

ARTICLE 33

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TEXT OF ARTICLE 33

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

INTRODUCTORY NOTE

1. The present study adopts the same criteria for the selection and presentation of material as those used in the previous study of Article 33 in the Repertory. Thus, Article 33 (1) is examined from the point of view of the relation between the obligation of the parties to seek peaceful settlement of a dispute or situation and the intervention in the question of the Security Council or of the General Assembly.

Discussion of such intervention has taken place on those occasions, inter alia, when a question has been submitted to the Security Council on the ground that prior efforts at peaceful settlement by the parties themselves have failed. Actions or decisions of the Security Council bearing on resort by the parties to the procedures of pacific settlement contemplated in Article 33 (1) are considered relevant to Article 33 (2).

2. The structure of the present study is the same as that of the previous study.
3. The General Survey presents the chief instances of reference to the use of peaceful means of settlement by the parties in the decisions or proceedings of the Security Council or the General Assembly. Brief mention is also made of instances of explicit or implicit reference to Article 33 in communications to the Security Council.
4. During the period under view, no constitutional debate concerning the application or interpretation of Article 33 has taken place in the Security Council. Nor has such discussion taken place in the General Assembly except in connexion with the question of the obligation of the parties under Article 33 (1) in relation to the intervention of the General Assembly, a matter dealt with in the Analytical Summary of Practice under section II,B,1.

I. GENERAL SURVEY

A. Action by the Security Council

5. In connexion with the Palestine question, the Security Council has repeatedly placed emphasis on the necessity of using the procedures of pacific settlement provided for in Article 33 (1) or in agreements between the parties concerned. 1/

(1) After consideration of the agenda item "Complaint by Israel against Egypt concerning: (a) enforcement by Egypt of restrictions on the passage of ships trading with Israel through the Suez Canal", the President of the Council (New Zealand), in closing the proceedings on the item, took note of a suggestion made by the representative of Peru that the Chief of Staff of the Truce Supervision Organization, as representative of the United Nations, should offer his services to the parties to arrange for the carrying out of measures to which the parties might agree. The President stated that he had no doubt that, if requested by the parties, the Chief of Staff would be prepared "to extend his good offices". 2/

(2) In connexion with the agenda item "Status of compliance given to the General Armistice Agreement and the resolutions of the Security Council adopted during the past year", the following resolutions adopted by the Council contained provisions relating to means of peaceful settlement: (a) by a resolution adopted at the 722nd meeting on 4 April 1956, the Council, inter alia requested the Secretary-General to arrange with the parties for the adoption of any measures which would reduce existing tensions, and called upon the parties to co-operate with the Secretary-General in the implementation of the resolution; 3/ (b) by a resolution adopted at the 728th meeting

1/ See also in this Supplement, under Articles 34, 36 and 40.

2/ S C, 10th yr., 688th mtg., paras. 34, 101 and 102.

3/ S C, 11th yr., 722nd mtg., provisional record, pp. 23-25; S/3575.

on 4 June 1956, the Council requested the Secretary-General to continue his good offices with the parties. 4/

6. In connexion with the question of alleged attack on a United States Navy aircraft, 5/ the representative of the United States invoked the provisions of Chapter VI of the Charter and declared that he had submitted the question to the Council because the Soviet Union had failed to accept a proposal for settlement by bilateral negotiation of the claims presented and in a similar previous case had refused to submit to the adjudication of the International Court of Justice. The Council considered the question at its 679th meeting after the adoption of the agenda by 10 votes to 1. Following renewed objection by the Soviet Union to the inclusion of the question in the agenda of the 680th meeting, the Council again adopted the agenda by 10 votes to 1. The representative of the Soviet Union maintained that the question had no connexion with Chapter VI of the Charter which concerned only disputes the continuance of which was likely to endanger the maintenance of international peace and security.

7. In connexion with two other matters which were brought to the attention of the Council but not discussed, references were made to means of peaceful settlement such as those provided for under Article 33. Only in the text of one communication was a specific reference made to Article 33. 6/

B. Action by the General Assembly

8. During the period under review the General Assembly has adopted two resolutions which, though not expressly referring to Article 33, have contained provisions concerning the peaceful means of settlement prescribed in that Article. These Assembly decisions were made in connexion with the following questions:

4/ S C, 11th yr., 728th mtg., provisional record, p. 23.

5/ For texts of relevant statements, see S C, 9th yr., 679th mtg., United States, paras. 38-42; 680th mtg., USSR, paras. 75-79.

6/ (a) By a letter (S/3414) dated 28 July 1955, the representatives of fourteen Members brought to the attention of the Security Council, under Article 35 (1), "the grave situation in Morocco". The communication, having referred to negotiations between the parties the continuation of which had been recommended by General Assembly resolution 612 (VII), stated that the recommendation of the General Assembly had so far been unimplemented.

(b) By a letter (S/3450) dated 28 October 1955, the representative of Saudi Arabia brought to the attention of the Security Council, under Article 35 (1), "the grave situation in the Buraimi Oasis and adjacent areas". The communication stated that an agreement had been concluded between the Governments of Saudi Arabia and the United Kingdom to arbitrate the dispute, but that the Arbitration Tribunal, constituted under this agreement, had been prevented from proceeding with its task by the resignation of the United Kingdom member. By a letter (S/3452) dated 29 October 1955, the representative of the United Kingdom, in reply, set forth the reasons why in the view of his Government it had not been possible to reach agreement with the Government of Saudi Arabia either by direct negotiation or by arbitration. In another communication (S/3548) dated 10 February 1956, the representative of Saudi Arabia informed the Council that his Government was "continuing to seek a peaceful solution in accordance with the injunctions of Article 33 of the Charter".

(a) The agenda item "Treatment of people of Indian origin in the Union of South Africa", included in the agenda of the ninth session on 24 September 1954, pursuant to a resolution of the General Assembly adopted at its eighth session. 7/ By resolution 816 (IX), the General Assembly suggested that the three Governments concerned — India, Pakistan and the Union of South Africa — seek a solution by direct negotiations, and that the parties should select a Government, agency or person to facilitate contacts between them. The Assembly further decided that if in the course of the following six months no agreement could be reached among the parties on those suggestions, the Secretary-General should designate a person for the indicated purpose and report on the results obtained to the next session of the Assembly. 8/

(a) The agenda item "The question of Morocco", submitted by fourteen Members 9/ and included in the agenda of the ninth session on 25 September 1954. By resolution 812 (IX), the General Assembly, having noted that certain delegations had declared that negotiations would be initiated between France and Morocco, expressed confidence that a satisfactory solution would be achieved.

9. During the consideration of the following questions by the General Assembly, explicit or implicit references were made to Article 33, although no decisions bearing on that Article were adopted:

- (a) Treatment of people of Indian origin in the Union of South Africa, tenth session. 10/
- (b) The question of Morocco, tenth session. 11/
- (c) The question of West Irian (West New Guinea), ninth 12/ and tenth sessions. 13/
- (d) The question of Cyprus, tenth session. 14/
- (e) The question of Algeria, tenth session. 15/
- (f) The Buraimi question, 16/ not an agenda item, dealt with at the tenth session in connexion with the agenda item "Measures for the further

7/ G A resolution 719 (VIII).

8/ See paras. 11-16 below. See also G A (X), annexes, a.i. 20, p. 1, A/3001 and p. 2, A/3001/Add.1.

9/ G A (IX), annexes, a.i. 56, pp. 1 and 2, A/2682.

10/ G A (X), Ad Hoc Pol. Com., 33rd mtg., paras. 4, 12 and 16; 34th mtg., paras. 1, 2, 5, 7, 9, 10, 12, 15, 18, 21, 26, 27, 30, 36, 40 and 42.

11/ G A (X), 1st Com., 796th mtg.: Egypt, paras. 8 and 9; Iraq, para. 29; Lebanon, para. 24; United States, paras. 30-32; 797th mtg.: Czechoslovakia, para. 25; India, paras. 17 and 20; Pakistan, para. 15.

12/ G A (IX), 1st Com., 731st mtg., Thailand, para. 27; 732nd mtg., Argentina, para. 47; 735th mtg., Philippines, para. 79.

13/ G A (X), annexes, a.i. 65, p. 3, A/3093; 1st Com., 811th mtg., para. 65.

14/ G A (X), Gen. Com., 102nd mtg.: Greece, paras. 25 and 26; Poland, para. 47; United Kingdom, paras. 17 and 18; United States, para. 31.

15/ G A (X), annexes, a.i. 64, p. 1, A/2924 and Add.1; Gen. Com., 103rd mtg.: Ethiopia, para. 65; Haiti, paras. 57 and 58; United States, para. 56; Plen., 525th mtg., para. 107; 530th mtg., para. 109.

16/ G A (X), 1st Com., 806th mtg., para. 24.

relaxation of international tension and development of international co-operation".

II. ANALYTICAL SUMMARY OF PRACTICE

** A. In the Security Council

B. In the General Assembly

1. *The question of the obligation of the parties under Article 33 (1) in relation to the intervention of the General Assembly*

10. During the consideration of one question by the General Assembly at its ninth session, discussion centred on whether or not direct negotiations by the parties and the utilization of a third party to arrange such negotiations should occur under the auspices of the United Nations.

Resolution 816 (IX) on the treatment of people of Indian origin in the Union of South Africa

11. At the ninth session of the General Assembly, the agenda item "Treatment of people of Indian origin in the Union of South Africa: report of the United Nations Good Offices Commission" was referred to and considered by the Ad Hoc Political Committee at its 8th to 16th meetings held between 18 and 28 October 1954. 17/ In submitting the report 18/ on behalf of the Good Offices Commission, the representative of Cuba stated that the Commission had failed in its attempts to arrange negotiations between the Governments concerned — India, Pakistan and the Union of South Africa — due to the unco-operative attitude of the latter Government. The Commission, he concluded, felt that other methods of approach might be tried and suggested that the Assembly might appoint a mediator or utilize some other means to organize negotiations between the Governments concerned. After the representative of the Union of South Africa had objected to the consideration of the question by the Assembly on the grounds of Article 2 (7), and had declared that his Government was still prepared to participate in negotiations outside the United Nations, a joint draft resolution was submitted at the 10th meeting of the Committee on 21 October 1954 which, as amended, read as follows: 19/

17/ For texts of relevant statements, see G A (IX), Ad Hoc Pol. Com., 8th mtg.: Cuba, paras. 1-3; Union of South Africa, para. 10; 10th mtg.: Brazil, paras. 16-18; Ecuador, paras. 12 and 13; Union of South Africa, paras. 3 and 4; 11th mtg., Haiti, para. 11; 13th mtg.: China, para. 20; Indonesia, para. 32; 14th mtg.: Brazil, paras. 16 and 17; India, para. 13; Israel, para. 26; Saudi Arabia, para. 52; 15th mtg.: Cuba, para. 47; India, paras. 14, 18, 24-26; Philippines, para. 9; Uruguay, paras. 37 and 48; 16th mtg.: Denmark, paras. 7 and 8; Ecuador, paras. 19 and 20; India, paras. 14 and 15; Lebanon, para. 16; Syria, para. 10; Plen., 497th mtg., United States, paras. 195 and 196.

18/ G A (IX), annexes, a.i. 22, pp. 1 and 2, A/2723.

19/ G A (IX), annexes, a.i. 22, p. 2, A/2784, para. 6 (A/AC.76/L.3/Rev.1).

"The General Assembly,

"Recalling that at several sessions it has considered the question of the treatment of people of Indian origin in the Union of South Africa and has adopted resolutions on that subject,

"Having noted the report of the United Nations Good Offices Commission (A/2723),

"1. Expresses appreciation of the work and efforts of the Good Offices Commission;

"2. Suggests to the Governments of India, Pakistan, and the Union of South Africa that they should seek a solution of the question by direct negotiations;

"3. Suggests, moreover, that the parties concerned should designate a Government, agency or person to facilitate contacts between them and assist them in settling the dispute;

"4. Decides that, if within the next six months following the date of the present resolution the parties have not reached agreement on the suggestions made in the foregoing paragraphs, the Secretary-General shall designate a person for the purposes specified above;

"5. Requests the Secretary-General to report to the General Assembly at its next regular session on the results obtained."

12. One representative, having noted that the joint draft resolution had advocated direct negotiations and contemplated only as a secondary possibility the designation by the Secretary-General of a person to facilitate contacts between the parties, stated that this was an effort at conciliation which in no way impaired the principle of the sovereignty of States. Another representative remarked that peaceful settlement of international disputes should be encouraged whether outside or within the United Nations, provided that the United Nations should always keep an interest in the matter. It was also argued that the draft resolution did not represent an attempt to remove the question from the jurisdiction of the United Nations but to ensure that the parties explored various possibilities of peaceful settlement. In the view of another representative, the draft resolution was clearly based on Article 33, and since the representative of the Union of South Africa had stated that the door was still open to negotiations there were grounds for hope of a settlement.

13. Doubts were expressed with regard to the effectiveness of the joint draft resolution on the grounds that since the Government of the Union of South Africa maintained that the United Nations was not competent to deal with the matter, direct negotiations could not be held within the framework of the United Nations. Several representatives were of the opinion that while the reference in the joint draft resolution to direct negotiations called for support, the stipulations regarding outside assistance to the parties, time limits, or mediation went beyond the proper scope of action by the General Assembly, and that these would hinder an effective solution of the problem. One representative expressed doubts concerning the wisdom of forcing a mediation, as proposed in paragraphs 3 and 4 of the draft resolution, and hoped that the method of direct negotiations would suffice.

14. The representative of the Union of South Africa, on the other hand, stated that he opposed the draft resolution as a whole because it represented intervention in matters of domestic jurisdiction. While direct negotiations could be undertaken

outside the United Nations, the draft resolution as a whole sought to affirm the competence of the United Nations.

15. The representative of India, in expressing his general support of the draft resolution, stated that the question was not one of entering into independent negotiations between the parties but of starting direct talks in pursuance of a resolution of the General Assembly. He agreed with the view that negotiations under Article 33 (1) would be initiated under United Nations auspices.

16. At its 16th meeting on 28 October 1954, the Ad Hoc Political Committee, after a roll-call vote in parts, adopted 20/ the revised joint draft resolution, as a whole, by 47 votes to 1, with 10 abstentions.

Decision

At its 497th meeting on 4 November 1954, the General Assembly adopted, 21/ as a whole, by 45 votes to 1, with 11 abstentions, the draft resolution submitted by the Ad Hoc Political Committee, which became resolution 816 (IX).

***2: The question of the application of Article 33 through procedures of a general character instituted by the General Assembly*

20/ G A (IX), Ad Hoc Pol. Com., 16th mtg., para. 30.
21/ G A (IX), Plen., 497th mtg., para. 198.

