Chapter X

CONSIDERATION OF THE PROVISIONS OF CHAPTER VI OF THE CHARTER

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INTRODUCTORY NOTE

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

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

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

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."

1/ Chapter VIII, pp. 147-150.

Part I

CONSIDERATION OF THE PROVISIONS OF ARTICLE 33 OF THE CHARTER

NOTE

During the period covered by this Supplement, the prior efforts to seek a peaceful solution made by States submitting a dispute or a situation to the Security Council have been indicated in the initial communications, though Article 33 has not been expressly cited in any of them.2/ In statements before the Council, the States concerned have drawn attention to the stage reached in efforts towards a settlement as evidence of the necessity for taking or not taking action under Chapter VI. The contentions advanced have centred on:

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

(2) The allegation of failure to reach a satisfactory settlement through negotiation.4/

(3) The allegation of refusal of proper recourse to procedures of settlement stipulated by special agreement binding on the parties.5/

(4) The allegation that the emergence of a threat to the peace precluded further recourse to the means of settlement presented by Article 33.6/

The case histories in part I of the present chapter provide an indication of the views taken by the Council in its decisions, or by the Council members or invited representatives in their discussions, with regard to the discharge of obligations for peaceful settlement of disputes in accordance with Article 33. In one instance, after noting the disappointment caused by the failure of the Summit Conference of May 1960, the Council recommended that the Governments concerned seek a solution to existing international problems by negotiation or other peaceful means, as provided in the Charter.7/ In another instance, after statements were made in the Council asserting that, under Article 33, the parties should seek solutions by the most direct means, including resort to regional bodies, the Council, basing itself on Article 33, among other Charter Articles, decided to adjourn its consideration of the question pending the receipt of a report from the regional agency where the matter was being considered.8/ On one occasion, one of the parties concerned, while stating that it had no objection to undertaking direct negotiations, rejected the suggestion to resort to mediation or arbitration as adequate means of peaceful settlement of the issues involved.9/ In another instance, one of the parties concerned suggested efforts at peaceful settlement through direct negotiations or investigation. However, since mutual consent of the parties appeared to be lacking, the Council proceeded to decide on the substance of the question.10/ On another occasion, after two permanent members and two other members of the Council had expressed willingness to negotiate, the Acting Secretary-General, at the request of a large number of Member States, had offered to make himself available for whatever assistance he could give to facilitate negotiations. The Council adjourned without voting on the draft resolutions before it, having taken cognizance of the favourable response to the Acting Secretary-General's initiative.11/

One instance is recorded when one of the parties involved made an unsuccessful attempt to have the Security Council request an advisory opinion of the International Court of Justice concerning certain decisions taken by an organ of a regional agency, and, pending the advisory opinion, to have the Council suspend these decisions.12/

On another occasion,13/ numerous references were made in the Council to "direct contacts" and "negotiations" which had taken place, upon the initiative and in the presence of the Secretary-General,14/ between the representatives of Portugal and of some African Member States. In the discussion, Article 33 and the procedures of "negotiations" and "conciliation" were mentioned but no constitutional issue was raised in this respect.

2/ Argentina, Ceylon, Ecuador and Tunisia in their letter dated 23 May 1960, S/4323 (submitted together with a draft resolution which noted with regret the lack of success of the meeting of the Heads of Government of France, the United Kingdom, the United States and the USSR) [O.R., 15th year, Suppl. for April-June 1960, pp. 13-14]; Argentina in explanatory memorandum to its letter dated 15 June 1960, S/4336, and Israel in its letters dated 21 June 1960, S/4341 and S/4342 (ibid., pp. 27-28, 29-30, 30-33) in connexion with the Eichmann case; Jordan in explanatory memorandum to its letter dated 1 April 1961, S/4777 [O.R., 16th year, Suppl. for April-June 1961, pp. 1-2] in connexion with the Palestine question; Tunisia in explanatory memorandum to its letter dated 20 July 1961, S/4862, and France in notes verbales transmitted with its letter dated 20 July 1961, S/4864 [O.R., 16th year, Suppl. for July-Sept. 1961, pp. 7-9, 11-14] in connexion with the complaint by Tunisia; Israel in its letters dated 20 August 1963, S/5394, and 21 August 1963, S/5396 [O.R., 18th year, Suppl. for July-Sept. 1963, pp. 76-77, 78-82] in connexion with the Palestine question; Algeria, Burundi, Cameroon, Central African Republic, Congo (Brazzaville), Congo (Leopoldville), Dahomey, Ethiopia, Gabon, Ghana, Guinea, Ivory Coast, Liberia, Madagascar, Mali, Mauritania, Morocco, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Togo, Tunisia, Uganda, United Arab Republic and Upper Volta in their letter dated 13 November 1963, S/5460, requesting that the Council be convened to consider the report of the Secretary-General, S/5448 and Add.1-3, where reference was made to exploratory conversations between representatives of certain African States and Portugal, in connexion with the situation in territories in Africa under Portuguese administration [O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 94-95].

3/ See Cases 2, 3 and 6.

4/ See Cases 1 and 9.

5/ See Case 6.

6/ See Case 8.

7/ See Case 1.

8/ See Case 2.

9/ See Case 6.

10/ See Case 8.

11/ See Case 7.

12/ See chapter VIII: Letter of 8 March 1962 from the representative of Cuba concerning the Punta del Este decisions, pp. 199-201.

13/ In connexion with the situation in territories in Africa under Portuguese administration, for texts of relevant statements, see: chapter I, Case 52, and chapter VIII, pp. 209-213.

14/ See the Secretary-General's report to the Security Council, S/5448 and Add.1-3, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 55-86.

During the period under review, observations were made in the Council[15] with regard to the relationship of the obligation to seek a peaceful settlement through direct negotiations, and the General Assembly resolutions on decolonization as a basis for such a settlement. During the discussions, statements were made regarding the obligation of the parties to negotiate on the basis of the principles of the Charter.

Part IV of the present chapter also includes observations by members of the Council favouring negotiations between the parties and the steps taken by the Council to assist them in reaching agreement on means of overcoming impediments to the operation of previously agreed procedures for dealing with the matters in dispute. Thus, for example, in connexion with the complaints by Cuba, the USSR and the United States, and in connexion with the reports of the Secretary-General concerning Yemen, the Council reacted favourably to the initiatives by the Secretary-General in making available to the parties the services of his office.

CASE 1.[16] LETTER OF 23 MAY 1960 FROM THE REPRESENTATIVES OF ARGENTINA, CEYLON, ECUADOR AND TUNISIA: In connexion with the draft resolution submitted by the aforementioned States: voted upon and adopted on 27 May 1960

[*Note:* During the discussion references were made to the provisions of the draft resolution and the need for Governments to seek a solution to international problems by negotiation, which was a specific obligation under Article 33 of the Charter.]

At the 861st meeting on 26 May 1960, the representatives of Argentina, Ceylon, Ecuador and Tunisia submitted a draft resolution[17] whereby:

"The Security Council,

"...

"Being convinced of the necessity to make every effort to restore and strengthen international good will and confidence, based on the established principles of international law,

"...

"1. Recommends to the Governments concerned to seek solutions of existing international problems by negotiation or other peaceful means as provided in the Charter of the United Nations;

"..."

The representative of Tunisia stated that it was most important for the Council to strive for the relaxation of international tensions, to foster the restoration of confidence, to recommend negotiation and settlements by peaceful means, to work unremittingly for international peace and security and to make a solemn appeal for co-operation and harmony on the basis of the principles of the Charter.

The representative of Argentina pointed out that the draft resolution co-sponsored by his delegation had been phrased in such a way as to dissociate its aim from other issues which already had been considered by the Council and which might revive controversy.

The President, speaking as the representative of Ceylon, observed that the only thing the Council could do at that stage was to encourage the four Great Powers to use the United Nations and its various organs to restore harmony and good will and to appeal to them to resume discussions.

The representative of Italy called attention to the fact that under Article 33 of the Charter recourse to negotiation was a specific obligation of Member States which could not be ignored without violating the letter and spirit of the Charter. The draft resolution, in operative paragraph 3, he observed, specifically indicated some of the fields which should be covered by negotiations.

The representative of the USSR stated that while the main idea embodied in the joint draft resolution—namely the need to facilitate negotiations between the Great Powers—was a good one, it would have been better if the appeal to negotiate were addressed to those who were disrupting negotiations or making them impossible.

At the 863rd meeting on 27 May 1960, the representative of Ecuador remarked that "... in an effort to reach the greatest possible measure of agreement in the Council ..." the sponsors were submitting a revised draft.[18]

The revised draft resolution as proposed by Argentina, Ceylon, Ecuador and Tunisia was adopted by 9 votes in favour with 2 abstentions.[19]

CASE 2.[20] COMPLAINT BY CUBA (LETTER OF 11 JULY 1960): In connexion with the draft resolution submitted by Argentina and Ecuador: voted upon and adopted on 19 July 1960

[*Note:* During the discussion it was asserted that under Article 33, Members of the United Nations who were parties to a dispute which threatened the maintenance of international peace and security should seek first of all solutions by the most direct peaceful means, including resort to regional agencies or arrangements, before appealing to the United Nations. Since discussions were in progress in the Organization of American States, the Council should encourage a pacific settlement through the regional body.[21]]

15/ See statements by India in connexion with the complaint by Portugal concerning Goa, Case 5; by Senegal in connexion with its complaint against Portugal, Case 8; and by several African invited representatives in connexion with the situation in territories in Africa under Portuguese administration, see chapter VIII, pp. 211-212.

16/ For texts of relevant statements, see:
861st meeting: Argentina, para. 40; Ceylon (President), paras. 61-63; Italy, paras. 77-78; Tunisia, para. 11; USSR, paras. 108, 111, 116;
863rd meeting: Ecuador, paras. 6, 7.

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

18/ S/4323/Rev.2, same text as S/4328; 863rd meeting: paras. 6-11.

19/ S/4328, O.R., 15th year, Suppl. for April-June 1960, pp. 20-23. 863rd meeting: para. 48. See also chapter XII, case 4.

20/ For texts of relevant statements, see:
874th meeting: President (Ecuador), paras. 145, 152, 154, 155; Argentina, paras. 131-143; Cuba*, paras. 87-93; United States, paras. 99-102;
875th meeting: Ceylon, paras. 28-30; France, paras. 21-22; Italy, paras. 6, 10; Tunisia, paras. 39-41; United Kingdom, para. 63;
876th meeting: USSR, paras. 102, 106, 107.

21/ For a discussion of the competence of the Council, see chapter XII, Case 24.

At the 874th meeting on 18 July 1960, the representative of Cuba* recalled his Government's readiness to settle all differences with the United States through normal diplomatic channels in spite of that Government's refusal to negotiate.

In reply, the representative of the United States stated that as a result of the Cuban refusal to enter into direct negotiations, the matter was being considered by the Organization of American States.

At the same meeting, Argentina and Ecuador submitted a draft resolution [22] under which:

"The Security Council,

"...

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

"...

"Considering that it is the obligation of all Members of the United Nations to settle their international disputes by negotiation and other peaceful means in such a manner that international peace and security and justice are not endangered,

"...

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

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

"..."

The representative of Argentina advanced the view that since the regional organization had already taken cognizance of the matter it was both desirable and practicable to await the results of its action and ascertain its point of view. This was the reason for operative paragraph 1 of the draft resolution.

The President, speaking as the representative of Ecuador, observed that the Security Council had been called upon to exert a conciliatory influence designed primarily to lessen and not to aggravate existing tensions. He added that the draft resolution was based on the premise that it was juridically correct and politically advisable to try to solve through regional bodies those disputes which could be dealt with by regional action, and that "the Security Council is ... required, legally and politically, to encourage the development of pacific settlement of local disputes through regional arrangements or agencies". This meant that "when there is a case appropriate for regional action the Council should recommend this course, or at any rate seek a report from the regional body concerned before taking any decisions itself".

At the 875th meeting on 18 July 1960, the representative of Italy asserted that the Charter of the United Nations specified recourse to regional organizations. Therefore, in suspending consideration of the question, the Council would in no way shun its responsibilities, but would reserve a final pronouncement, if need be, until such time as the measures for a solution through regional arrangements would have been explored, in accordance with Article 33 of the Charter.

The representative of France maintained that under Article 33 it was mandatory for the parties to a dispute first of all to seek a solution by resort, inter alia, to regional agencies or arrangements. Since discussions were in progress in the Organization of American States, the Council should not make an exhaustive examination of the various aspects of the situation.

The representative of Ceylon, after noting that Article 33, paragraph 1 of the Charter referred to the pacific settlement of disputes, asked: "... is it clear that such attempts as were made in this sense have in this case failed?" He suggested that the strained relationship between the two countries concerned might have precluded the use of any or all of the means mentioned in Article 33. Since, however, as the draft resolution noted, the matter was under the consideration of the Organization of American States, and its purpose was to employ the peaceful method of negotiation, it was not wrong for the Council in those circumstances "to utilize that organization for the free and full negotiations that are necessary to dispel misunderstanding and create mutual confidence between the parties".

The representative of Tunisia said that his delegation would have liked to see the misunderstanding between the two countries settled directly by means of bilateral negotiations that would have restored confidence between the two countries; such negotiations did not, however, appear capable of yielding satisfactory results. Consequently, the issue had been referred to the Organization of American States. He further observed that Article 33 of the Charter advanced the principle that the parties to any dispute should first seek a solution by, among other methods, resort to regional agencies or arrangements. Such a provision did not preclude resort to a competent United Nations organ. However, he added, "the general principles of our Charter are essentially based on the search for amicable settlements between the parties by the most direct means. It is in that spirit that Article 33 makes it incumbent upon the parties to a dispute first of all to seek a solution by direct negotiation or resort to regional agencies or arrangements."

The representative of the United Kingdom asserted that the procedures laid down in the charter of the Organization of American States for the peaceful settlement of disputes between its members were fully in harmony with Article 33 of the Charter of the United Nations. He then said that it was highly desirable that a regional organization such as the Organization of American States should be given a chance to settle disputes among its members before resort was had to the Security Council.

At the 876th meeting on 19 July 1960, the representative of the USSR contended that "... the Orga-

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

nization of American States did decide to consider a question, but not the question raised by Cuba", and proposed certain amendments[23] to the joint draft resolution which, inter alia, would delete the final preambular paragraph indicating that the situation was under consideration by that Organization, and replace in the second operative paragraph the words "Organization of American States" by "United Nations".

At the same meeting, the amendments proposed by the USSR were rejected by 2 votes in favour, 8 against, with 1 abstention. The draft resolution submitted by Argentina and Ecuador was adopted by 9 votes to none, with 2 abstentions.[24]

CASE 3.[25] COMPLAINT BY THE USSR (RB-47 INCIDENT): In connexion with a United States draft resolution revised at the suggestion of Ecuador: voted upon and not adopted on 26 July 1960

[*Note:* During the consideration of the question it was maintained that, in view of the fact that there were two conflicting accounts of the same incident, investigation seemed to be the only means of clarifying the situation. The Council was empowered under Article 33 to urge the parties to resort to this peaceful means of settlement.]

At the 881st meeting on 25 July 1960, the representative of the United States asserted that instead of seeking a condemnation of the USSR, which it was fully justified to do, it had decided, in accordance with Article 33 of the Charter "which calls on all of us first of all to seek solutions to dangerous issues through inquiry or other peaceful means, to appeal to the Soviet Government to join with us in an objective examination of the facts of this case". He introduced a draft resolution[26] whereby:

"The Security Council,

"...

"Recalling its resolution of 27 May 1960 [S/4328], in which the Council stated its conviction that every effort should be made to restore and strengthen international good will and confidence based on the established principles of international law, recommended to the Governments concerned to seek solutions of existing international problems by negotiation or other peaceful means as provided in the Charter of the United Nations ...

"Recommends to the Governments of the Union of Soviet Socialist Republics and the United States of America to undertake to resolve their differences arising out of the incident of 1 July 1960 either (a) through investigation of the facts by a commission composed of members designated in equal numbers, by the United States of America, by the Union of Soviet Socialist Republics, and by a Government or authority acceptable to both parties, charged with inquiring into the incident by inspecting the site, examining such remains of the plane as may be located, and interrogating survivors and other witnesses; or (b) through referral of the matter to the International Court of Justice for impartial adjudication."

The representative of the USSR stated that his delegation opposed the holding of any investigation whatever, and the establishment of any commission. In his view, the proposal for the establishment of a commission to conduct some sort of investigation could have only one object: to confuse an entirely clear issue, and thus to allow the organizers of the provocative flights to escape responsibility.

The representative of the United Kingdom drew attention to the proposals made by the United States under which both the USSR and the United States Governments were asked to agree peacefully to resolve their differences arising out of the aircraft incident on the basis of an impartial investigation into the facts. Such a procedure was consistent with the peaceful methods of discussion and conciliation.

The representative of France contended that the question did not at that stage fall within the competence of the Security Council, but should have been settled, as was customary in such cases, by negotiation between the two parties. He pointed to the provisions of Article 33 (1), observing that none of the means outlined therein had been employed by the Soviet Government. After ten days of silence, the USSR Government had "brought these charges against the Government of the United States and without making any attempt at negotiation, enquiry, conciliation, arbitration or judicial settlement, appealed to the Security Council". The first step should be to ascertain the facts by conducting an investigation by agreement between the parties and by interrogating the two survivors in completely acceptable conditions.

At the 882nd meeting on 26 July 1960, the representative of Argentina observed that the United States proposal merely suggested that the Council urge the parties to settle their disputes by means of an international inquiry, and that this power was specifically attributed to the Security Council in Article 33 (2) and had been confirmed by the established practice of the United Nations.

The representative of Italy, after recalling the resolution adopted by the Council on 27 May 1960[27] which recommended that the Governments concerned seek solutions of existing international problems by negotiation or other peaceful means, asserted that the USSR Goverment was not behaving in conformity with the spirit and the exhortation embodied in that resolution.

At the 883rd meeting on 26 July 1960, the representative of Tunisia stated that when the Security Council discussed the question of the U-2 incident the agreement of the two parties on the facts en-

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23/ S/4394, 876th meeting: paras. 106-107.

24/ 876th meeting: paras. 127-128.

25/ For texts of relevant statements, see:
881st meeting: France, paras. 83, 84, 92; USSR, para. 40; United Kingdom, paras. 70, 72; United States, paras. 26-30;
882nd meeting: Argentina, para. 11; Italy, paras. 20-23;
883rd meeting: Ceylon, para. 71; Tunisia, paras. 49, 50.

26/ S/4409, later revised, S/4409/Rev.1, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 35-36, 881st meeting: para. 29.

27/ S/4328, O.R., 15th year, Suppl. for Apr.-June 1960, pp. 22-23. See also Case 1.

abled four of its members to submit a draft resolution adopted on 27 May 1960 recommending the Governments concerned to seek solutions to existing international problems by negotiation or other peaceful means as provided for in the Charter. In his view, "this recommendation and appeal are now as urgent as ever".

The representative of Ceylon maintained that the general principles which underlay the United States draft resolution appeared to be in the spirit of Article 33 (1), which provided for attempts at peaceful solutions by negotiation, investigation, enquiry or any other peaceful means. It was imperative that solutions to existing international problems be sought by negotiation or other peaceful means as provided for in the Charter.

At the same meeting, the United States draft resolution, as amended, failed of adoption. There were 9 votes in favour and 2 against (one of the negative votes being that of a permanent member).[28]

CASE 4.[29] COMPLAINT BY CUBA (LETTER OF 31 DECEMBER 1960): In connexion with the draft resolution submitted by Chile and Ecuador: the sponsors did not press for a vote on the draft resolution.

[*Note:* In response to an allegation that an invasion against Cuba was imminent, it was maintained that since there were no specific facts to account for any fear of an immediate threat to peace, the role of the Council should be one of arbitration. The peaceful means provided for in the Charter did not exclude those which fell within the province of a regional agency.]

At the 922nd meeting on 4 January 1961, Chile and Ecuador submitted a draft resolution[30] which provided, inter alia:

"The Security Council,

"...

"Considering that it is the duty of Member States to resolve their international disputes by the peaceful means provided for in the United Nations Charter,

"1. Recommends to the Governments of the Republic of Cuba and of the United States of America that they make every effort to resolve their differences by the peaceful means provided for in the United Nations Charter;

"..."

The representative of Ecuador maintained that since there were no serious, specific facts to account for any fear of an immediate threat to peace, "we believe that our role should be one of friendly arbitration. We must continue in our efforts to find a peaceful solution. ..." He stated further that the Security Council was fully competent to deal with the matter and to seek a solution in accordance with the provisions of the Charter. He did not wish to single out any particular method provided for in Article 33, but would prefer to leave a wide area within which the two parties might seek a solution through international organizations.

At the 923rd meeting on 5 January 1961, the representative of the United Kingdom observed that when the Government of Cuba resorted to the Council for the first time, the Council felt that there might be something to investigate and that the appropriate forum for such an investigation was the Organization of American States. The Government of Cuba, however, had chosen not to avail itself of the machinery provided by that organization and appeared to have rejected in advance any resolution providing for a direct negotiation of its differences with the Government of the United States. In the light of this it appeared that Cuba had not wished to seek the help of the Council in measures of conciliation, but to seek an endorsement for a charge of aggression or the intention to commit aggression.

The representative of Chile asserted that the draft resolution contained nothing more than an appeal to the two Governments to seek a solution for their differences by all the peaceful means provided for in the Charter and in the American regional system.

Speaking as the representative of the United Arab Republic, the President expressed the view that the draft resolution merely reaffirmed the principles of the Charter by stressing the fact that States should settle their international disputes by peaceful means. The sponsors had not specified the means, but left their selection to the two countries concerned. He suggested that there might be contacts, either directly between the two States, or through friendly countries chosen by the two States in agreement.

The representative of Ecuador observed that the peaceful means provided for in the Charter did not exclude those which fell within the province of the Organization of American States. He added that one of the means prescribed in Article 33 of the Charter was that of conciliation, which was suggested by that organization when it established the ad hoc Committee of Good Offices.

The representative of the USSR, commenting on the rupture by the United States of diplomatic relations with Cuba, stated that such a course of action did not signify a desire for the peaceful settlement of an issue. He then noted that a draft resolution designed precisely with a view to the peaceful settlement of controversial issues in accordance with the Charter had been submitted, but that the United States and its allies had not found that proposal acceptable. He expressed the hope, however, that the Government of the United States would adopt the policy of settling the dispute by peaceful means.

The sponsors of the draft resolution did not press for a vote.[31]

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[28] 883rd meeting: para. 188.

[29] For texts of relevant statements, see:
922nd meeting: Ecuador, paras. 53, 55;
923rd meeting: President (United Arab Republic), paras. 89-91; Chile, para. 57; Ecuador, paras. 108-109; USSR, paras. 157, 158, 162, 166; United Kingdom, paras. 40-41.

[30] S/4612, O.R., 16th year, Suppl. for Jan.-March 1961, p. 16.

[31] 923rd meeting: Ecuador, para. 111.

CASE 5.[32] COMPLAINT BY PORTUGAL (GOA): In connexion with the joint draft resolution submitted by France, Turkey, the United Kingdom and the United States: voted upon and failed of adoption on 18 December 1961; and with the joint draft resolution submitted by Ceylon, Liberia and the United Arab Republic: voted upon and rejected on 18 December 1961

[*Note:* During discussion on the four-Power draft resolution calling for an immediate cessation of hostilities, for the withdrawal of the Indian forces, and urging the parties to work for solution of their differences by peaceful means in accordance with the principles of the Charter, it was maintained that the parties were bound, under the Charter, to settle their dispute by peaceful means. In connexion with the three-Power draft resolution, which called upon Portugal to co-operate with India in the liquidation of her colonial possessions in India, it was contended that Portugal's intransigent position was not consistent with Article 33, and that the only solution of the dispute was the liquidation of the Portuguese colonial possessions in India.]

At the 987th meeting on 18 December 1961, the representative of Portugal* stated that by committing aggression against Portugal in Goa, India had violated Article 2 (3) and 2 (4) of the Charter. He pointed out that the Prime Minister of Portugal had announced Portugal's readiness to negotiate on problems that might exist between Portugal and India.

The representative of India* stated that after the establishment of diplomatic relations with Portugal in 1949, the Indian Government had approached the Portuguese Government with a request to negotiate concerning the transfer of the Portuguese possessions in India. The answer was a negative one and had remained so. The point was that a colonial territory, which was a part of India, must be returned to India. The question was not one of negotiating any agreement for co-existence.

The representative of the United States said that, according to the Charter, States were obligated to renounce the use of force, to seek a solution of their differences by peaceful means and to utilize the procedures of the United Nations when other peaceful means had failed. The Council had an urgent duty to bring this dispute to the negotiating table, and must insist that the parties negotiate on the basis of the principles of the Charter.

The representative of the United Kingdom observed that his Government thought that the right course would have been for the dispute to be brought before the United Nations by one or both of the parties before either of them decided to resort to the use of force. The Security Council should call at once for the cessation of hostilities and for negotiations. After the withdrawal by India of its forces, the Governments of India and Portugal should be encouraged to use peaceful means to work out a peaceful solution of their differences in accordance with the Charter.

The representative of the USSR expressed the view that no attempt should be made by means of negotiations and compromises to delay the process of liberation from colonialism.

The representative of Ceylon stated that the build-up of Portuguese forces had been inconsistent with the desire to seek a settlement of the issue peacefully. The intransigent statements of the President of Portugal were not consistent with Article 33, which enjoined parties to any dispute to seek a solution by various peaceful means. Ceylon could not call on India to negotiate because India had offered in the past nothing but negotiations.

At the 988th meeting on 18 December 1961, the representative of Chile stated that Article 1 (1), Article 2 (2) and (3), and Chapter VI of the Charter provided that Members of the United Nations should settle all disagreements by peaceful means. It was the duty of the Security Council to call upon the parties to settle their disputes by enquiry, mediation, conciliation, arbitration or other peaceful means of their choice. In accordance with Article 35, any Member of the United Nations might bring any dispute or any situation of the nature referred to in Article 34 to the attention of the Security Council or the General Assembly. In the case before the Council, neither India nor Portugal had taken the dispute to the Council in accordance with Article 35. If they had done so, the Council, in accordance with Article 36, could have recommended more appropriate procedures or methods of adjustment of this dispute, for instance, by referring the parties to the International Court of Justice.

The representative of India* contended that, although India was told that there should be negotiations, no basis was mentioned. If it was the intention of those who suggested that there should be negotiations with the Portuguese adhering to their position and not recognizing resolution 1514 (XV), then no negotiation was possible. The Secretary-General in his communication to both parties had recommended negotiations in accordance with the principles of the Charter and the principles formulated by the United Nations. Those principles were embodied in resolutions 1514 (XV) and 1542 (XV) and other resolutions of the General Assembly on decolonization. The four-Power draft resolution (see below), which urged the parties to work out "a permanent solution of their differences by peaceful means", did not take into account the principles recognized in the numerous resolutions, notably resolution 1514 (XV), and therefore the Indian Government was strongly opposed to it.

The representative of the United States pointed out that General Assembly resolution 1514 (XV) gave no license to violate the Charter's fundamental principles, among them the principle that all Members should settle their international disputes by peaceful means. He introduced a draft resolution[33] submitted

[32] For texts of relevant statements, see:
987th meeting: Ceylon, paras. 139, 147; India*, paras. 41-44; Portugal*, paras. 11, 22; USSR, para. 113; United Kingdom, paras. 85, 87; United States, paras. 76, 80;
988th meeting: Chile, para. 26; India*, paras. 81, 86, 87; USSR, paras. 119, 123, 124; United States, para. 93.

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

jointly with France, Turkey and the United Kingdom, in which it was provided:

"The Security Council,

"Recalling that in Article 2 of the Charter ... all Members are obligated to settle their disputes by peaceful means ... (preamble, para. 1),

"...

"3. Urges the parties to work out a permanent solution of their differences by peaceful means in accordance with the principles embodied in the Charter;

"..."

At the same meeting, the representative of Ceylon introduced a draft resolution[34] submitted jointly with Liberia and the United Arab Republic, according to which:

"The Security Council,

"...

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

The representative of the USSR maintained that the joint draft resolution introduced by the representative of Ceylon established conditions for a cease-fire since if Portugal terminated its hostile action in Goa, and entered into negotiations with India in order to ensure the liquidation of its colonial possessions in India, the matter would end in a peaceful manner. The four-Power draft resolution stated in its first preambular paragraph that all Members were obligated to settle their disputes by peaceful means and referred to other provisions of the Charter. On the basis of these provisions its sponsors should have called upon Portugal to end immediately its colonial domination in Goa. Instead, they accused the Government of India of actions aimed at liberating the people of Goa. This was in complete contradiction with the purposes and principles of the Charter they had advanced as the initial premise for the subsequent operative paragraphs.

At the 988th meeting on 18 December 1961, the joint draft resolution submitted by Ceylon, Liberia and the United Arab Republic was rejected by 4 votes in favour and 7 against.[35]

At the same meeting, the joint draft resolution submitted by France, Turkey, the United Kingdom and the United States failed of adoption. There were 7 votes in favor and 4 against (one of the negative votes being that of a permanent member).[36]

CASE 6.[37] THE INDIA-PAKISTAN QUESTION: In connexion with an Irish draft resolution: voted upon and failed of adoption on 22 June 1962

[*Note:* During the resumed consideration of the question, observations were made concerning the use of the means of settlement enumerated in Article 33. On the one hand, it was contended that the need for the parties to undertake direct negotiations had been recognized, and that they might wish either to negotiate between themselves or with the assistance of a third party. In this connexion, the good offices of the Secretary-General were suggested. A draft resolution was submitted under which the Council would urge both parties to enter into negotiations, and would request the Acting Secretary-General to provide such services as might be requested by the parties to carry out the aims of the resolution. On the other hand, it was maintained that while one of the parties accepted the principle of bilateral negotiations, it did not accept the intervention of a third party, and that such negotiations had to take place on a basis of equality without any attempt to force upon either of the parties conditions known in advance to be unacceptable. It was also argued that the question before the Council was not a dispute but a situation created by the aggression of one of the parties and that therefore Article 33 was inapplicable.]

References to bilateral efforts at the highest level for "direct negotiations" were made by the representative of Pakistan* in his letter of submission[38] dated 11 January 1962, and by the representative of India* in his reply[39] dated 16 January 1962.

At the 990th meeting on 1 February 1962, the representative of Pakistan* described the negotiations which had been conducted between the heads of both Governments and stated that the position of his Government was as follows:

"... let us agree upon a procedure for the settlement of our disputes through negotiations, through mediation, through any channel that may be acceptable to both sides, but finally provide that if any of these methods does not bring us to a settlement of the disputes, then we shall have recourse to some procedure which would automatically bring a settlement like international arbitration or judicial settlement."

At the same meeting, the representative of India*, after reading out a quotation from a resolution adopted by the Indian National Congress supporting the Government's efforts to seek a solution by peaceful means, stated that it was a continuing policy of India to settle its disputes with Pakistan by negotiation and through peaceful means. He emphasized that there was no desire in India to settle its differences with Pakistan by any but peaceful means and by negotiations.

At the 1008th meeting on 2 May 1962, the representative of Pakistan suggested that the President

34/ S/5032, 988th meeting: para. 98.

35/ 988th meeting: para. 128.

36/ 988th meeting: para. 129.

37/ For texts of relevant statements, see:
990th meeting: India*, paras. 93, 109-110; Pakistan*, para. 48;
1007th meeting: Pakistan*, paras. 90-91;
1008th meeting: Pakistan*, paras. 160, 165-167;
1011th meeting: India*, paras. 182, 185; United Kingdom, para. 193;
1012th meeting: President (France), paras. 49-50; China, para. 26; United Kingdom, paras. 35-38;
1013th meeting: Ghana, para. 19;
1014th meeting: Chile, para. 30; Venezuela, para. 21;
1015th meeting: USSR, para. 22; United States, para. 7;
1016th meeting: India*, paras. 18, 19, 22, 34-41; Ireland, paras. 3-10; USSR, paras. 82-85.

38/ S/5058, O.R., 17th year, Suppl. for Jan.-March 1962, pp. 46-47.

39/ S/5060, ibid., pp. 48-49.

of the Security Council, the United Nations Representative for India and Pakistan or "any recognized international figure of undoubted integrity" acceptable to both parties should be asked to mediate with a view to bridging the differences between the parties.

At the 1011th meeting on 4 May 1962, the representative of India rejected the suggestion to resort to "mediation or arbitration", and stated the position that his Government would not agree "to arbitration or mediation on the question of the sovereignty of our territory". He further stated that his Government had no objection to undertaking direct negotiations with Pakistan, but it would not agree with the Security Council ordering, instructing or making suggestions to India with regard to the matter before the Council.

At the 1012th meeting on 15 June 1962, the representative of the United Kingdom stated that the absence of any progress over the past four years had led to the view that no fruitful negotiations could take place without "some form of friendly outside intervention". The Council, in preparing the ground for negotiation, should consider whether there was some procedure it could recommend in order to bring about a negotiation in the most hopeful circumstances. In this connexion he suggested "the good offices of some third party acceptable to both" India and Pakistan.

At the same meeting, the representative of China expressed the belief that the Council should urge the two parties to enter into new negotiations, either by themselves or with the assistance of a third party. In the past, he observed, "the good offices of the Secretary-General have frequently proved helpful in handling delicate and complicated situations".

Speaking as the representative of France, the President referred to the provisions of Article 33 and stated:

> "All that the Security Council can do, under the terms of this Article, is to 'call upon the parties to settle their dispute by such means'.
>
> "... I shall express no opinion on the forms and conditions of the negotiations envisaged, because it is the parties concerned which should determine them."

At the 1013th meeting on 19 June 1962, the representative of Ghana observed:

> "... that the effectiveness of a third party, whether proffering the umbrella of auspices, good offices or mediation, depends on the willingness of the two sides to use his services, and that no such approach is valid in itself unless the parties accept it. However, were the two parties, animated by the spirit of Article 33 of the Charter, to agree to avail themselves of the good offices of an acceptable individual of high standing and impartiality ... a good beginning would be made on the road to progress."

At the 1015th meeting on 21 June 1962, the representative of the United States remarked that while all members of the Council had recognized the need for the parties to resume negotiations, there was, however, some disparity of view "with regard to the introduction of a third party".

At the same meeting, the representative of the USSR stressed the need for securing acceptance by both parties of any mediation in the "so-called negotiations" between India and Pakistan:

> "According to the Charter, negotiations between countries are a normal and natural means of arriving at the peaceful settlement of any dispute ... However, negotiations can be useful only when both sides are interested in fruitful negotiations. If one side wants to force the other to negotiate on terms which the other side finds unacceptable, deliberately laying down unacceptable conditions, such negotiations will achieve nothing, no matter how often reference is made to the provisions of the Charter, because what is needed in negotiations is goodwill and agreement between the parties ..."

At the 1016th meeting on 22 June 1962, the representative of Ireland introduced a draft resolution, [40] the operative part of which provided:

> "The Security Council,
>
> "...
>
> "1. Reminds both parties of the principles contained in its resolution of 17 January 1948, and in the resolutions of the United Nations Commission for India and Pakistan dated 13 August 1948 and 5 January 1949;
>
> "2. Urges the Governments of India and Pakistan to enter into negotiations on the question at the earliest convenient time with the view to its ultimate settlement in accordance with Article 33 and other relevant provisions of the Charter of the United Nations;
>
> "3. Appeals to the two Governments to take all possible measures to ensure the creation and maintenance of an atmosphere favourable to the promotion of negotiations;
>
> "4. Urges the Government of India and the Goverment of Pakistan to refrain from making any statements, or taking any action, which may aggravate the situation;
>
> "5. Requests the Secretary-General to provide the two Governments with such services as they may request for the purpose of carrying out the terms of this resolution."

In commenting on the draft resolution, the representative of India objected to the adoption by the Council of any resolution because it "would not be of any value unless it was a resolution calling upon Pakistan to vacate its aggression". This, in his view, the Council was not ready to do at that time. India took exception to its being treated on the same basis with Pakistan in regard to the question of the complaint of aggression brought by India before the Council. In regard to that question, he asserted Pakistan was the aggressor and India was the aggressed. He further stated:

> "It is ... our submission ... that the ... Indo-Pakistan question is not a dispute in terms of the Charter. It is a situation created by Pakistan's aggression on our territory ... and therefore Article 33 is inapplicable ..."

[40] S/5134, O.R., 17th year, Suppl. for April-June 1962, p. 104.

After remarking that there had been negotiations, direct and indirect, "times without number", he continued:

"... when we come to arbitration, international law ... lays down certain principles that are basic to arbitration. There are some things that are arbitrable, others that are not arbitrable ... The sovereignty of a country, its independence and integrity, are not subjects for arbitration."

The representative of the USSR stated:

"It is perfectly obvious from the context of the draft resolution that the negotiations between the Governments of India and Pakistan, the renewal of which is urged in the draft, are to take place on the basis of the principles set forth in the now outdated resolutions of the Security Council and the United Nations Commission on Kashmir. That ... is the real purpose of 'recalling' the principles contained in those resolutions."

He maintained that despite the references to Article 33 which no one had contested and to other provisions of the Charter, the draft resolution constituted an attempt to impose on India negotiations which would be conducted on a basis advantageous to one side only and unacceptable to the other side. Noting that operative paragraph 5 implied the idea of mediation by a third party, he recalled India's position that "interference by third parties in the negotiations between India and Pakistan would be unacceptable". At the same time he reminded the Council that India had never in principle rejected the idea of bilateral negotiations between itself and Pakistan. However, such negotiations would have to be conducted on an equal footing and without attempts to impose an unacceptable basis for such negotiations.

At the same meeting, the Irish draft resolution failed of adoption. There were 7 votes in favour and 2 against, with 2 abstentions (one of the negative votes being that of a permanent member).[41]

CASE 7.[42] COMPLAINTS BY REPRESENTATIVES OF CUBA, USSR AND UNITED STATES (22-23 OCTOBER 1962): In connexion with the draft resolution submitted by the United States and the draft resolution submitted by the USSR; in connexion also with the draft resolution submitted by Ghana and the UAR: decision on 25 October 1962 to adjourn the meeting

[*Note:* In the course of the discussion, the danger to world peace inherent in the situation in the Caribbean was emphasized and the need for negotiations was urged in the draft resolutions introduced by two of the parties directly concerned. In addition, a draft resolution was introduced requesting the Acting Secretary-General to confer with the parties on immediate steps to normalize the situation. The Acting Secretary-General proposed to make himself available if such a procedure would facilitate negotiations. The parties concerned as well as other members of the Council reacted favourably to the Acting Secretary-General's offer to facilitate the negotiations. The Council decided to adjourn without voting on the draft resolution.]

At the 1022nd meeting on 23 October 1962, the representative of the United States submitted a draft resolution[43] which included the following provision:

"The Security Council,

"...

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

At the same meeting, the President, speaking as the representative of the USSR, introduced a draft resolution[44] under which it would be provided:

"The Security Council,

"...

"4. Calls upon the United States of America, the Republic of Cuba and the Union of Soviet Socialist Republics to establish contact and enter into negotiations for the purpose of restoring the situation to normal and thus of removing the threat of an outbreak of war."

At the 1023rd meeting on 24 October 1962, the representative of Ireland, in examining the statements of the representatives of the United States and the USSR, noted that: "In both cases the contacts and negotiations were suggested as the final step in a wider scheme of proposals upon which agreement may take time to achieve." However, in his view, the present danger to peace would allow no delay and could be dispelled only by agreement, and agreement could not be achieved without discussions and negotiations.

At the 1024th meeting on the same day, the representative of Chile observed that: "Discussion between both Powers is essential to the maintenance of peace", and added that there was a coincidence in the final paragraphs of the two draft resolutions which were similar in that they both recognized the need for negotiations between both Powers. In the event of an impasse, he suggested that "... the Secretary-General should take some initiative ... he might propose some immediately effective measure".

The representative of the United Arab Republic stated that every endeavour should be made to bring all parties together to negotiate with a view to reaching a peaceful settlement in accordance with the principles of the Charter. He further stated that the parties concerned should avail themselves of whatever assistance the Acting Secretary-General and his office may be able to render in reaching a peaceful and immediate solution.

41/ 1016th meeting: para. 92.

42/ For texts of relevant statements, see:
1023rd meeting: Ireland, paras. 95-96.
1024th meeting: Chile, paras. 55-57; France, para. 11; Ghana, paras. 112-114; United Arab Republic, paras. 80-82; Acting Secretary-General, paras. 118-122, 126.
1025th meeting: President (USSR), para. 44; Ghana, paras. 93-94; United States, para. 23; United Arab Republic, paras. 70-73.

43/ S/5182, 1022nd meeting: para. 80.

44/ S/5187, 1022nd meeting: para. 180.

At the same meeting, the representative of Ghana introducing a draft resolution submitted jointly with the United Arab Republic[45] maintained that what was urgently needed was negotiation between the parties concerned to resolve the current crisis on the basis of mutual respect for each other's sovereign rights. His delegation, he added, would urge the Council to authorize the Acting Secretary-General to confer with the parties immediately with a view to facilitating such negotiations. The draft resolution provided in part:

"The Security Council,

"...

"1. Requests the Secretary-General promptly to confer with the parties directly concerned on the immediate steps to be taken to remove the existing threat to world peace, and to normalize the situation in the Caribbean.

"..."

At the same meeting, the Acting Secretary-General noted that there was some common ground in the draft resolutions before the Council. "Irrespective of the fate of those draft resolutions", he stated, "that common ground remains. It calls for urgent negotiations between the parties directly involved..." Explaining the initiatives he had already taken, the Acting Secretary-General stated that at the request of representatives of a large number of Member States he had sent identically worded messages to the Governments of the United States and the USSR noting that "... time should be given to enable the parties concerned to get together with a view to resolving the present crisis peacefully and normalizing the situation in the Caribbean", and recommending "... the voluntary suspension of all arms shipments to Cuba, and also the voluntary suspension of the quarantine measures involving the searching of ships bound for Cuba" for a period of two to three weeks. He then assured the Governments "... I shall gladly make myself available to all parties for whatever services I may be able to perform". The Acting Secretary-General emphasized that he believed that it would greatly contribute to the breaking of the impasse if the construction and development of major military facilities and installations in Cuba could be suspended during the period of negotiations, and appealed to the Government of Cuba for its co-operation. He further appealed to "... the parties concerned to enter into negotiations immediately ... irrespective of any other procedures which may be available or which could be invoked". In conclusion, the Acting Secretary-General asserted that "the path of negotiation and compromise is the only course by which the peace of the world can be secured at this critical moment".[46]

At the 1025th meeting, the representative of the United States read out the reply of the President of the United States to suggestions in the Acting Secretary-General's appeal whereby he expressed a desire to reach a satisfactory and peaceful solution of the situation and stated that the United States representative was ready to enter into preliminary talks to determine whether satisfactory arrangements could be assured.

At the same meeting, the President of the Security Council, speaking as the representative of the USSR, read out a reply of the Chairman of the Council of Ministers of the USSR to the Acting Secretary-General's letter which concluded:

"I inform you that I am in agreement with your proposal, which is in accordance with the interests of peace."

Commenting on the favourable responses from the two Governments, the representative of the United Arab Republic urged the members of the Council to start preparing the way so that negotiations might begin without further delay.

The representative of Ghana remarked that his understanding of the response from the parties concerned was "that while refraining from any action which might aggravate the situation, the parties concerned ... will avail themselves of the Acting Secretary-General's offer of assistance to facilitate the negotiations on the immediate steps to be taken to remove the existing threat to world peace and to normalize the situation in the Caribbean".

The Council decided to adjourn without voting on the draft resolutions.[47]

CASE 8.[48] COMPLAINT BY SENEGAL: In connexion with the letter of 10 April 1963 (S/5279)

Note: In the consideration of the complaint by Senega., observations were made concerning the principle that the parties directly involved should attempt, in the various ways open to them under Article 33, to settle their differences peacefully among themselves. Direct negotiations and the procedure of inquiry were especially suggested.]

At the 1027th meeting on 17 April 1963, when the Security Council began its consideration of the letter[49] dated 10 April 1963 from the representative of Senegal concerning "repeated violations of Senegalese airspace and territory", the representative of Portugal* observed that on the assumption that the Government of Senegal desired nothing but a pacific settlement of its dispute with Portugal, instead of resorting with "undue haste" to the Council, it should have first of all sought direct negotiations or resorted to a friendly Government to serve as a mediator in order to take "the first and mandatory step towards arriving at a pacific settlement", in the terms of Article 33 of the Charter. It was only after all, or at least some, of the steps enumerated in Article 33 had been attempted and proved to have failed that an approach could legitimately be made to the Security Council.

45/ S/5190, 1024th meeting, para. 113.

46/ See also chapter I, Case 58.

47/ 1025th meeting: para. 101.

48/ For texts of relevant statements, see:
1027th meeting: Portugal*, paras. 66-73;
1028th meeting: Ghana, paras. 83, 101; Senegal*, paras. 36, 39-40; USSR, paras. 121-123;
1030th meeting: Portugal, para. 56;
1031st meeting: Senegal, para. 14;
1032nd meeting: France, para. 43, Ghana, para. 29;
1033rd meeting: President (China), paras. 77-79; Brazil, paras. 64-65, 67; Portugal, para. 118; Senegal, paras. 138-140; United Kingdom, paras. 26, 31; United States, para. 18.

49/ S/5279, O.R., 18th year, Suppl. for April-June 1963, pp. 16-17.

At the 1028th meeting on 18 April 1963, the representative of Senegal* stated that, contrary to the view of the representative of Portugal that his Government had not resorted to the conciliatory means provided for in Article 33, after the occurrence of similar incidents, in 1961 and at the beginning of 1962, on the advice of the Security Council, the Government of Senegal had tried to settle its differences with Portugal by negotiation. However, the Government of Portugal had denied everything and rejected all complaints, without examination. By refusing all dialogues with the African States, Portugal had made any negotiations or resort to mediators impossible, and Senegal had been left, therefore, with no alternative but to turn to the Security Council which had already received previous complaints.

At the same meeting, the representative of Ghana, after recalling that the Government of Senegal had tried unsuccessfully to settle bilaterally with Portugal the problems confronting both countries, stated that there was no question of negotiating with Portugal because the violation of Senegalese territory stemmed from the existence of the Portuguese territory of "so-called" Portuguese Guinea. Moreover, because the provocative actions of Portugal involved other African States which could not all resort to Article 33 of the Charter and negotiate with Portugal, the only recourse left to the African States was to appeal to the Security Council as the Government of Senegal had done. He then suggested that, owing to the denial by Portugal of the charges by Senegal and the degree of tension that was growing in the border areas with Senegal, an on-the-spot investigation would be helpful in order to determine the facts and to ease tension in that region. A small Security Council commission should be appointed to visit the area and report back to the Council, with recommendations to avoid a recurrence of similar incidents, whether in Portuguese Guinea or elsewhere.

At the 1030th meeting on 19 April 1963, the representative of Portugal, after referring to the "conflict between the Senegalese and Portuguese versions of the facts alleged to have occurred", suggested "that a small commission should be appointed by the mutual consent of Senegal and Portugal in order to carry out an investigation in loco of the subject matter of the complaint" submitted by Senegal. The Commission, he further suggested, "should be made up of an equal number of competent technicians to be named by each party and presided over by a neutral acceptable to both sides".

At the 1031st meeting on 22 April 1963, the representative of Senegal stated that the Portuguese suggestion to establish a small commission of investigation was only "a delaying tactic" designed "to prevent the Security Council from taking a just and efficient decision...".

At the 1032nd meeting on 23 April 1963, the representative of Ghana, in referring to a draft resolution[50] on the substance of the question which he had jointly submitted with the representative of Morocco, underlined an operative paragraph therein under which the Council would request the Secretary-General to keep the development of the situation under review. He stated:

> "We have heard the suggestion ... that possibly a commission of an international nature could have been sent. But in view of the fact that the Portuguese Government came forward offering a bilateral approach to this problem, we felt that we, who had advanced the idea of an international commission, should abandon that idea and allow the Secretary-General to keep this matter under review."

At the same meeting, the representative of France emphasized that in matters such as the one being considered by the Council, the greatest use should be made of the procedures outlined in Article 33 of the Charter. However, the proposal made by the representative of Portugal presupposed necessarily the consent of the other party, and since the current trend of relations between the two Governments had made such an arrangement impossible, the French delegation would support the draft resolution before the Council.

At the 1033rd meeting on 24 April 1963, the representative of the United States also emphasized that in circumstances such as those with which the Council had been confronted, the provisions of Article 33 should have been resorted to in the first instance.

The representative of the United Kingdom stated:

> "We believe that the Charter rightly lays emphasis on the principle that the parties to a dispute should attempt, in the wide variety of ways open to them and listed in Article 33, to settle their differences peacefully among themselves ... Furthermore, Article 33 stresses that the direct approach is only a first step. If it fails and no satisfaction is obtained, recourse can always be had thereafter to the Security Council or to some other appropriate organ of the United Nations.
>
> "...
>
> "Before concluding, it would be right to make some comment on the offer of the Portuguese Government to participate in a joint commission of inquiry with the Senegalese Government in order to establish the facts. ... The setting up of a commission of inquiry often provides a good way of proceeding, and the proposal deserved careful consideration."

The representative of Brazil observed that it was quite proper for the Council to recommend that the parties resort to the other means of peaceful settlement set forth in Article 33. In the question before it, the Council should act in accordance with Chapter VI of the Charter, which aimed at the pacific settlement of disputes. The draft resolution was, in his view, imbued with the spirit of Chapter VI and envisaged a peaceful settlement of the existing differences.

The representative of Portugal, recalling his suggestion that a commission of investigation be appointed, objected to the draft resolution on the grounds that it "prejudges the main issue before the Council". In the process, he remarked, "express provisions laid down in the Charter for the settlement of disputes have been disregarded".

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[50] S/5292; 1032nd meeting: para. 28.

Part II

CONSIDERATION OF THE PROVISIONS OF ARTICLE 34 OF THE CHARTER

NOTE

The three case histories entered in part II of this chapter are those in which issues have arisen relating to Article 34 of the Charter.[51] In the first instance,[52] objections to the competence of the Council were raised on the grounds that under Article 34, which had been invoked, the Council might only take action in order to investigate whether the continuance of the dispute was likely to endanger the maintenance of international peace and security. In the second instance,[53] in which the initial communication invoked Articles 34 and 35 (1), the question of the relationship between Articles 34 and 52 was discussed, and it was contended that the right of appeal to the Council was optional. In the resolution which was adopted, invoking Articles 34 and 52 among others, the Council noted that the question was being discussed by a regional agency, and adjourned its consideration pending the receipt of a report from that agency. In the third instance, reference to Article 34 was not made in the letter of submission but in a statement of the representative who had submitted the question for the consideration of the Council. During the discussions, objections were raised to the applicability of Article 34. The draft resolution before the Council was not adopted.[54]

On one occasion during the period under review, observations were made concerning the distinction between investigation under Chapter VI of the Charter and the establishment of a subsidiary organ for the purpose of obtaining information; the distinction was deemed interrelated with the problem of the procedural or non-procedural character of the decision involved.[55]

CASE 9.[56] COMPLAINT BY ARGENTINA (EICHMANN CASE): In connexion with the draft resolution voted upon and adopted on 23 June 1960

[*Note:* In submitting its complaint against Israel, Argentina had invoked Articles 34 and 35 (1) of the Charter. Argentina asserted that the issue centred on the deliberate violation of the sovereignty of a State, which was contrary to the Charter, and therefore within the competence of the Council since the differences which would arise could lead to a situation likely to endanger international peace and security. On the other hand, Israel raised objections to the competence of the Council on the ground that under Article 34 the only legitimate purpose of investigation by the Council was to determine whether the dispute or situation was likely to endanger the maintenance of international peace and security. The Council adopted a resolution indicating its concern that the repetition of acts such as those under consideration, which involved the sovereign rights of a Member State, would endanger international peace and security.]

At the 865th meeting on 22 June 1960, the representative of Argentina stated that his Government had based its case on Article 33 and the subsequent Articles of the Charter, because of the danger which Israel's act might involve for the maintenance of international peace and security. The Argentine Government had constantly been mindful of its obligation under Article 33 of the Charter to seek a solution through direct negotiation before appealing to the United Nations. However, its hopes that immediate recognition of its manifest right would put an end to the incident and would permit the resumption of the friendly relations between the two countries had not been fulfilled.

Rejecting the interpretation that in speaking of a dispute or a situation likely to endanger the maintenance of international peace and security, the drafters of the Charter had in mind only the imminent danger of generalized military conflict, the representative of Argentina maintained that international peace and security were in danger if the possibility existed that a situation of hostility might arise between two States, such as seriously to affect the relations between them. Had Argentina not brought the matter before the United Nations the failure by Israel to give satisfaction to its claim would have resulted in a state of affairs that would have made the dispute substantially more serious. He then noted that the main threat to international peace and security did not arise from the fact of the violation of Argentine sovereignty and its unfortunate repercussions on Argentine-Israel relations. "It results from the supreme importance of the principle impaired by that violation: the unqualified respect which States owe to each other and which precludes the exercise of jurisdictional acts in the territory of other States." There could be no doubt of the Council's competence if the violation was in conflict with a fundamental principle of peaceful relations among States. The case was especially serious because of the precedent it implied.[57]

The draft resolution[58] submitted by Argentina included the following paragraphs:

"The Security Council,

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[51] During the consideration at the 991st meeting on 27 February 1962 of the inclusion in the agenda of the complaint by Cuba (letter of 22 February 1962, S/5080, O.R., 17th year, Suppl. for Jan.-March 1962, p. 82), references were made to the provisions of Articles 34 and 35 (1). For these statements, see chapter II, Case 7. Article 34 was also invoked in the letters of submission of other questions (see below, in introductory note to part III of this chapter), as well as during the consideration of several other questions (see chapter VIII, part II), but no constitutional issues were raised.

[52] Case 9.

[53] Case 10.

[54] Case 11.

[55] See chapter V, Case 9.

[56] For texts of relevant statements, see:
865th meeting: Argentina, paras. 5, 12, 13, 30-34;
866th meeting: Israel*, paras. 12-14; United Kingdom, paras. 86-89, 91, 92, 94;
867th meeting: France, para. 63;
868th meeting: Argentina, para. 45; USSR, para. 64.

[57] See also Case 12.

[58] S/4345, 865th meeting: para. 47.

"...

"Noting that the repetition of acts such as that giving rise to this situation would involve a breach of the principles upon which international order is founded, creating an atmosphere of insecurity and distrust incompatible with the preservation of peace,

"...

"1. Declares that acts such as that under consideration, which affect the sovereignty of a Member State and therefore cause international friction, may, if repeated, endanger international peace and security;

"..."

At the 866th meeting, the representative of Israel* questioned the competence of the Security Council, pointing to certain limitations under Article 34 of the Charter, the Article invoked by the Government of Argentina in its request to the Council. She noted that the "only legitimate purpose" of investigation contemplated in that Article was to determine whether the continuance of a dispute or situation was likely to endanger the maintenance of international peace and security. This meant that the Council could only take action in accordance with that Article. "My Government is bound, therefore, to regard as ultra vires any resolution which may not be in conformity therewith."

The representative of the United Kingdom stated that in the case before the Council there was no major conflict of principle between two Member States, since the two principles involved in the Eichmann case—respect for sovereign rights, and the principle that war criminals should be brought to trial—were accepted by both Argentina and Israel. The difference between these States arose out of the difficulty of reconciling these principles in the particular case before the Council. There had been hopes that direct discussion, in accordance with Article 33 of the Charter, would have made unnecessary an appeal to the Security Council. He continued:

"Meanwhile, the Security Council has been seized with the question by the Government of Argentina and asked to express an opinion. ... It might, indeed, be useful for the Council to set out, in the form of a resolution, its opinion on the principles involved. This might serve as a guide and framework for the eventual settlement of the difference."

At the 867th meeting, the representative of France maintained that there did not exist at the time a threat to international peace and security which, under the terms of Chapter VI of the Charter, was a necessary condition for the Council's intervention. He further remarked that all the means of peaceful settlement as provided under Article 33 of the Charter had not been exhausted by the parties.

At the 868th meeting, the Argentine draft resolution, as amended, was adopted by 8 votes in favour, to none against, with 2 abstentions;[59] Argentina did not participate in the voting.

[59] 868th meeting: para. 52.

CASE 10.[60] COMPLAINT BY CUBA (LETTER OF 11 JULY 1960): In connexion with the draft resolution submitted by Argentina and Ecuador: voted upon and adopted on 19 July 1960

[*Note:* During the discussion it was contended that membership in a regional organization did not impair the right of States to submit questions to the Security Council even though such questions might be under consideration by the regional organization. It was suggested that the rights envisaged under Article 52 of the Charter were of an optional rather than an exclusive character, and that Member States might exercise whichever of those rights they chose. It was also suggested that to adjourn the meeting without proper consideration of the question could be construed as a refusal of the Council to fulfil its obligations under Article 34 of the Charter.]

At the 874th meeting on 18 July 1960, the representative of Cuba* asserted that "the right of any State which is a Member of the United Nations to have recourse to the Security Council cannot be questioned. The regional agencies do not take precedence over the obligations of the Charter." This was acknowledged in Article 52, which provided for the establishment of regional arrangements and agencies, since paragraph 4 of that Article stated: "This Article in no way impairs the application of Articles 34 and 35."

The representative of the United States contended that since the matter was under consideration by the Organization of American States, the Security Council should take no action on the Cuban complaint until those discussions had been completed. It was not, he added, a question of which was greater or which was less—the Organization of American States or the United Nations—but that it made sense to go to the regional organization first and to the United Nations as a place of last resort.

At the same meeting, the representatives of Argentina and Ecuador submitted a joint draft resolution[61] under which:

"The Security Council,

"...

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

"...

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

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

"2. Invites the members of the Organization of American States to lend their assistance towards

[60] For texts of relevant statements, see:
874th meeting: President (Ecuador), paras. 154-155; Argentina, paras. 135-136; Cuba*, paras. 6-7; United States, paras. 100-102;
875th meeting: Ceylon, paras. 29-32; France, para. 21; Italy, para. 8; Poland, paras. 56-58;
876th meeting: USSR, paras. 85, 86, 88, 94, 95.

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

the achievement of a peaceful solution of the present situation in accordance with the purposes and principles of the Charter of the United Nations;

"..."

The representative or Argentina maintained that by the provision of operative paragraph 1 under which the Council would adjourn consideration of the question, it was

> "not proposed to deny the Council's competence in the matter, or even to settle the legal question of which organization should act first. What is suggested is a noting of the concrete circumstance that the regional organization is dealing with the question, and a recognition that, for a better evaluation of the issues, it is useful to have before us the considerations at which the regional organization may arrive."

He further stated that such a preliminary measure could not prevent the Council from making provisions, which could be described as precautionary, to ensure that the existing situation did not deteriorate before the report of the Organization of American States was transmitted to the Council.

The President, speaking as the representative of Ecuador, contended that while resort to regional arrangements in no way detracted from the powers of the Security Council, it was juridically correct and politically advisable to try to solve through regional bodies those disputes which could be dealt with by regional action.

At the 875th meeting on 18 July 1960, the representative of Italy observed that because the Security Council was the supreme organ working on behalf of the United Nations on problems of war and peace, it should be called upon only when other avenues, as provided by regional arrangements, had been properly explored.

The representative of France noted that the situation was under consideration by the Organization of American States, and suggested that, in view of this fact, the Council should not make an exhaustive examination of the question at that time.

The representative of Ceylon observed that there could be no doubt that Cuba had the right to choose whether it should put the case before the Council or before the regional organization, since the Articles of the Charter amply supported such a contention. The fact that the Council adopted the agenda without objection meant that the jurisdiction of the Council and the right of Cuba were both admitted. Moreover, the proposal put forward in the draft resolution that the Council adjourn must be considered only as an interruption and not as an attempt to deny Cuba its right to have the case heard and decided before the Council.

The representative of Poland stated that according to the draft resolution the Council would decide to adjourn consideration of the question on the ground that it should first be discussed by the Organization of American States. Article 52 provided for the use of regional organizations for dealing with such matters as were appropriate for regional action. He further stated:

> "Paragraph 4 of this Article, however, contains a specific reservation to the effect that this provision in no way impairs the application of Articles 34 and 35. Again, Article 34 states that the Security Council 'may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute'."

Article 34, together with the provisions of Article 52, meant that the Security Council could consider any case, regardless of other existing machinery, organization or body outside the United Nations, leaving the choice of the appropriate machinery to the party directly concerned.

At the 876th meeting on 19 July 1960, the representative of the USSR contended that, although some members had chosen to disregard it, Article 52 expressly stated that the obligation of Members of the Organization to make efforts to achieve a settlement of local disputes within the framework of regional arrangements before referring them to the Security Council in no way impaired the application of Articles 34 and 35 of the Charter. He asserted that Article 35 (1) unequivocally provided that any Member State may bring any dispute or situation of the nature referred to in Article 34 to the attention of the Security Council or General Assembly. "On the strength of that provision of the Charter alone, the Cuban Government is fully entitled to apply to the Security Council for help and to expect such help from the Council", he added. He also maintained that the draft resolution, in proposing that the Council adjourn consideration of the question pending the receipt of a report from the Organization of American States, meant that, without examining the question itself and not wishing to take any action, the Council would refer the question to the Organization of American States. This, in effect, would be a refusal by the Security Council to fulfil its obligation.

At the same meeting, the draft resolution submitted by Argentina and Ecuador was adopted by 9 votes in favour, to none against, with 2 abstentions.[62]

CASE 11.[63] SITUATION IN ANGOLA: In connexion with the draft resolution submitted by Ceylon, Liberia and the United Arab Republic: voted upon and not adopted on 15 March 1961

[*Note:* During the discussion on the inclusion in the agenda it was remarked that, in order to ascertain whether they in fact endangered international peace and security, the events in Angola had to be discussed in the Council. It was later stated that in the context of the provisions of Article 34 it was clear that a situation which could endanger world peace need not necessarily be a dispute between two Member States. Doubts were expressed as to

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[62] 876th meeting: para. 128.

[63] For texts of relevant statements, see:
943rd meeting: USSR, paras. 71-72; United Arab Republic, para. 44;
944th meeting: France, paras. 19-21; Portugal*, paras. 37-39, 43;
946th meeting: Liberia, para. 158; Turkey, paras. 83-84, 87; United Kingdom, paras. 57-58.

whether it was relevant to invoke Article 34 in requesting the Council to deal with the Angola incidents: it was not sufficient to cite Article 34 but it had to be demonstrated that a situation in fact existed which was likely to endanger international peace and security. On the other hand, it was maintained that Articles 33 and 34, which were the only ones under which any action of the Council might be justified under Chapter VI of the Charter, were not applicable, since there was no mention of any dispute between Member States likely to endanger the maintenance of international peace and security, nor did any situation exist which would cause any dispute of that nature.]

At the 943rd meeting on 10 March 1961, the representative of the United Arab Republic, in dealing with the question of inclusion of the item in the agenda, observed that if the Council wanted to ascertain whether the events in Angola endangered peace and security within the meaning of Article 34 of the Charter, then they must be discussed by the Council.

The representative of the USSR remarked that the representative of Liberia had expressly referred at the 934th meeting, on 15 February 1961, to the presence of circumstances in Angola which were likely to endanger the maintenance of international peace and security. A situation had been created in Angola which might at any moment turn explosive and lead to military conflicts, thus endangering world peace.

At the 944th meeting on 10 March 1961, the representative of France inquired whether it was really relevant to invoke Article 34 in asking the Council to deal with the incidents in Angola. To assert that clashes which had taken place between various elements of the population in Angola were of such a nature as to lead to an international dispute would stretch the meaning of Article 34 in a way which had not been intended by its authors.

> "This would involve the danger of attributing to any dispute or incident which occurs in a country ... a meaning and significance which it does not have. Article 34 adds that the purpose of the Council's investigation shall be 'in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security'."

However, the incidents at Luanda had no sequel. The duty of the United Nations and of the Council was to maintain international peace and security. If the Council acted otherwise, the salutary nature of its action might be open to doubt. Therefore, the Security Council must refrain from intervening in matters which were not indisputably within its jurisdiction.

The representative of Portugal* maintained that there was no provision of the Charter which would justify the consideration of the matter by the Security Council, and that the inclusion of the item in the agenda was illegal. He added:

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

He also remarked that the representative of Liberia in his statement before the Council at the 934th meeting had based his request for inclusion of the item in the agenda on the provisions of Article 34 of the Charter. However, in the letter of submission reference to that Article had been omitted. This showed, in his view, that the Liberian delegation "could not in effect find any legal premise which would justify its submission of the matter to the Security Council".

At the 946th meeting on 15 March 1961, the representative of the United Kingdom noted that the representative of Liberia, in asking that the Council should deal with the incidents in Angola, had invoked Article 34 of the Charter. However, his delegation believed that it was not sufficient to invoke that Article. The Council would be competent to deal with the question "only if there were in fact a situation likely to endanger the maintenance of international peace and security". The onus of showing that such a situation in fact existed had to rest on those who alleged it. In the view of his delegation this had not been demonstrated in the Council debate on the question.

The representative of Turkey, referring to the specific question of the applicability of Article 34 of the Charter to the Angola incidents, stated that the Security Council had been entrusted by explicit Articles of the Charter to act as a guardian of international peace and security. As to whether the Security Council, the organ created to intervene in cases of dangers to world peace, should be seized of the incidents in Angola, the representative stated that his delegation could not support the draft resolution before the Council.

Referring to a statement made to the effect that the question before the Council did not involve a dispute between two Member States, the representative of Liberia, after quoting Article 34 "which confers indisputable powers upon the Security Council", stated:

> "I should like to underline the words 'situation which might lead to international friction or give rise to a dispute'. In the context of this legal pronouncement of Article 34, it is clear that a situation which could endanger world peace must not necessarily be a dispute between two Member States."

At the same meeting, the three-Power draft resolution before the Council was not adopted. There were 5 votes in favour, none against, with 6 abstentions.[64]

[64] 946th meeting: para. 165.

Part III

APPLICATION OF THE PROVISIONS OF ARTICLE 35 OF THE CHARTER

NOTE

During the period under review twenty-nine questions[65] relating to the maintenance of international peace and security were brought to the attention of the Security Council. Of these, twenty-six were submitted by Members of the United Nations,[66] one by a non-Member,[67] and two by the Secretary-General.[68] The relevant data regarding submission has been summarized in the appended Tabulation. This note, however, is concerned only with the implementation of Article 35 by Members and States not Members of the United Nations.

The Security Council has continued, at the instance of the parties or other Members of the United Nations, to consider two questions which had been previously included in its agenda, namely, the Palestine question[69] included in 1947 and the India-Pakistan question[70] included in 1948. In the current review period, four of the new questions considered by the Security Council received continuous attention from the Council, namely: the "Situation in the Republic of the Congo",[71] "Complaints by the Government of Cuba",[72] "Question of Race Conflict in South Africa",[73] and the "Situation in Territories in Africa under Portuguese Administration".[74]

Submission by Members of the United Nations

In submitting questions to the Security Council, Members of the United Nations have in most instances done so by means of a communication addressed to the President of the Security Council. In two instances submission was effected as a result of a letter addressed to the Secretary-General. In the first of these, the Government of Laos requested that the Secretary-General take the necessary procedural action in order to effect the dispatch of an emergency force to that country;[75] in the second, the Government of the Congo requested the urgent dispatch by the United Nations of military assistance.[76] The actual submission in both cases was effected by the Secretary-General who asked for an urgent meeting of the Council to hear a report by the Secretary-General on the communications of the two Governments.[77] With the exception of nine instances,[78] all questions were submitted by States directly involved.

In their initial communications, Members usually indicated that they were acting in accordance with Article 35 or that some Charter principle had been violated. In ten instances[79] Article 35 (1) of the

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65/ In two instances, the Council included in its agenda items submitted by different Member States arising from the same state of facts; see Tabulation: Entries 7 and 8, 22, 23 and 24. In another, the question was not included in the agenda; see Tabulation: Entry 11.

66/ See Tabulation: sections B and C.

67/ Tabulation: section D.

68/ Tabulation: section G.

69/ In the period covered by the present Repertoire, the following were considered as sub-items of the "Palestine question" by the Security Council: Letter dated 26 January 1959 from the representative of Israel addressed to the President of the Security Council (S/4151) (845th meeting); Letter dated 1 April 1961 from the Permanent Representative of Jordan addressed to the President of the Security Council (S/4777) (947th meeting); (a) Letter dated 20 March 1962 from the Permanent Representative of the Syrian Arab Republic addressed to the President of the Security Council (S/5096) (999th meeting); (b) Letter dated 21 March 1962 from the Permanent Representative of Israel addressed to the President of the Security Council (S/5098) (999th meeting); (a) Letter dated 20 August 1963 from the acting Permanent Representative of Israel addressed to the President of the Security Council (S/5394) (1057th meeting); (b) Letter dated 21 August 1963 from the acting Permanent Representative of Israel addressed to the President of the Security Council (S/5396) (1057th meeting); (c) Letter dated 21 August 1963 from the Permanent Representative of the Syrian Arab Republic addressed to the President of the Security Council (S/5395) (1057th meeting).

70/ The "India-Pakistan question" was considered under items entitled: (a) Letter dated 11 January 1962 from the Permanent Representative of Pakistan addressed to the President of the Security Council (S/5058) (990th meeting); (b) Letter dated 16 January 1962 from the Permanent Representative of India addressed to the President of the Security Council (S/5060 and Corr.1) (990th meeting); (c) Letter dated 29 January 1962 from the Permanent Representative of Pakistan addressed to the President of the Security Council (S/5068) (990th meeting).

71/ For the questions considered in connexion with the situation in the Republic of the Congo, see Tabulation: Entry 29.

72/ The complaints by the Government of Cuba were considered in items entitled: (a) Letter dated 11 July 1960 from the Minister for Foreign Affairs of Cuba addressed to the President of the Security Council (S/4378) (874th meeting); (b) Letter dated 31 December 1960 from the Minister for External Relations of Cuba to the President of the Security Council (S/4605) (921st meeting); (c) Letter dated 21 November 1961 from the Permanent Representative of Cuba addressed to the President of the Security Council (S/4992) (980th meeting); (d) Letter dated 22 February 1962 from the Permanent Representative of Cuba addressed to the President of the Security Council (S/5080) (991st meeting). This item was not included in the Council's agenda; (e) Letter dated 8 March 1962 from the Permanent Representative of Cuba addressed to the President of the Security Council (S/5086) (992nd meeting); (f) Letter dated 22 October 1962 from the Permanent Representative of Cuba addressed to the President of the Security Council (S/5183) (1022nd meeting). This item formed part of a multiple complaint in which both the United States and the USSR submitted letters. See Tabulation: Entries 22, 23, 24.

73/ The "Question of Race Conflict in South Africa" was considered under the following item and sub-items: (a) Letter dated 11 July 1963 addressed to the President of the Security Council by representatives of. . . [32 Member States] (S/5348) (1040th meeting); (b) Report by the Secretary-General in pursuance of the resolution adopted by the Security Council at its 1056th meeting on 7 August 1963 (S/5438 and Add.1-5) (1073rd meeting); (c) Letter dated 23 October 1963 from the representatives of. . . [32 Member States] (S/5444 and Add.1) (1073rd meeting).

74/ The "Situation in Territories in Africa under Portuguese Administration" was considered under the following item and sub-items: (a) Letter dated 11 July 1963 addressed to the President of the Security Council by representatives of... [32 Member States] (S/5347) (1040th meeting); (b) Report by the Secretary-General in pursuance of the resolution adopted by the Security Council at its 1049th meeting on 31 July 1963 (S/5448 and Add.1-3) (1079th meeting); (c) Letter dated 13 November 1963 from the representatives of... [29 Member States] (S/5460) (1079th meeting).

75/ S/4212, O.R., 14th year, Suppl. for July-Sept. 1959, pp. 7-8. In asking for the meeting, the Secretary-General said that he did not intend to introduce formally on the agenda anything beyond his own wish to report to the Council on the letter received from the Government of Laos. See Tabulation: Entry 28; 847th meeting: para. 11, and chapter I, Case 5.

76/ S/4382, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 11-12. Tabulation: Entry 29.

77/ S/4213, O.R., 14th year, Suppl. for July-Sept. 1959, p. 8; S/4381, O.R., 15th year, Suppl. for July-Sept. 1960, p. 11.

78/ Tabulation: Entries 1, 2, 6, 10, 14, 15, 16, 19, 25.

79/ Tabulation: Entries 1, 3, 4, 5, 10, 11, 13, 21, 23, 26. In another instance, a Member, while not invoking Article 35 (1) in his letter of submission, referred in that communication to a previous letter on the same question, in which that Article had been invoked; Tabulation: Entry 20, note 1.

Charter was invoked as the basis of submission; in nine of these instances[80] that provision was invoked in conjunction with Article 34 of the Charter and in seven instances it was invoked together with other Articles.[81] Other Articles invoked have been Articles 1 (1),[82] 2 (4),[83] 11 (2),[84] 24,[85] 24 (1),[86] 31,[87] 32,[88] 36,[89] 39,[90] 40,[91] 41,[92] 52,[93] 52 (4),[94] 53,[95] 96,[96] and 103.[97]

In the other communications submitting questions for consideration by the Security Council, no reference was made to specific Articles of the Charter; however, these complaints generally charged acts of provocation or aggression, or that a situation existed which threatened international peace and security. In their initial communication States have indicated more or less explicitly the action requested of the Council[98] as well as the nature of the question.

In no instance have Members submitted a question to the Council as a dispute. In eleven instances[99] questions were explicitly described as situations; in seven,[100] they were described generally as involving acts of aggression. One initial communication[101] referred to a unilateral act of war against the complaining State; another[102] referred to a state of war prevailing in the territories under the administration of a Member of the United Nations. In two instances[103] complaint was made of armed intervention, and in others complaining States referred to violations of sovereignty[104] and territorial integrity.[105] In two initial communications[106] a number of States complained about the policies of apartheid and racial discrimination practiced by a Member of the United Nations; in another[107] members called attention to the abuse of human rights and fundamental freedoms carried out in the territory under the administration of another Member. One communication[108] requested a meeting of the Council to consider the non-implementation by a Member of the Council of Article 73 of the Charter and the resolutions of the General Assembly and the Special Political Committee. In most cases, the conduct complained of was described as threatening international peace and security.

States not Members of the United Nations

During the period under review there has been only one instance[109] of submission of a question by a non-Member (Kuwait). This involved a complaint concerning a situation likely to endanger the maintenance of international peace and security arising from a threat to its territorial integrity and independence. The initial communication invoked Article 35 (2) as the basis of submission.[110]

Procedural consequences of submission under Article 35

As was noted above, questions have been submitted to the Council by means of communications addressed to the President of the Security Council, with the exception of the two instances wherein submission was effected as a result of a letter addressed to the Secretary-General requesting United Nations military assistance, and were dealt with in accordance with rules 3, 4 and 6, respectively, of the provisional rules of procedure.[111] Communications submitting questions for consideration by the Council have been dealt with in accordance with rules 6-9 of the provisional rules of procedure and material relating to the application of these rules is contained in chapter II of this Supplement. In three communications addressed to the President of the Security Council requesting inclusion of a matter in the provisional agenda draft resolutions were enclosed.[112] Material on the practice of the Security Council in the implementation of

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80/ The exception being Tabulation: Entry 1.

81/ Tabulation: Entries 4, 5, 10, 11, 21, 23, 26.

82/ Tabulation: Entries 23, 26, 28.

83/ Tabulation: Entries 23, 26.

84/ Tabulation: Entry 28.

85/ Tabulation: Entry 4.

86/ Tabulation: Entries 4, 5, 10, 11, 21, 23, 26.

87/ Tabulation: Entries 5, 10.

88/ Tabulation: Entry 5.

89/ Tabulation: Entry 4.

90/ Tabulation: Entries 23, 26.

91/ Tabulation: Entry 21.

92/ Tabulation: Entries 11, 21.

93/ Tabulation: Entries 11, 21.

94/ Tabulation: Entries 4, 5, 10.

95/ Tabulation: Entries 11, 19, 21.

96/ Tabulation: Entry 21.

97/ Tabulation: Entries 4, 5, 10, 11, 21.

98/ However, in nine instances no specific action was requested beyond the calling for a meeting and consideration of the matter by the Security Council. See Tabulation: Entries 1, 7, 8, 12, 13, 14, 23, 24, 27.

99/ Tabulation: Entries 1, 2, 4, 5, 6, 7, 8, 10, 13, 15, 16.

100/ Tabulation: Entries 4, 17, 18, 19, 20, 21, 26.

101/ Tabulation: Entry 23.

102/ Tabulation: Entry 25.

103/ Tabulation: Entries 10, 26.

104/ Tabulation: Entries 3, 9, 10, 13.

105/ Tabulation: Entries 12, 13.

106/ Tabulation: Entries 1, 15.

107/ Tabulation: Entry 6.

108/ Tabulation: Entry 16.

109/ Tabulation: Entry 27.

110/ This request was supported by the representative of the United Kingdom in a letter (S/4845) dated 1 July 1961, who asked that a meeting be called accordingly. In a letter (S/4847) dated 2 July 1961 the representative of Iraq requested a meeting of the Council to consider a "Complaint by the Government of the Republic of Iraq in respect of the situation, arising out of the armed threat by the United Kingdom to the independence and security of Iraq which is likely to endanger the maintenance of international peace and security". In another letter (S/4848) of the same date the same representative said he wished to state that the "complaint" by Kuwait was not receivable by the Council, since paragraph 2 of Article 35 of the Charter related to the right of States not Members of the United Nations to bring questions to the attention of the Security Council, and that Kuwait was not and had never been an independent State. At the 957th meeting on 2 July 1961, the representative of the USSR said: "We feel called upon to point out that the documents to be regarded as the formal grounds for including this whole question in the agenda are the proposals by two Members of the United Nations, namely, the requests made by the delegations of the United Kingdom and Iraq" (para. 10). In reply, the President said: "I take it that he [the representative of the USSR] is not opposing the adoption of the agenda" (para. 12). At the 958th meeting on 5 July 1961, the representative of Kuwait, having been invited to participate, repeated the earlier assertion: "We made our application to come here under Article 35, paragraph 2, of the Charter" (para. 67).

111/ See chapter I, Cases 5 and 6; see also chapter II, Case 1.

112/ Tabulation: Entries 2, 22, 24. In one initial communication, it was noted that a draft resolution would be submitted in due course (see Tabulation: Entry 16, note 1).

Article 35 of the Charter at the stage of adoption of the agenda will be found in chapter II, part III.

The Council has not, in respect of any new questions submitted for its consideration during the period under review, considered whether to accept the designation of a question in the initial communication. Nor was any question raised as to the appropriate designation for a question included in the agenda at an earlier period.

TABULATION OF QUESTIONS SUBMITTED TO THE SECURITY COUNCIL (1959-1963)

**SECTION A. QUESTIONS SUBMITTED BY MEMBERS AS DISPUTES

SECTION B. QUESTIONS SUBMITTED BY MEMBERS AS SITUATIONS

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. Complaint concerning South Africa (letter of 25 March 1960)	Afghanistan, Burma, Cambodia, Ceylon, Ethiopia, Federation of Malaya, Ghana, Guinea, India, Indonesia, Iran, Iraq, Japan, Jordan, Laos, Lebanon, Liberia, Libya, Morocco, Nepal, Pakistan, Philippines, Saudi Arabia, Sudan, Thailand, Tunisia, Turkey, United Arab Republic and Yemen, 25 March 1960	South Africa	35 (1)	"... situation arising out of the large-scale killings of unarmed and peaceful demonstrators against racial discrimination and segregation in the Union of South Africa. ... with grave potentialities for international friction, which endangers the maintenance of international peace and security."	"... to consider the situation... which endangers the maintenance of international peace and security."	S/4279 and Add.1, O.R., 15th year, Suppl. for Jan.-March 1960, pp. 58-59
2. Letter dated 23 May 1960 from the representatives of Argentina, Ceylon, Ecuador and Tunisia[a/]	Argentina, Ceylon, Ecuador, Tunisia, 23 May 1960	France, USSR, United Kingdom, United States	None	"Concern with present international 'situation'"; submits draft resolution	Resolution recommending, inter alia, that Governments concerned seek solutions of existing international problems by negotiation or other peaceful means; refrain from any action which might increase tensions; continue their efforts towards disarmament; and that the Big Four Powers resume discussions as soon as possible and avail themselves of the assistance of the Security Council and other appropriate organs	S/4323, O.R., 15th year, Suppl. for April-June 1960, pp. 13-14
3. Complaint by Argentina (Eichmann case)	Argentina, 15 June 1960	Israel	34, 35 (1)	"... the violation of the sovereign rights of the Argentine Republic ... contrary to the rules of international law and the purposes and principles of the Charter ... and creating an	"... take decisions involving just reparations for the rights violated."	S/4336, ibid., pp. 27-28

				atmosphere of insecurity and mistrust incompatible with the preservation of international peace."		
4. Complaint by Cuba (letter of 11 July 1960)	Cuba, 11 July 1960	United States	34, 35 (1), 52 (4), 103 [b]	Grave situation existing "with manifest danger to international peace and security, as a consequence of the repeated threats, harassments, intrigues, reprisals, and aggressive acts to which my country has been subjected by the Government of the United States of America."	"consider the situation and ... take such measures as it deems fit."	S/4378, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 9-10
5. Complaint by Cuba (letter of 31 Dec. 1960)	Cuba, 31 Dec. 1960	United States	34, 35 (1) [c]	"... the Government of the United States ... is about to perpetrate, within a few hours, direct military aggression against the Government and people of Cuba. ... The facts listed in this complaint relate to an extremely serious and dangerous phase of a situation which seriously affects international peace and security and could give rise to a conflict of unsuspected proportions and consequences."	Examination of the situation and adoption of "measures which it may deem necessary to prevent armed units of the United States and mercenaries in its service violating the sovereignty, territorial integrity and independence of a State Member of the United Nations".	S/4605, O.R., 15th year, Suppl. for Oct.-Dec. 1960, pp. 107-109
6. Situation in Angola	Liberia, 20 Feb. 1961	Portugal	34 [d]	"... crisis in Angola ..."	"... immediate action should be taken by the Security Council to prevent further deterioration and abuse of human rights and privileges in Angola."	S/4738, O.R., 16th year, Suppl. for Jan.-March 1961, p. 145

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
6. Situation in Angola (continued)	Afghanistan, Burma, Cambodia, Cameroon, Central African Republic, Ceylon, Chad, Congo (Brazzaville), Congo (Leopoldville), Cyprus, Dahomey, Ethiopia, Federation of Malaya, Gabon, Ghana, Guinea, India, Indonesia, Iran, Iraq, Ivory Coast, Japan, Jordan, Laos, Lebanon, Liberia, Libya, Madagascar, Mali, Morocco, Nepal, Nigeria, Pakistan, Philippines, Saudi Arabia, Senegal, Somalia, Sudan, Togo, Tunisia, United Arab Republic, Upper Volta, Yemen and Yugoslavia, 26 May 1961	Portugal	None	"... serious situation prevailing in Angola ... massacres ... and the most ruthless suppression of human rights and fundamental freedoms ... constitute a serious threat to international peace and security."	"... to consider the situation in Angola as a matter of urgency."	S/4816 and Add.1 and 2, O.R., 16th year, Suppl. for April-June 1961, pp. 57-59
7. Complaint by Kuwait	United Kingdom,[e/] 1 July 1961	Iraq, Kuwait	None[f/]	"... the situation arising from the threat by Iraq to the territorial independence of Kuwait, which is likely to endanger the maintenance of international peace and security."	". . that a meeting of the Council shall be called accordingly."	S/4845, O.R., 16th year, Suppl. for July-Sept. 1961, pp. 1-2
8. Complaint by Iraq	Iraq, 2 July 1961	United Kingdom	None	"... the situation, arising out of the armed threat by the United Kingdom to the independence and security of Iraq which is likely to endanger the maintenance of international peace and security."	"... that the Security Council be convened to consider the following question: ..."	S/4847, ibid., p. 2

9. Complaint by Tunisia	Tunisia, 20 July 1961	France	None	"... acts of aggression infringing the sovereignty and security of Tunisia and threatening international peace and security."	"... to take such measures as it deems necessary in order to put an end to this aggression and to have all French troops withdrawn from Tunisian territory."	S/4861, S/4862, ibid., pp. 6-9
10. Complaint by Cuba (letter dated 21 Nov. 1961)	Cuba, 21 Nov. 1961	Dominican Republic, United States	34, 35 (1)[g/]	"... the Government of the United States is carrying out a plan of armed intervention in the Dominican Republic in violation of that country's sovereignty" and "... endangering international peace and security. ... As the Dominican situation becomes increasingly threatening, the United States no longer hesitates to use more rapid and direct methods."	"The mission of the Security Council is to take up and find solutions for any important and urgent situations and disputes which raise a threat to international peace and security."	S/4992, O.R., 16th year, Suppl. for Oct.-Dec. 1961, pp. 139-141
11. Complaint by Cuba (letter dated 22 Feb. 1962)	Cuba, 22 Feb. 1962	United States	34, 35 (1)[h/]	"The Government of the United States ... has promoted the adoption of enforcement action within and outside the Organization of American States, as a prelude to the large-scale invasion of our country. ... These unlawful acts against an independent State create a serious international situation and a threat to international peace and security."	Adoption of "... measures necessary to bring to an end the illegal action ... and thus prevent the development of a situation which endangers international peace and security."	S/5080, O.R., 17th year, Suppl. for Jan.-March 1962, pp. 82-84
12. Complaint by Senegal	Senegal, 10 April 1963	Portugal	None	"In view of the repeated violations of Senegalese airspace and territory that have taken place."	"... to discuss this matter."	S/5279, O.R., 18th year, Suppl. for April-June 1963, pp. 16-17

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
13. Complaint by Haiti	Haiti, 5 May 1963	Dominican Republic	34, 35 (1)	"... the grave situation now existing between Haiti and the Dominican Republic ... caused by the repeated threats of aggression and attempts at interference made by the Dominican Republic, which are infringements of Haiti's sovereignty and territorial integrity and constitute a danger to international peace and security."	"... to bring the matter to the attention of the Security Council ..."	S/5302, ibid., pp. 38-39
14. Reports by the Secretary-General concerning Yemen	USSR, 8 June 1963	Yemen, Saudi Arabia, United Arab Republic	None	"... the reports [of the Secretary-General] contain proposals concerning possible measures by the United Nations to maintain international peace and security, on which, under the Charter, decisions are taken by the Security Council."	"... to consider the reports of the Secretary-General to the Council."	S/5326, O.R., 18th year, Suppl. for April-June 1963, p. 51
15. The question of race conflict in South Africa	Algeria, Burundi, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Congo (Leopoldville), Dahomey, Ethiopia, Gabon, Ghana, Guinea, Ivory Coast, Liberia, Libya, Madagascar, Mali, Mauritania, Morocco, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Tanganyika, Togo, Tunisia, Uganda, United Arab Republic and Upper Volta, 11 July 1963	South Africa	None	"... explosive situation existing in the Republic of South Africa, which constitutes a serious threat to international peace and security ... brought about by the intolerable apartheid policies of that Government ..."	"... that the Security Council take necessary action to find a solution ..."	S/5348, O.R., 18th year, Suppl. for July-Sept. 1963, pp. 11-14

	Algeria, Central African Republic, Ceylon, Congo (Brazzaville), Congo (Leopoldville), Dahomey, Ethiopia, Gabon, Ghana, Guinea, India, Indonesia, Ivory Coast, Liberia, Madagascar, Malaysia, Mali, Mauritania, Morocco, Niger, Nigeria, Pakistan, Senegal, Sierra Leone, Somalia, Sudan, Tanganyika, Togo, Tunisia, Uganda, United Arab Republic and Upper Volta, 23 Oct. 1963	South Africa	None	"... the situation ... 'seriously disturbing international peace and security' has been further exacerbated by recent developments in that country."	"... to examine the report of the Secretary-General ... in order to consider additional measures to ensure the compliance of the South African Government with previous Security Council resolutions and its obligation as a Member State."	S/5444 and Add.1, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 41-42
16. Situation in Southern Rhodesia	Ghana, Guinea, Morocco and United Arab Republic, 2 August 1963 Congo (Brazzaville), 30 August 1963	United Kingdom	None	"... our Governments consider that the continuance of this situation is likely to endanger the maintenance of international peace and security ..."	"... to consider the situation in Southern Rhodesia[i]/..."	S/5382, S/5409, 18th year, Suppl. for July-Sept. 1963, pp. 64-71, 151

a/ Attached was a draft resolution recommending specific measures.

b/ Other Articles invoked were Articles 24 and 36.

c/ Other Articles invoked included Articles 52 (4), 103, 24 (1), 31 and 32 of the Charter.

d/ This Article was invoked at the 934th meeting on 15 February 1961, in connexion with the adoption of the provisional agenda dealing with the situation in the Congo, at which time the representative of Liberia proposed that a new item dealing with the disturbances in Angola be added to the provisional agenda and to which he referred in his letter of submission.

e/ See Tabulation: entry 27.

f/ However, in its letter, the United Kingdom supported the invocation by Kuwait of Article 35 (2) of the Charter.

g/ Invoked also were Articles 24 (1), 31, 52 (4) and 103 of the Charter.

h/ Invoked also were Articles 24 (1), 41, 52, 53 and 103 of the Charter.

i/ The letter noted that a draft resolution would be submitted for consideration, in due course.

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

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
17. Complaint by the USSR (U-2 incident)[i]	USSR, 18 May 1960	United States, Turkey, Pakistan, Norway	None	"... Aggressive acts by the Air Force of the United States of America against the Soviet Union, creating a threat to universal peace."	"... urgently consider the question ... take the necessary measures to halt the unheard-of provocative actions of the United States of America which represent a threat to the cause of peace."	S/4314, S/4315, O.R., 15th year, Suppl. for April-June 1960, pp. 7-10
18. Complaint by the USSR (RB-47 incident)[k]	USSR, 13 July 1960	Norway, United Kingdom, United States	None	"... New aggressive acts by the Air Force of the United States of America, ... creating a threat to universal peace."	"... examine without delay the question of the continuing provocative acts being committed by the United States of America and in this connexion will take such measures as are necessary to put an end to these acts of the United States of America which are endangering peace."	S/4384, S/4385, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 12-15
19. Letter of 5 September 1960 from the USSR (Action of the OAS relating to the Dominican Republic) (letter dated 5 Sept. 1960)	USSR, 5 Sept. 1960	Dominican Republic, Venezuela	53	Consideration of a resolution adopted by the OAS on 20 August 1960 "condemning the acts of aggression and intervention committed against the Republic of Venezuela by the anti-popular Trujillo regime in the Dominican Republic."	"... considering the decision taken by the OAS concerning the Dominican Republic and with a view to the speedy adoption by the Council of an appropriate resolution."	S/4477, ibid., pp. 134-135
20. Complaint by Portugal (Goa)	Portugal, 18 Dec. 1961	India	None[l]	"... the Indian Government has followed up its build-up of armed forces and provocations ... with a full-scale unprovoked armed attack on the territories of Goa, Damao and Diu, comprising the Portuguese State of India."	"... to put a stop to the condemnable act of aggression of the Indian Union, ordering an immediate cease-fire and the withdrawal forthwith from the Portuguese territories of Goa, Damao and Diu of all the invading forces of the Indian Union."	S/5030, O.R., 16th year, Suppl. for Oct.-Dec. 1961, pp. 205-206

21. Letter of 8 March 1962 from the representative of Cuba concerning the Punta del Este decisions	Cuba, 8 March 1962	OAS	34, 35 (1), 96 [m]	"At ... meeting ... of Ministers for Foreign Affairs held at Punta del Este, Uruguay, certain resolutions were adopted which violate the Charter of the United Nations and unlawful enforcement action was ... taken ... without the authorization of the Security Council. ..." The sanction constituted aggression against Cuba and a serious threat to international peace and security."	Request for an advisory opinion on certain specific legal questions and "... suspension of the agreements adopted at ... Punta del Este, ... and of such measures as may have been ordered ..."	S/5086, O.R., 17th year, Suppl. for Jan.-March 1962, pp. 88-90
22. Complaint by the representative of the United States (letter dated 22 October 1962) [n]	United States, 22 Oct. 1962	Cuba, USSR	None	"... dangerous threat to the peace and security of the world caused by the secret establishment in Cuba by the Union of Soviet Socialist Republics of launching bases and the installation of long-range ballistic missiles capable of carrying thermonuclear warheads to most of North and South America."	"... action to bring about the immediate dismantling and withdrawal of the Soviet missiles and other offensive weapons in Cuba, under the supervision of United Nations observers ..."	S/5181, S/5182, O.R., 17th year, Suppl. for Oct.-Dec. 1962, pp. 146-148, and 1022nd meeting, para. 80
23. Complaint by the representative of Cuba (letter dated 22 October 1962)	Cuba, 22 Oct. 1962	United States	34, 35 (1), 39 [o]	"The United States Government is carrying out this act of war in disregard of the international organizations; in particular, in absolute contempt of the Security Council, and is creating an imminent danger of war."	"... to consider the act of war unilaterally committed by the Government of the United States in ordering the naval blockade of Cuba."	S/5183, ibid., p. 148

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
24. Complaint by the representative of the USSR (letter dated 23 October 1962)[p/]	USSR, 23 Oct. 1962	Cuba, United States	None	"In view of the full gravity of the situation which the United States Government has created over Cuba ..." concerning "The violation of the Charter of the United Nations and the threat to peace by the United States of America."	"... to examine the following question: 'The violation of the Charter of the United Nations and the threat to peace by the United States of America'."	S/5186, S/5187, ibid., pp. 149-154
25. Situation in territories in Africa under Portuguese administration (11 July 1963)	Algeria, Burundi, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Congo (Leopoldville), Dahomey, Ethiopia, Gabon, Ghana, Guinea, Ivory Coast, Liberia, Libya, Madagascar, Mali, Mauritania, Morocco, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Tanganyika, Togo, Tunisia, Uganda, United Arab Republic and Upper Volta, 11 July 1963	Portugal	None	"The state of war prevailing in some of these territories following the persistent refusal of Portugal to comply with the provisions ..." of General Assembly and Security Council resolutions "...constitutes a definite breach of peace and security in the African continent as well as a threat to international peace and security."	"... to consider the situation in the territories under Portuguese domination."	S/5347, O.R., 18th year, Suppl. for July-Sept. 1963, pp. 6-10
	Algeria, Burundi, Cameroon, Central African Republic, Congo (Brazzaville), Congo (Leopoldville), Dahomey, Ethiopia, Gabon, Ghana, Guinea, Ivory Coast, Liberia, Madagascar, Mali, Mauritania, Morocco, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Togo, Tunisia, Uganda, United Arab Republic and Upper Volta, 13 Nov. 1963	Portugal	None	Consideration of the report of the Secretary-General which reveals the failure to implement the resolution adopted by the Security Council on 31 July 1963	"... consider further appropriate measures which will ensure the implementation of the Security Council resolution of 31 July 1963."	S/5460, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 94-95

26. Complaint by the Government of Cyprus	Cyprus, 26 Dec. 1963	Turkey	34, 35, 39 [g]	"... complaint against the Government of Turkey for the acts of (a) aggression, (b) intervention in the internal affairs of Cyprus by the threat and use of force against its territorial integrity and political independence. ..." "A confrontation of the units of the Greek and Turkish armies resulted, with grave and threatening consequences to international peace."	"... to consider the matter and to take appropriate measures under the relevant Articles of the Charter in order to remedy the situation and to prevent such violations from occurring in the future."	S/5488, ibid., pp.112-114

[j] Submitted also was a cable dated 19 May 1960 from the Minister for Foreign Affairs of the USSR addressed to the President of the Security Council, transmitting an explanatory memorandum in amplification of his cable dated 18 May 1960.

[k] Submitted also was a cable dated 13 July 1960 from the Minister for Foreign Affairs of the USSR addressed to the Secretary-General of the United Nations, transmitting an explanatory memorandum in amplification of his cable of the same date.

[l] In his letter dated 18 December 1961 the representative of Portugal referred to his letter dated 11 December 1961 in which it was stated: "... under Article 35, paragraph 1 of the Charter of the United Nations, the Portuguese Government once again draws the attention of the Security Council to the above-mentioned facts [concentration of Indian troops and violations of Portuguese frontier] for all the purposes which the Council may deem useful, as it considers imminent a military aggression and an attack by the Indian Government on Portuguese territory." (S/5171, O.R., 17th year, Suppl. for Oct.-Dec. 1962, pp. 183-184.) He also invoked Article 32 in requesting an invitation to participate.

[m] Invoked also were Articles 24 (1), 34, 41, 52, 53 and 103.

[n] Attached was a draft resolution.

[g] Invoked also were Articles 1 (1), 2 (4) and 24 (1) of the Charter.

[o] Attached was a draft resolution.

[p] Other Articles invoked: 1 (1), 2 (4) and 24 (1).

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
27. Complaint by Kuwait	Kuwait	Iraq (United Kingdom) [q]	35 (2)	"... the situation arising from threats by Iraq to the territorial independence of Kuwait which is likely to endanger the maintenance of international peace and security."	"... to consider urgently the following question: ..."	S/4844, O.R., 16th year, Suppl. for July-Sept. 1961, p. 1

[q] See Tabulation: entry 7.

**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

Question	Date of submission	States involved	Articles invoked as basis for submission	Description of question in letter of submission	Action requested of the Security Council	Reference
28. Report by the Secretary-General relating to Laos	4 Sept. 1959	Laos, Democratic Republic of Vietnam	1 (1), 11 (2)[s/]	"Report by the Secretary-General on the letter received from the Minister for Foreign Affairs of the Royal Government of Laos, transmitted on 4 September 1959 by a note from the Permanent Mission of Laos to the United Nations."[t/]	"... an emergency force should be dispatched at a very early date in order to halt the aggression and prevent it from spreading."[u/]	S/4212, S/4213, O.R., 14th year, Suppl. for July-Sept. 1959, pp. 7-8
29. Situation in the Republic of the Congo[v/]	13 July 1960	Republic of the Congo, Belgium	None	"... a matter which may threaten the maintenance of international peace and security."	"... to hear a report of the Secretary-General on a demand for United Nations action in relation to the Republic of the Congo."	S/4381, O.R., 15th year, Suppl. for July-Sept. 1960, p. 11

[s/] These Articles were invoked by the Foreign Minister of Laos in his note of 4 September 1959 to the Secretary-General (S/4212).

[t/] The note charged that since July 1959 foreign troops had been crossing the frontier and engaging in military action against garrison units of the Royal Army stationed along the northeast frontier of Laos. Full responsibility for this aggression, it said, rested with the Democratic Republic of Vietnam.

[u/] As requested in note S/4212.

[v/] During the period under review, the following were considered as sub-items of "letter dated 13 July 1960 from the Secretary-General to the President of the Security Council, S/4381" [Situation in the Republic of the Congo]: Fourth Report of the Secretary-General on the implementation of Security Council resolutions S/4387 of 14 July 1960, S/4405 of 22 July 1960 and S/4426 of 9 August 1960 (S/4482 and Add.1) (896th meeting); Letter dated 8 September 1960 from the Permanent Representative of Yugoslavia to the United Nations addressed to the President of the Security Council (S/4485) (896th meeting); Letter dated 12 September 1960 from the representative of the Union of Soviet Socialist Republics addressed to the President of the Security Council (S/4506) (899th meeting); Urgent measures in connexion with the latest events in the Congo: Note by the Secretary-General (S/4571) (912th meeting); Statement dated 6 December 1960 from the Government of the Union of Soviet Socialist Republics concerning the situation in the Congo (S/4573) (912th meeting); Note by the Secretary-General (S/4606 and Add.1) (924th meeting); Letters dated 4 and 7 January 1961 from the Permanent Representative of the Union of Soviet Socialist Republics addressed to the President of the Security Council (S/4614, S/4616) (924th meeting); Letter dated 26 January 1961 from the Permanent Representatives of Ceylon, Ghana, Guinea, Mali, Morocco, United Arab Republic and Yugoslavia addressed to the President of the Security Council (S/4641) (in the agenda of the 929th meeting was added Libya [S/4650]) (928th meeting); Telegram dated 24 January 1961 from the President of the Republic of the Congo (Leopoldville) and the President of the College of Commissioners-General and Commissioner-General for Foreign Affairs addressed to the President of the Security Council (S/4639) (928th meeting); Letter dated 29 January 1961 from the Permanent Representative of the Union of Soviet Socialist Republics to the President of the Security Council (S/4644) (928th meeting); Report to the Secretary-General from his Special Representative in the Congo regarding Mr. Patrice Lumumba (S/4688 and Add.1) (934th meeting); Letter dated 3 November 1961 from the Permanent Representatives of Ethiopia, Nigeria and Sudan addressed to the President of the Security Council (S/4973) (973rd meeting). Telegram dated 8 September 1960 from the Prime Minister of the Republic of the Congo addressed to the Secretary-General (S/4486) was considered by the Council at the 896th meeting as a separate item.

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

Part IV

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

NOTE

As was noted in the earlier volumes of the Repertoire, the issues arising in the cases entered in part IV of Chapter X relate only in a minor degree to the real import of the provisions of Articles 36-37 in the working of the Council. In the period under review, material to throw light on that relationship is also scant by reason of the absence of sustained discussion of the connexion between the appropriateness of measures to be adopted by the Council and the provisions of Articles 36-37.

The case histories included in part IV of this chapter comprise those in which discussion has arisen regarding the responsibility of the Security Council for the settlement of the particular dispute or situation under consideration in the light of Chapter VI of the Charter. By reason of divergence of opinion regarding the constitutional basis for or the limits on the powers of the Council to indicate to the parties specific procedures to be followed in the resolution of their difficulties or to recommend terms of settlement, discussion has been directed to the provisions of Chapter VI or to that Chapter as a whole for guidance regarding the proper course to be followed by the Council.

Limitations on the competence of the Council have been suggested on various grounds in addition to Article 2 (7)[113] and Article 33.[114] On one occasion,[115] the Council discussed the demand of one of the parties concerned for "appropriate reparation", and in this connexion agreed on recommendations for appropriate terms of settlement. On another occasion,[116] the Council adopted a resolution defining its role in relation to an agreement on disengagement arrived at by the parties, and expressing the concern of the Council as to the fulfilment of such an agreement. On two other occasions during the continued consideration of a situation,[117] observations were made in the Council to the effect that measures provided for in both resolutions were recommendations under the provisions of Chapter VI, and not of Chapter VII of the Charter. On another occasion,[118] it was contended that the Council was bound to adopt measures of a preventive nature, as would appear suitable under Chapter VI of the Charter.

CASE 12.[119] COMPLAINT BY ARGENTINA (EICHMANN CASE): In connexion with the decision of 23 June 1960 requesting the Government of Israel to make reparations to the Argentine Government

[*Note:* During consideration of the question, several Council members asked what was the meaning to be attached to Argentina's demand for "appropriate reparation". The view was expressed that adequate reparation would be constituted by the adoption of the draft resolution, declaring that acts such as that under consideration, if repeated, would endanger international peace and security, and requesting Israel to make appropriate reparation. In addition, Israel's expression of regret for the incident was on the record of the Council.]

At the 865th meeting on 22 June 1960, the representative of Argentina submitted a draft resolution,[120] the operative paragraphs of which, as amended[121] on the proposal of the United States, read:

"The Security Council,

"...

"1. Declares that acts such as that under consideration, which affect the sovereignty of a Member State and therefore cause international friction, may, if repeated, endanger international peace and security;

"2. Requests the Government of Israel to make appropriate reparation in accordance with the Charter of the United Nations and the rules of international law;

"3. Expresses the hope that the traditionally friendly relations between Argentina and Israel will be advanced."

Referring to the text of operative paragraph 2, the representative of Israel, at the 866th meeting, inquired what was the meaning of the expression "appropriate reparation". In the view of the Israel Government the expressions of regret which had been made directly to the Argentine Government constituted appropriate reparation.

At the 867th meeting, the representative of the United States stated that his delegation considered that "appropriate reparation will have been made by the expression of views by the Security Council in the pending resolution taken together with the statement of the Foreign Minister of Israel making apology on behalf of the Government of Israel". In his view, once the pending resolution had been adopted, appropriate reparation would have been made, and the incident would be closed.

The representative of Italy also expressed the hope that through the adoption of the amended resolution appropriate reparation of the breach of international law would be found, on the basis of the acknowledgement of the Council of the right of Argentina to protect its national sovereignty. He continued:

"By obtaining a consensus of opinion in the matter, the prevailing features of the case in question, which are ... of a political nature and involve the necessity

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113/ See chapter XII, part II, B.

114/ See part I above.

115/ See Case 12.

116/ See Chapter VIII, p. 208.

117/ Case 13.

118/ Case 14.

119/ For texts of relevant statements, see:
865th meeting: Argentina, paras. 12, 47;
866th meeting: Israel*, paras. 45-46;
867th meeting: Italy, para. 40, United States, paras. 4-5;
868th meeting: Argentina, para. 42; France, para. 49; USSR, paras. 30-31; United Kingdom, para. 36.

120/ S/4345, 865th meeting: para. 47.

121/ 866th meeting: paras. 78-79; and 868th meeting: para. 43.

of steering a course between ethics and law, the Council will have served a useful purpose in strengthening the structure of the international community."

At the 868th meeting on 23 June 1960, the representative of the USSR asked whether Argentina included in the demand for appropriate reparation referred to in operative paragraph 2 of the draft resolution the return of Eichmann to the Argentine authorities for them to deal with.

The representative of the United Kingdom stated that the adoption of the draft resolution, and the regrets of the Government of Israel for any violation of Argentine laws, which were on the Council's record, could reasonably be regarded as adequate reparations and should enable the incident to be terminated.

In reply to the specific question put to him regarding what was meant by "appropriate reparations", the representative of Argentina stated:

"... my delegation does not consider that either Argentina or any other member of the Council has a special obligation to supply an interpretation of the resolutions adopted by the Council. We may each have our own interpretation of the texts placed before us. They will be personal interpretations and have legal force only for those who make them. Once a resolution has been adopted by the Security Council, the parties concerned will have to consider the question and take the necessary steps to ensure that it is interpreted properly and applied in accordance with law."

The representative of France expressed the hope that no uncertainty would remain regarding the firm and legitimate resolve of the Argentine Government to ensure respect for its sovereignty. He pointed out that:

"The Argentine representative stated that his country was entitled to reparation in this regard. We have taken note of the regrets and apologies stated on several occasions ... by the highest Israel Government authorities and believe that, in the expression of these sentiments and in the course of our present discussion, the Argentine Government has found the satisfaction it has sought."

At the same meeting the Argentine draft resolution, as amended, was adopted.[122]

CASE 13.[123] THE QUESTION OF RACE CONFLICT IN SOUTH AFRICA: In connexion with the joint draft resolution submitted by Ghana, Morocco and the Philippines, voted upon and adopted on 7 August 1963 as amended; in connexion also with a draft resolution submitted by Norway, voted upon and adopted on 3 December 1963

[*Note:* The determination that the situation in South Africa was "seriously disturbing international peace and security" was interpreted by two of the permanent members of the Council to mean that the situation there did not call for the kind of action appropriate in cases of threats to the peace, breaches of the peace or acts of aggression under Chapter VII of the Charter. It was also contended that the measures provided for in both resolutions were recommendations without mandatory character, since the expression "call upon" in the operative paragraphs could be found in Chapter VI as well as in Chapter VII. An operative paragraph calling for economic sanctions was rejected by a separate vote. It was then reiterated that the situation in South Africa fell within the provisions of Chapter VI, and not of Chapter VII of the Charter.]

At the 1054th meeting on 6 August 1963, the representative of Ghana introduced a draft resolution,[124] jointly submitted with the representatives of Morocco and the Philippines, under which the Council would express, in a preambular paragraph, its conviction that the situation in South Africa "is seriously disturbing international peace and security". The draft resolution included the following operative paragraphs:

"The Security Council,

"...

"3. Calls upon all States to boycott all South African goods and to refrain from exporting to South Africa strategic materials of direct military value;

"4. Solemnly calls upon all States to cease forthwith the sale and shipment of arms, ammunition of all types and military vehicles to South Africa."

At the same meeting, the representative of the United Kingdom stated that if the Council was to discharge properly its obligation in accordance with the Charter provisions, it had to distinguish between a situation which had engendered international friction and one which constituted a threat to peace. In dealing with the situation in South Africa, the Council did not have the power to impose sanctions as had been suggested. The South African Government had not committed aggression or endangered international peace and security in the sense of the terms of the Charter. The Government of South Africa had failed to heed a whole series of resolutions passed by various organs of the United Nations but for the Council to move to action under Chapter VII of the Charter would be to exceed its powers under the Charter.

At the 1056th meeting on 7 August 1963, upon the request of the representative of the United States, the Council took a separate vote on operative paragraph 3 of the joint draft resolution. The result of the vote was 5 in favour, none against, and 6 abstentions. The paragraph was therefore not adopted.[125] The joint draft resolution, as amended, was then adopted by 9 votes in favour, none against, with 2 abstentions.[126]

After the adoption of the resolution, the representative of the United States expressed his gratification

[122] 868th meeting: para. 52.

[123] For texts of relevant statements, see:
1054th meeting: Ghana, paras. 61-76; United Kingdom, paras. 84-90;
1056th meeting: United Kingdom, para. 37; United States, paras. 26-28;
1074th meeting: Ghana, paras. 34-36;
1076th meeting: Norway, paras. 59-62;
1078th meeting: President (United States), paras. 64, 65; United Kingdom, para. 21.

[124] S/5384, 1054th meeting: para. 62.

[125] 1056th meeting: para. 17.

[126] 1056th meeting: para. 18.

that, with respect to the last preambular paragraph, the sponsors of the joint draft resolution had seen fit to change their original formulation from "is seriously endangering international peace and security" to "is seriously disturbing international peace and security". This change reflected the fact that most of the Council members were not prepared to agree that the situation in South Africa was one which at that time called for the kind of action appropriate in cases of threats to the peace or breaches of the peace under Chapter VII of the United Nations Charter. That Chapter did not speak in terms of disturbances of peace, even serious ones, but only of actual threats to the peace, breaches of the peace or acts of aggression. The resolution's preambular reference to disturbing the peace thus refers to those underlying elements of the situation which, if continued, were likely to endanger international peace and security. Such a case would be quite different from finding a fully matured threat or breach of peace in the situation under consideration. He stated further that in calling upon Member States to take certain action, operative paragraphs 2 and 3 were not mandatory in character. The words "called upon" were found in Chapter VI as well as Chapter VII of the Charter and had been repeatedly employed by the General Assembly as well as by the Security Council and in the customary practice of the United Nations did not carry mandatory force.

At the 1074th meeting on 29 December 1963, during the resumed consideration of the question, the representative of Ghana maintained that by its decision of 7 August 1963 the Council had undertaken a "preventive action against South Africa" involving the total embargo on arms shipments to South Africa. This was an acknowledgement of the existence of a situation which could threaten international peace. A threat to the peace did not always need to take the form of armed conflict, but once a situation contained all the ingredients of strife, it could be construed as a threat to international peace, and the Council was obliged to take appropriate action.

At the 1076th meeting on 3 December 1963, the representative of Norway introduced a draft resolution[127] under which the Council would express, in a preambular paragraph, its strengthened conviction that the situation in South Africa "is seriously disturbing international peace and security". The following operative paragraph was also included:

> "The Security Council,
>
> "...
>
> "5. Solemnly calls upon all States to cease forthwith the sale and shipment of equipment and materials for the manufacture and maintenance of arms and ammunition in South Africa;
>
> "..."

The representative of Norway stated that it had been drafted as a result of consultations with other members of the Council, and on the basis of the fact that the South African Government had not responded to the resolution adopted by the Council on 7 August 1963. In calling for an embargo on equipment and materials for the South African armaments industry, the purpose was to make a further effective contribution to the curtailment of the arms build-up in South Africa. Operative paragraph 5 had thus been drafted in such a way that the Council would act under the same provisions of the Charter as it had done in adopting its resolution of 7 August.

At the 1078th meeting on 4 December 1963, the representative of the United Kingdom stated with regard to the draft resolution as a whole:

> "... we regard the recommendations to Governments which it contains as being consistent with the powers of the Council in Chapter VI of the Charter, and within the framework of that Chapter. They are recommendations directed to a special situation and do not in our view partake of the character of sanctions or other mandatory action envisaged under Article 41, in Chapter VII, of the Charter."

The President, speaking as the representative of the United States, specifically referred to operative paragraph 5 which, he observed, was a step "to eliminate a factor which might contribute directly to international friction in the area", thus facilitating a peaceful solution of the situation. He further stated:

> "We do not consider that the present situation in South Africa falls within the provisions of Chapter VII of the Charter. Accordingly, we would not consider a recommendation for coercive action as appropriate or authorized by the Charter. The transformation of the resolution of 7 August from Chapter VII to Chapter VI language was the decisive step, as we said at the time, that made it possible for my delegation to support the resolution. We support the pending draft resolution for the same reasons."

At the same meeting, the Norwegian draft resolution was adopted unanimously[128].

CASE 14.[129] SITUATION IN SOUTHERN RHODESIA: In connexion with the joint draft resolution submitted by Ghana, Morocco and the Philippines: voted upon and rejected on 13 September 1963

[*Note:* It was contended, on the one hand, that the likelihood of a threat to peace in the African Continent arising from certain forthcoming events in Southern Rhodesia made it necessary for the Council to act constructively by adopting such measures of a preventive nature as would appear suitable under Chapter VI of the Charter. On the other hand, reservations were made regarding the lack of competence of the Council in the matter, and Article 2 (7) was invoked; no situation of the nature referred to in Article 34, it was stated, existed in Southern Rhodesia.]

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[127] S/5469, same text as S/5471, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 103-105.

[128] 1078th meeting: para. 137.

[129] For texts of relevant statements see:
1064th meeting: Ghana, paras. 18, 22, 54-57, 72-73; United Kingdom, paras. 3-8;
1065th meeting: Mali, paras. 19, 28; United Arab Republic, para. 48;
1066th meeting: Tanganyika, para. 115; Uganda, para. 98; United Kingdom, paras. 4-5, 15-24, 52, 76;
1067th meeting: Morocco, para. 6; United States, paras. 28-29;
1068th meeting: Ghana, paras. 25-28; USSR, paras. 74-79;
1069th meeting: Brazil, para. 10; Norway, paras. 24-27.

At the 1064th meeting on 9 September 1963, the Council had before it, inter alia, a "Memorandum in regard to Southern Rhodesia" [130] submitted by the representative of Ghana to the Security Council on 28 August 1963, wherein continuance of the situation in Southern Rhodesia was described as "likely to endanger the maintenance of international peace and security". It therefore called for investigation by the Security Council under Article 34 of the Charter. In presenting the question before the Council, the representative of Ghana stated that it was

> "called upon to consider any issue which in the opinion of a Member State is likely to endanger peace or is a threat to peace and security; and we have come here because of the likely threat to peace which certain events in Southern Rhodesia are going to produce."

Such events, he added, would be the proposed transfer to the exclusive control of the Southern Rhodesian Government of the most powerful air force of Africa, together with a small but highly efficient army recruited on a racial basis. This transfer of powers was a consequence of the agreement reached at the Victoria Falls Conference for the dissolution of the Central African Federation. The process of handing over the powers and attributes of sovereignty to the Government of Southern Rhodesia, for which the United Kingdom was responsible, would be completed at an early date. This was why the Security Council should take "immediate remedial action" since it was its duty "to deal with such situations before they develop into full armed conflict". The Council should therefore impress upon the United Kingdom Government the extreme undesirability of proceeding with the transfer of any armed forces to Southern Rhodesia until a Government was established in the territory which would be fully representative of the whole population, irrespective of race, creed or colour.

At the 1065th meeting on 9 September 1963, the representative of Mali* also requested the Security Council "to adopt preventive measures in the interest of international peace and security". He further observed:

> "What we ask is within the competence of the Security Council and complies with the provisions of the Charter and of General Assembly resolution 1514 (XV). We think that the Security Council is called upon not merely to intervene after a breach of the peace has occurred but that its main task is to prevent breaches of the peace."

The representative of the United Arab Republic* also referred to the chain of events in connexion with the transfer of powers to the Southern Rhodesian Government, and which in his view caused a grave and immediate danger to peace and security in Southern Rhodesia, and, indeed, in all Africa. Such circumstances merited "urgent action by the Council".

At the 1066th meeting on 10 September 1963, the representative of Uganda* asserted that, in consequence of the transfer of powers, the situation in Southern Rhodesia was "getting to a point where peace and security will be threatened: threatened not only in the territory itself, but also in the neighbouring countries". This, he concluded, was why the Council was requested "to take preventive steps now".

The representative of Tanganyika* stated that developments in Southern Rhodesia had reached a stage in which peace in Africa was seriously threatened. The African States appealed therefore to the Council "to take action and to urge the United Kingdom to desist from transferring these enormous military forces and attributes of sovereignty to a minority and racist European settler Government".

The representative of the United Kingdom, after denying the competence of the Council on the grounds of domestic jurisdiction, rejected the argument that the "reversion of powers" to the Government of Southern Rhodesia would result in a situation in that territory of the nature referred to in Article 34 of the Charter. He called attention to the constitutional relationship between the Government of the United Kingdom and the Southern Rhodesian Government and remarked that there was no question of the latter using its armed forces for specific external adventures since the control of the use of these armed forces outside the frontier of Southern Rhodesia would be retained by the British Government. On the other hand, use of these armed forces for maintaining internal security and their availability for use in this sense by the Southern Rhodesian Government was clearly a matter of domestic jurisdiction which did not touch upon the Security Council's responsibilities for the maintenance of international peace and security. The situation in Southern Rhodesia was neither critical nor explosive and there was no ground for action under Chapter VII of the Charter nor had any evidence been produced that justified consideration of any of the measures contemplated in Chapter VI of the Charter.

At the 1067th meeting on 11 September 1963, the representative of Morocco expressed the view that the concept of a threat to peace was not a limited one. When juridical, political or economic decisions seriously affected the fate of the people of a colonial territory, such as in the case of the contemplated transfer of powers to the white Government of Southern Rhodesia, it was very difficult to say that there was no immediate or potential threat to peace, and it was still more difficult to contend that the threat lay rather in examination of the matter by the United Nations.

The representative of the United States observed that since the reversion of the armed forces to Southern Rhodesia in no way changed the degree of control exercised by the United Kingdom over those forces, there had in fact been no deterioration in the situation in Southern Rhodesia resulting from the action agreed upon at the Victoria Falls Conference such as would require Security Council action in accordance with its responsibility under the Charter.

At the 1068th meeting on 12 September 1963, the representative of Ghana introduced a draft resolution, [131] jointly sponsored with Morocco and the Philippines, under which the Council, after considering

[130] S/5403 and Corr.1.

[131] S/5425/Rev.1, 1068th meeting: para. 4.

that the transfer of powers to the Southern Rhodesian Government would aggravate the already explosive situation, invited the United Kingdom Government to delay transfer of any powers to its colony of Southern Rhodesia until a Government was established there which would be fully representative of its inhabitants. The United Kingdom Government was further invited not to transfer the armed forces and aircraft as envisaged by the recent Central African Conference.

In introducing this draft resolution the representative of Ghana maintained that there was to be an actual transfer of powers to the white minority Government of Southern Rhodesia and not a reversion of powers as the United Kingdom representative had tried to explain. In fact, the armed forces which were to be handed over to the Southern Rhodesian Government were far greater than they were in 1953. Besides, the army which was being transferred was an all-white army. These actions resulted in a threat to the peace which Central Africa, and, indeed, the whole of Africa faced, and which compelled the Council to act constructively in the light of the draft resolution before it.

The representative of the USSR, after quoting from the original explanatory memorandum[132] submitted by the African States, where it was stated that the transfer of forces to the Southern Rhodesian Government would "constitute a most serious threat to the security of the African continent and might well involve a threat to world peace", declared that it was the duty of the Security Council "to adopt effective measures", and that the measures provided for in the joint draft resolution constituted the minimum which the Security Council must adopt in the circumstances to prevent the implementation of the plans for granting Southern Rhodesia a fictitious independence, while preserving a system of exploitation by a minority of "white racists".

At the 1069th meeting on 13 September 1963, the representative of Brazil contended that while it was undeniable that the circumstances concerning the situation in Southern Rhodesia did not as yet constitute an acute threat to international peace and security, there was no doubt that all the ingredients of a highly explosive situation were to be found therein.

The representative of Norway felt that the implementation of plans to place armed forces at the disposal of the minority Government of Southern Rhodesia might lead to international friction in that area of Africa, within the meaning of Article 34 of the Charter. The Security Council was therefore entitled to examine this aspect of the Southern Rhodesian question and to adopt "such a resolution as would appear suitable in accordance with Chapter VI of the Charter".

At the 1069th meeting on 13 September 1963, the joint draft resolution failed of adoption. There were 8 votes in favour and 1 against, with 2 abstentions (the negative vote being that of a permanent member).[133]

[132] S/5382, O.R., 18th year, Suppl. for July-Sept. 1963, pp. 64-71.

[133] 1069th meeting: para. 64.