

ARTICLE 14

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TEXT OF ARTICLE 14

Subject to the provisions of Article 12, the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations.

INTRODUCTORY NOTE

1. The General Survey and the Analytical Summary deal with resolutions 1497 (XV) and 1661 (XVI) adopted by the General Assembly on the question of the status of the German-speaking element in the Province of Bolzano (Bozen): implementation of the Paris agreement of 5 September 1946. Three resolutions adopted by the General Assembly on the question of the treatment of people of Indian and Indo-Pakistan origin in the Republic of South Africa and nine resolutions on the question of race conflict in South Africa resulting from the policies of *apartheid* of the Government of the Republic of South Africa are listed in the General Survey. Of the latter, resolutions 1663 (XVI), 1761 (XVII), 1978 A (XVIII) and 2054 A (XX) are discussed in the Analytical Summary. Resolutions 1542 (XV) and 1699 (XVI) on transmission of information under Article 73 e of the Charter are noted in the General Survey.

2. With the exception of resolution 1542 (XV), there is no express reference to Article 14 in any of the above-mentioned resolutions. However, resolution 1497 (XV) in its preamble expresses the General Assembly's desire of "preventing the situation created by the dispute from impairing the friendly relations between the two countries" and in its operative paragraph 3, the General Assembly recommended that "the countries in question should refrain from any action which might impair their

friendly relations". The resolutions relating to the question of race policies of the Republic of South Africa have been included because they recall previous General Assembly resolutions on the same question in which an explicit reference to Article 14 was made. Resolutions 1663 (XVI) and 1761 (XVII) were included since views were expressed, during the discussion leading to their adoption, that the measures mentioned therein were those which the General Assembly could recommend to Member States in accordance with Article 14.

3. The General Survey and the Analytical Summary also refer to the Advisory Opinion of the International Court of the Justice of 20 July 1962 entitled "Certain expenses of the United Nations (Article 17, paragraph 2, of the Charter)". The advisory opinion of the International Court as well as the discussion relating to that opinion at the seventeenth session and the discussion on the item entitled "Comprehensive review of the whole question of peace-keeping operations in all their aspects" at the General Assembly's twentieth session dealt with the question of the Assembly's competence to make recommendations under Article 14 on questions relating to maintenance of international peace and security.

4. The General Survey also refers to instances of the invocation of Article 14 in requests for the inclusion of certain items in the agenda.

1. GENERAL SURVEY

5. In a letter¹ dated 23 June 1960 addressed to the Secretary-General, Austria proposed that the item entitled "The Problem of the Austrian Minority in Italy" be included in the agenda of the General Assembly at its fifteenth session and invoked Article 14 of the Charter in an accompanying memorandum.² The title of the item was subsequently revised in the Assembly's General Committee to read "The status of the German-speaking element in the Province of Bolzano (Bozen): implementation of the Paris

agreement of 5 September 1946".³ After the discussion of the item, the General Assembly adopted resolution 1497 (XV) in which no explicit reference to Article 14 was made. There was, however, a provision in the final paragraph of the preamble and in operative paragraph 3 of that resolution having a bearing on Article 14. At its sixteenth session, the General Assembly again considered the matter and adopted resolution 1661 (XVI) in which resolution 1497 (XV) was recalled.

6. During the period under review the General Assembly also adopted resolutions 1460 (XVI),

¹ G A (XV), Annexes, a.i. 68, A/4395.

² *Ibid.*, explanatory memorandum, para. 16.

³ G A (XV), Annexes, a.i. 68, A/4553, para. 3.

1597 (XV) and 1662 (XVI) on the question of the treatment of people of Indian and Indo-Pakistan origin in the Republic of South Africa; and resolutions 1375 (XIV), 1598 (XV), 1663 (XVI), 1761 (XVII), 1881 (XVIII), 1978 A and B (XVIII) and 2054 A and B (XX) on the policies of *apartheid* of the Government of the Republic of South Africa. As stated in the previous studies of Article 14 in the *Repertory* and its *Supplements Nos. 1* and *2*, the language of Article 14 had been used in resolution 44 (I) on the treatment of Indians in the Union of South Africa; and in four of the five resolutions adopted on the same question by the General Assembly prior to its ninth session, express reference had been made to resolution 44 (I).⁴ The resolutions on the above-mentioned items adopted at the fourteenth, fifteenth, sixteenth, seventeenth, eighteenth and twentieth sessions, also recalled the resolutions adopted at the previous sessions of the General Assembly and may be considered as also throwing light upon the "measures for the peaceful adjustment" of a situation mentioned in Article 14.

7. On 20 July 1962 the International Court of Justice delivered an advisory opinion entitled "Certain expenses of the United Nations (Article 17, paragraph 2, of the Charter)"⁵ which the General Assembly accepted by its resolution 1854 (XVII).

8. Amongst other Articles, the Court also discussed the relevance of Article 14 with regard to the competence of the General Assembly in recommending "measures" on matters affecting international peace and security.

9. During the discussion at the seventeenth session of the item entitled "Obligations of Members, under the Charter of the United Nations, with regard to the financing of the United Nations Emergency Force and the Organization's operations in the Congo: advisory opinion of the International Court of Justice" and also during the discussion at the twentieth session on the item entitled "Comprehensive review of the whole question of the peace-keeping operations in all their aspects", references were made to the competence of the General Assembly to recommend measures on matters concerning the maintenance of international peace and security.

10. Article 14 was cited also, together with Article 10, in a letter in which Czechoslovakia requested that the item entitled "Appeal for maximum support to efforts of newly emerging States for strengthening their independence"⁶ be included in the agenda of the General Assembly at its fifteenth session.

11. Article 14 was mentioned explicitly in reso-

lution 1542 (XV) entitled "Transmission of information under Article 73e of the Charter" which was adopted at the 948th plenary meeting on 15 December 1960. In that resolution it was noted, *inter alia*, that the General Assembly "mindful of its responsibilities under Article 14 of the Charter" considered that the territories under the administration of Portugal listed in operative paragraph 1 were "Non-Self-Governing Territories within the meaning of Chapter XI of the Charter". Resolution 1542 (XV) was recalled in the first preambular paragraph of resolution 1699 (XVI) of 19 December 1961.

12. Incidental references to Article 14 were made in the proceedings of the General Assembly and the Security Council.⁷

⁷ Incidental references were made to Article 14 during the debates on various items on the agenda of the General Assembly, as follows:

Fifteenth session: Item 8, "Adoption of the agenda". Item 92, "The situation in Angola" (G A (XV/2), Plen., 966th mtg.: Liberia, para. 37). Item 38, "Study of principles which should guide Members in determining whether or not an obligation exists to transmit the information called for in Article 73e of the Charter of the United Nations: report of the Special Committee established under General Assembly resolution 1467 (XIV)" (G A (XV/1), 4th Com., 1035th mtg.: Ceylon, para. 17; 1044th mtg.: Ceylon, para. 11; Iran, para. 21). Item 71, "Question of Algeria" (G A (XV/1), 1st Com., 1130th mtg.: United Arab Republic, para. 12; 1133rd mtg.: Ecuador, para. 42). Item 85, "The situation in the Republic of the Congo" (G A (XV/1), Plen., 950th mtg.: India, paras. 85 and 89; 957th mtg.: Cameroun, paras. 97-99).

Seventeenth session: Item 64, "Obligations of Members, under the Charter of the United Nations, with regard to the financing of the United Nations Emergency Force and the Organization's operations in the Congo: advisory opinion of the International Court of Justice" (G A (XVII), 5th Com., 965th mtg.: Romania, paras. 4 and 5; 967th mtg.: Italy, para. 10; 969th mtg.: Ghana, para. 21).

Fourth special session: Item 7, "Consideration of the financial situation of the Organization in the light of the report of the Working Group on the Examination of the Administrative and Budgetary Procedures of the United Nations" (G A (S-IV), 5th Com., 993rd mtg.: Malaya, para. 10; 995th mtg.: Ghana, para. 6).

Twentieth session: Item 36, "The policies of *apartheid* of the Government of the Republic of South Africa: (a) Reports of the Special Committee on the Policies of *apartheid* of the Government of the Republic of South Africa; (b) Reports of the Secretary-General" (G A (XX), Spec. Pol. Com., 472nd mtg.: Japan, para. 4). Item 93, "Question of Cyprus: (a) Letter dated 13 July 1965 from the representative of Cyprus; (b) Letter dated 21 July 1965 from the representative of Turkey" (G A (XX), 1st Com., 1414th mtg.: Argentina, para. 21). Item 101, "Comprehensive review of the whole question of peace-keeping operations in all their aspects: (a) Report of the Special Committee on Peace-keeping Operations; (b) The authorization and financing of future peace-keeping operations" (G A (XX), Spec. Pol. Com., 463rd mtg.: Peru, para. 5; 465th mtg.: USSR, para. 54; 466th mtg.: India, para. 12; 467th mtg.: Tanzania, para. 13; 468th mtg.: Guatemala, para. 19; Hungary, para. 24; Venezuela, para. 12; 482nd mtg.: Austria, para. 9; China, para. 15; 483rd mtg.: Morocco, para. 36; Zambia, para. 11).

Incidental reference to Article 14 was also made during the debates in the Security Council on the situation in the Republic of the Congo. (S C, 15th yr., 917th mtg.: India, paras. 159 to 161.)

⁴ See *Repertory*, vol. I, under Art. 14, paras. 13, 15, 35 and 36. *Supplement No. 1* Vol. I, under Article 14, paras. 4 and 8, and *Supplement No. 2*, vol. 2 under Article 14, paras. 4 and 6.

⁵ ICJ Reports 1962, p. 151.

⁶ G A (XV), Annexes, a.i. 77, A/4443, para. 7.

II. ANALYTICAL SUMMARY OF PRACTICE

A. The question of the type of "measures for the peaceful adjustment of any situation" of the nature described in Article 14 that the General Assembly may recommend under the Article.

1. RESOLUTIONS 1497 (XV) AND 1661 (XVI) ON THE STATUS OF THE GERMAN-SPEAKING ELEMENT IN THE PROVINCE OF BOLZANO (BOZEN)

13. By a letter⁸ dated 23 June 1960, Austria proposed that the item entitled "The problem of the Austrian minority in Italy" be included in the agenda of the General Assembly at its fifteenth session.

14. Austria had cited Article 14 together with Article 10 in the memorandum accompanying its letter of submission.⁹ During the consideration of the agenda in the General Committee, Austria stated¹⁰ that since bilateral negotiations had not been fruitful, it had decided to submit the question to the United Nations in accordance with Article 14 of the Charter. It further stated that the question involved relations between two States and that the Assembly, under Article 14, was competent to deal with a question which might strain relations between two States. Another representative said¹¹ that his country attached particular importance to the opportunity which Article 14 of the Charter provided for the peaceful settlement of international disputes and that, in accordance with the terms of that Article, it would therefore be appropriate to discuss the item.

15. At its 128th meeting on 23 September 1960, the General Committee decided to recommend that the item be included in the agenda and that its title be amended to read: "The Status of the German-speaking element in the Province of Bolzano (Bozen); implementation of the Paris agreement of 5 September 1946".¹² The General Assembly decided to include the item, as amended, in its agenda at the 898th plenary meeting on 10 October 1960.

16. At its 909th plenary meeting on 31 October 1960, the General Assembly adopted resolution 1497 (XV) in which it was stated in the fifth preambular paragraph and in operative paragraph 3, respectively, that

"The General Assembly,

"...

"Desirous of preventing the situation created by the dispute from impairing the friendly relations between the two countries,

"...

⁸ G A (XV), Annexes, a.i. 68, A/4395.

⁹ *Ibid.*, explanatory memorandum, para. 16.

¹⁰ G A (XV), Gen. Com., 127th mtg.: Austria, para. 13; 128th mtg.: Austria, para. 3.

¹¹ G A (XV), Gen. Com., 127th mtg.: Panama, para. 25.

¹² *Ibid.*, 128th mtg., para. 9.

"3. Likewise recommends that the countries in question should refrain from any action which might impair their friendly relations."

17. During the discussion of the item in the Special Political Committee, a number of representatives maintained that the General Assembly was competent to consider the issue by virtue of Article 14 of the Charter which provided that, subject to the provisions of Article 12, it might recommend measures for the peaceful adjustment of any situation which it deemed likely to impair the general welfare or friendly relations among nations. Other representatives maintained that, without impugning the Assembly's competence under Article 14 of the Charter, the question relating to the status of the German-speaking element was highly legal and technical, involving a number of legal issues and interpretations of international agreement, and that it should be dealt with by a legal body. If any organ of the United Nations was to be called upon to pass judgement, they felt it should be the International Court of Justice. Some representatives maintained that the General Assembly was competent to deal with the question, and if it took no action it would be neglecting one of the functions explicitly conferred upon it by Article 14 of the Charter, which drew no distinction between the legal and political character of a dispute. In their view, the question, instead of being referred to the International Court of Justice, might better be settled by negotiations between the parties concerned. Acting under Article 14 of the Charter, the Assembly could then ask the two parties to take note of the views expressed, particularly with regard to the need to uphold certain principles, and to bear those views in mind while resuming their efforts to settle the problem through bilateral negotiations.¹³

18. At the sixteenth session of the General Assembly, Austria again proposed that the item entitled "The status of the German-speaking element in the Province of Bolzano (Bozen); implementation of General Assembly resolution 1497 (XV) of 31 October 1960"¹⁴ should be included in the agenda.

19. By resolution 1661 (XVI) of 28 November 1961, the General Assembly, recalling its resolution 1497 (XV) of 31 October 1960, noting with satisfaction the negotiations which were taking place between the two parties concerned and noting further that the dispute remained as yet unresolved, called for further efforts by the two parties concerned to find a solution in accordance with operative paragraphs 1, 2 and 3 of resolution 1497 (XV).

¹³ For texts of relevant statements, see G A (XV/1), Spec. Pol. Com., 178th mtg.: Austria, para. 5; Sweden, para. 32; 180th mtg.: Bolivia, para. 1; Cuba, para. 14; 181st mtg.: India, para. 6; Lebanon, para. 16; Uruguay, para. 9; 182nd mtg.: Ireland, para. 21; Jordan, para. 18; Peru, paras. 34 and 35.

¹⁴ G A (XVI), Annexes, a.i. 74, A/4802 and Add.1.

2. RESOLUTIONS 1663 (XVI), 1761 (XVII), 1978 A (XVIII) AND 2054 A (XX) ON THE QUESTION OF RACE CONFLICT IN SOUTH AFRICA

a. Resolution 1663 (XVI)

20. In a letter dated 18 July 1961,¹⁵ Afghanistan, Brazil, Burma, Cambodia, Cameroun, Ceylon, Chad, Congo (Brazzaville), Congo (Leopoldville), Cuba, Cyprus, Denmark, Ethiopia, Federation of Malaya, Gabon, Ghana, Guinea, Iceland, India, Indonesia, Iran, Iraq, Ireland, Japan, Jordan, Laos, Lebanon, Liberia, Libya, Madagascar, Mali, Morocco, Nepal, Nigeria, Norway, Pakistan, Philippines, Saudi Arabia, Senegal, Somalia, Sudan, Tunisia, United Arab Republic, Uruguay, Yemen and Yugoslavia requested that the item entitled "The question of race conflict in South Africa resulting from the policies of *apartheid* of the Government of the Republic of South Africa" to be included in the provisional agenda of the General Assembly at its sixteenth session. At its 1014th plenary meeting on 25 September 1961, the General Assembly decided¹⁶ to include the item in its agenda.

21. During the discussion of that item, the Special Political Committee had before it two draft resolutions. The first draft resolution¹⁷ was submitted on 30 October 1961 by Cameroun, Central African Republic, Chad, Congo (Brazzaville), Congo (Leopoldville), Cuba, Dahomey, Ethiopia, Gabon, Ghana, Guinea, Indonesia, Iraq, Ivory Coast, Liberia, Libya, Madagascar, Mali, Mauritania, Morocco, Niger, Nigeria, Saudi Arabia, Senegal, Sierra Leone, Somalia, Sudan, Syria, Tunisia, United Arab Republic and Upper Volta (hereinafter referred to as the thirty-one-Power draft resolution). Under its operative part the General Assembly would, *inter alia*, solemnly recommend to all States to consider taking the following steps: breaking off diplomatic relations with the Government of the Republic of South Africa, closing the ports to all vessels flying the South African flag, enacting legislation prohibiting the ships of each State from entering South African ports, boycotting all South African goods and refraining from exporting goods to South Africa and refusing landing and passage facilities to all aircraft belonging to the Government and companies registered under the laws of the Republic of South Africa.

22. The second draft resolution¹⁸ was submitted on 1 November 1961 by Afghanistan, Ceylon, Denmark, Federation of Malaya, India, Norway, Togo and Venezuela (hereinafter referred to as the eight-Power draft resolution). Under its terms, the General Assembly would, *inter alia*, urge all states to take such separate and collective action as was open to them in conformity with the Charter of the United Nations to bring about an abandonment of the racial policies of the Government of the Republic of South Africa. The representatives of Ethiopia, the USSR and Pakistan submitted separate amendments to that draft resolution. The Ethiopian

amendment,¹⁹ submitted at the 285th meeting of the Special Political Committee on 10 November 1961, provided for the insertion of a new operative paragraph under which the General Assembly would call the attention of the Security Council to Article 11 (3) of the Charter and request it to consider what measures should be taken against the Republic of South Africa for its persistent violations of the Charter of the United Nations.

23. Under the USSR and the Pakistan amendments, the General Assembly would request the Member States to take certain specific measures. The USSR, in its amendment,²⁰ submitted at the 286th meeting on 10 November 1961, proposed the insertion of a new paragraph in the operative part of the eight-Power draft resolution under the terms of which the Assembly would call upon all States to deny to the Government of the Republic of South Africa any support and assistance, including assistance in the form of arms and war material, which might be used for the purpose of intensifying the violence against the indigenous population of South Africa and causing further bloodshed. Under the amendment²¹ submitted by Pakistan at its 287th meeting on 13 November 1961, the General Assembly would call upon all Member States to refrain from exporting petroleum to South Africa.

24. The Special Political Committee at the same meeting adopted the thirty-one-Power draft resolution,²² the three amendments to the eight-Power draft resolution and the eight-Power draft resolution, as a whole, as amended.²³

25. At its 1067th plenary meeting on 28 November 1961, the General Assembly proceeded to vote on the two draft resolutions. A separate vote was requested on the three operative paragraphs of the thirty-one-Power draft resolution relating to the possible expulsion of the Republic of South Africa from the United Nations, recommending the application of specific measures against South Africa and drawing the attention of the Security Council to the recommendations made by the Assembly in accordance with Article 11 (2) of the Charter. Those paragraphs failed to obtain the required two-thirds majority and were not adopted.²⁴ The sponsors of the draft resolution, while maintaining that under Article 14 it was within the competence of the General Assembly to recommend specific measures to Member States, requested, however, that the draft resolution be withdrawn. In the absence of objection, it was so decided.²⁵

26. The eight-Power draft resolution, as amended, was then put to the vote. Separate votes were requested on the operative paragraphs added to the draft following the adoption of the Ethiopian, USSR and Pakistan amendments. The first part of the operative paragraph proposed by Ethiopia, consisting of the

¹⁵ *Ibid.*, a.i. 76, A/4804 and Add. 1-5.

¹⁶ G A (XVI), Plen., 1014th mtg., para. 143.

¹⁷ G A (XVI), Annexes, a.i. 76, A/SPC/L. 71 and Add. 1-6.

¹⁸ *Ibid.*, A/SPC/L.72/rev.1 and Add.1.

¹⁹ *Ibid.*, A/4968, para. 7 (A/SPC/L.73).

²⁰ *Ibid.*, para. 8 (A/SPC/L.74).

²¹ *Ibid.*, para. 9 (A/SPC/L.75).

²² *Ibid.*, para. 11.

²³ *Ibid.*, para. 12.

²⁴ G A (XVIII), Plen., 1067th mtg., para. 105.

²⁵ *Ibid.*, paras. 107-112.

words "*Calls the attention* of the Security Council to the provision of Article 11, paragraph 3 of the Charter" was put to a separate vote and was adopted, but the second part of that paragraph failed to obtain the required two-thirds majority and was not adopted. The two additional operative paragraphs incorporating the USSR and Pakistan amendments were similarly not adopted, having failed to obtain the required two-thirds majority. The remainder of the eight-Power draft resolution, as amended, was adopted as resolution 1663 (XVI). It read as follows:

"The General Assembly,

"Recalling its previous resolutions on the question of race conflict in South Africa resulting from the policies of *apartheid* of the Government of the Republic of South Africa,

"Considering that in its resolutions 616 B (VII) of 5 December 1962, 917 (X) of 6 December 1955 and 1248 (XIII) of 30 October 1958 the General Assembly has declared that racial policies designed to perpetuate or increase discrimination are inconsistent with the Charter of the United Nations and with the pledges under Article 56 of the Charter,

"Noting that in its resolutions 395 (V) of 2 December 1950, 511 (VI) of 12 January 1952 and 616 A (VII) of 5 December 1952 the General Assembly has successively affirmed that the policy of racial segregation (*apartheid*) is necessarily based on doctrines of racial discrimination,

"Recalling that the Security Council in its resolution of 1 April 1960 recognized that the situation in South Africa was one that had led to international friction and, if continued, might endanger international peace and security,

"Recalling further that the Security Council in its aforesaid resolution called upon the Government of South Africa to initiate measures aimed at bringing about racial harmony based on equality in order to ensure that the present situation does not continue or recur and to abandon its policies of *apartheid* and racial discrimination,

"Recalling in particular that the Government of South Africa has completely disregarded General Assembly resolution 1598 (XV) of 13 April 1961 and, far from bringing its policies and conduct into conformity with its obligations under the Charter, has continued to reinforce its racial policies in disregard of those obligations,

"1. Deplores that the Government of the Republic of South Africa has failed to comply with the repeated requests and demands of the General Assembly and with the aforesaid resolution of the Security Council and has flouted world public opinion by refusing to reconsider or revise its racial policies or to observe its obligations under the Charter of the United Nations;

"2. Strongly deprecates the continued and total disregard by the Government of South Africa of its obligations under the Charter and furthermore its determined aggravation of racial issues by ever-increasing discriminatory laws and measures and their ruthless enforcement accompanied by violence and bloodshed;

"3. Condemns policies based on racial superiority as reprehensible and repugnant to human dignity;

"4. Calls the attention of the Security Council to the provision of Article 11, paragraph 3, of the Charter;

"5. Urges all States to take such separate and collective action as is open to them in conformity with the Charter to bring about an abandonment of those policies;

"6. Reaffirms that the racial policies being pursued by the Government of South Africa are a flagrant violation of the Charter of the United Nations and the Universal Declaration of Human Rights and are totally inconsistent with South Africa's obligations as a Member State;

"7. Reaffirms with grave concern and deep anxiety that these policies have led to international friction and that their continuance seriously endangers international peace and security;

"8. Reminds the Government of South Africa of the requirement of Article 2, paragraph 2, of the Charter that all Members shall fulfil in good faith the obligations assumed by them under the Charter;

"9. Calls once again upon the Government of South Africa to change its policies and conduct so as to conform to its obligations imposed by the Charter."

27. The constitutional discussion centred primarily on whether the General Assembly was acting within its rights when recommending measures which, according to some of the representatives, were enumerated in Article 41 of the Charter and thus raised the question of the conflict between the respective competence of the General Assembly and the Security Council.

28. The supporters of the thirty-one-Power draft resolution maintained that under Article 14 the General Assembly could, subject to the provisions of Article 12, recommend measures for the peaceful adjustment of any situation which it deemed likely to impair the general welfare or friendly relations among nations. They pointed out that under Article 35 any Member State might bring any dispute, or any situation which might lead to international friction or give rise to a dispute, to the attention of the Security Council or of the General Assembly. Since the Assembly was competent to discuss the dispute or situation, it could also recommend specific measures to remedy it. A number of representatives stated that although the measures which were enumerated in Article 41 were not mentioned specifically in Article 14, there was nothing in the Charter to indicate that the measures which the General Assembly might recommend under the terms of Article 14 could not coincide with those enumerated in Article 41. The difference between the measures referred to in Article 14 and those enumerated in Article 41 lay in the juridical nature of the decisions of the General Assembly and the Security Council, the two organs concerned.

29. Other representatives, however, stated that it had never been doubted that one sector was completely excluded from competence of the General

Assembly, namely, action to maintain or restore peace in application of Articles 39, 41 and 42 of the Charter. The Security Council, thus, had a "monopoly of enforcement" and they considered that it would be a violation of the Charter to ignore that competence which was reserved to the Security Council. Therefore, they felt that the General Assembly should not be allowed to trespass upon the functions of the Security Council, even to the extent of making recommendations. One representative, however, was of the opinion that the Charter did not formally prohibit the General Assembly from recommending measures of the kind enumerated in Article 41 but that it placed the responsibility for taking such action on the Security Council.²⁶

b. Resolution 1761 (XVII)

30. By a letter dated 14 August 1962 addressed to the Secretary-General,²⁷ Afghanistan, Burma, Cambodia, Cameroon, Central African Republic, Ceylon, Chad, Congo (Brazzaville), Congo (Leopoldville), Cyprus, Dahomey, Ethiopia, Federation of Malaya, Gabon, Ghana, Guinea, India, Indonesia, Iran, Iraq, Ivory Coast, Japan, Jordan, Laos, Lebanon, Liberia, Libya, Madagascar, Mali, Mauritania, Mongolia, Morocco, Nepal, Niger, Nigeria, Pakistan, Philippines, Senegal, Sierra Leone, Somalia, Sudan, Syria, Thailand, Tunisia, United Arab Republic, Upper Volta, Yemen and Yugoslavia requested that the item entitled "The policies of *apartheid* of the Government of the Republic of South Africa: (a) Race conflict in South Africa; (b) Treatment of people of Indian and Indo-Pakistan origin in the Republic of South Africa" be included in the agenda of the General Assembly at its seventeenth session. At its 1929th plenary meeting on 24 September 1962, the General Assembly decided to include the item in its agenda.²⁸

31. On 26 October 1962, Afghanistan, Algeria, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Congo (Leopoldville), Dahomey, Ethiopia, Gabon, Ghana, Guinea, India, Indonesia, Iraq, Ivory Coast, Liberia, Libya, Mali, Mauritania, Mongolia, Morocco, Niger, Nigeria, Pakistan, Saudi Arabia, Senegal, Sierra Leone, Somalia, Sudan, Syria, Tanganyika, Tunisia and the United Arab Republic submitted a draft resolution.²⁹ Certain amendments to this draft resolution were submitted by Guatemala, but the Special Political Committee rejected them at its 341st meeting on 1 November 1962³⁰ and adopted the joint draft resolution at the same meeting.³¹

32. At the 1164th plenary meeting of the General Assembly, on 6 November 1962, during consideration

of the draft resolution recommended to it by the Special Political Committee,³² the representative of Trinidad and Tobago submitted certain amendments³³ whereby the General Assembly would recommend, "in accordance with Article 14 of the Charter", that all Member States take the necessary measures, *inter alia*, to discontinue the export of arms to South Africa and the import of specific goods from that country. When submitting his delegation's amendments, the representative of Trinidad and Tobago quoted the text of Article 14 and stated that no one could deny that there had been a violation by the Government of South Africa of the provisions of the Charter setting forth the Purposes and Principles of the United Nations, and thus a situation had been created that needed peaceful adjustment.³⁴ However, the representative of Trinidad and Tobago later withdrew his amendments.³⁵

33. At its 1165th plenary meeting, on the same date, the General Assembly adopted resolution 1761 (XVII) by a roll-call vote of 67 to 16, with 23 abstentions.³⁶ It read as follows:

"The General Assembly,

"Recalling its previous resolutions on the question of race conflict in South Africa resulting from the policies of *apartheid* of the Government of the Republic of South Africa,

"Further recalling its resolutions 44 (I) of 8 December 1946, 395 (V) of 2 December 1950, 615 (VII) of 5 December 1952, 1179 (XII) of 26 November 1957, 1302 (XIII) of 10 December 1958, 1460 (XIV) of 10 December 1959, 1597 (XV) of 13 April 1961 and 1662 (XVI) of 28 November 1961, on the question of the treatment of peoples of Indian and Indo-Pakistan origin,

"Noting the reports of the Governments of India³⁷ and Pakistan³⁸ on that subject,

"Recalling that the Security Council in its resolution of 1 April 1960³⁹ recognized that the situation in South Africa was one that had led to international friction and, if continued, might endanger international peace and security,

"Recalling further that the Security Council in its aforesaid resolution called upon the Government of South Africa to initiate measures aimed at bringing about racial harmony based on equality in order to insure that the present situation does not continue or recur, and to abandon its policies of *apartheid* and racial discrimination,

"Regretting that the actions of some Member States indirectly provide encouragement to the Government of South Africa to perpetuate its policy of racial segregation, which has been rejected by the majority of that country's population,

²⁶ For texts of relevant statements, see G A (XVIII), Plen., 1067th mtg.: Ivory Coast, para. 107; Spec. Pol. Com., 276th mtg.: Sweden, para. 3; 277th mtg.: France, para. 10; 282nd mtg.: Turkey, para. 12; 285th mtg.: Ivory Coast, para. 8; Mexico, para. 40; Venezuela, para. 32; 287th mtg.: Ethiopia, para. 28; India, paras. 13-15.

²⁷ G A (XVII), Annexes, a.i. 87, A/5167 and Add.1-6.

²⁸ G A (XVII), Plen., 1129th mtg., para. 340.

²⁹ G A (XVII), Annexes, a.i. 87, A/SPC/L.83 and Add.1-3, adopted without change as G A resolution 1761 (XVII).

³⁰ G A (XVII), Spec. Pol. Com., 341st mtg., para. 80.

³¹ *Ibid.*, para. 91.

³² G A (XVII), Annexes, a.i. 87, A/5276, para. 13, adopted without change as G A resolution 1761 (XVII).

³³ G A (XVII), Annexes, a.i. 87, A/L.400.

³⁴ G A (XVII), Plen., 1164th mtg., para. 88.

³⁵ *Ibid.*, para. 193.

³⁶ *Ibid.*, 1165th mtg., para. 33.

³⁷ G A (XVII), Annexes, a.i. 87, A/5166.

³⁸ *Ibid.*, A/5173.

³⁹ S C, 15th yr., Suppl. for April-June, S/4300.

"1. *Deplores* the failure of the Government of the Republic of South Africa to comply with the repeated requests and demands of the General Assembly and of the Security Council and its flouting of world public opinion by refusing to abandon its racial policies;

"2. *Strongly deprecates* the continued and total disregard by the Government of South Africa of its obligations under the Charter of the United Nations and, furthermore, its determined aggravation of racial issues by enforcing measures of increasing ruthlessness involving violence and bloodshed;

"3. *Reaffirms* that the continuance of those policies seriously endangers international peace and security;

"4. *Requests* Member States to take the following measures, separately or collectively, in conformity with the Charter, to bring about the abandonment of those policies:

"(a) Breaking off diplomatic relations with the Government of the Republic of South Africa or refraining from establishing such relations;

"(b) Closing their ports to all vessels flying the South African flag;

"(c) Enacting legislation prohibiting their ships from entering South African ports;

"(d) Boycotting all South African goods and refraining from exporting goods, including all arms and ammunition, to South Africa;

"(e) Refusing landing and passage facilities to all aircraft belonging to the Government of South Africa and companies registered under the laws of South Africa;

"5. *Decides* to establish a Special Committee consisting of representatives of Member States nominated by the President of the General Assembly, with the following terms of reference:

"(a) To keep the racial policies of the Government of South Africa under review when the Assembly is not in session;

"(b) To report either to the Assembly or to the Security Council or to both, as may be appropriate, from time to time;

"6. *Requests* all Member States:

"(a) To do everything in their power to help the Special Committee to accomplish its task;

"(b) To refrain from any act likely to delay or hinder the implementation of the present resolution;

"7. *Invites* Member States to inform the General Assembly at its eighteenth session regarding actions taken, separately or collectively, in dissuading the Government of South Africa from pursuing its policies of *apartheid*;

"8. *Requests* the Security Council to take appropriate measures, including sanctions, to secure South Africa's compliance with the resolutions of the General Assembly and of the Security Council on this subject and, if necessary, to consider action under Article 6 of the Charter."

34. The discussion in the Special Political Committee on that item was a reiteration of the opinions expressed during the sixteenth session of the General Assembly. It was argued, on the one side, that the measures proposed in the draft resolutions were those which the Assembly had the right to recommend under Article 14 as that Article provided that, subject to the provisions of Article 12, the General Assembly might recommend measures for the peaceful adjustment of any situation which it deemed likely to impair the general welfare or friendly relations among nations. A number of representatives, on the other side, stressed that the measures put forward in the draft resolutions as Assembly recommendations were those which could be taken only by the Security Council in accordance with Article 41. They further argued that the very wording of the draft resolution implied that the situation was one falling within the meaning of Chapter VII of the Charter. That Chapter, in their view, gave the Security Council exclusive responsibility for making recommendations, or deciding what measures should be taken in the event that it determined the existence of any threat to the peace, breach of the peace or act of aggression. They also considered that the responsibilities and powers given to the General Assembly under Article 14 of the Charter did not cover threats to, or breaches of, the peace or acts of aggression. The supporters of the draft resolution, however, stated that the General Assembly was concerned with a situation whose continuance might involve a threat to the peace and in those circumstances, the Assembly was within its rights to recommend measures to Member States. If the threat were to materialize and an actual breach of peace were to take place, then it would rest with the Security Council to take action under Article 41.⁴⁰

c. Resolutions 1978 A (XVIII) and 2054 A (XX)

35. Resolution 1761 (XVII) was recalled in both resolution 1978 A (XVIII), adopted on 16 December 1963, and resolution 2054 A (XX), adopted on 15 December 1965. In operative paragraph 1 of resolution 1978 A (XVIII), the General Assembly appealed to all States to take appropriate measures and intensify their efforts, separately and collectively, with a view to dissuading the Government of the Republic of South Africa from pursuing its policies of *apartheid*, and requested them, in particular, to implement fully the Security Council resolution of 4 December 1963.⁴¹ In operative paragraph 1 of resolution 2054 (XX), the Assembly urgently appealed to the major trading partners of the Republic of South Africa to cease their increasing economic collaboration with the Government of South Africa, which encouraged that Government to defy world opinion and to accelerate the implementation of the policies of *apartheid*.

⁴⁰ For texts of relevant statements, see G A (XVII), Spec. Pol. Com., 336th mtg.: Sweden, para. 48; 340th mtg.: Ivory Coast, paras. 38 and 39; 341st mtg.: Colombia, para. 24; Guatemala, para. 47; Ivory Coast, para. 55; Sweden, para. 76; Thailand, para. 34; United Arab Republic, para. 78.

⁴¹ See also this *Supplement* under Article 41, paras. 26–32.

3. ADVISORY OPINION OF 20 JULY 1962 OF THE INTERNATIONAL COURT OF JUSTICE

36. In its advisory opinion of 20 July 1962 entitled "Certain expenses of the United Nations (Article 17, paragraph 2, of the Charter)",⁴² the International Court of Justice, after quoting Article 24 of the Charter, stated:

"The Charter makes it abundantly clear, however, that the General Assembly is also to be concerned with international peace and security. Article 14 authorized the General Assembly to 'recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the purposes and principles of the United Nations'. The word 'measures' implies some kind of action, and the only limitation which Article 14 imposes on the General Assembly is the restriction found in Article 12, namely, that the Assembly should not recommend measures while the Security Council is dealing with the same matter unless the Council requests it to do so. Thus while it is the Security Council which, exclusively, may order coercive action, the functions and powers conferred by the Charter on the General Assembly are not confined to discussion, consideration, the initiation of studies and the making of recommendations; they are not merely hortatory."⁴³

"...

"The practice of the Organization throughout its history bears out the foregoing elucidation of the term 'action' in the last sentence of Article 11, paragraph 2. Whether the General Assembly proceeds under Article 11 or under Article 14, the implementation of its recommendations for setting up commissions or other bodies involves organizational activity—action—in connection with the maintenance of international peace and security. Such implementation is a normal feature of the functioning of the United Nations."⁴⁴

"...

"The Court notes that these 'actions' may be considered 'measures' recommended under Article 14, rather than 'action' recommended under Article 11. The powers of the General Assembly stated in Article 14 are not made subject to the provisions of Article 11, but only of Article 12. Furthermore, as the Court has already noted, the word 'measures' implies some kind of action. So far as concerns the nature of the situations in the Middle East in 1956, they could be described as 'likely to impair ... friendly relations among nations', just as well as they could be considered to involve 'the maintenance of international peace and security'. Since the resolutions of the General Assembly in question do not mention upon which

article they are based, and since the language used in most of them might imply reference to either Article 14 or Article 11, it cannot be excluded that they were based upon the former rather than the latter article."⁴⁵

"...

"The Charter does not exclude, and indeed (subject to specified conditions and limitations) makes express provision for the carrying out of certain peace-keeping activities by the Assembly (Articles 11, 14, 35, etc.); and ... the activities of the Assembly in respect of which the expenditures at issue were incurred were of this kind, and did not exceed the conditions and limitations in question."⁴⁶

37. At the seventeenth session of the General Assembly, during the discussion in the Fifth Committee of the item entitled "Obligations of Members, under the Charter of the United Nations, with regard to the financing of the United Nations Emergency Force and the Organization's operations in the Congo: advisory opinion of the International Court of Justice", one view was that, although the Court had found that the operations undertaken in the Middle East were in conformity with Articles 11 and 14 of the Charter, it had, however, been specifically provided in Articles 42, 43, 45 and 47 that the Security Council and not the General Assembly should take such action as might be considered necessary to maintain or restore international peace and security by calling upon Member States to provide armed forces, assistance and facilities. According to that view, Articles 11 and 14 were not, in fact, relevant as far as action for maintenance of international peace was concerned. Under Article 14, the Assembly could make only recommendations for the peaceful adjustment of situations, but the measures it could thus recommend were subject to the provisions of Article 33, which specified that the Security Council should call upon the parties to settle disputes by peaceful means. It was clear from the text of Articles 10, 11, 12, 14, 18 and 35 that the General Assembly was authorized to "recommend" not to "take" measures relating to the maintenance of international peace and security.

38. Another view was that the responsibility conferred on the Security Council for the maintenance of international peace was primary, not exclusive, and that, subject to the limitation imposed by Article 12, the General Assembly was authorized by Article 14 to recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deemed likely to impair the general welfare or friendly relations among nations. That view was in agreement with the opinion of the International Court of Justice that the operations in the Middle East and the Congo were not enforcement actions undertaken in accordance with Chapter VII of the Charter and that, therefore, Article 43 was not applicable.⁴⁷

⁴² Certain expenses of the United Nations (Article 17, para. 2, of the Charter), Advisory Opinion of 20 July 1962: ICJ, *Reports* 1962, p. 151. See also this *Supplement* under Article 12.

⁴³ *Ibid.*, p. 163.

⁴⁴ *Ibid.*, p. 165.

⁴⁵ *Ibid.*, p. 172.

⁴⁶ *Ibid.*, (separate opinion of Judge Sir Gerald Fitzmaurice), p. 199.

⁴⁷ For texts of relevant statements, see G A (XVII), 5th Com., 965th mtg.: Romania, paras. 4 and 5; 969th mtg.: Ghana, para. 21.

39. At its 1395th plenary meeting on 15 December 1965, the General Assembly adopted resolution 2053 (XX) on the item entitled "Comprehensive review of the whole question of peace-keeping operations in all their aspects", in which it requested the Special Committee on Peace-Keeping Operations to continue and to complete as soon as possible the work assigned to it by the General Assembly in its resolution 2006 (XIX), adopted on 18 February 1965 at its 1330th plenary meeting.

40. During the discussion on the above-mentioned item, some representatives maintained that, as the Charter conferred responsibility for the maintenance of international peace and security on the Security Council and the General Assembly, the functions to be performed by the two organs should be complementary and that the functions performed by the General Assembly in that respect could be considered as residual functions. They invoked in this connexion Article 14 together with Articles 10, 11, 13 and 35. It was clear in their view that when the Security Council was unable to act, it was for the General Assembly to fulfil the paramount purpose of the Charter of making appropriate recommendations and even initiate actions to keep peace which did not in any way encroach upon the functions of the Security Council. One representative stated that his delegation agreed with the advisory opinion of the International Court of Justice that the word "action", as employed in Article 11 (2) of the Charter, referred to preventive or enforcement action against a specific State, and that any other interpretation would be tantamount to nullifying all the powers which Articles 10, 11 and 14 had conferred upon the Assembly in matters relating to the maintenance of international peace and security. Action could be taken without implying the use of military force against a specific State: for example, the appointment of a mediator, the arrangement of

a truce or the appointment of an observer force. Such action should be decided upon by a recommendation of the General Assembly within the provisions of Articles 10, 11 and 14. Another representative quoted from the statement made by his delegation in the Special Committee on Peace-Keeping Operations to the effect that the powers of the General Assembly under the Charter had been limited to the discussions of questions relating to the maintenance of international peace and security and to the making of recommendations. In this connexion it was necessary, however, to arrive at an agreement as to where the "measures" that could be recommended by the General Assembly under Article 14 ended and the "action" which could be taken only by the Security Council began.

41. A number of other representatives stated that while, under Articles 10, 11, 12, 13, 14 and 35 the Charter authorized the General Assembly to discuss any question relating to the maintenance of international peace and security and, within the powers given to it by the Charter, to make recommendations on such questions to the countries concerned or to the Security Council, only the Security Council was entitled to take decisions with regard to the maintenance of international peace and security which were binding on all Member States.⁴⁸

****B. The question of the powers granted to the General Assembly under Article 14 in connexion with the term "regardless of origin"**

⁴⁸ For texts of relevant statements, see G A (XX), Spec. Pol. Com., 463rd mtg.: Costa Rica, para. 20; Peru, para. 5; 465th mtg.: Czechoslovakia, paras. 26–28; India, para. 12; 467th mtg.: Tanzania, para. 13; 468th mtg.: Guatemala, para. 19; Hungary, para. 24; Venezuela, para. 12; 482nd mtg.: Austria, para. 9; China, para. 15; 483rd mtg.: Morocco, para. 36; Zambia, para. 11.