

ARTICLE 33

CONTENTS

	<i>Paragraph</i>
Text of Article 33	
Introductory Note	1-9
I. General Survey	10-24
A. Action by the Security Council	10-18
B. Action by the General Assembly	19-24
II. Analytical Summary of Practice	25-67
A. In the Security Council: The question of the extent to which parties to a dispute are obligated to seek a pacific settlement before recourse to the Security Council	25
1. Decision of 27 May 1960 in connexion with the proposed resumption of talks among the Great Powers (letter from Argentina, Ceylon, Ecuador and Tunisia)	26-30
2. Decision of 19 July 1960 in connexion with the complaint of Cuba . .	31-36
3. Decision of 26 July 1960 in connexion with the complaint by the USSR concerning the RB-47 incident	37-42
4. Decision of 22 June 1962 in connexion with the India-Pakistan question	43-55
5. Decision of 24 April 1963 and 19 May 1965 in connexion with the complaint by Senegal	56-67
**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.	
**2. The question of the application of Article 33 through procedures of a general character instituted by the General Assembly.	
<i>Annex:</i> Excerpts from the Report of the Special Committee on Principles of Inter- national Law concerning Friendly Relations and Co-operation among States, dated 16 November 1964	

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 study of Article 33 during the period under review follows essentially treatment in the *Repertory* and *Supplements Nos. 1* and *2*, limiting the material it presents to the question of the relationship between the obligation to seek peaceful settlement of a dispute or situation and its handling by the Security Council. Attention may in this connexion be drawn to an observation made in the *Repertory* that "The application of Article 33 therefore consists, in the first instance, of the effort made by the parties to a dispute to achieve a peaceful solution on their own initiative without recourse to the Security Council. Such efforts, being extraneous to the work of the Council, are not relevant to the *Repertory of Practice of United Nations Organs*".¹

2. The cases treated in section A, "Action by the Security Council", in this study were therefore drafted with this limitation in mind. The cases reflect the extent to which parties to a dispute are obligated to seek pacific settlement before recourse to the Security Council, as well as the scope of the question of what measures the Security Council may take in the light of the provisions of Article 33.

3. As resolutions adopted by the Security Council on occasion also recommended procedures previously agreed upon by the parties concerned, this study should be read in conjunction with that of Article 36 in this *Supplement*.

4. During the period under review, a number of resolutions adopted by the Security Council in connexion with the outbreak of hostilities were aimed at the immediate restoration of conditions that would make further efforts at peaceful settlement possible. Some of these resolutions also contained provisions designed to assist the parties concerned in finding a peaceful solution of their differences.² The study of Article 40 in this *Supplement* relating to provisional measures might therefore be consulted for a more complete analysis of the extent to which the Security Council has sought to bring about a peaceful solution of disputes or situations brought to its attention. No constitutional significance should,

however, be attached to this reference, which is made here merely for purposes of convenience to the reader.

5. The material relating to constitutional discussion bearing on Article 33 in the General Assembly during the period under review did not lend itself to the presentation of case histories under section B, of the Analytical Summary of Practice. In so far as such material was considered to have relevance to the application or interpretation of either of the two paragraphs of Article 33, however, it is treated in the General Survey under "B. Action by the General Assembly". This part of the General Survey refers to the various resolutions adopted by the General Assembly during the period in which it called upon the parties concerned to seek a peaceful solution of their differences, as well as to the various viewpoints of Member States related to the interpretation and application of Article 33.

6. On 20 December 1965 the General Assembly adopted resolution 2103A (XX) on the consideration of the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations. In its operative paragraph 4, the General Assembly called, among other things, for the continuation of studies³ by the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, of certain principles of international law on which it had previously not been able to reach agreement. Among these principles was the principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

7. Excerpts from the report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, summarizing the debates on the interpretation of the provisions of the above-mentioned principle are reproduced in the annex to this study.⁴

³ For treatment of resolutions adopted earlier in connexion with this item, see this *Supplement*, under Article 2 (4), paras. 33—42.

⁴ For excerpts from the reports of the Sixth Committee to the General Assembly on this subject, see G A (XVIII), Annexes, a. i. 71, p. 28, A/5671, paras. 67—79, and G A (XX), Annexes, a. i. 90 and 94, pp. 143—149, A/6165, paras. 32—37.

¹ *Repertory of Practice of United Nations Organs*, vol. II, p. 195, para. 1.

² See paras. 12 and 14 below.

8. The item entitled, "Peaceful settlement of disputes", was included, in accordance with a request⁵ of the Government of the United Kingdom, in the agenda of the twentieth session of the General Assembly, which at its 1403rd plenary meeting on 18 December 1965 decided⁶ to adjourn the debate on the item and to remit the question to the twenty-first session.

9. An explicit reference⁷ to Article 33 was contained in the report of the International Law Com-

⁵ G A (XX), Annexes, a. i. 99, p. 1, A/5964.

⁶ G A (XX), Plen., 1403rd mtg., para. 16. At the twenty-first session, the General Assembly decided to adjourn the debate on this item (G A (XXI), Plen., 1498th mtg., paras. 26–28).

⁷ In this report (G A (XXI), Suppl. No. 9, pp. 7–100) the Commission submitted its draft on the law of treaties. In draft article 62 (*ibid.*, p. 89) on the procedure to be followed in

mission on the work of the second part of its seventeenth session and of its eighteenth session to the General Assembly at its twenty-first session.

case of invalidity, termination, withdrawal from or suspension of the operation of a treaty, it is provided that if objection had been raised by any other party against a claim of a party that a treaty was invalid or that a ground existed for terminating it. "the parties shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations" (oper. para. 3). See also the commentary (5) of the Commission on Article 50; (*ibid.*, p. 76). In its report to the General Assembly at its eighteenth session the Sixth Committee in the summary of the debate on the draft articles of the Commission on the invalidity and termination of treaties stated that during the discussion some representatives commended the Commission for its realistic approach, inasmuch as in confining itself to the procedure for the settlement of disputes laid down in Article 33 of the Charter, it had taken account of the present practice of States (G A (XVIII), Annexes, a. i. 69, p. 1, A/5601, para. 24).

I. GENERAL SURVEY

A. Action by the Security Council

10. Among the decisions adopted by the Security Council during the period under review, two referred explicitly to Article 33 of the Charter.

11. Resolution 144 (1960), adopted on 19 July 1960 during the consideration of the complaint by Cuba against the United States, contained a preambular paragraph "taking into account" the provisions of certain Articles of the Charter, including Article 33.⁸ It also contained a preambular paragraph by which the Security Council considered that it was the obligation of all Member States "to settle their international disputes by negotiation and other peaceful means in such a manner that international peace and security and justice are not endangered", as well as an operative paragraph inviting members of the Organization of American States to lend their assistance toward the achievement of a peaceful solution of the question, in accordance with the Purposes and Principles of the Charter.

12. In the second decision, resolution 211 (1965), adopted on 20 September 1965 during the consideration of the armed conflict between India and Pakistan, Article 33 was the only Charter provision explicitly referred to.⁹ By one of the operative paragraphs of this resolution the Security Council decided to consider, as soon as hostilities had ceased and armed personnel had withdrawn to their position before the outbreak of hostilities, the appropriate steps to assist the two countries towards a settlement of the political problem underlying their armed conflict and called upon their Governments in the meantime "to utilize all peaceful means, including those listed in Article 33" to that end. Since no constitutional discussion took place in connexion with this decision it is not included in the Analytical Summary of Practice.

13. During the period under review, the Security Council also adopted a number of resolutions

⁸ Second preamb. para. Other provisions of the Charter cited were Articles 24, 34, 35, 36, 52 and 103. See also paras. 31–36 below.

⁹ Oper. para. 4.

which, while not explicitly referring to Article 33, contained provisions calling on Member States to seek the settlement of their differences by peaceful means. The various modes of peaceful settlement recommended in such resolutions included exhortation that the Member States concerned enter into negotiations or resume them immediately;¹⁰ co-operation with a mediator appointed by the Secretary-General under the authority of the Security Council for the purpose of reconciling the differences between the parties concerned;¹¹ acceptance of the good offices of the Secretary-General;¹² lending assistance to efforts at peaceful settlement being made by a regional organization;¹³ consultation for the purpose of reaching a specified objective;¹⁴ co-operation with the Secretary-General's representative in the carrying out of a specified task;¹⁵ and negotiation with political factions for a specified objective.¹⁶

14. The Security Council on occasion requested the Secretary-General to utilize a particular mode of peaceful settlement in consultation with Member States concerned, which might be considered as an indirect application of Article 33. During the consideration of the Cyprus question in March 1964, for instance, the Security Council adopted resolution 186 (1964) which, in addition to recommending the setting up of a peace-keeping force, also recom-

¹⁰ S C, resolution 135 (1960) of 27 May 1960, in connexion with the question of relations between the great Powers, oper. paras. 1 and 4.

¹¹ See para. 14 below.

¹² S C, resolution 188 (1964) of 9 April 1964, in connexion with the complaint by Yemen, oper. para. 5.

¹³ S C, resolution 199 (1964) of 30 December 1964, in connexion with questions concerning the Democratic Republic of the Congo, para. 5.

¹⁴ S C, resolution 202 (1965) of 6 May 1965, in connexion with the question concerning the situation in Southern Rhodesia, oper. para. 6.

¹⁵ S C, resolution 203 (1965) of 14 May 1965, in connexion with the situation in the Dominican Republic, oper. para. 3.

¹⁶ S C, resolution 218 (1965) of 23 November 1965, in connexion with the question of Territories under Portuguese administration, oper. para. 5 (d).

mended that the Secretary-General designate a mediator, in agreement with the Governments concerned, who should use his best endeavours with the representatives of the communities and with the four Governments concerned for the purpose of promoting a peaceful solution and an agreed settlement of the problem confronting Cyprus, in accordance with the Charter of the United Nations, having in mind the well-being of the people of Cyprus as a whole and the preservation of international peace and security.¹⁷ In another instance, in the course of the consideration of the complaint by Yemen in 1964, the Security Council adopted resolution 188 (1964) which contained a provision under which it requested the Secretary-General to use his good offices to try to settle outstanding issues in agreement with the parties concerned.¹⁸ Two years later, during the consideration of the complaint of the United Kingdom against Yemen, the Security Council called upon the Secretary-General to continue his good offices to settle the outstanding questions in agreement with the parties concerned.¹⁹

15. As had been the case during the periods covered by *Supplements Nos. 1* and *2*, the Security Council during the period of the present study tended to favour modes of peaceful settlement previously agreed upon by the parties concerned. One case illustrative of this approach was its handling of the complaints by Cuba, the USSR and the United States, in connexion with the deployment of missiles in Cuba by the USSR and the quarantine measures on arms shipment taken by the United States in October 1962. During the debate, the Secretary-General informed the Council that, following consultations with many Member States, he had addressed an appeal to the parties concerned for a voluntary suspension of all arms shipments to Cuba and voluntary suspension of the quarantine measures involving the search of ships bound for Cuba, to be followed by meetings between the parties with a view to finding a peaceful solution of the problem. He also informed the Council of the favourable replies he had received from the Governments of the United States and the USSR indicative of willingness to accept his appeal. The Council, having heard the report of the Secretary-General decided to adjourn its meeting without voting on the draft resolutions it had before it.²⁰ Another case was the Security Council's handling of the situation in the Democratic Republic of the Congo in December 1964. After hearing the parties concerned, and noting the desire among its members to have the matter further pursued by the Organization of African Unity (OAU) in accordance with a resolution previously adopted by the organization, the Security Council adopted resolution 199 (1964) of 30 December 1964 encouraging the OAU "to pursue its efforts to help the Gov-

ernment of the Democratic Republic of the Congo to achieve national reconciliation"²¹ in accordance with the OAU resolution mentioned.

16. While instances referred to in the foregoing paragraphs show the variety of modes of peaceful settlement recommended by the Security Council during the period under review, there were at the same time instances in which proposals seeking to call on the parties concerned to solve their differences by peaceful means were either rejected or failed of adoption. These included a draft resolution submitted by the United States during the consideration of the USSR complaint concerning the RB-47 incident in 1960;²² a draft resolution submitted by Liberia and the United Arab Republic during the consideration of the complaint by Tunisia against France in 1961,²³ and a draft resolution submitted by the United Kingdom and the United States in relation to the same question;²⁴ a draft resolution, containing explicit reference to Article 33, submitted by Ireland during the consideration of the India-Pakistan question in 1962;²⁵ a draft resolution submitted by the United States and co-sponsored by France, Turkey and the United Kingdom during the consideration of the complaint by Portugal against India in 1961 (Goa);²⁶ and a draft resolution submitted by Norway during the consideration of the complaint by Malaysia against Indonesia in 1964.²⁷ The reasons for this rejection or failure of adoption, were, however, not related to constitutional arguments bearing upon Article 33 of the Charter.

17. Instances in which Article 33 was invoked during debates are mostly covered by the case histories in the Analytical Summary of this study. Generally the Article was invoked to support a proposal for settlement through the measures it recommends:²⁸ to support a proposal for direct negotiations

²¹ Oper. para. 4. For constitutional discussions relating to the relationship between OAU and the Security Council, see this *Supplement* under Article 52.

²² See paras. 31-42 below.

²³ S C, 16th yr., Suppl. for July-Sept., p. 22, S/4878. The draft resolution was voted upon at the 963rd meeting on 22 July 1961 and was not adopted, having failed, with 4 votes to none and 7 abstentions, to obtain the affirmative votes of 7 members. S C, 16th yr., 963rd mtg., para. 113.

²⁴ S C, 16th yr., Suppl. for July-Sept., p. 23, S/4879. At the 963rd meeting, on 22 July 1961, the draft resolution failed to receive the affirmative votes of 7 members and was not adopted, the vote being 6 to none, with 5 abstentions (S C, 16th yr., 963rd mtg., para. 114).

²⁵ S C, 17th yr., Suppl. for April-June, p. 104, S/5134. See also paras. 43-55 below.

²⁶ S C, 17th yr., 988th mtg., para. 97, S/5033. The draft resolution was voted upon at the 988th meeting, on 18 December 1961, and failed of adoption, by a vote of 7 to 4, one of the negative votes being that of a permanent member (S C, 17th yr., 988th mtg., para. 129).

²⁷ S C, 19th yr., 1150th mtg., para. 72, S/5973. The draft resolution was voted upon at the 1152nd meeting on 17 September 1964 and failed of adoption, by 9 votes to 2, one of which was that of a permanent member. S C, 19th yr., 1152nd mtg., para. 64. For a reference by Norway to Article 33, see S C, 19th yr., 1149th mtg., para. 112.

²⁸ See the statement of Brazil during the consideration of the question relating to Territories in Africa under Portuguese administration in July 1963, S C, 18th yr., 1043rd mtg., para. 16.

¹⁷ S C, resolution 186 (1964) of 4 March 1964, oper. paras. 4 and 7.

¹⁸ S C, resolution 188 (1964) of 9 April 1964, oper. para. 5.

¹⁹ Statements of consensus read out by the President at the 1300th mtg., on 16 August 1966 (S C, 21st yr., 1300th mtg., para. 2).

²⁰ S C, 18th yr., 1025th mtg., para. 101. See also this *Supplement* under Article 40.

between the parties;²⁹ to support a proposal for an inquiry or referral of a matter to the International Court of Justice;³⁰ to support the viewpoint that a regional organization must be allowed to continue dealing with a particular matter;³¹ and to support the view that the parties concerned should have attempted recourse to the various modes of peaceful settlement enumerated in the Article prior to having their complaints brought to the Security Council.³²

18. In other instances, Article 33 was invoked in explanation of the reason for submitting a particular matter to the Security Council;³³ to support the viewpoint that the Article applied only to disputes between States;³⁴ and to illustrate the point that the matter under consideration could not have been brought under Chapter VI of the Charter.³⁵

B. Action by the General Assembly

19. One resolution adopted by the General Assembly during the period under review contained explicit reference to Article 33 of the Charter. At the eighteenth session, the General Assembly adopted resolution 1967 (XVIII)³⁶ by which, the General

²⁹ See paras. 28—30 and 50—55 below. See also statements made during the consideration of the complaint by Cuba of 31 December 1960, S C, 16th yr., 922nd mtg.: Ecuador, para. 55; 923rd mtg.: Ecuador, paras. 108 and 109; United Arab Republic, paras. 90 and 91; and statement by Czechoslovakia during the consideration of the India—Pakistan question in February 1964, S C, 19th yr., 1091st mtg., para. 29.

³⁰ See paras. 38—40 below.

³¹ See paras. 33—36 below. See also statements made during the consideration of the complaint by Cuba against the United States in February 1962, S C, 17th yr., 991st mtg.: Ghana, para. 24; the consideration of the complaint by Haiti against the Dominican Republic in May 1963, S C, 18th yr., 1036th mtg.: Philippines, paras. 120 and 121; United States, paras. 104 and 105; the consideration of the complaint by Panama against the United States in January 1964, S C, 19th yr., 1086th mtg.: Ivory Coast, para. 91; United Kingdom, para. 74; United States, para. 51; the consideration of the situation in the Dominican Republic in May 1965, S C, 20th yr., 1196th mtg.: United States, para. 87; 1203rd mtg.: Netherlands, paras. 7 and 9.

³² See paras. 56—67 below.

³³ Letter dated 15 June 1960 from the representative of Argentina requesting the Council to consider its complaint against Israel (Eichmann case). S C, 15th yr., Suppl. for April—June, p. 27, S/4336. At the 865th mtg., on 22 June 1960, the representative of Argentina, in his initial statement stated that in resorting to the Security Council, Argentina based its case “upon Article 33 and the subsequent Articles” of the Charter. S C, 15th yr., 865th mtg., para. 5. See also paras. 12 and 30—34; 867th mtg.: France, para. 63.

³⁴ Statement by Union of South Africa during the consideration of the question relating to the situation in South Africa. S C, 15th yr., 855th mtg., para. 19; statement by Portugal during the consideration of the situation in Angola on 10 March 1961, S C, 16th yr., 944th mtg., para. 39; and statement by the Democratic Republic of the Congo during the consideration of the question concerning the Democratic Republic of the Congo in December 1964, S C, 19th yr., 1184th mtg., paras. 39 and 40.

³⁵ Statement by Ivory Coast during the consideration of the situation in Southern Rhodesia in November 1965, S C, 20th yr., 1265th mtg., paras. 31 and 32.

³⁶ For the discussion of the resolution, see this *Supplement*, under Article 34, paras. 65—67. The resolution was recalled in General Assembly resolution 2104 (XX), by which the Secretary-General was requested to supplement his study on the relevant aspects of the problem.

Assembly, after, *inter alia*, recognizing the need to promote further development of the various procedures of peaceful settlement set out in Article 33, and considering that “enquiry” was one of such methods of peaceful settlement, provided for in the Article, requested the Secretary-General to study the relevant aspects of the problem and to report on the results of such study to the General Assembly at its nineteenth session and to the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States. The Assembly called upon the parties concerned to enter into negotiations, or resume negotiations entered into before having resort to the General Assembly.

20. In the case 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”, which was considered at its fifteenth and sixteenth sessions, the General Assembly adopted on 31 October 1960 resolution 1497 (XV) in which it urged³⁷ the Governments of Austria and Italy “to resume negotiations with a view to finding a solution for all differences relating to the implementation of the Paris Agreement of 5 September 1946”, which had given rise to the dispute under consideration. The Assembly also recommended that, in the event of failure to reach a satisfactory result within a reasonable period of time, “both parties should give favourable consideration to the possibility of seeking a solution of their differences 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”. At its sixteenth session, the General Assembly adopted on 28 November 1961 resolution 1661 (XVI) in which, after recalling resolution 1497 (XV), it called for “further efforts by the two parties concerned to find a solution” in accordance with the provisions of the above-mentioned resolution.

21. In the case of the question of Algeria, the General Assembly adopted resolution 1724 (XVI) on 20 December 1961, in which, having noted the willingness expressed by the Government of France and the Provisional Government of the Algerian Republic to seek a negotiated and peaceful settlement, it called on the 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”.³⁸

22. In its consideration of the grave situation in Tunisia obtaining since 19 July 1961, at its third special session in 1961, the General Assembly adopted resolution 1622 (S-III) on 25 August 1961, in which, in addition to reaffirming a resolution previously adopted by the Security Council on the matter, it called upon the Governments of France and Tunisia “to enter into immediate negotiations to devise peaceful and agreed measures in accordance with the principles of the Charter of the United Nations

³⁷ Oper. paras. 1 and 2.

³⁸ Fifth preamb. para. and oper. para.

for the withdrawal of all French armed forces from the Tunisian territory.³⁹

23. In relation to the question of the treatment of people of Indian origin in the Union of South Africa, which the General Assembly had also considered prior to the period under review, three resolutions were adopted⁴⁰ in which the General Assembly reiterated its appeal to the Government of the Union of South Africa to enter into negotiations with the Governments of India and Pakistan.

24. Article 33 was invoked or commented upon during debates to support a proposal calling for a particular mode of peaceful settlement;⁴¹ to refute a view that a proposal would, if accepted, deviate from an established procedure followed by members belonging to a regional organization;⁴² to suggest recourse to direct negotiations between the

³⁹ Oper. paras. 1 and 3.

⁴⁰ G A resolutions 1460 (XIV) of 10 December 1959 (oper. para. 4); 1597 (XV) of 13 April 1961 (oper. para. 4); and 1662 (XVI) of 28 November 1961 (oper. para. 3).

⁴¹ During the consideration of the question of the status of the German-speaking element in the province of Bolzano (Bozen) at the fifteenth and sixteenth sessions, G A (XV), Spec. Pol. Com., 180th mtg.: Cuba, para. 14; 184th mtg.: Ireland, paras. 1 and 16; Italy, para. 14; G A (XVI), Spec. Pol. Com., 293rd mtg.: Mexico, para. 52; 295th mtg.: Dahomey, para. 5.

⁴² During the consideration of the complaint by Cuba at the fifteenth session, G A (XV), 1st Com., 1159th mtg.: Mexico, para. 2.

parties;⁴³ to indicate that efforts had been made at peaceful settlement prior to bringing a matter to the attention of the General Assembly, in accordance with Article 33;⁴⁴ to support the view that the competence of the General Assembly to adopt measures for the peaceful adjustment of situations is limited by the language of Article 33;⁴⁵ to support peaceful co-existence;⁴⁶ and to support the view that there is a clear-cut division of powers between the General Assembly and the Security Council.⁴⁷

⁴³ During the consideration of the Tunisian question at the third special session in 1961, G A (S-III), Plen., 998th mtg.: United States, para. 103; and the consideration of the Report of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) at the eighteenth session, G A (XVIII), Spec. Pol. Com., 410th mtg.: Central African Republic, para. 24.

⁴⁴ During the consideration of the Tunisian question at the third special session in 1961, G A (S-III), Plen., 997th mtg.: Ghana, para. 93; 1003rd mtg.: Poland, para. 77.

⁴⁵ During the consideration at the seventeenth session of the advisory opinion of the International Court of Justice on the financial obligations of Member States with regard to the United Nations Emergency Force (UNEF) and the United Nations Operations in the Congo (ONUC), G A (XVII), 5th Com., 965th mtg.: Romania, para. 4.

⁴⁶ During the consideration of the complaint by Cuba against the United States at the sixteenth session, G A (XVI), 1st Com., 1238th mtg.: Yugoslavia, para. 3.

⁴⁷ During the consideration of the question of the policies of *apartheid* of the Government of the Republic of South Africa at the eighteenth session, G A (XVIII), Spec. Pol. Com., 390th mtg.: Japan, para. 36.

II. ANALYTICAL SUMMARY OF PRACTICE

A. In the Security Council: The question of the extent to which parties to a dispute are obligated to seek a pacific settlement before recourse to the Security Council

25. During the period under review, consideration of the obligation of the parties to seek a pacific settlement of their differences arose in the context of proposals to encourage the parties to seek settlement by direct negotiations, international inquiry, and resort to regional organizations.

1. DECISION OF 27 MAY 1960 IN CONNEXION WITH THE PROPOSED RESUMPTION OF TALKS AMONG THE GREAT POWERS (LETTER FROM ARGENTINA, CEYLON, ECUADOR AND TUNISIA)

26. In the course of the consideration of the USSR complaint on the U-2 incident in May 1960, the representatives of Argentina, Ceylon, Ecuador and Tunisia on 23 May 1960 addressed a letter⁴⁸ to the President of the Security Council requesting that, at the conclusion of its debate, the Security Council include in its agenda a draft resolution they had jointly sponsored, which read as follows:

"The Security Council,

"Mindful of its responsibility for the maintenance of international peace and security,

"Noting with regret that the hopes of the world for a successful meeting of the Heads of Government of France, the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics and the United States of America have not been fulfilled,

"Considering that these developments have caused great disappointment and concern in world public opinion,

"Considering also that the resulting situation may lead to an increase of international tensions likely to endanger peace and security,

"Being convinced of the necessity to make every effort to restore and strengthen international good will and confidence, based on the established principles of international law,

"Being especially aware of the mounting danger of the continuation of the armaments race,

"1. Recommends to the Governments concerned to seek solutions of existing international problems by negotiation or other peaceful means as provided in the Charter of the United Nations;

"2. Appeals to all Member Governments to refrain from any action which might increase tensions;

"3. Requests the Governments concerned to continue their efforts towards disarmament and the prohibition of nuclear weapons tests under an international control system and their negotiations on the technical aspects of measures

⁴⁸ S C, 15th yr., Suppl. for April-June, p. 13, S/4323.

against the possibility of surprise attack, as recommended by the General Assembly in its resolutions;

"4. Urges the Governments of France, the United Kingdom, the Union of Soviet Socialist Republics and the United States of America to resume discussions as soon as possible and to avail themselves of the assistance that the Security Council and other appropriate organs of the United Nations may be able to render to this end."

27. At the 861st meeting of the Council on 26 May 1960, the sponsors of the draft resolution observed that its purpose was not to seek the causes of the failure of the Paris Summit Conference of 1960, nor to assess responsibility for it. Its objective was rather not to allow the Security Council in the light of the responsibility of the United Nations Members, and the Council in particular, to adjourn its consideration of the U-2 incident case without trying to induce the opposing parties to resume their talks, or recommending that they should refrain from breaking them off permanently, or settle their differences through negotiations and by other peaceful means laid down in the Charter. It was also pointed out that the most important task now before the Council was to strive for the relaxation of international tensions and to foster the restoration of confidence by creating a favourable atmosphere for negotiations, particularly those relating to disarmament, which the draft resolution sought to accomplish.

28. One representative noted that the four-Power draft resolution, in addition to being a timely and advisable reminder in the light of events surrounding the Summit Conference in Paris, was fully in accord with the provisions of the Charter, particularly those of Article 33 which enjoined Member States to seek the solution of their problems by negotiation.

29. At the same meeting, the representative of the USSR observed that while the draft resolution contained an appeal for the resumption of talks based upon the principles of the Charter, to which the USSR had no objection, it failed to make a specific appeal to those who had been destroying the possibilities for negotiations. He proposed the following amendments:⁴⁹

(1) After the first preambular paragraph insertion of the following:

"Considering that the incursion of foreign military aircraft into the territory of other States is incompatible with the principles and purposes of the United Nations and constitutes a threat to peace and international security".

(2) At the end of the second operative paragraph the addition of the words:

"including the dispatch of their aircraft into the airspace of other States".

(3) The third operative paragraph to read:

"Requests the Governments concerned to continue their efforts towards the achievement of general and complete disarmament and the discontinuance of all nuclear weapons tests under

an appropriate international control system as well as their negotiations on measures to prevent surprise attack".

30. At its 863rd meeting, on 27 May 1960, the Council had before it a revised text of the four-Power draft resolution⁵⁰ according to paragraph 2 of which the Security Council would appeal to all Member Governments to refrain from the use or threats of force in their international relations to respect each other's sovereignty, territorial integrity and political independence; and to refrain from any action which might increase tensions. It was explained on behalf of the sponsors that the original draft resolution was an effort to keep the door open to negotiations among the four Great Powers for the settlement of the many international problems awaiting solution. The revised draft resolution was a further effort to achieve the same purpose after taking into consideration views expressed in the Council on the original draft.⁵¹

Decision

At the same meeting, after the President announced that he had been informed that the USSR did not wish to press for a vote on its third amendment, the Council voted on the remaining USSR amendments which it rejected⁵² by a vote of 6 to 2, with 3 abstentions. The Council then voted on the revised four-Power draft resolution and adopted⁵³ it by 9 votes to none, with 2 abstentions, as resolution 135 (1960).

2. DECISION OF 19 JULY 1960 IN CONNEXION WITH THE COMPLAINT OF CUBA

31. By a letter⁵⁴ dated 11 July 1960, the Minister for Foreign Affairs of Cuba requested the President of the Security Council to convene the Council to consider a grave situation endangering international peace and security as a consequence of the repeated threats, harassments, intrigues, reprisals and aggressive acts carried out by the United States against Cuba. The request was based on Articles 24, 34, 35 (1), 36, 52 (4) and 103 of the Charter and rule 3 of the provisional rules of procedure of the Security Council.

32. At its 874th meeting, on 18 July 1960 after the Council decided to include the Cuban complaint in its agenda, the representative of Cuba in his initial statement indicated that the right of a United Nations Member belonging to a regional organization to have recourse to the Security Council was unquestionable; that such right rested on the very provisions of the Charter including Articles 34, 35, 52 and 103 of the Charter; and that Cuba had

⁴⁹ Same text as S C, resolution 135 (1960) of 27 May 1960.

⁵⁰ For texts of relevant statements, see S C, 15th yr., 861st mtg.: President (Ceylon), paras. 60 and 63; Argentina, paras. 40 and 48; Italy, paras. 77 and 78; Tunisia, paras. 5-7 and 11; USSR, paras. 108, 111 and 116; 863rd mtg.: Argentina, para. 31; Ceylon, para. 39; Ecuador, paras. 6 and 7.

⁵¹ S C, 15th yr., 863rd mtg., para. 47.

⁵² *Ibid.*, para. 48.

⁵³ S C, 15th yr., Suppl. for July-Sept., p. 9, S/4378.

⁴⁹ *Ibid.*, p. 18 S/4326.

sought peaceful settlement through negotiations and diplomacy. The representative of the United States noted at the same meeting that inasmuch as the matter before the Council was currently being dealt with by the Organization of American States (OAS), the Security Council should allow the OAS to continue dealing with it, and should take no decision until the OAS had completed its consideration of the matter.

33. In the course of the debate on this complaint, the representatives of Argentina and Ecuador submitted a draft resolution,⁵⁵ by which the Security Council would adjourn consideration of the matter pending the receipt of a report from the OAS, invite OAS members to lend their assistance toward the peaceful solution of the question and urge all other States to refrain from actions likely to increase tension.

34. It was pointed out on behalf of the sponsors of the draft resolution that, inasmuch as the OAS had taken cognizance of the Cuban complaint, it would be desirable for the Council to await the decision of the OAS, and for that reason adjourn its consideration of the complaint, as called for in the draft resolution.

35. Other members of the Council who spoke in favour of the two-Power draft resolution, supported recourse to the OAS in the first instance generally on the basis of the provisions of Article 33 (1), as well as those of Article 52 (2). One representative argued that Article 33 made it mandatory for parties to a dispute first of all to seek a solution, *inter alia*, by resorting to regional agencies or arrangements.

36. In the course of the debate amendments⁵⁶ were submitted by the USSR, which would, *inter alia*, delete a preambular paragraph containing a statement that the situation was under consideration by the OAS, and an operative paragraph by which the Council would adjourn consideration of the question pending receipt of a report from the OAS.⁵⁷

Decision

At its 876th meeting, on 19 July 1960, the Council rejected⁵⁸ the USSR amendment by 8 votes to 2, with 1 abstention and adopted⁵⁹ the draft resolution by 9 votes to none, with 2 abstentions, as resolution 144 (1960), which reads as follows:

"The Security Council,

"Having heard the statements made by the Foreign Minister of Cuba and by members of the Council,

"Taking into account the provisions of Articles 24,

⁵⁵ S/4392. Same text as resolution 144 (1960) of 19 July 1960.

⁵⁶ S C, 15th yr., 876th mtg., paras. 105–107, S/4394.

⁵⁷ For texts of relevant statements, see S C, 15th yr., 874th mtg.: Cuba, para. 7; United States, paras. 101 and 102; 875th mtg.: Ceylon, para. 28; France, para. 21; Italy, paras. 6, 9 and 10; Tunisia, paras. 40–42; United Kingdom, para. 63.

⁵⁸ S C, 15th yr., 876th mtg., para. 127.

⁵⁹ *Ibid.*, para. 128.

33, 34, 35, 36, 52 and 103 of the Charter of the United Nations,

"Taking into account also Articles 20 and 102 of the Charter of the Organization of American States, of which both Cuba and the United States of America are members,

"Deeply concerned at the situation existing between Cuba and the United States of America,

"Considering that it is the obligation of all Members of the United Nations to settle their international disputes by negotiation and other peaceful means in such a manner that international peace and security and justice are not endangered,

"Noting that this situation is under consideration by the Organization of American States,

"1. Decides to adjourn the consideration of this question pending the receipt of a report from the Organization of American States;

"2. Invites the members of the Organization of American States to lend their assistance toward the achievement of a peaceful solution of the present situation in accordance with the purposes and principles of the Charter of the United Nations;

"3. Urges in the meantime all other States to refrain from any action which might increase the existing tensions between Cuba and the United States of America."

3. DECISION OF 26 JULY 1960 IN CONNEXION WITH THE COMPLAINT BY THE USSR CONCERNING THE RB-47 INCIDENT

37. At its 880th meeting, on 22 July 1960, the Security Council considered the question entitled "New aggressive acts by the Air Force of the United States of America against the Soviet Union, creating a threat to universal peace". The question concerned a complaint⁶⁰ by the Minister of Foreign Affairs of the USSR that on 1 July 1960 a United States military aircraft (RB-47 bomber) had violated the airspace of the Soviet Union. An explanatory memorandum to the USSR complaint noted that upon failing to follow signals directing it to land, the United States aircraft had been shot down over USSR territorial waters. Interrogation of its crew members revealed that the aircraft had been carrying out a special military reconnaissance mission. The new violation of the frontiers of the Soviet Union, the memorandum further stated, constituted a premeditated violation of universally accepted rules of international law and a policy of deliberate provocations designed to exacerbate the situation and to intensify the threat of war. The USSR submitted a draft resolution⁶¹ in this connexion which would have the Security Council condemn "the continuing provocative activities of the United States Air Force" and insist that the United States Government should put an immediate stop to such acts and prevent their recurrence.

⁶⁰ S C, 15th yr., Suppl. for July Sept., p. 12, S/4384 and S/4385.

⁶¹ S C, 15th yr., 880th mtg., para. 58, S/4406.

38. At the 881st meeting on 25 July 1960, the representative of the United States denied the alleged violation of the USSR airspace noting that at the time that the USSR claimed that the aircraft had been brought down in Soviet waters, it was actually fifty miles off the Soviet coast. He stated that his Government could have had resort to the Security Council at the time the United States aircraft was reported missing, but had found it more in the spirit of the Charter, particularly Article 33, to appeal to the USSR to join in an objective examination of the facts involved in the case. His Government now urged the Council to request the USSR to agree to such an investigation, and submitted a draft resolution,⁶² reading in part as follows:

"The Security Council,

"...

"Having heard the statements of representatives of the United States and the Union of Soviet Socialist Republics,

"...

"Recalling its resolution of 27th May 1960 (S/4328), in which the Council, stated its conviction that every effort should be made to restore and strengthen international good will and confidence based on the established principles of international law, recommended to the Governments concerned to seek solutions of existing international problems by negotiation or other peaceful means as provided in the Charter of the United Nations, and appealed to all Member Governments to refrain from the use or threat of force in their international relations, to respect each other's sovereignty, territorial integrity and political independence, and to refrain from any action which might increase tensions,

"Recommends to the Governments of the Union of Soviet Socialist Republics and the United States of America to undertake to resolve their differences arising out of the plane incident of 1st July 1960 either (a) through investigation of the facts by a commission composed of members designated in equal numbers, by the United States of America, by the Union of Soviet Socialist Republics, and by a Government or authority acceptable to both parties, charged with inquiring into the incident by inspecting the site, examining such remains of the plane as may be located, and interrogating survivors and other witnesses, or (b) through referral of the Matter to the International Court of Justice for impartial adjudication."

39. The USSR representative, at the same meeting, pointed out that since the Security Council had been furnished with exhaustive data in substantiation of the USSR charges, his Government was opposed to the holding of an investigation. The United States proposal for the establishment of a commission to conduct an investigation could have only the objective of confusing a clear issue and thus allowing the organizers of the provocative flight to escape responsibility.

40. Other representatives, speaking in support of the United States draft resolution, noted that an

international investigation into the facts called for in the draft resolution was a procedure consistent with the peaceful methods of settling international disputes outlined in Article 33 (1). One representative stated in this connexion that the question under consideration did not appear at that stage to fall within the competence of the Security Council, but should have been settled, as was customary in such cases, by negotiation between the two parties, in accordance with the provisions of Article 33 which, moreover, provided for various other means of peaceful settlement. He noted that none of the means set forth in Article 33 had been employed by the USSR before appealing to the Security Council. Another representative stated that what was suggested was not to have the Council establish a subsidiary organ to examine the case, which it clearly had the authority to do, but rather to suggest that the parties concerned should settle their dispute by means of an international inquiry. That power was clearly vested in the Council by Article 33 (2) and had been confirmed by the established practice of the Organization.⁶³

41. During the debate, the representative of Ecuador submitted an amendment⁶⁴ to the United States draft resolution, which was accepted by the United States and incorporated in its draft, requesting the parties concerned to report to the Security Council, as appropriate, on the steps taken to carry out the resolution.

42. The representative of Italy submitted another draft resolution⁶⁵ in which the Council would, *inter alia*, express the hope that, pending further inquiry or development related to the substance of the matter, the International Committee of the Red Cross be permitted to "fulfil the humanitarian task which came within its role as a neutral and independent institution with respect to members of the crew".

Decisions

At its 883rd meeting on 26 July, the Council voted on the three draft resolutions before it. The USSR draft resolution was rejected⁶⁶ by 9 votes to 2; the United States draft resolution failed of adoption⁶⁷ with 9 votes in favour and 2 against of which one was that of a permanent member and the draft resolution submitted by Italy failed of adoption⁶⁸ also by 9 votes to 2, including that of a permanent member.

4. DECISION OF 22 JUNE 1962 IN CONNEXION WITH THE INDIA-PAKISTAN QUESTION

43. At its 990th meeting the Security Council had before it a letter dated 11 January 1962 from

⁶² For texts of relevant statements, see S C, 15th yr., 881st mtg.: France, paras. 82-84 and 92; USSR, para. 40; United Kingdom, paras. 70-72; United States, paras. 26 and 28; 882nd mtg.: Argentina, para. 11; 883rd mtg.: Ceylon, para. 71.

⁶³ S C, 15th yr., 883rd mtg., para. 96.

⁶⁴ S C, 15th yr., 882nd mtg., para. 42, S/4411.

⁶⁵ S C, 15th yr., 883rd mtg., para. 187.

⁶⁶ *Ibid.*, para. 188.

⁶⁷ *Ibid.*, para. 189.

⁶⁸ S C, 15th yr., 881st mtg., para. 29, S/4409.

the representative of Pakistan, and another dated 16 January 1962 from the representative of India.

44. The representative of Pakistan stated in his letter⁶⁹ that he had requested the Security Council to be convened in order to consider what further action to take in the dispute concerning the State of Jammu and Kashmir in the light of the last report of the United Nations representative for India and Pakistan on 28 March 1958 and subsequent developments. Pakistan was constrained to make the request as efforts at the highest level for direct negotiations with the Government of India for a just and amicable settlement of the dispute had failed.

45. The letter⁷⁰ from the representative of India stated that Pakistan's contention that efforts for direct negotiations had failed was completely unfounded. It reviewed efforts on the part of India to arrive at a peaceful settlement, including an invitation extended by the Prime Minister of India during his visit to Pakistan in September 1960 to the President of Pakistan to visit India, which, the letter added, was still standing. It noted that, for four years following the submission of the report of the United Nations representative for India and Pakistan, the Government of Pakistan had not considered the matter urgent enough for consideration by the Council. That Pakistan should now, on the eve of India's third general election, ask for a meeting of the Security Council demonstrated an "opportunistic, agitational and propagandist approach which had nothing to do with the merits of the situation". India, therefore, requested the early convening of the Security Council to discuss the matter.

46. The Security Council also had before it a letter⁷¹ dated 29 January 1962 from the representative of Pakistan to the President of the Security Council drawing the attention of the Council to more recent developments which it considered as having created a grave situation between the two countries and therefore requiring immediate consideration by the Council. The letter noted in this connexion that statements by responsible leaders of opinion in India and members of the Government of India had led Pakistan to conclude that there had been a significant reversal of policy on the part of the Government of India with regard to the question of Kashmir and the relations between the two countries. The Government of India appeared to have decided to repudiate all its obligations, agreements and undertakings in respect of the peaceful solution of the Kashmir dispute.

47. During the debates at the 990th and subsequent meetings, the representatives of both Pakistan and India elaborated on previous efforts to have the matter resolved by peaceful means. The representative of Pakistan observed that, on its part, efforts at peaceful settlement had included a recent suggestion by the President of Pakistan, following a proposal by India for a no-war declaration, that the two countries should first make an attempt through negotiation, mediation, or through any

channel acceptable to both sides, but which would finally provide that if any of those methods did not bring the parties to a settlement they should have recourse to some procedure, such as international arbitration or judicial settlement, that would automatically bring about a solution. Having agreed to that procedure, the countries could then make a no-war declaration. The representative of India stated that it had always been the policy of his Government to settle its differences by peaceful means, including negotiations which, it noted, had in this respect not been exhausted by the parties. He also referred to the no-war declaration proposed by the Prime Minister of India, the objective of which was to create an atmosphere free from any apprehension, and thereby to facilitate the holding of any negotiations or discussions between the two countries for the settlement of their disputes.

48. At the same meeting, the Security Council decided, following the suggestion of its President, to adjourn on the understanding that it would resume consideration of the matter after consultation between members of the Council and the parties concerned.

49. The Council resumed its debate on the question at the 1007th meeting on 27 April 1962 and continued to meet until the 1016th meeting on 22 June 1962, in the course of which it heard the initial statements by Pakistan and India, as well as views of Council members.

50. Some members of the Council who spoke on the matter also expressed their views on the proper procedure for the Security Council to adopt at that stage of the development of the dispute. Some considered that the course of action to be taken by the Council should be in accordance with the provisions of Article 33, in the sense that it should limit itself to calling upon the parties to settle their differences through peaceful means, in particular, through the resumption of direct talks. They noted generally that the Security Council could not impose any solution that would be against the wishes of the parties concerned.

51. One representative stated that while the clear and important provisions of the Charter that negotiations were a normal and natural means of arriving at the peaceful settlement of any dispute continued to have force and significance, negotiations could be useful only when both sides were interested in fruitful negotiations. If one side wanted to force the other to negotiate on terms which the other side found unacceptable, such negotiations would achieve nothing, no matter how often references were made to the Charter. It was therefore suggested that since the Security Council had no cause for alarm in looking at the situation in the light of the provisions of either Chapter VI or Chapter VII of the Charter, it would have no need to take any special or additional decisions on the matter. The wisest course for the Security Council would be to conclude its deliberations at that point and be satisfied with the exchange of opinions which had already taken place.

52. At the 1016th meeting on 22 June 1962,

⁶⁹ S. C. 17th yr., Suppl. for Jan.—March. p. 46, S/5058.

⁷⁰ *Ibid.*, p. 48, S/5060.

⁷¹ *Ibid.*, p. 57, S/5068.

the representative of Ireland submitted a draft⁷² resolution⁷² which, *inter alia*, read as follows:

"The Security Council,

"...

"1. *Reminds* both parties of the principles contained in its resolution of 17 January 1948, and in the resolutions of the United Nations Commission for India and Pakistan dated 13 August 1948 and 5 January 1949;

"2. *Urges* the Governments of India and Pakistan to enter into negotiations on the question at the earliest convenient time with the view to its ultimate settlement in accordance with Article 33 and other relevant provisions of the Charter of the United Nations;

"3. *Appeals* to the two Governments to take all possible measures to ensure the creation and maintenance of an atmosphere favourable to the promotion of negotiations;

"4. *Urges* the Government of India and the Government of Pakistan to refrain from making any statements, or taking any action, which may aggravate the situation;

"5. *Requests* the Secretary-General to provide the two Governments with such services as they may request for the purpose of carrying out the terms of this resolution."

53. In introducing the draft resolution, the representative of Ireland stated that its purpose was to stress the desirability of an effort being made by India and Pakistan to reach a settlement of the Kashmir issue by means of negotiations and agreement between themselves.

54. The representative of India, speaking on the reference to Article 33 in the draft resolution, expressed the view that while on the face of it the draft resolution looked very nice, what was forgotten was that the phrase referring to the Article came under Chapter VI of the Charter. It had always been India's position that the India-Pakistan question was not a dispute in terms of the Charter. It was a situation created by Pakistan's aggression on India's territory and by its repeated violations of the principles and resolutions of the United Nations. Article 33 was therefore inapplicable to the case under consideration. But even if the substance of Article 33 could be defended on grounds of good conscience and should be accepted by nations, all peaceful means except judicial settlement had been tried over all these years. With regard to arbitration, it was pointed out that, while certain things were arbitrable, the sovereignty of a country, its independence and integrity were not subjects for arbitration. As India had carried out the substance of Article 33, it considered the invoking of the Article in the draft resolution as a further attempt to exert pressure on it in the matter.

55. One representative opposed to the draft resolution noted that, from the context of the draft, it was clear that the renewal of negotiations between the parties was to be based on the now out-dated resolutions of the Security Council and the United

Nations Commission on India and Pakistan. Neither reference to Article 33 of the Charter, which no one contested, nor any other references to the provisions of the Charter, nor skill and vigour in argument could conceal the central aim of the draft resolution. The appeal to negotiations on the substance of the question represented an attempt to impose negotiations which would be conducted on a basis pleasing and advantageous to one side and unacceptable to the other.⁷³

Decision

At the 1016th meeting, the Security Council voted upon the draft resolution submitted by Ireland. The results of the vote were 7 to 2, with 2 abstentions. The draft resolution failed of adoption,⁷⁴ one of the negative votes being that of a permanent member of the Security Council.

5. DECISIONS OF 24 APRIL 1963 AND 19 MAY 1965 IN CONNEXION WITH THE COMPLAINT BY SENEGAL

56. At the 1027th meeting, on 17 April 1963, when the Security Council considered a complaint⁷⁵ by Senegal of the "repeated violations of Senegalese airspace and territory" by Portuguese authorities, the representative of Portugal stated that, under Article 33 of the Charter, settlement of disputes such as the one complained of by Senegal, should have been sought through the various peaceful means enumerated therein before bringing them to the Security Council.

57. It was stated in this connexion that Portugal had in the past suggested the establishment of an international commission of inquiry to examine the facts of alleged violations like the one now under consideration by the Security Council. Such a commission, composed of Portuguese and Senegalese technicians, could have been chaired by a person appointed by the President of the Security Council or the Secretary-General, which would thereby have assured the Members of the Council of its impartiality. That was the sort of approach that would meet the precise objective of Article 33 (2) of the Charter.

58. Senegal responded that it had sought to settle its differences with Portugal through negotiations and diplomacy, but as negotiations had, in the light of the policy of racial discrimination on the part of the Government of Portugal, proved impossible, Senegal had been impelled to have recourse to the Security Council. It rejected the Portuguese proposal for establishing a commission of investigation as a delaying tactic aimed at preventing the Security Council from taking a decision on its complaint.

59. Some members of the Security Council, in expressing their views on the procedures of settlement

⁷³ For texts of the relevant statements, see S. C. 17th yr., 990th mtg.: India, para. 87; Pakistan, paras. 48 and 49; 1011th mtg.: India, paras. 182 and 185; 1012th mtg.: France, para. 49; 1013th mtg.: Ireland, para. 57; 1014th mtg.: Venezuela, para. 21; 1015th mtg.: USSR, paras. 22 and 25; 1016th mtg.: India, paras. 39-42; Ireland, para. 8; USSR, paras. 82 and 83.

⁷⁴ S. C. 17th yr., 1016th mtg., para. 92.

⁷⁵ S. C. 18th yr., Suppl. for April-June, p. 16, S/5279.

⁷² S. C. 17th yr., Suppl. for April-June, p. 104, S/5134.

sought by the parties, shared the view that in regard to matters like the one before the Security Council, it would have been more appropriate for the parties concerned to have sought a solution in the first instance through the means provided for in Article 33. Others noted that resort to the Security Council in respect of international disputes was not only authorized under Article 35 of the Charter, but in the case of the complaint by Senegal, the procedure was justified by the fact that negotiations and other diplomatic means had been attempted until Senegal broke off diplomatic relations with Portugal in 1961. Furthermore, as the matter complained of by Senegal stemmed from the existence of "the Portuguese colony of so-called Portuguese Guinea", there was no dispute so far between Senegal and Portugal. The dispute was one between Africa and Portugal, and the whole of Africa could not resort to Article 33 in terms of the Charter to negotiate with Portugal. The only recourse the African States had was to come to the Security Council, and this was precisely what Senegal had done.

60. At the 1032nd meeting on 23 April 1963, the representative of Ghana introduced a draft resolution⁷⁶ jointly sponsored with Morocco, in which the Security Council, expressing the hope that tension between Senegal and Portugal would be "eliminated in accordance with the provisions of the Charter of the United Nations", would, *inter alia*, deplore the incursions by Portuguese military forces into Senegalese territory as well as the more specific incident complained of by Senegal; request the Government of Portugal to take whatever action might be necessary to prevent the violation of Senegal's sovereignty and territorial integrity; and request the Secretary-General to keep the development of the situation under review.⁷⁷

Decision

At the 1033rd meeting on 24 April 1963, the Security Council adopted⁷⁸ the two-Power draft resolution unanimously as its resolution 178 (1963).

61. On 7 May 1965, the representative of Senegal submitted another complaint⁷⁹ to the Security Council, in which it was alleged that after the Council had taken a decision on its complaint in April 1963, Portugal had committed repeated violations of Senegalese territory and airspace.

62. At the 1205th meeting, on 12 May 1965, the representative of Senegal stated that since the adoption of resolution 178 (1963), there had been sixteen new violations of Senegalese territory and airspace by Portuguese authorities. Senegal requested the Security Council to call on Portugal to take all

necessary measures to prevent future violations of Senegalese territory and to abide by its declaration of intention⁸⁰ made in 1963 to respect Senegalese sovereignty and territorial integrity. The Council should also condemn Portugal for the violations of Senegalese territory which it had perpetrated notwithstanding the solemn warning contained in Security Council resolution 178 (1963).

63. At the 1206th meeting, on 13 May 1965 the representative of Portugal observed that since the complaint by Senegal had made mention of its earlier complaint, Portugal had to refer to the position it had taken two years before, that parties to international disputes of the nature now before the Council should, first of all, seek a solution among themselves by the various means of peaceful settlement provided for in Article 33 before bringing them to the attention of the Security Council. After noting that all the substantive charges levelled by Senegal had been answered, he stated that Senegal had made no further efforts in pursuance of Article 33. Portugal had on its own investigated the charges and its inquiry did not confirm a single instance of violation of Senegalese territory. Portugal proposed that if Senegal doubted the words of the Portuguese Government, both Governments should agree to set up an international inquiry team to investigate the alleged violations, consisting of three persons, one appointed by the Government of Senegal, one by the Government of Portugal, and the third member, the president, appointed either by the Secretary-General or the President of the Security Council, in consultation with the two Governments concerned.

64. Senegal replied that it had brought its complaint of Portuguese violations to the Security Council because it could not possibly have had any confidence in Portugal, after the latter, notwithstanding its pledge and the Council's warning, had again persistently violated Senegalese territory and airspace.

65. At its 1212th meeting on 19 May 1965 the Security Council had before it a draft resolution⁸¹ submitted by Ivory Coast, Jordan and Malaysia. The operative paragraphs of the draft resolution read as follows:

"The Security Council,

"...

"1. *Deeply deplores* any incursions by Portuguese military forces into Senegalese territory;

"2. *Reaffirms* its resolution 178 (1963) of 24 April 1963;

"3. *Requests once again* the Government of Portugal to take all effective and necessary action to prevent any violation of Senegal's sovereignty and territorial integrity;

"4. *Requests* the Secretary-General to follow the development of the situation."

66. Some members of the Security Council who spoke on the substance of the complaint by Senegal also commented on the appropriate steps to be taken by the Security Council. Among them some expressed the view that the Security Council should,

⁷⁶ *Ibid.*, p. 30, S/5293.

⁷⁷ For texts of relevant statements, see S.C., 19th yr., 1027th mtg.: Portugal, paras. 66-68, 70, 72-74 and 81; 1028th mtg.: Ghana, paras. 82 and 83; Senegal, paras. 36-38; USSR, para. 122; 1032nd mtg.: France, para. 43; Morocco, para. 13; 1033rd mtg.: Brazil, para. 64; Portugal, para. 116; Senegal, paras. 137 and 138; United Kingdom, paras. 25 and 26; United States, paras. 18 and 22.

⁷⁸ S.C., 18th yr., 1033rd mtg., para. 134.

⁷⁹ S.C., 20th yr., Suppl. for April-June, p. 105, S/6338.

⁸⁰ See S.C., 18th yr., Suppl. for April-June, p. 24, S/5281.

⁸¹ S.C., 20th yr., 1210th mtg., para. 84, S/6366.

under Article 33 of the Charter, call upon the parties concerned to employ means provided for in that Article that would best suit the circumstances of the case. They supported the proposal made by Portugal in this connexion for the appointment of an international inquiry commission to ascertain the facts of the alleged violations of Senegalese territory. One representative stated that the provisions of resolution 178 (1963) were still relevant, particularly the paragraph expressing the hope that the parties would eliminate the tension between them "in accordance with the provisions of the Charter of the United Nations".⁸² In the view of his Government, the principal relevant provisions were those of Article 33, which the Council could once more invite the parties concerned to explore.

67. Another representative expressed the view that without disputing the principle of having recourse to the various means of peaceful settlement contained in the Charter, in certain cases, including the one under consideration, an automatic application of such provisions would not be possible, spe-

⁸² Resolution 178 (1963) of 24 April 1963, third preamb. para.

cially when one of the parties was not prepared to adopt such a course.⁸³

Decision

At the 1212th meeting, on 19 May 1965, the Security Council voted upon and adopted⁸⁴ the three-Power draft resolution unanimously as its resolution 204 (1965).

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.**

****2. THE QUESTION OF THE APPLICATION OF ARTICLE 33 THROUGH PROCEDURES OF A GENERAL CHARACTER INSTITUTED BY THE GENERAL ASSEMBLY.**

⁸³ For texts of relevant statements, see S C, 20th yr., 1205th mtg.: Senegal, paras. 6 and 30-32; 1206th mtg.: France, para. 73; Portugal, paras. 11, 12, 16, 44 and 97; Senegal, para. 78; 1210th mtg.: Bolivia, para. 101; Congo (Brazzaville), para. 23; Ivory Coast, para. 90; United Kingdom, paras. 36 and 37; 1212th mtg.: Netherlands, paras. 22, 23 and 26; United Kingdom, paras. 39 and 40; United States, paras. 11 and 16.

⁸⁴ S C, 20th yr., 1212th mtg., para. 37.

ANNEX

Excerpts from the Report* of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, dated 16 November 1964

IV. The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered

A. WRITTEN PROPOSALS AND AMENDMENTS SUBMITTED DURING THE INITIAL DEBATE

128. In regard to the above principle five written proposals were submitted to the Special Committee by Czechoslovakia (A/AC.119/L.6), by Yugoslavia (A/AC.119/L.7), by the United Kingdom of Great Britain and Northern Ireland (A/AC.119/L.8), by Japan (A/AC.119/L.18) and jointly by Ghana, India and Yugoslavia (A/AC.119/L.19). Yugoslavia withdrew its original proposal (A/AC.119/L.7) in favour of the three-Power proposal (A/AC.119/L.19) submitted by that country, Ghana and India. Four written amendments to the proposal by the United Kingdom (A/AC.119/L.8) were submitted by France (A/AC.119/L.17), by Canada and Guatemala (A/AC.119/L.20), by the Netherlands (A/AC.119/L.21) and by Canada (A/AC.119/L.22). The amendment by Canada and Guatemala (A/AC.119/L.20) was later withdrawn by its sponsors. The texts of the above-mentioned proposals and amendments are given below in the order in which they were submitted to the Special Committee.

129. Proposal by Czechoslovakia (A/AC.119/L.6)

"The principle of peaceful settlement of disputes"

"1. States shall settle their international disputes solely by peaceful means so that international peace, security and justice are not endangered.

"2. The parties to a dispute shall enter first into direct negotiation, and, having regard to the circumstances and the nature of the dispute, may also use by common agreement

other peaceful means of settling disputes, such as enquiry, mediation, conciliation, arbitration or judicial settlement, and resort to regional agencies or arrangements."

130. Proposal by Yugoslavia (A/AC.119/L.7)

"Peaceful settlement of disputes"

"1. International disputes shall be settled solely by peaceful means, in a spirit of understanding, on a basis of sovereign equality and without the use of any form of pressure.

"2. States shall, accordingly, seek early, appropriate and just settlement of their international disputes by such peaceful means as may previously have been agreed upon between them or such other peaceful means as may be most appropriate according to the circumstances and the nature of the dispute, in particular those means indicated in Article 33 of the Charter.

"3. In seeking a peaceful settlement the parties to a dispute, as well as all other States, shall refrain from any action that could aggravate the situation."

131. Proposal by the United Kingdom (A/AC.119/L.8) and amendments by France (A/AC.119/L.17), Canada and Guatemala (A/AC.119/L.20), Netherlands (A/AC.119/L.21) and Canada (A/AC.119/L.22)

Proposal by the United Kingdom

"Peaceful settlement of disputes"

"Statement of principles"

"1. Every State shall settle its disputes with other States by peaceful means in such a manner that international peace and security, and justice, are not endangered.

"2. The parties to any such dispute shall first of all seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

"3. Unless they are capable of settlement by some other means, legal disputes should as a general rule be

* G A (XX), Annexes, a. i. 90 and 94, pp. 72-142, A/5746, paras. 128-138, 149 and 150, 155, 161-201.

referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court. The parties may, however, entrust the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future."

"Commentary"

"(1) The language of paragraph 1 follows closely that of Article 2, paragraph 3, of the Charter. Although the primary objective of the United Nations, as an organization, is to ensure the maintenance of international peace and security, it is essential to bear in mind that the Organization is equally dedicated to the concept that the principles of justice must be respected.

"(2) Paragraph 2, the language of which follows closely that of Article 33 of the Charter, spells out, in a non-exhaustive manner, the various means of peaceful settlement. Broadly speaking, the means of peaceful settlement thus enumerated fall into two categories:

"(a) Those means which, so far as the terms of settlement are concerned, depend upon voluntary acceptance by the parties;

"(b) Those means which oblige the parties to accept settlement determined by a third party organ.

"Negotiation, mediation, inquiry and conciliation fall into the first of these categories; arbitration and judicial settlement fall into the second. Although reference to regional agencies or arrangements is not a means of settlement in itself, resort to such regional agencies or arrangements, which may incorporate either or both of the categories of peaceful settlement, should in any case be encouraged. Although the means of negotiation is that most commonly used, at least in the initial stages, for the peaceful settlement of international disputes, it is not the only or necessarily the most effective method of resolving a dispute. In the event that the method of negotiation is initially adopted by the parties to a dispute and does not result in a solution, the parties should continue to seek a solution by making use of one of the other means of peaceful settlement enumerated, having regard to the nature of the dispute.

"(3) Paragraph 3 emphasizes the principle, enshrined in Article 36, paragraph 3, of the Charter, that legal disputes should as a general rule be referred by the parties to the International Court of Justice. All States Members of the United Nations are *ipso facto* parties to the Statute of the Court. The principle that legal disputes should as a general rule be referred to the Court also finds expression in operative paragraph 3 of General Assembly resolution 171 C (II) of 14 November 1947. The second preambular paragraph of part C of that resolution draws attention to the consideration that the International Court of Justice could settle or assist in settling many disputes in conformity with the principles of justice and international law if, by the full application of the provisions of the Charter and of the Statute of the Court, more frequent use were made of its services. In this connexion, operative paragraph 1 of part C of the resolution draws the attention of those States which have not yet accepted the compulsory jurisdiction of the Court in accordance with Article 36, paragraphs 2 and 5, of the Statute, to the desirability of the greatest possible number of States accepting this jurisdiction with as few reservations as possible.

"(4) The second sentence in paragraph 3, which is based on Article 95 of the Charter, makes it clear that parties to a dispute of a legal nature may entrust the solution of their differences to other means of judicial settlement."

132. The French amendment (A/AC.119/L.17) to the United Kingdom proposal provided for the addition to the statement of principles in that proposal of a new paragraph 4 as follows:

"4. Recourse to any one of the means of peaceful

settlement of disputes, in conformity with an undertaking freely entered into, shall not be regarded as derogating from the sovereignty of the State."

133. The amendment (A/AC.119/L.20) by Canada and Guatemala to the United Kingdom proposal, which was later withdrawn by its sponsors, proposed the insertion of the following new paragraph between paragraphs 2 and 3 of the statement of principles in that proposal:

"Parties to a dispute which, notwithstanding resort to the procedures mentioned in the previous paragraph, and in particular resort to the procedures provided for by regional agencies or arrangements, remains unsettled should, in accordance with the relevant provisions of the Charter, bring it before the General Assembly or the Security Council as the case may be."

134. The Netherlands amendment (A/AC.119/L.21) to the United Kingdom proposal provided for the addition, at the end of paragraph 3 of the statement of principles in that proposal, of the following:

"General multilateral conventions adopted under the auspices of the United Nations should contain a clause providing that disputes relating to the interpretation or application of the convention which the parties have not agreed to settle, or have not been able to settle, by some other peaceful means, may be referred on the application of any party to the International Court of Justice."

135. Lastly, the Canadian amendment (A/AC.119/L.22) to the United Kingdom proposal provided for the addition of the following new paragraph at the end of the statement of principles in the proposal:

"Nothing in the foregoing paragraphs prejudices or derogates from the powers and functions which are vested by the provisions of the Charter in the General Assembly and the Security Council respectively in relation to the peaceful settlement of international disputes."

136. Proposal by Japan (A/AC.119/L.18)

"Peaceful settlement of disputes"

"The following paragraph shall be inserted in the principal and operative part of the outcome of the Special Committee:

"Every State should accept the compulsory jurisdiction of the International Court of Justice, in accordance with Article 36, paragraph 2, of the Statute of the Court, as soon and with as few reservations as possible."

137. Proposal by Ghana, India and Yugoslavia (A/AC.119/L.19)

"Peaceful settlement of disputes"

"1. Every State shall settle its disputes with other States by peaceful means in such a manner that international peace and security, and justice are not endangered.

"2. Unless otherwise provided for, the parties to any dispute shall, first of all, seek a solution by direct negotiations; taking into account the circumstances and the nature of the dispute, they shall seek a solution by inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements of other peaceful means of their own choice.

"3. (a) If any dispute is not capable of settlement by some other means and if the parties agree that it is essentially legal in nature, such a dispute shall, as a general rule, be referred by all the parties to it to the International Court of Justice in accordance with the provisions of the Statute of the Court. The parties may, however, entrust the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future.

"(b) In accordance with the provisions of Article 9 of the Statute of the International Court of Justice concerning the election of the judges of the Court, the United Nations shall take early steps to assure that in the Court as a whole there are represented more fully and equitably the main forms of civilization and the principal legal systems of the

world. At the same time, it is the duty of the United Nations to continue its efforts in the field of the progressive development of international law and its codification in order to strengthen the legal basis of the judicial settlement of international disputes.

"4. States should, as far as possible, include in the bilateral and multilateral agreements, to which they become parties, provisions concerning the particular peaceful means mentioned in Article 33 of the Charter of the United Nations, by which they desire to settle their differences.

"5. In view of their gravity and their tendency to increase tensions rapidly and, thereby, endanger international peace and security, territorial disputes and problems concerning frontiers shall be settled solely by peaceful means.

"6. In seeking a peaceful settlement the parties to a dispute, as well as other States, shall refrain from any action which may aggravate the situation and shall act in accordance with the purposes and principles of the Charter of the United Nations and the provisions of this Chapter."

B. DEBATE

1. General obligation to settle international disputes by peaceful means

138. The principle stated in Article 2, paragraph 3, of the United Nations Charter, that States shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered, was generally recognized by the representatives who took part in the debate as a legal obligation which contemporary international law imposed on all States members of the international community. Proposals concerning this general obligation were submitted by Czechoslovakia (A/AC.119/L.6, para. 1 (see paragraph 129 above)), Yugoslavia (A/AC.119/L.7, para. 1 (see paragraph 130 above)), the United Kingdom (A/AC.119/L.8, para. 1 (see paragraph 131 above)) and Ghana, India and Yugoslavia (A/AC.119/L.19, para. 1 (see paragraph 137 above)).

...

2. Means of peaceful settlement of international disputes

149. It was generally recognized that the Charter system leaves the parties to disputes free to choose the means of peaceful settlement they consider most suitable. However, the various speakers who took part in the discussion stressed the merits of one or other means of peaceful settlement, or argued that the question should be approached from the point of view not only of the *lex lata* but also of the *lex ferenda* so as to improve the existing procedures of settlement to the greatest possible extent. Provisions concerning the means of settlement in general were contained in the proposals submitted by Czechoslovakia (A/AC.119/L.6, para. 2 (see paragraph 129 above)), Yugoslavia (A/AC.119/L.7, para. 2 (see paragraph 130 above)), the United Kingdom (A/AC.119/L.8, para. 2 (see paragraph 131 above)) and Ghana, India and Yugoslavia (A/AC.119/L.19, para. 2 (see paragraph 137 above)).

150. A number of representatives pointed out that, in dealing with the principle of peaceful settlement of international disputes, the Committee should not overlook the existence of the General Act of 26 September 1928 for the Pacific Settlement of International Disputes;^b revised by resolution 268 (III) of 28 April 1949 of the General Assembly.^c One representative, emphasizing that the General Act was a great step forward in the history of procedures for the peaceful settlement of international disputes, suggested that States Members of the United Nations should be urged to accede to it.

...

(i) Direct negotiation

155. The debate on this means of peaceful settlement revolved around the question whether it was necessary or

appropriate to give direct negotiation special legal emphasis as against the other means of peaceful settlement recognized by international law and set forth in the Charter. Many arguments were advanced on that question.

...

161. Those representatives who felt that negotiation should not be given a particular priority were also of the view that the establishment of a hierarchy among the methods of peaceful settlement of disputes would be contrary to the system laid down by Article 33, paragraph 1, and other provisions of the Charter. Article 33 left the parties free to choose the means of settlement they preferred, and that freedom was recognized without reservations and at all times. It would therefore be inadmissible to modify the Charter system on that important point by attempting to establish a kind of legal obligation to negotiate *nolens volens*. What the Charter did was to provide that when the parties could not reach agreement on the choice of the means of settlement therein set forth, they might have recourse to the United Nations itself in order to try to reach a solution, in accordance with the provisions of Chapter VI. The Charter did not give preference to negotiation nor to any other method of solving disputes, and an attempt to weaken its provisions in that regard would not contribute to the progressive development of international law. If the Charter mentioned negotiations first, it was because in the majority of cases the parties had recourse to that method first, but that did not imply that the parties were obliged to proceed in that manner, considering the other means as accessory or secondary. Some of the representatives in question pointed out that direct negotiation gave the parties great freedom of action, but that in the case of certain disputes it would be wiser to renounce that freedom and accept in advance a more formal method of settlement which would enable objective rules to be applied.

162. Accordingly, in the view of these representatives, there would be no justification for stating, as a general principle, that recourse should be had to direct negotiation in the first place. The choice of means would depend on the will of the parties and the nature of the dispute.

163. Finally, other representatives pointed out that reference might be made in the first place to the method of direct negotiation but without implying that preference had to be given to that means of settlement over any other desired by the parties. They considered that while it was significant that instruments such as the United Nations Charter, the Bandung Declaration, the Belgrade Declaration, the Charter of the Organization of American States and the Charter of the Organization of African Unity gave negotiation pride of place among the means of settling disputes, negotiation was not in itself sufficient unless it was accompanied by the desire of the parties to co-operate, neither was it a guarantee of justice. For these representatives, negotiation might justifiably be mentioned first since it was the first step towards the peaceful settlement of a dispute and was the most ancient method used by States. Furthermore, in the reality of international life, it solved the majority of disputes. That, however, was not at all the same thing as regarding it as the sole means of settlement or as a means to which the parties were obliged to have recourse, since Article 33 of the Charter adopted a flexible criterion and established that the parties could use means "of their own choice". In this connexion, the same representatives took the view that when a treaty stipulated a specific means of settlement other than direct negotiation, the States parties should obviously apply it, and also that the right of States to bring disputes of a particularly serious nature before the appropriate United Nations organ could not be called in question.

(ii) Inquiry, mediation and conciliation

164. Some representatives referred to the procedures for inquiry, mediation and conciliation established by regional organizations, such as the Organization of American States, the Organization of African Unity and various European organizations. One of them dwelt upon the procedures of me-

^b League of Nations, *Treaty Series*, vol. XCIII, 1929, No. 2123.

^c United Nations, *Treaty Series*, vol. 71 (1950), No. 912.

diation and conciliation which were within the terms of reference of the organs of the United Nations and drew attention to the Panel for Inquiry and Conciliation which had been established by the General Assembly of the United Nations (resolution 268 (III) of 28 April 1949).

(iii) *Arbitration*

165. Referring to the problems connected with the settlement of legal disputes, one representative raised the question of the improvements which could be made in existing conventional arbitration procedure. After pointing out the drawbacks and shortcomings inherent in the three means by which, under existing law, disputes could be brought before an arbitration tribunal—namely, the conclusion of an *ad hoc* agreement (*compromis*), the inclusion in a treaty of a “compromissory clause”, and the conclusion of a “general treaty of arbitration”—the representative suggested that the following measures might be taken to remedy those drawbacks and shortcomings: (a) acceptance of the competence of the International Court of Justice to determine whether a dispute was a legal one; (b) acceptance of the competence of the International Court of Justice to determine whether a dispute was justifiable under the terms of the arbitration treaty; (c) agreement that the International Court of Justice or its President would settle questions connected with the composition of the arbitral tribunal or other procedural matters, in conformity with article 3 of the United Nations draft articles on arbitral procedure, which had been drawn up by the International Law Commission; and (d) generalization of the practice whereby States agreed to accept judicial settlement whenever arbitration failed.

(iv) *Judicial settlement*

166. The proposals of the United Kingdom (A/AC.119/L.8, para. 3 (see paragraph 131 above)), Japan (A/AC.119/L.18 (see paragraph 136 above)) and Ghana, India and Yugoslavia (A/AC.119/L.19, para. 3 (see paragraph 137 above)) contained particular provisions relating to this mode of settlement.

167. The debate on judicial settlement of international disputes centred on whether, in the formulation of the principle relating to peaceful settlement, particular mention should be made of the role of the International Court of Justice in the matter and whether it was advisable to appeal to States to accept the compulsory jurisdiction of the Court under Article 36, paragraph 2, of its Statute.

168. With regard to the first of these points, some representatives pronounced themselves in favour of an explicit reference to the Court in the formulation of the principle of peaceful settlement of disputes. They stated that it would be inconceivable not to mention the important role of the International Court of Justice in that respect.

169. Other representatives, however, argued that such a reference was not necessary from either a strictly legal or a practical point of view and might give rise to ambiguity regarding the nature of the Court's jurisdiction, particularly if the reference was a general one which did not go into details. Still other representatives said that they had no objection to reference being made to the Court, provided that it was not at the expense of other means of settlement provided for in Article 33 of the Charter and in other relevant Charter provisions.

170. The question of the timeliness and desirability of an appeal for the acceptance of the compulsory jurisdiction of the International Court of Justice provoked greater controversy. Representatives favouring or opposing such an appeal put forward numerous arguments in support of their positions.

171. The representatives who were in favour of an appeal for the acceptance of the compulsory jurisdiction of the Court believed that the Special Committee should recommend that States should accept that jurisdiction under Article 36, paragraph 2, of the Statute of the Court. The procedure for the

judicial settlement of international disputes would thereby be improved and international law would be strengthened. States which accepted the compulsory jurisdiction of the Court, in the opinion of these representatives, were obviously more concerned over the possible consequences of their legal obligations than the States which had not yet accepted the compulsory jurisdiction. This resulted in a basic difference of approach to the formulation of substantive rules of international law and thereby hindered its development. Moreover, acceptance of the Court's compulsory jurisdiction, being an act entirely dependent on the will of States, could not be considered a limitation or renunciation of their sovereignty. Thus it could not be maintained that the nearly forty States which had accepted the Court's compulsory jurisdiction had abandoned their sovereignty. It was argued, furthermore, that States always exercised their freedom of action within the framework of international law. That freedom, however, as far as the choice of means of peaceful settlement was concerned, was contingent on the other party's agreeing to choose the same means of settlement. Agreement in this respect might be easier to achieve if all States were under the ultimate obligation of submitting their disputes to the Court.

172. It was also pointed out that the Statute provided for the acceptance of the Court's compulsory jurisdiction in Article 36, paragraph 2, and that the General Assembly was in no way barred from inviting States to accept it. In fact, General Assembly resolution 171 (II) of 14 November 1947 proclaimed the desirability of the acceptance by States of the compulsory jurisdiction of the Court. It was clear that resort to the Court offered considerable advantages and greater guarantees than other means of settlement. For one thing, in the light of the objectivity and impartiality of the Court, the real inequality in the strength of States would not affect the outcome as in the case of other means of settlement and final settlement, being based on law, could be accepted by unsuccessful parties without feeling that they had lost prestige. Furthermore, the inadequate development of international law and the lack of an international legislator enhanced the importance of the function of the International Court of Justice since it could fill the existing gaps by means of a case-law adapted to the needs of an evolving international community.

173. The representatives who favoured such an appeal recognized that the compulsory jurisdiction of the Court had been rejected by the United Nations Conference on International Organization at San Francisco and other subsequent conferences and that its general acceptance raised considerable difficulties. However, they considered that the present signs of a reduction in international tension suggested that the time would be opportune for an appeal. They added that the small proportion of States which at present accepted the compulsory jurisdiction of the Court and the nature of some reservations attached to those acceptances should not prevent the attention of States from being drawn to a method of settlement which had great advantages both for individual States and for the international community as a whole.

174. Those representatives who opposed an appeal for the acceptance of the compulsory jurisdiction of the International Court of Justice said that it would not accord with the realities of international life and recent experience in the matter. They argued that to attempt to put the compulsory jurisdiction of the International Court of Justice first among means of peaceful settlement would be to adopt a doctrinaire position contrary to the principle of sovereign equality and independence of States and to the principle of free choice by all States parties to a dispute of the most suitable means of peaceful settlement in the light of their interests and the nature and circumstances of the dispute in question. According to these representatives, recognition of the Court's jurisdiction should be optional, since the history of international law and more recent diplomatic events showed that the great majority of the States making up the international community did not consider compulsory

jurisdiction either appropriate or advisable, and that only some forty States had acceded to the optional clause in Article 36, paragraph 2, of the Statute of the Court. Moreover, a number of States which had accepted the Court's compulsory jurisdiction had done so with reservations which virtually nullified their acceptance. It was recalled that the San Francisco Conference had rejected compulsory jurisdiction and that Article 36, paragraph 3, of the Charter and Article 36, paragraph 1, of the Statute of the Court excluded such jurisdiction from the Charter system by declaring that disputes were to be referred to the Court by all parties, not merely by one. Furthermore, it was stressed that the various conferences on the codification of international law which had been held under the auspices of the United Nations, such as the 1958 Conference on the Law of the Sea, the 1961 Conference on Diplomatic Intercourse and Immunities, and the 1963 Conference on Consular Relations, had also rejected the inclusion of articles prescribing the compulsory jurisdiction of the Court in the conventions adopted and had limited themselves to setting it out in optional protocols, which had so far received an insignificant number of ratifications or accessions.

175. Other representatives, who also opposed an appeal for acceptance of compulsory jurisdiction, pointed out that the small degree of integration so far achieved by the international community was an obstacle to the more general acceptance of such jurisdiction and that that was particularly true of the States which had recently achieved independence, as was shown by the fact that very few of the new States Members of the United Nations had accepted such jurisdiction. In that regard it was pointed out that, in order for many States to have confidence in the Court's jurisdiction, it was essential not to appeal for acceptance of compulsory jurisdiction, but to speed up the process of codification and progressive development of international law and to ensure that the membership of the Court reflected a more equitable geographical distribution. Some representatives felt that the attitude adopted by the new States was justified because of the situation in which they found themselves as a result of having formally inherited legal obligations deriving from the colonial regime to which they had been subjected, and that Article 38, paragraph 1 (c) of the Statute of the Court, which provided that the Court should decide in accordance with "the general principles of law recognized by civilized nations" was not likely to dispel the new States' lack of confidence. One representative also stated that the organs of the United Nations themselves had done nothing to help dispel the lack of confidence in the Court since they had almost always resolved disagreements as to their competence without consulting it. (Further arguments advanced in the same respect appear in part 3 of the present chapter.)

176. To illustrate the views outlined above, some representatives pointed out that the States belonging to geographical areas which had reached a high degree of integration had accepted the obligation to submit a wide range of legal disputes to the International Court of Justice, while States belonging to other areas which had not yet attained the same degree of integration distrusted the procedure of judicial settlement of disputes. Thus, they noted that while article 1 of the European Convention for the Pacific Settlement of Disputes,⁴ and article XXXI of the American Treaty on Pacific Settlement, gave considerable prominence to the procedure of judicial settlement, the Charter of the Organization of African Unity had omitted mention of that procedure as one of the means of peaceful settlement of disputes. Finally, a number of representatives pointed out that the existence of tension and distrust in international relations made it difficult to determine when a dispute was a legal one and that, consequently, the best way to secure more frequent recourse to judicial settlement would be to first define the legal aspects of the political questions which most directly affected international peace and security.

177. During the debate on the procedure of judicial settle-

ment, some representatives expressed the view that the parties to a dispute should first of all agree that the dispute was essentially legal in nature before referring it to the Court. Other representatives, however, firmly opposed any mention of such a proviso since it would in many cases afford States a pretext for circumventing the jurisdiction of the Court and since, moreover, Article 36, paragraph 3, of the Charter conferred upon the Security Council the power to decide, as a first step, whether or not a dispute was a legal one for the purpose of referral to the International Court of Justice.

178. Some representatives, who rejected any appeal for accession to the optional clause, none the less stated that their respective countries had accepted the Court's jurisdiction in the case of certain technical conventions, or had otherwise provided for compulsory arbitration. Other representatives considered this to be an encouraging development.

(v) *Resort to regional agencies or arrangements*

179. Some representatives stressed that account should be taken of a recent trend in the peaceful settlement of international disputes, namely resort to regional agencies or arrangements. It was clear, in their view, that regional agencies were often better qualified than world organizations to settle a certain type of dispute arising within their own regions; furthermore, the value of recourse to such regional agencies had been amply shown by the recent practice of the new Organization of African Unity and by the history of older bodies such as the League of Arab States, the Organization of American States and European organizations. One representative also said that article 20 of the Charter of the Organization of American States specified,⁵ in conformity with Article 52 of the Charter of the United Nations, that all international disputes that might arise between American States should be submitted to the peaceful procedures set forth in the regional organization's Charter before being referred to the Security Council of the United Nations. Another representative, however, expressed the view that regional agencies were not the final answer, since the disputes which engaged the attention of the international community were often those that arose between States belonging to different regions.

(vi) *Resort to the competent bodies of the United Nations*

180. The joint amendment of Canada and Guatemala (A/AC.119/L.20 (see paragraph 133 above)) and the amendment of Canada (A/AC.119/L.22 (see paragraph 135 above)) to the United Kingdom proposal (A/AC.119/L.8) made reference to the settlement of disputes by the Security Council or the General Assembly.

181. Various representatives said that, in the formulation of the means of peaceful settlement of international disputes, it would not be enough simply to list the traditional methods of settlement which appeared in Article 33 of the Charter, since the institutional procedures for settlement under Articles 34 to 38 in Chapter VI and Article 14 in Chapter IV of the Charter were the most important innovation in that regard in the Charter, an innovation begun at the world level by the Covenant of the League of Nations. These representatives held that a careful consideration of those institutional procedures in the Charter was necessary, because United Nations practice daily demonstrated that many international disputes were settled by recourse to such procedures. Thus, they considered, in order to avoid a gap in the formulation of the principle of peaceful settlement of international disputes the vital role often played by the competent bodies of the United Nations in the peaceful settlement of international disputes should be stressed.

182. One representative emphasized that the Charter system for the settlement of international disputes by recourse to United Nations bodies represented an important step forward, since by means of such procedures those bodies could deal with both "situations" and "disputes" and were authorized

⁴ United Nations. *Treaty Series*, vol. 320 (1959), No. 4646.

⁵ *Ibid.*, vol. 119 (1952), No. 1609, p. 58.

to put forward recommendations. Another representative was in favour of redoubling efforts to secure the more direct involvement of United Nations bodies in the procedures for the peaceful settlement of international disputes and pointed out in that connexion that the granting of exceptional powers of decision to the General Assembly had contributed to the settlement of the question of the former Italian colonies.

(vii) *Advisory Opinions of the International Court of Justice*

183. Referring to possible means of strengthening and perfecting the means of peaceful settlement of international disputes, some representatives said that the Advisory Opinion of the International Court of Justice should be sought more frequently and that its conclusions should command general respect. They considered, in view of the Court's prestige and authority, that attention should be given to the possibility of making greater use of that institution both to develop United Nations law and to settle disputes between States.

(viii) *Good offices and legal consultation*

184. One representative stressed that Article 33, paragraph 1, of the Charter did not explicitly mention either good offices or legal consultation among the means of peaceful settlement, but that such omissions were not important since the list in Article 33 was not exhaustive and under the terms of that Article the parties could resort to "other peaceful means of their own choice". He recalled that the San Francisco Conference had expressly decided to add "inquiry" to the means listed in the Dumbarton Oaks draft, but had omitted "good offices", which had not been separated from "mediation" despite their distinct legal character. On the other hand, "good offices" were included in the list of means or procedures for peaceful settlement in the Charter of the Organization of American States. Another representative drew attention to the proposal put forward by certain countries for the establishment of a permanent commission of good offices as a subsidiary organ of the United Nations General Assembly.

3. *Questions relating to the principle of peaceful settlement of disputes*

185. During the debate on this principle, various questions were raised as being in one manner or another related to the peaceful settlement of international disputes and which were later dealt with in proposals and amendments submitted by the members of the Committee. These issues, with a summary of the observations made on them, are set forth hereunder.

(i) *The duty to settle territorial and frontier disputes by peaceful means*

186. The proposal submitted by Ghana, India and Yugoslavia (A/AC.119/L.19, para. 5 (see paragraph 137 above)) referred to territorial and frontier disputes and stated that they should be settled solely by peaceful means. The sponsors of the proposal observed that, as in the course of the discussions on the principle of prohibition of the threat or use of force a number of delegations had expressed their misgivings with regard to territorial disputes and frontier problem (referred to in the proposal by Czechoslovakia (A/AC.119/L.6 (see paragraph 27 above)), they had though it appropriate in the treatment of this principle, to make an explicit and specific reference to the duty to settle this category of disputes peacefully, in view of the fact that the gravity and nature of this category of disputes frequently made them serious threats to international peace and security. While no observations were made on this provision of the three-Power proposal during the debate, one representative referred to the letter on the subject of the peaceful settlement of territorial and frontier questions sent by the Chairman of the Council of Ministers of the Union of Soviet Socialist Republics, on 31 December 1963, to the Heads of States or Governments of all countries.

(ii) *The duty to refrain from aggravating the situation*

187. The proposal by Yugoslavia (A/AC.119/L.7, para. 3 (see paragraph 130 above)) and the proposal submitted by

Ghana, India and Yugoslavia (A/AC.119/L.19, para. 6 (see paragraph 137 above)) contained a provision on this subject.

188. A number of representatives observed that the duty to settle disputes by peaceful means implied a duty of States to refrain from aggravating the situation. This duty, they said, was incumbent both on the States parties to the disputes and on third States, since any dispute between States affected the entire international community, so that all States had the duty of helping to settle it by refraining from exacerbating it. It was pointed out that the recent Protocol of Mediation, Conciliation and Arbitration adopted by the Organization of African Unity provided that when a dispute had been referred to the Commission of Mediation, Conciliation and Arbitration all members of the Organization had the duty of refraining from any act likely to aggravate the situation.

(iii) *Resort to means of peaceful settlement does not derogate from the sovereignty of States*

189. This question was dealt with in the amendment by France (A/AC.119/L.17 (see paragraph 132 above)) to the United Kingdom proposal (A/AC.119/L.8).

190. A number of representatives expressed the view that in order to dispel certain misgivings and to remove any doubt on the matter, it would be advisable to specify clearly that a State's consent to submit a dispute to a judge or arbitrator or to any other means of pacific settlement was an act of its own free will and therefore, far from impairing its sovereignty, constituted a supreme manifestation of that sovereignty. As the sovereignty of each State was subject to the supremacy of international law, the use of procedures recognized by international law for the settlement of disputes could in no way be regarded as incompatible with the principle of sovereign equality of States. These observations were not challenged by any representative, although one representative felt that such a provision would be out of place in the conclusions to be adopted on the principle of peaceful settlement of international disputes.

(iv) *Composition of the international Court of Justice*

191. The proposal submitted by Ghana, India and Yugoslavia (A/AC.119/L.19, para. 3 (b) (see paragraph 137 above)) mentioned the question of the composition of the International Court of Justice.

192. Some representatives expressed the view that the geographical composition of the International Court of Justice was one of the reasons for the fact that many States showed reluctance to enlist its services for the settlement of their disputes or refused to accept its compulsory jurisdiction. Thus, these representatives felt that a more equitable representation of the various geographic groups and juridical systems of the world was essential if States were to be encouraged to resort to the International Court of Justice and to accept its compulsory jurisdiction. They considered that a revision of the Court's composition would help to increase the confidence of States in the Court as the principal judicial organ of the United Nations and, therefore, to develop the procedure of peaceful settlement of international disputes. One representative pointed out that his country had submitted to the General Assembly a proposal that the number of judges of the International Court of Justice should be increased.

193. However, other representatives pointed out that the composition of the Court raised complex problems, and that the rules for the election of its members could not be radically altered. They argued that the best means of improving the representation of the geographical groups which regarded themselves as still under-represented was not to change the rules for the election of the Court's members but to give due weight to the importance of the matter when elections took place. Thus, it was pointed out that at the last elections to the Court, held in 1963, it had been clear that the States Members of the United Nations had endeavoured—while still respecting the rules in force—to improve the balance within the Court

between the various geographical groups. In addition, they argued that the Court had always shown objectivity and impartiality and that, moreover, there were certain geographical groups which, though adequately represented in the Court, nevertheless did not resort to it for the settlement for their international disputes.

(v) *Codification and progressive development of international law*

194. The proposal by Ghana, India and Yugoslavia (A/AC.119/L.19, para. 3 (b) (see paragraph 137 above)) referred also to this matter.

195. In connexion with the use of arbitration and compulsory judicial settlement as means for the peaceful settlement of disputes, some representatives stressed the vital importance of the codification and progressive development of international law as a means of obtaining general and unqualified acceptance of such procedures by the great majority of the States making up the international community. In their view, the lack of confidence which many States at present displayed in such procedures was due in large measure to the antiquated, inequitable, fragmentary and uncertain character of many of the rules comprising the body of substantive rules of existing international law.

196. Thus, those representatives pointed out, no State could risk endangering its vital interests by having recourse to procedures of arbitration or compulsory judicial settlement as long as uncertainty remained about the scope and content of international law. They also pointed out that the decision to accept or reject compulsory jurisdiction was not made in a vacuum, but carried with it the implicit acceptance of the body of substantive legal rules relevant to the subject matter of the dispute in question. That explained the misgivings of the new and developing States, since the majority of them had not taken part in the process of the creation and development of the institutions and rules of international law, which had been consolidated and systematized during the nineteenth and early twentieth centuries. They added that many of those rules, such as, for example, the rules relating to State responsibility and to the protection of foreign investments, profoundly affected the situation of the new or economically weak States and had been established, in part, contrary to their interests. Consequently, in the opinion of those representatives, many States now considered those rules unjust, though formally sanctioned by international law, thus creating a dichotomy between international legality and justice, the inevitable result of which was that such States preferred to resort to political action rather than submit their disputes to arbitration or compulsory judicial settlement. Lastly, those representatives considered it essential that the United Nations should continue its efforts for the codification and progressive development of international law with a view to securing the juridical basis for the settlement of disputes, as General Assembly resolutions 1505 (XV) of 12 December 1960, 1686 (XVI) of 18 December 1961 and 1815 (XVII) of 18 December 1962, in particular, emphasized.

(vi) *Disputes relating to the application and interpretation of conventions*

197. The Netherlands amendment (A/AC.119/L.21 (see paragraph 134 above)) to the United Kingdom proposal and the proposal by Ghana, India and Yugoslavia (A/AC.119/L.19, para. 4 (see paragraph 137 above)) stated that treaties should contain clauses relating to the settlement of disputes.

198. With a view to establishing and developing the procedure of judicial settlement as a means for the settlement of disputes, some representatives advocated recognition that at least one particular category of disputes, namely, disputes relating to the interpretation and application of multilateral conventions adopted under the auspices of the United Nations, should as a matter of principle be referred to the International Court of Justice, as proposed in the Netherlands amendment. In the view of those representatives, such conventions contained carefully drafted and precise rules of international law which

had been drawn up with the participation of all States Members of the United Nations and disputes arising in regard to their interpretation or application constituted a special well-defined category.

199. Thus, those representatives considered it natural that a State which had voluntarily subscribed to the rules contained in those conventions and had accepted the rights and obligations deriving therefrom should undertake to use a procedure of impartial settlement of disputes, such as recourse to the International Court of Justice, in the event of a dispute between it and another State party to the convention over the extent of those rights and obligations. They added, moreover, that the compulsory jurisdiction of the International Court of Justice in the settlement of such disputes would be mandatory only in cases where the parties had refused or failed to settle the dispute through the use of other means of peaceful settlement. Lastly, one representative suggested that, with a view to improving the chances of a provision to that effect being accepted by the General Assembly, it would be advisable that such a provision should be limited to multilateral conventions relating to social, cultural or scientific questions adopted under the auspices of the United Nations.

200. The sponsors of the three-Power proposal thought it better to do no more than indicate that States should include in the bilateral and multilateral agreements to which they became parties provisions concerning the particular peaceful means mentioned in Article 33 of the Charter by which they desired to settle their differences.

C. DECISION OF THE SPECIAL COMMITTEE ON THE RECOMMENDATION OF THE DRAFTING COMMITTEE

201. On the recommendation of the Drafting Committee, the Special Committee, at its 39th meeting, adopted unanimously the following text (Drafting Committee paper No. 13):

"Principle B [i.e. the principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered].

"The Committee was unable to reach any consensus on the scope or content of this principle.

"(a) For proposals and amendments, see annex A.

"(b) For views expressed during the discussion, see annex B."

"Annex A

"PROPOSALS AND AMENDMENTS CONCERNING WHICH NO CONSENSUS WAS REACHED

"Proposal by Czechoslovakia (A/AC.119/L.6—reproduced in paragraph 129 of the report)

"Proposal by Yugoslavia (A/AC.119/L.7—reproduced in paragraph 130 of the report)

"Proposal by the United Kingdom (A/AC.119/L.8) and amendments by France (A/AC.119/L.17), Canada and Guatemala (A/AC.119/L.20), Netherlands (A/AC.119/L.21) and Canada (A/AC.119/L.22—reproduced in paragraphs 131, 132, 133, 134 and 135, respectively)

"Proposal by Japan (A/AC.119/L.18—reproduced in paragraph 136 of the report)

"Proposal by Ghana, India and Yugoslavia (A/AC.119/L.19—reproduced in paragraph 137 of the report)"

"Annex B"

"VIEWS EXPRESSED IN THE DISCUSSIONS, CONCERNING WHICH NO CONSENSUS WAS REACHED

"A. *General obligation of peaceful settlement of international disputes*

"Argentina (SR.19, pp. 15-16): the Charter is concerned only with those disputes between States which are likely to

* The reference numbers given in this annex are to the summary records of the Special Committee, issued under the symbol A/AC.119/SR.1-43. For purposes of convenience, the references have been shortened, in the present annex, to mention of the summary record number only.

endanger international peace and security. United States of America (SR.22, p. 20): Article 2, paragraph 3, of the Charter relates to all international disputes, whether or not likely to endanger international peace and security.

"Argentina (SR.19, p. 15): a 'dispute' is a disagreement on points of fact or law, a contradiction or a difference in juridical doctrine between States. United States of America (SR.22, pp. 21-22): a 'dispute' is a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons, where the claim of one is positively opposed by the other; there is no dispute if the claim on one side is totally unfounded.

"Italy (SR.21, pp. 4-5) and France (SR.21, p. 16): political disputes, and the distinction between them and legal disputes, should not be ignored.

"B. Settlement of border disputes

"Ghana (SR.22, p. 9) and India (SR.24, p. 21) supported inclusion of a provision on the subject.

"C. Modes of settlement

"1. In general

"India (SR.23, pp. 7-8): 'Unless otherwise provided for' in the three-Power draft covers the case where bilateral or multilateral treaties to which States are parties provide a method for solving disputes, and also covers the right of the parties to bring a dispute before the appropriate United Nations organ. 'Of their own choice' refers to a choice made either before or after a dispute has arisen.

"Ghana (SR.22, p. 7): means of settlement should be chosen 'by common agreement'.

"United States of America (SR.22, p. 19): undesirable to require agreement of all parties.

"2. Negotiations

"United Arab Republic (SR.24, p. 5): negotiations should be carried out (1) in good faith, (2) in the absence of all forms of pressure, and (3) without affecting the legitimate interests of another State or people.

"Czechoslovakia (SR.18, pp. 4-5, SR.21, pp. 23-24), Yugoslavia (SR.18, p. 7), Romania (SR.19, pp. 11-13), Union of Soviet Socialist Republics (SR.20, pp. 4-5, SR.22, p. 29) and Poland (SR.20, p. 10): special emphasis should be given to direct negotiation as a means of settlement. Czechoslovakia (SR.18, p. 4): negotiation cannot be unilaterally renounced. India (SR.23, pp. 5-7): particular reference should be made to direct negotiations as the pre-eminent means of settlement, but that means need not be resorted to first in all disputes.

"United Kingdom (SR.19, pp. 6, 7, SR.24, p. 9), Argentina (SR.19, p. 18), France (SR.21, p. 14), Lebanon (SR.21, p. 21), Mexico (SR.22, p. 14), United States of America (SR.22, pp. 19, 23), Dahomey (SR.23, p. 11), United Arab Republic (SR.24, pp. 4-5), and Australia (SR.24, pp. 16-19): undesirable or unnecessary to lay special stress on negotiations.

"3. Good offices

"Argentina (SR.19, pp. 17-18) referred to good offices. Italy (SR.21, p. 13) referred to a proposal for a permanent commission of good offices as a subsidiary organ of the General Assembly.

"4. Legal consultation

"Argentina (SR.19, p. 18) referred to legal consultation as a means of settlement.

"5. Mediation and conciliation

"Italy (SR.21, pp. 12-13) referred to regional conciliation procedures, to mediation and conciliation by the Security Council, the Secretary-General, and *ad hoc* bodies, and to the existing United Nations Panel for Inquiry and Conciliation.

"6. Arbitration

"Italy (SR.21, pp. 9-10) suggested improvements in arbitral procedure: (1) acceptance of the competence of a court to determine whether a dispute is a legal one, (2) acceptance of the competence of a court to determine whether the dispute is justiciable within the terms of the arbitration treaty, (3) a provision for settlement by the International Court of Justice or its President of disagreements on the composition of the arbitral tribunal or other procedural matters, and (4) an undertaking for judicial settlement whenever negotiation or arbitration fails.

"7. Judicial settlement

"Japan (SR.18, pp. 11-12, SR.21, pp. 17-21, SR.24, p. 10), Italy (SR.21, pp. 8-9), United States of America (SR.22, p. 18), Sweden (SR.22, pp. 25-27), United Kingdom (SR.24, p. 8), and Australia (SR.24, pp. 19-20): Committee should appeal for the acceptance of the compulsory jurisdiction of the International Court of Justice, with as few reservations as possible. Nigeria (SR.18, p. 10): appeal to all States to make more use of the International Court of Justice, where appropriate, having regard to the provisions of its Statute, particularly Article 36.

"Romania (SR.19, pp. 13-14), Union of Soviet Socialist Republics (SR.20, pp. 6-7, SR.22, p. 26), Poland (SR.20, pp. 8-10), Lebanon (SR.21, pp. 21-23), Czechoslovakia (SR.21, pp. 25-26), Burma (SR.21, pp. 26-27), Ghana (SR.22, pp. 6-7, 8), India (SR.23, pp. 8-9), and United Arab Republic (SR.24, pp. 5-6): the Committee should not appeal to States to accept the compulsory jurisdiction of the International Court of Justice. Dahomey (SR.23, p. 11): the best solution would be to affirm the principle of voluntary acceptance of the jurisdiction of a supreme international tribunal, but it would be difficult to agree on a text, so Article 2, paragraph 3, and Articles 33 and 36 of the Charter should be reaffirmed.

"France (SR.21, pp. 16-17), Mexico (SR.22, p. 14), Yugoslavia (SR.23, p. 12) and United Arab Republic (SR.24, pp. 5-6) supported including a reference to the International Court of Justice.

"United States of America (SR.22, p. 19) and United Kingdom (SR.24, pp. 7, 21) opposed the phrase 'if the parties agree that it is essentially legal in nature' in paragraph 3 of the three-Power draft.

"8. Advisory opinions of the International Court of Justice

"Mexico (SR.22, p. 13) and United States of America (SR.22, p. 17) referred to advisory opinions as a means of settlement of disputes.

"9. Revised General Act for the Pacific Settlement of International Disputes

"Italy (SR.21, p. 13) referred to the Revised General Act. Sweden (SR.22, p. 25) suggested an appeal to States to accede to it.

"10. Resort to regional agencies or arrangements

"Italy (SR.21, p. 12), Ghana (SR.22, p. 7), Sweden (SR.22, p. 25) and United Arab Republic (SR.24, p. 5) supported the reference to regional agencies or agreements.

"11. Settlement through United Nations organs

"Italy (SR.21, pp. 5, 10-12), France, (SR.21, p. 16), Mexico (SR.22, pp. 12-13), Sweden (SR.22, p. 25), Canada (SR.23, p. 5), Guatemala (SR.23, p. 5), United Kingdom (SR.24, p. 9), and Australia (SR.24, p. 15): the role of United Nations organs, in particular the Security Council and the General Assembly, should not be overlooked.

"D. Corollaries of the obligation of peaceful settlement

"1. Obligation not to aggravate the situation

"Yugoslavia (SR.18, p. 7, SR.23, pp. 12-13), Nigeria (SR.18, p. 9), Romania (SR.19, p. 13) and Ghana (SR.22, p. 7) expressed support for a provision on the subject.

"2. Disputed clauses in agreements and conventions

"Netherlands (SR.19, p. 10, SR.24, pp. 11-13), Italy (SR.21, p. 8), France (SR.21, p. 16), United States of America (SR.22, p. 18), United Kingdom (SR.24, p. 9) and Australia (SR.24, p. 15) supported the Netherlands amendment. Lebanon (SR.24, p. 14) suggested adding 'and relating to social, cultural or scientific questions' after 'under the auspices of the United Nations' in the Netherlands amendment, in order to make it more acceptable to the General Assembly. (For States which opposed an appeal for acceptance of the compulsory jurisdiction of the International Court of Justice, see under section C.7 above).

"3. Elections to the International Court of Justice

"Lebanon (SR.21, p. 23), Burma (SR.21, p. 26), Ghana (SR.22, pp. 6, 8) and United Arab Republic (SR.24, p. 6): the situation would be improved if the Court were made more representative of the different legal systems of the world.

"United States of America (SR.22, p. 17) and United Kingdom (SR.24, p. 9): a provision on the subject would be superfluous.

"4. Progressive development and codification of international law

"Ghana (SR.22, p. 9), Mexico (SR.22, p. 12) and Yugoslavia (SR.23, p. 12): facilitating the process of shaping international law would contribute to the settlement of disputes.

"5. Provision that recourse to peaceful settlement does not derogate from sovereignty

"France (SR.21, p. 15), United States of America (SR.22, p. 18), United Kingdom (SR.24, p. 9), and Australia (SR.24, p. 14) supported the French amendment.

"Union of Soviet Socialist Republics (SR.22, p. 29): the French amendment is somewhat vague and has little relevance."