

ARTICLE 2 (7)

CONTENTS

	<i>Paragraphs</i>
Text of Article 2 (7)	
Introductory Note	1—9
I. General Survey	10—274
A. General Assembly	10—177
** <i>Case No. 1: Relations of Member States with Spain</i>	
<i>Case No. 2: Treatment of people of Indian origin in the Union [Re-</i> <i>public] of South Africa:</i>	10—17
a. Action taken at the fourteenth session: resolution 1460 (XIV)	15
b. Action taken at the fifteenth session: resolution 1597 (XV)	16
c. Action taken at the sixteenth session: resolution 1662 (XVI)	17
** <i>Case No. 3: The question of convening conferences of representatives</i> <i>of Non-Self-Governing Territories</i>	
** <i>Case No. 4: The question of the establishment of committees on informa-</i> <i>tion transmitted under Article 73 e</i>	
<i>Case No. 5: The question of the competence of the General Assembly</i> <i>to determine the Territories to which Article 73 e applies</i>	18—19
** <i>Case No. 6: Threats to the political independence and territorial in-</i> <i>tegrity of Greece</i>	
** <i>Case No. 7: Observance of human rights in the Union of Soviet Socialist</i> <i>Republics</i>	
** <i>Case No. 8: Observance of human rights in Bulgaria, Hungary and</i> <i>Romania</i>	
** <i>Case No. 9: The question of Morocco</i>	
** <i>Case No. 10: The Tunisian question</i>	
<i>Case No. 11: The question of race conflict in the Union [Republic]</i> <i>of South Africa:</i>	20—33
a. Action taken at the fourteenth session: resolution 1375 (XIV).	24—26
b. Action taken at the fifteenth session: resolution 1598 (XV)	27—30
c. Action taken at the sixteenth session: resolution 1663 (XVI).	31—33
** <i>Case No. 24: The question of Cyprus</i>	
** <i>Case No. 25: The question of West Irian</i>	
** <i>Case No. 26: Complaint of detention and imprisonment of United</i> <i>Nations military personnel in violation of the Korean Armistice</i> <i>Agreement</i>	
<i>Case No. 27: The question of Algeria</i>	34—51
a. Action taken at the fourteenth session	39—42
b. Action taken at the fifteenth session: resolution 1573 (XV)	43—48
c. Action taken at the sixteenth session: resolution 1724 (XVI).	49—51
<i>Case No. 30: The question of Hungary</i>	52—59
a. Action taken at the fourteenth session: resolution 1454 (XIV).	57
b. Action taken at the sixteenth session: resolution 1741 (XVI).	58
c. Action taken at the seventeenth session: resolution 1857 (XVII)	59
<i>Case No. 34: The policies of apartheid of the Government of the Republic</i> <i>of South Africa</i>	60—77

a. Action taken at the seventeenth session:	
resolution 1761 (XVII)	64—66
b. Action taken at the eighteenth session:	
resolutions 1881 (XVIII), 1978 A and B (XVIII)	67—71
c. Action taken at the twentieth session:	
resolution 2054 A and B (XX)	72—77
<i>Case No. 35: The question of Tibet</i>	78—84
a. Action taken at the fourteenth session:	
resolution 1353 (XIV)	82
b. Action taken at the sixteenth session:	
resolution 1723 (XVI)	83
c. Action taken at the twentieth session:	
resolution 2079 (XX)	84
<i>Case No. 36: The question of Oman</i>	85—103
a. Action taken at the fifteenth session	92—94
b. Action taken at the sixteenth session	95—96
c. Action taken at the seventeenth session	97—98
d. Action taken at the eighteenth session:	
resolution 1948 (XVIII)	99—102
e. Action taken at the twentieth session:	
resolution 2073 (XX)	103
<i>Case No. 37: The question of Southern Rhodesia</i>	104—131
a. Action taken at the sixteenth session:	
resolution 1747 (XVI)	111—113
b. Action taken at the seventeenth session:	
resolution 1755 (XVII) and 1760 (XVII)	114—118
c. Action taken at the eighteenth session:	
resolutions 1883 (XVIII) and 1889 (XVIII)	119—124
d. Action taken at the twentieth session:	
resolutions 2012 (XX), 2022 (XX) and 2024 (XX)	125—131
<i>Case No. 38: The status of the German-speaking element in the Province of Bolzano (Bozen)</i>	132—143
a. Action taken at the fifteenth session:	
resolution 1497 (XV)	137—140
b. Action taken at the sixteenth session:	
resolution 1661 (XVI)	141—143
<i>Case No. 39: The situation in Angola</i>	144—157
a. Action taken at the fifteenth session:	
resolution 1603 (XV)	149—151
b. Action taken at the sixteenth session:	
resolution 1742 (XVI)	152—154
c. Action taken at the seventeenth session:	
resolution 1819 (XVII)	155—157
<i>Case No. 40: The situation in Aden</i>	158—168
a. Action taken at the eighteenth session:	
resolutions 1949 (XVIII) and 1956 (XVIII)	162—165
b. Action taken at the twentieth session:	
resolution 2023 (XX)	166—168
<i>Case No. 41: Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations</i>	169—171
<i>Case No. 42: Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty (resolution 2131 (XX))</i>	172—177
B. General Assembly and Economic and Social Council	178—187
<i>Case No. 12: Draft International Covenants on Human Rights</i>	178—187
** <i>Case No. 13: Recommendations concerning international respect for the self-determination of peoples</i>	
C. Security Council	188—265
** <i>Case No. 14: The Spanish question</i>	
** <i>Case No. 15: The Greek question (I)</i>	
** <i>Case No. 16: The Greek question (II)</i>	
** <i>Case No. 17: The Indonesian question</i>	
** <i>Case No. 18: The Czechoslovak question</i>	
** <i>Case No. 19: The Greek question (III)</i>	
** <i>Case No. 20: The Anglo-Iranian Oil Company question</i>	

Paragraphs

** Case No. 21: The question of Morocco	
** Case No. 28: The question of Algeria	
** Case No. 31: The question of Hungary	
** Case No. 32: The question of Oman	
Case No. 43: The situation in the Republic of the Congo	188—196
Case No. 44: The question of race conflict in South Africa (I)	197—203
Case No. 45: The question of race conflict in South Africa (II)	204—234
Case No. 46: The situation in Angola (I)	235—243
Case No. 47: The situation in Angola (II)	244—252
Case No. 48: The situation in Southern Rhodesia	253—259
Case No. 49: The situation in the Dominican Republic	260—265
D. International Court of Justice	266—274
** Case No. 22: Interpretation of peace treaties with Bulgaria, Hungary and Romania	
** Case No. 23: The Anglo-Iranian Oil Company case	
** Case No. 29: The Nottebohm case	
** Case No. 33: The case of certain Norwegian loans	
Case No. 50: The Interhandel Case	266—270
Case No. 51: The case concerning right of passage over Indian territory	271—274
II. Analytical Summary of Practice	275—414
A. The term “to intervene” in Article 2 (7)	276—314
1. Whether the inclusion of an item in the agenda constitutes interven- tion	284—286
2. Whether a recommendation — in general or to a particular State — constitutes intervention	287—289
** 3. Whether a request for stay of execution or for cancellation of trial and release of prisoners constitutes intervention	290—291
** 4. Whether the establishment by the General Assembly of a commis- sion to study the racial situation prevailing in a Member State con- stitutes 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	
7. Whether a resolution by which the General Assembly requests a State administering a Non-Self-Governing Territory to resume negotiations with the Government of the Territory with a view to reaching agreement on the date of independence for the Territory constitutes intervention	292—293
8. Whether an appeal for action by Member States against another Member State constitutes intervention	294
9. Whether a request to the Secretary-General (and to Member States) to provide assistance (for example, by the establishment of a trust fund) for persons persecuted for opposition to <i>apartheid</i> constitutes intervention	295
10. Whether according an oral hearing to a petitioner who is a citizen of a Member State constitutes intervention	296—297
11. Whether hearing a delegation from a territory claiming indepen- dence from a State constitutes intervention in the domestic affairs of that State	298—301
12. Whether the establishment of a Human Rights Committee to supervise the implementation of the Covenant on Civil and Poli- tical Rights constitutes intervention	302—305
13. Whether granting to individuals the right of submitting communi- cations (petitions) to a Human Rights Committee constitutes inter- vention	306—309
14. Whether holding a referendum under United Nations control and supervision in a territory whose population has been granted the right of self-determination constitutes intervention	310—314

B. The expression in Article 2 (7): "matters which are essentially within the domestic jurisdiction of any state"	315—375
1. Whether a matter governed by international law can fall essentially within domestic jurisdiction	318
2. Whether a matter governed by international agreement can fall essentially within domestic jurisdiction	319—325
3. Whether a matter dealt with by the Charter can fall essentially within domestic jurisdiction	326—355
a. Article 2 (7) and the Charter provisions on human rights	329—335
b. Article 2 (7) and the Charter provisions regarding Non-Self-Governing Territories	336—350
c. Article 2 (7) and the Charter provisions on the self-determination of peoples	351
d. Article 2 (7) and the Charter provisions on the maintenance of international peace	352—355
4. Whether the domestic jurisdiction of a State extends over all its territories	356—361
5. Whether civil strife in certain situations is not a matter falling essentially within domestic jurisdiction	362—368
6. Whether minority questions can fall essentially within domestic jurisdiction	369—375
C. The last phrase of Article 2 (7): "but this principle shall not prejudice the application of enforcement measures under Chapter VII"	376—385
D. Procedures by which Article 2 (7) was invoked	386—403
E. Effect of previous decisions by the General Assembly or the Security Council to deal with the question	404—406
F. Article 2 (7) and the principle of non-intervention	407—414
Annex. List of resolutions adopted over objections raised on the grounds of Article 2 (7), without discussion of that provision, in cases not dealt with in the present study	

TEXT OF ARTICLE 2 (7)

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

INTRODUCTORY NOTE

1. This study is organized in the same manner as the previous studies of Article 2 (7) in the *Repertory* and its *Supplements Nos. 1* and *2*. Some new headings have been added to cover new material. A description of the method of treating the material may be found in the Introductory Note to the study on Article 2 (7) in the *Repertory*.

2. The cases dealt with are, as in the three previous studies, those in which discussion resulted from objections to United Nations action raised on the basis of Article 2 (7).

3. In addition, the following six cases are dealt with because they gave rise to significant discussion of Article 2 (7): No. 41: Consideration of principle of international law concerning friendly relations and co-operation among States; No. 42: Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States (General Assembly resolution 2131 [XX]); No. 43: The situation in the Republic of the Congo; No. 49: The situation in the Dominican Republic; and two International Court of Justice cases, No. 50: The *Interhandel* case, and No. 51: The case concerning the right of passage over Indian territory.

4. None of the resolutions adopted in any of the cases referred specifically to Article 2 (7), but many incorporated, as grounds for action, some of the

considerations advanced during the discussions as excepting a question from the application of Article 2 (7).

5. Questions on which resolutions were adopted over objections raised on the grounds of Article 2 (7), but without discussion of that provision, are listed in the annex. The study does not cover decisions in connexion with which no objections based on Article 2 (7) were raised, although such decisions constitute, at least by implication, an affirmation of the competence of the United Nations, and may therefore have a bearing on the problem of domestic jurisdiction.

6. In case No. 12 on the Draft International Covenants on Human Rights, material beyond the period under review has been included in order to follow the development of the question up to the adoption of the Covenants by the General Assembly at its twenty-first session.

7. In cases Nos. 4, 24 and 25, no constitutional questions arose during the period under review, but information concerning those cases is given in foot-notes to them.

8. Six cases dealt with in the previous studies on Article 2 (7) in the *Repertory* and its *Supplements Nos. 1* and *2* are also dealt with here, as indicated in the following table:

<i>Case number and title</i>	<i>Relevant paragraphs of study</i>	<i>Organ</i>
<i>Case No. 2:</i> Treatment of people of Indian origin in the Union of South Africa	10—17, 276, 285, 286, 319, 326, 327, 330, 332, 352, 353, 390, 404, 405	General Assembly
<i>Case No. 5:</i> The question of the competence of the General Assembly to determine the territories to which Article 73 e applies	18, 19, 277, 292, 293, 315, 316, 318, 319, 326, 327, 330, 337, 338, 344—346, 352, 376, 404, 405	General Assembly
<i>Case No. 11:</i> The question of race conflict in the Union of South Africa	20—33, 276, 285—288, 294, 318, 326, 327, 330—333, 352, 353, 376, 391, 404, 405	General Assembly
<i>Case No. 12:</i> Draft International Covenants on Human Rights	178—187, 302—309, 320, 321, 330—332	General Assembly, Economic and Social Council
<i>Case No. 27:</i> The question of Algeria	34—51, 285, 286, 310—314, 331, 351, 352, 392, 404, 405	General Assembly
<i>Case No. 30:</i> The question of Hungary	52—59, 285, 286, 319, 330, 362, 363, 404, 405	General Assembly

9. In addition, the present study deals with eighteen new cases, as indicated in the following table:

<i>Case number and title</i>	<i>Relevant paragraphs of study</i>	<i>Organ</i>
<i>Case No. 34:</i> The policies of <i>apartheid</i> of the Government of the Republic of South Africa	60–77, 285, 290, 291, 295–297, 326 to 328, 330–334, 352, 353, 404, 405	General Assembly
<i>Case No. 35:</i> The question of Tibet	78–84, 285, 286, 326, 327, 330–332, 335, 353, 356–359, 404, 405	General Assembly
<i>Case No. 36:</i> The question of Oman	85–103, 298–301, 351–353, 360, 361, 364, 365, 404	General Assembly
<i>Case No. 37:</i> The question of Southern Rhodesia	104–131, 330, 348, 349, 352, 353, 394, 404, 405	General Assembly
<i>Case No. 38:</i> The status of the German-speaking element in the province of Bolzano (Bozen)	132–143, 278, 322–324, 330, 369–375	General Assembly
<i>Case No. 39:</i> The situation in Angola	144–157, 327, 330–332, 337, 344, 345, 352, 395, 405	General Assembly
<i>Case No. 40:</i> The situation in Aden	158–168, 339–343	General Assembly
<i>Case No. 41:</i> Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations	169–171, 279, 317, 319, 326, 330, 396 to 400, 405, 407, 408, 410, 411	General Assembly
<i>Case No. 42:</i> Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty	172–177, 347, 409, 412	General Assembly
<i>Case No. 43:</i> The situation in the Republic of the Congo	188–196, 280–283, 326, 330, 366 to 368, 380–385	Security Council
<i>Case No. 44:</i> The question of race conflict in South Africa (I)	197–203, 276, 278, 326, 327, 330–332, 352–355, 401, 404	Security Council
<i>Case No. 45:</i> The question of race conflict in South Africa (II)	204–234, 290, 291, 326, 330, 331, 352, 355, 379, 387, 388, 404	Security Council
<i>Case No. 46:</i> The situation in Angola (I)	235–243, 278, 327, 330–332, 337, 344, 351–353, 379	Security Council
<i>Case No. 47:</i> The situation in Angola (II)	244–252, 327, 331, 332, 337, 344, 351, 352, 404, 405	Security Council
<i>Case No. 48:</i> The situation in Southern Rhodesia	253–259, 350, 352, 353, 377, 378, 402, 404, 406	Security Council
<i>Case No. 49:</i> The situation in the Dominican Republic	260–265, 413, 414	Security Council
<i>Case No. 50:</i> The Interhandel Case	266–270	International Court of Justice
<i>Case No. 51:</i> The case concerning right of passage over Indian territory	271–274	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 [Republic]¹ of South Africa

10. The item entitled “Treatment of people of Indian origin in the Union of South Africa” was

¹ The Union of South Africa became the Republic of South Africa in June 1961.

considered by the General Assembly² at its fourteenth session. It was dealt with further at the fifteenth and sixteenth sessions under the modified title, “Treatment of people of Indian and Indo-Pakistan origin in the Union [Republic] of South Africa”.³

² For consideration of the question of race conflict in South Africa by the Security Council, see cases Nos. 42 and 43.

³ The inclusion of the item “Treatment of people of Indian origin in the Union of South Africa” in the agenda for the fourteenth session was requested by the representatives of India and Pakistan in letters dated 14 July 1959 with explanatory memoranda attached. The representative of India, in his

At the seventeenth session the question was combined with another item "The question of race conflict in the Union [Republic] of South Africa" (see case No. 11 below) to form one item under the general title "The policies of *apartheid* of the Government of the Republic of South Africa" (see case No. 34 below).

11. During the debates on the adoption of the agenda at the fourteenth, fifteenth and sixteenth sessions, the representative of the Union [Republic] of South Africa objected to the inclusion of the item on the grounds that discussion by the Assembly would contravene the terms of Article 2 (7) of the Charter. The competence of the General Assembly to take up the question was defended by other representatives.

12. Despite the objections raised on the grounds of Article 2 (7), the General Assembly, without a vote, placed the item on its agenda at each session.⁴

13. During the discussion of the item itself, it was again contended that the matter fell essentially within the domestic jurisdiction of South Africa. The arguments submitted for⁵ and against⁶ that contention as well as against⁷ and for⁸ the inclusion

explanatory memorandum, informed the General Assembly that, while his Government had sent communications to the Government of the Union of South Africa expressing readiness to enter into negotiations in accordance with General Assembly resolution 1302 (XIII) and explaining that such negotiations should be "without prejudice to the position adopted by any of the parties concerned in respect of the issue of 'domestic jurisdiction' under Article 2 (7) of the Charter", the Government of the Union of South Africa had not so far taken any steps to implement the wishes of the General Assembly. The representative of Pakistan, in his explanatory memorandum, stated that there had been no response from the Government of the Union of South Africa to communications regarding the matter addressed to it by his Government (see G A (XIV), Annexes, a. i. 60, A/4145, A/4146 and A/4345, paras. 1 and 2).

By letters dated 20 July 1960, the representatives of India and Pakistan, requested the inclusion in the provisional agenda for the fifteenth session of the items "Treatment of people of Indian origin in the Union of South Africa: report by the Government of India" and "Treatment of people of Indo-Pakistan origin in the Union of South Africa", respectively. In their explanatory memoranda, the two Governments repeated in substance the statements of the previous year. The two proposed items were combined as one and included in the agenda as "Treatment of people of Indian and Indo-Pakistan origin in the Union of South Africa" (see G A (XV), Annexes, a.i. 70, A/4416, A/4417 and A/4718, paras. 1-4).

By letters dated respectively 19 and 20 July 1961, the representatives of India and Pakistan requested the inclusion of the item "Treatment of people of Indian and Indo-Pakistan origin in the Republic of South Africa" in the agenda for the sixteenth session. In explanatory memoranda attached to the letters, the representatives once more stated that offers by their Governments to enter into negotiations had met with no response from the Government of the Republic of South Africa. The representative of Pakistan stated in addition that the offer of his Government was made "without prejudice to the position adopted by any of the parties concerned in regard to the question of 'domestic jurisdiction' under Article 2 (7) of the Charter" (see G A (XVI), Annexes, a.i. 75, A/4803 and Add. 1, A/4817 and A/4988, paras. 1 and 2).

⁴ G A (XIV), Plen., 803 mtg., para. 229; G A (XV), Plen. 898th mtg., para. 56; G A (XVI), Plen., 1014th mtg., para. 143.

⁵ See foot-notes 344, 361, 408 and 466 below.

⁶ See foot-note 273, 282, 322, 331, 347, 348 and 407 below.

⁷ See foot-notes 281 below.

⁸ See foot-notes 283 and 463 below.

of the item in the agenda are given in the Analytical Summary of Practice. They related to the following questions:⁹

The meaning of the term "to intervene" (paragraph 276);

Whether the inclusion of an item in the agenda constitutes intervention (paragraphs 285 and 286);

Whether a matter governed by international agreement can fall essentially within domestic jurisdiction (paragraph 319);

Whether a matter dealt with by the Charter can fall essentially within domestic jurisdiction (paragraphs 326 and 327);

Whether a matter governed by the Charter provisions on human rights can fall essentially within domestic jurisdiction (paragraphs 330 and 332);

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraphs 352 and 353);

Effect of previous decisions, by the General Assembly or the Security Council to deal with the question (paragraphs 404 and 405).

14. After discussion of the item at its fourteenth, fifteenth and sixteenth sessions, resolutions 1460 (XIV), 1597 (XV) and 1662 (XVI), each instance without a dissenting vote. There were some abstentions when the first two resolutions were adopted — twelve and two respectively — but the last was adopted unanimously.

a. Action taken at the fourteenth session:
resolution 1460 (XIV)

15. At the 852nd plenary meeting on 10 December 1959, the Assembly adopted¹⁰ resolution 1460 (XIV) by 66 votes to none, with 12 abstentions. In the preamble the Assembly recalled its resolutions 1179 (XII) and 1302 (XIII). In the operative paragraphs, it noted the readiness of the Governments of India and Pakistan to enter into negotiations with the Government of the Union of South Africa and expressed deep regret at the latter's failure to reply to the others' communications. The Assembly drew the South African Government's attention to its repeated appeals in the matter and appealed to that Government to enter into negotiations with the Governments of India and Pakistan. It invited Member States to use their good offices in any appropriate manner to bring about such negotiations and invited the parties concerned to report to the Assembly, jointly or separately, regarding any progress.

b. Action taken at the fifteenth session:
resolution 1597 (XV)

16. At the 981st plenary meeting on 13 April 1961, the Assembly adopted¹¹ resolution 1597 (XV) by 78 votes to none with 2 abstentions. The res-

⁹ See also para. 390 below under "Procedures by which Article 2 (7) was invoked".

¹⁰ G A (XIV), Plen., 852nd mtg., para. 85.

¹¹ G A (XV/2), Plen., 891st mtg., para. 10.

olution contained substantially the same provisions as those of resolution 1460 (XIV) except that in operative paragraph 2 the Assembly noted with deep regret that the South African Government "has not replied to the communications from the Governments of India and Pakistan on this subject, and has not yet shown any disposition to arrive at a solution of this problem in accordance with the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights and the repeated recommendations of the General Assembly".

*c. Action taken at the sixteenth session:
resolution 1662 (XVI)*

17. At the 1067th plenary meeting on 28 November 1961, the Assembly adopted¹² unanimously resolution 1662 (XVI). Among other things, the Assembly recalled its previous resolutions, in the preamble, and, in the operative paragraphs, noted with "deep regret that the Government of South Africa has repeatedly ignored the resolutions of the General Assembly".

****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 e¹³*

Case No. 5

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

18. The problem of domestic jurisdiction was raised in connexion with the question of the competence of the General Assembly to determine the territories to which Article 73 e applied during the debates in the General Assembly relating to the following items:

*General Assembly
session*

Agenda item

Fourteenth: Information from Non-Self-Governing Territories transmitted under Article 73 e of the Charter: reports of the Secretary General and of the Committee on Information from Non-Self-Governing Territories (item 36);

¹² G A (XVI/1), Plen., 1067th mtg., para. 24.

¹³ The Committee on Information from Non-Self-Governing Territories was continued by the General Assembly at its sixteenth and seventeenth sessions under resolutions 1700 (XVI) and 1847 (XVII), by 77 votes to none, with 16 abstentions, and 96 votes to none, with 5 abstentions, respectively. At its eighteenth session, the Assembly considered that the Committee's functions could be taken over by the Special Committee on decolonization, and, under resolution 1970 (XVIII), decided by 84 votes to none, with 26 abstentions, to dissolve the former (see this *Supplement* under Article 73). There was no discussion of Article 2 (7) during the deliberations which led to those decisions.

*General Assembly
session*

Agenda item

- Fifteenth: Study of principles which should guide Members in determining whether or not an obligation exists to transmit the information called for in Article 73 e of the Charter of the United Nations: report of the Special Committee established under General Assembly resolution 1467 (XIV) (item 38);
Declaration on the granting of independence to colonial countries and peoples (item 87);
- Sixteenth: Information from Non-Self-Governing Territories transmitted under Article 73 e of the Charter of the United Nations: reports of the Secretary-General and of the Committee on Information from Non-Self-Governing Territories (item 39);
Non-compliance of the Government of Portugal with Chapter XI of the Charter of the United Nations and with General Assembly resolution 1542 (XV) (item 79);
- Seventeenth: Non-compliance of the Government of Portugal with Chapter XI of the Charter of the United Nations and with General Assembly resolution 1542 (XV); report of the Special Committee on Territories under Portuguese Administration (item 54);
- Eighteenth: Report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (item 23);
- Twentieth: Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples: reports of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (item 23).

19. The decisions and proceedings are described in the study on Article 73 in this *Supplement*; the arguments on whether Article 2 (7) was¹⁴ or was not¹⁵ applicable are set out in the Analytical Summary of Practice, and related to the following questions:

The meaning of the term "to intervene" (paragraph 277);

Whether a resolution by which the General Assembly requests a State administering a Non-Self-Governing Territory to resume negotiations with the Government of the Territory with a view to reaching agreement on the date of independence

¹⁴ See foot-notes 293, 295, 344, 367-370 and 469 below.

¹⁵ See foot-notes 274, 294, 316, 320, 322, 332-336, 347, 391-398, 407, 437 and 463 below.

for the Territory constitutes intervention (paragraphs 292 and 293);

The meaning of the phrase "matters which are essentially within the domestic jurisdiction of any State" (paragraphs 315 and 316);

Whether a matter governed by international law can fall essentially within domestic jurisdiction (paragraph 318);

Whether a matter governed by international agreement can fall essentially within domestic jurisdiction (paragraph 319);

Whether a matter dealt with by the Charter can fall essentially within domestic jurisdiction (paragraphs 326 and 327);

Whether a matter governed by the Charter provisions on human rights can fall essentially within domestic jurisdiction (paragraph 330);

Whether a matter governed by the Charter provisions regarding Non-Self-Governing Territories can fall essentially within domestic jurisdiction (paragraphs 337, 338 and 344-346);

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraph 352);

The meaning of the last phrase of Article 2 (7) (paragraph 376);

Effect of previous decisions by the General Assembly or the Security Council to deal with the question (paragraphs 404 and 405).

****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 [Republic]¹⁶ of South Africa

20. The General Assembly¹⁷ considered the question of race conflict in the Union [Republic] of South Africa at its fourteenth, fifteenth and sixteenth sessions.¹⁸ At the seventeenth session the

¹⁶ See foot-note 1 above.

¹⁷ For consideration of the question by the Security Council, see cases Nos. 42 and 43.

¹⁸ The inclusion of the item in the agenda for the fourteenth session was requested by thirteen Member States in letters dated 15 and 22 July 1959. In an explanatory memorandum

question was combined with the question "Treatment of people of Indian (and Indo-Pakistan) origin in the Union [Republic] of South Africa" (see case No. 2 above) to form one item under the general title "The policies of *apartheid* of the Government of the Republic of South Africa" (see case No. 34 below).

21. During the discussion of the adoption of the agenda at the fourteenth, fifteenth and sixteenth sessions, the representative of South Africa contended that the item was excluded from the competence of the United Nations by Article 2 (7) and that discussion of the item by the General Assembly would therefore constitute a breach of one of the basic principles of the Charter. The competence of the General Assembly to take up the question was defended by other representatives.

22. Despite the objections raised on the grounds of Article 2 (7), the General Assembly, without a vote, placed the item on its agenda at each session.¹⁹

23. It was also contended during the discussion of the item itself that the matter fell essentially within the domestic jurisdiction of South Africa. The arguments submitted for²⁰ and against²¹ that contention as well as against²² and for²³ the inclusion of the item in the agenda are given in the Analytical Summary of Practice. They related to the following questions:²⁴

attached to the letter of 15 July 1959 it was stated that there had been "not the slightest indication that the Government of the Union of South Africa has taken any step in the matter in consonance with the declarations and the call of the General Assembly" (see G A (XIV), Annexes, a.i. 61, A/4147 and Add. 1).

The inclusion of the item in the agenda for the fifteenth session was requested by forty-one Member States in a letter dated 21 July 1960. In an explanatory memorandum, attached, it was stated that "the adoption of this resolution [General Assembly], resolution 1375 (XIV) and the solemn appeal made by the General Assembly have failed to bring about any reconsideration of the racial policies of the Government of the Union of South Africa. On the contrary, additional discriminatory measures have been put into effect and the system of *apartheid* has been intensified and extended" (see G A (XV), Annexes, a. i. 72, A/4419 and Add. 1 and 2).

The inclusion of the item in the agenda for the sixteenth session, was requested by forty-six Member States in a letter dated 18 July 1961. In an attached explanatory memorandum it was stated that General Assembly resolution 1598 (XV) "brought out even more clearly than before the great concern felt by the United Nations and their determination to see an end of the policies of *apartheid* and racial discrimination in South Africa. The resolution has, however, failed to bring about any change in the policies and actions of the Republic of South Africa. These continue with increasing ruthlessness and disregard of world opinion and of the successive resolutions adopted by the United Nations" (see G A (XVI), Annexes, a.i. 76, A/4804 and Add. 1-5).

¹⁹ G A (XIV), Plen., 803rd mtg., para. 229; GA (XV), Plen., 898th mtg., para. 56; G A (XVI/1), Plen., 1014th mtg., para. 143.

²⁰ See foot-notes 284-286, 296, 344, 345, 361, 362, 408 and 409 below.

²¹ See foot-notes 273, 321, 331, 337-342, 347-352, 354, 363, 407 and 438 below.

²² See foot-notes 281, 466 and 467 below.

²³ See foot-notes 282, 283 and 463 below.

²⁴ See also para. 391 below under "Procedures by which Article 2 (7) was invoked".

The meaning of the term "to intervene" (paragraph 276);

Whether the inclusion of the item in the agenda constitutes intervention (paragraphs 285 and 286);

Whether a recommendation — in general or to a particular State — constitutes intervention (paragraphs 287 and 288);

Whether an appeal for action by Member States against another Member State constitutes intervention (paragraph 294);

Whether a matter governed by international law can fall essentially within domestic jurisdiction (paragraph 318);

Whether a matter dealt with by the Charter can fall essentially within domestic jurisdiction (paragraphs 326 and 327);

Whether a matter governed by the Charter provisions on human rights can fall essentially within domestic jurisdiction (paragraphs 330 to 333);

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraphs 352 and 353);

The meaning of the last phrase of Article 2 (7) (paragraph 376);

Effect of previous decisions by the General Assembly or the Security Council to deal with the question (paragraphs 404 and 405).

a. *Action taken at the fourteenth session: resolution 1375 (XIV)*

24. At its 838th plenary meeting on 17 November 1959, the Assembly adopted²⁵ resolution 1375 (XIV) by 62 votes to 3, with 7 abstentions.

25. In the preamble of that resolution, the Assembly recalled its resolution 1248 (XIII); was convinced that the practice of racial discrimination and segregation was opposed to the observance of human rights and fundamental freedoms; considered that government policies accentuating or seeking to preserve racial discrimination were prejudicial to international harmony; and noted with concern that the policy of *apartheid* was still being pursued.

26. In the operative paragraphs, the Assembly expressed opposition to racial discrimination in any part of the world; solemnly called on all Member States to observe human rights and fundamental freedoms in accordance with the Charter; and expressed its deep regret and concern that the Government of South Africa had not yet responded to its appeals to reconsider governmental policies which impair the right of all racial groups to enjoy the same fundamental rights and freedoms. It appealed, finally, to all Member States to use their best endeavours to achieve the purposes of the resolution.

b. *Action taken at the fifteenth session: resolution 1598 (XV)*

27. The Special Political Committee recommended²⁶ to the General Assembly at its fifteenth

session the adoption of two draft resolutions.

28. At its 981st plenary meeting on 13 April 1961, the General Assembly, by 66 votes to none, with 25 abstentions, decided²⁷ not to vote on the first draft resolution. Under it, the Assembly would have recalled with regret the massacre at Pondoland despite Security Council resolution 134 (1960). It would have deplored the South African Government's continued disregard of relevant General Assembly resolutions and the enforcement of further discriminatory measures leading to violence and bloodshed; deprecated policies based on racial discrimination as being reprehensible and repugnant to the dignity and rights of peoples and individuals; and considered it to be the responsibility of all Members of the United Nations to take separate and collective action to bring about the elimination of those policies. It would have affirmed that the South African Government's racial policies and their implementation were inconsistent with the Charter, with the Universal Declaration of Human Rights and with membership of the United Nations, and would have noted with grave concern that those policies had led to international friction and that the Government's adherence to them endangered international peace and security. The Assembly then would have solemnly recommended to all States to consider taking the following steps:

"(a) To break off diplomatic relations with the Government of the Union of South Africa, or to refrain from establishing such relations;

"(b) To close the ports of each State to all vessels flying the South African flag;

"(c) To enact legislation prohibiting the ships of each State from entering South African ports;

"(d) To boycott all South African goods and to refrain from exporting goods to South Africa;

"(e) To refuse landing and passage facilities to all aircraft belonging to the Government and companies registered under the laws of the Union of South Africa."

The Assembly would also have drawn the attention of the Security Council to those recommendations in accordance with Article 11 (2) of the Charter.

29. At the same plenary meeting, by 95 votes to 1, with no abstentions, the Assembly adopted²⁸ as its resolution 1598 (XV) the second draft resolution recommended by the Special Political Committee.

30. In the preamble, the Assembly recalled certain provisions of its resolutions 395 (V), 511 (VI), 616 (VII), 917 (X) and 1248 (XIII). In the operative paragraphs, the Assembly requested all States to consider taking such separate and collective action as was open to them, in conformity with the Charter, to bring about the abandonment of South Africa's racial policies, which had led to international friction and the continuance of which endangered international peace and security. The Assembly affirmed that such policies were a flagrant violation of the Declaration of Human Rights and inconsistent

²⁵ G A (XIV), Plen., 838th mtg., para. 24.

²⁶ G A (XV), Annexes, a.i. 72, A/4728 and Corr.1, para. 9.

²⁷ G A (XV/2), Plen., 981st mtg., paras. 117–137.

²⁸ G A (XV/2), Plen., 981st mtg., para. 140.

with the obligations of a Member State; reminded the South African Government of its obligations under Article 2 (2) of the Charter; and called on it once again to bring its policies into conformity with its obligations under the Charter.

c. Action taken at the sixteenth session: resolution 1663 (XVI)

31. The Special Political Committee recommended²⁹ to the General Assembly at its sixteenth session the adoption of two draft resolutions.

32. At its 1067th plenary meeting on 28 November 1961, the Assembly decided³⁰ not to vote on the first draft resolution which contained the same specific recommendations to all States as those in the draft resolution which the Special Political Committee had recommended at the fifteenth session and on which the Assembly had decided not to vote.³¹ The Assembly would, in addition, have drawn the attention of the Security Council to those recommendations in accordance with Article 11 (2) of the Charter and to Article 6 for an early discussion of the continued membership of South Africa in the United Nations.

33. Instead, at the same plenary meeting, by 97 votes to 2, with 1 abstention, the Assembly adopted³² in an amended form as its resolution 1663 (XVI) the second draft resolution recommended by the Special Political Committee. In the preamble, the Assembly, among other things, recalled certain provisions of Security Council resolution 134 (1960) of 1 April 1960 and also recalled that the South African Government had completely disregarded Assembly resolution 1598 (XV) and had continued to reinforce its racial policies. In the operative paragraphs, it deplored the failure of that Government to comply with that Security Council resolution; strongly deprecated the disregard by that Government of its obligations under the Charter and its "determined aggravation of racial issues by ever-increasing discriminatory laws and measures and their ruthless enforcement accompanied by violence and bloodshed"; condemned "policies based on racial superiority as reprehensible and repugnant to human dignity"; and called the attention of the Security Council to the provision of Article 11 (3) of the Charter. It strengthened the general request contained in resolution 1598 (XV) by urging all States to take separate and collective action open to them in conformity with the Charter to bring about an abandonment of those policies, and it once again called on the Government of South Africa to change its policies and conduct so as to conform to its obligations under the Charter.

****Case No. 24**

*The question of Cyprus*³³

²⁹ G A (XVI), Annexes, a.i. 76, A/4968, para. 13.

³⁰ G A (XVI/1), Plen., 1067th mtg., paras. 103–112.

³¹ See para. 28 above.

³² G A (XVI/1), Plen., 1067th mtg., paras. 113–118.

³³ The Republic of Cyprus, established in February 1959, was admitted to membership in the United Nations by General Assembly resolution 1489 (XV) of 20 September 1960.

****Case No. 25**

*The question of West Irian*³⁴

****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*³⁵

34. The question of Algeria was considered by the General Assembly at its fourteenth, fifteenth and sixteenth sessions.³⁶

35. During the debates on the adoption of the agenda at each of those sessions, the representative of France stated that discussion of the question of Algeria would constitute intervention in matters essentially within the domestic jurisdiction of France and would violate Article 2 (7). At the fourteenth

³⁴ The General Assembly considered the question of West Irian at its sixteenth session in the context of the agenda item "The situation with regard to the implementation of the Declaration on the granting of independence to colonial countries and peoples" (G A (XVI), Annexes, a. i. 88 and 22 (a)). There was no discussion of Article 2 (7), and none of the draft resolutions submitted to the General Assembly on the subject obtained the two-thirds majority required for adoption. The matter was again taken up at the seventeenth session under agenda item 89, "Agreement between the Republic of Indonesia and the Kingdom of the Netherlands concerning West New Guinea (West Irian)". No reference was made to Article 2 (7) during the discussions. In its resolution 1752 (XVII) of 21 September 1962, the Assembly took note of the Agreement and authorized the Secretary-General to carry out the tasks entrusted to him in it. With respect to action taken by the Secretary-General, see this *Supplement* under Article 98.

³⁵ See also this *Supplement* under Article 10.

³⁶ The inclusion of the item in the agenda for the fourteenth session was requested by twenty-five Member States in a letter dated 14 July 1959. In an explanatory memorandum attached to the letter, those States said that despite the appeals made in Assembly resolutions 1012 (XI) and 1184 (XII), and in a draft resolution (A/C.1/L.232) approved by the First Committee, but not adopted by the Assembly at its thirteenth session, there had been no indication of improvement in the Algerian situation and "the hostilities continue unabated with increasing suffering and loss of human life" (see G A (XIV), Annexes, a.i. 59, A/4140).

The inclusion of the item in the agenda for the fifteenth session was requested by twenty-five Member States in a letter dated 20 July 1960. In an explanatory memorandum attached to the letter, those states again referred to Assembly resolutions 1012 (XI) and 1184 (XII) and draft resolution A/C.1/L.232, and to another draft resolution (A/C.1/L.246 and Add. 1) approved by the First Committee, but not adopted by the Assembly at its fourteenth session. They stated that the situation in Algeria continued to cause deep concern and to "embitter international relations and increase international tensions, and constitutes a threat to the peace of the world". That concern was again expressed in an addendum to the explanatory memorandum, dated 13 September 1960, which was submitted with a letter dated 14 September 1960 from one of the States (see G A (XV), Annexes, a.i. 71, A/4418 and Add. 1).

The inclusion of the item in the agenda for the sixteenth session was requested by twenty-nine Member States joined, on 17 August 1961 by two other Member States in a letter dated 11 August 1961. In an explanatory memorandum attached to the letter of 11 August 1961 reference was made to the same resolutions and draft resolutions as in the two previous memoranda and also to Assembly resolution 1573 (XV), and the situation in Algeria was described in similar terms (see G A (XVI), Annexes, a.i. 80, A/4842 and Add. 1).

and sixteenth sessions, he said that he did not formally oppose the inclusion of the item in the agenda. On the other hand, at all three sessions, he stated that his delegation would not participate in the deliberations on the question. At the fourteenth and sixteenth sessions the representative added that his delegation would consider any resolutions adopted on the item to be invalid, and at the fifteenth session he reserved the rights of his delegation in the matter.³⁷

36. Arguments against the French position were presented during the discussion of the adoption of the agenda at the fourteenth and fifteenth sessions.

37. The question of Algeria was included in the agenda of the General Assembly at all three sessions,³⁸ despite the objections raised on the grounds of Article 2 (7).

38. During the discussion of the item itself, some representatives maintained that, in view of Article 2 (7), the matter was outside the competence of the United Nations. The arguments for³⁹ and against⁴⁰ that position as well as against⁴¹ and for⁴² the inclusion of the item in the agenda are given in the Analytical Summary of Practice. They related to the following questions:

Whether the inclusion of an item in the agenda constitutes intervention (paragraphs 285 and 286);

Whether holding a referendum under United Nations control and supervision in a Territory whose population has been granted the right of self-determination constitutes intervention (paragraphs 310–314);

Whether a matter governed by the Charter provisions on human rights can fall essentially within domestic jurisdiction (paragraph 331);

Whether a matter governed by the Charter provisions on the self-determination of peoples can fall essentially within domestic jurisdiction (paragraph 351);

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraph 352);

Effect of previous decisions by the General Assembly or the Security Council to deal with the question (paragraphs 404 and 405).

a. *Action taken at the fourteenth session*

39. A draft resolution⁴³ was submitted in the First Committee on 2 December 1959 by a group

³⁷ G A (XIV), Gen. Com., 121st mtg., para. 23; G A (XV) Gen. Com., 127th mtg., para. 42; G A (XVI), Gen. Com., 136th mtg., para. 38.

³⁸ G A (XIV), Plen., 803rd mtg., paras. 227 and 229; G A (XV/1), Plen., 898th mtg., para. 57; G A (XVI/1), Plen., 1014th mtg., para. 159.

³⁹ See foot-notes 315 and 406 below; G A (XIV), 1st Com., 1069th mtg., para. 11; 1070th mtg., para. 14; 1075th mtg., para. 18; 1078th mtg., paras. 25 and 26; G A (XVI), 1st Com., 1225th mtg., para. 69.

⁴⁰ See foot-notes 315, 359, 404, 405 and 407 below.

⁴¹ See foot-notes 281 and 468 below.

⁴² See foot-notes 282 and 463 below.

⁴³ G A (XIV), Annexes, a.i. 59, A/4339, para. 5 (A/C.1/L.246 and Add.1).

of Member States consisting mainly of those which had requested the inclusion of the item in the agenda. Under it the Assembly would have recognized the right of the Algerian people to self-determination; expressed deep concern over the continuance of hostilities in Algeria; considered that the situation constituted a threat to international peace and security; and noted with satisfaction that the two parties concerned had accepted the right of self-determination as the basis for the solution of the Algerian problem. The Assembly would then have urged "the two parties concerned to enter into 'pourparlers' to determine the conditions necessary for the implementation as early as possible of the right of self-determination of the Algerian people, including conditions for a cease-fire".

40. The draft resolution was adopted at the 1078th meeting of the First Committee by a vote of 38 to 26, with 17 abstentions, and recommended by the Committee for adoption by the General Assembly.⁴⁴

41. In view of the outcome of the vote in the First Committee, it seemed probable that that draft resolution would not obtain the necessary two-thirds majority in plenary. At the 856th plenary meeting of the General Assembly on 12 December 1959, one of the sponsors therefore submitted and requested priority for consideration of a new draft resolution.⁴⁵ Under it the Assembly would merely have expressed deep concern over the continuance of hostilities in Algeria; recognized the right of the Algerian people to self-determination; and urged "the holding of 'pourparlers' with a view to arriving at a peaceful solution on the basis of the right to self-determination, in accordance with the principles of the Charter of the United Nations".

42. That the new draft resolution was voted on first. The result was 39 votes in favour, 22 against, with 20 abstentions. Having thus failed to obtain the required two-thirds majority, the draft resolution was not adopted.⁴⁶ No vote was taken on the draft resolution recommended by the First Committee.⁴⁷

b. *Action taken at the fifteenth session: resolution 1573 (XV)*

43. A group of Member States, consisting mainly of those which had requested the inclusion of the item in the agenda, submitted a draft resolution⁴⁸ in the First Committee on 9 December 1960. In the preamble, the Assembly would recall certain provisions of its resolutions 1012 (XI) and 1495 (XV); note with regret that the *pourparlers* contemplated in resolution 1184 (XII) had not materialized; express deep concern over the continuance of hostilities in Algeria; consider that the situation constituted a threat to international peace and security; and note that the two parties concerned had accepted the right of self-determination as the basis for the solution of the Algerian problem.

⁴⁴ *Ibid.*, paras. 6 and 7.

⁴⁵ *Ibid.*, p. 5 (A/L. 276).

⁴⁶ G A (XIV), Plen., 856th mtg., para. 129.

⁴⁷ *Ibid.*, para. 130.

⁴⁸ G A (XV), Annexes, a.i. 71, A/4660, para. 4 (A/C.1/L.265 and Add.1–3).

44. In the operative part, the Assembly would recognize the right of the Algerian people to self-determination and independence as well as "the imperative need for adequate and effective guarantees to ensure the successful and just implementation of the right of self-determination on the basis of respect for the unity and territorial integrity of Algeria". It would further recognize that "the United Nations has a responsibility to contribute towards its successful and just implementation" and would have decided, in operative paragraph 4, that "a referendum shall be conducted in Algeria, organized, controlled and supervised by the United Nations, whereby the Algerian people shall freely determine the destiny of their entire country".

45. At the 1133rd meeting of the First Committee, the preamble and three of the four operative paragraphs were adopted by large majorities, but operative paragraph 4 was adopted only by a narrow margin of 38 votes to 33, with 23 abstentions. The draft resolution as a whole was adopted by 47 votes to 20, with 28 abstentions, and recommended by the Committee for adoption by the General Assembly.⁴⁹

46. Two amendments to the draft resolution were submitted to the General Assembly, both relating to operative paragraph 4. In the amendment⁵⁰ submitted by one Member State the Assembly would have recommended "that a referendum be held in Algeria under the auspices of the United Nations, whereby the Algerian people shall freely determine the destiny of their country".

47. In the other amendment,⁵¹ submitted by eleven Member States, the Assembly would have invited "the parties involved in the conflict to enter immediately into negotiations, without preliminary conditions or restrictions, on a cease-fire and the circumstances for the organization of the referendum on self-determination, including mutual guarantees for the parties concerned, and international guarantees" and would have recommended, "with a view to facilitating contacts and the progress of the negotiations, the establishment of a special international commission, the composition and members of which shall be determined in agreement with the parties involved in the conflict".

48. At its 956th plenary meeting⁵² on 19 December 1960, the General Assembly voted first on the eleven-Power amendment and rejected its first paragraph by 39 votes to 31, with 25 abstentions, and its second paragraph by 39 votes to 22, with 35 abstentions. The other amendment received 52 votes in favour, 27 against and 17 abstentions, and, having failed to obtain the required two-thirds majority, was not adopted. When the General Assembly proceeded to vote on the draft resolution recommended by the First Committee, a separate vote was requested on operative paragraph 4. The result was 40 votes in favour, 40 against, with 16 abstentions; and, consequently, paragraph 4 was

not adopted. The remainder of the draft resolution without paragraph 4 was adopted by 63 votes to 8, with 27 abstentions, as resolution 1573 (XV).

c. Action taken at the sixteenth session: resolution 1724 (XVI)

49. A draft resolution⁵³ was submitted in the First Committee on 15 December 1961 by a group of Member States consisting mainly of those which had requested the inclusion of the item in the agenda. At its 1227th meeting, the Committee adopted the draft resolution by 61 votes to none, with 34 abstentions, and recommended it for adoption by the General Assembly.⁵⁴

50. The General Assembly, at its 1085th plenary meeting on 20 December 1961, adopted the draft resolution by 62 votes to none, with 38 abstentions⁵⁵ as its resolution 1724 (XVI). In it the Assembly recalled its resolutions 1514 (XV) and 1573 (XV); expressed deep concern about the continuance of the war in Algeria; took note of the fact that the two parties concerned had affirmed their willingness to seek a negotiated and peaceful solution on the basis of the right of the Algerian people to self-determination and independence; and regretted the suspension of the negotiations entered into by the Government of France and the Provisional Government of the Algerian Republic. The Assembly called on the two parties "to resume negotiations with a view to implementing the right of the Algerian people to self-determination and independence respecting the unity and territorial integrity of Algeria".

51. Algeria was admitted to membership in the United Nations by General Assembly resolution 1754 (XVII) of 8 October 1962.

Case No. 30

The question of Hungary

52. The question of Hungary was considered by the General Assembly at its fourteenth, sixteenth and seventeenth sessions. The item was placed on the agenda of the fifteenth session but, for lack of time, the Assembly was unable to discuss the matter in substance.⁵⁶

⁵³ G A (XVI), Annexes, a.i. 80, A/5070, paras. 5 and 6 (A/C.1/L.308 and Add.1 and Add.2).

⁵⁴ *Ibid.*, paras. 7 and 8.

⁵⁵ G A (XVI/1), Plen., 1085th mtg., para. 134.

⁵⁶ The inclusion of the item in the agenda for the fourteenth session was proposed by the United Nations Special Representative on the Question of Hungary, Sir Leslie Munro, in a letter dated 16 November 1959. The proposal was supported by the United States in a letter of 20 November 1959. Both letters referred to resolution 1312 (XIII), by which the General Assembly, *inter alia*, declared that "the United Nations will continue to be seized of the situation in Hungary...". In an explanatory memorandum attached to his letter, the Special Representative stated that the withdrawal of foreign armed forces from Hungary had not been achieved, that the framework of repression remained unchanged, that the Hungarian authorities persisted in their refusal to collaborate in any manner whatsoever with the United Nations, and that for those reasons the situation in Hungary must be deemed an important and urgent matter requiring the attention of the General Assembly at its fourteenth session. In its explanatory memorandum the United States declared that, in the light of the Special Representative's memorandum, the inclusion in the agenda of the proposed item as an important and urgent matter was

⁴⁹ *Ibid.*, paras. 5 and 6.

⁵⁰ *Ibid.*, p. 5., A/L. 333.

⁵¹ *Ibid.*, A/L. 334.

⁵² G A (XV/1), Plen., 956th mtg., paras. 185-189.

53. During the debates on the adoption of the agenda at the fourteenth, fifteenth, sixteenth and seventeenth sessions, the representative of Hungary and other representatives objected to the inclusion of the question in the agenda on the ground that that would constitute intervention in matters essentially within the domestic jurisdiction of Hungary and would violate Article 2 (7).

54. The competence of the General Assembly to take up the question was defended by other representatives.

55. Having considered the objections raised on the grounds of Article 2 (7), the General Assembly placed the item on the agenda at each session. At the fourteenth session the decision was taken by 51 votes to 10, with 15 abstentions; at the fifteenth session by 54 votes to 12, with 31 abstentions; at the sixteenth session by 51 votes to 15, with 30 abstentions; and at the seventeenth session by 43 votes to 34, with 19 abstentions.⁵⁷

56. During the discussion of the item itself at the fourteenth, sixteenth and seventeenth sessions the claim that the matter fell essentially within the domestic jurisdiction of Hungary was again made and opposed. The arguments for⁵⁸ and against⁵⁹ that contention as well as against⁶⁰ and for⁶¹ the inclusion of the item in the agenda are given in the Analytical Summary of Practice. They related to the following questions:

Whether the inclusion of an item in the agenda constitutes intervention (paragraphs 285 and 286);

plainly warranted (G A (XIV), Annexes, a.i. 74, A/4285 and A/4292).

The inclusion of the item in the agenda for the fifteenth session was requested by the United States in a letter dated 20 August 1960. In an explanatory memorandum attached to the letter it was stated that, in the absence of any indication that the Soviet and Hungarian authorities were prepared to co-operate with the United Nations Special Representative, the question should be further considered at that session (see G A (XV), Annexes, a.i. 81, A/4447).

The inclusion of the item in the agenda for the sixteenth session was requested by the United States in a letter dated 16 September 1961. In an explanatory memorandum, that Member, after referring to the fact that the General Assembly at its fifteenth session had been unable to consider the matter, stated that the situation in Hungary remained substantially unchanged and that no United Nations representative had been allowed to enter the country to seek compliance with United Nations resolutions. In view of the continuing and most serious situation, the memorandum went on to say, the matter must be inscribed on the agenda of the sixteenth session as an important and urgent item (see G A (XVI), Annexes, a.i. 89, A/4872).

The inclusion of the item in the agenda for the seventeenth session was requested by the United States in a letter dated 17 August 1962. In an explanatory memorandum, that Member stated that the Government of the Soviet Union and of Hungary failed thus far to co-operate with the United Nations and its appointed representatives as requested, and that the question of Hungary merited further discussion by the General Assembly and should be inscribed on the agenda for the seventeenth session (G A (XVII), Annexes, a.i. 85, A/5164).

⁵⁷ G A (XIV), Plen., 844th mtg., para. 79; G A (XV), Plen., 898th mtg., para. 163; G A (XVI/1), Plen., 1014th mtg., para. 222; G A (XVII), Plen., 1129th mtg., para. 315.

⁵⁸ See foot-note 421 below.

⁵⁹ See foot-notes 322, 347 and 420 below.

⁶⁰ See foot-notes 281 and 469 below.

⁶¹ See foot-notes 282 and 463-465 below.

Whether a matter governed by international agreement can fall essentially within domestic jurisdiction (paragraph 319);

Whether a matter governed by the Charter provisions on human rights can fall essentially within domestic jurisdiction (paragraph 330);

Whether civil strife in certain situations is not a matter falling essentially within domestic jurisdiction (paragraphs 362 and 363);

Effect of previous decisions by the General Assembly or the Security Council to deal with the question (paragraphs 404 and 405).

a. *Action taken at the fourteenth session: resolution 1454 (XIV)*

57. At its 851st plenary meeting on 9 December 1959, the General Assembly adopted⁶² resolution 1454 (XIV) by 53 votes to 11, with 17 abstentions. Having considered the report of the United Nations Representative on Hungary, Sir Leslie Munro, the Assembly deplored the continued disregard by the USSR and the Hungarian régime of the General Assembly resolutions dealing with the situation in Hungary, and called on the USSR and the authorities in Hungary to co-operate with the United Nations Representative on Hungary.

b. *Action taken at the sixteenth session: resolution 1741 (XVI)*

58. At its 1087th plenary meeting on 20 December 1961, the General Assembly adopted⁶³ resolution 1741 (XVI) by 49 votes to 17, with 32 abstentions. By that resolution, it again deplored, in the light of Sir Leslie Munro's report, "the continued disregard by the Union of Soviet Socialist Republics and the present Hungarian régime of the General Assembly resolutions concerning the situation in Hungary".

c. *Action taken at the seventeenth session: resolution 1857 (XVII)*

59. At its 1200th plenary meeting on 20 December 1962, the General Assembly on the recommendation of the Special Political Committee adopted⁶⁴ resolution 1857 (XVII) by 50 votes to 13, with 43 abstentions. In the preamble, the Assembly noted with concern that the USSR and Hungary had not given the United Nations Representative the co-operation necessary for the full discharge of his responsibilities, and reaffirmed the objectives of its resolutions 1004 (ES-II), 1005 (ES-II), 1127 (XI), 1131 (XI), 1132 (XI) and 1133 (XI). In the operative paragraphs, it requested "the Secretary-General to take any initiative that he deems helpful in relation to the Hungarian question" and considered that "in the circumstances the position of the United Nations Representative on Hungary need no longer be continued".

⁶² G A (XIV), Plen., 851st mtg., para. 40.

⁶³ G A (XVI/1), Plen., 1087th mtg., para. 186.

⁶⁴ G A (XVII), Plen., 1200th mtg., para. 60.

Case No. 34

The policies of apartheid of the Government of the Republic of South Africa

60. The item under the general heading "The policies of *apartheid* of the Government of the Republic of South Africa" was introduced at the seventeenth session of the General Assembly.⁶⁵ It combined two items, namely, "Treatment of people of Indian (and Indo-Pakistan) origin in the Union of South Africa" (case No. 2 above) and "The question of race conflict in the Union of South Africa" (case No. 11 above). During the period under review, the item was also included in the agenda of the eighteenth and twentieth sessions under a slightly enlarged title.⁶⁶

61. At each of the three sessions, the inclusion of the item in the agenda was opposed by the representative of South Africa, who stated that the discussion of the item would be in violation of Article 2 (7). The competence of the General Assembly to take up this question was defended by other representatives.

62. Despite the objections raised on the grounds of Article 2 (7), the General Assembly, without a vote, placed the item on its agenda at each session.⁶⁷

63. During the discussion of the item itself, it was also contended that the matter fell essentially within the domestic jurisdiction of South Africa. The

⁶⁵ For consideration by the Security Council of the question of race conflict in South Africa, see cases Nos. 42 and 43.

⁶⁶ By a letter dated 14 August 1962, forty Member States (and eight more Members by subsequent letters) requested the inclusion of the following item in the agenda for the seventeenth session: "The policies of *apartheid* of the Government of the Republic of South Africa: (a) Race conflict in South Africa; (b) Treatment of people of Indian and Indo-Pakistan origin in the Republic of South Africa". In an attached explanatory memorandum, they stated that General Assembly resolution 1663 (XVI) had "brought out even more clearly than before the great concern felt by the United Nations and their determination to see the end of the policies of *apartheid* and racial discrimination pursued by the Government of the Republic of South Africa. The resolution has, however, failed to bring about any change in the policies and actions of the Government of the Republic of South Africa. These continue with increasing ruthlessness and disregard of world opinion and of the successive resolutions adopted by the United Nations". The explanatory memorandum further referred to General Assembly resolution 1662 (XVI) and stated that, with respect to the treatment of people of Indian and Indo-Pakistan origin in the Republic of South Africa, the Government of South Africa had not shown "any willingness to enter into negotiations with the Governments of India and Pakistan ... in spite of repeated General Assembly resolutions" (see G A (XVII), Annexes, a.i. 87, A/5167 and Add.1-6).

After the General Assembly had established by resolution 1761 (XVII), a Special Committee to keep the racial policies of the Government of the Republic of South Africa under review and to report to the Assembly or to the Security Council or both, the Secretary-General included in the provisional agenda of the eighteenth session the item "The policies of *apartheid* of the Government of the Republic of South Africa: reports of the Special Committee on the Policies of *apartheid* of the Government of the Republic of South Africa". The item was included in the agenda by the General Assembly with the addition of the words: "and replies by Member States under General Assembly resolution 1761 (XVII)".

⁶⁷ G A (XVII), Plen., 1129th mtg., para. 340; G A (XVIII), Plen., 1210th mtg., para. 63; G A (XX), Plen., 1336th mtg., para. 19.

arguments submitted for⁶⁸ and against⁶⁹ that contention as well as against⁷⁰ and for⁷¹ the inclusion of the item in the agenda are given in the Analytical Summary of Practice. They related to the following questions:

Whether the inclusion of an item in the agenda constitutes intervention (paragraph 285);

Whether a request for stay of execution, or for cancellation of trial and release of political prisoners constitutes intervention (paragraphs 290 and 291);

Whether a request to provide assistance for persons persecuted for opposition to *apartheid* constitutes intervention (paragraph 295);

Whether according an oral hearing to a petitioner who is a citizen of a Member State constitutes intervention (paragraphs 296 and 297);

Whether a matter dealt with by the Charter can fall essentially within domestic jurisdiction (paragraphs 326-328);

Whether a matter governed by the Charter provisions on human rights can fall essentially within domestic jurisdiction (paragraphs 330 to 334);

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraphs 352 and 353);

Effect of previous decisions by the General Assembly or the Security Council to deal with the question (paragraphs 404 and 405).

a. *Action taken at the seventeenth session: resolution 1761 (XVII)*

64. At its 1165th plenary meeting on 6 November 1962, the General Assembly, on the recommendation of the Special Political Committee, adopted⁷² resolution 1761 (XVII) by 67 votes to 16, with 23 abstentions.

65. In the preamble, the Assembly recalled in particular its resolutions 44 (I), 395 (V), 615 (VII), 1179 (XII), 1302 (XIII), 1460 (XIV), 1597 (XV) and 1662 (XVI), and regretted that "the actions of some Member States indirectly provide encouragement to the Government of South Africa to perpetuate its policy of racial segregation, which has been rejected by the majority of that country's population".

66. In the operative paragraphs, the Assembly deplored the failure of that Government to comply with the repeated resolutions of the General Assembly and the Security Council, and its flouting of world public opinion; strongly deprecated its disregard of its obligations under the Charter as well as "its determined aggravation of racial issues by enforcing measures of increasing ruthlessness involving violence

⁶⁸ See foot-notes 287-289, 297, 298, 344, 361 and 408 below.

⁶⁹ See foot-notes 290, 299, 331, 337, 339, 347, 349-352, 354-356, 363, 364, 407 and 409 below.

⁷⁰ See foot-notes 281 and 466 below.

⁷¹ See foot-note 463 below.

⁷² G A (XVII), Plen., 1165th mtg., para. 33.

and bloodshed”, and reaffirmed that the continuance of those policies seriously endangered international peace and security. The last five operative paragraphs of the resolution read as follows:

“*The General Assembly,*

“ . . .

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

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

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

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

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

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

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

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

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

“6. *Requests* all Member States:

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

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

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

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

b. *Action taken at the eighteenth session: resolutions 1881 (XVIII), 1978 A and B (XVIII)*

67. In its report to the General Assembly at its eighteenth session, the Special Political Committee recommended⁷³ the adoption of three draft resolutions.

68. At its 1238th plenary meeting on 11 October 1963, the General Assembly adopted⁷⁴ the first draft

⁷³ G A (XVII), Annexes, a.i. 30, A/5565, para. 7.

⁷⁴ G A (XVIII), Plen., 1238th mtg., para. 137.

resolution by 106 votes to 1, with no abstentions, as its resolution 1881 (XVIII). In the preamble, the Assembly recalled its resolution 1761 (XVII) and Security Council resolution 181 (1963) of 7 August 1963; took note of the reports of the Special Committee on the policies of *apartheid* of the Government of the Republic of South Africa, “which stress the fact that the harsh repressive measures instituted by the Government of South Africa frustrate the possibilities for peaceful settlement, increase hostility among the racial groups and precipitate violent conflict”; referred to reports that that Government was “arranging the trial of a large number of political prisoners under arbitrary laws prescribing the death sentence”; and considered that such a trial would “inevitably lead to a further deterioration of the already explosive situation in South Africa, thereby further disturbing international peace and security”. The operative part of the resolution provided as follows:

“*The General Assembly,*

“ . . .

“1. *Condemns* the Government of the Republic of South Africa for its failure to comply with the repeated resolutions of the General Assembly and of the Security Council calling for an end to the repression of persons opposing *apartheid*;

“2. *Requests* the Government of South Africa to abandon the arbitrary trial now in progress and forthwith to grant unconditional release to all political prisoners and to all persons imprisoned, interned or subjected to other restrictions for having opposed the policy of *apartheid*;

“3. *Requests* all Member States to make all necessary efforts to induce the Government of South Africa to ensure that the provisions of paragraph 2 above are put into effect immediately;

“4. *Requests* the Secretary-General to report to the General Assembly and the Security Council, as soon as possible during the eighteenth session, on the implementation of the present resolution.”

69. At its 1283rd plenary meeting on 16 December 1963, the General Assembly, by 100 votes to 2, with 1 abstention, and 99 votes to 2, with no abstentions, respectively, adopted⁷⁵ as its resolutions 1978 A and B (XVIII) the two other draft resolutions recommended by the Special Political Committee.

70. In the preamble of resolution 1978 A (XVIII), the Assembly recalled its resolutions 1761 (XVII) and 1881 (XVIII) and took note of Security Council resolutions 181 (1963) and 182 (1963) of 7 August and 4 December. In the operative paragraphs, the Assembly appealed to all States to take appropriate measures and intensify their efforts, separately and collectively, with a view to dissuading the Government of the Republic of South Africa from pursuing its policies of *apartheid*, and requested them, in particular, to implement fully Security Council resolution 182 (1963); requested the Special Committee to submit reports to the General Assembly and to the Security Council whenever necessary; requested the Secretary-General to furnish the Special

⁷⁵ G A (XVIII), Plen., 1283rd mtg., paras. 102 and 103.

Committee with all the necessary means for the effective accomplishment of its task; and invited the specialized agencies and all Member States to give it their assistance and co-operation.

71. In the preamble of resolution 1978 B (XVIII), the Assembly took note of the report in which the Special Committee drew attention to the serious hardship faced by the families of persons persecuted by the Government of South Africa for their opposition to the policies of *apartheid* and recommended that the international community, for humanitarian reasons, provide them with relief and other assistance; and expressed the belief that such assistance was consonant with the purposes and principles of the United Nations. In the operative paragraphs, the Assembly requested the Secretary-General to seek ways and means of providing relief and assistance, through the appropriate international agencies, to the families of all such persecuted persons and invited Member States and organizations to contribute generously to such relief and assistance.

c. *Action taken at the twentieth session:
resolution 2054 A and B (XX)*

72. In its report to the General Assembly at its twentieth session, the Special Political Committee recommended⁷⁶ the adoption of two draft resolutions.

73. At its 1395th plenary meeting on 15 December 1965, the General Assembly adopted⁷⁷ the draft resolutions, by 80 votes to 2, with 16 abstentions, and 95 votes to 1, with 1 abstention, respectively, as its resolutions 2054 A and B (XX).

74. In the preamble of resolution 2054 A (XX), the Assembly expressed grave concern at the aggravation of the explosive situation in the Republic of South Africa as a result of the continued implementation of the policies of *apartheid* by the Government in violation of its obligations under the Charter and in defiance of Security Council and General Assembly resolutions; recalled in particular its resolution 1761 (XVII) and Security Council resolution 191 (1964); and expressed its profound disturbance that the policies and actions of that Government were thus aggravating the situation in neighbouring territories in southern Africa. Noting also the reported build-up of military and police forces in the Republic and recent investments by foreign-owned corporations in that country, the Assembly considered that prompt and effective international action was imperative to avert the grave danger of a violent racial conflict in Africa which would inevitably have grave repercussions throughout the world.

75. In the operative paragraphs, the Assembly urgently appealed to the major trading partners of the Republic to cease their increasing economic collaboration with the Government which encouraged it to defy world opinion and to accelerate the implementation of its policies of *apartheid*. It also decided to enlarge the Special Committee on the policies of *apartheid* by the addition of six members. Operative

paragraphs 4 to 8 of the resolution provided as follows:

“*The General Assembly,*

“ . . .

“4. *Condemns* the Government of South Africa for its refusal to comply with the resolutions of the Security Council and the General Assembly and its continued implementation of the policies of *apartheid*;

“5. *Firmly supports* all those who are opposing the policies of *apartheid* and particularly those who are combating such policies in South Africa;

“6. *Draws the attention* of the Security Council to the fact that the situation in South Africa constitutes a threat to international peace and security, that action under Chapter VII of the Charter is essential in order to solve the problem of *apartheid* and that universally applied economic sanctions are the only means of achieving a peaceful solution;

“7. *Deplores* the actions of those States which, through political, economic and military collaboration with the Government of South Africa, are encouraging it to persist in its racial policies;

“8. *Again requests* all States to comply fully with all the resolutions of the Security Council on this question and to halt forthwith the sale and delivery to South Africa of arms, ammunition of all types, military vehicles, and equipment and materials intended for their manufacture and maintenance.”

76. In other operative paragraphs, the Assembly requested the widest possible dissemination of information on the policies of *apartheid* and on United Nations efforts to deal with the situation, and invited the specialized agencies to take the necessary steps to deny technical and economic assistance to the Government of South Africa, without, however, interfering with humanitarian assistance to the victims of the policies of *apartheid*; and to take active measures, within their fields of competence, to compel the Government of South Africa to abandon its racial policies.

77. In the preamble of resolution 2054 B (XX), the Assembly recalled its resolution 1978 B (XVIII), expressed deep concern at the plight of persons persecuted by the Government of South Africa for their opposition to the policies of *apartheid* and repression, and at the plight of their families, and considered that humanitarian assistance to such persons and their families was in keeping with the purposes of the United Nations. In the operative paragraphs, the Assembly requested the Secretary-General to establish a United Nations Trust Fund for South Africa, made up of voluntary contributions from States, organizations and individuals, to be used for grants to voluntary organizations, Governments of host countries of refugees from South Africa and other appropriate bodies, towards:

“(a) Legal assistance to persons charged under discriminatory and repressive legislation in South Africa;

“(b) Relief for dependants of persons persecuted by the Government of South Africa for acts arising from opposition to the policies of *apartheid*;

⁷⁶ G A (XX), Annexes, a.i. 36, A/6159, para. 17.

⁷⁷ G A (XX), Plen., 1395th mtg., paras. 195–197.

“(c) Education of prisoners, their children and other dependants;

“(d) Relief for refugees from South Africa.”

A five-member Committee of Trustees of the United Nations Trust Fund for South Africa would decide on the uses of the Fund, promote contributions and co-operation and co-ordination in the activities of voluntary organizations concerned with relief and assistance to the victims of the policies of *apartheid* of the Government of South Africa. The Assembly appealed to Governments, organizations and individuals to contribute generously to the Fund.

Case No. 35

The question of Tibet

78. The question of Tibet was considered by the General Assembly at its fourteenth, sixteenth and twentieth sessions. The item was also placed on the agenda of the fifteenth session, but because of unforeseen pressure of work in the concluding stages of that session, the Assembly was not able to discuss it.⁷⁸

79. During the debates on the adoption of the agenda at those sessions, some representatives objected to the inclusion of the item on the ground that

⁷⁸ The inclusion of the item in the agenda for the fourteenth session was requested by two Member States in a letter dated 29 September 1959. In an explanatory memorandum attached to the letter the two Governments stated that they were convinced that, under the Charter, the United Nations could not ignore the situation in Tibet. After a study of the material available, the conclusion was inescapable that there existed *prima facie* evidence of an attempt to destroy the traditional way of life of the Tibetan people and the religious and cultural autonomy long recognized as belonging to them, as well as a systematic disregard for the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights. In such circumstances, the memorandum continued, the General Assembly had a duty to call for restoration of the religious and civil liberties of the people of Tibet (see G A (XIV), Annexes, a.i. 73, A/4234).

The item was proposed for inclusion in the agenda for the fifteenth session, by two Member States. In an explanatory memorandum attached to their letter dated 19 August 1960, the two Governments stated that, despite the solemn appeal contained in General Assembly resolution 1353 (XIV), fundamental human rights of the Tibetan people continued to be disregarded and the situation in Tibet remained a source of grave concern (see G A (XV), Annexes, a. i. 78, A/4444). At the end of the session, the two Members expressed regret that the item could not be considered (see G A (XV/2), Plen., 995th mtg. paras. 543 and 551).

By letter dated 18 August 1961, the same Members proposed the inclusion of the item in the agenda for the sixteenth session. In the explanatory memorandum, attached, they stated that the situation in Tibet had not improved and remained a source of grave concern. They hoped that renewed consideration of the question would pave the way for restoration of the religious and civil liberties of the Tibetan people (see G A (XVI), Annexes, a.i. 83, A/4848).

The item was placed on the supplementary list of the provisional agenda of the nineteenth session, at the request of three other Member States, but because of the particular circumstances at that session the matter went no further (see G A (XIX), Suppl. No. 15 (A/5815), p. ix; cf. p. v, foot-note 1).

By letter dated 16 June 1965, one of those three Members drew attention to the fact that the item had been included in the supplementary list for the nineteenth session and requested that it be included in the agenda for the twentieth session (see G A (XX), Annexes, a.i. 91, A/5931).

discussion of the question would violate Article 2 (7). Other representatives favoured its consideration by the General Assembly. A third opinion was that the General Assembly's competence was doubtful; some of those holding that view voted for inclusion, others abstained.

80. 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 fourteenth session the decision was taken by 43 votes to 11, with 25 abstentions, at the fifteenth session by 49 votes to 13, with 35 abstentions; at the sixteenth session by 48 votes to 14, with 35 abstentions; and at the twentieth session by 41 votes to 26, with 46 abstentions.⁷⁹

81. During the discussion of the item itself some representatives again contended that it was a matter of domestic jurisdiction. Other representatives disputed that view and asserted that the General Assembly was competent to take up the item. The arguments submitted for⁸⁰ and against⁸¹ the contention as well as against⁸² and for⁸³ the inclusion of the item in the agenda are given in the Analytical Summary together with the arguments of a third group of representatives who said that it was doubtful whether the matter fell within domestic jurisdiction or came within the competence of the General Assembly.⁸⁴ They related to the following questions:

Whether the inclusion of an item in the agenda constitutes intervention (paragraphs 285 and 286);

Whether a matter dealt with by the Charter can fall essentially within domestic jurisdiction (paragraphs 326 and 327);

Whether a matter governed by the Charter provisions on human rights can fall essentially within domestic jurisdiction (paragraphs 330–332 and 335);

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraph 353);

Whether the domestic jurisdiction of a State extends over all its territories (paragraphs 356–359);

Effect of previous decisions by the General Assembly or the Security Council to deal with the question (paragraphs 404 and 405).

⁷⁹ G A (XIV), Plen., 826th mtg., para. 119; G A (XV/1), Plen., 898th mtg., para. 130; G A (XVI/1), Plen., 1014th mtg., para. 184; for reference to the vote at the twentieth session, see G A (XXI), Suppl. No. 1, p. 38. See foot-note 78 above regarding the nineteenth session.

⁸⁰ See foot-notes 344, 361, 365, 408 and 413 below; and G A (XIV), Plen., 834th mtg., paras. 106–108 and 178–181.

⁸¹ See foot-notes 337, 347, 348 and 360 below; and G A (XIV), Gen. Com., 124th mtg., paras. 16, 17 and 29.

⁸² See foot-notes 281 and 469 below; G A (XIV), Gen. Com., 124th mtg., para. 48; and G A (XVI/1), Plen., 1085th mtg., paras. 36 and 53.

⁸³ See foot-notes 282, 283, 463 and 465 below; G A (XIV), Gen. Com., 124th mtg., paras. 27 and 30; G A (XVI/1), Plen., 1084th mtg., paras. 141–144; and G A (XX), Plen., 1336th mtg., paras. 64 and 65; 1394th mtg., paras. 60 and 102.

⁸⁴ See foot-note 414 below; and G A (XIV), Plen., 831st mtg., paras. 63 and 66; 832nd mtg., paras. 115–119; 834th mtg., paras. 20–23, 27, 170–172 and 175.

a. *Action taken at the fourteenth session:*
resolution 1353 (XIV)

82. At its 834th plenary meeting on 21 October 1959, the General Assembly adopted⁸⁵ resolution 1353 (XIV) by 45 votes to 9, with 26 abstentions. In the preamble, the Assembly stressed that the right to civil and religious liberty was one of the fundamental human rights and freedoms to which the Tibetan people were entitled, and expressed grave concern at reports that such rights and freedoms had been forcibly denied them. It also deplored the effect of those events in increasing international tension and embittering relations between peoples. In the operative part, the Assembly affirmed its belief that respect for the principles of the Charter and of the Universal Declaration of Human Rights was essential for the evolution of a peaceful world order, based on the rule of law, and called for respect for the fundamental human rights of the Tibetan people and for their distinctive cultural and religious life.

b. *Action taken at the sixteenth session:*
resolution 1723 (XVI)

83. At its 1085th plenary meeting on 20 December 1961, the General Assembly adopted⁸⁶ resolution 1723 (XVI) by 55 votes to 10, with 29 abstentions. In the preamble, the Assembly recalled its resolution 1353 (XIV), expressed grave concern at the continuation of events in Tibet, including the violation of fundamental human rights and freedoms and the principle of self-determination. It also noted with deep anxiety the severe hardship inflicted on the Tibetan people, as evidenced by the large-scale exodus of refugees to neighbouring countries. In the operative part, the Assembly solemnly renewed its call for the cessation of practices which deprived the Tibetan people of their fundamental human rights and freedoms, including the right to self-determination, and expressed the hope that Member States would make all possible appropriate efforts towards achieving the purposes of the resolution.

c. *Action taken at the twentieth session:*
resolution 2079 (XX)

84. At its 1403rd plenary meeting on 18 December 1965, the General Assembly adopted⁸⁷ resolution 2079 (XX) by 43 votes to 26, with 22 abstentions. In the preamble, the Assembly again expressed concern at the continued violation of the fundamental rights and freedoms of the people of Tibet, and in the operative part, declared its conviction that such violation and suppression of the distinctive cultural and religious life of the people of Tibet increased international tension and embittered relations between peoples. It further solemnly renewed its call for "the cessation of all practices which deprive the Tibetan people of the human rights and fundamental freedoms which they have always enjoyed" and appealed to all States to use their best endeavours to achieve the purposes of the resolution.

Case No. 36⁸⁸

The question of Oman

85. The question of Oman was considered by the General Assembly at its fifteenth, sixteenth, seventeenth, eighteenth and twentieth sessions.⁸⁹

86. The question in dispute in the first place was whether the item was a domestic or an international matter. The representative of the United Kingdom argued that Oman was part of the Sultanate of Muscat and Oman; the conflict between the Sultan and

⁸⁸ See case No. 32, *Repertory Supplement No. 2*, under Article 2 (7), regarding a request in August 1957 to have the question of Oman included in the agenda of the Security Council.

⁸⁹ The inclusion of the item in the agenda for the fifteenth session was requested by ten Member States in a letter dated 29 September 1960. In an explanatory memorandum attached to the letter it was stated that Oman had been invaded by British-led forces, that the military intervention continued unabated and that that aggression against the people of Oman threatened peace and security in the Middle East and constituted a breach of the Charter of the United Nations and of the rules of international law (see G A (XV), Annexes, a.i. 89, A/4521).

The item was placed on the agenda for the sixteenth session in accordance with a decision taken by the General Assembly, during its fifteenth session, that further consideration of the question be deferred until the next session (see G A (XVI), Annexes, a.i. 23, A/5010, para. 1).

The inclusion of the item in the agenda for the seventeenth session was requested by eleven Member States in a letter dated 10 July 1962. In an explanatory memorandum attached to the letter, reference was made to a draft resolution (G A (XVI), Annexes, a. i. 23, A/5010, para. 10) adopted by the Special Political Committee during the sixteenth session, but not adopted by the Assembly, and it was stated that, in view of the continued policy of repression pursued by the United Kingdom Government and its failure to take steps for ending the conflict on the basis of the recognition of the rights of the people of Oman, renewed discussion of the problem was necessary. The situation was fraught with dangers and might, if allowed to continue, imperil international peace and security (see G A (XVII), Annexes, a.i. 79, A/5149).

The inclusion of the item in the agenda for the eighteenth session was requested by thirteen Member States in a letter dated 9 September 1963. In an explanatory memorandum submitted on 16 September 1963, those Members stated that during the previous two sessions of the General Assembly a substantial majority of the Members of the United Nations had recognized the right of the people of Oman to self-determination and independence, and called for the withdrawal of foreign forces from Oman. In view of the continued policy of repression pursued by the Government of the United Kingdom and its failure to take steps to end its colonial rule and transfer all sovereign powers to the genuine representatives of the people, in accordance with the provisions of the Declaration on the Granting of Independence to Colonial Countries and Peoples the General Assembly must, once again, consider the question of Oman, and deal with it as an essentially colonial problem (see G A (XVIII), Annexes, a.i. 78, A/5492 and Add.1).

The item was included by the Secretary-General in the provisional agenda of the nineteenth session, in pursuance of General Assembly resolution 1948 (XVIII). Because of the particular circumstances at the nineteenth session, no agenda was formally adopted, and the Assembly merely noted that a report had been received from the *Ad Hoc* Committee on Oman established by resolution 1948 (XVIII) (see G A (XIX), Annexes, No. 2, A/5750/Rev. 1 and Suppl. No. 15, p. 10. For the report of the *Ad Hoc* Committee, see G A (XIX), Annexes, No. 16, A/5846).

Since the Assembly was unable to consider the question of Oman at its nineteenth session, the item was again included by the Secretary-General in the provisional agenda of the twentieth session (see G A (XX), Annexes, a.i. 73, A/6168, para. 1).

⁸⁵ G A (XIV), Plen., 834th mtg., para. 166.

⁸⁶ G A (XVI/1), Plen., 1085th mtg., para. 108.

⁸⁷ G A (XX), Plen., 1403rd mtg., paras. 98–100.

the Imam of Oman was therefore an internal conflict; that conflict and the support given by the United Kingdom to the Sultan at his request was consequently not the concern of the United Nations. Against that view it was asserted that for more than a thousand years Oman had existed as an independent entity under an Imam elected by the people, and that it was now a sovereign State not subject to the Sultan's authority. The military action undertaken by the Sultan's forces and those of the United Kingdom against the people of Oman was therefore an aggression which threatened peace and security in the Middle East. The item was consequently a proper and even urgent matter for consideration by the United Nations.

87. An additional and somewhat divergent argument, subsequently developed, was that the question of Oman should be considered as an essentially colonial problem. The whole area in dispute was under British domination and its people were denied the right of self-determination, in flagrant violation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 [XV]). A measure of the increasing impact of that argument was that at the eighteenth, twentieth and twenty-first sessions, the item was moved from the Special Political Committee to the Fourth Committee.⁹⁰

88. After the item had been taken up by the General Assembly, it was also argued that the Assembly had already considered the matter at previous sessions and had thereby established its competence to deal with it.

89. At the fifteenth session the General Committee, by 14 votes to 2, with 4 abstentions, decided to recommend the inclusion of the item in the agenda of the General Assembly. At the sixteenth, seventeenth, eighteenth and twentieth sessions the Committee decided without vote to make the same recommendation.⁹¹

90. The General Assembly at all these sessions included the item in its agenda without vote.⁹²

91. During the discussion of the item, the representative of the United Kingdom maintained and further developed the position taken during the discussion on the inclusion of the item on the agenda. Those in favour of consideration by the General Assembly also presented in greater detail the reasons for their point of view. The arguments submitted for⁹³ and against⁹⁴ the position of the United Kingdom

as well as against⁹⁵ and for⁹⁶ the inclusion of the item of the agenda are given in the Analytical Summary on Practice. They related to the following questions:

Whether hearing a delegation from a territory claiming independence from a State constitutes intervention in the domestic affairs of that State (paragraphs 298–301);

Whether a matter governed by the Charter provisions on the self-determination of peoples can fall essentially within domestic jurisdiction (paragraph 351);

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraphs 352 and 353);

Whether the domestic jurisdiction of a State extends over all its territories (paragraphs 360 and 361);

Whether civil strife in certain situations is not a matter falling essentially within domestic jurisdiction (paragraphs 364 and 365);

Effect of previous decisions by the General Assembly or the Security Council to deal with the question (paragraph 404).

a. Action taken at the fifteenth session

92. At the 259th meeting of the Special Political Committee on 21 April 1961, fourteen Member States submitted a draft resolution⁹⁷ by which the General Assembly would have recalled its resolution 1514 (XV), "Declaration on the Granting of Independence to Colonial Countries and Peoples", and would have (1) recognized the right of the people of Oman to self-determination and independence; (2) called for the withdrawal of foreign forces from Oman; and (3) invited the parties concerned to settle their differences peacefully with a view to restoring normal conditions in Oman.

93. At the same meeting, the Committee decided to recommend to the General Assembly that further consideration of the item be deferred until the sixteenth session.⁹⁸

94. The General Assembly at its 995th plenary meeting, on 21 April 1961, took note of the report of the Special Political Committee and the recommendations contained in it.⁹⁹

b. Action taken at the sixteenth session

95. The Special Political Committee, at its 306th meeting on 4 December 1961, adopted by 38 votes to 21, with 29 abstentions, a draft resolution¹⁰⁰ which repeated the provisions of the draft resolution submitted at the previous session.

96. The General Assembly, at its 1078th plenary meeting on 14 December 1961, voted on the draft resolution submitted by the Special Political Committee. The vote was 33 in favour, 21 against, with

⁹⁰ G A (XVIII), Plen., 1210th mtg., para. 88; G A (XX), Plen., 1336th mtg., para. 128; G A (XXI), Plen., 1415th mtg., para. 114. See also this *Supplement* under Article 73.

⁹¹ G A (XV), Gen. Com., 131st mtg., para. 31; G A (XVI), Gen. Com., 135th mtg., para. 11; G A (XVII), Gen. Com., 148th mtg., para. 61; G A (XVIII), Gen. Com., 153rd mtg., para. 51; G A (XX), Gen. Com., 159th mtg., para. 5.

⁹² G A (XV/1), Plen., 909th mtg., para. 47; G A (XVI/1), Plen., 1014th mtg., para. 53; G A (XVII), Plen., 1129th mtg., para. 283; G A (XVIII), 1210th mtg., para. 76; G A (XX), Plen., 1336th mtg., para. 22.

⁹³ See foot-notes 300, 301, 408, 416 and 422 below.

⁹⁴ See foot-notes 302–305, 404, 407, 417–419 and 423 below.

⁹⁵ See foot-note 281 below.

⁹⁶ See foot-notes 282 and 463 below.

⁹⁷ G A (XV), Annexes, a.i. 89, A/4745, para. 5.

⁹⁸ *Ibid.*, para. 6.

⁹⁹ G A (XV/2), Plen., 995th mtg., para. 542.

¹⁰⁰ G A (XVI), Annexes, a.i. 23, A/5010, para. 9.

37 abstentions. The draft resolution was therefore not adopted, having failed to obtain the required two-thirds majority.¹⁰¹

c. *Action taken at the seventeenth session*

97. The Special Political Committee, at its 357th meeting on 28 November 1962, adopted by 41 votes to 18, with 36 abstentions, a draft resolution¹⁰² repeating the provisions of the draft resolutions submitted at the two previous sessions, but modifying the third preambular paragraph and operative paragraph 3. By the latter, the Assembly would have invited the parties concerned to settle their difference peacefully in accordance with the purposes and principles of the Charter of the United Nations with a view to restoring normal conditions in Oman.

98. The General Assembly, at its 1191st plenary meeting on 11 December 1962, voted on the draft resolution. The vote on paragraph 1 was 36 in favour, 25 against, with 38 abstentions; on paragraph 2 the vote was 40 in favour, 26 against, with 31 abstentions; and on paragraph 3 the vote was 44 in favour, 23 against, with 30 abstentions. None of the paragraphs was adopted, having failed to obtain the required two-thirds majority.¹⁰³

d. *Action taken at the eighteenth session:*
resolution 1948 (XVIII)

99. At the 1504th meeting of the Fourth Committee on 6 December 1963, eighteen Member States submitted a revised draft resolution¹⁰⁴ by which the Assembly would have recognized the right of the people of Oman to self-determination and independence; and invited the Special Committee on decolonization to examine the situation in Oman and to submit a report to the General Assembly at its nineteenth session.

100. At the 1507th meeting on 9 December, thirteen Member States submitted another draft resolution, by which, *inter alia*, an *Ad Hoc* Committee would be established to examine the question of Oman instead of the Special Committee, as proposed in the eighteen-Power draft resolution.

101. The latter draft resolution was given priority in the voting and was adopted by the Fourth Committee by 95 votes to 1, with 7 abstentions. In view of the outcome of the voting, the Committee decided not to vote on the eighteen-Power draft resolution.

102. The General Assembly, at its 1277th plenary meeting on 11 December 1963, adopted¹⁰⁵ by 96 votes

to 1, with 4 abstentions, the draft resolution recommended by the Fourth Committee as its resolution 1948 (XVIII). In the preamble, the Assembly noted that petitioners had been heard and expressed deep concern with the situation. In the operative part, it established an *Ad Hoc* Committee composed of five Member States appointed by the President to examine the question of Oman, and called on all the parties concerned to co-operate with the Committee by all possible means, including that of facilitating visits to the area.

e. *Action taken at the twentieth session:*
resolution 2073 (XX)

103. At its 1399th plenary meeting on 17 December 1965, the General Assembly, on the recommendation of the Fourth Committee, adopted¹⁰⁶ resolution 2073 (XX) by 61 votes to 18, with 32 abstentions. In the preamble, the Assembly recalled its resolutions 1514 (XV) and 1948 (XVIII), noted that statements made by the representatives of the United Kingdom and by petitioners had been heard, and expressed deep concern at the serious situation arising from colonial policies and foreign intervention by the United Kingdom in Oman. In the operative paragraphs, the Assembly deplored the attitude of the Government of the United Kingdom and the authorities in the Territory for refusing to co-operate with the *Ad Hoc* Committee on Oman and for not facilitating its visit to the Territory; recognized the inalienable right of the people of the Territory as a whole to self-determination and independence in accordance with their freely expressed wishes; considered that the colonial presence of the United Kingdom in its various forms prevented the people of the Territory from exercising their rights to self-determination and independence; and called on the Government of the United Kingdom to implement the following measures in the Territory immediately:

“(a) Cessation of all repressive actions against the people of the Territory;

“(b) Withdrawal of British troops;

“(c) Release of political prisoners and political detainees and return of political exiles to the Territory;

“(d) Elimination of British domination in any form.”

The Assembly invited the Special Committee on decolonization to examine the situation in the Territory and requested the Secretary-General, in consultation with the Special Committee, to take appropriate measures for implementing the resolution.

Case No. 37

The question of Southern Rhodesia

104. During the period under review, the question of Southern Rhodesia was considered by the

¹⁰¹ G A (XVI/1), Plen., 1078th mtg., para. 4.

¹⁰² G A (XVII), Annexes, a.i. 79, A/5325, para. 7.

¹⁰³ G A (XVII), Plen., 1191st mtg., paras. 64–67. At the same meeting (para. 45), before the voting, the representative of the United Kingdom stated that he was authorized to declare on behalf of the Sultan of Muscat and Oman that, while not recognizing the right of the General Assembly to discuss the internal affairs of his country, and on the understanding that the Assembly take no formal action at that stage, he would be prepared to invite on a personal basis a representative of the Secretary-General to visit the Sultanate to obtain first-hand information regarding the situation there. A Special Representative of the Secretary-General visited the country, 8 May to 1 July 1963 (see G A (XVIII), Annexes, a.i. 78, A/5562, for his report; see also this *Supplement* under Article 98.

¹⁰⁴ G A (XVIII), Annexes, a.i. 78, A/5657, para. 10.

¹⁰⁵ G A (XVIII), Plen., 1277th mtg., para. 13.

¹⁰⁶ G A (XX), Plen., 1399th mtg., paras. 138–140. For the report of the *Ad Hoc* Committee, see G A (XIX), Annexes, No. 16, A/5846.

General Assembly¹⁰⁷ at its sixteenth, seventeenth, eighteenth and twentieth sessions.¹⁰⁸

105. In the discussion on the adoption of the agenda for the sixteenth session, the representative of the United Kingdom stated that any debate in the United Nations on the question of Southern Rhodesia would exceed what was permissible under the Charter, and might also cause harm in the Territory.¹⁰⁹ With respect to the inclusion of the question in the agenda for the seventeenth session, he reiterated in the General Committee his Government's view that the United Nations was not authorized to intervene in the domestic affairs of a Member State.¹¹⁰ At the eighteenth session he again stated in the General Committee that his delegation adhered to its position that the United Nations had no authority under the Charter to intervene in the affairs of Southern Rhodesia.¹¹¹

106. The competence of the General Assembly to take up the question was defended by other representatives.¹¹²

¹⁰⁷ For consideration of the question by the Security Council, see case No. 46.

¹⁰⁸ At the sixteenth session, in connexion with the item regarding information from Non-Self-Governing Territories transmitted under Article 73e, the General Assembly, by resolution 1745 (XVI), requested the Special Committee on decolonisation, established by resolution 1654 (XVI), to consider whether the Territory of Southern Rhodesia had attained a full measure of self-government and to report on the matter at the seventeenth session of the General Assembly. The Special Committee, on the basis of an investigation carried out by a sub-committee appointed by it, concluded that Southern Rhodesia had not attained self-government, and recommended that, in view of the grave situation in the Territory, the matter should be urgently considered by the General Assembly at its resumed sixteenth session or at a special session. The report of the Special Committee was transmitted to the Acting Secretary-General on 17 May 1962 with a request that it be circulated to Member States. By a letter dated 4 June 1962 thirty-nine (and later two more) Member States, referring to the report of the Special Committee, proposed the question of Southern Rhodesia for inclusion in the agenda of the resumed sixteenth session (G A (XVI), Annexes, a.i. 39-44, A/4997/Add.1, paras. 13-17; A/4997/Add.2, paras. 14-30; a.i. 97, A/5124, A/5127 and Add.1 and 2).

The item "Question of Southern Rhodesia: report of the Special Committee established under General Assembly resolution 1654 (XVI)" was listed in the provisional agenda drawn up by the Secretary-General for the seventeenth session. (G A (XVII), Annexes, a.i. 8, A/5150).

The inclusion of the item in the agenda for the eighteenth session was requested by twenty-eight Member States in letters dated 18 July, 20 August, 29 August, 3 September and 10 September 1963. In an explanatory memorandum dated 30 September 1963, reference was made to previous consideration of the question within the United Nations, and it was further stated that the item should be considered as a matter of highest priority and urgency (G A (XVIII), Annexes, a.i. 75, A/5448 and Add.1-4 and Add.5).

The question of Southern Rhodesia was not listed in the provisional agenda of the twentieth session as a separate item, nor was it proposed for inclusion in the agenda by Member States. It was dealt with under the item: "Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples: reports of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples" (G A (XX), Annexes, a.i. 23).

¹⁰⁹ G A (XVI), Gen. Com., 146th mtg., para. 5; Plen., 1109th mtg., paras. 14 and 16.

¹¹⁰ G A (XVII), Gen. Com., 148th mtg., para. 47.

¹¹¹ G A (XVIII), Gen. Com., 153rd mtg., para. 20.

¹¹² G A (XVI), Gen. Com., 146th mtg., paras. 3-4, 7-8,

107. Despite the objection raised by the representative of the United Kingdom, the question of Southern Rhodesia was included in the agenda at the sixteenth session by 62 votes to 26, with 15 abstentions, and at the seventeenth and eighteenth sessions without a vote.¹¹³

108. During the discussion of the question itself at the sixteenth, seventeenth, eighteenth and twentieth sessions, objections to the competence of the General Assembly to deal with the matter were raised again. In particular, during the deliberations in the Fourth Committee at the eighteenth session, the delegation of the United Kingdom referred to statements made by its representative in the Security Council, in which it was asserted that Article 2 (7) clearly applied to the matter. Other delegations also referred to domestic jurisdiction or Article 2 (7) as applicable to the question.

109. On the other hand, many representatives opposed that view and upheld the competence of the United Nations in the matter.

110. The arguments for¹¹⁴ and against¹¹⁵ that view as well as those against¹¹⁶ and for¹¹⁷ the inclusion of the item on the agenda are given in the Analytical Summary of Practice. They related to the following questions:¹¹⁸

Whether a matter governed by the Charter provisions on human rights can fall essentially within domestic jurisdiction (paragraph 330);

Whether a matter governed by the Charter provisions regarding Non-Self-Governing Territories can fall essentially within domestic jurisdiction (paragraphs 348 and 349);

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraphs 352 and 353);

Effect of previous decisions by the General Assembly or the Security Council to deal with the question (paragraphs 404 and 405).

a. Action taken at the sixteenth session: resolution 1747 (XVI)

111. At its 1121st plenary meeting on 28 June 1962, the General Assembly adopted¹¹⁹ resolution 1747 (XVI) by 73 votes to 1, with 27 abstentions.

112. In the preamble, the Assembly recalled its resolution 1514 (XV), considered that "the vast

9, 11, 14, 17, 18, 21, 22; Plen., 1109th mtg., paras. 5, 11, 31, 44, 46, 47, 57 and 74; G A (XVII), Gen. Com., 148th mtg., paras. 45, 46 and 48, 49, 50; G A (XVIII), Gen. Com., 153rd mtg., paras. 21, 22, 23, 24, 25.

¹¹³ G A (XVI), Plen., 1109th mtg., para. 186; G A (XVII), Plen., 1129th mtg., para. 276; G A (XVIII), Plen., 1210th mtg., para. 73.

¹¹⁴ See foot-notes 401 and 408 below; G A (XVII), 4th Com., 1335th mtg., para. 10; and S C 18th yr., 1064th mtg., para. 6; and 1066th mtg., paras. 3 and 4.

¹¹⁵ See foot-notes 349, 400 and 407 below; and G A (XVI), Plen., 1115th mtg., para. 37.

¹¹⁶ See foot-notes 109-111 above and 470 below.

¹¹⁷ See foot-notes 112 above and 463-465 below.

¹¹⁸ See also para. 394 below under "Procedures by which Article 2 (7) was invoked".

¹¹⁹ G A (XVI/3), Plen., 1121st mtg., para. 17.

majority of the people of Southern Rhodesia have rejected the Constitution of 6 December 1961" and deplored the denial of equal political rights and liberties to that majority. It noted with regret that the Government of the United Kingdom had not taken steps to transfer all powers to the people of Southern Rhodesia, as required under resolution 1514 (XV), and stated that it had further considered the evidence submitted by petitioners before the Special Committee on decolonization.

113. On the operative paragraphs, the Assembly approved the conclusions of the Special Committee on decolonization and affirmed that "the Territory of Southern Rhodesia is a Non-Self-Governing Territory within the meaning of Chapter XI of the Charter of the United Nations". The Assembly then requested the Administering Authority:

"(a) To undertake urgently the convening of a constitutional conference, in which there shall be full participation of representatives of all political parties, for the purpose of formulating a constitution for Southern Rhodesia, in place of the Constitution of 6 December 1961, which would ensure the rights of the majority of the people, on the basis of 'one man, one vote', in conformity with the principles of the Charter of the United Nations and the Declaration on the granting of independence to colonial countries and peoples, embodied in General Assembly resolution 1514 (XV);

"(b) To take immediate steps to restore all rights of the non-European population and remove all restraints and restrictions in law and in practice on the exercise of the freedom of political activity including all laws, ordinances and regulations which directly or indirectly sanction any policy or practice based on racial discrimination;

"(c) To grant amnesty to, and ensure the immediate release of all political prisoners."

The Assembly requested the Special Committee to continue its constructive efforts towards the earliest implementation of resolution 1514 (XV) in order to ensure the emergence of Southern Rhodesia as an independent African State.

b. Action taken at the seventeenth session: resolutions 1755 (XVII) and 1760 (XVII)

114. At its 1152nd plenary meeting on 12 October 1962, the General Assembly adopted¹²⁰ resolution 1755 (XVII) by 83 votes to 2, with 11 abstentions. In the preamble, the Assembly recalled that in its resolution 1747 (XVI) it had affirmed that Southern Rhodesia was a Non-Self-Governing Territory, and expressed deep concern "at the deplorable, critical and explosive situation obtaining in Southern Rhodesia as a result of the state of emergency, the banning of the Zimbabwe African Peoples Union, and the arrests and detention of nationalist leaders, a situation which constitutes a denial of political rights and endangers peace and security in Africa and in the world at large". In the operative paragraphs, the Assembly urged the Government of the United

Kingdom, as a matter of urgency, to take measures which would be most effective to secure:

"(a) The immediate and unconditional release of the President of the Zimbabwe African Peoples Union, Mr. Joshua Nkomo, and all other nationalist leaders, restricted, detained or imprisoned;

"(b) The immediate lifting of the ban on the Zimbabwe African Peoples Union."

115. At its 1163rd plenary meeting on 31 October 1962, the General Assembly adopted¹²¹ resolution 1760 (XVII) by 81 votes to 2, with 19 abstentions.

116. In the preamble, the Assembly recalled resolution 1514 (XV) and certain provisions of resolution 1747 (XVI), and noted the adoption of resolution 1755 (XVII). It confirmed "the inalienable rights of the people of Southern Rhodesia to self-determination and to form an independent African State" and after stating that petitioners had been heard noted with deep regret that the administering Power had not taken steps to carry out the request contained in resolution 1747 (XVI).

117. In the operative paragraphs, the Assembly considered that the attempt to impose the Constitution of 6 December 1961 and to hold elections under it would aggravate the explosive situation in the Territory. It requested the Government of the United Kingdom to take the necessary measures to secure:

"(a) The immediate implementation of resolutions 1747 (XVI) and 1755 (XVII);

"(b) The immediate suspension of the enforcement of the Constitution of 6 December 1961 and cancellation of the general elections scheduled to take place shortly under that Constitution;

"(c) The immediate convening of a constitutional conference, in accordance with resolution 1747 (XVI), to formulate a new constitution for Southern Rhodesia;

"(d) The immediate extension to the whole population, without discrimination, of the full and unconditional exercise of their basic political rights, in particular the right to vote, and the establishment of equality among all inhabitants of the Territory."

The Assembly requested the Acting Secretary-General to lend his good offices to promote conciliation among the various sections of the population of Southern Rhodesia by initiating prompt discussions with the United Kingdom Government and other parties concerned and to report to the Assembly at the same session as well as to the Special Committee on decolonization.

118. At its 1200th plenary meeting on 23 December 1962, the General Assembly took note of the Secretary-General's report¹²² submitted in accordance with resolution 1760 (XVII).

c. Action taken at the eighteenth session: resolutions 1883 (XVIII) and 1889 (XVIII)

119. At its 1241st plenary meeting on 14 October 1963, the General Assembly adopted¹²³ resolution

¹²¹ G A (XVII), Plen., 1163rd mtg., para. 62.

¹²² G A (XVII), Annexes, a.i. 56, A/5396.

¹²³ G A (XVIII), Plen., 1241st mtg., para. 73.

¹²⁰ G A (XVII), Plen., 1152nd mtg., para. 17.

1883 (XVIII) by 90 votes to 2, with 13 abstentions. 120. In the preamble, the Assembly recalled its resolutions 1514 (XV), 1747 (XVI) and 1760 (XVII) as well as the resolution adopted by the Special Committee on decolonization on 20 June 1963, and considered that the transfer to the government in Southern Rhodesia of the powers and attributes of sovereignty, in particular the control and operation of military forces and arms, would aggravate an already explosive situation.

121. In the operative part, the Assembly invited the Government of the United Kingdom not to transfer to its colony of Southern Rhodesia, as then governed, any of the powers or attributes of sovereignty, but to await the establishment of a government fully representative of all the inhabitants of the colony; not to transfer armed forces and aircraft to its colony, as envisaged by the Central African Conference held in 1963; and to put into effect the relevant General Assembly resolutions, particularly resolutions 1747 (XVI) and 1760 (XVII).

122. At its 1255th plenary meeting on 6 November 1963, the General Assembly adopted¹²⁴ resolution 1889 (XVIII) by 73 votes to 2, with 19 abstentions.

123. In the preamble, the Assembly recalled its resolutions 1514 (XV), 1747 (XVI), 1760 (XVII) and 1883 (XVIII), as well as the resolution adopted on 20 June 1963 by the Special Committee on decolonization; stated that it bore in mind the oral petitions presented to the Fourth Committee; expressed deep concern at the explosive situation in Southern Rhodesia resulting from the denial of political rights to the vast majority of the African population and the entrenchment of the minority régime in power, and remained mindful of the aggravation of the situation which threatened international peace and security.

124. In the operative paragraphs, the Assembly called on the Government of the United Kingdom not to accede to the request of the minority government of Southern Rhodesia for independence until majority rule based on universal adult suffrage was established in the Territory; once more invited the Government of the United Kingdom to hold without delay a constitutional conference in which representatives of all political parties of the Territory would take part with a view to making constitutional arrangements for independence, on the basis of universal adult suffrage, including the fixing of the earliest possible date for independence; urged all Member States, in particular those having the closest relations with the Government of the United Kingdom, to use their influence to the utmost with a view to ensuring the realization of the legitimate aspirations of the people of Southern Rhodesia; and requested the Secretary-General to continue to lend his good offices to promote conciliation in the Territory.

d. Action taken at the twentieth session: resolutions 2012 (XX), 2022 (XX) and 2024 (XX)

125. At its 1357th plenary meeting on 12 October 1965, the General Assembly adopted¹²⁵ resolution

2012 (XX) by 107 votes to 2, with 1 abstention.

126. In the preamble, the Assembly again expressed deep concern at the situation in Southern Rhodesia and noted with particular concern the repeated threats of the authorities there immediately and unilaterally to declare its independence in order to perpetuate minority rule. It also noted the attitude of the Government of the United Kingdom that a unilateral declaration of independence for Southern Rhodesia would be an act of rebellion and that any measure to give it effect would be an act of treason.

127. In the operative part, the Assembly condemned any attempt on the part of the Rhodesian authorities to seize independence by illegal means; declared that the perpetuation of such minority rule would be incompatible with the principle of equal rights and self-determination of peoples; requested the United Kingdom and all Member States not to accept a declaration of independence for Southern Rhodesia by the then authorities, which would be in the sole interest of the minority, and not to recognize any authorities purporting to emerge therefrom; and called on the United Kingdom to take all possible measures to prevent a unilateral declaration of independence and, in the event of such a declaration, to take all steps necessary to put an immediate end to the rebellion, with a view to transferring power to a representative government in keeping with the aspirations of the majority of the people. The Assembly also decided to keep the question under urgent and continuing review during the twentieth session and to consider what further steps might be necessary.

128. At its 1368th plenary meeting on 5 November 1965, the General Assembly adopted¹²⁶ resolution 2022 (XX) by 82 votes to 9, with 18 abstentions. In the preamble, the Assembly considered that the administering Power had not implemented any of the above-mentioned resolutions and that no constitutional progress had been made. It noted that the increasing co-operation between the authorities of Southern Rhodesia, South Africa and Portugal was designed to perpetuate racist minority rule in southern Africa and constituted a threat to freedom, peace and security in Africa, and it noted with grave concern the manifest intention of the authorities in Southern Rhodesia to proclaim independence unilaterally, which would continue the denial to the African majority of their fundamental rights to freedom and independence.

129. In the operative part, the Assembly recognized the legitimacy of the struggle of the people of Southern Rhodesia for the enjoyment of their rights as set forth in the Charter of the United Nations, the Universal Declaration of Human Rights and the Declaration on decolonization contained in Assembly resolution 1514 (XV); solemnly warned the authorities in Southern Rhodesia and the United Kingdom that the United Nations would oppose any declaration of independence not based on universal adult suffrage; condemned the policies of racial discrimination and segregation practised in Southern Rhodesia as

¹²⁴ G A (XVIII), Plen., 1255th mtg., para. 15.

¹²⁵ G A (XX), Plen., 1357th mtg., para. 74.

¹²⁶ G A (XX), Plen., 1368th mtg., para. 22.

a crime against humanity; condemned any support or assistance rendered by any State to the minority régime in Southern Rhodesia; and called on all States to refrain from rendering any assistance whatsoever to that régime. It requested that the administering Power effect immediately:

“(a) The release of all political prisoners, political detainees and restrictees;

“(b) The repeal of all repressive and discriminatory legislation and, in particular, the Law and Order (Maintenance) Act and the Land Apportionment Act;

“(c) The removal of all restrictions on African political activity and the establishment of full democratic freedom and equality of political rights.”

The Assembly reiterated its request to the Government of the United Kingdom to suspend the Constitution of 1961 and call a constitutional conference immediately, and it called on that Government to employ all necessary measures, including military force, to implement those requests. It appealed to all States to use all their powers against a unilateral declaration of independence and, in any case, not to recognize any government in Southern Rhodesia not representative of the majority of the people, and requested all States to render moral and material help to the people of Zimbabwe in their struggle for freedom and independence. The Assembly then drew the attention of the Security Council to the threats made by the authorities in Southern Rhodesia, including the threat of economic sabotage against the independent African States adjoining Southern Rhodesia, and to the explosive situation in Southern Rhodesia which threatened international peace and security.

130. At its 1375th plenary meeting on 11 November 1965, the General Assembly adopted¹²⁷ resolution 2024 (XX) by 107 votes to 2, with 1 abstention.

131. In the preamble, the Assembly took into consideration the explosive situation in Southern Rhodesia following the unilateral declaration of independence and noted the measures taken by the Government of the United Kingdom. In the operative part, it condemned that unilateral declaration by the racist minority; invited the United Kingdom to implement immediately the relevant resolutions of the General Assembly and Security Council in order to put an end to the rebellion by the unlawful authorities in Southern Rhodesia; and recommended the Security Council to consider the situation as a matter of urgency.

Case No. 38

The status of the German-speaking element in the Province of Bolzano (Bozen)

132. In a letter dated 23 June 1960¹²⁸ the Minister for Foreign Affairs of Austria requested that an item entitled “The problem of the Austrian minority in Italy” be included in the agenda for the fifteenth

session of the General Assembly. In an attached memorandum, he complained that the Paris agreement of 5 September 1946¹²⁹ which provided for legislative and executive autonomy of the South Tyrolean population to protect the ethnic and cultural character of the Austrian population in that area, had been interpreted and applied by Italy in a way that contradicted its purpose in essential respects. For several years efforts through negotiations between the Austrian and Italian Governments had failed to achieve a solution to the question, and the situation had become more and more acute. By virtue of Articles 10 and 14 of the Charter, therefore, Austria requested the General Assembly to consider the dispute between Austria and Italy in order to bring about a “just settlement based on democratic principles, by which the Austrian minority in Italy is conceded a true autonomy so as to enjoy the self-administration and self-government it has asked for and, indeed, it needs for the protection of its existence as a minority”.

133. During the consideration in the General Committee of the agenda for the fifteenth session, the representative of Italy¹³⁰ stated that his Government would not oppose the discussion of the question at the fifteenth session, provided that the formulation of the item reflected the real terms of the problem and did not prejudice the issue. The formulation proposed by Austria was inappropriate and could not be accepted for two principal reasons. The Italian Government objected, first, to the use of the words “Austrian minority”. The words used in the Paris agreement of 1946 were “German-speaking inhabitants,” the definition used in the bilateral conversations before and after the conclusion of the agreement. Secondly, the Italian Government objected to the absence of any reference to the Paris agreement, since Austria’s claims were based solely on certain provisions of that agreement, and since that was the only international instrument under which any claim could be made for discussion of the matter by the United Nations. If there had not been such an agreement, the matter would clearly be within Italian domestic jurisdiction. The approval of the item as formulated by Austria would amount to sanctioning the principle that questions concerning citizens of one State might be submitted to the Assembly by another State merely on the ground that such citizens constituted a minority. As worded in the provisional agenda, therefore, the item would establish an undesirable precedent, clearly contrary to the principles of the Charter. The Italian delegation, for those reasons, proposed that the item should read “Implementation of the international agreement between Italy and Austria of 5 September 1946”.

134. The representative of Austria stated¹³¹ that the wording proposed by Italy covered only one aspect of the substance of the question and was, in his view, prejudicial. The dispute had clearly arisen because of the existence of a minority, and the

¹²⁹ United Nations, *Treaty Series*, vol. 49 (1950), I. No. 747, annex IV.

¹³⁰ G A (XV), Gen. Com., 127th mtg., paras. 14–18.

¹³¹ *Ibid.*, 127th mtg., para. 32; 128th mtg., para. 3.

¹²⁷ G A (XX), Plen., 1375th mtg., para. 224.

¹²⁸ G A (XV), Annexes, a.i. 68, A/4395.

competence of the United Nations to deal with minority problems was uncontested. Nevertheless, he would be prepared, in a spirit of conciliation, to agree to another title so long as it covered the substance of what his Government wished to discuss.

135. After discussion and negotiations, agreement was finally reached on a compromise formula, and the General Committee, at its 128th meeting on 23 September 1960, decided¹³² without a vote, to recommend to the General Assembly that the item should be included in the agenda, and that it should read as follows: "The status of the German-speaking element in the province of Bolzano (Bozen); implementation of the Paris agreement of 5 September 1946".

136. During the substantive discussions at the fifteenth and sixteenth sessions, it was contended that the matter fell essentially within the domestic jurisdiction of Italy. The arguments submitted for¹³³ and against¹³⁴ that contention as well as against¹³⁵ and for¹³⁶ the inclusion of the item in the agenda are given in the Analytical Summary of Practice. They related to the following questions:

The meaning of the term "to intervene" (paragraph 278);

Whether a matter governed by international agreement can fall essentially within domestic jurisdiction (paragraphs 322-324);

Whether a matter governed by the Charter provisions on human rights can fall essentially within domestic jurisdiction (paragraph 330);

Whether minority questions can fall essentially within domestic jurisdiction (paragraphs 369 and 375).

a. Action taken at the fifteenth session: resolution 1497 (XV)

137. The General Assembly, at its 898th plenary meeting on 10 October 1960, decided¹³⁷ without discussion to include the item "The status of the German-speaking element in the province of Bolzano (Bozen); implementation of the Paris agreement of 5 September 1946" in its agenda, as recommended by the General Committee.

138. After substantive discussion of the item, the Assembly, at its 909th plenary meeting on 31 October 1960, on the recommendation of the Special Political Committee,¹³⁸ adopted¹³⁹ unanimously resolution 1497 (XV).

139. In the preamble, the Assembly noted that the status of the German-speaking element in the Province of Bolzano (Bozen) had been regulated by the international agreement between Austria and Italy signed in Paris on 5 September 1946, which established a system designed to guarantee the

¹³² *Ibid.*, 128th mtg., para. 9.

¹³³ See foot-notes 433 and 435 below.

¹³⁴ See foot-notes 275, 328-330, 347, 360, 434 and 436 below.

¹³⁵ See foot-note 430 below.

¹³⁶ See foot-notes 428, 429, 431 and 432 below.

¹³⁷ G A (XV/1), Plen., 898th mtg., para. 10.

¹³⁸ G A (XV), Annexes, a.i. 68, A/4553, para. 16.

¹³⁹ G A (XV/1), Plen., 909th mtg., para. 45.

German-speaking inhabitants of that province complete equality of rights with the Italian-speaking inhabitants. In view of the dispute that had arisen between Austria and Italy in regard to the implementation of the agreement, the Assembly expressed the desire to prevent the situation from impairing their friendly relations.

140. In the operative part, the Assembly urged the two parties to resume negotiations with a view to finding a solution for all differences relating to the implementation of the agreement; recommended that, in the event the negotiations did not lead to satisfactory results within a reasonable time, both parties should favourably consider the possibility of seeking a solution by any of the means provided in the Charter of the United Nations, including recourse to the International Court of Justice, or any other peaceful means of their own choice; and recommended that they should refrain from any action which might impair their friendly relations.

b. Action taken at the sixteenth session: resolution 1661 (XVI)

141. Since the negotiations undertaken in pursuance of resolution 1497 (XV) did not result in an agreement, the permanent representative of Austria to the United Nations, in a letter¹⁴⁰ dated 18 July 1961, requested the inclusion of the item entitled "The status of the German-speaking element in the Province of Bolzano (Bozen); implementation of resolution 1497 (XV) of the General Assembly of the United Nations of 31 October 1960" in the agenda for the sixteenth session.

142. The General Committee, at its 136th meeting on 21 September 1961, decided¹⁴¹ without discussion to recommend inclusion of the item, and the General Assembly, at its 1014th plenary meeting on 25 September 1961, decided¹⁴² without discussion to include it.

143. After substantive discussion of the item, the General Assembly, at its 1067th plenary meeting on 28 November 1961, on the recommendation of the Special Political Committee,¹⁴³ adopted¹⁴⁴ unanimously resolution 1661 (XVI), by which it noted with satisfaction that negotiations were taking place between the two parties and called for further efforts by them to find a solution to their dispute in accordance with Assembly resolution 1497 (XV).

Case No. 39

The situation in Angola

144. During the period under review, the situation in Angola was considered by the General Assembly¹⁴⁵ at its fifteenth, sixteenth and seventeenth session.¹⁴⁶

¹⁴⁰ G A (XVI), Annexes, a.i. 74, A/4802.

¹⁴¹ G A (XVI), Gen. Com., 136th mtg., p. 8 (item 74).

¹⁴² G A (XVI/1), Plen., 1014th mtg., para. 125.

¹⁴³ G A (XVI), Annexes, a.i. 74, A/4982, para. 9.

¹⁴⁴ G A (XVI/1), Plen., 1067th mtg., para. 23.

¹⁴⁵ For consideration of the question by the Security Council, see Cases Nos. 44 and 45.

¹⁴⁶ The inclusion of the item in the agenda for the fifteenth session was requested in a letter dated 20 March 1961 from

145. At each of those sessions, in the discussions on the adoption of the agenda, the representative of Portugal objected to the inclusion of the question in the agenda, on the ground that it would be in violation of Article 2 (7).

146. Other representatives opposed that view and affirmed the competence of the General Assembly to deal with the matter.

147. Despite the opposition of Portugal, the item was placed on the agenda at the fifteenth session by a vote of 79 votes to 2, with 8 abstentions, and at the sixteenth and seventeenth sessions without a vote.¹⁴⁷

148. During the discussion of the substance of the matter, it was also contended that consideration of the question would constitute a violation of Article 2 (7). The arguments for¹⁴⁸ and against¹⁴⁹ that contention as well as against¹⁵⁰ and for¹⁵¹ the inclusion of the item in the agenda are given in the Analytical Summary of Practice. They related to the following questions:¹⁵²

Whether a matter dealt with by the Charter can fall essentially within domestic jurisdiction (paragraph 327);

Whether a matter governed by the Charter provisions on human rights can fall essentially within domestic jurisdiction (paragraphs 330 and 332);

Whether a matter governed by the Charter provisions regarding Non-Self-Governing Territories can fall essentially within domestic jurisdiction (paragraphs 337, 344 and 345);

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraph 352);

Effect of previous decisions by the General Assembly or the Security Council to deal with the question (paragraph 405).

a. Action taken at the fifteenth session: resolution 1603 (XV)

149. At its 992nd plenary meeting on 20 April

39 Member States (later joined by a fortieth). In an explanatory memorandum, attached, it was stated that disturbances in Angola had aroused concern around the world, for fundamental human rights were being denied. If allowed to continue, the situation would gravely threaten international peace and security. It required immediate consideration by the General Assembly. (See G A (XV), Annexes, a.i. 92, A/4712 and Add. 1).

The item was placed on the provisional agenda of the sixteenth session, in pursuance of General Assembly resolution 1603 (XV).

The item was included in the provisional agenda of the seventeenth session in pursuance of General Assembly resolution 1742 (XVI).

¹⁴⁷ G A (XV/2), Plen., 966th mtg., para. 41; G A (XVI/1), Plen., 1014th mtg., para. 68; G A (XVII), Plen., 1129th mtg., para. 265.

¹⁴⁸ See foot-notes 344, 361, 368, 408 and 468 below.

¹⁴⁹ See foot-notes 347, 350, 357, 359, 369, 393-395 and 407 below.

¹⁵⁰ See foot-note 281 below.

¹⁵¹ See foot-note 282 below.

¹⁵² See also para. 395 below under "Procedures by which Article 2 (7) was invoked".

1961, the General Assembly adopted¹⁵³ resolution 1603 (XV) by 73 votes to 2, with 9 abstentions.

150. In the preamble, the Assembly stated that the continuance of disturbances and conflicts in Angola and failure to act speedily, effectively and in time for ameliorating the disabilities of the African peoples of Angola were likely to endanger international peace and security. It also recalled its resolutions 1514 (XV), 1541 (XV) and 1542 (XV).

151. In the operative part, the Assembly called on the Government of Portugal to consider urgently the introduction of measures and reforms in Angola for the purpose of implementing the Declaration on decolonization contained in resolution 1514 (XV), with due respect for human rights and fundamental freedoms and in accordance with the Charter of the United Nations; and established a sub-committee of five members to be appointed by the President of the Assembly to examine the statements made before the Assembly concerning Angola, to receive further statements and documents, to conduct inquiries and to report to the Assembly as soon as possible.

b. Action taken at the sixteenth session: resolution 1742 (XVI)

152. At its 1102nd plenary meeting on 30 January 1962, the General Assembly adopted¹⁵⁴ resolution 1742 (XVI) by 99 votes to 2, with 1 abstention.

153. In the preamble, the Assembly recalled its resolution 1603 (XV) and Security Council resolution 163 (1961), of 9 June 1961, referred to its examination of the Sub-Committee's report and deplored Portugal's lack of co-operation with the Sub-Committee in the discharge of its task. It noted with deep regret Portugal's refusal to recognize Angola as a Non-Self-Governing Territory, as well as its failure to take measures to implement the Declaration on decolonization, and expressed the conviction that Portugal's continued refusal to recognize the legitimate aspirations of the Angolan people to self-determination and independence threatened international peace and security.

154. In the operative part, the Assembly commended to the Portuguese Government for urgent consideration and effective implementation, the observations, findings and conclusions set out in the Sub-Committee's report. It deeply deprecated the repressive measures and armed action against the people of Angola and the denial to them of human rights and fundamental freedoms, and called on the Portuguese authorities to desist forthwith from such repressive measures. It appealed to the Government of Portugal to release all Angolan political prisoners immediately and urged it to undertake, without further delay, extensive political, economic and social reforms and measures, and, in particular, to set up freely elected and representative political institutions with a view to transferring power to the people of Angola. It requested Member States to use their influence to secure the compliance of Portugal with the resolution; requested Member States and members of the specialized agencies to deny Portugal any

¹⁵³ G A (XV/2), Plen., 992nd mtg., para. 277.

¹⁵⁴ G A (XVI/2), Plen., 1102nd mtg., para. 159.

support and assistance for suppressing the people of Angola; and recommended that the Security Council keep the matter under constant review. Meanwhile it instructed the Sub-Committee to study ways to secure the implementation of the resolution and to report to the Security Council and to the General Assembly; and it requested the Government of Portugal to submit a report to the Assembly at its seventeenth session on measures it had undertaken to implement the resolution.

*c. Action taken at the seventeenth session:
resolution 1819 (XVII)*

155. At its 1196th plenary meeting on 18 December 1962, the General Assembly adopted¹⁵⁵ resolution 1819 (XVII) by 57 votes to 14, with 18 abstentions.

156. In the preamble, the Assembly, having considered reports by the Sub-Committee on the Situation in Angola and the Special Committee on Territories under Portuguese Administration, resolutely condemned the mass extermination of the indigenous population of Angola and other severe repressive measures used by the Portuguese colonial authorities against those people. It deplored the use by Portugal of arms supplied to it by certain Member States and noted that in the Territory of Angola, as in other Portuguese colonies, the indigenous population was denied all fundamental rights and freedoms, that racial discrimination was widely practised, and that the economic life of Angola was largely based on forced labour. The Assembly further expressed its conviction that the colonial war carried on by the Government of Portugal in Angola, the violation by that Government of Security Council resolution 163 (1961) and its refusal to implement the Declaration on decolonization and other relevant resolutions of the Assembly constituted a source of international conflict and tension as well as a serious threat to world peace and security.

157. In the operative paragraphs, the Assembly solemnly reaffirmed the inalienable right of the people of Angola to self-determination and independence, and supported their demand for immediate independence; and condemned the colonial war carried on against them by Portugal and demanded that the Government of Portugal put an end to it immediately; and again called on the Portuguese authorities to desist forthwith from armed action and repressive measures against those people. The Assembly urged the Government of Portugal, without any further delay:

“(a) To release all political prisoners;

“(b) To lift the ban on political parties;

“(c) To undertake extensive political, economic and social measures that would ensure the creation of freely elected and representative political institutions and transfer of power to the people of Angola in accordance with the Declaration on the Granting of Independence to Colonial Countries and Peoples.”

It reiterated its requests to Member States to use their influence to secure compliance by Portugal

and to deny Portugal support or assistance, and in particular to terminate the supply of arms to Portugal. It reminded the Government of Portugal that its continued non-implementation of the resolutions of the General Assembly and of the Security Council was inconsistent with its membership in the United Nations; and it requested the Security Council to take appropriate measures, including sanctions, to secure Portugal's compliance with the resolution and with previous resolutions of the General Assembly and of the Security Council.

Case No. 40

The situation in Aden

158. The situation in Aden was considered by the General Assembly at its eighteenth¹⁵⁶ and twentieth¹⁵⁷ sessions. The reports¹⁵⁸ of the Special Committee on decolonization were discussed at those sessions. The Committee also reported to the seventeenth session¹⁵⁹ of the Assembly on the subject but no specific action relating to Aden resulted from the discussion.

159. At its 163rd meeting on 3 May 1963, the Special Committee adopted a resolution¹⁶⁰ by 18 votes to 5, with no abstentions, which included a provision, voted on separately and adopted by 16 votes to 5, with 2 abstentions, to send a sub-committee to the Territories of Aden and the Aden Protectorates and to neighbouring countries, if necessary, to ascertain the views of the population and hold talks with the administering Power.

160. The Sub-Committee was not admitted to the Territories by the United Kingdom authorities.¹⁶¹

161. It was maintained by the representative of the United Kingdom that dispatch of a visiting mission to a Non-Self-Governing Territory would constitute intervention in the administration of that Territory.¹⁶² While some representatives gave direct¹⁶³ or implied¹⁶⁴ support to that view, other representatives defended the competence of the Special Committee to send out visiting missions to Non-Self-Governing Territories.¹⁶⁵ The arguments are given in the Analytical Summary of Practice (paragraphs 339–343). They related to the following questions:

Whether the dispatch of a visiting mission to a Non-Self-Governing Territory, by an organ of the United Nations constitutes intervention;

Whether a matter governed by the Charter provisions on Non-Self-Governing Territories can fall essentially within domestic jurisdiction;

¹⁵⁶ Under agenda items 23 and 49.

¹⁵⁷ Under agenda item 23.

¹⁵⁸ G A (XVIII), Annexes, a.i. 23/Addendum, A/5446/Rev. 1, chap. V; G A (XX), Annexes, a.i. 23/Addendum, A/6000/Rev.1, chap. VI.

¹⁵⁹ See G A (XVII), Annexes, a.i. 25/Addendum, A/5238, chap. XI, paras. 51–63.

¹⁶⁰ G A (XVIII), Annexes, a.i. 23/Addendum, A/5446/Rev. 1, chap. V, para. 336.

¹⁶¹ G A (XVIII), Annexes, a.i. 23/Addendum, A/5446/Rev. 1, chap. V, para. 351.

¹⁶² See foot-notes 371, 372, 375 and 376 below.

¹⁶³ See foot-note 378 below.

¹⁶⁴ See foot-note 377 below.

¹⁶⁵ See foot-notes 380–390 below.

¹⁵⁵ G A (XVII), Plen., 1196th mtg., para. 56.

Whether a Member State which has signed the Convention on the Privileges and Immunities of the United Nations is bound not to deny entry to a visiting mission dispatched by the United Nations;

Whether a matter covered by a resolution of the General Assembly can fall essentially within domestic jurisdiction;

Whether a matter dealt with by a declaration of the General Assembly can fall essentially within domestic jurisdiction;

Whether the internal affairs of Non-Self-Governing Territories have become part of the international public domain;

Whether the presence in a Non-Self-Governing Territory of a visiting mission pursuing the same aim of independence as the administering Power can constitute intervention.

a. Action taken at the eighteenth session: resolutions 1949 (XVIII) and 1956 (XVIII)

162. At its 1277th plenary meeting on 11 December 1963, the General Assembly adopted resolutions 1949 (XVIII) and 1956 (XVIII) by 77 votes to 10, with 11 abstentions, and 95 votes to none, with 6 abstentions, respectively.

163. In the preamble of resolution 1949 (XVIII), the Assembly, among other things, recalled its resolutions 1514 (XV), 1654 (XVI) and 1810 (XVII); noted the desire of the population of the Territory of Aden for an early end of colonial domination and for the unity of the Territory. It was deeply concerned that the deteriorating situation might lead to serious unrest and threaten international peace and security; and was convinced that the people should be consulted at the earliest possible time.

164. In the operative paragraphs, the Assembly endorsed the conclusions and recommendations of the Sub-Committee on Aden and expressed deep regret that the Government of the United Kingdom had refused to co-operate with the Sub-Committee. The Government's refusal to permit the Sub-Committee's entry into the Territory for the performance of tasks entrusted to it by the Special Committee on decolonization was particularly regretted. The Assembly also endorsed the resolutions adopted by that Committee on 3 May and 19 July 1963 and reaffirmed the right of the people of the Territory to self-determination and freedom from colonial rule. It considered the maintenance of the military base at Aden prejudicial to the security of the region and its early removal desirable. It recommended that the people should be consulted as soon as possible through universal adult suffrage so that they might decide their future. The Assembly called on the administering Power:

“(a) To repeal all the laws which restrict public freedoms;

“(b) To release all political prisoners and detainees and those who have been sentenced following actions of political significance;

“(c) To allow the return of those people who have been exiled or forbidden to reside in the Territory because of political activities;

“(d) To cease forthwith all repressive action against the people of the Territory, in particular military expeditions and the bombing of villages”.

It further called on the administering Power to make the necessary constitutional changes so that a representative organ might be established and a provisional government set up after general elections on the basis of universal adult suffrage and with full respect for human rights and freedoms; recommended that elections should be held before the attainment of independence to be granted in accordance with the freely expressed wishes of the inhabitants; and requested the Secretary-General, in consultation with the Special Committee and the administering Power, to arrange for an effective United Nations presence before and during the elections. The Assembly then recommended that the government resulting therefrom should open conversations without delay to fix the date for the granting of independence and to arrange for the transfer of power.

165. By resolution 1956 (XVIII) the Assembly reiterated its approval of the Special Committee's report and again called on the administering Power to implement the conclusions and recommendations contained therein.¹⁶⁶

b. Action taken at the twentieth session: resolution 2023 (XX)

166. At its 1368th plenary meeting on 5 November 1965, the General Assembly adopted resolution 2023 (XX) by 90 votes to 11, with 10 abstentions. Paragraph 6 of that resolution was voted on separately and adopted by 64 votes to 22, with 25 abstentions.¹⁶⁷

167. In the preamble, the Assembly noted that it had considered the chapters of the reports of the Special Committee on decolonization relating to the Territory of Aden, which included, in addition to Aden, the Eastern and Western Aden Protectorates, the Islands of Perim, Kuria Muria, Kamaran and other off-shore islands; recalled its resolutions 1514 (XV) and 1949 (XVIII) and those of the Special Committee adopted on 9 April 1964, 11 and 17 May 1965; stated that petitioners had been heard and that note had been taken of the declarations of the representative of the administering Power; and expressed deep concern at the critical and explosive situation threatening peace and security in the area and arising from the policies pursued by the administering Power in the Territory.

168. In the operative paragraphs, the Assembly repeated more strongly and re-emphasized the main points made in its resolution 1949 (XVIII). It deplored the refusal of the administering Power to implement the resolutions of the General Assembly and the Special Committee and its attempts to set up an unrepresentative régime with a view to granting independence contrary to General Assembly resolutions 1514 (XV) and 1949 (XVIII). It appealed to all States not to recognize any independence not based on the wishes of the people freely expressed through elections held under universal adult suffrage, and to give the people of the Territory all possible

¹⁶⁶ See also this *Supplement* under Article 73.

¹⁶⁷ G A (XX) Plen., 1368th mtg., paras. 47–48.

aid in their efforts to attain freedom and independence. It drew the attention of the Security Council to the dangerous situation prevailing in the area because of British military action and urged the Government of the United Kingdom to abolish the state of emergency. It also requested the United Nations High Commissioner for Refugees, the specialized agencies and the international relief organizations to offer all possible assistance to the people of the Territory who were suffering as a result of these military operations.

Case No. 41

Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations

169. At the seventeenth, eighteenth and twentieth sessions of the General Assembly, some aspects of Article 2 (7) were examined in the Sixth Committee¹⁶⁸ during discussion of the principle of non-intervention under the item entitled "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations".

170. At the seventeenth session, Article 2 (7) was considered in connexion with resolution 1815 (XVII), which established a list of principles of international law concerning friendly relations and co-operation among States, including "the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter"; at the eighteenth session the discussion took place during the preparation of terms of reference for the Special Committee on Principles of International Law concerning Friendly Relations, which at that session was established by resolution 1966 (XVIII); and at the twentieth session, the Sixth Committee had before it a report¹⁶⁹ of the Special Committee, which formed the basis of the debate.

171. The arguments¹⁷⁰ are given in the Analytical Summary of Practice and related to the following questions:¹⁷¹

The meaning of the term "to intervene" (paragraph 279);

The meaning of the phrase "matters which are essentially within the domestic jurisdiction of any State" (paragraph 317);

Whether a matter governed by international agreement can fall essentially within domestic jurisdiction (paragraph 319);

Whether a matter dealt with by the Charter can fall essentially within domestic jurisdiction (paragraph 326);

¹⁶⁸ See G A (XVIII), Annexes, a.i. 71, A/5671, paras. 80-105; G A (XX), Annexes, a.i. 90 and 94, A/6165, paras. 38-43 and 56.

¹⁶⁹ G A (XX), Annexes, a.i. 90 and 94, A/5746, paras. 202-292.

¹⁷⁰ See foot-notes 276, 318, 319, 322, 331, 342, 347, 457, 472, 473, 475 and 476 below.

¹⁷¹ See also paras. 396-400 below under "Procedures by which Article 2 (7) was invoked".

Whether a matter governed by the Charter provisions on human rights can fall essentially within domestic jurisdiction (paragraph 330);

Effect of previous decisions by the General Assembly or the Security Council to deal with the question (paragraph 405);

Article 2 (7) and the principle of non-intervention (paragraphs 407, 408, 410 and 411).

Case No. 42

Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty (resolution 2131 (XX))

172. At the twentieth session of the General Assembly the question of the inadmissibility of intervention in the domestic affairs of States and the protection of their independence and sovereignty was discussed at the 1395th to 1406th meetings and at the 1423rd meeting of the First Committee, and at the 1408th plenary meeting. Some aspects of the principle of non-intervention, as expressed in Article 2 (7), were examined, both in the First Committee and by the Assembly.

173. The arguments for¹⁷² and against¹⁷³ considering a matter as falling within the scope of Article 2 (7) are given in the Analytical Summary of Practice. They related to the following questions:

Whether a matter dealt with by the Charter can fall essentially within domestic jurisdiction (paragraph 347);

Article 2 (7) and the principle of non-intervention (paragraphs 409 and 412).

174. At its 1422nd meeting on 20 December 1965, the First Committee adopted a draft resolution submitted by fifty-seven Powers, by 100 votes to none, with 5 abstentions. Two representatives said that they would vote in favour of the draft resolution on the clear understanding that it should not in any circumstances be invoked as a precedent in the Sixth Committee or in the Special Committee on the Principles of International Law concerning Friendly Relations and Co-operation among States.¹⁷⁴ One of those representatives added the reservation that nothing in the resolution should be interpreted as being prejudicial to the right of a State to request aid in any form it desired.¹⁷⁵

175. At its 1408th meeting on 21 December 1965, the General Assembly adopted by 109 votes to none, with 1 abstention, as its resolution 2131 (XX), the draft resolution submitted by the First Committee. One representative stated that his delegation was prepared to vote in favour on the clear understanding that the resolution neither added to nor detracted from obligations under the Charter.¹⁷⁶

176. In the preamble, the Assembly expressed concern over the increasing threat to universal peace posed by armed intervention and other forms

¹⁷² See foot-notes 474 and 480 below.

¹⁷³ See foot-notes 399, 478, 479 and 481 below.

¹⁷⁴ G A (XX), 1st Com., 1422nd mtg., paras. 34 and 43.

¹⁷⁵ *Ibid.*, para. 43.

¹⁷⁶ G A (XX), Plen., 1408th mtg., para. 74.

of direct or indirect interference threatening the sovereign personality and political independence of States. It interpreted the principle of self-determination as implying that all peoples had an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory. The Assembly further recalled previous affirmations of the principle of non-intervention at international conferences and in the charters of international organizations and proclaimed that the observance of that principle was essential to the fulfilment of the purposes and principles of the United Nations and that armed intervention was synonymous with aggression. It emphasized the threat that violation of those principles posed for all countries, particularly the developing countries and those that had freed themselves from colonialism, and declared that all States, and in particular the developing countries, should be free to choose their own political, economic and social institutions.

177. In the operative part, the Assembly solemnly declared:

"1. No State has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are condemned.

"2. No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or

armed activities directed towards the violent overthrow of the régime of another State, or interfere in civil strife in another State.

"3. The use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention.

"4. The strict observance of these obligations is an essential condition to ensure that nations live together in peace with one another, since the practice of any form of intervention not only violates the spirit and letter of the Charter of the United Nations but also leads to the creation of situations which threaten international peace and security.

"5. Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State.

"6. All States shall respect the right of self-determination and independence of peoples and nations, to be freely exercised without any foreign pressure, and with absolute respect for human rights and fundamental freedoms. Consequently, all States shall contribute to the complete elimination of racial discrimination and colonialism in all its forms and manifestations.

"7. For the purpose of the present Declaration, the term "State" covers both individual States and groups of States.

"8. Nothing in this Declaration shall be construed as affecting in any manner the relevant provisions of the Charter of the United Nations relating to the maintenance of international peace and security, in particular those contained in Chapters VI, VII and VIII."

B. General Assembly and Economic and Social Council

Case No. 12

Draft International Covenants on Human Rights

178. The General Assembly continued its consideration of the draft International Covenants on Human Rights at its fourteenth, fifteenth, sixteenth, seventeenth and eighteenth sessions. The matter was not dealt with at the nineteenth session because of the particular circumstances prevailing at that session. The item was on the agenda of the twentieth session but the Third Committee was not able to consider it because of its heavy workload. The General Assembly, therefore, by resolution 2080 (XX), merely referred further consideration to its twenty-first session. Consideration of the draft covenants was completed at that session. The final deliberations therefore took place outside the period under review, but are covered by the present study.

179. The question of domestic jurisdiction was raised during the deliberations on the measures for implementing¹⁷⁷ the proposed covenants.

¹⁷⁷ See E S C (XVIII), Suppl. No. 7, annex I, part IV, articles 17–25 of the draft Covenant on Economic, Social and

180. In the debate in the Third Committee¹⁷⁸ during the eighteenth session there was agreement, in principle at least, regarding the system of implementation proposed for the draft Covenant on Economic, Social and Cultural Rights. That system would involve a progressive realization of the rights enunciated and with respect to implementation would provide mainly that the Parties would undertake to submit reports to the United Nations concerning the progress made in achieving observance of those rights.¹⁷⁹

181. On the other hand, divergent views were expressed concerning the measures of implementation to be adopted with respect to the draft Covenant on Civil and Political Rights. It was there intended that implementation should be immediate,

Cultural Rights; and part IV, articles 27–48 and part V, articles 49 and 50, of the draft Covenant on Civil and Political Rights, as proposed by the Commission on Human Rights.

¹⁷⁸ G A (XVIII), 3rd Com., 1264th, 1267th to 1269th and 1273rd to 1277th mtgs.

¹⁷⁹ G A (XVIII), Annexes, a.i. 48, A/5655, paras. 110 and 111.

and the system proposed to that end would include international machinery to supervise observance of the Covenant's provisions. That idea of implementation machinery was criticized by some representatives as being contrary to the United Nations Charter and as constituting intervention in matters within the domestic jurisdiction of the Parties.¹⁸⁰

182. In connexion with a proposal to establish a High Commissioner for Human Rights, the view was expressed, during the discussion in the Social Committee of the Economic and Social Council, that national sovereignty and prerogatives were involved and interference in the internal affairs of sovereign States must be avoided. On the other side it was contended that Article 2 (7) did not apply.¹⁸¹

By resolution 1163 (XLI), the Economic and Social Council informed the General Assembly that the Commission on Human Rights had established a working group to study all relevant questions.¹⁸²

183. Similar objections, sometimes with explicit references to the provisions of Article 2 (7), were made at the twenty-first session of the General Assembly¹⁸³ during the elaboration in the Third Committee,¹⁸⁴ of the implementation provisions of the draft Covenant on Civil and Political Rights. It was said that any procedure under which a State Party or an individual could complain before an international organ that another State Party had violated the rights recognized in the Covenant would inevitably lead to intervention in the domestic affairs of Member States, in violation of the Charter.

184. Against that view it was argued that the adoption of a system of international control in the field of civil and political rights would not be contrary to the Charter: by accepting the Covenants in the full exercise of their sovereignty, States Parties would undertake obligations of an international character, and it could hardly be claimed that the provisions of those instruments were matters falling exclusively within domestic jurisdiction.¹⁸⁵

185. The arguments for¹⁸⁶ and against¹⁸⁷ the

¹⁸⁰ *Ibid.*, paras. 112–117.

¹⁸¹ E S C (XXXIX), E/AC.7/SR.518, and E S C (XLI), E/AC.7/SR.551. See also this *Supplement*, under Article 62 (2).

¹⁸² During discussion in the Third Committee the view was expressed that the High Commissioner should perform his functions in a manner that would not impair the sovereignty of States (G A (XX), 3rd Com., 1372nd mtg., paras. 36 and 40).

¹⁸³ G A (XXI), Annexes, a.i. 62, A/6546, para. 180.

¹⁸⁴ G A (XXI), 3rd Com., 1397th to 1406th, 1414th to 1441st, 1446th, 1451st and 1452nd mtgs.

¹⁸⁵ *Ibid.*, para. 181

¹⁸⁶ See foot-notes 307, 308, 313, 323–325, 347, 349, 357 and 358 below.

¹⁸⁷ See foot-notes 306, 311, 312, 326, 327 and 361 below.

suggested system of implementation for the draft Covenant on Civil and Political Rights are set out in detail in the Analytical Summary of Practice. They dealt with the following questions:

Whether the establishment of a Human Rights Committee to supervise the implementation of the Covenant on Civil and Political Rights constitutes intervention (paragraphs 302–305);

Whether granting to individuals the right of submitting communications (petitions) to a Human Rights Committee constitutes intervention (paragraphs 306–309);

Whether a matter governed by international agreement can fall essentially within domestic jurisdiction (paragraphs 320 and 321);

Whether a matter governed by the Charter provisions on human rights can fall essentially within domestic jurisdiction (paragraphs 330–332).

186. At its 1496th meeting on 16 December 1966, the General Assembly, by resolution 2200 (XXI), adopted the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol to the International Covenant on Civil and Political Rights.

187. The principal provisions for implementing the International Covenant on Civil and Political Rights are contained in its articles 28, 40–42 and 44. They include the establishment of a Human Rights Committee and the obligation of States Parties to submit reports to that Committee through the Secretary-General on “measures they have adopted which give effect to the rights recognized” in the Covenant and on “the progress made in the enjoyment of those rights”. Under article 41, States Parties which have declared that they recognize the competence of the Committee to receive and consider communications to the effect that a State Party is not fulfilling its obligations under the Covenant may submit such communications, but only in regard to a State Party which has likewise declared its recognition of the Committee's competence in that respect. If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of these States Parties, appoint an *ad hoc* Conciliation Commission to seek an amicable solution on the basis of respect for the Covenant.

****Case No. 13**

Recommendations concerning international respect for the self-determination of peoples

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*****Case No. 31***The question of Hungary*****Case No. 32***The question of Oman***Case No. 43***The situation in the Republic of the Congo*

188. In connexion with the consideration by the Security Council of the United Nations activities¹⁸⁸ in the Congo, reference was on some occasions made to Article 2 (7) either expressly or in using the language of the paragraph.

189. By its resolution 143 (1960) of 14 July 1960, the Security Council *inter alia* decided, in response to requests received from the Government of the Republic of the Congo, "to authorize the Secretary-General to take the necessary steps, in consultation with the Government of the Republic of the Congo, to provide the Government with such military assistance as may be necessary until, through the efforts of the Congolese Government with the technical assistance of the United Nations, the national security forces may be able, in the opinion of the Government, to meet fully their tasks".

190. By resolution 145 (1960) of 22 July 1960, the Council, *inter alia*, considered that "the complete restoration of law and order in the Republic of the Congo would effectively contribute to the maintenance of international peace and security".

191. In the fourth operative paragraph of its resolution 146 (1960) of 9 August 1960,¹⁸⁹ the Council reaffirmed "that the United Nations Force in the Congo will not be a party to or in any way intervene in or be used to influence the outcome of any internal conflict, constitutional or otherwise".

¹⁸⁸ For other aspects of these activities, see this *Supplement*, under Articles 25, 29, 40, 49 and 98.

¹⁸⁹ For the interpretation of operative paragraph 4 given by the Secretary-General to the Central Government of the Republic of the Congo, as well as to the provincial government of Katanga, see S C, 15th yr., Suppl. for July-Sept., S/4417/Add.6.

192. In resolution 161 A (1961) of 21 February 1961, the Security Council urged, *inter alia*, that "the United Nations take immediately all appropriate measures to prevent the occurrence of civil war in the Congo, including arrangements for cease-fires, the halting of military operations, the prevention of clashes, and the use of force, if necessary, in the last resort".

193. By resolution 169 (1961) of 24 November 1961, after deprecating "the secessionist activities illegally carried out by the provincial administration of Katanga with the aid of external resources and manned by foreign mercenaries", the security Council, *inter alia*, authorized the Secretary-General "to take vigorous action, including the use of the requisite measure of force, if necessary, for the immediate apprehension, detention pending legal action and/or deportation of all foreign military and paramilitary personnel and political advisers not under the United Nations Command, and mercenaries". The Council also declared its determination to assist the Central Government of the Congo "to maintain law and order and national integrity".

194. Most of the deliberations in the Council on the Congo question dealt with the application of those resolutions. In particular, much debate was devoted to the problem of how to restore and maintain law and order in the country without infringing the provision that the United Nations should not intervene in its internal conflicts.

195. As that provision was related to and inspired by Article 2 (7) of the Charter, Article 2 (7) or its language was also occasionally cited in the debates, in addition to provisions of the resolutions. To the extent that statements in those discussions have a bearing on the interpretation of Article 2 (7) rather than on the application of particular provisions of Security Council resolutions, they are of interest to this study.¹⁹⁰

196. The arguments considered relevant from that point of view are given in the Analytical Summary of Practice. They stated that certain acts or situations did¹⁹¹ or did not¹⁹² constitute intervention under the terms of Article 2 (7). They related to the following questions:

The meaning of the term "to intervene" (paragraphs 280—283);

Whether a matter dealt with by the Charter can fall essentially within domestic jurisdiction (paragraph 326);

¹⁹⁰ For a more extensive account of some of the relevant debates in the Council, see *Repertoire of the Practice of the Security Council, Supplement 1959—1963*, pp. 290—299. The question was also dealt with at the fourth emergency special session and the fifteenth session of the General Assembly (G A (ES-IV), Plen., 858th—863rd mtgs. and G A (XV), Plen., 896th, 898th, 900th, 911th—913th, 949th—953rd, 955th—959th, 961st, 965th—972nd, 974th—980th, 982nd—985th and 987th mtgs.). Those deliberations mainly relate to the application of the relevant Security Council resolutions and, so far as they have a bearing on Article 2 (7), restate or support positions taken in the Security Council.

¹⁹¹ See foot-notes 189 above, 424, 444 and 446—450 below.

¹⁹² See foot-notes 277, 279, 339, 347, 425—427, 445 and 451—454 below.

Whether a matter governed by the Charter provisions on human rights can fall essentially within domestic jurisdiction (paragraph 330);

Whether in certain situations civil strife is not a matter falling essentially within domestic jurisdiction (paragraphs 366—368);

The meaning of the last phrase of Article 2 (7) (paragraphs 380—385).

Case No. 44

The question of race conflict in South Africa (I)

197. By a letter¹⁹³ dated 25 March 1960, twenty-eight Member States (later joined by one more) requested an urgent meeting of the Security Council¹⁹⁴ “to consider the situation arising out of the large-scale killings of unarmed and peaceful demonstrators against racial discrimination and segregation in the Union of South Africa”. The letter went on to say that the signers considered that “this is a situation with grave potentialities for international friction, which endangers the maintenance of international peace and security”.

198. The question was included without a vote in the agenda of the Council at its 851st through 856th meetings.

199. In the debates in connexion with the adoption of the agenda¹⁹⁵ and on the substance of the matter, the representative of South Africa stated¹⁹⁶ that the inclusion of the item in the agenda and any subsequent discussion or resolution in regard thereto would be in violation of Article 2 (7) of the Charter.

200. Other representatives, without opposing the adoption of the agenda, also expressed doubts¹⁹⁷ as to the competence of the Council to deal with the question.

201. On the other hand, most speakers considered that Article 2 (7) did not apply, and they upheld the competence of the Council in the matter.¹⁹⁸

¹⁹³ S C, 15th yr., Suppl. for Jan.—March, A/4279 and Add.1.

¹⁹⁴ For consideration by the General Assembly of the question of race conflict in South Africa, see cases Nos. 2, 11 and 34.

¹⁹⁵ At the 851st mtg., the President stated that he had received a request (S C, 15th yr., Suppl. for Jan.—March, S/4280) from the representative of the Union of South Africa that he be given an opportunity to participate without a vote in the discussion of the request for the inclusion of the item in the Council's agenda. The President went on to say that the representative had indicated that, in view of the standard practice of the Council on invitations to non-members, he would like to speak after the vote on the adoption of the agenda. The representative, in speaking after the adoption of the agenda, stated that he had been instructed by his Government to record a strong protest against the refusal to hear him on the request to place the item on the agenda (S C, 15th yr., 851st mtg., paras. 5, 6 and 44).

¹⁹⁶ S C, 15th yr., 851st mtg., para. 46; 855th mtg., para. 18.

¹⁹⁷ *Ibid.*, 851st mtg., paras. 10—14; 854th mtg., paras. 8 and 9; 856th mtg., paras. 57—59.

¹⁹⁸ *Ibid.*, 851st mtg., paras. 21—23, 25—29, 86, 116 and 119; 852nd mtg., paras. 4, 6—17, 97, 113, 123—127 and 145—147; 853rd mtg., para. 83; 854th mtg., paras. 59, 60 and 84—90; 855th mtg., paras. 10, 34—37 and 58—68; 856th mtg., 9—14.

202. The arguments, which are given in the Analytical Summary of Practice, related to the following questions:¹⁹⁹

The meaning of the term “to intervene” (paragraphs 276 and 278);

Whether a matter dealt with by the Charter can fall essentially within domestic jurisdiction (paragraphs 326 and 327);

Whether a matter governed by the Charter provisions on human rights can fall essentially within domestic jurisdiction (paragraphs 330 to 332);

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraphs 352—355);

Effect of previous decisions by the General Assembly or the Security Council to deal with the question (paragraph 404).

203. After the discussion, the Security Council, at its 856th meeting on 1 April 1960, adopted²⁰⁰ resolution 134 (1960) by 9 votes to none, with 2 abstentions. In the operative part, the Council recognized that the situation in South Africa arising out of large-scale killings of unarmed and peaceful demonstrators against racial discrimination and segregation had led to international friction and if continued might endanger international peace and security. It deplored the loss of life of so many Africans, extending to the families of the victims its deepest sympathies, and the policies and actions of the Government of South Africa, including its disregard of General Assembly resolutions, which had given rise to the situation. The Council called on that Government to initiate measures aimed at bringing about racial harmony based on equality in order to ensure that the situation did not continue or recur, and to abandon its policies of *apartheid* and racial discrimination; and it requested the Secretary-General, in consultation with that Government, to make such arrangements as would adequately help in upholding the purposes and principles of the Charter.

Case No. 45

The question of race conflict in South Africa (II)

204. By a letter²⁰¹ dated 11 July 1963, thirty-two Member States requested that the Security Council²⁰² be convened as early as possible to consider “the explosive situation existing in the Republic of South Africa”, which constituted “a serious threat to international peace and security”. The letter went on to say that that situation, “brought about by the intolerable *apartheid* policies of that Government”, demanded that the Security Council should take “necessary action to find a solution, due to the systematic refusal of that Government to comply with the relevant resolutions of the General Assembly and

¹⁹⁹ See also para. 401 below under “Procedures by which Article 2 (7) was invoked”.

²⁰⁰ S C, 15th yr., 856th mtg., para. 56.

²⁰¹ S C, 18th yr., Suppl. for July—Sept. S/5348.

²⁰² For consideration by the General Assembly of the question of race conflict in South Africa, see cases Nos. 2, 11 and 34.

the Security Council". An attached explanatory memorandum referred, *inter alia*, to Security Council resolution 134 (1960) of 1 April 1960 (see case No. 44 above) and General Assembly resolution 1761 (XVII) of 6 November 1962 (see case No. 34 above).

205. The matter was placed on the agenda of the 1040th meeting of the Council, on 22 July 1963. At the same meeting, the representative of Ghana proposed²⁰³ that an invitation be addressed to the representative of South Africa to appear before the Council in connexion with the item. The President said²⁰⁴ that the Council had not received any request to participate in the debate from the Government of the Republic of South Africa. Its representative was awaiting instructions, and the Council would be apprised of the Government's decision in due course. The Council thereafter proceeded to consider another item on its agenda.

206. At the 1041st meeting, on the next day, the President, having consulted the members of the Council, proposed that the invitation should be sent, and it was so decided.²⁰⁵

207. The item was again taken up by the Council at its 1050th meeting, on 31 July 1963, and the President then announced²⁰⁶ that the same day he had received a letter from the representative of South Africa to the United Nations, which included the statement that the South African Government had "decided not to participate in the discussion by the Council of matters relating to South African policy which fall solely within the domestic jurisdiction of a Member State".

208. The Council thereafter went on to consider the item at its 1050th to 1056th meetings inclusive. In the debates during those meetings many speakers disputed²⁰⁷ the view that paragraph 2 (7) was applicable and affirmed the competence of the Council in the matter. The arguments, which are given in the Analytical Summary of Practice, related to the following questions:²⁰⁸

Whether a matter dealt with by the Charter can fall essentially within domestic jurisdiction (paragraph 326);

Whether a matter governed by the Charter provisions on human rights can fall essentially within domestic jurisdiction (paragraphs 330 and 331);

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraphs 352 and 355);

Effect of previous decisions by the General Assembly or the Security Council to deal with the question (paragraph 404).

²⁰³ S C, 18th yr., 1040th mtg., paras. 10 and 11.

²⁰⁴ *Ibid.*, paras. 12 and 13.

²⁰⁵ *Ibid.*, 1041st mtg., para. 90.

²⁰⁶ *Ibid.*, 1050th mtg., paras. 5 and 6.

²⁰⁷ *Ibid.*, paras. 39 and 41-43; 1051st mtg., paras. 20, 31 and 32; 1052nd mtg., paras. 32 and 58; 1053rd mtg., paras. 23, 56-57 and 68-71; 1054th mtg., paras. 82 and 83; 1055th mtg., para. 49.

²⁰⁸ See also paras. 387 and 388 below under "Procedures by which Article 2 (7) was invoked".

209. After the discussion, the Security Council, at its 1056th meeting on 7 August 1963, adopted²⁰⁹ resolution 181 (1963) by 9 votes to none, with 2 abstentions.

210. In the preamble, the Council recalled its resolution 134 (1960), took into account that world public opinion had been reflected in General Assembly resolution 1761 (XVII) and noted with concern the build-up of arms by the Government of South Africa, some of which were being used to further that Government's racial policies. It regretted that some States were indirectly encouraging that Government to perpetuate, by force, its policy of *apartheid* and that it had failed to accept the invitation of the Security Council to delegate a representative to appear before it. The Council was convinced that the situation in South Africa was seriously disturbing international peace and security.

211. The first three paragraphs of the operative part of the resolution read as follows:

"The Security Council,

" . . .

"1. *Strongly deprecates* the policies of South Africa in its perpetuation of racial discrimination as being inconsistent with the principles contained in the Charter of the United Nations and contrary to its obligations as a Member of the United Nations;

"2. *Calls upon* the Government of South Africa to abandon the policies of *apartheid* and discrimination, as called for in Security Council resolution 134 (1960), and to liberate all persons imprisoned, interned or subjected to other restrictions for having opposed the policy of *apartheid*;

"3. *Solemnly calls upon* all States to cease forthwith the sale and shipment of arms, ammunition of all types and military vehicles to South Africa."

212. Consideration of the question was resumed by the Security Council at its 1073rd meeting on 27 November 1963. In opening the discussion, the President²¹⁰ referred to resolution 181 (1963), quoted above, and stated that the Council had before it a report²¹¹ by the Secretary-General in pursuance of that resolution. He also said that the meeting had been arranged in response to the request made by thirty-two Member States in a letter²¹² dated 23 October 1963 addressed to him.

213. The Secretary-General's report included a reply received on 11 October 1963 from the Minister for Foreign Affairs of South Africa to a request by the Secretary-General to be informed regarding the steps taken by the Government of South Africa to carry out the provisions of resolution 181 (1963). The Minister for Foreign Affairs said, *inter alia*:

²⁰⁹ S C, 18th yr., 1056th mtg., para. 18. A proposed operative paragraph by which the Council would have called on all States "to boycott all South African goods and to refrain from exporting to South Africa strategic materials of direct military value" was not adopted, having failed to obtain the affirmative votes of seven members (*ibid.*, para. 17).

²¹⁰ *Ibid.*, 1073rd mtg., paras. 11 and 12.

²¹¹ *Ibid.*, Suppl. for Oct.-Dec., S/5438 and Add.1-6.

²¹² *Ibid.*, S/5444 and Add.1.

"The South African Government's attitude has often been stated and is well known. In this connexion it must be emphasized that the South African Government has never recognized the right of the United Nations to discuss or consider a matter which falls solely within the jurisdiction of a Member State...."

"While the South African Government entered into consultations with the then Secretary-General in 1960, this was on the basis of the authority of the Secretary-General under the Charter of the United Nations and on prior agreement that the consent of the South African Government to discuss the Security Council's resolution of 1 April 1960 would not require prior recognition from the South African Government of the United Nations authority.

"The present request from the Secretary-General is, however, based on a Security Council resolution which violates the provisions of Article 2, paragraph 7, of the Charter of the United Nations. It would be appreciated that in the circumstances it is impossible for the South African Government to comment on the matters raised by the Secretary-General since by doing so it would by implication recognize the right of the United Nations to intervene in South Africa's domestic affairs...."

214. The question was included in the agenda and further considered by the Council at its 1073rd to 1078th meetings inclusive.

215. In the debates the position taken by South Africa was disputed by several speakers.²¹³ The arguments, which are given in the Analytical Summary of Practice, related to the following questions:

Whether a matter dealt with by the Charter can fall essentially within domestic jurisdiction (paragraph 326);

Whether a matter governed by the Charter provisions on human rights can fall essentially within domestic jurisdiction (paragraphs 330 and 331);

Effect of previous decisions by the General Assembly or the Security Council to deal with the question (paragraph 404).

216. After the discussion, the Security Council at its 1078th meeting on 4 December 1963 unanimously adopted²¹⁴ resolution 182 (1963).

217. In the preamble, the Council deplored the refusal of the Government of South Africa to comply with Security Council resolution 181 (1963) and to accept the repeated recommendations of other United Nations organs. It noted with appreciation action taken or proposed by Member States in response to its call in that resolution to cease the sale and shipment of arms, ammunition and military vehicles to South Africa, and hoped that all Member States would inform the Secretary-General of their willingness to carry out such provisions. It also noted with satisfaction the overwhelming support for Gen-

eral Assembly resolution 1881 (XVIII) and took into account the serious concern of Member States with regard to the policy of *apartheid* of the Government of South Africa. The Council expressed its strengthened conviction that the situation was seriously disturbing international peace and security and recognized the need to eliminate discrimination in basic human rights and fundamental freedoms within the country. It expressed the firm conviction that the policies of *apartheid* and racial discrimination as practised by the South African Government were abhorrent to the conscience of mankind and that therefore a positive alternative must be found through peaceful means.

218. In the operative part, the Council urgently requested the South African Government to cease forthwith its continued imposition of discriminatory and repressive measures; condemned its non-compliance with the appeals contained in Assembly and Council resolutions; and called on it to liberate all persons imprisoned, interned or subjected to other restrictions for having opposed the policy of *apartheid*. The Council solemnly called on all States to cease forthwith the sale and shipment of equipment and materials for the manufacture and maintenance of arms and ammunition in South Africa. It requested the Secretary-General to establish under his direction and reporting to him a small group of recognized experts to examine methods of resolving the situation in South Africa through the full, peaceful and orderly application of human rights and fundamental freedoms to all inhabitants of the territory, regardless of race, colour or creed, and to consider what part the United Nations might play in the achievement of that end. It invited the Government of South Africa to avail itself of the assistance of the group in order to bring about "such peaceful and orderly transformation".

219. The question was again taken up at the 1127th meeting of the Security Council, on 8 June 1964. The meeting was convened at the request of fifty-eight Member States made in a letter²¹⁵ dated 27 April 1964. The Council had before it a report²¹⁶ submitted by the Secretary-General in pursuance of resolution 182 (1963), which included in an annex a report by the Group of Experts established under the same resolution. Also before the Council were two reports²¹⁷ of the Special Committee on the Policies of *Apartheid* of the Government of the Republic of South Africa, set up under General Assembly resolution 1761 (XVII).²¹⁸

220. In a communication²¹⁹ dated 22 May 1964, addressed to the President of the Security Council, the representative of the Republic of South Africa to the United Nations, stated that, as was well known, the South African Government regarded the subject-matter of the report of the Group of Experts as covering matters essentially within the domestic jurisdiction of the Republic of South Africa.

²¹³ *Ibid.*, 1073rd mtg., paras. 18-29 and 65-67; 1074th mtg., paras. 7-13 and 40; 1076th mtg., para. 6; 1078th mtg., para. 3.

²¹⁴ *Ibid.*, para. 137.

²¹⁵ S C, 19th yr., Suppl. for April-June, S/5674.

²¹⁶ *Ibid.*, S/5658 and Add.1-3.

²¹⁷ G A (XIX), Annexes, No. 12, A/5692 and A/5707.

²¹⁸ See above, case No. 34.

²¹⁹ S C, 19th yr., Suppl. for April-June, S/5723.

221. The Security Council included the item in its agenda and considered it at its 1127th to 1135th meetings inclusive.

222. Several speakers²²⁰ criticized the position taken by the South African Government and upheld the competence of the Council to deal with the matter.

223. At the 1127th meeting on 8 June 1964, Morocco and Ivory Coast submitted a draft resolution²²¹ which, after having been modified²²² by the sponsors at the 1128th meeting on 9 June 1964, was adopted²²³ by the Council at the same meeting by 7 votes to none, with 4 abstentions, as resolution 190 (1964).

224. In the preamble, the Council recalled certain provisions of General Assembly resolution 1881 (XVIII) and Security Council resolutions 181 (1963) and 182 (1963) and noted with great concern that the arbitrary Rivonia trial instituted against the leaders of the anti-*apartheid* movement had been resumed, and that the imminent verdict to be delivered under arbitrary laws prescribing long terms of imprisonment and the death sentence might have very serious consequences. It also noted with regret that the Government of South Africa had rejected the Secretary-General's appeal of 27 March 1964.

225. In the operative paragraphs, the Council urged the Government of South Africa:

"(a) To renounce the execution of the persons sentenced to death for acts resulting from their opposition to the policy of *apartheid*;

"(b) To end forthwith the trial in progress, instituted within the framework of the arbitrary laws of *apartheid*;

"(c) To grant an amnesty to all persons already imprisoned, interned or subjected to other restrictions for having opposed the policy of *apartheid* and particularly to the defendants in the Rivonia trial."

It also invited all States to exert all their influence in order to induce the Government of South Africa to comply with those provisions.

226. Three of the four representatives who abstained in the voting explained²²⁴ that they did so because they considered that the action urged on the South African Government could be construed as interference in the judicial processes of a Member State.

227. The fourth representative abstaining stated²²⁵ that his delegation considered that the moment chosen for appealing to the South African authorities was not propitious.

²²⁰ *Ibid.*, 1127th mtg., paras. 136 and 178; 1128th mtg., paras. 13-15; 1129th mtg., paras. 49, 62 and 89; 1130th mtg., paras. 22, 32, 50, 53 and 59; 1131st mtg., paras. 8, 9, 16, 55, 56, 65, 74 and 77; 1132nd mtg., paras. 16, 17 and 26; 1133rd mtg., para. 26; 1134th mtg., paras. 10-12; 1135th mtg., paras. 12, 13 and 111.

²²¹ *Ibid.*, 1127th mtg., para. 166.

²²² *Ibid.*, 1128th mtg., para. 4.

²²³ *Ibid.*, para. 34.

²²⁴ *Ibid.*, paras. 38, 46 and 52.

²²⁵ *Ibid.*, paras. 47-50.

228. The consideration of the question by the Council continued, and at the 1133rd meeting on 16 June 1964, the representative of Norway submitted a draft resolution,²²⁶ also sponsored by Bolivia, which, at the 1135th meeting on 18 June 1964, was adopted²²⁷ by 8 votes to none, with 3 abstentions, as resolution 191 (1964).

229. In the preamble, the Council recalled its resolutions 181 (1963), 182 (1963) and 190 (1964), expressed grave concern with the situation which it was convinced continued seriously to disturb international peace and security and deplored the refusal of the Government of South Africa to comply with pertinent Council resolutions.

230. In the operative paragraphs, the Council condemned the *apartheid* policies of that Government and the legislation supporting them, such as the General Law Amendment Act, and in particular its ninety-day detention clause, and urgently reiterated its appeal to liberate all persons imprisoned, interned or subjected to other restrictions for having opposed the policies of *apartheid*. The Council urgently appealed to that Government:

"(a) To renounce the execution of any persons sentenced to death for their opposition to the policy of *apartheid*;

"(b) To grant immediate amnesty to all persons detained or on trial, as well as clemency to all persons sentenced for their opposition to the Government's racial policies;

"(c) To abolish the practice of imprisonment without charges, without access to counsel or without the right of prompt trial."

231. The Council endorsed and subscribed in particular to the main conclusion of the Group of Experts that "all the people of South Africa should be brought into consultation and should thus be enabled to decide the future of their country at the national level"; requested the Secretary-General to consider what assistance the United Nations might offer to facilitate such consultations among representatives of all elements of the population in South Africa; and invited the Government of South Africa to accept that main conclusion of the Group of Experts, to co-operate with the Secretary-General and to submit its views to him with respect to such consultations by 30 November 1964. The Council also established an expert committee, composed of a representative of each of the then members of the Council, to undertake a technical and practical study and report to the Council as to the feasibility, effectiveness and implications of measures which could, as appropriate, be taken by the Council under the Charter. Operative paragraphs 10 to 13 of resolution 191 (1964) read as follows:

"The Security Council,

"...

"10. Authorizes the expert committee to request all States Members of the United Nations to co-operate with it and to submit to it their views on such measures no later than 30 November 1964,

²²⁶ *Ibid.*, 1133rd mtg., para. 3.

²²⁷ *Ibid.*, 1135th mtg., para. 43.

and requests the committee to complete its report not later than three months thereafter;

"11. *Invites* the Secretary-General, in consultation with appropriate United Nations specialized agencies, to establish an educational and training programme for the purpose of arranging for education and training abroad for South Africans;

"12. *Reaffirms* its call upon all States to cease forthwith the sale and shipment to South Africa of arms, ammunition of all types, military vehicles, and equipment and materials for the manufacture and maintenance of arms and ammunition in South Africa;

"13. *Requests* all Member States to take such steps as they deem appropriate to persuade the Government of the Republic of South Africa to comply with the present resolution."

232. The three representatives referred to in paragraph 226 above who abstained on resolution 190 (1964) voted in favour of resolution 191 (1964). The fourth representative, referred to in paragraph 227 above, who abstained on resolution 190 (1964) also abstained on resolution 191 (1964) and stated²²⁸ that his Government considered that the United Nations was "not entitled to intervene so directly in the domestic affairs of a Member State".

233. The two other representatives who abstained on resolution 191 (1964) declared²²⁹ that they did so because the resolution offered only inadequate, ineffective measures.

234. The arguments used in the debates at the 1127th to 1135th meetings inclusive are given in the Analytical Summary of Practice. They related to the following questions:

Whether a request for stay of execution or for cancellation of trial and release of prisoners constitutes intervention (paragraphs 290 and 291);

Whether a matter dealt with by the Charter can fall essentially within domestic jurisdiction (paragraph 326);

Whether a matter governed by the Charter provisions on human rights can fall essentially within domestic jurisdiction (paragraphs 330 and 331);

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraphs 352 and 355);

The meaning of the last phrase of Article 2 (7) (paragraph 379);

Effect of previous decisions by the General Assembly or the Security Council to deal with the question (paragraph 404).

Case No. 46

The situation in Angola (I)

235. At the 934th meeting of the Security Council²³⁰ on 15 February 1961, the representative

²²⁸ *Ibid.*, paras. 61–63.

²²⁹ *Ibid.*, paras. 27–36, 71 and 72.

²³⁰ For consideration by the General Assembly of the situation in Angola, see case No. 39.

of Liberia read²³¹ a statement issued from Monrovia, which said, *inter alia*:

"The Government of Liberia wishes to observe that what appear to be authoritative reports from Angola indicate that fundamental human rights are, contrary to the Universal Declaration of Human Rights, being violated in Angola, and this is likely to endanger the maintenance of international peace and security.

"The Liberian Government has therefore directed its representative on the Security Council to request the inscription of the item on the Security Council's agenda under Article 34 of the Charter of the United Nations."

236. With reference to his statement at the 934th meeting, the representative of Liberia, in a letter²³² dated 20 February 1961, formally requested a meeting of the Council at an early date to deal with the crisis in Angola.

237. The question was included in the agenda of the Security Council, without a vote, at its 944th meeting²³³ and discussed at its 944th to 946th meetings inclusive.

238. In the debates in connexion with the adoption of the agenda and on the substance of the matter, the representative of Portugal²³⁴ objected to the consideration of the question by the Council on the ground, *inter alia*, that it would be in violation of Article 2 (7) of the Charter.²³⁵

239. Other representatives considered Article 2 (7) inapplicable.²³⁶

240. The arguments, which are given in the Analytical Summary of Practice, related to the following questions:

The meaning of the term "intervene" (paragraph 278);

Whether a matter dealt with by the Charter can fall essentially within domestic jurisdiction (paragraph 327);

Whether a matter governed by the Charter provisions on human rights can fall essentially within domestic jurisdiction (paragraphs 330–332);

²³¹ S C, 16th yr., 934th mtg., para. 9.

²³² *Ibid.*, Suppl. for Jan.–March, p. 145, S/4738.

²³³ Discussion of the adoption of the agenda at the 943rd mtg. was continued at the 944th mtg.

²³⁴ At the 943rd meeting, the President announced that the representative of Portugal had asked to be heard in the discussion on the inscription of the item on the agenda. The President went on to say that it was standard practice that non-members of the Council did not participate in the discussion of the adoption of the agenda. The representative of Portugal would therefore be recognized to speak in connexion with the agenda after it had been adopted. After that, the Council would begin its discussion of the substance of the question. In conformity with that procedure, the President invited the representative of Portugal to the Council table at the 944th meeting and thereafter also at the 945th and 946th meetings (see also this *Supplement* under Article 31, para. 38–40).

²³⁵ S C, 16th yr., 944th mtg., paras. 48, 53 and 54; 945th mtg., paras. 130 and 137. See also, at 944th mtg., para. 15, the United Kingdom statement.

²³⁶ *Ibid.*, 943rd mtg., paras. 32–33, 36–37, 41–43, 56, 58–59, 69 and 71; 945th mtg., paras. 89 and 90; 946th mtg., para. 61

Whether a matter governed by the Charter provisions regarding Non-Self-Governing Territories can fall essentially within domestic jurisdiction (paragraphs 337 and 344);

Whether a matter governed by the Charter provisions on the self-determination of peoples can fall essentially within domestic jurisdiction (paragraph 351);

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraphs 352 and 353);

The meaning of the last phrase of Article 2 (7) (paragraph 379).

241. At the 945th meeting of the Council on 14 March 1961, Ceylon, Liberia and the United Arab Republic submitted²³⁷ a draft resolution by which the Council would have called on the Government of Portugal to consider urgently the introduction of measures and reforms in Angola for the purpose of implementing General Assembly resolution 1514 (XV) of 14 December 1960 on the granting of independence to colonial countries and peoples. The Council would also have decided to appoint a sub-committee and instruct it to examine the statements made before the Security Council concerning Angola, to receive further statements and documents and to conduct such inquiries as it might deem necessary and to report to the Council as soon as possible.

242. The Security Council voted²³⁸ on the draft resolution at its 946th meeting on 15 March 1961. The result was 5 votes in favour, none against, with 6 abstentions. Having failed to obtain the affirmative votes of seven members, the draft resolution was not adopted.

243. It may be noted that several representatives on the Council expressed doubts²³⁹ regarding the competence of the Council in the situation under Article 34. One representative said²⁴⁰ that he did not doubt the competence of the United Nations or accept the relevance of Article 2 (7); his doubts were in respect of the competence of the Council within the limits prescribed by the Charter.

Case No. 47

The situation in Angola (II)

244. By a letter²⁴¹ dated 26 May 1961, forty-two Members States, later joined by two more, requested that the Security Council should meet to consider the situation in Angola as a matter of urgency. They stated that the actions of the Portuguese authorities in Angola were "in contravention of the Charter and of the General Assembly's resolution²⁴² on Angola"

²³⁷ *Ibid.*, 945th mtg., para. 107.

²³⁸ *Ibid.*, 946th mtg., para. 165.

²³⁹ *Ibid.*, 944th mtg., paras. 4, 5, 19-21, 24 and 30; 946th mtg., paras. 57, 77, 83, 84 and 155.

²⁴⁰ *Ibid.*, 946th mtg., para. 61.

²⁴¹ *Ibid.*, Suppl. for April-June, S/4816 and Add.1 and 2.

²⁴² Resolution 1603 (XV) adopted on 20 April 1961; see case No. 39 above.

and constituted "a serious threat to international peace and security".

245. The Permanent Representative of Portugal, in a letter²⁴³ to the President of the Council dated 3 June 1961, protested against the action of the signatories of the letter on the ground, *inter alia*, that it disregarded the provisions of Article 2 (7) of the Charter.

246. The question was included without a vote in the agenda of the Security Council at its 950th to 956th meetings inclusive.

247. In the debates on the matter the representative of Portugal²⁴⁴ objected to the consideration of the question, on the ground, *inter alia*, that it would contravene Article 2 (7) of the Charter.²⁴⁵

248. Other representatives considered Article 2 (7) of the Charter inapplicable.²⁴⁶

249. The arguments, which are given in the Analytical Summary of Practice, related to the following questions:

Whether a matter dealt with by the Charter can fall essentially within domestic jurisdiction (paragraph 327);

Whether a matter governed by the Charter provisions on human rights can fall essentially within domestic jurisdiction (paragraphs 331 and 332);

Whether a matter governed by the Charter provisions regarding Non-Self-Governing Territories can fall essentially within domestic jurisdiction (paragraphs 337 and 344);

Whether a matter governed by the Charter provisions on the self-determination of peoples can fall essentially within domestic jurisdiction (paragraph 351);

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraph 352);

Effect of previous decisions by the General Assembly or the Security Council to deal with the question (paragraphs 404 and 405).

250. After the discussion and the adoption of amendments,²⁴⁷ the Security Council, at its 956th meeting on 9 June 1961, by 9 votes to none, with 2

²⁴³ S C, 16th yr., Suppl. for April-June, S/4821.

²⁴⁴ At the 950th meeting, the President announced that the representative of Portugal, in his letter of 3 June 1961, had asked to be heard in the discussion on the inscription of the item. The President stated further that, in accordance with the general practice of the Council, non-members did not participate in the discussion on adoption of the agenda. He therefore proposed that after the debate had been opened an opportunity be afforded to the representative of Portugal to make a statement on the adoption of the agenda. In conformity with that procedure, the President invited the representative of Portugal to the Council table at the 950th meeting and also at the 951st to 956th meetings inclusive.

²⁴⁵ S C, 16th yr., 950th mtg., paras. 80-106; 956th mtg., paras. 63 and 164.

²⁴⁶ *Ibid.*, 950th mtg., paras. 53-59, 61 and 63; 952nd mtg., paras. 2-6, 36, 37 and 47; 953rd mtg., paras. 3, 5, 6, 8, 10, 11 and 72; 955th mtg., paras. 19 and 49-51; 956th mtg., paras. 4 and 182.

²⁴⁷ *Ibid.*, 955th mtg., paras. 66 and 68; 956th mtg., para. 157.

abstentions, adopted²⁴⁸ as resolution 163 (1961) a draft resolution that had been sponsored initially by Ceylon, Liberia and the United Arab Republic.

251. In the preamble, the Council deeply deplored the large-scale killings and severely repressive measures in Angola; took note of the grave concern and strong reactions to such occurrences throughout the continent of Africa and in other parts of the world; and expressed the conviction that the continuance of the situation was likely to endanger the maintenance of international peace and security. It also recalled certain provisions of General Assembly resolutions 1514 (XV) and 1542 (XV).

252. In the operative part, the Council, after reaffirming General Assembly resolution 1603 (XV) and calling on Portugal to act in accordance with the terms of that resolution, called on the Portuguese authorities to desist forthwith from repressive measures and to extend every facility to the Sub-Committee on the Situation in Angola to enable it to perform its task expeditiously. The Council expressed the hope that a peaceful solution would be found to the problem of Angola in accordance with the Charter.

Case No. 48

*The situation in Southern Rhodesia*²⁴⁹

253. By a letter²⁵⁰ dated 2 August 1963, the representatives of Ghana, Guinea, Morocco and the United Arab Republic requested that a meeting of the Security Council be convened at an early date to consider the situation in Southern Rhodesia. An attached memorandum stated that "the British Government, despite repeated requests by the General Assembly, has refused to implement Article 73 of the United Nations Charter and resolutions 1514 (XV) of 14 December 1960, 1747 (XVI) of 28 June 1962, 1755 (XVII) of 12 October 1962, 1760 (XVII) of 31 October 1962, and the resolution²⁵¹ adopted by the Special Committee [on decolonization] at its 177th meeting on 20 June 1963, in regard to its colony of Southern Rhodesia". It was further stated in the memorandum that if, as proposed, the United Kingdom Government transferred, unconditionally, military and air force units and indeed all the attributes of sovereignty, save its nominal recognition, to the Government of Southern Rhodesia as then constituted, serious danger to world peace would ensue. The memorandum therefore urged the Security Council to "take appropriate measures to deal with the Southern Rhodesian situation".

254. On 30 August 1963, the representative of the Congo (Brazzaville), in a letter²⁵² on behalf of

²⁴⁸ *Ibid.*, paras. 157 and 159. An amendment by which it was proposed that the third preambular paragraph should begin with the words "Condemning the colonial war against the Angolan people" received 4 votes in favour, 3 against, with 4 abstentions, and was not adopted, having failed to obtain the affirmative vote of seven members (*ibid.*, paras. 126 and 158).

²⁴⁹ The action of the General Assembly with respect to the question of Southern Rhodesia is discussed under case No. 37.

²⁵⁰ S C, 18th yr., Suppl. for July—Sept., S/5382.

²⁵¹ For the text of the resolution, see GA (XVIII), Annexes, a.i. 23/Addendum, A/5446/Rev.1, chap. III, para. 282.

²⁵² S C 18th yr., Suppl. for July—Sept., S/5409.

28 African States, gave complete support to the four-Power letter of 2 August.

255. The question was included in the agenda of the Security Council without a vote at its 1064th meeting and discussed at its 1064th to 1069th meetings inclusive.

256. The United Kingdom representative stated, in the discussion of the agenda at the 1064th meeting, that, while he would not contest the inclusion of the item in the agenda, his Government considered that Article 2 (7) of the Charter clearly applied. The onus therefore lay on the proponents of the item to establish that a situation existed in Southern Rhodesia calling for action under Chapter VII of the Charter and thereby justifying the derogation from Article 2 (7) provided for in the last sentence of that paragraph.²⁵³

257. In the discussion of the substance of the matter, the United Kingdom representative reaffirmed and developed that opinion. Other representatives defended the competence of the Council to deal with the question. The arguments for²⁵⁴ and against²⁵⁵ the competence of the Council are set out in the Analytical Summary of Practice. They related to the following questions:²⁵⁶

Whether a matter governed by the Charter provisions regarding Non-Self-Governing Territories can fall essentially within domestic jurisdiction (paragraph 350);

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraphs 352 and 353);

The meaning of the last phrase of Article 2 (7) (paragraphs 377 and 378);

Effect of previous decisions by the General Assembly or the Security Council to deal with the question (paragraphs 404 and 406).

258. At the 1068th meeting on 12 September 1963, the representative of Ghana submitted a draft resolution²⁵⁷ sponsored by Ghana, Morocco and the Philippines, in which the Security Council would have noted that the Special Committee on decolonization had drawn its attention to the deterioration of the explosive situation in Southern Rhodesia. It would have stated that the Government in Southern Rhodesia had come to power as a result of an undemocratic and discriminating constitution imposed on the population and opposed by an overwhelming majority. It would have invited the Government of the United Kingdom not to transfer to the colony as then governed any powers or attributes of sovereignty until a government fully representative of all the inhabitants was established, not to transfer the armed forces and aircraft, as envisaged by the Central African Conference of 1963, and to implement the General Assembly resolutions on the question of

²⁵³ *Ibid.*, 1064th mtg., paras. 6 and 8.

²⁵⁴ See foot-notes 402, 407, 440, 463 and 465 below.

²⁵⁵ See foot-notes 403, 408, 439, 441 and 471 below.

²⁵⁶ See also para. 402 below under "Procedures by which Article 2 (7) was invoked".

²⁵⁷ S C, 18th yr., Suppl. for July—Sept., S/5425/Rev.1.

Southern Rhodesia, particularly resolutions 1747 (XVI) and 1760 (XVII).

259. The draft resolution was put to the vote at the 1069th meeting on 13 September 1963²⁵⁸ and received 8 votes in favour, 1 against, with 2 abstentions. Because the negative vote was cast by a permanent member of the Council (the United Kingdom), the draft resolution was not adopted.²⁵⁹

Case No. 49

The situation in the Dominican Republic

260. By a letter²⁶⁰ dated 1 May 1965, the USSR requested that the Security Council be convened urgently "to consider the question of the armed

²⁵⁸ *Ibid.*, 1069th mtg., para. 64.

²⁵⁹ The situation in Southern Rhodesia was again brought before the Security Council by a letter dated 21 April 1965, signed by thirty-five Member States. At the 1194th meeting, on 30 April 1965, the representative of the United Kingdom entered a general reservation about the competence of the Council to discuss the question on the basis of the material contained in the letter. He declared, however, that he did not contest the adoption of the agenda, including the question, and the agenda was adopted without a vote. During the discussion of the item, the relevance of Article 2 (7) was not an issue. In the vote on the draft resolution submitted, which took place at the 1202nd meeting on 6 May 1965, the representative of the United Kingdom abstained and in explaining his abstention reaffirmed his reservation regarding the competence of the Council (S C, 20th yr., 1194th, 1195th, 1197th, 1199th, 1201st and 1202nd mtgs.). The next time the question of Southern Rhodesia came before the Security Council was at the 1257th meeting on 12 November 1965. The representative of the United Kingdom informed the President of the Security Council by a letter dated 11 November 1965 (S C, 20th yr., Suppl. for Oct.—Dec., S/6896) that the authorities in Rhodesia had made an announcement "purporting, illegally and unilaterally, to declare independence for Rhodesia", and he requested that an urgent meeting of the Council be called. At that request and at the request of several other delegations separately, the question was included in the agenda without discussion (S C, 20th yr., 1257th mtg., paras 1—5). In resolution 217 (1965) of 20 November 1965 the Security Council determined that the situation in Southern Rhodesia was extremely grave and that its continuance in time would constitute a threat to international peace and security. On 9 April 1966, in resolution 221 (1966), the Security Council, at the request of the United Kingdom, determined that, since substantial supplies of oil were on the way to Southern Rhodesia, there was "a threat to the peace". More generally, the Security Council, in resolution 232 (1966) of 16 December 1966, determined that "the present situation in Southern Rhodesia constitutes a threat to international peace and security".

²⁶⁰ S C, 20th yr., Suppl. for April—June, S/6316.

interference by the United States in the internal affairs of the Dominican Republic".

261. During the deliberations on that question, one particular aspect of the interpretation of Article 2 (7) was discussed, namely, whether the provision that the United Nations must not intervene in matters essentially within the domestic jurisdiction of a State implied that such intervention by individual States was also prohibited.

262. The arguments used in this discussion are given in the Analytical Summary of Practice under the heading:

Article 2 (7) and the principle of non-intervention (paragraphs 413 and 414).

263. At the 1198th meeting on 4 May 1965, the representative of the USSR submitted a draft resolution²⁶¹ by which the Council, having examined the question of armed intervention by the United States in the domestic affairs of the Dominican Republic, would have condemned that intervention as a gross violation of the Charter of the United Nations and demanded the immediate withdrawal of the armed forces of the United States from the territory of the Dominican Republic.

264. Another draft resolution,²⁶² submitted by the representative of Uruguay at the 1204th meeting on 11 May 1965, and revised at the 1214th meeting on 21 May 1965, included as a preambular paragraph a proposed reaffirmation of the principles set forth in Chapter I of the Charter, in particular, in Article 2 (4) and (7).

265. The USSR draft resolution was voted on at the 1214th meeting,²⁶³ paragraph by paragraph, and each paragraph was rejected. The revised draft resolution submitted by Uruguay was voted on at the 1216th meeting on 22 May 1965, and was not adopted, having failed to obtain the affirmative votes of seven members.²⁶⁴ The vote was 5 to 1, with 5 abstentions.

²⁶¹ *Ibid.*, 1198th mtg., para. 3.

²⁶² *Ibid.*, 1204th mtg., paras. 3 and 4; 1214th mtg., paras. 51—59.

²⁶³ *Ibid.*, 1214th mtg., paras. 123—125. The vote on operative paragraph 1 was 6 against, 1 in favour, with 4 abstentions; and the vote on operative paragraph 2 was 6 against, 2 in favour, with 3 abstentions.

²⁶⁴ *Ibid.*, 1216th mtg., para. 69.

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

Case No. 50

The Interhandel Case

266. On 2 October 1957, Switzerland submitted an application to the International Court of Justice, instituting proceedings in a dispute with the United States of America concerning the restitution of the assets of the *Société internationale pour participations industrielles et commerciales S. A. (Interhandel)*.

267. The United States filed several preliminary objections to the application. The fourth of those objections invoked a reservation contained in the declaration of 14 August 1946, by which the United

States had accepted the compulsory jurisdiction of the Court. The relevant reservation read:

“Provided that this declaration shall not apply to

“(a) . . .

“(b) Disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America; or

“(c)”²⁶⁵

268. The United States’ fourth preliminary objection was twofold as follows:

“(a) that there is no jurisdiction in this Court to hear or determine any issues raised by the Swiss Application or Memorial concerning the sale or disposition of the vested shares of General Aniline and Film Corporation (including the passing of good and clear title to any person or entity), for the reason that such sale or disposition has been determined by the United States of America, pursuant to paragraph (b) of the Conditions attached to this country’s acceptance of this Court’s jurisdiction, to be a matter essentially within the domestic jurisdiction of this country; and

“(b) that there is no jurisdiction in this Court to hear or determine any issues raised by the Swiss Application or Memorial concerning the seizure and retention of the vested shares of General Aniline and Film Corporation, for the reason that such seizure and retention are, according to international law, matters within the domestic jurisdiction of the United States.”²⁶⁶

269. In its judgement on the preliminary objections, dated 21 March 1959, the Court dealt first with part (b) as follows:

“In challenging before the Court the seizure and retention of these shares by the authorities of the United States, the Swiss Government invokes the Washington Accord and general international law.

“In order to determine whether the examination of the grounds thus invoked is excluded from the jurisdiction of the Court for the reason alleged by the United States, the Court will base itself on the course followed by the Permanent Court of International Justice in its Advisory Opinion concerning *Nationality Decrees issued in Tunis and Morocco* (Series B, No. 4), when dealing with a similar divergence of view. Accordingly, the Court does not, at the present stage of the proceedings, intend to assess the validity of the grounds invoked by the Swiss Government or to give an opinion on their interpretation, since that would be to enter upon the merits of the dispute. The Court will confine itself to considering whether the grounds invoked by the Swiss Government are such as to justify the provisional conclusion that they may be of relevance in this case and, if so, whether questions relating to the validity and interpre-

tation of those grounds are questions of international law.

“With regard to its principal Submission that the Government of the United States is under an obligation to restore the assets of Interhandel in the United States, the Swiss Government invokes Article IV of the Washington Accord. The Government of the United States contends that this Accord relates only to German property in Switzerland, and that Article IV ‘is of no relevance whatever in the present dispute’.

“By Article IV of this international agreement, the United States has assumed the obligation to unblock Swiss assets in the United States. The Parties are in disagreement with regard to the meaning of the term ‘unblock’ and the term ‘Swiss assets’. The interpretation of these terms is a question of international law which affects the merits of the dispute. At the present stage of the proceedings it is sufficient for the Court to note that Article IV of the Washington Accord may be of relevance for the solution of the present dispute and that its interpretation relates to international law.

“The Government of the United States submits that according to international law the seizure and retention of enemy property in time of war are matters within the domestic jurisdiction of the United States and are not subject to any international supervision. All the authorities and judicial decisions cited by the United States refer to enemy property; but the whole question is whether the assets of Interhandel are enemy or neutral property. There having been a formal challenge based on principles of international law by a neutral State which has adopted the cause of its national, it is not open to the United States to say that their decision is final and not open to challenge; despite the American character of the Company, the shares of which are held by Interhandel, this is a matter which must be decided in the light of the principles and rules of international law governing the relations between belligerents and neutrals in time of war.

“In its alternative Submission, the Swiss Government requests the Court to adjudge and declare that the United States is under an obligation to submit the dispute to arbitration or conciliation. The Swiss Government invokes Article VI of the Washington Accord, which provides: ‘In case differences of opinion arise with regard to the application or interpretation of this Accord which cannot be settled in any other way, recourse shall be had to arbitration.’ It also invokes the Treaty of Arbitration and Conciliation between Switzerland and the United States, dated February 16th, 1931. Article I of this Treaty provides: ‘Every dispute arising between the Contracting Parties, of whatever nature it may be, shall, when ordinary diplomatic proceedings have failed, be submitted to arbitration or to conciliation, as the Contracting Parties may at the time decide.’ The interpretation and application of these provisions relating to arbitration and conciliation involve questions of international law.

²⁶⁵ *Interhandel Case*, Judgment of March 21st, 1959: I C J, Reports 1959, p. 15.

²⁶⁶ *Ibid.*, p. 11.

“Part (b) of the Fourth Preliminary Objection must therefore be rejected.”²⁶⁷

270. With respect to part (a) of the fourth preliminary objection, the Court relied on the declaration by the Agent for the United States that, as local remedies were once more available, that objection “has become somewhat academic” and “somewhat moot”; and decided that part (a) of the objection was without object at that stage of the proceedings.²⁶⁸

Case No. 51

The case concerning right of passage over Indian territory

271. On 22 December 1955, Portugal submitted an application to the International Court of Justice, instituting proceedings in a dispute regarding a right of passage in favour of Portugal through Indian territory to secure communications with certain Portuguese enclaves.

272. India filed six preliminary objections to the application. The fifth of those objections relied upon the reservation which formed part of the declaration of 28 February 1940, whereby India accepted the compulsory jurisdiction of the Court. The reservation excluded from that jurisdiction disputes with regard to questions which, by international law, fell exclusively within the jurisdiction of India.²⁶⁹

²⁶⁷ *Ibid.*, pp. 24 and 25.

²⁶⁸ *Ibid.*, pp. 25 and 26. See, however, dissenting opinions of President Klaestad, *ibid.*, pp. 75–78; Judge Armand-Ugon, *ibid.*, pp. 90–94; and Sir Hersch Lauterpacht, *ibid.*, pp. 96–119, 121 and 122.

²⁶⁹ Case concerning Right of Passage over Indian Territory (Merits), Judgment of 12 April 1960: I C J, *Reports 1960*, p. 32.

273. On 26 November 1957, the Court joined the fifth objection to the merits.²⁷⁰

274. In its judgement on the merits, dated 12 April 1960, the Court stated²⁷¹ in regard to the objection:

“In the present case Portugal is claiming a right of passage over Indian territory. It asserts the existence of a correlative obligation upon India. It asks for a finding that India has failed to fulfil that obligation. In support of the first two claims it invokes a Treaty of 1779, of which India contests both the existence and the interpretation. Portugal relies upon a practice of which India contests not only the substance, but also the binding character as between the two States which Portugal seeks to attach to it. Portugal further invokes international custom and the principles of international law as it interprets them. To contend that such a right of passage is one which can be relied upon as against India, to claim that such an obligation is binding upon India, to invoke, whether rightly or wrongly, such principles is to place oneself on the plane of international law. Indeed, in the course of the proceedings both Parties took their stand upon that ground and on occasion expressly said so. To decide upon the validity of those principles, upon the existence of such a right of Portugal as against India, upon such obligation of India towards Portugal, and upon the alleged failure to fulfil that obligation, does not fall exclusively within the jurisdiction of India.

“The Fifth Objection cannot therefore be upheld.”

²⁷⁰ *Ibid.*, pp. 8 and 9.

²⁷¹ *Ibid.*, p. 33.

II. ANALYTICAL SUMMARY OF PRACTICE

275. This summary of discussions concerning the domestic jurisdiction clause follows the main lines of the previous studies of Article 2 (7) in the *Repertory* and in *Supplements Nos. 1* and *2*. Several of the arguments are again summarized for the convenience of the reader, although in some cases they may be identical with those examined under Article 2 (7) in the earlier studies.

A. The term “to intervene” in Article 2 (7)

276. Discussing the meaning of the term “to intervene” in the context of Article 2 (7), some representatives stated that inscription of an item on the agenda and discussion thereafter in the Assembly or the Security Council would not be intervention.²⁷² Others added that debate or a request for negotiations or an attempt to get a settlement would not be intervention. If sanctions were imposed, of a character that interfered with the internal position in a country, that would be intervention; but to talk about a situation, to discuss it,

to debate, to persuade, to negotiate — that would not be intervention.²⁷³

277. Another argument ran as follows.²⁷⁴ Intervention resulting from the use of the powers of the United Nations could not be the same as interference by one State in the affairs of another. Under international law, the prohibition of intervention was a limitation on States acting in their individual capacities in pursuance of their particular interests; it did not apply to remedial or preventive action undertaken by or on behalf of the organs of international society. Article 2 (7), which could not have an absolute meaning in itself, must be related to the other provisions of the Charter. Any interpretation, therefore, not only must give meaning to Article 2 (7) but must recognize that the organs of the United Nations have competence to implement the purposes and operative provisions of the Charter. It was maintained that in practice the General Assembly

²⁷³ *Cases Nos. 2 and 11*: G A (XV/1), Plen., 898th mtg., para. 46.

²⁷⁴ *Case No. 5*: G A (XVIII), 4th Com., 1485th mtg., paras. 33–35.

²⁷² *Case No. 44*: S C, 15th yr., 851st mtg., para. 26; 853rd mtg., para. 126; 855th mtg., para. 58.

had acted on the assumption that to include an item in its agenda for purposes of discussion, to make general recommendations or recommendations to particular States, and to establish commissions of investigation to study domestic policies of States would not amount to intervention.

278. The view was also expressed²⁷⁵ that the type of intervention to which Article 2 (7) applied was "dictatorial interference". The element of coercion distinguished intervention under Article 2 (7) from other forms of interference. Discussion of a question in the General Assembly, Security Council or any competent organ was, therefore, not intervention within the meaning of Article 2 (7).

279. The same idea was further developed as follows. The term "to intervene" denoted interference of an imperative character. It covered decisions of the Security Council which were legally binding under Article 25, but also General Assembly resolutions having an element of the imperative, such as resolutions establishing and regulating military-type forces, financial decisions under Article 17 and instructions to the Secretary-General. In fact the question of whether action by a United Nations organ had the imperative element important to the notion of "intervention" could be answered only by reference to the language of the relevant resolution and to the attendant circumstances.²⁷⁶

280. In the debates in case No. 43 concerning the situation in the Republic of the Congo, it was maintained by some representatives that so-called intervention by invitation was not to be considered as the intervention in domestic matters that was prohibited by Article 2 (7) of the Charter.

281. The United Nations, it was said, was in the Congo because it was invited by the legitimate and unquestioned Government, so that the action of the Organization could in no way be regarded as an intervention in matters essentially within the domestic jurisdiction of the Republic of the Congo. The United Nations had the unambiguous invitation of the lawful Government to go to the Congo for a specific purpose, namely, to maintain law and order and to maintain and uphold the independence and political integrity of the Republic of the Congo. Having accepted that invitation, the United Nations was entitled to act accordingly unless and until that invitation was withdrawn.²⁷⁷

282. When the Government of the Congo, another argument ran, asked the United Nations to undertake a task that was normally the responsibility of the domestic authorities, and thus by implication admitted that it was not in a position to fulfil one of the most fundamental duties of any government, namely the preservation of order, it temporarily delegated to the United Nations the

right to take whatever measures the Organization, through its agents, judged appropriate. That right, of course, had to be exercised in consultation with the lawful authorities, but that did not prevent the United Nations from deciding on the appropriateness or the inappropriateness of specific measures for implementing resolutions adopted by the Security Council.²⁷⁸

283. It was further stated that the essential factor in intervention was the lack of Consent on the part of the State with respect to which action was taken.²⁷⁹ In the case of the Congo, it was obvious that the United Nations Force was there at the express request of its legitimate Government. Hence the legality of the action in the Congo seemed to be beyond question.²⁸⁰

1. WHETHER THE INCLUSION OF AN ITEM IN THE AGENDA CONSTITUTES INTERVENTION

284. 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, 27, 30, 34-37 and 39.

285. In each of those cases, the inclusion of the item in the agenda was opposed by representatives who, on the ground that the matter fell essentially within domestic jurisdiction, contended that the United Nations was debarred by Article 2 (7) from discussing it and, hence, from including it in the agenda.²⁸¹

²⁷⁸ *Case No. 43: Ibid.*, 902nd mtg., para. 6.

²⁷⁹ *Case No. 43: S C*, 16th yr., 932nd mtg., paras. 113 and 114.

²⁸⁰ Regarding the limitation imposed by the Security Council on the actions of the United Nations Force in the Congo, see case No. 43 in the General Survey and, in particular, S C resolution 146 (1960).

²⁸¹ *Cases Nos. 2 and 11: G A (XIV)*, Gen. Com., 122nd mtg., para. 1; *Plen.*, 803rd mtg., para. 228; *G A (XV)*, Gen. Com., 127th mtg., para. 36; *Plen.*, 898th mtg., paras. 14-26; *G A (XVI)*, Gen. Com., 136th mtg., para. 16; *Plen.*, 1014th mtg., paras. 127-142.

Case No. 27: G A (XIV), Gen. Com., 121st mtg., para. 23; *G A (XV)*, Gen. Com., 127th mtg., para. 42; *G A (XVI)*, Gen. Com., 136th mtg., para. 38.

Case No. 30: G A (XIV), Gen. Com., 125th mtg., paras. 6-8, 14 and 25; *Plen.*, 844th mtg., paras. 32, 42, 69 and 70; *G A (XV)*, Gen. Com., 128th mtg., paras. 29, 34, 41 and 43; *Plen.*, 898th mtg., para. 157; *G A (XVI)*, Gen. Com., 136th mtg., para. 52; 137th mtg., paras. 1, 5, 17, 18 and 23; *Plen.*, 1014th mtg., paras. 206 and 221; *G A (XVII)*, Gen. Com., 148th mtg., paras. 62, 63, 80, 81 and 83; *Plen.*, 1129th mtg., paras. 294, 297 and 302.

Case No. 34: G A (XVII), Gen. Com., 148th mtg., para. 92; *Plen.*, 1129th mtg., paras. 322 and 323; *G A (XVIII)*, Gen. Com., 153rd mtg., para. 8; *Plen.*, 1210th mtg., paras. 48-50; *G A (XX)*, Gen. Com., 159th mtg., para. 3.

Case No. 35: G A (XIV), Gen. Com., 124th mtg., paras. 15 and 28; *Plen.*, 826th mtg., paras. 77, 78, 110 and 115; 827th mtg., paras. 9-12; 831st mtg., paras. 70-76 and 112; 832nd mtg., paras. 64, 68, 75, 128, 131 and 151; 833rd mtg., paras. 39, 40, 104, 110 and 152; 834th mtg., paras. 14, 112 and 193; *G A (XV)*, Gen. Com., 127th mtg., paras. 48, 53, 58 and 61; *Plen.*, 898th mtg., paras. 85-86; *G A (XVI)*, Gen. Com., 136th mtg., paras. 45 and 50; *Plen.*, 1014th mtg., paras. 161-163; 1085th mtg., paras. 24, 36, 58, 80, 81, 88, 92, 112 and 113; *G A (XX)*, Gen. Com., 159th mtg., paras. 6, 8 and 11; *Plen.*, 1336th mtg., paras. 27, 31, 34, 41, 44 and 58; 1401st mtg., paras. 9-11, 85-87, 126, 127, 133, 146, 157, 168, 184, 185, 195 and 196; 1403rd mtg., paras. 43, 44, 53 and 55.

Case No. 36: G A (XV), Gen. Com., 131st mtg., para. 1; *G A (XVI)*, Gen. Com., 135th mtg., paras. 8 and 11; *G A*

²⁷⁵ *Case No. 38: G A (XV)*, Spec. Pol. Com., 178th mtg., para. 14; 182nd mtg., paras. 18 and 21.

Case No. 44: S C, 15th yr., 852nd mtg., paras. 14 and 15; 855th mtg., paras. 58 and 67.

Case No. 46: S C, 16th yr., 943rd mtg., paras. 42 and 43.

²⁷⁶ *Case No. 41: G A (XVIII)*, 6th Com., 825th mtg., para. 12.

²⁷⁷ *Case No. 43: S C*, 15th yr., 878th mtg., para. 70; 917th mtg., para. 38; 920th mtg., para. 106.

286. The representatives who supported the inclusion of the item in the agenda denied that the matter fell essentially within domestic jurisdiction²⁸² or that the inclusion of an item in the agenda or its discussion constituted intervention within the meaning of Article 2 (7).²⁸³

2. WHETHER A RECOMMENDATION — IN GENERAL OR TO A PARTICULAR STATE — CONSTITUTES INTERVENTION

287. At the fourteenth session of the General Assembly, during the discussion in the Fourth Committee of the question of race conflict in South Africa, one representative stated that a General Assembly resolution containing recommendations with specific reference to a State quite clearly constituted intervention. If a draft resolution similar to resolution 1248 (XIII) adopted at the previous session were submitted to the Committee, his delegation would vote in favour of any paragraphs condemning racial discrimination in general, but would feel obliged to abstain on any paragraphs referring to a particular State, and would also have to abstain on the resolution as a whole.²⁸⁴ Similar opinions were expressed by two other representatives.²⁸⁵

288. During the discussion of the same item at the fifteenth session, one representative said that his

(XVII), Gen. Com., 148th mtg., paras. 56 and 61; G A (XX), Gen. Com., 159th mtg., para. 5.

Case No. 37: See foot-notes 109—111 above and 469 below.

Case No. 39: G A (XV/2), Plen., 966th mtg., paras. 6—9, 12, 14—22; Gen. Com., 134th mtg., para. 12; G A (XV/1), Plen., 1014th mtg., para. 57; Gen. Com., 135th mtg., paras. 12 and 14; G A (XVII), Gen. Com., 148th mtg., para. 36.

²⁸² Case No. 2: G A (XV), Gen. Com., 127th mtg., paras. 37—40; Plen., 898th mtg., para. 41; G A (XVI), Gen. Com., 136th mtg., para. 18.

Case No. 11: G A (XV), Gen. Com., 127th mtg., paras. 37—40; G A (XVI), Gen. Com., 136th mtg., para. 18.

Case No. 27: G A (XIV), 1st Com., 1076th mtg., paras. 11 and 41; G A (XV), 1st Com., 1122nd mtg., para. 1; 1124th mtg., para. 12; 1130th mtg., paras. 12 and 21; G A (XVI), Plen., 1085th mtg., para. 129.

Case No. 30: G A (XIV), Gen. Com., 125th mtg., para. 32; Plen., 844th mtg., para. 37; G A (XV), Gen. Com., 128th mtg., paras. 31—33; Plen., 898th mtg., paras. 137—151.

Case No. 35: G A (XIV), Gen. Com., 124th mtg., paras. 5—14, 18, 40, 42, 47 and 51; Plen., 826th mtg., paras. 31, 32, 36—41, 66—74 and 93; G A (XV), Gen. Com., 127th mtg., para. 49; Plen., 898th mtg., paras. 81—84, 104, 107 and 126—129; G A (XVI), Plen., 1014th mtg., para. 179 and 181; G A (XX), Gen. Com., 159th mtg., para. 7.

Case No. 36: G A (XV), Gen. Com., 131st mtg., paras. 8—10, 13, 15, 18, 20, 21, 26—29; G A (XVI), Gen. Com., 135th mtg., para. 10.

Case No. 37: See foot-notes 112 above and 462—464 below.

Case No. 39: G A (XVI), Gen. Com., 135th mtg., paras. 15—17 and 19; G A (XVII), Gen. Com., 148th mtg., paras. 37 and 38.

²⁸³ Case No. 2: G A (XV/1), Plen., 898th mtg., paras. 46 and 47; Spec. Pol. Com., 228th mtg., paras. 22, 30 and 33.

Case No. 11: G A (XV/1), Plen., 898th mtg., paras. 46 and 47.

Case No. 35: G A (XIV), Plen., 832nd mtg., para. 83; G A (XX), Plen., 1401st mtg., para. 58.

²⁸⁴ Case No. 11: G A (XIV), Spec. Pol. Com., 142nd mtg., para. 24.

²⁸⁵ Case No. 11: *Ibid.*, 146th mtg., para. 10; 147th mtg., para. 11.

delegation had always held that while Article 2 (7) did not prevent the General Assembly from discussing questions which were within the domestic jurisdiction of a State or from expressing its opinion, the Article precluded the Assembly from taking specific action other than appealing to the Government of the State.²⁸⁶

289. It may be noted that many resolutions referred to in the General Survey contained specific recommendations.

3. WHETHER A REQUEST FOR STAY OF EXECUTION OR FOR CANCELLATION OF TRIAL AND RELEASE OF PRISONERS CONSTITUTES INTERVENTION

290. The question whether a request for cancellation of trial and release of prisoners constitutes intervention arose during the debates in cases Nos. 34 and 45. Doubts were expressed whether any Member State would consider it appropriate for any other State or for any international organization to interfere with its own sovereign right to conduct, under proper legislative safeguards for the prisoners, its defence against criminal violence that would hurt all its citizens.²⁸⁷ Referring to Article 2 (7), one representative affirmed that the United Nations had no right whatsoever under the Charter or under any other instrument to concern itself with the processes of law in the courts of a Member State.²⁸⁸ Another declared that a draft resolution adopted by the Special Political Committee and containing a request that a trial be cancelled and the prisoners released constituted interference in the internal affairs of a Member State, in violation of Article 2 (7).²⁸⁹

291. With reference particularly to *apartheid*, it was regarded as inconsistent to hold that the study, censure and condemnation of that policy was not intervention, and yet to consider as intervention a request for the immediate release of persons detained for offences against such a policy. If the policy of *apartheid* could be condemned in general terms without violating the Charter, a request not to bring to trial those fighting to banish that policy from their homeland must also be in order.²⁹⁰ It was also said that the *apartheid* legislation had not the nature of true law and was not binding on the consciences of the citizens. The carrying out of death sentences under that legislation was therefore "murder". No one could be justified, morally or legally, in tolerating the murder of a human being, whatever his colour or race, on the pretext that the affair was a domestic one.²⁹¹

²⁸⁶ Case No. 11: G A (XV), Spec. Pol. Com., 243rd mtg., para. 2.

²⁸⁷ Case No. 34: G A (XVIII), Plen., 1238th mtg., paras. 80 and 108.

Case No. 45: S C, 19th yr., 1128th mtg., paras. 37, 38, 42—46 and 52; 1135th mtg., paras. 61—63.

²⁸⁸ Case No. 34: G A (XVIII), Plen., 1238th mtg., paras. 112 and 113.

²⁸⁹ Case No. 34: G A (XVIII), Spec. Pol. Com., 381st mtg., para. 62.

²⁹⁰ Case No. 34: G A (XVIII), Plen., 1238th mtg., para. 55.

Case No. 45: S C, 19th yr., 1130th mtg., para. 53; 1131st mtg., para. 6.

²⁹¹ Case No. 45: S C, 19th yr., 1128th mtg., para. 15.

**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 INTERVENTION²⁹²

**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

7. WHETHER A RESOLUTION BY WHICH THE GENERAL ASSEMBLY REQUESTS A STATE ADMINISTERING A NON-SELF-GOVERNING TERRITORY TO RESUME NEGOTIATIONS WITH THE GOVERNMENT OF THE TERRITORY WITH A VIEW TO REACHING AGREEMENT ON THE DATE OF INDEPENDENCE FOR THE TERRITORY CONSTITUTES INTERVENTION

292. In the debates pertaining to case No. 5, the question arose whether a resolution by which the General Assembly requests a State administering a Non-Self-Governing Territory to resume negotiations with the Government of the Territory with a view to reaching agreement on the date of independence for the Territory constitutes intervention. It was contended that the adoption of a draft resolution containing such a request would constitute intervention in the internal affairs of the Territory.²⁹³ On the other hand, it was asserted that a mere request that the two parties negotiate could not be considered intervention.²⁹⁴

293. The draft resolution containing the proposed request was not pressed to a vote.²⁹⁵

8. WHETHER AN APPEAL FOR ACTION BY MEMBER STATES AGAINST ANOTHER MEMBER STATE CONSTITUTES INTERVENTION

294. At the fourteenth session of the General Assembly, during the discussion in the Special Political Committee on the question of race conflict in South Africa, one representative stated that an appeal by the General Assembly for action by Member States against South Africa would be tantamount to interference in the internal affairs of that country.²⁹⁶

²⁹² It may be noted that in case No. 36 on the question of Oman, the General Assembly established an *Ad Hoc* Committee to examine the question of Oman and to evaluate the territorial, historical and political issues involved in the problem (see para. 102 above).

²⁹³ *Case No. 5*: G A (XVI), 4th Com., 1254th mtg., paras. 36 and 43.

²⁹⁴ *Case No. 5*: *Ibid.*, paras. 12, 15 and 28.

²⁹⁵ *Case No. 5*: *Ibid.*, 1302nd mtg., paras. 70–73.

²⁹⁶ *Case No. 11*: G A (XIV), Spec. Pol. Com., 147th mtg., para. 13. For appeals made by the Assembly, in cases Nos. 11 and 34, see its resolutions 1375 (XIV), oper. para. 4 (see para. 26 above); 1598 (XV), oper. para. 3 (see para. 30 above); 1663 (XVI), oper. para. 5 (see para. 33 above); 1761 (XVII),

9. WHETHER A REQUEST TO THE SECRETARY-GENERAL (AND TO MEMBER STATES) TO PROVIDE ASSISTANCE (FOR EXAMPLE, BY THE ESTABLISHMENT OF A TRUST FUND) FOR PERSONS PERSECUTED FOR OPPOSITION TO APARTHEID CONSTITUTES INTERVENTION

295. During the discussion in case No. 34 it was stated that a resolution containing a request to provide assistance for persons persecuted for opposition to *apartheid* would constitute a violation of Article 2 (7).²⁹⁷

10. WHETHER ACCORDING AN ORAL HEARING TO A PETITIONER WHO IS A CITIZEN OF A MEMBER STATE CONSTITUTES INTERVENTION

296. In case No. 34 South Africa stated, in a letter dated 8 October 1963 to the Chairman of the Special Political Committee, that according an oral hearing to a petitioner who was a citizen of a Member State when the General Assembly was considering matters within the domestic jurisdiction of that Member State constituted a clear breach of the letter and spirit of the Charter.²⁹⁸

297. The Special Political Committee, on 8 October 1963, decided to accept the petitioner's application for a hearing.²⁹⁹

11. WHETHER HEARING A DELEGATION FROM A TERRITORY CLAIMING INDEPENDENCE FROM A STATE CONSTITUTES INTERVENTION IN THE DOMESTIC AFFAIRS OF THAT STATE

298. During the discussion of the question of Oman in the Special Political Committee at the sixteenth and seventeenth sessions of the General Assembly, some Member States requested a hearing for an Oman delegation.

299. The representative of the United Kingdom objected. Oman was, he stated, an integral part of the Sultanate of Muscat and Oman. The discussion of the so-called question of Oman already constituted intervention in the domestic affairs of an independent State. To grant a hearing to the self-styled delegation in question would make the intervention all the more flagrant. Furthermore, to accord the hearing would set a dangerous precedent, for it would mean that in the future any discontented provincial authority or dissident movement, particularly if supported from outside by parties hostile to the Government, would be able to send representatives to the United Nations to air its complaints.³⁰⁰ The United Kingdom representative was supported by some other speakers.³⁰¹

oper. para. 4 (see para. 65 above); 1881 (XVIII), oper. para. 3 (see para. 68 above); and 2054 A (XX), oper. para. 8 (see para. 75 above).

²⁹⁷ *Case No. 34*: G A (XVIII), Plen., 1283rd mtg., para. 95; G A (XX) Plen., 1396th mtg., para. 50.

²⁹⁸ *Case No. 34*: G A (XVIII), Spec. Pol. Com., 379th mtg., paras. 35 and 36.

²⁹⁹ *Case No. 34*: *Ibid.*, para. 34.

³⁰⁰ *Case No. 36*: G A (XVI), Spec. Pol. Com., 299th mtg., paras. 2 and 17; G A (XVII), Spec. Pol. Com., 351st mtg., para. 5; G A (XVIII), 4th Com., 1494th mtg., para. 2.

³⁰¹ *Case No. 36*: G A (XVI), Spec. Pol. Com., 299th mtg., paras. 4, 6, 9 and 12.

300. On the other hand, it was argued that the inclusion of the item in the agenda proved that the majority of Member States considered that it was not an internal matter; proper consideration of the item would be greatly facilitated by the granting of a hearing to those who were the leaders of the struggle for independence of the Omani people and whom the question most vitally concerned; if the United Kingdom arrogated to itself the rights to intervene unilaterally by force of arms against the defenceless people of Oman, the least the United Nations could do was to give representatives of the Omanis a chance to be heard; there was nothing in the Charter or the rules of procedure to preclude such a hearing; on the contrary, once the General Assembly had decided to include an item in the agenda, it was only natural that it should try to obtain as much direct information as possible with regard to the subject in order to be able to reach a valid conclusion.³⁰²

301. When put to the vote in the Special Political Committee at the sixteenth session, the request for a hearing was granted by 40 votes to 26, with 23 abstentions.³⁰³ At the seventeenth session, the Special Political Committee granted the hearing by 51 votes to 9, with 26 abstentions.³⁰⁴ At the eighteenth and twentieth sessions, the Fourth Committee, without a vote, decided to grant requests for hearings.³⁰⁵

12. WHETHER THE ESTABLISHMENT OF A HUMAN RIGHTS COMMITTEE TO SUPERVISE THE IMPLEMENTATION OF THE COVENANT ON CIVIL AND POLITICAL RIGHTS CONSTITUTES INTERVENTION

302. During the discussion in case No. 12, it was stated that the Human Rights Committee proposed in the provisions for implementing the draft Covenant on Civil and Political Rights would be able to make recommendations to the United Nations concerning the protection of human rights. Contracting States would have to recognize it as being entitled to examine complaints on matters essentially within their domestic jurisdiction. Such a committee would in a sense be supra-national and would be inconsistent with the principle of national sovereignty recognized in Article 2 (7) of the Charter.³⁰⁶

303. On the other hand, it was argued that the proposed Committee would not be a judicial organ but rather a conciliation and mediation body — a political organ which could consider other factors besides the strict terms of the Covenant. It would not have the power to make binding decisions in specific disputes but, because of its nature, might contribute to the peaceful settlement of differences. Its estab-

lishment would therefore be in keeping with the letter and spirit of the Charter.³⁰⁷

304. It was also stated that the establishment of a complaints procedure could not be considered as a violation of Article 2 (7).³⁰⁸

305. Other arguments in favour of that position were that the protection of human rights did not fall essentially within domestic jurisdiction, and that, as the implementation system³⁰⁹ would be freely accepted by the States in becoming parties to the Covenant, Article 2 (7) would not be applicable.

13. WHETHER GRANTING TO INDIVIDUALS THE RIGHT OF SUBMITTING COMMUNICATIONS (PETITIONS) TO A HUMAN RIGHTS COMMITTEE CONSTITUTES INTERVENTION

306. In case No. 12, during the consideration of the measures of implementation to be included in the international Covenant on Civil and Political Rights, it was proposed to insert an article on the right of individual petition. By it the Human Rights Committee to be established under the Covenant would be empowered to receive petitions from individuals or groups of individuals claiming to be victims of a violation, by any Party, of the rights set forth in the Covenant, provided that the Party complained of had declared that it recognized the competence of the Committee to receive such petitions.³¹⁰

307. That proposal was criticized by some representatives as constituting a violation of the principle of State sovereignty and an intervention in domestic affairs.³¹¹ It was argued that the Charter of the United Nations provided for the acceptance of petitions only within the framework of the Trusteeship System and made no provision for petitions from citizens of independent States. Such petitions under the Covenant would, therefore, contravene the principle of non-intervention in matters within domestic jurisdiction laid down in Article 2 (7). That principle was inalterable, and any clause which purported to modify it would be inoperative under Article 103 of the Charter, which gave the Charter precedence over any other international agreement.³¹²

308. In reply to those criticisms it was said that the proposed provision to permit the Human Rights Committee to receive communications from individuals was optional and thus entirely compatible with the principle of State sovereignty. Moreover, individuals would not be able to avail themselves

³⁰² *Case No. 36: Ibid.*, paras. 3, 5, 7, 8, 13–15, 18 and 19; G A (XVII), Spec. Pol. Com., 351st mtg., paras. 7–12.

³⁰³ *Case No. 36: G A (XVI) Spec. Pol. Com.*, 299th mtg., para. 16.

³⁰⁴ *Case No. 36: G A (XVII), Spec. Pol. Com.*, 351st mtg., para. 13.

³⁰⁵ *Case No. 36: G A (XVIII), 4th Com.*, 1436th mtg., para. 2; 1494th mtg., paras. 1–4; G A (XX), 4th Com., 1518th mtg., paras. 19–21; 1571st mtg., paras. 1–3.

³⁰⁶ *Case No. 12: G A (XVIII), 3rd Com.*, 1274th mtg., para. 12; G A (XXI), 3rd Com., 1414th mtg., paras. 20 and 21; 1415th mtg., paras. 8–11; 1456th mtg., para. 47.

³⁰⁷ *Case No. 12: G A (XVIII), 3rd Com.*, 1276th mtg., para. 9; G A (XXI), 3rd Com., 1397th mtg., para. 18; 1417th mtg., para. 7, 27 and 36; 1418th mtg., para. 22.

³⁰⁸ *Case No. 12: G A (XXI), 3rd Com.*, 1415th mtg., para. 27.

³⁰⁹ See G A resolution 2200 A (XXI), annex, International Covenant on Civil and Political Rights, articles 28, 40, 41, 42 and 44 (see also para. 187 above).

³¹⁰ *Case No. 12: G A (XXI), Annexes*, a.i. 62, A/6546, paras. 474–485.

³¹¹ *Case No. 12: G A (XXI), 3rd Com.*, 1439th mtg., paras. 5, 24, 36 and 41; 1440th mtg., paras. 7, 10, 19 and 30; 1456th mtg., para. 47.

³¹² *Case No. 12: G A (XXI), 3rd Com.*, 1439th mtg., para. 35.

of such a procedure until they had exhausted all available domestic remedies. The primacy of domestic jurisdiction was, therefore, safeguarded.³¹³

309. As a compromise, it was decided to include the provisions relating to individual communications in a separate, optional protocol annexed to the International Covenant on Civil and Political Rights.³¹⁴

14. WHETHER HOLDING A REFERENDUM UNDER UNITED NATIONS CONTROL AND SUPERVISION IN A TERRITORY WHOSE POPULATION HAS BEEN GRANTED THE RIGHT OF SELF-DETERMINATION CONSTITUTES INTERVENTION

310. In case No. 27, during the discussion of the question of Algeria in the First Committee of the General Assembly at the fifteenth session, a draft resolution was submitted under operative paragraph 4 of which the General Assembly would decide "that a referendum shall be conducted in Algeria, organized, controlled and supervised by the United Nations, whereby the Algerian people shall freely determine the destiny of their entire country".

311. That paragraph was criticized by a number of representatives in the First Committee as going beyond the powers of the General Assembly. It was stated by one speaker that the General Assembly was not authorized by the Charter to exercise sovereign powers in the territory of a Member State or elsewhere, and that, accordingly, any decision to hold a referendum in Algeria under United Nations control and supervision would be void. Another speaker referred to the impropriety of the United Nations seeking to impose a referendum on a sovereign State. In the same vein a representative said that it would be both improper and impracticable for the United Nations to decide unilaterally to take the conduct of the referendum out of France's hands. Others declared that they would vote against the paragraph because it called for the United Nations to exceed its authority under the Charter.

312. It was also suggested that, as the United Nations did not have the power to carry out such a decision, the resolution should instead recommend negotiations for implementation under adequate guarantees of the right of the people of Algeria to self-determination, and should make the services of the United Nations available for that purpose. While not objecting to the proposal to hold the referendum under United Nations auspices, some representatives stated that, as the General Assembly could only make recommendations, the term "decides" should be replaced by the word "recommends".

313. On the other hand, in defence of operative paragraph 4, the following arguments were proffered. Since the French Government had recognized that Algeria was no longer an integral part of France and that the Algerian people had the right to de-

³¹³ Case No. 12: *Ibid.*, 1438th mtg., paras. 22, 41, 50 and 58; 1439th mtg., paras. 13, 30, 45, 47 and 48; 1440th mtg., paras. 5, 6, 15 and 20.

³¹⁴ Case No. 12: G A (XXI), Annexes, a.i. 62, A/6546, para. 485.

termine their own future, and since both the French Government and the Provisional Government of the Algerian Republic had accepted the idea of a free referendum, the General Assembly would not be exceeding its powers by adopting paragraph 4. The draft resolution met the realities of the situation and reflected the collective responsibility of the United Nations in solving the problem. Only effective international control under United Nations auspices could ensure the free exercise by the Algerian people of their right of self-determination. While in general the United Nations should not intervene or exercise supervision unless invited by the parties concerned, the special circumstances in Algeria justified intervention, because they involved a colonial war which endangered the peace and security of the world. The French population of Algeria feared that a referendum which was not held in the presence of the French Army would not be impartial; the Algerian liberation movement feared that the presence of the French Army would effectively stifle all freedom of expression; the logical solution was to hold a referendum of all the people of Algeria under United Nations auspices.

314. As described in more detail in case No. 27 in the General Survey, the draft resolution was adopted by the First Committee but operative paragraph 4 was adopted with such a small majority that it seemed probable that it would not obtain the required two-thirds majority in plenary. Amendments were submitted in plenary to give it a more flexible content, but they were not adopted. A separate vote was taken on paragraph 4, and the paragraph, failing to receive the required two-thirds majority, was not adopted.³¹⁵

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

315. Discussing in case No. 5 the clause, "matters which are essentially within the domestic jurisdiction of any state", one representative stated, *inter alia*, the following.³¹⁶ Matters of domestic jurisdiction

³¹⁵ Case No. 27: For the text of the draft resolution (A/C.1/L.265 and Add.1-3), see G A (XV), Annexes, a.i. 71, A/4660, para. 4.

For criticisms of oper. para. 4, see G A (XV), 1st Com., 1130th mtg., para. 6; 1132nd mtg., paras. 21-23; 1133rd mtg., paras. 23, 33-35, 40, 42, 44, 52, 53, 61, 64, 66 and 80.

For arguments in favour of oper. para. 4, see G A (XV), 1st Com., 1126th mtg., para. 13; 1127th mtg., paras. 3, 10, 27 and 29; 1128th mtg., paras. 12, 16, 27 and 33; 1129th mtg., paras. 19, 25, 33 and 39; 1130th mtg., paras. 16, 20, 23, 27 and 37; 1131st mtg., paras. 3 and 16; 1132nd mtg., paras. 7, 9, 18 and 39; 1133rd mtg., paras. 4, 11, 15, 19, 29, 30, 55, 56 and 62.

For proceedings in plenary, see G A (XV/1), Plen., 956th mtg., paras. 42-207.

It might be pointed out that oper. para. 4 was opposed not only on the ground that it exceeded the powers of the General Assembly, but also on the ground that it was politically unsuitable. See, for example, G A (XV), 1st Com., 1129th mtg., para. 14; 1130th mtg., para. 6; 1132nd mtg., paras. 43 and 44; 1133rd mtg., paras. 7, 37, 48, 49, 52, 53, 58, 61, 64-66, 68, 70 and 79.

³¹⁶ Case No. 5: G A (XVIII), 4th Com., 1485th mtg., paras. 36, 37 and 41-44.

were not part of any inherent or fundamental rights of States. They had to be recognized by international law as matters of domestic concern. The fields of international and domestic jurisdiction were not, however, necessarily mutually exclusive. That was why the word "essentially" had been used. The framers of the Charter, by substituting the word "essentially" for the word "solely" used in the League of Nations Covenant, had thought that they would extend the scope of domestic jurisdiction. In actual fact they had produced the opposite effect. First, since the criterion of international law had not — as in the League Covenant — been laid down in Article 2 (7) to test the matter of domestic jurisdiction involved, the nature of jurisdiction could be decided by reference to political considerations, and legal considerations could even be ignored. Secondly, since the Article did not state who should determine the question, the political organs of the United Nations were competent to decide the question of domestic jurisdiction or even to ignore it in appropriate cases, thereby expanding the jurisdiction of the United Nations and restricting that of Member States. That was precisely what the General Assembly had done.

316. The same representative also said that there was no inconsistency between Article 2 (7) and Chapter XI of the Charter, since the former dealt with "matters" and the latter with "territories", and territories could not be regarded as matters falling within domestic jurisdiction.³¹⁷

317. The sense of the words "essentially" and "solely" was also discussed in case No. 41. The use of the word "essentially" instead of "solely", as in Article 15 (8) of the Covenant of the League of Nations, did not, according to one view,³¹⁸ have substantive effect. On the other hand, it was contended³¹⁹ that "essentially" represented a broader idea under which the parties concerned in a dispute enjoyed a certain latitude in determining whether a particular matter was subject to the law of the Charter and to intervention by the United Nations.

1. WHETHER A MATTER GOVERNED BY INTERNATIONAL LAW CAN FALL ESSENTIALLY WITHIN DOMESTIC JURISDICTION

318. It was stated in case No. 5 that matters which were the subject of international law and international obligations could not fall within the ambit of Article 2 (7).³²⁰ In case No. 11 it was said that the evolution of international law and of the concept of national sovereignty made a rigid interpretation of Article 2 (7) no longer valid.³²¹

³¹⁷ For arguments dealing with Article 2 (7) and the Charter provisions regarding Non-Self-Governing Territories, see paras. 336–350 below.

³¹⁸ *Case No. 41*: G A (XVIII), 6th Com., 825th mtg., para. 13.

³¹⁹ *Case No. 41*: G A (XX), 6th Com., 882nd mtg., para. 21.

³²⁰ *Case No. 5*: G A (XVIII), 4th Com., 1485th mtg., para. 37.

³²¹ *Case No. 11*: G A (XIV), Spec. Pol. Com., 146th mtg., para. 20 (see also cases Nos. 50 and 51 above).

2. WHETHER A MATTER GOVERNED BY INTERNATIONAL AGREEMENT CAN FALL ESSENTIALLY WITHIN DOMESTIC JURISDICTION

319. In several cases, when Article 2 (7) was cited as the basis for a claim of domestic jurisdiction, an opposing argument was that, when the subject-matter was governed by treaty obligations, Article 2 (7) did not apply. Thus, it was said, a State could not put forward Article 2 (7) as a defence for violating unilaterally an obligation freely contracted in international agreements or treaties in conformity with the Charter and international law.³²²

320. In the discussions on the implementation system proposed for the international Covenant on Civil and Political Rights, it was stated that such a system could not be regarded as a violation of State sovereignty, since its acceptance by a signatory State would be in itself an act of sovereignty.³²³ It was also said that a matter which was subject to and governed by an international agreement was thereby removed from the category of matters which are essentially within the domestic jurisdiction of a State.³²⁴ Further, it was stated that an optional clause granting the right of petition to individuals in the matter of human rights would not violate State sovereignty or violate Article 2 (7), as such a clause would concern only those States which agreed to be bound by it.³²⁵

321. On the other hand, it was maintained that the recognition of the right of individual petition on an international level in an international instrument of universal application would seriously conflict with the principle of State sovereignty.³²⁶ It was also stated that the principle of non-intervention in matters within domestic jurisdiction was inalterable and that any clause which purported to modify it would be inoperative under Article 103 of the Charter, which gave the Charter precedence over any other international agreement.³²⁷

322. In the discussions in case No. 38 on the status of the German-speaking element in the Province of Bolzano (Bozen), it was stated by the representative of Italy that if there had not been an international agreement between Austria and Italy (concluded in Paris on 5 September 1946), the matter would clearly have been within Italian domestic jurisdiction.³²⁸

323. Without accepting the view that the agreement was the only basis for considering the matter, the representative of Austria concurred that the

³²² *Case No. 2*: G A (XV/1), Plen., 898th mtg., para. 41; Spec. Pol. Com., 228th mtg., para. 22.

Case No. 5: G A (XIV), 4th Com., 975th mtg., paras. 19 and 29; G A (XV/1), Plen., 933rd mtg., paras. 157 and 158.

Case No. 30: G A (XIV), Plen., 849th mtg., para. 104.

Case No. 41: G A (XX), 6th Com., 892nd mtg., para. 34.

³²³ *Case No. 12*: G A (XVIII), 3rd Com., 1277th mtg., para. 3; G A (XXI), 3rd Com., 1415th mtg., para. 16.

³²⁴ *Case No. 12*: G A (XXI), 3rd Com., 1415th mtg., para. 27.

³²⁵ *Case No. 12*: *Ibid.*, 1438th mtg., paras. 22, 30–32 and 58.

³²⁶ *Case No. 12*: *Ibid.*, 1439th mtg., para. 24.

³²⁷ *Case No. 12*: *Ibid.*, para. 35.

³²⁸ *Case No. 38*: G A (XV), Gen. Com., 127th mtg., para. 17; Spec. Pol. Com., 176th mtg., paras. 27 and 36; Plen., 909th mtg., para. 18.

effect of the Paris agreement had been that the status of the Austrian minority had ceased to lie essentially and exclusively within the domestic jurisdiction of Italy.³²⁹

324. Other representatives also referred to the Paris agreement as taking the matter out of the domain covered by Article 2 (7).³³⁰

325. For the action taken, see the relevant cases in the General Survey, including case No. 50.

3. WHETHER A MATTER DEALT WITH BY THE CHARTER CAN FALL ESSENTIALLY WITHIN DOMESTIC JURISDICTION

326. In several cases representatives held that Article 2 (7) could not be relied on to prevent discussion of the violation of other provisions of the Charter.³³¹ It was stated that a State could not invoke Article 2 (7) for that purpose since it had voluntarily placed itself under international jurisdiction by accepting the obligations of the Charter, a multilateral treaty.³³² It was also said that if Article 2 (7) had an overriding effect it would have contained a derogatory clause, such as "notwithstanding any contrary provision in this Charter", or words to that effect.³³³ One representative argued that Article 2 (7) could not have an absolute meaning and effect in itself; it must be related to the other provisions of the Charter. Those provisions, like Chapter XI, expressly or by implication, permitted United Nations action in matters which had been within the sphere of domestic jurisdiction before the Charter had become operative.³³⁴ He also said that the question whether a Member State had fulfilled its obligations under the Charter could not be essentially a domestic matter. The Charter was an international instrument; hence all the matters to which it was applicable were of international concern and as such removed from domestic jurisdiction. If an overriding effect was conferred on Article 2 (7), many provisions of the Charter, including those on self-determination, would become meaningless. Therefore express provisions of the Charter could not be made subject to Article 2 (7).³³⁵ He further argued that Article 10, the cornerstone of the United Nations, was of a general scope and was an effective counter to arguments based on the

³²⁹ *Case No. 38*: G A (XV), Spec. Pol. Com., 178th mtg., paras. 10 and 12.

³³⁰ *Case No. 38*: *Ibid.*, para. 40; 179th mtg., para. 9; 180th mtg., paras. 1, 6 and 10; 182nd mtg., paras. 9, 11, 12, 18 and 34; G A (XVI), Spec. Pol. Com., 294th mtg., para. 15.

³³¹ *Case No. 2*: G A (XVI), Spec. Pol. Com., 297th mtg., para. 11.

Case No. 11: G A (XIV), Spec. Pol. Com., 147th mtg., para. 23; G A (XV), Spec. Pol. Com., 238th mtg., para. 5.

Case No. 34: G A (XVII), Spec. Pol. Com., 333rd mtg., para. 14.

Case No. 41: G A (XVIII), 6th Com., 822nd mtg., para. 10.

Case No. 44: S C, 15th yr., 852nd mtg., para. 97; 856th mtg., paras. 9-14.

³³² *Case No. 5*: G A (XV/1), Plen., 933rd mtg., paras. 157 and 158; G A (XVIII), 4th Com., 1485th mtg., para. 40.

Case No. 45: S C, 99th yr., 1134th mtg., paras. 10 and 11.

³³³ *Case No. 5*: G A (XVII), 4th Com., 1407th mtg., para. 14.

³³⁴ *Case No. 5*: G A (XVIII), 4th Com., 1485th mtg., para. 34.

³³⁵ *Case No. 5*: *Ibid.*, para. 38.

provisions of Article 2 (7).³³⁶ Other representatives stated that the general principles and purposes of the Charter, by their very nature, prevailed over the narrow concept of national competence.³³⁷ It was also said by one representative that in all cases where there was an apparent overlapping of competence between domestic jurisdiction and United Nations jurisdiction, the jurisdiction of the Member State ended where the jurisdiction of the United Nations began. For example, the Member State might pass legislation affecting race relations provided such legislation did not violate human rights and fundamental freedoms as safeguarded by the Charter. When it trespassed beyond the demarcation line, the United Nations must step in.³³⁸ A further argument was that the Charter was an indivisible whole; being a valid and legitimate multilateral treaty, all its provisions were binding upon its signatories, including the provision relating to respect for human rights which was one of its paramount principles. The States which by an act of sovereignty had acceded to the Charter had thereby agreed to relinquish a part of their domestic jurisdiction in favour of international jurisdiction.³³⁹ It was also stated that the United Nations was dedicated to the liquidation of colonialism, which therefore fell outside the provisions of Article 2 (7) of the Charter.³⁴⁰ One representative said that the provisions of Article 2 (7) had originally been included to protect sovereign States from arbitrary intervention, presumably caused by self-interest on the part of the offender. However, he continued, that did not apply to collective intervention by the United Nations with a view to ensuring respect for the principles of the Charter and safeguarding peace.³⁴¹ Other representatives, basing themselves on references to authors on international law, stated that the Charter empowered the principal United Nations organs, within the sphere of their respective jurisdictions, to decide whether or not a matter fell within the domestic jurisdiction of a State.³⁴² It was also said

³³⁶ *Case No. 5*: *Ibid.*, para. 44. Concerning the relationship between Article 2 (7) and the phrase "within the scope of the present Charter" in Article 10, see this *Supplement* under Article 10.

³³⁷ *Case No. 11*: G A (XIV), Spec. Pol. Com., 143rd mtg., para. 31; 144th mtg., para. 8; G A (XV), Spec. Pol. Com., 235th mtg., para. 14; 239th mtg., para. 26; G A (XVI), Spec. Pol. Com., 271st mtg., para. 6; 272nd mtg., para. 20.

Case No. 34: G A (XVII), Spec. Pol. Com., 339th mtg., para. 6 and 7; G A (XVIII), Plen., 1238th mtg., para. 56.

Case No. 35: G A (XIV), Plen., 831st mtg., para. 7; 832nd mtg., paras. 3 and 30; 834th mtg., para. 182; G A (XVI/1), Plen., 1084th mtg., para. 160.

³³⁸ *Case No. 11*: G A (XV), Spec. Pol. Com., 232nd mtg., para. 19.

³³⁹ *Case No. 11*: *Ibid.*, 238th mtg., para. 18; G A (XVI), Spec. Pol. Com., 273rd mtg., para. 16.

Case No. 34: G A (XVII), Spec. Pol. Com., 332nd mtg., para. 25.

Case No. 43: S C, 15th yr., 916th mtg., para. 74.

Case No. 45: S C, 18th yr., 1073rd mtg., paras. 19-22.

³⁴⁰ *Case No. 11*: G A (XVI), Spec. Pol. Com., 271st mtg., para. 5.

³⁴¹ *Case No. 11*: *Ibid.*, 280th mtg., para. 25.

³⁴² *Case No. 11*: *Ibid.*, 283rd mtg., paras. 1 and 2.

Case No. 41: G A (XVIII), 6th Com., 825th mtg., para. 12.

Case No. 45: S C, 18th yr., 1073rd mtg., paras. 24-28.

that the provisions of Article 2 (7) could not apply when action taken by any Member State was contrary to the principles laid down as part of the purposes and principles of the Charter.³⁴³

327. Other representatives held, on the contrary, that Article 2 (7) had an overriding effect in regard to all the other Articles of the Charter,³⁴⁴ with exceptions, however, in view of the last phrase of Article 2 (7). As for the contention that the principle contained in Article 2 (7) did not apply in the case of international obligations deriving from the Charter, such as respect for human rights, one representative argued that the Article clearly stated that nothing contained in the Charter authorized the United Nations to intervene in domestic matters, so that questions concerning respect for human rights were included in that prohibition.³⁴⁵

328. Another representative stated that in case of apparent contradiction between Articles of the Charter—more specifically, between those concerning non-intervention in domestic affairs and those dealing with respect for human rights—those Articles should be interpreted in the light of the circumstances, *de facto* and *de jure*, of each individual case.³⁴⁶

a. Article 2 (7) and the Charter provisions on human rights

329. In many cases 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 that contention.

330. Violations of the Charter provisions concerning human rights and race relations did not fall within domestic jurisdiction.³⁴⁷ Items which concerned such

violations were not only items which the Assembly could properly discuss, but they involved one of the most important issues confronting the United Nations, on the solution of which the future of the Organization itself would to a large extent depend.³⁴⁸ Problems relating to human rights were of interest to all nations, and the Charter of the United Nations had indelibly and rightly stamped them as matters of international concern.³⁴⁹ Under Articles 55 and 56 of the Charter, all Member States pledged themselves to take joint and separate action in co-operation with the Organization in promoting universal respect for human rights and fundamental freedoms without discrimination of any kind.³⁵⁰ The fundamental rights

mtg., para. 14; 237th mtg., para. 2; 238th mtg., para. 2, 5 and 18; G A (XVI), Spec. Pol. Com., 275th mtg., para. 46.

Case No. 12: G A (XXI), 3rd Com., 1397th mtg., paras. 8 and 18.

Case No. 30: G A (XIV), Plen., 849th mtg., paras. 104 and 183—186; 850th mtg., paras. 45 and 106; G A (XVI), Gen. Com., 136th mtg., paras. 71 and 72, 137th mtg., paras. 10, 12 and 13; Plen., 1014th mtg., paras. 209 and 211—213; G A (XVII), Plen., 1129th mtg., paras. 209—313; Spec. Pol. Com., 376th mtg., para. 32.

Case No. 34: G A (XVII), Spec. Pol. Com., 333rd mtg., para. 14; 335th mtg., para. 31; 336th mtg., paras. 14 and 25; G A (XVIII), Gen. Com., 153rd mtg., para. 14; Spec. Pol. Com., 391st mtg., para. 29.

Case No. 35: G A (XIV), Plen., 831st mtg., paras. 3, 7, 15, 31, 35, 119 and 126—128; 832nd mtg., paras. 2, 9, 30 and 80—85; 833rd mtg., paras. 33 and 67; 834th mtg., paras. 107 and 146—148; G A (XVI/1), Plen., 1084th mtg., paras. 160, 166—168 and 242; 1085th mtg., paras. 17 and 107; G A (XX), Plen., 1394th mtg., paras. 50, 59, 72 and 101; 1401st mtg., paras. 6, 8, 58 and 59, 65—69, 97, 123, 124 and 181; 1403rd mtg., paras. 75—82.

Case No. 38: G A (XV), Spec. Pol. Com., 177th mtg., para. 10; 182nd mtg., para. 29.

Case No. 39: G A (XV/2), Plen., 966th mtg., paras. 33 and 34; 991st mtg., para. 83; G A (XVI/2), Plen., 1089th mtg., para. 126.

Case No. 41: G A (XVII), 6th Com., 760th mtg., para. 4; G A (XVIII), 6th Com., 822nd mtg., para. 10; G A (XX), 6th Com., 889th mtg., para. 20.

Case No. 43: S C, 15th yr., 916th mtg., para. 74; 917th mtg., para. 15; 920th mtg., para. 114.

Case No. 44: S C, 15th yr., 851st mtg., paras. 22, 23 and 116.

Case No. 45: S C, 18th yr., 1051st mtg., paras. 20, 31 and 32; 1052nd mtg., paras. 32 and 58; 1053rd mtg., paras. 68 and 69; 1073rd mtg., paras. 20—29.

Case No. 46: S C, 16th yr., 945th mtg., para. 66.

³⁴⁸ Case No. 2: G A (XV), Spec. Pol. Com., 228th mtg., paras. 5 and 6; G A (XVI), Gen. Com., 136th mtg., para. 18.

Case No. 11: G A (XVI), Gen. Com., 136th mtg., para. 18.

Case No. 35: G A (XIV), Plen., 831st mtg., para. 15.

Case No. 44: S C, 15th yr., 852nd mtg., para. 16.

³⁴⁹ Case No. 11: G A (XIV), Spec. Pol. Com., 141st mtg., paras. 11 and 18; 143rd mtg., para. 31; 146th mtg., para. 22; G A (XVI), Spec. Pol. Com., 268th mtg., para. 4; 275th mtg., para. 4; 280th mtg., para. 25.

Case No. 12: G A (XVIII), 3rd Com., 1275th mtg., paras. 14 and 15.

Case No. 34: G A (XVII), Spec. Pol. Com., 336th mtg., para. 45.

Case No. 37: G A (XVII), 4th Com., 1357th mtg., para. 4; G A (XVIII), 4th Com., 1438th mtg., paras. 7 and 25.

³⁵⁰ Case No. 11: G A (XIV), Spec. Pol. Com., 142nd mtg., para. 8; 143rd mtg., para. 31; 145th mtg., para. 9; 147th mtg., para. 23; G A (XV), Spec. Pol. Com., 240th mtg.,

³⁴³ Case No. 44: S C, 15th yr., 852nd mtg., paras. 7 and 9; 855th mtg., para. 65; 856th mtg., paras. 9—14.

Case No. 45: S C, 18th yr., 1050th mtg., para. 38; 19th yr., 1134th mtg., para. 12.

³⁴⁴ Case No. 2: G A (XIV), Plen., 803rd mtg., para. 228; G A (XV/2), Plen., 981st mtg., para. 7.

Case No. 5: G A (XVII), 4th Com., 1406th mtg., para. 38; G A (XVIII), 4th Com., 1490th mtg., para. 46.

Case No. 11: G A (XIV), Plen., 803rd mtg., para. 228.

Case No. 34: G A (XVIII), Plen., 1283rd mtg., para. 92.

Case No. 35: G A (XIV), Plen., 834th mtg., paras. 28 and 174.

Case No. 39: G A (XV/2), Plen., 966th mtg., para. 10.

Case No. 44: S C, 15th yr., 851st mtg., para. 46.

Case No. 46: S C, 16th yr., 944th mtg., paras. 48 and 53.

Case No. 47: S C, 16th yr., 950th mtg., para. 84.

³⁴⁵ Case No. 11: G A (XIV), Spec. Pol. Com., 142nd mtg., para. 23.

³⁴⁶ Case No. 34: G A (XVIII), Plen., 1238th mtg., para. 70.

³⁴⁷ Case No. 2: G A (XIV), Spec. Pol. Com., 172nd mtg., para. 9; 173rd mtg., paras. 3 and 15; G A (XV), Gen. Com., 127th mtg., para. 40; Spec. Pol. Com., 228th mtg., paras. 13—15 and 22; 229th mtg., paras. 5, 14 and 29; G A (XVI), Spec. Pol. Com., 291st mtg., para. 2; 297th mtg., para. 11; 298th mtg., para. 5.

Case No. 5: G A (XVI), 4th Com., 1208th mtg., para. 33.

Case No. 11: G A (XIV), Spec. Pol. Com., 143rd mtg., paras. 3 and 19; 145th mtg., para. 9; 146th mtg., para. 20; G A (XV), Gen. Com., 127th mtg., para. 40; Spec. Pol. Com., 232nd mtg., paras. 18 and 19; 233rd mtg., para. 28; 235th

of the individual derived from the nature of man himself, and they could not be qualified or conditioned by considerations of domestic jurisdiction.³⁵¹ Racial discrimination or other acts of racism did not fall within domestic jurisdiction,³⁵² even when it was part of Government policy.³⁵³

331. The Preamble and Article 1 of the Charter solemnly enjoined universal respect for human rights.³⁵⁴ The international community was not only competent but also had the obligation to concern itself with the protection of human rights and fundamental freedoms, and Article 2 (7) could therefore not be invoked in such cases to prevent it from fulfilling that obligation.³⁵⁵ The principle in Article 2 (7) could not be interpreted as an excuse for shirking international responsibilities; the provisions of the Charter contained in Article 1 (3) and in Articles 55 and 56 proclaimed inescapable obligations respecting human rights and fundamental freedoms.³⁵⁶ Complete and effective international protection of human rights left no room for State sovereignty in the traditional sense.³⁵⁷ The question of human rights no longer came within the exclusive jurisdiction of States; it was now a matter of universal concern.³⁵⁸ There could be no doubt that the United

Nations could appropriately consider matters which concerned human rights.³⁵⁹ Article 2 (7) could not prevent the General Assembly from considering questions involving fundamental human rights.³⁶⁰

332. Other representatives contended, on the contrary, that human rights and fundamental freedoms within a country fell essentially within domestic jurisdiction; the records of the San Francisco Conference showed that Chapter IX of the Charter, including Articles 55 and 56 relating to fundamental human rights and freedoms, was not intended to authorize the United Nations to intervene in the domestic jurisdiction of Member States.³⁶¹ Nevertheless, those who held that view in general also stated that they did not condone racial discrimination or suppression of human rights. It was also said that interracial matters were so delicate that they should be approached with the utmost caution; therefore an attitude of understanding and trust would prove more effective than an ill-timed attempt to intervene.³⁶²

333. Some of the representatives who held that questions of human rights came within the provisions of Article 2 (7) later modified their position so far as

para. 9; G A (XVI), Spec. Pol. Com., 268th mtg., para. 4; 271st mtg., para. 6; 273rd mtg., para. 1.

Case No. 34: G A (XVIII), Spec. Pol. Com., 395th mtg., para. 8.

Case No. 39: G A (XVI/2), Plen., 1100th mtg., paras. 105 and 106.

Case No. 44: S C, 15th yr., 851st mtg., paras. 27-29; 852nd mtg., paras. 12 and 13.

Case No. 45: S C, 18th yr., 1050th mtg., para. 42; 1073rd mtg., para. 22.

³⁵¹ *Case No. 11:* G A (XIV), Spec. Pol. Com., 143rd mtg., para. 11; G A (XV), Spec. Pol. Com., 239th mtg., paras. 39-41.

Case No. 34: G A (XVII), Plen., 1164th mtg., para. 167; Spec. Pol. Com., 333rd mtg., para. 14; 336th mtg., para. 28; G A (XX), Spec. Pol. Com., 477th mtg., para. 3.

³⁵² *Case No. 11:* G A (XIV), Spec. Pol. Com., 143rd mtg., paras. 20 and 32; 145th mtg., para. 10; G A (XVI), Spec. Pol. Com., 279th mtg., para. 1; 280th mtg., para. 31.

Case No. 34: G A (XVIII), Spec. Pol. Com., 385th mtg., para. 14.

Case No. 44: S C, 15th yr., 852nd mtg., para. 127; 855th mtg., paras. 35 and 36.

Case No. 45: S C, 18th yr., 1052nd mtg., para. 32; 1055th mtg., para. 49; 1074th mtg., paras. 13 and 40; 19th yr., 1127th mtg., paras. 135 and 136; 1128th mtg., paras. 13 and 15.

³⁵³ *Case No. 44:* S C, 15th yr., 855th mtg., para. 10.

Case No. 45: S C, 18th yr., 1052nd mtg., para. 58.

³⁵⁴ *Case No. 11:* G A (XV), Spec. Pol. Com., 242nd mtg., para. 9; G A (XVI), Spec. Pol. Com., 273rd mtg., para. 1; 275th mtg., para. 4; 276th mtg., para. 6; 280th mtg., para. 25.

Case No. 34: G A (XVII), Spec. Pol. Com., 337th mtg., para. 24.

³⁵⁵ *Case No. 34:* G A (XVII), Spec. Pol. Com., 331st mtg., paras. 3 and 4; G A (XVIII), Plen., 1238th mtg., para. 76; Spec. Pol. Com., 394th mtg., para. 10.

³⁵⁶ *Case No. 34:* G A (XVII), Spec. Pol. Com., 335th mtg., para. 28; G A (XVIII), Spec. Pol. Com., 392nd mtg., para. 32.

³⁵⁷ *Case No. 12:* G A (XVIII), 3rd Com., 1276th mtg., para. 8.

Case No. 39: G A (XVI/2), Plen., 1101st mtg., para. 90.

³⁵⁸ *Case No. 12:* G A (XXI), 3rd Com., 1418th mtg., para. 22; Plen., PV. 1495, page 45.

³⁵⁹ *Case No. 27:* G A (XIV), 1st Com., 1077th mtg., para. 15; G A (XV), Gen. Com., 127th mtg., para. 44.

Case No. 39: G A (XV), Gen. Com., 134th mtg., paras. 9 and 13.

Case No. 44: S C, 15th yr., 853rd mtg., para. 83; 854th mtg., para. 86.

Case No. 45: S C, 18th yr., 1050th mtg., paras. 39 and 40; 1051st mtg., paras. 20, 31 and 32; 1052nd mtg., paras. 32, 57 and 58; 1053rd mtg., paras. 56 and 57.

Case No. 46: S C, 16th yr., 943rd mtg., para. 36.

Case No. 47: S C, 16th yr., 950th mtg., para. 58.

³⁶⁰ *Case No. 35:* G A (XIV), Gen. Com., 124th mtg., paras. 4-14, 18, 40, 42, 47 and 51; Plen., 826th mtg., paras. 31, 32, 38-41, 46 and 93; G A (XV), Gen. Com., 127th mtg., paras. 49, 50 and 54-57; Plen., 898th mtg., paras. 81-84; G A (XVI), Gen. Com., 136th mtg., para. 48; Plen., 1014th mtg., para. 179, 181 and 182; 1084th mtg., para. 126; G A (XX), Gen. Com., 159th mtg., paras. 7, 10, 12, 14 and 15; Plen., 1336th mtg., paras. 53, 54 and 67-72; 1394th mtg., paras. 23, 24 and 65; 1401st mtg., paras. 97 and 110; 1403rd mtg., paras. 70 and 71.

Case No. 38: G A (XV), Spec. Pol. Com., 182nd mtg., paras. 18 and 21.

³⁶¹ *Cases No. 2 and 11:* G A (XIV), Plen., 803rd mtg., para. 228; 811th mtg., para. 27; G A (XV/1), Plen., 898th mtg., paras. 16-24; G A (XVI/1), Plen., 1014th mtg., paras. 130 and 131.

Case No. 11: G A (XIV), Spec. Pol. Com., 142nd mtg., para. 23; 147th mtg., paras. 10, 12, 14 and 17; G A (XV), Spec. Pol. Com., 242nd mtg., para. 6.

Case No. 12: G A (XVIII), 3rd Com., 1274th mtg., para. 28.

Case No. 34: G A (XVII), Plen., 1129th mtg., paras. 326 to 330; 1164th mtg., paras. 26-29; Spec. Pol. Com., 341st mtg., para. 67.

Case No. 35: G A (XIV), Plen., 832nd mtg., paras. 31-47 and 120; 833rd mtg., paras. 91-97; 834th mtg., paras. 28, 173 and 174; Gen. Com., 124th mtg., para. 23.

Case No. 39: G A (XV), Gen. Com., 134th mtg., para. 10; Plen., 966th mtg., para. 11.

Case No. 44: S C, 15th yr., 851st mtg., para. 47.

Case No. 46: S C, 16th yr., 944th mtg., para. 47.

Case No. 47: S C, 16th yr., 950th mtg., para. 86.

³⁶² *Case No. 11:* G A (XIV), Spec. Pol. Com., 146th mtg., para. 9.

the policy of *apartheid* was concerned. They stated that *apartheid* could be considered so exceptional as to be *sui generis* and that therefore their delegations were able to consider proposals regarding that question on their merits. *Apartheid* now entailed such international repercussions that its discussion had been freed from the limitations otherwise imposed by Article 2 (7).³⁶³

334. It was also suggested that as there were certain apparent contradictions between Article 2 (7) and Article 55, it would be desirable to determine which provision took precedence over the other and that it therefore would be useful to refer the issue to the International Court of Justice.³⁶⁴

335. The human rights argument was, in case No. 35 regarding Tibet, countered by the contention that it was a false issue, for the human rights allegedly jeopardized were in fact privileges based on a feudal social order the destruction of which would bring real human rights to the overwhelming majority of the people.³⁶⁵

b. Article 2 (7) and the Charter provisions regarding Non-Self-Governing Territories

336. Arguments dealing specifically with the Charter provisions regarding Non-Self-Governing Territories³⁶⁶ were submitted in several cases. Those arguments may be summarized as follows.

337. Some representatives contended that the administration of a Non-Self-Governing Territory fell essentially within the administering State's domestic jurisdiction.³⁶⁷ That was particularly the case when the territory constitutionally formed part of the administering State itself.³⁶⁸ It was also stated that that legal situation could not be changed by a majority decision by the General Assembly.³⁶⁹

³⁶³ Case No. 11: G A (XV), Spec. Pol. Com., 242nd mtg., para. 13; 244th mtg., paras. 3 and 16-19.

Case No. 34: G A (XVII), Spec. Pol. Com., 339th mtg., para. 14; G A (XVIII), Plen., 1238th mtg., para. 91; Spec. Pol. Com., 386th mtg., para. 9.

³⁶⁴ Case No. 34: G A (XVII), Spec. Pol. Com., 330th mtg., para. 9.

³⁶⁵ Case No. 35: G A (XIV), Plen., 826th mtg., paras. 80 to 83; 834th mtg., paras. 55-59; G A (XVI), Gen. Com., 136th mtg., para. 45; Plen., 1085th mtg., para. 88; G A (XX), Plen., 1336th mtg., para. 32.

³⁶⁶ See this Supplement under Article 73.

³⁶⁷ Case No. 5: G A (XIV), Plen., 855th mtg., para. 16; 4th Com., 979th mtg., paras. 44 and 45; 981st mtg., paras. 8, 10, 20 and 55; G A (XV/1), Plen., 948th mtg., para. 106; G A (XVI), 4th Com., 1193rd mtg., para. 18; 1303rd mtg., para. 2; G A (XX), Plen., 1357th mtg., para. 77; 4th Com., 1524th mtg., paras. 60 and 63; 1545th mtg., paras. 5 and 8.

³⁶⁸ Case No. 5: G A (XV/1), Plen., 928th mtg., paras. 2-8; 934th mtg., paras. 32-34 and 40; G A (XVI), Gen. Com., 136th mtg., paras. 29-33; Plen., 1083rd mtg., paras. 189 and 195; G A (XVIII), 4th Com., 1475th mtg., paras. 27-31; G A (XX), 4th Com., 1590th mtg., para. 13; 1592nd mtg., para. 39.

Case No. 39: G A (XV), Gen. Com., 134th mtg., para. 11; Plen., 966th mtg., para. 13; G A (XVI), Gen. Com., 135th mtg., para. 13; Plen., 1014th mtg., para. 61.

Case No. 46: S C, 16th yr., 944th mtg., paras. 98-101.

Case No. 47: S C, 16th yr., 956th mtg., para. 63.

³⁶⁹ Case No. 5: G A (XVI), 4th Com., 1202nd mtg., para. 26; 1207th mtg., paras. 27 and 28; G A (XVII), 4th Com., 1406th mtg., para. 38.

Case No. 39: G A (XV/2), Plen., 966th mtg., para. 13.

338. Hearing of petitioners from a Non-Self-Governing Territory by the United Nations was said to constitute intervention in the domestic affairs of the State responsible for the administration of the Territory.³⁷⁰

339. Similarly, the representative of the United Kingdom stated that the presence in a Non-Self-Governing Territory under its administration of a visiting mission dispatched by an organ of the United Nations would constitute interference in the Territory's internal affairs³⁷¹ and intervention in the administration of the Territory. Although not suggesting that visiting missions would perform an administrative function, his Government believed their presence would constitute an interruption in the normal processes of political and constitutional advance in the Territories and a complicating factor in the constant dialogue between the administering Power and the leaders of the Territories.³⁷²

340. The representative of the United Kingdom defended the point of view of his Government. He recalled that when the General Assembly had adopted resolution 1654 (XVI) establishing the Special Committee on decolonization, which subsequently voted for sending a visiting mission to Aden and the Aden Protectorates, the representative had stated that his delegation was prepared to participate in the Committee's work only on the clear understanding that the Committee would not attempt to interfere in the administration of the Territories for which the United Kingdom was responsible.³⁷³ His delegation subsequently reaffirmed that position when the President of the General Assembly invited the United Kingdom to become a member of the Committee.³⁷⁴ During the deliberations of the Special Committee he expressed the view that visiting missions should not be dispatched without the consent of the administering Power,³⁷⁵ and on a later occasion he reiterated his Government's objections on the grounds of principle. Although willing to co-operate with the Special Committee, his Government maintained that under the Charter the responsibility for the administration of Non-Self-Governing Territories rested with the administering Member concerned and not with the United Nations or with any of its subsidiary organs. Consequently, when the Sub-Committee of the Special Committee had reported on the refusal of the United Kingdom authorities to permit it to enter the Territories of Aden and the Aden Protectorates, the representative of the United Kingdom stated that the refusal was consistent with its declared policy and did not represent a departure from its co-operation with the Committee in other respects.³⁷⁶

³⁷⁰ Case No. 5: G A (XVI), 4th Com., 1254th mtg., paras. 4 and 5-10.

³⁷¹ Case No. 40: G A (XVIII), Annexes, a. i. 23/Addendum, A/5446/Rev.1, chapter V, para. 178.

³⁷² Case No. 40: G A (XVIII), Plen., 1273rd mtg., para. 146.

³⁷³ Case No. 40: G A (XVI/1), Plen., 1066th mtg., paras. 229 and 230.

³⁷⁴ Case No. 40: G A (XIX), Suppl. No. 4, A/5804.

³⁷⁵ Case No. 40: G A (XVII), Annexes, a.i. 25/Addendum, A/5238, chap. I paras. 25 and 26.

³⁷⁶ Case No. 40: G A (XVIII), Annexes, a.i. 23/Addendum, A/5446/Rev.1, chap. V, para. 473.

341. A number of representatives gave implied³⁷⁷ or direct³⁷⁸ support to the view that the presence in a Non-Self-Governing Territory of a visiting mission dispatched by the United Nations constituted interference in the internal affairs of the Territory. One representative said that operative paragraph 6 of General Assembly resolution 1654 (XVI) had accepted the principle of close consultations between those Powers which did not have administering responsibilities and those which did.³⁷⁹ It was also said, however, that while it was the responsibility of the administering Power to lead the Territory to independence, it was equally the right and duty of the United Nations to see that the principles of the Charter were observed.³⁸⁰ One representative took the view that the internal affairs of Non-Self-Governing Territories had become part of the international public domain and were primarily of concern to the United Nations under the powers granted it by the Charter and in accordance with the resolutions by which the United Nations had assumed the task of ensuring the welfare of the inhabitants of those Territories. His delegation failed to understand how the mission of peace and conciliation entrusted to a visiting mission could be construed as interference in the internal affairs of a country.³⁸¹ The position of the United Kingdom Government was also opposed on the ground that the visiting mission would be required only to ascertain the views of the people. The same representative maintained further that the General Assembly had always insisted on its right and the right of its subsidiary organs to send such missions.³⁸² That argument was supported by two representatives, who pointed out that the possibility of sending missions to Territories was provided for in the terms of reference of the Special Committee which was authorized by General Assembly resolution 1654 (XVI) to use "all means which it will have at its disposal within the framework of the procedures and modalities which it shall adopt for the proper discharge of its functions". The General Assembly had, moreover, in resolution 1810 (XVIII), taken note with approval of the methods and procedures which the Special Committee had adopted for the discharge of its functions.³⁸³ One view was that the Special Committee's Sub-Committee on Aden could not be regarded as comparable to the visiting missions which had been sent out in the past by the Trusteeship Council; that followed from the purpose of the Sub-Committee which was to promote the speedy implementation of the Declaration on decolonization.³⁸⁴ The Sub-Committee might have recognized the need to secure the co-operation of the administering Power,

³⁷⁷ *Case No. 40: G A (XVIII), Plen., 1273rd mtg., paras. 6, 50 and 103; 1277th mtg., para. 125; Annexes, a.i. 23/Addendum, A/5446/Rev.1, chap. V, paras. 237, 264 and 311; G A (XX), Plen., 1387th mtg., para. 8.*

³⁷⁸ *Case No. 40: G A (XX), Plen. 1398th mtg., para. 260.*

³⁷⁹ *Case No. 40: G A (XVIII), Plen., 1277th mtg., para. 69.*

³⁸⁰ *Case No. 40: G A (XVIII), Annexes, a.i. 23/Addendum, A/5446/Rev. 1, chap. V, para. 244.*

³⁸¹ *Case No. 40: Ibid., paras. 359, 360 and 393.*

³⁸² *Case No. 40: Ibid., para. 317.*

³⁸³ *Case No. 40: Ibid., paras. 319 and 435.*

³⁸⁴ *Case No. 40: Ibid., para. 395.*

but the refusal of an administering Power to co-operate could not give it a right of veto over the committee's work.³⁸⁵ It was also maintained that as a signatory of the Charter and of the Convention on the Privileges and Immunities of the United Nations, the United Kingdom was bound to respect a sub-committee representing the United Nations.³⁸⁶

342. At the eighteenth session of the General Assembly the claim of the Government of the United Kingdom that the presence of a visiting mission would constitute intervention in the administration of the Territory was alleged to be a claim based on certain colonial provisions in public international law which were no longer valid.³⁸⁷ Another representative found that, in view of the purpose of the visiting mission, which was to ascertain the views of the peoples concerned and thus enable the Special Committee to submit proposals to the General Assembly, there was no incompatibility between the competence of the colonial Power and the objectives of the visiting mission.³⁸⁸

343. At the twentieth session of the General Assembly it was argued by one representative that the General Assembly had rejected the view that the dispatch of a visiting mission from the United Nations to a Non-Self-Governing Territory would be tantamount to interference in the internal affairs of the administering Power; what was more, the United Nations had certain responsibilities towards Non-Self-Governing Territories, and it was the obligation of the administering Powers to co-operate with the United Nations in all possible ways.³⁸⁹ Another representative stated it was only a legal ruse to postpone the legitimate rights of a people to be free when one colonial country after another said it was its own responsibility and that it would not compromise its administering powers.³⁹⁰

344. Several representatives disputed the contention that the provisions of Article 2 (7) precluded consideration by the General Assembly of matters relating to Non-Self-Governing Territories.³⁹¹ Some representatives stated in particular that the provisions of Chapter XI of the Charter were of an international character and established legal obligations which were binding on the administering Members. Thus the question of the Non-Self-Governing Territories could not be considered to be within the domestic jurisdiction of the administering Powers. In view of the international character of those legal obligations, the General Assembly was also the

³⁸⁵ *Case No. 40: Ibid., paras. 395 and 435.*

³⁸⁶ *Case No. 40: Ibid., para. 410.*

³⁸⁷ *Case No. 40: G A (XVIII), Plen., 1273rd mtg., paras. 68-70.*

³⁸⁸ *Case No. 40: Ibid., 1277th mtg., para. 84.*

³⁸⁹ *Case No. 40: G A (XX), Plen., 1386th mtg., para. 139.*

³⁹⁰ *Case No. 40: Ibid., 1387th mtg., para. 87.*

³⁹¹ *Case No. 5: G A (XIV), 4th Com., 976th mtg., para. 16; 979th mtg., paras. 47 and 48; G A (XV/1), Plen., 933rd mtg., paras. 157 and 158; 4th Com., 1034th mtg., paras. 2, 3 and 8; G A (XVI), 4th Com., 1207th mtg., para. 33; 1208th mtg., para. 33; G A (XVIII), 4th Com., 1485th mtg., para. 4; 1490th mtg., para. 34.*

Case No. 39: G A (XVI/2), Plen., 1100th mtg., paras. 4 and 34.

only competent body to decide whether a Territory was self-governing or not.³⁹² Several representatives emphasized that the status of a Non-Self-Governing Territory could not be changed by the administering Power's unilateral act of labelling the Territory a province or overseas territory in order to bring it under Article 2 (7).³⁹³ It was also said that the General Assembly, or the majority of Member States, had repeatedly refuted the contention that matters relating to Non-Self-Governing Territories were within the domestic jurisdiction of the administering States and came under Article 2 (7) of the Charter.³⁹⁴

345. It was further stated that, since Article 2 (7) referred to "matters" within the domestic jurisdiction of a State and not to "territories" within its domestic jurisdiction, that Article could not remove the Non-Self-Governing Territories themselves from the jurisdiction of the United Nations. Therefore, the argument continued, there was no inconsistency between Article 2 (7) and Chapter XI, and Article 2 (7) must be read in the light of the principle in Chapter XI, which had equal force with that Article. The Articles were drafted together and must be read as a whole. Matters falling under Chapter XI could not be matters "essentially within the domestic jurisdiction" of the administering State for they were equally within the jurisdiction of the United Nations. Matters which were the subject of international obligations of a legal character could not fall essentially within domestic jurisdiction. Matters dealt with in the Charter were of international concern and no longer within the reserved domain of States. Therefore, the argument concluded, the United Nations could intervene in such matters.³⁹⁵

³⁹² *Case No. 5*: G A (XIV), 4th Com., 975th mtg., para. 19; G A (XVI), 4th Com., 1204th mtg., paras. 9 and 10.

³⁹³ *Case No. 5*: G A (XIV), Plen., 855th mtg., para. 68; 4th Com., 976th mtg., para. 16; G A (XV/1), Plen., 927th mtg., para. 44; G A (XVII), 4th Com., 1403rd mtg., para. 10; 1417th mtg., para. 73; G A (XVIII), 4th Com., 1475th mtg., para. 32; 1484th mtg., paras. 3 and 4 (see also 1485th mtg., para. 4); 1487th mtg., para. 13; 1488th mtg., paras. 27, 28 and 64; 1489th mtg., para. 42; 1490th mtg., para. 34.

Case No. 39: G A (XV/2), Plen., 966th mtg., paras. 25, 30 and 32; 991st mtg., para. 124; 992nd mtg., paras. 120, 145 to 148 and 235; G A (XVI/2), Plen., 1091st mtg., para. 18; 1095th mtg., paras. 22 and 41-44; 1096th mtg., para. 56; 1097th mtg., para. 65; 1100th mtg., paras. 102-104; 1101st mtg., paras. 2 and 31-33; 1102nd mtg., paras. 15-17; G A (XVII), Plen., 1183rd mtg., paras. 88, 101 and 129-131; 1184th mtg., para. 150; 1185th mtg., paras. 8 and 117; 1186th mtg., paras. 82-84.

Case No. 46: S C, 16th yr., 943rd mtg., paras. 32-34, 41, 56, 58, 59 and 69.

Case No. 47: S C, 16th yr., 950th mtg., paras. 54 and 55; 953rd mtg., paras. 8-11.

³⁹⁴ *Case No. 5*: G A (XVI), 4th Com., 1198th mtg., para. 15; 1199th mtg., para. 26; 1200th mtg., para. 40; 1202nd mtg., para. 2; G A (XVII), 4th Com., 1399th mtg., para. 77.

Case No. 39: G A (XV/2), Plen., 966th mtg., para. 32; 990th mtg., para. 88; 991st mtg., paras. 8 and 84; G A (XVI/2), Plen., 1092nd mtg., para. 10; 1101st mtg., para. 85.

Case No. 46: S C, 16th yr., 945th mtg., paras. 89 and 90.

Case No. 47: S C, 16th yr., 950th mtg., paras. 61 and 63.

³⁹⁵ *Case No. 5*: G A (XVII), 4th Com., 1399th mtg., para. 77; 1407th mtg., para. 14.

Case No. 39: G A (XVII), Plen., 1184th mtg., paras. 162 and 163.

346. One representative also argued that the statement on colonial policy in Article 73 was so placed in the Charter as to override the general statement on domestic jurisdiction in Article 2 (7). Therefore, so far as colonial matters were concerned, the principle of domestic jurisdiction could not apply.³⁹⁶ The same representative further said that Chapter XI of the Charter brought the relations between the Administering Members and their Territories within the realm of international affairs; hence that relationship could not fall within domestic jurisdiction.³⁹⁷ He also said that it was necessary to differentiate between minorities living within the true metropolitan boundaries of States and the peoples of the Non-Self-Governing Territories. The realization of self-determination by the former could fall essentially within domestic jurisdiction, whereas in the case of the latter the matter was one of international concern and beyond the scope of domestic jurisdiction.³⁹⁸

347. In case No. 42 it was stated that, so far as the Non-Self-Governing and Trust Territories were concerned, the declaration contained in Chapter XI of the Charter had been reaffirmed by the Declaration on decolonization contained in Assembly resolution 1514 (XV), and that the question had essentially been removed from the national level and had now become the responsibility of the United Nations.³⁹⁹

348. In case No. 37, a main argument of those who defended the competence of the General Assembly to deal with the situation in Southern Rhodesia was that Southern Rhodesia had not attained a full measure of self-government but was still in a colonial status, and that therefore, under Article 73 of the Charter and the Declaration on decolonization contained in Assembly resolution 1514 (XV), the United Nations had the responsibility of assisting the people of the Territory to independence and self-determination.⁴⁰⁰

349. The counter-argument was that Southern Rhodesia enjoyed internal self-government and that therefore consideration by the United Nations of the situation there would be an intervention in the domestic affairs of Southern Rhodesia and of the

³⁹⁶ *Case No. 5*: G A (XVIII), 4th Com., 1485th mtg., para. 31.

³⁹⁷ *Case No. 5*: *Ibid.*, para. 37.

³⁹⁸ *Case No. 5*: *Ibid.*, para. 39.

³⁹⁹ *Case No. 42*: G A (XX), 1st Com., 1403rd mtg., para. 12.

⁴⁰⁰ *Case No. 37*: G A (XVI), Gen. Com., 146th mtg., paras. 7 and 11; Plen., 1110th mtg., paras. 17, 34, 47 and 70; 1112th mtg., para. 38; 1113th mtg., paras. 6, 34, 57, 67 and 75; 1114th mtg., paras. 25, 34 and 78; 1115th mtg., paras. 32, 83, 89 and 104; 1116th mtg., paras. 45, 60, 68 and 72; 1117th mtg., paras. 17, 19, 65 and 125; 1119th mtg., para. 88; 1120th mtg., para. 11; G A (XVII), Gen. Com., 148th mtg., paras. 45 and 46; 4th Com., 1356th mtg., para. 12; 1357th mtg., para. 53; 1359th mtg., para. 7; 1360th mtg., para. 10; 1362nd mtg., paras. 22 and 23; 1363rd mtg., para. 37; 1365th mtg., paras. 2, 5 and 9; 1367th mtg., paras. 11 and 32; Plen., 1163rd mtg., paras. 87-95; G A (XVIII), Gen. Com., 153rd mtg., paras. 21 and 23; 4th Com., 1438th mtg., paras. 7, 40, 41 and 76; 1440th mtg., paras. 16, 17 and 59; 1441st mtg., paras. 24-26; 1442nd mtg., paras. 42-57; 1443rd mtg., paras. 17-22, 29 and 31; 1447th mtg., paras. 6, 15, 16 and 20; Plen., 1241st mtg., para. 46; G A (XX), 4th Com., 1523rd mtg., para. 1; 1524th mtg., paras. 48, 50, 61 and 64; 1525th mtg., paras. 10, 18 and 19; 1526th mtg., para. 59.

United Kingdom which was responsible for the external relations of the Territory; responsibility for bringing Southern Rhodesia forward to independence rested with the United Kingdom Government alone.⁴⁰¹

350. Similar arguments and counter-arguments regarding the status of Southern Rhodesia were in substance repeated in case No. 48 before the Security Council by those who either defended,⁴⁰² or denied⁴⁰³ the competence of the Council in the matter.

c. Article 2 (7) and the Charter provisions on the self-determination of peoples

351. Arguments referring specifically to the Charter provisions on the self-determination of peoples were advanced during the debates in several cases. In reply to objections based on Article 2 (7), it was stated that the United Nations might quite appropriately discuss a matter which concerned, in particular, the right of self-determination.⁴⁰⁴ On the other hand, it was contended that the right of self-determination was reserved to the peoples of sovereign States and could not be conceded to any community, group or people, even though they formed part of a larger political entity.⁴⁰⁵ It was also said, with respect to the right of self-determination of the people of Algeria, that the proclamation of that right by France did not establish a corresponding right for the United Nations to intervene in the Algerian question.⁴⁰⁶

d. Article 2 (7) and the Charter provisions on the maintenance of international peace

352. Arguments referring specifically to the Charter provisions on the maintenance of international peace were submitted in many cases. Some representatives held that questions involving the peace and security of the world or a situation which had international repercussions or was likely

⁴⁰¹ *Case No. 37:* G A (XVI), Gen. Com., 146th mtg., para. 5; Plen., 1115th mtg., para. 37; 1120th mtg., paras. 23 and 25; G A (XVII), Gen. Com., 148th mtg., para. 47; 4th Com., 1360th mtg., para. 51; 1367th mtg., paras. 44, 48, 49, 67 and 70; Plen., 1152nd mtg., paras. 10–13; 1163rd mtg., para. 75; G A (XVIII), 4th Com., 1434th mtg., paras. 7 and 10; 1441st mtg., para. 13; G A (XX), 4th Com., 1518th mtg., para. 24; 1524th mtg., paras. 57, 60 and 63; 1544th mtg., para. 35; 1545th mtg., paras. 5 and 8; Plen., 1357th mtg., paras. 70, 71 and 77.

⁴⁰² *Case No. 48:* S C, 18th yr., 1064th mtg., paras. 19, 63 and 64; 1065th mtg., paras. 25 and 37–39; 1067th mtg., para. 7; 1069th mtg., paras. 7, 16, 17 and 37.

⁴⁰³ *Case No. 48:* *Ibid.*, 1066th mtg., paras. 45–48; 1068th mtg., paras. 83 and 101–103.

⁴⁰⁴ *Case No. 27:* G A (XIV), 1st Com., 1077th mtg., para. 15; G A (XV), Gen. Com., 127th mtg., para. 44; 1st Com., 1128th mtg., para. 14; 1130th mtg., para. 21.

Case No. 36: G A (XV), Gen. Com., 131st mtg., paras. 17 and 19; Spec. Pol. Com., 258th mtg., para. 20; 259th mtg., paras. 21 and 22; G A (XVII), Gen. Com., 148th mtg., para. 58; Spec. Pol. Com., 351st mtg., para. 24; 355th mtg., para. 9; G A (XVIII), Gen. Com., 153rd mtg., paras. 50 and 51; 4th Com., 1500th mtg., para. 3.

Case No. 46: S C, 16th yr., 943rd mtg., para. 36; 945th mtg., para. 66.

Case No. 47: S C, 16th yr., 950th mtg., para. 58.

⁴⁰⁵ *Case No. 27:* G A (XIV), Plen., 856th mtg., paras. 58, 96, 97, 99 and 104; 1st Com., 1078th mtg., para. 19.

⁴⁰⁶ *Case No. 27:* G A (XIV), Plen., 856th mtg., para. 3.

to cause international friction or endanger international peace could not fall essentially within domestic jurisdiction.⁴⁰⁷

353. Other representatives contended that in a particular case no danger for peace existed.⁴⁰⁸ One delegation stated, with respect to the policy of *apartheid*, that that policy had international repercussions which lifted the matter from the limitations of Article 2 (7) of the Charter; but he added that international repercussions were not necessarily the same thing as “to endanger the maintenance of international peace and security”, which was one of the most solemn phrases in the Charter and should be invoked only in the most serious circumstances.⁴⁰⁹ Another delegation warned against the dangers which might arise from internationalizing internal conflicts.⁴¹⁰

354. On the other hand, it was argued that it would be difficult to understand how any Article

⁴⁰⁷ *Case No. 2:* G A (XIV), Spec. Pol. Com., 173rd mtg., para. 3.

Case No. 5: G A (XVI), 4th Com., 1208th mtg., para. 33.

Case No. 11: G A (XIV), Spec. Pol. Com., 143rd mtg., paras. 6 and 19; 145th mtg., paras. 10, 18 and 19; 146th mtg., para. 20; G A (XV), Spec. Pol. Com., 233rd mtg., para. 28; 239th mtg., paras. 15, 21 and 26; G A (XVI), Spec. Pol. Com., 271st mtg., para. 10; 275th mtg., para. 46; 280th mtg., para. 31.

Case No. 27: G A (XIV), Gen. Com., 121st mtg., para. 30; G A (XV), Gen. Com., 127th mtg., paras. 43, 44, 46 and 47; 1st Com., 1132nd mtg., para. 7.

Case No. 34: G A (XVII), Spec. Pol. Com., 336th mtg., para. 25; G A (XVIII), Gen. Com., 153rd mtg., para. 14; Spec. Pol. Com., 384th mtg., para. 9.

Case No. 36: G A (XV), Gen. Com., 131st mtg., paras. 14 and 19; Spec. Pol. Com., 259th mtg., paras. 14 and 20.

Case No. 37: G A (XVIII), 4th Com., 1438th mtg., para. 27.

Case No. 39: G A (XV), Gen. Com., 134th mtg., paras. 9 and 13; Plen., 992nd mtg., para. 86.

Case No. 44: S C, 15th yr., 851st mtg., paras. 22, 23, 29 and 119; 852nd mtg., paras. 112 and 113; 854th mtg., para. 88; 855th mtg., para. 37.

Case No. 45: S C, 18th yr., 1050th mtg., paras. 41 and 42; 1052nd mtg., paras. 34 and 59; 1053rd mtg., paras. 56, 57 and 71; 19th yr., 1134th mtg., para. 10.

Case No. 46: S C, 16th yr., 943rd mtg., para. 37; 945th mtg., para. 66.

Case No. 47: S C, 16th yr., 950th mtg., para. 59; 952nd mtg., paras. 4 and 47; 953rd mtg., paras. 5 and 6.

Case No. 48: S C, 18th yr., 1069th mtg., para. 24.

⁴⁰⁸ *Cases Nos. 2 and 11:* G A (XVI/1), Plen., 1014th mtg., para. 134.

Case No. 34: G A (XVII), Plen., 1164th mtg., para. 30.

Case No. 35: G A (XIV), Plen., 826th mtg., para. 46.

Case No. 36: G A (XVI), Spec. Pol. Com., 301st mtg., para. 7; G A (XVIII), Gen. Com., 153rd mtg., para. 49; 4th Com., 1499th mtg., para. 2; G A (XX), Gen. Com., 159th mtg., para. 5.

Case No. 37: G A (XVII), 4th Com., 1360th mtg., para. 51; G A (XVIII), 4th Com., 1441st mtg., para. 19.

Case No. 39: G A (XVI/2), Plen., 1088th mtg., para. 16.

Case No. 44: S C, 15th yr., 855th mtg., paras. 19–21.

Case No. 46: S C, 16th yr., 944th mtg., para. 39.

Case No. 48: S C, 18th yr., 1066th mtg., paras. 61 and 76; 1069th mtg., paras. 49 and 55.

⁴⁰⁹ *Case No. 11:* G A (XVI), Spec. Pol. Com., 274th mtg., para. 5.

Case No. 34: G A (XVII), Spec. Pol. Com., 339th mtg., para. 14; G A (XVIII), Spec. Pol. Com., 386th mtg., para. 9.

⁴¹⁰ *Case No. 44:* S C, 15th yr., 854th mtg., para. 9.

of the Charter — Article 2 (7) or any other — could prevent any organ of the United Nations from taking such action as was necessary to prevent any Member State from acting in a way which was likely to endanger the maintenance of international peace and security.⁴¹¹

355. Another argument ran as follows.⁴¹² It was sometimes said that only enforcement measures under Chapter VII could be taken in the face of the domestic jurisdiction provision. The distinction between a situation likely to endanger the maintenance of international peace and security and a threat to peace was obviously one of degree only, that is, of immediacy and of the seriousness of the danger to peace. To hold that enforcement measures only could be taken would constitute an abdication of the functions of the Security Council and an invitation to permit the situation to deteriorate. It would be most difficult to accept that point of view, which would mean that the United Nations had no authority to deal with certain questions, unless and until peace was directly and immediately threatened, when it might be too late to take effective preventive measures.

4. WHETHER THE DOMESTIC JURISDICTION OF A STATE EXTENDS OVER ALL ITS TERRITORIES

356. During the discussion in case No. 35 on the question of Tibet, the question arose whether, in view of the legal relationship between them, the domestic jurisdiction of the People's Republic of China extended over Tibet.

357. The inclusion of the question of Tibet in the agenda of the General Assembly and the Assembly's consideration of the matter were opposed on the ground that Tibet was an integral part of the People's Republic of China and subject to its sovereignty, so that discussion of the situation in Tibet would be to intervene, contrary to Article 2 (7) of the Charter, in matters essentially within the domestic jurisdiction of the Republic.⁴¹³

358. Without explicitly denying that Tibet was subject to Chinese sovereignty, some of those asserting the competence of the Assembly in the matter stated that the status of Tibet was not completely clear. It could with some justification be contended that Tibet enjoyed some of the characteristics of a separate international personality. The applicability of Article 2 (7) was therefore not beyond doubt.⁴¹⁴

⁴¹¹ *Case No. 44: Ibid.*, 852nd mtg., para. 8.

⁴¹² *Case No. 44: Ibid.*, paras. 146 and 147.

Case No. 45: S C, 18th yr., 1050th mtg., para. 41.

⁴¹³ *Case No. 35: G A (XIV)*, Gen. Com., 124th mtg., paras. 15, 22 and 28; Plen., 826th mtg., paras. 45 and 78; 827th mtg., para. 9; 831st mtg., para. 75; 832nd mtg., para. 64; 833rd mtg., paras. 40, 92, 104 and 152; 834th mtg., paras. 168 and 169; *G A (XV)*, Gen. Com., 127th mtg., para. 48; Plen., 898th mtg., paras. 63, 86 and 111; *G A (XVI)*, Gen. Com., 136th mtg., paras. 45 and 50; Plen., 1014th mtg., paras. 162 and 170; 1085th mtg., paras. 26, 58, 83 and 113; *G A (XX)*, Gen. Com., 159th mtg., para. 6; Plen., 1336th mtg., paras. 31, 44 and 58; 1401st mtg., paras. 11, 86, 127, 146, 154, 157 and 185; 1403rd mtg., paras. 42, 43 and 55.

⁴¹⁴ *Case No. 35: G A (XIV)*, Gen. Com., 124th mtg., para. 26; Plen., 826th mtg., paras. 36–38; 831st mtg., paras. 28–30; 834th mtg., paras. 104, 147, 181 and 182; *G A (XV)*, Gen.

359. The main argument for the Assembly's competence, however, was that the item dealt with violations of fundamental human rights and consequently did not come under Article 2 (7).⁴¹⁵

360. During the discussion in case No. 36, one of the main questions in dispute was whether the Sultan of Muscat and Oman had sovereignty over Oman or whether Oman was a sovereign State under an elected Imam. The representative of the United Kingdom defended the view that consideration of the matter by the United Nations would constitute an intervention in the domestic affairs of the Sultanate.⁴¹⁶ A number of representatives who favoured inclusion of the question in the agenda of the General Assembly held that, as the Sultan's domestic jurisdiction did not extend over Oman, no question of United Nations intervention in such jurisdiction arose.⁴¹⁷

361. Some of the representatives defending the latter position went further and contended⁴¹⁸ that the Sultanate was not in fact a sovereign State but a territory subservient to the United Kingdom, so that the item really was to be considered as a colonial

Com., 127th mtg., para. 51; Plen., 898th mtg., paras. 126 and 127; *G A (XVI)*, Gen. Com., 136th mtg., para. 46; Plen., 1084th mtg., paras. 143, 144 and 165; 1085th mtg., para. 97.

⁴¹⁵ *Case No. 35: G A (XX)*, Gen. Com., 159th mtg., para. 7; Plen., 1394th mtg., paras. 21–23, 49, 50, 52 and 81 (see also foot-notes 347, 348 and 360 above, and, for the opposing argument, foot-notes 361 and 365 above).

⁴¹⁶ *Case No. 36: G A (XV)*, Gen. Com., 131st mtg., paras. 2–7; *G A (XVI)*, Spec. Pol. Com., 301st mtg., paras. 7 and 26; *G A (XVII)*, Spec. Pol. Com., 353rd mtg., paras. 16 and 34; *G A (XVIII)*, Gen. Com., 153rd mtg., para. 49; 4th Com., 1436th mtg., para. 3; 1499th mtg., paras. 28–39, 42, 53, 54 and 65; 1502nd mtg., para. 65; 1508th mtg., para. 3; *G A (XX)*, Gen. Com., 159th mtg., para. 5; 4th Com., 1518th mtg., para. 20; 1571st mtg., paras. 1, 63, 67, 80 and 81; 1576th mtg., paras. 35–38; 1586th mtg., para. 9.

Some delegations supported the United Kingdom view, for example *G A (XVI)*, Spec. Pol. Com., 305th mtg., paras. 1–5 and 22; *G A (XVIII)*, 4th Com., 1500th mtg., paras. 53, 54, 56, 80 and 81; 1504th mtg., paras. 47 and 55–58; 1508th mtg., paras. 5–7; *G A (XX)*, 4th Com., 1586th mtg., para. 26; 1587th mtg., paras. 49 and 55.

⁴¹⁷ *Case No. 36: G A (XV)*, Gen. Com., 131st mtg., paras. 11, 14 and 16; Spec. Pol. Com., 255th mtg., para. 7; 256th mtg., para. 21; 257th mtg., para. 13; 258th mtg., paras. 5, 12 and 19; 259th mtg., paras. 7–9; *G A (XVI)*, Spec. Pol. Com., 299th mtg., paras. 33–39; 300th mtg., paras. 4–6, 15, 19, 23, 24 and 28; 301st mtg., para. 2; *G A (XVIII)*, 4th Com., 1500th mtg., para. 12; *G A (XX)*, 4th Com., 1573rd mtg., para. 51; 1575th mtg., paras. 26, 59 and 64.

⁴¹⁸ *Case No. 36: G A (XV)*, Spec. Pol. Com., 257th mtg., para. 13; 258th mtg., para. 18; 259th mtg., paras. 14 and 20; *G A (XVI)*, Spec. Pol. Com., 299th mtg., paras. 31 and 32; 300th mtg., paras. 2, 12 and 22; 301st mtg., paras. 2–5, 29 and 33; 302nd mtg., paras. 1, 6 and 8; 303rd mtg., paras. 6, 9, 27, 30, 35 and 42; 304th mtg., paras. 1–4, 14, 16, 19 and 25; 305th mtg., paras. 13 and 14; *G A (XVII)*, Spec. Pol. Com., 352nd mtg., paras. 9, 10 and 17; 353rd mtg., paras. 13–15, 45 and 51; 354th mtg., paras. 9–11, 17 and 18; 355th mtg., paras. 3, 6, 7, 11, 14, 15, 26 and 29; 356th mtg., paras. 3, 7–9 and 16; *G A (XVIII)*, 4th Com., 1499th mtg., paras. 2, 22 and 56; 1500th mtg., paras. 59 and 70; 1501st mtg., paras. 16, 17, 25, 32, 38, 44, 49, 54, 62 and 66; 1502nd mtg., para. 1, 8, 9, 14–20 and 48; 1503rd mtg., paras. 1, 7, 12, 15, 23, 24, 34, 41, 52 and 63; 1504th mtg., paras. 16 and 28; 1505th mtg., para. 46; 1506th mtg., para. 5; Plen., 1277th mtg., para. 9–11; *G A (XX)*, 4th Com., 1571st mtg., para. 2; 1573rd mtg., para. 38; 1574th mtg., paras. 18, 32, 35, 45 and 51; 1575th mtg., paras. 6, 8, 15, 71 and 74; 1576th mtg., paras. 16 and 24.

question which should be dealt with in accordance with the Declaration on decolonization contained in Assembly resolution 1514 (XV) of 14 December 1960. It was also said that Article 2 (7) was usually invoked by the State which considered that the United Nations was intervening in its domestic affairs, not by another State speaking on its behalf; once another delegation spoke on behalf of Muscat, the latter could no longer be regarded as an independent State and the plea of domestic jurisdiction became meaningless. Article 2 (7), the argument concluded, was repeatedly invoked by the colonial Powers, but in such cases those Powers were eventually overruled and the dominated peoples became free.⁴¹⁹

5. WHETHER CIVIL STRIFE IN CERTAIN SITUATIONS IS NOT A MATTER FALLING ESSENTIALLY WITHIN DOMESTIC JURISDICTION

362. The question whether civil strife in certain situations was not a matter falling essentially within domestic jurisdiction was debated in case No. 30 regarding the question of Hungary. It was stated that the situation in Hungary was caused by foreign armed intervention in violation of Article 2 (4) of the Charter and therefore could not possibly be a matter essentially within the domestic jurisdiction of Hungary. The situation was foreign in origin, and the United Nations therefore had the right and duty to examine it. The military intervention in Hungary was the established fact from which the United Nations derived its authority and its responsibility under the Charter to consider the question and to take such measures as it might deem appropriate to remedy the continuing injustices that had resulted from that tragic episode.⁴²⁰

363. Against that view it was argued that there were actually no foreign armed forces in Hungary. The question whether the armed forces of States parties to the Treaty of Warsaw were entitled to be posted in Hungary — a party to that regional agreement — was solely the concern of the States parties to the Treaty. No foreign intervention had taken place in putting an end to the counter-revolution in Hungary; exclusive responsibility for those actions rested with the Government of the Hungarian People's Republic. Therefore no paragraph in the Charter authorized any organ of the United Nations to intervene in the matters discussed under the heading "Question of Hungary" because those matters were essentially within the domestic jurisdiction of the Hungarian People's Republic.⁴²¹

364. The issue arose also in case No. 36 on the question of Oman. The representative of the United Kingdom maintained that the conflict between the Sultan of Muscat and Oman and the Imam of Oman was an internal conflict within the Sultanate

and that the reason United Kingdom troops were involved was that the United Kingdom had for a long time had close and friendly relations with the Sultanate and had come to the Sultan's assistance at his request. Thus, as the matter was of a domestic character, it should not be dealt with by the General Assembly.⁴²²

365. Against that position it was maintained that Oman was a separate entity with its own sovereignty and that therefore the matter fell outside the domestic domain of the Sultan. It was further argued that even if the issue were conceded to be domestic in character, the right of the United Kingdom to intervene in an internal conflict would still deserve consideration. Authority was cited in support of the opinion that a foreign Power should not intervene in a domestic dispute, even in pursuance of a treaty, for such interference would necessarily be directed against part of the population of the country concerned. Those two aspects of the matter, the argument continued, indicated that the question should be included in the agenda of the General Assembly.⁴²³

366. The matter was discussed also in case No. 43 regarding the situation in the Congo, although from another viewpoint. By its resolution 146 (1960) of 9 August 1960, the Security Council affirmed that the United Nations Force in the Congo must not intervene in any internal conflict, constitutional or otherwise. During the debates in the Council leading to that resolution, and thereafter on the application in various circumstances of the limitations thus imposed upon the United Nations activities in the Congo, it was on several occasions stated that what seemed to be an internal conflict had in fact an international character because of foreign intervention.

367. While some representatives considered that the question of Katanga was a domestic problem,⁴²⁴ others stated that it could not be so regarded so long as foreign troops remained in the Congo.⁴²⁵ In Katanga, it was further stated, foreign military forces had organized and supported Mr. Tshombe's rebellion and were assisting it with arms, war materials and officers. To refrain, in those circumstances, from giving the assistance requested by the Central Government in order to restore law and order in the whole of the territory of the Republic of the Congo and to ensure the territorial integrity of the country

⁴¹⁹ *Case No. 36*: G A (XVII), Spec. Pol. Com., 351st mtg., para. 20. For the opinion of the *Ad Hoc* Committee in Oman in the matter, see G A (XIX), Annex No. 16, A/5846.

⁴²⁰ *Case No. 30*: G A (XIV), Gen. Com., 125th mtg., para. 9; Plen., 844th mtg., para. 37; 849th mtg., paras. 26, 86, 104 and 204; 850th mtg., paras. 45, 88–96, 106 and 109.

⁴²¹ *Case No. 30*: G A (XIV), Gen. Com., 125th mtg., para. 8; Plen., 848th mtg., paras. 117 and 122.

⁴²² *Case No. 36*: G A (XV), Gen. Com., 131st mtg., paras. 5 and 7; G A (XVII), Spec. Pol. Com., 353rd mtg., para. 28; 356th mtg., para. 22; G A (XVIII), 4th Com., 1499th mtg., para. 40.

⁴²³ *Case No. 36*: G A (XV), Gen. Com., 131st mtg., paras. 11 and 12; Spec. Pol. Com., 255th mtg., paras. 11 and 12; 256th mtg., para. 4; 258th mtg., paras. 14 and 19; 259th mtg., paras. 7–9; G A (XVII), Spec. Pol. Com., 353rd mtg., para. 41; 354th mtg., para. 7; G A (XVIII), 4th Com., 1501st mtg., para. 19; 1502nd mtg., paras. 37 and 38.

⁴²⁴ *Case No. 43*: S C, 15th yr., 879th mtg., para. 25; 886th mtg., paras. 70, 121, 144 and 180; 888th mtg., paras. 151 and 152; 889th mtg., paras. 71 and 114. Regarding the position of the Secretary-General, see S C, 15th yr., Suppl. for July–Sept., S/4417/Add.6.

⁴²⁵ *Case No. 43*: S C, 15th yr., 885th mtg., para. 15; 886th mtg., paras. 103, 217–221 and 228; 888th mtg., paras. 54–67; 889th mtg., para. 85; 896th mtg., para. 136.

would be tantamount to indirect support of a colonialist intervention.⁴²⁶

368. Also, with respect to the Mobutu régime, it was alleged that the régime was not a strictly domestic affair of the Congo, but an international problem because it had been founded and was being sustained through foreign intervention.⁴²⁷

6. WHETHER MINORITY QUESTIONS CAN FALL ESSENTIALLY WITHIN DOMESTIC JURISDICTION

369. The question whether minority questions could fall essentially within domestic jurisdiction was discussed in connexion with case No. 38. The Government of Austria proposed⁴²⁸ for inclusion in the agenda of the fifteenth session of the General Assembly an item entitled "The problem of the Austrian minority in Italy". In the debate on the adoption of the agenda the representative of Austria contended⁴²⁹ that the competence of the United Nations to deal with minority problems was uncontroverted.

370. The representative of Italy objected to the formulation of the item and stated⁴³⁰ that only because there was an international agreement between Austria and Italy on the matter could any claim be made for discussion of the question by the United Nations. If there had not been such an agreement, the matter would clearly be within Italian domestic jurisdiction. The approval of the item as formulated by Austria would amount to sanctioning the principle that questions concerning citizens of one State might be submitted to the Assembly by another State merely on the ground that such citizens constituted a minority: that would be clearly contrary to the principles of the Charter. The Italian delegation therefore proposed that the item should read "Implementation of the international agreement between Italy and Austria of 5 September 1946".

371. After a discussion⁴³¹ in which some speakers expressed sympathy for the Austrian formulation, others for the Italian view, and all were in favour of seeking a compromise solution, agreement was reached on the following wording of the item: "The status of the German-speaking element in the province of Bolzano (Bozen); implementation of the Paris agreement of 5 September 1946".⁴³²

372. During the substantive discussion of the item, the representative of Italy again emphasized that the Paris agreement was the only legal title under which Austria could raise the status of the German-speaking inhabitants of the province of Bolzano. He wondered what principles, other than the Paris agreement, could give an international body the right to deal with the situation of a group

of Italian citizens. Any demand on the part of Austria which went beyond the implementation of the Paris agreement was incompatible not only with the basic principles of international law but with the United Nations system itself, as defined in Article 2 (7) of the Charter.⁴³³

373. The representative of Austria replied that it was fallacious to plead the incompetence of the General Assembly under Article 2 (7) of the Charter; the General Assembly had explicitly stated in its resolution 217 C (III) that it could not remain indifferent to the fate of minorities. In any case, the effect of the Paris agreement had been that the status of the Austrian minority had ceased to be essentially and exclusively within the domestic jurisdiction of Italy.⁴³⁴

374. Other speakers also referred to the question of United Nations competence with respect to minority problems. One view was that the problem of minorities had, after the Second World War, been transformed into a question of human rights. The concept that minorities were entitled to an autonomous status or government or that political prerogatives of that kind were an essential safeguard was alien to the United Nations Charter. The political status of the inhabitants involved was a matter outside the General Assembly's competence; on the other hand, the General Assembly was empowered to consider their situation to the extent that fundamental human rights were at issue.⁴³⁵

375. Against that view, the representative of Austria, and some speakers supporting him, argued⁴³⁶ that it was only partly true that the protection of minorities had radically changed after the Second World War. After the First World War the protection of minorities had been based only on specific norms, whether unilateral, bilateral or multilateral. After the Second World War the United Nations had undertaken the task of providing minorities with general protection, whether or not they were also covered by specific protective provisions. In that connexion, attention was drawn to General Assembly resolution 217 C (III) which referred to "effective measures for the protection of racial, national, religious or linguistic minorities" — in other words, groups as such.

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

376. Reference was made to the last phrase of Article 2 (7) in case No. 5, during discussion in the Fourth Committee on the non-compliance of the Government of Portugal, *inter alia*, with Chapter

⁴²⁶ Case No. 43: *Ibid.*, 904th mtg., para. 44; 906th mtg., para. 44.

⁴²⁷ Case No. 43: S C, 16th yr., 931st mtg., para. 120; 937th mtg., paras. 11 and 12; 975th mtg., paras. 73, 87, 92 and 113. See also paras. 380—385 below.

⁴²⁸ Case No. 38: G A (XV), Annexes, a.i. 68, A/4395.

⁴²⁹ Case No. 38: G A (XV), Gen. Com., 128th mtg., para. 3.

⁴³⁰ Case No. 38: *Ibid.*, 127th mtg., paras. 17 and 18.

⁴³¹ Case No. 38: *Ibid.*, paras. 19—35; 128th mtg., paras. 1—8.

⁴³² Case No. 38: *Ibid.*, 128th mtg., para. 9.

⁴³³ Case No. 38: G A (XV), Spec. Pol. Com., 176th mtg., paras. 27 and 36.

⁴³⁴ Case No. 38: *Ibid.*, 178th mtg., paras. 10 and 12.

⁴³⁵ Case No. 38: *Ibid.*, 177th mtg., paras. 9 and 10; 181st mtg., para. 17; 182nd mtg., paras. 12, 29 and 35; G A (XVI), Spec. Pol. Com., 294th mtg., para. 15.

⁴³⁶ Case No. 38: G A (XV), Spec. Pol. Com., 178th mtg., para. 13; 180th mtg., para. 12; 182nd mtg., paras. 20 and 21.

XI of the Charter. It was stated that the last phrase of Article 2 (7) was relevant when the Security Council and the General Assembly were considering the situation in a dependent Territory because it constituted a threat to international peace and security, and because human rights were said to have been violated.⁴³⁷ Reference to the same phrase was made during discussion in the Special Political Committee in case No. 11 on the question of race conflict in South Africa, when it was argued that *apartheid* was certainly a threat to the peace.⁴³⁸

377. In the debate on the adoption of the agenda in case No. 48 on the situation in Southern Rhodesia, the United Kingdom representative stated that Article 2 (7) clearly applied to the question of Southern Rhodesia. Therefore the onus was on those countries which had brought the item before the Security Council to establish that a situation existed in Southern Rhodesia calling for action under Chapter VII of the Charter and thereby justifying the derogation from Article 2 (7) provided for in the last sentence of that paragraph. Having made that declaration, the representative said, however, that he would not contest the inclusion of the item in the agenda.⁴³⁹

378. In the discussion of the substance of the item, several representatives, without explicitly referring to Chapter VII, stated that events in Southern Rhodesia were a threat to peace or a likely threat to peace.⁴⁴⁰ The United Kingdom representative, on the other hand, maintained⁴⁴¹ that there was no ground for action under Chapter VII; he added that in that connexion he must reject any contention that the Security Council should in some way anticipate hypothetical troubles in an indefinite future.⁴⁴²

379. Reference to Chapter VII was also made in case No. 45 regarding the question of race conflict in South Africa, and in case No. 46 regarding the situation in Angola, to justify the competence of the Security Council to deal with the matter.⁴⁴³

380. During the discussion in the Security Council in case No. 43, regarding the situation in the Congo, the Secretary-General stated that "in the light of the domestic jurisdiction limitation of the Charter, it must be assumed that the Council would not authorize the Secretary-General to intervene with armed troops in an internal conflict, when the Council had not specifically adopted enforcement measures

under Articles 41 and 42 of Chapter VII of the Charter". At a later stage of the debates he quoted that statement and added that at the time when it was made no one in the Council had raised any question about it.⁴⁴⁴

381. On the latter occasion, some comment was made. One representative said⁴⁴⁵ that because, in the circumstances, it had been unnecessary to have recourse to Articles 40 and 41, the Council had not referred to them. The United Nations had been invited by the lawful Government of the Republic of the Congo to go into the country to maintain law and order and to uphold its independence and political integrity. That overriding invitation was sufficient to make the action taken by the Security Council lawful action and to entitle the United Nations to send its forces into the Congo for that purpose.

382. It was argued, on the other hand, that legal ingenuity would be stretched to regard Article 39 of the Charter as applicable in the Congo case, which involved a power conflict, a struggle for political leadership, a dispute over the legitimacy of a government, in short, a problem of a constitutional nature which was unquestionably a matter within the Congo's domestic jurisdiction, safeguarded by Article 2 (7) of the Charter.⁴⁴⁶

383. In his second report⁴⁴⁷ on the implementation of Security Council resolutions 143 (1960) and 145 (1960) of 14 and 22 July 1960, the Secretary-General pointed out that the Katanga authorities considered the presence of the United Nations Force in Katanga as jeopardizing the possibility of their working for a constitutional solution other than a strictly unitarian one. That was, however, an internal problem to which the United Nations could not be a party, he said. At a meeting of the Security Council on 7 December 1960, the Secretary-General stated that if the United Nations Force were employed to "enforce the Constitution" it would involve the United Nations in coercive action against competing political factions, and "such forcible intervention in internal constitutional and political conflict could not be considered compatible with the basic principles of Article 2 of the Charter relating to sovereign equality and non-intervention in domestic jurisdiction."⁴⁴⁸ At a Security Council meeting on 1 February 1961, the Secretary-General stated that it was not the task of the United Nations to act for the Congolese people and to take political or constitutional initiatives aiming at the establishment of a government. That was true not only in the sense that the United Nations had no right to try to impose on the Congo any special régime, but also in the sense that the Organization could not support the effort of any faction to impose such a régime. The duty of the United Nations was to deal only with interference from outside the

⁴³⁷ *Case No. 5*: G A (XVI), 4th Com., 1208th mtg., para. 33.

⁴³⁸ *Case No. 11*: G A (XVI), Spec. Pol. Com., 270th mtg., para. 8.

⁴³⁹ *Case No. 48*: S C, 18th yr., 1064th mtg., paras. 6 and 8.

⁴⁴⁰ *Case No. 48*: *Ibid.*, paras. 18 and 72; 1065th mtg., paras. 3, 27, 29, 40 and 63; 1066th mtg., paras. 88, 98 and 101; 1067th mtg., para. 6; 1068th mtg., para. 30; 1069th mtg., paras. 16 and 17.

⁴⁴¹ *Case No. 48*: S C, 18th yr., 1066th mtg., paras. 3 *et seq.*, 76; 1069th mtg., para. 55.

⁴⁴² It may be noted that by resolution 221 (1966), of 9 April 1966, the Security Council determined that the situation resulting from a violation of the embargo on oil constituted a threat to the peace.

⁴⁴³ *Case No. 45*: S C, 19th yr., 1130th mtg., paras. 21–26; 1131st mtg., paras. 8 and 9.

Case No. 46: S C, 16th yr., 943rd mtg., para. 71.

⁴⁴⁴ *Case No. 43*: S C, 15th yr., 887th mtg., para. 44; 920th mtg., para. 73.

⁴⁴⁵ *Case No. 43*: *Ibid.*, 920th mtg., paras. 106 and 107.

⁴⁴⁶ *Case No. 43*: *Ibid.*, 916th mtg., para. 66.

⁴⁴⁷ *Case No. 43*: S C, 15th yr., Suppl. for July–Sept. S/4417, para. 10.

⁴⁴⁸ *Case No. 43*: S C, 15th yr., 913th mtg., para. 29.

country and to maintain law and order within the country. It could not go beyond any of those points, and in its efforts to insulate the country from outside interference and to maintain law and order, the Organization must stay strictly within the limits established by the Charter.⁴⁴⁹

384. The point of view of the Secretary-General concerning the limits to United Nations action in the Congo was supported by several representatives.⁴⁵⁰ One of those representatives added that, in the case of violation of human rights, it was not always possible to invoke the argument that matters within the domestic jurisdiction of a State were involved. The observance of the Charter was binding upon Member States which, in signing it, had recognized that their domestic jurisdiction was to some measure subordinate to the international jurisdiction of the United Nations. In that respect the Republic of the Congo must be called on to fulfil its essential obligation to safeguard human rights.⁴⁵¹

385. Other representatives opposed the Secretary-

⁴⁴⁹ *Case No. 43*: S C, 16th yr., 928th mtg., paras. 67, 83 and 84.

⁴⁵⁰ *Case No. 43*: S C, 15th yr., 885th mtg., paras. 44, 45, 62, 63, 69 and 78; 886th mtg., paras. 12, 70, 71, 80, 140–145 and 161; 916th mtg., paras. 50–52; 918th mtg., paras. 63 and 69; 16th yr., 939th mtg., para. 71; 942nd mtg., para. 97.

⁴⁵¹ *Case No. 43*: S C, 15th yr., 916th mtg., paras. 65–69.

General's point of view. The representative of the Republic of the Congo maintained that it was an error to reduce the Katanga question to a constitutional issue.⁴⁵² While agreeing with the principle of non-intervention, other representatives held that authority in Katanga rested with the Belgian troops. Therefore, to refrain from sending the United Nations Force into Katanga indicated indirect support of Belgian intervention and direct acquiescence in the occupation of that province as well as in the Belgian-inspired opposition to the Government of the Congo. That, in turn, constituted an intervention in the internal affairs of the Congo.⁴⁵³ It was further held that the mandate given to the Secretary-General in Security Council resolutions 143 (1960) and 145 (1960) had been sufficient to override objections based on Article 2 (7) against introducing the United Nations Force in Katanga without the consent of the local authorities in order to secure the release of the Prime Minister, Patrice Lumumba, and other Ministers and Deputies.⁴⁵⁴

⁴⁵² *Case No. 43*: *Ibid.*, 885th mtg., paras. 13–15.

⁴⁵³ *Case No. 43*: *Ibid.*, 886th mtg., paras. 103 and 218; 904th mtg., paras. 43–47.

⁴⁵⁴ *Case No. 43*: *Ibid.*, 914th mtg., para. 62; 916th mtg., paras. 116, 117 and 119; 918th mtg., paras. 20–24, 30, 40 and 41; 16th yr., 931st mtg., paras. 67 and 86–88; 937th mtg., paras. 11 and 12.

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

386. Except for objections to the inclusion of an item in the agenda, no proposals to declare that an item was outside the competence of the United Nations because of Article 2 (7) were submitted to the General Assembly or the Security Council during the period under review.

387. In all the cases studied in this *Supplement* where objections were raised on the grounds of Article 2 (7), the representatives of the States raising the objections participated in the debates on the adoption of the agenda, except in the Security Council in case No. 45 on the question of race conflict in South Africa.

388. In that case, the Government of South Africa did not request to participate in the debate as it had done in other cases affecting its interests. When invited by the Council to do so, its representative answered by letter that the Government had decided not to participate in the discussion by the Council of matters relating to South African policy which fell solely within domestic jurisdiction. In that case, therefore, South Africa did not take part either in the discussion on the inclusion of the item in the agenda or in the debate on the item itself.⁴⁵⁵

389. In all other cases, representatives of States raising objections on the grounds of Article 2 (7) participated in the debates and in the voting on the items themselves — in the latter, in the Security Council, when they were members — with the following additional exceptions.

390. In case No. 2 on the treatment of people of Indo-Pakistan origin in South Africa, the representative of South Africa did not take part in the deliberations of the General Assembly on the substance of the matter at any of the sessions.

391. In case No. 11 on the question of race conflict in South Africa, no representative of South Africa participated in the deliberations of the General Assembly on the item itself at the fourteenth session. At the fifteenth session South Africa did not take part in the consideration of the matter in the Special Political Committee; its representative made a statement of protest in plenary, when the draft resolutions of the Committee were submitted, but did not take part in the voting on them. At the sixteenth session the representative of South Africa participated fully in the deliberations in the Committee and in plenary.

392. In case No. 27 on the question of Algeria, at the fourteenth, fifteenth and sixteenth sessions, the three sessions when the matter was on the agenda of the General Assembly, the representative of France stated that his delegation would not participate in the deliberations on the item.⁴⁵⁶

393. In case No. 34 on the policies of *apartheid* of South Africa, at all three sessions — the seventeenth, eighteenth and twentieth — of the General Assembly at which the item was considered, the

⁴⁵⁵ See further case No. 45 in the General Survey.

⁴⁵⁶ See further case No. 27 in the General Survey.

delegation of South Africa refrained from participating in the deliberations in the Special Political Committee, but took part in the debates and voting in plenary.

394. In case No. 37 on the question of Southern Rhodesia, the United Kingdom took part in the debates in the General Assembly, but not in the voting.

395. In case No. 39 on the situation in Angola, Portugal did not take part in the deliberations on the item in the General Assembly at the fifteenth session. At the sixteenth session, the Portuguese representative took part in the debate but not in the voting, while at the seventeenth session he participated both in the discussion and voting.

396. In case No. 41, during the discussion in the Sixth Committee, at the eighteenth session of the General Assembly, it was said that one ambiguity of Article 2 (7) was the uncertainty as to who decided that a question was within domestic jurisdiction. The absence of a clear-cut interpretation of that aspect of the Article had caused difficulties in the process of decolonization. However, when the United Nations wished to intervene it seemed absurd to allow the State concerned to make the decision.⁴⁵⁷

397. One representative commented⁴⁵⁸ along the following lines in that case on procedures for implementing Article 2 (7).

398. Unlike Article 2 (7), the corresponding provision of the League Covenant (Article 15, paragraph 8) explicitly required an express finding by the League Council on the question whether a matter lay solely within the domestic jurisdiction of a State. Although the cases in which the League had to make such a pronouncement were few, it appeared that the Council's consistent position was that such findings should be made by a body possessing legal competence.

399. The implementation of Article 2 (7) of the Charter had been less formal. United Nations organs had determined their competence in terms of substantive action. Thus, they had frequently adopted resolutions over objections raised on the grounds of that provision. On other occasions, the organ concerned had rejected motions that it lacked competence on the grounds of Article 2 (7) or had positively affirmed its competence. On two occasions, proposals that an advisory opinion on the question of competence should be requested of the International Court of Justice had been rejected.

400. In the representative's view, that less formal procedure was not in principle objectionable. It was consistent with the terms of Article 2 (7). It was also in consonance with opinions expressed at the San Francisco Conference, where it had been held that each United Nations organ should normally interpret the provisions of the Charter applicable to

its functions. In the event of a divergence of views among organs as to the correct interpretation of a given provision, an advisory opinion could always be requested of the International Court of Justice by the General Assembly or the Security Council. In some previous cases, that procedure might have been useful. It could provide a sound basis for subsequent proceedings in the organs concerned and might induce the State which had raised the jurisdictional objection to be more co-operative. The intrinsic value of the opinion of the Court should also be borne in mind. Although Article 2 (7) did not refer to international law, the rights and obligations of States members of international organizations and the competence of the latter must be interpreted in the light of international law.

401. In case No. 44 on the question of race conflict in South Africa, the representative of the Union of South Africa withdrew from the Security Council table after having protested the inclusion of the item in the agenda. A proposal by Tunisia that through its President the Security Council should ask the representative of South Africa whether he intended to take part in the Council's proceedings was rejected by the Council. The vote was 6 in favour to none against, with 4 abstentions. The representative of the Union of South Africa returned to the Council table at a subsequent meeting.⁴⁵⁹

402. In case No. 48 in the Security Council on the situation in Southern Rhodesia, the United Kingdom voted against a draft resolution which thereby failed of adoption because the negative vote was that of a permanent member of the Council.⁴⁶⁰

403. In the India-Pakistan question⁴⁶¹ considered in the Security Council in October 1965, the Indian representative objected to statements by the representative of Pakistan on the ground that they related to matters which were exclusively within the domestic jurisdiction of India. The President (Uruguay) asked the representative of Pakistan to refrain from commenting on matters which were within the domestic jurisdiction of another State. One representative, however, stated that the question which the Council was discussing had been before it for the previous 17 years and that the Council had assumed jurisdiction. The parties had accepted the authority of the Council and the question of domestic jurisdiction thus did not arise. When the representative of Pakistan resumed his statement, the representative of India withdrew from the Council chamber on the ground that the representative of Pakistan continued to refer to matters within India's domestic jurisdiction.⁴⁶²

⁴⁵⁷ *Case No. 41: G A (XVIII), 6th Com., 805th mtg., para. 25.*

⁴⁵⁸ *Case No. 41: G A (XVIII), 6th Com., 825th mtg., paras. 14-16.*

⁴⁵⁹ S C, 15th yr., 851st mtg., para. 81; 852nd mtg., paras. 167-174; 854th mtg., para. preceding para. 1.

⁴⁶⁰ See further case No. 48 in the General Survey.

⁴⁶¹ The question is not included as a separate case in this study because no significant discussion of Article 2 (7) took place.

⁴⁶² See S C, 20th yr., 1247th mtg., paras. 81, 83, 87, 88 and 109.

E. Effect of previous decisions by the General Assembly or the Security Council to deal with the question

404. In some of the cases, speakers in favour of inclusion of an item in the agenda relied on the fact that the General Assembly or the Security Council had previously overruled objections, based on Article 2 (7), to the inclusion of the item in question,⁴⁶³ or that a General Assembly resolution had stated that the United Nations would continue to be seized of the question,⁴⁶⁴ or that a General Assembly resolution had made requests in the matter which were being ignored.⁴⁶⁵

⁴⁶³ *Cases Nos. 2 and 11*: G A (XIV), Gen. Com., 122nd mtg., para. 3; G A (XV), Gen. Com., 127th mtg., paras. 37 and 38; Plen., 898th mtg., para. 53; G A (XVI), Gen. Com., 136th mtg., paras. 17 and 19. See also *Case No. 11*: G A (XIV), Spec. Pol. Com., 141st mtg., paras. 20 and 21; 142nd mtg., para. 28; 143rd mtg., para. 15; 147th mtg., para. 23; G A (XV), Spec. Pol. Com., 239th mtg., paras. 15 and 26; G A (XVI), Spec. Pol. Com., 273rd mtg., para. 1; 279th mtg., para. 15.

Case No. 5: G A (XIV), 4th Com., 975th mtg., para. 19; G A (XVI), 4th Com., 1204th mtg., paras. 9 and 10.

Case No. 27: G A (XIV), Gen. Com., 121st mtg., para. 28; G A (XV), Gen. Com., 127th mtg., para. 43; 1st Com., 1127th mtg., para. 18; 1128th mtg., para. 14; 1129th mtg., para. 27; 1132nd mtg., para. 38; 1133rd mtg., para. 10.

Case No. 30: G A (XIV), Plen., 849th mtg., para. 118; 851st mtg., para. 11.

Case No. 34: G A (XVII), Gen. Com., 148th mtg., para. 93; Spec. Pol. Com., 334th mtg., para. 19; G A (XVIII), Gen. Com., 153rd mtg., paras. 14 and 15; Plen., 1164th mtg., para. 181.

Case No. 35: G A (XV/1), Plen., 898th mtg., para. 107; G A (XVI), Gen. Com., 136th mtg., paras. 46–49; Plen., 1014th mtg., para. 169; 1084th mtg., para. 204; G A (XX), Gen. Com., 159th mtg., paras. 7, 12 and 14; Plen., 1336th mtg., paras. 48–50, 67 and 68.

Case No. 36: G A (XVI), Gen. Com., 135th mtg., para. 9; G A (XVII), Gen. Com., 148th mtg., paras. 57, 59 and 60; Spec. Pol. Com., 352nd mtg., para. 7; G A (XVIII), Gen. Com., 153rd mtg., paras. 50 and 51.

Case No. 37: G A (XVIII), Gen. Com., 153rd mtg., paras. 21 and 22; 4th Com., 1436th mtg., para. 48; G A (XX), 4th Com., 1525th mtg., para. 18.

Case No. 44: S C, 15th yr., 851st mtg., paras. 21 and 116; 854th mtg., para. 86; 855th mtg., para. 58.

Case No. 45: S C, 18th yr., 1050th mtg., paras. 43 and 44; 1051st mtg., paras. 35 and 36; 1073rd mtg., para. 18; 1074th mtg., para. 13; 19th yr., 1127th mtg., para. 178.

Case No. 47: S C, 16th yr., 952nd mtg., para. 3.

Case No. 48: S C, 18th yr., 1064th mtg., para. 19.

⁴⁶⁴ *Case No. 30*: G A (XIV), Gen. Com., 125th mtg., paras. 3, 9, 11 and 12; G A (XVI), Plen., 1087th mtg., para. 178.

Case No. 37: G A (XVI), Gen. Com., 146th mtg., para. 18; G A (XVII), Gen. Com., 148th mtg., para. 49; 4th Com., 1355th mtg., para. 55; G A (XVIII), 4th Com., 1435th mtg., para. 4.

⁴⁶⁵ *Case No. 30*: G A (XV/1), Plen., 898th mtg., paras. 137–151; G A (XVI), Gen. Com., 137th mtg., para. 12; Plen., 1014th mtg., paras. 209–213; G A (XVII), Gen. Com., 148th mtg., para. 79; Plen., 1129th mtg., paras. 309 and 313.

Case No. 35: G A (XV), Gen. Com., 127th mtg., paras. 49, 50, 51, 54–57; G A (XVI/1), Plen., 1084th mtg., para. 204; G A (XX), Gen. Com., 159th mtg., paras. 7 and 10; Plen., 1336th mtg., paras. 48–51; 1394th mtg., para. 59; 1401st mtg., para. 124.

405. Against the reasoning which contended that previous decisions of United Nations organs were decisive, it was argued that “in effect it means that if a wrongful act is repeated sufficiently often it thereby becomes a rightful act. According to that argument a violation of the Charter is validated by repetition”.⁴⁶⁶ It was further stated that “decisions of the Assembly do not acquire the force of law, and that the decisions of a particular session are not binding on subsequent sessions”. It was also said that the argument implied that the General Assembly could amend the Charter.⁴⁶⁷ Other arguments were that successive majorities in the General Assembly could not extend or restrict the meaning of Article 2 (7),⁴⁶⁸ and that resolutions adopted in violation of the Charter were illegal and no Member State would be prepared to respect them.⁴⁶⁹ An assertion of competence was an assertion and no more; it did not and could not make something exist which did not exist in the Charter itself; it could not establish or confer a new jurisdiction.⁴⁷⁰

406. In case No. 48 before the Security Council regarding the situation in Southern Rhodesia, where previous General Assembly resolutions were invoked, in addition to the argument that the assertion of competence by the General Assembly did not establish competence, it was said that the Security Council was no more able than the General Assembly of itself to alter the Charter. Moreover, it was added, the function of the Security Council under the Charter was not to act as a sort of general enforcement agency of the General Assembly.⁴⁷¹

Case No. 37: G A (XVIII), Gen. Com., 153rd mtg., para. 22; 4th Com., 1434th mtg., para. 18; 1436th mtg., para. 13; 1443rd mtg., paras. 29 and 31; 1444th mtg., paras. 23 and 45; 1447th mtg., paras. 15 and 16; G A (XX), 4th Com., 1518th mtg., para. 34; 1523rd mtg., para. 1.

Case No. 45: S C, 19th yr., 1128th mtg., para. 62; 1131st mtg., para. 74.

Case No. 48: S C, 18th yr., 1066th mtg., para. 88; 1068th mtg., para. 76 and 77.

⁴⁶⁶ *Cases Nos. 2 and 11*: G A (XVI/1), Plen., 1014th mtg., para. 135.

Case No. 34: G A (XVII), Plen., 1129th mtg., para. 322.

⁴⁶⁷ *Case No. 11*: G A (XV), Spec. Pol. Com., 242nd mtg., para. 13; 244th mtg., para. 3.

⁴⁶⁸ *Case No. 27*: G A (XIV), 1st Com., 1074th mtg., para. 2.

⁴⁶⁹ *Case No. 5*: G A (XVI), 4th Com., 1202nd mtg., para. 26; 1207th mtg., paras. 27 and 28; G A (XVII), 4th Com., 1406th mtg., para. 38.

Case No. 30: G A (XIV), Plen., 849th mtg., para. 140; G A (XVI), Plen., 1087th mtg., paras. 143, 144 and 174; G A (XVII), Plen., 1200th mtg., para. 67.

Case No. 35: G A (XVI/2), Plen., 1085th mtg., para. 24.

Case No. 39: G A (XV), Plen., 966th mtg., para. 13.

Case No. 47: S C, 16th yr., 950th mtg., paras. 100 and 103.

⁴⁷⁰ *Case No. 37*: G A (XVI/3), Plen., 1120th mtg., para. 23; G A (XVII), Plen., 1152nd mtg., para. 10.

⁴⁷¹ *Case No. 48*: S C, 18th yr., 1066th mtg., paras. 44–49 and 58; 1069th mtg., para. 49.

F. Article 2 (7) and the principle of non-intervention

407. In case No. 41 in the General Assembly, regarding the principles of international law concerning friendly relations and co-operation among States, it was stated⁴⁷² that the principle of non-intervention found its expression in Article 2 (7) or at least was present there by implication, in particular if the paragraph was read in the light of the preamble to Article 2.

408. It was further stated⁴⁷³ that the Charter, by refusing authorization to the United Nations in Article 2 (7) to intervene in the internal affairs of States, had made it an even greater offence against the law for one State to interfere in the internal affairs of another. How could one possibly maintain that what was expressly forbidden to the United Nations itself in Article 2 (7) could be permissible for an individual State.

409. Specifically concerning treaties, it was said in case No. 42, in the Assembly, that a treaty which purported to confer upon a State a right of intervention in the domestic affairs of another State violated the principle of sovereign equality; furthermore, such a treaty would be contrary to Article 2 (7) of the Charter which, by prohibiting intervention by the United Nations in matters which were essentially within the domestic jurisdiction of any State, *a fortiori* ruled out such intervention by an individual State. Since such a treaty would be in conflict with Charter obligations, it would be invalid and inoperative.⁴⁷⁴

410. In case No. 41, a less positive formulation used was that, although Article 2 (7) referred only to the powers and functions of the United Nations itself, it did not leave the way open to States to take, individually or collectively, any action not open to the United Nations.⁴⁷⁵

411. Other speakers contended,⁴⁷⁶ on the contrary, that the principle of non-intervention was quite distinct from the domestic jurisdiction clause in Article 2 (7). The United Nations was not a sovereign State or a super-State. Its function was to establish and maintain international peace, security and justice, and its actions must be evaluated in that light; they could not be judged by the same rules as those of States. Article 2 (7), which placed a limitation on intervention by the United Nations, did not regulate the actions of States, which were governed by other

⁴⁷² *Case No. 41*: G A (XVIII), 6th Com., 802nd mtg., para. 14; 804th mtg., para. 28; 805th mtg., para. 24; 812th mtg., para. 12; 818th mtg., para. 5; 823rd mtg., para. 7; G A (XX), 6th Com., 876th mtg., para. 6; 877th mtg., para. 38; 887th mtg., para. 51.

⁴⁷³ *Case No. 41*: G A (XVIII), 6th Com., 815th mtg., para. 5; 820th mtg., paras. 8 and 32; G A (XX), 6th Com., 875th mtg., para. 40; 884th mtg., para. 26; 885th mtg., para. 16; 886th mtg., para. 45; 889th mtg., para. 20; 892nd mtg., paras. 13 and 49.

⁴⁷⁴ *Case No. 42*: G A (XX), 1st Com., 1404th mtg., para. 29; Plen., 1408th mtg., paras. 76 and 77.

⁴⁷⁵ *Case No. 41*: G A (XX), 6th Com., 881st mtg., para. 29.

⁴⁷⁶ *Case No. 41*: G A (XVIII), 6th Com., 804th mtg., para. 9; 811th mtg., para. 26; 821st mtg., para. 12; 822nd mtg., para. 38; 825th mtg., para. 8.

provisions, notably Article 2 (4). In support of that view reference was made to the preparatory work⁴⁷⁷ for the Charter.

412. In case No. 42, one representative pointed out that the term "intervention", as used in the principle of non-intervention, could not be applied to measures taken individually or collectively in self-defence, or to collective measures legitimately taken in the common interest in order to protect peace in accordance with the United Nations Charter.⁴⁷⁸ Another considered as admissible measures taken by the United Nations and other competent organs for maintaining peace or protecting human rights, provided those measures were in accordance with the United Nations Charter.⁴⁷⁹ Another representative stated that the obligation under the Charter for States not to intervene in the domestic affairs of other States was not just derived from Article 2 (1). It was affirmed in Article 2 (4). Article 2 (7) merely stated that the United Nations itself was bound by the principle of non-intervention.⁴⁸⁰ In addition, it was argued that the principle did not apply to matters which had been freely and voluntarily placed under international jurisdiction by the States signatories to the Charter. Consequently no objection could be raised on the basis of Article 2 (7) in the case of flagrant violations of the principles proclaimed in the Charter or of action taken by the competent United Nations organs to maintain international peace and security.⁴⁸¹

413. In case No. 49 in the Security Council, regarding the situation in the Dominican Republic, it was argued that since the Charter, in Article 2 (7), prohibited the United Nations, which was responsible for maintaining international peace and security, from intervening in the domestic matters of Member States, it was obvious that the intervention of one of the Members in the affairs of another was also illegal.⁴⁸² That was also clear, it was added, from the preamble of Article 2, which expressly stated that "the Organization and its Members ... shall act in accordance with the following principles", that is, the principles enumerated in the seven paragraphs of the Article.⁴⁸³

⁴⁷⁷ *Documents of the United Nations Conference on International Organization*, (doc. 1070, I/1/34 (1) (d), vol. VI, pp. 486-489).

⁴⁷⁸ *Case No. 42*: G A (XX), 1st Com., 1398th mtg., para. 29.

⁴⁷⁹ *Case No. 42*: *Ibid.*, 1402nd mtg., para. 47.

⁴⁸⁰ *Case No. 42*: *Ibid.*, 1405th mtg., para. 39.

⁴⁸¹ *Case No. 42*: *Ibid.*, 1400th mtg., para. 34.

⁴⁸² *Case No. 49*: S C, 20th yr., 1196th mtg., paras. 27 and 166; 1198th mtg., para. 23; 1200th mtg., paras. 74 and 75; 1203rd mtg., para. 48.

⁴⁸³ *Case No. 49*: S C, 20th yr., 1204th mtg., para. 23. In connexion with the Punta del Este decisions of the Organization of American States, it was contended that these decisions violated the right of non-intervention granted to States in the inter-American community by article 15 of the Charter of the Organization of American States and Article 2 (7) of the United Nations Charter; and that a group of States was not entitled to take action with respect to the social system of a State, as even the United Nations, under Article 2 (7) of the Charter, could not intervene in matters which were within the domestic jurisdiction of a State (S C, 17th yr., 992nd mtg., paras. 71 and 106-108).

414. In opposition to that view, it was maintained that Article 2 (7) dealt exclusively with limitations on the authority of the United Nations itself and was

therefore in no way relevant to the case under discussion.⁴⁸⁴

⁴⁸⁴ *Case No. 49*: S C, 20th yr., 1198th mtg., para. 154.

ANNEX

List of resolutions adopted over objections raised on the grounds of Article 2 (7), without discussion of that provision, in cases not dealt with in the present study

<i>Organ</i>	<i>Resolution number</i>	<i>Title of resolution</i>
General Assembly	G A 1855 (XVII) ^a	The Korean Question
General Assembly	G A 1964 (XVIII) ^b	The Korean Question
General Assembly	G A 2217 (XXI) ^c	International Year for Human Rights
Economic and Social Council	E S C 974 (XXXVI) Parts DIII and DIV ^d	Exclusion of Portugal and South Africa from the Economic Commission from Africa

^a For objections raised on the grounds of Article 2 (7), see G A (XVII) Gen. Com., 148th mtg., para. 23; 1st Com., 1299th mtg., paras. 10 and 19; 1302nd mtg., para. 5; 1303rd mtg., para. 17; Plen., 1199th mtg., para. 106.

^b For objections raised on the grounds of Article 2 (7), see G A (XVIII), Gen. Com., 153rd mtg., para. 4; 1st Com., 1347th mtg., paras. 18, 35 and 39; 1349th mtg., para. 19; 1350th mtg., paras. 27, 29, 39 and 41; 1351st mtg., para. 6; Plen., 1280th mtg., para. 19.

^c Recommendation C in the annex to this resolution deals with the awarding of prizes in the field of human rights. For a memorandum of the Secretariat of the United Nations concluding that Article 2 (7) did not constitute an obstacle to such an award, see *United Nations Juridical Yearbook, 1965*, pp. 232 and 233.

^d See E S C (XXXVI), 1289th mtg., paras. 59, 60 and 63–65, 1290th mtg., paras. 3 and 9. It may be noted that the question of domestic jurisdiction was also discussed at the same session of the Economic and Social Council in connexion with the rejection by the Council of a proposal submitted by the representative of the USSR to include in the agenda of the session an additional item entitled "Policy of genocide which is being pursued by the Government of the Republic of Iraq against the Kurdish people". E S C (XXXVI), 1278th mtg., paras. 11–14, 23, 24, 27, 28, 33, 36, 39–41, 43 and 45–48.