

Chapter X

**CONSIDERATION OF THE PROVISIONS OF CHAPTER VI
OF THE CHARTER**

TABLE OF CONTENTS

	<i>Page</i>
INTRODUCTORY NOTE	135
PART I. CONSIDERATION OF THE PROVISIONS OF ARTICLE 33 OF THE CHARTER	
Note	136
PART II. CONSIDERATION OF THE PROVISIONS OF ARTICLE 34 OF THE CHARTER	
Note	140
PART III. APPLICATION OF THE PROVISIONS OF ARTICLE 35 OF THE CHARTER	
Note	144
PART IV. CONSIDERATION OF THE PROVISIONS OF ARTICLES 36-38 AND OF CHAPTER VI IN GENERAL	
Note	151

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.

¹ Chapter VIII, part I.

Chapter VI of the Charter. Pacific Settlement of Disputes

Article 33

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

2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

Article 34

The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.

Article 35

1. Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.

2. A state which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter.

3. The proceedings of the General Assembly in respect of matters brought to its attention under this Article will be subject to the provisions of Articles 11 and 12.

Article 36

1. The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.

2. The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties.

3. In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.

Article 37

1. Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.

2. If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.

Article 38

Without prejudice to the provisions of Articles 33 to 37, the Security Council may, if all the parties to any dispute so request, make recommendations to the parties with a view to a pacific settlement of the dispute.

Part I

CONSIDERATION OF THE PROVISIONS OF ARTICLE 33 OF THE CHARTER

NOTE

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 toward a settlement as evidence of the necessity for taking or not taking action under Chapter VI. The contentions advanced have centred around :

² Afghanistan, Egypt, Indonesia, Iran, Iraq, Jordan, Lebanon, Libya, Pakistan, Saudi Arabia, Syria, Thailand and Yemen in their letter dated 13 June 1956, S/3609, and the explanatory memorandum to their letter dated 12 April 1956, S/3589 and Add.1 (submitted together with Burma, Ceylon, India and the Philippines) [O.R., 11th year, *Suppl. for Apr.-June 1956*, pp. 74-75 and 25-27], in connexion with the question of Algeria; France and the United Kingdom in their letters dated 23 September 1956, S/3654, and 12 September 1956, S/3645 [O.R., 11th year, *Suppl. for July-Sept. 1956*, pp. 28-29 and 47] in connexion with the Suez Canal question; Egypt in its letters dated 24 September 1956, S/3656, and 17 September 1956, S/3650 [O.R., 11th year, *Suppl. for July-Sept. 1956*, pp. 48 and 38-41] in connexion with the Suez Canal question; Tunisia, in explanatory memorandum to its letter dated 13 February 1958, S/3952, and France, in explanatory memorandum to its letter dated 14 February 1958, S/3954 [O.R., 13th year, *Suppl. for Jan.-Mar. 1958*, pp. 13-14 and 15-16] in connexion with Tunisian question (I); Tunisia in explanatory memorandum to its letter dated 29 May 1958, S/4013, and France in explanatory memorandum to its letter dated 29 May 1958, S/4015 [O.R., 13th year, *Suppl. for Apr.-June 1958*, pp. 37-39 and 42-44] in connexion with Tunisian question (II); Sudan in a communication attached to its letter dated 20 February 1958, S/3963 [O.R., 13th year, *Suppl. for Jan.-Mar. 1958*, pp. 21-22] in connexion with the Sudanese question.

(1) The allegation of refusal to enter into or resume negotiations.³

(2) The allegation of the 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 prescribed by Article 33.⁶ In one instance, the Council three times adjourned its initial consideration of the complaint, at the request or with the concurrence of the complaining State, to permit recourse to regional machinery established with the participation of that State.⁷ In another instance, the Council, after learning that the parties had accepted a tender of good offices made by two of its permanent members, adjourned to permit the parties to reach agreement on the means of resolving difficulties which they had submitted to the Council.⁸

The case histories in part I of the present chapter throw light on the Council's view of the obligation of the

³ See Case 2 (letter of 20 February 1958 from the representative of Sudan).

⁴ See Case 1 (Tunisian question).

⁵ See Case 2 (letter of 20 February 1958 from the representative of Sudan) and Case 3 (complaint of Lebanon).

⁶ See Case 1 (Tunisian question) and Case 2 (letter of 20 February 1958 from the representative of Sudan).

⁷ See Case 3 (complaint of Lebanon).

⁸ See Case 1 (Tunisian question).

parties under Article 33, and on the bearing which, in varying contexts, that Article has on the Council's discharge of its responsibilities at the stage of initial consideration of a complaint.⁹ In the period under review, consideration of the obligation of the parties to choose peaceful means of settlement of their difficulties has taken place chiefly in a context of endeavour by the Council to encourage the parties to negotiate rather than a context of compliance with a prior condition for recourse to the Council. The Council has on several occasions given effect to its views on this aspect of the procedure for the settlement of controversies in decisions to adjourn following statements by members of the Council indicating a consensus of views concerning the course to be followed. This stress on the obligation of the parties has been accompanied at the stage of initial consideration by informal admonition to them not to increase their difficulties by prejudicial action,¹⁰ and, on several occasions, by an indication of the Council's continuing concern with the matter either in explicit presidential statement of the retention of the item on the Council's agenda¹¹ or in a decision to resume consideration of the matter at a specific date.¹²

Reference should also be made to the observations in part IV of this chapter regarding the encouragement by the Council of 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. In the Palestine and India-Pakistan questions, for example, the Council requested the good offices of the Secretary-General in the one case, and of the President of the Council in the other, for this purpose.

CASE 1.¹³ THE TUNISIAN QUESTION (I) AND (II): In connexion with decisions to adjourn

[*Note*: The Council adjourned after a discussion in which the view was expressed that this would promote

⁹ In some instances, when the matter before the Council has not been new to its agenda, consideration of the obligation of the parties to make use of arrangements for the pacific settlement of disputes which they had themselves established has also figured extensively in the Council's discussion. In one instance of that kind, there have been observations on the relation of the obligation of prior resort to the machinery of settlement established by the parties and the right of resort to the Council conferred by Article 35(1). See the introductory note to part IV and see also Case 7.

¹⁰ See Cases 1 and 2.

¹¹ See Case 2.

¹² See Cases 1 and 3.

¹³ For texts of relevant statements, see:

811th meeting: USSR (President), para. 44; France, para. 49; Japan, paras. 52-53; Sweden, para. 14; Tunisia*, para. 48; United Kingdom, paras. 10-12; United States, paras. 6-9;

819th meeting: France, paras. 92-93; Tunisia*, paras. 14, 17, 63-66;

820th meeting: France, para. 55; United Kingdom, paras. 95-97; United States, paras. 99-103.

821st meeting: France, paras. 37-51.

negotiation between the parties, who had accepted a tender of good offices made by two members of the Council, thus indicating their intention to settle their problems by peaceful means of their own choice in accordance with Article 33. Following a renewal of the complaints, the Council again adjourned to afford the parties a further opportunity to settle their difficulties by direct negotiations.]

At the 811th meeting on 18 February 1958, after the Council had included in its agenda cross-complaints by Tunisia and France, the representative of the United States announced that the tender of good offices made by his Government, in conjunction with that of the United Kingdom, to the Governments of France and Tunisia had been accepted. The responsibility for a peaceful solution of the differences outstanding between France and Tunisia lay with those countries under Article 33 of the Charter. Their acceptance of the tender of good offices was an indication of their desire to settle peacefully by means of their own choice, as suggested in Article 33, the differences they had submitted to the Council.

The representative of the United Kingdom was sure the Council would agree that the tender of good offices and the acceptance by the Governments of France and Tunisia were in full accord with the spirit of Article 33 of the Charter, which enjoined Members of the United Nations to seek a solution of their differences by peaceful means of their own choice, using, where appropriate, the help of friends.

The representative of Sweden suggested adjournment to allow the discussions taking place within the framework of the offer of good offices with a view to arriving at an amicable settlement, to proceed in an atmosphere conducive to a successful outcome.

The President, speaking as the representative of the USSR, noted that the parties' acceptance of the offer of "mediation" was in accord with Article 33 of the Charter.

The representative of Tunisia* confirmed that his Government had welcomed the offer of good offices, but expressed a preference for adjournment to a specific date and reserved the right to request an emergency meeting of the Council, fearing that circumstances beyond his Government's control might render the good offices ineffectual.

The representative of France declared that he had thought no meeting of the Council to be necessary in the circumstances and saw no point in making any reservations regarding the conditions of adjournment.

Upon the proposal of the representative of Japan under rule 33(2) of the provisional rules of procedure, the Council then adjourned.

At the 819th meeting on 2 June 1958, the Council heard further cross-complaints by the representatives of Tunisia* and France concerning incidents occurring since the earlier consideration of the case by the Council.

At the same meeting, the representative of Tunisia informed the Council that on 15 March the Good Offices

Mission had proposed to his Government a draft compromise agreement on the procedure for the evacuation of the French troops in Tunisia. This had been accepted by his Government on the same day and was to have been approved by the French Government on 14 April. However, a governmental crisis in France, following acceptance of the draft compromise agreement by the French Government, had delayed implementation of the agreement and resulted in suspension of the Good Offices Mission. In the period following, French forces in Tunisia had failed to respect the security regulations which Tunisia had made concerning them on 8 February 1958. The Government of Tunisia had tried every method of reaching an amicable agreement on the liberation of its territory from the illegal presence of French troops which were continually attacking it. It had tried direct negotiation, but without success; it had accepted the Good Offices Mission, and had shown itself as patient and as conciliatory as could be expected. It had no alternative but to appeal to the Security Council as the body responsible for the maintenance of international peace and security to take, in accordance with Article 39 of the Charter, all appropriate measures provided for in Articles 40 and 41 and subsequent Articles to assist it to obtain the withdrawal of the French troops stationed in Tunisia against its wishes. The representative of Tunisia also requested the Council to take provisional security measures under Article 40 of the Charter relating principally to compliance by the French troops in Tunisia with the preventive security measures of 8 February.

The representative of France contested the version of the facts presented by the representative of Tunisia and attributed responsibility for the incidents complained of to the Tunisian Government. He regarded neither the Good Offices Mission nor the negotiations between the two Governments and the compromise agreement of 15 March 1958 concerning the procedure for the evacuation of the French troops from Tunisia at an end.

“I must make it clear that we cannot accept this point of view, which is at variance with the very definition of good offices and also with the facts. The basic purpose of this procedure is not to find a direct solution of the dispute in which it is being employed: that is precisely what distinguishes it from mediation or arbitration, in which a settlement is either proposed to, or imposed upon, the parties to the dispute. The function of those who accept a good offices mission is no less important, but its scope is more restricted: it consists in finding an area of agreement as a basis for the resumption of direct negotiations between the countries concerned. That appears to me to be the manner in which the United States and the United Kingdom have always interpreted the good offices procedure; I trust that their representatives in the Security Council will correct me if I am mistaken.”

He added that it had been possible in the last few days to resume direct negotiations between Paris and Tunis which were still under way despite the tension between the two parties.

At the 820th meeting on 2 June 1958, the representative of France requested the Security Council

“... to adjourn after having invited Tunisia to carry on, in conformity with Article 33 of the Charter, the negotiations now in progress with France and to restore immediately within its borders, by a return to the *status quo ante* 15 May, the conditions necessary for a speedy conclusion of those negotiations which will be satisfactory to both countries.”

The representative of the United Kingdom, after observing that it was clear from the statements which the Council had heard that the situation was serious and delicate, added that, despite this, the Governments of France and Tunisia were known to have been in touch with one another recently in an attempt to solve the problems at the root of the incidents of which they were complaining.

“... It seems to me that every opportunity should be given for these confidential exchanges between France and Tunisia to succeed. I think, therefore, that the wise course for the Council to take, apart from any further hearing of the parties, would be not to proceed further with the consideration of the matter at present ...

“... it goes without saying that the Council looks to all concerned on the spot not to disturb the existing arrangements and to exercise the utmost restraint.”

The representative of the United States expressed confidence in the intentions of France and Tunisia to abide by their Charter obligations, particularly those set forth in the preamble and in Articles 1 and 2. The Charter placed a direct responsibility upon all States in the first instance to seek to settle their difficulties by peaceful means through direct negotiations. The United States had always felt that the situation presented to the Council by France and Tunisia was susceptible to such a settlement. The Good Offices Mission had found substantial agreement between the Governments of the two countries on many matters germane to the dispute now before the Council. The continuation of direct negotiation was also encouraging. Nothing should take place that might interrupt such a process of peaceful settlement or prejudice the intentions of the two Governments. This meant that it was important to seek to ensure that whatever happened in the Council in no way impaired the prospect for a satisfactory solution of the outstanding problems between the two countries.

At the 821st meeting on 4 June 1958, the representative of France informed the Council that the Government of France had sent a message to the Government of Tunisia expressing its intention to settle with the latter the outstanding difficulties between the two countries and the conditions for good relations in the future, and that the Government of Tunisia had replied in a co-operative manner. Accordingly, he proposed a two weeks' postponement of the debate to allow these conversations to take place.

In accordance with the stated preference of the representative of Tunisia for a fixed date, the Council decided to adjourn until 18 June.

CASE 2.¹⁴ LETTER DATED 20 FEBRUARY 1958 FROM THE REPRESENTATIVE OF THE SUDAN ADDRESSED TO THE SECRETARY-GENERAL: In connexion with the President's summing up of the opinions of members of the Council

[*Note:* In the consideration of the Sudan complaint, observations were made by all members of the Council concerning the importance of use by the parties of the means of settlement enumerated in Article 33. Emphasis was laid on the availability of the Council to consider the complaint further if negotiations between the parties should fail to resolve the questions outstanding between them.]

At the 812th meeting on 21 February 1958, the Security Council considered the letter of 20 February 1958 from the representative of Sudan concerning "the grave situation existing on the Sudanese-Egyptian border, resulting from the massed concentrations of Egyptian troops moving towards the Sudanese frontiers", which had followed receipt of a demand from the Government of Egypt to the Government of Sudan to hand over to Egypt two areas of Sudanese territory north of latitude 22*.

The representative of Sudan* declared that his Government had done everything in its power to avoid bringing the complaint to the United Nations. Within the short time at its disposal, it had exhausted all possibilities of reaching a peaceful and equitable solution. In support of this assertion, he declared that the Government of Egypt had rejected the request made on 18 February by the Government of Sudan to defer discussion of the claims until after the Sudanese elections to be held on 27 February.

The representative of Egypt* declared that the Government of Sudan had decided to submit the question to the Security Council "before the other peaceful means referred to in the Charter — particularly in Article 33 — had been exhausted". He stressed particularly the provision in Article 33 for "resort to regional agencies or arrangements", which in his view clearly included the League of Arab States. On learning of a memorandum communicated to the Secretary-General of the League of Arab States by the Sudan Minister for Foreign Affairs, the Egyptian Minister for Foreign Affairs had emphasized Egypt's good intentions toward the Sudan. Furthermore, the Secretary-General of the United Nations, who had expressed anxiety concerning the situation, had been informed that the Egyptian Government had adopted towards the Sudanese a "peaceful and good-neighbourly attitude". The representative of Egypt quoted from a communiqué issued by his Government on the very day of the Council's meeting, announcing that "the Egyptian Government decided to postpone the settling of the frontier question till after the Sudanese elections. Negotiations are to begin for the settling of all undecided

questions after the new Sudanese Government is chosen". He expressed confidence that the dispute would be settled between Egypt and Sudan in the tradition of their long-standing friendship.

Following a suspension of the meeting to enable members of the Council to talk the matter over privately, the Council resumed consideration of the matter.

The representative of the United States noted in particular the indications by the representatives of Egypt and Sudan of willingness to settle this matter after the elections of 27 February and the favourable reply made by the Government of Egypt to the Secretary-General's expression of concern and interest. He hoped the parties would seek a peaceful solution of their difficulties, and reminded the Council that by adopting the agenda, it was officially seized of the problem and, if the situation worsened, could always meet again on very short notice.

The representative of Japan regretted that it had been necessary to bring the matter to the attention of the Council at all, welcomed the expressions by the parties of the intention to seek a peaceful solution of their dispute and concluded with a statement of his understanding that the Council remained seized of the matter and could always discuss it if necessary.

The representative of the United Kingdom observed that it was the timing and manner in which the question had been raised that had led the Government of Sudan to come to the Council. The statements made to the Council by the parties of their intention to seek appropriate ways of negotiating a settlement of the dispute seemed to his delegation to meet the essential point in the Sudanese complaint to the Council, which, of course, remained seized of the matter.

The representative of Iraq deplored the failure to settle the difficulties between the parties by negotiation and noted the declarations of the two Governments of their intentions to settle the question peacefully.

The representative of France observed that the declaration made before the Council by the Egyptian representative on behalf of his Government seemed to be substantially what the Sudan requested. "Thus Article 33 of the Charter applies; we have come back to the procedure of negotiation. As we see it, all that is needed at this stage of the discussion is for the Council to take note of the statements made on the subject by the two parties."

The representative of Canada stressed the view of his Government that States should make every effort to settle their difficulties by the means outlined in Article 33 of the Charter. He noted the declarations of the parties, and added that "it is our hope that, because the attention of the Council has been focused on the situation along the Egyptian-Sudanese border, this in itself will also have a reassuring effect and that calm and confidence will prevail on both sides of that border".

The President (USSR), speaking on behalf of his delegation, noted the wish expressed by both sides to settle the frontier dispute by friendly negotiations. He emphasized the Charter requirement that disputed questions be settled by means of negotiation and

¹⁴ For texts of relevant statements, see:

812th meeting: President (USSR), paras. 70-74, 79-81; Canada, paras. 67-69; Egypt*, paras. 38, 43-47; France, paras. 65-66; Iraq, paras. 62-64; Japan, paras. 56-58; Sudan*, paras. 5, 30-31; United Kingdom, paras. 59-61; United States, paras. 50-55.

declared that there was no need for intervention by the Security Council at that time, due note having been made of statements by the parties.

All the members of the Council who spoke stressed the obligation of the parties not to permit a deterioration in the interval before negotiations were begun.

Summing up the opinions of members of the Council, the President declared :

“The Security Council has heard the statements of the representatives of the Sudan and Egypt and notes the Egyptian representative's assurances that his Government has decided to postpone the settlement of the frontier question until the elections in the Sudan are over.

“Of course, the question put forward by the Sudan remains before the Council. With this we can end our meeting, bearing it in mind that the next meeting, should one prove necessary, will be convened, as usual, on consultation between members of the Security Council and the parties concerned.”

CASE 3.¹⁶ LETTER DATED 22 MAY 1958 FROM THE REPRESENTATIVE OF LEBANON TO THE PRESIDENT OF THE SECURITY COUNCIL CONCERNING “COMPLAINT BY LEBANON IN RESPECT TO 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 INTERNATIONAL PEACE AND SECURITY”: In connexion with the adjournment of the meetings

[*Note* : The 818th and 822nd meetings of the Security Council were adjourned in view of submission of an identical complaint by Lebanon to the League of Arab States.]

At the 818th meeting on 27 May 1958, after the adoption of the agenda, the representative of Iraq stated that the League of Arab States was expected to meet on 31 May 1958 to discuss the question on the agenda of the Council. He therefore proposed the adjournment

¹⁶ For texts of relevant statements, see :

818th meeting : President (Canada), para. 17 ; Colombia, para. 27 ; Iraq, para. 8 ; Lebanon, para. 12 ; Panama, para. 34.

of the meeting until 3 June, at which time it would be known whether the question could be resolved outside the Council or not. It was to be understood that the Council should be ready to meet at short notice on the request of the representative of Lebanon.

The representative of Lebanon declared that his Government would welcome the adoption of the proposal made by the representative of Iraq. The Lebanese complaint would thus remain before the Council which would meet to consider it on 3 June if the League of Arab States were to be unsuccessful in dealing with it.

The President (Canada) observed that a request for adjournment motivated by the hope that a peaceful solution might be achieved on a regional basis seemed to fit into the general pattern of United Nations procedures.

The representative of Colombia welcomed adjournment in order to afford two friendly countries opportunity to settle their differences amicably within the system of regional organization to which they belonged. He did so on the understanding that the questions before the Council and the regional organization were the same.

The representative of Panama agreed that the Council should adopt the proposal of the Iraqi representative in order to enable the Arab League to have recourse to such means of pacific settlement as those contemplated in Article 33 of the Charter. It was moreover the duty of the Council under Article 36 to take into account the peaceful means chosen by the parties, in this instance the Pact of the League of Arab States which they had signed in 1945.

The Council decided ¹⁸ to adjourn until 3 June 1958. Subsequently the adjournment was extended until 5 June 1958.¹⁷

At the 822nd meeting on 5 June 1958, the President (China) proposed ¹⁸ that the Council adjourn for another twenty-four hours, since the League of Arab States was meeting at that very time on the question raised by Lebanon. The proposal was adopted.¹⁹

¹⁶ 818th meeting : para. 41.

¹⁷ See letter dated 2 June 1958 from the representative of Lebanon to the President of the Security Council, S/4018 [*O.R.*, 13th year, *Suppl. for Apr.-June 1958*, p. 44.]

¹⁸ 822nd meeting : para. 1.

¹⁹ 822nd meeting : para. 5.

Part II

CONSIDERATION OF THE PROVISIONS OF ARTICLE 34 OF THE CHAPTER

NOTE

The three case histories ²⁰ entered in part II of this chapter are those in which issues have arisen relating to

²⁰ During the consideration at the 783rd and 784th meetings on 20 October 1957 of the inclusion in the agenda of a letter dated 13 August 1957 containing a complaint concerning “the armed aggression” by the United Kingdom against the Imamate of Oman, several members referred to the provisions of Articles 34 and 35. For their statements, see : chapter II, part III.B.1, Case 5.

Article 34 of the Charter. In the proceedings relating to the Palestine question ²¹ the question raised concerned the propriety of a determination in advance of investigation that continuation of the situation under examination was likely to endanger the maintenance of international peace and security. In connexion with the question of Algeria, in which the initial communication invoked Article 35(1), objections were raised to the adoption of

²¹ See Case 5.

the provisional agenda on the grounds that it was not claimed that the situation in Algeria was a threat to "international" peace and security within the meaning of Article 34 of the Charter.²² In connexion with the question of the situation in Hungary, it was requested in the initial communication that the item be included in the agenda pursuant to the provision of Article 34. Objection was raised to this on the ground that Article 34 empowered the Council to examine exclusively disputes or situations arising in relationships between States.²³

CASE 4.²⁴ THE PALESTINE QUESTION: In connexion with a draft resolution to request the Secretary-General to survey, as a matter of urgency, the various aspects of enforcement of and compliance with the four Armistice Agreements and the Council's resolutions under reference, and to arrange for the adoption of measures which he considered would reduce the existing tensions along the Armistice Lines: voted upon and unanimously adopted on 4 April 1956

[Note: Under operative paragraph 1 of the United States draft resolution,²⁵ the Council was to consider that the situation prevailing between the parties "is such that its continuance is likely to endanger the maintenance of international peace and security". The paragraph was opposed on the grounds that its adoption would force the Council to make a premature determination of the situation in the area without having heard the report of the Secretary-General and the Chief of Staff of the United Nations Truce Supervision Organization. Accordingly, a USSR amendment²⁶ was introduced to replace the words describing the situation as noted above, by the words "is unsatisfactory". In opposition to the amendment, it was contended that the situation in the area was dangerous and that non-compliance with three unanimous resolutions of the Council constituted a situation which was likely to endanger international peace.]

Operative paragraph 1 of the United States draft resolution read:

"Considers that the situation now prevailing between the parties concerning the enforcement of the armistice agreements and the compliance given to the above-mentioned resolutions of the Council is such that its continuance is likely to endanger the maintenance of international peace and security."

At the 720th meeting on 3 April 1956, the representative of the USSR, referring to the paragraph just quoted, stated:

²² See Case 4.

²³ See Case 6.

²⁴ For texts of relevant statements, see: 720th meeting: President (United States), para. 47; USSR, para. 20;

721st meeting: Peru, paras. 66-67; USSR, paras. 43-47;

722nd meeting: Australia, para. 19; United Kingdom, para. 7; Yugoslavia, para. 22.

²⁵ S/3562, O.R., 11th year, Suppl. for Jan.-Mar. 1956, p. 21.

²⁶ S/3574, 720th meeting: para. 20.

"... If that paragraph were adopted in the form proposed by the United States delegation it would, in our opinion, force the Security Council to decide, prematurely and without a thorough study, that the situation now prevailing between the parties concerning compliance with the armistice agreements and the Security Council's resolutions is likely to endanger international peace and security. We consider that the Council should first hear the Secretary-General's report on his return from his visit to the countries in the Near East and the report of the Chief of Staff, General Burns: only then should it voice its conclusions about the situation in the area and say whether or not the situation with regard to compliance with the armistice agreements and the Security Council's resolutions is such that it is likely to endanger the maintenance of international peace and security. This is the purpose of our amendment to operative paragraph 1."

The President, speaking as the representative of the United States, replied:

"The second amendment is fallacious because it is clear that failure to comply with three unanimous resolutions of the Security Council is, in the words of the resolution, 'likely' to endanger peace. Surely it is not an exaggeration to say that non-compliance with three unanimous resolutions is likely to endanger peace. It seems none too strong."

At the 721st meeting on 4 April 1956, the representative of the USSR reiterated his views. The representative of Peru, opposing the USSR amendment, observed that the Council, in undertaking conciliation proceedings through a plenipotentiary, did not imply the taking of any measures prescribed under Article 39. Referring to the expression used in the paragraph concerned, he stated:

"... the expression is in fact taken from other articles referring to conciliation. Yet even so I should like to say that the expression — although it is of course used in the United Nations Charter, does not here carry the grave implications it has in Article 39, because the case is different: it is not a breach of the peace, a threat to the peace or an act of aggression. It is a situation whose continuance may possibly — and the United Nations is setting up mediation machinery to ensure that it does not continue — endanger the peace; its continuance would be likely to endanger peace..."

At the 722nd meeting on 4 April 1956, the representative of the United Kingdom declared that the situation in the area was not merely unsatisfactory but dangerous. He felt that the Council, without further evidence, could determine that the continuance of such a situation was likely to endanger the maintenance of international peace and security.

The representative of Australia stated:

"... It is true that these words are taken from a portion of the Charter; they are taken from Article 33... In other words, these words taken from the Charter do serve as the preliminary step, as it were, to conciliation, mediation and negotiation; the draft

resolution as a whole does request the Secretary-General to undertake a mission of investigation and conciliation within the framework of the armistice agreements that have been negotiated and accepted in the past."

The representative of Yugoslavia, in supporting the proposed amendment, observed:

"...this amendment would appear to bring the paragraph into fuller conformity with the spirit of Chapter VI, and more particularly of Article 34, of the Charter. It also coincides broadly with the views of my delegation on the situation in the area under consideration. Moreover, in our opinion this amendment has the advantage of dispelling any possible impression that the appraisal of the situation is being prejudged pending the Secretary-General's mission in the theatre."

At the same meeting, the USSR amendment to the first operative paragraph was rejected by 2 votes in favour and 3 against, with 6 abstentions.²⁷ The United States draft resolution was adopted unanimously.²⁸

CASE 5.²⁹ THE QUESTION OF ALGERIA: In connexion with a request dated 13 June 1956 that the situation in Algeria be considered by the Security Council

[*Note:* During the consideration of inclusion of the item in the agenda, it was urged that the Council was obliged to include the question in the agenda in order to determine, as stipulated in Article 34 of the Charter, whether continuance of the situation in Algeria threatened the maintenance of international peace and security. Objections to inclusion in the agenda were based *inter alia* on the ground that Article 34 concerned only threats to international peace. The provisional agenda was not adopted.]

At the 729th meeting on 26 June 1956, the Security Council had before it a provisional agenda which included a letter³⁰ dated 13 June 1956 submitted by the representatives of thirteen Member States, requesting under Article 35(1) that the situation in Algeria be considered by the Council as presenting a threat to peace and security.

Objection to inclusion of the item in the agenda was made by the representative of France on the ground that "Algerian affairs are matters essentially within the domestic jurisdiction of France".

On behalf of the Member States which had brought the situation in Algeria to the attention of the Council, the representative of Iran stated that the situation:

²⁷ 722nd meeting: para. 44.

²⁸ 722nd meeting: para. 46.

²⁹ For texts of relevant statements, see:

729th meeting: France, paras. 102-104; Iran, paras. 30, 42, 51-53, 55, 71, 89-90;

730th meeting: Iran, paras. 3, 8-9, 26; USSR, para. 76.

³⁰ S/3609, O.R., 11th year, Suppl. for Apr.-June 1956, pp. 74-76.

"... is of a nature to give rise to a dispute between nations, and that its continuance is likely to endanger maintenance of international peace and security."

After quoting Articles 35(1) and 34, he further stated:

"No one can deny that far-reaching military operations undertaken by an army of some 400,000 men equipped with modern arms against a population determined to defend its liberty... constitute a situation of the kind envisaged by Articles 34 and 35 of the Charter..."

"This situation has already led to international friction, within the meaning of Article 34 of the Charter, in the sense that thirteen Member States have expressed their serious concern about the unhappy situation now prevailing in Algeria. Could we force these States to remain silent when they ask the Council to examine this situation...?"

After dwelling further on the matter to demonstrate why the situation in Algeria was one on which the Council should act, he contended:

"... The Council... must include this question in its agenda so as to determine, as stipulated in Article 34 of the Charter, if, in its opinion, the continuance of this situation threatens the maintenance of international peace and security. It is quite evident that the Council cannot decide upon this until the question has been included in the agenda."

The representative of France reiterated his opposition to any discussion of "domestic affairs by third parties" and observed:

"... Article 2, paragraph 7, is not the only Article in which the principle of non-intervention is embodied. If we read Chapters VI and VII of the Charter, with particular reference to the competence of the Security Council, we find that under Article 34... the Council's competence is limited to 'any dispute, or any situation which might lead to international friction or give rise to a dispute', a dispute or situation the continuance of which 'is likely to endanger the maintenance of international peace and security'."

He remarked that, in the letter of submission to the Council, it had been claimed that the situation in Algeria was a "threat to peace and security", but "without inserting the qualifying objective 'international' which appears in Chapters VI and VII of the Charter".

He concluded that:

"... Threats to peace and security are not within the purview of this high forum unless they relate to international peace and security..."

At the 730th meeting on 26 June 1956, the representative of Iran contended that:

"... Articles 34 and 35 refer not to a present threat, nor to an imminent threat, but to the possibility of a situation which might endanger the maintenance of international peace and security..."

He added that, in regard to the situation in Algeria, "this possibility already exists, and the Security Council

is called upon to investigate it in accordance with the terms of Articles 34 and 35 of the Charter”.

The representative of the USSR maintained that the Council could not disregard the request made by thirteen States Members of the United Nations :

“... more particularly since these States maintain that there is a threat to peace and security in the area concerned. In order to determine whether or not any such threat to peace exists, the parties must be heard and the matter must be discussed in the Security Council.”

At the same meeting, the provisional agenda was rejected by 2 votes in favour and 7 against, with 2 abstentions.³¹

CASE 6.³² THE SITUATION IN HUNGARY : In connexion with the letter dated 27 October 1956 from the representatives of France, the United Kingdom and the United States to the President of the Security Council concerning the situation in Hungary

[*Note :* The competence of the Security Council was contested on the ground that a situation arising within a country and not affecting its relations with other States did not fall under Article 34 of the Charter.]

By letter ³³ dated 27 October 1956, the representatives of France, the United Kingdom and the United States addressed the President :

“... with regard to the situation created by the action of foreign military forces in Hungary in violently repressing the rights of the Hungarian people which are secured by the Treaty of Peace of 10 February 1947 to which the Governments of Hungary and the Allied and Associated Powers are parties.”

“Pursuant to the provisions of Article 34 of the Charter”, they requested the inclusion of an item in the agenda of the Security Council entitled “The situation in Hungary”, and the convening of an urgent meeting of the Council to consider it.

At the 746th meeting on 28 October 1956, the representative of the USSR, in opposing inclusion of the question in the agenda, stated :

“In their proposal for the inclusion of this item in the agenda the three Powers invoke Article 34 of the Charter as grounds for the discussion of this question in the Security Council. But that is entirely unwarrant-

ed. In point of fact, Article 34 of the Charter empowers the Security Council to investigate only disputes or situations of an international character, namely, those arising in relationships between States. Accordingly, any situations arising inside a country and not affecting its relations with other States, as in the present instance, do not fall under Article 34. Both in itself, therefore, and in association with the provisions of Article 2, paragraph 7, of the Charter... and those of Chapter I of the Charter as a whole, the text of Article 34 makes it quite clear that this is the only possible correct interpretation of the question of the Security Council's competence. The United Nations Charter thus leaves no doubt that the Security Council is not competent to examine questions of this nature.”

At the same meeting, the agenda was adopted by 9 votes in favour and 1 against, with 1 abstention.³⁴

The representative of the United Kingdom stated that :

“... The use of the armed forces of one country to restrain the peoples of another country in their domestic struggle for political freedom creates a situation fraught with danger to the community of nations, and is therefore a situation of which this Council clearly should take cognizance under Article 34 of the Charter.”

The President, speaking as the representative of France, stated that France had resolved to bring the situation before the Council, because everything had combined to lead it to this decision : legal arguments, factual reasons and moral dictates.

From the legal point of view, there could be no hesitation :

“... Is the situation serious? Is it such as to endanger international peace and security? No one can have any doubt on that score and the matter accordingly comes within the scope of Article 34 of the United Nations Charter.

“For several days now in Hungary, Soviet forces have been engaged in violent combat with the Hungarian people and with some units of the Hungarian army; that fact alone would suffice to bring the question within the competence of the Security Council.”

At the 752nd, 753rd and 754th meetings on 2, 3 and 4 November 1956, the Security Council continued to discuss the situation in Hungary on the basis of information received from its members and from the Government of Hungary.

At the 753rd meeting, the representative of the United States submitted a draft resolution,³⁵ which, as revised at the 754th meeting, read as follows :

“*The Security Council,*

“*Considering that the United Nations is based on the principle of sovereign equality of all its Members,*

“*Recalling that the enjoyment of human rights and*

³¹ 730th meeting : para. 85 ; See also chapter II, Case 5.

³² For texts of relevant statements, see :

746th meeting : France (President), paras. 86-91 ; USSR, para. 24 ; United Kingdom, paras. 71, 77.

752nd meeting : China, para. 131 ; Cuba, para. 68 ; France, paras. 109-115 ; United States, paras. 59-61 ;

753rd meeting : Australia, paras. 71, 74 ; Belgium, paras. 48-51, 53 ; France, paras. 83-84 ; Peru, paras. 94-96 ; USSR, para. 132 ; United Kingdom, paras. 39-40 ; United States, paras. 19-21 ; Yugoslavia, paras. 32-5, 64 ; 754th meeting : Belgium, paras. 34-35 ; USSR, paras. 53-54 ; United Kingdom, para. 60 ; United States, para. 10.

³³ S/3690, O.R., 11th year, Suppl. for Oct.-Dec. 1956, p. 100.

³⁴ 746th meeting : para. 35.

³⁵ S/3730 and S/3730/Rev.1, O.R., 11th year, Suppl. for Oct.-Dec. 1956, pp. 125-126.

of fundamental freedoms in Hungary was specifically guaranteed by the Peace Treaty between Hungary and the Allied and Associated Powers signed at Paris on 10 February 1947 and that the general principle of these rights and freedoms is affirmed for all peoples in the Charter of the United Nations,

“*Convinced* that present events in Hungary manifest clearly the desire of the Hungarian people to exercise and to enjoy fully their fundamental rights, freedoms and independence,

“*Deploring* the use of Soviet military forces to suppress the efforts of the Hungarian people to reassert their rights,

“*Noting* moreover the declaration by the Government of the Soviet Union of 30 October 1956, of its avowed policy of non-intervention in the internal affairs of other States,

“*Noting* the communication of 1 November 1956 of the Government of Hungary to the Secretary-General regarding demands made by that Government to the Government of the Union of Soviet Socialist Republics for ‘instant and immediate withdrawal of . . . Soviet forces,’³⁶

“*Noting* further the communication of 2 November 1956 (S/3726) of the Government of Hungary to the Secretary-General asking the Security Council ‘to instruct the Soviet and Hungarian Governments to

start the negotiations immediately’ on withdrawal of Soviet forces,

“*Anxious* to see the independence and sovereignty of Hungary respected ;

“1. *Calls upon* the Government of the Union of Soviet Socialist Republics to desist forthwith from any form of intervention, particularly armed intervention, in the internal affairs of Hungary ;

“2. *Calls upon* the Union of Soviet Socialist Republics to cease the introduction of additional armed forces into Hungary and to withdraw all of its forces without delay from Hungarian territory ;

“3. *Affirms* the right of the Hungarian people to a government responsive to its national aspirations and dedicated to its independence and well-being ;

“4. *Requests* the Secretary-General in consultation with the heads of appropriate specialized agencies to explore on an urgent basis the need of the Hungarian people for food, medicine and other similar supplies and to report to the Security Council as soon as possible ;

“5. *Requests* all Members of the United Nations and invites national and international humanitarian organizations to co-operate in making available such supplies as may be required by the Hungarian people.”

At the 754th meeting, the United States draft resolution failed of adoption. There were 9 votes in favour and 1 against and 1 vote recorded at the 755th meeting as an abstention. The negative vote was that of a permanent member.

³⁶ A/3251, O.R., General Assembly, Second Emergency Special Session, Annex.

Part III

APPLICATION OF THE PROVISIONS OF ARTICLE 35 OF THE CHARTER

NOTE

During the period under review, sixteen questions³⁷ relating to the maintenance of international peace and security have been brought to the attention of the Security Council by Members of the United Nations, nine of them by the States directly involved. The relevant data regard-

ing submission will be found in the appended tabulation. The Security Council has continued, at the instance of the parties or of other Members of the United Nations, to consider two questions which had been included in its agenda in 1947 and 1948 respectively, namely, the Palestine question³⁸ and the India-Pakistan question.

³⁷ 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 2 and 3. In another instance, an item submitted to the Council (see Tabulation : entry 8) was considered in the framework of a question on the agenda of the Council since 1947 (see chapter VIII : The Palestine question : steps for immediate cessation of the military action of Israel in Egypt, pp. 26-29).

³⁸ During the period under review, the following were considered as sub-items of “The Palestine question” by the Security Council : Letter dated 13 December 1955 from the representative of Syria addressed to the President of the Security Council (707th meeting) ; Status of compliance given to the general armistice agreements and the resolutions of the Security Council adopted during the past year (717th meeting) ; (a) Letter dated 15 October 1956 from the representative of Jordan, addressed to the President of the Security Council, (b) Letter dated 17 October 1956 from the representative of Israel, addressed to the President

of the Security Council, with complaint concerning : Persistent violations by Jordan of the General Armistice Agreement and of the cease-fire pledge made to the Secretary-General on 26 April 1956 (774th meeting) ; Steps for the immediate cessation of the military action of Israel in Egypt (748th meeting) ; Letter dated 13 May 1957 from the permanent representative of Syria to the United Nations, addressed to the President of the Security Council concerning the construction of a bridge in the demilitarized zone established by the General Armistice Agreement between Israel and Syria (S/3827) (780th meeting) ; (a) Letter dated 4 September 1957 from the permanent representative of Jordan addressed to the President of the Security Council (S/3878) ; (b) Letter dated 5 September 1957 from the acting permanent representative of Israel addressed to the President of the Security Council (S/3883) (787th meeting) ; Letter dated 4 December 1958 from the permanent representative of Israel addressed to the President of the Security Council (S/4123) (841st meeting).

SUBMISSION BY MEMBERS OF THE UNITED NATIONS

In two instances, one of which involved a complaint of "aggression", Members submitting questions to the Security Council indicated in the initial communication that they were acting in accordance with Article 35.³⁹ In other instances, the Articles invoked have been Article 34,⁴⁰ Article 2 (4),⁴¹ Article 40⁴² and Article 42.⁴³ The remaining submissions of questions for consideration by the Council made no reference to Articles of the Charter. In the initial communications or the documents accompanying them, Member States have indicated more or less explicitly the action requested of the Council as well as the nature of the question.

In no instance have Members submitted a question to the Council as a dispute; in seven instances questions were expressly described in initial communications as situations. Some questions have been submitted as involving a danger to peace, or aggression or intervention in domestic affairs or an invasion of sovereignty.⁴⁴

STATES NOT MEMBERS OF THE UNITED NATIONS

No question was submitted to the Security Council during the period under review by a State not a Member of the United Nations. Article 35,⁴⁵ however, was referred

³⁹ See Tabulation: entries 1 and 13. See also statement by the representative of Israel at the 844th meeting on 15 December 1958, S/PV/844, p. 57, and his further statement at the 845th meeting on 30 January 1959, S/PV/845, p. 33.

⁴⁰ See Tabulation: entry 4. See also the statements referred to in the preceding note.

⁴¹ See Tabulation: entry 14.

⁴² See Tabulation: entry 16.

⁴³ See Tabulation: entry 12.

⁴⁴ Questions not otherwise described have been listed in the tabulation under situations.

⁴⁵ See Tabulation: entry 13.

to in the submission of a question concerning "the armed aggression" against the territorial integrity of the Imamate of Oman.

PROCEDURAL CONSEQUENCES OF SUBMISSION UNDER ARTICLE 35

Questions have been submitted to the Security Council by means of communications addressed to the President of the Security Council; in only one instance⁴⁶ during this period was a question submitted to the Council by means of a communication addressed to the Secretary-General with a request for inclusion of the matter in the provisional agenda of the meeting. In one communication to the President of the Security Council requesting inclusion of a question in the agenda a draft resolution⁴⁷ was enclosed. Communications submitting questions for consideration by the Council have been dealt with in accordance with rules 6-9 of the provisional rules of procedure. Material relating to the application of rules 6-9 is contained in chapter II of this *Supplement*. Material on the practice of the Security Council in the implementation of 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 of the new questions submitted for its consideration during the period under review, considered whether to accept the designation of a question contained in the initial communication. The question of the appropriate designation for a question included in the agenda at an earlier period was raised⁴⁸ in the Council by a Member State.

⁴⁶ See Tabulation: entry 6.

⁴⁷ See Tabulation: entry 12.

⁴⁸ See in this chapter, Case 9 below.

Tabulation of questions submitted to the Security Council (1956-1958)

****SECTION A. QUESTIONS SUBMITTED BY MEMBERS AS DISPUTES**

SECTION B. QUESTIONS SUBMITTED BY MEMBERS AS SITUATIONS

Question	Submitted by	States involved	Articles invoked as basis for submission	Description of question in letter of submission	Action requested of the Security Council	References
1. Letter dated 13 June 1956 from the representatives of Afghanistan, Egypt, Indonesia, Iran, Iraq, Jordan, Lebanon, Libya, Pakistan, Saudi Arabia, Syria, Thailand and Yemen addressed to the President of the Security Council concerning Algeria	Afghanistan, Egypt, Indonesia, Iran, Iraq, Jordan, Lebanon, Libya, Pakistan, Saudi Arabia, Syria, Thailand, Yemen, ^a 13 June 1956	France	35	"... the situation had deteriorated to the extent that the United Nations could not remain indifferent to the threat to peace and security..."	"... to consider the grave situation in Algeria under Article 35, paragraph 1, of the United Nations Charter"	S/3609, O.R., 11th yr., Suppl. for Apr.-June 1956, pp. 74-76
2. Situation created by the unilateral action of the Egyptian Government in bringing to an end the system of international operation of the Suez Canal, which was confirmed and completed by the Suez Canal Convention of 1888	France, United Kingdom, 23 September 1956	Egypt	None	"Situation created by the unilateral action of the Egyptian Government ..."	"... a discussion of this situation by the Council"	S/3654, O.R., 11th yr., Suppl. for July-Sept. 1956, p. 47
3. Military assistance rendered by the Egyptian Government to the rebels in Algeria	France, 25 October 1956	Egypt	None	"The intervention by the Egyptian Government constitutes an attack on the French sovereignty in flagrant violation of the fundamental rules of international law ..."	"... the ... item be placed on the agenda of a forthcoming meeting."	S/3689, O.R., 11th yr., Suppl. for Oct.-Dec. 1956, pp. 98-100
4. The situation in Hungary	France, United Kingdom, United States, 27 October 1956	USSR ^b	34	"... the situation created by ... foreign military forces in Hungary is violently repressing the rights of the Hungarian people ... secured by the Treaty of Peace of February 1947 ..."	"... the consideration of this item ..."	S/3690, O.R., 11th yr., Suppl. for Oct.-Dec. 1956, p. 100

5. 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"	France, 14 February 1958	Tunisia	None	"...the Algerian rebels, aided and abetted by the Tunisian authorities, have been able...to establish in Tunisia a complete organization enabling them to carry out numerous border violations and incursions into French territory..."	"...the assistance furnished by Tunisia to the Algerian rebels should be condemned by the Council"	S/3954, O.R., 13th yr., Suppl. for Jan.-Mar. 1958, pp. 15-16
6. Letter dated 20 February 1958 from the representative of Sudan addressed to the Secretary-General	Sudan, 20 February 1958	Egypt	None	"...the grave situation existing on the Sudan-Egyptian border, resulting from the massed concentration of Egyptian troops moving towards the Sudanese frontiers"	"...to meet immediately and use its good offices to stop the impending Egyptian aggression"	S. 3963, O.R., 13th yr., Suppl. for Jan.-Mar. 1958, pp. 21-22
7. 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"	Lebanon, 22 May 1958	United Arab Republic	None	"The said intervention consists, <i>inter alia</i> , of the following acts:..."	"to call an urgent meeting ... to consider the ... question..."	S/4007, O.R., 13th yr., Suppl. for Apr.-June 1958, p. 33

a For discussion on the inclusion in the agenda, see chapter II, part III.B.1, Case 5.

b In the communication of 27 October 1956, reference was made to: "...foreign military forces in Hungary..."

c This question was considered by the Security Council together with the Tunisian complaint listed in Section C, entry 14.

Question	Submitted by	States involved	Articles invoked as basis for submission	Description of question in letter of submission	Action requested of the Security Council	References
8. Letter dated 29 May 1958 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" (S/3954) and (b) "The situation arising out of the disruption, by Tunisia of the <i>Modus Vivendi</i> which had been established since February 1958 with regard to the stationing of French troops at certain points in Tunisian territory" ^d	France, 29 May 1958	Tunisia	None	"... the Tunisian Government has created conditions likely to lead to incidents"	"... to recommend to the Tunisian Government that it should restore conditions favourable to a resumption of negotiations"	S/4015, <i>O.R.</i> , 13th yr., <i>Suppl. for Apr.-June 1958</i> , pp. 42-44
9. Jordan question	Jordan, 17 July 1958	United Arab Republic	None	"... interference in its domestic affairs by the United Arab Republic."	"... urgent consideration..."	S/4053

^d This question was considered by the Security Council together with the Tunisian complaint, listed in Section C, entry 16.

SECTION C. QUESTIONS SUBMITTED BY MEMBERS AS THREATS TO THE PEACE, BREACH OF THE PEACE OR ACTS OF AGGRESSION

Question	Submitted by	States involved	Articles invoked as basis for submission	Description of question in letter of submission	Action requested of the Security Council	References
10. Actions against Egypt by some Powers, particularly France and the United Kingdom, which constitute a danger to international peace and security and are serious violations of the Charter of the United Nations	Egypt, 24 September 1956	"... some Powers, particularly France and the United Kingdom..."	None	"Actions against Egypt... which constitute a danger to international peace and security..."	"... to consider the following: Actions against Egypt..."	S/3656, <i>O.R.</i> , 11th yr., <i>Suppl. for July-Sept. 1956</i> , p. 48
11. Letter dated 30 October 1956 from the representative of Egypt	Egypt, 30 October 1956	United Kingdom, France	None	"This threat of force... impel the Government of Egypt to request the Security Council to be immediately convened to consider this act of aggression by the United Kingdom and France"	"... to consider this act of aggression..."	S/3712, <i>O.R.</i> , 11th yr., <i>Suppl. for Oct.-Dec. 1956</i> , p. 111

12. Cablegram dated 5 November 1956 from the Minister for Foreign Affairs of the Union of Soviet Socialist Republics, addressed to the President of the Security Council, concerning: "Non-compliance by the United Kingdom, France and Israel with the decision of the emergency special session of the General Assembly of 2 November 1956 and immediate steps to halt the aggression of the aforesaid States against Egypt"	USSR. ^e 5 November 1956	United Kingdom, France, Israel	None	"Despite the decision of the emergency special session of the General Assembly... the aggressive war against Egypt is being intensified. This situation imposes the need..."	"USSR draft resolution: "1. Proposes to the Governments of the United Kingdom, France and Israel that they should immediately... cease all military action against Egypt... 2. Considers it essential, in accordance with Article 42 of the United Nations Charter, that all States Members of the United Nations, ... should give military and other assistance to the republic of Egypt..."	S/3736, <i>O.R.</i> , 11th yr., <i>Suppl. for Oct.-Dec. 1956</i> , pp. 128-130
13. Letter dated 13 August 1957 from the permanent representatives of Egypt, Iraq, Jordan, Lebanon, Libya, Morocco, Saudi Arabia, Sudan, Syria, Tunisia and Yemen addressed to the President of the Security Council	Egypt, Iraq, Jordan, Lebanon, Libya, Morocco, Saudi Arabia, Sudan, Syria, Tunisia, ^f Yemen. ^g 13 August 1957	United Kingdom	35	"... The British acts of aggression against the peaceful people of Oman will, if permitted to continue, lead to serious consequences..."	"... an immediate action by the Security Council..."	S/3865 and Add.1, <i>O.R.</i> , 12th yr., <i>Suppl. for July-Sept. 1957</i> , pp. 16-17
14. 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"	Tunisia, 13 February 1958	France	2(4)	"... the act of aggression committed on 8 February is of a particularly serious nature, not only because of the number of lives lost and the extent of the danger caused, but also because of the earlier acts of a similar kind committed since May 1957"	"... to take whatever decision it may deem appropriate to put an end to a situation which threatens Tunisia's security and endangers international peace and security in that part of the world"	S/3952, <i>O.R.</i> , 13th yr., <i>Suppl. for Jan.-Mar. 1958</i> , pp. 13-14

^e For discussion on the inclusion in the agenda, see chapter II, part III.B.1, Case 9.

^f S/3965/Add.1, *O.R.*, 12th year, *Suppl. for July-Sept. 1957*, pp. 16-17.

^g For discussion on the inclusion in the agenda, see chapter II, part III.B.1, Case 11.

Question	Submitted by	States involved	Articles invoked as basis for submission	Description of question in letter of submission	Action requested of the Security Council	References
15. Complaint of the representative of the Union of Soviet Socialist Republics in a letter to the President of the Security Council dated 18 April 1958 entitled: "Urgent measures to put an end to flights by United States military aircraft armed with atomic and hydrogen bombs in the direction of the frontier of the Soviet Union."	USSR, 18 April 1958	United States	None	"The threat to the cause of peace which has arisen as a result of the danger arising out of the numerous cases of flights in the direction of the USSR territory by the United States bombers carrying hydrogen bombs..."	"... give... the most urgent consideration and ... take the necessary steps to eliminate this threat to the cause of peace"	S/3990, O.R., 13th yr., Suppl. for Apr.-June 1958, p. 8
16. 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 19 May 1958 by the French military forces stationed in its territory and in Algeria"	Tunisia, 29 May 1958	France	None	"... Tunisia would draw ... attention to the extreme gravity of the situation resulting from these repeated acts of what is indisputably armed aggression against its territorial integrity by the French forces..."	"... to take such measures it may deem necessary — in accordance with Article 40 and subsequent Articles of the United Nations Charter — in order to put an end to this situation."	S/4013, O.R., 13th yr., Suppl. for Apr.-June 1958, pp. 37-39

****SECTION D. QUESTIONS SUBMITTED BY STATES NOT MEMBERS AS DISPUTES**

****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**

****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 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)⁴⁹ and Article 33.⁵⁰ The submission of a matter to the Council as a situation rather than as a dispute has been urged on one occasion⁵¹ as limiting the authority of the Council to make recommendations concerning steps to be taken to give effect to certain of its earlier resolutions in which one of the parties had not concurred. On another occasion⁵² the submission of a matter as a situation was considered not to debar the Security Council from giving the parties guidance concerning the substantive basis of a settlement. The question has also arisen whether the Council may exercise powers based on Chapter VII of the Charter in connexion with proposals⁵³ designed to assure the conditions necessary for the peaceful settlement of matters which the Council was considering in the framework of Chapter VI.⁵⁴ The observations on these occasions require to be considered within the context of the Council's effort⁵⁵ to promote agreement between the parties and to encourage negotiation by them.

In connexion with the discussion of the obligation of States to continue direct negotiations with regard to

disputes and situations submitted to the Council, observations concerning the retention of such questions on the list of matters of which the Council is seized have stressed the continuing concern of the Council with the progress and outcome of such negotiations as an aspect of its specific responsibility for the maintenance of international peace and security.

CASE 7.⁵⁶ SITUATION CREATED BY THE UNILATERAL ACTION OF THE EGYPTIAN GOVERNMENT IN BRINGING TO AN END THE SYSTEM OF OPERATION OF THE SUEZ CANAL, WHICH WAS CONFIRMED AND COMPLETED BY THE SUEZ CANAL CONVENTION OF 1888 : In connexion with the adoption of the agenda

[Note : During the consideration of the adoption of the agenda and afterwards observations were made on the powers of the Security Council under Article 37 to deal with a "situation" referred to it in accordance with Article 35(1) and recommend a settlement based on the Principles of the Charter.]

At the 734th meeting on 26 September 1956, during the discussion on the adoption of the provisional agenda,⁵⁷ the representative of Peru stated that France and the United Kingdom, faced with a dispute or situation which was likely to disturb or endanger international peace, after having done everything possible to settle this situation or dispute by negotiation and having complied with Article 37 of the Charter, had referred it to the Security Council. The representative of Peru pointed out that under Article 37 recourse to the Security Council was not optional. If the parties to a dispute "fail to settle it by negotiation, it is not left to their disposition to refer it to the Security Council. The terms of the Charter are categorical : they shall refer it to the Security Council".

At the same meeting, the agenda was adopted.⁵⁸

At the 735th meeting on 5 October 1956, the President, speaking as the representative of France, stated that the United Kingdom and France had "brought this situation to the attention of the President of the Security Council" on 23 September in accordance with Article 35(1) of the Charter.

At the 737th meeting on 8 October 1956, the representative of Peru pointed out that the Powers concerned had referred the question to the Security Council under Article 35 of the Charter and had insisted that their

⁴⁹ See chapter XII, part II.

⁵⁰ See part I above.

⁵¹ See Case 9.

⁵² See Case 7.

⁵³ See Case 8.

⁵⁴ See Case 10.

⁵⁵ See Case 11 and part I above.

⁵⁶ For texts of relevant statements, see :

734th meeting : Peru, paras. 69-71 ;

735th meeting : France (President) : para. 103 ;

737th meeting : Peru, paras. 6-8, 26-34.

⁵⁷ See chapter II, part III.B.1, Case 6.

⁵⁸ 734th meeting : paras. 121-123.

application should be dealt with as a situation and not a dispute.

"In the event of any situation or dispute likely to endanger world peace, the Council may assume competence *ex officio*, of its own initiative. On this occasion its competence has been brought into being by application by one of the parties, and the application of France and the United Kingdom refers to the case as a situation and not as a dispute. There are differences between these two forms of application. Under Article 36 of the Charter the Security Council may, when faced with a situation, recommend procedures or methods of adjustment. If, however, the parties present the case as a dispute, the Council has wider powers under Article 37 of the Charter. When a dispute is referred to it, the Council may either use the limited power vested in it under Article 36, and adopt only methods or procedures, or use the wider power of indicating what it considers appropriate terms of settlement; this gives it very wide discretionary powers in resolving the problem."

If a question was submitted to the Council as a situation, the representative of Peru asked,

"... does it follow that the competence of the Council is limited solely to recommending procedures and methods of adjustment — the well known procedures of conciliation, mediation, good offices or, if the problem is legal in character, a legal solution — or should the Council try to find some way of restoring the harmony between the parties which has been disrupted? ..."

In this case, the representative of Peru believed that the Council could, *ex officio*, investigate any situation or dispute which might arise, and then, on its own initiative,

"use the powers bestowed upon it by Article 37 of the Charter, and if, on studying a problem, it discovers that the situation involves a dispute and that what has been laid before it as a situation has, as in the present instance, entailed negotiations and consequently discussions between the parties, and that there is in fact a dispute, the Council can be the judge of its own competence and can assume the powers provided in Article 37, deciding whether simply to recommend procedures and methods of adjustment or to suggest, conscientiously and with a view to the ultimate objectives of universal peace and security, the terms of settlement which it deems the most appropriate."

The present situation involved at once an economic and political interest, and it also raised the problem of peace and war. The representative of Peru asked whether the Security Council could not, with the powers which he had outlined, find "some procedure, some method of adjustment, some terms of reference", and expressed the view that

"Although the procedures open to it are the conventional procedures, and methods of adjustment depend on circumstances, they could yet be commended to the parties. But methods of adjustment do not represent the most appropriate solution when there are principles in the Charter that could provide a remedy."

CASE 8.⁵⁹ SITUATION CREATED BY THE UNILATERAL ACTION OF THE EGYPTIAN GOVERNMENT IN BRINGING TO AN END THE SYSTEM OF INTERNATIONAL OPERATION OF THE SUEZ CANAL, WHICH WAS CONFIRMED AND COMPLETED BY THE SUEZ CANAL CONVENTION OF 1888: In connexion with paragraph (5) of the operative part of the French-United Kingdom joint draft resolution submitted on 13 October 1956 to consider that pending the definitive settlement of the régime of the Suez Canal, the Suez Canal Users' Association and the Egyptian authorities should co-operate to ensure the satisfactory operation of the Canal: failed of adoption

[*Note*: The provision of paragraph (5) of the joint draft resolution gave rise to the objection that there was no need to provide for any extraordinary measures when the question had been before the Security Council and the negotiations between the parties had been continuing. In reply, it was contended that provisional measures defined in Article 40 of the Charter might be applied by the Security Council by analogy also in connexion with a question considered under Chapter VI of the Charter.]

At the 742nd meeting on 13 October 1956, the representatives of France and the United Kingdom submitted a joint draft resolution,⁶⁰ providing for the Security Council to agree that any settlement of the Suez question should meet the six requirements defined therein. The last operative paragraph (para. 5) provided for the Security Council to consider

"... that pending the conclusion of an agreement for the definitive settlement of the régime of the Suez Canal on the basis of the requirements set out above, the Suez Canal Users' Association, which has been qualified to receive the dues payable by ships belonging to its members, and the competent Egyptian authorities, should co-operate to ensure the satisfactory operation of the Canal and free and open transit through the Canal in accordance with the Convention, signed at Constantinople on 29 October 1888 destined to guarantee the free use of the Suez Maritime Canal."

At the same meeting, the representative of the United Kingdom, referring to the concluding paragraph of the French-United Kingdom draft resolution, expressed the hope that all members of the Security Council were agreed that what had been called conservatory measures, or in the language of the Charter, provisional measures, were essential in order to ensure that subsequent negotiations towards a settlement would not in the meantime be prejudiced by any events or incidents which might occur. The Security Council must, therefore, see that there was a provisional regulation of practical problems which arose in the operation of the Canal. While avoid-

⁵⁹ For texts of relevant statements, see:

742nd meeting: USSR, para. 97; United Kingdom, para. 26;

743rd meeting: Belgium, paras. 62-65; Peru, paras. 86-89; United States, para. 12.

⁶⁰ S/3671, O.R., 11th year, Suppl. for Oct.-Dec. 1956, pp. 19-20.

ing undue formality, the Security Council must institute a *modus vivendi* pending the conclusion of an agreement for the definitive settlement of the régime of the Suez Canal on the basis of the six requirements, defined in the joint draft resolution.

The representative of the USSR contended that since the Suez question had now become the concern of the United Nations, this fact together with the continuation of the negotiations initiated on the Suez Canal question constituted a genuine safeguard obviating the need to apply any extraordinary measures.

At the 743rd meeting on 13 October 1956, the representative of the United States expressed the view that the Charter itself contemplated that provisional measures might be called for by the Council in relation to matters before it. In other words, the Charter made it quite clear that, simply because a case was pending before the Council, this did not exclude the need for interim arrangements.

The representative of Belgium stated that those who had drafted the Charter had fully realized that in certain circumstances, when it was difficult to reach a final solution, the wise thing was to agree upon "a certain number of provisional measures which . . . should have the purpose and the effect of preventing the occurrence of incidents and the deterioration of the situation". He quoted from Article 40 of the Charter: "... Such provisional measures shall be without prejudice to the rights, claims or position of the parties concerned" and asked how was "it possible, in such a delicate and serious situation . . . not to feel the absolute necessity of applying . . . Article 40 and adopting by common accord such provisional measures, 'without prejudice to the rights, claims or position of the parties concerned'?"

The representative of Belgium stated further that he was well aware that "the Chapter of the Charter which relates to the type of question we are considering does not specifically mention these provisional measures". But it was clear to him that "there is no legal problem about applying this principle from Chapter VII to the matters referred to in Chapter VI".

The representative of Peru pointed out that, although, strictly speaking, before provisional measures could be taken, the Security Council must first determine the existence of a threat to the peace, breach of the peace, or act of aggression, it was

"... obvious that, by analogy, provisional measures may also be taken under Chapter VI. They are not specifically provided for in Chapter VI, but, in empowering the Security Council in Articles 34, 36 and 37 of this Chapter *ex officio* to investigate any situation which is likely to endanger peace and, more particularly, in empowering it under Article 37 to recommend 'terms of settlement', the Charter did not exclude provisional measures from those terms of settlement, precisely so that such measures could be put into effect. There is a legal axiom according to which principles which are not directly relevant may be applied to similar cases by analogy.

"If the provisional measures to prevent 'an aggravation' of the situation — to quote Article 40 of the

Charter — are put into effect in the case of aggression or of a threat to the peace, why should they not be put into effect in cases where it may be said that there is probably a threat to the peace?"

The Security Council had such powers with regard to the term of settlement that it could certainly decide upon these provisional measures.

At the same meeting, the President (France) put the joint draft resolution to the vote in two parts. The first part included paragraph 1 of the operative part with the preamble and the second part began with paragraph 2 and continued to the end of the draft resolution. The first part of the draft resolution was adopted unanimously.⁶¹ The second part failed of adoption; there were 9 votes in favour and 2 against (one of the negative votes being that of a permanent member).⁶²

CASE 9.⁶³ THE INDIA-PAKISTAN QUESTION: In connexion with the joint draft resolution submitted by Australia, Cuba, the United Kingdom and the United States, and the USSR and Colombian amendments thereto: voted upon and rejected on 20 February 1957; and with the joint draft resolution submitted by Australia, the United Kingdom and the United States: voted upon and adopted on 21 February 1957

[Note: During the consideration of the item, the representative of India* contended, in commenting on the joint draft resolution submitted on 15 February 1957 by Australia, Cuba, the United Kingdom and the United States, that the question before the Security Council was not a "dispute" but a "situation" created by an act of aggression against India. On 20 February 1957, amendments submitted by the USSR and Colombia, which took into account the contention of the representative of India, were rejected as was the joint draft resolution. A joint draft resolution, submitted by Australia, the United Kingdom and the United States was adopted on 21 February 1957.]

At the 762nd meeting on 23 January 1957, the representative of India* referred to the letter⁶⁴ from the

⁶¹ 743rd meeting: para. 105.

⁶² 743rd meeting: para. 106.

⁶³ For texts of relevant statements, see:

762nd meeting: India*, paras. 8-15, 106, 108, 136;

764th meeting: India*, para. 191;

765th meeting: President (Philippines), para. 106; China, paras. 64-67; USSR, para. 82;

766th meeting: Pakistan*, paras. 6, 16;

767th meeting: China, para. 249; India*, paras. 66, 70, 74, 83-84, 99-101, 219-221;

769th meeting: India*, paras. 136-137;

770th meeting: USSR, para. 145;

771st meeting: Colombia, paras. 1-2, 4-5;

772nd meeting: India*, paras. 58, 105; United Kingdom, para. 150; United States, para. 115;

773rd meeting: Philippines, para. 43;

774th meeting: Pakistan*, para. 13.

⁶⁴ S/628, O.R., 3rd year, Suppl. for Nov., 1948, pp. 139-144.

Government of India to the Security Council dated 1 January 1948 to support his contention that the Indian Government had not brought a dispute about territory to the Council but a situation stemming from an act of aggression by Pakistan.

At the 765th meeting on 24 January 1957, the representative of China observed that the letter dated 1 January 1948 containing the Indian request to the Security Council to put the question on the agenda had indeed referred to "aggression". However, the representative of Pakistan at that time had made a counter-charge of acts of aggression by India against Pakistan. The charge had never been "taken up", and "never even given serious consideration". The representative of China thought "the basic question" was whether the State of Jammu and Kashmir should become a part of India or a part of Pakistan, and he asked whether this was not "a dispute with regard to territory".

The President, speaking as the representative of the Philippines, contended that it might have been the original intention of India to seize the Security Council not of a dispute but of a situation which might, by its continuance, endanger the maintenance of peace and security. However, the subsequent filing of a counter-complaint by Pakistan had "converted the situation into a dispute within the meaning of the Charter". This was affirmed in the resolution of the Council of 21 April 1948 in which it was stated "that the continuation of the dispute is likely to endanger international peace and security".⁶⁵

At the 766th meeting on 30 January 1957, the representative of Pakistan* stated that at an early stage of the debate, the Security Council had come to the conclusion first that "a situation likely to endanger international peace and security existed in view of the dispute between the Maharaja and his people", and subsequently between India and Pakistan over the question of the accession of the State of Jammu and Kashmir to India or Pakistan; and secondly, that there was general agreement between the parties that "the situation could be resolved only if the dispute was resolved by means of a free and impartial plebiscite".

At the 768th meeting on 15 February 1957, Australia, Cuba, the United Kingdom and the United States submitted a joint draft resolution,⁶⁶ to provide that:

"The Security Council,

"...

"Concerned at the lack of progress in settling the dispute,

"Considering the importance which it has attached to the demilitarization of the State of Jammu and Kashmir as a step towards the settlement of the dispute,

"...

"Believing that, in so far as it might contribute

⁶⁵ 284th meeting: p. 2; S/726, O.R., 3rd year, Suppl. for April 1948, pp. 8-12; See *Repertoire of the Practice of the Security Council, 1946-1951*.

⁶⁶ S/3787, O.R., 12th year, Suppl. for Jan.-Mar. 1957, pp. 7-8.

towards the achievement of demilitarization as envisaged in the resolutions of the United Nations Commission for India and Pakistan and towards the pacific settlement of the dispute, the use of such a force would deserve consideration,

"1. Requests the President of the Security Council, the representative of Sweden, to examine with the Governments of India and Pakistan proposals which, in his opinion, are likely to contribute to the achievement of demilitarization or to the establishment of other conditions for progress towards the settlement of the dispute, . . .

"..."

At the 769th meeting on 15 February 1957, the representative of India*, referring to the joint draft resolution before the Council, pointed out that the word "dispute" in paragraph 3 of the preamble had been introduced by the Security Council without India's assent. The only two resolutions⁶⁷ to which India had agreed were those of 17 January and 20 January 1948 and the resolutions⁶⁸ of the United Nations Commission for India and Pakistan of 13 August 1948 and 5 January 1949 in which the word "dispute" did not occur. The word used was "situation". The representative of India thought that "the introduction of the word 'dispute' means a political change". The "reintroduction" of the word "dispute" was an attempt on the part of the sponsors of subsequent resolutions "to weight these things" against India because the matter before the Security Council was a "situation", not a "territorial dispute".

At the 770th meeting on 18 February 1957, the representative of the USSR submitted amendments⁶⁹ to the joint draft resolution: (1) to replace the preamble by the text:

"Having heard the statements of the representatives of the Governments of India and Pakistan."

and (2) to amend paragraph 1 of the operative part to read:

"1. Requests the President of the Security Council, the representative of Sweden, to examine with the Governments of India and Pakistan the situation in respect of Jammu and Kashmir, and to consider the progress that can be made towards the settlement of the problem . . ."

At the 771st meeting on 18 February 1957, the representative of Colombia submitted an amendment⁷⁰ to the joint draft resolution: (1) to replace the preamble by the text:

"The Security Council,

"Recalling its previous resolutions and the letter addressed to the President of the U.N.C.I.P. on 20

⁶⁷ S/651 and S/654, *Repertoire of the Practice of the Security Council, 1946-1951*, pp. 344-355.

⁶⁸ S/1100, O.R., 3rd year, Suppl. for Nov. 1948, pp. 32-34; S/1196, O.R., 4th year, Suppl. for Jan. 1949, pp. 23-25.

⁶⁹ S/3789, O.R., 12th year, Suppl. for Jan.-Mar. 1957, p. 8.

⁷⁰ S/3791/Rev.1 and Corr.1, O.R., 12th year, Suppl. for Jan.-Mar. 1957, pp. 8-9.

August 1948, by India's Prime Minister [S/1100, para. 78];

and (2) amend paragraph 1 of the operative part to read :

"1. *Requests* the President of the Security Council, the representative of Sweden, to examine with the Governments of India and Pakistan proposals, which, in his opinion, are likely to contribute to the achievement of the provisions contemplated in the resolutions of 13 August 1948 [S/1100, para. 75], and 5 January 1949 [S/1196, para. 15], of the U.N.C.I.P. or to the establishment of other conditions for progress towards the settlement of the problem . . ."

In explanation of his amendment, the representative of Colombia stated :

"We shall not at this juncture discuss . . . the distinction between 'situation' and a 'dispute'; yet, without doubt, if we study the Charter, we must agree that, in the first place, it is not very clear. In the second place, this Kashmir case has the special feature that some of the resolutions, especially those of the United Nations Commission, spoke of a 'dispute', while others spoke of a 'situation'. Furthermore, I think that if we wish to be correct, we could reach the following conclusions: the Charter speaks of 'situation' and 'dispute'. However, there is also an intermediate stage, that of a 'presumption of a dispute', in which case the Security Council has the right to investigate whether a situation is simply a 'situation' or whether it is a 'dispute'.

"Consequently . . . I think that in this case it is better to use the word 'problem', as the Soviet Union has done, because this enables us to reserve the right of the Security Council. If, at a given time, the Security Council sees that it is necessary to take action under Chapter VII of the Charter, we can decide at that time that we are confronted with a 'dispute'. Besides, it seems to me inadvisable to use the word 'dispute' so long as the Council has not decided to take action under Chapter VII. The word 'problem', therefore, seems to me a very appropriate choice."

At the 772nd meeting on 20 February 1957, the representative of India* pointed out that when, on 1 January 1948, the Government of India had submitted a formal complaint to the Security Council under Chapter VI of the Charter, it had come to the Security Council to ask its assistance in obtaining, under this Chapter, "the end of an aggression". India could have invoked Chapter VII, but it had preferred to invoke Chapter VI.

The representative of the United States observed that under the USSR amendments to the joint draft resolution, the word "dispute" was changed to the word "situation". While the Security Council had used the word "situation" in its earliest resolutions, it had subsequently used the word "dispute" consistently. This had been the word used in the resolution of 24 January 1957 and, in the opinion of the United States delegation, "it reflects the facts".

The representative of the United Kingdom stated that an effect of the USSR amendments was to eliminate the

word "dispute" in the draft resolution. He was puzzled that there should be any objection to this word. Not only had it been used in many Security Council resolutions, but also it had been used in the joint communiqué issued to the Press in New Delhi on 20 August 1953.

At the 773rd meeting on 20 February 1957, the representative of the Philippines contended that the USSR and Colombian amendments seemed to accept that the President of the Council should be given, under the joint draft resolution, the necessary freedom for examination of other proposals likely to contribute to "the establishment of other conditions for progress towards the settlement of the dispute". However, both amendments skirted the argument of the representative of India that what the Council was seized of was a "situation" and not a "dispute". Instead, they adopted the word "problem" which did not appear in Chapter VI. It was not seen how the Council could get away from its resolution of 21 April 1958 which found that "the continuance of the dispute between the Governments of India and Pakistan is likely to endanger international peace and security".

At the same meeting, the amendments submitted by the USSR were rejected by 1 vote in favour and 2 against, with 8 abstentions.⁷¹

The amendment submitted by Colombia was rejected by 1 vote in favour and none against, with 10 abstentions.⁷²

The joint draft resolution submitted by Australia, Cuba, the United Kingdom and the United States was not adopted. There were 9 votes in favour and 1 against, with 1 abstention (the negative vote being that of a permanent member).⁷³

At the same meeting, Australia, the United Kingdom and the United States submitted a joint draft resolution,⁷⁴ according to which

"The Security Council,

"Recalling its resolution of 24 January 1957, its previous resolutions and the resolutions of the United Nations Commission for India and Pakistan on the India-Pakistan question,

"1. Requests the President of the Security Council, the representative of Sweden, to examine with the Governments of India and Pakistan any proposals which, in his opinion, are likely to contribute towards the settlement of the dispute, . . . ;

" . . ."

At the 774th meeting on 21 February 1957, the representative of Pakistan* stated that the question of the accession of the State of Jammu and Kashmir to Pakistan or to India "is a matter in dispute between India and Pakistan. The dispute involves in essence the right of self-determination of the people of the State on this disputed question of accession".

⁷¹ 773rd meeting : para. 124.

⁷² 773rd meeting : para. 125.

⁷³ 773rd meeting : para. 126.

⁷⁴ S/3792 and Corr.1, 773rd meeting : para. 130.

At the same meeting, the joint draft resolution submitted by Australia, the United Kingdom and the United States was adopted by 10 votes in favour and none against, with 1 abstention.⁷⁵

In his report⁷⁶ on the India-Pakistan question prepared in pursuance of the resolution of the Security Council of 21 February 1957, and transmitted to the President of the Security Council on 29 April 1957, the representative of Sweden stated :

“ During our conversations the Government of India laid particular emphasis on the fact that, in their view, two factors stood in the way of the implementation of the two resolutions adopted by the United Nations Commission for India and Pakistan . . . The second of these impediments, which concerned rather part II of the first resolution, was that the Government of India, which had brought the case before the Security Council on 1 January 1948, felt aggrieved that the Council had so far not expressed itself on the question of what, in the Indian view, was aggression committed by Pakistan on India. In the Indian Government’s view, it was incumbent on the Council to express itself on this question and equally incumbent on Pakistan ‘ to vacate the aggression ’. It was argued that prior to the fulfilment of these requirements on the part of the Security Council and on the part of Pakistan the commitments of India under the resolution of 13 August 1948 could not reach the operative stage.

“ I explained to the Government of India that the Security Council had properly taken cognizance of the original Indian complaint, and that it was not for me to express myself on the question whether its resolutions on the matter had been adequate or not. I pointed out that regardless of the merits of the present position taken by the Government of India, it could not be overlooked that India had accepted the two resolutions adopted by the Commission for India and Pakistan.”

CASE 10.⁷⁷ THE INDIA-PAKISTAN QUESTION: In connexion with the Pakistan proposal for the use of a United Nations force ; and with the joint draft resolution submitted by Australia,

⁷⁵ 774th meeting : para. 79 ; S/3793, O.R., 12th year, Suppl. for Jan.-Mar. 1957, p. 9.

⁷⁶ S/3821, O.R., 12th year, Suppl. for Apr.-June 1957, pp. 12-16.

⁷⁷ For texts of relevant statements, see :

761st meeting : Pakistan*, para. 112 ;

768th meeting : Australia, paras. 53-55 ; China, paras. 130-131 ; Colombia, paras. 79-83 ; Philippines, para. 115 ; United Kingdom, para. 12 ; United States, paras. 33-34 ;

769th meeting : France, paras. 32-33 ; India*, paras. 143-154, 166-167 ; Iraq, para. 24 ;

770th meeting : Pakistan*, paras. 118-128 ; USSR, para. 145 ;

771st meeting : Colombia, para. 6 ;

772nd meeting : United States, para. 113 ;

773rd meeting : India*, paras. 67-80 ; Philippines, para. 48 ; USSR, paras. 18-21 ;

774th meeting : Pakistan*, para. 9 ; USSR, para. 44.

Cuba, the United Kingdom and the United States, and the USSR and Colombian amendments thereto : voted upon and rejected on 20 February 1957 ; and with the joint draft resolution submitted by Australia, the United Kingdom and the United States : voted upon and adopted on 21 February 1957

[Note : Against a joint draft resolution suggesting consideration of a proposal to entrust the functions of protecting Jammu and Kashmir to a United Nations force, it was contended that recommendations of the Security Council, acting under Chapter VI of the Charter, required the agreement of the parties concerned to become effective. It was also maintained that a United Nations force could be established by the Security Council only under Chapter VII of the Charter. On 20 February 1957, the amendments submitted to the joint draft resolution were rejected and the joint draft resolution was not adopted. Subsequently, a joint draft resolution submitted by Australia, the United Kingdom and the United States, which did not contain any provision bearing on the use of such a force, was adopted.]

At the 761st meeting on 16 January 1957, the representative of Pakistan* stated that it had been agreed by the Governments of India and Pakistan and by the Security Council that demilitarization of the State of Jammu and Kashmir was an essential prerequisite of a free and impartial plebiscite.

“ In view of this, the Security Council should call upon the parties to withdraw all their troops from the State and should also ensure that the local forces which should be placed under the representative of the Security Council and left behind, are suitably reduced, if not disbanded altogether. The functions of protecting the State and ensuring internal security should be entrusted by the Council to a United Nations Force which should be introduced into the area . . . ”

At the 768th meeting on 15 February 1957, a joint draft resolution⁷⁸ was submitted by Australia, Cuba, the United Kingdom and the United States, according to which

“ The Security Council,

“ . . .

“ Noting the proposal of the representative of Pakistan for the use of a temporary United Nations force . . . (preamble, para. 6)

“ Believing that, in so far as it might contribute towards the achievement of demilitarization . . . the use of such a force would deserve consideration, (preamble, para. 7)

“ 1. Requests the President of the Security Council, the representative of Sweden, to examine with the Governments of India and Pakistan proposals which, in his opinion, are likely to contribute to the achieve-

⁷⁸ S/3787, O.R., 12th year, Suppl. for Jan.-Mar. 1957, pp. 7-8.

ment of demilitarization . . . bearing in mind the statements of the representatives of the Governments of India and Pakistan and the proposal for the use of a temporary United Nations force :

“ . . . ”

At the same meeting, the representative of Colombia observed that when the Security Council had appointed the Commission for India and Pakistan in 1948, the same error had been committed which the Council was about to commit with the draft resolution before it : the Commission's sole terms of reference being to negotiate within the framework of the resolution of 21 April 1948 which had been denounced beforehand by one of the parties, i.e., India. Thus on its arrival in India, the Commission had found itself acting as a conciliator under Chapter VI of the Charter and yet required to keep strictly to a resolution denounced by India. The agreement reached was not a consequence of the resolution but of direct negotiations, and constituted a compromise between two opposed positions. The Security Council could not “introduce new elements”, which would necessitate re-examination of the entire situation. Within the framework of Chapter VI, “we must not forget that we are acting as mediators and that the parties must agree to the suggestions”.

The idea of United Nations troops seemed to be “an excellent one, but only if and when India accepts it first”. The Security Council could not impose the presence of such troops. It must “first obtain the consent of the parties concerned” to their presence. The Security Council could not “put down at once in a resolution a series of new elements on the presence of United Nations troops without the countries having requested them”. The representative of Colombia added:

“Thus the idea is excellent, but only if and when the President of the Council obtains the consent of the parties in advance, because according to Chapter VI, nothing can be done unless the parties agree beforehand.”

The representative of China found that the idea of a United Nations force deserved consideration and pointed out that the Security Council was considering this problem under Chapter VI of the Charter. It had not come “to the stage of imposing any solution on either party”. Therefore, the joint draft resolution rightly asked the two parties only to give this proposal their consideration and asked the President to bring this proposal to the parties concerned and ask for their consideration.

At the 769th meeting on 15 February 1957, the representative of France stated that the joint draft resolution was not “in the nature of a substantive decision”. It confined itself to “prescribing a fact-finding measure” and the Council would take no decision on the solution of the Kashmir question until it had heard the report of the President. He did not, therefore, think that the final provision of operative paragraph 1 should be regarded “as anything but an indication”. The President would undoubtedly examine with the Governments of India and Pakistan all the aspects, both juridical and practical, of the use of a United Nations force.

The representative of India* said that the proposal for the use of a United Nations force was contrary to the Charter “because the United Nations has no authority to place any soldiers in our territory under Chapter VI . . .” He pointed out that any soldier setting foot in the Pakistan area of the State of Jammu and Kashmir was violating the sovereignty of the Indian Union and declared that the Government of India would in no circumstances permit foreign troops on its soil. The Security Council was asking India to accept a situation which was contrary to the provisions of the Charter.

At the 770th meeting on 18 February 1957, the representative of Pakistan* contended that the question of stationing United Nations troops on Indian soil did not arise. It must be clearly understood that

“this United Nations force is going into Kashmir with the consent of both parties, in the sense that both parties have agreed to demilitarize, and both parties have agreed to withdraw their forces. It is in pursuance of that agreement . . . for demilitarization, that this force is going . . . We are agreeing to it, and India has already agreed to demilitarization. Therefore its consent is presumed.”

At the same meeting, the representative of the USSR submitted amendments⁷⁹ to the joint draft resolution : (1) to replace the preamble by the following text :

“*Having heard* the statements of the representatives of the Governments of India and Pakistan.”

and (2) to amend paragraph 1 of the operative part to read as follows :

“1. *Requests* the President of the Security Council, the representative of Sweden, to examine with the Governments of India and Pakistan the situation in respect of Jammu and Kashmir, and to consider the progress that can be made towards the settlement of the problem, bearing in mind the statements of the representatives of the Governments of India and Pakistan ;

“ . . . ”

At the 771st meeting on 18 February 1957, the representative of Colombia submitted an amendment⁸⁰ to the joint draft resolution : (1) to replace the preamble by the following text :

“*The Security Council,*

“*Recalling* its previous resolutions and the letter addressed to the President of the United Nations Commission for India and Pakistan on 20 August 1948, by India's Prime Minister [S/1100, para. 78] ;”

and (2) to amend paragraph 1 of the operative part to read as follows :

“*Requests* the President of the Security Council, the representative of Sweden, to examine with the Governments of India and Pakistan . . . the proposals for the

⁷⁹ S/3789, O.R., 12th year, Suppl. for Jan.-Mar. 1957, p. 8.

⁸⁰ S/3791/Rev.1 and Corr.1, O.R., 12th year, Suppl. for Jan.-Mar. 1957, pp. 8-9.

use of a temporary United Nations force, if accepted by the parties . . . ;

“ . . . ”

In explanation of his amendment, the representative of Colombia stated that the use of a United Nations force “ could only be permitted if the countries concerned expressed their consent ”. What the Security Council wanted to do “ was to invite India to admit the force ”. In the opinion of the representative of Colombia,

“ . . . this point might be settled by a provision explaining that we are asking the President of the Security Council to consider, among other suggestions, the possibility of using a United Nations Force, provided, of course, that India accepts it. If India does not accept the force, it will obviously be unable to go . . . ”

At the 773rd meeting on 20 February 1957, the representative of the USSR asked whether the Security Council endorsed the idea of using a United Nations armed force in Kashmir. If the Security Council wished to act in full conformity with the Charter, it would have to state for what purpose and with what object such forces had been assigned to Kashmir. Article 42 was the only Article of the Charter which referred to the use of armed forces of the United Nations.

“ . . . the Charter nowhere provides for the use of United Nations armed forces for such a purpose as the holding of a plebiscite in any country. Accordingly, the proposal to send armed forces to Kashmir is contrary to the principles of the Charter . . . The effect of this ‘ exploration ’ will be that the Security Council will in fact be approving the idea, with a view to its implementation. ”

The representative of the Philippines observed that it was the Council’s right and duty to express its opinion. It would be failing in its duty if after deliberation it did not express what in its opinion would be a reasonable proposal to solve the deadlock on the question of demilitarization.

The representative of India* referred to the report⁸¹ of the Secretary-General of 24 January 1957 and quoted sub-paragraphs (a)-(c) of paragraph 5 concerning the use of the United Nations Emergency Force. He contended that the three sub-paragraphs were conclusive in regard to the “ illegality ” of the proposal for the use of a United Nations force in Kashmir, and made this proposal

“ totally impractical ”. He asked those who were responsible for the joint draft resolution to find one word in Chapter VI of the Charter with reference to a United Nations force. There was none. Therefore, it was contrary to the Charter.

At the same meeting, the USSR and Colombian amendments to the joint draft resolution were rejected.⁸²

The joint draft resolution submitted by Australia, Cuba, the United Kingdom and the United States was not adopted. There were 9 votes in favour and 1 against, with 1 abstention (the negative vote being that of a permanent member).⁸³

At the same meeting, Australia, the United Kingdom and the United States submitted a joint draft resolution,⁸⁴ in which it was provided that

“ *The Security Council,*

“ *Recalling* its resolution of 24 January 1957 [S/3779], its previous resolutions and the resolutions of the United Nations Commission for India and Pakistan on the India-Pakistan question,

“ 1. *Requests* the President of the Security Council, the representative of Sweden, to examine with the Governments of India and Pakistan any proposals which, in his opinion, are likely to contribute towards the settlement of the dispute, having regard to the previous resolutions of the Security Council and of the United Nations Commission for India and Pakistan ; to visit the sub-continent for this purpose ; and to report to the Security Council not later than 15 April 1957 ;

“ . . . ”

At the 774th meeting on 21 February 1957, the representative of Pakistan* stated that the sole purpose of his proposal for the introduction of a United Nations force had been to facilitate the withdrawal of Pakistani troops so that the process of demilitarization could be completed thereafter in accordance with the terms of the resolution of the United Nations Commission for India and Pakistan. In a sense, the introduction of a United Nations force would amount merely to an augmentation of the United Nations observers. It would thus be tantamount to “ a use of those procedures which have so far been followed with some success under Chapter VI of the Charter ”.

At the same meeting, the joint draft resolution⁸⁵ sub-

Charter requires the consent of the States in which the force is to operate. Moreover, such use must be undertaken and developed in a manner consistent with the principles mentioned under (a) above. It must, furthermore, be impartial, in the sense that it does not serve as a means to force settlement, in the interest of one party, of political conflicts or legal issues recognized as controversial. (c) United Nations actions must respect fully the rights of Member States recognized in the Charter, and international agreements not contrary to the aims of the Charter, which are concluded in exercise of those rights.” [A/3512, *Report of the Secretary-General in pursuance of General Assembly resolution 1123 (XI)*, G.A.O.R., 11th session, Annexes, a.i. 66, Part two, A, para. 5, p. 47.]

⁸² 773rd meeting : paras. 124-125.

⁸³ 773rd meeting : para. 126.

⁸⁴ S/3792 and Corr.1, 773rd meeting : para. 130.

⁸⁵ S/3793, O.R., 12th year, Suppl. for Jan.-Mar. 1957, p. 9.

⁸¹ In his report, the Secretary-General stated : “ . . . it would seem that the following points are generally recognized as non-controversial in the determination of the limits within which the activities of the United Nations can be properly developed. Within their scope, positive United Nations measures in the present issue, rendered possible by full compliance with the General Assembly resolutions, can be and have to be developed, which would represent effective progress toward the creation of peaceful conditions in the region. (a) The United Nations cannot condone a change of the *status juris* resulting from military action contrary to the provisions of the Charter. The Organization must, therefore, maintain that the *status juris* existing prior to such military action be re-established by a withdrawal of troops, and by the relinquishment or nullification of rights asserted in territories covered by the military action and depending upon it. (b) The use of military force by the United Nations other than that under Chapter VII of the

mitted by Australia, the United Kingdom and the United States was adopted by 10 votes in favour and none against, with 1 abstention.⁸⁶

CASE 11.⁸⁷ THE INDIA-PAKISTAN QUESTION: In connexion with the joint draft resolution submitted by Australia, Cuba, the United Kingdom and the United States and the USSR and Colombian amendments thereto: voted upon and rejected on 20 February 1957; with the joint draft resolution submitted by Australia, the United Kingdom and the United States: voted upon and adopted on 21 February 1957; and with the joint draft resolution submitted by Australia, Colombia, the Philippines, the United Kingdom and the United States and the Swedish amendments thereto: voted upon and adopted on 2 December 1957

[Note: During the consideration of draft resolutions submitted to the Council, objections were raised by the representative of India to those provisions of their preambles in which the previous resolutions of the Council and the United Nations Commission for India and Pakistan had been recalled. In this connexion, it was argued that resolutions adopted by the Council under Chapter VI of the Charter were recommendations not constituting decisions binding on the parties. In view of these contentions, amendments were submitted at the 770th and 771st meetings by the USSR and Colombia to the joint draft resolution submitted by Australia, Cuba, the United Kingdom and the United States. On 20 February 1957, these amendments were rejected and the joint draft resolution was not adopted. Subsequently, a joint draft resolution, submitted by Australia, the United Kingdom and the United States, was adopted on 21 February 1957. To a joint draft resolution submitted on 18 November 1957 by Australia, Colombia, the Philippines, the United Kingdom and the United States, Sweden submitted amendments taking into account India's objections. The draft resolution as amended was adopted.]

At the 761st meeting on 16 January 1957, the representative of Pakistan* requested the Security Council to spell out, under Article 37(2) of the Charter, the obligations of the parties under the terms of the international agreement for a plebiscite as embodied in the United Nations resolutions, and pointed out that Pakistan recognized with regard to the State of Jammu and Kashmir only those international obligations it had

voluntarily accepted together with the Government of India in the resolutions of the United Nations Commission for India and Pakistan dated 13 August 1948 and 5 January 1949.

At the 767th meeting on 8 February 1957, the representative of India* contended that his Government was bound only by the engagements to which it had become a party since 22 December 1947, apart from the general obligations of international law. He observed that "a number of resolutions have been passed by the Security Council, and none of these are resolutions of a character which may be called that of international engagements" except the two resolutions to which the representative of Pakistan had referred. The remainder were by way of adjuration and, "to the extent that they are under Chapter VI of the Charter, they are not binding upon the people concerned. They are by way of recommendation." The representative of India asked further what was the obligatory nature of actions taken under Chapter VI of the Charter? He observed that "an important stage" had been reached by the San Francisco Conference with Article 37 of the Charter. Under this Article,

"The Council may recommend terms of settlement, but it does not have the power to compel the parties to accept the terms. It has the power to enforce its decisions only after it is determined under the provisions of Chapter VII that a threat to the peace exists."

The only binding decisions the Security Council could make, the representative of India added, were the decisions under Chapter VII of the Charter.

At the 768th meeting on 15 February 1957, a joint draft resolution⁸⁸ was submitted by Australia, Cuba, the United Kingdom and the United States, in which it was provided:

"The Security Council,

"Recalling its resolution of 24 January 1957 [S/3779], its previous resolutions and the resolutions of the United Nations Commission for India and Pakistan on the India-Pakistan question, [preamble, para. 1]

"...

"1. Requests the President of the Security Council, the representative of Sweden, to examine with the Governments of India and Pakistan proposals which, in his opinion, are likely to contribute to the achievement of demilitarization or to the establishment of other conditions for progress towards the settlement of the dispute, having regard to the previous resolutions of the Security Council and of the United Nations Commission for India and Pakistan, and bearing in mind the statements of the representatives of the Governments of India and Pakistan ...

"..."

At the 770th meeting on 18 February 1957, the representative of the USSR submitted amendments⁸⁹ to the

⁸⁶ 774th meeting: para. 79.

⁸⁷ For texts of relevant statements, see:

761st meeting: Pakistan*, paras. 109, 115;

767th meeting: India*, paras. 91-94;

768th meeting: Philippines, para. 110;

769th meeting: India*, para. 120;

770th meeting: USSR, para. 145;

771st meeting: Colombia, para. 2;

773rd meeting: India*, para. 111;

774th meeting: India*, paras. 30-31; USSR, para. 44;

⁸⁸ S/3787, O.R., 12th year, Suppl. for Jan.-Mar. 1957, pp. 7-8.

⁸⁹ S/3789, O.R., 12th year, Suppl. for Jan.-Mar. 1957, p. 8.

joint draft resolution : (1) to replace the preamble by the following text:

“*Having heard* the statements of the representatives of the Governments of India and Pakistan.”

and (2) to amend paragraph 1 of the operative part to read as follows :

“1. *Requests* the President of the Security Council, the representative of Sweden, to examine with the Governments of India and Pakistan the situation in respect of Jammu and Kashmir, and to consider the progress that can be made towards the settlement of the problem, bearing in mind the statements of the representatives of the Governments of India and Pakistan ;

“...”

At the 771st meeting on 18 February 1957, the representative of Colombia submitted amendments⁹⁰ to the joint draft resolution : (1) to replace the preamble by the following text :

“*The Security Council,*

“*Recalling* its previous resolutions and the letter addressed to the President of the United Nations Commission for India and Pakistan on 20 August 1948, by India’s Prime Minister [S/1100, para. 78] ;”

and (2) to amend paragraph 1 of the operative part to read as follows :

“*Requests* the President of the Security Council, the representative of Sweden, to examine with the Governments of India and Pakistan proposals, which, in his opinion are likely to contribute to the achievement of the provisions contemplated in the resolutions of 13 August 1948 [S/1100, para. 75], and 5 January 1949 [S/1196, para. 15], of the United Nations Commission for India and Pakistan or to the establishment of other conditions for progress towards the settlement of the problem, bearing in mind the statements of the representatives of the Governments of India and Pakistan . . . ;

“...”

In explanation of his amendment, the representative of Colombia observed that it seemed to him that it would not be proper for the preamble to say merely : “*Having heard* the statements of the representatives . . .” because that would mean “ignoring, forgetting or revising what the Council has done”. If the Council wished to arrive at a solution, it was logical simply to refer to the earlier resolutions “without mentioning any of them specifically”. It did not seem indispensable to mention any particular resolution. By contrast, however, it was necessary to mention the letter of 20 August 1948 addressed by the Prime Minister of India to the United Nations Commission for India and Pakistan. This letter provided “the only reason which entitles us to insist on a plebiscite”.

At the 773rd meeting on 20 February 1957, the repre-

sentative of India* stated that India had come to the Security Council under Chapter VI of the Charter and, therefore, the only procedures that could be adopted were pacific procedures. The essence of pacific procedures was mutual consent. The Security Council, since 20 January 1948, had time after time passed resolutions which India had not been able to accept. The sponsors had been informed that India had been unable to accept them but the Security Council

“... continued to pass resolutions without any reference to conciliation, without any reference to the possibility of acceptance, and, what is more, in this particular case a draft resolution has been presented which largely embodies the proposals that have been put forward by one side. This is not calculated to bring about a settlement . . .”

At the same meeting, the USSR and Colombian amendments were rejected.⁹¹

The joint draft resolution submitted by Australia, Cuba, the United Kingdom and the United States was not adopted. There were 9 votes in favour and 1 against, with 1 abstention (the negative vote being that of a permanent member).⁹²

At the same meeting, Australia, the United Kingdom and the United States submitted a joint draft resolution⁹³ which read :

“*The Security Council,*

“*Recalling* its resolution of 24 January 1957 [S/3779], its previous resolutions and the resolutions of the United Nations Commission for India and Pakistan on the India-Pakistan question,

“1. *Requests* the President of the Security Council, the representative of Sweden, to examine with the Governments of India and Pakistan any proposals which, in his opinion, are likely to contribute towards the settlement of the dispute, having regard to the previous resolutions of the Security Council and of the United Nations Commission for India and Pakistan ; to visit the sub-continent for this purpose ; and to report to the Security Council not later than 15 April 1957 ;

“2. *Invites* the Governments of India and Pakistan to co-operate with him in the performance of these functions ;

“3. *Requests* the Secretary-General and the United Nations Representative for India and Pakistan to render such assistance as he may request.”

At the 774th meeting on 21 February 1957, the representative of India* contended that the only resolutions in which his Government felt “engaged” were those it had accepted, for resolutions passed by the Council under Chapter VI “have no binding effect upon Member States unless they consent”. India had rejected them, and the

⁹¹ 773rd meeting : paras. 124-125.

⁹² 773rd meeting : para. 126.

⁹³ S/3792 and Corr.1, 773rd meeting : para. 130.

⁹⁰ S/3791/Rev.1 and Corr.1, O.R., 12th year, Suppl. for Jan.-Mar. 1957, pp. 8-9.

United Nations Commission for India and Pakistan, after the rejection, "had proceeded on the basis" that India "had not accepted them". The Government of India regretted the unnecessary pinpointing of the resolution of 24 January 1957 in the preamble of the joint draft resolution, especially as the generic phrase "its previous resolutions" had been set out. The same applied to the words "having regard to the previous resolutions of the Security Council".

"... the Security Council must have regard to its own resolutions, but so far as Member States which are not members of the Security Council are concerned, when proceedings under Chapter VI are being pursued, its relevance to them is based only upon consent..."

The representative of the USSR pointed out that the Security Council's problem was "the pacific settlement of the Kashmir question in keeping with Chapter VI of the United Nations Charter" which provided for the pacific settlement of disputes and excluded any measures of compulsion and "any attempt to impose on one of the parties solutions unacceptable to it". The reference to previous Council decisions which were not acceptable to the Government of India might, therefore, render the task entrusted to the President more difficult.

At the same meeting, the joint draft resolution⁹⁴ submitted by Australia, the United Kingdom and the United States was adopted by 10 votes in favour and none against, with 1 abstention.⁹⁵

On 29 April 1957, the representative of Sweden transmitted to the President of the Security Council the report⁹⁶ he had prepared in pursuance of the resolution of the Security Council of 21 February 1957.

At the 803rd meeting on 18 November 1957, Australia, Colombia, the Philippines, the United Kingdom and the United States submitted a joint draft resolution⁹⁷ in which it was provided :

"The Security Council,

"...

"Observing further that the Governments of India and Pakistan recognize and accept the commitments undertaken by them in the resolutions of the United Nations Commission for India and Pakistan dated 13 August 1948 [S/1100, para. 75] and 5 January 1949 [S/1196, para. 15], which envisage the determination of the future status of the State of Jammu and Kashmir in accordance with the will of the people through the democratic method of a free and impartial plebiscite...; [preamble, para. 4]

"...

"Recalling its previous resolutions and the resolutions of the United Nations Commission for India and

Pakistan on the India-Pakistan question : [preamble, para. 7]

"...

"2. Requests the United Nations Representative for India and Pakistan to make any recommendations to the parties for further action which he considers desirable in connexion with part I of the resolution of the United Nations Commission for India and Pakistan of 13 August 1948, having regard to his third and fifth reports [S/2611 and Corr.1, S/2967] and the report of Mr. Jarring, and to enter into negotiations with the Governments of India and Pakistan in order to implement part II of the Commission's resolution of 13 August 1948, and in particular to reach agreement on a reduction of forces on each side of the cease-fire line to a specific number, arrived at on the basis of the relevant Security Council resolutions and having regard to the fifth report of the United Nations Representative for India and Pakistan ;

"..."

At the same meeting, the representative of the United States pointed out that no final settlement of the Kashmir problem could be reached except on an amicable basis acceptable to both parties. It was quite impossible for the Council "to push any sovereign nation into an action which it refuses to take".

The representative of the United Kingdom observed that the simple fact was that the Security Council "in proceeding under Chapter VI of the Charter, is attempting to find a basis for progress towards a settlement acceptable to both sides". The Council in seeking to make progress towards a settlement, must proceed from the resolutions of the United Nations Commission for India and Pakistan. There was "no question of the Security Council attempting to impose a decision on this point". The joint draft resolution merely reflected publicly announced decisions of the parties themselves.

At the 805th meeting on 21 November 1957, the representative of India*, after pointing out that the joint draft resolution contained a reference to the resolutions of 13 August 1948 and 5 January 1949, stated that there was "a significant omission" namely, that of the resolution of 17 January 1948. This resolution had been accepted by both parties. It was a "most important resolution", and, had it been observed, there would have been no need for the complaint by the United Nations Commission for India and Pakistan that Pakistan "had used that period for building up its forces". Therefore, if there were no reference to the resolution of 17 January 1948, "then the other resolutions have no effect". The representative of India stated further that he was authorized by the Government of India to say that it was "totally opposed" to the joint draft resolution. India had brought its complaint to the Council under Chapter VI, under which "no resolutions have any value that do not contain the element of conciliation. There must be either agreement between the parties or hope of agreement between the parties." He contended further that the discussion in the Security Council had shown that the joint draft resolution in fact served the interests of only one party, Pakistan, and did

⁹⁴ S/3793, O.R., 12th year, Suppl. for Jan.-Mar. 1957, p. 9.

⁹⁵ 774th meeting : para. 79.

⁹⁶ S/3821, O.R., 12th year, Suppl. for Apr.-June 1957, pp. 12-16.

⁹⁷ S/3911, O.R., 12th year, Suppl. for Oct.-Dec. 1957, pp. 11-12.

not take India's position into account, since it attempted "to impose quite unacceptable conditions on India". These endeavours were at sharp variance with the provisions of the Charter regarding the peaceful settlement of disputes between States, which excluded "the possibility of imposing any decision on a State Member of the United Nations".

At the 807th meeting on 28 November 1957, the representative of Sweden submitted the following amendment⁹⁸ to the joint draft resolution :

"1. In the fourth paragraph of the preamble delete the words 'commitments undertaken by them in' and insert instead 'provisions of its resolution dated 17 January 1948 and of' ;

"In the same paragraph insert between the words 'envisage' and 'the determination' the words 'in accordance with their terms'.

"2. Replace operative paragraph 2 by the following text :

"Requests the United Nations Representative for India and Pakistan to make any recommendations to the parties for further appropriate action with a view to making progress toward the implementation of the resolutions of the United Nations Commission for India and Pakistan of 13 August 1948 and 5 January 1949 and toward a peaceful settlement.'

"..."

At the 808th meeting on 2 December 1957, the amendments submitted by the representative of Sweden were adopted by 10 votes in favour and none against, with 1 abstention.⁹⁹

At the same meeting, the joint draft resolution¹⁰⁰ submitted by Australia, Colombia, the Philippines, the United Kingdom and the United States as amended was adopted by 10 votes in favour and none against, with 1 abstention.¹⁰¹

CASE 12.¹⁰² **THE PALESTINE QUESTION :** In connexion with letters dated 4 December 1958 and 26 January 1959 from the permanent representative of Israel addressed to the President of the Security Council (S/4123 and S/4151 and Corr.1) concerning incidents on the Israel-Syrian border

[*Note :* During the consideration of the Israel complaint concerning aggression by armed forces of the United Arab Republic on the Syrian border on 23 January 1959, discussion arose concerning the relation

⁹⁸ S/3920.

⁹⁹ 808th meeting : para. 8.

¹⁰⁰ S/3922, *O.R.*, 12th year, *Suppl. for Oct.-Nov. 1957*, pp. 21-22.

¹⁰¹ 808th meeting : para. 17.

¹⁰² For texts of relevant statements, see :

845th meeting (PV) : Canada, p. 81 ; China, pp. 87-90 ; Italy, pp. 66-67 ; Israel*, pp. 32-35, 93-95 ; Japan, pp. 56-60 ; Panama, p. 91 ; USSR, pp. 68-75 ; United Arab Republic, pp. 36, 41 ; United Kingdom, p. 51 ; United States, pp. 51-55.

between the right of a State to bring a question to the attention of the Security Council and the obligation of resort to local machinery established by the parties under the auspices of the United Nations.]

At the 845th meeting on 30 January 1959, the representative of Israel*, referring to Articles 34 and 35 of the Charter in justification of his Government's resort to the Security Council, declared that there was no need to prove that the continuation of constant firing by Syrian forces into Israel territory was "likely to endanger international peace and security". To deny "the preventive element in the responsibility" of the Council would be to do injury both to Middle Eastern peace and to the utility and prestige of the United Nations system.

The representative of the United Arab Republic* contended that the Council was faced with a local incident which fell within the competence of the Mixed Armistice Commission in accordance with article VII of the General Armistice Agreement between Israel and Syria. The Security Council, therefore, "should not have been seized of this question". Articles 34 and 35 of the Charter gave certain powers to the Council, but when there was a body created by agreement of both parties, under the auspices of the Council, it was necessary to utilize that body, particularly for an incident of the kind before the Council. It was the established practice of the Council to support the implementation of the Armistice Agreement and to give the Mixed Armistice Commission the opportunity of examining complaints of this kind.

The representative of the United Kingdom pointed out that the Security Council had a special responsibility in connexion with the situation on the borders between Israel and its Arab neighbours. He did not wish to question the right of Israel to come to the Security Council when in its opinion the general situation along any particular border became so serious that this course was essential. On the other hand, the machinery on the spot established by the United Nations to supervise the working of the Armistice Agreements and to deal with incidents locally must not be overlooked.

The representative of the United States expressed the view that any country had the right to bring a complaint to the Security Council at any time. In the instant case, however, specific United Nations machinery had been established in the area, and was available and fully competent to deal with just such incidents. The United States could, therefore, not agree that it was proper to resort to the Security Council in the first instance. Most such cases could be decided in the area by appropriate use of the United Nations machinery. Moreover, through a detailed examination by the United Nations agencies in the area, including the Mixed Armistice Commission, the Council would undeniably be placed in a much better position to form a judgement on the merits of the case and to deal with it effectively. Departure from this principle tended "to establish a precedent which could lead to progressive atrophy of the local United Nations machinery. This could have grave consequences for the maintenance of peace and stability".

The representative of Japan stated that the parties to any dispute might find practical advantage if they first

of all sought a solution by negotiation or by recourse to regional agencies or arrangements or by other peaceful means of their own choice. This was one of the fundamental principles of the Charter. There might be some benefit if the Security Council should act as "a final resort" in this sense on the basis of full knowledge of all the information available and also of full knowledge of the merits of this information. Therefore, the Mixed Armistice Commission should not be left paralysed, especially since the incidents on the Demarcation Line in particular had seemed to be under its jurisdiction.

The representative of Italy contended that while it was the duty of the Council to call upon the parties to exercise the utmost possible restraint and vigilance so as to prevent the recurrence of similar incidents in future, the desirability should be emphasized of a fuller recourse to the machinery provided in the Armistice Agreement. The right of the parties concerned to appeal to the Security Council when they thought a given situation

deserved consideration by the Council should not be questioned, but it appeared that the incidents in question might be properly dealt with primarily by the Armistice machinery.

The representative of Canada, stressing the importance of full utilization of all the existing United Nations machinery, observed that the Security Council's own consideration of such complaints, when that was found necessary, was likely to be rendered more fruitful if preliminary recourse to the Mixed Armistice machinery had clarified those points on which further action by the United Nations might be required.

The representative of China thought that for incidents such as that submitted by Israel, the machinery set up by the United Nations on the spot was more suitable, more efficacious and more expeditious in examining, in making recommendations, in coming to judgements, and in preventing incidents of this kind, whereas use of the Council for such matters was inefficient.