

Chapter X

CONSIDERATION OF THE PROVISIONS OF CHAPTER VI OF THE CHARTER

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INTRODUCTORY NOTE

As in the previous volume of the *Repertoire*, the criterion for inclusion of material in the present chapter is the occurrence of discussion in the Council directed to the text of Articles 33-38 or Chapter VI of the Charter. Thus, chapter X does not cover all the activities of the Council in the pacific settlement of disputes, for the debates preceding the major decisions of the Council in this field have dealt almost exclusively with the actual issues before the Council and the relative merits of measures proposed without discussion regarding the juridical problem of their relation to the provisions of the Charter. For a guide to the decisions of the Council in the pacific settlement of disputes, the reader should turn to the appropriate sub-headings of the Analytical Table of Measures adopted by the Security Council.¹

The material in this chapter constitutes only part of the material relevant to the examination of the operation of the Council under Chapter VI of the Charter, since the procedures of the Council reviewed in chapters I-VI, where they relate to the consideration of disputes and situations, would fall to be regarded as integral to the application of Chapter VI of the Charter. Chapter X is limited to presenting the instances of deliberate consideration by the Council of the relation of its proceedings or of measures proposed to the text of Chapter VI.

The case histories on each question require to be examined within the context of the chain of proceedings on the question presented in chapter VIII.

¹ Chapter VIII, part I.

Chapter VI of the Charter. Pacific Settlement of Disputes

Article 33

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

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

Article 34

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

Article 35

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

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

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

Article 36

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

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

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

Article 37

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

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

Article 38

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

Part I

CONSIDERATION OF THE PROVISIONS OF ARTICLE 33 OF THE CHARTER

NOTE

During the period covered by this supplement, the prior efforts to seek a peaceful solution made by States submitting a situation to the Security Council have been indicated in their initial communications, though Article 33 has not been expressly cited in any of them.²

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 in Article 35 (1) should all have been exhausted by the parties.³ Other statements have questioned whether Article 33 (1) implies an obligation of exhaustive recourse to the means of peaceful settlement enumerated therein when an act of aggression rather than a dispute was the subject of complaint.⁴ In this connexion, the statement has been made that the provision for resort to regional agencies or arrangements contained in Article 33 must be read in conjunction with Article 52 (2).⁵

In connexion with an agreement concluded pursuant to an order issued by the Council under Article 40 of the Charter, there has been discussion of the question of the extent to which Article 33 required the Council when

dealing with a dispute between the parties to the agreement to apply the principle of mutual consent in seeking a settlement.^{5a}

On one occasion in connexion with an item which had been on the agenda of the Security Council since 1947, proposals that the Council refrain from discussion of the question for a further period while direct negotiations between the parties continued, were supported by an appeal to the provisions of Article 33 (2).⁶

CASE 1.⁷ THE TUNISIAN QUESTION: In connexion with decision of 14 April 1952 not to adopt the provisional agenda

[Note: Discussion arose concerning the bearing of Article 33 on the question of including the item in the agenda. Inclusion of the question was opposed on the ground that a debate in the Council would hamper negotiations in progress which Article 33 required the Security Council to foster. Inclusion of the question was favoured on the ground that this would promote negotiations between the parties as required by Article 33 and would enable the Security Council to assist the parties in keeping their negotiations going. A draft resolution to include the question in the agenda while postponing consideration of it for the time being was rejected as was the provisional agenda.]

At the 574th meeting on 4 April 1952, the Security Council had before it letters⁸ dated 2 April 1952, from the representatives of eleven Asian-African Member

² Afghanistan, Burma, Egypt, India, Indonesia, Iran, Iraq, Pakistan, the Philippines, Saudi Arabia and Yemen in explanatory notes to their letters dated 2 April 1952, S/2579, S/2581, S/2575, S/2580, S/2574, S/2582, S/2576, S/2577, S/2583, S/2578, S/2584 (*O.R.*, 7th year, *Suppl. for April-June 1952*, pp. 9-15), in connexion with the Tunisian question. United States, in connexion with question of alleged incident of an attack on a United States navy aircraft, 679th meeting, paras. 38-39. For references to prior efforts in a letter submitting a question designated as an act of aggression: Guatemala in cablegram dated 19 June 1954 in connexion with the Guatemalan question, *O.R.*, 9th year, *Suppl. for April-June 1954*, pp. 11-13.

³ See statements by Brazil, France, Netherlands, Turkey, United Kingdom, United States in connexion with the Tunisian question, Case 1.

⁴ See statement by Guatemala* in connexion with the Guatemalan question, Case 4.

⁵ See statement by Colombia in connexion with the Guatemalan question, Case 4. For statements on the effect of Article 52 (4), see Case 6.

^{5a} See statements by USSR and the United Kingdom in connexion with the Palestine question, Case 3.

⁶ See statements by Colombia, France, Greece in connexion with the Appointment of a Governor of the Free Territory of Trieste, Case 2.

⁷ For texts of relevant statements see:

574th meeting: Brazil, paras. 95, 102; France, paras. 33-34; 575th meeting: President (Pakistan), paras. 84-87; China, paras. 32-33; Greece, para. 42; Netherlands, paras. 63-64; Turkey, para. 68; United Kingdom, paras. 8-9, 12; United States, paras. 15, 18; 576th meeting: Chile, paras. 40-41; Netherlands, paras. 58-63.

⁸ S/2574, S/2575, S/2576, S/2577, S/2578, S/2579, S/2580, S/2581, S/2582, S/2583, S/2584, *O.R.*, 7th year, *Suppl. for April-June 1952*, pp. 9-15. On the inclusion of the question in the agenda, see chapter II, Case 8.

States bringing, under Article 35 (1), the situation in Tunisia to the attention of the Council.

In opposing the inclusion of the question in the agenda, the representative of France stated "that the agreement reached between the French Government and the Bey" of Tunisia had "put the problem on the road to solution", and that the Council should not, therefore, "include in its agenda a question and a problem which no longer exists".

The representative of Brazil stated:

"In voting for the inclusion of the item in our agenda, the Brazilian delegation is not prejudging the merits of the case, nor even the competence of the Security Council to deal with this particular matter; neither can a favourable vote by Brazil be construed as expressing an opinion on the opportuneness of a debate on the Tunisian question. As a matter of cold fact, we do not feel that a protracted discussion on Tunisia would serve any useful purpose at the present stage of affairs, when the means have not been exhausted for reaching a solution by negotiation, inquiry, mediation, conciliation, arbitration, or other peaceful means provided for in Article 33 of the Charter. It is, moreover, our deep-seated conviction that the United Nations should not be overburdened with questions which may eventually prove capable of being solved through direct negotiations between the parties concerned. My delegation will therefore be quite receptive to any motion or proposal towards the postponement of consideration of this item, after its inclusion in the agenda of the Security Council."

He further stated that the Council should

"... forego any action which might hamper the utilization of the means provided in Article 33 of the Charter for the peaceful settlement of disputes. The task of the Security Council is to seek to facilitate and to pave the way for solutions rather than to impose them in a manner which might eventually prove inconsistent with the principles and purposes of the Charter."

At the 575th meeting on 10 April 1952, the representative of the United Kingdom remarked that in view of the desire of the French Government to negotiate with Tunisia, and of its concrete suggestions for a plan of reforms which would lead that country towards internal autonomy, "even if a debate in the Council were conducted with the utmost restraint on all sides", it was doubtful whether the Council "could assist in promoting a peaceful settlement". Aside from other legal considerations, he opposed the inclusion on the agenda of "a matter which is still the subject of peaceful negotiation".

The representative of the United States declared that it was clear that under the Charter the parties to a controversy were "obliged to seek a solution by negotiations" and that "... the over-riding objective of the Security Council must be to foster agreement through negotiation between the parties themselves ..."

The representative of China observed that in all disputes of this kind which the Council had handled so far its first objective had been

"... to bring the two parties together so that negotiations might be renewed and continued, with only so much assistance on the Council's part as has been necessary to keep negotiations going and to remove, wherever possible, obstacles to the successful conclusion of the negotiations ..."

For this reason it would be best to include the matter in the agenda and "then proceed immediately to take measures in the form of good offices or conciliation".

The representative of the Netherlands, after stating that the Council was "not a court but a political body with a responsibility, first of all, to try and promote peaceful solutions", continued:

"... in the opinion of my Government the primary responsibility of the Security Council for the maintenance of international peace and security does not necessarily mean that intervention of the Council is at all times and under all circumstances the best way to promote agreement between parties at issue. We believe that in the present case all avenues to settle the matter directly between the parties themselves have not yet been explored or exhausted."

The representative of Turkey felt that it would have been easier for the Security Council to vote in favour of the inclusion of the item if "the spirit embodied in Article 33 had been invoked". The Turkish Government was not of opinion that all the peaceful means of solution stipulated in Article 33 had been exhausted and believed that "direct negotiations between the French and the Tunisians ... can bring positive solutions" to the question before the Council.

The President, speaking as the representative of Pakistan, asserted that there were no negotiations actually taking place between the parties which could be jeopardized by a Council debate on the matter.

At the 576th meeting on 14 April 1952, the representative of Chile submitted to the Council a draft resolution⁹ to include the question in the agenda "on the understanding that such action does not imply any decision regarding the competence of the Council to consider the substance of the question", and "to postpone consideration of the communications referred to for the time being". In explaining his proposal, he stated that this postponement would give the French Government time "to go forward with the negotiations said to be now under way". This suspension of the discussion should also be understood "as not prejudicing the Council's right to deal with the matter at any time, if serious events should occur which prompt any member to request such action".

The representative of the Netherlands opposed the procedure proposed in the Chilean draft resolution on the grounds that priority

"... always must be given to possibilities of direct settlement between the responsible parties involved. The Council should be careful not to make such methods of direct settlement more difficult by premature debates or interventions ..."

Since the parties directly concerned seemed now to be ready to examine new ways of finding a solution, he

⁹ S/2600, 576th meeting: paras. 40-41, 103. On the postponement of consideration of the question, see chapter II, Case 19.

believed that "nothing should be done by this Council to hinder those efforts". The procedure suggested by the Chilean draft resolution "could still create a disturbing influence in the atmosphere of goodwill which is indispensable for the direct negotiations between the responsible parties".

At the same meeting, the Chilean draft resolution failed of adoption. There were 5 votes in favour and 2 against, with 4 abstentions.¹⁰

The provisional agenda was likewise not adopted. There were 5 votes in favour, 2 against, with 4 abstentions.¹¹

CASE 2.¹² APPOINTMENT OF A GOVERNOR OF THE FREE TERRITORY OF TRIESTE:¹³ In connexion with decision of 20 October 1953 to postpone discussion until 2 November 1953

[Note: A proposal under rule 33 (5) of the provisional rules of procedure to postpone discussion of the question until 2 November 1953 in order to await the outcome of negotiations between the States concerned was supported by appeal to Article 33 (2). In opposition to this view, it was stated that Article 33 (2) called for the Council to act, and not to remain idle. The Council adopted successive procedural motions to postpone consideration of the question to fixed dates, and finally decided to postpone consideration pending the outcome of current efforts to find a solution.¹⁴]

At the 628th meeting on 20 October 1953, the representative of Colombia, after referring to joint efforts undertaken by the Foreign Ministers of France, the United Kingdom and the United States to bring about a lasting settlement of the problem of Trieste, stated that in view of the "diplomatic exchanges" currently taking place "in the various capitals concerned", the Security Council should not enter into a debate on the draft resolution¹⁵ submitted by the representative of the USSR to appoint a governor of the Free Territory of Trieste. He proposed that in accordance with rule 33 (5) of its rules of procedure, the Council should postpone the discussion of this question until the early part of November.

The representative of France, in supporting this proposal, quoted the provisions of Article 33 of the Charter. He added:

"... the French, United Kingdom and United States Governments have publicly and officially announced their intention of seeking a peaceful settle-

ment to the situation through diplomatic negotiations and proposals made to the two parties chiefly concerned, Italy and Yugoslavia. But to this end an international climate must develop around those negotiations which is free and clear of futile polemics, and I think that certain speakers who have preceded me are absolutely justified in the desire they have expressed that the Security Council shall refrain from all debate which could exert only an unfavourable influence on the successful progress of these negotiations while these attempts at conciliation and negotiation are being worked out. In refraining for ten or fifteen days from any debate on the question, the Security Council would merely be tacitly applying Article 33, paragraph 2..."

The representative of the USSR declared that "Article 33... requires us to do something, to take action, not to remain idle and inactive". The means of settlement referred to in Article 33 (2) were the negotiations dealt with in Article 33 (1). The negotiations which were going on were not negotiations among the twenty-one signatories of the Treaty of Peace with Italy, but among a more limited group. Their object, moreover, was not to ensure the observance of the Treaty, an aim which the Council was obligated to seek to achieve. Accordingly, the question must be considered in the Security Council and agreement reached there on the appointment of a governor.

At the same meeting, the proposal that the discussion of the question be postponed to 2 November 1953 was adopted by 9 votes in favour and 1 against, with 1 abstention.¹⁶

At the 634th meeting on 2 November 1953, the representative of Greece moved, under rule 33 (5) of the rules of procedure of the Council, that the discussion of the question be again postponed for three weeks. He stated:

"It is, I submit, the duty of this Council, in the discharge of its primary responsibilities, not to tamper with the normal process of negotiations between the parties mainly interested for the purpose of reaching a settlement which can only strengthen peace and security in the area concerned."

In opposing this proposal, the representative of the USSR invoked Article 34 of the Charter and stated that the consultations to which reference had been made should not keep the Council from carrying out its duty to promote a greater respect for peace and international security.

At the same meeting, the proposal of the representative of Greece was adopted by 9 votes in favour and 1 against, with 1 abstention.¹⁷

At the 641st meeting on 23 November 1953, on the proposal of the representative of the United States, the Council postponed consideration of the question until the week of 8-15 December 1953, with the proviso that the exact date of the meeting be set by the President.

There were 9 votes in favour and 1 against, with 1 abstention.¹⁸

¹⁰ 576th meeting: para. 121.

¹¹ 576th meeting: para. 122.

¹² For texts of relevant statement see:

628th meeting: Colombia, paras. 1-4; France, para. 88; USSR, paras. 106-108, 111;

634th meeting: Greece, paras. 10-11, 13; USSR, para. 42;

641st meeting: USSR, paras. 10, 16; United States, paras. 5-6;

647th meeting: USSR, paras. 9, 21; United States, paras. 2-3.

¹³ This question had been included in the agenda at the 143rd meeting on 20 June 1947. For the earlier proceedings see the previous volume of the *Repertoire*, p. 314.

¹⁴ The Security Council was subsequently notified of the outcome of negotiations regarding the question of the Free Territory of Trieste. [See S/3301 and Add.1, *O.R.*, 9th year, *Suppl. for Oct.-Dec. 1954*, p. 2; S/3305, *O.R.*, 9th year, *Suppl. for Oct.-Dec. 1954* p. 9; S/3351, *O.R.*, 10th year, *Suppl. for Jan.-March 1955*, p. 25.]

¹⁵ S/3105, 625th meeting: para. 70.

¹⁶ 628th meeting: para. 133.

¹⁷ 634th meeting: para. 89.

¹⁸ 641st meeting: para. 101.

At the 647th meeting on 14 December 1953, the representative of the United States proposed "that the Council decide at this time to postpone further consideration of the Trieste item pending the outcome of the current efforts to find a solution for this important matter".

The representative of the USSR remarked that this proposal was actually one for the indefinite postponement of the discussion of the Trieste problem, and opposed it as meaning that the Security Council was "simply being left out of this question".

At the same meeting, the proposal of the representative of the United States was adopted by 8 votes in favour and 1 against, with 1 abstention (one member of the Security Council being absent).¹⁹

CASE 3.²⁰ THE PALESTINE QUESTION: In connexion with a draft resolution to authorize the Chief of Staff of the Truce Supervision Organization, in his capacity as Chairman of the Israel-Syrian Mixed Armistice Commission, to explore possibilities of reconciling the interests involved in the dispute; voted upon and not adopted

[Note: In opposition to the draft resolution it was contended that it ignored the fundamental Charter principle of mutual consent set forth in Article 33. In reply it was asserted that the question before the Council was not an ordinary dispute between two states to which Article 35 might be applicable.]

At the 629th meeting on 27 October 1953, the Security Council began consideration of a complaint²¹ by Syria against Israel concerning work on the west bank of the river Jordan in the demilitarized zone. Syria contended that the Israel Development Project was likely to affect the status of the demilitarized zone and required the consent of both parties to the General Armistice Agreement. Israel maintained that the project was consistent with the Armistice Agreement subject to the provision of safeguards for certain recognized private rights.

At the 648th meeting on 16 December 1953, the Council had before it a joint draft resolution,²² submitted by the representatives of France, the United Kingdom and the United States to authorize the Chief of Staff of the Truce Supervision Organization, in his capacity as Chairman of the Israel-Syrian Mixed Armistice Commission, to explore possibilities of reconciling the interests involved in the dispute. At the 656th meeting on 22 January 1954, the representative of the USSR opposed the revised joint draft-resolution on the ground *inter alia* that it failed to express the principle of mutual consent. He declared:

"... I must protest against an interpretation of the position, nature and meaning of the demilitarized

zone which leads to the assumption that the Chief of Staff is the master there and that the parties concerned have no authority and should not even take any effective part in the matter.

"The position cannot be regarded as normal; it does not comply with the basic principle of the status of the demilitarized zone and the purposes for which the demilitarized zone was established. No unilateral action can be taken by the Chief of Staff or by either of the parties, especially if there are grounds for expecting any complications.

"At this point, however, I consider that we have just such a case. We have a Mixed Armistice Commission and we have a Chief of Staff. The two parties are represented in the Mixed Armistice Commission. It appears perfectly normal and natural to allow those parties to settle the problem by mutual agreement.

"I believe that this would also fully comply with our Charter, because the Charter itself states that the parties should achieve the settlement of disputes by their own efforts, while the Security Council's duty is to promote the pacific settlement of disputes and to assist parties which take action in accordance with Article 33 of the United Nations Charter. It is directly stated in that article that the parties must 'first of all, seek a solution by negotiation, inquiry, mediation, conciliation, arbitration . . .' and so on.

"Surely none of the things I have mentioned can take place without mutual consent. . . .

"... if there is no reference to mutual consent or to this important principle, then of course I could never and shall never support any paragraph which would violate such an important political principle. This is also a legal principle, because it is a fundamental principle of international law.

"... if the draft resolution is adopted it will leave this dispute quite unsettled by the Security Council, and that is unacceptable because the Council has no right to delegate the settlement of a dispute between two parties to anyone except those parties themselves . . ."

In replying to the foregoing observations, the representative of the United Kingdom declared:

"... This question in a way is *sui generis*. It is not an ordinary dispute. It is a dispute which arises out of an action which it is proposed to take in the demilitarized zone, and this in its turn, of course, raises questions directly connected with the General Armistice Agreement between Israel and Syria, and it is with these questions arising out of the General Armistice Agreement that the Council is concerned, and also, consequently, with the position of the Chief of Staff who, under the General Armistice Agreement, has had great authority conferred upon him . . ."

At the same meeting, the joint draft resolution was put to the vote. There were 7 votes in favour and 2 against, with 2 abstentions. The draft resolution was not adopted, one of the negative votes being that of a permanent member of the Council.²³

²³ 656th meeting: para. 135.

¹⁹ 647th meeting: para. 43.

²⁰ For texts of relevant statements see:

656th meeting: USSR, paras. 41-85; United Kingdom, paras. 86-92.

²¹ S/3108/Rev.1, O.R., 8th year, Suppl. for Oct.-Dec. 1953, pp. 5-6.

²² S/3151/Rev.2, O.R., 8th year, Suppl. for Oct.-Dec. 1953, pp. 79-80.

CASE 4.²⁴ THE GUATEMALAN QUESTION: In connexion with a draft resolution to refer the question to the Organization of American States for urgent consideration, voted upon and not adopted

[*Note:* In support of the draft resolution, it was contended that Article 33, which was to be taken in conjunction with Article 52 (2), made it obligatory before appealing to the Security Council to apply to the regional organization. In opposition to this view, it was contended that Article 33 was not applicable to a complaint of aggression.]

In a cablegram dated 19 June 1954²⁵ to the President of the Security Council, the Minister for External Affairs of Guatemala stated that "expeditionary forces" from the direction of Honduras and Nicaragua had invaded Guatemalan territory, and that open aggression was being perpetrated against it. An urgent meeting of the Council was requested in order that, in accordance with Articles 34, 35 and 39, "it may take the measures necessary to prevent the disruption of peace and international security . . . and also to put a stop to the aggression in progress against Guatemala".

At the 675th meeting on 20 June 1954, the Council had before it a joint draft resolution²⁶ submitted by the representatives of Brazil and Colombia to refer the question to the Organization of American States for urgent consideration and to request the Organization of American States to inform the Security Council, as soon as possible, on the measures it had been able to take in the matter.

The representative of Colombia, in support of the joint draft resolution, stated that under Article 33,

" . . . the parties to any dispute, the continuation of which is likely to endanger the maintenance of international peace and security, must seek a solution to it and in that connexion mention is made of resort to regional agencies or arrangements. This Article

²⁴ For texts of relevant statements see: 675th meeting: Colombia, para. 72; Guatemala*, paras. 101-104, 189. For consideration of the provisions of Article 52 in connexion with the question, see chapter XII, Case 4.

²⁵ S/3232, *O.R.*, 9th year, *Suppl. for April-June 1954*, pp. 11-13.

²⁶ S/3236, 675th meeting: para. 69. See chapter VIII, p. 47.

must be taken in conjunction with Article 52, paragraph 2 of which says that every effort must be made to achieve pacific settlement of local disputes through such regional arrangements or agencies before referring them to the Security Council."

In opposing the draft resolution, the representative of Guatemala* considered that Article 33 was "completely inapplicable to Guatemala's case", since "Guatemala has no dispute" either with "Honduras, or with Nicaragua, or with any other State". He stated:

" . . . This Article would be operative in any kind of dispute, but not in the case of an aggression or an invasion; not when open towns are being machine-gunned . . . to create panic. I would ask you to take Article 33 into consideration from this point of view. The Security Council cannot compel the parties to settle their disputes by this means, for in this case there are no parties and there is no dispute."

After referring to Article 52 (2), and stating that "for the same reasons, this Article is not applicable", and that Guatemala "cannot achieve a pacific settlement with Honduras and Nicaragua because we have no dispute with them", the representative of Guatemala further stated that Guatemala had "officially renounced" any intervention in this matter by the Organization of American States, since it "cannot go to a regional organization to discuss a dispute which does not exist". He added:

" . . . We recognize the effectiveness of that organization; we have the greatest respect for it and are members of it, but we consider that under Articles 33 and 52, precisely, that organization ceases to be effective when an invasion is already in progress, when aggression has been committed against my country . . .

"I should like to ask you to give your attention to these facts, no aspect of which is such as to allow the Council to avoid direct intervention . . ."

At the same meeting, the joint draft resolution submitted by the representatives of Brazil and Colombia was not adopted. There were 10 votes in favour and 1 against (the vote against being that of a permanent member).²⁷

²⁷ 675th meeting: para. 194.

Part II

CONSIDERATION OF THE PROVISIONS OF ARTICLE 34 OF THE CHARTER

NOTE

The two case histories entered in part II of this chapter are those in which issues have arisen relating to Article 34 of the Charter.²⁸ In connexion with the Thailand question, in which the initial communication invoking Article 35 (1) asserted the existence of a situation of the nature referred to in Article 34, it was contended that the Security Council was required to take precautionary measures of observation when requested

²⁸ For a case history bearing on the question of the relation between Articles 32 and 34, see chapter III, Cases 23 and 28.

to do so by a Member State which alleged that it had reasonable ground to fear the existence of a threat to its security.²⁹ In connexion with the Guatemalan question, which involved a formal request to the Security Council to establish machinery of investigation under Articles 34 and 35 in respect of an asserted act of aggression, there was discussion of the limitations, if any, by reason of Article 52 on the Security Council's power to undertake an investigation under Article 34.³⁰

²⁹ See Case 5.

³⁰ See Case 6.

CASE 5.³¹ THE THAILAND QUESTION: In connexion with draft resolution providing for observation under the Peace Observation Commission; failed of adoption

[Note: In the communication³² from the representative of Thailand submitted to the Council in conformity with Articles 34 and 35 (1), the request was made that the Council provide for observation under the Peace Observation Commission by requesting the latter to establish a subcommission with authority to dispatch observers to Thailand and to consider whether observation was also necessary "in States contiguous to Thailand". In support of the draft resolution, it was stated that a Member State could not be denied such a precautionary measure. In opposition to the draft resolution, it was stated that no facts or evidence had been brought before the Council to justify the request.]

At the 672nd meeting on 3 June 1954, the representative of Thailand* stated that his Government had brought to the attention of the Security Council a situation which represented a threat to the security of Thailand, the continuance of which was likely to endanger the maintenance of international peace and security. Although until then his country had not been directly attacked, the situation in territories bordering Thailand had become so explosive and tension so high that a very real danger existed that fighting might spread to Thailand and the other countries of the area and foreign troops effect direct incursions into Thai territory. He added that:

"... when a threat to peace begins to appear, it is the duty of Members to call the attention of the Organization to the existence of such a threat... my Government is of the opinion that... the problem of a threat to the peace should be the concern of all Members of the Organization and should not be considered as a problem particular to a certain country or group of countries..."

"Consequently... my Government is confident that if this great international body takes into consideration this problem, it will not fail to produce certain deterring effects upon those who may be bent upon disturbing the peace of the area..."

"I do not think any objection can be raised by anyone to the general proposition that the United Nations requires an adequate system of observation if it is to function most effectively to prevent outbreaks of violence. That general thesis is embodied in section B of the General Assembly 'Uniting for peace' resolution (377 A (V)) which established the Peace Observation Commission..."

At the 673rd meeting on 16 June 1954, the representative of Thailand submitted for the consideration of the Council the following draft resolution:³³

"The Security Council,

"Noting the request of Thailand,

"*Recalling* General Assembly resolution 377 (V) (Uniting for peace), part A, section B, establishing a Peace Observation Commission which could observe and report on the situation in any area where there exists international tension, the continuance of which is likely to endanger the maintenance of international peace and security,

"*Taking into consideration* the legitimate apprehensions entertained by the Government of Thailand in regard to its own security, caused by a condition of international tension in the general region in which Thailand is located, the continuance of which is likely to endanger international peace and security,

"*Requests* the Peace Observation Commission to establish a sub-commission composed of not less than three nor more than five members, with authority:

"(a) To dispatch as soon as possible, in accordance with the invitation of the Thai Government, such observers as it may deem necessary to Thailand;

"(b) To visit Thailand if it deems it necessary;

"(c) To consider such data as may be submitted to it by its members or observers and to make such reports and recommendations as it deems necessary to the Peace Observation Commission and to the Security Council. If the sub-commission is of the opinion that it cannot adequately accomplish its mission without observation or visit also in States contiguous to Thailand, it shall report to the Peace Observation Commission or to the Security Council for the necessary instructions."

Commenting on the draft resolution of Thailand, the representative of New Zealand stated:

"There can be no doubt about the right of a Member of this Organization to bring to the attention of the Security Council a situation which, in its opinion, constitutes a threat to its territorial integrity. In such circumstances, an appeal by a Member of the United Nations for precautionary measures is not something which can be ignored or put aside..."

The existence of a state of tension in the general area of Thailand was a matter of great concern to the Government of New Zealand. Therefore, it gave

"... its emphatic support to the establishment of a sub-commission which can endeavour to determine and evaluate the facts concerning the state of tension reported by the Government of Thailand..."

The President, speaking as the representative of the United States, supported the appeal of Thailand and requested, under rule 38 of the rules of procedure, that at the appropriate time the draft resolution be voted upon.

At the 674th meeting on 18 June 1954, the representative of France, in supporting the draft resolution of Thailand, stated:

"... The fact that a Member of the United Nations has reasonable grounds for believing that such a threat exists or fears that it might arise in the near future should be sufficient to oblige all members of the Council, even those who consider that belief unfounded or that fear premature, to take into consideration

³¹ For texts of relevant statements see:
672nd meeting: Thailand*, paras. 22-23, 41-43;
673rd meeting: President (United States), para. 57; New Zealand, paras. 16, 23; Thailand*, para. 11.
674th meeting: France, para. 15; USSR, paras. 19, 47, 56.
³² S/3220, O.R., 9th year, Suppl. for April-June 1954, p. 10.
³³ S/3229, 673rd meeting: para. 10.

the relevant application, for which the sponsor alone is responsible. Without prejudging the question of the justification of Thailand's fears, we cannot refuse to accord that State the precautionary measure which its Government requests, the implementation of which on Thai territory cannot in any way aggravate the tension existing in that area."

The representative of the USSR, in opposing the draft resolution, remarked that the restoration of peace in Indo-China was being considered at the time by the Geneva Conference at which the permanent members of the Council were participating. He stated that:

"... the matter which has been put before the Security Council has nothing to do with the security of Thailand . . .

"... there is no evidence either in the statement the representative of Thailand made in introducing his draft resolution or in the draft resolution itself that there is any threat to Thailand from any direction whatsoever . . ."

He further stated:

"Observers are only sent at times when and to places where the flames of war are really blazing and where there is a likelihood that the war will spread rather than be localized or ended. Consequently . . . the idea of sending observers to Thailand, after a struggle of national liberation has been going on for seven years and at a time when tangible progress has already been made towards the attainment of a peaceful settlement of the Indo-China question, is wrong . . ."

At the same meeting, the draft resolution submitted by the representative of Thailand failed of adoption. There were 9 votes in favour and 1 against, with 1 abstention (the negative vote being that of a permanent member of the Council).³⁴

CASE 6.³⁵ THE GUATEMALAN QUESTION: In connexion with a request to the Security Council for the despatch of an observation commission to investigate the situation brought to the attention of the Council by the Government of Guatemala: decisions of 20 and 25 June 1954

[*Note:* The representative of Guatemala presented an "official request" by his Government that "an observation commission" be sent by the Council to make inquiries in Guatemala and "in other countries if necessary". The representatives of Brazil and Colombia presented a draft resolution based on Chapter VIII of the Charter to refer the Guatemalan complaint to the Organization of American States and to request the latter to inform the Security Council on the measures it had been able to take in the matter. The question arose whether the Security Council was not obligated

itself to undertake the investigation. The joint draft resolution was supported as consistent with the Security Council's primary responsibility on the ground that the regional organization was best equipped to ascertain the facts. It was opposed as based on inapplicable provisions of the Charter and as contrary to Article 34 which gave the complainant state a right to appeal to the Security Council to investigate a situation of aggression, a right safeguarded by Article 52 (4). The joint draft resolution was not adopted. The Council by unanimous vote called for the immediate termination of any action likely to cause bloodshed and requested all Members of the United Nations to abstain from rendering assistance to any such action. At the next meeting, the Council was informed of a report from the Inter-American Peace Committee concerning measures taken by it to initiate an investigation on the spot. Before the vote on the adoption of the agenda, there was discussion of the question whether the Council should resume its consideration of the item or await a report from the Inter-American Peace Committee. The agenda was not adopted.]

By cablegram³⁶ to the President of the Security Council dated 19 June 1954, the Minister for External Relations of Guatemala requested an urgent meeting of the Security Council in order that, in accordance with Articles 34, 35 and 39 of the Charter "it may take measures necessary to prevent the disruption of peace and international security . . . and also to put a stop to the aggression in progress against Guatemala".

At the 675th meeting on 20 June 1954, the representative of Guatemala*, after submitting to the Security Council his Government's outline of the situation, formally requested that an observation commission of the Security Council be constituted in Guatemala, and in other countries if necessary, to verify through an examination of the documentary evidence, the fact that the Governments of Honduras and Nicaragua "have connived at the invasion" of Guatemala territory by mercenary troops. The representative of Guatemala also explained to the Council that his Government had "merely notified the Peace Committee of the Organization of American States of the invasion, but has asked it to adopt no position until the Security Council has taken action".

A joint Brazilian-Colombian draft resolution³⁷ based on the provisions of Chapter VIII of the Charter, to refer the question to the Organization of American States and to request it to report "as soon as possible" to the Council "on the measures it has been able to take on the matter" was supported by the representative of France with the observation that,

"... in referring Guatemala's request to the Inter-American Peace Committee as a matter of urgency the Security Council will not be unloading its responsibilities on that committee; for it is requesting the committee to report on the conclusions it reaches after carrying out its inquiry. On those conclusions . . . it will rest with the Security Council to take its final decision."

³⁴ 674th meeting: para. 71.

³⁵ For texts of relevant statements see: 675th meeting: Brazil, paras. 67-68, 205; Colombia, paras. 72-73, 206; France, para. 75; Guatemala*, paras. 43, 46, 103-104, 184, 191; New Zealand, para. 214; USSR, para. 173; United States, paras. 75, 170;

676th meeting: Brazil, paras. 14-15, 27; Denmark, paras. 131-134; New Zealand, paras. 126-127; USSR, para. 59; United Kingdom, paras. 88, 90, 92; United States, paras. 174, 178.

³⁶ S/3232, O.R., 9th year, Suppl. for April-June 1954, pp. 11-13, See chapter VIII, p. 44.

³⁷ S/3236, 675th meeting: para. 69. See chapter VIII, p. 47.

The joint draft resolution was opposed by the representative of Guatemala on the ground, *inter alia*, that "under the terms of Article 34 my Government has an unchallengeable right to appeal to the Security Council". He declared that Article 34 empowered the Council to investigate any dispute or situation. While the Guatemalan case was not a dispute for which reason Articles 33 and 52 were not applicable, it was a situation and, under both Article 34 and Article 35, the Security Council could not deny to Guatemala "its right of direct intervention by the Council, not intervention through a regional organization".

The President, speaking in his capacity as representative of the United States, stated that the draft resolution did not seek to relieve the Council of responsibility; "it just asks the Organization of American States to see what it can do to be helpful". In this connexion he quoted Article 52 (2).

The representative of the USSR observed in reply that the last paragraph of Article 52, earlier paragraphs of which had been invoked in support of the joint draft resolution, provided that the Article in no way impaired the application of Articles 34 and 35, which imposed on the Council "a definite obligation to act".

The proviso concerning Article 34 contained in paragraph 4 of Article 52 was likewise invoked by the representative of Guatemala to support the contention that

"... under the Charter, the Security Council is bound by a duty, which it cannot disregard, to investigate this situation which my country, in exercise of the right conferred on it by the Charter, has brought to the notice of the Security Council . . ."

Following the rejection of the draft resolution, as amended,³⁸ the Council unanimously adopted the draft resolution submitted by the representative of France³⁹ calling for the immediate termination of any action likely to cause bloodshed and requesting all Members of the United Nations to abstain from rendering assistance to any such action.

In the explanation of vote that followed, several representatives expressed the view that the Organization of American States remained free to take any measure it might deem appropriate to deal with the situation with its own machinery. Thus, the representative of New Zealand stated:

"... I consider that the Organization of American States still has jurisdiction in this matter and can still investigate and report to us the facts as it finds them to be."

At the 676th meeting on 25 June 1954, the provisional agenda of the Security Council included in addition to the cablegram of 19 June, a letter⁴⁰ dated 22 June 1954 from the representative of Guatemala to the Secretary-General requesting an urgent meeting of the Council on the ground that the decision adopted by the Council on 20 June had not been complied with by other States Members "thus creating a situation covered by Article 35 of the Charter, which takes precedence over any

different unilateral definition". It was further stated in the letter that the Council "retains full jurisdiction in the matter, because Article 52, paragraph 4, of the Charter makes the obligations of the Council under Articles 34, 35 and 39 imperative". The letter concluded with an enumeration of the reasons for which "the Organization of American States by strict standards of international law cannot take action".

The Council also had before it a cablegram,⁴¹ dated 23 June 1954, from the Chairman of the Inter-American Peace Committee informing the Council that on that date the Committee had unanimously decided to inform the Government of Guatemala of a proposal by the representative of Nicaragua, supported by the representative of Honduras, to set up a committee of inquiry, and had expressed the hope that it would agree to the proposed procedure.

The representative of Brazil stated that a fact-finding committee "composed of both diplomats and military men from Argentina, Brazil, Cuba, Mexico and the United States" was expecting the official agreement of the Government of Guatemala to proceed to that country in accordance with the decision of the Inter-American Peace Committee. However, he added, "even if the Guatemalan Government does not choose to co-operate with the Inter-American Peace Committee, that Organization had already been seized of the matter and was bound to go into it in order to fulfil its obligations". In his view, therefore, the Security Council should not proceed to deal with the question and should rather wait for the report of the fact-finding committee of the regional organization. Consequently, he would vote against the adoption of the agenda.

The representative of the USSR stated that the consequence of the proposal that the agenda should not be adopted and that the consideration of the Guatemalan question should be postponed would be that the Council would not consider the request of a Member State which had been attacked. He added:

"... Thus, the Security Council, one of the principal organs of United Nations, responsible for the maintenance of peace and security, and for taking measures to put an end to aggression, will not comply with the request of a Member of the United Nations that the Council should examine the question and take suitable action . . ."

In the view of the representative of the United Kingdom, the situation in Guatemala appeared *prima facie* to be "one that cannot be dismissed without any investigation, as a purely internal matter". However, the Council could not "at the moment . . . take any further action in this matter without more facts at its disposal". To establish the facts concerning the complaint of Guatemala, the Inter-American Peace Committee which was not precluded from dealing with the question by the Security Council's decision of 20 June 1954 should, through its fact-finding committee, "make a constructive contribution" by observing what was happening in the two countries against which the allegation had been made and conveying the necessary information, as soon as possible, to the Council.

³⁸ 675th meeting: para. 194.

³⁹ 675th meeting: para. 203.

⁴⁰ S/3241, O.R., 9th year, Suppl. for April-June 1954, pp. 14-15.

⁴¹ S/3245, O.R., 9th year, Suppl. for April-June 1954, p. 16.

The representative of New Zealand welcomed the decision of the Organization of American States to establish a fact-finding committee and expressed confidence that the Council would be kept fully informed of the activities of that committee in accordance with Article 54 of the Charter. He referred to the undertaking in the cablegram⁴² from the Chairman of the Inter-American Peace Committee "to furnish the Security Council with what will be in effect a full report of the investigation". He desired that, following the adoption of the agenda, the Security Council should note the action taken by the Organization of American States and then adjourn.

The representative of Denmark, in agreeing with the position of the representative of New Zealand, observed that his Government had been of the view "that it might well have been appropriate for the United Nations itself to investigate this matter, or in some way associate itself with any investigation to be undertaken by other means". In consideration, however, of the provisions of Chapter VIII of the Charter, and of the practice of the Inter-American system, he would not oppose the procedure suggested by the Inter-American Peace Committee. He wished the matter placed on the agenda to hear if the representative of Guatemala had any new information or new proposals to offer. If nothing new emerged, the question should be adjourned until the results of the examination undertaken by the Committee were brought before the Council.

The representative of the USSR stressed the point that the provisions of the Charter relating to the pre-

vention of aggression prevailed over regional arrangements and, in that connexion, observed that Article 52(4) of the Charter stipulated that it in no way impaired the application of Article 34 and 35.

The President, speaking as the representative of the United States, observed that the Government of Guatemala claimed to be the victim of aggression, and had asked for an investigation. "It is entitled to have the facts brought to light; the procedures for doing that are clearly established within the Organization of American States". Guatemala, Honduras, and Nicaragua had all applied to the Inter-American Peace Committee of that Organization, which had decided to send a fact-finding committee to the area of controversy. However, Guatemala had "attempted to interrupt this wholesome process". Because the Committee felt that it was "inconceivable that Guatemala will obstruct the very investigation for which it has been clamouring for days" it was preparing to proceed to the area of controversy.

While the United States did not deny "the propriety of this danger to the peace in Guatemala being brought to the attention of the Security Council in accordance with Article 35 of the Charter", it was bound by its undertakings contained in Article 52 (2) of the Charter and in article 20 of the charter of the Organization of American States to oppose consideration by the Council "of this Guatemalan dispute", until the matter had first been dealt with by the Organization of American States.

At the same meeting, a vote was taken on the adoption of the agenda. The agenda was rejected by 5 votes to 4, with 2 abstentions.⁴³

⁴² S/3245, O.R., 9th year, Suppl. for April-June 1954, p. 16.

⁴³ 676th meeting: para. 195.

Part III

APPLICATION OF THE PROVISIONS OF ARTICLE 35 OF THE CHARTER

NOTE

The nine questions⁴⁴ relating to the maintenance of international peace and security newly admitted to the agenda of the Security Council during the period under review have been brought to its attention by Members of the United Nations.⁴⁵

The Security Council has continued the consideration of three questions which had been included in its agenda before the period under review, namely, the India-Pakistan question, which was submitted to the Security Council by India on 30 July 1947,⁴⁶ the Palestine question, referred to the Security Council by the General Assembly on 2 December 1947,⁴⁷ and the appointment

of a governor of the Free Territory of Trieste, submitted by the United Kingdom on 13 June 1947.⁴⁸

SUBMISSION BY MEMBERS OF THE UNITED NATIONS

Members of the United Nations submitting questions to the Security Council have in most instances done so through a communication addressed to the President of the Security Council. In two instances, both involving members of the Security Council, the submission was effected through a letter to the Secretary-General enclosing a draft resolution with a request for its circulation to the members of the Council and a request for inclusion of an appropriate item in the provisional agenda for the meeting at which the question was proposed to be considered.⁴⁹

In four instances Members submitting questions to the Security Council indicated in an initial communica-

⁴⁴ In one instance, the Council has included in its agenda two items submitted by different Member States relating to the same state of facts; see Tabulation: entries 7 and 9.

⁴⁵ See Tabulation: Sections B, C.

⁴⁶ See *Repertoire of the Practice of the Security Council 1946-1961*, chapter X, part III, Tabulation: Section B, entry 14, p. 405.

⁴⁷ See *Repertoire of the Practice of the Security Council 1946-1951*, chapter X, part III, Tabulation: Section F, entry 24, p. 408. Complaints of alleged violations of the Armistice Agreements were subsequently considered as sub-items of "the Palestine question". See request of France, the United Kingdom and the United States, 626th meeting: paras. 113-114; 628th meeting:

paras. 52-53; Syrian complaint, 629th meeting: p. 1; Israel and Egyptian complaints, 657th meeting: paras. 46, 86, 114. See, however, the statement of the representative of Israel and its reference to Articles 34 and 35 (1), 697th meeting: p. 2.

⁴⁸ See *Repertoire of the Practice of the Security Council 1946-1951*, chapter X, part III, Tabulation: Section H, entry 27, p. 409.

⁴⁹ See Tabulation: entries 2 and 3.

tion that they were acting in accordance with Article 35 (1);⁵⁰ in one of these instances Article 35 (1) was invoked in conjunction with Article 34;⁵¹ in another it was invoked in conjunction with Articles 34 and 39.⁵² In the other submissions of questions for consideration by the Council no Charter Article was referred to in the initial communication. In their initial communications or in the documents accompanying them, States have indicated more or less explicitly the action requested of the Council as well as the nature of the question.

In no instance have Members submitted a question to the Council as a dispute;⁵³ in three instances questions were expressly described in the initial communications as situations.⁵⁴ In four instances questions were submitted by States directly involved.⁵⁵

As already noted above, Article 39, together with Articles 34 and 35, was invoked in one instance in an initial communication which described the question submitted as one of "open aggression".⁵⁶ On another occasion a Member submitted a question as an act of aggression without adverting to Article 35.⁵⁷

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

⁵⁰ In connexion with the Tunisian question, with the question of Morocco, with the Thailand question, and with the Guatemalan question, see Tabulation: entries 1, 4, 5 and 8.

⁵¹ In connexion with the Thailand question, see Tabulation: entry 5.

⁵² In connexion with the Guatemalan question, see Tabulation: entry 8.

⁵³ In this connexion, see in this chapter, Case 4 above.

⁵⁴ Tabulation: entries 1, 5 and 7. In connexion with the Guatemalan question, the representative of Guatemala in a communication dated 22 June 1954 calling for a second urgent meeting of the Council, described the alleged failure to comply with the Security Council resolution of 20 June 1954 as "creating a situation covered by Article 35 of the Charter". S/3241, O.R., 9th year, *Suppl. for April-June 1954*, p. 14.

⁵⁵ Tabulation: entries 3, 5, 6 and 8.

⁵⁶ Tabulation: entry 8.

⁵⁷ Tabulation: entry 9.

proceedings is governed by the terms of the initial communication.

STATES NOT MEMBERS OF THE UNITED NATIONS

While no question has been submitted to the Security Council during the period under review by a State not a Member of the United Nations, Article 35 (2), *inter alia*, was the subject of discussion in connexion with the consideration of a sub-item of the Palestine question which concerned a complaint submitted on behalf of a non-Member State by a Member State. The question which arose concerned the conditions to be laid down by the Council for the participation of the non-Member State in its discussions.⁵⁸

PROCEDURAL CONSEQUENCES OF SUBMISSION UNDER ARTICLE 35

Questions have been submitted to the Security Council by means of communications addressed to the President of the Security Council or, exceptionally, by means of communications addressed to the Secretary-General containing a request for the circulation of a draft resolution together with a request for inclusion of the matter in the provisional agenda of a meeting.⁵⁹ Such communications have been dealt with in accordance with rules 6-9 of the provisional rules of procedure. Material relating to the application of rules 6-9 is contained in chapter II of the *Supplement*. Material on the practice of the Security Council in the implementation of Article 35 at the stage of adoption of the agenda will be found in chapter II, part III.

The Council has not, in respect of any of the questions submitted for its consideration during the period under review, considered whether to accept the designation of a question contained in the initial communication. The distinction between a "dispute" and a "situation" was adverted to by the complaining State in its statement to the Council in one instance.⁶⁰

⁵⁸ See in this supplement, chapter III, Case 24.

⁵⁹ See Tabulation: entries 2, 3. Regarding the application of rule 7, see in this supplement, chapter II, Case I.

⁶⁰ See, in this chapter, Case 4, above.

Tabulation of questions submitted to the Security Council (1952-1955)

**SECTION A. QUESTIONS SUBMITTED BY MEMBERS AS DISPUTES

SECTION B. QUESTIONS SUBMITTED BY MEMBERS AS SITUATIONS

Question	Submitted by	States involved	Articles invoked as basis for submission	Description of question in letter of submission	Action requested of the Security Council	References
1. Tunisian question	Indonesia, Egypt, Iraq, Pakistan, Saudi Arabia, Afghanistan, India, Burma, Iran, Philippines, Yemen 2 April 1952	France	35 (1)	"... the situation in Tunisia seriously ... endangers the maintenance of international peace and security ..."	"... taking the necessary measures provided by the Charter to put an end to the present situation."	S/2574, S/2584, O.R., 7th year, Suppl. for April-June 1952, pp. 9-15
2. Question of an appeal to States to accede to and ratify the Geneva Protocol of 1925 for the prohibition of the use of bacteriological weapons	USSR 14 June 1952	"... all States which have not yet acceded to or ratified their accession to the Geneva Protocol."	None	None	USSR draft resolution: "To appeal to all states ... which have not yet ratified or acceded to the Protocol ... signed at Geneva on 17 June 1925, to accede to and ratify the said Protocol."	S/2663 and 577th meeting; para. 111
3. Question of a request for investigation of alleged bacterial warfare	USA 20 June 1952	USSR	None	None	USA draft resolution: "Requests the International Committee of the Red Cross ... to investigate the charges ..."	579th meeting: pp. 8-9 and S/2671, O.R., 7th yr., Suppl. for April-June 1952, p. 17
4. Question of Morocco	Afghanistan, Burma, Egypt, India, Indonesia, Iran, Iraq, Lebanon, Liberia, Pakistan, Philippines, Saudi Arabia, Syria, Thailand, Yemen 21 August 1953	France	35 (1)	"... the international friction and the danger to international peace and security which has arisen by the unlawful intervention of France in Morocco and the overthrow of its legitimate sovereignty."	"... to investigate ... and to take appropriate action under the Charter."	S/3085, O.R., 8th year, Suppl. for July-Sept. 1953, p. 51

Question	Submitted by	States involved	Articles invoked as basis for submission	Description of question in letter of submission	Action requested of the Security Council	References
5. Thailand question	Thailand 29 May 1954	Thailand*	34 and 35 (1)	"... a situation which . . . represents a threat to the security of Thailand the continuance of which is likely to endanger the maintenance of international peace and security."	"... observation under the Peace Observation Commission."	S/3220, <i>O.R.</i> , 9th year, <i>Suppl. for April-June 1954</i> , p. 10
6. Question of alleged incident of attack on a United States Navy aircraft	USA 8 September 1954	USSR	None	"... this incident is of a type which might endanger international peace and security . . ."	"... to consider this matter."	S/3287
7. Question of hostilities in the area of certain islands off the coast of the mainland of China	New Zealand 28 January 1955	People's Republic of China and the Republic of China	None	"... a situation exists, the continuance of which is likely to endanger international peace and security."	"... to consider this matter."	S/3554, <i>O.R.</i> , 10th year, <i>Suppl. for Jan.-March 1955</i> , p. 27

* It was stated in the communication of 29 May 1954 that "large-scale fighting has repeatedly taken place in the immediate vicinity of Thai territory".

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

Question	Submitted by	States involved	Articles invoked as basis for submission	Description of question in letter of submission	Action requested of the Security Council	References
8. Guatemalan question	Guatemala 19 June 1954	Guatemala, Honduras, Nicaragua	34, 35, 39	"... open aggression has been perpetrated . . ."	"... in accordance with Articles 34, 35 and 39 . . . it [the Security Council] may take the measures necessary to prevent the disruption of peace and international security . . . and also to put a stop to the aggression in progress against Guatemala."	S/3232, <i>O.R.</i> , 9th year, <i>Suppl. for April-June 1954</i> , pp. 11-13
9. Question of acts of aggression by the United States of America against the People's Republic of China in the area of Taiwan and other islands of China	USSR 30 January 1955	USA People's Republic of China	None	"The intervention of the United States of America in the internal affairs of China and the recent extension of acts of aggression by the United States against the People's Republic of China in the area of Taiwan (Formosa) are aggravating tension in the Far East and increasing the threat of a new war." ⁴	"... to take immediate steps to put an end to the acts of aggression by the United States against the People's Republic of China and to its intervention in the internal affairs of China."	S/3355, <i>O.R.</i> , 10th year, <i>Suppl. for Jan.-March 1955</i> , p. 27

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

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

**SECTION F. QUESTIONS SUBMITTED BY THE GENERAL ASSEMBLY

**SECTION G. QUESTIONS SUBMITTED BY THE SECRETARY-GENERAL

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

Part IV

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

NOTE

It was noted in the previous volume of the *Repertoire* that the issues arising in the cases entered in part IV of chapter X of that volume related only in minor degree to the real import of the provisions of Articles 36-37 in the working of the Council. In the period presently under review, material to throw light on that relationship is even more scant by reason of the absence of sustained discussion of the connexion between the appropriateness of measures to be adopted by the Council and the provisions of Articles 36-37.

The impingement of the obligations of States to have recourse to the machinery of pacific settlement provided by regional organizations on the competence of the Council and on the appropriateness of intervention by the Council has given rise to discussion of the role of the Council in relation to such regional organizations. In this connexion, 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 the operation of the machinery of pacific settlement provided by the regional organization.⁶¹ In this context, the question of the appropriate stage for the active resumption by the Council of its consideration of a question on the list of matters has been the subject of sustained discussion in the light of Article 36.⁶²

The consideration of steps for the pacific settlement of disputes has, in consonance with the stress laid on the need to base the action of the Council on the promotion of agreement between the parties, centered on the encouragement by the Council of such agreement.⁶³ On certain occasions, question has arisen as to the

⁶¹ 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 chapter II, Cases 23 and 24.

⁶² See Case 7 below.

⁶³ During the debate on the India-Pakistan question the following observations were made concerning the role of the Security Council. It was asserted by the representative of the United Kingdom that the duty of the Council was to use its best endeavours to promote a settlement by reasoned negotiations and compromise between the parties. The representative of the United States enumerated the principles on which the Council should seek to assist the parties to carry out their Charter obligations as follows: Because a lasting political settlement must be an agreed settlement, the Security Council, he felt, would welcome any agreement to settle the dispute reached by the parties on any basis consistent with the principles of the Charter. The role of the Security Council was to assist the parties in seeking to reach agreement. The draft resolution offered to the parties an opportunity to arrive, by their negotiations, at a settlement of the final issue standing in the way. The Security Council, finally, should indicate its views on the positions taken by its representative. The representative of the Netherlands stressed the efforts which had been made by the Council to explore every avenue that might facilitate agreement. The representative of China stressed the point that in its consideration of the question the Security Council had a single objective: to help India and Pakistan to solve it. [For texts of relevant statements see: 606th meeting: United Kingdom, paras. 13, 16, 18; 607th meeting: United States, paras. 6-11, 40-41; 611th meeting: China, para. 79; Netherlands, para. 28; United Kingdom, paras. 31-32, 42, 57.]

bearing of Article 36 on the course to be taken by the Council in circumstances of complaint concerning non-compliance with earlier Council decisions asserted to be binding under Article 25.⁶⁴ Also relevant in this connexion is the material bearing on the exercise by the Council of its powers under Chapter VI of the Charter to promote agreement between the parties, with a view to ensuring continued compliance with previous decisions ordering them to cease hostilities.⁶⁵

Article 36 (2) was invoked in one case when a proposal was made that the Security Council should refer the question under consideration to a regional agency.

During the consideration of the Palestine question when the problem of the binding force of a previous decision of the Security Council was under discussion, a representative raised objection to the draft resolution on the ground that it sought to impose a decision upon one of the parties in disregard of the procedures of Chapter VI and especially of Article 36 which more properly applied to the case under consideration. For this discussion see chapter XII, case 3.

CASE 7.⁶⁶ THE GUATEMALAN QUESTION: In connexion with draft resolution to refer the question to the Organization of American States, voted upon and rejected on 20 June 1954. Also in connexion with discussion on adoption of the agenda: rejected on 25 June 1954

[Note: The draft resolution based on Articles 33 and 52 (2) was opposed on the ground that Guatemala objected to the referral to the Organization of American States. Article 36 (2) was invoked against the adoption of this draft resolution. It was not adopted. The Council then adopted unanimously a decision calling for the immediate termination of any action likely to cause bloodshed. At the next meeting, the Council had before it a report of Guatemala that the Council decision had not been complied with, together with a communication of the Inter-American Peace Committee advising the Council that it was dealing with the question in accordance with the procedures of the regional organization. Article 36 (2) was again invoked and the Council was requested to take further measures. The provisional agenda was not adopted.]

At the 675th meeting on 20 June 1954, the Security Council had before it a cablegram⁶⁷ from the Minister for External Relations of Guatemala requesting that, in accordance with Articles 34, 35 and 39, the Council "take measures to prevent the disruption of the peace and international security . . . and also to put a stop

⁶⁴ See chapter XII, Case 3.

⁶⁵ See, in chapter VIII, under the Palestine question.

⁶⁶ For texts of relevant statements see:

675th meeting: Colombia, para. 72; Guatemala*, paras. 60, 189; USSR, paras. 146, 148-149; United States, paras. 156-157;

676th meeting: Brazil, para. 27; Colombia, paras. 69-70; Denmark, para. 131; USSR, paras. 151, 157-158.

⁶⁷ S/3232, O.R., 9th year, Suppl. for April-June 1954, pp. 11-13.

to the aggression in progress against Guatemala". The Council also had before it a draft resolution,⁶⁸ jointly submitted by Brazil and Colombia, concerning the referral of the question to the Organization of American States. The joint draft resolution noted that Guatemala had also dispatched a similar communication to the Inter-American Peace Committee, an agency of that Organization. The draft resolution further invoked the provisions of Chapter VIII of the Charter, and also requested the regional organization to report back to the Council.

The representative of Guatemala* declared in his initial statement that his Government "exercising the option which is open to the Organization's members . . . officially declined to allow the Organization of American States and the Peace Committee to concern themselves with this situation".

In support of the joint draft resolution, the representative of Colombia stated that Article 33 taken in conjunction with Article 52 (2) of the Charter made it imperative for Guatemala to resort first to the regional organization, in this case, the Organization of American States.

In opposing the proposal for referral to the Organization of American States, the representative of the USSR remarked that "the attempt is being made to settle the question in a procedural way, to oblige one of the parties to comply with procedure which it is not willing to accept". He continued:

" . . . Article 36 of the Charter prohibits the adoption of such a decision . . .

"But one of the parties has rejected this procedure. That means that adoption of the Brazilian-Colombian draft resolution would be a violation of Article 36, paragraph 2. The Soviet delegation therefore considers that the draft resolution is inadmissible . . ."

The President, speaking as the representative of the United States, pointed out that the charges brought before the Council by Guatemala, "are indeed serious and certainly warrant urgent examination". However, he added, "the question arises as to where the situation can be dealt with most expeditiously and effectively". It appeared to his Government that the situation should be dealt with on an urgent basis, in the first instance, by an appropriate agency of the Organization of American States. In support of this view he mentioned "the very fact that the Government of Guatemala, as a member of the inter-American system, has already requested that the Organization of American States take action".

In this respect, the representative of Guatemala stated that his Government "has not referred the essential feature of the matter to the Organization of American States. It has merely notified the Peace Committee of the Organization of American States of the invasion, but has asked it to adopt no position until the Security Council has taken action".

The joint draft resolution was not adopted. There were 10 votes in favour and 1 against (that of a permanent member).⁶⁹

The Council then adopted unanimously a French draft resolution⁷⁰ calling for "the immediate termination of any action likely to cause bloodshed" and requesting all States members to abstain from rendering assistance to any such action.

At the 676th meeting on 25 June 1954, the provisional agenda of the Council included a cablegram⁷¹ dated 23 June from the Chairman of the Inter-American Peace Committee reporting that establishment of a commission of enquiry to deal with the Guatemalan complaint was waiting on a favourable reply from Guatemala.

The discussion on the adoption of the agenda centred on whether the Council should, before proceeding with the consideration of the question, wait for the report which, after its enquiry, the regional organization would submit to the Council, in accordance with Article 54 of the Charter.

The representative of Colombia, after referring to the provision of Article 33 concerning resort to regional agencies, stated:

"Among the procedures which parties must adopt to settle disputes likely to endanger the maintenance of international peace and security, Article 36, paragraph 2, provides that the Security Council should take into consideration any procedures for the settlement of disputes which have already been adopted by the parties. Among these procedures are those adopted by the American States; in this connexion, Article 37 provides that when a dispute endangering peace and security is referred to the Security Council, the Council must decide whether to take action under Article 36 which, as has been stated, contains a reference to regional systems, or whether to use another procedure."

The representative of the USSR invoked Article 36 to support the view that

" . . . we cannot forcibly adopt a procedure of settlement to which one of the parties objects. Article 36 must be obeyed, and the Security Council should consider, not whether or not to place on the agenda a question which is already there, but what measure it should take to put an end to aggression in Guatemala. Guatemala does not object to an observation commission being sent to the spot, but it wants the Security Council to send there a commission of inquiry which should submit a report and propose measures for restoring peace and putting an end to aggression."

And after referring to the "demands made here by the Government of Guatemala", he further stated:

" . . . I must once again draw attention to Article 36 . . . according to Article 36, the Security Council may adopt only such a procedure for the settlement of a dispute as is acceptable to the two parties. Here we have the victim of aggression, which is really the principal party. We should value its opinion more highly than that of the others; we are bound to take

⁶⁸ S/3236, 675th meeting: para. 69. See chapter VIII, p. 119.

⁶⁹ 675th meeting: para. 194.

⁷⁰ 675th meeting: paras. 200, 203.

⁷¹ S/3245, O.R., 9th year, Suppl. for April-June 1954, p. 16.

it into account and to help the victim of aggression by restoring peace and security in that country.

“This country declared that it did not accept the referral of the dispute to the Organization of American States for consideration, and requested that it should be dealt with by the United Nations through the Security Council. From this point of view, therefore, no procedure can be adopted which would

prevent the examination of this question by the Security Council, for that would constitute a violation of Article 36 of the Charter.”

The provisional agenda was not adopted. There were 5 votes in favour and 4 against, with 2 abstentions.⁷²

⁷² 676th meeting: para. 195.