

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, paragraph 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, there was no explicit reference to Article 1, paragraph 2, of the Charter contained in any of the resolutions adopted by the Security Council. However, the significance of the Charter provision regarding the right of peoples to self-determination was reflected in some of the decisions and deliberations of the Council. The principle of self-determination was implicitly invoked in resolutions 560 (1985) of 12 March 1985, 569 (1985) of 26 July 1985 and 591 (1986) of 28 November 1986 regarding the question of South Africa; resolution 562 (1985) of 10 May 1985 regarding the letter dated 16 May 1985 from the representative of Nicaragua; resolutions 566 (1985) of 19 June 1985 and 601 (1987) of 30 October 1987 regarding the situation in Namibia; resolution 577 (1985) of 6 December 1985 in connection with a complaint by Angola against South Africa; resolution 581 (1986) of 13 February 1986 regarding the situation in southern Africa; resolution 605 (1987) of 22 December 1987 regarding the situation in the occupied Arab territories; and resolution 621 (1988) of 20 September 1988 in connection with the situation concerning Western Sahara. The Charter principle embodied in Article 1, paragraph 2, was also implicitly invoked in three statements² issued by the President on behalf of the members of the Council.

In two of these cases,³ there were references in the texts to General Assembly resolution 1514 (XV) of 14 December 1960, entitled “Declaration on the Granting of Independence to Colonial Countries and Peoples”. In three other cases,⁴ the text also contained references to the Uni-

versal Declaration of Human Rights. Furthermore, there were three cases⁵ in which the text also included references to “universal adult suffrage”. Finally, there was one case⁶ in which the text contained a reference to “a referendum” for self-determination.

On one occasion, when the Council adopted resolution 562 (1985), in connection with the letter dated 6 May 1985 from the representative of Nicaragua, there was what might be described as a constitutional discussion or a consideration as to whether the Charter principle was applicable to “people” or to “States”. A case history pertaining to this instance is included below.

The Council also considered three draft resolutions invoking the principle of self-determination, which were voted upon but failed to be adopted: two draft resolutions were submitted in connection with the situation in Namibia;⁷ and one in connection with the situation in southern Africa.⁸

¹Resolution 581 (1986), para. 7; S/18157 and S/18808 (presidential statements), respectively, *OR, 41st yr., Resolutions and Decisions of the Security Council, 1986*, and *OR, 42nd yr., Resolutions and Decisions of the Security Council, 1987*.

²Resolution 621 (1988), third preambular para.

³S/17633 and S/18785, respectively, *OR, 40th yr., Suppl. for Oct.-Dec. 1985 and OR, 42nd yr., Suppl. for April-June 1987*. The first draft resolution was submitted by Burkina Faso, Egypt, India, Madagascar, Peru and Trinidad and Tobago and, at the 2629th meeting, failed to be adopted owing to the negative votes of two permanent members. The second draft resolution was submitted by Argentina, the Congo, Ghana, the United Arab Emirates and Zambia and, at the 2747th meeting, failed to be adopted owing to the negative votes of two permanent members. Both draft resolutions recalled General Assembly resolution 1514 (XV) (fifth preambular para.), while the second draft resolution (S/18785) further reaffirmed the inalienable rights of the people of Namibia to self-determination in accordance with the Charter of the United Nations and General Assembly resolution 1514 (XV) (sixth preambular para.).

⁴S/18087/Rev.1, *OR, 41st yr., Suppl. for April-June 1986*. This draft resolution was submitted by the Congo, Ghana, Madagascar, Trinidad and Tobago and the United Arab Emirates and, at the 2686th meeting, failed to be adopted owing to the negative votes of two permanent members. The draft resolution reaffirmed the legitimacy of the struggle of the South African people against apartheid in accordance with their inalienable rights as set forth in the Charter of the United Nations and in the Universal Declaration of Human Rights (fifteenth preambular para.).

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

²S/18157 and S/18808 (in connection with the question of South Africa), respectively, *OR, 41st yr., Resolutions and Decisions of the Security Council, 1986*, and *OR, 42nd yr., Resolutions and Decisions of the Security Council, 1987*; and S/19068 (in connection with the situation in Namibia), *ibid.*

³Resolutions 566 (1985), fifth preambular para. and para. 7; and 601 (1987), fourth preambular para.

⁴Resolution 591 (1986), seventh preambular para.; resolution 605 (1987), second preambular para.; and S/18808 (presidential statement), *OR, 42nd yr., Resolutions and Decisions of the Security Council, 1987*, third para.

On one occasion, during the Council's deliberations on the situation in Cyprus, the discussion was briefly focused on the interpretation and application of the Charter principle of self-determination. On the one hand, it was maintained that the Turkish argument that the Turkish Cypriot community in the area could exercise separately the right to self-determination was untenable, since such an exercise would distort the principle of self-determination embodied in General Assembly resolution 1514 (XV), which was meant to be exercised by a people as a whole and not on the basis of factional, religious, communal or ethnic criteria. Moreover, it was stated, the Turkish Cypriots could not exercise such a right on an occupied part of the territory of Cyprus, on which they had all along been a minority of 18 per cent, while the majority of 82 per cent had recently been expelled and supplanted by Turks from Anatolia and the Turkish military occupying forces. It was further held that the "referendum" for a new "constitution" of the "Turkish Republic of Northern Cyprus" and the so-called presidential elections which had been carried out in the occupied territory of the Republic on the basis of the notion of a "Turkish Cypriot people" constituted a mockery of all democratic principles and a contempt of all internationally recognized concepts of human rights. The principle of self-determination could not be interpreted in such a way as to impair the unity of the people and the territorial integrity of any State. On the other hand, it was argued that the Turkish Republic of Northern Cyprus had come into being in November 1983 as a manifestation of the right to self-determination of the Turkish Cypriot people. Furthermore, it was contended that whatever rights existed in south Cyprus for the Greek Cypriots, the same rights existed in full in the north for the Turkish Cypriots and that, in the absence of a joint federal government, it was the inalienable right of the Turkish Cypriot people to be represented by the authorities and organs elected freely by themselves since they could not be expected to live in a political vacuum.⁹

In one instance, during the Council's deliberations on the question of South Africa, the Preamble of the Charter was explicitly invoked and the following part thereof, which appears to have a bearing on Article 1, paragraph 2, was quoted: "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women".¹⁰

On another occasion, also in connection with the deliberations on the question of South Africa, Article 1, paragraph 3, of the Charter was explicitly invoked in the context of "human rights" and "fundamental freedoms", principles embodied in the Charter provision of Article 1, paragraph 2.¹¹

During the Council's consideration of the letter dated 11 March 1988 from the Permanent Representative of Argentina to the United Nations addressed to the President of the Security Council, concerning the decision by

the United Kingdom Government to conduct military manoeuvres in the Falkland Islands (Islas Malvinas), the discussion appeared to touch upon whether the Charter provision regarding the self-determination of peoples was applicable to the situation of those islands. On the one hand, it was argued that the decision to hold military manoeuvres was intended to consolidate a colonial domination of the Falkland Islands (Islas Malvinas) and that the British attitude disregarded negotiations as a basis for the settlement of the dispute over sovereignty. There was a reiteration of the opposition to the attempts to apply General Assembly resolution 1514 (XV) to the problem of the Falkland Islands (Islas Malvinas) in a way irrelevant to its true purpose and spirit as well as to its interpretation in "arbitrary and manipulative" ways. Moreover, it was held that the Falkland Islands (Islas Malvinas) were a colonial enclave in foreign territory and that, therefore, the inhabitants who were subjects of the Crown did not have a legitimate right to self-determination. It was further stated that the International Court of Justice and the General Assembly had recognized that the principle of territorial integrity had primacy over the principle of self-determination in cases where colonial occupation had affected the territorial sovereignty of independent countries. It was also asserted that there could be no doubt that Argentina had historical and legal rights to claim its sovereignty over the Falkland Islands (Islas Malvinas), South Georgia and the South Sandwich Islands and that, therefore, it was imperative that those territories be restored to it through negotiations aimed at a peaceful and definitive solution. On the other hand, it was maintained that the invasion of the Falkland Islands (Islas Malvinas) on 2 April 1982 by Argentine troops had led to the determination on the part of the Government of the United Kingdom that no such catastrophe should happen again and that they should indeed be in dereliction of their duty under Article 73 of the Charter were they not to take the necessary steps to safeguard the security of the people of the islands. It was further stressed that, as long as the Argentine claim to the Falkland Islands (Islas Malvinas) remained, the United Kingdom must retain the capability of dealing with the unexpected and the Government of the United Kingdom was determined to fulfil its commitments to the people of the islands and to uphold their right to choose by whomsoever they wished to be governed. While the United Kingdom was obliged to do so by the Charter and the International Covenant on Civil and Political Rights, it was held, the call for negotiations on all aspects of the islands was a demand for negotiations on sovereignty which, the Argentine Government had made plain, could have as the only outcome the annexation of the islands by Argentina.¹² However, no draft resolution reflecting these constitutional arguments was submitted for the Council's consideration.

In a number of cases, Article 1, paragraph 2, or Article 1 as a whole with reference to the principle of self-deter-

⁹For the texts of relevant statements, see S/PV.2591: Cyprus, p. 13; Mr. Koray, p. 38; and Turkey, pp. 44 and 45; and S/PV. 2635: Cyprus, p. 18.

¹⁰S/PV.2600: France, p. 7

¹¹S/PV.2736: Cuba, pp. 29-30.

¹²For the texts of relevant statements, see S/PV.2800: Argentina, p. 11; United Kingdom, pp. 16-18; S/PV.2801: Nicaragua, p. 26; Guatemala, pp. 42 and 43; Argentina, pp. 51 and 52; and United Kingdom, pp. 56 and 57.

mination was invoked without giving rise to a constitutional discussion.¹³

CASE I

Letter dated 6 May 1985 from the representative of Nicaragua

(In connection with a draft resolution sponsored by Nicaragua, voted upon and adopted on 10 May 1985, following a separate vote on each paragraph)

In the course of the separate vote on each paragraph of the draft resolution¹⁴ submitted by Nicaragua, the eighth preambular paragraph and operative paragraphs 1 and 2 of the draft resolution were not adopted. Following the unanimous adoption of the draft resolution as a whole and as amended, as resolution 562 (1985), the representative of the United Kingdom stated that his delegation upheld "the inalienable right freely to decide on political, economic and social systems", as referred to in paragraph 1 of the resolution as adopted. But, he added, his delegation must insist that it was a right which belonged to people, not to

¹³In connection with the question of South Africa, S/PV.2571: Chairman, Special Committee against Apartheid, pp. 22 and 23; S/PV.2600: South Africa, pp. 41 and 42; S/PV.2602: Yugoslavia, p. 33; S/PV.2690: Zaire, pp. 5 and 6; S/PV.2732: South Africa, p. 21; in connection with the situation in the Middle East, including the occupied Arab territories, S/PV.2572: Democratic Yemen, p. 48; S/PV.2573: Syrian Arab Republic, p. 61; S/PV.2605: Syrian Arab Republic, p. 32; Thailand, pp. 54 and 56; S/PV.2646: Egypt, p. 17; Mauritania, p. 41; Indonesia, pp. 47 and 48; S/PV.2649: Yugoslavia, p. 14; S/PV.2770: Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, p. 32; S/PV.2787: PLO, p. 98; Libyan Arab Jamahiriya, pp. 58-60; S/PV.2790: Czechoslovakia, p. 21; United Kingdom, p. 37; S/PV.2806: Mr. Maksoud of the Arab League; in connection with the letter dated 6 May 1985 from Nicaragua, S/PV.2578: Peru, p. 11; Brazil, p. 88; in connection with the situation in Namibia, S/PV.2583: Acting President of United Nations Council for Namibia, p. 18; South Africa, pp. 92-93; S/PV.2587: Panama, p. 48; S/PV.2589: Mr. Ebrahim of PAC, pp. 73-76; S/PV.2600, South Africa, pp. 41-42; in connection with the situation in southern Africa, S/PV.2660: Thailand, p. 41; S/PV.2686: Venezuela, pp. 31-33; in connection with the letter dated 27 June 1986 from Nicaragua, S/PV.2695: Syrian Arab Republic, p. 22.

¹⁴S/17172, OR, 40th yr., Suppl. for April-June 1985. For the request to put the draft resolution to the vote paragraph by paragraph and for the results of the votes thereof, see chap. VIII, part II, under the same heading.

States; and that was what was stated in the Charter of the United Nations, in both the International Covenants on Human Rights and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.¹⁵ After emphasizing that that was what the fourth preambular paragraph of the resolution before the Council also said, he cited: (a) the reference in the Charter to "the principle of equal rights and self-determination of peoples"; (b) both of the International Covenants which, in their common article 1, stated: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development"; and (c) the above-mentioned Declaration on Principles of International Law, which similarly held that, "... all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development". According to that Declaration, he emphasized, all States had the duty "to respect this right" and "to promote realization of the principle of equal rights and self-determination of peoples". Those basic instruments, as well as General Assembly resolution 38/10 of 11 November 1983 concerning the situation in Central America, which was quoted in the fourth preambular paragraph of Council resolution 562 (1985), made it clear that the right to self-determination was one that belonged to peoples and not to States. That was a fundamental distinction and the depiction of the principle in paragraph 1 of resolution 562 (1985) was a distortion.¹⁶ The resolution reads in part as follows:

The Security Council,

...
Recalling also General Assembly resolution 38/10, which reaffirms the inalienable right of all the peoples to decide on their own form of government and to choose their own economic, political and social system free from all foreign intervention, coercion or limitation,

...
 1. *Reaffirms* the sovereignty and inalienable right of Nicaragua and other States freely to decide their own political, economic and social systems, to develop their international relations according to their people's interests free from outside interference, subversion, direct or indirect coercion or threats of any kind;

¹⁵General Assembly resolution 2625 (XXV), annex.

¹⁶S/PV.2580, pp. 128-130.

Part II

CONSIDERATION OF THE PROVISIONS OF ARTICLE 2 OF THE CHARTER

A. Article 2, paragraph 4

"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

Two resolutions adopted by the Council during the period under review contained explicit references to Article 2, paragraph 4, of the Charter.¹⁷ On many other occasions, the de-

isions and deliberations of the Council reflected the significance of the principles and obligations contained in this provision of the Charter. Five of the resolutions referring to Article 2, paragraph 4,¹⁸ used language taken from this

¹⁷Resolutions 573 (1985), fourth preambular para.; and 611 (1988), fourth preambular para.

¹⁸Resolutions 568 (1985), fourth preambular para.; 574 (1985), third preambular para.; 580 (1985), third preambular para.; 581 (1986), second preambular para.; and 588 (1986), fourth preambular para.

Charter provision and 17 resolutions contained other implicit references to it.¹⁹ Fifteen statements of the President on behalf of the Council also referred to Article 2, paragraph 4: five²⁰ used, at least in part, the language of the Charter, whereas the other 10²¹ contained other implicit references to the Article. Seven draft resolutions, which either failed to be adopted or were not put to the vote, also contained references to Article 2, paragraph 4: of these, three²² employed the language of the Charter; three²³ contained other implicit references to the Charter principle; and one²⁴ draft resolution recalled the Definition of Aggression, as contained in General Assembly resolution 3314 (XXIX) of 14 December 1974.

In one of the instances indicated above, the Council emphasized the principle of the inadmissibility of the acquisition of territory by force and deplored the initial acts which gave rise to conflict between two States.²⁵ In another instance, the Council, acting under Articles 39 and

40 of the Charter,²⁶ demanded, as a first step towards a negotiated settlement, the observance of an immediate ceasefire, an end to all military actions and withdrawal of all forces to internationally recognized boundaries.²⁷ In a number of instances,²⁸ the Council expressed alarm or concern over the continuation of attacks, called for restraint or cessation of hostilities, censured the prolongation or escalation of a conflict and called for respect or support for the territorial integrity, sovereignty and political independence of States. In other paragraphs,²⁹ the Council expressed grave concern at threats to perpetrate acts of aggression and condemned a State for such threats. In one case,³⁰ the Council reaffirmed the legitimacy of the struggle of a people against illegal occupation and called upon all States to increase moral and material assistance to that people.

References of the kind indicated above to the provisions of Article 2, paragraph 4, were frequent; but only seldom did the Council engage in what might be described as a constitutional discussion regarding this principle of the Charter. On several occasions,³¹ Article 2, paragraph 4, was explicitly invoked in the deliberations of the Council, usually without giving rise to a constitutional discussion.

Article 2, paragraph 4, was also invoked in communications in connection with the letters dated 15 April 1986 from the representatives of the Libyan Arab Jamahiriya, Burkina Faso, the Syrian Arab Republic and Oman,³² as

¹⁹Resolutions 561 (1985), para. 2; 564 (1985), para. 2; 567 (1985), second preambular para. and para. 3; 571 (1985), third preambular para. and para. 1; 575 (1985), para. 2; 577 (1985), sixth preambular para. and para. 4; 582 (1986), sixth preambular para.; 583 (1986), para. 2; 586 (1986), para. 2; 592 (1986), para. 2; 594 (1987), para. 2; 599 (1987), para. 2; 598 (1987), para. 1; 602 (1987), third preambular para. and para. 4; 606 (1987), third preambular para. and para. 1; 609 (1988), para. 2; and 617 (1988), para. 2.

²⁰S/17215, issued on 24 May 1985, regarding the situation in the Middle East, *OR, 40th yr., Resolutions and Decisions of the Security Council, 1985*; S/17486, read out at the 2607th meeting, on 20 September 1985, regarding the situation in Cyprus, *ibid.*; S/18691 and S/18756, issued, respectively, on 13 February and 19 March 1987, regarding the situation in the Middle East, *OR, 42nd yr., Resolutions and Decisions of the Security Council, 1987*; and S/19959, issued on 24 June 1988, regarding the incident of 20 June 1988 ("South Africa's latest attacks on the territory of Botswana"), *OR, 43rd yr., Resolutions and Decisions of the Security Council, 1988*.

²¹S/17004, S/17036 and S/17130, issued, respectively, on 5 and 15 March and 25 April 1985, regarding the situation between Iran and Iraq, *OR, 40th yr., Resolutions and Decisions of the Security Council, 1985*; S/17932 and S/18538, issued, respectively, on 21 March and 22 December 1986, regarding the situation between Iran and Iraq, *OR, 41st yr., Resolutions and Decisions of the Security Council, 1986*; S/18138, issued in June 1986, regarding the situation in the Middle East, *ibid.*; S/18610, issued on 16 January 1987, regarding the situation between Iran and Iraq, *OR, 42nd yr., Resolutions and Decisions of the Security Council, 1987*; S/19068, issued on 21 August 1987, regarding the situation in Namibia, *ibid.*; S/19626 and S/20096, read out, respectively, at the 2798th and at the 2823rd meetings, held on 16 March and 8 August 1988, regarding the situation between Iran and Iraq, *OR, 43rd yr., Resolutions and Decisions of the Security Council, 1988*.

²²In connection with the letters both dated 25 March 1986 from the representatives of Malta and the Union of Soviet Socialist Republics and letter dated 26 March 1986 from the representative of Iraq, draft resolution S/17954, second preambular para., *OR, 41st yr., Suppl. for Jan.-March 1986*. In connection with the letter dated 12 April 1986 from the representative of Malta, draft resolution S/17984, third preambular para., *ibid., Suppl. for April-June 1986*; and in connection with the situation in the Middle East, draft resolution S/19434, operative para. 3, *OR, 43rd yr., Suppl. for Jan.-March 1988*.

²³In connection with the situation in the Middle East, draft resolution S/17730/Rev.2, operative para. 3, *OR, 41st yr., Suppl. for Jan.-March 1986*; draft resolution S/19868, *OR, 43rd yr., Suppl. for Jan.-March 1988*; and in connection with the letter from the Syrian Arab Republic, draft resolution S/17796/Rev.1, operative paras. 1 and 2, *OR, 41st yr., Suppl. for Jan.-March 1986*.

²⁴In connection with letters dated 15 April 1986 from the representatives of Burkina Faso, the Libyan Arab Jamahiriya, Oman, the Syrian Arab Republic and the Sudan, draft resolution S/18016/Rev.1, *OR, 41st yr., Suppl. for April-June 1986*.

²⁵See resolution 582 (1986), sixth preambular para. and para. 1.

²⁶For the discussion regarding Articles 39 and 40 (Chapter VII of the Charter), see chap. XI of the present *Supplement*.

²⁷Resolution 598 (1987), para. 1.

²⁸Resolutions 564 (1985), para. 2; 567 (1985), para. 3; 571 (1985), para. 1; 575 (1985), para. 2; 577 (1985), sixth preambular para. and para. 4; 583 (1986), para. 2; 586 (1986), para. 2; 594 (1987), para. 2; 599 (1987), para. 2; 602 (1987), second and fourth preambular paras. and para. 1; 609 (1987), para. 2; and 617 (1988), para. 2. See also statements by the President of the Security Council on behalf of the members of the Council, S/17004, S/17036 and S/17130, issued, respectively, on 5 and 15 March and 25 April 1985, regarding the situation between Iran and Iraq, *OR, Resolutions and Decisions of the Security Council 1985*; S/17932 and S/18538, issued, respectively, on 21 March and 22 December 1986, *OR, Resolutions and Decisions of the Security Council, 1986*; S/19626 and S/20096, issued, respectively, on 16 March and 8 August 1988, *OR, Resolutions and Decisions of the Security Council, 1988*.

²⁹Resolution 581 (1986), tenth preambular para. and para. 1.

³⁰Resolution 566 (1985), para. 2.

³¹In connection with the letter dated 6 May 1985 from the representative of Nicaragua, S/PV.2578: United States of America, p. 29; in connection with the situation in Namibia, S/PV.2590: Afghanistan, p. 58; in connection with the complaint by Angola against South Africa, S/PV.2596: United Republic of Tanzania, p. 24; Pakistan, p. 44; S/PV.2631: United Kingdom, p. 33; in connection with the letter dated 17 June 1985 from the representative of Botswana, S/PV.2599: Swaziland, p. 62; United Kingdom, p. 78; in connection with the letter dated 1 October 1985 from the representative of Tunisia, S/PV.2611: Burkina Faso, p. 21; United Kingdom, pp. 39-41; in connection with the situation in the occupied Arab territories, S/PV.2786: Italy, pp. 61-62; in connection with the situation in Cyprus, S/PV.2635: Cyprus, p. 59; S/PV.2688: Cyprus, pp. 9-10; S/PV.2771: Cyprus, p. 26; in connection with the situation in southern Africa, S/PV.2658: Ghana, pp. 27 and 28; S/PV.2686: Libyan Arab Jamahiriya, pp. 116 and 117; in connection with the letters dated 25 March from the representatives of Malta and the USSR and the letter dated 26 March 1986 from the representative of Iraq, S/PV.2669: Poland, p. 17; United Kingdom, p. 36; in connection with the letter dated 27 June 1986 from the representative of Nicaragua, S/PV.2697: United Arab Emirates, p. 36. The implicit references are too numerous to be listed here.

³²S/17990 (letter dated 14 April 1986 from the representative of the United States of America), *OR, 41st yr., Suppl. for April-June 1986*.

well as in connection with the question concerning the situation in Cyprus;³³ and the situation between Iran and Iraq.³⁴

In one instance, in connection with the Council's discussion on the situation in Cyprus, following the adoption of resolution 578 (1985),³⁵ by which the Council extended the mandate of the United Nations Peacekeeping Force in Cyprus (UNFICYP), Article 2, paragraph 4, was explicitly referred to in the exchanges which touched on the Treaty of Guarantee. The supremacy of the Charter provision over other international agreements, specifically the Treaty of Guarantee, was underscored, in those exchanges, by an explicit invocation of Article 103 of the Charter.³⁶ On the one hand, the representatives of Cyprus and Greece maintained that the key to the solution of the Cyprus problem was the withdrawal of the Turkish occupation troops and that the Council's meeting to renew the mandate of UNFICYP was necessitated by Turkey's failure to withdraw its troops from Cyprus. On the other hand, the representative of Turkey contended that, as the late Archbishop Makarios had said to the Council in 1974,³⁷ Cyprus had been faced with "not a Turkish invasion, but a Greek invasion", and what had happened in 1974 had been a Turkish "intervention" within the framework of the Treaty of Guarantee. The representative of Cyprus responded to the contention by stating that, had the Treaty of Guarantee given such a right of "intervention", the Treaty itself would have negated the provisions of Article 2, paragraph 4, and that, clearly, Article 103 of the Charter of the United Nations did not allow for such contradiction.³⁸

CASE 2

Letter dated 1 October 1985 from the representative of Tunisia

(In connection with a draft resolution sponsored by Burkina Faso, Egypt, India, Madagascar, Peru and Trinidad and Tobago, voted upon and adopted on 4 October 1985)

During the Council's deliberations regarding the incident whereby six Israeli military aircraft had dropped five bombs in the southern suburbs of Tunis, the discussions not only appeared focused on the provisions of Article 2, paragraph 4, but also led to frequent emphasis on the obligations on the part of Member States to observe the Charter principle in all its aspects. To a degree, the discussions also seemed to reveal what might be described as some tension between the Charter provisions of Article 2, paragraph 4, and those of Article 51 relating to "self-defence".³⁹ On the one hand, it was held that the Israeli raid

constituted a blatant act of aggression against Tunisia's territorial integrity, sovereignty and independence in flagrant violation of the rules and norms of international law and of the principles of the Charter of the United Nations. More specifically, it was stressed that the commitment to refrain from the use of force against the territorial integrity of any State, the failure to settle international disputes by peaceful means and, in particular, the resort to arbitrary and disproportionate violence—under any pretext, including retaliation—constituted an inadmissible failure to abide by Article 2, paragraph 4, of the Charter. On the other hand, it was maintained that, over the past year, the PLO headquarters in Tunisia had initiated, planned, organized and launched "hundreds of terrorist attacks" against Israel, against Israeli targets outside Israel and against Jews everywhere, and that Israel's forces had taken special care in targeting the PLO headquarters. With reference to the assertion that Israel's action had been an attack on a country which was not actively at war with Israel, it was argued that every State had a responsibility to prevent armed attacks from its territory and that no country would tolerate repeated attacks against its citizens by terrorists openly headquartered in and launched from another country. Moreover, sovereignty could not be separated from the responsibilities it entailed and a country which abdicated the fundamental responsibility of preventing a sovereign territory from being used as a launching ground for acts of aggression risked taking upon itself all the consequences of such dereliction of duty. It was further contended that the interest of a State in exercising protection over its nationals might take precedence over territorial sovereignty under the right to act in self-defence to curb armed attacks from other countries, in accordance with Article 51 of the Charter of the United Nations.⁴⁰

At the 2615th meeting, on 4 October 1985, the President drew the attention of the members of the Council to a six-Power draft resolution, which was voted upon at the same meeting and adopted as resolution 573 (1985).⁴¹ The resolution reads in part as follows:

The Security Council,

...

Considering that, in accordance with Article 2, paragraph 4, of the Charter of the United Nations, all States 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 acting in any other manner inconsistent with the purpose of the United Nations,

...

Considering that the Israeli Government claimed responsibility for the attack as soon as it had been carried out,

1. *Condemns vigorously* the act of armed aggression perpetrated by Israel against Tunisian territory in flagrant violation of the Charter of the United Nations, international law and norms of conduct;

³³S/18466 and S/19356 (letters dated, respectively, 29 November 1986 and 17 December 1987 from the representative of Cyprus), *OR, 41st yr., Suppl. for Oct.-Dec. 1986 and OR, 42nd yr., Suppl. for Oct.-Dec. 1987*.

³⁴S/20001 (letter dated 9 July 1988 from the representative of Iraq), *OR, 43rd yr., Suppl. for July-Sept. 1988*.

³⁵For an account of the Council's proceedings in connection with the adoption of resolution 578 (1985), see chap. VIII, part II, under the same heading.

³⁶For the discussions pertaining to Article 103 of the Charter, see part VII of the present chapter.

³⁷See, under the same heading, *Repertoire, Suppl. for 1972-1974*, chap. VIII, part II.

³⁸For the texts of the relevant statements, see S/PV.2635: Cyprus, pp. 9-13, 57 (second intervention) and 59 (third intervention); Greece, pp. 26 and 27, 57 (second intervention); and Turkey, p. 58 (third intervention).

³⁹For the discussions pertaining to Article 51 of the Charter, see chap. XI of the present Supplement.

⁴⁰For the texts of relevant statements, see S/17509 (letter dated 1 October 1985 from Tunisia), *OR, 40th yr., Suppl. for Oct.-Dec. 1985*; S/PV.2610: Tunisia, pp. 8-11; India, pp. 23 and 24; S/PV.2611: France, p. 7; Denmark, p. 9; China, p. 11; Turkey, pp. 13-16; Australia, p. 21; Israel, pp. 22-26; United Kingdom, p. 41; Pakistan, p. 57; S/PV.2613: Burkina Faso, p. 21; Trinidad and Tobago, p. 42; Morocco, pp. 47 and 48; Jordan, pp. 53-56; Israel (second intervention), p. 63; S/PV.2615: Yugoslavia, pp. 12 and 13; Indonesia, p. 26; Nicaragua, p. 31; Bangladesh, pp. 53-56; Viet Nam, p. 68; Tunisia (second intervention), pp. 81 and 82; Israel (third intervention), pp. 87 and 88; and the President (United States of America), pp. 111 and 112.

⁴¹For the vote on the draft resolution (S/17535), see chap. VIII, part II, under the same heading.

2. *Demands* that Israel refrain from perpetrating such acts of aggression or from threatening to do so;

3. *Urges* Member States to take measures to dissuade Israel from resorting to such acts against the sovereignty and territorial integrity of all States;

5. *Requests* the Secretary-General to report to the Security Council on the implementation of the present resolution by 30 November 1985 at the latest;

In pursuance of paragraph 5 of resolution 573 (1985), the Secretary-General on 29 November 1985 submitted a report⁴² in which he included the replies received from Member States. The Government of Israel, in its reply, declared that it rejected all allegations that its action which had been directed against PLO headquarters in Tunisia had constituted an "act of aggression". Reference was made to the 1974 and 1970 General Assembly resolutions, containing, respectively, the Definition of Aggression and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,⁴³ in which the Assembly had clearly spelt out that an "act of aggression" occurred when a country failed to fulfil its "duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State". Furthermore, in the said resolutions the Assembly required that a State must not acquiesce "in organized activities within its territory directed towards the commission of . . . [terrorist] acts"; Tunisia, by permitting the PLO to set up an extra-territorial base for the conduct of its operations, was in direct violation of both resolutions. Israel also contended that Security Council resolution 573 (1985) distorted both the principle of self-defence and the "very concept" of aggression, not only by denying Israel the right to defend itself but also by condemning it for having done so; Israel therefore viewed the content of the resolution as unacceptable and rejected, in particular, the improper use of the terms "acts of aggression" and "acts of armed aggression".

CASE 3

The situation between Iran and Iraq

(In connection with a draft resolution prepared as a result of consultations among the members of the Council and adopted on 24 February 1986)

The underlying theme for the Council's deliberations at the 2663rd to 2666th meetings, held between 18 and 24 February 1986, was outlined in the letter⁴⁴ dated 12 February 1986 from the representative of Iraq transmitting the text of a letter signed by the members of the Committee of Seven of the Council of the League of Arab States. The Committee of Seven had requested this series of the Council's meetings in view of the situation that had arisen following the "new large-scale armed aggression" by the Islamic Republic of Iran against the sovereignty and terri-

torial integrity of Iraq in the sector east of Basra and the sector of the Shatt al-Arab, which had begun on the night of 9/10 February 1986. The Committee of Seven had further requested the Security Council to discuss those developments and to take "serious . . . measures" to put an end to the war and to resolve the conflict by peaceful means in accordance with the Charter of the United Nations and international law.

At the 2666th meeting, on 24 February 1986, the draft resolution, which had been drawn up during consultations of the Council, was voted upon and adopted unanimously as resolution 582 (1986).⁴⁵ The resolution reads in part as follows:

The Security Council,

Deeply concerned about the prolongation of the conflict between the two countries resulting in heavy losses of human lives and considerable material damage and endangering peace and security,

Recalling the provisions of the Charter and in particular the obligation of all Member States to settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered,

Emphasizing the principle of the inadmissibility of the acquisition of territory by force,

1. *Deplores* the initial acts which gave rise to the conflict between the Islamic Republic of Iran and Iraq and deplores the continuation of the conflict;

2. *Also deplores* the escalation of the conflict, especially territorial incursions, the bombing of purely civilian population centres, attacks on neutral shipping or civilian aircraft, the violation of international humanitarian law and other laws of armed conflict and, in particular, the use of chemical weapons contrary to obligations under the 1925 Geneva Protocol;

3. *Calls upon* the Islamic Republic of Iran and Iraq to observe an immediate ceasefire, a cessation of all hostilities on land, at sea and in the air and withdrawal of all forces to the internationally recognized boundaries without delay;

5. *Calls upon* both parties to submit immediately all aspects of the conflict to mediation or to any other means of peaceful settlement of disputes;

As one of the principal parties to the situation which was the subject of resolution 582 (1986), the Islamic Republic of Iran had hitherto not only declined to participate in the Council's discussions on the question but had also dissociated itself from any action that had been taken by the Council.⁴⁶ However, following the adoption of resolution 582 (1986) on the situation between Iran and Iraq, the Iranian representative transmitted to the Secretary-General the statement⁴⁷ that had been released by the Ministry of Foreign Affairs of the Islamic Republic of Iran. In the statement it was stressed that the Security Council had finally come to realize that in order to resolve the whole matter of the war, in accordance with the provisions of the Charter of the United Nations, the Security Council should

⁴²S/17659/Rev.1 (annexes), *OR*, 40th yr., *Suppl. for Oct.-Dec. 1985*.

⁴³General Assembly resolutions 3314 (XXIX), annex; and 2625 (XXV), annex.

⁴⁴S/17821 (annex), *OR*, 41st yr., *Suppl. for Jan.-March 1986*. For the Council's proceedings pursuant to this request (2663rd to 2666th mtgs., between 18 and 24 February 1986), see chap. VIII, part I, under the same heading.

⁴⁵For the vote on the draft resolution (S/17859), see chap. VIII, part II, under the same heading.

⁴⁶For background information on Iran's position, see *Repertoire, Suppl. for 1981-1984*, chap. VIII, part II, under the same heading.

⁴⁷S/17864 and Corr.1 (letter dated 25 February 1986 from the representative of the Islamic Republic of Iran), *OR*, 41st yr., *Suppl. for Jan.-March 1986*.

consider the initial aggression by Iraq. Furthermore, while the portion of resolution 582 (1986) pertaining to the issue of the war and the termination of hostilities was unbalanced and inadequate, it was nevertheless a positive step towards the condemnation of Iraq as the aggressor and a just conclusion to the war. While the resolution referred to the need for the peaceful settlement of disputes, it did not mention, however, the blatant violation of this principle by Iraq and its resort to force through launching a year of aggression against the Islamic Republic of Iran.

CASE 4

Letter dated 25 March 1986 from the representative of Malta; letter dated 25 March 1986 from the representative of the Union of Soviet Socialist Republics; letter dated 26 March 1986 from the representative of Iraq

(In connection with a draft resolution sponsored by Bulgaria and the Soviet Union, not voted upon)

During the deliberations of the Council in connection with the situation that resulted from the claims and counter-claims involving the Gulf of Sidra in the southern Mediterranean, the discussions appeared somewhat focused, not so much on the interpretation of the Charter principle contained in Article 2, paragraph 4, but rather on its application. On one side, it was stressed that under Article 2, paragraph 4, Member States had the obligation to refrain in their international relations from the threat or use of force; and that the safeguarding of any rights under international law and practice, including the right of unhindered passage in international waters, could be fully undertaken within the framework of the principles and procedures laid down in Chapter VI of the Charter. The use of force or threats for the enforcement of claims in disputed waters could not be condoned, particularly so in the context of the case before the Council whereby a Member State sought to exercise what it considered its rights in international waters thousands of miles away from its territory. It was further emphasized that article 301 of the United Nations Convention on the Law of the Sea of 1982, which embodied the norm that "States Parties shall refrain from any threat or use of force against the territorial integrity or political independence of any State", signified that contemporary law of the sea reflected "one of the basic prerequisites" of the Charter of the United Nations. On the other side, it was held that the claim by the Libyan Arab Jamahiriya to control navigation and overflight in a vast area of the Mediterranean Sea had no basis in customary practice or international law, and that the Libyan attacks against naval units of the United States of America, which had been operating in international waters in the Gulf of Sidra, had constituted a breach of Libya's obligations under Article 2, paragraph 4, in response to which the United States forces had exercised their right of self-defence under Article 51 of the Charter.⁴⁸ In view of the grave challenge to freedom of navigation in international waters which had been posed by the Libyan actions, the Security Council should reaffirm the internationally accepted freedoms of navigation and overflight and condemn the nations that resorted to force to violate those norms. Moreover, the "first shots" had been fired by the Libyans against

⁴⁸For the discussions pertaining to Article 51 of the Charter ("self-defence"), see chap. XI of the present Supplement.

aircraft operating in international airspace over the high seas and the issue before the Council was not the means used by the United States to assert the right of freedom of navigation on the high seas in the Gulf of Sidra but rather the means used by the Libyan Arab Jamahiriya to assert its illegal claim to exclusive rights in the Gulf of Sidra.⁴⁹

At the 2671st meeting, on 31 March 1986, the President drew the attention of the members of the Council to a draft resolution⁵⁰ which had been submitted by Bulgaria and the USSR. Under the draft text, which was not put to the vote, the Council would have reaffirmed the obligation of all States Members of the United Nations to refrain from the threat or use of force, in accordance with the Charter, and condemned the act of armed aggression against the Libyan Arab Jamahiriya, which had constituted a blatant violation of the Charter of the United Nations and the norms of international law.

CASE 5

Letters dated 15 April 1986 from the representatives of the Libyan Arab Jamahiriya, Burkina Faso, the Syrian Arab Republic and Oman

(In connection with a draft resolution sponsored by the Congo, Ghana, Madagascar, Trinidad and Tobago, and the United Arab Emirates, revised, voted upon and not adopted on 21 April 1986)

During the Council's deliberations in connection with the complaints about the air strikes by United States military forces against specific targets in Tripoli and Benghazi in the Libyan Arab Jamahiriya, a considerable constitutional discussion arose regarding what might be described as a delineation of the distinction or tension between what was called the "general rule" as provided by Article 2, paragraph 4, and the exception to that—"the inherent right of self-defence"—as provided in Article 51 of the Charter.⁵¹ On one side, it was maintained that the general rule was the one set forth in Article 2, paragraph 4, which stated that all Member States "shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State". The inherent right of self-defence, as an exception to the general rule, must be interpreted "narrowly rather than broadly" in order not to permit violations of the general rule on the basis of arguments that the use of force was the legitimate recourse to the right of self-defence. In the strict "legal sense", it was held, the use of force after the cessation of the aggression was no longer in self-defence but in "mere retaliation". Furthermore, in international law, the concept of "pre-emptive self-defence" did not exist since

⁴⁹For the texts of the relevant statements, see S/PV.2668: USSR, pp. 7 and 8; Malta, pp. 12-14; United States, pp. 18-22; S/PV.2669: Poland, pp. 17 and 18; United Kingdom, pp. 32, 36 and 37; S/PV.2670: Ukrainian SSR, p. 8; Libyan Arab Jamahiriya, pp. 27-31; United States (second intervention), p. 66; USSR (second and third interventions), pp. 67, 68 and 74; United Kingdom (second and third interventions), pp. 72-74; and S/PV.2671: Democratic Yemen, p. 7; Libyan Arab Jamahiriya (second intervention), pp. 36 and 38; United States (third intervention), p. 38.

⁵⁰For the text of the draft resolution (S/17954), see *OR*, 41st yr., *Suppl. for Jan.-March 1986*.

⁵¹For the discussions pertaining to Article 51 of the Charter (self-defence), see chap. XI of the present Supplement, under the same heading.

invocation of such a right could give the pretext for all imaginable acts of armed aggression in violation of Article 2, paragraph 4, of the Charter. In any case, experts in international law had recognized that combating so-called terrorist acts never justified the use of force in violation of Article 2, paragraph 4.

On the other side, it was contended that, in exercise of the inherent right of self-defence recognized in Article 51 of the Charter, United States military forces had executed a series of carefully planned air strikes against terrorist-related targets in the Libyan Arab Jamahiriya. Those targets, which were part of that country's military infrastructure such as command and control systems, intelligence communications, logistics and training facilities, were the sites that were used to carry out the country's policy of international terrorism, including ongoing attacks against United States citizens and installations. It was further argued that the Libyan Arab Jamahiriya had not contented itself with merely threatening to use force, which in itself was a violation of the Charter, but had also followed through on those threats. With reference to paragraph 3 of the revised draft resolution⁵² before the Council, it was asserted that, while the paragraph began to reflect some awareness of the nature of the problem at hand, it did so in such general terms that it conveyed no idea of the magnitude of the threat posed by the activities of terrorists in general and by Libya's flagrant violations of Article 2, paragraph 4, of the Charter in particular. Moreover, the issue before the Council dealt not with the acts of individuals or groups, but rather with a State policy to use force by clandestine means. While terrorism could be attempted by any small group of determined or fanatical individuals, it did not require advanced technology or the resources of a large country and it was an even greater danger if it was backed by a State, such as the Libyan Arab Jamahiriya, in flagrant violation of Article 2, paragraph 4, of the Charter. Finally, the principles which the whole international community had accepted and which ought to be brought to the attention of the Libyan Arab Jamahiriya were those embodied in General Assembly resolution 40/61 of 9 December 1985,⁵³ calling upon all States "to fulfil their obligations under international law to refrain from organizing, instigating, assisting or participating in terrorist acts in other States, or acquiescing in activities within their territory directed towards the commission of such acts".⁵⁴

At the 2682nd meeting, held on 21 April 1986, the five-Power revised draft resolution was voted upon and not adopted owing to the negative vote of a permanent member.⁵⁵ Under

a preambular paragraph of the revised draft text, the Council would have recalled, *inter alia*, the Definition of Aggression.⁵⁶ Under the operative part of the revised draft resolution, the Council would have condemned the armed attack by the United States of America, condemned all terrorist activities, whether perpetrated by individuals, groups or States, and called upon all parties to refrain from resorting to force.

CASE 6

Letter dated 5 July 1988 from the representative of the Islamic Republic of Iran

(In connection with a draft resolution prepared in the course of the Council's consultations, voted upon and adopted on 20 July 1988)

During the Council's deliberations in connection with the incident in which a civilian airliner of Iran Air flight 655 was destroyed on 3 July 1988 by United States naval forces in the area of the Persian Gulf, considerable constitutional discussion arose regarding the interpretation of the provisions of Article 2, paragraph 4, of the Charter. It was held that, according to Article 2, paragraph 4, all Member States should refrain in their international relations not only from the threat or use of force against the territorial integrity or political independence of any State, but also from any measure that might endanger international peace and security. Therefore, the destruction of Iran Air flight 655 and the loss of life of 290 passengers and crew aboard the civil airliner in the airspace of the Islamic Republic of Iran and in the internationally established Amber 59 airway was a clear violation of the principle of non-use of force in international relations as well as a manifestation of disregard for the inviolability of the territorial integrity of a State Member of the United Nations. Moreover, the act of shooting down the civil airliner was a typical example of aggression, as had been stipulated in article 3 (b) of the 1974 Definition of Aggression,⁵⁶ according to which the use of armed force by a State against the territorial integrity of another State was considered an act of aggression. Paragraph 4 of General Assembly resolution 3314 (XXIX) provided that that Definition in accordance with the Charter of the United Nations. Furthermore, the United States action was a violation of the 1944 Chicago Convention⁵⁷ which guaranteed the safety and regularity of international civil aviation including the safety of passengers and crew. Annex II to the Chicago Convention enjoyed universal acceptance as it underlined the imperative of safeguarding international civil aviation, particularly the "absolute prohibition" of recourse to force against it. Despite the clarity of relevant rules, the Council and the General Assembly of the International Civil Aviation Organization (ICAO) had further studied the issue and had suggested measures to promote the existing rules and regulations in order to prevent any possible misinterpretation of the customary international law protecting civil aviation. The result of those efforts by ICAO had been the adoption by consensus of an additional amendment in the form of a separate protocol at an extraordinary session of the General Assembly of ICAO on 10 May 1984. Para-

⁵²For the full text of revised draft resolution S/18016/Rev.1, see *OR, 41st yr., Suppl. for April-June 1986*.

⁵³General Assembly resolution 40/61, para. 6.

⁵⁴For the texts of the relevant statements, see S/PV.2674: Libyan Arab Jamahiriya, pp. 7-12; United States, pp. 13-19; S/PV.2675: Bulgaria, p. 33; S/PV.2676: Ukrainian SSR, p. 14; Australia, p. 18; S/PV.2677: Qatar, pp. 5-10; Hungary, p. 32; Viet Nam, p. 36; Libyan Arab Jamahiriya (second intervention), pp. 50 and 51; S/PV.2678: Sudan, pp. 27-31; S/PV.2679: United Kingdom, pp. 14-16 and 26-31; S/PV.2680: Nicaragua, p. 48; S/PV.2682: United States (third intervention), pp. 26-31; Australia (second intervention), pp. 33 and 34; S/PV.2683: United States (fourth intervention), pp. 45 and 46; United Kingdom (second intervention), pp. 56-58. See also S/17990 (letter dated 14 April 1986 from the representative of the United States of America), *OR, 41st yr., Suppl. for April-June 1986*.

⁵⁵For the text of the revised draft resolution (S/18016/Rev.1), see note 52, above; for the vote on the revised draft resolution, see S/PV.2682, p. 43. See also chap. VIII, under the same heading.

⁵⁶General Assembly resolution 3314 (XXIX), annex.

⁵⁷United Nations, *Treaty Series*, vol. 15, No. 102.

graph 1 of the "new article" of that Protocol had stated: "The contracting States recognize that every State must refrain from resorting to the use of weapons against civil aircraft in flight and that, in case of interception, the lives of persons on board and the safety of aircraft must not be endangered." Furthermore, under Article 51,⁵⁸ the Charter of the United Nations recognized that acts of self-defence could be initiated only in response to prior armed attack, and not in response to other breaches of international law. Pre-emptive measures before the occurrence of an armed attack could not be justified as acts of self-defence; such measures could rather be considered only as a breach of the principle of the non-use of force in international relations.⁵⁹

At the 2821st meeting, on 20 July 1988, the draft resolution which had been prepared in the course of the Coun-

cil's consultations was voted upon and adopted unanimously as resolution 616 (1988).⁶⁰ The resolution reads in part as follows:

The Security Council,

...
Deeply distressed that a civil aircraft of Iran Air—scheduled international flight 655—was destroyed in flight over the Strait of Hormuz by a missile fired from the United States warship USS Vincennes,

...
 4. *Urges* all parties to the Convention on International Civil Aviation, signed at Chicago in 1944, to observe to the fullest extent, in all circumstances, the international rules and practices concerning the safety of civil aviation, in particular those of the annexes to that Convention, in order to prevent the recurrence of incidents of the same nature;

...

⁵⁸For discussion pertaining to Article 51 of the Charter (self-defence), see chap. XI of the present *Supplement*, under the same heading.

⁵⁹For the text of the relevant statements, see S/PV.2818: Islamic Republic of Iran, pp. 32-38. For the counter-arguments, which seemed primarily focused on the need to settle the wider conflict in the area between the Islamic Republic of Iran and Iraq on the basis

of a full and rapid implementation of Security Council resolution 598 (1987) of 20 July 1987, see chap. VIII, part II, under the same heading. See also part IV of this chapter for the consideration regarding implementation of Council resolution 598 (1987) (Article 25 of the Charter).

⁶⁰For the vote on the draft resolution (S/20038), see 2821st mtg. (PV), pp. 10 and 11.

****B. Article 2, paragraph 5**

C. Article 2, paragraph 6

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

NOTE

During the period under review, there was no constitutional discussion that arose in connection with Article 2, paragraph 6, of the Charter. In one instance, in connection with the question of South Africa, the resolution⁶¹ adopted by the Council contained provisions that might be construed as implicit reference to the principle in paragraph 6 of Article 2. The Council also considered one draft resolution,⁶² in connection with the situation in Namibia, which was voted upon but not adopted. The draft resolution explicitly referred to "the principles stated in Article 2 of the Charter" as a whole, but specifically urged States not Members of the United Nations "to act in accordance with the provisions" of the draft text. There were no explicit references to the Charter provisions of Article 2, paragraph 6, during the Council's deliberations.

D. Article 2, paragraph 7

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

⁶¹Resolution 591 (1986), para. 12.

⁶²S/17631, revised and reissued as S/17633, OR, 40th yr., *Suppl. for Oct.-Dec. 1986*.

NOTE

During the period under review, none of the resolutions adopted by the Council contained an explicit reference to Article 2, paragraph 7, of the Charter. In one instance, however, in connection with the letter dated 6 May 1985 from

the representative of Nicaragua, in the resolution⁶³ adopted by the Security Council recalled, *inter alia*: (a) General

⁶³Resolution 562 (1985), respectively, fourth and sixth preambular paragraphs.

Assembly resolution 38/10 of 11 November 1983, in which the Assembly reaffirmed the inalienable right of all the peoples to decide on their own form of government and to choose their own economic, political and social system "free from all foreign intervention, coercion or limitation"; and (b) General Assembly resolution 2625 (XXV),⁶⁴ which proclaimed the principle 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". Furthermore, the same resolution of the Council⁶⁵ contained another implicit reference to the provisions of Article 2, paragraph 7, where it reaffirmed the sovereignty and inalienable rights of States freely to decide their own political, economic and social systems and to develop their international relations "free from outside interference, subversion, direct or indirect coercion or threats of any kind". The Council also considered two draft resolutions⁶⁶ which contained implicit references to Article 2, paragraph 7, but were either not put to the vote or were voted upon and not adopted. Under one of the draft resolutions,⁶⁷ the Council would have, *inter alia*, regretted the trade embargo and other coercive economic measures as "inconsistent with the principle of non-interference in the internal affairs of States" and called for an immediate end to those measures.

The significance of the Charter provision regarding the principle of non-interference in domestic affairs was also reflected on a number of occasions in the proceedings of the Council. In one instance, after the adoption of Security Council resolution 569 (1985) and a statement⁶⁸ by the President on behalf of the members of the Council in connection with the question of South Africa, demanding the lifting of the state of emergency in the 36 districts in which it had been imposed and calling upon the South African Government to set free all political prisoners and detainees, the principle of non-interference in internal affairs was implicitly invoked by the representative of South Africa in a letter⁶⁹ addressed to the United Nations. In it the South African Government rejected both the resolution and the statement by the President of the Council as "illegal and unacceptable", inasmuch as they violated the principle of non-interference in the internal affairs of a Member State, as enshrined in the Charter of the United Nations. Furthermore, it was held, the resolution and the presidential statement set a "dangerous precedent" whereby the Council purported to prescribe to a sovereign State a particular course of domestic action.

⁶⁴General Assembly resolution 2625 (XXV), annex, entitled "Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations".

⁶⁵Resolution 562 (1985), para. 1.

⁶⁶S/17172, in connection with the letter dated 6 May 1985 from the representative of Nicaragua, para. 1, voted upon but not adopted, owing to a negative vote by a permanent member of the Council, during a separate vote on each paragraph, *OR, 40th yr., Suppl. for April-June 1985*; and S/17522, in connection with the complaint by Angola against South Africa, fourth preambular para. and para. 4, not voted upon, *ibid., Suppl. for Oct.-Dec. 1985*. See also case 7 below.

⁶⁷S/17172 (see note 66 above), para. 1. See also chap. VIII, part II, under the same heading.

⁶⁸S/17413; see S/PV.2603. See also *OR, 40th yr., Resolutions and Decisions of the Security Council, 1985*, p. 9.

⁶⁹S/17426, *OR, 40th yr., Suppl. for June-August 1985*.

In another instance, also in connection with the Council's consideration of the question of South Africa, the principle of non-interference in internal matters of States was frequently invoked implicitly. On the one hand, it was often argued that the Council's meeting to consider the subject matter was an abuse of the powers of the Security Council, the convening of which had been irregular and in contravention of the Charter of the United Nations, which "clearly and unambiguously" precluded intervention in the domestic affairs of a Member State. On the other hand, while it was conceded that under both the Charter of the United Nations and the Charter of the Organization of African Unity (OAU), as well as international law, no State—and much less the United Nations—had any right "to interfere or intervene" in the internal affairs of another State "except under restricted circumstances", it was maintained that apartheid had been rejected and declared "a crime against humanity" and therefore any acts of commission or omission in the furtherance of apartheid were not and could not be an internal matter for South Africa.⁷⁰

During the Council's deliberation on the complaint by Angola against South Africa, Article 2, paragraph 7, was implicitly invoked giving rise to what might be described as a constitutional discussion which is included in case 7 below.

Article 2, paragraph 7, was referred to both explicitly and implicitly in a number of other instances during the Council's deliberations,⁷¹ and in several communications⁷² from Member States addressed to the United Nations.

CASE 7

Complaint by Angola against South Africa

(In connection with a draft resolution submitted by South Africa, not voted upon)

In the course of the deliberations of the Council on Angola's complaint⁷³ of aggression by South Africa, the representative of South Africa contended that the Soviet Union and Cuba had expanded their role in the "civil war" in Angola by taking advantage of Security Council resolution 571 (1985),⁷⁴ particularly paragraph 5 thereof, in

⁷⁰For the texts of the relevant statements, see S/PV.2571: South Africa, p. 62; S/PV.2600: France, p. 7; Australia, p. 21; South Africa, p. 38; Kenya, pp. 86 and 87; and S/PV.2732: South Africa, p. 21; and Angola, p. 24.

⁷¹In connection with the situation in the Middle East, S/PV.2582; Lebanon, p. 12; Syrian Arab Republic, p. 36 (explicit); in connection with the situation in southern Africa, S/PV.2652: Togo, pp. 12 and 13; Sudan, p. 41; S/PV.2654: Zimbabwe, pp. 16 and 17; S/PV.2657: United Republic of Tanzania, pp. 7 and 8; Denmark, pp. 28 and 29; S/PV.2658: Algeria, p. 9; Islamic Republic of Iran, pp. 41 and 42; and S/PV.2660: Egypt, p. 12; in connection with the complaint by Angola against South Africa, S/PV.2691: South Africa, pp. 22-25; and S/PV.2693: Ghana, p. 31.

⁷²S/17656 (letter dated 27 November 1985 from the representative of India), *OR, 40th yr., Suppl. for Oct.-Dec. 1985*; S/17779 (letter dated 30 January 1986 from the representative of India), *OR, 41st yr., Suppl. for Jan.-March 1986*; S/17921 (letter dated 14 March 1986 from the representatives of Angola, Cuba and the USSR), *ibid.*; S/17931 (letter dated 18 March 1986 from the representative of Angola), *ibid.*; S/17975 (letter dated 7 April 1986 from the representative of Ghana), *ibid., Suppl. April-June 1986*; and S/19240 (letter dated 29 October 1987 from the representative of South Africa), *OR, 42nd yr., Suppl. for Oct.-Dec. 1987*.

⁷³S/17510 (letter dated 1 October 1985 from the representative of Angola), *OR, 40th yr., Suppl. for Oct.-Dec. 1985*.

⁷⁴For the Council's proceedings in connection with the adoption of resolution 571 (1985), see chapter VIII, part II, under the same heading.

which the Council had requested Member States to extend all necessary assistance to the "MPLA regime" in Luanda. After suggesting that, if the Council wished to discover what support the União Nacional para a Independência Total de Angola (UNITA) enjoyed in Angola, the Council should send a fact-finding mission to southern Angola, he challenged the MPLA Government of the People's Republic of Angola to hold free elections and to allow the people of Angola to determine their future by peaceful means rather than by destroying one another in an endless civil war which had been instigated by foreign Powers. If the MPLA chose to continue the civil war, there was no reason why it should be the only party entitled to call on assistance; the United States Congress, by repealing the Clark Amendment, had already recognized the admissibility of aiding UNITA. Furthermore, South Africa was committed to peace and stability in southern Africa, but this could not be achieved while foreign interests dictated developments in the subcontinent and while foreign Powers "abused" the countries of southern Africa for the furtherance of global aims.⁷⁵ At the 2614th meeting of the Council, on 4 October 1985, the President of the Council drew the attention of the Members to a draft resolution⁷⁶ submitted by South

Africa. Under the fourth preambular paragraph of the draft resolution, the Council would have declared itself "conscious" of the need and desire of the Angolan people to determine their own future free from any foreign interference. Under operative paragraph 3, the Council would have requested the "various factions" within Angola to settle their differences through peaceful negotiation and in a spirit of national reconciliation. And, under operative paragraph 4 of the draft text, the Council would have requested Member States to refrain from intervening in the domestic affairs of Angola so that self-determination could at last be achieved in that country. However, the draft resolution, which had been submitted by South Africa under rule 38 of the provisional rules of procedure of the Security Council, was not put to a vote.⁷⁷

On the other hand, it was held, with reference to the same draft resolution submitted by South Africa, that the Council dealt with issues affecting international peace and security, which were brought before it in accordance with Articles 34 and 35⁷⁸ of the Charter, and that domestic and national issues were neither the concern of the Security Council nor did they involve anyone outside the borders of Angola.⁷⁹

⁷⁵S/PV.2612: South Africa, pp. 11-13.

⁷⁶S/17522, OR, 40th yr., Suppl. for Oct.-Dec. 1985.

⁷⁷S/PV.2612, p. 16.

⁷⁸For the discussion pertaining to Articles 34 and 35 of the Charter, see chap. X of the present *Supplement*.

⁷⁹S/PV.2617: Angola, pp. 55 and 56.

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 primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

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

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

NOTE

During the period under review, none of the resolutions adopted by the Council contained an explicit reference to Article 24 of the Charter. However, the Charter provision by which the Members conferred on the Security Council primary responsibility for the maintenance of international peace and security was reflected in a number of the decisions and on several occasions in the proceedings of the Council. On one occasion, in connection with a statement made by the President (United Kingdom) on behalf of the members of the Council, the deliberations on the item entitled "United Nations for a better world and the responsibility of the Security Council in maintaining international peace and security" gave rise to what might be viewed as

considerable constitutional discussion regarding Article 24 of the Charter, which is included in case history 8 below.

In connection with the situation in Namibia, the Council adopted resolution 566 (1985) of 19 June 1985, which contained what might be construed as an implicit reference to Article 24 in its preambular part.⁸⁰ The consideration and adoption of that resolution, however, did not give rise to a constitutional discussion.

In another instance, in connection with the situation in the Middle East, the Council adopted resolution 587 (1986) of 23 September 1986, which contained an implicit

⁸⁰Resolution 566 (1985), ninth preambular para.

reference to Article 24 in its preambular part,⁸¹ also without giving rise to a constitutional discussion.

In a third instance, in connection with the situation between Iran and Iraq, the Council adopted resolution 588 (1986) of 8 October 1986, which contained a distinct, albeit implicit, reference to Article 24 in its preambular part.⁸² However, the consideration and adoption of that resolution gave rise to no constitutional discussion.

In a fourth instance, in connection with the question of South Africa, the Council adopted resolution 591 (1986) of 28 November 1986, which implicitly referred to Article 24 in its preambular part.⁸³ However, the consideration and adoption of that resolution did not give rise to a constitutional discussion.

A number of statements⁸⁴ were made by the President, on behalf of the members of the Council, containing implicit references to Article 24. One of these instances was occasioned by the fortieth anniversary of the first meeting of the Security Council and the inauguration on 1 January 1986 of the International Year of Peace. Prior to the adoption of the agenda for the 2642nd meeting,⁸⁵ on 17 January 1986, the President stated that the members of the Security Council wished to reaffirm their commitment to the Charter of the United Nations, which had conferred upon the Council the primary responsibility for the maintenance of international peace and security. He further stated that, at the first meeting of the Council in London 40 years earlier, the members had assumed the special responsibility in the conviction that it would prove a new beginning of the continuing quest for lasting peace and security.⁸⁶

During the period under review, there were a number of explicit references to Article 24 during the course of the deliberations of the Council, but no constitutional discussion ensued in nearly all those instances.⁸⁷

⁸¹Resolution 587 (1986), tenth preambular para.

⁸²Resolution 588 (1986), sixth preambular para.

⁸³Resolution 591 (1986), tenth preambular para.

⁸⁴In connection with the situation in Namibia: S/17151, *OR*, 40th yr., *Resolutions and Decisions of the Security Council*, 1985; S/19068, *OR*, 42nd yr., *Resolutions and Decisions of the Security Council*, 1987; S/20208, *OR*, 43rd yr., *Resolutions and Decisions of the Security Council*, 1988; in connection with the United Nations for a better world and the responsibility of the Security Council in maintaining international peace and security: S/17501, *OR*, 40th yr., *Resolutions and Decisions of the Security Council*, 1985 (see also case 7); in connection with the fortieth anniversary of the first meeting of the Security Council and the inauguration on 1 January 1986 of the International Year of Peace: S/17745, *OR*, 41st yr., *Resolutions and Decisions of the Security Council*, 1986; and in connection with the situation between Iran and Iraq: S/18610, *OR*, 42nd yr., *Resolutions and Decisions of the Security Council*, 1987.

⁸⁵The agenda for the 2642nd meeting, held on 17 January 1986, was: the situation in the Middle East.

⁸⁶For the full text of the presidential statement, see S/17745, *OR*, 41st yr., *Resolutions and Decisions of the Security Council*, 1986; see also note 84 above.

⁸⁷In connection with the complaint by Angola against South Africa, see S/PV.2606: Angola, p. 12; S/PV.2765: Zambia, pp. 13 and 16; in connection with the United Nations for a better world and the responsibility of the Security Council in maintaining international peace and security, see S/PV.2608: Ukrainian SSR, p. 23; the President (United Kingdom), p. 121, in connection with the situation between Iran and Iraq, see S/PV.2663: Iraq, p. 36; S/PV.2709: Iraq, p. 18; in connection with letters dated 15 April 1986 from, respectively, the Libyan Arab Jamahiriya, Burkina Faso, the Syrian Arab Republic and Oman, see S/PV.2680: Byelorussian SSR, p. 6; in connection with the letter dated 27 June 1986 from Nicaragua, see S/PV.2698: Guyana, p. 14; and in connection with the letter dated 11 March 1988 from Argentina, see S/PV.2800: Costa Rica, p. 58. Implicit references to Article 24 are too numerous to be listed here.

During the Council's consideration of the situation between Iran and Iraq, Article 24 of the Charter was invoked implicitly and in a manner that might be considered to have given rise to what might be described as a constitutional discussion. On the one hand, it was contended by the representative of the Libyan Arab Jamahiriya that, as a result of "the stalemate" in the Security Council, many peoples and countries including his own were no longer looking to the Council as a body capable of accomplishing its task; that they had lost confidence in and respect for the Council; and that they had lost hope that the Council would play its role in maintaining international peace and security. On the other hand, the representatives of France, the United Kingdom and the United States maintained that the Council could not accept a situation in which representatives of Member States spoke in a way that contradicted the commitments their Governments fully and freely had undertaken in adhering to the Charter of the United Nations. The representative of the United Kingdom further submitted, without pretending that the Council was a court of law, that a court of law was protected by rules about contempt of court; that a parliament was protected by rules about contempt of parliament; and that the Council should build up a body of practice which protected it against "contempt of Council". As the central body in the eyes of the world dealing with great international issues of peace and security, the Council should insist—whatever the political problems before it—that the problems should be dealt with in a mannerly, orderly and respectful way.⁸⁸

On another occasion, when the Council considered the complaint by Angola against South Africa, the representative of Ghana, while introducing a draft resolution,⁸⁹ stated that the delegations which had participated in the debate had all acknowledged that South Africa's aggressive policies could, if unchecked, undermine the very foundations of the Charter; and that it had also been reaffirmed that the Council had a clear obligation to preserve "the principle of civilized behaviour" in international relations.⁹⁰

In one instance, during the Council's deliberations on the letter dated 11 March 1988 from the representative of Argentina, the observation was made that, in principle, the Security Council was not the most appropriate forum for a discussion of military exercises per se.⁹¹

Article 24, paragraph 3, was explicitly referred to in a note⁹² by the President of the Security Council on behalf of its members, regarding a decision of the Council to further change the format of the Council's annual report to the General Assembly.

⁸⁸For the texts of the relevant statements, see S/PV.2665: Libyan Arab Jamahiriya, pp. 37 and 38; United States, p. 41; and S/PV.2666 (before the adoption of the agenda): France, pp. 2-5; and United Kingdom, p. 6.

⁸⁹Draft resolution S/19291 sponsored by Argentina, the Congo, Ghana, the United Arab Emirates and Zambia, subsequently adopted as resolution 602 (1987) of 25 November 1987.

⁹⁰S/PV.2767: Ghana, pp. 24 and 25.

⁹¹S/PV.2801: United States, p. 48.

⁹²S/16913 (note dated 29 January 1985 by the President of the Council on behalf of its members, concerning the format of the annual report of the Council to the General Assembly), *OR*, 40th yr., *Resolutions and Decisions of the Security Council*, 1985.

CASE 8

United Nations for a better world and the responsibility of the Security Council in maintaining international peace and security

(In connection with the statement made by the President, on behalf of the members of the Council, on 26 September 1985)

During the Council's discussion at the commemorative meeting⁹³ on the fortieth anniversary of the United Nations, all the speakers were unanimous in emphasizing the significance of the Council's responsibility in maintaining international peace and security, but the reflections on its performance over the past four decades appeared diverse and embraced a broad range of proposals on ways and means of strengthening its effectiveness in fulfilling the primary role conferred upon it under Article 24 of the Charter. It was recalled from a statement at the Council's first meeting in 1946 that the responsibility of the Security Council was not to create the conditions for peace—a task for other bodies of the United Nations system—but to see that peace was kept in fact; this, it was said, remained to be the contribution required from the Security Council for a better world. All the speakers stressed, in varying degrees, that it was essential for the international community to have in the Security Council a just, effective and determined guardian of the peace which it could respect and rely upon. On the one hand, it was stated that the strength of the Organization depended upon the balance between the Security Council and the General Assembly. Furthermore, the Security Council was more action-oriented at the behest of the Charter and by virtue of its composition and the rules governing its procedures, while the deliberative function of the General Assembly was "dominated" by the principles of universality and equal voting rights; and any weakening of the Council endangered that balance and was therefore prejudicial to the effectiveness and credibility of the Organization. Maintaining international peace and security was the "first purpose" of the United Nations, and the primary responsibility for that was conferred upon the Security Council which, through its composition and its operating rules, remained the organ best suited for the exercise of that responsibility. Thus, institutional reforms were not the path to take and that what was lacking was not the means or tools but rather the political will.

On the other hand, it was stated that the Charter of the United Nations had been conceived in another era and those who had drawn up the Charter had made it forward-looking in order to ensure its dynamism and effectiveness. It was therefore in the interest of all nations to be certain that the Charter, as the history of nations in movement and not "a remnant of history", was capable of transforming itself the better to deal with developing concerns. If the Security Council had so far been only marginally effective,

that was because some of its structures were "somewhat out of step" with the course of history; and therefore the Council could fully discharge its primary responsibility for the maintenance of international peace and security only if certain of its structures were reformed constructively. One such reform was the enlargement of the Council's membership for the same reasons that had prevailed in 1963 when Article 23 was amended to increase the membership of the Council from 11 to 15. Another area that needed review and rectification was the "right to veto", which no longer accorded with collective expectations and which, conceivably, could be allocated according to "geographical distribution" among the members of the Security Council. Furthermore, many speakers stressed that, for the Council to fulfil its role as the organ entrusted with the primary responsibility for the maintenance of international peace and security, the Council should: (a) strengthen its preventive capacity either through an agreed procedure for fact-finding under Article 34 or by authorizing the Secretary-General to gather information by all means to enable him to exercise his authority under Article 99 of the Charter; (b) hold regular periodic meetings under Article 28, paragraph 2, of the Charter; (c) address itself to the crucial issue of the regulation of armaments, in which the Council was given a "leading role" under Article 26 of the Charter; and (d) ensure implementation of its resolutions by means of enforcement measures under Chapter VII of the Charter.⁹⁴

At the conclusion of the 2608th meeting, held on 26 September 1985 at the level of Foreign Ministers, to celebrate the fortieth anniversary of the Organization, the President of the Council (United Kingdom) made a statement⁹⁵ on behalf of the members of the Council. The statement reads in part as follows:

...
The members of the Council were cognizant of the primary responsibility for the maintenance of international peace and security conferred by the Charter on the Security Council and of the special rights and responsibilities of its permanent members. They stressed that a collegial approach within the Council was desirable to facilitate considered and concerted action by the Council as the main instrument for international peace. They acknowledged that the high hopes placed in the Organization by the international community had not been fully met and undertook to fulfil their individual and collective responsibility for the prevention and removal of threats to the peace with renewed dedication and determination. They agreed to employ appropriate measures available under the Charter when considering international disputes, threats to the peace, breaches of the peace and acts of aggression. They recognized the valuable contribution made on many occasions by the United Nations peacekeeping forces. They called again upon the entire membership of the United Nations to abide by their obligations under the Charter to accept and carry out decisions of the Security Council.

⁹⁴For the text of the relevant statements, see S/PV.2608, pp. 7-11 (the Secretary-General); pp. 18 and 19 (USSR); pp. 23 and 24 (Ukrainian SSR); pp. 27, 28 and 32-34 (Trinidad and Tobago); pp. 41 and 42 (Thailand); pp. 50-53 (Peru); pp. 58-61 (Madagascar); pp. 65-68 (India); pp. 71-74 (France); pp. 81-86 (Egypt); pp. 90-91 (Denmark); pp. 95-97 (China); pp. 104-107 (Burkina Faso); p. 112 (Australia); p. 117 (United States); and pp. 121-123 (President, United Kingdom).

⁹⁵For the full text of the presidential statement, see S/17501, *OR*, 40th yr., *Resolutions and Decisions of the Security Council, 1985*. Also incorporated in the records of the 2608th mtg., held on 26 September 1985 (see S/PV.2608). See also chap. VIII, part II, under the same heading.

⁹³For the decision to hold a commemorative meeting of the Council at the level of Foreign Ministers and for the formulation of the agenda for that meeting, see chap. VIII, part II, under the same heading.

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, none of the resolutions adopted by the Council explicitly invoked Article 25 of the Charter. However, Article 25 was explicitly referred to in two draft resolutions, both of which were voted upon and not adopted.⁹⁶

Several resolutions⁹⁷ and two draft resolutions,⁹⁸ which were voted upon and not adopted, contained paragraphs that might be construed as implicit references to Article 25. There were also a number of statements⁹⁹ by the President, on behalf of the members of the Council, which contained passages that might be considered as implicit references to Article 25, often calling upon parties concerned or upon the entire membership of the United Nations to abide by their obligations to accept and carry out decisions of the Security Council.

During the debates in the Council, there were explicit references to Article 25, usually in connection with decisions previously taken by the Council.¹⁰⁰ Nevertheless, there was no occasion whereby the Council engaged in any constitutional discussion concerning Article 25 that went beyond upholding long-established views about its significance, interpretation and application.

⁹⁶In connection with the situation in Namibia, draft resolution S/17631, revised and replaced by S/17633, twelfth preambular para. and para. 9, *OR, 40th yr., Suppl. for Oct.-Dec. 1985*; also in connection with the situation in Namibia, draft resolution S/18785, seventeenth preambular para. and para. 9, *OR, 42nd yr., Suppl. for April-June 1987*; both voted upon and not adopted owing to the negative vote of a permanent member.

⁹⁷In connection with the situation in the Middle East, including the situation in the occupied Arab territories, resolutions 563 (1985), para. (a); 564 (1985), para. 4; 576 (1985), para. (a); 584 (1986), para. (a); 590 (1986), para. (a); 596 (1987), para. (a); 603 (1987), para. (a); 613 (1988), para. (a); 624 (1988), para. (a); in connection with the situation in Namibia, resolutions 566 (1985), paras. 3, 9 and 12; and 601 (1987), para. 1; in connection with the complaint by Angola, resolution 571 (1985), para. 4; in connection with the situation between Iran and Iraq, resolutions 588 (1986), para. 1; and 598 (1987), paras. 4 and 5; in connection with the question of South Africa, resolution 591 (1986), paras. 10, 11 and 12; in connection with the letter dated 19 April 1988 from Tunisia, resolution 611 (1988), para. 3; and in connection with the letter dated 5 July 1988 from the Islamic Republic of Iran, resolution 616 (1988), para. 5.

⁹⁸In connection with the situation in the Middle East, S/19434, para. 4, *OR, 43rd yr., Suppl. for Jan.-March 1988*; and S/20322, paras. 4 and 5, *ibid., Suppl. for Oct.-Dec. 1988*; both draft resolutions voted upon and not adopted owing to a negative vote by a permanent member.

⁹⁹In connection with the question of South Africa: S/17413, para. 2, statement dated 21 August 1985 by the President on behalf of the Council (*OR, 40th yr., Resolutions and Decisions of the Security Council, 1985*); in connection with the agenda item entitled "United Nations for a better world and the responsibility of the Security Council in maintaining international peace and security" (fortieth anniversary of the United Nations): S/17501, para. 5, statement dated 26 September 1985 by the President on behalf of the Council (*ibid.*); S/17745, para. 2, statement dated 17 January 1986 by the President on the occasion of the fortieth anniversary of the first meeting of the Security Council and the inauguration on 1 January 1986 of the International Year of Peace (*OR, 41st yr., Resolutions and Decisions of the Security Council, 1986*); in connection with the situation between Iran and Iraq: S/17932, para. 6, statement dated 21 March 1986 by the President on behalf of the Council (*ibid.*); S/18538, para. 2 (*ibid.*); S/19382, paras. 1, 2 and 5, statement dated 24 December 1987 by the President on behalf of the Council (*OR, 42nd yr., Resolutions and Decisions of the Security Council, 1987*); and S/19626, paras. 4, 7 and 9, statement dated 16 March 1988 by the President on behalf of the Council (*OR, 43rd yr., Resolutions and Decisions of the Security Council, 1988*); and in connection with the situation in Namibia: S/19068, para. 6, statement dated 21 August 1987 by the President on behalf of the Council (*OR, 42nd yr., Resolutions and Decisions of the Security Council, 1987*); and S/20208, statement dated 29 September 1988 by the President on behalf of the Council (*OR, 43rd yr., Resolutions and Decisions of the Security Council, 1988*).

¹⁰⁰In connection with the complaint by Angola against South Africa, S/PV.2606: Angola, p. 12; in connection with the letter dated 1 October 1985 from Tunisia, S/PV.2611: USSR, p. 37; in connection with the situation in southern Africa, S/PV.2658: Ghana, pp. 29-30; in connection with the situation between Iran and Iraq, S/PV.2663: Iraq, pp. 26 and 37; S/PV.2664: Jordan, pp. 8-10; S/PV.2666: France, p. 38; in connection with the situation in Namibia, S/PV.2743: Pakistan, p. 71; and in connection with the situation in the occupied Arab territories, S/PV.2786: PLO, p. 7 (language of Article 25).

Article 25 was implicitly invoked in three communications¹⁰¹ from Member States addressed to the United Nations, often in the context of urging or calling upon the Council to take appropriate measures under the Charter with a view to ensuring compliance with previously adopted resolutions of the Council.

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 this Article applies to any State which during the Second World War has been an enemy of any signatory of the present Charter."

Article 54

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

¹⁰¹S/17009, *OR*, 40th yr., *Suppl. for Jan.-March 1985* (letter from India to the Secretary-General); S/17114, *ibid.*, *Suppl. for April-June 1985* (letter from India to the President of the Council); S/17141, *ibid.* (letter from USSR to the Secretary-General); and S/20227, *OR*, 43rd yr., *Suppl. for Oct.-Dec. 1988* (letter from Zimbabwe to the Secretary-General)

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 Council was drawn during the period from 1985 to 1988 to the following communications, which were circulated by the Secretary-General to the representatives on the Council, but were not included in the provisional agenda.

**A. COMMUNICATIONS FROM THE SECRETARY-GENERAL OF THE ORGANIZATION OF AFRICAN UNITY

**B. COMMUNICATIONS FROM THE SECRETARY-GENERAL OF THE ORGANIZATION OF AMERICAN STATES

C. COMMUNICATIONS FROM STATES PARTIES TO DISPUTES OR SITUATIONS

- (i) Dated 31 May 1985: Argentina, transmitting the text of the resolution adopted on 30 May by the Permanent Council of OAS, concerning the situation in the region of the Falkland Islands (Islas Malvinas).¹⁰²
- (ii) Dated 20 September 1985: Somalia, charging that Ethiopia attacked, by air and land forces, populated areas of Somalia on 15 and 16 September 1985 and that Ethiopia would be responsible for the consequences that might follow.¹⁰³
- (iii) Dated 25 September 1985: Ethiopia, rejecting the charges by Somalia as a baseless manoeuvre to divert world attention from its internal civil war; and pointing out that only adherence to the principles of the Charter of the United Nations and the Charter of the Organization of African Unity could enhance international and regional security.¹⁰⁴
- (iv) Dated 14 February 1986: Chad, charging that the Libyan Arab Jamahiriya had committed further acts of aggression against Chad, that it had occupied Chadian territory in violation of the Charters of OAU and the Charter of the United Nations, and informing that Chad had requested the Secretary-General of OAU to include the question of the conflict between Chad and the Libyan Arab Jamahiriya in the agenda of the next meeting of the OAU Council of Ministers.¹⁰⁵
- (v) Dated 18 February 1986: Chad, describing the war situation that the Libyan Arab Jamahiriya had imposed upon Chad in violation of the resolutions and declarations adopted by OAU and the United Nations on the dispute between Chad and Libya; and informing that Chad had exercised its right under Article 51, and that the aggression had been repelled with military intervention by France alongside Chadian forces.¹⁰⁶
- (vi) Dated 13 November 1986: Argentina, transmitting the text of a resolution adopted on 11 November 1986 by the Permanent Council of OAS regarding the Declaration on fisheries in the south-west Atlantic issued by the Government of the United Kingdom on 29 October 1986.¹⁰⁷
- (vii) Dated 21 November 1986: The United Kingdom, offering an explanation about the nature and extent of the declaration of 29 October by the United Kingdom regarding the fishery limits to which the Falkland Islands were entitled under international law.¹⁰⁸

- (viii) Dated 12 November 1987: Chile, asserting that there was no territorial or boundary problem pending between Bolivia and Chile as claimed by Bolivia in the documents of the General Assembly (A/42/348 and A/42/662).¹⁰⁹
- (ix) Dated 26 November 1987: Bolivia, emphasizing that the American and international communities were convinced that a serious problem existed between Bolivia and Chile and that, since 1979, OAS had been adopting resolutions reiterating that it was in the interests of the hemisphere to find an equitable solution which would give Bolivia "sovereign and effective" access to the Pacific Ocean.¹¹⁰
- (x) Dated 27 November 1987: Chad, conveying the text of a message dated 25 November 1987 from the President of the Republic of Chad addressed to the Chairman of the Ad Hoc Committee of the OAU, concerning the dispute between Chad and the Libyan Arab Jamahiriya and charging that Libya had attacked Chad from Sudanese territory in violation of the ceasefire arranged under the auspices of OAU.¹¹¹
- (xi) Dated 3 December 1987: Libyan Arab Jamahiriya, conveying the text of a letter from the leader of the Libyan Arab Jamahiriya addressed to the Chairman of the OAU Ad Hoc Committee investigating the claims made by Chad against Libya, rejecting the allegations as baseless.¹¹²

D. COMMUNICATIONS FROM OTHER STATES CONCERNING MATTERS BEFORE REGIONAL ORGANIZATIONS

- (i) Dated 30 January 1985: Malaysia, transmitting the text of a statement concerning the situation in Kampuchea issued on 9 January 1985 by the current Chairman of the Standing Committee of ASEAN.¹¹³
- (ii) Dated 31 January 1985: Italy, transmitting the text of the Declaration on Kampuchea adopted at the Meeting on European Political Cooperation of the European Community, held at Rome on 23 January.¹¹⁴
- (iii) Dated 22 February 1985: Malaysia, transmitting the text of the Joint Statement issued on 11 February by the ASEAN Ministers for Foreign Affairs.¹¹⁵
- (iv) Dated 17 July 1985: Philippines, transmitting the texts of the following documents relating to the situation in Kampuchea: (a) the joint statement by the ASEAN Ministers for Foreign Affairs issued on 8 July; and (b) the ASEAN joint communiqué issued on 9 July 1985.¹¹⁶

¹⁰²S/17233, OR, 40th yr., Suppl. for April-June 1985.

¹⁰³S/17484, *ibid.*, Suppl. for July-Sept. 1985.

¹⁰⁴S/17495, *ibid.*

¹⁰⁵S/17842, OR, 41st yr., Suppl. for Jan.-March 1986.

¹⁰⁶S/17837, *ibid.*

¹⁰⁷S/18457, *ibid.*, Suppl. for Oct.-Dec., 1986; see also letters dated 30 October and 3 November 1986 (respectively, S/18438 and S/18441) from Argentina, *ibid.*

¹⁰⁸S/18473, *ibid.*

¹⁰⁹S/19265, annex, OR, 42nd yr., Suppl. for Oct.-Dec. 1987.

¹¹⁰S/19308, *ibid.*

¹¹¹S/19305, *ibid.*

¹¹²S/19317, *ibid.*

¹¹³S/16917, *ibid.*, 40th yr., Suppl. for Jan.-March 1985.

¹¹⁴S/16945, *ibid.*

¹¹⁵S/16981, *ibid.*

¹¹⁶(a) and (b), respectively, S/17344 and S/17345, *ibid.*, Suppl. for June-Aug. 1985.

- (v) Dated 15 January 1986: United Arab Emirates, transmitting the text of a resolution concerning relations between the Libyan Arab Jamahiriya and the United States of America, adopted on 4 January by the League of Arab States.¹¹⁷
- (vi) Dated 27 May 1986: Netherlands, transmitting the text of a joint statement of the European Community concerning the situation in Kampuchea.¹¹⁸
- (vii) Dated 8 July 1986: Guyana, transmitting the text of the Declaration concerning the situation in southern Africa adopted on 3 July by the Seventh Meeting of Heads of Government of the Caribbean Community.¹¹⁹
- (viii) Dated 8 July 1986: Singapore, transmitting the text of the ASEAN joint communiqué issued on 24 June concerning the situation in Kampuchea.¹²⁰
- (ix) Dated 22 May 1987: Singapore, transmitting the text of a statement on the situation in Kampuchea issued on 11 May 1987 by the Chairman of the ASEAN Standing Committee.¹²¹
- (x) Dated 8 June 1987: Belgium, transmitting the text of a statement of 3 June 1987 by the Ministers for Foreign Affairs of the European Community concerning relations between Mozambique and South Africa.¹²²
- (xi) Dated 15 July 1987: Denmark, transmitting the text of a declaration on the situation in and around Afghanistan adopted on 13 July by the Ministers for Foreign Affairs of the European Community.¹²³
- (xii) Dated 13 August 1987: Thailand, transmitting the texts of excerpts from the Joint Communiqué of the Twentieth Ministerial Meeting of ASEAN, held at Singapore on 15 and 16 June 1987, the Joint Statement issued on 14 June 1987 by the ASEAN Ministers for Foreign Affairs on Indo-Chinese refugees and the Joint Statement issued on 16 June 1987 by the ASEAN Ministers for Foreign Affairs on the situation in southern Africa.¹²⁴
- (xiii) Dated 28 September 1987: Thailand, transmitting the text of an explanatory note on the situation in Kampuchea, issued on the same date by ASEAN.¹²⁵
- (xiv) Dated 29 October 1987: United Arab Emirates, transmitting the text of a communiqué concerning relations between Kuwait and the Islamic Republic of Iran, issued on 25 October 1987 by the Ministerial Council of the Gulf Cooperation Council.¹²⁶
- (xv) Dated 7 December 1987: Denmark, transmitting the text of a declaration on the situation in and around Afghanistan, issued by the Heads of State and Government of the European Community.¹²⁷

- (xvi) Dated 24 December 1987: Thailand, transmitting the text of the Manila Declaration of 1987 on the situation in Kampuchea, issued on 15 December 1987 at Manila, at the conclusion of the Meeting of the ASEAN Heads of Government.¹²⁸
- (xvii) Dated 4 August 1988: Brunei Darussalam, transmitting the text of excerpts from the Joint Communiqué of the Twenty-First Ministerial Meeting of ASEAN, concerning the situation in Kampuchea.¹²⁹

In addition to circulating these communications to the representatives on the Council, it has been the practice to include a listing of them, under various headings, in the annual reports of the Council to the General Assembly.¹³⁰

During the period under review, none of the resolutions adopted by the Council, nor the statements by the President on behalf of the Council, contained references to the provisions of Chapter VIII of the Charter. However, the significance of the provisions of Chapter VIII was reflected on a few occasions during the Council's discussions on various questions.

On one occasion, during the Council's deliberations on the letter dated 6 May 1985 from the representative of Nicaragua, the provisions of Chapter VIII in general were implicitly invoked by representatives arguing against or in support of the decision by the United States of America to impose a trade embargo and other economic measures against Nicaragua. On the one hand, it was charged that the United States, by adopting internationally coercive economic measures, had violated not only the Charter of the United Nations but also, *inter alia*, the Charter of the Organization of American States (OAS), article 19 of which stated: "No State may use or encourage the use of coercive measures of an economic or political character in order to force the sovereign will of another State and to obtain from it advantages of any kind."

On the other hand, it was held that Nicaragua's "campaign of subversion and destabilization" in Central America had violated Article 2, paragraph 4, of the Charter of the United Nations, articles 3, 18, 20 and 21 of the revised Charter of the Organization of American States, and article 1 of the Rio Treaty. While customary international law did not oblige a State to trade with any other State, common sense suggested—and international practice confirmed—that in general a State was free to choose its trading partners. It was further maintained that, while the Charter of the United Nations in no way precluded action by individual States in pursuance of their customary and sovereign rights to safeguard their security, the trade embargo by the United States against Nicaragua was not only consistent with the Charter of the Organization of American States but also furthered its purposes.¹³¹

¹¹⁷S/17742, OR, 41st yr., Suppl. for Jan.-March 1986.

¹¹⁸S/18110, *ibid.*, Suppl. for April-June 1986.

¹¹⁹S/18211, *ibid.*, Suppl. for July-Sept. 1986.

¹²⁰S/18215, *ibid.*

¹²¹S/18877, OR, 42nd yr., Suppl. for April-June 1987.

¹²²S/18905, *ibid.*

¹²³S/18980, *ibid.*, Suppl. for July-Sept. 1987.

¹²⁴S/19048, *ibid.*

¹²⁵S/19159, *ibid.*

¹²⁶S/19241, *ibid.*, Suppl. for Oct.-Dec. 1987.

¹²⁷S/19323, *ibid.*

¹²⁸S/19385, *ibid.*

¹²⁹S/20091, OR, 43rd yr., Suppl. for July-Sept. 1988.

¹³⁰See under part IV of the report of the Security Council to the General Assembly, 1984/85 (GAOR, 40th sess., Suppl. No. 2), pp. 96 and 115; 1985/86 (GAOR, 41st sess., Suppl. No. 2), pp. 187, 189, 204 and 225; 1986/87 (GAOR, 42nd sess., Suppl. No. 2), pp. 98, 108, 110 and 106; 1987/88 (GAOR, 43rd sess., Suppl. No. 2), pp. 134, 136, 152, 155-156 and 173.

¹³¹For the texts of the relevant statements, see S/PV.2577: Nicaragua, pp. 26-28; S/PV.2578: Peru, p. 11; United States, pp. 26-31 and 89 (second intervention); Mexico, pp. 36 and 37; Brazil, p. 88, and Nicaragua, pp. 97-101. For the discussion regarding Article 2, paragraph 4, see part II, A, above.

On a second occasion, when the Council considered the situation in the Middle East at the request of the representative of Egypt¹³² concerning the conflict "in and around Beirut between . . . the Palestinians and the Lebanese", there was an explicit reference to Article 52. Following the adoption of resolution 564 (1985)¹³³ at the beginning of the 2582nd meeting, held on 31 May 1985, the representative of Lebanon stated that his Government had previously made it clear that Lebanon opposed the Security Council's dealing with "the situation in and around the Palestinian camps", which, he said, were located on Lebanese territory. He then enumerated five reasons for his Government's objection to the consideration of the question by the Council. The fifth reason he gave was that it was not useful for the Council to consider internal situations that were being dealt with on both the regional and the internal level; and that, on the contrary, the Council must encourage all efforts in keeping with Article 52 of the Charter of the United Nations.¹³⁴

On a third occasion, during the Council's deliberations on the letter dated 13 November 1986 from the representative of Chad, concerning the expansion of the occupied territory of northern Chad following a fresh military offensive by the Libyan Arab Jamahiriya, the provisions of Chapter VIII were frequently referred to by nearly all the representatives who participated in the discussion. On one side, the representative of Chad reaffirmed his Government's readiness to cooperate with the Ad-Hoc Committee on the Chad-Libya dispute which had been set up in 1977 by OAU, but which, he said, had been obstructed since its inception by Libya. It was further stressed, by the representative of the Congo, that there was a broad consensus in respect of the question of Chad within OAU, the foremost institutional body competent to deal with the issue; and that it was time to reaffirm that the OAU Charter, to which both Chad and the Libyan Arab Jamahiriya adhered, advocated respect for the principles concerning the

peaceful settlement of disputes among Member States. Moreover, the African charter prescribed, in harmony with respect for universal law, recourse in case of conflict to negotiation, mediation, conciliation or arbitration. It was in that spirit, he said, that the twenty-second summit of OAU had urged the continuance of efforts aimed at reactivating the Ad Hoc Committee on the Libyan-Chad conflict, since the settlement of the question lent itself "exceptionally well" to a regional initiative within the framework of OAU. It was therefore urged that the Security Council, in conformity with the relevant provisions of the Charter of the United Nations, should take due account of that factor and encourage OAU in its initiatives and efforts aimed at enabling Chad to regain peace, national unity and territorial integrity. On the other side, it was maintained that the problem of Chad was an internal problem which was before OAU which, in turn, had entrusted the President of the People's Republic of the Congo with the task of seeking national reconciliation among the contending Chadian parties; and that, therefore, while the Security Council meeting was groundless, the encouragement given to the "Habre group" had been designed only to hamper the endeavours of OAU.¹³⁵

In addition to those mentioned above, there were also many instances in which the provisions of Chapter VIII were invoked, both explicitly and implicitly, in the Council's deliberations,¹³⁶ and in a few communications from Member States addressed to the United Nations.¹³⁷

¹³²The letter dated 30 May 1985 from the representative of Egypt, addressed to the President of the Council, S/17228, was included in the Council's agenda. For the text of the letter, see *OR, 40th yr., Suppl. for April-June 1985*.

¹³³For the adoption of resolution 564 (1985) and the Council's general proceedings on the question, see chap. VIII, part II, under the same heading.

¹³⁴For the text of the relevant statement, see S/PV.2582: Lebanon, p. 12. For the other four reasons given by Lebanon, see chap. VIII, part II, under the same heading. See also S/PV.2582, p. 11.

¹³⁵For the texts of the relevant statements, see S/PV.2721: Chad, p. 8; Congo, pp. 11-13; Zaire, pp. 16-19; United States, p. 23; Libyan Arab Jamahiriya, pp. 28, 31, 33 and 36; and USSR, pp. 41 and 43.

¹³⁶In connection with the situation in Namibia, S/PV.2587: Poland, p. 51; in connection with the complaint by Angola against South Africa, S/PV.2596: United Republic of Tanzania, pp. 29-30; in connection with the question of South Africa, S/PV.2600: Kenya, p. 86; in connection with the agenda item entitled "United Nations for a better world and the responsibility of the Security Council in maintaining international peace and security", S/PV.2608: Madagascar, p. 61 (explicit); in connection with the letter dated 11 March 1988 from the representative of Argentina, S/PV.2800: Argentina, pp. 11 and 12; Uruguay, pp. 24-25; Peru, p. 38 and 39; Mexico, p. 52; Ecuador, p. 62; and S/PV.2801: Algeria, p. 7; Nepal, pp. 8 and 9; China, p. 21; and Guatemala, p. 42.

¹³⁷S/18554 (letter dated 2 January 1987 from the representative of the Libyan Arab Jamahiriya), *OR, 42nd yr., Suppl. for Jan.-March 1987*; S/18603 and S/18619 (letter and note verbale dated, respectively, 14 and 16 January 1987 from the representative of Chad), *ibid.*

****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 102

"1. Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.

"2. No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement before any organ of the United Nations."

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 two instances in which the principle of Article 103 was explicitly invoked, both times in connection with the situation in Cyprus.

At the 2635th meeting, on 12 December 1985, the representatives of Greece and Cyprus stressed, the latter with explicit reference to Article 103, that the Treaty of Guarantee did not give the right of military intervention in Cyprus and that, if the Treaty had given such a right, it would have been against the provisions of Article 2, paragraph 4, of the Charter, but that such contradiction was prohibited under Article 103.¹³⁸

On the second occasion, at the 2771st meeting of the Council, on 14 December 1987, the representative of Cy-

prus stated that the Turkish allegation that Turkish troops had invaded Cyprus and remained there in accordance with the Treaty of Guarantee was absurd. He recalled Article 2, paragraph 4, which called upon all Member States to refrain from the use of force in international relations, and stressed that any interpretation to the effect that the Treaty of Guarantee had given the right to any guarantor to use force would have rendered the Treaty provision contrary to Article 2, paragraph 4, of the Charter and would thus have been *ipso facto* null and void, as was clearly stipulated by Article 103 of the Charter of the United Nations.¹³⁹

Other than the two instances mentioned above, Article 103 of the Charter of the United Nations was also referred to explicitly in a letter dated 19 November 1986 from the representative of Cyprus addressed to the Secretary-General.¹⁴⁰

¹³⁹S/PV.2771: Cyprus, pp. 24-26; for the position of Turkey, see *ibid.*, pp. 52-55. For discussion regarding Article 2, paragraph 4, of the Charter, see part II, A.

¹⁴⁰S/18466, *OR*, 41st yr., *Suppl. for Oct.-Dec. 1986*; for Turkey's response, see S/18495 (letter dated 3 December 1986 from the representative of Turkey), *ibid.*

¹³⁸S/PV.2635: Greece, p. 59 (fourth intervention); Cyprus, p. 59 (fourth intervention). For Turkey's view, see *ibid.*, p. 58. See also part II, A, under Article 2, paragraph 4.

****Part VIII**

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