

ARTICLE 37

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TEXT OF ARTICLE 37

1. Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.

2. If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 56 or to recommend such terms of settlement as it may consider appropriate.

INTRODUCTORY NOTE

1. During the period under review no question was referred to the Security Council as a dispute likely to endanger the maintenance of international peace and security. Nor did the Council on any occasion determine that a question brought before it was in fact a dispute of the nature referred to in Article 33. Nevertheless, on two occasions it was proposed that the Council adopt draft resolutions which would have constituted endorsements of particular proposals for a substantive settlement of the matters in dispute. In one instance, appeal was made to Article 37 by one of the parties to support the initial demand for consideration of the proposals. In the other instance no reference was made to Article 37 by either party; it was cited by a member of the Council, however, in the course of discussion. It has been deemed appropriate to present case histories of the proceedings for the light they throw on the Council's view of its authority under the Charter to deal with the merits of a controversy as distinguished from its more limited function of assisting the parties by recommending procedures for the adjustment of the difficulties involved.

2. Throughout the proceedings reported in this study, the lines of demarcation of the Council's role as a forum for negotiations and its authority to assist or guide the parties towards a settlement cross each other. The Council's efforts to promote adjustment of the situation revealed concern both with the terms of the proposed settlement and the methods of obtaining agreement thereon. The material treated in the present study is therefore germane also to the study of Article 36.

I. GENERAL SURVEY

3. The provision of paragraph 2 of Article 37 regarding the Council's authority to concern itself with the substance of disputes was invoked in the submission by a party at one stage of the consideration of the India-Pakistan question. It was also referred to explicitly in the proceedings during which the Suez Canal question was considered.

4. Although the Suez Canal question was submitted as a situation under Article 35, rather than a dispute under Article 37 (2), the debate appeared to centre chiefly on the limits on the Council's authority to endorse proposals for settlement put forward by one party in the light of the Council's obligation under paragraph 2 of Article 24 to act in accordance with the Purposes and Principles of the United Nations. At the three successive stages of its consideration of the question, the Council first did not put to a vote a draft resolution submitted by one party and objected to by the other. 1/ It then adopted part of a draft resolution which had been agreed upon in private conversations between the parties, held under the auspices of the Council and with the participation of the Secretary-General, but failed to adopt a second part of the draft resolution which had not been accepted by both parties. 2/ At a later stage, the Council was seized of requests to determine whether the conduct of one of the parties conformed with the substantive determinations contained in its earlier resolution. 3/

5. In respect of the India-Pakistan question, the Council was requested by one of the parties to spell out, in accordance with Article 37 (2), the obligations of the parties under the terms of "the international agreement for a plebiscite as embodied in the United Nations resolutions" relating to the controversy. Objection was raised to the adoption of a draft resolution which would have complied with this request on grounds that the Council had been seized, not of a dispute to which Article 37 (2) might be applicable, but of a situation which remained unresolved and therefore impeded progress in the settlement of the merits of the matter. The Council in the end adopted a resolution which referred to the controversy as a dispute. 4/ A second resolution adopted in the course of subsequent proceedings again referred to the controversy as a dispute. 5/

6. On two occasions during the proceedings on the India-Pakistan question, the Council was seized of draft resolutions envisaging exploratory measures concerning the establishment of conditions for progress towards a settlement. On the first occasion, objection was raised to the adoption of a draft resolution on the ground that Article 37 (2) could not be applied without the agreement of the parties, and their consent even to the terms of an exploratory effort towards a settlement must first be obtained. The Council in the end adopted a resolution which omitted the

1/ See below, paras. 7-16.

2/ See paras. 17-26 below.

3/ See paras. 27-37 below.

4/ See paras. 38-48 below.

5/ S C, 12th yr., Suppl. for Oct.-Dec., p. 21, S/3922, fifth preambular paragraph.

terms that were regarded as unacceptable by one of the parties. ^{6/} On a second occasion, the Council again concluded its proceedings by adopting a draft resolution ^{7/} in a form amended to take into account the positions of both parties to the dispute.

II. ANALYTICAL SUMMARY OF PRACTICE

The scope of the Council's power to recommend terms
of settlement

1. The Suez Canal question: Initial proceedings

7. In the course of its consideration of the Suez Canal question ^{8/} at its 735th to 742nd meetings, held between 5 and 13 October 1956, the Security Council had before it a draft resolution ^{9/} jointly submitted by France and the United Kingdom. The preamble of the draft resolution cited the reasons why the users of the Suez Canal objected to the action of Egypt in unilaterally terminating the system of international operation of the canal; defined the situation as one likely to endanger international peace and security; recapitulated the efforts which had been made to negotiate with Egypt; and referred to the inauguration of the Suez Canal Users Association. ^{10/} In its operative paragraph, the Security Council:

"1. Reaffirms the principle of the freedom of navigation of the Suez Canal in accordance with the Suez Canal Convention of 1888;

"2. Considers that the rights which all users of the Suez Canal enjoyed under the system upon which the Suez Canal Convention of 1888 was based, should be safeguarded, and the necessary guarantees restored;

"3. Endorses the proposals of the eighteen States [S/3665] as suitably designed to bring about an adjustment and solution of the Suez Canal question by peaceful means and in conformity with justice;

"4. Recommends that the Government of Egypt should co-operate by negotiation in working out, on the basis of these proposals, a system of operation to be applied to the Suez Canal;

"5. Recommends that the Government of Egypt should, pending the outcome of such negotiations, co-operate with the Suez Canal Users Association."

^{6/} See paras. 32-48 below.

^{7/} S C, 12th yr., Suppl. for Oct.-Dec., p. 21, S/3922.

^{8/} During the discussion on the adoption of the agenda, one representative observed that under Article 37 recourse to the Security Council was not optional; if the parties to a dispute failed to settle it by negotiation, it was not left to their discretion to refer it to the Security Council. The terms of the Charter were categorical in providing that "they shall refer it to the Security Council" (S C, 11th yr., 734th mtg., paras. 69 and 70).

^{9/} S C, 11th yr., Suppl. for Oct.-Dec., p. 5, S/3666.

^{10/} For the proposals adopted 21 August 1956 by representatives of eighteen Governments at a conference in London, see S C, 11th yr., Suppl. for Oct.-Dec., p. 2, S/3665.

3. The draft resolution gave rise to discussion of the authority of the Council to make pronouncements on the substance of a question irrespective of the attitude of the parties directly concerned and in the absence of negotiations between them.

9. The sponsors and supporters of the draft resolution maintained that (a) the Council was obligated under the Charter to make recommendations for the adjustment of the situation; (b) the basic principles of the draft resolution were fully consonant with the Purposes and Principles of the United Nations by which the Council was to be guided in the discharge of its primary responsibility for the maintenance of international peace and security; (c) the draft resolution merely provided a basis for negotiations between the parties, rather than specific terms of settlement; and (d) adoption of the draft resolution would open the way towards further efforts to promote a peaceful solution of the problem.

10. The Charter, it was said, conferred upon the United Nations more than the function of preserving the peace. The original Dumbarton Oaks concept of merely keeping the peace, without reference to the merits of international conflicts, had been repudiated at San Francisco, where the interdependence of peace and justice had been recognized. Article 1 of the Charter had been rewritten to require the United Nations "to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations ...". The Security Council had been required, in discharging its primary responsibility for the maintenance of international peace and security, to act in accordance with the principles expressed in Article 1. It was therefore the duty of the Council to find a solution which conformed to the principles of justice and international law.

11. One member suggested that, despite the submission of the question as a situation under Article 35, the Council had the authority ex officio to investigate and, on concluding that the question was in fact a dispute, to be the judge of its own competence and assume the powers provided in Article 37, either to recommend procedures of adjustment or such terms of settlement as it deemed appropriate.

12. In further support of the draft resolution it was contended that the principles it embodied merited unhesitating endorsement by the Council as propositions which upheld the rule of law and applied the principle of justice. Specifically, the requirement of dependable operation of the Suez Canal as a free international water-way was in accordance with the Constantinople Convention of 1863; and the principle that the operation of the canal should be insulated from the influence of the politics of any nation could not be disregarded if the canal were not to become an instrument of national policy capable of endangering the vital interest of the nations depending upon it as an international water-way.

13. The role of the Council in the matter before it was not merely to provide a forum for negotiations but to lay down a fair and just basis for negotiations. The principles expressed in the draft resolution offered such a basis or framework. Some members emphasized in this connexion the difference between endorsing general principles of a settlement and indicating the particular means whereby these principles could be carried out. By endorsing the principles, the Council would uphold its authority under the Charter and would facilitate further efforts to reach a solution through negotiation.

14. Against the draft resolution submitted by France and the United Kingdom, it was argued that the Council could not endorse a set of principles approved by one party to the controversy but rejected by the other. The draft resolution restated a position taken at the conference in London by France, the United Kingdom and several

other States, which had proved unacceptable to Egypt. If the Council were to pronounce on the broad lines of a possible settlement by adopting guiding principles as a basis for negotiation, it must not prejudice the issue by placing one party in a position of inferiority. Endorsement of the principles contained in the draft resolution would amount to such an act. The Council should instead proceed from the principle of negotiations on the basis of full equality between the parties concerned and seek an acceptable framework for the adjustment of the situation.

15. Two members of the Council and the representative of Egypt expressed support for the proposition that the Council should adopt a set of principles which could form the basis of an effective agreement through negotiations. Such a course, in the opinion of the representative of Egypt, was preferable to the extreme methods of bringing before the Council conclusions without negotiations or calling for negotiations without guidance. 11/

16. At the 742nd meeting of the Security Council, on 13 October 1956, the sponsors of the draft resolution announced 12/ that they would not ask for a vote upon it at that time, in view of developments which had taken place as a result of private consultations of Council members and discussions among the Foreign Ministers of Egypt, France and the United Kingdom, with the participation of the Secretary-General.

2. The Suez Canal question: Decision of 13 October 1956

17. At the 742nd meeting of the Security Council on 13 October 1956, after private consultations had been held within the Council and between the Foreign Ministers of Egypt, and of France and the United Kingdom, with the participation of the Secretary-General, the following draft resolution 13/ was submitted by France and the United Kingdom:

"The Security Council,

"Noting the declarations made before it and the accounts of the development of the exploratory conversations on the Suez question given by the Secretary-General of the United Nations and the Foreign Ministers of Egypt, France and the United Kingdom,

"1. Agrees that any settlement of the Suez question should meet the following requirements:

(a) There should be free and open transit through the Canal without discrimination, overt or covert - this covers both political and technical aspects;

(b) The sovereignty of Egypt should be respected;

11/ For texts of relevant statements, see S C, 11th yr., 735th mtg.: France, paras. 156 and 157; United Kingdom, paras. 82-93, 95-99; 736th mtg.: Egypt, paras. 76-79, 146, 152, 159, 164, 169 and 170; 737th mtg.: Australia, paras. 84 and 85; Belgium, paras. 150, 151, 156-158; Cuba, paras. 98 and 99; Iran, paras. 57-61; Peru, paras. 6-8, 34; 738th mtg.: United States, paras. 28-35, 55-57, 60-67, 75-77, 80; Yugoslavia, paras. 23-27.

12/ S C, 11th yr., 742nd mtg., paras. 13, 28, 40.

13/ S C, 11th yr., Suppl. for Oct.-Dec., p. 19, S/3671.

(c) The operation of the Canal should be insulated from the politics of any country;

(d) The manner of fixing tolls and charges should be decided by agreement between Egypt and the users;

(e) A fair proportion of the dues should be allotted to development;

(f) In case of disputes, unresolved affairs between the Universal Suez Maritime Canal Company and the Egyptian Government should be settled by arbitration, with suitable terms of reference and suitable provisions for the payment of sums found to be due;

"2. Considers that the proposals of the eighteen Powers [S/3665] correspond to the requirements set out above and are suitably designed to bring about a settlement of the Suez Canal question by peaceful means, in conformity with justice;

"3. Notes that the Egyptian Government, while declaring its readiness in the exploratory conversations to accept the principle of organized collaboration between an Egyptian authority and the users, has not yet formulated sufficiently precise proposals to meet the requirements set out above;

"4. Invites the Governments of Egypt, France and the United Kingdom to continue their interchanges and in this connexion invites the Egyptian Government to make known promptly its proposals for a system meeting the requirements set out above and providing guarantees to the users not less effective than those sought by the proposals of the eighteen Powers;

"5. Considers that pending the conclusion of an agreement for the definitive settlement of the regime of the Suez Canal on the basis of the requirements set out above, the Suez Canal Users Association, which has been qualified to receive the dues payable by ships belonging to its members, and the competent Egyptian authorities, should co-operate to ensure the satisfactory operation of the Canal and free and open transit through the Canal in accordance with the Convention, signed at Constantinople on 29 October 1888 destined to guarantee the free use of the Suez Maritime Canal".

18. The sponsors explained that as a result of the private exploratory conversations, a framework had been established within which a basis for negotiations could be constructed. That framework was represented by the six basic requirements for a settlement which had been agreed upon among the three Foreign Ministers and which constituted the first part of the draft resolution. The second part concerned the modalities of application of the principles, which any settlement of the Suez Canal question should meet. The proposed means of implementation were, in the opinion of the sponsors, suitably designed to bring about a settlement by peaceful means and in conformity with justice, although no agreement had been reached on them. The concluding paragraph of the draft resolution prescribed provisional measures which were essential in order to ensure that subsequent negotiations towards a settlement would not in the meantime be prejudiced by any events or incidents that might occur.

19. Several members supported the draft resolution in its entirety on the ground that those of its proposals which were not the outcome of agreement between the parties were reasonable and just, and that it would not be right for the Council to disregard them. They had been submitted in good faith as an indication of the possible means of implementing the agreed principles. They had the broad

sponsorship of eighteen nations which were vitally dependent upon the Canal. They were, thus far, the only clear and specific system worked out in an effort to solve the problem. At the same time they did not preclude the other party from submitting an alternative basis for negotiations.

20. The representative of Egypt, supported by two members of the Council, accepted only the first part of the draft resolution, stating the six requirements that had been agreed upon in the private conversations between the parties, and restated his Government's readiness to pursue the efforts towards a satisfactory settlement of the question through negotiation. He objected, however, to the adoption of the second part of the draft resolution beginning with operative paragraph 2.

21. The view was expressed in this connexion that any international issue could and should be settled by negotiation. The Council had made it possible to establish contact between the parties. As a result of the exchange of views among the Foreign Ministers concerned, with the participation of the Secretary-General, agreement had been reached on general principles for any future settlement. It was then incumbent upon the Council to encourage further negotiations on practical means of carrying out those principles rather than to endorse the proposals of one party to the disadvantage of the other. Adoption of the second part of the draft resolution would amount to a determination that the future negotiation should be based on proposals which were known to be unacceptable to one of the parties. 14/

22. To spell out more clearly that other proposals than those referred to in the draft resolution could meet the six requirements, the representative of Iran submitted an amendment 15/ to add at the end of operative paragraph 2 the words:

"while recognizing that other proposals, corresponding to the same requirements, might be submitted by the Egyptian Government".

23. The amendment was subsequently accepted 16/ by the sponsors of the draft resolution.

24. The representative of Yugoslavia submitted a draft resolution 17/ which was designed to record the agreement on the six requirements and to provide for the continuation of negotiations. Its first operative paragraph listed the six requirements, and the remaining paragraphs read as follows:

"2. Recommends that the negotiations be continued;

"3. Requests the Secretary-General to offer, if necessary, his assistance in subsequent stages of negotiations;

"4. Calls on all the parties concerned to abstain from taking any measures which might impair these negotiations".

14/ For texts of relevant statements, see S C, 11th yr., 742nd mtg.: Egypt, paras. 42-50; France, paras. 32-39; Iran, paras. 57-60; United Kingdom, paras. 13-27; USSR, paras. 69-85, 93-99; 743rd mtg.: Australia, paras. 42, 45, 49 and 50; Belgium, paras. 54-59, 61-69; China, paras. 18-22; Peru, paras. 76-79, 84-91; USSR, paras. 96-100; United Kingdom, paras. 34-37, 40; United States, paras. 1-16; Yugoslavia, paras. 25-30.

15/ S C, 11th yr., 742nd mtg., para. 60.

16/ S C, 11th yr., 743rd mtg., paras. 35, 103.

17/ S C, 11th yr., Suppl. for Oct.-Dec., p. 20, S/3672.

25. At the 743rd meeting, on 13 October 1956, the Security Council unanimously adopted 18/ the first part of the draft resolution, submitted by France and the United Kingdom, which included operative paragraph 1, listing the six requirements. The second part of the draft resolution, beginning with operative paragraph 2 as amended, was not adopted. 19/ There were 9 votes in favour and 2 against, one negative vote being that of a permanent member.

26. The representative of Yugoslavia stated 20/ that his delegation would not ask for a vote on its own draft resolution.

3. The Suez Canal question: Further proceedings

27. When the Security Council resumed consideration of the Suez Canal question at the 776th and 777th meetings, on 26 April 1957, and again at the 778th and 779th meetings, on 20 and 21 May, it addressed its attention to an additional aspect of settlement.

28. The Council had before it the Declaration 21/ of the Government of Egypt, dated 24 April 1957, concerning the Suez Canal and the arrangements for its operation, and a letter 22/ from the Secretary-General to the Minister for Foreign Affairs of Egypt. The Declaration was stated by Egypt to be an elaboration of proposals communicated earlier to the Government of the United States and to the Secretary-General, to accord with the Suez Canal Convention signed at Constantinople in 1888 and the Charter of the United Nations, and to reflect Egypt's understanding of the Security Council resolution of 13 October 1956. 23/ The Declaration, with the obligations contained therein, was further stated to constitute an international instrument which would be deposited and registered with the Secretariat of the United Nations. In his letter to the Minister for Foreign Affairs of Egypt, the Secretary-General stated his understanding that the Government of Egypt considered the Declaration an engagement of an international character coming within the scope of Article 102 of the Charter.

29. Discussion of the Declaration gave rise to a divergence of interpretations concerning its nature; its relation to the six requirements set forth in the Council's resolution of 13 October 1956; and the extent to which it constituted an adequate adjustment of the situation brought before the Council and thus a discharge of the Council's responsibility in the matter.

30. It was argued that the Declaration did not provide a settlement that would fully meet the six principles laid down by the Council inasmuch as it was a unilateral statement of intention rather than a multilateral agreement. The mere registration of the Declaration with the Secretariat did not alter the fact that Egypt was free to interpret it, to amend it or to revoke it. Contrary to the method of negotiation implicit in the resolution of 13 October 1956 and basic to the working of the United Nations, and unlike the six principles which had been evolved through the application of that method, the Declaration was not the result of negotiations between the parties. Furthermore, it was provisional in nature, whereas a negotiated agreement was expected to produce a definitive solution of a problem.

18/ S C, 11th yr., 743rd mtg., para. 105; S C, 11th yr., Suppl. for Oct.-Dec., p. 47, S/3675.

19/ S C, 11th yr., 743rd mtg., para. 106.

20/ *Ibid.*, para. 112.

21/ S C, 12th yr., Suppl. for Apr.-June, p. 8, S/3818.

22/ *Ibid.*, p. 12, S/3819.

23/ See paras. 17-26 above.

31. The Declaration was variously described as in flagrant contradiction with the six requirements unanimously adopted by the Council and accepted by Egypt, or not fully in conformity with them, or an unsatisfactory implementation. A reservation contained in the Declaration would in practice enable Egypt to discriminate between the users of the Suez Canal at will, thus contravening the resolution of 13 October 1956, which was clearly intended to have general application, as well as a previous Council resolution ^{24/} relevant to the matter. Similarly, the mere statement of intention on the part of Egypt to accept the compulsory jurisdiction of the International Court of Justice in accordance with Article 36 of the Statute of the Court did not constitute implementation of the requirement concerning judicial settlement of disputes or unresolved affairs, so long as Egypt failed to take the necessary steps to give effect to its statement of intention.

32. Because the Declaration was unilateral in nature and deficient in contents, the Council could not regard itself as having discharged its responsibility in the matter but should continue to be seized of it and to exert any influence that might be required to give effect to the six requirements of its resolution.

33. In defence of the Declaration as a valid expression of the six principles, the view was stressed that the Declaration had acquired the force of an international instrument as a result of its registration with the Secretariat.

34. The resolution of 13 October 1956, it was further argued, necessarily allowed scope for divergent interpretations. This had already been evidenced at the time of its adoption by the Council. The Declaration reflected Egypt's interpretation of the six requirements. In any event, the resolution laid down the basic principles to which any settlement of the Suez Canal question should conform, rather than the means of application, on which there had been no agreement. Thus, the Declaration not only took into account the Council's resolution of 13 October 1956 but also provided the method for giving it effect. In this connexion, it was argued that a just and peaceful settlement could be achieved only on the basis of strict observance of Egypt's sovereign rights, a requirement which had been reaffirmed in the above-mentioned resolution.

35. The conclusion was accordingly propounded that the Declaration of Egypt of 24 April 1957 was both substantially in conformity with the Council's requirements for a settlement and in fact a solution of the Suez Canal question, so that the Council had no justification for further discussion of the matter. ^{25/}

^{24/} S/2322; S C, 6th yr., 558th mtg., paras. 5 and 6.

^{25/} For texts of relevant statements, see S C, 12th yr., 776th mtg.: Colombia, paras. 83-95; Cuba, paras. 64-66; Egypt, paras. 22-24, 35-38; France, paras. 41-47, 57-60; Philippines, paras. 72, 73, 77-80; United States, paras. 10-14; 777th mtg.: Australia, paras. 2-4, 6-8, 13-15; China, paras. 58-63; Iraq, paras. 26-28; Sweden, paras. 65-67; USSR, paras. 39, 42-47, 55-63; United Kingdom, paras. 82, 83, 86, 87, 92-94; 778th mtg.: Cuba, paras. 98-102; Egypt, paras. 66, 71-75, 86, 88, 93, 94; France, paras. 37, 38, 42, 43, 48-51, 54, 160-162; Philippines, paras. 132-139; United Kingdom, paras. 113, 114, 117-123; USSR, paras. 141-143, 149, 152, 157; 779th mtg.: Australia, paras. 3-5, 12, 14-18, 21-24; China, paras. 29 and 30; Colombia, paras. 45-54, 57 and 58; France, paras. 105 and 106; United States, paras. 92, 100 and 101.

36. At the 779th meeting of the Council, on 21 May 1957, the President (United States) of the Council, then summing up 26/ the debate, noted that a minority held that the Declaration of Egypt 27/ adequately implemented the six requirements, but that a majority thought that these requirements had not yet been met, that there were uncertainties requiring clarification and that the Egyptian position remained to be completed. In the meantime the Council would remain seized of the question.

37. The representative of the Union of Soviet Socialist Republics expressed 28/ expressed reservations with regard to the President's summary of the discussion in the Council and noted that there was a difference between the opinions of individual delegations and the collective opinion of the Security Council.

4. The India-Pakistan question: Decisions of 20 and 21 February 1957

38. At the 768th meeting of the Security Council, on 15 February 1957, in connexion with the India-Pakistan question, 29/ the Council had before it a draft resolution 30/ submitted jointly by Australia, Cuba, the United Kingdom and the United States. The relevant paragraphs read as follows:

"The Security Council,

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"Concerned at the lack of progress in settling the dispute,

"Considering the importance which it has attached to the demilitarization of the State of Jammu and Kashmir as a step towards the settlement of the dispute,

"Noting that demilitarization preparatory to the holding of a free and impartial plebiscite under United Nations auspices has not been achieved in accordance with the resolutions of the United Nations Commission for India and Pakistan,

"Noting the proposal of the representative of Pakistan for the use of a temporary United Nations force in connexion with demilitarization,

"Believing that, in so far as it might contribute towards the achievement of demilitarization as envisaged in the resolutions of the United Nations Commission for India and Pakistan and towards the pacific settlement of the dispute, the use of such a force would deserve consideration,

26/ S C, 12th yr., 779th mtg., paras. 116-127.

27/ See Declaration of Egypt on the compulsory jurisdiction of the International Court of Justice (S C, 12th yr., Suppl. for July-Sept., S/3818/Add.1); Heads of Agreement in connexion with compensation for Suez stockholders (S C, 13th yr., Suppl. for Apr.-June, p. 39, S/4014); and final agreement with the Compagnie financière de Suez (S C, 13th yr., Suppl. for July-Sept., p. 140, S/4089).

28/ S C, 12th yr., 779th mtg., paras. 130 and 131.

29/ For earlier decisions regarding the India-Pakistan question, see Repertory, vol. II, under Article 36, paras. 91-102.

30/ S C, 12th yr., Suppl. for Jan.-Mar., p. 7, S/3787.

"1. Requests the President of the Security Council, the representative of Sweden, to examine with the Governments of India and Pakistan proposals which, in his opinion, are likely to contribute to the achievement of demilitarization or to the establishment of other conditions for progress towards the settlement of the dispute, having regard to the previous resolutions of the Security Council and of the United Nations Commission for India and Pakistan, and bearing in mind the statements of the representatives of the Governments of India and Pakistan and the proposal for the use of a temporary United Nations force".

39. The draft resolution occasioned differing opinions on the authority of the Council to make recommendations dealing with, or touching upon, the substance of a question in the face of the dissent of one of the parties concerned and its contention that the question was a situation rather than a dispute.

40. The representative of Pakistan, at whose request the meeting had been called, had earlier recited the events which, in his opinion, showed that all the processes for a peaceful settlement of the dispute set forth in Article 33 had been exhausted without yielding any results. He urged the Council to spell out, under paragraph 2 of Article 37, the obligations of the parties, under the terms of the international agreement for a plebiscite embodied in the resolutions 31/ of the United Nations Commission for India and Pakistan (UNCIP) of 13 August 1948 and 5 January 1949. Among the measures that the Council should call upon the parties to take in order to remove the main obstacles to the agreed plebiscite, he suggested (a) withdrawing their troops from the State of Jammu and Kashmir; (b) introducing a United Nations force to maintain its security; and (c) fixing an early and firm date for the induction of a plebiscite administrator.

41. The representative of India recalled that his Government had originally submitted the question as a situation within the scope of Article 35 and had consistently maintained the view that its complaint was not in the nature of a dispute. The resolutions in which the word "dispute" occurred had been adopted without India's assent. Introduction of the word "dispute" in the draft resolution before the Council had a political meaning weighted against India, and was therefore unacceptable to it. Equally prejudicial to India's position was the endorsement, implicit in the draft resolution, of the proposals concerning demilitarization, a plebiscite and the use of a United Nations force. India's engagements under the resolutions of 13 August 1948 and 5 January 1949 were conditional. While the conditions upon which India's acceptance of demilitarization and a plebiscite remained unfulfilled, India's commitments remained inoperative. The Council was thus not seized of a proposition to bring about implementation of these commitments. Nor was it authorized to contemplate enforcement, inasmuch as the question had from the beginning been dealt with under Chapter VI of the Charter and the essence of the pacific procedures referred to in Chapter VI was mutual consent. Since India had not given its consent to the proposals contained in the draft resolution, even implicit endorsement of those proposals by singling them out for consideration would not be consonant with the provisions of the Charter. Article 37 made it clear that the Council had the power to recommend terms of settlement, but it was not empowered to compel the parties to accept the terms.

42. In support of the draft resolution, it was argued that it might have been the original intention of India not to seize the Council of a dispute but rather of a situation likely to endanger the maintenance of international peace and security.

31/ S C, 3rd yr., Suppl. for Nov., 1948, p. 17; S/1100, para. 75;
S C, 4th yr., Suppl. for Jan., 1949, p. 19; S/1196, para. 15.

However, after submission of a counter-complaint by Pakistan, the situation had been converted into a dispute within the meaning of the Charter. Thereafter, the word "dispute" had been used in many Council resolutions to reflect the fact that at issue was a dispute concerning the right of accession of the State of Jammu and Kashmir to India or to Pakistan; in other words, a dispute with regard to territory.

43. The contents of the draft resolution, one member suggested, were not of a substantive nature; the proposal was for no more than a fact-finding measure and a report back to the Council. The specific reference to the United Nations force was merely an indication that the proposal deserved examination by the parties with the President of the Council. Another member maintained that it was the Council's right and duty, after deliberation, to express what in its opinion would be a reasonable proposal to solve the deadlock on the question of demilitarization. Since the Council had not come to the stage of imposing any solution on either party, however, its provision for consideration of the idea of a United Nations force remained within the framework of Chapter VI of the Charter.

44. Objection to the draft resolution was based on a number of grounds. It was argued that the parties were far from having exhausted the possibilities of a peaceful settlement by means of bilateral negotiations without any intervention from outside. Though the method of negotiation remained the most promising approach to the solution of existing differences, the mission of the President of the Council could be useful if the terms of his mandate were acceptable to both parties directly concerned and were concurred in by the Council. Since, however, it was known that one party rejected the proposal to hold a plebiscite and to introduce a United Nations force, there was no point in endorsing such a controversial measure. Furthermore, the only permissible use of such a force was under Article 42, for the purpose of repelling aggression and restoring international peace, and was, therefore, inapplicable to the Kashmir situation. 32/

45. At the 770th meeting of the Security Council, on 18 February 1957, the representative of the Union of Soviet Socialist Republics, in submitting the following amendments 33/ to the four-Power draft resolution, explained that they were intended to remove from the draft resolution provisions which had been objected to by one of the parties directly concerned:

"1. Replace the preamble by the following text:

'Having heard the statements of the representatives of the Governments of India and Pakistan'.

32/ For texts of relevant statements, see S C, 12th yr., 761st mtg.: Pakistan, paras. 102, 103, 107-112; 762nd mtg.: India, paras. 8-15, 106, 108, 136; 765th mtg.: China, paras. 64-67; Philippines, para. 106; USSR, para. 82; 767th mtg.: China, para. 249; India, paras. 91-101, 219-221; 768th mtg.: Australia, paras. 53-55; China, paras. 130, 131; Colombia, paras. 79-83; Philippines, paras. 110, 115; United Kingdom, paras. 12-14; United States, paras. 33, 34; 769th mtg.: France, paras. 32, 33; India, paras. 136, 137, 143-154, 166, 167; Iraq, para. 24; 770th mtg.: Pakistan, paras. 118-128; USSR, paras. 137-145; 771st mtg.: Colombia, paras. 1-6; 772nd mtg.: India, paras. 58, 105; United Kingdom, para. 150; United States, paras. 113, 115; 773rd mtg.: India, paras. 67-80, 111; Philippines, paras. 43, 48; USSR, paras. 16-27.

33/ S C, 12th yr., Suppl. for Jan.-Mar., p. 8, S/3789.

"2. Amend paragraph 1 of the operative part to read as follows:

'1. Requests the President of the Security Council, the representative of Sweden, to examine with the Governments of India and Pakistan the situation in respect of Jammu and Kashmir, and to consider the progress that can be made towards the settlement of the problem, bearing in mind the statements of the representatives of the Governments of India and Pakistan'".

46. To meet the chief objections to the draft resolution while reserving the position of the Council with regard to the nature of the question, maintaining the reference to the previous resolutions on the matter and indicating the proposals which the President of the Council was to examine with the parties, the representative of Colombia, at the 771st meeting, on 18 February 1957, submitted the following amendments: 34/

"1. Replace the preamble by the following text:

'The Security Council,

'Recalling its previous resolutions and the letter addressed to the President of the United Nations Commission for India and Pakistan on 20 August 1948, by India's Prime Minister /S/1100, para. 78/'.

"2. Amend paragraph 1 of the operative part to read as follows:

'Requests the President of the Security Council, the representative of Sweden, to examine with the Governments of India and Pakistan proposals, which, in his opinion are likely to contribute to the achievement of the provisions contemplated in the resolutions of 13 August 1948 /S/1100, para. 75/, and 5 January 1949 /S/1196, para. 15/, of the United Nations Commission for India and Pakistan or to the establishment of other conditions for progress towards the settlement of the problem, bearing in mind the statements of the representatives of the Governments of India and Pakistan, the proposals for the use of a temporary United Nations force, if accepted by the parties, or the possibility to refer the problem to the International Court of Justice'".

47. At the 773rd meeting of the Council, on 20 February 1957, the amendments submitted by the Soviet Union were rejected 35/ by 1 in favour and 2 against, with 8 abstentions. The amendments submitted by Colombia were rejected 36/ by 1 in favour and none against, with 10 abstentions. The four-Power draft resolution was not adopted. 37/ There were 9 votes in favour and 1 against (the negative vote being that of a permanent member), with 1 abstention.

34/ S C, 12th yr., Suppl. for Jan.-Mar., p. 8, S/3791/Rev.1. For the UNCIP resolutions mentioned in the proposed amendment, see S C, 3rd yr., Suppl. for Nov. 1948, p. 17, S/1100, para. 75; S C, 4th yr., Suppl. for Jan. 1949, p. 19, S/1196, para. 15.

35/ S C, 12th yr., 773rd mtg., para. 124.

36/ Ibid., para. 125.

37/ Ibid., para. 126.

48. A modified draft resolution, 38/ which took into account the contentions advanced in the course of the debate, was subsequently submitted by Australia, the United Kingdom and the United States and was adopted 39/ by 10 votes in favour and none against, with 1 abstention. The resolution 40/ read as follows:

"The Security Council,

"Recalling its resolution of 24 January 1957 [S/3779], its previous resolutions and the resolutions of the United Nations Commission for India and Pakistan on the India-Pakistan question,

"1. Requests the President of the Security Council, the representative of Sweden, to examine with the Governments of India and Pakistan any proposals which, in his opinion, are likely to contribute towards the settlement of the dispute, having regard to the previous resolutions of the Security Council and of the United Nations Commission for India and Pakistan; to visit the sub-continent for this purpose; and to report to the Security Council not later than 15 April 1957;

"2. Invites the Governments of India and Pakistan to co-operate with him in the performance of these functions;

"3. Requests the Secretary-General and the United Nations Representative for India and Pakistan to render such assistance as he may request."

38/ Ibid., para. 130, S/3792 and Corr.1.

39/ Ibid., 774th mtg., para. 79.

40/ S C, 12th yr., Suppl. for Jan.-Mar., p. 9, S/3793. For text of S/3779 see ibid., p. 4.