

elections and the formation of the new Government. He further stated that there was no threat or use of force against Pakistan from India. On numerous occasions the Government of India had offered to enter into a no-war declaration with Pakistan. Thus an atmosphere free from any apprehension would be created in order to facilitate the holding of any negotiations or discussions between India and Pakistan for the settlement of the issue. India's basic policy was to seek all avenues of peaceful settlement in the vacating of the aggression.<sup>471/</sup> There had been an aggression against India in Kashmir, since Kashmir was an integral part of India. However, this aggression was to be vacated by peaceful means. The Prime Minister of India had repeatedly stated that India was not going to take any military measures in the Kashmir area under Pakistan occupation. There was no desire in the Government of India to settle the differences with Pakistan by any but peaceful means and by negotiations.<sup>472/</sup>

The President (United States) stated that from the statements made before the Council by the representatives of Pakistan and India it was apparent that they desired to deal with their differences on the Kashmir issue in a peaceful manner. In the light of those assurances, and of the comments made before the Council, any further consideration by the Council should be deferred, possibly until some time after 1 March, on the understanding that it would be resumed after consultation between members of the Council and the parties concerned. Meanwhile, he concluded, the parties should refrain from any use or threat of the use of force in connexion with this problem, and from any action which might increase existing tensions.<sup>473/</sup>

*Decision of 22 June 1962 (1016th meeting): Rejection of the draft resolution submitted by Ireland*

The Security Council resumed its consideration of the question at its 1007th meeting on 21 April 1962. The opening statement by the representative of Pakistan was made at the 1007th and 1008th meetings, and the opening statement by the representative of India at the 1009th meeting. Discussion continued through the 1016th meeting.

At the 1016th meeting on 22 June 1962, the representative of Ireland introduced a draft resolution<sup>474/</sup> under which, after noting with satisfaction the pledges made by the two parties to the effect that their Governments would not resort to force in settling this question, the Security Council would: (1) remind both parties of the principles contained in its resolution of 17 January 1948, and in the United Nations Commission for India and Pakistan (UNCIP) resolutions of 13 August 1948 and 5 January 1949; (2) urge the parties concerned to enter into negotiations at the earliest convenient time with a view to the ultimate settlement of the India-Pakistan question, in accordance with Article 33 and other relevant provisions of the Charter; (3) appeal to the two Governments to

take all possible measures to ensure the creation and maintenance of an atmosphere favourable to the promotion of negotiations; (4) urge the two Governments to refrain from making any statements, or taking any action, which might aggravate the situation; and (5) request the Secretary-General to provide the two Governments with such services as they might request for the purpose of carrying out the terms of this resolution.

At the same meeting, the Irish draft resolution failed of adoption. There were 7 votes in favour and 2 against, with 2 abstentions (one of the negative votes being that of a permanent member).<sup>475/</sup>

*LETTER OF 8 MARCH 1962 FROM THE REPRESENTATIVE OF CUBA CONCERNING THE PUNTA DEL ESTE DECISIONS*

*INITIAL PROCEEDINGS*

By letter<sup>476/</sup> dated 8 March 1962 addressed to the President of the Security Council, the representative of Cuba complained that certain resolutions adopted at the Eighth Meeting of Consultation of Ministers of Foreign Affairs of the American Republics, held at Punta del Este, violated the Charter of the United Nations, and that subsequently "unlawful enforcement action" had been taken against Cuba without the requisite authorization of the Security Council under Article 53 of the Charter. These coercive measures constituted aggression against the sovereignty of Cuba and were a serious threat to international peace and security. Accordingly, the Cuban Government asked for an immediate meeting of the Security Council to request the International Court of Justice to give an advisory opinion on several specific legal questions related to the decisions taken by the Eighth Meeting of Consultation of Ministers of Foreign Affairs. It further requested the Council to call, as a provisional measure under Article 40 of the Charter, for the suspension by the Council of the Organization of American States of the agreements adopted at Punta del Este. The Cuban request was based on Article 65 of the Statute of the International Court of Justice and Articles 24 (1), 34, 35 (1), 40, 41, 52, 53, 96 and 103 of the Charter, and the relevant provisions of the rules of procedure of the Council.

At the 992nd meeting on 14 March 1962, the Council included the question in its agenda.<sup>477/</sup> It considered the Cuban complaint at the 992nd to 998th meetings held between 14 and 23 March 1962. The President (Venezuela) invited the representative of Cuba to participate in the discussion.<sup>478/</sup>

*Decision of 23 March 1962 (998th meeting): Rejection of the Cuban draft resolution*

At the 992nd meeting on 14 March 1962, the representative of Cuba\* contended that the Eighth Meeting of Consultation of Punta del Este had been illegally convened, and that it had adopted collective enforcement measures which could not be implemented with-

<sup>471/</sup> See chapter X, Case 6.

<sup>472/</sup> 990th meeting: paras. 83-87, 93-98, 102-111.

<sup>473/</sup> 990th meeting: paras. 113-115.

<sup>474/</sup> S/5134, O.R., 17th year, Suppl. for April-June 1962, p. 104; 1016th meeting: paras. 3-10.

<sup>475/</sup> 1016th meeting: para. 42.

<sup>476/</sup> S/5086, O.R., 17th year, Suppl. for Jan.-March 1962, pp. 88-90.

<sup>477/</sup> 992nd meeting: para. 3.

<sup>478/</sup> 992nd meeting: para. 4.

out the approval of the Security Council.<sup>479/</sup> He asserted that under the United Nations Charter, socialist and capitalist nations were united, thus proclaiming peaceful co-existence. The United Nations was the international forum where countries with different social and political systems met. He stated further that the social system of a State was a matter essentially within its domestic jurisdiction, and that under Article 2 (7) of the Charter not even the United Nations was authorized to intervene in matters which were essentially within the domestic jurisdiction of any State. He concluded by requesting that, pending the opinion of the International Court, the Council should resolve to suspend the decisions of Punta del Este.<sup>480/</sup>

At the 993rd meeting on 15 March 1962, the representative of the USSR observed that there were well-founded legal reasons for the Security Council to take the matter before the International Court because serious differences had appeared at the previous meetings of the Council and the General Assembly in the views expressed about these legal questions.<sup>481/</sup>

At the same meeting the representative of the United States observed that it was the third time in two and a half months that the United Nations had been called upon to discuss complaints by Cuba which were essentially alike. He contended that the only difference in the current complaint was that its objective was to extend the Soviet veto to all regional organizations by way of the Security Council. He noted further that while the Cuban complaint might have been formulated in juridical terms, it was actually political. In his view, the principal issue was

"whether a regional organization, one which has co-operated fully with the United Nations, has the right to manage its own affairs and to defend itself against a foreign-dominated Government, or whether the Soviet Union is to be allowed to paralyse that organization's activities through the exercise of the veto power in this Council."

With regard to the Cuban contention that the resolutions adopted at Punta del Este were "enforcement action" and constituted aggression against Cuba, the United States representative, after analysing in detail the resolutions, asserted that they did not constitute aggression or violated the Charter and did not require Security Council approval, or interpretation by the International Court.<sup>482/</sup>

At the 994th meeting on 16 March 1962, the representative of Chile observed that a request for an advisory opinion of the International Court implied a kind of disapproval of the Punta del Este decisions and denial of authority to the competent organs that produced these decisions. He noted, further, that coercive measures within the meaning of Article 53 of the Charter involved the use of armed force. Consequently, the measures decided upon at Punta del Este could not be said to constitute enforcement action.<sup>483/</sup>

At the 995th meeting on 20 March 1962, the President (Venezuela)<sup>484/</sup> called attention to a letter dated 19 March 1962 from the representative of Cuba transmitting a draft resolution,<sup>485/</sup> submitted in accordance with rule 38 of the rules of procedure. Under the terms of the draft resolution, the Security Council would request the International Court of Justice to give an advisory opinion on the seven following questions:

- (i) Whether the Organization of American States was a regional agency within the meaning of Chapter VIII of the United Nations Charter;
- (ii) Whether, under the terms of the Charter, the OAS had the right to take enforcement action as provided for in Article 53 without the authorization of the Security Council;
- (iii) Whether the term "enforcement action" in Article 53 was to be regarded as including the measures provided for in Article 41, and whether the list of measures in Article 41 was exhaustive;
- (iv) Whether the Charter of the OAS included any procedure for the expulsion of a State member of that organization, particularly because of its social system;
- (v) Whether the provisions of the Charter of the OAS and of the Inter-American Treaty of Reciprocal Assistance (Rio Treaty) were to be regarded as having precedence over the obligations of Member States under the United Nations Charter;
- (vi) Whether it was one of the main principles of the Charter of the United Nations that membership in the Organization was open to States which complied with the requirements of Article 4, regardless of their social system;
- (vii) Whether, in the light of the replies to the foregoing questions, the resolutions adopted by the Eighth Meeting of Consultation regarding the expulsion of a State member of the regional agency because of its social system, and the adoption of other enforcement action against that State without the authorization of the Security Council, were or were not in accordance with the provisions of the Charter of the United Nations, the Charter of the OAS, and the Rio Treaty.

At the 996th meeting on 21 March 1962, the representative of the United Arab Republic recalled that requests for advisory opinions had been made in the past, and cited two cases, in 1947 and 1948, when they had been rejected on the grounds that the Council seemed more interested in the political rather than the juridical aspects of the questions raised.<sup>486/</sup>

At the 998th meeting on 23 March 1962, the representative of the USSR requested, in accordance with rule 38 of the rules of procedure,<sup>487/</sup> that the Cuban draft resolution be put to the vote.<sup>488/</sup>

<sup>479/</sup> See chapter XII, Case 27.

<sup>480/</sup> 992nd meeting: paras. 9-12, 77, 108, 118.

<sup>481/</sup> 993rd meeting: paras. 49-52.

<sup>482/</sup> 993rd meeting: paras. 72-74, 78-125.

<sup>483/</sup> 994th meeting: paras. 46, 65-64, 72.

<sup>484/</sup> 995th meeting: para. 3.

<sup>485/</sup> S/5095, O.R., 17th year, Suppl. for Jan.-March 1962, pp. 96-97. The draft resolution included the same seven questions which were raised in the Cuban letter of submission (S/5086).

<sup>486/</sup> 996th meeting: para. 42.

<sup>487/</sup> See chapter III, Case 16.

<sup>488/</sup> 998th meeting: para. 3.

The representative of Ghana requested that a separate vote be taken on the operative paragraph of the Cuban draft resolution which referred to the third above-mentioned question.<sup>489/</sup>

The President (Venezuela) stated that, in view of the fact that it was the USSR which had asked that the draft resolution be put to the vote, he would inquire whether the representative of the USSR had any objection to the separate vote requested by the representative of Ghana.<sup>490/</sup> After a discussion on whether the representative of Cuba might be heard at that stage and an expression of view by the President, the President, as an exception, called on the representative of Cuba.<sup>491/</sup> The representative of Cuba merely stated that he had no objection to Ghana's request.<sup>492/</sup>

The Ghanaian proposal was rejected; there were 4 votes in favour and 7 against.<sup>493/</sup>

The representative of Cuba stated then that as a result of the vote just taken he would not press for a vote on his draft resolution.<sup>494/</sup>

The representative of the United States objected to the proposed withdrawal, to avoid a vote on the draft resolution as a whole. Under rule 35, since a vote had been taken in respect of the draft resolution, it could no longer be withdrawn.<sup>495/</sup>

The President ruled that, under rule 35, the remaining part of the draft resolution would have to be voted upon.<sup>496/</sup> This ruling was challenged by the representative of the USSR,<sup>497/</sup> and was upheld by 7 votes in favour to 2 against, with 2 abstentions.<sup>498/</sup>

The draft resolution, as amended, was rejected by 2 votes in favour and 7 against, with 1 abstention.<sup>499/</sup>

## COMPLAINTS BY REPRESENTATIVES OF CUBA, USSR AND UNITED STATES (22-23 OCTOBER 1962)

### INITIAL PROCEEDINGS

By letter <sup>500/</sup> dated 22 October 1962, the representative of the United States requested an urgent meeting of the Security Council to "deal with the dangerous threat to the peace and security of the world caused by the secret establishment in Cuba by the Union of Soviet Socialist Republics of launching bases and the installation of long-range ballistic missiles capable of carrying thermonuclear warheads to most of North and South America". The letter stated that the United States had "incontrovertible evidence" that the USSR had been installing in Cuba a whole series of facilities for launching nuclear missiles and other offensive

<sup>489/</sup> 998th meeting; paras. 78, 81.

<sup>490/</sup> 998th meeting; paras. 84-87.

<sup>491/</sup> 998th meeting; paras. 88-109. For procedural discussion on this matter, see chapter III, Case 16.

<sup>492/</sup> 998th meeting; para. 110.

<sup>493/</sup> 998th meeting; para. 113.

<sup>494/</sup> 998th meeting; para. 123.

<sup>495/</sup> 998th meeting; paras. 124-125.

<sup>496/</sup> 998th meeting; paras. 142, 144-145.

<sup>497/</sup> 998th meeting; paras. 147, 149.

<sup>498/</sup> 998th meeting; para. 150.

<sup>499/</sup> 998th meeting; para. 158. The representative of Ghana did not participate in the vote.

<sup>500/</sup> S/5151, O.R., 17th year, Suppl. for Oct.-Dec. 1962, pp. 146-147.

weapons and installing the weapons themselves. These steps were far in excess of Cuba's defence requirements and had been undertaken some months ago despite repeated assurances, both in public and private, that no offensive weapons were being delivered to Cuba. In the light of this threat, the United States had appealed to the Organization of American States calling for a meeting of the Organ of Consultation invoking articles 6 and 8 of the Inter-American Treaty of Reciprocal Assistance (Rio Treaty) and had initiated a strict quarantine of Cuba to interdict the carriage of offensive weapons to that country. In accordance with its obligation under the Charter of the United Nations and the Council's responsibility for the maintenance of international peace and security, the United States was bringing these facts to the attention of the Council in order that prompt and effective measures might be taken for the immediate dismantling and withdrawal of Soviet offensive weapons from Cuba under the supervision of United Nations observers. Upon fulfilment of these conditions, the quarantine would be lifted. The letter was accompanied by a draft resolution<sup>501/</sup> under which the Security Council would call, as a provisional measure under Article 40 of the Charter, for immediate dismantling and withdrawal of all missiles and other offensive weapons from Cuba and would authorize and request the Secretary-General to dispatch to Cuba a United Nations observer corps to assure and report on compliance. The draft resolution also recommended that the United States and the USSR confer promptly on measures to remove the existing threat to the security of the Western Hemisphere and the peace of the world, and report thereon to the Security Council.<sup>502/</sup>

By letter <sup>503/</sup> dated 22 October 1962, the representative of Cuba requested an urgent meeting of the Security Council to consider "the act of war unilaterally committed by the Government of the United States in ordering the naval blockade of Cuba". The letter stated that the United States, in disregard of the international organizations including the Security Council, was creating an imminent danger of war. This unilateral and direct aggression committed against the Revolutionary Government and the people of Cuba was merely the culmination of a series of aggressive acts which had been reported to and denounced before the United Nations. The request for the meeting was based on Articles 34, 35 (1), 39, 1 (1), 2 (4) and 24 (1) of the Charter and the relevant articles of the rules of procedure of the Council.

By letter <sup>504/</sup> dated 23 October 1962, the representative of the USSR requested an immediate meeting of the Security Council to examine the question of "the violation of the Charter of the United Nations and the threat to peace" on the part of the United States. In a statement accompanying the letter, the Government of the USSR noted the United States decree which, it stated, had, in effect, placed the Republic of Cuba under a naval blockade. At the same time, United States troops had been reinforced at the Guantanamo base, situated in Cuban territory, and United States armed forces were being placed in a state of combat readi-

<sup>501/</sup> S/5152, 1022nd meeting; para. 80.

<sup>502/</sup> See chapter X, Case 7.

<sup>503/</sup> S/5183, O.R., 17th year, Suppl. for Oct.-Dec. 1962, p. 148.

<sup>504/</sup> S/5186, *ibid.*, pp. 149-154.