Chapter XII

CONSIDERATION OF THE PROVISIONS OF OTHER ARTICLES OF THE CHARTER

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INTRODUCTORY NOTE

Chapter XII covers the consideration by the Security Council of Articles of the Charter not dealt with in the preceding chapters. [1]

Part I

CONSIDERATION OF THE PROVISIONS OF ARTICLE 1 (2) OF THE CHARTER

Article 1 (2) of the Charter

"2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace." [1]

NOTE

The two case histories listed in this part deal with the first instances of the consideration of the provisions of Article 1 (2) in the proceedings of the Council.

CASE 1. [2] COMPLAINT BY PORTUGAL (GOA): In connexion with the draft resolution submitted by France, Turkey, the United Kingdom and the United States recalling the provisions of Article 1 (2): voted upon and failed of adoption on 18 December 1961

[*Note:* During the consideration of the Portuguese complaint concerning "Indian aggression" against Goa, Damao and Diu, a draft resolution was submitted calling for the cessation of hostilities, the withdrawal of Indian forces and the solution by peaceful means of their differences by the parties. In the preamble of the draft resolution was recalled Article 1 (2), to which implied references were made in the debate. The principle of self-determination was considered by the representative of India as inapplicable in the case of the population of Goa, Damao and Diu, and the reference to Article 1 (2) was also questioned by another representative as inconsistent with the operative part of the draft resolution.]

At the 987th meeting on 18 December 1961, the President, speaking as the representative of the United Arab Republic, stated that the peoples of the territories of Goa, Damao and Diu never had the right of self-determination and had not been consulted on whether or not they had agreed to their integration with Portugal.

At the 988th meeting on the same day, the representative of Ecuador said it had been argued that the matter before the Council was a dispute about colonial territories. He wondered whether Portugal was willing to meet its international obligations by complying with the resolutions of the United Nations and to take steps so that the fate of the peoples whose territories were in dispute might be decided according to the principle of self-determination.

The representative of Chile observed that the parties to the conflict should take into consideration the freely expressed wishes of the inhabitants of the three Portuguese enclaves. If India were to take possession of the territories immediately, it could have no satisfaction, because it would not have integrated them into its own territory by lawful means.

The representative of India* stated that there were instances when the question of self-determination could be raised in a certain context, as, for example, in Angola. However, in the situation under consideration, the question could not be raised, since there could be no self-determination of an Indian against an Indian.

At the same meeting, the representative of the United States introduced a draft resolution [3] submitted jointly with France, Turkey and the United Kingdom, whereby the Security Council would recall

> "that Article 1, paragraph 2, of the Charter specifies as one of the purposes of the United Nations to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples," (preamble, para. 3).

The representative of the USSR, after quoting the first [4] and the third preambular paragraphs of the joint draft resolution, stated that if its sponsors had been consistent, then they should have called upon Portugal to put an end to its colonial domination in Goa, and to liberate the people of Goa immediately, so that friendly relations among nations could be established on the basis of respect "for the principle of equal rights and self-determination of peoples".

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[1] For observations on the methods adopted in compilation of this chapter, see: Repertoire of the Practice of the Security Council, 1946-1951, Introductory Note to chapter VIII, part II: Arrangement of chapters X-XII, p. 296.

[2] For texts of relevant statements, see:
987th meeting: President (United Arab Republic), para. 125;
988th meeting: Chile, para. 30; Ecuador, paras. 13, 15, 16; India*, para. 85; USSR, paras. 123, 124.

[3] S/5033, 988th meeting: para. 97.

[4] The first preambular paragraph recalled the provisions of Article 2 (3) and 2 (4).

At the same meeting, the joint draft resolution submitted by France, Turkey, the United Kingdom and the United States failed of adoption.[5] There were 7 votes in favour, 4 against (one of the negative votes being that of a permanent member).

CASE 2.[6] SITUATION IN TERRITORIES IN AFRICA UNDER PORTUGUESE ADMINISTRATION: In connexion with the joint draft resolution submitted by Ghana, Morocco and the Philippines: voted upon and adopted on 11 December 1963

[*Note:* The concept of self-determination was discussed mainly during the second part of the consideration of the item. Portugal had contended that there was more than one modality of self-determination, just as there was more than one modality with regard to the form of the administration of a State, and that the principle of self-determination would be applied to African territories under its administration in a special context and within a national framework. Objections to this interpretation were raised on the ground that it actually constituted a denial to the peoples of those territories of the essential alternative of deciding on independence from foreign sovereignty. The Portuguese Government's concept of self-determination and of the context of its operation were fundamentally at variance with those laid down by the United Nations, particularly in the Declaration on the granting of independence to colonial countries and peoples. A joint draft resolution, which reaffirmed the interpretation of self-determination as laid down in that Declaration (General Assembly resolution 1514 (XV)), was adopted.]

At the 1049th meeting on 31 July 1963, in connexion with the situation in territories in Africa under Portuguese administration, the Security Council adopted a draft resolution[7] jointly sponsored by Ghana, Morocco and the Philippines, and which incorporated the amendments[8] submitted by Venezuela. This resolution, as adopted,[9] provided in part:

"The Security Council,

"...

"5. Urgently calls upon Portugal to implement the following:

"(a) The immediate recognition of the right of the peoples of the Territories under its administration to self-determination and independence,

"...

"(d) Negotiations, on the basis of the recognition of the right to self-determination, with the authorized representatives of the political parties within and outside the Territories with a view to the transfer of power to political institutions freely elected and representative of the peoples, in accordance with resolution 1514 (XV),

"...

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

In pursuance of the mandate given to him in the resolution, the Secretary-General submitted a report[10] informing the Council that, under his auspices, talks had been held between the representatives of Portugal and certain African States.[11] In the first phase of these talks, which were devoted mainly to the clarification by the representative of Portugal of his Government's concept of self-determination, he had stated the following:

"... The point at issue appeared to be not so much as to the question of self-determination, but as to agreement on a valid definition of the concept of self-determination...

"...

"To Portugal, self-determination meant the consent of the people to a certain structure and political organization. It came about by participation in administration and by participation in political life. Portugal submitted that when in any given country the population participated in administrative matters at all levels and in political life at all levels, then the population was participating in decisions regulating the country's affairs and decisions affecting the life of that country. This was what was happening in Portuguese territories. ... They participated in discussions, not only on any given territory, but on matters pertaining to the over-all State. This represented the free expression of the wishes and will of the population and their participation in administration and in political life of the territory."

The report of the Secretary-General also noted that the representatives of the African States had maintained that "So far as the Portuguese concept of self-determination was concerned, it could only be acceptable if it meant that the people had the right to determine the future of their territories and that they had the right to opt out of Portugal."

At the 1079th meeting on 6 December 1963, the representative of Liberia* stated that the African States could not accept the Portuguese interpretation of "self-determination", because if it were accepted, "it would in effect mean that Portugal had already applied the right of self-determination to its territories". The African States had therefore requested clarification of the statement of the Foreign Minister of Portugal, and the clarification which had been given was also quoted in the report of the Secretary-General. It referred, among others, to

[5] 988th meeting: para. 129.

[6] For texts of relevant statements, see:
1079th meeting: Liberia*, paras. 12-13, 17-22, 32-36; Tunisia*, paras. 50-60;
1080th meeting: Sierra Leone, para. 31;
1081st meeting: Ghana, paras. 61, 72-77;
1082nd meeting: Ghana, paras. 95, 101;
1083rd meeting: President (United States), paras. 142-144; Brazil, paras. 91-95; Philippines, paras. 43, 46, 48-52; Portugal*, paras. 23-35; United Kingdom, paras. 67, 76-77.

[7] 1049th meeting: para. 17.

[8] S/5379, 1048th meeting: para. 21.

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

[10] S/5448 and Add.1-3, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 55-86, paras. 11, 12.

[11] For the role of the Secretary-General in connexion with the talks, see chapter I, Case 52.

an envisaged plebiscite "within the national framework", its purpose being "to enable the people to have an opportunity to express their views on the Government's overseas policy". In the view of the representative of Liberia, the plebiscite thus defined meant that the Africans in territories under Portuguese administration would not be given a freedom of choice so that their true aspirations could be made known clearly.

After referring to the debates on the principle of self-determination at San Francisco, the representative of Liberia quoted the following explanation which had emerged from the respective Committee when the final draft of Article 1 (2) of the Charter was adopted:

> "The Committee understands that the principle of equal rights of peoples and that of self-determination are two complementary parts of one standard of conduct; that the respect of that principle is a basis for the development of friendly relations and is one of the measures to strengthen universal peace; that an essential element of the principle in question is a free and genuine expression of the will of the people ..."

The historical development of Chapter XI of the Charter also left no doubt that the political aspirations of dependent peoples were very important and that self-government did not exclude independence. The efforts and the success of the United Nations could be seen in the acceptance of this interpretation of self-determination by the United Kingdom, France, Belgium, and the Netherlands, all of which held colonial areas. Also, Spain had taken a significant step in that direction. General Assembly resolutions 1514 (XV), 1542 (XV) and 1742 (XVI), as well as Security Council resolution S/4835 adopted on 9 June 1961, should have removed any doubts of the Portuguese Government concerning the meaning of self-determination. It could not be assumed that self-determination meant one thing to all the other Members of the United Nations, and another thing to Portugal. The Council would therefore be requested to express again, in unequivocal terms, what was meant by the right of self-determination, which Portugal had so far failed to recognize.

The representative of Tunisia* stated that the interpretation of the principle of self-determination by the Foreign Minister of Portugal would destroy its juridical value on the international level, and its political significance in relation to the provisions of Security Council resolution S/5380, adopted on 31 July 1963. He further stated:

> "The principle of self-determination must take into account in its application two basic factors: first, the actual separation of the territory concerned from the metropolitan area, which is the case of the colonial territories under Portuguese domination according to General Assembly resolution 1542 (XV) of 15 December 1960; secondly, the inherent right to independence of the populations consulted, under the terms of General Assembly resolution 1514 (XV) of 14 December 1960. This has emerged very clearly from all the debates in the General Assembly both in connexion with the establishment of the right of peoples to self-determination and in connexion with other colonial problems."

The peoples themselves had to exercise the free choice either constitutionally to link themselves with the metropolitan area, or to break away from it. The Portuguese Government could not pretend to recognize the right of the peoples under its rule to self-determination while at the same time denying them the essential choice between accepting and rejecting external sovereignty. This attitude meant not only a "restriction" on the right to self-determination, but a "negation" of it.

At the 1080th meeting on 6 December 1963, the representative of Sierra Leone* stated:

> "What the African States wish to emphasize ... is that in the exercise of self-determination, no choice should be excluded... To exclude the possibility that the people of Angola might of their own free will choose to become a free, sovereign and independent State, is to predetermine and to railroad the results..."

At the 1081st meeting on 9 December 1963, the representative of Ghana, referring to the interpretation of self-determination in Portugal as described in the report of the Secretary-General, after quoting from the text of General Assembly resolution 1514 (XV), stated:

> "It is clear from all this that the Portuguese Government's concept of self-determination and of the context of its operation are fundamentally at variance with those laid down by the United Nations and, in particular, in the Declaration on the granting of independence to colonial countries and peoples as set out in the General Assembly resolution.
>
> "We are forced to conclude, therefore, that Portugal does not intend to give to the peoples of the territories under its administration a free choice to determine their future...
>
> "The responsibility of the Security Council is to leave Portugal no doubt as to the meaning of self-determination...
>
> "The Council should reaffirm the definition of self-determination as laid down by the General Assembly ..."

At the 1082nd meeting on 10 December 1963, the representative of Ghana introduced a draft resolution[12] jointly sponsored with Morocco and the Philippines. The text included the following operative paragraph:

> "The Security Council,
>
> "...
>
> "4. Reaffirms the interpretation of self-determination as laid down in General Assembly resolution 1514 (XV) as follows:
>
> "'All peoples have the right to self-determination; by virtue of that right they freely determine their

12/ S/5480, same text as S/5481, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 109-110.

political status and freely pursue their economic, social and cultural development.'"

At the 1083rd meeting on 11 December 1963, commenting on this paragraph, the representative of Portugal* quoted from the text of General Assembly resolution 222 (III) of 3 November 1948, according to which, in his view,

"it was left to the absolute discretion of Member Governments to decide when they should cease transmitting information under Article 73 e, and, in terms of that resolution, self-determination meant a constitutional development which, in the unilateral opinion of the responsible Member Government, had brought self-government to any given territory."

He also referred to General Assembly resolutions 748 (VIII) of 27 November 1953 and 849 (IX) of 22 November 1954, and observed:

"Therefore, as late as 1954, we find self-determination achieved through constitutional alterations of which the Assembly was apprised by the responsible Member Governments, and we also find that the opinion of the responsible Member Government was paramount and accepted by the Assembly."

He further referred to General Assembly resolutions 945 (X) of 15 December 1955 and 1469 (XIV) of 12 December 1959, both of which reaffirmed General Assembly resolution 222 (III), and remarked:

"... nowhere in the resolutions I have just mentioned is self-determination linked with the question of international sovereignty or with any predetermined results or with any special options to be approved or imposed from outside... Here, then, we have a concept of self-determination approved by the United Nations."

This concept, he added, might not be valid any longer since there appeared to be several legitimate means of achieving self-government, and more than one modality of self-determination. However, he contended that

"the solutions proposed by the Assembly and the criteria followed by it have varied considerably and have changed from time to time, both from a theoretical and from a practical point of view. One does not know what is really meant by a United Nations concept of self-determination or of its implementation."

In the view of the representative of the Philippines, the definition of the Portuguese concept of self-determination negated the very spirit of self-determination. According to the meaning of self-determination set forth in General Assembly resolution 1514 (XV), the people must have the right to choose for themselves their political status without coercion or repression or predetermined concepts. Only Portugal could decide on the procedure of bringing about self-determination to its territories, but it had to decide in no uncertain terms that its objectives must include the capacity to request complete independence.

The representative of the United Kingdom stated:

"... we have urged the Portuguese Government to apply this principle to the peoples of the territories under its administration, and to give them the opportunity, through self-determination, to decide their own future. We do not say that the result should be pre-judged or that the United Nations or any other body should determine the timing and pace of progress towards self-government, independence, association with Portugal, or whatever choice is made. We believe this to be Portugal's responsibility in conjunction with the peoples concerned. But the process must start.

"...

"The Charter ... upholds the principle of self-determination of peoples. We accept this, and apply it. We believe... that its application in any particular case must depend on all the circumstances. We believe also that self-determination partakes in essence of politics, rather than of obligation in law.

"In the present case ... namely, the territories under Portuguese administration, we have repeatedly said that, in our view, the time has come when the principle of self-determination should be applied..."

The representative of Brazil remarked that there was no fundamental incompatibility between the positions assumed by the various parties on the question before the Council. These points of coinciding interests should be explored further through consultations and renewed negotiations. In this connexion he referred to the conclusions of the report[13] of the Secretary-General that the Portuguese Government "is not opposed to the principle of self-determination as embodied in the Portuguese concept of the term and within its context", and "that the Portuguese Government has not denied that the principle applies to the peoples of the overseas territories".

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

"We believe that the peoples of the Portuguese territories in Africa, in exercising their right ... freely to determine their political status, should have before them a full choice of modalities and a full choice of political structures, including, although not limited to, independent sovereignty. This means, on the one hand, that the end result of an act of self-determination should not be limited from inside, and, on the other, that it should not be imposed or limited from outside.

"... Emergence as a sovereign independent State, free association with an independent State, or integration with an independent State ... are the types of choices to which an exercise of self-determination should give access.

"What the results will be must be left to the peoples to decide. Indeed, the concept of self-determination means that it is not for us to decide. Our responsibility, rather, is to help create the circumstances where the peoples themselves can make a free, unfettered and full choice."

At the same meeting, the joint draft resolution was adopted[14] by 10 votes in favour, none against, with 1 abstention.

[13] S/5448 and Add.1-3, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 55-86, paras. 14, 16.

[14] 1083rd meeting: para. 158.

Part II

CONSIDERATION OF THE PROVISIONS OF ARTICLE 2 OF THE CHARTER

A. Article 2 (4) of the Charter

"4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."

NOTE

Nine case histories bearing on the provisions of Article 2 (4) are dealt with in this section. The provisions of Article 2 (4) were explicitly invoked in one draft resolution.[15] In one instance, while it was contended, on the one hand, that Article 2 (4) had been violated, objections were raised, on the other hand, to its application on the grounds that the issue was a colonial matter and that the State complaining of aggression had not complied with a number of resolutions of the General Assembly on the question of decolonization.[16] In one draft resolution, language similar to the phraseology of Article 2 (4) was used,[17] and in three draft resolutions implied references to it were made.[18] In connexion with the considerations of all these draft resolutions explicit and implicit references to Article 2 (4) were made during the discussion of the Security Council while in three other instances such references to Article 2 (4) were made only in the debates in the Council.[19]

CASE 3.[20] COMPLAINT BY THE USSR (U-2 INCIDENT): In connexion with the USSR draft resolution: voted upon and rejected on 26 May 1960.

[*Note:* In its letter[21] of submission, the Government of the USSR requested an urgent meeting of the Council to examine the question of "aggressive acts by the Air Force of the United States of America against the Soviet Union, creating a threat to universal peace". During the debate, the USSR submitted a draft resolution whereby the Council would condemn these acts as aggressive and call for their termination. On the other hand, it was pointed out that the overflights had no aggressive intent and that the fact that assurance had been given that the flights had been discontinued and were not to be resumed indicated the acceptance of international law and treaty obligations and made formal condemnation unnecessary.]

At the 857th meeting on 23 May 1960, the Security Council had before it a USSR draft resolution[22] under which:

"The Security Council,

"...

"Noting that violations of the sovereignty of other States are incompatible with the principles and purposes of the Charter of the United Nations,

"...

"1. Condemns the incursions by United States aircraft into the territory of other States ... ;

"2. Requests the Government of the United States of America to adopt immediate measures to halt such actions and to prevent their recurrence."

In submitting this draft resolution, the representative of the USSR stated that the question before the Council had to do with aggressive acts prepared in advance and carried out with the knowledge and on the instructions of the United States Government. The USSR Government, in bringing the question to the attention of the Council, started from the premise that one of the most dangerous aspects of such a policy was that it flouted the principle of State sovereignty. The inviolability of the territory of States had always been and remained one of the most important universally acknowledged principles of international law. The recognition and observance of that principle constituted the very foundation of the maintenance of peaceful relations among States.

The representative of the United States declared that "the presence of a light, unarmed, single-engine, non-military, one-man plane" was not aggression. Quoting a statement made by the President of the United States in Paris on 16 May 1960 concerning the flights, he said that these activities had no aggressive intent but were to assure the safety of the United States and the "free world" against surprise attack by the USSR. He noted that the USSR Government had repeatedly "... in contravention of Article 2, paragraph 4, of the Charter ... used force and threats of force in its relations with other sovereign States. That is a clear Charter violation."

At the 858th meeting on 24 May 1960, the representative of France observed that while it was true that the overflights denounced by the USSR were regarded by that Government as a violation of its frontiers, it should be borne in mind that the flights in question, "carried out by unarmed aircraft, were not made for the purpose of changing the established international order".

The representative of Argentina maintained that the territorial sovereignty of every country great or small should be respected.

"We do not believe that any necessity can make it lawful or desirable for a nation to violate this

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[15] Case 9.
[16] Case 8.
[17] Case 4.
[18] Cases 3, 6, 10.
[19] Cases 5, 7, 11.
[20] For texts of relevant statements, see:
857th meeting: USSR, paras. 23, 27, 53; United States, paras. 101, 102, 106, 114;
858th meeting: Argentina, paras. 56-59; France, para. 11; Poland, paras. 83-85, 97-98;
859th meeting: President (Ceylon), paras. 51, 62.
[21] S/4314, S/4315, O.R., 15th year, Suppl. for April-June 1960, pp. 7-10.
[22] S/4321, 857th meeting: para. 99.

rule, even for a brief period of time. Today more than ever, strict compliance with this rule is one of the guarantees of the preservation of the peace with justice for which many countries are constantly striving."

The representative of Poland stated that there could be no doubt that the actions by the United States constituted a violation of international law, which recognized the complete and exclusive sovereignty of States over their airspace. Citing the Paris Convention relating to the Regulation of Aerial Navigation of 1919, the Havana Convention on Commercial Aviation of 1928 and the Chicago Convention on International Civil Aviation of 1944, he stated:

"Any flight that takes place without the permission of the State concerned, particularly an espionage flight, is a drastic breach of treaty obligations; it is also a violation of the principle of sovereignty and of State frontiers; and finally it is a violation of the United Nations Charter, particularly Articles 1, 2 and 78."

He stated further that a violation of those principles could not and should not be justified by the interest of one State or even a group of States.

At the 859th meeting on 25 May 1960, the President, speaking as the representative of Ceylon, observed that the territorial integrity of each State and the sanctity of its sovereign rights were inviolable and were guaranteed not only by the Charter, but also by the universal acceptance of those principles. If there had been no new development of a conciliatory nature following the U-2 flight incident, his delegation might have felt compelled to condemn the flight as an unwarranted invasion of the territorial integrity of the USSR. But, in view of the statement made by the President of the United States that all such flights had been stopped and would not be resumed, the ordinary implication was that a mistake had been made and would not be repeated. "In our opinion the statement made any formal condemnation quite unnecessary, because it indicates the acceptance of international law and of treaty obligations..."

At the 860th meeting on 26 May 1960, the USSR draft resolution was rejected by a vote of 2 in favour, 7 against, with 2 abstentions.[23]

CASE 4.[24] LETTER OF 23 MAY 1960 FROM THE REPRESENTATIVES OF ARGENTINA, CEYLON, ECUADOR AND TUNISIA: In connexion with the joint draft resolution submitted by Argentina, Ceylon, Ecuador and Tunisia, and a USSR amendment thereto: the amendment voted upon and rejected on 27 May 1960; the joint draft resolution, as revised, voted upon and adopted on 27 May 1960

[*Note:* During the consideration of the item, objection was raised to the fact that the four-Power draft resolution did not mention the incursion of foreign military aircraft into the territory of other States, and an amendment to this effect was submitted. The co-sponsors of the four-Power draft resolution submitted a revised draft with phraseology similar to that of Article 2 (4) of the Charter.]

At the 861st meeting on 26 May 1960, the Security Council had before it a draft resolution[25] submitted jointly by Argentina, Ceylon, Ecuador and Tunisia expressing the conviction that every effort should be made to restore and strengthen international good will and confidence and appealing to the four Great Powers to resume the discussions interrupted following the U-2 incident.[26]

The representative of the USSR, after noting that the four-Power draft resolution came into being as a result of the Council's debate on the item put forward by the USSR and should have included some provision condemning the action complained of, submitted an amendment[27] under which the Security Council would consider that the incursion of foreign military aircraft into the territory of other States was incompatible with the purposes and principles of the United Nations Charter and constituted a threat to international peace and security.

At the 862nd meeting on 27 May 1960, the representative of Poland observed that the USSR amendment reaffirmed the principle that military aircraft should in no circumstances violate the airspace of foreign countries, and, as such, reflected the opinion expressed by the majority of the members of the Council during the debate.

At the 863rd meeting on the same day, the sponsors of the joint draft resolution submitted a revised draft[28] under which

"The Security Council,

"...

"2. Appeals to all Member Governments to refrain from the use or threats of force in their international relations; to respect each other's sovereignty, territorial integrity and political independence; and to refrain from any action which might increase tensions;"

The representative of Tunisia stated that the sponsors considered that it would be useful if operative paragraph 2 of the revised draft resolution recalled and used almost the same phraseology as Article 2, paragraph 4, of the Charter. They felt that it might contribute to allaying apprehension from any quarter, as well as to calming mistrust and opening the way to hope.

At the same meeting, the USSR amendment was rejected by a vote of 2 in favour, 6 against and 3 abstentions[29]; the revised draft resolution was adopted by 9 votes in favour with 2 abstentions.[30]

23/ 860th meeting: para. 87.

24/ For texts of relevant statements, see:
861st meeting: USSR, paras. 94, 105, 106, 120-123;
862nd meeting: Poland, paras. 20-21;
863rd meeting: Ecuador, para. 9; Tunisia, para. 27.

25/ S/4323, O.R., 15th year, Suppl. for April-June 1960, pp. 13-14.

26/ See chapter X, Case 1.

27/ S/4326, O.R., 15th year, Suppl. for April-June 1960, pp. 18-19, para. 1.

28/ S/4328, ibid., pp. 22-23.

29/ 863rd meeting: para. 47.

30/ 863rd meeting: para. 48.

CASE 5.[31] SITUATION IN THE REPUBLIC OF THE CONGO: In connexion with the draft resolution submitted by Tunisia and the USSR amendment thereto: the amendment voted upon and rejected on 14 July 1960; the draft resolution voted upon and adopted on 14 July 1960

[*Note:* In the course of the discussion, statements were made as to whether the armed action of Belgian troops in the Republic of the Congo constituted an act of aggression against the Republic of the Congo. While a resolution calling for the withdrawal of Belgian troops was adopted, an amendment which would condemn the action of Belgium as armed aggression was rejected.]

At the 873rd meeting on 13/14 July 1960, the representative of Tunisia stated that the intervention of Belgian troops which had taken place against the wishes of the Congo Government was a breach of the Belgian-Congolese Treaty of 29 June 1960 and a violation of the sovereignty and independence of the Republic of the Congo recognized by Belgium on 30 June 1960. Undeniably the intervention constituted an unwarranted act of aggression for which there was no justification and which could not be legitimized. The representative submitted a draft resolution[32] under operative paragraph 1 of which the Security Council would call upon "the Government of Belgium to withdraw its troops from the territory of the Republic of the Congo".

The representative of the USSR stated that no proof was needed since the mere presence of the armed forces of a foreign State in the territory of another State without the latter's consent constituted an act of aggression according to the generally recognized principles of international law.

The representatives of Italy, the United Kingdom and France expressed the view that Belgian troops had intervened to keep law and order and to protect lives of Belgian and other nationals threatened with violence or to facilitate their withdrawal. Their action was a necessary temporary action and a humanitarian intervention in accordance with international law.

The representative of Poland observed that the Security Council was faced with an act of aggression, no matter what the action undertaken by the Belgian troops might be called.

The representative of Belgium* said that when it became clear that the Congolese State was no longer in a position to ensure the safety of the inhabitants, the Belgian Government decided to intervene with the sole purpose of ensuring the safety of European and other members of the population and of protecting human lives in general. The Government had been compelled to take this action in order to protect its nationals and its interests in the Congo and the interests of the international community at large. In Katanga the Belgian intervention had taken place with the agreement of the head of the provincial government. Thus, the charges of aggression made in connexion with Belgian humanitarian intervention in the Congo were without foundation.

The representative of the USSR submitted an amendment[33] to the Tunisian draft resolution to insert between the preamble and operative paragraph 1 a new operative paragraph, reading: "Condemns the armed aggression of Belgium against the Republic of the Congo."

The representative of Tunisia stated that the intervention of Belgian troops in the Congo could not be justified by a vague request for foreign intervention by a regional authority. The "so-called" approval or the "so-called" request of the legitimate Government of a State for intervention in a particular area could not be used as an argument to justify general intervention aimed "not at rendering the general assistance requested by that independent sovereign State but at replacing its sovereign, independent authority, recognized only six days earlier [872nd meeting], by another authority exercising the essential attributes of sovereignty". The representative pointed out further that operative paragraph 1 of the Tunisian draft resolution was simply an appeal which was in conformity with the principles so often affirmed by the Security Council and the General Assembly concerning the illegality of armed intervention in the domestic affairs of a sovereign, independent State.

At the 873rd meeting on 13/14 July 1960, the USSR amendment was rejected[34] by 2 votes in favour and 7 against, with 2 abstentions.

The Tunisian draft resolution was adopted[35] by 8 votes in favour to none against, with 3 abstentions.

CASE 6.[36] SITUATION IN THE REPUBLIC OF THE CONGO: In connexion with the USSR draft resolution: not voted upon; and with the Ceylonese-Tunisian joint draft resolution: voted upon and adopted on 21 July 1960

[*Note:* During the consideration of the first report of the Secretary-General on the implementation of resolution S/4387 of 14 July 1960, statements were made concerning the nature of the Belgian armed action in the Republic of the Congo. A draft resolution calling for a speedy implementation of the resolution of 14 July 1960 on the withdrawal of the Belgian troops was adopted. A draft resolution insisting upon the immediate withdrawal of "all troops of the aggressor" was not voted upon.]

At the 877th meeting on 20/21 July 1960, the representative of the Congo* said that his Government

[31] For texts of relevant statements, see:
873rd meeting: Belgium*, paras. 183, 186, 196, 197; France, paras. 141, 144; Italy, para. 121; Poland, paras. 158, 166; Tunisia, paras. 79, 87, 209, 216; USSR, paras. 104, 105; United Kingdom, paras. 130, 132, 133; United States, para. 95.

[32] S/4383. Same text as resolution S/4387, O.R., 15th year, Suppl. for July-Sept. 1960, p. 16.

[33] S/4386, 873rd meeting: para. 201.

[34] 873rd meeting: para. 223.

[35] 873rd meeting: para. 232.

[36] For texts of relevant statements, see:
877th meeting: Belgium*, para. 142; Congo*, para. 51; USSR, paras. 143, 144, 149, 151; United States, para. 188;
878th meeting: Argentina, paras. 118, 124, 127, 128; Poland, paras. 90, 91; Tunisia, paras. 24, 25, 30;
879th meeting: President (Ecuador), para. 80; France, para. 60; Italy, paras. 10, 12; United Kingdom, paras. 26, 27.

requested that the Security Council insist that an end be put to the aggressive action of Belgian troops in the Congo.

The representative of Belgium* stated that the purpose of Belgian military intervention in the Congo was purely humanitarian. The intervening troops would be withdrawn as soon as, and to the extent that, the United Nations effectively ensured the maintenance of order and the safety of persons.

The representative of the USSR expressed the view that the Belgian Government was continuing an open conflict against the legitimate Government of the Congo, was ignoring the Council's decision of 14 July 1960, and was seeking by its military intervention to dismember the Republic of the Congo. The representative submitted a draft resolution [37] whereby the Security Council would: (1) insist upon the immediate cessation of armed intervention against the Republic of the Congo and the withdrawal from its territory of all troops of the aggressor within a period of three days; and would (2) call upon the Member States to respect the territorial integrity of the Republic of the Congo and not to undertake any actions which might violate that integrity.

At the 878th meeting on 21 July 1960, the representative of Tunisia stated that the Belgian intervention in the Congo, deliberately decided upon by the Government and executed by units of the regular army, for whatever reasons, could hardly be described as anything but an act of aggression against the Republic of the Congo, the more so since its purpose was to take over the role of the independent Government of the Congo in the exercise of its full sovereignty, and, in particular, of its power to ensure order and security within the territory. The presence of Belgian troops was incompatible with respect for the sovereignty and territorial integrity of the Congo and was contrary to a decision of the Council. The representative introduced a draft resolution [38] submitted jointly with Ceylon, whereby the Council would call upon the Government of Belgium "to implement speedily [39] the Security Council resolution of 14 July 1960 on the withdrawal of its troops" and would authorize the Secretary-General "to take all necessary action to this effect" (oper. para. 1).

The representative of Poland pointed out that the first obligation of a Member State, which was stated in the Preamble and in Articles 1 and 2 of the Charter, was to refrain from the use of force. After having quoted the text of Article 2 (4), the representative said that no defence for the Belgian Government's action in the Congo could be given because international law did not recognize any justification for armed aggression against anyone under any circumstances.

The representative of Argentina stated that the Belgian Government could not be reproached for having assumed the duty to protect the life and honour of Belgian nationals who had been in danger. For this reason Belgium's action could not be described as aggressive.

At the 879th meeting on 21/22 July 1960, the representatives of Italy, the United Kingdom and France stated that there had been no aggression against the Congo and no attempt by Belgium to remove or diminish the independence of the Congo.

The President, speaking as the representative of Ecuador, reaffirmed the principle that foreign troops should not be in a State's territory without the active consent of that State's Government.

At the same meeting, the representative of Ceylon proposed [40] that the joint draft resolution submitted by Ceylon and Tunisia be given priority. The representative of the USSR said [41] that he had no objection to the proposal.

The joint draft resolution was adopted [42] unanimously.

The representative of the USSR stated [43] that, in view of the fact that the joint draft resolution had been adopted, he would not press for a vote on the USSR draft resolution.

CASE 7.[44] COMPLAINT BY THE USSR (RB-47 INCIDENT): In connexion with the USSR draft resolution: voted upon and rejected on 26 July 1960

[*Note:* In a draft resolution submitted by the USSR, the Security Council, after noting that the Government of the United States continued to violate the sovereign rights of other States, would condemn such activities and regard them as aggressive acts. The United States denied these allegations, explaining that at no time did its aircraft violate Soviet territory. Other members contended that, as there had been a serious discrepancy between the USSR and the United States account of the incident, they could not support the USSR proposed draft resolution.]

At the 880th meeting on 22 July 1960, the representative of the USSR submitted a draft resolution [45] according to which:

"The Security Council,

"...

"Noting that the Government of the United States of America continues premeditatedly to violate the sovereign rights of other States, a course which leads to the heightening of international tension and creates a threat to universal peace,

"1. Condemns these continuing provocative activities of the Air Force of the United States of America ...

"2. Insists that the Government of the United States of America should take immediate steps to put an end to such acts and to prevent their recurrence."

In introducing this draft resolution the representative of the USSR recalled the Security Council resolution [46]

37/ S/4402, 877th meeting: para. 176.

38/ S/4404, 878th meeting: para. 39.

39/ For the statement of the representative of Ceylon defining the term "speedily," see chapter VIII, p. 163.

40/ 879th meeting: para. 106.

41/ 879th meeting: para. 107.

42/ 879th meeting: para. 108.

43/ 879th meeting: para. 109.

44/ For texts of relevant statements, see:
880th meeting: USSR, paras. 3, 5; United States, para. 61;
883rd meeting: President (Ecuador), paras. 87-89, 91-94; Poland, paras. 17, 18.

45/ S/4406, 880th meeting: para. 58.

46/ S/4328, O.R., 15th year, Suppl. for April-June 1960, pp. 22-23.

of 27 May 1960, which appealed to all Member Governments to respect each other's sovereignty, territorial integrity and political independence and to refrain from any action which might increase tensions. He noted that it was the second time within two months that the USSR Government was compelled to bring before the Security Council the question of continuing aggressive acts by the United States in connexion with the new and provocative violations of the airspace of the Soviet Union by an aircraft of the United States Air Force.

The representative of the United States stated that at the time it was claimed to be brought down, the aircraft was actually fifty miles off the Soviet coast and thus became a victim of a "criminal" action by the USSR.

At the 883rd meeting on 26 July 1960, the representative of Poland observed that at the end of its consideration of the U-2 case the Security Council, on 27 May 1960, approved a resolution [47] calling upon Governments "to refrain from the use or threats of force in their international relations; to respect each other's sovereignty, territorial integrity and political independence; and to refrain from any action which might increase tensions". He reminded the Council that the United States had voted in favour of that resolution and must have had full knowledge of the obligations undertaken thereby.

The President, speaking as the representative of Ecuador, stated that the Security Council should take a firm stand whenever it was proved that the sovereign rights of a State had been violated in its territory, its territorial waters, or its airspace. In the case before the Council, however, the burden of proof was on the USSR but so far it had presented only its own affirmations. In such a situation the Council would be acting hastily if it attempted to reach final conclusions at that stage of its deliberation.

At the same meeting, the USSR draft resolution was rejected by 2 votes in favour and 9 against. [48]

CASE 8. [49] COMPLAINT BY PORTUGAL (GOA): In connexion with the joint draft resolution submitted by Ceylon, Liberia and the United Arab Republic: voted upon and rejected on 18 December 1961; and with the joint draft resolution submitted by France, Turkey, the United Kingdom and the United States: voted upon and failed of adoption on 18 December 1961

[*Note:* Consideration of the Portuguese request that the Council put an end to the "aggression" of India against the "Portuguese territories" of Goa, Damao and Diu, gave rise to a discussion, in which it was contended, on the one side, that India's action constituted a violation of the provisions of Article 2 (4) and, on the other, that the use of force by India for the liberation of its own territory under colonial occupation had no bearing on Article 2 (4) and was justified by Portugal's non-compliance with General Assembly resolutions 1514 (XV) [50] and 1542 (XV) [51].]

At the 987th meeting on 18 December 1961, the representative of Portugal* stated that India had committed a fully premeditated and unprovoked aggression against Portugal in Goa and had thus violated the sovereign rights of Portugal and Article 2, paragraphs 3 and 4, of the Charter.

The representative of India* stated that the matter before the Council was a colonial question in the sense that part of India was under Portuguese occupation which was illegal especially in the light of General Assembly resolution 1514 (XV). A question of aggression could not arise since Goa was an integral part of India. It was therefore for the Security Council to order Portugal to vacate Goa, Damao and Diu, and to give effect to the numerous resolutions of the General Assembly with regard to the freedom of dependent peoples.

The representative of the United States, after recalling the fact that Indian armed forces had occupied Damao and Diu and that there was fighting within the territory of Goa, said that the Council had before it a question "of the use of armed force by one State against another and against its will, an act clearly forbidden by the Charter". The Council was not meeting to decide on the merits of the case but "to decide what attitude should be taken in this body when one of the Members of the United Nations casts aside the principles of the Charter and seeks to resolve a dispute by force". What was at stake was not colonialism; it was a violation of the principle stated in Article 2 (4) of the Charter. The Security Council could not apply a double standard with regard to the principle of resort to force. It had an urgent duty to ask for an immediate cease-fire and to insist on the withdrawal of invading forces, for the law of the Charter forbade the use of force in such situations.

The representative of Liberia, referring to General Assembly resolutions 1514 (XV) and 1542 (XV), asked how the Council could agree that India had committed aggression on Portuguese territory when the enclaves were not part of Portugal.

The representative of Turkey stated that the resort to force for the settlement of international disputes, the transgression of frontiers by armed forces, under any pretext and for whatever reason, were actions which could not be condoned under any circumstances according to the Charter. Therefore, the current dispute could not be settled by an armed action, whatever the merits of the case, of which the Council was not seized. What the Council was faced with was the question "of what action, of what attitude, it should adopt when armed force is used to settle a dispute between two Member States of this Organization".

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[47] S/4328, ibid., pp. 22-23.

[48] 883rd meeting: para. 187.

[49] For texts of relevant statements, see:

987th meeting: President (United Arab Republic), paras. 125-127; Ceylon, paras. 138, 141, 143, 147; India*, paras. 46, 60-62; Liberia, para. 95; Portugal*, para. 11; Turkey, paras. 99, 101; USSR, paras. 104, 118, 119; United States, paras. 70, 72, 74, 75, 79, 80;

988th meeting: Ceylon, paras. 104, 105; Chile, para. 27; China, para. 19; Ecuador, paras. 10-14; India*, paras. 77, 78, 86, 87; USSR, paras. 121, 122, 124, 125; United States, paras. 89, 93, 94.

[50] Resolution 1514 (XV): "Declaration on the granting of independence to colonial countries and peoples."

[51] In resolution 1542 (XV): "Transmission of information under Article 73 e of the Charter", the General Assembly considered that the territories under administration of Portugal listed in the resolution and including "Goa and dependencies, called the State of India" were Non-Self-Governing Territories within the meaning of Chapter XI of the Charter.

The representative of the USSR maintained that the Security Council should only consider the question of violation by Portugal of the General Assembly resolution 1514 (XV), since by not carrying out its provisions, Portugal had created a threat to peace and security in the region of Goa. The matter was a colonial problem and the Council must apply in respect of Portugal sanctions as provided for in the Charter in order to compel Portugal to comply with the resolutions of the General Assembly.

The President, speaking as the representative of the United Arab Republic, observed that, in the light of the refusal of Portugal to put into effect General Assembly resolution 1542 (XV), the Security Council was confronted with a colonial problem. The continuation of a state of affairs brought about by colonialism was bound to endanger international peace and security. There was, however, no aggression on the part of India, since despite her efforts to negotiate a peaceful solution, Portugal had not changed its policy.

The representative of Ceylon stated that

> "the action taken by India is not action taken against another State for territorial aggrandizement, such as was envisaged in the Charter. It is not an invasion of a Portuguese population . . . India's action is to liberate Indian national territory."

India's attitude to the use of force was exemplified by its policy of not being a member of a military alliance. This did not, however, imply that it should not use force to defend its vital interests or its territory or its national integrity. No cease-fire could be called for by the Council as there was not a state of belligerency. Nor could India be called upon to withdraw from Goa because that would mean to ask it to withdraw from its own territory. The Council could not censure India for invading its own land because that would be a contradiction in terms.

At the 988th meeting on the same day, the representative of Ecuador stated that in the debate it seemed to be generally agreed that force as a means of solving international problems should be condemned. Ecuador had maintained the view that force should not be used to solve territorial disputes, "not only with regard to the illegality of the use of force, but with regard to all that derives from it". However, in the debate certain arguments were put forward that seemed to suggest that there was a lawful and an unlawful use of force. Ecuador did not accept the lawfulness of force unless it was used ". . . according to the Charter, either by the United Nations or with the authorization of the Security Council by some regional body in accordance with the Charter".

The representative of China observed that India's use of force to achieve its aims in regard to Goa, Damao and Diu was obviously a violation of the Charter "which, in this respect, is absolute and allows no exceptions".

The representative of Chile maintained that the Charter contained provisions which obliged Member States not to take unilateral decisions which might endanger international peace and security, and to avoid settling their disputes by means which were not peaceful. The conflict which had arisen because of the occupation of the three enclaves could only be considered in the light of the provisions of the Charter. The Chilean delegation, therefore, had to deplore the use of force by India in Goa, Damao and Diu.

The representative of India noted that various delegations maintained that the Charter absolutely prohibited the use of force:

> "but the Charter itself does not completely eschew force, in the sense that force can be used in self-defence, for the protection of the people of a country—and the people of Goa are as much Indians as the people of any other part of India."

So far as the achievement of freedom was concerned, when nothing else was available, it was "a very debatable proposition to say that force cannot be used at all". In the circumstances, India "had to have recourse to armed action, and this armed action is not an invasion. It cannot be an invasion because there cannot be an invasion of one's own country." Commenting on the four-Power draft resolution S/5033 (see below), the representative pointed out that the only question was of the territory of Goa becoming a part of the Indian Union. The draft resolution had no basis in reality and did not take into account the principles recognized in numerous United Nations resolutions, notably General Assembly resolution 1514 (XV).

The representative of the United States pointed out that the issue before the Security Council was not the right or the wrong of Portugal's colonial policy; it was "the right or the wrong of one nation seeking to change an existing political and legal situation by the use of armed force. That is expressly forbidden in the Charter. There are no exceptions, except self-defence." And could any one believe that India was acting in self-defence against an almost defenceless territory? As a Non-Self-Governing Territory, Goa had been under Portuguese authority, and therefore, India could not lawfully use force against Goa, especially when the peaceful methods in the Charter had not been exhausted. The claim that Portugal was the aggressor because it had not complied with the recommendations of resolution 1514 (XV) was groundless. Resolution 1514 (XV) did not authorize the use of force for its implementation, it did not and could not overrule the Charter injunctions against the use of armed force. It gave no licence to violate the Charter's fundamental principles, among them the principle that all Members should refrain from the threat or use of force against any other State. Even if the United States had been supporting entirely the Indian position on the merits of the dispute, nevertheless, it should be firmly opposed to the use of force to settle the question.

> "The Charter, in its categorical prohibition of the use of force in the settlement of international disputes, makes no exceptions, no reservations. The Charter does not say that all Members shall settle their international disputes by peaceful means except in cases of colonial areas."

The representative then introduced a draft resolution [52] submitted jointly with France, Turkey and the United Kingdom, whereby

"The Security Council,

"Recalling that in Article 2 of the Charter of the United Nations all Members are obligated ... to refrain from the threat or use of force in a manner inconsistent with the purposes of the United Nations,

"Deploring the use of force of India in Goa, Damao and Diu,

"...

"1. Calls for an immediate cessation of hostilities;

"2. Calls upon the Government of India to withdraw its forces immediately to positions prevailing before 17 December 1961."

The representative of Ceylon introduced a draft resolution [53] submitted jointly with Liberia and the United Arab Republic which provided:

"The Security Council,

"Having heard the complaint of Portugal of aggression by India against the territories of Goa, Damao and Diu,

"Having heard the statement of the representative of India that the problem is a colonial problem,

"...

"1. Decides to reject the Portuguese complaint of aggression against India;

"2. Calls upon Portugal to terminate hostile action and to co-operate with India in the liquidation of her colonial possessions in India."

The representative stated, with regard to operative paragraph 1 rejecting the Portuguese complaint of aggression against India, that it had been proved that India had not been guilty of aggression. Concerning operative paragraph 2 calling upon Portugal to terminate hostile action, he pointed out that such an action had consisted of provocative deeds such as massing large forces on the boundaries of India and Goa and other actions.

The representative of the USSR stated that the four-Power draft resolution applied certain general provisions of the Charter to a situation and to events which had a completely different meaning in the light of General Assembly resolution 1514 (XV). These provisions could not be the basis for the adoption of a decision when the issue involved the liquidation of colonial possessions. Further, the draft resolution called upon the Indian Government to withdraw its forces. No mention was made of the Portuguese forces, which had been brought into Goa as reinforcement and had been threatening all of the people of Goa and the neighbouring population in the territory of India.

At the 988th meeting on 18 December 1961, the joint draft resolution submitted by Ceylon, Liberia and the United Arab Republic was rejected by 4 votes in favour and 7 against. [54]

At the same meeting, the joint draft resolution submitted by France, Turkey, the United Kingdom and the United States failed of adoption. There were 7 votes in favour and 4 against (one of the negative votes being that of a permanent member). [55]

CASE 9. [56] THE PALESTINE QUESTION: In connexion with the joint draft resolution submitted by the United Kingdom and the United States: voted upon and adopted on 9 April 1962

[*Note:* Complaints had been brought by Syria and Israel against each other in connexion with the incident in the Lake Tiberias area on 16-17 March 1962. Article 2 (4) of the Charter was referred to in the discussion and incorporated in the operative part of the draft resolution adopted by the Council.]

At the 1005th meeting on 6 April 1962, the representative of the United States introduced a draft resolution [57] submitted jointly with the United Kingdom, which provided:

"The Security Council,

"...

"Recalling in particular the provisions of Article 2, paragraph 4 of the Charter, and article 1 of the Syrian-Israeli General Armistice Agreement,

"...

"1. Deplores the hostile exchanges between the Syrian Arab Republic and Israel starting on 8 March 1962 and calls upon the two Governments concerned to comply with their obligations under Article 2, paragraph 4 of the Charter by refraining from the threat as well as the use of force;

"..."

The representative stated that operative paragraph 1 deplored the hostile exchanges between Syria and Israel which had started on 8 March 1962 and called upon them to comply with their obligations under Article 2, paragraph 4, of the Charter by refraining from the threat as well as the use of force. In addition to deploring these hostile exchanges and the use of such weapons, the paragraph also reminded "the Governments concerned of their obligations under Article 2, paragraph 4, of the Charter. Both parties have on this occasion used force contrary to that Article". The draft resolution further called upon Israel in the most stringent terms "to resort to the Mixed Armistice Commission and to the Security Council, in accordance with its obligations under the Charter, instead of resorting to the use of force".

At the 1006th meeting on 9 April 1962, the representative of Israel*, commenting on the second part of operative paragraph 1 of the joint draft resolution, stated: "My Government reaffirms its willingness to

[52] S/5033, 988th meeting: para. 97.

[53] S/5032, 988th meeting: para. 98.

[54] 988th meeting: para. 128.

[55] 988th meeting: para. 129.

[56] For texts of relevant statements, see:
1005th meeting: United States, paras. 21, 23, 25, 30;
1006th meeting: Israel*, paras. 55, 56.

[57] S/5110 and Corr.1, same text as resolution S/5111, O.R., 17th year, Suppl. for April-June 1962, pp. 95-96.

comply with the obligations under Article 2, paragraph 4, in relation to Syria." It remained for the Syrian representative to put on record a similar declaration, on behalf of his own Government, in relation to Israel. If he failed to do so, the representative trusted the Security Council would draw the necessary conclusions.

At the same meeting, the draft resolution submitted by the United Kingdom and the United States was adopted by 10 votes in favour, none against, with 1 abstention.[58]

CASE 10.[59] COMPLAINTS BY REPRESENTATIVES OF CUBA, USSR AND UNITED STATES (22-23 OCTOBER 1962): In connexion with a United States draft resolution; in connexion also with a USSR draft resolution; decision of 25 October 1962: to adjourn the meeting

[*Note:* During the discussion, it was contended that, by sending medium range and intermediate range ballistic missiles to Cuba, the USSR was placing itself in a position to threaten the security of the United States and the rest of the Western Hemisphere. On the other hand, it was maintained that the Government of the United States should cease any kind of interference in the internal affairs of Cuba and of other States as this could threaten the peace.]

At the 1022nd meeting on 23 October 1962, the representative of the United States declared that he had asked for a meeting in order to bring to the attention of the Security Council a grave threat to the Western Hemisphere and to the peace of the world. "Unmistakable evidence" had established the fact that a series of offensive missile sites was in preparation in Cuba, which thus had been transformed into a base for offensive weapons of mass destruction. The representative contended that Article 2 (4) of the Charter had defined the necessary condition of a community of independent sovereign States, and that the USSR, by sending thousands of military technicians and jet bombers capable of delivering nuclear weapons, by installing in Cuba missiles capable of carrying atomic warheads and by preparing sites for missiles with a range of 2,200 miles, violated the Charter of the United Nations. This action constituted a threat to the Western Hemisphere and, by upsetting the balance in the world, it was "a threat to the whole world". It was in the face of these threats that the President of the United States had initiated steps to quarantine Cuba against further imports of offensive military equipment. The representative then submitted a draft resolution[60] under which:

"The Security Council,

"Having considered the serious threat to the security of the Western Hemisphere and the peace of the world caused by the continuance and acceleration of foreign intervention in the Caribbean,

"Noting with concern that nuclear missiles and other offensive weapons have been secretly introduced into Cuba,

"Noting also that as a consequence a quarantine is being imposed around the country,

"Gravely concerned that further continuance of the Cuban situation may lead to direct conflict,

"1. Calls as a provisional measure under Article 40 for the immediate dismantling and withdrawal from Cuba of all missiles and other offensive weapons;

"...

"3. Calls for termination of the measures of quarantine directed against military shipments to Cuba upon United Nations certification of compliance with paragraph 1 above;

"4. Urgently recommends that the United States of America and the Union of Soviet Socialist Republics confer promptly on measures to remove the existing threat to the security of the Western Hemisphere and the peace of the world, and report thereon to the Security Council."

The representative of Cuba* stated that Cuba had continuously been a victim of United States subversion, sabotage and boycott. Referring to Article 2 (4), the representative maintained that the United States naval blockade of Cuba was an act of war. It was the use of force by a great Power against the independence of a Member State and an act violating the Charter and the principles of the United Nations.

At the same meeting, the President, speaking as the representative of the USSR, submitted a draft resolution[61] under which the Security Council:

"3. Proposes to the Government of the United States of America that it shall cease any kind of interference in the internal affairs of the Republic of Cuba and of other States which creates a threat to peace."

In introducing his draft resolution, he stated that the Council was considering the matter of a unilateral and arbitrary action by a great Power which constituted a direct infringement of the freedom and independence of a small country, involving "a new and very dangerous act of aggression in a chain of acts of aggression" which the United States had committed against Cuba in violation of the rules of international law and of the fundamental provisions and of the letter and spirit of the Charter of the United Nations. Noting that the United States representative had quoted Article 2 (4), the USSR representative asked whether the declaration of a naval blockade of Cuba and all the military measures taken by the United States had not constituted a threat or use of force against the territorial integrity and political independence of Cuba. In sending its armed forces into the region and into Cuban territory itself, and declaring its intention to use force whenever it thought fit, the United States was carrying out an act of

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[58] 1006th meeting: para. 106.

[59] For texts of relevant statements, see:
1022nd meeting: Cuba*, paras. 90, 114, 122, 123; USSR (President), paras. 137, 157, 158, 163, 173; United States, paras. 12-15, 74, 79;
1023rd meeting: Romania, paras. 57, 58, 69, 70, 73, 78; Venezuela, paras. 6, 7;
1024th meeting: Ghana, paras. 109, 110; United Arab Republic, paras. 67, 80;
1025th meeting: United States, para. 21.

[60] S/5182, 1022nd meeting: para. 80.

[61] S/5187, 1022nd meeting: para. 180.

aggression in violation of the Charter, which prohibited Member States from using force or the threat of force in their international relations.

At the 1023rd meeting on 24 October 1962, the representative of Venezuela referred to the tense situation existing between Cuba and the other American Republics and to the consistent incitement to subversive action against established Governments of these Republics by the Cuban radio, Cuban propaganda agents, and by the clandestine introduction into these Republics of weapons to equip guerilla forces, and stated that, in addition, a graver danger to peace had arisen from the fact that the country carrying on these activities had nuclear missiles capable of annihilating any of the countries of Latin America. Such weapons, in Cuba's hands, constituted a menace to the peace and security of the rest of the American continent.

At the same meeting, the representative of Romania observed that aggressive actions of the United States constituted violation of the principles of the Charter, especially the provisions of Article 2 (4), and a negation of the general norms of international law. In the view of the Romanian delegation, the aggressive action of the United States against Cuba constituted a threat to the peace under Article 39 of the Charter. In setting up a naval blockade of Cuba, the United States had committed an act of war against that State since military blockade was one of the forms of aggression. His delegation considered that it was the duty of the Security Council decisively to condemn "the acts of the United States Government against Cuba, acts which threaten international peace and security".

At the 1024th meeting on 24 October 1962, the representative of the United Arab Republic stated that in accordance with Article 2 (4) of the Charter the Members should refrain in their international relations from the threat or use of force against the territorial integrity and political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. It was, therefore, the feeling of his delegation that the Council would be embarking on the right path prescribed in the Charter if it directed its efforts to ensuring that all Member States relinquished the use of force in their international relations.

The representative of Ghana stated that the action contemplated by the United States must be regarded as enforcement action, inadmissible in terms of Article 53 without the authorization of the Security Council. Nor could it be argued that the threat was of such a nature as to warrant the action so far taken, prior to a reference to the Security Council.

At the 1025th meeting on 25 October 1962, the representative of the United States asserted that the installation of weapons of mass destruction in Cuba posed a dangerous threat to peace, a threat which contravened paragraph 4 of Article 2 of the Charter, and a threat which the American Republics were entitled to meet, as they had done, by appropriate regional defensive methods.

The representative of the United Arab Republic proposed the adjournment of the meeting in order to enable the parties concerned to discuss with the Acting Secretary-General arrangements proposed by him. [62]

The representative of Ghana supported the motion of the representative of the United Arab Republic. [63]

The President (USSR) stated that in the absence of objections the motion of adjournment introduced by the representatives of the United Arab Republic and Ghana was adopted. [64]

CASE 11. [65] COMPLAINT BY THE GOVERNMENT OF CYPRUS: In connexion with a letter dated 26 December 1963 concerning the threat and use of force by Turkey: decision of 27 December 1963 to adjourn the meeting

[*Note:* In its letter of submission, [66] the Government of Cyprus brought to the attention of the Security Council, in accordance with Articles 1 (1), 2 (4), 24 (1), 34, 35 and 39 of the Charter, a complaint against Turkey for acts of (a) aggression, (b) intervention in the internal affairs of Cyprus by the threat and use of force against its territorial integrity and political independence.]

At the 1085th meeting on 27 December 1963, after explaining his country's fear of an invasion by Turkey, the representative of Cyprus* stated:

> "By this policy of force or the threat of force in flagrant violation of Article 2, paragraph 4, of the Charter, as evidenced here by the violation of airspace, the terrorizing of the population, the low flying of planes, and the violation of the territorial waters of Cyprus, as has been done and as was very nearly done tonight—we cannot have peace on the island."

He reminded the Council that Cyprus, according to its constitution and as a Member of the United Nations, was an independent and sovereign State. Therefore, its sovereignty and independence could not be violated by another Member State or non-Member State on whatever grounds or with whatever excuses. If Turkey thought that the security of the Turkish population in Cyprus was threatened, they could have complained to the Security Council and received its decision.

> "But to find excuses in order to attack, in order to threaten, in order to use force, that is a negation of the United Nations ... we would then be returning to the period when force and nothing else prevailed in the world ..."

The representative of Turkey* stated that his Government had given him instructions, categorically and officially, to deny that any Turkish ships were heading towards Cyprus.

The representative of Cyprus stated that the fact that the Prime Minister of Turkey had previously declared that ships had been sent to Cyprus for action

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62/ 1025th meeting: paras. 70-74. For the consideration of the provisions of Article 33, see chapter X.

63/ 1025th meeting: para. 94.

64/ 1025th meeting: para. 102.

65/ For texts of relevant statements, see:
1085th meeting: Cyprus*, paras. 16, 19, 61-64, 86; Turkey, para. 45.

66/ S/5488, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 112-114.

constituted a violation of Article 2 (4). After citing the opinion of Sir Humphrey Waldock that Article 2 (4) entirely prohibited any threat or use of force between independent States except in strict self-defence under Article 51 or in execution of collective measures under the Charter for the maintenance and restoration of peace, the representative observed, "Thus, only the United Nations can use force to restore order where there is a threat to international peace. No individual State has the right to use force against another State ..." The representative stated further that the Treaty of Guarantee did not contain any provision concerning the use of force.[67] It provided that Cyprus, Greece and Turkey undertook to ensure the maintenance of Cyprus's independence, territorial integrity and security, as well as respect of its Constitution. He maintained that there should be no objection to having a resolution which would call upon all States to respect the political independence and territorial integrity of the Republic of Cyprus and to refrain from any use of force against it.

The President (United States), after noting that the Council had heard statements from the interested parties as well as certain assurances, declared the meeting adjourned.[68]

[67] See Case 29.

[68] 1085th meeting: paras. 92-93.

B. Article 2 (7) of the Charter

"7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII."

NOTE

This section presents seven case histories of occasions on which problems connected with the subject of domestic jurisdiction arose or were discussed in the Security Council.

The first four case histories[69] concern the proceedings in the Security Council in which the issue of non-intervention by the United Nations in matters deemed to be essentially within the domestic jurisdiction of a Member State, and thus having a bearing on the provisions of Article 2 (7), was considered in connexion with the presence in that State of the United Nations Force.

In three cases[70] objections were raised in the debate that the Security Council was not competent, on the basis of the provisions of Article 2 (7), to deal with the question before it.

CASE 12.[71] SITUATION IN THE REPUBLIC OF THE CONGO: In connexion with the second report of the Secretary-General on the implementation of the Security Council resolutions S/4387 of 14 July 1960 and S/4405 of 22 July 1960; and with the Ceylonese-Tunisian joint draft resolution: voted upon and adopted on 9 August 1960

[*Note:* In connexion with the presence of the United Nations Force in the Republic of the Congo, it was contended that the Force could not intervene in internal constitutional problems and could not influence their outcome. On the other hand, it was asserted that failure to take specific action would indicate indirect support of Belgian intervention and that this would, therefore, constitute an interference in internal matters of the Republic of the Congo.][72]

In his second report[73] on the implementation of the Security Council resolutions S/4387 of 14 July 1960 and S/4405 of 22 July 1960, the Secretary-General pointed out that the Katanga authorities considered the presence of the United Nations Force in Katanga as jeopardizing the possibility of their working for a constitutional solution other than a strictly unitarian one, e.g., for some kind of federal structure providing for a higher degree of provincial self-government than currently foreseen. That was, however, an internal problem to which the United Nations could not be a party. Therefore, the Council should clarify its views on the matter and lay down such rules for the United Nations operation as would serve to separate questions of a peaceful development in the constitutional field from any questions relating to the presence of the United Nations Force.

At the 885th meeting on 8 August 1960, the representative of the Republic of the Congo* maintained that it was an error to reduce the Katanga question to a constitutional issue. This question had never been raised in the Congolese Parliament; nor could it be regarded as a domestic issue as long as Belgian troops remained in the Congo.

The representative of the United States observed that the Council should reinforce the Secretary-General's view that the United Nations could not be drawn into the political struggle between Prime Minister Lumumba and Provincial President Tshombé. The Charter and the practice of the United Nations emphasized that it could not be involved in internal political disputes.

The representative of Tunisia stated that the sole purpose of the entry of the United Nations forces into

[69] Cases 12-15.

[70] Cases 16, 17, 18.

[71] For texts of relevant statements, see:

885th meeting: Congo*, paras. 13-15; Tunisia, paras. 62, 63, 69, 78; United States, paras. 44, 45;

886th meeting: Argentina, paras. 70, 71, 80; Ceylon, para. 12; China, para. 64; Ecuador, para. 45; France (President), para. 180; Italy, paras. 120-122; Poland, para. 103; USSR, para. 218; United Kingdom, paras. 140-145, 161.

[72] Concerning the limitations of the powers of the United Nations Force with regard to the principle of non-intervention in domestic matters, see chapter V, Case 2 (i) and Case 2 (ii).

[73] S/4417, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 45-53, paras. 6, 10.

Katanga was to set in motion the speedy withdrawal of Belgian military forces and not to intervene in any way in the domestic affairs of the Republic of the Congo, which were neither within the jurisdiction of the United Nations as an organization nor within the jurisdiction of its Members.

The representative of Tunisia introduced[74] a draft resolution[75] submitted jointly with Ceylon, which provided:

"The Security Council,

"...

"3. Declares that the entry of the United Nations Force into the province of Katanga is necessary for the full implementation of this resolution;

"4. Reaffirms that the United Nations Force in the Congo will not be a party to or in any way intervene in or be used to influence the outcome of any internal conflict, constitutional or otherwise;

"..."

At the 886th meeting on 8/9 August 1960, the representative of Ceylon expressed the view that the people of the Congo had the right to determine the form of their Government and to devise their constitution. It was no part of the responsibility of the United Nations Force to take any side in political or other internal disputes.

The representative of Ecuador maintained that the need for adherence by the United Nations Force to the principle of neutrality in internal affairs was based not only on the specific provisions of the Charter but also on the particular circumstances in the Republic of the Congo. It should be made clear to the Congolese people, to their leaders, to the Central Government and local authorities that the influence of the Force would not be used to promote any particular trend in the process of the constitutional organization of the State. The contrary would constitute interference in what was the exclusive concern of the Congolese people.

The representative of China observed that it was necessary to make it clear in any proposal to solve the Katanga phase of the Congo problem that the United Nations Force should not, could not and did not intend to interfere in the domestic political matters of the Republic of the Congo.

The representative of Argentina stated that the intervention of United Nations forces in the Republic of the Congo had not been designed to interfere in the domestic affairs of the country or to support the central authority against the local authorities and vice versa. The Council should explicitly confirm the principle of non-interference, which was in keeping with the obligations imposed by the Charter and with the spirit of the resolutions of 14 and 22 July 1960. It should also state in the directives to the United Nations Force that the action of the Force must not imply any transfer of political power or interference in the internal affairs of the Congo.

The representative of Poland agreed that the United Nations Force should not interfere in the internal differences between the Government of the Congo and local or provincial authorities in so far as these differences had the true nature of an internal conflict. However, in Katanga, authority rested with the Belgian troops, and in those circumstances "to refrain from sending United Nations troops into the province of Katanga would indicate an indirect support of Belgian intervention and a direct acquiescence in the occupation of that province, as well as in the Belgian-inspired opposition to the Government of the Congo". In turn, such a support would constitute an intervention in the internal affairs of the Congo.

The representative of Italy said that the solution of the problem, whether Katanga was to remain within the Republic of the Congo or what kind of association there was going to be between Katanga and the Congo, or what kind of autonomy Katanga might enjoy, was a matter for the Congolese people themselves to decide without any intervention or interference from the outside. The Council must emphasize that the United Nations Force was not meant to intervene in any way in the internal constitutional problems of the Congo and that its presence in Katanga would not be considered as affecting the status of the authorities vis-à-vis the Government of Leopoldville.

The representative of the United Kingdom expressed the view that the authorities in Katanga had believed that the deployment of United Nations forces in Katanga would jeopardize their possibilities of working for a constitutional settlement other than a strictly unitary one. The United Nations Force could not and, as the Secretary-General had made plain, would not interfere in what was essentially an internal constitutional dispute. To employ the United Nations Force in any way which might give the impression that the United Nations had been taking sides in that constitutional dispute would be not only contrary to the principles of the Charter but also in contradiction to the understanding on which the troops were made available by the various sending Governments and on which several other Governments, including the United Kingdom Government, had provided support for the United Nations. The representative expressed the view that operative paragraph 4 of the joint draft resolution was intended as a response to the proposal[76] of the Secretary-General that the Security Council should formulate

"... principles for the United Nations presence, which, in accordance with the Purposes and Principles of the Charter, would safeguard democratic rights and protect the spokesmen of all different political views within the large entity of the Congo as to make it possible for them to make their voice heard in democratic forms."

He understood that if the Council adopted operative paragraph 4 it would be its intention that the United Nations Force should operate on the basis of the principles described in this passage in the Secretary-General's statement.

The President, speaking as the representative of France, observed that the difficulties between the

74/ 885th meeting: para. 76.

75/ S/4424. Same text as resolution S/4426, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 91-92.

76/ 884th meeting: para. 27.

Central Government and the provincial authorities were not in any way within the Council's competence. They were internal affairs, with which the Council was not concerned, except to declare that the United Nations was completely and entirely impartial in the matter. That was in fact the Secretary-General's view in the matter.

The representative of the USSR expressed the view that it was the duty of the Security Council to put an end to the intervention in the domestic affairs of the Congo by the Belgian Government—which was attempting to sever from the Congo its richest province and other provinces as well—and to restore the legitimate rights of the Government of the Congo. Such action on the part of the Security Council would be strictly in accordance with its resolutions and with the Charter and could in no way be construed as intervention in the domestic affairs of the Congo.

At the 886th meeting on 8/9 August 1960, the joint draft resolution[77] submitted by Ceylon and Tunisia was adopted by 9 votes in favour to none against, with 2 abstentions.[78]

CASE 13.[79] SITUATION IN THE REPUBLIC OF THE CONGO: In connexion with the joint draft resolution submitted by Ceylon and Tunisia: voted upon and failed of adoption on 17 September 1960

[*Note:* In connexion with the "constitutional conflict" in Leopoldville, it was contended, on the one hand, that the principle of non-intervention in internal matters as interpreted by the Secretary-General[80] prevented the implementation of the resolutions of the Security Council in the Republic of the Congo. It was maintained, on the other hand, that the United Nations could not take sides in the constitutional conflict, which was an internal matter of the Republic of the Congo and therefore not the concern of the United Nations.]

At the 896th meeting on 9/10 September 1960, the representative of Yugoslavia* maintained that, according to operative paragraph 2 of the resolution of 14 July 1960, the Security Council had created the United Nations Force in order to give military help to the Government of the Republic of the Congo until its security forces were able to meet their tasks fully. There was a dispute about the implementation of this principle, and because of a certain interpretation of the non-interference of the United Nations in the internal discords of a constitutional or other character in the Republic of the Congo, the United Nations Command had not found sufficient ways of preventing military and outside help from being given to the secessionist ring-leaders in Katanga. It was possible to find adequate means to deal with this situation and a perfectly legal basis for this in the pertinent resolutions of the Council and, particularly, in the pertinent laws of the Republic of the Congo, whose Government was legally entitled to exercise its authority in the Congo as a whole. The representative stated further that it was necessary

> "to fulfil strictly the Security Council resolutions and particularly to adhere to the basic principle contained in operative paragraph 2 of the resolution of 14 July [S/4387], which defined the character of the relations between the United Nations Command and the Government of the Republic of the Congo."

A different attitude would lead to the compromising of the place and the role of the United Nations in the Republic of the Congo.

The Secretary-General, exercising his right of reply, pointed out that on 21 August 1960 the Council had discussed problems[81] closely related to the ones raised by the representative of Yugoslavia, and stated:

> "... On that occasion [887th meeting] I made a careful analysis of the interpretation which had been given to me in a letter from Prime Minister Lumumba. My analysis stands, and I would invite the representative of Yugoslavia to study it. From that it appears that you cannot base an interpretation of the mandate of the Force solely on the resolution of 14 July, because the Council itself has interpreted that resolution, especially in its resolution of 9 August [S/4426]. For that reason, the resolution of 14 July, especially the paragraph quoted by the representative, has to be read in its proper context of related resolutions. That is what I have done, and my interpretation has in fact been discussed at this table at a later meeting [889th meeting] which did not result in any resolution at all. My conclusion from that later meeting was that my interpretation was approved by the majority of the Council."

At the 901st meeting on 14/15 September 1960, the representative of the USSR stated that the Command of the United Nations Force and the Secretary-General personally had violated the provisions of operative paragraph 4 of the resolution of 9 August 1960. In his fourth report the Secretary-General described what was happening in the Congo as "internal strife, centering around constitutional problems". The Soviet Government considered it essential for the Council to take urgent action to stop immediately all forms of interference in the internal affairs of the Congo. The lawful Government of the Republic of the Congo should be enabled to exercise its sovereign rights and authority over the whole Congolese territory.

The representative of Tunisia observed that a serious constitutional conflict threatening to develop into civil war in Leopoldville had increased the confusion and disorder. There could be no question of the United Nations taking sides in this conflict and even less of its settling it in one way or another. It must be settled by the Congolese people themselves alone.

77/ S/4426, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 91-92. See also chapter VIII, p. 165.

78/ 886th meeting: para. 272.

79/ For texts of relevant statements, see:

896th meeting: Yugoslavia*, paras. 134-138, 141, 145-147; Secretary-General, para. 154;

901st meeting: Tunisia, para. 132; USSR, paras. 36, 40, 42, 67;

902nd meeting: Argentina, para. 7;

904th meeting: Ceylon, para. 16; China, para. 87; Poland, paras. 43-47; Secretary-General, paras. 65-67;

905th meeting: Ghana*, paras. 67, 73, 75; Indonesia*, paras. 41-43; Italy (President), paras. 7, 8; United Arab Republic*, para. 181;

906th meeting: Tunisia, para. 104; Yugoslavia, para. 44.

80/ For the statement of the Secretary-General, see chapter I, Case 27.

81/ See chapter V, Case 2 (iv).

At the 902nd meeting on 15 September 1960, the representative of Argentina stated that the Government of the Congo had been unsuccessful in maintaining that minimum internal unity which would enable the Council to decide who currently were the lawfully appointed office-holders in the Government. The constitutional question was not the concern of the United Nations and must be settled solely by the Congolese people. It was, therefore, not for the Council to consider it in so far as it constituted an internal problem; all that was required of the Council was to take a decision at the appropriate time of who were to represent the Congo in the Organization.

At the 904th meeting on 16 September 1960, the representative of Ceylon observed that the United Nations activity in the Congo was based on complete impartiality and that was one reason why all the resolutions of the Council contained the clause which prevented the United Nations from taking any interest in or being used to influence the internal conflicts, constitutional or otherwise, which existed in the country.

The representative of Poland stated that the Secretary-General had excused himself from giving assistance to the Central Government of the Congo in its efforts to ensure the territorial integrity of the country on the grounds that such assistance would allegedly constitute interference in the internal affairs of the country. His contention was based on the interpretation of operative paragraph 4 of the resolution of 9 August 1960 contained in addendum 6 to his second report. As the Polish delegation had stated at the 886th and 889th meetings, it agreed that the United Nations should not interfere in the internal conflicts of the Republic of the Congo in so far as those conflicts or differences had the true nature of an internal problem. This, however, had not been and was not the case in the province of Katanga, where the Belgian military forces had organized and supported Tshombé's rebellion and were still assisting it with arms and war materials and officers of the Belgian army. To refrain, under these circumstances, from giving the assistance requested by the Central Government in order to restore law and order in the whole territory of the Republic of the Congo and to ensure the territorial integrity of the country would be tantamount to indirect support of the colonialist aggression and to direct acquiescence in the Belgian-inspired opposition to the Government of the Republic. Any reference to the so-called constitutional conflict was completely irrelevant, for the simple reason that the Katanga rebellion had been organized and assisted by a foreign colonial power or foreign colonial powers. Referring to the statement of the Secretary-General at the 896th meeting that his interpretation of paragraph 4 of the resolution of 9 August 1960 was approved by the majority of the Council, the representative expressed grave concern over the Secretary-General's contention that his interpretation, which had been used as a basis for action of far-reaching consequences, had been approved by the majority of the Council when, in fact, there had been no decision of the Council in that respect. Were this practice to be followed in the future, "it could bring us to abrogation of the Council's rights and therefore to complete departure from the Charter. And this would be a dangerous path to take...."

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

"... As the members will remember, the situation was as follows. I had given a certain interpretation to my mandate from the Security Council. That interpretation was challenged by the Prime Minister of the Republic of the Congo, and challenged also at the table by his spokesman [887th meeting]. The challenge was not taken up by any delegation. There was only one draft resolution [82] on the table and that draft resolution was concerned with another matter: the sending of a group of observers to the Congo. Even that resolution was withdrawn.

"I leave it, naturally, to the Council and to the members of the Council to interpret what such a situation means in parliamentary language and as to its legal effect. I have my own interpretation; but, I repeat, it is obviously for the Council itself to interpret what happened."

The representative of China said that there was no question that the United Nations should not be involved in the rival claims to authority or in the rival programmes of constitutional interpretation and reconstruction. All such questions must be settled by the Congolese people themselves, without the United Nations favouring any one claimant to authority or any particular programme whatsoever.

At the 905th meeting on 16 September 1960, the President, speaking as the representative of Italy, stated that it was not for the Security Council to solve the domestic problems of the Congo as far as the constitutional position of the Republic was concerned, but it was its duty to take that element into consideration. The measures adopted by the United Nations Command and endorsed by the Secretary-General which arose from the uncertainty of the constitutional situation in the Congo had been justified. They were not acts of intervention, but steps taken for the purpose of preventing civil war from spreading as a result of the constitutional crisis.

The representative of Indonesia* said that it should be made clear that the United Nations Force was in the Congo for the sole purpose of ensuring the territorial integrity and political independence of the Republic of the Congo. It seemed self-evident that the relevant provisions of the Security Council resolutions precluded the United Nations Command from assuming a position of so-called neutrality between the Central Government of the Congo and the dissident groups. The obligations and responsibilities of the Council were to the Central Government and to that Government alone. Therefore, the United Nations Force must refrain from any action which could be interpreted as constituting, directly or indirectly, support for or encouragement of the dissident groups.

The representative of Ghana* said that the United Nations, adhering to its principle of non-intervention between the Central Government and the secessionists, precluded itself from supplying the legitimate Government of the Congo with the necessary means for trans-

[82] S/4453. See chapter VIII, p. 166.

mended by the Security Council in its resolution [145] adopted at the 879th meeting on 22 July 1960. In the second report on the implementation of resolutions S/4387 of 14 July and S/4405 of 22 July 1960, [146] the Secretary-General dealt with the entry of the United Nations Force into Katanga and asked for instructions from the Security Council and for such decisions as the Council might find appropriate in order to achieve integrally its aims. In connexion with the principles concerning the functions and composition of the United Nations Force as defined by the Secretary-General, there arose the issue, bearing implicity on the obligations of Member States under Articles 25 and 49, of requests by certain Governments that their contingents in the Force or specified other States' contingents be deployed in specific regions of the Republic of the Congo.]

At the 885th meeting on 8 August 1960, the representative of the USSR said that the second report of the Secretary-General indicated that the troops dispatched to the Congo could not be sent into Katanga in view of the commitments to the contributing Governments. He referred further to the statements made by the Governments of Guinea [147] and Ghana [148] pointing out that they expressed their readiness to make the necessary contribution to implement the Council resolutions, and stated that if the troops of any particular country sent to the Congo in pursuance of the Council's decision were unable, for one reason or another, effectively to secure the withdrawal of the interventionist troops from the Congo, then troops of countries which were ready to participate in carrying out that action should be sent to the Congo.

[145] S/4405, ibid., pp. 34-35, oper. para. 3.

[146] S/4417, ibid., pp. 45-53, paras. 1-10.

[147] By telegram dated 6 August 1960, the President of the Republic of Guinea urged the Secretary-General to use immediately the Guinean troops in Katanga. Otherwise, they would be placed by the Government of Guinea under the direct authority of the Congolese Government. The Secretary-General, by telegram of the same day, informed the President of the Republic of Guinea that no decision had been taken on his part to the effect that the United Nations troops should not enter Katanga, provided that this could be done under the terms of reference established by the Security Council, and that no decision had been taken on the final composition of the contingents of the United Nations Force in Katanga (S/4417/Add.1/Rev.1, documents I, II, O.R., 15th year, Suppl. for July-Sept. 1960, p. 54).

[148] By note verbale of 6 August 1960, the Permanent Representative of Ghana forwarded to the Secretary-General a statement of the President of Ghana of the same day, in which it was stated that if no United Nations solution of the situation in Katanga was forthcoming, Ghana would lend such armed assistance as the Republic of the Congo might request, even though it meant that Ghana and the Congo had to fight alone against Belgian troops (S/4420, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 87-89, para. 15). See also the letter dated 3 August 1960 to the Vice-Prime Minister of the Republic of the Congo by which the Secretary-General refused a request that the party of the Special Representative of the Secretary-General for its journey to Katanga be accompanied by three members of the Cabinet escorted by twenty Ghanaian soldiers, on the grounds that it was "purely a United Nations mission the character of which should not be compromised by the arrangements made" and that "the principles established by the Security Council resolution reserve for decision by the Secretary-General and, under him, the Commander, any military dispositions regarding the Force. The dispatch of the Ghanaian group would not be in line with the plans made and announced". (S/4417/Add.2, documents I, II, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 55-56; also S/4417, ibid., pp. 45-53, para. 7.)

At the 886th meeting on 8/9 August 1960, the President, speaking as the representative of France, observed that once a State had been selected by the United Nations to co-operate in the implementation of a Security Council resolution,

> "its forces can no longer undertake an action other than that decided upon by the international Organization. In such circumstances, there can be no question of any threat of individual action. The Security Council has given the Secretary-General a mandate. No one, and least of all those who have been asked to provide military assistance, has the right to challenge its decision and recommendations."

At the 888th meeting on 21 August 1960, the representative of Guinea* observed that African troops, including Guinean troops, should be sent to Katanga. [149] The representative of the USSR said that his Government insisted that obstacles be removed to the dispatch to Katanga of the troops of the lawful Congolese Government and of those African States which had responded to the Security Council's call for assistance in ending the foreign intervention in the Congo.

At the same meeting, the Secretary-General, referring to the wishes of national Governments as regards the employment of their troops, stated that the United Nations military operations had to be "under a unified command exercising ... its judgement as best it can. If we were to try to meet desires expressed by the very many participating Governments, then ... that operation would very soon come to a deadlock". For that reason, it would be against the efficiency of the whole operation if it were considered necessary to take the wishes of those Governments into account when they ran counter to other considerations of a military and technical nature.

CASE 23. [150] SITUATION IN THE REPUBLIC OF THE CONGO: In connexion with the first report of the Secretary-General on the implementation of Security Council resolution S/4387 of 14 July 1960 and with his second report on the implementation of Security Council resolutions S/4387 of 14 July 1960 and S/4405 of 22 July 1960

[*Note:* In connexion with the principles concerning the functions and composition of the United Nations Force in the Congo, as defined by the Secretary-General, [151] the issue arose as to the effect of a unilateral withdrawal from the Force of a national contingent on the legal status of the Force in the territory of the Republic of the Congo, which had an implicit bearing on the obligations of Member States under Articles 25 and 49.]

[149] In letter dated 14 August 1960 to the Secretary-General, the Prime Minister of the Republic of the Congo stated that is was incomprehensible that only Swedish and Irish troops had been sent to Katanga, while troops from the African States had been systematically excluded, and requested that Moroccan, Guinean, Ghanaian, Ethiopian, Malian, Tunisian, Sudanese, Liberian and Congolese troops be sent there (S/4417/Add.7, document II, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 71-73).

[150] For texts of relevant statements, see:
896th meeting: Secretary-General, para. 109;
903rd meeting: France, para. 36.

[151] See note to Case 22.

ment of basic constitutional law, but it was hardly possible to reconcile this point of view with the actual decisions taken by the Security Council. For there could be no doubt that if the United Nations Force were employed to "enforce the Constitution", it would involve the United Nations in coercive action against competing political factions to a degree that was clearly excluded from the scope of its mandate.

> "... Moreover, ... such forcible intervention in internal constitutional and political conflict could not be considered as compatible with the basic principles of Article 2 of the Charter relating to sovereign equality and non-intervention in domestic jurisdiction."

From the legal standpoint, therefore, the only conclusion open to the Secretary-General had been to apply the mandate of the Force with full regard to the provisions of the Council resolutions, that is,

> "to avoid employing the Force so as to favour any political group or to influence the outcome of the constitutional controversy, but at the same time to assist in preserving law and order in the basic sense of protecting the lives and property of the inhabitants of the Republic of the Congo."

The Secretary-General stated further that the restrictions imposed on the United Nations in respect to its forcible intervention in constitutional matters did not preclude representations by the Secretary-General or his representatives on matters which fell within the concern of the United Nations in the light of its role in the Congo. Thus, since the Force had been requested to assume functions in regard to law and order, there was "a legal basis and justification for the Secretary-General to concern himself with the observance of elementary and generally accepted human rights". Similarly, the decisions of the United Nations had furnished a basis for the Secretary-General to appeal for an amicable settlement of internal political conflicts in the interest of the unity and integrity of the Congo.

At the 914th meeting on 8 December 1960, the President, speaking as the representative of the USSR, introduced a draft resolution[91] whereby the Security Council would call upon the Secretary-General to secure the immediate release of Mr. Patrice Lumumba, Prime Minister of the Republic of the Congo, Mr. Okito, President of the Senate, Mr. Kasongo, President of the Chamber of Representatives, and other Ministers and deputies and, at the same time, to take all the necessary steps to ensure the resumption of the activities of the lawful Government and Parliament of the Republic of the Congo (oper. para. 1).

The representative of Argentina contended that the provision in operative paragraph 1 of the USSR draft resolution was in flagrant contradiction to the resolution of 9 August. Even if the resolution of 9 August had not been adopted, the provision would be inadmissible because it would constitute an act of interference in the internal affairs of a sovereign State.

> "The ... intervention represented by the deposing of a Government actually in power—and that is what is here being proposed—and the installing of another which is not in effective control would, if it were carried out by one State to the detriment of another, impose upon the United Nations the obligation to take action as prescribed by the Charter. To whom, then, would it be possible to turn if the act of intervention was committed by the United Nations itself?"

At the 915th meeting on 8/9 December 1960, the representative of the United Kingdom stated that the internal political disputes in the Congo and the creation of a stable government were political problems which, as the Secretary-General rightly said, could only be solved by the Congolese people themselves.

The representative of Yugoslavia* contended that the development of the situation in the Congo had been in flagrant contradiction with the provisions of operative paragraph 2 of the resolution of 14 July and of operative paragraph 2 of the resolution of 22 July 1960. In practice, the principle of non-interference in the Congo had become one of non-interference by the United Nations in the activities of forces and factors which, having received large-scale military, material and financial help from abroad, had used violence to prevent the normal operation of the country's lawful organs and institutions.

At the 916th meeting on 9/10 December 1960, the representative of Italy expressed the view that, in the light of the principle of respect for the sovereign prerogatives and the independence and unity of the Republic of the Congo, it had been imperative for the United Nations bodies to take a position of strict non-interference in the domestic problems of the Congo. The three Security Council resolutions of 14 and 22 July 1960 and 9 August 1960 and General Assembly resolution 1474 (ES-IV) of 20 September 1960 clearly set forth these limits and constituted the basic guide to the action of the United Nations. Only in the event that the Council had reached the conclusion that the resolutions adopted were not fully adequate for new developments, could the Council consider taking another course of action. However, no action could be undertaken on the part of the Security Council which might represent an infringement on the sovereign rights of the country. The Council could properly assist, advise and make appeals, but it could not dictate a course of action in matters essentially within the framework of internal jurisdiction.

The representative of Ecuador stated that no mandate could properly go beyond the bounds or exceed the authority provided for in the Charter. The question before the Council was a power conflict, a struggle for political leadership, a dispute over the legitimacy of governments, which was a matter within the domestic jurisdiction of the Republic of the Congo, safeguarded by Article 2 (7) of the Charter. Mr. Lumumba, as Prime Minister, had drawn a distinction from the outset between the domestic problems of the Congo, for which he had not asked assistance, and the defence of the country's territorial integrity, for which he had sought assistance. The mandate given by the Security Council in operative paragraph 2 of the resolution of 14 July 1960 had followed very much the same lines. That mandate made United Nations action in the Congo contingent upon consultation with the Congolese Government, which was a method of en-

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[91] S/4579, 914th meeting: para. 62.

suring that such action remained outside the limits of the domestic jurisdiction of the State; it did not grant authorization of any kind to interpret the constitution or the laws of the Congo to determine in whom the right to exercise power was legally vested. Mr. Lumumba's removal from office was a matter which must be decided by reference to Congolese laws, and the Council could not interpret those laws without trespassing upon the country's domestic jurisdiction. However, in the case of violations of human rights, it was not always possible to invoke the argument that matters within the domestic jurisdiction of a State were involved. The observance of the Charter was binding upon Member States, which, in signing it, had recognized that their domestic jurisdiction was in some measure subordinate to the international jurisdiction of the United Nations. In this respect the Republic of the Congo must be called upon to fulfil its essential obligation to safeguard human rights.

The representative of Indonesia* expressed the opinion that within the framework of its mandate to maintain law and order the United Nations could not continue to condone a régime in the Congo which was unconstitutional and the principal fomentor of lawlessness and terror. One could not avoid reaching the conclusion that the establishment of the Mobutu régime in the Congo was an international, not a domestic, problem. As the Secretary-General had pointed out, the legal justification for the decision of the Security Council to provide the Central Government of the Republic of the Congo with the necessary military assistance had been the threat to peace and security which had arisen as a result of the intervention of Belgian troops in the Congo. But what was the difference between that intervention and the current intervention? There certainly was no difference between open armed aggression and the support of the current régime, which constituted the same foreign intervention in principle and in motive.

The representative of Cameroon* observed that his Government entirely subscribed to the Secretary-General's interpretation of the measures taken by the United Nations in the Congo. Except as specifically stated in the Charter, the United Nations could not intervene in the domestic affairs of a Member State.

At the 917th meeting on 10 December 1960, the representative of China pointed out that in a problem which concerned relations between a government and its opposition, the United Nations was juridically obliged to refrain from interference, which would constitute a violation of the Charter.

The representative of Ceylon* stated that the Ceylonese delegation had no right to complain if the Secretary-General was correct in his interpretation that the Security Council resolution had given him a certain mandate, which had precluded him from taking action for the maintenance of law and order and had not envisaged the involvement in matters of internal politics or dealing with internal policies. If that were correct, then the Security Council should consider a new resolution so that the Secretary-General could be given the right to use the Force, not to take part in the political affairs of the country nor to bolster one politician in his attempts to seize political control of another or over another area, but to keep order. The Secretary-General had voiced some doubts as to whether the Council could have given a wider mandate without the risk of acting against the Charter. In the opinion of the representative of Ceylon, there would not be any action which could be interpreted as against the Charter, for this was a case where the Head of a State had requested the United Nations to render certain assistance of a specified kind. In such a case, it would not have been against the Charter if the United Nations had gone to the country and, in trying to do what it had been requested to do, had followed certain interpretations in the discharge of its duties and tried to carry out the request of that country. Therefore, there were no grounds for any fears about the infringement of the Charter in this situation. The United Nations was in the Congo, in all its aspects, because it had been invited by the legitimate Government, so that its action could in no way be regarded as intervention in matters essentially within the domestic jurisdiction of the Congo. The worsening of the situation in the Congo was due to the interpretation of the mandate and to the execution of that mandate, and it was for the Council to correct that interpretation if it was wrong and to take further action, by a proper resolution, to give the correct mandate to the Secretary-General.

The Secretary-General pointed out that it had been mentioned that it should be the duty of the United Nations, or of the Secretary-General and his Command, under present rules to liberate Mr. Lumumba. However, any action by force to liberate Mr. Lumumba would, in fact, mean overriding by force the authority of the Chief of State. It was clear what that meant in legal terms in relation to a country. It had also been held that the United Nations Force or the Secretary-General might be entitled to act as indicated on the basis of the fact that United Nations assistance had been requested by the Central Government of the Congo. On that point the Secretary-General wanted to remind the Council of the fact that the request had been signed "Kasa-Vubu" and countersigned "Lumumba". That meant that the Council was facing a situation where it would act against the person who had been at least one of the co-signatories of the request on which the action of the Council was based.

At the 918th meeting on 12 December 1960, the representative of Poland referred to the memorandum of the Secretary-General of 12 August[92] on the implementation of operative paragraph 4 of the resolution of 9 August and stated that, were the interpretation of the Secretary-General accepted, it would be nothing less than the revision of the three resolutions previously approved by the Council. One would think that a question of such weight as the interpretation of some of the most important decisions taken by the Security Council would be put before it officially by its author or by those who, during the debate, had supported it strongly, so that the Council might take a formal decision. Nothing of that sort had happened and, despite the fact that the Council had not taken any formal decision on the Secretary-General's interpretation, in the lack of a formal request for such a decision, he had still

92/ S/4417/Add.6, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 64-71.

chosen to be guided by it, thus, in practice, giving himself freedom to revise the resolutions of the Council. The results had been the dismemberment of the country and de facto recognition of Tshombé by the Secretary-General and his representatives, and the return of the Belgian military and paramilitary personnel to the Congo. During all this time, the United Nations Force had had orders, based on the unilateral interpretation of the Council's mandate, to stand by and had done practically nothing to stop the flow. If the Lumumba Government, which had requested the United Nations presence in the Congo, had to be regarded as non-existent, then on what legal grounds could the United Nations Force stay in the Congo? The Council heard, however, that the main principle of the policy which guided the United Nations operation in the Congo was non-interference in internal affairs. The Polish delegation had maintained and continued to maintain that if the conflicts in the Congo were of a domestic nature, this policy would have been only correct. However, the issue was not of a domestic character. Apart from the question of a mandate, which had been worded in clear and unequivocal terms, how could one remain neutral in the struggle between colonialism and the Congolese people?

The representative of France pointed out that to call for the immediate release of Mr. Lumumba, the restoration of the Government, the convening of Parliament, the disarming of the Congolese national army and the dismissal of all Belgian staff employed by the Congolese Government would constitute a series of acts of interference in the affairs of a sovereign and independent country. In his message[93] to the Secretary-General, the President of the Republic of the Congo gave an assurance that the ex-Prime Minister would be tried according to the laws in force in civilized countries. The Council could not ask for more without interfering in the domestic affairs of a sovereign State and a Member of the United Nations.

The representative of Tunisia expressed the view that, from the purely legal point of view, the Council had no right to pass any judgement on the legality or constitutionality of any particular group. The Charter did not entitle the Organization to take sides in domestic conflicts of a constitutional nature; that was exclusively a matter for the Congolese people to settle. Therefore, the Tunisian delegation did not believe that the Secretary-General or his representatives in the Congo had the right to interfere in favour of either of the sides which confronted each other there. The blame for the fact that the United Nations action in the Congo had not produced better results could be justly laid on the Security Council itself, which had been unwilling, or because of the limitations of the Charter had been unable, to give the Secretary-General a broader and more extensive mandate, such as the situation required.

At the 919th meeting on 12 December 1960, the representative of Guinea* said that although the Government of the Congo had called in the United Nations, the seizure of power had been prepared for and carried out in the presence of the United Nations in the Congo. The United Nations had stood passively by and the Council was told it could not properly interfere in domestic affairs.

The representative of Yugoslavia* contended that the current internal conflict in the Congo was intimately connected with the existence of foreign intervention. Consequently, measures to settle the internal conflicts, restore legality and ensure a return to freedom and free political development should go hand in hand with measures for the immediate and resolute termination of foreign intervention, which was the real source of all the negative developments in the Congo. The responsible officials of the United Nations had introduced the theory of the policy of so-called non-interference in the domestic affairs of the Congo, or of respect for its sovereignty. What effect could this policy have when others were intervening in the most active way possible in Congolese affairs?

At the 920th meeting on 13/14 December 1960, the Secretary-General stated that in his interventions in the Council he had pointed out that the Council had never explicitly referred to the Charter Article on the basis of which it had taken action in the Congo. It was significant that the Council had not invoked Articles 41 and 42 of Chapter VII, which provided for enforcement measures which would override the domestic jurisdiction limitation of Article 2 (7). He stated further that during the discussion of the mandate in the Council which had taken place on the basis of his memorandum of 12 August 1960, not only had no proposal for the revision of the mandate been submitted but the same situation had been facing the fourth emergency special session of the General Assembly and the resolution resulting from the debate (1474 (ES-IV)) had asked the Secretary-General to continue vigorously his action, without having questioned the mandate. The resolution had been passed by 70 votes in favour and none against, and it must, therefore, from the point of view of the executive organ, be considered as concluding the debate on the substance of the mandate in favour of the stand taken by the Secretary-General. Of course, this left any member free to ask for a revision of the mandate or a clarification, but it did not entitle members to say that the Secretary-General had misinterpreted or distorted the mandate in the past.

The representative of Ceylon stated that the United Nations Force had the authority to step into the vacuum in the Congo and to take steps to create order where there was chaos, even if it were, in the context, interfering in the domestic affairs of the Congo. The United Nations had received an invitation which had been accepted and, therefore, it was entitled to act according to it within the Congo unless and until that invitation was withdrawn. The authority of the invitation had been sufficient to make the action taken by the Council lawful action and to entitle the United Nations to send its forces into the Congo. The case of Katanga had come before the Security Council through a referral by the Secretary-General. Rightly, he had related the interpretation of the Security Council to the situation in Katanga and to the question whether, in that case, there had been an interference in domestic affairs. The Katanga case was a case of political inter-

[93] S/4571 and Add.1, Annex III, O.R., 15th year, Suppl. for Oct.-Dec. 1960, pp. 73-75.

ference, between one who had claimed a political right in Katanga and another who had contested it. The Secretary-General had taken the United Nations Force into Katanga, and thus could have enforced law and order. The question of a political dispute, therefore, had not arisen in that case.

The representative of Tunisia, referring to the draft resolution submitted by the representative of the USSR, stated that the Security Council could not claim freedom for three persons alone, as mentioned in the draft resolution, since the Council was prohibited from interfering in a domestic constitutional conflict which was for the Congolese themselves to solve.

At the 920th meeting on 13/14 December 1960, the USSR draft resolution was rejected by 2 votes in favour and 8 against, with 1 abstention.[94]

CASE 15.[95] SITUATION IN THE REPUBLIC OF THE CONGO: In connexion with: communications concerning Mr. Lumumba transmitted by the Secretary-General's note dated 23 January 1961[96]; report dated 12 February 1961 to the Secretary-General from his Special Representative in the Congo on the subject of Mr. Lumumba[97]; and report dated 18 February 1961 to the Secretary-General from his Special Representative in the Congo concerning the arrest and deportation of political personalities[98]

[*Note:* In connexion with the above-mentioned documents, it was contended, on the one hand, that the United Nations, in accordance with the principle of non-interference in internal affairs, was obliged to avoid any action which could involve support to any one side involved in the constitutional conflict. It was maintained, on the other hand, that such a stand of the United Nations constituted a violation of the principle of non-interference in internal affairs of the Republic of the Congo.]

At the 928th meeting on 1 February 1961, the Secretary-General stated that it was not the task of the United Nations to act for the Congolese people and to take political or constitutional initiatives aiming at the establishment of a government. This was true not only in the sense that the United Nations had no right to try to impose on the Congo any special régime, but also in the sense that the Organization could not support the efforts of any faction to impose such a régime. The duty of the United Nations was to deal only with interference from outside the country and with the maintenance of law and order within the country. It could not go beyond any of those points and in its efforts to insulate the country from outside interference and to maintain law and order, the Organization must stay strictly within the limits established by the Charter, just as the Secretary-General and the United Nations Force must, in their turn, stay strictly within the limits of the mandate established by the Security Council and the General Assembly. The Secretary-General expressed the belief that a most important contribution in the direction of conciliation in the interest of national unity would be to revert to the original stand of the United Nations and get it enforced with the co-operation of the leaders concerned. For the United Nations to revive this initial concept would be to express in positive terms its neutrality in relation to all domestic conflicts in the Congo.

At the 930th meeting on 2 February 1961, the representative of Morocco* stated that the United Nations claimed that it was not authorized to use its troops to prevent the arrest of members of Parliament and Ministers, to oppose the closing of Parliament, to frustrate secessionist movements, and to put an end to the flow of arms and foreign military or paramilitary personnel into the Congo. That, it was argued, would be tantamount to interfering in the internal affairs of the Congo, but when the masses wanted to show their disapproval of this disorder, illegality and foreign intrigues, then there was no question of interfering in the internal affairs of the Congo. Here was a great contradiction directed in the wrong way.

At the 931st meeting on 7 February 1961, the representative of Guinea* expressed the view that the Congolese situation appeared to be attributable to the misinterpretation of the relevant resolutions of the Security Council and to the failure to carry them out. According to the terms of the resolution of 14 July,[99] it had been the task of the United Nations to "take the necessary steps, in consultation with the Government of the Republic of the Congo, to provide the Government with such military assistance as may be necessary ...". The United Nations, instead of adhering to this mandate to assist the Central Government of the Congo, had, however, looked on that Government as a political party, if not simply as a private group. How could the representatives of the United Nations, under the pretext of non-intervention in the domestic affairs of the Congo, remain neutral as between the Central Government which they had been sent to assist and the factions that had openly been created, financed and remotely controlled by the Belgians and their allies? According to the resolution of 14 July, the mandate of the United Nations had been to oppose foreign interference and, therefore, the United Nations had had full powers to quell all the political and military uprisings led by the puppets of foreign intervention.

At the 935th meeting on 15 February 1961, the Secretary-General, referring to the constitutional crisis in Leopoldville in early September when President Kasa-Vubu and Mr. Lumumba each had declared the mandate of the other null and void and when Colonel Mobutu, as he had said, had "neutralized" both the Chief of State and Mr. Lumumba, stated that, in the light of the principles applied by the United

94/ 920th meeting: para. 159.

95/ For texts of relevant statements, see:
928th meeting: Secretary-General, paras. 67, 83, 84;
930th meeting: Morocco*, para. 20;
931st meeting: Guinea*, paras. 67, 86, 87, 88;
935th meeting: Belgium*, paras. 108, 109, 111; Secretary-General, para. 7;
937th meeting: Poland, para. 11, 12;
939th meeting: Central African Republic*, para. 71;
942nd meeting: Chile, para. 36; France, para. 44; United States, paras. 97, 101.

96/ S/4637 and Add.1, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 54-59.

97/ S/4688 and Add.1-2, ibid., pp. 88-101.

98/ S/4727 and Add.1-3, ibid., pp. 131-137.

99/ S/4387, O.R., 15th year, Suppl. for July-Sept. 1960, p. 16.

Nations as regards domestic conflicts, the instructions to the Command and to the Special Representative had been that they should stand aside from the conflict which had developed and avoid any actions which could make them a party to the conflict or involved support to any one side in it. These instructions had been challenged on the basis that Mr. Lumumba remained the Head of Government and should be treated as such by the United Nations. The matter had come up before both the Security Council and the General Assembly which, on 20 September 1960, without any dissenting vote, adopted resolution 1474 (ES-IV), which must be interpreted as upholding the line taken by the Secretary-General in his instructions to the United Nations Command.

The representative of Belgium* pointed out that the state of insecurity and terrorism in the Congo was such that the Belgian Government had had to urge its nationals to leave Oriental and Kivu provinces since the United Nations was not able to ensure their protection, despite the representations made by the Belgian Government to the Secretary-General. The Belgian Government was not asking for intervention in the domestic affairs of the Congo. All it asked was that foreigners who were law-abiding and useful to the country should be protected. Fear of intervention in domestic affairs could not be a justification for the inaction of the United Nations. Belgium had the right to demand that its nationals, like all foreigners, should enjoy the active protection of the United Nations forces in the Congo.

At the 937th meeting on 16 February 1961, the representative of Poland observed that the resolutions approved in July and August 1960 had given the Secretary-General a sufficient mandate to disarm the military bands under the command of Kasa-Vubu, Tshombé, Mobutu, Kalonji and others. But the Secretary-General had chosen not to implement his mandate and to refuse to give the assistance requested by the Central Government of the Congo.

At the 939th meeting on 17 February 1961, the representative of the Central African Republic* pointed out that the solution of the situation lay neither in the disarming and disbanding of the Congolese national army by the United Nations nor in unilateral military assistance outside the United Nations. Either type of action would constitute interference, contrary to the Charter and to the resolutions of the Security Council and the General Assembly.

At the 942nd meeting on 20/21 February 1961, the representative of Chile stated that operative paragraphs 1 and 2 of part B of a joint draft resolution [100] submitted by Ceylon, Liberia and the United Arab Republic—which urged the convening of Parliament and the re-organization of Congolese armed units and personnel and the bringing of them under discipline and control—would have represented interference contrary to the Charter had the aim of the Security Council to prevent interference from outside and its appeal for conciliation not been stated in the preamble. This made up for the shortcomings referred to.

The representative of France expressed the view that any measures taken in the Congo must respect the sovereignty of that independent State, and that any other attitude, which would in any event be contrary to the Charter, would be likely to set a dangerous precedent, particularly in the case of the newly independent States.

The representative of the United States stated that an amendment [101] which he submitted to operative paragraph 3 of a second joint draft resolution [102] sponsored by Ceylon, Liberia and the United Arab Republic was intended to make clear that all actions of the United Nations in the Congo must be in accordance with the Charter, which provided also that the United Nations could not intervene in the domestic affairs of a country.

CASE 16.[103] SITUATION IN ANGOLA: In connexion with the draft resolution submitted by Ceylon, Liberia and the United Arab Republic: voted upon and not adopted on 15 March 1961

[*Note:* Objections to the competence of the United Nations to deal with the matter were made on the grounds of Article 2 (7). The situation in Angola was said to concern only "the maintenance of internal public order". It was asserted, on the other hand, that, when faced with the issue of self-determination and the problem of violation of human rights, the United Nations had declared itself competent whenever such a question affected the friendly relations among Member States. It was also noted that the situation in Angola could not fall exclusively within the domestic jurisdiction of Portugal because Portugal's territories overseas were not integral parts, but rather colonies, of Portugal.]

At the 943rd meeting on 10 March 1961, the representative of the United Arab Republic, referring to the objections on the grounds of domestic jurisdiction made by the representative of Portugal, stated that Article 2 (7) was not applicable since Portugal had "decided unilaterally that Angola was an integral part of Portugal". Moreover, he further stated,

> "... when faced with the question of human rights, of which the right of peoples to self-determination is one of the fundamental principles, the United Nations has declared itself competent whenever the question of the violation of human rights affected the friendly relations which should prevail among States Members of the United Nations."

The representative of the USSR asserted that the situation in Angola was not a matter falling within the domestic jurisdiction of Portugal because Angola was

[100] S/4722. Same text as S/4741, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 147-148. See chapter VIII, pp. 177-178.

[101] S/4740, 942nd meeting: para. 97. The amendment would add after the words "calls upon the United Nations authorities in the Congo to take all possible measures" the words "in accordance with the Charter".

[102] S/4733/Rev.1, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 142-143. See chapter VIII, p. 175.

[103] For texts of relevant statements, see:

943rd meeting: Ceylon, para. 58; USSR, paras. 69, 71; United Arab Republic, paras. 32, 33, 36;

944th meeting: Portugal*, paras. 48, 53, 54;

945th meeting: Ghana*, paras. 64-66; Liberia, paras. 89, 90; Portugal*, paras. 130, 137;

946th meeting: Ecuador, para. 61.

not an integral part of Portugal but a colony. He further asserted that

"... members of the Security Council should bear in mind that we are now considering a crisis created in Angola by the actions of the Portuguese colonizers, and that as a result of these actions, world peace and the security of that part of Africa are endangered... Thus, the attention of the Security Council is being drawn to a question involving the maintenance of peace and security, which, according to Chapters VI and VII of the Charter, is the primary responsibility of the Security Council."

At the 944th meeting on 10 March 1961, the representative of Portugal* remarked that the principle established by the Charter in Article 2 (7) was "overriding", and stated that in the view of his delegation the word "nothing" written in Article 2, paragraph 7, meant exactly "nothing".

"If nothing in the Charter authorizes the Organization to intervene in this matter, and, again, if nothing in the Charter recognizes the Council jurisdiction on the matter, even on a pretext falsely invoked, it follows that there is no valid basis whatever, in the light of international law, for the consideration of the matter by the Security Council."

At the 945th meeting on 14 March 1961, the representative of Ghana* expressed his disagreement with a statement by the representative of Portugal in a letter to the Council,[104] that the situation in Angola only concerned "the maintenance of internal public order", and stated that the situation in Angola constituted "a threat to friendly relations between States and to international peace and security". He further stated:

"Nothing can be said to fall exclusively within the domestic jurisdiction of a State if it has such international repercussions. Thus, last year, the Council decided that the similar massacres that took place in Sharpeville in the Union of South Africa constituted a threat to international peace. Furthermore, any violation of the principles of human rights and self-determination on the scale practised in Angola cannot but be regarded as directly threatening the relations between States, and therefore as a proper concern for this Council."

The representative of Liberia, referring to General Assembly resolution 1542 (XV) which "emphasized the international concern of the United Nations in the Portuguese territories", stated that by this action the General Assembly had not only established the international concern but also that it was itself competent to consider and examine conditions in the Portuguese territories, including Angola. For this reason the argument raised by the representative of Portugal in his letter and his invocation of Article 2 (7) of the Charter were "completely irrelevant and without foundation".

The representative of Portugal, after expressing his protest over the "illegal debate in which the Council has decided to engage itself", stated:

"The interpretation of the basic texts of the United Nations as well as the scope of the principles involved and the record of the facts do not offer a single valid argument which might lead to the conclusion that the matter might not be of the exclusive competence of Portuguese sovereignty."

The Government of Portugal was not accepting the premise that the just and orderly behaviour of the Portuguese authorities and any other points pertaining to the legal exercise of Portuguese sovereignty could be examined by the Council.

At the 946th meeting on 15 March 1961, the representative of Ecuador stated that his doubts as to the competence of the Council related not to the competence of the United Nations, but to the specific competence of the Security Council. Neither did they imply acceptance of the argument that the affairs of Angola fell within the domestic jurisdiction of Portugal, nor that the exception mentioned in Article 2, paragraph 7, of the Charter applied to them. They were related "to the competence of the Council within the limits prescribed by the Charter".

At the same meeting, the three-Power draft resolution was not adopted. There were 5 votes in favour, none against, with 6 abstentions.[105]

CASE 17.[106] THE QUESTION OF RACE CONFLICT IN SOUTH AFRICA: In connexion with the draft resolution submitted by Ghana, Morocco and the Philippines, as amended: adopted on 7 August 1963; and with the draft resolution submitted by Norway: adopted on 4 December 1963

[*Note:* During the discussion relating to both decisions, references were made to objections to the Council's competence, which had been raised by the Government of South Africa in communications of which the Council took note. The competence of the Council was supported on the grounds that the Council was confronted with a situation involving the violation of fundamental principles of the Charter. In this respect, the provisions of Articles 55 and 56, as well as of Articles 1 (3), 13 and 62, proclaiming respect for human rights, were invoked. Furthermore, the claim of domestic jurisdiction was considered to be untenable since the General Assembly, as well as the Security Council, had previously adopted resolutions on the issue.]

At the 1050th meeting on 31 July 1963, the President (Morocco) informed the Security Council that, following a decision made at its 1041st meeting[107] to invite the Republic of South Africa to participate in the consideration of the question, a reply had been received from the Foreign Minister of South Africa. The reply[108] included the following statement: "The

[104] S/4760, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 227-228.

[105] 946th meeting: para. 165.

[106] For texts of relevant statements, see:
1050th meeting: President (Morocco), para. 5; Tunisia*, paras. 36, 38, 42, 43;
1051st meeting: Liberia*, paras. 31, 32, 35, 36;
1052nd meeting: Ghana, paras. 31, 32, 34; United States, paras. 56-59;
1053rd meeting: China, paras. 56, 57; Venezuela, paras. 68, 69, 71;
1054th meeting: France, paras. 97-101; Ghana, paras. 61, 62; United Kingdom, paras. 82, 83;
1073rd meeting: Liberia, paras. 18, 22-29;
1074th meeting: India*, paras. 39, 40;
1076th meeting: President (Norway), paras. 60-66.

[107] 1040th meeting: para. 11; 1041st meeting: para. 90.

[108] 1050th meeting: para. 6.

South African Government has ... decided not to participate in the discussion by the Council of matters relating to South African policy which fall solely within the domestic jurisdiction of a Member State."

At the same meeting, in commenting on this statement, the representative of Tunisia* remarked that it was obvious that the drafters of Article 2 (7) of the Charter did not imagine that its adoption would result in depriving the United Nations of any right to act in situations involving the violation of fundamental principles of the Charter. The United Nations had the right and the duty to concern itself with national policies when they had repercussions on the world community. This applied particularly in a situation such as that of South Africa which fell within the scope not only of Articles 55 and 56 of the Charter, but also of Articles 34 and 35 and subsequent Articles. The reference to Article 2 (7) was all the more futile as the General Assembly and the Security Council had previously adopted resolutions on the policies of apartheid.

At the 1052nd meeting on 2 August 1963, the representative of Ghana, after quoting the South African statement, observed:

"To my delegation ... it confirms the contention long held by the Government of South Africa that its racial policies are entirely its domestic affair and that the United Nations has no competence to discuss them, much less to pass resolutions on them. My delegation and the overwhelming majority of the United Nations do not agree with South Africa in this. There can be no question of exclusive domestic jurisdiction when one race—in this case, the white race—is actively engaging in the merciless killing of another through oppression...

"Therefore, the South African Government's reliance on Article 2, paragraph 7, of the Charter is not tenable."

The representative of the United States, in reiterating certain basic views of his delegation about the issue before the Council, stated that a fundamental principle on which there was general agreement was that all Member States had pledged themselves to take action, in co-operation with the United Nations, to promote observance of human rights, without distinction as to race. He added:

"... we continue to believe that this matter is of proper and legitimate concern to the United Nations. We have often stated, in the General Assembly, our belief that the Assembly can properly consider questions of racial discrimination and other violations of human rights where they are a Member's official policy and are inconsistent with the obligations of that Member, under Articles 55 and 56 of the Charter, to promote observance of human rights, without distinction as to race.

"Moreover, the apartheid policy of South Africa has clearly led to a situation the continuance of which is likely to endanger international peace and security."

At the 1053rd meeting on 5 August 1963, the representative of China, regretting that the Government of South Africa had invoked Article 2 (7), stated that the promotion of human rights and fundamental freedoms was a paramount purpose of the United Nations, no less important than the maintenance of international peace and security. There could be no genuine peace and security if human rights and the fundamental freedoms were not respected. On questions involving human rights and fundamental freedoms, the competence of the United Nations was overriding, and in the eighteen years of the Organization's existence the preponderance of opinion of Member States had favoured this view. It served no useful purpose now to re-open the debate on the question of competence, which had long since been settled by an impressive number of precedents.

The representative of Venezuela declared that the Charter, in paragraph 3 of Article 1, and in Articles 13, 55 and 62, proclaimed respect for human rights. It would, therefore, be illogical to give an absolute and rigid interpretation to Article 2 (7) of the Charter in such a way as to cover a situation which flagrantly violated that respect for human rights which had been proclaimed in the other provisions of the Charter.

At the 1054th meeting on 6 August 1963, the representative of the United Kingdom stated that his delegation continued to attach the greatest importance to the proper observance of Article 2 (7), the Charter provision "which in effect guarantees to Members of the United Nations, and particularly those who may find themselves in the minority, a reasonable immunity from interference by the majority in their internal affairs". However, he further stated:

"... as regards apartheid, in 1961 the United Kingdom representative in the Special Political Committee of the General Assembly explained that, while the importance which we attached to the proper observance of Article 2, paragraph 7, remains undiminished, we regarded the case of apartheid in the circumstances which now exist as of such an extraordinary and exceptional nature as to warrant our regarding and treating it as sui generis."

In the opinion of the representative of France, the measures proposed in the joint draft resolution would, juridically speaking, constitute direct interference in matters falling within the national competence and jurisdiction of a State. However, the French Government had no hesitation regarding the agenda on the basis of which the Council debates were being held. The position of France on the question of apartheid was unmistakable. France could only condemn racial discrimination, and the French delegation consistently had taken this position on a number of occasions in the past.

At the 1056th meeting on 7 August 1963, the joint draft resolution [109] submitted by Ghana, Morocco and the Philippines, as amended, was adopted by 9 votes in favour, none against, with 2 abstentions. [110]

At the 1073rd meeting on 27 November 1963, when it resumed consideration of the question, the Council had before it the report [111] of the Secretary-General,

[109] S/5386, O.R., 18th year, Suppl. for July-Sept. 1963, pp. 73-74.

[110] 1056th meeting: para. 18.

[111] S/5438 and Add.1-5, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 7-38, para. 5.

which included a reply by the Foreign Minister of South Africa in which it was stated:

"The South African Government's attitude has often been stated and is well known. In this connexion it must be emphasized that the South African Government has never recognized the right of the United Nations to discuss or consider a matter which falls solely within the jurisdiction of a Member State....

"While the South African Government entered into consultations with the then Secretary-General in 1960 this was on the basis of the authority of the Secretary-General under the Charter of the United Nations and on prior agreement that the consent of the South African Government to discuss the Security Council's resolution of 1 April 1960 would not require prior recognition from the South African Government of the United Nations authority.

"The present request from the Secretary-General is, however, based on a Security Council resolution which violates the provisions of Article 2 (7) of the Charter of the United Nations. It would be appreciated that in the circumstances it is impossible for the South African Government to comment on the matters raised by the Secretary-General since by doing so it would by implication recognize the right of the United Nations to intervene in South Africa's domestic affairs."

The representative of Liberia*, in objecting to the "untenable argument" based on Article 2 (7), commented upon this reply and stated that "South Africa, as a signatory of the Charter and a Member of the United Nations, has pledged, under Article 56, 'to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55' ". International jurists and authors were mostly agreed that there was an element of legal duty in the undertaking given in Article 56. Referring to the opinions of some international jurists on the matter, the representative said that there could be no doubt about the competence of the United Nations to deal with the matter of apartheid in South Africa. No violation of Article 2 (7) occurred thereby.

At the 1074th meeting on 29 November 1963, the representative of India* recalled that when, at the first session of the General Assembly in 1946, the representative of South Africa, the then Prime Minister, Field Marshal Smuts, raised the objection of domestic jurisdiction, it was rejected after prolonged discussion. The representative quoted further from a statement made by the same representative of South Africa at the San Francisco Conference in 1945 in which he proposed that the Charter should contain in its Preamble a declaration on human rights, and contended that that statement "puts at rest any doubt that the question of the racial policies of the Government of South Africa is not covered by the Charter as a matter of domestic jurisdiction".

At the 1076th meeting on 3 December 1963, the representative of Norway (President) introduced a draft resolution[112] and, referring to its operative paragraph 6, concerning the establishment by the Secretary-General of a Group of Experts on South Africa, stated that it should not be regarded as an intervention in matters which were essentially within domestic jurisdiction.

At the 1078th meeting on 4 December 1963, the Norwegian draft resolution was unanimously adopted.[113]

CASE 18.[114] SITUATION IN SOUTHERN RHODESIA: In connexion with the joint draft resolution submitted by Ghana, Morocco and the Philippines: voted upon and failed of adoption on 13 September 1963

[*Note:* Article 2 (7) was invoked in connexion with objections to the Council's consideration of the question, and to any action by the Council thereon. On the other hand, it was contended that the competence of the Council could not be called into question since the situation in Southern Rhodesia was likely to endanger international peace and security and other United Nations bodies had already taken action with regard to it.]

At the 1064th meeting on 9 September 1963, before and after the adoption of the agenda, and at the 1066th meeting on 10 September 1963, the representative of the United Kingdom stated that the item before the Council concerned matters of domestic jurisdiction. In his view Article 2 (7) clearly applied, and since the documentation which had been submitted had a bearing on the internal affairs of Southern Rhodesia there were no grounds on which the Council could take action either under Chapter VI or Chapter VII of the Charter. The allegations made in respect of Southern Rhodesia concerned matters essentially within the domestic jurisdiction of its Government, matters which did not touch upon the Security Council's responsibilities for maintaining international peace and security and could

112/ S/5469. Same text as S/5471, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 103-105. See chapter VIII, pp. 216-217.

113/ 1078th meeting: para. 137. In his report to the Security Council (S/5658, 20 April 1964) concerning the implementation of this resolution, the Secretary-General transcribed a communication from the Minister of Foreign Affairs of South Africa, which included the following paragraphs:

"The Government of the Republic of South Africa has been advised by its Permanent Representative in New York of your request that facilities for a visit to the Republic be granted to members of the Group of Experts, appointed in terms of the Security Council resolution of 4 December 1963.

"The foregoing request has been put forward in pursuance of the aims outlined in that Security Council resolution, the main intent of which is to bring about the 'transformation' of the policies applied in South Africa. Against the background of this unequivocally stated objective it is manifestly impossible to receive the Group, whose visit is not only specifically intended as interference in the internal affairs of the Republic, and whose members are asked 'to consider what part the United Nations might play' in this regard, but which is also expected to prescribe how South Africa should be governed and, by implication, even what should be the provisions of its Constitution. This unparalleled attempt at deliberate interference not only makes it impossible for the Republic, as it would for any other sovereign independent State, to receive the Group, or any of its members, but also renders any form of co-operation with it out of the question."

114/ For texts of relevant statements, see:
1064th meeting: Ghana, paras. 18-21; United Kingdom, paras. 3-6;
1066th meeting: United Kingdom, paras. 24, 32, 33, 45-51;
1067th meeting: Morocco, paras. 6-8;
1068th meeting: France, para. 83; Morocco, paras. 120, 121; United Kingdom, paras. 101-104;
1069th meeting: Philippines (President), para. 37; United Kingdom, paras. 50-52.

not represent a threat to international peace. Therefore, they were beyond the scope of discussion in the Council.

At the 1064th meeting on 9 September 1963, the representative of Ghana contended that the competence of the Council could not be called into question in an issue such as that of Southern Rhodesia, which was likely to endanger international peace as a result of certain events in Southern Rhodesia. This question did not fall within Article 2 (7), as had been clearly demonstrated by the General Assembly resolutions, and by the deliberations of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples.

At the 1068th meeting on 12 September 1963, the representative of France stated that the United Nations was not empowered to pass judgement on measures taken to ensure the political development of any country which as yet did not enjoy all the attributes of sovereignty. This problem, he concluded, fell exclusively within the competence of the Member State responsible in the matter before the Council, the United Kingdom.

The representative of Morocco observed that objections to the competence of the Council were based on the special relationship between the United Kingdom and Southern Rhodesia. This relationship, though perhaps valid in English domestic law, could not, as a matter of international law, be admitted as evidence against the United Nations. This had also been demonstrated in connexion with the question of the territories under Portuguese administration.

At the 1069th meeting on 13 September 1963, the President, speaking as the representative of the Philippines, stated that the position held by the United Kingdom that Southern Rhodesia was not a Non-Self-Governing Territory, its invoking a convention under which it could not intervene in the internal affairs of the territory, and its denying the competence of the United Nations to deal with the question, were claims which had been thoroughly discussed on previous occasions. The resolutions adopted by the General Assembly and by the Special Committee constituted solid evidence that such allegations were not considered tenable by the United Nations.

The representative of the United Kingdom remarked that the issues concerning the question of Southern Rhodesia, as stated in the discussion, could in no sense involve the jurisdiction of the Security Council. There was no sufficient basis for taking action in the Council which could be justified under the Charter. In particular, nothing being done or being contemplated could remotely justify the intervention of the Security Council on the grounds that peace was being threatened.

At the same meeting, the draft resolution[115] jointly submitted by Ghana, Morocco and the Philippines to invite the Government of the United Kingdom not to transfer to Southern Rhodesia any powers or attributes of sovereignty and armed forces which would aggravate the already explosive situation, failed of adoption. There were 8 votes in favour, 1 against, and 2 abstentions (the negative vote being that of a permanent member).[116]

[115] S/5425/Rev.1, O.R., 18th year, Suppl. for July-Sept. 1963, pp. 164-165.

[116] 1069th meeting: para. 64.

Part III

CONSIDERATION OF THE PROVISIONS OF ARTICLE 24 OF THE CHARTER

Article 24

"1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

"2. In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII and XII.

"3. The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration."

NOTE

Article 24, while the subject of frequent and incidental reference in the deliberations in the Security Council, on two occasions was the subject of constitutional debate when discussion arose concerning the provisions of its paragraph 1 and the authority of regional agencies with regard to questions affecting international peace and security.[117]

On another occasion, Article 24 was the subject of constitutional discussion in connexion with the issue whether a violation of human rights could be considered as endangering international peace and security.[118]

In other instances, statements bearing on the provisions of Article 24 (1) relative to the primary responsibility of the Security Council for the main-

[117] See Cases 24 and 27.

[118] See Case 19.

tenance of international peace and security were made in the proceedings leading to the establishment of an observation mission by the Council,[119] and during the consideration by the Council of the U-2 incident,[120] of the letter dated 23 May 1960 from the representatives of Argentina, Ceylon, Ecuador and Tunisia,[121] and of the RB-47 incident.[122] On several occasions, Members, in submitting a question to the Council which affected international peace and security, invoked, among other Articles, the provisions of Article 24 (1) as a basis of submission.[123] Article 24 was invoked in a resolution of the Security Council adopted at the 876th meeting on 19 July 1960 concerning the complaint by Cuba (letter of 11 July 1960).[124]

CASE 19.[125] SITUATION IN ANGOLA: In connexion with the draft resolution submitted by Ceylon, Liberia and the United Arab Republic: voted upon and not adopted on 15 March 1961

[*Note:* In a discussion on the Council's competence it was observed, on the one hand, that, acting under Article 24 of the Charter, the Council did not have primary responsibility for dealing with a crisis or for preventing abuse of human rights, but for maintaining international peace and security. In the absence of a situation likely to endanger the maintenance of international peace and security, the Council had no power to act whatever might be the character of any supposed crisis or the extent of any abuse of human rights. On the other hand, it was asserted that any violation of the principles of human rights and self-determination on the scale practised in Angola had to be regarded as directly threatening the relations between States and the maintenance of international peace and security.]

At the 943rd meeting on 10 March 1961, the President (United States) referred[126] to the letter[127] of 7 March 1961 submitted by the representative of Portugal in which objection was raised to the request of the representative of Liberia that the Council include in its agenda a matter which, in the view of the representative of Portugal, was "exclusively within the jurisdiction of the Government of Portugal, i.e., the maintenance of internal public order". In addition to invoking Article 2 (7), the letter stated that the proponent of the item was "attempting to deviate the Security Council from its functions, leading it to exceed its specific powers as referred to in Article 24, paragraph 2, of the Charter". The letter added: "Thus, an attempt is being made to confuse and override the fact that only in the particular circumstances laid down in Chapters VI, VII, VIII and XII of the Charter can the Council acquire jurisdiction and authority."

At the 944th meeting on 10 March 1961, after the adoption of the agenda, the representative of the United Kingdom referred to the essential grounds on which the representative of Liberia had requested the consideration of the item, and stated:

"... acting as we must in accordance with Article 24 of the Charter, it is not, in the first place, to deal with a crisis or to prevent abuse of human rights that the Security Council has primary responsibility, but to maintain international peace and security. All the rest may flow from this. But, without a situation likely to endanger the maintenance of international peace and security, this Council has no power to act, whatever other features any supposed crisis may have or whatever may be the extent of any abuse of human rights."

At the same meeting, the representative of Portugal* observed that under Article 24 (2) the Council's competence was specifically limited to matters referred to in Chapters VI, VII, VIII and XII of the Charter. He added:

"No mention has been made of any dispute between the Portuguese State and any other State Member of the Organization likely to endanger the maintenance of international peace and security, nor has any proof been presented of the existence of a situation which would cause a dispute of that nature. Clearly, there must be at least two parties—and under the Charter the parties must also be sovereign independent States—if there is to be a dispute or if such a situation is to exist. Therefore, none of the cases foreseen in Articles 33 and 34 is under consideration. These two Articles are the only ones which would justify any action of the Security Council within the scope of Chapter VI.

"The action recommended in Chapter VII applies to cases foreseen in Article 39, that is, threats to the peace, breaches of the peace or acts of aggression...

"Thus, the application of Chapter VII would have required the existence of a breach of international peace in the form of attempted aggression or aggression against the territorial integrity or political independence of a State or the threat or the use of force against such territorial integrity or independence. No such allegation was made against Portugal, nor could it have been made. Therefore, the case is obviously outside the scope of Chapter VII.

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[119] See Case 20.

[120] See the following statements:
857th meeting: USSR, paras. 92, 96, 97;
858th meeting: France, para. 55; Poland, para. 79;
859th meeting: Ecuador, para. 36;
860th meeting: USSR, para. 69.

[121] See the following statements:
861st meeting: President (Ceylon), paras. 51-53, 59; Ecuador, paras. 24, 25; Tunisia, paras. 6-7; USSR, paras. 94, 95, 106; United Kingdom, para. 72;
862nd meeting: Poland, para. 16.

[122] See the following statements:
880th meeting: USSR, para. 57;
881st meeting: France, paras. 83-85;
883rd meeting: Tunisia, para. 45; USSR, para. 130.

[123] See chapter X, part III, Tabulation: entries 4, 5, 10, 11, 21, 23 and 26.

[124] S/4395, preamble, para. two, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 29-30. In a letter dated 11 July 1960 from the Minister for Foreign Affairs of Cuba to the President of the Security Council requesting the inclusion of the question in the agenda of the Council, reference was made to Article 24 (S/4378, ibid., pp. 9-10).

[125] For texts of relevant statements, see:
944th meeting: Portugal*, paras. 38-42, 44; United Kingdom, paras. 12, 13;
945th meeting: Ghana*, paras. 65-80; Liberia, paras. 109-113;
946th meeting: Chile, paras. 71, 74; Ecuador, paras. 65-66; United Kingdom, paras. 58-59.

[126] 943rd meeting: para. 5.

[127] S/4760, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 227-228.

"The provisions of Chapters VIII and XII, Article 83, are also irrelevant. No regional treaty is at stake, nor does the matter concern a strategic area under an international régime of trusteeship. Therefore, there is no provision whatever of the Charter which would justify the consideration of this matter by the Security Council."

After remarking that the delegation of Liberia had made in its request "a vague reference to human rights and privileges", he further observed that human rights were exclusively within the province of Chapter IX of the Charter.

At the 945th meeting on 14 March 1961, the representative of Ghana* gave a detailed account of the situation in Angola and of the "repressive measures" and "flagrant violations" of the Declaration on the granting of independence to colonial countries and peoples which were events constituting "a threat to international peace and security". "Furthermore", he said,

"any violation of the principles of human rights and self-determination on the scale practised in Angola cannot but be regarded as directly threatening the relations between States, and therefore as a proper concern for this Council ... and my Government urges that the Security Council should shoulder its responsibilities in the matter."

In the view of the representative of Liberia, there was in Angola the beginning of a colonial war. The situation was a threat to international peace and security as a result of the artificial division of the African continent which had separated tribal affiliation or ethnic groups. This fact alone was sufficient to warrant action by the Council in averting a crisis which might endanger world peace and order in that part of Africa.

At the 946th meeting on 15 March 1961, the representative of the United Kingdom, in objecting to the terms of the draft resolution[128] submitted by Ceylon, Liberia and the United Arab Republic, maintained that its adoption would seem to be

"... inviting the Security Council wholly to ignore the limitations placed on its jurisdiction by Article 24 of the Charter and to concern itself with matters which have been before the General Assembly and which may again be raised there. It is a wholly new interpretation of our Charter to say, as the sponsors of the draft resolution appear to be saying, that by simply alleging a danger to international peace and security this Council can take up the question of what effect a State ought to be giving to a resolution of the General Assembly.

"To proceed with this draft resolution therefore seems to my delegation to mean stretching the functions of the Security Council in such a manner as to blunt the edge of its major task, namely the maintenance of peace and security."

The representative of Ecuador dealt with the question of the Council's competence as follows:

"The Council has, under the Charter, the specific function of maintaining international peace and security. Its powers are governed by Article 24 and by Chapters VI and VII of the Charter. These define two spheres of action: first, any dispute, or any situation which might lead to international friction or give rise to a dispute, under Chapter VI; and secondly, threats to the peace, breaches of the peace, and acts of aggression, as mentioned in Chapter VII. At their present stage, the events in Angola do not seem ... to constitute an international dispute or a situation which might lead to a breach of international peace and security, or to represent an aggression or an actual threat to that peace and security.

"Hence, ... my delegation will abstain from voting on any draft resolution which would imply recognition of the Council's jurisdiction."

The representative of Chile held that the Council's debate on Angola had not shown that it was "faced with anything likely to endanger international peace and security, the only case in which action by this Council is justified". In his view the Council was dealing with "a question concerning human rights, fundamental freedoms and the principle of self-determination of peoples". He further observed:

"It is not desirable to depart from the strict legal rules on which the Council's existence is based, by introducing political and social considerations... If we do not abide by the provisions of the Charter concerning the limits of the Council's field of action, we may defeat our own ends, and, instead of promoting a solution of the problems, may delay and obstruct it."

At the same meeting, the three-Power draft resolution was not adopted. There were 5 votes in favour, none against, with 6 abstentions.[129]

CASE 20.[130] REPORTS BY THE SECRETARY-GENERAL CONCERNING YEMEN: In connexion with the decision of 11 June 1963 requesting the Secretary-General to establish a United Nations observation operation in Yemen, and to report to the Security Council on the implementation of this decision

[*Note:* Article 24 was not explicitly mentioned, nor were its provisions the subject of extended debate. However, in the letter raising the matter before the Security Council and during its consideration, the observation was made that, under the Charter, only the Security Council could take action assuming such a responsibility as the dispatch of observers in a conflict which threatened international peace and security. It was further contended that the Security Council should only adopt decisions regarding actions for the maintenance of peace and security after all aspects of the case, including the question of the financing and the duration of the operation, were taken into account. On the other hand, it was maintained that the Security Council was not the only United Nations body which could initiate action to maintain

[128] S/4769, 945th meeting: para. 107.

[129] 946th meeting: para. 165.

[130] For texts of relevant statements, see:
1038th meeting: Morocco, paras. 27-29; USSR, paras. 15, 18;
1039th meeting: President (Ghana), paras. 45-47; France, paras. 38, 39; Philippines, para. 33; USSR, paras. 13-18, 20, 24; United Kingdom, para. 6; United States, paras. 8, 9.

international peace and security, and the view was expressed that the assessment of the costs of the observation mission was the prerogative of the General Assembly. The adopted resolution gave the Secretary-General a mandate to establish the observation mission, and noted that the parties had agreed to defray the costs for a limited time.]

At the 1037th meeting on 10 June 1963, the Security Council had before it a letter [131] dated 8 June 1963 from the representative of the USSR requesting that the Security Council consider the reports of the Secretary-General [132] on developments relating to Yemen, "since the reports contain proposals concerning possible measures by the United Nations to maintain international peace and security, on which, under the Charter, decisions are taken by the Security Council".

In his reports on the developments in Yemen, the Secretary-General informed the Council that a disengagement agreement had been reached by the parties concerned and that, pursuant to their request, he would proceed with the organization and dispatch of a United Nations observation mission to Yemen. No financial implications for the United Nations were envisaged since the two parties principally involved had undertaken to defray the costs of the operation for an initial period of two months, and possibly for four months.

At the 1038th meeting, the representative of the USSR stated that the dispatch of United Nations observers to Yemen affected not only the parties directly concerned "but the whole problem of United Nations action for the maintenance of peace and security". He further stated:

> "... the Soviet delegation would not object to the Security Council—which under the United Nations Charter is the only body competent to take decisions on action by the Organization for the maintenance of international peace and security—deciding that a limited number of United Nations observers should be sent ... for a period of two months, as agreed between the parties concerned."

The representative of Morocco, in submitting a draft resolution jointly sponsored with Ghana, considered that its first purpose would be "to define the precise limits within which the United Nations could lawfully take action and could assume responsibilities in a dispute endangering international peace and security".

At the 1039th meeting on 11 June 1963, the representative of the United Kingdom stated that, in his view, "this new mission undertaken by our Organization is consistent with the peace-keeping duties laid upon it by the Charter".

After the draft resolution had been adopted, [133] the representative of the United States declared his understanding that with regard to the duration of the observation operation, there was no time limitation upon it, and the reference to two months had arisen only because the parties had agreed to defray the costs for two months, "but without prejudice to the manner of financing thereafter if a longer operation should prove to be necessary".

The representative of the USSR objected to the fact that no specific time limit for the observation mission had been indicated in the adopted resolution. His delegation was not opposed in principle to the dispatch of observers to Yemen. He added:

> "However, this operation, like any other operation involving the use of armed forces under the auspices of the United Nations, must be limited in time.... On the basis of the Secretary-General's statements, the Soviet delegation urged that the Council's decision should clearly specify that the United Nations observers were being sent for a period of two months....
>
> "The question of prolonging the observation mission's stay ... should be considered by the Security Council after the two months have elapsed, and the appropriate decision taken."

He further stated:

> "In deciding to conduct an operation entailing the use of armed forces under United Nations auspices, by virtue of Articles 43, 48 and 50 of the Charter, the Security Council is bound to consider the question of sources of financing as well. In essence the Council has already done this, since it received from the Secretary-General an estimate of the costs involved in the operation and it also heard the Secretary-General's statement that the maintenance of the United Nations observers for a two-month period would not entail any financial expenditure by the United Nations.
>
> "...
>
> "... the Soviet delegation has consistently taken and continues to take the view that the Security Council, in keeping with the letter and spirit of the Charter, should adopt decisions involving action on behalf of the United Nations for the maintenance of world peace and security only when all aspects of the matter, including the material and financial conditions for the execution of its decisions, have been duly examined."

In the opinion of the representative of the Philippines, this was a unique situation and should not, therefore, be considered as a precedent, "particularly with regard to the assumption that only the Security Council can authorize peace-keeping operations or that it is the only body that can initiate action to keep the peace".

The representative of France referred to "the manner in which the proposed operation is to be financed" as an important aspect of the problem on which, in his opinion, the Security Council was competent to pronounce itself. He added:

> "Since the financing of this operation is assured for a period of two months, the decision of the Security Council ... is valid for that period. Moreover, we understand from the information given by the Secretary-General that . . . if the observation operation undertaken by the United Nations were to exceed two months, he would inform the Security Council of that fact in good time. We therefore con-

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131/ S/5326, O.R., 18th year, Suppl. for April-June 1963, p. 51.

132/ S/5298, ibid., pp. 33-34; S/5321, ibid., pp. 46-48; S/5323, ibid., pp. 48-50; S/5325, ibid., p. 50.

133/ S/5331, ibid., pp. 52-53; see also chapter VIII, p. 208.

sider that if that proved to be the case ... the Council would have to re-examine the problem."

The President, speaking as the representative of Ghana, declared that one of the overriding reasons for the draft resolution had been "the need to emphasize the responsibility of the Security Council in the matter of peace-keeping in the area under discussion". He further observed:

"... If the observation team had to continue its efforts in the area after the two-month period, then in our view the Security Council would have to approve of further action in the area.

"The Ghana delegation feels that it is the primary responsibility of the Security Council to see that a peace-keeping operation takes place. But we feel that any position taken by the Council implies some financial obligation, and once a position has been taken, then the assessment of the costs will, of course, be the prerogative of the General Assembly."

Part IV

CONSIDERATION OF THE PROVISIONS OF ARTICLE 25 OF THE CHARTER

Article 25

"The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter."

NOTE

After the adoption of resolution S/4426[134/] of 9 August 1960, the Secretary-General, in order to stress the peremptory character of the decisions of the Security Council and to draw the attention of Member States to their obligations to accept and carry out the decisions of the Council and to join in affording mutual assistance in carrying out measures decided upon by the Council, on a number of occasions referred to or quoted operative paragraph 5 of the resolution, in which Articles 25 and 49 were explicity invoked.

In some instances, the Secretary-General cited both Articles[135/] with explicit reference to the resolution of 9 August 1960; in other instances, he cited Article 25,[136/] in some cases by implied reference to operative paragraph 5 of the resolution of 9 August 1960, or Article 49,[137/] with explicit and implied references to the same provision.

Two other case histories[138/] included in this part have a bearing on the obligation of Member States under Articles 25 and 49 arising from the participation of their military units in the United Nations Force in the Congo.

CASE 21.[139/] SITUATION IN THE REPUBLIC OF THE CONGO: In connexion with the Ceylonese-Tunisian joint draft resolution: voted upon and adopted on 9 August 1960

[*Note:* In the course of the discussion it was maintained that, in view of the peremptory character of Articles 25 and 49, Member States were bound to implement the decisions of the Security Council, and a draft resolution to this effect was adopted. To the statements that Member States must refrain from any unilateral action in the Congo, objection was made on the ground that the Government of the Republic of the Congo had the right to regulate its relations with other States according to its requirements.]

At the 884th meeting on 8 August 1960, the Secretary-General said that the Charter outlined in several Articles the obligations of Member States in relation to the Organization in a situation such as the current one in the Congo. He pointed out that he had drawn attention to Articles 25 and 49 in his reply to Mr.

134/ See Case 21.

135/ See: Note verbale dated 8 September 1960 from the Secretary-General to the representative of Belgium (S/4482/Add.1, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 139-140); statement of the Secretary-General at the 920th meeting on 13/14 December 1960 (para. 74); letter dated 14 December 1960 from the Secretary-General addressed to the President of the Republic of the Congo (S/4599, O.R., 15th year, Suppl. for Oct.-Dec. 1960, pp. 102-103); message dated 8 March 1961 from the Secretary-General to the President of the Republic of the Congo (Leopoldville) (S/4775, document I, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 261-265).

136/ See: Note verbale dated 22 February 1961 from the Secretary-General to the representative of Belgium (S/4752, annex I, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 178-179); letter dated 23 February 1961 addressed to all States Members of the Organization by the Secretary-General of the United Nations (S/4752, annex III, ibid., pp. 182-183); letter dated 27 February 1961 from the Secretary-General to the President of the Republic of the Congo (Leopoldville) (S/4752, annex IV, ibid., pp. 183-186); note verbale dated 2 March 1961 from the Secretary-General to the representative of Belgium (S/4752/Add.1, document I, ibid., pp. 190-193); letter dated 2 March 1961 from the Secretary-General to the President of the Republic of the Congo (Leopoldville) (S/4752/Add.1, document II, ibid., pp. 193-195); message dated 2 March 1961 addressed to Mr. Tshombé through the Special Representative of the Secretary-General in the Congo (S/4752/Add.1, document III, ibid., pp. 195-197); note verbale dated 8 March 1961 from the Secretary-General to the representative of Belgium (S/4752/Add.4, document I, ibid., pp. 201-203); message dated 12 March 1961 from the Secretary-General to the President of the Republic of the Congo (Leopoldville) (S/4775, document IV, ibid., pp. 269-271); second report of the Secretary-General on certain steps taken in regard to the implementation of Security Council resolution S/4741 of 21 February 1961 (S/4807, O.R., 16th year, Suppl. for April-June 1961, pp. 43-48, para. 4).

137/ See: telegram dated 9 August 1960 from the Secretary-General to the Prime Minister of the Republic of the Congo (S/4417/Add.3, document I, O.R., 15th year, Suppl. for July-Sept. 1960, p. 57); note verbale of 18 August 1960 from the Secretary-General to the Government of the Republic of the Congo (S/4417/Add.8, annex II, ibid., pp. 78-79); note dated 18 August 1960 for conversation with the representative of Ghana (S/4445, annex I, ibid., pp. 99-100).

138/ See Cases 22 and 23.

139/ For texts of relevant statements, see:

884th meeting: Secretary-General, paras. 22, 23;

885th meeting: Tunisia, para. 76; United States, para. 49;

886th meeting: Argentina, para. 76; Belgium*, paras. 244, 245; Ecuador, paras. 46, 49; Poland, para. 289; United Kingdom, paras. 149, 165.

Tshombé's démarche [140] published in his second report on the implementation of Security Council resolutions S/4387 of 14 July 1960 and S/4405 of 22 July 1960. He asked whether there could be a more explicit basis for hoping that the Council could count on active support from Governments directly concerned and for expecting that local authorities would adjust themselves to the obligations which their country had incurred.

At the 885th meeting on 8 August 1960, the representative of the United States, referring to his statement made at the 877th meeting that no nation could arrogate to itself the right to make threats of independent action in the Congo, observed that it became necessary to repeat that word of caution.

The representative of Tunisia introduced a draft resolution [141] submitted jointly with Ceylon whereby:

"The Security Council,

"...

"5. Calls upon all Member States, in accordance with Articles 25 and 49 of the Charter of the United Nations, to accept and carry out the decisions of the Security Council and to afford mutual assistance in carrying out measures decided upon by the Council;

"..."

At the 886th meeting on 8/9 August 1960, the representative of Ecuador stated that full implementation of the Council's resolutions seemed to have been held up by disregard for the obligations assumed by Member States under the Charter to comply with Security Council decisions. Under Article 25 of the Charter, the decisions of the Security Council were binding. Further, Article 49 established the obligation of Members to join in affording mutual assistance in carrying out the measures decided upon by the Council. "Member States are legally bound to carry out the decision of the Council; their obligation is therefore far stronger than the moral obligation imposed on them by recommendations of the General Assembly." The representative expressed the hope that all Member States would ponder the mandatory character of Articles 25 and 49. The mutual co-operation required to implement the Council's resolutions consisted not only of material assistance such as that being provided by those Member States upon which the Secretary-General had called for military contingents and other facilities. It should also be of a moral nature and, in the light of Article 49, some Governments should be more sparing in their criticism of an operation carried out in the name of all Member States.

The representative of Argentina observed that it was part of the obligations of Belgium as a Member of the United Nations to co-operate actively with the United Nations and to facilitate, as far as possible, the implementation of the Council's decisions.

The representative of the United Kingdom expressed the view that individual Member Governments should refrain from anything in the nature of direct intervention in the dispute even if they might be invited by one of the parties so to intervene. They should recoil from taking any action with regard to the situation in the Congo independently of the United Nations operations there.

The representative of Belgium* stated that he interpreted operative paragraph 5 of the Ceylonese-Tunisian joint draft resolution to mean that when the Security Council took up a problem and endeavoured to solve it, it was not in keeping with its dignity to allow a Member State to substitute for the Council and impose its own way of thinking.

At the 886th meeting on 8/9 August 1960, the joint draft resolution submitted by Ceylon and Tunisia was adopted. [142]

The representative of Poland objected to the interpretation of operative paragraph 5 of the resolution given during the discussion in the Council, which tended to exclude bilateral relations which the Government of the Congo might find it advisable to develop with any country in the world. The United Nations Force was in the Congo at the request of its Government, which, at the same time, had full right to develop its relations with any other State according to its desires.

CASE 22.[143] SITUATION IN THE REPUBLIC OF THE CONGO: In connexion with the first report of the Secretary-General on the implementation of Security Council resolution S/4387 of 14 July 1960 and with his second report on the implementation of Security Council resolutions S/4387 of 14 July 1960 and S/4405 of 22 July 1960

[*Note:* In his first report on the implementation of resolution S/4387 of 14 July 1960, [144] the Secretary-General defined the principles basic to the operation and composition of the United Nations Force in the Congo, which included the following provisions: The Force was under the exclusive command of the United Nations, vested in the Secretary-General under the control of the Organization. The mandate granted to the Force could not be exercised within the Congo either in competition with representatives of the host Government or in co-operation with them in any joint operation; this applied a fortiori to representatives and military units of Governments other than the host Government. To all United Nations personnel used in the operation the basic rules of the United Nations for international service should be considered as applicable, particularly as regards full loyalty to the aims of the Organization and abstention from actions in relation to their country of origin which might deprive the operation of its international character and create a situation of dual loyalty. The report was com-

140/ S/4417, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 45-53, para. 6.

141/ S/4424. Same text as resolution S/4426, ibid., pp. 91-92.

142/ 886th meeting: para. 272. S/4426, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 91-92.

143/ For texts of relevant statements, see:
885th meeting: USSR, para. 111, 113, 114;
886th meeting: France (President), para. 181;
888th meeting: Guinea*, para. 33; USSR, para. 81; Secretary-General, paras. 109, 110.

144/ S/4389, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 16-24, paras. 7, 12, 14.

porting its troops in its efforts to maintain law and order in the entire territory of the Congo, including Katanga. The principle of non-intervention, as interpreted by the Secretary-General and applied to the operations of the United Nations Force in the Congo, had come up against difficulties. The Security Council should state that, until such time as the Congolese people themselves decided to alter their constitutional arrangements, the law and order which the Council was pledged to maintain could be none other than that embodied in the Loi fondamentale and as represented by the Central Government of the Republic. Only thus could situations be avoided which gave the impression that the Central Government was being hindered in its efforts to restore law and order, situations such as the closing down of airports and radio stations[83] which had been interpreted by the Central Government of the Congo as a breach of the principle of non-intervention as defined by operative paragraph 4 of the resolution of 9 August 1960.

The representative of the United Arab Republic* observed that the constitutional issue raised in the course of the debate was an internal affair of the people of the Congo.

At the 906th meeting on 16/17 September 1960, the representative of Yugoslavia said that the principle of non-intervention by the United Nations in the internal affairs of the Congo had become a brake slowing down any adequate action aimed at implementing strictly the resolutions of the Security Council. This fact had been used to continue the outside interference in the internal affairs of the Republic of the Congo in most diverse forms, including the continued intervention by the Belgian troops, based on the misuse of the principle of the right of self-determination.

The representative of Ceylon introduced[84] a draft resolution[85] submitted jointly with Tunisia, according to which the Security Council would reaffirm its resolutions of 14 and 22 July and of 9 August and urge the Secretary-General to continue to give vigorous implementation to them, and call upon all Congolese within the Republic of the Congo to seek a speedy solution by peaceful means of all their internal conflicts for the unity and integrity of the Congo (oper. paras. 1, 2).

The representative of Tunisia pointed out that difficulties within the Congo were serious for international peace and security. However, the difficulties of a domestic nature were not within the Council's competence but were for the Congolese people to deal with.

The representative of the USSR submitted[86] an amendment[87] to operative paragraph 1 of the joint draft resolution to replace the words "to continue to give vigorous implementation to them" by the words "to implement them strictly"; thereafter, to add the words "permitting no interference in the internal affairs of the Republic of the Congo".

At the 906th meeting, the USSR amendment was rejected[88] by 2 votes in favour and 8 against, with 1 abstention.

At the same meeting, the joint draft resolution submitted by Ceylon and Tunisia failed of adoption;[89] there were 8 votes in favour, 2 against, with 1 abstention (one of the negative votes being that of a permanent member of the Council).

CASE 14.[90] SITUATION IN THE REPUBLIC OF THE CONGO: In connexion with the draft resolution submitted by the USSR: voted upon and rejected on 14 December 1960

[*Note:* In connexion with the USSR draft resolution calling upon the Secretary-General to secure the immediate release of Mr. Lumumba and his colleagues and to take steps to ensure the resumption of the activities of the lawful Government and Parliament of the Republic of the Congo, it was contended, on the one hand, that the interpretation of the Secretary-General of the principle of non-intervention by the United Nations in the internal affairs of the Republic of the Congo had led to non-intervention by the United Nations in the activities of forces which had used violence to prevent the normal operation of the country's lawful organs. It was maintained, on the other hand, that a struggle for political leadership and a dispute over the legitimacy of government were matters within the domestic jurisdiction of the Republic of the Congo, in accordance with Article 2 (7) of the Charter. For this reason, the Council could not take actions envisaged in the USSR draft resolution.]

At the 913th meeting on 7 December 1960, the Secretary-General stated that it had been after the adoption of the first two resolutions that internal conflict had given rise to the demands that the United Nations Force take action against competing political groups on the basis of constitutional provisions. The Council had not seen fit to modify the original mandate of the Force and on 9 August it adopted a specific injunction reaffirming the principle that the Force should not "be used to influence the outcome of any internal conflict, constitutional or otherwise". The records of the Security Council and the General Assembly contained abundant references to the emphasis which the great majority of Member States had placed on this principle. He stated further that it was possible to argue in a purely theoretical way that the maintenance of law and order might embrace the enforce-

83/ For the statement of the Secretary-General on these matters, *see* chapter I, Case 27.

84/ 906th meeting: para. 81.

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

86/ 906th meeting: para. 117.

87/ S/4524, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 173-174.

88/ 906th meeting: para. 153.

89/ 906th meeting: para. 157.

90/ For texts of relevant statements, see:

913th meeting: Secretary-General, paras. 16-18, 27-31;

914th meeting: Argentina, paras. 89, 90;

915th meeting: United Kingdom, para. 37; Yugoslavia*, paras. 113, 114, 125, 126, 131;

916th meeting: Cameroon*, para. 167; Ecuador, paras. 65-69, 71, 74; Indonesia*, paras. 116, 117, 119; Italy, paras. 50-52;

917th meeting: Ceylon*, paras. 23-26, 28-38, 41; China, paras. 13, 14; Secretary-General, paras. 62-64;

918th meeting: France, paras. 63, 69; Poland, paras. 20-24, 30, 40, 41; Tunisia, paras. 87, 89, 96;

919th meeting: Guinea*, paras. 33, 52; Yugoslavia, paras. 127, 131;

920th meeting: Ceylon, paras. 105-108; Tunisia, para. 139; Secretary-General, paras. 73, 77.

At the 896th meeting on 9/10 September 1960, the Secretary-General, referring to news to the effect that a national contingent within the United Nations Force had stated that it wanted to pull out from the Force until the United Nations "ceases its flagrant interference in internal Congolese affairs", [152] recalled the following statement [153] from his first report, "as commended" by the Security Council:

> "The authority granted to the United Nations Force cannot be exercised within the Congo either in competition with the representatives of the host Government or in co-operation with them in any joint operation. This naturally applies a fortiori to representatives and military units of other Governments than the host Government."

and said:

> "Were a national contingent to leave the United Nations Force, they would have to be regarded as foreign troops introduced into the Congo, and the Security Council would have to consider their continued presence in the Congo, as well as its consequences for the United Nations operation, in this light." [154]

At the 903rd meeting on 15 September 1960, the representative of France expressed the view that any State which had been asked by the United Nations to contribute a military contingent to restore order and security in the Congo would be failing in its obligations towards the United Nations and the responsibilities it had assumed when it had joined the Organization "if it were to use that contingent, or any other, in the Congo outside the scope of operation of the United Nations Force".

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[152] For the withdrawal of national contingents from the United Nations Force in the Congo on the basis of a disagreement with the implementation of the mandate of the Force, see the statements of the representatives of Yugoslavia* (915th meeting: para. 146), the United Arab Republic* (916th meeting: paras. 92-93), Indonesia* (920th meeting: para. 9; 931st meeting: para. 106), Morocco* (930th meeting: para. 36); see also telegram dated 12 December 1960 from the President of the Republic of Guinea to the President of the Security Council (S/4594, O.R., 15th year, Suppl. for Oct.-Dec. 1960, p. 98) and telegram dated 15 February 1961 from the President of the Republic of the Sudan to the Secretary-General (S/4731, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 140-141).

[153] S/4389, O.R. 15th year, Suppl. for July-Sept. 1960, pp. 16-24, para. 12.

[154] By note verbale (S/4668 and Add.1, document II, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 80-81) dated 25 January 1961, the Secretary-General informed the Permanent Representative of Morocco that he had received notification to the effect that the Commandant of the Moroccan brigade in the United Nations Force had received instructions from his Government as a result of which the brigade would cease to perform its functions during the period from 31 January 1961 until its departure. If this meant that from 31 January until its repatriation the Moroccan contingent would remain in the Congo, withdrawn from the United Nations Command, the situation would be very serious:

> "The Moroccan troops are at present in the Congo and can remain there only as an integral part of the United Nations Force, under the orders of the United Nations Command and under the responsibility of the United Nations. If they are withdrawn from that Command and from the responsibility of the United Nations, as the instructions transmitted to them would appear to indicate, they would have to be regarded as foreign troops present in the territory of the Congo without the consent of the Congolese Government."

In view of this, the Secretary-General requested that instructions be given that the Moroccan contingent, as long as it was present in the Congo, should remain an integral part of the United Nations Force, and should assume and perform all duties assigned to it by the Commander of the Force.

By letter dated 1 February 1961 (S/4668 and Add.1, document III, ibid., p. 81), the Permanent Representative of Morocco informed the Secretary-General that from 31 January 1961 until their repatriation, the Moroccan troops would remain under the United Nations flag. But if called upon to act against their conscience, they would feel bound not to apply any decisions contrary to the interests of the Congo and of legality.

By telegram (S/4758/Add.4, ibid., pp. 220-222) dated 5 March 1961, the Secretary-General, referring to the threat of the use of force by the ANC soldiers to compel evacuation of the Sudanese units of the United Nations Force from Matadi, drew the attention of the President of the Republic of the Congo to the following two points:

> "First, United Nations, under the Security Council mandate, must keep complete freedom of decision as regards the deployment of national contingents in performance of the United Nations operation. In the exercise of its responsibility the placement of specific contingents will, of course, always be made with due regard to all the pertinent circumstances. I am bound to consider unacceptable any attempt by force or otherwise to influence ONUC in this respect, including the setting of conditions as to the selection of units for Matadi. The forced withdrawal of the Sudanese detachment from Matadi today cannot be interpreted as derogating from this position of principle.
>
> "Secondly, the presence of the United Nations Force in Matadi is a vital condition for the carrying out of the United Nations operation in the Congo, especially for the prevention of civil war and the halting of military operations, for which, as you know, the Security Council resolution authorizes the use of force, if necessary, in the last resort. This point is necessarily subject, as regards placement of specific contingents, to the principles laid down in the preceding paragraph in the implementation of which the United Nations, on its own responsibility, takes into account all factors essential for the fulfilment of the task of the Force." (See also letter of 8 March 1961 from the Secretary-General to the President of the Republic of the Congo (S/4775, document I, ibid., pp. 262-265).)

In a message (S/4775, document IV, ibid., pp. 269-271) dated 12 March 1961 to the President of the Republic of the Congo, in connexion with the incidents at Matadi, the Secretary-General stated that the size, composition and deployment of the United Nations Force could not

> "be subordinated to the will of any one Government, be it a contributing Government or a host Government. If the United Nations organizes the Force, the Force must remain exclusively under the command of the United Nations, guided by the judgement of the military command of the United Nations as to what is necessary for the mission of the Force in order to enable it to fulfil its purpose as jointly endorsed by all Governments concerned. This must be accepted by the Congolese Government."

Part V

CONSIDERATION OF THE PROVISIONS OF CHAPTER VIII OF THE CHARTER

Article 52

> "1. Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional actions, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.

"2. The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.

"3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.

"4. This Article in no way impairs the application of Articles 34 and 35."

Article 53

"1. The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state.

"2. The term enemy state as used in paragraph 1 of this Article applies to any state which during the Second World War has been an enemy of any signatory of the present Charter."

Article 54

"The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security."

NOTE

In consequence of the obligation placed by the Charter upon Members of the United Nations and upon regional arrangements or agencies, the attention of the Security Council has been drawn during the period from 1959 to 1963 to the following communications, which have been circulated by the Secretary-General to the representatives of the Council, but have not been included in the provisional agenda:

1. *Communications from the Chairman of the Council of the Organization of American States*

   (i) Dated 6 May 1963: transmitting the text of a cable sent to the Governments of Haiti and the Dominican Republic from the Council of the Organization of American States, serving provisionally as Organ of Consultation. [155]

   (ii) Dated 7 May 1963: communicating the reply of the President of the Dominican Republic to the cable sent to him on 6 May 1963. [156]

2. *Communications from the Chairman of the Inter-American Peace Committee*

   (i) Dated 31 May 1960: transmitting a report on the case presented by Ecuador and a special report on the relationship between violations of human rights or the non-exercise of representative democracy and the political tensions that affect the peace of the hemisphere. [157]

   (ii) Dated 10 June 1960: transmitting report of the Inter-American Peace Committee on the case presented by the Government of Venezuela, as well as a statement made on that date regarding the Committee's current activities. [158]

   (iii) Dated 30 October 1963: transmitting report of the Inter-American Peace Committee on termination of the activities of the Honduras-Nicaragua Mixed Commission. [159]

3. *Communications from the Secretary-General of the Organization of American States*

   (i) Dated 2 May 1959: transmitting resolutions adopted on 28 and 30 April by the Council of the Organization of American States in response to a request by the Government of Panama. [160]

   (ii) Dated 14 May 1959: transmitting resolution adopted on 2 May by the Council of the Organization of American States in response to a request by the Government of Panama. [161]

   (iii) Dated 23 June 1959: transmitting a resolution adopted on 4 June by the Council of

[155] S/5304, O.R., 18th year, Suppl. for April-June 1963, pp. 39-40.
[156] S/5309, ibid., p. 43.
[157] S/4333.
[158] S/4337.
[159] S/5452.
[160] S/4184.
[161] S/4188.

the Organization of American States in response to a request by the Government of Nicaragua.[162]

(iv) Dated 30 July 1959: transmitting a resolution adopted on 29 July by the Council of the Organization of American States in connexion with the case submitted by the Government of Nicaragua, together with copies of reports on the matter.[163]

(v) Dated 11 July 1960: transmitting resolution approved on 8 July by the Council of the Organization of American States in response to the request of Venezuela.[164]

(vi) Dated 18 July 1960: transmitting resolution approved by the Council of the Organization of American States on 18 July in response to the request of the Government of Peru.[165]

(vii) Dated 9 August 1960: transmitting resolutions adopted by the Council of the Organization of American States regarding the agenda of the Seventh Meeting of Consultation of Ministers of Foreign Affairs.[166]

(viii) Dated 26 August 1960: transmitting the Final Act of the Sixth Meeting of Consultation of Ministers of Foreign Affairs serving as Organ of Consultation in application of the Inter-American Treaty of Reciprocal Assistance (relating to the Venezuelan complaint against the Dominican Republic).[167]

(ix) Dated 29 August 1960: transmitting the Final Act of the Seventh Meeting of Consultation of Ministers of Foreign Affairs, containing the Declaration of San José.[168]

(x) Dated 7 November 1960: transmitting information concerning the establishment of a Committee of Good Offices regarding the Cuban complaint of 11 July 1960.[169]

(xi) Dated 6 January 1961: transmitting resolution adopted on 4 January by the Council of the Organization of American States.[170]

(xii) Dated 24 January 1961: transmitting copy of a note dated 19 January 1961 from the Interim Representative of the United States on the Council of the Organization of American States.[171]

(xiii) Dated 11 December 1961: transmitting the Organization of American States resolution of 4 December 1961 convoking a Meeting of Consultation of Ministers of Foreign Affairs in response to a request by Colombia.[172]

(xiv) Dated 29 December 1961: transmitting the Organization of American States Council resolution of 22 December setting 22 January 1962 as the date of the Eighth Meeting of Consultation of Ministers of Foreign Affairs at Punta del Este, Uruguay.[173]

(xv) Dated 8 January 1962: transmitting the text of the resolution adopted on 4 January by the Council of the Organization of American States, together with the reports submitted by its Special Committee and sub-committee relating to developments in the Dominican Republic.[174]

(xvi) Dated 31 January 1962: transmitting the Final Act of the Eighth Meeting of Consultation of Ministers of Foreign Affairs, held at Punta del Este, Uruguay, from 22 to 31 January 1962.[175]

(xvii) Dated 23 October 1962: transmitting a resolution adopted the same day by the Council of the Organization of American States serving provisionally as Organ of Consultation, concerning the presence of "missiles and other weapons with ... offensive capability" in Cuba.[176]

(xviii) Dated 29 October 1962: transmitting notes from the Governments of Argentina, Colombia, Costa Rica, the Dominican Republic, Guatemala, Haiti, Honduras, Panama and the United States regarding collective action under the Inter-American Treaty of Reciprocal Assistance.[177]

(xix) Dated 8 November 1962: transmitting a resolution adopted on 5 November by the Council of the Organization of American States and a note from the Government of Nicaragua regarding collective action in the defence of the hemisphere.[178]

(xx) Dated 14 November 1962: transmitting reports from Argentina, El Salvador, the United States and Venezuela and a note from the United States, Argentina and the Dominican Republic concerning collective action.[179]

(xxi) Dated 13 December 1962: transmitting a report from the delegation of the United States and a note of the delegations of the United States, Argentina and the Dominican Republic, relating to the implementation of the Organization of American States resolution of 23 October 1962.[180]

[162] S/4194.
[163] S/4208.
[164] S/4397, O.R. 15th year, Suppl. for July-Sept. 1960, pp. 30-31.
[165] S/4399, ibid., pp. 31-32.
[166] S/4471, ibid., pp. 124-125.
[167] S/4476.
[168] S/4480.
[169] S/4559, O.R., 15th year, Suppl. for Oct.-Dec. 1960, pp. 53-57.
[170] S/4628.
[171] S/4647.
[172] S/5036, O.R., 16th year, Suppl. for Oct.-Dec. 1961, pp. 213-214.
[173] S/5049.
[174] S/5130.
[175] S/5075, O.R., 17th year, Suppl. for Jan.-March 1962, pp. 63-78.
[176] S/5193, O.R., 17th year, Suppl. for Oct.-Dec. 1962, pp. 161-163.
[177] S/5202.
[178] S/5206, O.R., 17th year, Suppl. for Oct.-Dec. 1962, pp. 173-174.
[179] S/5208.
[180] S/5217.

(xxii) Dated 28 April 1963: transmitting resolution approved by the Council of the Organization of American States on 28 April 1963 convoking a meeting on the application of the Inter-American Treaty of Reciprocal Assistance. [181]

(xxiii) Dated 3 May 1963: transmitting certain documents relating to the resolution adopted on 28 April 1963 by the Council of the Organization of American States serving provisionally as Organ of Consultation in application of the Inter-American Treaty of Reciprocal Assistance. [182]

(xxiv) Dated 8 May 1963: transmitting a resolution adopted by the Council of the Organization of American States serving provisionally as Organ of Consultation. [183]

(xxv) Dated 18 July 1963: transmitting the resolution on the situation between the Dominican Republic and Haiti adopted by the Council of the Organization of American States acting provisionally as Organ of Consultation at its meeting held on 16 July, together with the first and second reports of the Committee appointed in accordance with the resolution adopted on 28 April April 1963. [184]

(xxvi) Dated 6 August 1963: transmitting the resolution adopted by the Council of the Organization of American States acting provisionally as Organ of Consultation, at its meeting held on 6 August 1963. [185]

(xxvii) Dated 16 August 1963: transmitting resolution approved by the Council of the Organization of American States serving provisionally as Organ of Consultation at its meeting on 15 August 1963 in connexion with the situation between the Dominican Republic and Haiti. [186]

(xxviii) Dated 21 August 1963: transmitting information concerning the situation between Haiti and the Dominican Republic. [187]

(xxix) Dated 22 August 1963: transmitting the preliminary report of the Special Committee of the Council of the Organization of American States serving provisionally as Organ of Consultation pursuant to the provisions of the resolution approved on 28 April 1963. [188]

(xxx) Dated 3 September 1963: transmitting the text of the message received from the Government of Haiti concerning the situation between Haiti and the Dominican Republic. [189]

(xxxi) Dated 23 September 1963: transmitting the texts of cables sent to the Governments of Haiti and the Dominican Republic. [190]

(xxxii) Dated 4 December 1963: transmitting copy of the resolution adopted by the Council of the Organization of American States at its extraordinary meeting, held on 3 December 1963, on the convocation of the Organ of Consultation, pursuant to the provisions of the Inter-American Treaty of Reciprocal Assistance. [191]

4. Communications from States parties to disputes or situations

(i) Dated 15 July 1960: United States, transmitting text of a memorandum submitted to the Inter-American Peace Committee entitled "Provocative actions by the Government of Cuba against the United States which have served to increase tensions in the Caribbean area". [192]

(ii) Dated 26 November 1960: Cuba, regarding letter of 7 November 1960 from the Secretary-General of the OAS. [193]

In addition to circulating these communications to the representatives of the Council, it has been the practice to include summary accounts of them in the annual reports of the Security Council to the General Assembly. [194]

CASE 24. [195] COMPLAINT BY CUBA (LETTER OF 11 JULY 1960): In connexion with the joint draft resolution submitted by Argentina and Ecuador and the USSR amendments thereto: the amendments voted upon and rejected on 19 July 1960, the joint draft resolution voted upon and adopted on 19 July 1960

[*Note:* During the debate, it was contended that, under Article 52 of the Charter, membership in a regional organization entailed rights which were optional rather than exclusive in character. Consequently, the request of a Member of the United Nations that the Security Council consider a question brought by it before the Council had not been invalidated be-

181/ S/5301, O.R., 18th year, Suppl. for April-June 1963, pp. 37-38.
182/ S/5307.
183/ S/5312.
184/ S/5373, O.R., 18th year, Suppl. for July-Sept. 1963, pp. 20-53.
185/ S/5387, ibid., p. 73.
186/ S/5399, ibid., p. 83.
187/ S/5398, ibid., p. 82.
188/ S/5404, ibid., pp. 139-145.
189/ S/5413, ibid., pp. 157-158.
190/ S/5431, ibid., p. 190.
191/ S/5477, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 107-108.
192/ S/4388.
193/ S/4565, O.R., 15th year, Suppl. for Oct.-Dec. 1960, pp. 59-65.
194/ See Report of the Security Council to the General Assembly, 1958-1959 (GAOR, 14th Session, Suppl. No. 2), p. 34; Report of the Security Council to the General Assembly, 1959-1960 (GAOR, 15th Session, Suppl. No. 2), p. 38; Report of the Security Council to the General Assembly, 1960-1961 (GAOR, 16th Session, Suppl. No. 2), pp. 55-56; Report of the Security Council to the General Assembly, 1961-1962 (GAOR, 17th Session, Suppl. No. 2), p. 77; Report of the Security Council to the General Assembly, 1962-1963 (GAOR, 18th Session, Suppl. No. 2), pp. 5-6, 15-16, 18.
195/ For texts of relevant statements, see:
874th meeting: President (Ecuador), paras. 152-156; Argentina, paras. 134-136; Cuba*, paras. 6-11; United States, paras. 97-102;
875th meeting: Ceylon, paras. 29-32; Italy, paras. 6-10; Poland, paras. 55-58, 60; United Kingdom, para. 63;
876th meeting: USSR, paras. 77-85, 92-95, 97-102, 105-107.

cause of the membership of that Member in a regional body. On the other hand, it was maintained that it was juridically correct to solve through regional agencies those disputes which could be dealt with by regional action and only when such efforts failed would it be necessary to submit them to the Security Council.]

At the 874th meeting on 18 July 1960, the representative of Cuba* stated that the right of a State which was a Member of the United Nations to have recourse to the Security Council could not be questioned. Regional arrangements made under the terms of Article 52 of the Charter entailed rights which were optional rather than exclusive in character, and Member States could exercise whichever of those rights they chose. Cuba, therefore, was entirely within its rights in coming to the Security Council, and those who invoked Article 52 (2) of the Charter to support the non-juridical argument that "the cases which States members of the Organization of American States bring before the Security Council should be submitted to that Organization", ignored paragraph 4 of that Article, which stated that it "...in no way impairs the application of Articles 34 and 35". It was evident, therefore, that any American State which was a Member of the United Nations could choose between recourse to the Security Council or recourse to the Organization of American States in the event of a dispute or a situation. Otherwise, one was bound to reach the conclusion that the American States, upon forming a regional agency, had renounced their rights under the Charter. There could, however, be no question that what they had done "was to supplement their rights under the United Nations Charter with those which they enjoy under the regional agency". In support of this view he cited references made by the representatives of Ecuador and Uruguay concerning the case of Guatemala during the general debate which took place at the ninth session of the General Assembly in September and October 1954.[196]

The representative of the United States held the view that under the Inter-American Treaty of Reciprocal Assistance and the Charter of the Organization of American States, the American Republics had contracted to resolve their international differences with any other American State first of all through the Organization of American States. The causes of international tensions in the Caribbean had been under consideration by the Inter-American Peace Committee since the meeting of American Foreign Ministers in Santiago, Chile, in August 1959. The Council of the Organization of American States was currently meeting and was expected to call for a Foreign Ministers' meeting shortly. In these circumstances, the Council should take no action on the Cuban complaint, at least until the discussion by the Organization of American States had been completed. "The point is that it makes sense—and the Charter so indicates—to go to the regional organization first and to the United Nations as a place of last resort. There is no question ... of replacing the United Nations."

At the same meeting, the representatives of Argentina and Ecuador submitted a draft resolution[197] under which:

"The Security Council,

"...

"Taking into account the provisions of Articles 24, 33, 34, 35, 36, 52 and 103 of the Charter of the United Nations,

"Taking into account also articles 20 and 102 of the Charter of the Organization of American States of which both Cuba and the United States of America are members,

"...

"Noting that this situation is under consideration by the Organization of American States,

"1. Decides to adjourn the consideration of this question pending the receipt of a report from the Organization of American States;

"2. Invites the members of the Organization of American States to lend their assistance towards the achievement of a peaceful solution of the present situation in accordance with the purposes and principles of the Charter of the United Nations."

In introducing this draft resolution, the representative of Argentina noted that it had been debated whether countries belonging to the Organization of American States, a regional agency recognized under Article 52 of the Charter of the United Nations, were entitled to bring a dispute with another American State before the Security Council or should first have recourse to the regional machinery. He suggested that the Security Council could agree on the practical proposition that, since the regional organization had already taken cognizance of the matter, it was desirable to await the results of its action and ascertain its point of view. The proposal to adjourn consideration of the question pending a report of the Organization of American States was not designed to deny the Council's competence in the matter or even to settle the legal question of which organization should act first. Instead, what was suggested was a "noting" of the concrete circumstance that the regional organization was dealing with the question and a recognition of the fact that, for a better evaluation of the issues, it would be useful if the Council had before it the considerations at which the regional organization might arrive. Such preliminary measures, however, could not prevent the Council from making precautionary provisions to ensure that the existing situation did not deteriorate before the report of the Organization of American States was transmitted to it.

The President, speaking as the representative of Ecuador, maintained that it was juridically correct and politically advisable to try solving through regional bodies those disputes which could be dealt with by regional action. Moreover, there were certain problems for which regional action might be the best remedy "in that their submission to a world forum may result in complicating them". The Charter had

196/ GAOR, 9th Session, Plenary Meetings, 481st meeting, paras. 15, 16.

197/ S/4392, same text as S/4395, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 29-30.

made it clear that regional organizations in no way detracted from the powers of the Security Council as the supreme body responsible for the maintenance of international peace and security. That body, however, was also required to encourage the development of pacific settlement of local disputes through regional arrangements or agencies, which meant that when there was a case appropriate for regional action the Council should recommend that course, or at any rate seek a report from the regional body concerned before taking any decision itself. "Acting in this way, the Council, far from relinquishing its competence, is in fact exercising it." In the light of these considerations, it was clear that the provisions of the Charter regarding regional arrangements and agencies and the legal obligations assumed by States in establishing regional agencies

> "in no way invalidate the rights of these States to appeal to the Security Council if they consider that the defence of their rights and interests so requires, or that a specific situation or dispute, although appropriate for regional action, might endanger international peace and security. Any contrary interpretation would place States members of a regional organization in a position of capitis diminutio in the United Nations, which would be both deplorable and legally improper."

At the 875th meeting on 18 July 1960, the representative of Italy stated that the situation existing between Cuba and the United States which was being considered by the Organization of American States should be dealt with within that sphere. Since the Inter-American Commission on Methods for the Peaceful Solution of Conflicts was seized already of the matter, the Security Council should await the report of that Commission. Such a procedure was envisaged both by the regional arrangements entered into by the American States and by Article 54 of the United Nations Charter. The Security Council should be called in only when other avenues, as provided by regional arrangements, had been properly explored. By adopting the joint draft resolution, the Council would in no way shun its responsibility, but would reserve a final pronoucement, if need be, until such time as the means for a solution through regional arrangements had been explored, in accordance with the provisions of Article 52 of the Charter.

The representative of Ceylon said that there could be no doubt as to the right of the Cuban Government to come directly to the Security Council without first going to the regional organization; nor could there be any doubt that it had the right to choose whether it should put its case before the Security Council or before the regional body. The Articles of the Charter amply supported that contention. Moreover, it must be presumed that when the agenda was adopted without objection, the jurisdiction of the Security Council and the right of Cuba were both admitted. The purpose of the draft resolution submitted by Argentina and Ecuador was to make an attempt to employ the peaceful method of negotiation. It was not wrong for the Council, in the circumstances, to utilize the Organization of American States for that purpose. The proposal that the Council adjourn further consideration of the question could not be interpreted as an attempt to deny to Cuba the right to have its case fully discussed in the Council. The proposal was made only because there existed a forum where an attempt at reconciliation should be made with the assurance that if no settlement was reached the issue would be brought back to the Council for final adjudication. Such a meaning was implicit in operative paragraph 1 of the draft resolution.

The representative of Poland expressed the view that it was for the Council to decide the question brought before it by Cuba. The Charter had given it clear directives in that respect and, although Article 52 provided for the use of regional arrangements for dealing with such matters as were appropriate for regional action, paragraph 4 of that Article contained a specific reservation to the effect that such a provision in no way impaired the application of Articles 34 and 35. Besides, Article 34, together with the provisions of Article 52, meant that the Security Council could consider any case regardless of other existing machinery, organization or body outside the United Nations, leaving the choice of the appropriate machinery to the party directly concerned. In conclusion the representative stated:

> "It is obvious that the authors of the Charter found it necessary to safeguard the right of all States to seek assistance from the United Nations and its organs in situations which in their view might endanger the maintenance of international peace and security."

The representative of the United Kingdom maintained that the procedures which were laid down in the Charter of the Organization of American States for the peaceful settlement of disputes were in full harmony with Article 33 of the Charter of the United Nations, which referred specifically to "resort to regional agencies or arrangements" for the solution of disputes.[198] Quite apart from the legal obligations undertaken by Cuba in respect of the Organization of American States, it was desirable that regional organizations should be given the opportunity to settle disputes among their members before resort was had to the Security Council or other organs of the United Nations.

At the 876th meeting on 19 July 1960, the representative of the USSR stated that those trying to justify the proposal to transfer Cuba's complaint to the Organization of American States referred to Article 52 (2) of the United Nations Charter. That Article provided that Members of the United Nations entering into regional arrangements should make an effort to achieve peaceful settlements of local disputes through regional arrangements before referring them to the Security Council. But it was not possible to maintain that the situation which endangered world peace should be considered merely "local disputes" within the meaning of Article 52 (2) and, as such, should be dealt with by a regional agency. Moreover, Article 52 expressly stated that the obligation of members of regional agencies to make efforts to achieve a settlement of local disputes within the framework of regional arrangements before referring them to the Security Council in no way impaired the application

[198] See chapter X, Case 2.

of Articles 34 and 35 of the Charter. With reference to the proposal that the Council should adjourn consideration of the question pending receipt of a report from the Organization of American States, the representative observed that the adoption of that proposal would mean "a refusal by the Security Council to fulfil its obligation". The representative stated further that Cuba had raised the question of "aggressive action by the United States" in the Security Council and had not brought the matter up in the Organization of American States. In the light of this, he asked how it could be said that the Organization of American States had begun consideration of the matter. The fact was that the Organization of American States would decide to consider another matter, not the question raised by Cuba. The representative submitted to the two-Power draft resolution amendments to delete the sixth preambular paragraph and operative paragraph 1. He further proposed that in operative paragraph 2 the words "Organization of American States" should be replaced by "United Nations".

The USSR amendments were rejected by 2 votes in favour, and 8 against, with 1 abstention.[199]

The joint draft resolution submitted by Argentina and Ecuador was adopted by 9 votes in favour to none against, with 2 abstentions.[200]

CASE 25.[201] LETTER OF 5 SEPTEMBER 1960 FROM THE USSR (ACTION OF THE OAS RELATING TO THE DOMINICAN REPUBLIC): In connexion with a USSR draft resolution: not put to the vote. In connexion also with a joint draft resolution submitted by Argentina, Ecuador and the United States: voted upon and adopted on 9 September 1960

[*Note:* During the discussion it was contended that the decision of the Organization of American States concerning the Dominican Republic constituted enforcement action, and since, under Article 53 of the Charter, the Security Council was the only organ empowered to authorize the application of enforcement action by a regional agency, approval by the Council of that decision was necessary so as to give it legal force and render it more effective. On the other hand, it was maintained that enforcement action would require Council authorization only when it involved the use of force as provided for in Article 42 of the Charter and as no use of force had been contemplated in the Organization of American States decision, no authorization of the Council was necessary.]

At the 893rd meeting on 8 September 1960, the representative of the USSR stated that his Government regarded as proper the resolution adopted at the Meeting of Consultation of Ministers for Foreign Affairs of the American States which condemned the aggressive actions of the "Trujillo regime" against the Republic of Venezuela. "Similarly, the Members of the United Nations cannot fail to support the decision of the Organization of American States as to the necessity of taking enforcement action—sanctions—against the Government of the Dominican dictator." The application of such enforcement action was fully in accord with Articles 39 and 41 of the United Nations Charter. Moreover, Article 53 of the Charter provided that the Security Council was "the only organ empowered to authorize the application of enforcement action by regional organizations against any State. Without authorization from the Security Council, the taking of enforcement action by regional agencies would be contrary to the Charter of the United Nations." The USSR representative submitted a draft resolution[202] under which the Security Council, being guided by Article 53 of the Charter, would approve the resolution of the Meeting of Consultation of Ministers for Foreign Affairs of the American States, dated 20 August 1960.

At the same meeting, a joint draft resolution[203] was submitted by Argentina, Ecuador and the United States under which:

"The Security Council,

"Having received the report from the Secretary-General of the Organization of American States transmitting the Final Act of the Sixth Meeting of Consultation of Ministers of Foreign Affairs of the American States (S/4476),

"Takes note of that report and especially of resolution I approved at the aforesaid Meeting, whereby agreement was reached on the application of measures regarding the Dominican Republic."

In introducing this draft resolution, the representative of Argentina observed that the USSR request brought up in the Council for the first time the question of interpretation of Article 53 of the Charter in connexion with the steps taken by regional agencies. The request implied that under Article 53 of the Charter the Council was competent to approve or annul and revise measures taken by the Organization of American States. There were weighty reasons to support the argument that measures taken regionally would be subject to Security Council ratification only if they called for the use of armed force. In the opinion of the Argentine delegation, the decisions taken by the Organization of American States were fully within its power and, in transmitting that information to the Council for its notification, the Organization had fulfilled its obligation to the Council. What the Council might do was to take note officially of what the regional agency had done.

"This would be a complete demonstration of the co-ordination which should exist between the regional agency and the international Organization. It would also constitute one more proof of the concern which the world Organization—and especially this body, the Security Council—ought to show for problems that have a bearing on international peace and security in every part of the globe."

199/ 876th meeting: para. 127.

200/ 876th meeting: para. 128.

201/ For texts of relevant statements, see:
893rd meeting: Argentina, paras. 28-43; Ecuador, paras. 55-67; France, paras. 86-90; USSR, paras. 18, 22-25; United Kingdom, paras. 96, 97; United States, paras. 46-51; Venezuela*, paras. 76-81;
894th meeting: President (Italy), paras. 44, 45, 47; Ceylon, paras. 3, 8-20; Poland, paras. 30-34; USSR, paras. 55, 70, 74.

202/ S/4481/Rev.1, 893rd meeting: para. 25.

203/ S/4484, same text as S/4491, O.R., 15th year, Suppl. for July-Sept. 1960, p. 145.

The representative of the United States remarked that, in accordance with Article 54 of the Charter, the action of the Organization of American States had been reported to the Security Council by the Secretary-General of that organization on 26 August 1960 so that the Security Council, in the words of the resolution, would have "full information concerning the measures agreed upon in this resolution". It was significant that no member of the Organization of American States had sought authorization of the Council under Article 53 for the steps taken in connexion with that resolution. In specifically deciding that the resolution should be transmitted to the Security Council only for its full information, the Foreign Ministers were clearly expressing their view that this action required only notification to the United Nations under Article 54. It was, therefore, entirely proper for the Security Council, in that instance, to take note of the resolution adopted by the Organization of American States.

The representative of Ecuador stated that when the Ministers for Foreign Affairs approved the resolution concerning the Dominican Republic, they authorized the Secretary-General of the Organization of American States to transmit to the Security Council full information concerning the measures agreed upon. He maintained that the resolution of the Meeting of Consultation had become effective without authorization from the Security Council and had already been carried out almost in its entirety by member States of the Organization of American States. He stated further that the provisions of the Charter, regarding the Security Council's powers and the competence of regional agencies for dealing with matters relating to the maintenance of international peace and security as were appropriate for regional action, should be considered as a whole:

> "for they establish a delicate system of balances, which might be upset by any attempt to apply a particular provision in isolation, on the basis of some oversimplified and literal interpretation which failed to take into account the spirit of the Charter as a whole and the entire machinery whereby it operates so far as the relations between United Nations bodies and the regional agencies are concerned.
>
> "In this delicate matter, we think it essential to pursue a line of conduct which will protect and guarantee the autonomy, the individuality, the structure and the proper and effective working of regional agencies, so that they may deal with situations and disputes which are appropriate for regional action—provided that there is no undermining of the authority of the Security Council or of the Member States' right to appeal to it whenever they consider that the defence of their rights or interests requires such an appeal, or that a particular situation or dispute, even if appropriate for regional action, might endanger international peace and security. We think that the Security Council should not base its decisions in this matter entirely on one provision of Article 53. If we examine this Article in the light of the other provisions and of the spirit of the Charter, we find that it is far from having the clarity which would justify its use in the sense indicated both in the Soviet Union's letter and the Soviet draft resolution."

Several questions might be asked about the scope of paragraph 1 of Article 53 for which there had been no categorical reply either in the San Francisco discussions, or in the Council's own decisions, or in the context of the relevant Chapters of the Charter. It was not clear, for example, whether the enforcement action for which the Security Council's authorization was necessary was that which called for the use of armed force, as provided for in Article 42. Nor was it clear whether the second sentence of Article 53 applied only to action which a regional agency might take in a case which the Security Council had entrusted to it from the beginning. Moreover, the question might be asked whether the Security Council's authorization was necessary only for action which, like the use of force, would be in violation of international law if it were taken without the Council's authorization, but not for action like the breaking off of diplomatic relations which was within the exclusive right of a sovereign State. In the light of such questions, Article 53 could not, and should not, be used to make a regional agency's action rigidly dependent upon authorization by the Security Council. On the contrary, the relationship between the Council and regional agencies should be so flexible as to permit those agencies to take effective action for the maintenance of international peace and security according to regional conditions and without necessarily bringing regional problems before the world forum. In the present case, where the Government concerned opted for regional action, the proper course should be for the Council to take formal note of the approved resolution for the application of certain measures in regard to the Dominican Republic.

At the same meeting the representative of Venezuela*, having been invited to participate in the discussion, stated that the scope of the measures provided for in the decision of the Organization of American States did not fall within the concept of enforcement action referred to in Article 53 of the Charter. The authorization of the Council would be required only in the case of decisions of regional agencies the implementation of which would involve the use of force, which was not the case with the decision of the American States. The representative maintained further that interpretation of Article 53, in terms of the USSR draft resolution, would create serious obstacles to the efficient functioning of regional organizations, since it would imply recognition of the need for authorization by the Security Council in order to complete decisions which were valid in themselves. On the other hand, the draft resolution of Argentina, Ecuador and the United States was more in accordance with law.

The representative of France observed that by communicating its decision to the Council the Organization of American States had acted in conformity with Article 54 of the Charter and had followed the procedure that had been generally practised by that Organization. "However, in the Security Council's fifteen years of activity it has never ... appeared necessary for the Council to take a positive decision with regard to communications of that kind." He noted that it was also the first time that Article 53 had been invoked for the purpose of convening a meeting and approving a decision taken by another col-

lective organization. However, the arguments underlying Article 53 "have been set forth on many occasions, and especially in connexion with the question of Guatemala in 1954".[204] Nevertheless, though the regional organization had a competence recognized by the United Nations Charter and should be able to exercise it fully, it was impossible to exclude the competence of the United Nations by invoking an absolute priority for the regional organization. In this regard, the Council could not "decide in favour of an exclusive regional competence, nor can we say that the United Nations is necessarily competent in all cases". It must decide in each particular case whether its intervention could in any way promote the purposes and principles of the Charter. To accept the USSR's argument would amount to recognizing that Article 53 was applicable to the case before the Council. However,

> "Neither the United Nations Charter nor the work done by this Organization make it possible to establish with certainty the scope and content of the term 'enforcement action' as it should be understood within the meaning of Article 53 of the Charter.
>
> "Moreover, to attempt to apply Article 53 to this case would be self-contradictory, since the provision invoked involves the authorization of the Security Council and it is quite clear that this authorization must be given in advance."

At the same meeting, the representative of the United Kingdom stated that the Charter did not define the term "enforcement action". The measures which were decided upon by the Organization of American States with regard to the Dominican Republic were acts of policy perfectly within the competence of any sovereign State and, therefore, were within the competence of the OAS members acting collectively. When Article 53 referred to "enforcement action", what must have been contemplated was the exercise of force in a manner which would not normally be legitimate for any State or group of States except under the authority of a Security Council resolution. Other pacifying actions under regional arrangements as envisaged in Chapter VIII of the Charter which did not come into this category had to be brought to the attention of the Security Council under Article 54. That obligation had been adequately fulfilled by the report already made to the Council by the Organization of American States.

At the 894th meeting on 9 September 1960, the representative of Ceylon observed that the Organization of American States was a regional agency coming legitimately within the provisions of Chapter VIII of the Charter and was recognized by its members themselves as conforming to the provisions of the Charter. It had always followed the procedures indicated in Article 54 and kept the Security Council informed of action taken or contemplated by the organization for the maintenance of international peace and security. He stated further that the measures adopted with regard to the Dominican Republic did not involve the use of armed force and had been employed not by the Council acting on its own initiative, but by a regional agency as recognized by Article 52 of the Charter. There were valid arguments to support the view that the enforcement action referred to in Article 53 applied to the measures enumerated in Article 41 as well as Article 42; however, arguments might also be used in support of the contention that the enforcement action referred to in Article 53 was restricted to the series of measures referred to in Article 42, namely measures involving the use of armed force. In either case, there was great difficulty in the interpretation of Article 53. He was of the opinion that Article 53, when referring to enforcement action, whether taken by the Security Council through the utilization of the regional organization or by the regional agency with the authority of the Security Council, meant both kinds of action contemplated in Articles 41 and 42.

The representative stated further that the issue in question was to a large extent within the competence of the members of the regional group. "The Security Council in such cases usually utilizes the regional agency and generally is influenced by the views expressed by the regional agency. I therefore think that we should be guided by their opinion and their advice." Therefore, it might be preferable to accept the viewpoint of Argentina, Ecuador, Venezuela and the United States as countries immediately concerned.

The representative of Poland, while considering that a regional organization had the right to deal with matters affecting the maintenance of international peace and security in the area covered by the regional arrrangement, expressed the opinion that the Charter gave the ultimate responsibility and rights in that respect to the Security Council. The question of the relationship between regional arrangements and the Security Council in such matters was covered in Chapter VIII of the Charter, and particularly in Article 53. Although some delegations had expressed doubt as to the applicability of Article 53 of the Charter to the enforcement action approved by the Organization of American States, "no one had questioned the ultimate responsibility of the Security Council in these matters". The application of Article 53 would not limit the rights of the Organization of American States any more than they were already limited by Chapter VIII, regardless of the decision taken by the Security Council on the current issue: "The letter and the spirit of Chapter VIII in general, and of Article 53 in particular, clearly define the duties of the Security Council, which cannot be abrogated or disposed of." The representative could not subscribe to the opinion that the term "enforcement action" referred only to the use of military force. "The right to use armed forces in action with respect to a threat to the peace is given solely to the Security Council, according to the provisions of Chapter VII of the Charter." Nothing in the Charter gave that right to any kind of regional arrangement or organization. Consequently, the enforcement action referred to in Article 53 meant all sanctions short of military action. Sanctions or enforcement measures of an economic or political character could be initiated by

[204] See Repertoire of the Practice of the Security Council, Supplement 1952-1955, chapter XII, Case 4, pp. 164-168.

the Security Council itself as provided for in Article 41 of the Charter or by regional arrangements as provided in Article 52. "In the latter case, these sanctions—or, as they are called in the Charter, enforcement actions—have to have the approval of the Security Council."

The President, speaking as the representative of Italy, observed that the Organization of American States kept the Security Council fully informed of the measures agreed upon. Such a procedure appeared to be not only in full conformity with Article 54 of the Charter but also, in the case under consideration, to be very proper and adequate in order to achieve necessary co-ordination between the two organizational levels. It was not proper to engage the Council in a discussion on the interpretation of Article 53 since such a discussion should have a wider scope than the current one. However, there were doubts as to the applicability of Article 53 to the case being considered because of the nature of the measures adopted by the Organization of American States. The sphere of applicability of this Article should be considered as limited "to those measures which could not be legitimately adopted by any State except on the basis of a Security Council resolution".

The representative of the USSR maintained that Article 53 of the Charter provided for the Security Council's utilization of those arrangements or agencies for enforcement action aimed at removing threats to the peace and security and, although some representatives had maintained that the measures adopted by the Organization of American States were not in the nature of enforcement action and hence not falling within the scope of Article 53 of the Charter, those measures were among the ones enumerated in Article 41 of the Charter. They were enforcement measures not involving the use of armed force, which could be employed only by the Security Council in the event of threats to the peace, breaches of the peace or acts of aggression. Arguments that the Organization of American States had fulfilled its obligations under Article 54 by keeping the Security Council informed were designed to assign to the Security Council the role of passive observer in matters relating to the maintenance of international peace and security contrary to the Charter, which conferred on the Council the primary responsibility for the maintenance of international peace and security. Approval, in accordance with Article 53 of the Charter, by the Security Council of the Organization of American States resolution of 20 August 1960 would not only give legal force to the resolution but would also render it more effective, since the whole United Nations would be supporting the decision of the Organization of American States aimed at maintaining international peace and security.

At the 895th meeting on 9 September 1960, the draft resolution sponsored by Argentina, Ecuador and the United States was adopted by 9 votes in favour to none against, with 2 abstentions.[205] The representative of the USSR stated that he would not press for a vote on the USSR draft resolution.[206]

CASE 26.[207] COMPLAINT BY CUBA (LETTER OF 22 FEBRUARY 1962): In connexion with a request from the Government of Cuba calling for inclusion of the item in the agenda: voted upon and not adopted on 27 February 1962

[*Note:* In a letter[208] dated 22 February 1962, the Government of Cuba stated that, at the instance of the United States, the Organization of American States had adopted enforcement measures against Cuba in violation of the United Nations Charter in general, and in particular in violation of Article 53. It thereby requested that the Security Council adopt the measures necessary to put an end to the implementation of those illegal decisions and thus to prevent the development of a situation which could endanger international peace and security. In the discussion on the adoption of the agenda,[209] it was contended that the question of the relationship of the Security Council to action taken by regional agencies had already been fully considered by the Council in September 1960. Hence there was no reason to consider the issue again.]

At the 991st meeting on 27 February 1962, the representatives of the United Kingdom and Chile stated that the Council had given full consideration to the issue of the legal relationship between the Organization of American States and the United Nations in respect of decisions of the regional organization when it discussed the case of the Dominican Republic in September 1960.[210]

The representative of the USSR observed that in 1960 the issue was raised in relation to action taken against the Dominican Republic and thus was not the same thing as the case under discussion. In this instance, the decisions of the Organization of American States were directly at variance with the basic provisions of the Charter. Citing the provisions of Article 53 of the Charter, the representative maintained that the measures recently adopted by the OAS against Cuba fell within the meaning of Article 41 and were thus collective actions by certain States aimed at compelling another State, without the use of armed force, to follow a certain course of action against the will of that State. However, the decision in the matter of employing enforcement measures was the exclusive prerogative of the Security Council. If the Council failed to nullify the unlawful decisions taken against Cuba, then in the future similar actions might be taken against other countries at a regional meeting, usurping the prerogatives of the Security Council.

The representative of the United Arab Republic, quoting from the introduction to the ninth annual report of the Secretary-General on the work of the Organization,[211] recalled the observations of the

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[205] 895th meeting: para. 18.

[206] 895th meeting: para. 19.

[207] For texts of relevant statements, see:

991st meeting: President (United States), paras. 97-100; Chile, paras. 18, 19; China, para. 91; Ghana, para. 24; Romania, paras. 78, 79; USSR, paras. 30-32, 46-48, 52, 55-57; United Arab Republic, paras. 63, 64; United Kingdom, paras. 6-11; Venezuela, para. 68.

[208] S/5080, O.R., 17th year, Suppl. for Jan.-March 1962, pp. 82-84.

[209] See chapter II, Case 7.

[210] See Case 25.

[211] GAOR, Ninth Session, Suppl. No. 1 (A/2663), p. xi.

Secretary-General on the relationship of regional organizations to the United Nations:

"...the importance of regional arrangements in the maintenance of peace is fully recognized in the Charter and the appropriate use of such arrangements is encouraged. But in those cases where resort to such arrangements is chosen in the first instance, that choice should not be permitted to cast any doubt on the ultimate responsibility of the United Nations. Similarly, a policy giving full scope to the proper role of regional agencies can and should at the same time fully preserve the right of a Member nation to a hearing under the Charter."

The representative of Venezuela stated that in 1960, when the Council had been discussing a decision by the Organization of American States to impose sanctions on the Dominican Republic, his delegation maintained that Council approval was necessary only in cases of measures involving the use of force. That position had not changed.

The representative of Romania, noting that Article 52 provided that activities of regional agencies must be consistent "with the Purposes and Principles of the United Nations", stated that Article 53 of the Charter explicitly forbade regional agencies to take enforcement action, yet that was exactly what the Eighth Meeting of Consultation had done by its decisions, "thus usurping the place of the Security Council and flagrantly violating the provisions of the Charter".

The representative of China asserted that the Organization of American States was fully competent under Article 52 of the Charter to deal with regional matters relating to the maintenance of international peace and security.

The President, speaking as the representative of the United States, declared that the question of Security Council approval of such decisions as those taken by the Organization of American States at Punta del Este was thoroughly discussed in 1960 in relation to the case concerning the Dominican Republic, when all the other American States had rejected the contention that those decisions required the authorization of the Security Council under Article 53 of the Charter, and when no member of the Organization of American States sought any authorization of the Council under Article 53 for the steps taken in connexion with that resolution. In specifically deciding that the resolution should be transmitted to the Council only for its full information, the Foreign Ministers of the Organization of American States were clearly expressing their view that the decisions required only notification to the United Nations under Article 54. Moreover, in subsequently adopting a resolution by which the Council simply "took note" of the decisions which the Organization of American States had taken, the Council thereby rejected the Soviet contention that decisions of that sort required Security Council authorization. Consequently, there was no reason to re-open an issue which had been so thoroughly considered and so decisively disposed of.

At the 991st meeting on 27 February 1962, the agenda was not adopted. There were 4 votes in favour, none against, with 7 abstentions. [212]

[212] 991st meeting: para. 144.

CASE 27. [213] LETTER OF 8 MARCH 1962 FROM THE REPRESENTATIVE OF CUBA CONCERNING THE PUNTA DEL ESTE DECISIONS: In connexion with the Cuban draft resolution under which the Security Council would request the International Court of Justice, in accordance with Article 96 of the Charter, to give an advisory opinion on certain questions resulting from the adoption of certain measures by the Organization of American States: voted upon and rejected on 23 March 1962

[*Note:* During the discussion of the Cuban complaint it was contended that the measures adopted at Punta del Este were unlawful because they were of the nature of enforcement action which, under Article 53 of the Charter, required the authorization of the Security Council. On the other hand, it was argued that the action against Cuba was not enforcement action but regional action fully within the competence of the Organization of American States in connexion with which Article 53 could not be invoked. In notifying the Council of its decision, the Organization of American States had fulfilled its obligation to the Council under Article 54.]

At the 992nd meeting on 14 March 1963, the representative of Cuba* stated that at Punta del Este (Uruguay) illegal collective measures were adopted [214] against Cuba in violation of regional instruments and of the principles of the United Nations Charter, and had been implemented without the approval of the Security Council, which was required for such measures. Under Article 52 of the Charter of the United Nations, the Organization of American States was a regional agency whose activities had to be consistent with the purposes and principles of the Charter, and the Security Council was responsible for ensuring that those purposes and principles should prevail. At the Meeting of Consultation of the Organization of American States at Punta del Este,

"not only have resolutions been adopted which are in conflict with its principles but also such resolutions have been and are being implemented and it is sought to extend these coercive measures of a collective nature to other regions of the world, without the approval of the Security Council and in direct violation of Article 53 of the Charter".

In the case before it, the Security Council was obliged to ensure that the principles of the Charter were respected by regional agencies. To this end the representative recommended that as a provisional measure [215] the Council suspend the measures adopted by the Organization of American States and request an advisory opinion of the International Court of

[213] For texts of relevant statements, see:
992nd meeting: Cuba*, paras. 9, 72, 74, 75, 78, 79, 99, 103;
993rd meeting: USSR, paras. 32, 33, 41, 42-53, 150; United States, paras. 79, 91, 93, 94, 99, 100, 102, 113, 117-121;
994th meeting: Chile, paras. 47-53, 61, 64-68, 69, 73, 74; Cuba, para. 9;
995th meeting: China, paras. 20-26; France, paras. 42-60; United Kingdom, paras. 15-18;
996th meeting: Ghana, paras. 72, 74, 75, 88, 90; Ireland, paras. 54, 56, 57, 60-65; Romania, paras. 8, 9, 12, 13, 15-23, 26-28;
997th meeting: President (Venezuela), paras. 15-26; Cuba, paras. 48-53;
998th meeting: Ghana, paras. 78-80; USSR, paras. 33, 39-45; United States, para. 69.

[214] S/5075, O.R., 17th year, Suppl. for Jan.-March 1962, pp. 63-78.

[215] See also chapter XI, Case 2.

Justice on the legal questions submitted by his Government.

At the 993rd meeting on 15 March 1962, the representative of the USSR stated that enforcement measures had been taken by the Organization of American States against Cuba, despite the fact that that regional organization was not empowered to do so without special authorization by the Security Council. The decision to exclude Cuba from participation in the inter-American system on the ground of incompatibility of its social system and the decisions to cease trade with Cuba were nothing else but enforcement actions against Cuba.

The representative pointed out that Article 53 of the Charter explicitly stated that "no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council", and it was precisely that provision of the Charter which had been grossly violated by the Organization of American States when it had acted without consulting the Security Council. The enforcement measures undertaken with regard to Cuba not only went beyond the competence of the regional organization but were also a gross violation of the Charter as a whole, for under Article 52 the activities of regional organizations "must be subordinated" to the principles of the Charter.

The representative of the United States, after reading the texts of the resolutions adopted at Punta del Este, stated that aggression against the Organization of American States by the Cuban regime had caused its exclusion from the Organization of American States. Such "self-exclusion", caused by Cuba's aggressive acts against members of the OAS, was not "enforcement action" within the meaning of Article 53 of the Charter.

> "Security Council 'authorization' cannot be required for regional action—in this case exclusion from participation in a regional organization—as to matters which the Security Council itself cannot possibly act upon, and which are solely within the competence of the regional organization itself."

The Organization of American States was a regional organization within the meaning of Article 52 (1) of the United Nations Charter. The Council could not pretend to determine which Government could or could not participate in such regional agencies like the Organization of American States, the League of Arab States, or some future African or Asian regional agency. The analysis of the nine resolutions had revealed nothing resembling a violation of the United Nations Charter, and nothing was involved which would justify the Council in invoking its Article 53. The responsibilities of the Organization of American States were satisfied when it reported the decisions to the Council under Article 54 of the Charter. The representative pointed out that on a previous occasion,[216] contrary to the USSR contentions that the resolution had constituted enforcement action under Article 53 of the Charter, the Council had limited its action to "noting", not authorizing or approving or disapproving, the action of the Organization of American States which had been reported to it under Article 54. That decision had been that measures even more far-reaching than those before the Council did not involve "enforcement action" within the meaning of Article 53, and therefore did not require Security Council authorization.

At the 994th meeting on 16 March 1962, the representative of Cuba observed that Article 52 of the Charter conferred upon the Council the task of ensuring that regional agencies did not make agreements or engage in activities that were inconsistent with the purposes and principles of the United Nations.

The representative of Chile stated that it was fully in accordance with the principles of the Charter for a regional organization to adopt measures, and when transmitted to the Council these decisions did not require an endorsement by the Council. The Council should limit itself to taking note of them to the extent that they were in conformity with Article 53 of the Charter and without prejudice to the Council's right to discuss any aspect of the question. It would be most disturbing

> "if a precedent were set for the interference of the Security Council, where the five great Powers have the right of veto, in the affairs of regional organizations which are entitled to establish themselves by agreement and to impose obligations upon their members, in order to advance regional interests or the principles which determine the attitude of such regional agencies".

In the view of the representative, the term "enforcement action" as used in Article 53 was a major source of controversy. Under Articles 41 and 42, the Charter made a distinction between two types of measures: those which involved the use of armed force and those which did not. Articles 44 and 45 referred explicitly to the use of force, while Article 45 related "international enforcement action" directly to the employment of armed forces. "Undoubtedly, therefore, the purpose of Article 53 is to prohibit the 'use of armed force'—or physical violence—by regional organizations, without the autorization of the Security Council, with the single exception of individual or collective self-defence." The expulsion of Cuba from the inter-American system and the resolution on economic relations did not amount to enforcement action or the use of force, but fell exclusively within the internal jurisdiction of the regional body. Consequently, it was not appropriate that the Council should apply to the International Court of Justice for an advisory opinion.

At the 995th meeting on 20 March 1962, the President (Venezuela) drew attention to a letter dated 19 March 1962 from the representative of Cuba, transmitting a draft resolution[217] whereby the Security Council would request the International Court to give an advisory opinion on a number of questions.

The representative of the United Kingdom expressed the view that there was no provision in the Charter which would justify a claim that the United Nations would assume responsibility for ruling upon the membership or qualifications of more limited groups. On the question of the interpretation of Chapter VIII of the Charter, he pointed out that

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216/ See Case 25.

217/ S/5095, O.R., 17th year, Suppl. for Jan.-March 1962, pp. 96-97; 995th meeting: para. 3. For the terms of the draft resolution, see also chapter VIII, p. 200.

during the Council's discussion of the Dominican case his delegation had maintained that when Article 53 referred to "enforcement action" it contemplated the exercise of force in a manner which would not normally be legitimate for any State or group of States except under the authority of a Security Council resolution. That position remained unchanged. Article 54 specified that "activities ... by regional agencies for the maintenance of international peace and security" should be reported to the Security Council. Taking this Article together with those which preceded it, it was clear that such activities included any measures falling short of the use of force and, therefore, that it was "this Article, and not Article 53, which is applicable to all measures of this kind".

At the same meeting, the representative of China stated that the Punta del Este decisions related to matters concerning the maintenance of international peace and security appropriate for regional action, and were therefore fully consistent with the purposes and principles of the Charter. The Punta del Este meeting was not held at the initiative of the Security Council nor would its decisions create obligations for Members of the United Nations not belonging to the regional organization. Therefore, Article 53 could not be made applicable to those decisions.

The representative of France stated that the powers of the Security Council with regard to the decision of regional organizations were stated by the Council in September 1960 when it discussed the question of the Dominican Republic and it might be assumed that that position was implicitly confirmed on 27 February 1962, when the Council decided not to adopt the agenda.[218/] If the Council were now to adopt the Cuban proposal to call for the provisional suspension of the decisions taken at Punta del Este, that would constitute an admission that the action taken at Punta del Este came within the scope of Article 53 of the Charter of the United Nations. In affirming his position of September 1960 in connexion with the Dominican case, the representative said that his delegation considered that Article 53 did not apply and that the action taken by the Meeting of Consultation was a matter of collective protection justified under Article 51 of the Charter. The only obligation incumbent upon the Organization of American States under Article 54 of the Charter was to keep the Security Council fully informed of activities undertaken or in contemplation for the maintenance of international peace and security.

At the 996th meeting on 21 March 1962, the representative of Romania stated that one of the basic obligations undertaken under Article 52 of the Charter which related directly to regional organizations was the obligation to make every effort to achieve a peaceful settlement of local disputes. While Members were required to make every effort on the international and regional planes to settle conflicts peacefully, the United Nations, and in particular the Security Council, did not empower Member States to apply sanctions for that purpose. As a body bearing the "primary responsibility" for international peace and security, the Security Council reserved to itself the prerogatives which were necessary if it was to fulfil its functions, including those provided for in Article 53 of the Charter. The resolution under which Cuba had been excluded from the Organization of American States flagrantly violated the provisions of Articles 2 and 53 of the Charter since it constituted a political sanction against a Member State without prior authorization of the Security Council. The resolution on economic relations also involved enforcement action which under Article 53 was reserved for the Security Council. For these reasons the representative failed to see how the resolutions adopted at Punta del Este could be reconciled with the provisions of Articles 1, 2, 41, 52, 53 and 103 of the Charter.

The representative of Ireland stated that the Council in deciding the question before it should be careful to avoid any conclusion which might appear to undermine or to challenge the principle of regional organization. The framers of the Charter clearly realized that the role of regional organizations "must always be essentially a subordinate one" and their activities should not be allowed to weaken the position or usurp the authority of the United Nations. That was why Article 52 of the Charter required that the activities of regional arrangements and agencies must be consistent with the purposes and principles of the Charter. That was also why Article 53 of the Charter stipulated that no enforcement action could be taken under regional arrangements or by regional agencies without the authorization of the Security Council. The representative pointed out that, in addition to the question concerning the legality of the Punta del Este decisions, Cuba had raised questions relating to the conformity of certain decisions with the principles of the United Nations Charter. However, those questions were essentially questions for determination by the members of the Organization of American States iteself. The Security Council would be invading the autonomy of the Organization of American States if it were to constitute itself a court of review in respect of the Organization's interpretation of its own Charter and to seek the advisory opinion of the International Court of Justice on the Organization's constitutional decisions in that regard. The right to determine what States should constitute its membership was the most elementary right of any regional organization and to challenge that right was to challenge the principle of regional organization itself. The representative stated further that his delegation supported the view that the words "enforcement action" in Article 53 were intended to denote the taking of armed action or measures of a military or similar nature.

The representative of Ghana was of the opinion that the regional organizations as recognized by the Charter had certain authority with reference to problems which did not transcend the regional scope provided that their activities were in conformity with the provisions of the Charter. Mutual relations between such organizations and the United Nations should be so flexible as to permit them to take effective action, within the framework and spirit of the Charter, on matters appropriate for regional action. However, such flexibility could not be extended to the point of undermining the Security Council's authority or of detracting from any Member's right to appeal to the Council if that Member considered a

218/ See chapter II, Case 7, and in this chapter, Case 26.

particular situation, even if appropriate for regional action, was a threat to international peace and security, or that the defence of its rights or interests in the situation required such an appeal. The representative stated further that the meaning of "enforcement action" as used in the Charter was wanting in clarity. Nor could the scope and content of the term be established with certainty from the practice and jurisprudence of the organs of the United Nations and, moreover, no clear guidance was available on the question as to whether or not Security Council authorization was necessary only for actions involving armed force as laid down in Article 42. There still remained grounds for reasonable doubt as to the meaning of "enforcement action" under Article 53, and ex hypothesi as to the consistency of some of the decisions taken at Punta del Este with the provisions of the Charter. Those doubts constituted the strongest argument in favour of the Cuban request that the Council ask for an advisory opinion. While concurring with other members as to the danger of exposing the legitimate activities of regional agencies to the Security Council, the clear limitations imposed by the Charter on the competence of regional agencies under Articles 52, 53 and 103 could not be ignored.

At the 997th meeting on 22 March 1962, the President, speaking as the representative of Venezuela, stated that regional organizations

> "must have their own procedures, which are determined by the special circumstances characteristic of each region. Regional organizations must adapt themselves to these special circumstances, and must be guided by them in establishing their own rules. Provided that these rules do not violate the principles of the Charter of the United Nations, they cannot result in any incompatibility between regional organizations and the world Organization."

The representative pointed out that there was no provision in the Charter which required the regional organization to admit to membership a State which denies the fundamental principles of the organization and to retain such a State as a member. It was only in connexion with the resolution on economic relations with Cuba "in which certain measures are taken against the Cuban Government", that the Council had to decide whether the action could be regarded as enforcement action within the meaning of Article 53 of the Charter. However, his delegation's view on that matter had already been given in the Dominican case. It was stated then that it was the Venezuelan Government's view that the authorization of the Security Council would be required only in the case of decisions of regional agencies, the implementation of which would involve the use of force, which was not the case with the resolution of the American States.

The representative of Cuba stated that what Cuba was claiming in interpreting Articles 52 and 53 of the Charter, was that exceptional and extraordinary measures such as enforcement action should not be taken without the Council's approval, or in violation of regional instruments and, specifically, of principles of the United Nations Charter.

At the 998th meeting on 23 March 1962, the representative of the USSR, with a reference to the "so-called Dominican precedent" to which many members of the Council had referred, restated his delegation's position that the Security Council's "taking note of the decision of the Organization of American States to apply enforcement measures against the Dominican Republic meant nothing more or less than its approval ... of that decision". That was the precedent that was established and could be applied in a positive way to the question before the Council, "the taking of enforcement measures by the same Organization of American States against another Latin American country". By referring legal questions to the International Court of Justice the Council would not be repealing or altering its decision of 1960. It was necessary, however, to decide the question of what, in the light of the Charter, was meant by Article 53 which spoke of enforcement action.

The representative of the United States reminded the Council that the whole purpose of the USSR in bringing the Dominican case before the Council had been to insist that the Security Council's approval under Article 53 of the Charter was required. However, the Council had refused to act under Article 53.

The representative of Ghana requested [219] a separate vote on operative paragraph 3 of the Cuban draft resolution, put to the vote at the request of the representative of the USSR, [220] which read: "Can the expression 'enforcement action' in Article 53 of the United Nations Charter be considered to include the measures provided for in Article 41 of the United Nations Charter? Is the list of these measures in Article 41 exhaustive?"

The paragraph was rejected by 4 votes in favour and 7 against. [221]

The draft resolution as amended by the deletion of paragraph 3 was rejected by 2 votes in favour and 7 against, with 1 abstention. Ghana did not participate in the vote. [222]

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[219] 998th meeting: para. 78.

[220] 998th meeting: para. 3.

[221] 998th meeting: para. 113.

[222] 998th meeting: para. 158.

Part VI

CONSIDERATION OF THE PROVISIONS OF CHAPTER XII OF THE CHARTER

Chapter XII of the Charter: International Trusteeship System

"...

"ARTICLE 76

"The basic objectives of the trusteeship system, in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be:

"a. to further international peace and security;

"b. to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement;

"c. to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world; and

"d. to ensure equal treatment in social, economic, and commercial matters for all Members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80.

"...

"ARTICLE 84

"It shall be the duty of the administering authority to ensure that the trust territory shall play its part in the maintenance of international peace and security. To this end the administering authority may make use of volunteer forces, facilities, and assistance from the trust territory in carrying out the obligations towards the Security Council undertaken in this regard by the administering authority, as well as for local defense and the maintenance of law and order within the trust territory.

"..."

NOTE

In a case history contained in this part, it was contended that a Government in its capacity as Administering Authority for a Trust Territory had violated provisions of a Trusteeship Agreement. No explicit or implied references to any Article of the Charter were made during the discussion. However, the statements made in the debate could be deemed as having a bearing on the provisions of Articles 76 and 84 of the Charter.

CASE 28.[223] SITUATION IN THE REPUBLIC OF THE CONGO: In connexion with the joint draft resolution submitted by Ceylon, Liberia and the United Arab Republic: voted upon and not adopted on 14 January 1961

[*Note:* In a letter[224] dated 7 January 1961, the representative of the USSR requested that a meeting of the Security Council be convened in order to examine the serious threat to peace and security created as a result of the acts of Belgian aggression against the Congo and the violation of the international status of the United Nations Trust Territory of Ruanda-Urundi. During the proceedings in the Council, observations were made as to whether the provisions of the Trusteeship Agreement for the Trust Territory of Ruanda-Urundi were or were not violated by the Administering Authority. A draft resolution which would have called on the Government of Belgium to observe its obligations under the Trusteeship Agreement, and would have recommended the General Assembly to consider the action taken by the Government of Belgium as a violation of the Trusteeship Agreement, was not adopted.]

At the 924th meeting on 12 January 1961, the representative of the USSR stated that the gravity of the situation resulting from events on the frontiers between the Congo and Ruanda-Urundi was increased by the fact that Belgium's actions constituted an infringement of the Trusteeship Agreement for the Territory of Ruanda-Urundi concluded between Belgium and the United Nations and of the resolution of the General Assembly 1579 (XV) concerning the future of Ruanda-Urundi. The Security Council should,

[223] For texts of relevant statements, see:
924th meeting: Belgium*, paras. 47, 51, 57; USSR, paras. 12-14, 20, 37;
925th meeting: France, paras. 5-7;
926th meeting: President (United Arab Republic), para. 22; Ceylon, paras. 50, 54; Liberia, para. 9;
927th meeting: Chile, paras. 19, 21; Ecuador, paras. 10, 11.

[224] S/4616, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 19-20. For other documents pertinent to the substance of the matter, see chapter VIII, pp. 172-173.

therefore, recommend the General Assembly to give urgent consideration to the question of Belgium's violation of the Trusteeship Agreement for the Territory of Ruanda-Urundi and to that of divesting Belgium of all its rights and powers with respect to the Trust Territory.

The representative of Belgium* maintained that the Belgian authorities had arranged for the contingent of the Armée nationale congolaise which had landed at Usumbura to be immediately transported to the frontier of the Republic of the Congo. There were no longer any Congolese soldiers in the Territory of Ruanda-Urundi and the Belgian Government did not intend to authorize any further transit. Belgium had been and was anxious to fulfil the obligations which it had assumed under the Charter and the Trusteeship Agreement, and to observe the constitutional procedures governing Trust Territories and their progress towards independence.

At the 925th meeting on 13 January 1961, the representative of France stated that the Belgian Government, in its capacity as Administering Authority, had granted a right of transit through the Territory of Ruanda-Urundi to troops of the ANC, which was not at variance with the Trusteeship Agreement. With the exception of certain provisions of the Agreement, such as those of article 9 to the effect that the Administering Authority should ensure equal treatment for all States Members of the United Nations, including freedom of transit and navigation by air, there was nothing in the Trusteeship Agreement which would have appeared to be relevant to the matter before the Council.

At the 926th meeting on 13 January 1961, the representative of Liberia introduced a draft resolution [225] submitted jointly with Ceylon and the United Arab Republic, in which it was provided:

"The Security Council,

"...

"Having considered the grave situation which has arisen from the use of the Trust Territory of Ruanda-Urundi for military purposes against the Republic of the Congo in contravention of the provisions of the Trusteeship Agreement between the United Nations and the Government of Belgium concerning the Trust Territory of Ruanda-Urundi,

"...

"Noting that, in its resolution 1579 (XV) of 20 December 1960 the General Assembly called upon the Belgian Government as the Administering Authority in the Trust Territory of Ruanda-Urundi 'to refrain from using the Territory as a base, whether for internal or external purposes, for the accumulation of arms or armed forces not strictly required for the purpose of maintaining public order in the Territory' and that the Belgian Government by its actions has violated the above-mentioned resolution of the General Assembly",

"...

"1. Calls upon the Government of Belgium as the Administering Authority of the Trust Territory of Ruanda-Urundi immediately to cease all action against the Republic of the Congo and to observe strictly its international obligations under the Trusteeship Agreement and to take immediate steps to prevent the utilization of the United Nations Trust Territory of Ruanda-Urundi contrary to the purposes of the aforementioned resolutions;

"...

"3. Recommends the General Assembly to consider the action taken by Belgium as a violation of the Trusteeship Agreement for the Territory of Ruanda-Urundi, adopted by the General Assembly on 13 December 1946."

The President, speaking as the representative of the United Arab Republic, stated that by its action the Belgian Government had contravened the Trusteeship Agreement, which included an obligation to further international peace and security and, therefore, not to commit acts which might endanger it. The action also constituted a contravention of the Trusteeship Agreement owing to the special situation existing in the Congo and to the special responsibility of the United Nations.

The representative of Ceylon expressed the view that the Belgian Government's action was contrary to its obligations assumed under article 4 and paragraph 3 (b) of article 5 of the Trusteeship Agreement for the Territory of Ruanda-Urundi and constituted an infringement by Belgium of its international obligations both in regard to the current situation in the Republic of the Congo and in regard to the position it held as the Administering Authority in the Trust Territory, which had been used as a base against the United Nations effort in the Congo. Such a development would call for reconsideration of the Trusteeship Agreement.

At the 927th meeting on 14 January 1961, the representative of Ecuador stated that the permission of the Belgian authorities in Ruanda-Urundi, at the request of the Government of the Congo, to the Congolese forces to use the territory of Ruanda-Urundi for military manoeuvres might, technically, constitute intervention in the domestic affairs of the Congo. Such an act of intervention was deserving of censure particularly so when it involved the use of a Trust Territory. The Administering Authority exercised in a Trust Territory an administrative function under a mandate from the United Nations which was incompatible with acts which might constitute political intervention in the matters of another State or give rise to serious international tension.

The representative of Chile observed that the admission of a Congolese contingent to the Usumbura airport and the provision to it of transit facilities to the frontier were not in conformity with the responsibilities of the Administering Authority of a Trust Territory. However, the incident had been an isolated one and the assurances given by the Government of Belgium to the Secretary-General were satisfactory.

At the 927th meeting on 14 January 1961, the joint draft resolution submitted by Ceylon, Liberia and the United Arab Republic was not adopted, [226] the result of the vote being 4 in favour, with 7 abstentions.

[225] S/4625, O.R., 16th year, Suppl. for Jan.-March 1961, pp. 30-31.

[226] 927th meeting: para. 94.

Part VII

CONSIDERATION OF THE PROVISIONS OF CHAPTER XVI OF THE CHARTER

Chapter XVI of the Charter: Miscellaneous Provisions

"..."

"ARTICLE 103

"In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

"..."

NOTE

Two case histories relate to the proceedings in the Council in which references were made to Article 103; in one instance, in connexion with an international agreement, in the second instance, in connexion with a regional arrangement. Incidental reference to Article 103 is to be found also in this chapter, Case 27.

CASE 29.[227] COMPLAINT BY CUBA (LETTER OF 11 JULY 1960): In connexion with the joint draft resolution submitted by Argentina and Ecuador; and the USSR amendments thereto: the amendments voted upon and rejected on 19 July 1960; the joint draft resolution voted upon and adopted on 19 July 1960

[*Note:* In submitting its complaint[228] to the Council, the Government of Cuba asserted that it based itself on Article 52 (4) and Article 103 of the United Nations Charter which, without invalidating any regional arrangements, clearly laid down that obligations under the Charter should prevail over such arrangements. References to Article 103 were made in the joint draft resolution and during the consideration of the question by the Council.]

At the 874th meeting on 18 July 1960, the representative of Cuba* stated that Cuba was entirely within its rights in resorting to the Security Council. Referring to Article 103, he said that the juridical meaning of the provision was absolutely clear.

At the same meeting, the representatives of Argentina and Ecuador introduced a draft resolution[229] under which:

"The Security Council,

"...

"Taking into account the provisions of Articles 24, 33, 34, 35, 36, 52 and 103 of the Charter of the United Nations,

"Taking into account also articles 20 and 102 of the Charter of the Organization of American States of which both Cuba and the United States of America are members,

"...

"1. Decides to adjourn the consideration of this question pending the receipt of a report from the Organization of American States;

"..."

At the 875th meeting on 18 July 1960, the representative of Italy stated that under Article 52 (2) of the Charter, Member States which were parties to regional arrangements had the obligation to achieve pacific settlement of disputes through such regional arrangements before referring them to the Security Council,[230] and observed that there was also a similar provision in article 20 of the Charter of the Organization of American States. He added:

"And there is here no conflict between the obligations of the interested Member States under our Charter and their obligations under other international agreements—the situation envisaged in Article 103 of the United Nations Charter—because what the draft resolution in front of us is aiming at is not that the Security Council should decline to take on the examination of the problem but that it should simply adjourn it."

The representative of Poland, after quoting Article 103 of the Charter, observed that:

"This Article applies fully to this case. No provisions or obligations arising from regional treaties or arrangements for solving the dispute can be put ahead of the existing provisions of the United Nations Charter, which give Cuba the right to bring its case before us here for full consideration and proper action."

At the 876th meeting on 19 July 1960, the representative of the USSR drew attention to the provisions of article 102 of the Charter of the OAS, which stated that "None of the provisions of this Charter shall be construed as impairing the rights and obligations of the Member States under the Charter of the United Nations". Referring to Article 103 of the United Nations Charter, he stated that Cuba had acted in accordance with its provision, which was the only one which guaranteed the rights of Members of the United Nations. He then proposed certain amendments,[231] among which was the deletion of operative paragraph 1 of the draft resolution.

227/ For texts of relevant statements, see:
874th meeting: Cuba*, para. 7;
875th meeting: Italy, paras. 10, 11; Poland, para. 59;
876th meeting: USSR, para. 87.

228/ S/4378, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 9-10.

229/ S/4392, same text as S/4395, ibid., pp. 29-30.

230/ See Case 24.

231/ S/4394, 876th meeting: paras. 105-107.

At the same meeting, the USSR amendments were rejected by 2 votes in favour and 8 against, with 1 abstention.[232] The draft resolution submitted by Argentina and Ecuador was adopted by 9 votes in favour to none against, with 2 abstentions.[233]

CASE 30.[234] COMPLAINT BY THE GOVERNMENT OF CYPRUS: In connexion with the decision of 27 December 1963 to adjourn the meeting

[*Note:* During the debate it was contended that the Treaty guaranteeing the London Agreement on Cyprus was invalid under Article 103 if it could be interpreted as giving to any signatory the right to use force in Cyprus.]

At the 1085th meeting on 27 December 1963, the representative of Turkey* maintained that his Government, as one of the co-signers of the London Agreement of 1959 and the Treaty of Guarantee of 1960 of that Agreement, could not be disinterested in the fact that Turks were being massacred in Cyprus.

In reply the representative of Cyprus* stated that he understood "the representative of Turkey to refer to the Treaty of Guarantee as giving to Turkey the right to use force in Cyprus". However, if that Treaty could be interpreted as giving Turkey or any other country the right to use force[235] in Cyprus, then the Treaty itself should be considered as invalid under Article 103 of the Charter. The Treaty did not give Turkey, or any other guarantor State, the right to interfere and destroy the independence and integrity of Cyprus, which they were supposed to guarantee. "... in conformity with Article 103 of the Charter, the representations and measures provided for in the Treaty of Guarantee must be peaceful measures—recourse to the Security Council, recourse to the General Assembly, and so forth—not gunboats and aircraft bombing or even threats to bomb the island".

The President (United States), after stating that he had no more speakers on his list, noted that the Council had heard statements from the interested parties, as well as certain assurances, and declared the meeting adjourned.[236]

[232] 876th meeting: para. 127.

[233] 876th meeting: para. 128.

[234] For texts of relevant statements, see:
1085th meeting: Cyprus*, paras. 63-65; Turkey*, paras. 38-43.

[235] For the discussion on the use of force, see Case 11.

[236] 1085th meeting: paras. 91-92.

Part VIII

**CONSIDERATION OF THE PROVISIONS OF CHAPTER XVII OF THE CHARTER