

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. 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" was the only issue which arose under Article 12 during the period covered by this Supplement. This question was discussed by the General Assembly and is dealt with in the Analytical Summary of Practice.

I. GENERAL SURVEY

2. Of the disputes or situations which had been considered up to 31 August 1954 by both the Security Council and the General Assembly, only the Palestine question has remained on the agenda of both the General Assembly and the Security Council, the latter dealing in general with the security and military sides of the question and the former with the general political, economic and social aspects.

3. Acting under Article 12 (2) the Secretary-General has continued to notify the President of the General Assembly, with the consent of the Security Council, of "matters relative to the maintenance of international peace and security". 1/ The General Assembly took note of these notifications, 2/ which were based upon the "Summary Statement of the Secretary-General on matters on which the Security Council is seized and on the stage reached in their consideration". The Summary Statement is circulated each week in accordance with rule 11 3/ of the provisional rules of procedure of the Security Council. The items in the notifications were the same as those in the current "Summary Statement", with the exclusion of items not considered "matters relative to the maintenance of international peace and security". The matters dealt with by the Council were divided in the notifications 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. The Secretary-General obtained the consent of the Security Council by circulating copies of the draft notifications.

4. During this period, the Security Council did not delete any item from the list of matters of which it was seized.

II. ANALYTICAL SUMMARY OF PRACTICE

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

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

5. The scope of the restriction laid down in the first clause was the subject of discussion at the ninth regular session of the General Assembly during the consideration of the question of West Irian.

6. The main contention of those representatives, who opposed consideration of the item by the General Assembly, was that the question of West Irian was a part of the Indonesian question, in respect of which the Security Council has been exercising its functions, and that, for this reason, the General Assembly was prevented by the provision of Article 12 (1) from dealing with it.

1/ G A (IX), annexes, a.i. 7, p. 1, A/2732; G A (X), annexes, a.i. 7, p. 1, A/2972.

2/ G A (IX), Plen., 476th mtg., para. 103; G A (X), Plen., 521st mtg., para. 2.

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."

*1. Decision of 10 December 1954 in connexion with
the question of West Irian*

a. PRECIS OF THE PROCEEDINGS CONNECTED WITH DECISION OF 10 DECEMBER 1954

7. By letter dated 17 August 1954 addressed to the Secretary-General, ^{4/} the Acting Permanent Representative of Indonesia requested that the item: "The question of West Irian (West New Guinea)" be included in the provisional agenda of the ninth regular session of the General Assembly.
8. In an explanatory memorandum it was pointed out that the Government of Indonesia deemed it necessary to call the attention of the General Assembly to this question and to the fact "that as long as this problem—representing the remnant of Netherlands colonial rule in Indonesia—remained unsolved, it will continue to be a latent threat to the peace and security of that part of the world". The Government of Indonesia requested therefore, that, under Articles 35, 10 and 14 of the Charter, the question be placed on the agenda of the ninth session of the General Assembly "so that the Assembly may consider it and make appropriate recommendations".
9. At its 92nd meeting on 22 September 1954, the General Committee recommended to the General Assembly the inclusion in its agenda ^{5/} of the item "The question of West Irian (West New Guinea)".
10. At its 477th plenary meeting on 24 September 1954, the General Assembly approved the inclusion of this item ^{6/} and referred it to the First Committee, which considered the item at its 726th to 736th meetings, held between 23 November and 1 December 1954.
11. At the 726th meeting of the First Committee on 23 November 1954, Indonesia submitted a draft resolution ^{7/} calling upon the Governments of Indonesia and the Netherlands to resume negotiations, without delay, as provided by the Round Table Conference agreement, with a view to achieving an early agreement on the political status of West Irian.
12. At the 734th meeting on 30 November 1954, a joint draft resolution was submitted by Argentina, Costa Rica, Cuba, Ecuador, El Salvador, India, Syria and Yugoslavia ^{8/} expressing the hope that the two Governments would pursue their endeavours to find a solution of the dispute in conformity with the principles of the Charter.
13. At the 735th meeting, the Committee decided, by 37 votes to 2, with 18 abstentions, to grant priority in voting to the joint draft resolution which as a whole was adopted at the same meeting by a roll-call vote of 34 votes to 14, with 10 abstentions. ^{9/}
14. After the vote on the joint draft resolution, the representative of Indonesia stated that he did not insist on a vote being taken on the Indonesian draft resolution. ^{10/}
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- ^{4/} G A (IX), annexes, a.i. 61, pp. 1-3, A/2694.
^{5/} G A (IX), Gen. Com., 92nd mtg., para. 52.
^{6/} G A (IX), Plen., 477th mtg., para. 92.
^{7/} G A (IX), annexes, a.i. 61, p. 4, A/C.1/L.109.
^{8/} *Ibid.*, A/C.1/L.110. To this draft resolution was submitted an amendment by Colombia (G A (IX), 1st Com., 735th mtg., para. 13).
^{9/} G A (IX), 1st Com., 735th mtg., para. 102. The Colombian amendment was voted upon in two parts; after the rejection of the first part, the remainder was withdrawn (G A (IX), 1st Com., 735th mtg., paras. 97 and 98).
^{10/} G A (IX), 1st Com., 735th mtg., para. 103.

Decision

At its 509th plenary meeting on 10 December 1954, the General Assembly failed to adopt, by 34 votes to 23, with 3 abstentions, operative paragraph 1, and by 33 votes to 23, with 4 abstentions, operative paragraph 2 of the draft resolution submitted by the First Committee (A/2831, para. 9). As none of the operative parts of the draft resolution was adopted, the President did not put the draft resolution as a whole to the vote. 11/

b. SUMMARY OF RELEVANT CONSTITUTIONAL DISCUSSION IN THE PROCEEDINGS
CONNECTED WITH DECISION OF 10 DECEMBER 1954

15. It was argued, on the one side, that the discussion of the question of West Irian by the General Assembly was precluded by the provisions of Article 12 (1) of the Charter since this question formed a part of the Indonesian question which, as stated in document A/2732 submitted by the Secretary-General to the General Assembly, was still among the items of which the Security Council was seized. The time that had elapsed since the Security Council had last discussed an item was immaterial; the only criterion was whether the item was on the Council's agenda. Since the Indonesian question was still on the agenda then, for this reason, the matter could not be discussed by the General Assembly. Article 12 further prevented the General Assembly from making any recommendations on the question unless the Council so requested. Such a request, however, was not made.

16. The representatives who supported this point of view contended further that if Indonesia felt that the situation in West Irian might become a source of friction and a threat to international peace, it should direct its appeal, not to the General Assembly but to the Security Council or to the United Nations Commission for Indonesia, which, although adjourned sine die, was still at the disposal of the parties to the agreements reached at the Round Table Conference.

17. A representative, endorsing the view that under Article 12 the General Assembly was precluded from discussing the question of West Irian, stated that his delegation would have no objection to the matter being submitted to the General Assembly, provided formal action was first taken to remove the Indonesian question from the Council's agenda.

18. The contrary view was expressed that the denial of the General Assembly's competence on the basis of Article 12 (1) was not valid since the Indonesian question and the question of West Irian were two entirely different questions. The Indonesian situation arose out of the military operations undertaken by the Netherlands forces against the people of Indonesia. This question, as included in the agenda of the Security Council in 1947, had ceased to exist when the situation which had been brought to the attention of the Security Council had been solved. An item should be judged by its content and not by its title. West Irian had not been involved in the armed conflict between the Netherlands and Indonesia and had never been discussed by the Council; it had emerged as an issue only after the Round Table Conference at The Hague held in 1949. There were many precedents — of which the Palestine and Korean questions were two — for the General Assembly's consideration of specific aspects of a general question with which the Security Council was concerned. To bring Article 12 (1) into the matter before the General Assembly would set a dangerous precedent and militate against the Assembly's competence and authority.

11/ G A (IX), Plen., 509th mtg., paras. 296-298.

19. It was further contended that the words "While the Security Council is exercising ...(its)... functions" in Article 12 clearly implied active examination of a question by the Council or consideration by the Council of the advisability of enforcement measures. The Indonesian question might still formally be included in the Security Council's agenda but the Council had not in fact exercised its functions on it since 1950 and the Commission on Indonesia had stood adjourned sine die for nearly four years. Even admitting that the question was still within the Council's competence, Article 12 did not preclude its discussion by the General Assembly, the relevant words being "The General Assembly shall not make any recommendation". 12/

12/ For texts of relevant statements, see G A (IX), Gen. Com., 92nd mtg.: Burma, para. 39; Colombia, para. 37; France, paras. 36 and 49; Iceland, para. 43; Indonesia, paras. 26, 44 and 45; Netherlands, para. 32; Syria, para. 41; USSR, paras. 47 and 50.
Plen., 477th mtg.: India, para. 86; Indonesia, paras. 30-33; Lebanon, paras. 69 and 70; Netherlands, paras. 12-14; 509th mtg.: Burma, para. 248.
1st Com., 726th mtg.: Netherlands, para. 60; 728th mtg.: India, paras. 8-12; 729th mtg.: Poland, para. 7; Burma, para. 21; 730th mtg.: El Salvador, para. 39; 731st mtg.: Indonesia, para. 46; France, para. 40; 732nd mtg.: Egypt, paras. 27 and 33.

