

ARTICLE 2 (7)

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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. This study is organized in the same manner as the previous Repertory studies of Article 2 (7). A description of the method of selecting and treating the material may be found in the Introductory Note to the study on Article 2 (7) in the Repertory.

2. As in the two previous studies, the only cases dealt with are those in which objections to United Nations action were raised on the grounds of Article 2 (7). Of these, the cases in which such objections led to discussion of the domestic jurisdiction clause are treated in detail; cases in which resolutions were adopted over such objections, without discussion of Article 2 (7), are listed in the annex.

3. The study does not cover decisions in connexion with which no objections based on Article 2 (7) were raised, though they constitute, at least by implication, an affirmation of the competence of the United Nations and may, therefore, have a bearing on the problem of domestic jurisdiction.

4. Of the fourteen cases dealt with in the study on Article 2 (7) in the Repertory, Supplement No. 1, seven were again considered by United Nations organs during the period covered by this Supplement. These seven cases appear in the present study under the same reference numbers as those used in the Repertory, Supplement No. 1.

5. The seven cases are as follows:

<u>Case number and title</u>	<u>Relevant paragraphs of study</u>	<u>Organ</u>
<u>Case No. 2</u> : Treatment of people of Indian origin in the Union of South Africa	7-15, 139, 140, 146-149, 153-155, 157-159, 161-163, 177, 178, 180, 194-196	General Assembly
<u>Case No. 11</u> : The question of race conflict in the Union of South Africa	16-23, 139-140, 142-144, 153-155, 157-158, 161-162, 164, 177-178, 180, 194-196	General Assembly
<u>Case No. 12</u> : Draft International Covenants on Human Rights	109	General Assembly, Economic and Social Council
<u>Case No. 13</u> : Recommendations concerning international respect for the self-determination of peoples	110-116, 171, 173-175	
<u>Case No. 24</u> : The question of Cyprus	24-35, 137-140, 154, 168, 170-174, 176, 184-185, 187, 191	General Assembly
<u>Case No. 25</u> : The question of West Irian	36-38	General Assembly
<u>Case No. 27</u> : The question of Algeria	39-61, 136-140, 142-144, 154-155, 157-159, 162, 165, 171-173, 176-178, 180-181, 184, 186-188, 197	General Assembly

6. In addition, the present study deals with four new cases, which have been given the following reference numbers:

<u>Case number and title</u>	<u>Relevant paragraphs of study</u>	<u>Organ</u>
<u>Case No. 30</u> : The question of Hungary	62-108, 137-140, 146, 148, 150, 153, 155, 157, 160, 162, 166, 177, 179, 182, 198	General Assembly
<u>Case No. 31</u> : The question of Hungary	117-125, 139-140, 146, 148, 151, 177, 179, 183	Security Council
<u>Case No. 32</u> : The question of Oman	126-130, 139-140, 189, 190	Security Council
<u>Case No. 33</u> : The case of certain Norwegian loans	131-134	International Court of Justice

I. GENERAL SURVEY

A. General Assembly

** Case No. 1

Relations of Member States with Spain

Case No. 2

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

RESOLUTIONS 1015 (XI), 1179 (XII) AND 1302 (XIII)

7. The question of the treatment of people of Indian origin in the Union of South Africa was further considered by the General Assembly at its eleventh, twelfth and thirteenth sessions.

8. During the discussion 1/ on the adoption of the agenda at each of these sessions, the representative of the Union of South Africa contended 2/ that since the item fell essentially within the domestic jurisdiction of the Union Government, Article 2 (7) debarred the General Assembly from placing it on the agenda. The arguments submitted for and against this contention are contained in the Analytical Summary of Practice of the present study. They relate to the following question:

1/ At the eleventh session, the inclusion of the item in the agenda was requested by the representatives of India and Pakistan by letters dated, respectively, 5 and 11 September 1956. Both representatives informed the General Assembly that, after the adoption of resolution 919 (X) (Repertory, Supplement No. 1, vol. I, under Article 2 (7), para. 17), their Governments had requested the Government of the Union of South Africa to enter into negotiations without in any way prejudging "the position adopted by any of the parties concerned in respect of the issue of 'Domestic Jurisdiction' under Article 2, para. 7, of the Charter of the United Nations". The Union Government, however, had declined to accede to the request and no negotiations had taken place (G A (XI), Annexes, vol. I, a.i. 24, A/3186 and A/3188).

At the twelfth session, the representatives of India and Pakistan again requested the inclusion of the item in the agenda in letters dated 16 August 1957. The explanatory memoranda attached to the letters stated that the Union Government had rejected a new offer by the Governments of India and Pakistan to enter into negotiations on the basis of G A resolution 1015 (XI). (G A (XII), Annexes, a.i. 61, A/3643 and A/3645; for the text of resolution 1015 (XI), see below, para. 13.)

At the thirteenth session, the two representatives once more requested the inclusion of the item in the agenda in letters dated 14 July 1958. The explanatory memoranda attached to the letters stated that the Union Government had rejected a further offer by the Governments of India and Pakistan to enter into negotiations on the basis of G A resolution 1179 (XII). (G A (XIII), Annexes, a.i. 62, pp. 1-3, A/3850 and A/3854; for the text of G A resolution 1179 (XII), see below, para. 14.)

2/ G A (XI), Plen., vol. I, 577th mtg., para. 75 et seqq.; Gen. Com., 107th mtg., para. 21; G A (XII), Plen., 682nd mtg., paras. 68 and 69; Gen. Com., 111th mtg., para. 52; G A (XIII), Plen., 752nd mtg., para. 31; Gen. Com., 117th mtg., para. 39.

Whether the inclusion of an item in the agenda constitutes intervention (paragraph 140, below).

9. Despite the objections raised on the grounds of Article 2 (7), the General Assembly placed the item on its agenda at each session. At the eleventh session, the decision was taken 3/ at the 578th plenary meeting, on 15 November 1956, by 63 votes to 2, with 13 abstentions; at the twelfth session, it was taken 4/ at the 682nd plenary meeting, on 20 September 1957, by 63 votes to 2, with 16 abstentions. At the thirteenth session, the item was placed 5/ on the agenda at the 752nd plenary meeting, on 22 September 1958 without a vote.

10. During the discussion of the item itself - a discussion which took place, as noted below, 6/ without the participation of the Union of South Africa - several representatives contended that the matter fell essentially within the domestic jurisdiction of that Member State. The arguments submitted for and against the contention are given in the Analytical Summary of Practice. They relate to the following questions:

Whether a matter governed by international agreements can fall essentially within domestic jurisdiction (paragraphs 147 and 148 below);

Whether a matter governed by the Charter in general can fall essentially within domestic jurisdiction (paragraphs 153 and 154);

Whether a matter governed by the Charter provisions on human rights can fall essentially within domestic jurisdiction (paragraphs 157 to 159, 161 and 162);

Whether a matter governed by the Charter provisions on the maintenance of peace can fall essentially within domestic jurisdiction (paragraph 178).

11. Following discussion of the item during the period under review, the General Assembly adopted three resolutions numbered 1015 (XI), 1179 (XII) and 1302 (XIII). In each instance, the action was taken without a dissenting vote. There were, however, several abstentions. It should be noted that some of these abstentions were expressly based 7/ on the position that the competence of the General Assembly on the matter was in doubt, in view of the provisions of Article 2 (7).

12. The three resolutions adopted by the General Assembly follow.

i. Action taken at the eleventh session: resolution 1015 (XI)

13. Resolution 1015 (XI), adopted 8/ at the 648th plenary meeting, on 30 January 1957, by 42 votes to none, with 12 abstentions, reads:

"The General Assembly,

"Recalling its resolution 919 (X) of 14 December 1955,

"Having considered the reports of the Governments of India and Pakistan,

3/ G A (XI), Plen., vol. I, 578th mtg., para. 5.

4/ G A (XII), Plen., 682nd mtg., para. 120.

5/ G A (XIII), Plen., 752nd mtg., para. 51.

6/ Paras. 194-196.

7/ G A (XI), Spec. Pol. Com., 10th mtg., paras. 42 and 52; G A (XII), Spec. Pol. Com., 61st mtg., paras. 24, 35 and 36; 63rd mtg., para. 35.

8/ G A (XI), Plen., vol. II, 648th mtg., para. 1.

"1. Notes that the Governments of both India and Pakistan have reiterated their readiness to pursue negotiations with the Government of the Union of South Africa, in accordance with the expressed desires of the United Nations;

"2. Notes with regret that the Government of the Union of South Africa has not yet agreed to such negotiations;

"3. Urges the parties concerned to enter into negotiations to facilitate a settlement of the problem of the treatment of people of Indian origin in the Union of South Africa and, more particularly, appeals to the Government of the Union of South Africa to co-operate to this end;

"4. Recalls also its resolution 926 (X) of 14 December 1955, which provides a unified programme under the name of 'advisory services in the field of human rights';

"5. Invites the parties to report as appropriate, jointly or separately, to the General Assembly."

ii. Action taken at the twelfth session: resolution 1179 (XII)

14. Resolution 1179 (XII), adopted 9/ at the 723rd plenary meeting, on 26 November 1957, by 64 votes to none, with 15 abstentions, reads:

"The General Assembly,

"Recalling its resolution 1015 (XI) of 30 January 1957,

"Having considered the reports of the Governments of India and of Pakistan,

"1. Notes that the Governments of both India and Pakistan have reiterated their readiness to pursue negotiations with the Government of the Union of South Africa in accordance with the expressed desires of the United Nations;

"2. Notes with regret that the Government of the Union of South Africa has not agreed to carry forward the purposes of General Assembly resolution 1015 (XI) of 30 January 1957;

"3. Appeals to the Government of the Union of South Africa to participate in negotiations with the Governments of India and of Pakistan with a view to solving this problem in accordance with the purposes and principles of the United Nations Charter and the Universal Declaration of Human Rights;

"4. Invites the parties concerned to report to the General Assembly as appropriate, jointly or separately, regarding the progress of the negotiations."

iii. Action taken at the thirteenth session: resolution 1302 (XIII)

15. Resolution 1302 (XIII), adopted 10/ at the 783rd plenary meeting, on 10 December 1958, by 69 votes to none, with 10 abstentions, reads:

9/ G A (XII), Plen., 723rd mtg., para. 113.

10/ G A (XIII), Plen., 783rd mtg., para. 59.

"The General Assembly,

"Recalling its resolution 1179 (XII) of 26 November 1957,

"Having considered the reports of the Governments of India and Pakistan,

"1. Notes that the Governments of both India and Pakistan have reiterated their readiness to enter into negotiations with the Government of the Union of South Africa in accordance with the expressed desires of the United Nations, and with the express declaration that such negotiations would not in any way prejudice their own position or the position taken by the Government of the Union of South Africa regarding their respective juridical stands in the dispute;

"2. Regrets that the Government of the Union of South Africa has not replied to the communications sent by the Governments of India and Pakistan on this subject and has not yet agreed to confer with those Governments with a view to arriving at a solution of this problem in accordance with the purposes and principles of the United Nations Charter and the Universal Declaration of Human Rights;

"3. Appeals to the Government of the Union of South Africa to enter into negotiations to that end with the Governments of India and Pakistan without prejudice to the position taken by the Union of South Africa regarding its juridical stand on the issue;

"4. Invites Member States to use their good offices, as appropriate, to bring about negotiations in accordance with the desires expressed by the General Assembly at previous sessions;

"5. Invites the parties concerned to report to the General Assembly as appropriate, jointly or separately, regarding any progress which may be made."

**** Case No. 3**

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

**** Case No. 4**

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

**** Case No. 5**

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

**** Case No. 6**

Threats to the political independence and territorial integrity of Greece

**** Case No. 7***Observance of human rights in the Union of Soviet Socialist Republics***** Case No. 8***Observance of human rights in Bulgaria, Hungary and Romania***** Case No. 9***The question of Morocco***** Case No. 10***The Tunisian question***Case No. 11***The question of race conflict in the Union of South Africa*

16. The General Assembly resumed its consideration of the question of race conflict in the Union of South Africa at the eleventh, twelfth and thirteenth sessions.

17. During the discussion 11/ of the adoption of the agenda at each of these sessions,

11/ At the eleventh session, the inclusion of the item in the agenda was requested by three Member States in letters dated 12 September, 27 September and 11 October 1956. An explanatory memorandum attached to the letter of 12 September 1956 referred in particular to G A resolution 917 (X) (See Repertory, Supplement No. 1, vol. I, under Article 2 (7), para. 54 et seqq.) and stated that "... the Government of the Union of South Africa has paid no attention to the appeal contained in this resolution and continues to pursue its policy of racial discrimination and violation of human rights." (G A (XI), Annexes, a.i. 61, A/3190 and Add.1 and 2.)

At the twelfth session, the inclusion of the item in the agenda was requested by nine Member States by letters dated 6 August 1957 and 3 September 1957. In an explanatory memorandum, the nine States contended that: "Since the adoption by the Assembly of the above resolution [1016 (XI)] no communication has been made to Member States of the United Nations indicating that, as a result of the Secretary-General's action in terms of paragraph 5 thereof, [see below, paragraph 21 and foot-note 18] steps have been taken or are contemplated by the Union of South Africa to carry forward the purposes of the resolution." (G A (XII), Annexes, a.i. 60, A/3628 and Add.1.)

At the thirteenth session, the inclusion of the item was requested by eleven Member States in a letter dated 13 August 1958. The explanatory memorandum attached to the letter referred to G A resolution 1178 (XII) (see below, paragraph 22), to the Universal Declaration of Human Rights and to Articles 1, 55 c and 56 of the Charter. It also stated that the racial situation in the Union of South Africa "continues unameliorated" and that "a grave threat to peaceful relations between ethnic groups of the world, to which attention has been drawn by successive resolutions of the General Assembly, continues." (G A (XIII), Annexes, a.i. 67, A/3872.)

the representative of the Union of South Africa contended 12/ that, since the item fell essentially within the domestic jurisdiction of the Union Government, Article 2 (7) debarred the General Assembly from placing it on the agenda. The arguments submitted for and against this contention are given in the Analytical Summary of Practice. They relate to the following question:

Whether the inclusion of the item in the agenda constitutes intervention (paragraph 140, below).

18. Despite the objections raised on the grounds of Article 2 (7), the General Assembly placed the item on its agenda at each session. At the eleventh session, the decision was taken 13/ at the 578th plenary meeting, on 15 November 1956, by 61 votes to 8, with 7 abstentions; at the twelfth session, it was taken 14/ at the 682nd plenary meeting, on 20 September 1957, by 64 votes to 8, with 9 abstentions. At the thirteenth session, the item was placed 15/ on the agenda without a vote at the 752nd plenary meeting, on 22 September 1958.

19. During the discussion of the item itself - a discussion which took place, as noted below, 16/ without the participation of the Union of South Africa - several representatives contended that the matter fell essentially within the domestic jurisdiction of that Member State. The arguments submitted for and against the contention are presented in the Analytical Summary of Practice. They relate to the following questions:

Whether a recommendation - in general or to a particular State - constitutes intervention (paragraph 143, below).

Whether a matter governed by the Charter in general can fall essentially within domestic jurisdiction (paragraphs 153 and 154);

Whether a matter governed by the Charter provisions on human rights can fall essentially within domestic jurisdiction (paragraphs 157, 158, 161 and 162);

Whether a matter governed by the Charter provisions on the maintenance of peace can fall essentially within domestic jurisdiction (paragraph 178).

20. As a result of the discussion of the item, and in spite of the objections raised on the grounds of Article 2 (7) by the representatives supporting the claim of domestic jurisdiction, during the period under review the General Assembly took the action described in the following sections.

a. ACTION TAKEN AT THE ELEVENTH SESSION: RESOLUTION 1016 (XI)

21. At the 648th plenary meeting, on 30 January 1957, the General Assembly, by 56 votes to 5, with 12 abstentions, adopted 17/ the following resolution, 1016 (XI):

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- 12/ G A (XI), Plen., vol. I, 577th mtg., para. 75 et seqq.; Gen. Com., 107th mtg., para. 21; G A (XII), Plen., 682nd mtg., paras. 68 and 69; Gen. Com., 111th mtg., para. 52; G A (XIII), Plen., 752nd mtg., para. 31; Gen. Com., 117th mtg., para. 39.
- 13/ G A (XI), Plen., vol. I, 578th mtg., para. 6.
- 14/ G A (XII), Plen., 682nd mtg., para. 85.
- 15/ G A (XIII), Plen., 752nd mtg., para. 51.
- 16/ Paras. 194-196.
- 17/ G A (XI), Plen., vol. I, 648th mtg., para. 61.

"The General Assembly,

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

"Recalling in particular paragraph 6 of General Assembly resolution 917 (X) of 6 December 1955 calling upon the Government of the Union of South Africa to observe its obligations under the Charter of the United Nations,

"Noting that resolution 616 B (VII) of 5 December 1952 declared, inter alia, that governmental policies which are designed to perpetuate or increase discrimination are inconsistent with the Charter,

"Further noting that resolutions 395 (V) of 2 December 1950, 511 (VI) of 12 January 1952 and 616 A (VII) of 5 December 1952 have successively affirmed that a policy of 'racial segregation' (apartheid) is necessarily based on doctrines of racial discrimination,

"Convinced that, in a multiracial society, harmony and respect for human rights and freedoms and the peaceful development of a unified community are best assured when patterns of legislation and practices are directed towards ensuring a legal order that will ensure equality before the law and the elimination of discrimination between all persons regardless of race, creed or colour,

"Convinced also that a conciliatory approach in accordance with the principles of the Charter is necessary for progress towards a solution of this problem,

"1. Deplores that the Government of the Union of South Africa has not yet observed its obligations under the Charter and has pressed forward with discriminatory measures which would make the future observance of those obligations more difficult;

"2. Affirms its conviction that perseverance in such discriminatory policies is inconsistent not only with the Charter but with the forces of progress and international co-operation in implementing the ideals of equality, freedom and justice;

"3. Calls upon the Government of the Union of South Africa to reconsider its position and revise its policies in the light of its obligations and responsibilities under the Charter and in the light of the principles subscribed to and the progress achieved in other contemporary multiracial societies;

"4. Invites the Government of the Union of South Africa to co-operate in a constructive approach to this question, more particularly by its presence in the United Nations;

"5. Requests the Secretary-General, as appropriate, to communicate with the Government of the Union of South Africa to carry forward the purposes of the present resolution." 18/

18/ In the Annual Report of the Secretary-General on the Work of the Organization submitted at the twelfth session, he informed the General Assembly that: "On 5 February, the Secretary-General transmitted the resolution to the Government of the Union of South Africa, drawing the attention of the Government to it." (G A (XII), Suppl. No. 1, p. 57.)

b. ACTION TAKEN AT THE TWELFTH SESSION: RESOLUTION 1178 (XII)

22. At the 723rd plenary meeting, on 26 November 1957, the General Assembly, by 59 votes to 6, with 14 abstentions, adopted 19/ resolution 1178 (XII) as follows:

"The General Assembly,

"Recalling its previous resolutions, in particular resolution 1016 (XI) of 30 January 1957, on the question of race conflict in South Africa resulting from the policy of apartheid of the Government of the Union of South Africa,

"Recalling in particular paragraph 6 of its resolution 917 (X) of 6 December 1955, calling upon the Government of the Union of South Africa to observe its obligations under the Charter of the United Nations,

"Noting that the General Assembly, in resolution 616 B (VII) of 5 December 1952, declared, inter alia, that governmental policies which are designed to perpetuate or increase discrimination are inconsistent with the Charter,

"Further noting that resolutions 395 (V) of 2 December 1950, 511 (VI) of 12 January 1952 and 616 A (VII) of 5 December 1952 have successively affirmed that a policy of 'racial segregation' (apartheid) is necessarily based on doctrines of racial discrimination,

"1. Deplores that the Government of the Union of South Africa has not yet responded to the call and invitation conveyed in paragraphs 3 and 4 of General Assembly resolution 1016 (XI) of 30 January 1957;

"2. Again draws the attention of the Government of the Union of South Africa to that resolution and, in particular, to paragraphs 3 and 4 thereof;

"3. Appeals to the Government of the Union of South Africa, in the interests of the common observance by Member States of the high purposes and principles enshrined in the Charter of the United Nations, to which the Government of the Union of South Africa has also subscribed and is as much committed as any other Member, to revise its policy in the light of those purposes and principles and of world opinion and to inform the Secretary-General of its response."

c. ACTION TAKEN AT THE THIRTEENTH SESSION: RESOLUTION 1248 (XIII)

23. At the 778th plenary meeting, on 30 October 1958, the General Assembly, by 70 votes to 5, with 4 abstentions, adopted 20/ resolution 1248 (XIII), as follows:

"The General Assembly,

"Recalling its previous consideration of the question of race conflict in South Africa resulting from the policies of apartheid of the Government of the Union of South Africa,

"Recalling in particular paragraph 6 of its resolution 917 (X) of 6 December 1955 calling upon the Government of South Africa to observe its obligations under the Charter of the United Nations,

19/ G A (XII), Plen., 723rd mtg., para. 104.
20/ G A (XIII), Plen., 778th mtg., para. 48.

"1. Declares again that, in a multiracial society, harmony and respect for human rights and freedoms and the peaceful development of a united community are best assured when patterns of legislation and practice are directed towards ensuring equality before the law of all persons regardless of race, creed or colour, and when the economic, social, cultural and political participation of all racial groups is on a basis of equality;

"2. Affirms that governmental policies of Member States which are not directed towards these goals, but which are designed to perpetuate or increase discrimination, are inconsistent with the pledges of the Members under Article 56 of the Charter of the United Nations;

"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;

"4. Expresses its regret and concern that the Government of the Union of South Africa has not yet responded to appeals of the General Assembly that it reconsider governmental policies which impair the right of all racial groups to enjoy the same rights and fundamental freedoms."

Case No. 24

The question of Cyprus

24. The question of Cyprus was further considered by the General Assembly at its eleventh, twelfth and thirteenth sessions. During this period, however, substantial changes were made in the title of the item under which the question appeared in the agenda.

25. At the eleventh session, two items concerning Cyprus were proposed for inclusion in the agenda. The first, submitted 21/ by Greece, was entitled:

"Application, under the auspices of the United Nations, of the principle of equal rights and self-determination of peoples in the case of the population of the Island of Cyprus".

The second item, submitted 22/ by the United Kingdom, was entitled: "Support from Greece for terrorism in Cyprus". At its 107th meeting, on 14 November 1956, the General Committee recommended 23/ the inclusion in the agenda of the two items merged into a single one, under the title,

"Question of Cyprus":

"(a) Application, under the auspices of the United Nations, of the principle of equal rights and self-determination of peoples in the case of the population of the Island of Cyprus;

"(b) Complaint by the United Kingdom of Great Britain and Northern Ireland of support from Greece for terrorism in Cyprus".

In plenary, the inclusion of the item recommended by the General Committee was opposed 24/ by a Member on the grounds of Article 2 (7) while other Members,

21/ Letter dated 13 March 1956 from the representative of Greece to the Secretary-General (G A (XI), Annexes, vol. II, a.i. 55, A/3120).

22/ Letter dated 12 October 1956 from the representative of the United Kingdom to the Secretary-General (G A (XI), Annexes, vol. II, a.i. 55, p. 4, A/3204).

23/ G A (XI), Gen. Com., 107th mtg., para. 51.

24/ G A (XI), Plen., vol. I, 578th mtg., para. 16.

and in particular the United Kingdom, reserved 25/ their position with respect to this provision. Since, however, no formal decision was requested, the General Assembly adopted 26/ the General Committee's recommendation without a vote, at the 578th plenary meeting, on 15 November 1956.

26. At the twelfth session of the General Assembly, the representative of Greece requested 27/ the inclusion in the agenda of an item entitled:

"Cyprus:

- "(a) Application under the auspices of the United Nations, of the principle of equal rights and self-determination of peoples in the case of the population of the Island of Cyprus;
- "(b) Violations of human rights and atrocities by the British Colonial Administration against the Cyprians".

At the 111th meeting of the General Committee, on 18 September 1957, the representative of the United Kingdom objected 28/ on the grounds of Article 2 (7) to the inclusion in the agenda of item (b). At the suggestion 29/ of one of its members, the Committee recommended 30/ the deletion of items (a) and (b) and the inclusion in the agenda of an item entitled "The Cyprus question". In the plenary meeting, no objections to the recommendation of the General Committee were raised on the grounds of Article 2 (7). The representative of the United Kingdom, however, reserved 31/ his position with respect to the domestic jurisdiction clause. At its 682nd plenary meeting, on 20 September 1957, the General Assembly placed 32/ on its agenda the item recommended by the General Committee. The decision was taken without a vote.

27. At the thirteenth session of the General Assembly, the representative of Greece requested 33/ the inclusion of an item entitled "Question of Cyprus". At its 752nd plenary meeting, on 22 September 1958, the General Assembly placed 34/ the item on its agenda without discussion.

28. During the discussion of the question itself at the eleventh, twelfth and thirteenth sessions, the representative of the United Kingdom contended 35/ that, since Cyprus was a British territory, Article 2 (7) debarred the United Nations from intervening in the application of the principle of self-determination to the population of the island. The arguments submitted for and against the contention are given in the Analytical Summary of Practice. They relate to the following questions:

Whether a matter governed by the Charter in general can fall essentially within domestic jurisdiction (paragraph 154, below);

Whether a matter governed by the Charter provisions regarding Non-Self-Governing Territories can fall essentially within domestic jurisdiction (paragraph 168);

25/ G A (XI), Plen., vol. I, 578th mtg., paras. 15, 29, 42-44.

26/ Ibid., para. 45.

27/ Letter dated 12 July 1957 from the representative of Greece to the Secretary-General (G A (XII), Annexes, a.i. 58, A/3616).

28/ G A (XII), Gen. Com., 111th mtg., para. 18.

29/ Ibid., para. 23.

30/ Ibid., para. 48.

31/ G A (XII), Plen., 682nd mtg., para. 58.

32/ Ibid., para. 59.

33/ Letter dated 15 August 1958 from the representative of Greece to the Secretary-General (G A (XIII), Annexes, a.i. 68, A/3874).

34/ G A (XIII), Plen., 752nd mtg., para. 56.

35/ G A (XI), 1st Com., 847th mtg., para. 60; G A (XII), 1st Com., 927th mtg., para. 3.

Whether a matter governed by the Charter provisions on the self-determination of peoples can fall essentially within domestic jurisdiction (paragraphs 172 to 174);

Whether the domestic jurisdiction of a State extends over all its territories (paragraphs 184 and 185).

29. After discussion of the item during the period under review, the General Assembly took the action described in the following sections.

a. Action taken at the eleventh session: resolution 1013 (XI)

30. At its 660th plenary meeting, on 26 February 1957, the General Assembly, by 57 votes to none, with 1 abstention, adopted 36/ resolution 1013 (XI), which was supported, 37/ among others, by the representative of the United Kingdom. The resolution reads:

"The General Assembly,

"Having considered the question of Cyprus,

"Believing that the solution of this problem requires an atmosphere of peace and freedom of expression,

"Expresses the earnest desire that a peaceful, democratic and just solution will be found in accord with the purposes and principles of the Charter of the United Nations, and the hope that negotiations will be resumed and continued to this end."

b. ACTION TAKEN AT THE TWELFTH SESSION

31. At the conclusion of its consideration of the question of Cyprus at the twelfth session, the First Committee, by 33 votes to 20, with 25 abstentions, approved 38/ a draft resolution 39/ submitted by Greece and opposed 40/ by the United Kingdom and by other Members supporting the claim of domestic jurisdiction. The operative part of the draft resolution referred in the following terms to the right of self-determination:

"The General Assembly,

.....

"Expresses its earnest hope that further negotiations and discussions will be undertaken in a spirit of co-operation with a view to having the right of self-determination applied in the case of the people of Cyprus."

32. In the General Assembly, the draft resolution approved by the First Committee was put to the vote without discussion at the 731st plenary meeting, on 14 December 1957. There were 31 votes in favour, 23 against and 24 abstentions. Having failed to obtain the required two-thirds majority, the draft resolution was rejected. 41/

36/ G A (XI), Plen., vol. II, 660th mtg., para. 4.

37/ G A (XI), 1st Com., 856th mtg., para. 36.

38/ G A (XII), 1st Com., 934th mtg., para. 33.

39/ G A (XII), Annexes, a.i. 58, p. 9, A/3794, para. 12.

40/ G A (XII), 1st Com., 934th mtg., para. 33.

41/ G A (XII), Plen., 731st mtg., para. 138.

C. ACTION TAKEN AT THE THIRTEENTH SESSION: RESOLUTION 1287 (XIII)

33. At the conclusion of its consideration of the item at the thirteenth session, the First Committee approved, 42/ by 31 votes to 22, with 28 abstentions, a draft resolution 43/ supported 44/ by the United Kingdom and opposed 45/ by Greece. The preamble to the draft resolution expressed the belief that "a conference between the three Governments directly concerned 46/ and representatives of the Cypriots ..., offers the best hope of peaceful progress towards an agreed solution of the Cyprus problem". It also stated the view that "self-government and free institutions should be developed in accordance with the Charter of the United Nations to meet the legitimate aspirations of the Cypriots". The operative part urged "that such a conference should be convened, and that all concerned should co-operate to ensure a successful outcome in accordance with the purposes and principles of the Charter of the United Nations."

34. Since the draft resolution had not obtained the support of the two-thirds majority required in the First Committee for action in plenary, another draft was submitted directly to the General Assembly by one of its members. In the absence of any objection, the draft was adopted 47/ without a vote at the 782nd plenary meeting, on 5 December 1958, and became resolution 1287 (XIII).

35. Resolution 1287 (XIII) reads:

"The General Assembly,

"Having considered the question of Cyprus,

"Recalling its resolution 1013 (XI) of 26 February 1957,

"Expresses its confidence that continued efforts will be made by the parties to reach a peaceful, democratic and just solution in accordance with the Charter of the United Nations."

Case No. 25

The question of West Irian

36. The General Assembly further considered the question of West Irian at its eleventh and twelfth sessions. The item did not appear on the agenda of the thirteenth session since no representative had requested its inclusion.

37. There was no discussion of Article 2 (7) during the consideration of the question, and only passing references 48/ were made to that provision.

42/ G A (XIII), 1st Com., 1010th mtg., para. 31.

43/ G A (XIII), Annexes, a.i. 68, p. 15, A/4029 and Add.1, para. 26.

44/ G A (XIII), 1st Com., 1010th mtg., para. 31.

45/ Ibid.

46/ The reference was to the Governments of Greece, Turkey and the United Kingdom.

47/ G A (XIII), Plen., 782nd mtg., para. 64.

48/ G A (XI), Plen., vol. II, 664th mtg., para. 182; 1st Com., 859th mtg., paras. 23 and 26; 861st mtg., para. 47; G A (XII), Plen., 724th mtg., para. 132; 1st Com., 908th mtg., para. 18; 909th mtg., para. 12; 910th mtg., para. 58; 911th mtg., para. 14.

38. None of the draft resolutions 49/ submitted to the General Assembly during the period under review obtained 50/ the two-thirds majority required for adoption.

**** Case No. 26**

*Complaint of detention and imprisonment of United Nations military personnel
in violation of the Korean Armistice Agreement*

Case No. 27

The question of Algeria

39. The General Assembly resumed 51/ its consideration of the Algerian question at the eleventh, twelfth and thirteenth sessions.

40. During the discussion of the adoption of the agenda at the eleventh and twelfth sessions, the representative of France did not object 52/ to the inclusion of the item. After the adoption of the agenda, he participated in the general discussion of the item. He did not, however, participate in the debates or in the votes on the draft resolutions which were submitted on the matter to the First Committee and to the General Assembly (see below, paragraph 197). At the thirteenth session, the

49/ G A (XI), Annexes, vol. II, a.i. 63, p. 2, A/C.1/L.173; G A (XII), Annexes, a.i. 62, p. 2, A/C.1/L.193.

50/ G A (XI), Plen., vol. II, 664th mtg., para. 181; G A (XII), Plen., 724th mtg., para. 131.

51/ The inclusion of the item in the agenda of the General Assembly at its eleventh session was requested by fifteen Member States in a letter dated 1 October 1956. In an explanatory memorandum attached to the letter, the fifteen States referred to the right of self-determination of the Algerian people and to Articles 11 and 14 of the Charter; they stated that

"To suppress the Algerian liberation movement, the French Government has adopted a policy based on repression and extermination of the Algerian people. This policy is in utter disregard and in complete violation of the Convention on the Prevention and Punishment of the Crime of Genocide, to which France is a party." (G A (XI), Annexes, vol. II, a.i. 62, A/3197.)

At the twelfth session, the inclusion of the item was requested by twenty-two Member States in two letters, dated 18 July and 24 July 1957. The explanatory memorandum submitted in support of the request for inclusion contended that there had been an aggravation of the situation in Algeria since the adoption by the General Assembly of resolution 1012 (XI), (G A (XII), Annexes, a.i. 59, A/3617 and Add.1; the text of resolution 1012 (XI) is given below in para. 48.)

At the thirteenth session, the inclusion of the item was requested by twenty-four Member States in a letter dated 16 July 1958. In the explanatory memorandum, these States maintained that no definite steps had been taken to implement General Assembly resolution 1184 (XII) and that "the hostilities in Algeria continue unabated, causing increasing suffering and loss of human life ..." (G A (XIII), Annexes, a.i. 63, A/3853; the text of resolution 1184 (XII) is given below in para. 55.)

52/ For the position of the representative of France at the eleventh and twelfth sessions with respect to the inclusion of the item in the agenda, see G A (XI), 1st Com., 830th mtg., para. 1 et seqq., and G A (XII), 1st Com., 913th mtg., paras. 2 and 3.

representative of France objected 53/ to the inclusion of the item in the agenda and after its inclusion 54/ refrained from participation in the debates thereon.

41. In the course of the discussion of the item itself during the period under review several representatives, in particular, the representative of France at the eleventh and twelfth sessions, contended that Algeria was part of the metropolitan territory of France and that the matter fell essentially within the latter's domestic jurisdiction. The arguments submitted for and against this contention are given in the Analytical Summary of Practice. They relate to the following questions:

The meaning of the term "to intervene" (paragraphs 136 to 138, below);

Whether a recommendation - in general or to a particular State - constitutes intervention (paragraph 143);

Whether a matter governed by the Charter in general can fall essentially within domestic jurisdiction (paragraph 154);

Whether a matter governed by the Charter provisions on human rights can fall essentially within domestic jurisdiction (paragraphs 157 to 159 and 162);

Whether a matter governed by the Charter provisions on the self-determination of peoples can fall essentially within domestic jurisdiction (paragraphs 172 and 173);

Whether a matter governed by the Charter provisions on the maintenance of peace can fall essentially within domestic jurisdiction (paragraph 178);

Whether the domestic jurisdiction of a State extends over all its territories (paragraphs 184 and 186).

42. Following the discussion of the item during the period under review, the General Assembly took the action described in the following sections.

a. ACTION TAKEN AT THE ELEVENTH SESSION; RESOLUTION 1012 (XI)

43. At the eleventh session, three draft resolutions concerning the question of Algeria were submitted to the First Committee.

44. The first draft resolution (A/C.1/L.165) 55/ was supported by the representatives of the fifteen States which had sponsored the request for inclusion of the item in the agenda. 56/ It was opposed by the representatives 57/ who had contended that the matter fell essentially within the domestic jurisdiction of France or had expressed doubts with respect to the competence of the General Assembly in view of the provisions of Article 2 (7). The draft resolution follows.

"The General Assembly,

"Having regard to the situation of unrest and strife in Algeria which is causing much human suffering and disturbing the harmony between nations,

"Recognizing the right of the people of Algeria to self-determination according to the principles of the Charter of the United Nations,

53/ G A (XIII), Gen. Com., 117th mtg., para. 42.

54/ The General Assembly included the item in the agenda without a prior vote at its 752nd plenary meeting, on 22 September 1958 (G A (XIII), Plen., 752nd mtg., para. 52).

55/ G A (XI), Annexes, vol. II, a.i. 62, p. 2.

56/ See foot-note 51 above.

57/ G A (XI), 1st Com., 846th mtg., paras. 13 and 14.

"1. Requests France to respond to the desire of the people of Algeria to exercise their fundamental right of self-determination;

"2. Invites France and the people of Algeria to enter into immediate negotiations with a view to the cessation of hostilities and the peaceful settlement of their differences in accordance with the Charter of the United Nations;

"3. Requests the Secretary-General to assist the parties in conducting such negotiations and report to the General Assembly at its twelfth session."

45. The second draft resolution (A/C.1/L.166) 58/ was submitted by three representatives in an effort "to accommodate the positions of the parties to the conflict, in particular the position of France, as much as possible under the circumstances." 59/ It was nevertheless opposed 60/ by some of the representatives who supported the claim of domestic jurisdiction. The draft resolution follows.

"The General Assembly,

"Having regard to the situation of unrest in Algeria which is causing much human suffering and loss of lives,

"Believing that the unsatisfactory situation now prevailing in Algeria may be normalized by the joint efforts of France and the Algerian people to find an equitable solution in conformity with the principles of the Charter of the United Nations,

"Expresses the hope that France and the Algerian people will endeavour, through appropriate negotiations, to bring about the end of bloodshed and the peaceful settlement of the present difficulties."

46. The third draft resolution (A/C.1/L.167) 61/ was generally supported 62/ by the representatives who upheld the claim of domestic jurisdiction or expressed doubts with respect to the competence of the General Assembly in the matter. It was opposed 63/ by the sponsors of the request for inclusion of the item in the agenda. The draft resolution read:

"The General Assembly,

"Having heard the statements of the French and other delegations and discussed the question of Algeria,

"Expresses the hope that a peaceful and democratic solution of this question will be found."

47. The three draft resolutions were put to the vote at the First Committee's 846th meeting, on 13 February 1957. The first (A/C.1/L.165) was rejected after four

58/ G A (XI), Annexes, vol. II, a.i. 62, p. 3.

59/ G A (XI), 1st Com., 843rd mtg., para. 61.

60/ G A (XI), 1st Com., 844th mtg., paras. 8 and 14; 846th mtg., paras. 6, 63 and 73.

61/ G A (XI), Annexes, vol. II, a.i. 62, p. 3.

62/ G A (XI), 1st Com., 846th mtg., para. 52.

63/ Ibid.

separate votes on the preamble and the first two paragraphs of the operative part; there was no vote on the text as a whole. 64/ The second (A/C.1/L.166) was approved 65/ by 37 votes to 27, with 13 abstentions. The third (A/C.1/L.167) was also approved 66/ by 41 votes to 33, with 3 abstentions.

48. Since neither of the two draft resolutions approved by the First Committee had obtained the two-thirds majority required for action in plenary, nine Member States submitted a new draft resolution (A/L.220) 67/ directly to the General Assembly as a "conciliatory" proposal. The draft resolution read:

"The General Assembly,

"Having heard the statements made by the various delegations and discussed the question of Algeria,

"Having regard to the situation in Algeria which is causing much suffering and loss of human lives,

"Expresses the hope that, in a spirit of co-operation, a peaceful, democratic and just solution will be found, through appropriate means, in conformity with the principles of the Charter of the United Nations."

49. The above text was adopted by the General Assembly at its 654th plenary meeting, on 15 February 1957, 68/ by 75 votes to none, with 1 abstention, and it became resolution 1012 (XI).

50. It should be noted that some of the representatives who voted for resolution 1012 (XI) stated 69/ that their votes were based on the assumption that the resolution did not prejudice the question of the competence of the General Assembly under Article 2 (7).

b. ACTION TAKEN AT THE TWELFTH SESSION: RESOLUTION 1184 (XII)

51. At the conclusion of its deliberations on the Algerian question at the twelfth session, the First Committee had before it a draft resolution 70/ and two amendments thereto.

52. The draft resolution (A/C.1/L.194) 71/ was supported by the representatives who had sponsored the request for inclusion of the item in the agenda. It read:

64/ The first paragraph of the preamble was adopted by 39 votes to 26, with 7 abstentions (G A (XI), 1st Com., 846th mtg., para. 12). The second paragraph of the preamble was adopted by 36 votes to 27, with 14 abstentions (ibid., para. 13). The first paragraph of the operative part was rejected by 34 votes to 33, with 10 abstentions (ibid., para. 14). The second paragraph of the operative part was rejected by 34 votes to 33, with 9 abstentions (ibid., para. 15).

65/ G A (XI), 1st Com., 846th mtg., para. 62.

66/ Ibid., para. 52.

67/ Quoted in G A (XI), Plen., vol. II, 654th mtg., para. 1.

68/ G A (XI), Plen., vol. II, 654th mtg., para. 3. An additional affirmative vote was later recorded (ibid., para. 4), and the abstention was subsequently changed to a positive vote (ibid., para. 5).

69/ G A (XI), Plen., vol. II, 654th mtg., paras. 81 and 108.

70/ A second draft resolution submitted by seven representatives was withdrawn before the vote (G A (XII), Annexes, a.i. 59, p. 2, A/3772, paras. 5 and 9).

71/ G A (XII), Annexes, a.i. 59, p. 2, A/3772, para. 4.

"The General Assembly,

"Having discussed the Algerian question,

"Recalling its resolution 1012 (X) of 15 February 1957,

"Regretting that the hope expressed in that resolution has not yet been realized,

"Recognizing that the principle of self-determination is applicable to the Algerian people,

"Noting that the situation in Algeria continues to cause much suffering and loss of human life,

"Calls for negotiations for the purpose of arriving at a solution in accordance with the principles and purposes of the Charter of the United Nations."

53. The first amendment replaced the fourth paragraph of the preamble to the draft resolution by the following text:

"Recognizing that the people of Algeria are entitled to work out their own future in a democratic way".

The second amendment substituted the following provision for the operative part of the draft resolution:

"Proposes effective discussions for the purpose both of resolving the present troubled situation and of reaching a solution in accordance with the purposes and principles of the Charter of the United Nations." 72/

Both amendments were supported 73/ by the representatives who upheld the claim of domestic jurisdiction or expressed doubts with respect to the competence of the General Assembly in the matter. They were opposed 74/ by the sponsors of the draft resolution.

54. The draft resolution and the two amendments were put to the vote at the First Committee's 926th meeting, on 6 December 1957. The amendments were approved 75/ by 37 votes to 36, with 7 abstentions. The draft resolution, as amended, was rejected, 76/ 37 votes being cast in favour and 37 against, with 6 abstentions.

55. In the plenary meeting, a new draft resolution (A/L.239) 77/ was submitted by fifteen Member States. It read:

"The General Assembly,

"Having discussed the question of Algeria,

"Recalling its resolution 1012 (XI) of 15 February 1957,

72/ G A (XII), Annexes, a.i. 59, p. 2, A/3772, para. 6.

73/ G A (XII), 1st Com., 926th mtg., para. 71.

74/ Ibid.

75/ Ibid.

76/ Ibid., para. 72.

77/ Quoted in G A (XII), Plen., 726th mtg., para. 109.

- "1. Expresses again its concern over the situation in Algeria;
- "2. Takes note of the offer of good offices made by His Majesty the King of Morocco and His Excellency the President of the Republic of Tunisia;
- "3. Expresses the wish that, in a spirit of effective co-operation, pourparlers will be entered into and other appropriate means utilized with a view to a solution in conformity with the Purposes and Principles of the Charter of the United Nations."

56. At its 726th plenary meeting, on 10 December 1957, the General Assembly, by 80 votes to none, adopted 78/ the above text, which became resolution 1184 (XII). The decision was taken without discussion.

C. ACTION TAKEN AT THE THIRTEENTH SESSION

57. At the conclusion of its deliberations on the Algerian question at the thirteenth session, the First Committee had before it a draft resolution (A/C.1/L.232) and an amendment thereto. 79/

58. The draft resolution was supported by the representatives who had sponsored the request for inclusion of the item in the agenda. It was opposed 80/ by the representatives who contended that the matter fell essentially within the domestic jurisdiction of France or expressed doubts with respect to the competence of the General Assembly in view of the provisions of Article 2 (7). The draft resolution read:

"The General Assembly,

"Having discussed the question of Algeria,

"Recalling its resolution 1012 (XI) of 15 February 1957 by which the General Assembly expressed the hope that a peaceful, democratic and just solution would be found, through appropriate means, in conformity with the principles of the Charter of the United Nations,

"Recalling further its resolution 1184 (XII) of 10 December 1957 by which the General Assembly expressed the wish that pourparlers would be entered into, and other appropriate means utilized, with a view to a solution, in conformity with the purposes and principles of the Charter of the United Nations,

"Recognizing the right of the Algerian people to independence,

"Deeply concerned with the continuance of the war in Algeria,

"Considering that the present situation in Algeria constitutes a threat to international peace and security,

"Taking note of the willingness of the Provisional Government of the Algerian Republic to enter into negotiations with the Government of France,

78/ G A (XII), Plen., 726th mtg., para. 110.

79/ G A (XIII), Annexes, a.i. 63, p. 2, A/4075, paras. 4 and 5; a second amendment was withdrawn before the vote (G A (XIII), 1st Com., 1023rd mtg., para. 31).

80/ G A (XIII), 1st Com., 1023rd mtg., para. 37.

"Urges negotiations between the two parties concerned with a view to reaching a solution in conformity with the Charter of the United Nations."

59. The amendment substituted the following provision for the fourth paragraph of the preamble of the above text:

"Recognizing, in virtue of Article 1, paragraph 2, of the Charter, the right of the Algerian people to decide for themselves their own destiny". 81/

The amendment was opposed 82/ both by the sponsors of the draft resolution and by some of the representatives who held that the matter fell essentially within the domestic jurisdiction of France.

60. At its 1023rd meeting, on 13 December 1958, the First Committee rejected 83/ the amendment by 48 votes to 13, with 19 abstentions. At the same meeting, the Committee approved 84/ the draft resolution by 32 votes to 18, with 30 abstentions.

61. The text approved by the First Committee was considered by the General Assembly at its 792nd plenary meeting on 13 December 1958. The General Assembly voted first on a motion to delete the seventh preambular paragraph. The motion was adopted 85/ by 38 votes to none, with 43 abstentions, and the paragraph was deleted. The General Assembly voted next on the draft resolution as a whole, without the seventh preambular paragraph. There were 35 votes in favour, 18 against and 28 abstentions. Having failed to obtain the required two-thirds majority, the draft resolution was not adopted. 86/

Case No. 30

The question of Hungary

62. The question of Hungary was considered by the General Assembly at the second special emergency session and at the eleventh, twelfth and thirteenth regular sessions. The events in Hungary and the debates in the Security Council which led to the convening of the second special emergency session are dealt with in the present study under case No. 31. 87/

63. At the opening of the second special emergency session, on 4 November 1956, Mr. Janos Kadar, who had replaced Mr. Imre Nagy at the head of the Government of Hungary, addressed the following cablegram to the Secretary-General:

"The Revolutionary Workers' and Peasants' Government of Hungary declares that Imre Nagy's requests to the United Nations [see below, paragraph 118] to have the Hungarian question discussed in the United Nations have no legal force and cannot be considered as requests emanating from Hungary as a State. The Revolutionary Workers' and Peasants' Government objects categorically to any discussion of the said question either by the Security Council or by the General Assembly because

81/ G A (XIII), Annexes, a.i. 63, p. 2, A/4075, para. 5.

82/ G A (XIII), 1st Com., 1023rd mtg., para. 30.

83/ *Ibid.*

84/ *Ibid.*, para. 37.

85/ G A (XIII), Plen., 792nd mtg., para. 206.

86/ G A (XIII), Plen., 792nd mtg., para. 260.

87/ See below, para. 117 et seqq.

that question is within the exclusive jurisdiction of the Hungarian People's Republic." 88/

64. The objections raised by Mr. Kadar on the grounds of Article 2 (7) were re-stated 89/ by the representative of Hungary during the discussion 90/ on the adoption of the agenda at the eleventh, twelfth and thirteenth sessions. The arguments submitted for and against the objections are given in the Analytical Summary of Practice. They relate to the following question:

Whether the inclusion of the item in the agenda constitutes intervention (paragraph 140, below).

65. Despite the objections raised on the grounds of Article 2 (7), the General Assembly placed the item on the agenda at each session. At the second emergency special session, the decision was taken 91/ at the 564th plenary meeting, on 4 November 1956, by 53 votes to 8, with 7 abstentions. At the eleventh session, the item was placed 92/ on the agenda at the 576th plenary meeting, on 13 November 1956, by 62 votes to 9, with 8 abstentions. At the twelfth session, it was placed 93/ on the agenda at the 684th plenary meeting, on 23 September 1957, by 57 votes to 10, with 6 abstentions. At the thirteenth session, the item was placed 94/ on the agenda at the 752nd plenary meeting, on 22 September 1958, by 61 votes to 10, with 10 abstentions.

66. During the discussion of the item itself at the four sessions, the representative of Hungary again contended that the matter fell essentially within the domestic jurisdiction of Hungary, and that Article 2 (7) debarred the General Assembly from dealing with it. To protest against what he termed intervention in the internal affairs of his country, the representative of Hungary withdrew from part of the eleventh session. He resumed attendance before the end of the session. 95/

67. The claim of domestic jurisdiction was supported by several representatives, including the representative of the Union of Soviet Socialist Republics, and opposed by others. The arguments submitted for and against the claim are given in the Analytical Summary of Practice. They relate to the following questions:

Whether a matter governed by international agreements can fall essentially within domestic jurisdiction (paragraph 148, below);

Whether a matter governed by the Charter in general can fall essentially within domestic jurisdiction (paragraph 153);

88/ G A (ES-II), Annexes, a.i. 5, p. 3, A/3311.

89/ G A (XI), Plen., vol. I, 576th mtg., paras. 134-154; G A (XII), Gen. Com., 112th mtg., paras. 3 and 4; G A (XIII), Plen., 752nd mtg., paras. 58-74.

90/ At the eleventh session, the item was placed on the provisional agenda in pursuance of paragraph 1 of General Assembly resolution 1008 (ES-II), adopted at the end of the second emergency special session.

At the twelfth session, the item was placed on the provisional agenda in pursuance of paragraph 10 of General Assembly resolution 1133 (XI), adopted during the eleventh session.

At the thirteenth session, the item was placed on the provisional agenda at the request of two Member States (G A (XIII), Annexes, a.i. 69, pp. 11 and 12, A/3875 and Add.1 and 2).

91/ G A (ES-II), Plen., 564th mtg., para. 36.

92/ G A (XI), Plen., vol. I, 576th mtg., para. 205.

93/ G A (XII), Plen., 684th mtg., para. 53.

94/ G A (XIII), Plen., 752nd mtg., para. 112.

95/ See below, para. 198.

Whether a matter governed by the Charter provisions on human rights can fall essentially within domestic jurisdiction (paragraphs 157, 160 and 162);

Whether a matter governed by the Charter provisions on the maintenance of peace can fall essentially within domestic jurisdiction (paragraph 179).

Resolutions 1004 to 1008 (ES-II), 1127 to 1133 (XI) and 1312 (XIII)

68. As a result of its consideration of the Hungarian question during the period under review, the General Assembly adopted 96/ thirteen resolutions, 1004 to 1008 (ES-II), 1127 to 1133 (XI) and 1312 (XIII). With the exception noted below in paragraphs 105 and 106, this action was taken over the objections raised by Hungary on the grounds of Article 2 (7).

69. The following sections (paragraphs 70 to 108) analyse the main provisions of the thirteen resolutions. They also indicate the action taken thereon by United Nations organs and representatives, to the extent that such action had a bearing on the problem of domestic jurisdiction.

1. Provisions setting out the grounds for the action of the General Assembly

70. The preamble to resolution 1004 (ES-II) - the first resolution adopted by the General Assembly on the question of Hungary - reads as follows:

96/ Resolutions 1004 to 1008 (ES-II) were adopted in the course of the second special emergency session. The voting was as follows. Resolution 1004 (ES-II) was adopted by 50 votes to 8, with 15 abstentions, at the 564th plenary meeting on 4 November 1956 (G A (ES-II), Plen., 564th mtg., para. 253). Resolution 1005 (ES-II) was adopted by 48 votes to 11, with 16 abstentions, at the 571st meeting, on 9 November 1956 (ibid., 571st mtg., para. 240). Resolution 1006 (ES-II) was adopted by 53 votes to 9, with 13 abstentions, at the same meeting (ibid., para. 243). Resolution 1007 (ES-II) was also adopted at the same meeting - by 67 votes to none, with 8 abstentions (ibid., para. 245). Resolution 1008 (ES-II) was adopted by 53 votes to 9, with 8 abstentions, at the 573rd plenary meeting, on 10 November 1956 (G A (ES-II), Plen., 573rd mtg., para. 60). Resolutions 1127 to 1133 (XI) were adopted in the course of the eleventh session. The voting was as follows. Resolution 1127 (XI) was adopted by 55 votes to 10, with 14 abstentions, at the 587th plenary meeting on 21 November 1956 (G A (XI), Plen., 587th mtg., para. 59). Resolution 1128 (XI) was adopted by 57 votes to 8, with 14 abstentions, at the same meeting (ibid., para. 64). Resolution 1129 (XI) was also adopted at the same meeting - by 69 votes to 2, with 8 abstentions (ibid., para. 161). Resolution 1130 (XI) was adopted by 54 votes to 10, with 14 abstentions, at the 608th plenary meeting, on 4 December 1956 (G A (XI), Plen., 608th mtg., para. 182). Resolution 1131 (XI) was adopted by 55 votes to 8, with 13 abstentions, at the 618th plenary meeting, on 12 December 1956 (G A (XI), Plen., 618th mtg., para. 212). Resolution 1132 (XI) was adopted by 59 votes to 8, with 10 abstentions, at the 636th plenary meeting, on 10 January 1957 (G A (XI), Plen., 636th mtg., para. 112). Resolution 1133 (XI) was adopted by 60 votes to 10, with 10 abstentions, at the 677th plenary meeting, on 13 September 1957 (G A (XI), Plen., 677th mtg., para. 300).

No resolution was adopted after the discussion of the Hungarian question at the twelfth session.

Resolution 1312 (XIII) was adopted in the course of the thirteenth session by 54 votes to 10, with 15 abstentions, at the 787th plenary meeting, on 12 December 1958 (G A (XIII), Plen., 787th mtg., para. 119).

"The General Assembly,

"Considering that the United Nations is based on the principle of the sovereign equality of all its Members,

"Recalling that the enjoyment of human rights and of fundamental freedom in Hungary was specifically guaranteed by the Peace Treaty between Hungary and the Allied and Associated Powers signed at Paris on 10 February 1947, and that the general principle of these rights and this freedom is affirmed for all peoples in the Charter of the United Nations,

"Convinced that recent events in Hungary manifest clearly the desire of the Hungarian people to exercise and to enjoy fully their fundamental rights, freedom and independence,

"Condemning the use of Soviet military forces to suppress the efforts of the Hungarian people to reassert their rights,

"Noting moreover the declaration of 30 October 1956 by the Government of the Union of Soviet Socialist Republics of its avowed policy of non-intervention in the internal affairs of other States,

"Noting the communication of 1 November 1956 [97/] of the Government of Hungary to the Secretary-General regarding demands made by that Government to the Government of the Union of Soviet Socialist Republics for the instant and immediate withdrawal of Soviet forces,

"Noting further the communication of 2 November 1956 [98/] from the Government of Hungary to the Secretary-General asking the Security Council to instruct the Government of the Union of Soviet Socialist Republics and the Government of Hungary to start negotiations immediately on the withdrawal of Soviet forces,

"Noting that the intervention of Soviet military forces in Hungary has resulted in grave loss of life and widespread bloodshed among the Hungarian people,

"Taking note of the radio appeal of Prime Minister Imre Nagy of 4 November 1956 ..."

71. The grounds for action in the above text may be grouped under the following headings:

The principle of sovereign equality of Member States;
 The threat to the independence of Hungary caused by foreign military intervention;
 The Charter provisions on human rights and fundamental freedoms;
 The provisions of an international agreement concluded between Hungary and the Allied and Associated Powers; and
 The requests addressed to the United Nations by the Government of Mr. Nagy.

72. Since resolution 1004 (ES-II) was the first decision taken by the General Assembly with respect to the situation in Hungary, these grounds for action appear to apply to the subsequent resolutions adopted on the matter. Most of the subsequent resolutions referred expressly to resolution 1004 (ES-II) and some elaborated upon or added to the grounds indicated therein.

97/ See below, para. 118.

98/ See below, para. 118.

73. Thus, with respect to the threat to the independence of Hungary, resolution 1127 (XI), adopted on 21 November 1956, referred expressly in its preamble to "the principle embodied in Article 2, paragraph 4" of the Charter. As regards the Charter provisions on human rights and fundamental freedoms, the same resolution recalled "the obligations assumed by all Member States under Articles 55 and 56". Finally, with respect to the international agreements applicable to the matter, paragraph 4 (d) of resolution 1133 (XI) of 13 September 1957 referred to "the Geneva Conventions of 1949", and the preamble to resolution 1127 (XI) recalled "the principles of the Convention on the Prevention and Punishment of the Crime of Genocide, in particular article II (c) and (e), to which Hungary and the Union of Soviet Socialist Republics are parties, and the Treaty of peace with Hungary, in particular the provisions of article 2".

ii. Provisions entrusting investigatory functions to the Secretary-General and action taken thereon

74. At the outset of its consideration of the Hungarian question, the General Assembly entrusted investigatory functions to the Secretary-General of the United Nations. Paragraph 4 of resolution 1004 (ES-II) of 4 November 1956 requested the Secretary-General "to investigate the situation caused by foreign intervention in Hungary, to observe the situation directly through representatives named by him, and to report thereon to the General Assembly at the earliest moment, and as soon as possible to suggest methods to bring an end to the foreign intervention in Hungary in accordance with the principles of the Charter of the United Nations". Paragraph 5 of the resolution called upon the Governments of Hungary and the Soviet Union "to permit observers designated by the Secretary-General to enter the territory of Hungary, to travel freely therein, and to report their findings to the Secretary-General". The call upon the two Governments concerned was subsequently reiterated in resolution 1128 (XI) of 21 November 1956 and 1130 (XI) of 4 December 1956.

75. In pursuance of these provisions, the Secretary-General requested the Government of Hungary on 8 November 1956 to inform him "whether ... it is willing to permit observers designated by ... [the Secretary-General], as soon as possible, to enter the territory of Hungary for the purpose prescribed, to travel freely within Hungary, and to report ... on their findings." 99/

76. In reply to this request, the Deputy Minister for Foreign Affairs of Hungary recalled, in a cable dated 12 November 1956, 100/ the position of his Government on the question of domestic jurisdiction and stated that "the Hungarian Government is decidedly of the opinion that the sending of representatives to be appointed by the Secretary-General of the United Nations is not warranted".

77. In a report submitted to the General Assembly on 30 November 1956, the Secretary-General noted that he had received no information "concerning steps taken in order to establish compliance with the decisions of the General Assembly which refer to a withdrawal of troops or related political matters". He also outlined the new efforts that had been made to obtain permission for the entry of observers into Hungary, stating that: "so far, no such permission has been given." 101/ He added, however, that he had "offered to go personally to Budapest for discussions" with the Government

99/ Aide-mémoire dated 8 November 1956 from the Secretary-General, addressed to the Minister of Foreign Affairs of Hungary (G A (ES-II), Annexes, a.i. 5, p. 3, A/3315).

100/ Cablegram from the Acting Minister, Deputy Minister for Foreign Affairs of Hungary to the Secretary-General (G A (XI), Annexes, vol. II, a.i. 67, p. 4, A/3341).

101/ G A (XI), Annexes, vol. I, a.i. 67, p. 13, A/3403, paras. 8 and 9.

of Hungary and had been informed that this question was under consideration by the Government. The Secretary-General indicated the legal basis on which he would conduct his discussions if his offer to visit Budapest were accepted:

"While the aims of the United Nations in the case of the situation in Hungary, as set out in the various General Assembly resolutions on the matter, would guide his efforts in Budapest, it seems appropriate that the contact of the Secretary-General with the Hungarian Government be considered as based on his position under the Charter of the United Nations, with the wider scope that such a standpoint might give to his approach." 102/

78. In response to the offer to visit Budapest, the Acting Minister, Deputy Minister for Foreign Affairs of Hungary addressed the following cable dated 3 December 1956 to the Secretary-General:

"1. The Hungarian Government maintains its earlier position that the events which took place in Hungary since 23 October 1956 constitute exclusively the internal affairs of Hungary and do not belong to the competence of any international organization, including the United Nations organization. Consequently, the Hungarian Government is, as before, of the opinion that the permission for United Nations observers to enter the territory of Hungary would violate the sovereignty of Hungary and would be contrary to the principles of the United Nations Charter.

"2. In the middle of November 1956, you declared that on the occasion of your trip to Egypt you would like to meet the representatives of the Hungarian Government in Rome or Budapest. Led by the desire that you should get satisfactory personal information of the situation in Hungary, the Hungarian Government persists in its willingness expressed previously that its representative should negotiate with you in Rome or New York without delay.

"3. In order to make it possible for you to conduct direct negotiations with the Hungarian Government, the Revolutionary Workers' and Peasants' Government of the Hungarian People's Republic is ready to welcome you in Budapest at a later date appropriate for both parties." 103/

79. No agreement was reached, however, on an appropriate date for the Secretary-General's journey to Hungary, 104/ and the projected visit to Budapest did not materialize.

80. On 5 January 1957, the Secretary-General transmitted a report to the General Assembly that contained the conclusions of a group of three persons he had appointed to assist him in his investigatory activities. The conclusions were as follows:

102/ Ibid., para. 10.

103/ G A (XI), Annexes, vol. II, a.i. 67, p. 23, A/3414.

104/ On 7 December 1956 the Secretary-General reported to the General Assembly that "on 4 December, I suggested [to the Hungarian Government] that I could be in Budapest on 16 December. I have not received any official reaction to this suggestion. If the visit cannot be made at the time proposed, it may be questioned whether it would be to the purpose." (Note by the Secretary-General, G A (XI), Annexes, vol. II, a.i. 67, p. 24, A/3435.) On 12 December 1956, the Permanent Mission of Hungary to the United Nations informed the Secretary-General that the date of "16 December ... is not appropriate for the Hungarian Government." (Note verbale from the Permanent Mission of Hungary to the United Nations, addressed to the Secretary-General, G A (XI), Annexes, vol. II, a.i. 67, p. 25, A/3435/Add.6.)

"Until it is possible to open up further sources of reliable material through observation on the spot in Hungary and by the co-operation of the Governments directly concerned, there would be little purpose in our attempting an assessment of the present situation or of recent events. In these circumstances the question arises as to whether it is not best for the process of investigation to be suspended for the present and for the matter to be re-examined at a later stage." 105/

81. In transmitting the above conclusions, the Secretary-General expressed the view that "the Assembly may now wish to establish a special ad hoc committee which would take over the activities of the group of investigators established by the Secretary-General and follow them up under somewhat broader terms of reference." 106/

iii. Provisions establishing a special committee to investigate the situation in Hungary

82. By resolution 1132 (XI), adopted on 10 January 1957, the General Assembly endorsed the Secretary-General's suggestion and established a special committee to investigate the situation in Hungary. The relevant provisions of the resolution follow.

"The General Assembly,

.....

"Desiring to ensure that the General Assembly and all Member States shall be in possession of the fullest and best available information regarding the situation created by the intervention of the Union of Soviet Socialist Republics, through its use of armed force and other means, in the internal affairs of Hungary, as well as regarding developments relating to the recommendations [107/] of the General Assembly on this subject,

"1. Establishes, for the above-mentioned purposes, a Special Committee, composed of representatives of Australia, Ceylon, Denmark, Tunisia and Uruguay, to investigate, and to establish and maintain direct observation in Hungary and elsewhere, taking testimony, collecting evidence and receiving information, as appropriate, in order to report its findings to the General Assembly at its eleventh session, and thereafter from time to time to prepare additional reports for the information of Member States and of the General Assembly if it is in session;

"2. Calls upon the Union of Soviet Socialist Republics and Hungary to co-operate in every way with the Committee and, in particular, to permit the Committee and its staff to enter the territory of Hungary and to travel freely therein;

"3. Requests all Member States to assist the Committee in any way appropriate in its task, making available to it relevant information, including testimony and evidence, which Members may possess, and assisting it in securing such information".

105/ G A (XI), Annexes, vol. II, a.i. 67, p. 43, A/3485, para. 3.

106/ Ibid.

107/ See below, paras. 92-98.

iv. Provisions endorsing two reports submitted by the Special Committee on the Problem of Hungary

83. On 20 February 1957, the Special Committee on the Problem of Hungary submitted to the General Assembly an interim report 108/ defining the scope of the inquiry which it had been called upon to conduct and indicating the specific problems to be studied. The interim report also informed the General Assembly that:

"The Secretary-General ... communicated, on the Committee's behalf and at its request, with the permanent representative of Hungary, requesting that assistance and facilities be extended by his Government to the Special Committee for its work, and especially with regard to the entry of the Committee and its staff within the territory of Hungary. In his reply of 5 February 1957 the permanent representative of Hungary informed the Secretary-General that, in the opinion of his Government, the Committee 'violates, in its function the Charter of the United Nations' and that, 'consequently, the Hungarian Government is not in a position to permit the members of the Special Committee and its staff to enter into the territory of Hungary'." 109/

84. In March and April 1957, the Special Committee on the Problem of Hungary heard witnesses in New York, Geneva, Rome, Vienna and London. The Committee specified that: "The witnesses were selected under the authority of the Chairman and the Rapporteur. The primary consideration in the selection of witnesses was their capacity to place before the Committee evidence based on direct and personal knowledge of the events in Hungary." 110/

85. On 7 June 1957, the Special Committee on the Problem of Hungary submitted a report 111/ to the General Assembly, analysing the events in Hungary and setting out the Committee's conclusions thereon. 112/ As regards the question of domestic jurisdiction, the report expressed the view that:

"In the light of the extent of foreign intervention, consideration of the Hungarian question by the United Nations was legally proper and, moreover, it was requested by a legal Government of Hungary. In the matter of human rights, Hungary has accepted specific international obligations in the Treaty of Peace. Accordingly, the Committee does not regard objections based on paragraph 7 of Article 2 of the Charter as having validity in the present case. A massive armed intervention by one Power on the territory of another, with the avowed intention of interfering with the internal affairs of the country must, by the Soviet's own definition of aggression, be a matter of international concern." 113/

86. The Committee's report was endorsed by the General Assembly in resolution 1133 (XI), adopted on 14 September 1957. The relevant provisions of the resolution follow:

The General Assembly,

.....

108/ G A (XI), Annexes, vol. II, a.i. 67, p. 57 et seqq., A/3546.

109/ Ibid., p. 58, para. 9.

110/ G A (XI), Suppl. No. 18 (A/3592), para. 9.

111/ G A (XI), Suppl. No. 18 (A/3592).

112/ For a summary of the Committee's conclusions, see the provisions of resolution 1133 (XI) quoted in para. 86.

113/ G A (XI), Suppl. No. 18 (A/3592), para. 785 (xiii).

"1. Expresses its appreciation to the Special Committee on the Problem of Hungary for its work;

"2. Endorses the report of the Committee;

"3. Notes the conclusion of the Committee that the events which took place in Hungary in October and November of 1956 constituted a spontaneous national uprising;

"4. Finds that the conclusions reached by the Committee on the basis of its examination of all available evidence confirm that:

"(a) The Union of Soviet Socialist Republics, in violation of the Charter of the United Nations, has deprived Hungary of its liberty and political independence and the Hungarian people of the exercise of their fundamental human rights;

"(b) The present Hungarian régime has been imposed on the Hungarian people by the armed intervention of the Union of Soviet Socialist Republics;

"(c) The Union of Soviet Socialist Republics has carried out mass deportations of Hungarian citizens to the Union of Soviet Socialist Republics;

"(d) The Union of Soviet Socialist Republics has violated its obligations under the Geneva Conventions of 1949;

"(e) The present authorities in Hungary have violated the human rights and freedoms guaranteed by the Treaty of Peace with Hungary."

87. On 14 July 1958, the Special Committee on the Problem of Hungary submitted a supplementary report 114/ to the General Assembly; this dealt mainly with several trials and executions which had taken place in Hungary during the preceding year. The report also contained the following reference to the problem of domestic jurisdiction:

"The Governments [of Hungary, Romania and the Soviet Union] ... have throughout maintained that the Committee is illegal and its activities contrary to the provisions of the United Nations Charter, particularly to paragraph 7 of Article 2. This view was, however, decisively rejected by the General Assembly when, on 10 January 1957, it created the Committee (resolution 1132 (XI)) by a vote of 59 to 8, with 10 abstentions, and again rejected on 14 September 1957, when the General Assembly endorsed (resolution 1133 (XI)) the Committee's report by 60 votes to 10, with 10 abstentions." 115/

88. By resolution 1312 (XIII), adopted on 12 December 1958, the General Assembly endorsed the supplementary report 116/ and expressed "its thanks to the Committee for its objective and efficient discharge of the tasks entrusted to it". 117/

114/ "Special report of the Special Committee on the Problem of Hungary" (G A (XIII), Annexes, a.i. 69, A/3849). It is referred to as "The supplementary report" in resolution 1312 (XIII).

115/ G A (XIII), Annexes, a.i. 69, A/3849, para. 8.

116/ See above, para. 87.

117/ Operative paragraph 2 of the resolution.

v. Provisions appointing special representatives on the Hungarian problem

89. After endorsing the report of 7 June 1957 of the Special Committee on the Problem of Hungary (see above, paragraph 86), resolution 1133 (XI), in operative paragraph 7, expressed the view that further efforts should be made "to achieve the objectives of the United Nations in regard to Hungary in accordance with the Purposes and Principles of the Charter and the pertinent resolutions of the General Assembly". Accordingly, operative paragraph 9 of the resolution requested "the President of the eleventh session of the General Assembly, H.R.H. Prince Wan Waithayakon, as the General Assembly's special representative on the Hungarian problem, to take such steps as he deems appropriate, in view of the findings of the ... [Special Committee on the Problem of Hungary] to achieve the objectives of the United Nations in accordance with General Assembly resolutions 1004 (ES-II) of 4 November 1956, 1005 (ES-II) of 9 November 1956, 1127 (XI) of 21 November 1956, 1131 (XI) of 12 December 1956 and 1132 (XI) of 10 January 1957, to consult as appropriate with the Committee during the course of his endeavours, and to report and make recommendations as he may deem advisable to the General Assembly".

90. On 9 December 1957, Prince Wan Waithayakon reported 118/ to the General Assembly the failure of his efforts to enter into consultation with the Governments of Hungary and the Soviet Union.

91. By resolution 1312 (XIII) of 12 December 1958, the General Assembly expressed its appreciation to Prince Wan Waithayakon and appointed Sir Leslie Munro 119/ "to represent the United Nations for the purpose of reporting to Member States or to the General Assembly on significant developments relating to the implementation of the Assembly resolutions on Hungary". 120/

vi. Provisions concerning the cessation of outside intervention, the withdrawal of foreign troops and the observance of human rights and fundamental freedoms

92. Before receiving the results of the investigations dealt with above under items i and ii, the General Assembly repeatedly called for the cessation of outside intervention in Hungary, the withdrawal of foreign troops from that country and the observance of the human rights and fundamental freedoms of the Hungarian people. After receipt of the results, the General Assembly condemned some of the acts brought to light by the investigations and continued to call upon the parties concerned to comply with its resolutions. The provisions adopted by the General Assembly on the above points follow.

93. Operative paragraphs 1 and 2 of resolution 1004 (ES-II) - the first resolution adopted on the Hungarian question - called upon the Soviet Union "to desist forthwith from all armed attack on the people of Hungary and from any form of intervention, in particular armed intervention, in the internal affairs of Hungary" and "to cease the introduction of additional armed forces into Hungary and to withdraw all of its forces without delay from Hungarian territory". This call was reiterated in resolution 1005 (ES-II), adopted on 9 November 1956.

118/ "Report of the General Assembly's special representative on the Hungarian problem", G A (XII), Annexes, a.i. 63, A/3774.

119/ President of the General Assembly at its twelfth session.

120/ Operative paragraph 9 of the resolution.

94. Operative paragraph 2 of resolution 1127 (XI) of 21 November 1956, urged "the Government of the Union of Soviet Socialist Republics and the Hungarian authorities to take immediate steps to cease the deportation of Hungarian citizens and to return promptly to their homes those who have been deported from Hungarian territory".

95. The preamble to resolution 1130 (XI) of 4 December 1956 noted "with deep concern that the Government of the Union of Soviet Socialist Republics has failed to comply with the provisions of the United Nations resolutions calling upon it to desist from its intervention in the internal affairs of Hungary, to cease its deportations of Hungarian citizens and to return promptly to their homes those it has already deported, to withdraw its armed forces from Hungary and to cease its repression of the Hungarian people". Operative paragraph 1 of the resolution reiterated the General Assembly's "call upon the Government of the Union of Soviet Socialist Republics and the Hungarian authorities to comply" with resolutions 1004 (ES-II), 1005 (ES-II), 1006 (ES-II) and 1127 (XI), among others.

96. Operative paragraph 1 of resolution 1131 (XI), adopted on 12 December 1956 after a discussion of the Secretary-General's report of 30 November 1956, 121/ declared that "by using its armed force against the Hungarian people, the Government of the Union of Soviet Socialist Republics is violating the political independence of Hungary". Operative paragraph 2 of the resolution condemned "the violation of the Charter of the United Nations by the Government of the Union of Soviet Socialist Republics in depriving Hungary of its liberty and independence and the Hungarian people of the exercise of their fundamental rights". Operative paragraph 3 reiterated the General Assembly's call upon the Soviet Government "to desist forthwith from any form of intervention in the internal affairs of Hungary". Operative paragraph 4 called upon the Soviet Union "to make immediate arrangements for the withdrawal, under United Nations observation, of its armed forces from Hungary and to permit the re-establishment of the political independence of Hungary".

97. Referring to the conclusions of the report of the Special Committee on the Problem of Hungary, 122/ operative paragraph 5 of resolution 1133 (XI) condemned the "acts listed in the conclusions" and the continued defiance of the resolutions of the General Assembly". Operative paragraph 8 of resolution 1133 (XI) called upon "the Union of Soviet Socialist Republics and the present authorities in Hungary, in view of evidence contained in the report, to desist from repressive measures against the Hungarian people, to respect the liberty and political independence of Hungary and the Hungarian people's enjoyment of fundamental human rights and freedoms, and to ensure the return to Hungary of those Hungarian citizens who have been deported to the Union of Soviet Socialist Republics".

98. Operative paragraph 4 of resolution 1312 (XIII), adopted on the basis of the Committee's supplementary report, 123/ deplored "the continuing repression in Hungary of fundamental rights of the Hungarian people and of their freedom of political expression under the shadow of the continuing presence of Soviet armed forces". Paragraph 5 denounced "the execution of Mr. Imre Nagy, General Pál Maléter and other Hungarian patriots". Paragraph 6 condemned "this continued defiance of the resolutions of the General Assembly". Paragraph 7 reiterated the General Assembly's call upon "the Union of Soviet Socialist Republics and the present authorities in Hungary to desist from repressive measures against the Hungarian people and to respect the

121/ See above, para. 77.

122/ See above, para. 85.

123/ See above, paras. 87 and 88.

liberty and political independence of Hungary and the Hungarian people's enjoyment of fundamental human rights and freedoms".

vii. Provisions concerning the holding of free elections under United Nations auspices

99. In resolution 1005 (ES-II) of 9 November 1956, the General Assembly specified that one of the fundamental rights of the Hungarian people - the right to hold free elections - should be implemented under United Nations auspices. The relevant provisions of the resolution follow.

100. The preamble to the resolution expressed the conviction that "the recent events in Hungary manifest clearly the desire of the Hungarian people to exercise and to enjoy fully their fundamental rights, freedom and independence". It also stated "that foreign intervention in Hungary is an intolerable attempt to deny to the Hungarian people the exercise and the enjoyment of such rights, freedom and independence, and in particular to deny to the Hungarian people the right to a government freely elected and representing their national aspirations".

101. In operative paragraph 2, the General Assembly

"2. Considers that free elections should be held in Hungary under United Nations auspices, as soon as law and order have been restored, to enable the people of Hungary to determine for themselves the form of government they wish to establish in their country".

viii. Provisions concerning assistance and relief

102. Provisions on assistance and relief appear in General Assembly resolutions 1004, 1006 and 1007 (ES-II) and 1129 (XI).

103. Operative paragraph 7 of resolution 1004 (ES-II), adopted on 4 November 1956, requested the Secretary-General "in consultation with the heads of appropriate specialized agencies to inquire, on an urgent basis, into the needs of the Hungarian people for food, medicine and other similar supplies, and to report to the General Assembly as soon as possible". Operative paragraph 8 requested Member States and invited national and international humanitarian organizations "to co-operate in making available such supplies as may be required by the Hungarian people".

104. Operative paragraph 2 in section I of resolution 1006 (ES-II), adopted on 9 November 1956, called upon the "Hungarian authorities to facilitate, and the Union of Soviet Socialist Republics not to interfere with, the receipt and distribution of food and medical supplies to the Hungarian people and to co-operate fully with the United Nations and its specialized agencies, as well as with other international organizations such as the International Red Cross, to provide humanitarian assistance to the people of Hungary". Operative paragraph 1 in section II of the resolution requested "the Secretary-General to call upon the United Nations High Commissioner for Refugees to consult with other appropriate international agencies and interested Governments with a view to making speedy and effective arrangements for emergency assistance to refugees from Hungary". Finally, operative paragraph 2 in section II urged "Member States to make special contributions for this purpose".

105. Resolution 1007 (ES-II), adopted on 9 November 1956 - the only resolution on the question of Hungary which was not opposed 124/ by that Member State - was devoted entirely to the humanitarian aspect of the matter. The resolution follows.

"The General Assembly,

"Considering the extreme suffering to which the Hungarian people are subjected,

"Urgently wishing effectively to eliminate this suffering,

"Convinced that humanitarian duties can be fulfilled most effectively through the international co-operation stipulated in Article 1, paragraph 3, of the Charter of the United Nations,

"1. Resolves to undertake on a large scale immediate aid for the affected territories by furnishing medical supplies, foodstuffs and clothes;

"2. Calls upon all Member States to participate to the greatest extent possible in this relief action;

"3. Requests the Secretary-General to undertake immediately the necessary measures;

"4. Urgently appeals to all countries concerned to give full assistance to the Secretary-General in the implementation of this task."

106. After the adoption of resolution 1007 (ES-II), the Government of Hungary informed the Secretary-General that:

"The Hungarian Government accepts with sincere thanks the humane resolutions of the General Assembly which are in conformity with Article 1, paragraph 3, of the United Nations Charter and aim to assist the Hungarian people; and communicates that it will facilitate with every means the receipt and distribution of food and medicine sent for the Hungarian people, and is at present also co-operating with the representatives of the International Red Cross Committee. The Soviet troops in Hungary do not hinder this relief work in any way. In carrying out this task, the Hungarian Government is prepared to co-operate most fully with the agencies of the United Nations." 125/

107. Resolution 1129 (XI), adopted on 21 November 1956, dealt with the co-ordination of international assistance to Hungarian refugees. In its last paragraph, the resolution requested "the Secretary-General and the United Nations High Commissioner for Refugees to make an immediate appeal to both Governments and non-governmental organizations to meet the minimum present needs" of the refugees.

108. The action taken by the Secretary-General in pursuance of the above resolutions was described by him in several reports 126/ submitted to the General Assembly. No objection to this action appears to have been raised on the grounds of Article 2 (7).

124/ G A (ES-II), Plen., 571st mtg., para. 245.

125/ Cablegram dated 12 November 1956 from the Acting Minister, Deputy Minister for Foreign Affairs of Hungary to the Secretary-General (G A (XI), Annexes, vol. II, a.i. 67, p. 4, A/3341).

126/ G A (XI), Annexes, vol. II, a.i. 67, p. 8, A/3371 and Add.1; p. 13, A/3403 (V); p. 15, A/3405; p. 29, A/3443; p. 31, A/3464 and Add.1 and 2; p. 45, A/3503; p. 52, A/3503/Add.1.

B. General Assembly and Economic and Social Council

Case No. 12

Draft International Covenants on Human Rights

109. At the eleventh, twelfth and thirteenth sessions, the Third Committee of the General Assembly continued its consideration of the two draft Covenants on Human Rights. There was no further discussion of the domestic jurisdiction clause, and no action was taken with respect to the text which the Committee had approved for article 1 of the draft Covenants at the tenth session. 127/

Case No. 13

Recommendations concerning international respect for the self-determination of peoples

110. At its eleventh session, the General Assembly again decided 128/ to postpone to the next session the question of recommendations concerning international respect for the self-determination of peoples.

111. At the twelfth session, after a discussion of the question, in the course of which no objections were raised on the grounds of Article 2 (7), 129/ the General Assembly adopted 130/ resolution 1188 (XII) by 65 votes to none, with 13 abstentions at the 727th plenary meeting, on 11 December 1957. The resolution follows.

"The General Assembly,

"Recalling that one of the purposes and principles of the United Nations is to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples,

"Recalling further its resolution 545 (VI) of 5 February 1952 in which it decided to include in the International Covenants on Human Rights an article which should provide: 'All peoples shall have the right of self-determination',

"Reaffirming the principles embodied in the above-mentioned resolution that all States, including those having responsibility for the administration of Non-Self-Governing Territories, should promote the realization of that right, in conformity with the purposes and principles of the United Nations,

"Considering that disregard for the right to self-determination not only undermines the basis of friendly relations among nations as defined in the Charter of the United Nations but also creates conditions which may prevent further realization of the right itself,

"Believing that such a situation is contrary to the purposes and principles of of the United Nations,

127/ Repertory, Supplement No. 1, vol. I, under Article 2 (7), para. 105.

128/ G A (XI), Plen., vol. II, 656th mtg., para. 57.

129/ There was, however, a passing reference to Article 2 (7) at one of the meetings devoted to the question; see G A (XII), 3rd Com., 827th mtg., para. 28.

130/ G A (XII), Plen., 727th mtg., para. 87.

"1. Reaffirms that it is of international importance that, in accordance with the purposes and principles of the Charter of the United Nations:

"(a) Member States shall, in their relations with one another, give due respect to the right of self-determination;

"(b) Member States having responsibility for the administration of Non-Self-Governing Territories shall promote the realization and facilitate the exercise of this right by the peoples of such Territories;

"2. Decides to consider further at its thirteenth session the item 'Recommendations concerning international respect for the right of peoples and nations to self-determination', including the proposals contained in Economic and Social Council resolution 586 D (XX) of 29 July 1955."

112. Pursuant to the last paragraph of the above resolution, the General Assembly, at its thirteenth session, resumed consideration of the question of international respect for the self-determination of peoples.

113. The General Assembly had before it resolutions I and II submitted by the Commission on Human Rights and a draft resolution submitted by the United States. These three texts, it may be recalled, 131/ had been transmitted to the General Assembly by Economic and Social Council resolution 586 D (XX); they constituted the "proposals" referred to in the last paragraph of resolution 1188 (XII) quoted above.

114. The discussion of resolution II 132/ led to an exchange of views on the domestic jurisdiction clause. The arguments submitted in respect of that clause are set out in the Analytical Summary of Practice of the present study. They relate to the following question:

Whether a matter governed by the Charter provisions on the self-determination of peoples can fall essentially within domestic jurisdiction (paragraphs 173 and 174, below).

115. At the conclusion of the debates on the item, the following action was taken with respect to the three texts before the General Assembly.

116. Resolution I was adopted 133/ by the General Assembly at its 788th plenary meeting, on 12 December 1958, by 52 votes to 15, with 8 abstentions, and it became resolution 1314 (XIII). 134/ The United States draft resolution 135/ was rejected 136/ by the Third Committee at its 893rd meeting, on 26 November 1958. At the same meeting,

131/ Repertory, Supplement No. 1, vol. I, under Article 2 (7), paras. 109-112.

132/ For the text of the operative part of resolution II, see Repertory, vol. I, under Article 2 (7), para. 227.

133/ G A (XIII), Plen., 788th mtg., para. 56.

134/ Since no objections to the resolution were raised on the grounds of Article 2 (7), its provisions are not analysed in the present study.

135/ The text of the draft resolution is quoted in part in the Repertory, Supplement No. 1, vol. I, under Article 2 (7), para. 111.

136/ The draft resolution was rejected by 48 votes to 16, with 8 abstentions (G A (XIII), 3rd Com., 893rd mtg., para. 34).

the Committee decided 137/ to postpone action on resolution II until the fourteenth session of the General Assembly.

C. Security Council

**** Case No. 14**

The Spanish question

**** Case No. 15**

The Greek question (I)

**** Case No. 16**

The Greek question (II)

**** Case No. 17**

The Indonesian question

**** Case No. 18**

The Czechoslovak question

**** Case No. 19**

The Greek question (III)

**** Case No. 20**

The Anglo-Iranian Oil Company question

**** Case No. 21**

The question of Morocco

**** Case No. 28**

The question of Algeria

137/ The decision was taken by 39 votes to 7, with 24 abstentions (G A (XIII), 3rd Com., 893rd mtg., para. 40).

Case No. 31

The question of Hungary 138/

117. In a letter dated 27 October 1956, 139/ the representatives of France, the United Kingdom and the United States, invoking Article 34 of the Charter, requested the Security Council to include in its agenda an item entitled "The situation in Hungary", because of "the situation created by the action of foreign military forces in Hungary in violently repressing the rights of the Hungarian people which are secured by the Treaty of Peace of 10 February 1947".

118. By a letter dated 28 October 1956, 140/ the representative of Hungary transmitted to the Security Council a declaration of his Government objecting, on the grounds of Article 2 (7), to the inclusion in the agenda of the item proposed by the three representatives. Three days later, however, on 1 November 1956, Mr. Imre Nagy, President of the Council of Ministers of the Hungarian People's Republic, informed the Secretary-General by cable 141/ that:

"Reliable reports have reached the Government of the Hungarian People's Republic that further Soviet units are entering into Hungary. The President of the Council of Ministers in his capacity as Minister of Foreign Affairs summoned Mr. Andropov, Ambassador Extraordinary and Plenipotentiary of the Soviet Union to Hungary, and expressed his strongest protest against the entry of further Soviet troops into Hungary. He demanded the instant and immediate withdrawal of these Soviet forces. He informed the Soviet Ambassador that the Hungarian Government immediately repudiates the Warsaw Treaty and at the same time declares Hungary's neutrality, turns to the United Nations and requests the help of the four great Powers in defending the country's neutrality. The Government of the Hungarian People's Republic made the declaration of neutrality on 1 November 1956. Therefore I request Your Excellency promptly to put on the agenda of the forthcoming General Assembly of the United Nations the question of Hungary's neutrality and the defence of this neutrality by the four great Powers."

Further, by a letter dated 2 November 1956, 142/ Mr. Nagy requested the Security Council to "instruct the Soviet and Hungarian Governments to start the negotiations immediately" on the withdrawal of Soviet troops from Hungary.

119. The request for inclusion of the question of Hungary in the agenda of the Security Council was considered by the Security Council at its 746th meeting, on 28 October 1956. The request was opposed by the representative of the Union of Soviet Socialist Republics, who stated that the Government of Hungary had been compelled to bring its armed forces into action against a counter-revolutionary uprising and had appealed for assistance to the Government of the Soviet Union. Such a situation - the representative of the Soviet Union contended 143/ - fell essentially within the domestic jurisdiction of Hungary, and Article 2 (7) debarred the Security Council from including it in its agenda.

138/ The action of the General Assembly with respect to the question of Hungary is discussed above, under Case No. 30.

139/ S C, 11th yr., Suppl. for Oct.-Dec., p. 100, S/3690.

140/ Ibid., p. 101, S/3691.

141/ G A (ES-II), Annexes, a.i. 5, A/3251.

142/ S C, 11th yr., Suppl. for Oct.-Dec., p. 119, S/3726.

143/ S C, 11th yr., 746th mtg., paras. 12 to 26.

120. Despite these objections, the Security Council included 144/ the item in the agenda by 9 votes to 1, with 1 abstention.

121. The Security Council discussed the item at its 746th and 752nd to 754th meetings. During the discussion, the representative of the Soviet Union again contended 145/ that the matter fell essentially within the domestic jurisdiction of Hungary and that the Security Council was not competent to deal with it. The arguments submitted for and against the contention are set out in the Analytical Summary of Practice. They relate to the following questions:

Whether a matter governed by international agreements can fall essentially within domestic jurisdiction (paragraph 148, below);

Whether a matter governed by the Charter provisions on the maintenance of peace can fall essentially within domestic jurisdiction (paragraph 179).

122. At the 753rd meeting of the Security Council, on 3 November 1956, the representative of the United States submitted 146/ a draft resolution 147/ which, in part, called upon "the Government of the Union of Soviet Socialist Republics to desist forthwith from any form of intervention ... and to withdraw all of its forces without delay from Hungarian territory". The draft resolution was put to a vote at the 754th meeting, on 4 November 1956; there were 9 votes in favour and 1 against. 148/ Since the negative vote had been cast by the representative of the Soviet Union, a permanent member of the Council, the draft resolution was not adopted.

123. Immediately after this vote, the representative of the United States, "in accordance with rule 8 (b) of the rules of procedure of the General Assembly", submitted 149/ a second draft resolution, as follows:

"The Security Council,

"Considering that a grave situation has been created by the use of Soviet military forces to suppress the efforts of the Hungarian people to reassert their rights,

"Taking into account that because of the lack of unanimity among its permanent members the Security Council has been unable to exercise its primary responsibility for the maintenance of international peace and security,

"Decides to call an emergency special session of the General Assembly, as provided in General Assembly resolution 377A (V) of 3 November 1950, in order to make appropriate recommendations concerning the situation in Hungary."

124. The above draft resolution was adopted 150/ by the Security Council at its 754th meeting, on 4 November 1956, by 10 votes to 1.

144/ Ibid., para. 35.

145/ S C, 11th yr., 746th mtg., para. 141; 754th mtg., para. 54.

146/ S C, 11th yr., 753rd mtg., paras. 19-22.

147/ S C, 11th yr., Suppl. for Oct.-Dec., pp. 125 and 126, S/3730 and S/3730/Rev.1.

148/ One member did not participate in the vote.

149/ S C, 11th yr., 754th mtg., para. 70.

150/ Ibid., para. 75.

125. It will be recalled 151/ that the General Assembly met on the same day in emergency special session, to consider the question of Hungary.

Case No. 32

The question of Oman

126. In a letter dated 13 August 1957, 152/ the representatives of eleven Member States requested the Security Council to include the question of Oman in the agenda. The letter referred to Article 35 of the Charter and stated that:

"The people of Oman are at present the victims of an armed aggression resorted to by the British Government in violation of its obligations under the Charter of the United Nations.

"This aggression has taken, during the last few weeks, the form of a full-scale war involving the use of modern destructive weapons ..."

127. In a telegram dated 17 August 1957, 153/ the Sultan of Muscat and Oman protested against the request for inclusion of the question in the agenda and stated that the "matters to which [the above] letter relates fall exclusively within our internal jurisdiction and are no concern of United Nations organization".

128. During the discussion on the adoption of the agenda several representatives, including the representative of the United Kingdom, maintained that Oman was part of the dominions of the Sultan of Muscat and Oman and did not constitute a sovereign independent State. The military action of the armed forces of the United Kingdom had been taken at the request of the Sultan of Muscat and Oman for the purpose of assisting the Sultan in restoring order in the face of a revolt encouraged and supported from outside. Referring to the telegram of 17 August 1957, these representatives contended 154/ that the matter fell essentially within the domestic jurisdiction of the Sultanate of Muscat and Oman and that Article 2 (7) debarred the Council from including the item in its agenda. The arguments advanced for and against this contention are given in the Analytical Summary of Practice. They relate to the following question:

Whether the inclusion of the item in the agenda constitutes intervention (paragraph 140, below).

129. There were also representatives who did not support 155/ or who actually opposed 156/ the inclusion of the question in the agenda for reasons not based on Article 2 (7).

130. As a result of this discussion, the Security Council decided not to include the question of Oman in its agenda. The decision was taken 157/ at the 784th meeting, on 20 August 1957. There were 4 votes for the inclusion of the question in the agenda, 5 against, with 1 abstention, and one member present and not voting.

151/ See above, under Case No. 30, para. 62 et seqq.

152/ S C, 12th yr., Suppl. for July-Sept., p. 16, S/3865 and Add.1.

153/ Ibid., p. 17, S/3866.

154/ S C, 12th yr., 783rd mtg., paras. 35, 51, 52, 57, 73, 75 and 77; 784th mtg., para. 30.

155/ S C, 12th yr., 784th mtg., paras. 1-7, 12-16.

156/ Ibid., paras. 17-24.

157/ S C, 12th yr., 784th mtg., para. 87.

D. International Court of Justice

**** Case No. 22***Interpretation of peace treaties with Bulgaria, Hungary and Romania***** Case No. 23***Anglo-Iranian Oil Company case***** Case No. 29***The Nottebohm case***Case No. 33***The case of certain Norwegian loans*

131. On 6 July 1955, France submitted an application to the International Court of Justice, instituting proceedings in a dispute with Norway concerning the payment of various Norwegian loans issued in France.

132. On 20 April 1956, Norway filed several preliminary objections to the application. The first of these objections invoked the reservation contained in the declaration by which France had accepted the compulsory jurisdiction of the Court. This reservation reads:

"This declaration does not apply to differences relating to matters which are essentially within the national jurisdiction [158/] as understood by the Government of the French Republic." 159/

133. The Court examined the first preliminary objection in a judgement dated 6 July 1957. After a discussion of the arguments submitted by the parties, and without considering the question whether the French reservation was compatible with Article 36 (6) of the Statute of the International Court of Justice, 160/ the judgement found that:

158/ The original text of the French reservation reads:

"Cette déclaration ne s'applique pas aux différends relatifs à des affaires qui relèvent essentiellement de la compétence nationale telle qu'elle est entendue par le Gouvernement de la République française."

It should be noted that the expression "compétence nationale" used in the reservation also appears in the French text of Article 2 (7) and is rendered in the English text of that provision by "domestic jurisdiction" and not "national jurisdiction", as in the English translation of the reservation quoted above.

159/ Case of certain Norwegian loans, I C J, Reports 1957, p. 21.

160/ On the question of the compatibility of the French reservation with article 36 (6) of the Statute, see the separate opinion of Judge Sir Hersch Lauterpacht (I C J, Reports 1957, p. 43 et seqq.), and the dissenting opinion of Judge Guerrero (ibid., p. 67 et seqq.).

"... the Norwegian Government is entitled, by virtue of the condition of reciprocity, to invoke the reservation contained in the French Declaration of March 1st, 1949; that this reservation excludes from the jurisdiction of the Court the dispute which has been referred to it by the Application of the French Government; that consequently the Court is without jurisdiction to entertain the Application." 161/

134. In view of the expression "as understood by the Government of the French Republic" appearing in the French reservation, the Court was not called upon to determine whether the subject matter of the dispute was "essentially within the national jurisdiction", and the judgement of 6 July 1957 expressed no views on the point.

II. ANALYTICAL SUMMARY OF PRACTICE

135. With some exceptions, the present discussion of the domestic jurisdiction clause follows the main lines of the discussion of the clause in the Repertory studies of Article 2 (7). Several of the arguments are again summarized in the present study for the convenience of the reader, though they may be identical with those described under Article 2 (7) in the Repertory or Supplement No. 1.

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

136. The problem of a general definition of the term "to intervene" was raised in connexion with case No. 27 by a representative who contended 162/ that the term should be understood in the light of the traditional meaning of intervention as defined, for instance, by Professor Rousseau in his treatise on international public law. 163/ Accordingly, neither the discussion of a matter nor the adoption of recommendations thereon constituted intervention within the meaning of Article 2 (7).

137. While it appears that there were no other express references to a general definition of intervention, the position assumed by several representatives in connexion with cases Nos. 24, 27 and 30 may shed some light on the matter.

138. In each of these cases, a number of representatives who claimed that the matter fell essentially within domestic jurisdiction nevertheless supported draft resolutions and proposals dealing with the substance of the case. (See above, paragraphs 30, 33 to 35 for case No. 24, paragraphs 46, 49, 53 and 56 for case No. 27 and paragraphs 77 to 79, 105 and 106 for case No. 30.) This position may be interpreted as indicating that the representatives in question considered that the action taken in these draft resolutions and proposals did not constitute intervention within the meaning of Article 2 (7). Such an interpretation finds a measure of support in the fact that, at least in one instance (see paragraph 50, above), some of the representatives expressly

161/ I C J, Reports 1957, p. 27.

162/ Case No. 27: G A (XI), 1st Com., 838th mtg., paras. 21 and 22.

163/ The English translation of Professor Rousseau's definition follows:

"Intervention is the action of a State which is carrying out an act of interference in the internal or external affairs of another State to require the performance or non-performance of a specific thing. The intervening State acts in an authoritative way, seeking to impose its will, to exercise pressure in order to make its views prevail." (Charles Rousseau, Droit international public (Paris, Recueil Sirey, 1953), p. 321; quoted in G A (XI), 1st Com., 838th mtg., para. 21.

based their affirmative vote on the contention that the resolution under consideration did not prejudice the question of the competence of the General Assembly under Article 2 (7).

1. Whether the inclusion of an item in the agenda constitutes intervention

139. The question whether the inclusion of an item in the agenda constitutes intervention arose in the debates on the adoption of the agenda in cases Nos. 2, 11, 24, 27, 30, 31 and 32.

140. In each of these cases, the inclusion of the item in the agenda was opposed by representatives who, stating that the item fell essentially within domestic jurisdiction, contended 164/ that the United Nations was debarred by Article 2 (7) from discussing it and, hence, from including it in the agenda. The representatives who supported the inclusion of the item in the agenda either denied 165/ that the matter fell essentially within domestic jurisdiction or contended 166/ that the inclusion of an item in the agenda and its subsequent discussion did not constitute intervention within the meaning of Article 2 (7).

164/ Case No. 2: G A (XI), Gen. Com., 107th mtg., para. 21; Plen., 577th mtg., para. 75; G A (XII), Gen. Com., 111th mtg., para. 52; Plen., 682nd mtg., paras. 68 and 69; G A (XIII), Gen. Com., 117th mtg., para. 39; Plen., 752nd mtg., para. 31.

Case No. 11: G A (XI), Gen. Com., 107th mtg., para. 21; Plen., 577th mtg., para. 75; G A (XII), Gen. Com., 111th mtg., para. 52; Plen., 682nd mtg., paras. 68, 69, 78, 80 and 83; G A (XIII), Gen. Com., 117th mtg., para. 39; Plen., 752nd mtg., para. 31.

Case No. 24: G A (XI), Plen., 578th mtg., para. 16; G A (XII), Gen. Com., 111th mtg., para. 18.

Case No. 27: G A (XIII), Gen. Com., 117th mtg., para. 42.

Case No. 30: G A (ES-II), Plen., 564th mtg., para. 10; 569th mtg., paras. 2 and 45; G A (XI), Gen. Com., 106th mtg., paras. 11 and 14; Plen., 576th mtg., paras. 134 and 169; G A (XII), Gen. Com., 112th mtg., paras. 3, 5 and 7; G A (XIII), Plen., 752nd mtg., paras. 87 and 92.

Case No. 31: S C, 11th yr., 746th mtg., para. 24.

Case No. 32: S C, 12th yr., 783rd mtg., paras. 35, 51, 52, 59, 73-75 and 77; 784th mtg., paras. 30 and 33.

165/ Case No. 2: G A (XI), Gen. Com., 107th mtg., paras. 28 and 31; Plen., 577th mtg., para. 146; G A (XII), Plen., 682nd mtg., para. 87; G A (XIII), Plen., 752nd mtg., para. 46.

Case No. 11: G A (XI), Gen. Com., 107th mtg., paras. 28 and 31; Plen., 577th mtg., para. 148; G A (XII), Plen., 682nd mtg., para. 72; G A (XIII), Plen., 752nd mtg., paras. 39 and 44.

Case No. 24: G A (XII), Gen. Com., 111th mtg., para. 28.

Case No. 30: G A (ES-II), 564th mtg., paras. 27, 32 and 33; G A (XI), Gen. Com., 106th mtg., paras. 13 and 20.

Case No. 31: S C, 11th yr., 746th mtg., para. 30.

Case No. 32: S C, 12th yr., 784th mtg., paras. 9 and 61.

166/ Case No. 2: G A (XIII), Plen., 752nd mtg., para. 33.

Case No. 11: G A (XII), Spec. Pol. Com., 55th mtg., para. 2; G A (XIII), Plen., 752nd mtg., para. 33.

Case No. 27: G A (XI), 1st Com., 838th mtg., para. 22; 841st mtg., para. 51.

Decisions

141. Decisions to include items in the agenda after objections had been raised on the grounds of Article 2 (7) are dealt with above, in the General Survey, in paragraphs 9, 18, 40, 65 and 120. A decision not to include an item in the agenda after objections had been raised on the grounds of Article 2 (7) is dealt with in paragraph 130, and an example of a decision to amend the title of an item may be found in the General Survey in paragraph 26.

2. Whether a recommendation - in general or to a particular State - constitutes intervention

142. The question whether a recommendation constitutes intervention was discussed during the debates in cases Nos. 11 and 27.

143. Some representatives contended 167/ during these debates that a recommendation did not constitute intervention. Professor Rousseau's definition 168/ of the term was invoked 169/ in support of the contention. Other representatives drew a distinction between recommendations addressed to a particular Member of the United Nations and those addressed to all Members. The former, they held, 170/ constituted intervention, the latter did not.

Decisions

144. The resolutions adopted in connexion with cases Nos. 11 and 27 are dealt with above, in the General Survey, in paragraphs 21 to 23, and paragraphs 48, 49, 55 and 56, respectively. It should be noted that most of the representatives who voted for these resolutions expressed no opinion on the question whether the recommendations contained therein constituted intervention but based their position on the contention that the subject matter did not fall essentially within domestic jurisdiction in either case (see below, paragraphs 153, 156 to 159, 161, 172, 178 and 186).

***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 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*

167/ Case No. 11: G A (XIII), Spec. Pol. Com., 86th mtg., para. 18.

Case No. 27: G A (XI), 1st Com., 838th mtg., para. 22.

168/ See above, foot-note 163.

169/ Case No. 27: G A (XI), 1st Com., 838th mtg., para. 21.

170/ Case No. 11: G A (XI), Spec. Pol. Com., 14th mtg., paras. 33-35; G A (XII), Spec. Pol. Com., 57th mtg., paras. 24 and 25; G A (XIII), Spec. Pol. Com., 92nd mtg., para. 18.

B. The expression in Article 2 (7): "matters which are essentially within the domestic jurisdiction of any State"

1. *Whether a matter governed by international law can fall essentially within domestic jurisdiction*

145. References to international law were made in connexion with the question whether matters governed by the Charter provisions on human rights can fall essentially within domestic jurisdiction; such references are dealt with in the section devoted to that question. (See below, paragraphs 160 and 161).

2. *Whether a matter governed by international agreements can fall essentially within domestic jurisdiction*

146. The question whether a matter governed by an international agreement can fall essentially within domestic jurisdiction arose in the debates on cases Nos. 2, 30 and 31.

147. It was contended ^{171/} during the debates that a matter "essentially" within a State's domestic jurisdiction retained its character even when it became the object of an international agreement signed by that State. A statement made by Mr. John Foster Dulles, the representative of the United States at the United Nations

^{171/} Case No. 2: G A (XI), Plen., 577th mtg., para. 102; G A (XII), Spec. Pol. Com., 61st mtg., para. 36.

Conference on International Organization at San Francisco, was invoked 172/ in support of this position.

148. The above contention was disputed on two grounds. Some representatives maintained 173/ that a matter "essentially" within the domestic jurisdiction of a State was removed from the reserved domain established by Article 2 (7) when it became the object of an international agreement signed by the State. The advisory opinion delivered on 7 February 1923 by the Permanent Court of International Justice 174/ was invoked 175/ in support of this position. Other representatives did not refer to the subject matter of international agreements, but to the obligations contained therein,

172/ Case No. 2: G A (XI), Plen., 577th mtg., para. 102.

The representative who submitted this argument referred to the following passage in a statement by Mr. Dulles at the seventeenth meeting of Commission I, Committee 1, on 14 June 1945:

"... It said, for instance, that we should say that the question of what is domestic jurisdiction should be determined in accordance with international law. Well, that seemed an innocuous suggestion; but I wonder what international law is. Do we go back to the text books, Grotius, Basil and the like?

"Of course, their idea of what was domestic jurisdiction has no relationship whatever in the kind of world that we live in today. But does it perhaps mean something else? And that has been suggested. Does it mean that whenever you have a treaty which deals with any subject that that treaty is international law, and therefore the fact that a subject is dealt with by a treaty means that it is no longer domestic? In other words, does it mean that if the United States makes a Hull trade treaty, does that mean that the subject of the American Tariff is no longer a domestic matter, but one which can be dealt with by the world organization? Does it mean that because the Charter is a treaty which makes international law every subject which it deals with is no longer a matter of domestic jurisdiction?

"If so, if that is the meaning of the phrase 'international law', the whole purpose of the limitation [i.e., the domestic jurisdiction clause] is done away with, because it would mean that all these matters we talk about, this whole social life of every state which is dealt with - and properly dealt with - by this Charter would under that interpretation of the international law phrase be no longer a matter of domestic jurisdiction, and therefore the whole effect of the limitation swept away?"

The above passage, quoted from the Verbatim Minutes of the seventeenth meeting of Committee I/1, in the custody of the United Nations Archives, is not fully reflected in the digest of the speech appearing in the Summary Report of the seventeenth meeting of Committee I/1, the official record of the meeting Documents of the United Nations Conference on International Organization, vol. VI, doc. 1019, I/1/42, p. 507 et seqq.

173/ Case No. 2: G A (XI), Spec. Pol. Com., 7th mtg., para. 10; G A (XII), Spec. Pol. Com., 62nd mtg., para. 8; 63rd mtg., para. 9.

Case No. 30: G A (XI), Plen., 606th mtg., para. 120.

174/ Repertory, vol. I, under Article 2 (7), paras. 386 and 387.

175/ Case No. 30: G A (XI), Plen., vol. I, 585th mtg., paras. 26, 103 and 104. The record of the meeting, instead of citing an advisory opinion of the International Court of Justice (foot-note 1 to para. 26), should have referred to an advisory opinion of the Permanent Court of International Justice (PCIJ, Series B, No. 4, p. 7 (Nationality Decrees in Tunis and Morocco)).

and held 176/ that the violation of such obligations could not fall essentially within the domestic jurisdiction of the party which had committed the violation.

Decisions

149. The three resolutions adopted in connexion with case No. 2 during the period under review made no reference to the international agreements invoked during the debates (see above, paragraphs 13 to 15). It should be noted, however, that the first resolution adopted by the General Assembly in connexion with the case - resolution 44 (I) of 8 December 1946 - referred expressly to these international agreements (Repertory, vol. I, under Article 2 (7), paragraph 56).

150. The resolutions adopted in connexion with case No. 30 referred to the international agreements invoked during the debates (paragraphs 70 to 73; above). They also referred to Article 2 (4), to the Charter provisions on human rights and to request for United Nations action submitted by the Government directly concerned.

151. No resolution on substance was adopted in connexion with case No. 31 (paragraphs 123 and 124, above).

3. Whether a matter dealt with by the Charter can fall essentially within domestic jurisdiction

152. The arguments submitted during the period under review, with reference to the Charter as a whole, may be summarized as follows.

153. Some representatives contended that the mere fact that a matter was dealt with by the Charter placed it outside the scope of Article 2 (7). Three main arguments were advanced in support of this contention. First, it was maintained 177/ that Article 10 clearly showed that Article 2 (7) did not limit the power of the General Assembly to take action on "any matters within the scope of the present Charter". Secondly, it was held 178/ that the Charter had raised the matters dealt with therein to the category of matters of international concern and that the presence of the word "essentially" in Article 2 (7) excluded such matters from the scope of Article 2 (7). Thirdly, it was argued 179/ that, since the Charter was an international agreement, the matters dealt with therein were removed from the domestic jurisdiction of the parties. The advisory opinion delivered on 7 February 1923 by the Permanent Court of International Justice 180/ was invoked 181/ in support of this position.

176/ Case No. 2: G A (XI), Spec. Pol. Com., 10th mtg., para. 6; G A (XII), Spec. Pol. Com., 63rd mtg., para. 6.

Case No. 30: G A (ES-II), Plen., 564th mtg., para. 27.

Case No. 31: S C, 11th yr., 746th mtg., para. 133.

177/ Case No. 2: G A (XII), Spec. Pol. Com., 63rd mtg., para. 44; G A (XIII), Spec. Pol. Com., 123rd mtg., para. 2.

Case No. 11: G A (XI), Spec. Pol. Com., 13th mtg., para. 21.

178/ Case No. 2: G A (XII), Spec. Pol. Com., 63rd mtg., paras. 2 and 7.

Case No. 30: G A (XI), Plen., vol. III, 675th mtg., paras. 40 and 41.

179/ Case No. 30: G A (XI), Plen., vol. I, 585th mtg., paras. 25 and 26.

180/ Repertory, vol. I, under Article 2 (7), paras. 386 and 387.

181/ Case No. 11: G A (XII), Spec. Pol. Com., 55th mtg., para. 40.

Case No. 30: G A (XI), Plen., vol. I, 585th mtg., paras. 25 and 26. See also foot-note 175, above.

154. Other representatives held, 182/ on the contrary, that the expression "Nothing contained in the present Charter" appearing at the beginning of Article 2 (7) 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). The expression precluded the application to the Charter of the principle laid down in the advisory opinion of the Permanent Court of International Justice of 7 February 1923, with respect to international agreements in general. 183/ Moreover, it was stated, the records of the San Francisco Conference clearly showed that a matter essentially within domestic jurisdiction was removed from "the scope of the present Charter" as these words were used in Article 10, and that there was no conflict between this provision and the domestic jurisdiction clause. 184/

a. ARTICLE 2 (7) AND THE CHARTER PROVISIONS ON HUMAN RIGHTS

155. In addition to considerations relating to the Charter as a whole, arguments referring specifically to the provisions on human rights and fundamental freedoms were submitted in cases Nos. 2, 11, 27 and 30. These arguments may be summarized as follows.

156. Some representatives contended that human rights and fundamental freedoms did not fall essentially within the domestic jurisdiction of Member States. The following points were made in support of this contention.

157. First, it was held 185/ that Articles 1 (3), 55 c and 56 of the Charter removed human rights and fundamental freedoms from the domestic jurisdiction of Member States. Some representatives taking this position argued that the Articles cited imposed obligations on Member States and that the implementation of an international obligation

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- 182/ Case No. 2: G A (XI), Plen., vol. I, 577th mtg., paras. 83 and 84.
Case No. 11: G A (XI), Plen., vol. I, 577th mtg., paras. 83 and 84; G A (XII), Spec. Pol. Com., 57th mtg., paras. 23 and 35; G A (XIII), Spec. Pol. Com., 94th mtg., paras. 10 and 21.
Case No. 24: G A (XI), 1st Com., 853rd mtg., para. 5; G A (XII), 1st Com., 930th mtg., para. 31.
Case No. 27: G A (XI), 1st Com., 830th mtg., para. 3; G A (XII), 1st Com., 914th mtg., para. 35.
- 183/ Case No. 11: G A (XIII), Spec. Pol. Com., 94th mtg., para. 21.
- 184/ Case No. 2: G A (XI), Plen., vol. I, 577th mtg., paras. 96-99.
Case No. 11: G A (XI), Plen., vol. I, 577th mtg., paras. 96-99. Reference was made to the Summary Reports of the ninth and tenth meetings of the Executive Committee of the United Nations Conference on International Organization (UNCIO, vol. V, docs. 1063.EX.27 and 1108.EX.28, p. 522 et seqq., and p. 535 et seqq.).
- 185/ Case No. 2: G A (XI), Plen., vol. I, 577th mtg., para. 148; Gen. Com., 107th mtg., para. 28; Spec. Pol. Com., 9th mtg., paras. 4, 18 and 31; G A (XII), Spec. Pol. Com., 59th mtg., para. 6, 60th mtg., para. 2; 61st mtg., para. 7; 62nd mtg., para. 24; 63rd mtg., para. 2; G A (XIII), Spec. Pol. Com., 124th mtg., para. 1.
Case No. 11: G A (XI), Plen., vol. I, 577th mtg., para. 148; Gen. Com., 107th mtg., para. 28; Spec. Pol. Com., 13th mtg., para. 5; G A (XII) Spec. Pol. Com., 53rd mtg., paras. 6 and 33; 54th mtg., paras. 3 and 33; G A (XIII), Spec. Pol. Com., 87th mtg., para. 7; 88th mtg., para. 29; 89th mtg., paras. 2 and 6; 90th mtg., para. 15.
Case No. 27: G A (XI), 1st Com., 838th mtg., para. 20; 844th mtg., para. 4.
Case No. 30: G A (ES-II) Plen., 568th mtg., para. 99; G A (XI) Plen., 583rd mtg., para. 62; 606th mtg., para. 21; 608th mtg., para. 71.

did not fall essentially within domestic jurisdiction. Others did not refer to the implementation of the obligations established in Articles 1 (3), 55 c and 56, but to the violations of these obligations; they held that such violations did not fall essentially within domestic jurisdiction. Still others expressed no opinion on the question whether the Articles had a binding character.

158. Secondly, it was contended 186/ that a confirmation of the competence of the United Nations with respect to human rights and fundamental freedoms could be found in Articles 13 b and 62 (2) of the Charter.

159. Thirdly, it was argued 187/ that to admit the claim of domestic jurisdiction with respect to human rights and fundamental freedoms would destroy the edifice which the Charter had constructed for the protection of these rights and freedoms and would render meaningless some of its most important provisions.

160. Fourthly, it was held 188/ that if collective action of States for the protection of human rights and fundamental freedoms had been permissible under the international law of the nineteenth century, 189/ it was surely no less permissible under the law of the United Nations.

161. Finally, it was maintained 190/ that the protection of human rights and fundamental freedoms was an international matter since man was no longer, as in the past, indirectly subject to international law but had become its primary concern.

162. Other representatives contended, 191/ on the contrary, that human rights and fundamental freedoms fell essentially within domestic jurisdiction for the following reasons. Articles 1 (3), 55 c and 56 of the Charter were not statements of legal obligations but declarations of principles and purposes. As the records of the San Francisco Conference showed, these Articles were not intended to authorize the

186/ Case No. 2: G A (XII), Spec. Pol. Com., 63rd mtg., para. 44; G A (XIII), Spec. Pol. Com., 123rd mtg., para. 2.

Case No. 11: G A (XIII), Spec. Pol. Com., 93rd mtg., para. 6.

Case No. 27: G A (XI), 1st Com., 842nd mtg., para. 53.

187/ Case No. 2: G A (XII), Spec. Pol. Com., 63rd mtg., para. 2; G A (XIII), Spec. Pol. Com., 123rd mtg., para. 30.

Case No. 27: G A (XI), 1st Com., 838th mtg., para. 20.

188/ Case No. 30: G A (XI), Plen., vol. I, 585th mtg., para. 100.

189/ The representative submitting the argument referred in particular to the practice of intervention in the interest of humanity.

190/ Case No. 2: G A (XII), Spec. Pol. Com., 60th mtg., para. 3.

Case No. 11: G A (XIII), Spec. Pol. Com., 94th mtg., para. 26.

191/ Case No. 2: G A (XI), Plen., vol. I, 577th mtg., para. 105.

Case No. 11: G A (XI), Plen., vol. I, 577th mtg., para. 105; Spec. Pol. Com., 15th mtg., para. 11; G A (XII), Spec. Pol. Com., 57th mtg., para. 35.

Case No. 30: G A (XI), Plen., vol. I, 585th mtg., para. 197.

United Nations to intervene in the domestic jurisdiction of Member States. 192/ Moreover, Article 2 (7) had an overriding effect and applied to all provisions of the Charter, including those on human rights and fundamental freedoms, with the sole exception of the enforcement measures provided for in Chapter VII. 193/

Decisions

163. None of the three resolutions adopted by the General Assembly in connexion with case No. 2 referred expressly to a Charter provision on human rights. Two of these resolutions, however, referred to the "purposes and principles of the United Nations Charter and the Universal Declaration of Human Rights" (see above, paragraphs 14 and 15). It will be recalled that one provision of the "Purposes and Principles of the Charter - Article 1 (3) - concerns human rights.

164. Each of the three resolutions adopted by the General Assembly in connexion with case No. 11 recalled paragraph 6 of resolution 917 (X), 194/ which reads:

"The General Assembly,

".....

"6. Calls on the Government of the Union of South Africa to observe the obligations contained in Article 56 of the Charter".

192/ Case No. 2: G A (XI), Plen., vol. I, 577th mtg., paras. 107 and 114.
Case No. 11: G A (XI), Plen., vol. I, 577th mtg., paras. 107 and 114.
Case No. 27: G A (XII), 1st Com., 914th mtg., para. 36, 917th mtg., para. 78.
 In cases Nos. 2 and 11, reference was made to the following passage in the report of Commission II at the San Francisco Conference:

"Commission II has also agreed to include in its records the statement that nothing contained in this Chapter [i.e., 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. VIII, p. 268; see also Repertory, vol. I, under Article 2 (7), foot-note 373.)

In case No. 27, some representatives recalled that the San Francisco Conference had failed to adopt an amendment submitted by France which would have added to the clause prohibiting intervention in domestic jurisdiction the following phrase: "unless the clear violation of essential liberties and of human rights constitutes in itself a threat capable of compromising peace." (UNCIO, vol. III, doc. 2, G/7 (q), p. 386.) Other representatives, however, held that no inference could be drawn from this fact since the French delegation had withdrawn its amendment after the adoption by the Conference of a proposal to include in the text of Article 2 (7) the phrase "but this principle shall not prejudice the application of enforcement measures under Chapter VII". (G A (XII), 1st Com., 922nd mtg., para. 37 et seqq.)

193/ Case No. 2: G A (XI), Plen., vol. I, 577th mtg., para. 83.
 Case No. 11: G A (XI), Plen., vol. I, 577th mtg., para. 83; G A (XII), Spec. Pol. Com., 57th mtg., para. 35; G A (XIII), Spec. Pol. Com., 94th mtg., para. 10.

Case No. 27: G A (XII), 1st Com., 914th mtg., para. 35.

194/ See above, paras. 21, 22 and 23; see also Repertory, Supplement No. 1, vol. I, under Article 2 (7), paras. 54-57.

Furthermore, one of the three resolutions 1248 (XIII), referred specifically to Article 56 of the Charter and called upon "all Member States to bring their policies into conformity with their obligations under the Charter to promote the observance of human rights and fundamental freedoms". (See above, paragraph 23.)

165. Neither of the two resolutions adopted by the General Assembly in connexion with case No. 27 referred expressly to a Charter provision on human rights (see above, paragraphs 48, 49, 55 and 56). One of these resolutions, however, referred to the purposes of the Charter, which include a provision dealing with human rights (paragraphs 55 and 56 above).

166. The resolutions adopted by the General Assembly in connexion with case No. 30 referred expressly to Charter provisions on human rights. (See above, paragraph 70.) Resolution 1127 (XI), in particular, recalled "the obligations assumed by all Member States under Articles 55 and 56 of the Charter" (paragraph 73, above). It should be noted that these resolutions also referred to the international agreements invoked during the debates, to Article 2 (4) of the Charter and to a request for United Nations action submitted by the Government directly concerned.

b. ARTICLE 2 (7) AND THE CHARTER PROVISIONS REGARDING
NON-SELF-GOVERNING TERRITORIES

167. Arguments referring specifically to the Charter provisions regarding Non-Self-Governing Territories were submitted during the debates on case No. 24. These arguments may be summarized as follows.

168. Some representatives held 195/ that, in entrusting specific functions to the Administering Powers with respect to Non-Self-Governing Territories, Chapter XI of the Charter had removed the matters covered by these functions from the domestic jurisdiction of the Administering Powers. Other representatives contended, 196/ on the contrary, that Article 2 (7) debarred the United Nations from intervening in the exercise of the functions entrusted to the Administering Powers by Chapter XI.

169. Some representatives held that the domestic jurisdiction of a State did not extend over its Non-Self-Governing Territories. The arguments submitted in respect of this contention are summarized below in paragraphs 184 and 185.

Decisions

170. Neither of the two resolutions adopted in connexion with case No. 24 referred to the Charter provisions regarding Non-Self-Governing Territories (see above, paragraphs 30 and 35).

c. ARTICLE 2 (7) AND THE CHARTER PROVISIONS ON THE SELF-DETERMINATION
OF PEOPLES

171. Arguments referring specifically to the Charter provisions on the self-determination of peoples were advanced during the debates in cases Nos. 13, 24 and 27. These arguments may be summarized as follows.

195/ Case No. 24: G A (XI), 1st Com., 855th mtg., para. 54; 856th mtg., para. 10.
196/ Case No. 24: G A (XI), 1st Com., 849th mtg., para. 28; G A (XII), 1st Com., 931st mtg., para. 26.

172. Some representatives contended 197/ that, since the Charter proclaimed the right of self-determination in Articles 1 (2) and 55, the implementation of this right did not fall essentially within the domestic jurisdiction of Member States. Article 10 of the Charter was invoked 198/ in support of this contention. It was also argued 199/ that the fact that self-determination was a human right sufficed to remove it from domestic jurisdiction.

173. Other representatives held, 200/ on the contrary, that both in Article 1 (2) and in Article 55, the English text of the Charter referred, not to a right to self-determination but to a principle of self-determination, and the implementation of that principle fell essentially within domestic jurisdiction. It was contended, 201/ furthermore, that Article 2 (7) had an overriding effect and applied to all the provisions of the Charter, including those of the self-determination of peoples, with the sole exception of the enforcement measures provided for in Chapter VII.

174. Some representatives drew a distinction between minorities living within the metropolitan boundaries of a State and the peoples of Non-Self-Governing Territories. They held that the realization of self-determination by the former fell essentially within the domestic jurisdiction of the State concerned. The realization of self-determination by the latter was, on the contrary, a question of international concern governed by the provisions of Chapter XI of the Charter and beyond the scope of domestic jurisdiction. 202/

Decisions

175. The resolution adopted in connexion with case No. 13 referred expressly to the "right of self-determination" and recalled the principle "that all States, including those having responsibility for the administration of Non-Self-Governing Territories, should promote the realization of that right ..." (see above, paragraph 111).

176. A resolution adopted by the General Assembly in connexion with case No. 24 and another adopted in connexion with case No. 27 referred to the "Purposes and Principles" of the Charter. These Purposes and Principles, it will be recalled, contain a provision 203/ on self-determination (see above, paragraph 30 for case No. 24 and paragraph 55 for case No. 27). It should be noted, however, that, in respect of each case, the General Assembly rejected, either in plenary or in committee meetings, one or more proposals referring expressly to self-determination (see above, paragraphs 31 and 32 for case No. 24 and paragraphs 44, 47, 52 to 54 for case No. 27).

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- 197/ Case No. 24: G A (XI), 1st Com., 851st mtg., para. 8; 852nd mtg., paras. 1, 15 and 17.
- 198/ Case No. 24: G A (XI), 1st Com., 854th mtg., para. 68.
Case No. 27: G A (XI), 1st Com., 838th mtg., para. 16.
- 199/ Case No. 24: G A (XI), 1st Com., 852nd mtg., para. 37.
Case No. 27: G A (XI), 1st Com., 838th mtg., para. 20.
- 200/ Case No. 13: G A (XIII), 3rd Com., 890th mtg., para. 30; 891st mtg., para. 38; 892nd mtg., paras. 8 and 30.
Case No. 24: G A (XI), 1st Com., 847th mtg., para. 60; 849th mtg., paras. 28 and 29; 851st mtg., paras. 24 and 25.
Case No. 27: G A (XI), 1st Com., 841st mtg., paras. 23 and 27.
- 201/ Case No. 24: G A (XI), 1st Com., 853rd mtg., para. 5.
Case No. 27: G A (XII), 1st Com., 914th mtg., para. 35.
- 202/ Case No. 13: G A (XIII), 3rd Com., 893rd mtg., paras. 11 and 17.
Case No. 24: G A (XI), 1st Com., 851st mtg., para. 15; 853rd mtg., paras. 36-38.
- 203/ Article 1 (2).

d. ARTICLE 2 (7) AND THE CHARTER PROVISIONS ON THE MAINTENANCE
OF INTERNATIONAL PEACE

177. Arguments referring specifically to the Charter provisions on the maintenance of international peace were submitted in cases Nos. 2, 11, 27, 30 and 31.

178. In cases Nos. 2, 11 and 27, several representatives held that a situation which had international repercussions or was likely to cause international friction could not fall essentially within domestic jurisdiction. 204/ Article 14 of the Charter was invoked 205/ in support of this contention. Other representatives contended, 206/ on the contrary, that the sole exception to the principle laid down in Article 2 (7) was to be found in the last phrase of the Article. The exception applied only to "threats to the peace, breaches of the peace, and acts of aggression" within the meaning of Chapter VII of the Charter. With respect to a latent or potential danger to peace, the principle laid down in Article 2 (7) was not subject to any exception. 207/

179. In cases Nos. 30 and 31, several representatives contended that the political situation existing in a particular Member State had been caused by the armed intervention of another Member State. They held 208/ that, since this armed intervention had been committed in violation of Article 2 (4) of the Charter, the political situation in question could not fall essentially within domestic jurisdiction. Other representatives, however, maintained 209/ that the armed intervention had been fully legitimate since it had taken place at the express request of the particular Member State concerned, and they contended that the political situation under consideration fell essentially within the domestic jurisdiction of that Member State.

- 204/ Case No. 2: G A (XI), Spec. Pol. Com., 9th mtg., para. 26.
Case No. 11: G A (XI), Spec. Pol. Com., 13th mtg., para. 24; 14th mtg., para. 31; G A (XII), Plen., 682nd mtg., para. 87; Spec. Pol. Com., 54th mtg., paras. 8 and 31; G A (XIII), Spec. Pol. Com., 88th mtg., para. 7; 89th mtg., para. 8.
Case No. 27: G A (XI), 1st Com., 837th mtg., para. 32; 838th mtg., paras. 18 and 49; G A (XIII), 1st Com., 1018th mtg., para. 29; 1021st mtg., para. 29.
- 205/ Case No. 2: G A (XI), Spec. Pol. Com., 9th mtg., para. 23; 10th mtg., para. 23.
Case No. 11: G A (XI), Spec. Pol. Com., 13th mtg., para. 21.
Case No. 27: G A (XI), 1st Com., 837th mtg., para. 32; 838th mtg., paras. 16 and 18; G A (XII), 1st Com., 919th mtg., para. 12; G A (XIII), 1st Com., 1021st mtg., para. 33.
- 206/ Case No. 2: G A (XI), Plen., vol. I, 577th mtg., paras. 83 and 84.
Case No. 11: G A (XI), Plen., vol. I, 577th mtg., paras. 83 and 84; G A (XIII), Spec. Pol. Com., 94th mtg., para. 10.
Case No. 27: G A (XI), 1st Com., 830th mtg., para. 3; G A (XII), 1st Com., 914th mtg., para. 35.
- 207/ Case No. 27: G A (XI), 1st Com., 830th mtg., para. 3.
- 208/ Case No. 30: G A (ES-II), Plen., 564th mtg., paras. 32 and 33; 568th mtg., para. 20; 570th mtg., para. 94; G A (XI), Gen. Com., 106th mtg., para. 20; Plen., 583rd mtg., para. 62; 585th mtg., para. 140; 605th mtg., para. 210; 608th mtg., para. 71; 671st mtg., para. 91; 674th mtg., para. 22; 675th mtg., paras. 5 and 41.
Case No. 31: S C, 11th year, 746th mtg., paras. 119, 133 and 182.
- 209/ Case No. 30: G A (ES-II), Plen., 564th mtg., paras. 10 and 100-113; 568th mtg., paras. 3, 4 62-68, 107, 109 and 114; 569th mtg., paras. 2, 5 and 13; G A (XI), Plen., 576th mtg., paras. 134 and 135; 582nd mtg., paras. 28 and 56; 583rd mtg., paras. 132 and 133; 584th mtg., para. 115; 616th mtg., para. 8.
Case No. 31: S C, 11th year, 746th mtg., paras. 20, 24, 141 and 156.

Decisions

180. None of the resolutions adopted by the General Assembly in connexion with cases Nos. 2, 11 and 27 referred directly to the Charter provisions on the maintenance of international peace which were invoked during the debates on these cases (see above, paragraphs 13, 14 and 15 for case No. 2; paragraphs 21, 22 and 23 for case No. 11; and paragraphs 48, 49, 55 and 56 for case No. 27). It should be noted, however, that some of the previous resolutions adopted by the General Assembly in connexion with cases Nos. 2 and 11 did refer to these Charter provisions (see under Article 2 (7), Repertory, vol. I, paragraphs 437 and 440, and Supplement No. 1, vol. I, paragraph 169).

181. A draft resolution approved by the First Committee in connexion with case No. 27 found that the situation dealt with therein constituted "a threat to international peace and security". In the plenary meeting, however, the draft resolution failed to obtain the majority required for adoption (see above, paragraphs 58 to 61).

182. Several of the resolutions adopted by the General Assembly in connexion with case No. 30 referred expressly to Article 2 (4) of the Charter (see above, paragraph 73). They also referred to the international agreements which had been invoked during the debates, to the Charter provisions on human rights and to a request for United Nations action submitted by the Government directly concerned.

183. No resolution on substance was adopted in connexion with case No. 31 (see above, paragraphs 122 to 125).

4. Whether the domestic jurisdiction of a State extends over all its territories

184. Two questions concerning the territorial scope of domestic jurisdiction were discussed during the period under review. The first arose in connexion with case No. 24 and related to Non-Self-Governing Territories. The second arose in connexion with case No. 27 and related to metropolitan territories. The discussion of both questions did not bear on the "matters" involved in the situation under consideration, but on the geographical area of the situation, and revolved around the issue whether the domestic jurisdiction of the State invoking Article 2 (7) extended over that geographical area. The discussion was along the following lines.

185. During the debates on case No. 24, some representatives held 210/ that a State could not invoke Article 2 (7) with respect to a situation arising in one of its Non-Self-Governing Territories since the domestic jurisdiction of States did not extend over Non-Self-Governing Territories. Other representatives expressed 211/ the opposite view.

186. During the debates on case No. 27 some representatives contended 212/ that the domestic jurisdiction of a State did not cover an overseas area which the State had declared unilaterally to be part of its metropolitan territory and whose population constituted a distinct cultural, national and ethnic entity. The State in question could not therefore invoke Article 2 (7) with respect to a situation arising in that

210/ Case No. 24: G A (XI), 1st Com., 853rd mtg., para. 38; 854th mtg., para. 68.

211/ Case No. 24: G A (XI), 1st Com., 849th mtg., para. 28.

212/ Case No. 27: G A (XI), 1st Com., 835th mtg., para. 48; 836th mtg., paras. 3 and 4; 840th mtg., para. 44; G A (XII), 1st Com., 916th mtg., paras. 29 and 30; 918th mtg., para. 38; 922nd mtg., para. 4; G A (XIII), 1st Com., 1016th mtg., para. 2.

overseas area. Other representatives held, on the contrary, that the domestic jurisdiction of a State extended over the whole of its metropolitan territory. They pointed out that the United Nations was obliged to respect the political constitutions and geographical boundaries of its Members. They held, 213/ in particular, that when an overseas area was part of the metropolitan territory of a State at the time of the latter's admission to the United Nations, the General Assembly should refrain from any action casting doubt on the sovereignty of the State over the area in question.

Decisions

187. None of the resolutions adopted by the General Assembly in connexion with cases Nos. 24 and 27 appeared to refer to the arguments submitted with respect to the question of the territorial scope of domestic jurisdiction (see above, paragraphs 30 and 35 for case No. 24 and paragraphs 48, 49, 55 and 56 for case No. 27).

188. It should be noted, however, that a draft resolution approved by the First Committee in connexion with case No. 27 referred to a provisional Government which claimed authority over an overseas area included in the metropolitan territory of a Member State and took note of the willingness of that provisional Government to enter into negotiations with the Government of the Member State. In the plenary meeting, all references to the provisional Government were deleted by a vote of the General Assembly, and the rest of the draft resolution failed to obtain the majority required for adoption (see above, paragraphs 58 and 61).

C. The last phrase of Article 2 (7): "but this principle shall not prejudice the application of enforcement measures under Chapter VII"

189. The last phrase of Article 2 (7) was invoked during the debates in the Security Council on the adoption of the agenda in case No. 32.

190. During these debates several members maintained 214/ that the question proposed for inclusion in the agenda fell essentially within the domestic jurisdiction of a State and opposed the adoption of the agenda on the grounds of Article 2 (7). One of the members supporting the adoption of the agenda held 215/ that, even if the question involved fell essentially within domestic jurisdiction, the Security Council was empowered to take enforcement measures by virtue of the last phrase of Article 2 (7).

Decisions

191. The Security Council decided not to include in its agenda the question dealt with in case No. 24. It should be noted that several members of the Council based their position with respect to the adoption of the agenda on reasons not connected with Article 2 (7). (See above, paragraphs 129 and 130.)

213/ Case No. 27: G A (XI), 1st Com., 830th mtg., para. 7; 836th mtg., para. 31; 841st mtg., paras. 12 and 48; 844th mtg., para. 16; G A (XII), 1st Com., 913th mtg., para. 3; 917th mtg., para. 78; 920th mtg., paras. 1, 3 and 14; 921st mtg., para. 64; G A (XIII), 1st Com., 1018th mtg., paras. 8 and 10; 1020th mtg., para. 4.

214/ Case No. 32: S C, 12th yr., 783rd mtg., paras. 35, 51, 52, 59, 73, 75, and 77; 784th mtg., para. 30.

215/ Case No. 32: S C, 12th yr., 783rd mtg., para. 64.

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

192. No proposals on competence were submitted in relation to Article 2 (7) during the period under review.

193. In all the cases studied in this Supplement, the representatives raising objections on the grounds of Article 2 (7) participated in the debates on the adoption of the agenda. These representatives also participated in the debates and votes on the cases themselves, with the following exceptions.

194. At the eleventh, twelfth and thirteenth sessions of the General Assembly, the representative of the Union of South Africa refrained from participation in the debates and votes on cases Nos. 2 and 11, entitled respectively "Treatment of people of Indian origin in the Union of South Africa" and "The question of race conflict in the Union of South Africa".

195. The delegation of the Union Government, moreover, curtailed its participation in the work of the General Assembly on other matters. In the course of the general debate at the eleventh session, the representative of the Union Government stated that the inscription on its agenda of cases Nos. 2 and 11 had induced his Government to "take stock of its position as a Member of the United Nations". 216/ He informed the General Assembly that "until such time as the United Nations shows that it is prepared to act in accordance with the spirit of the San Francisco Conference of 1945 and to conform to the principles laid down by the founders of the Organization in Article 2, paragraphs 1 and 7, of the Charter, the Union of South Africa, while as yet continuing to be a Member of the United Nations, will in future maintain only a token representation or a nominal representation at the meetings of the Assembly and at the Headquarters of the Organization". 217/ As regards administrative and budgetary matters, he specified that: "In view of the fact that the Union of South Africa will continue to be responsible for the payment of its annual assessments, a member of the delegation will attend the meetings of the Fifth Committee when necessary in order to watch South Africa's interests." 218/

196. At the thirteenth session, however, the representative of the Union Government informed the General Assembly in the course of the general debate that his Government had "resolved to play its part as an active Member of this Organization". He mentioned "the more friendly approach and more conciliatory attitude shown towards South Africa in the debates of the last session of the General Assembly". "This", he stated, "was the determining factor in my Government's decision to return to the United Nations ...". 219/ He added, however, that "the South African delegation having ... recorded its objection to the placing of items 62 [case No. 2] and 67 [case No. 11] on the agenda, will ignore all discussions dealing with either of those items and will, equally, ignore any resolutions adopted by the United Nations concerning them". 220/

197. The representative of France refrained from participation in the debates on case No. 27 - the Algerian question - at the thirteenth session of the General Assembly. At the eleventh and twelfth sessions, he participated in the general

216/ G A (XI), Plen., vol. I, 597th mtg., para. 110.

217/ Ibid., para. 152.

218/ Ibid., para. 153.

219/ G A (XIII), Plen., vol. I, 757th mtg., para. 58.

220/ Ibid., para. 61.

discussion of the question but not in the debates and votes on the draft resolutions and proposals submitted thereon. 221/

198. The representative of Hungary participated in the debates and votes of the General Assembly on case No. 30 - the question of Hungary - at the second emergency special session and at the twelfth and thirteenth sessions. At the eleventh session, he participated in these debates and votes until the 615th plenary meeting, on 11 December 1956. At that meeting, he withdrew from the General Assembly, stating that:

"The Hungarian question has been kept almost continuously on the Assembly's agenda, and a number of delegations have rudely and disgracefully offended the Government of the Hungarian People's Republic and its delegation to the United Nations, in a way that is incompatible with Hungary's sovereignty and the national honour of the Hungarian people. The Hungarian delegation will therefore not participate in the work of the eleventh session of the United Nations General Assembly so long as the discussion of the Hungarian question does not proceed in the spirit of the United Nations Charter." 222/

The representative of Hungary resumed his participation in the work of the General Assembly during the eleventh session at the 669th plenary meeting, on 10 September 1957, and took part in the discussion of the Hungarian question. 223/

ANNEX

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

<u>Organ</u>	<u>Resolution number</u>	<u>Title of resolution</u>
General Assembly	G A 1284 (XIII) <u>b/</u>	Report of the United Nations High Commissioner for Refugees
Economic and Social Council . .	E S C 682 (XXVI) <u>c/</u>	Increase in the membership of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees

221/ G A (XI), 1st Com., 843rd mtg., para. 34; 846th mtg., para. 9; G A (XII), 1st Com., 926th mtg., para. 70.

222/ G A (XI), Plen., 615th mtg., paras. 3 and 4.

223/ The eleventh session was resumed from 10 to 14 September 1957 for the purpose of considering the report of the Special Committee on the Problem of Hungary (see above, paras. 85 and 86).

a/ See above, para. 2.

b/ For objections raised on the grounds of Article 2 (7), see G A (XIII), 3rd Com., 875th mtg., para. 26.

c/ For objections raised on the grounds of Article 2 (7), see E S C (XXVI), Plen., 1041st mtg., para. 6.

Chapter II
MEMBERSHIP

