

ARTICLE 2 (7)

Table of Contents

	<u>Paragraphs</u>
Text of Article 2 (7)	
Introductory Note	1 - 9
I. General Survey	10 - 338
A. General Assembly	11 - 206
<u>Case No. 1: Relations of Member States with Spain</u>	12 - 40
a. Resolution 32 (I)	13 - 14
b. Resolution 39 (I)	15 - 21
c. Resolution 114 (II)	22 - 25
d. Action taken at the third session	26 - 30
e. Resolution 386 (V)	31 - 36
f. Action taken at the sixth session	37 - 40
<u>Case No. 2: Treatment of people of Indian origin in the Union of South Africa</u>	41 - 75
a. Decision on a proposal to request an advisory opinion of the International Court of Justice	46
b. Decisions concerning competence	47 - 52
i. Decisions taken at the third session.	47 - 49
ii. Decision taken at the fifth session	50 - 52
c. Resolutions 44 (I), 265 (III), 395 (V), 511 (VI), 615 (VII) and 719 (VIII)	53 - 75
i. Resolution 44 (I)	54 - 56
ii. Resolution 265 (III)	57 - 59
iii. Resolution 395 (V)	60 - 63
iv. Resolution 511 (VI)	64 - 67
v. Resolution 615 (VII)	68 - 72
vi. Resolution 719 (VIII)	73 - 75
<u>Case No. 3: The question of convening conferences of representatives of Non-Self-Governing Territories</u>	76 - 80
<u>Case No. 4: The question of the establishment of committees on information transmitted under Article 73 e</u>	81 - 85
<u>Case No. 5: The question of the competence of the General Assembly to determine the Territories to which Article 73 e applies</u>	86 - 87

Table of Contents
(continued)

	<u>Paragraphs</u>
<u>Case No. 6:</u> Threats to the political independence and territorial integrity of Greece	88 - 100
<u>Case No. 7:</u> Observance of human rights in the Union of Soviet Socialist Republics	101 - 107
<u>Case No. 8:</u> Observance of human rights in Bulgaria, Hungary and Romania	108 - 137
a. Resolution 272 (III)	109 - 117
b. Resolution 294 (IV)	118 - 127
c. Resolution 385 (V)	128 - 137
<u>Case No. 9:</u> The question of Morocco	138 - 154
a. Action taken at the sixth session	139 - 141
b. Action taken at the seventh session; resolution 612 (VII)	142 - 148
c. Action taken at the eighth session	149 - 154
<u>Case No. 10:</u> The Tunisian question	155 - 170
a. Action taken at the seventh session; resolution 611 (VII)	156 - 163
b. Action taken at the eighth session	164 - 170
<u>Case No. 11:</u> The question of race conflict in the Union of South Africa	171 - 206
a. Action taken at the seventh session	172 - 187
1. Inclusion of the item in the agenda and decisions concerning competence	173 - 179
ii. Resolution 616 A (VII)	180 - 183
iii. Resolution 616 B (VII)	184 - 187
b. Report of the Commission on the racial situation in the Union of South Africa	188 - 190
c. Action taken at the eighth session	191 - 206
1. Inclusion of the item in the agenda and decisions concerning competence	192 - 200
ii. Resolution 721 (VIII)	201 - 206
B. General Assembly and Economic and Social Council	207 - 229
<u>Case No. 12:</u> Draft International Covenants on Human Rights	208 - 220
<u>Case No. 13:</u> Recommendation concerning international respect for the self-determination of peoples	221 - 229
C. Security Council	230 - 332
<u>Case No. 14:</u> The Spanish question	231 - 253
a. Resolution of 29 April 1946 establishing the Sub-Committee on the Spanish Question	233 - 241

**Table of Contents
(continued)**

	<u>Paragraphs</u>
b. Report of the Sub-Committee on the Spanish Question . .	242 - 245
c. Consideration by the Security Council of the Sub-Committee's report	246 - 253
<u>Case No. 15:</u> The Greek question (I)	254 - 258
<u>Case No. 16:</u> The Greek question (II)	259 - 272
a. Resolution of 10 February 1947	261 - 265
b. Report of the Commission of Investigation	266 - 272
<u>Case No. 17:</u> The Indonesian question	273 - 308
a. Resolution of 1 August 1947	276 - 286
i. Draft resolution submitted by Australia	276 - 277
ii. Amendment submitted by the United States.	278 - 279
iii. Decision concerning competence	280 - 281
iv. Voting on resolution of 1 August 1947	282 - 285
v. Letter dated 3 August 1947 addressed by the representative of the Netherlands to the President of the Security Council	286
b. Resolutions of 25 and 26 August 1947	287 - 298
i. Decisions concerning competence	287 - 289
ii. Amendment submitted by the Union of Soviet Socialist Republics	290
iii. First resolution of 25 August 1947.	291 - 294
iv. Second resolution of 25 August 1947	295 - 296
v. Resolution of 26 August 1947	297 - 298
c. Letters dated 30 August and 4 September 1947 addressed to the Secretary-General by the representative of the Netherlands	299 - 300
d. Resolutions of 24 and 28 December 1948 and 28 January 1949	301 - 308
i. Resolution of 24 December 1948.	302
ii. Resolution of 28 December 1948.	303 - 304
iii. Resolution of 28 January 1949	305 - 308
<u>Case No. 18:</u> The Czechoslovak question	309 - 316
<u>Case No. 19:</u> The Greek question (III)	317 - 319
<u>Case No. 20:</u> The Anglo-Iranian Oil Company question	320 - 327
<u>Case No. 21:</u> The question of Morocco	328 - 332
D. International Court of Justice	333 - 338
<u>Case No. 22:</u> Interpretation of peace treaties with Bulgaria, Hungary and Romania	334 - 335
<u>Case No. 23:</u> Anglo-Iranian Oil Company case	336 - 338

Table of Contents
(continued)

	<u>Paragraphs</u>
II. Analytical Summary of Practice	339 - 471
A. The term "to intervene" appearing in Article 2 (7)	340 - 384
1. Whether inclusion of an item in the agenda constitutes intervention	346 - 357
2. Whether a recommendation - in general or to a particular State - constitutes intervention	358 - 362
3. Whether a request for a stay of execution constitutes intervention	363 - 370
4. Whether the establishment by the General Assembly of a commission to study the racial situation prevailing in a Member State constitutes intervention	371 - 374
5. Whether the examination of the domestic policy of a Member State by a commission of investigation established under Article 34 constitutes intervention	375 - 378
6. Whether a resolution by which the Security Council tenders its good offices to parties to a dispute or calls upon them to cease hostilities and to settle the dispute by peaceful means constitutes intervention	379 - 384
B. The expression in Article 2 (7): "Matters essentially within the domestic jurisdiction of any state"	385 - 441
1. Whether a matter governed by international law can fall essentially within domestic jurisdiction	391 - 397
2. Whether a matter governed by international agreement can fall essentially within domestic jurisdiction	398 - 406
3. Whether a matter dealt with by the Charter can fall essentially within domestic jurisdiction	407 - 441
a. Article 2 (7) and the Charter provisions on human rights	412 - 421
b. Article 2 (7) and the Charter provisions regarding Non-Self-Governing Territories	422 - 426
c. Article 2 (7) and the Charter provisions on the self-determination of peoples	427 - 432
d. Article 2 (7) and the Charter provisions on the maintenance of international peace	433 - 441
C. The last phrase of Article 2 (7): "but this principle shall not prejudice the application of enforcement measures under Chapter VII"	442 - 450
D. Procedures by which Article 2 (7) was invoked	451 - 471

Table of cases studied in the General Survey and in the Analytical Summary of Practice

ANNEX. Resolutions adopted over objections raised on the grounds of Article 2 (7) in cases not dealt with in the present study

TEXT OF ARTICLE 2 (7)

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

INTRODUCTORY NOTE

1. The present study deals only with cases in which objections to United Nations action were raised on the grounds of Article 2 (7). Those cases -- 23 in all -- in which such objections led to a discussion of the domestic jurisdiction clause are treated in detail. Cases in which resolutions were adopted over such objections without discussion of the domestic jurisdiction clause, are listed in an annex.
2. Thus, the present study does not cover proceedings in which objections on the grounds of the domestic jurisdiction clause were raised but not discussed, and in which no resolutions were adopted. Nor does it cover decisions in connexion with which no objections based on Article 2 (7) were raised, although such decisions constitute, at least by implication, an affirmation of the competence of the Organization, and may therefore have a bearing on the meaning of Article 2 (7).
3. In the majority of the twenty-three cases treated in detail the discussion of the problem of domestic jurisdiction was extensive and touched upon many constitutional questions raised by the wording of Article 2 (7). With one exception, ^{1/} the resolutions adopted, however, made no mention of Article 2 (7) nor of the problem of domestic jurisdiction. None of them expressly asserted that the grounds for action set forth in them removed the matter from the operation of Article 2 (7). Many of the resolutions, however, set forth as grounds for action some of the considerations advanced during the discussions as excepting a question from the application of Article 2 (7).
4. The study is divided into two parts entitled, respectively, "General Survey" and "Analytical Summary of Practice". It has been necessary, for the sake of clarity and in order to avoid repetition, to organize the present study along the lines described below, which are somewhat different from those generally followed in the Repertory.
5. The General Survey deals seriatim with the above-mentioned twenty-three cases. The cases are grouped in four sections:
 - A. General Assembly;
 - B. General Assembly and Economic and Social Council;

^{1/} See para. 182. However, an advisory opinion (see paras. 534 and 355) and an order (see paras. 336-338) of the International Court of Justice deal with the problem of domestic jurisdiction.

- C. Security Council;
- D. International Court of Justice.

6. Within these sections of the General Survey a subsection is devoted to each case. Each subsection describes 2/ the proceedings and quotes or summarizes the decisions which appear relevant to the problem of domestic jurisdiction. It sets forth the objections to United Nations action raised on the grounds of Article 2 (7). The subsection lists the constitutional questions concerning the interpretation of Article 2 (7) which have arisen in the debates on the case to which it is devoted. Finally, in respect of each constitutional question listed, it indicates between brackets the paragraphs of the Analytical Summary of Practice in which the arguments relating to such constitutional questions are summarized.

7. The Analytical Summary of Practice deals seriatim with the constitutional questions concerning the interpretation of Article 2 (7) which have arisen in connexion with the debates on the twenty-three cases described in the General Survey. These questions are grouped in four sections entitled:

A. The term "to intervene" appearing in Article 2 (7);

B. The expression in Article 2 (7): "matters which are essentially within the domestic jurisdiction of any state"; "but this principle shall not prejudice the application of enforcement measures under Chapter VII";

C. The last phrase of Article 2 (7);

D. Procedures by which Article 2 (7) was invoked.

8. Within these sections, a subsection is devoted to each constitutional question. The subsections list the cases in connexion with which the constitutional questions arose, set forth the decisions taken in connexion with these cases and refer to the paragraphs of the General Survey in which those decisions are dealt with. Finally, each subsection summarizes the arguments relevant to the particular question under consideration, indicating for each argument the cases in which it was advanced and the Official Records from which it is summarized. For the sake of brevity and to avoid confusion between agenda items with like titles, the cases are referred to not by name but by the numbers appearing in the table attached at the end of the present study. For the convenience of the reader, the table folds out.

9. It should be emphasized that the Analytical Summary of Practice does not purport to give an exhaustive analysis of Article 2 (7). Of all the constitutional questions posed by that provision, it surveys only those which arose in connexion with the practice of United Nations organs. 3/ Of all the arguments relevant to those questions, it summarizes only such arguments as were actually advanced during the debates of those organs.

2/ The proceedings and the decisions taken in two of the twenty-three cases are fully described in the study on Article 73. For those two cases the General Survey merely refers to the relevant sections of that study (see paras. 81-87).

3/ The period covered by this study is as follows: for the General Assembly, the first to the eighth sessions, inclusive; for the Economic and Social Council, the tenth to the eighteenth sessions, inclusive; for the Security Council, the first to the eighth years, inclusive (32nd - 624th meetings), and for the International Court of Justice, the years 1950 and 1951.

I. GENERAL SURVEY

10. The organization of the General Survey and its relation to the Analytical Summary of Practice are described above in the Introductory Note (see paragraphs 4 to 9). A table appearing at the end of the present study indicates the paragraphs of the Analytical Summary of Practice relevant to each of the cases studied in the General Survey and the reference numbers by which these cases are mentioned in the Analytical Summary of Practice. The reference number of each case is also indicated in the heading of the subsection of the General Survey devoted to the case.

A. General Assembly

11. This section deals with eleven cases, numbered 1 to 11 inclusive, which were discussed by the General Assembly during its first eight sessions.

Case No. 1

Relations of Member States with Spain

12. The question of the relations of Member States with Spain was discussed by the General Assembly at the two parts of its first session, and at its second, third and fifth sessions. At the sixth session, a particular aspect of the question was considered. The action taken at those sessions is studied below.

a. RESOLUTION 32 (I)

13. At the first part of its first session the General Assembly adopted 4/ at its 26th plenary meeting on 9 February 1946, resolution 32 (I) recalling "that the San Francisco Conference adopted a resolution 5/ according to which paragraph 2 of Article 4 ... of the ... Charter 'cannot apply to States whose regimes have been installed with the help of armed forces of countries which have fought against the United Nations so long as these regimes are in power'". The resolution also noted that at the Potsdam Conference the USSR, the United Kingdom and the United States had stated 6/ that they would not support a request for admission to the United Nations of the present Spanish Government. Finally, in "endorsing these two statements", the resolution recommended that "the Members of the United Nations should act in accordance with the letter and the spirit of these statements in the conduct of their future relations with Spain".

14. Though it does not appear that the problem of domestic jurisdiction was raised during the discussions which led to the adoption of resolution 32 (I), this resolution was recalled in the subsequent resolutions dealing with the question of relations of Member States with Spain.

4/ The official record of the 26th plenary meeting states that the resolution was "adopted by 46 votes with 2 abstentions". However, the results of the roll-call vote appearing in that record indicate that there were 46 votes in favour, 2 against and no abstentions (G A (I/1), Plen., 26th mtg., p. 361).

5/ Documents of the United Nations Conference on International Organization, vol. 6, pp. 127 and 136, doc. 1167, I/10.

6/ For the statement made at the Potsdam Conference, see doc. 123, Senate, 81st Congress, 1st Session, U.S. Government Printing Office, Washington, 1950, p. 45.

b. RESOLUTION 39 (I)

15. By a letter 7/ dated 31 October 1946 the representatives of five Member States requested that "as the question of the attitude of the United Nations towards the régime in Spain is of great concern to the Members of the United Nations" an item concerning the relations between Spain and the United Nations should be included in the agenda of the second part of the first session as a separate item. The question was included 8/ without debate in the agenda of the second part of the first session.

16. During the consideration of the item, it was recalled that the Sub-Committee established by the Security Council on 29 April 1946 (see paragraphs 233-245), had found that, although the continuance of the situation in Spain was likely to endanger the maintenance of international peace, it did not constitute an actual threat to the peace in the meaning of Chapter VII of the Charter. Hence, it was contended 9/, the question of the form and nature of the Spanish Government fell essentially within Spain's domestic jurisdiction. Article 2 (7), therefore, prohibited the General Assembly from exerting pressure in order to bring about a change of régime in that State. In particular, the Assembly was debarred from recommending that Member States should sever diplomatic relations with Spain or even recall their Ambassadors and Ministers Plenipotentiary from Madrid. 10/ Furthermore, such a recommendation would constitute intervention also in the domestic jurisdiction of the Member State to which it would be addressed. 11/ Those contentions were disputed by some representatives. The arguments for and against, which are set out in the Analytical Summary of Practice related to the following questions:

Whether a recommendation constitutes intervention (paragraph 359);

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraph 434).

17. In spite of the objections raised on the grounds of Article 2 (7) the General Assembly, at its 59th plenary meeting on 12 December 1946, adopted 12/ resolution 39 (I) by 34 votes to 6, with 13 abstentions.

18. The preamble to that resolution recalled resolution 32 (I) and the decisions concerning Spain which had been taken at the San Francisco and Potsdam Conferences (see paragraph 13). After assuring the Spanish people of the sympathy of the United Nations, it also recalled that the Sub-Committee established by the Security Council on 29 April 1946 had "found unanimously [that] ... 'the Franco régime is a fascist régime ..., [that during the war] Franco ... gave very substantial aid to the enemy Powers ... [and was] a guilty party with Hitler and Mussolini in the conspiracy to wage war ...'".

7/ G A (I/2), 1st Com., pp. 351 and 352, annex 11 (A/BUR/45).

8/ G A (I/2), Plen., 46th mtg., p. 925. The General Assembly referred the question to the First Committee.

9/ G A (I/2), Plen., 58th mtg., p. 1188; 1st Com., 36th mtg., p. 242; 37th mtg., pp. 247 and 248.

10/ G A (I/2), Plen., 58th mtg., pp. 1182, 1187 and 1188; 1st Com., 36th mtg., p. 235; 37th mtg., pp. 252 and 253.

11/ G A (I/2), 1st Com., 43rd mtg., p. 295.

12/ G A (I/2), Plen., 59th mtg., p. 1222.

19. The first section of the operative part recommended "that the Franco Government of Spain be debarred from membership in international agencies established by or brought into relationship with the United Nations, and from participation in conferences or other activities which may be arranged by the United Nations ...".

20. The second and last section of the operative part read:

"The General Assembly,

"Further, desiring to secure the participation of all peace-loving peoples, including the people of Spain, in the community of nations,

"Recommends that if, within a reasonable time, there is not established a government which derives its authority from the consent of the governed, committed to respect freedom of speech, religion and assembly and to the prompt holding of an election in which the Spanish people, free from force and intimidation and regardless of party, may express their will, the Security Council consider the adequate measures to be taken in order to remedy the situation;

"Recommends that all Members of the United Nations immediately recall from Madrid their Ambassadors and Ministers plenipotentiary accredited there. [13]"

"The General Assembly further recommends that the States Members of the Organization report to the Secretary-General and to the next session of the Assembly what action they have taken in accordance with this recommendation."

21. The resolution made no reference to any specific provision of the Charter or to the objections which had been raised on the grounds of Article 2 (7).

C. RESOLUTION 114 (II)

22. At its 91st plenary meeting the General Assembly, without discussion, included 14/ in the agenda of its second session the question of the relations of Member States with Spain and referred it to the First Committee. The question had been placed on the provisional agenda in accordance with the last paragraph of resolution 39 (I).

23. At its 107th meeting, the First Committee, by 29 votes to 6 with 20 abstentions, adopted 15/ a draft resolution, consisting of three paragraphs, which it submitted to the General Assembly.

24. At its 118th plenary meeting on 17 November 1947, the General Assembly, by 36 votes to 5 with 12 abstentions, adopted 16/ the first and third paragraphs of that draft resolution which became resolution 114 (II). The text read:

"Whereas the Secretary-General in his annual report has informed the General Assembly of the steps taken by the States Members of the Organization in pursuance of its recommendations of 12 December 1946, [resolution 39 (I)]"

13/ The First Committee had rejected by a vote of 20 to 20, with 10 abstentions, a proposal recommending that Member States should "refuse to maintain diplomatic relations with the present Spanish régime" (G A (I/2), 1st Com., 43rd mtg., p. 301, and ibid., pp. 358-362, annex 11 k (A/C.1/128).

14/ G A (II), Plen., vol. I, 91st mtg., p. 299.

15/ G A (II), 1st Com., 107th mtg., p. 431.

16/ G A (II), Plen., vol. II, 118th mtg., p. 1096.

"The General Assembly

"Expresses its confidence that the Security Council will exercise its responsibilities under the Charter as soon as it considers that the situation in regard to Spain so requires."

25. The second paragraph of the Committee's draft resolution failed to obtain the required two-thirds majority in plenary 17/ and was therefore rejected. That paragraph read:

"Reaffirms its resolution [39 (I)] ... concerning relations of Members of the United Nations with Spain;" 18/

d. ACTION TAKEN AT THE THIRD SESSION

26. At the request of the representative of Poland, the Spanish question was included in the agenda of the second part of the third session of the General Assembly and referred to the First Committee. There was no debate on the matter of inclusion.

27. During the consideration of the item in the Committee, the last section of the operative part of resolution 39 (I) was criticized as constituting intervention in domestic jurisdiction. 19/ The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following questions:

Whether a recommendation constitutes intervention (paragraph 359);

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraph 434).

28. At its 262nd meeting on 7 May 1949, the First Committee, by 25 votes to 16, with 16 abstentions, adopted 20/ a draft resolution 21/ the operative part of which read:

"The General Assembly,

".

"Decides, without prejudice to the declarations contained in ... resolution [39 (I)], to leave Member States full freedom of action as regards their diplomatic relations with Spain."

29. In the General Assembly the draft resolution failed 22/ to obtain the required two-thirds majority and was therefore rejected at the 214th plenary meeting on 16 May 1949.

17/ Ibid. There were 29 votes in favour, 16 against and 8 abstentions.

18/ G A (II), Plen., vol. II, pp. 1610-1612, annex 25 (A/479), para. 5.

19/ G A (III/2), 1st Com., 258th mtg., p. 186; 259th mtg., p. 205; 262nd mtg., p. 237.

20/ G A (III/2), 1st Com., 262nd mtg., p. 240.

21/ G A (III/2), Plen., Annexes, pp. 58-61, A/852.

22/ G A (III/2), Plen., 214th mtg., p. 501. There were 26 votes in favour, 15 against and 16 abstentions.

30. The Assembly, at the same meeting, also rejected 23/ a Polish draft resolution 24/ which, recommended that all Member States should cease to export arms, ammunition and strategic material to Spain and should refrain from entering into any agreements with the Franco régime.

e. RESOLUTION 386 (V)

31. By letters 25/ dated 2 and 18 August 1950, respectively, the representatives of the Dominican Republic and Peru requested the Assembly to reconsider the question of the relations of Member States with Spain. At its 285th plenary meeting, the Assembly, by 45 votes to 9 with 2 abstentions, included 26/ the question in the agenda of its fifth session. No objection to the Assembly's action was raised on the grounds of Article 2 (7).

32. During the discussion of the question, the last section of the operative part of resolution 39 (I) was again criticized as constituting intervention in domestic jurisdiction. 27/

33. At its 304th plenary meeting on 4 November 1950, the General Assembly adopted 28/ resolution 386 (V) by 38 votes to 10, with 12 abstentions.

34. The preamble to that resolution noted that "The establishment of diplomatic relations and the exchange of Ambassadors and Ministers with a government does not imply any judgment upon the domestic policy of that government". It also stated that the specialized agencies should be free to decide for themselves whether Spain should be allowed to participate in their work.

35. The operative part read:

"The General Assembly,

".

"Resolves:

"1. To revoke the recommendation for the withdrawal of Ambassadors and Ministers from Madrid, contained in General Assembly resolution 39 (I) of 12 December 1946;

"2. To revoke the recommendation intended to debar Spain from membership in international agencies established by or brought into relationship with the United Nations, which recommendation is a part of the same resolution adopted by the General Assembly in 1946 concerning relations of Members of the United Nations with Spain."

23/ G A (III/2), Plen., 214th mtg., p. 504. The draft resolution was rejected by 40 votes to 6, with 7 abstentions.

24/ G A (III/2), Plen., Annexes, pp. 84 and 85, A/860.

25/ G A (V), Annexes, a.i. 62, pp. 1 and 2, A/1310 and A/1328.

26/ G A (V), Plen., vol. I, 285th mtg., para. 54. The Assembly referred the question to the Ad Hoc Political Committee.

27/ G A (V), Plen., vol. I, 304th mtg., para. 86; Ad Hoc Pol. Com., 25th mtg., para. 31; 27th mtg., para. 11; 28th mtg., para. 44.

28/ G A (V), Plen., 304th mtg., para. 124.

36. The resolution made no mention of the criticisms which had been levelled at resolution 39 (I) on the grounds of Article 2 (7).

f. ACTION TAKEN AT THE SIXTH SESSION

37. The Spanish question did not appear on the agenda of the sixth session of the General Assembly. During that session, however, while the Third Committee was engaged in a discussion of the draft International Covenant on Human Rights, the representative of Poland submitted the following draft resolution: 29/

"The Third Committee of the General Assembly,

"Concerned over violations of human rights, in Spain,

"Noting that twenty-four inhabitants of Barcelona, among them Gregorio López Raimundo, have been arraigned before a military court for participation in the Barcelona strike and that they are under threat of death penalty,

"Requests the President of the General Assembly to take the necessary steps in order that the appropriate authorities in Spain take measures to ensure the cessation of the persecution of the above-mentioned twenty-four inhabitants of Barcelona and their immediate release."

38. Some representatives held 30/ that the draft resolution submitted by Poland was not relevant to the item on the Committee's agenda. Others contended that the Committee was debarred by Article 2 (7) from adopting that draft resolution. The arguments on the latter contention, which are set out in the Analytical Summary of Practice, related to the following question:

Whether a request for a stay of execution constitutes intervention (paragraph 365).

39. At its 392nd meeting, the Third Committee, by 28 votes to 13 with 13 abstentions, 31/ directed its Rapporteur to include "in the report to the Assembly a statement that the Committee, without considering the substance of the draft resolution submitted by the delegation of Poland ..., decides that the subject matter of the draft resolution is not within the item under discussion, and that the Committee is not authorized, under rule 97 of the rules of procedure, to introduce this draft resolution as a new item on its own initiative". 32/

40. Consequently the draft resolution submitted by Poland was not put to the vote.

29/ G A (VI), Annexes, a.i. 29, pp. 52 and 53, A/C.3/L.203/Rev.1, para. 98.

30/ G A (VI), 3rd Com., 391st mtg., paras. 6, 22 and 24; 392nd mtg., para. 68.

31/ G A (VI), 3rd Com., 392nd mtg., para. 97.

32/ G A (VI), Annexes, a.i. 29, p. 36, A/C.3/L.220; p. 54, A/2112, para. 109.

Case No. 2

*Treatment of people of Indian origin in
the Union of South Africa*

41. The item entitled "Treatment of people of Indian origin in the Union of South Africa" 33/ was discussed by the General Assembly at its first, second, third, fifth, sixth, seventh and eighth sessions. The item was brought to the attention of the Assembly for the first time by the representative of India in a letter 34/ dated 22 June 1946. That representative, and later the representative of Pakistan 35/, contended that the Union Government's treatment of people of Indian origin living in South Africa was contrary to the Charter provisions on human rights and to the Cape Town Agreements 36/ concluded in 1927 and 1932 between the Union and India. Those representatives held, furthermore, that, by that treatment, the Union had created a situation which impaired friendly relations among nations within the meaning of Article 14.

42. At each of the sessions at which the item was discussed, the representative of the Union of South Africa opposed, on the grounds of Article 2 (7), all the substantive draft resolutions that were submitted. He contended that, since the people of Indian origin were Union nationals, the matter fell essentially within the Union's domestic jurisdiction and therefore could not be dealt with by the General Assembly. That contention was supported by some representatives and disputed by others. The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following questions:

The meaning of the term "to intervene" (paragraphs 342 and 343);

Whether a recommendation constitutes intervention (paragraph 359);

The meaning of the expression "matters which are essentially within the domestic jurisdiction of any state" (paragraph 386);

Whether a matter governed by international agreements can fall essentially within domestic jurisdiction (paragraphs 399 and 400);

Whether a matter governed by the Charter in general can fall essentially within domestic jurisdiction (paragraphs 409 and 410);

Whether a matter governed by the Charter provisions on human rights can fall essentially within domestic jurisdiction (paragraphs 413-415);

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraph 434);

Whether the International Court of Justice should be requested to give an advisory opinion on the question of domestic jurisdiction (paragraphs 466 and 469).

43. At the first, second, third and fifth sessions, the Assembly included 37/ the item in its agenda without a vote, since there had been no formal objection to inclusion.

33/ At the first, second and third sessions of the General Assembly the item was entitled "Treatment of Indians in the Union of South Africa".

34/ G A (I/2), Joint 1st and 6th Com., pp. 52 and 53, annex 1 (A/149).

35/ See footnote 59.

36/ For the text of the Cape Town Agreements, see G A (I/2), Joint 1st and 6th Com., annex 1 a (A/68), pp. 66 and 67, and annex 1 b (A/167), pp. 92 and 93.

37/ At the first session the Assembly referred the item to a joint committee of the First and Sixth Committees. At the second and third sessions it referred the item to the First Committee. At the fifth session it referred the item to the Ad Hoc Political Committee.

44. At the sixth, seventh and eighth sessions, however, the representative of South Africa, invoking Article 2 (7), formally objected to the inclusion of the item in the agenda. The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following question:

Whether the inclusion of an item in the agenda constitutes intervention (paragraphs 347, 349, 351 and 352).

At each of those three sessions the Assembly decided by formal vote 38/ to include 39/ the item in its agenda despite the objections raised by the representative of South Africa.

45. The General Assembly took the following decisions during its consideration of the item.

a. DECISION ON A PROPOSAL TO REQUEST AND ADVISORY OPINION OF
THE INTERNATIONAL COURT OF JUSTICE

46. The representative of the Union of South Africa submitted to the General Assembly at its first session an amendment 40/ to a draft resolution recommended by the Joint Committee of the First and Sixth Committees for adoption (see footnote 37). The amendment substituted for the draft resolution a text requesting the International Court of Justice "to give an advisory opinion on the question whether the matters referred to in the Indian application 41/ are, under Article 2, paragraph 7 of the Charter, essentially within the domestic jurisdiction of the Union". At its 52nd plenary meeting the Assembly rejected 42/ the amendment submitted by South Africa

38/ The Assembly included the item in the agenda of its sixth session by 40 votes to 1, with 12 abstentions; in the agenda of its seventh session by 46 votes to 1, with 6 abstentions; and in the agenda of its eighth session by 45 votes to 1, with 11 abstentions. (G A (VI), Plen., 341st mtg., para. 41; G A (VII), Plen., 380th mtg., para. 140; G A (VIII), Plen., 435th mtg., para. 17).

39/ At its sixth, seventh and eighth sessions, the Assembly referred the item to the Ad Hoc Political Committee.

40/ G A (I/2), Plen., 50th mtg., A/205/Add.1, pp. 1009 and 1010.

41/ See paragraph 41 and footnote 34.

42/ G A (I/2), Plen., 52nd mtg., p. 1061.

by 31 votes to 21, with 2 abstentions. ^{43/} At the same meeting it adopted resolution 44 (I) as recommended by the Joint Committee for adoption. Resolution 44 (I) is studied in paragraphs 54-56.

b. DECISIONS CONCERNING COMPETENCE

i. Decisions taken at the third session

47. During the third session of the General Assembly, at the beginning of the discussion on the item in the First Committee, ^{44/} the representative of South Africa asked the Chairman to rule that under rule 110 ^{45/} of the rules of procedure "the matter of competence must be discussed and decided upon by the First Committee before the substance of the question was discussed". ^{46/} At its 263rd meeting, the Committee rejected ^{47/} the motion submitted by the representative of South Africa by 33 votes to 7, with 10 abstentions, and proceeded to discuss the substance of the item.

48. At the Committee's 265th meeting, during the general debate, the representative of South Africa submitted a draft resolution to the effect that the matter "was essentially within the domestic jurisdiction of the Union of South Africa, and that it did not fall within the competence of the Assembly". ^{48/} He also stated that since his presence at the table of the Committee would constitute technical participation in the debate, he would take a seat behind the table and follow the discussion as an observer. He proposed later to resume his seat in order to answer any arguments which might be

^{43/} Mention of the International Court of Justice was also made in a joint draft resolution submitted at the second session of the General Assembly by Belgium, Brazil, Cuba, Denmark and Norway. The joint draft resolution called upon the Union and Indian Governments "after inviting the Government of Pakistan to take part in their negotiations, to continue their efforts with a view to reaching an agreement settling their dispute through a round table conference or other direct means or, if necessary, by mediation or conciliation, and, should they fail to reach such an agreement, to submit the question of the extent of their obligations under the agreements concluded between them and under the relevant provisions of the Charter to the International Court of Justice." (G A (II), Plen., vol. II, pp. 1616 and 1617, annex 26 a (A/496). The agreements referred to in the joint draft resolution had been concluded at Cape Town in 1927 and 1932 between the Union and India. The representative of South Africa contended that the agreements did not remove the question under consideration from the Union's domestic jurisdiction since they were mere declarations of policy and imposed no obligations on the parties (G A (II), 1st Com., 106th mtg., pp. 420 and 421, 110th mtg., p. 458). The representative of India held, on the contrary, that the agreements imposed obligations on the parties in respect of the people of Indian origin and, therefore, removed the question from the Union's domestic jurisdiction. (G A (I/2), Joint 1st and 6th Com., 2nd mtg., p. 10). At its 120th plenary meeting, the Assembly rejected the joint draft resolution by 29 votes to 24, with 3 abstentions. (G A (II), Plen., vol. II, 120th mtg., p. 1170).

^{44/} See footnote 37.

^{45/} Rule 110, amended by the deletion of the word "immediately" between the words "vote" and "before", became rule 122 in the 1954 edition of the rules of procedure of the General Assembly.

^{46/} G A (III/2), 1st Com., 263rd mtg., pp. 246 and 247.

^{47/} G A (III/2), 1st Com., 263rd mtg., p. 253.

^{48/} G A (III/2), 1st Com., 265th mtg., p. 280, A/C.1/460.

raised concerning the motion of competence which he had submitted, and to take part in the vote on that motion. 49/

49. At the end of the general debate and before the vote on the substantive draft resolutions, the First Committee, at its 268th meeting, rejected 50/ the draft resolution submitted by the representative of South Africa by 33 votes to 5, with 12 abstentions.

ii. Decision taken at the fifth session

50. During the fifth session of the General Assembly, at the beginning of the discussion on the item in the Ad Hoc Political Committee, 51/ at its 41st meeting, the representative of South Africa invoked Article 2 (7) and raised the question of the competence of the Committee and the United Nations to deal with the item on the agenda. 52/ The Chairman ruled that the discussion would proceed on both the question of competence and the substance of the item, and that a vote would be taken on the question of competence prior to voting on any proposals submitted. 53/ The Chairman's ruling was not challenged.

51. At the 46th meeting of the Committee, when the general debate was drawing to a close, the representative of Syria submitted the following draft resolution:

"The Ad Hoc Political Committee,

"In view of the fact that the question of competence regarding the item on the agenda relative to the treatment of people of Indian origin in the Union of South Africa has been considered,

"In view of the discussion on this subject and the proposals submitted,

"Decides that it is competent to consider and vote on such proposals as have been submitted." 54/

52. At the same meeting, the Committee adopted 55/ the draft resolution submitted by Syria by 35 votes to 3, with 17 abstentions. The proposals referred to therein were subsequently adopted by the Assembly as resolution 395 (V) (see paragraphs 60-63).

49/ G A (III/2), 1st Com., 265th mtg., p. 280.

50/ G A (III/2), 1st Com., 268th mtg., p. 321.

51/ See footnote 37.

52/ G A (V), Ad Hoc Pol. Com., 41st mtg., paras. 1-6.

53/ G A (V), Annexes, a.i. 57, p. 3, A/1548, para. 5; see also Ad Hoc Pol. Com., 42nd mtg., para. 75.

54/ G A (V), Ad Hoc Pol. Com., 46th mtg., para. 110, A/AC.38/L.40.

55/ G A (V), Ad Hoc Pol. Com., 46th mtg., para. 112.

C. RESOLUTIONS 44 (I), 265 (III), 395 (V), 511 (VI),
615 (VIII) AND 719 (VIII)

53. During its first eight sessions the Assembly adopted six resolutions on the question of the treatment of the people of Indian origin in the Union of South Africa. ^{56/} None made any reference to the objections which the representative of South Africa had raised at each session on the grounds of Article 2 (7) (see paragraph 42).

1. Resolution 44 (I)

54. Resolution 44 (I) was adopted ^{57/} at the 52nd plenary meeting on 8 December 1946, by 32 votes to 15, with 7 abstentions.

55. The preamble to the resolution read:

"The General Assembly,

"Having taken note of the application made by the Government of India regarding the treatment of Indians in the Union of South Africa, and having considered the matter:"

56. Paragraph 1 of the operative part referred to Article 14 of the Charter in the following terms:

"1. States that, because of that treatment, friendly relations between the two Member States have been impaired and, unless a satisfactory settlement is reached, these relations are likely to be further impaired;"

Paragraph 2 of the operative part referred to the treaty obligations contained in the Cape Town Agreements (see paragraph 41) and to the "relevant provisions of the Charter", without specifying which provisions were relevant. The paragraph read:

"2. Is of the opinion that the treatment of Indians in the Union should be in conformity with the international obligations under the agreements concluded between the two Governments and the relevant provisions of the Charter;"

Paragraph 3 -- the last paragraph of the resolution -- read:

"3. Therefore requests the two Governments to report at the next session of the General Assembly the measures adopted to this effect."

^{56/} No resolution on this question was adopted at the second and fourth sessions.

At the second session the First Committee submitted to the Assembly a draft resolution requesting "the two Governments ^{of} India and of the Union of South Africa" to enter into discussions at a round table conference on the basis of "resolution 44 (I) and to report the result of such discussions to the Secretary-General (G A (II), Plen., vol. II, 119th mtg., pp. 1111 and 1112, A/492). At the plenary meeting the draft resolution failed to obtain the requisite two-thirds majority and was therefore rejected (G A (II), Plen., vol. II, 120th mtg., pp. 1169 and 1170).

^{57/} At the fourth session, the question did not appear on the Assembly's agenda. G A (I/2), Plen., 52nd mtg., p. 1061.

ii. Resolution 265 (III)

57. Resolution 265 (III) was adopted 58/ at the 212th plenary meeting on 14 May 1949, by 47 votes to 1, with 10 abstentions.

58. The preamble took note of the application made by the Government of India and of the considerations put forward by the Government of the Union.

59. The operative part read:

"The General Assembly,

".

"Invites the Governments of India, Pakistan [59/] and the Union of South Africa to enter into discussion at a round-table conference, taking into consideration the purposes and principles of the Charter of the United Nations and the Declaration of Human Rights."

No reference was made to the Cape Town Agreements.

iii. Resolution 395 (V)

60. Resolution 395 (V) was adopted 60/ at the 315th plenary meeting on 2 December 1950, by 33 votes to 6, with 21 abstentions.

61. The preamble recalled resolutions 44 (I) and 265 (III). It also recalled resolutions 103 (I), concerning racial persecution, and 217 (III), relating to the Universal Declaration of Human Rights. Finally, it stated that "a policy of racial segregation (Apartheid) is necessarily based on doctrines of racial discrimination".

62. The operative part read:

"The General Assembly

".

"1. Recommends that the Governments of India, Pakistan and the Union of South Africa proceed, in accordance with resolution 265 (III), with the holding of a round table conference on the basis of their agreed agenda [61/] and bearing in mind the provisions of the Charter of the United Nations and of the Universal Declaration of Human Rights;

58/ G A (III/2), Plen., 212th mtg., p. 455.

59/ A section of the Indian minority in the Union of South Africa originated from the parts of India which are now the State of Pakistan.

60/ G A (V), Plen., vol. I, 315th mtg., para. 51.

61/ Pursuant to resolution 265 (III), India had reported to the Assembly at its fifth session that it had reached an agreement with the Union on an agenda for a round table conference but that, following the adoption of the Group Areas Act by the Union Parliament, negotiations had been broken off. (G A (V), Annexes, a.i. 57, pp. 1 and 2, A/1289).

"2. Recommends that, in the event of failure of the governments concerned to hold a round table conference before 1 April 1951 or to reach agreement in the round table conference within a reasonable time, there shall be established for the purpose of assisting the parties in carrying through appropriate negotiations a commission of three members, one member to be nominated by the Government of the Union of South Africa, another to be nominated by the Governments of India and Pakistan and the third to be nominated by the other two members or, in default of agreement between these two in a reasonable time, by the Secretary-General;

"3. Calls upon the governments concerned to refrain from taking any steps which would prejudice the success of their negotiations, in particular, the implementation or enforcement of the provisions of 'The Group Areas Act', pending the conclusion of such negotiations;

"4. Decides to include this item in the agenda of the next regular session of the General Assembly."

63. The resolution made no specific mention of Article 14 of the Charter or of the Cape Town Agreements. However, it recalled resolution 44 (I), which referred both to Article 14 and to the Cape Town Agreements.

iv. Resolution 511 (VI)

64. Resolution 511 (VI) was adopted 62/ at the 360th plenary meeting on 20 December 1951, by 44 votes to none, with 14 abstentions.

65. The preamble recalled the previous resolutions adopted on the question, including resolution 44 (I). It also recalled resolutions 103 (I), concerning racial persecution, and 217 (III), relating to the Universal Declaration of Human Rights. It stated that "a policy of 'racial segregation' (apartheid) is necessarily based on doctrines of racial discrimination". Finally the preamble noted that "the Government of the Union of South Africa has been unable up to the present time to accept General Assembly resolution 395 (V) as a basis for a round-table conference", 63/ and that "the promulgation on 30 March 1951 of five proclamations under the Group Areas Act renders operative thereby the provisions of that Act in direct contravention of paragraph 3 of resolution 395 (V)".

66. The operative part of resolution 511 (VI) recommended establishment of the commission of three members referred to in paragraph 2 of resolution 395 (V), called upon the Union Government to "suspend the implementation or enforcement of the provisions of the Group Areas Act pending the conclusion of the negotiations" and decided to "include this item in the agenda" of the seventh session of the General Assembly.

67. Here, again, no specific mention was made of Article 14 of the Charter or of the Cape Town Agreements. The resolution, however, recalled resolution 44 (I), which referred to both Article 14 and the Cape Town Agreements.

62/ G A (VI), Plen., 360th mtg., para. 35.

63/ The Union of South Africa had informed the Assembly that it was unable to accept resolution 395 (V) since the terms of that resolution constituted intervention in a matter which was essentially within the Union's domestic jurisdiction (G A (VI), Annexes, a.i. 25, p. 1, A/1787).

v. Resolution 615 (VII)

68. Resolution 615 (VII) was adopted 64/ at the 401st plenary meeting on 5 December 1952, by 41 votes to 1, with 15 abstentions.

69. The preamble recalled the previous resolutions adopted on the question, including resolution 44 (I). It also noted that "the Government of the Union of South Africa has expressed its inability 65/ to accept General Assembly resolution 511 (VI) in respect of the resumption of negotiations with the Governments of India and Pakistan", and that the Union Government "has continued to enforce the Group Areas Act in contravention of ... resolutions 511 (VI) and 395 (V)".

70. The operative part established "a United Nations Good Offices Commission consisting of three members to be nominated by the President of the General Assembly, with a view to arranging and assisting in negotiations between the Government of the Union of South Africa and the Governments of India and Pakistan in order that a satisfactory solution of the question in accordance with the Purposes and Principles of the Charter and the Universal Declaration of Human Rights may be achieved".

71. Finally, resolution 615 (VII) called upon the Government of the Union to suspend the implementation of the Group Areas Act and decided to include the item in the provisional agenda of the eighth session of the General Assembly.

72. The resolution made no specific reference to Article 14 of the Charter or to the Cape Town Agreements. However, it recalled resolution 44 (I), which referred to both Article 14 and the Agreements.

vi. Resolution 719 (VIII)

73. Resolution 719 (VIII) was adopted 66/ at the 457th plenary meeting on 11 November 1953, by 42 votes to 1, with 17 abstentions.

74. The preamble stated that "resolution 44 (I) of 8 December 1946 expressed the opinion that the treatment of Indians in the Union of South Africa should be in conformity with the international obligations under the agreements concluded between the Governments of India and the Union of South Africa and the relevant provisions of the Charter and requested the two Governments to report to the General Assembly on the measures adopted to this effect". No mention was made of the paragraph of resolution 44 (I) which referred to Article 14 of the Charter. The preamble also recalled that "resolution 265 (III) ... invited the Governments of India, Pakistan and the Union of South Africa to enter into discussion at a round table conference, taking into consideration the Purposes and Principles of the Charter and the Declaration of Human Rights". Finally the preamble quoted from the other resolutions adopted on the question of the treatment of the people of Indian origin in the Union of South Africa.

64/ G A (VII), Plen., 401st mtg., para. 69.

65/ The Secretary-General reported to the Assembly at its seventh session that the Union Government had "indicated that it was not able to accept the terms of resolution 511 (VI) as it constituted interference in a matter which was essentially within the domestic jurisdiction of the Union of South Africa" (G A (VII), Annexes, a.i. 22, p. 2, A/2218, para. 3).

66/ G A (VIII), Plen., 457th mtg., para. 93.

75. The operative part of resolution 719 (VIII) read:

"The General Assembly

"

"5. Expresses its regret that the Government of the Union of South Africa:

"(a) Has refused [67] to make use of the Commission's good offices or to utilize any of the alternative procedures for the settlement of the problem recommended by the four previous resolutions of the General Assembly;

"(b) Has continued to implement the provisions of the Group Areas Act in spite of the provisions of three previous resolutions;

"(c) Is proceeding with further legislation contrary to the Charter and the Universal Declaration of Human Rights, including the Immigrants Regulation Amendment Bill which seeks to prohibit the entry into South Africa of wives and children of South African nationals of Indian origin;

"6. Considers that these actions of the Government of the Union of South Africa are not in keeping with its obligations and responsibilities under the Charter of the United Nations;

"7. Decides to continue the United Nations Good Offices Commission and urges the Government of the Union of South Africa to co-operate with that Commission;

"8. Requests the Commission to report to the General Assembly at its next regular session the extent of progress achieved, together with its own views on the problem and any proposals which, in its opinion, may lead to a peaceful settlement of it;

"9. Again calls upon the Government of the Union of South Africa to refrain from implementing the provisions of the Group Areas Act;

"10. Decides to include this item in the provisional agenda of the ninth session of the General Assembly."

Case No. 3

*The question of convening conferences of representatives
of Non-Self-Governing Territories*

76. By a letter 68/ dated 1 November 1946, the representative of the Philippines requested the General Assembly to include in the agenda of the second part of its first session a "proposal to hold a conference to implement the provisions of Chapter XI of the Charter". At its 47th plenary meeting the Assembly included 69/ the proposal in the agenda. No objections were raised on the grounds of Article 2 (7).

67/ See Report of the United Nations Good Offices Commission (G A (VIII), Annexes, a.i. 20, pp. 1 and 2, A/2473).

68/ G A (I/2), 6th Com., pp. 284-286, annex 18 (A/BUR/54).

69/ The proposal was included in the agenda without a vote (G A (I/2), Plen., 47th mtg., p. 953).

77. At its 64th plenary meeting the Assembly considered a draft resolution submitted by the Fourth Committee, 70/ to which the proposal had been referred. 71/ The operative part of the draft resolution 72/ read in part:

"The General Assembly

".

"Recommends that the Economic and Social Council, together with the Administrative Authorities concerned, organize the convocation of regional conferences of representatives of Non-Self-Governing Territories..."

78. Several representatives criticized the draft resolution on the grounds of Article 2 (7). The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following question:

Whether a matter governed by the Charter provisions regarding Non-Self-Governing Territories can fall essentially within domestic jurisdiction (paragraphs 423 and 424).

79. At its 64th plenary meeting on 14 December 1946, the Assembly, by 23 votes to 14, with 17 abstentions, adopted 73/ an amendment 74/ submitted by Cuba, which substituted the following text for the phrase quoted in paragraph 77:

"Recommends that the Economic and Social Council, together with the administration of Non-Self-Governing Territories to convene conferences of representatives of Non-Self-Governing Peoples..."

80. At the same meeting the draft resolution with the amendment submitted by Cuba was adopted 75/ by 31 votes to 1, with 21 abstentions, and became resolution 67 (I), which read as follows:

"The General Assembly,

"Considering that the resolution [76/] on Non-Self-Governing Peoples adopted during the first part of the first session of the General Assembly draws attention to the fact that the obligations accepted by Members of the United Nations under Chapter XI of the Charter are already in full force,

"Recognizing the importance of the declaration contained in Chapter XI of the Charter especially as it concerns the peace and security of the world, and the political, economic, social and educational advancement of the peoples of Non-Self-Governing Territories as well as their just treatment and protection against abuses,

70/ The Committee adopted the draft resolution by 18 votes to 15, with 2 abstentions (G A (I/2), 4th Com., 21st mtg., p. 131).

71/ In including the proposal in the agenda, the Assembly had referred it simultaneously to the Fourth and Sixth Committees. The final report to the Assembly, however, was submitted by the Fourth Committee alone.

72/ G A (I/2), Plen., pp. 1561-1563, annex 7† (A/251).

73/ G A (I/2), Plen., 64th mtg., p. 1356.

74/ Ibid.

75/ G A (I/2), Plen., 64th mtg., p. 1357.

76/ G A resolution 9 (I).

"Recommends all Members having or assuming responsibilities for the administration of Non-Self-Governing Territories to convene conferences of representatives of Non-Self-Governing Peoples chosen or preferably elected in such a way that the representation of the people will be ensured to the extent that the particular conditions of the territory concerned permit, in order that effect may be given to the letter and spirit of Chapter XI of the Charter and that the wishes and aspirations of the Non-Self-Governing Peoples may be expressed."

Case No. 4

The question of the establishment of committees on information transmitted under Article 73 e

81. At its first session the General Assembly, by resolution 66 (I), established an ad hoc committee to study the information transmitted under Article 73 e by Member States responsible for the administration of Non-Self-Governing Territories. At its second session the Assembly, by resolution 146 (II), invited the Fourth Committee to constitute:

"a special committee to examine the information transmitted under Article 73 e of the Charter on the economic, social and educational conditions in the Non-Self-Governing Territories, and to submit reports thereon for the consideration of the General Assembly with such procedural recommendations as it may deem fit, and with such substantive recommendations as it may deem desirable relating to functional fields generally but not with respect to individual territories".

At its third session the Assembly, by resolution 219 (III), constituted "a special committee similar to that established at the second session".

82. At its fourth session the Assembly, by resolution 332 (IV), decided "to constitute a Special Committee for a three-year period" and invited:

"the Special Committee to examine, in the spirit of paragraphs 3 and 4 of Article 1 and of Article 55 of the Charter, the summaries and analyses of information transmitted under Article 73 e of the Charter on the economic, social and educational conditions in the Non-Self-Governing Territories, including any papers prepared by the specialized agencies and any reports or information on measures taken in pursuance of the resolutions adopted by the General Assembly concerning economic, social and educational conditions in the Non-Self-Governing Territories;"

Furthermore, resolution 332 (IV) requested the Special Committee:

"to submit to the regular sessions of the General Assembly in 1950, 1951 and 1952 reports containing such procedural recommendations as it may deem fit and such substantive recommendations as it may deem desirable relating to functional fields generally but not with respect to individual Territories;"

83. At its sixth session the Assembly, by resolution 569 (VI), decided that the Special Committee "shall henceforth be known by the following title: 'Committee on Information from Non-Self-Governing Territories'". At its seventh session it decided, by resolution 646 (VII), "to continue the Committee on Information from Non-Self-Governing Territories on the same basis for a further three-year period".

84. The problem of domestic jurisdiction was discussed during the debates which led to the adoption of the above-mentioned resolutions. The arguments, which

are set out in the Analytical Summary of Practice, related to the following question:

Whether a matter governed by the Charter in general and by the provisions regarding Non-Self-Governing Territories in particular can fall essentially within domestic jurisdiction (paragraphs 409, 410, 423 and 424).

85. A detailed account of the proceedings relating to resolutions 66 (I), 146 (II), 219 (III), 332 (IV), 569 (VI) and 646 (VII), and an analysis of their provisions may be found in II, B, 3 of the study on Article 73 in this Repertory.

Case No. 5

The question of the competence of the General Assembly to determine the territories to which Article 73 e applies

86. The problem of domestic jurisdiction was raised during the debates relating to the question of the General Assembly's competence to determine the territories to which Article 73 e of the Charter applies. That question was discussed at the third, fourth, fifth, sixth, seventh and eighth sessions of the Assembly in connexion with the consideration of the items concerning information from Non-Self-Governing Territories, factors which should be taken into account in deciding whether a Territory is or is not a Territory whose people have not yet attained a full measure of self-government, and cessation of the transmission of information under Article 73 e of the Charter.

87. The arguments, which are set out in the Analytical Summary, related to the following question:

Whether a matter governed by the Charter in general and by the provisions regarding Non-Self-Governing Territories in particular can fall essentially within domestic jurisdiction (paragraphs 409, 423 and 424).

The relevant decisions and proceedings are described in II, C, 1 of the study on Article 73 in this Repertory.

Case No. 6

Threats to the political independence and territorial integrity of Greece

88. The item entitled "Threats to the political independence and territorial integrity of Greece" was discussed by the General Assembly from its second to its sixth sessions, inclusive. During those discussions the problem of domestic jurisdiction arose mainly in connexion with draft resolutions dealing with death sentences pronounced by Greek tribunals. These draft resolutions were submitted to the Assembly at its third, fourth, fifth and sixth sessions. Some were judged 77/ by

77/ During the fourth session of the General Assembly, the First Committee decided (G A (IV), 1st Com., 297th mtg., paras. 41 et seqq.) "that it was not competent to adopt" four draft resolutions dealing with the question of death sentences and submitted, respectively, by the USSR (G A (IV), 1st Com., Annex, p. 16, A/C.1/507), Colombia (*ibid.*, pp. 16 and 17, A/C.1/510), Uruguay (*ibid.*, p. 17, A/C.1/511/Rev.1) and Paraguay (A/C.1/509). It would appear from the record of the discussion that, while certain representatives expressed the view that these draft resolutions violated Article 2 (7) (G A (IV), 1st Com., 295th mtg., para. 22; 296th mtg., paras. 14 and 30), the majority was of the opinion that the Committee was not competent to consider them for reasons not based on Article 2 (7) (G A (IV), 1st Com., 294th mtg., paras. 35 and 36; 295th mtg., paras. 12, 18 and 48; 296th mtg., paras. 10 and 14; 297th mtg., paras. 11 and 19).

the Committee to which they were referred to be beyond its competence for reasons not based on Article 2 (7). Others were discussed with reference to that Article and are therefore studied below. They may be divided into three groups.

89. The first group is composed of three draft resolutions containing recommendations addressed to the Greek Government, requesting that Government to suspend or rescind death sentences pronounced by Greek tribunals. The draft resolutions were submitted, at the third, fourth and sixth sessions, respectively, by the representatives of Yugoslavia, 78/ Poland 79/ and the USSR. 80/ During the discussions several representatives held 81/ that the draft resolutions constituted intervention in Greece's domestic jurisdiction and that the United Nations was therefore not competent to consider them. Others maintained, 82/ however, that humanitarian feelings should prevail over legal considerations. None of the draft resolutions was adopted. The draft resolution submitted by Yugoslavia was judged 83/ by the Committee to which it was submitted to be beyond its competence and was never put to the vote; the two others were rejected. 84/

90. The second group is composed of two draft resolutions submitted, respectively, by France and Ecuador. Neither draft resolution contained a recommendation addressed to the Greek Government. Both were couched in general terms, and did not refer to any specific death sentences.

91. The draft resolution submitted by France was based on a suggestion 85/ made by the delegation of Greece and was supported 86/ by that delegation. It was submitted to the First Committee at the third session of the General Assembly. It read:

"The First Committee,

"Having noted the offer made by the Greek delegation to get in touch with the Chairman of the Committee for the purpose of examining the matter [of death sentences] ... , and trusting that the Chairman will take all the necessary steps to that end,

"Proceeds to the next item on the agenda." 87/

92. At its 186th meeting, the First Committee adopted 88/ that draft resolution by 41 votes to none, with 9 abstentions.

78/ G A (III/1), 1st Com., Annexes, p. 48, A/C.1/371.

79/ G A (IV), 1st Com., Annexes, p. 12, A/C.1/483.

80/ A/1989, same text as G A (VI), Annexes, a.i. 19, p. 13, A/AC.53/L.6.

81/ G A (III/1), 1st Com., 186th mtg., pp. 442, 445 and 446; G A (IV), 1st Com., 275th mtg., paras. 39 and 46; 276th mtg., para. 49.

82/ G A (III/1), 1st Com., 186th mtg., p. 444; G A (IV), 1st Com., 275th mtg., para. 19.

83/ G A (III/1), 1st Com., 186th mtg., p. 449.

84/ G A (IV), 1st Com., 276th mtg., para. 76; G A (VI), Plen., 351st mtg., para. 128.

85/ G A (III/1), 1st Com., 186th mtg., p. 442.

86/ G A (III/1), 1st Com., 186th mtg., p. 443.

87/ G A (III/1), 1st Com., Annexes, p. 48, A/C.1/372.

88/ G A (III/1), 1st Com., 186th mtg., p. 449.

93. The draft resolution 89/ submitted by Ecuador was considered by the First Committee at the fourth session of the General Assembly. It read:

"The First Committee

"Requests the President of the General Assembly to negotiate with the representatives of the Government of Greece concerning the suspension of death sentences passed by military courts for political reasons, as long as the Conciliation Committee 90/ is in existence."

94. At its 297th meeting, the First Committee decided, 91/ by 31 votes to 16, with 12 abstentions, that it was competent to take a vote on the Ecuadorian draft resolution. The representative of Greece voted against the Committee's competence. It does not appear that he stated the reasons for his vote.

95. At its 298th meeting, the Committee, by 40 votes to 4, with 10 abstentions, adopted 92/ the following revised version 93/ of the draft submitted by Ecuador:

"The First Committee

"Requests the President of the General Assembly to ascertain the views of the Government of Greece concerning the suspension of death sentences passed by military courts for political reasons as long as the Conciliation Committee is in existence."

96. At its 268th plenary meeting on 5 December 1949, the General Assembly in turn approved 94/ the revised version of the draft resolution submitted by Ecuador.

97. The third group is composed of two proposals submitted by the USSR: one, an amendment to the draft resolution submitted by France, studied above (see para. 91), and the other a separate draft resolution. Like the resolutions in the second group, these proposals did not contain recommendations addressed to the Greek Government. They did, however, refer to specific death sentences.

89/ G A (IV), 1st Com., Annex, p. 17, A/C.1/512 and A/C.1/512/Rev.1 (incorporating the amendments proposed by Venezuela (G A (IV), 1st Com., 297th mtg., para. 20) and USSR (ibid., para. 48), which were accepted by Ecuador (ibid., paras. 49 and 55)).

90/ The Conciliation Committee was created by the First Committee at its 276th meeting "in an endeavour to reach a pacific settlement of existing differences between Greece on the one hand, and Albania, Bulgaria and Yugoslavia on the other". (G A (IV), 1st Com., Annex, p. 12, A/C.1/506.)

91/ G A (IV), 1st Com., 297th mtg., para. 61.

92/ At the same meeting, the Committee rejected the following USSR amendments to the draft resolution submitted by Ecuador:

(1) "insert the words 'and cancellation' after the word 'suspension'

(G A (IV), 1st Com., 298th mtg., para. 4).

(2) "delete the words 'as long as the Conciliation Committee is in existence' (ibid.)

(3) "substitute for the words 'to ascertain the views of the Government of Greece' the words 'to negotiate with the representatives of the Government of Greece'" (ibid., para. 6).

93/ G A (IV), 1st Com., 298th mtg., para. 12.

94/ G A (IV), Plen., 268th mtg., para. 131. The record of the meeting does not indicate the results of the vote.

98. The amendment 95/ proposed by the USSR provided that the phrase "take all the necessary steps to that end" appearing in the draft resolution submitted by France be replaced by "take measures to save the lives of the trade unionists who have been condemned to death". At its 186th meeting, the First Committee decided 96/ by 37 votes to 6, with 6 abstentions, that it "was not competent to entertain" that amendment.

99. The draft resolution submitted by the USSR 97/ was considered by the First Committee at the fifth session of the General Assembly. It read:

"Taking notice of the fact that the military courts in Greece are at the present time continuing to pass death sentences on members of the Greek trade union and the people's liberation movement, the First Committee requests the President of the General Assembly to enter into negotiations with the representatives of the Greek Government concerning the repeal of the death sentences passed by the military courts on Greek patriots, including the eleven Greek patriots named in their mothers' letter of 18 September last, and on the eight trade union officials named in the memorandum of their relatives of 16 September last."

100. After a debate during which several representatives stated 98/ that in their opinion the draft resolution submitted by the USSR constituted intervention in Greece's domestic jurisdiction, the First Committee at its 393rd meeting rejected 99/ that draft resolution by 31 votes to 6, with 12 abstentions.

Case No. 7

Observance of Human Rights in the Union of Soviet Socialist Republics

101. By a letter 100/ dated 27 May 1948, the Permanent Representative of Chile, invoking Article 14¹ of the Charter, requested the General Assembly to include the following item in the agenda of its third session: "Violation by the USSR of fundamental human rights, traditional diplomatic practices and other principles of the Charter" 101/. The representative of Chile alleged that the USSR had taken legislative and administrative measures to prevent Soviet "wives of foreign nationals from leaving the USSR either in company with their husbands or in order to rejoin them". He contended that those measures violated the Charter provisions on human rights, and "could impair the friendly relations among nations" (Article 14), and, when they affected the wives of members of foreign diplomatic missions, also violated diplomatic practices.

95/ G A (III/1), 1st Com., Annexes, p. 48, A/C.1/373.

96/ G A (III/1), 1st Com., 186th mtg., p. 449.

97/ G A (V), 1st Com., vol. I, 346th mtg., para. 11, A/C.1/559.

98/ G A (V), 1st Com., vol. I, 393rd mtg., paras. 26, 29 and 31.

99/ G A (V), 1st Com., vol. I, 393rd mtg., para. 61.

100/ G A (III/1), Plen., Annexes, p. 1, A/560.

101/ The title quoted above is the final wording of the item as proposed by the representative of Chile. It appears in the provisional agenda for the third session (G A (III/1), Plen., Annexes, pp. 32-35, A/585, item 44).

102. During the discussion on the adoption of the agenda, the USSR representative claimed 102/ that the women referred to in the Chilean complaint had retained Soviet citizenship. They therefore came under the nationality laws of the USSR and its regulations on exit visas for its own nationals, and those were matters essentially within its domestic jurisdiction. Invoking Article 2 (7), the representative of the USSR moved that the item be deleted from the provisional agenda. At its 142nd plenary meeting on 24 September 1948, the Assembly rejected 103/ the USSR motion by 30 votes to 7, with 17 abstentions and included the item in its agenda. 104/

103. During the consideration of the item, the representative of the USSR restated the objections he had raised on the grounds of Article 2 (7). The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following questions:

Whether a matter governed by international law can fall essentially within domestic jurisdiction (paragraph 392);

Whether a matter governed by the Charter in general can fall essentially within domestic jurisdiction (paragraph 409);

Whether a matter governed by the Charter provisions on human rights can fall essentially within domestic jurisdiction (paragraphs 413 and 415);

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraph 434).

104. Despite the objections raised on the grounds of Article 2 (7), the General Assembly, at its 197th meeting on 25 April 1949 adopted 105/ resolution 285 (III) by 39 votes to 6, with 11 abstentions.

105. The preamble to the resolution quoted the human rights provisions contained in the Preamble to the Charter, and in Articles 1 (3) and 55 c. It referred to articles 13 and 16 of the Universal Declaration of Human Rights and recalled that "the Economic and Social Council ... in its resolution 154 (VII) D ... deplored the 'legislative or administrative provisions which deny to a woman the right to leave her country of origin and reside with her husband in any other'".

102/ G A (III/1), General Com., 43rd mtg., pp. 10 and 11; Plen., 142nd mtg., pp. 97 and 98; G A (III/2), Plen., 196th mtg., p. 153.

103/ G A (III/1), Plen., 142nd mtg., p. 108.

104/ The Assembly referred the item to the Sixth Committee. In the Committee the representative of Australia submitted the following draft resolution:

"The General Assembly,

"Resolves to submit the following questions to the International Court of Justice for advisory opinion:

"1. To what degree do the privileges and immunities granted to the head of a foreign mission in accordance with diplomatic practices traditionally established by international law extend to his family and to his establishment?

"2. In particular, is the action of a State in preventing one of its nationals, who is the wife of a member of a foreign diplomatic mission or of a member of his family or of his establishment, from leaving its territory with her husband, or in order to join her husband, a breach of international law?" (G A (III/1), 6th Com., Annexes, pp. 56 and 57, A/C.6/316).

At its 139th meeting the Sixth Committee rejected the draft resolution submitted by Australia by 13 votes to 9, with 12 abstentions (G A (III/1), 6th Com., 139th mtg., p. 781)

105/ G A (III/2), Plen., 197th mtg., p. 163.

106. The operative part read:

"The General Assembly,

".

"Declares that the measures which prevent or coerce the wives of citizens of other nationalities from leaving their country of origin with their husbands or in order to join them abroad, are not in conformity with the Charter; and that when those measures refer to the wives of persons belonging to foreign diplomatic missions, or of members of their families or retinue, they are contrary to courtesy, to diplomatic practices and to the principle of reciprocity, and are likely to impair friendly relations among nations;

"Recommends the Government of the Union of Soviet Socialist Republics to withdraw the measures of such a nature which have been adopted."

107. The resolution made no reference to the objections raised on the grounds of Article 2 (7).

Case No. 8

Observance of Human Rights in Bulgaria, Hungary and Romania

108. At its third session the General Assembly discussed the question of the observance of human rights in Bulgaria and Hungary. At its fourth and fifth sessions it discussed the question of the observance of human rights in those two States and in Romania as well. As a result of its discussions the Assembly adopted three resolutions numbered respectively 272 (III), 294 (IV) and 385 (V).

a. RESOLUTION 272 (III)

109. At the second part of the third session, the representatives of Australia and Bolivia requested the General Assembly to include the following item in its agenda: "Having regard to the provisions of the Charter and of the peace treaties [with Bulgaria and Hungary], the question of the observance in Bulgaria and Hungary of human rights and fundamental freedoms, including questions of religious and civil liberties, with special reference to recent trials of church leaders". 106/

106/ By a letter dated 16 March 1949, the representative of Bolivia had requested the Assembly to include in the agenda of the second part of its third session the following item: "Study of the legal proceedings against Cardinal Mindszenty of Hungary in relation to Articles 1, paragraph 3, and 55, paragraph c, of the Charter" (G A (III/2), Plen., Annexes, p. 31, A/820).

By a letter dated 3 March 1949, the representative of Australia had requested the inclusion in the same agenda of an item entitled "Observance of fundamental freedoms and human rights in Bulgaria and Hungary, including the question of religious and civil liberty in special relation to recent trials of church leaders" (*ibid.*, pp. 31 and 32, A/821).

At the 59th meeting of the General Committee, the two representatives agreed to combine the items which they had submitted separately in the single item the title of which is quoted above. (G A (III/2), General Com., 59th mtg., p. 34)

110. The two representatives contended that certain measures taken by the Governments of Bulgaria and Hungary, and in particular the proceedings instituted against church leaders, violated the provisions on human rights contained in the Charter and in the peace treaties recently concluded with those two Governments.

111. During the discussion on the adoption of the agenda, several representatives, invoking Article 2 (7), opposed the inclusion of the item proposed by Australia and Bolivia. They held that the matter fell essentially within the domestic jurisdiction of Bulgaria and Hungary. Furthermore, they contended that, since the United Nations was not a party to the peace treaties, it was not entitled to intervene in the interpretation and implementation of those treaties. The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following question:

Whether the inclusion of an item in the agenda constitutes intervention (paragraphs 347, 349, 351 and 352).

112. Despite the above-mentioned objections, the General Assembly, at its 190th plenary meeting on 12 April 1949, included 107/ the item in its agenda by 30 votes to 7, with 20 abstentions, and referred it to the Ad Hoc Political Committee.

113. At its 34th meeting, the Committee, by 17 votes to 1, with 31 abstentions, invited 108/ representatives of Bulgaria and Hungary "to participate, without vote, in the discussion of this question". The two States declined 109/ the invitation, contending that the matter fell essentially within their domestic jurisdiction and that the United Nations was not competent to deal with it. That contention was supported by some Member States and disputed by others. The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following questions:

The meaning of the expression "matters which are essentially within the domestic jurisdiction of any state" (paragraph 386);

Whether a matter governed by international agreements can fall essentially within domestic jurisdiction (paragraphs 399 and 400);

Whether a matter governed by the Charter in general and by the provisions on human rights in particular can fall essentially within domestic jurisdiction (paragraphs 409 and 413).

114. In spite of the objections raised on the grounds of Article 2 (7), the General Assembly, at its 203rd plenary meeting on 30 April 1949, by 34 votes to 6, with 9 abstentions adopted 110/ resolution 272 (III), which had been submitted to it by the Ad Hoc Political Committee.

115. The preamble to the resolution referred to the provisions on human rights contained in Article 1 (3) of the Charter and in the peace treaties with Bulgaria and Hungary.

107/ G A (III/2), Plen., 190th mtg., p. 29.

108/ G A (III/2), Ad Hoc Pol. Com., 34th mtg., p. 65.

109/ G A (III/2), Ad Hoc Pol. Com., Annexes, pp. 9-11, A/AC.24/57 and A/AC.24/58.

110/ G A (III/2), Plen., 203rd mtg., pp. 272 and 273.

116. The operative part read:

"The General Assembly,

".

"1. Expresses its deep concern at the grave accusations made against the Governments of Bulgaria and Hungary regarding the suppression of human rights and fundamental freedoms in those countries;

"2. Notes with satisfaction that steps [111/] have been taken by several States signatories to the Peace Treaties with Bulgaria and Hungary regarding these accusations, and expresses the hope that measures will be diligently applied, in accordance with the Treaties, in order to ensure respect for human rights and fundamental freedoms;

"3. Most urgently draws the attention of the Governments of Bulgaria and Hungary to their obligations under the Peace Treaties, including the obligation to co-operate in the settlement of all these questions;

"4. Decides to retain the question on the agenda of the fourth regular session of the General Assembly of the United Nations."

117. The resolution made no reference to the objections raised on the grounds of Article 2 (7).

b. RESOLUTION 294 (IV)

118. Pursuant to resolution 272 (III), the item was included in the provisional agenda of the fourth session of the General Assembly. At its 65th meeting, the General Committee, on a proposal submitted by the representative of Australia, amended 112/ the title of the item to read: "Observance in Bulgaria, Hungary and Romania of human rights and fundamental freedoms".

119. At its 224th plenary meeting on 22 September 1949, the General Assembly included 113/ the item in the agenda without a vote and referred it to the Ad Hoc Political Committee.

120. In the Committee several representatives contended that the matter fell essentially within the domestic jurisdiction of Bulgaria, Hungary and Romania and that the United Nations was not competent to deal with it. The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following questions:

Whether a matter governed by international agreements can fall essentially within domestic jurisdiction (paragraphs 399 and 400);

Whether a matter governed by the Charter provisions on human rights can fall essentially within domestic jurisdiction (paragraphs 413 and 415).

111/ Certain signatory States had sought to refer the accusations to the Commissions established by the Peace Treaties for the settlement of disputes.

112/ G A (IV), General Com., 65th mtg., para. 73.

113/ G A (IV), Plen., 224th mtg., para. 56.

121. At its 7th meeting, the Committee, by 41 votes to none, with 15 abstentions, invited 114/ Romania "to send a representative to participate, without the right to vote, in the consideration of the item under discussion". Romania declined 115/ the invitation, contending that the matter fell essentially within its domestic jurisdiction and that the United Nations was not competent to deal with it.

122. In spite of the objections raised on the grounds of Article 2 (7), the General Assembly, by 47 votes to 5, with 7 abstentions, adopted 116/ at its 235th plenary meeting on 22 October 1949, resolution 294 (IV), which had been submitted to it by the Ad Hoc Political Committee.

123. The first paragraph of the preamble to resolution 294 (IV) read:

"Whereas the United Nations, pursuant to Article 55 of the Charter, shall promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,"

124. The other paragraphs of the preamble recalled the terms of resolution 272 (III) and referred to the peace treaties between Bulgaria, Hungary and Romania on the one hand, and the Allied and Associated Powers on the other. They noted that certain Allied and Associated Powers had charged Bulgaria, Hungary and Romania with violations of the provisions on human rights contained in the peace treaties and had sought to refer their charges to the Commissions established by the peace treaties to settle disputes between signatory States, but that the Commissions had been unable to meet since Bulgaria, Hungary and Romania had refused to appoint their representatives.

125. The first two paragraphs of the operative part read:

"The General Assembly

"1. Expresses its continuing interest in and its increased concern at the grave accusations made against Bulgaria, Hungary and Romania;

"2. Records its opinion that the refusal of the Governments of Bulgaria, Hungary and Romania to co-operate in its efforts to examine the grave charges with regard to the observance of human rights and fundamental freedoms justifies this concern of the General Assembly about the state of affairs prevailing in Bulgaria, Hungary and Romania in this respect;"

126. The other paragraphs of the operative part requested the International Court of Justice to give an advisory opinion on the interpretation of the provisions for the settlement of disputes contained in the peace treaties and, in particular, on the question whether Bulgaria, Hungary and Romania were "obligated to carry out ... the provisions for the appointment of their representatives to the Treaty Commissions".

127. The resolution made no reference to the objections raised on the grounds of Article 2 (7).

C. RESOLUTION 385 (V)

128. Pursuant to resolution 294 (IV), the International Court of Justice delivered two advisory opinions, dated respectively 30 March and 18 July 1950.

114/ G A (IV), Ad Hoc Pol. Com., 7th mtg., para. 16.

115/ G A (IV), Ad Hoc Pol. Com., 10th mtg., para. 1, A/AC.31/L.4.

116/ G A (IV), Plen., 235th mtg., para. 52.

129. The opinion of 30 March examined the objections raised on the grounds of Article 2 (7) by Bulgaria, Hungary and Romania. The relevant part of that opinion may be found in paragraph 335. The opinion of 18 July made no reference to the problem of domestic jurisdiction.

130. As regards the substance of the questions put to it by the Assembly, the Court stated "that the Governments of Bulgaria, Hungary and Romania are obligated to carry out ... the provisions for the appointment of their representatives to the Treaty Commissions". 117/

131. The two advisory opinions were included in the provisional agenda of the fifth session of the General Assembly as part of the question of the observance of human rights in Bulgaria, Hungary and Romania.

132. During the discussion on the adoption of the agenda several representatives, invoking Article 2 (7), objected 118/ to the inclusion of the question. Despite these objections, the General Assembly, at its 284th plenary meeting on 26 September 1950, included 119/ the item in the agenda by 51 votes to 6, with 1 abstention, and referred it to the Ad Hoc Political Committee.

133. The discussion of the problem of domestic jurisdiction in the Committee is summarized below in the Analytical Summary of Practice. The arguments advanced during that discussion related to the following questions:

Whether a matter governed by international agreements can fall essentially within domestic jurisdiction (paragraphs 399 and 400);

Whether a matter governed by the Charter provisions on human rights can fall essentially within domestic jurisdiction (paragraphs 413 and 415).

134. At its 303rd plenary meeting on 3 November 1950, the General Assembly, by 40 votes to 5 with 12 abstentions, adopted 120/ resolution 385 (V), which had been submitted to it by the Ad Hoc Political Committee.

135. As in the case of the two other resolutions adopted on the item, resolution 385 (V) made no reference to the objections raised on the grounds of Article 2 (7) by Bulgaria, Hungary and Romania and by several Member States.

136. The preamble to the resolution quoted the provision on human rights contained in Article 1 (3) of the Charter and recalled resolutions 272 (III) and 294 (IV).

137. The first paragraph of the operative part took note of the Court's advisory opinions of 30 March and 18 July 1950. The second paragraph condemned the refusal of Bulgaria, Hungary and Romania to appoint representatives to the Treaty Commissions. The other paragraphs read:

"The General Assembly,

"

117/ Interpretation of Peace Treaties, I C J Reports 1950, pp. 75-77.

118/ See para. 347 and footnote 315.

119/ G A (V), Plen., vol. I, 284th mtg., para. 166.

120/ G A (V), Plen., vol. I, 303rd mtg., para. 169.

"3. Is of the opinion that the conduct of the Governments of Bulgaria, Hungary and Romania in this matter is such as to indicate that they are aware of breaches being committed of those articles of the Treaties of Peace under which they are obligated to secure the enjoyment of human rights and fundamental freedoms in their countries; and that they are callously indifferent to the sentiments of the world community;

"4. Notes with anxiety the continuance of serious accusations on these matters against the Governments of Bulgaria, Hungary and Romania, and that the three Governments have made no satisfactory refutation of these accusations;

"5. Invites Members of the United Nations, and in particular those which are parties to the Treaties of Peace with Bulgaria, Hungary and Romania, to submit to the Secretary-General all evidence which they now hold or which may become available in future in relation to this question;

"6. Likewise invites the Secretary-General to notify the Members of the United Nations of any information he may receive in connexion with this question."

Case No. 9

The question of Morocco

138. The question of Morocco was on the provisional agenda of the sixth, seventh and eighth sessions of the General Assembly. It was included in the final agenda and discussed at the seventh and eighth sessions. The action taken by the Assembly at the three sessions is studied below.

a. ACTION TAKEN AT THE SIXTH SESSION

139. By communications 121/ dated 4, 6, 8, 9 and 10 October 1951, the representatives of six Member States requested the General Assembly to include in the agenda of its sixth session an item entitled "Violation by France in Morocco of the principles of the United Nations Charter and the Declaration of Human Rights".

140. Their request was considered by the General Committee at its 75th and 76th meetings. At the 75th meeting the representative of France expressed the view that a discussion of the item in the Assembly would not serve the interests of the Moroccan people. He made it clear that he was not dealing with "the question from the standpoint of the provisions of Article 2, paragraph 7, of the Charter". 122/ At its 76th meeting, the General Committee recommended 123/ to the Assembly "that consideration of the question of placing the item ... on the final agenda of the General Assembly be postponed for the time being".

141. At its 354th plenary meeting on 13 December 1951, the Assembly adopted 124/ the recommendation of the General Committee by 28 votes to 23, with 7 abstentions. No further action was taken during the sixth session.

121/ G A (VI), Annexes, a.1. 7, pp. 4-6, A/1894, A/1898, A/1904, A/1908, A/1909 and A/1918.

122/ G A (VI), General Com., 75th mtg., para. 68.

123/ G A (VI), General Com., 76th mtg., para. 32.

124/ G A (VI), Plen., 354th mtg., para. 290.

b. ACTION TAKEN AT THE SEVENTH SESSION; RESOLUTION 612 (VII)

142. By a letter 125/ dated 3 September 1952, the representatives of thirteen Member States requested the General Assembly to include in the agenda of its seventh session an item entitled "The question of Morocco". These representatives claimed that certain measures taken by the French Administration in Morocco were contrary to the Charter provisions on human rights and to the principle of self-determination. They also contended that France had violated Morocco's sovereignty, which it had undertaken to respect in signing the Act of Algeciras and the Protectorate Treaty. Finally, they maintained that the situation in Morocco was a "menace to international peace in that part of the world".

143. The request submitted by the thirteen Member States was considered by the General Committee at its 79th meeting. At that meeting, the representative of France stated 126/ that his Government found the interference of the United Nations in matters which were exclusively within its national jurisdiction wholly unacceptable, and announced that he would not take part in any discussion or in any vote on the inclusion of the item. At the same meeting, the Committee decided 127/ without a vote to recommend the inclusion of the item in the agenda of the seventh session. At its 380th plenary meeting on 16 October 1952, the General Assembly adopted 128/ the Committee's recommendation without debate and referred the question to the First Committee.

144. By a letter 129/ dated 4 December 1952, the representative of France informed the Chairman of the First Committee that the "French Government could not accept any interference by the United Nations in its relations with ... Morocco" and that "the French delegation ... will be unable to participate in the impending discussions [on the item]".

145. During the discussion of the item in the Committee, several representatives contended that the matter fell essentially within France's domestic jurisdiction and that the United Nations was not competent to deal with it. The arguments for and against that contention, which are set out in the Analytical Summary of Practice, related to the following questions:

The meaning of the expression "matters which are essentially within the domestic jurisdiction of any state." (paragraph 388);

Whether a matter governed by international agreements can fall essentially within domestic jurisdiction (paragraphs 399, 400 and 401);

Whether a matter governed by the Charter in general can fall essentially within domestic jurisdiction (paragraph 409);

Whether a matter governed by the Charter provisions regarding Non-Self-Governing Territories can fall essentially within domestic jurisdiction (paragraphs 423 and 424);

Whether a matter governed by the Charter provisions on self-determination can fall essentially within domestic jurisdiction (paragraph 428);

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraph 434).

125/ G A (VII), Annexes, a.i. 65, pp. 1-5, A/2175 and Add.1 and 2.

126/ G A (VII), General Com., 79th mtg., para. 18.

127/ Ibid.

128/ G A (VII), Plen., 380th mtg., para. 202.

129/ G A (VII), Annexes, a.i. 65, p. 5, A/C.1/737.

146. In spite of the objections raised on the grounds of Article 2 (7), the General Assembly, acting on the report of the First Committee, adopted 130/ at its 407th plenary meeting on 19 December 1952, resolution 612 (VII) by 45 votes to 3, with 11 abstentions.

147. The preamble to the resolution quoted from Articles 1 (2), 1 (4) and 11 (1) of the Charter. The operative part read:

"The General Assembly,

".

"1. Expresses the confidence that, in pursuance of its proclaimed policies, the Government of France will endeavour to further the fundamental liberties of the people of Morocco, in conformity with the Purposes and Principles of the Charter;

"2. Expresses the hope that the parties will continue negotiations on an urgent basis towards developing the free political institutions of the people of Morocco, with due regard to legitimate rights and interests under the established norms and practices of the law of nations; 131/

"3. Appeals to the parties to conduct their relations in an atmosphere of goodwill, mutual confidence and respect and to settle their disputes in accordance with the spirit of the Charter, thus refraining from any acts or measures likely to aggravate the present tension."

148. The resolution made no mention of the objections raised on the grounds of Article 2 (7).

C. ACTION TAKEN AT THE EIGHTH SESSION

149. By a letter 132/ dated 9 July 1953, the representatives of fifteen Member States requested the Assembly to include the question of Morocco in the agenda of its eighth session. In the absence of any objections, the Assembly included 133/ the question in its agenda without a vote at its 435th plenary meeting on 17 September 1953, and referred it to the First Committee.

150. As had been the case in the previous year, the French representative, invoking Article 2 (7), informed 134/ the Chairman of the First Committee that he would be unable to participate in the discussion on the question.

130/ G A (VII), Plen., 407th mtg., para. 50.

131/ The text of paragraph 2 as submitted to the Assembly by the First Committee read: "Expresses the hope that the parties will continue negotiations on an urgent basis with a view to bringing about self-government for Moroccans in the light of the relevant provisions of the Charter of the United Nations;" (G A (VII), Annexes, a.i. 65, pp. 12 and 13, A/2325, para. 11.

"At its 407th plenary meeting on 19 December 1952, the Assembly by 29 votes to 8, with 22 abstentions, adopted an amendment which became the final text of paragraph 2 (G A (VII), Plen., 407th mtg., para. 49).

132/ G A (VIII), Annexes, a.i. 57, pp. 1 and 2, A/2406.

133/ G A (VIII), Plen., 435th mtg., para. 67.

134/ G A (VIII), Annexes, a.i. 57, p. 4, A/C.1/L.58.

151. During the discussion of the item in the Committee, several representatives contended that the matter fell essentially within France's domestic jurisdiction and that the United Nations was not competent to deal with it. The arguments for and against that contention, which are set out in the Analytical Summary of Practice, related to the following questions:

Whether a matter governed by international agreements can fall essentially within domestic jurisdiction (paragraphs 399, 400 and 401);

Whether a matter governed by the Charter in general can fall essentially within domestic jurisdiction (paragraphs 409 and 410);

Whether a matter governed by the Charter provisions regarding Non-Self-Governing Territories can fall essentially within domestic jurisdiction (paragraph 424);

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraph 434).

152. In spite of the objections raised on the grounds of Article 2 (7), the Committee, by 31 votes to 18, with 9 abstentions, adopted 135/ at its 640th meeting a draft resolution which stated that:

"The General Assembly,

".

"Recognizing the right of the people of Morocco to complete self-determination in conformity with the Charter,

"Renews its appeal for the reduction of tension in Morocco and urges that the right of the people of Morocco to free democratic political institutions be ensured." 136/

153. In the Assembly, the draft resolution adopted by the First Committee failed to obtain the required two-thirds majority 137/ at the 455th plenary meeting on 3 November 1953, and was therefore rejected.

154. No further action was taken at the eighth session.

Case No. 10

The Tunisian question

155. The Tunisian question was discussed by the General Assembly at its seventh and eighth sessions. The action taken at these sessions is studied below.

a. ACTION TAKEN AT THE SEVENTH SESSION; RESOLUTION 611 (VII)

156. By a letter 138/ dated 30 July 1952 the representatives of thirteen Member States, invoking Article 11 (2), requested the General Assembly to include in the agenda of its seventh session an item entitled "The Tunisian question". These

135/ G A (VIII), 1st Com., 640th mtg., para. 45.

136/ G A (VIII), Annexes, a.i. 57, p. 6, A/2526, para. 11.

137/ There were 32 votes in favour of the operative part, 22 against and 5 abstentions. (G A (VIII), 455th mtg., paras. 61 and 125)

138/ G A (VII), Annexes, a.i. 60, pp. 1-4, A/2152.

representatives claimed that the French Administration in Tunisia had suppressed civil liberties and had violated human rights and the principle of self-determination. They also contended that France had violated Tunisia's sovereignty, which it had undertaken to respect in signing the Protectorate Treaties.

157. The request submitted by the thirteen Member States was considered by the General Committee at its 79th meeting. At that meeting, the representative of France stated 139/ that his Government found the interference of the United Nations in matters which were exclusively within its national jurisdiction wholly unacceptable, and announced that he would not take part in any discussion or in any vote on the inclusion of the item. At the same meeting, the Committee decided 140/ without a vote to recommend the inclusion of the item in the agenda of the seventh session. At its 380th plenary meeting on 16 October 1952, the General Assembly adopted 141/ the Committee's recommendation without debate and referred the matter to the First Committee.

158. By a letter 142/ dated 4 December 1952, the representative of France informed the Chairman of the First Committee that "the French Government could not accept any interference by the United Nations in its relations with Tunisia" and that "the French delegation ... will be unable to participate in the impending discussions on the item/".

159. During the discussion of the item in the Committee, several representatives contended that the matter fell essentially within France's domestic jurisdiction and that the United Nations was not competent to deal with it. The arguments for and against that contention, which are set out in the Analytical Summary of Practice, related to the following questions:

The meaning of the expression "matters which are essentially within the domestic jurisdiction of any State" (paragraph 388);

Whether a matter governed by international agreements can fall essentially within domestic jurisdiction (paragraphs 399, 400 and 401);

Whether a matter governed by the Charter in general can fall essentially within domestic jurisdiction (paragraph 409);

Whether a matter governed by the Charter provisions regarding Non-Self-Governing Territories can fall essentially within domestic jurisdiction (paragraphs 423 and 424);

Whether a matter governed by the Charter provisions on self-determination can fall essentially within domestic jurisdiction (paragraph 428);

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraph 434).

160. In spite of the objections raised on the grounds of Article 2 (7), the General Assembly, acting on the report of the First Committee, adopted 143/ at its 404th

139/ G A (VII), General Com., 79th mtg., para. 18.

140/ G A (VII), General Com., 79th mtg., para. 18.

141/ G A (VII), Plen., 380th mtg., para. 202.

142/ G A (VII), Annexes, a.i. 60, p. 5, A/C.1/737.

143/ G A (VII), Plen., 404th mtg., para. 62.

plenary meeting on 17 December 1952, resolution 611 (VII) by 44 votes to 3, with 8 abstentions.

161. The preamble to that resolution, which was, *mutatis mutandis*, identical to the preamble to resolution 612 (VII), quoted from Articles 1 (2), 1 (4) and 11 (1) of the Charter.

162. The operative part read:

"The General Assembly,

".

"1. Expresses its confidence that, in pursuance of its proclaimed policies, the Government of France will endeavour to further the effective development of the free institutions of the Tunisian people, in conformity with the Purposes and Principles of the Charter;

"2. Expresses the hope that the parties will continue negotiations on an urgent basis with a view to bringing about self-government for Tunisians in the light of the relevant provisions of the Charter of the United Nations;

"3. Appeals to the parties concerned to conduct their relations and settle their disputes in accordance with the spirit of the Charter and to refrain from any acts or measures likely to aggravate the present tension."

163. The resolution made no reference to the objections raised on the grounds of Article 2 (7).

b. ACTION TAKEN AT THE EIGHTH SESSION

164. By a letter 144/ dated 13 July 1953, the representatives of fifteen Member States requested the General Assembly to include the Tunisian question in the agenda of its eighth session. In the absence of any objections, the Assembly included 145/ the question in its agenda without a vote at its 435th plenary meeting on 17 September 1952, and referred it to the First Committee.

165. As had been the case in the previous year, the representative of France, invoking Article 2 (7), informed 146/ the Chairman of the First Committee that he would be unable to participate in the discussion of the question.

166. During the discussion of the item in the Committee, several representatives contended that the matter fell essentially within France's domestic jurisdiction and that the United Nations was not competent to deal with it. The arguments for and against that contention, which are set out in the Analytical Summary of Practice, related to the following questions:

Whether a matter governed by international agreements can fall essentially within domestic jurisdiction (paragraphs 399, 400 and 401);

144/ G A (VIII), Annexes, a.i. 56, pp. 1 and 2, A/2405.

145/ G A (VIII), Plen., 435th mtg., para. 67.

146/ G A (VIII), Annexes, a.i. 57, p. 4, A/C.1/L.58.

Whether a matter governed by the Charter in general can fall essentially within domestic jurisdiction (paragraph 410);

Whether a matter governed by the Charter provisions regarding Non-Self-Governing Territories can fall essentially within domestic jurisdiction (paragraph 424);

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraph 434).

167. In spite of the objections raised on the grounds of Article 2 (7), the Committee, by 29 votes to 22, with 5 abstentions, adopted 147/ at its 647th meeting a draft resolution 148/ which stated that:

"The General Assembly,

".

"Convinced that full effect should be given to the sovereignty of the people of Tunisia by the exercise, as early as possible, of their legitimate rights to self-determination and self-government in conformity with the Charter,

"1. Recommends that all necessary steps be taken to ensure the realization by the people of Tunisia of their right to full sovereignty and independence; "

168. At its 457th plenary meeting, on 11 November 1953, the General Assembly, by 32 votes in favour, 16 against and 11 abstentions, adopted an amendment 149/ to that draft resolution. The amendment substituted for paragraph 1, quoted above, the following text:

"1. Recommends that negotiations between France and Tunisia be undertaken to ensure the realization by the people of Tunisia of their right to self-determination."

169. As amended, the draft resolution failed 150/ to obtain the necessary two-thirds majority and was therefore rejected.

170. No further action was taken at the eighth session.

147/ G A (VIII), 1st Com., 647th mtg., para. 26.

148/ G A (VIII), Annexes, a.i. 56, p. 5, A/2530, para. 7.

149/ G A (VIII), Plen., 457th mtg., para. 150.

150/ There were 31 votes in favour, 18 against and 10 abstentions. (G A (VII), Plen., 457th meeting, para. 152)

Case No. 11

*The question of race conflict in the
Union of South Africa*

171. At the seventh session the General Assembly discussed the question of race conflict in the Union of South Africa and established a Commission to study the racial situation in that State. At the eighth session it considered the Commission's report and again discussed the question. The action taken by the Assembly at the two sessions and the Commission's report are studied below.

a. ACTION TAKEN AT THE SEVENTH SESSION

172. By a letter 151/ dated 15 September 1952, the representatives of thirteen Member States requested the Assembly to include in the agenda of its seventh session an item entitled "The question of race conflict in South Africa resulting from the policies of apartheid of the Government of the Union of South Africa". These representatives contended that by its racial policy the Government of the Union was "creating a dangerous and explosive situation, which constitutes both a threat to international peace and a flagrant violation of the basic principles of human rights and fundamental freedoms which are enshrined in the Charter".

i. Inclusion of the item in the agenda and decisions concerning competence

173. During the discussion on the adoption of the agenda the representative of South Africa, maintaining that the item proposed by the thirteen Member States fell essentially within the Union's domestic jurisdiction, submitted 152/ the following motion:

"Having regard to the provisions of Article 2, paragraph 7, of the Charter, the General Assembly decides that it is not competent to consider the item ...".

174. At the 381st plenary meeting, on 17 October 1952, the President ruled 153/ that "under rule 80 154/ [of the rules of procedure]/the motion/ regarding the competence of the General Assembly should be put to the General Assembly before the question of the inclusion or non-inclusion of this item in the agenda". The President's ruling was challenged 155/ on the ground that the Assembly would be in a position to decide on the question of competence only after the item had been discussed; it was therefore necessary to place the item on the agenda before considering the motion submitted by South Africa. By 41 votes to 10, with 8 abstentions, the Assembly reversed 156/ the President's ruling and, without pronouncing itself on the question of competence, included 157/ the item in the agenda and referred it to the Ad Hoc Political Committee.

151/ G A (VII), Annexes, a.1. 66, pp.1-3, A/2183.

152/ G A (VII), Plen., 381st mtg., paras. 5-67.

153/ G A (VII), Plen., 381st mtg., para. 150.

154/ Present rule 81 (A/520/Rev.3, United Nations Publications, Sales No. 1954.1.17)

155/ G A (VII), Plen., 381st mtg., paras. 74, 136, 141, 163 and 164.

156/ G A (VII), Plen., 381st mtg., para. 150.

157/ The item was placed on the agenda by 45 votes to 6, with 8 abstentions (G A (VII), Plen., 381st mtg., para. 167).

175. At the beginning of the discussion in the Committee, the representative of South Africa restated his Government's reasons for contending that the item fell essentially within the Union's domestic jurisdiction. The arguments for and against that contention, which are set out in the Analytical Summary of Practice, related to the following questions:

The meaning of the term "to intervene" (paragraphs 342 and 343);

Whether a recommendation - in general or to a particular State - constitutes intervention (paragraph 359);

Whether the establishment by the General Assembly of a commission to study the racial situation prevailing in a Member State constitutes intervention (paragraph 372);

Whether a matter governed by the Charter in general can fall essentially within domestic jurisdiction (paragraphs 409 and 410);

Whether a matter governed by the Charter provisions on human rights can fall essentially within domestic jurisdiction (paragraphs 413, 414 and 415);

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraph 434).

176. At the 13th meeting of the Committee the representative of South Africa submitted the following motion: 158/

"Having regard to the provisions of Article 2, paragraph 7, of the Charter of the United Nations,

"The Ad Hoc Political Committee finds that it has no competence to consider the item ...".

177. The motion was put to the vote at the end of the debate on the item at the 21st meeting of the Committee and was rejected 159/ by 45 votes to 6 with 8 abstentions. At the same meeting the Committee adopted two draft resolutions which the General Assembly considered at its 401st plenary meeting on 5 December 1952.

178. At that meeting the representative of South Africa moved 160/ that:

"The General Assembly,

"Having regard to the provisions of Article 2, paragraph 7, of the Charter,

"Finds that it is unable to adopt the resolutions submitted by the Ad Hoc Political Committee".

179. The Assembly, by 43 votes to 6, with 9 abstentions, rejected 161/ the motion made by the representative of South Africa. It then proceeded to adopt the two resolutions which had been submitted by the Ad Hoc Political Committee.

158/ G A (VII), Ad Hoc Pol. Com., 13th mtg., para. 14, A/AC.61/L.6 and Corr.1.

159/ G A (VII), Ad Hoc Pol. Com., 21st mtg., para. 34.

160/ G A (VII), Plen., 401st mtg., para. 80, A/L.124.

161/ G A (VII), Plen., 401st mtg., para. 89.

ii. Resolution 616 A (VII)

180. The first resolution, numbered 616 A (VII), was adopted 162/ by 35 votes to 1, with 23 abstentions.

181. The preamble to that resolution took note of the request submitted by thirteen Member States, quoted the provision on human rights contained in Article 1 (3) of the Charter and referred to resolutions 103 (I) 163/, 395 (V) 164/ and 511 (VI) 165/.

182. The operative part established

"a Commission, consisting of three members, to study the racial situation in the Union of South Africa in the light of the Purposes and Principles of the Charter, with due regard to the provision of Article 2, paragraph 7, as well as the provisions of Article 1, paragraphs 2 and 3, Article 13, paragraph 1 b, Article 55 c, and Article 56 of the Charter, and the resolutions of the United Nations on racial persecution and discrimination, and to report its conclusions to the General Assembly at its eighth session;"

183. Finally the resolution invited "the Government of the Union of South Africa to extend its full co-operation to the Commission" and decided "to retain the question on the provisional agenda of the eighth session".

iii. Resolution 616 B (VII)

184. The second resolution, numbered 616 B (VII), was adopted 166/ by 24 votes to 1, with 34 abstentions.

185. The preamble took note of the request 167/ submitted by 13 Member States, referred to Article 1 (3) and recalled resolution 103 (I) 168/.

186. The first two paragraphs of the operative part contained a general declaration on the policies to be pursued in a multi-racial society. No particular State was mentioned. The third and last paragraph referred to Article 55 c in the following terms:

"The General Assembly,

".

. "3. Solemnly calls upon all Member States to bring their policies into conformity with their obligation under the Charter to promote the observance of human rights and fundamental freedoms."

187. Neither resolution made any reference to the objections raised by the representative of South Africa on the grounds of Article 2 (7).

162/ G A (VII), Plen., 401st mtg., para. 98.

163/ See paras. 61 and 65.

164/ See paras. 60 to 63.

165/ See paras. 64 to 66.

166/ G A (VII), Plen., 401st mtg., para. 105.

167/ See para. 172.

168/ See paras. 61 and 65.

b. REPORT OF THE COMMISSION ON THE RACIAL SITUATION IN
THE UNION OF SOUTH AFRICA

188. The Commission established by resolution 616 A (VII) submitted its report to the General Assembly on 3 October 1953. The report dealt both with the question of competence and with the question of substance.

189. On the question of competence, the report concluded that:

"The Assembly, assisted by the commissions which it establishes and authorizes, is permitted by the Charter to undertake any studies and make any recommendations to Member States which it may deem necessary in connexion with the application and implementation of the principles to which the Member States have subscribed by signing the Charter. That universal right of study and recommendation is absolutely incontestable with regard to general problems of human rights and particularly of those protecting against discrimination for reasons of race, sex, language or religion.

"The exercise of the functions and powers conferred on the Assembly and its subsidiary organs by the Charter does not constitute an intervention prohibited by Article 2 (7) of the Charter." 169/

190. On the question of substance, the report concluded that the racial policy of the Union Government was contrary to the Charter and the Universal Declaration of Human Rights and that the continuance of this policy was likely to impair friendly relations among nations. 170/

c. ACTION TAKEN AT THE EIGHTH SESSION

191. Pursuant to resolution 616 A (VII), the following item was included in the provisional agenda of the eighth session: "The question of race conflict in South Africa resulting from the policies of apartheid of the Government of the Union of South Africa: report of the Commission appointed to study the racial situation in the Union of South Africa".

1. Inclusion of the item in the agenda and decisions concerning competence

192. During the discussion on the adoption of the agenda, the representative of South Africa, invoking Article 2 (7), objected to the inclusion of the question of race conflict. The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following question:

Whether the inclusion of an item in the agenda constitutes intervention (paragraphs 347 and 352).

193. Despite the objections of the representative of South Africa, the General Assembly, by 46 votes to 7 with 7 abstentions, at its 435th plenary meeting on 17 September 1953, included 171/the question of race conflict in its agenda and referred it to the Ad Hoc Political Committee.

169/ G A (VIII), Suppl. No. 16, para. 893.

170/ G A (VIII), Suppl. No. 16, paras. 895-909.

171/ G A (VIII), Plen., 435th mtg., para. 66.

194. At the beginning of the discussion in the Committee, the representative of South Africa restated his Government's reasons for contending that the question fell essentially within the Union's domestic jurisdiction and that the Assembly was not competent to deal with it. The arguments for and against that contention, which are set out in the Analytical Summary of Practice, related to the following questions:

The meaning of the term "to intervene" (paragraphs 342 and 343);

Whether a recommendation - in general or to a particular State - constitutes intervention (paragraphs 359 and 360);

Whether a matter governed by the Charter in general can fall essentially within domestic jurisdiction (paragraph 410);

Whether a matter governed by the Charter provisions on human rights can fall essentially within domestic jurisdiction (paragraphs 413 and 414);

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraph 434).

195. At the 32nd meeting of the Committee the representative of South Africa submitted the following draft resolution: 172/

"The Ad Hoc Political Committee,

"Noting that the matters to which the item entitled 'The question of race conflict in South Africa resulting from the policies of apartheid of the Government of the Union of South Africa' relates and which are referred to in documents A/2183 and A/2505, such as the policies and legislation of a Member State in regard to land tenure, conditions of employment in public services, regulation of transport, suppression of Communism, combat service in the armed forces, nationality, the franchise, movement of population, residence, immigration, the work and practice of the professions, social security, education, public health, criminal law, taxation, housing, regulation of the liquor traffic, regulation of labour and wages, marriage, food subsidies, local government, pensions, workmen's compensation, are among matters which are essentially within the domestic jurisdiction of a Member State,

"Noting that by Article 2 (7) of the Charter nothing contained in the Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State,

"Decides, the Ad Hoc Political Committee has no competence to intervene in the matters listed above to which the said item relates."

196. At the 34th meeting of the Committee as reported in the summary of the record below, the Chairman stated 173/ that

"when the General Assembly included an item in its agenda, it did not prejudice the question of its competence. The practice of the United Nations provided many precedents for that view. It had always been agreed that the question of competence was considered by the committee concerned or by the Assembly

172/ A/AC.72/L.13.

173/ G A (VIII), Ad Hoc Pol. Com., 34th mtg., para. 55.

itself. For that reason, he had circulated the South African draft resolution concerning the question of competence and had made it clear that the general debate could deal both with the report mentioned in the agenda item and with the South African draft resolution. When the Committee reached the voting stage, he would first put to the vote the draft resolution regarding competence."

197. That statement was not challenged and the Committee proceeded in the way suggested by the Chairman.

198. The draft resolution submitted by the representative of South Africa was put to the vote at the end of the Committee's debate on the item at its 42nd meeting and rejected 174/ by 42 votes to 7, with 7 abstentions. It should be noted, however, that several of the representatives who commented on the draft resolution stated 175/ that they were opposed to it because the matters listed in the preamble were not on the Committee's agenda; hence, the question whether those matters fell essentially within domestic jurisdiction was not relevant.

199. At the same meeting the Committee adopted a draft resolution dealing with the substance of the question, which it submitted to the General Assembly.

200. At the 469th plenary meeting on 8 December 1953, the representative of South Africa submitted the following draft resolution: 176/

"The General Assembly,

"Having regard to Article 2, paragraph 7, of the Charter,

"Decides that it has no competence to adopt ... [the draft resolution submitted by the Ad Hoc Political Committee]."

The Assembly rejected 177/ the draft resolution submitted by the representative of South Africa by 42 votes to 8, with 10 abstentions.

ii. Resolution 721 (VIII)

201. After the rejection of the draft resolution submitted by the representative of South Africa, the Assembly, by 38 votes to 11, with 11 abstentions, adopted 178/ at its 469th plenary meeting on 8 December 1953, the resolution which had been submitted by the Ad Hoc Political Committee. The resolution was subsequently numbered 721 (VIII).

202. The preamble to the resolution took note of the conclusions on substance presented in the report of the Commission on the racial situation in the Union of South Africa. The conclusions on competence were not mentioned.

203. Paragraph 1 of the operative part reaffirmed resolutions 103 (I), 377 A (V), section E, and 616 B (VII). It referred to Article 55 c of the Charter in the

174/ G A (VIII), Ad Hoc Pol. Com., 42nd mtg., para. 60.

175/ G A (VIII), Ad Hoc Pol. Com., 32nd mtg., paras. 44-47, 37th mtg., para. 4; 42nd mtg., paras. 27, 30, 31, 33, 47 and 48.

176/ G A (VIII), Plen., 469th mtg., para. 26, A/L.172.

177/ G A (VIII), Plen., 469th mtg., para. 52.

178/ G A (VIII), Plen., 469th mtg., para. 66.

following terms, taken from section E of resolution 377 A (V): "lasting peace depends ... especially upon respect for and observance of human rights and fundamental freedoms for all".

204. Paragraphs 2 and 3 expressed appreciation of the Commission's work and provided for the replacement of those of its members who would be unable to continue their membership. Paragraph 4 read:

"The General Assembly,

".

"4. Requests the Commission:

"(a) To continue its study of the development of the racial situation in the Union of South Africa:

"(i) With reference to the various implications of the situation for the populations affected;

"(ii) In relation to the provisions of the Charter and, in particular, to Article 14;

"(b) To suggest measures which would help to alleviate the situation and promote a peaceful settlement;"

205. Finally, paragraphs 5 and 6 invited "the Government of the Union of South Africa to extend its full co-operation to the Commission" and requested "the Commission to report to the General Assembly at its ninth session".

206. The resolution made no reference to the objections raised on the grounds of Article 2 (7).

B. General Assembly and Economic and Social Council

207. This section deals with two cases, numbered 12 and 13, which were discussed both by the General Assembly and by the Economic and Social Council.

Case No. 12

Draft international covenants on Human Rights

208. Pursuant to General Assembly resolution 217 F (III) the Commission on Human Rights, at its sixth session, submitted to the Economic and Social Council a Draft International Covenant on Human Rights. 179/

209. Articles 1 to 18 of the draft defined the human rights which each State party to the Covenant would undertake "to respect and to ensure to all individuals within its territory" 180/. Articles 19 to 41 dealt with the measures of implementation of Articles 1 to 18. They provided for the establishment of a Human Rights Committee and stipulated that if a State party to the Covenant considered that another State

179/ ESC (XI), Suppl. No. 5 (E/1681), annex I.

180/ Article 1 of the draft Covenant.

party was not giving effect to a provision of the Covenant it could communicate directly with that other State and, if the matter was not adjusted to the satisfaction of both, either State had the right to refer the matter to the Human Rights Committee. The Committee was empowered to "ascertain the facts and make available its good offices to the States concerned with a view to a friendly solution of the matter". 181/

210. By resolution 303 I (X) the Economic and Social Council transmitted the draft Covenant to the General Assembly, which considered it at the fifth session.

211. During that consideration the USSR submitted to the Third Committee and subsequently to the Assembly an amendment 182/ which stated that:

"The General Assembly,

".

"Recognizing that the implementation of the provisions of the Covenant on Human Rights falls entirely within the domestic jurisdiction of States;

".

"Considers that articles 19 to 41 of the draft Covenant should be deleted, since their inclusion would constitute an attempt at intervention in the domestic affairs of States and an encroachment on their sovereignty."

212. Representatives opposing the amendment observed that human rights were governed by the Charter and, as regards the States parties to the Covenant, would also be governed by the provisions of the Covenant after its entry into force. The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following questions:

Whether a matter governed by international agreements can fall essentially within domestic jurisdiction (paragraph 399);

Whether a matter governed by the Charter provisions on human rights can fall essentially within domestic jurisdiction (paragraph 413).

213. Both the Third Committee, at its 313th meeting, and the General Assembly, at its 317th meeting on 4 December 1950, rejected 183/ the amendment submitted by the USSR.

181/ Article 41 of the draft Covenant.

182/ In the Third Committee, the text (G A (V), Annexes, a.i. 63, pp. 17 and 18, A/C.3/L.96) was submitted in the form of an amendment to a joint draft resolution presented by Brazil, Turkey and the United States (ibid., p. 11, A/C.3/L.76). In the General Assembly, the text (ibid., pp. 35 and 36, A/1576) was submitted in the form of an amendment to the draft resolution adopted by the Third Committee (ibid., pp. 33 and 34, A/1559).

183/ The Third Committee rejected the amendment submitted by the USSR as a whole by 26 votes to 8 with 15 abstentions (G A (V), 3rd Com., 313th mtg., para. 67). The Assembly rejected the first paragraph of the proposal by 37 votes to 7 with 14 abstentions (G A (V), vol. I, Plen., 317th mtg., para. 150). It rejected the second paragraph by 43 votes to 5, with 9 abstentions (ibid., para. 163).

214. At its 317th meeting on 4 December 1950, the Assembly adopted resolution 421 (V), 184/ which called upon "the Economic and Social Council to request the Commission on Human Rights to continue to give priority in its work to the completion of the draft Covenant and measures for its implementation". Resolution 421 (V) was considered by the Economic and Social Council at its twelfth session. During that consideration the representative of the USSR submitted a draft resolution 185/ under which the Council would have instructed the Commission on Human Rights:

""

"3. To delete from the draft covenant on human rights the provisions concerning implementation contained in articles 19 to 41 thereof, as they provide for methods of supervising the implementation of the covenant which constitute an attempt at intervention in the domestic affairs of States and at encroachment on their sovereignty."

Without voting on the draft resolution submitted by the USSR, the Council transmitted it to the Commission on Human Rights. 186/

215. The Commission discussed the draft resolution submitted by the USSR at its seventh session. The arguments advanced during that discussion are summarized below in the Analytical Summary of Practice (paragraphs 399 and 413). They were similar to those advanced at the fifth session of the General Assembly (see paragraph 212). At its 213th meeting the Commission rejected 187/ the draft resolution submitted by the USSR by 15 votes to 2 with 1 abstention.

216. Pursuant to General Assembly resolution 543 (VI), adopted in the interval between the Commission's seventh and eighth sessions, the Commission proceeded at its eighth, ninth and tenth sessions "with the drafting of two covenants, one on civil and political rights and the other on economic, social and cultural rights". 188/ The measures of implementation described in paragraph 209 formed the basis of part IV of the draft Covenant on Civil and Political Rights.

217. At the ninth session of the Commission the representatives of Chile, Egypt and the Philippines submitted an amendment 189/ to part IV which gave rise to a discussion of the problem of domestic jurisdiction. The amendment read:

"Add the following paragraph to article 55 of part IV of the draft Covenant on Civil and Political Rights/

"If the Human Rights Committee 190/ considers that the information supplied is not sufficient it may, by a vote of two thirds of all its members, conduct an enquiry within the metropolitan area or Non-Self-Governing Territory of any State complained against. The State concerned shall afford full facilities necessary for the efficient conduct of the investigation."

184/ G A resolution 421 (V) was adopted by 38 votes to 7, with 12 abstentions (G A (V), Plen., vol. I, 317th mtg., para. 170).

185/ E S C (XII), Annexes, a.i. 12, pp. 8 and 9, E/L.137.

186/ See E S C resolution 349 (XII) and E S C (XII), 442nd mtg., para. 48.

187/ E/CN.4/SR.213, p. 9.

188/ E S C (XIV), Suppl. No. 4 (E/2256), para. 97.

189/ E S C (XVI), Suppl. No. 8 (E/2447), annex III, para. 141.

190/ See para. 209.

Article 55 read:

"In any matter referred to it the Committee may call upon the States concerned to supply any relevant information."

218. The amendment was opposed 191/ by those representatives who, holding that all the measures of implementation contained in part IV constituted intervention in domestic jurisdiction, had supported the text submitted by the USSR at the seventh session of the Commission. It was also opposed 192/ by representatives who maintained that the particular measure of implementation proposed in the amendment constituted intervention in domestic jurisdiction. The arguments advanced in support of the amendment were based on the contention that human rights were governed by the Charter and, as regards the States parties to the Covenant, would also be governed by the provisions of the Covenant after its entry into force. The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following questions:

Whether a matter governed by international agreements can fall essentially within domestic jurisdiction (paragraph 399);

Whether a matter governed by the Charter can fall essentially within domestic jurisdiction (paragraph 409).

219. At its 388th meeting, the Commission, by 9 votes to 5 with 1 abstention, rejected 193/ the amendment and, by 12 votes to 3, approved 194/ the text of Article 55 as quoted above. In a second reading of the draft Covenant, the Commission, at its 409th meeting, renumbered article 55 as article 42. 195/

220. At the end of its tenth session the Commission submitted to the Economic and Social Council the two draft Covenants on Human Rights which the Council transmitted by resolution 545 B I (XVIII) to the General Assembly at its ninth session.

Case No. 13

Recommendations concerning international respect for the self-determination of peoples

221. By resolution 545 (VI) the General Assembly requested "the Commission on Human Rights to prepare recommendations concerning international respect for the self-determination of peoples". Pursuant to that resolution the Commission on Human Rights, at its eighth session, adopted 196/ two resolutions 197/ which the Economic and Social Council transmitted 198/ to the General Assembly at its seventh session for adoption.

191/ See the results of the roll-call vote on the amendment: E/CN.4/SR.388, p. 13.

192/ E/CN.4/SR.388, pp. 6 and 7.

193/ E/CN.4/SR.388, p. 13.

194/ E/CN.4/SR.388, p. 13.

195/ A/CN.4/SR.409, p. 20. At that meeting the Commission revised the end of the French text of Article 42 to read "... de lui fournir toute information pertinente" instead of "de lui fournir tous les éléments d'information qu'il juge à propos".

196/ E S C (XIV), Suppl. No. 4 (E/2256), paras. 75-90.

197/ *Ibid.*, para. 91.

198/ See E S C resolution 440 B (XIV).

222. Paragraph 2 of the first of those resolutions read:

"The General Assembly

"Recommends that

".

"2. The States Members of the United Nations shall recognize and promote the realization of the right of self-determination of the people of Non-Self-Governing and Trust Territories who are under their administration; and grant this right on a demand for self-government on the part of these people, the popular wish being ascertained in particular through a plebiscite held under the auspices of the United Nations."

223. In the Assembly objections were raised on the grounds of Article 2 (7) to that paragraph. The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following question:

Whether a matter governed by the Charter provisions on self-determination can fall essentially within domestic jurisdiction (paragraphs 428 and 429).

224. Despite these objections the General Assembly, at its 403rd meeting, on 16 December 1952, certain amendments having been made to paragraph 2, adopted 199/ resolution 637 A (VII), by 40 votes to 14, with 6 abstentions.

225. The preamble to the resolution referred to the provisions on self-determination contained in Articles 1 (2) and 55 of the Charter. Paragraph 2 of the operative part, which was based on the provision quoted in paragraph 222, read:

"The General Assembly recommends that:

".

"2. The States Members of the United Nations shall recognize and promote the realization of the right of self-determination of the peoples of Non-Self-Governing and Trust Territories who are under their administration and shall facilitate the exercise of this right by the peoples of such Territories according to the principles and spirit of the Charter of the United Nations in regard to each Territory and to the freely expressed wishes of the peoples concerned, the wishes of the people being ascertained through plebiscites or other recognized democratic means, preferably under the auspices of the United Nations;"

226. At the same meeting the General Assembly adopted resolution 637 C (VII), requesting "the Economic and Social Council to ask the Commission on Human Rights to continue preparing recommendations concerning international respect for the right of peoples to self-determination". By resolution 472 (XV) the Council transmitted the Assembly's request to the Commission on Human Rights. At its tenth session, the Commission prepared the recommendations requested by the Assembly. These recommendations were contained in two resolutions 200/ - numbered I and II - which the

199/ G A (VII), Plen., 403rd mtg., para. 210.
200/ E S C (XVIII), Suppl. No. 7 (E/2573), annex IV, F.

Commission submitted to the Council at its eighteenth session and which the Council referred to its Social Committee.

227. During the discussion in the Social Committee, resolution II was criticized inter alia on the grounds of Article 2 (7). This resolution requested the Assembly to establish a commission with the following terms of reference:

"1. The Commission shall examine any situation resulting from the alleged denial or inadequate realization of the right of self-determination, which falls within the scope of Article 14 of the Charter and to which the Commission's attention is drawn by any ten Members of the United Nations;

"2. The Commission shall provide its good offices for the peaceful rectification of [the] ... situation".

228. The objections to resolution II raised on the grounds of Article 2 (7) are summarized below in the Analytical Summary of Practice. They related to the following question:

Whether a matter governed by the Charter provisions on self-determination can fall essentially within domestic jurisdiction (paragraph 429).

229. At its 820th meeting the Economic and Social Council decided 201/ to refer resolutions I and II back to the Commission on Human Rights "so that [the Commission] may reconsider them in the light of the Council's discussions".

C. Security Council

230. This section deals with eight cases, numbered 14 to 21, inclusive, which were discussed by the Security Council from 1946 to 1953.

Case No. 14

The Spanish question

231. By a letter 202/ dated 9 April 1946, the representative of Poland, referring to Articles 34 and 35 of the Charter, brought the situation in Spain to the attention of the Security Council. He expressed the view that "the activities of the Franco Government [had] already caused international friction and endangered international peace and security".

232. At its 32nd meeting on 15 April 1946, the Security Council included 203/ the Spanish question in its agenda without discussion.

201/ E S C resolution 545 G (XVIII).

202/ S C, 1st yr., 1st Series, Suppl. No. 2, p. 55, annex 3 b (S/34).

203/ S C, 1st yr., 1st Series, No. 2, 32nd mtg., p. 122.

a. RESOLUTION OF 29 APRIL 1946 ESTABLISHING THE
SUB-COMMITTEE ON THE SPANISH QUESTION

233. At the 34th meeting of the Security Council on 17 April 1946, the representative of Poland submitted a draft resolution calling upon all Member States to sever diplomatic relations with the Franco Government "in accordance with ... Articles 39 and 41 [Chapter VII] of the Charter". 204/

234. The draft resolution submitted by the representative of Poland was opposed by several representatives who stated that no evidence had been adduced that the Franco régime constituted a threat to the peace or had committed a breach of the peace or an act of aggression. The provisions of Chapter VII of the Charter - and in particular Articles 39 and 41 - were therefore not applicable. Moreover, since the question of the nature of a State's political régime fell essentially within the domestic jurisdiction of that State, Article 2 (7) debarred the Security Council from dealing with the Spanish question also under Chapter VI. 205/

235. That contention was disputed by other representatives. The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following questions:

The meaning of the expression "matters which are essentially within the domestic jurisdiction of any State" (paragraph 388);

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraph 435);

The meaning of the last phrase of Article 2 (7) (paragraph 443).

236. At the 35th meeting of the Council, the representative of Australia offered an amendment 206/ to the draft resolution submitted by the representative of Poland. The amendment provided for the appointment of a sub-committee of five members to "report to the Security Council ... on the following questions:

"1. Is the Spanish situation one essentially within the jurisdiction of Spain?

"2. Is the situation in Spain one which might lead to international friction or give rise to a dispute?

"3. If the answer to question 2 is 'Yes', is the continuance of the situation likely to endanger the maintenance of international peace and security?"

237. At the 37th meeting, the representative of Australia replaced his amendment by a draft resolution which, after further revision, was adopted 207/ by 10 votes in favour, none against, and 1 abstention, at the Council's 39th meeting on 29 April 1946. The explanations of vote indicated that the one abstention was based on grounds not related to Article 2 (7). 208/

204/ S C, 1st yr., 1st Series, No. 2, 34th mtg., p. 167.

205/ S C, 1st yr., 1st Series, No. 2, 34th mtg., pp. 176 and 177; 35th mtg., pp. 180-181.

206/ S C, 1st yr., 1st Series, No. 2, 35th mtg., p. 198.

207/ S C, 1st yr., 1st Series, No. 2, 39th mtg., p. 245.

208/ Ibid., pp. 242-243.

238. At the same meeting, the representative of Poland agreed that his draft resolution should not be put to the vote until the Sub-Committee established under the draft resolution submitted by the representative of Australia had submitted its report. 209/

239. The preamble to the resolution adopted by the Council recalled that the situation in Spain had been brought to the Council's attention under Article 35. It also recalled "the unanimous moral condemnation of the Franco régime in the Security Council" and referred to the previous United Nations resolutions on Spain. 210/ Finally, it stated that the Council kept in mind "the views expressed by the members of the Security Council regarding the Franco régime".

240. The operative part 211/ read:

"The Security Council

".

"Hereby resolves: to make further studies in order to determine whether the situation in Spain has led to international friction and does endanger international peace and security, and if it so finds, then to determine what practical measures the United Nations may take.

"To this end, the Security Council appoints a Sub-Committee of five of its members and instructs this Sub-Committee to examine the statements made before the Security Council concerning Spain, to receive further statements and documents, and to conduct such inquiries as it may deem necessary, and to report to the Security Council before the end of May."

241. Unlike the amendment submitted by the representative of Australia the above resolution did not expressly instruct the Sub-Committee to determine whether the situation in Spain fell essentially within that State's domestic jurisdiction.

b. REPORT OF THE SUB-COMMITTEE ON THE SPANISH QUESTION

242. The Sub-Committee established by the resolution of 29 April 1946 submitted its report to the Council on 1 June 1946.

243. In the report, the Sub-Committee expressed the view that, since no threat to the peace had been established, Chapter VII of the Charter was not applicable to the situation in Spain. 212/ It held, however, that the continuance of that situation was likely to endanger the maintenance of international peace and security, within the meaning of Article 34 of Chapter VI. 213/ Moreover, it found that:

209/ S C, 1st yr., 1st Series, No. 2, 39th mtg., p. 242.

210/ See para. 13.

211/ S C, 1st yr., 1st Series, No. 2, 39th mtg., p. 244.

212/ S C, 1st yr., 1st Series, Special Suppl., p. 8, para. 22.

213/ S C, 1st yr., 1st Series, Special Suppl., p. 9, para. 24.

"the facts established by the evidence before the Committee are by no means of essentially local or domestic concern to Spain. What is imputed to the Franco régime is that it is threatening the maintenance of international peace and security and that it is causing international friction. The allegations against the Franco régime involve matters which travel far beyond domestic jurisdiction and which concern the maintenance of international peace and security and the smooth and efficient working of the United Nations as the instrument mainly responsible for performing this duty." 214/

244. The report concluded that "the Security Council is empowered under Article 36 [of Chapter VI] to recommend appropriate procedures or methods of adjustment". 215/

245. Finally the report submitted the following concrete recommendations:

"... Having regard to the important powers of the General Assembly under Article 10 of the Charter, the Sub-Committee recommends as follows:

"(a) The endorsement by the Security Council of the principles contained in the declaration by the Governments of the United Kingdom, the United States and France, dated 4 March 1946. 216/

"(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 régime 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.

"(c) The taking of appropriate steps by the Secretary-General to communicate these recommendations to all Members of the United Nations and all others concerned." 217/

C. CONSIDERATION BY THE SECURITY COUNCIL OF THE
SUB-COMMITTEE'S REPORT

246. The Council considered the report of the Sub-Committee at its 44th, 45th, 46th and 47th meetings.

214/ S C, 1st yr., 1st Series, Special Suppl., pp. 1 and 2, para. 4.

215/ S C, 1st yr., 1st Series, Special Suppl., p. 10, para. 28.

216/ This declaration stated that "... the three Governments are hopeful that the Spanish people will not again be subjected to the horrors and bitterness of civil strife. On the contrary, it is hoped that leading patriotic and liberal-minded Spaniards may soon find means to bring about a peaceful withdrawal of Franco, the abolition of the Falange, and the establishment of an interim or caretaker government under which the Spanish people may have an opportunity freely to determine the type of government they wish to have". (S C, 1st yr., 1st Series, Special Suppl., pp. 76 and 77)

217/ S C, 1st yr., 1st Series, Special Suppl., p. 11, para. 31.

247. At the 45th meeting, the representative of Australia submitted a draft resolution 218/ under which the Council would resolve:

"To adopt the three recommendations of the Sub-Committee ... 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'."

248. Some representatives opposed the draft resolution submitted by the representative of Australia on the grounds of Article 2 (7). While not denying that the continuation of the situation in Spain was likely to endanger the maintenance of international peace, they contended that the situation fell essentially within Spain's domestic jurisdiction. 219/ The arguments concerning that contention, which are set out in the Analytical Summary of Practice, related to the following questions:

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraph 435);
The meaning of the last phrase of Article 2 (7) (paragraph 443).

249. The representative of the United Kingdom, one of the representatives opposing the draft resolution submitted by the representative of Australia on the grounds of Article 2 (7), offered the following amendment 220/ thereto:

"The Security Council resolves

"To adopt the three recommendations of the Sub-Committee ... subject to the deletion of paragraph (b), 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'."

250. At its 47th meeting on 18 June 1946, the Council rejected 221/ the amendment submitted by the representative of the United Kingdom by 6 votes to 2, with 3 abstentions.

251. At the same meeting the Council voted on the draft resolution submitted by the representative of Australia. There were 9 votes in favour, 1 against and 1 abstention. Since the negative vote was cast by a permanent member, the draft resolution was not adopted. 222/ In explaining his vote, the representative of that permanent member stated 223/ that in his opinion the situation in Spain constituted an actual threat to the peace and that the Security Council itself should call upon all Member States to sever diplomatic relations with the Franco Government instead of recommending that the General Assembly should do so.

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

219/ S C, 1st yr., 1st Series, No. 2, 46th mtg., pp. 344-348.

220/ Ibid., pp. 348 and 349.

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

222/ S C, 1st yr., 1st Series, No. 2, 47th mtg., p. 379.

223/ S C, 1st yr., 1st Series, No. 2, 45th mtg., pp. 331, 337 and 338; 47th mtg., pp. 367-369.

252. At the 48th meeting of the Council on 24 June 1946, the representative of Poland submitted a revised version 224/ of the draft resolution which he had presented at the 34th meeting of the Council and which had not been put to the vote (see paragraphs 233 and 238). The revision consisted in the deletion of the references to Articles 39 and 41 of the Charter. At its 48th meeting, the Council rejected 225/ that revised version by 7 votes to 4.

253. At its 79th meeting on 4 November 1946, the Council concluded the consideration of the Spanish question by resolving 226/ "that the situation in Spain is to 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". 227/

Case No. 15

The Greek question (I)

254. By a cablegram 228/ dated 24 August 1946, the Foreign Minister of the Ukrainian SSR, referring to Articles 34 and 35 (1) of the Charter, brought to the Security Council's attention "the situation in the Balkans which has resulted from the policy of the Greek Government".

255. During the discussion on the adoption of the agenda some representatives stated that the situation brought to the attention of the Council fell essentially within Greece's domestic jurisdiction and that the Security Council was debarred by Article 2 (7) from discussing it. The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following question:

Whether the inclusion of an item in the agenda constitutes intervention (paragraphs 347 and 353).

256. Despite the objections raised on the grounds of Article 2 (7), the Council, at its 59th meeting on 3 September 1946, included 229/ the Ukrainian communication in its agenda by 7 votes to 2, with 2 abstentions.

257. At the 67th, 69th and 70th meetings of the Council, several draft resolutions were submitted on the substance of the question. None obtained the required majority. The explanations of vote indicated that the negative votes were not motivated by considerations based on Article 2 (7).

258. At its 70th meeting, the Council concluded its discussion of the item by removing 230/ it from the list of matters of which it was seized.

224/ S C, 1st yr., 1st Series, No. 2, 48th mtg., pp. 383 and 384.

225/ S C, 1st yr., 1st Series, No. 2, 48th mtg., p. 388.

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

227/ For the discussion of the Spanish question in the General Assembly, see Case No. 1, paras. 12 to 40.

228/ S C, 1st yr., 2nd Series, Suppl. No. 5, pp. 149-151, annex 8 (S/137).

229/ S C, 1st yr., 2nd Series, No. 7, 59th mtg., p. 197.

230/ S C, 1st yr., 2nd Series, No. 16, 70th mtg., pp. 417-422.

Case No. 16

The Greek question (II)

259. By a resolution adopted unanimously 231/ on 19 December 1946, the Security Council established under Article 34 of the Charter, "a Commission of Investigation to ascertain the facts relating to ... alleged border violations along the frontier between Greece on the one hand and Albania, Bulgaria and Yugoslavia on the other". The Commission was "composed of a representative of each of the members of the Security Council". The resolution instructed the Commission to "conduct its investigation in northern Greece and in such places in other parts of Greece, Albania, Bulgaria, and Yugoslavia as the Commission considers should be included in its investigation in order to elucidate the causes and nature of the above-mentioned border violations and disturbances". Finally, the resolution gave the Commission authority "to call upon the Governments, officials and nationals of those countries, as well as such other sources as the Commission deems necessary, for information relevant to its investigation".

260. The problem of domestic jurisdiction was discussed in connexion with the Security Council resolution of 10 February 1947, which gave further instructions to the Commission. It was also mentioned in the Commission's report to the Security Council. These two points are studied below.

a. RESOLUTION OF 10 FEBRUARY 1947

261. By a cablegram 232/ sent from Athens on 6 February 1947, the Commission of Investigation informed the Security Council that it had requested the Greek Government to postpone the execution of eleven persons sentenced to death by Greek tribunals for political offences. The Commission wished to know whether, in submitting that request to the Greek Government, it had acted within the terms of reference laid down in the Security Council resolution of 19 December 1946.

262. The representative of Greece, in a letter 233/ dated 7 February 1947, informed the Security Council that the Greek Government had "exceptionally consented ... that the executions be postponed for forty-eight hours". At the same time the Greek Government lodged "the most emphatic protest in regard to the interference of the Commission of Investigation in the domestic affairs of ... [Greece], contrary to Article 2, paragraph 7 ... and the terms of reference of the Commission".

263. The Commission's cablegram and the letter of the representative of Greece were considered by the Council at its 100th and 101st meetings. The arguments submitted at those meetings in regard to the protest lodged by the Greek Government, which are set out in the Analytical Summary of Practice, related to the following question:

Whether a request for a stay of execution constitutes intervention (paragraph 367).

264. At its 101st meeting on 10 February 1947, the Security Council, by 9 votes to none, with 2 abstentions, adopted 234/ a resolution 235/ advising the Commission that:

231/ S C, 1st yr., 2nd Series, No. 28, 87th mtg., pp. 700 and 701.

232/ S C, 2nd yr., Suppl. No. 4, pp. 51 and 52, annex 9 (S/266).

233/ S C, 2nd yr., Suppl. No. 4, pp. 52-54, annex 10 (S/271).

234/ S C, 2nd yr., No. 10, 101st mtg., p. 188.

235/ S C, 2nd yr., No. 10, 100th mtg., p. 176.

"it is the sense of the Security Council that the Commission, acting under the resolution adopted by the Council on 19 December 1946, is not empowered to request the appropriate authorities of Greece, Albania, Bulgaria and Yugoslavia to postpone the execution of any persons sentenced to death, unless the Commission has reason to believe that the examination of any such person as a witness would assist the Commission in its work, and makes its request on this ground."

265. The resolution made no reference to Article 2 (7) or to any other provision of the Charter.

b. REPORT OF THE COMMISSION OF INVESTIGATION

266. The Commission established by the Security Council resolution of 19 December 1946 submitted its report on 27 May 1947. The report surveyed the evidence collected during the investigation and set forth the Commission's conclusions and proposals.

267. The conclusions were contained in two chapters of the report. The first chapter was approved 236/ by eight of the eleven members of the Commission. Section D of that chapter was entitled "Greek domestic policy in relation to the Commission's inquiry". It stated:

"The representatives of Albania, Bulgaria and Yugoslavia charged that the present régime was responsible for a state of civil war in Greece and for the disturbed conditions in the northern provinces. The Greek Government took the position 237/ that an investigation of that charge would involve the internal affairs of Greece which were not within the Commission's competence. Accordingly, the Greek Government did not on those grounds present evidence in refutation and in consequence the evidence before the Commission was inevitably one-sided. Nevertheless it was felt by the Commission that in so far as it might constitute a factor contributing to the disturbed conditions in northern Greece along the Greek frontier, the Greek internal situation could not be ignored ... In connection with the present situation in Greece ... evidence was presented not only by the representatives of Greece's three northern neighbours, but by three Communist-controlled groups: the EAM (National Liberation Front), the Central Committee of the General Confederation of Labour, and the EPON youth organization. In addition, the Commission heard representatives of the Left Liberal Party as well as a number of individual witnesses." 238/

268. The second chapter of the conclusions was approved 239/ by two members. These members had not subscribed to the conclusions contained in the first chapter. As regards the problem of domestic jurisdiction, the second chapter stated:

"The Commission ... was unable to agree with the Greek representative's assertion that questions concerning the internal situation in the country did not come under its terms of reference, as it considered that the tense situation and disorders in northern Greece were directly connected with the situation throughout the country." 240/

236/ S C, 2nd yr., Special Suppl. No. 2, vol. 1, p. 147.

237/ See para. 376 and footnote 335.

238/ S C, 2nd yr., Special Suppl. No. 2, vol. 1, pp. 112 and 113.

239/ S C, 2nd yr., Special Suppl. No. 2, vol. 1, p. 151.

240/ S C, 2nd yr., Special Suppl. No. 2, vol. 1, p. 140.

269. Before setting forth the Commission's proposals, the report stated:

"The Commission did not make any suggestions in matters which were essentially within the domestic jurisdiction of the countries concerned as they would be contrary to the provisions of paragraph 7 of Article 2 of the Charter. However, in the event that the Greek Government should decide to grant a new amnesty for political prisoners and guerrillas, the Commission suggested that the Security Council make known to the Greek Government its willingness, if that Government so requested it, to lend its good offices in order to secure by all possible means the realization of that measure." 241/

270. The report then formulated the Commission's proposals, which had been approved by nine of its members. The proposals stated:

"B. In order to provide effective machinery for the regulation and control of their common frontiers, the Commission proposed that the Security Council recommend to the Governments concerned that they enter into new conventions ...

"C. ... The Commission recommended the establishment of a body with the following composition and functions:

"(a) The body should be established by the Security Council in the form of either a small commission or a single commissioner.

".

"(c) The commission or commissioner should have the right to perform its functions on both sides of the border ... The functions and duties of the commission or commissioner should be:

"(i) To investigate any frontier violations that should occur;

"(ii) To use its good offices for the settlement, through the means mentioned in Article 33 of the Charter, of [disputes] ..."

"D. The Commission recognized that owing to the deep-rooted causes of the present disturbances and to the nature of the frontiers, it was physically impossible to control the passage of refugees across the border. As the presence of those refugees in any of the four countries was a disturbing factor, each Government should assume the obligation to remove them as far away as possible from the area from which they came as it was physically and practically possible.

".

"E. The Commission proposed that the Security Council recommend to the Governments concerned that they study the practicability of concluding agreements for the voluntary transfer of minorities." 242/

241/ S C, 2nd yr., Special Suppl. No. 2, vol. 1, p. 153.

242/ S C, 2nd yr., Special Suppl. No. 2, vol. 1, pp. 154-156.

271. The Commission's report was considered by the Security Council at its 147th to 171st meetings inclusive. None of the draft resolutions submitted in connexion with the report obtained the necessary majority. The problem of domestic jurisdiction was not discussed during the debates on those draft resolutions. 243/

272. At its 202nd meeting the Council removed the Greek question from the list of matters of which it was seized. 244/

Case No. 17

The Indonesian question

273. By letters 245/ dated 30 July 1947, Australia and India brought to the Security Council's attention the situation created by the hostilities then in progress between the armed forces of the Netherlands and those of the Republic of Indonesia. Australia invoked Article 39, India, Article 35, of the Charter.

274. The item was included in the provisional agenda of the 171st meeting of the Council. At that meeting, the President stated: 246/

"I should like to make it clear that the adoption of this item on the agenda does not in any way prejudge either the competence of the Security Council in the matter or any of the merits of the case."

275. The President's statement was not challenged and the provisional agenda was adopted 247/ without objection.

a. RESOLUTION OF 1 AUGUST 1947

1. Draft resolution submitted by Australia

276. At the 171st meeting of the Security Council, the representative of Australia submitted a draft resolution 248/ under which the Council, having determined that the hostilities in Indonesia constituted a breach of the peace under Article 39 of the Charter, would have called upon the Governments of the Netherlands and of the Republic of Indonesia, under Article 40 of the Charter, to cease hostilities and to settle their disputes by arbitration.

277. The representative of the Netherlands, who, after the adoption of the agenda, had been invited to participate in the debate, opposed the draft resolution submitted by the representative of Australia. He held that there was no threat to the peace,

243/ One of those draft resolutions was based on the Commission's proposals (S C, 2nd yr., No. 51, 147th mtg., S/391, pp. 1124-1126). It was opposed by representatives who contended that its "adoption ... would constitute a flagrant infringement of the provisions of the Charter which protect the sovereign rights of States" (S C, 2nd yr., No. 59, 160th mtg., p. 1379. See also *ibid.*, No. 57, 156th mtg., pp. 1280 and 1281; No. 63, 166th mtg., pp. 1520 and 1521, 1525; No. 66, 169th mtg., pp. 1598 and 1599). During the consideration of the contention a passing reference was made to Article 2 (7). (S C, 2nd yr., No. 63, 166th mtg., p. 1520) That did not, however, lead to a discussion of that provision.

244/ S C, 2nd yr., No. 89, 202nd mtg., p. 2405.

245/ S C, 2nd yr., Suppl. No. 16, S/447 and S/449, pp. 149 and 150.

246/ S C, 2nd yr., No. 67, 171st mtg., p. 1617.

247/ S C, 2nd yr., No. 67, 171st mtg., p. 1617.

248/ S C, 2nd yr., No. 67, 171st mtg., p. 1626.

breach of the peace or act of aggression; the provisions of Chapter VII of the Charter, and, in particular, Articles 39 and 40, were therefore not applicable. Moreover, he expressed the view that the Republic of Indonesia was not a sovereign State but a "constituent element" of the Netherlands, and that the item under consideration therefore, fell essentially within the domestic jurisdiction of the Netherlands. Since, as he had already stated, the situation did not come under Chapter VII, the last phrase of Article 2 (7) was not applicable and the Security Council was debarred from dealing with the item. 249/ The contention of the representative of the Netherlands was supported by some Member States and disputed by others. The arguments for and against that contention, which are set out in the Analytical Summary of Practice, related to the following questions:

Whether resolutions by which the Security Council tenders its good offices to the parties to a dispute or calls upon them to cease hostilities and to settle the dispute by peaceful means constitute intervention (paragraphs 380, 382 and 383);

The meaning of the last phrase of Article 2 (7) (paragraphs 445-448);

Whether the International Court of Justice should be requested to give an advisory opinion on the question of domestic jurisdiction (paragraphs 467 and 470).

ii. Amendment submitted by the United States

278. At the 172nd meeting of the Council, the representative of the United States submitted an amendment 250/ deleting all references to the provisions of the Charter from the draft resolution submitted by Australia. The amendment read:

"The Security Council,

"Noting with concern the hostilities in progress between the armed forces of the Netherlands and of the Republic of Indonesia;

"Calls upon the parties,

"(a) To cease hostilities forthwith, and

"(b) To settle their disputes by arbitration or by other peaceful means."

279. The representative of the United States contended that the above text would enable the Council to "stop the fighting ... without prejudice to the position which any member of [the] Council may feel that he must take on the important juridical principles involved". 251/

iii. Decision concerning competence

280. At the 173rd meeting of the Council on 1 August 1947, the representative of the United States, accepting an amendment submitted by the representative of France, added to the preamble of his amendment a second phrase 252/ which read:

"... and without in any way deciding the juridical question concerning the competence of the Security Council in this regard".

249/ S C, 2nd yr., No. 67, 171st mtg., pp. 1619, 1620, 1645 and 1646; No. 74, 181st mtg., pp. 1920-1923; No. 77, 185th mtg., p. 2011.

250/ S C, 2nd yr., No. 68, 172nd mtg., p. 1658.

251/ S C, 2nd yr., No. 68, 172nd mtg., p. 1658.

252/ S C, 2nd yr., No. 68, 173rd mtg., p. 1687.

231. At the same meeting the amendment submitted by the United States was put to the vote, in parts. The phrase quoted above failed to obtain the necessary majority 253, and was therefore rejected. There were 5 votes in favour and 6 abstentions.

iv. Voting on resolution of 1 August 1947

232. The Council adopted 254/ the first phrase of the preamble to the United States amendment submitted by the United States by 7 votes to none, with 4 abstentions. The operative part with an amendment submitted by Poland requesting the parties to "keep the Security Council informed about the progress of the settlement" was adopted 255, by 3 votes in favour, with 5 abstentions.

233. Finally, the Council rejected 256, an amendment submitted by the USSR which read:

"The Security Council considers it necessary that the armed forces of both sides, the Netherlands and the Indonesian Republic, should be immediately withdrawn to the previous positions which they occupied before the beginning of the military operations."

234. As adopted by the Council, the text of the amendment submitted by the United States read:

"The Security Council,

"Noting with concern the hostilities in progress between the armed forces of the Netherlands and the Republic of Indonesia,

"Calls upon the parties,

"(a) To cease hostilities forthwith, and

"(b) To settle their disputes by arbitration or by other peaceful means and keep the Security Council informed of the progress of the settlement."

235. Since the above-quoted text replaced the draft resolution submitted by Australia, the latter was not put to the vote.

v. Letter dated 3 August 1947 addressed by the representative of the Netherlands to the President of the Security Council

236. By a letter 257/ dated 3 August 1947, the representative of the Netherlands informed the President of the Security Council that "... although persisting in its denial of the Council's jurisdiction in this matter the Netherlands Government, ... has instructed the Lieutenant-Governor-General of the Netherlands Indies to enter into contact with the authorities of the Republic of Indonesia, in order to arrive at the cessation, on both sides, of hostile action of any kind".

253/ S C, 2nd yr., No. 68, 173rd mtg., p. 1702.

254/ S C, 2nd yr., No. 68, 173rd mtg., p. 1700.

255/ S C, 2nd yr., No. 68, 173rd mtg., pp. 1702 and 1703.

256/ The amendment failed to obtain the necessary majority. There were 2 votes in favour and 9 abstentions (S C, 2nd yr., No. 68, 173rd mtg., p. 1710).

257/ S C, 2nd yr., No. 69, 174th mtg., S/466, p. 1716.

b. RESOLUTIONS OF 25 AND 26 AUGUST 1947

i. Decisions concerning competence

287. At the 194th meeting of the Council on 25 August 1947, the representative of Belgium submitted a draft resolution 258/ recalling that "in invoking Article II, paragraph 7 ... the Government of the Netherlands contests the competence of the Security Council to deal with the Indonesian question" and requesting the International Court of Justice to give "an advisory opinion on whether the Security Council is competent to deal with the aforementioned question".

288. The representative of Belgium observed that the question of competence was a previous question. He therefore moved 259/ that his draft resolution be put to the vote before two other draft resolutions - the first submitted jointly by Australia and China at the 193rd meeting of the Council and the second submitted by the United States at the same meeting. At its 194th meeting, the Council rejected 260/ the motion submitted by Belgium and proceeded to vote on and to adopt the two other draft resolutions. Those draft resolutions are considered below in paragraphs 291 to 296.

289. The draft resolution submitted by the representative of Belgium was put to the vote at the 195th meeting of the Council on 26 August 1947. It failed 261/ to obtain the necessary majority and was therefore rejected. There were 4 votes in favour, one against and 6 abstentions.

ii. Amendment submitted by the Union of Soviet Socialist Republics

290. At its 194th meeting, the Council voted on a USSR amendment 262/ providing that a Commission be established "to supervise the implementation of the decision of the Security Council of 1 August". There were 7 votes in favour, 2 against and 2 abstentions. 263/ Since one of the negative votes was cast by France - a permanent member of the Security Council - the proposal was not adopted. The representative of France, in explaining his vote, stated that his "delegation ... went as far as it could in accepting the measures proposed, as long as those measures, either by their substance or by the way in which they were presented, did not involve the question of competence". 264/

iii. First resolution of 25 August 1947

291. After the rejection of the amendment submitted by the USSR, the Security Council, at its 194th meeting on 25 August 1947, adopted 265/ the draft resolution which had been submitted jointly by Australia and China at the 193rd meeting (see paragraph 288).

258/ S C, 2nd yr., No. 83, 194th mtg., S/517, in footnote 1 to p. 2193.

259/ S C, 2nd yr., No. 83, 194th mtg., p. 2193.

260/ There were 2 votes in favour, none against and 9 abstentions. (S C, 2nd yr., No. 83, 194th mtg., p. 2196)

261/ S C, 2nd yr., No. 84, 195th mtg., p. 2224.

262/ S C, 2nd yr., No. 83, 194th mtg., p. 2197. The text was submitted in the form of an amendment to the draft resolution submitted by Australia and China (see para. 291).

263/ S C, 2nd yr., No. 83, 194th mtg., pp. 2199 and 2200.

264/ S C, 2nd yr., No. 84, 195th mtg., p. 2214.

265/ There were 7 votes in favour, none against, and 4 abstentions (S C, 2nd yr., No. 83, 194th mtg., p. 2200).

292. The preamble to the resolution noted "with satisfaction" the steps taken by the parties to comply with the resolution of 1 August 1947 and the "statement issued by the Netherlands Government on 11 August, in which it affirms its intention to organize a sovereign, democratic United States of Indonesia in accordance with the purposes of the Linggadjati Agreement". 266/ The preamble also noted that the Netherlands Government had expressed the intention to request the career consuls stationed in Batavia jointly to report on the present situation in the Republic of Indonesia. 267/

293. The operative part of the resolution read:

"The Security Council

"Requests the Governments members of the Council which have career consular representatives in Batavia to instruct them to prepare jointly for the information and guidance of the Security Council reports on the situation in the Republic of Indonesia following the resolution of the Council on 1 August 1947, such reports to cover the observance of the cease-fire orders and the conditions prevailing in areas under military occupation or from which armed forces now in occupation may be withdrawn by agreement between the parties;

"Requests the Governments of the Netherlands and of the Republic of Indonesia to grant to the representatives referred to ... [above] all facilities necessary for the effective fulfilment of their mission".

294. In subsequent resolutions 268/ the Council used the term "Consular Commission" in referring to the group of career consular representatives mentioned in the above resolution.

iv. Second resolution of 25 August 1947

295. Also at the 194th meeting the Council, by 8 votes to none with 3 abstentions, adopted 269/ the following draft resolution which had been submitted by the United States at the 193rd meeting (see paragraph 288).

266/ The Linggadjati Agreement was concluded on 25 March 1947 between the Netherlands and the Republic of Indonesia. For the text of the agreement, see: Netherlands Information Bureau, The political events in the Republic of Indonesia, New York, 1947, pp. 34-37.

267/ At the 185th meeting, the representative of the Netherlands had stated:

"My Government [proposes] that all the career consuls stationed in Batavia should ... draw up a report on the present situation on the islands of Java, Sumatra and Madura ... we would wish to proceed with an investigation, but not with an investigation ordered by the Security Council, the Council having no jurisdiction. We are all for a commission or an investigation, but we hold that the Security Council has not the right to establish one."
(S C, 2nd yr., No. 77, 185th mtg., pp. 2013, and 2014)

268/ S C resolutions of 1 November 1947 and 28 January 1949.

269/ S C, 2nd yr., No. 83, 194th mtg., p. 2209.

"The Security Council

".

"Resolves to tender its good offices to the parties in order to assist in the pacific settlement of their dispute, in accordance with paragraph (b) of the resolution of the Council of 1 August 1947. The Council expresses its readiness, if the parties so request, to assist in the settlement through a committee of the Council consisting of three members of the Council, each party selecting one, and the third to be designated by the two so selected."

296. In subsequent resolutions 270/ the Council used the term "Committee of Good Offices" to refer to the committee mentioned in the above resolution. On 28 January 1949 the Council decided that "the Committee of Good Offices shall henceforth be known as the United Nations Commission for Indonesia".

v. Resolution of 26 August 1947

297. At its 195th meeting on 26 August 1947, the Council, by 10 votes to none, with 1 abstention, adopted 271/ a resolution calling upon the parties "to adhere strictly to the recommendation of the Security Council of 1 August 1947".

298. None of the resolutions adopted on 25 and 26 August 1947 refer to any provision of the Charter. Neither do they make any mention of the objections raised by the Netherlands on the grounds of Article 2 (7). (See paragraph 277).

c. LETTERS DATED 30 AUGUST AND 4 SEPTEMBER 1947 ADDRESSED TO THE SECRETARY-GENERAL BY THE REPRESENTATIVE OF THE NETHERLANDS

299. By a letter 272/ dated 30 August 1947, the representative of the Netherlands informed the Secretary-General that:

"the Netherlands Government, while maintaining undiminished its point of view regarding the incompetence of the Security Council in the matter, is nevertheless of the opinion that the tendency of the resolutions passed by the Security Council on 25 and 26 August 1947 concerning the Indonesian question is acceptable. The Netherlands Indies Government will provide the career consular officials in Batavia of the Powers concerned with all facilities necessary to carry out their task."

300. On 4 September 1947, the Netherlands Government informed 273/ the Secretary-General that it had selected Belgium to serve on the tri-partite Committee of Good Offices. On 18 September, the two other members of the Committee were appointed. 274/

270/ Resolutions of 1 November 1947, 28 February 1948, 29 July 1948, and 24 December 1948.

271/ S C, 2nd yr., No. 84, 195th mtg., p. 2232.

272/ S C, 2nd yr., No. 92, 206th mtg., S/537, p. 2481.

273/ S C, 2nd yr., No. 92, 206th mtg., S/545, p. 2481.

274/ The Republic of Indonesia appointed Australia; Australia and Belgium in turn chose the United States as third member (S C, 2nd yr., No. 92, 206th mtg., S/564 and S/558, p. 2481).

d. RESOLUTIONS OF 24 AND 28 DECEMBER 1948 AND 28 JANUARY 1949

301. Under the auspices of the Committee of Good Offices, ^{as} negotiated and concluded several agreements. During the negotiations the Security Council adopted several resolutions on the Indonesian question. Three of those resolutions gave rise to a discussion of the problem of domestic jurisdiction. All three had been opposed 275/ by the Netherlands representative on the grounds of Article 2 (7). The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following questions:

Whether resolutions by which the Security Council tenders its good offices to the parties to a dispute or calls upon them to cease hostilities and to settle the dispute by peaceful means constitute intervention (paragraph 383);

The meaning of the last phrase of Article 2 (7) (paragraphs 446-448).

i. Resolution of 24 December 1948

302. The first of the above-mentioned three resolutions was adopted 276/ by 7 votes to none, with 4 abstentions, at the 392nd meeting of the Council on 24 December 1948. The preamble to the resolution noted the resumption of hostilities in Indonesia. The operative part called upon the parties

"(a) To cease hostilities forthwith, and

"(b) Immediately to release the President [of the Republic of Indonesia] and [the] other political prisoners arrested since 18 December".

ii. Resolution of 28 December 1948

303. The second resolution was adopted 277/ by 8 votes to none, with 3 abstentions, at the 395th meeting of the Council on 28 December 1948. It called upon "the Netherlands Government to set free ... [the above-mentioned] political prisoners forthwith and report to the Security Council within twenty-four hours of the adoption of the present resolution".

304. Neither of these resolutions referred to any provision of the Charter or made any mention of the objections of the representative of the Netherlands on the grounds of Article 2 (7).

iii. Resolution of 28 January 1949

305. The third resolution was adopted 278/ at the 406th meeting of the Council on 28 January 1949.

275/ S C, 3rd yr., No. 132, 388th mtg., pp. 25 and 26; 4th yr., No. 9, 406th mtg., pp. 9-11.

276/ S C, 3rd yr., No. 134, 392nd mtg., p. 38.

277/ S C, 3rd yr., No. 136, 395th mtg., p. 67.

278/ S C, 4th yr., No. 9, 406th mtg., pp. 21-33. The resolution was adopted by a vote in parts.

The preamble to the resolution stated that:

"The Security Council

".

"Considering that continued occupation of the territory of the Republic of Indonesia by the armed forces of the Netherlands is incompatible with the restoration of good relations between the parties and with the final achievement of a just and lasting settlement of the Indonesian dispute;

"Considering that the establishment and maintenance of law and order throughout Indonesia is a necessary condition to the achievement of the expressed objectives and desires of both parties;

"Noting with satisfaction that the parties continue to adhere to the principles of the Renville Agreement [279] and agree that free and democratic elections should be held throughout Indonesia for the purpose of establishing a constituent assembly at the earliest practicable date, and further agree that the Security Council should arrange for the observation of such elections by an appropriate agency of the United Nations; and that the representative of the Netherlands has expressed his Government's desire to have such elections held not later than 1 October 1949;

"Noting also with satisfaction that the Government of the Netherlands plans to transfer sovereignty to the United States of Indonesia by 1 January 1950, if possible, and, in any case, during the year 1950;

"Conscious of its primary responsibility for the maintenance of international peace and security [Article 24 (1)], and in order that the rights, claims and position of the parties may not be prejudiced by the use of force;"

306. The operative part of the resolution again called upon the Netherlands to release all political prisoners arrested since 17 December 1948. It recommended that negotiations be undertaken by the parties on the basis of the Linggadjati and Renville Agreements for the purpose of establishing an interim federal government, holding elections to choose representatives to an Indonesian constituent assembly and, finally, transferring to the United States of Indonesia the sovereignty over its territory. To ensure the implementation of these recommendations the resolution gave detailed instructions to the Consular Commission and to the United Nations Commission for Indonesia.

307. On 16 January 1950, the United Nations Commission for Indonesia informed 280/ the Security Council that the Netherlands had transferred to the United States of Indonesia the sovereignty over Indonesia.

308. On 28 September 1950, Indonesia was admitted 281/ to membership in the United Nations.

279/ The Renville Agreement had been concluded between the Netherlands and the Republic of Indonesia under the auspices of the Committee of Good Offices. For the text of the Agreement, see S C, 3rd yr., Special Suppl. No. 1, appendices VIII, XI, XII, XIII.

280/ S C, 5th yr., Special Suppl. No. 1, pp. 16-19.

281/ G A resolution 491 (V).

Case No. 18

The Czechoslovak question

309. By a letter 282/ dated 12 March 1948, the representative of Chile, acting under Article 35 (1) of the Charter, brought to the attention of the Security Council the situation then existing in Czechoslovakia. At the same time, he referred 283/ to the Council a communication from the former permanent representative of Czechoslovakia to the United Nations, alleging that the USSR had intervened in Czechoslovakia's internal affairs, and, by the threat of the use of force, had imposed a new political régime on that State, in violation of Article 2 (4) of the Charter and the provisions of international agreements to which the USSR was a party.

310. During the discussion on the adoption of the agenda, some representatives, contending that the question fell essentially within Czechoslovakia's domestic jurisdiction, opposed the inclusion of the item in the agenda on the grounds of Article 2 (7). The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following question:

Whether the inclusion of an item in the agenda constitutes intervention (paragraphs 347, 352 and 353).

311. Despite the objections raised on the grounds of Article 2 (7), the Security Council, at its 268th meeting on 17 March 1948, included 284/ the question in the agenda by 9 votes to 2.

312. At its 278th meeting, the Council invited 285/ Czechoslovakia "to participate without vote in the discussion of the ... question". By a letter 286/ dated 8 April 1948, the representative of Czechoslovakia informed the Council that "since the discussion of internal matters of Czechoslovakia in the Security Council is contrary to the basic principles of the Charter ... the Czechoslovak Government does not find it possible to take in any way part in such discussion".

313. At the 281st meeting of the Council, the representative of Chile submitted a draft resolution 287/ which stated:

"Whereas the attention of the Security Council has been drawn by a Member of the United Nations, in accordance with Articles 34 and 35 of the Charter, to the situation in Czechoslovakia which may endanger international peace and security; and the Security Council has been asked to investigate this situation;

".

"... without prejudice of any decisions which may be taken in accordance with Article 34 of the Charter,

282/ S C, 3rd yr., Suppl. for Jan., Feb. and March, S/694, pp. 31-34.

283/ S C, 3rd yr., Suppl. for Jan., Feb. and March, S/696, pp. 34-37.

284/ S C, 3rd yr., Nos. 36-51, 268th mtg., pp. 101 and 102.

285/ S C, 3rd yr., No. 53, 278th mtg., p. 6.

286/ S C, 3rd yr., Suppl. for April, S/718, p. 6.

287/ S C, 3rd yr., No. 73, 303rd mtg., p. 28.

"The Security Council

"Resolves to appoint a sub-committee of three members and instructs this sub-committee to receive or to hear ... evidence, statements and testimonies and to report to the Security Council at the earliest possible time."

314. The draft resolution was opposed by the representative of the USSR on the grounds that the appointment of the proposed sub-committee would constitute intervention in the internal affairs of Czechoslovakia. 288/ Other representatives, however, contended that the situation in Czechoslovakia did not fall essentially within domestic jurisdiction and that the Council, therefore, was not debarred by Article 2 (7) from adopting the Chilean draft resolution. The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following questions:

Whether a matter governed by international law can fall essentially within domestic jurisdiction (paragraph 393);

Whether a matter governed by international agreements can fall essentially within domestic jurisdiction (paragraph 399).

315. The draft resolution submitted by the representative of Chile was put to the vote at the 303rd meeting of the Security Council. There were 9 votes in favour and 2 against. Since one of the negative votes was cast by the USSR - a permanent member of the Council - the resolution was not adopted. 289/

316. The Council took no further action on the Czechoslovak question.

*Case No. 19**The Greek question (III)*

317. At the 493rd meeting of the Security Council on 31 August 1950, the representative of the USSR proposed 290/ that the following item be included in the agenda: "The unceasing terrorism and mass executions in Greece".

318. The inclusion of the item was opposed, inter alia, on the grounds that the matter fell essentially within Greece's domestic jurisdiction. 291/

319. At its 493rd meeting the Council, by 9 votes to 2, decided 292/ not to include the item in its agenda.

*Case No. 20**The Anglo-Iranian Oil Company question*

320. In 1951 the Iranian Parliament passed two laws nationalizing the oil industry in Iran. As a consequence of these laws, a dispute arose between the Government of Iran

288/ S C, 3rd yr., No. 56, 281st mtg., p. 14.

289/ S C, 3rd yr., No. 73, 303rd mtg., p. 29.

290/ S C, 5th yr., No. 35, 493rd mtg., pp. 1 and 2.

291/ Ibid., pp. 22 and 23.

292/ Ibid., p. 30.

and the Anglo-Iranian Oil Company. At the request of the United Kingdom, which had adopted the cause of the British company, the International Court of Justice, by an order dated 5 July 1951, indicated certain interim measures of protection. The order stated that the indication of such measures "in no way prejudices the question of the jurisdiction of the Court to deal with the merits of the case". (See paragraph 337.)

321. By a letter 293/ dated 28 September 1951, the representative of the United Kingdom requested the Security Council to include in its agenda the following item: "Complaint of failure by the Iranian Government to comply with provisional measures indicated by the International Court of Justice in the Anglo-Iranian Oil Company case". He contended that the nationalization of the Anglo-Iranian Oil Company was contrary both to the rules of international law governing the expropriation of foreign property and to the provisions of the treaties concluded between the United Kingdom and Iran. 294/ He also held that the order indicating interim measures had given rise to obligations which it was the right and duty of the Security Council to uphold. 295/ Finally he expressed his Government's concern "at the dangers inherent in the situation [caused by the failure of the Iranian Government to comply with the provisional measures] and at the threat to the peace and security that may thereby be involved". 296/

322. During the discussion on the adoption of the agenda, some representatives opposed the inclusion in the agenda of the item proposed by the United Kingdom on the grounds that the nationalization of the oil industry of Iran fell essentially within Iran's domestic jurisdiction. 297/ The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following question:

Whether the inclusion of an item in the agenda constitutes intervention (paragraphs 347, 352 and 353).

Despite the objections raised on the grounds of Article 2 (7), the Security Council, at its 559th meeting, included 298/ the item in the agenda by 9 votes to 2.

323. At the 560th meeting of the Council, the representative of Iran contended 299/ that since the matter fell essentially within Iran's domestic jurisdiction, the Council had no competence to deal with it. His contention was disputed by other representatives. The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following questions:

Whether a matter governed by international law can fall essentially within domestic jurisdiction (paragraph 394);

Whether a matter governed by international agreements can fall essentially within domestic jurisdiction (paragraph 399);

Whether the Security Council should adjourn the debate on a matter until the International Court of Justice has ruled on its own competence to deal with a related matter (paragraph 460).

293/ S C, 6th yr., Suppl. for Oct., Nov. and Dec., S/2357, pp. 1 and 2.

294/ S C, 6th yr., 561st mtg., para. 40.

295/ S C, 6th yr., 559th mtg., para. 18.

296/ S C, 6th yr., Suppl. for Oct., Nov. and Dec., S/2357, para. 3.

297/ S C, 6th yr., 559th mtg., paras. 3 and 4, 9.

298/ Ibid., para. 54.

299/ S C, 6th yr., 560th mtg., paras. 28 and 37.

324. At the 562nd meeting of the Council, the representative of the United Kingdom submitted a draft resolution 300/ based on Article 33 of the Charter and calling for the resumption of negotiations between the parties.

325. At the same meeting the representative of Ecuador submitted a draft resolution 301/ whose preamble noted that:

"... the International Court of Justice is to express its opinion on the question whether the dispute falls exclusively within the domestic jurisdiction of Iran".

The operative part read:

"The Security Council,

"Without deciding on the question of its own competence,

"Advises the parties concerned to reopen negotiations as soon as possible with a view to making a fresh attempt to settle their differences in accordance with the Purposes and Principles of the United Nations Charter."

326. At the 565th meeting of the Council on 19 October 1951, the representative of France moved 302/ that the Council adjourn the debate "until the International Court of Justice had ruled on its own competence in the matter". The motion was adopted 303/ at the same meeting by 8 votes to 1, with 2 abstentions.

327. On 22 July 1952, the International Court of Justice ruled, on grounds not related to Article 2 (7), that it had "no jurisdiction to deal with" the Anglo-Iranian Oil Company case. On the same date the order of 5 July 1951 became inoperative and the provisional measures indicated therein lapsed. (See paragraph 338.)

Case No. 21

The question of Morocco

328. By a letter 304/ dated 21 August 1953, the representatives of fifteen Member States, acting under Article 35 (1) of the Charter, brought to the attention of the Security Council the situation created "by the unlawful intervention of France in Morocco and the overthrow of its legitimate sovereign".

329. During the discussion on the adoption of the agenda the representative of France opposed the inclusion of the item in the agenda on the grounds of Article 2 (7). He contended 305/ that, although Morocco had remained legally a sovereign State, it had transferred to France the exercise of its external sovereignty by the Treaty of Fez of 30 March 1912. Hence, the matters governed by that Treaty - and in particular the situation brought to the Council's attention - fell essentially within France's domestic jurisdiction. Moreover, the situation fell within Morocco's domestic

300/ S C, 6th yr., Suppl. for Oct., Nov. and Dec., pp. 4 and 5, S/2358/Rev.2. .
301/ S C, 6th yr., 562nd mtg., S/2320, para. 48.
302/ S C, 6th yr., 565th mtg., paras. 9 and 10, 12.
303/ S C, 6th yr., 565th mtg., para. 62.
304/ S C, 8th yr., Suppl. for July, Aug. and Sept., p. 51, S/3085.
305/ S C, 8th yr., 619th mtg., paras. 22-28.

jurisdiction as well. Its discussion by the Council would therefore constitute a twofold violation of Article 2 (7).

330. The contention of the representative of France was supported 306/ by some members and disputed by others. The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following questions:

Whether the inclusion of an item in the agenda constitutes intervention (paragraphs 347, 349, 352 and 353);

Whether a matter governed by international agreements can fall essentially within domestic jurisdiction (paragraphs 399 and 401).

331. There were also representatives who opposed 307/ the inclusion of the item in the agenda for reasons not based on Article 2 (7).

332. At its 624th meeting, the Council decided, 308/ by 5 votes to 5, with 1 abstention, not to include the item in its agenda.

D. International Court of Justice

333. This section deals with two cases, numbered 22 and 23, which were considered by the International Court of Justice in 1950 and 1951.

Case No. 22

Interpretation of peace treaties with Bulgaria, Hungary and Romania

334. It will be recalled (see paragraph 126) that by resolution 294 (IV) the General Assembly requested the International Court of Justice to give an advisory opinion on the interpretation of the provisions for the settlement of disputes contained in the peace treaties with Bulgaria, Hungary and Romania.

335. In communications addressed to the Court, the three States contended that the request for an advisory opinion constituted intervention in matters essentially within their domestic jurisdiction. The advisory opinion of 30 March 1950, delivered by the Court in pursuance of resolution 294 (IV), deals with that contention in the following terms:

"The power of the Court to exercise its advisory function in the present case has been contested by the Governments of Bulgaria, Hungary and Romania, and also by several other Governments, in the communications which they have addressed to the Court.

"This objection is founded mainly on two arguments.

"It is contended that the Request for an Opinion was an action ultra vires on the part of the General Assembly because, in dealing with the question of the observance of human rights and fundamental freedoms in the three States mentioned above, it was 'interfering' or 'intervening' in matters essentially within the domestic jurisdiction of States. This contention against the exercise by the Court of its advisory function seems thus to be based on the

306/ S C, 8th yr., 620th mtg., paras. 17-23; 623rd mtg., para. 29.

307/ S C, 8th yr., 620th mtg., para. 12; 624th mtg., paras. 47 and 48.

308/ S C, 8th yr., 624th mtg., para. 45.

alleged incompetence of the General Assembly itself, an incompetence deduced from Article 2, paragraph 7, of the Charter.

"The terms of the General Assembly's Resolution [294 (IV)] ... considered as a whole and in its separate parts, show that this this argument is based on a misunderstanding. When the vote was taken on this Resolution, the General Assembly was faced with a situation arising out of the charges made by certain Allied and Associated Powers, against the Governments of Bulgaria, Hungary and Romania of having violated the provisions of the Peace Treaties concerning the observance of human rights and fundamental freedoms. For the purposes of the present Opinion, it suffices to note that the General Assembly justified the adoption of its Resolution by stating that 'the United Nations, pursuant to Article 55 of the Charter, shall promote universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion' [see paragraph 107].

"The Court is not called upon to deal with the charges brought before the General Assembly since the Questions put to the Court relate neither to the alleged violations of the provisions of the Treaties concerning human rights and fundamental freedoms nor to the interpretation of the articles relating to these matters. The object of the Request is much more limited. It is directed solely to obtaining from the Court certain clarifications of a legal nature regarding the applicability of the procedure for the settlement of disputes by the Commissions provided for in the express terms of Article 36 of the Treaty with Bulgaria, Article 40 of the Treaty with Hungary and Article 38 of the Treaty with Romania. The interpretation of the terms of a treaty for this purpose could not be considered as a question essentially within the domestic jurisdiction of a State. It is a question of international law which, by its very nature, lies within the competence of the Court.

"These considerations also suffice to dispose of the objection based on the principle of domestic jurisdiction and directed specifically against the competence of the Court, namely, that the Court, as an organ of the United Nations, is bound to observe the provisions of the Charter, including Article 2, paragraph 7." 309/

Case No. 23

The Anglo-Iranian Oil Company case

336. It will be recalled (see above, paragraph 320) that, by an order dated 5 July 1951, the International Court of Justice indicated certain interim measures of protection which had been requested by the United Kingdom in the Anglo-Iranian Oil Company case.

337. The order referred to the problem of domestic jurisdiction in the following terms:

309/ Interpretation of Peace Treaties, I C J, Reports 1950, pp. 70 and 71.
c.f. Dissenting opinion by Judge Krylov, ibid., pp. 111-113.

"Whereas in its message of June 29th, 1951, the Iranian Government stated that it rejected the Request for the indication of interim measures of protection presented by the United Kingdom Government on the grounds principally of the want of competence on the part of the United Kingdom Government to refer to the Court a dispute which had arisen between the Iranian Government and the Anglo-Iranian Oil Company, Limited, and of the fact that this dispute pertaining to the exercise of the sovereign rights of Iran was exclusively 310/ within the national jurisdiction of that State and thus not subject to the methods of settlement specified in the Charter;

"Whereas it appears from the Application by which the Government of the United Kingdom instituted proceedings, that that Government has adopted the cause of a British company and is proceeding in virtue of the right of diplomatic protection;

"Whereas the complaint made in the Application is one of an alleged violation of international law by the breach of the agreement for a concession of April 29th, 1933, and by a denial of justice which, according to the Government of the United Kingdom, would follow from the refusal of the Iranian Government to accept arbitration in accordance with that agreement, and whereas it cannot be accepted a priori that a claim based on such a complaint falls completely outside the scope of international jurisdiction;

"Whereas the considerations stated in the preceding paragraph suffice to empower the Court to entertain the Request for interim measures of protection;

"Whereas the indication of such measures in no way prejudices the question of the jurisdiction of the Court to deal with the merits of the case and leaves unaffected the right of the Respondent to submit arguments against such jurisdiction." 311/

338. On 22 July 1952 the Court delivered a judgment finding that it "had no jurisdiction to deal with the Anglo-Iranian Oil Company case" 312/ and cancelling the interim measures indicated in the Order of 5 July 1951. The judgment was based on grounds not related to the problem of domestic jurisdiction.

310/ In the course of the hearings which preceded the judgment of 22 July 1952 (see paragraph 338), Iran submitted:

"That the United Kingdom and Iran, having in their Declarations reserved questions which, according to international law, are within the exclusive jurisdiction of States, this reservation, having regard to the substitution of Article 2, paragraph 7, of the Charter of the United Nations for Article 15, paragraph 8, of the Covenant of the League of Nations, must be understood as extending to questions which are essentially within the domestic jurisdiction of States;

"That express declarations of this kind undoubtedly reinforce the general provision in Article 2, paragraph 7, of the Charter of the United Nations, and therefore constitute an additional reason for the Court to declare that it lacks jurisdiction".

Anglo-Iranian Oil Co. case (jurisdiction), I C J Reports 1952, p. 99.

311/ Anglo-Iranian Oil Co. case, I C J Reports 1951, pp. 92 and 93.

312/ Anglo-Iranian Oil Co. case (jurisdiction), I C J Reports 1952, p. 114.

II. ANALYTICAL SUMMARY OF PRACTICE

339. The organization of the Analytical Summary of Practice and its relation to the General Survey are described above in the Introductory Note (see paragraphs 4-9). Cases dealt with in this Summary are mentioned not by title but by reference number. A table attached at the end of the present study indicates the organ concerned with the case, the title of the case corresponding to each reference number and the paragraphs of the General Survey and of the Analytical Summary of Practice in which the case is dealt with.

A. The term "to intervene" appearing in Article 2 (7)

340. The meaning of the term "to intervene" has frequently been discussed in United Nations organs. Some representatives have suggested general definitions of that term. Others, while not expressing a general view, have commented on whether certain specific types of action constituted intervention.

341. As regards the problem of a general definition, two main theses were advanced.

342. Some representatives held that "intervention" was a technical term traditionally defined in international law as "dictatorial interference", and that that definition was applicable to Article 2 (7). ^{313/} The conclusions drawn by these representatives are indicated in paragraphs 351, 359 and 372.

343. Other representatives, on the contrary, pointed out that the Security Council alone was empowered by the Charter to "interfere dictatorially". The other United Nations organs could only recommend. Moreover, the Security Council was expressly authorized in Article 2 (7) to take enforcement measures -- a case of dictatorial interference par excellence -- in respect of matters essentially within domestic jurisdiction. These representatives therefore contended that if the intervention were to be defined as "dictatorial interference", Article 2 (7) would become meaningless. Hence, it was obvious that the drafters of the Charter had rejected that definition and had used the word "intervene" in its ordinary dictionary meaning of "interfere"; recommendations or other non-coercive action by the Organization could constitute such interference. ^{314/}

344. No decision has been found containing a general definition of intervention in the sense of Article 2 (7).

^{313/} Case No. 2: G A (III/1), Plen., 146th mtg., p. 226; G A (III/2), 1st Com., 267th mtg., p. 308; G A (VIII), Suppl. No. 16, paras. 139-141.

Several representatives referred to the definition of intervention given by Lauterpacht in International Law and Human Rights, London, Stevens and Sons, Ltd., 1950, pp. 167-169 (G A (V), Ad Hoc Pol. Com., 42nd mtg., para. 57; 43rd mtg., para. 8; 45th mtg., para. 10).

Case No. 11: G A (VII), Ad Hoc Pol. Com., 18th mtg., para. 19; G A (VIII), Ad Hoc Pol. Com., 36th mtg., para. 30.

^{314/} Case No. 2: G A (III/2), 1st Com., 265th mtg., p. 277; G A (V), Ad Hoc Pol. Com., 42nd mtg., paras. 2-4; 43rd mtg., para. 56; 45th mtg., para. 53; G A (VI), Plen., 341st mtg., para. 37; G A (VIII), Ad Hoc Pol. Com., 21st mtg., para. 12.

Case No. 11: G A (VII), Plen., 381st mtg., paras. 21-28; Ad Hoc Pol. Com., 13th mtg., para. 6; 14th mtg., para. 11; 20th mtg., para. 21; G A (VIII), Ad Hoc Pol. Com., 32nd mtg., paras. 7 and 32; 38th mtg., para. 5; 40th mtg., para. 15.

345. In considering whether certain specific types of action constituted intervention, the following points were discussed:

1. Whether the inclusion of an item in the agenda constitutes intervention;
 2. Whether a recommendation -- in general or to a particular State -- constitutes intervention;
 3. Whether a request for a stay of execution constitutes intervention;
 4. Whether the establishment by the General Assembly of a commission to study the racial situation prevailing in a Member State constitutes intervention;
 5. Whether the examination of the domestic policy of a Member State by a commission of investigation established under Article 34 constitutes intervention;
 6. Whether resolutions by which the Security Council tenders its good offices to the parties to a dispute or calls upon them to cease hostilities and to settle the dispute by peaceful means constitute intervention.
- These questions are studied below.

1. Whether the inclusion of an item in the agenda constitutes intervention

346. The question whether the inclusion of an item in the agenda of a United Nations organ constituted intervention in the meaning of Article 2 (7) has arisen in the debates on the adoption of the agenda in cases Nos. 2, 7, 8, 9, 10, 11, 15, 18, 19, 20 and 21.

347. In each of those cases the inclusion of the item in the agenda was opposed by representatives who, stating that the item fell essentially within domestic jurisdiction, contended that the United Nations was debarred by Article 2 (7) from discussing it and, hence, from including it in the agenda. ^{315/} Some of the representatives taking that position maintained that the discussion of a matter by the United Nations constituted intervention within the meaning of Article 2 (7). ^{316/}

348. The representatives favouring inclusion advanced two main theses to refute the contention that Article 2 (7) debarred the United Nations from including the item in the agenda.

-
- ^{315/} Case No. 2: G A (VI), Plen., 341st mtg., para. 33; G A (VII), Plen., 380th mtg., paras. 130 et seqq.; G A (VIII) Plen., 435th mtg., paras. 6 et seqq.
Case No. 7: G A (III/1), General Com., 43rd mtg., pp. 10 and 11; Plen., 142nd mtg., pp. 97, 98 and 108.
Case No. 8: G A (III/2), Plen., 190th mtg., pp. 20-29; G A (V), Plen., vol. I, 284th mtg., paras. 137-157.
Case No. 9: G A (VII), General Com., 79th mtg., para. 18
Case No. 10: G A (VII), General Com., 79th mtg., para. 18.
Case No. 11: G A (VII), Plen., 381st mtg., paras. 1-67; G A (VIII), Plen., 435th mtg., paras. 19-48.
Case No. 15: S C, 1st yr., 2nd Series, No. 7, 59th mtg., p. 196.
Case No. 18: S C, 3rd yr., Nos. 36-51, 268th mtg., pp. 90, 91 and 96.
Case No. 19: S C, 5th yr., No. 35, 493rd mtg., pp. 22 and 23.
Case No. 20: S C, 6th yr., 559th mtg., paras. 3, 4 and 9-12.
Case No. 21: S C, 8th yr., 619th mtg., paras. 25-31; 620th mtg., paras. 16-24; 623rd mtg., para. 29.
- ^{316/} Case No. 2: G A (VI), Plen., 341st mtg., para. 37.
Case No. 11: G A (VII), Plen., 381st mtg., paras. 21-28; G A (VIII), Plen., 435th mtg., para. 32.
Case No. 18: S C, 3rd yr., Nos. 36-51, 268th mtg., pp. 90-97.
Case No. 20: S C, 6th yr., 559th mtg., para. 4.

349. On the one hand, some denied that the item fell essentially within domestic jurisdiction. 317/ The arguments supporting that thesis are studied in the section dealing with the meaning of the expression "matters which are essentially within ... domestic jurisdiction" (see below paragraphs 385-441).

350. On the other hand, some representatives held that, even if it were admitted that the item fell essentially within domestic jurisdiction, Article 2 (7) would not debar the United Nations from including it in the agenda and discussing it. The following arguments were advanced in support of this thesis.

351. First, it was maintained that the discussion of a matter did not constitute intervention. Hence, the inclusion of an item in the agenda could not violate Article 2 (7). 318/

352. Secondly, it was held that the inclusion of an item in the agenda did not prejudice the question whether the United Nations was competent to deal with it. It was necessary to include the item before the question of competence could even be discussed. 319/

353. Finally, in the Security Council, some members contended that the Council was obliged to include in its agenda and to discuss any question brought to its attention by a Member State. 320/

Decisions

354. Decisions to include items in the agenda after objections had been raised on the grounds of Article 2 (7) are dealt with in the following paragraphs of the General Survey: 44, 102, 112, 132, 143, 157, 174, 193, 256, 311 and 322.

355. Decisions not to include items in the agenda after objections had been raised, inter alia, on the grounds of Article 2 (7) are summarized in paragraphs 319 and 332.

-
- 317/ Case No. 2: G A (VII), Plen., 380th mtg., para. 137.
Case No. 7: G A (III/1), General Com., 43rd mtg., pp. 10 and 11.
Case No. 8: G A (III/2), Plen., 190th mtg., pp. 24 and 28; G A (V), Plen., vol. I, 234th mtg., para. 159.
Case No. 11: G A (VII), Plen., 381st mtg., paras. 97-107 and 123.
Case No. 21: S C, 8th yr., 619th mtg., paras. 42, 50 and 103-109.
- 318/ Case No. 2: G A (III/1), Plen., 146th mtg., p. 226.
Case No. 8: G A (III/2), Plen., 189th mtg., p. 12.
Case No. 11: G A (VII), Plen., 381st mtg., para. 102.
- 319/ Case No. 2: G A (VII), Plen., 380th mtg., para. 136; G A (VIII), Plen., 435th mtg., para. 14.
Case No. 8: G A (III/2), Plen., 190th mtg., p. 22.
Case No. 11: G A (VII), Plen., 381st mtg., paras. 74, 141, 163 and 164; G A (VIII), Plen., 435th mtg., paras. 52 and 57.
Case No. 18: S C, 3rd yr., Nos. 36-51, 268th mtg., pp. 95, 98 and 99.
Case No. 20: S C, 6th yr., 559th mtg., paras. 6, 14 and 30.
Case No. 21: S C, 8th yr., 621st mtg., paras. 91 and 96.
- 320/ Case No. 15: S C, 1st yr., 2nd Series, No. 7, 59th mtg., pp. 176 and 177.
Case No. 18: S C, 3rd yr., Nos. 36-51, 268th mtg., p. 100.
Case No. 20: S C, 6th yr., 559th mtg., para. 5.
Case No. 21: S C, 8th yr., 622nd mtg., para. 25.

356. A decision to give the question of inclusion priority over the question of competence is dealt with in paragraph 174.

357. Statements by presiding officers on whether the inclusion of an item prejudged the question of competence are dealt with in paragraphs 196 and 274.

2. Whether a recommendation -- in general or to a particular State -- constitutes intervention

358. The question whether a recommendation -- in general or to a particular State -- constituted intervention has arisen in the debates in cases Nos. 1, 2 and 11.

359. During those debates it was contended, on the one hand, that a recommendation did not constitute intervention. 321/ The definition (mentioned in paragraph 342) of the term as "dictatorial interference" was invoked in support of that contention. 322/ It was maintained, on the other hand, that a recommendation constituted intervention 323/ (see paragraph 343) and that the definition of the latter term as "dictatorial interference" was not applicable to Article 2 (7). 324/

360. There were also representatives who drew a distinction between recommendations addressed to a particular Member of the United Nations and those addressed to all Members. The former, they held, constituted intervention; the latter did not. 325/

Decisions

361. In cases Nos. 1, 2 and 11 the General Assembly adopted several resolutions containing recommendations. These are dealt with in paragraphs 17-21, 35, 53-75, 184-186 and 205.

It should be noted, however, that several representatives who voted for those resolutions expressed no opinion on whether a recommendation constituted intervention but based their position on the contention that the matters dealt with in the resolutions did not fall essentially within domestic jurisdiction (see paragraphs 399, 409, 413 and 434).

362. The question whether a recommendation constituted intervention was also discussed in a report submitted to the Assembly in case No. 11 by a commission established to study the racial situation in a particular State. The relevant passage of the report may be found in paragraph 189.

321/ Case No. 1: G A (I/2), Plen., 58th mtg., pp. 1180, 1181 and 1193; 59th mtg., p. 1219.
Case No. 2: G A (I/2), Plen., 51st mtg., p. 1024; G A (VIII), Ad Hoc Pol. Com., 20th mtg., para. 44.

322/ See footnote 313.

323/ Case No. 1: G A (I/2), Plen., 58th mtg., pp. 1182, 1187 and 1188; 1st Com., 35th mtg., p. 230; 43rd mtg., pp. 294 and 295; G A (III/2), 1st Com., 259th mtg., p. 206; G A (V), Plen., vol. I, 304th mtg., para. 86; Ad Hoc Pol. Com., 25th mtg., para. 31; 27th mtg., para. 11; 28th mtg., para. 44.

324/ See footnote 314.

325/ Case No. 11: G A (VIII), Ad Hoc Pol. Com., 32nd mtg., para. 40; 33rd mtg., para. 49; 34th mtg., para. 8; 38th mtg., para. 6.

3. *Whether a request for a stay of execution constitutes intervention*

363. The question whether a request for a stay of execution constituted intervention has arisen in the debates in cases Nos. 1, 6 and 16.

364. During those debates some representatives contended that the adoption of a resolution recommending that a Member State suspend the execution of a death sentence imposed by one of its tribunals would constitute intervention in the domestic jurisdiction of that State. 326/ The contention was disputed on the grounds that humanitarian feelings should prevail over legal considerations. 327/

365. Some representatives also argued that the adoption of a resolution requesting the President of the General Assembly to negotiate with a State concerning the stay of execution or the release from prison of persons specifically designated in the resolution would constitute intervention in that State's domestic jurisdiction. 328/ The argument was disputed on the ground that a request addressed to the President of the Assembly could not constitute intervention. 329/

366. There were, however, representatives who held that a committee of the Assembly was competent to adopt a resolution which, without referring to any specific death sentence, requested the President of the Assembly to negotiate with a Member State concerning the suspension of the execution of death sentences imposed for political reasons by the military tribunals of that State. 330/ It does not appear that these representatives stated the reasons for adopting that position.

367. Finally, in the Security Council, some members contended that Article 2 (7) did not debar a commission of investigation established under Article 34 from requesting a State to postpone the execution of a person sentenced to death if the commission had reason to believe that the examination of that person as a witness would assist it in its investigation. 331/ A request made in those conditions would not constitute intervention. 332/

Decisions

368. Decisions on draft resolutions recommending that a Member State grant a stay of execution are dealt with in paragraph 89.

369. Decisions on draft resolutions containing requests addressed to the President of the General Assembly are noted in paragraphs 39 and 94-100.

370. Decisions on the question whether a commission of investigation might request a State to postpone the execution of a person sentenced to death are dealt with in paragraphs 261-264 and 269.

326/ Case No. 6: G A (III/1), 1st Com., 186th mtg., pp. 442, 445 and 446; G A (IV), 1st Com., 275th mtg., paras. 39 and 46; 276th mtg., para. 49.

327/ Case No. 6: G A (III/1), 1st Com., 186th mtg., p. 444; G A (IV), 1st Com., 275th mtg., para. 19.

328/ Case No. 1: G A (VI), 3rd Com., 391st mtg., paras. 23 and 25; 392nd mtg., para. 83.

329/ Case No. 1: G A (VI), 3rd Com., 392nd mtg., para. 71.

330/ Case No. 6: See the draft resolution submitted by Ecuador (G A (IV), 1st Com., Annex, p. 17, A/C.1/512/Rev.1) and the results of the roll-call vote "on the question whether the First Committee was competent to take a vote" on that draft resolution (G A (IV), 1st Com., 297th mtg., para. 61).

331/ Case No. 16: S C, 2nd yr., No. 10, 100th mtg., pp. 176 and 184.

332/ Case No. 16: S C, 2nd yr., No. 10, 101st mtg., p. 187.

*4. Whether the establishment by the General Assembly of a
commission to study the racial situation prevailing
in a Member State constitutes intervention*

371. The question whether the establishment by the General Assembly of a commission to study the racial situation prevailing in a Member State constituted intervention has arisen in the debates in case No. 11.

372. During those debates some representatives contended that the establishment of such a commission would not constitute intervention. ^{333/} Others took the opposite view. ^{334/}

Decisions

373. The Assembly adopted a resolution establishing the above-mentioned commission in spite of objections raised on the grounds of Article 2 (7). The resolution is dealt with in paragraphs 180-183. It should be noted, however, that several representatives who voted for that resolution expressed no opinion on whether the establishment of the commission constituted intervention but based their position on the contention that the racial situation which the commission was instructed to study did not fall essentially within domestic jurisdiction (see paragraphs 409, 413 and 434).

374. In the report which it subsequently submitted to the Assembly, the Commission discussed the question whether studies undertaken by the Assembly constitute intervention. The relevant passage of the report is reproduced in paragraph 189.

*5. Whether the examination of the domestic policy of a Member State
by a commission of investigation established under
Article 34 constitutes intervention*

375. The question whether the examination of the domestic policy of a Member State by a commission of investigation constituted intervention has arisen in the debates in case No. 16. It will be recalled that, in that case, the Security Council established, under Article 34, a Commission of Investigation to ascertain the facts relating to a particular situation (see paragraph 259).

376. A Member State involved in that situation contended that the Commission was debarred by Article 2 (7) from examining its domestic policy since such an examination would constitute intervention in matters essentially within domestic jurisdiction. ^{335/}

377. Members of the Commission, however, maintained that Article 2 (7) did not debar the Commission from examining the domestic policy of that State if such an examination could throw light on the nature and causes of the particular situation under investigation. ^{336/}

^{333/} Case No. 11: G A (VII), Ad Hoc Pol. Com., 16th mtg., para. 19; 17th mtg., paras. 5 and 37.

^{334/} Case No. 11: G A (VII), Ad Hoc Pol. Com., 14th mtg., para. 11; 20th mtg., para. 21.

^{335/} Case No. 16: S/AC.4/PV.18; S C, 2nd yr., Suppl. No. 4, annex 10 (S/271), p. 54; *ibid.*, Special Suppl. No. 2, vol. I, p. 112, para. (b); vol. III, p. 342.

^{336/} Case No. 16: S C, 2nd yr., Special Suppl. No. 2, vol. I, p. 112; para. (b), 113; para. (d), p. 140.

Decisions

378. The relevant decisions of the Commission of Investigation are dealt with in paragraphs 267-269.

6. *Whether a resolution by which the Security Council tenders its good offices to the parties to a dispute or calls upon them to cease hostilities and to settle the dispute by peaceful means constitutes intervention*

379. The question whether a resolution of the Security Council tendering its good offices to the parties to a dispute or calling upon them to cease hostilities and to settle the dispute by peaceful means constituted intervention has arisen in the debates in case No. 17.

380. During those debates a representative argued that, since one of the parties to the dispute under consideration claimed that the dispute fell essentially within its domestic jurisdiction, the Council could take no action as long as it had not ascertained that it had the right to intervene. 337/ Another representative, however, held that, even before ascertaining that it had the right to intervene, the Security Council was empowered to take such action as would not prejudice the claim of domestic jurisdiction. 338/ He therefore submitted two proposals to the Council.

381. The first was presented in the form of an amendment to a draft resolution pending before the Council. It called upon the parties to cease hostilities and to settle their dispute by peaceful means. It referred to no provision of the Charter and contained a clause expressly reserving the question of the Council's competence to deal with the dispute (see paragraphs 278-280).

382. Commenting on that amendment, some representatives stated that there was no contradiction between calling upon the parties to cease hostilities and to settle the dispute by peaceful means, on the one hand, and reserving the question of competence, on the other. They expressed the view, however, that the Council could not proceed to more authoritative decisions without first settling the question of competence. 339/

383. The second proposal was submitted in the form of a draft resolution which, without referring to any provision of the Charter, tendered the Council's good offices to the parties (see paragraph 295). Though the draft resolution contained no clause reserving the question of competence, several representatives contended that it did not prejudice the question. 340/ In support of that contention it was argued that any future action to which the offer of good offices might lead would be taken by the Council only after the acceptance of that offer by the parties and at their request. 341/

337/ Case No. 17: S C, 2nd yr., No. 68, 172nd mtg., p. 1653.

338/ Case No. 17: S C, 2nd yr., No. 68, 172nd mtg., pp. 1657 and 1658; No. 82, 193rd mtg., pp. 2177 and 2178.

339/ Case No. 17: S C, 2nd yr., No. 68, 173rd mtg., pp. 1695, 1696 and 1712.

340 Case No. 17: S C, 2nd yr., No. 82, 193rd mtg., p. 2178; No. 83, 194th mtg., p. 2194; No. 103, 218th mtg., pp. 2732 and 2733 (see, however, *ibid.*, 219th mtg., p. 2737) (see also footnote 422 below).

341/ Case No. 17: S C, 2nd yr., No. 82, 193rd mtg., p. 2178; 3rd yr., No. 134, 392nd mtg., p. 10; 4th yr., No. 6, 402nd mtg., p. 4.

Decisions

384. On 1 August 1947 the Security Council adopted the first proposal by a vote in parts, the clause reserving the question of competence being rejected (see paragraphs 280-284). The second proposal was adopted on 25 August 1947 without change (see paragraph 295). Several representatives who voted for these proposals, however, expressed the view that the question of the Council's competence was not in doubt since Chapter VII of the Charter was applicable to the dispute. Their position is studied below, in paragraphs 444-447.

B. The expression in Article 2 (7): "matters which are essentially within the domestic jurisdiction of any State"

385. On several occasions representatives discussed a general definition of the expression: "matters which are essentially within the domestic jurisdiction of any State". Two theses were advanced.

386. On the one hand, some representatives favoured 342/ the definition of domestic jurisdiction given by the Permanent Court of International Justice in its advisory opinion of 7 February 1923. 343/

387. Commenting on Article 15 (8) of the Covenant of the League of Nations, the Court had stated in that advisory opinion:

"The words 'solely within the domestic jurisdiction' [appearing in Article 15 (8) of the Covenant] seem ... to contemplate certain matters which, though they may very closely concern the interests of more than one State, are not, in principle, regulated by international law. As regards such matters, each State is sole judge.

"The question whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question; it depends upon the development of international relations. Thus, in the present state of international law, questions of nationality are, in the opinion of the Court, in principle within this reserved domain.

"For the purpose of the present opinion, it is enough to observe that it may well happen that, in a matter which, like that of nationality, is not, in principle, regulated by international law, the right of a State to use its discretion is nevertheless restricted by obligations which it may have undertaken towards other States. In such a case, jurisdiction which, in principle, belongs solely to the State, is limited by rules of international law. Article 15, paragraph 8, then ceases to apply as regards those States which are entitled to invoke such rules, and the dispute as to the question whether a State has or has not the right to take certain measures becomes in these circumstances a dispute of an international character ...". 344/

342/ Case No. 2: G A (I/2), Joint 1st and 6th Com., 5th mtg., p. 41; G A (V), Ad Hoc Pol. Com., 44th mtg., para. 12.

Case No. 8: G A (III/2), Ad Hoc Pol. Com., 37th mtg., p. 122.

Case No. 9: G A (VI), Plen., 353rd mtg., para. 41.

Case No. 10: G A (VII), 1st Com., 540th mtg., para. 51.

343/ Nationality Decrees issued in Tunis and Morocco (French zone) on 8 November 1921, P C I J, Series B, No. 4, 1923.

344/ Ibid., pp. 23 and 24.

388. Other representatives, however, observed that the advisory opinion of 7 February 1923 was based on the words "a matter which ... is solely within ... domestic jurisdiction" which appeared in Article 15 (8) of the Covenant of the League of Nations. For those words the Charter had substituted "matters which are essentially within ... domestic jurisdiction. 345/ Therefore, it was contended, the definition given in the advisory opinion was not applicable to Article 2 (7). 346/

389. There appears to be no decision of any United Nations organ containing a general definition of the domestic jurisdiction clause.

390. In addition to the problem of a general definition, representatives have discussed the question whether various matters of which the United Nations was seized fell essentially within domestic jurisdiction. In the course of such discussions, a number of representatives either expressly or by implication maintained that matters which were the subject of international obligations of a legal character could not, for that reason, fall essentially within domestic jurisdiction. This position has been asserted in respect of international obligations which arise from:

- (a) General international law;
- (b) The provisions of specific treaties;
- (c) The provisions of the Charter of the United Nations.

Paragraphs 391-441 below deal with the decisions and discussions relating to these three aspects.

1. Whether a matter governed by international law can fall essentially within domestic jurisdiction

391. In cases Nos. 7, 18 and 20, it was contended that the matters in question were governed by rules of international law and therefore could not fall essentially within domestic jurisdiction.

345/ The word "solely" appeared in the provision on domestic jurisdiction contained in the Dumbarton Oaks Proposals, on which the discussions at the San Francisco Conference were based. For the proceedings which led to the substitution of "essentially" for "solely", see the following documents of the Conference: Dumbarton Oaks Proposals, Chapter VIII, Section A, paragraph 7 (Doc. 1, G/1, UNCIO, vol. 3, p. 14); Amendments submitted by China, Soviet Union, United Kingdom and United States, Chapter II (Doc. 2, G/29, UNCIO, vol. 3, p. 623); Amendment submitted by Belgium (Doc. 1019, I/1/42, UNCIO, vol. 6, p. 510); Summary records of the 16th and 17th meetings of Committee I/1 (Doc. 976, I/1/40, UNCIO, vol. 6, pp. 494-499; Doc. 1019, I/1/42, UNCIO, vol. 6, pp. 507-513); Supplement to the report of the Rapporteur of Committee I/1 (Doc. 1070, I/1/34 (1) (d), UNCIO, vol. 6, p. 487); Verbatim Record of the 3rd meeting of Commission I (Doc. 1167, I/10, UNCIO, vol. 6, pp. 108-113).

346/ Case No. 9: G A (VII), 1st Com., 548th mtg., para. 55. There appears to be a clerical error in the record, which refers to the advisory opinion of 1921 instead of the advisory opinion of 1923.
Case No. 10: G A (VII), 1st Com., 538th mtg., para. 74; 545th mtg., para. 29.
Case No. 14: S C, 1st yr., 1st Series, No. 2, 34th mtg., p. 177.
Case No. 22: Interpretation of Peace Treaties, I C J Reports, 1950, Dissenting opinion by Judge Krylov, p. 112.

392. In case No. 7, some representatives held that if a State took legislative and administrative measures in violation of diplomatic practices which were part of international law, that State could not claim that the measures fell essentially within its domestic jurisdiction. 347/

393. In case No. 18, which dealt with a complaint that a new political régime had been imposed on a Member State by the threat of use of force in violation of Article 2 (4) by another Member State, it was argued that if the allegation were true, the situation described in the complaint would not fall essentially within the domestic jurisdiction of the former State since it would be the result of an illegal action by one State against another. 348/

394. Finally, in case No. 20, it was contended that the expropriation of foreign property and rights did not fall essentially within domestic jurisdiction since it was asserted to be a matter which was governed by definite rules of international law laying down not only the circumstances in which foreign property and rights could validly be expropriated but also the conditions and modalities of expropriation. 349/

Decisions

395. No resolutions were adopted in connexion with cases Nos. 18 and 20 (see paragraphs 315, 316, 326 and 327).

396. The resolution adopted in connexion with case No. 7 referred to diplomatic practices (see paragraph 106). It should be noted that it referred also to the Charter provisions on human rights and on the maintenance of international peace (see paragraph 417).

397. Finally, in the advisory opinion delivered in connexion with case No. 22 and in the order delivered in connexion with case No. 23, the International Court of Justice expressed views relevant to the question whether matters governed by international law can fall essentially within domestic jurisdiction (see paragraphs 335 and 337). In particular, the Court stated in the advisory opinion delivered in connexion with case No. 22 that the interpretation of a treaty for the purpose of that advisory opinion "could not be considered as a question essentially within the domestic jurisdiction of a State. It is a question of international law which, by its very nature, lies within the competence of the Court".

2. Whether a matter governed by international agreements can fall essentially within domestic jurisdiction

398. The question whether a matter governed by an international agreement could fall essentially within domestic jurisdiction arose in the debates in cases Nos. 2, 8, 9, 10, 12, 18, and 21. During those debates the following arguments were advanced on the question.

399. Some representatives contended that a matter governed by an international agreement could not fall essentially within the domestic jurisdiction of a party to

347/ Case No. 7: G A (III/1), 6th Com., 135th mtg., p. 738; G A (III/2), Plen., 196th mtg., p. 143.

348/ Case No. 18: S C, 3rd yr., Nos. 36-51, 268th mtg., p. 99.

349/ Case No. 20: S C, 6th yr., 561st mtg., paras. 40 and 41.

the Agreement. 350/ The advisory opinion of 7 February 1923 rendered by the Permanent Court of International Justice 351/ was invoked in support of that contention. 352/ It was also pointed out that treaties were entered into for the purpose of creating international rights on the one side and international obligations on the other with regard to matters which would otherwise be within the domestic jurisdiction of each of the individual States. It would be a contradiction to state that the subject of the treaty obligation remained within domestic jurisdiction and could not, therefore, be the subject of international settlement or adjudication. 353/ Thus when the matter involved was a question of treaty observance, that matter was essentially one of international jurisdiction because of the very nature of a treaty which was an international instrument. 354/

400. Other representatives held, on the contrary, that a matter which was "essentially" within a State's domestic jurisdiction retained that character even when

350/ Case No. 2: G A (I/2), General Com., 19th mtg., pp. 70-72; Plen., 52nd mtg., p. 1043; Joint 1st and 6th Com., 1st mtg., pp. 3-6; 2nd mtg., p. 10; 3rd mtg., p. 22; G A (II), Plen., vol. II, 120th mtg., p. 1143; 1st Com., 109th mtg., p. 451; G A (III/2), 1st Com., 265th mtg., p. 282; 266th mtg., pp. 285 and 289; 267th mtg., p. 307; G A (V), Ad Hoc Pol. Com., 45th mtg., para. 7; G A (VI), Ad Hoc Pol. Com., 32nd mtg., para. 7; G A (VII), Ad Hoc Pol. Com., 11th mtg., para. 28; G A (VIII), Ad Hoc Pol. Com., 16th mtg., para. 5; 17th mtg., paras. 8, 9 and 37; 18th mtg., para. 28; 19th mtg., paras. 58 and 59; 20th mtg., para. 43.

Case No. 8: G A (III/2), General Com., 58th mtg., pp. 17 and 19; Plen., 202nd mtg., p. 247; Ad Hoc Pol. Com., 35th mtg., pp. 77 and 91; 36th mtg., p. 102; 38th mtg., p. 130; G A (IV), Ad Hoc Pol. Com., 9th mtg., para. 19; 10th mtg., para. 10; 13th mtg., para. 36; G A (V), Ad Hoc Pol. Com., 6th mtg., para. 35.

Case No. 9: G A (VII), 1st Com., 547th mtg., para. 2; G A (VIII), 1st Com., 630th mtg., paras. 9 and 64; 633rd mtg., para. 26; 634th mtg., para. 5; 635th mtg., paras. 17 and 29.

Case No. 10: G A (VII), 1st Com., 538th mtg., paras. 9 and 69; G A (VIII), 1st Com., 644th mtg., para. 1; 645th mtg., para. 27.

Case No. 12: G A (V), 3rd Com., 314th mtg., para. 28; E/CN.4/SR.211, p. 6; E/CN.4/SR.388, p. 11.

Case No. 18: S C, 3rd yr., No. 56, 281st mtg., p. 26.

Case No. 20: S C, 6th yr., 561st mtg., paras. 40 and 41.

Case No. 21: S C, 8th yr., 619th mtg., paras. 43, 105 and 106; 621st mtg., para. 88; 624th mtg., para. 17.

351/ See paras. 386 and 387.

352/ Case No. 2: G A (I/2), Joint 1st and 6th Com., 5th mtg., p. 41; G A (V), Ad Hoc Pol. Com., 44th mtg., para. 12.

Case No. 8: G A (III/2), General Com., 58th mtg., p. 19.

Case No. 9: G A (VII), 1st Com., 547th mtg., para. 2.

Case No. 10: G A (VII), 1st Com., 540th mtg., paras. 7 and 51.

353/ Case No. 22: Interpretation of Peace Treaties, I C J, Pleadings, 1950, pp. 327 and 328.

354/ Case No. 22: Ibid., pp. 280, 314 and 315.

it became the object of an obligation arising out of an international agreement signed by that State. 355/ The following arguments were submitted in support of that contention. First, it was pointed out that the Article 2 (7) referred to matters which were essentially -- and not solely -- within the domestic jurisdiction of a State. 356/ Second, it was argued that the Article applied to all the Articles of the Charter and made no distinction between provisions which imposed international obligations on States and those which did not. A matter which was essentially within domestic jurisdiction therefore did not lose that character when it became the object of a Charter obligation. This *a fortiori* was true of a matter which was the object of an ordinary treaty obligation. 357/ Third, it was contended that even though a treaty provision laid down an international obligation, that obligation existed only between the States parties to the treaty and hence did not, by that fact, remove the matter from domestic jurisdiction for purposes of the United Nations Charter. 358/

401. Finally, as regards protectorate treaties, some representatives contended that clauses by which the protected State entrusted the conduct of its foreign affairs to the protecting State had the effect of removing the relations between the two States from the jurisdiction of the United Nations and placing them essentially within the domestic jurisdiction of the protecting State. 359/ That contention was disputed on the grounds that, since the relations between the two States were governed by a treaty, even though a protectorate treaty, they could not fall essentially within the domestic jurisdiction of a party to the treaty. 360/

Decisions

402. No resolutions were adopted in connexion with cases Nos. 18, 20 and 21 (see above paragraphs 315, 316, 326, 327 and 332); those adopted in connexion with cases Nos. 9 and 10 made no reference to the international agreements which were invoked during the debates (see paragraphs 147, 161 and 162).

403. In connexion with case No. 2, the General Assembly adopted six resolutions. The first, resolution 44 (I), referred expressly to the international agreements invoked during the debates (see paragraph 56). The third, 395 (V), fourth, 511 (VI), fifth, 615 (VII), and sixth, 719 (VIII), recalled the first resolution (see paragraphs 61-75).

-
- 355/ Case No. 2: G A (III/2), 1st Com., 265th mtg., p. 276.
Case No. 9: G A (VIII), 1st Com., 630th mtg., para. 40.
Case No. 10: G A (VIII), 1st Com., 641st mtg., para. 27.
- 356/ Case No. 9: G A (VII), 1st Com., 548th mtg., para. 55. (See footnote 346.)
Case No. 10: G A (VII), 1st Com., 538th mtg., para. 74; 545th mtg., para. 29.
Case No. 22: Interpretation of Peace Treaties, I C J, Reports 1950, Dissenting opinion by Judge Krylov, p. 112.
- 357/ Case No. 2: G A (VIII), Ad Hoc Pol. Com., 14th mtg., para. 17.
- 358/ Case No. 8: G A (IV), Ad Hoc Pol. Com., 13th mtg., para. 20; G A (V), Plen., vol. I, 303rd mtg., para. 126; Ad Hoc Pol. Com., 4th mtg., para. 7.
Case No. 9: G A (VII), Plen., 392nd mtg., para. 92.
Case No. 10: G A (VII), Plen., 392nd mtg., para. 92.
- 359/ Case No. 9: G A (VII), 1st Com., 548th mtg., para. 26; G A (VIII), 1st Com., 630th mtg., paras. 26 and 27; 640th mtg., para. 5.
Case No. 10: G A (VII), 1st Com., 538th mtg., para. 53.
Case No. 21: S C, 8th yr., 620th mtg., paras. 18-23.
- 360/ See footnote 350, cases Nos. 9 and 10.

The second, resolution 265 (III), contained no reference, direct or indirect, to those international agreements (see paragraphs 57-59). Some of those resolutions referred also to Charter provisions on human rights and on the maintenance of peace (see paragraphs 416 and 437).

404. All three resolutions adopted by the Assembly in connexion with case No. 8 referred to the international agreements invoked during the debates (see paragraphs 115, 116, 124-126 and 137). They referred also to Charter provisions on human rights (see paragraph 418).

405. The decisions taken in connexion with case No. 12 may be found in paragraphs 213, 215 and 219.

406. Finally, in the advisory opinion delivered in connexion with case No. 22, the International Court of Justice expressed views relevant to the question whether matters governed by international agreements could fall essentially within domestic jurisdiction (see paragraphs 335 and 337).

3. Whether a matter dealt with by the Charter can fall essentially within domestic jurisdiction

407. The arguments submitted on the question whether a matter dealt with by the Charter could fall essentially within domestic jurisdiction may be divided into categories.

408. The arguments of the first category referred to the Charter as a whole and drew no distinction between provisions which imposed obligations on Member States and those which did not. These arguments are summarized below.

409. Some representatives contended that the mere fact that a matter was dealt with by the Charter placed it outside the domestic jurisdiction of Member States. Three arguments were advanced in support of that contention. First, it was held that since the Charter was an international agreement, the matters dealt with therein were removed from the domestic jurisdiction of the parties. ^{361/} To support that position it was argued that matters dealt with in the Charter had become matters of international concern and consequently were no longer within the reserved domain of States. Second, it was maintained that Article 10 of the Charter clearly showed that Article 2 (7) did

^{361/} Case No. 2: G A (V), Ad Hoc Pol. Com., 42nd mtg., para. 68.

Case No. 5: G A (VIII), 4th Com., 324th mtg., para. 2.

Case No. 7: G A (III/1), 6th Com., 134th mtg., pp. 723 and 724.

Case No. 10: G A (VII), 1st Com., 539th mtg., para. 46.

Case No. 11: G A (VII), Plen., 381st mtg., paras. 100 and 101; Ad Hoc Pol. Com., 18th mtg., para. 20; 21st mtg., para. 9.

Case No. 12: E/CN.4/SR.388, p. 11.

not limit the power of the General Assembly to take action "on any matters within the scope of the ... Charter". 362/ Finally, it was agreed that if it had been intended that Article 2 (7) should nullify express provisions of the Charter, that Article would have read "Notwithstanding the provisions of the Charter ..." instead of "Nothing contained in the present Charter ...". 363/

410. Other representatives held, on the contrary, that the word "Nothing" had an overriding effect and prohibited any intervention in a State's domestic jurisdiction, regardless of any other provision of the Charter with the sole exception of the last phrase of Article 2 (7). A matter "essentially" within domestic jurisdiction remained so even when it was dealt with by a Charter provision 364/, and thus was removed from the "scope of the Charter", as those words were used in Article 10. 365/

411. The arguments of the second category referred to specific provisions of the Charter. In some of these arguments a distinction was drawn between provisions which imposed obligations on Member States and those which did not, the contention being that matters referred to in the latter provisions could fall essentially within domestic jurisdiction. The arguments in the second category are studied in the following subsections.

a. ARTICLE 2 (7) AND THE CHARTER PROVISIONS ON HUMAN RIGHTS

412. Arguments referring specifically to Charter provisions on human rights were submitted in cases Nos. 2, 7, 8, 11 and 12. They may be summarized as follows.

- 362/ Case No. 2: G A (V), Ad Hoc Pol. Com., 42nd mtg., para. 34; 45th mtg., paras. 7 and 8; G A (VII), Ad Hoc Pol. Com., 3th mtg., para. 36.
Case No. 4: G A (IV), 4th Com., 121st mtg., para. 37.
Case No. 7: G A (III/1), 6th Com., 134th mtg., p. 725; 135th mtg., p. 738.
Case No. 8: G A (III/2), General Com., 58th mtg., pp. 15 and 16, 20; 59th mtg., p. 33, Ad Hoc Pol. Com., 35th mtg., p. 89; 39th mtg., p. 136.
Case No. 9: G A (VIII), 1st Com., 630th mtg., paras. 45 and 46 (see, however, 637th mtg., para. 11); 635th mtg., para. 31.
Case No. 10: G A (VII), 1st Com., 540th mtg., paras. 57 and 58; 545th mtg., para. 21.
Case No. 11: G A (VII), Ad Hoc Pol. Com., 18th mtg., para. 13; 19th mtg., para. 5.
- 363/ Case No. 9: G A (VII), 1st Com., 552nd mtg., para. 17.
- 364/ Case No. 2: G A (I/2), Joint 1st and 6th Com., 1st mtg., p. 3; G A (III/2), Plen., 212th mtg., p. 441; 1st Com., 265th mtg., p. 275; G A (V), Ad Hoc Pol. Com., 42nd mtg., para. 40; G A (VII), Ad Hoc Pol. Com., 10th mtg., para. 16; G A (VIII), Ad Hoc Pol. Com., 21st mtg., para. 12.
Case No. 4: G A (IV), Plen., 262nd mtg., paras. 177 and 178.
Cases Nos. 9 and 10: G A (VIII), 1st Com., 630th mtg., para. 19.
Case No. 11: G A (VII), Plen., 381st mtg., paras. 15-20; Ad Hoc Pol. Com., 14th mtg., para. 9; 16th mtg., paras. 37, 73 and 75; G A (VIII), Ad Hoc Pol. Com., 32nd mtg., paras. 7 and 28; 36th mtg., para. 14; 38th mtg., para. 5.
- 365/ Case No. 9: G A (VIII), 1st Com., 630th mtg., para. 29.
Case No. 4: G A (VII), 4th Com., 266th mtg., para. 18.
Case No. 11: G A (VII), Ad Hoc Pol. Com., 14th mtg., para. 13.

413. Several representatives laid down the premise that the Charter provisions on human rights and fundamental freedoms, and in particular Articles 1 (3), 55 c and 56, created international obligations which all Member States 366 had undertaken to respect. They disagreed, however, on the conclusions to be drawn from that premise. Most of these representatives contended that since human rights and fundamental freedoms were governed by international obligations, they came under the jurisdiction of the United Nations, and not under the domestic jurisdiction of its Members. 367 Others drew a distinction between accidental violations of human rights and fundamental freedoms, affecting individuals or small groups, and systematic violations which had international repercussions and created unrest beyond the borders of the State where they occurred. The former could fall essentially within domestic jurisdiction, the latter could not. 368 Still others argued that Article 2 (7) applied to the whole Charter and made no distinction between provisions which imposed international obligations and those which did not. It could, therefore, not be evaded by invoking the existence of international obligations created by other provisions of the Charter, even those on human rights. 369

414. There were also representatives who, rejecting the above-mentioned premise, contended that the Charter did not impose international obligations in respect of human rights and fundamental freedoms and did not remove them from the domestic jurisdiction of States, where they traditionally belonged. 370 In support of that

366 In case No. 8 some representatives contended that Article 55 imposed obligations on non-member States as well (G A (III/2), General Com., 58th mtg., pp. 15 and 16; 59th mtg., p. 25; Ad Hoc Pol. Com., 38th mtg., p. 128; G A (IV), Ad Hoc Pol. Com., 7th mtg., para. 3).

Other representatives held, on the contrary, that non-member States were not legally bound to comply with the Charter provisions on human rights (G A (III/2), General Com., 58th mtg., p. 11; Ad Hoc Pol. Com., 35th mtg., p. 80).

367 Case No. 2: G A (I/2), Joint 1st and 6th Com., 2nd mtg., p. 10; 3rd mtg., pp. 23, 28 and 29; G A (II), 1st Com., 107th mtg., p. 437; 109th mtg., pp. 449 and 450; G A (III/2), 1st Com., 263rd mtg., p. 257; 265th mtg., p. 282; 266th mtg., p. 292; G A (V), Ad Hoc Pol. Com., 44th mtg., para. 2; G A (VIII), Ad Hoc Pol. Com., 17th mtg., paras. 13, 14, 37 and 38; 19th mtg., para. 52; 20th mtg., paras. 22 and 23.

Case No. 7: G A (III/1), General Com., 43rd mtg., p. 10; 6th Com., 136th mtg., p. 745; 138th mtg., pp. 765 and 768.

Case No. 8: G A (III/2), Plen., 190th mtg., p. 25; 202nd mtg., p. 247; General Com., 59th mtg., p. 25; Ad Hoc Pol. Com., 35th mtg., p. 76; G A (IV), Ad Hoc Pol. Com., 8th mtg., para. 4; 11th mtg., para. 42.

Case No. 11: G A (VII), Ad Hoc Pol. Com., 13th mtg., paras. 33, 34 and 40-42; 18th mtg., paras. 26, 33 and 34; 19th mtg., para. 21; G A (VIII), Ad Hoc Pol. Com., 35th mtg., para. 19; 39th mtg., para. 49; 40th mtg., para. 6.

Case No. 12: G A (V), Plen., vol. II, 317th mtg., para. 134; E/CN.4/SR.210, p. 24.

368 Case No. 8: G A (V), Ad Hoc Pol. Com., 6th mtg., para. 34.

Case No. 11: G A (VII), Ad Hoc Pol. Com., 18th mtg., paras. 57-59.

Case No. 12: E/CN.4/SR.211, p. 11.

369 Case No. 2: G A (VIII), Ad Hoc Pol. Com., 14th mtg., para. 17.

Case No. 11: G A (VIII), Ad Hoc Pol. Com., 32nd mtg., para. 29.

370 Case No. 2: G A (I/2), Joint 1st and 6th Com., 1st mtg., pp. 3 and 4; G A (III/2), 1st Com., 265th mtg., p. 278; G A (V), Ad Hoc Pol. Com., 41st mtg., para. 51

Case No. 11: G A (VII), Ad Hoc Pol. Com., 16th mtg., para. 37.

position, they asserted that the provisions relating to such rights and freedoms were declarations of purposes and principles, rather than obligations, and that it was left to the Member States to carry them out. 371/ Moreover, the fact that human rights and fundamental freedoms had not been defined in the Charter was a significant indication that they did not impose obligations. 372/

415. Finally, some representatives maintained that the records of the San Francisco Conference clearly showed that the Charter provisions on human rights were not intended to authorize the United Nations to intervene in the domestic jurisdiction of Member States. 373/

Decisions

416. The General Assembly adopted six resolutions in connexion with case No. 2. Three of these, namely, resolutions 265 (III), 615 (VII) and 719 (VIII), referred to the Purposes and Principles of the Charter (see paragraphs 59, 70 and 74). Article 1 (3) of those Purposes and Principles deals with human rights. It should be noted that some of the resolutions adopted in connexion with case No. 2 referred also to international agreements (see paragraph 403) and to the Charter provisions on the maintenance of peace (see paragraph 437).

417. The resolution adopted by the General Assembly in connexion with case No. 7 recommended that a Member State should withdraw certain measures it had taken in respect of its female citizens married to aliens (see paragraphs 105 and 106). The resolution drew a distinction between the measures affecting the wives of ordinary foreign citizens and those affecting the wives of members of diplomatic missions. It

371/ Case No. 2: G A (V), Ad Hoc Pol. Com., 41st mtg., para. 50.

Case No. 11: G A (VII), Ad Hoc Pol. Com., 13th mtg., para. 8; 20th mtg., para. 18; G A (VIII), Ad Hoc Pol. Com., 36th mtg., para. 20.

372/ Case No. 2: G A (I/2), Joint 1st and 6th Com., 1st mtg., pp. 3 and 4; G A (III/2), 1st Com., 265th mtg., p. 278; G A (V), Ad Hoc Pol. Com., 41st mtg., para. 51.

Case No. 11: G A (VII), Ad Hoc Pol. Com., 13th mtg., para. 8; G A (VIII), 32nd mtg., para. 11; 41st mtg., para. 38.

373/ Case No. 2: G A (III/2), Plen., 212th mtg., pp. 444 and 445; G A (V), Ad Hoc Pol. Com., 41st mtg., para. 53.

Case No. 7: G A (III/1), 6th Com., 137th mtg., p. 748.

Case No. 8: G A (IV), Ad Hoc Pol. Com., 10th mtg., para. 11; 12th mtg., para. 19; G A (V), Plen., vol. I, 284th mtg., para. 146.

Case No. 11: G A (VII), Plen., 381st mtg., paras. 36-44.

In referring to the records of the San Francisco Conference, representatives quoted paragraph 10 of the Report of Committee II/3. That paragraph read:

"10. There were some misgivings that the statement of purposes now recommended [Article 55] implied that the Organization might interfere in the domestic affairs of member countries. To remove all possible doubt, the Committee agreed to include in its records the following statement:

"The members of Committee 3 of Commission II are in full agreement that nothing contained in Chapter IX [of the Charter] can be construed as giving authority to the Organization to intervene in the domestic affairs of Member States." (Documents of the United Nations Conference on International Organization, vol. 8, pp. 81 and 82, doc. 924, II, 12.)

declared that the former measures were not in conformity with the Charter and referred expressly to the human rights provisions contained in the Preamble and in Articles 1 (3) and 55 c. The latter were declared to be not in conformity with the Charter, contrary to diplomatic practices (see paragraph 396) and likely to impair friendly relations among nations (Article 14) (see paragraph 438).

418. In connexion with case No. 8 the Assembly adopted three resolutions, all of which referred to Charter provisions on human rights (see paragraphs 115, 123 and 136) and to international agreements (see paragraph 404).

419. The three resolutions adopted by the Assembly in connexion with case No. 11 referred to the Charter provisions on human rights (see paragraphs 181, 186 and 203). One of those resolutions, 616 B (VII), called upon "all Member States to bring their policies into conformity with their obligation under the Charter to promote the observance of human rights and fundamental freedoms" (see paragraph 186).

420. The decisions taken in connexion with case No. 12 may be found above in paragraphs 213, 215 and 219.

421. Finally, in an advisory opinion delivered in connexion with case No. 22, the International Court of Justice expressed views relevant to the question whether matters governed by Charter provisions on human rights could fall essentially within domestic jurisdiction (see paragraph 335).

b. ARTICLE 2 (7) AND THE CHARTER PROVISIONS REGARDING
NON-SELF-GOVERNING TERRITORIES

422. In addition to the considerations relating to the Charter as a whole (see paragraphs 407-411), arguments dealing specifically with the provisions regarding Non-Self-Governing Territories were submitted in cases Nos. 3, 4, 5, 9 and 10. These arguments may be summarized as follows:

423. Some representatives contended that the administration of a Non-Self-Governing Territory fell essentially within the Administering State's domestic jurisdiction ^{374/} and drew the following conclusions. The General Assembly was not authorized to recommend that the Economic and Social Council convene conferences of representatives of Non-Self-Governing Territories. ^{375/} Such a recommendation would constitute a violation of Article 2 (7) even if it specified that the conferences should be convened by the Council in co-operation with the administering Powers concerned. ^{376/} The Assembly was not competent to establish permanent machinery to study the

-
- ^{374/} Case No. 3: G A (I/2), Plen., 64th mtg., pp. 1331, 1332 and 1346.
^{375/} Case No. 4: G A (II), 4th Com., 42nd mtg., pp. 72 and 73; G A (IV), Plen., 262nd mtg., paras. 170-172 and 179; A/AC.28/SR.16, pp. 6, 9 and 10.
Case No. 5: G A (VII), 4th Com., 274th mtg., para. 14; A/AC.28/SR.2, p. 7, A/AC.28/SR.4, p. 3; A/AC.28/SR.16, pp. 6, 9 and 10.
Case No. 9: G A (VII), 1st Com., 548th mtg., para. 27; G A (VIII), 1st Com., 630th mtg., para. 19.
Case No. 10: G A (VII), 1st Com., 538th mtg., para. 53; 545th mtg., paras. 29 and 30.
^{375/} Case No. 3: G A (I/2), Plen., 64th mtg., p. 1346.
^{376/} Case No. 3: G A (I/2), Plen., 64th mtg., p. 1336.

information transmitted under Article 73 e 377/; neither was it competent to make recommendations on the policies to be followed with respect to any particular Non-Self-Governing Territory. 378/ Each Member State had the exclusive right to determine which of the territories under its administration came within the scope of Article 73 e 379/. The Assembly could only recommend the general principles which should guide Member States in that determination. 380/

424. Other representatives disputed the contention that the provisions of Article 2 (7) precluded consideration by the General Assembly of matters relating to Non-Self-Governing Territories. 381/ They held, in particular, that the General Assembly had the right to study the information transmitted under Article 73 e 382/ and to ascertain to what extent the obligations imposed on Member States by Chapter XI of the Charter were being fulfilled. 383/ Moreover, they could not accept the view that the determination of the territories coming within the scope of Article 73 e should be made exclusively by the administering States concerned. 384/

Decisions

425. The resolution adopted in connexion with case No. 9 did not refer to the Charter provisions regarding Non-Self-Governing Territories (see paragraph 147; see also, however, footnote 131).

426. The resolutions adopted in connexion with cases Nos. 3, 4, 5 and 10 referred to the Charter provisions regarding Non-Self-Governing Territories. Relevant passages of the resolutions adopted in connexion with cases Nos. 3 and 10 are reproduced in paragraphs 80 and 162. The resolutions adopted in connexion with cases Nos. 4 and 5

377/ Case No. 4: G A (II), Plen., 108th mtg., p. 734; G A (IV), Plen., 262nd mtg., para. 181; 4th Com., 117th mtg., para. 37; 120th mtg., paras. 36-38; G A (VII), 4th Com., 266th mtg., para. 20.

378/ Case No. 4: G A (II), Plen., vol. I, 107th mtg., p. 683; 108th mtg., p. 734.

379/ Case No. 5: A/AC.28/SR.2, p. 7; A/AC.28/SR.4, p. 3; G A (III), Suppl. No. 12, p. 2; G A (VII), Plen., 402nd mtg., para. 41; 4th Com., 274th mtg., paras. 40 and 65; G A (VIII), 4th Com., 322nd mtg., para. 47; 330th mtg., para. 5.

380/ Case No. 5: G A (VII), Plen., 402nd mtg., para. 41; 4th Com., 274th mtg., para. 40; G A (VIII), 4th Com., 322nd mtg., para. 47; 330th mtg., para. 5.

381/ Case No. 3: G A (I/2), Plen., 64th mtg., p. 1338.

Case No. 4: G A (II), Plen., vol. I, 107th mtg., p. 690; 108th mtg., pp. 704 and 705; G A (IV), Plen., 262nd mtg., para. 144.

Case No. 5: G A (III), Suppl. No. 12, p. 2; G A (VII), 4th Com., 274th mtg., para. 19; G A (VIII), 4th Com., 322nd mtg., para. 37; 323rd mtg., para. 12; 324th mtg., para. 16; 325th mtg., para. 27; 326th mtg., paras. 9 and 95.

Case No. 9: G A (VII), 1st Com., 550th mtg., para. 41; 552nd mtg., paras. 24 and 25; G A (VIII), 1st Com., 630th mtg., para. 9; 638th mtg., para. 1.

Case No. 10: G A (VII), 1st Com., 538th mtg., para. 33; 538th mtg., paras. 60 and 64; 539th mtg., para. 48; 543rd mtg., para. 58; G A (VIII), 1st Com., 644th mtg., para. 10.

382/ Case No. 4: G A (II), Plen., vol. I, 107th mtg., p. 684.

383/ Case No. 5: G A (VII), Suppl. No. 18, para. 77; G A (VIII), 4th Com., 323rd mtg., para. 12.

384/ Case No. 5: G A (III), Suppl. No. 12, p. 2; G A (VIII), 4th Com., 322nd mtg., para. 37; 323rd mtg., para. 12; 324th mtg., para. 17; 325th mtg., paras. 27 and 42.

are dealt with in the study on Article 73 (for case No. 4 see II, B, 3; for case No. 5 see II, C, 1.). It should be noted that the resolution adopted in connexion with case No. 10 referred also to the Charter provisions on self-determination (see paragraph 431) and on the maintenance of peace (see paragraph 439).

c. ARTICLE 2 (7) AND THE CHARTER PROVISIONS ON
THE SELF-DETERMINATION OF PEOPLES

427. Arguments referring specifically to the Charter provisions on the self-determination of peoples were made in cases Nos. 9, 10 and 13. These arguments may be summarized as follows.

428. It was contended, on the one hand, that since Articles 1 (2) and 55 laid down the principle of the self-determination of peoples, a matter governed by that principle did not fall essentially within the domestic jurisdiction of Member States. ^{385/}

429. It was argued, on the other hand, that the manner in which a State applied the principle of self-determination fell essentially within that State's domestic jurisdiction. ^{386/} It was held, in particular, that Article 2 (7) debarred the United Nations from recommending that a Member State organize a plebiscite to determine the aspirations of a minority group. ^{387/}

Decisions

430. The resolution adopted in connexion with case No. 9 referred to Article 1 (2) of the Charter (see paragraph 147). It also referred to the Charter provisions on the maintenance of peace (see paragraph 439).

431. The resolution adopted in connexion with case No. 10 referred to Article 1 (2) of the Charter (see paragraph 161). It also referred to the Charter provisions on the maintenance of peace (see paragraph 439) as well as those regarding Non-Self-Governing Territories (see paragraph 426).

432. The resolution adopted in connexion with case No. 13 referred to Articles 1 (2) and 55 (see paragraph 225).

d. ARTICLE 2 (7) AND THE CHARTER PROVISIONS ON
THE MAINTENANCE OF INTERNATIONAL PEACE

433. Arguments referring specifically to the Charter provisions on the maintenance of international peace were submitted in cases Nos. 1, 2, 7, 9, 10, 11 and 14. These arguments are summarized below.

^{385/} Case No. 9: G A (VII), 1st Com., 549th mtg., paras. 28 and 29; 551st mtg., para. 19.

Case No. 10: G A (VII), 1st Com., 538th mtg., para. 9; 540th mtg., para. 22; 543rd mtg., para. 69; 545th mtg., para. 21.

Case No. 13: G A (VII), 3rd Com., 448th mtg., para. 30.

^{386/} Case No. 13: E/AC.7/SR.292, p. 5.

^{387/} Case No. 13: G A (VII), 3rd Com., 445th mtg., para. 29.

434. In the General Assembly, some representatives held that, Article 2 (7) notwithstanding, the Assembly was always competent to deal with a situation which threatened the peace. 388/ Others made the same contention in respect of a situation which had international repercussions or could lead to international friction. 389/ Articles 11 390/ and 14 391/ were invoked to support that position. Those arguments were disputed on the grounds that the sole exception to the principle laid down in Article 2 (7) was to be found in the last phrase of that provision. The exception applied only to the enforcement measures which the Security Council could take under Chapter VII. 392/ The Charter provisions on the maintenance of international peace, and Articles 11 and 14 in particular, did not authorize the General Assembly to intervene in matters essentially within domestic jurisdiction. 393/

- 388/ Case No. 1: G A (III/2), 1st Com., 258th mtg., p. 187; 262nd mtg., p. 234.
 Case No. 9: G A (VII), 1st Com., 548th mtg., para. 31.
 Case No. 10: G A (VII), 1st Com., 546th mtg., para. 36.
 Case No. 11: G A (VIII), Ad Hoc Pol. Com., 36th mtg., para. 3; 37th mtg., para. 32.
- 389/ Case No. 1: G A (I/2), Plen., 58th mtg., p. 1180; G A (II), 1st Com., 107th mtg., p. 428; G A (III/2), 1st Com., 258th mtg., p. 188; Plen., 214th mtg., p. 480.
 Case No. 9: G A (VII), 1st Com., 551st mtg., para. 24; G A (VIII), 1st Com., 634th mtg., para. 4.
 Case No. 10: G A (VII), 1st Com., 538th mtg., para. 6; 543rd mtg., para. 33.
 Case No. 11: G A (VII), Ad Hoc Pol. Com., 15th mtg., para. 11; 18th mtg., para. 59.
- 390/ Case No. 2: G A (VIII), Ad Hoc Pol. Com., 19th mtg., para. 27.
 Case No. 9: G A (VII), Plen., 407th mtg., para. 13; 1st Com., 548th mtg., para. 48; G A (VIII), 1st Com., 635th mtg., para. 31.
 Case No. 10: G A (VIII), 1st Com., 644th mtg., para. 30.
 Case No. 11: G A (VII), Ad Hoc Pol. Com., 18th mtg., para. 16.
- 391/ Case No. 2: G A (I/2), Joint 1st and 6th Com., 3rd mtg., p. 28; 5th mtg., pp. 40 and 41; G A (III/2), 1st Com., 267th mtg., pp. 307 and 311; 268th mtg., p. 312; G A (VIII), Ad Hoc Pol. Com., 19th mtg., paras. 27 and 35.
 Case No. 7: G A (III/1), 6th Com., 134th mtg., p. 725; 137th mtg., pp. 750 and 751.
 Case No. 9: G A (VII), Plen., 407th mtg., para. 13; 1st Com., 548th mtg., para. 48; G A (VIII), 1st Com., 635th mtg., para. 31.
 Case No. 10: G A (VII), 1st Com., 545th mtg., para. 42; G A (VIII), 1st Com., 644th mtg., para. 30.
 Case No. 11: G A (VII), Plen., 381st mtg., para. 102; Ad Hoc Pol. Com., 18th mtg., paras. 13 and 14; G A (VIII), Ad Hoc Pol. Com., 39th mtg., para. 13.
- 392/ Case No. 1: G A (I/2), Plen., 58th mtg., p. 1188; 1st Com., 36th mtg., p. 242; 37th mtg., pp. 247, 248, 251-253; G A (II), Plen., 118th mtg., p. 1091; 1st Com., 107th mtg., pp. 424 and 425; G A (III/2), Plen., 213th mtg., p. 466.
 Case No. 9: G A (VII), Plen., 392nd mtg., para. 96; G A (VIII), 1st Com., 630th mtg., para. 29.
 Case No. 10: G A (VII), Plen., 392nd mtg., para. 96; 1st Com., 545th mtg., para. 28.
- 393/ Case No. 2: G A (III/2), 1st Com., 265th mtg., p. 275; 268th mtg., p. 315; G A (V), Ad Hoc Pol. Com., 43rd mtg., para. 54.
 Case No. 9: G A (VII), 1st Com., 548th mtg., para. 28; G A (VIII) 1st Com., 630th mtg., paras. 29 and 51.
 Case No. 10: G A (VIII), 1st Com., 630th mtg., paras. 29 and 51.
 Case No. 11: G A (VII), Plen., 381st mtg., paras. 85-90; Ad Hoc Pol. Com., 13th mtg., para. 5; G A (VIII), Ad Hoc Pol. Com., 32nd mtg., paras. 7-28; 36th mtg., para. 14.

435. In the Security Council, it was contended that a situation which caused international friction 394/ or the continuance of which was likely to endanger the maintenance of international peace (Articles 33 and 34) 395/ did not fall essentially within domestic jurisdiction. That contention was disputed on the grounds that the sole exception to the principle laid down in Article 2 (7) was to be found in the last phrase of that provision, and the exception was not applicable to situations which did not constitute an actual threat to the peace, breach of the peace, or act of aggression (Article 39). 396/

Decisions

436. The resolutions adopted by the General Assembly in connexion with case No. 1 did not refer to Charter provisions on the maintenance of international peace (see paragraphs 13, 18-21, 24, 34 and 35).

437. The Assembly adopted six resolutions in connexion with case No. 2. The first, resolution 44 (I), referred expressly to Article 14 of the Charter (see paragraph 56). The third, 395 (V), fourth, 511 (VI), and fifth, 615 (VII), recalled the first resolution (see paragraphs 61, 65 and 69). It should be noted that some of the resolutions adopted in connexion with case No. 2 referred also to international agreements (see paragraph 403) and to Charter provisions on human rights (see paragraph 416).

438. The resolution adopted in connexion with case No. 7 (see paragraphs 105 and 106) referred to Article 14, to diplomatic practices and to Charter provisions on human rights (see paragraphs 396 and 417).

439. The resolutions adopted in connexion with cases Nos. 9 (see paragraph 147) and 10 (see paragraph 161) referred to Article 11. They also referred to the Charter provisions on self-determination (see paragraphs 430 and 431). Furthermore the resolution adopted in connexion with case No. 10 referred to the Charter provisions regarding Non-Self-Governing Territories (see paragraph 426).

440. One of the resolutions adopted in connexion with case No. 11, 721 (VIII), referred to Article 14 (see paragraph 204). It also referred to Charter provisions on human rights (see paragraph 419).

441. Finally, in connexion with case No. 14, the report of a sub-committee appointed by the Security Council expressed the view that, although there was no actual threat to the peace in the sense of Chapter VII, the fact that the continuance of the particular situation was likely to endanger the maintenance of international peace and security took the matter beyond domestic jurisdiction (see paragraph 243).

394/ Case No. 14: S C, 1st yr., 1st Series, No. 2, 34th mtg., p. 166.
395/ Case No. 14: S C, 1st yr., 1st Series, No. 2, 44th mtg., pp. 317 and 318.
396/ Case No. 14: S C, 1st yr., 1st Series, No. 2, 35th mtg., pp. 181 and 182;
46th mtg., pp. 345 and 346.

C. The last phrase of Article 2 (7):
 "But this principle shall not prejudice the application
 of enforcement measures under Chapter VII"

442. The last phrase of Article 2 (7) was invoked during the debates in cases Nos. 14 and 17.

443. During the Security Council's consideration of case No. 14 -- the Spanish question -- the representative of a permanent member contended that, although the situation in Spain was of a domestic nature, it constituted a threat to the peace and therefore came under Chapter VII of the Charter. Referring to the last phrase of Article 2 (7), he maintained that the Charter authorized the Council to take definite measures in respect of any State whose domestic situation constituted a threat to the peace. 397/ He therefore supported 398/ a draft resolution 399/ by which the Security Council would have called upon Member States to sever diplomatic relations with Spain "in accordance with ... Articles 39 and 41 of the Charter". (See paragraph 233.) Other representatives, however, opposed the draft resolution on the grounds that the situation in Spain did not constitute a threat to the peace and that Articles 39 and 41 were therefore not applicable. 400/

444. During the Security Council's consideration of case No. 17 -- the Indonesian question -- the Netherlands claimed that the question fell essentially within its domestic jurisdiction and that the Council was therefore not competent to deal with it. (See paragraph 277.) Several representatives, holding that the situation in Indonesia came under Chapter VII of the Charter, advanced the following arguments to refute the claim of domestic jurisdiction.

445. First, it was argued that even if the Indonesian question fell essentially within domestic jurisdiction, the last phrase of Article 2 (7) authorized the Council to take action under Article 39 of the Charter. 401/

446. Second, it was contended that, since the question came under Chapter VII, it fell outside the scope of domestic jurisdiction by virtue of the last phrase of Article 2 (7). 402/ The representatives making that contention held that the first resolution adopted on the Indonesian question, though it did not refer to any specific provision of the Charter, was nevertheless based on Chapter VII. 403/ It will be recalled that by that resolution the Council called upon the parties to cease hostilities and to settle their dispute by peaceful means (see paragraph 284).

447. Finally, it was held that a distinction should be drawn between the measures aimed at stopping the fighting in Indonesia and the measures aimed at achieving a long-

-
- 397/ Case No. 14: S C, 1st yr., 1st Series, No. 2, 35th mtg., pp. 185 and 186.
398/ Case No. 14: S C, 1st yr., 1st Series, No. 2, 35th mtg., p. 193.
399/ Case No. 14: S C, 1st yr., 1st Series, No. 2, 34th mtg., p. 167.
400/ Case No. 14: S C, 1st yr., 1st Series, No. 2, 34th mtg., pp. 176 and 177; 35th mtg., pp. 180 and 181, 48th mtg., p. 384.
 See also S C, 1st yr., 1st Series, Special Suppl., p. 8, para. 22.
401/ Case No. 17: S C, 2nd yr., No. 68, 173rd mtg., p. 1684.
402/ Case No. 17: S C, 2nd yr., No. 84, 195th mtg., pp. 2216, 2217 and 2222.
403/ Case No. 17: S C, 2nd yr., No. 77, 185th mtg., p. 2015; No. 84, 195th mtg., p. 2216; 3rd yr., No. 133, 390th mtg., pp. 6 and 7.

range settlement of the dispute. The former were based on Article 40 of Chapter VII and therefore did not prejudice the question of domestic jurisdiction, 404, but as regards the latter there were grave doubts as to the competence of the Council under Article 2 (7). The Council, therefore, could only take such measures as did not prejudice the question of competence -- for instance, it could tender its good offices to the parties. 405;

448. There were also representatives who doubted whether Chapter VII was applicable to the situation in Indonesia and whether the Council was competent under Article 2 (7) to deal with that situation. 406/. They did not, however, oppose the resolution of 1 August 1947 and they supported the resolution of 25 August 1947 by which the Council tendered its good offices to the parties, since in their view those resolutions did not prejudice the question of competence. Their position has been described in paragraphs 379-333.

Decisions

449. The relevant decisions taken in connexion with case No. 14 are dealt with in paragraphs 233, 238 and 252.

450. The resolutions adopted by the Security Council in connexion with case No. 17 over objections raised on the grounds of Article 2 (7) are dealt with in paragraphs 255, 284, 292, 293, 295, 297 and 302-306. None of those resolutions referred either to Chapter VI or to Chapter VII of the Charter.

D. Procedures by which Article 2 (7) was invoked 407/

451. The Charter contains no provision concerning a procedure for the application of Article 2 (7). It does not require that a State objecting to United Nations action on the grounds of Article 2 (7) submit a specific proposal on competence; nor does it prohibit the submission of such a proposal at any stage of the debates. In practice, proposals relating specifically to competence have been submitted in some cases and not in others.

452. In cases Nos. 1, 3, 4, 5, 7, 8, 9, 10, 12, 13, 14, 15, 16, 18, 19 and 21 the States which invoked Article 2 (7), submitted no specific proposal concerning competence. Some informed the Organization that, since the question under consideration fell essentially within their domestic jurisdiction, they would not participate in the debates thereon (see paragraphs 113, 121, 144, 150, 158, 165 and 312). The others participated in the debates and, either before or after the adoption of the agenda, voiced their objections on the grounds of Article 2 (7).

404/ Case No. 17: S C, 2nd yr., No. 82, 193rd mtg., pp. 2175 and 2176; 3rd yr., No. 132, 389th mtg., p. 43.

405/ Case No. 17: S C, 2nd yr., No. 82, 193rd mtg., pp. 2177 and 2178.

406/ Case No. 17: S C, 2nd yr., No. 68, 172nd mtg., pp. 1653 and 1654, 1655 and 1656; 173rd mtg., pp. 1676 and 1677; 3rd yr., No. 134, 392nd mtg., pp. 9 and 10; 4th yr., No. 2, 398th mtg., p. 11; No. 6, 402nd mtg., p. 4.

407/ Cases Nos. 22 and 23, which were considered by the International Court of Justice, are not dealt with in this section since the procedure followed was governed by the Statute of the Court.

453. In cases Nos. 2, 6, 11, 17 and 20, States not only invoked Article 2 (7) in their interventions in the debates but also submitted specific proposals concerning competence. These proposals are studied below together with the arguments advanced in connexion with them. The arguments dealing with the problem of domestic jurisdiction without specific reference to the proposals are summarized in section II, B, of this study and will not be repeated here.

Proposal on competence submitted before the adoption of the agenda

454. During the discussion on the adoption of the agenda at the seventh session of the General Assembly a Member State moved that, having regard to Article 2 (7), the Assembly was not competent to consider the item dealt with in case No. 11. The President ruled that under the rules of procedure of the General Assembly the proposal regarding competence had priority over the question of the inclusion or non-inclusion of the item in the agenda. ^{408/} The President's ruling was challenged on the grounds that the Assembly would be in a position to decide on the question of competence only after the item had been discussed; it was therefore necessary to include the item in the agenda before considering the motion on competence. ^{409/} The Assembly reversed ^{410/} the President's ruling and, without pronouncing itself on the question of competence, included the item in the agenda.

Proposal submitted after the adoption of the agenda and requesting priority for the discussion on competence

455. During the debates in the First Committee in case No. 2, a Member State which contended that the item under consideration fell essentially within its domestic jurisdiction submitted a motion requesting the Committee to decide upon the question of competence before discussing the substance of the item. The motion was rejected. (See above, paragraph 47. See also paragraph 50).

Other proposals on competence submitted after the adoption of the agenda

456. In case No. 2 a Member State moved, at the third session of the General Assembly, that the item under consideration was essentially within its domestic jurisdiction and outside the competence of the Assembly. At the end of the general debate and before the vote on the other proposals which had been submitted, the motion was put to the vote and rejected (see paragraphs 43 and 44). At the fifth session, another Member State which contended that the item under consideration did not fall essentially within domestic jurisdiction moved that the Ad Hoc Political Committee was competent to consider and to vote on all the draft resolutions submitted in connexion with the item. The motion was adopted (see paragraphs 48 and 49).

457. In case No. 6 it was moved, at the third and fourth sessions of the General Assembly, after a debate during which objections to United Nations action had been raised on the grounds of Article 2 (7), that the First Committee vote on the question whether it was competent to vote on the draft resolutions submitted to it. At both sessions the motion was adopted (see above paragraphs 94 and 98).

^{408/} Case No. 11: G A (VII), Plen., 381st mtg., para. 150.

^{409/} Case No. 11: G A (VII), Plen., 381st mtg., paras. 74, 136, 141, 163 and 164.

^{410/} Case No. 11: G A (VII), Plen., 381st mtg., para. 150.

458. In case No. 11 a Member State which contended that the item under consideration fell essentially within its domestic jurisdiction moved, at the seventh and eighth sessions of the General Assembly, that the Ad Hoc Political Committee was not competent to consider the item and that the Assembly was not competent to adopt the draft resolutions recommended by the Committee. At both sessions the motions were put to the vote at the end of the general debate and before the other proposals which had been submitted. They were rejected (see paragraphs 176-179 and 200). At the eighth session, the same Member State submitted a draft resolution by which the Ad Hoc Political Committee would have declared that certain matters listed therein "to which the item [under consideration] relates" were essentially within domestic jurisdiction. At the end of the general debate and before the vote on the other proposals which had been submitted, the Committee rejected the draft resolution (see paragraphs 195-198). Several of the representatives who commented on the draft resolution stated 411/ that they were opposed to it because the matters listed therein were not on the Committee's agenda; hence, the question whether those matters fell essentially within domestic jurisdiction was not relevant.

Proposal requesting the Security Council to adjourn the debate on a matter until the International Court of Justice had ruled on its own competence to deal with a related matter

459. In case No. 20 the Security Council included in its agenda a complaint submitted by a member of the Council claiming that a Member State had failed to comply with provisional measures indicated by the International Court of Justice in respect of a dispute to which that Member State was a party.

460. During the Council's debates, it was maintained that since the dispute fell essentially within domestic jurisdiction the Council was not competent to deal with the complaint. It was also pointed out that, in indicating provisional measures, the Court had expressly reserved the question of its competence to deal with the dispute. Hence, it was moved that the Council should adjourn the debate on the complaint until the Court had ruled on its own competence. In supporting the motion, a member expressed 412/ the view that though the jurisdictions of the Council and of the Court were not identical or even interdependent, the decision of the Court and the reasons on which it would be based might throw some light on the question of the Council's jurisdiction. Another member, however, criticized 413/ the motion on the grounds that it implied that the question of the Council's jurisdiction depended at least to a certain degree on a decision of another United Nations body.

Decision

461. The Council adopted the motion and adjourned the debate without taking a decision on the other proposals submitted in the case. The International Court of Justice subsequently ruled, on grounds not related to Article 2 (7), that it had no jurisdiction to deal with the dispute (see paragraphs 326, 327 and 338).

Proposals containing provisions reserving the question of competence

462. In case No. 17 where it was contended that Article 2 (7) debarred the Security Council from dealing with the item under consideration, a member submitted an amendment

411/ Case No. 11: G A (VIII), Ad Hoc Pol. Com., 32nd mtg., paras. 44-47; 37th mtg., para. 4; 42nd mtg., paras. 27, 30, 31, 33, 47 and 48.

412/ Case No. 20: S C, 6th yr., 565th mtg., paras. 27 and 28.

413/ Case No. 20: S C, 6th yr., 565th mtg., para. 63.

to a draft resolution recommending action in respect of the item. The amendment contained, inter alia, a provision stating that the Council would take that action "without in any way deciding the juridical question concerning.../its/ competence..." The amendment was adopted by a vote in parts, the provision quoted above being rejected, however (see paragraphs 280-284).

463. In case No. 20, where it was also contended that Article 2 (7) debarred the Security Council from dealing with the item under consideration, a member submitted a draft resolution by which the Council would have recommended action in respect of the item "without deciding on the question of its own competence". The draft resolution was not put to the vote since a motion to adjourn the debate was adopted (see paragraphs 324 to 327).

Proposals requesting the International Court of Justice to give an advisory opinion on the question of competence

464. In case No. 2 an amendment to a draft resolution before the General Assembly requested the International Court of Justice to give an advisory opinion on the question whether the matters under consideration fell essentially within that State's domestic jurisdiction. In case No. 17 a member of the Security Council submitted a draft resolution requesting the International Court of Justice to give an advisory opinion on whether the Council was competent under Article 2 (7) to deal with the question under consideration. Contending that the question of competence was a previous question, that member moved that the draft resolution be given priority over all other proposals submitted to the Council.

465. The following contentions were submitted in favour of the proposals to request an advisory opinion.

466. In case No. 2 it was maintained that the question whether a particular matter was within the domestic jurisdiction of a State should not be decided by the interested party, nor by a political body, 414/ but should be referred to the Court for an authoritative exposition of the law and a judicial application of the law to the facts. 415/ It was maintained that juridical solutions would have more weight than a decision taken on political grounds, and reference to the Court would further the rule of law which the United Nations was seeking to establish. 416/ Some representatives favouring reference to the Court suggested that the question be phrased broadly so that the Court would not be required to give a narrow interpretation. 417/ It was also noted that when an advisory opinion was delivered, the question would be returned to the General Assembly which could then seek to find a solution with reference both to the legal and the political aspects. 418/

467. In case No. 17 it was argued that if the Security Council exceeded its competence it would undermine the authority which it must possess. 419/ To make sure that it did not exceed its competence, it should request the International Court of Justice to give an authoritative interpretation of Article 2 (7). In so doing the

414/ Case No. 2: G A (I/2), Joint 1st and 6th Com., 3rd mtg., p. 31.

415/ Case No. 2: G A (I/2), Joint 1st and 6th Com., 2nd mtg., p. 11.

416/ Case No. 2: G A (I/2), Joint 1st and 6th Com., 2nd mtg., pp. 14 and 15; 4th mtg., pp. 32 and 36.

417/ Case No. 2: G A (I/2), Joint 1st and 6th Com., 4th mtg., p. 35.

418/ Case No. 2: G A (I/2), Joint 1st and 6th Com., 4th mtg., p. 35.

419/ Case No. 17: S C, 2nd yr., No. 84, 195th mtg., pp. 2214 and 2215.

Council would demonstrate its desire to be impartial and to act in strict accordance with the provisions of the Charter. ^{420/} It was also maintained ^{421/} that an advisory opinion rendered by the Court would help to build a body of rules and standards which would enable the Council in future to judge whether it had competence in a given matter. ^{422/}

468. The following arguments were submitted against the proposals to request an advisory opinion.

469. In case No. 2 it was maintained that the question whether a matter was essentially within the domestic jurisdiction of a State was one for the General Assembly to decide and not for the Court. ^{423/} The political aspects far outweighed the legal aspects and to treat the question as a legal matter would be to minimize the political importance and prestige of the United Nations. ^{424/} It was said, in particular, that the proposal to request an advisory opinion did not take sufficient account of the political issue of the deterioration of relations between the countries involved. ^{425/} It was also suggested that a juridical interpretation of Article 2 (7) might give too much weight to the restriction on competence of the United Nations, particularly in respect of human rights and fundamental freedoms. ^{426/}

470. In case No. 17 it was recalled that the San Francisco Conference had rejected a proposal ^{427/} that the question whether Article 2 (7) applied to a particular matter be referred to the International Court of Justice. Hence, Article 2 (7) should be interpreted in the same manner as the other provisions of the Charter, that is, by the organ concerned and without reference to the Court. ^{428/} It was also argued that, though advisory opinions were not legally binding, it would be difficult, from the moral point of view, for the Council to set aside an advisory opinion rendered by the Court at the Council's request. In requesting an opinion the Council would therefore lose much of its freedom of action. ^{429/} Finally, some representatives held that the Council should not consult the Court on the question of competence since political as well as legal considerations were involved. ^{430/} Others contended that the question of competence was not a legal but a political question upon which only the Council could decide. ^{431/}

Decisions

471. The motion on priority and the amendment and the draft resolution requesting advisory opinions were rejected (see paragraphs 46 and 287-289).

^{420/} Case No. 17: S C, 2nd yr., No. 83, 194th mtg., p. 2194.

^{421/} Case No. 17: S C, 2nd yr., No. 84, 195th mtg., pp. 2218 and 2219.

^{422/} Case No. 17. It was further argued (S C, 2nd yr., No. 83, 194th mtg., p. 2194) that the adoption of a draft resolution requesting an advisory opinion on the question of competence would not prevent the Council from tendering its good offices to the parties since such an offer would not prejudice the question of competence (see para. 583).

^{423/} Case No. 2: G A (I/2), Joint 1st and 5th Com., 4th mtg., p. 37.

^{424/} Case No. 2: G A (I/2), Joint 1st and 6th Com., 3rd mtg., p. 29.

^{425/} Case No. 2: G A (I/2), Joint 1st and 6th Com., 2nd mtg., pp. 16 and 17.

^{426/} Case No. 2: G A (I/2), Joint 1st and 6th Com., 3rd mtg., p. 23.

^{427/} Documents of the United Nations Conference on International Organization, vol. 6, pp. 509 and 510, doc. 1019, I/1/42.

^{428/} Case No. 17: S C, 2nd yr., No. 84, 195th mtg., p. 2216.

^{429/} Ibid., p. 2217.

^{430/} Ibid., pp. 2215, 2216 and 2220.

^{431/} Ibid., p. 2222.

Table of cases studied in the General Survey and in
the Analytical Summary of Practice

Organ <u>a/</u>	Reference number of case	Title of case	Relevant paragraphs of the General Survey	Relevant paragraphs of the Analytical Summary of Practice
General Assembly (first, second, third and fifth sessions)	1	Relations of Member States with Spain	12 to 40	353, 359, 361, 363, 365, 369, 433, 434, 436 and 452.
General Assembly (first, second, third, fifth, sixth, seventh and eighth sessions)	2	Treatment of people of Indian origin in the Union of South Africa	41 to 75	342, 343, 346, 347, 349, 351, 352, 354, 358, 359, 361, 386, 398, 399, 400, 403, 409, 410, 412, 413, 414, 415, 416, 433, 434, 437, 453, 455, 456, 464, 465, 466, 468, 469 and 471.
General Assembly (first session)	3	The question of convening conferences of representatives of Non-Self-Governing Territories	76 to 80	422, 423, 424, 426 and 452.
General Assembly (first, second, third, fourth, sixth and seventh sessions)	4	The question of the establishment of committees on information transmitted under Article 73 e	81 to 85	409, 410, 422, 423, 424, 426 and 452.
General Assembly (third, fourth, fifth, sixth, seventh and eighth sessions)	5	The question of the General Assembly's competence to determine the territories to which Article 73 e applies	86 and 87	409, 422, 423, 424, 426 and 452.

a/ The session or year during which the case was discussed is indicated between brackets.

Organ <u>a/</u>	Reference number of case	Title of case	Relevant paragraphs of the General Survey	Relevant paragraphs of the Analytical Summary of Practice
General Assembly (third, fourth, fifth and sixth sessions)	6	Threats to the political independence and territorial integrity of Greece	88 to 100	363, 364, 366, 368, 369, 453 and 457.
General Assembly (third session)	7	Observance of human rights in the Union of Soviet Socialist Republics	101 to 107	346, 347, 349, 354, 391, 392, 396, 409, 412, 413, 415, 417, 433, 434, 438 and 452.
General Assembly (third, fourth and fifth sessions)	8	Observance of human rights in Bulgaria, Hungary and Romania	108 to 137	346, 347, 349, 351, 352, 354, 386, 398, 399, 400, 404, 409, 412, 413, 415, 418 and 452.
General Assembly (sixth, seventh and eighth sessions)	9	The question of Morocco	138 to 154	346, 347, 354, 386, 388, 398, 399, 400, 401, 402, 409, 410, 422, 423, 424, 425, 427, 428, 430, 433, 434, 439 and 452.
General Assembly (seventh and eighth sessions)	10	The Tunisian question	155 to 170	346, 347, 354, 386, 388, 398, 399, 400, 401, 402, 409, 410, 422, 423, 424, 426, 427, 428, 431, 433, 434, 439 and 452.
General Assembly (seventh and eighth sessions)	11	The question of race conflict in the Union of South Africa	171 to 206	342, 343, 346, 347, 349, 351, 352, 354, 356, 357, 358, 359, 360, 361, 362, 371, 372, 373, 374, 409, 410, 412, 413, 414, 415, 419, 433, 434, 440, 453, 454 and 458.

Organ <u>a/</u>	Reference number of case	Title of case	Relevant paragraphs of the General Survey	Relevant paragraphs of the Analytical Summary of Practice
General Assembly (fifth and sixth sessions) and Economic and Social Council (eleventh, twelfth, thirteenth, fourteenth, sixteenth and eighteenth sessions)	12	Draft International Covenants on Human Rights	208 to 220	398, 399, 405, 409, 412, 413, 420 and 452.
General Assembly (sixth and seventh sessions) and Economic and Social Council (first special session, fourteenth, fifteenth and eighteenth sessions)	13	Recommendations concerning international respect for the self-determination of peoples	221 to 229	427, 428, 429, 432 and 452.
Security Council (1946)	14	The Spanish question	231 to 253	388, 433, 435, 441, 442, 443, 449 and 452.
Security Council (1946)	15	The Greek question (I)	254 to 258	346, 347, 353, 354, and 452.
Security Council (1946 and 1947)	16	The Greek question (II)	259 to 272	363, 367, 370, 375, 376, 377, 378 and 452.

Organ <u>a/</u>	Reference number of case	Title of case	Relevant paragraphs of the General Survey	Relevant paragraphs of the Analytical Summary of Practice
Security Council (1947, 1948 and 1949)	17	The Indonesian question	273 to 308	357, 379, 380, 381, 382, 383, 384, 442, 444, 445, 446, 447, 448, 450, 453, 462, 464, 465, 467, 468, 470 and 471.
Security Council (1948)	18	The Czechoslovak question	309 to 316	346, 347, 352, 353, 354, 391, 393, 395, 398, 399, 402 and 452.
Security Council (1950)	19	The Greek question (III)	317 to 319	346, 347, 355 and 452.
Security Council (1951)	20	The Anglo-Iranian Oil Company question	320 to 327	346, 347, 352, 353, 354, 391, 394, 395, 398, 399, 402, 453, 459, 460, 461 and 463.
Security Council (1953)	21	The question of Morocco	328 to 332	346, 347, 349, 352, 353, 355, 398, 399, 401, 402 and 452.
International Court of Justice (1950)	22	Interpretation of Peace Treaties with Bulgaria, Hungary and Romania	334 and 335	388, 397, 399, 400, 406 and 421.
International Court of Justice (1951 and 1952)	23	The Anglo-Iranian Oil Company case	336 to 338	397 and 406.



ANNEX

Resolutions adopted over objections raised on the grounds of
Article 2 (7) in cases not dealt with in the present study

The following table lists resolutions adopted over objections raised on the grounds of Article 2 (7) in cases which are not dealt with in the General Survey and in the Analytical Summary of Practice since the objections did not lead to an exchange of views on the domestic jurisdiction clause (see Introductory Note, paragraph 2). The table indicates the numbers and the titles of the resolutions and the organs which adopted them. For each resolution a footnote refers to the Official Records in which the objections raised on the grounds of Article 2 (7) may be found.

Organ	Resolution number <u>a/</u>	Title of resolution
General Assembly	415 (V) <u>b/</u>	Transfer of functions of the International Penal and Penitentiary Commission
General Assembly	429 (V) <u>c/</u>	Draft Convention relating to the Status of Refugees
General Assembly	629 (VII) <u>d/</u>	Draft protocol relating to the status of stateless persons
General Assembly	687 (VII) <u>e/</u>	International criminal jurisdiction
General Assembly	733 (VIII) <u>f/</u>	Studies on internal migration
Economic and Social Council	116 D (VI) <u>g/</u>	Stateless persons

-
- a/ The roman figure between brackets indicates the session at which the resolution was adopted.
- b/ For the objections raised on the grounds of Article 2 (7), see G A (V), Plen., vol. I, 314th mtg., para. 117.
- c/ For the objections raised on the grounds of Article 2 (7), see G A (V), 3rd Com., 329th mtg., para. 26.
- d/ For the objections raised on the grounds of Article 2 (7), see G A (VII), 3rd Com., 421st mtg., para. 4.
- e/ For the objections raised on the grounds of Article 2 (7), see G A (VII), 6th Com., 324th mtg., para. 1; 327th mtg., paras. 41 and 46.
- f/ For the objections raised on the grounds of Article 2 (7), see G A (VIII), 3rd Com., 511th mtg., para. 19.
- g/ For the objections raised on the grounds of Article 2 (7), see E S C (VI), Plen., 159th mtg., p. 310.

Organ <u>a/</u>	Resolution number	Title of resolution
Economic and Social Council	147 G (VII) <u>h/</u>	Report of second session of the Transport and Communications Commission <u>i/</u>
Economic and Social Council	155 C (VII) <u>j/</u>	Prevention of crime and treatment of offenders
Economic and Social Council	222 A (IX) <u>k/</u> annex I	Observations on and guiding principles of an expanded programme of technical assistance for economic development
Economic and Social Council	222 D (IX) <u>l/</u>	Methods of financing economic development of under-developed countries
Economic and Social Council	227 F (IX) <u>m/</u>	Passport and frontier formalities
Economic and Social Council	248 B (IX) <u>n/</u>	Study of statelessness
Economic and Social Council	346 (XII) <u>o/</u>	International co-operation on water control and utilization
Economic and Social Council	379 B (XIII) <u>p/</u>	Licensing of motor-vehicle drivers
Economic and Social Council	379 D (XIII) <u>q/</u>	Customs formalities for international road transport and touring

- h/ For the objections raised on the grounds of Article 2 (7), see E S C (VII), Plen., 223rd mtg., p. 794.
- i/ E S C resolution 147 G (VII) is concerned with the question of passport and frontier formalities.
- j/ For the objections raised on the grounds of Article 2 (7), see E S C (VII), Plen., 198th mtg., p. 377; E/AC.7/SR.50, p. 14; E/CN.5/SR.97, pp. 4 and 5.
- k/ For the objections raised on the grounds of Article 2 (7), see E S C (IX), Plen., 343rd mtg., pp. 921, 922 and 926.
- l/ For the objections raised on the grounds of Article 2 (7), see E S C (IX), Plen., 340th mtg., p. 858.
- m/ For the objections raised on the grounds of Article 2 (7), see E S C (IX), Plen., 337th mtg., p. 821.
- n/ For the objections raised on the grounds of Article 2 (7), see E S C (IX), Plen., 327th mtg., p. 641.
- o/ For the objections raised on the grounds of Article 2 (7), see E S C (XII), Plen., 464th mtg., para. 61.
- p/ For the objections raised on the grounds of Article 2 (7), see E/AC.6/SR.118, p. 6.
- q/ For the objections raised on the grounds of Article 2 (7), see E/AC.6/SR.118, p.13.

Organ	Resolution number <u>a/</u>	Title of resolution
Economic and Social Council	379 G (XIII) <u>r/</u>	Discrimination in transport insurance
Economic and Social Council	434 G (XIV) <u>s/</u>	Simplification of formalities and reduction of costs for migrants
Economic and Social Council	468 E (XV) <u>t/</u>	Licensing of motor-vehicle drivers
Economic and Social Council	471 D (XV) <u>u/</u>	Report of the Population Commission (seventh session) <u>v/</u>
Economic and Social Council	523 (XVII) <u>w/</u>	Allegations regarding infringements of trade union rights
Economic and Social Council	526 A (XVII) <u>x/</u>	Draft Protocol relating to the Status of Stateless Persons

-
- r/ For the objections raised on the grounds of Article 2 (7), see E/AC.6/SR.119, p. 6.
- s/ For the objections raised on the grounds of Article 2 (7), see E S C (XIV), Plen., 659th mtg., para. 33.
- t/ For the objections raised on the grounds of Article 2 (7), see E S C (XV), Plen., 687th mtg., para. 94.
- u/ For the objections raised on the grounds of Article 2 (7), see E S C (XV), Plen., 685th mtg., para. 47.
- v/ E S C resolution 471 D (XV) is concerned with the question of internal migration.
- w/ For the objections raised on the grounds of Article 2 (7), see E S C (XVII), Plen., 788th mtg., para. 21.
- x/ For the objections raised on the grounds of Article 2 (7), see E/AC.7/SR.269, p. 9.

Chapter II

MEMBERSHIP

