# Chapter XII

# CONSIDERATION OF THE PROVISIONS OF OTHER ARTICLES OF THE CHARTER

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## INTRODUCTORY NOTE

Chapter XII covers the consideration by the Security Council of Articles of the Charter not dealt with in the preceding chapters. Appropriate references are given to chapter VIII to facilitate the consultation of the material in conjunction with the record of decisions contained in that chapter. Further observations on the method adopted in the compilation of this chapter will be found in the introductory note to chapter VIII, and the reservations in the introductory note to chapter X apply also to chapter XII.

## Part I

## CONSIDERATION OF THE PROVISIONS OF ARTICLE 2 (7) OF THE CHARTER

### NOTE

The provisions of Article 2 (7), constituting a limitation on the competence of the Security Council, as of other organs of the United Nations, belong to Chapter I of the Charter dealing with the "Purposes and Principles of the United Nations". It was emphasized in the discussions at the San Francisco Conference that there was no intention of defining the scope of domestic jurisdiction by any rigid or legal formula. The intention was to state a general principle.

Problems connected with this narrowing of the field of action of the Security Council by the exclusion from it of matters essentially within the domestic jurisdiction of States have arisen, or been discussed, on a number of occasions in the course of the work of the Council. It has not been considered appropriate to classify the material on the basis of the criteria stated by representatives on the Council to distinguish between matters which are, and matters which are not, "essentially within the domestic jurisdiction of any State".

This section accordingly presents, in strictly chronological order, individual case histories of occasions on which problems connected with the subject of domestic jurisdiction have arisen or been discussed in the Security Council, and, since the tendency of the Council has been to avoid making explicit or formal decisions on the application of Article 2 (7), pays particular attention to a presentation of the procedures followed by the Council in the course of proceedings when the question of domestic jurisdiction has been raised.

This note contains references to, and summaries of, positions taken during the consideration of problems which have been common to two or more cases where the implementation of Article 2 (7) has been in question.

Objections were raised concerning the competence of the Council to deal with the item as a whole in the Indonesian question (I and II),[1] the Spanish question,[2] the Czechoslovak question,[3] the Anglo-Iranian Oil Company case[4] and the Korean question.[5] Objections were made that the Security Council was not competent to consider certain aspects of the question or to take certain specific action in regard to questions already on the agenda during the consideration of the Ukrainian complaint against Greece,[6] the Greek frontier incidents question[7] and the Palestine question.[8]

Three main points made in these debates may be outlined as follows:

(i) With regard to the general concept of domestic jurisdiction, views were expressed that the line between matters of international and domestic concern was not fixed, being mutable;[9] and that matters within the domestic jurisdiction of a State which bordered or encroached directly upon its external political relations might threaten international peace and security.[10]

(ii) It was stressed that, in itself, the régime or form of government in a State was a matter of domestic jurisdiction,[11] but that such government or régime might become a "matter of international concern" if it were of so aggressive a nature that its activities created a situation which would be a potential menace to international peace and security.[12]

(iii) The view was expressed that "the very existence" of a fascist régime represented a "threat to the peace".[13] Other members of the Council maintained that, although such a régime by its actions and its policy, both domestic and foreign, might threaten international peace, it was necessary to prove this fact before the Security Council could consider the item as a matter of international concern. The question further arose whether such a régime, as a situation the continuance of which was likely to endanger the maintenance of

[1] Cases 1, 7, 8, 9, 10, 11 and 12.
[2] Case 2.
[3] Case 16.
[4] Case 19.
[5] Case 17.
[6] Case 3.
[7] Cases 4, 5 and 6.
[8] Cases 13, 14 and 15.
[9] 35th meeting: Australia, p. 195.
[10] Case 1, 14th meeting: USSR, p. 206.
[11] 34th meeting: Netherlands, p. 177.
35th meeting: Brazil, p. 194.
46th meeting: United Kingdom, p. 345.
268th meeting: USSR, p. 90.
[12] Report of the Sub-Committee on the Spanish Question, *O.R., 1st year, 2nd series, Special Suppl.*, pp. 1, 5. See Case 2.
34th meeting: Mexico, p. 173.
35th meeting: Australia, p. 195.
46th meeting: France, p. 357.
[13] 66th meeting: USSR, p. 304.

international peace and security, ceased to be essentially a matter of domestic jurisdiction.[14]

The problem, whether matters essentially within the domestic jurisdiction of a State might become matters of international concern by reason of their international repercussions, arose in connexion with hostilities which, it was contended, took place within a single political entity. In this case, the competence of the Council to intervene was challenged on the basis of Article 2 (7) of the Charter.[15] The competence of the Council was supported on the grounds that the Council was confronted with a situation resulting from fighting on such a scale that it could lead to international friction and endanger the peace of the world; that repercussions of the hostilities in Indonesia amounted to a threat to international peace and security; that relations between the Indonesian Republic and the Netherlands had gone beyond the limits of a domestic dispute and had become an international problem;[16] that the Security Council was obliged to act in order to maintain peace and security wherever disturbances of the peace had occurred in the world;[17] and that the Council regained its competence when internal difficulties had assumed such proportions that they were liable to give rise to international difficulties.[18]

It was also contended that where persons of "the same race and of the same national status" were concerned, the provisions of Article 2 (7) restricting competence were applicable; but that it was "quite another matter" when "different races and different statuses" were involved.[19]

Objections to the Council's competence based on Article 2 (7) were also raised in connexion with the following specific matters: investigation of frontier violations by a special subsidiary organ of the Council;[20] supervision of international plebiscites and of national elections;[21] control of foreign economic aid;[22] nationalization of foreign property and rights and treatment of aliens;[23] execution of death sentences;[24] obligations of each party to a truce to bring to trial persons involved in a breach of the truce.[25] The question of domestic jurisdiction also arose in connexion with certain provisions in the first report of the Atomic Energy Commission at the 115th meeting.

With regard to the nature of intervention in matters essentially within the domestic jurisdiction of a State, the question has arisen on certain occasions whether a discussion in the Council of the internal affairs of a Member State would constitute intervention (the Ukrainian complaint against Greece;[26] the Czechoslovak question[27]).

As regards the procedure of the Council, the question has been debated on several occasions whether adoption of the agenda constitutes a pronouncement on competence in respect of the items included.[28]

Discussion has also arisen as to whether the Council, dealing continually with a matter and having adopted certain resolutions, has decided by implication that it is competent. A number of representatives indicated that their vote in favour of certain resolutions carried the reservation that their action was not to be construed as implying any decision regarding the question of competence of the Council.[29] Other representatives expressed the view that by adopting certain resolutions the Council had decided that it was competent to deal with the matter.[30]

On several occasions it has been suggested, without any formal proposal having been submitted, that the Council, before deciding the question of its competence, should request the International Court of Justice for an advisory opinion in this respect.[31] A formal proposal to this effect was made during the consideration of the Indonesian question (II) and was rejected by the Security Council.[32] The arguments in favour of this proposal were of a general nature.[33] The arguments opposing the proposal stressed the political character of the issue — its "grave political repercussions",[34] diversion of attention "from the substance of the question to legal considerations of secondary importance".[35] Attention was also drawn to the possible effects of the advisory opinion upon the proceedings of the Council,[36] and to the problem of the position of the Council during the intermediary period between the submission of a request for an advisory opinion to the International Court of Justice and the delivery thereof.[37]

In another matter, where the dispute had already been submitted to the International Court of Justice, the Security Council decided to adjourn its debate until the Court had "ruled on its own competence" in the

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[14] See Case 2.
[15] Cases 7 and 11. 171st meeting: Netherlands, p. 1645.
[16] 172nd meeting: France, p. 1658; United Kingdom, p. 1656.
390th meeting: Australia, p. 14.
391st meeting: USSR, pp. 39-40.
[17] 391st meeting: Syria, p. 22.
[18] 392nd meeting: France, p. 10.
[19] See Case 1. 15th meeting: Egypt, p. 213.
[20] Case 6.
[21] Case 3. See also India-Pakistan question:
239th meeting: India, p. 327.
240th meeting: Pakistan, pp. 353-354; United States, pp. 370-371.
241st meeting: France, p. 4.
242nd meeting: India, pp. 36-37.
[22] Case 5.
[23] Case 19.
[24] Case 4.
[25] Case 15.
[26] Case 3. 61st meeting: Greece, p. 219.
[27] Case 16. 268th meeting: Ukrainian SSR, pp. 96-97; USSR, p. 90; Czechoslovakia, S/718, *O.R., 3rd year, Suppl. for April 1948*, p. 6.
[28] See chapter II, part III, section B (2).
[29] 181st meeting: France, p. 1936; United States, pp. 1942-1943.
194th meeting: Belgium, p. 2193; France, p. 2214.
195th meeting: China, p. 2217; United Kingdom, p. 2218; United States, pp. 2177-2178.
[30] 181st meeting: Poland, pp. 1927-1928.
194th meeting: USSR, p. 2210.
195th meeting: USSR, p. 2222.
[31] Case 1. 15th meeting: Netherlands, p. 218.
Case 2. 46th meeting: United Kingdom, p. 347; see also
426th meeting: United Kingdom, p. 28 (Hyderabad question).
[32] Case 9. See also chapter VI, Case 27.
[33] 194th meeting: Belgium, p. 2194.
195th meeting: Belgium, p. 2214; France, pp. 2214-2215; United Kingdom, pp. 2218-2219; United States, p. 2222.
[34] 195th meeting: Australia, pp. 2215-2216; India, pp. 2219-2221; Poland, pp. 2222-2223.
[35] 194th meeting: USSR, p. 2211.
[36] 195th meeting: Australia, p. 2217; China, pp. 2217-2218; India, p. 2220.
[37] 194th meeting: Belgium, pp. 2193-2194.
195th meeting: China, p. 2217; France, pp. 2214-2215; Poland, pp. 2222-2223; United Kingdom, p. 2218; United States, p. 2178.

case.[38] It was argued that the Council was not competent to deal with this matter since it was within the domestic jurisdiction of Iran[39] and that the question of international or domestic jurisdiction was to be decided by the Court: therefore, it would be inadvisable for the Council to rule on its own competence.[40] On the other side, it was contended that the ruling of the Court on provisional measures had indicated that the matter was at least *prima facie* justiciable,[41] and that, being a subject of litigation in the International Court of Justice, there was reason for not accepting the objection that the matter was essentially within the domestic jurisdiction of Iran.[42]

On occasion the President has stated the position that representatives on the Council would register their view on competence by their vote on the specific proposals involving a recommendation by the Council.[43]

[38] Case 19.
[39] 559th meeting: USSR, pp. 1-2; Yugoslavia, pp. 2-3.
560th meeting: Iran, pp. 6-7.
561st meeting: Yugoslavia, pp. 17-18.
562nd meeting: Ecuador, p. 2.
[40] 561st meeting: India, pp. 16-17.
562nd meeting: Ecuador, pp. 5, 6.
[41] 559th meeting: United Kingdom, p. 4.
[42] 559th meeting: United States, pp. 6-7.
563rd meeting: Netherlands, pp. 32-34.
[43] See Case 7, and chapter X, Case 26.

## Article 2 (7) of the Charter

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

### Case 1.[44] The Indonesian Question (I)

[*Note:* The question of domestic jurisdiction arose in connexion with the proposal to send a commission; and with the question whether the matter on the agenda covered Dutch-Indonesian relations.]

By letter dated 21 January 1946, the representative of the Ukrainian SSR drew the Security Council's attention to the fact that military action had been directed against the local population by the British and Japanese forces in Indonesia, and it was the opinion of his Government that that situation threatened the maintenance of international peace and security.[45]

At the 12th meeting on 7 February 1946, the representative of the United Kingdom said that the question of who was the sovereign authority in Indonesia should be made clear. It was the definite decision of the Allies to restore the territory taken by the enemy to the sovereign power. The question of sending commissions should be dealt with by the sovereign power, namely, the Netherlands. At the 13th meeting on 9 February 1946, the representative of the United Kingdom said that, in all the statements he had heard, the sovereignty of the Netherlands had not been questioned; an important point of principle had been raised on which a conclusion should be reached. After referring to Article 2 (7), he declared that he could not agree that a commission should be sent to investigate and deal with the problems arising inside the territory of a sovereign power. The representative of the Netherlands pointed out that he had no objection to the question being dealt with as worded, i.e., the question of military action directed against the local population. There was no question of fighting against the Indonesians; there was only the need for subduing armed bands who tried to prevent the British troops from disarming the Japanese and obtaining their surrender.

At the 14th meeting on 10 February 1946, the representative of the USSR denied that Article 2 (7) was applicable to the situation in Indonesia. He said:

> "There are matters, however, which though formally comprised in the domestic jurisdiction of a given State, border upon external political relations, or even encroach directly upon external political relations, threatening the peace and security of the peoples. Such matters cannot be left to be settled by the State itself, notwithstanding the principle of sovereignty."

He cited the sending of an international commission to Greece to control the carrying out of the elections, the commission on Polish affairs consisting of a USSR, a United Kingdom and a United States member, and the mission of Sir Archibald Clark Kerr to Indonesia.

At the 15th meeting on 10 February 1946, the representative of Egypt contended that the Security Council was fully entitled to deal with the Indonesian situation. He stated that Article 1 (2) and Chapter XI imposed an obligation not only on States administering dependent territories, but also a more general obligation on all Members of the United Nations. He agreed with the representative of the United Kingdom that, bearing in mind Article 2 (7), it would not be right to send commissions of investigation when internal troubles arose in a certain country. But he considered that a distinction had to be made between cases "where persons of the same race and the same national status" were concerned, in which event Article 2 applied unquestionably, and cases where "different races and different statutes" were involved, and when, as a result of the conflict, there was a threat to international peace.

The representative of the Netherlands considered that the interpretation given by the representative of the USSR whittled away completely Article 2 (7), and he should "like to see what, for instance, the International Court of Justice would have to say with regard to that point".

At the 18th meeting on 13 February 1946, the Ukrainian proposal for a commission of inquiry and the Egyptian draft resolution whereby the Council was to be kept informed of the results of the Netherlands-

[44] For texts of relevant statements see:
12th meeting: United Kingdom, p. 179.
13th meeting: United Kingdom, pp. 193-194.
14th meeting: USSR, pp. 206-207.
15th meeting: Egypt, pp. 212-213, 218; Netherlands, p. 218.
17th meeting: Netherlands, p. 246.
[45] See chapter VIII, p. 302. For consideration regarding the applicability of Article 34, see chapter X, Case 7.

Indonesian negotiations then going on were both rejected.[46]

CASE 2.[47] THE SPANISH QUESTION: In connexion with the terms of reference of the Sub-Committee on the Spanish Question established 29 April 1946; and the recommendations of the Sub-Committee presented 1 June 1946.

[*Note:* In the establishment of the Sub-Committee the question arose whether the question of domestic jurisdiction should be expressly referred to it for report (Case 2 (i)). After the submission of the report, discussion arose on the finding of the Sub-Committee that the situation in Spain, while not a threat to the peace within the meaning of Article 39, was nevertheless of international concern such as to warrant a recommendation under Article 36 (Case 2 (ii)).]

CASE 2 (i)

At the 34th meeting on 17 April 1946, the representative of Poland, in his introductory statement, referred to General Assembly resolution 32 (I) of 9 February 1946, and declared that "by this act alone it was established that the question of the Franco régime is not an internal affair of interest to Spain alone but an international problem which concerns all the United Nations". Reasons why the Franco régime was "a matter of concern to all the United Nations" were given.

At the same meeting, the representative of Poland submitted a draft resolution which, citing Articles 39 and 41 of the Charter, called upon members of the United Nations to sever diplomatic relations with the Franco Government.[48]

Consideration of the draft resolution gave rise to discussion at the 34th and 35th meetings whether the situation in Spain was essentially a matter within the domestic jurisdiction of Spain and whether the Franco régime fell, as a threat to the peace, within the proviso of Article 2 (7).

At the 35th meeting on 18 April, the representative of Australia submitted an amendment to the draft resolution submitted by the representative of Poland. In submitting his amendment, the representative of Australia observed that "the question of domestic jurisdiction has been raised" and "we have to have an investigation and proof that its [*the Franco Government's*] policy and activities are of international concern, and therefore within the ambit of the Charter."[49] The amendment provided for the appointment of a committee of five members "to report . . . on the following questions:[50]

"1. Is the Spanish situation one essentially within the jurisdiction of Spain?

"2. Is the situation in Spain one which might lead to international friction or give rise to a dispute?

"3. If the answer to question 2 is 'Yes', is the continuance of the situation likely to endanger the maintenance of international peace and security?"

At the 37th meeting on 25 April, the representative of Australia replaced his amendment by a draft resolution for the appointment of a sub-committee to report on the facts bearing on three questions:

"1. Is the existence of the Franco régime a matter of international concern and not one essentially within the jurisdiction of Spain?"[51]

The second and third questions remained unchanged.

At the 38th meeting on 26 April, the representative of Australia submitted a revised text of the draft resolution[52] which, with further amendments, was adopted at the 39th meeting on 29 April 1946. It read in part:[53]

". . . *the Security Council,*

"*Keeping in mind* the unanimous moral condemnation of the Franco régime . . . and the views expressed by members of the Security Council regarding the Franco régime,

"*Hereby resolves:* to make further studies in order to determine whether the situation in Spain has led to international friction and does endanger international peace and security, and if it so finds, then to determine what practical measures the United Nations may take.

"*To this end, the Security Council appoints* a Sub-Committee of five of its members . . . to report to the Security Council before the end of May."

The specific questions regarding domestic jurisdiction were not included in the terms of reference; the representative of Australia explained, however, that the phrase "Keeping in mind . . . the views expressed by members of the Security Council regarding the Franco régime" referred to "all the views in the whole of the debate for and against, and the question of domestic jurisdiction."[54]

The following statements were made before the establishment of the Sub-Committee:

The representative of Poland (34th meeting, 17 April 1946):

"The Franco régime in Spain is not merely an internal affair of interest to that country alone. It is a matter of concern to all the United Nations for the following reasons:

"1. The Franco régime was placed in power with the support of Fascist Italy and Nazi Germany against the will of the Spanish people . . .

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[46] See chapter VIII, p. 302.

[47] For texts of relevant statements see:
34th meeting: France, pp. 168-169; Mexico, pp. 173-174; Netherlands, pp. 176-177; Poland, pp. 156-159, 164, 166.
35th meeting: Australia, pp. 195, 197-198; Brazil, pp. 193-194; USSR, pp. 185-186; United Kingdom, p. 181.
37th meeting: Netherlands, p. 231; Poland, pp. 227-228.
44th meeting: Australia, pp. 317-320.
45th meeting: Egypt, pp. 328-329; USSR, p. 331.
46th meeting: Australia, pp. 351-355; France, pp. 357-359; Mexico, pp. 360-362; United Kingdom, pp. 345-346.
47th meeting: United States, p. 365.
48th meeting: Poland, pp. 382, 388.

[48] 34th meeting: p. 167. See chapter VIII, p. 306 for submission of the Spanish question. For text of draft resolution, see chapter XI, Case 1.

[49] 35th meeting: p. 195.

[50] 35th meeting: p. 198.

[51] 37th meeting: p. 216.

[52] 38th meeting, p. 239.

[53] 39th meeting, p. 244. See chapter X, Case 8, for discussion in relation to Article 34; and chapter V, Case 65, for discussion on the character of the Sub-Committee.

[54] S/75, *O.R., 1st year, 1st series, Special Suppl., rev. ed.*, pp. 1-2.

"2. The Franco régime was an active partner in the Axis war against the United Nations . . .

"3. The Franco régime caused a state of international friction by compelling the French Republic to close its borders with Spain and by massing troops along the borders of France.

"4. The Franco régime allowed the territory of Spain to become a haven for German assets, for German personnel and for German scientists engaged in pursuits dangerous to the peace of mankind . . ."

The representative of France (34th meeting):

"A second objection is that the Spanish problem is claimed to be an internal one coming under Article 2, paragraph 7, of the Charter. The United Nations itself at San Francisco and London, and the three Great Powers at Potsdam, have already disposed of this argument by branding the Spanish régime as being incompatible with the new international order."

The representative of Mexico (34th meeting):

"My Government believes that the fear of intervening in the domestic affairs of Spain is wholly groundless, particularly at the present juncture. The United Nations and several States, singly or in groups, have acted already against Franco's régime. Nobody, except Franco, has to this date raised the objection that such acts are against Article 2, paragraph 7, of the Charter. If any nations have been guilty of intervention in the domestic affairs of Spain those nations are Germany and Italy . . .

"I may add that if we have recognized in fact that there is in Spain a situation that threatens international peace, we cannot likewise maintain that this is a matter essentially within the domestic jurisdiction of the Spanish State. This, indeed, would be an absurd conclusion, one contrary to the letter and to the spirit of the Charter of the United Nations.

"Of the eleven members of the Council, the five permanent members have adopted positions hostile to Franco . . . Of the six non-permanent members, only two maintain diplomatic relations with Franco.

"Other Members of the United Nations, namely, Bolivia, Guatemala, Panama, and Venezuela, have severed relations with that spurious Government. It has been reported that other States, both Members and non-members, will soon act in the same manner. On the other hand, there is a Spanish Republican Government-in-exile that has been recognized by several States. Is it logical to maintain that this peculiarly anomalous international situation is essentially within the domestic jurisdiction of the Spanish State?"

The representative of the Netherlands (34th meeting):

"So long as Franco does not really threaten international peace and security, whether Spain wants to keep that régime or not is a matter for Spain and for Spain alone. It is, in my opinion, in the language of the Charter, a matter which is essentially within Spain's domestic jurisdiction. On this point I must disagree with my friend, the representative of Mexico.

"I may recall in this respect the definition given, with regard to precisely this term, by the Permanent Court of International Justice in 1923. In giving a unanimous opinion on the dispute between France and Great Britain, the Court then said: 'The words *solely within the domestic jurisdiction* seem rather to contemplate certain matters which, though they may very closely concern the interests of more than one State, are not, in principle, regulated by international law. As regards such matters, each State is sole judge.'

"And I also recall that, while the Dumbarton Oaks plan spoke of 'matters solely within the domestic jurisdiction of States', this was considered as being too narrow and too restricted and therefore was changed in the Charter to 'matters . . . essentially within the domestic jurisdiction of any State'.

"So long as there is no evidence that the Franco régime really threatens international peace and security, and I do not think there is such evidence, the question as to whether it should or should not be continued, rests solely with the Spanish people . . ."

The representative of the United Kingdom (35th meeting):

"Previous speakers have called attention to paragraph 6 of Article 2 of the Charter, but I must point out that this paragraph is immediately followed by a further statement, in paragraph 7, to the effect that nothing in this Charter authorizes the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State. The nature of the régime in any given country is indisputably a matter of domestic jurisdiction.

"But those who drafted the Charter wisely made one exception to this rule, designed to meet the case where a régime such as the Nazi régime in Germany might be of so aggressive a nature as plainly to threaten the peace and security of other countries. The paragraph I have quoted also lays down that this principle, that is to say, the principle of non-intervention in matters of domestic jurisdiction, shall not prejudice the application of enforcement matters under Chapter VII. That is the Chapter of the Charter which deals with enforcement measures and the first article of that Chapter, Article 39, governs the whole Chapter . . .

". . .

"I cannot admit that the case so far made against the Spanish Government has established the existence of such a threat to the peace, breach of the peace, or act of aggression . . ."

The representative of the USSR (35th meeting):

"It has been claimed that the Polish statement constitutes interference in the domestic affairs of Spain, and that such interference is prohibited under Article 2, paragraph 7, of the Charter. Such assertions are, however, ill-founded and a distortion of the true facts. The Charter indeed contains a provision with reference to non-interference on the part of the United Nations in the domestic affairs of any State. But it is clearly stated in the Charter that interference by the United Nations in the domestic affairs of a State should not take place in normal circumstances, that is to say, when the internal situation in any State does not constitute a threat to international peace and security. The Charter admits and provides for the necessity of taking definite measures with regard to States when

their internal situation constitutes a threat to international peace and security. This is also clearly stated in Article 2 of the Charter. So the Charter leaves no doubt whatever under which circumstances the United Nations cannot and should not intervene in the internal affairs of sovereign States and under which circumstances the United Nations both can and should take certain measures required by the situation arising even out of the internal affairs of a State when these internal affairs constitute a menace to international peace and security."

CASE 2 (ii)

In the introduction to its report, dated 1 June 1946, the Sub-Committee on the Spanish Question stated:

"3. There can be no question that the situation in Spain is of international concern. That fact is sufficiently evidenced by the resolution of the first part of the first session of the General Assembly in London, the resolution of the Security Council and the joint declaration of the United States, United Kingdom and France dated 4 March 1946 . . .

"4. It is also plain that the facts established by the evidence before the Committee are by no means of essentially local or domestic concern to Spain. What is imputed to the Franco régime is that it is threatening the maintenance of international peace and security and that it is causing international friction. The allegations against the Franco régime involve matters which travel far beyond domestic jurisdiction and which concern the maintenance of international peace and security and the smooth and efficient working of the United Nations as the instrument mainly responsible for performing this duty."

At the 45th to 47th meetings between 13 and 18 June 1946, the Security Council had under consideration the draft resolution for the adoption of the Sub-Committee's recommendations, which, together with the United Kingdom amendment, were rejected at the 47th meeting.[55] The recommendations gave rise to discussion on several questions of interpretation: whether the proviso of Article 2 (7) relating to enforcement measures under Chapter VII constituted the sole exception to the principle of non-intervention; whether measures within the scope of Chapter VI of the Charter could rightly be adopted in respect of the situation in Spain on the grounds that the situation was not essentially a matter within the domestic jurisdiction of Spain; and whether the measures proposed by the Sub-Committee came within the scope of Chapter VI or within the scope of Chapter VII.

The following statements were made after the submission of the report of the Sub-Committee:

The representative of Australia as the Chairman of the Sub-Committee (44th meeting):

"It will be noticed that the majority of the Sub-Committee takes the view that the situation in Spain is not of the kind described in Chapter VII: that is, that there is no existing threat to peace. As a consequence of that decision, the question has been raised whether or not the proposed action by the Council would be contrary to the provisions of Article 2, paragraph 7, of the Charter, namely that the United Nations cannot intervene in a matter essentially within the jurisdiction of a State. Now, in my opinion, this argument springs from fallacious logic and it should be pointed out quite clearly that Article 2, paragraph 7, of the Charter does not say that the United Nations shall not intervene in any matter which does not fall within Chapter VII. What it does say is that the United Nations shall not intervene in a matter essentially within the domestic jurisdiction of a State. When considering this point we can forget about Chapter VII. We should concern ourselves only with the terms of Article 2, paragraph 7, and ask ourselves whether or not this question is essentially within the domestic jurisdiction of Spain. That is a question of fact. It depends upon the circumstances of the particular case.

". . .

"What are the facts? The facts are that there is a situation the continuance of which, in the finding of the Sub-Committee, is likely to endanger the maintenance of international peace and security... The situation, I submit, is the complete antithesis of an essentially domestic situation."

The representative of the United Kingdom (46th meeting):

"I must say that my Government has very grave doubts indeed as to the juridical right of the Security Council to intervene in the internal affairs of a country unless there is a clear threat to the maintenance of international peace and security. We should be creating a precedent, and it is clearly essential that the United Nations should act on a perfectly sound legal basis.

". . .

"I think it is quite plain from that language what the framers of the Charter meant to effect. It was to prevent the United Nations from intervening in matters of purely domestic jurisdiction. But in their wisdom, those who framed the Charter did add an exception. They added at the end of that paragraph, 'but this principle' — that is to say, the principle of non-intervention in matters of domestic jurisdiction —'shall not prejudice the application of enforcement measures under Chapter VII'. That, no doubt, is why the Polish draft resolution submitted in the thirty-fourth meeting suggested that action should be taken under Articles 39 and 41."

The representative of France (46th meeting):

"I must confess that I do not understand this argument very well; it seems to me to lack validity since it refers to paragraph 7 of Article 2. There is no question of our intervening in the domestic affairs of Spain; once this point is conceded, the whole argument put to us lacks foundation. The really important question is whether the facts contained in the Sub-Committee's report and endorsed by that Sub-Committee unanimously amount to intervention in the domestic affairs of Spain, or whether or not they constitute a threat to the peace.

"It is quite obvious that events which, though taking place within the frontiers of one country, endanger world peace cease to be domestic affairs. From that point onwards, the overriding considera-

[55] For discussion of the recommendations in relation to Chapter VI of the Charter, see chapter X, Case 22; and in relation to Chapter VII of the Charter, see chapter XI, Cases 1 and 16.

tion is their international aspect; Article 2, referred to by the United Kingdom representative, does not refer merely to matters within the domestic jurisdiction of a State, but to matters 'essentially' within such jurisdiction. The first point to be decided is whether the recommendations proposed to us constitute interference in the domestic affairs of Spain and whether there is really a threat to world peace."

After the rejection of the draft resolution based on the recommendations of the Sub-Committee, no further discussion of the problem of domestic jurisdiction took place. At the 49th meeting on 26 June 1946, the Security Council decided "to keep the situation in Spain under continuous observation and maintain it upon the list of matters of which it is seized".[56]

CASE 3.[57] THE GREEK QUESTION: Ukrainian SSR communication dated 24 August 1946.

[*Note:* The contention was advanced that internal developments may, by giving rise to a threat to the peace, warrant the adoption of measures by the Security Council.]

The complaint brought to the attention of the Security Council by the Ukrainian SSR,[58] charging that the situation in the Balkans which endangered the maintenance of international peace and security had resulted from the policy of the Government of Greece, was placed on the provisional agenda of the 54th meeting on 28 August 1946. During the discussions as to whether this item should be included in the agenda, the representatives of Australia, Brazil, the Netherlands and the United Kingdom maintained that the Ukrainian SSR communication contained accusations against Greece unsubstantiated by sufficient facts. The representatives of the Netherlands and the United Kingdom opposed adoption of the item. The representative of the USSR contended that the Government of the Ukrainian SSR had submitted to the Council a very important and serious question directly connected with the maintenance of international peace and security. In this connexion he stated at the 58th meeting on 30 August 1946:

"... It may be said that the state of affairs in Greece is an internal Greek affair ...

"As soon as an internal state of affairs causes a serious external complication and gives rise to a threat to peace, the Charter of the United Nations obliges the Security Council to consider the situation even if it arises out of the internal position. In the present case precisely such a situation occurs."

Before the vote on the adoption of the item at the 59th meeting on 3 September the representative of Australia stated:

"... Before we admit a situation for examination, we have to have a reasonable certainty that it is not going to involve us in any of the difficulties which are raised by Article 2, paragraph 7, relating to intervention in matters of domestic jurisdiction.

"We cannot entertain a situation which is one of domestic jurisdiction, and for that reason, and for a number of other reasons, we must have a clear and careful description of the situation which we are expected to consider. Regrettably, we feel that the situation has not been so described."

At the 59th meeting, the item was included in the agenda by 7 votes in favour, 2 against, with 2 abstentions.[59]

During the general debate on the question it was maintained by the representatives of the Ukrainian SSR* and the USSR that the internal affairs of Greece, aggravated by the presence of United Kingdom troops, had become a threat to the peace and justified intervention by the Security Council under Article 2 (7).

In this connexion, at the 60th meeting on 4 September the representative of the Ukrainian SSR said:

"Article 2, paragraph 7, of the United Nations Charter denies other Governments the right to intervene in the internal affairs of a foreign country. In that case, however, this Article and paragraph are directed against the British authorities who have violated the Article. Action in the present case by the Security Council is not intervention in the internal affairs of Greece, but it is the duty of the Security Council to prevent intervention by a foreign government in the internal affairs of another country and the creation of such conditions, in accordance with Article 2, paragraph 7, of the Charter of the United Nations, as to guarantee that the plebiscite remains an internal affair of the Greek people only."

The representative of the USSR, referring to Article 2 (7), stated at the 66th meeting on 11 September that:

"... the meaning of this paragraph of the Charter is absolutely clear. It permits the United Nations to undertake appropriate measures for removing a threat to the peace or a violation of the peace, even though such a threat might have arisen from the internal situation in a particular country. This paragraph not only justifies but also obliges the Security Council to undertake measures against countries having a fascist régime, the very existence of which represents a threat to the peace.

"It is impossible, on the basis of this paragraph in the Charter, to justify foreign intervention in the internal affairs of Greece, all the more so because it is a matter of an intervention which is responsible to a considerable extent for the aggressive policy of ruling Greek circles."

The representatives of Greece and the United Kingdom maintained that United Kingdom troops had landed in Greece "at the time of the liberation" in 1944 and had "remained in Greece since then" at the request of the Greek Government. In reply to the representatives of the Ukrainian SSR and the USSR, the representative of Greece stated at the 61st meeting on 5 September that:

"We regard as inadmissible any public discussion of our internal affairs, because under Article 2,

[56] 49th meeting: p. 441. For text, see chapter VIII, p. 307.

[57] For texts of relevant statements see:
58th meeting: USSR, p. 170.
59th meeting: Australia, p. 196; USSR, p. 186.
60th meeting: Ukrainian SSR, p. 209.
61st meeting: Greece, pp. 218-219.
62nd meeting: United Kingdom, pp. 246-247.
66th meeting: USSR, p. 304; United Kingdom, p. 314.

[58] S/137, *O.R., 1st year, 2nd series, Suppl. No. 5*, pp. 149-151. For the submission of the question, see chapter VIII, p. 308.

[59] 59th meeting, p. 197. On inclusion in the agenda, see also chapter II, Cases 17 and 28.

paragraph 7, of the United Nations Charter, this constitutes intervention in the internal matters of a sovereign State, a proud and independent Member of the United Nations. But we cannot allow the charges brought by this Council against our country to go unanswered."

At the 66th meeting, the representative of the United Kingdom, referring to Article 2 (7), said:

"He [*the representative of the USSR*] then said, or I understood him to say, that I had tried to justify British action in Greece by invoking paragraph 7, Article 2, of the Charter. I really did nothing of the kind... [*The representative of the Ukrainian SSR*] said that paragraph 7, Article 2, of the Charter forbade a nation to intervene in matters coming within the domestic jurisdiction of another nation. I pointed out that it does not, but it forbids the United Nations as a body from doing so. I added that it was not intervention of one nation in the affairs of another nation, if the latter had requested the former to maintain troops upon its territory."

Following the rejection of draft resolutions submitted by the representatives of the USSR, the Netherlands, the United States and Poland, the item was removed from the list of matters of which the Council is seized.[60]

CASE 4.[61] THE GREEK FRONTIER INCIDENTS QUESTION: In connexion with United States draft resolution to advise the Commission of Investigation concerning Greek Frontier Incidents that it was not empowered to request authorities of Greece, Albania, Bulgaria and Yugoslavia to postpone any executions unless examination of any such person as a witness might assist the Commission in its work: voted upon and adopted on 10 February 1947

[*Note:* The question arose whether the requests of the Commission involved interference in the domestic jurisdiction of Greece.]

By cablegram dated 6 February 1947, the Secretary of the Commission of Investigation concerning Greek Frontier Incidents[62] requested the Security Council to inform the Commission whether its action in requesting the Greek Government to postpone executions of eleven persons for political offences was covered by the terms of reference of the resolution of the Council of 19 December 1946,[63] which empowered the Commission to call upon nationals of the States concerned who might assist the Commission with information relevant to its investigation.

By letter dated 7 February 1947,[64] the representative of Greece to the United Nations stated that the Greek Government had "altogether exceptionally consented for the last time to order that the executions be postponed by forty-eight hours". While it was "willing to facilitate to its utmost the work of the Commission" it was "unable, however, to agree to the abolition of the sovereign rights of the State by the postponement of the execution of the tribunal's sentences".

The Greek Government, therefore, lodged

"... the most emphatic protest in regard to the interference of the Commission of Investigation in the domestic affairs of ... [*Greece*] contrary to Article 2, paragraph 7, of the Charter of the United Nations and the terms of reference of the Commission as they were established by the resolution of 19 December 1946 of the Security Council..."

On 8 February 1947, the Secretary-General requested the Government of Greece to postpone the executions in question until the Council had had time to consider and discuss the Greek representative's letter of 7 February 1947.[65]

At the 100th meeting the representative of the United States stated:

"... the terms of reference of the Commission do not empower the Commission to intervene with the Greek Government for the suspension of sentences against condemned persons simply because they happen to be political offenders. That is a very delicate question of alleged interference in the internal affairs of other countries..."

In this connexion, the representative of the United States submitted a draft resolution.[66] The representatives of Australia, France and the United Kingdom expressed their support of the United States draft resolution as a correct reply to the Commission.

The representative of Australia stated at the 100th meeting:

"... it appears that the informal request was based on the view that the Commission's work would be facilitated if the Greek Government postponed certain executions. It seems to us that the Greek Government was under no obligation, juridically speaking, to comply with that request; but we are very pleased to note ... that, in fact, the Greek Government did comply with the informal request made to it..."

At the 101st meeting on 10 February, the representative of France stated that the United States draft resolution contained a double warning: to the Commission of Investigation on the one hand, and to the Greek Government on the other. He added:

"This resolution reminds the Commission of Investigation that it has no right to interfere in the internal affairs of Greece. It reminds the Greek Government that the Commission of Investigation has been empowered to interrogate all persons whose testimonies are necessary for the accomplishment of its mission..."

Amendments to the United States draft resolution were submitted by the representatives of Poland[67] and

[60] 70th meeting: pp. 420-422. For the draft resolutions, see chapter VIII, p. 308; for consideration of the draft resolutions in relation to Chapter VI of the Charter, see chapter X, Case 10; for removal of the question from the list of matters, see chapter II, Case 57.

[61] For texts of relevant statements see:
100th meeting: Australia, pp. 183-184; Poland, p. 184; USSR, pp. 182-183; United Kingdom, p. 182; United States, pp. 175-176.
101st meeting: Brazil, pp. 186-187; France, p. 187; USSR, pp. 186, 187.

[62] S/266, *O.R., 2nd year, Suppl. No. 4*, pp. 51-52.

[63] S/399, 87th meeting: pp. 700-701. For text, see chapter VIII, p. 309.

[64] S/271, *O.R., 2nd year, Suppl. No. 4*, pp. 52-54.

[65] S/271, *O.R., 2nd year, Suppl. No. 4*, p. 55.

[66] 100th meeting: p. 176.

[67] 101st meeting: p. 184.

the USSR[68] respectively at the 101st meeting. At the same meeting the USSR amendment was rejected by 1 vote in favour, 9 votes against, with 1 abstention. The Polish amendment was rejected by 2 votes in favour, 7 against, with 2 abstentions.

Also at the 101st meeting the United States draft resolution was adopted by 9 votes in favour, none against, with 2 abstentions.

CASE 5.[69] THE GREEK FRONTIER INCIDENTS QUESTION: In connexion with the decision of 18 April 1947, establishing the Subsidiary Group of the Commission of Investigation concerning Greek Frontier Incidents

[*Note:* Incidental to the establishment of the Subsidiary Group of the Commission of Investigation concerning Greek Frontier Incidents, the objection was raised that intervention in the internal affairs of Greece was involved in the matter of the administration of foreign aid.]

At the 123rd meeting on 28 March 1947, the representative of the United States made a statement informing the Council of the proposed United States programme of assistance to Greece and Turkey in response to requests from both Governments. He stated that this programme of assistance, together with effective action by the Security Council in the case of the northern Greek frontiers, would materially advance the cause of peace.

At the 126th meeting on 7 April, the representative of the United States submitted a draft resolution[70] providing that, in the absence of the Commission of Investigation concerning Greek Frontier Incidents from the area in which it had conducted its investigation, the Commission should maintain a subsidiary group in the area concerned.

At the same meeting, the representative of the USSR submitted a draft resolution[71] which read as follows:

"As a result of the discussion which took place in the Security Council on the question raised by the representative of the United States in his statement of 28 March 1947,[72]

"The Security Council resolves to establish a special commission, composed of representatives of the member States of the Security Council, the task of which shall be to ensure, through proper supervision, that aid which Greece may receive from the outside be used only in the interests of the Greek people."

At the same meeting, the representative of the USSR contended with regard to the United States draft resolution that a decision to maintain the Commission in northern Greece might be construed

". . . as an attempt to set up a screen behind which activities will be pursued by the United States Government which are not in the interests of the United Nations because they constitute intervention in the internal affairs of Greece."

At the 128th meeting on 10 April, the representative of the United States, replying to the representative of the USSR, declared that the proposed programme of assistance was pursuant to requests from the Governments of Greece and Turkey and that the report of the Committee on Foreign Relations recommending favourable action by the Senate on the Bill providing for assistance to Greece and Turkey stated that:

" '. . . before assistance is furnished, the Governments of Greece and Turkey shall agree to certain reasonable undertakings, consistent with the sovereign independence of these countries, which provide the United States with proper safeguards against the improper utilization of assistance furnished.' "

The representative of the United States continued that:

". . . any agreements entered into with the Governments of Greece and Turkey in this matter, pursuant to this legislation, if passed, will be registered with the United Nations, and the Members of the United Nations will therefore be fully provided with an opportunity to determine if there is any unwarranted interference in the internal affairs of Greece and Turkey.

"The report mentioned further states: 'Such conditions are not, of course, intended to impair in any manner the sovereign inuependence or internal security of the two countries.' "

Also at the 128th meeting on 10 April, the representative of Poland stated with regard to the assistance programme to Greece that there was

". . . no justification for sending military supplies or personnel to Greece or for granting credits to be used for military purposes. Such acts would imply unwarranted intervention in the internal affairs of Greece. It would violate the Charter of the United Nations . . ."

The representative of Yugoslavia, speaking at the 129th meeting on 14 April, declared:

". . . As regards general aid to Greece and Turkey . . . no one can prevent any one State from granting it. That is a sovereign right of the State concerned . . .

". . . It is the sovereign right of the United States to decide to whom it will grant relief, but nobody can prove that its proposal is along the lines of the resolution of 11 December of the General Assembly."[73]

At the 130th meeting on 18 April, the representative of Brazil stated:

"The United Nations does not constitute a State superstructure with derogation of sovereignties. The Charter is a pact between sovereign nations, intended to promote the interests of the Member States in regard to peace, security, and general well-being. They are not forbidden the pursuance of normal relations by means of bilateral or multi-lateral treaties aiming at the most varied objectives and interests, including those of military defence.

[68] 101st meeting: pp. 185-186. For text of adopted resolution, see chapter VIII, p. 310.

[69] For texts of relevant statements see:
123rd meeting: United States, p. 622.
126th meeting: Australia, p. 705; USSR, pp. 700-701, 715-716; United Kingdom, p. 703.
128th meeting: Poland, p. 739; United States, pp. 746, 747.
129th meeting: Albania, p. 755; Yugoslavia, p. 764.
130th meeting: Brazil, p. 772.
131st meeting: Belgium, p. 786; China, p. 798.

[70] 126th meeting: pp. 708, 711-712. See chapter VIII, p. 310.

[71] 126th meeting: p. 715. For text of the draft resolution, see 131st meeting: p. 808.

[72] 123rd meeting: pp. 617-625.

[73] General Assembly resolution 48 (I): Relief Needs after the termination of UNRRA; *G.A.O.R., 1st year, 2nd series, Resolutions*, pp. 74-76.

"There is no disposition in the Charter of the United Nations that might be invoked directly or indirectly as being preclusive of the concession of the assistance under consideration. On the contrary, the Charter presupposes, as necessary for the maintenance of peace and security, the creation in all countries of conditions of stability and well-being. Furthermore, under the terms of Article 56, the Members of the Organization are bound to act, either jointly or individually, to achieve that purpose.

"It should be definitely and clearly understood, therefore, that, in our opinion, nations are not precluded from requesting or receiving the assistance of other nations, nor from extending such help to others; and furthermore, that there is nothing in our Charter to warrant that such requests or the granting of such help should be submitted to any interference of the United Nations or its agencies."

At the 131st meeting on 18 April 1947, the United States draft resolution, as amended, was adopted by 9 votes in favour, none against and 2 abstentions.[74] At the same meeting, the USSR draft resolution was rejected by 2 votes in favour, 4 against and 5 abstentions.[75]

CASE 6.[76] THE GREEK FRONTIER INCIDENTS QUESTION: In connexion with the draft resolution submitted by the representative of the United States to establish a commission of investigation and good offices: voted upon and rejected on 29 July 1947

[*Note:* The report of the Commission of Investigation was submitted to the Security Council at the 147th meeting on 27 June 1947. At this meeting, the representative of the United States submitted a draft resolution to adopt the recommendations contained in the report of the Commission of Investigation and to establish a commission which would use its good offices, by the means mentioned in Article 33, to settle controversies between the Governments concerned and would also be empowered to investigate alleged frontier violations.

During the consideration of the United States draft resolution the question was discussed whether the establishment of a commission of investigation and good offices would limit the sovereignty of States in violation of Article 2 (7).]

During the consideration by the Security Council of the United States draft resolution submitted at the 147th meeting on 27 June 1947, and based on the recommendations contained in the report of the Commission of Investigation subscribed to by the majority of its members, the representatives of Bulgaria,* the USSR, Yugoslavia* and Albania* contended that the adoption of the draft resolution under which a commission of investigation and good offices would be established, would constitute an infringement upon the sovereignty of States, contrary to Article 2 (7) of the Charter.

At the 156th meeting on 11 July 1947, the representative of Bulgaria* remarked that Chapter VI of the Charter, under which the Greek question was being considered, only referred to "recommendations" which the Council could make, taking into consideration the sovereignty of States, while under Chapter VII the Council could take "decisions" which did not require the consent of the parties. He added:

". . . Admittedly under the Charter it is possible to override the sovereignty of States; but the Charter is very careful to limit this possibility to the far more serious cases provided for in Chapter VII . . .

". . . In this case . . . we are concerned with a commission with extensive powers, a commission which is not being proposed to us, but which it is desired to impose upon us, and this without our previous consent and even against our will . . ."

The representative of the USSR stated at the 160th meeting on 17 July 1947:

". . . The functions of the commission, as presented in the United States resolution, are such that, firstly, they go beyond the limits of the functions and powers assigned to the Security Council and, secondly, they are contrary to those provisions of the Charter which protect the sovereign rights of States Members of the United Nations. For instance, if we take its functions with regard to frontier incidents, we shall see that, according to this proposal, the Security Council is to set up its own frontier observers along the Greek frontier, on Greek, Albanian, Yugoslav and Bulgarian territories. Such a proposal is unjustifiable both from the point of view of the actual situation in these countries and on these frontiers and, as I have already pointed out, from the point of view of the Charter of the United Nations. The adoption of such a proposal would constitute a flagrant infringement of the provisions of the Charter which protect the sovereign rights of States.

At the 166th meeting on 24 July, the representative of Yugoslavia* observed:

". . . if we translate the last provision of Article 2, paragraph 7, into positive terms, we should say: the Charter restricts the sovereignty of States only in the case of the measures provided for in Chapter VII.

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

". . .

". . . It is obvious that the right to conduct an investigation in the territory of a State inevitably constitutes a restriction of that State's sovereignty. The Charter, however, lays down that national sovereignty should be limited only in very specific condi-

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[74] 131st meeting: pp. 799-800. For text, see chapter VIII, p. 310.

[75] 131st meeting: p. 808.

[76] For texts of relevant statements see:
150th meeting: Belgium, pp. 1198-1199.
151st meeting: Brazil, p. 1211; United Kingdom, p. 1208.
156th meeting: Bulgaria, pp. 1280-1281.
158th meeting: China, p. 1319; Syria, p. 1330.
160th meeting: USSR, pp. 1378-1379.
166th meeting: United States, pp. 1522-1523, 1526-1527; Yugoslavia, pp. 1520-1521, 1525.
167th meeting: Brazil, pp. 1530-1531; USSR, p. 1542.
168th meeting: United Kingdom, pp. 1556-1557.
169th meeting: Albania, pp. 1598, 1599.
See also chapter VIII, p. 311 and chapter X, Case 13, for discussion in relation to Article 34.

tions: if there is a threat to the peace, a breach of the peace, or aggression...

"... But the Charter clearly states in what conditions national sovereignty can be limited, and it can only be limited as laid down in Chapter VII..."

The representatives of Belgium, Brazil, the United Kingdom and the United States, in supporting the draft resolution, considered that the establishment of the proposed commission did not infringe upon Article 2 (7) of the Charter.

At the 150th meeting on 1 July, the representative of Belgium recalled "that the right to accept international restrictions has always been considered, in theory and in practice, one of the essential attributes of sovereignty". He continued:

"It is precisely because they are sovereign that States can bind themselves by treaty and legally accept restrictions on their liberty. To contest the power of any State to take such action would be to deny its sovereignty. To recommend States to cooperate with an international commission does not therefore, mean that it is proposed to infringe their sovereign rights..."

The representative of the United Kingdom observed at the 151st meeting on 3 July that:

"... In the course of time many international conventions have been entered into, and each one of these detracts, in lesser or greater degree, from national sovereignty. The Charter itself makes very considerable inroads on the theory of national sovereignty. Article 36, and perhaps still more Article 25, are instances of this..."

At the 166th meeting on 24 July, the representative of the United States held that, under Article 34, the Council had "the right to investigate any dispute regardless of whether or not the State investigated approves or likes it".

The representative of Brazil stated at the 167th meeting on 25 July 1947:

"... With regard to the United States resolution now under discussion, the commission to be set up would be a commission of conciliation, and it would have the power of investigation, under Article 34, as a preliminary to conciliation. The only obligation placed on the States concerned under the draft resolution, therefore, would be the obligation to collaborate with the Commission in its function of investigation..."

The United States draft resolution, as amended, was voted upon at the 170th meeting on 29 July 1947, and was not adopted. There were 9 votes in favour and 2 against (one vote against being that of a permanent member).[77]

[77] 170th meeting: p. 1612.

[78] For texts of relevant statements see:
171st meeting: Netherlands, pp. 1639-1648.
172nd meeting: President (Syria), p. 1667; Belgium, pp. 1652-1655; USSR, pp. 1659-1665; United Kingdom, pp. 1655-1657; United States, pp. 1657-1659, 1667-1668.
173rd meeting: President (Syria), pp. 1701-1702; Australia, p. 1694; Belgium, p. 1712; China, pp. 1684-1685; Colombia, pp. 1692-1694; France, pp. 1676-1678, 1695-1696; India, pp. 1683-1684; Netherlands, pp. 1688-1689, 1695; USSR, pp. 1689-1692; United Kingdom, pp. 1674-1675, 1696; United States, pp. 1687-1688.

CASE 7.[78] THE INDONESIAN QUESTION (II): In connexion with decision of 1 August 1947 calling upon the parties to cease hostilities forthwith and to settle their disputes by arbitration or by other peaceful means

[*Note:* During the discussion preceding the decision of 1 August 1947, the contention was advanced that the matter of the Indonesian question was within the domestic jurisdiction of the Netherlands, and that, in view of the absence of any threat to international peace, the proviso of Article 2 (7) did not apply. In certain statements the competence of the Council was upheld. The text of the resolution was advocated on the grounds that the omission of specific reference to any Article of the Charter obviated the question of competence; but a proposal expressly to reserve the question of competence was rejected.]

At the 171st meeting on 31 July 1947, the representative of Australia submitted a draft resolution by which the Council, having determined that the hostilities in Indonesia constituted a breach of the peace under Article 39 of the Charter, would call upon the Governments of the Netherlands and the Republic of Indonesia, under Article 40 of the Charter, to cease hostilities and settle their disputes by arbitration.[79]

At the same meeting, the representative of the Netherlands* contended that the form of action in Indonesia was one with which the Council had no concern. He stated that the Charter was designed to operate between sovereign States, and that, therefore, it was not applicable to what was happening in Indonesia, inasmuch as the latter was not a sovereign State. He added: "... we consider ... that this is a matter essentially within the domestic jurisdiction of the Netherlands'. After quoting Article 2 (7), the representative of the Netherlands observed:

"Now I come to Chapter VII. Assuming purely and simply for argument's sake that the Charter is applicable—which I deny—to what is now taking place in Java and Sumatra, where then, I ask, is there any danger to international peace or security, let alone breaches of the peace or acts of aggression in the sense of the Charter? In what countries outside the Netherlands' territory are there any signs of danger to peace caused by this action?"

At the 172nd meeting on 1 August, the representative of the United States submitted an amended version of the Australian draft resolution, omitting all references to the provisions of the Charter included in the Australian draft. "In this amendment", the representative of the United States said, "there is no mention of any Article of the Charter and there is no commitment regarding the sovereignty of the Netherlands over the region in question. All of those questions are left open and without prejudice to any determination which the Council may later reach." He thought that the Council's sentiment was that it wanted "the fighting there stopped without prejudice to the position which any member of this Council may feel he must take on the important juridical principles involved".

At the same meeting, the representative of the USSR observed that the Council was obliged in such cases

[79] S/454, 171st meeting: p. 1626. See chapter VIII, p. 315 for submission of the question; for text and for consequent discussion relating to chapter VII of the Charter, see chapter XI, Case 4.

to take decisions which would "restore peace and put an end to aggression". He contended further that the Netherlands itself had given *de facto* recognition to the Indonesian Government, and added:

"I want to draw the Security Council's attention to the fact that we should be making a gross mistake if we transferred the centre of our attention from the basic issue to its legal aspect, and tried by various kinds of legal definitions to conceal the fact that military operations are being carried out in Indonesia by the Netherlands and that a war is going on.

"Yesterday, at the 171st meeting, we heard a statement by Mr. van Kleffens who tried to justify the position of the Netherlands Government. In the first place, he denied the right of the Security Council to consider this question; that is quite inadmissible. Such an assertion is at variance with the Charter and with the obligation laid by it on the Security Council for the maintenance of international peace and security."

The President (Syria), intervening in the debate in connexion with the urgent plea of the Polish representative that the Council should either adopt a recommendation calling for a cessation of hostilities or decide that the matter was outside its competence, stated:

"Had any motion in regard to competence been submitted, I would have given it priority, because it would then have been necessary to decide first whether or not the Security Council was competent to deal with this question. If that had been decided affirmatively, we should then have proceeded to any other recommendation that might have been made. The fact is, however, that the question of competence has simply been mentioned by some of the speakers in the course of the discussion. If any member had submitted a formal proposal stating that this matter was outside the competence of the Security Council and that therefore this item ought to be deleted from the Council's agenda, that proposal would have received priority over any other. However, no such proposal has been made.

"I shall therefore call for further discussion on the proposal of the Australian delegation, as amended by the delegations of the United States and the Union of Soviet Socialist Republics. The vote on that proposal will, after all, reveal the views of the members on the question of competence. Those who believe that the matter is within the competence of the Council may vote affirmatively or negatively on the Australian resolution; however, those who believe that the matter is outside the competence of the Council will certainly vote against the resolution."

At the 173rd meeting on 1 August, the representative of the United Kingdom, referring to the United States amendment to the Australian draft resolution, stated that it also did not avoid prejudging the legal issues involved. He said: "It does, on the contrary, prejudge the legal position, because to call on parties to cease fighting is definitely to imply that Article 2, paragraph 7, of the Charter does not apply".

At the same meeting, the representative of France, questioning the competence of the Council, stated:

"We cannot be competent to deal with this question unless there is a threat to the peace. The events taking place in Java and Sumatra might constitute such a threat either if—being considered to be of an internal nature—they were liable to give rise to international complication, on account of their repercussions on external affairs . . . or if, upon an examination of the facts themselves, we were to consider them as acts of war between two distinct and sovereign states.

"The explanations given yesterday show that, with regard to the second alternative—the existence of two sovereign states—the answer is, to say the least, extremely doubtful."

The representative of France, while of the view that it would be difficult to leave aside legal or technical questions, stated that he would support the United States amendment if the following insertion were made in its text: "Reserving entirely the question of the Council's competence as regards the application of the Charter but prompted by a wish to see the cessation of bloodshed in the two islands".

At the same meeting, the representative of India* said that, according to his understanding, Article 2 (7) meant that "it would be within the jurisdiction of the Security Council to treat of and take the necessary action on even matters which are essentially within the domestic jurisdiction of a State, if those matters have a bearing upon international peace and security. Accordingly, even if, for argument's sake, we agreed with the representative of the United Kingdom that this is a domestic matter, the Security Council would, in the light of the circumstances prevailing today, be justified in taking action under Article 39 of the Charter."

The representative of the USSR, at the same meeting, said that he could not agree with the French amendment. He said: "In the first place, this would reduce the weight of such decisions, and in the second place, it would create an undesirable precedent for the future, as it would mean that the Security Council might consider a particular question though it was not certain that the question came within its jurisdiction". He had no doubt whatsoever that this question came within the Council's jurisdiction. It was just the kind of question to which the Council was obliged by the Charter to give priority consideration.

The representative of Colombia, also at the same meeting, said that he could not agree with the French amendment. He held that the Council "cannot very properly pass a resolution, saying that it is not sure whether or not it has the competence to pass it".

The representative of the Netherlands* said that he warmly applauded the idea "that some clause should be inserted which would reserve the legal position as regards the competence of the Council". He added, however, that the Council would implicitly declare its competence to deal with this question "if it does not make in the body of the resolution a certain reservation to the effect that its competence is at least doubtful".

The President, speaking as the representative of Syria, expressed the belief that the Council was competent to deal with the matter before it, "whether it is considered as a humanitarian task in the maintenance of international peace and security or whether the problem is considered on the basis of the independence of Indonesia." Speaking as President he added, however, that he did not consider that the question (of competence) had been settled, but that it had been left in abeyance.

At the same meeting, when voting took place on the United States amended version of the Australian draft resolution, the French amendment reading "and without in any way deciding the juridical question concerning the competence of the Security Council in this regard" was rejected by 5 votes in favour and 6 abstentions. With this exception, the draft resolution, together with a Polish amendment, was adopted.[80]

The representative of Belgium, in explaining his vote, stated that he felt obliged to abstain in the vote since "the Council did not feel able, in deference to the French delegation's suggestion, to consult the International Court of Justice or to reserve the legal question without postponing an appeal for a cessation of hostilities". He further stated that his delegation made "the most express reservation regarding the Council's competence in this matter".

CASE 8.[81] THE INDONESIAN QUESTION (II): In connexion with decision of 25 August 1947 establishing the Consular Commission at Batavia and the Committee of Good Offices

[*Note:* In the discussion preceding the decision of 25 August 1947 the claim of domestic jurisdiction was again raised. The jurisdiction of the Council with regard to large-scale hostilities in Indonesia was urged as justification for the establishment of the Consular Commission, and uncertainty regarding jurisdiction in the constitutional question of Indonesia as grounds for recourse to the method of good offices. Observations were made on the manner in which the Council might register competence.][82]

At its 185th meeting on 15 August 1947, the representative of the Netherlands*, in connexion with the Australian draft resolution[83] to establish a Commission to report on the situation in the Indonesian Republic following the resolution of 1 August 1947, stated that the "all-important question of jurisdiction" was involved in the consideration of that proposal. He proposed that the Council should first decide on that preliminary question.

Asserting that his Government had accepted the "cease-fire invitation" expressed in the resolution of 1 August 1947 on humanitarian grounds, and not because it recognized the jurisdiction of the Council, the representative of the Netherlands stated that the Council did not have the right to establish a commission in view of the categoric objection raised by his Government which was the sovereign power in Indonesia. He thereupon submitted certain proposals of his own.

The President (Syria), intervening in the discussion at the same meeting, stated:

". . . I should like to give an explanation with regard to the matter of the Council's jurisdiction and the procedure I intend to follow.

"The representative of the Netherlands has been opposing the assumption of jurisdiction by the Council since the beginning. However, he has not made any formal proposal supported by a member of the Council in order to have formal action taken.

". . . the Indonesian question has been on the agenda since the last day of last month. It cannot therefore be considered that the Council has no jurisdiction unless presentation is made of a formal proposal, which would state that since the Indonesian question does not come under the jurisdiction of the Security Council, it should be deleted from the agenda."

In a further statement, the President explained that as long as the question was on the agenda and the agenda had been adopted, he would allow the subject and resolutions concerning it to be discussed in the Council, unless some formal proposal was presented to the contrary. He added: "In case a proposal is presented to the contrary—that is, to take the matter off the agenda—we shall discuss it and vote upon it. We cannot do otherwise.

The representative of Belgium thereupon stated that he reserved fully his position on "the question of the Council's competence as a whole".

The representative of the United States, also reserving the position of his delegation on the implications of the President's statement, observed that, when a matter was on the agenda, it did not necessarily mean that the question of the jurisdiction of the Council on that matter could not be raised. He added: ". . . it would seem inequitable that it (the Council) must be considered competent unless the member who contests it can muster seven votes, including those of the five permanent members, in order to remove it from the agenda. That would mean that one veto would make the Council competent, and determine the Council's jurisdiction". He was, however, "not in any way contesting the power and authority of the Council to determine its jurisdiction in a given matter".

The representative of the Philippines* argued that "the dispute in question is not a matter essentially within the domestic jurisdiction of the Netherlands", and stated that the question of whether or not a particular matter was essentially within the domestic jurisdiction of any State was one to be decided by the organs of the United Nations concerned and by the Members themselves, on the merits of each particular case.

At the 192nd meeting on 22 August, the representative of the Netherlands*, again referring to the Australian draft resolution and the amendments thereto, stated as follows:

"When the vote is taken on the Australian proposal in any of the forms now before us (one of which

[80] For text, see chapter VIII, p. 316. For subsequent discussion of the resolution in relation to Chapter VII of the Charter, see chapter XI, Case 4.

[81] For texts of relevant statements see:
185th meeting: President (Syria), pp. 2017, 2025; Belgium, pp. 2024-2025; Netherlands, pp. 2006-2014; Philippines, pp. 2017-2024; Poland, pp. 2014-2017; United States, p. 2025.
187th meeting: China, pp. 2064-2068; USSR, pp. 2058-2063.
192nd meeting: President (Syria), pp. 2147-2148, 2150; Belgium, pp. 2150-2151; Colombia, pp. 2157-2160; France, pp. 2149-2150; India, pp. 2153-2157; Netherlands, pp. 2144-2147; USSR, pp. 2151-2152.
193rd meeting: Poland, pp. 2183-2187; United States, pp. 2175-2179.
194th meeting: Belgium, pp. 2193-2194; Indonesia, pp. 2190-2192.

[82] Further discussion on the problem of domestic jurisdiction arose in June 1948 in connexion with the working of the Committee of Good Offices. For texts, see:
316th meeting: Netherlands, pp. 25-34.
323rd meeting: Belgium, pp. 23-35.
326th meeting: France, pp. 21-23.
328th meeting: Indonesia, pp. 2-7; Netherlands, pp. 7-10; United Kingdom, pp. 16-19.

[83] See chapter VIII, p. 316.

is the moderate Chinese amendment), each member of this Council who casts an affirmative vote thereby states implicitly but clearly that the Council has jurisdiction in this case . . .

". . . In view of the gravity of the movement, permit me to recapitulate very briefly: first, we consider that the Charter is applicable only to disputes between sovereign States generally recognized as such. Secondly, even if it is assumed that the Charter is applicable, we regard this matter as a domestic question which quite clearly does not endanger international peace . . . Thirdly, and then I shall have finished with the question of jurisdiction—again assuming the Charter to be applicable to a case such as this—the Government of the Netherlands says that since it has become clear that there is no danger to international peace and security, Chapters VI and VII of the Charter are not applicable."

The representative of the United States, speaking at the 193rd meeting on 22 August in connexion with the Australian proposal, observed:

". . . my Government's view is that there are two very definite and different aspects of the question before the Council. The first relates to the problems which arise in connexion with the cessation of hostilities. My Government believes that the Security Council acted properly and in entire conformity with the Charter in calling upon the parties to cease hostilities . . .

"In our view, the Council's jurisdiction rested on the fact that large-scale hostilities were being carried on in Indonesia, the repercussions of which were so serious that they amounted to a threat to international peace and security.

"In the view of the Government of the United States, the Security Council has ample power to send observers, if necessary, to supervise its cease-fire order and to make certain that new hostilities do not break out which would threaten international peace and security."

Referring to "the problem of reaching a solution of the constitutional issues" which were in dispute between the parties, the United States representative added:

"The view of the United States delegation is that there is legitimate room for doubt as to the Council's jurisdiction in so far as a settlement of the constitutional issues of the Indonesian question is concerned. My Government would not be prepared, under existing circumstances, to support action by the Council based on the conclusion that it has such jurisdiction.

"We suggest that the Council itself should tender its good offices to the parties. Due to the nature of the offer of good offices, such a solution would not raise any question whatsoever as to the Council's competence or jurisdiction in the matter."

The representative of the United States thereupon submitted a draft resolution resolving to tender the Council's good offices to the parties in the pacific settlement of their dispute.[84]

At the 194th meeting on 25 August, the representative of Belgium observed that the question of jurisdiction was a preliminary question which took priority over all others. He submitted a draft resolution and urged that it be given priority in the voting.[85]

At the same meeting, the Belgian draft resolution having failed to obtain priority in the vote, the Council adopted the joint Australian-Chinese draft resolution establishing a Consular Commission at Batavia to report on the situation in the Indonesian Republic.[86] The Council, at the same meeting, adopted the United States draft resolution establishing a Committee of Good Offices.[87]

Case 9.[88] The Indonesian Question (II): In connexion with a draft resolution submitted by the representative of Belgium to request the International Court of Justice for an advisory opinion concerning the competence of the Council in the matters voted upon and rejected on 26 August 1947

[*Note:* The draft resolution to request the International Court of Justice for an advisory opinion concerning the competence of the Council to deal with the Indonesian question gave rise to discussion on the merits of this procedure. The view was expressed that previous decisions constituted an affirmation of competence, and the distinction was again drawn between the ordering of the cessation of hostilities and the recommendation of measures for pacific settlement. The draft resolution was rejected.][89]

At the 194th meeting on 25 August 1947, as indicated in the preceding Case, the representative of Belgium submitted a draft resolution concerning the competence of the Council in the matter of the Indonesian question. The draft resolution, as amended by the representative of the United Kingdom, read as follows:[90]

"*The Security Council,*

"*Having been seized* by the Governments of Australia and India of the situation in Indonesia;

"*Considering* the debates which have taken place on this subject in the Security Council,

"*Considering* that in invoking Article 2, paragraph 7 of the Charter, the Government of the Netherlands contests the competence of the Security Council to deal with the question of which it has thus been seized;

"*Requests* the International Court of Justice, under Article 96 of the Charter, to give it, as soon as possible, an advisory opinion concerning the competence of the Security Council to deal with the aforementioned question;

"*Instructs* the Secretary-General to place the documentation submitted to the Security Council regarding the question and the records of the meetings devoted to it at the disposal of the International Court of Justice."

[84] S/514, 193rd meeting: p. 2179.

[85] S/517, 194th meeting: p. 2193; see also Case 9.

[86] 194th meeting: p. 2200. For text, see chapter VIII, p. 317.

[87] 194th meeting: p. 2209. For text, see chapter VIII, p. 317.

[88] For texts of relevant statements see:
194th meeting: Belgium, pp. 2193-2194; USSR, pp. 2210-2211.
195th meeting: President (Syria), p. 2223; Australia, pp. 2215-2217; China, pp. 2217-2218; France, pp. 2214-2215; India, pp. 2219-2221; Poland, pp. 2222-2223; United Kingdom, pp. 2218-2219; United States, pp. 2221-2222.

[89] See also chapter VI, Case 27, for discussion in connexion with the relation of the Security Council and the International Court of Justice.

[90] S/517, 194th meeting: p. 2193. See also chapter VIII, p. 317.

The representative of the USSR maintained that if the Belgian draft resolution were to be adopted, "it would mean that the Security Council was thereby casting a reflection on its own (previous) decisions". He added: "The fact that the Security Council began to examine the Indonesian Question and took a decision on 1 August shows that the Council recognizes that it has every right to act in this matter as it deems necessary in the light of the situation in Indonesia."

At the 195th meeting on 26 August, the representative of France, stating that "the first duty of any body having functions, powers and responsibilities is to have a proper respect for its own competence", supported the Belgian draft resolution.

The representative of Australia contended that the question of competence was not a purely legal question, and that it had grave political implications and affected world security. Maintaining that the resolution of 1 August 1947 represented action taken under Chapter VII of the Charter, he argued that "it follows automatically that this matter is outside the sphere of domestic jurisdiction covered by Article 2, paragraph 7". He considered: "... in every case that has come before the Council, this question of competence or jurisdiction has been raised. If we decide on every occasion to refer a question to the International Court before we decide to take any action whatever, the result would be that we would never take any action."

The representative of China, at the same meeting, observed that although the question of the competence of the Council had been raised in connexion with many matters brought before it, in no case had the Council gone so far as to seek advice from the International Court. He thought that "a legal opinion rendered to the Council might turn out to be a very tight strait-jacket", and added: "If we put on this strait-jacket, we may find it very inconvenient when we attempt to face the problems of a world which is changing very rapidly."

The representative of the United States said:

"First of all, we have no doubts whatever concerning the Security Council's competence and authority to issue an order to cease hostilities—no doubts whatever. What concerns us is the question as to whether the Security Council has competence to impose a particular method of peaceful settlement in a case of this type. As other representatives, however, some of whom are permanent members who have the veto power, have grave legal doubts on the matter, we prefer, for reasons of courtesy and out of consideration for those sincere doubts, to support reference of the entire case to the International Court of Justice for an advisory opinion, rather than to request that it should be broken down into its component parts."

The representative of Poland stated, at the same meeting, that the question of competence in the case of the Indonesian question was not a legal one. It was a political question which could be decided only by the Council.

The Council, at the same meeting, rejected the Belgian draft resolution by 4 votes in favour, 1 against and 6 abstentions.[91]

[91] 195th meeting: p. 2224.

CASE 10.[92] THE INDONESIAN QUESTION (II): In connexion with decision of 1 November 1947 requesting the Committee of Good Offices to assist the parties in the implementation of the terms of the resolution of 1 August 1947

[*Note:* In the discussion preceding this decision, the question was again raised whether previous decisions related in substance to that of the draft resolution under consideration constituted a pronouncement on the competence of the Council.]

At its 218th meeting on 1 November 1947, in connexion with the draft resolution submitted by a subcommittee of the Council, composed of Australia, Belgium, China and the United States,[93] the question of the competence of the Council was touched upon by a number of representatives.

The representative of China observed that, while he personally considered the Council competent to deal with the question, his delegation and other delegations had endeavoured to follow a course "free of technical questions"—a course to which the draft resolution submitted was "a logical development".

The representative of Colombia, referring to a clause in the preamble of the draft resolution which read: "Having received and taken note of the report of the Consular Commission, dated 14 October 1947, indicating that the Council's resolution of 1 August 1947, relating to the cessation of hostilities, has not been fully effective", stated his impression that, if the Council accepted the draft, it would implicitly be accepting the thesis that it had no competence to deal with the matter. If, on the other hand, it had competence in the matter, he added, "it should be of very deep concern to the Security Council to be content to say that it is taking note that, according to the reports, no attempt has been made on either side to comply with the recommendations or the wishes of the Security Council".

The President (United States) replied:

"... I wish to say that no action has been taken by the Security Council on the question of general jurisdiction. No decision whatever has been made upon the challenge of competence or jurisdiction of the Security Council in this matter.

"On the contrary, whatever action has occurred because of decisions taken in the Security Council has been characterized by a definite understanding in the record that no such decision is being made. On that understanding, the very first decision on 1 August, which was of a provisional character, called upon the parties

"(*a*) to cease hostilities forthwith, and (*b*) to settle their disputes by arbitration, or by other peaceful means, and keep the Security Council informed about the progress of the settlement.

"Subsequently, the action taken on 25 August was with the distinct reservation that no decision was being made upon the general jurisdiction of the Secu-

[92] For texts of relevant statements see:
218th meeting: President (United States), pp. 2732-2733; China, pp. 2724-2725; Colombia, pp. 2731-2732, 2733-2734.
219th meeting: President (United States), pp. 2736, 2748; Belgium, p. 2748; Colombia, pp. 2746-2747; France, pp. 2747-2748; USSR, pp. 2734-2736.

[93] See chapter VIII, p. 318.

rity Council in this case. That action was taken with the consent, assent and agreement of both parties, who actually participated in it to the extent of nominating members to the Committee of Good Offices.

"We now come to the present resolution. That resolution does not decide that the Security Council has no competence or jurisdiction. The resolution does not decide that the Council has competence or jurisdiction beyond the point of adopting this as another provisional measure which undertakes to carry out the previous two provisional measures. Therefore, I understand that the general question of the Council's jurisdiction regarding the different aspects of the case is not being passed upon by this resolution. The President has no doubt that the Security Council has jurisdiction to act as indicated in this resolution."

At the 219th meeting on 1 November 1947, the representative of the USSR stated that the rejection of the Belgian draft resolution showed that "the question of competence was thereby decided in the affirmative, for, if we were to take the opposite view, we should be forced to the completely absurd conclusion that the Security Council has been dealing with the Indonesian question for three months absolutely in vain, with neither the right nor the power to do so".[94]

The representative of the USSR added further:

"I am therefore unable to agree with the statement made by the President at the 218th meeting — presumably in his capacity as representative of the United States — that no decision has yet been taken by the Security Council on the question of competence. It is true that there has been no formal decision, but the Council rejected a proposal which cast doubt on the competence of the Security Council; thus the situation was clarified, for otherwise the Security Council would not have dealt with the Indonesian question and would not have continued to deal with it."

With reference to the statement of the representative of Colombia, the representative of the USSR stated his view that the adoption of the draft resolution before the Council "would certainly in no way cast doubt on the competence of the Security Council".

The President (United States) stated that there was "no issue now pending in the Security Council regarding the general jurisdiction by the Security Council over the Indonesian question", and he asked the Council to refrain from entering that field and to adhere to the resolution that was before it.

The representative of Colombia, reiterating his objection to the first clause in the preamble of the resolution, stated that the Council could not accept the draft as it stood, unless it accepted, by implication, the views of those who questioned the competence of the Council.

The representative of Belgium, referring to the earlier rejection of the Belgian draft resolution, maintained that the Council thereby, "decided only whether the Court's opinion should be asked on this subject; it did not decide the actual question of competence".

The draft resolution submitted by the Sub-Committee of the Council was voted upon at the same meeting, and was adopted by 7 votes in favour, 1 against, and 3 abstentions.[95]

[94] For the Belgian draft resolution, see Case 9.

[95] 219th meeting: p. 2750. For text, see chapter VIII, p. 318.

CASE 11.[96] THE INDONESIAN QUESTION (II): In connexion with decision of 24 December 1948 calling upon the parties to cease hostilities forthwith and to release political prisoners

[*Note:* Following the renewed outbreak of hostilities between the armed forces of the Netherlands and the Republic of Indonesia on 18-19 December 1948, the Security Council on 24 December 1948 adopted the draft resolution submitted two days earlier calling upon the parties to cease hostilities forthwith, and instructing the Committee of Good Offices to report on compliance therewith. During the consideration of the matter, the representative of the Netherlands restated the grounds on which his Government had declined to recognize the competence of the Council. The counter-contention was advanced that the question before the Council was that of armed conflict between States. The question was also raised whether the hostilities fell within the competence of the Council by reason of their international repercussion.][97]

At the 388th meeting on 22 December 1948, the representative of the Netherlands* stated that the declared aim of his Government was and remained "the promotion of the freedom of Indonesia in order to create a sovereign federation of Indonesia linked in voluntary and equal partnership with the Kingdom of the Netherlands in a Netherlands-Indonesia Union". His Government was prepared to keep the Council regularly informed concerning the progress made towards that goal. After reviewing the events that led to the renewal of hostilities, the representative of the Netherlands reiterated his Government's opinion that the Council was "under the terms of the Charter, not competent to deal with the Indonesian question". He asserted that "the competence of the Council in the Indonesian dispute was never recognized by the Netherlands and never decided by the Council itself".

The representative of the Netherlands maintained that in accepting the aid of the Committee of Good Offices, his Government did not admit "even by implication that the competence of the Security Council was valid in this matter". He reiterated the arguments advanced by the Netherlands delegation at the 171st meeting of the Council on 31 July 1947 in denying the competence of the Council, and declared that they were "as valid today as they were last year".[98] Holding that Article 2 (7) applied in full force "without limitation contained in its final clause", the representative of the Netherlands stated:

"... I must conclude, with regard to the competence of the Security Council, that the Indonesian question is outside that competence, first, because the Charter deals only with relations between sovereign States; secondly, because this is a matter within the domestic jurisdiction of the Netherlands; and, thirdly, because

[96] For texts of relevant statements see:
388th meeting: Netherlands, pp. 2-31.
389th meeting: United States, pp. 42-49.
390th meeting: Australia, pp. 5-14; China, pp. 1-5.
391st meeting: India, p. 29; Syria, pp. 18-24; USSR, pp. 29-41.
392nd meeting: President (Belgium), pp. 24-27; China, p. 28; France, pp. 7-12; Netherlands, pp. 20-22; United Kingdom, pp. 3-7.

[97] For discussion in relation to Article 39, see chapter XI, Case 7.

[98] See Case 7.

the situation does not endanger international peace and security."

At the 389th meeting on 22 December, the representative of the United States, after stating that his Government considered "that the Security Council today is faced with at least as grave a situation as that of August 1947", said:

"It seems to me that the Council is obligated under the Charter at this stage of its deliberations immediately to order a cessation of hostilities in Indonesia and to require the armed forces of both parties immediately to withdraw to their own sides of the demilitarized zones . . . I must reiterate my Government's view that the Council's cease-fire resolution of 1 August 1947 continues to be binding on both parties and that it has been violated by the recent armed action taken by the Netherlands authorities in Indonesia".

The representative of the United States thereupon submitted a draft resolution[99] sponsored also by Colombia and Syria, by which the Council would, *inter alia*, call upon the parties to cease hostilities forthwith.

At the 390th meeting on 23 December, the representative of China recalled that in the preamble of the United States amended version of the Australian draft resolution submitted on 1 August 1947, the clause proposed by the representative of France reading "and without in any way deciding the juridical question concerning the competence of the Security Council in this regard" was rejected, and he stated:

"I therefore submit that, by that vote of 1 August 1947, the Security Council decided not to make any reservations as to its competence to deal with the Indonesian question, although I am well aware that certain delegations made strong reservations at the time."

At the 391st meeting on 23 December, the representative of Syria said that although at the time of the adoption of the resolution of 1 August 1947 no positive decision was taken about the competence or incompetence of the Council, "we did consider that the Republic of Indonesia was recognized as exercising certain of the authorities and prerogatives of sovereignty in Indonesia . . .". And he added:

"Now, after nineteen months during which the Security Council has been seized of the question, is not the time to return to the question of competence. The Security Council is obliged to act in order to keep peace and security wherever disturbances of the peace occur in the world. The Security Council has taken such actions in other places and its competence has not been contested."

At the same meeting, the representative of the USSR, in connexion with the question of competence raised by the representative of the Netherlands, stated:

". . . The Indonesian question has long been an international problem and the Netherlands Government cannot pretend that it is a Dutch domestic concern. The Republican Government has been recognized *de facto* by the Netherlands under the Linggadjati Agreement. The Security Council invited the Government of the Republic to take part in the discussion of the dispute between the Republic and the Netherlands, thereby formally recognizing the Republic as an entirely equal party to the dispute.

"The Indonesian Republic was officially proclaimed in August 1945 and possesses all the principal attributes of an independent sovereign State. It has territory, a people, a government, armed forces and so forth. Its relations with the Netherlands have gone far beyond the stage of a domestic dispute and have become an international problem.

"Dutch colonial aggression loosed against the Republic is without doubt a breach of the peace and represents a threat to peace and security throughout Eastern Asia. From the standpoint of international law, it is an armed conflict between two States and none of the references made by the Netherlands Government to the so-called police measures can alter the international nature of the conflict. The Security Council is fully justified and competent to consider the Indonesian question and to take a decision on it."

At the 392nd meeting on 24 December, the representative of the United Kingdom, adverting to the question of competence, said:

". . . The facts are that ever since the occurrence of the developments of 1945-46 the Indonesian question has, whether rightly or wrongly, had repercussions in many parts of the world and has been brought on more than one occasion before the United Nations. I am not prepared to say more at this moment on the question of the competence of the Security Council than was said by the United Kingdom delegation in 1947 (172nd and 173rd meetings), except to suggest that the Indonesian situation is surely one which, in the terms of the Charter, may lead to international friction, and that it has for some time past shown signs of so doing.

"In all the circumstances my Government proposes to support the joint Colombian-Syrian-United States draft resolution [S/1142] which is before the Council. In so doing it does not commit itself to any view of the legal issues which have been argued on both sides as regards the Council's competence or the particular clauses of the Charter which authorize this or that action . . .

". . . We believe that if the Council adopts the resolution before us it will avoid the reproach either . . . of washing its hands of a situation which cries out for remedy, or of exceeding its powers in matters which are solemnly protected by the domestic jurisdiction clause of the Charter."

At the same meeting, the representative of France contended that the Charter was concerned "with relations between States in terms of international law", and that the Republic of Indonesia did not qualify "as a State in the meaning of the Charter on the level of international law". He said: "The reason for this is that its sovereignty had yet to be created and that very sovereignty was intended solely for the benefit of a federal State in which the Republic was to be only a federated State". He further stated:

"When the Security Council acted in this matter of Indonesia, it did so as a good officer in order to reach a settlement in a purely friendly way, confining itself to what was acceptable to both parties. That was, in my opinion, the only attitude the Council could legitimately adopt. If it departs from that attitude, it will

[99] S/1142, *O.R., 3rd year, Suppl. for Dec. 1948*, p. 294. See chapter VIII, p. 321.

come up against all the objections which I have just recalled.

"A little while ago another argument was invoked, one which I agree would be valid, namely that, owing to its importance, the conflict might give rise to international complications. Having myself defended that point of view in relation to the Spanish question over two years ago, I fully recognize that when internal difficulties in a country assume such proportions that they are liable to give rise to international difficulties, the Council regains its competence. It gains it not because it is seized with an internal conflict in a given country, but because it is faced with the genuine responsibility of complications between that State and other States.

"I can see nothing among the documents before us to warrant the presumption that we are faced with a situation of that kind. There has been nothing to show that such an opinion was well founded, and I repeat, I can see nothing among all the facts at our disposal to show that such a danger does actually exist.

"The French delegation, for its part, considers that the essential question is that of competence, as I pointed out a short while ago. For, however unfortunate—and I repeat, shocking—the intervention of the Netherlands authorities may have been, feeling on that score cannot affect the legal aspect, the question of competence."

At the same meeting, the President, speaking as the representative of Belgium, associated himself with the conclusions reached by the representative of France in regard to the question of the Council's competence.

The representative of China, at the same meeting, explaining why the Council decided not to make a reservation in regard to its competence where that question was first raised, stated:

"I think it would be naive to believe that the matter could easily be settled by reference to the International Court of Justice ... In my opinion this is not a juridical or legal matter, pure and simple. The decision of the Security Council was based largely upon political considerations, and in fact it was a political decision. If we or the Court were to adopt any particular definition of a sovereign State, it would be difficult to apply such a definition to certain States which are already Members of the United Nations."

The Council, at the same meeting (392nd), adopted by 7 votes in favour, none against, with 4 abstentions, the joint Colombian-Syrian-United States draft resolution, and an Australian amendment thereto, after they had been voted upon in parts and amended.[100]

CASE 12.[101] THE INDONESIAN QUESTION (II): In connexion with decision of 28 January 1949 establishing the United Nations Commission for Indonesia and recommending the procedures and terms of a settlement.

[*Note:* On 21 January 1949, China, Cuba, Norway and the United States submitted a joint draft resolution which was adopted, after revision and amendment, on 28 January 1949. In the discussion the question of the competence of the Council was again surveyed. Certain paragraphs of the draft resolution were described as invasions of domestic jurisdiction. In the later discussion on the proposed Round Table Conference at The Hague, views were expressed on the decision of 28 January 1949 as an affirmation of competence.][102]

At the 402nd meeting on 21 January 1949, the representatives of China, Cuba, Norway and the United States introduced a joint draft resolution[103] on the Indonesian question (II).

The representative of Belgium*, at the same meeting, said he felt bound to draw the Council's attention to certain paramount considerations in view of the fact that the Indonesian question seemed to him about to enter upon a new phase. He recalled that the Netherlands had been contesting the Council's competence on the basis of Article 2 (7) ever since the submission of the Indonesian question, and that a number of other delegations had similarly questioned the Council's competence or, at any rate, had entertained doubts in regard to its competence. The Council lost an opportunity to verify its competence when it failed to adopt an earlier Belgian draft resolution[104] to submit the question to the International Court of Justice. In what it had done hitherto, however, the Council could not be accused of "complete lack of caution". The Council had remained within the limits of good offices and it "should not depart from this cautious attitude in its forthcoming attempt to find ways of settling the Indonesian question", and, in particular, it "should not contemplate other measures before having made sure, by reference to the Court, that it is empowered to take them".

At the same meeting, the representative of the United States stated that there was "no question but that the Council must continue to concern itself with the Indonesian question". He said:

"My delegation is not able to accept the views on the jurisdiction of the Council which have just been so eloquently stated by the representative of Belgium. We agree with the recent statement [400th meeting] of the representative of the United Kingdom that in the light of recent events we now have a situation in which the Security Council must feel compelled to make recommendations. As matters stand, I think the majority of the members of the Council

[100] For text, see chapter VIII, p. 321.

[101] For texts of relevant statements see:
398th meeting: China, pp. 11-13; United States, pp. 2-10.
400th meeting: Netherlands, pp. 2-15; United Kingdom, pp. 15-18.
402nd meeting: Belgium, pp. 2-5; United States, pp. 6-10.
403rd meeting: India, pp. 3-8; United Kingdom, pp. 15-17.
404th meeting: Indonesia, pp. 2-3.
405th meeting: Belgium, pp. 29-31.
406th meeting: Argentina, pp. 2-3; Netherlands, pp. 6-19.
417th meeting: India, p. 3.
420th meeting: Belgium, pp. 19-24; Egypt, pp. 24-28.

[102] Further observations on the question of competence were made at the 455th and 456th meetings on 12, 13 December 1949 in connexion with the Special Report by the United Nations Commission for Indonesia on the Round Table Conference. For texts of relevant statements see:
455th meeting: President (Canada), pp. 2-3; China, pp. 30-31; Indonesia, pp. 11-13; Netherlands, pp. 3-7.
456th meeting: Argentina, pp. 27-28; Burma, pp. 22-23; Egypt, p. 13; France, p. 25.

[103] S/1219, *O.R., 4th year, Suppl. for Jan. 1949*, p. 53. See chapter VIII, p. 322.

[104] See Case 9.

will agree that we have an obligation to continue our efforts to assist in arriving at a solution as a whole. The time has passed for a piecemeal approach.

"A second basic premise of ours is that there were and are two parties before us. Discussions concerning the legal inequality in their status have not at any point prevented the Council from dealing with them as parties. The fact that they both in good faith signed an agreement under the auspices of our agency is sufficient, apart from any other consideration, to establish both as parties with which we can legitimately concern ourselves, as we have done hitherto. As we understand the factual situation at the moment, however, it is necessary for the Council to seek to reestablish the position of one of the parties to a point where it can resume *bona fide* negotiations with the other. Naturally, the Council cannot accept the contention that, in its present situation, the Government of the Republic is able to enter upon negotiations in any real sense of the word. Clearly, it must be enabled to negotiate with the Netherlands freely and thus to have a voice in the discussion of the future of Indonesia."

In regard to the new terms of reference to be given to the agency of the Council in Indonesia under the joint draft resolution, the United States representative added:

"We all recognize that in our draft resolution we have placed a heavy burden on the Commission. We have not, on the other hand, sought to give it any power which the Security Council cannot delegate. In the final analysis, the responsibility rests with the Council. We are convinced, however, that it is necessary to give our agency on the spot sufficient authority in the first instance to enable it to meet the new situation there."

At the 403rd meeting on 25 January 1949, the representative of India* said he was "astonished" that "in these times anybody could urge that the Indonesian question was a domestic issue, when it has produced the gravest repercussions throughout the world, and has forced 19 countries in Asia and in the Pacific to meet at very short notice and to pass a unanimous resolution indicating the gravity of the situation, and the possibilities of a menace to world peace".

At the 406th meeting on 28 January, prior to the vote on the four-Power draft resolution and the amendments to it, the representative of the Netherlands* objected to it again on the ground that it represented "a drastic and deep interference in the domestic affairs of a State, such as no Member of the United Nations ever accepted when signing the United Nations Charter". He pointed out, by way of example; the provisions of paragraph 3 and sub-paragraph 4 (f) of the joint draft resolution, and stated that the Council by asking the parties to comply with those terms was, in effect, asking the Netherlands to renounce some of its most fundamental and vital sovereign rights. He said:

". . . Even if the competence of the Security Council to deal with the Indonesian question, which we deny, were fully conceded by us and all others, even then the Council would be barred by the Charter from interfering in this way in our domestic affairs.

"If this resolution is adopted, this provision (Article 2 (7)), which is one of the cornerstones of the United Nations Charter, will from now on be a dead letter."

The representative of the Netherlands, objecting to another provision (sub-paragraph 4 (a)) of the draft resolution which provided that in the future the United Nations Commission for Indonesia should take its decisions by a majority vote, stated:

". . . Since there is on the Commission one member chosen by the Netherlands and one member by the Republic of Indonesia, the decisive vote would as a rule lie with the third member, the United States of America. This is not changed by the provision that minority opinions can be brought to the knowledge of the Security Council. Thus, the real effect of the resolution would be that the Netherlands would, during the interim period, hand over fundamental rights, constituting part of its sovereignty over Indonesia, to the United States of America. Such a concession, I submit, cannot be asked from any State."

At the same meeting, the four-Power draft resolution, as amended by Canada, was adopted after having been voted upon in parts.[105]

Following the decision of 28 January 1949, the Council, at its 416th meeting on 10 March 1949, had before it a proposal[106] from the representative of the Netherlands which, according to him, if accepted by the Council, would "lead to statehood for Indonesia within a very few months", and to "the achievement of the Security Council's own aim at a much earlier date".[107] Accordingly, the representative of the Netherlands stated that a round table conference of all the interested parties was proposed to be held at The Hague, and that invitations had been issued to all interested parties, including the United Nations Commission for Indonesia. He appealed to the Council to render possible, on its part, the execution of his Government's plan.

At the 420th meeting on 23 March, in the course of the discussion following the submission of the Netherlands proposal[108] at the end of which the Council adopted, by 8 votes in favour, none against and 3 abstentions, the text of a directive proposed by Canada, the representative of Belgium* observed that those who were of the view that the Council "should exclude the Netherlands proposals from the discussion and consider them as non-existent", and who pressed "for the literal application of the Council's last resolution (of 28 January 1949)", did not "take into account the fact that the Council's competence was challenged from the beginning, that its competence was never either verified or established, although several members of the Council, among whom were three permanent members, had supported the proposal to do so and although the Netherlands declared itself ready to bow to the opinion of the International Court of Justice".

At the same meeting, the representative of Egypt, in connexion with the statement of the representative of Belgium, stated that "when, by a large majority, the Security Council adopted its resolution of 28 January of this year, it gave the most unequivocal proof of its conviction that it is competent to deal with this matter". He added:

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[105] 406th meeting: pp. 21-33. For text, see chapter VIII, pp. 322-324.

[106] S/1274, *O.R., 4th year, Suppl. for March 1949,* pp. 35-41.

[107] 416th meeting: pp. 9-12. See chapter VIII, p. 324.

[108] See chapter VIII, p. 324.

"Unless and until we have proof to the contrary as to the competence of the Council—a proof, according to my views, which ought to be approved by the Council itself—the Council's competence remains unchallenged seriously by anyone. I say 'unchallenged seriously' not in any sense of minimizing the importance of the observations made by the representative of Belgium, but in the sense that the Council's competence is not validly and properly challenged until the Council decides that it is no longer competent to deal with the question of Indonesia. Until that happens, its competence remains and its decisions stand. If any member wishes to refer a question to the International Court of Justice for an advisory opinion, that is quite another matter."

CASE 13.[109] THE PALESTINE QUESTION: In connexion with decision of 18 May 1948: adoption of the text of a questionnaire to be put to the parties concerned.

[*Note:* The issue arose whether certain questions would constitute an invasion of domestic jurisdiction.]

At the 293rd meeting on 17 May 1948, the representative of the United States submitted a questionnaire to be addressed by the Security Council to the parties concerned for the purpose of ascertaining the facts of the situation in Palestine.[110] Of the questions to be put to the Governments of Egypt, Iraq, Lebanon, Saudi Arabia, Syria, the Hashemite Kingdom of the Jordan, and Yemen, questions (*f*) and (*g*) read as follows:[111]

"(*f*) Have the Arab Governments entered into any agreement among themselves with respect to Palestine?

"(*g*) If so, what are the terms of the agreement?"

At the 294th meeting on 18 May, the representative of Lebanon* objected to the inclusion of the above questions. At the 295th meeting on the same day, the President (France) stated that the two questions related to the maintenance of peace, which was "precisely within the province of the Security Council". The representative of Argentina cited Article 2 (7) and suggested that inclusion of the two questions in the questionnaire should be decided by vote. Questions (*f*) and (*g*) were not adopted, having failed to obtain the affirmative votes of seven members. There were 4 votes in favour.[112]

At the same meeting, the representative of Syria proposed the following additional question to be addressed to the Jewish authorities in Palestine:[113]

"Do you have among your armed forces foreigners who are not Palestinian citizens? If so, how many or in what percentage?"

The representative of the Jewish Agency for Palestine* suggested that, since the immigration policy of Israel was a matter of domestic jurisdiction under Article 2 (7), it should also be excluded from the questionnaire. The Syrian proposal was not adopted, having failed to obtain the affirmative votes of seven members. There were 3 votes in favour.[114]

CASE 14.[115] THE PALESTINE QUESTION: In connexion with decision of 29 May 1948 calling for the cessation of military operations for a period of four weeks.

[*Note:* The wording of certain provisions was changed in consequence of objections on grounds of domestic jurisdiction.]

At the 306th meeting on 27 May 1948, the representative of the United Kingdom submitted a draft resolution,[116] which, in the second paragraph of its operative part, provided that the Security Council would call upon[117]

". . . both parties to undertake that they will not introduce fighting personnel or men of military age into Palestine during the cease-fire."

At the 307th meeting on 28 May, the representative of the Jewish Agency for Palestine*, having cited Article 2 (7), contended that the Council would be exceeding its powers if it attempted to intervene in the immigration policy of Israel. The representative of the Ukrainian SSR supported the view that the question of immigration into the State of Israel was an internal affair of that State and that the Council had "neither the right nor the power to encroach upon the sovereign rights of a State".

At the 310th meeting on 29 May, the representative of the United States suggested that the paragraph should be amended to read as follows:[118]

". . . Calls upon all Governments and authorities concerned to undertake that they will not introduce fighting personnel or men of military age into Palestine, Egypt, Iraq, Lebanon, Saudi Arabia, Syria, Transjordan or Yemen during the cease-fire."

The President (France) proposed a further amendment to delete the words "or men of military age" and to insert an additional paragraph providing that such men of military age as would be introduced into those countries should not be mobilized or trained militarily during the cease-fire.[119]

The two paragraphs, as amended, were adopted by 7 votes in favour, none against with 4 abstentions.[120]

CASE 15.[121] THE PALESTINE QUESTION: In connexion with decision of 19 August 1948 indicating certain obligations of governments and authorities concerned during the truce.

[*Note:* The provision regarding the punishment of persons involved in a breach of the truce was questioned on grounds of domestic jurisdiction.]

[109] For texts of relevant statements see:
293rd meeting: United States, p. 3.
294th meeting: Lebanon, p. 19.
295th meeting: President (France), p. 35; Argentina, p. 35; Syria, p. 27; Jewish Agency for Palestine, pp. 44-45.
[110] See chapter VIII, p. 328.
[111] 293rd meeting: p. 3.
[112] 295th meeting: p. 36.
[113] 295th meeting: p. 27.
[114] 295th meeting: p. 45.
[115] For texts of relevant statements see:
306th meeting: United Kingdom, p. 29.
307th meeting: Ukrainian SSR, p. 15; Jewish Agency for Palestine, pp. 10-11.
310th meeting: President (France), pp. 41-42; United Kingdom, pp. 47-48; United States, p. 40; Jewish Agency for Palestine, pp. 26-27.
[116] S/795. See chapter VIII, p. 329.
[117] 306th meeting: p. 29.
[118] 310th meeting: p. 40.
[119] 310th meeting: pp. 41-42.
[120] 310th meeting: p. 52. For text, see chapter VIII, p. 329.
[121] For texts of relevant statements see:
354th meeting: USSR, pp. 45-46; United Kingdom, p. 47.

At the 354th meeting on 19 August 1948, in connexion with a draft resolution[122] concerning truce violations submitted by the representatives of Canada, France, the United Kingdom and the United States, the representative of the USSR held that paragraph (*c*) was contrary to Article 2 (7). The paragraph read:

"Each party has the obligation to bring to speedy trial and in case of conviction to punishment, any and all persons within their jurisdiction who are involved in a breach of the Truce."

The representative of the United Kingdom replied that recalling the obligation of authorities and governments concerned would not constitute intervention. The Council was not proposing that it would intervene and attempt to punish individuals or groups that were guilty of evading this obligation.

At the same meeting, paragraph (*c*) of the draft resolution was adopted by 8 votes in favour, none against with 3 abstentions.[123]

### Case 16.[124] The Czechoslovak Question

[*Note:* The question of domestic jurisdiction arose at four stages of the debate on the Czechoslovak question:

(i) Adoption of the agenda;

(ii) Invitation to the Government of Czechoslavkia to participate without vote in the discussion;

(iii) Draft resolution submitted by the representative of Chile at the 281st meeting;

(iv) Draft resolution submitted by the representative of Argentina at the 303rd meeting.]

#### (i) *Adoption of the agenda*[125]

In objecting to the inclusion of the question in the agenda, the representative of the USSR stated at the 268th meeting on 17 March 1948, that "discussion of the Chilean communication would be crass interference by the Security Council in the internal affairs of Czechoslovakia, a Member of the United Nations, and such interference is flatly prohibited by the United Nations Charter". He continued that "only the people of Czechoslovakia can determine the composition of their government and all other questions which are within the domestic jurisdiction of Czechoslovakia as a sovereign State".

Representatives who spoke in favour of consideration of the question raised two inter-connected points. First, it was denied that the question brought before the Council was essentially within the domestic jurisdiction of Czechoslovakia; hence consideration of the question would not be a violation of Article 2 (7). Secondly, observations were made to the effect that the question arose whether Article 2 (7) had not been violated already in connexion with the events in Czechoslovakia, with the consequence that Article 2 (7) would not bar but might rather constitute the basis for United Nations action.

The representative of the United Kingdom stated that the United Nations was not being asked to intervene in matters of domestic jurisdiction in Czechoslovakia, but that what was before the Council was "an allegation made by a Member of the United Nations — the Government of Chile — to the effect that another Member of the United Nations — the USSR — has intervened in the affairs of another State". The representative of France stated that "the complaint before the Council concerns external interference in the affairs of the Czechoslovak people and therefore, in the form in which it is submitted, does not concern the internal affairs of Czechoslovakia".

The representative of Syria stated:

". . . The charge is made that pressure and the threat of force have been exerted by one Member State against another in order to change the domestic régime of that second State. If it were proved that that had actually been done, the action of the first State would be considered a violation of Article 2, paragraph 7, of the Charter."[126]

In answer to the charge that the changes in the Government of Czechoslovakia had been brought about by the intervention of the Government of the USSR, the USSR representative stated that such assertions were "pure slander against the USSR" and that the "Soviet delegation flatly rejects them".

#### (ii) *Invitation to the Government of Czechoslovakia to participate without vote in the discussion*[127]

Following the adoption by the Security Council at its 278th meeting on 6 April 1948, of a resolution inviting the Government of Czechoslovakia to participate without vote in the discussion of the Czechoslovak question, the representative of Czechoslovakia, in a letter dated 8 April 1948, stated:[128]

"The discussion of internal matters before the Security Council is in contradiction to the provisions of the Charter. Such matters are exclusively within the domestic jurisdiction of any State. The Czechoslovak Government therefore rejects with indignation the unfounded complaint which has been put before the Security Council . . .

"Since the discussion of internal matters of Czechoslovakia in the Security Council is contrary to the basic principles of the Charter, inspired by the aim of protecting the sovereignty and independence of States, the Czechoslovak Government does not find it possible to take part in any way in such discussion."

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[122] S/981, *G.A.O.R., 4th Session, Suppl. No. 2*, pp. 40-41.

[123] 354th meeting: p. 50.

[124] For texts of relevant statements see:
268th meeting: Colombia, p. 95; France, p. 98; Syria, pp. 94-95; Ukrainian SSR, pp. 96-97; USSR, pp. 90-91; United Kingdom, p. 94; United States, p. 99.
272nd meeting: Argentina, p. 173; Ukrainian SSR, pp. 198-199, 200-201, 203; United Kingdom, pp. 191-192.
273rd meeting: USSR, p. 210; United States, pp. 226-227.
276th meeting: Ukrainian SSR, pp. 279-280.
278th meeting: Argentina, p. 3; United States, p. 2.
281st meeting: USSR, pp. 14-15, 19, 21; United States, pp. 26, 32.
288th meeting: Ukrainian SSR, pp. 6-7.
300th meeting: USSR, pp. 36, 42.
303rd meeting: USSR, p. 33.
305th meeting: USSR, pp. 36-38.

[125] On the inclusion of the item in the agenda, see chapter II, Case 32; for the submission of the question, see chapter VIII, p. 352.

[126] Subsequent to adoption of the agenda, the representative of Argentina also stated, at the 278th meeting on 6 April 1948, that "the situation which has been brought to the notice of the Security Council by the representative of Chile arises from the fact that one State is alleged to have interfered in the domestic affairs of another. Such an action is forbidden by Article 2, paragraph 7". (278th meeting: p. 3.)

[127] For the proposal to invite Czechoslovakia, see chapter III, Case 37.

[128] S/718, *O.R., 3rd year, Suppl. for April 1948*, p. 6.

At the 281st meeting on 12 April 1948, the representative of the United States, after commenting on the circumstances of the case, concluded:

"All of these circumstances lead to the basic question: Has the Government of Czechoslovakia been subverted with the assistance, direct or indirect, of an outside Power? Has a threat of the use of force or other pressure or interference by an outside Power been directed against the political independence of Czechoslavakia? If the answer is in the affirmative, then we are confronted with a situation which very definitely is outside the scope of Article 2, paragraph 7 of the Charter and which concerns the Security Council. . .

"This invitation has now been rejected. Why? The rejection is based on the thesis that this case comes under Article 2, paragraph 7. This, as I have pointed out, is a matter for determination by the Security Council."

(iii) *Draft resolution submitted by the representative of Chile at the 281st meeting*[129]

At the 281st meeting on 12 April 1948, the representative of Chile submitted a draft resolution which provided for the appointment of a sub-committee to study evidence and report to the Security Council.[130] The representative of the USSR referred to:

". . . the absolute inadmissibility, in this field, of any foreign intervention in the internal affairs of Czechoslovakia; whether such intervention emanates from separate countries or groups of countries, or from the Security Council, which a particular group of countries is attempting to use as its blind instrument for purposes which have nothing in common with the task of maintaining international peace and security."

At the same meeting, the representative of the United States stated that the charges made before the Security Council against both the USSR and the Czechoslovak Governments

". . . are based on the allegation of an illegal intervention by one State in the internal affairs of another State, leading to the impairment of its political independence. Moreover, the restoration and maintenance of democratic institutions in liberated Europe, including Czechoslovakia, was the subject of an international Agreement concluded at Yalta by Marshal Stalin, Prime Minister Churchill and President Roosevelt in February 1945. Consequently, if the charges are true, Article 2, paragraph 7 clearly could not be a bar to Security Council jurisdiction over this question. The taking of evidence is the way to settle whether or not the charges are a premeditated quota of slander, as charged by the Union of Soviet Socialist Republics."

At the 300th meeting on 21 May 1948, the representative of the USSR stated that if the draft resolution submitted by the representatives of Chile and sponsored by the representative of Argentina were adopted, it could not "be interpreted otherwise than as a crude attempt to interfere in Czechoslovakia's internal affairs". In connexion with the voting procedure under Article 27, the representative of the USSR at the 300th meeting stated that

". . . in rejecting all attempts to interfere in Czechoslovakia's internal affairs, we are defending the perfectly legitimate rights and interests of the people of Czechoslovakia and of the Czechoslovak State."

(iv) *Draft resolution submitted by the representative of Argentina at the 303rd meeting*

At the 303rd meeting on 24 May, the representative of Argentina submitted a draft resolution[131] which provided for the Committee of Experts to obtain testimonial evidence both oral and written regarding the Czechoslovak question, and to report to the Security Council at the earliest opportunity.

At the 305th meeting on 26 May, the representative of the USSR declared:

"The USSR delegation can in no case agree to any proposals of that kind. They constitute attempts to interfere in the internal affairs of the sovereign State of Czechoslovakia."

CASE 17.[132] COMPLAINT OF AGGRESSION UPON THE REPUBLIC OF KOREA: In connexion with draft resolution to condemn the North Korean authorities for defiance of the United Nations: voted upon and rejected on 6 September 1950.

[*Note:* The representative of the USSR claimed that the Council's action regarding the situation in Korea involved intervention in the domestic affairs of Korea, where the conflict had the characteristics of a civil war. The representative of the United Kingdom stated that, under the Council's responsibility for the maintenance of international peace and security, it was authorized by the Charter to intervene, if need be, in the internal affairs of any country.]

At the 479th meeting on 31 July 1950, the representative of the United States submitted a draft resolution[133] to condemn the North Korean authorities for their continued defiance of the United Nations.

At the 482nd meeting on 3 August, the President, speaking as the representative of the USSR, commenting on the situation in Korea, stated:

". . . It is clear to anyone . . . that a civil war is in progress in Korea between the North and South Koreans. The military operations between the North and South Koreans are of an internal character; they bear the character of a civil war. There is therefore no justification for regarding these military operations as aggression . . .

"As is known, the United Nations Charter also directly prohibits intervention by the United Nations in the domestic affairs of any State when the conflict is an internal one between two groups within a single State and a single nation. Accordingly, the United Nations Charter provides for intervention by the Security Council only in events of an international rather than of an internal nature . . . "

At the 486th meeting on 11 August, the representative of the United Kingdom stated that the represen-

[129] For consideration of the draft resolution, see chapter V, Case 67; and chapter X, Case 17.

[130] 281st meeting: p. 2. See chapter VIII, p. 352.

[131] S/782, *O.R., 3rd year, 303rd meeting*, p. 33.

[132] For texts of relevant statements see:
482nd meeting: USSR, pp. 6, 8.
486th meeting: United Kingdom, pp. 5-6.
489th meeting: USSR, p. 3; United Kingdom, pp. 20-21.

[133] 479th meeting: pp. 7-8. See chapter VIII, p. 357.

tative of the USSR had omitted to draw attention to the fact that the Government of the Republic of Korea had already been declared the lawful Government of that country by the United Nations; that United Nations observers were stationed on its *de facto* northern frontier; and that, therefore, the whole State was, as it were, existing under the mantle of the United Nations. He added:

" . . . Quite apart from this, there is absolutely no reason to suppose that wars between people of the same race, even if they do not involve a government which has been set up under the aegis of the United Nations, are necessarily exempt from the decisions of the Security Council. A civil war in certain circumstances might well, under Article 39 of the Charter, constitute a 'threat to the peace', or even a 'breach of the peace', and if the Security Council so decided, there would be nothing whatever to prevent its taking any action it liked in order to put an end to the incident, even if it should involve two or more portions of the same international entity. Indeed, paragraph 7 of Article 2 of the Charter so provides . . . "

He continued that the last few words of that paragraph "make it quite clear that the United Nations has full authority to intervene actively in the internal affairs of any country if this is necessary for the purpose of enforcing its decisions as regards the maintenance of international peace and security".

At the 496th meeting on 6 September, the United States draft resolution was not adopted. There were 9 votes in favour, 1 against (being that of a permanent member), with 1 abstention.[134]

CASE 18.[135] In connexion with the proposal on 31 August 1950 to include in the agenda the item "The unceasing terrorism and mass executions in Greece."

[*Note:* Objection to the inclusion of the item in the agenda was raised on grounds of domestic jurisdiction and on other grounds. The Council rejected the proposal to include the item.]

At the 493rd meeting on 31 August 1950, the representative of the USSR, in his capacity as President, included in the provisional agenda an item on "The unceasing terrorism and mass executions in Greece". During the discussion on the adoption of the agenda, he submitted a draft resolution[136] to request the Greek Government "to suspend the execution of the death sentence on 45 active members of the national resistance movement who have been sentenced to death, to prohibit any further executions of political prisoners and not to allow the transfer of tubercular political prisoners to desert islands with an unhealthy climate".

In opposing the inclusion of this item in the agenda, the representative of the United Kingdom stated:

" . . . It is perfectly clear that the Security Council has no jurisdiction in the matter at all, and that it would be wholly improper for the item to be included in the definitive agenda. The matters with which the communications from the President deal, obviously do not constitute a threat to the peace. They are clearly within the sphere of Greek domestic jurisdiction, and the United Nations under Article 2, paragraph 7 of the Charter, is therefore precluded from discussing them."

Objection was also raised by the representative of the United States on the grounds that there was "no single coherent suggestion that there is a threat to international peace or even an international dispute".

The Council rejected the proposal to include the item in the agenda by 2 votes in favour, and 9 against.[137]

After the vote, the following statements were made:

By the representative of India:

"While in certain circumstances the subject matter . . . may be a matter for the consideration of the General Assembly or some other organ of the United Nations, my delegation is not satisfied that it is a matter for the Security Council."

By the representative of Ecuador:

"I voted against the inclusion of this item in the agenda because the Assembly will shortly open, because I take into account the wording of Article 13, paragraph 1 (b) of the Charter, and because whatever action is required to ensure that human rights are observed as far as possible in Greece and in all other countries can be taken in the Assembly."

By the representative of Norway:

". . . my delegation voted against the inclusion in the agenda . . . because, in my opinion, the item as proposed is completely outside the jurisdiction of the Security Council whether the General Assembly is in session or not. This is so because this item has nothing to do with the maintenance of international peace and security."

CASE 19.[138] THE ANGLO-IRANIAN OIL COMPANY CASE: In connexion with draft resolutions submitted by the representative of the United Kingdom to call upon the Government of Iran to act in conformity with provisional measures indicated by the International Court of Justice.

[*Note:* On 5 July 1951, the Court granted interim measures of protection in accordance with Article 41 of the Statute in the course of proceedings instituted by the United Kingdom against Iran in connexion with the application of the Agreement of 1933 between the Imperial Government of Persia and the Anglo-Persian Oil Company, Limited. The order stated that the indication of such measures in no way prejudged the ques-

[134] 496th meeting: pp. 18-19.

[135] For texts of relevant statements see:
493rd meeting: Ecuador, pp. 30-31; France, pp. 28-29; India, p. 30; Norway, p. 31; USSR, pp. 15-20; United Kingdom, pp. 22-23; United States, pp. 26-27; Yugoslavia, p. 29.

[136] S/1746/Rev.1, 493rd meeting: pp. 19-20.

[137] 493rd meeting: p. 30. See also chapter II, Case 36, for procedural argumentation.

[138] For texts of relevant statements see:
559th meeting: China, pp. 8-9; Ecuador, p. 2; France, p. 5; India, pp. 7-8; Netherlands, p. 5; Turkey, p. 3; USSR, pp. 1-2; United Kingdom, pp. 3-4, 20; United States, pp. 5-7; Yugoslavia, pp. 2-3, 8-10.
560th meeting: Iran, pp. 6-7, 12-13.
561st meeting: China, pp. 19-21; India, pp. 16-17; Iran, pp. 5, 31; USSR, p. 22; United Kingdom, pp. 8-9, 23; Yugoslavia, pp. 17-18.
562nd meeting: Ecuador, pp. 3, 5-10; United Kingdom, p. 3.
563rd meeting: China, pp. 34-35; Netherlands, pp. 32-34; United States, p. 3.
565th meeting: China, p. 5; France, pp. 2-3; Yugoslavia, pp. 2, 13.

tion of the jurisdiction of the Court to deal with the merits of the case, but was intended to preserve the respective rights of the parties pending the Court's decision. Objection was raised to the United Kingdom request on grounds of domestic jurisdiction before, and again after, the adoption of the agenda.][139]

At the 559th meeting on 1 October 1951, when the Security Council decided to include the item in the agenda, as well as at five subsequent meetings, between 15 and 19 October 1951, when the Council considered draft resolutions submitted by the representative of the United Kingdom,[140] several representatives made statements regarding the competence of the Council to deal with the question.

At the 559th meeting, the representatives of the USSR and Yugoslavia objected to the inclusion of the item in the agenda. The representatives of the Netherlands, the United Kingdom and the United States made statements to uphold the competence of the Council. The representatives of China, Ecuador, India and Turkey spoke in favour of including the item in the agenda, but reserved their positions both on the question of competence and the merits of the case.

The representative of the USSR maintained that the discussion of the United Kingdom complaint would constitute interference in the internal affairs of Iran contrary to the provisions of Article 2 (7). He opposed the United Kingdom draft resolution and all amendments thereto on the ground that their aim was to force Iran to conduct negotiations and to make a question which was exclusively within its domestic jurisdiction the subject of international discussion in violation of Article 2 (7). The representative of Yugoslavia contended that the action taken or contemplated by Iran with regard to the Anglo-Iranian Oil Company was a matter essentially within the domestic jurisdiction of Iran.

In discussion on the inclusion of the item in the agenda, the representative of the United Kingdom outlined his views, regarding the competence of the Council, which he elaborated in later stages of the debate. He maintained that the expropriation of foreign property and rights and the treatment of aliens were matters governed by rules of international law. It was thus a confusion of the issue to plead the general right of nationalization. Moreover, the United Kingdom's claim that Iran had broken certain treaties between the two countries was sufficient by itself to remove the dispute from the realm of domestic jurisdiction. He suggested that the finding of the International Court of Justice on provisional measures, indicating the existence of a case at least *prima facie* internationally justiciable and not therefore a pure matter of domestic jurisdiction, gave rise to international obligations which it was the right and duty of the Council to uphold. He adduced grounds for concluding that this decision of the Court regarding its jurisdiction was binding on all Members of the United Nations. Citing Articles 93 (1) and 94 (1) of the Charter, he maintained that the indication by the Court of provisional measures under Article 41 of the Statute of itself gave rise to obligations which it was the duty of the Security Council to uphold and which could not be regarded as being solely within the domestic jurisdiction of one of the parties. In addition, the Council had special functions in relation to the decisions of the Court, both under Article 94 (2) of the Charter and Article 41 (2) of the Statute of the Court, and possessed the power to deal with matters arising out of provisional measures which the Court had not notified to it. He maintained that Article 94 (2) applied not only to final judgments of the Court, but to decisions on interim measures as well, for there would be no point in making the final judgment binding if one of the parties could frustrate that judgment in advance by actions which would render it nugatory. He further stressed that the formal basis of the reference to the Council was Article 35 of the Charter and, in these circumstances and quite apart from the decision of the Court, there was a dispute which should receive urgent consideration by the Council.

The representative of Iran* observed that the Security Council had no competence to deal with the question because the exercise of Iran's sovereign rights in such matters of domestic jurisdiction could neither be abridged nor interfered with by any foreign State or international body. That principle of international law was also the law of the United Nations by virtue of Articles 1 (2) and 2 (7) which exempted the Members from any requirement to submit such matters to settlement under the Charter. Apart from the bar to the Council's jurisdiction interposed by Article 2 (7), the Council could not, as the United Kingdom asked, enforce compliance under Article 94 with the provisional measures indicated by the Court under Article 41 of its Statute, because the Statute attributed binding force only to final judgments under its Article 59. The argument of the representative of the United Kingdom that there would be no point in making a final decision binding if one of the parties could frustrate that decision in advance, was an argument *de lege ferenda* rather than one declaratory of existing law. The language of Article 41 of the Statute was exhortative and not declaratory, and the provisional measures would have binding force only if the parties had been bound by an arbitration treaty which would expressly obligate them to respect such measures. As to the suggestion that the Security Council ought to have jurisdiction because of the existence of a threat or potential threat to peace and security, the representative of Iran declared that a nation as weak and small as Iran could not endanger world peace, that whatever danger there might be to peace lay in the actions of the Government of the United Kingdom, and that the only dispute between Iran and the United Kingdom related to the latter's attempts to interfere in the internal affairs of Iran. Under the rules of international law, the expropriation of the property of aliens was governed only by one condition, compensation, a condition which had been specifically provided for in the nationalization statute, and Iran had repeatedly expressed its willingness to negotiate for a settlement.

Certain other statements bore rather on the competence of the Council in the light of the situation arising from the legal issues in the dispute. The representative of Yugoslavia, in opposing the inclusion of the item in the agenda, contended that questions involving the applicability or non-applicability of Article 2 (7) to cases brought before the Council had always been decided by

[139] For submission of the question, see chapter VIII, p. 360. For discussion in relation to Chapter VI of the Charter, see chapter X, Case 26; in relation to Article 41 of the Statute, see chapter VI, Case 29.

[140] S/2357 and S/2358/Rev.1 and Rev.2.

the Council itself in accordance with the legal precept that interpretation was co-extensive with application. The Council was, therefore, not bound by decisions which other organs of the United Nations had taken with regard to competence. At the 561st meeting on 16 October 1951, he stated that the Council was not competent to deal with the matter which came essentially within the domestic jurisdiction of Iran. However, he stated that if the Council felt that it could make a useful contribution to settlement between the parties themselves, his delegation considered the general approach of the United Kingdom draft resolution,[141] to which he had proposed joint amendments, to be fundamentally sound.

The representative of India, at the same meeting, observed that because the question of international jurisdiction had not yet been finally decided by the International Court of Justice and was, in fact, *sub judice* at the moment, it might not be wise or proper for the Council to pronounce on the question while the latter was under consideration by the Court. He submitted amendments,[142] jointly proposed by India and Yugoslavia, the aim of which was to provide a basis for negotiations which would safeguard the legitimate position of each party, without prejudicing the question of the Council's competence.

The representative of China suggested additional amendments to the revised United Kingdom draft resolution, designed to avoid the characterization of the dispute as a threat to international peace and security, to delete references to the International Court of Justice, and to have the Council "advise", instead of "call for", negotiations so that the resolution might not prejudice the question of the Council's competence.

The representative of Ecuador, at the 562nd meeting on 17 October 1951, observed that the eventual decision of the Security Council would constitute an important precedent because it was the first time that the Council had dealt with a question arising out of a dispute between a State and a foreign company. Basing his views on certain provisions of inter-American agreements which constituted, in his opinion, part of international law governing the relations between a State and foreign capital and undertaking, he made a detailed statement on the general authority of the Council as well as the question of domestic jurisdiction. He maintained that the question of international or domestic jurisdiction with regard to the dispute was to be decided by the International Court of Justice and, therefore, it would be inadvisable for the Council to rule at present on its own competence. Should the Court, having declared its competence, render a final judgment, the applicability of Article 94 (2) would arise if one of the parties refused to comply with the final judgment. However, if the Court decided that it had no competence because the case was one of domestic jurisdiction, the Council should not then intervene in a legal matter against the opinion of the judicial organ of the United Nations. The nationalization of the oil industry in Iran was a domestic matter between the Iranian Government and a foreign concern, and legally unassailable provided it was accompanied by fair compensation, and could not of itself afford ground for a complaint to the Security Council. Moreover, a denial of justice had to be established before any diplomatic action, apart from the mere exercise of good offices, could be taken by a Government attempting to protect the rights of its nationals. His delegation considered that there had not yet been a denial of justice and that the Iranian Government had not refused to pay compensation. There could be no violation of international law where, as in this case, a contract concluded by a sovereign State with an individual or company was broken in consequence of a general statute. So far, he had heard of no evidence that the Iranian Government had violated any treaty with the United Kingdom. It was highly questionable whether the mere exercise of diplomatic protection transformed a dispute between a State and a foreign company into a dispute between two States within the meaning of Chapter VI of the Charter. In his opinion the failure of a State to observe provisional measures indicated by the Court did not empower the Council to make recommendations under Article 94 (2), for that article, by its wording, pertained only to final judgments of the Court.

The representative of the United States, at the 563rd meeting on 17 October 1951, declared that there could be no question about the competence of the Council in this case, because there clearly existed a dispute between the United Kingdom and Iran the continuance of which was likely to endanger international peace and security. The representative of the Netherlands observed that the Council was undoubtedly competent to deal with a situation which had arisen out of Iran's failure to comply with the provisional measures indicated by the Court. His delegation supported the second revised United Kingdom draft resolution, but opposed the Ecuadorian draft resolution which, in his opinion did not differentiate the complaint brought before the Council by the United Kingdom from the legal case on the fundamentals which ought to be left to the Court.

The representative of China, while expressing doubts in regard to the competence of the Council, indicated that it was not clear to him that the nationalization of the oil industry in Iran was entirely within the domestic jurisdiction of Iran. He could not accept the thesis that all the consequences of that nationalization were beyond the jurisdiction of the Council, for such an assertion would impair the utility of the United Nations and would render useless the recognized right of diplomatic protection. At the 565th meeting on 19 October, the representative of Yugoslavia stated that his delegation had been prepared to support an appeal by the Council to the parties if the members of the Council had been in a position to provide "an overwhelmingly positive answer" to the question of competence. This, however, had not been the case, and, therefore, the situation called for new suggestions.

The representative of France proposed to adjourn the debate on the revised United Kingdom draft resolution "until the International Court of Justice has ruled on its own competence in the matter".

The representative of China, who supported the French proposal, believed that the competence of the Council and the competence of the Court were not identical or interdependent. However, the decision of the Court and the reasons on which it would be based might throw some light on the question of the competence of the Council.

[141] S/2358/Rev.1.
[142] S/2379.

The motion of the representative of France was adopted by 8 votes to 1, with 2 abstentions.[143]

The representative of Yugoslavia explained that his delegation had abstained because the motion implied that the question of the competence of the Council depended, at least to a certain degree, on the decision of another United Nations body, an opinion which he did not share.

By letter dated 19 August 1952,[144] the Secretary-General transmitted, for the information of the members of the Security Council, a copy of the judgment of the International Court of Justice,[145] given on 22 July 1952, in which the Court, by 9 votes to 5 found that it had no jurisdiction in the case. It was noted in the letter that the Court's Order of 5 July 1951, indicating Provisional Measures of protection in the Anglo-Iranian Oil Company case, had ceased to be operative upon the delivery of this judgment and that the Provisional Measures had lapsed at the same time.

[143] 565th meeting: p. 12.
[144] S/2746.

[145] Anglo-Iranian Oil Company case, Judgment of 22 July 1952; *International Court of Justice Reports, 1952,* pp. 93-171.

## Part II

## CONSIDERATION OF THE PROVISIONS OF ARTICLE 24 OF THE CHARTER

### NOTE

Article 24, while the subject of frequent reference in the Security Council, has only on certain occasions been the subject of extended debate. Part II accordingly presents the main instances of discussion bearing on this Article of the Charter. In two cases discussion centred on the question of the general power deemed to inhere in the Security Council by virtue of Article 24 irrespective of the specific powers indicated in Chapters VI, VII, VIII and XII of the Charter.[1] Incidental reference has also been made to this question on other occasions, notably in the consideration of the recommendations of the Commission of Investigation concerning Greek Frontier Incidents.[2] Attention has also been directed to the primary responsibility of the Council in relation to the functions of the General Assembly regarding the maintenance of international peace and security. Discussion of this nature which arose in connexion with the recommendations of the Sub-Committee on the Spanish question has been entered in this Part[3]. Cognate material on the relation of the Council and the General Assembly in matters of international peace and security will be found in chapter VI, part I, section A, where it is entered in connexion with Article 12 of the Charter. It has also been considered appropriate to enter in part II of this chapter the proceedings of the Council consequent on the request of the General Assembly in November 1947 to assume certain responsibilities in connexion with Palestine.[4] Attention may also be directed to certain decisions of the Council which, by reason of the inclusion of the terms of Article 24 in the preamble, might be deemed to have been taken on the basis of the general responsibility of the Council for the maintenance of international peace and security.[5]

Though allusion has from time to time been made to the representative character of membership of the Security Council by virtue of Article 24 (1),[6] no case history calls for entry in connexion with the provision that the Security Council, in discharging its responsibility for the maintenance of international peace and security, acts on behalf of the Members of the United Nations.

The Purposes and Principles of the Charter, in accordance with which the Security Council is enjoined to act, do not form the subject of any one section of the *Repertoire.* The Purposes and Principles have been extensively invoked in the course of discussion; but most frequently the language of the Purposes and Principles has been utilized incidentally in discussion to characterize the various external situations to which representatives on the Council have wished to refer. Material relating to the Purposes and Principles included within the *Repertoire* is limited to such material as constitutes an integral element in the presentation of a case to the Council or in the consideration of a question by the Council. With one exception,[7] the relevant references have been entered in chapter VIII of the *Repertoire.* The main instances are:

#### ARTICLE 2 (1)

*Syrian and Lebanese question:* Contention by the representatives of Syria and Lebanon that the presence of French and British troops was a violation of the principle of sovereignty.[8]

*Egyptian question:* Contention by the representative of Egypt that occupation in time of peace of the territory of a Member of the United Nations, without its consent, is contrary to the principle of sovereign equality.[9]

*Indonesian question (II):* Contention by the representative of the Netherlands that the relations of the

[1] Cases 20 and 21. Statements corresponding to the view expressed by the representative of Australia in the question of the Statute of the Free Territory of Trieste were also made by the representative of Australia on the following occasions:
71st meeting: pp. 425-426.
72nd meeting: pp. 453-454.
162nd meeting: p. 1919.

[2] See chapter X, Case 13.

[3] Case 21.

[4] Case 23.

[5] *Cf.* Palestine question: decision of 1 April 1948; India-Pakistan question: decision of 30 March 1951; Indonesian question (II): decision of 28 January 1949.

[6] Argentina, 360th meeting: p. 6.
Australia, 26th meeting: p. 39; 40th meeting: p. 249.
Ecuador, 472nd meeting: p. 11.
Syria, 310th meeting: p. 24.
USSR, 47th meeting: p. 368; 406th meeting: p. 6.
United Kingdom, 40th meeting: p. 251.
United States, 59th meeting: p. 176; 405th meeting: p. 35.

[7] See Case 24.

[8] 20th meeting: pp. 284, 285, 287. Also 21st meeting: China, p. 309; Egypt, p. 311; Netherlands, p. 316; USSR, p. 305. See chapter VIII, pp. 302-303.

[9] 175th meeting: p. 1753. See chapter VIII, p. 314.

Netherlands and the Republic of Indonesia were not within the scope of the Charter because "the Charter was designed to operate between sovereign States".[10]

ARTICLE 2 (4)

*Iranian question:* Contention by the representative of Iran that, in accordance with Article 2 (4), the Security Council should make a recommendation regarding Soviet forces in Iran.[11]

*Czechoslovak question:* Contention by the representative of Chile that the political independence of Czechoslovakia had been violated by the threat of the use of force in contravention of Article 2 (4).[12]

*Identic notifications dated 28 September 1948:* Contention by the representatives of France, the United Kingdom and the United States that the threat by the USSR of recourse to force contrary to Article 2 (4) created a threat to the peace.[13]

*Palestine question:* Decisions of the Security Council of 8 May and 18 May 1951.[14]

ARTICLE 2 (6)

*The Spanish question:* Contention by the representative of Poland that Article 2 (6) should be applied to "the fascist regime in Spain".[15]

[10] 388th meeting: p. 25. Also 392nd meeting: France, p. 58; Belgium, p. 26. See also chapter VIII, p. 316.
[11] See chapter VIII, p. 301.
[12] 268th meeting: Belgium, p. 18; Chile, p. 104; France, p. 99; United Kingdom, p. 94.
[13] 364th meeting: France, p. 41; United Kingdom, p. 35. See chapter VIII, p. 354.
[14] See chapter VIII, pp. 341-343.
[15] *O.R., 1st series, 1st year, Suppl. No. 2,* p. 55. See chapter VIII, p. 306.

**Article 24 of the Charter**

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

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

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

CASE 20.[16] THE IRANIAN QUESTION (II): In connexion with the proposal to withdraw the question from the agenda.

[*Note:* The problem was discussed whether the Council was entitled to retain the Iranian question on the agenda despite the request of the parties for its withdrawal, and, in justification of the retention of the question on the agenda, the responsibility of the Security Council under Article 24 was cited.]

In consequence of the USSR communication of 6 April 1946 and the Iranian communication of 15 April 1946,[17] the Security Council considered at the 32nd and 33rd meetings on 15 and 16 April 1946 the question whether it was obliged to remove the item from the agenda or whether it could legitimately retain the item on the agenda.

At the 32nd meeting on 15 April, the representative of the USSR contended that the Iranian question could not be deemed to be a dispute or situation the continuance of which was likely to endanger the maintenance of international peace and security, and observed that the Council had taken no decision to this effect. He concluded that the Council's task was simply to note that the Iranian problem was removed from the agenda. The representative of the United States observed that a complaint such as the Iranian complaint presented grave issues under Article 2 (4) of the Charter, and when such complaints were presented to the Security Council it was not permissible for the Council to take the position that the continuation of the conditions complained of would not endanger international peace and security. The representative of the Netherlands considered that the Council would be open to legitimate criticism if it dropped a matter before the settlement had actually been carried into effect, since the Council had a responsibility of its own and was under an obligation to report to the General Assembly on its actions. The representative of Australia contended that, once a State presented a case to the Council, its Government had a duty, in the interest of the Organization, to see that relevant information was not withheld. Any Member of the United Nations alleging that the presence of foreign troops in its territory was a threat to international peace and security had a right to bring the matter before the Security Council, and the Council had a duty to investigate it. It then became the property of the Council, even though both parties requested its withdrawal. The representative of Brazil considered it "a valid and indisputable legal principle" that it did not rest with the parties concerned to decide whether or not the question should be withdrawn from the agenda. The representative of France, referring to the obligation of the Council to submit reports to the General Assembly, submitted a draft resolution to instruct the Secretary-General to collect the necessary information for such a report.[18]

[16] For texts of relevant statements see:
32nd meeting: Australia, pp. 131-132; Brazil, pp. 132-133; France, pp. 135-136; Egypt, p. 139; Netherlands, p. 127; Poland, pp. 137-138; USSR, pp. 123-125; United Kingdom, pp. 129-130; United States, p. 126.
33rd meeting: France, p. 149; Netherlands, p. 147; Poland, p. 153; USSR, p. 145; United States, p. 152.
36th meeting: France, p. 206; Mexico, p. 210; Netherlands, p. 212; Poland, p. 209; USSR, p. 201; United Kingdom, pp. 207-208; United States, p. 203.
[17] See chapter VIII, p. 305. For procedural argumentation on the withdrawal of the Iranian question from the agenda, see chapter II, Case 56.
[18] 33rd meeting: pp. 142-143.

At the 33rd meeting on 16 April, a statement by the Secretary-General was read to the Council.[19] Discussion continued on the withdrawal of the Iranian question. The representative of the Netherlands stressed that the view that the parties were sole judges as to whether or not a matter should be retained on the agenda might well give rise to abuse, especially in disputes between great Powers and small Powers in which diplomatic pressure might be exercised to bring about the withdrawal of the question from the agenda. It was decided to postpone further consideration until the Report of the Committee of Experts had been received.

At the 36th meeting on 23 April, the Council had before it the Report of the Committee of Experts. The Committee of Experts reported that they had been unable to formulate a common opinion on the question put to it by the Council. With regard to the powers of the Council under the Charter, the delegations of Australia, Brazil, China, Egypt, Mexico, the Netherlands, the United Kingdom and the United States made, with certain variations, the following observations:[20]

"... It would be a mistake, in their opinion, to regard the problem from a purely legalistic point of view. The Charter has in fact invested the Security Council especially under Article 24 with certain political functions of primary importance by conferring on it the primary responsibility for the maintenance of international peace and security. Moreover, Article 1, to which Article 24 refers, stipulates that the pacific settlement of disputes shall be brought about in conformity with the principles of justice and international law. The Security Council may hold that, even after an agreement has been reached between the parties, circumstances may continue to exist (for example the conditions under which the agreement has been negotiated) which might still leave room for fears regarding the maintenance of peace and which justify the question's being retained among the matters entrusted to its care.

"The Security Council may, even when the parties announce that they have reached an agreement, find it necessary to remain seized of the matter until the whole or part of the agreement has been executed, or even longer.

"Several representatives in the same group drew the Committee's attention to the mistake which the memorandum seems to have made in failing to distinguish clearly between the decision by which the Security Council becomes seized of a question and any decision which it may take under Article 34. The decision by which the Security Council is seized of a question is absolutely independent of and distinct from the measures which it may decide to take under Article 34.

"Several representatives in the same group questioned the argument in the memorandum which seemed to imply that unless the Security Council takes a decision under Article 34 or 36 it cannot remain seized of a dispute the withdrawal of which has been requested.

"Several representatives in the same group expressed the opinion that Article 35, paragraph 1, proves that the action of the Security Council in its role as guardian of the peace is quite independent of the strictly legal circumstances in which a dispute develops since, according to that text, it is not necessarily a party to a dispute which has to bring it to the attention of the Security Council. Any Member of the Organization may draw the Security Council's attention both to situations and to disputes involving certain specified States."

The Committee reported further that, in the opinion of the representatives of France, Poland and the USSR, the rules governing the withdrawal of a question varied according to whether a dispute or situation was involved.[21]

The representatives of France, Poland and the USSR concluded:

"Moreover, two hypotheses should be envisaged: the case in which the dispute originally submitted to the Security Council has reached the point where other parties are concerned than those originally involved; and the case in which a new situation has arisen out of the original dispute. In each case the question is a different one from that originally submitted to the Security Council. It may be brought to the attention of the Security Council by a Member of the Organization under Article 35, paragraph 1, of the Charter, or else the Security Council itself may take it up under Article 34 of the Charter."

In the discussion of the Report the representative of the United States indicated his view that the argument in the Secretary-General's memorandum disclosed a concept of the functions of the Security Council which was far too limited. He added that the United Nations placed very great responsibilities for the maintenance of peace and security upon the Security Council, and the Charter had given the Council powers commensurate with these responsibilities.

The representative of Australia drew attention to the power given to the Council by Article 34 of the Charter, whereby the Council can "investigate and act without complaint from any parties". The representative of the United Kingdom indicated his doubt whether it would be wise to lay down a general rule to govern the Council in all cases; each case should be considered on its merits. The representative of Poland contended that it was an unwise and dangerous doctrine to maintain that a country had no right to withdraw a complaint from the Council. The representative of Mexico said that his Government's opinion that the Council might remain seized of a dispute after the parties to it had withdrawn their complaints was based on Article 24, paragraph 2, of the Charter. He continued:[22]

"We base this opinion on the letter and the spirit of Article 24, paragraph 2, first sentence, of the Charter, which invests the Council with implied powers wider in scope than the specific powers laid down in Chapters VI, VII, VIII, and XII, to which the second sentence of the same paragraph and article refers.

"We subscribe to the view that the decision by which the Security Council is seized of a question may be independent of any measures taken under Article 34.

[19] For text, see chapter II, Case 56.

[20] S/42, *O.R., 1st year, 1st series, Suppl. No. 2*, pp. 47-50. See also chapter II, Case 56.

[21] For these observations see chapter II, Case 56.

[22] 36th meeting: p. 210.

"We consider that this interpretation is desirable in order to implement the powers inherent in the Security Council's mandate, powers with which the Council was vested to enable it to fulfil adequately its primary responsibility for the maintenance of international peace and security."

The representative of the Netherlands contended that the Council had the duty to supervise a case once it was placed before it until a settlement was achieved.

The French draft resolution to take note of the Iranian letter of 15 April 1946 regarding the withdrawal of the complaint was rejected by 8 votes in favour and 3 against.[23]

CASE 21.[24] THE SPANISH QUESTION: In connexion with the recommendation by the Sub-Committee to refer the Spanish question to the General Assembly.

[*Note:* Objection was raised on the basis of Article 24 of the Charter to the draft resolution, based upon the recommendation of the Sub-Committee on the Spanish question, to refer the question to the General Assembly.][25]

At the 45th meeting on 13 June 1946, the Chairman of the Sub-Committee on the Spanish question stated that, in his opinion, adoption of its recommendation[26] to refer the matter to the General Assembly would "represent no diminution of the powers of the Security Council, but will really represent an exercise by the Security Council of its power to recommend methods of adjustment or suitable procedures".

The representative of the USSR, at the same meeting, stated:

"... in asserting that the Security Council has not the right, in the present case, to take a decision regarding the severance of relations with Franco, and in recommending that the Assembly should take such a decision, the Sub-Committee seems, in regard to the present question, to confuse the functions of the Security Council and the General Assembly. The Security Council has the primary responsibility for the maintenance of peace, and precisely for this reason the Security Council should, and is appointed to, decide the question of the measures to be taken regarding the Franco regime. The Security Council is precisely the organ which should take the decision regarding action in connexion with questions dealing with the maintenance of peace. The Security Council has the necessary powers for this, which are provided, in particular, by Article 24, paragraph 1, of the Charter. The Sub-Committee's proposal is contrary to this Article.

"...

"I wish to emphasize strongly that such a decision would not merely be undesirable, but would even be dangerous, because it might constitute a precedent capable of seriously prejudicing the authority and prestige not only of the Security Council, but of the whole United Nations, on whose behalf the Security Council acts. In the event of serious questions arising in the future, recommendations may be made, on the strength of this precedent, to refer other serious and pressing questions to the General Assembly or to some other organ of the United Nations for consideration, instead of taking practical measures on such questions in the Security Council."

Also at the 45th meeting, the representative of the Netherlands declared:

"... If the Council has both the right to act and good reasons for taking action, by all means let us take action now, or in September. To this extent I am in agreement with what the representative of the USSR has just told us. But, if we take action, let us take action ourselves and not refer the matter to another organ of the United Nations.

"It is this Council which has the primary responsibility for matters such as these, under Article 24 of the Charter, and I think we should discharge that responsibility ourselves. But, if we have no right to act or no good grounds for taking action, by all means let us refrain from doing so. If, nevertheless, the Assembly wants to take up the matter, it is for the Assembly to decide."

At the 47th meeting on 18 June the representative of the USSR further declared:

"... Mr. Evatt stated in one of his speeches that reference of the Spanish question to the General Assembly was based on and justified by the fact that that question concerned not only the members of the Security Council, but all the Members of the United Nations. In itself that thesis is correct. It is true that the solution of the Spanish question concerns not only the members of the Security Council, but all the Members of the United Nations.

"However, the problem is incorrectly stated. The fact is that the adoption by the Security Council of decisive, practical measures directed towards the removal of the threat to peace, as represented in Spain by Franco's fascist regime, is not inconsistent with the thesis that the existing situation in Spain concerns not only the members of the Security Council, but all the Members of the United Nations."

After quoting from the text of Article 24, he continued:

"That is to say, the Security Council acts on behalf of all the Members of the United Nations. Consequently the inconsistency mentioned here by Mr. Evatt is an imaginary one; it does not exist in reality."

At the same meeting, the representative of Poland, in accepting the recommendations of the Sub-Committee as amended, pointed out that he "did so with two provisos":

"In the first place, I want it to be fully understood that acceptance of the Sub-Committee's recommendations should in no way prejudice the rights of the Security Council; nor should it ever be invoked as a precedent which would justify the Council, when faced with a difficult situation, in avoiding responsibility and referring the matter to another organ of the United Nations...

"I accept the recommendatons of the Sub-Committee only because I realize that the Spanish ques-

[23] 36th meeting: p. 213.

[24] For texts of relevant statements see:
45th meeting: Australia, p. 327; Netherlands, p. 339; USSR, pp. 337-338.
47th meeting: Poland, p. 373; USSR, pp. 367-368.

[25] For consideration of the draft resolution in relation to Article 12, see chapter VI, Case 1 (1).

[26] See chapter VIII, pp. 306-307.

tion is of a very special nature and because my delegation wants positive action to be taken unanimously."

Also at the 47th meeting, the draft resolution submitted by the Chairman of the Sub-Committee, as amended at the 45th meeting, was not adopted. There were 9 votes in favour and 1 against (that of a permanent member), with 1 abstention.[27]

CASE 22.[28] THE QUESTION OF THE STATUTE OF THE FREE TERRITORY OF TRIESTE: In connexion with decision of 10 January 1947: Approval of the three annexes to the draft Peace Treaty with Italy and acceptance of responsibilities thereunder

[*Note:* The Security Council was requested to assume certain responsibilities relating to the Free Territory of Trieste, notably that of ensuring its independence and integrity. The question was raised whether the Council had authority under the Charter to assume these responsibilities which, it was contended, were not compatible with the Principles and Purposes of the Charter, and involved administrative responsibilities not connected with the maintenance of international peace and security.

The Council accepted the responsibilities in question.][29]

In accordance with the draft Peace Treaty with Italy which established a Free Territory of Trieste "whose independence and integrity would be ensured by the Security Council of the United Nations", the Chairman of the Council of Foreign Ministers, by letter dated 12 December 1946, submitted the relevant parts of the Treaty to the Security Council for its approval.[30]

At the 89th meeting on 7 January 1947, an exchange of views took place regarding "constitutional questions" which, in the view of the representative of Australia, were raised by the proposals placed before the Council in accordance with the draft Treaty of Peace with Italy. The representative of Australia stated:

"The proposal that the Security Council should assure the integrity and independence of the Free Territory of Trieste is accompanied by other responsibilities, which would mean, in effect, that the Security Council would act as the supreme governing body of the Territory and would have the ultimate authority over the functioning of the Government which will be established by the permanent Statute."

With regard to the question whether the Security Council had in fact been endowed "with sufficient power to discharge itself of the new duty which it is proposed to lay upon it", the representative of Australia continued:

"... Chapter V of the Charter contains the general powers and functions of the Security Council, and it is further stated in Article 24, paragraph 2, that specific powers granted to the Council for the discharge of its duty to maintain international peace and security are laid down in Chapters VI, VII, VIII, and XII. Chapters VIII and XII are not relevant to the present case. Turning to Chapters VI and VII, we find that neither of these chapters authorizes the Council to give any general guarantee of integrity and independence to a particular territory. It is only in the particular circumstances referred to in those chapters that the Council acquires and can acquire jurisdiction. Before the Council may act, there must be a dispute or a situation which might lead to international friction or give rise to a dispute or a threat to the peace, or a breach of peace. These powers of the Security Council, under the Charter, operate independently of any peace treaties drawn up by the Council of Foreign Ministers, and they operate in respect of all territories, including Trieste.

"The proposals now before the Security Council, however, are to the effect that the Council should accept various new responsibilities and, in particular, the responsibility of assuring the integrity and the independence of the Free Territory. The acceptance of such responsibilities is clearly not authorized by the Charter ...

"It might be claimed that because the Security Council had a primary responsibility under the Charter for the maintenance of international peace and security, it enjoys an authority which is sufficiently wide to permit it to give a general assurance regarding the integrity and the independence of Trieste. In our view, this claim is not justifiable. There are other articles in the proposed permanent Statute of the Free Territory under which the Security Council would appear to assume functions having no direct connexion with the maintenance of international peace and security, for example, under Article 10 of the Statute. If there is a conflict between the Statute and the Constitution of the Free Territory, appeal can be made to the Security Council by a decision of the Governor of the Territory.

"Further, under Article 37, the Statute confers upon the Security Council power to amend the Statute itself on petition from the popular Assembly. These are functions which relate to the ordinary good government of the Territory, and not to the maintenance of peace and security.

"..."

The representative of Syria also questioned the legality of the assumption by the Council of the responsibilities deriving from the Peace Treaty with Italy.

"I ... reviewed all the Chapters of the Charter to find some Article which might authorize the Security Council to take charge of the direct administration of any State or territory. I failed to find such an Article, with the exception of Chapter XII of the Charter which concerns strategic areas which are put under the system of trusteeship ..."

In answer to these objections, attention was drawn by other representatives either to implicit powers of the Council or to the spirit of the Charter. The representative of the United Kingdom deprecated

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[27] 47th meeting: p. 379.

[28] For texts of relevant statements see:

89th meeting: Australia, pp. 5-8; China, pp. 17-18; Colombia, p. 18; France, pp. 15-16; Poland, pp. 14-15; Syria, pp. 8-9; USSR, p. 9; United Kingdom, pp. 9-11; United States, pp. 11-12.

91st meeting: Australia, pp. 56-58; France, pp. 58-59; Secretary-General, pp. 44-45.

[29] For discussion regarding Article 25, see Case 26.

[30] S/224, *O.R., 2nd year, Suppl. No. 1.* For submission of the question, see chapter VIII, p. 312.

"... any kind of precedent which in future would debar the Council from accepting any responsibilities which were not specifically laid upon it in the Charter, because I think very difficult questions may often arise, in which it really will be necessary to turn to the Council for assistance."

The representatives of Colombia and of Poland referred to the spirit of the Charter as a basis for the Council's decision. The representative of Poland observed:

"We do not have any legal qualms about the Security Council accepting the responsibilities it is asked to accept. I know that it may be somewhat difficult to point to a specific phrase in the Charter which would justify the taking over of the functions we are asked to assume. However, I think it would be entirely within the general spirit of the Charter of the United Nations, if it were decided to form a Free Territory under a quasi-international administration. We believe it is only proper that the United Nations, as an Organization, should be given the responsibility of supervision over its administration. And since it is a matter which involves international peace and security, we believe that the Security Council is the logical organ to carry out these functions."

The representative of China contended "that the Charter confers sufficiently broad powers on the Security Council for undertaking such a responsibility, and that it is only through the Security Council undertaking this responsibility that this solution could be made workable."

The representative of France had recourse to the phraseology of Article 24 in his statement:

"In my opinion, the text of the Charter confers upon the Security Council a very general mission: that of maintaining peace. Moreover, we are not faced by an instance where the provisions of the Charter should be interpreted in a restricted sense because they clash with another principle, such as, for example, the sovereignty of a State. Indeed, world opinion would certainly not understand it, if the Security Council were to give the impression of evading a responsibility so closely related to the maintenance of international peace and security, as it is precisely the main task and responsibility of the Security Council."

The representative of the USSR invoked more explicitly Article 24:

"As regards the powers and rights of the Security Council, I consider it to be obvious that the right and power of the Security Council to assume responsibility for the fulfilment of the tasks specified in the document submitted by the Council of Foreign Ministers are provided for by several of the terms of the United Nations Charter, in particular by Article 24 of the Charter."

The representative of the United States stated:

"... The Council of the United Nations is charged, as its highest responsibility by the Charter, with the duty of watching over and maintaining international peace and security. Any spot on the surface of the earth where, for whatever reason, conflicts may break out and where men may be at each other's throats, is a spot of legitimate concern to the Security Council.

"...

"The Security Council should not, in my view, be afraid of leaping to take such a responsibility. It is in the fulfilment of such a responsibility that the United Nations justifies its existence."

At the 91st meeting on 10 January 1947, a statement by the Secretary-General relating to "the authority of the Security Council to accept the responsibilities" in question was read to the Council.

The relevant passages were:

"1. *Authority of the Security Council*

"It has been suggested that it would be contrary to the Charter for the Security Council to accept the responsibilities proposed to be placed on it by the permanent Statute for the Free Territory of Trieste and the two related instruments. This position has been suggested on the ground that the powers of the Security Council are limited to the specific powers granted in Chapters VI, VII, VIII and XII of the Charter, and that these specific powers do not vest the Council with sufficient authority to undertake the responsibilities imposed by the instruments in question."

Regarding the text of Article 24, the Secretary-General observed:

"The words, 'primary responsibility for the maintenance of international peace and security', coupled with the phrase, 'acts on their behalf', constitute a grant of power sufficiently wide to enable the Security Council to approve the documents in question and to assume the responsibilities arising therefrom.

"Furthermore, the records of the San Francisco Conference demonstrate that the powers of the Council under Article 24 are not restricted to the specific grants of authority contained in Chapters VI, VII, VIII and XII. In particular, the Secretary-General wishes to invite attention to the discussion at the fourteenth meeting of Committee III/1 at San Francisco, wherein it was clearly recognized by all the representatives that the Security Council was not restricted to the specific powers set forth in Chapters VI, VII, VIII and XII. (I have in mind document 597, Committee III/1/30.) It will be noted that this discussion concerned a proposed amendment to limit the obligation of Members to accept decisions of the Council solely to those decisions made under the specific powers. In the discussion, all the delegations which spoke, including both proponents and opponents of this amendment, recognized that the authority of the Council was not restricted to such specific powers. It was recognized in this discussion that the responsibility to maintain peace and security carried with it a power to discharge this responsibility. This power, it was noted, was not unlimited, but subject to the purposes and principles of the United Nations.

"It is apparent that this discussion reflects a basic conception of the Charter, namely, that the Members of the United Nations have conferred upon the Security Council powers commensurate with its responsibility for the maintenance of peace and security. The only limitations are the fundamental principles and purposes found in Chapter I of the Charter."

At the same meeting, the representative of Australia made the following reply:

"The question is not whether a particular situation now existing is of concern to the Security Council, but whether the Security Council has power to act in a certain way in the future. The political arguments, however real they may be, do not dispose of the constitutional difficulties. The real issue is whether—if there is general competence of the Security Council under Article 24 in respect of matters affecting international peace and security—this competence is of such a character as to cover those precise functions which the Security Council will be required to undertake after the setting up of the Free Territory of Trieste.

"Let us assume for our present purpose that Article 24 does confer a general responsibility for the maintenance of international peace and security over and above the specific powers listed in Chapters VI, VII, VIII and XII of the Charter. This general authority would not, in our view, authorize the assumption by the Council of the functions assigned to it in the Trieste Statute.

"The reasons for taking this view are the following:

"1. The functions to be assigned to the Council by the Statute are not necessarily limited to the maintenance of international peace and security.

"2. The giving of a categorical guarantee of the integrity and independence of the Free Territory goes farther than is warranted by the purposes and principles of the United Nations, and the Security Council is specifically required by Article 24 to act in accordance with such purposes and principles.

"The statement read this afternoon on behalf of the Secretary-General contained the following sentence: 'The only limitations are the fundamental principles and purposes found in Chapter I of the Charter'. It is precisely that limitation to which the Australian delegation now refers. It is, in our submission, a limitation which is very real, and if the statement of the Secretary-General had not stopped at that point, but had proceeded to an examination of Chapter I, it would inevitably have revealed that such a limitation does in fact exist.

"Regarding the first of these two points, the Australian delegation wishes to point out that the proposed Statute for the Free Territory designates the Security Council as the supreme administrative and legislative authority and gives it wide powers, not only to assure the integrity and independence of the Territory in the international sphere and in its international relations, but also to ensure the maintenance of public order and security and good conduct of its Government in the ordinary domestic affairs.

"We submit that this question may affect the peace or the welfare and good government of the Territory without in any sense affecting international peace and security.

"Regarding the second of these two points, I would recall what we said in our previous statement, that both the Dumbarton Oaks and San Francisco Conferences rejected proposals for the inclusion in the purposes and principles of the United Nations of a guarantee of territorial integrity, and chose instead a method by which Members undertook not to use force or threat of force against the integrity or independence of a territory."

After this statement, the representative of France expressed a wish to say "more precisely" why, in his view, action by the Council was in order. He declared:

"I pointed out that Article 24 of the Charter, which is drafted in very general terms, did not, in the case now before us, come up against any principle which might justify a narrow or limited interpretation of its terms.

"The case is not one where the principle of the sovereignty of States, the rule according to which there must be no interference in a country's domestic affairs, is at stake. That principle can only be invoked by those States whose peace treaties have already been drawn up. Now, the task entrusted to us relates precisely to the examination of a peace treaty which has not yet been ratified. Consequently we cannot run against any provision or principle of this kind.

"I should also like to bring forward another argument. The case of Trieste is extremely delicate and intricate. It is one of these cases which are liable to create difficulties and even endanger peace. The case was not referred to us under that aspect, but in connexion with the drafting of the peace treaties. We did not draw up these treaties ourselves, but we are nevertheless aware that the question, by its very nature, constitutes a danger to peace. I think we should look at it from this angle.

"If the question has been brought before us under Chapter VI and, particularly, Chapter VII, we should be invested with extremely wide powers extending even to, these are the very words of Article 42, demonstrations and the use of force.

"It would be rather extraordinary, if in a case really liable to endanger, if not peace itself, at least the maintenance of peace, the Security Council, which, in that event, would have such extensive powers of intervention, should not even be able to take administrative measures, far less serious than the use of force, in order to ensure the maintenance of peace.

"As I said the other day, we are dealing with a case where the Security Council must take a full view of its responsibilities. It is responsible for the maintenance of peace. It is my opinion that we should not shrink from the task, however delicate, which the drafters of the peace treaty have asked us to assume."

At the 91st meeting, the draft resolution submitted by the representative of the United States at the 89th meeting which provided for "acceptance" by the Security Council of "the responsibilities devolving upon it under" the annexes to the draft Peace Treaty with Italy was adopted.[31]

CASE 23. THE PALESTINE QUESTION: In connexion with decisions of 5 March 1948 calling on the permanent members of the Council to consult and to report, and of 1 April 1948 calling for a truce in Palestine and requesting a special session of the General Assembly.

[*Note:* The Security Council was requested by General Assembly resolution 181 (II) of 29 November

[31] 91st meeting: p. 61. For text, see chapter VIII, pp. 312-313.

1947 to assume certain responsibilities in connexion with Palestine. On receiving the request at the 222nd meeting on 9 December 1947, the Council refrained from proceeding further than to become seized of the matter. At the close of February 1948, the special report of the Palestine Commission on the disorders in Palestine gave rise to discussion regarding the authority of the Council to comply with the request of the General Assembly, and notably concerning the circumstances in which and the purposes for which the powers of Chapter VII of the Charter might be exercised. Endorsement of the General Assembly request at this stage was withheld by the Council, which confined its immediate action to eliciting from the permanent members recommendations regarding the implementation of the General Assembly resolution. On 1 April 1948, having received such recommendations, the Council, in the exercise of its primary responsibility for the maintenance of peace and security, called for a truce in Palestine and for the convocation of a special session of the General Assembly to consider further the question of the future government of Palestine.]

### Case 23 (i)[32]

By resolution 181 (II) of 29 November 1947, which recommended for Palestine the Plan of Partition with Economic Union, the General Assembly requested that

"(*a*) The Security Council take the necessary measures as provided for in the plan for its implementation;[33]

"(*b*) The Security Council consider, if circumstances during the transitional period require such consideration, whether the situation in Palestine constitutes a threat to the peace. If it decides that such a threat exists, and in order to maintain international peace and security, the Security Council should supplement the authorization of the General Assembly by taking measures, under Articles 39 and 41 of the Charter, to empower the United Nations Commission, as provided in this resolution, to exercise in Palestine the functions which are assigned to it by this resolution;

"(*c*) The Security Council determine as a threat to the peace, breach of the peace or act of aggression, in accordance with Article 39 of the Charter, any attempt to alter by force the settlement envisaged by this resolution; . . ."

The transmission by the Secretary-General of the text of the resolution gave rise to discussion at the 222nd meeting on 9 December 1947 regarding the terms in which the Council should register receipt of the communication.

The President (Australia) stated that his intention in including the item in the provisional agenda had been that "the Security Council should note the receipt of the letter from the Secretary-General, thereby becoming seized of the question of Palestine". This suggestion gave rise to consideration of the implications of this phraseology. The representative of Syria held that the Security Council, before taking note of the General Assembly resolution, or soon thereafter, should carefully consider the relation of the request made by the Assembly to the provisions of the Charter. The President observed that the resolution of the General Assembly came to the Security Council "in the form of a recommendation and a request". It was, therefore, entirely proper for the Security Council to discuss, when circumstances required it, the method of implementing and putting the request into effect. The representative of the USSR favoured a clear indication that the Security Council should implement the resolution of the General Assembly and that it would be seized of the Palestine question "from now on". The representative of the United States stressed that in his view it was premature to enter into any substantive discussion of the Palestine question.

The Security Council agreed on the formula suggested by the President that "the Security Council had received the communication from the Secretary-General and having been seized of the matter, agreed to postpone further discussion".[34]

### Case 23 (ii)[35]

At the 253rd meeting on 24 February 1948, the Security Council had before it the special report[36] of the Palestine Commission on the problem of security in Palestine. The Commission stated that, in view of the aggravated security situation in Palestine and the deliberate efforts of one party to alter by force the settlement envisaged by the General Assembly resolution, it would be unable to implement the plan of partition with economic union without the assistance of an effective international force.

The representative of the United States stressed that the interpretation of the terms of the Charter in the Palestine issue would seriously affect the future actions of the United Nations in other cases. He maintained that the Security Council was authorized to take the necessary measures for the implementation of the General Assembly resolution. The Security Council, although not bound under the Charter to accept and carry out General Assembly recommendations, was nevertheless expected to give great weight to them. Attempts to frustrate such recommendations by the threat or use of force were contrary to the Charter. He continued:

"The Security Council is given the responsibility under the Charter to 'determine the existence of any threat to the peace, breach of the peace or act of aggression'. If it makes such a determination with

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[32] For texts of relevant statements see:
222nd meeting: President (Australia), pp. 2776-2777, 2779, 2788; France, p. 2785; Poland, p. 2788; Syria, pp. 2778-2779, 2780-2781, 2787; USSR, p. 2780; United States, p. 2782.

[33] The Plan of Partition with Economic Union provided for the establishment in Palestine, upon termination of the United Kingdom Mandate but not later than 1 October 1948, of independent Arab and Jewish States and a special international régime for the City of Jerusalem. A commission consisting of five Member States was set up to implement the plan and to take over the administration of Palestine during the transitional period between 29 November 1947 and 1 October 1948 under the instructions of the Security Council.

[34] 222nd meeting: p. 2788.

[35] For texts of relevant statements see:
253rd meeting: United Kingdom, p. 273; United States, pp. 264-269.
254th meeting: Syria, pp. 275-276, 281-282, 287, 291-292.
258th meeting: Belgium, pp. 356-358; Syria, p. 365.
260th meeting: Syria, pp. 395-398; United Kingdom, p. 405; United States, pp. 398-401.
261st meeting: Canada, p. 3; China, p. 6; France, pp. 22-23; USSR, p. 36.

[36] S/676, *O.R., 3rd year, Special Suppl. No 2* pp. 10-19.

respect to the situation in Palestine, the Security Council is required by the Charter to act. Its finding and subsequent action might arise either in connexion with incursions into Palestine from the outside or from such internal disorder as would itself constitute a threat to international peace.

"If the Security Council finds that a threat to international peace or breach of the peace exists, the Charter authorizes it to follow various lines of action . . . The Security Council is required to follow one or more of these lines of action. It may pursue these lines of action in any sequence it deems proper.

"Although the Security Council is empowered to use, and would normally attempt to use, measures short of armed force to maintain the peace, it is authorized under the Charter to use armed force if it considers other measures inadequate. A finding by the Security Council that a danger to peace exists places all Members of the United Nations, regardless of their views, under obligation to assist the Security Council in maintaining peace. If the Security Council should decide that it is necessary to use armed force to maintain international peace in connexion with Palestine, the United States would be ready to consult under the Charter with a view to such action as may be necessary to maintain international peace. Such consultation would be required in view of the fact that agreement has not yet been reached making armed forces available to the Security Council under the terms of Article 43 of the Charter.

"The Security Council is authorized to take forceful measures with respect to Palestine to remove a threat to international peace. The Charter of the United Nations does not empower the Security Council to enforce a political settlement whether it is pursuant to a recommendation of the General Assembly or of the Security Council itself.

"What this means is this: The Security Council, under the Charter, can take action to prevent aggression against Palestine from outside. The Security Council, by these same powers, can take action to prevent a threat to international peace and security from inside Palestine. But this action must be directed solely to the maintenance of international peace. The Security Council's action, in other words, is directed to keeping the peace and not to enforcing partition."

The representative of the United Kingdom stated that, while it had no intention of opposing the recommendations of the General Assembly, his Government could not undertake, either individually or collectively in association with others, to impose those recommendations by force.

At the 254th meeting on the same day, the representative of Syria observed that the resolution of the General Assembly could not be of any effect

". . . on the Security Council in the exercise of its duties since the functions of the Security Council were limitatively defined in the Charter . . . The resolutions of the General Assembly may not in any way add to, delete from or modify those functions . . . The Security Council is an independent organ of the United Nations, endowed with complete liberty to act within the provisions of the Charter, irrespective of any recommendations or instructions given to it by any other body . . ."

The representative of Syria concluded that the recommendations of the Assembly were therefore subject to reconsideration by the Council.

At the 255th meeting on 25 February, the representatives of Colombia and the United States submitted draft resolutions. The Colombian draft resolution was subsequently withdrawn.[37] The United States draft resolution[38] provided that the Security Council should resolve:

"1. To accept, subject to the authority of the Security Council under the Charter, the requests addressed by the General Assembly to it in paragraphs (*a*), (*b*) and (*c*) of Section A of the General Assembly resolution of 29 November 1947;

"2. To establish a committee of the Security Council comprising the five permanent members of the Council whose functions will be:

"(*a*) To inform the Security Council regarding the situation with respect to Palestine and to make recommendations to it regarding the guidance and instructions which the Council might usefully give to the Palestine Commission;[39]

"(*b*) To consider whether the situation with respect to Palestine constitutes a threat to international peace and security, and to report its conclusions as a matter of urgency to the Council, together with any recommendations for action by the Security Council which it considers appropriate;

"(*c*) To consult with the Palestine Commission, the Mandatory Power, and Representatives of the principal communities of Palestine concerning the implementation of the General Assembly recommendation of 29 November 1947."

The draft resolution concluded with an appeal to all Governments and peoples to take action to prevent disorders.

At the 260th meeting on 2 March, the representative of the United States explained that the United States draft resolution implied "the limitation that armed force cannot be used for the implementation of the plan, because the Charter limits the use of United Nations forces expressly to threats to and breaches of the peace and aggression affecting international peace". Measures of implementation would therefore be peaceful measures. By the resolution the Security Council would be required to consider, in pursuance of request (*b*) of the General Assembly, whether the situation in Palestine constituted a threat to the peace; and, if so found, the Council might empower the United Nations Palestine Commission to assist the Council in maintaining peace, and might take steps under Articles 40 to 42 of the Charter. With regard to request (*c*) of the General Assembly, the understanding would be that the Council might "regard attempts to alter by force the settlement envisaged by this resolution as constituting such a threat"; but this attitude must fol-

[37] For discussion on the Colombian draft resolution, see Case 29.

[38] S/684, 255th meeting: pp. 294-295.

[39] Para. 2 (*a*) was amended by the United States at the 263rd meeting. See chapter V, Case 68. On the relations of the Security Council and the Palestine Commission, see chapter VI, Case 16.

low from "the Council's own process of determination" and not solely at the request of the General Assembly.

At the 258th meeting on 27 February, the representative of Belgium submitted an amendment to the United States draft resolution[40] the effect of which would be to delete from the United States draft resolution the provision for acceptance of the requests of the General Assembly. He explained that the object of eliminating that provision was to enable the Security Council to pronounce itself on the question of compliance with the General Assembly resolution after it had taken into account the report of the proposed committee, and to leave the committee entirely free in its deliberations. At the 261st meeting on 3 March, the representative of Canada supported the Belgian amendment on the grounds that, before consideration of the situation under Article 39, the Council should satisfy itself by its own inquiries that the situation had passed beyond the possibilities of pacific settlement under Chapter VI of the Charter.

The representative of Syria favoured the Belgian amendment on the grounds that: (*a*) the Security Council was not empowered to enforce political settlements. Suppression of the opposition of one party to the General Assembly resolution would amount to implementing a political settlement. (*b*) The internal security situation of Palestine was outside the competence of the Security Council whose functions were limited to the maintenance of international peace. The representative of Syria also contended that Article 39 could not be invoked with respect to the situation in Palestine since the term "peace" meant international peace and not public order in a territory.

At the 263rd meeting on 5 March, the Belgian amendment was rejected by 5 votes in favour, none against and 6 abstentions. Paragraphs 1 and 2 (*b*) and 2 (*c*) of the amended United States draft resolution were also rejected. The decision of 5 March 1948 was confined to calling upon the permanent members to consult and to make recommendations to the Council regarding instructions to the Palestine Commission.[41]

### Case 23 (iii)[42]

At the 270th meeting on 19 March, the representative of the United States reported, on behalf of China, France and the United States, the results of the consultations among the permanent members.

The report made the following recommendations:[43]

"1. As a result of the consultations of the permanent members regarding the situation with respect to Palestine, they find and report that a continuation of the infiltration into Palestine, by land and by sea, of groups of persons with the purpose of taking part in violence would aggravate still further the situation and recommend

"(*a*) That the Security Council should make it clear to the parties and Governments concerned that the Security Council is determined not to permit the existence of a threat to international peace in Palestine, and

"(*b*) That the Security Council should take further action by all means available to it to bring about the immediate cessation of violence and the restoration of peace and order in Palestine."

The representative of the USSR stated that he had agreed to both recommendations (*a*) and (*b*), but had not accepted the preamble which treated on an equal footing the infiltration into Palestine "by land and sea".

At the 271st meeting on 19 March, the representative of the United States submitted on behalf of his Government alone, "additional conclusions and recommendations concerning Palestine". These suggested that, since the plan of partition could not be implemented by peaceful means, and in order not only to maintain the peace but also to afford a further opportunity to reach an agreement between the interested parties, the Security Council should recommend to the General Assembly and to the Mandatory Power the establishment of a temporary trusteeship for Palestine. A special session of the General Assembly should be convoked for that purpose, and the Palestine Commission should be instructed by the Security Council to suspend in the meantime its efforts to implement the proposed partition plan. The representative of the United States urged that, under the Charter, the Security Council had "an inescapable responsibility and full authority to bring about a cease-fire in Palestine". He added that the powers of Articles 39 to 42 were very great, and the Security Council "should not hesitate to use them—all of them—if necessary to bring about peace". The temporary trusteeship should be established to maintain the peace, and would be without prejudice to the character of the eventual political settlement.

The representative of the USSR disputed the United States statement that there was general agreement that partition could not be implemented by peaceful means. He emphasized that there was nothing in common between the United States proposal and the formulations agreed upon as a result of the consultations among the permanent members.

In pursuance of the recommendations of four of the permanent members, the representative of the United States submitted, at the 275th meeting on 30 March, two draft resolutions. The first draft resolution,[44] which, invoking the primary responsibility of the Security Council for the maintenance of international peace and security, called for the arrangement of a truce in Palestine. At the 277th meeting on 1 April, the representative of the United States explained that the object of this draft resolution was in full harmony with the provision contained in paragraph 1 of Article 80 and that, as long as the Mandate existed in Palestine, the Security Council had the responsibility of trying to maintain order and peace there. The second draft resolution requested the Secretary-General to convoke a special session of the General Assembly to consider further the question of the future government of Palestine.[45] Both draft resolutions were adopted at the 277th meeting.[46]

[40] S/688, *O.R., 3rd year, Suppl. for Jan., Feb. and March 1948*, pp. 30-31.

[41] For text of the resolution, see chapter VIII, p. 326.

[42] For texts of relevant statements see:
270th meeting: USSR, pp. 146-147; United States, pp. 141-143.
271st meeting: China, pp. 170-171; USSR, pp. 171-172; United States, pp. 166-168.
275th meeting: USSR, pp. 249-253; United States, pp. 246-248.
277th meeting: United States, pp. 31-32.

[43] 270th meeting: pp. 142-143.

[44] S/704, 275th meeting: p. 247.

[45] S/705, 275th meeting: pp. 247-248.

[46] 277th meeting: pp. 34-35. For texts of the resolutions, see chapter VIII, p. 326.

CASE 24.[47] THE PALESTINE QUESTION: In connexion with decision of 1 September 1951 calling upon Egypt to terminate the restrictions on the passage of international commercial shiping through the Suez Canal.

[*Note:* In consequence of the complaint by Israel concerning the detention by Egypt of ships passing through the Suez Canal en route to Israel,[48] the Council had before it on 16 August 1951 a draft resolution which affirmed that, under the Armistice régime, neither party could reasonably claim that it was actively a belligerent or required to exercise "the right of visit, search or seizure for any legitimate purpose of self defence". The representative of Egypt contested this view.]

At the 553rd meeting on 16 August 1951, the representative of Egypt made the following statement:

"Although we do not want to pretend that the functions and powers of the Security Council are limited to those specific powers mentioned in paragraph 2 of Article 24 of the Charter, yet we affirm that those powers and duties are limited and should be strictly regulated and governed by the fundamental principles and purposes laid down in Chapter I of the Charter. Paragraph 2 of Article 24, on the 'functions and powers' of the Security Council reminds us that 'In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations'. Those Purposes and Principles of the United Nations are laid down in Chapter I of the Charter; Article 1, paragraph 1, demands that the adjustment or settlement of international disputes should be 'in conformity with the principles of justice and international law'. The joint draft resolution submitted by the delegations of France, the United Kingdom and the United States is a flagrant violation of the purposes of the United Nations, as formulated in Article 1 of the Charter, which govern the functions and powers of the Security Council. The proposed action to be taken by the Security Council, in accordance with this draft resolution, is mainly based on the termination or the denial of belligerency exercised by Egypt in conformity with the stipulations of the Armistice Agreement and the principles of international law.

"The Egyptian-Israel General Armistice Agreement does not include any provision on the termination of the legal or technical state of war between Egypt and Israel. Nor does international law, in its principles or in its practice, deny a country its belligerent rights before any peace settlement is concluded. This draft resolution, which is mostly based on denying Egypt its belligerent rights before any peace settlement has been concluded with Israel, in fact proposes that the Council violate the principles and the practice of international law and the stipulations of Articles 1 and 24 of the Charter of the United Nations . . .

"Any arbitrary resolution of the Council denying Egypt its belligerent rights would be an attempt by the Council to impose on Egypt a political settlement. The Council is not empowered to enforce political settlements . . .

"We believe that if, nevertheless, the Security Council takes it upon itself to decide on this dispute, the Council is bound by the stipulations of the United Nations Charter, including those which enjoin it to act in conformity with the principles of justice and international law and in accordance with the Purposes and Principles of the United Nations.

"We believe that the Security Council has no authority to abrogate the rights of States or of individuals."

At its 558th meeting on 1 September, the joint draft resolution was adopted by 8 votes in favour, none against, with 3 abstentions.[49]

[47] For texts of relevant statements see:
553rd meeting: Egypt, pp. 22-25.
555th meeting: Egypt, pp. 16-17.
[48] For submission of the question, see chapter VIII, p. 343.

[49] 558th meeting: p. 3. For text, see chapter VIII, pp. 343-344. Reference should be made to paras. 5-7 of the resolution.

## Part III

## CONSIDERATION OF THE PROVISIONS OF ARTICLE 25 OF THE CHARTER

### NOTE

Discussion regarding Article 25 has mainly arisen in connexion with the question of the binding character of decisions of the Security Council under Article 34 of the Charter. Material relating to Article 25 will, therefore, also be found in chapter X, part II. Only in one case has it been considered appropriate to segregate from this material the material relating to Article 25 for insertion in part III of the present chapter.

Discussion regarding Article 25 arose mainly at two stages in the consideration of the Greek frontier incidents question. In the first stage, the resolution of 18 April 1947, as implemented by the resolution of the Commission of Investigation of 29 April 1947,[1] was challenged as invalid by reason of inherent defects and of non-compliance with the provisions of the Charter.[2] Observations were made on this occasion regarding the obligation to accept the decision of the Council to investigate.[3] At a later stage, in the discussion on the United States draft resolution to establish a Commission of Investigation and Good Offices,[4] the binding character of resolutions under Chapter VI of the Charter was in general denied, and discussion centred on this point and, more precisely, on the question whether a decision under Article 34 constituted a binding decision.[5]

Observations regarding Article 25 in relation to decisions under Chapter VII of the Charter have been made in connexion with the second outbreak of hostilities in Indonesia.[6] The question of the bearing of Arti-

[1] See chapter VIII, p. 310.
[2] See chapter X, Case 12.

[3] See Case 25, and chapter X, Case 12.
[4] See chapter VIII, p. 311.
[5] See chapter X, Cases 13 and 15.
[6] See chapter XI, Case 4, for statement by United States (398th meeting: p. 3). See also chapter XI, Case 7, and the following statements by Australia: 390th meeting: p. 7; 395th meeting: p. 62; 397th meeting: p. 27.

cle 25 on decisions of the Council in general arose in connexion with the question of the Statute of the Free Territory of Trieste.[7]

Discussion on the question of the obligation of Article 25 as one of the obligations of pacific settlement to be accepted by non-Members of the United Nations in pursuance of Article 32 or 35 of the Charter has been included in the case history on participation in connexion with which this discussion arose.[8]

[7] See Case 26.

[8] See chapter III, Case 80. See also chapter VI, Case 8, for Article 25 in relation to Article 94.

## Article 25 of the Charter

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

CASE 25.[9] THE GREEK FRONTIER INCIDENTS QUESTION: In connexion with the USSR draft resolution to modify the terms of reference of the Subsidiary Group: voted upon and rejected on 22 May 1947.

[*Note:* In consequence of the refusal of Albania, Bulgaria and Yugoslavia to participate in the work of the Subsidiary Group, the question arose whether the decision on the establishment of the Group was a binding decision within the terms of Article 25. The draft resolution in connexion with which this discusson arose was rejected.]

At the 133rd meeting on 12 May 1947, the Security Council had before it a cablegram dated 5 May 1947[10] from the Chairman of the Commission of Investigation concerning Greek Frontier Incidents informing the Council that the liaison representatives of Albania, Bulgaria and Yugoslavia had stated that they would not participate in the work of the Subsidiary Group established by the Commission under the authority of the resolution adopted by the Council at its 131st meeting on 18 April 1947.[11] In referring the matter to the Council, the Chairman of the Commission reported the views of the representatives of the United States and the USSR on the Commission. The representative of the United States

> "... considered that obligations of the four countries concerned to Subsidiary Group arise from resolution of 19 December and while considering that the four countries concerned are not obliged to appoint their representatives on Subsidiary Group they are nevertheless obliged to facilitate its work, Yugoslavia and Greece under Article 25 of the Charter, Bulgaria and Albania under letters which they have submitted to the Security Council prior to their participation in Security Council discussion."

The representative of the USSR, disputing this contention, recalled his objections to directives to the Subsidiary Group on the grounds that the Commission "was not competent to transfer its terms of reference to Subsidiary Group". He added that "there were also no directives" in the resolution of 18 April under which the Subsidiary Group was established, "which would allow this Commission to draw conclusion that obligation which liaison representatives accepted under resolution" of the Council of 19 December 1946 setting up the Commission "should automatically apply to them regarding Subsidiary Group".[12]

At the same meeting, the representative of the USSR, after submitting to the Council his views on the matter referred by the Commission, introduced a draft resolution[13] which would modify the terms of reference of the Subsidiary Group.

At the 134th meeting on 16 May, the representative of Belgium held "that the resolution of 18 April, like that of 19 December 1946, is applicable to Yugoslavia, Albania and Bulgaria, as it is to Greece". He added:

> ". . . Is this resolution applicable to them as an injunction or as a simple recommendation? It would definitely seem to be an injunction. The terms of Article 34 show that it is a decision involving an obligation; the Article does not speak of recommending an investigation, but definitely specifies that 'the Security Council may investigate' . . .
>
> "Consequently, according to the most reasonable interpretation, the States parties to a dispute, namely Greece, Yugoslavia, Albania and Bulgaria, are bound to comply with the resolution of 18 April.
>
> "This conclusion is supported by Article 25 of the Charter which . . . is applicable to Greece and Yugoslavia which signed and ratified the Charter; it applies to Albania and Bulgaria which not only accepted the Council's invitation to take part in the discussion but, at the same time assumed, for the purposes of the dispute, the obligations imposed by the Charter.
>
> "Since the Council's resolution of 18 April is binding on the four States, they are in principle bound by the decision of 29 April taken by the Commission of Investigation . . . This decision in no way requires their agreement; it is sufficient that it was taken..."

The representative of the United States stated at the 135th meeting on 20 May, that "Yugoslavia was bound, as a Member of the United Nations, to accept the decisions taken", and that "Albania and Bulgaria accepted the obligations of membership and the stipulations of the Charter for the purposes of this case". He further stated:

> "...it is entirely inadmissible that this Council should accept their refusal to co-operate, whether or not they send representatives to act as liaison officers. It seems to me that, if they refuse to co-operate when requested to do so by the Subsidiary Group, they will put themselves in the grave position of a deliberate defiance of the United Nations, which,

[9] For texts of relevant statements see:
133rd meeting: USSR, p. 830.
134th meeting: Belgium, pp. 842-844; Yugoslavia, p. 846.
135th meeting: Albania, pp. 867-868; Brazil, pp. 880-881; China, pp. 882-883; United States, pp. 874-875.
136th meeting: Bulgaria, p. 892; France, pp. 905-906; United Kingdom, p. 899; Yugoslavia, pp. 900-902.
137th meeting: USSR, pp. 917-918.

[10] S/343, S/341/Corr.1, S/342/Corr.1, S/345, *O.R., 2nd year, Suppl. No. 11*, pp. 123-125, 126-128. See chapter VIII, p. 310.

[11] 131st meeting: pp. 799-800.

[12] S/343, *O.R., 2nd year, Suppl. No. 11*, pp. 123-124.

[13] 133rd meeting: p. 832. For text and for other discussion in relation to Article 34, see chapter X, Case 12.

in the case of Yugoslavia, would be a refusal by a Member to carry out obligations; in the case of the other countries, it would be a refusal to abide by the obligations which they voluntarily assumed for the purposes of the present situation."

The representative of Brazil, after quoting Article 25, stated:

"Albania and Bulgaria accepted the invitation of the Security Council to participate in the discussion. By doing that, they expressly accepted the jurisdiction of the Security Council, and thereby assumed the obligation to abide by its decision. Any other interpretation would be illogical. The acceptance of the invitation to participate in the discussion has no other effect than that of extending the jurisdiction of the Council to the participating States. If it were not so, the whole mechanism of the peaceful solution of disputes, established in Chapter VI of the Charter, would cease to work, and the functions of the Security Council as an instrument of peaceful solution would be completely nullified.

"In the matter submitted for our examination, Albania and Bulgaria, which are non-member States which accepted participation in the discussion without vote, find themselves in the same situation as Yugoslavia and Greece, which are Member States, as regards the obligation to carry out the decisions of the Council."

At the same meeting, the representative of China expressed the view that the opposition of the three countries concerned and their refusal to assist in the work of the Subsidiary Group were "no more valid than their original opposition to the establishment of the main Commission itself". He continued:

". . . my delegation thinks that Albania, Bulgaria and Yugoslavia are, both legally and morally, under obligation to assist the Subsidiary Group in its work. Yugoslavia is a Member of the United Nations. Under Article 25 of the Charter, Yugoslavia agreed to accept and carry out the decisions of the Security Council. Albania and Bulgaria, though non-members, have already accepted the obligations imposed upon them by the Charter."

At the 136th meeting on 22 May, the representative of the United Kingdom expressed the hope that if, as a result of the discussion, the Council rejected the USSR draft resolution, the three States concerned would

". . . conform to the Council's decision and not persist in an attitude which, in our view, would constitute a breach of Article 25 of the Charter."

The representative of Yugoslavia remarked that Article 25 specifically directed Member States to accept and to apply decisions of the Security Council "in accordance with the present Charter". The application of this phrase, he declared, was "the essence of the issue". He further stated:

". . . Article 25, however, refers to the decisions only of the Security Council as binding upon the Members of the United Nations. This Article does not compel the Members of the Organization to accept and apply the decisions of any other body . . .

". . . it is not only outside the scope of the Charter regulations to delegate authority from the Security Council to other organs, but it is also against the spirit of the Charter. To charge that a Member State did not carry out the decision of the competent organ because it did not carry out and because it does not accept as authoritative the decision of a non-competent organ—to which the competent organ delegated its authority for a specific occurrence without being empowered to do so—represents a mistake in reasoning.

"It cannot be maintained that a decision of the Commission is a decision of the Council. Accordingly, a decision of the Commission cannot be dealt with on the basis of Article 25 of the Charter, nor can compulsory power over Members of the Organization be attributed to such a Commission.

". . .

". . . if the Council delegates its authority to other organs, every guarantee extended to the States which are non-members of the Security Council, according to Article 31 of the Charter, becomes illusory in all cases where Article 31 would apply. The Council would simply be deciding to establish subsidiary bodies, while these subsidiary bodies would be making the actual decisions. Thus, Article 31 of the Charter would be reduced to a guarantee to interested countries that they may be present at discussions in the Council when subsidiary bodies are being established, but not present at the deliberations of those bodies. If we add to this the assertion of some members of the Council that the decisions of such subsidiary bodies have full authority in accordance with Article 25, then we can come to the conclusion that interested nations would not be participating in the reaching of decisions of substance; or in other words, the guarantees of participation of non-members of the Security Council in activities covered by Article 31 would be reduced to considerations of procedure."

The representative of the USSR stated at the 137th meeting on 22 May:

". . . It has been stated here that the representatives of the three countries—Yugoslavia, Bulgaria and Albania—agreed to implement the Security Council's decisions on the Greek question. It is perfectly true that these countries did agree to implement the Security Council's decisions. But we are discussing the decisions, not of the Security Council, but of the Commission. The representatives of these countries, after all, never undertook to implement the Commission's decisions, still less the decisions of the Subsidiary Group . . ."

At the 137th meeting on 22 May, the USSR draft resolution was rejected by 2 votes in favour, 6 against, and 3 abstentions.[14]

CASE 26.[15] THE QUESTION OF THE STATUTE OF THE FREE TERRITORY OF TRIESTE: In connexion with decision of 10 January 1947: Approval of the three annexes to the draft Peace Treaty with Italy and acceptance of responsibility thereunder.

[*Note:* In consequence of the request to the Security Council to accept certain responsibilities concern-

[14] 137th meeting: pp. 924-925.

[15] For texts of relevant statements see:
89th meeting: Australia, p. 7; United Kingdom, p. 10.
91st meeting: Australia, pp. 57-58; Secretary-General, p. 45.

ing the Free Territory of Trieste, the question was raised as to the States on which these responsibilities would devolve, and, specifically, whether they would be borne by a non-permanent member after it had ceased to be a member of the Council. The view was expressed that Article 25 related to decisions of the Council under Article 24 and under the Chapters conferring specific powers on the Council.][16]

The Chairman of the Council of Foreign Ministers having submitted certain parts of the draft Peace Treaty with Italy to the Security Council for its approval, the representative of Australia said certain "constitutional questions" were involved. After questioning whether the Council had authority under the Charter to accept the responsibilities envisaged in the draft Peace Treaty, the representative of Australia continued:

"Another important question which will arise, should the Security Council approve the resolution which has been suggested, concerns the obligations accepted not only by the Security Council as one of the principal organs of the United Nations, but by the Members of the United Nations. Which countries will be bound by the obligation to ensure the integrity and independence of the Free Territory? Will that obligation bind countries which were non-permanent members of the Council at the time the resolution was adopted, but find themselves no longer members at the time the obligation is implemented? Will it bind countries which are members of the Security Council when the obligation is carried out, but which are not members of the Council at the time the resolution accepting the obligations is adopted? Will it bind countries which were neither members of the Council when the resolution was adopted, nor when the obligation is implemented?

"It would appear to be straining the provisions of the Charter too far, to assume that all these countries will be bound, especially when the action which it is now proposed the Security Council should take, does not have the backing of the General Assembly . . ."

In answer to this question, the representative of the United Kingdom stated:

"The Security Council has already certain broad responsibilities and any State elected as a non-permanent member assumes those duties when it joins the Council, and, I suppose, it is divested of them when its term of office comes to an end. Should we lay on the Security Council any additional specific duties, it seems to me that the situation would be identical, and that the State elected to the Council would, during its term of office, share in those responsibilities; but at the end of its term of office, it would revert to its former status of a Member of the United Nations on behalf of whom the Security Council acts. I think that is the right answer."

The statement by the Secretary-General read at the 91st meeting on 10 January 1947 contained the following passage:

"2. Obligation of the Members to accept and carry out the decisions of the Security Council.

"The question has been raised as to 'what countries will be bound by the obligation to ensure the integrity and independence of the Free Territory'. The answer to this is clear. Article 24 provides that in carrying out its duties, the Security Council acts in behalf of Members of the United Nations. Moreover, Article 25 expressly provides that 'the Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter'.

"The record at San Francisco also demonstrates that this paragraph applies to all the decisions of the Security Council. As indicated above, there was a proposal in Committee III/1 to limit this obligation solely to those decisions of the Council undertaken pursuant to the specific powers enumerated in Chapters VI, VII, VIII and XII of the Charter. This amendment was put to a vote in the Committee and rejected (document 597, III/1/30). The rejection of this amendment is clear evidence that the obligation of the Members to carry out the decisions of the Security Council applies equally to decisions made under Article 24 and to the decisions made under the grant of specific powers."

The representative of Australia, at the same meeting, declared:

". . . we do not feel that a satisfactory answer has been given to the question raised as to what countries would be bound by the obligations to ensure the integrity and independence of the Free Territory. As I have already pointed out, there is no obligation on Members, under the Charter, to ensure the integrity and independence of any territory, and this omission is deliberate.

"If the Security Council now, by its own act, gives such an assurance, on whom will the obligation rest? The representative of the United Kingdom suggested that it would fall upon the Security Council as an organ and that the responsibility would be shared by those Members of the United Nations who happened to be members of the Security Council at any particular time. Does this mean that the present members of the Council, and in particular the non-permanent members, are now being asked to assume obligations which they themselves may not have to bear in the future and which some other Member of the United Nations which is not participating in the present decision would be required to bear? That would seem to be the position in view of the fact that the action which it is now proposed the Security Council should take does not have the backing of the General Assembly."[17]

[16] For submission of the question, see chapter VIII, p. 312; for discussion in relation to Article 24, see Case 22.

[17] For the decision of the Council, see chapter VIII, pp. 312-313.

## Part IV

## CONSIDERATION OF THE PROVISIONS OF CHAPTER VIII OF THE CHARTER

### NOTE

In consequence of the obligation placed by the Charter upon Members of the United Nations and upon regional arrangements or agencies,[1] the attention of the Security Council has been drawn to the following communications, which have been circulated by the Secretary-General to the representatives of the Council, but have not been included on the provisional agenda:

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

(i) Dated 15 December 1948: transmitting resolutions adopted by the Council concerning Costa Rica and Nicaragua[2]

(ii) Dated 24 December 1948: transmitting resolution adopted by the Council on the same case[3]

(iii) Dated 23 February 1949: on Pact of Friendship signed between Costa Rica and Nicaragua[4]

(iv) Dated 23 May 1950: transmitting Report by Investigating Committee and Decisions taken by the Council with regard to cases submitted by Haiti and the Dominican Republic[5]

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

(i) Dated 7 April 1949: concerning alleged conflict between Haiti and the Dominican Republic[6]

(ii) Dated 20 June 1949: concerning settlement of same case[7]

(iii) Dated 7 September 1949: transmitting text of a Note sent to the representatives of States Members of the Organization of American States[8]

(iv) Dated 7 September 1949: concerning the outcome of the situation which had arisen between Cuba and Peru[9]

(v) Dated 15 September 1949: transmitting text of conclusions regarding the Caribbean situation[10]

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

(i) Dated 24 January 1949: transmitting text of Inter-American Treaty of Reciprocal Assistance, with reference to resolutions taken by the Council of the Organization of American States concerning Costa Rica and Nicaragua[11]

(ii) Dated 10 July 1950: transmitting report of the Special Committee on the Caribbean[12]

(iii) Dated 21 May 1951: transmitting second and final reports of the Special Committee on the Caribbean[13]

(iv) Dated 11 September 1951: transmitting official text of the Final Act of the Fourth Meeting of Consultation of Ministers of Foreign Affairs[14]

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

(i) Dated 18 August 1948: Dominican Republic, transmitting application made to the Inter-American Peace Committee[15]

(ii) Dated 7 October 1948: Dominican Republic, transmitting suggestions made by the Inter-American Peace Committee on the same case[16]

(iii) Dated 12 December 1948: Costa Rica, informing on alleged invasion by armed forces coming from Nicaragua[17]

(iv) Dated 28 November 1951: Cuba, giving text of a Note addressed to the Inter-American Peace Committee[18]

(v) Dated 27 December 1951: Cuba, informing on action taken by the Inter-American Peace Committee on the same case and its results.[19]

In addition to the circulation to the representatives on the Council of these communications, it has been the practice to include in the Reports of the Security Council to the General Assembly summary accounts of the disputes or situations referred to in those communications.[20]

[1] For communications from the Secretary-General of the League of Arab States, all of them directly connected to the Palestine question, see S/745, *O.R., 3rd year, Suppl. for May 1948*, pp. 83-88; S/906, *O.R., 3rd year, Suppl. for July 1948*, pp. 79-80; S/908, *O.R., 3rd year, Suppl. for July 1948*, pp. 82-86; S/958, *O.R., 3rd year, Suppl. for August 1948*, p. 151.

[2] S/1171.
[3] S/1172.
[4] S/1268.
[5] S/1492.
[6] S/1307.
[7] S/1346.
[8] S/1389.
[9] S/1390.
[10] S/1407.
[11] S/1239.
[12] S/1607.
[13] S/2180.
[14] S/2344.
[15] S/982.
[16] S/1036.
[17] S/1115.
[18] S/2425.
[19] S/2460.
[20] See Report of the Security Council to the General Assembly, 1948-1949 (*G.A.O.R., 4th session, Suppl. No. 2*), p. 97; Report of the Security Council to the General Assembly, 1949-1950 (*G.A.O.R., 5th session, Suppl. No. 2*), p. 64; Report of the Security Council to the General Assembly, 1950-1951 (*G.A.O.R., 6th session, Suppl. No. 2*), p. 93.

### Chapter VIII of the Charter. Regional Arrangements

*Article 52*

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

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

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

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

*Article 53*

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

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

*Article 54*

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

CASE 27.[21] THE PALESTINE QUESTION: In connexion with decision of 29 May 1948 calling for cessation of hostilities for a period of four weeks.

[*Note:* At the 296th meeting the Security Council had before it, in consequence of the outbreak of hostilities in Palestine, a draft resolution to determine the situation a threat to the peace and a breach of the peace within the meaning of Article 39.[22] This provision of the draft resolution failed of adoption. In the course of discussion on this provision, the question arose whether the entry of the armed forces of Egypt and Jordan into Palestine was warranted by the terms of Articles 51 or 52.]

At the 296th meeting on 18 May 1948, the representative of Belgium contended that the communications of the Governments of Egypt and Transjordan informing the Security Council that their armed forces had entered the territory of Palestine were not in themselves sufficient to justify the application of Article 39 to those States. He stated:

"... the mere fact that the armed forces of a State enter foreign territory does not necessarily imply that the State is guilty of a breach of the peace or an act of aggression. If that were so, then what of the right of individual or collective self-defence recognized by Article 51 of the Charter? The same argument also applies to a state or a nation fighting on its own soil."

The representative of the Jewish Agency for Palestine* stated that Article 51 could not be applied to the existing situation in Palestine. Under the Charter there were two categories of legitimate use of armed force by Member States. The first related to resistance in self-defence. Article 51 recognized the "inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations", but no such attack had been made or threatened against Egypt or Transjordan whose forces had been despatched to Palestine. The second concerned military action undertaken by Member States with the authorization of the United Nations, which was not given in the case of Palestine.

At the 297th meeting on 20 May, the representative of the Arab Higher Committee* maintained that the Arab majority of Palestine possessed the unquestionable right of sovereignty over the country after the termination of the Mandate.

"When the Jewish minority rebelled and declared its intention of establishing a separate State, it created a dangerous threat to the peace of the whole country. Under the circumstances we were obliged to solicit the assistance of the surrounding countries, with which we are linked by all national ties as well as by the pact of the Arab League, for the restoraation of peace and order of the whole population of Palestine."

At the 299th meeting on 21 May, the representative of Syria stated that the intervention of the Arab States in Palestine had been undertaken in conformity with Article 52 of the Charter. Palestine was an associate member of the Arab League which constituted a regional arrangement. The Arab League States had inter-

[21] For texts of relevant statements see:
296th meeting: Belgium, p. 11; Jewish Agency for Palestine, pp. 13-14.
297th meeting: Arab Higher Committee, pp. 12-13.
298th meeting: Syria, p. 20.
299th meeting: Syria, pp. 13-15.
302nd meeting: Syria, p. 48; United States, pp. 42-43.
307th meeting: United States, p. 22.

[22] See chapter VIII, pp. 328-329. For discussion on the applicability of Articles 39 and 40, see chapter VI, Case 10.

vened in Palestine in response to the request of the majority of its people to assist in the suppression of an armed insurrection. He referred to Article 52 (2) as authorizing the Arab League to pacify the local dispute in Palestine. The nature of such pacification depended upon the methods used by the disturbing party. If those methods were peaceful, pacification might be achieved in one way. If they were violent, then pacification meant "restoring peace... suppressing the disturbance by applying the necessary measures".

After citing Article 52 (3) and referring to the failure of the Security Council to perform its task to settle the dispute in Palestine, he stated:

"It is not only because there are no armed forces now available to the Security Council, but because this is considered to be a local dispute, and not an international dispute between two different nations. In such a case, the Security Council is not supposed to interfere. But those Members of the United Nations entering into regional arrangements are obliged to interfere on behalf of the United Nations, and in the name of peace and the security of the world".

At the 302nd meeting on 22 May, the representative of the United States argued that the invasion of Palestine by the Arab armies was in violation of the Charter. Articles 51 and 52 were no justification for this invasion, because Article 53 provided that no enforcement action should be taken under regional arrangements or by regional agencies without the authorization of the Security Council. Referring to the Syrian contention that the Arab States had acted at the invitation of the majority of the people of Palestine, he stated:

" . . . that part of Palestine which is under the *de facto* government of the Provisional Government of Israel is not a part of the regional organization... This is hostility by a group, a coalition, a region—call it a regional organization if you like—against an organized community which, at least, claims before us that it is a State..."

## Part V

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

**NOTE**

One trusteeship agreement has been submitted to, and approved by, the Security Council. An outline of the proceedings leading to the approval of the agreement will be found in chapter IX. In part V of the present chapter are entered observations made in the course of these proceedings which bear more directly on the terms of Articles 82-83 of the Charter. In chapter VI, part III, of the *Repertoire* will be found material relating to the relations of the Security Council and the Trusteeship Council arising from the entry into force of the trusteeship agreement.

### Article 82

There may be designated, in any trusteeship agreement, a strategic area or areas which may include part or all of the trust territory to which the agreement applies, without prejudice to any special agreement or agreements made under Article 43.

### Article 83

1. All functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the Security Council.

2. The basic objectives set forth in Article 76 shall be applicable to the people of each strategic area.

3. The Security Council shall, subject to the provisions of the trusteeship agreements and without prejudice to security considerations, avail itself of the assistance of the Trusteeship Council to perform those functions of the United Nations under the trusteeship system relating to political, economic, social, and educational matters in the strategic areas.

CASE 28. In connexion with decision of 2 April 1947 approving the Trusteeship Agreement for the former Japanese-mandated islands.

[*Note:* Certain questions were raised concerning the constitutional position of the Council as regards the trusteeship of strategic areas: (i) the competence of the Council to place the islands under trusteeship, in view of their status as a mandated territory, and since no peace settlement with Japan had been concluded; (ii) amendments to the preamble designed to give a legal basis to the termination of the Japanese mandate; (iii) the rights of the Council to modify the terms of the trusteeship agreement.

The amendment on the question of competence was subsequently withdrawn. The amendments to the preamble and on the right of the Council to modify the terms of the agreement were rejected.]

CASE 28 (i)[1]

At the 113th meeting on 26 February 1947, the representative of the United States, in submitting for the approval of the Council the text of a draft trusteeship agreement for the former Japanese-mandated islands,[2]

[1] For texts of relevant statements see:
113th meeting: Australia, p. 414; United States, pp. 407-414; USSR, p. 415.
116th meeting: Australia, p. 465; China, p. 467; Poland, pp. 468-470; Syria, pp. 470-471; United Kingdom, pp. 463-465.
119th meeting: President (Brazil), p. 518; Australia, pp. 519-522; United States, pp. 523-528.
123rd meeting: Australia, pp. 627-628.

[2] See chapter IX, p. 372.

declared that these islands—Marshalls, Marianas and Carolines—constituted an integrated strategic physical complex that was vital to the security of the United States, and should, in accordance with Article 82, be designated a strategic area, and be placed under the trusteeship of the United States. The final disposal of the islands would have to await the peace settlement with Japan. The representative of the USSR considered that the question of the former Japanese-mandated islands was within the competence of the Security Council and that the Council was entitled to take a decision upon it without delay.

The representative of the United Kingdom was of the opinion that it was not strictly within the competence of the Council under the Charter to approve a trusteeship agreement for the islands at that stage, in advance of the peace treaty with Japan which would decide on their disposal. The representative of the United States explained that Japan had never had sovereignty over the mandated islands, and that the trusteeship was in the hands of the United Nations as the successor of the League of Nations. No question of residual title would arise, once disposal had been effected in accordance with the draft trusteeship agreement.

The representative of Australia stated that approval should be subject to confirmation in the interim or final treaty of peace between Japan and the allied Powers victorious in the war against Japan, and submitted an amendment to this effect at the 118th meeting.[3] Representatives of States invited to participate in the discussion took their places at the Council at the 119th meeting on 17 March. The President (Brazil) pointed out that the Australian amendment gave rise to a constitutional point related to the competence of the Security Council on trusteeship questions in strategic areas. He stated:

> "In view of the powers conferred upon the Security Council by Article 83, paragraph 1, of the Charter, relating to trusteeship matters for strategic areas, it appears to me to be very difficult to accept the idea that a decision of the Council on such matters may be conditioned by confirmation of any other international body—be it linked with the United Nations or not. It is my opinion that if we approve the trusteeship agreement before us, that decision is final as far as the United Nations is concerned, and can only be revoked by another decision of the Security Council itself. We should always bear in mind that we act in these matters on behalf of all Members of the United Nations, as provided for in Article 24 of the Charter. There can be no higher authority than the Security Council on these questions... On the other hand, it seems to me highly undesirable for us to give a directive... to a conference which purposely is not held under the auspices of the United Nations."

The representative of Australia submitted a redraft of the original text to the effect that the agreement would enter into force on the date on which a peace treaty became binding on Japan. The representative of the United States challenged the Australian amendment as an unconstitutional effort to take away authority from the United Nations and to give it to somebody else. At the 123rd meeting on 28 March, the representative of Australia did not press his proposal for amendment, since his point had been met by the invitations issued by the Council to representatives of other nations that had fought against Japan, to participate in the discussions of the Council.[4]

[3] 118th meeting: p. 516.

### Case 28 (ii)[5]

At the 124th meeting on 2 April 1947, the Council began its detailed consideration of the terms of the draft trusteeship agreement for the former Japanese-mandated islands by discussing several amendments to the preamble. In its original form, the preamble read as follows:

> *"Whereas* Article 75 of the Charter of the United Nations provides for the establishment of an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent agreements; and
>
> *"Whereas* under Article 77 of the said Charter the trusteeship system may be applied to territories now held under mandate; and
>
> *"Whereas* on 17 December 1920 the Council of the League of Nations confirmed a mandate for the former German islands north of the equator to Japan, to be administered in accordance with Article 22 of the Covenant of the League of Nations; and
>
> *"Whereas* Japan, as a result of the Second World War, has ceased to exercise any authority in these islands;
>
> *"Now, therefore,* the Security Council of the United Nations, having satisfied itself that the relevant articles of the Charter have been complied with, hereby resolves to approve the following terms of trusteeship for the Pacific Islands formerly under mandate to Japan."

The representative of Poland submitted an amendment to add, after the fourth paragraph, the following clause:

> *"Whereas* Japan has violated the terms of the above mandate of the League of Nations and has thus forfeited her mandate."

In support of his amendment, the representative of Poland stated that, through her action in leaving the League of Nations, and by starting a war of aggression against China, in breach of the Covenant of the League, Japan had forfeited all her rights as a Member of the League, including her rights as a mandatory power. The representative of Australia held that the proposed addition was undesirable. It was not correct in law since a breach of the mandate in itself did not constitute forfeiture. In his view, the original text of the preamble was preferable. The representative of the USSR also expressed a preference for the preamble in its original form. He contended that, there being no continuity, either legal or otherwise, between the mandatory system of the League of Nations and the trusteeship system of the United Nations, there was no justification for the Security Council to discuss or to decide on the question of the mandates.

In accepting the Polish amendment, the representative of the United States remarked that the question

[4] 123rd meeting: pp. 627-628.

[5] For texts of relevant statements see:
124th meeting: Australia, pp. 645-646; Netherlands, pp. 650-651, 656; Poland, pp. 647, 656; USSR, pp. 648, 657; United States, pp. 648-650, 656.

before the Council dealt with trusteeship, not with title. After referring to Article 77 of the Charter as a basis for the acceptance by the United States of the Polish amendment, he stated that it

"added a term that clarified the preamble and settled the question of the mandatory rights which the Japanese had over these islands. This amendment declares a forfeiture, and a forfeiture always occurs when the essence of an agreement is broken."

The representative of the Netherlands opposed the view that a mandate lapsed by the mere fact of violation, and remarked that the proper authority had to declare that that was so. He suggested that the Polish amendment be replaced by the following clause:

*"Whereas,* as a result of the signature by Japan of an act of unconditional surrender, the mandate held by Japan for these islands has come to an end."

The representative of the United States then proposed a new text to be added in place of the Polish and the Netherlands amendments. This text, which was accepted by the representatives of Poland and the Netherlands, read as follows:

*"Whereas* the mandate held by Japan for these islands has come to an end."

This United States amendment was put to the vote and was rejected by 5 votes in favour with 6 abstentions. The preamble as a whole, in its original form, was then adopted unanimously.[6]

CASE 28 (iii)[7]

At the 124th meeting on 2 April 1947 the Council considered a USSR amendment to the text of Article 15 of the draft trusteeship agreement. In its original form, as submitted by the United States, Article 15 read:

"The terms of the present agreement shall not be altered, amended or terminated without the consent of the Administering Authority."

The representative of the USSR proposed that Article 15 should be redrafted as follows:

"The terms of the present agreement may be altered and amended or the terms of its validity discontinued by the decision of the Security Council."

He emphasized that this would bring the text of Article 15 more in accordance with the powers and rights of the Council with regard to the approval of trusteeship agreements concerning strategic areas. The representative of the United States declared the amendment unacceptable, since there must be two parties to any trusteeship agreement, and it would be an astonishing interpretation of the Charter to maintain that the function of determining the terms of the agreement should be given exclusively to the party which, under the Charter, had only the function of approval. To give the power of termination to the Security Council alone would be in violation of the spirit of the Charter and of the theory of the agreement. The representative of the USSR maintained that since the Council had the power to approve a draft trusteeship agreement at the time of its conclusion, it followed that it had also the right to take later a decision that the agreement had become out of date and should be amended, discontinued, or replaced by a new agreement. His amendment was intended to ensure that the rights of the Council were observed. The representative of Poland presented another amendment, as follows:

"The terms of the present agreement shall not be altered, amended, or terminated except as provided by the Charter."

The representative of the United Kingdom objected to this amendment on the ground that the Charter said nothing on the subject.

The USSR and the Polish amendments were not adopted having failed to obtain the affirmative votes of seven members. Article 15 was approved in its original form by 8 votes in favour, none against, with 3 abstentions.[8]

[6] 124th meeting: p. 658.

[7] For texts of relevant statements see:
124th meeting: President (China), pp. 674-675; Australia, p. 671; Belgium, p. 671; Poland, p. 676; Syria, pp. 672-673; USSR, pp. 669, 671-672, 678; United Kingdom, pp. 676, 678; United States, p. 670.

[8] 124th meeting: pp. 679-680.

## Part VI

## CONSIDERATION OF THE PROVISIONS OF CHAPTER XVII OF THE CHARTER

### NOTE

Occasion for the invocation of Article 106 arose in connexion with the Palestine question, and the relevant case history has been segregated from the material included under Article 24[1] for separate presentation in part VI of the present chapter.[2]

With regard to Articles 106 and 107, reference should also be made to the report of the Military Staff Committee on the general principles governing the organization of the armed forces to be made available by the Members of the United Nations.[3]

[1] See Case 23 (ii).

[2] Case 29. For further incidental observations bearing on Article 106, see Colombia, 274th meeting: p. 242; 292nd meeting: p. 24; 298th meeting: p. 27; 308th meeting: pp. 26-27; and Belgium, 309th meeting. pp. 13-14.

[3] S/336, *O.R., 2nd year, Special Suppl. No. 1,* pp. 1-32.

### Chapter XVII of the Charter. Transitional Security Arrangements

*Article 106*

Pending the coming into force of such special agreements referred to in Article 43 as in the opinion of the Security Council enable it to begin the exercise of its responsibilities under Article 42, the parties to the Four-Nation Declaration,

signed at Moscow, October 30, 1943, and France, shall, in accordance with the provisions of paragraph 5 of that Declaration, consult with one another and as occasion requires with other Members of the United Nations with a view to such joint action on behalf of the Organization as may be necessary for the purpose of maintaining international peace and security.

*Article 107*

Nothing in the present Charter shall invalidate or preclude action in relation to any state which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of that war by the Governments having responsibility for such action.

CASE 29.[4] THE PALESTINE QUESTION: In connexion with draft resolution invoking Article 106 submitted by the representative of Colombia and subsequently withdrawn.

[*Note:* In consequence of the report of the Palestine Commission that it would be unable to implement the plan of partition recommended by the General Assembly without the assistance of an effective armed force,[5] a draft resolution was submitted at the 254th meeting on 24 February 1948, to invite the permanent members of the Council, in pursuance of Article 106, to consult with a view to joint action on behalf of the Organization. The draft resolution was withdrawn at the 258th meeting on 27 February 1948, in favour of another draft resolution to request the permanent members, constituted as a committee of the Council, to make recommendations to the Council.][6]

At the 253rd meeting on 24 February 1948, in the course of discussion on the situation in Palestine reported by the Palestine Commission, the representative of the United States observed:

"If the Security Council should decide that it is necessary to use armed force to maintain international peace in connexion with Palestine, the United States would be ready to consult under the Charter with a view to such action as may be necessary to maintain international peace."

Such consultation would be required, he added, since armed forces were not available under the terms of Article 43 of the Charter.

At the 254th meeting on the same day, the representative of Colombia submitted a draft resolution[7] which, recalling that the Palestine Commission had referred to the Security Council the problem of providing armed assistance to enable the Commission to discharge its responsibilities, recited:

"That Articles 39 and 41 of the Charter . . . envisage measures to be taken in the case of conflicts or disputes between States, but do not authorize the Security Council to create special forces for the purposes indicated by the United Nations Palestine Commission;"

By the draft resolution, the Council would invite

"according to Article 106 of the Charter, the parties to the Four-Nation Declaration, signed at Moscow, 30 October 1943, and France, to consult with one another with a view to such joint action on behalf of this Organization as may be necessary to prevent or remove any threat to the peace, breach of the peace or act of aggression arising from the implementation of the General Assembly's resolution of 29 November 1947;"

At the 258th meeting on 27 February 1948, the representative of Colombia contended that, in the absence of any agreement under Article 43,

"... if any joint action on behalf of this Organization is necessary for the purpose of maintaining international peace and security in Palestine, that responsibility devolves primarily upon the permanent members of the Security Council."

At the 255th meeting on 25 February, the representative of the United States opposed the Colombian draft resolution and submitted instead a draft resolution[8] to establish a committee of the five permanent members of the Security Council to study the situation with respect to Palestine and report its conclusions and recommendations to the Council.

At the 258th meeting on 27 February, the representative of Belgium expressed support for the United States proposal on the grounds that, in the particular case of Palestine and at the initial stage of establishing the facts, it was appropriate that

"... such a committee should be composed of the permanent members of the Council, inasmuch as the possibility of coercive measures has been mentioned and the responsibility for enforcing such measures would devolve, according to Article 106 of the Charter, on the five great Powers."

At the same meeting, the representative of Colombia withdrew his draft resolution with a view to expediting the work of the Council.[9]

At the 260th meeting on 2 March, the representative of the USSR, while objecting to the establishment of a committee of the five permanent powers, as proposed in the United States draft resolution, stated:

"We think that the five Powers should conduct direct consultations quite outside any committee. Since the permanent members of the Security Council have not yet shown any initiative in this matter, the Council might call upon them or request them to begin such consultations immediately and report on the results within ten or fifteen days."

[4] For texts of relevant statements see:
253rd meeting: United States, p. 267.
254th meeting: Colombia, pp. 292-293.
255th meeting: United States, pp. 294-295.
258th meeting: Belgium, pp. 356-357; Colombia, pp. 361-365.
260th meeting: USSR, p. 406.
262nd meeting: Syria, p. 29; China, p 30.

[5] See chapter VIII, pp. 325-326, and Case 23 (ii).

[6] For the consideration of this draft resolution, see also chapter V, Case 68.

[7] S/684, 254th meeting: pp 292-293.

[8] S/685, 255th meeting: pp 294-295.

[9] 258th meeting: pp. 364-365.

In the opinion of the representative of Syria, Article 106 was applicable only when the Security Council decided that a case required the use of armed force. At the 262nd meeting on 5 March, he stated:

"... action by the permanent members under that Article will always be in order when the Security Council decides that a situation exists which endangers international peace and security, when other methods and means have been tried and proved to be inadequate, and when action under Article 42 of the Charter is necessary. Then, as long as Article 43 is not implemented, the five permanent members would convene to determine what action to take."

The representative of Syria accordingly endorsed the suggestion that the permanent members of the Security Council should consult among themselves provided they did so not under Article 106.

The President, speaking as the representative of China, said:

"I have stated that I should be glad to participate in a committee or in a consultation of the five permanent members. I would do that not by virtue of Article 106. I consider that such consultation or committee action at the present moment is not related to Article 106 of the Charter."

At the 263rd meeting on the same day, the Security Council adopted a resolution calling upon the permanent members of the Council to consult and report within ten days their recommendations regarding the implementation of the General Assembly resolution on Palestine.[10]

CASE 30.[11] IDENTIC NOTIFICATIONS: In connexion with the decision on 5 October 1948 to include the question in the agenda.

[*Note:* Objection to consideraion by the Security Council of the question submitted was based on Article 107. The reply was made that the question submitted did not concern action in relation to a former enemy State, but related to a threat to the peace occasioned by measures of duress by one occupying Power against other occupying Powers.][12]

At the 361st meeting on 4 October 1948 the representative of the USSR opposed the inclusion of this question in the agenda on the grounds that the question did not fall within the competence of the Security Council and could not, therefore, be the subject of discussion in the Council.

The representative of the USSR contended that, according to Article 107 of the Charter, all questions arising in connexion with the control of Germany, including the situation in Berlin, fell within the competence of the Governments responsible for the occupation of Germany under the relevant international agreements. He stated:

"To refer the Berlin question to the Security Council would be a direct violation of Article 107 . . . According to Article 107 of the United Nations Charter, the Berlin question, forming as it does a part of the question of Germany as a whole, belongs to the competence of those Governments which are responsible for the occupation of Germany, and consequently, it is not a matter which can be considered by the Security Council.

"In fact, as regards Germany in general and Berlin in particular, there exists a whole series of important international agreements and treaties signed by the four Powers . . . Thus in view of the special international agreements and treaties signed by the great Powers, the whole problem of Germany, including the Berlin question, is a matter to be settled by the Governments which bear the responsibility for the occupation of Germany; this problem cannot, therefore, be allowed to come up for consideration before any other body than that defined in the international agreements under which are the signatures of the great Powers...

"That, in short, is the principle proclaimed in Article 107 ..."

The "only legal way of dealing with the matter", the representative of the USSR contended, was "to have the Council of Foreign Ministers examine the Berlin question." He continued:

"... it is said ... that there has arisen a threat to peace and security which, in other words, makes it a matter of direct concern to the Security Council.

"But, even if there did exist a threat to peace and security, Article 107 of the Charter excludes intervention in this matter by the United Nations Organization. This is the meaning of Article 107. But does such a threat in fact exist, or is it . . . merely a pretext for trying to transfer responsibility for examination of this question by the four Powers—in accordance with the provisions of the international agreement—to the Security Council, which never undertook to examine the German question, and which indeed, in view of Article 107, never could have assumed this responsibility."

The representative of the United Kingdom replied:

"... The USSR action, of which the Western Powers are complaining, has not . . . been taken in relation to Germany. It is essentially action taken in relation to the Western Powers themselves by cutting off their communications with a part of Germany where they have the right to be and by attempting to deny them access to it or to compel their withdrawal. That the locale of this action is Germany and that the population of Berlin is affected by it does not suffice to constitute it as action taken in relation to Germany or to bring it under Article 107. The term used . . . 'in relation to' is clearly intended to mean action of which the enemy State is the object and not merely the subject, the occasion or the locale. The object of the USSR action in the case of Berlin is clearly the three Western Powers and their position . . . For these reasons, it cannot be claimed that the action of the Government of the USSR in Berlin escapes the application of the Charter, or that it is taken out of the Charter by Article 107, since it is not at all the type of action contemplated in that provision."

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[10] 263rd meeting: pp. 43-44. For text, see chapter VIII, p. 326.

[11] For texts of relevant statements see:
361st meeting: USSR, pp. 10-14, 18-19; United Kingdom, pp. 28-30; United States, pp. 20-21, 23-27.
362nd meeting: Belgium, pp. 18-19; France, pp. 2-3; Syria, pp. 5-7; Ukrainian SSR, pp. 22-23; USSR, pp. 8-16, 22.
364th meeting: United Kingdom, p. 36.
366th meeting: USSR, pp. 12-13.
372nd meeting: USSR, p. 6.

[12] For the submission of the Identic Notifications, see chapter VIII, p. 354.

The representative of the United States made the following statement:

"The arguments put forward by the representative of the USSR make it appear that the question brought before the Security Council is the entire problem of Germany . . . That is not the case. The question before this Council is a different one, namely, the threat to international peace and security caused by the imposition and maintenance of the USSR blockade of Berlin and other measures of duress taken against the three other occupying Powers."

". . .

"Article 107 of the Charter was not designed to prevent any disputes among the victorious Powers from coming to the Security Council, but to prevent interference by the former enemy States in any action taken by the victorious Powers within the agreed realm of their responsibility. In other words, Article 107, while precluding appeals to United Nations organs by defeated enemy States concerning action taken against them during the period of military occupation by the responsible allied Powers, does not prevent one of the allied Powers from bringing its differences with other allied Powers to the attention of United Nations organs for consideration according to the provisions of Chapters IV, VI or VII of the Charter; much less would it preclude consideration by the Security Council of action by a Member of the United Nations constituting a threat to peace."

The representative of the USSR replied that the three Western Governments had carried out "actions" which harmed "the economy of the Soviet Zone of Occupation, that is, the interests of the population of that zone."

At the 362nd meeting on 5 October 1948, the Council adopted the agenda which included the identic notifications by 9 votes to 2.[13] Before the adoption of the agenda, the representative of Argentina made the following statement:

"The Argentine delegation will . . . vote for the adoption of the agenda, it being understood, however, that by this vote it does not express any opinion on competence, jurisdiction, or substance of the matter."

After the adoption of the agenda, the representative of the USSR made the following statement:

"The delegation of the USSR states on behalf of the USSR Government that the inclusion of this question in the Security Council's agenda, by a majority of the Council, represents a violation of Article 107 according to which such a question is to be resolved by the Governments having responsibility for the occupation of Germany and cannot be referred to the Security Council.

"In view of the above considerations the delegation of the USSR declares that it will not take part in the discussion of the Berlin question in the Security Council."[14]

The representative of the Ukrainian SSR associated himself with the above statement and said that he would not take part in the discussion of this question.

[13] 362nd meeting: p. 21.

[14] For statements, more especially after adoption of the agenda, regarding recourse to Article 33, see chapter X, Case 6. For the draft resolution to recommend renewal of negotiations in the Council of Foreign Ministers after fulfilment of certain conditions, see chapter XI, Case 14.