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 2 (7) OF THE CHARTER

Article 2 (7) of the Charter

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

CASE 1.[2] THE QUESTION OF MOROCCO: In connexion with a request of 21 August 1953 to include the question of Morocco in the agenda of the Security Council.[3]

[*Note:* It was requested that the Security Council should investigate the international friction and the danger to international peace and security which had arisen because of the intervention of France in Morocco and to take appropriate action under the Charter. Objection was raised that Article 2 (7) of the Charter prevented the Security Council from considering the question. The provisional agenda was not adopted.]

By letter dated 21 August 1953,[4] the representatives of Afghanistan, Burma, Egypt, India, Indonesia, Iran, Iraq, Lebanon, Liberia, Pakistan, Philippines, Saudi Arabia, Syria, Thailand and Yemen requested the President of the Security Council under Article 35 (1) of the Charter, to call an urgent meeting of the Security Council to investigate the international friction and the danger to international peace and security which had arisen by the unlawful intervention of France in Morocco and the overthrow of its legitimate sovereign and to take appropriate action under the Charter.

At the 619th meeting on 26 August 1953, the representative of France, opposing the adoption of the provisional agenda, stated that the French Government denied that either the General Assembly or the Security Council were in any way competent to intervene in France's relationship with the Empire of Morocco. It found support for its views in the terms of Article 2 (7) of the Charter. Though Morocco had remained legally a sovereign State, it had by the Treaty of Fez of 1912 transferred to France the exercise of its external sovereignty. Any matter

> ". . . covered by the treaty of protectorate falls in essence, and by the very terms of the treaty, within the national jurisdiction of France. In virtue of Article 2, paragraph 7, of the Charter the United Nations cannot deal with such a matter; and in the present case the Security Council can only acknowledge its own lack of competence by refusing to place on its agenda discussion of the item submitted by the fifteen delegations of the African and Asian group."

Before falling essentially within the national competence of France by virtue of that treaty, Moroccan internal affairs fell no less essentially within the national competence of Morocco. If, therefore,

> ". . . the United Nations should claim the right to intervene in such matters, it would commit a double violation of Article 2, paragraph 7, of the Charter."

The request of the fifteen delegations, the representative of France contended further, was also inadmissible because the grounds on which it was made did not exist. The request was based on Article 35 of the Charter. However, there was no dispute between the French Government and the Sherifian Government. Even if such a dispute existed the Security Council would not be competent under Article 2 (7) to consider it.

The representative of Pakistan stated that in his view, Article 2 (7) had been

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

[2] For texts of relevant statements see:
619th meeting: France, paras. 5-6, 25-31; Lebanon, paras. 104-108; Pakistan, paras. 40-43; 49-50;
620th meeting: United Kingdom, paras. 19-23; United States, para. 10;
621st meeting: President (China), paras. 88-89; USSR, paras. 59-64;
622nd meeting: Pakistan, paras. 67-68;
623rd meeting: President (Colombia) paras. 7-9, 11-12, 29; Chile, paras. 36-37.
624th meeting: President (Colombia), paras. 12-13; Pakistan, paras. 3-8;

[3] On the inclusion of the question in the agenda, see chapter II, Case 8.

[4] S/3085, *O.R., 8th year, Suppl. for July-Sept. 1953*, p. 51.

". . . over-taxed in its use. The fact is conveniently ignored that Article 2, paragraph 7, is meant to operate within the framework of the Charter . . .

". . . The important words in this Article are: 'essentially within the domestic jurisdiction of any State'. What is the meaning of 'domestic jurisdiction'? Surely the word 'domestic' restricts the idea of wider jurisdiction, that is to say, authority in a wide sense. It draws a distinction between a matter's being within the jurisdiction of a State and its being within the domestic jurisdiction of that State. A matter, therefore, to be within the domestic jurisdiction of a State, must be, first, one that pertains to the affairs of the subjects and the territories of that State; and, secondly, one over which that State has powers of direct legislation.

"So far as the first point is concerned, the subjects and territories of Morocco are not as yet a part of France, and, so far as the second point is concerned, it has been judicially determined on the highest authority that France does not have jurisdiction to legislate in respect of Morocco . . ."

The representative of Pakistan referred to the judgment of the International Court of Justice[5] of 27 August 1952 and stated that

". . . It cannot therefore be claimed that the internal affairs of Morocco are 'essentially' within the domestic jurisdiction of France, and therefore Article 2, paragraph 7, cannot be invoked to bar an investigation by the Security Council of the serious situation in Morocco."

The representative of Pakistan stated further that the Act of Algeciras of 1906, to which thirteen States were parties, and which was still binding and operative, safeguarded the sovereignty and independence of the Sultan. Under this Act, Morocco was a sovereign State. It was true that the Treaty of Fez placed certain limitations on the powers of the Sultan of Morocco and accorded certain authority to the Government of France, but these limitations were subject to the Act of Algeciras.

Moreover, the consideration of the question of Morocco by the General Assembly and the adoption by the latter of resolution 612 (VII), "establishes the fact that the matter is not within the domestic jurisdiction of France under Article 2, paragraph 7, of the Charter".

The representative of Lebanon stated that the following facts were indicative that the events in Morocco were not purely local, but had distinct international aspects: (1) the Treaty of Fez eliminated the purely local character of the question; (2) according to the Act of Algeciras at least twelve States were concerned with any fundamental change in Morocco; and the deposition of the Sultan was certainly a fundamental change and had clear international implications; (3) the judgment of the International Court of Justice of 27 August 1952; and (4) the important fact that the General Assembly had deemed itself competent at its seventh session to deal with the Moroccan issue.

[5] *Case concerning rights of nationals of the United States of America in Morocco, judgment of August 27th, 1952: I.C.J. Reports 1952*, p. 176.

At the 620th meeting on 27 August 1953, the representative of the United States declared that the line of reasoning that the objections of the sixteen nations to events in Morocco constituted international friction and therefore empowered the Security Council to investigate to see whether continuance of the situation was likely to endanger international peace "would make it possible always to break down the distinction between matters of domestic and international concern".

The representative of the United Kingdom stated that the chief characteristic of the special relationship of Morocco to France under the Treaty of Fez was the fact that the sole and entire conduct of the external affairs of Morocco was vested in France. The effect, internationally, of this relationship was necessarily to place the relations between France and Morocco on the domestic plane; they were as much on the domestic plane as were the relations between two states of a federal union or between a federal government and a constituent state. It followed, therefore,

". . . that a difference between France and Morocco, if any should exist, would not have any international character. Accordingly, it could not lead to international friction, nor is it likely to endanger the maintenance of international peace and security."

The opening words of Article 2 (7) clearly showed that, far from being subject to other provisions of the Charter, it was "an overriding stipulation".

At the 621st meeting on 31 August 1953, the representative of the USSR stated that the Treaty of Fez and the Act of Algeciras did not prevent the United Nations from considering the situation in Morocco. Their right to consider questions connected with the situation there also derived from Chapter XI of the Charter.

At the 623rd meeting on 2 September 1953, the President, speaking as the representative of Colombia, said that the judgment of the International Court of Justice of 27 August 1952 dealt only with questions of taxation and jurisdiction of Moroccan courts in cases in which a United States citizen or protegé was defendant and not with questions relating to Morocco's sovereignty in external affairs. Therefore, any argument based on that judgment could not be invoked at this juncture. General Assembly resolution 612 (VII) merely expressed the hope that France would continue to fulfil its obligations under Articles 73 and 74 of the Charter. In no case could that resolution be interpreted to mean that Morocco had resumed the right to exercise sovereignty in external matters which it had ceded by the Treaty of Fez to France. The Security Council could not consider the Moroccan question without violating Article 2 (7). Morocco retained its full sovereignty in domestic matters; if it did not retain that domestic sovereignty it would not constitute a State separate from France. Morocco was entitled to follow its own domestic policy in complete independence and it would be able to do so only if the Security Council did "not interfere in its domestic affairs".

At the 624th meeting on 3 September 1953, the representative of Pakistan stated that it was wrong to say

that the internal troubles of Morocco created by France, were within the domestic jurisdiction of France and that, therefore, Article 2 (7) of the Charter was applicable. In his view this provision of the Charter was not applicable for this very reason, namely, that the subject concerned internal happenings in Morocco, fomented by another State, which was a Member of the United Nations.

At the 624th meeting on 3 September 1953, the agenda was not adopted.[6]

[6] 624th meeting: para. 45.

Part II

CONSIDERATION OF THE PROVISIONS OF ARTICLE 24 OF THE CHARTER

Article 24 of the Charter

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

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

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

CASE 2.[7] THE PALESTINE QUESTION: In connexion with the New Zealand draft resolution of 1 September 1951; voted upon and rejected on 29 March 1954

[*Note:* Consideration of the complaint by Israel of continued Egyptian interference with shipping proceeding to Israel through the Suez Canal, in violation of the Security Council resolution of 1 September 1951, gave rise to discussion as to whether Article 24 empowered the Council to deal with a violation of the Constantinople Convention of 1888 guaranteeing the free navigation of the Suez Canal.]

At the 662nd meeting on 23 March 1954, the representative of Egypt* raised the question whether the Council's competence had been invoked in the New Zealand draft resolution in accordance with the terms of the Charter. He questioned whether it was within the jurisdiction of the Security Council to discuss the question of freedom of navigation through the Suez Canal. Observing that the representative of New Zealand had referred to himself as the representative of a maritime power, the representative of Egypt asked whether the representatives meeting in the Security Council were really the representatives of States answering to particular descriptions:

". . . In my view, the members present are the representatives of their governments. But the governments of those members, the States which are the members of the Security Council, represent, not themselves, but the United Nations. They are there as agents. They work for the Organization as a whole. On that point, Article 24 of the Charter is explicit . . .

"The Council does not act on behalf of the governments which send representatives to the Security Council. It acts on behalf of the whole international community represented in the United Nations. The five great Powers, it is true, represent the five great Powers. They are permanent members. But whom do they represent as permanent members? They certainly do not represent the United States, the United Kingdom, France, the Soviet Union and China. They are there because they bore the heaviest burden in winning the war. And they are there to bear the heaviest burden in maintaining the peace. They hold their seats in that capacity, not in their capacities as the United Kingdom, the United States, France, the Soviet Union or China. There can be no doubt about that. In the Security Council they have a special capacity.

"The representative of New Zealand, however, states:

"'I would add that for maritime nations—countries which, like my own, depend on their overseas trade for their prosperity and indeed their existence . . .'

"And he refers to the measures taken by Egypt in the Suez Canal. Maritime Powers? Very well. But do not come to the Security Council in that capacity. Maritime Powers? Suez Canal? Freedom of navigation? Excellent. You have an instrument—the 1888 Convention regulating the freedom of shipping in the Suez Canal. That is the document you should appeal to. That is the international instrument you should bring into operation. Article 8 of that Convention states:

"'The agents in Egypt of the signatory Powers of the present Treaty shall be charged to watch over its execution. In case of any event threatening the security or the free passage of the Canal, they shall meet on the summons of three of their number under

[7] For texts of relevant statements see:
662nd meeting Egypt*, paras. 46-47; Lebanon, para. 57;
663rd meeting: France, para. 34; United Kingdom, paras. 21-24;
664th meeting: USSR, paras. 52-55.

the presidency of their *doyen*, in order to proceed to the necessary verifications. They shall inform the Khedival Government of the danger which they may have perceived, in order that that Government may take proper steps to ensure the protection and the free use of the Canal.'

"It is article 8 which you should bring into operation, not the Security Council. Apply to the signatories' representatives in Cairo. You are perfectly entitled to complain of obstacles to the free passage of shipping through the Canal. I believe you know that the signatories are France, Germany, Austria-Hungary, Spain, Great Britain, Italy, the Netherlands, Russia and the Ottoman Empire. These countries exist. They even have successors. Their number is increasing. You can easily find any of these countries. You can find three to call together the signatories' representatives in Cairo. Take your complaint to them. But to raise the question of free passage through the Suez Canal in the Security Council is wrong. It is completely at variance with Article 24 of the United Nations Charter."

In this position the representative of Egypt was supported by the representative of Lebanon who made full reservations about the propriety or impropriety of raising the issue of maritime interests in the Security Council. At the 663rd meeting on 25 March 1954, the representative of the United Kingdom declared that the representative of Egypt had oversimplified the question since the maritime aspect of the issue was connected with two other reasons which affected the Security Council very directly. The first was the claim of one of the parties to the Armistice Agreement to make unfettered use at its discretion of belligerent rights and the second was the effect of the action by the Government of Egypt on the Council's authority in regard to Palestine.

At the same meeting, the representative of France observed that the Council was not primarily concerned with the validity of any particular article of the Constantinople Convention.

". . . The Security Council has not, under the Charter, any special competence to examine alleged infringements of obligations assumed under a particular treaty. The Council is not necessarily competent to deal with a case merely by virtue of the fact that an international treaty is involved. Its essential function is to remove threats to the peace . . ."

At the 664th meeting on 29 March 1954, the representative of the USSR stated:

"I cannot overlook that the question of shipping in the Suez Canal and of the observance of the 1888 Convention, which is before the Security Council, calls for the special consideration of this question by all the parties to the convention. However, only some of the States parties to that convention are represented in the Security Council, and they constitute a minority of all those who signed the convention.

". . .

"By what warrant, then, does the Security Council in its present composition assume the right to settle problems which it is not competent to settle even within the meaning of the 1888 Convention, though this constitutes the basis of all the arguments advanced, of the 1951 resolution and of all the positions stated here with regard to Egypt?"

At the 664th meeting, the New Zealand draft resolution failed of adoption. There were 8 votes in favour and 2 against, with one abstention. One vote against was that of a permanent member.[8]

[8] 664th meeting: para. 69.

Part III

CONSIDERATION OF THE PROVISIONS OF ARTICLE 25 OF THE CHARTER

NOTE

Discussion regarding Article 25 arose in one case only in connexion with the question of the binding force of a previous resolution of the Security Council.

Article 25 of the Charter

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

CASE 3.[9] THE PALESTINE QUESTION: In connexion with the New Zealand draft resolution concerning compliance with a previous Council resolution: voted upon and failed of adoption on 29 March 1954.

[*Note:* Consideration of the complaint by Israel of continued Egyptian interference with shipping proceeding to Israel, in violation of the Security Council resolution of 1 September 1951, gave rise to a discussion as to

[9] For texts of relevant statements see:
658th meeting: Egypt*, para. 162; Israel*, paras. 4-5, 97-100, 112-113;
659th meeting: Egypt*, paras. 65, 135-136;
661st meeting: Egypt*, paras. 68-70, 107-110; Israel*, para. 133;
662nd meeting: Egypt*, paras. 42, 46-47; New Zealand, paras. 16-18;
663rd meeting: Denmark, paras. 12-13; Egypt*, para. 155; France, paras. 34-35, 41; Lebanon, paras. 62-65; United Kingdom, paras. 27-28; United States, paras. 2-6;
664th meeting: President (Turkey), para. 67; Brazil, para. 16; China, para. 6; Colombia, para. 22; Egypt*, para. 155; France, paras. 113-115; USSR, paras. 37, 42-43, 46, 48-52, 55-56, 96.

whether that resolution was of the nature of a decision referred to in Article 25 and, consequently, whether Egypt was under an obligation to comply therewith. The New Zealand draft resolution which called upon Egypt, in accordance with its obligations under the Charter, to comply with the earlier resolution failed of adoption.]

At the 658th meeting on 5 February 1954, the representative of Israel*, in requesting that the Security Council confirm and reinforce its decision of 1 September 1951, which had called upon Egypt to terminate the restrictions on the passage of international commercial shipping and goods, emphasized the authority of the Council as the final arbiter of disputes arising out of the armistice agreement concluded in pursuance of a Council resolution. This authority had been recognized by the parties when they signed the General Armistice Agreement.

He added:

"It is clear from this fact and from our Charter that in such matters affecting international peace and security as the rights of war or hostile acts, decisions taken by the Council, such as that handed down on 1 September 1951, possess a far greater legal and moral force than do the resolutions of any other international body. A grave moment will be reached in the history of the Security Council if this precedent for total defiance of its will becomes more firmly established."

The representative of Israel suggested that the continuation by Egypt of a hostile act, based on the assertion of a state of war, in prolonged and deliberate defiance of a Security Council resolution, clearly created the kind of situation to which the enforcement measures laid down in Chapter VII of the Charter should properly apply.[10]

At the 659th meeting on 15 February 1954, the representative of Egypt* stated that the Security Council, in adopting the resolution of 1 September 1951, had based it on considerations other than the essentially legal aspects of the case. Quoting the statement of the representative of Egypt made at the 558th meeting, he stressed that Egypt had accepted that resolution with the reservation that the question "was not closed and that the decision did not rest on fixed and final foundations." It was, therefore, beside the point to state that Egypt was acting in a manner incompatible with the resolution of 1 September 1951.

At the 661st meeting on 12 March 1954, the representative of Egypt continued his statement. He declared that, by adopting the resolution of 1 September 1951, the Security Council had disregarded the undeniable right of a sovereign State to self-defence which was explicitly safeguarded in Article 51. What the Charter forbade was acts of aggression and not a legitimate exercise of the right of visit and search after an armed struggle. The representative of Egypt stated further:

"In establishing the collective security system the Charter formulates these two principles: first, member States are entitled to exercise the right of self-defence individually and collectively; and secondly, the individual or collective right of self-defence may not be overriden in favour of the Security Council except in so far as the States concerned are so well protected by the resources available to the Security Council that the abandonment of their right of self-defence will not harm them."

In the case before the Security Council attention must be directed to "Israel's aggression complex" and the situation could not be dealt with by resolutions like that of 1 September 1951. The Council was not established to judge legislative policy or to pass upon the legislative competence of Member States. The Council, having been established to ensure international security and to promote the establishment of a lasting peace, could and should deal only with acts which constituted threats to that peace and security.

Replying to the representative of Egypt, the representative of Israel contended that his Government was "quite certain—absolutely certain" that the injunction in paragraph 5 of the resolution of 1 September 1951 "is binding upon Egypt and Israel as an authoritative and final verdict within the framework of the Armistice Agreement".

At the 662nd meeting on 23 March 1954, the representative of New Zealand, in introducing his draft resolution[11] stressed that it was directed primarily to the issue of non-compliance with the 1951 resolution. He recalled the statement of principle contained in that resolution which denied the assertion of active belligerency, and the finding that Egypt's practice of interfering with the passage through the Suez Canal of goods destined for Israel was an abuse of the right of visit, search and seizure and could not be justified on the ground of self-defence. He stated further that the resolution of 1 September 1951 had been legally and properly adopted by the Council. Under the Charter it was "the clear duty of all Members of the Organization to observe the resolutions of this Council". Therefore, the argument that Egypt was entitled to disregard the terms of the resolution of 1 September 1951 by reason of a reservation entered at the time of its adoption could not be accepted.

The representative of Egypt, commenting on the draft resolution submitted by the representative of New Zealand, stated that, like the resolution of 1 September 1951, it took no account of the legal character of the conflict submitted to the Council. Was the Council's competence in fact invoked in the draft resolution in accordance with the terms of the Charter? Was it really within the jurisdiction of the Council to discuss the question of freedom of navigation through the Suez Canal? The provision relevant to this matter was contained in article 8 of the Constantinople Convention regulating the freedom of shipping in the Suez Canal, and this provision, not the Security Council, should be brought into operation. To raise the question of free

[10] On a previous occasion, when Israel informed the Security Council of the detention by Egyptian authorities of a Greek merchant vessel carrying Israel cargo, the first affirmation was made that this was an act of non-compliance with the Security Council resolution in contravention of Article 25. (S/3093, *O.R., 8th year, Suppl. for July-Sept. 1953*, p. 73.)

[11] S/3188/Corr. 1, *O.R., 9th year, Suppl. for Jan.-March 1954*, p. 44. See chapter VIII, p. 31.

passage through the Suez Canal in the Security Council was "completely at variance" with Article 24 of the Charter.

At the 663rd meeting on 25 March 1954, the representative of the United States contended that the question before the Council was one of compliance with its decision. Throughout the history of the Palestine question, the United Nations had sought a peaceful settlement of many complicated problems arising out of the Palestine conflict. The parties directly concerned in these problems had an equal duty to respect and to make every reasonable effort to give effect to the combined judgment of the United Nations, whether expressed in the Security Council or in the General Assembly, or other competent organs.

The representative of Denmark stated that there was no reservation to Article 25 of the Charter. The obligation to accept and carry out the decisions of the Security Council was not limited to such decisions as a Member agreed with or considered legal. All Member States in ratifying the Charter had agreed to a limitation of their sovereignty. If the Council accepted the view that a Member State which disagreed with one of its decisions by calling it illegal was not bound by the decision, the work of the Council would become chaotic.

The representative of France stated, with reference to the Egyptian argument concerning the Constantinople Convention of 1888, that the Security Council had not, under the Charter, any special competence to examine alleged infringements of obligations assumed under a particular treaty. The Council was not necessarily competent to deal with a case merely by virtue of the fact that an international treaty was involved. Its essential function was to remove threats to the peace. Its competence became operative only if such threats existed in circumstances and under conditions referred to in Articles 33 *et seq.* of the Charter. The dispute before the Council concerned the application of the Armistice Agreement signed by Israel and Egypt in 1950 of which the Security Council was guardian. The representative of France stated further that the draft resolution submitted by the representative of New Zealand, in so far as it called upon Egypt to comply with the resolution of 1 September 1951 was manifestly based on Article 25 of the Charter.

At the 664th meeting on 29 March 1954, the representative of Brazil stated that the representative of Egypt, in declaring that his country had not conformed to the Council's resolution of 1 September 1951, had invoked Egyptian sovereignty. But it was in exercise of that very sovereignty that Member States had decided to abide by the provisions of the Charter.

The representative of Colombia stated that Colombia had not been a member of the Security Council on 1 September 1951 when the Council adopted the resolution on the Suez Canal, but he believed that his country was bound by Article 25 of the Charter to support it and that the resolution should be respected and implemented, since the Council's function under the Charter was to maintain international peace and security and it might be assumed that its actions were directed solely towards that end.

The representative of the USSR contended that the draft resolution submitted by the representative of New Zealand, in fact, contained nothing related to the settlement of the Palestine question. It merely referred to the resolution of 1951 and to obligations to comply with that resolution. The representative of the USSR declared that he would disregard the general question of the conditions in which any resolution might be regarded as legal. He remarked that it could not be so regarded in all conditions and stated that, after listening to the statements of the representatives supporting the New Zealand draft resolution, he had reached the conclusion that they were disregarding the impossibility of settling international problems by the method "of imposing upon one of the parties a decision which, moreover, has been stated by that party to be absolutely unacceptable from the outset". Chapter VI, especially in Article 36, stressed the need to take special measures for the settlement of disputes between the interested parties. Among the methods recommended in Chapter VI there was no such method as that of imposing on one party "a decision which is contrary to and completely disregards the will, wishes and interests of the other party". It would be, therefore, more correct to use the normal and generally accepted method of international law and the Charter, and it would be "far more desirable for the Security Council to appeal to both parties to take steps to settle their difference on this question by means of direct negotiations. The Charter itself imposes on us the duty to make such an attempt".

The representative of France stated that it was true that the Charter called for direct negotiations, and that that was generally a preliminary stage in any dispute. But the Security Council was aware how far it would have been desirable and how difficult it had been proving to attempt direct negotiation. Referring to the resolution of 1 September 1951 as "a legally-adopted resolution", the representative of France declared that it seemed to be "absolutely contrary to the provisions of the Charter, most particularly Article 25", that if a resolution were not applied by the parties it should be abandoned.

Replying to the representative of France the representative of Egypt stated that Article 25 was not applicable to the resolution of 1 September 1951, since it had not been adopted, in the words at the end of Article 25, "in accordance with the Charter".

The President, speaking as the representative of Turkey, stated that "in the absence of a conciliatory settlement between the parties, the Council is left with no alternative but to request compliance with its previous resolutions".

At the 664th meeting on 29 March 1954, the New Zealand draft resolution was not adopted. There were 8 votes in favour and 2 against, with one abstention. One vote against was that of a permanent member.[12]

[12] 664th meeting: para. 69.

Part IV

CONSIDERATION OF THE PROVISIONS OF CHAPTER VIII OF THE CHARTER

NOTE

In consequence of the obligation placed by the Charter upon Members of the United Nations and upon regional arrangements or agencies, the attention of the Security Council has been drawn during the period from 1952 to 1956 to the following communications, which have been circulated by the Secretary-General to the representatives of the Council, but have not been included on the provisional agenda:

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

(i) Dated 10 January 1955: transmitting a resolution adopted by the Council at the request of the Government of Costa Rica, which had stated that it was convinced that an attack was imminent on its frontier with Nicaragua[13]

(ii) Dated 12 January 1955: transmitting a resolution adopted at a special session of the Council on 11 January[14]

(iii) Dated 13 January 1955: transmitting the text of the resolution adopted by the Council on 12 January[15]

(iv) Dated 19 January 1955: transmitting the texts of four communications received from the fact-finding Committee, together with a resolution adopted by the Council on 14 January[16]

(v) Dated 17 January 1955: transmitting four communications about the situation from the fact-finding Committee and from Governments of Member States, as well as two resolutions adopted by the Council on 16 January[17]

(vi) Dated 18 February 1955: transmitting the report of the fact-finding Committee[18]

(vii) Dated 28 February 1955: transmitting four resolutions adopted by the Council on 24 February concerning Costa Rica and Nicaragua[19]

(viii) Dated 8 September 1955: transmitting a report to the Council submitted by the Special Committee established by a resolution of the Council of 24 February 1955 and a resolution adopted by the Council on 8 September 1955[20]

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

(i) Dated 7 January 1952: transmitting the records of the special session of the Committee held on 25 December 1951, including the text of a declaration signed by the Government of Cuba and the Dominican Republic[21]

(ii) Dated 2 February 1954: transmitting the text of the Committee's conclusions in the case submitted to it by Colombia on 17 November 1953;[22]

(iii) Dated 27 June 1954: transmitting copies of various notes and information concerning the itinerary of the Committee to Guatemala, Honduras and Nicaragua[23]

(iv) Dated 5 July 1954: transmitting information that Guatemala, Honduras and Nicaragua informed the Committee that the dispute between themselves has ceased to exist[24]

(v) Dated 8 July 1954: transmitting a report of the Committee on the dispute between Guatemala, Honduras and Nicaragua and copies of all communications exchanged between the Committee and the parties concerned[25]

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

4. *Communications from States parties to disputes or situations*

(i) Dated 5 January 1952: Dominican Republic transmitting the text of the declaration signed by the Dominican Republic and Cuba before the Inter-American Peace Committee on 25 December 1951[26]

(ii) Dated 25 January 1952: Cuba, transmitting "necessary rectifications" to the document listed under (i)[27]

(iii) Dated 31 January 1952: Dominican Republic, making statements "in rectification" of the document listed above under (ii)[28]

(iv) Dated 15 April 1953: Guatemala, requesting if necessary a statement annexed to the letter be placed on the agenda of the Security Council for the record[29]

(v) Dated 9 July 1954: Guatemala informing the President of the Security Council that peace and order had been restored in Guatemala and that there was no reason why the question of Guatemala should remain on the agenda of the Security Council[30]

[13] S/3344.
[14] S/3345.
[15] S/3348.
[16] S/3347.
[17] S/3349.
[18] S/3366, S/3366/Add.1.
[19] S/3395.
[20] S/3438.
[21] S/2494.
[22] S/3176.
[23] S/3256.
[24] S/3262.
[25] S/3267.
[26] S/2480.
[27] S/2495.
[28] S/2511.
[29] S/2988.
[30] S/3266.

In addition to the circulation to the representatives on the Council of these communications, it has been the practice to include summary accounts of the disputes or situations referred to in them in the Reports of the Security Council to the General Assembly.[31]

[31] See Report of the Security Council to the General Assembly, 1951-1952 (*G.A.O.R., 7th session, Suppl. No. 2*), p. 61; Report of the Security Council to the General Assembly, 1952-1953 (*G.A.O.R., 8th session, Suppl. No. 2*), p. 29; Report of the Security Council to the General Assembly 1952-1953 (*G.A.O.R., 9th session, Suppl. No. 2*), p. 65; Report of the Security Council to the General Assembly, 1954-1955 (*G.A.O.R., 10th session, Suppl. No. 2*), p. 27.

Chapter VIII of the Charter. Regional Arrangements

Article 52

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

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

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

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

Article 53

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

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

Article 54

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

CASE 4.[32] THE QUESTION OF GUATEMALA: In connexion with decision of 20 June 1954: rejection of the draft resolution submitted by the representatives of Brazil and Colombia, referring the complaint of the Government of Guatemala to the Organization of American States; and in connexion with decision of 25 June 1954: non-adoption of the provisional agenda.

[*Note:* At the 675th meeting on 20 June 1954, the Security Council had before it a draft resolution submitted by the representatives of Brazil and Colombia to refer the complaint of Guatemala, requesting the Council to take the measures necessary "to prevent the disruption of peace and international security in this part of Central America and also to put a stop to the aggression in progress against Guatemala", to the Organization of American States and to request the Organization of American States to inform the Security Council on the measures it had been able to take in the matter. The draft resolution was not adopted. At the 676th meeting the provisional agenda was not adopted. In the proceedings of the Council the main

[32] For texts of relevant statements see:
675th meeting: President (United States), paras. 157, 170; Brazil, paras. 67-68; Colombia, paras. 72-73; France, paras. 198-201; Guatemala*, paras. 6, 10, 43-46, 60, 102-104, 189-190; Honduras*, para. 63; New Zealand, paras. 93-95; Nicaragua*, para, 65; Pakistan, para. 130; USSR, paras. 110, 118, 120, 144-145, 148, 173, 184; United Kingdom, paras. 87-88, 90.
676th meeting: President (United States), paras. 175-178; Brazil, paras. 11, 15, 22-23; China, paras. 113-115; Colombia, paras. 65-74, 76-77; Denmark, paras. 131-132; France, paras. 97-99; New Zealand, paras. 128-130; Turkey, paras. 108-109; USSR, paras. 138, 144, 148, 155-156; United Kingdom, paras. 87-95.

question discussed was the question of the relation between Articles 52 (2) and (3) and 52 (4).][33]

By cablegram dated 19 June 1954,[34] the Minister for External Relations of Guatemala requested the President of the Security Council to convene a meeting urgently in order that, in accordance with Articles 34, 35 and 39, the Council might take the measures necessary "to prevent the disruption of peace and international security in this part of Central America and also to put a stop to the aggression in progress against Guatemala". It was stated in the communication that expeditionary forces coming from Honduras had captured a Guatemalan frontier post on 17 June 1954 and had advanced about fifteen kilometres inside Guatemalan territory. On 19 June 1954 aircraft coming from the direction of Honduras and Nicaragua had dropped explosive bombs on Guatemalan territory and had attacked Guatemala City and other towns.

At the 675th meeting of the Security Council on 20 June 1954, after the adoption of the agenda, the President invited the representatives of Guatemala, Honduras and Nicaragua to participate in the discussion.[35]

The representative of Guatemala* stated that Guatemala had been invaded by expeditionary forces forming part of an "unlawful international aggression" which was "the outcome of a vast international conspiracy"; his country was prepared to repel the invading forces and not to acquiesce in the invasion. On behalf of his Government, the representative of Guatemala made two requests of the Security Council: first, to send an observation commission to Guatemala "to ask questions, to investigate, and to listen to the diplomatic corps"; secondly, to constitute an observation commission of the Security Council in Guatemala, and in other countries if necessary, to verify through an examination of the documentary evidence, the fact that the countries which his Government accused had connived at the invasion. He added that the Inter-American Peace Committee of the Organization of American States had met on 19 June and that his Government, exercising the option which was open to the members of that Organization, had officially declined to allow it and the Peace Committee to concern themselves with the situation.

The representative of Honduras* expressed the view that the matter should be referred to the "appropriate jurisdiction", the Organization of American States. A similar request was made by the representative of Nicaragua*.

The representative of Brazil stated that it had been a tradition among the American States that all disputes and situations which could threaten or endanger the friendly relations among American republics should be dealt with by the organization set up by them for that purpose. According to its charter, the Organization of American States was empowered to deal with and to solve any problems relating to such disputes or situations. Furthermore, Chapter VIII of the United Nations Charter acknowledged this principle in Article 52. After quoting paragraph 3 of Article 52, the representative of Brazil declared that the Security Council should act according to "that very clear provision" of the Charter, and, without going into the merits of the Guatemalan complaint, refer it to the Organization of American States. For these reasons, and "having in mind the traditional way to settle disputes among American republics", he introduced the following draft resolution, which was sponsored also by Colombia:[36]

"*The Security Council,*

"*Having considered* on an urgent basis the communication of the Government of Guatemala to the President of the Security Council (S/3232),

"*Noting* that the Government of Guatemala has dispatched a similar communication to the Inter-American Peace Committee, an agency of the Organization of American States,

"*Having in mind* the provisions of Chapter VIII of the Charter of the United Nations,

"*Conscious* of the availability of Inter-American machinery which can deal effectively with problems concerning the maintenance of peace and security in the Americas,

"*Refers* the complaint of the Government of Guatemala to the Organization of American States for urgent consideration;

"*Requests* the Organization of American States to inform the Security Council as soon as possible, as appropriate, on the measures it has been able to take on the matter."

The representative of Colombia, after referring to Article 33 of the Charter, stated that this Article must be taken in conjunction with Article 52 (2) which imposed on all Members "the duty to apply first to the regional organization, which is of necessity the court of first appeal". This was not a right which could be renounced because the signatories of the United Nations Charter had undertaken this obligation.

The representative of France who had no objection in principle to the draft resolution submitted by Brazil and Colombia, proposed to add a final paragraph, whereby the Council, without prejudice to such measures as the Organization of American States might take, would call for the immediate termination of any action likely to cause further bloodshed and would request all Members of the United Nations to abstain, in the spirit of the Charter, from giving assistance to any such action.[37]

The amendment was accepted by the sponsors of the draft resolution.[38]

During the debate on the amended draft resolution, the representative of the United Kingdom stated that Chapter VIII of the Charter provided for the employment of regional arrangements to deal with matters

[33] In connexion with the consideration of Article 52 there was also discussion of the bearing of other Articles of the Charter. For the discussion of Article 33 in connexion with Article 52, see chapter X, Case 4; of Articles 34 and 35 in connexion with Article 52, see chapter X, Case 6; and of Article 36 (2) in connexion with Article 52, see chapter X, Case 7.

[34] S/3232, *O.R., 9th year, Suppl. for April-June 1954*, pp. 11-13.

[35] 675th meeting: para. 2.

[36] S/3236, 675th meeting: para. 69.

[37] 675th meeting: para. 77.

[38] 675th meeting: paras. 82, 85.

relating to the maintenance of international peace and security. It seemed to him that the course proposed in the draft resolution submitted by Brazil and Colombia was the most constructive that the Council could adopt and the most conducive to the interests of peace and security.

The representative of New Zealand, after stressing that the authors of Chapter VIII of the Charter had especially in mind the regional arrangements already in existence on the American continent, observed that the desirability of achieving peaceful settlement of local disputes was enjoined upon the members of regional organizations by Article 52 (2) of the Charter. Article 53 authorized measures of regional organizations under the direction or with the authority of the Security Council. It might properly be considered, therefore, fully consistent with its own overriding responsibility for the maintenance of international peace and security for the Council to refer the problem first to the Organization of American States and to ask it to report to the Council at an early date.

The representative of Guatemala held that Articles 33 and 52 (2) were completely inapplicable to Guatemala's case because Guatemala had no dispute of any kind with Honduras and Nicaragua which required peaceful settlement. Guatemala was faced with "an outright aggression". Under the terms of Articles 34, 35 and 39, on which Guatemala had based its complaint, Guatemala had an unchallengeable right of appeal to the Council, and "the Security Council cannot deny it its right of direct intervention by the Council, not intervention through regional organization". Guatemala had no obligation to submit this question to the Organization of the American States.

In a subsequent intervention, the representative of Guatemala declared that, in the last analysis, in the case of a conflict between the obligations under the Charter and other obligations of Members of the United Nations, the Articles of the Charter must, by reason of Article 103, apply. Quoting Article 52 (4), the representative of Guatemala contended that thus under the Charter the Security Council was in duty bound to investigate the situation which Guatemala, in exercise of its rights under the Charter, had brought to the Council's notice.

The representative of the USSR stated that the Security Council was faced "with an open act of aggression" against Guatemala; it should take immediate steps to end this aggression, and could not refer the matter to another body. Article 52 (2) envisaged a situation in which no aggression had taken place. An entirely different situation was before the Council, however; an act of aggression had been committed against Guatemala, which the Security Council, acting under Article 24 of the Charter, was bound to take steps to end. There was absolutely no justification for giving priority in this matter to the Organization of American States rather than to the Security Council. Aggression knew no territorial limits, and wherever it was committed, even in Central America, the Security Council was in duty bound to consider the case and take prompt action to put an end to it.

The President, speaking as the representative of the United States, declared that the situation appeared to his Government to be precisely the kind of problem which should be dealt with in the first place on an urgent basis by an appropriate agency of the Organization of American States. The draft resolution submitted by the representatives of Brazil and Colombia did not seek to relieve the Security Council of responsibility; it just asked the Organization of American States "to see what it can do to be helpful".

When the draft resolution submitted by the representatives of Brazil and Colombia, as amended, was put to a vote, it was not adopted.[39] There were 10 votes in favour and 1 against, the negative vote being that of a permanent member.

The representative of France then re-introduced his amendment to the Brazilian-Colombian draft resolution as a separate draft resolution. He added that the step he was taking should not be construed as casting doubt on, or weakening the competence of the Inter-American Peace Committee.

The draft resolution read as follows:

"*The Security Council,*

"*Having considered* on an urgent basis the communication of the Government of Guatemala to the President of the Security Council (S/3232),

"*Calls* for the immediate termination of any action likely to cause bloodshed and requests all Members of the United Nations to abstain, in the spirit of the Charter, from rendering assistance to any such action".

It was adopted unanimously.[40]

By letter dated 22 June 1954[41] addressed to the Secretary-General, the representative of Guatemala stated on behalf of his Government that the resolution adopted by the Council at its 675th meeting on 20 June 1954 had not been complied with by those States Members of the United Nations which had acquiesced in or assisted from their territories the acts of aggression suffered by Guatemala, and requested a meeting of the Security Council in order that the Council might use its authority with Honduras and Nicaragua as States Members of the United Nations to secure the cessation of all assistance to, or acquiescence in, the aggressive acts which were being committed by mercenary forces.

At the 676th meeting of the Security Council on 25 June 1954, the provisional agenda[42] read as follows:

"1. Adoption of the agenda.

"2. Cablegram dated 19 June 1954 from the Minister for External Relations of Guatemala addressed to the President of the Security Council and letter dated 22 June 1954 from the representative of Guatemala addressed to the Secretary-General."

The President (United States) drew the attention of the members of the Security Council to various communications which had been received on the question,[43] among them a cablegram dated 23 June 1954 from the

[39] 675th meeting: para. 194.
[40] 675th meeting: para. 203.
[41] S/3241, *O. R., 9th year, Suppl. for April-June 1954*, pp. 14-15.
[42] 676th meeting: p. 1.
[43] 676th meeting: paras. 1-6.

Chairman of the Inter-American Committee of the Organization of American States,[44] informing the Security Council that on 23 June 1954 the representative of Nicaragua had proposed that a commission of inquiry of the Inter-American Peace Committee be established to proceed to Guatemala, Honduras and Nicaragua, and that the Committee had voted unanimously to inform Guatemala of this.

In response to a proposal that the representative of Guatemala be invited to the Council table, the President ruled that the Security Council was not involved in a discussion relating to a dispute within the meaning of Article 32 and rule 37 of the rules of procedure until the agenda was adopted. The ruling of the President was maintained by the Council, a challenge having been rejected.[45]

The representative of Brazil stated that in view of the action already taken by the Organization of American States, the most reasonable attitude which the Security Council could assume in the matter was to wait for the report of the Inter-American Peace Committee. Any action by the Security Council at that stage or even any discussion of the subject without the proper information would not be justified and could only introduce confusion into the current situation.

The representative of the United Kingdom stated that *prima facie* the situation was one that could not be dismissed without investigation. For the Security Council to divest itself of its ultimate responsibility would be gravely to prejudice the moral authority of the United Nations. It was also clear that it was not at the moment open to the Security Council to take any further action in the matter without having more facts at its disposal. The question was how to establish the facts. The action of the Inter-American Peace Committee was sufficient for the moment as a means of providing the necessary information for the Council. The Committee was part of the Organization of American States, which was a regional organization within the meaning of Chapter VIII. Where such an organization took, of its own initiative, proper and constructive action, it seemed to the United Kingdom delegation entirely in accordance with the provisions of the Charter that such action should go on and that the Council should be kept informed.

The representative of France stated that the essential thing was that the Security Council should be in a position to be acquainted by the fact-finding committee with the real situation prevailing in the area under consideration. In suspending its action until it was more fully informed, the Security Council was in no way jettisoning the matter which had been submitted to it. By applying the procedure provided for by Article 52 of the Charter, it was not declining any of the responsibilities which the last paragraph of that Article conferred on it and which governed the interpretation of the preceding paragraph.

The representative of China expressed the view that the purposes and procedures of the Organization of American States were in perfect harmony with the principles of the Charter. He was convinced that the machinery of that Organization was adequate to handle the matter before the Security Council. It was even possible to say that the machinery of the Organization of American States had been specifically designed to meet such a situation as existed in Guatemala. After studying the basic documents involved, the representative of China could not escape the conclusion that the members of that organization were legally bound to take their disputes or controversies in the first instance to that organization, and not to the Security Council or to the General Assembly.

The representative of New Zealand considered that the Security Council should not, by any decision it might reach, give the appearance of abdicating the supreme responsibility and authority conferred upon it by the Charter. This was a matter of principle and cardinal importance to small nations. Any decision not to proceed with the discussion of the Guatemalan complaint at that meeting of the Council did not affect this principle and did not prejudice the Council's right to take up the question in the future if events made this necessary.

The representative of Denmark, having in view the provisions of Chapter VIII of the Charter and considering the practice which had developed with regard to the way in which disputes on the American continent were dealt with, did not wish to oppose a procedure along the lines suggested by the Inter-American Peace Committee. The Security Council would thus in no way divest itself of its interest in the matter, because it was clear from Article 54 of the Charter, and from the words of the Secretary-General of the Inter-American Peace Committee, that the Committee was ready to keep the Security Council fully informed of the results of its procedure.

The representative of the USSR stated that, admittedly, Article 52 provided for the consideration of certain disputes between States in regional organizations. It stated precisely, however, that such organizations could examine all types of disputes before they were referred to the Security Council. The question, however, was already before the Council. It had never been the practice of the Security Council to transmit questions of aggression to some other organization, particularly the Organization of American States. The procedure of outside settlement could not be forced upon the Security Council. The question of putting a stop to aggression should be dealt with by the Security Council, upon which Article 24 of the Charter laid primary responsibility for the maintenance of peace and security. Consequently, the Security Council must deal with the question in accordance with Article 52 (2). Also, in view of the stipulation of Article 52 (4), the provisions of the Charter relating to the prevention of aggression prevailed over regional arrangements.

The President, speaking as the representative of the United States, declared that the Government of Guatemala had regularly exercised the privileges and had

[44] S/3245, *O.R., 9th year, Suppl. for April-June 1954*, p. 16.

[45] For consideration of inclusion of the question in the agenda, see chapter II, Case 22; for proceedings regarding the retention and deletion of the item from the agenda, see chapter II, Case 23; for consideration o fthe invitation to the representatives of Guatemala, Honduras and Nicaragua, see chapter III, Case 23.

enjoyed all the advantages of membership in the Organization of American States. Guatemala was obligated by Article 52 (2) of the Charter to "make every effort to achieve pacific settlement of local disputes through regional arrangements". Its effort to by-pass the Organization of American States was, in substance, a violation of Article 52 (2). The United States was, both legally and as a matter of honour, bound by its undertakings contained in Article 52 (2) of the Charter of the United Nations and in Article 20 of the Charter of the Organization of American States, to oppose consideration by the Security Council of the matter until it had first been dealt with by the Organization of American States, which through its regularly constituted agencies, was already dealing with the problem.

The provisional agenda was not adopted.[46]

[46] 676th meeting: para. 195.

Part V

**CONSIDERATION OF THE PROVISIONS OF ARTICLES 82-83 OF THE CHARTER

Part VI

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