

ARTICLE 39

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TEXT OF ARTICLE 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

INTRODUCTORY NOTE

1. During the period under review, the Security Council did not invoke Article 39 in any of its decisions nor did it make a determination of the existence of a threat to the peace, breach of the peace or act of aggression. Nor were any of its previous resolutions containing direct or indirect reference to Article 39 recalled by the Council.
2. The General Survey of the present study briefly reviews relevant proceedings connected with two items in connexion with which two new constitutional questions, dealt with in the Analytical Summary of Practice, arose during the period covered by this Supplement.
3. The two constitutional questions were, "The question whether a determination within the meaning of Article 39 is a pre-condition of invoking the procedure under General Assembly resolution 377 A (V)" ^{1/} and "The question whether without a determination under Article 39 and a decision in accordance with Article 42, a United Nations force may be established and employed by the Security Council". These questions, which are dealt with in sections II E and II F, are treated in this study for their possible bearing on the application and interpretation of Article 39; they are not directly related to its application or interpretation.
4. The General Survey also lists incidental references to Article 39 during the discussion in the Security Council on whether or not a question should be included in the agenda and during the consideration of a question by the Sixth (Legal) Committee of the General Assembly.

I. GENERAL SURVEY

5. The Analytical Summary of Practice reviews the discussion of two constitutional questions - together with the relevant decisions - which arose during consideration of specific provisions in draft resolutions submitted in connexion with the following two items: "Letter dated 30 October 1956 from the representative of Egypt addressed to the President of the Security Council" and "The India-Pakistan question".
6. At the 751st meeting of the Security Council, on 31 October 1956, a draft resolution was submitted in connexion with the item, "Letter dated 30 October 1956 from the representative of Egypt addressed to the President of the Security Council", according to which the Security Council would decide to call an emergency special session of the General Assembly, as provided in General Assembly resolution 377 A (V), "Uniting for peace". Objections to the draft resolution were raised on the grounds that two previous draft resolutions, which failed of adoption, concerned another item of the Council's agenda; in those draft resolutions no determination had been made of the existence of a threat to the peace, breach of the peace or act of aggression within the terms of Chapter VII. The proposal to rule the draft resolution out of order was not adopted. Though the question dealt with the interpretation of the "Uniting for peace" resolution, it is treated within the context of Article 39 since the constitutional question involved is whether resolution 377 (V) could be invoked only after the Council had explicitly determined the existence of a threat to the peace, breach of the peace or act of aggression, notwithstanding the fact that operative

^{1/} See Repertory, vol. I, under Article 11, annex IV.

paragraph 1 of the resolution used the words "... where there appears to be a threat to the peace, breach of the peace, or act of aggression ...". 2/

7. At the 768th meeting of the Security Council, on 15 February 1957, in connexion with the India-Pakistan question, a joint draft resolution was submitted expressing the belief that, in so far as it might contribute to demilitarization, the use of a temporary United Nations force would deserve consideration, and requesting the President of the Security Council, the representative of Sweden, to examine with the Governments of India and Pakistan proposals which, in his opinion, were likely to contribute to the achievement of demilitarization, including the proposal for the use of such a force. There were two objections to these provisions of the draft resolutions: (a) when acting under Chapter VI of the Charter, the Council could establish a United Nations force only with the consent of the parties concerned; and (b) a United Nations force could be established by the Council only when acting under Chapter VII of the Charter, to repel aggression and restore international peace. 3/ Amendments expressive of these points of view were submitted. One amendment would have authorized the President of the Council to examine with the two Governments concerned the proposal for the use of a temporary United Nations force, but only if accepted by the parties. The other amendment would have deleted all reference to a United Nations force. The amendments were rejected, and the draft resolution failed of adoption because of the negative vote of a permanent member of the Council. Subsequently, a new draft resolution containing no mention of a United Nations force was submitted and adopted. 4/

8. References were made to Article 39 during the discussion in the Security Council concerning the inclusion in the agenda of the question, "The armed aggression by the United Kingdom of Great Britain and Northern Ireland against the independence, sovereignty, and the territorial integrity of the Imamate of Oman". 5/

9. Incidental references to Article 39 were also made during the debates in the Sixth Committee at the twelfth session of the General Assembly in connexion with the agenda item, "Question of defining aggression: report of the Special Committee". 6/

- 2/ See below, paras. 10-17. For further constitutional developments in connexion with this question during the first emergency session of the General Assembly and during its eleventh session, see this Supplement under Article 11.
- 3/ For objections to the authority of the General Assembly to establish the United Nations Emergency Force, see this Supplement under Articles 11 and 22.
- 4/ See below, paras. 18-35.
- 5/ Letter dated 13 August 1957 addressed to the President of the Security Council from the representatives of Egypt, Iraq, Jordan, Lebanon, Libya, Morocco, Saudi Arabia, Sudan, Syria, Tunisia and Yemen (S C, 12th yr., Suppl. for July-Sept., p. 16, S/3865 and Add.1). The inclusion of the question was considered by the Council at its 783rd and 784th meetings, on 20 August 1957. For statements referring to Article 39, see S C, 12th yr., 783rd mtg.: Philippines, paras. 62 and 64; United Kingdom, paras. 31 and 57; 784th mtg.: Iraq, para. 37. The agenda item was not adopted.
- 6/ G A (XII), a.i. 54; see G A (XII), Suppl. No. 16 (A/3574). For texts of relevant statements, see G A (XII), 6th Com., 514th mtg.: Belgium, paras. 26, 29 and 30; Netherlands, para. 2; 516th mtg.: Colombia, para. 4; 517th mtg.: China, paras. 27 and 28; Syria, paras. 4, 7 and 10; 519th mtg.: United States, para. 16; Uruguay, paras. 9-11; 520th mtg.: Afghanistan, para. 12; Guatemala, paras. 3 and 4; 524th mtg.: Czechoslovakia, paras. 38 and 45; Denmark, para. 24; Italy, para. 20; 525th mtg.: Panama, para. 3; 526th mtg.: Ethiopia, para. 6; 527th mtg.: Netherlands, paras. 20-23, 28 and 32; 528th mtg.: Byelorussian SSR, para. 14; 530th mtg.: El Salvador, para. 25; New Zealand, para. 13; 531st mtg.: Mexico, paras. 4 and 5; Romania, para. 18; 532nd mtg.: Belgium, para. 35.

II. ANALYTICAL SUMMARY OF PRACTICE

- ** A. The question whether decisions amounted to action under Article 39 in the absence of explicit invocation of the Article
- ** B. The question of action under Article 39 in matters in which the competence of the Security Council to intervene was questioned on the ground that they came within the domestic jurisdiction of States
- ** C. The question of the circumstances in which Article 39 is applicable
- ** D. The question of designating in advance certain circumstances as coming within the purview of Article 39
- E. The question whether a determination within the meaning of Article 39 is a pre-condition of invoking the procedure under General Assembly resolution 377 A (V)

Decision of 31 October 1956 in connexion with the letter dated 30 October 1956 from the representative of Egypt

10. In connexion with a draft resolution, according to which the Security Council would decide to call an emergency special session of the General Assembly, as provided in General Assembly resolution 377 A (V), "Uniting for peace", it was objected that the Security Council had not made a determination within the meaning of Article 39 and that the procedure envisaged in the "Uniting for peace" resolution could therefore not be resorted to by the Council.

11. At its 750th and 751st meetings, held on 30 and 31 October 1956, the Security Council considered Egypt's request 7/ for action on the ultimatum addressed by the Governments of France and the United Kingdom in connexion with the outbreak of hostilities between Egypt and Israel.

12. In the course of the discussion, the representative of Yugoslavia submitted the following draft resolution: 8/

"The Security Council,

"Considering that a grave situation has been created by action undertaken against Egypt,

"Taking into account that the lack of unanimity of its permanent members at the 749th and 750th meetings of the Security Council has prevented it from exercising its primary responsibility for the maintenance of international peace and security,

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

7/ S C, 11th yr., Suppl. for Oct.-Dec., p. 111, S/3712.
8/ S C, 11th yr., 751st mtg., paras. 71 and 78, S/3719.

13. Referring to the two successive failures of the Council to adopt a resolution on the previous agenda item, because of the lack of unanimity of its permanent members, and to the rapidly worsening situation in the area of hostilities, the representative of Yugoslavia, supported by some other members of the Council, indicated that the procedure for convening an emergency special session of the General Assembly was clearly applicable in the prevailing circumstances. He contended that there existed a breach of the peace brought about by the landing of armed forces on the territory of an independent country and the bombing of its cities. The draft resolution not adopted by the Council called for the immediate withdrawal of armed forces, expressed grave concern at the violation of the General Armistice Agreement ^{9/} and requested a cease-fire. All this was provided for in Chapter VII, Articles ⁴⁰ and 41.

14. The representatives of France and the United Kingdom questioned the applicability of the proposed procedure on both technical and legal grounds. They contended that General Assembly resolution 377 A (V) laid down certain conditions for calling an emergency special session. Resolution 377 A (V) expressly referred to the failure of the Council "to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression ...". This provision meant that before the Council could invoke the procedure of the "Uniting for peace" resolution it must make a determination of the existence of a threat to the peace, a breach of the peace or an act of aggression within the terms of Chapter VII of the Charter. Since no such determination was contained in the two draft resolutions acted upon previously, invocation of the procedure envisaged in the "Uniting for peace" resolution was inadmissible.

15. The representative of the United Kingdom moved that a vote should be taken on his contention that the Yugoslav draft resolution was out of order.

16. In support of the Yugoslav draft resolution it was argued that although the item under consideration - the Egyptian complaint - was technically different from the item previously discussed by the Council - the Palestine question - the substance of the two items was essentially the same. If the point were pressed too far it would be tantamount to an invitation to submit a new draft resolution, put it to a vote and bring about the failure that would fulfil the technical requirement advanced by the representatives of France and the United Kingdom.

17. Regarding the contention that the draft resolution must contain a clear finding under Chapter VII, it was pointed out that, whatever the wording of the draft resolution might be, the facts of the situation confronting the Council were self-evident, and the breach of the peace was undeniable. ^{10/}

Decision

At its 751st meeting, on 31 October 1956, the Council rejected ^{11/} the United Kingdom motion to rule the Yugoslav draft resolution out of order by 6 votes to 4, with 1 abstention.

^{9/} United Nations, Treaty Series, vol. 42, I, No. 654, p. 251.

^{10/} For texts of relevant statements, see S C, 11th yr., 751st mtg.: China, para 110; Cuba, para. 119; France, paras. 96, 97, 108 and 124; Peru, para. 115; United Kingdom, paras. 82-85, 93, 94, 125 and 126; United States, para. 101; Yugoslavia, paras. 88-90, 106 and 107.

^{11/} S C, 11th yr., 751st mtg., para. 127.

- F. The question whether without a determination under Article 39 and a decision in accordance with Article 42, a United Nations force may be established and employed by the Security Council

Decisions of 20 February and 21 February 1957 in connexion with the India-Pakistan question

18. In support of a draft resolution 12/ containing endorsement of a proposal for the use of a temporary United Nations force in the State of Jammu and Kashmir, it was asserted that since the draft resolution provided only for exploratory examination of this proposal with the Governments concerned and not for the establishment of such a force, the Security Council would not be exceeding the authority conferred on it by Chapter VI of the Charter. On the other hand, it was contended that the provisions of the draft resolution relating to a United Nations force were a violation of the Charter. A permanent member held that action of this kind could be taken by the Council only under Chapter VII. Other members declared that such action could not be undertaken without the consent of the parties concerned.

19. At the 761st meeting, on 16 January 1957, the representative of Pakistan stated that it had been agreed by the Governments of India and Pakistan, as well as by the Security Council, that demilitarization of the State of Jammu and Kashmir was an essential prerequisite for a plebiscite to be conducted in the State under the control of the United Nations. In view of this, the Security Council should call upon the parties to withdraw all their troops from the State and should also ensure that the local forces were reduced, if not disbanded altogether. The function of protecting the State and ensuring internal security should be entrusted by the Security Council to a United Nations force which should be introduced into the area.

20. At the 768th meeting, on 15 February 1957, a joint draft resolution 13/ was submitted by Australia, Cuba, the United Kingdom and the United States, according to which:

"The Security Council,

".....

"Noting the proposal of the representative of Pakistan for the use of a temporary United Nations force in connexion with demilitarization [sixth preambular paragraph],

"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 [seventh preambular paragraph],

"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 ... 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;

"....."

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

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

21. At the 770th meeting, on 18 February 1957, the representative of the Union of Soviet Socialist Republics submitted amendments 14/ to the joint draft resolution, (a) to replace the preamble by the following text:

"Having heard the statements of the representatives of the Governments of India and Pakistan"

and (b) to amend operative paragraph 1 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;"

22. At the 771st meeting, on 18 February 1957, the representative of Colombia submitted an amendment 15/ to the joint draft resolution, (a) to replace the preamble as follows:

"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. 787;"

and (b) to amend operative paragraph 1 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. 757, and 5 January 1949 S/1196, para. 157 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 ...,"

23. During the course of the discussion related to the provisions of the joint draft resolution concerning the proposal for the use of a temporary United Nations force, the representative of Pakistan stated that the object of the entry of a United Nations force into the State was to create the necessary confidence in the two countries, to enable them to proceed without fear in the discharge of their obligations under international agreement as embodied in United Nations resolutions. As soon as the United Nations force should enter Kashmir, both sides should start withdrawing their forces, an operation to be followed by disbandment of the "Asad" Kashmir forces and further reduction in the forces on the Indian side of the cease-fire line. It should be clearly understood that the United Nations force would go into Kashmir with the consent of both parties; both would have agreed to demilitarize and to withdraw their troops. The force would enter in pursuance of agreement for demilitarization. It was therefore wrong to suppose that the force was going against the wishes of the people of Kashmir or of India or of Pakistan. The United Nations force would be sent to Kashmir only when there was a presumption that both parties were willing to agree to delimitarize and accept the force. Pakistan had accepted, and it was hoped that India's acceptance would be secured when the President of the Security Council went to

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

15/ Ibid., S/3791/Rev.1.

New Delhi. The question of forcing the troops into the area therefore did not arise; it was the willingness of the parties to receive them that would take the force there.

24. The representatives who supported the Pakistan proposal contended that the idea of a small temporary force was worth examination by the two Governments. There was no intention of setting aside any processes or procedures in the resolutions of the United Nations Commission for India and Pakistan (UNCIP). The intention was to implement the demilitarization procedure set out in those resolutions. The joint draft resolution before the Council, therefore, in taking note of the proposal of Pakistan, made it quite clear that the use of a temporary force could only be considered within the framework of the previous resolutions and in so far as it might contribute towards achieving the demilitarization of the State of Jammu and Kashmir and settling the dispute. The Pakistan proposal should, therefore, be one of the elements to be borne in mind by the President of the Security Council in his discussions with the parties. The employment of the force should be in absolute accord with the principles of the Charter. It was also pointed out that the Security Council was considering the question under Chapter VI of the Charter, and had not come to the stage of imposing any solution on either party. The joint draft resolution therefore rightly asked the two parties merely to give the proposal their consideration. The parties, jointly or singly, were free to accept or to reject it.

25. One representative stated that the joint draft resolution was not in the nature of a substantive decision. It was confined to prescribing a fact-finding measure; the Security Council would take no decision on the solution of the Kashmir problem until it had heard the report of its President. Therefore, the final phrase of operative paragraph 1, which read: "... bearing in mind the statements of the representatives of India and Pakistan and the proposal for the use of a temporary United Nations force" should be regarded merely as an indication. The President of the Council would undoubtedly examine with the two Governments concerned all the aspects, both juridical and practical, of the use of such a force. In the circumstances, any objections of the parties or a member of the Council to any given formula were fully reserved.

26. Another representative expressed the view that the sovereignty of India and Pakistan was not involved in the proposal to send a United Nations force into the State of Jammu and Kashmir for a temporary and limited purpose. In the circumstances, and pending a plebiscite, neither India nor Pakistan could claim sovereignty over the State of Jammu and Kashmir. The force was being sent into the State to assist in securing the free expression of the wishes of the people of the State to determine whether they would accede to India or to Pakistan. That objective delimited the tenure and circumscribed the authority of the United Nations force which would function under, and derive its powers from, the Government of the State of Jammu and Kashmir. His delegation would not object to the deletion of the words, "and the proposal for the use of a temporary United Nations force", at the end of operative paragraph 1 of the draft resolution. The clause was redundant because this proposal was embodied in the statement of the representative of Pakistan, which the President of the Security Council was asked to bear in mind in the same paragraph. There seemed to be no reason for the repetition except emphasis. Moreover, the last paragraph of the preamble of the draft resolution expressed the belief of the Council that the Pakistan proposal deserved consideration in so far as the use of a United Nations force might contribute to the achievement of demilitarization. Certainly the President could not ignore it since it was one of the proposals he might examine with the Governments of India and Pakistan as likely to contribute to demilitarization.

27. It was also contended that the idea of a United Nations force gained in interest and importance from the recent establishment and operations of the United Nations Emergency Force (UNEF) in Egypt. Without drawing a parallel between the situation

that had led to the General Assembly's decision to establish UNEF and the problem of securing appropriate measures for demilitarizing Kashmir as a preliminary step towards holding a free and impartial plebiscite, it was difficult to deny that the use of such a force, in so far as it might contribute towards demilitarization, would, in the words of the draft resolution, "deserve consideration". It had not been suggested in the Council that a United Nations force should be used to impose a plebiscite on Kashmir.

28. The representative of Colombia referred briefly to the difficulties the Council had encountered in the past so as to avoid their repetition in the future. When the Security Council had appointed the United Nations Commission for India and Pakistan in 1948, it had unwittingly committed the same error the Council was about to commit in the joint draft resolution: the sole terms of reference of UNCIP were to negotiate within the framework of the resolution of 21 April 1948, which India had denounced before UNCIP left New York. Thus, on its arrival in India, UNCIP had been in an absurd position: it was acting in accordance with Chapter VI of the Charter; in other words, it was engaged in conciliation procedure yet was required to operate within a resolution that had already been denounced by one of the parties.

29. Referring to the preamble of the joint draft resolution, the representative of Colombia stated that one part was somewhat illogical. The Security Council should not both recall resolutions and introduce new elements; either it should adhere to previous resolutions or it should introduce new elements. Though the action of the Council was within the framework of Chapter VI, the Council should not forget that it was acting as mediator and that the parties must agree to the suggestions. The idea of United Nations troops was excellent, but only if and when India accepted it. The Security Council could not impose the presence of such troops but must first obtain the consent of the parties concerned to their presence. The Security Council could not adopt a resolution with a series of new elements on the presence of United Nations troops without the prior request of the countries. The President of the Council should obtain the consent of the parties in advance because, according to Chapter VI, nothing could be done unless the parties had agreed beforehand.

30. In explaining his amendment, the representative of Colombia stated that the President should be allowed to consider all the suggestions that had been made, including the use of a United Nations force. Since the use of a United Nations force could be permitted only if the countries concerned had expressed their consent, the Security Council should invite India to admit the force. This point might be settled by a provision explaining that the Security Council was asking its President to consider, among other suggestions, the possibility of using a United Nations force, provided that India accepted it. If India did not accept the force, it would obviously be unable to go, just as it would have been unable to enter Egypt without the latter country's assent.

31. The representative of the Union of Soviet Socialist Republics stated that in his view there was no point in having the resolution refer to the proposal concerning the use of a United Nations force in the Kashmir region. The Charter provided clearly and unambiguously that United Nations forces could be used only to repel aggression and to restore international peace. The Charter made no provision for the use of armed forces for any other purpose. It did not provide for the use of United Nations forces to impose a plebiscite in any country. Thus, the introduction of a United Nations force into Kashmir was contrary to the principles of the Charter. He asked what the term "desirable" in the joint draft resolution meant in connexion with the use of a United Nations force: did the Security Council endorse the idea of using a United Nations force in Kashmir, and if so, for what purpose? What would be its mission? If the Security Council wished to act in full conformity with the Charter, it would have to state for what purpose and with what object such a force would be assigned to Kashmir.

Article 42 was the only Article of the Charter which referred to the use of armed forces of the United Nations. The relevant Articles which preceded it referred specifically to the repelling of aggression or the restoration of international peace; no other tasks were provided for in the Charter. It was not proper for the Council to take decisions which were in conflict with the Charter. The principal reason for the Soviet Union's amendment to the joint draft resolution was to delete the provisions concerning the sending of armed forces to Kashmir. In the view of the Soviet Union's representative, the use of armed forces would not lead to a peaceful solution. On the contrary, their use would be evidence that enforcement measures were being applied. The Council had the right to apply these measures only in specific cases, prescribed by the Charter. In the current instance, the Council had not embarked on such a course. Therefore, there was no justification whatever for deciding to use a United Nations force in Kashmir. Though it might be contended that the Council wished merely to explore the problem, the effect of this "exploration" would be that the Council was in fact approving the idea, with a view to its implementation. Otherwise, it was impossible to understand the purpose of such a decision. He stated further that the Security Council could not disregard the fact that India, one of the parties directly concerned, was categorically opposed to sending United Nations troops to Kashmir. An attempt to impose upon a Member of the United Nations a solution with which it was not in agreement would foredoom the mission of the President of the Security Council concerning measures to bring about a peaceful settlement within the terms of Chapter VI of the Charter.

32. The representative of India, commenting on the provision in the preamble of the joint draft resolution, according to which the use of a temporary United Nations force, in so far as it might contribute towards demilitarization, "would deserve consideration", stated that the facts denied that a United Nations force might contribute towards the achievement of that end. It was not necessary to have a United Nations force to achieve demilitarization. All that was needed was for the Pakistan army to withdraw from the Pakistan area of the State of Jammu and Kashmir and for the Indian arms in Kashmir to be deployed only in conditions of peace. The question of sending someone to achieve disarmament did not therefore arise. Furthermore, the proposal was contrary to the Charter because the United Nations had no authority, under Chapter VI, to place soldiers on Indian territory. The representative of India referred to a statement by the Secretary-General that troops could be placed without consent only under Chapter VII of the Charter; the Government of India would in no circumstances permit the stationing of foreign troops on Indian soil. The introduction of United Nations forces, which presumably would be composed of volunteers from Member States, unless the United Nations proposed to form a foreign legion, would not only be a violation of the Charter, but would also be a violation by each Member State that contributed troops, because India had bilateral relations with them. If a Member State were to send its troops to India in violation of the Charter, they would not be protected by the Charter. Their protection disappeared on account of their illegality. The joint draft resolution was, therefore, totally vitiated by its introduction of United Nations forces.

33. The representative of India referred to the report of the Secretary-General of 24 January 1957, 16/ concerning the use of the United Nations Emergency Force, and stated that sub-paragraphs (a), (b) and (c) of paragraph 5 of that report were conclusive in regard to the illegality of the use of a United Nations force in Kashmir, making the proposal totally impractical. Not a single word in Chapter VI referred to a United Nations force; it was therefore contrary to the Charter. The representative of India also contended that it was unfair to India to draw an analogy between the

16/ G A (XI), Annexes, vol. II, a.i. 66, p. 47, A/3512, para. 5. See also this Supplement under Articles 11 and 22.

United Nations Emergency Force in Egypt, in which India had participated, and the use of a United Nations force in Kashmir. In the one case, the territory of Egypt had been invaded by France, Israel and the United Kingdom. The purposes of UNEF, which were described in the report of the Secretary-General 17/ on the plan for an emergency international United Nations force, stated that the functions of the force were to supervise the cease-fire and the withdrawal. Had it been suggested that a United Nations force should go into Pakistan-occupied areas in order to supervise the withdrawal of Pakistan forces and then go away? That was certainly not the idea. It was therefore not possible to draw an analogy between the two cases. In one case, the United Nations emergency force went to the defence of those who had been the object of aggression; in the current case it would go to stand by the aggressor. The analogy had no relation whatsoever to the facts. 18/

Decision

At the 773rd meeting of the Security Council, on 20 February 1957, the amendment submitted by the Soviet Union was rejected 19/ by 1 vote in favour, 2 against, with 8 abstentions. The amendments submitted by Colombia were rejected 20/ by 1 vote in favour, none against, with 10 abstentions. The joint draft resolution was not adopted; 21/ there were 9 votes in favour, 1 against, with 1 abstention, the negative vote being that of a permanent member of the Security Council.

34. At the same meeting, Australia, the United Kingdom and the United States submitted a joint draft resolution 22/ which provided that:

"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;

"....."

17/ G A (ES-I), Annexes, a.i. 5, p. 19, A/3302 and Add.1 to 16, para. 12. See also this Supplement under Articles 11 and 22.

18/ For texts of relevant statements, see S C, 12th yr., 761st mtg.: Pakistan, paras. 111 and 112; 766th mtg.: Pakistan, para. 86; 768th mtg.: Australia, para. 53; Colombia, paras. 62, 63, 79, 81-83; China, paras. 130 and 131; United Kingdom, paras. 11, 12 and 14; United States, para. 34; 769th mtg.: France, paras. 32 and 33; India, paras. 99, 103, 145-147, 151-154, 167 and 169; Iraq, para. 24; 770th mtg.: Pakistan, paras. 123-128; USSR, paras. 139 and 145; 771st mtg.: Colombia, para. 6; 772nd mtg.: Australia, paras. 126 and 127; United Kingdom, para. 153; United States, para. 113; 773rd mtg.: India, paras. 72-78, 80, 88 and 99; Philippines, paras. 44-48; USSR, paras. 18-24, 138 and 139.

19/ Ibid., 773rd mtg., para. 124.

20/ Ibid., para. 125.

21/ Ibid., para. 126.

22/ S C, 12th yr., 773rd mtg., para. 130, S/3792.

35. At the 774th meeting, on 21 February 1957, the representative of Pakistan stated 23/ that the sole purpose of the proposal for the use of a United Nations force was to facilitate the withdrawal of Pakistan troops so that the process of demilitarization could be undertaken and completed in accordance with the terms of the resolution of the United Nations Commission for India and Pakistan. It was never intended to be utilized for holding a plebiscite. The task of organizing and actually holding the plebiscite was assigned to the Plebiscite Administrator. In a sense, the introduction of a United Nations force would merely amount to an augmentation of United Nations observers. It would thus be tantamount to a use of procedures which had thus far been followed with some success under Chapter VI of the Charter.

Decision

At the 774th meeting of the Security Council, on 21 February 1957, the joint draft resolution 24/ submitted by Australia, the United Kingdom and the United States was adopted 25/ by 10 votes in favour, none against, with 1 abstention.

23/ Ibid., 774th mtg., para. 9.

24/ S C, 12th yr., Suppl. for Jan.-Mar., p. 9, S/3793.

25/ S C, 12th yr., 774th mtg., para. 79.