

**Chapter X**

**CONSIDERATION OF THE PROVISIONS OF CHAPTER VI OF THE CHARTER**

## CONTENTS

	<i>Page</i>
<b>INTRODUCTORY NOTE</b> .....	165
<b>PART I. CONSIDERATION OF THE PROVISIONS OF ARTICLE 33 OF THE CHARTER</b>	
<b>Note</b> .....	166
<b>PART II. CONSIDERATION OF THE PROVISIONS OF ARTICLE 34 OF THE CHARTER</b>	
<b>Note</b> .....	169
<b>PART III. APPLICATION OF THE PROVISIONS OF ARTICLE 35 OF THE CHARTER</b>	
<b>Note</b> .....	171
<b>PART IV. CONSIDERATION OF THE PROVISIONS OF ARTICLES 36-38 AND OF CHAPTER VI     IN GENERAL</b>	
<b>Note</b> .....	176

## 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 subheadings of the Analytical Table of Measures adopted by the Security Council.<sup>1</sup>

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."

<sup>1</sup> Chapter VIII, part I.

## Part I

## CONSIDERATION OF THE PROVISIONS OF ARTICLE 33 OF THE CHARTER

## NOTE

During the period covered by this *Supplement*, prior efforts to seek a peaceful solution made by States submitting a dispute or a situation to the Security Council have in many instances been indicated in the initial communications, although Article 33 has not been expressly cited in any of them.<sup>2</sup>

In statements before the Council, the States concerned have generally drawn attention to the stage reached in efforts towards a peaceful settlement as evidence for the necessity of taking or not taking action under Chapter VI.<sup>3</sup> The scope of the obligation imposed by Article 33, paragraph 1, has been the subject of consideration in connexion with the problem of the appropriate stage at which a dispute should become the proper concern of the Council. The principle has been restated that before bringing a dispute or situation to the Council, the means of pacific settlement in Article 33, paragraph 1, should be exhausted by the parties.<sup>4</sup> On one occasion, failure to have recourse to direct negotiation has been adduced in support of the argument that there was no *prima facie* case for the Council to consider.<sup>5</sup> On another occasion it was argued that inasmuch as the provision of Article 33, paragraph 1 establishes priority of procedures for peaceful settlement, and in the light of the fact that the matter was being dealt with by a regional organization, the Council should allow that organization to continue dealing with it.<sup>6</sup> Such procedure, it was further argued on the same occasion, was in accord with the provision of Article 36, paragraph 2, which provided that the Council should take into consideration any procedures for the settlement of disputes which had already been adopted by the parties. It was argued on the other hand that the Security Council, being the principal organ responsible for the main-

tenance of international peace and security, should be fully cognizant of a particular dispute or situation even though some other procedure of pacific settlement set forth in Article 33, paragraph 1, of the Charter had been resorted to.

The significance of Article 33 in the pacific settlement of disputes in accordance with the Charter rests not only on the discharge by the parties themselves of their obligation under the Article, but also on the recourse by the Council to Article 33, or to the spirit of Article 33, in the discharge of its responsibilities for pacific settlement of disputes after submission to the Council. In this connexion, reference should be made to the entries in part IV of this chapter containing observations on the role of the Council to encourage negotiations between the parties, and to the entries under "Measures for settlement" in the Analytical Table of Measures adopted by the Security Council. Reference should also be made to the resolution adopted during consideration of the India-Pakistan question by which the Council, after demanding that a cease-fire should take place by a certain time, and deciding on certain other measures, called on the parties concerned to utilize all peaceful means, including those listed in Article 33, towards a settlement of the political problems underlying the conflict being considered by the Council.<sup>7</sup>

Similarly, the Council by a resolution adopted on the complaint by Yemen, after *inter alia* calling on Yemen and the United Kingdom to exercise maximum restraint to avoid further incidents and restore peace, requested the Secretary-General to use his good offices to settle outstanding issues, in agreement with the two parties.<sup>8</sup>

CASE 1.<sup>9</sup> THE INDIA-PAKISTAN QUESTION: In connexion with the letter dated 16 January 1964 (S/5517)

[Note: In the course of the debate, views were ex-

<sup>2</sup> Pakistan in its letter dated 16 January 1964 (S/5517) in connexion with the India-Pakistan question [O.R., 19th yr., *Suppl. for Jan-Mar. 1964*, pp. 26-34]; Cyprus in its letter dated 15 February 1964 (S/5545), in connexion with its complaint against Turkey [*ibid.*, pp. 69-70]; Yemen in its letter dated 1 April 1964 (S/5635), in connexion with its complaint against the United Kingdom [O.R., 19th yr., *Suppl. for Apr.-June 1964*, pp. 1-2]; Cambodia in its letter dated 13 May 1964 (S/5697) in connexion with its complaint against the United States and the Republic of Viet-Nam [O.R., 19th yr., *Suppl. for Apr.-June 1964*, pp. 130-132]; Greece in its letter dated 5 September 1964 (S/5934) in connexion with its complaint against Turkey [O.R., 19th yr., *Suppl. for July-Sept. 1964*, p. 268]; Afghanistan, Algeria, Burundi, Cambodia, Central African Republic, Congo (Brazzaville), Dahomey, Ethiopia, Ghana, Guinea, Indonesia, Kenya, Malawi, Mali, Mauritania, Somalia, Sudan, United Republic of Tanzania, Uganda, United Arab Republic, Yugoslavia and Zambia in their letter dated 1 December 1964 (S/6076 and Add.1-5), in connexion with the situation in the Democratic Republic of the Congo [O.R., 19th yr., *Suppl. for Oct.-Dec. 1964*, pp. 198-200]; Algeria, Burundi, Cameroon, Central African Republic, Chad, Dahomey, Democratic Republic of the Congo, Ethiopia, Ghana, Guinea, Ivory Coast, Kenya, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Morocco, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Togo, Tunisia, Uganda, United Arab Republic, United Republic of Tanzania, Upper Volta and Zambia in their letter dated 28 July 1965 (S/6585), in connexion with the situation in territories in Africa under Portuguese administration [O.R., 20th year, *Suppl. for July-Sept. 1965*, pp. 147-149].

<sup>3</sup> See Cases 1 and 3.

<sup>4</sup> For statement of the principle during earlier periods of the Council's activity, see *Repertoire of the Practice of the Security Council, 1946-1951*, chapter X, note, pp. 376-377.

<sup>5</sup> See Case 3.

<sup>6</sup> See Case 2.

<sup>7</sup> See resolution 211 of 20 September 1965. In introducing this draft resolution, the representative of the Netherlands indicated that the main objectives of the draft resolution were to stop the fighting before it could spread to other areas and subsequently "to open up an avenue to the parties to renew negotiations about their underlying political problem from which the present fighting originated". See 1242nd meeting, para. 45.

<sup>8</sup> Resolution 188 of 9 April 1964 (S/5650). Reference should also be made to the resolution adopted in the course of the consideration of the situation in Territories in Africa under Portuguese administration, by which the Security Council, having expressed its conviction that the implementation of the previous resolutions of the Security Council and the General Assembly with regard to the matter was the only means to "achieve a peaceful solution" of the question under consideration, reaffirmed its demand that Portugal should, *inter alia*, hold negotiations with the authorized representatives of the political parties within and outside the Territories concerned with a view to the transfer of power to political institutions freely elected and representative of the peoples. (Resolution 218 of 23 November 1965.)

<sup>9</sup> For texts of relevant statements, see:

1087th meeting: Pakistan,\* paras. 14, 86-90.

1088th meeting: India,\* paras. 3-4, 61, 87.

1090th meeting: India,\* para. 55.

1091st meeting: Bolivia, paras. 63-64; China, paras. 5, 7; Czechoslovakia, paras. 29, 30; Norway, paras. 12-13, 16-17; USSR, paras. 51, 54.

1104th meeting: Czechoslovakia, para. 62.

1115th meeting: Morocco, paras. 62-63.

1116th meeting: President (France), paras. 48, 56.

pressed on the primary obligation of the parties under the Charter to refrain from any resort to force or the threat of it and to settle their disputes by peaceful means.]

At the 1087th meeting on 3 February 1964, the representative of Pakistan, \* explaining his Government's request for a meeting of the Council,<sup>10</sup> drew attention to the worsening situation in Kashmir as well as to recent efforts to reach a peaceful solution of that and related problems outstanding between India and Pakistan. He noted that negotiations towards that end had failed due to India's "intransigent stand against any just and honourable settlement of the dispute and its refusal to move from its rigid position". In the light of those developments, he appealed to the Security Council to undertake steps which would carry that dispute towards a speedy and peaceful solution.

At the 1088th and 1090th meetings on 5 and 10 February 1964, the representative of India \* contended that there was no reason for convening the Council meeting because no new situation had arisen to aggravate the situation in Jammu and Kashmir. He denied the charges made by Pakistan that recent negotiations had failed due to India's intransigent attitude, asserting that it was Pakistan that broke off the negotiations, in spite of India's willingness to keep them going. In the view of his Government, what was to be done at that stage of the development of the matter under consideration was for India and Pakistan to hold meetings to discuss ways and means to restore normal conditions in the disturbed areas of India and Pakistan and to bring about intercommunal unity and harmony in both countries, and jointly to decide that they would not resort to war and would settle their differences peacefully. Pakistan, he contended, had failed to substantiate its charges that India was trying to integrate Kashmir further into India and that there was a grave situation in the area that would call for some action by the Security Council; there was, therefore, nothing before the Council that would require action.

At the 1091st meeting on 14 February the representative of China stated that since both India and Pakistan had indicated willingness to settle their differences by peaceful means, it was the duty of the Security Council to explore the possibilities of bringing about such a peaceful settlement of the dispute. He pointed out in that connexion that the train of thought embodied in a draft resolution considered by the Security Council in June 1962<sup>11</sup> was still useful. The Council should therefore,

"once again urge the parties, possibly with the good offices of a third party, to enter into negotiations at the earliest possible date with a view to an ultimate settlement in accordance with the spirit of the Charter of the United Nations and with due regard to the interest of all concerned."

The representative of Norway, taking note of the assurances given by both parties to settle their disputes by further negotiations, expressed the hope that it would prove possible for the Security Council to encourage the two parties to meet anew at the confer-

<sup>10</sup> S/5517, O.R., 19th yr., Suppl. for Jan.-March 1964, pp. 26-34.

<sup>11</sup> By this draft resolution, the Security Council would have, among other things, urged the Governments of India and Pakistan to enter into negotiations at the earliest convenient time, with a view to the settlement of their dispute in accordance with Article 33 and other relevant provisions of the Charter. S/5134, O.R., 17th yr., Suppl. for April-June 1962, p. 104.

ence table. He indicated that the form which such encouragement by the Council should take was less important than the political value in finding means to give expression to the desire of the Council to see negotiations resumed between the parties concerned.

The representative of Czechoslovakia stated that the role of the Council should be to help and encourage the two parties to embark on peaceful negotiations.<sup>12</sup> By so doing, the Council "would be respecting Article 33 of the Charter". Noting that the problem was complex and delicate, his delegation did not believe it appropriate for the Council to adopt a formal resolution to that extent. In appealing to the two parties to resume negotiations, the Council should not at that stage introduce controversial issues which would constitute obstacles to the holding of such negotiations.

The representative of the USSR, also expressing the view that the dispute should be settled by direct negotiations noted that its examination by the Council should be so conducted as to create the appropriate conditions that would enable the parties concerned to settle their disputes themselves by peaceful means.

The representative of Bolivia also expressed doubt whether the adoption of a new resolution on the question of Jammu and Kashmir could lead to the objective sought by the Council. He noted that one thing seemed certain:

"direct negotiations between both parties have not been exhausted, and nothing can officially be done under the peaceful procedures provided for by the United Nations Charter until it had been announced that the two countries have nothing more to say to each other."

What the Council should do in the circumstances, therefore, was to help to create a propitious atmosphere in which such direct negotiations could be continued.

The representative of the United States noted that, given the history of efforts to resolve the issues in the past, it was the view of his Government that the two countries should consider the possibility of recourse to the good offices of a country or a person of their choice to assist them in bringing about the resumption of negotiation and in mediating their differences. He added that the Secretary-General might be of assistance to the two countries in exploring the possibility of such third-party mediation.

At the 1115th meeting on 12 May 1964, the view was expressed by the representative of Morocco that in spite of the divergent positions of the parties concerned, the Council might still, with their collaboration, make a further effort towards peaceful settlement, as neither of them had closed the door to bilateral talks. Such talks would not *a priori* exclude either previous findings of the Council or the facts of the conflict. Likewise, they should not exclude the Council's responsibility or its interests in the progress of the talks or any results they might produce. He added:

"The principle of direct negotiations would thus be preserved without the Council's relinquishing its jurisdiction or washing its hands of a problem, for which it has assumed responsibilities for the past sixteen years and must continue to assume them until it is finally settled."

<sup>12</sup> This position was reaffirmed at the 1104th meeting on 17 March 1964.

At the 1116th meeting on 13 May 1964, the President, speaking as the representative of France, expressed the view that the United Nations, through the Secretary-General, should be requested to assist the party in the conduct of negotiations. He observed that

"it would be desirable for the Secretary-General to ensure that the Security Council is in a position to keep abreast of developments in a matter which is of concern to us all, that for this purpose he should be kept regularly informed by the two parties of the progress achieved or the difficulties encountered in the course of their bilateral negotiations, and that he should be able to offer them his assistance or advice if necessary, so as to prevent the talks, once started, from being broken off again."

The meeting was adjourned with a statement by the President that he would, in line with a suggestion made at that meeting, consult members with a view to identifying the conclusions reached in the debate.

#### CASE 2.<sup>13</sup> SITUATION IN THE DOMINICAN REPUBLIC:

In connexion with the letter dated 1 May 1965<sup>14</sup> from the representative of the USSR requesting an urgent meeting of the Council in order to consider "the armed interference by the United States in the internal affairs of the Dominican Republic"

[Note: In the course of the debate the question was raised whether the Security Council should consider the situation in the Dominican Republic in the light of the fact that the matter was being dealt with by the Organization of American States. The constitutional issue debated centered on the competence of the Council to deal with the matter in the light of the provisions of Articles 35 and 52, and in some measure, of Article 36.]

In his statement at the 1196th meeting on 3 May 1965, the representative of the USSR urged the Council to condemn the armed interference by the United States in the domestic affairs of the Dominican Republic as a breach of international peace and as an action incompatible with the obligations assumed by the United States under the United Nations Charter, and to call upon the United States Government to withdraw its forces from the territory of the Dominican Republic immediately. The Security Council thus "must fulfil its duty and the obligations placed upon it by the United Nations Charter".

The representative of the United States indicated that the matter had previously been considered by the Organization of American States, and that all actions taken by the latter had been reported to the Security Council, in accordance with the provisions of Article 54. While not opposed to the discussion of the matter in the Security Council, he drew attention to the provisions of Article 33, particularly to the procedure of resort to regional agencies as a means of peaceful settlement. He added:

"This, of course, does not derogate from the authority of this Council. It merely prescribes the procedures and priorities envisaged by the authors of the two charters, the Charter of the United Na-

tions and that of the OAS, for dealing with disputes of a local nature, procedures and priorities that have been followed consistently in analogous situations in the past."

He suggested that in the light of the actions already taken by the OAS, it would be prudent, constructive and "in keeping with precedents established by this Council" to permit the OAS to continue to deal with the matter.

At the 1198th meeting on 4 May 1965 the representative of Uruguay noted that his delegation had no doubt as to the competence of the Security Council to inquire at any time into a dispute or situation, the continuance of which was likely to endanger the maintenance of international peace and security, even though the dispute was being considered by a regional organization. He then stated:

"This authority, which the provisions of Article 52, paragraph 4, and Articles 34 and 35 of the Charter of the United Nations clearly confer upon the Security Council, is even more appropriate when the situation involved appears *prima facie* to contravene international law, and in particular, Article 2, paragraphs 4 and 7, of the Charter of the United Nations and articles 15 and 17 of the charter of the Organization of American States."

The representative of Cuba\* referred to various Articles of the Charter<sup>15</sup> in support of the view that the authority of the Security Council was not restricted by the fact that the dispute or situation was being considered by a regional organization. With regard to the provisions of Article 33, he observed:

"The reference in Article 33 of the Charter to the participation of regional agencies in the pacific settlement of international disputes has been quoted as proof of the wisdom of having recourse to such an agency and awaiting its settlements in the present case. Apart from the fact that this step is recommended as something to which the parties have recourse only if they think it advisable—it should be noted that the Article says 'shall . . . seek a solution'—this injunction is contained in the Chapter of the Charter which treats of the unrestricted powers of the Security Council to take cognizance of any situation or dispute which may endanger international peace and security and cannot therefore be considered as limiting the powers of the Council in this case, but rather as reaffirming its competence, if for one reason or another, resort to the regional agency has utterly failed to reduce existing tension or solve the problem of the aggression in question."

The representative of the United Kingdom, having referred to the provisions of Article 33, noted that under Article 36, paragraph 2, the Security Council should take into consideration the procedure of settlement already adopted by the parties. The Council would, in his view, best serve the cause of peace in the Dominican Republic if it endorsed the action by the OAS and appealed to all engaged in the fighting to submit to the mediation of the Special Committee which the OAS had appointed for that purpose.

The representative of the Netherlands, speaking at the 1203rd meeting on 7 May 1965, observed that from the provisions of Articles 33 and 52 it seemed

<sup>13</sup> For texts of relevant statements, see:

1196th meeting: USSR, para. 52; United States, paras. 70, 75, 87-88.

1198th meeting: Cuba,\* paras. 66-68, 70; United Kingdom, paras. 60-61; Uruguay, para. 23.

1203rd meeting: Netherlands, paras. 9-10.

<sup>14</sup> S/6316, O.R., 20th year, Suppl. for Apr.-June 1965, p. 70.

<sup>15</sup> Articles 33, 34, 35, 36, 39, 40, 41, 42, 43, 52 and 53. For discussion of some of these Articles, see chapter XII, Case 9.

clear that the first and normal way to try to solve a dispute in the Western hemisphere was through the OAS. That, however, did not mean that his delegation

"denies the competence of the Security Council to take cognizance of such a dispute and to make, if necessary, recommendations in respect thereof".

Following further debates on the complaint before the Council at that and other subsequent meetings, a draft resolution jointly submitted by Ivory Coast, Jordan and Malaysia was adopted at the 1208th meeting on 14 May 1965 which, *inter alia*, called for a strict cease-fire and invited the Secretary-General to send a representative to the Dominican Republic for the purpose of reporting to the Security Council on the situation then developing in that country.<sup>16</sup>

CASE 3.<sup>17</sup> COMPLAINT BY SENEGAL: In connexion with the draft resolution jointly submitted by Ivory Coast, Jordan and Malaysia and voted upon and adopted on 19 May 1965

[Note: The argument was advanced on the one hand that before recommending a particular course of action, the Security Council should seek to encourage the parties concerned to enter into bilateral negotiations. It was contended, on the other hand, that given the past attitude of one of the parties to the dispute, further bilateral negotiation would serve no purpose.]

At the 1206th meeting on 13 May 1965, the representative of Portugal, \* after noting that the complaint by Senegal fell within Chapter VI of the Charter, denied the charges of violations of Senegalese territory, and reaffirmed his Government's position stated before the Council in 1963,<sup>18</sup> to the extent that the first duty of parties to a dispute under Article 33 was to seek a solution by peaceful bilateral arrangements before bringing charges to the Security Council. If the Gov-

<sup>16</sup> 1208th meeting, para. 8; resolution 203 (1965). For discussion of the various measures proposed and acted upon in the course of the debate on the matter, see chapter VIII, pp. 208-216. See also chapter XII, Case 9.

<sup>17</sup> For texts of relevant statements, see:

1206th meeting: France, para. 73; Portugal, \* paras. 11-12, 16-17; Senegal, \* para. 78.

1210th meeting: Congo (Brazzaville), \* para. 23.

<sup>18</sup> See *Repertoire Supplement 1959-1963*, chapter X, part I, Case 8.

ernment of Senegal felt "in any way aggrieved by Portugal, it has at its disposal ways and means to approach Portugal for the purpose of reaching a peaceful settlement through bilateral channels". He observed in that connexion that no effort whatsoever had been made by the Government of Senegal to talk matters over in accordance with Article 33.

In the light of that and other arguments his delegation had set forth, the representative of Portugal believed that there was no *prima facie* grounds for the Council to deal with the Senegalese complaints.

The representative of France recalled the preambular paragraph of resolution 178 (1963) which expressed the hope that tensions between the parties would be eliminated in accordance with the provisions of the United Nations Charter. He observed:

"In our understanding, the principal relevant provisions are those of Article 33, which sets out the procedures for the settlement of disputes. These are the possibilities which the Council could... once more invite the parties to explore."

The representative of Senegal, \* at the same meeting, and the representative of Congo (Brazzaville), \* at the 1210th meeting on 18 May 1965, stated in reply that direct negotiations were impossible due to bad faith displayed by the Government of Portugal, which, despite its pledge to respect the sovereignty and territorial integrity of Senegal, had committed sixteen violations of Senegalese territory in two years, and that it was therefore difficult to convince the African peoples that an arrangement could be made with Portugal through bilateral action.

At the 1212th meeting on 19 May 1965, a draft resolution jointly submitted by the Ivory Coast, Jordan and Malaysia was adopted, by which the Security Council *inter alia* deplored the incursions by Portuguese military forces into Senegalese territory; reaffirmed its resolution 178 (1963); requested the Government of Portugal to take all effective and necessary action to prevent any violation of Senegal's territory; and requested the Secretary-General to follow the development of the situation.<sup>19</sup>

<sup>19</sup> 1212th meeting, para. 37; S/RES/204 (1965) O.R., 20th yr., *Resolutions and Decisions of the Security Council, 1965*, pp. 12-13.

## Part II

### CONSIDERATION OF THE PROVISIONS OF ARTICLE 34 OF THE CHARTER

#### NOTE

Article 34 has not, in the course of the period under review, been discussed in terms of its proper application or interpretation. In cases where it has been invoked in letters of submission,<sup>20</sup> no further views were expressed as to its bearing on the competence of the Security Council to investigate matters within the scope of the Article. In some instances in which the Article has been invoked during debates, members have referred to it along with references to other Articles of the Charter in support of the competence of

<sup>20</sup> See part III, note.

the Security Council to deal with the matter under consideration.<sup>21</sup>

The two case histories entered in part II of this chapter are those in which issues have arisen concerning the competence of the Security Council to investigate matters brought to its attention. In the proceedings relating to the complaint by Cambodia, the question was raised as to the appropriateness of the Security Council examining the charges made by one party in the light of the fact that similar charges had been investigated by the International Commis-

<sup>21</sup> See part I, Case 2, note 3. See also chapter XII, Case 9.

sion for Supervision and Control established by the Geneva Conference.<sup>22</sup> In connexion with the complaint by Senegal, the problem was posed as to whether or not a request to the Secretary-General to keep the situation under review should not be preceded by an impartial investigation conducted by the Security Council.<sup>23</sup>

For fuller appreciation of the scope of the application of Article 34 for the period under review, reference should also be made to constitutional discussions related to other provisions of procedures for pacific settlement of the Security Council, as reflected in entries in parts I and IV of this chapter, as well as in chapter XII.

#### ARTICLE 34

CASE 4.<sup>24</sup> COMPLAINT BY CAMBODIA. In connexion with the draft resolution submitted by the Ivory Coast and Morocco, voted upon and adopted on 4 June 1964<sup>25</sup>

[*Note:* In the course of the discussion touching on future efforts of the United Nations to preserve peace and security in the areas bordering Cambodia and the Republic of Viet-Nam, the suggestion was made that the efforts of the International Commission for Supervision and Control might be supplemented by an investigation team established by the Security Council to report on the incidents alleged to have taken place in those areas. On the one hand, it was contended that the responsibility for controlling the border areas rested with the International Commission for Supervision and Control thus rendering unnecessary an intervention on the part of the Security Council. It was argued on the other hand, that the Security Council might establish a committee for the limited purpose of investigating the incidents and reporting them to the Security Council.]

At the 1118th meeting on 19 May 1964, the representative of Cambodia\* recalled that his Government had proposed the dispatch of a United Nations commission to investigate charges made by the United States that "the Vietcong" had penetrated into South Viet-Nam through the territory of Cambodia. In that connexion, he indicated that his Government would renew this suggestion if the dispatch of a United Nations commission of inquiry to Cambodia would make it possible to investigate the charges. He specified, however, that the commission should have only a limited role of verifying the merit of the accusations made against Cambodia, for it could not serve as a substitute for the International Commission for Supervision and Control, the latter having been made the permanent body for the purpose of supervising frontiers, as agreed upon at the 1954 Geneva Conference.

The representative of the United States after denying the Cambodian charge that his Government had steadily refused a proposed inspection of the regions bordering Cambodia and South Viet-Nam indicated that his Government was prepared to consider any proposal for a new and effective machinery under the

United Nations to help stabilize the situation along the Cambodian-Viet-Name frontier.

The representative of France noted at the 1121st meeting on 25 May 1964, that it would be more advisable to utilize the two international control commissions in Cambodia and Viet-Nam created by the Geneva Conference rather than to establish a completely new organ to deal with matters which had essentially been the concern of the commissions. He suggested that for the purpose envisaged, the terms of reference of the two commissions would have to be made more explicit and their *modus operandi* would have to be modified so as to correspond with their new responsibilities. He further observed:

"It is, of course, not for the Security Council to define these terms of reference; but my delegation thinks the Council can make a recommendation to the Powers concerned which they would most certainly consider implementing, so that the terms of reference can be defined according to the procedure regarded by them as most suitable."

At the 1125th meeting on 3 June 1964, the representative of Morocco introduced a draft resolution jointly submitted with the Ivory Coast<sup>26</sup> paragraph 5 of which would have the Security Council decide

"to send three of its members to the two countries and to the places where the most recent incidents have occurred, in order to consider such measures as may prevent any recurrence of such incidents...".

With regard to this operative part of the draft resolution, the representative of Morocco noted at the same meeting and at the 1126th meeting on 4 June 1964, that after getting in touch with the Governments of the two countries directly concerned, and after visiting the scenes of the incidents, the Commission would report to the Council on "the facts, the causes and the course of events". He added:

"In requesting the commission to be appointed by the Council to go to the places where the most recent incidents occurred and to visit the two countries in question, we did not intend that the mission of those members of the Council should be confined to mere corroboration of the facts, which have been explained here in a concordant manner by all the parties concerned. But we felt that the broadest possible investigation, drawing upon information provided by the responsible authorities in the two countries, would enable the delegation sent by the Council to collect data which perhaps have not been set forth here, and which in a subsequent report might be useful for the Council's information or at all events help to guide it in any decision it might take."

At the 1126th meeting, after further discussion, the joint draft resolution was adopted unanimously.<sup>27</sup>

CASE 5.<sup>28</sup> COMPLAINT BY SENEGAL: In connexion with the draft resolution jointly submitted by Jor-

<sup>22</sup> S/5735, O.R., 19th yr., Suppl. for Apr.-June 1964, same text as S/5741, p. 190.

<sup>23</sup> See part IV, Case 5.

<sup>24</sup> For texts of relevant statements, see: 1118th meeting: Cambodia,\* paras. 41-42, United States, para. 66.

1121st meeting: France, paras. 106-107.  
1125th meeting: Morocco, para. 23.  
1126th meeting: Morocco, para. 7.

<sup>25</sup> S/5735, O.R., 19th yr., Suppl. for April-June 1964, same text as S/5741, p. 190.

<sup>26</sup> S/5735, O.R., 19th yr., Suppl. for Apr.-June 1964, same text as S/5741, p. 190.

<sup>27</sup> 1126th meeting, paras. 48-49, S/RES/189 (1964) O.R., 19th yr., Resolutions and Decisions of the Security Council, 1964, p. 11.

<sup>28</sup> For texts of relevant statements, see:

1206th meeting: Portugal,\* para. 44.  
1210th meeting: Bolivia, paras. 100-101.  
1211th meeting: Ivory Coast, paras. 43-45.  
1212th meeting: Ivory Coast, para. 65; Netherlands, para. 23; United Kingdom, paras. 39-40.



dan, Malaysia and the Ivory Coast voted upon and adopted on 19 May 1965

[*Note:* In the course of the debate the suggestion was made to have the allegations of incursions investigated by either a joint commission composed of Portugal and Senegal or by the Security Council acting on its own initiative.]

At the 1206th meeting on 13 May 1965 the representative of Portugal, \* after hearing the charges of violation of Senegalese territory proposed that the Governments of Senegal and Portugal agree to the setting up of an inquiry team to investigate the allegations of violation of said territory and air space made by the Government of Senegal. That team should comprise three persons, one appointed by the Government of Senegal, one by the Government of Portugal and a third member who should act as its president and who would be appointed either by the Secretary-General of the United Nations or the President of the Security Council in consultation with the two Governments concerned.

At the 1210th meeting on 18 May 1965, the representative of the Ivory Coast introduced a draft resolution jointly submitted by the Ivory Coast, Jordan and Malaysia,<sup>29</sup> operative paragraph 4 of which read as follows:

"4. Requests the Secretary-General to keep the development of the situation under review."

The representative of Bolivia, having noted that the parties concerned had not complied with the spirit of a previous Council resolution, observed that an investigation of the facts of the problem before the Council might be advisable, but in the view of his delegation, "such an investigation will have to be followed by decisions relating to more positive measures to preserve the freedom of the threatened nation and to avoid the occurrence of events which might have a much wider and more dramatic range and compass."

At the 1211th meeting on 18 May 1965, the repre-

<sup>29</sup> S/6366, 1210th meeting, para. 84.

sentative of the Ivory Coast announced that operative paragraph 4 of the draft resolution had been changed to read "4. Requests the Secretary-General to follow the development of the situation."<sup>30</sup>

At the 1212th meeting on 19 May 1965, the representative of the Netherlands, commenting on the joint draft resolution before the Council, referred to the proposal for an inquiry team made by the representative of Portugal. He noted that since the proposal had been considered unacceptable by one side,

"the Council could itself have ordered an investigation of the facts of the dispute, in accordance with Article 34 of the Charter, for instance by inviting the Secretary-General to send a representative to the spot for the purpose of fact-finding."

After the adoption of the joint draft resolution at the same meeting,<sup>31</sup> the representative of the United Kingdom noted, in explanation of his delegation's vote, that:

"We recognize that in paragraph 4 of the resolution, provision is made for the Secretary-General to follow developments and we welcome that. But we wish to emphasize that we believe that in all matters of this kind, the best basis for a solution can be found when it is preceded or accompanied by an impartial investigation."

At the same meeting the representative of the Ivory Coast explained the import of paragraph 4 of the resolution as follows:

"In paragraph 4 of the resolution, the Council requests the Secretary-General to follow the development of the situation. We hold that it is for the Secretary-General to determine the method by which he will keep the situation under review."

He further observed that the formula embodied in that paragraph was the only one that would satisfy the African States and that the investigation proposed by Portugal was unacceptable to them.

<sup>30</sup> S/6366/Rev.1, same text as resolution 204 (1965) of 19 May 1965. *O.R.*, 20th yr., *Resolutions and Decisions of the Security Council, 1965*, pp. 12-13.

<sup>31</sup> 1212th meeting, para. 37.

### Part III

#### APPLICATION OF THE PROVISIONS OF ARTICLE 35 OF THE CHARTER

##### NOTE

During the period under review, fifteen questions relating to the maintenance of international peace and security were brought to the attention of the Security Council, all of which were submitted by Members of the United Nations. The relevant data regarding submission are summarized in the appended Tabulation. This part of chapter X, however, is concerned only with the application of Article 35 by Members as well as States not Members of the United Nations.

The Security Council has continued, at the request of the parties or other Members of the United Nations, to consider six questions which had previously been included in the agenda, namely, the India-Pakistan question,<sup>32</sup> complaint by the Government of Cyprus,<sup>33</sup>

the question of race conflict in South Africa,<sup>34</sup> complaint by Senegal,<sup>35</sup> situation in Territories in Africa under Portuguese administration<sup>36</sup> and the Palestine question.<sup>37</sup>

##### 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 all fifteen instances covered for the period under review, communications were addressed to the President of the Council.

In their initial communications Members have usually indicated that they were acting in accordance with

<sup>34</sup> See Tabulation, section B, entry 5.

<sup>35</sup> See Tabulation, section B, entry 11.

<sup>36</sup> See Tabulation, section B, entry 12.

<sup>37</sup> See Tabulation, section C, entry 15.

<sup>32</sup> See Tabulation, section B, entry 2.

<sup>33</sup> See Tabulation, section B, entry 3.

Article 35 of the Charter or that some Charter principle had been violated. In the period under review, only in three instances, namely, the complaint by Panama,<sup>38</sup> the complaint by Yemen,<sup>39</sup> and the complaint by Cambodia<sup>40</sup> was Article 35, paragraph 1 invoked as the basis of submission; in two instances, it was invoked along with Article 34,<sup>41</sup> while in one instance Article 39 was invoked.<sup>42</sup>

In the other communications submitting questions for consideration by the Security Council, no reference was made to a particular Article of the Charter. However, these complaints generally charged acts of provocation or aggression or that a situation existed which either had threatened international peace and security or, if allowed to continue, was likely to threaten international peace and security. In their initial communication, States have generally indicated the action requested of the Security Council as well as the nature of the question involved.

In no instance have Members submitted a question to the Council as a dispute. In ten instances,<sup>43</sup> the questions submitted were described as a "situation", in three instances as acts of aggression, and in one instance, the question was described as "the armed interference"<sup>44</sup> by a Member State in the internal affairs of another State. In another instance the question was

described as a "violation" of a territory of a Member State.<sup>45</sup>

#### STATES NOT MEMBERS OF THE UNITED NATIONS

During the period under review there has been no instance of submission of a question by a non-member.

#### PROCEDURAL CONSEQUENCES OF SUBMISSION UNDER ARTICLE 35

As was noted above, all questions submitted during the period under review were effected through the submission of a communication to the President of the Security Council requesting either a meeting of the Security Council or specifying the particular actions requested. 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 the *Supplement*. In no instances in the communications addressed to the President of the Security Council requesting inclusion of a matter in the provisional agenda, was a draft resolution enclosed. Material on the practice of the Security Council in the implementation of Article 35 of the Charter at the stage of the adoption of the agenda will be found in chapter II, part III of the *Supplement*.

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.

<sup>45</sup> See Tabulation, section B, entry 11.

<sup>38</sup> See Tabulation, section B, entry 1.

<sup>39</sup> See Tabulation, section B, entry 4.

<sup>40</sup> See Tabulation, section C, entry 13.

<sup>41</sup> See Tabulation, section B, entries 1 and 4.

<sup>42</sup> See Tabulation, section C, entry 14.

<sup>43</sup> See Tabulation, section B, entries 1, 2, 3, 4, 5, 6, 7, 8, 9 and 12.

<sup>44</sup> See Tabulation, section B, entry 10.

Tabulation of questions submitted to the Security Council (1964-1965)

\*\* 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 by Panama (letter of 10 January 1964)	Panama	United States	34, 35 (1)	"... grave situation that exists between Panama and the United States of America because of the Canal enclave in our territory," which "has been brought about by the repeated threats and acts of aggression committed by the Government of the United States of America in the Republic of Panama."	"... should intervene, so that these acts of aggression may be considered by the Security Council ..."	S/5509, O.R., 19th yr., Suppl. for Jan.-March 1964, pp. 18-19
2. The India-Pakistan question (letter of 16 January 1964)	Pakistan	India	None	"... grave situation that has arisen in the State of Jammu and Kashmir."	"... to consider the grave turn that the situation in India-occupied Jammu and Kashmir has taken and the danger that it poses to peace in the region."	S/5517, O.R., 19th yr., Suppl. for Jan.-March 1964, pp. 26-34
3. Complaint by the Government of Cyprus (letter of 15 February 1964) *	Cyprus	Turkey	None	Present situation resulting from "the increasing threat from war preparations on the coast of Turkey opposite Cyprus coupled with the declared intentions of the Turkish Government to interfere by force in Cyprus has made the danger of the invasion of the island both obvious and imminent".	"... to convene urgently an emergency meeting of the Security Council under rule 3 of its provisional rules of procedure in order to consider the matter and take appropriate measures under the relevant Articles of the Charter."	S/5545, O.R., 19th yr., Suppl. for Jan.-March 1964, pp. 69-70
4. Complaint by Yemen (letter of 1 April 1964)	Yemen	United Kingdom	34, 35 (1)	"... deteriorated situation resulting from the British continuous acts of aggression against the peaceful Yemeni citizens ..."	To put an end to "this grave situation"	S/5635, O.R., 19th yr., Suppl. for April-June 1964, pp. 1-2
5. The question of race conflict in South Africa (letter of 27 April 1964)	58 Member States	South Africa	None	"... serious situation existing in South Africa in the light of the report [S/5658], drawn up by the Secretary-General ... and the new developments in the Republic of South Africa."	"... positive and urgent action ... to prevent a conflict in South Africa of unforeseeable consequences for Africa and for the world."	S/5674, O.R., 19th yr., Suppl. for April-June 1964, pp. 96-98
6. Complaint by the United States (Tonkin Gulf Incident) (letter of 4 August 1964)	United States	Democratic Republic of Vietnam	None	"... serious situation created by deliberate attacks of the Hanoi régime on United States naval vessels in international waters."	"... to consider the serious situation ..."	S/5849, O.R., 19th yr., Suppl. for July-Sept. 1964, p. 135

Tabulation of questions submitted to the Security Council (1964-1965) (continued)

SECTION B. QUESTIONS SUBMITTED BY MEMBERS AS SITUATIONS (continued)

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
7. Question of relations between Greece and Turkey (letter of 5 September 1964)	Greece	Turkey	None	"... dangerous situation brought about by actions already taken by Turkey."	"... to consider the matter and take appropriate measures."	S/5934, O.R., 19th yr., Suppl. for July-Sept. 1964, p. 268
8. Situation in the Democratic Republic of the Congo (letter of 1 December 1964)	22 Member States	Democratic Republic of the Congo	None	"... to consider the situation in the Democratic Republic of the Congo" ... brought about by actions which "constitute an intervention in African affairs, a flagrant violation of the Charter of the United Nations and a threat to the peace and security of the African continent."	"... to ensure that such violations of the Charter would not recur in the future."	S/6076 and Add.1-5 O.R., 19th yr., Suppl. for Oct.-Dec. 1964, pp. 198-200
9. Situation in Southern Rhodesia (letter of 21 April 1965)	35 Member States	Southern Rhodesia	None	"... very serious situation existing in Southern Rhodesia."	To take and put into effect "the measures required to put an end to the dangerous trend of the present situation ..."	S/6294 and Add.1, O.R., 20th yr., Suppl. for Apr.-June 1965, pp. 45-47
10. Situation in the Dominican Republic (letter of 1 May 1965)	USSR	United States	None	"... the question of the armed interference by the United States in the internal affairs of the Dominican Republic"	To "condemn the armed interference by the United States in the domestic affairs of the Dominican Republic as a breach of international peace" and "call upon the United States Government to withdraw its forces from the territory of the Dominican Republic immediately". <sup>b</sup>	S/6316, O.R., 20th yr., Suppl. for Apr.-June 1965, p. 70
11. Complaint by Senegal (letter of 7 May 1965)	Senegal	Portugal	None	"... repeated violations of Senegalese air space and territory by the Portuguese authorities."	To "ask Portugal to cease the violation of" Senegalese territory	S/6338, O.R., 20th yr., Suppl. for April-June 1965, pp. 105-106
12. Situation in Territories in Africa under Portuguese administration (letter of 28 July 1965)	32 Member States	Portugal		"the obstinacy of Portugal in its desire to perpetuate its domination over the colonial Territories under its administration," constituting "a serious threat to peace and security."	"... to take the appropriate measures envisaged in the Charter in order to give effect to its own resolutions on the question."	S/6585, O.R., 20th yr., Suppl. for July-Sept. 1965, pp. 147-149

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
13. Complaint by Cambodia (letter of 13 May 1964)	Cambodia	United States South Viet-Nam (non-member)	35	"... repeated acts of aggression by United States—South Viet-Nameese forces against the territory and the civilian population of Cambodia."	"... to consider the situation resulting from these acts of aggression."	S/5697, O.R., 19th yr., Suppl. for Apr.-June 1964, pp. 130-132
14. Complaint by Malaysia (letter of 3 September 1964)	Malaysia	Indonesia	39	"blatant and inexcusable aggression against a peaceful neighbour, an act which is in itself a breach of the peace and involves a threat to international peace and security in the area."	"... adjudge Indonesia guilty of the gravest act of aggression," and "condemn such international brigandage." <sup>c</sup>	S/5930, O.R., 19th yr., Suppl. for July-Sept. 1964, p. 263
15. The Palestine question: Complaint by Syria (letter of 14 November 1964)	Syria	Israel	None	"... aggression committed by Israel against the Syrian Arab Republic."	"... to condemn Israel in the strongest terms" and "to put an end to Israel's aggressive acts and policies." <sup>d</sup>	S/6044, O.R., 19th yr., Suppl. for Oct.-Dec. 1964, p. 55

<sup>a</sup> A letter from the representative of the United Kingdom of the same date described the situation in Cyprus as having its origin "in a dispute between the two communities on the island, which dispute has led to a progressive deterioration in internal security". S/5543, O.R., 19th yr., Suppl. for Jan.-March 1964, pp. 66-67. When the Security Council resumed its consideration of the complaint by the Government of Cyprus at the 1094th meeting on 17 February 1964, the agenda contained, as subitems, the letters from the representative of the United Kingdom (S/5543) and from the representative of Cyprus (S/5545).

<sup>b</sup> This quoted passage was part of the statement made by the representative of the USSR during the course of the debate on this item at the 1196th meeting on 3 May 1965. See 1196th meeting, para. 52.

<sup>c</sup> This quoted passage was part of the statement made by the representative of Malaysia during the course of the debate on this item at the 1144th meeting on 9 September 1964. See 1144th meeting, para. 62.

<sup>d</sup> This quoted passage was part of the statement made by the representative of Syria during the course of the debate on this item at the 1162nd meeting on 16 November 1964. See 1162nd meeting, para. 42.

## Part IV

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

## NOTE

The case histories in part IV of this chapter comprise those in which discussion has arisen regarding the responsibility of the Security Council for the settlement of the particular dispute or situation under consideration in the light of the provisions of Chapter VI of the Charter. Part IV does not cover all the activity of the Council in the pacific settlement of disputes, for the debates preceding the major decisions of the Council in this field have dealt almost exclusively with the actual issues before the Council and the relative merits of measures proposed without discussion regarding the juridical problem of their relation to the provisions of the Charter. As a guide to the decision of the Council in the pacific settlement of disputes, reference should be made to the appropriate headings of the Analytical Table of Measures adopted by the Security Council.<sup>46</sup> During the period under review, the relation of these decisions to the provisions of Articles 36-38 has not been the subject of deliberations within the Council; neither have the provisions of Articles 36-38 been invoked in resolutions, although in one instance, a preambular paragraph of a resolution invoked Article 2, paragraphs 3 and 4, the former, it will be noted, bearing on the duty of Members to settle their international disputes by peaceful means.<sup>47</sup>

Moreover, by reason of the unity of the provisions of Chapter VI of the Charter, reference should be made to material in parts I and II of this chapter. Discussions bearing on procedures of pacific settlement were on occasion related to proposed measures to cope with situations which had been brought to the attention of the Council as threats to peace, breaches of the peace or acts of aggression; consequently, reference should also be made to relevant entries in chapter XI of this *Supplement*.

Constitutional discussions reflected in entries in this part, as was the case with entries in the same chapter of earlier volumes of the *Repertoire*, relate only in 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 throwing light on that relationship continued to be scant by reason not only of the absence of sustained discussion of the connexion between the appropriate measures to be adopted by the Council and the provisions under Articles 36-37, but also of the need for discussing immediate measures to meet the exigencies of the moment.

The competence of the Security Council has never been explicitly contested during the debate.<sup>48</sup> In cases in which a preference has been expressed for continued concern of a regional agency to deal with the

matter under consideration or for having the matter negotiated directly between parties concerned, Articles of the Charter have been invoked not so much to contest the competence of the Security Council, as to limit the measures to be adopted in terms of the requirements of the case.<sup>49</sup>

On one occasion, the argument was put forward that while a regional organization should be allowed to continue to be concerned with a matter with a view to its peaceful settlement, a request to the Secretary-General to follow the developments of the case and inform the Council thereon was a privilege of the Council, which it must retain in the interest of international peace and security.<sup>50</sup>

In two instances the Council was urged, in the light of procedures of settlement previously adopted by the parties concerned, to confine the discharge of its responsibility to encouraging the parties to continue with their bilateral efforts or to providing them with a mediator to facilitate reconciliations of their differences.<sup>51</sup>

CASE 6.<sup>52</sup> COMPLAINT BY PANAMA (letter of 10 January 1964):<sup>53</sup> In connexion with the Council decision of 10 January 1964 authorizing the President to appeal to the parties concerned to cease firing and to end bloodshed.

[Note: It was argued in the course of the discussion that, since the Inter-American Peace Committee of the Organization of American States was about to be dispatched to Panama to ascertain the facts, the matter before the Security Council should, in accordance with the provisions of Articles 33 and 52, continue to be dealt with by the Organization of American States. On the other hand, the argument was advanced that, while the matter could be dealt with by the Organization of American States, the Security Council might still appeal to both parties to cease firing and to end the bloodshed, while keeping the matter under review.]

In the course of the consideration of the complaint by Panama at the 1086th meeting on 10 January 1964, the representative of the United States stated that in view of the fact that the Organization of American States had already met, at the request of Panama and the United States, to consider the matter now before the Council, and in view of its decision to dispatch the Inter-American Peace Committee to Panama to ascertain the facts involved, the matter should continue to be dealt with by the Organization of American States. He noted in this connexion that Articles 33 and 52 both provided for pacific settlement of local disputes through regional agencies.

The representative of Brazil noted that, notwithstanding the steps taken by the Organization of American States, the Security Council should be seized of the matter and adopt some emergency measures to

<sup>46</sup> Chapter VIII, part I.

<sup>47</sup> See resolution 188 (1964) of 9 April 1964 in connexion with the complaint by Yemen.

<sup>48</sup> Its competence was, however, questioned in one instance through a communication addressed to the President of the Council on the grounds that the Member State concerned had always considered the matter under consideration as being essentially within its domestic jurisdiction and, therefore, under Article 2 (7) excluding the competence of the Council to deal with it. See S/5723, O.R., 19th yr., Suppl. or April-June 1964, pp. 161-172. See also chapter XII, Case 5.

<sup>49</sup> See Cases 6, 7, 9. See also part I, Case 2.

<sup>50</sup> See Case 9.

<sup>51</sup> See Cases 7 and 8.

<sup>52</sup> For texts of relevant statements, see 1086th meeting: President (Bolivia), paras. 104-105, 108; Brazil, paras. 58-59; Ivory Coast, para. 91; Panama, paras. 86-87; United States, paras. 50-51, 92-93.

<sup>53</sup> S/5509, O.R., 19th yr., Suppl. for Jan.-March 1964, pp. 18-19.

cope with the situation. He suggested that the Council should to that extent authorize its President to address an appeal to the Governments of the United States and Panama to bring to an end the exchange of fire and bloodshed occurring in Panama, and to request the two Governments to impose utmost restraint over military forces under their command and to protect the civilian population. He added that if his suggestion was approved there would, then, be no need for a formal resolution.

The representative of Panama \* stated in support of the Brazilian proposal that there was nothing in it that was incompatible with the action being taken by the Organization of American States.

The representative of the United States thereupon stated that his delegation also welcomed the suggestion of the representative of Brazil for an appeal, and that the United States would comply in letter and spirit with such representation. He observed that he agreed with the representative of Brazil that no further action or resolution of the Security Council was necessary at that time.

The representative of the Ivory Coast, while agreeing to the Brazilian suggestion observed that:

"It remains understood that our Organization will nevertheless keep the matter under review and will be able to intervene should the situation deteriorate and again threaten to degenerate into a local struggle or war likely to cause loss of life."

In the absence of any objection, the President (Bolivia), declared the Brazilian suggestion adopted and noted that the issue raised by the representative of Panama would in the meantime remain on the agenda of the Council.

CASE 7.<sup>54</sup> THE INDIA-PAKISTAN QUESTION: In connexion with the letter dated 16 January 1964 from the representative of Pakistan.<sup>55</sup>

[Note: After hearing the views of the representatives of Pakistan and India on the question before the Council,<sup>56</sup> discussion took place on the role that the Security Council should play in the light of the expressed willingness of both parties to solve their differences by peaceful means. It was contended by some members that in the circumstances of the case, the role of the Council should be confined to encouraging the parties to resume their talks, calling their attentions to the availability of the Secretary-General for assistance, if requested. The contention was made, on the other hand, that members should avoid hasty recourse to the Security Council lest the debates, which might become inflamed, should adversely affect the talks. It was also argued that third party intervention, unsolicited by both parties, would hamper negotiations.]

The representative of the United Kingdom indicated at the 1090th meeting on 10 February 1964 that the Security Council's attention should be directed to the searching for common ground between India and Pakistan. To that end the two States should, as a first

measure, restore normal conditions and intercommunal harmony in their respective territories and undertake talks on communal and related problems with a view to preventing further outbreaks. If they believed that the exercise of good offices would be helpful, the Council should stand ready to discuss it. In the second place, they should be prepared to resume negotiations on Kashmir and, as necessary, other related matters. He indicated in that connexion that the experience of negotiations conducted by the two countries in the course of 1962 and 1963 suggested that some degree of outside help would be necessary if satisfactory results were to be achieved. It was for that reason that his Government favoured mediation, as it had indicated to both parties from time to time. While realizing that the procedure of mediation could not be pressed if it were not acceptable to both India and Pakistan, his delegation would commend the procedure to the urgent attention of both parties and called on them to consider all possibilities in that regard, including that of engaging the assistance of the Secretary-General of the United Nations.

At the 1115th meeting on 12 May 1964, the representative of Ivory Coast, being of the opinion that recent statements by government and political leaders of India and Pakistan reflected a desire to seek a peaceful and just solution to the dispute through bilateral negotiations, and recognizing the difficulties that might arise in the resumption of, as well as, during the negotiations, observed that in that case:

"we should avoid hasty recourse to the Security Council, for the ensuing debate would become highly inflamed and would merely accelerate the breakdown of the talks or make it a certainty."

He suggested in that connexion, that the Security Council should, with a view to avoiding such an eventuality, request the assistance of the Secretary-General to "ease the way for the resumption of negotiations and their successful conclusion, if necessary".

The representative of Norway, after a survey of the development of the matter under consideration, noted that a solution to the Kashmir question would prove to be durable only if it was satisfactory to the population of Jammu and Kashmir, and its main features acceptable to India and Pakistan. He added:

"We do not believe, however, that the Security Council should proceed in any manner that could be interpreted by the parties as a prescription for a particular solution. It is our view that in the present improved circumstances the most constructive role for the Security Council would be to consider what encouragement and assistance it can render to the parties in order that they may utilize vigorously the more promising circumstances now prevailing."

The representative of China reminded the members that the Council had been consistent in all the sixteen years it had been dealing with the India-Pakistan question, by adopting the view that in the absence of an agreement between India and Pakistan, the question could not be solved without regard to the principle of self-determination. Consequently, the Council could not, while being obliged to uphold that principle, impose a solution which was not acceptable to either of the two parties. As to the modes of settlement, he observed that within the framework of previous Council resolutions and, above all, the principles of the Charter, the modalities by which the settlement might

<sup>54</sup> For texts of relevant statements, see:

1090th meeting: United Kingdom, paras. 112-113, 115.

1115th meeting: Brazil, paras. 108, 110; China, paras. 102-103; Ivory Coast, paras. 76-79; Norway, paras. 88-90.

1116th meeting, President (France), para. 56.

1117th meeting, President (France), para. 6; India, paras. 21-22, 26-27; Pakistan, para. 16.

<sup>55</sup> S/5517, O.R., 19th yr., Suppl. for Jan.-March 1964, pp. 26-34.

<sup>56</sup> See part I, Case I.

be effected could be discussed with a view to agreement between the parties and "adjustments could be made to meet the changes in the conditions throughout these years and to accommodate the different views of both parties". The Council should accordingly urge the two parties to take advantage of the recent favourable developments in the situation and make further efforts to improve their relations. The Council should also "call upon them to resume negotiations at the earliest possible date, with a view to arriving at a mutually agreeable settlement in accordance with the spirit of the Charter and with due regard to the United Nations actions".

The representative of Brazil noted in support of further efforts to persuade the parties to solve their differences by peaceful means that the United Nations might in that connexion put some "friendly pressure" to bear on the two Member States in order that

"they may set aside . . . the emotional attitudes to which the long and protracted dispute has given rise and employ their statesmanship to explore all possible avenues of agreement . . ."

so as to bring an end to the dispute. After noting that recent developments demonstrated the emergence of a realistic approach to the problem, he stated:

"In spite of the fact that in my view, there is no substitute for direct talks in the present case, the parties should keep in mind the fact that the United Nations . . . has developed and polished the best available international machinery for the settlement of disputes. They should bear in mind that this . . . machinery is at their disposal at all times and can be set in motion at a moment's notice."

He drew attention in that connexion to the availability of the Secretary-General to assist the parties concerned whenever they requested such assistance, and suggested that the Council should authorize the President at the conclusion of the debate to recall some of the positive elements that had arisen since the Council last dealt with the matter, to express the Council's hope for a prompt and a fair settlement of the Jammu-Kashmir question, and to remind the parties of the availability of the Secretary-General's assistance.

At the 1116th meeting on 13 May 1964, the President announced that he would, in accordance with the suggestion made by the representative of Brazil and supported by the representative of Norway, consult with Council Members with a view to identifying the conclusions reached in the debate.

Consequently, upon the resumption of debate at the 1117th meeting on 18 May 1964, the President reported on the results of his consultations. In indicating the points of agreement among the members of the Council, the President declared *inter alia* that they

"expressed the hope that both parties would refrain from any act which might aggravate the situation and that they would take steps calculated to re-establish an atmosphere of moderation between the two countries and peace and harmony between the communities."

He further declared that the Council members

"expressed the hope that, in the light of our recent debates, the two countries concerned would resume their contacts in the near future with a view to settling their disputes, particularly that centring upon Jammu and Kashmir, by negotiation."

Following the President's statement, the representative of Pakistan expressed appreciation for the efforts at reconciliation made by the President, and noted:

"The summation by the President is neither a consensus nor a statement of agreed conclusions. As such, we consider it to be a purely descriptive and factual statement which the President of the Council has made, and not any kind of recommendation to the parties with any binding force. The question of our accepting or rejecting it, therefore, does not arise."

The representative of India expressed agreement with the representative of Pakistan that the President's statement was neither a consensus nor a resolution, and had therefore no binding effect on the parties. He indicated that the debate had shown that the matter could only be solved by bilateral negotiations, and that any intervention on the part of a third party would hinder rather than help these negotiations. With regard to the role of the Secretary-General, he pointed out that while India would welcome his visit as its guest, it did not wish him to come "in the context of the Kashmir debate, unless we both agree that he should so come". He added:

"I assure the Secretary-General and I assure the Council that any intervention on the part of the Secretary-General which is uninvited and without the consent of both parties will hinder and hamper the negotiations which we propose to carry on in the very near future."

Following this statement, the Council adjourned its meeting.

CASE 8.<sup>57</sup> COMPLAINT BY THE GOVERNMENT OF CYPRUS: In connexion with a joint draft resolution, voted upon and adopted on 4 March 1964

[*Note:* A suggestion was made in the course of the debate that along with the establishment of a United Nations force in Cyprus, the Security Council should appoint a mediator to help the parties concerned reach a peaceful settlement of their problems.]

In his opening statement at the 1095th meeting on 18 February 1964, the representative of the United Kingdom suggested after reviewing the developments in Cyprus that members of the Council must bring the influence of the Council to bear on the tense situation there, and exert a calming effect on all the parties concerned. The Council should, in the light of the agreement of all parties concerned to the establishment of an international force, point the way towards an agreed solution of the problems involved. It should, furthermore, point the way towards an acceptable form of mediation that might be required in the reaching of a solution.

The representative of the United States, speaking at the 1096th meeting on 19 February 1964, stated that strenuous efforts would be required to bring about agreement between the two parties on a political settlement which would permit them to live in peace with one another. He suggested in that connexion that the Security Council urge the Government of Cyprus and the Guarantor Powers in consultation with

<sup>57</sup> For texts of relevant statements, see:  
1095th meeting: United Kingdom, paras. 90, 92.  
1096th meeting: United States, para. 82.  
1097th meeting: Czechoslovakia, para. 60; Ivory Coast, paras. 76-77; Norway, para. 45.  
1098th meeting: Bolivia, para. 166.  
1099th meeting: China, para. 108.



the Secretary-General to designate an impartial mediator to assist in achieving settlement.

At the 1097th meeting on 25 February 1964, the representative of Norway, supporting the proposal for the appointment of a mediator, expressed the hope that the parties would avail themselves of the assistance of the Secretary-General to work out the necessary arrangements in that respect. A mediator acting under the aegis of the United Nations would then be guided by the principles and purposes of the Charter which he could use as an important point of reference in the discharge of his function. While calling on the parties to enter into those arrangements, the Security Council should request the Secretary-General to keep it informed of further developments.

The representative of Czechoslovakia indicated that the Security Council should, in the light of the circumstances of the case, reaffirm the independence, sovereignty and territorial integrity of Cyprus and call on all States to refrain from any threat or use of force against Cyprus and should appeal to all Governments concerned "to reach a peaceful settlement based on the principles of the Charter".

The representative of Ivory Coast noted that the constitutional issues confronting the Greek and Turkish Cypriots were first and foremost domestic issues. Consequently, the Council should as a preliminary step merely propose a mediator acceptable to both parties who would be given the twofold function of helping the Cypriot communities in negotiating a reform of its Constitution and of helping the parties concerned to find a suitable way to reconcile their existing differences.

At the 1098th meeting on 27 February 1964, the representative of Bolivia stated that, together with the creation of an international United Nations force, it was essential to appoint a mediator to help bring about a final understanding which, while safeguarding the positions of the different parties, would be a step towards consolidation of the independence and territorial unity of Cyprus.

At the 1099th meeting on 28 February 1964, the representative of China indicated that while a peace-keeping force might meet the short-range problem, the Security Council should also consider what measures to take for the solution of the long-range problem by an equitable and just political settlement. The appointment of an impartial mediator could, in his delegation's view, do much to help bring about an equitable settlement of the dispute.

At the 1100th meeting on 2 March 1964, a draft resolution jointly sponsored by Bolivia, Brazil, Ivory Coast, Morocco and Norway,<sup>58</sup> was introduced by the representative of Brazil. The operative paragraphs of this draft resolution *inter alia* recommended for the creation, with the consent of the Government of Cyprus, of a United Nations peace-keeping force in Cyprus, and

"Recommends further that the Secretary-General designate, in agreement with the Government of Cyprus and the Governments of Greece, Turkey and the United Kingdom, a mediator, who shall use his best endeavours with the representatives of the communities and also with the aforesaid four Governments, for the purpose of promoting a peaceful

solution and an agreed settlement of the problem confronting Cyprus, in accordance with the Charter of the United Nations, having in mind the well-being of the people of Cyprus as a whole and the preservation of international peace and security. The mediator shall report periodically to the Secretary-General on his efforts."

The joint draft resolution was voted upon and adopted unanimously at the 1102nd meeting on 4 March 1964.<sup>59</sup>

CASE 9.<sup>60</sup> SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO: In connexion with the draft resolution jointly submitted by Morocco and Ivory Coast voted upon and adopted on 30 December 1964

[Note: It was contended during the consideration of the draft resolution that its operative paragraph requesting the Secretary-General to follow the implementation of the resolution and requesting him to follow the situation in the Congo, and to report thereon to the Security Council was, in effect, casting doubt on the competence of the Organization of African Unity, which had dealt with the matter previously. It was argued on the other hand that the operative paragraph reflected a prerogative of the Council, which in the light of the circumstances of the case, it must retain with a view to the maintenance of international peace and security.]

At the 1186th meeting on 28 December 1964, a draft resolution jointly sponsored by Ivory Coast and Morocco was submitted, which read *inter alia*:<sup>61</sup>

"The Security Council,

"...

"Taking into consideration the resolution of the Organization of African Unity dated 10 September 1964, in particular paragraph 1 relating to the mercenaries,

"Convinced that the Organization of African Unity should be able, in the context of Article 52 of the Charter of the United Nations, to help find a peaceful solution to all the problems and disputes affecting peace and security in the continent of Africa,

"Having in mind the efforts of the Organization of African Unity to help the Government of the Democratic Republic of the Congo and the other political factions in the Congo to find a peaceful solution to their dispute,

"...

"2. Appeals for a cease-fire in the Congo in accordance with the Organization of African Unity's resolution dated 10 September 1964;

"3. Considers, in accordance with that same resolution, that the mercenaries should as a matter of urgency be withdrawn from the Congo;

"4. Encourages the Organization of African Unity to pursue its efforts to help the Government of the

<sup>58</sup> 1102nd meeting, paras. 26-28, S/RES/186 (1964), O.R., 19th yr., Resolutions and Decisions of the Security Council, 1964, pp. 2-4.

<sup>60</sup> For texts of relevant statements, see:

1186th meeting: Guinea,\* para. 46; Ivory Coast, para. 13.

1187th meeting: Guinea,\* paras. 5, 6-10, 12; Morocco, paras. 45, 47, 48, 50.

<sup>61</sup> For full text, see: S/6123/Rev.1, 1186th meeting, para. 9; with the revision announced at the same meeting, para. 66.

<sup>58</sup> S/5571, same text as S/5575, O.R., 19th yr., Suppl. for Jan.-March 1964, pp. 102-103.

Democratic Republic of the Congo to achieve national reconciliation in accordance with the above-mentioned resolution of the Organization of African Unity;

"5. Requests all States to assist the Organization of African Unity in the attainment of this objective;

"6. Requests the Secretary-General of the United Nations to follow the implementation of the present resolution, to follow the situation in the Congo, and to report to the Security Council at the appropriate time."

In introducing the joint draft resolution, the representative of the Ivory Coast stated that the Security Council should use all the means provided by the Charter to secure a peaceful settlement of the problem and that resort to regional agencies was one of the means provided in Article 52 of the Charter. He added that to the extent that the matter had already been laid before the Organization of African Unity, the Security Council "should encourage the OAU to continue its efforts within the framework accepted by the parties mainly concerned". That, he noted, was what operative paragraph 4 of the draft resolution envisaged. He then observed:

"Bearing in mind, however, that in the Congo there is not merely a threat to peace but a hot war which is assuming alarming proportions, the Security Council must, through the Secretary-General, the executive organ, follow the situation in the Congo, the implementation of this resolution, and be ready to take up the matter again should the situation continue to endanger peace in Africa and, consequently, peace throughout the world."

The representative of Guinea \* noted that since all speakers had emphasized the special, if not exclusive, competence of the Organization of African Unity in so far as the efforts to find a solution to the problem were concerned, "it might perhaps not be absolutely necessary to bring the United Nations into the picture again...". He further stated:

"We, therefore, considered that if the efforts of the OAU were placed outside the specified framework of Articles 52 and 54 of the United Nations Charter, its competence, if not its effectiveness, would to some extent be called into question."

At the 1187th meeting on 29 December 1964, the representative of Guinea \* submitted, on behalf of the eighteen African States that had brought the matter to the Security Council, an amendment to paragraph 6 of the joint draft resolution to read as follows:<sup>62</sup>

"Requests the Organization of African Unity, in accordance with Article 54 of the United Nations

Charter, to keep the Security Council fully informed of any action it may take under the present resolution."

In explaining the amendment, the representative of Guinea stated that the wording of original operative paragraph 6 of the joint draft resolution suggested "something of a tendency to cast doubt on the competence of the OAU". Stressing the competence of the OAU to deal with the matter, he referred to various past efforts of the OAU, including its decision of 18 December 1963<sup>63</sup> which, *inter alia*, recommended to all the Governments concerned that they co-operate with the OAU in order to facilitate the solution of the Congolese problem. He observed:

"All members of the Security Council have recognized that the Organization of African Unity is both competent and pre-eminently qualified to seek, and to help in finding, a peaceful solution to the Congolese problem; all we have to do now is to request that Organization to inform the Security Council of the measures it takes and of the results it achieves."

Speaking at the same meeting, the representative of Morocco noted that paragraph 6 of the joint draft resolution reflected "a regular prerogative of the Security Council". If the Security Council decided to have information on a matter which had been the subject of discussion and decision, such a decision must in no way be interpreted as casting a doubt on the competence of the OAU. He pointed out that the paragraph defined a precise role entrusted to the Secretary-General, which was that of "informing the Security Council about a given situation", adding that there was no desire on the part of the sponsors of the joint draft resolution to have the United Nations intervene in a matter which "comes within the competence of the OAU". The OAU must be able by its own means to meet its responsibilities and it was not necessary that the Security Council delegate some of its prerogatives to it. The Security Council, he indicated, "must retain the prerogatives conferred upon it by the Charter in the interest of international peace and security".

The joint draft resolution, as adopted at the 1189th meeting on 30 December 1964 incorporated the amendment proposed by the representative of Guinea as operative paragraph 6 and deleted the phrase "follow the implementation of the present resolution" from the original operative paragraph 6 of the joint draft resolution, subsequently re-numbered as paragraph 7.<sup>64</sup>

<sup>63</sup> Resolution ECM/RES.6 (IV) adopted by the Council of Ministers of the Organization of African Unity at its fourth extraordinary session.

<sup>64</sup> 1189th meeting, paras. 32-34, resolution 199 (1964). See also chapter VIII, pp. 142-143.

<sup>62</sup> For text, see 1187th meeting, para. 12.