), para. 1.
      Decision of 9 August 1960 (S/4426), para. 1.
   3. To take necessary measures including the use of force to arrest and/or deport certain personnel, military or other, not under the United Nations Command.
      The situation in the Republic of the Congo:
      Decision of 24 November 1961 (S/5002), para. 4.
   4. To prevent entry or return of certain personnel, military or other, not under United Nations Command, and also of arms and other war material.
      The situation in the Republic of the Congo:
      Decision of 24 November 1961 (S/5002), para. 5.
   5. Request to the Secretary-General to make arrangements in consultation with the Government involved to uphold the purposes and principles of the Charter.
      Complaint concerning South Africa (letter dated 25 March 1960):
      Decision of 1 April 1960 (S/4300), para. 5.

G. Employment of United Nations forces.
   1. Entry into a territory.
      The situation in the Republic of the Congo:
      Decision of 9 August 1960 (S/4426), para. 3.
   2. Limitation on powers.
      The situation in the Republic of the Congo:
      Decision of 9 August 1960 (S/4426), para. 4.
   3. Deprecation of armed action against United Nations forces.
      The situation in the Republic of the Congo:
      Decision of 24 November 1961 (S/5002), para. 2.

H. Measures to prevent the occurrence of civil war, including the use of force if necessary.
   The situation in the Republic of the Congo:
   Decision of 21 February 1961 (S/4741), part A, para. 1.

I. Investigation and punishment of perpetrators of crimes.
   The situation in the Republic of the Congo:
   Decision of 21 February 1961 (S/4741), part A, para. 4.

J. Support to a government to maintain law and order and national integrity.
   The situation in the Republic of the Congo:
   Decision of 24 November 1961 (S/5002), paras. 9 and 10.

K. Action to maintain territorial integrity and political independence. Cessation of secessionist activities.
   The situation in the Republic of the Congo:
   Decision of 24 November 1961 (S/5002), paras. 1, 3 and 8.

L. Measures to obtain compliance.
   1. Reaffirmation of previous decisions.
      (a) Of the Security Council:
      (i) The situation in the Republic of the Congo:
      Decision of 9 August 1960 (S/4426), preamble and para. 1.
      President's statement of 10 September 1960.
      Decision of 21 February 1961 (S/4741), part A, para. 5.
      Decision of 24 November 1961 (S/5002), preamble and para. 4.
      (ii) The Palestine question:
      Decision of 9 April 1962 (S/5111), preamble and para. 2.
      (iii) Question of race conflict in South Africa:
      Decision of 7 August 1963 (S/5386), preamble and para. 2.
      Decision of 4 December 1963 (S/5471), preamble and paras. 1 and 4.
      (iv) The situation in territories in Africa under Portuguese administration:
      Decision of 11 December 1963 (S/5481), preamble.
      (b) Of the General Assembly:
      (i) The situation in the Republic of the Congo:
      Decision of 21 February 1961 (S/4741), part A, para. 5.
      Decision of 24 November 1961 (S/5002), preamble and paras. 9 and 10.
      (ii) The situation in Angola:
      Decision of 9 June 1961 (S/4835), para. 1.
      (iii) The situation in territories in Africa under Portuguese administration:
      Decision of 11 December 1963 (S/5481), para. 4.
   2. Request for immediate withdrawal of troops.
      The situation in the Republic of the Congo:
      Decision of 9 August 1960 (S/4426), para. 2.
   3. Request for compliance with previous resolutions.
      (i) The situation in the Republic of the Congo:
      Decision of 21 February 1961 (S/4741), part A, para. 5.
      (ii) The question of race conflict in South Africa:
      Decision of 7 August 1963 (S/5386), para. 2.
      (iii) The situation in territories in Africa under Portuguese administration:
      Decision of 11 December 1963 (S/5481), para. 2.

4. Expression of concern over non-implementation of specific measures requested by the Security Council.
(i) The Palestine question:
Decision of 9 April 1962 (S/5111), preamble.
(ii) Question of race conflict in South Africa:
Decision of 4 December 1963 (S/5471), preamble.
5. Deprecation of continued refusal to implement the resolutions of the Security Council
(i) The situation in territories in Africa under Portuguese administration:
Decision of 31 July 1963 (S/5380), para. 3.
(ii) Question of race conflict in South Africa:
Decision of 4 December 1963 (S/5471), para. 3.

M. Endorsement of reports of the Secretary-General.
(i) The situation in the Republic of the Congo:
Decision of 22 July 1960 (S/4405), para. 3.
(ii) Reports by the Secretary-General concerning Yemen:
Decision of 11 June 1963 (S/5331), preamble.

N. Request for assistance from the specialized agencies of the United Nations.
The situation in the Republic of the Congo:
Decision of 22 July 1960 (S/4405), para. 4.

O. Finding of a violation of a Security Council cease-fire injunction.
The Palestine question:
Decision of 9 April 1962 (S/5111), para. 3.

P. Expression of concern over military incursions into foreign territories.
Complaint by Senegal:
Decision of 24 April 1963 (S/5293), para. 1.

VIII. MEASURES TO ENSURE FURTHER CONSIDERATION AND TO ASCERTAIN COMPLIANCE

A. Request for information on the progress of settlement.
1. From the Secretary-General.
(i) Complaint concerning South Africa (letter dated 25 March 1960):
Decision of 1 April 1960 (S/4300), para. 5.
(ii) The situation in the Republic of the Congo:
Decision of 14 July 1960 (S/4387), para. 3.
Decision of 22 July 1960 (S/4405), para. 5.
Decision of 9 August 1960 (S/4426), para. 6.
(iii) Complaint by Senegal:
Decision of 24 April 1963 (S/5293), para. 3.
(iv) Reports by the Secretary-General concerning Yemen:
Decision of 11 June 1963 (S/5331), para. 3.
(v) The situation in territories in Africa under Portuguese administration:
Decision of 31 July 1963 (S/5380), para. 7.
Decision of 11 December 1963 (S/5481), para. 7.
(vi) Question of race conflict in South Africa:
Decision of 7 August 1963 (S/5386), para. 4.
Decision of 4 December 1963 (S/5471), para. 8.
2. From the subsidiary organs.
(i) The situation in Angola:
Decision of 9 June 1961 (S/4835), para. 5.
(ii) The Palestine question:
Decision of 9 April 1962 (S/5111), para. 8.
3. From regional agencies or arrangements.
Complaint by Cuba (letter of 11 July 1960):
Decision of 19 July 1960 (S/4395), preamble and para. 1.

B. Provision by express decision to consider the matter further.
Complaint by Tunisia:
Decision of 22 July 1961 (S/4882), para. 2.

C. Statement by the President that the Council would remain seized of the question.
(i) Complaint by Kuwait:
Decision: President's statement of 7 July 1961.
(ii) Complaint by Tunisia:
Decision: President's statement of 22 July 1961.
(iii) Complaint by Cuba (letter of 21 November 1961):
Decision: President's statement of 28 November 1961.
(iv) Complaints by Cuba, USSR and USA (letters dated 22-23 October 1962):
Decision: President's statement of 25 October 1962.
(v) Complaint by Haiti:
Decision: President's statement of 9 May 1963.

IX. MEASURES IN CONNEXION WITH THE INABILITY OF THE SECURITY COUNCIL TO EXERCISE ITS RESPONSIBILITY FOR THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY

A. Convocation of an emergency special session of the General Assembly under the provisions of General Assembly resolution 377 (V) of 3 November 1950.
The situation in the Republic of the Congo:
Decision of 17 September 1960 (S/4526).

PART II

THE PALESTINE QUESTION

Decision *of 30 January 1959 (845th meeting): Adjournment*

By letter[4] dated 26 January 1959, the permanent representative of Israel brought to the attention of the Security Council "the renewal of aggression by United Arab Republic armed forces on the Israel-Syrian border" and requested that a special meeting of the Council be convened to consider the matter. It was stated in the letter that a series of incidents, especially the latest one at Ma'ale Habashan, in which one shepherd was killed by Syrian soldiers, constituted "grave violations of the Israel-Syrian General Armistice Agreement and of the Charter of the United Nations, threatening peace and security". The Government of Israel believed that it was the duty of the United Nations under the Charter to bring about an immediate cessation of these acts of aggression.

At the 845th meeting on 30 January 1959, the Security Council included the Israel complaint in its agenda. Following the adoption of the agenda, the representatives of Israel and the United Arab Republic were invited to take a place at the Council table.[5]

The representative of Israel* stated that the attack had been a climax in a series of incidents, about which in each instance complaints had been lodged by Israel with the Mixed Armistice Commission. The continuation of constant firing by Syrian forces into Israel Territory was likely to endanger international peace and security and therefore fell clearly within the purview of Article 34 of the Charter. Further, Article 35 conferred upon each Member State the right to bring such matters to the Security Council.

The representative of the United Arab Republic* contended that under article VII of the General Armistice Agreement an incident of the kind referred to by the representative of Israel should be first dealt with by the Mixed Armistice Commission, the body which had been established by agreement between the two parties under the auspices of the Security Council, and not by the Security Council itself. Israel's recourse to the Council with a purely local incident was in his view a further evidence of its in-

[4] S/4151 and Corr.1, O.R., 14th year, Suppl. for Jan.-June 1959, pp. 3-4.

[5] 845th meeting: para. 32.

tention to persist in its refusal to recognize the functions of the Mixed Armistice Commission.

The representatives of the United Kingdom, the United States, Japan, France, Italy, Canada, China and Panama expressed the view that both parties should observe strictly the provisions of the General Armistice Agreement, show good faith and respect for the Agreement by strict orders to the military commanders on both sides to prohibit firing except in cases of obvious self-defence. The representative of the USSR held that Israel was disregarding procedures laid down in the Armistice Agreement and maintained that it was necessary for the Council to indicate to the Government of Israel the need to abide strictly by the provisions of the Armistice Agreement.[6/]

The Council adjourned the meeting.[7/]

Decision *of 11 April 1961 (949th meeting):*

(i) Endorsing the decision of the Jordan-Israel Mixed Armistice Commission of 20 March 1961;

(ii) Urging Israel to comply with this decision;

(iii) Requesting the members of the Mixed Armistice Commission to co-operate so as to ensure that the General Armistice Agreement will be complied with

By letter[8/] dated 1 April 1961, the permanent representative of Jordan informed the President of the Security Council that the Israel authorities were contemplating holding on 20 April 1961, in the Israel-occupied part of the Holy City of Jerusalem, a military parade in which Israel troops, heavy armament and heavy war equipment would be displayed and reviewed. The Government of the Hashemite Kingdom of Jordan had submitted a complaint to the Jordan-Israel Mixed Armistice Commission which, on the basis of its findings, had decided on 20 March 1961 that "this act by Israel is a breach of the General Armistice Agreement." It had also condemned this act by Israel and called upon the Israel authorities to take the strongest measures to prevent the recurrence of such a breach of the General Armistice Agreement and to refrain in the future from bringing to Jerusalem any equipment in excess of that allowed for under the terms of the General Armistice Agreement. In spite of the condemnation and the decision by the Mixed Armistice Commission, the Israel authorities had again made known their intentions to hold the contemplated military parade on 20 April 1961. This contemplated act of military provocation on the part of Israel, in utter defiance and complete disregard of the decision of the Mixed Armistice Commission, if not prevented from taking place, would endanger international peace and security.

At the 947th meeting of the Security Council on 6 April 1961, the provisional agenda listed under the general heading "The Palestine question" included:

"Letter dated 1 April 1961 from the permanent representative of the Hashemite Kingdom of Jordan addressed to the President of the Security Council (S/4777)."

The agenda was adopted[9/] and the Security Council considered the question at its 947th to 949th meetings between 6 and 11 April 1961. The representatives of Jordan and Israel were invited to take part in the discussions.

At the 947th meeting, the representative of Israel,* in referring to the Jordanian complaint, viewed it as a minor matter of a technical character, which in no sense involved a threat to international peace and which should never have been brought before the Security Council. He discounted the assertion that the ceremonial parade of military equipment without ammunition could even constitute "a formal breach of annex II to the General Armistice Agreement". If the Council really wished to concern itself with the functioning of the Israel-Jordan Armistice Agreement, there could be more far-reaching issues than that just raised. He concluded that on the one hand the Jordanians refused implementation of the essential clauses of the Armistice Agreement and on the other they came to the Council on matters of no real significance.[10/]

At the 948th meeting on 10 April 1961, the representatives of the United Arab Republic and Ceylon submitted a draft resolution[11/] under which the Security Council would: (1) endorse the decision of the Mixed Armistice Commission of 20 March 1961; and (2) urge Israel to comply with this decision.

At the 949th meeting on 11 April 1961, the representative of the United States introduced an amendment[12/] to the joint draft resolution which was adopted by 7 votes in favour and none against, with 4 abstentions.[13/]

At the same meeting, the joint draft resolution, as amended, was adopted by 8 votes in favour and none against, with 3 abstentions. The resolution[14/] read as follows:

"The Security Council,

"Having considered the complaint submitted on 1 April 1961 by the Government of the Hashemite Kingdom of Jordan [S/4777],

"Noting the decision of the Jordan-Israel Mixed Armistice Commission on 20 March 1961,[15/]

"1. Endorses the decision of the Mixed Armistice Commission on 20 March 1961;

6/ For texts of relevant statements, see:
845th meeting: Canada, paras. 125, 129. China, paras. 135, 136; France, para. 108; Israel*, paras. 37, 40, 43-45, 140, 145, 146, 151; Italy, paras. 112-114; Japan, paras. 99-103; Panama, para. 137; USSR, paras. 117-120; United Arab Republic*, paras. 48, 49, 51, 52, 70, 83, 155; United Kingdom, paras. 87-89; United States, paras. 91, 93-96.

7/ 845th meeting: para. 155.

8/ S/4777, O.R., 16th year, Suppl. for April-June 1961, pp. 1-2.

9/ 947th meeting: para. 3.

10/ 947th meeting: paras. 36, 48, 55, 61.

11/ S/4784, 948th meeting: para. 20.

12/ S/4785, O.R., 16th year, Suppl. for April-June 1961, p. 9; 949th meeting: para. 8.

13/ 949th meeting: para. 75.

14/ S/4786, O.R., 16th year, Suppl. for April-June 1961, p. 11; 949th meeting: para. 76.

15/ O.R., 16th year, Suppl. for Jan.-March 1961, p. 275.

"2. Urges Israel to comply with this decision;

"3. Requests the members of the Mixed Armistice Commission to co-operate so as to ensure that the General Armistice Agreement will be complied with."

Decision *of 9 April 1962 (1006th meeting):*

(i) Calling upon the two Governments concerned to comply with their obligations under Article 2, paragraph 4, of the Charter by refraining from the threat as well as the use of force;

(ii) Calling upon both parties to abide scrupulously by the cease-fire arranged by the Chief of Staff on 17 March 1962;

(iii) Calling for strict observance of article V of the General Armistice Agreement which provided for the exclusion of armed forces from the Demilitarized Zone;

(iv) Calling upon the Governments of Israel and of the Syrian Arab Republic to co-operate with the Chief of Staff of the Truce Supervision Organization in carrying out his responsibilities under the General Armistice Agreement and the pertinent resolutions of the Security Council;

(v) Requesting the Chief of Staff of the Truce Supervision Organization to report as appropriate concerning the situation

By letter[16] dated 20 March 1962, the permanent representative of Syria requested that the Security Council be convened to consider the grave situation which had arisen from the acts of aggression committed by Israel on the Syrian frontier and in the demilitarized zone which threatened the peace and security of the region. He further referred to his letter of 17 March 1962[17] in connexion with successive acts of aggression committed by Israel during the night of 16/17 March 1962 at various points in his country's territory.

By letter[18] dated 21 March 1962, the permanent representative of Israel drew the attention of the Security Council to the recurrence of acts of aggression and provocation by Syrian armed forces against the citizens and territory of Israel, following the previous aggressive actions reported in his letter of 19 March 1962.[19] Due to the gravity of the situation caused by the persistence of these aggressive actions on the part of the Syrian armed forces, he requested an early meeting of the Council.

At the 999th meeting on 28 March 1962, the Council had before it a provisional agenda which, under the general heading of item 2 "The Palestine question" listed as sub-items (a) and (b) the complaints submitted by Syria and Israel, respectively.

Following the adoption of the agenda,[20] the President invited the representatives of Syria and Israel to the Security Council table to take part in the discussion.[21] At the suggestion of the President, the Council decided to discuss sub-paragraphs (a) and (b) simultaneously. The Council considered the question at its 999th to 1006th meetings between 28 March and 9 April 1962.

At the 999th meeting, the Council also had before it a report from the Chief of Staff of the United Nations Truce Supervision Organization[22]. At the suggestion of the representative of the United States, the Council decided to request the Chief of Staff to return to New York to be available for consultation.[23]

At the 1000th meeting on 3 April 1962, the Secretary-General announced the presence of the Chief of Staff of UNTSO, General Von Horn, at the meeting, who would provide the Council with all relevant information available to him.[24]

At the same meeting, the representative of Syria submitted a draft resolution[25] according to which the Council would: (1) condemn Israel for the wanton attack which was carried out against Syrian territory on the night of 16/17 March 1962 in violation of the Council resolution of 15 July 1948, of the General Armistice Agreement between Syria and Israel and of Israel's obligations under the Charter; (2) warn Israel of the Security Council's resolve to call for sanctions against Israel, should it resort to further aggression in the future; and (3) invite Israel to comply with its obligations under the Charter and the General Armistice Agreement and, in particular, to help the Chief of Staff of the United Nations Truce Supervision Organization strengthen the armistice machinery in order to relieve tension in the area; and (4) request the Chief of Staff to render to the Security Council progress reports on the implementation of this resolution.

At the 1001st meeting on 4 April 1962, the representative of Israel submitted a draft resolution[26] which provided that the Security Council would: (1) express its grave concern at the attacks by Syrian armed forces; (2) call upon Syria to abide by all the provisions of the General Armistice Agreement, and in particular to prevent all illegal crossing from Syrian territory, to cease all interference with Israel activities on Lake Tiberias, and to desist from firing into Israel territory; (3) find that Syria's constant threats against the territorial integrity and political independence of Israel violated the letter and the spirit of the Charter of the United Nations, the Israel-Syrian General Armistice Agreement and the resolutions of the Security Council and the General Assembly; and (4) call upon Syria to refrain from any threats against the territorial integrity or political independence of Israel.

At the 1005th meeting on 6 April 1962, the Council had before it a joint draft resolution[27] submitted by

16/ S/5096, O.R., 17th year, Suppl. for Jan.-March 1962, pp. 97-98.
17/ S/5092, ibid., p. 93.
18/ S/5098, ibid., pp. 98-99.
19/ S/5093, ibid., pp. 94-96.
20/ 999th meeting: para. 5.
21/ 999th meeting: para. 6.
22/ S/5102 and Add.1, O.R., 17th year, Suppl. for Jan.-March 1962, pp. 100-110.
23/ 999th meeting: paras. 97, 103, 155-158.
24/ 1000th meeting: paras. 11-12.
25/ S/5107 (later revised as S/5107/Rev.1, O.R., 17th year, Suppl. for April-June 1962, pp. 93-94); 1000th meeting: para. 92.
26/ S/5109, ibid., pp. 94-95; 1001st meeting: para. 2.
27/ S/5110, same text as S/5111, see below; 1005th meeting: para. 2.

the representatives of the United Kingdom and the United States.

At the 1006th meeting on 9 April 1962, after further statements by the parties concerned, the representative of the United Arab Republic requested a separate vote on the preamble and operative paragraphs 2, 3 and 8 of the joint draft resolution. The representatives of the United Kingdom and the United States objected, under rule 32 of the rules of procedure, to this request.[28]

The Council adopted the joint draft resolution by 10 votes in favour, none against, with 1 abstention.[29] The resolution[30] read as follows:

"The Security Council,

"Recalling its resolutions of 15 July 1948 and 18 May 1951,

"Having considered the report of the Chief of Staff of the United Nations Truce Supervision Organization on the military activities in the Lake Tiberias area and in the Demilitarized Zone,

"Having heard the statements of the representatives of the Syrian Arab Republic and Israel,

"Being deeply concerned over developments in the area which have taken place in violation of the Charter of the United Nations and of the Armistice Agreement,

"Recalling in particular the provisions of Article 2, paragraph 4 of the Charter and article I of the Syrian-Israel General Armistice Agreement,

"Noting with satisfaction that a cease-fire has been achieved,

"1. Deplores the hostile exchange between the Syrian Arab Republic and Israel starting on 8 March 1962 and calls upon the two Governments concerned to comply with their obligations under Article 2, paragraph 4 of the Charter by refraining from the threat as well as the use of force;

"2. Reaffirms the Security Council resolution of 19 January 1956 which condemned Israel military action in breach of the General Armistice Agreement, whether or not undertaken by way of retaliation;

"3. Determines that the Israel attack of 16-17 March 1962 constitutes a flagrant violation of that resolution and calls upon Israel scrupulously to refrain from such action in the future;

"4. Endorses the measures recommended by the Chief of Staff for the strengthening of the Truce Supervision Organization in its tasks of maintaining and restoring the peace and of detecting and deterring future incidents, and calls upon the Israel and Syrian authorities to assist the Chief of Staff in their early implementation;

"5. Calls upon both parties to abide scrupulously by the cease-fire arranged by the Chief of Staff on 17 March 1962;

"6. Calls for strict observance of article V of the General Armistice Agreement which provides for the exclusion of armed forces from the Demilitarized Zone and annex IV of that Agreement which sets limits on forces in the defensive area, and calls upon the Governments of Israel and the Syrian Arab Republic to co-operate with the Chief of Staff in eliminating any violations thereof;

"7. Calls upon the Governments of Israel and of the Syrian Arab Republic to co-operate with the Chief of Staff of the Truce Supervision Organization in carrying out his responsibilities under the General Armistice Agreement and the pertinent resolutions of the Security Council and urges that all steps necessary for reactivating the Mixed Armistice Commission and for making full use of the Mixed Armistice machinery be promptly taken;

"8. Requests the Chief of Staff of the Truce Supervision Organization to report as appropriate concerning the situation."

Decision of 3 September 1963 (1063rd meeting): Rejection of the United Kingdom and United States joint draft resolution

By letter[31] dated 20 August 1963, the acting permanent representative of Israel requested an urgent meeting of the Security Council to consider the following complaint of Israel against Syria:

"Grave act of aggression by Syrian armed forces in violation of article III, paragraphs 2 and 3, of the General Armistice Agreement and in terms of Article 39 of the Charter of the United Nations."

In the letter it was stated that on 19 August 1963, at 19.10 hours, three unarmed members of an Israel agricultural settlement at Almagor in the Galilee, while returning home on a tractor from work in their fields, were ambushed by a group of at least ten Syrian soldiers at a point about one kilometre west of the Syrian border. Two of the farmers were murdered, the third fled, whereupon the Syrian army unit returned across the border. This entire incident took place well within Israel territory. A complaint was immediately lodged with the Mixed Armistice Commission. The letter added that this incident was the gravest in the lengthy chain of Syrian border attacks[32] which for a number of months past had been repeatedly carried out by the Syrian armed forces across the border against the civilian activities in the areas adjacent to the border. The continuance of this state of affairs had become intolerable to the Government of Israel, which was responsible for the protection of the lives and property of its citizens and the integrity of its borders. Accordingly, the Government of Israel requested urgent consideration of this complaint by the Security Council in order that Syria should be condemned for the warlike and aggressive actions of its armed forces and that all such acts should forthwith be brought to a halt.

By letter[33] dated 21 August 1963, to the President of the Security Council the representative of the

[28] 1006th meeting: paras. 77, 82.

[29] 1006th meeting: para. 106.

[30] S/5111, O.R., 17th year, Suppl. for April-June 1962, pp. 95-96.

[31] S/5394, O.R., 18th year, Suppl. for July-Sept. 1963, pp. 76-77.

[32] For a list of incidents, see document S/5396 which was circulated as an annex to the letter dated 21 August 1963, ibid., pp. 78-82.

[33] S/5395, ibid., p. 77.

Syrian Arab Republic stated with regard to the latest flare-up on the Syrian-Israel demarcation lines, that, at exactly 1330 hours on 20 August 1963, an Israel force opened fire with automatic weapons from the Israel settlement of Al-Dardara which was located within the demilitarized zone. The Israel force, estimated at fifteen armoured cars, was deployed throughout an extended area. The fire was directed at the Syrian advanced positions in the area. The Syrian forces returned the fire, but the Israel forces continued to shell the Syrian positions, creating a situation which threatened the peace and security of the region. This incident was preceded several days previously by a heavy concentration of Israel troops in the area. He therefore requested that an urgent meeting of the Security Council be convened to consider this grave situation which had arisen as a result of this new wave of aggression perpetrated by the Israel authorities in clear contravention of their obligations under the Syrian-Israel General Armistice Agreement.

At the 1057th meeting on 23 August 1963, the Security Council had before it the provisional agenda which, under the general heading: "The Palestine question," listed as sub-items (a) and (b) the complaints submitted by Israel and Syria, respectively.

The agenda was adopted and the Security Council considered the question at its 1057th to 1063rd meetings between 23 August and 3 September 1963. The representatives of Israel and Syria were invited[34] to take part in the discussion.

At the 1057th meeting on 23 August 1963, the representative of Israel* stated that the wanton murder of two Israel farmers by Syrian soldiers was serious enough even if it were an isolated incident. It had far greater import as the culminating outrage in a lengthy series of Syrian armed attacks on Israel citizens and against the background of a tense and disturbed border. The Government of Israel believed that the time had come for the Council to condemn and curb Syria's persistent violation of the Armistice Agreement and the United Nations Charter. It was felt that such action was essential in order to preserve that measure of stability which existed under the armistice regime.

The representative of Syria* charged that Israel, having opened fire from the demilitarized zone upon Syrian positions, in flagrant violation of the Armistice Agreement, now appeared in the guise of the victim. He wished the Council to give the most careful attention to the following facts: First, massive concentrations of Israel troops had recently taken place in the defensive areas, leading to expectations of an attack on the Syrian positions. Secondly, intensive military activity had been going on in the demilitarized zone. Thirdly, the Israel authorities had often refused to participate in the precise delimitation of the demarcation line. He added that the basic reason for the present tension lay in the fact that the Israel authorities refused to respect the status of the demilitarized zone as defined in the Armistice Agreement. Finally, he drew the attention of the Council to the following conclusions: first, Israel should be condemned by the Security Council for its aggressive conduct and its incessant violations of the Armistice Agreement; secondly, the Armistice Agreement should be strictly and fully implemented; thirdly, respect for the status of the demilitarized zone must be fully ensured; fourthly, the Mixed Armistice Commission should resume normal working.[35]

At the 1058th meeting on 28 August 1963, the Secretary-General, in his report to the Council, stated that in general the cease-fire was being observed and that General Bull, Chief of Staff of UNTSO, had completed on 26 August the inspection visits to the defensive areas and the demilitarized zone.[36] The President (Norway) drew the Council's attention to the report from the Chief of Staff.[37]

At the 1060th meeting on 29 August 1963, the representatives of the United Kingdom and the United States submitted a joint draft resolution[38] according to which the Security Council would: (1) condemn the wanton murder at Almagor of two Israel citizens; (2) call the attention of the Syrian Arab Republic to evidence in the Secretary-General's report to the effect that the armed group responsible for the killing appeared to have entered from the direction of the Jordan River and left in the same direction; (3) note with satisfaction that there was no substantial show of force in the demilitarized zone on 20 August 1963; (4) appeal to the parties to co-operate in the early exchange of prisoners; (5) note certain measures proposed by the Chief of Staff with a view to alleviating tension and restoring tranquillity in the area; (6) call upon the parties to offer to the Chief of Staff all possible co-operation in the pursuit of this end in conformity with the General Armistice Agreement; and (7) request the Secretary-General to report to the Security Council by 31 December 1963 on the progress made in regard to the measures proposed by the Chief of Staff.

At the 1062nd meeting on 30 August 1963, the representative of Morocco submitted amendments[39] to the joint draft resolution, substituting the words "regrets the death" for "condemns the wanton murder" in the first operative paragraph, deleting operative paragraph 2 from the text, changing the text of paragraph 3, and finally adding a new paragraph which would note with regret that Israel had, since 1951, not co-operated with the Syrian-Israel Mixed Armistice Commission as provided for in the Syrian-Israel General Armistice Agreement.

At the 1063rd meeting on 3 September 1963, the Moroccan amendments were put to the vote and rejected,[40] by 2 votes in favour, none against, with 9 abstentions. The joint draft resolution was then voted upon and failed[41] of adoption. There were 8 votes in favour, 2 against, with 1 abstention (one of the nega-

34/ 1057th meeting: para. 1.

35/ For texts of relevant statements, see:
1057th meeting: Israel,* paras. 4, 26; Syria,* paras. 39, 46, 50, 65.

36/ 1058th meeting, paras. 3-4.

37/ S/5401 and Add.1-4, O.R., 18th year, Suppl. for July-Sept. 1963, pp. 84-139; 1058th meeting: para. 6.

38/ S/5407; ibid., p. 149; 1060th meeting: paras. 56-63.

39/ S/5410/Rev.1, ibid., p. 151; 1062nd meeting, paras. 5, 9, 10, 12.

40/ 1063rd meeting: para. 63.

41/ 1063rd meeting: para. 64.

tive votes being that of a permanent member of the Council).

REPORT BY THE SECRETARY-GENERAL RELATING TO LAOS

INITIAL PROCEEDINGS

By note [42] dated 4 September 1959, the Permanent Mission of Laos transmitted to the Secretary-General a cablegram addressed to him by the Foreign Minister of Laos requesting the assistance of the United Nations under Article 1 (1) and Article 11 (2) of the Charter, in order to halt an aggression along the north-eastern frontier of Laos, attributed to elements from the Democratic Republic of Viet-Nam. In particular, the Government of Laos requested that an emergency force should be dispatched at a very early date to halt the aggression and prevent it from spreading. The Secretary-General was also asked "to take the appropriate procedural action on this request".

By letter [43] dated 5 September 1959, the Secretary-General requested the President of the Security Council to convene urgently a meeting of the Council for the consideration of an item entitled "Report by the Secretary-General on the letter received from the Minister for Foreign Affairs of the Royal Government of Laos, transmitted on 4 September 1959 by a note from the Permanent Mission of Laos to the United Nations."

At the 847th meeting on 7 September 1959, the Security Council included the item in its agenda by 10 votes in favour to 1 against.[44] The Council considered the question at its 847th and 848th meetings on 7 September 1959.

After the adoption of the agenda, the Secretary-General recalled that various communications on the difficulties that had developed in Laos had in the course of the year been addressed to the United Nations, without the Organization, however, being formally seized of the matter. Informal studies and consultations had taken place regarding the possibility open to the Organization to be of assistance, without impairing the Geneva Agreements of 1954 or interfering with the arrangements based on them. The specific request for the dispatch of an emergency force, contained in the Laotian note of 4 September, however, confronted the United Nations and the Secretary-General with problems entirely different from those which had been faced so far in this case. That request fell within a field in which, in the first place, the Security Council carried the responsibility. Therefore, when asked by the Laotian Government in its note of 4 September to apply the appropriate procedure, he felt he had to report to the Security Council for such consideration and initiatives as the Council might call for. His request to address the Council had thus not been based on the Secretary-General's rights under Article 99.[45]

Decision of 7 September 1959 (848th meeting): Establishment of a sub-committee to conduct inquiries and to report to the Council

At the same meeting, the representative of the United States submitted a draft resolution,[46] co-sponsored by France and the United Kingdom, under which the Council would appoint a sub-committee composed of Argentina, Italy, Japan and Tunisia, to examine the statements made before the Security Council concerning Laos, to receive further statements and documents, and to conduct such inquiries as it might determine necessary, and to report to the Council as soon as possible.

The representative of the United States maintained that the draft resolution was "squarely within the provisions of Article 29 of the Charter" and that the proposed sub-committee would be a subsidiary organ of the Council which would in effect provide for the continuation of the Council's consideration of the question.[47]

After a procedural debate, initiated by the representative of the USSR on the question whether the proposed establishment of a sub-committee was a procedural or a substantive matter,[48] the three-Power draft resolution was voted upon at the 848th meeting on 7 September 1959. The President (Italy) stated [49] that the draft resolution had been adopted by 10 votes in favour to 1 against. It read as follows:[50]

"The Security Council

"Decides to appoint a sub-committee consisting of Argentina, Italy, Japan and Tunisia, and instructs this sub-committee to examine the statements made before the Security Council concerning Laos, to receive further statements and documents and to conduct such inquiries as it may determine necessary, and to report to the Council as soon as possible." [51]

At the end of the period covered by this Supplement of the Repertoire, the Security Council remained seized of the item.[52]

COMPLAINT CONCERNING SOUTH AFRICA

INITIAL PROCEEDINGS

By letter [53] dated 25 March 1960 addressed to the President of the Security Council, the representatives of Afghanistan, Burma, Cambodia, Ceylon, Ethiopia, Federation of Malaya, Ghana, Guinea, India, Indonesia, Iran, Iraq, Japan, Jordan, Laos, Lebanon, Liberia,

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42/ S/4212, O.R., 14th year, Suppl. for July-Sept. 1959, pp. 7-8.

43/ S/4213, ibid., p. 8.

44/ For discussion on the adoption of the agenda and the convening of the meeting, see chapter II, Case 1.

45/ 847th meeting: paras. 11-12, 44-55.

46/ S/4214, same text as S/4210, see below.

47/ 847th meeting: paras. 56-64.

48/ For the procedural debate, see chapter IV, Cases 24 and 25 on the establishment of subsidiary organ, see chapter V, Case 1. In the same chapter, see also Case 4.

49/ 848th meeting, para. 132.

50/ S/4215, O.R., 14th year, Suppl. for July-Sept. 1959, pp. 9-10.

51/ On 5 November 1959, the Sub-Committee established under the Security Council resolution of 7 September 1959 submitted its report to the President of the Council (S/4236, O.R., 14th year, Suppl. for Oct.-Dec. 1959, pp. 10-73).

52/ S/4223, Summary Statement of 21 September 1959, item 40; S/5500, Summary Statement of 31 December 1963, item 40.

53/ S/4279 and Add.1, O.R., 15th year, Suppl. for Jan.-March 1960, pp. 53-54.

Libya, Morocco, Nepal, Pakistan, Philippines, Saudi Arabia, Sudan, Thailand, Tunisia, Turkey, United Arab Republic and Yemen requested, in accordance with Article 35 (1) of the Charter, an urgent meeting of the Security Council to consider the situation arising out of the large-scale killings of unarmed and peaceful demonstrators against racial discrimination and segregation in the Union of South Africa. In their opinion, that was a situation with grave potentialities for international friction, which endangered the maintenance of international peace and security.

At the 851st meeting on 30 March 1960, the Council decided to include the question in the agenda.

The Council considered the question at its 851st to 856th meetings, from 30 March to 1 April 1960. The representatives of Ethiopia, Ghana, Guinea, India, Liberia, Pakistan and the Union of South Africa, and later of Jordan, were invited to take part in the discussion.[54]

After the adoption of the agenda, the representative of the Union of South Africa* protested against the inclusion of the item in the agenda, a decision which his Government considered to be a violation of Article 2 (7) of the Charter, and in conflict with the unanimous decision taken at the San Francisco Conference of 1945 to the effect that nothing contained in Chapter IX of the Charter could be construed as giving authority to the United Nations to intervene in the domestic affairs of Member States. It was contended in the letter of submission that recent events in South Africa constituted a situation which could lead to international friction or give rise to a dispute likely to endanger international peace and security. However, Article 34 of the Charter made it clear that there had to be more than one party to a dispute, and there was no doubt that the other relevant Articles of the Charter envisaged disputes or situations arising between sovereign and independent States, and not purely internal situations.[55]

The representatives of Tunisia, Ceylon, India,* Ethiopia,* Pakistan,* Liberia,* Ghana,* Guinea* and Jordan,* speaking at the 851st to 853rd meetings, stated that Article 2 (7) could not be invoked in a situation in which the violation of human rights was so serious that the United Nations organs could not disregard it without failing in their duties as defined in Articles 1, 55 and 56. For many years the General Assembly had attempted to put an end to the situation created by the apartheid policy of the Union Government, but the South African authorities had persisted in their policy of racial discrimination, completely disregarding the Assembly resolutions which had declared this policy to be contrary to the Charter. The situation in South Africa had greatly deteriorated, and the repressive measures undertaken by the South African Government, especially since 21 March 1960, posed a serious threat to international peace and security. A situation which had led to international friction and was likely to endanger international peace and security could never be construed as falling within the domestic jurisdiction of any one nation. Moreover, the South African Government's pursuit of the apartheid policy had resulted in the Sharpeville massacre—by its armed police force—of an unarmed multitude of African people. Similar incidents had occurred at Johannesburg and other places in the Union territory. The official figures admitted that on 21 March 1960 there had been 74 persons killed and 184 wounded, but the actual casualty figures were believed to be higher. These tragic events could start a chain reaction which would seriously endanger international peace and security. Therefore, the Council could not shirk its responsibility under Article 24 (1), which authorized it to act on behalf of all Member States, particularly since more than one-third of the United Nations Members had drawn the Council's attention to the situation in South Africa as one likely to endanger international peace and security, and since there had been numerous General Assembly resolutions recommending measures designed to prevent precisely such a dangerous situation as the one being considered by the Council. Moreover, there was an actual dispute between the Union of South Africa and the African-Asian States, and especially the African nations, and there was a danger that this state of affairs might, in the near future, give rise to a serious conflict which could be a threat to peace and order in the African continent.[56]

Decision *of 1 April 1960 (856th meeting):*

(i) Recognizing the situation in the Union of South Africa as one which had led to international friction and which, if continued, might endanger international peace and security;

(ii) Deploring the loss of life of many Africans in recent disturbances, and the policies and actions of the Government of South Africa;

(iii) Calling upon the Government of the Union of South Africa to initiate measures to bring about racial harmony, and to abandon its policies of apartheid and racial discrimination;

(iv) Requesting the Secretary-General, in consultation with the South African Government, to make such arrangements as would adequately help in upholding the purposes and principles of the Charter, and to report to the Council whenever necessary and appropriate

At the 854th meeting on 31 March 1960, the representative of Ecuador stated that the Council should reaffirm the opposition of the United Nations to apartheid and place on record its view that continuance of that policy might endanger international peace and security, and should once again invite the Union of South Africa to comply with the General Assembly's recommendations. Accordingly, the Ecuadorean representative introduced a draft resolution.[57]

[54] 851st meeting: para. 31; 853rd meeting: para. 1.

[55] 851st meeting: paras. 43-66, 68-81. After making this statement the representative of the Union of South Africa withdrew from the Council table. A proposal by Tunisia at the 852nd meeting on 30 March 1960 that the Security Council, through the President, should ask the representative of the Union of South Africa whether or not he intended to take part in the Council's proceedings, was put to the vote and rejected (852nd meeting, paras. 169, 174).

[56] For texts of relevant statements, see:

851st meeting: Tunisia, paras. 83-126;

852nd meeting: Ceylon, paras. 1-36; Ethiopia*, paras. 101-115; India*, paras. 37-100; Liberia*, paras. 143-163; Pakistan*, paras. 116-142;

853rd meeting: Ghana*, paras. 2-35; Guinea*, paras. 36-95; Jordan*, paras. 96-107.

[57] 854th meeting: paras. 98, 101; S/4299, O.R., 15th year, Suppl. for Jan.-March 1960, pp. 64-65.

At the 855th meeting on 1 April 1960, the representative of the Union of South Africa,* who had taken again his place at the Council table as from the 854th meeting, reiterated the protest of his Government over the disregard to Article 2 (7) by the Council. He also stated that the Union Government would regard in a serious light any resolution adopted by the Council in connexion with the local disturbances that had taken place in South Africa. Should any further bloodshed in South Africa result from a decision of the Council, the latter would have to accept its full share of responsibility.[58]

At the 856th meeting on 1 April 1960, the Security Council adopted[59] the Ecuadorean draft resolution by 9 votes in favour, none against, with 2 abstentions. The resolution[60] read as follows:

"The Security Council,

"Having considered the complaint of twenty-nine Member States contained in document S/4279 and Add.1 concerning 'the situation arising out of the large-scale killings of unarmed and peaceful demonstrators against racial discrimination and segregation in the Union of South Africa',

"Recognizing that such a situation has been brought about by the racial policies of the Government of the Union of South Africa and the continued disregard by that Government of the resolutions of the General Assembly calling upon it to revise its policies and bring them into conformity with its obligations and responsibilities under the Charter of the United Nations,

"Taking into account the strong feelings and grave concern aroused among Governments and peoples of the world by the happenings in the Union of South Africa,

"1. Recognizes that the situation in the Union of South Africa is one that has led to international friction and, if continued, might endanger international peace and security;

"2. Deplores that the recent disturbances in the Union of South Africa should have led to the loss of life of so many Africans and extends to the families of the victims its deepest sympathies;

"3. Deplores the policies and actions of the Government of the Union of South Africa which have given rise to the present situation;

"4. Calls upon the Government of the Union of South Africa to initiate measures aimed at bringing about racial harmony based on equality in order to ensure that the present situation does not continue or recur, and to abandon its policies of apartheid and racial discrimination;

"5. Requests the Secretary-General, in consultation with the Government of the Union of South Africa, to make such arrangements as would adequately help in upholding the purposes and principles of the Charter and to report to the Security Council whenever necessary and appropriate."

58/ 855th meeting: paras. 15, 23, 26.

59/ 856th meeting: para. 56.

60/ S/4300, O.R., 15th year, Suppl. for April-June 1960, pp. 1-2.

COMPLAINT BY THE USSR (U-2 INCIDENT)

INITIAL PROCEEDINGS

By cable[61] dated 18 May 1960, the Minister for Foreign Affairs of the USSR requested an urgent meeting of the Security Council to consider the question of aggressive acts by the United States Air Force against the Soviet Union, which created a threat to universal peace. The need for immediate examination of this question arose from the fact that United States military aircraft had repeatedly encroached upon the airspace of the USSR and the United States Government had declared these actions to be its policy. Under the United Nations Charter the Security Council bore the main responsibility for the maintenance of international peace and security; consequently, the USSR Government expected that it would take the necessary measures to halt the provocative actions which threatened the peace.

In an explanatory memorandum[62] dated 19 May 1960, the USSR Government gave the dates of the alleged incursions, the kinds of aircraft used, the distance they penetrated into the USSR and the bases from which they had flown. Such premeditated acts, it was stated, constituted a grave threat to universal peace. The USSR Government had hoped that at the meeting of the Heads of State in Paris, the United States would condemn the aggressive acts of its Air Force, punish the perpetrators, renounce that policy, and give assurances against recurrence. However, the United States refused to take such measures. Instead, it tried to evade responsibility and even sought to justify its policy in the name of its own security. Thus the threat of incursions by United States aircraft had not been removed, nor had the danger that such acts might lead to military clashes and the unleashing of a nuclear-rocket war. It was, therefore, the duty of the United Nations to condemn these acts. Failure to do so would only injure the prestige of the Organization and create a threat to the peace.

At the 857th meeting on 23 May 1960, the Council included the question in its agenda.[63] It was considered at the 857th to 860th meetings held between 23 and 26 May 1960.

Decision *of 26 May 1960 (860th meeting): Rejection of the USSR draft resolution*

At the 857th meeting on 23 May 1960, the representative of the USSR submitted a draft resolution[64] under which the Security Council would have condemned the incursions by the United States aircraft into the territory of other States as aggressive acts and requested that the United States Government adopt immediate measures to halt such acts and prevent their recurrence. In introducing his proposal, the representative of the USSR reviewed the incident and recalled previous protests and warnings about them. Until the current crisis, the USSR Government had conceded the possibility that these provocative acts represented irresponsible behaviour by military cir-

61/ S/4314, ibid., p. 7.

62/ S/4315, ibid., pp. 7-10.

63/ 857th meeting: para. 9.

64/ S/4321, 857th meeting: para. 99.

cles in the United States and that the United States Government, particularly its President, was not directly involved. However, the policy pursued by the United States Government and its President was finally exposed on 1 May, when they were caught in the act of executing a carefully-planned incursion into the USSR for aggressive purposes. Instead of publicly announcing its intention to halt this policy, as the USSR Government had expected, the United States declared such incursions into territories of other States to be its official policy, personally approved by its President in the name of the "open skies" plan. The USSR Government was submitting the question to the Council out of a belief that one of the most dangerous concomitants of these acts was that they flouted the principle of State sovereignty and territorial inviolability. Because of the international situation and the existence of weapons of unprecedented destructive power, there was also the danger that the Soviet Union would have every reason to draw the conclusion from the invasion of USSR territory by United States aircraft that an act of aggression was occurring and to deal the aggressor a retaliatory blow.[65]

At the same meeting, the representative of the United States denied that the United States had committed aggressive acts against the Soviet Union or any other country and asserted that the activities protested by the Soviet Union had no aggressive intent but rather were to assure the safety of the United States and "the free world" against surprise attack by a Power which boasted of its ability to devastate the United States and other countries by missiles armed with atomic warheads. He asserted further that the overflights "were suspended after the recent incident and are not to be resumed", rejected Soviet assertions that this suspension was "merely a 'tactical step' with the 'object of deluding world opinion'" and proposed that the two countries negotiate an "open skies" treaty to obviate the need for resort to such measures. Soviet use of force on several occasions in violation of Article 2 (4) of the Charter, together with its insistence on secrecy, justified resort to measures of collecting information against further assault. Finally, he reaffirmed his country's commitment to the solution of problems by negotiation rather than force.[66]

At the 860th meeting on 26 May 1960, the USSR draft resolution was rejected by 2 in favour, 7 against, with 2 abstentions.[67]

LETTER OF 23 MAY 1960 FROM THE REPRESENTATIVES OF ARGENTINA, CEYLON, ECUADOR AND TUNISIA

INITIAL PROCEEDINGS

By letter[68] dated 23 May 1960, the representatives of Argentina, Ceylon, Ecuador and Tunisia submitted a draft resolution for the consideration of the Council with the request that it be included as an item in the Council's provisional agenda at the conclusion of the debate on the item referred to in document S/4314. The draft resolution, after calling attention to the Council's responsibility for the maintenance of international peace and security and noting the disappointment caused by the failure of the Summit Conference, (1) recommended that the Governments concerned seek a solution of existing international problems by negotiation or other peaceful means,[69] (2) appealed to all Member Governments to refrain from any action which might increase tension; (3) requested that the Governments concerned continue their efforts to achieve a constructive solution of the question of general and complete disarmament, and (4) urged the Governments of the Four Great Powers to resume discussions as soon as possible and to avail themselves of the assistance of the Security Council and other organs of the United Nations.

At the 861st meeting on 26 May 1960, the Council decided[70] without vote to include in its agenda the item:

> "Letter dated 23 May 1960 from the representatives of Argentina, Ceylon, Ecuador and Tunisia addressed to the President of the Security Council (S/4323)"

The Council considered the question at its 861st to 863rd meetings held on 26 and 27 May 1960.

Decision of 27 May 1960 (863rd meeting):

(i) Recommending that Governments concerned seek solutions of existing international problems by negotiation or other peaceful means; and requesting that they continue their efforts towards disarmament and the prohibition of nuclear weapons tests;

(ii) Appealing to all Member Governments to refrain from the use or threat of force in their international relations; to respect each other's sovereignty, territorial integrity and political independence; and to refrain from any action which might increase tensions;

(iii) Urging the Governments of France, the United Kingdom, the United States of America and the USSR to resume discussions as soon as possible and to avail themselves of any assistance that the Security Council and other appropriate organs of the United Nations might be able to render

At the 861st meeting on 26 May 1960, the representative of Tunisia referred to the hopes and expectations with which the Summit Conference had been awaited and the disappointment caused by its failure. The sponsors of the draft resolution did not seek to assess responsibility for the breakdown, a matter discussed in another debate, but instead to encourage the parties to resume their talks and endeavour to settle their differences through negotiation and by other peaceful means provided in the Charter.[71]

65/ 857th meeting: paras. 18-100.

66/ 857th meeting: paras. 101-119.

67/ 860th meeting: para. 87. By a letter dated 23 May 1960, the representatives of Argentina, Ceylon, Ecuador and Tunisia requested that at the conclusion of its current debate the Council consider a draft resolution to urge the Governments of the four Great Powers to resume discussions as soon as possible. See following item.

68/ S/4323, O.R., 15th year, Suppl. for April-June 1960, pp. 13-14.

69/ See chapter X, Case 1.

70/ 861st meeting: preceding para. 1.

71/ 861st meeting: paras. 1-13.

The representative of the USSR said that although the item on the Council's agenda was a separate one, it was directly connected with the item submitted by the Government of the USSR and previously debated. The major defect of the draft resolution was its failure to condemn the United States policy of provocation against the USSR. The Soviet Government was not opposed to the provisions recommended by the draft, but only to its failure to appeal to those who were destroying the possibility for negotiations.[72] He proposed the following amendments:[73]

(1) After the first preambular paragraph insertion of the following:

"Considering that the incursion of foreign military aircraft into the territory of other States is incompatible with the principles and purposes of the United Nations and constitutes a threat to peace and international security."

(2) At the end of the second operative paragraph the addition of the words:

"including the dispatch of their aircraft into the airspace of other States."

(3) The third operative paragraph to read:

"Requests the Governments concerned to continue their efforts towards the achievement of general and complete disarmament and the discontinuance of all nuclear weapons tests under an appropriate international control system as well as their negotiations on measures to prevent surprise attack."

At the 863rd meeting on 27 May 1960, the representative of Ecuador submitted a revised text[74] of the four-Power draft resolution. The revision consisted in the amendment of operative paragraph 2 to appeal to all Member Governments not only to refrain from action likely to increase tension but also to refrain from the use or threat of force in their international relations and to respect each other's sovereignty, territorial integrity and political independence.

At the same meeting the President (Ceylon) stated[75] that he had been informed that the Soviet Union did not wish to press for a vote on its third amendment.

The Council then voted on the remaining USSR amendments, which were rejected by a vote of 2 in favour, 6 against, with 3 abstentions.[76]

The four-Power revised draft resolution was adopted by 9 votes in favour, with 2 abstentions.[77] The resolution[78] read:

"The Security Council,

"Mindful of its responsibility for the maintenance of international peace and security,

"Noting with regret that the hopes of the world for a successful meeting of the Heads of Government of France, the United Kingdom, the United States of America and the Union of Soviet Socialist Republics have not been fulfilled,

"Considering that these developments have caused great disappointment and concern in world public opinion,

"Considering also that the resulting situation may lead to an increase of international tensions likely to endanger peace and security,

"Being convinced of the necessity to make every effort to restore and strengthen international good will and confidence, based on the established principles of international law,

"Being especially aware of the mounting danger of the continuation of the armaments race,

"1. Recommends to the Governments concerned to seek solutions of existing international problems by negotiation or other peaceful means as provided in the Charter of the United Nations;

"2. Appeals to all Member Governments to refrain from the use or threats of force in their international relations; to respect each other's sovereignty, territorial integrity and political independence; and to refrain from any action which might increase tensions;

"3. Requests the Governments concerned to continue their efforts to achieve a constructive solution of the question of general and complete disarmament under effective international control, in accordance with resolution 1378 (XIV) of the General Assembly, and the discontinuance of all nuclear weapons tests under an appropriate international control system as well as their negotiations on measures to prevent surprise attack, including technical measures, as recommended by the General Assembly;

"4. Urges the Governments of France, the United Kingdom, the United States of America and the Union of Soviet Socialist Republics to resume discussions as soon as possible and to avail themselves of the assistance that the Security Council and other appropriate organs of the United Nations may be able to render to this end."

COMPLAINT BY ARGENTINA (EICHMANN CASE)

INITIAL PROCEEDINGS

By letter[79] dated 15 June 1960, the representative of Argentina requested the President of the Security Council to call an urgent meeting of the Council

"to consider the violation of the sovereign rights of the Argentine Republic resulting from the illicit and clandestine transfer of Adolf Eichmann from Argentine territory to the territory of the State of Israel, contrary to the rules of international law and the purposes and principles of the Charter of the United Nations and creating an atmosphere of insecurity and mistrust incompatible with the preservation of international peace."

72/ 861st meeting: paras. 93-127.

73/ S/4325, O.R., 15th year, Suppl. for April-June 1960, pp. 18-19.

74/ S/4323/Rev.2, same text as S/4325, see below; 863rd meeting: paras. 5-12.

75/ 863rd meeting: paras. 42-44.

76/ 863rd meeting: para. 47.

77/ 863rd meeting: para. 48. For discussion concerning Article 33 in connexion with this draft resolution, see chapter X, Case 1.

78/ S/4325, O.R., 15th year, Suppl. for April-June 1960, pp. 22-23.

79/ S/4336, ibid., pp. 27-28.

In an attached memorandum, the Argentine Government referred to a note from its Foreign Ministry which had been transmitted to the Security Council with a letter[80]/ dated 10 June 1960, and in which the Argentine Government had protested to Israel after it became known that Eichmann was captured in Argentine territory by "volunteer groups" and had been taken to Israel. This had been acknowledged by the Embassy of Israel in Buenos Aires in a note verbale of 3 June 1960, which had given the circumstances related to the manner in which Eichmann had been taken away, allegedly with his full consent, and handed over to the security services of the Israel Government, which was making arrangements for the prisoner's trial. The note of Israel concluded with the statement that "if the volunteer group violated Argentine law or interfered with matters within the sovereignty of Argentina, the Government of Israel wishes to express its regret".

The Argentine Government further stated in the memorandum that it had made the most formal protest against the illegal act committed to the detriment of a fundamental right of the Argentine State, and had requested as appropriate reparation the return of Eichmann, for which it had set a time-limit of one week, and the punishment of those guilty of violating Argentine territory. Israel had been informed that, failing compliance with this request, the matter would be referred to the United Nations. In view of the failure of the diplomatic representations made by it to the Government of Israel, the Argentine Government felt compelled to request that the case be dealt with by the Security Council. In Argentina's view, the case was explicitly covered by the provisions of Article 34 and Article 35 (1) of the Charter.[81]/ The Argentine memorandum stated, in conclusion, that "a political question is involved which, apart from gravely prejudicing Argentine sovereignty, constitutes a precedent dangerous for international peace and security, for the maintenance of which the Council bears primary responsibility." The Security Council was requested to take decisions involving just reparation for the rights violated.

By letter[82]/ dated 21 June 1960 to the President of the Council, the Government of Israel contended that the unilateral allegations of the Argentine Government were not sufficient to bring the dispute or situation within the terms of Article 34 of the Charter. The Argentine complaint and the action requested were beyond the Council's competence. Whatever difficulties might have arisen between Israel and Argentina should have been settled by direct negotiations between the parties. The Argentine Government had made certain demands couched in the form of an ultimatum, calling for compliance within a week. The hope that the way was open for a direct settlement had been strengthened by discussions in Buenos Aires, which indicated that a settlement could be found by direct contact of the parties at the highest level. Such a direct contact between the Prime Minister of Israel and the President of Argentina had been in effect arranged and their meeting was to take place in Europe later in the week. Prior to the meeting of the Security Council, the representative of Israel also sent to the President of the Council a letter[83]/ dated 21 June 1960, enclosing the texts of a note verbale of 3 June 1960 and a letter dated 7 June 1960 from the Prime Minister of Israel addressed to the President of Argentina. In these communications, Adolf Eichmann was described as the person mainly responsible for the extermination of the Jews throughout Europe during World War II. The Government of Israel did not underestimate the seriousness of the formal violation of Argentine law committed by those who, desirous to bring the man responsible for those crimes to trial before the Jewish people, had at last ended their long search with the capture of Eichmann. But there had been profound motives and a supreme moral justification for this act. The incident could not be judged only from the purely formal angle. The trial of Eichmann in Israel had to be viewed as an act of supreme historical justice.

At the 865th meeting on 22 June 1960, the Security Council decided to include the question in its agenda.[84]/ The Council considered the question at its 865th to 868th meetings on 22 and 23 June 1960. The representative of Israel was invited to participate in the discussion.[85]/

Decision *of 23 June 1960 (868th meeting):*

(i) Declaring that acts such as that under consideration, affecting the sovereignty of a Member State and therefore causing international friction may, if repeated, endanger international peace and security;

(ii) Requesting Israel to make appropriate reparation in accordance with the Charter and rules of international law; and

(iii) Expressing the hope that the traditionally friendly relations between Argentina and Israel will be advanced

At the 865th meeting on 22 June 1960, in presenting his case before the Council the representative of Argentina contended that the dispute with Israel concerned an infringement of Argentine sovereignty and had, therefore, to be regarded as a political rather than as a strictly legal dispute within the meaning of Article 36 (3) of the Charter. The deliberate violation of the sovereignty of a State was in itself in conflict with the Charter and, further, under Article 33 et seq., the violation was within the competence of the Security Council if the difference led to a situation likely to endanger international peace and security. This violation was not, however, the main threat to international peace and security. Supreme importance had to be attached to the principle impaired by that violation. This principle was "the unqualified respect which States owe to each other and which precludes the exercise of jurisdictional acts in the territory of other States". If this principle could be violated with impunity, international law would "be replaced by the law of the jungle". There could be no doubt of the competence of the

80/ S/4334, ibid., pp. 24-26.

81/ For discussion on the Council's competence under Article 34, see chapter X, Case 9.

82/ S/4341, O.R., 15th year, Suppl. for April-June 1960, pp. 29-30.

83/ S/4342, ibid., pp. 30-33.

84/ 865th meeting: para. 2.

85/ 865th meeting: para. 3.

Security Council when a violation of sovereignty was in conflict with a fundamental principle of peaceful relations among States. The case before the Council was, therefore, serious not only in itself but especially because of the precedent it implied. The protection of Argentine sovereign rights thus involved the protection of the rights of all members of the international community.[86]/

At the same meeting the representative of Argentina submitted a draft resolution.[87]/ At the 866th meeting on the same day, the representative of the United States submitted two amendments[88]/ which were later accepted[89]/ by the representative of Argentina.

At the 866th meeting on 22 June 1960, the representative of Israel* recognized that the persons who apprehended Eichmann in Argentina and took him to Israel had broken the laws of Argentina. For this the Government of Israel had apologized to the Argentine Government. But the Government of Israel believed that this isolated violation of Argentine law had to be regarded in the light of the exceptional and unique character of the crimes attributed to Eichmann, on the one hand, and the motives of those that acted in this unusual manner, on the other hand. In the course of their efforts to bring Eichmann to justice some nationals of the State of Israel may have committed infringement of the law of Argentina, but these illegal actions of individuals should not be confused, as a basic legal proposition, with the non-existing intentional violation of the sovereignty of one Member State by another. This was a fundamental distinction, well established in international law, and the State of Israel emphatically denied the charge that it had violated the sovereignty of Argentina. In the view of the Government of Israel its expressions of regret constituted adequate reparation.[90]/

At the 868th meeting on 23 June 1960, the Argentine draft resolution, as amended, was adopted by 8 votes in favour, none against, with 2 abstentions.[91]/ The representative of Argentina explained that he would not participate in the vote in accordance with the provisions of Article 27 (3) of the Charter.[92]/

The resolution[93]/ read:

"The Security Council,

"Having examined the complaint that the transfer of Adolf Eichmann to the territory of Israel constitutes a violation of the sovereignty of the Argentine Republic,

"Considering that the violation of the sovereignty of a Member State is incompatible with the Charter of the United Nations,

"Having regard to the fact that reciprocal respect for and the mutual protection of the sovereign rights of States are an essential condition for their harmonious coexistence,

"Noting that the repetition of acts such as that giving rise to this situation would involve a breach of the principles upon which international order is founded, creating an atmosphere of insecurity and distrust incompatible with the preservation of peace,

"Mindful of the universal condemnation of the persecution of the Jews under the Nazis, and of the concern of people in all countries that Eichmann should be brought to appropriate justice for the crimes of which he is accused,

"Noting at the same time that this resolution should in no way be interpreted as condoning the odious crimes of which Eichmann is accused,

"1. Declares that acts such as that under consideration, which affect the sovereignty of a Member State and therefore cause international friction, may, if repeated, endanger international peace and security;

"2. Requests the Government of Israel to make appropriate reparation in accordance with the Charter of the United Nations and the rules of international law;

"3. Expresses the hope that the traditionally friendly relations between Argentina and Israel will be advanced."

The question remained on the list of matters of which the Security Council is seized.

SITUATION IN THE REPUBLIC OF THE CONGO

INITIAL PROCEEDINGS

By telegram[94]/ dated 12 July 1960 addressed to the Secretary-General, the President and the Prime Minister of the Republic of the Congo urgently requested the United Nations for military assistance. The telegram stated that the Congolese request was justified by the unsolicited dispatch to the Congo of metropolitan Belgian troops, in violation of the Belgian-Congolese Treaty of Friendship of 29 June 1960, which allowed intervention by Belgian troops only at the express request of the Congolese Government. Therefore, they regarded the Belgian action as an act of aggression against the Congo. They further accused the Government of Belgium of having carefully prepared the secession of Katanga with a view to maintaining a hold on the Congo.

By a further telegram[95]/ of 13 July 1960, it was made clear that: (1) the purpose of the aid requested was not to restore the internal situation in the Congo but rather to protect the national territory in the Congo against acts of aggression committed by Belgian metropolitan troops; (2) the request for assistance related to a United Nations force consisting of military personnel from neutral countries; (3) if the assistance was not forthcoming immediately the Republic of the Congo would be obliged to appeal to the Bandung Treaty Powers; and (4) the aid had

86/ 865th meeting: paras. 5-14.

87/ S/4345, 865th meeting: para. 47.

88/ S/4346, 866th meeting: paras. 78 and 79.

89/ 868th meeting: para. 43.

90/ 866th meeting: paras. 2-49. For discussion on appropriate reparation, see chapter X, Case 11.

91/ 868th meeting: para. 52.

92/ 868th meeting: para. 51.

93/ S/4349, O.R., 15th year, Suppl. for April-June 1960, p. 35.

94/ S/4382, document I, O.R., 15th year, Suppl. for July-Sept. 1960, p. 11.

95/ S/4382, document II, ibid., p. 12.

been requested by the Republic of the Congo in the exercise of its sovereign rights.

By letter [96]/ dated 13 July 1960 the Secretary-General informed the President of the Security Council that he had to bring to the attention of the Council a matter which, in his opinion, might threaten the maintenance of international peace and security. He requested an urgent meeting of the Council to hear a report of the Secretary-General on a demand for United Nations action in relation to the Republic of the Congo.

At the 873rd meeting on 13/14 July 1960, the Council decided, [97]/ without a vote, to include in its agenda the item: "Letter dated 13 July 1960 from the Secretary-General addressed to the President of the Security Council (S/4381)."

The question was considered by the Security Council at the 873rd meeting on 13 and 14 July 1960; at the 877th to 879th meetings from 20 to 22 July 1960; at the 884th to 886th meetings on 8 and 9 August 1960; at the 887th to 889th meetings on 21 and 22 August 1960; at the 896th to 906th meetings between 9 and 17 September 1960; at the 912th to 920th meetings between 7 and 14 December 1960; at the 924th to 927th meetings between 12 and 14 January 1961; at the 928th to 942nd meetings between 1 and 21 February 1961; and at the 973rd to 979th meetings between 13 and 21 November and the 982nd meeting on 24 November 1961.

Decision of *14 July 1960 (873rd meeting):*

(i) Calling upon the Government of Belgium to withdraw its troops from the territory of the Republic of the Congo;

(ii) Deciding to authorize the Secretary-General to take the necessary steps, in consultation with the Government of the Republic of the Congo, to provide the Government with necessary military assistance until, through the efforts of the Government with the technical assistance of the United Nations, the national security forces might be able, in the opinion of the Government, to meet fully their tasks;

(iii) Requesting the Secretary-General to report to the Security Council.

At the 873rd meeting on 13/14 July 1960 the Secretary-General, explaining the situation in the Congo that had led him to bring the matter to the attention of the Security Council under Article 99, stated that although the difficulties in the Republic of the Congo were connected with the maintenance of order in the country and the protection of life, they had an important international bearing. It was not for the Secretary-General to pronounce himself on the presence of the Belgian troops in the Congo; but he had to conclude from the communications received from the Government of the Congo that the presence of those troops was a source of internal and, potentially, international tension. In those circumstances, the presence of those troops could not be accepted as a satisfactory stopgap arrangement pending the re-establishment of order through the national security forces. The Secretary-General found that the arrangement envisaged by the Government of the Congo was preferable to any other formula, and strongly recommended to the Council

> "to authorize the Secretary-General to take the necessary steps, in consultation with the Government of the Congo, to provide the Government with military assistance during the period which may have to pass before, through the efforts of the Government with the technical assistance of the United Nations, the national security forces are able to fully meet their tasks."

He added that it was his understanding that were the United Nations to act as proposed, "the Belgian Government would see its way to a withdrawal." [98]/

The Council decided that the Government of Belgium and the Government of the Republic of the Congo should be invited to take part in the discussion of the item and at the invitation of the President (Ecuador) the representative of Belgium took a seat at the Council table. [99]/

The representative of Tunisia submitted [100]/ a draft resolution [101]/ to which the representative of the USSR submitted amendments [102]/ which, at the same meeting, were rejected by the Council. [103]/

At the 873rd meeting the Tunisian draft resolution was adopted by 8 votes to none with 3 abstentions. [104]/

The resolution [105]/ read:

"The Security Council,

"Considering the report of the Secretary-General on a request for United Nations action in relation to the Republic of the Congo,

"Considering the request for military assistance addressed to the Secretary-General by the President and the Prime Minister of the Republic of the Congo [S/4382],

"1. Calls upon the Government of Belgium to withdraw its troops from the territory of the Republic of the Congo;

"2. Decides to authorize the Secretary-General to take the necessary steps, in consultation with the Government of the Republic of the Congo, to provide the Government with such military assistance as may be necessary until, through the efforts of the Congolese Government with the technical assistance of the United Nations, the national security forces may be able, in the opinion of the Government, to meet fully their tasks;

96/ S/4381, ibid., p. 11.

97/ 873rd meeting: para. 16.

98/ 873rd meeting: paras. 18, 19, 26, 27. For the statement of the Secretary-General, see chapter I, Case 44; in connexion with the establishment and composition of the United Nations Force in the Congo, see chapter V, Case 2; in connexion with the limitations of the powers of the United Nations Force with regard to the principle of non-intervention in domestic matters, see chapter V, Case 2 (i), with regard to the use of force, see chapter V, Case 2 (iii).

99/ 873rd meeting: paras. 71-72. For the invitation of the Governments of Belgium and the Republic of the Congo, see chapter III, Case 2.

100/ 873rd meeting: para. 91.

101/ S/4383, same text as S/4387, see below.

102/ 873rd meeting: paras. 199, 201, 205. For the consideration of individual amendments, see chapter V, Case 2.

103/ 873rd meeting: paras. 223-225.

104/ 873rd meeting: para. 232.

105/ S/4387, O.R., 15th year, Suppl. for July-Sept. 1960, p. 16.

"3. Requests the Secretary-General to report to the Security Council as appropriate."

Decision *of 22 July 1960 (879th meeting):*

(i) Calling upon the Government of Belgium to implement speedily the Security Council resolution of 14 July 1960 on the withdrawal of its troops, and authorizing the Secretary-General to take all necessary action to this effect;

(ii) Requesting all States to refrain from any action which might tend to impede the restoration of law and order and the exercise by the Government of the Congo of its authority and also to refrain from any action which might undermine the territorial integrity and the political independence of the Republic of the Congo;

(iii) Commending the Secretary-General for the prompt action he had taken to carry out resolution S/4387 and for his first report;

(iv) Inviting the specialized agencies of the United Nations to render to the Secretary-General such assistance as he might require;

(v) Requesting the Secretary-General to report further to the Council.

On 18 July 1960 the Secretary-General submitted to the Security Council his first report[106] on the implementation of resolution S/4387 of 14 July 1960.

At the 877th to 879th meetings between 20 and 22 July 1960, the representatives of Belgium and of the Republic of the Congo were invited to participate in the discussion.[107]

At the 877th meeting the Secretary-General introduced his report.[108]

The representative of Belgium said that Belgium would withdraw its intervening troops as soon as, and to the extent that, the United Nations effectively ensured the maintenance of order and the safety of persons. This principle was already being put into effect, particularly in Leopoldville.[109]

The representative of the USSR submitted a draft resolution[110] whereby the Security Council would: (1) insist upon the immediate cessation of armed intervention against the Republic of the Congo and the withdrawal from its territory of all troops of the aggressor within a period of three days; and (2) call upon all Member States to respect the territorial integrity of the Republic of the Congo and not to undertake any actions which might violate that integrity.

At the 878th meeting a joint draft resolution[111] was submitted by Ceylon and Tunisia.

The representative of Ceylon, commenting on operative paragraph 1 of this draft resolution, stated that whether the words "immediately" or "as speedily as possible" or "speedily" were used, the idea was more or less the same except for the matter of timing to which some attention had to be paid.[112]

At the 879th meeting the representative of Ceylon, on behalf of the sponsors, asked that operative paragraph 3 of the joint draft resolution be deleted because similar authority had been conferred on the Secretary-General in the resolution of 14 July 1960. The fact that operative paragraph 1 of the present joint draft resolution envisaged a special authority for him would clearly make the present operative paragraph 3 redundant.[113]

The representative of the USSR stated that he had no objection to the joint draft resolution being given priority.[114]

The President (Ecuador) stated that the Ceylonese-Tunisian joint draft resolution would be put to the vote without operative paragraph 3.[115]

At the 879th meeting on 21/22 July 1960, the joint draft resolution was adopted unanimously.[116]

The resolution[117] read:

"The Security Council,

"Having considered the first report by the Secretary-General [S/4389 and Add.1-3] on the implementation of Security Council resolution S/4387 of 14 July 1960,

"Appreciating the work of the Secretary-General and the support so readily and so speedily given to him by all Member States invited by him to give assistance,

"Noting that, as stated by the Secretary-General, the arrival of the troops of the United Nations Force in Leopoldville has already had a salutary effect,

"Recognizing that an urgent need still exists to continue and to increase such efforts,

"Considering that the complete restoration of law and order in the Republic of the Congo would effectively contribute to the maintenance of international peace and security,

"Recognizing that the Security Council recommended the admission of the Republic of the Congo to membership in the United Nations as a unit,

"1. Calls upon the Government of Belgium to implement speedily the Security Council resolution of 14 July 1960 on the withdrawal of its troops, and authorizes the Secretary-General to take all necessary action to this effect;

"2. Requests all States to refrain from any action which might tend to impede the restoration of law

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106/ S/4389, ibid., pp. 18-24; documents S/4389/Add.1-3 were issued on 19 and 20 July.

107/ 877th meeting: para. 1.

108/ 877th meeting: paras. 3-19. For the statement of the Secretary-General see chapter I, Cases 19 and 20; in connexion with the definition of the area of operation of the United Nations Force, see chapter V, Case 2; in connexion with the limitations of the powers of the United Nations Force with regard to the principle of non-intervention in domestic matters, see chapter V, Case 2 (i).

109/ 877th meeting: para. 142.

110/ S/4402, 877th meeting: para. 176.

111/ S/4404, 878th meeting: para. 39.

112/ 878th meeting: paras. 71-75.

113/ 879th meeting: para. 104.

114/ 879th meeting: para. 107.

115/ 879th meeting: para. 108.

116/ 879th meeting: para. 108.

117/ S/4405, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 34-35.

and order and the exercise by the Government of the Congo of its authority and also to refrain from any action which might undermine the territorial integrity and the political independence of the Republic of the Congo;

"3. Commends the Secretary-General for the prompt action he has taken to carry out resolution S/4387 of the Security Council, and for his first report;

"4. Invites the specialized agencies of the United Nations to render to the Secretary-General such assistance as he may require;

"5. Requests the Secretary-General to report further to the Security Council as appropriate."

The representative of the USSR stated that in view of the adoption of the joint draft resolution, he would not press for a vote on his draft resolution.[118]

He noted that because of the specific nature of the resolution of 14 July 1960 and of the situation in the Republic of the Congo it would be prudent not to regard that resolution otherwise than as a decision adopted under exceptional circumstances. The current resolution, as well as that of 14 July, should not, therefore, be considered as a precedent for the future. The USSR felt unable to subscribe to certain aspects of the interpretation given by the Secretary-General to the resolution of 14 July, and it could not regard that resolution, and the ensuing action for its implementation, as endowing the United Nations with the right to interfere in the domestic affairs of a State and to assume responsibility for its domestic laws and regulations. The fundamental purpose and the crux of the resolution were to be found in its demand for the withdrawal of the Belgian forces. The United Nations Force must also be entrusted with safeguarding the territorial integrity of the Republic of the Congo. No other interpretation of the resolution of 14 July could be correct or consistent with the provisions of the Charter.[119]

Decision *of 9 August 1960 (886th meeting):*

(i) Confirming the authority given to the Secretary-General by the resolutions of 14 July and 22 July 1960 and requesting him to continue to carry out the responsibility placed on him thereby;

(ii) Calling upon the Government of Belgium to withdraw immediately its troops from the province of Katanga under speedy modalities determined by the Secretary-General;

(iii) Declaring that the entry of the United Nations Force into the province of Katanga was necessary for the full implementation of this resolution;

(iv) Reaffirming that the United Nations Force in the Congo would not be a party to or in any way intervene in or be used to influence the outcome of any internal conflict, constitutional or otherwise;

(v) Calling upon all Member States, in accordance with Articles 25 and 49 of the Charter, to carry out the decisions of the Security Council and to afford mutual assistance in carrying out measures decided upon by the Council;

(vi) Requesting the Secretary-General to implement this resolution and to report further to the Council.

On 6 August 1960 the Secretary-General submitted to the Security Council his second report[120] on the implementation of resolutions S/4387 of 14 July 1960 and S/4405 of 22 July 1960, which the Security Council considered at the 884th to 886th meetings held on 8 and 8/9 August 1960.

The representatives of Belgium and of the Republic of the Congo were invited to take part in the discussion.[121]

At the 884th meeting the Secretary-General introduced his report.[122]

At the 885th meeting the representative of Tunisia introduced[123] a draft resolution[124] submitted jointly with Ceylon.

At the same meeting the representative of the USSR submitted a draft resolution[125] whereby the Security Council would: (1) note that the Belgian Government was grossly violating the decisions of the Security Council calling for the speedy withdrawal of Belgian troops from the territory of the Congo and the maintenance of the territorial integrity and political independence of the Republic of the Congo; (2) impose on the Secretary-General the obligation to take decisive measures, without hesitating to use any means to that end, to remove the Belgian troops from the territory of the Congo and to put an end to acts directed against the territorial integrity of the Republic of the Congo; and (3) instruct the Secretary-General to report within a period of three days on the measures taken to implement this decision of the Security Council.

At the 886th meeting the representative of Ceylon, quoting operative paragraph 2 of the Ceylonese-Tunisian draft resolution, whereby the Security Council would ask the Government of Belgium to withdraw immediately its troops from the province of Katanga under speedy modalities determined by the Secretary-General and "to assist in every possible way the implementation of the Council's resolutions", stated that the last words were taken from the Charter and that it would, therefore, be incumbent upon the Belgian Government to carry out the provisions of the Charter without hesitation.[126]

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[118] 879th meeting: para. 109.

[119] 879th meeting: paras. 115-122.

[120] S/4417, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 45-53, para. 10.

[121] 884th meeting: para. 4.

[122] 884th meeting: paras. 10-35. For the statement of the Secretary-General, see chapter I, Cases 21, 22 and 45; in connexion with the definition of the area of operation of the United Nations Force, see chapter V, Case 2; in connexion with the limitations of the powers of the United Nations Force in the Congo with regard to the use of force, see chapter V, Case 2 (iii); in connexion with the consideration of the provisions of Articles 25 and 49, see chapter XII, Case 22 and chapter XI, part IV, Note.

[123] 885th meeting: para. 76.

[124] S/4424, same text as resolution S/4426, see below; 885th meeting: para. 76.

[125] S/4425, 885th meeting: para. 119.

[126] 886th meeting: para. 26.

The representative of the United Kingdom pointed out that the joint draft resolution provided for the immediate withdrawal of the Belgian forces "under speedy modalities determined by the Secretary-General" and felt that it would be of value to the Council if the Secretary-General would state how he would interpret this language.[127]/

In reply, the Secretary-General stated that he read the phrase "speedy modalities" as a recognition of the need for him to implement the request for immediate withdrawal addressed to the Government of Belgium in such a way as to provide for an orderly development within the limits of the possible, as determined also by factors over which others were the masters, with due regard to the overriding needs of the situation. Thus, the Secretary-General read the phrase as entitling him, inter alia, to have regard to the concern expressed by the Council that there should be effective and continued maintenance of law and order. That would not slow down the withdrawal provided that the Belgian Government and Mr. Tshombé gave their full and immediate co-operation. There were, however, other related considerations which were bound to influence the Secretary-General in determining the modalities and the establishment of speedy time-tables.[128]/

At the 886th meeting on 8/9 August 1960, the Security Council adopted the joint draft resolution submitted by Ceylon and Tunisia by 9 votes in favour to none against, with 2 abstentions.[129]/

The resolution[130]/ read:

"The Security Council,

"Recalling its resolution of 22 July 1960 (S/4405), inter alia, calling upon the Government of Belgium to implement speedily the Security Council resolution of 14 July (S/4387) on the withdrawal of its troops and authorizing the Secretary-General to take all necessary action to this effect,

"Having noted the second report of the Secretary-General (S/4417) on the implementation of the aforesaid two resolutions and his statement before the Council,

"Having considered the statements made by the representatives of Belgium and the Republic of the Congo to this Council at this meeting,

"Noting with satisfaction the progress made by the United Nations in carrying out the Security Council resolutions in respect of the territory of the Republic of the Congo other than the province of Katanga,

"Noting, however, that the United Nations had been prevented from implementing the aforesaid resolutions in the province of Katanga although it was ready, and in fact attempted, to do so,

"Recognizing that the withdrawal of Belgian troops from the province of Katanga will be a positive contribution to and essential for the proper implementation of the Council resolutions,

"1. Confirms the authority given to the Secretary-General by the Security Council resolutions of 14 July and 22 July 1960 and requests him to continue to carry out the responsibility placed on him thereby;

"2. Calls upon the Government of Belgium to withdraw immediately its troops from the province of Katanga under speedy modalities determined by the Secretary-General and to assist in every possible way the implementation of the Council's resolutions;

"3. Declares that the entry of the United Nations Force into the province of Katanga is necessary for the full implementation of this resolution;

"4. Reaffirms that the United Nations Force in the Congo will not be a party to or in any way intervene in or be used to influence the outcome of any internal conflict, constitutional or otherwise;

"5. Calls upon all Member States, in accordance with Articles 25 and 49 of the Charter of the United Nations, to accept and carry out the decisions of the Security Council and to afford mutual assistance in carrying out measures decided upon by the Council;

"6. Requests the Secretary-General to implement this resolution and to report further to the Council as appropriate."

The representative of the USSR stated that he would not press for a vote on the USSR draft resolution.[131]/

Decision *of 22 August 1960 (889th meeting): Statement by the President expressing the conviction that the Secretary-General had found in the debate the desired clarification to assist him in the pursuit of his mission*

On 12 August 1960 the Secretary-General informed the Security Council of the interpretation which he had given to the Central Government of the Republic of the Congo, as well as to the provincial government of Katanga, of operative paragraph 4 of the resolution of 9 August, contained in the "Memorandum on the implementation of the Security Council resolution of 9 August 1960, operative paragraph 4".[132]/ He noted that the resolution, in addition to reaffirming the principle of non-intervention in any internal conflict, had put the main emphasis on the withdrawal of Belgian troops. Consequently, in the application of operative paragraph 4 to the situation in Katanga, as seen in the light of precedents in the cases of Lebanon and Hungary, it could be concluded

"that if the Belgian troops were withdrawn and if, pending full withdrawal, a Belgian assurance were given to the Secretary-General that the Belgian troops would in no way intervene in or be used to influence the outcome of the conflict between the provincial government and the Central Government—that is to say, that they would remain completely inactive during the phasing out—the question between the provincial government and the Central

127/ 886th meeting: para. 159.

128/ 886th meeting: paras. 169, 170.

129/ 886th meeting: para. 272.

130/ S/4426, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 91-92.

131/ 886th meeting: para. 273.

132/ S/4417/Add.1, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 64-71. For the contents of the memorandum, the letter of the Prime Minister of the Republic of the Congo of 14 August 1960 and the debate at the 887th to 889th meetings, see chapter V, Case 2 (ii).

Government would be one in which the United Nations would in no sense be a party and on which it could in no sense exert an influence. . . ."

The Secretary-General stated further that were his findings, as regards operative paragraph 4, to be challenged either by the Central Government or the provincial government, he would immediately report to the Security Council and request it to consider the interpretation and pronounce itself on its validity.

In a letter[133]/ dated 14 August 1960, the Prime Minister of the Republic of the Congo contested the Secretary-General's interpretation.

At the 887th meeting on 21 August 1960, convened at the Secretary-General's request,[134]/ the representatives of the Congo and of Guinea were invited to take part in the discussion.[135]/

In his explanatory statement the Secretary-General pointed out that although in the light of the legal history of the matter he did not see any reason for the Council to confirm the interpretation he had given in the memorandum of 12 August, he felt that the Council might clarify its attitude, which was the only reason for his request for the meeting.[136]/

At the 888th meeting on 21 August 1960, the representative of the USSR raised objections to the Secretary-General's interpretation of the resolution of 9 August 1960. He also submitted[137]/ a draft resolution[138]/ which provided for the establishment by the Security Council of a group consisting of representatives of Member States supplying armed forces to assist the Republic of the Congo, which, acting in conjunction with the Secretary-General, might ensure on the spot the execution of the decisions of the Security Council.

The representative of Tunisia observed that the spirit in which the decisions of the Council had been implemented seemed in no way contrary to those decisions, and still less to the principles which had guided the United Nations intervention.[139]/

The representative of Argentina endorsed the Secretary-General's interpretation of operative paragraph 4 of the resolution of 9 August.[140]/

At the 889th meeting on 21/22 August 1960, at which the representative of Belgium was invited to participate in the discussion,[141]/ the Secretary-General's interpretation was further endorsed by the representatives of Italy, Ceylon, Ecuador, the United Kingdom, the United States and China,[142]/ while the representative of Poland expressed his disagreement.[143]/

The representative of the USSR stated that he would not press for a vote on the USSR draft resolution since most of the members of the Council were not prepared to support it.[144]/

The President (France) made the following "final observation":

"The Secretary-General asked for this meeting to be convened so that he might obtain clarification, for his own guidance, of the views of the Security Council. We have listened, throughout the day and even into the early hours of this morning, to different and sometimes conflicting opinions. I believe that on both sides everything has been said to bring out their respective points of view. I am convinced that the Secretary-General will have found in this debate the clarification which he desired, and that it will assist him in the pursuit of his mission. If there are no other observations, I shall declare the meeting adjourned."[145]/

Decisions of *10 September 1960 (897th meeting): Adjournment and statement by the President interpreting the consensus of the Council*

On 30 August 1960 the Secretary-General submitted his third report[146]/ and on 7 September 1960 his fourth[147]/ on the implementation of Security Council resolutions S/4387 of 14 July 1960, S/4405 of 22 July 1960 and S/4426 of 9 August 1960.

By letter[148]/ dated 7 September 1960 the Secretary-General requested the President of the Security Council to convene a meeting of the Council for consideration of his fourth report on the question of the Congo.

By letter[149]/ dated 8 September 1960 the representative of Yugoslavia requested the President of the Security Council, in accordance with Article 35 (1) of the Charter, urgently to convene the Council to consider the situation in the Republic of the Congo, which Yugoslavia considered was threatening "to bring into greatest peril peace in the world" and required "an appropriate action without delay by the Security Council".

By telegram[150]/ dated 8 September 1960 addressed to the Secretary-General, the Prime Minister of the Republic of the Congo, referring to Article 28 (3) of the Charter, urged the Secretary-General to desig-

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133/ S/4417/Add.7, document II, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 71-73. See also S/4448, ibid., pp. 107-109. The interpretation of the Secretary-General was implicitly criticized in the statement of the Government of the USSR on the situation in the Congo, S/4450, ibid., pp. 109-112, para. 14.

134/ 887th meeting: para. 7.

135/ 887th meeting: paras. 2, 4.

136/ 887th meeting: paras. 39, 41, 51. For the statement of the Secretary-General, see chapter I, Cases 25, 26 and 46; in connexion with the limitations of the powers of the United Nations Force with regard to the principle of non-intervention in domestic matters, see chapter V, Case 2 (ii); with regard to the use of force, see chapter V, Case 2 (iii); in connexion with a proposal concerning the establishment of a group of observers in the Congo, see chapter V, Case 6; in connexion with the legal status of Kamina and Kitona bases, see chapter XI, part I, Note.

137/ 888th meeting: para. 80. See chapter V, Case 6. For the statement of the representative of the USSR objecting to the interpretation given by the Secretary-General, see chapter V, Case 2 (ii).

138/ S/4453, O.R., 15th year, Suppl. for July-Sept. 1960, p. 116.

139/ 888th meeting: para. 132.

140/ 888th meeting: para. 149.

141/ 889th meeting: para. 1.

142/ 889th meeting: paras. 8, 50, 59, 70, 96, 114.

143/ 889th meeting: paras. 84, 85.

144/ 889th meeting: para. 142.

145/ 889th meeting: paras. 144, 145.

146/ S/4475, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 126-129, supplemented by S/4475/Add.1-3.

147/ S/4482, ibid., pp. 135-139.

148/ S/4488, ibid., p. 145.

149/ S/4485, ibid., pp. 143-144.

150/ S/4486, ibid., p. 145.

nate Leopoldville as the place of the next Council meeting on the problem of the Congo.

By letter[151]/ dated 9 September 1960, the First Deputy Minister for Foreign Affairs of the USSR transmitted to the Secretary-General the text of a statement by the Government of the USSR informing him that it had instructed its representative on the Security Council to request an immediate meeting of the Council "with a view to measures being taken without delay to put an end to all interference of whatever kind in the internal affairs of the Congo".

At the 896th meeting on 9/10 September 1960, the Council adopted[152]/ the following agenda:

"...

"2. Telegram dated 8 September 1960 from the Prime Minister of the Republic of the Congo addressed to the Secretary-General (S/4486).

"3. Letter dated 13 July 1960 from the Secretary-General addressed to the President of the Security Council (S/4381): fourth report of the Secretary-General on the implementation of Security Council resolutions S/4387 of 14 July 1960, S/4405 of 22 July 1960 and S/4426 of 9 August 1960 (S/4482 and Add.1); letter dated 8 September 1960 from the Permanent Representative of Yugoslavia to the United Nations addressed to the President of the Security Council (S/4485)."

The following representatives were invited to take part in the discussion, the invitations being renewed at each of the subsequent meetings: at the 896th meeting, the representatives of Yugoslavia and Indonesia; at the 897th meeting, the representative of Ghana; at the 899th meeting, the representatives of Guinea and Morocco; at the 902nd meeting, the representative of Belgium; at the 903rd meeting, the representative of the United Arab Republic; at the 906th meeting, the representatives of Ethiopia and Liberia.[153]/

At the 896th meeting the representative of the USSR submitted a draft resolution[154]/ whereby the Council would decide to hold a special meeting in Leopoldville to consider the situation in the Congo. The draft resolution was rejected,[155]/ and the Council proceeded to consider point 3 of the agenda.

The Secretary-General made a statement on "the constitutional conflict" in Leopoldville and its repercussions on the United Nations action in the Congo.[156]/

The representative of Tunisia, referring to a motion for the adjournment of the meeting made by the representative of the United Kingdom,[157]/ pointed out that the statement by the Secretary-General had emphasized the gravity of the situation in the Congo, and expressed the hope that until such time as the Council had decided on what measures to take, in conformity with Article 40 of the Charter, no action would be taken in the Republic of the Congo that might aggravate a situation which was already serious.[158]/

At the 897th meeting on 10 September 1960, the Council had before it a telegram[159]/ of the Central Government of the Republic of the Congo requesting postponement of the meeting until the arrival of the delegation of the Congo.

The representative of the United Kingdom stated that he was prepared to agree to the requested postponement of the meeting on the understanding that in the interval no action likely to aggravate the situation in the Congo would be taken by any Members of the United Nations and he gave his full support to the statement of the representative of Tunisia made at the 896th meeting.[160]/ Similar views were expressed by the representatives of Ecuador, the United States, Argentina and Ceylon.[161]/

After a suspension of the meeting, the representative of Tunisia proposed that the meeting be adjourned to 12 September 1960.[162]/

The President (Italy), having declared that the proposal was adopted,[163]/ stated:

"In consideration of the decision to adjourn the meeting, as President of this Council, certain that I am interpreting the consensus of opinion around this table, I should like to stress how important it is that, in conformity with the letter and spirit of the Charter of the United Nations, no action should be taken by any party which might worsen the already very grave situation with which we are confronted in the Congo. The representative of Tunisia, at the close of last night's meeting, made an appeal to that effect. As many speakers have previously referred to his statement, I should like to quote a pertinent part of it:

"'The clear and precise statement made at this meeting by the Secretary-General served to emphasize still further the gravity of the situation to which the Council must give its serious attention.

"'Now that the matter is before it, the Council must, in full awareness of its responsibilities, take such decisions as it deems proper to maintain international peace and security. Since, however, a motion for adjournment has been made my delegation wishes to express the fervent hope that, until such time as the Security Council has decided what measures to take at the close of the debate,

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151/ S/4497, ibid., pp. 147-150, para. 14.

152/ 896th meeting: para. 29. For the adoption of the agenda, see chapter II, Case 5.

153/ 896th meeting: paras. 30, 31; 897th meeting: para. 3 899th meeting: para. 4; 902nd meeting: para. 2; 903rd meeting: para. 22; 906th meeting: para. 2.

154/ S/4494, 896th meeting: paras. 13, 54. For the consideration of the USSR draft resolution, see chapter I, Case 6.

155/ 896th meeting: paras. 81, 82.

156/ 896th meeting: paras. 83-111. For the statement of the Secretary-General, see chapter I, Cases 11, 27, 28 and 29; for the consideration of the provisions of Article 2 (7), see chapter XII, Case 13; for the consideration of the provisions of Article 25, and Article 49, see chapter XII, Case 23 and chapter XI, part IV, Note.

157/ 896th meeting: para. 155.

158/ 896th meeting: paras. 159, 160.

159/ S/4496, 897th meeting: para. 4.

160/ 897th meeting: paras. 11, 13.

161/ 897th meeting: paras. 22, 24, 31, 51 and 52.

162/ 897th meeting: para. 79.

163/ 897th meeting: paras. 82-85.

in conformity with the spirit if not the letter of Article 40 of the United Nations Charter no action will be taken in the Republic of the Congo which might aggravate an already serious situation.' [896th meeting, paras. 159 and 160.]

"In this connexion may I remind the Council that it has already taken, on two previous occasions, a very definite position on this point. Operative paragraph 2 of the resolution adopted by the Council on 22 July [S/4405] contains a specific request to all States 'to refrain from any action which might tend to impede the restoration of law and order' in the Congo. Similarly, in operative paragraph 5 of the resolution adopted on 9 August [S/4426], the Council:

"'Calls upon all Member States, in accordance with Articles 25 and 49 of the Charter of the United Nations, to accept and carry out the decisions of the Security Council and to afford mutual assistance in carrying out measures decided upon by the Security Council.'

"The decisions which have been made by the Council in its wisdom appear to be of the utmost relevance at this juncture, in the face of the grave situation and the serious events of which the Secretary-General has apprised us. The Council, by deciding to postpone until Monday its final deliberations, has taken a serious responsibility, because of the critical circumstances at present prevailing in that country. In this awareness, I am sure that I am interpreting the consensus of the Council when I reiterate a strong appeal that no action should be taken that could by any means aggravate the present situation until the resumption of our debate."

The representative of Poland agreed with that part of the President's statement which called upon all parties not to aggravate the situation in the Congo, but expressed the view that the reference to all the other problems unnecessarily enlarged the issue. He reserved his right to comment on these matters at the next meeting.[164]

The President stated:

"I deemed it fit to make my statement in response to suggestions and requests which came from members of this Council and which I welcomed. I thought that the statement might help in the situation, and it was in that light that I decided to make it. The representative of Poland has made some comments on my statement and has reserved his right to elaborate on them at a future meeting. That means that I am not in a position to comment on his comments on the considerations advanced by me. That will be done when he has had an opportunity to make his comments. I do think, however, that my statement responded to a situation which made it necessary, and I hope that, in the light of that situation, all the members of the Council will approve it."[165]

Decisions of 17 September 1960 (906th meeting): Rejection of the USSR draft resolution; rejection of the Ceylonese-Tunisian joint draft resolution

By letter[166] dated 12 September 1960, the representative of the USSR requested the President of the Security Council to call a meeting of the Council for urgent consideration of the question of the implementation of the Council's resolutions of 14 and 22 July and of 9 August 1960.

At the 899th meeting on 14 September 1960, the Security Council considered the following agenda:[167]

". . .

"3. Letter dated 13 July 1960 from the Secretary-General addressed to the President of the Security Council (S/4381); fourth report of the Secretary-General on the implementation of Security Council resolutions S/4387 of 14 July 1960, S/4405 of 22 July 1960 and S/4426 of 9 August 1960 (S/4482 and Add.1-3); letter dated 8 September 1960 from the Permanent Representative of Yugoslavia to the United Nations addressed to the President of the Security Council (S/4485); letter dated 12 September 1960 from the representative of the Union of Soviet Socialist Republics addressed to the President of the Security Council (S/4506)."

The President (Italy) drew the attention of the Council to documents S/4504 and Add.1,[168] containing cables relating to the appointment of two different delegations from the Congo to participate in the discussion. The representative of Poland proposed that the Council invite the delegation headed by Mr. Kanza.[169] At the 900th meeting on 14 September 1960, this proposal was not adopted.[170]

At the 902nd meeting on 15 September 1960 the representative of the United States submitted a draft resolution[171] whereby the Security Council would: (1) urge the Secretary-General to continue to give vigorous effect to the resolutions of the Council; (2) call upon Member Governments to make voluntary financial contributions to a United Nations fund for the Congo, to be used under United Nations control as determined by the Secretary-General, for the financing of the necessary governmental expenditures not covered by governmental revenue owing to the disruption of the administration and civilian life; (3) urge all parties to the internal conflicts within the Republic of the Congo, in the interest of its unity and integrity, to seek a speedy settlement by peaceful means with such assistance from the Secretary-General as might be required; (4) reaffirm its request to all States to refrain from any action which might tend to impede the restoration of law and order and in particular from sending personnel, supplies and equipment to be used for military purposes in the Congo other than through the United Nations in accordance with its responsibilities under the pertinent resolutions of the Security Council; and (5) reaffirm that the United Nations Force should

164/ 897th meeting: paras. 94, 95.

165/ 897th meeting: para. 96.

166/ S/4500, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 160-162.

167/ As point 2 of the agenda the Security Council considered in private the report of the Security Council to the General Assembly.

168/ O.R., 15th year, Suppl. for July-Sept. 1960, pp. 157-158.

169/ 899th meeting: para. 34. For consideration of this proposal and the decision, see chapter I, Case 9.

170/ 900th meeting: para. 87.

171/ S/4516, 902nd meeting: para. 45.

continue to act to restore and maintain order as necessary for the maintenance of international peace and security.

At the 903rd meeting on 15 September 1960 the representative of the USSR submitted a draft resolution[172] according to which the Security Council would: (1) invite the Secretary-General and the Command of the United Nations Force in the Congo to cease forthwith any form of interference in the internal affairs of the Republic of the Congo so that its Government might exercise without let or hindrance its sovereign rights and authority over the whole territory of the Congo and, in particular, immediately to evacuate armed forces under the control of the United Nations Command from all airports occupied by them and to hand over national radio stations to the complete and unrestricted control of the Central Government of the Congo; (2) instruct the Secretary-General to remove the Command of the United Nations Force, whose actions constituted flagrant violations of the Security Council's decisions on the question of the Congo; and (3) call upon all Member States of the United Nations to provide the Republic of the Congo with speedy financial and other economic assistance through voluntary contributions to be placed directly at the disposal of the Government of the Republic of the Congo.

At the 906th meeting on 16/17 September 1960 the representative of Ceylon introduced a draft resolution[173] submitted jointly with Tunisia, whereby the Security Council would: (1) reaffirm its resolutions of 14 and 22 July and 9 August and urge the Secretary-General to continue to give vigorous implementation to them; (2) call upon all Congolese within the Republic of the Congo to seek a speedy solution by peaceful means of all their internal conflicts for the unity and integrity of the Congo; (3) reaffirm that the United Nations Force should continue to act to restore and maintain law and order as necessary for the maintenance of international peace and security; (4) appeal to all Member Governments for urgent voluntary contributions to a United Nations Fund for the Congo to be used under United Nations control and in consultation with the Central Government of the Congo for the purpose of rendering the fullest possible assistance; and (5) reaffirm specifically: (a) its request to all States to refrain from any action which might tend to impede the restoration of law and order and the exercise by the Government of the Congo of its authority and also to refrain from any action which might undermine the territorial integrity and political independence of the Republic of the Congo and decide that no assistance for military purposes be sent to the Congo except as part of the United Nations action; (b) its call to all Member States, in accordance with Articles 25 and 49 of the Charter, to accept and carry out the decisions of the Security Council and to afford mutual assistance in carrying out measures decided upon by the Council.

The representative of the USSR submitted the following amendments to the joint draft resolution:[174] (1) in the fourth preambular paragraph to insert after the word "assist" the words "the Central Government of"; (2) in operative paragraph 1 to replace the words "to continue to give vigorous implementation to them" by the words "to implement them strictly"; thereafter, to add the words "permitting no interference in the internal affairs of the Republic of the Congo"; (3) in operative paragraph 3, after the word "should" to delete the words "continue to"; to replace the words "as necessary for the maintenance of international peace and security" by the words "with the view to assisting the Central Government of the Congo to exercise its authority and ensure the territorial integrity and political independence of the Congo"; (4) in operative paragraph 4 to replace the word "consultation" with the word "co-operation"; and (5) in operative paragraph 5 (a) to insert after the words "and also to refrain from any action" the words "including military assistance"; to delete the words "and decides that no assistance for military purposes be sent to the Congo except as part of the United Nations action".

The representative of Tunisia said in clarification that the sponsors had not thought it necessary to repeat throughout the draft resolution a reference to the "Central Government of the Congo" or the "Central Government of the Republic of the Congo", as such reference was understood.[175]

At the 906th meeting on 17 September 1960, the USSR draft resolution was rejected by 2 votes in favor to 7 against, with 2 abstentions.[176]

Paragraph 1 of the USSR amendment was rejected by 4 votes in favour to 6 against, with 1 abstention[177]; paragraph 2 was rejected by 2 votes in favour to 8 against, with 1 abstention[178]; paragraph 3 was rejected by 2 votes in favour to 9 against[179]; paragraph 4 was rejected by 2 votes in favour to 8 against, with 1 abstention[180]; paragraph 5 was rejected by 2 votes in favour to 9 against.[181]

The Ceylonese-Tunisian joint draft resolution failed of adoption; there were 8 votes in favour, 2 against, and 1 abstention (one of the negative votes being that of a permanent member).[182]

The representative of the United States said that he would not press for a vote on the United States draft resolution.[183]

Decision *of 17 September 1960 (906th meeting): Calling an emergency special session of the General Assembly*

172/ S/4519, 903rd meeting: para. 93.

173/ S/4523, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 172-173; 906th meeting: para. 81.

174/ S/4524, ibid., pp. 173-174; 906th meeting: paras. 116-124.

175/ 906th meeting: para. 130.

176/ 906th meeting: para. 148.

177/ 906th meeting: para. 152.

178/ 906th meeting: para. 153.

179/ 906th meeting: para. 154.

180/ 906th meeting: para. 155.

181/ 906th meeting: para. 156.

182/ 906th meeting: para. 157.

183/ 906th meeting: para. 159.

At the 906th meeting on 17 September 1960, after the vote on the USSR draft resolution and the Ceylonese-Tunisian joint draft resolution, the representative of the United States submitted a draft resolution,[184] by which the Security Council would decide to call an emergency special session of the General Assembly, as provided in General Assembly resolution 377 A (V), with a view to making appropriate recommendations.

At the same meeting the draft resolution submitted by the United States was adopted by 8 votes in favour to 2 against, with 1 abstention.[185]

The resolution[186] read:

"The Security Council,

"Having considered the item on its agenda as contained in document S/Agenda/906,

"Taking into account that the lack of unanimity of its permanent members at the 906th meeting of the Security Council has prevented it from exercising its primary responsibility for the maintenance of international peace and security,

"Decides to call an emergency special session of the General Assembly as provided in General Assembly resolution 377 A (V) of 3 November 1950, in order to make appropriate recommendations."

Decisions *of 14 December 1960 (920th meeting): Rejection of the joint draft resolution submitted by Argentina, Italy, the United Kingdom and the United States; rejection of the USSR draft resolution*

On 5 December 1960 the Secretary-General transmitted to the members of the Security Council a report[187] from his Special Representative in the Congo regarding actions taken against Mr. Patrice Lumumba.

On 6 December 1960, at the request of the President of the Security Council, a statement[188] issued on the same day by the Government of the USSR concerning the situation in the Congo was brought to the attention of the members of the Security Council.

At its 912th meeting on 7 December 1960, the Security Council adopted the following agenda:[189]

"Letter dated 13 July 1960 from the Secretary-General addressed to the President of the Security Council (S/4381):

"Urgent measures in connexion with the latest events in the Congo:

"Note by the Secretary-General (S/4571);

"Statement dated 6 December 1960 by the Government of the Union of Soviet Socialist Republics concerning the situation in the Congo (S/4573)."

The following representatives were invited to take part in the discussion, the invitations being renewed at each of the subsequent meetings: at the 913th meeting, the representatives of Mali, Guinea, Congo (Leopoldville), Indonesia, Cameroon and Yugoslavia; at the 914th meeting, the representatives of India and the United Arab Republic; at the 916th meeting, the representative of Morocco.[190]

At the 913th meeting on 7 December 1960, the Secretary-General noted at the conclusion of his statement that the United Nations must stand by the mandate already laid down, interpreted strictly in accordance with the principles of the Charter,

"but adjusted to the peculiar circumstances at present prevailing in the Congo. This adjustment unavoidably leads to a serious curtailment for the present of our activities and to great restraint as regards the assistance we can grant."[191]

Only through the efforts of the Congolese people themselves could the United Nations assistance make its full contribution.[192]

At the 914th meeting on 8 December 1960, the President, speaking as the representative of the USSR, introduced a draft resolution[193] according to which the Security Council would: (1) call upon the Secretary-General to secure the immediate release of Mr. Lumumba, Prime Minister of the Republic of the Congo, Mr. Okito, President of the Senate, Mr. Kasongo, President of the Chamber of Representatives, and other Ministers and deputies and, at the same time, to take all the necessary steps to ensure the resumption of the activities of the lawful Government and Parliament of the Republic of the Congo; (2) request the Command of the troops dispatched to the Congo by decision of the Security Council immediately to disarm the terrorist bands of Mobutu; and (3) call upon the Government of Belgium, in accordance with the decision of the Security Council and the special emergency session of the General Assembly, immediately to withdraw Belgian military, paramilitary and civil personnel from the Congo.

The representative of Argentina introduced[194] a draft resolution submitted jointly with Italy, the United Kingdom and the United States, which in its

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184/ S/4525, 906th meeting: para. 173.

185/ 906th meeting: para. 198.

186/ S/4526, O.R., 15th year, Suppl. for July-Sept. 1960, p. 174.

187/ S/4571 and Add.1, O.R., 15th year, Suppl. for Oct.-Dec. 1960, pp. 67-75.

188/ S/4573, ibid., pp. 75-80. In the statement were listed steps to be taken by the Security Council "without the slightest delay".

189/ 912th meeting: para. 101.

190/ 913th meeting: paras. 2, 3, 6-9; 914th meeting: para. 4; 916th meeting: para. 3.

191/ In explanation of this last statement, the Secretary-General, at the 916th meeting on 9/10 December 1960, stated that the need for "great restraint" referred "to very practical circumstances, which I think I can most easily illustrate by saying that, of course, we cannot continue the training of an army which has become a political instrument, nor can we help financially with the budget if expenditure is partly of a character which runs counter to our aims" (para. 133).

192/ 913th meeting: paras. 12-61. For the statement of the Secretary-General, see chapter I, Case 33; in connexion with the limitations of the powers of the United Nations Force with regard to the use of force, see chapter V, Case 2 (v); for the consideration of Chapter VII of the Charter in general, see chapter XI, Case 4; for the consideration of the provisions of Article 2 (7), see chapter XII, Case 14.

193/ S/4579, 914th meeting: para. 62.

194/ 914th meeting: para. 80.

revised form[195] provided for the Security Council (1) to declare that any violation of human rights in the Republic of the Congo was inconsistent with the purposes that guided the United Nations and to expect that no measures contrary to recognized rules of law and order would be taken by anyone against any person held prisoner or under arrest anywhere in the Republic of the Congo; (2) to express the hope that the International Committee of the Red Cross would be allowed to examine detained persons throughout the Republic of the Congo and their places and conditions of detention and otherwise to obtain the necessary assurances for their safety; and (3) to request the Secretary-General to continue his efforts to assist the Republic of the Congo in the restoration of law and order throughout its territory and in adopting all necessary measures tending to safeguard civil and human rights for all persons within the country.

At the 915th meeting on 8/9 December 1960, the representative of the United Kingdom stated that the resolutions of the Council adopted on 14 and 22 July and 9 August 1960 had provided the Secretary-General with a satisfactory mandate to carry out his responsibility and that no further resolution was required in connexion with his mandate.[196]

On 9 December 1960 the Secretary-General transmitted to the members of the Security Council a report[197] from his Special Representative in the Congo which noted that, following arrests of a number of Belgians in Stanleyville, the commander of the United Nations Force was instructed by ONUC Headquarters in Leopoldville to provide full protection to the European population with all means that might be required in the circumstances.

At the 917th meeting on 10 December 1960, the representative of Ceylon suggested that the Council should confer on the Secretary-General a mandate to make use of the armed forces at his disposal so as to carry out the purpose of maintaining law and order in the territory of the Congo by all the means that would appear to him to be necessary.[198]

At the 920th meeting on 13/14 December 1960, the President, speaking as the representative of the USSR, submitted the following amendments[199] to the four-Power draft resolution: (1) in the second preambular paragraph[200] to replace the words following "Deeply concerned" by

> "at the deterioration in the situation in the Republic of the Congo and at the fact that the decisions of the Security Council on the question of the Congo are not being carried out, that the sovereign rights of the Congolese people continue to be violated and that the country's territorial integrity and independence are being undermined by Belgium and other colonial Powers";

(2) to insert the following text as the third preambular paragraph:

> "Noting that, as a result of the premeditated and systematic destruction of the democratic foundations of the State Government of the Congo by Mobutu's armed bands, which are financed and supplied by foreign Powers, the functioning of the lawful Central Government and Parliament of the Republic has been paralysed and Prime Minister Patrice Lumumba and a number of leading members of Parliament and members of the Government have been unlawfully deprived of their liberty and are being subjected to other forms of violence."

The third preambular paragraph would accordingly become preambular paragraph 4; (3) in operative paragraph 1 to replace the words following "United Nations and" by

> "requests that the Command of the troops, sent to the Congo in accordance with the Security Council's decision, shall take energetic action to ensure the immediate cessation of the criminal violation of law and order in the country by Mobutu's armed bands";

(4) to delete, in view of the amendment to the first operative paragraph, operative paragraph 2; and (5) to replace operative paragraph 3, which would become operative paragraph 2, by the following:

> "Requests that the Command of the armed forces, sent to the Congo in accordance with the Security Council's decision, shall take immediate steps to disarm and disperse Mobutu's bands, thereby creating the essential conditions for the restoration of law and order in the country."

At the 920th meeting on 13/14 December 1960, the USSR amendments to the four-Power draft resolution were rejected: the first, second, third and fifth amendments by 2 votes in favour to 8 against, with 1 abstention,[201] and the fourth amendment by 2 votes in favour to 7 against, with 2 abstentions.[202]

The four-Power draft resolution failed of adoption; there were 7 votes in favour, 3 against, with 1 abstention (one of the negative votes being that of a permanent member).[203]

The representative of Poland requested that a separate vote be taken on the last operative paragraph of the USSR draft resolution.[204]

The President (USSR) put to the vote operative paragraph 3 of the USSR draft resolution. The para-

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195/ S/4575/Rev.1, O.R., 15th year, Suppl. for Oct.-Dec. 1960, pp. 82-83. At the 920th meeting the representative of Argentina stated that the sponsors of the joint draft resolution, in order to make their concern for civil and human rights more specific, had introduced in operative paragraph 3 statements previously to be found in preambular paragraph 3 (920th meeting: para. 126).

196/ 915th meeting: paras. 35, 43.

197/ S/4590, O.R., 15th year, Suppl. for Oct.-Dec. 1960, pp. 93-95, paras. 5, 6.

198/ 917th meeting: para. 56. See chapter XI, Case 4.

199/ S/4597, 920th meeting: para. 33.

200/ The paragraph read: "Deeply concerned at the continuation of unsettled conditions in various parts of the Republic of the Congo, which has led to acts of violence against persons of both Congolese and non-Congolese nationality, including United Nations personnel."

201/ 920th meeting: paras. 151-153, 155.

202/ 920th meeting: para. 154.

203/ 920th meeting: para. 156.

204/ 920th meeting: para. 157.

graph was rejected by 4 votes in favour to 6 against, with 1 abstention.[205]

The USSR draft resolution as a whole was rejected by 2 votes in favour to 8 against, with 1 abstention.[206]

Decision of 14 December 1960 (920th meeting): Rejection of the Polish draft resolution

At the 920th meeting on 13/14 December 1960, after the rejection of the four-Power draft resolution and of the USSR draft resolution, the representative of Poland submitted a draft resolution[207] according to which the Security Council would: (1) request the Secretary-General to undertake the necessary measures in order to obtain the immediate release of Mr. Lumumba and of all persons under arrest or detention despite their parliamentary immunity; and (2) request the Secretary-General to inform the Security Council as soon as possible of the measures taken and the results thereof.

At the same meeting the Polish draft resolution was rejected[208] by 3 votes in favour to 6 against, with 2 abstentions.

Decision of 14 January 1961 (927th meeting): Rejection of the joint draft resolution submitted by Ceylon, Liberia and the United Arab Republic

By note verbale[209] dated 1 January 1961 to the representative of Belgium, the Secretary-General referred to the report[210] from his Special Representative in the Congo that the troops of the Armée nationale congolaise, which had been permitted to land at Usumbura, had been transferred to Bukavu in the Republic of the Congo. This, it was noted, indicated direct or indirect military assistance to the Armée nationale congolaise, in contravention of operative paragraph 6[211] of General Assembly resolution 1474 (ES-IV), and the gravity of the situation was accentuated by the fact that such assistance had been rendered in the Trust Territory of Ruanda-Urundi. The Secretary-General requested the Belgian Government to take immediate and effective measures to ensure that Belgian authorities in the Trust Territory of Ruanda-Urundi or elsewhere would lend no support, directly or indirectly, to military action by Congolese troops.[212]

By letter[213] dated 4 January 1961 addressed to the President of the Security Council, the representative of the USSR requested that States members of the Security Council should receive information from the Secretary-General on the use of the Trust Territory of Ruanda-Urundi as a Belgian military base for carrying out operations against the Congo.

By letter[214] dated 7 January 1961, the representative of the USSR requested the President of the Security Council to convene a meeting of the Council to examine the serious threat to peace and security which it held to have been created by the new acts of Belgian aggression against the Congo and flagrant violation of the international status of the Trust Territory of Ruanda-Urundi.

In a note verbale[215] dated 11 January 1961 to the Secretary-General, the representative of Belgium stated that the Belgian authorities at Usumbura had treated the contingent of the Armée nationale congolaise correctly and transported the contingent immediately to the frontier of the Congo. In so acting they had not contravened operative paragraph 6 of resolution 1474 (ES-IV). Any other attitude would have been contrary to the Security Council resolution of 22 July 1960, which requested "all States to refrain from any action which might tend to impede the restoration of law and order and the exercise by the Government of the Congo of its authority". If was further stated in the note that there were no longer any Congolese soldiers in Ruanda-Urundi and that the local authorities had been instructed by the Government of Belgium to oppose any unauthorized transit in the future.

At the 924th meeting on 12 January 1961, the Council considered the following agenda:

"Letter dated 13 July 1960 from the Secretary-General addressed to the President of the Security Council (S/4381);

"Note of the Secretary-General (S/4606 and Add.1);

"Letters dated 4 and 7 January 1961 from the Permanent Representative of the Union of Soviet Socialist Republics addressed to the President of the Security Council (S/4614, S/4616)."

The representative of Belgium was invited to participate in the discussion, the invitation being renewed at each of the subsequent meetings; at the 927th meeting the representative of the Republic of the Congo was also invited to take part in the discussion.[216]

The representative of the USSR stated that further acts of aggression against the Republic of the Congo had been committed by Belgium from the Trust

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205/ 920th meeting: para. 158.

206/ 920th meeting: para. 159.

207/ S/4598, 920th meeting: para. 169.

208/ 920th meeting: para. 177.

209/ S/4600, document V, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 11-12. In documents S/4606 and Add.1 (ibid., pp. 1-15) the Secretary-General submitted documents concerning the landing of units of the Armée nationale congolaise at Usumbura (Ruanda-Urundi). For the consideration of the obligations for Belgium arising from the Trusteeship Agreement, see chapter XII, Case 28.

210/ S/4606, document IV, ibid., pp. 7-11.

211/ Operative paragraph 6 of resolution 1474 (ES-IV) reads:

"6. Without prejudice to the sovereign rights of the Republic of the Congo, calls upon all States to refrain from the direct and indirect provision of arms or other materials of war and military personnel and other assistance for military purposes in the Congo during the temporary period of military assistance through the United Nations, except upon the request of the United Nations through the Secretary-General for carrying out the purposes of this resolution and of the resolutions of 14 and 22 July and 9 August 1960 of the Security Council."

212/ In a note verbale of 2 January 1961 (S/4600/Add.1, document VI, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 12-13) to the representative of Belgium, the Secretary-General reiterated the urgent need for a clarification by the Belgian Government of the situation in Ruanda-Urundi.

213/ S/4614, ibid., pp. 17-19.

214/ S/4616, ibid., pp. 19-20.

215/ S/4621, ibid., pp. 22-27.

216/ 924th meeting: para. 1; 927th meeting: para. 2c.

Territory of Ruanda-Urundi, in violation of operative paragraph 6 of resolution 1474 (ES-IV). This action also constituted an infringement of the Trusteeship Agreement for the Territory of Ruanda-Urundi and of resolution 1579 (XV) concerning the future of Ruanda-Urundi adopted by the General Assembly on 20 December 1960.[217]

The representative of Belgium* stated that when the Belgian Government learned that a contingent of the Armée nationale congolaise had landed at Usumbura, it could have given to the Resident-General of Ruanda-Urundi no instructions other than to have that contingent at once conveyed to the Congolese national frontier. He assured the Council that the Belgian Government did not intend to authorize any further transit in the future.[218]

At the 926th meeting on 13 January 1961, the representative of Liberia introduced a draft resolution[219] jointly sponsored with Ceylon and the United Arab Republic, according to which the Security Council would: (1) call upon the Government of Belgium as the Administering Authority of the Trust Territory of Ruanda-Urundi immediately to cease all action against the Republic of the Congo and to observe strictly its international obligations under the Trusteeship Agreement and to take immediate steps to prevent the utilization of the Trust Territory of Ruanda-Urundi contrary to the purposes of General Assembly resolutions 1474 (ES-IV) and 1579 (XV) and the Security Council resolutions of 14 and 22 July and 9 August 1960; (2) call upon the Government of Belgium to withdraw immediately from the Republic of the Congo all Belgian military and paramilitary personnel, advisers and technicians; and (3) recommend to the General Assembly to consider the action taken by Belgium as a violation of the Trusteeship Agreement for the Trust Territory of Ruanda-Urundi.

The representative of the United States, in view of assurances by the Belgian Government, reaffirmed in the Security Council by the representative of Belgium, that there were no more Congolese troops within the Trust Territory and that no more would be permitted to enter, stated that if there ever had been any justification for the Council to meet it had now been obviated.[220]

At the 927th meeting on 14 January 1961 the draft resolution submitted jointly by Ceylon, Liberia and the United Arab Republic was not adopted; there were 4 votes in favour, with 7 abstentions.[221]

Decisions of *21 February 1961 (942nd meeting):*

(1) Rejection of the USSR draft resolution;

(2) Adoption of the draft resolution submitted by Ceylon, Liberia and the United Arab Republic

A (i) Urging the immediate taking of all appropriate measures to prevent the occurrence of civil war in the Congo;

(ii) Urging the taking of measures for the immediate withdrawal and evacuation from the Congo of all Belgian and other foreign military and paramilitary personnel and political advisers not under the United Nations Command, and mercenaries;

(iii) Calling upon all States to prevent the departure of such personnel for the Congo from their territories;

(iv) Deciding that an investigation be held in order to ascertain the circumstances of the death of Mr. Lumumba and his colleagues and that the perpetrators of these crimes be punished;

(v) Reaffirming the Security Council resolutions of 14 July, 22 July and 9 August 1960 and the General Assembly resolution 1474 (ES-IV) of 20 September 1960 and reminding all States of their obligation under these resolutions;

B (i) Urging the convening of the Parliament;

(ii) Urging the re-organization of Congolese armed units and personnel;

(iii) Calling upon all States to extend their full co-operation for the implementation of this resolution;

(3) Rejection of the joint draft resolution submitted by Ceylon, Liberia and the United Arab Republic.

By note[222] dated 23 January 1961 the Secretary-General brought to the attention of the Members of the Security Council communications concerning Mr. Lumumba and other related subjects.

217/ 924th meeting: paras. 3, 19, 20.

218/ 924th meeting: paras. 47, 51.

219/ S/4025, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 30-31; 925th meeting: para. 9.

220/ 926th meeting: para. 36.

221/ 927th meeting: para. 94.

222/ S/4637, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 54-59. By letter dated 19 January 1961 the Secretary-General informed the President of the Republic of the Congo (Leopoldville) about the grave concern regarding the transfer of Mr. Lumumba to Katanga and urged him to take immediate measures to have Mr. Lumumba return from Katanga and that, unless released, he be given the opportunity to answer the charges against him in a fair and public hearing (document I, ibid., pp. 54-55). By message dated 19 January 1961 addressed through his Special Representative in the Congo to Mr. Tshombé, the Secretary-General stated that it had been his understanding that the Katanga authorities had been presented by Mr. Lumumba's transfer with a fait accompli; that Mr. Tshombé would consider what steps could properly be taken so that Mr. Lumumba and his companions might be given the benefit of due process of law at the place of competent jurisdiction (document II, ibid., p. 55). By letter dated 20 January 1961 the Secretary-General informed the President of the Republic of the Congo that the Advisory Committee considered it appropriate to draw his urgent attention to the serious bearing on the efforts towards reconciliation and political unification which the continued imprisonment of Mr. Lumumba seemed to it to have. The political significance of those observations was enhanced by Mr. Lumumba's transfer, which could not but aggravate the complications created by his arrest and detention (document III, ibid., pp. 56-57). By message dated 23 January 1961 addressed through his Special Representative in the Congo to Mr. Gizenga in Stanleyville, the Secretary-General drew Mr. Gizenga's attention to confirmed reports in Oriental Province indicating that a very large number of violations of the most basic human rights of both Congolese and non-Congolese elements of the population had taken place. The Secretary-General asked that the most vigorous steps be taken to ensure that the the Armée nationale congolaise units in the Stanleyville area assume their function of the maintenance of internal security (document V, ibid., pp. 58-59). By message received by the Secretary-General on 1 February 1961, Mr. Tshombé informed him that the transfer of Mr. Lumumba to Katanga had been effected on the initiative of the President of the Congo and expressed the view that for the time being, in the interest of restoring general calm, there should be no contact between Mr. Lumumba and the outside world (S/4637/Add.1, ibid., p. 59).

By letter[223] dated 24 January 1961, the President of the Republic of the Congo and the President of the College of Commissioners-General and Commissioner-General for Foreign Affairs informed the President of the Security Council that the Government of the Republic of the Congo had taken cognizance of the violation of its national sovereignty and of the flagrant interference in its domestic affairs by the United Arab Republic[224] which constituted a breach of General Assembly resolution 1474 (ES-IV) of 20 September 1960 and of the Charter. In view of this grave situation, which was considered to be the result of foreign intervention in the Republic of the Congo and to present a danger to international peace and security, the President of the Security Council was requested to call a meeting of the Council to examine the situation and to take appropriate measures. In submitting this question, the Government of the Congo referred to Articles 24, 34 and 35 (1) of the Charter and to rule 3 of the provisional rules of procedure of the Security Council.

By letter[225] dated 26 January 1961, the permanent representatives of Ceylon, Ghana, Guinea, Mali, Morocco, the United Arab Republic and Yugoslavia informed the President of the Security Council that their Governments strongly protested against the inhuman and brutal treatment to which Mr. Lumumba, Prime Minister of the Republic of the Congo, Mr. Okito, Vice-President of the Senate, and Mr. Mpolo, Minister of Youth, had been subjected upon their illegal transfer to Katanga. They further noted that the continued illegal incarceration of Mr. Lumumba would increase disunity and render extremely difficult the preservation of the Congo's territorial integrity and the establishment of law and order. Fruitful negotiations aiming at increasing harmony among political factions and at preserving the Congo's territorial integrity could not be conducted as long as some of the Congo's prominent national leaders remained illegally detained. The President of the Security Council was, therefore, requested to convene a meeting of the Council "to examine the alarming recent developments in the Congo, which are hampering efforts for the preservation of law and order in that country, as well as its territorial integrity, and which, therefore, endanger international peace and security".

By note verbale[226] dated 29 January 1961, the permanent representative of Libya joined in the request and requested the President of the Security Council that his name be added to the list of signatories of the letter of request (S/4641).

In a letter[227] dated 29 January 1961 addressed to the President of the Security Council, the permanent representative of the USSR stated that the situation in the Republic of the Congo constituted a real threat not only to Africa but to the whole world. The principal cause of all the difficulties was the continued Belgian aggression against the Congo. The illegal arrest of Prime Minister Lumumba and his subsequent surrender to the former Belgian colonial administration in Katanga had further complicated the situation in the Congo and increased the grave threat to international peace and security. He requested the President of the Security Council to take up immediately the situation resulting from the new acts of Belgian aggression.

At the 928th meeting on 1 February 1961, the Security Council adopted[228] the following agenda:

"Letter dated 13 July 1960 from the Secretary-General addressed to the President of the Security Council (S/4381);

"Letter dated 26 January 1961 from the permanent representatives of Ceylon, Ghana, Guinea, Libya, Mali, Morocco, United Arab Republic and Yugoslavia addressed to the President of the Security Council (S/4641 and S/4650);[229]

"Telegram dated 24 January 1961 from the President of the Republic of the Congo (Leopoldville) and the President of the College of Commissioners-General and Commissioner-General for Foreign Affairs addressed to the President of the Security Council (S/4639);

"Letter dated 29 January 1961 from the Permanent Representative of the Union of Soviet Socialist Republics to the President of the Security Council (S/4644)."

The following representatives were invited to participate in the discussion, the invitations being renewed at each of the subsequent meetings: at the 928th meeting, the representatives of Mali, India, Yugoslavia, Indonesia, Belgium, Guinea, Ghana, Congo (Leopoldville), Morocco, Poland and Libya; at the 934th meeting, the representatives of Sudan, Nigeria, Madagascar, Cameroon, Congo (Brazzaville), Senegal, Gabon; at the 935th meeting, the representatives of the Central African Republic, Upper Volta and Iraq; at the 936th meeting, the representative of Czechoslovakia; at the 941st meeting, the representative of Pakistan.[230]

At the 928th meeting on 1 February 1961, the Secretary-General made a statement commenting on "important elements" in the current situation in the Congo, in which he dealt with domestic political

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223/ S/4639, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 59-60.

224/ By letter dated 7 January 1961, the President of the Republic of the Congo (Leopoldville) and the Commissioner-General for Foreign Affairs sent to the Special Representative of the Secretary-General in the Congo a memorandum concerning the activities of the United Nations in the Congo. In the memorandum it was stated that an aircraft whose registration marks appeared to connect it with the United Arab Republic landed at Lisala on 31 December 1960, without clearance to fly over or land in the country. The United Arab Republic troops belonging to the United Nations Force apparently had prevented all contacts between the legal authorities and the crew of the aircraft, thus implying support of that country for the rebel agitators in Oriental and Kivu Provinces (S/4630, O.R., 16th year, Suppl. for Jan.-March 1961, p. 43, para. 10).

225/ S/4641, ibid., pp. 62-63.

226/ S/4650, ibid., pp. 70-71.

227/ S/4644, ibid., pp. 66-67.

228/ 928th meeting: para. 55.

229/ In the agenda of the 929th-932nd, 934th-939th, 941st and 942nd meetings, after Guinea, Libya was included as a signatory of the letter and document number S/4650 was added after S/4641. The 933rd and 940th meetings were adjourned without the adoption of the agenda.

230/ 928th meeting: paras. 57, 94; 934th meeting: para. 22; 935th meeting: paras. 1-2.

development, the problem of interference from outside and the problem of the various units of the Armée nationale congolaise, as regards its role in relation to the domestic political development and as an element in the interplay between foreign Powers and groups within the Congo.[231]

At the 933rd meeting on 13 February 1961, the Secretary-General stated that after the circulation of the report[232] from his Special Representative in the Congo regarding Mr. Lumumba, he was informed[233] that Mr. Patrice Lumumba and his associates, Messrs. Okito and Mpolo, had been assassinated. He proposed that this report, which was of a most serious and tragic nature, be added to the agenda, noting that the matter was of such a character and significance that an impartial, international investigation was necessary.[234] The meeting adjourned without adopting the agenda.

At the 934th meeting on 15 February 1961, to the agenda adopted[235] at the 928th meeting the following was added:

"Report to the Secretary-General from his Special Representative in the Congo regarding Mr. Patrice Lumumba (S/4688 and Add.1)"

At the same meeting, the representative of the USSR submitted a draft resolution[236] whereby the Security Council would: (1) decisively condemn the actions of Belgium which had led to the murder of Messrs. Lumumba, Okito and Mpolo; (2) deem it essential that the sanctions provided under Article 41 of the Charter should be applied to Belgium as to an aggressor which by its actions was creating a threat to international peace, and would call on the Member States of the United Nations to apply those sanctions immediately; (3) enjoin the command of the troops that were in the Congo pursuant to the decision of the Security Council immediately to arrest Tshombé and Mobutu in order to deliver them for trial, to disarm all military units and "gendarmerie" forces under their control, and to ensure the immediate disarming and removal from the Congo of all Belgian troops and all Belgian personnel; (4) direct that the "United Nations operation" in the Congo should be discontinued within one month and all foreign troops withdrawn from there so as to enable the Congolese people to decide its own internal affairs; and (5) deem it essential to dismiss Mr. Hammarskjold from the post of Secretary-General of the United Nations as a participant in and organizer of the violence committed against the leading statesmen of the Republic of the Congo.

At the 935th meeting on 15 February 1961, the Secretary-General made a statement in which he dealt with points which he held "should determine the judgement regarding the relations of the United Nations to the fate of Mr. Lumumba" and outlined measures to be pursued with regard to the solution of the Congo problem.[237]

At the 938th meeting on 17 February 1961, the representative of the United Arab Republic introduced a draft resolution[238] submitted jointly with Ceylon and Liberia.

At the 940th meeting on 20 February 1961, the Secretary-General, referring to the report[239] of his Special Representative in the Congo, stated that it was for the Council to judge how the latest development should influence United Nations action in relation to the Congo and various groups in the Congo.[240] The meeting adjourned without adopting the agenda.

At the 941st meeting on 20 February 1961, the representative of the United Arab Republic introduced a draft resolution[241] submitted jointly with Ceylon and Liberia, whereby the Security Council, taking note of the Secretary-General's report (S/4727) of 18 February 1961 and his communication to the Security Council in his statement made at the 940th meeting (preamble, para. 1), would: (1) strongly condemn the unlawful arrests, deportations and assassinations of the political leaders of the Congo; (2) call upon the authorities in Leopoldville, Elisabethville and Kasai immediately to put and end to such practices; (3) call upon the United Nations authorities in the Congo to take all possible measures to prevent the occurrence of such outrages including, if necessary, the use of force as a last resort; and (4) decide upon an impartial investigation to determine the responsibility for these crimes and punishment of the perpetrators of such crimes. The representative requested that priority should be given to a discussion on this joint draft resolution.

231/ 928th meeting: paras. 61-93. For the statement of the Secretary-General, see chapter I, Cases 38 and 46; in connexion with the limitations of the powers of the United Nations Force with regard to the use of force, see chapter V, Case 2 (vi); for the consideration of the provisions of Article 2 (7), see chapter XII, Case 15.

232/ On 12 February 1961 the Special Representative of the Secretary-General in the Congo forwarded to the Secretary-General a report (S/4688, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 88-95) on the subject of Mr. Patrice Lumumba, containing information about the escape during the night 9/10 February of Messrs. Lumumba, Mpolo and Okito from Kolatey Farm in the province of Katanga, where they had been detained.

233/ On 13 February 1961 the Special Representative transmitted (S/4688/Add.1, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 95-97) to the Secretary-General a statement made on the same day by Mr. Munongo, Minister of Interior of the provincial government of Katanga, in which the assassination of Messrs. Lumumba, Okito and Mpolo had been announced.

234/ 933rd meeting: paras. 2, 3.

235/ 934th meeting: para. 13.

236/ S/4706, 934th meeting: para. 112.

237/ 935th meeting: paras. 25-36. For the statement of the Secretary-General, see chapter I, Cases 12, 39 and 40; in connexion with the limitations of the powers of the United Nations Force with regard to the use of force, see chapter V, Case 2 (vi); for the consideration of the provisions of Article 2 (7), see chapter XII, Case 15.

238/ S/4722, same text as S/4741, see below; 938th meeting: para. 24.

239/ S/4727 and Add.1-3, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 131-137. In his report dated 18 February 1961, the Special Representative reported on a wave of arbitrary arrests of political personalities in Leopoldville in October and November 1960. During the previous week, arrests of political personalities had been resumed in Leopoldville and deportations were taking place to Bakwanga in South Kasai. On 20 February, the Special Representative reported that a Mr. Kabeya, who described himself as a Minister for Justice for the so-called Etat minier of South Kasai, had notified him that Messrs. Finant, Fataki, Yangare, Muzungu, Elengenza and Nzuzi were sentenced to death and Mr. Kamanga was sentenced to five years of imprisonment.

240/ 940th meeting: paras. 3-6.

241/ S/4733, see S/4733/Rev.1 and foot-note 23, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 142-143; 941st meeting: para. 3.

At the same meeting the representative of Liberia submitted a draft resolution[242] according to which the Security Council would resolve that the meeting should rise and that its next meeting would be held in the Congo or in a nearby country upon the invitation of its Government for the purpose of meeting the political leaders of the Congo.

The representative of the United States, referring to part A of the joint draft resolution S/4722, stated that his delegation would like to have seen covered more specifically the following points: the responsibility of the Secretary-General for carrying out the resolution, recognition that the United Nations was in the Congo to assist and uphold its sovereignty and independence, and the prohibition of outside interference through the provision of supplies and "matériel" as well as personnel. It was obvious that any Security Council resolution calling for United Nations action must be implemented by the Secretary-General. Finally, the representative regretted that operative paragraph 3 did not specifically call upon all States not only to prevent the departure of military and paramilitary personnel for the Congo but also to prevent the sending of military "matériel", directly or indirectly. He suggested to the sponsors of the draft resolution to revise operative paragraph 3 to read as follows:

> "Calls upon all States to take immediate and energetic measures to prevent the departure or provision from their territories for the Congo of any such personnel or of any aid for military purposes, direct or indirect, other than through the United Nations, and to deny any transit or other facilities for any such personnel or any such aid, and requests the United Nations to take the necessary measures to interdict any such personnel or aid."[243]

The representative of Turkey observed that the joint draft resolution S/4722 reaffirmed the provisions of all previous resolutions of the Council on the Congo, so that the scope and meaning of the text before the Council became precise and clear in the light of existing decisions of the Council as well as of the provisions of the Charter. For example, the principle of non-interference was dealt with directly in operative paragraphs 2 and 3 of part A. These paragraphs were concerned with one particular aspect of intervention—that of personnel. However, paragraph 5 of part A, by reaffirming all the previous resolutions, brought the Council back in a strengthened way to the principle of non-interference in connexion with any of the aspects of the problem that interested the Council. Thus, the mandate of the Secretary-General came also from paragraph 5, and operative paragraph 3 of part B clearly must be interpreted in relation to the entire United Nations stand as it was set out in the previous resolutions. The representative further suggested that the text of draft resolution S/4733 be made another section, part C of draft resolution S/4722, and that operative paragraph 2 of draft resolution S/4733 be revised to read: "Calls upon the authorities in the Congo".[244]

The representative of China, commenting on the joint draft resolution S/4733, suggested that operative paragraph 2 should read: "Calls upon all the authorities in all parts of the Congo (Leopoldville) immediately to put an end to such practices", and that preambular paragraph 5, reading "Convinced of the responsibility for such crimes of persons in high places" should be deleted. He stated further that his delegation would not support the phrase "including, if necessary, the use of force as a last resort" in operative paragraph 3[245] and requested that this phrase be put to the vote separately.

The representative of Ceylon suggested that the first preambular paragraph of draft resolution S/4733 should read:

> "The Security Council,
>
> "Taking note of the report of the Special Representative in the Congo, S/4727 of 18 February 1961 and the Secretary-General's communication to the Security Council in his statement of 20 February, bringing to the earnest attention of the Council the atrocities and the assassinations in Leopoldville, Katanga and South Kasai in the Congo,"

and proposed that operative paragraph 2 should read: "Calls upon all concerned in the Congo immediately to put an end to such practices."[246]

The representative of Liberia, referring to the joint draft resolution S/4722, part A, operative paragraph 3, stated that his delegation interpreted the provision as including material from any country or other source and that this interpretation was a necessary precaution.[247]

The representative of the United States, referring to the interpretation given by the representative of Liberia, assumed that it reflected the views of the other sponsors of the draft resolution, and on that assumption, he was prepared to proceed with the voting on draft resolution S/4722.[248]

At the 942nd meeting on 20/21 February 1961 the President, speaking as the representative of the United Kingdom, stated that his delegation could not agree that any part of the joint draft resolution S/4722 could be interpreted to derogate from the principle stated in the fourth preambular paragraph of part B, that "the solution of the problem of the Congo lies in the hands of the Congolese people themselves without any interference from outside". The representative drew attention to part A, operative paragraphs 1 and 4, and part B, operative paragraph 2. Each of them, if taken in isolation, could mean that the United Nations would take action in the Congo by force without appropriate consultation with the representatives of the Congolese people. This interpretation would be extremely dangerous. The representative added that he fully agreed with the interpretation of the representative of the United States to the effect that operative paragraph 1 of

242/ 941st meeting: para. 23.

243/ 941st meeting: paras. 79-82, 84-87.

244/ 941st meeting: paras. 91-94.

245/ 941st meeting: paras. 98-102.

246/ 941st meeting: para. 126.

247/ 941st meeting: paras. 166-168.

248/ 941st meeting: para. 186.

part A should be interpreted to mean that the Secretary-General should implement the resolution.[249]/

The representative of Chile stated that the joint draft resolution S/4722, with its deliberate avoidance of any reference to the Secretary-General, was not a satisfactory one. The previous resolutions of the Council and the General Assembly should be expressly reaffirmed, for this remedied many defects in the draft resolution. The appeal to States in part A, operative paragraph 3, seemed to be limited in scope by making no reference to war matériel. However, the Liberian representative's explanation had to some extent made up for these weaknesses, which a proper interpretation of the existing agreements, reaffirmed and recalled by the draft resolution, would offset. The representative expressed doubts about part B of the draft resolution. Operative paragraphs 1 and 2 would represent interference contrary to the Charter; however, the aim, as stated in the preamble to part B, to prevent interference from outside and the appeal for conciliation, made up for that shortcoming. The convening of the Parliament, as well as the reorganization of the army, were not made mandatory. It would be necessary to negotiate and conciliate for that purpose. The representative concurred in the explanations and interpretations given by the representatives of the United States, Turkey and the United Kingdom.[250]/

The representative of France stated that his delegation endorsed what had been said by the representatives of the United States and the United Kingdom on the subject of the respect for the sovereignty of the Congo. It was desirable that the United Nations should help the lawful authorities of the Congo to reorganize the armed forces and to restore order within the country, but nothing could be done without their co-operation. It was also for those authorities to convene Parliament and to take the necessary steps towards conciliation.[251]/

The representative of China shared the interpretations of the representatives of Turkey, the United States and the United Kingdom on the joint draft resolution S/4722, particularly on operative paragraph 1 of part A. In regard to operative paragraph 3, the Chinese delegation attached a great deal of importance to the prevention of the furnishing not only of military personnel but also of military matériel. With regard to operative paragraph 1 of part B, it was his understanding that it meant that the Secretary-General should urge the Government of the Congo to convene the Parliament because that was the only procedure possible. With regard to operative paragraph 2 of part B, the representative expressed the view that the Secretary-General should urge the Government of the Congo to have its armed forces reorganized. This was the only procedure consistent with the Charter and with the previous resolutions of the Council.[252]/

The representative of Ecuador stated that he would vote for the joint draft resolution S/4722 on the understanding that it was to be interpreted in the manner explained by the representative of Liberia and in conformity with the views expressed by the representatives of the United Kingdom, the United States and Turkey.[253]/

At the 942nd meeting on 20/21 February 1961, the draft resolution submitted by the USSR was rejected by 1 vote in favour to 8 against, with 2 abstentions.[254]/

Before the vote on the joint draft resolution S/4722, the representative of the United States stated that he understood the statement of the representative of Liberia to mean that, taken as a whole, the draft resolution was intended to forbid the introduction into the Congo of military arms and supplies, as well as military personnel from any source, and to authorize the United Nations to interdict such traffic. The representative assumed that, in the absence of any statement to the contrary, the two other sponsors were in accord with the representative of Liberia in so construing the draft resolution. It was on this basis that the United States was ready to vote for it.[255]/

At the 942nd meeting on 21 February 1961 the joint draft resolution submitted by Ceylon, Liberia and the United Arab Republic was adopted[256]/ by 9 votes in favour to none against, with 2 abstentions. The resolution[257]/ read:

"A

"The Security Council,

"Having considered the situation in the Congo,

"Having learnt with deep regret the announcement of the killing of the Congolese leaders, Mr. Patrice Lumumba, Mr. Maurice Mpolo and Mr. Joseph Okito,

"Deeply concerned at the grave repercussions of these crimes and the danger of widespread civil war and bloodshed in the Congo and the threat to international peace and security,

"Noting the report of the Secretary-General's Special Representative (S/4691) dated 12 February 1961 bringing to light the development of a serious civil war situation and preparations therefor,

"1. Urges that the United Nations take immediately all appropriate measures to prevent the occurrence of civil war in the Congo, including arrangements for cease-fires, the halting of all military operations, the prevention of clashes, and the use of force, if necessary, in the last resort;

"2. Urges that measures be taken for the immediate withdrawal and evacuation from the Congo of all Belgian and other foreign military and paramilitary personnel and political advisers not under the United Nations Command, and mercenaries;

249/ 942nd meeting: paras. 17-19, 23.

250/ 942nd meeting: paras. 34-39.

251/ 942nd meeting: para. 44.

252/ 942nd meeting: paras. 53-55.

253/ 942nd meeting: para. 57.

254/ 942nd meeting: para. 89.

255/ 942nd meeting: paras. 91-94.

256/ 942nd meeting: para. 95.

257/ S/4741, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 147-148.

"3. Calls upon all States to take immediate and energetic measures to prevent the departure of such personnel for the Congo from their territories, and for the denial of transit and other facilities to them;

"4. Decides that an immediate and impartial investigation be held in order to ascertain the circumstances of the death of Mr. Lumumba and his colleagues and that the perpetrators of these crimes be punished;

"5. Reaffirms the Security Council resolutions of 14 July, 22 July and 9 August 1960 and the General Assembly resolution 1474 (ES-IV) of 20 September 1960 and reminds all States of their obligation under these resolutions.

"B

"The Security Council,

"Gravely concerned at the continuing deterioration in the Congo, and the prevalence of conditions which seriously imperil peace and order, and the unity and territorial integrity of the Congo, and threaten international peace and security,

"Noting with deep regret and concern the systematic violations of human rights and fundamental freedoms and the general absence of rule of law in the Congo,

"Recognizing the imperative necessity of the restoration of parliamentary institutions in the Congo in accordance with the fundamental law of the country, so that the will of the people should be reflected through the freely elected Parliament,

"Convinced that the solution of the problem of the Congo lies in the hands of the Congolese people themselves without any interference from outside and that there can be no solution without conciliation,

"Convinced further that the imposition of any solution, including the formation of any government not bases on genuine conciliation would, far from settling any issues, greatly enhance the dangers of conflict within the Congo and threat to international peace and security,

"1. Urges the convening of the Parliament and the taking of necessary protective measures in that connexion;

"2. Urges that Congolese armed units and personnel should be re-organized and brought under discipline and control, and arrangements be made on impartial and equitable bases to that end and with a view to the elimination of any possibility of interference by such units and personnel in the political life of the Congo;

"3. Calls upon all States to extend their full co-operation and assistance and take such measures as may be necessary on their part, for the implementation of this resolution."

At the same meeting, the representative of the United States submitted the following amendments to the joint draft resolution S/4733/Rev.1: (1) in the first preambular paragraph to add after the words "20 February" the words "and of other reports"; and after the words "assassinations in" to add the word "Stanleyville"; (2) to delete the last preambular paragraph; (3) in operative paragraph 3, to add after the word "measures" the words "in accordance with the Charter"; (4) in operative paragraph 4 to add after the word "and" the words "to seek the".

He stated that the purpose of his amendments was, first, to make it clear that the Council was concerned with atrocities, assassinations and violations of human rights wherever they occurred in the Congo, secondly, that no prejudgement of responsibility for those occurrences be made before the investigation, thirdly, to seek the punishment of the perpetrators thereof, and fourthly, to make it clear that any action by the United Nations in the Congo, specifically the use of force, was circumscribed by the provisions of the Charter.[258]

After a suspension of the meeting the representative of Ceylon stated that the sponsors of the joint draft resolution were prepared to substitute in the last preambular paragraph "Taking note of the allegations of the responsibility of persons in high places for such crimes", and were ready to accept the United States amendments to operative paragraphs 3 and 4. However, they were not in a position to accept the amendment to the first preambular paragraph.[259]

The representative of the United States declared that he was ready to substitute in the first preambular paragraph after "20 February" the words "and other reports bringing to the urgent attention of the Council the atrocities and assassinations in various parts of the Congo".[260]

The President (United Kingdom) put to the vote the retention of the words "including, if necessary, the use of force in the last resort" in operative paragraph 3, as the representative of China had asked for a separate vote on these words.[261]

The proposal was not adopted. There were 5 votes in favour, 1 against, with 5 abstentions.[262]

The President put to the vote the amendments to preambular paragraph 1, to add after the words "20 February" the words "and of other reports" and to delete the words "in Leopoldville, Katanga and South Kasai in the Congo", and to replace them with the words "in various parts of the Congo".[263]

The amendments failed of adoption. There were 8 votes in favour and 3 against (one of the negative votes being that of a permanent member).[264]

Following a discussion in which the representatives of Liberia, the United States, Ceylon, the United Arab Republic, Turkey and the USSR took part, the meeting was suspended. Upon resumption of the meeting, after a clarification by the representative of the United States that the first preambular paragraph of

258/ S/4740, 942nd meeting: paras. 97-101.
259/ 942nd meeting: paras. 112, 113.
260/ 942nd meeting: para. 128.
261/ 942nd meeting: para. 129.
262/ 942nd meeting: para. 129.
263/ 942nd meeting: para. 138.
264/ 942nd meeting: para. 139.

the joint draft resolution S/4733/Rev.1, as amended by the proposed United States amendment, would read:

"Taking note of the report of the Special Representative in the Congo [S/4727] of 18 February 1961 and the Secretary-General's communication to the Security Council in his statement of 20 February and other reports" [265]

the President put the amendment to the vote.

The amendment failed of adoption. There were 7 votes in favour, 3 against, with 1 abstention (one of the negative votes being that of a permanent member).[266]

At the 942nd meeting on 20/21 February 1961, the joint draft resolution S/4733/Rev.1, as amended, was not adopted. There were 6 votes in favour, none against, with 5 abstentions.[267]

The President, speaking as the representative of the United Kingdom, said that had either of the amendments to the first preambular paragraph been carried, his delegation would have voted for the draft resolution.[268]

The Secretary-General welcomed resolution S/4741 as giving a stronger and a clearer framework for United Nations action although it did not provide a wider legal basis or new means for implementation. He noted the reaffirmation of previous resolutions which had entrusted the Secretary-General with execution of the decisions of the Security Council in the Congo affairs. On that basis he would urgently avail himself of the assistance of the Advisory Committee. The Secretary-General noted further that there had been no difference of opinion as regards the operative paragraphs of draft resolution S/4733/Rev.1. Under such circumstances he felt entitled to use those operative paragraphs with the full moral value which they had in the United Nations efforts in the Congo. Concerning the provision regarding the impartial investigation to determine responsibility, it would have to be done on the initiative of the Secretariat.[269]

The representative of Liberia asked the President of the Security Council to consider convening a special meeting of the Council to discuss his delegation's suggestion regarding the Council's visit to the Congo.[270]

The President said that he would enter into consultations with other members of the Council with a view to calling a meeting if that was the general desire.[271]

[265] 942nd meeting: para. 109.

[266] 942nd meeting: para. 175.

[267] 942nd meeting: para. 181.

[268] 942nd meeting: para. 215.

[269] 942nd meeting: paras. 216, 217, 219-221. For the statement of the Secretary-General in connexion with the question of the limitation of the powers of the United Nations Force in the Congo with regard to the use of force (paras. 225, 226, 228-231), see chapter XI, Case 4.

[270] 942nd meeting: para. 240.

[271] 942nd meeting: para. 247.

By telegram[272] dated 22 February 1961, the President of the Congo (Leopoldville) communicated to the President of the Security Council the position of the Government of the Congo on the Security Council resolution S/4741 of 21 February 1961.

On 27 February 1961 the Secretary-General submitted his first report[273] and on 17 May 1961 his second report[274] on steps taken in regard to the implementation of the Security Council resolution S/4741 of 21 February 1961.

On 20 March 1961 the Secretary-General submitted his report[275] on the implementation of part A, operative paragraph 4, of Security Council resolution S/4741 of 21 February 1961.

On 20 June 1961 he submitted his report[276] on steps taken in regard to the implementation of part B, paragraph 1, of Security Council resolution S/4741 of 21 February 1961.

On 2 August 1961 the Secretary-General submitted his report[277] concerning the meeting of the Parliament of the Congo and the establishment, on 2 August 1961, of a new Government of the Republic.

On 13 August 1961 an exchange of letters[278] between the Prime Minister of the Republic of the Congo and the Secretary-General concerning the meeting of the Congolese Parliament and the establishment of a Government of national unity and political reconciliation under Prime Minister Adoula was published.

On 14 September 1961 a report[279] of the Officer-in-Charge of the United Nations Operation in the Congo to the Secretary-General, relating to the implementation of part A, operative paragraph 2, of Security Council resolution S/4741 of 21 February 1961, was published.

Decision *of 24 November 1961 (982nd meeting):*

(i) Strongly deprecating the secessionist activities in Katanga;

[272] S/4743, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 150-152. By letter dated 21 February 1961 addressed to the President of the Security Council the representative of the Congo (Leopoldville) brought to the attention of the Security Council the views of his Government on certain aspects of the question, and the interpretation it intended to give to the decision adopted, on the basis of the commentaries put forward by the members of the Council (S/4742, ibid., pp. 145-150).

[273] S/4752, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 176-190, supplemented by S/4752/Add.1-4, ibid., pp. 190-203.

[274] S/4807, O.R., 16th year, Suppl. for April-June 1961, pp. 43-48, supplemented by S/4807/Add.1, ibid., p. 48.

[275] S/4771, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 259-260, supplemented by S/4771/Add.1-3, ibid., pp. 260-261.

[276] S/4841, O.R., 16th year, Suppl. for April-June 1961, pp. 69-72, supplemented by S/4841/Add.1-3, ibid., pp. 73-76.

[277] S/4913, O.R., 16th year, Suppl. for July-Sept. 1961, pp. 61-63.

[278] S/4923, ibid., pp. 74-80.

[279] S/4940, O.R., 16th year, Suppl. for July-Sept. 1961, pp. 99-106. The report covered the developments in Katanga from 24 August to the afternoon of 13 September and was supplemented by documents S/4940/Add.1-9, covering the developments from 13 September to 23 September 1961, ibid., pp. 106-121. Document S/4940/Add.7 contains the text of a provisional draft agreement on a cease-fire between the United Nations troops and those of the Katanga authorities, signed on 20 September 1961, ibid., pp. 119-120. Subsequent developments up to 19 December 1961 were covered in S/4940/Add.10-19, O.R., 16th year, Suppl. for Oct.-Dec. 1961, pp. 1-55.

(ii) Further deprecating the armed action against the United Nations forces and personnel in pursuit of such activities;

(iii) Insisting that such activities should cease forthwith;

(iv) Authorizing the Secretary-General to take vigorous action, including the use of requisite measure of force, if necessary, for the immediate apprehension, detention pending legal action, and/or deportation of all foreign military and paramilitary personnel and political advisers not under United Nations Command, and mercenaries as laid down in paragraph A-2 of the resolution of 21 February 1961;

(v) Further requesting the Secretary-General to take all necessary measures to prevent the entry or return of such elements and of equipment or other material in support of such activities;

(vi) Requesting all States to refrain from the supply of arms, equipment or other material which could be used for warlike purposes, and to take the necessary measures to prevent their nationals from doing the same, and to deny transportation for such supplies except in accordance with the decisions, policies and purposes of the United Nations;

(vii) Calling upon all Member States to refrain from promoting, condoning, or giving support to activities against the United Nations often resulting in armed hostilities against the United Nations forces and personnel;

(viii) Declaring that all secessionist activities against the Congo are contrary to the Loi fondamentale and Security Council decisions and specifically demanding that such activities taking place in Katanga should cease forthwith;

(ix) Declaring full support for the Central Government of the Republic of the Congo;

(x) Urging all Members to lend their support to the Central Government of the Republic of the Congo;

(xi) Requesting all Member States to refrain from any action which might impede the policies and purposes of the United Nations in the Congo and which was contrary to the decisions of the Security Council and the general purposes of the Charter

By letter [280] dated 3 November 1961, the permanent representatives of Ethiopia, Nigeria and Sudan requested the President of the Security Council to convene a meeting of the Council to consider the situation prevailing in the province of Katanga, Republic of the Congo, which was considered to have been caused by the lawless acts of mercenaries.

At the 973rd meeting on 13 November 1961,[281] the Security Council adopted the following agenda:

"Letter dated 13 July 1960 from the Secretary-General to the President of the Security Council (S/4381):

"Letter dated 3 November 1961 from the Permanent Representatives of Ethiopia, Nigeria and Sudan to the President of the Security Council (S/4973)."

The following representatives were invited to participate in the discussion, the invitations being renewed at each of the subsequent meetings: at the 973rd meeting, the representatives of Ethiopia, Belgium, India and the Republic of the Congo; at the 974th meeting, the representative of Sweden.[282]

At the 974th meeting on 15 November 1961, the representative of Liberia noted that the resolution of the Security Council of 21 February 1961 had not yet been fully implemented and that paragraphs 2 and 3 of part A of that resolution had not yet met with the desired results.[283] He introduced a draft resolution[284] submitted jointly with Ceylon and the United Arab Republic according to which the Security Council would: (1) strongly deprecate the secessionist activities of the provincial administration of Katanga; (2) further deprecate the armed action against the United Nations forces and personnel in the pursuit of such activities; (3) insist that such activities should cease forthwith; (4) authorize the Secretary-General to take vigorous action, including the use of requisite measure of force, if necessary, for the immediate apprehension, detention pending legal action and/or deportation of all foreign mercenaries and hostile elements as laid down in paragraph 2 of part A of resolution S/4741 of 21 February 1961; (5) further request the Secretary-General to take all necessary measures to prevent the entry or return of such elements and also of arms, equipment or other material in support of such activities; (6) request all States to refrain from the supply of arms, equipment or other material which could be used for warlike purposes, and to take the necessary measures to prevent their nationals from doing the same, and also to deny transportation and transit facilities for such supplies across their territories except in accordance with the decisions of the United Nations; (7) call upon all Member States to refrain from promoting, condoning or giving support to activities against the United Nations; (8) demand that all secessionist activities in Katanga should cease forthwith in conformity with the Loi fondamentale and the decisions of the Security Council; (9) declare full support for the Central Government of the Congo and the determination to assist that Government in accordance with the decisions of the United Nations to maintain law and order and national integrity, and to provide technical assistance; (10) urge all States to lend their support to the Central Government of the Republic of the Congo; (11) request all Member States to refrain from any action which might impede the policies and purposes of the United Nations in the Congo.

The representative of Belgium* observed that the United Nations could not use force except when it had exhausted all possibilities of conciliation to the utmost and requested the Council to consider

280/ S/4973, O.R., 16th year, Suppl. for Oct.-Dec. 1961, p. 66.

281/ 973rd meeting: para. 10.

282/ 973rd meeting: para. 25; 974th meeting: para. 2.

283/ 974th meeting: para. 10.

284/ S/4985. (The sponsors subsequently revised operative paragraph 8 of the joint draft resolution which was issued as S/4985/Rev.1, O.R., 16th year, Suppl. for Oct.-Dec. 1961, pp. 132-134.) 974th meeting: para. 7.

whether a provision about conciliation should not be added to the draft resolution.[285]/

At the 975th meeting on 16 November 1961, the representative of the United States, referring to actions and declarations of the authorities in Oriental Province, stated that he had no doubt that the sponsors of the joint draft resolution would agree that further consultations were essential if the Council was to take effective action on all important aspects of the Congo question.[286]/

At the 976th meeting on 17 November 1961, the representative of Turkey pointed out that, since the joint draft resolution had been submitted on 14 November, naturally any developments which had occurred after that date could not have been taken into account by the co-sponsors. He further stated that the general consensus of opinion of the Council would be in favour of adopting a text which would also reflect, as appropriate, any subsequent questions which might be relevant to the debate on the Congo.[287]/

The representative of the United Kingdom expressed the view that the joint draft resolution should be broadened to take into account all secessionist activities in the Congo.[288]/

At the 977th meeting on 20 November 1961, the representative of Chile observed that operative paragraph 10 of the joint draft resolution was superfluous and might open the door to types of unilateral actions which would be incompatible with the decisions of the General Assembly and the Security Council, in which it had been envisaged that no military assistance should be provided except through the channels of the United Nations.[289]/

The representative of Liberia pointed out that the only official information about secession concerned Katanga and that all the resolutions of the Security Council and of the General Assembly had called for the territorial integrity and national unity of the Republic of the Congo. Thus, by implication, the United Nations was opposed to secessionist activities in any part of the Congo. The sponsors of the joint draft resolution, however, had revised the text of operative paragraph 8, whereby the Council would declare that all secessionist activities against the Republic of the Congo were contrary to the Loi fondamentale and the Security Council decisions and would specifically demand that such activities as were currently taking place in Katanga should cease forthwith.[290]/

At the 978th meeting on 21 November 1961, the representative of the United States submitted the following amendments[291]/ to the joint draft resolution of Ceylon, Liberia and the United Arab Republic: (1) to revise the fifth preambular paragraph[292]/ to read: "Deploring all armed action and secessionist activities in opposition to the authority of the Government of the Republic of the Congo, including specifically those carried on with the aid of external resources and foreign mercenaries, and completely rejecting the claim that Katanga is a 'sovereign independent nation'"; (2) to add two new preambular paragraphs: "Noting with deep regret the recent and past actions of violence against United Nations personnel" and "Recognizing the Government of the Republic of the Congo as exclusively responsible for the conduct of external affairs of the Congo"; (3) to revise operative paragraph 2 to read: "Further deprecates all armed action against the United Nations forces and personnel and against the Government of the Republic of the Congo"; (4) to revise operative paragraph 4 to read: "Authorizes the Secretary-General to take vigorous action, including the use of requisite measure of force, if necessary, for the immediate apprehension, detention pending legal action and/or deportation of all foreign military and paramilitary personnel and political advisers not under the United Nations Command, and mercenaries as laid down in part A, paragraph 2, of the Security Council resolution of 21 February 1961"; (5) to add the following new paragraph 6, renumbering subsequent paragraphs accordingly: "Authorizes the Secretary-General, in consultation with the Government of the Republic of the Congo, to neutralize, where necessary to prevent their use for military purposes against the United Nations, the Republic of the Congo, or the civilian population, aircraft and other weapons of war which have entered the Congo contrary to its laws and United Nations resolutions"; (6) to add the following new paragraph 11 (after original paragraph 9): "Requests the Secretary-General to assist the Government of the Republic of the Congo to reorganize and retrain Congolese armed units and personnel and to assist the Government to develop its armed forces for the tasks which confront it"; and (7) to add the following new penultimate paragraph: "Further requests the Secretary-General to take all such steps in accordance with the resolutions of the Security Council as he considers necessary, including those of negotiation and conciliation, to achieve the immediate political unity and territorial integrity of the Congo."

The President, speaking as the representative of the USSR, submitted the following amendment[293]/ to the United States amendments: to make the following changes in the text of the new paragraph 6 proposed in the fifth United States amendment: (a) substitute the word "remove" for the word "neutralize"; (b) substitute the words "which have entered Katanga contrary to the laws of the Congo" for the words "which have entered the Congo contrary to its laws"; and (c) delete the words "where necessary."

285/ 974th meeting: para. 151.

286/ 975th meeting: para. 54.

287/ 976th meeting: para. 129.

288/ 976th meeting: para. 175.

289/ 977th meeting: para. 15.

290/ 977th meeting: paras. 42-44.

291/ S/4989, O.R., 16th year, Suppl. for Oct.-Dec. 1961, pp. 136-137.

292/ This paragraph read: "Bearing in mind the imperative necessity of speedy and effective action to implement fully the policies and purposes of the United Nations in the Congo to end the unfortunate plight of the Congolese people, necessary both in the interests of world peace and international co-operation, and stability and progress of Africa as a whole".

293/ S/4991, O.R., 16th year, Suppl. for Oct.-Dec. 1961, pp. 138-139; 975th meeting: paras. 36, 37.

On 21 November 1961, the United States submitted a revised text of its amendments[294] to the joint draft resolution, in which the following changes were made: (a) the preambular paragraph 5 to read: "Deploring all armed action and secessionist activities in opposition to the authority of the Government of the Republic of the Congo, including specifically those carried on by the provincial administration of Katanga with the aid of external resources and foreign mercenaries, and completely rejecting the claim that Katanga is a 'sovereign independent nation'"; (b) the new operative paragraph 6 in the fifth amendment to read: "Authorizes the Secretary-General, in consultation with the Government of the Republic of the Congo, to remove or to prevent the use for military purposes against the United Nations, the Republic of the Congo, or the civilian population, of aircraft and other weapons of war which have entered Katanga or any other region of the Congo contrary to the laws of the Congo and United Nations resolutions"; and (c) the new operative paragraph 11 in the sixth amendment to read: "Requests the Secretary-General to assist the Government of the Republic of the Congo to reorganize and retain Congolese armed units and personnel to assist the Government to develop its armed forces for the tasks which confront it."

At the 979th meeting on 21 November 1961 the representative of the United Kingdom expressed "very strong" reservations on the United States amendments in paragraphs 4 and 5 of document S/4989/Rev.1.[295] The United Kingdom delegation could not associate itself with any wording which could be interpreted as encouraging the local command to use an added measure of force which might endanger the uneasy peace in Katanga and lead to a further series of reprisals and counter-reprisals. The representative expressed the hope that the Secretary-General would interpret this particular part of his mandate with the basic principle in mind that the proper task for the United Nations was conciliation and pacification. Concerning the amendment in paragraph 5, which introduced a new operative paragraph 6, the representative pointed out that the United Nations had entered into a cease-fire agreement with the Katanga authorities and the implementation of this new paragraph must not prejudice the terms of that agreement.[296]

The President, speaking as the representative of the USSR, stated that in view of the United States amendments (S/4989/Rev.1) the USSR amendment (S/4991) would be altered by deleting from the text of the new operative paragraph 6 only the words "or any other region of the Congo".[297]

At the 982nd meeting on 24 November 1961, the United States introduced a new revised text of its amendments[298] in which the preambular paragraph 5 would read:

"Deploring all armed action in opposition to the authority of the Government of the Republic of the Congo, specifically secessionist activities and armed action now being carried on by the provincial administration of Katanga with the aid of external resources and foreign mercenaries, and completely rejecting the claim that Katanga is a 'sovereign independent nation'."

The representative of the United States revised, in paragraph 5 of the United States amendments (S/4989/Rev.2) the words "have entered" to read "have entered or may enter". He further deleted paragraph 7 of the amendments.[299]

The President put to the vote the USSR sub-amendment to paragraph 5 of the United States amendments to delete the words "or any other region of the Congo". The USSR amendment was rejected by 2 votes in favour to 6 against, with 3 abstentions.[300]

The first United States amendment to the joint draft resolution submitted by Ceylon, Liberia and the United Arab Republic was adopted[301] by 9 votes in favour to none against, with 2 abstentions.

The two paragraphs of the second United States amendment were each adopted[302] by 10 votes in favour to none against, with 1 abstention.

The third United States amendment failed of adoption.[303] The result of the vote was 9 in favour, 1 against, with 1 abstention (the negative vote being that of a permanent member).

The fourth United States amendment was adopted[304] by 8 votes in favour to none against, with 3 abstentions.

The fifth United States amendment was not adopted.[305] There were 6 votes in favour, 1 against, with 3 abstentions, one member having not participated in the voting.

The sixth United States amendment failed of adoption.[306] There were 9 votes in favour, 1 against, with 1 abstention (the negative vote being that of a permanent member).

At the proposal of the United States representative, the meeting was suspended.[307]

After the resumption of the meeting, the joint draft resolution of Ceylon, Liberia and the United Arab Republic, as amended, was put to the vote.

At the 982nd meeting on 24 November 1961, the joint draft resolution, as amended, was adopted[308] by 9 votes in favour to none against, with 2 abstentions.

294/ S/4989/Rev.1, see foot-note 31 to S/4989/Rev.2, O.R., 16th year, Suppl. for Oct.-Dec., 1961, pp. 137-138.

295/ These were the amendments to operative paragraph 4 and the new operative paragraph 6.

296/ 979th meeting: paras. 19-21.

297/ 979th meeting: para. 54.

298/ S/4989/Rev.2, O.R., 16th year, Suppl. for Oct.-Dec. 1961, pp. 137-138.

299/ 982nd meeting: paras. 25, 56.

300/ 982nd meeting: para. 77.

301/ 982nd meeting: para. 78.

302/ 982nd meeting: paras. 79, 80.

303/ 982nd meeting: para. 81.

304/ 982nd meeting: para. 82.

305/ 982nd meeting: para. 83.

306/ 982nd meeting: para. 84.

307/ 982nd meeting: para. 94.

308/ 982nd meeting: para. 99.

The resolution 309/ read:

"The Security Council,

"Recalling its resolutions S/4387, S/4405, S/4426 and S/4741,

"Recalling further General Assembly resolutions 1474 (ES-IV), 1592 (XV), 1599 (XV), 1600 (XV) and 1601 (XV),

"Reaffirming the policies and purposes of the United Nations with respect to the Congo (Leopoldville) as set out in the aforesaid resolutions, namely:

"(a) To maintain the territorial integrity and the political independence of the Republic of the Congo,

"(b) To assist the Central Government of the Congo in the restoration and maintenance of law and order,

"(c) To prevent the occurrence of civil war in the Congo,

"(d) To secure the immediate withdrawal and evacuation from the Congo of all foreign military, paramilitary and advisory personnel not under the United Nations Command, and all mercenaries, and

"(e) To render technical assistance,

"Welcoming the restoration of the national Parliament of the Congo in accordance with the "Loi fondamentale" and the consequent formation of a Central Government on 2 August 1961,

"Deploring all armed action in opposition to the authority of the Government of the Republic of the Congo, specifically secessionist activities and armed action now being carried on by the provincial administration of Katanga with the aid of external resources and foreign mercenaries, and completely rejecting the claim that Katanga is a 'sovereign independent nation',

"Noting with deep regret the recent and past actions of violence against United Nations personnel,

"Recognizing the Government of the Republic of the Congo as exclusively responsible for the conduct of the external affairs of the Congo,

"Bearing in mind the imperative necessity of speedy and effective action to implement fully the policies and purposes of the United Nations in the Congo to end the unfortunate plight of the Congolese people, necessary both in the interests of world peace and international co-operation, and stability and progress of Africa as a whole,

"1. Strongly deprecates the secessionist activities illegally carried out by the provincial administration of Katanga, with the aid of external resources and manned by foreign mercenaries;

"2. Further deprecates the armed action against United Nations forces and personnel in the pursuit of such activities;

"3. Insists that such activities shall cease forthwith, and calls upon all concerned to desist therefrom;

"4. Authorizes the Secretary-General to take vigorous action, including the use of a requisite measure of force, if necessary, for the immediate apprehension, detention pending legal action and/or deportation of all foreign military and paramilitary personnel and political advisers not under the United Nations Command, and mercenaries as laid down in part A, operative paragraph 2 of the Security Council resolution of 21 February 1961;

"5. Further requests the Secretary-General to take all necessary measures to prevent the entry or return of such elements under whatever guise and also of arms, equipment or other material in support of such activities;

"6. Requests all States to refrain from the supply of arms, equipment of other material which could be used for warlike purposes, and to take the necessary measures to prevent their nationals from doing the same, and also to deny transportation and transit facilities for such supplies across their territories, except in accordance with the decisions, policies and purposes of the United Nations;

"7. Calls upon all Member States to refrain from promoting, condoning, or giving support by acts of omission or commission, directly or indirectly, to activities against the United Nations often resulting in armed hostilities against the United Nations forces and personnel;

"8. Declares that all secessionist activities against the Republic of the Congo are contrary to the 'Loi fondamentale' and Security Council decisions and specifically demands that such activities which are now taking place in Katanga shall cease forthwith;

"9. Declares full and firm support for the Central Government of the Congo, and the determination to assist that Government, in accordance with the decisions of the United Nations, to maintain law and order and national integrity, to provide technical assistance and to implement those decisions;

"10. Urges all Member States to lend their support, according to their national procedures, to the Central Government of the Republic of the Congo, in conformity with the Charter and the decisions of the United Nations;

"11. Requests all Member States to refrain from any action which may, directly or indirectly, impede the policies and purposes of the United Nations in the Congo and is contrary to its decisions and the general purpose of the Charter."

The Acting Secretary-General stated that he intended to discharge the responsibilities entrusted to him particularly in paragraphs 4 and 5 of the resolution with determination and vigour and to employ to that end as much as possible of the total resources available to the United Nations Operations in the Congo. 310/

309/ S/5002, O.R., 16th year, Suppl. for Oct.-Dec. 1961, pp. 148-150.

310/ 982nd meeting: para. 102. For the statement of the Acting Secretary-General, see chapter I, Cases 13 and 41; in connexion with the limitations of the powers of the United Nations Force with regard to the use of force, see chapter V, Case 2 (vii).

On 4 February 1963 the Secretary-General submitted to the Security Council his report[311] on the implementation of Security Council resolutions S/4387 of 14 July 1960, S/4741 of 21 February 1961 and S/5002 of 24 November 1961.[312]

On 17 September 1963 the Secretary-General submitted to the Security Council his report on the question of military disengagement in the Congo.[313]

On 29 June 1964 the Secretary-General submitted to the Security Council his report on the withdrawal of the United Nations Force in the Congo and on other aspects of the United Nations Operations there.[314]

COMPLAINT BY CUBA (LETTER OF 11 JULY 1960)

INITIAL PROCEEDINGS

By letter[315] dated 11 July 1960 addressed to the President of the Security Council, the Minister for Foreign Affairs of Cuba stated that a grave situation existed with manifest danger to international peace and security, as a consequence of the repeated threats, reprisals and aggressive acts carried out against Cuba by the Government of the United States. The situation had taken concrete shape from the moment the Revolutionary Government, exercising its sovereignty, had adopted measures designed to safeguard the national resources and to raise the standard of living, health and education of the Cuban people. In spite of the Cuban Government's repeated expressions of willingness to live in peace and harmony with the United States and to broaden, on a basis of equality, mutual respect and reciprocal benefit, diplomatic and economic relations with the Government and people of the United States, such proposals had been of no avail. Instead, the United States had offered protection to known Cuban war criminals, and provided facilities to counter-revolutionaries to plot conspiracies and to prepare invasion plans. Cuban airspace had been frequently violated with considerable material damage and loss of life by aircraft proceeding from United States territory and piloted, in some instances, by United States pilots. Also, threats of economic strangulation had been levelled against Cuba through such acts as the refusal of oil companies to refine crude oil owned by the Cuban State in violation of the Mineral Fuel Oil Act of 1938, and the extraordinary decision of the President of the United States to reduce the sugar quota. Such actions, concluded the letter, constituted intervention in Cuba's domestic affairs and economic aggression contrary to the terms of relevant treaties and to the fundamental principles of the United Nations Charter.

The request for a meeting of the Security Council was based on Articles 52 (4), 103, 24, 34, 35 (1) and 36 of the Charter and rule 3 of the provisional rules of procedure of the Security Council.

At the 874th meeting on 18 July 1960, the Council decided[316] to include the question in its agenda. It was considered by the Council at its 874th to 876th meetings held between 18 and 19 July 1960. The President (Ecuador) invited, without objection, the representative of Cuba to participate in the discussion.[317]

Decision *of 19 July 1960 (876th meeting):*

(i) Deciding to adjourn consideration of the question pending the receipt of a report from the Organization of American States;

(ii) Inviting members of that Organization to lend their assistance toward the achievement of a peaceful solution of the situation;

(iii) Urging all other States to refrain from any action which might increase tensions between Cuba and the United States

At the 874th meeting on 18 July 1960, the President called attention to a letter[318] dated 15 July 1960 from the representative of the United States to the President of the Council, transmitting a memorandum on "Provocative Actions of the Government of Cuba Against the United States Which Have Served to Increase Tensions in the Caribbean Area", which had been previously submitted to the Inter-American Peace Committee of the Organization of American States. The memorandum noted that, for the past several months, the Government of Cuba had conducted an intensive campaign of distortions, half-truths and outright falsehoods against the United States and that, in spite of patience and forbearance on the part of the latter, Cuba continued to intensify its hostility towards that country, thus increasing tensions in the area. With regard to Cuban charges, which were said to lack substantiation either by evidence or facts, the memorandum cited among other "provocative" actions the La Coubre incident, regarding which the Government of Cuba, after charging that the explosion on board the vessel La Coubre was the responsibility of the United States, admitted that it had no conclusive evidence. Attached to the memorandum were several documents to substantiate the United States contention that the Cuban Government's systematic and provocative campaign of slander and hostile propaganda against the United States was a major contribution to increased tensions in the Caribbean and the hemisphere as a whole.

In his initial statement before the Council at the 874th meeting on 18 July 1960, the representative of Cuba upheld his Government's right of appeal to the Council, in spite of the existence of the Organization of American States, and advanced further charges that the United States was planning increased aggression and, ultimately, invasion.[319]

311/ S/5240 and Add.1, O.R., 18th year, Suppl. for Jan.-March 1963, pp. 92-106, supplemented by S/5240/Add.2, O.R., 18th year, Suppl. for April-June 1963, pp. 1-13.

312/ For the report of the Officer-in-Charge of the United Nations Operation in the Congo to the Secretary-General relating to the implementation of the Security Council resolutions S/4741 of 21 February 1961 and S/5002 of 24 November 1961, see: S/5033 and Add.1-9, O.R., 17th year, Suppl. for Jan.-March 1962, pp. 2-44; S/5053/Add.10, O.R., 17th year, Suppl. for April-June 1962, pp. 1-93; S/5053/Add.11, O.R., 17th year, Suppl. for July-Sept. 1962, pp. 1-40; S/5053/Add.12, Add.12/Add.1 and 2, Add.13 and Add.13/Add.1, O.R., 17th year, Suppl. for Oct.-Dec. 1962, pp. 1-142; S/5053/Add.14-15, O.R., 18th year, Suppl. for Jan.-March 1963, pp. 1-85.

313/ S/5428, O.R., 18th year, Suppl. for July-Sept. 1963, pp. 166-178.

314/ S/5784.

315/ S/4378, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 9-10.

316/ 874th meeting: preceding para. 1.

317/ 874th meeting: para. 2.

318/ S/4388; 874th meeting: para. 3.

319/ 874th meeting: paras. 6-94.

In reply, the representative of the United States denied the Cuban allegations and assured the Council that his Government harboured no aggressive intentions against Cuba. It was Cuba, he asserted, that was the source of tensions in the Caribbean area.[320]/

At the same meeting the representatives of Argentina and Ecuador submitted a draft resolution.[321]/ In introducing the joint draft resolution, the representative of Argentina expressed the view that analysis of the legal relationship between the OAS and the United Nations was not indispensable. He believed that the Council could agree on the practical proposition that since the OAS had already taken cognizance of the matter, it would be desirable to await the results of its action.[322]/

At the 876th meeting on 19 July 1960, the representative of the USSR objected to the view that, since the matter was at the time being considered by the OAS, consideration of it by the Council should be adjourned. He said that Cuba had brought the matter to the Council, not to the OAS, and proposed certain amendments[323]/ to the draft resolution.[324]/

At the same meeting the amendments of the USSR were rejected[325]/ by 2 votes in favour, 8 against, and 1 abstention, and the resolution jointly submitted by Argentina and Ecuador was adopted[326]/ by 9 votes in favour, none against, and 2 abstentions. The resolution[327]/ read:

"The Security Council,

"Having heard the statements made by the Foreign Minister of Cuba and by members of the Council,

"Taking into account the provisions of Articles 24, 33, 34, 35, 36, 52 and 103 of the Charter of the United Nations,

"Taking into account also articles 20 and 102 of the Charter of the Organization of American States of which both Cuba and the United States of America are members,

"Deeply concerned at the situation existing between Cuba and the United States of America,

"Considering that it is the obligation of all Members of the United Nations to settle their international disputes by negotiation and other peaceful means in such a manner that international peace and security and justice are not endangered,

"Noting that this situation is under consideration by the Organization of American States,

"1. Decides to adjourn the consideration of this question pending the receipt of a report from the Organization of American States;

"2. Invites the members of the Organization of American States to lend their assistance towards the achievement of a peaceful solution of the present situation in accordance with the purposes and principles of the Charter of the United Nations;

"3. Urges in the meantime all other States to refrain from any action which might increase the existing tensions between Cuba and the United States of America."

COMPLAINT BY THE USSR (RB-47 INCIDENT)

INITIAL PROCEEDINGS

By telegram[328]/ dated 13 July 1960 to the Secretary-General, the Foreign Minister of the USSR requested an urgent meeting of the Security Council to examine the question of "New aggressive acts by the Air Force of the United States of America against the Soviet Union, creating a threat to universal peace", occurring on 1 July 1960. The need for immediate consideration of the question arose from the fact that United States military aircraft were continuing their "aggressive invasions" of Soviet airspace.

In an explanatory memorandum[329]/ of the same date it was stated that this was the second time within a few months that the question of aggressive acts by the United States Air Force had been submitted to the Council. Despite the Council's resolution of 27 May 1960,[330]/ appealing to all Governments to respect each other's territorial integrity and political independence and to refrain from acts that might increase tensions, the Government of the United States was openly flouting the appeal and continued to follow its provocative practices of dispatching its military aircraft into the airspace of the USSR. Notwithstanding signals given by a Soviet fighter aircraft to follow it down and make a landing, the violating aircraft penetrated further into Soviet airspace and consequently was shot down over Soviet territorial waters to the east of Cape Svyatoy Nos at 6.30 p.m. Moscow time on 1 July. According to evidence given at their interrogation by two crew members of the aircraft, the aircraft belonged to an air unit of the United States strategic military intelligence service, and had been carrying out special military reconnaissance missions. It was armed with 20-millimetre guns with a full supply of ammunition and had a compartment containing special photographic and radio-electronic reconnaissance equipment.

In addition to lodging a strong protest with the United States, the Soviet Government had also sent protests to the Governments of the United Kingdom and Norway because the aforementioned facts had implicated their countries in the United States aggressive designs.

At the 880th meeting on 22 July 1960, the Council decided[331]/ to include the question in its agenda. It was considered at the 880th to 883rd meetings, held between 22 and 26 July 1960.

320/ 874th meeting: paras. 95-124.

321/ S/4392, same text as S/4395, see below.

322/ 874th meeting: paras. 125-143. See chapter X, Cases 2 and 10; see also chapter XII, Case 24.

323/ S/4394, 876th meeting: paras. 105-107.

324/ 876th meeting: paras. 6-109.

325/ 876th meeting: para. 127.

326/ 876th meeting: para. 128.

327/ S/4395, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 29-30.

328/ S/4384, ibid., p. 12.

329/ S/4385, ibid., pp. 13-15.

330/ S/4325, O.R., 15th year, Suppl. for April-June 1960, pp. 22-23.

331/ 880th meeting: preceding para. 1.

Decision of 26 July 1960 (883rd meeting): Rejection of the USSR, United States and Italian draft resolutions

At the 880th meeting on 22 July 1960, the representative of the USSR submitted a draft resolution[332] according to which the Security Council would: (1) condemn the provocative activities of the United States Air Force and regard them as aggressive acts; (2) insist that the Government of the United States should take immediate steps to put an end to such acts and to prevent their recurrence. He asserted that the incursions by United States aircraft were part of a broad and carefully conceived system of intelligence activities conducted by the United States against the USSR.[333]

At the same meeting, the representative of the United States maintained that at the time the Soviet Union claimed that the aircraft was brought down in Soviet waters it was actually 50 miles off the Soviet coast, and it was still in the air twenty minutes later, over the high seas 200 miles from the point alleged by the USSR Government, and flying in a northeasterly direction. He claimed, further, that at no time during its flight was the aircraft closer than 30 miles to the Soviet coast. Consequently, the Soviet Union was guilty of a criminal and piratical action against the United States. In its note to the USSR Government, the United States Government had requested the release of the two crew members who were being held. Its representative repeated the request at the Council meeting.[334]

At the 881st meeting on 25 July 1960, the representative of the United States introduced certain charts in order to describe better the course of the aircraft and to pin-point its location at the time it was brought down. He asserted that, contrary to the Soviet allegation that the aircraft had been on an aggressive mission, it had been on an electro-magnetic observation flight, and it carried no offensive weapons of any kind save two tail guns to protect it from attacks from the rear. With regard to the fate of the two crewmen, the United States representative maintained that international law and custom demanded that they must have the right to communicate with the United States mission in the host country. That right had not yet been honoured, nor had the Soviet Government seen fit to respond to the suggestion of the United States for an on-the-spot search for other missing crew members and the remains of the aircraft. The United States representative observed further that in accordance with the spirit of the Charter, particularly Article 33, the United States would not press for a condemnation of the Soviet Union.[335] The representative introduced a draft resolution[336] under which the Council would recommend, inter alia, that both countries undertake to resolve their differences arising out of the plane incident of 1 July 1960 either: (a) through investigation of the facts by a commission designated by both parties;[337] or (b) through referral of the matter to the International Court of Justice for impartial adjudication.

At the same meeting, the representative of the USSR rejected the United States account of the incident and stated that the USSR Government was categorically opposed to the holding of an investigation and the establishment of any commission.[338]

The representative of France questioned the note of urgency on which the Soviet Union's request for a meeting had been sounded, and noted that it had waited thirteen days before bringing the incident to the attention of the Council. The matter, he added, should have been settled in the customary manner by negotiation, as recommended in Article 33 (1) of the Charter.[339]

At the 882nd meeting on 26 July 1960, the representative of Italy expressed the hope that the Soviet Government would allow the International Red Cross to get in touch with the survivors pending any other development or action,[340] and introduced a draft resolution[341] to this effect.

At the 883rd meeting on 26 July 1960, the President, speaking as the representative of Ecuador, suggested the addition of a final paragraph to the United States draft resolution to read:

> "Requests the parties concerned to report to the Security Council, as appropriate, on the steps taken to carry out this resolution."[342]

The representative of the United States accepted the Ecuadorian amendment.[343]

At the same meeting, the USSR draft resolution was rejected[344] by 2 votes in favour and 9 against. The United States revised draft resolution failed of adoption. There were 9 votes in favour and 2 against (one of the negative votes being that of a permanent member).[345] The Italian draft resolution failed of adoption.[346] There were 9 votes in favour and 2 against (one of the negative votes being that of a permanent member).

LETTER OF 5 SEPTEMBER 1960 FROM THE USSR (ACTION OF THE OAS RELATING TO THE DOMINICAN REPUBLIC)

INITIAL PROCEEDINGS

By letter[347] dated 5 September 1960 addressed to the President of the Security Council, the First Deputy Minister for Foreign Affairs of the USSR requested an urgent meeting of the Security Council to consider a decision adopted by the Organization of American States on 20 August 1960 concerning the Dominican Republic, as stated in document S/4476. The letter noted that the decision provided

332/ S/4406, 880th meeting: para. 58.
333/ 880th meeting: paras. 2-59.
334/ 880th meeting: paras. 60-63.
335/ 881st meeting: paras. 2-33.
336/ S/4409, 881st meeting: para. 29.
337/ See chapter X, Case 3.
338/ 881st meeting: paras. 34-43.
339/ 881st meeting: paras. 73-93.
340/ 882nd meeting: paras. 18-43.
341/ S/4411, 882nd meeting: para. 42.
342/ 883rd meeting: para. 96.
343/ 883rd meeting: para. 142.
344/ 883rd meeting: para. 187.
345/ 883rd meeting: para. 188.
346/ 883rd meeting: para. 189.
347/ S/4477, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 134-135.

for the application of enforcement action against the Trujillo régime including the breaking off of diplomatic relations with the Dominican Republic. It then recommended that the Council should consider the question and endorse the decision of the OAS, which was designed to remove the threat to peace and security created by the actions of the Dominican authorities. In support of this recommendation, the letter cited the provisions of Article 53 of the Charter which provided that the Council should utilize "regional arrangements or agencies for enforcement action under its authority", and that "no enforcement action should be taken under regional arrangements or by regional agencies without the authorization of the Security Council".

At the 893rd meeting on 8 September 1960, the Council decided[348]/ without vote to include the question in the agenda. It was considered at its 893rd to 895th meetings held on 8 and 9 September 1960. The representative of Venezuela was invited to take part in the discussions.[349]/

Decision *of 9 September 1960 (895th meeting): Taking note of the report from the Organization of American States transmitting the Final Act of the Sixth Meeting of Consultation of Ministers of Foreign Affairs of the American Republics, especially of the resolution on the application of measures regarding the Dominican Republic*

At the 893rd meeting on 8 September 1960, the President (Italy) called attention to a draft resolution[350]/ submitted by the representative of the USSR, and a draft resolution[351]/ jointly submitted by Argentina, Ecuador and the United States.

In introducing his draft resolution, under which the Council, in accordance with Article 53[352]/ of the Charter, would approve the resolution of the Sixth Meeting of Consultation of Ministers of Foreign Affairs of the American Republics dated 20 August 1960, the representative of the USSR asserted that the Government of the Dominican Republic had committed acts of intervention and aggression against Venezuela, violating the sovereignty of that State, and created a threat to international peace and security. He stated that his Government regarded as appropriate the resolution adopted at the above-mentioned Meeting of Consultation, which condemned the aggressive actions of the Trujillo régime against Venezuela, and felt that the Members of the United Nations could not fail to support the decision of the Organization of American States as to the necessity of taking enforcement action, in fact sanctions, against the Government of the Dominican Republic. The application of such sanctions was fully in accord with Articles 39 and 41 of the Charter. However, since the Charter entrusted the Security Council with the primary responsibility for the maintenance of international peace and security, and provided that no enforcement action should be taken without its authorization, it was necessary for the Council to approve the decision of the Organization of American States.[353]/

The representative of Argentina observed that the USSR note had raised in the Council, for the first time, the question of the interpretation of Article 53 of the Charter in connexion with steps taken by regional agencies. Implied in the Soviet note was the view that the Security Council was entitled to annul or revise measures taken by the OAS regarding one of its members. However, he believed that was not the proper juncture at which to take final decision on that question. In any case, he doubted whether the Soviet interpretation was the correct one. Instead, he favoured the argument that measures taken regionally would be subject to the Council's ratification only if they called for the use of armed force. As to the draft resolution which his delegation co-sponsored, the representative of Argentina stated that such a text showed the Security Council's concern in matters of international peace and security and left the door open for a constructive interpretation of Article 53 of the Charter in circumstances more favourable than those prevailing at that time.[354]/

At the same meeting, the representative of the United States observed that the actions of the Organization of American States had been reported to the Security Council in accordance with Article 54 of the Charter, and he rejected that the contention of the USSR that under Article 53 the decisions of the OAS required any endorsement by the Security Council. He further maintained that no member of the OAS had sought authorization of the Council, under Article 53, for the steps taken in connexion with the decision. The OAS had specifically decided that the resolution should be transmitted to the Council only for its information, as required by Article 54. This Article clearly envisaged the possibility of activities by regional agencies for the maintenance of international peace and security, in regard to which the responsibility of the regional organization to the Security Council was purely that of keeping the Council informed. Moreover, the action taken collectively by members of the OAS could also be taken individually by any sovereign nation on its own initiative. His co-sponsorship of the draft resolution was based on the view that it was entirely proper for the Council, in the instance before it, merely to take note of the resolution adopted by the OAS.[355]/

At the 895th meeting on 9 September the representative of Ecuador requested that priority be given to the draft resolution jointly sponsored with Argentina and the United States, and appealed to the USSR for agreement in this respect.[356]/ There was no objection. The Council voted on the draft resolution, which was adopted by 9 votes in favour, none against, with 2 abstentions.[357]/ The resolution[358]/ read as follows:

"The Security Council,

348/ 893rd meeting: para. 6.

349/ 893rd meeting: para. 27.

350/ S/4481 and S/4481/Rev.1, 893rd meeting: para. 25.

351/ S/4484, same text as S/4491, see below.

352/ See chapter XII, Case 25.

353/ 893rd meeting: paras. 10-26.

354/ 893rd meeting: paras. 29-43.

355/ 893rd meeting: paras. 44-54.

356/ 895th meeting: para. 16.

357/ 895th meeting: para. 18.

358/ S/4491, O.R., 15th year, Suppl. for July-Sept. 1960, p. 145.

"Having received the report from the Secretary-General of the Organization of American States transmitting the Final Act of the Sixth Meeting of Consultation of Ministers of Foreign Affairs of the American States (S/4476),

"Takes note of that report and especially of resolution I, approved at the aforesaid Meeting, whereby agreement was reached on the application of measures regarding the Dominican Republic."

The representative of the USSR remarked that, in the light of the discussion and the vote, the majority of the members were not ready at that time to vote for the Soviet draft resolution, although they did not object to its substance. Consequently, he would not press for a vote on his draft resolution. Explaining his vote on the joint draft resolution, he stated that his delegation had abstained because the three-Power draft resolution which proposed that the Council limit itself to taking note of the decision of the OAS was not sufficiently comprehensive. Furthermore, while none of the members objected to the Council noting the action of the OAS, his delegation's draft resolution had expressed that concept more exactly and definitely. He stressed that the decision of the OAS fell completely under Article 53, and that regional agencies might apply sanctions only with the concurrence of the Security Council. However, since no one had challenged that position, although some members tried to evade consideration of the substantive issue, noting that they were not ready to deal with it at that time, the USSR delegation interpreted this to mean that the door was being left open for full support of the Charter provisions in this regard in other circumstances.[359]

The representative of the United States expressed his disagreement with the Soviet interpretation of the vote, maintaining that the three-Power draft resolution was not submitted under Article 53. Contrary to the contention that the matter was being left open for future consideration by the Council, his delegation regarded the item as completed, and believed that future proposals should be judged on their merits.[360]

The President stated that the Council should consider examination of the question as completed and, after further discussion, he declared that the Council had disposed of the matter.[361]

COMPLAINT BY CUBA (LETTER OF 31 DECEMBER 1960)

INITIAL PROCEEDINGS

By letter[362] dated 31 December 1960 addressed to the President of the Security Council, the Minister for External Relations of Cuba asserted that the United States, in violation of the United Nations Charter and the most elementary principles of international law, was about to perpetrate "within a few hours" direct military aggression against Cuba, thus placing in grave peril international peace and security. In justification of these hostile preparations, the United States had invoked the "fraudulent pretext" of "the construction on the island of Cuba of seventeen sites for the launching of Soviet rockets". He noted instances of "psychological warfare" in which the United States had sought to manœuvre toward the diplomatic isolation of Cuba. The request for an immediate meeting of the Security Council to "examine the situation thoroughly" was based on Articles 24 (1), 31, 32, 34, 35 (1), 52 (4) and 103 of the Charter, and on the relevant rules of procedure of the Council.

At the 921st meeting on 4 January 1961, the Council considered the inclusion of the item in its agenda. The representative of the United States, while describing the item as "totally fraudulent", informed the Council that his delegation would not oppose its inclusion in the agenda.[363] The agenda was adopted,[364] and the Council considered the Cuban complaint at its 921st to 923rd meetings held between 4 and 5 January 1961. The President (United Arab Republic) invited the representative of Cuba to participate in the discussion.[365]

Decision *of 5 January 1961 (923rd meeting): Statement by the President expressing confidence that the debate would help in reducing tensions between the two countries and that nothing would be done to aggravate the situation*

At the 921st meeting on 4 January 1961, before the adoption of the agenda, the representative of the United States rejected the charge of imminent invasion and stated further that it was not the United States which was isolating Cuba, but that by its own actions Cuba was isolating itself. He repeated previous assurances that the United States was not planning to invade Cuba and claimed that any information concerning such a plan was erroneous and without either logic or evidence. It was Cuba, he contended, that was the real attacker, and its targets were not only the United States but all the Governments of the Western Hemisphere with whose policies Cuba did not agree. These were the real threats to the hemisphere and the concern of the Organization of American States, the proper organ to which the Cuban complaint should have been first submitted.[366]

At the same meeting, the representative of Cuba stated that an invasion was imminent. The initiative taken by the United States in breaking off diplomatic relations with Cuba, in accordance with its "strategic plan", gave this imminence an especially grave character. In support of this allegation, he referred to the arming and financing of the counter-revolutionary mercenary forces by the United States Government and cited certain Press reports concerning the presence of thirteen warships without flags or registration in the Bay of Puerto Barrios, Guatemala, the encampment of hundreds of armed men in the Sierra del Petén near the Mexican frontier, together with the fact that two destroyers had been placed on the alert

359/ 895th meeting: paras. 21-24.

360/ 895th meeting: paras. 31-32.

361/ 895th meeting: para. 33.

362/ S/4605, O.R., 15th year, Suppl. for Oct.-Dec. 1960, pp. 107-109.

363/ 921st meeting: para. 36.

364/ 921st meeting: para. 53.

365/ 921st meeting: para. 54.

366/ 921st meeting: paras. 32-34, 41-42, 48-52.

at Key West, ninety miles from Cuba. He then expressed the view that only the climax of the plan was lacking, since the action had already been prepared and could be carried out at any time.[367]/

At the 922nd meeting on 4 January 1961, the representative of the United States admitted his Government's aid to refugees forced to leave Cuba without money or property, but denied that it had supported military incursions by these groups. With regard to the break in diplomatic relations with Cuba, he cited several instances of hostile and provocative actions which destroyed the confidence and mutual respect necessary for effective diplomatic relations and made the maintenance of the United States Embassy in Havana impossible. Further, he noted that in accusing the United States of invasion plans, Cuba seemed unmindful that it had considered itself destined to "... act as a springboard for all the popular forces of Latin America following a destiny identical to that of Cuba".[368]/

At the same meeting, the representative of Ecuador introduced a draft resolution[369]/ jointly submitted with Chile. Under the draft resolution the Council would remind the parties of their Charter obligation to settle disputes by peaceful means, and recommend that every effort should be made to fulfil such an obligation.[370]/

At the 923rd meeting on 5 January 1961, the representative of France questioned the allegation of imminent "military aggression" and noted that four days had since elapsed with no such occurrence.[371]/

At the same meeting, the representative of the United Kingdom referred to another letter[372]/ from the Minister for External Relations of Cuba dated 3 January 1961 and addressed to the President of the Council which, like the previous letter, reported that direct military aggression was about to be committed against Cuba, but noted that a charge of impending aggression, or the intention to commit aggression was in any event more difficult to sustain than a charge of aggression actually committed. So far, however, no evidence had been produced which convincingly supported the accusation. He observed also that both the United States and Cuba had expressed themselves negatively on resolutions of the kind submitted by Chile and Ecuador, and maintained that further action by the Council would be unnecessary and of no positive value.[373]/

At the same meeting, the representative of Chile expressed regret that the joint draft resolution submitted by Chile and Ecuador had not been supported, since it had been prompted by a desire for constructive co-operation, and with a view to the re-establishment of normal relations. However, in the light of the negative attitudes apparent in the discussion, he would not press for a vote on the draft resolution.[374]/ The representative of Ecuador concurred in this.[375]/

At the conclusion of the meeting, the President (United Arab Republic) made a statement expressing confidence that the debate would help "in reducing the tension between the Republic of Cuba and the United States, whose relations should be governed by the Charter of the United Nations", and that, therefore, nothing would be done to aggravate the existing tensions.[376]/

SITUATION IN ANGOLA

INITIAL PROCEEDINGS

By letter[377]/ dated 20 February 1961, the representative of Liberia requested the President of the Security Council to convene an early meeting of the Council "to deal with the crisis in Angola". After expressing his Government's concern regarding recent developments in Angola, he stated that immediate action should be taken by the Security Council to prevent further deterioration and abuse of human rights and privileges in Angola.[378]/

By letter[379]/ dated 7 March 1961, the representative of Portugal protested against the request of Liberia for inscription in the Council's agenda of a matter which Portugal considered to be within its exclusive jurisdiction.

The letter from the representative of Liberia was placed on the provisional agenda of the 943rd meeting of the Council on 10 March 1961 and the agenda was adopted at the 944th meeting.[380]/ The Council considered the question at its 943rd to 946th meetings between 10 and 15 March 1961. After the adoption of the agenda, the representative of Portugal was invited to the Council table.[381]/ At the 945th meeting on 14 March 1961, the representatives of Ghana and the Congo (Brazzaville) were invited to the Council table.[382]/

At the 943rd meeting of the Council on 10 March, the representative of Liberia, explaining his reasons for the submission of the question to the Security Council, stated that consideration had become necessary because of serious loss of life in Angola and the existence of conditions which had become a complete violation of human rights. In invoking Article 34 of the Charter, the Liberian Government

367/ 921st meeting: paras. 56-60, 63-125.

368/ 922nd meeting: paras. 2-40.

369/ S/4612, O.R., 16th year, Suppl. for Jan.-March 1961, p. 16; 922nd meeting: paras. 42-85.

370/ See chapter X, Case 4.

371/ 923rd meeting: paras. 9-23.

372/ S/4611, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 15-16.

373/ 923rd meeting: paras. 27-43.

374/ 923rd meeting: paras. 44-63.

375/ 923rd meeting: paras. 95-111.

376/ 923rd meeting: para. 178.

377/ S/4738, O.R., 16th year, Suppl. for Jan.-March 1961, p. 145.

378/ At the 934th meeting on 15 February 1961, in connexion with the adoption of the provisional agenda dealing with the situation in the Congo, the representative of Liberia had proposed that a new item dealing with the disturbances in Angola be added to the provisional agenda. He requested the inscription of the item on the agenda under Article 34, because fundamental rights were being violated in Angola, and the situation was likely to endanger the maintenance of international peace and security. However, the President ruled that under rules 6 and 7 of the provisional rules of procedure, it would be impossible to add an item to the agenda in the manner suggested by the representative of Liberia (934th meeting: paras. 4-11). For consideration of the inclusion of the question in the agenda, see chapter II, Case 4.

379/ S/4760, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 227-228.

380/ 944th meeting: para. 8.

381/ 944th meeting: para. 31.

382/ 945th meeting: para. 2.

wished to draw attention to a dangerous situation which not only threatened the peace in Angola, but was also a threat to world peace.[383]/

After the adoption of the agenda at the 944th meeting, the representative of Portugal* stated that his delegation considered the inscription of the item on the agenda of the Council as illegal. Under the terms of Article 24 (2), the Security Council had its competence specifically limited to matters referred to in Chapters VI, VII, VIII and XII of the Charter, none of which could conceivably apply to the case before the Council.[384]/ The Liberian complaint had made no mention of any dispute between Portugal and any other State; therefore, none of the cases foreseen in Articles 33 and 34 was under consideration.[385]/ Liberia had based its complaint on a vague reference to violation of human rights, and this was not within the competence of the Council. Moreover, under the terms of Article 2 (7) of the Charter, the United Nations could not intervene in matters essentially within the domestic jurisdiction[386]/ of any State.[387]/

Decision of 15 March 1961 (946th meeting): Rejection of the draft resolution submitted by Ceylon, Liberia and the United Arab Republic

At the 945th meeting on 14 March 1961, the representative of Liberia introduced a draft resolution[388]/ jointly sponsored with Ceylon and the United Arab Republic. Referring in the preamble to a situation likely to endanger international peace and security, and recalling General Assembly resolutions 1514 (XV) of 14 December 1960, and 1541 (XV) and 1542 (XV) of 15 December 1960, in its operative part this draft resolution would have the Security Council: (1) call upon the Government of Portugal to consider urgently the introduction of measures and reforms in Angola for the purpose of the implementation of General Assembly resolution 1514 (XV) of 14 December 1960, with due respect for human rights and fundamental freedoms and in accordance with the Charter; and (2) decide to appoint a sub-committee and instruct this sub-committee to examine the statements made before the Security Council concerning Angola, to receive further statements and documents and to conduct such inquiries as it deemed necessary and to report to the Security Council as soon as possible.

At the 946th meeting on 15 March 1961, the joint draft resolution submitted by Ceylon, Liberia and the United Arab Republic was put to the vote and rejected by 5 votes in favour, none against, and 6 abstentions.[389]/

By letter[390]/ dated 26 May 1961 addressed to the President of the Security Council, the representatives of Afghanistan, Burma, Cambodia, Cameroon, Central African Republic, Ceylon, Chad, Congo (Brazzaville), Congo (Leopoldville), Cyprus, Dahomey, Ethiopia, Federation of Malaya, Gabon, Ghana, Guinea, India, Indonesia, Iran, Iraq, Ivory Coast, Japan, Jordan, Laos, Lebanon, Liberia, Libya, Madagascar, Mali, Morocco, Nepal, Nigeria, Philippines, Saudi Arabia, Senegal, Somalia, Sudan, Tunisia, United Arab Republic, Upper Volta, Yemen and Yugoslavia requested that a meeting of the Security Council be called, as a matter of urgency, to consider the situation in Angola. They charged that the massacres in Angola were continuing and human rights were being continually suppressed. These acts, together with the armed suppression of the Angolan people and the denial of the right to self-determination, were in contravention of the United Nations Charter and of the General Assembly resolution on Angola and constituted a serious threat to international peace and security. On 2 June, Togo, and on 9 June, Pakistan associated themselves with this request.

At its 950th meeting on 6 June 1961, the Council included the request of the forty-four Member States in its agenda.[391]/

The Council considered the question at its 950th to 956th meetings, between 6 and 9 June 1961.

In accordance with the decision taken at the 950th and subsequent meetings, the representatives of Portugal, India, Ghana, Congo (Leopoldville), Congo (Brazzaville), Nigeria, Mali, Ethiopia and Morocco were invited, at their request, to take seats at the Council table.[392]/

Decision of 9 June 1961 (956th meeting): Requesting the Sub-Committee on the Situation in Angola to implement its mandate without delay

Opening the debate at the 950th meeting on 6 June 1961, the representative of Liberia stated that the situation in Angola had deteriorated further since its consideration by the Security Council and the General Assembly in March and April 1961 respectively.[393]/ In its resolution 1603 (XV) of 20 April 1961, the General Assembly, recognizing that the situation in Angola was likely to endanger the maintenance of international peace and security, had called upon Portugal to consider urgently the intro-

383/ 943rd meeting: paras. 9-22. The request of Liberia to consider the situation in Angola was supported in a letter dated 10 March 1961 (S/4762, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 246-247) by the representatives of Afghanistan, Burma, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Congo (Leopoldville), Dahomey, Ethiopia, Gabon, Ghana, Guinea, India, Indonesia, Iran, Iraq, Jordan, Lebanon, Libya, Madagascar, Mali, Morocco, Nepal, Niger, Nigeria, Pakistan, Saudi Arabia, Senegal, Somalia, Sudan, Togo, Tunisia, Upper Volta and Yemen. These delegations considered that this was a situation with grave potentialities for international friction which endangered the maintenance of international peace and security.

384/ For discussion in relation to Article 24 (2), see chapter XII, part III.

385/ For discussion relating to Articles 33 and 34, see chapter X, Case 11.

386/ For discussion relating to Article 2 (7), see chapter XII, Case 10.

387/ 944th meeting: paras. 33-54.

388/ S/4769, 945th meeting: para. 107.

389/ 946th meeting: para. 165.

390/ S/4816. By S/4816/Add.1 and 2, Togo and Pakistan were added to the list of signatories. O.R., 16th year, Suppl. for April-June 1961, pp. 57-59.

391/ 950th meeting: para. 8.

392/ 950th meeting: paras. 9, 10. 952nd meeting: para. 1; 953rd meeting: para. 1.

393/ Following the failure of adoption of a resolution on Angola in the Security Council (946th meeting), the Liberian delegation with other African-Asian delegations had brought the matter before the General Assembly, where it was considered on 20 April 1961 (990th to 992nd plenary meetings). After a full discussion, the Assembly adopted resolution 1603 (XV) entitled "The situation in Angola" by 73 votes to 2, with 9 abstentions.

duction of measures and reforms in Angola. It had also established a sub-committee to investigate the situation in Angola and to report to the General Assembly. But the Government of Portugal, instead of implementing the resolution, had stepped up its military repression of the Angolan people. The acute and urgent nature of such a situation required prompt and effective action by the Security Council. To this end, the representative of Liberia introduced a draft resolution jointly sponsored with Ceylon and the United Arab Republic,[394] whereby the Council, convinced that the situation in Angola was a threat to international peace and security, would call upon the Portuguese authorities to desist forthwith from repressive measures, and act in accordance with the terms of General Assembly resolution 1603 (XV); further, it would request the Sub-Committee appointed in terms of General Assembly resolution 1603 (XV) to implement its mandate without delay, and report to the Security Council and the General Assembly as soon as possible.[395]

At the same meeting, the representative of Portugal* protested against the inclusion in the Council's agenda of a matter pertaining exclusively to the internal jurisdiction and security of Portugal, and thus in violation of Article 2 (7).[396] Articles 34 and 35 had been wrongly invoked in a previous debate, as Portugal had not created an international dispute with any of the States requesting or supporting the inscription of the item. Allegations of the violation of human rights had been made, but the discussion of human rights was excluded from the functions of the Council by Article 24 of the Charter. This Article granted specific powers to the Security Council for the discharge of those duties laid down in Chapters VI, VII, VIII and XII. It did not include Chapter IX, where Articles 55 and 56 dealing with human rights appeared.[397]

At the 955th meeting on 9 June 1961, the representative of Chile submitted amendments[398] to the joint draft resolution to: (1) in the fourth preambular paragraph, replace the words "threat to" by "is likely to endanger the maintenance of"; and (2) between operative paragraphs 3 and 4 insert the following additional paragraph: "Expresses the hope that a peaceful solution will be found to the problem of Angola in accordance with the Charter of the United Nations".

At the 956th meeting on the same day, the representative of the USSR submitted the following amendment[399] to operative paragraph 3 of the draft resolution: insert the following at the beginning of operative paragraph 3: "Condemning the colonial war against the Angolan people", and continue as in the draft resolution.

At the same meeting, the Council voted upon the draft resolution and the amendments before it.

The Chilean amendments were adopted by 9 votes in favour to none against, with 2 abstentions.[400]

The USSR amendment received 4 votes in favour, 3 against, with 4 abstentions, and was not adopted.[401]

The draft resolution, as amended, was adopted by 9 votes in favour to none against, with 2 abstentions.[402] It read as follows:[403]

"The Security Council,

"Having considered the situation in Angola,

"Deeply deploring the large-scale killings and the severely repressive measures in Angola,

"Taking note of the grave concern and strong reactions to such occurrences throughout the continent of Africa and in other parts of the world,

"Convinced that the continuance of the situation in Angola is an actual and potential cause of international friction and is likely to endanger the maintenance of international peace and security,

"Recalling General Assembly resolution 1542 (XV) of 15 December 1960 declaring Angola among others a Non-Self-Governing Territory within the meaning of Chapter XI of the Charter as well as General Assembly resolution 1514 (XV) of 14 December 1960, by which the General Assembly declared without dissent that the subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation and asked for immediate steps to be taken to transfer all powers to the peoples of these Territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom,

"1. Reaffirms General Assembly resolution 1603 (XV) of 20 April 1961 and calls upon Portugal to act in accordance with the terms of that resolution;

"2. Requests the Sub-Committee on the Situation in Angola, appointed under the terms of the aforesaid General Assembly resolution, to implement its mandate without delay;

"3. Calls upon the Portuguese authorities to desist forthwith from repressive measures and further to extend every facility to the Sub-Committee to enable it to perform its task expeditiously;

"4. Expresses the hope that a peaceful solution will be found to the problem of Angola in accordance with the Charter of the United Nations;

"5. Requests the Sub-Committee to report to the Security Council and the General Assembly as soon as possible."

394/ S/4828, 955th meeting: para. 35.

395/ 950th meeting: paras. 11-41.

396/ In a letter dated 3 June 1961 (S/4821, O.R., 16th year, Suppl. for April-June 1961, pp. 60-61), the representative of Portugal had protested against the request of the forty-four Member States for inscription on the Council's agenda of a matter which his Government considered to be within its exclusive jurisdiction.

397/ 950th meeting: paras. 80-108.

398/ S/4833/Rev.1, 955th meeting: paras. 66 and 68.

399/ S/4834, 956th meeting: para. 126.

400/ 956th meeting: para. 157.

401/ 956th meeting: para. 158.

402/ 956th meeting: para. 159.

403/ S/4835, O.R., 16th year, Suppl. for April-June 1961, p. 67.

COMPLAINT BY KUWAIT, COMPLAINT BY IRAQ

INITIAL PROCEEDINGS

By telegram[404] dated 1 July 1961, the State Secretary of Kuwait requested the President of the Security Council to call a meeting to consider urgently the following question:

"Complaint by Kuwait in respect of the situation arising from threats by Iraq to the territorial independence of Kuwait which is likely to endanger the maintenance of international peace and security."

By letter[405] dated 1 July 1961, the representative of the United Kingdom expressed his Government's support for the request from the Ruler of Kuwait and requested that a meeting of the Council be called accordingly.

By letter[406] dated 2 July 1961, the representative of Iraq requested that the Security Council be convened to consider the following question:

"Complaint by the Government of the Republic of Iraq in respect of the situation, arising out of the armed threat by the United Kingdom to the independence and security of Iraq which is likely to endanger the maintenance of international peace and security."

At the 957th meeting on 2 July 1961, the provisional agenda of the Security Council included the two items submitted by the United Kingdom and Kuwait and by Iraq, respectively, as items 2 and 3. Following the adoption of the agenda, the representative of Iraq was invited to participate in the discussions. At the 958th meeting on 5 July 1961, the representative of Kuwait was also invited to participate.[407] The Council considered the question at its 957th to 960th meetings, between 2 and 7 July 1961.

Decisions of 7 July 1961 (960th meeting): Rejection of the United Kingdom and United Arab Republic draft resolutions; Statement by the President

At the 957th meeting on 2 July 1961, the representative of the United Kingdom stated that his Government had dispatched a force to Kuwait in response to an urgent request of the Ruler of Kuwait and pursuant to a treaty obligation to the latter. It had been placed at the Ruler's disposal to afford such assistance as he might consider necessary for the preservation of the independence of Kuwait in the face of recent developments there. He emphasized his Government's hope that the necessity to make use of this force would not arise and that it would be withdrawn as soon as the Ruler considered that the threat to the independence of Kuwait was over. The action was in no way hostile to Iraq and the force could only be employed in a combat role if Kuwait were attacked from across the border.[408]

The representative of Iraq stated that his Government had repeatedly indicated that it would employ only peaceful means to settle its difficulty with Kuwait and had denied the unsubstantiated reports of any troop concentrations in southern Iraq. In the absence of any troop concentrations and in view of the repeated assurances given by his Government, it must conclude that this complaint by the United Kingdom had been lodged "in order to cover up and justify the blatant act of aggression committed by the United Kingdom by landing its forces in Kuwait". This was the reason why his Government had requested the consideration by the Council of the situation arising out of the landing of the United Kingdom troops in the Arab country of Kuwait, an integral part of Iraq—a situation which was likely to endanger international peace and security and to violate and threaten the independence, security and territorial integrity of Iraq. He further maintained that the treaty of 1899 to which the Government of the United Kingdom referred was nothing but an agreement concluded by a British agent with a local administrative officer of a sovereign State. It had, therefore, no legal validity whatsoever and could not be considered as binding on any side. Finally, he expressed the hope that the Council would be in a position to order the unconditional and immediate withdrawal of the British forces from Kuwait.[409]

At the 959th meeting on 6 July 1961, the representative of the United Kingdom submitted a draft resolution[410] under which the Council would call upon all States to respect the independence and territorial integrity of Kuwait; urge that all concerned should work for peace and tranquillity in the area; and agree to keep the situation under review.

At the 960th meeting on 7 July 1961, the representative of the United Arab Republic introduced a draft resolution[411] under which the Council would urge that the question be solved by peaceful means and call upon the United Kingdom to withdraw immediately its forces from Kuwait.

At the 960th meeting on 7 July 1961, the United Kingdom draft resolution failed of adoption.[412] There were 7 votes in favour, 1 against, with 3 abstentions (the negative vote being that of a permanent member of the Council).

At the same meeting, the draft resolution submitted by the United Arab Republic was not adopted.[413] There were 3 votes in favour, none against, with 8 abstentions.

Before adjourning the meeting, the President (Ecuador) stated:

"I would appeal to them—and I think that I am speaking for the Council as a whole in doing so—to realize the hope expressed here by abstaining from any action that may aggravate the situation. That is a hope which I express as President of the Council.

"I should also like to state that we and all the other members of the Council will remain vigilant

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404/ S/4844, O.R., 16th year, Suppl. for July-Sept. 1961, p. 1.

405/ S/4845, ibid., pp. 1-2.

406/ S/4847, ibid., p. 2; see also S/4848, ibid., p. 3.

407/ 957th meeting: para. 13; 958th meeting: para. 21.

408/ 957th meeting: paras. 15-17, 35-37.

409/ 957th meeting: paras. 52-53, 65-67, 73.

410/ S/4855, O.R., 16th year, Suppl. for July-Sept. 1961, p. 5; 959th meeting: para. 61.

411/ S/4856, ibid., p. 6; 960th meeting: para. 11.

412/ 960th meeting: para. 44.

413/ 960th meeting: para. 45.

with regard to the dangerous situation that unfortunately still exists. As President, I shall be prepared to convene the Council whenever circumstances make it necessary to do so."[414]

The question remained on the list of matters of which the Security Council is seized.

COMPLAINT BY TUNISIA

INITIAL PROCEEDINGS

By telegram[415] dated 20 July 1961 addressed to the President of the Security Council, the Secretary of State for Foreign Affairs of Tunisia informed the President that the town and gouvernorat of Bizerta had been under attack by French naval and air forces since the afternoon of 19 July, and requested a meeting of the Security Council as a matter of extreme urgency for the purpose of considering a complaint against France "for acts of aggression infringing the sovereignty and security of Tunisia and threatening international peace and security". By letter[416] of the same date addressed to the President of the Council, the representative of Tunisia reiterated the request and submitted an explanatory memorandum which stated that, in addition to the air and naval attacks of 19 July, 800 French paratroopers had been dropped over Bizerta, thus violating Tunisia's airspace, despite the categorical prohibition of the Tunisian Government. During the night of 19/20 July, French armoured units had also taken up positions outside the Bizerta base. These acts represented a flagrant violation of the airspace and the territorial integrity of Tunisia and also constituted a clear and premeditated act of aggression, gravely threatening international peace and security. After recalling the repeated efforts made by Tunisia to obtain the evacuation of French troops from the Bizerta base and a portion of the south-east territory of Tunisia, which was also occupied by French forces, the memorandum stated that on 6 July a final approach had been made in the form of a personal message from President Bourguiba to General de Gaulle. No reply had been given to that last attempt to obtain a peaceful settlement. Following this demonstration of France's intention to flout Tunisia's national dignity, the Tunisian Government was forced to take steps similar to those taken after the act of aggression at Sakiet-Sidi-Youssef and was compelled to exercise its right of self-defence[417] in accordance with Article 51 of the Charter.

At its 961st meeting on 21 July 1961, the Security Council included the item on its agenda.[418] The Council considered the question at its 961st to 966th meetings held between 21 and 29 July 1961. After the adoption of the agenda, the President (Ecuador) invited the representative of Tunisia to the Council table.[419]

Decision of 22 July 1961 (962nd meeting): Calling for an immediate cease-fire and a return of all armed forces to their original position and deciding to continue the debate

Opening the debate, the representative of Tunisia* stated that since 19 July 1961 France had been committing armed, premeditated and continuous aggression against Tunisia, which had, with great patience and understanding, made every effort using diplomatic means to secure the evacuation of foreign forces from its territory. Those efforts had been fruitless; even President Bourguiba's personal appeal on 6 July to General de Gaulle had gone unanswered, on the pretext that popular demonstrations made negotiations impossible. Tunisia was fighting because it was the victim of aggression by forces far stronger than its own, and was using its right of self-defence under Article 51 of the Charter in order to regain its legitimate sovereignty over all its territory. In that situation, he called on the Council to bring an immediate end to the aggression; to assist Tunisia to repel the aggression, if necessary; and to assist Tunisia in removing from its territory the permanent danger of aggression constituted by the presence of French troops on Tunisian territory against its will.[420]

The representative of France stated that his Government would have had every justification if it had complained to the Council of the premeditated and systematic aggression committed by the Tunisian Government in Bizerta against the French Government. The legal basis for the French military presence in Bizerta was to be found in the exchange of letters of June 1958 between the French and Tunisian Governments, which provided for the maintenance of the base at Bizerta pending negotiation of a final agreement on the evacuation of the French forces stationed throughout Tunisia. The evacuation of all forces outside Bizerta had been completed in October 1958. The French Government had taken the initiative in proposing to the Government of Tunisia that talks be held in connexion with the base. That invitation had been renewed repeatedly, and negotiations had taken place on many occasions. However, they had never been fruitful. The French Government was, therefore, not opposed to negotiations, but the military and aggressive actions of the Tunisian authorities made it impossible. The French Government had solemnly warned the Tunisian Government against action which it had deliberately undertaken and for which it bore full and sole responsibility.[421]

414/ 960th meeting: paras. 82-83.

415/ S/4861, O.R., 16th year, Suppl. for July-Sept. 1961, p. 6.

416/ S/4862, ibid., pp. 7-9.

417/ In a letter dated 20 July 1961 (S/4864, O.R., 16th year, Suppl. for July-Sept. 1961, pp. 11-14) the representative of France requested the circulation of the text of two notes dated 18 and 20 July 1961 respectively which had been delivered to the office of the Secretary of State for Foreign Affairs of Tunisia. In the first note, the French Government noted that the measures announced by the President of the Republic of Tunisia were designed, not to restore normal conditions, but on the contrary to increase tension. Action of this nature would, moreover, serve only to delay conversations concerning the Bizerta base, which were provided for in the exchange of letters of 17 June 1958 and which the French Government still wished to see opened. In the face of the increasingly serious threats, the French Government was compelled to take all necessary steps to ensure the inviolability of the base installations and freedom of communication between them. In the note of 20 July, the French Government warned the Tunisian Government against the attempt it had announced to cripple the Bizerta base by means of popular demonstrations and force. It further stated that on 19 July and during the night of 19/20 July the Tunisian authorities had taken the initiative in committing deliberate acts of aggression against the French installations and forces. The latter, after waiting for a long time, had been compelled to retaliate in self-defence.

418/ 961st meeting: para. 2.

419/ 961st meeting: para. 3.

420/ 961st meeting: paras. 5-62.

421/ 961st meeting: paras. 63-87.

At the 962nd meeting on 22 July 1961, the Secretary-General stated that, in view of his obligations under Article 99 of the Charter, he considered it his duty to make an urgent appeal to the Council to consider, without delay, the taking of an interim decision pending the further consideration of the item and conclusion of the debate. Such a decision should not prejudge the final outcome of the deliberations of the Council as it would, in his view, only request of the two States concerned an immediate cessation, through a cease-fire, of all hostile actions. Naturally, this request should be combined with a demand for an immediate return to the status quo ante, as otherwise the cease-fire would be likely to prove too unstable to satisfy the urgent needs of the moment.[422]

After the resumption of the meeting which, on the proposal of the representative of the United States, had been suspended for an hour, the representative of Liberia introduced a draft resolution[423] along the lines suggested by the Secretary-General, and requested that it receive priority. At the same meeting the Council adopted the Liberian draft resolution by 10 votes in favour, none against and no abstentions,[424] France did not participate in the voting.

The resolution[425] read:

"The Security Council,

"Considering the gravity of the situation prevailing in Tunisia,

"Pending the conclusion of the debate of the item on its agenda,

"1. Calls for an immediate cease-fire and a return of all armed forces to their original position;

"2. Decides to continue the debate."

Decisions *of 22 July 1961 (963rd meeting): Rejection of a draft resolution jointly submitted by the United Kingdom and the United States, and of a draft resolution jointly submitted by Liberia and the United Arab Republic*

At the 963rd meeting on 22 July 1961, the representative of the United Kingdom introduced a draft resolution[426] jointly sponsored with the United States, under which the Council would call upon the parties to effect an immediate cease-fire and a speedy return of all forces to their previous positions; call upon all concerned to refrain from any action which might lead to a further deterioration of the situation; urge the parties, in accordance with the Charter, to negotiate a peaceful settlement of their differences; and decide to keep the situation under urgent review in the interests of peace and security.

Also at the 963rd meeting, the representative of Liberia introduced a draft resolution[427] jointly sponsored with the United Arab Republic, which would have the Council call for an immediate cease-fire; for the immediate withdrawal of those French forces which had been introduced into the Bizerta base, and for the return to their original position of those which had transgressed beyond the limits of that base since 19 July 1961; and, further, call upon both parties to enter into immediate negotiations aimed at the speedy evacuation of the French forces from Tunisia.

At the same meeting, the Council proceeded to vote upon the draft resolutions before it. The draft resolution sponsored by Liberia and the United Arab Republic was not adopted, the result of the vote being 4 in favour, none against and 7 abstentions.[428] The draft resolution sponsored by the United Kingdom and the United States was not adopted, the result of the vote being 6 in favour, none against, and 5 abstentions.[429]

The President (Ecuador) noted that, although neither of the draft resolutions before the Council had been adopted, the item was still on the agenda as had been made clear in the interim resolution adopted at the previous meeting. He would call a meeting of the Council at the request of any member of the Council or State Member of the United Nations whenever they might deem it necessary.

Decisions *of 29 July 1961 (966th meeting): Rejection of two draft resolutions jointly submitted by Ceylon, Liberia and the United Arab Republic, and of a draft resolution submitted by Turkey*

By letter[430] dated 27 July 1961 addressed to the President of the Council, the representative of Tunisia stated that France continued to refuse to carry out the provisional measures called for in the Council's interim resolution of 22 July. He accordingly requested that the Council be convened to resume consideration of the "complaint by Tunisia against France concerning acts of aggression infringing the sovereignty and security of Tunisia and threatening international peace and security" submitted by his Government to the Security Council on 20 July 1961.

The Security Council resumed consideration of the question at its 964th to 966th meetings held on 28 and 29 July 1961. The representatives of Libya, Senegal and Tunisia were,[431] at their request, invited to participate in the proceedings.

At the 964th meeting on 28 July, the President drew the Council's attention to a letter[432] dated 28 July 1961 from the representative of France informing the President that his delegation did not consider it necessary to participate in any discussions on the matter which might take place in the Council.

The representative of Tunisia* stated that his delegation's request that the Council be convened had been necessary by the grave situation resulting from the French military authority's non-observance of the interim decision taken by the Council on 22 July 1961. The Tunisian Government had accepted the

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422/ 962nd meeting: paras. 2-3. See chapter I, Case 49.

423/ S/4880, 962nd meeting: para. 43.

424/ 962nd meeting: para. 58.

425/ S/4882, O.R., 16th year, Suppl. for July-Sept. 1961, p. 25.

426/ S/4879, ibid., p. 23; 963rd meeting: para. 28.

427/ S/4878, ibid., pp. 22-23; 963rd meeting: para. 34.

428/ 963rd meeting: para. 113.

429/ 963rd meeting: para. 114.

430/ S/4893, O.R., 16th year, Suppl. for July-Sept. 1961, pp. 33-34.

431/ 964th meeting: paras. 4, 5.

432/ S/4897, O.R., 16th year, Suppl. for July-Sept. 1961, pp. 40-41; 964th meeting: para. 3.

Council's interim decision and undertaken to implement it in good faith while the French authorities, in contrast, were ignoring it. The French order to cease fire had been given only because the objectives of the aggressor had been achieved and, furthermore, the application of the cease fire had been far from complete. Nor had the French military authorities given effect to the Council's call for the return of all armed forces to their original position. They had instead taken advantage of Tunisian respect for the cease-fire, increased their military potential and violated Tunisian airspace. The representative of Tunisia requested the Council to take into account, in compliance with Article 40 of the Charter, France's refusal to abide by its obligation under the Charter and to act vigorously to enforce the Council's decisions.[433]/

At the request of the representative of Liberia, the Secretary-General made a statement, informing the Council that, at the invitation of President Bourguiba, he paid a short visit to Tunisia, in the course of which he had had personal contacts with the President and with members of the Tunisian Government. The scope and character of the visit had been clearly defined in the exchange of letters, issued as a Council document,[434]/ in which the aim of the visit was defined by President Bourguiba as a direct and personal exchange of views regarding the developments following the interim resolution of the Security Council of 22 July 1961. The Secretary-General had pointed out in his reply that the question of substance was considered by him as falling outside his personal competence in view of the fact that it was pending before the Council. The acceptance of the invitation extended to him by President Bourguiba fell within the framework of the rights and obligations of the Secretary-General. Article 99 of the Charter authorized him to draw to the Council's attention what, in his view, might represent a threat to international peace and security, and it was obvious that the duties flowing from that authority could not be fulfilled unless the Secretary-General, in case of need, was in a position to acquire a personal opinion about the relevant facts of the situation that might represent such a threat. Without in any way assuming the role of mediator but with a view to getting a better understanding of the difficulties with which efforts to establish a direct contact between the parties had met, he had taken the initiative of expressing to the French Government[435]/ his hope that it would inform him about its views regarding the questions on which he had been informed of the Tunisian viewpoint during his visit. The implementation of the Security Council resolution of 22 July remained so far incomplete. The cease-fire had been established, but that did not seem to have led to an immediate cessation of all acts which, under a cease-fire, should be ruled out. Nor did it mean that the integral demand by the Council for a return of the armed forces to the original position had been met. In view of the need for co-ordination of steps to be taken by the two sides, various efforts, so far unsuccessful, had been made to establish contact between the two parties prior to the full implementation of the resolution. As stated to the parties, it seemed obvious to him from the resolution and from the general principles of the Charter that the objective of such a contact should be the co-ordination of steps needed for the implementation of the resolution, and that the choice of modalities should take into account the prevailing legal situation. By personal observation he could confirm the fact of the presence, at the time of his visit in the city of Bizerta, and at a fairly considerable distance from Bizerta on the main road to Tunis, of French military units, and that these troops had exercised functions for the maintenance of law and order which normally belonged to organs of the sovereign Government. Furthermore, testimony given in personal contacts appeared to confirm that actions difficult to reconcile with the principle of a cease-fire, involving French military personnel, had occurred. In conclusion, the Secretary-General stated that it was not for him to pass any judgement on the situation, either in terms of what it might involve by way of risks of a breakdown in the cease-fire in case of an incident, or in terms of the resolution, or in terms of international law.[436]/

At the same meeting the representative of the United Arab Republic submitted a draft resolution[437]/ jointly sponsored with Ceylon and Liberia under which the Council would: (1) express its serious concern over the fact that France had not complied fully with the interim resolution of 22 July, and that the situation continued to represent a serious threat to international peace and security; (2) invite France to comply immediately with all the provisions of the interim resolution.

At the 965th meeting on 29 July 1961, the same three Powers submitted a second draft resolution,[438]/ under which the Council would invite France immediately to enter into negotiations with Tunisia, with a view to the speedy evacuation of French forces from Tunisia.

At the same meeting, the representative of Turkey expressed his belief that the Council's object should be to break the deadlock between the two parties and secure the implementation of the interim resolution of 22 July while at the same time opening the path for a final settlement of the question. His delegation therefore introduced a draft resolution[439]/ according to which the Council would: (1) express its concern that the resolution of 22 July had not been fully carried out; (2) call for immediate and full implementation of that resolution; and (3) urge the early opening of negotiations for a peaceful solution of differences, including a definitive settlement of the question of Bizerta, having due regard for Tunisian sovereignty.

At the 966th meeting on 29 July, the representative of Turkey stated that, having heard certain objections, and in particular the comments of the representative of Tunisia, with regard to paragraph 3 of his draft, he had decided to drop the final paragraph so that a vote might be taken only on operative paragraphs 1 and 2 of his draft resolution.[440]/

433/ 964th meeting: paras. 7-50.

434/ S/4885, O.R., 16th year, Suppl. for July-Sept. 1961, p. 26.

435/ S/4894 and Add.1, ibid., pp. 34-38.

436/ 964th meeting: paras. 85-94. See also chapter I, Case 50.

437/ S/4903, O.R., 16th year, Suppl. for July-Sept. 1961, p. 47. 964th meeting: para. 160.

438/ S/4904, ibid., p. 47; 965th meeting: para. 14.

439/ S/4905, ibid., p. 48. 965th meeting: para. 32.

440/ 966th meeting: para. 58.

At the same meeting, the representative of the USSR proposed that in operative paragraph 1 of the Turkish draft resolution, after the words "had not been fully carried out", be added the words "by France", and that, in operative paragraph 2, after the words "implementation of that resolution" be added the words "by France".[441]

At the 966th meeting, the Council proceeded to vote on the draft resolutions and the amendment before it. The first draft resolution (S/4903) submitted by Ceylon, Liberia and the United Arab Republic was not adopted, there being 4 votes in favour, none against and 6 abstentions.[442] The second draft resolution submitted by Ceylon, Liberia and the United Arab Republic was not adopted, there being 4 votes in favour, none against and 6 abstentions.[443] The USSR amendment to the Turkish draft resolution was not adopted, there being 4 votes in favour, none against and 6 abstentions.[444] The draft resolution submitted by Turkey was not adopted, there being 6 votes in favour, none against and 4 abstentions.[445]

The President (Ecuador) noted that France had not participated in the voting.

The President expressed his concern at the fact that the Council had concluded its discussion without having arrived at a positive resolution. He expressed the hope that the good will of the countries concerned and their understanding of their duties would lead to the full implementation of the only resolution that the Council had been able to adopt on the matter.[446]

COMPLAINT BY CUBA (LETTER OF 21 NOVEMBER 1961)

INITIAL PROCEEDINGS

By letter[447] dated 21 November 1961 addressed to the President of the Security Council, the representative of Cuba stated that the United States was carrying out a plan of armed intervention in the Dominican Republic in violation of that country's sovereignty. He asserted that United States warships and aircraft carriers had been dispatched to Santo Domingo waters, from which flights had been launched over Dominican territory with no justification expect force and intimidation. Such actions, he added, infringed on the basic principles of the United Nations Charter and those of the Charter of the Organization of American States and were consequently endangering international peace and security. Furthermore, if allowed to go unprotested, they could become a precedent for United States intervention in the internal affairs of other countries of Latin America and thus affect their struggle for self-determination. The request for a meeting of the Security Council was based on Articles 34, 35 (1), 52 (4), 103, 24 (1) and 31 of the Charter, and on the relevant rules of procedure of the Security Council.

At the 980th meeting on 22 November 1961, the Council included the question in its agenda.[448] The President (USSR) invited the representatives of Cuba and the Dominican Republic to participate in the debate.[449] The Council considered the Cuban complaint at its 980th, 981st and 983rd meetings held on 22, 24 and 28 November 1961.

Decision of 28 November 1961 (983rd meeting): Statement by the President summing up the consensus in the Council

At the 980th meeting on 22 November 1961, the representative of Cuba* asked the Council to condemn the United States as an aggressor, and to demand the immediate withdrawal of U.S. Forces from the coasts of the Dominican Republic.[450]

The representative of the United States observed that the charge that the United States was planning armed intervention in the Dominican Republic was totally without foundation, and at no time had the land, sea or air forces of the United States been present in the territorial waters or airspace of the Dominican Republic. The friendly presence of the U.S. fleet on the high seas of the Caribbean was undertaken with the full knowledge of the constitutional authorities of the Dominican Republic, who were struggling to free that nation from years of dictatorship. It was surprising, however, that the accusation of intervention was made not by the Dominican Republic but by Cuba. The real threat to the peace and security of the hemisphere, he asserted, rested with a Government aided by the Communist bloc, which was attempting to frustrate the efforts of the Dominican people to achieve a new and democratic life for their country.[451]

At the 981st meeting on 24 November 1961, the representative of the Dominican Republic* expressed regret that Cuba had misused the right granted to Members under Article 35 in a case that fulfilled none of the prerequisites mentioned in Article 34. The Dominican Republic had traditionally been very conscious about its sovereignty, and there was no United States interference in Dominican internal affairs. Instead, full United States respect for that country's sovereignty was manifest. Further, the United States had not violated international law since it had not intruded into the Dominican Republic's territorial waters. The United States patrolled the high seas which was within its rights. The Dominican representative suggested that since Cuba had raised the same complaint before the Organization of American States the Council might abstain from considering it. In so doing, the Council would be respecting Articles 52 to 54 of the United Nations Charter.[452]

The President, in summing up the debate at the 983rd meeting on 28 November 1961,[453] stated that

441/ 966th meeting: paras. 59-60, 62.

442/ 966th meeting: para. 64. One permanent member did not participate in the voting.

443/ 966th meeting: para. 65. One permanent member did not participate in the voting.

444/ 966th meeting: para. 66. One permanent member did not participate in the voting.

445/ 966th meeting: para. 67. One permanent member did not participate in the voting.

446/ 966th meeting: para. 78.

447/ S/4992, O.R., 16th year, Suppl. for Oct.-Dec. 1961, pp. 139-141.

448/ 980th meeting: preceding para. 1.

449/ 980th meeting: paras. 1 and 50.

450/ 980th meeting: paras. 4-30.

451/ 980th meeting: paras. 31-46.

452/ 981st meeting: paras. 3-30, 34-51.

453/ 983rd meeting: para. 174.

not much could be gained from prolonged discussion at that stage and that if there were no objections he would close the meeting, leaving the matter on the agenda in case further discussion should prove necessary. There was no objection.

COMPLAINT BY PORTUGAL (GOA)

INITIAL PROCEEDINGS

By letter[454] dated 18 December 1961, the permanent representative of Portugal informed the President of the Security Council that the Government of India had followed up its build-up of armed forces and provocation—some of which had been mentioned in his letters to the President of the Council, dated 8,[455] 11,[456] and 16[457] December 1961—with a full-scale unprovoked armed attack on the territories of Goa, Damao and Diu, comprising the Portuguese State of India. The aggression now committed was a flagrant violation of the sovereign rights of Portugal and of the Charter of the United Nations. Consequently, the Government of Portugal requested the President of the Council to convene the Security Council immediately to put an end to India's act of aggression, to order an immediate cease fire and the withdrawal forthwith of all the invading Indian forces from the Portuguese territories of Goa, Damao and Diu. In the meantime and until the Security Council had taken the above-mentioned measures, Portugal had no alternative but to defend itself against aggression.

At the 987th meeting on 18 December 1961, the Security Council decided by 7 votes in favour to 2 against, with 2 abstentions, to include the item in its agenda.[458]

The Security Council considered the question at its 987th and 988th meetings on 18 December 1961. The representatives of Portugal and India were invited to take part in the discussion.[459]

Decisions *of 18 December 1961 (988th meeting):*

(i) Rejection of the joint draft resolution submitted by Ceylon, Liberia and the United Arab Republic;

(ii) Rejection of the joint draft resolution submitted by France, Turkey, the United Kingdom and the United States

At the 987th meeting the representative of India* stated that the Portuguese Government had refused repeated requests of the Government of India to negotiate the transfer of the Portuguese possessions in India and invented a legal fiction that they were part of Portugal. The question before the Council was a colonial question in the sense that part of Indian territory had been illegally occupied by conquest by Portugal. Portugal had no sovereign right over that territory and there was no legal frontier between India and Goa since Goa was an integral part of India. Therefore, a question of aggression could not arise. The only thing the Security Council could do was to tell Portugal to vacate Goa, Damao and Diu, and to give effect to the numerous resolutions of the General Assembly with regard to the freedom of dependent peoples.[460]

At the 988th meeting on 18 December 1961, the representative of the United States introduced a joint draft resolution[461] co-sponsored by France, Turkey and the United Kingdom, whereby the Security Council would: (1) call for an immediate cessation of hostilities; (2) call upon the Government of India to withdraw its forces immediately to positions prevailing before 17 December 1961; (3) urge the parties to work out a permanent solution of their differences by peaceful means in accordance with the principles embodied in the Charter; and (4) request the Secretary-General to provide such assistance as might be appropriate.

At the same meeting, the representative of Ceylon introduced a joint draft resolution[462] co-sponsored by Liberia and the United Arab Republic, according to which the Security Council would: (1) decide to reject the Portuguese complaint of aggression against India; and (2) call upon Portugal to terminate hostile actions and to co-operate with India in the liquidation of her possessions in India.

At the same meeting, the joint draft resolution submitted by Ceylon, Liberia and the United Arab Republic was rejected; there were 4 votes in favour and 7 against.[463]

The joint draft resolution submitted by France, Turkey, the United Kingdom and the United States failed of adoption. There were 7 votes in favour and 4 against (one of the negative votes being that of a permanent member).[464]

The question remained on the list of matters of which the Security Council is seized.

THE INDIA-PAKISTAN QUESTION

Decision *of 1 February 1962 (990th meeting): Statement by the President*

By letter[465] dated 11 January 1962, the representative of Pakistan requested a meeting of the Security

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454/ S/5030, O.R., 16th year, Suppl. for Oct.-Dec. 1961, pp. 205-206.

455/ S/5016, *ibid.*, pp. 151-152. In the letter, Portugal complained of movements of Indian naval units near the territorial waters of Goa and of military forces at the frontiers of Goa, of violations of the airspace of Goa and Diu, and of a campaign of false charges of the Indian radio, Press and other media against Goa and the Portuguese Government. The Government of Portugal considered that it was being made a victim of unprovoked aggression which constituted a grave threat to peace and security.

456/ S/5018, *ibid.*, pp. 153-154. In the letter, it was stated that India had continued to accumulate near the Indo-Portuguese frontier considerable military, naval and air forces and that violations of the Portuguese frontier and airspace by Indian armed forces had multiplied. Indian propaganda media had continued to carry on a campaign of accusations. The Portuguese Government, under Article 35 (1), drew the attention of the Security Council to those facts as it considered imminent a military aggression and attack by the Indian Government on Portuguese territory.

457/ S/5024, *ibid.*, p. 204. In the letter were listed incidents which took place from 9 to 11 December 1961.

458/ 987th meeting: para. 7. On the inclusion of the question in the agenda, see chapter II, Case 6.

459/ 987th meeting: para. 9.

460/ 987th meeting: paras. 4.-43, 44, 60-62.

461/ S/5033, 988th meeting: para. 47. For constitutional considerations advanced in connexion with this draft resolution, see chapter X, Case 5, and chapter XII, Case 5.

462/ S/5032, 988th meeting: para. 93. For constitutional considerations advanced in connexion with this draft resolution, see chapter XII, Case 5.

463/ 988th meeting: para. 126.

464/ 988th meeting: para. 129.

465/ S/5055, O.R., 17th year, Suppl. for Jan.-March 1962, pp. 46-47.

Council to consider what further action to take in the dispute concerning the State of Jammu and Kashmir in the light of the last report of the United Nations representative for India and Pakistan on 28 March 1958, and subsequent developments. The Government of Pakistan was constrained to make that request as the efforts at the highest level for direct negotiations with the Government of India had failed to open a way towards the settlement of the dispute. Recent pronouncements by responsible personalities in India indicated that the situation constituted a grave threat to the maintenance of peace in the region.

By letter[466] dated 16 January 1962, the representative of India stated that the Security Council should refuse to entertain the request of Pakistan for a meeting. Pakistan's allegations that efforts for direct negotiations had failed, and that a threat to the peace had arisen, were unfounded. As far as the Government of India was concerned, the avenues for direct negotiations were always open. It was Pakistan which threatened the maintenance of peace in the region by its aggressive efforts and instigation of attempts at subversion and sabotage. The eve of the general elections in India was hardly the proper time either for direct negotiations between the two Governments or for discussion of the situation in the Security Council.

By letter[467] dated 29 January 1962, the representative of Pakistan stated that a very grave situation prevailed between India and Pakistan which called for immediate consideration by the Security Council. During recent weeks, responsible leaders of opinion in India had expressed themselves in a manner which had forced Pakistan to the conclusion that there had been a significant reversal of policy on the part of India with reference to the question of Kashmir and the relations between the two countries. India seemed to have decided to repudiate all its obligations, agreements and undertakings in respect of the resolving of the Kashmir dispute. This, in itself, was a development which would affect most seriously the relations between the two Governments. The situation was further exacerbated by the repeated declarations of Indian leaders to the effect that the continued existence of Azad Kashmir constituted "aggression" by Pakistan against India, and that it should be terminated by the "liberation" of the Azad Kashmir territory. It was clear that India's stand on any possible negotiations was limited by the repeated declaration of the Prime Minister of India that he was not willing to negotiate a settlement of the Kashmir dispute itself, but to discuss "adjustments", meaning thereby minor rectifications of the cease-fire line. Therefore, the situation with regard to the maintenance of peace between the two countries was daily becoming more precarious, and Pakistan consequently requested that the Council should take up the consideration of the India-Pakistan question as an urgent matter.

At the 990th meeting on 1 February 1962, the Security Council agreed[468] to include the item in its agenda. The representatives of Pakistan and India were invited to participate in the discussion.[469] The Council considered the question at the 990th meeting on 1 February 1962, and at the 1007th to 1016th meetings held between 27 April and 22 June 1962.

At the 990th meeting, the representative of Pakistan* reviewed the history of the dispute over the accession of the State of Jammu and Kashmir to Pakistan or to India, and indicated that no progress had been reached towards a peaceful solution of the question, which could only be attained on the basis of the freely expressed wishes of the people of that State. During the past few months, tension between India and Pakistan had mounted to a dangerous degree and declarations by responsible leaders in India had created a sense of crisis in Pakistan, a sense of foreboding that perhaps it might be difficult to maintain peace between the two countries. After quoting from Indian statements to the effect that Pakistan had committed aggression against India and that if that aggression could not be vacated by peaceful means the Azad Kashmir area would have to be "liberated", just as Goa had been liberated, he referred to a statement attributed to the Indian Defence Minister ruling out a plebiscite as a solution for the Kashmir question, and declaring that India would not negotiate on the surrender of its sovereignty. The representative of Pakistan emphasized that there was a serious dispute over the question of the accession to India of the State of Jammu and Kashmir, and that the fundamental problem involved therein was the self-determination of the people of that State and their right to decide their own future freely without interference from one side or the other. Even assuming Pakistan to be in illegal possession of parts of Kashmir, the people of Kashmir would continue to have the right of self-determination. It was sometimes said that because the situation had been more or less stabilized during fifteen years, it should not be disturbed and discussion should only centre on some "adjustments". He wished to assure the Council that even if 150 years were to pass, the dispute would not be settled except through the freely expressed wishes of the people of Kashmir. The Security Council should, therefore, in accordance with its responsibility, take steps to ensure that no recourse should be had to threat or the use of force for the purpose of a settlement of the dispute. Should there be an attempt at a "vacation of aggression or liberation of the Azad Kashmir area" the conflict that then might ensue would be bound to spread, and in view of the geographical situation of Kashmir, if a conflagration started in that area it would not be confined to the sub-continent or even to the whole continent of Asia.[470]

The representative of India* stated that no new facts had emerged in relation to Kashmir since the last meeting of the Security Council in 1957 to merit a reconsideration of the question. It was highly inconvenient for the Government of India to take substantive part in the Council's discussion of the Kashmir problem at a time when India was on the eve of general elections. The Council's consideration of this matter should, therefore, be deferred until a convenient time in the future after the Indian general

466/ S/5060 and Corr.1, ibid., pp. 48-49.

467/ S/5068, ibid., pp. 57-61.

468/ 990th meeting: para. 8.

469/ 990th meeting: paras. 9-10.

470/ 990th meeting: paras. 13-26, 50-55, 69-87.

elections and the formation of the new Government. He further stated that there was no threat or use of force against Pakistan from India. On numerous occasions the Government of India had offered to enter into a no-war declaration with Pakistan. Thus an atmosphere free from any apprehension would be created in order to facilitate the holding of any negotiations or discussions between India and Pakistan for the settlement of the issue. India's basic policy was to seek all avenues of peaceful settlement in the vacating of the aggression.[471] There had been an aggression against India in Kashmir, since Kashmir was an integral part of India. However, this aggression was to be vacated by peaceful means. The Prime Minister of India had repeatedly stated that India was not going to take any military measures in the Kashmir area under Pakistan occupation. There was no desire in the Government of India to settle the differences with Pakistan by any but peaceful means and by negotiations.[472]

The President (United States) stated that from the statements made before the Council by the representatives of Pakistan and India it was apparent that they desired to deal with their differences on the Kashmir issue in a peaceful manner. In the light of those assurances, and of the comments made before the Council, any further consideration by the Council should be deferred, possibly until some time after 1 March, on the understanding that it would be resumed after consultation between members of the Council and the parties concerned. Meanwhile, he concluded, the parties should refrain from any use or threat of the use of force in connexion with this problem, and from any action which might increase existing tensions.[473]

Decision of 22 June 1962 (1016th meeting): Rejection of the draft resolution submitted by Ireland

The Security Council resumed its consideration of the question at its 1007th meeting on 21 April 1962. The opening statement by the representative of Pakistan was made at the 1007th and 1008th meetings, and the opening statement by the representative of India at the 1009th meeting. Discussion continued through the 1016th meeting.

At the 1016th meeting on 22 June 1962, the representative of Ireland introduced a draft resolution[474] under which, after noting with satisfaction the pledges made by the two parties to the effect that their Governments would not resort to force in settling this question, the Security Council would: (1) remind both parties of the principles contained in its resolution of 17 January 1948, and in the United Nations Commission for India and Pakistan (UNCIP) resolutions of 13 August 1948 and 5 January 1949; (2) urge the parties concerned to enter into negotiations at the earliest convenient time with a view to the ultimate settlement of the India-Pakistan question, in accordance with Article 33 and other relevant provisions of the Charter; (3) appeal to the two Governments to take all possible measures to ensure the creation and maintenance of an atmosphere favourable to the promotion of negotiations; (4) urge the two Governments to refrain from making any statements, or taking any action, which might aggravate the situation; and (5) request the Secretary-General to provide the two Governments with such services as they might request for the purpose of carrying out the terms of this resolution.

At the same meeting, the Irish draft resolution failed of adoption. There were 7 votes in favour and 2 against, with 2 abstentions (one of the negative votes being that of a permanent member).[475]

LETTER OF 8 MARCH 1962 FROM THE REPRESENTATIVE OF CUBA CONCERNING THE PUNTA DEL ESTE DECISIONS

INITIAL PROCEEDINGS

By letter[476] dated 8 March 1962 addressed to the President of the Security Council, the representative of Cuba complained that certain resolutions adopted at the Eighth Meeting of Consultation of Ministers of Foreign Affairs of the American Republics, held at Punta del Este, violated the Charter of the United Nations, and that subsequently "unlawful enforcement action" had been taken against Cuba without the requisite authorization of the Security Council under Article 53 of the Charter. These coercive measures constituted aggression against the sovereignty of Cuba and were a serious threat to international peace and security. Accordingly, the Cuban Government asked for an immediate meeting of the Security Council to request the International Court of Justice to give an advisory opinion on several specific legal questions related to the decisions taken by the Eighth Meeting of Consultation of Ministers of Foreign Affairs. It further requested the Council to call, as a provisional measure under Article 40 of the Charter, for the suspension by the Council of the Organization of American States of the agreements adopted at Punta del Este. The Cuban request was based on Article 65 of the Statute of the International Court of Justice and Articles 24 (1), 34, 35 (1), 40, 41, 52, 53, 96 and 103 of the Charter, and the relevant provisions of the rules of procedure of the Council.

At the 992nd meeting on 14 March 1962, the Council included the question in its agenda.[477] It considered the Cuban complaint at the 992nd to 998th meetings held between 14 and 23 March 1962. The President (Venezuela) invited the representative of Cuba to participate in the discussion.[478]

Decision of 23 March 1962 (998th meeting): Rejection of the Cuban draft resolution

At the 992nd meeting on 14 March 1962, the representative of Cuba* contended that the Eighth Meeting of Consultation of Punta del Este had been illegally convened, and that it had adopted collective enforcement measures which could not be implemented with-

471/ See chapter X, Case 6.

472/ 990th meeting: paras. 83-87, 93-98, 102-111.

473/ 990th meeting: paras. 113-115.

474/ S/5134, O.R., 17th year, Suppl. for April-June 1962, p. 104. 1016th meeting: paras. 3-12.

475/ 1016th meeting: para. 92.

476/ S/5056, O.R., 17th year, Suppl. for Jan.-March 1962, pp. 88-90.

477/ 992nd meeting: para. 3.

478/ 992nd meeting: para. 4.

out the approval of the Security Council.[479] He asserted that under the United Nations Charter, socialist and capitalist nations were united, thus proclaiming peaceful co-existence. The United Nations was the international forum where countries with different social and political systems met. He stated further that the social system of a State was a matter essentially within its domestic jurisdiction, and that under Article 2 (7) of the Charter not even the United Nations was authorized to intervene in matters which were essentially within the domestic jurisdiction of any State. He concluded by requesting that, pending the opinion of the International Court, the Council should resolve to suspend the decisions of Punta del Este.[480]

At the 993rd meeting on 15 March 1962, the representative of the USSR observed that there were well-founded legal reasons for the Security Council to take the matter before the International Court because serious differences had appeared at the previous meetings of the Council and the General Assembly in the views expressed about these legal questions.[481]

At the same meeting the representative of the United States observed that it was the third time in two and a half months that the United Nations had been called upon to discuss complaints by Cuba which were essentially alike. He contended that the only difference in the current complaint was that its objective was to extend the Soviet veto to all regional organizations by way of the Security Council. He noted further that while the Cuban complaint might have been formulated in juridical terms, it was actually political. In his view, the principal issue was

> "whether a regional organization, one which has co-operated fully with the United Nations, has the right to manage its own affairs and to defend itself against a foreign-dominated Government, or whether the Soviet Union is to be allowed to paralyse that organization's activities through the exercise of the veto power in this Council."

With regard to the Cuban contention that the resolutions adopted at Punta del Este were "enforcement action" and constituted aggression against Cuba, the United States representative, after analysing in detail the resolutions, asserted that they did not constitute aggression or violated the Charter and did not require Security Council approval, or interpretation by the International Court.[482]

At the 994th meeting on 16 March 1962, the representative of Chile observed that a request for an advisory opinion of the International Court implied a kind of disapproval of the Punta del Este decisions and denial of authority to the competent organs that produced these decisions. He noted, further, that coercive measures within the meaning of Article 53 of the Charter involved the use of armed force. Consequently, the measures decided upon at Punta del Este could not be said to constitute enforcement action.[483]

At the 995th meeting on 20 March 1962, the President (Venezuela)[484] called attention to a letter dated 19 March 1962 from the representative of Cuba transmitting a draft resolution,[485] submitted in accordance with rule 38 of the rules of procedure. Under the terms of the draft resolution, the Security Council would request the International Court of Justice to give an advisory opinion on the seven following questions:

(i) Whether the Organization of American States was a regional agency within the meaning of Chapter VIII of the United Nations Charter;

(ii) Whether, under the terms of the Charter, the OAS had the right to take enforcement action as provided for in Article 53 without the authorization of the Security Council;

(iii) Whether the term "enforcement action" in Article 53 was to be regarded as including the measures provided for in Article 41, and whether the list of measures in Article 41 was exhaustive;

(iv) Whether the Charter of the OAS included any procedure for the expulsion of a State member of that organization, particularly because of its social system;

(v) Whether the provisions of the Charter of the OAS and of the Inter-American Treaty of Reciprocal Assistance (Rio Treaty) were to be regarded as having precedence over the obligations of Member States under the United Nations Charter;

(vi) Whether it was one of the main principles of the Charter of the United Nations that membership in the Organization was open to States which complied with the requirements of Article 4, regardless of their social system;

(vii) Whether, in the light of the replies to the foregoing questions, the resolutions adopted by the Eighth Meeting of Consultation regarding the expulsion of a State member of the regional agency because of its social system, and the adoption of other enforcement action against that State without the authorization of the Security Council, were or were not in accordance with the provisions of the Charter of the United Nations, the Charter of the OAS, and the Rio Treaty.

At the 996th meeting on 21 March 1962, the representative of the United Arab Republic recalled that requests for advisory opinions had been made in the past, and cited two cases, in 1947 and 1948, when they had been rejected on the grounds that the Council seemed more interested in the political rather than the juridical aspects of the questions raised.[486]

At the 998th meeting on 23 March 1962, the representative of the USSR requested, in accordance with rule 38 of the rules of procedure,[487] that the Cuban draft resolution be put to the vote.[488]

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[479] See chapter XII, Case 27.

[480] 992nd meeting: paras. 9-12, 77, 108, 118.

[481] 993rd meeting: paras. 49-52.

[482] 993rd meeting: paras. 72-74, 78-128.

[483] 994th meeting: paras. 46, 63-69, 72.

[484] 995th meeting: para. 3.

[485] S/5095, O.R., 17th year, Suppl. for Jan.-March 1962, pp. 96-97. The draft resolution included the same seven questions which were raised in the Cuban letter of submission (S/5086).

[486] 996th meeting: para. 42.

[487] See chapter III, Case 1c.

[488] 998th meeting: para. 3.

The representative of Ghana requested that a separate vote be taken on the operative paragraph of the Cuban draft resolution which referred to the third above-mentioned question.[489]

The President (Venezuela) stated that, in view of the fact that it was the USSR which had asked that the draft resolution be put to the vote, he would inquire whether the representative of the USSR had any objection to the separate vote requested by the representative of Ghana.[490] After a discussion on whether the representative of Cuba might be heard at that stage and an expression of view by the President, the President, as an exception, called on the representative of Cuba.[491] The representative of Cuba merely stated that he had no objection to Ghana's request.[492]

The Ghanaian proposal was rejected; there were 4 votes in favour and 7 against.[493]

The representative of Cuba stated then that as a result of the vote just taken he would not press for a vote on his draft resolution.[494]

The representative of the United States objected to the proposed withdrawal, to avoid a vote on the draft resolution as a whole. Under rule 35, since a vote had been taken in respect of the draft resolution, it could no longer be withdrawn.[495]

The President ruled that, under rule 35, the remaining part of the draft resolution would have to be voted upon.[496] This ruling was challenged by the representative of the USSR,[497] and was upheld by 7 votes in favour to 2 against, with 2 abstentions.[498]

The draft resolution, as amended, was rejected by 2 votes in favour and 7 against, with 1 abstention.[499]

COMPLAINTS BY REPRESENTATIVES OF CUBA, USSR AND UNITED STATES (22-23 OCTOBER 1962)

INITIAL PROCEEDINGS

By letter[500] dated 22 October 1962, the representative of the United States requested an urgent meeting of the Security Council to "deal with the dangerous threat to the peace and security of the world caused by the secret establishment in Cuba by the Union of Soviet Socialist Republics of launching bases and the installation of long-range ballistic missiles capable of carrying thermonuclear warheads to most of North and South America". The letter stated that the United States had "incontrovertible evidence" that the USSR had been installing in Cuba a whole series of facilities for launching nuclear missiles and other offensive weapons and installing the weapons themselves. These steps were far in excess of Cuba's defence requirements and had been undertaken some months ago despite repeated assurances, both in public and private, that no offensive weapons were being delivered to Cuba. In the light of this threat, the United States had appealed to the Organization of American States calling for a meeting of the Organ of Consultation invoking articles 6 and 8 of the Inter-American Treaty of Reciprocal Assistance (Rio Treaty) and had initiated a strict quarantine of Cuba to interdict the carriage of offensive weapons to that country. In accordance with its obligation under the Charter of the United Nations and the Council's responsibility for the maintenance of international peace and security, the United States was bringing these facts to the attention of the Council in order that prompt and effective measures might be taken for the immediate dismantling and withdrawal of Soviet offensive weapons from Cuba under the supervision of United Nations observers. Upon fulfilment of these conditions, the quarantine would be lifted. The letter was accompanied by a draft resolution[501] under which the Security Council would call, as a provisional measure under Article 40 of the Charter, for immediate dismantling and withdrawal of all missiles and other offensive weapons from Cuba and would authorize and request the Secretary-General to dispatch to Cuba a United Nations observer corps to assure and report on compliance. The draft resolution also recommended that the United States and the USSR confer promptly on measures to remove the existing threat to the security of the Western Hemisphere and the peace of the world, and report thereon to the Security Council.[502]

By letter[503] dated 22 October 1962, the representative of Cuba requested an urgent meeting of the Security Council to consider "the act of war unilaterally committed by the Government of the United States in ordering the naval blockade of Cuba". The letter stated that the United States, in disregard of the international organizations including the Security Council, was creating an imminent danger of war. This unilateral and direct aggression committed against the Revolutionary Government and the people of Cuba was merely the culmination of a series of aggressive acts which had been reported to and denounced before the United Nations. The request for the meeting was based on Articles 34, 35 (1), 39, 1 (1), 2 (4) and 24 (1) of the Charter and the relevant articles of the rules of procedure of the Council.

By letter[504] dated 23 October 1962, the representative of the USSR requested an immediate meeting of the Security Council to examine the question of "the violation of the Charter of the United Nations and the threat to peace" on the part of the United States. In a statement accompanying the letter, the Government of the USSR noted the United States decree which, it stated, had, in effect, placed the Republic of Cuba under a naval blockade. At the same time, United States troops had been reinforced at the Guantanamo base, situated in Cuban territory, and United States armed forces were being placed in a state of combat readi-

[489] 998th meeting: paras. 78, 81.

[490] 998th meeting: paras. 84-87.

[491] 998th meeting: paras. 88-106. For procedural discussion on this matter, see chapter III, Case 1c.

[492] 998th meeting: para. 110.

[493] 998th meeting: para. 113.

[494] 998th meeting: para. 123.

[495] 998th meeting: paras. 124-125.

[496] 998th meeting: paras. 142, 144-145.

[497] 998th meeting: paras. 147, 149.

[498] 998th meeting: para. 150.

[499] 998th meeting: para. 158. The representative of Ghana did not participate in the vote.

[500] S/5181, O.R., 17th year, Suppl. for Oct.-Dec. 1962, pp. 146-149.

[501] S/5182, 1022nd meeting: para. 50.

[502] See chapter X, Case 7.

[503] S/5183, O.R., 17th year, Suppl. for Oct.-Dec. 1962, p. 148.

[504] S/5186, ibid., pp. 149-154.

ness. The Soviet Government had called attention to the serious danger to world peace created by the policy pursued by the United States towards Cuba. The statement questioned the authority assumed by the United States as arbiter of the destinies of other territories and peoples, and referred to the fact that under the Charter of the United Nations all countries, large or small, had the right to organize themselves as they saw fit and to take such measures as they considered necessary to protect their own security. It was further stated that USSR's assistance to Cuba was designed to improve that country's defensive capacity, in response to the continuous threats and provocations by the United States. If the United States were genuinely striving for peace it would accept the Soviet proposal to withdraw its troops and dismantle its military bases in various parts of the world. The USSR Government appealed to all Governments and peoples to protest against the aggressive acts of the United States against Cuba and other States, strongly to condemn such acts and to take steps to prevent the unleashing of a thermonuclear war by the United States.

At the 1022nd meeting on 23 October 1962, the provisional agenda of the Council included the three letters. After the adoption of the agenda,[505] the President (USSR) invited,[506] without objection, the representative of Cuba to participate in the discussion. He then proposed that the three letters be considered simultaneously. It was so decided.[507] The Council considered the question at its 1022nd to 1025th meetings from 23 to 25 October 1962.

Decision *of 25 October 1962 (1025th meeting): Adjournment, pending outcome of discussions and negotiations initiated with the assistance of the Acting Secretary-General*

At the 1022nd meeting on 23 October 1962, the representative of the United States stated that he had asked for an emergency meeting to bring to the attention of the Council a grave threat to the Western Hemisphere and to the peace of the world. After reading to the Council a report by the President of the United States, broadcast the day before, on "the recent alarming military developments in Cuba", he reiterated the United States assertion that unmistakable evidence had established the fact that a series of offensive missile sites were being prepared in Cuban territory, and that the purpose of these bases was to provide a nuclear strike capability against the Western Hemisphere. Cuba had thus given to the USSR a bridgehead and staging area in this hemisphere. He contended further that missiles which helped a country to defend its independence, which left its political institutions intact, which were not designed to subvert the territorial integrity or political independence of other States, and were installed without concealment or deceit, was a type of assistance consistent with the principles of the United Nations. However, missiles which introduced a nuclear threat to an area heretofore free of it, which were installed by clandestine means, and which resulted in the most formidable nuclear base in the world outside existing treaty systems, presented a different problem. Despite repeated claims that Soviet arms in Cuba were solely of a "defensive character", the fact remained that the USSR had upset the precarious balance and created a new and dangerous situation in a new area. Cuba was being transformed into a base for "communist aggression" and "for putting all of the Americas under the nuclear gun". The United States could not accept that new phase of aggression without being negligent in its obligations to world peace. To accept that basic disturbance of the world's structure of power would simply be to extend an invitation to a new surge of aggression. In conclusion, the United States representative informed the Council of a decision[508] of the Organization of American States calling for the dismantling and withdrawal of all missiles and other offensive weapons from Cuba.[509]

At the same meeting, the representative of Cuba* repeated earlier assertions that the weapons were purely defensive and that were the United States to give proof by word and deed that it would not carry out aggression against Cuba, then Cuba's weapons would be unnecessary. However, United States conduct had not fulfilled such expectations. There were frequent acts of sabotage, violations of the territorial waters and airspace, and other provocative and punitive measures which made Cuba's defence vital. The United States had no right to attack another Member State because of its social system. The Charter, which had been signed by States with different social systems, imposed peaceful negotiations on States in the settlement of their disputes. Cuba, for its part, had always been ready to carry out peaceful negotiations with the United States but the latter would rather set might above right. The United States had adopted warlike measures in complete disregard of international organizations, particularly the Security Council. The Cuban representative invoked Article 2 (4) of the Charter and appealed for immediate withdrawal of all ships, troops and planes around Cuba, and the cessation of provocative acts by agents of the United States Government.[510]

At the same meeting, the President, speaking as the representative of the USSR, reiterated his assurances that the armaments and military matériel sent to Cuba were only for defensive purposes, and stated that, in initiating a naval blockade against Cuba, the United States had taken a step unprecedented in relations between States not formally at war. That, he said, had created a threat to the peace and a direct challenge to the Security Council as the organ of the United Nations primarily responsible for the maintenance of international peace and security. The Council alone was empowered to carry out any enforcement measures. By throwing its armed forces into the area around Cuba and into Cuban territory, the United States was committing an act of overt aggression. It had openly violated the Charter, which prohibited the threat or use of force in international relations. The United States, by declaring its intention

505/ 1022nd meeting: para. 8.

506/ 1022nd meeting: para. 9.

507/ 1022nd meeting: para. 11.

508/ 1022nd meeting: para. 81.

509/ 1022nd meeting: paras. 12-14, 58-63, 70-79.

510/ 1022nd meeting: paras. 90-93, 107-110, 122-125.

to inspect ships on the high seas, was committing an act of piracy, which led to an intensification of the tension in the international situation, and constituted a step towards the provoking of a world thermonuclear war. The United States had no right to make the demands enunciated by its President concerning shipping, both from the point of view of international law or from the Charter. No State, however powerful, had any right at all to define or determine what form of armaments might be required by another State for its defence. Each State, according to the Charter, had a right of self-defence and the right to the weapons necessary to serve that defence. Thus, the position set out by the United States flagrantly violated international law, which recognized the sovereign equality of all States, and obliged States to base their relations on this principle.[511]/

In conclusion, the representative of the USSR introduced a draft resolution,[512]/ under which the Security Council would, inter alia, condemn the actions of the United States Government, aimed at violating the Charter and increasing the threat of war; insist on the revocation of the order to inspect ships of other States bound for Cuba; and call upon the Governments of Cuba, the United States and the USSR to establish contact and enter into negotiations for the purpose of normalizing the situation and thus removing the threat of war.

At the 1024th meeting on 24 October 1962, the representative of Chile suggested that if the United States resolution were not adopted, the Acting Secretary-General should nominate a commission that would go immediately to Cuba. Should an impasse develop in the Council as a result of the outcome of the vote on the draft resolutions before the Council, he suggested that the Acting Secretary-General should take some initiative and propose measures that might be immediately effective.[513]/

At the same meeting, the representative of the United Arab Republic stated that the representatives of some fifty Member States, fearful of an armed clash and desirous of finding a peaceful solution, after long deliberations had delegated from among themselves the representatives of Ghana, Cyprus and the United Arab Republic to meet with the Acting Secretary-General in order to convey to him on their behalf their deep concern and anxiety. The United Arab Republic representative then suggested that the Council should concentrate its effort to achieve, among other objectives prescribed in the Charter, the use, by the parties concerned, of whatever assistance the Acting Secretary-General and his office might be able to render in bringing the matter to a peaceful and immediate solution.[514]/

The representative of Ghana introduced a draft resolution,[515]/ jointly sponsored with the United Arab Republic, under which the Security Council would request the Acting Secretary-General promptly to confer with the parties directly concerned on immediate steps to remove the threat to world peace and call on the parties to comply with the resolution and assist the Acting Secretary-General in performing his task, and to refrain from any action which might further aggravate the situation.

At the same meeting, the Acting Secretary-General stated that at the request of the permanent representatives of a large number of Member States he had sent identical messages to the Governments of the United States and of the USSR, calling upon them to refrain from any action that might aggravate the situation and bring forth the risk of war. A part of the message read as follows:

> "... it is important that time should be given to enable the parties concerned to get together with a view to resolving the present crisis peacefully and normalizing the situation in the Caribbean. This involves on the one hand the voluntary suspension of all arms shipments to Cuba, and also the voluntary suspension of the quarantine measures involving the searching of ships bound for Cuba. I believe that such voluntary suspension for a period of two to three weeks will greatly ease the situation and give time to the parties concerned to meet and discuss with a view to finding a peaceful solution of the problem. In this context, I shall gladly make myself available to all parties for whatever services I may be able to perform."

The Acting Secretary-General also appealed to the Government of Cuba to suspend construction of major military facilities during the period of negotiation. He further repeated his appeal to the parties concerned to enter into negotiations at once, and offered to make himself and his office available to all parties.[516]/

At the 1025th meeting on 25 October 1962, the representative of the United States called attention to the reply by the President of the United States to the appeal of the Acting Secretary-General, in which the President expressed a willingness to begin preliminary talks to determine whether satisfactory arrangements could be assured. The United States asserted its desire to reach a satisfactory and a peaceful solution of the matter.[517]/

Speaking as the representative of the USSR, the President referred to a letter of 24 October from the USSR Government to Bertrand Russell wherein the Soviet attitude toward the crisis was outlined. In the view of the USSR Government, the question of war and peace was so vital that a meeting on the highest level would be useful in order to discuss the problems that had arisen, and to do everything to remove the danger of unleashing a thermonuclear war. The USSR representative referred also to his Government's reply to the Acting Secretary-General, welcoming his initiative and expressing agreement with his proposal.[518]/

The representative of Ghana expressed appreciation of the Acting Secretary-General's initiative and the kinds of response his appeals had elicited, and sup-

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[511]/ 1022nd meeting: paras. 129-184.

[512]/ S/5187, 1022nd meeting: para. 180.

[513]/ 1024th meeting: paras. 26-59.

[514]/ 1024th meeting: paras. 62-82.

[515]/ S/5190, 1024th meeting: para. 113.

[516]/ 1024th meeting: paras. 110-126. See also chapter I, Case 51.

[517]/ 1025th meeting: paras. 2-23.

[518]/ 1025th meeting: paras. 28-44.

ported a proposal by the United Arab Republic[519] for adjournment.[520]

The proposal was adopted without objection, and the meeting was adjourned after a statement by the President that, in the light of the results of the discussions which were to take place, he would decide on the future work of the Council on the subject.[521]

COMPLAINT BY SENEGAL

INITIAL PROCEEDINGS

By letter[522] dated 10 April 1963 to the President of the Security Council, the representative of Senegal requested that "in view of the repeated violations of Senegalese airspace and territory that have taken place", a meeting of the Council should be called to discuss the matter. In the letter it was asserted that on 9 April[523] four Portuguese aircraft had violated Senegalese airspace and dropped four grenades on the village of Bouniak. It was also recalled that on 22 December 1961 the Government of Senegal had drawn the attention of the President of the Council to several earlier violations which had taken place on the border between Senegal and "so-called" Portuguese Guinea. The recurrence of such acts had therefore determined the Government of Senegal to appeal to the Security Council.

By letter[524] dated 10 April 1963 to the President of the Security Council, the Permanent Representative of Portugal stated that the report by Senegal was "without the slightest foundation" and that "on the day in question, no Portuguese military aircraft flew over that area or any other area along the border with Senegal". Furthermore, all Portuguese forces had "the strictest orders to scrupulously respect the sovereignty, the territorial integrity and the airspace of the Republic of Senegal". The complaints presented by Senegal in 1961, he contended, "either were totally unfounded or originated from a misconstruction of events without any real significance". It was regretted that "old complaints" should have been joined "to a new entirely unfounded allegation in order to create an atmosphere of hostility against Portugal" in spite of "the constant endeavours of the Portuguese Government to adhere to a firm policy of international co-operation and good neighbourliness". The convening of the Security Council, the letter concluded, "would be entirely unwarranted".

At the 1027th meeting on 17 April 1963, the Council included the item in its agenda.[525] The question was considered by the Council at the 1027th to 1033rd meetings held between 17 and 24 April 1963. At the 1027th meeting on 17 April 1963, the representatives of Senegal and Portugal,[526] and at the 1028th meeting on 18 April 1963, the representatives of the Congo (Brazzaville) and Gabon[527] were invited to participate in the discussion.

Decision of 24 April 1963 (1033rd meeting): Deploring any incursion by Portuguese military forces in Senegalese territory, and requesting the Government of Portugal to take action to prevent any violation of Senegal's sovereignty and territorial integrity

In his initial statement before the Council, the representative of Senegal* complained that in December 1961 there had been serious incidents along the border between Senegal and "so-called" Portuguese Guinea. Senegal had at that time requested the Security Council to consider these incidents. Senegal had then been persuaded to seek a direct arrangement with Portugal instead of insisting on the initiation of Council proceedings. Two years later, however, the occurrence of even graver incidents "despite the solemn undertakings made by the Portuguese Government at that time" had forced Senegal to appear before the Council. As to the latest incidents, on 8 April, the Senegalese village of Bouniak had been bombed by four aircraft of the Portuguese colonial army. There was also much tension on the border area between the populations residing on both sides, resulting from a systematic division of the border population by the Portuguese authorities, who were massacring and terrorizing the Diolas, who were Africans of Portuguese nationality. In addition to these elements causing tension, there was a network of espionage on Senegal's territory which was operated by the Portuguese. He denied Portuguese charges that Senegal had annexationist aims against Portuguese Guinea and asserted that in questions of decolonization Senegal supported the principle of self-determination and national independence for all dependent peoples. These border incidents were creating "a very tense" and "storm-charged" atmosphere which might explode in an armed conflict, which would be "a real threat to international peace and security", since Senegal had military agreements with other nations in Africa and elsewhere. The Security Council should solemnly condemn Portuguese incursions into Senegalese territory and the aggressions being perpetrated by Portugal against its villages. Later, at the same meeting, in support of his complaint, the representative of Senegal displayed before the Council metal fragments which, he contended, had come from rockets fired by Portuguese planes flying over Senegalese territory.[528] Together with the pieces of rockets and bullets found on the ground, he submitted as documentary evidence a report of experts.[529]

At the 1028th meeting on 18 April, the representative of Senegal asserted that no negotiation with

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519/ 1025th meeting: para. 74.

520/ 1025th meeting: paras. 91-94.

521/ 1025th meeting: para. 102. In a letter dated 7 January 1963 (S/5227, O.R., 18th year, Suppl. for Jan.-March 1963, p. 55) jointly addressed to the Secretary-General on behalf of their Governments by the representatives of the USSR and the United States, they expressed appreciation to the Secretary-General for his assistance to both Governments in averting a serious threat to world peace and noted that: "in view of the degree of understanding reached between them on the settlement of the crisis and the extent of progress on the implementation of this understanding, it is not necessary for this item to occupy further the attention of the Security Council at this time."

522/ S/5278, O.R., 18th year, Suppl. for April-June 1963, pp. 16-17.

523/ On 16 April this date was corrected to read 8 April (S/5279/Corr.1).

524/ S/5281, *ibid.*, pp. 24-25.

525/ 1027th meeting: para. 46.

526/ 1027th meeting: para. 47.

527/ 1028th meeting: para. 26.

528/ 1027th meeting: paras. 48-62, 113-117.

529/ S/5287, O.R., 18th year, Suppl. for April-June 1963, pp. 26-28.

Portugal was possible. He wondered what use there was in entering into contact with a Government that had made it a principle to deny all its errors. At the root of the problem was Portugal's African policy of racial discrimination which Senegal, like practically all the African States and the progressive forces of the world, condemned. Members of the Council knew only too well the policy of Portugal and realized therefore the impossibility of any negotiations or resort to mediation. Senegal thus was left no alternative but to turn to the Security Council. The Council could do no greater service to Portugal than to make it aware of how far astray it had gone, and to make it realize the context of General Assembly resolution 1514 (XV), on the granting of independence to colonial countries and peoples.[530]

At the 1027th meeting on 17 April and the 1030th meeting on 19 April 1963, the representative of Portugal* stated in reply that consideration by the Council of the complaint by Senegal was both "irregular and premature, in terms of the Charter". Senegal's request for a meeting had obviously been made under the provisions of Chapter VI. Article 33 of the Charter provided that the parties to a dispute should first of all seek a solution by negotiation, inquiry or other peaceful means. Only after these steps had been attempted and proved to have failed should an approach be made to the Security Council. Senegal, however, had not even tried any of the methods indicated in Article 33, and had at once asked that the Council be convened.[531] True to its traditional policy of friendship and co-operation, the Portuguese Government never refused to discuss or negotiate on any disputes arising from border incidents. The events of 1961 on the Senegal-Portuguese border had been without any real significance and had originated in mistaken or unintentional acts. They had then been brought by Senegal to the notice of the President of the Council, and had been fully analysed and dealt with in the letter of 9 January 1962[532] of the Portuguese representative to the President of the Security Council. The contents of that letter had not been the subject of any comment by the Government of Senegal, either at that time or at any time thereafter.

With regard to the Senegalese allegation of an incident on 9 April 1963, he asserted that it was "absolutely devoid of truth". A careful inquiry ordered by the Portuguese Government had found that no Portuguese military aircraft based in the Province of Guinea had taken to the air on that day, and therefore no such aircraft could have overflown the village of Bouniak or any other area along the border with Senegal. Noting also that Senegal had later declared that the alleged incident had taken place not on 9 April but on 8 April,[533] he wondered why the Government of Senegal had waited seven days to correct an error on such an important point as the date of the occurrence. The facts, as verified by the Portuguese Government, were that on 9 April no military planes had taken to the air in the Province of Guinea. On 8 April, however, there had been "some routine small-scale military exercises in which air and land forces participated", but no bombs or grenades had been used by the planes, and all operations had taken place strictly within Portuguese territory. There was, therefore, no ground for complaint. As for the pieces of rocket that were supposed to have been found in Bouniak and said to have come from the alleged bombings by four Portuguese planes, what was there to prove that they had actually been dropped from Portuguese aircraft at the place and on the day in question? After dismissing other Senegalese allegations and the charge that agents of Portuguese police operated in Senegal, he stated that there were positive grounds for the belief of his Government that the roots of the hostility of the Government of Senegal were outside that country. The evidence submitted in the Council proceedings was "hearsay evidence of a very questionable nature". There was absolutely no tension on the borders between Portuguese Guinea and Senegal and the populations, at least on the Portuguese side of it, lived in peace except on those occasions when, in pursuance of avowed anti-Portuguese policies, agitators with subversive purposes infiltrated in the dead of the night, alleging that they were nationalists from Portuguese Guinea. There was a "grand anti-Portuguese conspiracy on the international plane" to which the current attempt by a neighbouring African State to bring Portugal into disrepute was clearly connected. The norms of good neighbourliness had been repeatedly violated by Senegal in its conduct towards Portugal, and subversive anti-Portuguese propaganda had been broadcast daily by the Senegalese radio in Dakar. Nevertheless, Portugal would always be willing to co-operate with Senegal in matters of common interest, with the aim of reaching solutions acceptable to both sides. In accordance with this policy, Portugal suggested that a small commission be appointed with the mutual consent of Senegal and Portugal to make an on-the-spot investigation of the substance of the current Senegalese complaint. The commission should be composed of competent technicians to be named in equal numbers by each party and presided over by a neutral acceptable to both sides.[534]

At the 1031st meeting on 22 April 1963, after denying the Portuguese charges, the representative of Senegal rejected the proposal to set up a commission of investigation. This, he asserted, was a delaying tactic and its obvious aim was to prevent the Security Council from taking a just and efficient decision.[535]

At the 1032nd meeting on 25 April 1963, the representative of Ghana introduced a draft resolution[536] jointly sponsored with Morocco.

At the 1033rd meeting on 24 April 1963, the joint draft resolution was adopted unanimously.[537]

The resolution[538] read:

"The Security Council,

530/ 1025th meeting: paras. 34-66.

531/ For discussion concerning Article 33, see chapter X, Case 8.

532/ S/5055, O.R., 17th year, Suppl. for Jan.-March 1962, pp. 44-45.

533/ See S/5279/Corr.1.

534/ 1027th meeting: paras. 63-112, 115; 1030th meeting: paras. 3-57.

535/ 1031st meeting: paras. 3-15.

536/ S/5292, 1032nd meeting: para. 25.

537/ 1033rd meeting: para. 134.

538/ S/5293, O.R., 18th year, Suppl. for April-June 1963, pp. 30-31.

"Having heard the statements of the representatives of Senegal and Portugal concerning violations of Senegalese territory by the Portuguese military forces,

"Deploring the incidents that have occurred near the frontier between Senegal and Portuguese Guinea,

"Noting with concern that the state of relations in this area between the two parties concerned may lead to tension on the occasion of any incident, and expressing the hope that such tension will be eliminated in accordance with the provisions of the Charter of the United Nations,

"Taking note of the declared intention of the Portuguese Government scrupulously to respect the sovereignty and territorial integrity of Senegal.

"1. Deplores any incursion by Portuguese military forces into Senegalese territory as well as the incident which occurred at Bouniak on 8 April 1963;

"2. Requests the Government of Portugal, in accordance with its declared intentions, to take whatever action may be necessary to prevent any violation of Senegal's sovereignty and territorial integrity;

"3. Requests the Secretary-General to keep the development of the situation under review."

The question remained on the list of matters of which the Security Council is seized.

COMPLAINT BY HAITI

INITIAL PROCEEDINGS

By a telegram[539] dated 5 May 1963 the Minister for Foreign Affairs of the Republic of Haiti requested the President of the Security Council, in accordance with Articles 35 (1) and 34 of the Charter, to convene an urgent meeting of the Council in order to consider the situation "caused by the repeated threats of aggression and attempts at interference made by the Dominican Republic", which were "infringements of Haiti's sovereignty and territorial integrity" and constituted a danger to international peace and security. The Council also had before it a note verbale[540] dated 6 May 1963 from the Permanent Mission of the Dominican Republic transmitting the texts of (1) a note addressed by the Secretary of State for Foreign Affairs of the Dominican Republic to the Minister for Foreign Affairs of Haiti concerning the severance of diplomatic and consular relations between the two countries, and the refusal of the Dominican Government to withdraw the staff of its diplomatic mission until certain guarantees were offered by the Haitian Government, and (2) a message addressed by the President of the Dominican Republic to the Chairman of the Council of the Organization of American States offering to co-operate with the commission of investigation established by the Council of the Organization, acting as provisional Organ of Consultation, to study the situation on the spot.

The item was included in the agenda[541] and was considered by the Council at its 1035th and 1036th meetings on 8 and 9 May 1963. The representatives of Haiti and the Dominican Republic were invited to participate in the discussion.[542]

Decision of 9 May 1963 (1036th meeting): Statement by the President summarizing the debate and stating that the Council would remain seized of the question

In his initial statement before the Council at the 1035th meeting on 8 May 1963, the representative of Haiti* stated that the Council was fully aware of the danger inherent in the situation brought to its consideration, not only for the peace of the Caribbean area—where the situation was already so disturbed—but also for the peace of the world. In this area, which had such a strategic importance, a dangerous situation had developed ever since the Government of the Dominican Republic had violated the most elementary laws of co-existence and of the inter-American legal system. Its present attempt was made within the context of efforts to destroy the only Negro nation in the New World. There had been repeated threats of invasion by the President of the Dominican Republic, and the Dominican Republic had made unfounded accusations regarding the violation of its Port-au-Prince Embassy and had presented to the Haitian Government an ultimatum of twenty-four hours in connexion with those accusations. On numerous occasions, threats of invasion had been made. The Government of the Dominican Republic also showed more than tolerance to the subversive activities of the Haitian exiles who had established training camps on Dominican territory and even boasted of the facilities that had been granted to them. There had been numerous violations of the treaty of peace, trade, navigation and extradition signed between the Dominican Republic and the Republic of Haiti on 9 November 1874, including repeated violations of Haitian airspace and massive concentrations of Dominican troops on Haiti's frontiers. The Haitian Government denounced all these threats and acts of aggression of the Dominican Republic against Haiti. The Haitian Government, wishing to maintain and defend its independence and the integrity of its territory which was being threatened, had used its legitimate right to appeal to the Security Council, and was confident that this appeal would receive proper attention. However, if the Council deemed it advisable, despite the exceptional seriousness of the situation, to await the result of the OAS peace mission established under a resolution adopted by that regional organization, the Government of Haiti, which also had confidence in the regional organization, would have no objection, provided, however, that the Security Council did not decide not to proceed with the question and remained ready to take it up again at any time.[543]

The representative of the Dominican Republic* contended that the situation which had arisen between his country and Haiti had been caused by the behaviour

539/ S/5302, O.R., 18th year, Suppl. for April-June 1963, pp. 38-39.
540/ S/5306, ibid., pp. 40-42.

541/ 1035th meeting: before para. 1.
542/ 1035th meeting: para. 2.
543/ 1035th meeting: paras. 6-4 , 1036th meeting: paras. 4-19.

of President Duvalier who maintained a rule of terror in Haiti, and, as a climax, had ordered an undisciplined and fanatic soldiery to invade the Dominican Republic Embassy in Port-au-Prince to seize and imprison the adversaries of his regime, at the same time ordering the military occupation of the premises of the Dominican diplomatic mission in the Haitian capital. The attacks against the symbols of the Dominican Republic in Haitian territory such as those committed against its diplomatic mission clearly constituted acts of provocation. The deployment of troops on the Dominican-Haitian frontier could not be considered an act of aggression since they were in a posture of legitimate defence, and in order to prevent the carrying out of Haitian incursions into Dominican territory. The chaotic situation in Haiti resulted from the very nature of the political situation there and not from pressure exercised from the territory of the Dominican Republic. Both the Dominican Republic and Haiti had referred the dispute to the Organization of American States, the regional organization which was intended to solve conflicts of the nature that had emerged between them. In this connexion, the Dominican representative quoted Article 52 of the Charter, paragraphs 2 and 3 of which were the application of the principles of Articles 33 and 36. The Dominican Republic hoped that in accordance with those Articles the Security Council would decide to suspend its consideration of the matter and leave it in the hands of the OAS.

The representative of the Dominican Republic stated further that he would also like to point out the weakness of the Haitian argument that the fundamental cause of the crisis between the Dominican Republic and the Republic of Haiti was the effort of the former to destroy the only Negro State in the Americas. This allegation was, in his view, so absurd that it did not even require a denial, for the fact should be stressed that within the Dominican Republic there had never been racial antagonisms, nor could such antagonisms conceivably exist, since the population was composed of elements from both races who lived together in a close community of interests and feelings. The Dominican Republic had no aggressive designs against the Haitian people or any other people. It saw no reason for the Haitian Government to bring the question before the Security Council since the problem was already being dealt with by the Organization of American States, which had already taken measures that were expected to be effective in re-establishing as soon as possible harmony between both countries.[544]

At the end of the discussion, the President (France) noted that all the members of the Council had had an opportunity to express their views on the question and stated that most of the Council members considered it preferable, at the current stage, to leave the initiative to the regional organization which was trying to bring about an amicable settlement of the dispute between two of its members. Those members had indicated that they had no objection to that procedure. The President also stated that the question would remain on the agenda of the Council. He added that he was convinced that, in conformity with their obligations as Members of the United Nations, the two parties would avoid any action which might compromise the success of measures likely to bring about a peaceful solution of their disputes.[545]

REPORTS BY THE SECRETARY-GENERAL CONCERNING YEMEN

INITIAL PROCEEDINGS

By letter[546] dated 8 June 1963, the representative of the USSR requested the President of the Security Council to convene the Council in order to consider the reports of the Secretary-General[547] on developments relating to Yemen, "since the reports contain proposals concerning possible measures by the United Nations to maintain international peace and security, on which, under the Charter, decisions are taken by the Security Council".

In his first report to the Security Council, dated 29 April 1963 (S/5298), the Secretary-General referred to consultations he had with the representatives of Saudi Arabia, the United Arab Republic and the Yemen Arab Republic regarding "certain aspects of the situation in Yemen of external origin" with a view to making the Office of the Secretary-General "available to the parties for such assistance as might be desired towards ensuring against any developments in that situation which might threaten the peace of the area". As a result of these efforts, undertaken to ease tension and restore conditions to normal, there had emerged an agreement among the three Governments concerned on "identical terms of disengagement in Yemen". In substance, the terms of the agreement provided that the Government of Saudi Arabia would terminate all support and aid to the Royalists of Yemen and prohibit the use of Saudi Arabian territory by Royalist leaders for the purpose of carrying on their struggle against the Republican Government in Yemen. The United Arab Republic undertook to begin simultaneously withdrawal from Yemen of the troops sent on request of the Yemen Republican Government. A demilitarized zone to a distance of twenty kilometres on each side of the demarcated Saudi Arabia-Yemen border was to be established. The demilitarized zone was to be under the observation of impartial observers. The United Arab Republic and Saudi Arabia had further undertaken to cooperate with a representative of the United Nations Secretary-General in reaching agreement on the modalities and verification of disengagement. The Secretary-General reported further that he had designated General Von Horn as his representative to undertake exploratory talks in this respect with the authorities of the parties concerned.

In his second report, dated 27 May 1963 (S/5321), the Secretary-General concluded, as a result of the talks held by General Von Horn, that "United Nations observers in the Saudi Arabia-Yemen area are vitally necessary and could well be the decisive factor in avoiding serious trouble in that area; their presence is desired by all parties concerned; moreover, as the need is urgent, they should be dispatched

544/ 1035th meeting: paras. 42-53; 1036th meeting: paras. 21-26.

545/ 1036th meeting: para. 150.

546/ S/5326, O.R., 18th year, Suppl. for April-June 1963, p. 51.

547/ S/5298, ibid., pp. 33-34; S/5321, ibid., pp. 46-48; S/5323, ibid., pp. 48-50; S/5325, ibid., pp. 50-51.

with the least possible delay". The Secretary-General further stated:

"Because of the importance and urgency of the United Nations observation function to the peaceful resolution of the Yemen issues, I have it in mind to proceed with the establishment of the operation as soon as the necessary arrangements for the men and their requirements can be made."

The third report of the Secretary-General dated 3 June 1963 (S/5323) dealt with financial implications of the United Nations observation mission proposed to be sent to Yemen.

In his fourth report, dated 7 June 1963 (S/5325), the Secretary-General explained that since the two parties principally involved had undertaken to defray the costs of the Yemen operation for two months there were "no financial implications for the United Nations in getting the Yemen observation mission established and the operation under way, or for its maintenance for an initial period of two months". The Secretary-General further stated that it was his intention to proceed with the organization and dispatch of the mission and that the arrival in the area of an advance party of United Nations Observers would "formally signify that all provisions of the terms of disengagement are in effect and that the agreement is being implemented in full".

At the 1037th meeting on 10 June 1963, the Security Council decided to include the question in its agenda.[548] The question was considered by the Council at its 1037th to 1039th meetings on 10 and 11 June 1963.

Decision *of 11 June 1963 (1039th meeting):*

(i) Requesting the Secretary-General to establish the observation operation as defined by him;

(ii) Urging the parties concerned to observe fully the agreed terms of disengagement;

(iii) Requesting the Secretary-General to report to the Security Council on the implementation of this decision

At the 1037th meeting the Secretary-General referred to his "conception of the measures involving United Nations action which might be taken in fulfilment of the terms of disengagement accepted by the parties". These measures, he added, were "in the form of a United Nations observation function". He reiterated his reports regarding the lack of financial implications for the United Nations during a period of two months, and the urgent need to initiate the observation operation. He also announced that General Von Horn was alerted and ready to proceed to the area with an advance party on twenty-four hours' notice.[549]

At the 1038th meeting on 11 June 1963, both the President (Ghana) and the Secretary-General referred to informal consultations among the Council members.[550] The Secretary-General made a statement concerning the observation function the United Nations was called upon to provide, and which could be commenced immediately. He warned that the agreement on the terms of disengagement might be jeopardized if the United Nations Observation Group was not promptly on the spot, and he expressed the hope that the Council would soon agree on the matter.[551]

At the same meeting the representative of Morocco introduced a draft resolution,[552] jointly submitted with Ghana.

At the 1039th meeting on 11 June 1963, the Ghana-Morocco draft resolution was adopted by 10 votes in favour to none against, with 1 abstention.[553]

The resolution[554] read:

"The Security Council,

"Noting with satisfaction the initiative of the Secretary-General mentioned in his report of 24 April 1963 [S/5298] 'about certain aspects of the situation in Yemen of external origin', and aimed at achievement of a peaceful settlement and 'ensuring against any developments in that situation which might threaten the peace of the area',

"Noting further the statement by the Secretary-General before the Security Council on 10 June 1963 [1037th meeting],

"Noting further with satisfaction that the parties directly concerned with the situation affecting Yemen have confirmed their acceptance of identical terms of disengagement in Yemen, and that the Governments of Saudi Arabia and the United Arab Republic have agreed to defray the expenses over a period of two months of the United Nations observation function called for in the terms of disengagement,

"1. Requests the Secretary-General to establish the observation operation as defined by him;

"2. Urges the parties concerned to observe fully the terms of disengagement set out in the report of 29 April and to refrain from any action which would increase tension in the area;

"3. Requests the Secretary-General to report to the Security Council on the implementation of this decision."

In accordance with the last operative paragraph, the Secretary-General submitted to the Security Council a report[555] on the implementation of the Council resolution. This report was followed by a series of further reports[556] on the extension of the United Nations Yemen Observation Mission for additional periods of two months.

The question remained on the list of matters of which the Security Council is seized.

548/ 1037th meeting: para. 3.

549/ 1037th meeting: paras. 6–8.

550/ 1038th meeting: paras. 1 and 3.

551/ 1038th meeting: paras. 2–6. See chapter I, Case 42.

552/ S/5330, 1038th meeting: para. 27.

553/ 1039th meeting: para. 7.

554/ S/5331, O.R., 18th year, Suppl. for April-June 1963, pp. 52–53.

555/ S/5412, O.R., 18th year, Suppl. for July-Sept. 1963, pp. 152–157.

556/ See chapter V, Case 3 for the Council's procedures in authorizing the establishment of UNYOM, and for reports concerning its extension and its termination.

SITUATION IN TERRITORIES IN AFRICA UNDER PORTUGUESE ADMINISTRATION

INITIAL PROCEEDINGS

By letter[557] dated 11 July 1963, the representatives of Algeria, Burundi, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Congo (Leopoldville), Dahomey, Ethiopia, Gabon, Ghana, Guinea, Ivory Coast, Liberia, Libya, Madagascar, Mali, Mauritania, Morocco, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Tanganyika, Togo, Tunisia, Uganda, United Arab Republic and Upper Volta requested the President of the Security Council to convene an urgent meeting of the Council to consider "the situation in the territories under Portuguese domination".

The letter declared that:

> "the state of war prevailing in some of these territories following the persistent refusal of Portugal to comply with the provisions of resolution 1514 (XV) of the General Assembly of the United Nations and particularly those contained in the resolution of the Security Council dated 9 June 1961, constitutes a definite breach of peace and security in the African continent as well as a threat to international peace and security."

The "extreme gravity" of the situation thus created had been a matter of deep concern to the Heads of State at the Conference of Addis Ababa (22-25 May 1963) who adopted a resolution the relevant provisions of which were quoted in an explanatory memorandum attached to the letter.

In the explanatory memorandum it was stated that, "in view of the failure of the Government of Portugal to co-operate with the Sub-Committee [on the situation in Angola] and to carry out the resolutions of the Security Council and the General Assembly", the General Assembly had adopted resolutions 1807 (XVII) and 1819 (XVII) which included a request to the Security Council "to take appropriate measures, including sanctions, to secure Portugal's compliance" with the respective resolutions of the General Assembly and of the Security Council. The Government of Portugal, however, had continued "its repressive measures and use of armed force against the indigenous population of these territories". The memorandum referred further to the decision of the Security Council of 24 April 1963[558] deploring violations of Senegalese territory, and to the Portuguese Government's rejection of the recent invitation of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (Committee of Twenty-Four) to attend its meeting, and its refusal to receive a sub-committee of that organ to hold consultations with it. In those circumstances, the Special Committee had adopted a resolution on 4 April 1963 drawing the immediate attention of the Security Council to the situation in the territories under Portuguese administration with a view to its taking appropriate measures, including sanctions, as provided in General Assembly resolutions 1807 (XVII) and 1819 (XVII). The explanatory memorandum concluded by quoting the relevant provisions of the resolution on decolonization adopted at the Addis Ababa Conference. Among these was a decision to send a delegation of Ministers of Foreign Affairs (of Liberia, Madagascar, Sierra Leone and Tunisia) to speak on behalf of all African States at the meeting of the Security Council which would be convened to examine the report of the Committee of Twenty-Four concerning "the situation in African territories under Portuguese domination".

At the 1040th meeting on 22 July 1963, the Security Council included the question in its agenda.[559] The President (Morocco) invited the representatives of Liberia, Madagascar, Portugal, Sierra Leone and Tunisia to participate in the discussion.[560] The Council considered the question at the 1040th to 1049th meetings held between 22 and 31 July 1963.

Decision *of 31 July 1963 (1049th meeting):*

(i) Affirming that Portugal's claim to the African territories under its administration as an integral part of metropolitan Portugal was contrary to the principles of the Charter and relevant resolutions of the General Assembly and the Security Council;

(ii) Deprecating the attitude of the Portuguese Government, its repeated violations of the principles of the Charter and its continued refusal to implement the resolutions of the General Assembly and the Security Council;

(iii) Determining that the situation in the territories under Portuguese administration was seriously disturbing peace and security in Africa;

(iv) Urgently calling upon Portugal to implement certain stated measures, including the recognition of the right of the peoples of the territories under its administration to self-determination and eventually to grant independence to all those territories;

(v) Requesting all States to refrain from offering the Portuguese Government any assistance which would enable it to continue its repression of the peoples of the territories under its administration, and to take all measures to prevent the sale of arms and military equipment to the Portuguese Government.

(vi) Requesting the Secretary-General to ensure the implementation of the resolution, to furnish such assistance as he deemed necessary and to report to the Security Council by 31 October 1963

The Foreign Ministers of Liberia*, Sierra Leone* and Tunisia*, and the Finance Minister of Madagascar*, speaking at the 1040th and 1041st meetings "as representatives of all the independent States of Africa under indigenous rule", stated that under General Assembly resolution 1542 (XV) and in the light of the provisions of the Charter, the territories under the administration of Portugal listed in that resolution were Non-Self-Governing Territories within the meaning of Chapter XI of the Charter. It fol-

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557/ S/5347, O.R., 18th year, Suppl. for July-Sept. 1963, pp. 6-10.

558/ Resolution S/5293, see pp. 205-206 above.

559/ 1040th meeting: para. 6.

560/ 1040th meeting: para. 7.

lowed from the text of the resolution that the United Nations considered the so-called "overseas" territories not to be an integral part of Portugal.

The representatives of the African Heads of State and Governments were before the Security Council to request that it take action to ensure greater respect for, and compliance with, the resolutions already passed by the United Nations on the Portuguese-administered territories even if it meant the imposition of sanctions against Portugal. The refusal of the Government of Portugal to recognize the right of the African peoples under Portuguese domination to self-determination and to see that right extended to territories under its responsibility was the direct cause of the bloody conflict which had erupted inside those colonies and which had overflowed their frontiers and threatened neighbouring countries. This already dangerous situation had become explosive and constituted a threat to international peace and security, as the resolutions of 9 June 1961 and 24 April 1963[561] had indicated. The situation which was considered by the Security Council in its resolution of 9 June 1961 as likely to endanger the maintenance of international peace and security had thus become a serious threat to peace. This threat was mainly due to the constant increase by the Portuguese Government of its military potential in the colonial territories, notably in Angola and in Portuguese Guinea.

The measures adopted by the Security Council in its resolution of 9 June 1961 were provisional measures, and non-compliance with them constituted premeditated dereliction on the part of a Member State.

It was necessary for the Council to ask the Government of Portugal to decide, within a reasonably short time, to renounce its theory of the extension of Portugal into Africa, and to recognize the inalienable rights of the people of Angola, Mozambique and Portuguese Guinea to self-determination. If this assurance was not forthcoming, the Security Council would be asked to call upon all Member States to enforce economic and diplomatic sanctions against Portugal, and, if necessary, to consider further action under appropriate provisions of the Charter.[562]

The Foreign Minister of Portugal* stated in reply at the 1042nd meeting that Portugal considered the resolutions concerning information on Portuguese territories to be illegal. With regard to the allegation that it was a "fiction" to call the Portuguese territories "overseas provinces", he stated that the first Portuguese law using the words "overseas provinces" dated back to 1612 and the same conception was used in a law adopted in 1633. The same terminology was also used in the constitutions of 1822, of 1832, of 1911, and of 1933. The conflict in the north of Angola had been instigated and organized from outside in the early months of 1961. After directing attention particularly to the violence in northern Angola, and the part played by the Republic of the Congo (Leopoldville) in aiding and encouraging this violence, he inquired whether it was lawful for Members of the United Nations to provide military camps, to train foreign guerillas, to send volunteers and to supply arms to be used against a fellow Member. He maintained that the very foundation of Portuguese policy was its opposition to policies of racial supremacy or segregation, and its aim was an integrated multiracial society with equal political rights, educational opportunities, and economic and social possibilities for all. From September 1963 through the beginning of 1964, elections to representative bodies were to be held on the basis of the Organic Law adopted in 1963, thus assuring the widest participation in the Portuguese political and administrative structure. In connexion with statements to the effect that the Portuguese Government had always refused to co-operate with the United Nations, the Minister referred to its specific invitations for visits and suggestions for conversations with the African countries for the consideration of African problems. However, no response had been received. In conclusion, he addressed a personal invitation to the Foreign Ministers of Tunisia, Liberia and Sierra Leone and the Finance Minister of Madagascar to visit Angola and Mozambique, each Minister at his convenience, as a guest of Portugal.[563]

At the 1044th meeting on 26 July 1963, the representative of Ghana introduced a draft resolution[564] jointly submitted with Morocco and the Philippines.

At the 1048th meeting on 30 July 1963, the representative of Venezuela submitted amendments[565] to the three-Power joint draft resolution, which at the 1049th meeting were accepted[566] by its sponsors.

At the same meeting the joint draft resolution was adopted, as amended, by 8 votes in favour and none against, with 3 abstentions.[567]

The resolution[568] read:

"The Security Council,

"Having examined the situation in the Territories under Portuguese Administration as submitted by the thirty-two African Member States,

"Recalling the Security Council resolution of 9 June 1961 and General Assembly resolutions 1807 (XVII) of 14 December 1962 and 1819 (XVII) of 18 December 1962,

"Recalling General Assembly resolution 1542 (XV) of 15 December 1960 which declared the Territories under Portuguese administration to be Non-Self-Governing Territories within the meaning of Chapter XI of the United Nations Charter, as well as resolution 1514 (XV) of 14 December 1960, by which the General Assembly declared inter alia that fmmediate steps be taken to transfer all powers to the peoples of these Territories, without any conditions or reservations, in accordance with their freely expressed wishes, without distinctions as to

561/ Resolutions S/4835 and S/5293, see pp. 191 and 205.

562/ For texts of relevant statements, see:
1040th meeting: Liberia*, paras. 15-88, Tunisia*, paras. 90-128;
1041st meeting: Madagascar*, paras. 2-9, 11-17, 19-21; Sierra Leone*, paras. 23-34.

563/ 1042nd meeting: paras. 3-60.

564/ S/5372, 1044th meeting: para. 4.

565/ S/5379, 1049th meeting: para. 21.

566/ 1049th meeting: paras. 4-7.

567/ 1049th meeting: para. 17.

568/ S/5380, O.R., 18th year, Suppl. for July-Sept. 1963, pp. 63-64.

race, creed or colour in order to enable them to enjoy complete freedom and independence,

"1. Confirms resolution 1514 (XV) of the General Assembly;

"2. Affirms that the policies of Portugal in claiming the Territories under its administration as 'overseas' territories and as integral parts of metropolitan Portugal are contrary to the principles of the Charter and the relevant resolutions of the General Assembly and the Security Council;

"3. Deprecates the attitude of the Portuguese Government, its repeated violations of the principles of the Charter and its continued refusal to implement the resolutions of the General Assembly and of the Security Council;

"4. Determines that the situation in the Territories under Portuguese administration is seriously disturbing peace and security in Africa;

"5. Urgently calls upon Portugal to implement the following:

"(a) The immediate recognition of the right of the peoples of the Territories under its administration to self-determination and independence,

"(b) The immediate cessation of all acts of repression and the withdrawal of all military and other forces at present employed for that purpose,

"(c) The promulgation of an unconditional political amnesty and the establishment of conditions that will allow the free functioning of political parties,

"(d) Negotiations, on the basis of the recognition of the right to self-determination, with the authorized representatives of the political parties within and outside the Territories with a view to the transfer of power to political institutions freely elected and representative of the peoples, in accordance with resolution 1514 (XV),

"(e) The granting of independence immediately thereafter to all the Territories under its administration in accordance with the aspirations of the peoples;

"6. Requests that all States should refrain forthwith from offering the Portuguese Government any assistance which would enable it to continue its repression of the peoples of the Territories under its administration, and take all measures to prevent the sale and supply of arms and military equipment for this purpose to the Portuguese Government;

"7. Requests the Secretary-General to ensure the implementation of the provisions of this resolution, to furnish such assistance as he may deem necessary and to report to the Security Council by 31 October 1963."

Decision of 11 December 1963 (1083rd meeting):

(i) Calling upon all States to comply with paragraph 6 of the Security Council's resolution of 31 July 1963;

(ii) Deprecating the non-compliance of the Government of Portugal with the Council resolution of 31 July 1963;

(iii) Reaffirming the interpretation of self-determination as laid down in General Assembly resolution 1514 (XV);

(iv) Requesting the Secretary-General to continue his efforts and to report to the Council not later than 1 June 1964

On 13 November 1963, the representatives of Algeria, Burundi, Cameroon, Central African Republic, Congo (Brazzaville), Congo (Leopoldville), Dahomey, Ethiopia, Gabon, Ghana, Guinea, Ivory Coast, Liberia, Madagascar, Mali, Mauritania, Morocco, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Togo, Tunisia, Uganda, United Arab Republic and Upper Volta addressed a letter[569] to the President of the Security Council requesting him to convene the Council at an early date, to consider the report[570] submitted by the Secretary-General. With reference to operative paragraph 5 of resolution S/5380, it was stated that since the measures provided for therein "... have not been implemented, it is essential that the Security Council consider further appropriate measures" to ensure the implementation of the Council resolution of 31 July 1963.

At the 1079th meeting on 6 December 1963, the Security Council resumed its consideration of the item. The President (United States) invited the representatives of Madagascar, Tunisia, Portugal, Liberia and Sierra Leone, who had requested to be heard, to participate in the discussion.[571] The President also called the attention of members of the Council to a letter[572] dated 3 December 1963 from the President of the General Assembly transmitting the text of General Assembly resolution 1913 (XVIII) concerning the question of the territories in Africa under Portuguese administration. The Council continued its consideration of the question at the 1079th to 1083rd meetings held between 6 and 11 December 1963.

At the 1079th and 1080th meetings, the representatives of Liberia*, Tunisia*, Madagascar* and Sierra Leone* observed that the Secretary-General had referred in his report to the exploratory contacts initiated by him, in which nine African States participated on one side, and Portugal on the other. These conversations in the private office and in the presence of the Secretary-General had centred mainly on the clarification by the representative of Portugal of his Government's concept of "self-determination". The talks had failed because of lack of agreement on this issue. Although pretending to recognize the right of self-determination to peoples under its domination, the Portuguese Government denied them the essential alternative of deciding on independence from foreign

569/ S/5480, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 94-95.

570/ In accordance with the provision in paragraph 7 of the Council resolution S/5380 of 31 July 1963, on 31 October 1963 the Secretary-General submitted to the Security Council a report (S/5448, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 55-82) on the implementation of this resolution. Three addenda were subsequently circulated as additional Member States communicated information concerning action taken or proposed to be taken by their Governments in the context of the resolution (ibid., pp. 82-86).

571/ 1079th meeting: paras. 1-2.

572/ S/5470, O.R., 18th year, Suppl. for Oct.-Dec. 1963, p. 103; 1079th meeting: para. 5.

sovereignty,[573] thus denying them that right. The representatives stated further that, even after the adoption by the Security Council of its resolution of 31 July 1963, Portugal had not recognized the right of self-determination and independence, a political amnesty had not been promulgated in the African territories under its administration and no negotiations had been undertaken with authorized representatives of the political parties within and outside the territories, which was essential if unrest in those territories was to cease and a dangerous situation was to be averted. Therefore, the situation in those territories, which had already been considered in the past as seriously threatening international peace and security, had not changed for the better since the last debate in the Security Council and had even seriously worsened since then. As far as the Africans were concerned, there could be no constructive and realistic dialogue with Portugal except within the framework of General Assembly resolution 1514 (XV) and Security Council resolution S/5380 of 31 July 1963. Conditions should be established for direct negotiations between Portugal and the genuine representatives of the African populations under its administration with a view to their accession to independence. In conclusion, the representatives called upon the Council to express again, in unequivocal terms, what was meant by the term "self-determination". The Council should reaffirm its resolution of 31 July 1963 to ensure its full implementation. It should also ask all States to put an end immediately to the dispatch of arms which were being used against the patriots of the territories in Africa under Portuguese dependence. Finally, the Secretary-General should again be requested to do everything he could to bring about Portugal's full compliance with the terms of the Council's resolution of 31 July 1963.[574]

At the 1081st meeting on 9 December 1963, the representative of Portugal* stated that during the debate the African representatives had dealt mostly in abstract terms with theoretical and political problems such as the interpretation of the principle of self-determination. The Council, however, under the Charter, had to deal with concrete questions of peace and security. Otherwise, the whole structure of the United Nations would have to be revised and, in fact, the solution of political problems would be shifted from the General Assembly to the Security Council. The question before the Council was outside its competence and no proof was furnished that it constituted a threat to peace. The representative of Portugal stated further that the conversations held with the African representatives might be divided into three different chapters: first, investigation of conditions prevailing in Portuguese overseas territories; secondly, questions relating to peace and security; and thirdly, political problems. The African representatives who participated in the talks, however, had not shown any interest whatsoever in informing themselves either on the economic, social, educational and political conditions existing in the Portuguese overseas territories or on questions of peace and security. Having, therefore, declined to examine such questions, they had no right to come before the Security Council and make accusations against Portugal. He recalled further that only a short time before the Council had adopted a resolution,[575] in accordance with the wishes of several African delegations, calling on a Member State to establish a multiracial society, with the United Nations being ready to extend a helping hand. However, these same delegations were now opposing Portuguese policy, based on the conception of a multiracial society, as constituting a threat to the peace and security of the world. In conclusion, the representative of Portugal* denied the contention that Portugal was not willing to co-operate with the United Nations. As a demonstration of his Government's intention to dispose of groundless accusations concerning factual conditions in Portuguese overseas territories, he invited the Secretary-General officially to visit Angola and Mozambique at his discretion and convenience.[576]

At the 1082nd meeting on 10 December 1963, the representative of Ghana introduced a draft resolution[577] jointly sponsored with Morocco and the Philippines.

At the 1083rd meeting on 11 December 1963, the joint draft resolution was put to the vote. Upon request of the representative of the United Kingdom, a separate vote was taken on operative paragraph 3, which was adopted[578] by 7 votes in favour, none against, with 4 abstentions. The draft resolution as a whole was adopted[579] by 10 votes in favour, none against, with 1 abstention.

The resolution[580] read:

"The Security Council,

"Having considered the Secretary-General's report as contained in document S/5448 and addenda,

"Recalling General Assembly resolution 1541 (XV) of 15 December 1960,

"Recalling further its resolution of 31 July 1963,

"Noting with appreciation the efforts of the Secretary-General in establishing contact between representatives of Portugal and representatives of African States,

"1. Regrets that this contact has not achieved the desired results, because of failure to reach agreement on the United Nations interpretation of self-determination;

"2. Calls upon all States to comply with paragraph 6 of its resolution of 31 July 1963;

573/ For consideration of the provisions of Article 1 (2), see chapter XII, Case 2.

574/ For texts of relevant statements, see:
1079th meeting: Liberia*, paras. 10-15, 36-38; Tunisia*, paras. 49-63, 77-78.
1080th meeting: Madagascar*, paras. 5-11, 13, 19-20; Sierra Leone*, paras. 23, 26, 30-33.

575/ S/5471, O.R., 15th year, Suppl. for Oct.-Dec. 1963, pp. 103-105.

576/ 1081st meeting: paras. 14-19, 31-34, 36-38, 46-49.

577/ S/5480, same text as S/5481, see below: 1082nd meeting: para. 45.

578/ 1083rd meeting: para. 157.

579/ 1083rd meeting: para. 158.

580/ S/5481, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 110-111.

"3. Deprecates the non-compliance of the Government of Portugal with the resolution of 31 July 1963;

"4. Reaffirms the interpretation of self-determination as laid down in General Assembly resolution 1514 (XV) as follows:

"'All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development';

"5. Notes General Assembly resolution 1542 (XV) which enumerated, inter alia, Territories under Portuguese administration as falling under the category of Non-Self-Governing Territories within the meaning of Chapter XI of the Charter;

"6. Believes that action by the Government of Portugal to grant an amnesty to all persons imprisoned or exiled for advocating self-determination in these Territories will be an evidence of its good faith;

"7. Requests the Secretary-General to continue with his efforts and report to the Council not later than 1 June 1964."

The question remained on the list of matters of which the Security Council is seized.[581]

THE QUESTION OF RACE CONFLICT IN SOUTH AFRICA

INITIAL PROCEEDINGS

By letter[582] dated 11 July 1963, the representatives of Algeria, Burundi, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Congo (Leopoldville), Dahomey, Ethiopia, Gabon, Ghana, Guinea, Ivory Coast, Liberia, Libya, Madagascar, Mali, Mauritania, Morocco, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Tanganyika, Togo, Tunisia, Uganda, United Arab Republic and Upper Volta requested the President of the Security Council to convene an early meeting of the Council "to consider the explosive situation existing in the Republic of South Africa, which constitutes a serious threat to international peace and security".

Stating that the situation stemmed from the apartheid policies of the Government of the Republic of South Africa, the representatives of the African States urged the Security Council to take the necessary action to find a solution, "due to the systematic refusal of that Government to comply with the relevant resolutions of the General Assembly and the Security Council". It was noted further that "the extreme gravity of the situation" had been a matter of "deep concern" to the Heads of State and Governments of the Independent African States who had met at the Conference of Addis Ababa from 22 to 25 May 1963, and had adopted a resolution on this question, the relevant provisions of which were quoted in an attached memorandum. The resolution, in part, called for the dispatch of a delegation of the Foreign Ministers of Liberia, Madagascar, Sierra Leone and Tunisia to inform the Security Council of the explosive situation existing in South Africa. The resolution also called for "concerted measures of sanction against the Government of South Africa".

At the 1040th meeting on 22 July 1963, the Security Council decided to include the question in the agenda.[583] The Council considered the question at its 1050th to 1056th meetings, from 31 July to 7 August 1963. The representatives of Tunisia, Liberia, Sierra Leone and Madagascar were invited to take part in the discussion.[584]

At the 1050th meeting on 31 July 1963, the President (Morocco) recalled that the Council at its 1041st meeting had decided to invite the representative of the Republic of South Africa to take part in the consideration of the question.[585] A telegram to this effect had been sent to the Government of South Africa. The reply had just been received, and it indicated that the Government of South Africa declined the invitation of the Council. The letter[586] from the permanent representative of South Africa—which was read to the Council—stated that the South African Government had decided not to participate in the discussion of the Council on matters which it considered to fall solely within its domestic jurisdiction. The letter also stated that the African States that had submitted the item had "tried to justify their hostility and interference in South Africa's domestic affairs by relying on the totally unfounded allegation that South Africa is a threat to international peace and security". It was the view of the South African Government that these African States, or some among them, had threatened peace and order in southern Africa and had initiated preparations for the use of force against South Africa. Evidence of their intentions could be found in the relevant paragraphs of resolutions adopted by the African States at their recent conference in Addis Ababa, and in the reported statements of certain African leaders. In this regard, reference was made to contributions offered by several African States to finance military and other activities envisaged against South Africa. This "active incitement from abroad and systematic encouragement and subsidization of the small groups of subversive Bantu, supported by Communist elements and fellow travellers in South Africa" had recently compelled the South African Government to assume increased legislative powers for the maintenance of order and stability. The South African Government had decided therefore that "no useful purpose would be served by re-stating its case at the Security Council".

Decision *of 7 August 1963 (1056th meeting):*

(i) Expressing the Security Council's conviction that the situation in South Africa was seriously disturbing international peace and security;

(ii) Deprecating strongly the policies of South Africa in its perpetuation of racial discrimination as being inconsistent with the principles contained in the Charter, and contrary to its

581/ S/5500.

582/ S/5348, O.R., 18th year, Supp. for July-Sept. 1963, pp. 11-14.

583/ 1040th meeting: para. 6.

584/ 1050th meeting: para. 4.

585/ 1050th meeting: para. 5. For consideration concerning the question of the effect of the extension of the invitation, see chapter III, Case 26.

586/ S/5381, 1050th meeting: para. 6.

obligations as a Member State of the United Nations;

(iii) Calling upon the Government of South Africa to abandon the policies of apartheid and racial discrimination, and to liberate all persons subjected to prison or other restrictions for having opposed the policies of apartheid;

(iv) Calling solemnly upon all States to cease forthwith the sale and shipment of arms, ammunition of all types and military vehicles to South Africa;

(v) Requesting the Secretary-General to keep the situation in South Africa under observation and to report to the Security Council by 30 October 1963

The Foreign Ministers of Sierra Leone*, Tunisia*, Madagascar* and Liberia*, speaking at the 1050th and 1051st meetings on behalf of all African member States of the Organization of African Unity, stated that the findings and recommendations of the Special Committee of the General Assembly on the policies of apartheid of the Government of South Africa were supported in a resolution that had been unanimously adopted at the Addis Ababa Conference of that Organization.

In reviewing the past history of the question, they called attention to the fact that the South African Government had continued to disregard the resolutions of the General Assembly and the Security Council which had called upon that Government to revise its policies and bring them into conformity with its obligations and responsibilities under the Charter of the United Nations. They further remarked that the only reason which had been given by the Government of South Africa for its disregard of the resolutions against its policies of apartheid was to state that the United Nations was not authorized under the Charter to intervene in matters which were essentially within the domestic jurisdiction of any State. In their view, the validity of Article 2 (7) was not disputed but those who drew up the Article did not imagine that its adoption would result in depriving the United Nations of any right to act in situations involving the violation of fundamental principles of the Charter. The situation under consideration fell within the scope not only of Articles 55 and 56, but also of Articles 34 and 35 and subsequent Articles. Furthermore, the reference to Article 2 (7) was all the more futile as the General Assembly had repeatedly discussed racial segregation in South Africa. The twenty-seven resolutions adopted by a very large majority could scarcely lend any weight to such an argument. The Security Council had never permitted the defenders of colonial interests to take refuge in the "domestic jurisdiction" provisions of the Charter. When peace and security had been threatened, the Council had, time and again, acted promptly without paying any attention to "hypocritical allegations" of interference in domestic matters. In fact, no reasonable interpretation of the provisions of the Charter could require the organ which was responsible for the maintenance of international peace and security to refrain from intervening until an explosion actually occurred. The Security Council unquestionably had the duty to prevent such an explosion. Moreover, the situation in South Africa had been greatly aggravated by an accelerated arms build-up and by the increasingly provocative attitude of the South African Government. Its arms build-up and its multiplicity of laws against freedom constituted the greatest threat to peace and security on the African continent. Besides, that Government was extending its policies and practices to the territory of South West Africa, which it had unlawfully occupied. The United Nations, to be true to its Charter, could not any longer tolerate the presence in South West Africa of the Government of South Africa, or the extension to that territory of the doctrine and policies of apartheid imposed by that Government. In conclusion it was stated that the Heads of the African States of the Organization of African Unity wished to add their plea to those of the General Assembly and the Special Committee that the Security Council would adopt the measures provided in the Charter and recommended by the Special Committee to compel the Government of the Republic of South Africa to abandon, before it was too late, its present collision course. The African representatives also urged the Council to give full support to General Assembly resolution 1761 (XVII).[587]

At the 1054th meeting on 6 August 1963, the representative of Ghana introduced a draft resolution[588] jointly sponsored with Morocco and the Philippines.

According to operative paragraph 3 of the draft resolution, the Council would call upon all States to boycott all South African goods and to refrain from exporting to South Africa strategic materials of direct military value.

At the 1056th meeting on 7 August 1963, upon the request of the representative of the United States, a separate vote was taken on operative paragraph 3, which was not adopted. There were 5 votes in favour, none against, and 6 abstentions.[589] The draft resolution, as amended, was then adopted by 9 votes in favour, none against, and 2 abstentions.[590]

The resolution[591] read:

"The Security Council,

"Having considered the question of race conflict in South Africa resulting from the policies of apartheid of the Government of the Republic of South Africa, as submitted by the thirty-two African Member States,

"Recalling Security Council resolution of 1 April 1960,[592]

"Taking into account that world public opinion has been reflected in General Assembly resolution 1761 (XVII) and particularly in its paragraphs 4 and 8,

"Noting with appreciation the two interim reports adopted on 6 May and 16 July 1963 by the Special

[587] For texts of relevant statements, see:
1050th meeting: Sierra Leone*, paras. 10-33; Tunisia*, paras. 34-84;
1051st meeting: Liberia*, paras. 26-80; Madagascar*, paras. 9-25.

[588] S/5384, 1054th meeting: para. 62.

[589] 1056th meeting: paras. 15-17.

[590] 1056th meeting: para. 18.

[591] S/5386, O.R., 18th year, Suppl. for July-Sept. 1963, pp. 73-74.

[592] Resolution S/4300, see p. 157.

Committee on the policies of apartheid of the Government of the Republic of South Africa,[593]

"Noting with concern the recent arms build-up by the Government of South Africa, some of which arms are being used in furtherance of that Government's racial policies,

"Regretting that some States are indirectly providing encouragement in various ways to the Government of South Africa to perpetuate, by force, its policy of apartheid,

"Regretting the failure of the Government of South Africa to accept the invitation of the Security Council to delegate a representative to appear before it,

"Being convinced that the situation in South Africa is seriously disturbing international peace and and security,

"1. Strongly deprecates the policies of South Africa in its perpetuation of racial discrimination as being inconsistent with the principles contained in the Charter of the United Nations and contrary to its obligations as a Member State of the United Nations;

"2. Calls upon the Government of South Africa to abandon the policies of apartheid and discrimination as called for in the Security Council resolution of 1 April 1960, and to liberate all persons imprisoned, interned or subjected to other restrictions for having opposed the policy of apartheid;

"3. Solemnly calls upon all States to cease forthwith the sale and shipment of arms, ammunition of all types and military vehicles to South Africa;

"4. Requests the Secretary-General to keep the situation in South Africa under observation and to report to the Security Council by 30 October 1963."

By letter[594] dated 23 October 1963, the representatives of Algeria, Central African Republic, Ceylon, Congo (Brazzaville), Congo (Leopoldville), Dahomey, Ethiopia, Gabon, Ghana, Guinea, India, Indonesia, Ivory Coast, Liberia, Madagascar, Malaysia, Mali, Mauritania, Morocco, Niger, Nigeria, Pakistan, Senegal, Sierra Leone, Somalia, Sudan, Tanganyika, Togo, Tunisia, Uganda, United Arab Republic and Upper Volta requested the President of the Security Council to convene an urgent meeting of the Council to consider the report[595] submitted by the Secretary-General in pursuance of the Security Council resolution of 7 August 1963. In the same communication it was stated that the reaction of the South African Government to this resolution had been "completely negative", and further that "the situation, which according to that resolution was 'seriously disturbing international peace and security' has been further exacerbated by recent developments in that country". In conclusion, it was stated that the Council should convene to examine the report of the Secretary-General in order "to consider additional measures to ensure the compliance of the South African Government with previous Security Council resolutions and its obligations as a Member State".

The Council continued its consideration of the question at the 1073rd to the 1078th meetings held between 27 November and 4 December 1963. The representatives of India, Liberia, Madagascar, Tunisia and Sierra Leone were invited to participate in the discussion.[596]

Decision of 4 December 1963 (1078th meeting):

(i) Expressing the strengthened conviction of the Security Council that the situation in South Africa was seriously disturbing international peace and security;

(ii) Strongly deprecating the apartheid policies of the Government of South Africa as being inconsistent with the principles of the Charter and with its obligations as a Member State;

(iii) Appealing to all States to comply with the provisions of Security Council resolution of 7 August 1963;

(iv) Urgently requesting the South African Government to cease forthwith its continued imposition of discriminatory and repressive measures, and again calling upon that Government to liberate all persons subjected to prison or other restrictions for having opposed the policies of apartheid;

(v) Calling solemnly upon all States to cease forthwith the sale and shipment of equipment and materials for the manufacture and maintenance of arms and ammunition in South Africa;

(vi) Requesting the Secretary-General to establish under his direction and reporting to him a small group of recognized experts to examine methods of resolving the current situation in South Africa through full, peaceful and orderly application of human rights to all the inhabitants of its territory, and to consider what part the United Nations might play in the achievement of that end;

(vii) Inviting the South African Government to avail itself of the assistance of this group in order to bring about such peaceful and orderly transformation;

(viii) Requesting the Secretary-General to continue to keep the situation under observation and to report to the Council—in any case not later than 1 June 1964—on the implementation of this resolution

The representatives of Liberia*, Tunisia*, India*, Sierra Leone* and Madagascar*, commenting on the

593/ Documents S/5310 and S/5353, see GAOR, 18th Session, Annexes, addendum to a.i. 30, document A/5497/Add.1, annexes III and IV.

594/ S/5444 and Add.1, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 41-42.

595/ S/5435 and Add.1-5, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 7-35. In his report, the Secretary-General referred to an exchange of communications with the Government of South Africa which refused to comment on the question of the implementation of the Council resolution raised by the Secretary-General "since by doing so it would by implication recognize the right of the United Nations to intervene in South Africa's domestic affairs". The South African Government had also stated that the Council's resolution, in calling for an arms embargo on South Africa, was a denial of the spirit of Article 51 of the Charter. The resolution could not, therefore, have any binding effect on the Republic of South Africa or any other Member State. In the report and in its addenda were also given the substance of the replies received from Member States on the action taken or proposed to be taken by their Governments regarding the implementation of the resolution. An additional addendum containing further replies was issued on 23 December 1963 (S/5435/Add.6, ibid., pp. 39-40).

596/ 1073rd meeting: paras. 8-11.

report of the Secretary-General, drew attention to the reply of the Minister of Foreign Affairs of South Africa to the letter of the Secretary-General concerning the implementation of the Security Council resolution of 7 August 1963. The reply of the South African Foreign Minister was dated 11 October 1963, and was reproduced in the report. The Foreign Minister's argument that the resolution was contrary to the principle contained in Article 2 (7), since the matter fell within the domestic jurisdiction of South Africa, was held to be untenable and it was noted that it had been rejected by all United Nations organs. The various provisions of the Charter could not be interpreted separately. South Africa, as a signatory of the Charter and a Member of the United Nations, had pledged itself to respect the provisions of Articles 55 and 56 which concerned, among other things, the observance of human rights. International jurists were mostly agreed that there was an element of legal duty in the undertaking given in Article 56. There was, therefore, no doubt about the competence of the United Nations to deal with the matter of apartheid in South Africa, and no violation of Article 2 (7) of the Charter was thereby involved.

With regard to the statement that the South African military build-up was made necessary because of threats by African States, it was asserted that no African State wanted to fight a war with South Africa, or was presently armed for such an eventuality. Furthermore, the military build-up in South Africa started long before the Addis Ababa Conference convened in May 1963. Concerning the argument that the imposition of an arms embargo was contrary to the spirit of Article 51, which recognized the right of Member States to individual and collective self-defence, and that the Council resolution could not be binding on any Member State, it was noted that such a contention was contrary even to the title of the resolution of 7 August 1963. The last paragraph of the preamble of that resolution stressed the conviction of the Council that the situation in South Africa was "seriously disturbing international peace and security". Although not mentioned in the Charter, it was undeniable that the disturbance of peace constituted more than a threat to the peace, and obviously fell between a threat to the peace and a breach of the peace. Measures decided upon by the Security Council were obviously binding on Member States in conformity with Article 25 of the Charter. It was in that spirit that Member States had replied to the Secretary-General's request for information concerning the embargo on arms prescribed by the Security Council.

With regard to recent developments, the situation in South Africa was characterized in terms of "continuous deterioration". It appeared evident that the South African Government had no intention of changing its policy either with regard to the main bodies of the Organization or with regard to the Africans in its own country. The Council was, therefore, concerned with the fact that the continuation of the apartheid policy in South Africa constituted a serious threat to international peace and security. Only the firmest sanctions taken and implemented could make an impact. The Council could well prescribe measures of an economic character to force the South African Government to modify its position. One such measure could be to halt the supply to South Africa of weapons, and also of the material necessary for the manufacture and maintenance of weapons.[597]

At the 1076th meeting on 3 December 1963, the representative of Norway introduced a draft resolution[598] which he declared to have been formulated on the basis of informal talks and consultations with members of the Council and with representatives of Member States who had participated in the debate on the matter before the Council.

At the 1077th meeting on 3 December 1963, the representative of Ghana expressed doubts on the necessity of "establishing a 'group of recognized experts' as is envisaged in operative paragraph 6 of the draft resolution" and requested that a separate vote be taken on the relevant paragraph.[599]

At the 1078th meeting on 4 December 1963, the representative of the United Kingdom requested that a separate vote be taken on operative paragraph 1 of the draft resolution dealing with an appeal to all States to implement the Security Council resolution of 7 August 1963. His delegation would reserve its position regarding the supply of equipment to South Africa proper to the purposes of her right to self-defence under Article 51 of the Charter.[600]

At the same meeting, the representatives of Ghana and the United Kingdom withdrew their requests for separate votes in response to appeals made by the sponsor of the draft resolution, which was put to the vote as a whole and adopted unanimously.[601]

The resolution[602] read:

"The Security Council,

"Having considered the race conflict in South Africa resulting from the policies of apartheid of the Government of the Republic of South Africa,

"Recalling previous resolutions of the Security Council and of the General Assembly which have dealt with the racial policies of the Government of the Republic of South Africa, and in particular the Security Council resolution of 7 August 1963,

"Having considered the Secretary-General's reports contained in S/5438 and addenda,

"Deploring the refusal of the Government of the Republic of South Africa as confirmed in the reply of the Minister of Foreign Affairs of the Republic of South Africa to the Secretary-General received on 11 October 1963, to comply with the Security Council resolution of 7 August 1963, and to accept the repeated recommendations of other United Nations organs,

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597/ For texts of relevant statements, see:
1073rd meeting: Liberia*, paras. 15-49; Tunisia*, paras. 51-80;
1074th meeting: Ghana, paras. 2-37; India*, paras. 39-57; Sierra Leone*, paras. 59-77;
1075th meeting: Morocco, paras. 5-27; Madagascar*, paras. 29-51.

598/ S/5469, same text as S/5471, see below; 1076th meeting: paras. 59-60.

599/ 1077th meeting: paras. 27-30, 34.

600/ 1078th meeting: para. 20.

601/ 1078th meeting: paras. 120-121, 125-130, 137.

602/ S/5471, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 103-105.

"Noting with appreciation the replies to the Secretary-General's communication to the Member States on the action taken and proposed to be taken by their Governments in the context of that resolution's operative paragraph 3, and hoping that all the Member States as soon as possible will inform the Secretary-General about their willingness to carry out the provisions of that paragraph,

"Taking note of the reports of the Special Committee on the Policies of Apartheid of the Government of the Republic of South Africa,

"Noting with deep satisfaction the overwhelming support for the resolution 1881 (XVIII) adopted by the General Assembly on 11 October 1963,

"Taking into account the serious concern of the Member States with regard to the policy of apartheid as expressed in the general debate in the General Assembly as well as in the discussions in the Special Political Committee,

"Being strengthened in its conviction that the situation in South Africa is seriously disturbing international peace and security, and strongly deprecating the policies of the Government of South Africa in its perpetuation of racial discrimination as being inconsistent with the principles contained in the Charter of the United Nations and with its obligations as a Member State of the United Nations,

"Recognizing the need to eliminate discrimination in regard to basic human rights and fundamental freedoms for all individuals within the territory of the Republic of South Africa without distinction as to race, sex, language or religion,

"Expressing the firm conviction that the policies of apartheid and racial discrimination as practised by the Government of the Republic of South Africa are abhorrent to the conscience of mankind and that therefore a positive alternative to these policies must be found through peaceful means,

"1. Appeals to all States to comply with the provisions of the Security Council resolution of 7 August 1963;

"2. Urgently requests the Government of the Republic of South Africa to cease forthwith its continued imposition of discriminatory and repressive measures which are contrary to the principles and purposes of the Charter and which are in violation of its obligations as a Member of the United Nations and of the provisions of the Universal Declaration of Human Rights;

"3. Condemns the non-compliance by the Government of the Republic of South Africa with the appeals contained in the above-mentioned resolutions of the General Assembly and the Security Council;

"4. Again calls upon the Government of South Africa to liberate all persons imprisoned, interned or subjected to other restrictions for having opposed the policy of apartheid;

"5. Solemnly calls upon all States to cease forthwith the sale and shipment of equipment and materials for the manufacture and maintenance of arms and ammunition in South Africa;

"6. Requests the Secretary-General to establish under his direction and reporting to him a small group of recognized experts to examine methods of resolving the present situation in South Africa through full, peaceful and orderly application of human rights and fundamental freedoms to all inhabitants of the territory as a whole, regardless of race, colour or creed, and to consider what part the United Nations might play in the achievement of that end;

"7. Invites the Government of the Republic of South Africa to avail itself of the assistance of this group in order to bring about such peaceful and orderly transformation;

"8. Requests the Secretary-General to continue to keep the situation under observation and to report to the Security Council such new developments as may occur, and in any case not later than 1 June 1964, on the implementation of this resolution."

The question remained on the list of matters of which the Security Council is seized.[603]

SITUATION IN SOUTHERN RHODESIA

INITIAL PROCEEDINGS

By letter[604] dated 2 August 1963 the representatives of Ghana, Guinea, Morocco and the United Arab Republic requested the President of the Security Council to call an urgent meeting of the Council to consider the situation in Southern Rhodesia in relation to: (a) General Assembly resolution 1760 (XVII) of 31 October 1962; (b) the resolution of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples adopted at its 177th meeting on 20 June 1963; and (c) implementation of Article 73 of the Charter with respect to the British Non-Self-Governing Territory of Southern Rhodesia.

A memorandum attached to the letter stated why these Member Governments considered that the continuance of the situation was likely to endanger the maintenance of international peace and security, and why they thought it necessary that the Council should consider the item as a matter of urgency. The memorandum stated that: the British Government had refused to abide by the resolutions of the General Assembly in regard to "its Colony of Southern Rhodesia"; the situation in the territory had become aggravated and had been characterized as one "constituting a threat to international peace and security" by the Special Committee in its resolution of 20 June 1963; and the British Parliament had enacted the Rhodesia and Nyasaland Act, 1963 which would enable the British Government to transfer almost every

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[603] In pursuance of his mandate under the resolution, the Secretary-General submitted to the Security Council on 20 April 1964 a report (S/5650 and Corr.1) to which was annexed the report submitted to him on 20 April 1964 by the Group of Experts established by him in pursuance of operative paragraph 6 of Council resolution S/5471 adopted on 4 December 1963. For further reference to the establishment, composition and termination of the Group of Experts, see chapter V, Case 4.

[604] S/5382, O.R., 18th year, Suppl. for July-Sept. 1963, pp. 64-71.

attribute of sovereignty and independence to Southern Rhodesia without notice to the United Nations.

By note verbale[605] dated 28 August 1963 to the President of the Security Council, the representative of Ghana requested that a "Memorandum in regard to Southern Rhodesia", submitted to the Council by his delegation together with other documents, be published as a Security Council document. In the memorandum it was stated that the situation in Southern Rhodesia called for investigation by the Security Council under Article 34 of the Charter.

By letter[606] dated 30 August 1963 from the Chargé d'Affaires of the Permanent Mission of the Congo (Brazzaville) on behalf of the delegations of Algeria, Burundi, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Congo (Leopoldville), Dahomey, Ethiopia, Gabon, Ivory Coast, Liberia, Libya, Madagascar, Mali, Mauritania, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Tanganyika, Togo, Tunisia, Uganda and Upper Volta, the President of the Security Council was informed that their representatives had unanimously decided to give their complete support to the terms of the letter of 2 August 1963 addressed to him by the representatives of Ghana, Guinea, Morocco and the United Arab Republic, and to the request for a meeting of the Council on the question.

At the 1064th meeting on 9 September 1963, the Security Council decided to include the question in its agenda.[607] Before the adoption of the agenda the representative of the United Kingdom, while not objecting to its adoption, made reservations regarding the lack of competence of the Council on the matter.[608] The Council considered the question at its 1064th to 1069th meetings, from 9 to 13 September 1963. The representatives of Mali, Tanganyika, Uganda and the United Arab Republic were invited to take part in the discussion.[609]

Decision of 13 September 1963 (1069th meeting): Rejection of the joint draft resolution submitted by Ghana, Morocco and the Philippines

The representatives of Ghana, Mali*, the United Arab Republic*, Uganda*, Tanganyika* and Morocco stated at the 1064th to 1067th meetings that within a short time "the most powerful air force at present existing on the African continent" and a "small but highly efficient army recruited on a racial basis" would be transferred to the exclusive control of the Southern Rhodesian Government. The transfer of these forces to a "white minority Government" representative of only 6 per cent of the European population and totally unrepresentative of the 94 per cent African population, could only result in a conflict on the African continent. The urgency of the situation had been accentuated by the enactment of a law by the British Parliament in 1963 which permitted the United Kingdom Government, by the formal process of passing an Order in Council, subsequently to make the necessary detailed provisions for the dissolution of the Central African Federation and the transfer of its powers. In view of the possibility of an early transfer of powers, it was imperative for the Security Council to take preventive action to avoid future conflict since the reinforcement of the potential of the Southern Rhodesian Government for oppressing its African population would create a dangerous situation seriously threatening the peace and security of the States bordering on Southern Rhodesia. These developments and events had given African States cause for the serious concern which had been expressed in the resolution passed by the Heads of African States and Governments at their Conference at Addis Ababa, in May 1963, by which the United Kingdom had been invited not to transfer the powers and attributes of sovereignty to "foreign minority governments imposed on African peoples by the use of force and under cover of racial legislation" such as that of Southern Rhodesia. The present state of affairs in Southern Rhodesia was the responsibility of the United Kingdom. The African States supported the conclusion of the Special Committee set up under resolution 1745 (XVI) that the territory of Southern Rhodesia was a Non-Self-Governing Territory within the meaning of Chapter XI of the Charter. This view had been endorsed by the General Assembly and confirmed in subsequent Assembly resolutions, particularly resolution 1760 (XVII) of 31 October 1962, which reaffirmed resolution 1747 (XVI) of 28 June 1962. The Special Committee of Twenty-four, in its resolution of 20 June 1963, had also confirmed that conclusion. Faced with an action threatening international peace and security, the Security Council should impress upon the United Kingdom the undesirability of proceeding with the transfer of any armed forces to Southern Rhodesia until a Government fully representative of the whole population, irrespective of race, creed or colour, had been established in that territory, in accordance with the General Assembly Declaration contained in resolution 1514 (XV).[610]

At the 1066th meeting, the representative of the United Kingdom stated that the consideration of the question represented an abuse of the functions of the Council. No situation of the nature described in Article 34 of the Charter existed in Southern Rhodesia. The British Government did not accept that Southern Rhodesia was a Non-Self-Governing Territory. In its view, Article 2 (7) clearly applied.[611] The onus for establishing that a situation existed in Southern Rhodesia that called for measures either under Chapter VI or Chapter VII of the Charter rested upon those countries which had brought the question before the Council. He rejected the contention that the Security Council should in some way anticipate disturbances in an indefinite future. In reply to the allegation that the United Kingdom had not abided by certain General Assembly resolutions on Southern Rhodesia, he stated

605/ S/5403 and Corr.1.

606/ S/5409, O.R., 18th year, Suppl. for July-Sept. 1963, p. 151.

607/ 1064th meeting: para. 9.

608/ 1064th meeting: paras. 2-8.

609/ 1064th meeting: para. 13; 1066th meeting: para. 2.

610/ For texts of relevant statements, see:
1064th meeting: Ghana, paras. 17-75;
1065th meeting: Mali*, paras. 3-33, United Arab Republic*, paras. 34-63;
1066th meeting: Tanganyika*, paras. 99-120; Uganda*, paras. 78-98;
1067th meeting: Morocco, paras. 3-19.

611/ See chapter XII, Case 15.

that these resolutions depended upon an interpretation of Chapter XI of the Charter which the British Government could not accept as valid. Southern Rhodesia was not to be regarded as a Non-Self-Governing Territory. Although the General Assembly had asserted the opposite view, an assertion of its competence did not make something exist which did not exist in the Charter itself. Besides, it was not the function of the Security Council to decide whether a territory was or was not self-governing. As for the assertion that the situation described by the Special Committee as explosive had been aggravated, no evidence had been produced in support of that argument except the opinion of a sub-committee of the General Assembly. It was the duty of the Council to make its own findings, and it was by no means bound to follow a sub-committee of the Assembly. In dealing with the proposed "reversion" of powers, not the "transfer" of powers, to Southern Rhodesia, he stated that when the Federation of Rhodesia and Nyasaland was established in 1953 certain powers previously exercised in Southern Rhodesia by the Government of that territory were conferred with full consent upon the Government of the Federation. On the dissolution of the Federation resulting from the Victoria Falls Agreement, these powers would revert to the territorial Government by which they were previously exercised. Moreover, such reversion of powers provided no grounds for bringing the matter to the Security Council. It would be, therefore, inappropriate for the Council to take any action whatsoever on the item.[612]

At the 1068th meeting on 12 September 1963, the representative of Ghana introduced a draft resolution,[613] jointly sponsored with Morocco and the Philippines, under which the Council would invite the United Kingdom Government not to transfer to its colony of Southern Rhodesia any powers or attributes of sovereignty until the establishment of a government fully representative of all the inhabitants of the colony, and not to transfer to that colony the armed forces and aircraft as envisaged by the Central Africa Conference, 1963. The United Kingdom Government would further be invited to implement the General Assembly resolutions on the question of Southern Rhodesia, in particular General Assembly resolutions 1747 (XVI) and 1760 (XVII). The General Assembly would also be requested to continue its examination of the question of Southern Rhodesia with a view to securing a just and lasting settlement.

At the 1069th meeting on 13 September 1963, the draft resolution jointly sponsored by Ghana, Morocco and the Philippines failed of adoption. There were 8 votes in favour, 1 against (the vote against being that of a permanent member), and 2 abstentions.[614]

The question remained on the list of matters of which the Security Council is seized.[615]

[612] 1066th meeting: paras. 3-77. For discussion concerning action under Chapter VI of the Charter, see chapter X, Case 14.

[613] S/5425/Rev.1; 1068th meeting: para. 4.

[614] 1069th meeting: para. 64.

[615] S/5500.

COMPLAINT BY THE GOVERNMENT OF CYPRUS

INITIAL PROCEEDINGS

By letter[616] dated 26 December 1963, the representative of Cyprus brought to the attention of the Security Council, in accordance with Articles 34, 35, 39, 1 (1), 2 (4) and 24 (1), a complaint against the Government of Turkey for "acts of (a) aggression, (b) intervention in the internal affairs of Cyprus by the threat and use of force against its territorial integrity and political independence ... perpetrated yesterday, 25 December"; and requested that a meeting of the Council be convened under rule 3 of its provisional rules of procedure.

After citing certain incidents in support of the allegations, the letter noted that Greek troops had to move into Nicosia in order to stem the tide of joint attacks by the Turkish Cypriots and Turkish units, resulting in a confrontation of the units of the Greek and Turkish armies with grave and threatening consequences to international peace. In view of the gravity of the situation, the Council was asked "... to consider the matter and to take appropriate measures under the relevant Articles of the Charter in order to remedy the situation and to prevent such violations from occurring in the future".

At the 1085th meeting on 27 December 1963, the Council decided[617] to include the question in its agenda. The representatives of Cyprus, Greece and Turkey were invited[618] to participate in the discussion.

The Council considered the question at its 1085th meeting on 27 December 1963.

Decision *of 27 December 1963 (1085th meeting): Adjournment, after statements by interested parties, with the proviso that the meeting would be reconvened by the President when and if it was considered appropriate by the members*

At the same meeting, the representative of Cyprus* stated that his Government felt compelled to request an urgent meeting of the Council, since the country was under the threat of an invasion. Such a fear was justified by the announcement made in the Turkish Chamber of Deputies by the Prime Minister of Turkey: "We are sending our force to Cyprus. We are sending our ships to Cyprus to stand there awaiting orders to act." However, shortly after requesting the immediate Council meeting, the representative of Cyprus had learned that the ships were no longer speeding towards Cyprus but were turned in another direction. This he felt was a consequence of the immediate application for a meeting of the Security Council. After noting that the expedition by the Turkish naval units would have the "psychological effect" of terrorizing the Greeks on the island and emboldening the Turks to attack, he pointed out that there had not been any similar action on the part of Greece. Thus, "By this policy of force, of the threat of force in violation of Article 2, paragraph 4, of the Charter ... we cannot have peace in the island".[619]

[616] S/5488, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 112-114.

[617] 1085th meeting: preceding para. 1.

[618] 1085th meeting: paras. 1-2.

[619] See chapter XII, Case 11.

He stated further that the cause of the difficulties was the divisive provisions of the Constitution that divided the people into two camps hostile to each other. He stated that while he could understand the wish of the Turkish Government to protect the interests of the Turks in Cyprus, those interests were not promoted by incitement to violence or to the use of force, but rather by inducing them to co-operate with the Greek side in order to find a peaceful solution of the differences that divided them. In conclusion, he requested the Council to consider the question as a matter of urgency with regard to the preservation of the cease-fire and the promotion of peace in the island.[620]

In reply to the allegation made by the representative of Cyprus that Turkish ships were heading towards Cyprus, the representative of Turkey* stated that his Government had already denied "such rumours", and had instructed him "categorically and officially" to deny them. He stated that after a campaign lasting for more than two years designed to repudiate the rights of the Turkish community in Cyprus, to violate those rights and to make them ineffective, the Greek Cypriots, during the night of 21/22 December, embarked on a very serious course of action, "the massacre of the entire Turkish community of the island". After describing the efforts made by his Government to end hostilities on the island, he expressed surprise that "... at this very moment, when there is hope for peace, Ambassador Rossides should come here to make totally unfounded accusations". Turkey, however, would continue its efforts at conciliation, as far as it could, and hoped that the other party would do likewise.[621]

The representative of Greece* observed that the representative of Cyprus had expressed the wish to limit his request, for the time being, to the strict and faithful implementation of the cease-fire in Cyprus. Such a request was a wise one at that stage and if the Council were to favour it and encourage the efforts that were being made in Cyprus for the implementation of the cease-fire, it would have performed a very useful work at this serious time. He read a message addressed by the King of Greece to the President of Turkey which disputed Turkey's account of the situation, and afterwards noted that the assurances given by the representative of Turkey to the Council were of the kind that could dispel the apprehensions of the people of Cyprus.[622]

In exercise of his right of reply, the representative of Cyprus noted that the representative of Turkey had referred to the Treaty of Guarantee as giving Turkey the right to use force in Cyprus, and contended that such an interpretation was invalid under Article 103 of the Charter.[623] He repeated that Article 2, paragraph 4, entirely prohibited any threat or use of force except in strict self-defence under Article 51 or in execution of collective measures under the Charter for the maintenance and restoration of peace.[624] Only the United Nations could use force to restore order where there was a threat to international peace. Moreover, the Treaty of Guarantee did not stipulate anything about force. It provided that Cyprus, Greece and Turkey undertook to ensure the maintenance of Cyprus' independence, territorial integrity and security, as well as respect of its Constitution. He then expressed the wish that the Council would adopt a resolution

> "ensuring the peace of Cyprus, and ensuring also that there shall be no intervention by force, that the cease-fire shall continue, that the agreement shall continue without threat and without force and that everybody shall do what is necessary for promoting peace in the island. ..."[625]

The representative of Turkey denied that Turkish troops in Cyprus had taken part in the fighting, and after repeating his assurances that Turkish ships were not heading towards the island, he expressed Turkey's desire to receive the assurance that the cease-fire would be respected and that the slaughter and carnage in Cyprus would be stopped.[626]

The President (United States) stated that Council members, having heard statements from the interested parties, might wish to consider them. He proposed that the meeting be adjourned, to be reconvened on consultation by the President when and if it was considered appropriate by the members. In the absence of any objection, it was so decided.[627]

The question remained on the list of matters of which the Security Council is seized.[628]

620/ 1085th meeting: paras. 6-33.

621/ 1085th meeting: paras. 34-47.

622/ 1085th meeting: paras. 48-56.

623/ See chapter XII, Case 29.

624/ See chapter XII, Case 11.

625/ 1085th meeting: paras. 58-74.

626/ 1085th meeting: paras. 75-81.

627/ 1085th meeting: paras. 92-93.

628/ S/5500.

Chapter IX

DECISIONS IN THE EXERCISE OF OTHER FUNCTIONS AND POWERS

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. During the period under review, no decision has been taken by the Council in the exercise of other functions and powers under the Charter.1/

1/ With the exception of decisions concerning the relations of the Security Council with other organs of the United Nations, arising from Articles 12, 93 (2) and 97 of the Charter. For these decisions, see chapter VI.

Chapter X

CONSIDERATION OF THE PROVISIONS OF CHAPTER VI OF THE CHARTER

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INTRODUCTORY NOTE

As in the previous volumes of the Repertoire, the criterion for inclusion of material in the present chapter is the occurrence of discussion in the Council directed to the text of Articles 33-38 or Chapter VI of the Charter. Thus, chapter X does not cover all the activities 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. For a guide to the decisions of the Council in the pacific settlement of disputes, the reader should turn to the appropriate sub-headings of the Analytical Table of Measures adopted by the Security Council.[1/]

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, since 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.

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.

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."

[1/] Chapter VIII, pp. 147-150.

Part I

CONSIDERATION OF THE PROVISIONS OF ARTICLE 33 OF THE CHARTER

NOTE

During the period covered by this Supplement, the prior efforts to seek a peaceful solution made by States submitting a dispute or a situation to the Security Council have been indicated in the initial communications, though Article 33 has not been expressly cited in any of them.[2/] In statements before the Council, the States concerned have drawn attention to the stage reached in efforts towards a settlement as evidence of the necessity for taking or not taking action under Chapter VI. The contentions advanced have centred on:

(1) The allegation of refusal to enter into or resume negotiations.[3/]

(2) The allegation of failure to reach a satisfactory settlement through negotiation.[4/]

(3) The allegation of refusal of proper recourse to procedures of settlement stipulated by special agreement binding on the parties.[5/]

(4) The allegation that the emergence of a threat to the peace precluded further recourse to the means of settlement presented by Article 33.[6/]

The case histories in part I of the present chapter provide an indication of the views taken by the Council in its decisions, or by the Council members or invited representatives in their discussions, with regard to the discharge of obligations for peaceful settlement of disputes in accordance with Article 33. In one instance, after noting the disappointment caused by the failure of the Summit Conference of May 1960, the Council recommended that the Governments concerned seek a solution to existing international problems by negotiation or other peaceful means, as provided in the Charter.[7/] In another instance, after statements were made in the Council asserting that, under Article 33, the parties should seek solutions by the most direct means, including resort to regional bodies, the Council, basing itself on Article 33, among other Charter Articles, decided to adjourn its consideration of the question pending the receipt of a report from the regional agency where the matter was being considered.[8/] On one occasion, one of the parties concerned, while stating that it had no objection to undertaking direct negotiations, rejected the suggestion to resort to mediation or arbitration as adequate means of peaceful settlement of the issues involved.[9/] In another instance, one of the parties concerned suggested efforts at peaceful settlement through direct negotiations or investigation. However, since mutual consent of the parties appeared to be lacking, the Council proceeded to decide on the substance of the question.[10/] On another occasion, after two permanent members and two other members of the Council had expressed willingness to negotiate, the Acting Secretary-General, at the request of a large number of Member States, had offered to make himself available for whatever assistance he could give to facilitate negotiations. The Council adjourned without voting on the draft resolutions before it, having taken cognizance of the favourable response to the Acting Secretary-General's initiative.[11/]

One instance is recorded when one of the parties involved made an unsuccessful attempt to have the Security Council request an advisory opinion of the International Court of Justice concerning certain decisions taken by an organ of a regional agency, and, pending the advisory opinion, to have the Council suspend these decisions.[12/]

On another occasion,[13/] numerous references were made in the Council to "direct contacts" and "negotiations" which had taken place, upon the initiative and in the presence of the Secretary-General,[14/] between the representatives of Portugal and of some African Member States. In the discussion, Article 33 and the procedures of "negotiations" and "conciliation" were mentioned but no constitutional issue was raised in this respect.

2/ Argentina, Ceylon, Ecuador and Tunisia in their letter dated 23 May 1960, S/4323 (submitted together with a draft resolution which noted with regret the lack of success of the meeting of the Heads of Government of France, the United Kingdom, the United States and the USSR) [O.R., 15th year, Suppl. for April-June 1960, pp. 13-14]; Argentina in explanatory memorandum to its letter dated 15 June 1960, S/4336, and Israel in its letters dated 21 June 1960, S/4341 and S/4342 (ibid., pp. 27-28, 29-30, 30-33) in connexion with the Eichmann case; Jordan in explanatory memorandum to its letter dated 1 April 1961, S/4777 [O.R., 16th year, Suppl. for April-June 1961, pp. 1-2] in connexion with the Palestine question. Tunisia in explanatory memorandum to its letter dated 20 July 1961, S/4862, and France in notes verbales transmitted with its letter dated 20 July 1961, S/4864 [O.R., 16th year, Suppl. for July-Sept. 1961, pp. 7-9, 11-14] in connexion with the complaint by Tunisia. Israel in its letters dated 20 August 1963, S/5394, and 21 August 1963, S/5396 [O.R., 18th year, Suppl. for July-Sept. 1963, pp. 76-77, 78-82] in connexion with the Palestine question; Algeria, Burundi, Cameroon, Central African Republic, Congo (Brazzaville), Congo (Leopoldville), Dahomey, Ethiopia, Gabon, Ghana, Guinea, Ivory Coast, Liberia, Madagascar, Mali, Mauritania, Morocco, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Togo, Tunisia, Uganda, United Arab Republic and Upper Volta in their letter dated 13 November 1963, S/5400, requesting that the Council be convened to consider the report of the Secretary-General, S/5448 and Add.1-3, where reference was made to exploratory conversations between representatives of certain African States and Portugal, in connexion with the situation in territories in Africa under Portuguese administration [O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 94-95].

3/ See Cases 2, 3 and 6.

4/ See Cases 1 and 9.

5/ See Case 6.

6/ See Case 8.

7/ See Case 1.

8/ See Case 2.

9/ See Case 6.

10/ See Case 8.

11/ See Case 7.

12/ See chapter VIII: Letter of 8 March 1962 from the representative of Cuba concerning the Punta del Este decisions, pp. 199-201.

13/ In connexion with the situation in territories in Africa under Portuguese administration, for texts of relevant statements, see: chapter I, Case 52, and chapter VIII, pp. 209-213.

14/ See the Secretary-General's report to the Security Council, S/5448 and Add.1-3, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 55-86.

During the period under review, observations were made in the Council[15] with regard to the relationship of the obligation to seek a peaceful settlement through direct negotiations, and the General Assembly resolutions on decolonization as a basis for such a settlement. During the discussions, statements were made regarding the obligation of the parties to negotiate on the basis of the principles of the Charter.

Part IV of the present chapter also includes observations by members of the Council favouring negotiations between the parties and the steps taken by the Council to assist them in reaching agreement on means of overcoming impediments to the operation of previously agreed procedures for dealing with the matters in dispute. Thus, for example, in connexion with the complaints by Cuba, the USSR and the United States, and in connexion with the reports of the Secretary-General concerning Yemen, the Council reacted favourably to the initiatives by the Secretary-General in making available to the parties the services of his office.

CASE 1.[16] LETTER OF 23 MAY 1960 FROM THE REPRESENTATIVES OF ARGENTINA, CEYLON, ECUADOR AND TUNISIA: In connexion with the draft resolution submitted by the aforementioned States: voted upon and adopted on 27 May 1960

[*Note:* During the discussion references were made to the provisions of the draft resolution and the need for Governments to seek a solution to international problems by negotiation, which was a specific obligation under Article 33 of the Charter.]

At the 861st meeting on 26 May 1960, the representatives of Argentina, Ceylon, Ecuador and Tunisia submitted a draft resolution[17] whereby:

"The Security Council,

"...

"Being convinced of the necessity to make every effort to restore and strengthen international good will and confidence, based on the established principles of international law,

"...

"1. Recommends to the Governments concerned to seek solutions of existing international problems by negotiation or other peaceful means as provided in the Charter of the United Nations;

"..."

The representative of Tunisia stated that it was most important for the Council to strive for the relaxation of international tensions, to foster the restoration of confidence, to recommend negotiation and settlements by peaceful means, to work unremittingly for international peace and security and to make a solemn appeal for co-operation and harmony on the basis of the principles of the Charter.

The representative of Argentina pointed out that the draft resolution co-sponsored by his delegation had been phrased in such a way as to dissociate its aim from other issues which already had been considered by the Council and which might revive controversy.

The President, speaking as the representative of Ceylon, observed that the only thing the Council could do at that stage was to encourage the four Great Powers to use the United Nations and its various organs to restore harmony and good will and to appeal to them to resume discussions.

The representative of Italy called attention to the fact that under Article 33 of the Charter recourse to negotiation was a specific obligation of Member States which could not be ignored without violating the letter and spirit of the Charter. The draft resolution, in operative paragraph 3, he observed, specifically indicated some of the fields which should be covered by negotiations.

The representative of the USSR stated that while the main idea embodied in the joint draft resolution—namely the need to facilitate negotiations between the Great Powers—was a good one, it would have been better if the appeal to negotiate were addressed to those who were disrupting negotiations or making them impossible.

At the 863rd meeting on 27 May 1960, the representative of Ecuador remarked that "... in an effort to reach the greatest possible measure of agreement in the Council ..." the sponsors were submitting a revised draft.[18]

The revised draft resolution as proposed by Argentina, Ceylon, Ecuador and Tunisia was adopted by 9 votes in favour with 2 abstentions.[19]

CASE 2.[20] COMPLAINT BY CUBA (LETTER OF 11 JULY 1960): In connexion with the draft resolution submitted by Argentina and Ecuador: voted upon and adopted on 19 July 1960

[*Note:* During the discussion it was asserted that under Article 33, Members of the United Nations who were parties to a dispute which threatened the maintenance of international peace and security should seek first of all solutions by the most direct peaceful means, including resort to regional agencies or arrangements, before appealing to the United Nations. Since discussions were in progress in the Organization of American States, the Council should encourage a pacific settlement through the regional body.[21]]

15/ See statements by India in connexion with the complaint by Portugal concerning Goa, Case 5; by Senegal in connexion with its complaint against Portugal, Case 8, and by several African invited representatives in connexion with the situation in territories in Africa under Portuguese administration, see chapter VIII, pp. 211-212.

16/ For texts of relevant statements, see:

861st meeting: Argentina, para. 40; Ceylon (President), paras. 61-63; Italy, paras. 77-78; Tunisia, para. 11; USSR, paras. 108, 111, 116;

863rd meeting: Ecuador, paras. 6, 7.

17/ S/4323, O.R., 15th year, Suppl. for April-June 1960, pp. 13-14.

18/ S/4323/Rev.2, same text as S/4328, 863rd meeting: paras. 6-11.

19/ S/4328, O.R., 15th year, Suppl. for April-June 1960, pp. 20-23, 863rd meeting: para. 48. See also chapter XII, case 4.

20/ For texts of relevant statements, see:

874th meeting: President (Ecuador), paras. 145, 152, 154, 155; Argentina, paras. 131-143; Cuba*, paras. 87-93; United States, paras. 99-102;

875th meeting: Ceylon, paras. 26-30; France, paras. 21-22; Italy, paras. 6, 10; Tunisia, paras. 39-41; United Kingdom, para. 63;

876th meeting: USSR, paras. 102, 106, 107.

21/ For a discussion of the competence of the Council, see chapter XII, Case 24.

At the 874th meeting on 18 July 1960, the representative of Cuba* recalled his Government's readiness to settle all differences with the United States through normal diplomatic channels in spite of that Government's refusal to negotiate.

In reply, the representative of the United States stated that as a result of the Cuban refusal to enter into direct negotiations, the matter was being considered by the Organization of American States.

At the same meeting, Argentina and Ecuador submitted a draft resolution[22] under which:

"The Security Council,

"...

"Taking into account the provisions of Articles 24, 33, 34, 35, 36, 52 and 103 of the Charter of the United Nations,

"...

"Considering that it is the obligation of all Members of the United Nations to settle their international disputes by negotiation and other peaceful means in such a manner that international peace and security and justice are not endangered,

"...

"1. Decides to adjourn the consideration of this question pending the receipt of a report from the Organization of American States;

"2. Invites the members of the Organization of American States to lend their assistance towards the achievement of a peaceful solution of the present situation in accordance with the purposes and principles of the Charter of the United Nations;

"..."

The representative of Argentina advanced the view that since the regional organization had already taken cognizance of the matter it was both desirable and practicable to await the results of its action and ascertain its point of view. This was the reason for operative paragraph 1 of the draft resolution.

The President, speaking as the representative of Ecuador, observed that the Security Council had been called upon to exert a conciliatory influence designed primarily to lessen and not to aggravate existing tensions. He added that the draft resolution was based on the premise that it was juridically correct and politically advisable to try to solve through regional bodies those disputes which could be dealt with by regional action, and that "the Security Council is ... required, legally and politically, to encourage the development of pacific settlement of local disputes through regional arrangements or agencies". This meant that "when there is a case appropriate for regional action the Council should recommend this course, or at any rate seek a report from the regional body concerned before taking any decisions itself".

At the 875th meeting on 18 July 1960, the representative of Italy asserted that the Charter of the United Nations specified recourse to regional organizations. Therefore, in suspending consideration of the question, the Council would in no way shun its responsibilities, but would reserve a final pronouncement, if need be, until such time as the measures for a solution through regional arrangements would have been explored, in accordance with Article 33 of the Charter.

The representative of France maintained that under Article 33 it was mandatory for the parties to a dispute first of all to seek a solution by resort, inter alia, to regional agencies or arrangements. Since discussions were in progress in the Organization of American States, the Council should not make an exhaustive examination of the various aspects of the situation.

The representative of Ceylon, after noting that Article 33, paragraph 1 of the Charter referred to the pacific settlement of disputes, asked: "... is it clear that such attempts as were made in this sense have in this case failed?" He suggested that the strained relationship between the two countries concerned might have precluded the use of any or all of the means mentioned in Article 33. Since, however, as the draft resolution noted, the matter was under the consideration of the Organization of American States, and its purpose was to employ the peaceful method of negotiation, it was not wrong for the Council in those circumstances "to utilize that organization for the free and full negotiations that are necessary to dispel misunderstanding and create mutual confidence between the parties".

The representative of Tunisia said that his delegation would have liked to see the misunderstanding between the two countries settled directly by means of bilateral negotiations that would have restored confidence between the two countries; such negotiations did not, however, appear capable of yielding satisfactory results. Consequently, the issue had been referred to the Organization of American States. He further observed that Article 33 of the Charter advanced the principle that the parties to any dispute should first seek a solution by, among other methods, resort to regional agencies or arrangements. Such a provision did not preclude resort to a competent United Nations organ. However, he added, "the general principles of our Charter are essentially based on the search for amicable settlements between the parties by the most direct means. It is in that spirit that Article 33 makes it incumbent upon the parties to a dispute first of all to seek a solution by direct negotiation or resort to regional agencies or arrangements."

The representative of the United Kingdom asserted that the procedures laid down in the charter of the Organization of American States for the peaceful settlement of disputes between its members were fully in harmony with Article 33 of the Charter of the United Nations. He then said that it was highly desirable that a regional organization such as the Organization of American States should be given a chance to settle disputes among its members before resort was had to the Security Council.

At the 876th meeting on 19 July 1960, the representative of the USSR contended that "... the Orga-

[22] S/4392, same text as S/4395, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 29-30.

nization of American States did decide to consider a question, but not the question raised by Cuba", and proposed certain amendments [23] to the joint draft resolution which, inter alia, would delete the final preambular paragraph indicating that the situation was under consideration by that Organization, and replace in the second operative paragraph the words "Organization of American States" by "United Nations".

At the same meeting, the amendments proposed by the USSR were rejected by 2 votes in favour, 8 against, with 1 abstention. The draft resolution submitted by Argentina and Ecuador was adopted by 9 votes to none, with 2 abstentions. [24]

CASE 3. [25] COMPLAINT BY THE USSR (RB-47 INCIDENT): In connexion with a United States draft resolution revised at the suggestion of Ecuador: voted upon and not adopted on 26 July 1960

[*Note:* During the consideration of the question it was maintained that, in view of the fact that there were two conflicting accounts of the same incident, investigation seemed to be the only means of clarifying the situation. The Council was empowered under Article 33 to urge the parties to resort to this peaceful means of settlement.]

At the 881st meeting on 25 July 1960, the representative of the United States asserted that instead of seeking a condemnation of the USSR, which it was fully justified to do, it had decided, in accordance with Article 33 of the Charter "which calls on all of us first of all to seek solutions to dangerous issues through inquiry or other peaceful means, to appeal to the Soviet Government to join with us in an objective examination of the facts of this case". He introduced a draft resolution [26] whereby:

"The Security Council,

"...

"Recalling its resolution of 27 May 1960 [S/4328], in which the Council stated its conviction that every effort should be made to restore and strengthen international good will and confidence based on the established principles of international law, recommended to the Governments concerned to seek solutions of existing international problems by negotiation or other peaceful means as provided in the Charter of the United Nations ...

"Recommends to the Governments of the Union of Soviet Socialist Republics and the United States of America to undertake to resolve their differences arising out of the incident of 1 July 1960 either (a) through investigation of the facts by a commission composed of members designated in equal numbers, by the United States of America, by the Union of Soviet Socialist Republics, and by a Government or authority acceptable to both parties, charged with inquiring into the incident by inspecting the site, examining such remains of the plane as may be located, and interrogating survivors and other witnesses; or (b) through referral of the matter to the International Court of Justice for impartial adjudication."

The representative of the USSR stated that his delegation opposed the holding of any investigation whatever, and the establishment of any commission. In his view, the proposal for the establishment of a commission to conduct some sort of investigation could have only one object: to confuse an entirely clear issue, and thus to allow the organizers of the provocative flights to escape responsibility.

The representative of the United Kingdom drew attention to the proposals made by the United States under which both the USSR and the United States Governments were asked to agree peacefully to resolve their differences arising out of the aircraft incident on the basis of an impartial investigation into the facts. Such a procedure was consistent with the peaceful methods of discussion and conciliation.

The representative of France contended that the question did not at that stage fall within the competence of the Security Council, but should have been settled, as was customary in such cases, by negotiation between the two parties. He pointed to the provisions of Article 33 (1), observing that none of the means outlined therein had been employed by the Soviet Government. After ten days of silence, the USSR Government had "brought these charges against the Government of the United States and without making any attempt at negotiation, enquiry, conciliation, arbitration or judicial settlement, appealed to the Security Council". The first step should be to ascertain the facts by conducting an investigation by agreement between the parties and by interrogating the two survivors in completely acceptable conditions.

At the 882nd meeting on 26 July 1960, the representative of Argentina observed that the United States proposal merely suggested that the Council urge the parties to settle their disputes by means of an international inquiry, and that this power was specifically attributed to the Security Council in Article 33 (2) and had been confirmed by the established practice of the United Nations.

The representative of Italy, after recalling the resolution adopted by the Council on 27 May 1960 [27] which recommended that the Governments concerned seek solutions of existing international problems by negotiation or other peaceful means, asserted that the USSR Goverment was not behaving in conformity with the spirit and the exhortation embodied in that resolution.

At the 883rd meeting on 26 July 1960, the representative of Tunisia stated that when the Security Council discussed the question of the U-2 incident the agreement of the two parties on the facts en-

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[23] S/4394, 876th meeting: paras. 106-107.

[24] 876th meeting: paras. 127-128.

[25] For texts of relevant statements, see:
881st meeting: France, paras. 83, 84, 92; USSR, para. 40; United Kingdom, paras. 70, 72; United States, paras. 26-30;
882nd meeting: Argentina, para. 11; Italy, paras. 20-23;
883rd meeting: Ceylon, para. 71; Tunisia, paras. 49, 50.

[26] S/4409, later revised, S/4409/Rev.1, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 35-36, 881st meeting: para. 29.

[27] S/4328, O.R., 15th year, Suppl. for Apr.-June 1960, pp. 22-23. See also Case 1.

abled four of its members to submit a draft resolution adopted on 27 May 1960 recommending the Governments concerned to seek solutions to existing international problems by negotiation or other peaceful means as provided for in the Charter. In his view, "this recommendation and appeal are now as urgent as ever".

The representative of Ceylon maintained that the general principles which underlay the United States draft resolution appeared to be in the spirit of Article 33 (1), which provided for attempts at peaceful solutions by negotiation, investigation, enquiry or any other peaceful means. It was imperative that solutions to existing international problems be sought by negotiation or other peaceful means as provided for in the Charter.

At the same meeting, the United States draft resolution, as amended, failed of adoption. There were 9 votes in favour and 2 against (one of the negative votes being that of a permanent member).[28]

CASE 4.[29] COMPLAINT BY CUBA (LETTER OF 31 DECEMBER 1960): In connexion with the draft resolution submitted by Chile and Ecuador: the sponsors did not press for a vote on the draft resolution.

[*Note:* In response to an allegation that an invasion against Cuba was imminent, it was maintained that since there were no specific facts to account for any fear of an immediate threat to peace, the role of the Council should be one of arbitration. The peaceful means provided for in the Charter did not exclude those which fell within the province of a regional agency.]

At the 922nd meeting on 4 January 1961, Chile and Ecuador submitted a draft resolution[30] which provided, inter alia:

"The Security Council,

"...

"Considering that it is the duty of Member States to resolve their international disputes by the peaceful means provided for in the United Nations Charter,

"1. Recommends to the Governments of the Republic of Cuba and of the United States of America that they make every effort to resolve their differences by the peaceful means provided for in the United Nations Charter;

"..."

The representative of Ecuador maintained that since there were no serious, specific facts to account for any fear of an immediate threat to peace, "we believe that our role should be one of friendly arbitration. We must continue in our efforts to find a peaceful solution. ..." He stated further that the Security Council was fully competent to deal with the matter and to seek a solution in accordance with the provisions of the Charter. He did not wish to single out any particular method provided for in Article 33, but would prefer to leave a wide area within which the two parties might seek a solution through international organizations.

At the 923rd meeting on 5 January 1961, the representative of the United Kingdom observed that when the Government of Cuba resorted to the Council for the first time, the Council felt that there might be something to investigate and that the appropriate forum for such an investigation was the Organization of American States. The Government of Cuba, however, had chosen not to avail itself of the machinery provided by that organization and appeared to have rejected in advance any resolution providing for a direct negotiation of its differences with the Government of the United States. In the light of this it appeared that Cuba had not wished to seek the help of the Council in measures of conciliation, but to seek an endorsement for a charge of aggression or the intention to commit aggression.

The representative of Chile asserted that the draft resolution contained nothing more than an appeal to the two Governments to seek a solution for their differences by all the peaceful means provided for in the Charter and in the American regional system.

Speaking as the representative of the United Arab Republic, the President expressed the view that the draft resolution merely reaffirmed the principles of the Charter by stressing the fact that States should settle their international disputes by peaceful means. The sponsors had not specified the means, but left their selection to the two countries concerned. He suggested that there might be contacts, either directly between the two States, or through friendly countries chosen by the two States in agreement.

The representative of Ecuador observed that the peaceful means provided for in the Charter did not exclude those which fell within the province of the Organization of American States. He added that one of the means prescribed in Article 33 of the Charter was that of conciliation, which was suggested by that organization when it established the ad hoc Committee of Good Offices.

The representative of the USSR, commenting on the rupture by the United States of diplomatic relations with Cuba, stated that such a course of action did not signify a desire for the peaceful settlement of an issue. He then noted that a draft resolution designed precisely with a view to the peaceful settlement of controversial issues in accordance with the Charter had been submitted, but that the United States and its allies had not found that proposal acceptable. He expressed the hope, however, that the Government of the United States would adopt the policy of settling the dispute by peaceful means.

The sponsors of the draft resolution did not press for a vote.[31]

28/ 883rd meeting: para. 188.

29/ For texts of relevant statements, see:
922nd meeting: Ecuador, paras. 53, 55;
923rd meeting: President (United Arab Republic), paras. 89-91; Chile, para. 57; Ecuador, paras. 108-109; USSR, paras. 157, 158, 162, 166; United Kingdom, paras. 40-41.

30/ S/4612, O.R., 16th year, Suppl. for Jan.-March 1961, p. 16.

31/ 923rd meeting: Ecuador, para. 111.

CASE 5.[32] COMPLAINT BY PORTUGAL (GOA): In connexion with the joint draft resolution submitted by France, Turkey, the United Kingdom and the United States: voted upon and failed of adoption on 18 December 1961; and with the joint draft resolution submitted by Ceylon, Liberia and the United Arab Republic: voted upon and rejected on 18 December 1961

[*Note:* During discussion on the four-Power draft resolution calling for an immediate cessation of hostilities, for the withdrawal of the Indian forces, and urging the parties to work for solution of their differences by peaceful means in accordance with the principles of the Charter, it was maintained that the parties were bound, under the Charter, to settle their dispute by peaceful means. In connexion with the three-Power draft resolution, which called upon Portugal to co-operate with India in the liquidation of her colonial possessions in India, it was contended that Portugal's intransigent position was not consistent with Article 33, and that the only solution of the dispute was the liquidation of the Portuguese colonial possessions in India.]

At the 987th meeting on 18 December 1961, the representative of Portugal* stated that by committing aggression against Portugal in Goa, India had violated Article 2 (3) and 2 (4) of the Charter. He pointed out that the Prime Minister of Portugal had announced Portugal's readiness to negotiate on problems that might exist between Portugal and India.

The representative of India* stated that after the establishment of diplomatic relations with Portugal in 1949, the Indian Government had approached the Portuguese Government with a request to negotiate concerning the transfer of the Portuguese possessions in India. The answer was a negative one and had remained so. The point was that a colonial territory, which was a part of India, must be returned to India. The question was not one of negotiating any agreement for co-existence.

The representative of the United States said that, according to the Charter, States were obligated to renounce the use of force, to seek a solution of their differences by peaceful means and to utilize the procedures of the United Nations when other peaceful means had failed. The Council had an urgent duty to bring this dispute to the negotiating table, and must insist that the parties negotiate on the basis of the principles of the Charter.

The representative of the United Kingdom observed that his Government thought that the right course would have been for the dispute to be brought before the United Nations by one or both of the parties before either of them decided to resort to the use of force. The Security Council should call at once for the cessation of hostilities and for negotiations. After the withdrawal by India of its forces, the Governments of India and Portugal should be encouraged to use peaceful means to work out a peaceful solution of their differences in accordance with the Charter.

The representative of the USSR expressed the view that no attempt should be made by means of negotiations and compromises to delay the process of liberation from colonialism.

The representative of Ceylon stated that the build-up of Portuguese forces had been inconsistent with the desire to seek a settlement of the issue peacefully. The intransigent statements of the President of Portugal were not consistent with Article 33, which enjoined parties to any dispute to seek a solution by various peaceful means. Ceylon could not call on India to negotiate because India had offered in the past nothing but negotiations.

At the 988th meeting on 18 December 1961, the representative of Chile stated that Article 1 (1), Article 2 (2) and (3), and Chapter VI of the Charter provided that Members of the United Nations should settle all disagreements by peaceful means. It was the duty of the Security Council to call upon the parties to settle their disputes by enquiry, mediation, conciliation, arbitration or other peaceful means of their choice. In accordance with Article 35, any Member of the United Nations might bring any dispute or any situation of the nature referred to in Article 34 to the attention of the Security Council or the General Assembly. In the case before the Council, neither India nor Portugal had taken the dispute to the Council in accordance with Article 35. If they had done so, the Council, in accordance with Article 36, could have recommended more appropriate procedures or methods of adjustment of this dispute, for instance, by referring the parties to the International Court of Justice.

The representative of India* contended that, although India was told that there should be negotiations, no basis was mentioned. If it was the intention of those who suggested that there should be negotiations with the Portuguese adhering to their position and not recognizing resolution 1514 (XV), then no negotiation was possible. The Secretary-General in his communication to both parties had recommended negotiations in accordance with the principles of the Charter and the principles formulated by the United Nations. Those principles were embodied in resolutions 1514 (XV) and 1542 (XV) and other resolutions of the General Assembly on decolonization. The four-Power draft resolution (see below), which urged the parties to work out "a permanent solution of their differences by peaceful means", did not take into account the principles recognized in the numerous resolutions, notably resolution 1514 (XV), and therefore the Indian Government was strongly opposed to it.

The representative of the United States pointed out that General Assembly resolution 1514 (XV) gave no license to violate the Charter's fundamental principles, among them the principle that all Members should settle their international disputes by peaceful means. He introduced a draft resolution[33] submitted

[32] For texts of relevant statements, see:
987th meeting: Ceylon, paras. 139, 147; India*, paras. 41-44; Portugal*, paras. 11, 22; USSR, para. 113; United Kingdom, paras. 85, 87; United States, paras. 76, 80;
988th meeting: Chile, para. 26; India*, paras. 81, 86, 87; USSR, paras. 119, 123, 124; United States, para. 93.

[33] S/5033, 988th meeting: para. 97.

jointly with France, Turkey and the United Kingdom, in which it was provided:

"The Security Council,

"Recalling that in Article 2 of the Charter ... all Members are obligated to settle their disputes by peaceful means ... (preamble, para. 1),

"...

"3. Urges the parties to work out a permanent solution of their differences by peaceful means in accordance with the principles embodied in the Charter;

"..."

At the same meeting, the representative of Ceylon introduced a draft resolution [34] submitted jointly with Liberia and the United Arab Republic, according to which:

"The Security Council,

"...

"2. Calls upon Portugal to terminate hostile action and to co-operate with India in the liquidation of her colonial possessions in India."

The representative of the USSR maintained that the joint draft resolution introduced by the representative of Ceylon established conditions for a cease-fire since if Portugal terminated its hostile action in Goa, and entered into negotiations with India in order to ensure the liquidation of its colonial possessions in India, the matter would end in a peaceful manner. The four-Power draft resolution stated in its first preambular paragraph that all Members were obligated to settle their disputes by peaceful means and referred to other provisions of the Charter. On the basis of these provisions its sponsors should have called upon Portugal to end immediately its colonial domination in Goa. Instead, they accused the Government of India of actions aimed at liberating the people of Goa. This was in complete contradiction with the purposes and principles of the Charter they had advanced as the initial premise for the subsequent operative paragraphs.

At the 988th meeting on 18 December 1961, the joint draft resolution submitted by Ceylon, Liberia and the United Arab Republic was rejected by 4 votes in favour and 7 against.[35]

At the same meeting, the joint draft resolution submitted by France, Turkey, the United Kingdom and the United States failed of adoption. There were 7 votes in favor and 4 against (one of the negative votes being that of a permanent member).[36]

CASE 6.[37] THE INDIA-PAKISTAN QUESTION: In connexion with an Irish draft resolution: voted upon and failed of adoption on 22 June 1962

[*Note:* During the resumed consideration of the question, observations were made concerning the use of the means of settlement enumerated in Article 33. On the one hand, it was contended that the need for the parties to undertake direct negotiations had been recognized, and that they might wish either to negotiate between themselves or with the assistance of a third party. In this connexion, the good offices of the Secretary-General were suggested. A draft resolution was submitted under which the Council would urge both parties to enter into negotiations, and would request the Acting Secretary-General to provide such services as might be requested by the parties to carry out the aims of the resolution. On the other hand, it was maintained that while one of the parties accepted the principle of bilateral negotiations, it did not accept the intervention of a third party, and that such negotiations had to take place on a basis of equality without any attempt to force upon either of the parties conditions known in advance to be unacceptable. It was also argued that the question before the Council was not a dispute but a situation created by the aggression of one of the parties and that therefore Article 33 was inapplicable.]

References to bilateral efforts at the highest level for "direct negotiations" were made by the representative of Pakistan* in his letter of submission[38] dated 11 January 1962, and by the representative of India* in his reply[39] dated 16 January 1962.

At the 990th meeting on 1 February 1962, the representative of Pakistan* described the negotiations which had been conducted between the heads of both Governments and stated that the position of his Government was as follows:

"... let us agree upon a procedure for the settlement of our disputes through negotiations, through mediation, through any channel that may be acceptable to both sides, but finally provide that if any of these methods does not bring us to a settlement of the disputes, then we shall have recourse to some procedure which would automatically bring a settlement like international arbitration or judicial settlement."

At the same meeting, the representative of India*, after reading out a quotation from a resolution adopted by the Indian National Congress supporting the Government's efforts to seek a solution by peaceful means, stated that it was a continuing policy of India to settle its disputes with Pakistan by negotiation and through peaceful means. He emphasized that there was no desire in India to settle its differences with Pakistan by any but peaceful means and by negotiations.

At the 1008th meeting on 2 May 1962, the representative of Pakistan suggested that the President

[34] S/5032, 988th meeting: para. 98.

[35] 988th meeting: para. 128.

[36] 988th meeting: para. 129.

[37] For texts of relevant statements, see:
990th meeting: India*, paras. 93, 109-110; Pakistan*, para. 48;
1007th meeting: Pakistan*, paras. 90-91;
1008th meeting: Pakistan*, paras. 160, 165-167;
1011th meeting: India*, paras. 182, 185; United Kingdom, para. 193;
1012th meeting: President (France), paras. 49-50; China, para. 26; United Kingdom, paras. 35-38;
1013th meeting: Ghana, para. 19;
1014th meeting: Chile, para. 30; Venezuela, para. 21;
1015th meeting: USSR, para. 22; United States, para. 7;
1016th meeting: India*, paras. 18, 19, 22, 34-41; Ireland, paras. 3-10; USSR, paras. 82-85.

[38] S/5058, O.R., 17th year, Suppl. for Jan.-March 1962, pp. 46-47.

[39] S/5060, ibid., pp. 48-49.

of the Security Council, the United Nations Representative for India and Pakistan or "any recognized international figure of undoubted integrity" acceptable to both parties should be asked to mediate with a view to bridging the differences between the parties.

At the 1011th meeting on 4 May 1962, the representative of India rejected the suggestion to resort to "mediation or arbitration", and stated the position that his Government would not agree "to arbitration or mediation on the question of the sovereignty of our territory". He further stated that his Government had no objection to undertaking direct negotiations with Pakistan, but it would not agree with the Security Council ordering, instructing or making suggestions to India with regard to the matter before the Council.

At the 1012th meeting on 15 June 1962, the representative of the United Kingdom stated that the absence of any progress over the past four years had led to the view that no fruitful negotiations could take place without "some form of friendly outside intervention". The Council, in preparing the ground for negotiation, should consider whether there was some procedure it could recommend in order to bring about a negotiation in the most hopeful circumstances. In this connexion he suggested "the good offices of some third party acceptable to both" India and Pakistan.

At the same meeting, the representative of China expressed the belief that the Council should urge the two parties to enter into new negotiations, either by themselves or with the assistance of a third party. In the past, he observed, "the good offices of the Secretary-General have frequently proved helpful in handling delicate and complicated situations".

Speaking as the representative of France, the President referred to the provisions of Article 33 and stated:

> "All that the Security Council can do, under the terms of this Article, is to 'call upon the parties to settle their dispute by such means'.
>
> "... I shall express no opinion on the forms and conditions of the negotiations envisaged, because it is the parties concerned which should determine them."

At the 1013th meeting on 19 June 1962, the representative of Ghana observed:

> "... that the effectiveness of a third party, whether proffering the umbrella of auspices, good offices or mediation, depends on the willingness of the two sides to use his services, and that no such approach is valid in itself unless the parties accept it. However, were the two parties, animated by the spirit of Article 33 of the Charter, to agree to avail themselves of the good offices of an acceptable individual of high standing and impartiality ... a good beginning would be made on the road to progress."

At the 1015th meeting on 21 June 1962, the representative of the United States remarked that while all members of the Council had recognized the need for the parties to resume negotiations, there was, however, some disparity of view "with regard to the introduction of a third party".

At the same meeting, the representative of the USSR stressed the need for securing acceptance by both parties of any mediation in the "so-called negotiations" between India and Pakistan:

> "According to the Charter, negotiations between countries are a normal and natural means of arriving at the peaceful settlement of any dispute ... However, negotiations can be useful only when both sides are interested in fruitful negotiations. If one side wants to force the other to negotiate on terms which the other side finds unacceptable, deliberately laying down unacceptable conditions, such negotiations will achieve nothing, no matter how often reference is made to the provisions of the Charter, because what is needed in negotiations is goodwill and agreement between the parties ..."

At the 1016th meeting on 22 June 1962, the representative of Ireland introduced a draft resolution, [40] the operative part of which provided:

> "The Security Council,
>
> "...
>
> "1. Reminds both parties of the principles contained in its resolution of 17 January 1948, and in the resolutions of the United Nations Commission for India and Pakistan dated 13 August 1948 and 5 January 1949;
>
> "2. Urges the Governments of India and Pakistan to enter into negotiations on the question at the earliest convenient time with the view to its ultimate settlement in accordance with Article 33 and other relevant provisions of the Charter of the United Nations;
>
> "3. Appeals to the two Governments to take all possible measures to ensure the creation and maintenance of an atmosphere favourable to the promotion of negotiations;
>
> "4. Urges the Government of India and the Government of Pakistan to refrain from making any statements, or taking any action, which may aggravate the situation;
>
> "5. Requests the Secretary-General to provide the two Governments with such services as they may request for the purpose of carrying out the terms of this resolution."

In commenting on the draft resolution, the representative of India objected to the adoption by the Council of any resolution because it "would not be of any value unless it was a resolution calling upon Pakistan to vacate its aggression". This, in his view, the Council was not ready to do at that time. India took exception to its being treated on the same basis with Pakistan in regard to the question of the complaint of aggression brought by India before the Council. In regard to that question, he asserted Pakistan was the aggressor and India was the aggressed. He further stated:

> "It is ... our submission ... that the ... Indo-Pakistan question is not a dispute in terms of the Charter. It is a situation created by Pakistan's aggression on our territory ... and therefore Article 33 is inapplicable ..."

[40] S/5134, O.R., 17th year, Suppl. for April-June 1962, p. 104.

After remarking that there had been negotiations, direct and indirect, "times without number", he continued:

"... when we come to arbitration, international law ... lays down certain principles that are basic to arbitration. There are some things that are arbitrable, others that are not arbitrable ... The sovereignty of a country, its independence and integrity, are not subjects for arbitration."

The representative of the USSR stated:

"It is perfectly obvious from the context of the draft resolution that the negotiations between the Governments of India and Pakistan, the renewal of which is urged in the draft, are to take place on the basis of the principles set forth in the now outdated resolutions of the Security Council and the United Nations Commission on Kashmir. That ... is the real purpose of 'recalling' the principles contained in those resolutions."

He maintained that despite the references to Article 33 which no one had contested and to other provisions of the Charter, the draft resolution constituted an attempt to impose on India negotiations which would be conducted on a basis advantageous to one side only and unacceptable to the other side. Noting that operative paragraph 5 implied the idea of mediation by a third party, he recalled India's position that "interference by third parties in the negotiations between India and Pakistan would be unacceptable". At the same time he reminded the Council that India had never in principle rejected the idea of bilateral negotiations between itself and Pakistan. However, such negotiations would have to be conducted on an equal footing and without attempts to impose an unacceptable basis for such negotiations.

At the same meeting, the Irish draft resolution failed of adoption. There were 7 votes in favour and 2 against, with 2 abstentions (one of the negative votes being that of a permanent member).[41]

CASE 7.[42] COMPLAINTS BY REPRESENTATIVES OF CUBA, USSR AND UNITED STATES (22-23 OCTOBER 1962): In connexion with the draft resolution submitted by the United States and the draft resolution submitted by the USSR; in connexion also with the draft resolution submitted by Ghana and the UAR: decision on 25 October 1962 to adjourn the meeting

[*Note:* In the course of the discussion, the danger to world peace inherent in the situation in the Caribbean was emphasized and the need for negotiations was urged in the draft resolutions introduced by two of the parties directly concerned. In addition, a draft resolution was introduced requesting the Acting Secretary-General to confer with the parties on immediate steps to normalize the situation. The Acting Secretary-General proposed to make himself available if such a procedure would facilitate negotiations. The parties concerned as well as other members of the Council reacted favourably to the Acting Secretary-General's offer to facilitate the negotiations. The Council decided to adjourn without voting on the draft resolution.]

At the 1022nd meeting on 23 October 1962, the representative of the United States submitted a draft resolution[43] which included the following provision:

"The Security Council,

"...

"4. Urgently recommends that the United States of America and the Union of Soviet Socialist Republics confer promptly on measures to remove the existing threat to the security of the Western Hemisphere and the peace of the world, and report thereon to the Security Council."

At the same meeting, the President, speaking as the representative of the USSR, introduced a draft resolution[44] under which it would be provided:

"The Security Council,

"...

"4. Calls upon the United States of America, the Republic of Cuba and the Union of Soviet Socialist Republics to establish contact and enter into negotiations for the purpose of restoring the situation to normal and thus of removing the threat of an outbreak of war."

At the 1023rd meeting on 24 October 1962, the representative of Ireland, in examining the statements of the representatives of the United States and the USSR, noted that: "In both cases the contacts and negotiations were suggested as the final step in a wider scheme of proposals upon which agreement may take time to achieve." However, in his view, the present danger to peace would allow no delay and could be dispelled only by agreement, and agreement could not be achieved without discussions and negotiations.

At the 1024th meeting on the same day, the representative of Chile observed that: "Discussion between both Powers is essential to the maintenance of peace", and added that there was a coincidence in the final paragraphs of the two draft resolutions which were similar in that they both recognized the need for negotiations between both Powers. In the event of an impasse, he suggested that "... the Secretary-General should take some initiative ... he might propose some immediately effective measure".

The representative of the United Arab Republic stated that every endeavour should be made to bring all parties together to negotiate with a view to reaching a peaceful settlement in accordance with the principles of the Charter. He further stated that the parties concerned should avail themselves of whatever assistance the Acting Secretary-General and his office may be able to render in reaching a peaceful and immediate solution.

41/ 1016th meeting: para. 92.

42/ For texts of relevant statements, see:
1023rd meeting: Ireland, paras. 95-96.
1024th meeting: Chile, paras. 55-57; France, para. 11; Ghana, paras. 112-114; United Arab Republic, paras. 80-82; Acting Secretary-General, paras. 118-122, 126.
1025th meeting: President (USSR), para. 44; Ghana, paras. 93-94; United States, para. 23; United Arab Republic, paras. 70-73.

43/ S/5182, 1022nd meeting: para. 80.

44/ S/5187, 1022nd meeting: para. 180.

At the same meeting, the representative of Ghana introducing a draft resolution submitted jointly with the United Arab Republic [45] maintained that what was urgently needed was negotiation between the parties concerned to resolve the current crisis on the basis of mutual respect for each other's sovereign rights. His delegation, he added, would urge the Council to authorize the Acting Secretary-General to confer with the parties immediately with a view to facilitating such negotiations. The draft resolution provided in part:

"The Security Council,

"...

"1. Requests the Secretary-General promptly to confer with the parties directly concerned on the immediate steps to be taken to remove the existing threat to world peace, and to normalize the situation in the Caribbean.

"..."

At the same meeting, the Acting Secretary-General noted that there was some common ground in the draft resolutions before the Council. "Irrespective of the fate of those draft resolutions", he stated, "that common ground remains. It calls for urgent negotiations between the parties directly involved..." Explaining the initiatives he had already taken, the Acting Secretary-General stated that at the request of representatives of a large number of Member States he had sent identically worded messages to the Governments of the United States and the USSR noting that "... time should be given to enable the parties concerned to get together with a view to resolving the present crisis peacefully and normalizing the situation in the Caribbean", and recommending "... the voluntary suspension of all arms shipments to Cuba, and also the voluntary suspension of the quarantine measures involving the searching of ships bound for Cuba" for a period of two to three weeks. He then assured the Governments "... I shall gladly make myself available to all parties for whatever services I may be able to perform". The Acting Secretary-General emphasized that he believed that it would greatly contribute to the breaking of the impasse if the construction and development of major military facilities and installations in Cuba could be suspended during the period of negotiations, and appealed to the Government of Cuba for its co-operation. He further appealed to "... the parties concerned to enter into negotiations immediately ... irrespective of any other procedures which may be available or which could be invoked". In conclusion, the Acting Secretary-General asserted that "the path of negotiation and compromise is the only course by which the peace of the world can be secured at this critical moment". [46]

At the 1025th meeting, the representative of the United States read out the reply of the President of the United States to suggestions in the Acting Secretary-General's appeal whereby he expressed a desire to reach a satisfactory and peaceful solution of the situation and stated that the United States representative was ready to enter into preliminary talks to determine whether satisfactory arrangements could be assured.

At the same meeting, the President of the Security Council, speaking as the representative of the USSR, read out a reply of the Chairman of the Council of Ministers of the USSR to the Acting Secretary-General's letter which concluded:

"I inform you that I am in agreement with your proposal, which is in accordance with the interests of peace."

Commenting on the favourable responses from the two Governments, the representative of the United Arab Republic urged the members of the Council to start preparing the way so that negotiations might begin without further delay.

The representative of Ghana remarked that his understanding of the response from the parties concerned was "that while refraining from any action which might aggravate the situation, the parties concerned ... will avail themselves of the Acting Secretary-General's offer of assistance to facilitate the negotiations on the immediate steps to be taken to remove the existing threat to world peace and to normalize the situation in the Caribbean".

The Council decided to adjourn without voting on the draft resolutions. [47]

CASE 8. [48] COMPLAINT BY SENEGAL: In connexion with the letter of 10 April 1963 (S/5279)

Note: In the consideration of the complaint by Senega., observations were made concerning the principle that the parties directly involved should attempt, in the various ways open to them under Article 33, to settle their differences peacefully among themselves. Direct negotiations and the procedure of inquiry were especially suggested.]

At the 1027th meeting on 17 April 1963, when the Security Council began its consideration of the letter [49] dated 10 April 1963 from the representative of Senegal concerning "repeated violations of Senegalese airspace and territory", the representative of Portugal* observed that on the assumption that the Government of Senegal desired nothing but a pacific settlement of its dispute with Portugal, instead of resorting with "undue haste" to the Council, it should have first of all sought direct negotiations or resorted to a friendly Government to serve as a mediator in order to take "the first and mandatory step towards arriving at a pacific settlement", in the terms of Article 33 of the Charter. It was only after all, or at least some, of the steps enumerated in Article 33 had been attempted and proved to have failed that an approach could legitimately be made to the Security Council.

45/ S/5190, 1024th meeting, para. 113.

46/ See also chapter I, Case 58.

47/ 1025th meeting: para. 101.

48/ For texts of relevant statements, see:
1027th meeting: Portugal*, paras. 66-73;
1028th meeting: Ghana, paras. 83, 101; Senegal*, paras. 36, 39-40; USSR, paras. 121-123;
1030th meeting: Portugal, para. 56;
1031st meeting: Senegal, para. 14;
1032nd meeting: France, para. 43, Ghana, para. 29;
1033rd meeting: President (China), paras. 77-79; Brazil, paras. 64-65, 67; Portugal, para. 118; Senegal, paras. 138-140; United Kingdom, paras. 26, 31; United States, para. 18.

49/ S/5279, O.R., 18th year, Suppl. for April-June 1963, pp. 16-17.

At the 1028th meeting on 18 April 1963, the representative of Senegal* stated that, contrary to the view of the representative of Portugal that his Government had not resorted to the conciliatory means provided for in Article 33, after the occurrence of similar incidents, in 1961 and at the beginning of 1962, on the advice of the Security Council, the Government of Senegal had tried to settle its differences with Portugal by negotiation. However, the Government of Portugal had denied everything and rejected all complaints, without examination. By refusing all dialogues with the African States, Portugal had made any negotiations or resort to mediators impossible, and Senegal had been left, therefore, with no alternative but to turn to the Security Council which had already received previous complaints.

At the same meeting, the representative of Ghana, after recalling that the Government of Senegal had tried unsuccessfully to settle bilaterally with Portugal the problems confronting both countries, stated that there was no question of negotiating with Portugal because the violation of Senegalese territory stemmed from the existence of the Portuguese territory of "so-called" Portuguese Guinea. Moreover, because the provocative actions of Portugal involved other African States which could not all resort to Article 33 of the Charter and negotiate with Portugal, the only recourse left to the African States was to appeal to the Security Council as the Government of Senegal had done. He then suggested that, owing to the denial by Portugal of the charges by Senegal and the degree of tension that was growing in the border areas with Senegal, an on-the-spot investigation would be helpful in order to determine the facts and to ease tension in that region. A small Security Council commission should be appointed to visit the area and report back to the Council, with recommendations to avoid a recurrence of similar incidents, whether in Portuguese Guinea or elsewhere.

At the 1030th meeting on 19 April 1963, the representative of Portugal, after referring to the "conflict between the Senegalese and Portuguese versions of the facts alleged to have occurred", suggested "that a small commission should be appointed by the mutual consent of Senegal and Portugal in order to carry out an investigation in loco of the subject matter of the complaint" submitted by Senegal. The Commission, he further suggested, "should be made up of an equal number of competent technicians to be named by each party and presided over by a neutral acceptable to both sides".

At the 1031st meeting on 22 April 1963, the representative of Senegal stated that the Portuguese suggestion to establish a small commission of investigation was only "a delaying tactic" designed "to prevent the Security Council from taking a just and efficient decision...".

At the 1032nd meeting on 23 April 1963, the representative of Ghana, in referring to a draft resolution[50] on the substance of the question which he had jointly submitted with the representative of Morocco, underlined an operative paragraph therein under which the Council would request the Secretary-General to keep the development of the situation under review. He stated:

> "We have heard the suggestion ... that possibly a commission of an international nature could have been sent. But in view of the fact that the Portuguese Government came forward offering a bilateral approach to this problem, we felt that we, who had advanced the idea of an international commission, should abandon that idea and allow the Secretary-General to keep this matter under review."

At the same meeting, the representative of France emphasized that in matters such as the one being considered by the Council, the greatest use should be made of the procedures outlined in Article 33 of the Charter. However, the proposal made by the representative of Portugal presupposed necessarily the consent of the other party, and since the current trend of relations between the two Governments had made such an arrangement impossible, the French delegation would support the draft resolution before the Council.

At the 1033rd meeting on 24 April 1963, the representative of the United States also emphasized that in circumstances such as those with which the Council had been confronted, the provisions of Article 33 should have been resorted to in the first instance.

The representative of the United Kingdom stated:

> "We believe that the Charter rightly lays emphasis on the principle that the parties to a dispute should attempt, in the wide variety of ways open to them and listed in Article 33, to settle their differences peacefully among themselves ... Furthermore, Article 33 stresses that the direct approach is only a first step. If it fails and no satisfaction is obtained, recourse can always be had thereafter to the Security Council or to some other appropriate organ of the United Nations.
>
> "...
>
> "Before concluding, it would be right to make some comment on the offer of the Portuguese Government to participate in a joint commission of inquiry with the Senegalese Government in order to establish the facts. ... The setting up of a commission of inquiry often provides a good way of proceeding, and the proposal deserved careful consideration."

The representative of Brazil observed that it was quite proper for the Council to recommend that the parties resort to the other means of peaceful settlement set forth in Article 33. In the question before it, the Council should act in accordance with Chapter VI of the Charter, which aimed at the pacific settlement of disputes. The draft resolution was, in his view, imbued with the spirit of Chapter VI and envisaged a peaceful settlement of the existing differences.

The representative of Portugal, recalling his suggestion that a commission of investigation be appointed, objected to the draft resolution on the grounds that it "prejudges the main issue before the Council". In the process, he remarked, "express provisions laid down in the Charter for the settlement of disputes have been disregarded".

[50] S/5292; 1032nd meeting: para. 28.

Part II

CONSIDERATION OF THE PROVISIONS OF ARTICLE 34 OF THE CHARTER

NOTE

The three case histories entered in part II of this chapter are those in which issues have arisen relating to Article 34 of the Charter.[51] In the first instance,[52] objections to the competence of the Council were raised on the grounds that under Article 34, which had been invoked, the Council might only take action in order to investigate whether the continuance of the dispute was likely to endanger the maintenance of international peace and security. In the second instance,[53] in which the initial communication invoked Articles 34 and 35 (1), the question of the relationship between Articles 34 and 52 was discussed, and it was contended that the right of appeal to the Council was optional. In the resolution which was adopted, invoking Articles 34 and 52 among others, the Council noted that the question was being discussed by a regional agency, and adjourned its consideration pending the receipt of a report from that agency. In the third instance, reference to Article 34 was not made in the letter of submission but in a statement of the representative who had submitted the question for the consideration of the Council. During the discussions, objections were raised to the applicability of Article 34. The draft resolution before the Council was not adopted.[54]

On one occasion during the period under review, observations were made concerning the distinction between investigation under Chapter VI of the Charter and the establishment of a subsidiary organ for the purpose of obtaining information; the distinction was deemed interrelated with the problem of the procedural or non-procedural character of the decision involved.[55]

CASE 9.[56] COMPLAINT BY ARGENTINA (EICHMANN CASE): In connexion with the draft resolution voted upon and adopted on 23 June 1960

[*Note:* In submitting its complaint against Israel, Argentina had invoked Articles 34 and 35 (1) of the Charter. Argentina asserted that the issue centred on the deliberate violation of the sovereignty of a State, which was contrary to the Charter, and therefore within the competence of the Council since the differences which would arise could lead to a situation likely to endanger international peace and security. On the other hand, Israel raised objections to the competence of the Council on the ground that under Article 34 the only legitimate purpose of investigation by the Council was to determine whether the dispute or situation was likely to endanger the maintenance of international peace and security. The Council adopted a resolution indicating its concern that the repetition of acts such as those under consideration, which involved the sovereign rights of a Member State, would endanger international peace and security.]

At the 865th meeting on 22 June 1960, the representative of Argentina stated that his Government had based its case on Article 33 and the subsequent Articles of the Charter, because of the danger which Israel's act might involve for the maintenance of international peace and security. The Argentine Government had constantly been mindful of its obligation under Article 33 of the Charter to seek a solution through direct negotiation before appealing to the United Nations. However, its hopes that immediate recognition of its manifest right would put an end to the incident and would permit the resumption of the friendly relations between the two countries had not been fulfilled.

Rejecting the interpretation that in speaking of a dispute or a situation likely to endanger the maintenance of international peace and security, the drafters of the Charter had in mind only the imminent danger of generalized military conflict, the representative of Argentina maintained that international peace and security were in danger if the possibility existed that a situation of hostility might arise between two States, such as seriously to affect the relations between them. Had Argentina not brought the matter before the United Nations the failure by Israel to give satisfaction to its claim would have resulted in a state of affairs that would have made the dispute substantially more serious. He then noted that the main threat to international peace and security did not arise from the fact of the violation of Argentine sovereignty and its unfortunate repercussions on Argentine-Israel relations. "It results from the supreme importance of the principle impaired by that violation: the unqualified respect which States owe to each other and which precludes the exercise of jurisdictional acts in the territory of other States." There could be no doubt of the Council's competence if the violation was in conflict with a fundamental principle of peaceful relations among States. The case was especially serious because of the precedent it implied.[57]

The draft resolution[58] submitted by Argentina included the following paragraphs:

"The Security Council,

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[51] During the consideration at the 891st meeting on 27 February 1962 of the inclusion in the agenda of the complaint by Cuba (letter of 22 February 1962, S/5080, O.R., 17th year, Suppl. for Jan.-March 1962, p. 82), references were made to the provisions of Articles 34 and 35 (1). For these statements, see chapter II, Case 7. Article 34 was also invoked in the letters of submission of other questions (see below, in introductory note to part III of this chapter), as well as during the consideration of several other questions (see chapter VIII, part II), but no constitutional issues were raised.

[52] Case 9.

[53] Case 10.

[54] Case 11.

[55] See chapter V, Case 9.

[56] For texts of relevant statements, see:
865th meeting: Argentina, paras. 5, 12, 13, 30-34.
866th meeting: Israel*, paras. 12-14. United Kingdom, paras. 86-89, 91, 92, 94;
867th meeting: France, para. 63;
868th meeting: Argentina, para. 45; USSR, para. 64.

[57] See also Case 12.

[58] S/4345, 865th meeting: para. 47.

"...

"Noting that the repetition of acts such as that giving rise to this situation would involve a breach of the principles upon which international order is founded, creating an atmosphere of insecurity and distrust incompatible with the preservation of peace,

"...

"1. Declares that acts such as that under consideration, which affect the sovereignty of a Member State and therefore cause international friction, may, if repeated, endanger international peace and security;

"..."

At the 866th meeting, the representative of Israel* questioned the competence of the Security Council, pointing to certain limitations under Article 34 of the Charter, the Article invoked by the Government of Argentina in its request to the Council. She noted that the "only legitimate purpose" of investigation contemplated in that Article was to determine whether the continuance of a dispute or situation was likely to endanger the maintenance of international peace and security. This meant that the Council could only take action in accordance with that Article. "My Government is bound, therefore, to regard as ultra vires any resolution which may not be in conformity therewith."

The representative of the United Kingdom stated that in the case before the Council there was no major conflict of principle between two Member States, since the two principles involved in the Eichmann case—respect for sovereign rights, and the principle that war criminals should be brought to trial—were accepted by both Argentina and Israel. The difference between these States arose out of the difficulty of reconciling these principles in the particular case before the Council. There had been hopes that direct discussion, in accordance with Article 33 of the Charter, would have made unnecessary an appeal to the Security Council. He continued:

"Meanwhile, the Security Council has been seized with the question by the Government of Argentina and asked to express an opinion. ... It might, indeed, be useful for the Council to set out, in the form of a resolution, its opinion on the principles involved. This might serve as a guide and framework for the eventual settlement of the difference."

At the 867th meeting, the representative of France maintained that there did not exist at the time a threat to international peace and security which, under the terms of Chapter VI of the Charter, was a necessary condition for the Council's intervention. He further remarked that all the means of peaceful settlement as provided under Article 33 of the Charter had not been exhausted by the parties.

At the 868th meeting, the Argentine draft resolution, as amended, was adopted by 8 votes in favour, to none against, with 2 abstentions;[59] Argentina did not participate in the voting.

[59] 868th meeting: para. 52.

CASE 10.[60] COMPLAINT BY CUBA (LETTER OF 11 JULY 1960): In connexion with the draft resolution submitted by Argentina and Ecuador: voted upon and adopted on 19 July 1960

[*Note:* During the discussion it was contended that membership in a regional organization did not impair the right of States to submit questions to the Security Council even though such questions might be under consideration by the regional organization. It was suggested that the rights envisaged under Article 52 of the Charter were of an optional rather than an exclusive character, and that Member States might exercise whichever of those rights they chose. It was also suggested that to adjourn the meeting without proper consideration of the question could be construed as a refusal of the Council to fulfil its obligations under Article 34 of the Charter.]

At the 874th meeting on 18 July 1960, the representative of Cuba* asserted that "the right of any State which is a Member of the United Nations to have recourse to the Security Council cannot be questioned. The regional agencies do not take precedence over the obligations of the Charter." This was acknowledged in Article 52, which provided for the establishment of regional arrangements and agencies, since paragraph 4 of that Article stated: "This Article in no way impairs the application of Articles 34 and 35."

The representative of the United States contended that since the matter was under consideration by the Organization of American States, the Security Council should take no action on the Cuban complaint until those discussions had been completed. It was not, he added, a question of which was greater or which was less—the Organization of American States or the United Nations—but that it made sense to go to the regional organization first and to the United Nations as a place of last resort.

At the same meeting, the representatives of Argentina and Ecuador submitted a joint draft resolution[61] under which:

"The Security Council,

"...

"Taking into account the provisions of Articles 24, 33, 34, 35, 36, 52 and 103 of the Charter of the United Nations,

"...

"Noting that this situation is under consideration by the Organization of American States,

"1. Decides to adjourn the consideration of this question pending the receipt of a report from the Organization of American States;

"2. Invites the members of the Organization of American States to lend their assistance towards

[60] For texts of relevant statements, see:
874th meeting: President (Ecuador), paras. 154-155; Argentina, paras. 135-136; Cuba*, paras. 6-7; United States, paras. 100-102;
875th meeting: Ceylon, paras. 29-32; France, para. 21; Italy, para. 8; Poland, paras. 56-58;
876th meeting: USSR, paras. 85, 86, 88, 94, 95.

[61] S/4392, same text as S/4395, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 29-30.

the achievement of a peaceful solution of the present situation in accordance with the purposes and principles of the Charter of the United Nations;

"..."

The representative or Argentina maintained that by the provision of operative paragraph 1 under which the Council would adjourn consideration of the question, it was

"not proposed to deny the Council's competence in the matter, or even to settle the legal question of which organization should act first. What is suggested is a noting of the concrete circumstance that the regional organization is dealing with the question, and a recognition that, for a better evaluation of the issues, it is useful to have before us the considerations at which the regional organization may arrive."

He further stated that such a preliminary measure could not prevent the Council from making provisions, which could be described as precautionary, to ensure that the existing situation did not deteriorate before the report of the Organization of American States was transmitted to the Council.

The President, speaking as the representative of Ecuador, contended that while resort to regional arrangements in no way detracted from the powers of the Security Council, it was juridically correct and politically advisable to try to solve through regional bodies those disputes which could be dealt with by regional action.

At the 875th meeting on 18 July 1960, the representative of Italy observed that because the Security Council was the supreme organ working on behalf of the United Nations on problems of war and peace, it should be called upon only when other avenues, as provided by regional arrangements, had been properly explored.

The representative of France noted that the situation was under consideration by the Organization of American States, and suggested that, in view of this fact, the Council should not make an exhaustive examination of the question at that time.

The representative of Ceylon observed that there could be no doubt that Cuba had the right to choose whether it should put the case before the Council or before the regional organization, since the Articles of the Charter amply supported such a contention. The fact that the Council adopted the agenda without objection meant that the jurisdiction of the Council and the right of Cuba were both admitted. Moreover, the proposal put forward in the draft resolution that the Council adjourn must be considered only as an interruption and not as an attempt to deny Cuba its right to have the case heard and decided before the Council.

The representative of Poland stated that according to the draft resolution the Council would decide to adjourn consideration of the question on the ground that it should first be discussed by the Organization of American States. Article 52 provided for the use of regional organizations for dealing with such matters as were appropriate for regional action. He further stated:

"Paragraph 4 of this Article, however, contains a specific reservation to the effect that this provision in no way impairs the application of Articles 34 and 35. Again, Article 34 states that the Security Council 'may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute'."

Article 34, together with the provisions of Article 52, meant that the Security Council could consider any case, regardless of other existing machinery, organization or body outside the United Nations, leaving the choice of the appropriate machinery to the party directly concerned.

At the 876th meeting on 19 July 1960, the representative of the USSR contended that, although some members had chosen to disregard it, Article 52 expressly stated that the obligation of Members of the Organization to make efforts to achieve a settlement of local disputes within the framework of regional arrangements before referring them to the Security Council in no way impaired the application of Articles 34 and 35 of the Charter. He asserted that Article 35 (1) unequivocally provided that any Member State may bring any dispute or situation of the nature referred to in Article 34 to the attention of the Security Council or General Assembly. "On the strength of that provision of the Charter alone, the Cuban Government is fully entitled to apply to the Security Council for help and to expect such help from the Council", he added. He also maintained that the draft resolution, in proposing that the Council adjourn consideration of the question pending the receipt of a report from the Organization of American States, meant that, without examining the question itself and not wishing to take any action, the Council would refer the question to the Organization of American States. This, in effect, would be a refusal by the Security Council to fulfil its obligation.

At the same meeting, the draft resolution submitted by Argentina and Ecuador was adopted by 9 votes in favour, to none against, with 2 abstentions.[62]

CASE 11.[63] SITUATION IN ANGOLA: In connexion with the draft resolution submitted by Ceylon, Liberia and the United Arab Republic: voted upon and not adopted on 15 March 1961

[*Note:* During the discussion on the inclusion in the agenda it was remarked that, in order to ascertain whether they in fact endangered international peace and security, the events in Angola had to be discussed in the Council. It was later stated that in the context of the provisions of Article 34 it was clear that a situation which could endanger world peace need not necessarily be a dispute between two Member States. Doubts were expressed as to

[62] 876th meeting: para. 128.

[63] For texts of relevant statements, see:
943rd meeting: USSR, paras. 71-72; United Arab Republic, para. 44;
944th meeting: France, paras. 19-21; Portugal*, paras. 37-39, 43;
946th meeting: Liberia, para. 158; Turkey, paras. 83-84, 87; United Kingdom, paras. 57-58.

whether it was relevant to invoke Article 34 in requesting the Council to deal with the Angola incidents: it was not sufficient to cite Article 34 but it had to be demonstrated that a situation in fact existed which was likely to endanger international peace and security. On the other hand, it was maintained that Articles 33 and 34, which were the only ones under which any action of the Council might be justified under Chapter VI of the Charter, were not applicable, since there was no mention of any dispute between Member States likely to endanger the maintenance of international peace and security, nor did any situation exist which would cause any dispute of that nature.]

At the 943rd meeting on 10 March 1961, the representative of the United Arab Republic, in dealing with the question of inclusion of the item in the agenda, observed that if the Council wanted to ascertain whether the events in Angola endangered peace and security within the meaning of Article 34 of the Charter, then they must be discussed by the Council.

The representative of the USSR remarked that the representative of Liberia had expressly referred at the 934th meeting, on 15 February 1961, to the presence of circumstances in Angola which were likely to endanger the maintenance of international peace and security. A situation had been created in Angola which might at any moment turn explosive and lead to military conflicts, thus endangering world peace.

At the 944th meeting on 10 March 1961, the representative of France inquired whether it was really relevant to invoke Article 34 in asking the Council to deal with the incidents in Angola. To assert that clashes which had taken place between various elements of the population in Angola were of such a nature as to lead to an international dispute would stretch the meaning of Article 34 in a way which had not been intended by its authors.

> "This would involve the danger of attributing to any dispute or incident which occurs in a country ... a meaning and significance which it does not have. Article 34 adds that the purpose of the Council's investigation shall be 'in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security'."

However, the incidents at Luanda had no sequel. The duty of the United Nations and of the Council was to maintain international peace and security. If the Council acted otherwise, the salutary nature of its action might be open to doubt. Therefore, the Security Council must refrain from intervening in matters which were not indisputably within its jurisdiction.

The representative of Portugal* maintained that there was no provision of the Charter which would justify the consideration of the matter by the Security Council, and that the inclusion of the item in the agenda was illegal. He added:

> "No mention has been made of any dispute between the Portuguese State and any other State Member of the Organization likely to endanger the maintenance of international peace and security, nor has any proof been presented of the existence of a situation which would cause a dispute of that nature. Clearly there must be at least two parties —and under the Charter the parties must also be sovereign independent States—if there is to be a dispute or if such a situation is to exist. Therefore, none of the cases foreseen in Articles 33 and 34 is under consideration. These two Articles are the only ones which would justify any action of the Security Council within the scope of Chapter VI."

He also remarked that the representative of Liberia in his statement before the Council at the 934th meeting had based his request for inclusion of the item in the agenda on the provisions of Article 34 of the Charter. However, in the letter of submission reference to that Article had been omitted. This showed, in his view, that the Liberian delegation "could not in effect find any legal premise which would justify its submission of the matter to the Security Council".

At the 946th meeting on 15 March 1961, the representative of the United Kingdom noted that the representative of Liberia, in asking that the Council should deal with the incidents in Angola, had invoked Article 34 of the Charter. However, his delegation believed that it was not sufficient to invoke that Article. The Council would be competent to deal with the question "only if there were in fact a situation likely to endanger the maintenance of international peace and security". The onus of showing that such a situation in fact existed had to rest on those who alleged it. In the view of his delegation this had not been demonstrated in the Council debate on the question.

The representative of Turkey, referring to the specific question of the applicability of Article 34 of the Charter to the Angola incidents, stated that the Security Council had been entrusted by explicit Articles of the Charter to act as a guardian of international peace and security. As to whether the Security Council, the organ created to intervene in cases of dangers to world peace, should be seized of the incidents in Angola, the representative stated that his delegation could not support the draft resolution before the Council.

Referring to a statement made to the effect that the question before the Council did not involve a dispute between two Member States, the representative of Liberia, after quoting Article 34 "which confers indisputable powers upon the Security Council", stated:

> "I should like to underline the words 'situation which might lead to international friction or give rise to a dispute'. In the context of this legal pronouncement of Article 34, it is clear that a situation which could endanger world peace must not necessarily be a dispute between two Member States."

At the same meeting, the three-Power draft resolution before the Council was not adopted. There were 5 votes in favour, none against, with 6 abstentions.[64]

[64] 946th meeting: para. 165.

Part III

APPLICATION OF THE PROVISIONS OF ARTICLE 35 OF THE CHARTER

NOTE

During the period under review twenty-nine questions[65] relating to the maintenance of international peace and security were brought to the attention of the Security Council. Of these, twenty-six were submitted by Members of the United Nations,[66] one by a non-Member,[67] and two by the Secretary-General.[68] The relevant data regarding submission has been summarized in the appended Tabulation. This note, however, is concerned only with the implementation of Article 35 by Members and States not Members of the United Nations.

The Security Council has continued, at the instance of the parties or other Members of the United Nations, to consider two questions which had been previously included in its agenda, namely, the Palestine question[69] included in 1947 and the India-Pakistan question[70] included in 1948. In the current review period, four of the new questions considered by the Security Council received continuous attention from the Council, namely: the "Situation in the Republic of the Congo",[71] "Complaints by the Government of Cuba",[72] "Question of Race Conflict in South Africa",[73] and the "Situation in Territories in Africa under Portuguese Administration".[74]

Submission by Members of the United Nations

In submitting questions to the Security Council, Members of the United Nations have in most instances done so by means of a communication addressed to the President of the Security Council. In two instances submission was effected as a result of a letter addressed to the Secretary-General. In the first of these, the Government of Laos requested that the Secretary-General take the necessary procedural action in order to effect the dispatch of an emergency force to that country;[75] in the second, the Government of the Congo requested the urgent dispatch by the United Nations of military assistance.[76] The actual submission in both cases was effected by the Secretary-General who asked for an urgent meeting of the Council to hear a report by the Secretary-General on the communications of the two Governments.[77] With the exception of nine instances,[78] all questions were submitted by States directly involved.

In their initial communications, Members usually indicated that they were acting in accordance with Article 35 or that some Charter principle had been violated. In ten instances[79] Article 35 (1) of the

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65/ In two instances, the Council included in its agenda items submitted by different Member States arising from the same state of facts; see Tabulation: Entries 7 and 8, 22, 23 and 24. In another, the question was not included in the agenda; see Tabulation: Entry 11.

66/ See Tabulation: sections B and C.

67/ Tabulation: section D.

68/ Tabulation: section G.

69/ In the period covered by the present Repertoire, the following were considered as sub-items of the "Palestine question" by the Security Council: Letter dated 26 January 1959 from the representative of Israel addressed to the President of the Security Council (S/4151) (845th meeting); Letter dated 1 April 1961 from the Permanent Representative of Jordan addressed to the President of the Security Council (S/4777) (947th meeting); (a) Letter dated 20 March 1962 from the Permanent Representative of the Syrian Arab Republic addressed to the President of the Security Council (S/5096) (999th meeting); (b) Letter dated 21 March 1962 from the Permanent Representative of Israel addressed to the President of the Security Council (S/5098) (999th meeting); (a) Letter dated 20 August 1963 from the acting Permanent Representative of Israel addressed to the President of the Security Council (S/5394) (1057th meeting); (b) Letter dated 21 August 1963 from the acting Permanent Representative of Israel addressed to the President of the Security Council (S/5396) (1057th meeting); (c) Letter dated 21 August 1963 from the Permanent Representative of the Syrian Arab Republic addressed to the President of the Security Council (S/5395) (1057th meeting).

70/ The "India-Pakistan question" was considered under items entitled: (a) Letter dated 11 January 1962 from the Permanent Representative of Pakistan addressed to the President of the Security Council (S/5058) (990th meeting); (b) Letter dated 16 January 1962 from the Permanent Representative of India addressed to the President of the Security Council (S/5060 and Corr.1) (990th meeting); (c) Letter dated 29 January 1962 from the Permanent Representative of Pakistan addressed to the President of the Security Council (S/5068) (990th meeting).

71/ For the questions considered in connexion with the situation in the Republic of the Congo, see Tabulation: Entry 29.

72/ The complaints by the Government of Cuba were considered in items entitled: (a) Letter dated 11 July 1960 from the Minister for Foreign Affairs of Cuba addressed to the President of the Security Council (S/4378) (874th meeting); (b) Letter dated 31 December 1960 from the Minister for External Relations of Cuba to the President of the Security Council (S/4605) (921st meeting); (c) Letter dated 21 November 1961 from the Permanent Representative of Cuba addressed to the President of the Security Council (S/4992) (980th meeting); (d) Letter dated 22 February 1962 from the Permanent Representative of Cuba addressed to the President of the Security Council (S/5080) (991st meeting). This item was not included in the Council's agenda; (e) Letter dated 8 March 1962 from the Permanent Representative of Cuba addressed to the President of the Security Council (S/5086) (992nd meeting). (f) Letter dated 22 October 1962 from the Permanent Representative of Cuba addressed to the President of the Security Council (S/5183) (1022nd meeting). This item formed part of a multiple complaint in which both the United States and the USSR submitted letters. See Tabulation: Entries 22, 23, 24.

73/ The "Question of Race Conflict in South Africa" was considered under the following item and sub-items: (a) Letter dated 11 July 1963 addressed to the President of the Security Council by representatives of. . . [32 Member States] (S/5348) (1040th meeting); (b) Report by the Secretary-General in pursuance of the resolution adopted by the Security Council at its 1056th meeting on 7 August 1963 (S/5438 and Add.1-5) (1073rd meeting). (c) Letter dated 23 October 1963 from the representatives of. . . [32 Member States] (S/5444 and Add.1) (1073rd meeting).

74/ The "Situation in Territories in Africa under Portuguese Administration" was considered under the following item and sub-items: (a) Letter dated 11 July 1963 addressed to the President of the Security Council by representatives of... [32 Member States] (S/5347) (1040th meeting); (b) Report by the Secretary-General in pursuance of the resolution adopted by the Security Council at its 1049th meeting on 31 July 1963 (S/5448 and Add.1-3) (1079th meeting). (c) Letter dated 13 November 1963 from the representatives of... [29 Member States] (S/5460) (1079th meeting).

75/ S/4212, O.R., 14th year, Suppl. for July-Sept. 1959, pp. 7-8. In asking for the meeting, the Secretary-General said that he did not intend to introduce formally on the agenda anything beyond his own wish to report to the Council on the letter received from the Government of Laos. See Tabulation: Entry 28; 847th meeting: para. 11, and chapter I, Case 5.

76/ S/4382, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 11-12. Tabulation: Entry 29.

77/ S/4213, O.R., 14th year, Suppl. for July-Sept. 1959, p. 8; S/4381, O.R., 15th year, Suppl. for July-Sept. 1960, p. 11.

78/ Tabulation: Entries 1, 2, 6, 10, 14, 15, 16, 19, 25.

79/ Tabulation: Entries 1, 3, 4, 5, 10, 11, 13, 21, 23, 26. In another instance, a Member, while not invoking Article 35 (1) in his letter of submission, referred in that communication to a previous letter on the same question, in which that Article had been invoked: Tabulation: Entry 20, note 1.

Charter was invoked as the basis of submission; in nine of these instances[80] that provision was invoked in conjunction with Article 34 of the Charter and in seven instances it was invoked together with other Articles.[81] Other Articles invoked have been Articles 1 (1),[82] 2 (4),[83] 11 (2),[84] 24,[85] 24 (1),[86] 31,[87] 32,[88] 36,[89] 39,[90] 40,[91] 41,[92] 52,[93] 52 (4),[94] 53,[95] 96,[96] and 103.[97]

In the other communications submitting questions for consideration by the Security Council, no reference was made to specific Articles of the Charter; however, these complaints generally charged acts of provocation or aggression, or that a situation existed which threatened international peace and security. In their initial communication States have indicated more or less explicitly the action requested of the Council[98] as well as the nature of the question.

In no instance have Members submitted a question to the Council as a dispute. In eleven instances[99] questions were explicitly described as situations; in seven,[100] they were described generally as involving acts of aggression. One initial communication[101] referred to a unilateral act of war against the complaining State; another[102] referred to a state of war prevailing in the territories under the administration of a Member of the United Nations. In two instances[103] complaint was made of armed intervention, and in others complaining States referred to violations of sovereignty[104] and territorial integrity.[105] In two initial communications[106] a number of States complained about the policies of apartheid and racial discrimination practiced by a Member of the United Nations; in another[107] members called attention to the abuse of human rights and fundamental freedoms carried out in the territory under the administration of another Member. One communication[108] requested a meeting of the Council to consider the non-implementation by a Member of the Council of Article 73 of the Charter and the resolutions of the General Assembly and the Special Political Committee. In most cases, the conduct complained of was described as threatening international peace and security.

States not Members of the United Nations

During the period under review there has been only one instance[109] of submission of a question by a non-Member (Kuwait). This involved a complaint concerning a situation likely to endanger the maintenance of international peace and security arising from a threat to its territorial integrity and independence. The initial communication invoked Article 35 (2) as the basis of submission.[110]

Procedural consequences of submission under Article 35

As was noted above, questions have been submitted to the Council by means of communications addressed to the President of the Security Council, with the exception of the two instances wherein submission was effected as a result of a letter addressed to the Secretary-General requesting United Nations military assistance, and were dealt with in accordance with rules 3, 4 and 6, respectively, of the provisional rules of procedure.[111] Communications submitting questions for consideration by the Council have been dealt with in accordance with rules 6-9 of the provisional rules of procedure and material relating to the application of these rules is contained in chapter II of this Supplement. In three communications addressed to the President of the Security Council requesting inclusion of a matter in the provisional agenda draft resolutions were enclosed.[112] Material on the practice of the Security Council in the implementation of

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80/ The exception being Tabulation: Entry 1.

81/ Tabulation: Entries 4, 5, 10, 11, 21, 23, 26.

82/ Tabulation: Entries 23, 26, 28.

83/ Tabulation: Entries 23, 26.

84/ Tabulation: Entry 28.

85/ Tabulation: Entry 4.

86/ Tabulation: Entries 4, 5, 10, 11, 21, 23, 26.

87/ Tabulation: Entries 5, 10.

88/ Tabulation: Entry 5.

89/ Tabulation: Entry 4.

90/ Tabulation: Entries 23, 26.

91/ Tabulation: Entry 21.

92/ Tabulation: Entries 11, 21.

93/ Tabulation: Entries 11, 21.

94/ Tabulation: Entries 4, 5, 10.

95/ Tabulation: Entries 11, 19, 21.

96/ Tabulation: Entry 21.

97/ Tabulation: Entries 4, 5, 10, 11, 21.

98/ However, in nine instances no specific action was requested beyond the calling for a meeting and consideration of the matter by the Security Council. See Tabulation: Entries 1, 7, 8, 12, 13, 14, 23, 24, 27.

99/ Tabulation: Entries 1, 2, 4, 5, 6, 7, 8, 10, 13, 15, 16.

100/ Tabulation: Entries 4, 17, 18, 19, 20, 21, 26.

101/ Tabulation: Entry 23.

102/ Tabulation: Entry 25.

103/ Tabulation: Entries 10, 26.

104/ Tabulation: Entries 3, 9, 10, 13.

105/ Tabulation: Entries 12, 13.

106/ Tabulation: Entries 1, 15.

107/ Tabulation: Entry 6.

108/ Tabulation: Entry 16.

109/ Tabulation: Entry 27.

110/ This request was supported by the representative of the United Kingdom in a letter (S/4845) dated 1 July 1961, who asked that a meeting be called accordingly. In a letter (S/4847) dated 2 July 1961 the representative of Iraq requested a meeting of the Council to consider a "Complaint by the Government of the Republic of Iraq in respect of the situation, arising out of the armed threat by the United Kingdom to the independence and security of Iraq which is likely to endanger the maintenance of international peace and security". In another letter (S/4848) of the same date the same representative said he wished to state that the "complaint" by Kuwait was not receivable by the Council, since paragraph 2 of Article 35 of the Charter related to the right of States not Members of the United Nations to bring questions to the attention of the Security Council, and that Kuwait was not and had never been an independent State. At the 957th meeting on 2 July 1961, the representative of the USSR said: "We feel called upon to point out that the documents to be regarded as the formal grounds for including this whole question in the agenda are the proposals by two Members of the United Nations, namely, the requests made by the delegations of the United Kingdom and Iraq" (para. 10). In reply, the President said: "I take it that he [the representative of the USSR] is not opposing the adoption of the agenda" (para. 12). At the 958th meeting on 5 July 1961, the representative of Kuwait, having been invited to participate, repeated the earlier assertion: "We made our application to come here under Article 35, paragraph 2, of the Charter" (para. 67).

111/ See chapter I, Cases 5 and 6; see also chapter II, Case 1.

112/ Tabulation: Entries 2, 22, 24. In one initial communication, it was noted that a draft resolution would be submitted in due course (see Tabulation: Entry 16, note 1).

Article 35 of the Charter at the stage of adoption of the agenda will be found in chapter II, part III.

The Council has not, in respect of any new questions submitted for its consideration during the period under review, considered whether to accept the designation of a question in the initial communication. Nor was any question raised as to the appropriate designation for a question included in the agenda at an earlier period.

TABULATION OF QUESTIONS SUBMITTED TO THE SECURITY COUNCIL (1959-1963)

**SECTION A. QUESTIONS SUBMITTED BY MEMBERS AS DISPUTES

SECTION B. QUESTIONS SUBMITTED BY MEMBERS AS SITUATIONS

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. Complaint concerning South Africa (letter of 25 March 1960)	Afghanistan, Burma, Cambodia, Ceylon, Ethiopia, Federation of Malaya, Ghana, Guinea, India, Indonesia, Iran, Iraq, Japan, Jordan, Laos, Lebanon, Liberia, Libya, Morocco, Nepal, Pakistan, Philippines, Saudi Arabia, Sudan, Thailand, Tunisia, Turkey, United Arab Republic and Yemen, 25 March 1960	South Africa	35 (1)	"... situation arising out of the large-scale killings of unarmed and peaceful demonstrators against racial discrimination and segregation in the Union of South Africa. ... with grave potentialities for international friction, which endangers the maintenance of international peace and security."	"... to consider the situation... which endangers the maintenance of international peace and security."	S/4279 and Add.1, O.R., 15th year, Suppl. for Jan.-March 1960, pp. 58-59
2. Letter dated 23 May 1960 from the representatives of Argentina, Ceylon, Ecuador and Tunisia [a]	Argentina, Ceylon, Ecuador, Tunisia, 23 May 1960	France, USSR, United Kingdom, United States	None	"Concern with present international 'situation'"; submits draft resolution	Resolution recommending, inter alia, that Governments concerned seek solutions of existing international problems by negotiation or other peaceful means; refrain from any action which might increase tensions; continue their efforts towards disarmament; and that the Big Four Powers resume discussions as soon as possible and avail themselves of the assistance of the Security Council and other appropriate organs	S/4323, O.R., 15th year, Suppl. for April-June 1960, pp. 13-14
3. Complaint by Argentina (Eichmann case)	Argentina, 15 June 1960	Israel	34, 35 (1)	"... the violation of the sovereign rights of the Argentine Republic ... contrary to the rules of international law and the purposes and principles of the Charter ... and creating an	"... take decisions involving just reparations for the rights violated."	S/4336, ibid., pp. 27-28

				atmosphere of insecurity and mistrust incompatible with the preservation of international peace."		
4. Complaint by Cuba (letter of 11 July 1960)	Cuba, 11 July 1960	United States	34, 35 (1), 52 (4), 103 b/	Grave situation existing "with manifest danger to international peace and security, as a consequence of the repeated threats, harassments, intrigues, reprisals, and aggressive acts to which my country has been subjected by the Government of the United States of America."	"consider the situation and ... take such measures as it deems fit."	S/4378, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 9-10
5. Complaint by Cuba (letter of 31 Dec. 1960)	Cuba, 31 Dec. 1960	United States	34, 35 (1) c/	"... the Government of the United States ... is about to perpetrate, within a few hours, direct military aggression against the Government and people of Cuba. ... The facts listed in this complaint relate to an extremely serious and dangerous phase of a situation which seriously affects international peace and security and could give rise to a conflict of unsuspected proportions and consequences."	Examination of the situation and adoption of "measures which it may deem necessary to prevent armed units of the United States and mercenaries in its service violating the sovereignty, territorial integrity and independence of a State Member of the United Nations".	S/4605, O.R., 15th year, Suppl. for Oct.-Dec. 1960, pp. 107-109
6. Situation in Angola	Liberia, 20 Feb. 1961	Portugal	34 d/	"... crisis in Angola ..."	"... immediate action should be taken by the Security Council to prevent further deterioration and abuse of human rights and privileges in Angola."	S/4738, O.R., 16th year, Suppl. for Jan.-March 1961, p. 145

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
6. Situation in Angola (continued)	Afghanistan, Burma, Cambodia, Cameroon, Central African Republic, Ceylon, Chad, Congo (Brazzaville), Congo (Leopoldville), Cyprus, Dahomey, Ethiopia, Federation of Malaya, Gabon, Ghana, Guinea, India, Indonesia, Iran, Iraq, Ivory Coast, Japan, Jordan, Laos, Lebanon, Liberia, Libya, Madagascar, Mali, Morocco, Nepal, Nigeria, Pakistan, Philippines, Saudi Arabia, Senegal, Somalia, Sudan, Togo, Tunisia, United Arab Republic, Upper Volta, Yemen and Yugoslavia, 26 May 1961	Portugal	None	"... serious situation prevailing in Angola ... massacres ... and the most ruthless suppression of human rights and fundamental freedoms ... constitute a serious threat to international peace and security."	"... to consider the situation in Angola as a matter of urgency."	S/4816 and Add.1 and 2, O.R., 16th year, Suppl. for April-June 1961, pp. 57-59
7. Complaint by Kuwait	United Kingdom, [e/] 1 July 1961	Iraq, Kuwait	None [f/]	"... the situation arising from the threat by Iraq to the territorial independence of Kuwait, which is likely to endanger the maintenance of international peace and security."	". . that a meeting of the Council shall be called accordingly."	S/4845, O.R., 16th year, Suppl. for July-Sept. 1961, pp. 1-2
8. Complaint by Iraq	Iraq, 2 July 1961	United Kingdom	None	"... the situation, arising out of the armed threat by the United Kingdom to the independence and security of Iraq which is likely to endanger the maintenance of international peace and security."	"... that the Security Council be convened to consider the following question: ..."	S/4847, ibid., p. 2

9. Complaint by Tunisia	Tunisia, 20 July 1961	France	None	"... acts of aggression infringing the sovereignty and security of Tunisia and threatening international peace and security."	"... to take such measures as it deems necessary in order to put an end to this aggression and to have all French troops withdrawn from Tunisian territory."	S/4861, S/4862, ibid., pp. 6-9
10. Complaint by Cuba (letter dated 21 Nov. 1961)	Cuba, 21 Nov. 1961	Dominican Republic, United States	34, 35 (1)[g/]	"... the Government of the United States is carrying out a plan of armed intervention in the Dominican Republic in violation of that country's sovereignty" and "... endangering international peace and security. ... As the Dominican situation becomes increasingly threatening, the United States no longer hesitates to use more rapid and direct methods."	"The mission of the Security Council is to take up and find solutions for any important and urgent situations and disputes which raise a threat to international peace and security."	S/4992, O.R., 16th year, Suppl. for Oct.-Dec. 1961, pp. 139-141
11. Complaint by Cuba (letter dated 22 Feb. 1962)	Cuba, 22 Feb. 1962	United States	34, 35 (1)[h/]	"The Government of the United States ... has promoted the adoption of enforcement action within and outside the Organization of American States, as a prelude to the large-scale invasion of our country. ... These unlawful acts against an independent State create a serious international situation and a threat to international peace and security."	Adoption of "... measures necessary to bring to an end the illegal action ... and thus prevent the development of a situation which endangers international peace and security."	S/5080, O.R., 17th year, Suppl. for Jan.-March 1962, pp. 82-84
12. Complaint by Senegal	Senegal, 10 April 1963	Portugal	None	"In view of the repeated violations of Senegalese airspace and territory that have taken place."	"... to discuss this matter."	S/5279, O.R., 18th year, Suppl. for April-June 1963, pp. 16-17

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
13. Complaint by Haiti	Haiti, 5 May 1963	Dominican Republic	34, 35 (1)	"... the grave situation now existing between Haiti and the Dominican Republic ... caused by the repeated threats of aggression and attempts at interference made by the Dominican Republic, which are infringements of Haiti's sovereignty and territorial integrity and constitute a danger to international peace and security."	"... to bring the matter to the attention of the Security Council ..."	S/5302, ibid., pp. 38-39
14. Reports by the Secretary-General concerning Yemen	USSR, 8 June 1963	Yemen, Saudi Arabia, United Arab Republic	None	"... the reports [of the Secretary-General] contain proposals concerning possible measures by the United Nations to maintain international peace and security, on which, under the Charter, decisions are taken by the Security Council."	"... to consider the reports of the Secretary-General to the Council."	S/5326, O.R., 18th year, Suppl. for April-June 1963, p. 51
15. The question of race conflict in South Africa	Algeria, Burundi, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Congo (Leopoldville), Dahomey, Ethiopia, Gabon, Ghana, Guinea, Ivory Coast, Liberia, Libya, Madagascar, Mali, Mauritania, Morocco, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Tanganyika, Togo, Tunisia, Uganda, United Arab Republic and Upper Volta, 11 July 1963	South Africa	None	"... explosive situation existing in the Republic of South Africa, which constitutes a serious threat to international peace and security ... brought about by the intolerable apartheid policies of that Government ..."	"... that the Security Council take necessary action to find a solution ..."	S/5348, O.R., 18th year, Suppl. for July-Sept. 1963, pp. 11-14

	Algeria, Central African Republic, Ceylon, Congo (Brazzaville), Congo (Leopoldville), Dahomey, Ethiopia, Gabon, Ghana, Guinea, India, Indonesia, Ivory Coast, Liberia, Madagascar, Malaysia, Mali, Mauritania, Morocco, Niger, Nigeria, Pakistan, Senegal, Sierra Leone, Somalia, Sudan, Tanganyika, Togo, Tunisia, Uganda, United Arab Republic and Upper Volta, 23 Oct. 1963	South Africa	None	"... the situation ... 'seriously disturbing international peace and security' has been further exacerbated by recent developments in that country."	"... to examine the report of the Secretary-General ... in order to consider additional measures to ensure the compliance of the South African Government with previous Security Council resolutions and its obligation as a Member State."	S/5444 and Add.1, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 41-42
16. Situation in Southern Rhodesia	Ghana, Guinea, Morocco and United Arab Republic, 2 August 1963 Congo (Brazzaville), 30 August 1963	United Kingdom	None	"... our Governments consider that the continuance of this situation is likely to endanger the maintenance of international peace and security ..."	"... to consider the situation in Southern Rhodesia[5]..."	S/5382, S/5409, 18th year, Suppl. for July-Sept. 1963, pp. 64-71, 151

[a] Attached was a draft resolution recommending specific measures.

[b] Other Articles invoked were Articles 24 and 36.

[c] Other Articles invoked included Articles 52 (4), 103, 24 (1), 31 and 32 of the Charter.

[d] This Article was invoked at the 934th meeting on 15 February 1961, in connexion with the adoption of the provisional agenda dealing with the situation in the Congo, at which time the representative of Liberia proposed that a new item dealing with the disturbances in Angola be added to the provisional agenda and to which he referred in his letter of submission.

[e] See Declaration; entry 27.

[f] However, in its letter, the United Kingdom supported the invocation by Kuwait of Article 35 (2) of the Charter.

[g] Invoked also were Articles 24 (1), 31, 52 (4) and 103 of the Charter.

[h] Invoked also were Articles 24 (1), 41, 52, 53 and 103 of the Charter.

[i] The letter noted that a draft resolution would be submitted for consideration, in due course.

SECTION C. QUESTIONS SUBMITTED BY MEMBERS AS THREATS TO THE PEACE, BREACHES OF THE PEACE OR ACTS OF AGGRESSION

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
17. Complaint by the USSR (U-2 incident)[j]	USSR, 18 May 1960	United States, Turkey, Pakistan, Norway	None	"... Aggressive acts by the Air Force of the United States of America against the Soviet Union, creating a threat to universal peace."	"... urgently consider the question ... take the necessary measures to halt the unheard-of provocative actions of the United States of America which represent a threat to the cause of peace."	S/4314, S/4315, O.R., 15th year, Suppl. for April-June 1960, pp. 7-10
18. Complaint by the USSR (RB-47 incident)[k]	USSR, 13 July 1960	Norway, United Kingdom, United States	None	"... New aggressive acts by the Air Force of the United States of America, ... creating a threat to universal peace."	"... examine without delay the question of the continuing provocative acts being committed by the United States of America and in this connexion will take such measures as are necessary to put an end to these acts of the United States of America which are endangering peace."	S/4384, S/4385, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 12-15
19. Letter of 5 September 1960 from the USSR (Action of the OAS relating to the Dominican Republic) (letter dated 5 Sept. 1960)	USSR, 5 Sept. 1960	Dominican Republic, Venezuela	53	Consideration of a resolution adopted by the OAS on 20 August 1960 "condemning the acts of aggression and intervention committed against the Republic of Venezuela by the anti-popular Trujillo regime in the Dominican Republic."	"... considering the decision taken by the OAS concerning the Dominican Republic and with a view to the speedy adoption by the Council of an appropriate resolution."	S/4477, ibid., pp. 134-135
20. Complaint by Portugal (Goa)	Portugal, 18 Dec. 1961	India	None[l]	"... the Indian Government has followed up its build-up of armed forces and provocations ... with a full-scale unprovoked armed attack on the territories of Goa, Damao and Diu, comprising the Portuguese State of India."	"... to put a stop to the condemnable act of aggression of the Indian Union, ordering an immediate cease-fire and the withdrawal forthwith from the Portuguese territories of Goa, Damao and Diu of all the invading forces of the Indian Union."	S/5030, O.R., 16th year, Suppl. for Oct.-Dec. 1961, pp. 205-206

21. Letter of 8 March 1962 from the representative of Cuba concerning the Punta del Este decisions	Cuba, 8 March 1962	OAS	34, 35 (1), 96 [m]	"At ... meeting ... of Ministers for Foreign Affairs held at Punta del Este, Uruguay, certain resolutions were adopted which violate the Charter of the United Nations and unlawful enforcement action was ... taken ... without the authorization of the Security Council. ..." The sanction constituted aggression against Cuba and a serious threat to international peace and security."	Request for an advisory opinion on certain specific legal questions and "... suspension of the agreements adopted at ... Punta del Este, ... and of such measures as may have been ordered ..."	S/5086, O.R., 17th year, Suppl. for Jan.-March 1962, pp. 88-90
22. Complaint by the representative of the United States (letter dated 22 October 1962) [n]	United States, 22 Oct. 1962	Cuba, USSR	None	"... dangerous threat to the peace and security of the world caused by the secret establishment in Cuba by the Union of Soviet Socialist Republics of launching bases and the installation of long-range ballistic missiles capable of carrying thermonuclear warheads to most of North and South America."	"... action to bring about the immediate dismantling and withdrawal of the Soviet missiles and other offensive weapons in Cuba, under the supervision of United Nations observers ..."	S/5181, S/5182, O.R., 17th year, Suppl. for Oct.-Dec. 1962, pp. 146-148, and 1022nd meeting, para. 80
23. Complaint by the representative of Cuba (letter dated 22 October 1962)	Cuba, 22 Oct. 1962	United States	34, 35 (1), 39 [o]	"The United States Government is carrying out this act of war in disregard of the international organizations; in particular, in absolute contempt of the Security Council, and is creating an imminent danger of war."	"... to consider the act of war unilaterally committed by the Government of the United States in ordering the naval blockade of Cuba."	S/5183, ibid., p. 148

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
24. Complaint by the representative of the USSR (letter dated 23 October 1962)[b/]	USSR, 23 Oct. 1962	Cuba, United States	None	"In view of the full gravity of the situation which the United States Government has created over Cuba ..." concerning "The violation of the Charter of the United Nations and the threat to peace by the United States of America."	"... to examine the following question: 'The violation of the Charter of the United Nations and the threat to peace by the United States of America'."	S/5186, S/5187, ibid., pp. 149-154
25. Situation in territories in Africa under Portuguese administration (11 July 1963)	Algeria, Burundi, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Congo (Leopoldville), Dahomey, Ethiopia, Gabon, Ghana, Guinea, Ivory Coast, Liberia, Libya, Madagascar, Mali, Mauritania, Morocco, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Tanganyika, Togo, Tunisia, Uganda, United Arab Republic and Upper Volta, 11 July 1963	Portugal	None	"The state of war prevailing in some of these territories following the persistent refusal of Portugal to comply with the provisions ..." of General Assembly and Security Council resolutions "...constitutes a definite breach of peace and security in the African continent as well as a threat to international peace and security."	"... to consider the situation in the territories under Portuguese domination."	S/5347, O.R., 18th year, Suppl. for July-Sept. 1963, pp. 6-10
	Algeria, Burundi, Cameroon, Central African Republic, Congo (Brazzaville), Congo (Leopoldville), Dahomey, Ethiopia, Gabon, Ghana, Guinea, Ivory Coast, Liberia, Madagascar, Mali, Mauritania, Morocco, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Togo, Tunisia, Uganda, United Arab Republic and Upper Volta, 13 Nov. 1963	Portugal	None	Consideration of the report of the Secretary-General which reveals the failure to implement the resolution adopted by the Security Council on 31 July 1963	"... consider further appropriate measures which will ensure the implementation of the Security Council resolution of 31 July 1963."	S/5460, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 94-95

26. Complaint by the Government of Cyprus	Cyprus, 26 Dec. 1963	Turkey	34, 35, 39 [9]	"... complaint against the Government of Turkey for the acts of (a) aggression, (b) intervention in the internal affairs of Cyprus by the threat and use of force against its territorial integrity and political independence, ..." "A confrontation of the units of the Greek and Turkish armies resulted, with grave and threatening consequences to international peace."	"... to consider the matter and to take appropriate measures under the relevant Articles of the Charter in order to remedy the situation and to prevent such violations from occurring in the future."	S/5488, Ibid., pp.112-114

[1] Submitted also was a cable dated 14 May 1960 from the Minister for Foreign Affairs of the USSR addressed to the President of the Security Council, transmitting an explanatory memorandum in amplification of his cable dated 10 May 1960.

[2] Submitted also was a cable dated 13 July 1960 from the Minister for Foreign Affairs of the USSR addressed to the Secretary-General of the United Nations, transmitting an explanatory memorandum in amplification of his cable of the same date.

[3] In his letter dated 15 December 1961 the representative of Portugal referred to his letter dated 11 December 1961 in which it was stated: "... under Article 35, paragraph 1 of the Charter of the United Nations, the Portuguese Government once again draws the attention of the Security Council to the above-mentioned facts [concentration of Indian troops and violations of Portuguese frontier] for all the purposes which the Council may deem useful, as it considers imminent a military aggression and an attack on the Indian Government of Portuguese territory." (S/5171, O.R., 16th year, Suppl. for Oct.-Dec. 1961, pp. 153-154.) He also invoked Article 32 of request, giving invitation to participate.

[4] Invoked also were Articles 24 (1), 34, 41, 52, 53 and 103.

[5] Attached was a draft resolution.

[6] Invoked also were Articles 1 (1), 2 (4) and 24 (1) of the Charter.

[7] Attached was a draft resolution.

[8] Other Articles invoked: 1 (1), 2 (4) and 24 (1).

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
27. Complaint by Kuwait	Kuwait	Iraq (United Kingdom) [1]	35 (2)	"... the situation arising from threats by Iraq to the territorial independence of Kuwait which is likely to endanger the maintenance of international peace and security."	"... to consider urgently the following question: ..."	S/4844, O.R., 16th year, Suppl. for July-Sept. 1961, p. 1

[1] See Tabulation entry 7.

**SECTION E. QUESTIONS SUBMITTED BY STATES NOT MEMBERS AS THREATS TO THE PEACE, BREACHES OF THE PEACE OR ACTS OF AGGRESSION

**SECTION F. QUESTIONS SUBMITTED BY THE GENERAL ASSEMBLY

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
28. Report by the Secretary-General relating to Laos	4 Sept. 1959	Laos, Democratic Republic of Vietnam	1 (1), 11 (2)[a/]	"Report by the Secretary-General on the letter received from the Minister for Foreign Affairs of the Royal Government of Laos, transmitted on 4 September 1959 by a note from the Permanent Mission of Laos to the United Nations."[b/]	"... an emergency force should be dispatched at a very early date in order to halt the aggression and prevent it from spreading."[c/]	S/4212, S/4213, O.R., 14th year, Suppl. for July-Sept. 1959, pp. 7-8
29. Situation in the Republic of the Congo[d/]	13 July 1960	Republic of the Congo, Belgium	None	"... a matter which may threaten the maintenance of international peace and security."	"... to hear a report of the Secretary-General on a demand for United Nations action in relation to the Republic of the Congo."	S/4381, O.R., 15th year, Suppl. for July-Sept. 1960, p. 11

[a/] These Articles were invoked by the Foreign Minister of Laos in his note of 4 September 1959 to the Secretary-General (S/4212).

[b/] The note charged that since July 1959 foreign troops had been crossing the frontier and engaging in military action against garrison units of the Royal Army stationed along the northeast frontier of Laos. Full responsibility for this aggression, it said, rested with the Democratic Republic of Vietnam.

[c/] As requested in note S/4212.

[d/] During the period under review, the following were considered as sub-items of "letter dated 13 July 1960 from the Secretary-General to the President of the Security Council, S/4381" [Situation in the Republic of the Congo]: Fourth Report of the Secretary-General on the implementation of Security Council resolutions S/4387 of 14 July 1960, S/4405 of 22 July 1960 and S/4426 of 9 August 1960 (S/4482 and Add.1) (896th meeting): Letter dated 8 September 1960 from the Permanent Representative of Yugoslavia to the United Nations addressed to the President of the Security Council (S/4485) (896th meeting): Letter dated 12 September 1960 from the representative of the Union of Soviet Socialist Republics addressed to the President of the Security Council (S/4506) (899th meeting): Urgent measures in connexion with the latest events in the Congo: Note by the Secretary-General (S/4571) (912th meeting): Statement dated 6 December 1960 from the Government of the Union of Soviet Socialist Republics concerning the situation in the Congo (S/4573) (912th meeting): Note by the Secretary-General (S/4606 and Add.1) (924th meeting). Letters dated 4 and 7 January 1961 from the Permanent Representative of the Union of Soviet Socialist Republics addressed to the President of the Security Council (S/4614, S/4616) (924th meeting): Letter dated 26 January 1961 from the Permanent Representatives of Ceylon, Ghana, Guinea, Mali, Morocco, United Arab Republic and Yugoslavia addressed to the President of the Security Council (S/4641) (in the agenda of the 929th meeting was added Libya [S/4650]) (928th meeting): Telegram dated 24 January 1961 from the President of the Republic of the Congo (Leopoldville) and the President of the College of Commissioners-General and Commissioner-General for Foreign Affairs addressed to the President of the Security Council (S/4639) (928th meeting): Letter dated 29 January 1961 from the Permanent Representative of the Union of Soviet Socialist Republics to the President of the Security Council (S/4644) (928th meeting): Report to the Secretary-General from his Special Representative in the Congo regarding Mr. Patrice Lumumba (S/4688 and Add.1) (934th meeting): Letter dated 3 November 1961 from the Permanent Representatives of Ethiopia, Nigeria and Sudan addressed to the President of the Security Council (S/4973) (973rd meeting). Telegram dated 8 September 1960 from the Prime Minister of the Republic of the Congo addressed to the Secretary-General (S/4486) was considered by the Council at the 896th meeting as a separate item.

**SECTION H. QUESTIONS SUBMITTED BY THE COUNCIL OF FOREIGN MINISTERS

Part IV

CONSIDERATION OF THE PROVISIONS OF ARTICLES 36-38 AND OF CHAPTER VI IN GENERAL

NOTE

As was noted in the earlier volumes of the Repertoire, the issues arising in the cases entered in part IV of Chapter X relate only in a minor degree to the real import of the provisions of Articles 36-37 in the working of the Council. In the period under review, material to throw light on that relationship is also scant by reason of the absence of sustained discussion of the connexion between the appropriateness of measures to be adopted by the Council and the provisions of Articles 36-37.

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 Chapter VI of the Charter. By reason of divergence of opinion regarding the constitutional basis for or the limits on the powers of the Council to indicate to the parties specific procedures to be followed in the resolution of their difficulties or to recommend terms of settlement, discussion has been directed to the provisions of Chapter VI or to that Chapter as a whole for guidance regarding the proper course to be followed by the Council.

Limitations on the competence of the Council have been suggested on various grounds in addition to Article 2 (7)[113] and Article 33.[114] On one occasion,[115] the Council discussed the demand of one of the parties concerned for "appropriate reparation", and in this connexion agreed on recommendations for appropriate terms of settlement. On another occasion,[116] the Council adopted a resolution defining its role in relation to an agreement on disengagement arrived at by the parties, and expressing the concern of the Council as to the fulfilment of such an agreement. On two other occasions during the continued consideration of a situation,[117] observations were made in the Council to the effect that measures provided for in both resolutions were recommendations under the provisions of Chapter VI, and not of Chapter VII of the Charter. On another occasion,[118] it was contended that the Council was bound to adopt measures of a preventive nature, as would appear suitable under Chapter VI of the Charter.

CASE 12.[119] COMPLAINT BY ARGENTINA (EICHMANN CASE): In connexion with the decision of 23 June 1960 requesting the Government of Israel to make reparations to the Argentine Government

[*Note:* During consideration of the question, several Council members asked what was the meaning to be attached to Argentina's demand for "appropriate reparation". The view was expressed that adequate reparation would be constituted by the adoption of the draft resolution, declaring that acts such as that under consideration, if repeated, would endanger international peace and security, and requesting Israel to make appropriate reparation. In addition, Israel's expression of regret for the incident was on the record of the Council.]

At the 865th meeting on 22 June 1960, the representative of Argentina submitted a draft resolution,[120] the operative paragraphs of which, as amended[121] on the proposal of the United States, read:

"The Security Council,

"...

"1. Declares that acts such as that under consideration, which affect the sovereignty of a Member State and therefore cause international friction, may, if repeated, endanger international peace and security;

"2. Requests the Government of Israel to make appropriate reparation in accordance with the Charter of the United Nations and the rules of international law;

"3. Expresses the hope that the traditionally friendly relations between Argentina and Israel will be advanced."

Referring to the text of operative paragraph 2, the representative of Israel, at the 866th meeting, inquired what was the meaning of the expression "appropriate reparation". In the view of the Israel Government the expressions of regret which had been made directly to the Argentine Government constituted appropriate reparation.

At the 867th meeting, the representative of the United States stated that his delegation considered that "appropriate reparation will have been made by the expression of views by the Security Council in the pending resolution taken together with the statement of the Foreign Minister of Israel making apology on behalf of the Government of Israel". In his view, once the pending resolution had been adopted, appropriate reparation would have been made, and the incident would be closed.

The representative of Italy also expressed the hope that through the adoption of the amended resolution appropriate reparation of the breach of international law would be found, on the basis of the acknowledgement of the Council of the right of Argentina to protect its national sovereignty. He continued:

"By obtaining a consensus of opinion in the matter, the prevailing features of the case in question, which are ... of a political nature and involve the necessity

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113/ See chapter XII, part II, B.

114/ See part I above.

115/ See Case 12.

116/ See Chapter VIII, p. 208.

117/ Case 13.

118/ Case 14.

119/ For texts of relevant statements, see:
865th meeting: Argentina, paras. 12, 47;
866th meeting: Israel*, paras. 45-46;
867th meeting: Italy, para. 40, United States, paras. 4-5;
868th meeting: Argentina, para. 42; France, para. 49; USSR, paras. 30-31; United Kingdom, para. 36.

120/ S/4345, 865th meeting: para. 47.

121/ 866th meeting: paras. 78-79; and 868th meeting: para. 43.

of steering a course between ethics and law, the Council will have served a useful purpose in strengthening the structure of the international community."

At the 868th meeting on 23 June 1960, the representative of the USSR asked whether Argentina included in the demand for appropriate reparation referred to in operative paragraph 2 of the draft resolution the return of Eichmann to the Argentine authorities for them to deal with.

The representative of the United Kingdom stated that the adoption of the draft resolution, and the regrets of the Government of Israel for any violation of Argentine laws, which were on the Council's record, could reasonably be regarded as adequate reparations and should enable the incident to be terminated.

In reply to the specific question put to him regarding what was meant by "appropriate reparations", the representative of Argentina stated:

"... my delegation does not consider that either Argentina or any other member of the Council has a special obligation to supply an interpretation of the resolutions adopted by the Council. We may each have our own interpretation of the texts placed before us. They will be personal interpretations and have legal force only for those who make them. Once a resolution has been adopted by the Security Council, the parties concerned will have to consider the question and take the necessary steps to ensure that it is interpreted properly and applied in accordance with law."

The representative of France expressed the hope that no uncertainty would remain regarding the firm and legitimate resolve of the Argentine Government to ensure respect for its sovereignty. He pointed out that:

"The Argentine representative stated that his country was entitled to reparation in this regard. We have taken note of the regrets and apologies stated on several occasions ... by the highest Israel Government authorities and believe that, in the expression of these sentiments and in the course of our present discussion, the Argentine Government has found the satisfaction it has sought."

At the same meeting the Argentine draft resolution, as amended, was adopted.[122]

CASE 13.[123] THE QUESTION OF RACE CONFLICT IN SOUTH AFRICA: In connexion with the joint draft resolution submitted by Ghana, Morocco and the Philippines, voted upon and adopted on 7 August 1963 as amended; in connexion also with a draft resolution submitted by Norway, voted upon and adopted on 3 December 1963

[*Note:* The determination that the situation in South Africa was "seriously disturbing international peace and security" was interpreted by two of the permanent members of the Council to mean that the situation there did not call for the kind of action appropriate in cases of threats to the peace, breaches of the peace or acts of aggression under Chapter VII of the Charter. It was also contended that the measures provided for in both resolutions were recommendations without mandatory character, since the expression "call upon" in the operative paragraphs could be found in Chapter VI as well as in Chapter VII. An operative paragraph calling for economic sanctions was rejected by a separate vote. It was then reiterated that the situation in South Africa fell within the provisions of Chapter VI, and not of Chapter VII of the Charter.]

At the 1054th meeting on 6 August 1963, the representative of Ghana introduced a draft resolution,[124] jointly submitted with the representatives of Morocco and the Philippines, under which the Council would express, in a preambular paragraph, its conviction that the situation in South Africa "is seriously disturbing international peace and security". The draft resolution included the following operative paragraphs:

"The Security Council,

"...

"3. Calls upon all States to boycott all South African goods and to refrain from exporting to South Africa strategic materials of direct military value;

"4. Solemnly calls upon all States to cease forthwith the sale and shipment of arms, ammunition of all types and military vehicles to South Africa."

At the same meeting, the representative of the United Kingdom stated that if the Council was to discharge properly its obligation in accordance with the Charter provisions, it had to distinguish between a situation which had engendered international friction and one which constituted a threat to peace. In dealing with the situation in South Africa, the Council did not have the power to impose sanctions as had been suggested. The South African Government had not committed aggression or endangered international peace and security in the sense of the terms of the Charter. The Government of South Africa had failed to heed a whole series of resolutions passed by various organs of the United Nations but for the Council to move to action under Chapter VII of the Charter would be to exceed its powers under the Charter.

At the 1056th meeting on 7 August 1963, upon the request of the representative of the United States, the Council took a separate vote on operative paragraph 3 of the joint draft resolution. The result of the vote was 5 in favour, none against, and 6 abstentions. The paragraph was therefore not adopted.[125] The joint draft resolution, as amended, was then adopted by 9 votes in favour, none against, with 2 abstentions.[126]

After the adoption of the resolution, the representative of the United States expressed his gratification

[122] 868th meeting: para. 52.

[123] For texts of relevant statements, see:
1054th meeting: Ghana, paras. 61-76; United Kingdom, paras. 84-90;
1056th meeting: United Kingdom, para. 37; United States, paras. 26-28;
1074th meeting: Ghana, paras. 34-35;
1076th meeting: Norway, paras. 59-62;
1078th meeting: President (United States), paras. 64, 65; United Kingdom, para. 21.

[124] S/5384, 1054th meeting: para. 62.

[125] 1056th meeting: para. 17.

[126] 1056th meeting: para. 18.

that, with respect to the last preambular paragraph, the sponsors of the joint draft resolution had seen fit to change their original formulation from "is seriously endangering international peace and security" to "is seriously disturbing international peace and security". This change reflected the fact that most of the Council members were not prepared to agree that the situation in South Africa was one which at that time called for the kind of action appropriate in cases of threats to the peace or breaches of the peace under Chapter VII of the United Nations Charter. That Chapter did not speak in terms of disturbances of peace, even serious ones, but only of actual threats to the peace, breaches of the peace or acts of aggression. The resolution's preambular reference to disturbing the peace thus refers to those underlying elements of the situation which, if continued, were likely to endanger international peace and security. Such a case would be quite different from finding a fully matured threat or breach of peace in the situation under consideration. He stated further that in calling upon Member States to take certain action, operative paragraphs 2 and 3 were not mandatory in character. The words "called upon" were found in Chapter VI as well as Chapter VII of the Charter and had been repeatedly employed by the General Assembly as well as by the Security Council and in the customary practice of the United Nations did not carry mandatory force.

At the 1074th meeting on 29 December 1963, during the resumed consideration of the question, the representative of Ghana maintained that by its decision of 7 August 1963 the Council had undertaken a "preventive action against South Africa" involving the total embargo on arms shipments to South Africa. This was an acknowledgement of the existence of a situation which could threaten international peace. A threat to the peace did not always need to take the form of armed conflict, but once a situation contained all the ingredients of strife, it could be construed as a threat to international peace, and the Council was obliged to take appropriate action.

At the 1076th meeting on 3 December 1963, the representative of Norway introduced a draft resolution[127] under which the Council would express, in a preambular paragraph, its strengthened conviction that the situation in South Africa "is seriously disturbing international peace and security". The following operative paragraph was also included:

"The Security Council,

"...

"5. Solemnly calls upon all States to cease forthwith the sale and shipment of equipment and materials for the manufacture and maintenance of arms and ammunition in South Africa;

"..."

The representative of Norway stated that it had been drafted as a result of consultations with other members of the Council, and on the basis of the fact that the South African Government had not responded to the resolution adopted by the Council on 7 August 1963. In calling for an embargo on equipment and materials for the South African armaments industry, the purpose was to make a further effective contribution to the curtailment of the arms build-up in South Africa. Operative paragraph 5 had thus been drafted in such a way that the Council would act under the same provisions of the Charter as it had done in adopting its resolution of 7 August.

At the 1078th meeting on 4 December 1963, the representative of the United Kingdom stated with regard to the draft resolution as a whole:

"... we regard the recommendations to Governments which it contains as being consistent with the powers of the Council in Chapter VI of the Charter, and within the framework of that Chapter. They are recommendations directed to a special situation and do not in our view partake of the character of sanctions or other mandatory action envisaged under Article 41, in Chapter VII, of the Charter."

The President, speaking as the representative of the United States, specifically referred to operative paragraph 5 which, he observed, was a step "to eliminate a factor which might contribute directly to international friction in the area", thus facilitating a peaceful solution of the situation. He further stated:

"We do not consider that the present situation in South Africa falls within the provisions of Chapter VII of the Charter. Accordingly, we would not consider a recommendation for coercive action as appropriate or authorized by the Charter. The transformation of the resolution of 7 August from Chapter VII to Chapter VI language was the decisive step, as we said at the time, that made it possible for my delegation to support the resolution. We support the pending draft resolution for the same reasons."

At the same meeting, the Norwegian draft resolution was adopted unanimously[128]

CASE 14.[129] SITUATION IN SOUTHERN RHODESIA: In connexion with the joint draft resolution submitted by Ghana, Morocco and the Philippines: voted upon and rejected on 13 September 1963

[*Note:* It was contended, on the one hand, that the likelihood of a threat to peace in the African Continent arising from certain forthcoming events in Southern Rhodesia made it necessary for the Council to act constructively by adopting such measures of a preventive nature as would appear suitable under Chapter VI of the Charter. On the other hand, reservations were made regarding the lack of competence of the Council in the matter, and Article 2 (7) was invoked; no situation of the nature referred to in Article 34, it was stated, existed in Southern Rhodesia.]

[127] S/5469, same text as S/5471, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 103-105.

[128] 1078th meeting: para. 137.

[129] For texts of relevant statements see:
1064th meeting: Ghana, paras. 18, 22, 54-57, 72-73; United Kingdom, paras. 3-8;
1065th meeting: Mali, paras. 19, 28; United Arab Republic, para. 48;
1066th meeting: Tanganyika, para. 115; Uganda, para. 98; United Kingdom, paras. 4-5, 15-24, 52, 76;
1067th meeting: Morocco, para. 6; United States, paras. 28-29;
1068th meeting: Ghana, paras. 25-28; USSR, paras. 74-79;
1069th meeting: Brazil, para. 10; Norway, paras. 24-27.

At the 1064th meeting on 9 September 1963, the Council had before it, inter alia, a "Memorandum in regard to Southern Rhodesia" [130] submitted by the representative of Ghana to the Security Council on 28 August 1963, wherein continuance of the situation in Southern Rhodesia was described as "likely to endanger the maintenance of international peace and security". It therefore called for investigation by the Security Council under Article 34 of the Charter. In presenting the question before the Council, the representative of Ghana stated that it was

> "called upon to consider any issue which in the opinion of a Member State is likely to endanger peace or is a threat to peace and security; and we have come here because of the likely threat to peace which certain events in Southern Rhodesia are going to produce."

Such events, he added, would be the proposed transfer to the exclusive control of the Southern Rhodesian Government of the most powerful air force of Africa, together with a small but highly efficient army recruited on a racial basis. This transfer of powers was a consequence of the agreement reached at the Victoria Falls Conference for the dissolution of the Central African Federation. The process of handing over the powers and attributes of sovereignty to the Government of Southern Rhodesia, for which the United Kingdom was responsible, would be completed at an early date. This was why the Security Council should take "immediate remedial action" since it was its duty "to deal with such situations before they develop into full armed conflict". The Council should therefore impress upon the United Kingdom Government the extreme undesirability of proceeding with the transfer of any armed forces to Southern Rhodesia until a Government was established in the territory which would be fully representative of the whole population, irrespective of race, creed or colour.

At the 1065th meeting on 9 September 1963, the representative of Mali* also requested the Security Council "to adopt preventive measures in the interest of international peace and security". He further observed:

> "What we ask is within the competence of the Security Council and complies with the provisions of the Charter and of General Assembly resolution 1514 (XV). We think that the Security Council is called upon not merely to intervene after a breach of the peace has occurred but that its main task is to prevent breaches of the peace."

The representative of the United Arab Republic* also referred to the chain of events in connexion with the transfer of powers to the Southern Rhodesian Government, and which in his view caused a grave and immediate danger to peace and security in Southern Rhodesia, and, indeed, in all Africa. Such circumstances merited "urgent action by the Council".

At the 1066th meeting on 10 September 1963, the representative of Uganda* asserted that, in consequence of the transfer of powers, the situation in Southern Rhodesia was "getting to a point where peace and security will be threatened: threatened not only in the territory itself, but also in the neighbouring countries". This, he concluded, was why the Council was requested "to take preventive steps now".

The representative of Tanganyika* stated that developments in Southern Rhodesia had reached a stage in which peace in Africa was seriously threatened. The African States appealed therefore to the Council "to take action and to urge the United Kingdom to desist from transferring these enormous military forces and attributes of sovereignty to a minority and racist European settler Government".

The representative of the United Kingdom, after denying the competence of the Council on the grounds of domestic jurisdiction, rejected the argument that the "reversion of powers" to the Government of Southern Rhodesia would result in a situation in that territory of the nature referred to in Article 34 of the Charter. He called attention to the constitutional relationship between the Government of the United Kingdom and the Southern Rhodesian Government and remarked that there was no question of the latter using its armed forces for specific external adventures since the control of the use of these armed forces outside the frontier of Southern Rhodesia would be retained by the British Government. On the other hand, use of these armed forces for maintaining internal security and their availability for use in this sense by the Southern Rhodesian Government was clearly a matter of domestic jurisdiction which did not touch upon the Security Council's responsibilities for the maintenance of international peace and security. The situation in Southern Rhodesia was neither critical nor explosive and there was no ground for action under Chapter VII of the Charter nor had any evidence been produced that justified consideration of any of the measures contemplated in Chapter VI of the Charter.

At the 1067th meeting on 11 September 1963, the representative of Morocco expressed the view that the concept of a threat to peace was not a limited one. When juridical, political or economic decisions seriously affected the fate of the people of a colonial territory, such as in the case of the contemplated transfer of powers to the white Government of Southern Rhodesia, it was very difficult to say that there was no immediate or potential threat to peace, and it was still more difficult to contend that the threat lay rather in examination of the matter by the United Nations.

The representative of the United States observed that since the reversion of the armed forces to Southern Rhodesia in no way changed the degree of control exercised by the United Kingdom over those forces, there had in fact been no deterioration in the situation in Southern Rhodesia resulting from the action agreed upon at the Victoria Falls Conference such as would require Security Council action in accordance with its responsibility under the Charter.

At the 1068th meeting on 12 September 1963, the representative of Ghana introduced a draft resolution, [131] jointly sponsored with Morocco and the Philippines, under which the Council, after considering

[130] S/5403 and Corr.1.

[131] S/5425/Rev.1, 1068th meeting: para. 4.

that the transfer of powers to the Southern Rhodesian Government would aggravate the already explosive situation, invited the United Kingdom Government to delay transfer of any powers to its colony of Southern Rhodesia until a Government was established there which would be fully representative of its inhabitants. The United Kingdom Government was further invited not to transfer the armed forces and aircraft as envisaged by the recent Central African Conference.

In introducing this draft resolution the representative of Ghana maintained that there was to be an actual transfer of powers to the white minority Government of Southern Rhodesia and not a reversion of powers as the United Kingdom representative had tried to explain. In fact, the armed forces which were to be handed over to the Southern Rhodesian Government were far greater than they were in 1953. Besides, the army which was being transferred was an all-white army. These actions resulted in a threat to the peace which Central Africa, and, indeed, the whole of Africa faced, and which compelled the Council to act constructively in the light of the draft resolution before it.

The representative of the USSR, after quoting from the original explanatory memorandum[132] submitted by the African States, where it was stated that the transfer of forces to the Southern Rhodesian Government would "constitute a most serious threat to the security of the African continent and might well involve a threat to world peace", declared that it was the duty of the Security Council "to adopt effective measures", and that the measures provided for in the joint draft resolution constituted the minimum which the Security Council must adopt in the circumstances to prevent the implementation of the plans for granting Southern Rhodesia a fictitious independence, while preserving a system of exploitation by a minority of "white racists".

At the 1069th meeting on 13 September 1963, the representative of Brazil contended that while it was undeniable that the circumstances concerning the situation in Southern Rhodesia did not as yet constitute an acute threat to international peace and security, there was no doubt that all the ingredients of a highly explosive situation were to be found therein.

The representative of Norway felt that the implementation of plans to place armed forces at the disposal of the minority Government of Southern Rhodesia might lead to international friction in that area of Africa, within the meaning of Article 34 of the Charter. The Security Council was therefore entitled to examine this aspect of the Southern Rhodesian question and to adopt "such a resolution as would appear suitable in accordance with Chapter VI of the Charter".

At the 1069th meeting on 13 September 1963, the joint draft resolution failed of adoption. There were 8 votes in favour and 1 against, with 2 abstentions (the negative vote being that of a permanent member).[133]

[132] S/5382, O.R., 18th year, Suppl. for July-Sept. 1963, pp. 64-71.

[133] 1069th meeting: para. 94.

Chapter XI

CONSIDERATION OF THE PROVISIONS OF CHAPTER VII OF THE CHARTER

TABLE OF CONTENTS

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 cross references are given to chapter VIII to facilitate the consultation of the material in conjunction with the record of decisions contained in that chapter.

A new part V dealing with the "Consideration of the Provisions of Chapter VII of the Charter in General" has been included in the present Supplement.

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

As the previous volumes of the Repertoire indicate, decisions explicitly under Article 39 of the Charter have been exceptional. On one occasion[1] during the period under review two draft resolutions were submitted which recalled previous resolutions containing direct or indirect references to Article 39. One of the draft resolutions was adopted. However, the invocation of this Article in letters of submission and the employment of language derived from it both in these letters[2] and in draft resolutions have given rise to discussions[3] whether the situations under consideration by the Council corresponded to circumstances envisaged in Article 39 and whether in consequence the proposed action would merely serve to increase tensions. Consequently, in connexion with certain questions before it, the Council found it necessary to address itself to the problem of cessation of activities that might aggravate an existing situation and to encourage contending parties to settle their disputes by peaceful means. As a guide to the decisions of the Council in this regard, reference should be made to the Analytical Table of Measures adopted by the Security Council in chapter VIII and to chapter X of the present volume.

During the discussion of the question of race conflict in South Africa, certain members of the Council made a distinction between a situation considered to be "seriously endangering international peace and security" and "actual threats to the peace, breaches of the peace or acts of aggression", within the meaning of Chapter VII of the Charter and the kind of action which the latter would necessitate under that Chapter.[4]

Reference to Article 40 of the Charter has been made in the course of discussion on proposals to adopt provisional measures. On one occasion,[5] an invited representative requested that, as a provisional measure under Article 40, certain decisions of a regional organization be suspended pending an advisory opinion from the International Court of Justice on the legality of these decisions. On another occasion,[6] a permanent member proposed that certain interim measures within the meaning of Article 40 be adopted pending certain other actions by the Council. Neither of these proposals was put to the vote. In a third instance,[7] Article 40 was invoked by the President in a statement made after a motion for the adjournment of the meeting was adopted, interpreting the consensus of the Council by reiterating an appeal that no action should be taken in the Republic of the Congo

1/ Case 3.

2/ The Tabulation in part III of chapter X lists instances of submission of questions in which Article 39 was explicitly invoked or in which the language derived from that Article was employed. See above, pp. 253, 255.

3/ See Cases 1, 2. See also chapter VIII, pp. 157, 199.

4/ See chapter X, Case 12.

5/ See Case 2 below.

6/ Chapter VIII, p. 201.

7/ Chapter VIII, pp. 167-168.

that would aggravate the situation until the resumption of the debate on the item.

Article 40 was further referred to by the Secretary-General in his statement and communications [8] defining the temporary administration by the United Nations of the Kamina and Kitona bases in the Republic of the Congo as a provisional measure under Article 40.

For the statements bearing upon Article 40 in connexion with the question of the Charter authority concerning the United Nations action in the Republic of the Congo, see in this chapter, part V: Consideration of the provisions of Chapter VII of the Charter in general.

CASE 1. [9] COMPLAINT BY THE USSR (U-2 INCIDENT): In connexion with the USSR draft resolution: voted upon and rejected on 26 May 1960

[*Note:* The letter of submission referred to the question of "aggressive acts by the Air Force of the United States of America against the Soviet Union, creating a threat to universal peace". A draft resolution was submitted by a permanent member of the Council to condemn the incursions by United States aircraft into the territory of other States, and to regard them "as aggressive acts". Another permanent member asserted that the acts in question did not constitute acts of aggression within the meaning of Article 39 of the Charter. It was also maintained that the evidence produced had not established that a threat to universal peace had occurred. The draft resolution was not adopted.]

At the 857th meeting on 23 May 1960, the representative of the USSR stated that in submitting the question to the Council the Soviet Government started from the premise that one of the most dangerous aspects of the invasion of the airspace of a sovereign State was that it flouted the principle of State sovereignty and territorial inviolability, a principle which constituted the very foundation of peaceful relations among States and the violation of which led, as a rule, to war. [10] Besides, given the nature of the international situation and the existence of weapons of unprecedented destructive power, there was the added danger that if a United States aircraft invaded Soviet territory, the Soviet Union would have every reason to view it as an act of aggression and to deal the aggressor a retaliatory blow.

The USSR representative introduced a draft resolution [11] under which:

"The Security Council,

"...

"1. Condemns the incursions by United States aircraft into the territory of other States and regards them as aggressive acts;

"2. Requests the Government of the United States of America to adopt immediate measures to halt such actions and to prevent their recurrence."

The representative of the United States denied that the United States had committed any aggressive acts against the Soviet Union or any other country and asserted that the activities protested by the Government of the USSR had no aggressive intent but were designed to assure the safety of the United States and the "free world" against surprise attack by a Power which prided itself on its ability to devastate the United States and other countries by missiles equipped with atomic warheads.

At the 858th meeting on 24 May 1960, the representative of France observed that the USSR complaint of 18 May seemed to have been made on the basis of the provisions of Chapter VII of the Charter, and in particular of Article 39. His delegation, however, had serious doubts about the "aggressive nature" of the acts complained of. The overflights denounced by the USSR Government came, in his view, within the category of intelligence activities, and there were no rules of international law concerning the gathering of intelligence in peace-time. "That being so, the French delegation cannot agree that the facts protested against represent acts of aggression within the meaning of Article 39 of the Charter or under the rules of international law", nor had the evidence produced established that a threat to universal peace had occurred.

The representative of Argentina maintained that it was not for the Council to decide on the legality or illegality of the acts in question, but to decide whether they constituted aggression and should be condemned as such. He stated further that, since it had not yet been possible to draw up a specific international rule defining the cases which constituted aggression, resort would have to be made to generally accepted doctrine and to draft agreements which had been prepared on the subject. Using as a guide a USSR draft of 1956, [12] he pointed out that the United States overflights did not come within any of the cases of aggression envisaged in the draft. Furthermore, if the Soviet Union had thought that the flights constituted a threat to the peace for other reasons than because it was an act of aggression, then it should have submitted its complaint in a different form. Noting that the Security Council was not a judicial tribunal but a high executive body of a political character, charged with the maintenance of international peace and security, the representative of Argentina further asserted that its first duty "... is to ensure that its acts, instead of making the situation worse, will serve to improve it by creating, as far as possible, an atmosphere of relaxation and harmony".

The representative of Poland stated that there was convincing and irrefutable evidence in favour of the Soviet complaint of aggressive acts by the United

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[8] 887th meeting: para. 31; S/4475, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 126-127, paras. 3, 4; S/4599, document II, O.R., 15th year, Suppl. for Oct.-Dec. 1960, pp. 102-103; S/4651, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 71-73; S/4779, O.R., 16th year, Suppl. for April-June 1961, pp. 4-6.

[9] For texts of relevant statements, see:
857th meeting: USSR, paras. 53, 65-68; United States, paras. 101-102;
858th meeting: Argentina, paras. 44-50, 55, 56; France, paras. 7-11; Poland, para. 118.

[10] See also chapter XII, Case 3.

[11] S/4321, 857th meeting: para. 99.

[12] This draft agreement on the definition of aggression was submitted by the Soviet Union in 1956 to the Special Committee on the Question of Defining Aggression, GAOR, 12th Session, Suppl. No. 16, Annex II.

States Air Force against the Soviet Union which were a threat to the peace of the world. The real danger lay not only in the threat of military incidents, but mainly in the undermining of the rules of international law and the breach of the principle of sovereignty of all States, as well as in the violation of treaties and obligations. The consequences of such a state of affairs were distrust, international tension and a threat to peace. The task of the Council, therefore, was to reinstate the rule of law and respect for obligations and proper conduct in international relations.

At the 860th meeting on 26 May 1960, the USSR draft resolution was rejected by 2 votes in favour and 7 against, with 2 abstentions.[13/]

CASE 2.[14/] COMPLAINT BY CUBA (LETTER OF 8 MARCH 1962 FROM THE REPRESENTATIVE OF CUBA CONCERNING THE PUNTA DEL ESTE DECISIONS): In connexion with a request of Cuba for the adoption of certain provisional measures; the Council adjourned without taking any action on the request

[*Note:* During the consideration of the question, it was suggested that the proposal concerning the adoption of provisional measures under Article 40 not only conformed to the spirit and letter of the Charter, but also was the only one possible in the circumstances. On the other hand, it was argued that the Council had previously considered that aspect of the Cuban complaint and found it to be unjustified. If the Council were then to accede to the Cuban request it would be going back on its own decision when there were no new factors to justify fresh consideration.]

At the 992nd meeting on 14 March 1962, the Council considered the letter of 8 March 1962 from the representative of Cuba (S/5086). The letter[15/] requested the Council

> "under the terms of Article 40 of the Charter of the United Nations ... to inform the Council of the Organization of American States and the other organs of the inter-American system that, as a provisional measure, it is calling for the suspension of the agreements adopted at the Eighth Meeting of Consultation of the Ministers of Foreign Affairs of the American States, held at Punta del Este, Uruguay, and of such measures as may have been ordered in pursuance of those agreements, because the adoption and execution of those agreements constitute illegal acts and because they involve a threat to international peace and security."

At the same meeting, the representative of Cuba, after noting that he had requested the Council to refer certain questions to the International Court of Justice for an advisory opinion,[16/] urged that, pending the opinion of the Court, the Council decide to suspend the "illegal agreements" of Punta del Este together with any measures that might have been taken under those agreements, and that the regional organization should be notified of that decision.

At the 993rd meeting on 15 March 1962, the representative of the USSR, speaking in support of the Cuban proposal "that the Council should undertake a number of supplementary actions and measures on the basis of Article 40 of the United Nations Charter", suggested that such a proposal deserved the most serious attention and ought to be approved by the Council. He recalled that Article 40 envisaged such provisional measures as might be taken by the Security Council to prevent the aggravation of the situation.

> "Applying this to what we are now discussing, namely to the request to the International Court of Justice for an advisory opinion on the important questions of international law formulated in the letter from the representative of Cuba, we believe that the Security Council has a right and a duty to suspend implementation of the decisions taken at the Punta del Este meeting and of any decisions developing or supplementing them which may be taken until such time as the Security Council has received and considered the advisory opinion of the Court."

He was of the opinion that a provisional measure of the kind proposed not only conformed to the spirit and letter of Article 40 of the Charter, but also was "the only one possible in existing conditions", when there was no unanimity among the members of the Security Council about the nature of the final decision on the legal and political problems which the Security Council could take in connexion with the question raised by the Cuban Government. Moreover, a provisional measure of the sort proposed, and as envisaged in Article 40 of the Charter, would be without prejudice to "the rights, claims, or position of the parties concerned", because it would not prejudge the nature of the Security Council's final consideration on the question submitted by Cuba, but would prevent actions which could be irrevocable at a time when their legality was questioned by many Members of the United Nations, including members of the Council.

The representative of the United States observed that, viewed in the context of the resolutions adopted at Punta del Este and the precedent of the Dominican case, the questions raised in the letter from the representative of Cuba should be dismissed for lack of substantiality; "moreover, the insubstantiality of the questions demonstrates that there is even less reason for the Council to consider the Cuban demand that provisional measures be adopted, under Article 40, to suspend the implementation of the resolutions of Punta del Este."

At the 995th meeting on 20 March 1962, the representative of China expressed the view that the charge made by Cuba concerning the legality of the Punta del Este decisions was unfounded. Consequently, the

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13/ 860th meeting: para. 87. (In a telegram (S/4384) dated 13 July 1960, the USSR again requested an urgent meeting of the Council to examine the question of "new aggressive acts by the Air Force of the United States of America against the Soviet Union, creating a threat to universal peace". A USSR draft resolution (S/4406) submitted at the 880th meeting on 22 July 1960, calling for a condemnation of these provocative activities and their cessation was rejected by the Council at the 883rd meeting on 26 July 1960. For the developments concerning this question, see chapter VIII, pp. 185-186, and chapter X, Case 3.)

14/ For texts of relevant statements, see:
992nd meeting: Cuba, paras. 118-119;
993rd meeting: USSR, paras. 65-70; United States, paras. 124-125;
995th meeting: China, para. 27; France, paras. 55-57.

15/ S/5086, O.R., 17th year, Suppl. for Jan.-March 1962, pp. 88-90.

16/ See chapter VIII, p. 200, and chapter XII, Case 25.

action which Cuba was requesting the Council to take on those resolutions was unwarranted and undesirable.

The representative of France, after recalling Cuba's request for referral of certain questions relating to the Punta del Este decisions to the International Court of Justice, noted that the representative of Cuba was also asking the Security Council under the terms of Article 40 to call upon the Council of the Organization of American States and the organs of the inter-American system provisionally to suspend those decisions and any measures which might have been ordered in pursuance of those decisions on the grounds that the measures adopted were illegal and threatened international peace and security. Then, calling attention to the fact that during the previous month both the General Assembly and the Security Council had considered that aspect of the Cuban complaint and that neither of them had found the charges justified, he asserted that if the Council were to accede to Cuba's request it would be going back on its own decision when there were no new factors to justify a fresh consideration of the matter.

At the 998th meeting on 23 March 1962, the meeting adjourned without taking any action on the Cuban request.[17]

CASE 3.[18] THE PALESTINE QUESTION: In connexion with the decision of 9 April 1962 determining that the Israel attack of 16-17 March 1962 constituted a violation of the Council resolution of 19 January 1956

[*Note:* During the discussion a draft resolution was submitted under which Israel would be warned that sanctions would be invoked against it in the event of further aggression. It was not voted upon. A second draft resolution calling upon both parties to abide by the cease-fire arrangements was adopted by the Council. Both draft resolutions recalled the Security Council decision of 15 July 1948, which determined the situation in Palestine to be a threat to the peace within the meaning of Article 39 of the Charter.]

At the 1000th meeting on 3 April 1962, the representative of Syria submitted a draft resolution[19] in the preamble of which the Council would have recalled its resolutions of 24 November 1953, 29 March 1955 and 19 January 1956, concerning the Qibya, Gaza and Lake Tiberias incidents, respectively. After noting that the Council had called upon Israel to take effective measures to prevent the recurrence of such military actions, the resolution would condemn

> "Israel for the wanton attack which was carried out against Syrian territory on the night of 16-17 March 1962, in violation of its resolution of 15 July 1948, of the terms of the General Armistice Agreement between Syria and Israel and of Israel's obligations under the Charter of the United Nations."

Further, it would "again" warn Israel "of the Security Council's resolve to call for appropriate sanctions against Israel, should it resort once more in the future to such aggressive acts".

At the 1005th meeting on 6 April 1962, the Council also had before it a joint draft resolution[20] submitted by the United Kingdom and the United States, which, after deploring the hostile exchanges between the Syrian Arab Republic and Israel, would reaffirm the Security Council resolution of 19 January 1956, which condemned Israeli military action in breach of the General Armistice Agreement, whether or not undertaken by way of retaliation, and would determine that the Israeli attack of 16-17 March 1962 constituted a flagrant violation of that resolution, and call upon Israel scrupulously to refrain from such action in the future.

At the same meeting, the representative of Ghana, speaking on the incidents of 16-17 March, stated:

> "it was a deliberately planned military operation... It is not the first incident of this kind and, besides, the Security Council has clearly laid down on previous similar occasions that military action in breach of the Israel-Syrian General Armistice Agreement is not permissible, whether or not undertaken by way of retaliation."

He urged Israel to have fuller respect for, and to place greater reliance on the United Nations machinery and arrangements for maintenance of peace in the area than on the use of force.

The representative of the USSR, commenting on the Syrian draft resolution, observed:

> "... I fail to understand why certain delegations... although agreeing with us on what happened on the night of 16-17 March, are not prepared to support this extremely modest draft resolution, which is directly based on the facts of the case and represents ... a minimum programme of what the Council can and should do."

He pointed out further that the draft resolution did not even call for the immediate application of sanctions, although there would be every ground for such a demand, in view of the situation which the Council was obliged to examine and investigate.

He went on to say that not only were certain provisions of the draft resolution submitted by the United Kingdom and the United States in absolute contradiction with the factual side of the question, but also an attempt was made to place the victim of aggression and the aggressor on an equal footing.

17/ 998th meeting: para. 158. The draft resolution requesting an advisory opinion from the International Court of Justice was rejected by 2 votes in favour to 7 against, with 1 abstention; Ghana did not participate in the voting.

18/ For the texts of relevant statements, see:
998th meeting: Israel*, para. 84. Syria*, paras. 24, 37, 49, 52-55; USSR, paras. 143, 150-153; United States, paras. 100, 101;
1000th meeting: Israel, para. 90; Syria, paras. 56, 58;
1002nd meeting: France, para. 14;
1003rd meeting: China, paras. 10, 16; United Kingdom, paras. 26, 31, 34, 36;
1004th meeting: Venezuela, para. 14;
1005th meeting: Ghana, paras. 10-15; USSR, paras. 55, 57, 62; United States, paras. 26-27, 29-30, 35-36;
1006th meeting: USSR, paras. 93, 95; United Arab Republic, para. 78; United Kingdom, para. 82.

19/ S/5107/Rev.1, O.R., 17th year, Suppl. for April-June 1962, pp. 93-94.

20/ S/5110 and Corr.1. The text of this draft resolution, following its adoption, was circulated as S/5111, O.R., 17th year, Suppl. for April-June 1962, pp. 95-96.

At the 1006th meeting on 9 April 1962, the representative of the USSR, further commenting on the draft resolution submitted by the United Kingdom and the United States, stated:

"I think that the adoption of this draft resolution will serve as a serious warning and as an intimation that the Security Council as a whole, performing its functions under the Charter of the United Nations, demands that the Government of Israel should desist from acts of aggression and should strictly observe the Armistice Agreement, and that the Security Council will keep a close watch for any violation by Israel of the Armistice Agreement and will take action if such violations are committed...

"This categorical warning should be the last. If hereafter Israel should be guilty of violations of the Armistice Agreement or should commit other aggressive acts, the Security Council will, if this threat to international peace and security resulting from the incessant aggressive actions of Israel in the Middle East again comes before it, be obliged to apply the coercive measures which are contemplated in the Charter."

The representative of the United Arab Republic stated that if his request for a separate vote on certain paragraphs of the draft resolution submitted by the United Kingdom and the United States were accepted, he would not press for a vote on the Syrian draft resolution. Following the refusal by the representative of the United Kingdom to accede to this request, the joint draft resolution was voted upon as a whole and adopted by 10 votes in favour and 1 abstention.[21]

[21] 1006th meeting: para. 106.

Part II

CONSIDERATION OF THE PROVISIONS OF ARTICLE 41 OF THE CHARTER

NOTE

During the period under review, references to Articles 41 and 42 were made in connexion with three questions before the Council when the issue as to whether certain decisions of a regional agency constituted or did not constitute an "enforcement action", within the meaning of Article 53, was considered. References were made to the nature of the measures provided for in the two Articles and to their relationship to the concept of "enforcement action" in Article 53. The three case histories dealing with the matter are included in chapter XII, part IV, of the present volume. Other references to Article 41 made in connexion with Article 42 are mentioned in part III of the present chapter.

Part III

CONSIDERATION OF THE PROVISIONS OF ARTICLES 42-47 OF THE CHARTER

NOTE

During the consideration by the Council of the mandate of the United Nations Force in the Congo, it was maintained that the Security Council had made no explicit or implicit findings under Articles 41 and 42 for the adoption of enforcement measures to be carried out by the United Nations Force in the Congo. The statements bearing on the relevance of these Articles to the mandate of the Force are to be found in chapter V of the present volume.

As indicated in the note to part II of this chapter, references to Article 42 were made on three occasions which are included in chapter XII, part IV, of this volume.

Part IV

CONSIDERATION OF THE PROVISIONS OF ARTICLES 48-51 OF THE CHARTER

NOTE

During the period under review Article 49 was invoked, together with Article 25, in a draft resolution submitted and adopted in connexion with the situation in the Republic of the Congo. In the course of the discussion, the peremptory character of both Articles was emphasized, and no specific constitutional references were made to Article 49. For this reason the case is included in chapter XII, part IV: Consideration of the provisions of Article 25 of the Charter. For the same reason there are to be found in chapter XII, part IV, references to Article 49, based on the resolution of 9 August 1960, made by the Secretary-General in his statement before the Council and in his communications.

References to Article 51 of the Charter were made during consideration by the Council of the RB-47 incident, and the complaint by Cuba concerning decisions by the Organization of American States made at Punta del Este, Uruguay. These references are treated in chapter XII, parts II and V, respectively.

Part V

CONSIDERATION OF THE PROVISIONS OF CHAPTER VII OF THE CHARTER IN GENERAL

NOTE

In none of its five resolutions[22] adopted in connexion with the consideration of the situation in the Republic of the Congo, did the Security Council indicate which Article or Articles of the Charter constituted the Charter authority on which the Council based its decisions. Neither the original resolution authorizing the Secretary-General to take the necessary steps to provide the Government of the Congo with military assistance, nor the subsequent resolutions by which the Council decided upon further measures to be undertaken by the Secretary-General or by the United Nations Force contain an explicit or implicit reference to any Article of the Charter which would make possible a conclusive judgement as to whether the Council, in exercising its primary responsibility for the maintenance of international peace and security, had adopted its decisions under the Articles of Chapter VI or especially under Chapter VII of the Charter.[23]

Also, the constitutional discussions which preceded the particular decisions shed no light on the intentions of the Council with regard to the Charter provisions on which it was basing its actions.

The Council took into account limitations imposed by the Charter on its powers especially in connexion with its decisions relating to the mandate of the United Nations Force in the following two instances: in connexion with the question of the limitations of the powers of the Force with regard to the principle of non-intervention in domestic matters;[24] and with the question of the use of force by the Force.[25]

This issue was dealt with, in relation to the above-mentioned two questions, in several interventions by the Secretary-General who, while drawing attention to the fact that he was expressing his own views which had not been endorsed by the Security Council or by the General Assembly, in some instances stressed the negative aspect of the matter by referring to those Articles of the Charter on which the action of the Council could not, in his opinion, have been deemed to be based.

However, deliberations in the Council on these two and other pertinent questions are not conducive to ascertaining which of the Articles of the Charter had constituted or could have constituted the basis for the Council's decisions.

The case history presented below relates to the proceedings in the Council in which, within the framework of a discussion of the provisions of two draft resolutions submitted, the question of the Charter authority underlying the Council's decisions was dealt with in constitutional terms.

Since the statements were made in connexion with the issue as to whether the Council had been or had not been acting under the provisions of Chapter VII of the Charter, the case history is included in part V of this chapter under the heading: Consideration of the Provisions of Chapter VII in General.

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[22] Resolution S/4387 adopted on 14 July 1960 (873rd meeting), resolution S/4405 adopted on 22 July 1960 (879th meeting); resolution S/4426 adopted on 9 August 1960 (886th meeting), resolution S/4741 adopted on 21 February 1961 (942nd meeting); and resolution S/5002 adopted on 24 November 1961 (982nd meeting).

[23] Only in resolution S/4426 adopted on 9 August 1960 were explicit references made to Articles 25 and 49 with regard to the obligations of Member States to accept and carry out the decisions of the Council and to afford mutual assistance in carrying out measures decided upon by the Council (oper. para. 5). This resolution was reaffirmed by resolution S/4741 adopted on 21 February 1961 (part A, oper. para. 5). In the same resolution, an implied reference was made to Article 49 (part B, oper. para. 3). In resolution S/5002 adopted on 24 November 1961 the four previous resolutions were recalled (preamble, para. 1).

[24] See chapter V, Cases 2 (i–ii).

[25] See chapter V, Cases 2 (iii–vii).

CASE 4.[26] SITUATION IN THE REPUBLIC OF THE CONGO: In connexion with the draft resolution submitted by Poland: voted upon and rejected on 14 December 1960; and with the joint draft resolution submitted by Argentina, Italy, the United Kingdom and the United States and the USSR amendments thereto: the amendments voted upon and rejected on 14 December 1960, the joint draft resolution voted upon and not adopted on 14 December 1960

[*Note:* In connexion with the consideration of the above-mentioned draft resolutions and amendments, statements were made relating to the question as to whether the resolutions of the Security Council on the situation in the Congo were or were not adopted under the provisions of Chapter VII of the Charter. A draft resolution calling upon the Secretary-General to secure the release of Mr. Lumumba and his colleagues, to take steps to ensure the resumption of the activities of the lawful Government of the Republic of the Congo, and upon the Command of the United Nations Force to disarm "the terrorist bands of Mobutu" was rejected; a joint draft resolution requesting the Secretary-General to continue his efforts to assist the Republic of the Congo in the restoration of law and order and in adopting measures tending to safeguard civil and human rights was not adopted, while amendments thereto, corresponding to the provisions of the first draft resolution, were rejected.]

At the 914th meeting on 8 December 1960, the President, speaking as the representative of the USSR, introduced a draft resolution.[27]

At the same meeting, the representative of Argentina introduced a draft resolution[28] submitted jointly with Italy, the United Kingdom and the United States.

At the 915th meeting on 8/9 December 1960, the Secretary-General stated that the question of whether the mandate of the United Nations Force extended beyond the protection of life and property into the realm of enforcement of one or another political solution or constitutional rule[29] had been the subject of lengthy debates in the Council and some representatives were giving to the mandate an interpretation which was not warranted by the history of the case. Assuming, however, that their interpretation of the mandate was correct, the Secretary-General asked:

> "Has the Council ... ever given the Secretary-General or the Force the means—I mean now the legal means—by which we could carry out the wider mandate which you believe has been given to the Force? And if so, let me ask this last question: could the Council have given such means to the Force, through the Secretary-General, without acting against the clear injunctions of the Charter? ... it is even doubtful if the Council ever has acted under Chapter VII. The very most that can be said is that the Council's actions may have been under Article 40 of the Charter ...."[30]

At the 916th meeting on 9/10 December 1960, the representative of Ecuador stated that no mandate could properly exceed the authority provided for in the Charter and it was for the Council to determine the limits within which its action must be confined.

> "It would stretch legal ingenuity to regard Article 39 of the Charter as applicable to the case before us, which is a power conflict, a struggle for political leadership, a dispute over the legitimacy of governments, in short, a problem of an internal constitutional nature. And since the Congo is a free and independent sovereign State, this is unquestionably a matter within its domestic jurisdiction, which is safeguarded by Article 2 (7) of the Charter."

At the 917th meeting on 10 December 1960, the representative of Ceylon stated that the United Nations Force had applied the mandate in too restricted a manner in a fast-changing situation which, in order to justify the presence of the United Nations Force in the Congo, required a completely new approach. If the Secretary-General's interpretation that "the Security Council resolutions gave him a certain mandate, which precluded him from taking action for the maintenance of law and order in the Congo, which did not envisage the involvement in matters of internal politics or dealing with internal policies", was correct, it was the duty of the Council "to give a new mandate to the Secretary-General, for the utilization

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[26] For texts of relevant statements, see:

915th meeting: Secretary-General, paras. 155, 157;

916th meeting: Ecuador, paras. 65, 66;

917th meeting: Ceylon, paras. 28–31, 34–38; Secretary-General, para. 64;

920th meeting: Ceylon, para. 107; Poland, para. 169; Secretary-General, paras. 73–75.

[27] S/4579, 914th meeting: para. 62. For the summary of the provisions of the draft resolution, see chapter VIII, p. 170.

[28] S/4578, see S/4578/Rev.1, O.R., 15th year, Suppl. for Oct.-Dec. 1960, pp. 82–83, and footnote 11. For the summary of its provisions, see chapter VIII, p. 171.

[29] At the 913th meeting on 7 December 1960 the Secretary-General recalled that at the initial stage there had been no United Nations concern with the constitutional issues or political institutions of the Congo and, referring to demands made after the adoption of the first two resolutions that the United Nations Force should take action against competing political groups on the basis of constitutional provisions, expressed the view that the Council had to stand by the mandate as laid down, interpreted strictly in accordance with the principles of the Charter and adjusted to the peculiar circumstances currently prevailing in the Congo (913th meeting: paras. 26–27, 60).

[30] On two other occasions, the Secretary-General made statements, as follows:

At the 884th meeting on 8 August 1960, the Secretary-General pointed out that the Charter stated in several Articles the obligations of Member States in relation to the Organization in a situation such as the current one in the Congo, the solution of which was a question of peace or war. Having quoted Articles 25, 40, 41 and 49, the Secretary-General said:

"The resolutions of the Security Council of 14 July [S/4387] and 22 July [S/4405] were not explicitly adopted under Chapter VII, but they were passed on the basis of an initiative under Article 99. For that reason I have felt entitled to quote three articles under Chapter VII, and I repeat what I have already said in this respect: in a perspective which may well be short rather than long, the problem facing the Congo is one of peace or war—and not only in the Congo." (884th meeting: paras. 21–26).

At the 887th meeting on 21 August 1960, the Secretary-General stated that the Council could not be deemed

"to have instructed the Secretary-General, without stating so explicitly, to act beyond the scope of his own request or contrary to the specific limitation regarding non-intervention in internal conflicts. . . Moreover, in the light of the domestic jurisdiction limitation of the Charter, it must be assumed that the Council would not authorize the Secretary-General to intervene with armed troops in an internal conflict, when the Council had not specifically adopted enforcement measures under Articles 41 and 42 of Chapter VII of the Charter." (887th meeting: para. 44).

of the forces in the Congo, to carry out the purpose for which they were sent".

There were no grounds for any fears that the Council, by giving a wider mandate, would be acting against the Charter, since in this case the Head of a State had requested the United Nations to render certain assistance of a specified kind.

> "Article 39 of the Charter is clear as regards the duties of the Security Council whenever there exists a threat to peace or a breach of the peace. Article 40 further elaborates the duties of the Security Council to prevent an aggravation of a situation likely to cause a breach of international peace and security. The United Nations is today in the Congo, in all its aspects, because it was invited by the legitimate and unquestioned Government, so that our action can in no way be regarded as an intervention in matters essentially within the domestic jurisdiction of the Republic of the Congo."[31]

At the same meeting, the Secretary-General, referring to the statement of the representative of Ceylon, said that Articles 39 and 40 of the Charter might be considered "as the background for action taken, although that is not quite clear legally". It had also been hinted that the Council might be entitled to act, as indicated by the representative of Ceylon, on the basis of the fact that the United Nations assistance had been requested by the Central Government of the Congo. However, the Council had to face a situation where it would act against the person who had been at least one of the co-signatories of the document on which the action was based.[32]

At the 920th meeting on 13/14 December 1960, the Secretary-General stated:

> "In interventions in the course of this debate in the Council, I have pointed out that the Council has never explicitly referred to the Charter Article on the basis of which it took action in the Congo. In particular, it is significant that the Council did not invoke Articles 41 and 42 of Chapter VII, which provide for enforcement measures and which would override the domestic jurisdiction limitation of Article 2 (7). I mention this as one of the reasons why some far-reaching interpretations of the mandate of the Force ... are, quite frankly, difficult to understand. Those interpretations would require at least that the Security Council had clearly taken enforcement measures under Articles 41 and 42."

The Secretary-General then quoted from his statement at the 887th meeting the following:

> "... 'in the light of the domestic jurisdiction limitation of the Charter, it must be assumed that the Council would not authorize the Secretary-General to intervene with armed troops in an internal conflict, when the Council had not specifically adopted enforcement measures under Articles 41 and 42 of Chapter VII'."

and stated:

> "Members may remember that no one in the Council raised any question about this statement.
>
> "It is true that, in its resolution of 9 August [S/4426], the Council referred to Articles 25 and 49 as the basis for the legal obligation imposed on the States concerned by the Council's action, but this is certainly not the same as invoking enforcement measures.
>
> "My own view, which I have expressed to the Council, is that the resolutions may be considered as implicitly taken under Article 40 and, in that sense, as based on an implicit finding under Article 39. But what I should like to emphasize is that neither the Council nor the Assembly has ever endorsed this interpretation, much less put such endorsement in a resolution. What is even more certain is that the Council in no way directed that we go beyond the legal basis of Article 40 and into the coercive action covered by Articles 41 and 42. Certainly the Organization, as represented by the Security Council and the General Assembly, must consider its responsibility as an executive organ to take carefully into account the limits on its authority as indicated by the facts which I have just recalled."

The representative of Ceylon pointed out that Articles 40 and 41 had been quoted by the Secretary-General and stated that they would have vested the Security Council's decision with a great cogency and force, but it had been unnecessary for the Security Council to have recourse to them. The Council had not referred to those Articles in its resolutions or in any other document because the strength and the authority of an invitation by the Central Government of the Congo had been sufficient to make the action taken by the Security Council lawful action and to entitle the United Nations to send its forces into the Congo. Once the United Nations was in the Congo, it should take action which should go beyond the part which the Security Council had been playing in some cases relating to law and order.

At the same meeting, the President, speaking as the representative of the USSR, submitted amendments[33] to the four-Power draft resolution.

At the same meeting on 13/14 December 1960, the USSR amendments to the four-Power draft resolution were rejected;[34] the four-Power draft resolution failed of adoption;[35] and the USSR draft resolution was rejected.[36]

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[31] The representative of Ceylon suggested that the United Nations should ask the President of the Republic of the Congo to reconvene both Houses of Parliament; should use every persuasive measure to promote a round-table conference of political leaders of all parties in the Congo; and the United Nations Command must be directed to take all necessary measures to disarm any private armies in the Congo operating under the orders of "authorities which have no basis in the constitution of the Congo". (917th meeting: paras. 46, 50, 53).

[32] For the above statement of the Secretary-General, see also chapter I, Case 34.

[33] S/4578, 920th meeting: para. 53. For the summary of the provisions of the amendments, see chapter VIII, p. 171.

[34] 920th meeting: paras. 151–155.

[35] 920th meeting: para. 156.

[36] 920th meeting: para. 159.

Chapter XII

CONSIDERATION OF THE PROVISIONS OF OTHER ARTICLES OF THE CHARTER

TABLE OF CONTENTS

INTRODUCTORY NOTE

Chapter XII covers the consideration by the Security Council of Articles of the Charter not dealt with in the preceding chapters. [1]

Part I

CONSIDERATION OF THE PROVISIONS OF ARTICLE 1 (2) OF THE CHARTER

Article 1 (2) of the Charter

"2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace." [1]

NOTE

The two case histories listed in this part deal with the first instances of the consideration of the provisions of Article 1 (2) in the proceedings of the Council.

CASE 1. [2] COMPLAINT BY PORTUGAL (GOA): In connexion with the draft resolution submitted by France, Turkey, the United Kingdom and the United States recalling the provisions of Article 1 (2): voted upon and failed of adoption on 18 December 1961

[*Note:* During the consideration of the Portuguese complaint concerning "Indian aggression" against Goa, Damao and Diu, a draft resolution was submitted calling for the cessation of hostilities, the withdrawal of Indian forces and the solution by peaceful means of their differences by the parties. In the preamble of the draft resolution was recalled Article 1 (2), to which implied references were made in the debate. The principle of self-determination was considered by the representative of India as inapplicable in the case of the population of Goa, Damao and Diu, and the reference to Article 1 (2) was also questioned by another representative as inconsistent with the operative part of the draft resolution.]

At the 987th meeting on 18 December 1961, the President, speaking as the representative of the United Arab Republic, stated that the peoples of the territories of Goa, Damao and Diu never had the right of self-determination and had not been consulted on whether or not they had agreed to their integration with Portugal.

At the 988th meeting on the same day, the representative of Ecuador said it had been argued that the matter before the Council was a dispute about colonial territories. He wondered whether Portugal was willing to meet its international obligations by complying with the resolutions of the United Nations and to take steps so that the fate of the peoples whose territories were in dispute might be decided according to the principle of self-determination.

The representative of Chile observed that the parties to the conflict should take into consideration the freely expressed wishes of the inhabitants of the three Portuguese enclaves. If India were to take possession of the territories immediately, it could have no satisfaction, because it would not have integrated them into its own territory by lawful means.

The representative of India* stated that there were instances when the question of self-determination could be raised in a certain context, as, for example, in Angola. However, in the situation under consideration, the question could not be raised, since there could be no self-determination of an Indian against an Indian.

At the same meeting, the representative of the United States introduced a draft resolution [3] submitted jointly with France, Turkey and the United Kingdom, whereby the Security Council would recall

"that Article 1, paragraph 2, of the Charter specifies as one of the purposes of the United Nations to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples," (preamble, para. 3).

The representative of the USSR, after quoting the first [4] and the third preambular paragraphs of the joint draft resolution, stated that if its sponsors had been consistent, then they should have called upon Portugal to put an end to its colonial domination in Goa, and to liberate the people of Goa immediately, so that friendly relations among nations could be established on the basis of respect "for the principle of equal rights and self-determination of peoples".

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[1] For observations on the methods adopted in compilation of this chapter, see: Repertoire of the Practice of the Security Council, 1946-1951, Introductory Note to chapter VIII, part II: Arrangement of chapters X-XII, p. 296.

[2] For texts of relevant statements, see:
987th meeting: President (United Arab Republic), para. 125.
988th meeting: Chile, para. 30; Ecuador, paras. 13, 15, 16; India*, para. 85; USSR, paras. 123, 124.

[3] S/5033, 988th meeting: para. 97.

[4] The first preambular paragraph recalled the provisions of Article 2 (3) and 2 (4).

At the same meeting, the joint draft resolution submitted by France, Turkey, the United Kingdom and the United States failed of adoption.[5] There were 7 votes in favour, 4 against (one of the negative votes being that of a permanent member).

CASE 2.[6] SITUATION IN TERRITORIES IN AFRICA UNDER PORTUGUESE ADMINISTRATION: In connexion with the joint draft resolution submitted by Ghana, Morocco and the Philippines: voted upon and adopted on 11 December 1963

[*Note:* The concept of self-determination was discussed mainly during the second part of the consideration of the item. Portugal had contended that there was more than one modality of self-determination, just as there was more than one modality with regard to the form of the administration of a State, and that the principle of self-determination would be applied to African territories under its administration in a special context and within a national framework. Objections to this interpretation were raised on the ground that it actually constituted a denial to the peoples of those territories of the essential alternative of deciding on independence from foreign sovereignty. The Portuguese Government's concept of self-determination and of the context of its operation were fundamentally at variance with those laid down by the United Nations, particularly in the Declaration on the granting of independence to colonial countries and peoples. A joint draft resolution, which reaffirmed the interpretation of self-determination as laid down in that Declaration (General Assembly resolution 1514 (XV)), was adopted.]

At the 1049th meeting on 31 July 1963, in connexion with the situation in territories in Africa under Portuguese administration, the Security Council adopted a draft resolution[7] jointly sponsored by Ghana, Morocco and the Philippines, and which incorporated the amendments[8] submitted by Venezuela. This resolution, as adopted,[9] provided in part:

"The Security Council,

"...

"5. Urgently calls upon Portugal to implement the following:

"(a) The immediate recognition of the right of the peoples of the Territories under its administration to self-determination and independence,

"...

"(d) Negotiations, on the basis of the recognition of the right to self-determination, with the authorized representatives of the political parties within and outside the Territories with a view to the transfer of power to political institutions freely elected and representative of the peoples, in accordance with resolution 1514 (XV),

"...

"7. Requests the Secretary-General to ensure the implementation of the provisions of this resolution, to furnish such assistance as he may deem necessary and to report to the Security Council by 31 October 1963."

In pursuance of the mandate given to him in the resolution, the Secretary-General submitted a report[10] informing the Council that, under his auspices, talks had been held between the representatives of Portugal and certain African States.[11] In the first phase of these talks, which were devoted mainly to the clarification by the representative of Portugal of his Government's concept of self-determination, he had stated the following:

"... The point at issue appeared to be not so much as to the question of self-determination, but as to agreement on a valid definition of the concept of self-determination...

"...

"To Portugal, self-determination meant the consent of the people to a certain structure and political organization. It came about by participation in administration and by participation in political life. Portugal submitted that when in any given country the population participated in administrative matters at all levels and in political life at all levels, then the population was participating in decisions regulating the country's affairs and decisions affecting the life of that country. This was what was happening in Portuguese territories. ... They participated in discussions, not only on any given territory, but on matters pertaining to the over-all State. This represented the free expression of the wishes and will of the population and their participation in administration and in political life of the territory."

The report of the Secretary-General also noted that the representatives of the African States had maintained that "So far as the Portuguese concept of self-determination was concerned, it could only be acceptable if it meant that the people had the right to determine the future of their territories and that they had the right to opt out of Portugal."

At the 1079th meeting on 6 December 1963, the representative of Liberia* stated that the African States could not accept the Portuguese interpretation of "self-determination", because if it were accepted, "it would in effect mean that Portugal had already applied the right of self-determination to its territories". The African States had therefore requested clarification of the statement of the Foreign Minister of Portugal, and the clarification which had been given was also quoted in the report of the Secretary-General. It referred, among others, to

[5] 988th meeting: para. 129.

[6] For texts of relevant statements, see:
1079th meeting: Liberia*, paras. 12-13, 17-22, 32-36; Tunisia*, paras. 50-60.
1080th meeting: Sierra Leone, para. 31.
1081st meeting: Ghana, paras. 61, 72-77.
1082nd meeting: Ghana, paras. 95, 101;
1083rd meeting: President (United States), paras. 142-144; Brazil, paras. 91-95; Philippines, paras. 43, 46, 48-52; Portugal*, paras. 23-35; United Kingdom, paras. 67, 76-77.

[7] 1049th meeting: para. 17.

[8] S/5479, 1048th meeting: para. 21.

[9] S/5380, O.R., 18th year, Suppl. for July-Sept. 1963, pp. 63-64.

[10] S/5448 and Add.1-3, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 55-86, paras. 11, 12.

[11] For the role of the Secretary-General in connexion with the talks, see chapter I, Case 52.

an envisaged plebiscite "within the national framework", its purpose being "to enable the people to have an opportunity to express their views on the Government's overseas policy". In the view of the representative of Liberia, the plebiscite thus defined meant that the Africans in territories under Portuguese administration would not be given a freedom of choice so that their true aspirations could be made known clearly.

After referring to the debates on the principle of self-determination at San Francisco, the representative of Liberia quoted the following explanation which had emerged from the respective Committee when the final draft of Article 1 (2) of the Charter was adopted:

> "The Committee understands that the principle of equal rights of peoples and that of self-determination are two complementary parts of one standard of conduct; that the respect of that principle is a basis for the development of friendly relations and is one of the measures to strengthen universal peace; that an essential element of the principle in question is a free and genuine expression of the will of the people ..."

The historical development of Chapter XI of the Charter also left no doubt that the political aspirations of dependent peoples were very important and that self-government did not exclude independence. The efforts and the success of the United Nations could be seen in the acceptance of this interpretation of self-determination by the United Kingdom, France, Belgium, and the Netherlands, all of which held colonial areas. Also, Spain had taken a significant step in that direction. General Assembly resolutions 1514 (XV), 1542 (XV) and 1742 (XVI), as well as Security Council resolution S/4835 adopted on 9 June 1961, should have removed any doubts of the Portuguese Government concerning the meaning of self-determination. It could not be assumed that self-determination meant one thing to all the other Members of the United Nations, and another thing to Portugal. The Council would therefore be requested to express again, in unequivocal terms, what was meant by the right of self-determination, which Portugal had so far failed to recognize.

The representative of Tunisia* stated that the interpretation of the principle of self-determination by the Foreign Minister of Portugal would destroy its juridical value on the international level, and its political significance in relation to the provisions of Security Council resolution S/5380, adopted on 31 July 1963. He further stated:

> "The principle of self-determination must take into account in its application two basic factors: first, the actual separation of the territory concerned from the metropolitan area, which is the case of the colonial territories under Portuguese domination according to General Assembly resolution 1542 (XV) of 15 December 1960; secondly, the inherent right to independence of the populations consulted, under the terms of General Assembly resolution 1514 (XV) of 14 December 1960. This has emerged very clearly from all the debates in the General Assembly both in connexion with the establishment of the right of peoples to self-determination and in connexion with other colonial problems."

The peoples themselves had to exercise the free choice either constitutionally to link themselves with the metropolitan area, or to break away from it. The Portuguese Government could not pretend to recognize the right of the peoples under its rule to self-determination while at the same time denying them the essential choice between accepting and rejecting external sovereignty. This attitude meant not only a "restriction" on the right to self-determination, but a "negation" of it.

At the 1080th meeting on 6 December 1963, the representative of Sierra Leone* stated:

> "What the African States wish to emphasize ... is that in the exercise of self-determination, no choice should be excluded... To exclude the possibility that the people of Angola might of their own free will choose to become a free, sovereign and independent State, is to predetermine and to railroad the results..."

At the 1081st meeting on 9 December 1963, the representative of Ghana, referring to the interpretation of self-determination in Portugal as described in the report of the Secretary-General, after quoting from the text of General Assembly resolution 1514 (XV), stated:

> "It is clear from all this that the Portuguese Government's concept of self-determination and of the context of its operation are fundamentally at variance with those laid down by the United Nations and, in particular, in the Declaration on the granting of independence to colonial countries and peoples as set out in the General Assembly resolution.
>
> "We are forced to conclude, therefore, that Portugal does not intend to give to the peoples of the territories under its administration a free choice to determine their future...
>
> "The responsibility of the Security Council is to leave Portugal no doubt as to the meaning of self-determination...
>
> "The Council should reaffirm the definition of self-determination as laid down by the General Assembly ..."

At the 1082nd meeting on 10 December 1963, the representative of Ghana introduced a draft resolution [12] jointly sponsored with Morocco and the Philippines. The text included the following operative paragraph:

> "The Security Council,
>
> "...
>
> "4. Reaffirms the interpretation of self-determination as laid down in General Assembly resolution 1514 (XV) as follows:
>
> "'All peoples have the right to self-determination; by virtue of that right they freely determine their

12/ S/5480, same text as S/5481, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 109-110.

political status and freely pursue their economic, social and cultural development.'"

At the 1083rd meeting on 11 December 1963, commenting on this paragraph, the representative of Portugal* quoted from the text of General Assembly resolution 222 (III) of 3 November 1948, according to which, in his view,

"it was left to the absolute discretion of Member Governments to decide when they should cease transmitting information under Article 73 e, and, in terms of that resolution, self-determination meant a constitutional development which, in the unilateral opinion of the responsible Member Government, had brought self-government to any given territory."

He also referred to General Assembly resolutions 748 (VIII) of 27 November 1953 and 849 (IX) of 22 November 1954, and observed:

"Therefore, as late as 1954, we find self-determination achieved through constitutional alterations of which the Assembly was apprised by the responsible Member Governments, and we also find that the opinion of the responsible Member Government was paramount and accepted by the Assembly."

He further referred to General Assembly resolutions 945 (X) of 15 December 1955 and 1469 (XIV) of 12 December 1959, both of which reaffirmed General Assembly resolution 222 (III), and remarked:

"... nowhere in the resolutions I have just mentioned is self-determination linked with the question of international sovereignty or with any predetermined results or with any special options to be approved or imposed from outside... Here, then, we have a concept of self-determination approved by the United Nations."

This concept, he added, might not be valid any longer since there appeared to be several legitimate means of achieving self-government, and more than one modality of self-determination. However, he contended that

"the solutions proposed by the Assembly and the criteria followed by it have varied considerably and have changed from time to time, both from a theoretical and from a practical point of view. One does not know what is really meant by a United Nations concept of self-determination or of its implementation."

In the view of the representative of the Philippines, the definition of the Portuguese concept of self-determination negated the very spirit of self-determination. According to the meaning of self-determination set forth in General Assembly resolution 1514 (XV), the people must have the right to choose for themselves their political status without coercion or repression or predetermined concepts. Only Portugal could decide on the procedure of bringing about self-determination to its territories, but it had to decide in no uncertain terms that its objectives must include the capacity to request complete independence.

The representative of the United Kingdom stated:

"... we have urged the Portuguese Government to apply this principle to the peoples of the territories under its administration, and to give them the opportunity, through self-determination, to decide their own future. We do not say that the result should be pre-judged or that the United Nations or any other body should determine the timing and pace of progress towards self-government, independence, association with Portugal, or whatever choice is made. We believe this to be Portugal's responsibility in conjunction with the peoples concerned. But the process must start.

"...

"The Charter ... upholds the principle of self-determination of peoples. We accept this, and apply it. We believe... that its application in any particular case must depend on all the circumstances. We believe also that self-determination partakes in essence of politics, rather than of obligation in law.

"In the present case ... namely, the territories under Portuguese administration, we have repeatedly said that, in our view, the time has come when the principle of self-determination should be applied..."

The representative of Brazil remarked that there was no fundamental incompatibility between the positions assumed by the various parties on the question before the Council. These points of coinciding interests should be explored further through consultations and renewed negotiations. In this connexion he referred to the conclusions of the report[13] of the Secretary-General that the Portuguese Government "is not opposed to the principle of self-determination as embodied in the Portuguese concept of the term and within its context", and "that the Portuguese Government has not denied that the principle applies to the peoples of the overseas territories".

The President, speaking as the representative of the United States, stated:

"We believe that the peoples of the Portuguese territories in Africa, in exercising their right ... freely to determine their political status, should have before them a full choice of modalities and a full choice of political structures, including, although not limited to, independent sovereignty. This means, on the one hand, that the end result of an act of self-determination should not be limited from inside, and, on the other, that it should not be imposed or limited from outside.

"... Emergence as a sovereign independent State, free association with an independent State, or integration with an independent State ... are the types of choices to which an exercise of self-determination should give access.

"What the results will be must be left to the peoples to decide. Indeed, the concept of self-determination means that it is not for us to decide. Our responsibility, rather, is to help create the circumstances where the peoples themselves can make a free, unfettered and full choice."

At the same meeting, the joint draft resolution was adopted[14] by 10 votes in favour, none against, with 1 abstention.

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[13] S/5448 and Add.1-3, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 55-86, paras. 14, 16.

[14] 1083rd meeting: para. 158.

Part II

CONSIDERATION OF THE PROVISIONS OF ARTICLE 2 OF THE CHARTER

A. Article 2 (4) of the Charter

"4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."

NOTE

Nine case histories bearing on the provisions of Article 2 (4) are dealt with in this section. The provisions of Article 2 (4) were explicitly invoked in one draft resolution.[15] In one instance, while it was contended, on the one hand, that Article 2 (4) had been violated, objections were raised, on the other hand, to its application on the grounds that the issue was a colonial matter and that the State complaining of aggression had not complied with a number of resolutions of the General Assembly on the question of decolonization.[16] In one draft resolution, language similar to the phraseology of Article 2 (4) was used,[17] and in three draft resolutions implied references to it were made.[18] In connexion with the considerations of all these draft resolutions explicit and implicit references to Article 2 (4) were made during the discussion of the Security Council while in three other instances such references to Article 2 (4) were made only in the debates in the Council.[19]

CASE 3.[20] COMPLAINT BY THE USSR (U-2 INCIDENT): In connexion with the USSR draft resolution voted upon and rejected on 26 May 1960.

[*Note:* In its letter[21] of submission, the Government of the USSR requested an urgent meeting of the Council to examine the question of "aggressive acts by the Air Force of the United States of America against the Soviet Union, creating a threat to universal peace". During the debate, the USSR submitted a draft resolution whereby the Council would condemn these acts as aggressive and call for their termination. On the other hand, it was pointed out that the overflights had no aggressive intent and that the fact that assurance had been given that the flights had been discontinued and were not to be resumed indicated the acceptance of international law and treaty obligations and made formal condemnation unnecessary.]

At the 857th meeting on 23 May 1960, the Security Council had before it a USSR draft resolution[22] under which:

"The Security Council,

"...

"Noting that violations of the sovereignty of other States are incompatible with the principles and purposes of the Charter of the United Nations,

"...

"1. Condemns the incursions by United States aircraft into the territory of other States ... ;

"2. Requests the Government of the United States of America to adopt immediate measures to halt such actions and to prevent their recurrence."

In submitting this draft resolution, the representative of the USSR stated that the question before the Council had to do with aggressive acts prepared in advance and carried out with the knowledge and on the instructions of the United States Government. The USSR Government, in bringing the question to the attention of the Council, started from the premise that one of the most dangerous aspects of such a policy was that it flouted the principle of State sovereignty. The inviolability of the territory of States had always been and remained one of the most important universally acknowledged principles of international law. The recognition and observance of that principle constituted the very foundation of the maintenance of peaceful relations among States.

The representative of the United States declared that "the presence of a light, unarmed, single-engine, non-military, one-man plane" was not aggression. Quoting a statement made by the President of the United States in Paris on 16 May 1960 concerning the flights, he said that these activities had no aggressive intent but were to assure the safety of the United States and the "free world" against surprise attack by the USSR. He noted that the USSR Government had repeatedly "... in contravention of Article 2, paragraph 4, of the Charter ... used force and threats of force in its relations with other sovereign States. That is a clear Charter violation."

At the 858th meeting on 24 May 1960, the representative of France observed that while it was true that the overflights denounced by the USSR were regarded by that Government as a violation of its frontiers, it should be borne in mind that the flights in question, "carried out by unarmed aircraft, were not made for the purpose of changing the established international order".

The representative of Argentina maintained that the territorial sovereignty of every country great or small should be respected.

"We do not believe that any necessity can make it lawful or desirable for a nation to violate this

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15/ Case 9.
16/ Case 8.
17/ Case 4.
18/ Cases 3, 6, 10.
19/ Cases 5, 7, 11.
20/ For texts of relevant statements, see:
857th meeting: USSR, paras. 23, 27, 53; United States, paras. 101, 102, 108, 114;
858th meeting: Argentina, paras. 50-59; France, para. 11; Poland, paras. 83-85, 97-98;
859th meeting: President (Ceylon), paras. 51, 62.
21/ S/4314, S/4315, O.R., 15th year, Suppl. for April-June 1960, pp. 7-10.
22/ S/4321, 857th meeting: para. 99.

rule, even for a brief period of time. Today more than ever, strict compliance with this rule is one of the guarantees of the preservation of the peace with justice for which many countries are constantly striving."

The representative of Poland stated that there could be no doubt that the actions by the United States constituted a violation of international law, which recognized the complete and exclusive sovereignty of States over their airspace. Citing the Paris Convention relating to the Regulation of Aerial Navigation of 1919, the Havana Convention on Commercial Aviation of 1928 and the Chicago Convention on International Civil Aviation of 1944, he stated:

"Any flight that takes place without the permission of the State concerned, particularly an espionage flight, is a drastic breach of treaty obligations; it is also a violation of the principle of sovereignty and of State frontiers; and finally it is a violation of the United Nations Charter, particularly Articles 1, 2 and 78."

He stated further that a violation of those principles could not and should not be justified by the interest of one State or even a group of States.

At the 859th meeting on 25 May 1960, the President, speaking as the representative of Ceylon, observed that the territorial integrity of each State and the sanctity of its sovereign rights were inviolable and were guaranteed not only by the Charter, but also by the universal acceptance of those principles. If there had been no new development of a conciliatory nature following the U-2 flight incident, his delegation might have felt compelled to condemn the flight as an unwarranted invasion of the territorial integrity of the USSR. But, in view of the statement made by the President of the United States that all such flights had been stopped and would not be resumed, the ordinary implication was that a mistake had been made and would not be repeated. "In our opinion the statement made any formal condemnation quite unnecessary, because it indicates the acceptance of international law and of treaty obligations..."

At the 860th meeting on 26 May 1960, the USSR draft resolution was rejected by a vote of 2 in favour, 7 against, with 2 abstentions. [23]

CASE 4. [24] LETTER OF 23 MAY 1960 FROM THE REPRESENTATIVES OF ARGENTINA, CEYLON, ECUADOR AND TUNISIA: In connexion with the joint draft resolution submitted by Argentina, Ceylon, Ecuador and Tunisia, and a USSR amendment thereto: the amendment voted upon and rejected on 27 May 1960; the joint draft resolution, as revised, voted upon and adopted on 27 May 1960

[*Note:* During the consideration of the item, objection was raised to the fact that the four-Power draft resolution did not mention the incursion of foreign military aircraft into the territory of other States, and an amendment to this effect was submitted. The co-sponsors of the four-Power draft resolution submitted a revised draft with phraseology similar to that of Article 2 (4) of the Charter.]

At the 861st meeting on 26 May 1960, the Security Council had before it a draft resolution [25] submitted jointly by Argentina, Ceylon, Ecuador and Tunisia expressing the conviction that every effort should be made to restore and strengthen international good will and confidence and appealing to the four Great Powers to resume the discussions interrupted following the U-2 incident. [26]

The representative of the USSR, after noting that the four-Power draft resolution came into being as a result of the Council's debate on the item put forward by the USSR and should have included some provision condemning the action complained of, submitted an amendment [27] under which the Security Council would consider that the incursion of foreign military aircraft into the territory of other States was incompatible with the purposes and principles of the United Nations Charter and constituted a threat to international peace and security.

At the 862nd meeting on 27 May 1960, the representative of Poland observed that the USSR amendment reaffirmed the principle that military aircraft should in no circumstances violate the airspace of foreign countries, and, as such, reflected the opinion expressed by the majority of the members of the Council during the debate.

At the 863rd meeting on the same day, the sponsors of the joint draft resolution submitted a revised draft [28] under which

"The Security Council,

"...

"2. Appeals to all Member Governments to refrain from the use or threats of force in their international relations; to respect each other's sovereignty, territorial integrity and political independence; and to refrain from any action which might increase tensions;"

The representative of Tunisia stated that the sponsors considered that it would be useful if operative paragraph 2 of the revised draft resolution recalled and used almost the same phraseology as Article 2, paragraph 4, of the Charter. They felt that it might contribute to allaying apprehension from any quarter, as well as to calming mistrust and opening the way to hope.

At the same meeting, the USSR amendment was rejected by a vote of 2 in favour, 6 against and 3 abstentions [29]; the revised draft resolution was adopted by 9 votes in favour with 2 abstentions. [30]

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[23] 860th meeting: para. 87.

[24] For texts of relevant statements, see:
861st meeting: USSR, paras. 94, 105, 106, 120-123;
862nd meeting: Poland, paras. 20-21;
863rd meeting: Ecuador, para. 9; Tunisia, para. 27.

[25] S/4323, O.R., 15th year, Suppl. for April-June 1960, pp. 13-14.

[26] See chapter X, Case 1.

[27] S/4326, O.R., 15th year, Suppl. for April-June 1960, pp. 18-19, para. 1.

[28] S/4328, ibid., pp. 22-23.

[29] 863rd meeting: para. 47.

[30] 863rd meeting: para. 48.

CASE 5.[31] SITUATION IN THE REPUBLIC OF THE CONGO: In connexion with the draft resolution submitted by Tunisia and the USSR amendment thereto: the amendment voted upon and rejected on 14 July 1960; the draft resolution voted upon and adopted on 14 July 1960

[*Note:* In the course of the discussion, statements were made as to whether the armed action of Belgian troops in the Republic of the Congo constituted an act of aggression against the Republic of the Congo. While a resolution calling for the withdrawal of Belgian troops was adopted, an amendment which would condemn the action of Belgium as armed aggression was rejected.]

At the 873rd meeting on 13/14 July 1960, the representative of Tunisia stated that the intervention of Belgian troops which had taken place against the wishes of the Congo Government was a breach of the Belgian-Congolese Treaty of 29 June 1960 and a violation of the sovereignty and independence of the Republic of the Congo recognized by Belgium on 30 June 1960. Undeniably the intervention constituted an unwarranted act of aggression for which there was no justification and which could not be legitimized. The representative submitted a draft resolution[32] under operative paragraph 1 of which the Security Council would call upon "the Government of Belgium to withdraw its troops from the territory of the Republic of the Congo".

The representative of the USSR stated that no proof was needed since the mere presence of the armed forces of a foreign State in the territory of another State without the latter's consent constituted an act of aggression according to the generally recognized principles of international law.

The representatives of Italy, the United Kingdom and France expressed the view that Belgian troops had intervened to keep law and order and to protect lives of Belgian and other nationals threatened with violence or to facilitate their withdrawal. Their action was a necessary temporary action and a humanitarian intervention in accordance with international law.

The representative of Poland observed that the Security Council was faced with an act of aggression, no matter what the action undertaken by the Belgian troops might be called.

The representative of Belgium* said that when it became clear that the Congolese State was no longer in a position to ensure the safety of the inhabitants, the Belgian Government decided to intervene with the sole purpose of ensuring the safety of European and other members of the population and of protecting human lives in general. The Government had been compelled to take this action in order to protect its nationals and its interests in the Congo and the interests of the international community at large. In Katanga the Belgian intervention had taken place with the agreement of the head of the provincial government. Thus, the charges of aggression made in connexion with Belgian humanitarian intervention in the Congo were without foundation.

The representative of the USSR submitted an amendment[33] to the Tunisian draft resolution to insert between the preamble and operative paragraph 1 a new operative paragraph, reading: "Condemns the armed aggression of Belgium against the Republic of the Congo."

The representative of Tunisia stated that the intervention of Belgian troops in the Congo could not be justified by a vague request for foreign intervention by a regional authority. The "so-called" approval or the "so-called" request of the legitimate Government of a State for intervention in a particular area could not be used as an argument to justify general intervention aimed "not at rendering the general assistance requested by that independent sovereign State but at replacing its sovereign, independent authority, recognized only six days earlier [872nd meeting], by another authority exercising the essential attributes of sovereignty". The representative pointed out further that operative paragraph 1 of the Tunisian draft resolution was simply an appeal which was in conformity with the principles so often affirmed by the Security Council and the General Assembly concerning the illegality of armed intervention in the domestic affairs of a sovereign, independent State.

At the 873rd meeting on 13/14 July 1960, the USSR amendment was rejected[34] by 2 votes in favour and 7 against, with 2 abstentions.

The Tunisian draft resolution was adopted[35] by 8 votes in favour to none against, with 3 abstentions.

CASE 6.[36] SITUATION IN THE REPUBLIC OF THE CONGO: In connexion with the USSR draft resolution: not voted upon; and with the Ceylonese-Tunisian joint draft resolution: voted upon and adopted on 21 July 1960

[*Note:* During the consideration of the first report of the Secretary-General on the implementation of resolution S/4387 of 14 July 1960, statements were made concerning the nature of the Belgian armed action in the Republic of the Congo. A draft resolution calling for a speedy implementation of the resolution of 14 July 1960 on the withdrawal of the Belgian troops was adopted. A draft resolution insisting upon the immediate withdrawal of "all troops of the aggressor" was not voted upon.]

At the 877th meeting on 20/21 July 1960, the representative of the Congo* said that his Government

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[31] For texts of relevant statements, see:
873rd meeting: Belgium*, paras. 183, 186, 196, 197; France, paras. 141, 144; Italy, para. 121; Poland, paras. 158, 166; Tunisia, paras. 79, 87, 209, 210; USSR, paras. 104, 105; United Kingdom, paras. 130, 132, 133; United States, para. 95.

[32] S/4383. Same text as resolution S/4387, O.R., 15th year, Suppl. for July-Sept. 1960, p. 16.

[33] S/4386, 873rd meeting: para. 201.

[34] 873rd meeting: para. 223.

[35] 873rd meeting: para. 232.

[36] For texts of relevant statements, see:
877th meeting: Belgium*, para. 142; Congo*, para. 51; USSR, paras. 143, 144, 149, 151; United States, para. 188;
878th meeting: Argentina, paras. 118, 124, 127, 128; Poland, paras. 90, 91; Tunisia, paras. 24, 25, 30.
879th meeting: President (Ecuador), para. 80; France, para. 60; Italy, paras. 10, 12; United Kingdom, paras. 26, 27.

requested that the Security Council insist that an end be put to the aggressive action of Belgian troops in the Congo.

The representative of Belgium* stated that the purpose of Belgian military intervention in the Congo was purely humanitarian. The intervening troops would be withdrawn as soon as, and to the extent that, the United Nations effectively ensured the maintenance of order and the safety of persons.

The representative of the USSR expressed the view that the Belgian Government was continuing an open conflict against the legitimate Government of the Congo, was ignoring the Council's decision of 14 July 1960, and was seeking by its military intervention to dismember the Republic of the Congo. The representative submitted a draft resolution [37] whereby the Security Council would: (1) insist upon the immediate cessation of armed intervention against the Republic of the Congo and the withdrawal from its territory of all troops of the aggressor within a period of three days; and would (2) call upon the Member States to respect the territorial integrity of the Republic of the Congo and not to undertake any actions which might violate that integrity.

At the 878th meeting on 21 July 1960, the representative of Tunisia stated that the Belgian intervention in the Congo, deliberately decided upon by the Government and executed by units of the regular army, for whatever reasons, could hardly be described as anything but an act of aggression against the Republic of the Congo, the more so since its purpose was to take over the role of the independent Government of the Congo in the exercise of its full sovereignty, and, in particular, of its power to ensure order and security within the territory. The presence of Belgian troops was incompatible with respect for the sovereignty and territorial integrity of the Congo and was contrary to a decision of the Council. The representative introduced a draft resolution [38] submitted jointly with Ceylon, whereby the Council would call upon the Government of Belgium "to implement speedily [39] the Security Council resolution of 14 July 1960 on the withdrawal of its troops" and would authorize the Secretary-General "to take all necessary action to this effect" (oper. para. 1).

The representative of Poland pointed out that the first obligation of a Member State, which was stated in the Preamble and in Articles 1 and 2 of the Charter, was to refrain from the use of force. After having quoted the text of Article 2 (4), the representative said that no defence for the Belgian Government's action in the Congo could be given because international law did not recognize any justification for armed aggression against anyone under any circumstances.

The representative of Argentina stated that the Belgian Government could not be reproached for having assumed the duty to protect the life and honour of Belgian nationals who had been in danger. For this reason Belgium's action could not be described as aggressive.

At the 879th meeting on 21/22 July 1960, the representatives of Italy, the United Kingdom and France stated that there had been no aggression against the Congo and no attempt by Belgium to remove or diminish the independence of the Congo.

The President, speaking as the representative of Ecuador, reaffirmed the principle that foreign troops should not be in a State's territory without the active consent of that State's Government.

At the same meeting, the representative of Ceylon proposed [40] that the joint draft resolution submitted by Ceylon and Tunisia be given priority. The representative of the USSR said [41] that he had no objection to the proposal.

The joint draft resolution was adopted [42] unanimously.

The representative of the USSR stated [43] that, in view of the fact that the joint draft resolution had been adopted, he would not press for a vote on the USSR draft resolution.

CASE 7. [44] COMPLAINT BY THE USSR (RB-47 INCIDENT): In connexion with the USSR draft resolution: voted upon and rejected on 26 July 1960

[*Note:* In a draft resolution submitted by the USSR, the Security Council, after noting that the Government of the United States continued to violate the sovereign rights of other States, would condemn such activities and regard them as aggressive acts. The United States denied these allegations, explaining that at no time did its aircraft violate Soviet territory. Other members contended that, as there had been a serious discrepancy between the USSR and the United States account of the incident, they could not support the USSR proposed draft resolution.]

At the 880th meeting on 22 July 1960, the representative of the USSR submitted a draft resolution [45] according to which:

"The Security Council,

"...

"Noting that the Government of the United States of America continues premeditatedly to violate the sovereign rights of other States, a course which leads to the heightening of international tension and creates a threat to universal peace,

"1. Condemns these continuing provocative activities of the Air Force of the United States of America ...

"2. Insists that the Government of the United States of America should take immediate steps to put an end to such acts and to prevent their recurrence."

In introducing this draft resolution the representative of the USSR recalled the Security Council resolution [46]

37/ S/4402, 877th meeting: para. 176.

38/ S/4404, 878th meeting: para. 39.

39/ For the statement of the representative of Ceylon defining the term "speedily," see chapter VIII, p. 163.

40/ 879th meeting: para. 106.

41/ 879th meeting: para. 107.

42/ 879th meeting: para. 108.

43/ 879th meeting: para. 109.

44/ For texts of relevant statements, see:
880th meeting: USSR, paras. 3, 5; United States, para. 61;
883rd meeting: President (Ecuador), paras. 87-89, 91-94; Poland, paras. 17, 18.

45/ S/4406, 880th meeting: para. 58.

46/ S/4328, O.R., 15th year, Suppl. for April-June 1960, pp. 22-23.

of 27 May 1960, which appealed to all Member Governments to respect each other's sovereignty, territorial integrity and political independence and to refrain from any action which might increase tensions. He noted that it was the second time within two months that the USSR Government was compelled to bring before the Security Council the question of continuing aggressive acts by the United States in connexion with the new and provocative violations of the airspace of the Soviet Union by an aircraft of the United States Air Force.

The representative of the United States stated that at the time it was claimed to be brought down, the aircraft was actually fifty miles off the Soviet coast and thus became a victim of a "criminal" action by the USSR.

At the 883rd meeting on 26 July 1960, the representative of Poland observed that at the end of its consideration of the U-2 case the Security Council, on 27 May 1960, approved a resolution [47] calling upon Governments "to refrain from the use or threats of force in their international relations; to respect each other's sovereignty, territorial integrity and political independence; and to refrain from any action which might increase tensions". He reminded the Council that the United States had voted in favour of that resolution and must have had full knowledge of the obligations undertaken thereby.

The President, speaking as the representative of Ecuador, stated that the Security Council should take a firm stand whenever it was proved that the sovereign rights of a State had been violated in its territory, its territorial waters, or its airspace. In the case before the Council, however, the burden of proof was on the USSR but so far it had presented only its own affirmations. In such a situation the Council would be acting hastily if it attempted to reach final conclusions at that stage of its deliberation.

At the same meeting, the USSR draft resolution was rejected by 2 votes in favour and 9 against.[48]

CASE 8.[49] COMPLAINT BY PORTUGAL (GOA): In connexion with the joint draft resolution submitted by Ceylon, Liberia and the United Arab Republic: voted upon and rejected on 18 December 1961; and with the joint draft resolution submitted by France, Turkey, the United Kingdom and the United States: voted upon and failed of adoption on 18 December 1961

[*Note:* Consideration of the Portuguese request that the Council put an end to the "aggression" of India against the "Portuguese territories" of Goa, Damao and Diu, gave rise to a discussion, in which it was contended, on the one side, that India's action constituted a violation of the provisions of Article 2 (4) and, on the other, that the use of force by India for the liberation of its own territory under colonial occupation had no bearing on Article 2 (4) and was justified by Portugal's non-compliance with General Assembly resolutions 1514 (XV) [50] and 1542 (XV) [51].]

At the 987th meeting on 18 December 1961, the representative of Portugal* stated that India had committed a fully premeditated and unprovoked aggression against Portugal in Goa and had thus violated the sovereign rights of Portugal and Article 2, paragraphs 3 and 4, of the Charter.

The representative of India* stated that the matter before the Council was a colonial question in the sense that part of India was under Portuguese occupation which was illegal especially in the light of General Assembly resolution 1514 (XV). A question of aggression could not arise since Goa was an integral part of India. It was therefore for the Security Council to order Portugal to vacate Goa, Damao and Diu, and to give effect to the numerous resolutions of the General Assembly with regard to the freedom of dependent peoples.

The representative of the United States, after recalling the fact that Indian armed forces had occupied Damao and Diu and that there was fighting within the territory of Goa, said that the Council had before it a question "of the use of armed force by one State against another and against its will, an act clearly forbidden by the Charter". The Council was not meeting to decide on the merits of the case but "to decide what attitude should be taken in this body when one of the Members of the United Nations casts aside the principles of the Charter and seeks to resolve a dispute by force". What was at stake was not colonialism; it was a violation of the principle stated in Article 2 (4) of the Charter. The Security Council could not apply a double standard with regard to the principle of resort to force. It had an urgent duty to ask for an immediate cease-fire and to insist on the withdrawal of invading forces, for the law of the Charter forbade the use of force in such situations.

The representative of Liberia, referring to General Assembly resolutions 1514 (XV) and 1542 (XV), asked how the Council could agree that India had committed aggression on Portuguese territory when the enclaves were not part of Portugal.

The representative of Turkey stated that the resort to force for the settlement of international disputes, the transgression of frontiers by armed forces, under any pretext and for whatever reason, were actions which could not be condoned under any circumstances according to the Charter. Therefore, the current dispute could not be settled by an armed action, whatever the merits of the case, of which the Council was not seized. What the Council was faced with was the question "of what action, of what attitude, it should adopt when armed force is used to settle a dispute between two Member States of this Organization".

[47] S/4328, ibid., pp. 22-23.

[48] 883rd meeting: para. 187.

[49] For texts of relevant statements, see:

987th meeting: President (United Arab Republic), paras. 125-127; Ceylon, paras. 138, 141, 143, 147. India*, paras. 46, 60-62; Liberia, para. 95. Portugal*, para. 11; Turkey, paras. 99, 101. USSR, paras. 104, 118, 119; United States, paras. 70, 72, 74, 75, 79, 80;

988th meeting: Ceylon, paras. 104, 105. Chile, para. 27; China, para. 19; Ecuador, paras. 10-14; India*, paras. 77, 78, 86, 87; USSR, paras. 121, 122, 124, 125; United States, paras. 89, 93, 94.

[50] Resolution 1514 (XV): "Declaration on the granting of independence to colonial countries and peoples."

[51] In resolution 1542 (XV): "Transmission of information under Article 73 e of the Charter", the General Assembly considered that the territories under administration of Portugal listed in the resolution and including "Goa and dependencies, called the State of India" were Non-Self-Governing Territories within the meaning of Chapter XI of the Charter.

The representative of the USSR maintained that the Security Council should only consider the question of violation by Portugal of the General Assembly resolution 1514 (XV), since by not carrying out its provisions, Portugal had created a threat to peace and security in the region of Goa. The matter was a colonial problem and the Council must apply in respect of Portugal sanctions as provided for in the Charter in order to compel Portugal to comply with the resolutions of the General Assembly.

The President, speaking as the representative of the United Arab Republic, observed that, in the light of the refusal of Portugal to put into effect General Assembly resolution 1542 (XV), the Security Council was confronted with a colonial problem. The continuation of a state of affairs brought about by colonialism was bound to endanger international peace and security. There was, however, no aggression on the part of India, since despite her efforts to negotiate a peaceful solution, Portugal had not changed its policy.

The representative of Ceylon stated that

> "the action taken by India is not action taken against another State for territorial aggrandizement, such as was envisaged in the Charter. It is not an invasion of a Portuguese population ... India's action is to liberate Indian national territory."

India's attitude to the use of force was exemplified by its policy of not being a member of a military alliance. This did not, however, imply that it should not use force to defend its vital interests or its territory or its national integrity. No cease-fire could be called for by the Council as there was not a state of belligerency. Nor could India be called upon to withdraw from Goa because that would mean to ask it to withdraw from its own territory. The Council could not censure India for invading its own land because that would be a contradiction in terms.

At the 988th meeting on the same day, the representative of Ecuador stated that in the debate it seemed to be generally agreed that force as a means of solving international problems should be condemned. Ecuador had maintained the view that force should not be used to solve territorial disputes, "not only with regard to the illegality of the use of force, but with regard to all that derives from it". However, in the debate certain arguments were put forward that seemed to suggest that there was a lawful and an unlawful use of force. Ecuador did not accept the lawfulness of force unless it was used "... according to the Charter, either by the United Nations or with the authorization of the Security Council by some regional body in accordance with the Charter".

The representative of China observed that India's use of force to achieve its aims in regard to Goa, Damao and Diu was obviously a violation of the Charter "which, in this respect, is absolute and allows no exceptions".

The representative of Chile maintained that the Charter contained provisions which obliged Member States not to take unilateral decisions which might endanger international peace and security, and to avoid settling their disputes by means which were not peaceful. The conflict which had arisen because of the occupation of the three enclaves could only be considered in the light of the provisions of the Charter. The Chilean delegation, therefore, had to deplore the use of force by India in Goa, Damao and Diu.

The representative of India noted that various delegations maintained that the Charter absolutely prohibited the use of force:

> "but the Charter itself does not completely eschew force, in the sense that force can be used in self-defence, for the protection of the people of a country—and the people of Goa are as much Indians as the people of any other part of India."

So far as the achievement of freedom was concerned, when nothing else was available, it was "a very debatable proposition to say that force cannot be used at all". In the circumstances, India "had to have recourse to armed action, and this armed action is not an invasion. It cannot be an invasion because there cannot be an invasion of one's own country." Commenting on the four-Power draft resolution S/5033 (see below), the representative pointed out that the only question was of the territory of Goa becoming a part of the Indian Union. The draft resolution had no basis in reality and did not take into account the principles recognized in numerous United Nations resolutions, notably General Assembly resolution 1514 (XV).

The representative of the United States pointed out that the issue before the Security Council was not the right or the wrong of Portugal's colonial policy; it was "the right or the wrong of one nation seeking to change an existing political and legal situation by the use of armed force. That is expressly forbidden in the Charter. There are no exceptions, except self-defence." And could any one believe that India was acting in self-defence against an almost defenceless territory? As a Non-Self-Governing Territory, Goa had been under Portuguese authority, and therefore, India could not lawfully use force against Goa, especially when the peaceful methods in the Charter had not been exhausted. The claim that Portugal was the aggressor because it had not complied with the recommendations of resolution 1514 (XV) was groundless. Resolution 1514 (XV) did not authorize the use of force for its implementation, it did not and could not overrule the Charter injunctions against the use of armed force. It gave no licence to violate the Charter's fundamental principles, among them the principle that all Members should refrain from the threat or use of force against any other State. Even if the United States had been supporting entirely the Indian position on the merits of the dispute, nevertheless, it should be firmly opposed to the use of force to settle the question.

> "The Charter, in its categorical prohibition of the use of force in the settlement of international disputes, makes no exceptions, no reservations. The Charter does not say that all Members shall settle their international disputes by peaceful means except in cases of colonial areas."

The representative then introduced a draft resolution [52] submitted jointly with France, Turkey and the United Kingdom, whereby

"The Security Council,

"Recalling that in Article 2 of the Charter of the United Nations all Members are obligated . . . to refrain from the threat or use of force in a manner inconsistent with the purposes of the United Nations,

"Deploring the use of force of India in Goa, Damao and Diu,

". . .

"1. Calls for an immediate cessation of hostilities;

"2. Calls upon the Government of India to withdraw its forces immediately to positions prevailing before 17 December 1961."

The representative of Ceylon introduced a draft resolution [53] submitted jointly with Liberia and the United Arab Republic which provided:

"The Security Council,

"Having heard the complaint of Portugal of aggression by India against the territories of Goa, Damao and Diu,

"Having heard the statement of the representative of India that the problem is a colonial problem,

". . .

"1. Decides to reject the Portuguese complaint of aggression against India;

"2. Calls upon Portugal to terminate hostile action and to co-operate with India in the liquidation of her colonial possessions in India."

The representative stated, with regard to operative paragraph 1 rejecting the Portuguese complaint of aggression against India, that it had been proved that India had not been guilty of aggression. Concerning operative paragraph 2 calling upon Portugal to terminate hostile action, he pointed out that such an action had consisted of provocative deeds such as massing large forces on the boundaries of India and Goa and other actions.

The representative of the USSR stated that the four-Power draft resolution applied certain general provisions of the Charter to a situation and to events which had a completely different meaning in the light of General Assembly resolution 1514 (XV). These provisions could not be the basis for the adoption of a decision when the issue involved the liquidation of colonial possessions. Further, the draft resolution called upon the Indian Government to withdraw its forces. No mention was made of the Portuguese forces, which had been brought into Goa as reinforcement and had been threatening all of the people of Goa and the neighbouring population in the territory of India.

At the 988th meeting on 18 December 1961, the joint draft resolution submitted by Ceylon, Liberia and the United Arab Republic was rejected by 4 votes in favour and 7 against. [54]

At the same meeting, the joint draft resolution submitted by France, Turkey, the United Kingdom and the United States failed of adoption. There were 7 votes in favour and 4 against (one of the negative votes being that of a permanent member). [55]

CASE 9. [56] THE PALESTINE QUESTION: In connexion with the joint draft resolution submitted by the United Kingdom and the United States: voted upon and adopted on 9 April 1962

[*Note:* Complaints had been brought by Syria and Israel against each other in connexion with the incident in the Lake Tiberias area on 16-17 March 1962. Article 2 (4) of the Charter was referred to in the discussion and incorporated in the operative part of the draft resolution adopted by the Council.]

At the 1005th meeting on 6 April 1962, the representative of the United States introduced a draft resolution [57] submitted jointly with the United Kingdom, which provided:

"The Security Council,

". . .

"Recalling in particular the provisions of Article 2, paragraph 4 of the Charter, and article I of the Syrian-Israeli General Armistice Agreement,

". . .

"1. Deplores the hostile exchanges between the Syrian Arab Republic and Israel starting on 8 March 1962 and calls upon the two Governments concerned to comply with their obligations under Article 2, paragraph 4 of the Charter by refraining from the threat as well as the use of force;

". . ."

The representative stated that operative paragraph 1 deplored the hostile exchanges between Syria and Israel which had started on 8 March 1962 and called upon them to comply with their obligations under Article 2, paragraph 4, of the Charter by refraining from the threat as well as the use of force. In addition to deploring these hostile exchanges and the use of such weapons, the paragraph also reminded "the Governments concerned of their obligations under Article 2, paragraph 4, of the Charter. Both parties have on this occasion used force contrary to that Article". The draft resolution further called upon Israel in the most stringent terms "to resort to the Mixed Armistice Commission and to the Security Council, in accordance with its obligations under the Charter, instead of resorting to the use of force".

At the 1006th meeting on 9 April 1962, the representative of Israel*, commenting on the second part of operative paragraph 1 of the joint draft resolution, stated: "My Government reaffirms its willingness to

[52] S/5033, 988th meeting: para. 97.

[53] S/5032, 988th meeting: para. 98.

[54] 988th meeting: para. 128.

[55] 988th meeting: para. 129.

[56] For texts of relevant statements, see:
1005th meeting: United States, paras. 21, 23, 25, 30;
1006th meeting: Israel*, paras. 55, 56.

[57] S/5110 and Corr.1, same text as resolution S/5111, O.R., 17th year, Suppl. for April-June 1962, pp. 95-96.

comply with the obligations under Article 2, paragraph 4, in relation to Syria." It remained for the Syrian representative to put on record a similar declaration, on behalf of his own Government, in relation to Israel. If he failed to do so, the representative trusted the Security Council would draw the necessary conclusions.

At the same meeting, the draft resolution submitted by the United Kingdom and the United States was adopted by 10 votes in favour, none against, with 1 abstention.[58]

CASE 10.[59] COMPLAINTS BY REPRESENTATIVES OF CUBA, USSR AND UNITED STATES (22-23 OCTOBER 1962): In connexion with a United States draft resolution; in connexion also with a USSR draft resolution; decision of 25 October 1962; to adjourn the meeting

[*Note:* During the discussion, it was contended that, by sending medium range and intermediate range ballistic missiles to Cuba, the USSR was placing itself in a position to threaten the security of the United States and the rest of the Western Hemisphere. On the other hand, it was maintained that the Government of the United States should cease any kind of interference in the internal affairs of Cuba and of other States as this could threaten the peace.]

At the 1022nd meeting on 23 October 1962, the representative of the United States declared that he had asked for a meeting in order to bring to the attention of the Security Council a grave threat to the Western Hemisphere and to the peace of the world. "Unmistakable evidence" had established the fact that a series of offensive missile sites was in preparation in Cuba, which thus had been transformed into a base for offensive weapons of mass destruction. The representative contended that Article 2 (4) of the Charter had defined the necessary condition of a community of independent sovereign States, and that the USSR, by sending thousands of military technicians and jet bombers capable of delivering nuclear weapons, by installing in Cuba missiles capable of carrying atomic warheads and by preparing sites for missiles with a range of 2,200 miles, violated the Charter of the United Nations. This action constituted a threat to the Western Hemisphere and, by upsetting the balance in the world, it was "a threat to the whole world". It was in the face of these threats that the President of the United States had initiated steps to quarantine Cuba against further imports of offensive military equipment. The representative then submitted a draft resolution[60] under which:

"The Security Council,

"Having considered the serious threat to the security of the Western Hemisphere and the peace of the world caused by the continuance and acceleration of foreign intervention in the Caribbean,

"Noting with concern that nuclear missiles and other offensive weapons have been secretly introduced into Cuba,

"Noting also that as a consequence a quarantine is being imposed around the country,

"Gravely concerned that further continuance of the Cuban situation may lead to direct conflict,

"1. Calls as a provisional measure under Article 40 for the immediate dismantling and withdrawal from Cuba of all missiles and other offensive weapons;

". . .

"3. Calls for termination of the measures of quarantine directed against military shipments to Cuba upon United Nations certification of compliance with paragraph 1 above;

"4. Urgently recommends that the United States of America and the Union of Soviet Socialist Republics confer promptly on measures to remove the existing threat to the security of the Western Hemisphere and the peace of the world, and report thereon to the Security Council."

The representative of Cuba* stated that Cuba had continuously been a victim of United States subversion, sabotage and boycott. Referring to Article 2 (4), the representative maintained that the United States naval blockade of Cuba was an act of war. It was the use of force by a great Power against the independence of a Member State and an act violating the Charter and the principles of the United Nations.

At the same meeting, the President, speaking as the representative of the USSR, submitted a draft resolution[61] under which the Security Council:

"3. Proposes to the Government of the United States of America that it shall cease any kind of interference in the internal affairs of the Republic of Cuba and of other States which creates a threat to peace."

In introducing his draft resolution, he stated that the Council was considering the matter of a unilateral and arbitrary action by a great Power which constituted a direct infringement of the freedom and independence of a small country, involving "a new and very dangerous act of aggression in a chain of acts of aggression" which the United States had committed against Cuba in violation of the rules of international law and of the fundamental provisions and of the letter and spirit of the Charter of the United Nations. Noting that the United States representative had quoted Article 2 (4), the USSR representative asked whether the declaration of a naval blockade of Cuba and all the military measures taken by the United States had not constituted a threat or use of force against the territorial integrity and political independence of Cuba. In sending its armed forces into the region and into Cuban territory itself, and declaring its intention to use force whenever it thought fit, the United States was carrying out an act of

[58] 1008th meeting: para. 106.

[59] For texts of relevant statements, see:

1022nd meeting: Cuba*, paras. 90, 114, 122, 123. USSR (President), paras. 137, 157, 158, 163, 174; United States, paras. 12-15, 74, 79.

1023rd meeting: Romania, paras. 57, 58, 69, 70, 73, 78. Venezuela, paras. 6, 7.

1024th meeting: Ghana, paras. 109, 110; United Arab Republic, paras. 67, 80.

1025th meeting: United States, para. 21.

[60] S/5182, 1022nd meeting: para. 80.

[61] S/5187, 1022nd meeting: para. 180.

aggression in violation of the Charter, which prohibited Member States from using force or the threat of force in their international relations.

At the 1023rd meeting on 24 October 1962, the representative of Venezuela referred to the tense situation existing between Cuba and the other American Republics and to the consistent incitement to subversive action against established Governments of these Republics by the Cuban radio, Cuban propaganda agents, and by the clandestine introduction into these Republics of weapons to equip guerilla forces, and stated that, in addition, a graver danger to peace had arisen from the fact that the country carrying on these activities had nuclear missiles capable of annihilating any of the countries of Latin America. Such weapons, in Cuba's hands, constituted a menace to the peace and security of the rest of the American continent.

At the same meeting, the representative of Romania observed that aggressive actions of the United States constituted violation of the principles of the Charter, especially the provisions of Article 2 (4), and a negation of the general norms of international law. In the view of the Romanian delegation, the aggressive action of the United States against Cuba constituted a threat to the peace under Article 39 of the Charter. In setting up a naval blockade of Cuba, the United States had committed an act of war against that State since military blockade was one of the forms of aggression. His delegation considered that it was the duty of the Security Council decisively to condemn "the acts of the United States Government against Cuba, acts which threaten international peace and security".

At the 1024th meeting on 24 October 1962, the representative of the United Arab Republic stated that in accordance with Article 2 (4) of the Charter the Members should refrain in their international relations from the threat or use of force against the territorial integrity and political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. It was, therefore, the feeling of his delegation that the Council would be embarking on the right path prescribed in the Charter if it directed its efforts to ensuring that all Member States relinquished the use of force in their international relations.

The representative of Ghana stated that the action contemplated by the United States must be regarded as enforcement action, inadmissible in terms of Article 53 without the authorization of the Security Council. Nor could it be argued that the threat was of such a nature as to warrant the action so far taken, prior to a reference to the Security Council.

At the 1025th meeting on 25 October 1962, the representative of the United States asserted that the installation of weapons of mass destruction in Cuba posed a dangerous threat to peace, a threat which contravened paragraph 4 of Article 2 of the Charter, and a threat which the American Republics were entitled to meet, as they had done, by appropriate regional defensive methods.

The representative of the United Arab Republic proposed the adjournment of the meeting in order to enable the parties concerned to discuss with the Acting Secretary-General arrangements proposed by him. [62]

The representative of Ghana supported the motion of the representative of the United Arab Republic. [63]

The President (USSR) stated that in the absence of objections the motion of adjournment introduced by the representatives of the United Arab Republic and Ghana was adopted. [64]

CASE 11. [65] COMPLAINT BY THE GOVERNMENT OF CYPRUS: In connexion with a letter dated 26 December 1963 concerning the threat and use of force by Turkey: decision of 27 December 1963 to adjourn the meeting

[*Note:* In its letter of submission, [66] the Government of Cyprus brought to the attention of the Security Council, in accordance with Articles 1 (1), 2 (4), 24 (1), 34, 35 and 39 of the Charter, a complaint against Turkey for acts of (a) aggression, (b) intervention in the internal affairs of Cyprus by the threat and use of force against its territorial integrity and political independence.]

At the 1085th meeting on 27 December 1963, after explaining his country's fear of an invasion by Turkey, the representative of Cyprus* stated:

> "By this policy of force or the threat of force in flagrant violation of Article 2, paragraph 4, of the Charter, as evidenced here by the violation of airspace, the terrorizing of the population, the low flying of planes, and the violation of the territorial waters of Cyprus, as has been done and as was very nearly done tonight—we cannot have peace on the island."

He reminded the Council that Cyprus, according to its constitution and as a Member of the United Nations, was an independent and sovereign State. Therefore, its sovereignty and independence could not be violated by another Member State or non-Member State on whatever grounds or with whatever excuses. If Turkey thought that the security of the Turkish population in Cyprus was threatened, they could have complained to the Security Council and received its decision.

> "But to find excuses in order to attack, in order to threaten, in order to use force, that is a negation of the United Nations ..., we would then be returning to the period when force and nothing else prevailed in the world ..."

The representative of Turkey* stated that his Government had given him instructions, categorically and officially, to deny that any Turkish ships were heading towards Cyprus.

The representative of Cyprus stated that the fact that the Prime Minister of Turkey had previously declared that ships had been sent to Cyprus for action

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[62] 1025th meeting: paras. 70-74. For the consideration of the provisions of Article 33, see chapter X.

[63] 1025th meeting: para. 94.

[64] 1025th meeting: para. 102.

[65] For texts of relevant statements, see:
1085th meeting: Cyprus*, paras. 16, 19, 61-64, 86; Turkey, para. 45.

[66] S/5488, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 112-114.

constituted a violation of Article 2 (4). After citing the opinion of Sir Humphrey Waldock that Article 2 (4) entirely prohibited any threat or use of force between independent States except in strict self-defence under Article 51 or in execution of collective measures under the Charter for the maintenance and restoration of peace, the representative observed, "Thus, only the United Nations can use force to restore order where there is a threat to international peace. No individual State has the right to use force against another State ..." The representative stated further that the Treaty of Guarantee did not contain any provision concerning the use of force.[67] It provided that Cyprus, Greece and Turkey undertook to ensure the maintenance of Cyprus's independence, territorial integrity and security, as well as respect of its Constitution. He maintained that there should be no objection to having a resolution which would call upon all States to respect the political independence and territorial integrity of the Republic of Cyprus and to refrain from any use of force against it.

The President (United States), after noting that the Council had heard statements from the interested parties as well as certain assurances, declared the meeting adjourned.[68]

[67] See Case 29.

[68] 1085th meeting: paras. 92-93.

B. 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."

NOTE

This section presents seven case histories of occasions on which problems connected with the subject of domestic jurisdiction arose or were discussed in the Security Council.

The first four case histories[69] concern the proceedings in the Security Council in which the issue of non-intervention by the United Nations in matters deemed to be essentially within the domestic jurisdiction of a Member State, and thus having a bearing on the provisions of Article 2 (7), was considered in connexion with the presence in that State of the United Nations Force.

In three cases[70] objections were raised in the debate that the Security Council was not competent, on the basis of the provisions of Article 2 (7), to deal with the question before it.

CASE 12.[71] SITUATION IN THE REPUBLIC OF THE CONGO: In connexion with the second report of the Secretary-General on the implementation of the Security Council resolutions S/4387 of 14 July 1960 and S/4405 of 22 July 1960; and with the Ceylonese-Tunisian joint draft resolution; voted upon and adopted on 9 August 1960

[*Note:* In connexion with the presence of the United Nations Force in the Republic of the Congo, it was contended that the Force could not intervene in internal constitutional problems and could not influence their outcome. On the other hand, it was asserted that failure to take specific action would indicate indirect support of Belgian intervention and that this would, therefore, constitute an interference in internal matters of the Republic of the Congo.][72]

In his second report[73] on the implementation of the Security Council resolutions S/4387 of 14 July 1960 and S/4405 of 22 July 1960, the Secretary-General pointed out that the Katanga authorities considered the presence of the United Nations Force in Katanga as jeopardizing the possibility of their working for a constitutional solution other than a strictly unitarian one, e.g., for some kind of federal structure providing for a higher degree of provincial self-government than currently foreseen. That was, however, an internal problem to which the United Nations could not be a party. Therefore, the Council should clarify its views on the matter and lay down such rules for the United Nations operation as would serve to separate questions of a peaceful development in the constitutional field from any questions relating to the presence of the United Nations Force.

At the 885th meeting on 8 August 1960, the representative of the Republic of the Congo* maintained that it was an error to reduce the Katanga question to a constitutional issue. This question had never been raised in the Congolese Parliament; nor could it be regarded as a domestic issue as long as Belgian troops remained in the Congo.

The representative of the United States observed that the Council should reinforce the Secretary-General's view that the United Nations could not be drawn into the political struggle between Prime Minister Lumumba and Provincial President Tshombé. The Charter and the practice of the United Nations emphasized that it could not be involved in internal political disputes.

The representative of Tunisia stated that the sole purpose of the entry of the United Nations forces into

[69] Cases 12-15.

[70] Cases 16, 17, 18.

[71] For texts of relevant statements, see:

885th meeting: Congo*, paras. 13-15; Tunisia, paras. 62, 63, 69, 78; United States, paras. 44, 45;

886th meeting: Argentina, paras. 70, 71, 80; Ceylon, para. 12; China, para. 64; Ecuador, para. 45; France (President), para. 180; Italy, paras. 120-122; Poland, para. 103; USSR, para. 218; United Kingdom, paras. 140-145, 161.

[72] Concerning the limitations of the powers of the United Nations Force with regard to the principle of non-intervention in domestic matters, see chapter V, Case 2 (i) and Case 2 (ii).

[73] S/4417, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 45-53, paras. 6, 10.

Katanga was to set in motion the speedy withdrawal of Belgian military forces and not to intervene in any way in the domestic affairs of the Republic of the Congo, which were neither within the jurisdiction of the United Nations as an organization nor within the jurisdiction of its Members.

The representative of Tunisia introduced[74] a draft resolution[75] submitted jointly with Ceylon, which provided:

"The Security Council,

"...

"3. Declares that the entry of the United Nations Force into the province of Katanga is necessary for the full implementation of this resolution;

"4. Reaffirms that the United Nations Force in the Congo will not be a party to or in any way intervene in or be used to influence the outcome of any internal conflict, constitutional or otherwise;

"..."

At the 886th meeting on 8/9 August 1960, the representative of Ceylon expressed the view that the people of the Congo had the right to determine the form of their Government and to devise their constitution. It was no part of the responsibility of the United Nations Force to take any side in political or other internal disputes.

The representative of Ecuador maintained that the need for adherence by the United Nations Force to the principle of neutrality in internal affairs was based not only on the specific provisions of the Charter but also on the particular circumstances in the Republic of the Congo. It should be made clear to the Congolese people, to their leaders, to the Central Government and local authorities that the influence of the Force would not be used to promote any particular trend in the process of the constitutional organization of the State. The contrary would constitute interference in what was the exclusive concern of the Congolese people.

The representative of China observed that it was necessary to make it clear in any proposal to solve the Katanga phase of the Congo problem that the United Nations Force should not, could not and did not intend to interfere in the domestic political matters of the Republic of the Congo.

The representative of Argentina stated that the intervention of United Nations forces in the Republic of the Congo had not been designed to interfere in the domestic affairs of the country or to support the central authority against the local authorities and vice versa. The Council should explicitly confirm the principle of non-interference, which was in keeping with the obligations imposed by the Charter and with the spirit of the resolutions of 14 and 22 July 1960. It should also state in the directives to the United Nations Force that the action of the Force must not imply any transfer of political power or interference in the internal affairs of the Congo.

The representative of Poland agreed that the United Nations Force should not interfere in the internal differences between the Government of the Congo and local or provincial authorities in so far as these differences had the true nature of an internal conflict. However, in Katanga, authority rested with the Belgian troops, and in those circumstances "to refrain from sending United Nations troops into the province of Katanga would indicate an indirect support of Belgian intervention and a direct acquiescence in the occupation of that province, as well as in the Belgian-inspired opposition to the Government of the Congo". In turn, such a support would constitute an intervention in the internal affairs of the Congo.

The representative of Italy said that the solution of the problem, whether Katanga was to remain within the Republic of the Congo or what kind of association there was going to be between Katanga and the Congo, or what kind of autonomy Katanga might enjoy, was a matter for the Congolese people themselves to decide without any intervention or interference from the outside. The Council must emphasize that the United Nations Force was not meant to intervene in any way in the internal constitutional problems of the Congo and that its presence in Katanga would not be considered as affecting the status of the authorities vis-à-vis the Government of Leopoldville.

The representative of the United Kingdom expressed the view that the authorities in Katanga had believed that the deployment of United Nations forces in Katanga would jeopardize their possibilities of working for a constitutional settlement other than a strictly unitary one. The United Nations Force could not and, as the Secretary-General had made plain, would not interfere in what was essentially an internal constitutional dispute. To employ the United Nations Force in any way which might give the impression that the United Nations had been taking sides in that constitutional dispute would be not only contrary to the principles of the Charter but also in contradiction to the understanding on which the troops were made available by the various sending Governments and on which several other Governments, including the United Kingdom Government, had provided support for the United Nations. The representative expressed the view that operative paragraph 4 of the joint draft resolution was intended as a response to the proposal[76] of the Secretary-General that the Security Council should formulate

"... principles for the United Nations presence, which, in accordance with the Purposes and Principles of the Charter, would safeguard democratic rights and protect the spokesmen of all different political views within the large entity of the Congo as to make it possible for them to make their voice heard in democratic forms."

He understood that if the Council adopted operative paragraph 4 it would be its intention that the United Nations Force should operate on the basis of the principles described in this passage in the Secretary-General's statement.

The President, speaking as the representative of France, observed that the difficulties between the

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74/ 885th meeting: para. 76.

75/ S/4424. Same text as resolution S/4426, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 91-92.

76/ 884th meeting: para. 27.

Central Government and the provincial authorities were not in any way within the Council's competence. They were internal affairs, with which the Council was not concerned, except to declare that the United Nations was completely and entirely impartial in the matter. That was in fact the Secretary-General's view in the matter.

The representative of the USSR expressed the view that it was the duty of the Security Council to put an end to the intervention in the domestic affairs of the Congo by the Belgian Government—which was attempting to sever from the Congo its richest province and other provinces as well—and to restore the legitimate rights of the Government of the Congo. Such action on the part of the Security Council would be strictly in accordance with its resolutions and with the Charter and could in no way be construed as intervention in the domestic affairs of the Congo.

At the 886th meeting on 8/9 August 1960, the joint draft resolution[77] submitted by Ceylon and Tunisia was adopted by 9 votes in favour to none against, with 2 abstentions.[78]

CASE 13.[79] SITUATION IN THE REPUBLIC OF THE CONGO: In connexion with the joint draft resolution submitted by Ceylon and Tunisia: voted upon and failed of adoption on 17 September 1960

[*Note:* In connexion with the "constitutional conflict" in Leopoldville, it was contended, on the one hand, that the principle of non-intervention in internal matters as interpreted by the Secretary-General[80] prevented the implementation of the resolutions of the Security Council in the Republic of the Congo. It was maintained, on the other hand, that the United Nations could not take sides in the constitutional conflict, which was an internal matter of the Republic of the Congo and therefore not the concern of the United Nations.]

At the 896th meeting on 9/10 September 1960, the representative of Yugoslavia* maintained that, according to operative paragraph 2 of the resolution of 14 July 1960, the Security Council had created the United Nations Force in order to give military help to the Government of the Republic of the Congo until its security forces were able to meet their tasks fully. There was a dispute about the implementation of this principle, and because of a certain interpretation of the non-interference of the United Nations in the internal discords of a constitutional or other character in the Republic of the Congo, the United Nations Command had not found sufficient ways of preventing military and outside help from being given to the secessionist ring-leaders in Katanga. It was possible to find adequate means to deal with this situation and a perfectly legal basis for this in the pertinent resolutions of the Council and, particularly, in the pertinent laws of the Republic of the Congo, whose Government was legally entitled to exercise its authority in the Congo as a whole. The representative stated further that it was necessary

> "to fulfil strictly the Security Council resolutions and particularly to adhere to the basic principle contained in operative paragraph 2 of the resolution of 14 July [S/4387], which defined the character of the relations between the United Nations Command and the Government of the Republic of the Congo."

A different attitude would lead to the compromising of the place and the role of the United Nations in the Republic of the Congo.

The Secretary-General, exercising his right of reply, pointed out that on 21 August 1960 the Council had discussed problems[81] closely related to the ones raised by the representative of Yugoslavia, and stated:

> "... On that occasion [887th meeting] I made a careful analysis of the interpretation which had been given to me in a letter from Prime Minister Lumumba. My analysis stands, and I would invite the representative of Yugoslavia to study it. From that it appears that you cannot base an interpretation of the mandate of the Force solely on the resolution of 14 July, because the Council itself has interpreted that resolution, especially in its resolution of 9 August [S/4426]. For that reason, the resolution of 14 July, especially the paragraph quoted by the representative, has to be read in its proper context of related resolutions. That is what I have done, and my interpretation has in fact been discussed at this table at a later meeting [889th meeting] which did not result in any resolution at all. My conclusion from that later meeting was that my interpretation was approved by the majority of the Council."

At the 901st meeting on 14/15 September 1960, the representative of the USSR stated that the Command of the United Nations Force and the Secretary-General personally had violated the provisions of operative paragraph 4 of the resolution of 9 August 1960. In his fourth report the Secretary-General described what was happening in the Congo as "internal strife, centering around constitutional problems". The Soviet Government considered it essential for the Council to take urgent action to stop immediately all forms of interference in the internal affairs of the Congo. The lawful Government of the Republic of the Congo should be enabled to exercise its sovereign rights and authority over the whole Congolese territory.

The representative of Tunisia observed that a serious constitutional conflict threatening to develop into civil war in Leopoldville had increased the confusion and disorder. There could be no question of the United Nations taking sides in this conflict and even less of its settling it in one way or another. It must be settled by the Congolese people themselves alone.

77/ S/4426, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 91-92. See also chapter VIII, p. 165.

78/ 886th meeting: para. 272.

79/ For texts of relevant statements, see:

896th meeting: Yugoslavia*, paras. 134-138, 141, 145-147; Secretary-General, para. 154.

901st meeting: Tunisia, para. 132; USSR, paras. 36, 40, 42, 67;

902nd meeting: Argentina, para. 7;

904th meeting: Ceylon, para. 16; China, para. 87; Poland, paras. 43-47; Secretary-General, paras. 65-67;

905th meeting: Ghana*, paras. 67, 73, 75; Indonesia*, paras. 41-43; Italy (President), paras. 7, 8; United Arab Republic*, para. 181;

906th meeting: Tunisia, para. 104; Yugoslavia, para. 44.

80/ For the statement of the Secretary-General, see chapter I, Case 27.

81/ See chapter V, Case 2 (iv).

At the 902nd meeting on 15 September 1960, the representative of Argentina stated that the Government of the Congo had been unsuccessful in maintaining that minimum internal unity which would enable the Council to decide who currently were the lawfully appointed office-holders in the Government. The constitutional question was not the concern of the United Nations and must be settled solely by the Congolese people. It was, therefore, not for the Council to consider it in so far as it constituted an internal problem; all that was required of the Council was to take a decision at the appropriate time of who were to represent the Congo in the Organization.

At the 904th meeting on 16 September 1960, the representative of Ceylon observed that the United Nations activity in the Congo was based on complete impartiality and that was one reason why all the resolutions of the Council contained the clause which prevented the United Nations from taking any interest in or being used to influence the internal conflicts, constitutional or otherwise, which existed in the country.

The representative of Poland stated that the Secretary-General had excused himself from giving assistance to the Central Government of the Congo in its efforts to ensure the territorial integrity of the country on the grounds that such assistance would allegedly constitute interference in the internal affairs of the country. His contention was based on the interpretation of operative paragraph 4 of the resolution of 9 August 1960 contained in addendum 6 to his second report. As the Polish delegation had stated at the 886th and 889th meetings, it agreed that the United Nations should not interfere in the internal conflicts of the Republic of the Congo in so far as those conflicts or differences had the true nature of an internal problem. This, however, had not been and was not the case in the province of Katanga, where the Belgian military forces had organized and supported Tshombé's rebellion and were still assisting it with arms and war materials and officers of the Belgian army. To refrain, under these circumstances, from giving the assistance requested by the Central Government in order to restore law and order in the whole territory of the Republic of the Congo and to ensure the territorial integrity of the country would be tantamount to indirect support of the colonialist aggression and to direct acquiescence in the Belgian-inspired opposition to the Government of the Republic. Any reference to the so-called constitutional conflict was completely irrelevant, for the simple reason that the Katanga rebellion had been organized and assisted by a foreign colonial power or foreign colonial powers. Referring to the statement of the Secretary-General at the 896th meeting that his interpretation of paragraph 4 of the resolution of 9 August 1960 was approved by the majority of the Council, the representative expressed grave concern over the Secretary-General's contention that his interpretation, which had been used as a basis for action of far-reaching consequences, had been approved by the majority of the Council when, in fact, there had been no decision of the Council in that respect. Were this practice to be followed in the future, "it could bring us to abrogation of the Council's rights and therefore to complete departure from the Charter. And this would be a dangerous path to take. . . ."

The Secretary-General, exercising his right of reply, stated:

"... As the members will remember, the situation was as follows. I had given a certain interpretation to my mandate from the Security Council. That interpretation was challenged by the Prime Minister of the Republic of the Congo, and challenged also at the table by his spokesman [887th meeting]. The challenge was not taken up by any delegation. There was only one draft resolution [82] on the table and that draft resolution was concerned with another matter: the sending of a group of observers to the Congo. Even that resolution was withdrawn.

"I leave it, naturally, to the Council and to the members of the Council to interpret what such a situation means in parliamentary language and as to its legal effect. I have my own interpretation; but, I repeat, it is obviously for the Council itself to interpret what happened."

The representative of China said that there was no question that the United Nations should not be involved in the rival claims to authority or in the rival programmes of constitutional interpretation and reconstruction. All such questions must be settled by the Congolese people themselves, without the United Nations favouring any one claimant to authority or any particular programme whatsoever.

At the 905th meeting on 16 September 1960, the President, speaking as the representative of Italy, stated that it was not for the Security Council to solve the domestic problems of the Congo as far as the constitutional position of the Republic was concerned, but it was its duty to take that element into consideration. The measures adopted by the United Nations Command and endorsed by the Secretary-General which arose from the uncertainty of the constitutional situation in the Congo had been justified. They were not acts of intervention, but steps taken for the purpose of preventing civil war from spreading as a result of the constitutional crisis.

The representative of Indonesia* said that it should be made clear that the United Nations Force was in the Congo for the sole purpose of ensuring the territorial integrity and political independence of the Republic of the Congo. It seemed self-evident that the relevant provisions of the Security Council resolutions precluded the United Nations Command from assuming a position of so-called neutrality between the Central Government of the Congo and the dissident groups. The obligations and responsibilities of the Council were to the Central Government and to that Government alone. Therefore, the United Nations Force must refrain from any action which could be interpreted as constituting, directly or indirectly, support for or encouragement of the dissident groups.

The representative of Ghana* said that the United Nations, adhering to its principle of non-intervention between the Central Government and the secessionists, precluded itself from supplying the legitimate Government of the Congo with the necessary means for trans-

[82] S/4453. See chapter VIII, p. 166.

mended by the Security Council in its resolution [145] adopted at the 879th meeting on 22 July 1960. In the second report on the implementation of resolutions S/4387 of 14 July and S/4405 of 22 July 1960, [146] the Secretary-General dealt with the entry of the United Nations Force into Katanga and asked for instructions from the Security Council and for such decisions as the Council might find appropriate in order to achieve integrally its aims. In connexion with the principles concerning the functions and composition of the United Nations Force as defined by the Secretary-General, there arose the issue, bearing implicity on the obligations of Member States under Articles 25 and 49, of requests by certain Governments that their contingents in the Force or specified other States' contingents be deployed in specific regions of the Republic of the Congo.]

At the 885th meeting on 8 August 1960, the representative of the USSR said that the second report of the Secretary-General indicated that the troops dispatched to the Congo could not be sent into Katanga in view of the commitments to the contributing Governments. He referred further to the statements made by the Governments of Guinea [147] and Ghana [148] pointing out that they expressed their readiness to make the necessary contribution to implement the Council resolutions, and stated that if the troops of any particular country sent to the Congo in pursuance of the Council's decision were unable, for one reason or another, effectively to secure the withdrawal of the interventionist troops from the Congo, then troops of countries which were ready to participate in carrying out that action should be sent to the Congo.

[145] S/4405, ibid., pp. 34-35, oper. para. 3.

[146] S/4417, ibid., pp. 45-53, paras. 1-10.

[147] By telegram dated 6 August 1960, the President of the Republic of Guinea urged the Secretary-General to use immediately the Guinean troops in Katanga. Otherwise, they would be placed by the Government of Guinea under the direct authority of the Congolese Government. The Secretary-General, by telegram of the same day, informed the President of the Republic of Guinea that no decision had been taken on his part to the effect that the United Nations troops should not enter Katanga, provided that this could be done under the terms of reference established by the Security Council, and that no decision had been taken on the final composition of the contingents of the United Nations Force in Katanga (S/4417/Add.1/Rev.1, documents I, II, O.R., 15th year, Suppl. for July-Sept. 1960, p. 54).

[148] By note verbale of 6 August 1960, the Permanent Representative of Ghana forwarded to the Secretary-General a statement of the President of Ghana of the same day, in which it was stated that if no United Nations solution of the situation in Katanga was forthcoming, Ghana would lend such armed assistance as the Republic of the Congo might request, even though it meant that Ghana and the Congo had to fight alone against Belgian troops (S/4430, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 87-89, para. 15). See also the letter dated 3 August 1960 to the Vice-Prime Minister of the Republic of the Congo by which the Secretary-General refused a request that the party of the Special Representative of the Secretary-General for its journey to Katanga be accompanied by three members of the Cabinet escorted by twenty Ghanaian soldiers, on the grounds that it was "purely a United Nations mission the character of which should not be compromised by the arrangements made" and that "the principles established by the Security Council resolution reserve for decision by the Secretary-General and, under him, the Commander, any military dispositions regarding the Force. The dispatch of the Ghanaian group would not be in line with the plans made and announced". (S/4417/Add.2, documents I, II, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 55-56, also S/4417, ibid., pp. 45-53, para. 7.)

At the 886th meeting on 8/9 August 1960, the President, speaking as the representative of France, observed that once a State had been selected by the United Nations to co-operate in the implementation of a Security Council resolution,

> "its forces can no longer undertake an action other than that decided upon by the international Organization. In such circumstances, there can be no question of any threat of individual action. The Security Council has given the Secretary-General a mandate. No one, and least of all those who have been asked to provide military assistance, has the right to challenge its decision and recommendations."

At the 888th meeting on 21 August 1960, the representative of Guinea* observed that African troops, including Guinean troops, should be sent to Katanga. [149] The representative of the USSR said that his Government insisted that obstacles be removed to the dispatch to Katanga of the troops of the lawful Congolese Government and of those African States which had responded to the Security Council's call for assistance in ending the foreign intervention in the Congo.

At the same meeting, the Secretary-General, referring to the wishes of national Governments as regards the employment of their troops, stated that the United Nations military operations had to be "under a unified command exercising . . . its judgement as best it can. If we were to try to meet desires expressed by the very many participating Governments, then . . . that operation would very soon come to a deadlock". For that reason, it would be against the efficiency of the whole operation if it were considered necessary to take the wishes of those Governments into account when they ran counter to other considerations of a military and technical nature.

CASE 23. [150] SITUATION IN THE REPUBLIC OF THE CONGO: In connexion with the first report of the Secretary-General on the implementation of Security Council resolution S/4387 of 14 July 1960 and with his second report on the implementation of Security Council resolutions S/4387 of 14 July 1960 and S/4405 of 22 July 1960

[*Note:* In connexion with the principles concerning the functions and composition of the United Nations Force in the Congo, as defined by the Secretary-General, [151] the issue arose as to the effect of a unilateral withdrawal from the Force of a national contingent on the legal status of the Force in the territory of the Republic of the Congo, which had an implicit bearing on the obligations of Member States under Articles 25 and 49.]

[149] In letter dated 14 August 1960 to the Secretary-General, the Prime Minister of the Republic of the Congo stated that is was incomprehensible that only Swedish and Irish troops had been sent to Katanga, while troops from the African States had been systematically excluded, and requested that Moroccan, Guinean, Ghanaian, Ethiopian, Malian, Tunisian, Sudanese, Liberian and Congolese troops be sent there (S/4417/Add.7, document II, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 71-73).

[150] For texts of relevant statements, see:
886th meeting: Secretary-General, para. 109;
903rd meeting: France, para. 36.

[151] See note to Case 22.

ment of basic constitutional law, but it was hardly possible to reconcile this point of view with the actual decisions taken by the Security Council. For there could be no doubt that if the United Nations Force were employed to "enforce the Constitution", it would involve the United Nations in coercive action against competing political factions to a degree that was clearly excluded from the scope of its mandate.

> "... Moreover, ... such forcible intervention in internal constitutional and political conflict could not be considered as compatible with the basic principles of Article 2 of the Charter relating to sovereign equality and non-intervention in domestic jurisdiction."

From the legal standpoint, therefore, the only conclusion open to the Secretary-General had been to apply the mandate of the Force with full regard to the provisions of the Council resolutions, that is,

> "to avoid employing the Force so as to favour any political group or to influence the outcome of the constitutional controversy, but at the same time to assist in preserving law and order in the basic sense of protecting the lives and property of the inhabitants of the Republic of the Congo."

The Secretary-General stated further that the restrictions imposed on the United Nations in respect to its forcible intervention in constitutional matters did not preclude representations by the Secretary-General or his representatives on matters which fell within the concern of the United Nations in the light of its role in the Congo. Thus, since the Force had been requested to assume functions in regard to law and order, there was "a legal basis and justification for the Secretary-General to concern himself with the observance of elementary and generally accepted human rights". Similarly, the decisions of the United Nations had furnished a basis for the Secretary-General to appeal for an amicable settlement of internal political conflicts in the interest of the unity and integrity of the Congo.

At the 914th meeting on 8 December 1960, the President, speaking as the representative of the USSR, introduced a draft resolution[91] whereby the Security Council would call upon the Secretary-General to secure the immediate release of Mr. Patrice Lumumba, Prime Minister of the Republic of the Congo, Mr. Okito, President of the Senate, Mr. Kasongo, President of the Chamber of Representatives, and other Ministers and deputies and, at the same time, to take all the necessary steps to ensure the resumption of the activities of the lawful Government and Parliament of the Republic of the Congo (oper. para. 1).

The representative of Argentina contended that the provision in operative paragraph 1 of the USSR draft resolution was in flagrant contradiction to the resolution of 9 August. Even if the resolution of 9 August had not been adopted, the provision would be inadmissible because it would constitute an act of interference in the internal affairs of a sovereign State.

> "The ... intervention represented by the deposing of a Government actually in power—and that is what is here being proposed—and the installing of another which is not in effective control would, if it were carried out by one State to the detriment of another, impose upon the United Nations the obligation to take action as prescribed by the Charter. To whom, then, would it be possible to turn if the act of intervention was committed by the United Nations itself?"

At the 915th meeting on 8/9 December 1960, the representative of the United Kingdom stated that the internal political disputes in the Congo and the creation of a stable government were political problems which, as the Secretary-General rightly said, could only be solved by the Congolese people themselves.

The representative of Yugoslavia* contended that the development of the situation in the Congo had been in flagrant contradiction with the provisions of operative paragraph 2 of the resolution of 14 July and of operative paragraph 2 of the resolution of 22 July 1960. In practice, the principle of non-interference in the Congo had become one of non-interference by the United Nations in the activities of forces and factors which, having received large-scale military, material and financial help from abroad, had used violence to prevent the normal operation of the country's lawful organs and institutions.

At the 916th meeting on 9/10 December 1960, the representative of Italy expressed the view that, in the light of the principle of respect for the sovereign prerogatives and the independence and unity of the Republic of the Congo, it had been imperative for the United Nations bodies to take a position of strict non-interference in the domestic problems of the Congo. The three Security Council resolutions of 14 and 22 July 1960 and 9 August 1960 and General Assembly resolution 1474 (ES-IV) of 20 September 1960 clearly set forth these limits and constituted the basic guide to the action of the United Nations. Only in the event that the Council had reached the conclusion that the resolutions adopted were not fully adequate for new developments, could the Council consider taking another course of action. However, no action could be undertaken on the part of the Security Council which might represent an infringement on the sovereign rights of the country. The Council could properly assist, advise and make appeals, but it could not dictate a course of action in matters essentially within the framework of internal jurisdiction.

The representative of Ecuador stated that no mandate could properly go beyond the bounds or exceed the authority provided for in the Charter. The question before the Council was a power conflict, a struggle for political leadership, a dispute over the legitimacy of governments, which was a matter within the domestic jurisdiction of the Republic of the Congo, safeguarded by Article 2 (7) of the Charter. Mr. Lumumba, as Prime Minister, had drawn a distinction from the outset between the domestic problems of the Congo, for which he had not asked assistance, and the defence of the country's territorial integrity, for which he had sought assistance. The mandate given by the Security Council in operative paragraph 2 of the resolution of 14 July 1960 had followed very much the same lines. That mandate made United Nations action in the Congo contingent upon consultation with the Congolese Government, which was a method of en-

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[91] S/4579, 914th meeting: para. 62.

suring that such action remained outside the limits of the domestic jurisdiction of the State; it did not grant authorization of any kind to interpret the constitution or the laws of the Congo to determine in whom the right to exercise power was legally vested. Mr. Lumumba's removal from office was a matter which must be decided by reference to Congolese laws, and the Council could not interpret those laws without trespassing upon the country's domestic jurisdiction. However, in the case of violations of human rights, it was not always possible to invoke the argument that matters within the domestic jurisdiction of a State were involved. The observance of the Charter was binding upon Member States, which, in signing it, had recognized that their domestic jurisdiction was in some measure subordinate to the international jurisdiction of the United Nations. In this respect the Republic of the Congo must be called upon to fulfil its essential obligation to safeguard human rights.

The representative of Indonesia* expressed the opinion that within the framework of its mandate to maintain law and order the United Nations could not continue to condone a régime in the Congo which was unconstitutional and the principal fomentor of lawlessness and terror. One could not avoid reaching the conclusion that the establishment of the Mobutu régime in the Congo was an international, not a domestic, problem. As the Secretary-General had pointed out, the legal justification for the decision of the Security Council to provide the Central Government of the Republic of the Congo with the necessary military assistance had been the threat to peace and security which had arisen as a result of the intervention of Belgian troops in the Congo. But what was the difference between that intervention and the current intervention? There certainly was no difference between open armed aggression and the support of the current régime, which constituted the same foreign intervention in principle and in motive.

The representative of Cameroon* observed that his Government entirely subscribed to the Secretary-General's interpretation of the measures taken by the United Nations in the Congo. Except as specifically stated in the Charter, the United Nations could not intervene in the domestic affairs of a Member State.

At the 917th meeting on 10 December 1960, the representative of China pointed out that in a problem which concerned relations between a government and its opposition, the United Nations was juridically obliged to refrain from interference, which would constitute a violation of the Charter.

The representative of Ceylon* stated that the Ceylonese delegation had no right to complain if the Secretary-General was correct in his interpretation that the Security Council resolution had given him a certain mandate, which had precluded him from taking action for the maintenance of law and order and had not envisaged the involvement in matters of internal politics or dealing with internal policies. If that were correct, then the Security Council should consider a new resolution so that the Secretary-General could be given the right to use the Force, not to take part in the political affairs of the country nor to bolster one politician in his attempts to seize political control of another or over another area, but to keep order. The Secretary-General had voiced some doubts as to whether the Council could have given a wider mandate without the risk of acting against the Charter. In the opinion of the representative of Ceylon, there would not be any action which could be interpreted as against the Charter, for this was a case where the Head of a State had requested the United Nations to render certain assistance of a specified kind. In such a case, it would not have been against the Charter if the United Nations had gone to the country and, in trying to do what it had been requested to do, had followed certain interpretations in the discharge of its duties and tried to carry out the request of that country. Therefore, there were no grounds for any fears about the infringement of the Charter in this situation. The United Nations was in the Congo, in all its aspects, because it had been invited by the legitimate Government, so that its action could in no way be regarded as intervention in matters essentially within the domestic jurisdiction of the Congo. The worsening of the situation in the Congo was due to the interpretation of the mandate and to the execution of that mandate, and it was for the Council to correct that interpretation if it was wrong and to take further action, by a proper resolution, to give the correct mandate to the Secretary-General.

The Secretary-General pointed out that it had been mentioned that it should be the duty of the United Nations, or of the Secretary-General and his Command, under present rules to liberate Mr. Lumumba. However, any action by force to liberate Mr. Lumumba would, in fact, mean overriding by force the authority of the Chief of State. It was clear what that meant in legal terms in relation to a country. It had also been held that the United Nations Force or the Secretary-General might be entitled to act as indicated on the basis of the fact that United Nations assistance had been requested by the Central Government of the Congo. On that point the Secretary-General wanted to remind the Council of the fact that the request had been signed "Kasa-Vubu" and countersigned "Lumumba". That meant that the Council was facing a situation where it would act against the person who had been at least one of the co-signatories of the request on which the action of the Council was based.

At the 918th meeting on 12 December 1960, the representative of Poland referred to the memorandum of the Secretary-General of 12 August [92] on the implementation of operative paragraph 4 of the resolution of 9 August and stated that, were the interpretation of the Secretary-General accepted, it would be nothing less than the revision of the three resolutions previously approved by the Council. One would think that a question of such weight as the interpretation of some of the most important decisions taken by the Security Council would be put before it officially by its author or by those who, during the debate, had supported it strongly, so that the Council might take a formal decision. Nothing of that sort had happened and, despite the fact that the Council had not taken any formal decision on the Secretary-General's interpretation, in the lack of a formal request for such a decision, he had still

[92] S/4417/Add.6, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 64-71.

chosen to be guided by it, thus, in practice, giving himself freedom to revise the resolutions of the Council. The results had been the dismemberment of the country and de facto recognition of Tshombé by the Secretary-General and his representatives, and the return of the Belgian military and paramilitary personnel to the Congo. During all this time, the United Nations Force had had orders, based on the unilateral interpretation of the Council's mandate, to stand by and had done practically nothing to stop the flow. If the Lumumba Government, which had requested the United Nations presence in the Congo, had to be regarded as non-existent, then on what legal grounds could the United Nations Force stay in the Congo? The Council heard, however, that the main principle of the policy which guided the United Nations operation in the Congo was non-interference in internal affairs. The Polish delegation had maintained and continued to maintain that if the conflicts in the Congo were of a domestic nature, this policy would have been only correct. However, the issue was not of a domestic character. Apart from the question of a mandate, which had been worded in clear and unequivocal terms, how could one remain neutral in the struggle between colonialism and the Congolese people?

The representative of France pointed out that to call for the immediate release of Mr. Lumumba, the restoration of the Government, the convening of Parliament, the disarming of the Congolese national army and the dismissal of all Belgian staff employed by the Congolese Government would constitute a series of acts of interference in the affairs of a sovereign and independent country. In his message [93] to the Secretary-General, the President of the Republic of the Congo gave an assurance that the ex-Prime Minister would be tried according to the laws in force in civilized countries. The Council could not ask for more without interfering in the domestic affairs of a sovereign State and a Member of the United Nations.

The representative of Tunisia expressed the view that, from the purely legal point of view, the Council had no right to pass any judgement on the legality or constitutionality of any particular group. The Charter did not entitle the Organization to take sides in domestic conflicts of a constitutional nature; that was exclusively a matter for the Congolese people to settle. Therefore, the Tunisian delegation did not believe that the Secretary-General or his representatives in the Congo had the right to interfere in favour of either of the sides which confronted each other there. The blame for the fact that the United Nations action in the Congo had not produced better results could be justly laid on the Security Council itself, which had been unwilling, or because of the limitations of the Charter had been unable, to give the Secretary-General a broader and more extensive mandate, such as the situation required.

At the 919th meeting on 12 December 1960, the representative of Guinea* said that although the Government of the Congo had called in the United Nations, the seizure of power had been prepared for and carried out in the presence of the United Nations in the Congo. The United Nations had stood passively by and the Council was told it could not properly interfere in domestic affairs.

The representative of Yugoslavia* contended that the current internal conflict in the Congo was intimately connected with the existence of foreign intervention. Consequently, measures to settle the internal conflicts, restore legality and ensure a return to freedom and free political development should go hand in hand with measures for the immediate and resolute termination of foreign intervention, which was the real source of all the negative developments in the Congo. The responsible officials of the United Nations had introduced the theory of the policy of so-called non-interference in the domestic affairs of the Congo, or of respect for its sovereignty. What effect could this policy have when others were intervening in the most active way possible in Congolese affairs?

At the 920th meeting on 13/14 December 1960, the Secretary-General stated that in his interventions in the Council he had pointed out that the Council had never explicitly referred to the Charter Article on the basis of which it had taken action in the Congo. It was significant that the Council had not invoked Articles 41 and 42 of Chapter VII, which provided for enforcement measures which would override the domestic jurisdiction limitation of Article 2 (7). He stated further that during the discussion of the mandate in the Council which had taken place on the basis of his memorandum of 12 August 1960, not only had no proposal for the revision of the mandate been submitted but the same situation had been facing the fourth emergency special session of the General Assembly and the resolution resulting from the debate (1474 (ES-IV)) had asked the Secretary-General to continue vigorously his action, without having questioned the mandate. The resolution had been passed by 70 votes in favour and none against, and it must, therefore, from the point of view of the executive organ, be considered as concluding the debate on the substance of the mandate in favour of the stand taken by the Secretary-General. Of course, this left any member free to ask for a revision of the mandate or a clarification, but it did not entitle members to say that the Secretary-General had misinterpreted or distorted the mandate in the past.

The representative of Ceylon stated that the United Nations Force had the authority to step into the vacuum in the Congo and to take steps to create order where there was chaos, even if it were, in the context, interfering in the domestic affairs of the Congo. The United Nations had received an invitation which had been accepted and, therefore, it was entitled to act according to it within the Congo unless and until that invitation was withdrawn. The authority of the invitation had been sufficient to make the action taken by the Council lawful action and to entitle the United Nations to send its forces into the Congo. The case of Katanga had come before the Security Council through a referral by the Secretary-General. Rightly, he had related the interpretation of the Security Council to the situation in Katanga and to the question whether, in that case, there had been an interference in domestic affairs. The Katanga case was a case of political inter-

[93] S/4571 and Add.1, Annex III, O.R., 15th year, Suppl. for Oct.-Dec. 1960, pp. 73-75.

ference, between one who had claimed a political right in Katanga and another who had contested it. The Secretary-General had taken the United Nations Force into Katanga, and thus could have enforced law and order. The question of a political dispute, therefore, had not arisen in that case.

The representative of Tunisia, referring to the draft resolution submitted by the representative of the USSR, stated that the Security Council could not claim freedom for three persons alone, as mentioned in the draft resolution, since the Council was prohibited from interfering in a domestic constitutional conflict which was for the Congolese themselves to solve.

At the 920th meeting on 13/14 December 1960, the USSR draft resolution was rejected by 2 votes in favour and 8 against, with 1 abstention.[94]

CASE 15.[95] SITUATION IN THE REPUBLIC OF THE CONGO: In connexion with: communications concerning Mr. Lumumba transmitted by the Secretary-General's note dated 23 January 1961[96]; report dated 12 February 1961 to the Secretary-General from his Special Representative in the Congo on the subject of Mr. Lumumba[97]; and report dated 18 February 1961 to the Secretary-General from his Special Representative in the Congo concerning the arrest and deportation of political personalities.[98]

[*Note:* In connexion with the above-mentioned documents, it was contended, on the one hand, that the United Nations, in accordance with the principle of non-interference in internal affairs, was obliged to avoid any action which could involve support to any one side involved in the constitutional conflict. It was maintained, on the other hand, that such a stand of the United Nations constituted a violation of the principle of non-interference in internal affairs of the Republic of the Congo.]

At the 928th meeting on 1 February 1961, the Secretary-General stated that it was not the task of the United Nations to act for the Congolese people and to take political or constitutional initiatives aiming at the establishment of a government. This was true not only in the sense that the United Nations had no right to try to impose on the Congo any special régime, but also in the sense that the Organization could not support the efforts of any faction to impose such a régime. The duty of the United Nations was to deal only with interference from outside the country and with the maintenance of law and order within the country. It could not go beyond any of those points and in its efforts to insulate the country from outside interference and to maintain law and order, the Organization must stay strictly within the limits established by the Charter, just as the Secretary-General and the United Nations Force must, in their turn, stay strictly within the limits of the mandate established by the Security Council and the General Assembly. The Secretary-General expressed the belief that a most important contribution in the direction of conciliation in the interest of national unity would be to revert to the original stand of the United Nations and get it enforced with the co-operation of the leaders concerned. For the United Nations to revive this initial concept would be to express in positive terms its neutrality in relation to all domestic conflicts in the Congo.

At the 930th meeting on 2 February 1961, the representative of Morocco* stated that the United Nations claimed that it was not authorized to use its troops to prevent the arrest of members of Parliament and Ministers, to oppose the closing of Parliament, to frustrate secessionist movements, and to put an end to the flow of arms and foreign military or paramilitary personnel into the Congo. That, it was argued, would be tantamount to interfering in the internal affairs of the Congo, but when the masses wanted to show their disapproval of this disorder, illegality and foreign intrigues, then there was no question of interfering in the internal affairs of the Congo. Here was a great contradiction directed in the wrong way.

At the 931st meeting on 7 February 1961, the representative of Guinea* expressed the view that the Congolese situation appeared to be attributable to the misinterpretation of the relevant resolutions of the Security Council and to the failure to carry them out. According to the terms of the resolution of 14 July,[99] it had been the task of the United Nations to "take the necessary steps, in consultation with the Government of the Republic of the Congo, to provide the Government with such military assistance as may be necessary ...". The United Nations, instead of adhering to this mandate to assist the Central Government of the Congo, had, however, looked on that Government as a political party, if not simply as a private group. How could the representatives of the United Nations, under the pretext of non-intervention in the domestic affairs of the Congo, remain neutral as between the Central Government which they had been sent to assist and the factions that had openly been created, financed and remotely controlled by the Belgians and their allies? According to the resolution of 14 July, the mandate of the United Nations had been to oppose foreign interference and, therefore, the United Nations had had full powers to quell all the political and military uprisings led by the puppets of foreign intervention.

At the 935th meeting on 15 February 1961, the Secretary-General, referring to the constitutional crisis in Leopoldville in early September when President Kasa-Vubu and Mr. Lumumba each had declared the mandate of the other null and void and when Colonel Mobutu, as he had said, had "neutralized" both the Chief of State and Mr. Lumumba, stated that, in the light of the principles applied by the United

94/ 920th meeting: para. 159.

95/ For texts of relevant statements, see:
928th meeting: Secretary-General, paras. 67, 83, 84;
930th meeting: Morocco*, para. 20;
931st meeting: Guinea*, paras. 67, 86, 87, 88.
935th meeting: Belgium*, paras. 108, 109, 111; Secretary-General, para. 7;
937th meeting: Poland, para. 11, 12;
939th meeting: Central African Republic*, para. 71;
942nd meeting: Chile, para. 36; France, para. 44; United States, paras. 97, 101.

96/ S/4637 and Add.1, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 54-59.

97/ S/4688 and Add.1-2, ibid., pp. 88-101.

98/ S/4727 and Add.1-3, ibid., pp. 131-137.

99/ S/4387, O.R., 15th year, Suppl. for July-Sept. 1960, p. 16.

Nations as regards domestic conflicts, the instructions to the Command and to the Special Representative had been that they should stand aside from the conflict which had developed and avoid any actions which could make them a party to the conflict or involved support to any one side in it. These instructions had been challenged on the basis that Mr. Lumumba remained the Head of Government and should be treated as such by the United Nations. The matter had come up before both the Security Council and the General Assembly which, on 20 September 1960, without any dissenting vote, adopted resolution 1474 (ES-IV), which must be interpreted as upholding the line taken by the Secretary-General in his instructions to the United Nations Command.

The representative of Belgium* pointed out that the state of insecurity and terrorism in the Congo was such that the Belgian Government had had to urge its nationals to leave Oriental and Kivu provinces since the United Nations was not able to ensure their protection, despite the representations made by the Belgian Government to the Secretary-General. The Belgian Government was not asking for intervention in the domestic affairs of the Congo. All it asked was that foreigners who were law-abiding and useful to the country should be protected. Fear of intervention in domestic affairs could not be a justification for the inaction of the United Nations. Belgium had the right to demand that its nationals, like all foreigners, should enjoy the active protection of the United Nations forces in the Congo.

At the 937th meeting on 16 February 1961, the representative of Poland observed that the resolutions approved in July and August 1960 had given the Secretary-General a sufficient mandate to disarm the military bands under the command of Kasa-Vubu, Tshombé, Mobutu, Kalonji and others. But the Secretary-General had chosen not to implement his mandate and to refuse to give the assistance requested by the Central Government of the Congo.

At the 939th meeting on 17 February 1961, the representative of the Central African Republic* pointed out that the solution of the situation lay neither in the disarming and disbanding of the Congolese national army by the United Nations nor in unilateral military assistance outside the United Nations. Either type of action would constitute interference, contrary to the Charter and to the resolutions of the Security Council and the General Assembly.

At the 942nd meeting on 20/21 February 1961, the representative of Chile stated that operative paragraphs 1 and 2 of part B of a joint draft resolution [100] submitted by Ceylon, Liberia and the United Arab Republic—which urged the convening of Parliament and the re-organization of Congolese armed units and personnel and the bringing of them under discipline and control—would have represented interference contrary to the Charter had the aim of the Security Council to prevent interference from outside and its appeal for conciliation not been stated in the preamble. This made up for the shortcomings referred to.

The representative of France expressed the view that any measures taken in the Congo must respect the sovereignty of that independent State, and that any other attitude, which would in any event be contrary to the Charter, would be likely to set a dangerous precedent, particularly in the case of the newly independent States.

The representative of the United States stated that an amendment [101] which he submitted to operative paragraph 3 of a second joint draft resolution [102] sponsored by Ceylon, Liberia and the United Arab Republic was intended to make clear that all actions of the United Nations in the Congo must be in accordance with the Charter, which provided also that the United Nations could not intervene in the domestic affairs of a country.

CASE 16,[103] SITUATION IN ANGOLA: In connexion with the draft resolution submitted by Ceylon, Liberia and the United Arab Republic: voted upon and not adopted on 15 March 1961

[*Note:* Objections to the competence of the United Nations to deal with the matter were made on the grounds of Article 2 (7). The situation in Angola was said to concern only "the maintenance of internal public order". It was asserted, on the other hand, that, when faced with the issue of self-determination and the problem of violation of human rights, the United Nations had declared itself competent whenever such a question affected the friendly relations among Member States. It was also noted that the situation in Angola could not fall exclusively within the domestic jurisdiction of Portugal because Portugal's territories overseas were not integral parts, but rather colonies, of Portugal.]

At the 943rd meeting on 10 March 1961, the representative of the United Arab Republic, referring to the objections on the grounds of domestic jurisdiction made by the representative of Portugal, stated that Article 2 (7) was not applicable since Portugal had "decided unilaterally that Angola was an integral part of Portugal". Moreover, he further stated,

> "... when faced with the question of human rights, of which the right of peoples to self-determination is one of the fundamental principles, the United Nations has declared itself competent whenever the question of the violation of human rights affected the friendly relations which should prevail among States Members of the United Nations."

The representative of the USSR asserted that the situation in Angola was not a matter falling within the domestic jurisdiction of Portugal because Angola was

[100] S/4722. Same text as S/4741, O.R., 15th year, Suppl. for Jan.-March 1961, pp. 147-148. See chapter VIII, pp. 177-178.

[101] S/4740, 942nd meeting: para. 97. The amendment would add after the words "calls upon the United Nations authorities in the Congo to take all possible measures" the words "in accordance with the Charter".

[102] S/4733/Rev.1, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 142-143. See chapter VIII, p. 175.

[103] For texts of relevant statements, see:
943rd meeting: Ceylon, para. 58; USSR, paras. 69, 71; United Arab Republic, paras. 32, 33, 36;
944th meeting: Portugal*, paras. 48, 53, 54;
945th meeting: Ghana*, paras. 64-66; Liberia, paras. 89, 90; Portugal*, paras. 130, 137;
946th meeting: Ecuador, para. 61.

not an integral part of Portugal but a colony. He further asserted that

> "... members of the Security Council should bear in mind that we are now considering a crisis created in Angola by the actions of the Portuguese colonizers, and that as a result of these actions, world peace and the security of that part of Africa are endangered... Thus, the attention of the Security Council is being drawn to a question involving the maintenance of peace and security, which, according to Chapters VI and VII of the Charter, is the primary responsibility of the Security Council."

At the 944th meeting on 10 March 1961, the representative of Portugal* remarked that the principle established by the Charter in Article 2 (7) was "overriding", and stated that in the view of his delegation the word "nothing" written in Article 2, paragraph 7, meant exactly "nothing".

> "If nothing in the Charter authorizes the Organization to intervene in this matter, and, again, if nothing in the Charter recognizes the Council jurisdiction on the matter, even on a pretext falsely invoked, it follows that there is no valid basis whatever, in the light of international law, for the consideration of the matter by the Security Council."

At the 945th meeting on 14 March 1961, the representative of Ghana* expressed his disagreement with a statement by the representative of Portugal in a letter to the Council,[104] that the situation in Angola only concerned "the maintenance of internal public order", and stated that the situation in Angola constituted "a threat to friendly relations between States and to international peace and security". He further stated:

> "Nothing can be said to fall exclusively within the domestic jurisdiction of a State if it has such international repercussions. Thus, last year, the Council decided that the similar massacres that took place in Sharpeville in the Union of South Africa constituted a threat to international peace. Furthermore, any violation of the principles of human rights and self-determination on the scale practised in Angola cannot but be regarded as directly threatening the relations between States, and therefore as a proper concern for this Council."

The representative of Liberia, referring to General Assembly resolution 1542 (XV) which "emphasized the international concern of the United Nations in the Portuguese territories", stated that by this action the General Assembly had not only established the international concern but also that it was itself competent to consider and examine conditions in the Portuguese territories, including Angola. For this reason the argument raised by the representative of Portugal in his letter and his invocation of Article 2 (7) of the Charter were "completely irrelevant and without foundation".

The representative of Portugal, after expressing his protest over the "illegal debate in which the Council has decided to engage itself", stated:

> "The interpretation of the basic texts of the United Nations as well as the scope of the principles involved and the record of the facts do not offer a single valid argument which might lead to the conclusion that the matter might not be of the exclusive competence of Portuguese sovereignty."

The Government of Portugal was not accepting the premise that the just and orderly behaviour of the Portuguese authorities and any other points pertaining to the legal exercise of Portuguese sovereignty could be examined by the Council.

At the 946th meeting on 15 March 1961, the representative of Ecuador stated that his doubts as to the competence of the Council related not to the competence of the United Nations, but to the specific competence of the Security Council. Neither did they imply acceptance of the argument that the affairs of Angola fell within the domestic jurisdiction of Portugal, nor that the exception mentioned in Article 2, paragraph 7, of the Charter applied to them. They were related "to the competence of the Council within the limits prescribed by the Charter".

At the same meeting, the three-Power draft resolution was not adopted. There were 5 votes in favour, none against, with 6 abstentions.[105]

CASE 17.[106] *THE QUESTION OF RACE CONFLICT IN SOUTH AFRICA*: In connexion with the draft resolution submitted by Ghana, Morocco and the Philippines, as amended; adopted on 7 August 1963; and with the draft resolution submitted by Norway; adopted on 4 December 1963

[Note: During the discussion relating to both decisions, references were made to objections to the Council's competence, which had been raised by the Government of South Africa in communications of which the Council took note. The competence of the Council was supported on the grounds that the Council was confronted with a situation involving the violation of fundamental principles of the Charter. In this respect, the provisions of Articles 55 and 56, as well as of Articles 1 (3), 13 and 62, proclaiming respect for human rights, were invoked. Furthermore, the claim of domestic jurisdiction was considered to be untenable since the General Assembly, as well as the Security Council, had previously adopted resolutions on the issue.]

At the 1050th meeting on 31 July 1963, the President (Morocco) informed the Security Council that, following a decision made at its 1041st meeting[107] to invite the Republic of South Africa to participate in the consideration of the question, a reply had been received from the Foreign Minister of South Africa. The reply[108] included the following statement: "The

[104] S/4700, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 227-228.

[105] 946th meeting: para. 165.

[106] For texts of relevant statements, see:
1050th meeting: President (Morocco), para. 5; Tunisia*, paras. 36, 38, 42, 43.
1051st meeting: Liberia*, paras. 31, 32, 35, 36;
1052nd meeting: Ghana, paras. 31, 32, 34; United States, paras. 56-59;
1053rd meeting: China, paras. 56, 57; Venezuela, paras. 66, 69, 71;
1054th meeting: France, paras. 97-101; Ghana, paras. 61, 62; United Kingdom, paras. 82, 83.
1073rd meeting: Liberia, paras. 18, 27-29;
1074th meeting: India*, paras. 39, 40;
1076th meeting: President (Norway), paras. 60-66.

[107] 1040th meeting: para. 11; 1041st meeting: para. 90.

[108] 1050th meeting: para. 6.

South African Government has ... decided not to participate in the discussion by the Council of matters relating to South African policy which fall solely within the domestic jurisdiction of a Member State."

At the same meeting, in commenting on this statement, the representative of Tunisia* remarked that it was obvious that the drafters of Article 2 (7) of the Charter did not imagine that its adoption would result in depriving the United Nations of any right to act in situations involving the violation of fundamental principles of the Charter. The United Nations had the right and the duty to concern itself with national policies when they had repercussions on the world community. This applied particularly in a situation such as that of South Africa which fell within the scope not only of Articles 55 and 56 of the Charter, but also of Articles 34 and 35 and subsequent Articles. The reference to Article 2 (7) was all the more futile as the General Assembly and the Security Council had previously adopted resolutions on the policies of apartheid.

At the 1052nd meeting on 2 August 1963, the representative of Ghana, after quoting the South African statement, observed:

"To my delegation ... it confirms the contention long held by the Government of South Africa that its racial policies are entirely its domestic affair and that the United Nations has no competence to discuss them, much less to pass resolutions on them. My delegation and the overwhelming majority of the United Nations do not agree with South Africa in this. There can be no question of exclusive domestic jurisdiction when one race—in this case, the white race—is actively engaging in the merciless killing of another through oppression...

"Therefore, the South African Government's reliance on Article 2, paragraph 7, of the Charter is not tenable."

The representative of the United States, in reiterating certain basic views of his delegation about the issue before the Council, stated that a fundamental principle on which there was general agreement was that all Member States had pledged themselves to take action, in co-operation with the United Nations, to promote observance of human rights, without distinction as to race. He added:

"... we continue to believe that this matter is of proper and legitimate concern to the United Nations. We have often stated, in the General Assembly, our belief that the Assembly can properly consider questions of racial discrimination and other violations of human rights where they are a Member's official policy and are inconsistent with the obligations of that Member, under Articles 55 and 56 of the Charter, to promote observance of human rights, without distinction as to race.

"Moreover, the apartheid policy of South Africa has clearly led to a situation the continuance of which is likely to endanger international peace and security."

At the 1053rd meeting on 5 August 1963, the representative of China, regretting that the Government of South Africa had invoked Article 2 (7), stated that the promotion of human rights and fundamental freedoms was a paramount purpose of the United Nations, no less important than the maintenance of international peace and security. There could be no genuine peace and security if human rights and the fundamental freedoms were not respected. On questions involving human rights and fundamental freedoms, the competence of the United Nations was overriding, and in the eighteen years of the Organization's existence the preponderance of opinion of Member States had favoured this view. It served no useful purpose now to re-open the debate on the question of competence, which had long since been settled by an impressive number of precedents.

The representative of Venezuela declared that the Charter, in paragraph 3 of Article 1, and in Articles 13, 55 and 62, proclaimed respect for human rights. It would, therefore, be illogical to give an absolute and rigid interpretation to Article 2 (7) of the Charter in such a way as to cover a situation which flagrantly violated that respect for human rights which had been proclaimed in the other provisions of the Charter.

At the 1054th meeting on 6 August 1963, the representative of the United Kingdom stated that his delegation continued to attach the greatest importance to the proper observance of Article 2 (7), the Charter provision "which in effect guarantees to Members of the United Nations, and particularly those who may find themselves in the minority, a reasonable immunity from interference by the majority in their internal affairs". However, he further stated:

"... as regards apartheid, in 1961 the United Kingdom representative in the Special Political Committee of the General Assembly explained that, while the importance which we attached to the proper observance of Article 2, paragraph 7, remains undiminished, we regarded the case of apartheid in the circumstances which now exist as of such an extraordinary and exceptional nature as to warrant our regarding and treating it as sui generis."

In the opinion of the representative of France, the measures proposed in the joint draft resolution would, juridically speaking, constitute direct interference in matters falling within the national competence and jurisdiction of a State. However, the French Government had no hesitation regarding the agenda on the basis of which the Council debates were being held. The position of France on the question of apartheid was unmistakable. France could only condemn racial discrimination, and the French delegation consistently had taken this position on a number of occasions in the past.

At the 1056th meeting on 7 August 1963, the joint draft resolution [109] submitted by Ghana, Morocco and the Philippines, as amended, was adopted by 9 votes in favour, none against, with 2 abstentions.[110]

At the 1073rd meeting on 27 November 1963, when it resumed consideration of the question, the Council had before it the report [111] of the Secretary-General,

[109] S/5386, O.R., 18th year, Suppl. for July-Sept. 1963, pp. 73-74.

[110] 1056th meeting: para. 18.

[111] S/5438 and Add.1-5, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 7-38, para. 5.

which included a reply by the Foreign Minister of South Africa in which it was stated:

"The South African Government's attitude has often been stated and is well known. In this connexion it must be emphasized that the South African Government has never recognized the right of the United Nations to discuss or consider a matter which falls solely within the jurisdiction of a Member State. . . .

"While the South African Government entered into consultations with the then Secretary-General in 1960 this was on the basis of the authority of the Secretary-General under the Charter of the United Nations and on prior agreement that the consent of the South African Government to discuss the Security Council's resolution of 1 April 1960 would not require prior recognition from the South African Government of the United Nations authority.

"The present request from the Secretary-General is, however, based on a Security Council resolution which violates the provisions of Article 2 (7) of the Charter of the United Nations. It would be appreciated that in the circumstances it is impossible for the South African Government to comment on the matters raised by the Secretary-General since by doing so it would by implication recognize the right of the United Nations to intervene in South Africa's domestic affairs."

The representative of Liberia*, in objecting to the "untenable argument" based on Article 2 (7), commented upon this reply and stated that "South Africa, as a signatory of the Charter and a Member of the United Nations, has pledged, under Article 56, 'to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55' ". International jurists and authors were mostly agreed that there was an element of legal duty in the undertaking given in Article 56. Referring to the opinions of some international jurists on the matter, the representative said that there could be no doubt about the competence of the United Nations to deal with the matter of apartheid in South Africa. No violation of Article 2 (7) occurred thereby.

At the 1074th meeting on 29 November 1963, the representative of India* recalled that when, at the first session of the General Assembly in 1946, the representative of South Africa, the then Prime Minister, Field Marshal Smuts, raised the objection of domestic jurisdiction, it was rejected after prolonged discussion. The representative quoted further from a statement made by the same representative of South Africa at the San Francisco Conference in 1945 in which he proposed that the Charter should contain in its Preamble a declaration on human rights, and contended that that statement "puts at rest any doubt that the question of the racial policies of the Government of South Africa is not covered by the Charter as a matter of domestic jurisdiction".

At the 1076th meeting on 3 December 1963, the representative of Norway (President) introduced a draft resolution [112] and, referring to its operative paragraph 6, concerning the establishment by the Secretary-General of a Group of Experts on South Africa, stated that it should not be regarded as an intervention in matters which were essentially within domestic jurisdiction.

At the 1078th meeting on 4 December 1963, the Norwegian draft resolution was unanimously adopted. [113]

CASE 18.[114] SITUATION IN SOUTHERN RHODESIA: In connexion with the joint draft resolution submitted by Ghana, Morocco and the Philippines: voted upon and failed of adoption on 13 September 1963

[*Note:* Article 2 (7) was invoked in connexion with objections to the Council's consideration of the question, and to any action by the Council thereon. On the other hand, it was contended that the competence of the Council could not be called into question since the situation in Southern Rhodesia was likely to endanger international peace and security and other United Nations bodies had already taken action with regard to it.]

At the 1064th meeting on 9 September 1963, before and after the adoption of the agenda, and at the 1066th meeting on 10 September 1963, the representative of the United Kingdom stated that the item before the Council concerned matters of domestic jurisdiction. In his view Article 2 (7) clearly applied, and since the documentation which had been submitted had a bearing on the internal affairs of Southern Rhodesia there were no grounds on which the Council could take action either under Chapter VI or Chapter VII of the Charter. The allegations made in respect of Southern Rhodesia concerned matters essentially within the domestic jurisdiction of its Government, matters which did not touch upon the Security Council's responsibilities for maintaining international peace and security and could

112/ S/5409. Same text as S/5471, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 103-105. See chapter VIII, pp. 216-217.

113/ 1078th meeting: para. 137. In his report to the Security Council (S/5658, 20 April 1964) concerning the implementation of this resolution, the Secretary-General transcribed a communication from the Minister of Foreign Affairs of South Africa, which included the following paragraphs:

"The Government of the Republic of South Africa has been advised by its Permanent Representative in New York of your request that facilities for a visit to the Republic be granted to members of the Group of Experts, appointed in terms of the Security Council resolution of 4 December 1963.

"The foregoing request has been put forward in pursuance of the aims outlined in that Security Council resolution, the main intent of which is to bring about the 'transformation' of the policies applied in South Africa. Against the background of this unequivocally stated objective it is manifestly impossible to receive the Group, whose visit is not only specifically intended as interference in the internal affairs of the Republic, and whose members are asked 'to consider what part the United Nations might play' in this regard, but which is also expected to prescribe how South Africa should be governed and, by implication, even what should be the provisions of its Constitution. This unparalleled attempt at deliberate interference not only makes it impossible for the Republic, as it would for any other sovereign independent State, to receive the Group, or any of its members, but also renders any form of co-operation with it out of the question."

114/ For texts of relevant statements, see:
1064th meeting: Ghana, paras. 18-21; United Kingdom, paras. 3-6;
1066th meeting: United Kingdom, paras. 24, 32, 33, 45-51;
1067th meeting: Morocco, paras. 6-8;
1068th meeting: France, para. 83; Morocco, paras. 120, 121; United Kingdom, paras. 101-104;
1069th meeting: Philippines (President), para. 37; United Kingdom, paras. 50-52.

not represent a threat to international peace. Therefore, they were beyond the scope of discussion in the Council.

At the 1064th meeting on 9 September 1963, the representative of Ghana contended that the competence of the Council could not be called into question in an issue such as that of Southern Rhodesia, which was likely to endanger international peace as a result of certain events in Southern Rhodesia. This question did not fall within Article 2 (7), as had been clearly demonstrated by the General Assembly resolutions, and by the deliberations of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples.

At the 1068th meeting on 12 September 1963, the representative of France stated that the United Nations was not empowered to pass judgement on measures taken to ensure the political development of any country which as yet did not enjoy all the attributes of sovereignty. This problem, he concluded, fell exclusively within the competence of the Member State responsible in the matter before the Council, the United Kingdom.

The representative of Morocco observed that objections to the competence of the Council were based on the special relationship between the United Kingdom and Southern Rhodesia. This relationship, though perhaps valid in English domestic law, could not, as a matter of international law, be admitted as evidence against the United Nations. This had also been demonstrated in connexion with the question of the territories under Portuguese administration.

At the 1069th meeting on 13 September 1963, the President, speaking as the representative of the Philippines, stated that the position held by the United Kingdom that Southern Rhodesia was not a Non-Self-Governing Territory, its invoking a convention under which it could not intervene in the internal affairs of the territory, and its denying the competence of the United Nations to deal with the question, were claims which had been thoroughly discussed on previous occasions. The resolutions adopted by the General Assembly and by the Special Committee constituted solid evidence that such allegations were not considered tenable by the United Nations.

The representative of the United Kingdom remarked that the issues concerning the question of Southern Rhodesia, as stated in the discussion, could in no sense involve the jurisdiction of the Security Council. There was no sufficient basis for taking action in the Council which could be justified under the Charter. In particular, nothing being done or being contemplated could remotely justify the intervention of the Security Council on the grounds that peace was being threatened.

At the same meeting, the draft resolution[115] jointly submitted by Ghana, Morocco and the Philippines to invite the Government of the United Kingdom not to transfer to Southern Rhodesia any powers or attributes of sovereignty and armed forces which would aggravate the already explosive situation, failed of adoption. There were 8 votes in favour, 1 against, and 2 abstentions (the negative vote being that of a permanent member).[116]

[115] S/5425/Rev.1, O.R., 18th year, Suppl. for July-Sept. 1963, pp. 164-165.

[116] 1069th meeting: para. 64.

Part III

CONSIDERATION OF THE PROVISIONS OF ARTICLE 24 OF THE CHARTER

Article 24

"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."

NOTE

Article 24, while the subject of frequent and incidental reference in the deliberations in the Security Council, on two occasions was the subject of constitutional debate when discussion arose concerning the provisions of its paragraph 1 and the authority of regional agencies with regard to questions affecting international peace and security.[117]

On another occasion, Article 24 was the subject of constitutional discussion in connexion with the issue whether a violation of human rights could be considered as endangering international peace and security.[118]

In other instances, statements bearing on the provisions of Article 24 (1) relative to the primary responsibility of the Security Council for the main-

[117] See Cases 24 and 27.

[118] See Case 19.

tenance of international peace and security were made in the proceedings leading to the establishment of an observation mission by the Council,[119] and during the consideration by the Council of the U-2 incident,[120] of the letter dated 23 May 1960 from the representatives of Argentina, Ceylon, Ecuador and Tunisia,[121] and of the RB-47 incident.[122] On several occasions, Members, in submitting a question to the Council which affected international peace and security, invoked, among other Articles, the provisions of Article 24 (1) as a basis of submission.[123] Article 24 was invoked in a resolution of the Security Council adopted at the 876th meeting on 19 July 1960 concerning the complaint by Cuba (letter of 11 July 1960).[124]

CASE 19.[125] SITUATION IN ANGOLA: In connexion with the draft resolution submitted by Ceylon, Liberia and the United Arab Republic: voted upon and not adopted on 15 March 1961

[*Note:* In a discussion on the Council's competence it was observed, on the one hand, that, acting under Article 24 of the Charter, the Council did not have primary responsibility for dealing with a crisis or for preventing abuse of human rights, but for maintaining international peace and security. In the absence of a situation likely to endanger the maintenance of international peace and security, the Council had no power to act whatever might be the character of any supposed crisis or the extent of any abuse of human rights. On the other hand, it was asserted that any violation of the principles of human rights and self-determination on the scale practised in Angola had to be regarded as directly threatening the relations between States and the maintenance of international peace and security.]

At the 943rd meeting on 10 March 1961, the President (United States) referred[126] to the letter[127] of 7 March 1961 submitted by the representative of Portugal in which objection was raised to the request of the representative of Liberia that the Council include in its agenda a matter which, in the view of the representative of Portugal, was "exclusively within the jurisdiction of the Government of Portugal, i.e., the maintenance of internal public order". In addition to invoking Article 2 (7), the letter stated that the proponent of the item was "attempting to deviate the Security Council from its functions, leading it to exceed its specific powers as referred to in Article 24, paragraph 2, of the Charter". The letter added: "Thus, an attempt is being made to confuse and override the fact that only in the particular circumstances laid down in Chapters VI, VII, VIII and XII of the Charter can the Council acquire jurisdiction and authority."

At the 944th meeting on 10 March 1961, after the adoption of the agenda, the representative of the United Kingdom referred to the essential grounds on which the representative of Liberia had requested the consideration of the item, and stated:

"... acting as we must in accordance with Article 24 of the Charter, it is not, in the first place, to deal with a crisis or to prevent abuse of human rights that the Security Council has primary responsibility, but to maintain international peace and security. All the rest may flow from this. But, without a situation likely to endanger the maintenance of international peace and security, this Council has no power to act, whatever other features any supposed crisis may have or whatever may be the extent of any abuse of human rights."

At the same meeting, the representative of Portugal* observed that under Article 24 (2) the Council's competence was specifically limited to matters referred to in Chapters VI, VII, VIII and XII of the Charter. He added:

"No mention has been made of any dispute between the Portuguese State and any other State Member of the Organization likely to endanger the maintenance of international peace and security, nor has any proof been presented of the existence of a situation which would cause a dispute of that nature. Clearly, there must be at least two parties—and under the Charter the parties must also be sovereign independent States—if there is to be a dispute or if such a situation is to exist. Therefore, none of the cases foreseen in Articles 33 and 34 is under consideration. These two Articles are the only ones which would justify any action of the Security Council within the scope of Chapter VI.

"The action recommended in Chapter VII applies to cases foreseen in Article 39, that is, threats to the peace, breaches of the peace or acts of aggression...

"Thus, the application of Chapter VII would have required the existence of a breach of international peace in the form of attempted aggression or aggression against the territorial integrity or political independence of a State or the threat or the use of force against such territorial integrity or independence. No such allegation was made against Portugal, nor could it have been made. Therefore, the case is obviously outside the scope of Chapter VII.

119/ See Case 20.

120/ See the following statements:
857th meeting: USSR, paras. 92, 96, 97;
858th meeting: France, para. 55; Poland, para. 79;
859th meeting: Ecuador, para. 36;
860th meeting: USSR, para. 69.

121/ See the following statements:
861st meeting: President (Ceylon), paras. 51-53, 59; Ecuador, paras. 24, 25; Tunisia, paras. 6-7; USSR, paras. 94, 95, 106; United Kingdom, para. 72;
862nd meeting: Poland, para. 16.

122/ See the following statements:
880th meeting: USSR, para. 57;
881st meeting: France, paras. 83-85;
883rd meeting: Tunisia, para. 45; USSR, para. 130.

123/ See chapter X, part III, Tabulation: entries 4, 5, 10, 11, 21, 23 and 26.

124/ S/4395, preamble, para. two, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 29-30. In a letter dated 11 July 1960 from the Minister for Foreign Affairs of Cuba to the President of the Security Council requesting the inclusion of the question in the agenda of the Council, reference was made to Article 24 (S/4378, ibid., pp. 9-10).

125/ For texts of relevant statements, see:
944th meeting: Portugal*, paras. 38-42, 44; United Kingdom, paras. 12, 13;
945th meeting: Ghana*, paras. 65-80; Liberia, paras. 109-113;
946th meeting: Chile, paras. 71, 74; Ecuador, paras. 65-66; United Kingdom, paras. 58-59.

126/ 943rd meeting: para. 5.

127/ S/4760, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 227-228.

"The provisions of Chapters VIII and XII, Article 83, are also irrelevant. No regional treaty is at stake, nor does the matter concern a strategic area under an international régime of trusteeship. Therefore, there is no provision whatever of the Charter which would justify the consideration of this matter by the Security Council."

After remarking that the delegation of Liberia had made in its request "a vague reference to human rights and privileges", he further observed that human rights were exclusively within the province of Chapter IX of the Charter.

At the 945th meeting on 14 March 1961, the representative of Ghana* gave a detailed account of the situation in Angola and of the "repressive measures" and "flagrant violations" of the Declaration on the granting of independence to colonial countries and peoples which were events constituting "a threat to international peace and security". "Furthermore", he said,

"any violation of the principles of human rights and self-determination on the scale practised in Angola cannot but be regarded as directly threatening the relations between States, and therefore as a proper concern for this Council ... and my Government urges that the Security Council should shoulder its responsibilities in the matter."

In the view of the representative of Liberia, there was in Angola the beginning of a colonial war. The situation was a threat to international peace and security as a result of the artificial division of the African continent which had separated tribal affiliation or ethnic groups. This fact alone was sufficient to warrant action by the Council in averting a crisis which might endanger world peace and order in that part of Africa.

At the 946th meeting on 15 March 1961, the representative of the United Kingdom, in objecting to the terms of the draft resolution [128] submitted by Ceylon, Liberia and the United Arab Republic, maintained that its adoption would seem to be

"... inviting the Security Council wholly to ignore the limitations placed on its jurisdiction by Article 24 of the Charter and to concern itself with matters which have been before the General Assembly and which may again be raised there. It is a wholly new interpretation of our Charter to say, as the sponsors of the draft resolution appear to be saying, that by simply alleging a danger to international peace and security this Council can take up the question of what effect a State ought to be giving to a resolution of the General Assembly.

"To proceed with this draft resolution therefore seems to my delegation to mean stretching the functions of the Security Council in such a manner as to blunt the edge of its major task, namely the maintenance of peace and security."

The representative of Ecuador dealt with the question of the Council's competence as follows:

"The Council has, under the Charter, the specific function of maintaining international peace and security. Its powers are governed by Article 24 and by Chapters VI and VII of the Charter. These define two spheres of action: first, any dispute, or any situation which might lead to international friction or give rise to a dispute, under Chapter VI; and secondly, threats to the peace, breaches of the peace, and acts of aggression, as mentioned in Chapter VII. At their present stage, the events in Angola do not seem ... to constitute an international dispute or a situation which might lead to a breach of international peace and security, or to represent an aggression or an actual threat to that peace and security.

"Hence, ... my delegation will abstain from voting on any draft resolution which would imply recognition of the Council's jurisdiction."

The representative of Chile held that the Council's debate on Angola had not shown that it was "faced with anything likely to endanger international peace and security, the only case in which action by this Council is justified". In his view the Council was dealing with "a question concerning human rights, fundamental freedoms and the principle of self-determination of peoples". He further observed:

"It is not desirable to depart from the strict legal rules on which the Council's existence is based, by introducing political and social considerations... If we do not abide by the provisions of the Charter concerning the limits of the Council's field of action, we may defeat our own ends, and, instead of promoting a solution of the problems, may delay and obstruct it."

At the same meeting, the three-Power draft resolution was not adopted. There were 5 votes in favour, none against, with 6 abstentions. [129]

CASE 20. [130] REPORTS BY THE SECRETARY-GENERAL CONCERNING YEMEN: In connexion with the decision of 11 June 1963 requesting the Secretary-General to establish a United Nations observation operation in Yemen, and to report to the Security Council on the implementation of this decision

[*Note:* Article 24 was not explicitly mentioned, nor were its provisions the subject of extended debate. However, in the letter raising the matter before the Security Council and during its consideration, the observation was made that, under the Charter, only the Security Council could take action assuming such a responsibility as the dispatch of observers in a conflict which threatened international peace and security. It was further contended that the Security Council should only adopt decisions regarding actions for the maintenance of peace and security after all aspects of the case, including the question of the financing and the duration of the operation, were taken into account. On the other hand, it was maintained that the Security Council was not the only United Nations body which could initiate action to maintain

[128] S/4769, 945th meeting: para. 107.

[129] 946th meeting: para. 165.

[130] For texts of relevant statements, see:
1038th meeting: Morocco, paras. 27-29; USSR, paras. 15, 18;
1039th meeting: President (Ghana), paras. 45-47; France, paras. 38, 39; Philippines, para. 33; USSR, paras. 13-18, 20, 24; United Kingdom, para. 6; United States, paras. 8, 9.

international peace and security, and the view was expressed that the assessment of the costs of the observation mission was the prerogative of the General Assembly. The adopted resolution gave the Secretary-General a mandate to establish the observation mission, and noted that the parties had agreed to defray the costs for a limited time.]

At the 1037th meeting on 10 June 1963, the Security Council had before it a letter [131] dated 8 June 1963 from the representative of the USSR requesting that the Security Council consider the reports of the Secretary-General [132] on developments relating to Yemen, "since the reports contain proposals concerning possible measures by the United Nations to maintain international peace and security, on which, under the Charter, decisions are taken by the Security Council".

In his reports on the developments in Yemen, the Secretary-General informed the Council that a disengagement agreement had been reached by the parties concerned and that, pursuant to their request, he would proceed with the organization and dispatch of a United Nations observation mission to Yemen. No financial implications for the United Nations were envisaged since the two parties principally involved had undertaken to defray the costs of the operation for an initial period of two months, and possibly for four months.

At the 1038th meeting, the representative of the USSR stated that the dispatch of United Nations observers to Yemen affected not only the parties directly concerned "but the whole problem of United Nations action for the maintenance of peace and security". He further stated:

> "... the Soviet delegation would not object to the Security Council—which under the United Nations Charter is the only body competent to take decisions on action by the Organization for the maintenance of international peace and security—deciding that a limited number of United Nations observers should be sent ... for a period of two months, as agreed between the parties concerned."

The representative of Morocco, in submitting a draft resolution jointly sponsored with Ghana, considered that its first purpose would be "to define the precise limits within which the United Nations could lawfully take action and could assume responsibilities in a dispute endangering international peace and security".

At the 1039th meeting on 11 June 1963, the representative of the United Kingdom stated that, in his view, "this new mission undertaken by our Organization is consistent with the peace-keeping duties laid upon it by the Charter".

After the draft resolution had been adopted, [133] the representative of the United States declared his understanding that with regard to the duration of the observation operation, there was no time limitation upon it, and the reference to two months had arisen only because the parties had agreed to defray the costs for two months, "but without prejudice to the manner of financing thereafter if a longer operation should prove to be necessary".

The representative of the USSR objected to the fact that no specific time limit for the observation mission had been indicated in the adopted resolution. His delegation was not opposed in principle to the dispatch of observers to Yemen. He added:

> "However, this operation, like any other operation involving the use of armed forces under the auspices of the United Nations, must be limited in time.... On the basis of the Secretary-General's statements, the Soviet delegation urged that the Council's decision should clearly specify that the United Nations observers were being sent for a period of two months....
>
> "The question of prolonging the observation mission's stay ... should be considered by the Security Council after the two months have elapsed, and the appropriate decision taken."

He further stated:

> "In deciding to conduct an operation entailing the use of armed forces under United Nations auspices, by virtue of Articles 43, 48 and 50 of the Charter, the Security Council is bound to consider the question of sources of financing as well. In essence the Council has already done this, since it received from the Secretary-General an estimate of the costs involved in the operation and it also heard the Secretary-General's statement that the maintenance of the United Nations observers for a two-month period would not entail any financial expenditure by the United Nations.
>
> "...
>
> "... the Soviet delegation has consistently taken and continues to take the view that the Security Council, in keeping with the letter and spirit of the Charter, should adopt decisions involving action on behalf of the United Nations for the maintenance of world peace and security only when all aspects of the matter, including the material and financial conditions for the execution of its decisions, have been duly examined."

In the opinion of the representative of the Philippines, this was a unique situation and should not, therefore, be considered as a precedent, "particularly with regard to the assumption that only the Security Council can authorize peace-keeping operations or that it is the only body that can initiate action to keep the peace".

The representative of France referred to "the manner in which the proposed operation is to be financed" as an important aspect of the problem on which, in his opinion, the Security Council was competent to pronounce itself. He added:

> "Since the financing of this operation is assured for a period of two months, the decision of the Security Council ... is valid for that period. Moreover, we understand from the information given by the Secretary-General that . . . if the observation operation undertaken by the United Nations were to exceed two months, he would inform the Security Council of that fact in good time. We therefore con-

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[131] S/5326, O.R., 18th year, Suppl. for April-June 1963, p. 51.

[132] S/5298, ibid., pp. 33-34; S/5321, ibid., pp. 46-48; S/5323, ibid., pp. 48-50; S/5325, ibid., p. 50.

[133] S/5331, ibid., pp. 52-53; see also chapter VIII, p. 208.

sider that if that proved to be the case ... the Council would have to re-examine the problem."

The President, speaking as the representative of Ghana, declared that one of the overriding reasons for the draft resolution had been "the need to emphasize the responsibility of the Security Council in the matter of peace-keeping in the area under discussion". He further observed:

"... If the observation team had to continue its efforts in the area after the two-month period, then in our view the Security Council would have to approve of further action in the area.

"The Ghana delegation feels that it is the primary responsibility of the Security Council to see that a peace-keeping operation takes place. But we feel that any position taken by the Council implies some financial obligation, and once a position has been taken, then the assessment of the costs will, of course, be the prerogative of the General Assembly."

Part IV

CONSIDERATION OF THE PROVISIONS OF ARTICLE 25 OF THE CHARTER

Article 25

"The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter."

NOTE

After the adoption of resolution S/4426[134] of 9 August 1960, the Secretary-General, in order to stress the peremptory character of the decisions of the Security Council and to draw the attention of Member States to their obligations to accept and carry out the decisions of the Council and to join in affording mutual assistance in carrying out measures decided upon by the Council, on a number of occasions referred to or quoted operative paragraph 5 of the resolution, in which Articles 25 and 49 were explicity invoked.

In some instances, the Secretary-General cited both Articles[135] with explicit reference to the resolution of 9 August 1960; in other instances, he cited Article 25,[136] in some cases by implied reference to operative paragraph 5 of the resolution of 9 August 1960, or Article 49,[137] with explicit and implied references to the same provision.

Two other case histories[138] included in this part have a bearing on the obligation of Member States under Articles 25 and 49 arising from the participation of their military units in the United Nations Force in the Congo.

CASE 21.[139] SITUATION IN THE REPUBLIC OF THE CONGO: In connexion with the Ceylonese-Tunisian joint draft resolution: voted upon and adopted on 9 August 1960

[*Note:* In the course of the discussion it was maintained that, in view of the peremptory character of Articles 25 and 49, Member States were bound to implement the decisions of the Security Council, and a draft resolution to this effect was adopted. To the statements that Member States must refrain from any unilateral action in the Congo, objection was made on the ground that the Government of the Republic of the Congo had the right to regulate its relations with other States according to its requirements.]

At the 884th meeting on 8 August 1960, the Secretary-General said that the Charter outlined in several Articles the obligations of Member States in relation to the Organization in a situation such as the current one in the Congo. He pointed out that he had drawn attention to Articles 25 and 49 in his reply to Mr.

134/ See Case 21.

135/ See: Note verbale dated 8 September 1960 from the Secretary-General to the representative of Belgium (S/4482/Add.1, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 139-140); statement of the Secretary-General at the 920th meeting on 13/14 December 1960 (para. 74); letter dated 14 December 1960 from the Secretary-General addressed to the President of the Republic of the Congo (S/4599, O.R., 15th year, Suppl. for Oct.-Dec. 1960, pp. 102-103); message dated 8 March 1961 from the Secretary-General to the President of the Republic of the Congo (Leopoldville) (S/4775, document I, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 261-265).

136/ See: Note verbale dated 22 February 1961 from the Secretary-General to the representative of Belgium (S/4752, annex I, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 178-179); letter dated 23 February 1961 addressed to all States Members of the Organization by the Secretary-General of the United Nations (S/4752, annex III, ibid., pp. 182-183); letter dated 27 February 1961 from the Secretary-General to the President of the Republic of the Congo (Leopoldville) (S/4752, annex IV, ibid., pp. 183-186); note verbale dated 2 March 1961 from the Secretary-General to the representative of Belgium (S/4752/Add.1, document I, ibid., pp. 190-193). letter dated 2 March 1961 from the Secretary-General to the President of the Republic of the Congo (Leopoldville) (S/4752/Add.1, document II, ibid., pp. 193-195); message dated 2 March 1961 addressed to Mr. Tshombé through the Special Representative of the Secretary-General in the Congo (S/4752/Add.1, document III, ibid., pp. 195-197), note verbale dated 8 March 1961 from the Secretary-General to the representative of Belgium (S/4752/Add.4, document I, ibid., pp. 201-203); message dated 12 March 1961 from the Secretary-General to the President of the Republic of the Congo (Leopoldville) (S/4775, document IV, ibid., pp. 269-271), second report of the Secretary-General on certain steps taken in regard to the implementation of Security Council resolution S/4741 of 21 February 1961 (S/4807, O.R., 16th year, Suppl. for April-June 1961, pp. 43-48, para. 4).

137/ See: telegram dated 9 August 1960 from the Secretary-General to the Prime Minister of the Republic of the Congo (S/4417/Add.3, document I, O.R., 15th year, Suppl. for July-Sept. 1960, p. 57); note verbale of 18 August 1960 from the Secretary-General to the Government of the Republic of the Congo (S/4417/Add.8, annex II, ibid., pp. 78-79), note dated 18 August 1960 for conversation with the representative of Ghana (S/4445, annex I, ibid., pp. 99-100).

138/ See Cases 22 and 23.

139/ For texts of relevant statements, see:

884th meeting: Secretary-General, paras. 22, 23.

885th meeting: Tunisia, para. 76; United States, para. 49;

886th meeting: Argentina, para. 76; Belgium*, paras. 244, 245; Ecuador, paras. 46, 49; Poland, para. 289. United Kingdom, paras. 149, 165.

Tshombé's démarche [140] published in his second report on the implementation of Security Council resolutions S/4387 of 14 July 1960 and S/4405 of 22 July 1960. He asked whether there could be a more explicit basis for hoping that the Council could count on active support from Governments directly concerned and for expecting that local authorities would adjust themselves to the obligations which their country had incurred.

At the 885th meeting on 8 August 1960, the representative of the United States, referring to his statement made at the 877th meeting that no nation could arrogate to itself the right to make threats of independent action in the Congo, observed that it became necessary to repeat that word of caution.

The representative of Tunisia introduced a draft resolution [141] submitted jointly with Ceylon whereby:

"The Security Council,

"...

"5. Calls upon all Member States, in accordance with Articles 25 and 49 of the Charter of the United Nations, to accept and carry out the decisions of the Security Council and to afford mutual assistance in carrying out measures decided upon by the Council;

"..."

At the 886th meeting on 8/9 August 1960, the representative of Ecuador stated that full implementation of the Council's resolutions seemed to have been held up by disregard for the obligations assumed by Member States under the Charter to comply with Security Council decisions. Under Article 25 of the Charter, the decisions of the Security Council were binding. Further, Article 49 established the obligation of Members to join in affording mutual assistance in carrying out the measures decided upon by the Council. "Member States are legally bound to carry out the decision of the Council; their obligation is therefore far stronger than the moral obligation imposed on them by recommendations of the General Assembly." The representative expressed the hope that all Member States would ponder the mandatory character of Articles 25 and 49. The mutual co-operation required to implement the Council's resolutions consisted not only of material assistance such as that being provided by those Member States upon which the Secretary-General had called for military contingents and other facilities. It should also be of a moral nature and, in the light of Article 49, some Governments should be more sparing in their criticism of an operation carried out in the name of all Member States.

The representative of Argentina observed that it was part of the obligations of Belgium as a Member of the United Nations to co-operate actively with the United Nations and to facilitate, as far as possible, the implementation of the Council's decisions.

The representative of the United Kingdom expressed the view that individual Member Governments should refrain from anything in the nature of direct intervention in the dispute even if they might be invited by one of the parties so to intervene. They should recoil from taking any action with regard to the situation in the Congo independently of the United Nations operations there.

The representative of Belgium* stated that he interpreted operative paragraph 5 of the Ceylonese-Tunisian joint draft resolution to mean that when the Security Council took up a problem and endeavoured to solve it, it was not in keeping with its dignity to allow a Member State to substitute for the Council and impose its own way of thinking.

At the 886th meeting on 8/9 August 1960, the joint draft resolution submitted by Ceylon and Tunisia was adopted. [142]

The representative of Poland objected to the interpretation of operative paragraph 5 of the resolution given during the discussion in the Council, which tended to exclude bilateral relations which the Government of the Congo might find it advisable to develop with any country in the world. The United Nations Force was in the Congo at the request of its Government, which, at the same time, had full right to develop its relations with any other State according to its desires.

CASE 22. [143] SITUATION IN THE REPUBLIC OF THE CONGO: In connexion with the first report of the Secretary-General on the implementation of Security Council resolution S/4387 of 14 July 1960 and with his second report on the implementation of Security Council resolutions S/4387 of 14 July 1960 and S/4405 of 22 July 1960

[*Note:* In his first report on the implementation of resolution S/4387 of 14 July 1960, [144] the Secretary-General defined the principles basic to the operation and composition of the United Nations Force in the Congo, which included the following provisions: The Force was under the exclusive command of the United Nations, vested in the Secretary-General under the control of the Organization. The mandate granted to the Force could not be exercised within the Congo either in competition with representatives of the host Government or in co-operation with them in any joint operation; this applied a fortiori to representatives and military units of Governments other than the host Government. To all United Nations personnel used in the operation the basic rules of the United Nations for international service should be considered as applicable, particularly as regards full loyalty to the aims of the Organization and abstention from actions in relation to their country of origin which might deprive the operation of its international character and create a situation of dual loyalty. The report was com-

140/ S/4417, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 45-53, para. 6.

141/ S/4424. Same text as resolution S/4426, ibid., pp. 91-92.

142/ 886th meeting: para. 272. S/4426, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 91-92.

143/ For texts of relevant statements, see:
885th meeting: USSR, para. 111, 113, 114;
886th meeting: France (President), para. 181;
888th meeting: Guinea*, para. 33; USSR, para. 81; Secretary-General, paras. 109, 110.

144/ S/4389, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 16-24, paras. 7, 12, 14.

porting its troops in its efforts to maintain law and order in the entire territory of the Congo, including Katanga. The principle of non-intervention, as interpreted by the Secretary-General and applied to the operations of the United Nations Force in the Congo, had come up against difficulties. The Security Council should state that, until such time as the Congolese people themselves decided to alter their constitutional arrangements, the law and order which the Council was pledged to maintain could be none other than that embodied in the Loi fondamentale and as represented by the Central Government of the Republic. Only thus could situations be avoided which gave the impression that the Central Government was being hindered in its efforts to restore law and order, situations such as the closing down of airports and radio stations[83] which had been interpreted by the Central Government of the Congo as a breach of the principle of non-intervention as defined by operative paragraph 4 of the resolution of 9 August 1960.

The representative of the United Arab Republic* observed that the constitutional issue raised in the course of the debate was an internal affair of the people of the Congo.

At the 906th meeting on 16/17 September 1960, the representative of Yugoslavia said that the principle of non-intervention by the United Nations in the internal affairs of the Congo had become a brake slowing down any adequate action aimed at implementing strictly the resolutions of the Security Council. This fact had been used to continue the outside interference in the internal affairs of the Republic of the Congo in most diverse forms, including the continued intervention by the Belgian troops, based on the misuse of the principle of the right of self-determination.

The representative of Ceylon introduced[84] a draft resolution[85] submitted jointly with Tunisia, according to which the Security Council would reaffirm its resolutions of 14 and 22 July and of 9 August and urge the Secretary-General to continue to give vigorous implementation to them, and call upon all Congolese within the Republic of the Congo to seek a speedy solution by peaceful means of all their internal conflicts for the unity and integrity of the Congo (oper. paras. 1, 2).

The representative of Tunisia pointed out that difficulties within the Congo were serious for international peace and security. However, the difficulties of a domestic nature were not within the Council's competence but were for the Congolese people to deal with.

The representative of the USSR submitted[86] an amendment[87] to operative paragraph 1 of the joint draft resolution to replace the words "to continue to give vigorous implementation to them" by the words "to implement them strictly"; thereafter, to add the words "permitting no interference in the internal affairs of the Republic of the Congo".

At the 906th meeting, the USSR amendment was rejected[88] by 2 votes in favour and 8 against, with 1 abstention.

At the same meeting, the joint draft resolution submitted by Ceylon and Tunisia failed of adoption;[89] there were 8 votes in favour, 2 against, with 1 abstention (one of the negative votes being that of a permanent member of the Council).

CASE 14.[90] SITUATION IN THE REPUBLIC OF THE CONGO: In connexion with the draft resolution submitted by the USSR; voted upon and rejected on 14 December 1960

[*Note:* In connexion with the USSR draft resolution calling upon the Secretary-General to secure the immediate release of Mr. Lumumba and his colleagues and to take steps to ensure the resumption of the activities of the lawful Government and Parliament of the Republic of the Congo, it was contended, on the one hand, that the interpretation of the Secretary-General of the principle of non-intervention by the United Nations in the internal affairs of the Republic of the Congo had led to non-intervention by the United Nations in the activities of forces which had used violence to prevent the normal operation of the country's lawful organs. It was maintained, on the other hand, that a struggle for political leadership and a dispute over the legitimacy of government were matters within the domestic jurisdiction of the Republic of the Congo, in accordance with Article 2 (7) of the Charter. For this reason, the Council could not take actions envisaged in the USSR draft resolution.]

At the 913th meeting on 7 December 1960, the Secretary-General stated that it had been after the adoption of the first two resolutions that internal conflict had given rise to the demands that the United Nations Force take action against competing political groups on the basis of constitutional provisions. The Council had not seen fit to modify the original mandate of the Force and on 9 August it adopted a specific injunction reaffirming the principle that the Force should not "be used to influence the outcome of any internal conflict, constitutional or otherwise". The records of the Security Council and the General Assembly contained abundant references to the emphasis which the great majority of Member States had placed on this principle. He stated further that it was possible to argue in a purely theoretical way that the maintenance of law and order might embrace the enforce-

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[83] For the statement of the Secretary-General on these matters, see chapter I, Case 27.

[84] 906th meeting: para. 81.

[85] S/4523, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 172-173.

[86] 906th meeting: para. 117.

[87] S/4524, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 173-174.

[88] 906th meeting: para. 153.

[89] 906th meeting: para. 157.

[90] For texts of relevant statements, see:

913th meeting: Secretary-General, paras. 16-18, 27-31;

914th meeting: Argentina, paras. 89, 90;

915th meeting: United Kingdom, para. 37; Yugoslavia*, paras. 113, 114, 125, 126, 131;

916th meeting: Cameroon*, para. 107; Ecuador, paras. 65-69, 71, 74; Indonesia*, paras. 116, 117, 119; Italy, paras. 50-52;

917th meeting: Ceylon*, paras. 23-26, 28-38, 41; China, paras. 13, 14; Secretary-General, paras. 62-64;

918th meeting: France, paras. 63, 69; Poland, paras. 20-24, 30, 40, 41; Tunisia, paras. 87, 89, 96;

919th meeting: Guinea*, paras. 33, 52; Yugoslavia, paras. 127, 131;

920th meeting: Ceylon, paras. 105-108; Tunisia, para. 139; Secretary-General, paras. 73, 77.

At the 896th meeting on 9/10 September 1960, the Secretary-General, referring to news to the effect that a national contingent within the United Nations Force had stated that it wanted to pull out from the Force until the United Nations "ceases its flagrant interference in internal Congolese affairs", [152] recalled the following statement [153] from his first report, "as commended" by the Security Council:

> "The authority granted to the United Nations Force cannot be exercised within the Congo either in competition with the representatives of the host Government or in co-operation with them in any joint operation. This naturally applies a fortiori to representatives and military units of other Governments than the host Government."

and said:

> "Were a national contingent to leave the United Nations Force, they would have to be regarded as foreign troops introduced into the Congo, and the Security Council would have to consider their continued presence in the Congo, as well as its consequences for the United Nations operation, in this light." [154]

At the 903rd meeting on 15 September 1960, the representative of France expressed the view that any State which had been asked by the United Nations to contribute a military contingent to restore order and security in the Congo would be failing in its obligations towards the United Nations and the responsibilities it had assumed when it had joined the Organization "if it were to use that contingent, or any other, in the Congo outside the scope of operation of the United Nations Force".

[152] For the withdrawal of national contingents from the United Nations Force in the Congo on the basis of a disagreement with the implementation of the mandate of the Force, see the statements of the representatives of Yugoslavia* (915th meeting: para. 146), the United Arab Republic* (916th meeting: paras. 92-93), Indonesia* (920th meeting: para. 9; 931st meeting: para. 106), Morocco* (930th meeting: para. 36); see also telegram dated 12 December 1960 from the President of the Republic of Guinea to the President of the Security Council (S/4594, O.R., 15th year, Suppl. for Oct.-Dec. 1960, p. 98) and telegram dated 15 February 1961 from the President of the Republic of the Sudan to the Secretary-General (S/4731, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 140-141).

[153] S/4389, O.R. 15th year, Suppl. for July-Sept. 1960, pp. 16-24, para. 12.

[154] By note verbale (S/4668 and Add.1, document II, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 80-81) dated 25 January 1961, the Secretary-General informed the Permanent Representative of Morocco that he had received notification to the effect that the Commandant of the Moroccan brigade in the United Nations Force had received instructions from his Government as a result of which the brigade would cease to perform its functions during the period from 31 January 1961 until its departure. If this meant that from 31 January until its repatriation the Moroccan contingent would remain in the Congo, withdrawn from the United Nations Command, the situation would be very serious:

> "The Moroccan troops are at present in the Congo and can remain there only as an integral part of the United Nations Force, under the orders of the United Nations Command and under the responsibility of the United Nations. If they are withdrawn from that Command and from the responsibility of the United Nations, as the instructions transmitted to them would appear to indicate, they would have to be regarded as foreign troops present in the territory of the Congo without the consent of the Congolese Government."

In view of this, the Secretary-General requested that instructions be given that the Moroccan contingent, as long as it was present in the Congo, should remain an integral part of the United Nations Force, and should assume and perform all duties assigned to it by the Commander of the Force.

By letter dated 1 February 1961 (S/4668 and Add.1, document III, ibid., p. 81), the Permanent Representative of Morocco informed the Secretary-General that from 31 January 1961 until their repatriation, the Moroccan troops would remain under the United Nations flag. But if called upon to act against their conscience, they would feel bound not to apply any decisions contrary to the interests of the Congo and of legality.

By telegram (S/4758/Add.4, ibid., pp. 220-222) dated 5 March 1961, the Secretary-General, referring to the threat of the use of force by the ANC soldiers to compel evacuation of the Sudanese units of the United Nations Force from Matadi, drew the attention of the President of the Republic of the Congo to the following two points:

> "First, United Nations, under the Security Council mandate, must keep complete freedom of decision as regards the deployment of national contingents in performance of the United Nations operation. In the exercise of its responsibility the placement of specific contingents will, of course, always be made with due regard to all the pertinent circumstances. I am bound to consider unacceptable any attempt by force or otherwise to influence ONUC in this respect, including the setting of conditions as to the selection of units for Matadi. The forced withdrawal of the Sudanese detachment from Matadi today cannot be interpreted as derogating from this position of principle.
>
> "Secondly, the presence of the United Nations Force in Matadi is a vital condition for the carrying out of the United Nations operation in the Congo, especially for the prevention of civil war and the halting of military operations, for which, as you know, the Security Council resolution authorizes the use of force, if necessary, in the last resort. This point is necessarily subject, as regards placement of specific contingents, to the principles laid down in the preceding paragraph in the implementation of which the United Nations, on its own responsibility, takes into account all factors essential for the fulfilment of the task of the Force." (See also letter of 8 March 1961 from the Secretary-General to the President of the Republic of the Congo (S/4775, document I, ibid., pp. 262-265).)

In a message (S/4775, document IV, ibid., pp. 269-271) dated 12 March 1961 to the President of the Republic of the Congo, in connexion with the incidents at Matadi, the Secretary-General stated that the size, composition and deployment of the United Nations Force could not

> "be subordinated to the will of any one Government, be it a contributing Government or a host Government. If the United Nations organizes the Force, the Force must remain exclusively under the command of the United Nations, guided by the judgement of the military command of the United Nations as to what is necessary for the mission of the Force in order to enable it to fulfil its purpose as jointly endorsed by all Governments concerned. This must be accepted by the Congolese Government."

Part V

CONSIDERATION OF THE PROVISIONS OF CHAPTER VIII OF THE CHARTER

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 actions, 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."

NOTE

In consequence of the obligation placed by the Charter upon Members of the United Nations and upon regional arrangements or agencies, the attention of the Security Council has been drawn during the period from 1959 to 1963 to the following communications, which have been circulated by the Secretary-General to the representatives of the Council, but have not been included in the provisional agenda:

1. *Communications from the Chairman of the Council of the Organization of American States*

   (i) Dated 6 May 1963: transmitting the text of a cable sent to the Governments of Haiti and the Dominican Republic from the Council of the Organization of American States, serving provisionally as Organ of Consultation.[155]

   (ii) Dated 7 May 1963: communicating the reply of the President of the Dominican Republic to the cable sent to him on 6 May 1963.[156]

2. *Communications from the Chairman of the Inter-American Peace Committee*

   (i) Dated 31 May 1960: transmitting a report on the case presented by Ecuador and a special report on the relationship between violations of human rights or the non-exercise of representative democracy and the political tensions that affect the peace of the hemisphere.[157]

   (ii) Dated 10 June 1960: transmitting report of the Inter-American Peace Committee on the case presented by the Government of Venezuela, as well as a statement made on that date regarding the Committee's current activities.[158]

   (iii) Dated 30 October 1963: transmitting report of the Inter-American Peace Committee on termination of the activities of the Honduras-Nicaragua Mixed Commission.[159]

3. *Communications from the Secretary-General of the Organization of American States*

   (i) Dated 2 May 1959: transmitting resolutions adopted on 28 and 30 April by the Council of the Organization of American States in response to a request by the Government of Panama.[160]

   (ii) Dated 14 May 1959: transmitting resolution adopted on 2 May by the Council of the Organization of American States in response to a request by the Government of Panama.[161]

   (iii) Dated 23 June 1959: transmitting a resolution adopted on 4 June by the Council of

[155] S/5304, O.R., 18th year, Suppl. for April-June 1963, pp. 39-40.
[156] S/5309, ibid., p. 43.
[157] S/4333.
[158] S/4337.
[159] S/5452.
[160] S/4184.
[161] S/4188.

the Organization of American States in response to a request by the Government of Nicaragua.[162]

(iv) Dated 30 July 1959: transmitting a resolution adopted on 29 July by the Council of the Organization of American States in connexion with the case submitted by the Government of Nicaragua, together with copies of reports on the matter.[163]

(v) Dated 11 July 1960: transmitting resolution approved on 8 July by the Council of the Organization of American States in response to the request of Venezuela.[164]

(vi) Dated 18 July 1960: transmitting resolution approved by the Council of the Organization of American States on 18 July in response to the request of the Government of Peru.[165]

(vii) Dated 9 August 1960: transmitting resolutions adopted by the Council of the Organization of American States regarding the agenda of the Seventh Meeting of Consultation of Ministers of Foreign Affairs.[166]

(viii) Dated 26 August 1960: transmitting the Final Act of the Sixth Meeting of Consultation of Ministers of Foreign Affairs serving as Organ of Consultation in application of the Inter-American Treaty of Reciprocal Assistance (relating to the Venezuelan complaint against the Dominican Republic).[167]

(ix) Dated 29 August 1960: transmitting the Final Act of the Seventh Meeting of Consultation of Ministers of Foreign Affairs, containing the Declaration of San José.[168]

(x) Dated 7 November 1960: transmitting information concerning the establishment of a Committee of Good Offices regarding the Cuban complaint of 11 July 1960.[169]

(xi) Dated 6 January 1961: transmitting resolution adopted on 4 January by the Council of the Organization of American States.[170]

(xii) Dated 24 January 1961: transmitting copy of a note dated 19 January 1961 from the Interim Representative of the United States on the Council of the Organization of American States.[171]

(xiii) Dated 11 December 1961: transmitting the Organization of American States resolution of 4 December 1961 convoking a Meeting of Consultation of Ministers of Foreign Affairs in response to a request by Colombia.[172]

(xiv) Dated 29 December 1961: transmitting the Organization of American States Council resolution of 22 December setting 22 January 1962 as the date of the Eighth Meeting of Consultation of Ministers of Foreign Affairs at Punta del Este, Uruguay.[173]

(xv) Dated 8 January 1962: transmitting the text of the resolution adopted on 4 January by the Council of the Organization of American States, together with the reports submitted by its Special Committee and sub-committee relating to developments in the Dominican Republic.[174]

(xvi) Dated 31 January 1962: transmitting the Final Act of the Eighth Meeting of Consultation of Ministers of Foreign Affairs, held at Punta del Este, Uruguay, from 22 to 31 January 1962.[175]

(xvii) Dated 23 October 1962: transmitting a resolution adopted the same day by the Council of the Organization of American States serving provisionally as Organ of Consultation, concerning the presence of "missiles and other weapons with ... offensive capability" in Cuba.[176]

(xviii) Dated 29 October 1962: transmitting notes from the Governments of Argentina, Colombia, Costa Rica, the Dominican Republic, Guatemala, Haiti, Honduras, Panama and the United States regarding collective action under the Inter-American Treaty of Reciprocal Assistance.[177]

(xix) Dated 8 November 1962: transmitting a resolution adopted on 5 November by the Council of the Organization of American States and a note from the Government of Nicaragua regarding collective action in the defence of the hemisphere.[178]

(xx) Dated 14 November 1962: transmitting reports from Argentina, El Salvador, the United States and Venezuela and a note from the United States, Argentina and the Dominican Republic concerning collective action.[179]

(xxi) Dated 13 December 1962: transmitting a report from the delegation of the United States and a note of the delegations of the United States, Argentina and the Dominican Republic, relating to the implementation of the Organization of American States resolution of 23 October 1962.[180]

162/ S/4104.
163/ S/4208.
164/ S/4397, O.R. 15th year, Suppl. for July-Sept. 1960, pp. 30-31.
165/ S/4399, ibid., pp. 31-32.
166/ S/4471, ibid., pp. 124-125.
167/ S/4476.
168/ S/4480.
169/ S/4559, O.R., 15th year, Suppl. for Oct.-Dec. 1960, pp. 53-57.
170/ S/4628.
171/ S/4647.
172/ S/5036, O.R., 16th year, Suppl. for Oct.-Dec. 1961, pp. 213-214.
173/ S/5049.
174/ S/5130.
175/ S/5075, O.R., 17th year, Suppl. for Jan.-March 1962, pp. 63-78.
176/ S/5193, O.R., 17th year, Suppl. for Oct.-Dec. 1962, pp. 161-163.
177/ S/5202.
178/ S/5206, O.R., 17th year, Suppl. for Oct.-Dec. 1962, pp. 173-174.
179/ S/5208.
180/ S/5217.

(xxii) Dated 28 April 1963: transmitting resolution approved by the Council of the Organization of American States on 28 April 1963 convoking a meeting on the application of the Inter-American Treaty of Reciprocal Assistance.[181]

(xxiii) Dated 3 May 1963: transmitting certain documents relating to the resolution adopted on 28 April 1963 by the Council of the Organization of American States serving provisionally as Organ of Consultation in application of the Inter-American Treaty of Reciprocal Assistance.[182]

(xxiv) Dated 8 May 1963: transmitting a resolution adopted by the Council of the Organization of American States serving provisionally as Organ of Consultation.[183]

(xxv) Dated 18 July 1963: transmitting the resolution on the situation between the Dominican Republic and Haiti adopted by the Council of the Organization of American States acting provisionally as Organ of Consultation at its meeting held on 16 July, together with the first and second reports of the Committee appointed in accordance with the resolution adopted on 28 April April 1963.[184]

(xxvi) Dated 6 August 1963: transmitting the resolution adopted by the Council of the Organization of American States acting provisionally as Organ of Consultation, at its meeting held on 6 August 1963.[185]

(xxvii) Dated 16 August 1963: transmitting resolution approved by the Council of the Organization of American States serving provisionally as Organ of Consultation at its meeting on 15 August 1963 in connexion with the situation between the Dominican Republic and Haiti.[186]

(xxviii) Dated 21 August 1963: transmitting information concerning the situation between Haiti and the Dominican Republic.[187]

(xxix) Dated 22 August 1963: transmitting the preliminary report of the Special Committee of the Council of the Organization of American States serving provisionally as Organ of Consultation pursuant to the provisions of the resolution approved on 28 April 1963.[188]

(xxx) Dated 3 September 1963: transmitting the text of the message received from the Government of Haiti concerning the situation between Haiti and the Dominican Republic.[189]

(xxxi) Dated 23 September 1963: transmitting the texts of cables sent to the Governments of Haiti and the Dominican Republic.[190]

(xxxii) Dated 4 December 1963: transmitting copy of the resolution adopted by the Council of the Organization of American States at its extraordinary meeting, held on 3 December 1963, on the convocation of the Organ of Consultation, pursuant to the provisions of the Inter-American Treaty of Reciprocal Assistance.[191]

4. Communications from States parties to disputes or situations

(i) Dated 15 July 1960: United States, transmitting text of a memorandum submitted to the Inter-American Peace Committee entitled "Provocative actions by the Government of Cuba against the United States which have served to increase tensions in the Caribbean area".[192]

(ii) Dated 26 November 1960: Cuba, regarding letter of 7 November 1960 from the Secretary-General of the OAS.[193]

In addition to circulating these communications to the representatives of the Council, it has been the practice to include summary accounts of them in the annual reports of the Security Council to the General Assembly.[194]

CASE 24.[195] COMPLAINT BY CUBA (LETTER OF 11 JULY 1960): In connexion with the joint draft resolution submitted by Argentina and Ecuador and the USSR amendments thereto: the amendments voted upon and rejected on 19 July 1960, the joint draft resolution voted upon and adopted on 19 July 1960

[*Note:* During the debate, it was contended that, under Article 52 of the Charter, membership in a regional organization entailed rights which were optional rather than exclusive in character. Consequently, the request of a Member of the United Nations that the Security Council consider a question brought by it before the Council had not been invalidated be-

181/ S/5301, O.R., 18th year, Suppl. for April-June 1963, pp. 37-38.
182/ S/5307.
183/ S/5312.
184/ S/5373, O.R., 18th year, Suppl. for July-Sept. 1963, pp. 20-53.
185/ S/5387, ibid., p. 73.
186/ S/5399, ibid., p. 83.
187/ S/5398, ibid., p. 82.
188/ S/5404, ibid., pp. 139-145.
189/ S/5413, ibid., pp. 157-158.
190/ S/5431, ibid., p. 190.
191/ S/5477, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 107-108.
192/ S/4388.
193/ S/4565, O.R., 15th year, Suppl. for Oct.-Dec. 1960, pp. 59-65.
194/ See Report of the Security Council to the General Assembly, 1958-1959 (GAOR, 14th Session, Suppl. No. 2), p. 34; Report of the Security Council to the General Assembly, 1959-1960 (GAOR, 15th Session, Suppl. No. 2), p. 38; Report of the Security Council to the General Assembly, 1960-1961 (GAOR, 16th Session, Suppl. No. 2), pp. 55-56. Report of the Security Council to the General Assembly, 1961-1962 (GAOR, 17th Session, Suppl. No. 2), p. 77; Report of the Security Council to the General Assembly, 1962-1963 (GAOR, 18th Session, Suppl. No. 2), pp. 5-6, 15-16, 18.
195/ For texts of relevant statements, see:
874th meeting: President (Ecuador), paras. 152-156; Argentina, paras. 134-136; Cuba*, paras. 6-11; United States, paras. 97-102;
875th meeting: Ceylon, paras. 29-32; Italy, paras. 6-10; Poland, paras. 55-58, 60; United Kingdom, para. 63;
876th meeting: USSR, paras. 77-85, 92-95, 97-102, 105-107.

cause of the membership of that Member in a regional body. On the other hand, it was maintained that it was juridically correct to solve through regional agencies those disputes which could be dealt with by regional action and only when such efforts failed would it be necessary to submit them to the Security Council.]

At the 874th meeting on 18 July 1960, the representative of Cuba* stated that the right of a State which was a Member of the United Nations to have recourse to the Security Council could not be questioned. Regional arrangements made under the terms of Article 52 of the Charter entailed rights which were optional rather than exclusive in character, and Member States could exercise whichever of those rights they chose. Cuba, therefore, was entirely within its rights in coming to the Security Council, and those who invoked Article 52 (2) of the Charter to support the non-juridical argument that "the cases which States members of the Organization of American States bring before the Security Council should be submitted to that Organization", ignored paragraph 4 of that Article, which stated that it "...in no way impairs the application of Articles 34 and 35". It was evident, therefore, that any American State which was a Member of the United Nations could choose between recourse to the Security Council or recourse to the Organization of American States in the event of a dispute or a situation. Otherwise, one was bound to reach the conclusion that the American States, upon forming a regional agency, had renounced their rights under the Charter. There could, however, be no question that what they had done "was to supplement their rights under the United Nations Charter with those which they enjoy under the regional agency". In support of this view he cited references made by the representatives of Ecuador and Uruguay concerning the case of Guatemala during the general debate which took place at the ninth session of the General Assembly in September and October 1954.[196]

The representative of the United States held the view that under the Inter-American Treaty of Reciprocal Assistance and the Charter of the Organization of American States, the American Republics had contracted to resolve their international differences with any other American State first of all through the Organization of American States. The causes of international tensions in the Caribbean had been under consideration by the Inter-American Peace Committee since the meeting of American Foreign Ministers in Santiago, Chile, in August 1959. The Council of the Organization of American States was currently meeting and was expected to call for a Foreign Ministers' meeting shortly. In these circumstances, the Council should take no action on the Cuban complaint, at least until the discussion by the Organization of American States had been completed. "The point is that it makes sense—and the Charter so indicates—to go to the regional organization first and to the United Nations as a place of last resort. There is no question ... of replacing the United Nations."

At the same meeting, the representatives of Argentina and Ecuador submitted a draft resolution[197] under which:

"The Security Council,

"...

"Taking into account the provisions of Articles 24, 33, 34, 35, 36, 52 and 103 of the Charter of the United Nations,

"Taking into account also articles 20 and 102 of the Charter of the Organization of American States of which both Cuba and the United States of America are members,

"...

"Noting that this situation is under consideration by the Organization of American States,

"1. Decides to adjourn the consideration of this question pending the receipt of a report from the Organization of American States;

"2. Invites the members of the Organization of American States to lend their assistance towards the achievement of a peaceful solution of the present situation in accordance with the purposes and principles of the Charter of the United Nations."

In introducing this draft resolution, the representative of Argentina noted that it had been debated whether countries belonging to the Organization of American States, a regional agency recognized under Article 52 of the Charter of the United Nations, were entitled to bring a dispute with another American State before the Security Council or should first have recourse to the regional machinery. He suggested that the Security Council could agree on the practical proposition that, since the regional organization had already taken cognizance of the matter, it was desirable to await the results of its action and ascertain its point of view. The proposal to adjourn consideration of the question pending a report of the Organization of American States was not designed to deny the Council's competence in the matter or even to settle the legal question of which organization should act first. Instead, what was suggested was a "noting" of the concrete circumstance that the regional organization was dealing with the question and a recognition of the fact that, for a better evaluation of the issues, it would be useful if the Council had before it the considerations at which the regional organization might arrive. Such preliminary measures, however, could not prevent the Council from making precautionary provisions to ensure that the existing situation did not deteriorate before the report of the Organization of American States was transmitted to it.

The President, speaking as the representative of Ecuador, maintained that it was juridically correct and politically advisable to try solving through regional bodies those disputes which could be dealt with by regional action. Moreover, there were certain problems for which regional action might be the best remedy "in that their submission to a world forum may result in complicating them". The Charter had

196/ GAOR, 9th Session, Plenary Meetings, 481st meeting, paras. 15, 16.

197/ S/4392, same text as S/4395, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 29-30.

made it clear that regional organizations in no way detracted from the powers of the Security Council as the supreme body responsible for the maintenance of international peace and security. That body, however, was also required to encourage the development of pacific settlement of local disputes through regional arrangements or agencies, which meant that when there was a case appropriate for regional action the Council should recommend that course, or at any rate seek a report from the regional body concerned before taking any decision itself. "Acting in this way, the Council, far from relinquishing its competence, is in fact exercising it." In the light of these considerations, it was clear that the provisions of the Charter regarding regional arrangements and agencies and the legal obligations assumed by States in establishing regional agencies

> "in no way invalidate the rights of these States to appeal to the Security Council if they consider that the defence of their rights and interests so requires, or that a specific situation or dispute, although appropriate for regional action, might endanger international peace and security. Any contrary interpretation would place States members of a regional organization in a position of capitis diminutio in the United Nations, which would be both deplorable and legally improper."

At the 875th meeting on 18 July 1960, the representative of Italy stated that the situation existing between Cuba and the United States which was being considered by the Organization of American States should be dealt with within that sphere. Since the Inter-American Commission on Methods for the Peaceful Solution of Conflicts was seized already of the matter, the Security Council should await the report of that Commission. Such a procedure was envisaged both by the regional arrangements entered into by the American States and by Article 54 of the United Nations Charter. The Security Council should be called in only when other avenues, as provided by regional arrangements, had been properly explored. By adopting the joint draft resolution, the Council would in no way shun its responsibility, but would reserve a final pronoucement, if need be, until such time as the means for a solution through regional arrangements had been explored, in accordance with the provisions of Article 52 of the Charter.

The representative of Ceylon said that there could be no doubt as to the right of the Cuban Government to come directly to the Security Council without first going to the regional organization; nor could there be any doubt that it had the right to choose whether it should put its case before the Security Council or before the regional body. The Articles of the Charter amply supported that contention. Moreover, it must be presumed that when the agenda was adopted without objection, the jurisdiction of the Security Council and the right of Cuba were both admitted. The purpose of the draft resolution submitted by Argentina and Ecuador was to make an attempt to employ the peaceful method of negotiation. It was not wrong for the Council, in the circumstances, to utilize the Organization of American States for that purpose. The proposal that the Council adjourn further consideration of the question could not be interpreted as an attempt to deny to Cuba the right to have its case fully discussed in the Council. The proposal was made only because there existed a forum where an attempt at reconciliation should be made with the assurance that if no settlement was reached the issue would be brought back to the Council for final adjudication. Such a meaning was implicit in operative paragraph 1 of the draft resolution.

The representative of Poland expressed the view that it was for the Council to decide the question brought before it by Cuba. The Charter had given it clear directives in that respect and, although Article 52 provided for the use of regional arrangements for dealing with such matters as were appropriate for regional action, paragraph 4 of that Article contained a specific reservation to the effect that such a provision in no way impaired the application of Articles 34 and 35. Besides, Article 34, together with the provisions of Article 52, meant that the Security Council could consider any case regardless of other existing machinery, organization or body outside the United Nations, leaving the choice of the appropriate machinery to the party directly concerned. In conclusion the representative stated:

> "It is obvious that the authors of the Charter found it necessary to safeguard the right of all States to seek assistance from the United Nations and its organs in situations which in their view might endanger the maintenance of international peace and security."

The representative of the United Kingdom maintained that the procedures which were laid down in the Charter of the Organization of American States for the peaceful settlement of disputes were in full harmony with Article 33 of the Charter of the United Nations, which referred specifically to "resort to regional agencies or arrangements" for the solution of disputes.[198] Quite apart from the legal obligations undertaken by Cuba in respect of the Organization of American States, it was desirable that regional organizations should be given the opportunity to settle disputes among their members before resort was had to the Security Council or other organs of the United Nations.

At the 876th meeting on 19 July 1960, the representative of the USSR stated that those trying to justify the proposal to transfer Cuba's complaint to the Organization of American States referred to Article 52 (2) of the United Nations Charter. That Article provided that Members of the United Nations entering into regional arrangements should make an effort to achieve peaceful settlements of local disputes through regional arrangements before referring them to the Security Council. But it was not possible to maintain that the situation which endangered world peace should be considered merely "local disputes" within the meaning of Article 52 (2) and, as such, should be dealt with by a regional agency. Moreover, Article 52 expressly stated that the obligation of members of regional agencies to make efforts to achieve a settlement of local disputes within the framework of regional arrangements before referring them to the Security Council in no way impaired the application

[198] See chapter X, Case 2.

of Articles 34 and 35 of the Charter. With reference to the proposal that the Council should adjourn consideration of the question pending receipt of a report from the Organization of American States, the representative observed that the adoption of that proposal would mean "a refusal by the Security Council to fulfil its obligation". The representative stated further that Cuba had raised the question of "aggressive action by the United States" in the Security Council and had not brought the matter up in the Organization of American States. In the light of this, he asked how it could be said that the Organization of American States had begun consideration of the matter. The fact was that the Organization of American States would decide to consider another matter, not the question raised by Cuba. The representative submitted to the two-Power draft resolution amendments to delete the sixth preambular paragraph and operative paragraph 1. He further proposed that in operative paragraph 2 the words "Organization of American States" should be replaced by "United Nations".

The USSR amendments were rejected by 2 votes in favour, and 8 against, with 1 abstention.[199]

The joint draft resolution submitted by Argentina and Ecuador was adopted by 9 votes in favour to none against, with 2 abstentions.[200]

CASE 25,[201] LETTER OF 5 SEPTEMBER 1960 FROM THE USSR (ACTION OF THE OAS RELATING TO THE DOMINICAN REPUBLIC): In connexion with a USSR draft resolution: not put to the vote. In connexion also with a joint draft resolution submitted by Argentina, Ecuador and the United States: voted upon and adopted on 9 September 1960

[*Note:* During the discussion it was contended that the decision of the Organization of American States concerning the Dominican Republic constituted enforcement action, and since, under Article 53 of the Charter, the Security Council was the only organ empowered to authorize the application of enforcement action by a regional agency, approval by the Council of that decision was necessary so as to give it legal force and render it more effective. On the other hand, it was maintained that enforcement action would require Council authorization only when it involved the use of force as provided for in Article 42 of the Charter and as no use of force had been contemplated in the Organization of American States decision, no authorization of the Council was necessary.]

At the 893rd meeting on 8 September 1960, the representative of the USSR stated that his Government regarded as proper the resolution adopted at the Meeting of Consultation of Ministers for Foreign Affairs of the American States which condemned the aggressive actions of the "Trujillo regime" against the Republic of Venezuela. "Similarly, the Members of the United Nations cannot fail to support the decision of the Organization of American States as to the necessity of taking enforcement action—sanctions—against the Government of the Dominican dictator." The application of such enforcement action was fully in accord with Articles 39 and 41 of the United Nations Charter. Moreover, Article 53 of the Charter provided that the Security Council was "the only organ empowered to authorize the application of enforcement action by regional organizations against any State. Without authorization from the Security Council, the taking of enforcement action by regional agencies would be contrary to the Charter of the United Nations." The USSR representative submitted a draft resolution[202] under which the Security Council, being guided by Article 53 of the Charter, would approve the resolution of the Meeting of Consultation of Ministers for Foreign Affairs of the American States, dated 20 August 1960.

At the same meeting, a joint draft resolution[203] was submitted by Argentina, Ecuador and the United States under which:

"The Security Council,

"Having received the report from the Secretary-General of the Organization of American States transmitting the Final Act of the Sixth Meeting of Consultation of Ministers of Foreign Affairs of the American States (S/4476),

"Takes note of that report and especially of resolution I approved at the aforesaid Meeting, whereby agreement was reached on the application of measures regarding the Dominican Republic."

In introducing this draft resolution, the representative of Argentina observed that the USSR request brought up in the Council for the first time the question of interpretation of Article 53 of the Charter in connexion with the steps taken by regional agencies. The request implied that under Article 53 of the Charter the Council was competent to approve or annul and revise measures taken by the Organization of American States. There were weighty reasons to support the argument that measures taken regionally would be subject to Security Council ratification only if they called for the use of armed force. In the opinion of the Argentine delegation, the decisions taken by the Organization of American States were fully within its power and, in transmitting that information to the Council for its notification, the Organization had fulfilled its obligation to the Council. What the Council might do was to take note officially of what the regional agency had done.

"This would be a complete demonstration of the co-ordination which should exist between the regional agency and the international Organization. It would also constitute one more proof of the concern which the world Organization—and especially this body, the Security Council—ought to show for problems that have a bearing on international peace and security in every part of the globe."

199/ 870th meeting: para. 127.

200/ 870th meeting: para. 128.

201/ For texts of relevant statements, see:
893rd meeting: Argentina, paras. 28-43; Ecuador, paras. 55-67; France, paras. 86-90; USSR, paras. 18, 22-25; United Kingdom, paras. 96, 97; United States, paras. 46-51; Venezuela*, paras. 76-81;
894th meeting: President (Italy), paras. 44, 45, 47; Ceylon, paras. 3, 8-20; Poland, paras. 30-34; USSR, paras. 55, 70, 74.

202/ S/4481/Rev.1, 893rd meeting: para. 25.

203/ S/4484, same text as S/4491, O.R., 15th year, Suppl. for July-Sept. 1960, p. 145.

The representative of the United States remarked that, in accordance with Article 54 of the Charter, the action of the Organization of American States had been reported to the Security Council by the Secretary-General of that organization on 26 August 1960 so that the Security Council, in the words of the resolution, would have "full information concerning the measures agreed upon in this resolution". It was significant that no member of the Organization of American States had sought authorization of the Council under Article 53 for the steps taken in connexion with that resolution. In specifically deciding that the resolution should be transmitted to the Security Council only for its full information, the Foreign Ministers were clearly expressing their view that this action required only notification to the United Nations under Article 54. It was, therefore, entirely proper for the Security Council, in that instance, to take note of the resolution adopted by the Organization of American States.

The representative of Ecuador stated that when the Ministers for Foreign Affairs approved the resolution concerning the Dominican Republic, they authorized the Secretary-General of the Organization of American States to transmit to the Security Council full information concerning the measures agreed upon. He maintained that the resolution of the Meeting of Consultation had become effective without authorization from the Security Council and had already been carried out almost in its entirety by member States of the Organization of American States. He stated further that the provisions of the Charter, regarding the Security Council's powers and the competence of regional agencies for dealing with matters relating to the maintenance of international peace and security as were appropriate for regional action, should be considered as a whole:

"for they establish a delicate system of balances, which might be upset by any attempt to apply a particular provision in isolation, on the basis of some oversimplified and literal interpretation which failed to take into account the spirit of the Charter as a whole and the entire machinery whereby it operates so far as the relations between United Nations bodies and the regional agencies are concerned.

"In this delicate matter, we think it essential to pursue a line of conduct which will protect and guarantee the autonomy, the individuality, the structure and the proper and effective working of regional agencies, so that they may deal with situations and disputes which are appropriate for regional action—provided that there is no undermining of the authority of the Security Council or of the Member States' right to appeal to it whenever they consider that the defence of their rights or interests requires such an appeal, or that a particular situation or dispute, even if appropriate for regional action, might endanger international peace and security. We think that the Security Council should not base its decisions in this matter entirely on one provision of Article 53. If we examine this Article in the light of the other provisions and of the spirit of the Charter, we find that it is far from having the clarity which would justify its use in the sense indicated both in the Soviet Union's letter and the Soviet draft resolution."

Several questions might be asked about the scope of paragraph 1 of Article 53 for which there had been no categorical reply either in the San Francisco discussions, or in the Council's own decisions, or in the context of the relevant Chapters of the Charter. It was not clear, for example, whether the enforcement action for which the Security Council's authorization was necessary was that which called for the use of armed force, as provided for in Article 42. Nor was it clear whether the second sentence of Article 53 applied only to action which a regional agency might take in a case which the Security Council had entrusted to it from the beginning. Moreover, the question might be asked whether the Security Council's authorization was necessary only for action which, like the use of force, would be in violation of international law if it were taken without the Council's authorization, but not for action like the breaking off of diplomatic relations which was within the exclusive right of a sovereign State. In the light of such questions, Article 53 could not, and should not, be used to make a regional agency's action rigidly dependent upon authorization by the Security Council. On the contrary, the relationship between the Council and regional agencies should be so flexible as to permit those agencies to take effective action for the maintenance of international peace and security according to regional conditions and without necessarily bringing regional problems before the world forum. In the present case, where the Government concerned opted for regional action, the proper course should be for the Council to take formal note of the approved resolution for the application of certain measures in regard to the Dominican Republic.

At the same meeting the representative of Venezuela*, having been invited to participate in the discussion, stated that the scope of the measures provided for in the decision of the Organization of American States did not fall within the concept of enforcement action referred to in Article 53 of the Charter. The authorization of the Council would be required only in the case of decisions of regional agencies the implementation of which would involve the use of force, which was not the case with the decision of the American States. The representative maintained further that interpretation of Article 53, in terms of the USSR draft resolution, would create serious obstacles to the efficient functioning of regional organizations, since it would imply recognition of the need for authorization by the Security Council in order to complete decisions which were valid in themselves. On the other hand, the draft resolution of Argentina, Ecuador and the United States was more in accordance with law.

The representative of France observed that by communicating its decision to the Council the Organization of American States had acted in conformity with Article 54 of the Charter and had followed the procedure that had been generally practised by that Organization. "However, in the Security Council's fifteen years of activity it has never ... appeared necessary for the Council to take a positive decision with regard to communications of that kind." He noted that it was also the first time that Article 53 had been invoked for the purpose of convening a meeting and approving a decision taken by another col-

lective organization. However, the arguments underlying Article 53 "have been set forth on many occasions, and especially in connexion with the question of Guatemala in 1954". [204] Nevertheless, though the regional organization had a competence recognized by the United Nations Charter and should be able to exercise it fully, it was impossible to exclude the competence of the United Nations by invoking an absolute priority for the regional organization. In this regard, the Council could not "decide in favour of an exclusive regional competence, nor can we say that the United Nations is necessarily competent in all cases". It must decide in each particular case whether its intervention could in any way promote the purposes and principles of the Charter. To accept the USSR's argument would amount to recognizing that Article 53 was applicable to the case before the Council. However,

> "Neither the United Nations Charter nor the work done by this Organization make it possible to establish with certainty the scope and content of the term 'enforcement action' as it should be understood within the meaning of Article 53 of the Charter.
>
> "Moreover, to attempt to apply Article 53 to this case would be self-contradictory, since the provision invoked involves the authorization of the Security Council and it is quite clear that this authorization must be given in advance."

At the same meeting, the representative of the United Kingdom stated that the Charter did not define the term "enforcement action". The measures which were decided upon by the Organization of American States with regard to the Dominican Republic were acts of policy perfectly within the competence of any sovereign State and, therefore, were within the competence of the OAS members acting collectively. When Article 53 referred to "enforcement action", what must have been contemplated was the exercise of force in a manner which would not normally be legitimate for any State or group of States except under the authority of a Security Council resolution. Other pacifying actions under regional arrangements as envisaged in Chapter VIII of the Charter which did not come into this category had to be brought to the attention of the Security Council under Article 54. That obligation had been adequately fulfilled by the report already made to the Council by the Organization of American States.

At the 894th meeting on 9 September 1960, the representative of Ceylon observed that the Organization of American States was a regional agency coming legitimately within the provisions of Chapter VIII of the Charter and was recognized by its members themselves as conforming to the provisions of the Charter. It had always followed the procedures indicated in Article 54 and kept the Security Council informed of action taken or contemplated by the organization for the maintenance of international peace and security. He stated further that the measures adopted with regard to the Dominican Republic did not involve the use of armed force and had been employed not by the Council acting on its own initiative, but by a regional agency as recognized by Article 52 of the Charter. There were valid arguments to support the view that the enforcement action referred to in Article 53 applied to the measures enumerated in Article 41 as well as Article 42; however, arguments might also be used in support of the contention that the enforcement action referred to in Article 53 was restricted to the series of measures referred to in Article 42, namely measures involving the use of armed force. In either case, there was great difficulty in the interpretation of Article 53. He was of the opinion that Article 53, when referring to enforcement action, whether taken by the Security Council through the utilization of the regional organization or by the regional agency with the authority of the Security Council, meant both kinds of action contemplated in Articles 41 and 42.

The representative stated further that the issue in question was to a large extent within the competence of the members of the regional group. "The Security Council in such cases usually utilizes the regional agency and generally is influenced by the views expressed by the regional agency. I therefore think that we should be guided by their opinion and their advice." Therefore, it might be preferable to accept the viewpoint of Argentina, Ecuador, Venezuela and the United States as countries immediately concerned.

The representative of Poland, while considering that a regional organization had the right to deal with matters affecting the maintenance of international peace and security in the area covered by the regional arrrangement, expressed the opinion that the Charter gave the ultimate responsibility and rights in that respect to the Security Council. The question of the relationship between regional arrangements and the Security Council in such matters was covered in Chapter VIII of the Charter, and particularly in Article 53. Although some delegations had expressed doubt as to the applicability of Article 53 of the Charter to the enforcement action approved by the Organization of American States, "no one had questioned the ultimate responsibility of the Security Council in these matters". The application of Article 53 would not limit the rights of the Organization of American States any more than they were already limited by Chapter VIII, regardless of the decision taken by the Security Council on the current issue: "The letter and the spirit of Chapter VIII in general, and of Article 53 in particular, clearly define the duties of the Security Council, which cannot be abrogated or disposed of." The representative could not subscribe to the opinion that the term "enforcement action" referred only to the use of military force. "The right to use armed forces in action with respect to a threat to the peace is given solely to the Security Council, according to the provisions of Chapter VII of the Charter." Nothing in the Charter gave that right to any kind of regional arrangement or organization. Consequently, the enforcement action referred to in Article 53 meant all sanctions short of military action. Sanctions or enforcement measures of an economic or political character could be initiated by

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[204] See Repertoire of the Practice of the Security Council, Supplement 1952-1955, chapter XII, Case 4, pp. 164-168.

the Security Council itself as provided for in Article 41 of the Charter or by regional arrangements as provided in Article 52. "In the latter case, these sanctions—or, as they are called in the Charter, enforcement actions—have to have the approval of the Security Council."

The President, speaking as the representative of Italy, observed that the Organization of American States kept the Security Council fully informed of the measures agreed upon. Such a procedure appeared to be not only in full conformity with Article 54 of the Charter but also, in the case under consideration, to be very proper and adequate in order to achieve necessary co-ordination between the two organizational levels. It was not proper to engage the Council in a discussion on the interpretation of Article 53 since such a discussion should have a wider scope than the current one. However, there were doubts as to the applicability of Article 53 to the case being considered because of the nature of the measures adopted by the Organization of American States. The sphere of applicability of this Article should be considered as limited "to those measures which could not be legitimately adopted by any State except on the basis of a Security Council resolution".

The representative of the USSR maintained that Article 53 of the Charter provided for the Security Council's utilization of those arrangements or agencies for enforcement action aimed at removing threats to the peace and security and, although some representatives had maintained that the measures adopted by the Organization of American States were not in the nature of enforcement action and hence not falling within the scope of Article 53 of the Charter, those measures were among the ones enumerated in Article 41 of the Charter. They were enforcement measures not involving the use of armed force, which could be employed only by the Security Council in the event of threats to the peace, breaches of the peace or acts of aggression. Arguments that the Organization of American States had fulfilled its obligations under Article 54 by keeping the Security Council informed were designed to assign to the Security Council the role of passive observer in matters relating to the maintenance of international peace and security contrary to the Charter, which conferred on the Council the primary responsibility for the maintenance of international peace and security. Approval, in accordance with Article 53 of the Charter, by the Security Council of the Organization of American States resolution of 20 August 1960 would not only give legal force to the resolution but would also render it more effective, since the whole United Nations would be supporting the decision of the Organization of American States aimed at maintaining international peace and security.

At the 895th meeting on 9 September 1960, the draft resolution sponsored by Argentina, Ecuador and the United States was adopted by 9 votes in favour to none against, with 2 abstentions.[205] The representative of the USSR stated that he would not press for a vote on the USSR draft resolution.[206]

[205] 895th meeting: para. 18.

[206] 895th meeting: para. 19.

CASE 26.[207] COMPLAINT BY CUBA (LETTER OF 22 FEBRUARY 1962): In connexion with a request from the Government of Cuba calling for inclusion of the item in the agenda: voted upon and not adopted on 27 February 1962

[*Note:* In a letter[208] dated 22 February 1962, the Government of Cuba stated that, at the instance of the United States, the Organization of American States had adopted enforcement measures against Cuba in violation of the United Nations Charter in general, and in particular in violation of Article 53. It thereby requested that the Security Council adopt the measures necessary to put an end to the implementation of those illegal decisions and thus to prevent the development of a situation which could endanger international peace and security. In the discussion on the adoption of the agenda,[209] it was contended that the question of the relationship of the Security Council to action taken by regional agencies had already been fully considered by the Council in September 1960. Hence there was no reason to consider the issue again.]

At the 991st meeting on 27 February 1962, the representatives of the United Kingdom and Chile stated that the Council had given full consideration to the issue of the legal relationship between the Organization of American States and the United Nations in respect of decisions of the regional organization when it discussed the case of the Dominican Republic in September 1960.[210]

The representative of the USSR observed that in 1960 the issue was raised in relation to action taken against the Dominican Republic and thus was not the same thing as the case under discussion. In this instance, the decisions of the Organization of American States were directly at variance with the basic provisions of the Charter. Citing the provisions of Article 53 of the Charter, the representative maintained that the measures recently adopted by the OAS against Cuba fell within the meaning of Article 41 and were thus collective actions by certain States aimed at compelling another State, without the use of armed force, to follow a certain course of action against the will of that State. However, the decision in the matter of employing enforcement measures was the exclusive prerogative of the Security Council. If the Council failed to nullify the unlawful decisions taken against Cuba, then in the future similar actions might be taken against other countries at a regional meeting, usurping the prerogatives of the Security Council.

The representative of the United Arab Republic, quoting from the introduction to the ninth annual report of the Secretary-General on the work of the Organization,[211] recalled the observations of the

[207] For texts of relevant statements, see:

991st meeting: President (United States), paras. 97-100; Chile, paras. 16, 19; China, para. 91; Ghana, para. 24; Romania, paras. 78, 79; USSR, paras. 30-32, 46-48, 52, 55-57. United Arab Republic, paras. 63, 64; United Kingdom, paras. 6-11, Venezuela, para. 68.

[208] S/5080, O.R., 17th year, Suppl. for Jan.-March 1962, pp. 82-84.

[209] See chapter II, Case 7.

[210] See Case 25.

[211] GAOR, Ninth Session, Suppl. No. 1 (A/2663), p. xi.

Secretary-General on the relationship of regional organizations to the United Nations:

"...the importance of regional arrangements in the maintenance of peace is fully recognized in the Charter and the appropriate use of such arrangements is encouraged. But in those cases where resort to such arrangements is chosen in the first instance, that choice should not be permitted to cast any doubt on the ultimate responsibility of the United Nations. Similarly, a policy giving full scope to the proper role of regional agencies can and should at the same time fully preserve the right of a Member nation to a hearing under the Charter."

The representative of Venezuela stated that in 1960, when the Council had been discussing a decision by the Organization of American States to impose sanctions on the Dominican Republic, his delegation maintained that Council approval was necessary only in cases of measures involving the use of force. That position had not changed.

The representative of Romania, noting that Article 52 provided that activities of regional agencies must be consistent "with the Purposes and Principles of the United Nations", stated that Article 53 of the Charter explicitly forbade regional agencies to take enforcement action, yet that was exactly what the Eighth Meeting of Consultation had done by its decisions, "thus usurping the place of the Security Council and flagrantly violating the provisions of the Charter".

The representative of China asserted that the Organization of American States was fully competent under Article 52 of the Charter to deal with regional matters relating to the maintenance of international peace and security.

The President, speaking as the representative of the United States, declared that the question of Security Council approval of such decisions as those taken by the Organization of American States at Punta del Este was thoroughly discussed in 1960 in relation to the case concerning the Dominican Republic, when all the other American States had rejected the contention that those decisions required the authorization of the Security Council under Article 53 of the Charter, and when no member of the Organization of American States sought any authorization of the Council under Article 53 for the steps taken in connexion with that resolution. In specifically deciding that the resolution should be transmitted to the Council only for its full information, the Foreign Ministers of the Organization of American States were clearly expressing their view that the decisions required only notification to the United Nations under Article 54. Moreover, in subsequently adopting a resolution by which the Council simply "took note" of the decisions which the Organization of American States had taken, the Council thereby rejected the Soviet contention that decisions of that sort required Security Council authorization. Consequently, there was no reason to re-open an issue which had been so thoroughly considered and so decisively disposed of.

At the 991st meeting on 27 February 1962, the agenda was not adopted. There were 4 votes in favour, none against, with 7 abstentions. [212]

[212] 991st meeting: para. 144.

CASE 27. [213] LETTER OF 8 MARCH 1962 FROM THE REPRESENTATIVE OF CUBA CONCERNING THE PUNTA DEL ESTE DECISIONS: In connexion with the Cuban draft resolution under which the Security Council would request the International Court of Justice, in accordance with Article 96 of the Charter, to give an advisory opinion on certain questions resulting from the adoption of certain measures by the Organization of American States: voted upon and rejected on 23 March 1962

[*Note:* During the discussion of the Cuban complaint it was contended that the measures adopted at Punta del Este were unlawful because they were of the nature of enforcement action which, under Article 53 of the Charter, required the authorization of the Security Council. On the other hand, it was argued that the action against Cuba was not enforcement action but regional action fully within the competence of the Organization of American States in connexion with which Article 53 could not be invoked. In notifying the Council of its decision, the Organization of American States had fulfilled its obligation to the Council under Article 54.]

At the 992nd meeting on 14 March 1963, the representative of Cuba* stated that at Punta del Este (Uruguay) illegal collective measures were adopted [214] against Cuba in violation of regional instruments and of the principles of the United Nations Charter, and had been implemented without the approval of the Security Council, which was required for such measures. Under Article 52 of the Charter of the United Nations, the Organization of American States was a regional agency whose activities had to be consistent with the purposes and principles of the Charter, and the Security Council was responsible for ensuring that those purposes and principles should prevail. At the Meeting of Consultation of the Organization of American States at Punta del Este,

"not only have resolutions been adopted which are in conflict with its principles but also such resolutions have been and are being implemented and it is sought to extend these coercive measures of a collective nature to other regions of the world, without the approval of the Security Council and in direct violation of Article 53 of the Charter".

In the case before it, the Security Council was obliged to ensure that the principles of the Charter were respected by regional agencies. To this end the representative recommended that as a provisional measure [215] the Council suspend the measures adopted by the Organization of American States and request an advisory opinion of the International Court of

[213] For texts of relevant statements, see:
992nd meeting: Cuba*, paras. 9, 72, 74, 75, 78, 79, 99, 103;
993rd meeting: USSR, paras. 32, 33, 41, 42-53, 150; United States, paras. 79, 91, 93, 94, 99, 100, 102, 113, 117-121;
994th meeting: Chile, paras. 47-53, 61, 64-68, 69, 73, 74; Cuba, para. 9;
995th meeting: China, paras. 20-26; France, paras. 42-60; United Kingdom, paras. 15-18;
996th meeting: Ghana, paras. 72, 74, 75, 88, 90; Ireland, paras. 54, 56, 57, 60-65; Romania, paras. 8, 9, 12, 13, 15-23, 26-28;
997th meeting: President (Venezuela), paras. 15-26; Cuba, paras. 48-53;
998th meeting: Ghana, paras. 78-80; USSR, paras. 33, 39-45; United States, para. 69.

[214] S/5075, O.R., 17th year, Suppl. for Jan.-March 1962, pp. 63-78.

[215] See also chapter XI, Case 2.

Justice on the legal questions submitted by his Government.

At the 993rd meeting on 15 March 1962, the representative of the USSR stated that enforcement measures had been taken by the Organization of American States against Cuba, despite the fact that that regional organization was not empowered to do so without special authorization by the Security Council. The decision to exclude Cuba from participation in the inter-American system on the ground of incompatibility of its social system and the decisions to cease trade with Cuba were nothing else but enforcement actions against Cuba.

The representative pointed out that Article 53 of the Charter explicitly stated that "no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council", and it was precisely that provision of the Charter which had been grossly violated by the Organization of American States when it had acted without consulting the Security Council. The enforcement measures undertaken with regard to Cuba not only went beyond the competence of the regional organization but were also a gross violation of the Charter as a whole, for under Article 52 the activities of regional organizations "must be subordinated" to the principles of the Charter.

The representative of the United States, after reading the texts of the resolutions adopted at Punta del Este, stated that aggression against the Organization of American States by the Cuban regime had caused its exclusion from the Organization of American States. Such "self-exclusion", caused by Cuba's aggressive acts against members of the OAS, was not "enforcement action" within the meaning of Article 53 of the Charter.

> "Security Council 'authorization' cannot be required for regional action—in this case exclusion from participation in a regional organization—as to matters which the Security Council itself cannot possibly act upon, and which are solely within the competence of the regional organization itself."

The Organization of American States was a regional organization within the meaning of Article 52 (1) of the United Nations Charter. The Council could not pretend to determine which Government could or could not participate in such regional agencies like the Organization of American States, the League of Arab States, or some future African or Asian regional agency. The analysis of the nine resolutions had revealed nothing resembling a violation of the United Nations Charter, and nothing was involved which would justify the Council in invoking its Article 53. The responsibilities of the Organization of American States were satisfied when it reported the decisions to the Council under Article 54 of the Charter. The representative pointed out that on a previous occasion,[216] contrary to the USSR contentions that the resolution had constituted enforcement action under Article 53 of the Charter, the Council had limited its action to "noting", not authorizing or approving or disapproving, the action of the Organization of American States which had been reported to it under Article 54. That decision had been that measures even more far-reaching than those before the Council did not involve "enforcement action" within the meaning of Article 53, and therefore did not require Security Council authorization.

At the 994th meeting on 16 March 1962, the representative of Cuba observed that Article 52 of the Charter conferred upon the Council the task of ensuring that regional agencies did not make agreements or engage in activities that were inconsistent with the purposes and principles of the United Nations.

The representative of Chile stated that it was fully in accordance with the principles of the Charter for a regional organization to adopt measures, and when transmitted to the Council these decisions did not require an endorsement by the Council. The Council should limit itself to taking note of them to the extent that they were in conformity with Article 53 of the Charter and without prejudice to the Council's right to discuss any aspect of the question. It would be most disturbing

> "if a precedent were set for the interference of the Security Council, where the five great Powers have the right of veto, in the affairs of regional organizations which are entitled to establish themselves by agreement and to impose obligations upon their members, in order to advance regional interests or the principles which determine the attitude of such regional agencies".

In the view of the representative, the term "enforcement action" as used in Article 53 was a major source of controversy. Under Articles 41 and 42, the Charter made a distinction between two types of measures: those which involved the use of armed force and those which did not. Articles 44 and 45 referred explicitly to the use of force, while Article 45 related "international enforcement action" directly to the employment of armed forces. "Undoubtedly, therefore, the purpose of Article 53 is to prohibit the 'use of armed force'—or physical violence—by regional organizations, without the autorization of the Security Council, with the single exception of individual or collective self-defence." The expulsion of Cuba from the inter-American system and the resolution on economic relations did not amount to enforcement action or the use of force, but fell exclusively within the internal jurisdiction of the regional body. Consequently, it was not appropriate that the Council should apply to the International Court of Justice for an advisory opinion.

At the 995th meeting on 20 March 1962, the President (Venezuela) drew attention to a letter dated 19 March 1962 from the representative of Cuba, transmitting a draft resolution[217] whereby the Security Council would request the International Court to give an advisory opinion on a number of questions.

The representative of the United Kingdom expressed the view that there was no provision in the Charter which would justify a claim that the United Nations would assume responsibility for ruling upon the membership or qualifications of more limited groups. On the question of the interpretation of Chapter VIII of the Charter, he pointed out that

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[216] See Case 25.

[217] S/5095, O.R., 17th year, Suppl. for Jan.-March 1962, pp. 96-97; 995th meeting: para. 3. For the terms of the draft resolution, see also chapter VIII, p. 200.

during the Council's discussion of the Dominican case his delegation had maintained that when Article 53 referred to "enforcement action" it contemplated the exercise of force in a manner which would not normally be legitimate for any State or group of States except under the authority of a Security Council resolution. That position remained unchanged. Article 54 specified that "activities ... by regional agencies for the maintenance of international peace and security" should be reported to the Security Council. Taking this Article together with those which preceded it, it was clear that such activities included any measures falling short of the use of force and, therefore, that it was "this Article, and not Article 53, which is applicable to all measures of this kind".

At the same meeting, the representative of China stated that the Punta del Este decisions related to matters concerning the maintenance of international peace and security appropriate for regional action, and were therefore fully consistent with the purposes and principles of the Charter. The Punta del Este meeting was not held at the initiative of the Security Council nor would its decisions create obligations for Members of the United Nations not belonging to the regional organization. Therefore, Article 53 could not be made applicable to those decisions.

The representative of France stated that the powers of the Security Council with regard to the decision of regional organizations were stated by the Council in September 1960 when it discussed the question of the Dominican Republic and it might be assumed that that position was implicitly confirmed on 27 February 1962, when the Council decided not to adopt the agenda.[218] If the Council were now to adopt the Cuban proposal to call for the provisional suspension of the decisions taken at Punta del Este, that would constitute an admission that the action taken at Punta del Este came within the scope of Article 53 of the Charter of the United Nations. In affirming his position of September 1960 in connexion with the Dominican case, the representative said that his delegation considered that Article 53 did not apply and that the action taken by the Meeting of Consultation was a matter of collective protection justified under Article 51 of the Charter. The only obligation incumbent upon the Organization of American States under Article 54 of the Charter was to keep the Security Council fully informed of activities undertaken or in contemplation for the maintenance of international peace and security.

At the 996th meeting on 21 March 1962, the representative of Romania stated that one of the basic obligations undertaken under Article 52 of the Charter which related directly to regional organizations was the obligation to make every effort to achieve a peaceful settlement of local disputes. While Members were required to make every effort on the international and regional planes to settle conflicts peacefully, the United Nations, and in particular the Security Council, did not empower Member States to apply sanctions for that purpose. As a body bearing the "primary responsibility" for international peace and security, the Security Council reserved to itself the prerogatives which were necessary if it was to fulfil its functions, including those provided for in Article 53 of the Charter. The resolution under which Cuba had been excluded from the Organization of American States flagrantly violated the provisions of Articles 2 and 53 of the Charter since it constituted a political sanction against a Member State without prior authorization of the Security Council. The resolution on economic relations also involved enforcement action which under Article 53 was reserved for the Security Council. For these reasons the representative failed to see how the resolutions adopted at Punta del Este could be reconciled with the provisions of Articles 1, 2, 41, 52, 53 and 103 of the Charter.

The representative of Ireland stated that the Council in deciding the question before it should be careful to avoid any conclusion which might appear to undermine or to challenge the principle of regional organization. The framers of the Charter clearly realized that the role of regional organizations "must always be essentially a subordinate one" and their activities should not be allowed to weaken the position or usurp the authority of the United Nations. That was why Article 52 of the Charter required that the activities of regional arrangements and agencies must be consistent with the purposes and principles of the Charter. That was also why Article 53 of the Charter stipulated that no enforcement action could be taken under regional arrangements or by regional agencies without the authorization of the Security Council. The representative pointed out that, in addition to the question concerning the legality of the Punta del Este decisions, Cuba had raised questions relating to the conformity of certain decisions with the principles of the United Nations Charter. However, those questions were essentially questions for determination by the members of the Organization of American States itself. The Security Council would be invading the autonomy of the Organization of American States if it were to constitute itself a court of review in respect of the Organization's interpretation of its own Charter and to seek the advisory opinion of the International Court of Justice on the Organization's constitutional decisions in that regard. The right to determine what States should constitute its membership was the most elementary right of any regional organization and to challenge that right was to challenge the principle of regional organization itself. The representative stated further that his delegation supported the view that the words "enforcement action" in Article 53 were intended to denote the taking of armed action or measures of a military or similar nature.

The representative of Ghana was of the opinion that the regional organizations as recognized by the Charter had certain authority with reference to problems which did not transcend the regional scope provided that their activities were in conformity with the provisions of the Charter. Mutual relations between such organizations and the United Nations should be so flexible as to permit them to take effective action, within the framework and spirit of the Charter, on matters appropriate for regional action. However, such flexibility could not be extended to the point of undermining the Security Council's authority or of detracting from any Member's right to appeal to the Council if that Member considered a

[218] See chapter II, Case 7, and in this chapter, Case 2b.

particular situation, even if appropriate for regional action, was a threat to international peace and security, or that the defence of its rights or interests in the situation required such an appeal. The representative stated further that the meaning of "enforcement action" as used in the Charter was wanting in clarity. Nor could the scope and content of the term be established with certainty from the practice and jurisprudence of the organs of the United Nations and, moreover, no clear guidance was available on the question as to whether or not Security Council authorization was necessary only for actions involving armed force as laid down in Article 42. There still remained grounds for reasonable doubt as to the meaning of "enforcement action" under Article 53, and ex hypothesi as to the consistency of some of the decisions taken at Punta del Este with the provisions of the Charter. Those doubts constituted the strongest argument in favour of the Cuban request that the Council ask for an advisory opinion. While concurring with other members as to the danger of exposing the legitimate activities of regional agencies to the Security Council, the clear limitations imposed by the Charter on the competence of regional agencies under Articles 52, 53 and 103 could not be ignored.

At the 997th meeting on 22 March 1962, the President, speaking as the representative of Venezuela, stated that regional organizations

> "must have their own procedures, which are determined by the special circumstances characteristic of each region. Regional organizations must adapt themselves to these special circumstances, and must be guided by them in establishing their own rules. Provided that these rules do not violate the principles of the Charter of the United Nations, they cannot result in any incompatibility between regional organizations and the world Organization."

The representative pointed out that there was no provision in the Charter which required the regional organization to admit to membership a State which denies the fundamental principles of the organization and to retain such a State as a member. It was only in connexion with the resolution on economic relations with Cuba "in which certain measures are taken against the Cuban Government", that the Council had to decide whether the action could be regarded as enforcement action within the meaning of Article 53 of the Charter. However, his delegation's view on that matter had already been given in the Dominican case. It was stated then that it was the Venezuelan Government's view that the authorization of the Security Council would be required only in the case of decisions of regional agencies, the implementation of which would involve the use of force, which was not the case with the resolution of the American States.

The representative of Cuba stated that what Cuba was claiming in interpreting Articles 52 and 53 of the Charter, was that exceptional and extraordinary measures such as enforcement action should not be taken without the Council's approval, or in violation of regional instruments and, specifically, of principles of the United Nations Charter.

At the 998th meeting on 23 March 1962, the representative of the USSR, with a reference to the "so-called Dominican precedent" to which many members of the Council had referred, restated his delegation's position that the Security Council's "taking note of the decision of the Organization of American States to apply enforcement measures against the Dominican Republic meant nothing more or less than its approval ... of that decision". That was the precedent that was established and could be applied in a positive way to the question before the Council, "the taking of enforcement measures by the same Organization of American States against another Latin American country". By referring legal questions to the International Court of Justice the Council would not be repealing or altering its decision of 1960. It was necessary, however, to decide the question of what, in the light of the Charter, was meant by Article 53 which spoke of enforcement action.

The representative of the United States reminded the Council that the whole purpose of the USSR in bringing the Dominican case before the Council had been to insist that the Security Council's approval under Article 53 of the Charter was required. However, the Council had refused to act under Article 53.

The representative of Ghana requested [219] a separate vote on operative paragraph 3 of the Cuban draft resolution, put to the vote at the request of the representative of the USSR, [220] which read: "Can the expression 'enforcement action' in Article 53 of the United Nations Charter be considered to include the measures provided for in Article 41 of the United Nations Charter? Is the list of these measures in Article 41 exhaustive?"

The paragraph was rejected by 4 votes in favour and 7 against. [221]

The draft resolution as amended by the deletion of paragraph 3 was rejected by 2 votes in favour and 7 against, with 1 abstention. Ghana did not participate in the vote. [222]

[219] 998th meeting: para. 78.

[220] 998th meeting: para. 3.

[221] 998th meeting: para. 113.

[222] 998th meeting: para. 158.

Part VI

CONSIDERATION OF THE PROVISIONS OF CHAPTER XII OF THE CHARTER

Chapter XII of the Charter: International Trusteeship System

"...

"ARTICLE 76

"The basic objectives of the trusteeship system, in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be:

"a. to further international peace and security;

"b. to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement;

"c. to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world; and

"d. to ensure equal treatment in social, economic, and commercial matters for all Members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80.

"...

"ARTICLE 84

"It shall be the duty of the administering authority to ensure that the trust territory shall play its part in the maintenance of international peace and security. To this end the administering authority may make use of volunteer forces, facilities, and assistance from the trust territory in carrying out the obligations towards the Security Council undertaken in this regard by the administering authority, as well as for local defense and the maintenance of law and order within the trust territory.

"..."

NOTE

In a case history contained in this part, it was contended that a Government in its capacity as Administering Authority for a Trust Territory had violated provisions of a Trusteeship Agreement. No explicit or implied references to any Article of the Charter were made during the discussion. However, the statements made in the debate could be deemed as having a bearing on the provisions of Articles 76 and 84 of the Charter.

CASE 28.[223] SITUATION IN THE REPUBLIC OF THE CONGO: In connexion with the joint draft resolution submitted by Ceylon, Liberia and the United Arab Republic: voted upon and not adopted on 14 January 1961

[*Note:* In a letter[224] dated 7 January 1961, the representative of the USSR requested that a meeting of the Security Council be convened in order to examine the serious threat to peace and security created as a result of the acts of Belgian aggression against the Congo and the violation of the international status of the United Nations Trust Territory of Ruanda-Urundi. During the proceedings in the Council, observations were made as to whether the provisions of the Trusteeship Agreement for the Trust Territory of Ruanda-Urundi were or were not violated by the Administering Authority. A draft resolution which would have called on the Government of Belgium to observe its obligations under the Trusteeship Agreement, and would have recommended the General Assembly to consider the action taken by the Government of Belgium as a violation of the Trusteeship Agreement, was not adopted.]

At the 924th meeting on 12 January 1961, the representative of the USSR stated that the gravity of the situation resulting from events on the frontiers between the Congo and Ruanda-Urundi was increased by the fact that Belgium's actions constituted an infringement of the Trusteeship Agreement for the Territory of Ruanda-Urundi concluded between Belgium and the United Nations and of the resolution of the General Assembly 1579 (XV) concerning the future of Ruanda-Urundi. The Security Council should,

223/ For texts of relevant statements, see:
924th meeting: Belgium*, paras. 47, 51, 57; USSR, paras. 12-14, 20, 37;
925th meeting: France, paras. 5-7;
926th meeting: President (United Arab Republic), para. 22; Ceylon, paras. 50, 54; Liberia, para. 9;
927th meeting: Chile, paras. 19, 21; Ecuador, paras. 10, 11.

224/ S/4616, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 19-20. For other documents pertinent to the substance of the matter, see chapter VIII, pp. 172-173.

therefore, recommend the General Assembly to give urgent consideration to the question of Belgium's violation of the Trusteeship Agreement for the Territory of Ruanda-Urundi and to that of divesting Belgium of all its rights and powers with respect to the Trust Territory.

The representative of Belgium* maintained that the Belgian authorities had arranged for the contingent of the Armée nationale congolaise which had landed at Usumbura to be immediately transported to the frontier of the Republic of the Congo. There were no longer any Congolese soldiers in the Territory of Ruanda-Urundi and the Belgian Government did not intend to authorize any further transit. Belgium had been and was anxious to fulfil the obligations which it had assumed under the Charter and the Trusteeship Agreement, and to observe the constitutional procedures governing Trust Territories and their progress towards independence.

At the 925th meeting on 13 January 1961, the representative of France stated that the Belgian Government, in its capacity as Administering Authority, had granted a right of transit through the Territory of Ruanda-Urundi to troops of the ANC, which was not at variance with the Trusteeship Agreement. With the exception of certain provisions of the Agreement, such as those of article 9 to the effect that the Administering Authority should ensure equal treatment for all States Members of the United Nations, including freedom of transit and navigation by air, there was nothing in the Trusteeship Agreement which would have appeared to be relevant to the matter before the Council.

At the 926th meeting on 13 January 1961, the representative of Liberia introduced a draft resolution [225] submitted jointly with Ceylon and the United Arab Republic, in which it was provided:

"The Security Council,

"...

"Having considered the grave situation which has arisen from the use of the Trust Territory of Ruanda-Urundi for military purposes against the Republic of the Congo in contravention of the provisions of the Trusteeship Agreement between the United Nations and the Government of Belgium concerning the Trust Territory of Ruanda-Urundi,

"...

"Noting that, in its resolution 1579 (XV) of 20 December 1960 the General Assembly called upon the Belgian Government as the Administering Authority in the Trust Territory of Ruanda-Urundi 'to refrain from using the Territory as a base, whether for internal or external purposes, for the accumulation of arms or armed forces not strictly required for the purpose of maintaining public order in the Territory' and that the Belgian Government by its actions has violated the above-mentioned resolution of the General Assembly",

"...

"1. Calls upon the Government of Belgium as the Administering Authority of the Trust Territory of Ruanda-Urundi immediately to cease all action against the Republic of the Congo and to observe strictly its international obligations under the Trusteeship Agreement and to take immediate steps to prevent the utilization of the United Nations Trust Territory of Ruanda-Urundi contrary to the purposes of the aforementioned resolutions;

"...

"3. Recommends the General Assembly to consider the action taken by Belgium as a violation of the Trusteeship Agreement for the Territory of Ruanda-Urundi, adopted by the General Assembly on 13 December 1946."

The President, speaking as the representative of the United Arab Republic, stated that by its action the Belgian Government had contravened the Trusteeship Agreement, which included an obligation to further international peace and security and, therefore, not to commit acts which might endanger it. The action also constituted a contravention of the Trusteeship Agreement owing to the special situation existing in the Congo and to the special responsibility of the United Nations.

The representative of Ceylon expressed the view that the Belgian Government's action was contrary to its obligations assumed under article 4 and paragraph 3 (b) of article 5 of the Trusteeship Agreement for the Territory of Ruanda-Urundi and constituted an infringement by Belgium of its international obligations both in regard to the current situation in the Republic of the Congo and in regard to the position it held as the Administering Authority in the Trust Territory, which had been used as a base against the United Nations effort in the Congo. Such a development would call for reconsideration of the Trusteeship Agreement.

At the 927th meeting on 14 January 1961, the representative of Ecuador stated that the permission of the Belgian authorities in Ruanda-Urundi, at the request of the Government of the Congo, to the Congolese forces to use the territory of Ruanda-Urundi for military manoeuvres might, technically, constitute intervention in the domestic affairs of the Congo. Such an act of intervention was deserving of censure particularly so when it involved the use of a Trust Territory. The Administering Authority exercised in a Trust Territory an administrative function under a mandate from the United Nations which was incompatible with acts which might constitute political intervention in the matters of another State or give rise to serious international tension.

The representative of Chile observed that the admission of a Congolese contingent to the Usumbura airport and the provision to it of transit facilities to the frontier were not in conformity with the responsibilities of the Administering Authority of a Trust Territory. However, the incident had been an isolated one and the assurances given by the Government of Belgium to the Secretary-General were satisfactory.

At the 927th meeting on 14 January 1961, the joint draft resolution submitted by Ceylon, Liberia and the United Arab Republic was not adopted, [226] the result of the vote being 4 in favour, with 7 abstentions.

[225] S/4625, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 30-31.

[226] 927th meeting: para. 94.

Part VII

CONSIDERATION OF THE PROVISIONS OF CHAPTER XVI OF THE CHARTER

Chapter XVI of the Charter: Miscellaneous Provisions

"..."

"ARTICLE 103

"In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

"..."

NOTE

Two case histories relate to the proceedings in the Council in which references were made to Article 103; in one instance, in connexion with an international agreement, in the second instance, in connexion with a regional arrangement. Incidental reference to Article 103 is to be found also in this chapter, Case 27.

CASE 29.[227] COMPLAINT BY CUBA (LETTER OF 11 JULY 1960): In connexion with the joint draft resolution submitted by Argentina and Ecuador; and the USSR amendments thereto: the amendments voted upon and rejected on 19 July 1960; the joint draft resolution voted upon and adopted on 19 July 1960

[*Note:* In submitting its complaint[228] to the Council, the Government of Cuba asserted that it based itself on Article 52 (4) and Article 103 of the United Nations Charter which, without invalidating any regional arrangements, clearly laid down that obligations under the Charter should prevail over such arrangements. References to Article 103 were made in the joint draft resolution and during the consideration of the question by the Council.]

At the 874th meeting on 18 July 1960, the representative of Cuba* stated that Cuba was entirely within its rights in resorting to the Security Council. Referring to Article 103, he said that the juridical meaning of the provision was absolutely clear.

At the same meeting, the representatives of Argentina and Ecuador introduced a draft resolution[229] under which:

"The Security Council,

"...

"Taking into account the provisions of Articles 24, 33, 34, 35, 36, 52 and 103 of the Charter of the United Nations,

"Taking into account also articles 20 and 102 of the Charter of the Organization of American States of which both Cuba and the United States of America are members,

"...

"1. Decides to adjourn the consideration of this question pending the receipt of a report from the Organization of American States;

"..."

At the 875th meeting on 18 July 1960, the representative of Italy stated that under Article 52 (2) of the Charter, Member States which were parties to regional arrangements had the obligation to achieve pacific settlement of disputes through such regional arrangements before referring them to the Security Council,[230] and observed that there was also a similar provision in article 20 of the Charter of the Organization of American States. He added:

"And there is here no conflict between the obligations of the interested Member States under our Charter and their obligations under other international agreements—the situation envisaged in Article 103 of the United Nations Charter—because what the draft resolution in front of us is aiming at is not that the Security Council should decline to take on the examination of the problem but that it should simply adjourn it."

The representative of Poland, after quoting Article 103 of the Charter, observed that:

"This Article applies fully to this case. No provisions or obligations arising from regional treaties or arrangements for solving the dispute can be put ahead of the existing provisions of the United Nations Charter, which give Cuba the right to bring its case before us here for full consideration and proper action."

At the 876th meeting on 19 July 1960, the representative of the USSR drew attention to the provisions of article 102 of the Charter of the OAS, which stated that "None of the provisions of this Charter shall be construed as impairing the rights and obligations of the Member States under the Charter of the United Nations". Referring to Article 103 of the United Nations Charter, he stated that Cuba had acted in accordance with its provision, which was the only one which guaranteed the rights of Members of the United Nations. He then proposed certain amendments,[231] among which was the deletion of operative paragraph 1 of the draft resolution.

227/ For texts of relevant statements, see:
874th meeting: Cuba*, para. 7;
875th meeting: Italy, paras. 10, 11; Poland, para. 59.
876th meeting: USSR, para. 87.

228/ S/4378, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 9-10.

229/ S/4392, same text as S/4395, ibid., pp. 29-30.

230/ See Case 24.

231/ S/4394, 876th meeting: paras. 105-107.

At the same meeting, the USSR amendments were rejected by 2 votes in favour and 8 against, with 1 abstention.[232] The draft resolution submitted by Argentina and Ecuador was adopted by 9 votes in favour to none against, with 2 abstentions.[233]

CASE 30.[234] COMPLAINT BY THE GOVERNMENT OF CYPRUS: In connexion with the decision of 27 December 1963 to adjourn the meeting

[*Note:* During the debate it was contended that the Treaty guaranteeing the London Agreement on Cyprus was invalid under Article 103 if it could be interpreted as giving to any signatory the right to use force in Cyprus.]

At the 1085th meeting on 27 December 1963, the representative of Turkey* maintained that his Government, as one of the co-signers of the London Agreement of 1959 and the Treaty of Guarantee of 1960 of that Agreement, could not be disinterested in the fact that Turks were being massacred in Cyprus.

In reply the representative of Cyprus* stated that he understood "the representative of Turkey to refer to the Treaty of Guarantee as giving to Turkey the right to use force in Cyprus". However, if that Treaty could be interpreted as giving Turkey or any other country the right to use force[235] in Cyprus, then the Treaty itself should be considered as invalid under Article 103 of the Charter. The Treaty did not give Turkey, or any other guarantor State, the right to interfere and destroy the independence and integrity of Cyprus, which they were supposed to guarantee. "... in conformity with Article 103 of the Charter, the representations and measures provided for in the Treaty of Guarantee must be peaceful measures—recourse to the Security Council, recourse to the General Assembly, and so forth—not gunboats and aircraft bombing or even threats to bomb the island".

The President (United States), after stating that he had no more speakers on his list, noted that the Council had heard statements from the interested parties, as well as certain assurances, and declared the meeting adjourned.[236]

[232] 876th meeting: para. 127.

[233] 876th meeting: para. 128.

[234] For texts of relevant statements, see:
1085th meeting: Cyprus*, paras. 63-65; Turkey*, paras. 38-43.

[235] For the discussion on the use of force, see Case 11.

[236] 1085th meeting: paras. 91-92.

Part VIII

**CONSIDERATION OF THE PROVISIONS OF CHAPTER XVII OF THE CHARTER