

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.¹

Part I

CONSIDERATION OF THE PROVISIONS OF ARTICLE 1, PARAGRAPH 2, OF THE CHARTER

Article 1

"1. ...

"2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace."

NOTE

During the period under review, the Security Council did not engage in constitutional discussions regarding Article 1, paragraph 2, of the Charter. The principle of self-determination embodied in that Charter provision was, however, implicitly invoked in Security Council resolutions 309 (1972) and 310 (1972), both of 4 February 1972, 319 (1972) of 1 August 1972 and 323 (1972) of 6 December 1972 regarding the situation in Namibia; resolutions 312 (1972) of 4 February 1972 and 322 (1972) of 22 November 1972 in connexion with the situation in Territories under Portuguese Administration; resolution 318 (1972) of 28 July 1972 relating to the situation in Southern Rhodesia; resolution 321 (1972) of 23 October 1972 in connexion with the complaint by Senegal and resolutions 326 (1973) of 2 February 1973 and 328 (1973) of 10 March 1973 regarding the complaint by Zambia. The Security Council also considered several draft resolutions invoking the principle of self-determination implicitly, which either were rejected or not voted upon or from which the reference to the principle of self-determination was deleted before adoption by the Council.² In many of

¹ For observations on the methods adopted in compilation of this chapter, see *Repertoire of the Practice of the Security Council, 1946-1951*, introductory note to chapter VIII, part II; arrangement of chapters X-XII, p. 296.

² In connexion with the situation in Southern Rhodesia, the draft resolutions S/10606 (failing of adoption), *OR, 27th yr., Suppl. for Jan.-March 1972*, pp. 82f., and S/10805/Rev.1 (failing of adoption), *ibid., Suppl. for July-Sept. 1972*, pp. 108-110; in connexion with the situation in Territories under Portuguese Administration, draft resolutions S/10607 (reference deleted and revision adopted), *ibid., Suppl. for Jan.-March 1972*, pp. 83f., S/10834 (withdrawn) and S/10839 (not voted upon), *ibid., Suppl. for Oct.-Dec. 1972*, pp. 47-48, 51; and in connexion with the

these cases³ the text contained in addition references to General Assembly resolution 1514 (XV) of 14 December 1960, the "Declaration on the Granting of Independence to Colonial Countries and Peoples".

Article 1, paragraph 2 was occasionally invoked explicitly without, however, giving rise to a constitutional discussion.⁴

examination of the relationship between the United Nations and South Africa the draft resolutions S/11543 (explicitly invoking Article 1 together with Articles 2, 6, 55 and 56, but failing of adoption) and S/11547 (not voted upon), *ibid., 29th yr., Suppl. for Oct.-Dec. 1974*, pp. 34-35 and 36.

³ Resolution 310 (1972), preambular para. 9; resolution 312 (1972), paras. 1, 2, 4 *a*; resolution 322 (1972), preambular para. 3, paras. 1 and 3; resolution 318 (1972), para. 2; resolution 321 (1972), preambular para. 7, para. 4; resolution 326 (1973), preambular para. 3, and resolution 328 (1973), preambular para. 7, para. 3; also draft resolutions S/10606, preambular paras. 5 and 9; S/10607, para. 4 (*d*); S/10805/Rev.1, preambular paras. 3 and 7; S/10834, preambular para. 3, paras. 1, 3, and 6; S/10839, para. 2.

⁴ In connexion with the consideration of questions relating to Africa, 1633rd mtg.: Mr. Leballo, (invoking Article 1 as a whole); 1635th mtg.: United States, (invoking Article 1, para. 2 together with para. 3); in connexion with the situation in Territories under Portuguese Administration, 1672nd meeting: Liberia. For some discussion regarding the definition of self-determination, see *ibid.*, and 1674th mtg.: Uganda. In connexion with the complaint by Zambia, 1688th mtg.: Egypt; in connexion with the consideration of measures for the maintenance and strengthening of international peace and security in Latin America, 1702nd mtg.: President (Panama), and also 1699th mtg., for a definition by Australia of self-determination in Latin America. In connexion with the situation in the Middle East, 1718th mtg.: Syrian Arab Republic, and 1725th mtg.: President (USSR).

Implicit references to the principle of self-determination which occurred frequently in the Security Council proceedings and in communications addressed to the President of the Security Council are too numerous to be listed here.

Part II

CONSIDERATION OF THE PROVISIONS OF ARTICLE 2 OF THE CHARTER

A. Article 2, paragraph 4, of the Charter

"All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."

NOTE

During the period under review, none of the resolutions adopted by the Council contained an explicit reference to Article 2, paragraph 4 of the Charter. The decisions and deliberations of the Council reflected, however, the importance of this Charter provision and of the concomitant principles and obligations. Of the twenty-one resolutions referring to Article 2, paragraph 4, ten⁵ use language derived from the Charter, while the other 11⁶ contain only implicit references to it. Eight draft resolutions, which either failed of adoption or were not brought to a vote, also contained references to Article 2, paragraph 4: six⁷ of these used language derived from it, one⁸ referred implicitly to it, and one⁹ contained an explicit reference to Article 2 as a whole.

In a large number of instances,¹⁰ the Council resolutions or drafts contained implicit references to the principle of the prohibition of the threat or use of force in international

⁵ Resolution 310 (1972), preambular para. 10; resolution 312 (1972), preambular para. 7, para. 5; resolution 321 (1972), preambular para. 7, para. 3; resolution 326 (1973), preambular para. 7; resolution 332 (1973), para. 2; resolution 337 (1973), preambular para. 3, para. 1; resolution 347 (1974), para. 1; resolution 353 (1974), para. 1; resolution 355 (1974), preambular para. 2; resolution 360 (1974), preambular para. 2.

⁶ Resolution 313 (1972); resolution 316 (1972), preambular para. 6, para. 1; resolution 317 (1972), paras. 1-3; resolution 328 (1973), para. 2; resolution 330 (1973), preambular para. 2, para. 2; resolution 338 (1973), para. 1; resolution 339 (1973), para. 1; resolution 340 (1973), preambular para. 2, para. 1; resolution 357 (1974), preambular para. 2, para. 2; resolution 358 (1978), preambular para. 1; resolution 366 (1974), preambular paras. 4 and 5, para. 1.

⁷ In connexion with the situation in Territories under Portuguese Administration, the draft resolutions S/10834, preambular para. 4; and S/10839, preambular para. 2, *OR*, 27th yr., *Suppl. for Oct.-Dec. 1972*, pp. 47-48, 51; in connexion with the situation in the Middle East, draft resolution S/10974, para. 5, *ibid.*, 28th yr., *Suppl. for July-Sept. 1973*, pp. 20-21; in connexion with the situation in Cyprus, the draft resolutions S/11346 and Rev.1, para. 1, *ibid.*, 29th yr., *Suppl. for July-Sept. 1974*, pp. 28-29; S/11391, para. 2, *ibid.*, p. 70; and S/11399, para. 1, *ibid.*, p. 75.

⁸ In connexion with the situation in the Middle East, draft resolution S/10723, preambular para. 3, paras. 1 and 2, *ibid.*, 27th yr., *Suppl. for April-June 1972*, p. 141.

⁹ In connexion with the relationship between the United Nations and South Africa, draft resolution S/11543, preambular para. 4, *ibid.*, 29th yr., *Suppl. for Oct.-Dec. 1974*, pp. 34-35.

¹⁰ Resolution 312 (1972), preambular para. 7, para. 5; resolution 316 (1972), para. 1; resolution 326 (1973), preambular para. 7; resolution 330 (1973), preambular para. 2, para. 2; resolution 332 (1973), para. 2; resolution 337 (1973), preambular para. 3, para. 4; resolution 347 (1974), para. 1; resolution 353 (1974), para. 3; resolution 366 (1974), para. 5; draft resolutions S/10804 (see above note 7), para. 4 and S/10839 (see also note 7), para. 2.

relations against the territorial integrity or political independence of any State. Other paragraphs¹¹ invoked the principle of respect for and acknowledgement of the sovereignty, territorial integrity or inviolability, and political independence of every State. Dealing more directly with the situation under review, the Council condemned,¹² or was asked to condemn,¹³ acts of aggression, or it called for a cease-fire, for the withdrawal from occupied territory and for other such measures.¹⁴ There were a few other cases that could be considered to have a bearing on the provisions of Article 2, paragraph 4, e.g., when the Council deplored the loss of life through violence, the resumption of fighting and other cease-fire violations, the continuation of violence or the failure to release abducted military personnel.¹⁵

Although references of this kind to the provisions of Article 2, paragraph 4 were rather numerous, the Council, during the period under review, engaged only very seldom in what might be described as some constitutional discussion or at least as clear espousal of the Charter principle. Eight case histories belonging in this category are included below.

On a number of occasions,¹⁶ Article 2, para. 4 was explicitly invoked, but usually did not give rise to a constitutional discussion.

¹¹ Resolution 310 (1972), preambular para. 10; resolution 321 (1972), preambular para. 7, para. 3; resolution 353 (1974), para. 1; resolution 355 (1974), preambular para. 2; resolution 360 (1974), preambular para. 2; draft resolutions S/10974 (see above note 7), para. 5; S/11346 (see also note 7), para. 1, and S/11391 (see also note 7), para. 1.

¹² Resolution 316 (1972), para. 2; resolution 326 (1973), preambular paras. 2, 5 and 8, para. 1; resolution 328 (1973), para. 2; resolution 332 (1973), paras. 1 and 2; resolution 337 (1973), para. 1; resolution 347 (1974), paras. 1 and 2; resolution 360 (1974), para. 1; resolution 366 (1974), preambular para. 4, para. 1.

¹³ Draft resolutions S/10723 (see above note 8), para. 1; S/10834 (see above note 7), para. 2; S/10839 (see also note 7), para. 1.

¹⁴ Resolution 313 (1972); resolution 317 (1973), para. 2; resolution 332 (1973), para. 3; resolution 338 (1973), para. 1; resolution 339 (1973), para. 1; resolution 340 (1973), para. 1; resolution 353 (1974), paras. 2 and 4; resolution 357 (1974), para. 2; draft resolutions S/10723 (see above note 8), para. 2; S/11346 (see above note 7), para. 2; S/11391 (see also note 7), para. 2.

¹⁵ Resolution 316 (1972), preambular para. 6; resolution 317 (1972), paras. 2 and 3; resolution 340 (1973), preambular para. 2; resolution 357 (1974), preambular para. 2; resolution 358 (1974), preambular para. 1.

¹⁶ In connexion with the situation in the Middle East, 1643rd mtg.: Lebanon, Somalia, (together with 2 (3); 1718th mtg.: Nigeria, (Article 2 as a whole); 1720th mtg.: Kuwait, 1722nd mtg.: Morocco, 1724th mtg.: Kenya, France, 1725th mtg.: President

Case 1. *The situation in the Middle East*: In connexion with the draft resolution jointly submitted by Belgium, France, Italy and the United Kingdom, amended, voted upon and adopted on 28 February 1972.

During the discussion of the Lebanese and Israeli complaints, one charging massive attacks by Israeli armed forces against Lebanese villages, the other alleging unending armed raids by terrorists from Lebanese territory against Israel, nearly all speakers invoked explicitly Article 2, paragraph 4, and stated that the use of force against the territory of another State was inadmissible and that the argument of self-defence in retaliation against terrorist attacks had to be rejected in view of the meaning of Article 51 of the Charter; the Government of Lebanon could not be held accountable for the movements and actions of Palestinians who were resisting the Israeli occupation of their homeland. Arguing in defence of its retaliatory measures, the representative of Israel asserted that under international law every Government was bound to refrain from the use of force and to prevent anybody from using its territory for threats and attacks against another country; his Government had merely fulfilled its duty to protect its citizens from these external attacks.¹⁷

At the 1644th meeting on 27 February 1972, the representative of Italy introduced a draft resolution¹⁸ sponsored by Belgium, France, Italy and the United Kingdom, which read as follows:

The Security Council,

Deploing all actions which have resulted in the loss of innocent lives,

Demanding that Israel immediately desist and refrain from any ground and air military action against Lebanon and forthwith withdraw all its military forces from Lebanese territory.

Following the discussion concerning various amendments and deletions regarding the draft resolution and a brief recess allowing the sponsors of the draft to consult briefly,¹⁹ the preambular paragraph of the draft resolution was voted upon separately and received 8 votes in favour to 4 against, with 3 abstentions, and was not adopted, having failed to receive the required majority of votes; the

(USSR), Peru, (Article 2 as a whole); 1767th mtg.: Lebanon, 1769th mtg.: Costa Rica, (Article 2 as a whole); in connexion with the consideration of measures for the maintenance and strengthening of international peace and security in Latin America, 1697th mtg.: Mr. Gros Espiell, 1702 mtg.: President (Panama); in connexion with the situation in Cyprus, S/10610, Letter dated 15 April 1972 from the representative of Cyprus, *OR*, 27th yr., *Suppl. for April-June 1972*, p. 31; 1793rd mtg.: Cyprus, 1794th mtg.: Cyprus, 1795th mtg.: Cyprus, (together with Article 2 (1 and 3)); 1810th mtg.: Cyprus; in connexion with the complaint by Cuba, S/10995, Letter dated 13 September 1973 from the representative of Cuba, *OR*, 28th yr., *Suppl. for July-Sept. 1973*, p. 31 (together with Article 2 (2)); in connexion with the relationship between the United Nations and South Africa, 1800th mtg.: Yugoslavia, 1802nd mtg.: Barbados, (together with Article 2 (2)); draft resolution S/11543, *OR*, 29th yr., *Suppl. for Oct.-Dec. 1974*, pp. 34-35, preambular para. 4 (Article 2 as a whole). The proceedings of the Council contain many implicit references to Article 2, paragraph 4, too numerous to be listed here.

¹⁷ For relevant statements, see 1643rd mtg.: Lebanon, Israel, USSR, France, Yugoslavia, United Kingdom, Italy, Belgium, China, Somalia; 1644th mtg.: Argentina; Guinea; USSR; France; United States.

¹⁸ S/10552, amended and adopted as resolution 313 (1972).

¹⁹ 1644th mtg., paras. 201-204.

remainder of the draft resolution was unanimously adopted.²⁰

Case 2. *The situation in the Middle East*: In connexion with the draft resolution jointly submitted by Belgium, France and the United Kingdom, voted upon and adopted on 26 June 1972, and the draft resolution submitted by the United States, not voted upon.

During the discussion of the Lebanese and Israeli complaints, both charging continued armed attacks and other acts of violence, the representative of Lebanon asked the Council to condemn the Israeli acts of aggression and to take decisive measures under Chapter VII, whereas the representative of Israel claimed once again the right to act in self-defence, as long as Lebanon repudiated its obligation to ensure that its territory was not used for aggression against its neighbour. Various speakers strongly criticized Israel's reprisals because the incidents which provoked its retaliation could not be described as an act of aggression on the part of Lebanon and because the natural right of self-defence enshrined in Article 51 of the Charter was limited to the single case of armed aggression.²¹

At the 1650th meeting on 26 June 1972, the representative of France introduced a draft resolution²² sponsored by Belgium, France and the United Kingdom and urged its unanimous adoption. It read, *inter alia*, as follows:

The Security Council,

Deploing the tragic loss of life resulting from all acts of violence and retaliation,

Gravely concerned at Israel's failure to comply with Security Council resolutions 262 (1968) of 31 December 1968, 20 (1969) of 26 August 1969, 280 (1970) of 19 May 1970, 285 (1970) of 5 September 1970 and 313 (1972) of 28 February 1972 calling on Israel to desist forthwith from any violation of the sovereignty and territorial integrity of Lebanon,

1. *Calls upon* Israel to strictly abide by the aforementioned resolutions and to refrain from all military acts against Lebanon;

2. *Condemns*, while profoundly deploring all acts of violence, the repeated attacks of Israeli forces on Lebanese territory and population in violation of the principles of the Charter of the United Nations and Israel's obligations thereunder;

...

The representative of the United States also submitted a draft resolution²³ under which the Security Council would, *inter alia*, condemn acts of violence in the area; call for an immediate cessation of all such acts, and call on all Governments concerned to repatriate all armed forces prisoners held in custody.

Following a brief discussion of the two drafts, the three-power draft resolution was voted upon and adopted by 13 votes to none, with 2 abstentions.²⁴ The United States draft resolution was not put to the vote in view of the adoption of the other draft resolution.²⁵

²⁰ *Ibid.*, paras. 230-232. Adopted as resolution 313 (1972). For the detailed procedural history of this case, see chapter VIII, part II, under the same title.

²¹ For relevant statements, see 1648th mtg.: Lebanon; Israel; USSR, China, 1649th mtg.: Kuwait, India, United Kingdom, Somalia, 1650th mtg.: France; Belgium.

²² S/10722, adopted without change as resolution 316 (1972).

²³ S/10723, *OR*, 27th yr., *Suppl. for April-July 1972*, p. 141.

²⁴ 1650th mtg. para. 82. Adopted as resolution 316 (1972).

²⁵ *Ibid.*, para. 83. For the detailed procedural history of this case, see chapter VIII, part II, under the same title.

Case 3. *Consideration of measures for the maintenance and strengthening of international peace and security in Latin America*: In connexion with the draft resolution jointly submitted by Panama, Peru, and Yugoslavia, subsequently revised and also sponsored by Guinea, Kenya, and Sudan, voted upon and adopted on 21 March 1973.

During the meetings of the Security Council at Panama City, many Latin American speakers and a number of other representatives stressed the importance of certain principles, e.g., respect for the territorial integrity of every State; inadmissibility of acquisition of territories by force; observance of the principle of equal rights among States; opposition to colonialism and imperialism and to the threat or use of force in international relations, and compliance with the obligations deriving from the Charter of the United Nations, for the maintenance and strengthening of international peace and security and demanded that in order to create conditions of economic security the Council should acknowledge that economic, no less than military, aggression including coercive measures by transnational firms and other international companies constituted not merely a threat to, but an assault upon the peace and security of the area. Representatives of several other States held, however, that although economic questions could have important implications, they should not be brought before the Council.²⁶

At the 1700th meeting on 19 March 1973, the representative of Peru introduced a draft resolution²⁷ jointly submitted by Panama, Peru and Yugoslavia. At the 1702nd meeting on 20 March 1973, the President (Panama) announced that Guinea, Kenya and Sudan had become co-sponsors of the draft resolution. It read *inter alia* as follows:

The Security Council,

...

Reaffirming General Assembly resolution 2625 (XXV) of 24 October 1970, which states that no State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind,

Noting with deep concern the existence and use of coercive measures which affect the free exercise of permanent sovereignty over the natural resources of Latin American countries,

Recognizing that the use or encouragement of the use of coercive measures may create situations likely to endanger peace and security in Latin America.

1. *Urges* States to adopt appropriate measures to impede the activities of those enterprises which deliberately attempt to coerce Latin American countries;

2. *Requests* States, with a view to maintaining and strengthening peace and security in Latin America, to refrain from using or encouraging the use of any type of coercive measures against States of the region.

²⁶ For relevant statements, see 1696th mtg.: Peru, Guyana, Mexico, Colombia, Cuba, 1697th mtg.: Ecuador, Chile, Argentina, 1698th mtg.: Jamaica, Venezuela, 1699th mtg.: China, Yugoslavia, 1700th mtg.: Kenya, Guinea, USSR, 1701st mtg.: France, Zaire, United Kingdom, United States, 1704th mtg.: President (Panama).

²⁷ S/10932/Rev.1, slightly revised, voted upon and adopted as resolution 330 (1973).

At the 1704th meeting on 21 March 1973, the draft resolution was put to the vote and adopted by 12 votes to none, with 3 abstentions.²⁸

Case 4. *The situation in the Middle East*: In connexion with the draft resolution jointly submitted by France and the United Kingdom, revised, voted upon and adopted on 21 April 1973.

During the discussion of the Lebanese complaint about a new large-scale act of aggression by Israel against Lebanon, many representatives condemned the Israeli action as a flagrant violation of the principles of territorial integrity and of the non-use of force in international relations; in one instance, Israel's policy was labelled state terrorism, and the Council was urged to reaffirm the renunciation of the use or threat of force. Israel, on the other hand, reiterated its charges concerning Palestinian groups operating from Lebanese territory and again claimed its duty to protect the lives of its citizens against these assaults, until the Government of Lebanon observed its obligations and eliminated the terrorist groups and their activities from its territory.²⁹

On 19 April 1973, France and the United Kingdom submitted a draft resolution,³⁰ and on the same day Guinea, India, Indonesia and Yugoslavia submitted an amendment³¹ adding an operative paragraph with a call by the Council on all States to refrain from providing any assistance which encouraged military attacks or impeded the search for a peaceful settlement.

At the 1710th meeting on 20 April 1973, the representative of France introduced the draft resolution submitted by France and the United Kingdom in revised form,³² whereupon the amendment was withdrawn by its four sponsors.³³

At the 1711th meeting on 21 April 1973, the revised draft resolution was adopted by 11 votes to none, with 4 abstentions.³⁴ It read as follows:

The Security Council,

Deeply deploring all recent acts of violence resulting in the loss of life of innocent civilians and the endangering of international civil aviation,

1. *Expresses deep concern* over and condemns all acts of violence which endanger or take innocent human lives;

2. *Condemns* the repeated military attacks conducted by Israel against Lebanon and Israel's violation of Lebanon's territorial integrity and sovereignty in contravention of the Charter of the United Nations, of the Armistice Agreement between Israel and Lebanon and of the Council's cease-fire resolutions;

3. *Calls upon* Israel to desist forthwith from all military attacks on Lebanon.

²⁸ 1704th mtg., para. 124. For the detailed procedural history of this case, see chapter VIII, part II, p. 179 under the same title.

²⁹ For relevant statements, see 1705th mtg.: Lebanon, Israel, 1706th mtg.: Algeria, USSR, Sudan, Yugoslavia, 1708th mtg.: United Kingdom, United States, Australia, Lebanon, 1709th mtg.: Kenya, Panama, France, President (Peru).

³⁰ S/10916, *OR*, 28th yr., *Suppl. for April-June 1973*, p. 24.

³¹ S/10917, *ibid.*, p. 24.

³² S/10916/Rev.1, adopted without change as resolution 332 (1973).

³³ 1710th mtg.: Guinea, para. 73.

³⁴ 1711th mtg., following the resumption of the suspended meeting. For the detailed procedural history of this case, see chapter VIII, part II, under the same title.

Case 5. *The situation in the Middle East*: In connexion with the draft resolution jointly submitted by Guinea, India, Indonesia, Kenya, Panama, Peru, Sudan and Yugoslavia, voted upon and not adopted on 26 July 1973.

During the comprehensive examination of the situation in the Middle East based upon the report of the Secretary-General under Security Council resolution 331 (1973) dated 18 May 1973,³⁵ members of the Council and other representatives nearly unanimously called in clear and unequivocal terms for the adherence by the parties in the Middle East to the principles of the inadmissibility of the acquisition of territory by war, the respect for and acknowledgment of the sovereignty, territorial integrity and political independence of every State, the freedom from threats or acts of force, and in that connexion demanded the withdrawal of the armed forces of Israel from occupied Arab territories, in accordance with resolution 242 (1967). The representative of Israel reaffirmed his Government's acceptance of that resolution, but argued that the demand for prior withdrawal of the Israeli forces did not conform to the stipulations of resolution 242 (1967) and that his Government maintained its invitation to its Arab neighbours to negotiate peace agreements with each of them, without outside interference by third parties.³⁶

At the 1734th meeting on 25 July 1973, the representative of India introduced the draft resolution³⁷ jointly sponsored by Guinea, India, Indonesia, Kenya, Panama, Peru, Sudan and Yugoslavia, whereby the Council *inter alia* would emphasize its primary responsibility for the maintenance of international peace and security, reaffirm resolution 242 (1967), (2) strongly deplore Israel's continuing occupation of the territories occupied as a result of the 1967 conflict, contrary to the principles of the Charter, (5) express its convictions that a just and peaceful solution of the problem of the Middle East could be achieved only on the basis of respect for national sovereignty, territorial integrity, the rights of all States in the area and for the rights and legitimate aspirations of the Palestinians.

At the 1735th meeting on 26 July 1973, the eight-Power draft resolution received 13 votes in favour to 1 against and failed of adoption owing to the negative vote of a permanent member; one member did not participate in the vote.³⁸

Case 6. *Complaint by Iraq*: In connexion with the letter dated 12 February 1974 from the representative of Iraq and the statement of the President, representing the consensus of the members of the Council.

³⁵ S/10929, *OR*, 28th yr., *Suppl. for April-June 1973*, pp. 37-53.

³⁶ For relevant statements, see 1717th mtg.: Egypt, Israel, Jordan, 1718th mtg.: Tanzania, Nigeria, Syrian Arab Republic, 1719th mtg.: Guyana, 1720 mtg.: Kuwait, Algeria, 1721st mtg.: Sudan, United Kingdom, Egypt, 1722nd mtg.: Morocco, Yugoslavia, 1723rd mtg.: President (USSR), Iran, Egypt, 1724th mtg.: Kenya, France, 1725th mtg.: President (USSR), Israel, Peru, Austria, 1726th mtg.: United States, Panama, India, China, Bahrain, 1733rd mtg.: Egypt, Israel, Jordan, USSR.

³⁷ S/10974, *OR*, 28th yr., *Suppl. for July-Sept. 1973*, pp. 20-21.

³⁸ 1735th meeting, following the intervention by Panama. For the detailed procedural history of this case, see chapter VIII, part II, pp. 124-131 under the same title.

During the discussion of the complaint by Iraq, the representatives of Iraq and Iran reiterated their charges which they had brought to the attention of the Council in their letters of 12 February 1974,³⁹ and alleged that the armed forces of the other side had invaded their own territory and committed severe acts of aggression, in violation of the territorial integrity and independence of the neighbouring State. Both sides declared their willingness to try to settle their differences through negotiations, possibly involving the good offices of a third party.⁴⁰

At the beginning of the 1764th meeting on 28 February 1974, the President stated that following consultations with all the members of the Council and with the Representative of Iran, he was able to announce a consensus of the Council,⁴¹ which provided *inter alia* as follows:

2. *The Security Council*, having heard the statements of the representatives of Iraq and Iran regarding the events referred to in the complaint by Iraq, believes that it is important to deal with a situation which could endanger peace and stability in the region. It deplores all the loss of human life; it appeals to the parties to refrain from all military action and from any move which might aggravate the situation. The Council reaffirms the fundamental principles set out in the Charter regarding respect for the territorial sovereignty of States and the pacific settlement of disputes and the duty of all States to fulfil their obligations under international law, as well as the principles referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV)).

Case 7. *The situation in the Middle East*: In connexion with the draft resolution voted upon and adopted on 24 April 1974.

During the discussion of the Lebanese complaint regarding renewed cases of Israeli aggression against Lebanese villages, most speakers severely criticized the violation of the territorial integrity of Lebanon by Israeli armed attacks, reaffirmed the principle of the inadmissibility of the acquisition of territory by war or force and called for urgent measures by the Council to put an end to Israeli aggression. A few representatives deplored all acts of violence in the area including terrorist actions by Palestinians and called for an end to Israel's acts of reprisal. Israel reiterated its charges against Lebanon for allowing the Palestinian organizations to operate on its territory and asserted again its rights and duty to defend the lives of its citizens against any danger.⁴²

At the 1769th meeting on 24 April 1974, the President drew the attention of the members of the Council to a draft

³⁹ S/11216, letter dated 12 February 1974 from Iraq, *OR*, 29th yr., *Suppl. for Jan.-March 1974*, p. 96, and S/11218, letter dated 12 February 1974 from Iran, *ibid.*, pp. 97-98.

⁴⁰ For relevant statements, see 1762nd mtg.: Iraq, Iran, 1763rd mtg.: Democratic Yemen, Libyan Arab Republic, Iran, Iraq.

⁴¹ S/11229, *OR*, 29th yr., *Resolutions and Decisions of the Security Council, 1974*, pp. 1-2. 1764th meeting: President (France); statement. For the detailed procedural history of this case, see chapter VIII, part II, under the same title.

⁴² For relevant statements, see 1766th mtg.: Lebanon, Israel, Syrian Arab Republic, Kuwait, 1767th mtg.: USSR, United Kingdom, France, Lebanon, Israel, 1768th mtg.: Austria, Australia, 1769th mtg.: United States.

resolution submitted by several members after lengthy consultations.⁴³ It read *inter alia* as follows:

The Security Council,

...

Deeply aïsturbed at the continuation of acts of violence,

...

1. *Condemns* Israel's violation of Lebanon's territorial integrity and sovereignty and calls once more on the Government of Israel to refrain from further military actions and threats against Lebanon;

2. *Condemns* all acts of violence, especially those which result in the tragic loss of innocent civilian life, and urges all concerned to refrain from any further acts of violence;

...

An amendment proposed by the United States to insert the four words "as at Kiryat Shmona" in paragraph 2,⁴⁴ received 6 votes in favour, 7 against and 2 abstentions and was not adopted, having failed to acquire the necessary majority.⁴⁵ Then the original draft resolution was voted upon and adopted by 13 votes to none, with two members not participating.⁴⁶

Case 8. *The situation in Cyprus*: In connexion with a draft resolution revised and not voted upon; a draft resolution voted upon and adopted on 20 July 1974; the draft resolution adopted on 23 July 1974; a draft resolution submitted by the USSR and not voted upon; a draft resolution submitted and withdrawn by the United Kingdom; a draft resolution voted upon and not adopted, owing to the negative vote of a permanent member of the Council; a draft resolution voted upon and adopted on 1 August 1974; a draft resolution submitted by the United Kingdom, revised and adopted on 14 August 1974; a draft resolution voted upon and adopted on 15 August 1974; a draft resolution submitted by France, twice revised and adopted on 16 August 1974.

During the long deliberations concerning the critical situation in Cyprus during July and August 1974, the members of the Security Council and the parties invoked near-unanimously the principles and provisions of Article 2, paragraph 4, and reaffirmed the sovereignty, independence and territorial integrity of the Republic of Cyprus. The Council condemned the intervention of foreign troops on the island and called urgently for a cease-fire and a complete withdrawal of all these troops. The spokesman for the intervening State asserted that the intervention had taken place to restore the constitutional rights of the Turkish minority; the intervention did not constitute a violation of Charter principles, but an effort to solve the Cypriot problem in a manner of justice and equity.⁴⁷

At the conclusion of the 1780th meeting on 19 July 1974, the President (Peru) announced that a draft resolution which was the result of consultations,⁴⁸ would be circulated among the members of the Council and he hoped to be able to put it to the vote at the next meeting. The draft resolution provided *inter alia* that the Council would deeply deplore the outbreak of violence and the continuing bloodshed and would (1) call upon all States to respect the sovereignty, independence and territorial integrity of Cyprus, and (2) demand an immediate end to foreign military intervention in the Republic of Cyprus and request the immediate withdrawal of foreign military personnel in excess of those envisaged in international agreements.

The draft resolution was slightly revised in two pre-ambular and one operative paragraphs,⁴⁹ but it was not brought to a vote.

At the 1781st meeting on 20 July 1974, the President stated that as a result of continuous consultations with the Secretary-General and representatives of Member States it had been possible to circulate a draft resolution⁵⁰ which he proposed to put to the vote. The draft was voted upon and unanimously adopted.⁵¹ It read *inter alia* as follows:

The Security Council,

...

Deeply deploring the outbreak of violence and the continuing bloodshed,

...

1. *Calls upon* all States to respect the sovereignty, independence, and territorial integrity of Cyprus;

2. *Calls upon* all parties to the present fighting as a first step to cease all firing and requests all States to exercise the utmost restraint and to refrain from any action which might further aggravate the situation;

3. *Demands* an immediate end to foreign military intervention in the Republic of Cyprus that is in contravention of the provisions of paragraph 1 above;

4. *Requests* the withdrawal without delay from the Republic of Cyprus of foreign military personnel present otherwise than under the authority of international agreements, ...;

...

At the 1783rd meeting on 23 July 1974, the President stated that as a result of talks and consultations a draft resolution⁵² had been distributed for circulation. He put it to a vote immediately, and it was unanimously adopted.⁵³ It read *inter alia* as follows:

The Security Council,

...

Greece; 1786th mtg.: USSR; 1789th mtg.: USSR, 1792nd mtg.: Cyprus, Turkey, 1793rd mtg.: Cyprus, President (USSR), Algeria, 1794th mtg.: Cyprus, 1795th mtg.: Cyprus, President (USSR), France.

⁴⁸ S/11346, *OR*, 29th yr., *Suppl. for July-Sept. 1974*, pp. 28-29.

⁴⁹ S/11346/Rev.1, *ibid.*, p. 29.

⁵⁰ S/11350, unanimously adopted as resolution 353 (1974).

⁵¹ 1781st meeting following the statement by the Secretary-General.

⁵² S/11369, unanimously adopted as resolution 354 (1974).

⁵³ 1783rd meeting following the statement by the Secretary-General.

⁴³ S/11275, adopted without change as resolution 347 (1974).

⁴⁴ 1769th mtg. United States, first intervention.

⁴⁵ *Ibid.*, following the first intervention by Mauritania.

⁴⁶ *Ibid.*, following the second intervention by Mauritania. Adopted as resolution 347 (1978). For the detailed procedural history of this case, see chapter VIII, part II, under the same title.

⁴⁷ For relevant statements, see 1779th mtg.: Secretary-General, Cyprus, USSR, Turkey, France, United States, 1780th mtg.: President Makarios, Greece, Turkey, Yugoslavia, Romania, China, United States, 1781st mtg., Secretary-General, United Kingdom, France, Mauritania, Kenya, USSR; Mauritius; Cyprus; 1783rd mtg.:

Demands that all parties to the present fighting comply immediately with the provisions of paragraph 2 of Security Council resolution 353 (1974) calling for an immediate cessation of all firing in the area and requesting all States to exercise the utmost restraint and to refrain from any action which might further aggravate the situation.

At the 1787th meeting on 29 July 1974, the President drew the attention of the Council members to a draft resolution sponsored by the USSR.⁵⁴ During the same meeting the representative of the USSR introduced the draft resolution which would *inter alia* (2) insist on the immediate cessation of firing and of all acts of violence against the Republic of Cyprus and on the speediest withdrawal of all foreign forces and military personnel present in Cyprus in violation of its sovereignty, independence and territorial integrity as a non-aligned State. The draft resolution was not put to a vote.

At the 1788th meeting on 31 July 1974, the President announced the withdrawal of a draft resolution sponsored by the United Kingdom,⁵⁵ which *inter alia* would have noted that all States had declared their respect for the sovereignty, independence and territorial integrity of Cyprus.

At the same meeting the President also announced that, as a result of consultations, a draft resolution⁵⁶ was being circulated, which *inter alia* would note that all States had declared their respect for the sovereignty, independence and territorial integrity of Cyprus. Following lengthy deliberations in the course of which the USSR submitted two amendments⁵⁷ and the Council adopted one of them and rejected the other, the draft resolution, as amended, received 12 votes in favour to 2 against, with one member not participating in the vote, and failed of adoption owing to the negative vote of a permanent member.⁵⁸

At the 1789th meeting on 1 August 1974, the President stated that, in the course of consultations with the members of the Council, agreement had been reached on a draft resolution.⁵⁹ It was immediately put to the vote and adopted by 12 votes to none, with 2 abstentions and one member not participating.⁶⁰ It read *inter alia* as follows:

The Security Council,

...

Noting that all States have declared their respect for the sovereignty, independence and territorial integrity of Cyprus,

...

Prior to the 1792nd meeting on 14 August 1974, a draft resolution had been submitted by the United Kingdom.⁶¹ At the 1792nd meeting, the President announced that, during consultations, members of the Council had agreed upon a revised text,⁶² which he put to the vote at once and

which was unanimously adopted.⁶³ It read *inter alia* as follows:

The Security Council,

...

Deeply deploring the resumption of fighting in Cyprus, contrary to the provisions of its resolution 353 (1974),

...

2. *Demands* that all parties to the present fighting cease all firing and military action forthwith;

...

At the 1793rd meeting on 15 August 1974, the President put to the vote a draft resolution which had been agreed upon during consultations.⁶⁴ It was unanimously adopted⁶⁵ and read *inter alia* as follows:

The Security Council,

Deeply concerned about the continuation of violence and bloodshed in Cyprus,

...

2. *Insists* on the full implementation of the above resolutions by all parties and on the immediate and strict observance of the cease-fire.

At the 1794th meeting on 16 August 1974, the President drew the attention of the members of the Council to a draft resolution submitted by France the previous day,⁶⁶ which had been twice revised.⁶⁷ The original text provided *inter alia* that the Council, noting that all States had declared their respect for the sovereignty, independence and territorial integrity of Cyprus and for the constitutional structure of that country, as established and guaranteed by international guarantees, gravely concerned at the further deterioration of the situation in Cyprus, resulting from the military operations conducted by Turkey, which constituted a most serious threat to peace and security in the eastern Mediterranean area, would: (i) records its formal disapproval of the resumption of military operations in Cyprus by Turkey; (ii) demand once again that all parties cease all firing and all military activity forthwith and strictly observe the cease-fire throughout the island; and (iii) urge the parties to comply with all the provisions of previous resolutions of the Security Council including those concerning the withdrawal without delay from the Republic of Cyprus of foreign military personnel present otherwise than under the authority of international agreements, and to resume negotiations without delay for the restoration of peace and constitutional government in Cyprus, in conformity with resolution 353 (1974).

The revised draft resolution was put to the vote and adopted by 11 votes to none, with 3 abstentions and one member not participating.⁶⁸ It read *inter alia* as follows:

⁵⁴ S/11391, *OR, 29th yr., Suppl. for July-Sept. 1974*, p. 70.

⁵⁵ S/11399, *ibid.*, p. 75.

⁵⁶ S/11400, *ibid.*, p. 75.

⁵⁷ S/11401, *ibid.*, p. 75.

⁵⁸ 1788th meeting, preceding the second statement by the Secretary-General.

⁵⁹ S/11402, adopted as resolution 355 (1974).

⁶⁰ 1789th meeting, preceding the intervention by China.

⁶¹ S/11446, *OR, 29th yr., Suppl. for July-Sept. 1974*, p. 104.

⁶² S/11446/Rev.1, adopted as resolution 357 (1974).

⁶³ 1792nd meeting, following the President's opening statement.

⁶⁴ S/11448, adopted as resolution 358 (1974).

⁶⁵ 1793rd meeting, following the statement by the Secretary-General.

⁶⁶ S/11450, *OR, 29th yr., Suppl. for July-Sept.*, pp. 105-106.

⁶⁷ S/11450/Rev.2, subsequently adopted as resolution 360 (1974).

⁶⁸ 1794th meeting, following the statement by the Secretary-General. For the detailed procedural history of this case, see chapter VIII, part II, under the same title.

The Security Council,

...

Noting that all States have declared their respect for the sovereignty, independence and territorial integrity of the Republic of Cyprus,

Gravely concerned at the deterioration of the situation in Cyprus, resulting from the further military operations, which constituted a most serious threat to peace and security in the Eastern Mediterranean area,

1. *Records its formal disapproval* of the unilateral military actions undertaken against the Republic of Cyprus,

2. *Urges* the parties to comply with all the provisions of previous resolutions of the Security Council, including those concerning the withdrawal without delay from the Republic of Cyprus of foreign military personnel present otherwise than under the authority of international agreements;

...

B. Article 2, paragraph 5 of the Charter

“All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.”

NOTE

During the period under review, no constitutional discussion arose in connexion with Article 2, paragraph 5 of the Charter. The Council, however, adopted a number of resolutions containing provisions which might be described as implicit references to the principle in that paragraph of Article 2.⁶⁹ There were several explicit references to Article 2, paragraph 5, during the debates of the Security Council.⁷⁰

⁶⁹ Resolution 320 (1972), preambular para. 6, para. 3; and resolution 333 (1973), preambular para. 4, in connexion with the situation in Southern Rhodesia; resolution 326 (1973), paras. 5 and 10, in connexion with the complaint by Zambia; and resolution 340 (1973), para. 5, in connexion with the situation in the Middle East. With the exception of the paragraph in resolution 326 (1973) all the other references could be linked to Article 25 which states the principle of Article 2, paragraph 5 in a narrower and more specific manner. For the consideration of the provisions of Article 25, see below, part IV.

⁷⁰ In connexion with the consideration of questions relating to Africa, 1632nd mtg., Liberia, para. 28; in connexion with the relationship between the United Nations and South Africa, 1800th mtg.: Yugoslavia, and 1803rd mtg.: Romania.

C. Article 2, paragraph 6 of the Charter

“The Organization shall ensure that states which are not Members of the United Nations act in accordance with these principles so far as may be necessary for the maintenance of international peace and security.”

NOTE

During the period under review, the Council adopted two resolutions⁷¹ which invoked Article 2, paragraph 6 explicitly. In one of these cases, a constitutional argument was raised during the Council proceedings, as a result of which the explicit reference to the Charter provision was added to the text of a draft resolution.⁷² In several other resolutions as well as in a consensus decision⁷³ adopted by

⁷¹ Resolutions 314 (1972) and 320 (1972) in connexion with the situation in Southern Rhodesia.

⁷² Resolution 314 (1972). See case 9.

⁷³ Resolution 310 (1972), para. 5, in connexion with the situation in Namibia; resolution 311 (1972), para. 5, in connexion with the question of race conflict in South Africa; resolution 312 (1972), preambular para. 6, para. 6, in connexion with the situation in Territories under Portuguese administration; resolutions 318 (1972), paras. 5 and 8, and 333 (1973), paras. 2-8, in connexion with the situation in Southern Rhodesia; resolution 328 (1973), para. 7, in connexion with the complaint by Zambia; resolution 347 (1974), para. 3, in connexion with the situation in the Middle East; and the consensus decision of 20 June 1972, the last two paras., *OR, 27th yr., Resolutions and Decisions of the Security Council 1972*, p. 18, in connexion with the situation created by increasing incidents involving the hijacking of commercial aircraft.

the Council, Article 2, paragraph 6 was referred to in an implicit manner without giving rise to a constitutional discussion. In a few instances, the provision was explicitly mentioned during the Council proceedings.⁷⁴

Case 9. *Situation in Southern Rhodesia*: In connexion with the draft resolution jointly submitted by Guinea, Somalia and the Sudan, revised, voted upon and adopted on 28 February 1972.

At the 1641st meeting on 24 February 1972, the President drew the attention of the members of the Council to the draft resolution which had been submitted by Guinea, Somalia and the Sudan.⁷⁵

At the same meeting the representative of Somalia introduced the draft resolution, paragraph 2 of which read as follows:

2. *Urges* all States to implement fully all Security Council resolutions pertaining to Southern Rhodesia in accordance with

⁷⁴ In connexion with the relationship between the United Nations and South Africa, 1798th mtg., Guyana, and 1800th mtg., Uganda.

⁷⁵ S/10541, *OR, 27th yr., Suppl. for Jan.-March 1972*, pp. 50-51.

their obligations under Article 25 of the United Nations Charter, and deplores the attitude of those States which have persisted in giving moral, political and economic assistance to the illegal régime;

The representative of France, in commenting on the draft resolution, pointed out, concerning paragraph 2, that not all resolutions pertaining to Rhodesia were mandatory, since only some of them had been adopted under Chapter VII; therefore, it would be more accurate to urge the full implementation of all mandatory resolutions or to list the three resolutions that fell under that category; obviously, Article 25 could not be applied to resolutions which were not adopted within the framework of Chapter VII.⁷⁶

At the 1642nd meeting on 25 February 1972, the representative of Somalia introduced the revised draft resolution,⁷⁷ which incorporated significant changes in

⁷⁶ 1641st meeting, France.

⁷⁷ S/10541/Rev.1, adopted with a small change as resolution 314 (1972).

paragraphs 1, 2, 3 and 6, reflecting mainly the comments of the French representative.⁷⁸

At the 1645th meeting on 28 February 1972, the draft resolution was voted upon: Paragraph 1, in a separate vote, was adopted by 14 votes to none, with 1 abstention; then, the draft resolution as a whole was adopted by 13 votes to none, with 2 abstentions.⁷⁹ In a revised form, as adopted, an explicit reference to Article 2, paragraph 6, had been added to paragraph 2 of the operative part of the resolution.⁸⁰ It read in paragraph 2 as follows:

2. *Urges* all States to implement fully all Security Council resolutions establishing sanctions against Southern Rhodesia, in accordance with their obligations under Article 25 and Article 2, paragraph 6, of the Charter of the United Nations and deplores the attitude of those States which have persisted in giving moral, political and economic assistance to the illegal régime.

⁷⁸ 1642nd meeting: Somalia, paras. 35-46.

⁷⁹ 1645th meeting, paras. 91-92.

⁸⁰ Paragraphs 4 and 5 of resolution 314 (1972) contain implicit references to Article 2, paragraph 6. For the detailed procedural history of this case, see chapter VIII, part II, under the same title.

D. Article 2, paragraph 7, of the Charter

“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.”

NOTE

The principle of non-interference in domestic affairs was frequently mentioned in Council proceedings, but the Council did not adopt any decision invoking implicitly or explicitly the provisions of Article 2, paragraph 7.

During the consideration of the complaint by Cuba, the representative of Chile cited the principle of non-interference explicitly and described in detail what his Government viewed as instances of massive intervention of Cuba in Chile.⁸¹ A large number of representatives, regardless of their particular evaluation of the complaint by Cuba against Chile, declared unequivocally that their Governments would rigorously adhere to the principle of non-intervention in domestic affairs.⁸² One representative

⁸¹ 1741st meeting, Chile.

⁸² 1741st meeting: Peru, Panama, 1742nd meeting: Indonesia, Kenya, Austria, Sudan, Algeria, Madagascar.

requested, however, that in view of the grave attack on the Cuban diplomatic community in Chile the Council should define the limits of the rule of non-intervention in domestic affairs and not remain indifferent to the events in Chile.⁸³

Aside from numerous incidental invocations of the principle of non-intervention, there were several explicit references to Article 2, paragraph 7, during the Council proceedings⁸⁴ and in one case, in a communication by a Member State to the President of the Security Council,⁸⁵ without giving rise to a constitutional discussion.

⁸³ *Ibid.*, Senegal. For the detailed procedural history of the complaint by Cuba, see chapter VIII, part II, under that title.

⁸⁴ In connexion with the situation in the Middle East, 1711th mtg., Sudan, in connexion with the relationship between the United Nations and South Africa, 1800th mtg., South Africa, 1801st mtg., Ghana, 1802nd mtg., India, Barbados, 1806th mtg., Kenya.

⁸⁵ S/10833, *OR*, 27th yr., *Suppl. for Oct.-Dec. 1972*, p. 47.

Part III

CONSIDERATION OF THE PROVISIONS OF ARTICLE 24 OF THE CHARTER

Article 24

“1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council’s 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, VIII and XII.

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

NOTE

During the period under review, the Security Council adopted one resolution⁸⁶ which invoked Article 24 explicitly, while discussing the situation in Cyprus. Prior to the adoption of this resolution, the text of another draft resolution⁸⁷ containing the same explicit invocation of Article 24, had been circulated among the members of the Council, but it was not put to a vote. The consideration of these texts did not involve any constitutional discussion.

During the Middle East war of October 1973, the United States explicitly invoked the principle of Article 24 in calling for a meeting of the Security Council.⁸⁸ Following the adoption of resolution 341 (1973) setting up UNEF, the representative of France emphasized the position of his Government with regard to the exclusive competence of the Security Council in the matter of peace-keeping and the maintenance of international security in accordance with Article 24 of the Charter and added that to enable the

⁸⁶ Resolution 353 (1973), preambular para. 8.

⁸⁷ S/11346 and S/11346/Rev.1, preambular para. 7, *OR*, 29th yr., *Suppl. for July-Sept. 1974*, pp. 28-29.

⁸⁸ S/11010, *OR*, 28th yr., *Suppl. for Oct.-Dec. 1973*, p. 70.

Council to establish as well as to control an international force a subsidiary organ could be set up whose purpose would be to lessen the Council's work without prejudice to the primary responsibilities conferred upon the Council by the Charter.⁸⁹

There were a number of explicit references to Article 24, aside from those already mentioned, in the course of Council debates, but no constitutional discussion ensued.⁹⁰

Article 24, paragraph 3, was explicitly referred to in a note⁹¹ by the President of the Security Council, regarding a decision of the Council to change the format of the Council's annual report.

⁸⁹ 1752nd mtg., France. See also similar remarks at the 1760th mtg., France, in connexion with the role of the United Nations and the Security Council in the arrangements for the peace conference on the Middle East (resolution 344 (1973)).

⁹⁰ In connexion with the consideration of measures for the maintenance and strengthening of international peace and security in Latin America, 1701st mtg., France, in connexion with the situation in the Middle East, 1725th mtg., Peru, 1743rd mtg., Egypt, in connexion with the relationship between the United Nations and South Africa, 1800th mtg., Uganda.

⁹¹ S/11586, *OR*, 29th yr., *Suppl. for Oct.-Dec. 1974*, p. 72.

Part IV

CONSIDERATION OF THE PROVISIONS OF ARTICLE 25 OF THE CHARTER

Article 25

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

NOTE

During the period under review, the Security Council adopted four resolutions⁹² in which Article 25 of the Charter was explicitly invoked. Article 25 was also explicitly referred to in five draft resolutions, of which three⁹³ were voted upon and not adopted, and two⁹⁴ were subsequently revised and then adopted.

⁹² In connexion with the situation in Southern Rhodesia, resolutions 314 (1972), preambular para. 5, para. 2; 318 (1972), preambular para. 5; 320 (1972), preambular para. 3, para. 2; 333 (1973), preambular para. 3.

⁹³ S/10606, preambular para. 7, *OR*, 27th yr., *Suppl. for Jan.-March 1972*, pp. 82-83; S/10805 and Rev.1, para. 7, *ibid.*, *Suppl. for July-Sept. 1972*, pp. 108-110; and S/10928, preambular para. 6, *ibid.*, 28th yr. *Suppl. for April-June 1973*, p. 36: all in connexion with the situation in Southern Rhodesia.

⁹⁴ Again in connexion with the situation in Southern Rhodesia, S/10541, preambular para. 3, para. 2, *OR*, 27th yr., *Suppl. for*

A large number of resolutions⁹⁵ and several draft resolutions which either were not brought to a vote or

Jan.-March 1972, pp. 50-51, subsequently revised and adopted as resolution 314 (1972); and S/10804, preambular para. 3, para. 2, *ibid.*, *Suppl. for July-Sept. 1972*, p. 108, revised and adopted as resolution 320 (1972).

⁹⁵ In connexion with the situation in Namibia, resolution 310, preambular para. 8, para. 1; and resolution 366 (1974), preambular para. 4, para. 4; in connexion with the question of race conflict in South Africa, resolution 311 (1972), preambular para. 4; in connexion with the situation in Territories under Portuguese administration, resolution 312 (1972), preambular para. 5; in connexion with the situation in the Middle East, resolutions 316 (1972), para. 1; 338 (1973), para. 2; 340 (1973), para. 5; 346 (1974), para. 7; and 363 (1974), para. 1, (a); in connexion with the complaint by Senegal, resolution 321 (1972), preambular para. 5; in connexion with the complaint by Zambia, resolution 326 (1973), para. 7; and in connexion with the situation in Cyprus, resolutions 357 (1974), para. 1; 358 (1974), preambular para. 2, para. 2; 360 (1974), para. 2.

failed of adoption,⁹⁶ contained paragraphs which might be considered as implicit references to Article 25.

There were also explicit references to Article 25 and to its binding nature during the debates in the Security Council usually in connexion with decisions previously taken by the Council.⁹⁷ But the Council did not engage in

⁹⁶ In connexion with the situation in Namibia, S/10608, preambular para. 8, *OR*, 27th yr., *Suppl. for Jan.-March 1972*, p. 84; in connexion with the situation in Territories under Portuguese administration, S/10839, para. 2, *ibid.*, *Suppl. for Oct.-Dec. 1972*, p. 51; and in connexion with the situation in Cyprus, S/11391, para. 1, *OR*, 29th yr., *Suppl. for July-Sept. 1974*, p. 70.

⁹⁷ In connexion with the consideration of questions relating to Africa, 1628th mtg., Egypt, 1630th mtg., Yugoslavia, 1632nd mtg., Liberia, para. 27; 1636th mtg., Somalia, in connexion with the situation in Southern Rhodesia, 1641st mtg., Somalia, France, 1642nd mtg., Somalia, President (Sudan), 1654th mtg., Somalia, 1655th mtg., Somalia, 1664th mtg., Yugoslavia, Guinea, 1712th mtg., Yugoslavia, in connexion with the situation in the

any constitutional discussion concerning Article 25, that represented more than a reaffirmation of long held views about its interpretation and application.

Article 25 was explicitly invoked in a communication⁹⁸ from the Executive Secretary of the Organization of African Unity to the President of the Council and in a letter⁹⁹ from the President of the Council to the Secretary-General.

Middle East, 1651st mtg., USSR, 1718th mtg., Nigeria, 1725th mtg., Peru, 1733rd mtg., Egypt, 1735th mtg., India, and in connexion with the relationship between the United Nations and South Africa, 1796th mtg., Tunisia, 1797th mtg., Syria, 1798th mtg., Mr. Sibeko, 1800th mtg., Yugoslavia, 1806th mtg., Kenya, 1808th mtg., United States.

⁹⁸ S/10741, *OR*, 27th yr., *Suppl. for July-Sept. 1972*, pp. 73-79; here p. 76 (OAU resolution on Zimbabwe, para. 8).

⁹⁹ S/10822, *ibid.*, *Suppl. for Oct.-Dec. 1972*, p. 27 relating to the reply by the Security Council concerning the implementation of the Declaration on the Strengthening of International Security.

Part V

CONSIDERATION OF THE PROVISIONS OF CHAPTER VIII OF THE CHARTER

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 the 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 agencies for the maintenance of international peace and security."

NOTE

In consequence of the obligations placed by the Charter upon Members of the United Nations and upon regional arrangements or agencies, the attention of the Security Council has been drawn during the period from 1972 to 1974 to the following communications, which have been circulated by the Secretary-General to the representatives on the Council, but have not been included in the provisional agenda.

A. Communications from the Secretary-General of the Organization of African Unity

- (i) Dated 19 July 1972: transmitting the texts of the resolutions adopted by the Assembly of Heads of State and Government of the OAU at its ninth session.¹⁰⁰

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

C. Communications from States parties to disputes or situations

- (i) Dated 1 October 1973: Guinea, requesting a meeting of the Security Council as a matter of urgency to consider the serious situation between Guinea and Senegal.¹⁰¹
- (ii) Dated 21 February 1974: Guinea, withdrawing the complaint against Senegal, following the visit of the President of OAU to Guinea.¹⁰²

¹⁰⁰ S/10741, *OR*, 27th yr., *Suppl. for July-Sept. 1972*, pp. 73-79.

¹⁰¹ S/11004, *OR*, 28th yr., *Suppl. for Oct.-Dec. 1973*, p. 61.

¹⁰² S/11225, *OR*, 29th yr., *Suppl. for Jan.-Feb. 1974*, p. 102.

***D. Communications from other States concerning matters before regional organizations*

In addition to circulating these communications to the representatives on the Council, it has been the practice to include summary accounts of some of them in the Annual Reports of the Security Council to the General Assembly.¹⁰³

During the period under review, the question of the respective responsibilities of the Security Council and the regional agencies concerning matters before the Council was not the subject of an intensive constitutional debate, but on several occasions, the Articles of Chapter VIII and the principles established in these Charter provisions were explicitly invoked and amplified in terms of their relevance for the work of the regional organization and its relationship to the United Nations.¹⁰⁴

¹⁰³ See report of the Security Council to the General Assembly, 1972-1972, *GAOR*, 28th Session, *Suppl. No. 2*, p. 148; report of the Security Council to the General Assembly, 1973-1974, *GAOR*, 29th Session, *Suppl. No. 2*, p. 78.

¹⁰⁴ In connexion with the consideration of questions relating to Africa, 1627th mtg., President (Somalia), (Article 52); in connexion with the consideration of measures for the maintenance and strengthening of international peace and security in Latin America, 1695th mtg., Secretary-General, (Article 54); 1697th mtg., Chile, (Article 53); 1701st mtg., United Kingdom, (Article 52, Chapter VIII); United States, (Chapter VIII); and in connexion with the situation in the Middle East, 1724th mtg., Kenya, (Article 52). For further details regarding the consideration of measures for the maintenance and strengthening of international peace and security in Latin America, see the procedural history in chapter VIII, part II, p. 179 under the same title.

Part VI

****CONSIDERATION OF THE PROVISIONS OF CHAPTER XII OF THE CHARTER**

Part VII

CONSIDERATION OF THE PROVISIONS OF CHAPTER XVI OF THE CHARTER

“...”

Article 103

“In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.”

NOTE

During the period under review, there were several instances in which the principle of Article 103 was explicitly invoked and discussed in its applicability for two questions inscribed on the agenda of the Security Council.

In connexion with the situation in Cyprus, a series of letters from the representatives of Cyprus and Turkey

raised the question whether and to what extent Article 103 was relevant for the Cyprus question. The representative of Cyprus alleged that the treaties on Cyprus were imposed upon the people of Cyprus in circumstances amounting to duress and precluding free choice and that they fell within the ambit of Article 103 of the Charter in that they conflicted with fundamental Charter provisions on sovereign equality, non-use of force in international

relations and non-intervention.¹⁰⁵ The representative of Turkey denied all these charges and expressed the view that the Cyprus treaties were not in violation of Article 103, but were violated by the Government of Cyprus which failed to implement the constitutional arrangements fully and equitably.¹⁰⁶ The issue was not raised during the Council proceedings.

¹⁰⁵ For the Cypriot view, see S/10585, *OR*, 27th yr., *Suppl. for April-June 1972*, p. 20, and S/10610, *ibid.*, pp. 30-32.

¹⁰⁶ For the Turkish position, see S/10595, *ibid.*, pp. 27-28, and S/10650, *ibid.*, pp. 60-62.

During the Council meetings in Panama City Article 103 was explicitly referred to by two representatives who stressed that under no circumstances whatsoever could the principles of the Charter of the United Nations be diminished or limited by the interpretation of the regional jurisdiction of the OAS.¹⁰⁷

¹⁰⁷ In connexion with the consideration of measures for the maintenance and strengthening of international peace and security in Latin America, 1697th mtg., Chile, and 1702nd mtg., President (Panama).

Part VIII

**CONSIDERATION OF THE PROVISIONS OF CHAPTER XVII OF THE CHARTER