

# ARTICLE 12

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## TEXT OF ARTICLE 12

1. While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.

2. The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters.

## INTRODUCTORY NOTE

1. Article 12 delimits the powers of the General Assembly and of the Security Council, as regards the exercise of their respective competence to deal with disputes and situations and should be considered in connexion with Articles 10, 11 and 14, and the Articles of Chapters VI and VII of the Charter. <sup>1/</sup>

2. Under Article 12 (1), the competence of the General Assembly is restricted with respect to making recommendations concerning disputes and situations with regard to which the Security Council "is exercising... the functions assigned to it" in the Charter.

3. This restriction of the competence of the General Assembly applies during the time the Security Council is dealing with the dispute or situation and does not impair the power of the General Assembly to make recommendations with respect to disputes or situations with which the Security Council has ceased to deal.

4. The restriction of the competence of the General Assembly to make recommendations is temporary; the Council may lift this restriction by requesting the General Assembly to make a recommendation, or by adopting a decision to the effect that it has ceased to deal with the matter.

5. Article 12 (2) prescribes the procedure by which the General Assembly is to be informed of the matters which are being dealt with by the Security Council or with which the Council has ceased to deal.

6. The main problems that have arisen in connexion with the application of this Article have been related to the scope of the term "recommendation", to the meaning of the phrase "While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter" and its effect upon the powers of the General Assembly, and to the question of the requests of the Security Council to the General Assembly in accordance with the proviso of paragraph 1.

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<sup>1/</sup> See also in this Repertory under these Articles.

7. The question has also arisen whether a decision of the Security Council to remove an item from the list of matters of which the Council is seized may or may not be considered procedural within the meaning of Article 27 (2). This question is examined in this Repertory under Article 27.

### I. GENERAL SURVEY

8. The following disputes or situations — or certain aspects thereof — have been considered by both the Security Council and the General Assembly: the Spanish question, the Indonesian question, the Greek frontier incidents question, the Palestine question, the complaint of aggression upon the Republic of Korea, the complaint of armed invasion of Taiwan (Formosa) and the complaint of bombing by air forces of the territory of China.

9. As regards the Tunisian question and the question of Morocco, which have been dealt with by the General Assembly, their inclusion in the agenda of the Security Council was requested, but was rejected.

10. As regards the Palestine question, which was originally submitted to the General Assembly by the United Kingdom on 3 April 1947, certain aspects thereof were referred to the Security Council by General Assembly resolution 181 (II). That resolution recommended to Members the adoption and implementation of a Plan of Partition with Economic Union and requested the Council to take the necessary measures provided for in the Plan for its implementation, and to consider, if circumstances during the transitional period required such consideration, whether the situation in Palestine constituted a threat to the peace. Since then, the Palestine question has continued to be on the agenda of both the General Assembly and the Security Council, the latter dealing in general with the security and military aspects of the matter, and the former with general political, economic and social aspects.

11. Decisions relevant to the matters treated in the Analytical Summary of Practice are those adopted at the fourth session of the General Assembly in connexion with the question of Indonesia and those of the Security Council in connexion with the Spanish question, the Greek frontier incidents question, the complaint of armed invasion of Taiwan (Formosa), and the complaint of aggression upon the Republic of Korea.

12. The provisions of Article 12 (2) have been implemented by means of notifications from the Secretary-General addressed to the President of the General Assembly, with the consent of the Security Council, of "matters relative to the maintenance of international peace and security which are being dealt with by the Security Council", and of matters with which the Security Council has ceased to deal. <sup>2/</sup> These notifications have been based upon the "Summary Statement by the Secretary-General

<sup>2/</sup> G A (I/2), Plen., pp. 1479 and 1480, annex 31, A/124; G A (II), Plen., pp. 1449 and 1450, annex 2, A/389; G A (III/1), Plen., Annexes, p. 153, A/649, A/979; G A (V), Annexes, a.i. 7, pp. 1 and 2, A/1379; A/1928; A/2223; G A (VIII), Annexes, a.i. 7, p. 1, A/2472 and A/2732.

on matters of which the Security Council is seized and on the stage reached in their consideration", which is circulated each week in accordance with rule 11 3' of the provisional rules of procedure of the Security Council.

15. The items included in the notifications have been the same as those listed in the current "Summary Statement", with the exclusion of those items which were not considered as "matters relative to the maintenance of international peace and security". In the notifications up to and including that of 21 September 1950 4' at the beginning of the fifth session of the General Assembly, specific reference was made to the "Summary Statement".

14. As from the notification 5' of 22 October 1951 at the beginning of the sixth session, the matters being dealt with by the Council have been divided into two categories: first, matters "which are being dealt with by the Security Council, and which have been discussed" during the period since the previous notification; and second, matters of which the Security Council "remains seized" but which it "has not discussed" during that period.

15. In 1946 and 1947, the consent of the Security Council was given formally. 6' Since then, it has been obtained by the Secretary-General from the members of the Council through the circulation of copies of draft notifications.

16. Notifications have also been issued when items have been expressly deleted from the list of matters of which the Security Council is seized. 7'

## II. ANALYTICAL SUMMARY OF PRACTICE

### A. The question of the scope of the term "recommendation" as used in Article 12 (1)

17. This matter was discussed during the fourth session of the General Assembly in connexion with the question of Indonesia, which had been placed on the provisional

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3' Rule 11 reads as follows: "The Secretary-General shall communicate each week to the representatives on the Security Council a summary statement of matters of which the Security Council is seized and of the stage reached in their consideration."

Rule 49 of the rules of procedure of the General Assembly reproduces textually the provisions of Article 12 (2).

4' G A (V), Annexes, a.i. 7, A/1379.

5' A/1928.

6' 1946 - S C, 1st yr., 2nd Series, No. 19, 77th mtg., p. 483; 1947 - S C, 2nd yr., No. 89, 202nd mtg., pp. 2405 and 2406.

7' G A (I/2), Plen., p. 1480, annex 31 a, (A/177), and G A (V), Annexes, a.i. 7, p. 2, A/1379/Add.1.

agenda in accordance with resolution 274 (III) 8/ of the General Assembly and later included in the agenda as item 20.

18. During the discussion in the Ad Hoc Political Committee the question arose whether the two draft resolutions before the Committee contained "recommendations" within the meaning of Article 12 (1).

19. The first draft resolution 9/ was submitted jointly by the representatives of Afghanistan, Australia, Burma, China, Egypt, India, Iran, Iraq, Lebanon, Pakistan, Philippines, Saudi Arabia, Syria and Yemen. It provided that the General Assembly welcome the announcement that an agreement had been reached at the Round Table Conference held at The Hague, commend the parties concerned and the United Nations Commission for Indonesia for their contributions thereto and welcome the forthcoming establishment of the Republic of the United States of Indonesia as an independent, sovereign State.

20. The other draft resolution, 10/ submitted by the representative of the Ukrainian SSR, provided that the General Assembly deem it essential to take the following measures: to withdraw the Netherlands forces to the positions occupied by them before the commencement of hostilities; to demand that the Netherlands Government release the Indonesian political prisoners; to propose the establishment of a United Nations commission to observe the implementation of such measures and also to investigate the activities of the Netherlands authorities; to instruct the commission to prepare, and submit to the Security Council within three months, proposals for the settlement of the conflict between the Netherlands and the Indonesian Republic on the basis of the recognition of the independence and sovereign rights of the Indonesian people; and to dissolve the United Nations Commission for Indonesia.

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8/ The Indonesian question (II) was submitted to the Security Council by Australia and India separately on 30 July 1947 and included in its agenda at its 171st meeting on 31 July 1947. At the second part of its third session, the General Assembly decided to include the item "the question of Indonesia" in its agenda, also at the request of Australia and India. At the 60th meeting of the General Committee on 8 April 1949, when the question of the inclusion of the item in the Assembly's agenda was considered, statements were made to the effect that although the General Assembly was entitled to discuss the matter, it would not be able, under Article 12 (1), to make recommendations, since the Security Council was seized of the question. See G A (III/2), Gen. Com., pp. 40, 42-44, 47 and 48, 50. At its 208th plenary meeting on 11 May 1949, the General Assembly adopted resolution 274 (III) which read as follows:

"The General Assembly,

"Noting the outcome of preliminary negotiations between the Netherlands and the Republic of Indonesia in Batavia as announced on 7 May 1949, which negotiations were based on the directives of the Security Council of 23 March 1949,

"Expressing the hope that this agreement will assist the attainment of a lasting settlement in accordance with the intentions of the Security Council resolution of 28 January 1949,

"Decides to defer further consideration of the item to the fourth regular session of the General Assembly."

9/ G A (IV), Ad Hoc Pol. Com., Annex, vol. I, p. 65, A/AC.31/L.50.

10/ G A (IV), Ad Hoc Pol. Com., Annex, vol. I, p. 65, A/AC.31/L.51.

21. During the discussion, the Chairman drew the attention of the Committee to the provisions of Article 12 (1). Pointing out that the Security Council was still seized of the question, he stated that, before putting each of the draft resolutions to the vote, he would ask the Committee to pronounce on whether its terms constituted a recommendation within the meaning of Article 12. 11/

#### Decisions

At its 50th meeting on 3 December 1949, the Ad Hoc Political Committee decided, 12/ by 42 votes to 1, with 6 abstentions, that the joint draft resolution did not constitute a recommendation within the meaning of Article 12 of the Charter. It then adopted 12a/ the joint draft resolution by 43 votes to 5, with 4 abstentions.

At the same meeting the Committee decided 12b/ by 42 votes to 5, with 4 abstentions, that the draft resolution submitted by the Ukrainian SSR did constitute a recommendation within the meaning of Article 12 of the Charter. The draft resolution was not, therefore, put to the vote.

22. The report 13/ of the Ad Hoc Political Committee was considered by the General Assembly at its 271st and 272nd plenary meetings. The draft resolution originally submitted 14/ by the Ukrainian SSR in the Ad Hoc Political Committee was resubmitted 15/ at the 271st plenary meeting. 16/

#### Decisions

At its 272nd plenary meeting on 7 December 1949, the draft resolution recommended by the Ad Hoc Political Committee was adopted by 44 votes to 5, with 2 abstentions. 17/

The proposal that the General Assembly should vote upon the Ukrainian draft resolution was rejected by 33 votes to 5, with 12 abstentions. 18/

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- 11/ For texts of relevant statements, see G A (IV), Ad Hoc Pol. Com., 56th mtg., Chairman (Iran), paras. 17 and 18, 100; Afghanistan, para. 48; Australia, paras. 24 and 25; Burma, paras. 35-37; Egypt, paras. 82 and 83; India, para. 3; Philippines, para. 47; Poland, paras. 78-80; Ukrainian SSR, paras. 6, 92-97; United States, paras. 41 and 42; USSR, paras. 49, 52, 63.
- 12/ G A (IV), Ad Hoc Pol. Com., 56th mtg., para. 116.
- 12a/ G A (IV), Ad Hoc Pol. Com., 56th mtg., para. 117.
- 12b/ G A (IV), Ad Hoc Pol. Com., 56th mtg., para. 118.
- 13/ G A (IV), Plen., Annex, pp. 59 and 60, A/1208.
- 14/ See para. 20 above.
- 15/ G A (IV), Plen., Annex, p. 60, A/1209.
- 16/ For texts of relevant statements, see G A (IV), Plen.  
271st mtg.: India, paras. 3-10; Netherlands, paras. 49-60; Pakistan, paras. 61-72; Poland, paras. 73-102; Ukrainian SSR, paras. 11-48.  
272nd mtg.: Belgium, paras. 46-52; Byelorussian SSR, paras. 1-21; Philippines, paras. 54-57; Ukrainian SSR, paras. 58-60; USSR, paras. 22-45.
- 17/ G A (IV), Plen., 272nd mtg., para. 53.
- 18/ G A (IV), Plen., 272nd mtg., para. 61.

**B. The question of the meaning of the phrase "While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter," and its effect upon the powers of the General Assembly**

23. The scope of the restriction laid down in the first clause of Article 12 and its effect upon the powers of the General Assembly have been the subject of constitutional discussion in the Security Council in connexion with the Spanish question, the Greek frontier incidents question, the complaint of armed invasion of Taiwan (Formosa), and the complaint of aggression upon the Republic of Korea.

24. In the proceedings connected with the relevant decisions, representatives have on occasion maintained that the restriction does not affect the powers of discussion of the General Assembly and that, therefore, nothing forbids the simultaneous consideration of the same question in the Security Council and the General Assembly. On no occasion, however, has it been contended that the restriction should be interpreted as not covering recommendations by the General Assembly, although divergent views have been expressed as to the meaning and scope of the words "exercising in respect of any dispute or situation the functions".

25. A survey of the practice of the General Assembly and the Security Council in connexion with the four above-mentioned questions shows that the Assembly has dealt with them after the Council had decided, as in the case of the first, second and fourth questions, to remove them from the list of matters of which it was seized, or, as was the case with the complaint of armed invasion of Taiwan (Formosa), after the Council had decided "to defer consideration" of the question for a certain period.

26. The proceedings of the General Assembly on the question of Indonesia, which was considered by the Assembly while the Indonesian question (II) was on the list of matters of which the Security Council was seized, are in some respects relevant here, but have already been reviewed in paragraphs 17-22 above.

**1. Decisions of 26 June and 4 November 1946  
in connexion with the Spanish question**

27. At the 48th meeting of the Security Council on 24 June 1946, the representative of Poland submitted a draft resolution <sup>19/</sup> which provided that the Council resolve "To keep the situation in Spain under continuous observation and to keep the question on the list of matters of which it is seized," and "To take up the matter again not later than 1 September 1946, in order to determine what appropriate practical measures provided by the Charter should be taken, it being understood that any member of the Security Council has a right to bring the matter up before the Council at any time before the mentioned date."

28. During the consideration of this draft resolution it was observed that if the matter was retained on the agenda of the Council until the General Assembly met, there might be a danger that the Assembly would be prevented from making any recommendation on the matter, unless the item was later removed from the agenda of the Council.

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<sup>19/</sup> S C, 1st yr., 1st Series, No. 2, 48th mtg., p. 389.



29. The view was also expressed that merely to keep an item on the agenda of the Security Council was not to take action and therefore to exercise a function. Perhaps an interpretation of Article 12 was possible which would permit the matter to be kept on the agenda of the Council and, at the same time, leave the Assembly free to consider the matter.

30. At the same meeting the representative of the United Kingdom submitted an amendment 20/ which would insert after the words in the draft resolution submitted by the representative of Poland "resolves to keep the situation in Spain under continuous observation and ...," the words "pending the meeting of the General Assembly next September," and also delete the clause of the draft resolution stating that the Security Council would "take up the matter again not later than 1 September 1946."

31. At the suggestion 21/ of the representative of Poland, the President appointed 22/ a drafting committee composed of the representatives of Australia, Poland and the United Kingdom to try to prepare a text of the draft resolution that would be acceptable to the Council.

32. At the 49th meeting on 26 June 1946, the representative of Australia presented, on behalf of the majority of the Committee, the representative of Poland dissenting, an amended text of the draft resolution. 23/ Its operative part read:

"The Security Council decides that without prejudice to the rights of the General Assembly under the Charter, the Council shall keep the situation in Spain under continuous observation and shall maintain it upon the list of matters of which it is seized, in order that it will be at all times ready to take such measures as may become necessary to maintain international peace and security. Any member of the Security Council may bring up the matter for consideration by the Council at any time."

33. The Security Council decided by 9 votes to 2, 24/ to consider this text to be an amendment to the draft resolution introduced by the representative of Poland at the 48th meeting. 25/

#### Decision

At the 49th meeting on 26 June 1946 the amended draft resolution was not adopted. There were 9 votes in favour and 2 against, 1 vote against being that of a permanent member. 26/

34. At the same meeting the representative of the USSR submitted an amended text 27/ of the draft resolution of the Committee.

20/ S C, 1st yr., 1st Series, No. 2, 48th mtg., p. 394.

21/ S C, 1st yr., 1st Series, No. 2, 48th mtg., p. 399.

22/ S C, 1st yr., 1st Series, No. 2, 48th mtg., p. 400.

23/ S C, 1st yr., 1st Series, No. 2; 49th mtg., p. 401.

24/ S C, 1st yr., 1st Series, No. 2, 49th mtg., p. 413.

25/ For texts of relevant statements, see S C, 1st yr., 1st Series, No. 2.

48th mtg.: President (Mexico), p. 398; Australia, p. 391; France, p. 396;

Poland, pp. 389, 392, 398; USSR, p. 395; United Kingdom, p. 394; United States, p. 397.

49th mtg.: Australia, pp. 442 and 443; USSR, pp. 444-446; United States, p. 446.

26/ S C, 1st yr., 1st Series, No. 2, 49th mtg., p. 413.

27/ S C, 1st yr., 1st Series, No. 2, 49th mtg., p. 434.

Decision

At the 49th meeting on 26 June 1946, the first sentence of the operative part of the USSR draft resolution, which read:

"The Security Council decides to keep the situation in Spain under continuous observation and maintain it upon the list of matters of which it is seized in order that it will be at all times ready to take such measures as may become necessary to maintain international peace and security."

was adopted. 28/

The second sentence, which read:

"The Security Council shall take up the matter again not later than 1 September 1946 in order to determine what appropriate practical measures provided by the Charter should be taken."

was rejected. There were 3 votes in favour, 7 against and 1 abstention. 29/

The last sentence, which read:

"Any member of the Security Council may bring the matter up for consideration by the Council at any time before the date mentioned."

was adopted with the omission of the words "before the date mentioned". 30/

35. The representative of Australia then submitted the following draft resolution: 31/

"That in the opinion of the Security Council the carrying of the resolution on the Spanish question dated 26 June, does not in any way prejudice the rights of the General Assembly under the Charter."

Decision

At the 49th meeting on 26 June 1946, the draft resolution was not adopted. There were 9 votes in favour and 2 against, 1 vote against being that of a permanent member. 32/

36. At the 78th meeting of the Security Council on 30 October 1946, the representative of Poland stated 33/ that his delegation intended to present to the General Assembly draft resolutions containing certain recommendations on the Spanish question and that, taking the provisions of Article 12 into consideration and not wanting to prejudice in any way the interpretation thereof, he would propose that the Spanish question be taken off the list of matters of which the Security Council was seized.

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- 28/ S C, 1st yr., 1st Series, No. 2, 49th mtg., p. 441.  
29/ S C, 1st yr., 1st Series, No. 2, 49th mtg., p. 441.  
30/ S C, 1st yr., 1st Series, No. 2, 49th mtg., pp. 441 and 442.  
31/ S C, 1st yr., 1st Series, No. 2, 49th mtg., p. 444.  
32/ S C, 1st yr., 1st Series, No. 2, 49th mtg., p. 446.  
33/ S C, 1st yr., 2nd Series, No. 20, 78th mtg., pp. 487 and 488.

37. At the 79th meeting on 4 November 1946, the representative of Poland submitted the following draft resolution: 34/

"The Security Council resolves that the situation in Spain be taken off the list of matters of which the Council is seized, and that all records and documents of the case be put at the disposal of the General Assembly."

38. During the discussion, the view was expressed that the crux of the matter was the exact meaning of the words "While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter", used in Article 12. It was contended that the mere mention of a subject on the agenda need not be held to constitute the exercise of the functions of the Security Council within the meaning of Article 12. Several representatives also stated that the matter of interpreting the scope of the words in question should be thoroughly considered by the Council in the near future. 35/

39. The President (United Kingdom) asked 36/ the representative of Poland whether, for the sake of form, he would not add a sentence to his draft resolution to this effect:

"The Security Council requests the Secretary-General to notify the General Assembly of this decision."

The representative of Poland agreed 37/ to add this sentence to the draft resolution.

#### Decision

At the 79th meeting on 4 November 1946, the draft resolution, with the addition suggested by the President, was adopted unanimously. 38/

### **2. Decisions of 15 September 1947 in connexion with the Greek frontier incidents question**

40. At the 202nd meeting of the Security Council on 15 September 1947, the representative of the United States submitted the following draft resolution: 39/

"The Security Council, pursuant to Article 12 of the Charter,

"(a) Requests the General Assembly to consider the dispute between Greece on the one hand, and Albania, Yugoslavia and Bulgaria on the other, and to make any recommendations with regard to that dispute which it deems appropriate under the circumstances;

"(b) Instructs the Secretary-General to place all records and documents in the case at the disposal of the General Assembly."

34/ S C, 1st yr., 2nd Series, No. 21, 79th mtg., p. 492.

35/ For texts of relevant statements, see:

S C, 1st yr., 2nd Series, No. 21, 79th mtg.: President (United Kingdom), pp. 497 and 498; Australia, pp. 493 and 494; Egypt, pp. 497 and 498; France, p. 495; Mexico, pp. 496 and 497; Poland, pp. 491 and 492; USSR, pp. 495 and 496; United States, pp. 494 and 495.

36/ S C, 1st yr., 2nd Series, No. 21, 79th mtg., p. 498.

37/ S C, 1st yr., 2nd Series, No. 21, 79th mtg., p. 498.

38/ S C, 1st yr., 2nd Series, No. 21, 79th mtg., p. 498.

39/ S C, 2nd yr., No. 89, 202nd mtg., p. 2369.

41. During the discussion, it was stated on the one side that the General Assembly should assist the Security Council in its efforts to bring about an improvement in the situation, but that the General Assembly could not exert all its powers under the Charter in a situation of this nature so long as the Security Council was exercising its functions in respect of a given question, unless the Security Council made an appropriate request in accordance with Article 12. It was argued also that the draft resolution was intended to remove a limitation upon the powers of the General Assembly which existed by reason of Article 12. The General Assembly would thus be enabled to make a recommendation if it so desired, but the Security Council would still be seized of the dispute. The view was expressed that in accordance with Article 12, the Council could either delete the matter from its agenda or request the General Assembly to make recommendations and continue to deal with the question at the same time as the General Assembly; the latter alternative, however, could result in contradictory decisions from the Security Council and the General Assembly. It was also contended that as long as the Security Council was seized of the question, recommendations from the General Assembly would be only to the Security Council.

42. On the other hand, it was stated that the situation in Greece represented a direct danger to international peace and security and, therefore, required that action be taken by the Security Council. For this reason, the question should remain on its agenda. Its removal from the agenda would mean that the Security Council would voluntarily abstain from taking a decision on the matter, and the request to the General Assembly for a recommendation would be universally interpreted as an abdication by the Security Council of its primary responsibility for the maintenance of international peace and security under the Charter. 40/

#### Decision

At the 202nd meeting on 15 September 1947, the United States draft resolution was not adopted. There were 9 votes in favour and 2 against, 1 vote against being that of a permanent member. 41/

43. Following the rejection of this draft resolution the representative of the United States submitted another draft resolution 42/ which provided that:

#### "The Security Council

"(a) Resolves that the dispute between Greece on the one hand, and Albania, Yugoslavia and Bulgaria on the other, be taken off the list of matters of which the Council is seized;"

#### Decision

At the 202nd meeting on 15 September 1947, the United States draft resolution was adopted by 9 votes to 2. 43/

40/ For text of relevant statements, see:

S C, 2nd yr., No. 89, 202nd mtg.: President (USSR), pp. 2376 and 2377, 2402; Australia, pp. 2372 and 2373; France, pp. 2384 and 2385; Poland, pp. 2379 and 2380; Syria, p. 2387; United States, pp. 2368 and 2369, 2383-2401.

41/ S C, 2nd yr., No. 89, 202nd mtg., pp. 2399 and 2400.

42/ S C, 2nd yr., No. 89, 202nd mtg., p. 2401.

43/ S C, 2nd yr., No. 89, 202nd mtg., p. 2405. Following the adoption of this resolution, the Security Council approved a draft notification from the Secretary-General to the General Assembly pursuant to Article 12 (2), after deletion of "The Greek question" from the list of matters concerned. (S C, 2nd yr., No. 89, 202nd mtg., pp. 2405 and 2406.)

**3. Decisions of 28 and 29 September 1950 in connexion with  
the complaint of armed invasion of Taiwan (Formosa)**

44. At the 503rd meeting on 26 September 1950, the representative of China stated 44/ that the delegation of the USSR had proposed to include in the agenda of the Fifth session of the General Assembly the item "Complaint of aggression against China by the United States of America". This item was identical with the item "Complaint of armed invasion of Taiwan (Formosa)", considered by the Security Council. According to Articles 10 and 12 of the Charter, the Security Council and the General Assembly should not discuss the same question simultaneously. For this reason, the representative of China proposed that the Security Council should cease consideration of the item "Complaint of armed invasion of Taiwan (Formosa)" during the consideration of this matter by the General Assembly.

45. During the discussion, it was stated that according to Article 12, while the Security Council was exercising the functions assigned to it by the Charter in respect of any dispute or situation, the General Assembly might not make any recommendation unless the Security Council so requested. Neither Article 10 nor 12, however, prohibited the General Assembly from discussing such questions. There had been precedents for this in the history of the United Nations. Despite the fact that the Indonesian question had been under discussion in the Security Council, it had been included in the agenda of the General Assembly for the very reason that Article 12 did not prohibit the General Assembly from considering and discussing questions which were on the agenda of the Security Council. 45/

46. At the 504th meeting on 27 September 1950, the representative of Ecuador submitted as an amendment 46/ to the proposal of the representative of China a text which provided that:

"The Security Council,

. . .

"Decides:

"(a) To defer consideration of this question until the first meeting of the Council held after 1 December 1950;"

47. At the 505th meeting of the Security Council on 28 September, the President put to the vote the following draft resolution 47/ submitted by the representative of China:

"The Security Council shall cease consideration of the complaint of armed invasion of Taiwan (Formosa) during the consideration of this item by the General Assembly."

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44/ S C, 5th yr., No. 45, 503rd mtg., p. 29.

45/ For texts of relevant statements, see:

S C, 5th yr., No. 45, 503rd mtg.: USSR, pp. 30 and 31; United States, p. 33;

S C, 5th yr., No. 46, 504th mtg.: USSR, p. 5; United Kingdom, p. 18.

46/ S C, 5th yr., No. 46, 504th mtg., pp. 12 and 13, S/1817/Rev.1.

47/ S C, 5th yr., No. 47, 505th mtg., p. 20.

Decision

At the 505th meeting on 28 September 1950, the Chinese draft resolution was rejected. There were 2 votes in favour, 6 against and 3 abstentions. 48/

48. At the same meeting the President put to the vote the amendment 49/ submitted by the representative of Ecuador.

Decision

At the 505th meeting on 28 September 1950, the operative part of the Ecuadorean amendment was rejected. There were 6 votes in favour, 4 against and 1 abstention, 50/

49. At the 506th meeting of the Security Council on 29 September 1950, the representative of Ecuador reintroduced 51/ his amendment as a draft resolution, 52/ substituting the date "15 November 1950" for "1 December 1950" in the first paragraph of the operative part.

50. The draft resolution was put to a vote paragraph by paragraph.

Decision

At the 506th meeting on 29 September 1950, the last paragraph of the preamble 53/ of the Ecuadorean draft resolution, which read:

"Considering further that a complaint submitted by the Union of Soviet Socialist Republics regarding aggression against the territory of China by the United States of America has been placed on the agenda of the fifth session of the General Assembly and has been referred for consideration to the First Committee of the Assembly,"

was rejected. There were 2 votes in favour, 2 against and 7 abstentions. 54/ The operative part of the draft resolution was adopted by 7 votes to 4. The draft resolution as a whole, with the omission of the last paragraph of the preamble, was adopted by 7 votes to 3, with 1 abstention. 55/

**4. Decision of 31 January 1951 in connexion with the complaint of aggression upon the Republic of Korea**

51. In a letter 56/ dated 29 January 1951 to the President of the Security Council, the permanent representative of the United Kingdom pointed out that the item on the General Assembly's agenda entitled "Intervention of the Central People's Government of the People's Republic of China in Korea" had figured in the discussions of the Security Council under the heading "Complaint of aggression upon the Republic of

48/ S C, 5th yr., No. 47, 505th mtg., p. 21.

49/ See paragraph 46 above.

50/ S C, 5th yr., No. 47, 505th mtg., pp. 22 and 23.

51/ S C, 5th yr., No. 48, 506th mtg., p. 2.

52/ S C, 5th yr., No. 48, 506th mtg., pp. 3 and 4, S/1823/Corr.1.

53/ S C, 5th yr., No. 48, 506th mtg., p. 4.

54/ S C, 5th yr., No. 48, 506th mtg., p. 5.

55/ S C, 5th yr., No. 48, 506th mtg., p. 5.

56/ S C, 6th yr., Suppl. for Jan., Feb. and March, pp. 10 and 11, S/1922.

Korea". There might be some question whether the Security Council "is exercising the functions assigned to it in the present Charter" in respect of the item which was being considered by the Assembly. In order to remove any technical doubts which might be cast on the validity of any Assembly resolution containing recommendations to Members of the United Nations, it would be desirable, in the opinion of the United Kingdom delegation, that the item "Complaint of aggression upon the Republic of Korea" be removed from the agenda of the Security Council. The representative of the United Kingdom requested, therefore, that a meeting of the Security Council be called for that purpose, before the General Assembly was called upon to approve any recommendation on the item "Intervention of the Central People's Government of the People's Republic of China in Korea" which might be adopted by the First Committee.

52. At the 531st meeting on 31 January 1951, the representative of the United Kingdom submitted the following draft resolution: 57/

"The Security Council,

"Resolves to remove the item 'Complaint of aggression against the Republic of Korea' from the list of matters of which the Council is seized."

53. During the discussion, it was stated that a draft resolution concerning the intervention of the People's Republic of China in Korea had been put to the vote at the 530th meeting of the Security Council on 30 November 1950. Although it had received nine affirmative votes, it had not been adopted owing to the negative vote of a permanent member. It might, therefore, be argued that since that date the Council had not, in effect, been exercising its functions in respect of this question within the meaning of Article 12. It was also maintained by certain representatives that the Security Council had not been exercising, in regard to this item, the functions assigned to it under the Charter since the month of November 1950. The proposed step was, therefore, unnecessary and any action of the Council on the draft resolution should not be cited as a precedent binding the Council on all future occasions.

54. It was contended by one representative that all decisions adopted on this matter by the Security Council had been illegal, since they had been adopted in the absence of two permanent members, that is, in violation of the Charter provision that decisions of the Security Council on matters of substance must be agreed to by all its permanent members. 58/

Decision

At the 531st meeting on 31 January 1951, the United Kingdom draft resolution was adopted unanimously. 59/

**C. The question of the requests by the Security Council  
to the General Assembly in accordance with  
the proviso of Article 12 (1)**

55. Draft resolutions providing that the Security Council request the General Assembly to make recommendations with regard to a dispute or situation which was being

57/ S C, 6th yr., 531st mtg., S/1995, para. 38.

58/ For texts of relevant statements, see S C, 6th yr., 531st mtg.: China, paras. 42 and 43; United Kingdom, paras. 35-39.

59/ S C, 6th yr., 531st mtg., para. 57.

dealt with by the Council have been the subject of substantial constitutional discussion in connexion with the Spanish question and the Greek frontier incidents question. The matter was discussed from the standpoint of the extent of the powers of the Council as regards requests to the General Assembly to make recommendations, and the effect of such requests on the responsibility and authority of the Council. In both cases the proceedings have followed a similar pattern: draft resolutions providing for the requests have failed of adoption 60/ by the Council, and subsequently other draft resolutions proposing that these matters "be taken off the list of matters of which the Council is seized" were submitted and adopted.

56. The proceedings connected with the decisions in respect of the Greek frontier incidents question have already been reviewed above 61/ and those related to the decisions on the Spanish question are summarized below.

*Decisions of 18 June and 4 November 1946 in connexion  
with the Spanish question*

57. At the 44th meeting on 6 June 1946, the Security Council began consideration of the report and recommendations 62/ of the Sub-Committee 63/ of the Security Council instructed to investigate the Spanish question.

58. At the 45th meeting on 13 June 1946, the representative of Australia, as Chairman of the Sub-Committee, submitted a draft resolution 64/ which provided that:

"Whereas the Sub-Committee on the Spanish question made the three following recommendations in paragraph 31 (a), (b), and (c) of its report to the Security Council:

" . . .

"(b) The transmitting by the Security Council to the General Assembly of the evidence and reports of this Sub-Committee, together with the recommendation that, unless the Franco regime is withdrawn and the other conditions of political freedom set out in the declaration are, in the opinion of the General Assembly, fully satisfied, a resolution be passed by the General Assembly recommending that diplomatic relations with the Franco régime be terminated forthwith by each Member of the United Nations; . . ." 65/

" . . .

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60/ In both cases the question arose whether or not the matter was a procedural matter within the meaning of Article 27 (2). See also in this Repertory under Article 27.

61/ See paras. 40-43 above.

62/ S C, 1st yr., 2nd Series, Special Suppl., S/75.

63/ This Sub-Committee was established by S C resolution of 29 April 1946, S C, 1st yr., 1st Series, No. 2, 45th mtg., pp. 311 and 312.

64/ S C, 1st yr., 1st Series, No. 2, 45th mtg., p. 326.

65/ The representative of Brazil, a member of the Sub-Committee, reserved his position regarding recommendation (b).



"The Security Council resolves

"To adopt the three recommendations of the Sub-Committee set forth above, subject to the addition to recommendation (b), after the words 'each Member of the United Nations', of the following words: 'or alternatively such other action be taken as the General Assembly deems appropriate and effective under the circumstances prevailing at the time'."

59. In introducing the draft resolution the representative of Australia stated that, in his opinion as Chairman of the Sub-Committee, its adoption would represent no diminution of the powers of the Security Council, but the exercise by the Council of its power to recommend methods of adjustment or suitable procedures, and to refer a matter to other organs of the United Nations whenever the circumstances were thought fit by the Council.

60. Other representatives argued that it would be inappropriate for the Security Council to prejudge the course of action the General Assembly should take, and that no Article of the Charter referred to recommendations by the Council to the General Assembly, although Article 12 provided that recommendations might be made by the General Assembly to the Security Council. It was further stated that it was within the rights of the Security Council to deal with the whole matter and make its own final decisions but that if it decided to refer the matter to the General Assembly, with or without recommendations, the power of the General Assembly could not in any way be impaired; and that even if the Council made recommendations, the Assembly would not be bound by them.

61. On the other hand, some representatives expressed the view that a decision to refer the matter to the General Assembly would be incompatible with the authority of the Security Council; that acceptance of the Sub-Committee's recommendations should in no way prejudice the rights of the Security Council nor should it be invoked as a precedent which would justify the Council, when faced with a difficult situation, to avoid responsibility and refer the matter to another organ of the United Nations. 66/

62. At the 46th meeting on 17 June 1946, the representative of the United Kingdom submitted an amendment 67/ to the draft resolution submitted by the representative of Australia as the Chairman of the Sub-Committee, which would adopt the recommendations of the Sub-Committee, subject to the deletion of the part of paragraph (b), coming after the words "reports of this Sub-Committee", and the addition of the words "together with the minutes of the discussion of the case by the Security Council".

Decision

At the 47th meeting on 18 June 1946, the United Kingdom amendment was rejected by 6 votes to 2, with 3 abstentions. 68/ The three recommendations of the Sub-Committee were not adopted. There were 9 votes in favour, 1 against and 1 abstention, the negative vote being that of a permanent member. 69/

66/ For texts of relevant statements, see: S C, 1st yr., 1st Series, No. 2. 44th mtg.: Chairman of the Sub-Committee (Australia), pp. 311 and 312, 326; 45th mtg.: Australia, pp. 326 and 327; Egypt, pp. 330 and 331; USSR, pp. 337 and 338; United States, p. 328; 46th mtg.: President (Mexico), pp. 360-364; Australia, pp. 349-357; France, pp. 357-360; United Kingdom, pp. 347 and 348; 47th mtg.: Australia, pp. 376 and 377; Poland, p. 373.

67/ S C, 1st yr., 1st Series, No. 2, 46th mtg., pp. 348 and 349.

68/ S C, 1st yr., 1st Series, No. 2, 47th mtg., p. 378.

69/ S C, 1st yr., 1st Series, No. 2, 47th mtg., pp. 378 and 379.

63. At the 49th meeting on 26 June 1946, the Security Council adopted 70/ a resolution in accordance with which it would "keep the situation in Spain under continuous observation and maintain it upon the list of matters of which it is seized".

64. The Security Council again considered the Spanish question at the 78th and 79th meetings on 30 October and 4 November 1946, when a draft resolution submitted by the representative of Poland to the effect that "the situation in Spain be taken off the list of matters of which the Council is seized", was adopted unanimously. 71/

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70/ See decision following para. 34 above.

71/ See paras. 36-39 above.