

The representative of the USSR said that although the item on the Council's agenda was a separate one, it was directly connected with the item submitted by the Government of the USSR and previously debated. The major defect of the draft resolution was its failure to condemn the United States policy of provocation against the USSR. The Soviet Government was not opposed to the provisions recommended by the draft, but only to its failure to appeal to those who were destroying the possibility for negotiations.^{72/} He proposed the following amendments:^{73/}

(1) After the first preambular paragraph insertion of the following:

"Considering that the incursion of foreign military aircraft into the territory of other States is incompatible with the principles and purposes of the United Nations and constitutes a threat to peace and international security."

(2) At the end of the second operative paragraph the addition of the words:

"including the dispatch of their aircraft into the airspace of other States."

(3) The third operative paragraph to read:

"Requests the Governments concerned to continue their efforts towards the achievement of general and complete disarmament and the discontinuance of all nuclear weapons tests under an appropriate international control system as well as their negotiations on measures to prevent surprise attack."

At the 863rd meeting on 27 May 1960, the representative of Ecuador submitted a revised text^{74/} of the four-Power draft resolution. The revision consisted in the amendment of operative paragraph 2 to appeal to all Member Governments not only to refrain from action likely to increase tension but also to refrain from the use or threat of force in their international relations and to respect each other's sovereignty, territorial integrity and political independence.

At the same meeting the President (Ceylon) stated^{75/} that he had been informed that the Soviet Union did not wish to press for a vote on its third amendment.

The Council then voted on the remaining USSR amendments, which were rejected by a vote of 2 in favour, 6 against, with 3 abstentions.^{76/}

The four-Power revised draft resolution was adopted by 9 votes in favour, with 2 abstentions.^{77/} The resolution^{78/} read:

"The Security Council,

"Mindful of its responsibility for the maintenance of international peace and security,

^{72/} 361st meeting: paras. 93-127.

^{73/} S/4326, O.R., 15th year, Suppl. for April-June 1960, pp. 13-19.

^{74/} S/4323/Rev.2, same text as S/4328, see below; 863rd meeting: paras. 5-12.

^{75/} 863rd meeting: paras. 42-44.

^{76/} 863rd meeting: para. 47.

^{77/} 863rd meeting: para. 48. For discussion concerning Article 33 in connexion with this draft resolution, see chapter X, Case 1.

^{78/} S/4325, C.R., 15th year, Suppl. for April-June 1960, pp. 22-23.

"Noting with regret that the hopes of the world for a successful meeting of the Heads of Government of France, the United Kingdom, the United States of America and the Union of Soviet Socialist Republics have not been fulfilled,

"Considering that these developments have caused great disappointment and concern in world public opinion,

"Considering also that the resulting situation may lead to an increase of international tensions likely to endanger peace and security,

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

"Being especially aware of the mounting danger of the continuation of the armaments race,

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

"2. Appeals to all Member Governments to refrain from the use or threats of force in their international relations; to respect each other's sovereignty, territorial integrity and political independence; and to refrain from any action which might increase tensions;

"3. Requests the Governments concerned to continue their efforts to achieve a constructive solution of the question of general and complete disarmament under effective international control, in accordance with resolution 1378 (XIV) of the General Assembly, and the discontinuance of all nuclear weapons tests under an appropriate international control system as well as their negotiations on measures to prevent surprise attack, including technical measures, as recommended by the General Assembly;

"4. Urges the Governments of France, the United Kingdom, the United States of America and the Union of Soviet Socialist Republics to resume discussions as soon as possible and to avail themselves of the assistance that the Security Council and other appropriate organs of the United Nations may be able to render to this end."

COMPLAINT BY ARGENTINA (EICHMANN CASE) INITIAL PROCEEDINGS

By letter^{79/} dated 15 June 1960, the representative of Argentina requested the President of the Security Council to call an urgent meeting of the Council

"to consider the violation of the sovereign rights of the Argentine Republic resulting from the illicit and clandestine transfer of Adolf Eichmann from Argentine territory to the territory of the State of Israel, contrary to the rules of international law and the purposes and principles of the Charter of the United Nations and creating an atmosphere of insecurity and mistrust incompatible with the preservation of international peace."

^{79/} S/4336, *ibid.*, pp. 27-28.

In an attached memorandum, the Argentine Government referred to a note from its Foreign Ministry which had been transmitted to the Security Council with a letter^{80/} dated 10 June 1960, and in which the Argentine Government had protested to Israel after it became known that Eichmann was captured in Argentine territory by "volunteer groups" and had been taken to Israel. This had been acknowledged by the Embassy of Israel in Buenos Aires in a note verbale of 3 June 1960, which had given the circumstances related to the manner in which Eichmann had been taken away, allegedly with his full consent, and handed over to the security services of the Israel Government, which was making arrangements for the prisoner's trial. The note of Israel concluded with the statement that "if the volunteer group violated Argentine law or interfered with matters within the sovereignty of Argentina, the Government of Israel wishes to express its regret".

The Argentine Government further stated in the memorandum that it had made the most formal protest against the illegal act committed to the detriment of a fundamental right of the Argentine State, and had requested as appropriate reparation the return of Eichmann, for which it had set a time-limit of one week, and the punishment of those guilty of violating Argentine territory. Israel had been informed that, failing compliance with this request, the matter would be referred to the United Nations. In view of the failure of the diplomatic representations made by it to the Government of Israel, the Argentine Government felt compelled to request that the case be dealt with by the Security Council. In Argentina's view, the case was explicitly covered by the provisions of Article 34 and Article 35 (1) of the Charter.^{81/} The Argentine memorandum stated, in conclusion, that "a political question is involved which, apart from gravely prejudicing Argentine sovereignty, constitutes a precedent dangerous for international peace and security, for the maintenance of which the Council bears primary responsibility." The Security Council was requested to take decisions involving just reparation for the rights violated.

By letter^{82/} dated 21 June 1960 to the President of the Council, the Government of Israel contended that the unilateral allegations of the Argentine Government were not sufficient to bring the dispute or situation within the terms of Article 34 of the Charter. The Argentine complaint and the action requested were beyond the Council's competence. Whatever difficulties might have arisen between Israel and Argentina should have been settled by direct negotiations between the parties. The Argentine Government had made certain demands couched in the form of an ultimatum, calling for compliance within a week. The hope that the way was open for a direct settlement had been strengthened by discussions in Buenos Aires, which indicated that a settlement could be found by direct contact of the parties at the highest level. Such a direct contact between the Prime Minister of Israel and the President of Argentina had been in effect

arranged and their meeting was to take place in Europe later in the week. Prior to the meeting of the Security Council, the representative of Israel also sent to the President of the Council a letter^{83/} dated 21 June 1960, enclosing the texts of a note verbale of 3 June 1960 and a letter dated 7 June 1960 from the Prime Minister of Israel addressed to the President of Argentina. In these communications, Adolf Eichmann was described as the person mainly responsible for the extermination of the Jews throughout Europe during World War II. The Government of Israel did not underestimate the seriousness of the formal violation of Argentine law committed by those who, desirous to bring the man responsible for those crimes to trial before the Jewish people, had at last ended their long search with the capture of Eichmann. But there had been profound motives and a supreme moral justification for this act. The incident could not be judged only from the purely formal angle. The trial of Eichmann in Israel had to be viewed as an act of supreme historical justice.

At the 865th meeting on 22 June 1960, the Security Council decided to include the question in its agenda.^{84/} The Council considered the question at its 865th to 868th meetings on 22 and 23 June 1960. The representative of Israel was invited to participate in the discussion.^{85/}

Decision of 23 June 1960 (868th meeting):

- (i) *Declaring that acts such as that under consideration, affecting the sovereignty of a Member State and therefore causing international friction may, if repeated, endanger international peace and security;*
- (ii) *Requesting Israel to make appropriate reparation in accordance with the Charter and rules of international law; and*
- (iii) *Expressing the hope that the traditionally friendly relations between Argentina and Israel will be advanced*

At the 865th meeting on 22 June 1960, in presenting his case before the Council the representative of Argentina contended that the dispute with Israel concerned an infringement of Argentine sovereignty and had, therefore, to be regarded as a political rather than as a strictly legal dispute within the meaning of Article 36 (3) of the Charter. The deliberate violation of the sovereignty of a State was in itself in conflict with the Charter and, further, under Article 33 et seq., the violation was within the competence of the Security Council if the difference led to a situation likely to endanger international peace and security. This violation was not, however, the main threat to international peace and security. Supreme importance had to be attached to the principle impaired by that violation. This principle was "the unqualified respect which States owe to each other and which precludes the exercise of jurisdictional acts in the territory of other States". If this principle could be violated with impunity, international law would "be replaced by the law of the jungle". There could be no doubt of the competence of the

^{80/} S/4334, *ibid.*, pp. 24-26.

^{81/} For discussion on the Council's competence under Article 34, see chapter X, Case 9.

^{82/} S/4341, O.R., 15th year, Suppl. for April-June 1960, pp. 29-30.

^{83/} S/4342, *ibid.*, pp. 30-33.

^{84/} 865th meeting: para. 2.

^{85/} 865th meeting: para. 3.

Security Council when a violation of sovereignty was in conflict with a fundamental principle of peaceful relations among States. The case before the Council was, therefore, serious not only in itself but especially because of the precedent it implied. The protection of Argentine sovereign rights thus involved the protection of the rights of all members of the international community.^{86/}

At the same meeting the representative of Argentina submitted a draft resolution.^{87/} At the 866th meeting on the same day, the representative of the United States submitted two amendments^{88/} which were later accepted^{89/} by the representative of Argentina.

At the 866th meeting on 22 June 1960, the representative of Israel* recognized that the persons who apprehended Eichmann in Argentina and took him to Israel had broken the laws of Argentina. For this the Government of Israel had apologized to the Argentine Government. But the Government of Israel believed that this isolated violation of Argentine law had to be regarded in the light of the exceptional and unique character of the crimes attributed to Eichmann, on the one hand, and the motives of those that acted in this unusual manner, on the other hand. In the course of their efforts to bring Eichmann to justice some nationals of the State of Israel may have committed infringement of the law of Argentina, but these illegal actions of individuals should not be confused, as a basic legal proposition, with the non-existing intentional violation of the sovereignty of one Member State by another. This was a fundamental distinction, well established in international law, and the State of Israel emphatically denied the charge that it had violated the sovereignty of Argentina. In the view of the Government of Israel its expressions of regret constituted adequate reparation.^{90/}

At the 868th meeting on 23 June 1960, the Argentine draft resolution, as amended, was adopted by 8 votes in favour, none against, with 2 abstentions.^{91/} The representative of Argentina explained that he would not participate in the vote in accordance with the provisions of Article 27 (3) of the Charter.^{92/}

The resolution^{93/} read:

"The Security Council,

"Having examined the complaint that the transfer of Adolf Eichmann to the territory of Israel constitutes a violation of the sovereignty of the Argentine Republic.

"Considering that the violation of the sovereignty of a Member State is incompatible with the Charter of the United Nations,

"Having regard to the fact that reciprocal respect for and the mutual protection of the sovereign rights

of States are an essential condition for their harmonious coexistence,

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

"Mindful of the universal condemnation of the persecution of the Jews under the Nazis, and of the concern of people in all countries that Eichmann should be brought to appropriate justice for the crimes of which he is accused,

"Noting at the same time that this resolution should in no way be interpreted as condoning the odious crimes of which Eichmann is accused,

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

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

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

The question remained on the list of matters of which the Security Council is seized.

SITUATION IN THE REPUBLIC OF THE CONGO INITIAL PROCEEDINGS

By telegram^{94/} dated 12 July 1960 addressed to the Secretary-General, the President and the Prime Minister of the Republic of the Congo urgently requested the United Nations for military assistance. The telegram stated that the Congolese request was justified by the unsolicited dispatch to the Congo of metropolitan Belgian troops, in violation of the Belgian-Congolese Treaty of Friendship of 29 June 1960, which allowed intervention by Belgian troops only at the express request of the Congolese Government. Therefore, they regarded the Belgian action as an act of aggression against the Congo. They further accused the Government of Belgium of having carefully prepared the secession of Katanga with a view to maintaining a hold on the Congo.

By a further telegram^{95/} of 13 July 1960, it was made clear that: (1) the purpose of the aid requested was not to restore the internal situation in the Congo but rather to protect the national territory in the Congo against acts of aggression committed by Belgian metropolitan troops; (2) the request for assistance related to a United Nations force consisting of military personnel from neutral countries; (3) if the assistance was not forthcoming immediately the Republic of the Congo would be obliged to appeal to the Bandung Treaty Powers; and (4) the aid had

^{86/} 865th meeting: paras. 5-34.

^{87/} S/4345, 865th meeting: para. 47.

^{88/} S/4346, 866th meeting: paras. 78 and 79.

^{89/} 868th meeting: para. 43.

^{90/} 866th meeting: paras. 2-49. For discussion on appropriate reparation, see chapter X, Case 11.

^{91/} 868th meeting: para. 52.

^{92/} 868th meeting: para. 51.

^{93/} S/4349, O.R., 15th year, Suppl. for April-June 1960, p. 35.

^{94/} S/4382, document I, O.R., 15th year, Suppl. for July-Sept. 1960, p. 11.

^{95/} S/4382, document II, *ibid.*, p. 12.