

Chapter X

CONSIDERATION OF THE PROVISIONS OF CHAPTER VI OF THE CHARTER

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INTRODUCTORY NOTE

The considerations governing the construction of chapter X are stated in the second part of the introductory note to chapter VIII. The case histories on each question require to be examined within the context of the chain of proceedings on the question presented in chapter VIII.

The material in this chapter constitutes only part of the material relevant to the examination of the operation of the Council under Chapter VI of the Charter. The view may be held that the activity of the Security Council in the field of pacific settlement is exemplified in its proceedings in the consideration of disputes or situations from the moment of their admission to the agenda. On this assumption the procedures of the Council reviewed in chapters I-VI, where they relate to the consideration of disputes and situations, would fall to be regarded as integral to the application of Chapter VI of the Charter. Chapter X is limited to presenting the instances of deliberate consideration by the Council of the relation of its proceedings or of measures proposed to the text of Chapter VI. For the

convenience of the reader, the decisions following each instance of consecutive discussion are recorded in this chapter, but the decision should not be deemed a pronouncement on the constitutional issues dealt with in this chapter, since these decisions are not taken only in the light of the constitutional considerations relevant to this chapter. For these reasons the chapter is entitled: "Consideration of the provisions of Chapter VI of the Charter". The reader is intended to draw on the content of this and other chapters, especially of chapter VIII, in the study of the practice of the Council in the application of Chapter VI of the Charter.

An exceptional title, however, has been given to part III of this chapter bearing on Article 35 since the material is presented in the form of a Note, with a Tabulation, bringing together the instances of the utilization of the Articles of the Charter in the submission of questions to the Council, together with references to relevant discussion entered elsewhere in the *Reper-toire*.

Chapter VI of the Charter. Pacific Settlement of Disputes

Article 33

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

Article 34

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

Article 35

1. Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.
2. A state which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter.
3. The proceedings of the General Assembly in respect of matters brought to its attention under this Article will be subject to the provisions of Articles 11 and 12.

Article 36

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

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

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

Article 37

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

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

Article 38

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

Part I

CONSIDERATION OF THE PROVISIONS OF ARTICLE 33 OF THE CHARTER

NOTE

States submitting disputes to the Security Council in most instances indicated in their initial communications the prior efforts made by them to seek a peaceful solution,¹ though Article 33 was not expressly cited in every instance. In some cases, before consideration by the Council commenced, the State against which the complaint was directed submitted a memorandum stating its own record of these efforts.² In statements before the Council, the States concerned have drawn attention to the stage reached in efforts toward a settlement as evidence of the necessity for taking, or not taking, action under Chapter VI.

On one occasion in 1946, the President took note of letters from Siam and France describing the settlement of their dispute by means of negotiations which were conducted, in accordance with Article 33, through the good offices of two members of the Council.³

¹ Siam in letter dated 15 July 1946 in connexion with Siamese-French relations, S/105, referring to letter dated 31 May 1946, S/72; United Kingdom in letter dated 10 January 1947 in connexion with the Corfu Channel question, S/247, *O.R.*, 2nd year, *Suppl. 3*, pp. 35-36; Egypt in letter dated 8 July 1947 in connexion with the Egyptian question, S/410, 159th meeting, pp. 1343-1345; Pakistan in letter dated 15 January 1948 in connexion with the India-Pakistan question, S/646 and Corr.1, *O.R.*, 3rd year, *Suppl. for Nov. 1948*, pp. 68, 75, 81-82.

Article 33 (1) refers to "parties to any dispute". For references to prior efforts in letters submitting a question designated as a situation or a threat to or breach of the peace: see Iran in letter dated 19 January 1946 in connexion with the Iranian question, *O.R.*, 1st year, 1st series, *Suppl. 1*, pp. 16-17, 22-24; Greece in letter dated 3 December 1946 in connexion with the Greek frontier incidents question, S/203, *O.R.*, 1st year, 2nd series, *Suppl. 10*, pp. 173, 174, 175; India in letter dated 1 January 1948 in connexion with the India-Pakistan question, S/628, *O.R.*, 3rd year, *Suppl. for Nov. 1948*, pp. 142-143; Identical notifications dated 29 September 1948, submitted by France, S/1020, *O.R.*, 3rd year, *Suppl. for Oct.*, pp. 9-10.

² USSR in letter dated 24 January 1946 in connexion with the Iranian question, *O.R.*, 1st year, 1st series, *Suppl. 1*, pp. 17-19; Pakistan in letter dated 15 January 1948, in connexion with the India-Pakistan question, S/646 and Corr.1, *O.R.*, 3rd year, *Suppl. for Nov. 1948*, pp. 81-82.

³ See Note to Article 35, p. 402, footnote 21; also 81st meeting: pp. 505-507.

The observations on the means to which parties have had recourse provide an indication of the views taken regarding compliance with the obligation of effort at peaceful settlement before submission of a question to the Council. Contentions regarding the adequacy of these efforts at settlement before recourse to the Council have constituted a significant aspect of the initial discussion on many questions. The contentions advanced have centred around:

(1) The allegation of refusal to enter into or resume negotiations.⁴

(2) The allegation of the failure to reach a satisfactory settlement through negotiation.⁵

(3) The allegation of refusal of proper recourse to procedures of settlement stipulated by special agreement binding on the parties.⁶

(4) The allegation that the emergence of a threat to the peace precluded further recourse to the means of settlement prescribed by Article 33.⁷

The scope of the obligation imposed by Article 33 (1) has been the subject of consideration in connexion with the problem of the appropriate stage at which a dispute should become the proper concern of the Council. The principle has been advanced that, before any intervention by the Council, the means of settlement indicated in Article 33 (1) should all have been exhausted by

⁴ See Case 1 (Iranian question); Case 2 (Syrian and Lebanese question).

⁵ See Case 4 (Egyptian question); Case 5 (i) (India-Pakistan question); Case 6 (Identical notifications dated 29 September 1948). In the Corfu Channel question the United Kingdom alleged unsatisfactory response to diplomatic notes. (See Case 3; and United Kingdom letter dated 10 January 1947, S/247, *O.R.*, 2nd year, *Suppl. 3*, pp. 35-36).

⁶ Hyderabad, in connexion with the Hyderabad question, 357th meeting: pp. 17-18. Netherlands, in connexion with the Indonesian question (II), on the applicability of the arbitration provisions of the Linggadjati Agreement, 171st meeting, p. 1642.

⁷ See Case 6 (Identical notifications dated 29 September 1948); see also chapter XI, Case 4, in connexion with the Indonesian question (II).

the parties.⁸ Other statements have questioned whether Article 33 (1) implies an obligation of exhaustive recourse to the several means of peaceful settlement enumerated therein,⁹ and have stressed the right of the Council to intervene under Article 36 at any stage in a dispute.

On certain occasions the absence of prior resort to peaceful means of settlement in accordance with Article 33 (1) has been adduced as a ground on which the Council should decline to consider the question.¹⁰

The significance of Article 33 in the pacific settlement of disputes in accordance with the Charter rests not only on the discharge by the parties themselves of their obligation under the Article, but also on the recourse by the Council to Article 33, or to the spirit of Article 33, in the discharge of its responsibilities for pacific settlement of disputes after submission to the Council.

In this connexion reference should be made to the observations in part IV of this chapter regarding the encouragement by the Council of negotiations between the parties; and to the entries under "Measures for Settlement" in the Analytical Table of Measures adopted by the Security Council.¹¹ Reference should also be made to the draft resolutions submitted expressly under Article 33, in connexion with the Corfu Channel and the Egyptian questions, to call upon the parties to resume direct negotiations;¹² and to the proceedings on the Syrian and Lebanese question.¹³ In certain instances, in circumstances in which reservations have been entered regarding the competence of the Council, the Council has sought nevertheless to bring about settlement by peaceful means of the parties' own choice. Notably in the Indonesian question (II), the Council at first called upon the parties to settle their disputes by arbitration or other peaceful means, and rested its assistance to the parties on the concept of good offices.¹⁴

CASE 1.¹⁵ THE IRANIAN QUESTION (I)

[*Note:* Discussion arose on the competence of the Council in the light of the differing views of the parties regarding the stage reached in negotiations in accordance with Article 33.]

In submitting the Iranian question, Iran contended that prior efforts to negotiate "in accordance with

⁸ See statements by Brazil, Poland and the USSR in connexion with the Corfu Channel question, Case 3; by Brazil in connexion with the Egyptian question, Case 4; by Syria in connexion with the India-Pakistan question, Case 5 (i).

⁹ See statement by Iran in connexion with the Iranian question (I), Case 1; see statement by United Kingdom in connexion with the Corfu Channel question, Case 3; and by Egypt in connexion with the Egyptian question, Case 4.

¹⁰ United Kingdom, 71st meeting: p. 425; and United States, 72nd meeting: p. 453, in connexion with the question of information on Armed Forces of the United Nations. See also United Kingdom letter dated 17 February 1946 concerning Polish armed forces in Italy, S/12; United Kingdom, in connexion with USSR communication dated 21 January 1946 on the Greek question, 6th meeting: p. 84. (These questions were not submitted to the Council as disputes.)

¹¹ Chapter VIII, part I.

¹² See Polish draft resolution in connexion with the Corfu Channel question, Case 3; and Brazilian draft resolution in connexion with the Egyptian question, Case 4.

¹³ See chapter VIII, pp. 302-303.

¹⁴ See Case 25.

¹⁵ For texts of relevant statements see:

3rd meeting: Iran, pp. 33-38; USSR, pp. 39-43.
5th meeting: Iran, pp. 46-48; USSR, pp. 49-53.

Article 33" had met with no success. The USSR contended in reply that, negotiations having been entered into by the parties, the matter should continue to be dealt with in that manner. The representative of the USSR agreed to the inclusion of the item in the agenda on the understanding that the Council would then discuss whether the question was to be considered.¹⁶

At the 3rd and 5th meetings on 28 and 30 January 1946, statements were made by the parties concerning the exchange of notes before submission of the question to the Council. The representative of Iran contended that an exchange of notes which ended in rejection of the request for withdrawal of troops did not constitute negotiations within the meaning of Article 33; and that, even if such an exchange of notes did constitute negotiations, the obligations of the Iranian Government under Article 33 were nevertheless fulfilled in view of the provision that the parties to the dispute must "first of all seek a solution by negotiations . . ."

The representative of the USSR stated that there was no foundation for consideration of the question by the Council since, under Article 33, Members were required "to attempt to settle disputes by means of negotiation, et cetera . . .". In the circumstances of the case, the Council was not entitled to call upon the USSR to take any steps provided for by the second paragraph of Article 33.

After both parties had indicated agreement to the resumption of negotiations, discussion centred on whether, as Iran favoured, the negotiations should be under the aegis of the Council.¹⁷

CASE 2.¹⁸ THE SYRIAN AND LEBANESE QUESTION: In connexion with draft resolutions calling upon the parties to negotiate: voted upon and rejected on 16 February 1947

[*Note:* The demand for the withdrawal of forces without preliminary negotiation resulted in discussion on the bearing of Article 33 on the settlement of the dispute.]

In submitting the question to the Security Council, Syria* and Lebanon* requested the Council to recommend the total and simultaneous evacuation of foreign troops from the territories of Syria and Lebanon.¹⁹ At the 19th to 23rd meetings between 14 and 16 February 1946, the representatives of Syria and Lebanon contended that negotiations were unnecessary; they considered that it would be sufficient for the Council to recommend that the evacuation of troops should be carried out within a limited time, and that the matter should remain on the agenda of the Council until evacuation was completed. The question of evacuation, they maintained, concerned only the Governments of

¹⁶ For the submission of the question, see chapter VIII, p. 300. Regarding inclusion of the question in the agenda, see chapter II, Case 27.

¹⁷ Regarding the question of retention on the agenda, see Case 20; and for the decision of the Council, see chapter VIII, p. 301.

¹⁸ For texts of relevant statements see:

20th meeting: France, pp. 292-293.

21st meeting: Australia, pp. 310-311; United States, pp. 300-301.

22nd meeting: Syria, pp. 323, 330-331; France, pp. 325-326.

23rd meeting: Lebanon, p. 342; France, pp. 338, 357-358; USSR, pp. 360-361.

¹⁹ S/5, O.R., 1st year, 1st series, Suppl. No. 1, pp. 80-83. For the submission of the question, see chapter VIII, p. 302.

the United Kingdom and France which had to arrange for it. They observed that, after the troops had been withdrawn, they would not refuse to enter into negotiations, but they declined to negotiate on the question of withdrawal in conjunction with other matters.

At the 22nd and 23rd meetings on 16 February, the representative of France, recalling that the representatives of Syria and Lebanon had expressed their refusal to negotiate on the evacuation of troops, declared that either there was a dispute, in which case the parties were required, under Article 33, to negotiate with a view to seeking a solution; or else, if there were no negotiations and if there was a refusal to negotiate, the assumption ought to be that there was no dispute.

The representative of the USSR maintained that this argument was "unfounded and mistaken". He said:

"A dispute does clearly exist, but the parties in this case are simply refusing one of the means provided for solving it, and that is all the interpretation of Article 33 permits. Article 33 provides other means of solution besides negotiation."

At the 21st meeting on the same day, the representative of the United States observed that the possibilities of negotiation to find a peaceful solution in accordance with Article 33 had not yet been exhausted and that the Council should reserve the right to request information regarding the progress of negotiations and the results achieved. The representative of Australia observed that negotiation was one of the methods of settlement recognized by Article 33, and that it would be sufficient if the Council took note of the statements of the parties and invited them to continue negotiations with a view to reaching an agreed solution of the problem speedily. The results of the negotiations should be reported to the Council and, if they were not satisfactorily concluded within a reasonable time, the Council might then consider what further action it would wish to take.

During the discussion of the question, four draft resolutions were submitted which provided for negotiations and varied according to the statement of the conditions and purposes of the negotiations.²⁰

CASE 3.²¹ THE CORFU CHANNEL QUESTION

[Note: Inclusion of the question in the agenda was opposed on the grounds that one party had not complied with the obligation imposed by Article 33. After the adoption of the agenda, further observations were made on the bearing of Article 33 on the consideration of the question by the Council. The proceedings concluded with the recommendation for reference of the dispute by the parties to the International Court of Justice.]

At the 95th meeting on 20 January 1947, the representative of the USSR objected to the inclusion of the Corfu Channel question in the agenda on the

²⁰ For the draft resolutions see chapter VIII, p. 303.

²¹ For texts of relevant statements see:

95th meeting: USSR, p. 115; United Kingdom, p. 116.

107th meeting: United Kingdom, p. 306.

111th meeting: Australia, pp. 362, 364; Poland, p. 376; USSR, pp. 365-366, 371, 378; United Kingdom, pp. 384-385.

120th meeting: Poland, pp. 556-557; United Kingdom, pp. 567-568.

122nd meeting: China, p. 601; Poland, p. 600; Syria, pp. 605-606.

125th meeting: Brazil, pp. 686-688; Poland, pp. 688-689; Syria, p. 688; United Kingdom, pp. 684-685.

grounds that no proper effort had been made by the Government of the United Kingdom to bring about a settlement of the dispute in accordance with Article 33 of the Charter.²² The representative of the United Kingdom replied that his Government had resorted to direct diplomatic exchange of views, which was, in its view, the correct procedure, but that in view of the unsatisfactory result of its attempt to settle the matter, his Government had decided to place it before the Council.

At the 95th meeting, the Council included the question in its agenda.

At the 111th meeting on 24 February, the representative of the USSR, in connexion with the draft resolution submitted by the representative of Australia for the appointment of a sub-committee,²³ drew attention to the rejection by the British Government of the Albanian proposal of 11 November 1946, for the establishment of a mixed commission. This showed, in his view, that the British Government had not taken the course of settling the question by bilateral negotiation with the Government of Albania, and had thus acted without regard to Article 33, paragraph 1. The representative of the United Kingdom replied that the mixed commission had been proposed for the limited purpose of defining the Channel, not for the settlement of the whole dispute.

At the 120th meeting on 20 March 1947, the representative of Poland expressed the view that, the accusations against Albania not having been substantiated, the normal procedure would be simply to dismiss the case; but that, in the special circumstances, he would not intend so to proceed.

Having cited Article 33, he continued:

"I think this is the most appropriate action which this Council can take, namely, to invoke Article 33, paragraph 2, and call upon the parties to settle their dispute by the means set forth in paragraph 1 of that article. During the process of settlement, we shall be able to examine additional evidence and information which may still be collected."

At the 122nd meeting on 25 March 1947, the representative of Poland submitted a draft resolution²⁴ whereby the Council, "taking into consideration that the parties did not exhaust the means of peaceful settlement before bringing their case to the Council", would, pursuant to Article 33 of the Charter, call upon the parties to the dispute

"to settle their dispute by any means of peaceful settlement of disputes provided by the above-mentioned Article of the Charter, subject to their own agreed choice".

At the same meeting, the representative of Syria stated:

"In this instance, I consider that the United Kingdom justly presented this case to the Security Council, because it believed that its rights had been encroached upon; instead of trying to restore its position by force, the United Kingdom came to the Security Council under the provisions of the Charter. However, the United Kingdom Government could have collected certain evidence or facts before coming to the Security Council, in order to facilitate the solution of such a problem. The Security Council is

²² For the submission of the question, see chapter VIII, p. 313

²³ 111th meeting: pp. 364-365.

²⁴ 122nd meeting: p. 600.

not able to collect and investigate all this evidence. Had the British Government taken steps under Article 33 of the Charter before coming to the Security Council, it would have been able, perhaps, to collect certain evidence to eliminate all the doubts and ambiguities which exist in the matter.

"I do not see how I can participate in accusing an independent sovereign State, contrary to its declaration of faith. I should prefer that the matter be studied further, and that the parties to the dispute try some other means, such as mediation, for instance, as mentioned in Article 33 of the Charter. This would give them another chance and would keep the dispute on the agenda of the Security Council for further reference in case these new endeavours failed to reach a conciliatory solution."

After the vote on the United Kingdom draft resolution,²⁵ the representative of Poland withdrew his proposal.²⁶

At the 125th meeting on 3 April 1947, after submission of a new United Kingdom draft resolution for reference of the dispute to the International Court, the representative of Brazil expressed the view that Articles 34, 35 and 36 were applicable only, first, when the requirements of Article 33 had been complied with, and secondly, when the dispute or situation was likely to endanger the maintenance of international peace and security.²⁷ In the particular case, it was the opinion of the representative of Brazil that:

"Albania and the United Kingdom had not exhausted such means when they referred their case to the United Nations, on 29 October 1946 and on 10 January 1947, respectively. In my opinion, consequently, the provisions of the Charter had not been observed when the Council decided to consider this dispute before the parties had exhausted the resources set forth in our constitutional document. The Council was thus transformed into a court of arbitration, contrary to its specific functions."

CASE 4.²⁸ THE EGYPTIAN QUESTION: In connexion with draft resolutions to recommend direct negotiations submitted by the representatives of Brazil and China: voted upon and rejected on 28 August and 10 September 1947.

[Note: In the consideration of the Egyptian question, observations were made, notably by the representative of Brazil, regarding the circumstances in which disputes might appropriately be brought before the Security Council. Article 33 was cited in connexion with the proposed recommendation by the Council of direct negotiations, and certain remarks were directed to the distinction between recommendations under Article 33

²⁵ 122nd meeting: pp. 608-609. For the United Kingdom draft resolution, see Case 23.

²⁶ 122nd meeting: p. 609.

²⁷ See Case 23 for further observations bearing on consideration of the dispute by the Council.

²⁸ For texts of relevant statements see:

175th meeting: Egypt, pp. 1746-1748.

176th meeting: United Kingdom, pp. 1769-1772, 1776, 1783-1784.

189th meeting: Brazil, pp. 2105-2109.

193rd meeting: Egypt, pp. 2164-2167.

196th meeting: Australia, p. 2252; Poland, p. 2249; United Kingdom, p. 2254.

198th meeting: Colombia, p. 2290; USSR, pp. 2284-2285.

201st meeting: Syria, p. 2349; United Kingdom, pp. 2347-2348.

and under Article 36.²⁹ All draft resolutions were, however, rejected.]

In the letter of submission dated 8 July 1947, Egypt* stated that attempts to reach a settlement by direct negotiations, in conformity with Article 33 of the Charter, had failed.³⁰

In their initial statements before the Council, the representative of Egypt at the 175th and 179th meetings on 5 and 11 August 1947, and the representative of the United Kingdom at the 176th, 179th and 182nd meetings on 5, 11 and 13 August, described the negotiations which had been conducted between the two Governments. The representative of the United Kingdom stated that his Government had agreed to enter into negotiations for the revision of the Anglo-Egyptian Treaty of 1936 "as a matter of grace", and that Egypt could not acquire a right to negotiations by bringing an ill-founded claim before the Council.

The draft resolution for the resumption of direct negotiations, submitted by the representative of Brazil at the 189th meeting on 20 August, read as follows:³¹

"The Security Council,

"Having considered the dispute between the United Kingdom and Egypt, brought to its attention by the letter of the Prime Minister of Egypt, dated 8 July 1947,

"Noting that the methods of adjustment provided for by Article 33 of the Charter have not been exhausted, and believing that the settlement of the dispute may best be attained, under present circumstances, through recourse to those methods,

"Recommends to the Governments of the United Kingdom and Egypt:

"(a) To resume direct negotiations and, should negotiations fail, to seek a solution of the dispute by other peaceful means of their own choice;

"(b) To keep the Security Council informed of the progress of these negotiations."

In submitting the draft resolution, the representative of Brazil contended that the situation presented no immediate danger to international peace, and that all possibilities of agreement, by direct negotiations or other customary methods of settlement, had not been exhausted.

Objection was raised to the draft resolution by the representative of the USSR on the grounds that the question had come before the Council because no positive result had been achieved from direct negotiation; that negotiations could not rightly proceed during the occupation of the territories of Egypt and the Sudan; and that the draft resolution avoided expression of an opinion on the substance of the question. The representative of Colombia stated that, should direct negotiations between the United Kingdom and Egypt again fail to achieve their ends, the Council should have the opportunity of making a new recommendation regarding the means of settling the dispute in the light of the conditions in which it might come back for examination. The representative of the United Kingdom accepted the Brazilian draft resolution and stated that his Government was very willing to resume negotiations. The representative of Egypt opposed the draft resolu-

²⁹ See also Case 24 for observations bearing on Article 36 (3).

³⁰ S/410, 159th meeting: pp. 1343-1345. For the submission of the question, see chapter VIII, p. 314.

³¹ 189th meeting: pp. 2108-2109.

tion as an evasion of the Council's primary responsibility since it declined to deal with the merits of the dispute. The representative of Poland held that, under the Charter, the Council could act in an early stage of a dispute and did not need to wait until an unequivocal menace to peace had arisen.

At the 193rd meeting on 22 August, the representative of Australia proposed an amendment that, in so far as the negotiations affected the future of the Sudan, they should include consultation with the Sudanese.³² The representative of Belgium opposed the amendment on the grounds that it provided for methods which implied taking a position on the substance of the dispute. If the Council were to adopt the amendment, it would depart from the system provided for in Article 33.

At the 198th meeting on 28 August, the Australian amendment and the Brazilian draft resolution were rejected.

In connexion with the draft resolution for the resumption of direct negotiations submitted by the representative of China at the 201st meeting on 10 September,³³ the representative of the United Kingdom stated that the last paragraph of the preamble, which read:

"Having confidence that the re-establishment of direct contact between the parties will result in early evacuation of remaining British armed forces",

appeared to assign priorities to certain aspects of the negotiations, and that the draft resolution would thus shift the Council from the sphere of Article 33 to that of Article 36. The representative of Syria stated that the more urgent issue of evacuation would come within Article 36, while other issues of the dispute could be dealt with under Article 33.

At the same meeting, the Chinese draft resolution was rejected.

The following statements were made in the course of these proceedings:

The representative of Brazil stated (189th meeting, 20 August 1947):

"The powers which the Charter confers upon the Security Council for the exercise of its functions do not exclude, however, the traditional methods of international law for the peaceful adjustment of conflicts. On the contrary, these powers presuppose recourse to such methods, to which both Chapter VI and Chapter VII of the Charter give priority. Only after these have failed is the Security Council allowed to intervene and impose obligations on the parties. Negotiation, good offices, mediation and arbitration assume within the Charter the character of normal instruments of adjustment, in the initial stages of pacific settlement. Articles 33, 36 and 37 make it quite clear that it is incumbent upon the parties to seek the settlement of their dispute by the traditional methods of adjustment, while the Council is to maintain a watchful attitude in the initial stage of settlement.

"The framers of the Charter of the United Nations very properly and wisely adopted a duality of methods for the peaceful settlement of disputes: the traditional method of international law and the specific method of the Security Council. There is no contradiction between these; rather, they complement each other, giving the Security Council great flexi-

bility in the exercise of its function of conciliation and permitting it to resort to either one or the other according to the circumstances of the case. If, on the contrary, the Charter had established its own method for peaceful settlement, to the exclusion of all devices developed through centuries of practice of international law, the rigidity which would then ensue would be detrimental to the proper adjustment of disputes.

"In fact, not all situations or disputes are open to adjudication by the Security Council. Cases are brought before that body only in so far as they concern security. They are usually presented in an isolated form, unconnected with any other aspects of the question. The Council intervenes then to prevent a situation or dispute from becoming a menace to international peace and security. Hence the insufficiency of the Council's action wherever it is exercised outside that scope in complex situations involving mutual relations and interests of States devoid of the urgent character which justifies the action of the Security Council.

"In the sphere of diplomatic relations, questions often arise between States as the outcome of their divergent interests and political and economic interdependence. Not infrequently they involve a long record of political relations and present complex aspects with political, economic and social implications. The aspect of security may also be present, though without any character of immediateness and urgency which might call for summary action by the international agency. Questions such as these cannot be dealt with advantageously by the Security Council. We are here in a domain where the traditional methods of international law provide the most convenient instrument for adjustment in the interests not only of the parties directly concerned but also of the harmonious development of international relations.

"...
"Considering the complexity of present international relations and the ever-growing interdependence among States, as well as the frequent divergencies ensuing from this interdependence, one may legitimately doubt the existence of a single dispute the continuance of which might not eventually be capable of affecting international peace and security. Such a broad interpretation of the language of the Charter, which, be it said, is vague and imprecise, would furthermore lead the Council to convert into a rule that which should constitute an exception, namely, its intervention in the relations between States to adjust matters which would be handled with better results through direct negotiation or other means afforded by diplomacy. In our opinion, such intervention by the international agency should take place only when the parties have shown themselves incapable of arriving at a satisfactory settlement or have exhausted the ways of diplomacy, i.e., when the dispute, in the light of the particular circumstances of each case, may be deemed grave enough to constitute an unequivocal menace to international peace and security.

"Recourse to an international agency has its disadvantages as well as its advantages. Among the former, we might mention the tendency it has to accentuate divergencies. That is why it should not be allowed as a form of pressure or threat to bring about or to influence negotiations. Its use should be restricted to questions presenting a character of im-

³² 193rd meeting: p. 2169.

³³ 201st meeting: p. 2344.

mediateness and urgency, which do not permit sufficient time for more extended treatment, but which must be handled at once to avoid the materialization of a threat to the peace. The intervention of the Security Council should be considered in that respect as an *ultima ratio* or heroic remedy, to be resorted to only after all others have been tried and found inadequate. To seek redress in the Security Council before the traditional means of settlement have been exhausted would amount to transferring to that body all the diplomatic difficulties emerging from the relations between States.

“...
“The Anglo-Egyptian Treaty of 1936 contains provisions for revision. In fact, both parties initiated negotiations to that effect without, however, reaching an agreement. The circumstances do not seem to justify the opinion that all possibilities of agreement, whether by direct negotiation or by resort to other customary methods of settlement, have been exhausted.

“In face of a situation which presents no immediate danger to international peace, the Brazilian delegation is of the opinion that the Security Council is not justified in taking action, setting aside a treaty, but rather that it should let the parties settle their differences ‘in conformity with the principles of justice and international law’, namely by having recourse to the usual methods of settlement provided by international law.

“...
“In view of the above-stated reasons, the Brazilian delegation, without passing upon the merits of the case or upon the duties and obligations of the parties in consequence of the Treaty of 1936, is of the opinion that the Security Council is not justified in taking action in the matter, but rather that it should invite both Governments to resume direct negotiations with a view to the peaceful settlement of their dispute in accordance with the traditional methods of international law.”

The representative of Egypt, having stated that the representative of Brazil had placed unjustified emphasis on “traditional methods” of handling international disputes, continued (193rd meeting, 22 August 1947):

“To say that the Security Council can intervene ‘only after these methods have failed’ is to deny to the Security Council the role assigned to it by Article 36, paragraph 1, of the Charter.

“...
“Egypt brought this dispute to the attention of the Council under Articles 35 and 37 of the Charter. The Security Council has considered the dispute under those Articles. Its competence to do so, its competence to ‘call upon the parties to settle their dispute’ by the means set out in Article 33, and its competence to ‘recommend appropriate procedures or methods of adjustment’ under either Article 36 or Article 37 is a special competence. It applies only to disputes ‘the continuance of which is likely to endanger the maintenance of international peace and security’. I think, therefore, that I am entirely justified in my deduction that the Security Council finds this to be such a dispute; this being the case, the very basis of the resolution disappears.

“...
“The draft resolution asserts that ‘the methods of adjustment provided for by Article 33 of the Charter

have not been exhausted’ in this case. I think it cannot be contended that all of the methods mentioned in Article 33 must have been exhausted. The text refers to them not as cumulative but as alternative methods. It does not enjoin an endless procedure. A party to a dispute is not obliged first to try negotiation; then that failing, to go on to enquiry; and that failing, to proceed successively to mediation, conciliation, arbitration, judicial settlement, and other peaceful means.”

The representative of Poland stated: (196th meeting, 26 August 1947):

“No one can confine the competence of this Council to cases which constitute only an unequivocal menace to peace. According to the terms of the Charter, the Security Council is not allowed to wait until a dispute becomes an unequivocal menace to peace. It is the primary duty of this Council to act in an early stage of a dispute, before it has become an unequivocal menace to peace. The Council cannot wait until hostilities begin or until the situation has gone beyond the control of the Egyptian and United Kingdom Governments.”

CASE 5 (i).³⁴ THE INDIA-PAKISTAN QUESTION

[Note: Article 33 was cited in connexion with the conversations between the parties under the aegis of the President.]

At the 227th meeting on 6 January 1948, the representative of India* stated that his Government had been compelled to bring this question before the Council by the failure to reach agreement in direct negotiations which had resulted from the intransigence and lack of co-operation of the Government of Pakistan.

At the 228th and 229th meetings held on 16 and 17 January, the representative of Pakistan* denied the charge that the Government of Pakistan had refused to co-operate in bringing about a settlement of the Kashmir question. After giving a detailed account of the various attempts made by the Government of Pakistan to get the Indian authorities to participate in direct talks on Kashmir, the representative of Pakistan added that the Government of India had not really tried to settle the issues by direct negotiation.

At the 229th meeting held on 17 January, the representative of the United Kingdom suggested that the President should invite the representatives of India and Pakistan for direct talks under his guidance to find some common ground for a settlement of the dispute. In this he was supported by the representatives of the United States and the USSR. The suggestion was also accepted by the representatives of India and Pakistan.

At the 230th meeting on 20 January, as a result of the conversations held by the representatives of the parties under his chairmanship, the President (Belgium) submitted a draft resolution to establish a commission. In

* For texts of relevant statements see:

227th meeting: India, p. 11.

228th meeting: Pakistan, p. 87.

229th meeting: India, p. 126; Pakistan, pp. 90-94, 127; USSR, pp. 127-128; United Kingdom, pp. 125-126; United States, p. 126.

230th meeting: President (Belgium), pp. 129-133.

231st meeting: President (Belgium), pp. 164-165.

235th meeting: United Kingdom, pp. 259-260.

236th meeting: President (Belgium), p. 279; United States, p. 279.

241st meeting: Syria, pp. 13-14.

so doing, he stated that both parties had signified their approval of the draft resolution.³⁵ The President also stated that it had been agreed with the parties that the conversations would continue in order to clarify the essential points of a settlement.

At the 231st meeting on 22 January, the President reported to the Council on the main topics covered in the conversations conducted by him with the representatives of India and Pakistan.

At the 235th meeting on 24 January, the representative of the United Kingdom suggested that the discussions between the representatives of India and Pakistan should continue under the auspices of the President of the Council. This suggestion met with the general approval of the representatives on the Council.

At the 236th meeting on 28 January, the President reported to the Council on the conversations that he had continued with the parties. At the same meeting, the representative of the United States inquired as to whether "we [have] arrived at that parliamentary stage in this question where the parties are unable to do anything under Article 33". He added that, if the parties had arrived only at a partial agreement, then the Council "is bound by the Charter to consider that partial agreement if it proceeds under Article 37, because Article 36, paragraph 2, commends the Security Council to 'take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties'."

In his reply to the representative of the United States, the President declared that the representatives of India and Pakistan had not given up hope of reaching an agreement through direct negotiations under the guidance of the President of the Council. These talks had, however, been suspended in order to give members of the Council "an opportunity to express their views on points which had been discussed between the parties".

At the 241st meeting on 5 February, the representative of Syria stated that, before submitting this question to the Council, the Governments of India and Pakistan "had not met all the conditions set forth in Article 33 of the Charter, namely, exhausting all the means for arriving at a settlement by negotiations between themselves. All that happened was, as we understand from the various statements made, that there had been an exchange of letters and telegrams between them. Although that exchange of letters did not settle the question, it contained serious points which might assist very well in the final solution". The representative of Syria believed that the direct talks between the parties might be renewed under the guidance of the President of the Council on the basis of the detailed memorandum submitted by the representative of Colombia at the same meeting. Upon the suggestion of the President (Canada), consultations with the parties were jointly continued, with the representative of Belgium acting as Rapporteur.

CASE 5 (ii).³⁶

At the 457th meeting on 17 December 1949, the Council adopted the suggestion of the representative

³⁵ For text of the draft resolution, which was adopted at the same meeting, see chapter VIII, p. 345.

³⁶ For text of relevant statement see: 458th meeting: United States, p. 20.

of Norway that the President of the Council should meet informally with the representatives of India and Pakistan in order to come to an agreement on some proposal which was mutually satisfactory to the two parties concerned.³⁷

At the 458th meeting on 29 December, the representative of the United States declared that the matter of greatest importance was that the wishes of the parties should be given priority by the Council and that "no suggestions should be made which would put obstacles in the way of the selection of the parties of those means, under Article 33 of the Charter, which seem to them most effective and most suitable to settle this dispute by peaceful methods". He added that "it does not seem to us that any settlement has been made of any procedural issue here this afternoon. We do not think that we have foreclosed the possibility of raising at a subsequent time the question whether the decision of 17 December does not constitute a valid basis for continuing authority . . . I think that I am perfectly correct in saying that it has not been foreclosed, nor do I think that it has been the sense of the Council or of the President, if I may venture to interpret his remarks to make certain that I understood them, that the force of Article 33 of the Charter would preclude him or anyone else acting, upon the request of the parties, if that is what is considered by them a suitable method of procedure".

CASE 6.³⁸ IDENTIC NOTIFICATIONS DATED 29 SEPTEMBER 1948

[*Note:* The question was submitted to the Council as a threat to the peace within the meaning of Chapter VII. The three Governments submitting the question stressed their efforts to bring about a settlement of the question before recourse to the Council. The reply was made that these Governments had failed to avail themselves of the special machinery established by international agreement for dealing with the question submitted. Discussion on the bearing of Article 33 took place mainly after the adoption of the agenda.]³⁹

The identic notifications dated 29 September 1948 from the Governments of France, the United Kingdom and the United States drew attention to the efforts made by those Governments to bring about a settlement before submitting the question to the Council:⁴⁰

"It is clear from the protracted exchange of notes and the conversations which have taken place on the initiative of the three Governments between them and the Soviet Government that the three Governments, conscious of their obligations under the Charter to settle their disputes by peaceful means, have

³⁷ 457th meeting: p. 8.

³⁸ For text of relevant statements see:

361st meeting: USSR, pp. 12-13; United States, p. 21.

362nd meeting: USSR, pp. 9, 16-17.

363rd meeting: United States, pp. 2-4, 10-11, 19-21, 26.

364th meeting: France, pp. 39, 41, 45; United Kingdom, pp. 31, 33, 35-36.

366th meeting: United States, p. 9.

368th meeting: France, pp. 63, 67; United Kingdom, pp. 49-50; United States, pp. 51, 53, 55-56, 60-62.

370th meeting: Belgium, p. 13; Canada, p. 14.

372nd meeting: France, p. 3.

³⁹ For discussion before adoption of the agenda on the relevance of Article 107, see chapter XII, Case 30. For the draft resolution to recommend renewal of negotiations after fulfilment of certain conditions, see chapter XI, Case 14.

⁴⁰ S/1020, *O.R.*, 3rd year, *Suppl. for October 1948*, pp. 9-10. For the submission of the question, see chapter VIII, p. 354.

made every effort to resolve their differences directly with the Soviet Government.”

In these notifications reference was made to a note addressed at an earlier date by the three Governments to the Government of the USSR. In this note the three Governments made the following statement:⁴¹

“The Soviet Government has thereby taken upon itself sole responsibility for creating a situation in which further recourse to the means of settlement prescribed in Article 33 of the Charter of the United Nations is not, in existing circumstances, possible, and which constitutes a threat to international peace and security. In order that international peace and security may not be further endangered, the Governments of the United States, the United Kingdom and France, therefore, while reserving to themselves full rights to take such measures as may be necessary to maintain in these circumstances their position in Berlin, find themselves obliged to refer the action of the Soviet Government to the Security Council of the United Nations.”

In their statements in the Security Council the representatives of the United States and the United Kingdom indicated the efforts which had been made by them in accordance with Article 33 to secure a settlement of the question, and stressed their view that the continuation of direct negotiations was precluded by the recourse of the Government of the USSR to measures of force. The representative of the United Kingdom stated at the 364th meeting on 6 October 1948:

“Efforts to secure agreement on the lifting of the blockade, which were made continuously between 23 June and 3 July, were equally unsuccessful . . .

“ . . .
“The further course of the discussion between His Majesty’s Government and the Government of the USSR is set out in the documents which have been submitted to the Security Council. These documents show conclusively that His Majesty’s Government, in initiating direct discussions with the Government of the USSR in Moscow, and subsequently in Berlin, and by an exchange of notes through the diplomatic channel, was determined to abide by its obligations under Article 33 of the Charter . . .

“ . . .
“We fulfilled to the limit Article 33 of the Charter, which I have already quoted. We failed to achieve any satisfactory result. Article 37 of the Charter lays down that ‘should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.’ We complied with Article 37.”

The representatives of France and the United States referred to the omission of the USSR to institute negotiations prior to the imposition of the blockade measures in Berlin.

At the 363rd meeting on 5 October, the representative of the United States drew attention to Article 36 (3) as indicating an appropriate method of settlement. He observed:

“If the Government of the USSR believed that the three Western Governments had lost the rights which they admittedly had possessed, the course of action

open to the Government of the USSR, in conformity with its obligations under the Charter, would have been clear. Under the Charter it would have been obliged to resort to negotiation or other peaceful procedures for the determination of the question. Since a matter of rights was involved, the Soviet Union might well have taken into consideration the principle enunciated in Article 36, paragraph 3, of the Charter. This principle is that ‘legal disputes should, as a general rule, be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court’.

“The Government of the USSR would not have found the Government of the United States hesitant to submit the question of its rights to the determination of the judicial organ of the United Nations or to any other convenient means of pacific settlement for the settlement of this question. In any such situation, it is clearly the obligation of the party asserting a change in the legal position to propose a means of peaceful settlement.”

At the 361st meeting on 4 October, the representative of the USSR replied that the question had not been raised before the Council of Foreign Ministers, which was the organ duly established by international agreement for dealing with such a question. He stated:

“For the solution of such matters, by the international agreements to which I have just referred, a special control machinery for Germany was established: the Four Power Control Council and the Council of Foreign Ministers . . . If we are to keep to the terms of the above-mentioned international agreements, and to respect the signature appended to them, then it cannot be recognized as either legal or correct to refer to the Security Council any question concerning Germany, including that of Berlin. A decision to refer any such question to the Security Council would constitute a direct violation of the provisions of the United Nations Charter and of the international agreements I have mentioned. Most blatantly of all, it would be a violation of the agreements signed at Yalta and Potsdam, in accordance to which the question of Germany falls within the sole competence of the four Powers bearing the responsibility for the occupation of Germany.

“ . . .
“In virtue of the treaties signed by them, the Governments of the United States of America, the United Kingdom and France have at their disposal all the necessary legal means to enable them to submit their claims and to rectify by legal means any grievances arising in connection with Germany.

“ . . .
“The Governments of the United Kingdom, the United States of America, and France must therefore choose the legal way, the way or procedure established in the international agreements signed by them, and by others at a later date. That is the legal method. Those who follow it will not violate either the Charter of the United Nations, or the international instruments which those Governments have signed.”

At the 366th meeting on 15 October, the President of the Council addressed a series of questions to the Powers concerned. The representatives of the United States, United Kingdom, France and the USSR were asked to explain “in detail the agreement involved

⁴¹ S/1020/Add.1, O.R., 3rd year, Suppl. for October 1948, Annex XI, identic notes dated 26 and 27 September 1948, p. 45.

in the instructions given to the military governors of the four Powers in Berlin, and to give the precise reasons which prevented its implementation".⁴² In reply the representatives of the United Kingdom, the United States and France presented statements concerning their

attempts to secure a settlement through negotiations and the reasons why these negotiations had failed.⁴³

⁴² 366th meeting: p. 8.

⁴³ 368th meeting: pp. 40-50, 50-62, 62-67.

Part II

CONSIDERATION OF THE PROVISIONS OF ARTICLE 34 OF THE CHARTER

NOTE

The case histories entered in part II of this chapter are those in which issues have arisen related to Article 34 of the Charter. The diverse character of the case histories arises from the broad significance of Article 34 in the structure of Chapter VI of the Charter. By Article 34, the Security Council is empowered to investigate any dispute, or any situation of the character indicated, in order to determine whether the dispute or situation falls within the category of those in respect of which the Council is empowered to make recommendations under Articles 36 and 37 of the Charter.

In connexion with the Iranian question the interpretation was affirmed that Article 34 empowers the Council to take up of its own initiative a dispute or situation not brought to its attention under Article 35.¹ Though in respect of many questions submitted to the Council the contention has been advanced that the dispute or situation under consideration was not one the continuance of which was likely to endanger the maintenance of international peace and security,² only in certain instances have the proceedings of the Council or its decisions rested explicitly on the power conferred by Article 34 to investigate any dispute, or any situation which might lead to international friction or give rise to a dispute.³ Consideration has been given to the question whether investigation under Article 34 or an express finding of the nature envisaged in Article 34 is a condition of the exercise by the Council of its powers under Articles 36 and 37.⁴ On two occasions the Council has appointed commissions of investigation expressly under Article 34 of the Charter, but on neither occasion was the investigation confined to the purpose stated in Article 34.⁵ On other occasions proposals for investigation have given rise to discussion regarding the circumstances in which investigation is appropriate, without resulting, however, in an affirmative decision.⁶ Considerable discussion has centred on the distinction between investigation under Article 34 and the establishment of a sub-committee to examine the facts, and on certain occasions recourse has been had to the establishment of such a sub-committee;⁷ the distinction is necessarily inter-related with the problem of the procedural or non-procedural character of the decision involved.⁸ The questions have been debated whether the Council's power of investigation is exhausted with a finding under Article 34 of the Charter,⁹ and whether

a decision to investigate is a binding decision within the terms of Article 25.¹⁰

CASE 7.¹¹ THE INDONESIAN QUESTION (I)

[*Note:* In the Indonesian question, after discussion on whether the circumstances brought to the attention of the Council endangered international peace and warranted the establishment of a commission of inquiry, the Council, after rejecting the draft resolutions submitted, closed the proceedings on the question.]¹²

At the 12th meeting on 7 February 1946, the representative of the Ukrainian SSR contended that the action of British forces in Indonesia was in contravention of Article 1 (2) of the Charter and had resulted in a situation which, under Article 34 of the Charter, threatened the maintenance of international peace and security. At the 16th meeting on 11 February 1946, the representative of the Ukrainian SSR introduced a draft resolution¹³ to set up a commission to carry out an enquiry on the spot, establish the facts in Indonesia, and report to the Council on the result of its work.

The representative of the USSR supported the sending of a commission as a means of obtaining impartial information. The representative of the United Kingdom insisted that no endangerment to international peace was involved—a view supported by the representatives of the Netherlands, United States, France and Brazil. The representative of Australia, while emphasizing the importance of appropriate recourse to commissions of inquiry, concluded that, in the case under discussion, there was no basis for action under Article 34, since the military action of the British troops in Indonesia did not threaten the maintenance of international peace and security. The representative of the United States stated that "the power of investigation under Article 34" was of especial importance as one of the means whereby the Council could determine whether or not it should undertake to deal with a particular situation or dispute. In determining whether or not a situation warranted investigation, the Security Council should have reason to believe, on the circumstances before it, that the continuance of the situation was likely to endanger international peace and security. The representative of the United States concluded that in the existing circumstances the Security Council should

¹⁰ See Cases 13, 15: see also chapter XII, Case 25.

¹¹ For texts of relevant statements see:

12th meeting: Ukrainian SSR, pp. 174-178; Netherlands, p. 187; United Kingdom, pp. 178-182.

15th meeting: Egypt, p. 214; United Kingdom, pp. 215-217.

16th meeting: Australia, p. 234; United States, pp. 235-237.

17th meeting: Mexico, p. 242; France, pp. 243-244; Brazil, pp. 244-245; Netherlands, pp. 246-247.

18th meeting: Netherlands, pp. 258-259; United Kingdom, pp. 260-261.

¹² On the question of domestic jurisdiction, see chapter XII, Case 1.

¹³ 16th meeting: p. 223. For the submission of the question, see chapter VIII, p. 302.

¹ See chapter II, Case 56.

² See part IV: Note, p. 410.

³ See Case 18. See also Cases 11 and 16.

⁴ See Case 13, and also Case 9.

⁵ See Cases 11 and 16.

⁶ See Cases 7, 10 and 18.

⁷ See Cases 8 and 17: see also chapter V, Cases 65, 66 and 67.

⁸ See chapter IV, Cases 43, 49, 85, 96, 98, 118, 119 and 180.

⁹ See Case 14.

not undertake an investigation or take any further action.

At the 17th meeting on 12 February, the representative of Mexico suggested that the first organ to be set up under Article 29 should be "an instrument to produce the necessary information as to the facts involved in any definite question brought before us". A temporary commission should therefore be established under Article 29 to ascertain the facts and bring them to the notice of the Council. The commission, while not interfering with the rights of the Netherlands Government as a sovereign Power, could also, "if the Dutch Government desired, be of help as a mediator in the negotiations between the Dutch Government and the legitimate leaders of the nationalist movement".

At the 18th meeting on 13 February, the proposal of the Ukrainian SSR to set up a commission of inquiry was rejected by 2 votes in favour.¹⁴

In speaking on the Egyptian draft resolution, the representative of the Netherlands reiterated that no threat to international peace was involved in the action of British troops, and that the situation created by the Indonesian nationalist movement was not on the agenda. The representative of the United Kingdom expressed his rejection of the criticism implied in the Egyptian draft resolution.¹⁵ On the rejection of the draft resolution, the President (Australia) declared the matter closed.

CASE 8.¹⁶ THE SPANISH QUESTION: In connexion with decision of 29 April 1946 to establish a Sub-Committee to conduct inquiries.

[Note: The Security Council had before it on 18 April 1946 an Australian draft resolution to make inquiries in accordance with Article 34, through the instrumentality of a committee of five members, to determine whether the situation in Spain endangered international peace or security, a conclusion enunciated in the Polish draft resolution submitted the preceding day. In the resolution adopted the reference to Article 34 was omitted and consequential changes introduced.]

At the 35th meeting on 18 April 1946, the representative of Australia submitted a draft resolution for the establishment of a committee on the Spanish question in accordance with Article 34. The draft resolution provided:¹⁷

"The Security Council,

"Having had its attention drawn to the situation in Spain by a Member of the United Nations acting in accordance with Article 35 of the Charter, and

"Having been asked to declare that this situation has led to international friction and endangers international peace and security,

"Hereby resolves, in accordance with Article 34 of the Charter, to make further inquiries in order to determine whether or not such a situation exists, and to this end

¹⁴ 18th meeting: p. 258.

¹⁵ For the Egyptian draft resolution, see chapter VIII, p. 302.

¹⁶ For texts of relevant statements see:

35th meeting: Australia, pp. 195, 197-198.

37th meeting: Australia, pp. 216-217, 233, 239; Brazil, p. 225; France, pp. 226-227; Mexico, p. 233; Netherlands, p. 224, 231; USSR, pp. 220-221, 223, 242-243; United Kingdom, pp. 231-232; United States, pp. 218-219.

39th meeting: Australia, p. 242; Mexico, p. 243; Poland, pp. 241-242; USSR, pp. 242-243.

¹⁷ 35th meeting: p. 198.

"Appoints a committee of five of its members and

*"Instructs this committee to examine the statements made before the Security Council concerning Spain, to call for further written statements and documentary evidence from Members of the United Nations and from the Franco regime, and to make such other inquiries as it may deem fit in order that the committee may report to the Security Council not later than 17 May 1946, on the following questions: . . ."*¹⁸

In presenting the draft resolution, the representative of Australia stated:

"The mere existence of a fascist government as such does not . . . give us the right to discuss it. We have to have an investigation and proof that its policy and activities are of international concern, and therefore within the ambit of the Charter."

" . . .

"Now, the Polish representative brought his case under Chapter VI. But Chapter VI calls for investigation. It requires investigation before we can take any action. We have to take a decision and ascertain facts. But he jumps straight away into Chapter VII, Articles 39 and 41, which operate only against a proved aggressor."

At the 37th meeting on 25 April, the representative of Australia presented a revised draft resolution which omitted the reference to Article 34; described the proposed body as a "Sub-Committee" instead of a "Committee"; deleted the words: "to call for further written statements and documentary evidence from Members of the United Nations and from the Franco regime", and substituted the following text: "to call for further statements, documents and evidence and to conduct such inquiries as it may deem necessary"; amended the words "report . . . on the following questions" to read "report . . . on the results of such studies and especially the facts bearing on the following questions".¹⁹ In presenting the revised draft resolution, the representative of Australia said:

" . . . first of all, I have cut out the idea of a formal investigation under Article 34 of the Charter so as to enable the proposed body to be brought in under Article 29 as a subsidiary organ; . . .

" . . . it was felt by some representatives that the Sub-Committee should not and could not itself make a finding on those three questions, or make recommendations on them, but should present the facts so that the Council itself could decide and make its own decision on the facts ascertained and presented by the sub-committee"

Discussion continued regarding the necessity of such preliminary inquiry, in the course of which the representative of France expressed the view that the three questions addressed to the Sub-Committee were too restrictive, and should be replaced by a broad direction to report "on the results of such studies and on the practical measures which the United Nations could take in this matter".

On the revised text submitted at the 38th meeting on 26 April, after consultation with the representatives of France and Poland, the representative of Australia said:

¹⁸ For the text of questions, see chapter XII, Case 2.

¹⁹ 37th meeting: p. 216.

"The main substance of this resolution is that it is for this Council, and not the Sub-Committee, to determine what practical measures the United Nations might take on the finding that it has led to international friction and does endanger international peace and security.

"In the fourth paragraph it will be seen that very wide powers of discretion are given to the Sub-Committee to conduct such inquiries as it may deem necessary; that is, it will itself decide how and when and where the inquiry is to be made."

The resolution, as adopted at the 39th meeting on 29 April, provided for the appointment of a sub-committee to conduct inquiries as a means to determination by the Council whether the situation in Spain endangered international peace.²⁰

CASE 9.²¹ THE SPANISH QUESTION: In connexion with the Australian-United Kingdom amendment to the Polish draft resolution; voted upon and rejected on 26 June 1949; and decision of 26 June 1946 to keep the situation in Spain under observation.

[Note: The Sub-Committee on the Spanish question having reported the situation in Spain to be of the nature referred to in Article 34, draft resolutions on the question were submitted by the Chairman of the Sub-Committee²² and by the representative of Poland, but were rejected. Further discussion related to the terms in which the Council should express its continued concern with the question and its consequent retention on the agenda.]

In its report submitted on 1 June 1946, the Sub-Committee on the Spanish question stated:²³

"24. Chapter VI of the Charter empowers the Security Council to examine 'any situation which might lead to international friction' . . . In the opinion of the Sub-Committee, the Spanish situation is one which has already led to international friction. The investigation has convinced the Sub-Committee, not only that international friction has occurred, but that it is almost bound to recur.

". . . such activities [of the Franco regime] do constitute a situation which is a potential menace to international peace and security and which therefore is a situation 'likely to endanger the maintenance of international peace and security' within the meaning of Article 34 of the Charter."

At the 48th meeting on 24 June, after the rejection of the first Polish draft resolution, the representative of Poland submitted a draft resolution which in its preamble noted that the investigation of the Sub-Committee established that "Franco's fascist regime is a serious danger to the maintenance of international

peace and security".²⁴ He observed that he used these words because, though in his opinion the matter fell within Article 39, he did not wish to make it impossible for members who disagreed with this view to vote for the draft resolution now submitted.

The operative clauses of the draft resolution read as follows:

"The Security Council, therefore, decides to keep the situation in Spain under continuous observation and keep the question on the list of matters of which it is seized, in order to be able to take such measures as may be necessary in the interests of peace and security.

"The Security Council will take the matter up again not later than 1 September 1946, in order to determine what appropriate practical measures provided by the Charter should be taken. Any member of the Security Council has a right to bring the matter up before the Security Council at any time before the mentioned date."

The representative of Australia objected to the preamble that it departed from the finding of the Sub-Committee, and the representative of the United Kingdom expressed concern that the question should be considered at the next session of the General Assembly.

At the 49th meeting on 26 June, the representatives of Australia and the United Kingdom submitted an amended text, which read:²⁵

"And whereas the Sub-Committee was of opinion that the situation in Spain is one the continuance of which is likely to endanger the maintenance of international peace and security,

"It is hereby resolved that without prejudice to the rights of the General Assembly under the Charter, the Security Council keeps the situation in Spain under continuous observation and maintains it upon the list of matters of which it is seized in order that it will be at all times ready to take such measures as may become necessary to maintain international peace and security. Any member of the Security Council may bring the matter up for consideration by the Council at any time."

The representative of Australia observed that the reference to the rights of the Assembly were inserted as a reminder that, at the proper time, the question should be removed from the agenda of the Council to enable the General Assembly to make recommendations. The representative of Poland indicated that his draft resolution had included, as an indication to the Spanish people, a date by which the Council was to take the matter up again.

At the same meeting, the amended draft resolution was not adopted. There were 9 votes in favour and 2 against (one vote against being that of a permanent member).²⁶

After further discussion, the text of the decision of 26 June 1946 to keep the situation in Spain under observation was adopted.²⁷

²⁰ 39th meeting: p. 244. For the text of the resolution, see chapter VIII, p. 306. On the character of the Sub-Committee, see also chapter V, Case 65.

²¹ For texts of relevant statements see: 48th meeting: Australia, p. 391; Poland, p. 392; United Kingdom, p. 393.

49th meeting: Australia, p. 435; Poland, p. 404.

²² See Case 22.

²³ S/75, O.R., 1st year, 1st series, Suppl., Rev. ed., pp. 9-10. See also Case 22 for discussion on the measures proposed by the Sub-Committee.

²⁴ 48th meeting: p. 389.

²⁵ 49th meeting: p. 407.

²⁶ 49th meeting: p. 413.

²⁷ For text, see chapter VIII, p. 307.

CASE 10.²⁸ THE GREEK QUESTION: Ukrainian SSR communication dated 24 August 1946: In connexion with the draft resolutions submitted by the representatives of the USSR, United States and Poland: voted upon and rejected on 20 September 1946.

[*Note:* The question arose whether the situation described in the Ukrainian SSR communication constituted a situation within the terms of Chapter VI of the Charter. Draft resolutions were submitted for measures of investigation under Article 34—by one member on the situation as submitted in the Ukrainian SSR communication, and by another member on a situation otherwise defined. Discussion took place on the circumstances in which investigation by the Council would be appropriate, and on the significance of retention of a question on the agenda. The draft resolutions were not adopted and the proposal to retain the question on the agenda was rejected.]

At the 67th meeting on 16 September 1946, the representative of Australia submitted a draft resolution "that the Security Council pass to the next item on the agenda".²⁹ The representative of Australia recalled his statement at the 64th meeting on 9 September to the effect that "the Council should never allow its machinery to be set in motion for frivolous or vexatious reasons", and that in the present case the Council should indicate its disapproval by passing to the next item on the agenda. The representative of Australia continued that, whereas his Government would take the view that the normal procedure would be to proceed to investigation, he did not believe that in the case under consideration the interests of peace or the interests of the Council would be served by the usual form of investigation. Having reiterated his reservations regarding the manner in which the complaint had been presented, the representative of Australia continued that Chapter VI of the Charter left it entirely to the wisdom of the Council "to devise the appropriate methods of adjustment in regard to a situation". He expressed the view that it would be "extremely difficult" for the Council to devise any method to adjust the situation without in some measure passing judgment on the Governments whose names had been mentioned in the Ukrainian complaint. The charges were, in the view of the Australian Government, unsubstantiated. If the Council proceeded to pass to the next item on the agenda, other ways would remain open to the Council for taking cognizance of the situation in the Balkans if peace should be threatened.

At the same meeting the representative of the USSR submitted the following draft resolution:³⁰

²⁸ For texts of relevant statements see: 62nd meeting: Australia, pp. 251-254; United Kingdom, p. 249.

(4th meeting: Australia, pp. 276-281; United States, p. 276.

65th meeting: Brazil, p. 296.

67th meeting: Australia, pp. 329-333; Netherlands, p. 326; USSR, pp. 334-335.

68th meeting: Poland, p. 351.

69th meeting: Australia, pp. 376-379, 390-391; France, p. 381; USSR, pp. 381-382; United States, pp. 366-367, 386-387.

70th meeting: Australia, pp. 406, 414-415; France, p. 400; Poland, pp. 413-414; USSR, p. 397; United Kingdom, pp. 415-416; United States, pp. 394-395.

²⁹ 67th meeting: p. 329. For the proceedings before the submission of the Australian draft resolution, see chapter VIII, p. 308.

³⁰ 67th meeting: pp. 334-335.

"The Security Council established the fact:

"That on the Greco-Albanian border there have recently been an increasing number of frontier incidents provoked by aggressive Greek monarchist elements . . .

"That the persecution of national minorities in Greece by the Greek Government, by provoking national strife, is bringing strain in the relations between Greece and her other neighbours;

"That the unbridled propaganda of the aggressive Greek monarchist elements, demanding the annexation of territories belonging to these neighbours, threatens to complicate the situation in the Balkans . . .

"That in their policy of aggression, the aggressive Greek monarchist elements are striving to exploit the results of the falsified plebiscite held on 1 September under terroristic conditions . . . They are likewise exploiting the presence of British troops on Greek territory . . .

"That all these circumstances create a situation envisaged by Article 34 of the Charter of the United Nations and endanger peace and security.

"For the above-mentioned reasons, the Security Council resolves to call upon the Greek Government:

"(1) to take measures in accordance with Article 2, paragraph 4, of the Charter of the United Nations for the immediate cessation of the provocative activities of the aggressive monarchist elements on the Greco-Albanian frontier;

"(2) to call upon the Greek Government to put an end to the agitation regarding the state of war which is said to exist between Greece and Albania, in spite of the fact that Albania is endeavouring to establish normal peaceful relations with Greece;

"(3) to terminate the persecution of national minorities in Greece, which is contrary to Article 1, paragraphs 2 and 3, of the Charter of the United Nations;

"(4) to retain on the agenda of the Security Council the question of the menacing situation brought about as the result of the activities of the Greek Government so long as the latter fails to carry out the recommendations proposed by the Security Council."

At the 69th meeting on 18 September 1946, the representative of the United States expressed the view that the evidence indicated a disquieting situation along the northern frontiers of Greece, for which Greece was not primarily responsible. The representative of the United States urged that the situation along the entire length of the northern frontier of Greece called for the consideration and attention of the Council. This situation was, he observed, separate from the charges brought by the representative of the Ukrainian SSR which the United States rejected as unfounded.

At the 70th meeting on 20 September, the representative of the United States submitted the following draft resolution:³¹

"Resolved,

"That the Security Council, acting under Article 34 of the Charter, establish a commission of three individuals to be nominated by the Secretary-General, to represent the Security Council on the basis of their competence and impartiality, and to be confirmed by the Security Council;

³¹ 70th meeting: p. 396.

"That the Security Council instruct the commission:

"(1) To investigate the facts relating to the border incidents along the frontier between Greece, on the one hand, and Albania, Bulgaria and Yugoslavia on the other;

"(2) To examine the statements submitted to the Security Council concerning these incidents and such further information from other sources as it deems necessary;

"(3) To submit to the Security Council as soon as practicable a report on the facts disclosed by its investigation;

"That the commission shall have authority to conduct its investigation in the area and to call upon Albania, Bulgaria, Greece and Yugoslavia for information relevant to its investigation;

"That the Security Council request the Secretary-General to communicate with the appropriate authorities in the countries involved in order to obtain permission for the commission to conduct its investigation in these countries."

At the same meeting, the representative of the USSR contended that the United States draft resolution could not and should not be adopted by the Security Council since the Council had not examined such questions as those relating to the situation on the Greek-Yugoslav and Greek-Bulgarian frontiers. He continued:

"It is a fact that the creation of an investigation commission is not merely a formal act; the creation of a commission and the decision to establish such a commission is a political decision which in itself implies that the Security Council is satisfied that the accusations in regard to one country or the other are substantiated. Therefore, the very decision of the Security Council to create an investigation commission is already a decision which to some extent casts a shadow on a certain country . . ."

He contended that the purpose of the United States draft resolution was to divert attention from the seriousness of the situation brought about in the Balkans as a result of the aggressive policy of the Greek Government.

The representative of France expressed the view that "the very fact of proposing such an investigation in itself implies that a judgment has not yet been made".

The representative of Australia at the 69th meeting reiterated his contentions in favour of passing to the next item on the agenda. He recalled that the communication of the Ukrainian SSR had been admitted to the agenda in its entirety, and that it consisted of "a general accusation that there is a threat to the peace and a spirit of aggression on the part of two Governments". He expressed the view that, although it would be within the competence of the Council to select a particular aspect of the letter for attention, the Council should not follow such a course in the absence of "overpowering reasons". The representative of Australia drew attention to the constitutional consideration that the step proposed by the representative of the United States would "extend to the investigation of matters which . . . are not formally before this Council at this present time". He concluded that, in his view, the proper course was to dismiss the case so as to prevent the Council from being used for purposes otherwise than in the

sense of Chapter VI of the Charter. He therefore opposed the draft resolution for investigation on principle.

At the 70th meeting, the USSR draft resolution was rejected by 2 votes in favour and 9 against.³² The United States draft resolution was not adopted. There were 8 votes in favour, 2 against, (one vote against being that of a permanent member)³³ and 1 abstention.

After the rejection of these draft resolutions, the representative of Poland submitted at the 70th meeting the following draft resolution.³⁴

"The Security Council, having considered the situation brought to its attention by the Ukrainian Soviet Socialist Republic, decides to keep the situation under observation and to retain it on the list of the matters with which the Council is seized."

The representative of Poland recalled the retention of the Spanish question on the agenda, and expressed the view that acceptance of his draft resolution would not involve any "judgment on the situation". The representative of Australia observed that, by its vote on the draft resolution submitted by the representative of the USSR, a majority of the Council had indicated its view of the charges brought by the Ukrainian SSR. He observed that it was for the Council to pronounce its opinion one way or the other on the communication of the Ukrainian SSR. He recalled the Australian draft resolution, and indicated that its sense was "to dismiss the Ukrainian letter from the agenda of the Security Council". The representative of the United Kingdom also expressed opposition to retention of the item on the agenda. The representative of the USSR expressed support of the Polish draft resolution, which would "merely oblige the Security Council to take an interest in the situation".

The Polish draft resolution was rejected by 2 votes in favour and 9 votes against.³⁵ The Council passed to the consideration of the draft resolution submitted by the representative of Australia.³⁶

CASE 11.³⁷ THE GREEK FRONTIER INCIDENTS QUESTION: In connexion with decision of 19 December 1946 to establish a commission of investigation.

[Note: The decision of 19 December 1946 was expressly taken under Article 34. The measure was also supported as a procedure of inquiry in accordance with Article 33.]

In the letter of submission dated 3 December 1946,³⁸ Greece requested the Security Council under Articles 34 and 35 (1) to consider the situation which was "leading to friction between Greece and her neighbours, by reason of the fact that the latter are lending their support to the violent guerrilla warfare now being

³² 70th meeting: pp. 407-409.

³³ 70th meeting: p. 412.

³⁴ 70th meeting: p. 413.

³⁵ 70th meeting: p. 413.

³⁶ For consideration of the Australian draft resolution, see chapter II, Case 57.

³⁷ For texts of relevant statements see:

85th meeting: Australia, pp. 633-634; United Kingdom, p. 631; United States, pp. 629-631.

86th meeting: Egypt, p. 647; USSR, pp. 645-647.

87th meeting: China, p. 657; France, p. 654; Poland, p. 652; United States, p. 666.

³⁸ S/203, S/203/Add.1, O.R., 1st year, 2nd series, Suppl. No. 10, pp. 169-190. For the submission of the question, see chapter VIII, p. 309.

waged in northern Greece against public order and the territorial integrity" of Greece, and drew the attention of the Council to the urgent need for an investigation on the spot.

At the 85th meeting on 18 December 1946, the representative of the United States submitted a draft resolution³⁹ to establish a commission of investigation under Article 34. In submitting his proposal, he observed that all the four Governments concerned had made allegations that border violations had taken place. These border violations could not be ignored by the Security Council, and therefore it seemed to him to be "the inescapable and self-evident duty of the Security Council to investigate the facts pertaining to these border violations without attempting at this time, on the basis of present information, to prejudge the issues". The representative of the United States continued that such an investigation was an "essential first step in the Council's proceedings in this case". Other representatives made observations on the appropriateness of an investigation in the circumstances.

The representative of the United Kingdom stated:

"... We have no means of verifying the charges made on one side or the other. But that work could be done by a commission commanding the confidence of the Security Council, sent to the spot to investigate the local situation and, on the basis of such a commission's report, I should hope that the Security Council would be able to reach a just conclusion on which to base any recommendation which it may see fit to make."

At the 87th meeting on 19 December 1946, the representative of Poland held that under Article 33 the Council had, in the case before it, a certain obligation to resort to an investigation before taking further decisions. He stated:

"... since, by implication, we have decided that the case before us is in the nature of a dispute, before we take further decisions we must comply with Article 33 of the Charter, which says that in case of disputes the parties shall seek all methods of adjustment before they call upon the Security Council to take a decision; and as one of these methods, it mentions an enquiry. So, in a way, we are really under an obligation, and the same applies to the parties concerned in the dispute, to take certain steps before we make a final decision. I think that is a very weighty argument in favour of setting up our commission of investigation."

At the same meeting, the Council voted on the draft resolution, paragraph by paragraph. The draft resolution, as amended during the vote, was adopted unanimously.⁴⁰

In its report to the Council, the Commission of Investigation concerning Greek Frontier Incidents presented conclusions, as requested by the Council, on the validity of the charges and counter-charges.⁴¹ It also, in accordance with the terms of reference, presented proposals, agreed upon by the majority, stated to be framed "in the spirit of Chapter VI of the Charter of the United Nations with a view, first, to prevent any

aggravation of the situation, and, secondly, to alleviate it and eventually to restore it to normal". The Commission indicated certain activities which in the future "should be considered by the Security Council as a threat to the peace within the meaning of the Charter of the United Nations".⁴²

CASE 12.⁴³ THE GREEK FRONTIER INCIDENTS QUESTION: In connexion with the draft resolution submitted by the representative of the USSR to modify the terms of reference of the Subsidiary Group: voted upon and rejected on 22 May 1947.

[Note: The Council had before it on 12 May 1947 a draft resolution to amend the terms of reference of the Subsidiary Group. The question was debated whether investigation should relate only to incidents anterior to the establishment of the Commission, and whether the Commission had acted correctly in defining the terms of reference of the Subsidiary Group. The draft resolution was rejected.]

At the 131st meeting on 18 April 1947, the Security Council adopted an amended United States draft resolution⁴⁴ to provide that, pending a new decision of the Council, the Commission of Investigation should maintain in the area concerned a subsidiary group to continue to fulfil such functions as might be prescribed by the Commission in accordance with its terms of reference. In support of the draft resolution at the time of submission, the representative of the United States stated that "the Commission should continue its work, including its investigations along the northern Greek border, until the Security Council itself has disposed of the Greek case" and that it was "of the utmost importance that the Commission should leave representatives in the border area" while its report was being prepared and while the report was being considered by the Council.

At the 133rd to the 137th meetings, between 12 and 22 May, the Council, at the request of the representative of the USSR,⁴⁵ considered the functions and powers assigned to the Subsidiary Group under the directive of the Commission of Investigation of 29 April 1947.⁴⁶ The Council also had before it a cablegram dated 5 May 1947 from the Chairman of the Commission of Investigation referring to the Council the question raised by the refusal of the liaison representatives of Albania, Bulgaria and Yugoslavia to participate in the work of the Subsidiary Group.⁴⁷

³⁹ S/360/Rev.1, O.R., 2nd year, Special Suppl. No. 2, vol. I, pp. 152-156. The majority proposals are in part IV of the Report. For consideration of these proposals in relation to the Charter, see Case 13, and chapter XI, Case 2.

⁴⁰ For texts of relevant statements see:

123rd meeting: United States, pp. 618-619.

133rd meeting: USSR, pp. 828-829, 831.

134th meeting: Belgium, pp. 844-845; Yugoslavia, pp. 847, 848-849.

135th meeting: Albania, pp. 866-868; Australia, p. 877; Brazil, pp. 880-881; China, pp. 882-883; Greece, p. 869; United States, pp. 873-875.

136th meeting: Bulgaria, p. 892; France, p. 905; Poland, pp. 907-908; United Kingdom, pp. 896-897; Yugoslavia, p. 901.

137th meeting: Australia, pp. 919-920; Syria, pp. 911-912; USSR, pp. 913-914.

⁴¹ 131st meeting: pp. 799-800. See chapter VIII, p. 310.

⁴² S/347, O.R., 2nd year, Suppl. No. 11, p. 125.

⁴³ S/337, O.R., 2nd year, Suppl. No. 11, pp. 121-122. For discussion, see also chapter X, Case 12.

⁴⁴ S/343, S/341/Corr.1, S/342/Corr.1, S/345, O.R., 2nd year, Suppl. No. 11, pp. 123-125, 126-128.

³⁹ 85th meeting: pp. 630-631.

⁴⁰ 87th meeting: pp. 700-701. For text of adopted resolution, see chapter VIII, p. 309. For consideration of the composition of the commission, see chapter V, Case 2.

⁴¹ For texts of conclusions see S/360/Rev.1, O.R., 2nd year, Special Suppl. No. 2, vol. I, pp. 106-152.

At the 133rd meeting on 12 May, the representative of the USSR objected to the decision of the Commission of 29 April 1947, stating that it was "not compatible with the Security Council resolution of 18 April 1947" since it was evident from the records "that the Commission decided to delegate to the Subsidiary Group, automatically and fully, the functions assigned to it as a Commission". He stated further:

"... the terms of reference of the Commission of Investigation naturally could not relate to future incidents, of which no one could possibly know; they related to past incidents, to which our attention has been drawn by the Governments of Greece, Yugoslavia, Bulgaria and Albania in the course of the discussion of this question in the Security Council... It is perfectly clear that the powers and functions assigned to the Commission of Investigation by previous decisions of the Security Council could not be applied automatically in future, even in so far as this Commission is concerned since these powers were the result of a discussion of the question of past incidents. Moreover, the Commission could not automatically delegate its powers to a subsidiary group established by the Commission itself."

At the same meeting, the representative of the USSR introduced the following draft resolution:⁴⁸

"The Security Council,

"Having discussed the decision taken by the Commission of Investigation concerning Greek Frontier Incidents on 29 April 1947, about the terms of reference of the Subsidiary Group of the Commission,

"Resolves

"1. That the Subsidiary Group will carry out the investigation of facts only on the instructions of the Commission in each separate case and will report to the Commission about the results of such investigation;

"2. That the Subsidiary Group will have its headquarters in Athens and will carry out such functions as the Commission of the Security Council will assign to the Subsidiary Group in accordance with the provisions of the above paragraph 1;

"3. That the Subsidiary Group will cease its activity with the liquidation of the Commission itself;

"4. That the Commission should bring its decision on the terms of reference of the Subsidiary Group in conformity with this decision of the Security Council."

At the 134th meeting on 16 May, the representative of Yugoslavia, in supporting the USSR draft resolution, stated:

"Considering that the Commission was instructed to define the competence of the Subsidiary Group only within the scope of its original terms of reference, it was only entitled to entrust the Subsidiary Group, as its substitute, with the completion of the inquiry which it might not have brought to an end; but by no means was it in the position to create a new commission of inquiry to investigate future incidents that might arise... The Commission of Investigation was not entitled to take such a decision because it was not empowered to create new terms of reference..."

"The Security Council, under Article 34 of the Charter, can order an inquiry by reason of a dispute

which has already arisen or by reason of a situation which has already been created. The Security Council has done so in the present case by establishing the Commission of Investigation. The Security Council would have been entitled to take provisional measures under Article 40, if one of the cases envisaged in Article 39 had occurred: namely, a threat to peace or an act of aggression. Considering that the cases mentioned in Article 39 do not exist now, and since it has not been established that such cases even existed, the Security Council was not in a position to order any provisional measures in the sense of Article 40. In that connexion, the Commission of Investigation has assumed a right which even the Security Council does not possess.

"..."

"All this shows that the decision of the Committee of Investigation of 29 April 1947 is not lawfully founded. It is in flagrant contradiction to the Charter. It was not based on the provisions concerning the procedures prescribed both in the Charter and in the rules of procedure of the Security Council, nor has it remained within the scope of the terms of reference which were given to the Commission by the Security Council."

The representatives of Poland, Albania, and Bulgaria concurred with these views.

Statements in support of the decision of the Commission of Investigation and opposing the USSR draft resolution were made by the representatives of Belgium, Greece,* the United States, Australia, Brazil, China, the United Kingdom, France and Syria, who contended that a Council decision to investigate under Article 34 imposed legal obligations on Members of the United Nations. It was also maintained that these obligations extended to non-Members which accepted for the purpose of the dispute the obligations of pacific settlement provided in the Charter.

The representative of Belgium stated at the 134th meeting:

"Since the Council's resolution of 18 April is binding on the four States, they are in principle bound by the decision of 29 April taken by the Commission of Investigation in pursuance of instructions it received by this resolution..."

"..."

"The decision of 29 April would, of course, not have any binding character if it overstepped the powers conferred on the Commission of Investigation by the resolution of 18 April but a most careful study has not enabled me to discover any trace of these powers being exceeded, except on one single point. I think that the decision should not have provided, in paragraph IV—at least not in imperative terms—for liaison representatives to be attached to the Subsidiary Group. In my opinion, as I have already pointed out, whilst the States concerned are to facilitate all useful contacts, they are not obliged to do this by means of liaison representatives permanently attached to the Subsidiary Group.

"... In giving the Subsidiary Group functions similar to its own, although less extensive, the Commission respected the character of the Subsidiary Group which, as its name implies, should be a kind of deputizing organ. In principle, the Subsidiary Group has the same powers of initiative as the Com-

⁴⁸ 133rd meeting: p. 832.

mission itself; the exercise of its functions does not require prior authorization. It derives its powers from the Security Council which may define, modify or terminate them either directly or through the intermediary of the Commission . . . ”

The representative of the United States observed at the 135th meeting on 20 May that he was “in entire agreement” with the “exposition of the legal aspects of this matter” by the representative of Belgium.

With regard to the argument “that the terms of reference of the Subsidiary Group refer to future and not to past incidents”, the representative of Australia remarked:

“ . . . The representative of Yugoslavia based his main argument on the supposition that this Council violated Article 34 of the Charter which deals with the investigation of a dispute. In other words, if I understood his argument correctly, the Charter speaks of a dispute, of incidents which have already taken place; therefore, an investigation should be confined to that alone and, if it goes beyond that, the Charter is violated. However, the whole tenor of the debates and the language used indicated that the Commission was to deal with all incidents right up to the time when its report came before this Council. That was clearly the intention.”

At the 137th meeting on 22 May, the representative of Australia also emphasized that there was “a very great difference” between the powers of the Commission and those of the Subsidiary Group:

“ . . . It is clearly laid down that the Group is to investigate only certain incidents, to hear evidence only on certain incidents, and to report on them . . . The Group is not to report to this Council, as is the case with the full Commission, but to the Commission only . . . The powers are not the same. The Subsidiary Group has neither right nor authority to make any proposals or recommendations . . . ”

With regard to the delegation of powers contained in the resolution of the Security Council of 18 April, the representative of Brazil did “not find any juridical ground for invalidating it”. He stated at the 135th meeting:

“ . . . The only limit imposed upon the Commission in the exercise of that right lay in that its own powers may not, in any circumstances, be exceeded, under the self-evident theory that the mandatory cannot use powers which it does not possess. Such, however, is not the case of the Subsidiary Group whose powers, as defined by the Commission, do not exceed the powers of the Commission itself.”

The representative of China expressed the view that:

“In creating the Subsidiary Group, the Council undeniably acted within its competence and in accordance with its rules of procedure . . . ”

“ . . . ”

“ . . . the Subsidiary Group should have authority, by a formal decision, to investigate any incident that may occur, without having to await an order in each case from the Commission of Investigation or from the Security Council. That Group is to be stationed in Greece. It should have the power to make on-the-spot investigations as it sees fit.”

At the 136th meeting on 22 May, the representative of the United Kingdom held that there was “no reason

why the Subsidiary Group . . . might not have had exactly the same powers as the Commission itself as regards watching the situation” in northern Greece. The Commission, however, had actually limited the powers of the Subsidiary Group. With regard to the USSR proposal to refer back to the Commission each separate incident to be investigated, he believed that “its effect would be to stultify the whole purpose of the Council’s decision” establishing the Subsidiary Group.

The representative of Syria contended at the 137th meeting that, since the composition of the Commission and that of the Subsidiary Group were identical, the terms of reference of the latter should not have been different from the original terms of reference given to the Commission itself. He believed that the Council should consider that “the directives limiting the scope of the Subsidiary Group’s capacity are unnecessary”, and that the Subsidiary Group should be authorized “to do whatever it deems proper for the continuation of its investigation and for the fulfilment of the duties assigned to the Commission by the first resolution of the Security Council”.

At the 137th meeting, the USSR draft resolution was rejected by 2 votes in favour, 6 against and 3 abstentions.⁴⁹

CASE 13.⁵⁰ THE GREEK FRONTIER INCIDENTS QUESTION: In connexion with the French amendment to the preamble of the United States draft resolution to establish a commission of investigation and good offices: preamble voted upon and adopted on 29 July 1947; draft resolution as a whole rejected on 29 July 1947.

[Note: When the Council had under consideration the draft resolution for the continuance of investigation through the agency of a commission, the position was taken by representatives invited to participate that a decision to this effect, taken under Chapter VI of the Charter, was not binding on them. In view of this contention, an amendment was submitted on 22 July 1947 to add to the preamble the finding that the dispute was of the nature envisaged in Article 34. The view was expressed that such a finding was necessary as a basis of the measures to be adopted under Chapter VI of the Charter. Discussion also continued to centre on the question whether a decision under Article 34 constituted a binding decision. The preamble as amended was adopted, but the draft resolution as a whole failed of adoption.]

⁴⁹ 137th meeting: pp. 924-925.

⁵⁰ For texts of relevant statements see: 147th meeting: Greece, pp. 1126-1127; United States, pp. 1124-1125.

150th meeting: Belgium, pp. 1199-1200.

156th meeting: Bulgaria, p. 1280; United States, pp. 1290-1291.

159th meeting: Yugoslavia, pp. 1371-1372.

160th meeting: USSR, pp. 1379, 1383.

162nd meeting: Australia, pp. 1418-1420; Brazil, p. 1422; Colombia, pp. 1420-1421; France, pp. 1416, 1425-1426; United States, pp. 1422-1423.

163rd meeting: Yugoslavia, pp. 1432-1433.

166th meeting: United States, pp. 1522-1523, 1526-1527.

167th meeting: President (Poland), p. 1547; Australia, pp. 1544-1545; USSR, pp. 1541-1542; United States, pp. 1540-1541.

168th meeting: United Kingdom, pp. 1556-1558.

169th meeting: Albania, p. 1599; Colombia, pp. 1592-1593.

170th meeting: President (Poland), p. 1611.

At the 147th meeting on 27 June 1947, the Security Council had before it the report of the Commission of Investigation concerning Greek Frontier Incidents, in which the majority of the members of the Commission had made proposals stated to be "framed in the spirit of Chapter VI of the Charter".⁵¹

The representative of the United States submitted a draft resolution to establish a commission of good offices and investigation.⁵² In submitting the draft resolution, the representative of the United States stated:

"... The authority of the Security Council under Chapter VI carries with it the full weight of the United Nations. The Members of the United Nations, and those who look forward to becoming Members, must also be deeply conscious of the obligation of Members under Article 25..."

The representatives of Albania,* Bulgaria,* and Yugoslavia* contended that Article 25 was not applicable to recommendations provided for in Chapter VI, but only to decisions of the Council taken under Chapter VII.

At the 156th meeting on 11 July, the representative of Bulgaria stated that under Chapter VI, the Security Council "is only called upon to make recommendations" which require the consent of the parties in order to be implemented, while under Chapter VII the decisions of the Council could be applied without the consent of the parties. He contended:

"The establishment of the proposed commission represents more than a recommendation; this is a decision to be imposed regardless of the consent of the parties..."

At the same meeting, the representative of the United States remarked that the principle involved in the observation of the representative of Bulgaria had arisen in connexion with the question of the Free Territory of Trieste, and that in the statement submitted by the Secretary-General at the 91st meeting, on 10 January 1947,⁵³ it was considered that the records of the San Francisco Conference demonstrated "that the powers of the Council under Article 24 are not restricted to the specific grants of authority contained in Chapters VI, VII, VIII and XII" of the Charter.

At the 160th meeting on 17 July, the representative of the USSR, in opposing the United States draft resolution stated:

"... It is clear that any decision on this question is a decision taken in conformity with Chapter VI of the Charter, relating to the pacific settlement of disputes. This means that any decision we may take in the Council on this question will be in the nature of a recommendation and will have nothing in common with the decisions provided for in Article 25 of the Charter..."

The representative of the USSR held that the explanation given by the representative of the United States "was at variance with the Charter". He observed that the problem which had arisen in connexion with the Trieste question concerned "not... the nature of the Security Council's decisions", but "the extent of the Security Council's powers" which "puts the matter on an absolutely different plane".

At the 162nd meeting on 22 July, the representative of France introduced an amendment to the preamble of the draft resolution whereby the preamble would read as follows:⁵⁴

"The Security Council,

"Having primary responsibility for the maintenance of international peace and security by virtue of Article 24 of the Charter, and having considered the report submitted by the Commission of Investigation established by the Council's resolution of 19 December 1946,

"Finds that a dispute exists, the continuance of which is likely to endanger the maintenance of international peace and security. The Security Council therefore, following the proposals made by the majority of the members of the Commission of Investigation,

"Resolves that..."

At the same meeting, the representative of Australia, in supporting the French amendment to the preamble, drew attention to the arguments put forward by the representatives of Albania, Bulgaria and Yugoslavia, and by the representative of the USSR, to the effect that only recommendations could be adopted under Chapter VI and that the action proposed in the United States draft resolution would not be binding on the parties unless made as a decision under Chapter VII. He observed that these contentions needed to be met in order to avoid doubt "as regards the whole of the authority and power and duties of the Security Council under Chapter VI". The representative of Australia expressed doubt whether these contentions could be met by reference to the "so-called wide reserve powers" of the Council under Article 24. He continued:

"... in Chapter VI itself and in other places in the Charter, we find ample justification for all the action proposed in the United States resolution..."

"... A decision to investigate—and that has never been challenged—is surely more than a recommendation..."

The representative of Australia stated that under Chapter VI the Council could take many decisions; the original decision to set up the commission of investigation was a decision, and not a recommendation; therefore, he contended, Article 25 applied. He continued:

"... whether it is a decision or a recommendation that is involved—and we have indicated that we can make both under Chapter VI—we cannot make either until we have determined that the continuation of the situation does endanger international peace and security... That determination must be made under Article 34, in order to take any of the steps which the resolution contemplates under Article 33..."

The representative of Australia concluded that for these reasons he supported the French amendment.

At the 162nd meeting, the representative of Brazil also contended that the power of the Security Council to order investigation could not be challenged without "eliminating Article 34 of the Charter and ignoring the role assigned the Security Council by the Charter as the mainstay of security". The contention that the Security Council, in acting under Chapter VI, had to limit itself to adopting recommendations was entirely unfounded. He observed:

⁵⁴ Text as voted upon, 170th meeting: p. 1602.

⁵¹ S/360/Rev.1, O.R., 2nd year, Special Suppl. No. 2, pp. 153, 154-157.

⁵² S/391, 147th meeting: pp. 1124-1126.

⁵³ For this statement, see chapter XII, Case 22.

“... Measures proposed as a means of conciliation have the character of recommendations, but even those measures carry great weight if the Council finds that we are faced with a situation which is likely to endanger peace and security. The determination of such a situation establishes the jurisdiction of the Council in the matter and creates an obligation on the parties concerned to settle a dispute, under penalty of having the situation become a threat to the peace, in which case Chapter VII would apply.”

The representative of the United States, accepting the French amendment to the preamble, stated:

“I think it is generally admitted that the primary role of the Security Council is to be the guardian organ of the United Nations for international peace and security. Under Article 34 of the Charter, the Security Council itself could go to the region which we have been discussing and conduct investigations. It follows, therefore, that it can set up a subsidiary organ to perform those functions. To argue that, in setting up such an organ, it would have the power only to recommend to countries that the commission should be allowed to function, and that those countries could refuse to accept it and to co-operate with it, or refuse to give it facilities, would seem to me to undermine the very foundations of the Charter and would stultify whatever influence and power the Security Council might have for the preservation of international peace...”

At the 163rd meeting on 22 July, the representative of Yugoslavia cited the following passage of the Report to the President by the Chairman of the United States Delegation to the San Francisco Conference:⁵⁵

“It is to be noted that the members of the Organization agree to carry out the decisions of the Security Council ‘in accordance with the present Charter’. Thus the precise extent of the obligations of Members under Article 25 can be determined only by reference to other provisions of the Charter, particularly Chapters VI, VII, VIII and XII (Article 24, paragraph 2). Decisions of the Security Council take on a binding quality only as they relate to the prevention or suppression of breaches of the peace. With respect to the pacific settlement of disputes, the Council has only the power of recommendation...”

The representative of Yugoslavia continued:

“It seems to me that this is an express and clear statement that the measures assigned to the Security Council—which, by virtue of Chapter VI, debates them—are solely in the nature of recommendations and are not decisions.”

At the 166th meeting on 24 July 1947, the representative of the United States stated that his draft resolution did not exceed the bounds of Chapter VI. He added:

“... The representative of Yugoslavia claims that the Council can set up a commission to make investigations in Yugoslavia under Chapter VI only if Yugoslavia consents. I think that is completely erroneous as an interpretation of the Charter, and it would nullify the whole operative intent of Chapter VI.

“... consistent with what we believe to be the real intent and meaning of Chapter VI, judged in the

light of its history and its formation, and even in the light of the statement of the Secretary of State... Article 34 gives the Security Council the right to investigate any dispute regardless of whether or not the State investigated approves or likes it; and other stipulations of the Charter impose on the State being investigated the duty to accept the investigation whether or not it likes it, and to co-operate loyally.”

At the 167th meeting on 25 July, the representative of the United States, after further emphasizing the “operating powers” of the Council under Article 34, stated:

“There remains only the question of the measure and degree of obligation which the Members of the United Nations are under, within the purview of Chapter VI, to co-operate with such an investigation. That obligation, I believe, is imposed in Article 25. I do not think it can be denied that, under Chapter VI, certain forms of decisions can be taken; and that under Article 25, it is the duty of the Members of the United Nations to conform to those decisions.”

Asserting that there was “a limitation of the Security Council’s powers” under Chapter VI, the representative of the USSR stated:

“... that is the point of Chapter VI. The steps which can be taken by the Council under Chapter VI are of a limited character. The Council’s powers in this connexion are inevitably limited. That is precisely the difference between Chapter VI and Chapter VII.

“... Compulsory decisions are those taken under Chapter VII, not decisions taken under Chapter VI, still less the actual preliminary decisions—decisions to conduct an investigation.

The representatives of Belgium, Brazil and Colombia also expressed the view that recommendations under Chapter VI, such as those proposed in the United States draft resolution, were binding upon Member States and upon States parties to a dispute who had assumed obligations of Member States for the purposes of this dispute.

Remarking that Article 27 specifically refers to “decisions under Chapter VI”, the representative of Australia stated at the meeting:

“... Article 25 does not differentiate as to decisions under Chapter VI or Chapter VII. On the other hand, we have the specific fact that the Charter does refer to ‘decisions under Chapter VI’, and nowhere does the Charter state that this Council can make recommendations only.

“... it is very clear that we have a right, and even a duty, to take various decisions under Chapter VI. Under Article 29, in establishing subsidiary organs, the Security Council is taking decisions. They are not at all decisions to make recommendations. We have to make decisions with regard to all kinds of questions. Furthermore, under Article 25 all those decisions, regardless of whether they infringe upon or impair the sovereignty of any States, are binding.”

At the 168th meeting on 28 July, the representative of the United Kingdom expressed his agreement with the view that a decision to establish a commission of investigation under Article 34 of the Charter was a decision within the meaning of Article 25. With regard

⁵⁵ Report to the President on the results of the San Francisco Conference by the Chairman of the United States Delegation, the Secretary of State (Department of State Conference Series No. 71, No. 2349), p. 79.

to the continuance of investigation, he expressed himself in the following terms:

"... it seems clear that it would be the duty of the Council—having made its findings—in the first place, to propose such measures to conciliation as might seem to be appropriate, and, in the second place, to continue to watch over the dispute in order to keep itself informed of any developments which might constitute a deterioration of the situation and thereby endanger peace. Only thus . . . can it fulfil its primary responsibility."

At the 170th meeting on 29 July, the United States draft resolution, as amended, was voted upon, paragraph by paragraph. The preamble, as amended, was adopted by 9 votes to 1, with 1 abstention.⁵⁶ The draft resolution as a whole was not adopted. There were 9 votes in favour and 2 against (one vote against being that of a permanent member).⁵⁷

CASE 14.⁵⁸ THE GREEK FRONTIER INCIDENTS QUESTION: In connexion with a text proposed by the representative of Syria for the preamble to the United States draft resolution to establish a commission of investigation and good offices.

[Note: A text was submitted based on the view that a finding that the dispute under consideration was of the nature envisaged in Article 34 would exhaust the Council's power of investigation. The text submitted was withdrawn.]

At the 162nd meeting on 22 July 1947, the representative of Syria objected to the French amendment⁵⁹ to the preamble of the United States draft resolution to establish a commission of investigation and good offices⁶⁰ on the grounds that it would convey the implication that "it has already been determined that the continuance of the situation is likely to endanger peace and security". If adopted, the French preamble meant that the Council "would be prejudging the case", and that "the act of investigation would be over", there being "no necessity for continuing the investigation". Therefore, he proposed to amend the proposed French text to read, after "19 December 1946":⁶¹

"... finds that further action must be taken by the Security Council under Article 34 of the Charter in order to determine whether the continuance of that situation is likely to endanger the maintenance of international peace and security".

Explaining his proposal, the representative of Syria stated:

"This wording makes it clear that we have not yet made a determination; the further action of setting up a commission would therefore be justified on the grounds that we are attempting to determine whether

the continuance of the situation in question is likely to endanger the maintenance of international peace and security. The continuance of the action which was begun by the Commission of Investigation would also be in conformity with Article 34 of the Charter, as well as with the other Articles of the Charter."

The representative of the United States stated that he did not accept "in its entirety the interpretation" of the representative of Syria:

"... the power of the Security Council to conduct an investigation, or to order an investigation conducted under Article 34, is not necessarily stopped because, at one stage in the development of a dangerous situation, an investigating group has found that a situation exists the prolongation of which might threaten the maintenance of international peace and security. If the Council can order and carry out an investigation leading to such a conclusion, it seems to my delegation that it is inherent in the powers conferred by Article 34, and conferred by other provisions of the Charter relating to the duties and functions of the Security Council, that it may continue to make such investigations as long as it thinks that that situation exists . . ."

The representative of France, replying to the objection raised by the representative of Syria, stated:

"... In my opinion that is too literal, too narrow an interpretation of Article 34 . . . I feel that if the Security Council has had the power to initiate an investigation for the purpose of obtaining information, and of ascertaining whether a situation endangering peace exists, it is reasonable to suppose that it can continue this investigation when the situation itself seems likely to continue. For such a situation can become aggravated, can become more threatening to peace; it can disappear, or on the contrary it can become more serious. It would be rather paradoxical, I think, that an investigation could be continued if it did not find there was a threat to the peace, if it left the matter in doubt, but could not be continued in the most serious situation, that is, one in which a threat to the peace was found to exist.

"In other words, I feel that the most reasonable interpretation of the text of Article 34 is to go beyond its simple and literal interpretation. Since we have established a Commission and find that the same situation exists, that it may continue and become more or less dangerous, we have, I feel, the power to continue to apply Article 34, that is, to request further information."

At the 163rd meeting on 22 July, the representative of Brazil expressed disagreement with the literal interpretation of Article 34. He stated:

"After the Security Council has determined, on the basis of an investigation, that the situation is likely to endanger peace, the Council's power of investigation does not stop there. That situation might improve; it might remain stationary, it might grow worse. The Security Council, under those conditions, might find it necessary to use its power of investigation to verify those circumstances in order to decide whether the situation had become a menace or a threat to peace . . ."

Clarifying his view, the representative of Syria stated:

⁵⁶ 170th meeting: pp. 1602-1603.

⁵⁷ 170th meeting: p. 1612.

⁵⁸ For texts of relevant statements see:

162nd meeting: President (Poland), pp. 1424, 1427; France, pp. 1426-1427; Syria, pp. 1423-1424; United States, pp. 1424-1425.

163rd meeting: President (Poland), pp. 1431, 1435, 1436, 1437; Australia, pp. 1433-1434, 1436-1437; Belgium, p. 1430; Brazil, pp. 1428-1429, 1435, 1437; France, pp. 1430-1431, 1434, 1436-1437; Syria, pp. 1429-1430, 1434-1435, 1436; United Kingdom, p. 1435; United States, pp. 1431, 1434, 1435.

⁵⁹ S/430, *O.R.*, 2nd year, *Suppl. No. 15*, pp. 146-147. For text, see Case 13.

⁶⁰ S/391, 147th meeting: pp. 1124-1126.

⁶¹ 162nd meeting: pp. 1423-1424.

"I did not mean . . . to limit or restrict the powers and jurisdiction of the Security Council in any way . . . The Security Council is always free to take any action which is allowed by the Charter . . . I simply want to add Article 34 of the Charter of the United Nations to the resolution concerning the Commission of Investigation. This would not interfere in any way with the competence of the Security Council as defined in Article 24 and Article 36 of the Charter—that is, the right of the Security Council to make recommendations with respect to methods of adjustment in order to maintain peace and security . . .

" . . .

"The draft resolution which we are considering is composed of these two elements: the constitution of a commission of inquiry and recommendations for methods of adjustment. Articles 34 and 36 in Chapter VI cover these two functions . . ."

Accordingly, the representative of Syria modified his proposal and suggested that the text of the preamble should read as follows:

" . . . finds it necessary that further action be taken by the Security Council under Articles 34 and 36 of the Charter"

At the same meeting, the representatives of France and the United States accepted the amendment proposed by the representative of Syria.⁶² The representative of France, however, reverted to the text he had originally proposed as an amendment to the preamble of the United States draft resolution. In doing so he explained:

" . . . Article 36 is contingent on Article 37. In Article 37, paragraph 2, it is stated: 'If the Security Council deems that the continuation of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.'

"Therefore, in so far as reference is made to Article 36, it is to be concluded that the Council first considered that Article 37 was applicable. But, as I have just recalled, the latter brings Article 36 into play, because the Security Council is presumed to consider that the continuance of the dispute endangers the maintenance of international peace and security.

"The result is that the contradiction referred to by the Syrian representative, if it exists, appears in full force when the two Articles are placed side by side in the same text."

The representative of the United States expressed his preference for the original French amendment to the preamble.

The representative of Syria stated he would have preferred that the Council should establish that it was to take action under Articles 34 and 36, it being tacitly understood that, as long as Article 36 was applied, Article 37 had been taken into consideration. He added that he would not insist upon a vote on his proposal, since it was not favoured by most of the Council members.

⁶² 163rd meeting: pp. 1430-1431.

CASE 15.⁶³ THE GREEK FRONTIER INCIDENTS QUESTION: In connexion with an amendment to the United States draft resolution to establish a commission of investigation and good offices: draft resolution voted upon and rejected on 29 July 1947.

[Note: In pursuance of the report of the Commission of Investigation a draft resolution was submitted on 24 July 1947 providing for the continuance of investigation through the instrumentality of a commission. A discussion arose as to whether a decision of the Council to this effect gave rise to an obligation on the part of the Member concerned to implement the decision. The paragraph in question was adopted in modified form, but the draft resolution as a whole failed of adoption.]

At the 166th meeting on 24 July 1947, the Security Council had before it the Report of the Commission of Investigation concerning Greek Frontier Incidents,⁶⁴ the United States draft resolution⁶⁵ based on the proposals subscribed to by the majority of the members of the Commission, and amendments to this draft resolution submitted by the representatives of the United Kingdom⁶⁶ and France.⁶⁷

The United States draft resolution contained the following provision:

"3. . . .

"b. The duties and powers of the commission shall be:

"(1) To use its good offices for the settlement by the means mentioned in Article 33 of the Charter, of:

"(a) Controversies arising from frontier violations;

"(b) Controversies directly connected with the application of the frontier conventions recommended to the four Governments under this resolution;

"(c) Complaints regarding conditions on the border which may be brought to the attention of the commission by one Government against another; and

"In order to carry out these tasks, the commission is empowered to make an investigation of any frontier violations that occur and of any complaints brought by one Government against another in connexion with the application of the frontier conventions or regarding conditions on the border,

" . . .

"(6) To have such other duties and powers as the Security Council may determine from time to time."

⁶³ For texts of relevant statements see:

166th meeting: France, pp. 1523-1524; United States, pp. 1522-1523, 1526-1527; Yugoslavia, pp. 1519-1522, 1524-1525.

167th meeting: President (Poland), p. 1547; Australia, pp. 1544-1545; Belgium, pp. 1539-1540; Brazil, p. 1530; Bulgaria, p. 1535; France, p. 1540; Greece, pp. 1542-1544; USSR, pp. 1536-1539, 1541-1542; United States, pp. 1540-1541; Yugoslavia, pp. 1545-1546.

168th meeting: Colombia, pp. 1568-1569; France, pp. 1551-1556, 1569-1570; United Kingdom, pp. 1556-1558; United States, p. 1568; Yugoslavia, p. 1570.

169th meeting: Albania, pp. 1598-1599; Yugoslavia, pp. 1597-1598.

⁶⁴ S/360/Rev.1, O.R., 2nd year, Special Suppl. No. 2, vols. I, II.

⁶⁵ S/391, 147th meeting: pp. 1124-1126.

⁶⁶ S/429, O.R., 2nd year, Suppl. No. 15, pp. 145-146.

⁶⁷ S/430, O.R., 2nd year, Suppl. No. 15, pp. 146-148.

The amendment to sub-paragraph 3 (b) of the United States draft resolution, submitted by the representative of France at the 162nd meeting on 22 July, deleted the sub-paragraph following paragraph (1) (c). The new texts proposed read as follows:⁶⁵

"3. Sub-paragraph 3 (b)

"The functions of the Commission shall be those of conciliation and investigation in order:

" . . .

"(6) Whenever the Commission may deem it necessary in the performance of the duties defined in the foregoing paragraph 5 and in order to keep the Security Council informed, going to the spot and there making all useful investigations. Its authority with respect to investigation shall be identical to that vested in the Commission established under the resolution of the Security Council of 19 December 1946."

During the consideration of this amendment at the 166th meeting, the representative of Yugoslavia, raising "the question of principle regarding the competence of the commission", stated:

"The United States resolution and the amendments contemplate a commission set up in advance which would be imposed upon the States concerned and which would be empowered to undertake investigations.

"My Government's opinion is that, under the Charter, such a commission cannot be set up: Chapter VI of the Charter provides for investigation only as a method of procedure, and any decision taken by the Security Council regarding an investigation is a decision *pro foro interno*."

" . . .

"It is obvious . . . that the existence of a commission such as that provided for in the United States resolution restricts the sovereignty of the States concerned. That is why the United States proposal is contrary not only to the letter of Chapter VI, but to the very principle of the Charter.

" . . .

"The authors of the Charter clearly established a distinction between two kinds of procedure: that provided for by Chapter VI and that provided for by Chapter VII. In drawing up the measures contained in Chapter VI, they took special care not to restrict the sovereignty of States. It was only in connexion with a serious situation that they thought fit to restrict this sovereignty."

The representative of the United States disagreed with this interpretation. He stated at the same meeting:

"Chapter VI of the Charter contains two Articles, Articles 33 and 34 which, in my opinion, are complementary and are not interdependent. Article 33 imposes a moral and—if one may say so—a legal obligation on individual Members of the United Nations, obligations which flow basically from Articles 1 and 2 of the Charter.

" . . .

"However, the Security Council . . . has also other means at its disposal for carrying out its duties under the Charter as the guardian of international peace. It is Article 34, which confers full and complete authority on the Security Council to investigate any

dispute or any situation which might lead to international friction or give rise to a dispute.

"If, in order to make such an investigation, the Security Council feels it necessary to go itself to the territory of some Member State, or to the territory of some non-Member State, which for the purposes of the dispute has accepted its obligations, the Security Council has the right to ask that State for certain facilities and for co-operation . . .

" . . .

"The Council certainly has powers and rights of conciliation and, unless the doctrine just proposed by the representative of Yugoslavia is rejected, it would have no power under Article 34 to make investigations. The Council has the power to make those investigations whether or not the country being investigated likes it; that is the fundamental issue . . ."

The representative of Yugoslavia stated that the matter to be decided was "whether the Security Council is empowered not only to conduct an investigation, but also to set up a commission and to impose it on the countries concerned". He added:

" . . . the right to conduct an investigation in the territory of a State inevitably constitutes a restriction of that State's sovereignty. The Charter, however, lays down that national sovereignty should be limited only in very specific conditions: if there is a threat to the peace, a breach of the peace, or aggression".

The representative of the United States held that there was "a clear distinction" between the conciliatory actions of the Council which could not be enforced upon the States concerned and actions of an investigatory nature which could be taken irrespective of the attitude of any individual State. He stated further:

"It is obviously the duty of the Security Council to attempt to conciliate opposing parties under certain conditions. It is equally obvious that, under the Charter, it is the duty of those opposing parties at least to lend an ear to the admonitions of the Council. Thirdly, it is obvious that the Council cannot force two opposing parties to conciliate their views. Conciliation implies voluntary will on the part of those who oppose each other; and it is suggested only that the Security Council, in the spirit of the Charter, might act as a catalytic agent.

"As regards functions of investigation, however, the situation is entirely different. There the Council has a duty—or may have a duty—to the entire United Nations which would override the consideration of the desires of any individual States."

At the 167th meeting on 25 July, the representative of Brazil, while agreeing that Chapter VI "does not permit enforcement", and "has made great allowance for the sovereignty of States", expressed the view that it did, however, impose obligations upon States. He added:

" . . . Article 34 authorizes the Security Council to make investigations, and the power of investigation imposes an obligation upon the States to collaborate with the Commission of Investigation. But Chapter VI goes still further. Once the Security Council decides, under Article 34, that a dispute or a situation is likely to endanger peace, it establishes thereby the obligation of the parties to settle that dispute. In doing that, they can still resort to their

⁶⁵ S/430, O.R., 2nd year, Suppl. No. 15, pp. 147-148.

own methods, but they are obliged to settle the dispute. Their failure to do so compels the Security Council to go still further and apply Chapter VII.

“... It is true that Chapter VI is somewhat inadequate. But if we eliminate whatever obligations Chapter VI carries, the result will be its nullification; and that will involve the Security Council in the immediate application of Chapter VII. That would be contrary to the method devised in the Charter itself, which establishes two phases for the procedure for preventing conflicts: the phase of peaceful settlement, and the phase of enforcement.”

At the same meeting the representative of the USSR contended that “the idea that Security Council decisions to conduct an investigation are obligatory is contrary to Chapter VI of the Charter”. He stated:

“... the USSR delegation cannot share the view of certain representatives that decisions in connexion with the pacific settlement of disputes (under Chapter VI of the Charter) are of a compulsory character. If we take that path, we shall inevitably reach the conclusion that, if a State does not fulfil certain recommendations, some other measures must automatically be applied to it. The question then arises: what other measures? Obviously, compulsory measures. But, in that event, the whole of Chapter VI regarding the pacific settlement of disputes loses its significance and meaning. All that should be left in the Charter, then, is Chapter VII, which provides for taking compulsory decisions. Such is the absurd conclusion to which this concept leads.

“On one point, we can agree with those who defend this concept; we can agree with them that, in the case also of Council decisions for the pacific settlement of disputes, i.e., in the case of recommendations, States which do not comply with those recommendations bear a moral responsibility...”

The representative of France asked the representative of the USSR to clarify his view on Article 34:

“I should like to ask the USSR representative if he considers that this Article gives the Security Council only the power to recommend an investigation, or also the power to decide it will take place.”

In this connexion, the representative of the USSR stated:

“No one doubts the Security Council’s right to decide to conduct an investigation or inquire into the facts connected with a particular dispute or situation. That is a right conferred upon the Security Council by the Charter. However, all decisions taken under Chapter VI, including decisions to conduct an investigation, are in the nature of recommendations, from the point of view of the attitude taken towards these decisions or recommendations by the countries they affect.

“... ”

“... A country which does not fulfil even the recommendations bears a certain moral responsibility, but no more than a moral responsibility.

“... Compulsory decisions are those taken under Chapter VII, not decisions taken under Chapter VI, still less the actual preliminary decisions—decisions to conduct an investigation.

“This is where the Security Council is most restricted. It is only later on, when the dispute or situation becomes more serious, that the weight and

significance of the Security Council’s decisions increase until they become compulsory, since they are taken under Chapter VII of the Charter.”

The representative of France considered “that the Security Council has indeed the right to decide upon an investigation”. In regard to the comments of the representative of the USSR, he stated at the 168th meeting on 28 July:

“Article 34 of the Charter... says: ‘The Security Council may investigate...’ These terms appear sufficiently clear in themselves and seem to me perfectly definite when taken in conjunction with the other provisions of Chapter VI.

“The terms used by the authors of the Charter in the other Articles of Chapter VI dealing with the powers of the Security Council are all extremely precise. Article 33, paragraph 2, says that the Security Council, when it deems it necessary, shall ‘call upon’ the parties. Article 36, paragraph 1, says that the Security Council may, at any stage, ‘recommend’, and paragraph 3 of the same Article begins with the words ‘In making recommendations...’ In Article 37 we find the word ‘recommend’. In Article 38 there is again the word ‘recommendations’.

“The authors of the Charter have therefore, with great precision, made use of terms to which they gave an extremely clear meaning. These different Articles speak of ‘recommending’ which is not the same thing as ‘deciding’.

“When, on the other hand, these terms are compared with those of Article 34, it at once appears that Article 34 is quite differently drafted. Here there is no question of ‘recommending’ an investigation, or of ‘calling upon’ the parties to accept an investigation... It appears to me that the text of these different Articles itself settles the question: the drafting is too different... The terms used in Chapter VI have obviously been too carefully weighed for the difference in wording between Article 34 and the other Articles not to have a meaning.

“... ”

“... I do not very well see the ‘gradation’ from Chapter VI to Chapter VII. On the one hand we have Chapter VI with one series of measures; and then we have Chapter VII with another series of measures. On the other hand, is it singular, is it inexplicable that, in Article 34 which deals with the power of investigation, the Security Council should have greater power than when it reaches the end and the conclusions of its investigation? This appears to me to be easily explained. Article 34 refers only to an investigation for the sole purpose of providing the Security Council with information. It is an entirely preliminary measure preceding all the measures which the Security Council may later contemplate. It is a simple measure of enquiry, and it is quite natural that here the Security Council should have greater power—even within the province of Chapter VI—and that it should be able to decide, and not merely recommend, that an investigation should be made.”

The representative of France concluded that the Council was empowered to give the proposed commission two kinds of functions—good offices and investigation. The former “by definition... cannot encroach upon what the various States may finally decide to accept or reject”. He added:

"The Commission's other task is based on Article 34 . . . and it consists of keeping the Council informed. Here . . . it is not a question of recommendations but of the Security Council's power of decision; but this power of decision must be based on Article 34 and can therefore be brought into action only in accordance with the terms of that Article. Consequently, it may be advisable to state that the commission can act in the capacity of a commission of investigation only with a view to giving the Security Council information."

Accordingly, the representative of France submitted a modified text of section (6) of his amendment⁶⁹ to sub-paragraph 3 (b) to the United States draft resolution, which was accepted by the representative of the United States.⁷⁰ The amended text read as follows:

"(6) In order to keep the Security Council informed, the Commission shall:

"(a) Whenever it may deem useful, investigate any frontier violation reported to it;

"(b) Investigate the facts of the frontier situation on the complaint of any of the Governments concerned, whenever it considers these facts likely to lead to an aggravation of the situation."

At the 170th meeting on 29 July 1947, the United States draft resolution, as amended, was voted upon, paragraph by paragraph. Paragraph 6, which included the French amendment accepted by the representative of the United States, was adopted by 9 votes in favour, 1 against, with 1 abstention. The draft resolution as a whole was not adopted. There were 9 votes in favour and 2 against (one vote against being that of a permanent member).⁷¹

CASE 16.⁷² THE INDIA-PAKISTAN QUESTION: In connexion with decisions of 20 January 1948 establishing the United Nations Commission for India and Pakistan; of 21 April 1948 modifying the Council's instructions to the Commission; and of 8 June 1948 authorizing the President to explain the Council's decision of 3 June 1948 to the Government of India.

[Note: After the initial proceedings, the Council established a Commission to investigate, under Article 34, the facts related to the situation in the Jammu and Kashmir State, as well as the facts regarding other situations brought to the Council's attention by the Government of Pakistan. During discussion on the setting up of the Commission, as well as in connexion with other decisions of the Council clarifying the terms of reference of the Commission, objections were raised by India as to the scope of the activities of the Commission in the exercise of its powers of investigation.]

At the 230th meeting on 20 January 1948, the President, speaking as the representative of Belgium, submitted a draft resolution⁷³ to establish a Commission of the Security Council, composed of representatives of three Members of the United Nations, with the function of investigating the facts "pursuant to Article 34 of the Charter".

⁶⁹ 168th meeting: p. 1555.

⁷⁰ 168th meeting: p. 1560.

⁷¹ 170th meeting: pp. 1611-1612.

⁷² For texts of relevant statements see:

230th meeting: President (Belgium), pp. 129-131; India, pp. 135-136; Syria, pp. 136-137; USSR, pp. 139-140; Ukrainian SSR, pp. 140-141.

⁷³ 230th meeting: pp. 130-131.

The representative of India* stated that the proposed Commission could be invested with jurisdiction to deal only with matters connected with the Jammu and Kashmir question as other matters brought to the attention of the Council by the representative of Pakistan had not been discussed by the Council and the Government of India had not yet submitted its case on those matters. The representative of Syria declared that it was not necessary for the proposed Commission to wait for other directions from the Council: the Commission could start its work in accordance with the proposed terms of reference "to investigate the facts pursuant to Article 34 of the Charter". In other words, it would investigate any fact or situation likely to endanger the maintenance of international peace and security. The representative of the USSR expressed the view that, if the Council set up a commission, it should be a Security Council Commission, composed of three, five or eleven States represented in the Council. It would then be clear to everyone that the Council had decided to investigate the dispute because it considered that it deserved attention and because the situation which had arisen in Jammu and Kashmir was sufficiently serious to warrant such investigation.

The draft resolution was adopted by 9 votes in favour and none against, with 2 abstentions.⁷⁴

At the 286th meeting on 21 April 1948, the Council adopted a resolution increasing to five the membership of the Commission and modifying the Council's instructions to the Commission.⁷⁵

At the 312th meeting on 3 June 1948, the Council adopted a resolution⁷⁶ giving further instructions to the Commission.

At the 315th meeting on 8 June, the President (Syria) stated that he had received a message from the Government of India, protesting against the enlargement of the scope of the Commission's activities by the resolution of the Council of 3 June 1948, and expressing surprise that "the Council should have thought it fit to direct the Commission to study and report" on matters relating to Junagadh, genocide, and agreements between India and Pakistan.⁷⁷ The Council agreed that the President should write to the Indian Prime Minister, explaining that the Security Council had not come to a decision on those other questions; that it had only instructed the Commission, when it deemed appropriate, to gather further information concerning them and to report.

CASE 17.⁷⁸ THE CZECHOSLOVAK QUESTION: In connexion with the draft resolution to appoint a sub-committee to hear evidence: voted upon and rejected on 24 May 1948.

⁷⁴ 230th meeting: p. 143. For text, see chapter VIII, p. 345.

⁷⁵ 286th meeting: pp. 9-39. For text, see chapter VIII, pp. 346-347.

⁷⁶ 312th meeting: p. 21. For text, see chapter VIII, p. 348.

⁷⁷ S/825, O.R., 3rd year, Suppl. for June 1948, p. 79; 315th meeting: p. 2.

⁷⁸ For texts of relevant statements see:

268th meeting: USSR, pp. 92, 100-101; United Kingdom, p. 94.

276th meeting: Canada, pp. 271, 273; China, p. 275; Syria, p. 277.

281st meeting: USSR, pp. 18-20; United States, pp. 26, 32-33.

288th meeting: Argentina, pp. 15, 26-27; Belgium, p. 18; Canada, p. 21; Syria, p. 23; USSR, pp. 21-22; United States, pp. 19-21.

303rd meeting: Argentina, p. 21; China, pp. 27-28; France, p. 20; Syria, p. 17.

305th meeting: Argentina, p. 35; France, p. 35; USSR, p. 36; United Kingdom, p. 33.

[Note: The question arose of the circumstances in which the Security Council might proceed to an investigation in accordance with Article 34, and the relation to Article 34 of the establishment of a sub-committee to hear evidence.]⁷⁹

In his letter dated 12 March 1948 addressed to the Secretary-General the representative of Chile⁸⁰ indicated that his Government was requesting the submission of the case to the Security Council in order that, in accordance with Article 34, the Council might investigate the events in Czechoslovakia.

At the 268th meeting on 17 March 1948, the representative of the USSR contended that reference to Article 34 was "completely unfounded" since that Article provided "for the investigation of any situation which might lead to international friction or give rise to a dispute . . . for the purpose of determining whether [its] continuance was likely to endanger the maintenance of international peace and security". In the present case, "the prerequisites justifying any sort of investigation" were "entirely absent". The representative of the United Kingdom observed that a "very serious charge" had been made and the Security Council should give to those who had made it a chance of substantiating it and to the Soviet Union the possibility of refuting it. In reply, the USSR representative commented that were it "assumed that the existence of a demand or desire for an investigation affords sufficient grounds for such an investigation . . . a State or even, as in the present case, a private individual . . . need only lodge such a request, and the Security Council will consider the question of an investigation".

At the 276th meeting on 31 March, the difficulties confronting the Council in conducting an investigation in the case were expressed by the representative of Syria:

" . . . It might be considered that the Security Council would discharge its functions and duties by applying Article 34 of the Charter and by establishing a commission of inquiry or investigation. This might have been good procedure had we been assured that the *de facto* authority in Czechoslovakia would be ready to grant such a commission all facilities for carrying out its duties. This is not the case, however, and the Security Council has no representative of that *de facto* authority before it to state what would be the attitude of the present Government of Czechoslovakia to such a commission. In these circumstances, we should simply be adding yet another commission to those which are already waiting on the borders of certain areas without being allowed to enter in order to carry out the observation and other tasks assigned to them. In view of this, it is useless to consider the matter from that angle . . .

"I believe it would be convenient, if the Security Council would agree to accept this suggestion, for a fact finding sub-committee composed of not more than three members, to be constituted by the Security Council, to study this matter and collect facts in a way it deems proper and to report to the Security Council about the situation in Czechoslovakia, about what has taken place in the past and how things have

developed. If this suggestion were accepted, I believe it would be a good way to collect the information which may be useful to the Security Council."

At the 281st meeting on 12 April the representative of Chile submitted the following draft resolution:

"Whereas the attention of the Security Council has been drawn by a Member of the United Nations, in accordance with Articles 34 and 35 of the Charter, to the situation in Czechoslovakia which may endanger international peace and security; and the Security Council has been asked to investigate this situation; and

"Whereas during the debate which took place in the Council the existence of further testimonial and documentary evidence with regard to this situation has been announced; and

"Whereas the Security Council considers it advisable that such further testimonial and documentary evidence should be heard,

"Therefore, to this end, and without prejudice of any decisions which may be taken in accordance with Article 34 of the Charter,

"The Security Council

"Resolves to appoint a sub-committee of . . . members and instructs this sub-committee to receive or to hear such evidence, statements and testimonies and to report to the Security Council at the earliest possible time."

The representative of the USSR contended that Article 34 was inapplicable to the case. Certain definite conditions—the existence of a situation which might lead to international friction or give rise to a dispute—were required before an investigation could be carried out. In the absence of such conditions there was no justification for investigation.

The representative of the United States stated that he "would not consider the activity of such a sub-committee to be in any way an investigation".

At the 288th meeting on 29 April: he further stated that the draft resolution to establish a sub-committee was "a decision under Article 29 of the Charter, not under Chapter VI". The representative of the USSR stated that "this resolution, if adopted, would necessitate investigations".

At the 303rd meeting on 24 May, the draft resolution was not adopted. There were 9 votes in favour and 2 against (one vote against being that of a permanent member).⁸¹

At the same meeting, the representative of Argentina also submitted a draft resolution⁸² to entrust the the Committee of Experts with the task of obtaining further testimonial evidence regarding the Czechoslovak situation and to report back to the Security Council at the earliest opportunity.

At the 305th meeting on 26 May, the representative of Argentina said that, by this means, the Council would be prevented "from wasting time by dealing with the matter itself".

At the same meeting, the representative of the USSR stated that "the Argentine resolution cannot be regarded otherwise than as a new attempt to procure, by all means, an investigation of the Czechoslovak question".

⁷⁹ On voting procedure in connexion with the draft resolution, see chapter IV, Case 49; for other observations regarding the character of the sub-committee, see chapter V, Case 67.

⁸⁰ S/494, O.R., 3rd year, Suppl. for Jan., Feb., Mar. 1948, pp. 31-34.

⁸¹ 303rd meeting: pp. 28-29.

⁸² S/782.

CASE 18.⁸³ COMPLAINT OF ARMED INVASION OF TAIWAN (FORMOSA): In connexion with decision of 29 September 1950 to invite the representative of the People's Republic of China.

[*Note:* Discussion centred on the question of the responsibility of the Council to consider the question, taking into account the item on the agenda of the General Assembly. In view of the provisions of Article 34, the Council set a date for hearing the People's Republic of China.]⁸⁴

At the 503rd-506th meetings on 26-29 September 1950, the Security Council considered the complaint of armed invasion of Taiwan (Formosa). Discussion centred on the question how the Council should proceed in view of the comparable item included in the agenda of the General Assembly. The representative of the USSR insisted that Article 12 did not debar the General Assembly from discussing disputes or situations with which the Security Council was concerned; and that the Security Council should discharge its obligation under the Charter by hearing a representative of the People's Republic of China. The representative of Ecuador stressed that the Council "should not refuse to examine complaints submitted on subjects which are related to the maintenance of international peace and security"; he proposed that the Council defer consideration to a fixed date to enable the Council to benefit by any investigation by the Assembly. The representative of Ecuador stressed his concern with the principle "that the Council must be ready to hear complaints about situations which may threaten the maintenance of peace". The representative of the United Kingdom emphasized the primary responsibility of the Council to deal with the matter as a possible threat to the peace. The representative of the United States and the USSR opposed delay; the representative of the United States indicated that, since the Council had decided to hear the complaint, it should be "swiftly disposed of" through the establishment of a commission to evaluate the charges.

At the 506th meeting on 29 September 1950, the Council decided to defer consideration of the question but to invite the People's Republic of China to attend the meetings of the Council on the question after the assigned date. The preamble of the resolution read as follows:

"The Security Council,

"Considering that it is its duty to investigate any situation likely to lead to international friction or to

give rise to a dispute in order to determine whether the continuance of such dispute or situation may endanger international peace and security, and likewise to determine the existence of any threat to peace;

"Considering that, in the event of a complaint regarding situations or facts similar to those mentioned above, the Council may hear the complainants;"⁸⁵

CASE 19.⁸⁶ COMPLAINT OF BOMBING BY AIR FORCES OF THE TERRITORY OF CHINA: In connexion with draft resolution to establish a commission of investigation: voted upon and rejected on 12 September 1950.

By letter dated 29 August 1950,⁸⁷ the United States stated that it would welcome an investigation on the spot by a commission appointed by the Security Council into the charges made by the People's Republic of China.

At the 493rd meeting on 31 August 1950, the representative of the United States added:

"For their part, the United States military authorities would extend to the commission full co-operation, including access to pertinent records. The commission, when established, can make an immediate investigation of the incident alleged in the complaint to have occurred on 27 August. If it is found that an attack did in fact occur, my Government is prepared to make payment to the Secretary-General, for appropriate transmission to the injured parties, of such damages as the commission shall find to be fair and equitable. In such case my Government will see to it that appropriate disciplinary action is taken."

At the 499th meeting on 11 September, the representative of Norway, supporting the United States proposal for the establishment of a commission of investigation, stated that the Council was faced "with what Article 34 called a 'situation which might lead to international friction or give rise to a dispute'."

At the 501st meeting on 12 September, the representative of the USSR stated that such questions as creating a commission and sending it to a country could not be decided without the participation of a representative of that country's Government. He added that the representative of the United States had admitted the invasion of Chinese air space, and consequently there was no need to set up any special commission of investigation.

At the same meeting, the United States draft resolution was not adopted.⁸⁸

⁸³ For texts of relevant statements see:

503rd meeting: China, p. 29; USSR, pp. 30-31; United States, pp. 31-32.

504th meeting: Ecuador, pp. 7-9; Egypt, p. 20; USSR, pp. 4-5; United Kingdom, pp. 18-19.

505th meeting: Ecuador, pp. 12-16; Cuba, pp. 6-7; United States, pp. 8-9.

⁸⁴ For consideration in relation to Article 12, see chapter VI, Case 3; for discussion on the invitation to the People's Republic of China, see chapter III, Case 54.

⁸⁵ For full text, see chapter VIII, p. 359.

⁸⁶ For texts of relevant statements see:

493rd meeting: United States, p. 26.

499th meeting: Norway, p. 13.

501st meeting: USSR, pp. 7, 16; India, p. 24; Ecuador, pp. 24-25.

⁸⁷ S/1727, O.R., 5th year, Suppl. for June-Aug. 1950, p. 146.

⁸⁸ 501st meeting: p. 28.

Part III

APPLICATION OF THE PROVISIONS OF ARTICLE 35 OF THE CHARTER

NOTE

Questions relating to the maintenance of international peace and security have been brought to the attention of the Security Council by Members of the United Nations,¹ by States not Members of the United Nations,² by the General Assembly,³ by the Secretary-General,⁴ and by the Council of Foreign Ministers.⁵ The relevant data regarding submission has been summarized in the appended Tabulation.⁶ This Note, however, is concerned only with the implementation of Article 35 by Members and States not Members of the United Nations.

SUBMISSION BY MEMBERS OF THE UNITED NATIONS

In submitting disputes and situations Members have usually indicated in their initial communications or in their statements to the Council that they were acting in accordance with Article 35 (1).⁷ Article 37 was invoked once by a party to a dispute in conjunction with Article 35.⁸ In the initial communications, States have in most instances indicated not only the nature of the question, but also the action requested of the Council.⁹

The Tabulation indicates that in five instances Members submitted questions to the Council as disputes,¹⁰ and in eleven as situations.¹¹ In each instance of the submission of a dispute by a Member, the Member submitting the dispute was itself a party, but situations were in most instances submitted to the Council by Members not directly involved.¹² Questions submitted

as disputes were usually accompanied by requests for specific measures by the Council related to the claims of the party; submissions of situations have not always contained such indication of the measures sought.

On three occasions a Member submitted a question to the Council in the first instance as a threat to the peace,¹³ breach of the peace,¹⁴ or act of aggression,¹⁵ without adverting to Article 35. However, when the Indonesian question (II) was submitted by Australia as a threat to the peace under Chapter VII, India submitted the same question as a situation under Article 35 (1) on the assumption that only members of the Council were entitled to invoke Chapter VII.¹⁶

Although consideration of the Greek frontier incidents question was initiated by Greece under Article 35, at a later stage that Government submitted a communication requesting the Council to take the question up under Article 39.¹⁷ The absence of any clearly discernible distinction in the chain of proceedings of the Council consequent upon the invocation of Article 39 at the time of submission is reflected in the uniform mode of treatment adopted for all questions in chapter VIII of the *Repertoire*. Chapter VIII should be consulted for evidence of the extent to which, in the practice of the Council, the chain of proceedings is governed by the terms of the initial communication.

On two occasions when a Member has submitted matters relating to the question of Trieste, which was originally brought to the Security Council by the Council of Foreign Ministers,¹⁸ the articles of the treaties and special agreements concerning Trieste have been invoked as a basis of submission.¹⁹

STATES NOT MEMBERS OF THE UNITED NATIONS

Article 35 (2) was invoked on two occasions.²⁰ In the question of Siamese-French relations, the complaint duly circulated in accordance with rule 6 was not placed

incidents question to the Council as a situation, but the Council considered whether it was a dispute, and invitations to participate were extended with the implication that the question before the Council was a dispute. (Entry 12.) The United Kingdom submitted the Anglo-Iranian Oil Company case as a situation, but, during consideration by the Council, draft resolutions were submitted to determine the existence of a dispute. (Entry 16.) See also the question of the Free Territory of Trieste submitted by Yugoslavia. (Entry 28.)

¹³ See Tabulation: Section C, Entry 18.

¹⁴ See Tabulation: Section C, Entries 17 and 19.

¹⁵ See Tabulation: Section C, Entry 19.

¹⁶ 171st meeting: p. 1620. The question whether there is a distinction between the rights of members of the Council and of other Members of the United Nations to submit questions also arose in connexion with a question which was not placed on the provisional agenda. When Yugoslavia drew the attention of the Council to the presence of Polish forces in Italy by means of a letter to the representative of the USSR requesting him to forward a Yugoslav *aide-mémoire* to the Council, the representative of the United Kingdom observed that Yugoslavia "could exercise the right of any Member of the United Nations of bringing the matter themselves before the Security Council under Article 35". See S/11 and S/12.

¹⁷ See chapter XI, Case 3.

¹⁸ See Tabulation: Section H, Entries 27 and 28.

¹⁹ Yugoslavia, however, in submitting its complaint regarding Trieste, employed language derived from Articles 34 and 35. See Tabulation: Section H, Entry 28.

²⁰ See Tabulation: Section D.

¹ See Tabulation: Sections A, B, C and Section H, Entries 27 and 28.

² See Tabulation: Sections D and E.

³ See Tabulation: Section F.

⁴ See Tabulation: Section G.

⁵ See Tabulation: Section H.

⁶ The data entered in the Tabulation, with the exception of entries in brackets, are derived from the initial communications of submission. The headings for the sections of the Tabulation and the insertion of entries thereunder are also based on the terminology used in these initial communications.

⁷ Syria and Lebanon in submitting their dispute with France and the United Kingdom referred to Article 34 only.

⁸ By Egypt in connexion with the Egyptian question: see Entry 4.

⁹ The relevant information for this aspect of each question is summarized in the Tabulation under the heading "Action requested of the Security Council".

¹⁰ See Tabulation: Section A.

¹¹ See Tabulation: Section B.

¹² See Tabulation: Section B, entries 7, 8, 9, 10, 11, 13 and 15. As for the four other cases in Section B in which questions were submitted as situations by States directly concerned: Iran submitted the Iranian question (I) as a situation, but in a subsequent communication the question was referred to as a dispute (*O.R., 1st year, 1st series, Suppl. No. 1, pp. 22-24*), and, in the initial communication, the Council was requested to "recommend appropriate terms of settlement". (Entry 6.) India submitted the complaint against Pakistan as a situation under Article 35, alleging that aid given by Pakistan to the "invaders" was "an act of aggression". In the voting India abstained as a party to the dispute in accordance with Article 27 (3); Pakistan's counter-complaint was submitted as a dispute (Entries 5 and 14). Greece submitted the Greek frontier

on the provisional agenda of the Council.²¹ In the Hyderabad question, the Secretary-General circulated the initial communications from Hyderabad with a prefatory note stating that he was not in a position to determine whether he was required to circulate the communications under rule 6.²² The Council included the Hyderabad question in the agenda subject to reservations on the question of competence.²³ Both Siam and Hyderabad accepted in advance, in accordance with the provisions of Article 35 (2), the obligations of pacific settlement provided in the Charter.

On two occasions, the People's Republic of China submitted complaints against the United States alleging acts of aggression. In these cases, Article 35 was not cited.²⁴

PROCEDURAL CONSEQUENCES OF SUBMISSION UNDER ARTICLE 35

Disputes and situations have been submitted to the Council by communications addressed to the Secretary-General or to the President of the Council. They have been dealt with in accordance with rule 3 and rules 6-9 of the provisional rules of procedure. Regarding rule 3, chapter I, Case 1, should be consulted. Material relating to the application of rules 6-9 is covered in chapter II of the *Repertoire*. Material on the practice of the Council in the implementation of Article 35 at the stage of adoption of the agenda will be found in chapter II, part III.²⁵

The distinction between a "dispute" and a "situation" involves procedural consequences not only as regards submission, under Article 35, of questions by States

²¹ Further communications were made in connexion with the application of Siam for membership. By letters to the Secretary-General dated 19 August 1946 (S/132); 28 August 1946 (S/139); and 24 August 1946 (O.R., 1st year, 2nd series, *Suppl. No. 4*, pp. 47-48, 145-148), the representative of Siam, in connexion with his Government's application for membership, kept the Council informed of the details of the negotiations which were taking place through the good offices of the United States and the United Kingdom. At the 9th meeting of the Committee on the Admission of New Members on 13 August 1946, the representative of France stated that France would not support the pending application of Siam so long as an agreement had not been reached on the procedure for the solution of the territorial dispute. He also explained the French view of the origins of the dispute. (O.R., 1st year, 2nd series, *Suppl. No. 4*, pp. 75-76.) Consideration of the application was suspended at the request of Siam by letter dated 28 August 1946 because of the dispute. (S/139.) At the 81st meeting on 29 November 1946, without the question having been put on the provisional agenda, the President (United States) took note of letters to the Secretary-General dated 28 November 1946 from the representatives of France and Siam (S/200 and S/199), drawing the attention of the Council to a Settlement Agreement and Protocol of 17 November 1946 signed in accordance with Article 33 (1) of the Charter. The representative of Siam was instructed by his Government "to withdraw the above complaint before the Security Council". The President thereupon announced that Siam's request that the application, which had been suspended because of the dispute, be again put before the Council, would be granted. 81st meeting: pp. 505-507.

²² See chapter II, Case 2.

²³ The representative of India considered that Hyderabad was not competent to bring the question before the Council inasmuch as Article 35 (2) refers to States. 357th meeting: p. 19. See the initial proceedings concerning the Hyderabad question in chapter VIII, p. 353; for the inclusion of the question in the agenda, see chapter II, Case 33.

²⁴ See Tabulation: Section E; for consideration of invitations to the People's Republic of China, see chapter III, Cases 54 and 66.

²⁵ On the question of the procedure of the Council subsequent to the submission of a dispute or situation, see also chapter I, Cases 46 and 50.

not Members, but also as regards voting requirements under Article 27 (3) and participation, under Article 32, of States not members of the Council.²⁶ The acceptance by the Council of the designation "dispute" or "situation" for the purposes of one Article may imply acceptance of the same designation as regards the other Articles. In considering what designation to accept for the purposes of Article 35 (1) the Council has considered whether a decision should be taken at all, and if so, at what stage and whether the Council should itself decide or simply accept the designation given by the State submitting the question.²⁷ On one occasion the Council decided not to vote on a proposal to determine whether a question was a dispute.²⁸ On another the Council made participation in the discussion by States not Members of the United Nations conditional upon a subsequent finding that the question was a dispute; but the invitation was extended at a later stage without an explicit decision to this effect.²⁹ In the early meetings of the Council, criteria for distinguishing a "dispute" from a "situation" were advanced by the Committee of Experts³⁰ and by members of the Council in the course of discussion.³¹ There are no decisions embodying such criteria.

In the early meetings of the Council and before the adoption of rule 37 of the provisional rules of procedure, the question of the participation of non-members of the Council in the proceedings gave rise to consideration whether the submission of a situation under Article 35 (1) fulfilled the requirements of Article 31 for the extension of an invitation; namely, that the interests of the Member are specially affected.³² Since the adoption of rule 37 it has been the practice of the Council to extend invitations to participate in the discussion to all Members submitting matters to the Council in accordance with Article 35 (1).

At a later date the question of participation under Article 32 of States not Members of the United Nations gave rise to debate on the procedural consequences of the differentiation of disputes from questions dealt with as breaches of the peace.³³ The practice with respect to such States has varied with the circumstances of the case.³⁴

²⁶ The relevant material on voting is in chapter IV, Cases 107-120, and on participation in chapter III, part II. In addition, the distinction between dispute and situation has arisen in connexion with the right to withdraw a complaint; this material is in chapter II, Case 56.

²⁷ See 19th meeting: pp. 272-282 (Syrian-Lebanese question); 82nd meeting: pp. 535, 537, 541, 546, 548 (Greek frontier incidents question). The memorandum of 18 March 1946 by the Secretariat concerning the procedure of the Council contained the following observations on these questions:

"The consensus of opinion within the Council was that the Security Council itself should decide whether a matter submitted under Article 35 of the Charter is a 'dispute' or a 'situation'."

"The Security Council has acted on the view that the decision whether a dispute or situation is in question should not be taken until after the initial hearing of the States directly concerned." O.R., 1st year, 1st series, *Suppl. No. 2*, p. 15.

²⁸ 19th meeting: p. 281 (Syrian and Lebanese question).

²⁹ For the invitation to Albania and Bulgaria in connexion with the Greek frontier incidents question, see chapter III, Cases 57, 58 and 71.

³⁰ See chapter II, Case 56.

³¹ See chapter II, Case 18. See also 19th meeting: p. 276 (Syrian and Lebanese question), and 82nd meeting: p. 537; 84th meeting: p. 607 (Greek frontier incidents question).

³² See chapter III, Cases 9, 10, 11; see also 16th meeting: pp. 223-232.

³³ See chapter III, Case 73.

³⁴ See chapter III, part I, Section D, and Part II.

Tabulation of questions submitted to the Security Council (1946-1951)

SECTION A. QUESTIONS SUBMITTED BY MEMBERS AS DISPUTES

Question	Submitted by	Other parties	Articles invoked as basis for submission	Description of question in letter of submission	Action requested of the Security Council	Reference
1. Syrian and Lebanese question	Syria and Lebanon 4 Feb. 1946	France, United Kingdom	34	"The presence of [French and British] troops . . . may give rise to serious disputes" and "have been a constant menace to peace and security in this region".	"To adopt a decision recommending the total and simultaneous evacuation of the foreign troops from the territories of Syria and Lebanon."	S/5, <i>O.R.</i> , 1st year, 1st series, <i>Suppl. 1</i> , pp. 82-83.
2. Iranian question (II) ^a	Iran 18 Mar. 1946	USSR	35 (1)	"A dispute . . . the continuance of which is likely to endanger the maintenance of international peace and security . . . has arisen by reason of new developments since the adoption by the Security Council of resolution of January 30, 1946."	"The immediate and just solution of this dispute by the Security Council."	S/15, <i>O.R.</i> , 1st year, 1st series, <i>Suppl. 2</i> , pp. 43-44.
3. Corfu Channel question	United Kingdom 10 Jan. 1947	Albania	35	"An incident in which two of His Majesty's ships were damaged by mines in the Corfu Channel..."	[At the 107th meeting on 18 February the United Kingdom asked the Council "to recommend under Article 36... settlement . . . by direct negotiations, after making the finding of fact..."]	S/247, <i>O.R.</i> , 2nd year, <i>Suppl. 3</i> , pp. 35-36; 107th meeting, p. 306.
4. Egyptian question	Egypt 8 July 1947	United Kingdom	35 and 37	"The occupation of the Nile Valley by the British armed forces and the pursuance of the... hostile policy . . . have given rise to a dispute . . . the continuance of which is likely to endanger the maintenance of international peace and security."	"To direct: (a) The total and immediate evacuation of British troops from Egypt including the Sudan; (b) The termination of the present administrative regime in the Sudan."	S/410, 159th meeting, pp. 1343-1345.
5. India-Pakistan question	Pakistan ^b 15 Jan. 1948	India	35	"A situation has existed between . . . India and . . . Pakistan which has given rise to disputes that are likely to endanger the maintenance of international peace and security . . . Pakistan . . . bring to the attention of the Security Council the existence of these disputes..."	"To adopt appropriate measures for the settlement of these disputes and the restoration of friendly relations between the two countries."	S/646. ^c

^a For submission of Iranian question (I) as a situation, see Tabulation entry 6.
^b See also complaint by India dated 1 January 1948 submitted as a situation, Tabulation entry 14.

^c The full text was reproduced as Annex 6 in Document S/1100. See *O.R.*, 3rd year, *Suppl. for Nov. 1948*, pp. 67-87.

SECTION B. QUESTIONS SUBMITTED BY MEMBERS AS SITUATIONS^a

Question	Submitted by	States involved	Articles invoked as basis for submission	Description of question in letter of submission	Action requested of the Security Council	Reference
6. Iranian question (I)	Iran ^b 19 Jan. 1946	USSR, Iran	35 (1)	"A situation . . . which may lead to international friction."	"Investigate the situation and recommend appropriate terms of settlement."	<i>O.R., 1st year, 1st series, Suppl. 1, pp. 16-17.</i>
7. Greek question	USSR 21 Jan. 1946	United Kingdom, Greece	35	"A situation . . . has given rise to extreme tension fraught with the possibility of serious consequences both for the Greek people and for the maintenance of peace and security."	"To discuss . . . and to take the measures provided for by the Charter to put an end to the situation."	<i>Ibid., pp. 73-74.</i>
8. Indonesian question (I)	Ukrainian SSR 21 Jan. 1946	United Kingdom, Japan, Netherlands	35 (1)	"The situation constitutes a threat to the maintenance of international peace and security . . . covered by Article 34 . . ."	"To carry out the necessary investigation and to take the measures provided for by the Charter in order to put an end to the situation that has arisen."	<i>Ibid., p. 76.</i>
9. Spanish question	Poland ^c 9 April 1946	Spain	34 and 35	A situation arising from the existence and activities of the Franco regime in Spain "which have already caused international friction and endangered international peace and security".	To consider and adopt "such measures as are provided for in the Charter".	S/32 and S/34, <i>O.R., 1st year, 1st series, Suppl. 2, pp. 54-55.</i>
10. Ukrainian complaint against Greece	Ukrainian SSR 24 Aug. 1946	Greece, United Kingdom, Albania	35 (1)	A "situation as being of the nature covered by Article 34 which has resulted from the policy of the Greek Government and which endangers the maintenance of international peace and security".	"Measures to be adopted . . . without delay in order to eliminate this threat to peace."	S/137, <i>O.R., 1st year, 2nd series, Suppl. 5, pp. 149-151.</i>
11. Information on Armed Forces of the United Nations	USSR ^d 29 Aug. 1946	Certain Powers Members of the United Nations	34 and 35	"The situation" created through continued "presence of Allied troops . . . on the territories of Members of the United Nations and of other States . . ."	"Adopt a resolution requiring States Members of the United Nations to submit . . . information [concerning the disposition of their armed forces] to the Security Council within two weeks."	S/144, <i>O.R., 1st year, 2nd series, Suppl. 5, pp. 151-152.</i>
12. Greek frontier incidents question	Greece 3 Dec. 1946	Yugoslavia, Bulgaria, Albania, Greece	34 and 35 (1)	"A situation which is leading to friction between Greece and her neighbours . . . This situation . . . is likely to endanger the maintenance of international peace and security."	"Urgent necessity for an investigation to be undertaken on the spot, in order that the causes of this situation may be brought to light."	S/203, <i>O.R., 1st year, 2nd series, Suppl. 10, pp. 169-172.</i>

13. Indonesian question (II)	India* 30 July 1947	Netherlands, Republic of Indonesia	35 (1)	"This situation endangers the maintenance of international peace and security which is covered by Article 34 ..."	"To take the necessary measures provided by the Charter to put an end to the present situation."	S/447, O.R., 2nd year, Suppl. 16, Annex 41, p. 150.
14. India-Pakistan question	India* 1 Jan. 1948	Pakistan, India	35	"A situation . . . whose continuance is likely to endanger the maintenance of international peace and security . . . exists between India and Pakistan owing to the aid which invaders . . . are drawing from Pakistan ..."	"To call upon Pakistan to put an end immediately to the giving of such assistance which is an act of aggression."	S/628, O.R., 3rd year, Suppl. for Nov. 1948, Annex 28, pp. 139-144. ^g
15. Czechoslovak question	Chile 12 Feb. 1948	Czechoslovakia, USSR	35 (1)	"The events which had taken place in [Czechoslovakia] since 22 February [1948] on the grounds that they constitute a situation endangering the maintenance of international peace and security."	"Investigate the events reported by the Permanent Representative of Czechoslovakia, Mr. Jan Papanek, which constitute a threat to international peace and security."	S/694, O.R., 3rd year, Suppl. for Jan., Feb., and Mar. 1948, pp. 31-34.
16. Anglo-Iranian Oil Co. case ^h	United Kingdom 29 Sept. 1951	Iran, United Kingdom	35 ⁱ	"Failure by the Iranian Government to comply with provisional measures indicated by the ICJ . . . [gave rise to] dangers inherent in this situation, and [a] threat to peace and security . . . may thereby be involved."	"Speedy discussion of this question." [In a draft resolution annexed to the letter of submission the United Kingdom asked the Council to call upon Iran to act in all respects in conformity with the provisional measures and to permit the staff to continue to reside at Abadan.]	S/2357, S/2358, O.R., 6th year, Suppl. for Oct., Nov., Dec. 1951, pp. 1-3.

* Yugoslavia submitted the question of the Free Territory of Trieste as a "situation . . . likely to endanger the maintenance of international peace and security"; for basis for submission, see Tabulation entry 28.

^b In a subsequent communication dated 26 January 1946, the representative of Iran referred to the question as a dispute. *O.R., 1st year, 1st series, Suppl. 1*, pp. 22-24. For submission of Iranian question (II) as a dispute, see Tabulation entry 2.

^c By letter dated 3 December 1947 (S/622), the Secretary-General brought to the attention of Council members the paragraph of General Assembly resolution 114 (II) concerning the Security Council's responsibilities in regard to the Spanish question. At the 327th meeting the Council decided not to include the letter in its agenda. (327th meeting, pp. 1-9.)

^d This question was submitted by statement at the 57th meeting, pp. 141-142. For discussion on the inclusion in the agenda, see chapter II, Case 18.

^e See also submission by Australia under Chapter VII, Tabulation entry 17. At the 171st meeting India explained that it had asked for consideration under Chapter VI because it believed that not being a member of the Council it was not entitled to invoke Chapter VII. (171st meeting, p. 1620.)

^f See also submission by Pakistan of counter-complaint as a dispute, Tabulation entry 5.

^g The full text was reproduced as Annex 28 in Document S/1100.

^h During consideration of the inclusion of the item in the agenda, and in revised texts of the United Kingdom draft resolution (S/2358), the question was referred to by the United Kingdom as a dispute. See 559th meeting, p. 4; S/2358/Rev.1 and Rev.2, *O.R., 6th year, Suppl. for Oct., Nov., Dec. 1951*, pp. 3-5.

ⁱ At the 559th meeting the representative of the United Kingdom stated that "the formal basis of the . . . reference to the Council [was] . . . Article 35". (559th meeting, p. 4.)

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

Question	Submitted by	States involved	Articles invoked as basis for submission	Description of question in letter of submission	Action requested of the Security Council	Reference
17. Indonesian question (II)	Australia ^a 30 July 1947	Netherlands, Republic of Indonesia	None	"Hostilities [in Java and Sumatra] constitute a breach of the peace under Article 39."	"Take immediate action to restore international peace and security. As a provisional measure . . . should call upon the Governments . . . to cease hostilities forthwith."	S/449, <i>O.R.</i> , 2nd year, <i>Suppl.</i> 16, Annex 40, pp. 149-150.
18. Identic notifications dated 29 Sept. 1948	France, United Kingdom, United States 29 Sept. 1948	USSR, France, United Kingdom, United States	None	"The serious situation which has arisen as the result of the unilateral imposition by the [USSR] of restrictions on transport and communications between the Western Zones of Occupation in Germany and Berlin . . . This action by the Soviet Government is contrary to its obligations under Article 2 . . . and creates a threat to the peace within the meaning of Chapter VII."	"Consider this question at the earliest opportunity."	S/1020, <i>O.R.</i> , 3rd year, <i>Suppl.</i> for Oct. 1948, pp. 9-11.
19. Complaint of aggression upon the Republic of Korea	United States ^b 25 June 1950	North Korea, Republic of Korea	None	"An attack of the forces of the North Korean regime . . . constitutes a breach of the peace and an act of aggression."	[At the 473rd meeting the representative of the United States submitted a draft resolution (S/1497) to determine the action a breach of the peace and to call for an immediate cessation of hostilities and withdrawal of armed forces of North Korea to the 38th parallel.]	S/1495, 473rd meeting, pp. 1, 7-8.

^a See also submission by India, Tabulation entry 13.

^b See also submission by the Secretary-General, Tabulation entry 25.

SECTION D. QUESTIONS SUBMITTED BY STATES NOT MEMBERS AS DISPUTES

Question	Submitted by	Other parties	Articles invoked as basis for submission	Description of question in letter of submission	Action requested of the Security Council	Reference
20. Siamese-French relations	Siam* 15 July 1946	France	35 (2); accepted obligations contained therein	"A state of affairs on the Indo-chinese-Siamese frontiers which . . . menaced the maintenance of peace in [that] area . . . territorial problems . . . still remain to be solved."	"For consideration under the pertinent Articles of the Charter [of] those matters in dispute between the Republic of France and the Kingdom of Siam".	S/106
21. Hyderabad question	Hyderabad 21 Aug. 1948 12 Sept. 1948 13 Sept. 1948	India	35 (2); accepted obligations contained therein ^b	"Grave dispute . . . which, unless settled in accordance with international law and justice, is likely to endanger the maintenance of international peace and security" (S/986). "imminent invasion" (S/998). "invasion . . . now taking place" (S/1000).	To consider the question. [At the 357th meeting, the representative of Hyderabad urged the Council to take action under Articles 39 and 40 of Chapter VII as well as Chapter VI.]	S/986, S/998, S/1000, <i>O.R.</i> , 3rd year, <i>Suppl. for Sept. 1948</i> , pp. 5-7; 357th meeting, pp. 12-13.

* On 25 May 1946 Siam informed the United Nations of tensions on the Indo-chinese-Siamese frontiers (S/72). Siam at the time was not a Member of the United Nations. This question was not included in the agenda. See p. 402, footnote 21.

^b During Council discussion the representative of India contended that Hyderabad was not a State within the meaning of Article 35 (2).

SECTION E. QUESTIONS SUBMITTED BY STATES NOT MEMBERS AS THREATS TO THE PEACE, BREACHES OF THE PEACE OR ACTS OF AGGRESSION^a

Question	Submitted by	States involved	Articles invoked as basis for submission	Description of question in letter of submission	Action requested of the Security Council	Reference
22. Complaint of armed invasion of Taiwan	People's Republic of China 24 Aug. 1950	United States, People's Republic of China	None	"Armed aggression" by the United States Government [Movement of United States 7th Fleet toward the Straits of Taiwan] "on the territory of China".	"To condemn the United States Government for its criminal act . . . to take immediate measures to bring about the complete withdrawal of all the United States armed invading forces from Taiwan and from other territories belonging to China."	S/1715, 490th meeting, pp. 9-10.
23. Complaint of bombing by air forces of the territory of China	People's Republic of China 27 Aug. 1950	United States, People's Republic of China	None	"Provocative . . . acts of invading the air of China on the part of the United States . . . are a serious criminal action of encroaching upon China's sovereignty . . ."	"To condemn the United States aggression forces in Korea . . . to take immediate measures to bring about the complete withdrawal of all the United States forces from Korea . . ."	S/1722, <i>O.R.</i> , 5th year, <i>Suppl. for June, July, and Aug.</i> , pp. 144-145.

^a See also submission of Hyderabad question, Tabulation entry 21.

SECTION F. QUESTIONS SUBMITTED BY THE GENERAL ASSEMBLY^a

<i>Question</i>	<i>Resolution of Assembly</i>	<i>Date of submission to Council</i>	<i>Articles invoked as basis for submission</i>	<i>Description of question in Assembly resolution</i>	<i>Action requested of the Security Council</i>	<i>Reference</i>
24. Palestine question ^b	Resolution 181 (II) 29 Nov. 1947	By letter dated 2 Dec. 1947	None	"Situation in Palestine is one which is likely to impair the general welfare and friendly relations among nations ..."	[For text of request, see chapter XII, Case 23 (i)]	S/614, <i>O.R.</i> , 2nd year, <i>Suppl.</i> 20, p. 172; G.A.O.R. 2nd Session, Resolution 181 (II), pp. 131-132.

^a For letter of Secretary-General transmitting General Assembly resolution 114 (II) concerning the Spanish question, see Tabulation entry 9, footnote c.

^b Complaints by the parties of alleged violations of the Armistice Agreements were subsequently considered as sub-items of "the Palestine question". See Egyptian,

Jordanian and Israeli complaints, 502nd meeting, p. 15; 503rd meeting, p. 10; 511th meeting, p. 2; 549th meeting, p. 11. For Syrian and Israeli complaints, see 541st meeting, p. 2. The Syrian letter dated 9 April 1951 (S/2078) invoked Articles 34 and 35 as the basis for submission.

SECTION G. QUESTIONS SUBMITTED BY THE SECRETARY-GENERAL

<i>Question</i>	<i>Date of submission</i>	<i>States involved</i>	<i>Articles invoked as basis for submission</i>	<i>Description of question in letter of submission</i>	<i>Action requested of the Security Council</i>	<i>Reference</i>
25. Complaint of aggression upon the Republic of Korea	25 June 1950 ^a	North Korea, Republic of Korea	None	Text of cablegram from UNCOK which drew attention "to serious situation developing which is assuming character of full-scale war and may endanger the maintenance of international peace and security".	[At the 473rd meeting the Secretary-General declared "it is the clear duty of the Security Council to take steps necessary to re-establish peace in that area"]	S/1496, 473rd meeting, pp. 2-3.

^a See also submission by United States, Tabulation entry 19.

SECTION H. QUESTIONS SUBMITTED BY THE COUNCIL OF FOREIGN MINISTERS*

<i>Question</i>	<i>Submitted by</i>	<i>States involved</i>	<i>Articles invoked as basis for submission</i>	<i>Description of question in letter of submission</i>	<i>Action requested of the Security Council</i>	<i>Reference</i>
26. Statute of the Free Territory of Trieste	Council of Foreign Ministers 12 Dec. 1946	Yugoslavia, Italy, France, USSR, United Kingdom, United States	None	The Draft Peace Treaty with Italy established "a Free Territory of Trieste whose independence and integrity would be ensured by the Security Council of the United Nations".	"To study the texts in question [and] for approval..."	S/224, <i>O.R.</i> , 2nd year, <i>Suppl. 1</i> , pp. 1-2.
27. Appointment of a governor of the Free Territory of Trieste	United Kingdom 13 June 1947		Art. 11, paragraph 1, of the Permanent Statute approved by the Council 10 Jan. 1947	"The appointment of a governor of the Free Territory of Trieste, in accordance with article 11, paragraph 1, of the . . . Statute."	[See description of question]	S/374, 143rd meeting, p. 1043.
28. Question of the Free Territory of Trieste	Yugoslavia 28 July 1948	Italy, United Kingdom, United States, Yugoslavia	Art. 21 (1) and Art. 2, Annex VI of the Peace Treaty with Italy	"Measures [of the Allied Military Command] which were a . . . breach of the Treaty of Peace and which placed the independence of the Free Territory of Trieste in jeopardy", and agreements "between the Anglo-American Zone and the Republic of Italy" by which "a situation is created likely to endanger the maintenance of international peace and security".	"To undertake measures . . . necessary and sufficient to nullify the . . . agreements between the Anglo-American zone and the Republic of Italy", and "to assure the respect by the Governments of the United States and the United Kingdom of their international obligations".	S/927, <i>O.R.</i> , 3rd year, <i>Suppl. for Aug. 1948</i> , pp. 79-84.

* This list includes questions submitted by Members consequent on the action taken by the Security Council on the original item submitted by the Council of Foreign Ministers.

Part IV

CONSIDERATION OF THE PROVISIONS OF ARTICLES 36-38 AND OF CHAPTER VI IN GENERAL

NOTE

The case histories included in part IV of this chapter comprise those in which discussion has arisen regarding the responsibility of the Security Council for the settlement of the particular dispute or situation under consideration in the light of the provisions of Chapter VI of the Charter. Part IV does not cover all the activity of the Council in the pacific settlement of disputes, for the debates preceding the major decisions of the Council in this field have dealt almost exclusively with the actual issues before the Council and the relative merits of measures proposed without discussion regarding the juridical problem of their relation to the provisions of the Charter. As a guide to the decisions of the Council in the pacific settlement of disputes, the reader should turn to the appropriate headings of the Analytical Table of Measures adopted by the Security Council.¹ Not only has the relation of these decisions to the provisions of Articles 36-38 rarely been the subject of deliberation within the Council, but on no occasion have Articles 36-38 been invoked in the text of decisions. The case histories which fall to be included in part IV of the present chapter are therefore those in which, by reason of divergence of opinion regarding the propriety of the Council's concern with the particular question, discussion has been directed to the text of Chapter VI of the Charter for guidance regarding the appropriate course to be followed by the Council in the particular circumstances of the case.

The competence of the Council has been called in question on varying grounds. In connexion with several questions submitted to the Council, the competence of the Council to deal with the question has been contested on grounds of domestic jurisdiction,² and in some questions on grounds connected with Article 33 or with Article 107.³ In several cases also the contention has been advanced by one of the parties or States directly concerned, or by one or more representatives on the Council, that the dispute or situation before the Council was not one the continuance of which was likely to endanger the maintenance of international peace and security and not therefore within the competence of the Council under Articles 36-37.⁴ The Council has in most instances refrained from direct pronouncement on such contentions;⁵ and discussion on the issue of competence has been incidental to consideration of the appropriate measures to be adopted by the Council⁶ or of the manner in which proceedings on the question should be brought to a close.⁷ These case

histories of questions on the borderline of the Council's competence provide the main subject matter of part IV; but, by reason of the unity of the provisions of Chapter VI of the Charter, related material will be found in parts I and II.

The issues arising in the cases entered in part IV therefore relate only in minor degree to the real import of the provisions of Articles 36-37 in the working of the Council. Discussion has related rather to the significance of the retention of questions on the list of matters of which the Security Council is seized—discussion which has resulted from the qualification in Articles 36-37 of the character of the disputes and situations to which these Articles relate.⁸ The willingness of States to continue direct negotiations in connexion with disputes allegedly not of sufficient consequence for the maintenance of international peace and security to warrant the intervention of the Council has given rise to a second but related issue; namely, the role of the Council in relation to such negotiations. In this connexion also the retention of matters on the agenda has constituted a significant issue as a step indicative of the concern of the Council with the progress and outcome of such negotiations.⁹

On certain occasions stress has been laid on the specific and predominant concern of the Council in the pacific settlement of disputes with the maintenance of international peace and security.¹⁰ It is these issues which assume prominence in the cases entered in part IV. By reason of the general character of these problems, this part has been entitled: Consideration of the provisions of Articles 36-38 and of Chapter VI in general.

On certain occasions the question has arisen as to the powers which the Council may exercise under Chapter VI of the Charter. The question whether the Council can, under Chapter VI of the Charter, make decisions within the meaning of Article 25, has been raised mainly in relation to Article 34; the observations on this problem have not, however, been restricted to Article 34.¹¹ The observations on these occasions require, however, to be considered within the context of the stress laid on the need to base the action of the Council on the promotion of agreement between the parties.¹² Also relevant in this connexion is the material

¹ Material on procedure regarding the retention of questions on the list of matters is entered in chapter II, part IV. For substantive discussion regarding the retention of questions on the agenda, see Cases 9 and 10 of this chapter; chapter II, Case 58, regarding the Corfu Channel question; chapter XII, Case 20, for discussion on the retention of the Iranian question; and also the further references in the following footnote.

² See Case 20. See also Case 2; Case 4 (together with chapter II, Case 59) and Case 25.

³ Statements by the representative of Brazil: Case 23, and also Case 4.

⁴ See Cases 13, 14 and 15, and chapter XII, Case 25.

⁵ Reference may be made to the discussion on the powers of the Council in the pacific settlement of disputes which arose in connexion with the proposals by Australia (S/512, 193rd meeting: p. 2174) and Poland (194th meeting: pp. 2203-2204) for the establishment of a commission of arbitration to deal with the Indonesian question (II), and similar discussion at a later date in connexion with the functioning of the Committee of Good Offices.

193rd meeting: United States, pp. 2177-2178.

194th meeting: United States, pp. 2203-2205.

323rd meeting: Belgium, p. 33.

326th meeting: France, pp. 21-22.

328th meeting: Belgium, p. 23; United Kingdom, pp. 17-18.

¹ Chapter VIII, part I.

² See Chapter XII, part I.

³ For objection on grounds of Article 33, see part I of this chapter; and on grounds of Article 107, see chapter XII, part VI.

⁴ Notably in connexion with the following questions: Iranian question (see Case 20); Greek question: USSR communication dated 21 January 1946 (see Case 21); Indonesian question (I) (see Case 7); Syrian and Lebanese question (see Case 2); Greek question: Ukrainian SSR communication dated 24 August 1945 (see Case 10); Corfu Channel question (see Case 3); Egyptian question (see Cases 4 and 24); Czechoslovak question (see Case 17); Complaint of armed invasion of Taiwan (Formosa) (see Case 18); and Anglo-Iranian Oil Company case (see Case 26).

⁵ For the determination on the India-Pakistan question as a dispute of the nature referred to in Article 34, see chapter VIII, p. 346.

⁶ See statement by the President at the 562nd meeting (Case 26).

⁷ See Case 21. See also Case 10.

bearing on the exercise by the Council of its powers under Chapter VI of the Charter with a view to bringing about the cessation of hostilities which will be found in chapter XI, where it is entered by reason of its origin in proposals put to the Council under Chapter VII of the Charter.¹³ A specific problem as to the nature of the measures falling within the scope of Article 36 arose in connexion with the recommendations of the Sub-Committee on the Spanish question.¹⁴

During consideration of the India-Pakistan question, discussion took place on whether the Council, having been seized of the question by both parties and having based recommendations on conversations by the President with representatives of the parties, had been acting under Article 38.¹⁵

The consideration of steps for the pacific settlement of disputes has, in respect of many questions before the Council, centred on the encouragement by the Council of negotiations between the parties. Incidental observations have been made, in connexion with draft resolutions with this objective, regarding the transition from Article 33 (2) to recommendation under Article 36;¹⁶ but discussion of this nature has been exceptional. Problems ancillary to the promotion of negotiations between the parties—such as the request for a report to the Council on the outcome of negotiations, the inclusion of a time schedule, the establishment of conditions to be satisfied before the initiation of negotiations, the definition of bases of negotiation, or the account to be taken of procedures incumbent on the parties by reason of agreements between them—have been examined in the light of the circumstances of each case and not as general problems of procedure under the Charter. For this reason such problems have not been regarded as germane to the *Repertoire*. In its reception to General Assembly resolution 268 B (III) of 28 April 1949, the Council indeed gave general expression to its concern to retain flexibility in the discharge of its functions in connexion with the peaceful settlement of disputes.¹⁷

Other discussion within the Council relating to procedures of pacific settlement has been concerned mainly with the question of the composition and functioning of committees or commissions proposed or established in pursuance of the pacific settlement of disputes. Data regarding the composition and termination of these subsidiary organs will be found in chapter V, part I, of the *Repertoire*. Information is also given regarding the proposed composition of subsidiary organs proposed but not established. For information regarding their internal organization and procedure, and their methods of operation, the series: "Organization and Procedure of United Nations Commissions" should be consulted.¹⁸

CASE 20. THE IRANIAN QUESTION (I): In connexion with decision of 30 January 1946 requesting Iran and USSR to inform the Council of the results of negotiations between them.

¹³ See chapter XI, Case 9.

¹⁴ Case 22.

¹⁵ See statements by the representative of Colombia, 245th meeting: pp. 115-116, and by the representative of the United States, 304th meeting: p. 21. For conversations between the President and the representatives of India and Pakistan, see Case 5.

¹⁶ Cf. Cases 3 and 23; see also Cases 4 and 5.

¹⁷ See chapter I, Case 46.

¹⁸ United Nations Publications, 1949-1950.X.

[*Note:* Since both parties were favourably inclined to renewed efforts to settle the question by direct negotiation, discussion centred on the manner in which the Council might ensure the fulfilment of its own responsibilities in connexion with the adoption of this procedure.]

At the 3rd meeting on 28 January 1946, the President (Australia) observed that this was the first occasion on which the Council had been called upon to act under Chapter VI of the Charter and that the proceedings were likely to set a precedent for the future. The representative of the USSR, after having outlined the exchanges which had preceded the submission of the question to the Council, claimed that neither Articles 33, 34, 36 nor 37 were applicable in this case.¹⁹

At the 5th meeting on 30 January, the representative of Iran observed that Iran would be prepared to enter into direct negotiations with the USSR if this procedure were recommended by the Council.²⁰ He insisted that the negotiations should proceed under the aegis of the Council and that their progress and results should be reported to the Council. Discussion ensued on the relation between the direct negotiations to be undertaken between the parties and the continuing responsibility of the Council in respect of the dispute. The representative of China maintained that, in view of the willingness of the parties to negotiate, a recommendation by the Council on the procedure of negotiation was not necessary. The President, speaking as the representative of Australia, made the following statement:

"It is now clear that both parties have declared their willingness to negotiate. When, however, the jurisdiction of the Council has been invoked, it is the view of the Australian Government that the Council should remain seized of the matter, so that it will be in a position to deal with it again at any time it deems appropriate. If, therefore, the Council agrees to defer further consideration of this matter pending negotiations between the parties, it is the view of my Government that the Council should be kept informed of the progress of these negotiations and, in particular, of the nature of any settlement arrived at between the parties.

"An opportunity will then be given for any member of the Council to raise such matters as he deems appropriate, and to bring any proposal before the Council for its consideration. In this way, the world at large will be kept fully informed of the results of the negotiations . . ."

The representative of the United Kingdom submitted a draft resolution the last paragraph of which included a provision that the matter remain on the agenda.²¹ He stated that the adoption of a resolution for settlement by bilateral negotiation would not constitute the discharge by the Council of its duty and that, until a report on the results of negotiations was received, the question should remain before the Council.

The representative of the USSR demurred that any recommendation under Article 37 carried the implication of endangerment to the maintenance of interna-

¹⁹ For texts of relevant statements see:

3rd meeting: President (Australia), p. 31; USSR, pp. 42-43. 5th meeting: President (Australia), p. 61; China, pp. 58-59; Iran, pp. 48-49; France, p. 59; United Kingdom, pp. 56, 66-67, 70; United States, p. 58; China, p. 58; USSR, pp. 65, 70.

²⁰ For discussion bearing on Article 33, see Case 1. For the submission of the question, see chapter VIII, p. 300.

²¹ 5th meeting: p. 64

tional peace and security. Retention on the agenda, he commented, conveyed this implication in veiled form. In reply to a question by the representative of the United Kingdom, the representative of the USSR stated that, if no results were achieved in the negotiations, the question could again be discussed by the Security Council in accordance with the terms of the Charter. The representative of the United Kingdom then agreed to delete from his resolution the provision that the matter remain on the agenda. Thus amended, the draft resolution was adopted unanimously.²²

CASE 21.²³ THE GREEK QUESTION: USSR communication dated 21 January 1946: In connexion with decision of 6 February 1946 taking note of declarations made and views expressed.

[Note: Discussion whether the question under consideration was a situation within the meaning of Chapter VI led to the closing of proceedings by presidential statement.]

During the consideration by the Security Council of the complaint of the USSR that the presence of United Kingdom troops in Greece and the ensuing interference in the internal affairs of that State was causing tension fraught with grave consequences for the maintenance of peace and security, at the 6th meeting on 1 February 1946, the representative of the United Kingdom replied that the question was "an internal matter" for the Greek Government in its relations with the Government of the United Kingdom, since the United Kingdom forces were present in Greece by agreement with the Government; and that he was unable to find any Article of the Charter under which a "civil action" of that kind could be brought before the Council, unless the allegation was made that the presence of British forces in Greece was endangering the peace of the world. The representative of the United Kingdom requested a "straight answer" to this question.

At the 7th meeting on 4 February 1946, the representative of the United States expressed the view that no reasonable grounds existed for the belief that the presence of United Kingdom troops in Greece constituted a situation likely to endanger the maintenance of international peace and security; that the Council therefore would not be justified in making any finding to that effect under Chapter VI of the Charter; and that "without such a finding the Council has no authority to recommend appropriate procedures or methods of adjustment".

At the same meeting the President, speaking as the representative of Australia, concurred that action might be taken by the Council only if there were a dispute the continuance of which threatened the maintenance of international peace and security. He proposed that the question should be closed by means of a presidential statement containing this affirmation.

At the 10th meeting on 6 February 1946, the representative of the United Kingdom, having drawn attention to the views expressed by the representatives of the United States, France, China, Poland, Egypt, Brazil

and the Netherlands that the presence of United Kingdom troops in Greece did not constitute a situation likely to endanger the maintenance of international peace and security, withdrew his insistence on a formal resolution to this effect. The matter was closed by means of a presidential statement prepared by the representatives of the United States and the USSR which took note of the declarations made and views expressed.²⁴

CASE 22.²⁵ THE SPANISH QUESTION: In connexion with draft resolution to recommend that the General Assembly pass a resolution on severance of diplomatic relations with the Franco régime: voted upon and rejected on 18 June 1946.

[Note: The draft resolution based on the recommendations of the Sub-Committee gave rise to the objection that it was not proper indirectly to recommend one of the sanctions provided for in Chapter VII, since the Sub-Committee had come to the conclusion that Article 39 was not at present applicable. The answer was made that the procedure of taking the matter to the General Assembly under Article 36 differed from an order by the Council under Chapter VII.²⁶

The amendment to delete the recommendation regarding the severance of diplomatic relations was rejected, but the draft resolution as a whole was not adopted.]

The Sub-Committee on the Spanish question in its report of 1 June 1946, found that "the present situation in Spain, though not an existing threat within the meaning of Article 39, is a situation the continuance of which is in fact likely to endanger the maintenance of international peace and security".

"The situation in Spain thus falls to be dealt with by the Security Council under Chapter VI of the Charter, which covers measures of peaceful settlement and adjustment.

"28. The Security Council is empowered under Article 36 to recommend appropriate procedures or methods of adjustment of such a situation. It is not vested with executive authority, as in the case of Chapter VII, but it has the duty of devising methods of adjustment adequate to meet the given situation."

Accordingly, the Sub-Committee recommended, *inter alia*:²⁷

". . . (b) The transmitting by the Security Council to the General Assembly of the evidence and reports of this Sub-Committee, together with the recommendation that unless the Franco régime is withdrawn and the other conditions of political freedom set out in the declaration are, in the opinion of the General Assembly, fully satisfied, a resolution be passed by the General Assembly recommending that diplomatic relations with the Franco régime be terminated forthwith by each Member of the United Nations."

²⁴ For text, see chapter VIII, p. 302.

²⁵ For texts of relevant statements see:

45th meeting: Australia, p. 327; Egypt, p. 330; USSR, pp. 336-337.

46th meeting: Australia, pp. 352-353; United Kingdom, pp. 346-347.

²⁶ For discussion relating to Chapter VII of the Charter, see chapter XI, Case 1; and in relation to Article 12, see chapter VI, Case 1 (i).

²⁷ S/75, O.R., 1st year, 1st series, Special Suppl., Rev. ed., pp. 10-11.

²² 5th meeting: p. 71. For text, see chapter VIII, p. 301.

²³ For texts of relevant statements see:

6th meeting: USSR, p. 74; United Kingdom, pp. 87-88.

7th meeting: President (Australia), pp. 116, 121; France, p. 113; Poland, p. 116; United States, p. 111.

10th meeting: United Kingdom, p. 170; USSR, p. 172.

At the 45th meeting on 13 June 1946, the representative of Australia, speaking as Chairman of the Sub-Committee, stated that the Council, if it followed the Sub-Committee's recommendations, would exercise "its power to recommend methods of adjustment or suitable procedures, and to refer a matter to other organs of the United Nations whenever the circumstances are thought fit by the Security Council".

Also at the 45th meeting, the Chairman of the Sub-Committee submitted a draft resolution for the adoption of the Sub-Committee's recommendations, subject to the addition to recommendation (b), after the words: "each Member of the United Nations" of the following provision: "or alternatively such other action be taken as the General Assembly deems appropriate and effective under the circumstances prevailing at the time".²⁸

At the 46th meeting on 17 June, the United Kingdom representative noted the admission of the Sub-Committee that "none of the series of enforcement measures set out in Articles 41 and 42 can, at the present time, be directed by the Security Council", and expressed "grave doubts as to the juridical validity" of the Council, "having invoked Chapter VI", indirectly to recommend "one of the so-called sanctions provided for in Chapter VII of the Charter", namely, the severance of diplomatic relations.

At the same meeting, the representative of the United Kingdom also submitted an amendment to delete the recommendation to the Assembly regarding a resolution for the severance of diplomatic relations.²⁹

In reply, the representative of Australia, at the same meeting, emphasized the difference between an order by the Council, under Chapter VII, that diplomatic relations be severed and a procedure, under Chapter VI, taking "the matter to the supreme governing body of the United Nations". He contended that "procedures aimed at somewhat analogous results" to those pursued under Chapter VII could be adopted within the framework of Chapter VI.

At the 47th meeting on 18 June, the United Kingdom amendment was rejected by 6 votes in favour, 2 against, with 3 abstentions.³⁰ After separate votes had been taken on each of the three recommendations, the draft resolution as a whole was not adopted. There were 9 votes in favour, 1 against (that of a permanent member) and 1 abstention.³¹

CASE 23.³² THE CORFU CHANNEL QUESTION: In connexion with decision of 9 April 1947 recommending reference of the dispute to the International Court of Justice.

[Note: In the course of discussion observations were made on the circumstances in which the consideration of a dispute by the Council was warranted, and the circumstances in which, in accordance with Article 36 (3),

²⁸ 45th meeting: p. 378.

²⁹ 46th meeting: pp. 348-349.

³⁰ 47th meeting: p. 378.

³¹ 47th meeting: p. 379.

³² For texts of relevant statements see:

111th meeting: Australia, p. 364; Poland, pp. 376-377.

120th meeting: Colombia, p. 549.

121st meeting: Colombia, p. 588.

125th meeting: Belgium, p. 690; Brazil, pp. 686-688; Poland, p. 689; Syria, p. 688; United Kingdom, p. 685; United States, p. 686.

127th meeting: Australia, pp. 722-723; China, p. 726; USSR, pp. 724-726.

reference to the International Court of Justice was appropriate.]³³

At the 107th meeting on 18 February 1947, the representative of the United Kingdom requested a recommendation by the Council under Article 36 of the Charter.³⁴ At the 120th meeting on 20 March 1947, after presentation of the report of the sub-committee to examine the evidence, the representative of the United Kingdom submitted a draft resolution,³⁵ which, as amended on the suggestion of the representatives of France and the United States, read:

"The Security Council

" . . .

"1. *Considers* that the laying of mines in peacetime without notification is unjustified and an offence against humanity;

"2. *Finds* that an unnotified minefield was laid in the immediate vicinity of the Albanian coast, resulting in serious injury to two of His Majesty's ships with loss of life and injury to their crews; that this minefield could not have been laid without the knowledge of the Albanian authorities;

"3. *Recommends* that the United Kingdom and Albanian Governments should settle the dispute on the basis of the Council's findings in paragraph 2 above, and that, in the event of failure to settle, either party may apply to the Council for further consideration of the matter;

"4. *Resolves* to retain this dispute on its agenda until both parties certify that it has been settled to their satisfaction."

The draft resolution was rejected at the 122nd meeting by 7 votes in favour, 2 against (one being that of a permanent member) and 1 abstention, and one member not participating in the vote.³⁶

At the 125th meeting on 3 April, the representative of the United Kingdom submitted a second draft resolution³⁷ to recommend the reference of the dispute to the International Court of Justice.

At the 125th meeting, the representative of Brazil made the following statement in support of the United Kingdom draft resolution:

"In the course of our extensive and repeated discussions, as well as in the interim report of the Sub-Committee and in the consideration of the facts and aspects of this case, the feeling gathered from what was said, what was set forth, and the conclusion reached, was that the Council was functioning at times as a court of arbitration and at others as a tribunal of justice.

"The Security Council is not and cannot be a tribunal. It is *par excellence* the political and executive organ of the United Nations. Ours is not a judicial function, nor do we meet here as international judges. It would be hard otherwise to explain why the International Court of Justice has been maintained and why its functions have been amplified at San Francisco.

"Our functions have been well defined in the Charter, and we can neither broaden them nor reduce

³³ For observations on Article 33, see Case 3.

³⁴ See chapter VIII, p. 313, regarding the submission of the question.

³⁵ 120th meeting: p. 567.

³⁶ 122nd meeting: p. 609.

³⁷ 125th meeting: pp. 685-686.

them. Should misconception or misapplication bring about an attempt to do so, the result will be practical disarticulation of our Organization. While vesting the Council with ample and even elastic functions, the Charter circumscribed them within the provision that they must be discharged in accordance with the principles and purposes of the United Nations. Whatever the nature of a dispute, it can become the object of the Council's consideration only if its continuance is likely to endanger the maintenance of international peace and security.

"... it is beyond doubt that, even in taking into consideration a dispute or a situation likely to endanger peace and security, the Council has no power to judge but only to investigate and to recommend appropriate procedures or methods of adjustment. In the examination of disputes and situations, the Council is not restricted, as a court or tribunal would be, to the consideration of proofs, facts, circumstances, and laws. Our function is political, not judicial. Our consideration of a dispute or situation should limit itself to that part of the one or the other which may endanger the maintenance of international peace and security. Our attributions, therefore, preclude the consideration of any other disputes or situations, under penalty of the enlargement of our competence beyond the limits fixed by the Charter.

"... it is not our function to conciliate parties, to harmonize differences, to negotiate understandings, to arbitrate disputes, to pronounce sentence. We act principally to protect and ensure international peace and security, whenever these are threatened. We have no powers to condemn or to absolve. Our decisions are based exclusively on the interests of international peace and security, and not on other considerations. It is not our prerogative either to punish or fail to punish, to listen to prosecution and defence, or finally, like a body of international jurymen to deliver a verdict.

"The hope of the Brazilian delegation is, therefore, that in the future the Council will admit for consideration, after the peaceful resources recommended in Article 33 are exhausted, only those disputes whose continuance is likely to endanger international peace and security, provided such menace is ascertained by previous investigation.

"For these reasons, we give our full support to the resolution now before us, and we hope that in the future, when dealing with similar cases, the Council will bear in mind the provisions of Article 36, and refer such disputes, from the beginning, to the International Court of Justice."

At the 127th meeting on 9 April 1947, the representative of Australia stated:

"What ... does the resolution propose? The resolution asks that the matter be referred to the International Court of Justice. However, the representative of Albania says that we did not have sufficient proof and that we did not give due regard to the evidence. But the International Court of Justice can do very fully the very things we were not able to do here. It can collect additional evidence and, particularly in the oral hearings provided under Article 43, it can call in witnesses, experts, counsel and advocates. It can obtain material witnesses for examination and cross-examination so that justice shall be done."

At the same meeting, the representative of the USSR stated:

"... I think I must express a negative attitude to Sir Alexander Cadogan's proposal which was submitted to us in draft form at the last meeting of the Security Council. Albania is innocent of the crime with which it is charged by the representative of the United Kingdom. We have no justification, therefore, for dragging Albania before the International Court of Justice because, in order to bring any country before the International Court of Justice, some sort of justification is necessary".

At the 127th meeting, the United Kingdom draft resolution was adopted.³⁸

CASE 24.³⁹ THE EGYPTIAN QUESTION: In connexion with the draft resolution submitted by the representative of Brazil for the settlement of the dispute between the parties by peaceful means of their own choice: voted upon and rejected on 28 August 1947.

[*Note:* An amendment to the draft resolution gave rise to observations regarding the appropriateness of recommending the reference of a specific aspect of the question to the International Court of Justice.]

At the 189th meeting on 20 August 1947, the representative of Belgium submitted an amendment⁴⁰ to the Brazilian draft resolution to specify among the peaceful means available to the disputants reference of disputes concerning the validity of the Anglo-Egyptian Treaty of 1936 to the International Court of Justice.

The representative of Brazil stated that, while his delegation had no substantial objections, it saw a disadvantage in the amendment since it would single out the legal aspect of the question. The amendment might convey the impression that the Council was inclined to agree with the view that the validity of the Treaty was the sole issue before it. The representative of Syria held that the question before the Council could not be deemed a legal dispute and that, therefore, the Belgian amendment had no place in the present case. He stated:

"It would not be wise to overlook the legitimate wishes of Member States to live freely within their borders. We are concerned with a strategic area, surrounded by millions who share the feelings of its people and sympathize with their national aspirations. The validity or non-validity of the Treaty, in the face of the existing threat to peace, may be termed purely academic. When the presence of foreign forces in the homeland of a Member State constitutes a menace to international peace and security and prejudices the sacred principles of sovereign equality, it is to be considered as conflicting with the provisions of the Charter. Such a dispute cannot be deemed a legal dispute to be judged by the International Court of Justice under Article 36, paragraph 3, of the Charter. The Court may be seized of disputes which are exclusively legal, but it has

³⁸ 127th meeting: p. 727. For text, see chapter VIII, pp. 313-314.

³⁹ For texts of relevant statements see: 189th meeting: Belgium, p. 2115; United Kingdom, p. 2113. 193rd meeting: Egypt, p. 2166; United Kingdom, p. 2169. 196th meeting: President (Syria), pp. 2242-2243; Belgium, p. 2252; Brazil, pp. 2235-2236; United Kingdom, pp. 2252-2253. 198th meeting: France, pp. 2291-2292.

See also Case 4 for statements regarding recourse to Article 33.

⁴⁰ 189th meeting: p. 2115.

no jurisdiction in political disputes. Therefore, I believe the Belgian amendment has no place in the present case."

The representative of Egypt* considered that the amendment would serve no useful purpose, since Article 33 included judicial settlement in its enumeration. The representative of the United Kingdom urged acceptance of the Belgian amendment as in accordance with Article 36, paragraph 3, of the Charter. He stated:

"The Council has not formally pronounced on this Egyptian contention because, as I understand the matter, without passing on the merits of the case or on the duties and obligations of the parties in consequence of the Treaty of 1936, it has accepted the view, so clearly expressed by the representative of Brazil, that, in the face of a situation which presents no immediate danger to international peace, it is not justified in taking any action in the matter, but rather that it should invite both Governments to resume direct negotiations with a view to peaceful settlement in accordance with traditional methods of international law. The Belgian amendment would constitute an expression of opinion by this Council that any question concerning the validity of this Treaty is a legal question, and that recourse to the International Court of Justice is the proper method of settling it."

At the 198th meeting on 28 August 1947, the Belgian amendment was rejected.

CASE 25.⁴¹ THE INDONESIAN QUESTION (II)

[*Note:* In the circumstances of the question the assistance offered to the parties by the Council rested on the concept of good offices, which was at one stage related by a representative on the Council to Article 38.]

At the 172nd meeting on 1 August 1947, in the discussion of the Australian draft resolution⁴² to call upon the Netherlands and the Republic of Indonesia, under Article 40 of the Charter, to cease hostilities and to settle their disputes by arbitration, the representative of the Netherlands* stated that his Government warmly welcomed the offer of good offices made by the Government of the United States on 31 July 1947. The representative of the United Kingdom observed that not Article 39, but Articles 34 and 35 were applicable to the case, "not as a dispute" between the Netherlands and the Indonesian Republic, but because the fighting in progress might well create "a situation leading to international friction". He continued:

"If the members of the Security Council are in agreement, it would seem to my delegation that this Council, instead of proceeding on the lines of the

Australian proposal, should take note of this offer of good offices and leave the question on the list of matters of which the Council is seized, so that in due course, and as soon as possible, we may receive a report on all developments."

By the decision of 1 August 1947, the Security Council called upon the parties to "settle their disputes by arbitration or by other peaceful means and keep the Security Council informed about the progress of the settlement".⁴³

At the 178th meeting on 7 August 1947, the representative of Australia indicated that his Government would be prepared to act jointly with the United States Government in the capacity of mediator and arbitrator. The representative of the Republic of Indonesia* at the 184th meeting on 14 August announced that his Government accepted the United States offer of good offices and Australia's mediation or arbitration. At the 187th meeting on 19 August, the representative of the United States indicated that his Government's offer of good offices had been an attempt to implement the cease-fire resolution within the spirit of Article 33. He added that, from a legal point of view, a distinction might well be drawn between the two aspects of the question—the cessation of hostilities, and the final peaceful settlement.

By the decision of 25 August 1947, the Security Council tendered its good offices and expressed its readiness to assist in the settlement of the dispute through a committee of the Council.⁴⁴ In introducing the resolution, the representative of the United States observed that the question of competence would not arise in the exercise of good offices, since the services of the Council would be rendered upon the express request of the parties themselves.

At the 213th meeting on 22 October, the representative of the United States indicated that, since no attempt had been made by the parties to reach an agreement for the cessation of hostilities, the Committee of Good Offices should give its aid in this respect. At the 217th meeting on 31 October, the representative of Brazil expressed the view that the proposed task was within the competence of the Committee of Good Offices, since the Committee could not achieve its essential function of bringing the parties to a final settlement of the dispute without first securing the complete cessation of hostilities. By the decision of 1 November 1947, the Council called upon the parties to consult with each other as to the means to be employed to give effect to the cease-fire resolution and requested the Committee of Good Offices to assist the parties in reaching an agreement.⁴⁵ On 17 January 1948, the Chairman of the Committee of Good Offices informed the President of the Council that the parties would that day sign a truce agreement and an agreement on political principles which would serve as a basis for discussion in the settlement of the dispute.

At the 247th meeting on 17 February 1948, in reviewing the work of the Committee of Good Offices, the representative of Australia on the Committee, who had been invited to the Council table, observed that he felt that, in the future, the Committee should make public its suggestions to the parties without necessarily

⁴¹ For texts of relevant statements see:
171st meeting: United States, p. 1648.
172nd meeting: Netherlands, p. 1655; United Kingdom, pp. 1656-1657; United States, pp. 1657-1658.
178th meeting: Australia, p. 1854.
184th meeting: Indonesia, p. 2003.
187th meeting: United States, pp. 2068-2069.
194th meeting: United States, pp. 2200-2201, 2203-2205.
213th meeting: United States, pp. 2602-2603.
217th meeting: Brazil, pp. 2692-2693.
247th meeting: Netherlands, pp. 151-152. Australia, member of the Committee of Good Offices, pp. 145-149.
249th meeting: USSR, pp. 175-187.
251st meeting: United States, p. 211-212.

⁴² For text, see chapter VIII, p. 316; for discussion in relation to Article 39, see chapter XI, Case 4, and in relation to Article 2 (7), see chapter XII, Case 7.

⁴³ For text, see chapter VIII, p. 316.

⁴⁴ For text, see chapter VIII, p. 317.

⁴⁵ For text, see chapter VIII, p. 318.

waiting for both parties to invite it to do so. The representative of the Netherlands observed that the Committee could vary its procedure, but could not change its nature as a committee of good offices. At the 249th meeting on 18 February 1948, the representative of the USSR expressed criticism of the work of the Consular Commission and of the Committee of Good Offices, which, he contended, had not been an organ of the Security Council. At the 251st meeting on 21 February, the representative of the United States made the following statement on the status of the Committee of Good Offices:

"The Charter of the United Nations contemplates that the solutions of controversies between parties will be arrived at by their independent negotiation, unassisted; by negotiation, assisted by the Security Council, as in the present case; or by recommendations of the Security Council in which the parties could acquiesce, even though they could not come to an original agreement upon them . . .

"I wish to state my view of the situation with respect to the Security Council Committee of Good Offices."

Referring to the resolutions of 1 August and 25 August 1947, the representative of the United States continued:

"There are two notable points in these two resolutions which I have cited. One point is the use of the verb 'assist' in the resolution of 25 August 1947. The word 'assist' is not a passive word but a word of action. This should be interpreted with reference to the objective, which is the pacific settlement not of one dispute but of all of the disputes. The word 'disputes' occurs twice, as I have indicated to the members of the Security Council. The resolution of 1 August, paragraph (b), says 'to settle their disputes . . .'; and the resolution of 25 August, section II, says 'assist in the pacific settlement of their dispute in accordance with paragraph (b) . . .'. Therefore, the two must be considered together.

"Each party to this dispute named one member to the Committee of Good Offices, and the Committee so chosen selected the third member. Thus, we are in the situation which falls under Article 38 of the Charter, where the same authority prevails in the Security Council as would have prevailed if the parties had submitted their request to the Security Council before it passed these resolutions.

"Therefore, the foundation of the power of the Committee of Good Offices is the agreement of the parties, which is, in effect, the request by them to have specific terms of reference recommended by the Security Council. The Committee of Good Offices is the hand of the Security Council."

After further discussion on the right of the Committee of Good Offices to make suggestions to the parties, the Council adopted the decision of 28 February 1948 whereby it maintained its offer of good offices.⁴⁶

CASE 26.⁴⁷ THE ANGLO-IRANIAN OIL COMPANY CASE

[*Note:* The question arose whether the matter constituted a dispute of the character envisaged in Article

34 and of the appropriate course for the Council to follow in the circumstances.]⁴⁸

In the draft resolution⁴⁹ appended to the letter of submission to the Security Council, the United Kingdom concentrated attention upon the request to the Council to call upon the Government of Iran to act in all respects in conformity with the provisional measures indicated by the Court. Consequent upon the expulsion from Iran of the remaining Anglo-Iranian Oil Company staff, contrary to the provisional measures in question, the revised draft resolution submitted by the United Kingdom at the 560th meeting on 15 October 1951⁵⁰ recited in the preamble that "a dispute has arisen between the Government of the United Kingdom and the Government of Iran regarding the oil installations in Iran, the continuance of which dispute is likely to threaten the maintenance of international peace and security". The operative clauses provided:

"The Security Council,

"Calls for:

"1. The resumption of negotiations at the earliest practicable moment in order to make further efforts to resolve the differences between the parties in accordance with the principles of the provisional measures indicated by the International Court of Justice unless mutually agreeable arrangements are made consistent with the Purposes and Principles of the United Nations Charter;

"2. The avoidance of any action which would have the effect of further aggravating the situation or prejudicing the rights, claims or positions of the parties concerned."

In the consideration of the draft resolution, the representative of the United States affirmed that the question was a dispute within the meaning of Chapter VI. Accordingly, the representative of the United States expressed his willingness to support the draft resolution. The provisions in the draft resolution concerning the provisional measures of the Court were deleted on the proposal of the representatives of India and Yugoslavia on the grounds that in this respect the competence of the Council was in doubt. The representatives of Ecuador and China expressed the view that the question was not a dispute of a character likely to threaten the maintenance of international peace and security. The representative of Ecuador questioned whether the Council was empowered under Article 24, paragraph 1, or Article 25 of the Charter "to make recommendations in cases where there is no dispute between two States, or where the dispute or situation does not constitute a threat to the peace". The representative of Ecuador concluded that the Council was not competent in this case to make recommendations "of the kind mentioned in Chapter VI". Accordingly, he objected to the phrase "calls upon" in the United Kingdom draft resolution on the ground that such phraseology, derived from the Charter, conveyed the implication that the Council had competence in the matter. The representative of China observed that, if

⁴⁶ On the claim of domestic jurisdiction, see chapter XII, Case 19; and on the question of the competence of the Council under Article 94, see chapter VI, Case 29.

⁴⁹ S/2358, *O.R. Suppl. for Oct., Nov., Dec. 1951*, pp. 2-3.

⁵⁰ S/2358/Rev.1; *O.R., Suppl. for Oct., Nov., Dec. 1951*, pp. 3-4.

⁴⁶ For text, see chapter VIII, p. 319.

⁴⁷ For texts of relevant statements see:

559th meeting: China, p. 21; India, pp. 15-17; Yugoslavia, pp. 17-19.

562nd meeting: President (Brazil), p. 2; Ecuador, pp. 7-9.

the Council were not competent, the draft resolution should be "framed to render what we might call 'the friendly services' of the Security Council". The representatives of Ecuador and China accordingly proposed that the Council should advise, and not call for, the resumption of negotiations in order to avoid the implication of the latter phrase that the Council had "a certain authority over this dispute".

At the 562nd meeting on 17 October 1951, when summarizing the draft resolutions before the Council with a view to indicating the appropriate procedure in circumstances in which the competence of the Council was questioned, the President (Brazil) drew attention to the statement which the President (Syria) had

made at the 172nd meeting on 1 August 1947, and added:

"Such an approach to the question of competence recognizes that the Council will not be able to determine whether it is competent or not to deal with the specific question on its agenda unless it has thoroughly investigated the matter and is actually called upon to decide on any particular course of action under the Charter. This derives from the fact that, before the question of competence is decided, the Security Council still has the power to call upon the parties to seek, of their own accord, a peaceful settlement of their dispute."

The United Kingdom draft resolution was not put to the vote.