

ARTICLE 2 (4)

CONTENTS

	<i>Paragraphs</i>
Text of Article 2 (4)	
Introductory Note	1—13
I. General Survey	14—42
II. Analytical Summary of Practice	43—260
A. The question of the scope and limits of the phrase “threat or use of force against the territorial integrity or political independence of any state”	43—252
1. In the Security Council	44—203
a. Decision of 26 May 1960 in connexion with the complaint by the USSR (U-2 incident)	44—52
(i) Précis of proceedings	44—46
(ii) Précis of relevant constitutional discussion	47—52
b. Decision of 27 May 1960 in connexion with the item entitled “Letter dated 23 May 1960 from the representatives of Argentina, Ceylon, Ecuador and Tunisia addressed to the President of the Security Council (S/4323)”	53—59
(i) Précis of proceedings	53—56
(ii) Précis of relevant constitutional discussion	57—59
c. Decisions of 13/14 July and 22 July 1960 in connexion with the situation in the Republic of the Congo	60—76
Decision of 13/14 July 1960	60—68
(i) Précis of proceedings	60—64
(ii) Précis of relevant constitutional discussion	65—68
Decision of 22 July 1960	69—76
(i) Précis of proceedings	69—71
(ii) Précis of relevant constitutional discussion	72—76
d. Decision of 26 July 1960 in connexion with the complaint by the USSR (RB-47 incident)	77—83
(i) Précis of proceedings	77—79
(ii) Précis of relevant constitutional discussion	80—83
e. Decisions of 22 July and 29 July 1961 in connexion with the complaint by Tunisia	84—95
(i) Précis of proceedings connected with the decisions of 22 and 29 July 1961	84—92
(ii) Précis of relevant constitutional discussion connected with the decision of 22 July 1961	93—95
f. Decisions of 18 December 1961 in connexion with the complaint by Portugal (Goa)	96—109
(i) Précis of proceedings	96—101
(ii) Précis of relevant constitutional discussion	102—109
g. Decisions of 9 April 1962 and 3 August 1966 in connexion with the Palestine question	110—129
Decision of 9 April 1962	110—119
(i) Précis of proceedings	110—115
(ii) Précis of relevant constitutional discussion	116—119
Decision of 3 August 1966	120—129
(i) Précis of proceedings	120—123
(ii) Précis of relevant constitutional discussion	124—129
h. Decision of 25 October 1962 in connexion with complaints by Cuba, USSR and United States (22—23 October 1962)	130—143
(i) Précis of proceedings	130—136
(ii) Précis of relevant constitutional discussion	137—143
i. Decisions of 28 December 1963, 4 and 13 March 1964 and 9 August 1964 in connexion with the complaint by the Government of Cyprus	144—169

	<i>Paragraphs</i>
Decision of 28 December 1963	144—147
(i) Précis of proceedings	144—145
(ii) Précis of relevant constitutional discussion	146—147
Decision of 4 March 1964	148—154
(i) Précis of proceedings	148—151
(ii) Précis of relevant constitutional discussion	152—154
Decision of 13 March 1964	155—159
(i) Précis of proceedings	155—157
(ii) Précis of relevant constitutional discussion	158—159
Decisions of 9 August 1964	160—169
(i) Précis of proceedings	160—165
(ii) Précis of relevant constitutional discussion	166—169
j. Decision of 9 April 1964 in connexion with the complaint by Yemen	170—177
(i) Précis of proceedings	170—172
(ii) Précis of relevant constitutional discussion	173—177
k. Decision of 17 September 1964 in connexion with the question of relations between Malaysia and Indonesia	178—185
(i) Précis of proceedings	178—180
(ii) Précis of relevant constitutional discussion	181—185
1. Decision of 30 December 1964 in connexion with the situation in the Democratic Republic of the Congo	186—195
(i) Précis of proceedings	186—189
(ii) Précis of relevant constitutional discussion	190—195
m. Decision of 21 May 1965 in connexion with the situation in the Dominican Republic	196—203
(i) Précis of proceedings	196—199
(ii) Précis of relevant constitutional discussion	200—203
2. In the General Assembly	204—252
a. Decisions of 21 April 1961, 14 December 1961 and 11 December 1962 in connexion with the item entitled “Question of Oman”	204—220
(i) Précis of proceedings	204—214
(ii) Précis of relevant constitutional discussion	215—220
b. Decision of 25 August 1961 in connexion with the item entitled “The grave situation in Tunisia obtaining since 19 July 1961”	221—225
(i) Précis of proceedings	221—223
(ii) Précis of relevant constitutional discussion	224—225
c. Decision of 18 December 1965 in connexion with the item entitled “Question of Cyprus”	226—236
(i) Précis of proceedings	226—233
(ii) Précis of relevant constitutional discussion	234—236
d. Decision of 21 December 1965 in connexion with the item entitled “The inadmissibility of intervention in the domestic affairs of States and the protection of their independence and sovereignty”	237—252
(i) Précis of proceedings	237—245
(ii) Précis of relevant constitutional discussion	246—252
**B. The question of the scope and limits of the phrase “in any other manner inconsistent with the Purposes of the United Nations”	
C. The question of the bearing of the injunction in Article 2 (4) on the right of self-defence	253—260
1. In the Security Council	254—257
a. Complaint by the USSR (RB-47 incident)	254
b. Complaint by Tunisia	255
c. Complaint by Yemen	256—257
2. In the General Assembly	258—260
a. Question of Oman	258
b. The grave situation in Tunisia obtaining since 19 July 1961	259
c. The inadmissibility of intervention in the domestic affairs of States and the protection of their independence and sovereignty	260

TEXT OF ARTICLE 2 (4)

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

...

4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

INTRODUCTORY NOTE

1. As in *Repertory Supplement No. 2*, Article 2 (4)¹ requires treatment in a separate study also in this *Supplement* since there were a number of decisions of the Security Council and the General Assembly bearing on its provisions and extensive constitutional discussions related to these decisions.

2. The General Survey contains a brief recapitulation of the decisions of the Security Council and of the General Assembly and indicates the items in connexion with which the provisions of Article 2 (4) were considered from a constitutional point of view.

3. The Analytical Summary of Practice contains an account of the discussion in the Security Council and the General Assembly of questions concerning the interpretation and application of Article 2 (4) which arose in connexion with various decisions.

4. While the constitutional discussion was related, in general, to the interpretation and application of Article 2 (4) in connexion with the specific situation under consideration, there were three instances, during consideration by the General Assembly of items of a general nature, of constitutional discussion concerning the interpretation of Article 2 (4). One of them, that relating to the inadmissibility of intervention in the domestic affairs of States, is considered in this *Supplement*.²

5. In the second instance, the provisions of Article 2 (4) were considered in abstract and general terms in connexion with the item entitled, "Consideration of the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations", by the Sixth Committee at the eighteenth³ and twentieth⁴ sessions of the General Assembly and by the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, at its session held between

27 August and 1 October 1964⁵ and by the re-constituted 1966 Special Committee, at its session held during the twenty-first session of the General Assembly from 8 March to 25 April 1966.⁶

6. As the General Assembly did not make a final recommendation on that matter, its proceedings are briefly reviewed in the General Survey.

7. In the third instance, Article 2 (4) was dealt with in the report⁷ of the International Law Commission on the Law of Treaties where it was conceived as a basis for the invalidity of treaties provided for in Article 49 of the law of treaties.

8. The proceedings and constitutional discussions in the Security Council and the General Assembly relating to questions treated in the Analytical Summary of Practice shed light on the meaning and scope of the terms of Article 2 (4) as understood by members of the two principal organs of the United Nations. In some instances, references to Article 2 (4) were accompanied by references to other Articles of the Charter defining the competence of the organ concerned or to the provisions of other paragraphs of Articles 2 and 1 which set forth the Purposes and Principles of the United Nations. On occasion, the objections raised to the threat or use of force were answered by references to Article 2 (7) which prohibits the United Nations from intervening in matters which are essentially within the domestic jurisdiction of any State. The threat or use of force was also defended with references to Articles 51 or 53; in those instances, it was objected that the threat or use of force was at variance with the provisions of those two Articles or of Article 42 of the Charter.

9. The terms of Article 2 (4) were invoked chiefly as a criterion for characterizing governmental conduct involving the unilateral use of coercive measures. The degree and type of violations of the provisions of Article 2 (4) were expressed in concrete terms relating to the actual behaviour of the party deemed to have violated them rather than in analytical and abstract definitions and elaborations of the meaning of the

¹ See *Repertory Supplement No. 2*, Vol. I, Under Article 2 (4). For the relationship of Article 2 (4) to other provisions of the Charter, see paras. 2-7.

² See paras. 237-252 below.

³ G A (XVIII), Annexes, a.i. 71, A/5671, paras. 49-66.

⁴ G A (XX), Annexes, a.i. 90 and 94, A/6165, paras. 22-31.

⁵ *Ibid.*, A/5746, paras. 26-127.

⁶ G A (XXI), Annexes, a.i. 87, A/6230, paras. 22-156.

⁷ G A (XXI), Suppl. No. 9, pp. 75 and 76.

provisions of the Article. The individual case histories included in the Analytical Summary of Practice describe the main lines of characterization of the specific activities of States in relation to the requirements of Article 2 (4). Neither the Security Council nor the General Assembly made any textual interpretation of Article 2 (4) or of its relation to other provisions of the Charter.

10. Consequently, as in *Repertory Supplement No. 2*, the material is organized under the following broad headings: A. The question of the scope and limits of the phrase "threat or use of force against the territorial integrity or political independence of any state"; B. The question of the scope and limits of the phrase "in any other manner inconsistent with the Purposes of the United Nations" and C. The question of the bearing of the injunction in Article 2 (4) on the right of self-defence. The material pertaining to section C is derived from the constitutional discussions treated in section A. However, while the entries in section A concern extensive constitutional discussions, those contained in section C deal with discussions of a more limited scope. No material was found for inclusion in section B. Material relevant to section B for the period under review was covered in Supplement No. 2. No material has been found for inclusion here.

11. One of the questions which arose in the proceedings of the Security Council and the General Assembly was whether the use of force in certain specific circumstances, as claimed, could be considered legitimate within the provisions of Article 2 (4). Such claims were made for reasons which would seem to fall into the four categories listed below which, however, were formulated merely in order to enable the reader to have an over-all view of the cases related to the interpretation and application of the provisions of Article 2 (4) and no special constitutional significance should be attached to them.

1. The use of force:
 - a. by one State against the previous use of force by another State;
 - b. by one State against foreign troops present in its territory without its permission and against its will;
 - c. for the purpose of reprisals;

- d. for the purpose of prevention of the development of a threat to the security of the State concerned.
2. The use of force pursuant to a request:
 - a. by a Government for intervention by another Government for humanitarian purposes;
 - b. under a treaty by a Government against another State;
 - c. under a treaty by the head of a Protectorate to suppress an internal uprising;
 - d. by local authorities for intervention for humanitarian purposes.
3. The use of force under an international treaty in order to restore the constitutional *status quo ante* in a State signatory of the treaty;
4. The use of force in connexion with the process of decolonization:
 - a. against a Non-Self-Governing Territory in order to support the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples;
 - b. in support of the exercise of the right of self-determination of peoples under a colonial régime;
 - c. in support of wars of liberation or national liberation movements.

12. Other issues concerning the interpretation and application of the provisions of Article 2 (4) arose when it was contended that the violation of the air-space of a State without an aggressive intent was not contrary to the provisions of that Article and that activities not involving the use of force directed against the territorial integrity and political independence of a State constituted indirect aggression and, therefore, contravened Article 2 (4).

13. In the Analytical Summary of Practice introductory paragraphs under the heading: "The question of the scope and limits of the phrase 'threat or use of force against the territorial integrity or political independence of any state'" offer some indication as to instances in which specific topics are involved in the discussions treated in the case histories.⁸

⁸ See para. 43 below.

I. GENERAL SURVEY

14. During the period under review, paragraph 4 of Article 2 was explicitly referred to in three decisions of the Security Council: resolution 171 (1962) on the Palestine question,⁹ resolution 186 (1964) on the question of Cyprus¹⁰ and resolution 188 (1964) on the complaint by Yemen;¹¹ and in one decision of the General Assembly—resolution 2077 (XX) on the question of Cyprus.¹²

15. In connexion with the Palestine question, the Security Council adopted resolution 171 (1962)

in which it recalled its resolution 93 (1951) and reaffirmed¹³ its resolution 111 (1956) in which resolution 93 (1951) was also recalled. In the latter resolution, the Council had recalled resolution 92 (1951) by which (a) it had brought to the attention of the parties their obligations, under Article 2 (4) and (b) had called upon them to comply with these obligations. By resolution 93 (1951), the Council had also recalled to the Governments of Syria and Israel their obligations under Article 2 (4).

16. Resolution 186 (1964), in the preamble of which the Security Council reproduced the provisions of Article 2 (4), was reaffirmed in subsequent

⁹ Fifth preamb. para. and oper. para. 1.

¹⁰ Third preamb. para.

¹¹ Third preamb. para.

¹² Oper. para. 2.

¹³ Oper. para. 2.

decisions of the Security Council¹⁴ on the question of Cyprus and in General Assembly resolution 2077 (XX)¹⁵ on the same question; for that reason these resolutions could also be considered as having a bearing on Article 2 (4).

17. In Security Council resolution 135 (1960)¹⁶ on the item entitled "Letter dated 23 May 1960 from the representatives of Argentina, Ceylon, Ecuador and Tunisia addressed to the President of the Security Council (S/4323)", language similar to that of Article 2 (4) was used.

18. Certain provisions in other resolutions of the Security Council and of the General Assembly may be regarded as having a bearing on Article 2 (4). Those were mainly recommendations addressed to particular Member States in relation to the threat or use of force. The proceedings and the constitutional discussions leading to the adoption of the following resolutions contain indications that the recommendations could be considered as related to the provisions of Article 2 (4):

- a. Security Council resolution 164 (1961) on the complaint by Tunisia;
- b. Security Council resolutions 178 (1963) and 204 (1965) on the complaint by Senegal;
- c. General Assembly resolution 1622 (S-III) on the grave situation in Tunisia obtaining since 19 July 1961;
- d. General Assembly resolution 2131 (XX) entitled "Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty".

19. Resolutions adopted by the General Assembly on the question of Basutoland, Bechuanaland and Swaziland and on the question of South West Africa appear to have an implicit bearing on the provisions of Article 2 (4). In the first instance, the General Assembly, in resolution 1817 (XVII),¹⁷ expressing its profound concern at the declared intention of the Government of the Republic of South Africa to annex the three Territories, declared solemnly that any attempt to annex those Territories, or to encroach upon their territorial integrity in any way would be regarded by the United Nations as an act of aggression violating the Charter of the United Nations; in resolution 1954 (XVIII)¹⁸ the General Assembly, recalling the declaration contained in operative paragraph 4 of resolution 1817 (XVII), solemnly warned the Government of the Republic of South Africa that any attempt to annex or encroach upon the territorial integrity of the three Territories would be considered an act of aggression. In connexion with the question of South West Africa the

¹⁴ S C resolutions 187 (1964), second preamb. para. 192 (1964), oper. para. 1; 193 (1964), second preamb. para. 194 (1964), oper. para. 1; 198 (1964), oper. para. 1; 201 (1965), oper. para. 1; 206 (1965), oper. para. 1; 207 (1965), oper. para. 1; 219 (1965), oper. para. 1; 220 (1966), oper. para. 1 and 222 (1966), oper. para. 1.

¹⁵ Second preamb. para.

¹⁶ Oper. para. 2.

¹⁷ Seventh preamb. para. and oper. para. 6.

¹⁸ Fifth preamb. para. and oper. para. 4.

General Assembly, in resolution 1899 (XVIII),¹⁹ considering that any attempt by the Government of the Republic of South Africa to annex a part or the whole of the Territory of South West Africa would be contrary to the advisory opinion of the International Court of Justice of 11 July 1950 and would constitute a violation of that Government's obligations under the Mandate and of its other international obligations, considered that any attempt to annex a part or the whole of the Territory of South West Africa constituted an act of aggression.

20. In connexion with consideration of the situation in the Republic of the Congo the constitutional discussion which preceded the adoption of two decisions may be considered as shedding light on the interpretation of the provisions of Article 2 (4) while the resolutions adopted have an indirect bearing on those provisions.

21. Draft resolutions bearing on Article 2 (4) were not adopted by the Security Council in connexion with the following questions:

- a. Complaint by the USSR (U-2 incident);
- b. Complaint by the USSR (RB-47 incident);
- c. Complaint by Portugal (Goa);
- d. Complaints by Cuba, USSR and United States (22-23 October 1962);
- e. The question of relations between Malaysia and Indonesia;
- f. Situation in the Dominican Republic;²⁰
- g. The Palestine question (decision of 3 August 1966).

22. However, the constitutional discussion concerning those draft resolutions could be considered as having a bearing on the provisions of Article 2 (4).

23. The same applies to the consideration of the question of Oman by the General Assembly.

24. The decisions of the Security Council in connexion with

- a. The complaint concerning acts of aggression against the territory and civilian population of Cambodia: resolution 189 (1964) of 4 June 1964 and
- b. The India-Pakistan question: resolutions 209 (1965) of 4 September 1965, 210 (1965) of 6 September 1965, 211 (1965) of 20 September 1965, 214 (1965) of 27 September 1965 and 215 (1965) of 5 November 1965, have a bearing on the provisions of Article 2 (4). In resolution 189 (1964), the Security Council, *inter alia*, deplored the incidents caused by the penetration of units of the army of the Republic of Viet-Nam into Cambodian territory; invited those responsible to take all appropriate measures to prevent any further violations of the Cambodian frontier

¹⁹ Eleventh preamb. para. and oper. para. 4.

²⁰ In connexion with that item, the Security Council adopted resolution 203 (1965) of 14 May 1965, in which, *inter alia*, it called for a strict cease-fire and invited the Secretary-General to send a representative to the Dominican Republic for the purpose of reporting to the Council (oper. paras. 1 and 2); and resolution 205 (1965) of 22 May 1965, in which, *inter alia*, it requested that the suspension of hostilities in Santo Domingo be transformed into a permanent cease-fire (oper. para. 1).

and requested all States and authorities to respect Cambodia's territorial integrity. In resolutions 209 (1965), 210 (1965), 211 (1965), 214 (1965) and 215 (1965) respectively, the Security Council, *inter alia*, called upon India and Pakistan to take steps for an immediate cease-fire and to have all armed personnel of each party withdrawn to its own side of the cease-fire line; called for an immediate cessation of hostilities; demanded that a cease-fire should take effect on a certain date; called upon both Governments to issue orders for a cease-fire and a subsequent withdrawal of all armed personnel to the positions held on an indicated date; demanded that the parties urgently honour their commitments to the Council to observe the cease-fire; called upon the parties promptly to withdraw all armed personnel as necessary steps in the full implementation of a previous resolution; requested the Governments of the parties to instruct their armed personnel to co-operate with the United Nations and cease all military activity and insisted that there be an end to violations of the cease-fire. In the proceedings leading to the adoption of those decisions, the discussion was concerned mainly with the state of affairs existing between the parties concerned and no constitutional issue arose concerning the provisions of Article 2 (4).

25. In connexion with the question of Hungary, the General Assembly, by resolution 1857 (XVII),²¹ reaffirmed the objectives of its resolutions 1004 (ES-II), 1005 (ES-II), 1127 (XI), 1131 (XI), 1132 (XI) and 1133 (XI) which were dealt with in *Supplement No. 2*.²² In two previous resolutions²³ the General Assembly had deplored the continued disregard by the Union of Soviet Socialist Republics and the current Hungarian régime of its resolutions on the situation in Hungary.

26. During the period under review, the General Assembly by resolution 1653 (XVI) adopted the "Declaration on the prohibition of the use of nuclear and thermo-nuclear weapons" and by resolution 2033 (XX), the "Declaration on the denuclearization of Africa". Some of the provisions²⁴ of these two Declarations could be regarded as having a direct bearing on Article 2 (4).

27. Draft resolutions containing implicit or ex-

PLICIT references to Article 2 (4) were not adopted by the Council in the following instances: in connexion with the complaint by Portugal (Goa), the Security Council was seized of a draft resolution containing an explicit reference to Article 2 (4) in which it deplored the use of force by a Member State in Goa, Damão and Diu;²⁵ In connexion with the question of relations between Malaysia and Indonesia, the Council had before it a draft resolution in which it called upon the parties to refrain from all threat or use of force and to respect each other's territorial integrity and political independence²⁶ and, in connexion with the situation in the Dominican Republic, the Council was seized of a draft resolution under which it would have reaffirmed the principles set forth in Chapter I of the Charter of the United Nations and, in particular, in Article 2 (4) and (7).²⁷

28. In a letter²⁸ dated 22 October 1962 addressed to the President of the Security Council by the representative of Cuba requesting the convening of the Council to consider the question of "the act of war unilaterally committed by the Government of the United States in ordering the naval blockade of Cuba", Article 2 (4), among others, was explicitly invoked as a basis for the request. Article 2 (4) was also explicitly invoked, together with other Articles, in letters from the representative of Cyprus dated 26 December 1963, 13 March 1964 and 8 August 1964²⁹ requesting that the Council should consider the complaint by the Government of Cyprus.³⁰

29. In most instances, discussion of Article 2 (4) took the form of a commentary on the implications of the Article for the obligations of Members in the situations being dealt with.

30. In the Security Council, there was an explicit reference to Article 2 (4) in connexion with the complaints by Kuwait and by Iraq.³¹

31. In the General Assembly, explicit references to Article 2 (4) were made in connexion with the question of Algeria,³² the complaint by Cuba³³ and the situation in Angola.³⁴

32. Implied references to Article 2 (4) were made during the consideration of the problem of Mauritania.³⁵

²⁵ See para. 100 below.

²⁶ See para. 180 below.

²⁷ See para. 199 below.

²⁸ S C, 17th yr., Suppl. for Oct.—Dec., p. 148, S/5183.

²⁹ S C, 18th yr., Suppl. for Oct.—Dec., p. 112, S/5488; 19th yr., Suppl. for Jan.—March, p. 140, S/5598; Suppl. for July—Sept., p. 145, S/5861.

³⁰ For resolutions adopted by the Security Council on that question see para. 16 above.

³¹ S C, 16th yr., 958th mtg.: United States, para. 90.

³² G A, (XIV), Gen. Com., 121st mtg., para. 24.

³³ G A (XV), 1st Com., 1149th mtg.: Cuba, para. 1.

³⁴ G A (XV/2), Plen., 990th mtg.: Liberia, paras. 94 and 95; G A (XVI), Gen. Com., 135th mtg.: Portugal, para. 13; G A (XVI), Plen., 1014th mtg.: Portugal, para. 62; 1083rd mtg.: Portugal, para. 190; 1088th mtg.: Portugal, para. 12; G A (XVII), Plen., 1184th mtg.: Ceylon, paras. 165 and 166; 1185th mtg.: Pakistan, para. 117; G A (XVII), 4th Com., 1399th mtg.: Ceylon, paras. 45, 79.

³⁵ G A (XV/1), 1st Com., 1109th mtg.: Morocco, paras. 2-4, 7, 8 and 11; 1113th mtg.: Morocco, para. 18; 1117th mtg.: Morocco, para. 15.

²¹ Second preamb. para.

²² See *Repertory Supplement No. 2*, under Article 11, paras. 79-93, 94-115, 138-147, 201-216, 217-222 and 223-254. In connexion with this question, explicit references to Article 2 (4) were made in the Report of the United Nations' Special Representative on the question of Hungary (G A (XIV), Annexes, a.i. 74, A/4304, para. 10) and at the 849th plenary meeting on 8 December 1959 (G A (XIV), Plen. 849th mtg., para. 26).

²³ G A resolutions 1454 (XIV) and 1741 (XVI).

²⁴ Under resolution 1653 (XVI), the General Assembly declared that "(a) The use of nuclear and thermo-nuclear weapons is contrary to the spirit, letter and aims of the United Nations and, as such, a direct violation of the Charter of the United Nations; ... (d) Any State using nuclear and thermo-nuclear weapons is to be considered as violating the Charter of the United Nations..." In operative paragraph 4 of resolution 2033 (XX), the General Assembly called upon "all States to refrain from the use, or the threat of use, of nuclear weapons on the African continent".

33. At its sixteenth session, in connexion with the item entitled "Future work in the field of the codification and progressive development of international law",³⁶ the General Assembly at its 1081st plenary meeting, on 18 December 1961, adopted³⁷ unanimously resolution 1686 (XVI) by which it decided to include in the provisional agenda of its seventeenth session the question entitled "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations".³⁸

34. At its seventeenth session, the General Assembly adopted,³⁹ by 70 votes to none, as its resolution 1815 (XVII), a draft resolution⁴⁰ submitted by the Sixth Committee entitled "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations".

35. By that resolution the General Assembly, *inter alia*, considering it "essential that all States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations",⁴¹ recognized "the paramount importance . . . of the principles of international law concerning friendly relations and co-operation among States and the duties deriving therefrom, embodied in the Charter of the United Nations . . . notably: (a) The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations;"⁴² decided to place the item on the provisional agenda at its eighteenth session in order to study, among others, the principle stated in operative paragraph 1 (a) quoted above⁴³ and it invited Member States to submit to the Secretary-General, before 1 July 1963, any views or suggestions they might have on that item and particularly on the subjects enumerated in operative paragraph 3 of the resolution.⁴⁴

36. During its eighteenth session, the General Assembly adopted⁴⁵ unanimously the draft resolution⁴⁶

³⁶ G A (XVI), Annexes, a.i. 70.

³⁷ G A (XVI), Plen., 1081st mtg., para. 51.

³⁸ Oper. para. 4.

³⁹ G A (XVII), Plen., 1196th mtg., para. 20.

⁴⁰ G A (XVII), Annexes, a.i. 75, A/5356, para. 12. The draft resolution was submitted by Afghanistan, Algeria, Cambodia, Cameroon, Canada, Ceylon, Central African Republic, Chile, Congo (Leopoldville), Cyprus, Czechoslovakia, Dahomey, Denmark, Ethiopia, Ghana, Greece, Hungary, India, Indonesia, Iran, Japan, Liberia, Mali, Mongolia, Morocco, Nigeria, Pakistan, Philippines, Poland, Romania, Sierra Leone, Somalia, Syria, Tanganyika, Turkey, United Arab Republic and Yugoslavia.

⁴¹ Eighth Preamb. para.

⁴² Oper. para. 1 (a).

⁴³ Oper. para. 3 (a).

⁴⁴ Oper. para. 4.

⁴⁵ G A (XVIII), Plen., 1281st mtg., para. 65.

⁴⁶ G A (XVIII), Annexes, a.i. 71, A/5671, paras. 10-13; the draft resolution was submitted by Afghanistan, Algeria, Bolivia, Burma, Cambodia, Cameroon, Ceylon, Colombia, Costa Rica, Cyprus, Ecuador, El Salvador, Ethiopia, Ghana,

submitted to it by the Sixth Committee as its resolution 1966 (XVIII).

37. By that resolution, the General Assembly decided to establish a "Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States" which would draw up a report containing, for the purpose of the progressive development and codification of the four principles referred to in operative paragraph 3 of resolution 1815 (XVII) and, among them, "the principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations", so as to secure their more effective application. In the conclusions of the study and recommendations, the Special Committee should take into account in particular: "(a) The practice of the United Nations and of States in the application of the principles established in the Charter of the United Nations; (b) The comments submitted by Governments on this subject in accordance with paragraph 4 of resolution 1815 (XVII) and (c) The views and suggestions advanced by the representatives of Member States during the seventeenth and eighteenth sessions of the General Assembly".⁴⁷ The General Assembly further requested the Special Committee to submit its report at the nineteenth session, decided to place the item on the provisional agenda of that session in order to consider the report of the Special Committee and urged those Member States which had not already done so to submit to the Secretary-General, before 1 July 1964, their views in accordance with paragraph 4 of resolution 1815 (XVII).⁴⁸

38. The Special Committee established under General Assembly resolution 1966 (XVIII) submitted to the General Assembly on 16 November 1964 the report⁴⁹ on its work.

39. The item was not considered during the nineteenth session of the General Assembly. As stated in a note⁵⁰ by the President on the status of the agenda of that session, the item would be included by the Secretary-General in the provisional agenda of the twentieth session.

40. At its twentieth session,⁵¹ the General As-

Guatemala, Guinea, India, Indonesia, Mali, Morocco, Nicaragua, Nigeria, Peru, Somalia, Syria, Tanganyika, United Arab Republic, Venezuela and Yugoslavia.

⁴⁷ G A Resolution 1966 (XVIII), oper. para. 1 (a) to (c).

⁴⁸ *Ibid.*, oper. paras. 3, 5 and 6.

⁴⁹ G A (XX), Annexes, a.i. 90 and 94, A/5746.

⁵⁰ G A (XIX), Annexes, No. 2, A/5884, para. 6.

⁵¹ The item was included in the agenda of the General Assembly at its twentieth session as agenda item 90 and was considered together with agenda item 94 entitled "Observance by Member States of the principles relating to the sovereignty of States, their territorial integrity, non-interference in their domestic affairs, the peaceful settlement of disputes and the condemnation of subversive activities" which was originally submitted by Madagascar to the General Assembly for consideration at its nineteenth session (G A (XIX), Annexes, No. 2, A/5757 and Add.1). The General Assembly took no action on that item, which was submitted again by Madagascar for inclusion in the agenda of the Assembly at its twentieth session (G A (XX), Annexes, a.i. 90 and 94, A/5937).

sembly adopted⁵² as its resolution 2103 A (XX) the draft resolution submitted to it⁵³ by the Sixth Committee. 41. By that resolution the General Assembly took note of the report of the Special Committee,⁵⁴ decided to reconstitute it⁵⁵ and requested it to continue, in the light of the debates which had taken place in the Sixth Committee during the seventeenth, eighteenth and twentieth sessions of the General Assembly and of the report of the previous Special Committee, the consideration, among others, of the principle set forth in paragraph 3 (a) of resolution 1815 (XVII), having full regard to matters on which the previous Special Committee had been unable to reach agreement and to the measure of

⁵² G A (XX), Plen., 140th mtg., para. 134.

⁵³ After the conclusion of the general debate in the Sixth Committee, the sponsors of the various draft resolutions on item 90 designated a group of representatives to prepare a draft resolution which would be generally acceptable to the Committee. The result of the deliberations of that group was a draft resolution dealing with both agenda items 90 and 94, submitted jointly by Argentina, Chile, Costa Rica, Czechoslovakia, Ecuador, Guatemala, India, Iraq, Jamaica, Mexico, Poland, Romania and the United Kingdom, later joined by Australia, Ceylon, Hungary, Madagascar and Saudi Arabia. (G A (XX), Annexes, a.i. 90 and 94, A/6165, para. 15).

⁵⁴ Oper. para. 1.

⁵⁵ Oper. para. 3.

progress achieved on particular matters.⁵⁶ The General Assembly further requested the Special Committee to report to the General Assembly at its twenty-first session⁵⁷ and decided to include the item in its provisional agenda.⁵⁸

42. The reconstituted 1966 Special Committee submitted its report on its work on 27 June 1966.⁵⁹

⁵⁶ Oper. para. 4.

⁵⁷ Oper. para. 6.

⁵⁸ Oper. para. 8.

⁵⁹ During its twenty-first session, at the 1489th plenary meeting on 12 December 1966, the General Assembly adopted, by 85 votes to none, with 2 abstentions, resolution 2181 under which it took note of the report of the 1966 Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States (oper. para. 1), decided to ask the Special Committee, as reconstituted by General Assembly resolution 2103 (XX), to continue its work (oper. para. 4), and requested it, in the light of the debate which had taken place in the Sixth Committee during the seventeenth, eighteenth, twentieth and twenty-first sessions of the General Assembly and in the 1964 and 1966 Special Committees, to complete, *inter alia*, the formulation of "(a) The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity and political independence of any State, or in any other manner inconsistent with the purposes of the United Nations;" (oper. para. 5 (a)). The General Assembly also decided to include the item in the provisional agenda at its twenty-second session (oper. para. 11).

II. ANALYTICAL SUMMARY OF PRACTICE

A. The question of the scope and limits of the phrase "threat or use of force against the territorial integrity or political independence of any state"

43. Article 2 (4) was referred to in the Security Council and the General Assembly in connexion with questions which involved allegations of the threat or use of force against the territorial integrity or political independence of a State. In the course of those discussions, questions arose concerning the scope and limits of the threat or use of force contrary to the provisions of Article 2 (4) as follows:

1. In the Security Council

- a. In connexion with the situation in the Republic of the Congo and in the Democratic Republic of the Congo, the question whether a military intervention for humanitarian reasons constituted the use of force prohibited by Article 2 (4);
- b. In connexion with the complaints by the USSR (U-2 incident and RB-47 incident), and with the item entitled "Letter dated 25 May 1960 from the representatives of Argentina, Ceylon, Ecuador and Tunisia addressed to the President of the Security Council (S/4323)", submitting a draft resolution for the consideration of the Council, the question whether violations of the air-space of the USSR constituted a violation of territorial integrity and political independence contrary to the provisions of the Charter;
- c. In connexion with the complaint by Tunisia, the question whether the stationing of foreign troops in the territory of Tunisia without the

consent of its Government constituted a violation of Article 2 (4) and whether the use of force against the previous use by the other side was within the limits of Article 2 (4);

- d. In connexion with the complaint by Portugal, the question whether the use of force in order to liberate a colonial territory was prohibited by Article 2 (4);
- e. In connexion with the Palestine question, the question whether military action in breach of the General Armistice Agreement was a violation of Article 2 (4);
- f. In connexion with the complaints by Cuba, USSR and the United States, the question whether the clandestine installation of long-range ballistic missiles by one side and the establishment of a naval quarantine by the other side constituted an infringement of Article 2 (4);
- g. In connexion with the complaint by the Government of Cyprus, the question whether the threat or use of force for the settlement of an internal matter and whether the threat or use of force against a State made with reference to an international treaty guaranteeing the *status quo* in that State were incompatible with Article 2 (4);
- h. In connexion with the complaint by Yemen, the question whether the use of force in defence of a State on the basis of a treaty was prohibited by Article 2 (4);
- i. In connexion with the question of relations between Malaysia and Indonesia, the question

whether the use of force in pursuance of an anti-colonial policy which, it was claimed, was not inconsistent with the purposes of the Charter, was within the limits of Article 2 (4);

- j. In connexion with the situation in the Dominican Republic, the question whether a military intervention undertaken, as claimed, for humanitarian reasons and with the purpose of re-establishing a constitutional government constituted an infringement of Article 2 (4).

2. In the General Assembly

- a. In connexion with the question of Oman, the question whether the use of force by a third State following a request by the Head of a Protectorate, in order to suppress an internal uprising, was within the limits of Article 2 (4);
- b. In connexion with the complaint by Tunisia, the same question as c. above, which was considered by the Security Council;
- c. In connexion with the question of Cyprus, the question whether the threat or use of force for the settlement of an internal matter was compatible with the Charter;
- d. In connexion with the item entitled "The inadmissibility of intervention in the domestic affairs of States and the protection of their independence and sovereignty", the question whether armed intervention and other forms of intervention in internal matters were incompatible with the provisions of Article 2 (4).

1. IN THE SECURITY COUNCIL

a. Decision of 26 May 1960 in connexion with the complaint by the USSR (U-2 incident)

(i) Précis of proceedings

44. By a cablegram⁶⁰ dated 18 May 1960, the Minister for Foreign Affairs of the USSR requested the President of the Security Council to convene an urgent meeting of the Council to examine "the question of aggressive acts by the Air Force of the United States of America against the Soviet Union, creating a threat to universal peace".

45. At its 857th meeting, on 23 May 1960, the Security Council decided⁶¹ to include the question submitted by the USSR in its agenda.

46. At the same meeting, the representative of the USSR submitted a draft resolution⁶² in which it was provided that:

"The Security Council,

"...

"Noting that violations of the sovereignty of other States are incompatible with the Principles and Purposes of the Charter of the United Nations,

⁶⁰ S C, 15th yr., Suppl. for April-June, p. 7, S/4314. By a cablegram dated 19 May 1960, the Minister for Foreign Affairs of the USSR transmitted to the President of the Security Council an explanatory memorandum in amplification of his cablegram dated 18 May 1960 (S C, *ibid.*, S/4315).

⁶¹ S C, 15th yr., 857th mtg., para. 9.

⁶² *Ibid.*, para. 99.

"Considering that such actions create a threat to universal peace,

"1. *Condemns* the incursions by United States aircraft into the territory of other States and regards them as aggressive acts;

"2. *Requests* the Government of the United States of America to adopt immediate measures to halt such actions and to prevent their recurrence".

Decision

At the 860th meeting on 26 May 1960, the USSR draft resolution was rejected⁶³ by 2 votes to 7, with 2 abstentions.

(ii) Précis of relevant constitutional discussion

47. In submitting his draft resolution, the representative of the USSR stated that the Security Council had to consider aggressive acts planned in advance and carried out on the instructions of the United States Government. That Government had announced publicly that an integral part of its official policy had been the carrying out of systematic incursions into another State for purposes of espionage and diversion. One of the most dangerous aspects of that policy was that it flouted the principle of State sovereignty and of the inviolability of the territory of States. The recognition and observance of that principle constituted the foundation of the maintenance of peaceful relations among States.

48. The representative of the United States contended that the term "aggression" had never been officially defined. However, the presence over a foreign territory of a light, unarmed, single engine, non-military, one-man plane did not, as such, constitute an act of aggression. He quoted a statement made by the President of the United States on 16 May 1960 in which the President declared that the flights over the USSR had no aggressive intent but were to assure the safety of the United States and the free world against surprise attack by the USSR. Those flights, however, had been suspended and were not to be resumed.

49. One representative who supported the USSR draft resolution expressed the view that the way in which the United States had acted constituted a violation of international law which recognized complete and exclusive sovereignty of States over their air-space. Referring to a number of international conventions on international civil aviation, he pointed out that flights of foreign planes over a State's territory without its consent were illegal. Moreover, an espionage flight was not only a breach of treaty obligations but also a violation of the principle of sovereignty and of State frontiers and a violation of the Charter, particularly of Articles 1, 2 and 78.

50. On the other hand, it was maintained that the overflights denounced by the Government of the USSR came within the category of reconnaissance activities. Those flights had not involved a use of force or a threat of the use of force against the USSR, and had been made without an aggressive intent.

⁶³ S C, 15th yr., 860th mtg., para. 87.

The U-2 incident should, therefore, be treated as a symptom of the fear of surprise attacks, and had been undertaken for the purpose of forestalling such attacks. In any case, the United States had suspended the flights over the USSR and they would not be resumed. Therefore, the Security Council was not faced with an act of aggression.

51. One representative pointed out that his country had drawn the Council's attention to many violations of its air-space by military aircraft. What made those violations unquestionably aggressive acts was the fact that they had been carried out by aircraft belonging to an army which was engaged in a war in the immediate vicinity of his country and that they had been preceded, accompanied or followed by the bombing of its national soil. It was those circumstances taken together that marked those flights as aggressive acts. Unlike the violations of that country's air-space, however, the U-2 incident lacked the essential features characteristic of aggression. The flight was a reconnaissance flight over military and industrial establishments of the USSR and the Council had not been told that the aircraft was armed or had been accompanied or followed by other armed aircraft.

52. Another representative stated that it was a rule of international law that the air space over the territory of any country could not be violated without a breach of international law. The flight of U-2 aircraft must, therefore, be disapproved. However, the statement made by the President of the United States on 16 May 1960 had made any formal condemnation unnecessary, because it indicated the acceptance of international law and treaty obligations. The assurance asked for in operative paragraph 2 of the USSR draft resolution had already been given and that paragraph had, therefore, been complied with.⁶⁴

b. *Decision of 27 May 1960 in connexion with the item entitled "Letter dated 23 May 1960 from the representatives of Argentina, Ceylon, Ecuador and Tunisia addressed to the President of the Security Council (S/4323)"*

(i) *Précis of proceedings*

53. By a letter⁶⁵ dated 23 May 1960, addressed to the President of the Security Council, the representatives of Argentina, Ceylon, Ecuador and Tunisia submitted to the Council for consideration a draft resolution under the terms of which the Council being convinced that every effort should be made to restore international goodwill and confidence, urged the Governments of France, the USSR, the United Kingdom and the United States to resume discussions as soon as possible.

⁶⁴ For text of relevant statements, see S C. 15th yr., 857th mtg.: USSR, paras. 23, 29, 53 and 99; United States, paras. 102 and 106; 858th mtg.: Argentina, paras. 45, 46, 48 and 50; China, paras. 64, 66 and 67; France, paras. 7-11; Italy, paras. 125 and 136; Poland, paras. 83-85, 87, 90, 93, 96-99, 110 and 113; United Kingdom, paras. 25, 28 and 30; 859th mtg.: Ceylon (President), paras. 49-51, 53, 54, 58, 62, 64 and 66; Tunisia, paras. 8-10 and 12.

⁶⁵ S C, 15th yr., Suppl. for April-June, p. 13, S/4323.

54. At its 861st meeting on 26 May 1960, the Security Council decided⁶⁶ to include the item in its agenda.

55. At the same meeting, the representative of the USSR submitted an amendment⁶⁷ to the draft resolution whereby the Security Council would insert the following after the first preambular paragraph: "*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*".

56. At the 863rd meeting, on 27 May 1960, the sponsors of the draft resolution submitted⁶⁸ a revised text⁶⁹ including a new operative paragraph 2 which read as follows:

"*The Security Council,*

"...

"2. *Appeals 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*".

Decision

At the 863rd meeting, on 27 May 1960, the USSR amendment was rejected by 2 votes to 6, with 3 abstentions.⁷⁰ The revised draft resolution submitted by Argentina, Ceylon, Ecuador and Tunisia was adopted⁷¹ as resolution 135 (1960), by 9 votes to none, with 2 abstentions.

(ii) *Précis of relevant constitutional discussion*

57. In submitting his amendment, the representative of the USSR pointed out that the draft resolution which had been submitted as a result of the Security Council's debate on the item put forward by the Government of the USSR, disregarded the main issue namely, the policy of provocation pursued by the Government of the United States against the USSR. To bring about negotiations between the great Powers, the Security Council should condemn the gross violation of the sovereignty of States, which was incompatible with the basic Purposes and Principles of the Charter and constituted a threat to peace and a breach of international law committed by those who sent their aircraft across the frontiers of other States.

58. One representative stated that the amendment submitted by the USSR reflected the opinion of the majority of the members of the Council expressed during the debate on the complaint by the USSR concerning the U-2 incident namely, that the incursion of foreign military aircraft inside the borders of other States was incompatible with the principles

⁶⁶ S C, 15th yr., 861st mtg., preceding para. 1.

⁶⁷ *Ibid.*, para. 123.

⁶⁸ S C, 15th yr., 863rd mtg., para. 5.

⁶⁹ S C, 15th yr., Suppl. for April-June, p. 22; same text as resolution 135 (1960).

⁷⁰ S C, 15th yr., 863rd mtg., para. 47.

⁷¹ *Ibid.*, para. 48.

and aims of the United Nations and constituted a threat to peace and international security.

59. One of the sponsors of the draft resolution said that, in their view, it would not be without value if operative paragraph 2 of the revised draft resolution recalled and used almost the same phrasology as Article 2 (4) of the Charter.⁷²

c. Decisions of 13/14 July and 22 July 1960 in connexion with the situation in the Republic of the Congo

Decision of 13/14 July 1960

(i) *Précis of proceedings*

60. By a telegram⁷³ dated 12 July 1960 addressed to the Secretary-General, the President and the Prime Minister of the Republic of the Congo requested the urgent dispatch by the United Nations of military assistance on the grounds that metropolitan Belgian troops had been sent to the Congo in violation of the treaty of friendship between the Republic of the Congo and Belgium signed on 29 June 1960, which permitted intervention of Belgian troops only at the express request of the Congolese Government. No such request had been made by the Government of the Republic of the Congo which, therefore, regarded "the unsolicited Belgian action as an act of aggression" against the Congo. The Belgian Government was further accused of having prepared the secession of Katanga. Military aid was therefore requested for the protection of the national territory of the Congo against the external aggression which was a threat to international peace. By a telegram⁷⁴ dated 13 July 1960, the President and the Prime Minister of the Republic of the Congo informed the Secretary-General that the purpose of the aid requested was not to restore the internal situation in the Congo but "rather to protect the national territory against acts of aggression committed by Belgian metropolitan troops".

61. By a letter⁷⁵ dated 13 July 1960, the Secretary-General requested the President of the Security Council to call an urgent meeting of the Council to hear a report of the Secretary-General on a demand for United Nations action in relation to the Republic of the Congo.

62. At the 873rd meeting, on 13 July 1960, the letter of the Secretary-General was included⁷⁶ in the agenda of the Council.

63. At the same meeting, the representative of Tunisia submitted a draft resolution⁷⁷ whereby the Security Council would call upon the Government of Belgium to withdraw its troops from the territory of the Republic of the Congo.

⁷² For text of relevant statements, see S C 15th yr., 861st mtg.: USSR, paras. 94, 95, 116, 121 and 123; 862nd mtg.: Poland, paras. 20 and 21; 863rd mtg.: Tunisia, para. 27.

⁷³ S C, 15th yr., Suppl. for July-Sept., p. 11, S/4382, document I.

⁷⁴ *Ibid.*, p. 12, S/4382, document II.

⁷⁵ *Ibid.*, p. 11, S/4381.

⁷⁶ S C, 15th yr., 873rd mtg., para. 16.

⁷⁷ *Ibid.*, para. 91.

64. At the same meeting, the representative of the USSR submitted⁷⁸ amendments to the Tunisian draft resolution under which, *inter alia*, the word "immediately" would be inserted in operative paragraph 1 after the words "the Government of Belgium to withdraw its troops" and the following operative paragraph would be added between the preamble and operative paragraph 1:

"Condemns the armed aggression of Belgium against the Republic of the Congo."

Decision

At the 873rd meeting, on 13/14 July 1960, the USSR amendments were rejected⁷⁹ by 2 votes to 7, with 2 abstentions. The Tunisian draft resolution was adopted⁸⁰ by 8 votes to none, with 3 abstentions.

(ii) *Précis of relevant constitutional discussion*

65. In submitting his draft resolution, the representative of Tunisia stated that the intervention of the Belgian troops had taken place against the wishes of the Government of the Congo and, therefore, it constituted a breach of the treaty of friendship between Belgium and the Congo and a violation of its sovereignty and independence. Thus, the intervention was an act of aggression against the Republic of the Congo. The appeal contained in operative paragraph 1 of the draft resolution was in conformity with the principles affirmed by both the Security Council and the General Assembly concerning the illegality of armed foreign intervention in the domestic affairs of a sovereign, independent State.

66. The representative of Belgium maintained that the sole purpose of the Belgian Government's intervention in the Congo was to ensure the safety of European and other members of the population and to protect human lives in general. The Belgian operations had been strictly limited to that purpose and were justified by the complete inability of the Congolese national authorities to ensure respect for fundamental rules which must be observed in any civilized community and by the duty of the Government of Belgium to take the measures required by morality and by public international law. There was thus no interference by the Belgian Government in the internal affairs of the Republic of the Congo, since its military operations had no political objectives. That demonstrated that the charges of aggression made in connexion with Belgium's humanitarian intervention in the Congo were without foundation. The representative pointed out also that, in Katanga, the Belgian intervention had taken place with the agreement of the head of the provincial government.

67. In the course of the discussion the views were expressed, on the one hand, that the mere presence of the armed forces of a foreign State in the territory of another State without the latter's consent constituted an act of aggression according to the generally recognized principles of international law. Hence,

⁷⁸ *Ibid.*, paras. 199 and 201.

⁷⁹ *Ibid.*, paras. 223 and 224.

⁸⁰ *Ibid.*, para. 232.

the Security Council was faced with an act of aggression threatening the independence of the Congo, which was undermining international relations and the continuance of which would constitute a serious threat to international peace and security. The Council should, therefore, demand the withdrawal of Belgian troops from the Congo. One representative maintained that the alleged request for intervention in a particular area by a regional authority could not be used as an argument to justify an intervention which was aimed at replacing the sovereign independent authority by another authority exercising the essential attributes of sovereignty.

68. On the other hand, it was argued that the operations by Belgian troops in the Congo did not constitute an intervention, but rather a temporary security and humanitarian action, undertaken with the purpose to facilitate the withdrawal of Belgian as well as of other nationals who were threatened with violence. Consequently, no aggression was committed since the efforts of the Belgian Government had been directed solely towards saving the lives of Belgians and other nationals.⁸¹

Decision of 22 July 1960

(i) Précis of proceedings

69. At its 877th meeting, on 20 July 1960, the Security Council had before it the first report⁸² of the Secretary-General on the implementation of Security Council resolution 143 (1960) of 14 July 1960.

70. At the same meeting, the representative of the USSR submitted the following draft resolution:⁸³

"The Security Council,

"Having heard the report of the Secretary-General of the United Nations on the question of aggression of Belgium against the Republic of the Congo;

"1. Insists upon the immediate cessation of armed intervention against the Republic of the Congo and the withdrawal from its territory of all troops of the aggressor within a period of three days;

"2. Calls upon the States Members of the United Nations to respect the territorial integrity of the Republic of the Congo and not to undertake any actions which might violate that integrity."

71. At the 878th meeting on 21 July 1960, the representative of Tunisia submitted a draft resolution⁸⁴ sponsored jointly with Ceylon in which it was provided as follows:

"The Security Council,

"...

⁸¹ For text of relevant statements, see S C, 15th yr., 873rd mtg.; Ecuador (President), paras. 170, 171 and 174; Belgium, paras. 183, 184, 186, 192, 193 and 197; France, para. 141; Italy, para. 121; Poland, paras. 156, 158 and 162; Tunisia, paras. 79, 87 and 216; USSR, para. 105; United Kingdom, para. 130; United States, para. 95.

⁸² S C, 15th yr., Suppl. for July—Sept., p. 16, S/4389 and Add. 1—3.

⁸³ S C, 15th yr., 877th mtg., para. 176.

⁸⁴ S C, 15th yr., 878th mtg., para. 39.

"1. Calls upon the Government of Belgium to implement speedily the Security Council resolution of 14 July 1960 on the withdrawal of its troops, and authorizes the Secretary-General to take all necessary action to this effect;

"2. Requests all States to refrain from any action which might tend to impede the restoration of law and order and the exercise by the Government of the Congo of its authority and also to refrain from any action which might undermine the territorial integrity and the political independence of the Republic of the Congo;"

Decision

At the 879th meeting, on 21/22 July 1960, the draft resolution submitted by Ceylon and Tunisia was adopted unanimously⁸⁵ as resolution 145 (1960). The representative of the USSR did not press⁸⁶ for a vote on its draft resolution.

(ii) Précis of relevant constitutional discussion

72. In submitting his draft resolution, the representative of the USSR stated that the Government of Belgium was continuing its armed intervention against the legitimate Government of the Republic of the Congo; the occupying forces were broadening the scope of their military operations, thus ignoring the Council's resolution of 14 July 1960. In the light of those developments, the measure urgently needed was the immediate withdrawal of the aggressor forces.

73. In submitting the Ceylonese-Tunisian draft resolution, the representatives of Tunisia maintained that the dispatch of troops of the Belgian regular army, whatever the reasons for it might have been, could be described only as an act of aggression against the Congo, since its purpose was the taking over of the role of the independent Government of the Congo in the exercise of its full sovereignty and of its power to ensure order and security within the territory. That action was not only incompatible with respect for the sovereignty and territorial integrity of the Congo, but it was also contrary to a decision of the Security Council. The immediate withdrawal of Belgian troops was, therefore, necessary in order to reduce tension and restore calm throughout the territory of the Congo and to rebuild confidence and friendly relations between the Congo and Belgium. With regard to the statement that Belgian troops had intervened in Katanga at the request of the provincial government, the representative observed that no independent and sovereign State could allow foreign forces, even forces of a friendly country or of an ally, to intervene in one of its provinces or regions in response to an appeal of the head of the province or the region, even if serious disturbances were occurring there.

74. In the course of the discussion, the representative of the Republic of the Congo requested the Security Council to insist that an end be put to

⁸⁵ S C., 15th yr., 879th mtg., para. 108.

⁸⁶ *Ibid.*, para. 109.

the aggression of Belgian troops which must be evacuated from the Congo as soon as possible.

75. The representative of Belgium and a number of other representatives said that Belgian military intervention in the Congo had only a humanitarian purpose; it was limited in its objective and also in time since it was conceived as a temporary action. In intervening, Belgium was not pursuing any political design or seeking to interfere in any way in the domestic politics of the Congo. Belgium would withdraw its troops as soon as, and to the extent that, the United Nations would effectively ensure the maintenance of order and the safety of persons. The opinion was also expressed that the only reason for the sending of Belgian troops was to compensate temporarily for the governmental and administrative failure of the Congolese authorities. One representative reiterated that his Government interpreted resolution 143 (1960) of 14 July 1960 calling upon the Government of Belgium to withdraw its troops as being contingent upon the successful carrying out of the entire resolution by the United Nations.

76. One representative, after quoting Article 2 (4), observed that international law did not recognize any justification of armed aggression against anyone under any circumstances. The presence of Belgian troops in the Congo constituted a constant danger for the territorial integrity of the State and a constant threat to international peace and security. The Council should, therefore, determine the exact day for the withdrawal of the Belgian troops from the Congo. It was further observed that one of the causes of the unrest in the Congo was the presence of Belgian troops which had been dispatched there despite the wishes of the Government in power. For these reasons, these troops should be withdrawn speedily. Another representative said that foreign troops should not be in a State's territory without the consent of that State's Government.⁸⁷

d. Decision of 26 July 1960 in connexion with the complaint by the USSR (RB-47 incident)

(i) Précis of proceedings

77. By a telegram⁸⁸ dated 13 July 1960 to the Secretary-General, the Minister for Foreign Affairs of the USSR requested that the Security Council should be urgently convened to examine the question of "New aggressive acts by the Air Force of the United States of America against the Soviet Union, creating a threat to universal peace".

⁸⁷ For text of relevant statements, see S C, 15th yr., 877th mtg.: Belgium, paras. 91, 98, 101, 106 and 142; Congo (Republic of the), paras. 30, 31, 51, 52 and 126; USSR, paras. 144, 146, 154, 165, 168 and 176; United States, para. 188; 878th mtg.: Argentina, paras. 118 and 128; Ceylon, paras. 67 and 75; Poland, paras. 90, 91 and 106; Tunisia, paras. 21, 25, 30, 31, 33 and 39; 879th mtg.: Ecuador (President), para. 80; China, paras. 31 and 33; France, paras. 41, 55, 56, 58 and 60; Italy, paras. 6 and 10; United Kingdom, paras. 26 and 27.

⁸⁸ S C, 15th yr., Suppl. for July—Sept., p. 12, S/4384. By a subsequent telegram of the same date, the Minister for Foreign Affairs of the USSR forwarded to the Secretary-General an explanatory memorandum in amplification of his earlier telegram (*ibid.*, p. 13, S/4385).

78. At the 880th meeting, on 22 July 1960, the Security Council decided⁸⁹ to include the item in its agenda.

79. At the same meeting, the representative of the USSR submitted a draft resolution⁹⁰ which read as follows:

"The Security Council,

" . . .

"Noting that the Government of the United States of America continues premeditatedly to violate the sovereign rights of other States, a course which leads to the heightening of international tension and creates a threat to universal peace,

"1. *Condemns* these continuing provocative activities of the Air Force of the United States of America and regards them as aggressive acts;

"2. *Insists* that the Government of the United States should take immediate steps to put an end to such acts and to prevent their recurrence".

Decision

At the 883rd meeting on 26 July 1960, the USSR draft resolution was rejected⁹¹ by 2 votes to 9.

(ii) Précis of relevant constitutional discussion

80. In submitting his draft resolution, the representative of the USSR recalled Security Council resolution 135 (1960) of 27 May 1960 and contended that the premeditated incursion of the RB-47 bomber into the air space of the USSR on a spying and sabotage mission had been an act of aggression, a case of the use of force, the responsibility for which rested with the Government of the United States.

81. The representative of the United States maintained that, at the time that the USSR claimed to have brought down the United States aircraft in USSR waters, it had, in fact, been flying at a distance of fifty miles from its coast and, at no time, had it penetrated USSR territory, territorial waters or air space.

82. A representative stated, on the one hand, that it was necessary to understand the distinction between preparations for war and precautions taken to reduce the risk of a surprise attack. It was also pointed out that there was no international definition of aggression. The Security Council had before it no evidence of the alleged violation of USSR frontiers other than the assertions of the representative of the USSR. According to one representative, the Security Council should take a firm stand whenever it was proved that the sovereign rights of a State had been violated, whether in its territory, in its territorial waters or in its air space. The USSR exposition, however, was too general, therefore the Council must await more specific information, supported by evidence, before it could reach final conclusions.

83. It was maintained, on the other hand, that the RB-47 aircraft had violated the sovereignty and territorial integrity of the USSR, which constituted

⁸⁹ S C, 15th yr., 880th mtg., preceding para. 1.

⁹⁰ *Ibid.*, para. 58.

⁹¹ S C, 15th yr., 883rd mtg., para. 187.

a new and serious infringement of the Charter, particularly of Articles 1, 2 and 78. A representative, referring to Security Council resolution 135 (1960)⁹² of 27 May 1960 containing an appeal to all 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", pointed out that the Government of the United States had voted for that resolution as a whole and those who approved the flight of the RB-47 aircraft towards USSR territory must have had full knowledge of the obligation undertaken by the United States by the vote for the resolution approved by the majority of the Security Council.⁹³

e. *Decisions of 22 July and 29 July 1961 in connexion with the complaint by Tunisia*

(i) *Précis of proceedings connected with the decisions of 22 and 29 July 1961*

84. By a telegram⁹⁴ dated 20 July 1961, the Secretary of State for Foreign Affairs of Tunisia requested the President of the Security Council to convene the Council for the purpose of considering the complaint by Tunisia against France "for acts of aggression infringing the sovereignty and security of Tunisia and threatening international peace and security".

85. By a letter dated 20 July 1961, addressed to the President of the Security Council, the representative of Tunisia repeated the request for the convening of the Security Council and submitted an explanatory memorandum.⁹⁵

86. At its 961st meeting, on 21 July 1961, the Security Council decided to include⁹⁶ the item in its agenda.

Decision

At the 962nd meeting, on 22 July 1961, a draft resolution was submitted by Liberia, whereby the Security Council would, *inter alia*, call for an immediate cease-fire and a return of all armed forces to their original position. It was adopted⁹⁷ as resolution 164 (1961) by 10 votes to none, with no abstentions. France did not participate in the voting.

87. At the 963rd meeting, on 22 July 1961, the representative of Liberia submitted a draft resolution⁹⁸ co-sponsored by the United Arab Republic whereby the Security Council would, *inter alia*, call for an immediate cease-fire, for the immediate withdrawal of those French forces which had been introduced into the base of Bizerta and for the

return to their original position of those forces which had transgressed beyond the limits of that base since 19 July 1961.

88. At the same meeting, the representative of the United Kingdom also submitted⁹⁹ a draft resolution¹⁰⁰ jointly sponsored with the United States under which, *inter alia*, the Council, noting with profound regret the circumstances in which fighting had broken out in Tunisia between French and Tunisian forces, would call upon the parties to effect an immediate cease-fire and a speedy return of all forces to their previous positions and would call upon all concerned to refrain from any action which might lead to a further deterioration of the situation.

Decisions

At the same meeting, the draft resolution submitted by Liberia and the United Arab Republic was not adopted,¹⁰¹ the result of the vote being 4 votes in favour, none against, with 7 abstentions.

The draft resolution submitted by the United Kingdom and the United States was not adopted,¹⁰² the result of the vote being 6 votes to none, with 5 abstentions.

89. At the 964th meeting of the Security Council, on 28 July 1961, the representative of the United Arab Republic submitted¹⁰³ a draft resolution¹⁰⁴ co-sponsored by Ceylon and Liberia under the terms of which the Security Council would, *inter alia*, invite France to comply immediately with all the provisions of interim resolution 164 (1961) of 22 July 1961.

90. At the 965th meeting of the Council, on 29 July 1961, the same three Powers submitted¹⁰⁵ a second draft resolution¹⁰⁶ which was introduced by the representative of Liberia. Under its terms, the Security Council, being convinced that the presence of French forces in Tunisia against the will of the Tunisian Government and people represented a permanent source of friction and a serious threat to international peace and security, would invite France to enter immediately into negotiations with Tunisia with a view to the rapid evacuation of French forces from Tunisia.

91. At the same meeting, the representative of Turkey submitted¹⁰⁷ a draft resolution¹⁰⁸ whereby the Security Council, *inter alia*, would call for immediate and full implementation of resolution 164 (1961) of 22 July 1961.

92. At the 966th meeting of the Security Council, on 29 July 1961, the representative of the USSR

⁹² See para. 56 above.

⁹³ For text of relevant statement, see S C, 15th yr., 880th mtg.: USSR, paras. 3, 5, 19, 27 and 58; United States, para. 61; 881st mtg.: France, para. 80; United Kingdom, paras. 53, 54, 57 and 63; United States, paras. 2, 3 and 9; 882nd mtg.: Italy, para. 31; 883rd mtg.: Ecuador (President), paras. 87, 92 and 93; Ceylon, para. 66; Poland, paras. 8, 11, 17 and 18.

⁹⁴ S C, 16th yr., Suppl. for July–Sept., p. 6, S/4861.

⁹⁵ *Ibid.*, S/4862.

⁹⁶ S C, 16th yr., 961st mtg., para. 2.

⁹⁷ *Ibid.*, 962nd mtg., para. 58.

⁹⁸ S C, 16th yr., Suppl. for July–Sept., p. 22, S/4878.

⁹⁹ S C, 16th yr., 963rd mtg., paras. 28 and 65.

¹⁰⁰ S C, 16th yr., Suppl. for July–Sept., p. 23, S/4879.

¹⁰¹ S C, 16th yr., 963rd mtg., para. 113.

¹⁰² *Ibid.*, para. 114.

¹⁰³ S C, 16th yr., 964th mtg., para. 160.

¹⁰⁴ S C, 16th yr., Suppl. for July–Sept., p. 47, S/4903.

¹⁰⁵ S C, 16th yr., 965th mtg., para. 14.

¹⁰⁶ S C, 16th yr., Suppl. for July–Sept., p. 47, S/4904.

¹⁰⁷ S C, 16th yr., 965th mtg., para. 32.

¹⁰⁸ S C, 16th yr., Suppl. for July–Sept., p. 48, S/4905.

submitted amendments¹⁰⁹ to the Turkish draft resolution.

Decisions

At the same meeting, the Security Council voted on the draft resolutions and the amendments. The first draft resolution (S/4903) submitted by Ceylon, Liberia and the United Arab Republic was not adopted,¹¹⁰ the result of the vote being 4 votes to none, with 6 abstentions.

The second draft resolution (S/4904) submitted by Ceylon, Liberia and the United Arab Republic was not adopted,¹¹¹ the result of the vote being 4 votes to none, with 6 abstentions.

The USSR amendments to the Turkish draft resolution were not adopted,¹¹² the result of the vote being 4 votes to none, with 6 abstentions.

The draft resolution submitted by Turkey was not adopted,¹¹³ the result of the vote being 6 votes to none, with 4 abstentions.

(ii) Précis of relevant constitutional discussion connected with the decision of 22 July 1961

93. In his introductory statement the representative of Tunisia stated that, since 19 July 1961, France had been committing armed aggression against Tunisia, using military forces coming from Algeria and from French warships off the Tunisian coast. It had been carried out by paratroops, supported by bombing of the Bizerte area, followed by attacks of armoured units from the barracks at the base. That act of aggression could not be justified since the existence of the Charter constituted the complete negation of any possible excuse for an act of aggression. The representative pointed out at a later meeting that the non-execution of measures, whether provisional or final, decided upon by the Security Council, such as the call for an immediate cease-fire, constituted in itself a case of aggression.

94. The representative of France said that the Tunisian Government took the initiative by opening fire on the French forces on 19 July 1961 and the latter, in exercising their legitimate right of self-defence, resigned themselves to returning fire. Tunisia was trying to use force to settle a dispute with another Government and the Security Council was asked to condemn the State against which aggressive action had been taken.

95. In the course of the discussion, it was stated that the intrusion of massive armed forces of one State into the air space and territory of another State, and their presence in the territory of another State in defiance of the latter's wishes were incompatible with the provisions of the Charter. It was further observed that the Charter set forth the principles on which a solution of the problems at issue should be based: respect for the territorial

integrity and political independence of all States, settlement of all disputes by peaceful means and restraint from the threat or use of force in any manner inconsistent with the Charter.¹¹⁴

f. Decisions of 18 December 1961 in connexion with the complaint by Portugal (Goa)

(i) Précis of proceedings

96. By a letter¹¹⁵ dated 18 December 1961, the representative of Portugal requested the President of the Security Council to convene an urgent meeting of the Council to consider a complaint concerning a full-scale unprovoked armed attack by India on the territories of Goa, Damão and Diu, comprising the Portuguese State of India and to put an end to India's act of aggression.

97. At its 987th meeting, on 18 December 1961, the Security Council had before it a provisional agenda which read in part "2. Letter dated 18 December 1961 from the Permanent Representative of Portugal to the President of the Security Council (S/5030)".

98. The representative of the USSR objected to the adoption of the agenda on the ground that the situation in territories which were part of a sovereign State could not, under the Charter, be considered by the Security Council. The matter which was before it fell exclusively within the domestic jurisdiction of India since the Portuguese colonies in Indian territory could be only regarded as being temporarily under the colonial domination of Portugal.¹¹⁶

99. The provisional agenda was adopted¹¹⁷ and the Security Council considered the question at its 987th and 988th meetings, on 18 December 1961.

100. At the 988th meeting, the representative of the United States submitted a draft resolution¹¹⁸ co-sponsored by France, Turkey and the United Kingdom reading as follows:

"The Security Council,

"Recalling that in Article 2 of the Charter of the United Nations all Members are obligated...to refrain from the threat or use of force in a manner inconsistent with the purposes of the United Nations,

"Deploring the use of force by India in Goa, Damão and Diu,

"...

"1. Calls for immediate cessation of hostilities;

"2. Calls upon the Government of India to withdraw its forces immediately to positions prevailing before 17 December 1961;"

¹¹⁴ For text of relevant statements, see S C, 16th yr., 961st mtg.: France, paras. 83, 84 and 210; Tunisia, paras. 28, 55, 56 and 59-61; USSR, paras. 141, 161 and 162; 963rd mtg.: Tunisia, para. 92; United States, para. 67; 964th mtg.: Tunisia, para. 75; USSR, para. 122; 966th mtg.: Tunisia, para. 70.

¹¹⁵ S C, 16th yr., Suppl. for Oct.-Dec., p. 205, S/5030.

¹¹⁶ S C, 16th yr., 987th mtg., paras. 2-5.

¹¹⁷ *Ibid.*, para. 7.

¹¹⁸ *Ibid.*, 988th mtg., para. 97, S/5033.

¹⁰⁹ S C, 16th yr., 966th mtg., para. 59.

¹¹⁰ *Ibid.*, para. 64.

¹¹¹ *Ibid.*, para. 65.

¹¹² *Ibid.*, para. 66.

¹¹³ *Ibid.*, para. 67.

101. At the same meeting, the representative of Ceylon submitted a draft resolution¹¹⁹ co-sponsored by Liberia and the United Arab Republic which read as follows:

"The Security Council,

"Having heard the complaint of Portugal of aggression by India against the territories of Goa, Damão and Diu,

"Having heard the statement of the representative of India, that the problem is a colonial problem,

"Considering that these enclaves claimed by Portugal in India constitute a threat to international peace and security and stand in the way of the unity of the Republic of India,

"Recalling resolution 1514 (XV) and resolution 1542 (XV) of the General Assembly,

"1. Decides to reject the Portuguese complaint of aggression against India;

"2. Calls upon Portugal to terminate hostile action and to co-operate with India in the liquidation of the colonial possessions in India."

Decisions

At the 988th meeting, on 18 December 1961, the draft resolution submitted by Ceylon, Liberia and the United Arab Republic was rejected¹²⁰ by 7 votes to 4.

At the same meeting, the draft resolution submitted by France, Turkey, the United Kingdom and the United States failed of adoption:¹²¹ there were 7 votes in favour and 4 against, one of the negative votes being that of a permanent member of the Council.

(ii) Précis of relevant constitutional discussion

102. In the course of the discussion, the representative of Portugal stated that India, by its premeditated and unprovoked aggression against Portugal in Goa, had violated the sovereign rights of Portugal and the provisions of Article 2 (4) of the United Nations Charter. He requested the Security Council to order an immediate cease-fire and the withdrawal forthwith of all the invading forces from the Portuguese territories of Goa, Damão and Diu.

103. The representative of India maintained that the territory of the Portuguese State of India was a colonial territory which was an integral part of India illegally occupied by right of conquest by Portugal which, therefore, had no sovereign rights over it. For that reason there could not be any legal colonial frontier between India and Goa. In the light of General Assembly resolution 1514 (XV) entitled "Declaration on the Granting of Independence to Colonial Countries and Peoples", there was not any question of aggression against the Indian frontiers or against the Indian people in Goa. The Security Council could only order Portugal to vacate Goa, Damão and Diu and to give effect to

the numerous resolutions of the General Assembly with regard to the freedom of dependent peoples.

104. The representative of Portugal stated that Goa could not be classified as a colony since it was legally an overseas province and an integral part of the Portuguese nation. India's attempts to annex the territory of other States, without their voluntary agreement, had no legal justification. Therefore, the Security Council was seized with a premeditated act of unprovoked aggression by India.

105. The representative of India stated that the Charter did not completely eschew force, in the sense that force could be used for the protection of the people of Goa who were as much Indian as the people of any other part of India. The use of force, in all circumstances, was regrettable but where the achievement of freedom was concerned, when nothing else was available, it was debatable that force could not be used. The purpose of measures like those used by India was to assist the resistance movement of Goa; it was Indian people in Goa who were in revolt against Portuguese suppression and who were to be liberated. In the four-Power draft resolution there was no comprehension of the meaning of General Assembly resolution 1514 (XV).

106. Another representative maintained that the question raised by the representative of Portugal was not within the jurisdiction of the Security Council. It was for the Council to consider the violation of the provisions of General Assembly resolution 1514 (XV) by Portugal, which had no intention of carrying out its provisions and was thereby causing a threat to peace and security in various parts of the world and in the region of Goa. India was helping a people and territory, which formed an integral part of India, to free themselves from colonial domination. There was a difference between the use of force as such and the use of force against peoples fighting for their freedom. The provisions of the three-Power draft resolution were in accordance with resolution 1514 (XV). The four-Power draft resolution reiterated certain general provisions of the Charter, which naturally retained their force and must be observed by all Members of the United Nations as a general principle but those provisions were applied to a situation and to events which had a different meaning in the light of the Declaration adopted in General Assembly resolution 1514 (XV). For that reason they could not be the basis for the adoption of a decision when the issue involved was the liquidation of colonial possessions which should have been transferred to the States in whose territories they were located. Furthermore, the Government of India was called upon "to withdraw its forces immediately to positions prevailing before 17 December 1961", but there was no mention of the Portuguese forces which had been brought into Goa as reinforcements and which had been threatening all the people of Goa and the neighbouring population in the territory of India.

107. It was further pointed out that General Assembly resolution 1542 (XV)¹²² had provided

¹¹⁹ *Ibid.*, para. 98.

¹²⁰ *Ibid.*, para. 128.

¹²¹ *Ibid.*, para. 129.

¹²² In its resolution 1542 (XV) entitled "Transmission of information under Article 73 of the Charter", the General

that the three Portuguese enclaves in India were Non-Self-Governing Territories. If the Security Council accepted that fact, how could it agree that India had committed aggression against Portuguese territory when the three enclaves were not part of Portuguese territory? For that reason the Council could not, with any degree of legality, condemn India for aggression against Portuguese territories when the three Territories were not part of Portugal.

108. The view was also expressed that India's action was an act of liberation of its national territory held by Portugal. India had undoubtedly used force, but its action was not taken against another State for territorial aggrandizement, such as was envisaged in the Charter. India's action was an action undertaken for a legitimate purpose. In the matter before the Council there could be no cease-fire as a cease-fire could only be applicable between belligerents and there was no state of belligerency between India and Portugal. Nor could India be called upon to withdraw from Goa because that would be asking it to withdraw from its own territory. Therefore, the Security Council could not censure India for invading its own land.

109. On the other hand it was contended that the Security Council had to consider, not the merit of the case, but what attitude it should adopt when armed force was used to settle a dispute between two Member States of the Organization. What was at stake was not colonialism but a violation of the principles stated in Article 2 (4). The issue before the Council was not the right or the wrong of Portugal's colonial policy; it was the right or the wrong of one State seeking to change an existing political and legal situation by the use of armed force which was expressly forbidden in the Charter. There were no exceptions, except self-defence and no one could believe that India was acting in self-defence against an almost defenceless territory. Two arguments had been made in defence of India's use of force: first, that Goa was a colony or a Non-Self-Governing Territory and, therefore, somehow force was permissible to be employed against it. Secondly, that Portugal had not relinquished control of Goa pursuant to the recommendation of General Assembly resolution 1514 (XV) and, therefore, that force could be used against it. It was, however, a matter of fact and international law that Goa was under Portuguese authority. That being the case, India could not lawfully use force against Goa especially when the peaceful methods provided for in the Charter had not been exhausted. It was also claimed that Portugal, not India, was the aggressor because it had not followed the recommendation of General Assembly resolution 1514 (XV). However, that resolution did not authorize the use of force for its implementation. It did not and it could not do that under the Charter. It gave no license to violate the Charter's fundamental principles that all Members should settle their international disputes by peaceful means and that they should refrain

Assembly considered that the territories under administration of Portugal listed in the resolution and including "Goa and dependencies, called the State of India" were Non-Self-Governing Territories within the meaning of Chapter XI of the Charter.

from the threat or use of force against any State. In that respect the Charter made no exceptions, no reservations. It did not state that all Members should settle their international disputes by peaceful means except in cases of colonial areas. It was further maintained that the resort to force was not lawful, even in defence of the lawfulness of a given case. Certain arguments seemed to suggest that there was a lawful and an unlawful use of force. However, the lawfulness of use of force could not be accepted unless it was used according to the Charter, either by the United Nations or with the authorization of the Security Council by a regional agency. A military action contrary to the principles of the Charter must be ended immediately and a situation in which peaceful contacts could be resumed must be restored.¹²³

*g. Decisions of 9 April 1962 and 3 August 1966
in connexion with the Palestine question*

Decision of 9 April 1962

(i) Précis of proceedings

110. By a letter¹²⁴ dated 20 March 1962, the representative of Syria requested the President of the Security Council to convene the Council for the purpose of considering the grave situation arising from the acts of aggression committed by Israel on the Syrian frontier and in the demilitarized zone, which threatened the peace and security of the region.

111. By a letter¹²⁵ dated 21 March 1962, the representative of Israel submitted to the President of the Security Council the following complaints against Syria and requested an early meeting of the Council to consider them: (a) Complaint by Israel of repeated acts of aggression committed by Syrian armed forces against citizens and territory of Israel and (b) complaint by Israel of threats against its territorial integrity and political independence made by the official spokesman of the Syrian Government, manifesting aggressive intentions against Israel in flagrant violation of the United Nations Charter.

112. At its 999th meeting, on 28 March 1962, the Security Council decided to include¹²⁶ the Syrian and the Israeli complaints in its agenda.

113. At the 1001st meeting on 4 April 1962, the representative of Israel submitted a draft resolution¹²⁷ which read as follows:

¹²³ For text of relevant statements, see S C, 16th yr., 987th mtg.: United Arab Republic (President), paras. 125 and 129; Ceylon, paras. 131, 133, 136, 138, 141, 143, 144, and 147; India, paras. 40-43, 46, 53 and 59-62; Liberia, para. 95; Portugal, paras. 11 and 27; Turkey, paras. 99 and 101; USSR, paras. 104, 107, 109 and 118; United Kingdom, para. 82; United States, paras. 72, 74, 75, 77, 79 and 80; 988th mtg.: Ceylon, para. 104; Chile, paras. 27 and 29; China, para. 20; Ecuador, paras. 10, 12 and 14; France, para. 9; India, paras. 77-79, 83 and 85; Portugal, paras. 37, 43-45 and 48; USSR, paras. 118, 119, 121 and 125; United States, paras. 89 and 92-94.

¹²⁴ S C, 17th yr., Suppl. for Jan.-March, p. 97, S/5096.

¹²⁵ *Ibid.*, p. 98, S/5098.

¹²⁶ S C, 17th yr., 999th mtg., para. 5.

¹²⁷ S C, 17th yr., Suppl. for April-June, p. 94, S/5109.

The Security Council,

“... ”

“1. *Expresses* its grave concern at the attacks by Syrian armed forces against citizens and territory of Israel, referred to in the letters from the representative of Israel to the President to the Security Council dated 19, 21 and 22 March 1962;¹²⁸

“2. *Calls upon* Syria to abide fully by all the provisions of the General Armistice Agreement (including Article I thereof) and in particular, to prevent all illegal crossing from Syrian territory, to cease all interference with Israel activities on the lake, and to desist from firing into Israel territory;

“3. *Finds* that the policy of active hostility of Syria against Israel, as proclaimed in official statements of its representatives, and in particular their constant threats against the territorial integrity and political independence of Israel, violate the letter and the spirit of the Charter of the United Nations, the Israel-Syrian General Armistice Agreement, and the resolutions of the Security Council and the General Assembly;

“4. *Calls upon* Syria to refrain from any threats against the territorial integrity or political independence of Israel.”

114. At the 1002nd meeting on 5 April 1962, the representative of Syria submitted a draft resolution¹²⁹ which read as follows:

The Security Council,

“... ”

“1. *Condemns* Israel for the wanton attack which was carried out against Syrian territory on the night of 16–17 March 1962, in violation of its resolution of 15 July 1948, of the terms of the General Armistice Agreement between Syria and Israel and of Israel’s obligation under the Charter of the United Nations;”

115. At the 1005th meeting on 6 April 1962, the representative of the United States submitted a draft resolution¹³⁰ co-sponsored by the United Kingdom, which read as follows:

The Security Council,

“... ”

“*Recalling* in particular the provisions of Article 2, paragraph 4 of the Charter and Article 1 of the Syrian-Israeli General Armistice Agreement,

“1. *Deploras* the hostile exchange between the Syrian Arab Republic and Israel starting on 8 March 1962 and calls upon the two Governments concerned to comply with their obligations under Article 2, paragraph 4 of the Charter by refraining from the threat as well as the use of force;

“2. *Reaffirms* the Security Council resolution of 19 January 1956 which condemned Israeli military

action in breach of the General Armistice Agreement, whether or not undertaken by way of retaliation”.

Decision

At the 1006th meeting on 9 April 1962, the United Kingdom-United States draft resolution was adopted¹³¹ by 10 votes to none, with 1 abstention. The Syrian draft resolution was withdrawn.¹³²

(ii) *Précis of relevant constitutional discussion*

116. In his opening statement, the representative of Syria maintained that Israel had committed an act of aggression against Syria which threatened international peace and security and violated the principles of the Charter.

117. The representative of Israel referred to the complaint contained in his letter of 21 March 1962 concerning the threats against Israel territorial integrity and political independence made by the Syrian official spokesman and observed that those threats constituted violations of Articles 2 (4) and 39. He asked whether the Government of Syria would abide by Article 2 (4) and refrain from any further threats against the territorial integrity and political independence of Israel. At a subsequent meeting, that representative reaffirmed his Government’s willingness to comply with its obligations under Article 2 (4) in relation to Syria. It remained for the representative of Syria to put on record a similar declaration.

118. In submitting the draft resolution co-sponsored by the United Kingdom, the representative of the United States said that under operative paragraph 1, the Council would deplore the hostile exchanges between Syria and Israel, without assessing blame because the United Nations Truce Supervision Organization had been unable to determine who had initiated the firing on any of the occasions prior to the attack of 16 March. It would also remind the Governments concerned of their obligations under Article 2 (4), since both parties had used force contrary to that Article.

119. During the debate it was stated that it was clear from the report of the Chief of Staff of the United Nations Truce Supervision Organization that the action of Israel could not be considered as an act of self-defence within the meaning of Article 51 of the Charter. On a number of occasions the Security Council had been consistent in its pronouncement that military action in breach of the General Armistice Agreement, whether or not undertaken by way of retaliation, was not permissible. It was also observed that Israel, in trying to resolve its differences with Syria by employing armed forces, had violated articles II and V of the General Armistice Agreement and, therefore, the provisions of Articles 1 and 2 of the Charter.¹³³

¹²⁸ S C, 17th yr., Suppl. for Jan.—March, S/5093, S/5098 and S/5100.

¹²⁹ S C, 17th yr., 1002nd mtg., para. 53. For text of revised draft resolution, see S C, 17th yr., Suppl. for April—June, S/5107/Rev. 1.

¹³⁰ S C, 17th yr., 1005th mtg., para. 21. S/5110 and Corr. I; same text as resolution 171 (1962).

¹³¹ S C, 17th yr., 1006th mtg., para. 106; Same text as resolution 171 (1962).

¹³² *Ibid.*, para. 102. No action was taken on the draft resolution submitted by Israel.

¹³³ For text of relevant statements, see S C, 17th yr., 999th mtg.; Israel, paras. 83, 84 and 92; Syria, paras. 20, 21, 24

Decision of 3 August 1966(i) *Précis of proceedings*

120. By a letter¹³⁴ dated 21 July 1966, the representative of Syria requested the President of the Security Council to convene an urgent meeting of the Council "for the purpose of considering the grave situation arising from the act of aggression committed by Israel against Syrian territory on the afternoon of 14 July 1966, an act that seriously threatens peace and security in the area".

121. By a letter¹³⁵ dated 22 July 1966 addressed to the President of the Security Council, the representative of Israel requested an urgent meeting of the Council to consider the following complaints against Syria:

"1. Repeated acts of aggression committed by Syrian armed forces and by armed saboteur groups operating from Syrian territory against citizens and territory of Israel, in violation of the Israel-Syrian General Armistice Agreement.

"2. Declarations by official spokesmen of the Syrian Government containing threats against the people, territorial integrity and political independence of Israel, and openly inciting to war against Israel, in violation of the United Nations Charter and the Israel-Syrian General Armistice Agreement."

122. At the 1288th meeting on 25 July 1966, the Security Council decided to include¹³⁶ the Syrian and Israel letters in its agenda.

123. At the 1292nd meeting on 29 July 1966, the representative of Jordan submitted a draft resolution¹³⁷ co-sponsored by Mali, which read as follows:

"*The Security Council,*

" . . .

"*Noting with concern* that the Israeli aggression took place north-west of Lake Tiberias, well within the territory of the Syrian Arab Republic, and that it took the grave form of an air attack where napalm bombs in particular were used,

" . . .

"1. *Condemns* Israel's wanton attack of 14 July 1966, as a flagrant violation of the terms of the cease-fire provisions of Security Council resolution 54 (1948) of 15 July 1948, of the terms of the General Armistice Agreement between Israel and Syria, and of Israel's obligations under the Charter of the United Nations;

" . . .

"3. *Reaffirms* its resolutions 111 (1956) and 171 (1962), and deplores the resumption by Israel of aggressive acts unequivocally condemned by these resolutions;

and 29; 1003rd mtg.: China, para. 10; Romania, para. 57; United Kingdom, para. 31; 1005th mtg.: United States, paras. 21, 23, 25, 27, 28 and 30; 1006th mtg.: Israel, para. 56.

¹³⁴ S C, 21st yr., Suppl. for July—Sept., p. 38, S/7419.

¹³⁵ *Ibid.*, p. 39, S/7423.

¹³⁶ S C, 21st yr., 1288th mtg., para. 45.

¹³⁷ S C, 21st yr., Suppl. for July—Sept., p. 59, S/7437.

"4. *Reminds* Israel that the Security Council has already condemned military action in breach of the General Armistice Agreement, and has called upon Israel to take effective measures to prevent such action;

"5. *Reiterates* its call on Israel to comply with its obligations under the Charter in default of which the Council will have to consider what further measures should be invoked;"

Decision

At the 1295th meeting on 3 August 1966, the draft resolution submitted by Jordan and Mali was not adopted,¹³⁸ the result of the vote being 6 votes in favour, none against, with 9 abstentions.

(ii) *Précis of relevant constitutional discussion*

124. In his introductory statement, the representative of Syria pointed out that the acts of aggression, by Israel which culminated in an unprovoked aerial attack on Syria on 14 July 1966, threatened, with their repercussions, the peace of the Middle East.

125. The representative of Israel, referring to the Syrian attacks of 13 and 14 July 1966 directed against civilian habitations and activities in the Israel border area and their intensification, stated that, after the incident at Almagor, planes of the Israel Air Force had been ordered to take strictly limited action regarded as appropriate under the circumstances. The action had been taken reluctantly, after Israel had become convinced that all its efforts through the United Nations and through diplomatic channels had failed to deter aggression by Syria.

126. During the discussion, certain representatives expressed the view that the attack by the Air Force of Israel on the territory of the Syrian Arab Republic had constituted premeditated aggression by Israel which was in direct contradiction with the principles and provisions of the Charter, particularly with the provisions of Article 2 (4). In that connexion, references were made to Security Council resolutions 111 (1956)¹³⁹ of 19 January 1956 in which the Council condemned Israel military action as a breach of the Armistice Agreement "whether or not undertaken by way of a retaliation" and 188 (1964) of 9 April 1964 relating to the complaint of Yemen in which the Council condemned "reprisals as incompatible with the purposes and principles of the Charter". It was further pointed out that the doctrine of reprisals was contrary to the provisions of Article 2 (4) and had been condemned by the Security Council. The unilateral exercise of force, by means of retaliation even in the face of persistent provocation, was inadmissible under the Charter.

127. It was also stated that the attack which was the subject of the Syrian complaint was a reprisal action and could not be considered as the legitimate exercise of the right of self-defence. The Security Council had no option but to deplore it.

¹³⁸ S C, 21st yr., 1295th mtg., para. 76.

¹³⁹ See para. 115 above.

128. One representative observed that if the Israel air attack of 14 July 1966 was judged in isolation, it undoubtedly constituted an illegal aggressive act; if however, it was linked to the acts of sabotage carried out by Syria on 12 and 13 July, the responsibility of Israel was considerably mitigated. For the same reasons, the mitigation of responsibility also applied to the Syrian Arab Republic. It was obvious that armed reprisals could not in any circumstances be recognized as a lawful instrument in international relations and that the illegal use of force constituted a violation of the Charter. Those reprisals could be explained by the extenuating circumstances referred to previously but they could not be justified, for there were international organs empowered to intervene in the case of acts such as those which had provoked the reaction of 14 July.

129. It was further maintained that Israel had not exhausted the avenues of redress opened to it and that Israel as well as the Syrian Arab Republic should utilize more the services of the United Nations organs existing in the area and which were at their disposal for the settlement of their disputes, without resorting to military actions.¹⁴⁰

h. *Decision of 25 October 1962 in connexion with complaints by Cuba, USSR and United States (22–23 October 1962)*

(i) *Précis of proceedings*

130. By a letter¹⁴¹ dated 22 October 1962, the representative of the United States requested the President of the Security Council to convene an urgent meeting of the Council "to deal with the dangerous threat to the peace and security of the world caused by the secret establishment in Cuba by the Union of Soviet Socialist Republics of launching bases and the installation of long-range ballistic missiles capable of carrying thermonuclear warheads to most of North and South America". It was further stated that the United States was "initiating a strict quarantine of Cuba to interdict the carriage of offensive weapons" to Cuba.

131. By a letter¹⁴² dated 22 October 1962, the representative of Cuba requested the President of the Security Council to convene an urgent meeting of the Council "to consider the act of war unilaterally committed by the Government of the United States in ordering the naval blockade of Cuba". In the request reference was made, among others, to Article 2 (4) of the Charter.

¹⁴⁰ For text of relevant statements, see S C, 21st yr., 1288th mtg.: Israel, paras. 129 and 137; Syria, para. 84; USSR, paras. 199, 200 and 212; 1289th mtg.: Iraq, paras. 4, 5 and 30; Jordan, paras. 49 and 58; 1291st mtg.: United Kingdom, paras. 28 and 29; United States, paras. 9, 10, 13, 14 and 16; 1292nd mtg.: Argentina, paras. 92, 94 and 99; Bulgaria, paras. 21, 27 and 28; Jordan, paras. 35, 39 and 52; New Zealand, paras. 82–86; 1293rd mtg.: China, paras. 63 and 65; Netherlands, paras. 11, 19 and 20; Nigeria, 22 and 23; Uruguay, para. 47; 1294th mtg.: Uganda (President), paras. 5 and 10; 1295th mtg.: Bulgaria, paras. 4 and 11; Japan, para. 30; USSR, para. 68.

¹⁴¹ S C, 17th yr., Suppl. for Oct.–Dec., p. 146, S/5181.

¹⁴² *Ibid.*, p. 148, S/5183.

132. By a letter¹⁴³ dated 23 October 1962, the representative of the USSR requested the President of the Security Council to convene immediately a meeting of the Council in order to examine the following question "The violation of the Charter of the United Nations and the threat to peace by the United States of America".

133. At the 1022nd meeting on 23 October 1962, the Security Council decided¹⁴⁴ to include the three letters in its agenda.

134. At the same meeting, the representative of the United States submitted a draft resolution¹⁴⁵ which read as follows:

"*Having considered* the serious threat to the security of the Western Hemisphere and the peace of the world caused by the continuance and acceleration of foreign intervention in the Caribbean,

"*Noting with concern* that nuclear missiles and other offensive weapons have been secretly introduced into Cuba,

"*Noting also* that as a consequence a quarantine is being imposed around the country,

"*Gravely concerned* that further continuance of the Cuban situation may lead to direct conflict,

"1. *Calls* as a provisional measure under Article 40 for the immediate dismantling and withdrawal from Cuba of all missiles and other offensive weapons;

"...

"3. *Calls for* termination of the measures of quarantine directed against military shipments to Cuba upon United Nations certification of compliance with paragraph 1 above;

"4. *Urgently recommends* that the United States of America and the Union of Soviet Socialist Republics confer promptly on measures to remove the existing threat to the security of the Western Hemisphere and the peace of the world, and report thereon to the Security Council."

135. At the same meeting, the representative of the USSR introduced a draft resolution¹⁴⁶ which read as follows:

"*The Security Council,*

"*Guided* by the need to maintain peace and safeguard security throughout the world,

"*Recognizing* the right of every State to strengthen its defences,

"*Noting the inadmissibility* of violations of the rules governing freedom of navigation on the high seas,

"1. *Condemns* the actions of the Government of the United States of America aimed at violating the United Nations Charter and at increasing the threat of war;

"2. *Insists* that the Government of the United States shall revoke its decision to inspect ships of other States bound for the Republic of Cuba;

¹⁴³ *Ibid.*, p. 149, S/5186.

¹⁴⁴ S C, 17th yr., 1022nd, mtg., para. 8.

¹⁴⁵ *Ibid.*, para. 80, S/5182.

¹⁴⁶ *Ibid.*, para. 180.

"3. *Proposes* to the Government of the United States of America that it shall cease any kind of interference in the internal affairs of the Republic of Cuba and of other States which creates a threat to peace;

"4. *Calls upon* the United States of America, the Republic of Cuba and the Union of Soviet Socialist Republics to establish contact and enter into negotiations for the purpose of restoring the situation to normal and thus of removing the threat of an outbreak of war."

136. At the 1024th meeting on 24 October 1962, the representative of Ghana submitted a draft resolution,¹⁴⁷ co-sponsored by the United Arab Republic, providing as follows:

"*The Security Council,*

"...

"*Noting with grave concern* the threat to international peace and security,

"...

"1. *Requests* the Secretary-General promptly to confer with the parties directly concerned on the immediate steps to be taken to remove the existing threat to world peace, and to normalize the situation in the Caribbean;

"...

"4. *Calls upon* the parties concerned to refrain meanwhile from any action which may directly or indirectly further aggravate the situation."

Decision

At its 1025th meeting, on 25 October 1962, the Security Council adopted¹⁴⁸ a proposal for adjournment.

(ii) *Précis of relevant constitutional discussion*

137. In submitting its draft resolution, the representative of the United States pointed out that Article 2 (4) defined the necessary condition of a community of independent sovereign States. He contended that when the USSR, under the cloak of secrecy, had sent to Cuba jet bombers capable of delivering nuclear weapons and when it had installed missiles capable of carrying atomic warheads with a range of 2,200 miles, those actions constituted not only a threat to the Western Hemisphere, but to the whole world. He further pointed out that assistance through installation of missiles, without concealment, which helped a country to defend its independence and which were not designed to subvert the territorial integrity or political independence of other States, was consistent with the principles of the United Nations. But assistance in the form of missiles which introduced a nuclear threat into an area free of it and which resulted in establishing the most formidable nuclear base in the world outside existing treaty systems, was different. He stated further that, in view of the transformation

¹⁴⁷ S C, 17th yr., 1024th mtg., para. 113, S/5190.

¹⁴⁸ S C, 17th yr., 1025th mtg., para. 101. Subsequently, the President (USSR) stated that, in the light of the results of the discussions which were to take place, he would decide with regard to the further proceedings of the Council in respect of that matter (*ibid.*, para. 102).

of Cuba into a base of offensive weapons of mass destruction, the President of the United States had initiated steps to quarantine Cuba against imports of offensive military equipment. In another intervention, that representative observed that the installation of weapons of mass destruction in Cuba posed a dangerous threat to peace, in contravention of Article 2 (4) which the American Republics were entitled to meet by appropriate regional defensive methods.

138. The representative of Cuba stated that his Government had been forced to arm for defensive purposes in the face of the repeated aggressions by the Government of the United States; its actions did not constitute a threat to the security of any country in the Western Hemisphere. After quoting Article 2 (4), he stated that the naval blockade of Cuba was an act of war against its independence in violation of the Charter and the principles of the United Nations. The Security Council should call for the immediate withdrawal of the forces of the United States from the coasts of Cuba and for the cessation of the illegal blockade unilaterally decreed by the Government of the United States.

139. The President, speaking as the representative of the USSR, in introducing the USSR draft resolution maintained that the declaration of a naval blockade by the United States against Cuba and the military measures taken by it constituted an act of aggression in violation of the Charter, which forbade States Members of the United Nations to use force or the threat of force in their international relations. He stated further that no State had any right to rule on the quantities or types of arms which another State considered necessary for its defence, since, according to the Charter, each State had the right to defend itself and to possess weapons to ensure its own security. The USSR Government had never sent and was not sending offensive weapons of any kind to Cuba and the assistance being given was exclusively designed to improve Cuba's defensive capacity and to strengthen its sovereignty and independence.

140. During the course of the discussion several representatives who supported the United States draft resolution expressed the view that nuclear missiles in the possession of Cuba constituted a menace to the peace and security of the rest of the American continent. It was for the Security Council to take measures to prevent the continuing arrival of nuclear weapons in Cuba and to bring about the dismantling of the nuclear missile bases in Cuba. The issue before the Council was the introduction into the Western Hemisphere of nuclear missiles by the USSR, which affected the security of the Western Hemisphere, and not the question whether Cuba had the right to build up its own defence. The right of a sovereign State to call for military aid from another Government could not be disputed; however, nuclear missiles with ranges from 1,000 to 2,000 miles could not be considered to be within the scope of legitimate defence. The threat came not from without against Cuba, but from within Cuba against its neighbours. The way to restore confidence in the Western Hemisphere was for the missiles to be

dismantled and withdrawn. With regard to the United States quarantine of Cuba, it was pointed out that measures undertaken to prevent the possibility of war could not be regarded as acts of hostility, but should be considered as compatible with the Purposes and Principles of the Charter in the preservation of peace and security.

141. In support of the USSR draft resolution it was maintained, on the other hand, that the aggressive acts committed by the United States in violation of Article 2 (4) against Cuba threatened the peace of the world and constituted a threat to peace under Article 39 of the Charter. Faced with those threats, it was legitimate for Cuba to take any action it deemed necessary to organize its defence. That was an elementary right inherent in the Charter. The naval blockade against Cuba was one of the forms of aggression and constituted an act of war against that State.

142. One representative, who referred in his statement to Article 2 (4), was of the opinion that the unilateral decision of the United States to exercise the quarantine in the Caribbean Sea was an action, not only contrary to international law and the accepted norms of freedom of navigation on the high seas, but which also led to a situation threatening international peace and security. It was an action taken without authorization from the Security Council which had primary responsibility for the maintenance of international peace and security. He suggested that the members of the Council should concentrate their efforts to achieve the following: all parties concerned should refrain from taking any action which might hinder the possibility of reaching a solution; that all Member States should relinquish the use of force or the threat of force; all parties concerned should engage in negotiation and avail themselves of the assistance of the Acting Secretary-General with a view to reaching a peaceful solution.

143. The representative of Ghana, introducing a draft resolution co-sponsored by the United Arab Republic, asked whether the fact that Cuba had received weapons of all kinds from the USSR constituted a sufficient pretext for a naval blockade against Cuba. Referring to the USSR and Cuban assurances concerning the nature of weapons delivered to Cuba, he stated that it had been conceded by every member of the Council that Cuba had a right, derived from its sovereignty and independence, to take adequate measures to ensure its self-defence. Therefore, what was in dispute was whether the weapons possessed by Cuba were offensive. Since there was a mutual fear of being threatened, that representative proposed that the United States should give a written guarantee to the Security Council that it had no intention of interfering in the internal affairs of Cuba and of taking offensive military action against Cuba. Cuba should then also give a written guarantee to the Council that it had no intention of interfering in the internal affairs of any country in the Western Hemisphere and of taking offensive military action against any country. The representative of Ghana further stated that any attempt to attribute an offensive character to

military arrangements, such as those adopted by Cuba, should be accompanied by proof of the most incontrovertible nature. It was, however, doubtful whether such proof of Cuba's offensive designs had been tendered. Nor could it be argued that the threat was of such a nature as to warrant action on the scale so far taken, prior to a reference to the Security Council. It also could not be argued that, in that particular case, self-defence could be invoked to justify the exercise of authority of the United States on the high seas, for the concept of freedom on the open seas entailed absolute freedom of navigation for vessels of all nations in time of peace.¹⁴⁹

i. *Decisions of 28 December 1963, 4 and 13 March 1964 and 9 August 1964 in connexion with the complaint by the Government of Cyprus*

Decision of 28 December 1963

(i) *Précis of proceedings*

144. By a letter¹⁵⁰ dated 26 December 1963 addressed to the President of the Security Council, the representative of Cyprus brought to the attention of the Council a complaint by his Government against the Government of Turkey concerning acts of aggression and intervention in the internal affairs of Cyprus by the threat and use of force against its territorial integrity and political independence.

145. At the 1085th meeting, on 27 December 1963, the Security Council included¹⁵¹ the question in its agenda.

Decision

At its 1085th meeting on 27/28 December 1963, the Council decided¹⁵² to adjourn consideration of the item.

(ii) *Précis of relevant constitutional discussion*

146. In opening the debate, the representative of Cyprus stated that the movement of Turkish ships towards Cyprus constituted a threat of force in violation of Article 2 (4) as evidenced also by the terrorizing of the population by low flying Turkish planes and by the violation of the territorial waters of Cyprus. If Turkey thought that the security of the Turkish population in Cyprus was threatened, it could have complained to the Security Council. But to find excuses in order to use force was a negation of Article 2 (4) which not only abolished war but forbade the use of force, in whatever manner,

¹⁴⁹ For text of relevant statements, see S C, 17th yr., 1022nd mtg.: Cuba, paras. 90, 99, 109, 114 and 122–125; USSR, paras. 138, 155, 158, 173, 178, (f) and 180; United States, paras. 12, 14, 15, 61, 74, 79 and 80; 1023rd mtg.: Ireland, para. 89; Romania, paras. 43, 53, 54, 57, 58, 72, 73, and 78; United Kingdom, paras. 16, 27, 36, 37 and 39; Venezuela, paras. 7 and 11; 1024th mtg.: China, paras. 19, 22 and 23; Ghana, paras. 92–98, 102, 103, 105, 109, 110 and 113; United Arab Republic, paras. 67, 74, 75 and 80; 1025th mtg.: United States, para. 21.

¹⁵⁰ S C, 18th yr., Suppl. for Oct.–Dec., p. 112, S/5488.

¹⁵¹ S C, 18th yr., 1085th mtg., preceding para. 1.

¹⁵² S C, 18th yr., 1085th mtg., paras. 92 and 93.

against any State. Subsequently referring to the fact that the Prime Minister of Turkey had previously declared that ships had been sent to Cyprus for action, the representative observed that according to Article 2 (4) not only the use of force but also the threat of force was a violation of the Charter. Only the United Nations could use force to restore order when there was a threat to international peace and no individual State had the right to use force against another State. Referring to the Treaty of Guarantee, he stated that, if it could be interpreted as giving Turkey the right to use force in Cyprus, it would be invalid under Article 103 of the Charter. However, there was no provision in the Treaty concerning the use of force. The representations and measures provided for in the Treaty had to be peaceful measures such as recourse to the Security Council or the General Assembly.

147. The representative of Turkey declared that he had been instructed by his Government to state officially that no Turkish ships were sailing towards Cyprus.¹⁵³

Decision of 4 March 1964

(i) *Précis of proceedings*

148. By a letter¹⁵⁴ dated 15 February 1964 addressed to the President of the Security Council, the representative of the United Kingdom drew the attention of the Council to the deterioration of relations between the Greek and Turkish communities in Cyprus which had culminated in a serious act of violence in the town of Limassol on 12 February 1964 and he requested the convening of an early meeting of the Council to consider that urgent matter.

149. By a letter¹⁵⁵ dated 15 February 1964, addressed to the President of the Security Council, the representative of Cyprus brought to the attention of the Security Council information concerning the situation in Cyprus and requested the convening of an emergency meeting of the Council to consider the matter.

150. At its 1095th meeting, on 18 February 1964, the Security Council decided to include¹⁵⁶ the two letters in its agenda.

151. At the 1100th meeting, on 2 March 1964, the representative of Brazil introduced a draft resolution¹⁵⁷ co-sponsored by Bolivia, Ivory Coast, Morocco and Norway, which read as follows:

"The Security Council,

"...

"Having in mind the relevant provisions of the Charter of the United Nations and, in particular, its Article 2, paragraph 4, which reads:

"All Members shall refrain in their international relations from the threat or use of force

against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations',

"1. Calls upon all Member States, in conformity with their obligations under the Charter of the United Nations, to refrain from any action or threat of action likely to worsen the situation in the sovereign Republic of Cyprus or to endanger international peace;"

Decision

At the 1102nd meeting, on 4 March 1964, the draft resolution was adopted¹⁵⁸ unanimously as resolution 186 (1964).

(ii) *Précis of relevant constitutional discussion*

152. In his introductory statement, the representative of the United Kingdom quoted article IV of the Treaty of Guarantee, signed on 16 August 1960 by the United Kingdom, Greece, Turkey and the Republic of Cyprus in which it was provided that in the event of a breach of the provisions of the Treaty, the four signatories undertook to consult together with respect to the representations or measures necessary to ensure observance of those provisions; in so far as common or concerted action might not prove possible, each of the three guaranteeing Powers reserved "the right to take action with the sole aim of re-establishing the state of affairs created by the present Treaty". In a subsequent statement, that representative pointed out that the answer to the question whether or not the use of force was permissible under the rules of international law and, in particular, under the United Nations Charter, must always depend on the circumstances in which and the purposes for which it was used. It was undeniable that the Charter itself contemplated the lawful use of force in certain circumstances as, for instance, under Article 51. Concerning the Treaty of Guarantee, its purposes were entirely in accordance with the obligation contained in Article 2 (4) of the Charter. The right to take action provided for in article IV (2) of the Treaty could only be resorted to in the event of a breach of the provisions of the Treaty, that is to say, in circumstances in which there was a threat to the independence, territorial integrity or security of the Republic of Cyprus as established by the Basic Articles of its Constitution. The intervention, however, must be limited to such action as would be necessary for re-establishing the state of affairs created by the Treaty. Only in such limited circumstances was the right of intervention permissible under the Treaty obligations.

153. In his introductory intervention the representative of Cyprus stated that no country had the right of military action in Cyprus. With regard to threats of aggression by Turkey, it was for the Security Council to take the necessary measures for the protection of the territorial integrity and the independence of the Republic of Cyprus. In subsequent statements, he recalled that the theory had

¹⁵³ For text of relevant statements, see S C, 18th yr., 1085th mtg.: Cyprus, paras. 9, 13, 14, 16, 19 and 61-65; Turkey, para. 45.

¹⁵⁴ S C, 19th yr., Suppl. for Jan.-March, p. 66, S/5543.

¹⁵⁵ *Ibid.*, p. 69, S/5545.

¹⁵⁶ S C, 19th yr., 1095th mtg., preceding para. 1.

¹⁵⁷ S C, 19th yr., 1100th mtg., para. 5, S/5571.

¹⁵⁸ S C, 19th yr., 1102nd mtg., para. 28.

been advanced that the affirmation of the territorial integrity and political independence of the Republic of Cyprus should be subject to the Treaty of Guarantee which, Turkey claimed, gave to Greece, Turkey and the United Kingdom the right of military intervention in Cyprus. However, the territorial integrity and independence of Cyprus were based on the Charter of the United Nations, especially on the provisions of Article 2 (1) and (4). The interpretation of article IV of the Treaty of Guarantee as permitting the right of an unlimited intervention was in direct contravention of the principles of the Charter defined in Article 2 (1) and (4) and Article 103. Under Article 2 (4), the prohibition of the use of force in international relations was absolute. The only possible exceptions were provided by the Charter in Article 42, under which an enforcement action was decided upon by the Security Council, and in Article 51 concerning self-defence. Both of those exceptions should be interpreted *stricto sensu* and neither of them was relevant to the question before the Council. Consequently, the obligations of Member States under Article 2 (4) were paramount and could not be neutralized by any provision in any treaty under which a breach would permit the use of force. In other words an act which was prohibited under the Charter could not be legalized by agreement between the parties thereof. The term "action" contained in the Treaty of Guarantee referred to "representations or necessary measures". The word "measures" could only mean the use of peaceful means. Any other interpretation involving the use of force would be in direct conflict with the provisions of Article 2 (4).

154. Another representative expressed the view that, under the pretext of maintaining order in Cyprus, actions were being taken which threatened the freedom and independence of Cyprus. Under Article 2 (4) of the Charter, Cyprus had the right to ask the Security Council to protect it from threats against its independence and territorial integrity, and no treaty could deprive Cyprus of that right. The obligation of every Member State to respect the independence and territorial integrity of other Member States and to refrain from the threat or use of force against them, could not be revoked by any agreement or treaty. The Members of the United Nations had assumed the obligations pursuant to the provisions of Articles 103 and 2 (1), (3), (4) and (7) to settle all their international disputes by peaceful means and to refrain in international relations from the threat or use of force. Those obligations nullified the obligations and rights emanating from sources other than the Charter. For that reason no State Member of the United Nations could, even on the basis of agreements such as the London and Zurich Agreements, claim a right to intervene in the affairs of Cyprus, since no agreement could legalize an action which was illegal under the terms of the Charter.¹⁵⁹

¹⁵⁹ For text of relevant statements, see S C, 19th yr., 1095th mtg.: Cyprus, paras. 101, 144 and 145; Greece, para. 255; United Kingdom, para. 40; 1096th mtg.: USSR, paras. 35 and 54—56; 1097th mtg.: Cyprus, para. 137; Czechoslovakia, paras. 47, 50 and 60; Ivory Coast, para. 82; 1098th mtg.: Bolivia, paras. 161 and 162; Cyprus, paras. 95—98, 104,

Decision of 13 March 1964

(i) *Précis of proceedings*

155. By a letter¹⁶⁰ dated 13 March 1964 addressed to the President of the Security Council, the representative of Cyprus, in accordance with, *inter alia*, Article 2 (4) of the Charter and resolution 186 (1964) of the Security Council of 4 March 1964, requested the convening of an emergency meeting of the Security Council, in view of the threat of imminent invasion of the territory of the Republic of Cyprus by Turkish forces.

156. At the 1103rd meeting, on 13 March 1964, the Security Council included¹⁶¹ the item in its agenda.

157. At the same meeting, the representative of Brazil introduced a draft resolution¹⁶² co-sponsored by Bolivia, Ivory Coast, Morocco and Norway which read as follows:

"The Security Council,

"...

"Reaffirming its resolution of 4 March 1964,

"...

"1. Reaffirms its call upon all Member States, in conformity with their obligations under the Charter of the United Nations, to refrain from any action or threat of action likely to worsen the situation in the sovereign Republic of Cyprus, or to endanger international peace;"

Decision

At the 1103rd meeting, on 13 March 1964, the draft resolution was adopted¹⁶³ unanimously as resolution 187 (1964).

(ii) *Précis of relevant constitutional discussion*

158. In his introductory statement the representative of Cyprus recalled that the Government of Turkey had said that it had a right to intervene in Cyprus under the Treaty of Guarantee. However, the "representations" or "measures" permitted to be taken under article IV of the Treaty could be taken only by peaceful means. That was the proper interpretation of those terms, particularly as the Charter made it clear that the obligation of Member States was to respect the territorial integrity and independence of other States under Article 2 (4). Therefore, by virtue of that Article, they were not entitled to intervene in Cyprus by force. Referring to a letter¹⁶⁴ of 13 March 1964 from the representative

105 and 133; United Kingdom, paras. 65—67; 1099th mtg.: Cyprus, paras. 126, 127 and 130; 1100th mtg.: Brazil, paras. 5 and 11; 1102nd mtg.: USSR, paras. 2 and 3.

¹⁶⁰ S C, 19th yr., Suppl. for Jan.—March, p. 140, S/5598.

¹⁶¹ S C, 19th yr., 1103rd mtg., preceding para. 1.

¹⁶² *Ibid.*, para. 95.

¹⁶³ *Ibid.*, para. 156.

¹⁶⁴ S C, 19th yr., Suppl. for Jan.—March, S/5596. In the letter it was stated that the Government of Turkey, in view of the gravity of the situation in Cyprus and by virtue of the right conferred upon it by Article IV of the Treaty of Guarantee, had decided to take appropriate action and a force would be sent to the island in exercise of that right and in order to strengthen the already existing three-Power peace-keeping force in the island; it would be entrusted with the exclusive

of Turkey to the Secretary-General, the representative stated further that the threat of force, even in words, was in itself a violation of Article 2 (4). The letter sent by Turkey, together with the troopships and the accompanying destroyers and submarines moving in the vicinity of Cyprus, constituted a violation of the Charter. It was for the Security Council to take steps so that those threats of force, which amounted to a violation of the integrity and independence of Cyprus, would cease. Referring to the statement by the representative of Turkey that the three-Power peace-keeping force in Cyprus had been established in conformity with Article 52 of the Charter, the representative of Cyprus further said that regional arrangements under Article 52 should be subject to the Purposes and Principles of the Charter and, therefore, subject to Article 2 (4). Commenting on the draft resolution in which the Council called upon all Member States to refrain from any action or threat of action, he expressed the view that the threat of action could not mean anything other than the threat of force.

159. Two representatives pointed out that, in its resolution of 4 March 1964, the Security Council had recalled the obligations of Member States defined in Article 2 (4). Under those obligations all Members should adopt an attitude based on respect for the sovereignty, independence and territorial integrity of Cyprus. It was also stated that the draft resolution was a warning against any attempt at aggression and armed intervention with regard to the sovereign State of Cyprus.¹⁶⁵

Decisions of 9 August 1964

(i) Précis of proceedings

160. By letter¹⁶⁶ dated 8 August 1964, the representative of Turkey requested the President of the Security Council to convene an urgent meeting of the Council to consider the serious situation created in Cyprus by the renewed and continuing attempts of the Greek Cypriots to subdue by force of arms the Turkish community in Cyprus in order to perpetuate the usurpation of government by the Greek community.

161. By a letter¹⁶⁷ dated 8 August 1964, the representative of Cyprus, referring, *inter alia*, to Article 2 (4) of the Charter and to resolutions 186, 187 and 192, adopted by the Security Council on 4 and 13 March 1964 and 20 June 1964, respectively, requested the President of the Security Council to convene immediately an emergency meeting of

task of putting an end to the massacre perpetrated by the Greek Cypriot terrorist organization against the Turkish community in violation of human rights and of re-establishing the state of affairs created by the Treaty of Guarantee. The force would operate until the United Nations Peace-keeping Force, envisaged under paragraph 4 of the Security Council resolution of 4 March 1964, effectively performed the functions entrusted to it, and would refrain from violating the independence and territorial integrity of the Republic of Cyprus.

¹⁶⁵ For text of relevant statements, see S C, 19th yr., 1103rd mtg.: Brazil, para. 95.; Cyprus, paras. 31–34, 38, 51 and 76; Czechoslovakia, para. 140; Greece, para. 64; USSR, paras. 83–84 and 120.

¹⁶⁶ S C, 19th yr., Suppl. for July–Sept. 1964, p. 144, S/5859.

¹⁶⁷ *Ibid.*, p. 145, S/5861.

the Council in view of the deliberate, unprovoked armed air attacks against the unarmed civilian population of Cyprus carried out by airplanes of the Turkish Air Force which were still continuing.

162. At its 1142nd meeting, on 8 August 1964, the Security Council decided¹⁶⁸ to include the two letters in its agenda.

163. At the 1143rd meeting, on 9 August 1964, the representative of the Ivory Coast requested the President to make an immediate appeal to Turkey to put an end forthwith to the bombardment of Cyprus and suspend all military measures against Cyprus, and to call on the Government of Cyprus at once to order an immediate cease-fire pending the adoption by the Council of a final decision on the matter.¹⁶⁹

Decision

At its 1143rd meeting, on 9 August 1964, the Council authorized the President to make an urgent appeal to the Government of Turkey to cease instantly the bombardment and use of military force of any kind against Cyprus, and to the Government of Cyprus to order the armed forces under its control to cease fire immediately.¹⁷⁰

164. At the same meeting the representative of the United States submitted a draft resolution¹⁷¹ co-sponsored by the United Kingdom, in which it was provided as follows:

“The Security Council,

“ . . .

“1. *Reaffirms* the appeal just addressed by the President of the Security Council to the Governments of Turkey and Cyprus, worded as follows:

“The Security Council has authorized me to make an urgent appeal to the Government of Turkey to cease instantly the bombardment and the use of military force of any kind against Cyprus and to the Government of Cyprus to order the armed forces under its control to cease firing immediately”;

“2. *Calls for* an immediate cease-fire by all concerned”.

165. The representative of the United States proposed¹⁷² the insertion of the following as a second preambular paragraph:

“*Reaffirming* its resolutions of 4 March (S/5575), 13 March (S/5603) and 20 June 1964 (S/5778).”

Decision

At the 1143rd meeting, on 9 August 1964, the draft resolution submitted by the United Kingdom and the United States, as amended, was adopted¹⁷³ by 8 votes to none, with 2 abstentions as resolution 193 (1964).

¹⁶⁸ S C, 19th yr., 1142nd mtg., para. 3. Also included in the agenda was the letter dated 26 December 1963 from the Permanent Representative of Cyprus addressed to the President of the Security Council (S C, 18th yr., Suppl. for Oct.—Dec., p. 112, S/5488).

¹⁶⁹ S C, 19th yr., 1143rd mtg., para. 11.

¹⁷⁰ S C, resolution 193 (1964).

¹⁷¹ S C, 19th yr., 1143rd mtg., paras. 44 and 112, S/5866 replaced by S/5866/Rev.1.

¹⁷² S C, 19th yr., 1143rd mtg., para. 171.

¹⁷³ *Ibid.*, para. 178.

(ii) *Précis of relevant constitutional discussion*

166. In his introductory statement the representative of Turkey said that the Greek Cypriots had unleashed offensives supported by artillery on land by motor assault boats from the sea on various Turkish settlements on the island on 5 August 1964. The Turks of Cyprus had turned for protection to Turkey, which could not ignore such a humane and legitimate call. The Government of Turkey had been compelled to stop the flow of Greek Cypriot reinforcements by bombing from the air the roads used for the purpose of bringing them in. That action was directed exclusively at military targets and constituted a limited police action taken in legitimate self-defence. The representative observed that under the Treaty of Guarantee, Turkey had the right to intervene in Cyprus in order to re-establish the status which had existed before.

167. The representative of Cyprus stated that Turkish airplanes engaged in illegal flights over various parts of Cyprus were machine-gunning the people in contravention of Article 2 (4) of the Charter. In that connexion, he wondered whether Cyprus was not entitled to its territorial integrity, sovereignty and independence as a Member of the United Nations. Subsequently, referring to the statement made by the representative of Turkey on the right of Turkey to intervene by force in Cyprus, he said that nothing could be more removed from the sense of the Charter than to speak of the right to invade Cyprus under a treaty. The Security Council must stop and condemn aggression and thus demonstrate that the Charter, which, under its Article 2 (4), protected small nations from attack, had not become meaningless.

168. One representative expressed the view that it was the Security Council's duty to demand the immediate cessation of military actions against Cyprus and to ensure respect for its sovereignty in accordance with the purposes of the Charter and with the previous decisions of the Council. He called on the members of the Council to support a draft resolution containing an appeal by the Council for the immediate cessation of the bombardment and use of military force of any kind against Cyprus.

169. Another representative stated that the Council was aware of the danger inherent in the fact that an attack launched by one Member State against another was being justified by the aggressor on the ground of so-called legitimate self-defence. If the Council were to accept that aggression and its justification, the basic principles of the Charter would be completely discarded. He further pointed out that the President of the Council in his appeal had made a distinction between the external aggression on the part of Turkey and the operations carried out by the Government of Cyprus in the exercise of its right of self-defence.¹⁷⁴

¹⁷⁴ For text of relevant statements, see S C, 19th yr., 1142nd mtg.: Cyprus, paras. 88, 112, 113, 129, 167 and 168; Turkey, paras. 60, 66, 67 and 162; 1143rd mtg.: Cyprus, paras. 34 and 35; Czechoslovakia, paras. 80, 81 and 83; USSR, paras. 98 and 108.

j. *Decision of 9 April 1964 in connexion with the complaint by Yemen*(i) *Précis of proceedings*

170. By a letter¹⁷⁵ dated 1 April 1964, the representative of Yemen requested the President of the Security Council to convene an urgent meeting of the Council to consider the deteriorating situation resulting from the continuous acts of aggression by Britain against Yemeni citizens, culminating in the attack of 28 March 1964 which had caused the death of twenty-five Yemeni citizens.

171. At its 1106th meeting, on 2 April 1964, the Security Council included¹⁷⁶ the item in its agenda.

172. At the 1110th meeting, on 8 April 1964, the representative of Morocco introduced a draft resolution¹⁷⁷ co-sponsored by the Ivory Coast in which it was provided that:

"The Security Council,

"...

"Recalling Article 2, paragraphs 3 and 4 of the Charter of the United Nations,

"...

"1. Condemns reprisals as incompatible with the purposes and principles of the United Nations;

"2. Deplores the British military action at Harib on 28 March 1964;"

Decision

At the 1111th meeting of the Security Council, on 9 April 1964, the draft resolution was adopted¹⁷⁸ by 9 votes to none, with 2 abstentions, as resolution 188 (1964).

(ii) *Précis of relevant constitutional discussion*

173. The representative of Yemen, in his introductory statement, said that on 28 March 1964 eight military aircraft had bombed the people of the town of Harib and he gave to the Council a summary of the acts of British aggression committed against the Yemen Arab Republic since March 1963. In his subsequent statements, he said that attacks across borders, including the attack on the fortress near Harib which could escalate into full-scale war, were proper subjects for the consideration of the Council. Referring to the statement of the representative of the United Kingdom that the attack against Harib was made in retaliation for several air attacks launched from Yemen, the representative pointed out that the policy of retaliation was in contradiction with the Principles and Purposes of the United Nations.

174. The representative of the United Kingdom stated that the British Government was responsible for the defence of the Federation of South Arabia and thus had an obligation to assist it, at the request of the Ministers of the Federation, in protecting its territory from external aggression. After the Yemeni

¹⁷⁵ S C, 19th yr., Suppl. for April-June, p. 1, S/5635.

¹⁷⁶ S C, 1106th mtg., preceding para. 1.

¹⁷⁷ S C, 1110th mtg., para. 39.

¹⁷⁸ S C, 1111th mtg., para. 24.

authorities attacked the Federal territory on 13 and 27 March 1964, the United Kingdom Government saw no alternative but to make a defensive response in order to preserve the territorial integrity of the Federation; it had, therefore, authorized an attack against the fort of Harib as a military and isolated target. In his subsequent statement, he stated that the use of armed force to repel or prevent an attack—that is to say, legitimate action of a defensive nature—might sometimes have to take the form of a counter-attack. To destroy the fort of Harib with the minimum use of force was, therefore, a defensive measure which had no parallel with acts of retaliation or reprisals which had as an essential element the purposes of vengeance or retribution. It was that latter use of force which was condemned by the Charter, and not the use of force for defensive purposes such as warding off future attacks.

175. The representative of Morocco, when introducing the draft resolution stated that the resolution recalled Article 2, paragraphs 3 and 4 of the Charter because they referred to the obligation for Members of the United Nations to employ peaceful means in the settlement of disputes.

176. In the course of the discussion, it was maintained that the attack on Harib was not an act of self-defence, since there had been no armed attack from the Yemeni side. On the contrary, it had been a pre-authorized, premeditated act of retaliation sanctioned at the highest level of the British Government. With reference to resolution 111 (1956) adopted by the Security Council on 19 January 1956,¹⁷⁹ it was stated that the Council should condemn the retaliatory action as inconsistent with the obligations of the United Kingdom under the Charter. The view was also expressed that it was difficult to reconcile the use of force, even in the face of provocation, with the provisions of the Charter which enjoined all Member States to solve their differences by peaceful means. While political and economic measures of retaliation were not necessarily incompatible with the principles of the Charter, armed attacks across national frontiers were prohibited by express provisions of the Charter. It was also observed that to resort to a punitive expedition when no state of war existed between two countries was incompatible with the United Kingdom's obligations under the Charter. It was questioned also why the United Kingdom had considered it unnecessary to appeal to the Security Council before taking aggressive action and had decided to act arbitrarily by resorting to force.

177. In connexion with the statement of the representative of the United Kingdom that the action against Harib was taken on the basis of a treaty with the Federation of South Arabia, it was objected that no claim could be based on an inequitable treaty which had never been ratified. Treaties of that nature had no validity according to inter-

¹⁷⁹ In that resolution, it was provided that the Security Council would remind the Government concerned "that the Council has already condemned military action in breach of the General Armistice Agreements, whether or not undertaken by way of retaliation, and has called upon... to take effective measures to prevent such action;"

national law and Article 103 of the Charter. Furthermore, that part of the South Arabian peninsula with which the treaty concerned was concluded had no status in international law.¹⁸⁰

k. *Decision of 17 September 1964 in connexion with the question of relations between Malaysia and Indonesia*

(i) *Précis of proceedings*

178. By a letter¹⁸¹ dated 3 September 1964, the permanent representative of Malaysia requested the President of the Security Council to call an urgent meeting of the Council because during the midnight hours of 2 September 1964, an Indonesian aircraft had flown over South Malaya dropping a group of armed paratroopers. The Government of Malaysia regarded that act as an act of aggression which constituted a breach of peace and was a threat to international peace and security in the area.

179. At the 1144th meeting, on 9 September, the Security Council included¹⁸² the item in its agenda.

180. At the 1150th meeting, on 15 September 1964, the representative of Norway submitted a draft resolution¹⁸³ which read as follows:

"The Security Council,

"...

"Deeply concerned by the fact that the armed incidents which have occurred in that region have seriously aggravated the situation and are likely to endanger peace and security in that region,

"...

"4. *Calls upon* the parties to refrain from all threat or use of force and to respect the territorial integrity and political independence of each other, and thus to create a conducive atmosphere for the continuation of their talks;"

Decision

At the 1152nd meeting, on 17 September 1964, the draft resolution failed of adoption,¹⁸⁴ the result of the vote being 9 votes in favour and 2 against. One of the negative votes was that of a permanent member of the Council.

(ii) *Précis of relevant constitutional discussion*

181. In his introductory statement, the representative of Malaysia said that Indonesia had committed

¹⁸⁰ For text of relevant statements, see S C, 1106th mtg.: USSR, para. 77; United Kingdom, paras. 34, 35, 51, 55 and 57; Yemen, paras. 13, 14, 16, 23, 27 and 32; 1107th mtg.: Iraq, paras. 22 and 41; United Arab Republic, para. 51; 1108th mtg.: Ivory Coast, para. 50; Morocco, paras. 26 and 42; Syria, paras. 15 and 22; United States, para. 66; 1109th mtg.: Morocco, para. 91; Syria, paras. 79–82; United Kingdom, paras. 17, 24, 26, 30 and 31; 1110th mtg., Czechoslovakia (President), paras. 21 and 22; Morocco, paras. 39 and 42; 1111th mtg., China, paras. 11 and 12.

¹⁸¹ S C, 19th yr., Suppl. for July–Sept., p. 263, S/5930.

¹⁸² S C, 19th yr., 1144th mtg., preceding para. 1.

¹⁸³ S C, 19th yr., 1150th mtg., para. 72.

¹⁸⁴ S C, 19th yr., 1152nd mtg., para. 64.

previous acts of aggression against Malaysia by landing Indonesian armed infiltrators on the beaches of the southern districts of the Malaysian Peninsula and by dropping three platoons of armed paratroopers in a remote area of South Malaya; it had thus committed an act of unprovoked aggression aimed at the destruction of Malaysia. It was for the Council to declare Indonesia guilty of acts of aggression and to demand that it desist from such activities. In a later statement, that representative observed that Indonesia's declared aim of destroying Malaysia was contrary to the letter and spirit of the Charter, specifically to the provisions of Article 2 (4).

182. The representative of Indonesia stated that the item before the Council should be considered in the context of the broader conflicts in the region of South-East Asia when, in the past, Indonesia had suffered incursions from the British colonial territories incorporated in Malaysia and had, therefore, been compelled to take counter-action by retaliating on the enemy's own territory. The representative observed that the meaning of the term "aggression" was not clear; even the United Nations had not been successful in finding an agreed definition for it. Indonesia's acts, pursued by volunteers against neo-colonialism, could not be termed "aggression", since their incursions in the territories called Malaysia represented a people's fight against colonialism and neo-colonialism. In a later statement, referring to operative paragraph 4 of the draft resolution submitted by Norway, the representative expressed the view that the principle embodied in Article 2 (4) was taken rather out of context or was, at least, incomplete. Indonesia's confrontation policy against Malaysia was consistent with its anti-colonial policy which was not inconsistent with the purposes of the United Nations.

183. In introducing the draft resolution, the representative of Norway pointed out that the Security Council, in dealing with the complaint before it, must have as its guidance the relevant provisions of the Charter. One relevant provision was quoted in operative paragraph 4 of the draft resolution and dealt with the obligation which Member States had taken upon themselves under the Charter "to refrain from all threat or use of force and to respect the territorial integrity and political independence of each other...". That call was addressed in the draft resolution to no party in particular; it was addressed to the parties. It seemed to be an appropriate and well-justified call by the Council in matters of similar nature.

184. In the course of the discussion it was maintained, on the one side, that the Council could not condone the use of force in international relations outside the framework of the Charter; it was, therefore, necessary for the Council to declare as inadmissible the armed action of the Indonesian Government against Malaysia on 2 September. The Government of Malaysia, while exercising its inherent right of self-defence, had also met its obligation under the Charter by bringing the matter to the Security Council. Malaysia had the right to expect the protection of the Council against future attacks in accordance with Article 2 (4).

185. It was pointed out, on the other hand, that by the establishment of the Federation of Malaysia violations of the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples¹⁸⁵ had been committed. The cause of national liberation reflected the spirit and principles of the Charter, of the Declaration and of many other resolutions of the United Nations. The support of Indonesia's action against Malaysia by a number of volunteers who joined the struggle could not constitute any foundation for accusing Indonesia of being an aggressor: to accept such accusation would be contrary to the aims of the United Nations, especially as they were expressed in the Declaration.¹⁸⁶

1. *Decision of 30 December 1964 in connexion with the situation in the Democratic Republic of the Congo*

(i) *Précis of proceedings*

186. By a letter¹⁸⁷ dated 1 December 1964, addressed to the President of the Security Council, the representatives of Afghanistan, Algeria, Burundi, Cambodia, Central African Republic, Congo (Brazzaville), Dahomey, Ethiopia, Ghana, Guinea, Indonesia, Kenya, Malawi, Mali, Mauritania, Somalia, Sudan, Uganda, United Arab Republic, United Republic of Tanzania, Yugoslavia and Zambia, requested an urgent meeting of the Council to consider the situation in the Democratic Republic of the Congo. In an explanatory memorandum it was stated, *inter alia*, that the Governments of Belgium and the United States, with the concurrence of the Government of the United Kingdom, had launched military operations in Stanleyville and in other parts of the Congo. Those operations constituted an intervention in African affairs, a flagrant violation of the Charter of the United Nations and a threat to the peace and security of the African continent.¹⁸⁸

¹⁸⁵ G A resolution 1514 (XV).

¹⁸⁶ For text of relevant statements, see S C, 19th yr., 1144th mtg.: Indonesia, paras. 65, 68, 102, 104 and 105; Malaysia, paras. 31, 32, 33, 36 and 60-62; 1145th mtg.: USSR (President), paras. 54, 57 and 72; Indonesia, paras. 37 and 43; United States, paras. 15, 22 and 25; 1148th mtg.: Brazil, paras. 33 and 36; China, para. 91; Malaysia, para. 30; United Kingdom, paras. 58, 59 and 75; 1149th mtg.: Czechoslovakia, paras. 67 and 69; Ivory Coast, para. 89; 1150th mtg.: Norway, paras. 74 and 75; 1152nd mtg.: France, para. 6; Indonesia, paras. 15, 16 and 19; Ivory Coast, paras. 38 and 40.

¹⁸⁷ S C, 19th yr., Suppl. for Oct.-Dec., p. 198, S/6076 and Add. 1-5.

¹⁸⁸ Prior to the submission to the Security Council of this letter, the following communications were forwarded to the Security Council in connexion with the situation brought to its attention: letters dated 21 November from the representatives of Belgium, the United States and Italy respectively (S C, 19th yr., Suppl. for Oct.-Dec., p. 64, S/6055, p. 67, S/6056 and p. 68, S/6058); letter dated 24 November 1964 from the Prime Minister of the Democratic Republic of the Congo (*ibid.*, p. 69, S/6060); letters dated 24 November 1964 from the representatives of the United States and Belgium, respectively (*ibid.*, p. 186, S/6062 and p. 189, S/6063); letter dated 25 November 1964 from the representative of the USSR (*ibid.*, p. 192, S/6066); letter dated 26 November 1964 from the representative of the United Kingdom (*ibid.*, p. 196, S/6069) and letters dated 1 December 1964 from the representatives of Belgium and the United States, respectively, (*ibid.*, p. 196, S/6074 and p. 197, S/6075).

187. By a letter¹⁸⁹ dated 9 December 1964, the representative of the Democratic Republic of the Congo transmitted to the Secretary-General a message from the Prime Minister and Minister for Foreign Affairs of the Democratic Republic of the Congo addressed to the President of the Security Council requesting the convening of the Council to consider "foreign interference in the domestic affairs of the Congo". It was alleged in the message that certain African States, the "Chinese communist régime" and the USSR assisted the rebel groups in the eastern part of the Congo. If allowed to continue, those acts of interference would constitute a grave threat to peace in Africa.

188. At the 1170th meeting, on 9 December 1964, the Security Council decided¹⁹⁰ without objection to include in its agenda the letter from the representatives of the twenty-two Member States. It also decided,¹⁹¹ by 7 votes to 4, to include in its agenda the letter from the representative of the Democratic Republic of the Congo.

189. At the 1186th meeting on 28 December 1964, the representative of the Ivory Coast submitted a draft resolution¹⁹² co-sponsored by Morocco which read as follows:

"The Security Council,

"Noting with concern the aggravation of the situation in the Democratic Republic of the Congo,

"...

"Reaffirming the sovereignty and territorial integrity of the Democratic Republic of the Congo,

"...

"1. Requests all States to refrain or desist from intervening in the domestic affairs of the Congo;".

Decision

At the 1189th meeting, on 30 December 1964, the draft resolution submitted by Ivory Coast and Morocco, as amended, was adopted¹⁹³ as resolution 199 (1964), by 10 votes to none, with 1 abstention.

(ii) Précis of relevant constitutional discussion

190. The representatives of the Member States which had requested the inclusion of the item in the agenda of the Security Council maintained that the armed, military intervention by Belgium and the United States, supported by the United Kingdom, to which the Government of the Democratic Republic of the Congo had consented without making any request for it, constituted an aggression against the people of the Congo. Such intervention had not respected the unity or the territorial integrity of the Congo; its purpose had been to facilitate the capture of Stanleyville by mercenaries and to prevent, by the use of force, the exercise of the right of self-determination. Thus Belgium and its allies had

violated the provisions of the Charter and its objectives, as well as endangered peace. It was no longer admissible in present international relations to implement a policy based on the use of force, regardless of its justification. For those reasons the Security Council should condemn military intervention by foreign Powers in other countries committed under any pretext.

191. One representative declared that the armed intervention in the internal affairs of the Congo by the three Powers had been directed at the suppression of the national liberation movement.

192. It was also pointed out that a civil war existed in the Congo and that the Government and other political factions were in armed opposition.

193. The representative of the Democratic Republic of the Congo, on the other hand, stated that the Belgian-American intervention had taken place with the agreement of his Government, for a humanitarian purpose and for a limited period. The drop of paratroopers had taken place in specified zones and for a specific purpose. They had not been called upon to put down a mutiny. Their aim had been to liberate civilians taken as hostages by a group of insurgents. That was the context in which the rescue operation had taken place.

194. The representatives of Belgium, the United Kingdom and the United States contended that the Belgian and the United States Governments, with the co-operation of the United Kingdom and with the express authorization of the Government of the Democratic Republic of the Congo, had undertaken an emergency rescue mission to save the lives of persons of diverse nationalities in danger who were regarded as hostages by rebel authorities. The mission had not been a military operation; it had not been undertaken in order to help the Congolese National Army or to conquer or retain any particular territory. Therefore, there had been no interference in the domestic affairs of a State, since its lawful Government was given the assistance for which it had asked. The mission lasted four days and all the airborne troops had left the area the day their task had ended and had returned immediately to Belgium at a time when the civil war in the Congo was far from ended. Thus no provision of the Charter had been violated. The obligation of the Security Council was to protect and assure the territorial integrity and political independence of the Congo.

195. The views were also expressed that since the short, specific rescue mission was requested and duly authorized by the legal Government of the Democratic Republic of the Congo, it was a legitimate operation and could not be questioned on legal grounds. It was further pointed out that since the Charter demanded respect for the sovereignty and the territorial integrity of all Member States, the Security Council should ensure that all States refrain from intervening in the domestic affairs of the Democratic Republic of the Congo.¹⁹⁴

¹⁸⁹ S C, 19th yr., Suppl. for Oct.—Dec., p. 217, S/6096.

¹⁹⁰ S C, 19th yr., 1170th mtg., para. 62.

¹⁹¹ *Ibid.*, para. 63.

¹⁹² S C, 19th yr., 1186th mtg., para. 9.

¹⁹³ S C, 19th yr., 1189th mtg., para. 34.

¹⁹⁴ For text of relevant statements, see S C, 19th yr., 1170th mtg.: Congo (Brazzaville), paras. 93 and 96; Ghana, paras. 110, 114 and 133; 1171st mtg.: Guinea, para. 7; Mali, paras. 25, 48, 50, 55 and 59; 1172nd mtg.: Algeria, paras. 22 and 28; 1173rd mtg.: Belgium, paras. 9, 44 and 73; Congo (Democratic

m. *Decision of 21 May 1965 in connexion with the situation in the Dominican Republic*

(i) *Précis of proceedings*

196. By a letter¹⁹⁵ dated 1 May 1965, the representative of the USSR requested the President of the Security Council to convene an urgent meeting of the Council "to consider the question of the armed interference by the United States in the internal affairs of the Dominican Republic".

197. At the 1196th meeting, on 3 May 1965, the Security Council decided¹⁹⁶ to include the item in its agenda.

198. At the 1198th meeting, on 4 May 1965, the representative of the USSR submitted a draft resolution¹⁹⁷ which read as follows:

"The Security Council,

"Having examined the question of armed intervention by the United States of America in the domestic affairs of the Dominican Republic,

"1. *Condemns* the armed intervention by the United States of America in the domestic affairs of the Dominican Republic as a gross violation of the Charter of the United Nations;

"2. *Demands* the immediate withdrawal of the armed forces of the United States of America from the territory of the Dominican Republic."

199. At the 1204th meeting, on 11 May 1965, the representative of Uruguay submitted a draft resolution¹⁹⁸ in which the Security Council reaffirmed

"the principles set forth in Chapter I of the Charter of the United Nations and, in particular, in Article 2, paragraphs 4 and 7,".

Decision

At the 1214th meeting, on 21 May 1965, the USSR draft resolution was voted upon, paragraph by paragraph, and was rejected.¹⁹⁹

At the 1216th meeting on 22 May 1965, the draft resolution submitted by Uruguay was not adopted,²⁰⁰ the result of the vote being 5 votes in favour, 1 against, with 5 abstentions.

(ii) *Précis of the relevant constitutional discussion*

200. In his introductory statement the representative of the USSR declared that the United States

had embarked on armed intervention, constituting an act of open aggression against the Dominican Republic undertaken in order to preserve a régime acceptable to it. It had given itself the "right" to undertake punitive military action against national liberation movements. By that invasion of the territory of another country, the United States was violating the Charter and in particular the provisions of Article 2 (4). The Security Council must, therefore, condemn the armed interference by the United States in the domestic affairs of the Dominican Republic as a breach of international peace and as an action incompatible with the obligations assumed by the United States under the United Nations Charter and call upon the Government of the United States to withdraw its forces from the territory of the Dominican Republic immediately. In subsequent statements, that representative reiterated that by its invasion of the territory of another country for the purpose of intervening in its domestic affairs, the United States had violated the provisions of Article 2 (4), and he wondered to what specific Articles of the Charter the United States representative could refer in support of his contention that the United States had the right to send troops into another sovereign State Member of the United Nations.

201. The representative of the United States stated that, in the absence of any governmental authority, Dominican law enforcement and military officials had informed his Embassy that the police and the Government could no longer guarantee the safety of Americans and of any other foreign nationals and that only an immediate landing of United States forces could safeguard their lives. Faced with that emergency, the threat to the lives of its citizens and a request for assistance from those Dominican authorities still struggling to maintain order, the United States, on 28 April 1965, had dispatched the first of the security forces that were sent to the Dominican Republic. It was not the intention of the United States to impose a military junta but it wished to re-establish the constitutional government and to assist in maintaining the stability essential to the expression of the free choice of the Dominican people. In later statements, the representative of the United States, replying to the representative of the USSR, quoted Article 2 (4) and said that the United States had not violated its provisions since it was not employing force against the territorial integrity and political independence of the Dominican Republic. The United States had not taken any forcible action against the Dominican State or Government, nor was it interfering in, or threatening the personality of the Dominican State. Its forces were not taking sides in the Dominican conflict but were functioning within the framework of the Organization of American States actions which had been directed to assist in the evacuation.

202. In the course of the discussion a representative said that there was no doubt about the competence of the Security Council to inquire into the situation before it since it appeared *prima facie* to contravene international law and, in particular,

Republic of), para. 166; 1174th mtg.: United Arab Republic, paras. 3 and 41; United States, paras. 56, 57, 59, 63, 65, 128 and 130; 1175th mtg.: Kenya, paras. 36 and 43; United Kingdom, para. 13; 1176th mtg.: France, para. 55; Nigeria, para. 13; 1177th mtg.: Brazil, para. 89; Burundi, para. 79; 1178th mtg.: USSR, para. 70; United Republic of Tanzania, para. 23; 1183rd mtg.: Bolivia (President), paras. 69 and 71; Algeria, para. 15; 1184th mtg.: Congo (Democratic Republic of), para. 48; 1186th mtg.: Morocco, para. 28.

¹⁹⁵ S C, 20th yr., *Suppl. for April-June*, p. 70, S/3616.

¹⁹⁶ S C, 20th yr., 1196th mtg., preceding para. 1.

¹⁹⁷ S C, 20th yr., 1198th mtg., para. 3.

¹⁹⁸ S C, 20th yr., 1204th mtg., para. 4.

¹⁹⁹ S C, 20th yr., 1214th mtg., paras. 123-125.

²⁰⁰ *Ibid.*, 1216th mtg., para. 69.

Articles 2 (4) and (7) of the Charter. One possible course of action might be for the Council to request that all unilateral action should cease immediately. Another might be for the Council to lend its moral authority to the cease-fire and the re-establishment of normal conditions so as to enable the Dominican people to exercise its right of self-determination without threats of coercion. Another representative stated that, with the outbreak of civil war, it was fully understood that the United States Government should have been concerned for the safety of its nationals and for their evacuation but such an operation should be limited in its objective, its duration and in the scope of the measures applied. However, in view of the landing of a considerable number of United States troops, the Security Council was faced with a genuine armed intervention which appeared to be directed against those who claimed to have constitutional legality. One representative contended that the only right course of action for the United States would have been to bring the matter to the attention of the Security Council. However, a swift armed intervention by the United States in response to an appraisal of the situation from its own authorities in the Dominican Republic, if condoned, would undermine the basic principles of the sovereignty and security of States. That representative stated at a later meeting that his State belonged to a group of nations that stood against the presence of foreign troops in any country without the permission of the duly constituted government of that country.

203. Another representative expressed the view that the United States had invoked humanitarian reasons in order to justify its act of aggression which had violated the principles of the Preamble of the Charter, of Articles 1 and 2 (4). Even an extended application of the right of individual self-defence guaranteed by Article 51 could not have been invoked. In a subsequent statement, the representative of Cuba quoted the following from the monograph of Professor Zourek, former Chairman of the United Nations International Law Commission, entitled "The prohibition of the use of force as national policy in international law":

"... There can be no doubt that the occupation of even the smallest part of the territory of a State without its consent constitutes an attack on its territorial integrity and on its political independence... To condone any contrary practice would be tantamount to legalizing aggression whenever the aggressor declares that his intention is not to violate the territorial integrity or political independence of the State attacked..."²⁰¹

²⁰¹ For text of relevant statements, see S C, 20th yr., 1196th mtg.: Cuba, paras. 160–162, 165 and 167; USSR, paras. 11, 13, 15, 24, 25, 26, 27, 51 and 52; United States paras. 67, 68 and 89; 1198th mtg.: Cuba, paras. 64, 80, 90 and 103; France, paras. 111, 112 and 114; USSR, paras. 120, 121 and 130; United States paras. 155–158; Uruguay, paras. 23 and 32; 1200th mtg.: Cuba, paras. 76–83, Jordan, para. 8; United States paras. 16, 19 and 53; 1203rd mtg.: Cuba, para. 47; 1212th mtg.: USSR, paras. 179; United States paras. 144, 145, 147, 149, 150, 152 and 153; 1214th mtg.: Jordan, para. 117; 1220th mtg.: USSR, para. 34.

2. IN THE GENERAL ASSEMBLY

a. *Decisions of 21 April 1961, 14 December 1961 and 11 December 1962 in connexion with the item entitled "Question of Oman"*

(i) *Précis of proceedings*

204. By a letter²⁰² dated 29 September 1960 addressed to the Secretary-General, the representatives of Iraq, Jordan, Lebanon, Libya, Morocco, Saudi Arabia, Sudan, Tunisia, United Arab Republic and Yemen requested the inclusion in the agenda of the fifteenth session of the General Assembly of the item entitled "Question of Oman". In an explanatory memorandum it was stated that the armed aggression by the United Kingdom had begun in 1955 with the invasion of Oman. Since then the people of Oman had continued their resistance to military aggression. The United Kingdom aggression threatened peace and security in the Middle East and constituted a breach of the Charter of the United Nations.²⁰³

205. At its 909th plenary meeting, on 31 October 1960, the General Assembly decided²⁰⁴ to include the item in its agenda and allocated it to the Special Political Committee for consideration and report.

206. At the 259th meeting of the Political Committee, on 21 April 1961, the representative of Indonesia introduced a draft resolution²⁰⁵ co-sponsored by Afghanistan, Guinea, Iraq, Jordan, Lebanon, Libya, Morocco, Saudi Arabia, Sudan, Tunisia, United Arab Republic, Yemen and Yugoslavia whereby the General Assembly would, in operative paragraph 2, call for the withdrawal of foreign forces from Oman.

207. At its 259th meeting, on 21 April 1961, the Special Political Committee, upon the proposal²⁰⁶ of the representative of India, decided²⁰⁷ that further consideration of the question of Oman should be postponed until the sixteenth session of the General Assembly.

Decision of 21 April 1961

At its 995th plenary meeting, on 21 April 1961, the General Assembly took note²⁰⁸ of the decision of the Special Political Committee.

²⁰² G A (XV), Annexes, a.i. 89, p. 1, A/4521.

²⁰³ The question of "armed aggression" by the United Kingdom against the independence, sovereignty and territorial integrity of the Imamate of Oman was submitted for consideration to the Security Council by a letter dated 13 August 1957 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 item was included in the provisional agenda of the 783rd meeting of the Security Council on 20 August 1957. At the 784th meeting on the same day, the Council rejected the provisional agenda by 5 votes to 4 with 1 abstention, and one member present and not voting (S C, 12th yr., 784th mtg., para. 87).

²⁰⁴ G A (XV), Plen., 909th mtg., para. 47.

²⁰⁵ G A (XV), Annexes, A/4745, para. 5.

²⁰⁶ G A (XV), Spec. Pol. Com., 259th mtg., para. 30.

²⁰⁷ *Ibid.*, para. 36.

²⁰⁸ G A (XV), Plen., 995th mtg., paras. 542 and 543.

208. At its 1014th plenary meeting,²⁰⁹ on 25 September 1961, the General Assembly decided to include the item entitled "Question of Oman" in the agenda of the sixteenth session and, at its 1018th plenary meeting,²¹⁰ on 27 September 1961, allocated it to the Special Political Committee for consideration and report.

209. On 22 November 1961, the representatives of Afghanistan, Guinea, Indonesia, Iraq, Jordan, Lebanon, Libya, Morocco, Saudi Arabia, Sudan, Syria, Tunisia, United Arab Republic, Yemen and Yugoslavia submitted a draft resolution²¹¹ identical with the draft resolution submitted at the 259th meeting of the Special Political Committee on 21 April 1961.

210. At its 306th meeting, on 4 December 1961, the Special Political Committee adopted²¹² the draft resolution by 38 votes to 21, with 29 abstentions.

Decision of 14 December 1961

At the 1078th plenary meeting of the General Assembly, on 14 December 1961, the draft resolution submitted by the Special Political Committee was not adopted,²¹³ having failed to obtain the required two-thirds majority.²¹⁴

211. By a letter²¹⁵ dated 10 July 1962, the representatives of Iraq, Jordan, Lebanon, Libya, Morocco, Saudi Arabia, Sudan, Syria, Tunisia, United Arab Republic and Yemen requested the inclusion of the item entitled "Question of Oman" in the agenda of the seventeenth session of the General Assembly. In an explanatory memorandum it was stated that in view of the continued policy of repression pursued by the United Kingdom Government and its failure to take steps for ending the conflict on the basis of the recognition of the rights of the people of Oman, the renewed discussion of the problem became necessary.

212. At the 1129th plenary meeting,²¹⁶ on 24 September 1962, the General Assembly included the item in its agenda and referred it to the Special Political Committee.

213. On 26 November 1962, Afghanistan, Algeria, Guinea, Indonesia, Iraq, Jordan, Lebanon, Libya, Mali, Mauritania, Morocco, Saudi Arabia, Sudan, Syria, Tunisia, United Arab Republic, Yemen and Yugoslavia submitted to the Special Political Committee a draft resolution²¹⁷ whereby the General Assembly, *inter alia*, convinced that a speedy restoration of independence to Oman was necessary for the peace and stability in the area,

would, in operative paragraph 2, call for the withdrawal of foreign forces from Oman.

214. At its 357th meeting, on 28 November 1962, the Special Political Committee adopted²¹⁸ the draft resolution by 41 votes to 18, with 36 abstentions.

Decision of 11 December 1962

At the 1191st plenary meeting of the General Assembly, on 11 December 1962, the draft resolution²¹⁹ submitted by the Special Political Committee was not adopted²²⁰ all the preambular and operative paragraphs having failed to obtain the required two-thirds majority.²²¹

²¹⁸ G A (XVII), Spec. Pol. Com., 357th mtg., para. 14.

²¹⁹ G A (XVII), Annexes, a.i. 79, p. 3, A/5325, para. 8.

²²⁰ G A (XVII), Plen., 1191st mtg., para. 67.

²²¹ At the 1191st plenary meeting of the General Assembly, the representative of the United Kingdom transmitted to the Secretary-General an invitation from the Sultan of Muscat and Oman to send a representative on a personal basis "to visit the Sultanate during the coming year to obtain first-hand information on the situation there" (G A (XVII), Plen., 1191st mtg., para. 45).

The Secretary-General accepted the invitation. The Special Representative of the Secretary-General submitted his report on his visit to Oman on 21 August 1963 (G A (XVIII), Annexes, a.i. 78, A/5562, p. 2). In the report, it was stated that, far from being a threat or use of force against territorial integrity or political independence, contrary to Article 2 (4), the introduction of the United Kingdom troops was a step taken for the purpose of helping the lawful authorities of the Sultanate to preserve its political independence and territorial integrity (*ibid.*, para. 64).

By a letter dated 9 September 1963 the representatives of Algeria, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Saudi Arabia, Sudan, Syria, Tunisia, United Arab Republic and Yemen requested that the item entitled "the question of Oman" be placed on the agenda of the General Assembly at its eighteenth session. In an explanatory memorandum, it was stated that, in view of the continued policy of repression pursued by the Government of the United Kingdom and its failure to take steps to end its colonial rule, the General Assembly should deal with the question of Oman as an essentially colonial problem (*ibid.*, A/5492 and Add.1, p. 1). The question was considered by the Fourth Committee as agenda item 78 and, on its recommendation, the General Assembly at its 1277th plenary meeting on 11 December 1963 adopted, by 96 votes to 1, with 4 abstentions, resolution 1948 (XVIII) (G A (XVIII), Plen., 1277th mtg., para. 13) by which it decided to establish an *Ad Hoc* Committee composed of five Member States to examine the question of Oman.

The *Ad Hoc* Committee on Oman submitted its report to the Secretary-General on 8 January 1965, (G A (XIX), Annexes, No. 16, p. 1, A/5846). At its 1330th plenary meeting on 18 February 1965, the General Assembly noted that the report of the *Ad Hoc* Committee had been received (G A (XIX) Plen., 1330th mtg., para. 281).

Since the General Assembly was unable to consider the question of Oman, the item was included by the Secretary-General in the provisional agenda of the twentieth session under the heading "Question of Oman: report of the *Ad Hoc* Committee on Oman". It was considered as agenda item 73 by the Fourth Committee. At the 1399th plenary meeting of the General Assembly, on 17 December 1965, the draft resolution submitted by the Fourth Committee (G A (XX), Annexes, a.i. 73, p. 1, A/6168, para. 13) was adopted by 61 votes to 18, with 32 abstentions (G A (XX), Plen., 1399th mtg., para. 140) as resolution 2073 (XX), by which the General Assembly, *inter alia*, called upon the Government of the United Kingdom to effect immediately the implementation in the Territory of the following measures: (a) cessation of all repressive actions against the people of the Territory and (b) withdrawal of British troops.

²⁰⁹ G A (XVI), Plen., 1014th mtg., para. 53.

²¹⁰ *Ibid.*, 1018th mtg., para. 185.

²¹¹ G A (XVI), Annexes, a.i. 23, A/5019, para. 5; on 30 November 1961, Mali added its name to the list of sponsors.

²¹² G A (XVI), Spec. Pol. Com., 306th mtg., para. 6.

²¹³ G A (XVI), Annexes, a.i. 23, A/5010, para. 10.

²¹⁴ G A (XVI), Plen., 1078th mtg., para. 4.

²¹⁵ G A (XVII), Annexes, a.i. 79, p. 1, A/5149.

²¹⁶ G A (XVII), Plen., 1129th mtg., para. 283.

²¹⁷ G A (XVII), Annexes, a.i. 79, A/5325, para. 6.

(ii) *Précis of relevant constitutional discussion*

215. The representatives who were in favour of the draft resolutions before the Special Political Committee contended that the Imamate of Oman, even if it formed part of the Sultanate of Muscat, was an independent State. While the Sultan was the vassal of a colonial power Oman, under the Treaty of Sib of 1920, was a sovereign State. Therefore, the United Kingdom military operations which started in 1955 constituted an armed aggression against the independence and territorial integrity of an independent State in violation of the Charter, especially of Article 2 (4). These representatives also observed that even if the claim of the United Kingdom that the Treaty of Sib granted to the people of Oman only a certain degree of self-government was correct, the United Kingdom has no right to intervene by force of arms in a dispute between the Sultan and autonomous Oman. The rules of international law did not permit foreign intervention in order to assist a Government to repress an internal rebellion. Aggression was never justified, even by the request of a Government or by obligations flowing from a treaty. It was for those reasons that the United Kingdom aggression had to be dealt with by the United Nations under the Charter.

216. It was further contended that the United Kingdom, besides violating the provisions of the Charter, had also violated resolution 1514 (XV) of the General Assembly entitled "Declaration on the Granting of Independence to Colonial Countries and Peoples" which prohibited all armed action or repressive measures undertaken to impose colonial rule. One representative observed that the use of armed forces from abroad on any pretext to interfere with the right of peoples to self-determination could not be condoned.

217. The representative of the United Kingdom maintained that the area of Muscat and Oman constituted a unitary whole. There had never been a State of Oman independent and distinct from the Sultanate of Muscat and Oman. The Agreement of Sib was an internal arrangement between the Sultan's Government and some of his Omani tribal chiefs and it had in no way recognized Oman as an independent State. The Agreement had been unilaterally terminated by the rebellion in Oman in 1954-1955. In helping the Sultan, at his request, to put down the rebellion, the United Kingdom had not violated international law. There was no provision in the Charter to prohibit the granting of such military assistance. As a result, peace had been restored in 1955, all British troops were withdrawn, no British troops were permanently stationed in the country and no British military bases were established in the Sultanate. There was, therefore, no case to be considered by the United Nations.

218. On representative expressed the view that the Charter must not be used to cover attempts at subversion; in assisting the Sultan to resist a rebellion instigated from abroad the United Kingdom had acted in accordance with the Charter.

219. The views were further expressed that the Sultanate of Muscat and Oman constituted an independent State where United Kingdom troops

were stationed at the request of a Government which had been faced with the task of putting down an internal rebellion. Such form of intervention was not prohibited by the Charter but in the hypothetical situation that the Sultan of Muscat had sovereignty over Oman, it was within his rights to request military assistance from another State. Moreover, it was not clear from the Charter which of its Articles would authorize the General Assembly to call for the withdrawal of foreign troops.

220. According to several representatives, in order to take any action in the question of Oman, a minimum knowledge of the facts and of background information was needed in order to form a judgement on the case; for that reason, the establishment of a commission or the appointment of a commissioner to inquire into the situation in Muscat and Oman might be considered.²²²

b. *Decision of 25 August 1961 in connexion with the item entitled "The grave situation in Tunisia obtaining since 19 July 1961"*

(i) *Précis of the proceedings*

221. By a letter²²³ dated 7 August 1961 addressed to the Secretary-General the representatives of Afghanistan, Brazil, Burma, Cambodia, Ceylon, Congo (Leopoldville), Cuba, Cyprus, Ethiopia, Federation of Malaya, Ghana, Guinea, India, Indonesia, Iran, Iraq, Jordan, Laos, Lebanon, Liberia, Libya, Morocco, Nepal, Nigeria, Pakistan, Philippines, Saudi Arabia, Somalia, Sudan, Thailand, Togo, Tunisia, Turkey, United Arab Republic, Upper Volta, Yemen and Yugoslavia, requested the convening of a special session of the General Assembly

²²² For text of relevant statements, see G A (XV/2), Spec. Pol. Com., 255th mtg.: Saudi Arabia, paras. 6 and 10; 256th mtg.: United Arab Republic, para. 27; 257th mtg.: United Kingdom, paras. 10 and 12; 258th mtg.: Lebanon, para. 19; Yemen, paras. 9 and 10; 259th mtg.: Jordan, para. 5, Yugoslavia, para. 16; G A (XVI), Spec. Pol. Com., 299th mtg.: Saudi Arabia, para. 35; 300th mtg.: Libya, para. 21; 301st mtg.: Jordan, paras. 32-34; Saudi Arabia, para. 38; Syria, para. 3; United Kingdom, paras. 8, 15, 17, 19 and 24; 302nd mtg.: Byelorussian SSR, paras. 6 and 7; Ghana, para. 13; Lebanon, para. 4; Poland, para. 10; 303rd mtg.: Afghanistan, para. 36; Bulgaria, para. 30; Czechoslovakia, paras. 1 and 6; Sudan, para. 39; Ukrainian SSR, paras. 34 and 35; United Arab Republic, paras. 11, 14 and 17; 304th mtg.: Albania, para. 1; Cambodia, para. 6; Morocco, para. 2; Romania, para. 4; 305th mtg.: France, paras. 1 and 3; India, para. 8; Mexico, para. 20; 306th mtg.: Ecuador, paras. 4 and 5; G A (XVII), Spec. Pol. Com., 351st mtg.: Saudi Arabia, paras. 15, 19, 20 and 24; 352nd mtg.: Jordan, para. 9; 353rd mtg.: Guatemala, para. 51; Iraq, paras. 37, 39, 40 and 43; Libya, para. 12; Saudi Arabia, para. 50; United Kingdom, paras. 28, 30, 31 and 34; USSR, para. 46; 354th mtg.: Byelorussian SSR, para. 10; Czechoslovakia, para. 18; 355th mtg.: Afghanistan; para. 9; Albania, para. 29; Chile, paras. 22 and 24; Hungary, para. 27; Mongolia, paras. 12 and 15; Peru, paras. 31 and 32; Romania, para. 4; 356th mtg.: Algeria, para. 20; Bulgaria, paras. 9 and 10; Cuba, para. 14; Guinea, para. 8; United Arab Republic, para. 2; United Kingdom, para. 22; 357th mtg.: Ecuador, para. 3. G A (XX), 4th Com., 1573rd mtg.: Iraq, para. 41; 1575th mtg.: United Arab Republic, para. 61.

²²³ G A (S-III), Annexes, a.i. 7, p. 1, A/4831. By a letter dated 7 August 1961, the representatives of Albania, Bulgaria, Byelorussian SSR, Czechoslovakia, Hungary, Poland, Romania, Ukrainian SSR, USSR associated themselves with the request made in the letter of the same day signed by thirty-eight representatives.

to consider the grave situation in Tunisia obtaining since 19 July 1961, in view of the failure of the Security Council to take appropriate action.²²⁴

222. By a note²²⁵ dated 17 August 1961, the Secretary-General, on the receipt of the concurrence of a majority of the Member States, summoned the third special session of the General Assembly to meet on 21 August 1961.

223. At its 996th plenary meeting, on 21 August 1961, the General Assembly adopted²²⁶ its agenda.

Decision

At the 1006th plenary meeting, on 25 August 1961, the General Assembly adopted,²²⁷ by 66 votes to none, with 30 abstentions, as its resolution 1622 (S-III) a draft resolution²²⁸ submitted by Afghanistan, Burma, Cambodia, Ceylon, Congo (Leopoldville), Cyprus, Ethiopia, Federation of Malaya, Ghana, Guinea, India, Indonesia, Iran, Iraq, Jordan, Lebanon, Liberia, Libya, Mali, Morocco, Nepal, Nigeria, Pakistan, Saudi Arabia, Somalia, Sudan, Thailand, Togo, United Arab Republic, Upper Volta, Yemen and Yugoslavia, which read as follows:

“*The General Assembly,*

“ . . .

“*Convinced* that the presence of French armed forces in Tunisian territory against the express will of the Tunisian Government and people constitutes a violation of Tunisia’s sovereignty, is a permanent source of international friction and endangers international peace and security,

“ . . .

“2. *Recognizes* the sovereign right of Tunisia to call for the withdrawal of all French armed forces present on its territory without its consent;”.

(ii) *Précis of relevant constitutional discussion*

224. In his introductory statement, the representative of Tunisia said that since 20 March 1956, the date on which Tunisia had recovered its full sovereignty, the Tunisian Government had requested the withdrawal of all French troops from its territory. Their presence in Tunisia, which did not derive from any freely negotiated agreement, was incompatible with Tunisia’s new international status which had been recognized by France as that of an independent and sovereign State. On 19 July 1961, France had begun military operations against Tunisia which left no doubt as to the premeditated character of French aggression. The Security Council on 22 July had adopted a resolution²²⁹ calling for an immediate cease-fire and a return of all armed forces to their original positions. The refusal of the French Government to comply with that resolution and the continuing flights by French military air-

craft over the entire territory of Tunisia demonstrated French aggressive intentions. An aggression took place whenever there was an armed attack designed to impair the independence and territorial integrity of a State; the French thesis, on the contrary, was that the presence of its troops in Tunisia had been justified by the strategic interests of France. The United Nations should state that that thesis represented a danger for the basic principles of the United Nations. The problem before the General Assembly concerned the right of Tunisia to call for the early withdrawal of French troops from its territory since their presence had no legal basis and had led to a conflict which had degenerated into armed threatening international peace and security.

225. In the course of the discussion it was maintained that since Tunisia was a sovereign State it had an inherent right to request the complete removal of the French troops from its territory. When France refused to accede to Tunisia’s legitimate request and used force to maintain its position, it violated Article 2 (4) of the Charter. One representative stated that his Government recognized the right of a sovereign State to permit the presence of foreign troops on its territory; however, it equally recognized and insisted on the sovereign right of all States not to tolerate the presence of foreign forces or foreign military bases on their soil. Such a right was an essential attribute of sovereignty and a corollary of the respect for each other’s territorial integrity to which Member States of the United Nations were pledged under the Charter. It was further contended that France had resorted to the use of force in order to compel Tunisia to accept the continued violation of its territorial integrity and its sovereignty. Therefore, the General Assembly should condemn the French acts of aggression against Tunisia and order the withdrawal of French troops from Tunisia.²³⁰

c. *Decision of 18 December 1965 in connexion with the item entitled “Question of Cyprus”*

(i) *Précis of proceedings*

226. By a letter²³¹ dated 24 September 1964 addressed to the Secretary-General, the representative of Cyprus requested the inclusion in the agenda of the General Assembly at its nineteenth session of the item entitled “Question of Cyprus”. In an explanatory memorandum subsequently submitted by a letter²³² dated 4 December 1964, it was stated that in the last eleven months, Turkey had repeatedly threatened armed intervention in Cyprus. Cyprus

²³⁰ For text of relevant statements, see G A (S-III), Plen., 996th mtg.: Liberia, paras. 137, 138 and 140; Tunisia, paras. 31, 66, 71, 74, 77, 81, 82, 91, 96, 103 and 121; 997th mtg.: Ghana, paras. 87, 93 and 101; USSR, para. 52, 998th mtg.: Libya, paras. 20 and 23; 999th mtg.: Iraq, paras. 18 and 25; 1000th mtg.: Lebanon, para. 133; Somalia, paras. 113, 114 and 115; Ukrainian SSR, para. 44; 1001st mtg.: Albania, paras. 41 and 49; 1003rd mtg.: Byelorussian SSR, para. 11; Cambodia, para. 84; 1004th mtg.: Cameroun, para. 7; 1005th mtg.: Bulgaria, para. 165; Hungary, para. 124; 1006th mtg.: Tunisia, paras. 135 and 136.

²³¹ G A (XIX), Annexes, No. 2, p. 9, A/5752.

²³² *Ibid.*, A/5752/Add.1, paras. 13–16.

²²⁴ See paras. 84–95 above.

²²⁵ G A (S-III), Annexes, a.i. 7, p. 2, A/4847.

²²⁶ G A (S-III), Plen., 996th mtg., para. 22.

²²⁷ G A (S-III), Plen., 1006th mtg., para. 150.

²²⁸ G A (S-III), Annexes, a.i. 7, p. 2, (A/L.351).

²²⁹ See para. 86 above.

expected the General Assembly to call upon all States, in conformity with their obligations under the Charter, and in particular with Article 2 (1) and (4), to respect the sovereignty, unity, independence and territorial integrity of Cyprus and to refrain from any threat or use of force or intervention directed against Cyprus.

227. By a letter²³³ dated 5 October 1964, the representative of Turkey requested the inclusion in the agenda of the General Assembly at its nineteenth session of the supplementary item entitled "The grave situation created by the policies of the Greek Cypriots and of Greece in the question of Cyprus". By a letter²³⁴ dated 25 November 1964, the representative of Turkey submitted an explanatory memorandum in which he stated that, in spite of Turkey's desire to maintain Cyprus as an independent State, the persistence by Greece of a policy of annexation would lead to an outbreak of war and would consequently endanger the peace and stability of the area.

228. By a letter²³⁵ dated 13 July 1965, the representative of Cyprus informed the Secretary-General that if the General Assembly were not able to take up the item entitled "Question of Cyprus" during the remainder of its nineteenth session, his Government would propose its inclusion in the provisional agenda of the twentieth session.

229. By a letter dated²³⁶ 21 July 1965 addressed to the Secretary-General, the representative of Turkey requested that, in the event of the General Assembly not being able to consider the item proposed by Turkey in its letter of 5 October 1964 during its resumed nineteenth session, the item be included in the agenda of the twentieth session under the title "Question of Cyprus": the grave situation created in Cyprus by the policies pursued against the Turkish community". By a letter²³⁷ dated 15 September 1965, the representative of Turkey submitted to the Secretary-General an explanatory memorandum in which it was stated that the attempts to settle the problem of Cyprus by force or through *faits accomplis* constituted a serious threat to the peace and security in the region.

230. By a letter²³⁸ dated 22 September 1965, the representative of Cyprus submitted an explanatory memorandum which incorporated the explanatory memorandum submitted on 4 December 1964 and a supplement to it.

231. At its 1336th plenary meeting, on 24 September 1965, the General Assembly decided²³⁹ to include the two items in the agenda at its twentieth session as a single item entitled "Question of Cyprus: (a) Letter dated 13 July 1965 from the representative of Cyprus (A/5934 and Add.1): (b) Letter dated 21 July 1965 from the representative of Turkey (A/5938 and Add.1)" and referred the

item to the First Committee for consideration and report.

232. On 2 December 1965, the representatives of Burundi, Central African Republic, Chad, the Congo (Brazzaville), the Congo (Democratic Republic of), Dahomey, Gabon, Gambia, Ghana, Guinea, India, Jamaica, Kenya, Liberia, Malawi, Mali, Nepal, Nigeria, Panama, Rwanda, Sierra Leone, Togo, Uganda, United Arab Republic, United Republic of Tanzania, Uruguay, Yemen, Yugoslavia and Zambia submitted a draft resolution²⁴⁰ subsequently co-sponsored by Trinidad and Tobago and Cameroon. In the draft resolution it was provided as follows:

"The General Assembly,

" . . .

"2. Calls upon all States, in conformity with their obligations under the Charter, and in particular Article 2, paragraphs 1 and 4, to respect the sovereignty, unity, independence and territorial integrity of the Republic of Cyprus and to refrain from any intervention directed against it;"

233. At the 1416th meeting of the First Committee, on 16 December 1965, the draft resolution was adopted.²⁴¹

Decision

At its 1402nd plenary meeting, on 18 December 1965, the General Assembly adopted²⁴² the draft resolution²⁴³ submitted by the First Committee by 47 votes to 5, with 54 abstentions as its resolution 2077 (XX).

(ii) *Précis of the relevant constitutional discussion*

234. In his introductory statement, the representative of Cyprus said that since the adoption by the Security Council of resolution 186 (1964) of 4 March 1964 and in spite of its specific reference to Article 2 (4) of the Charter, Turkish threats and acts of aggression and intervention had continued, culminating in the bombings of Cyprus in August 1964. He later said that the Committee's work would be facilitated if the Turkish representative would state whether or not the Government of Turkey considered that intervention by force—or otherwise—in the internal affairs of another State and the use of force by one country against another were compatible with the sovereignty of States and with the principles of the Charter. He asked further whether there would be any objection to the inclusion in the forthcoming resolution of the General Assembly of a provision corresponding to the third preambular paragraph of Security Council resolution 186 (1964), citing the terms of Article 2 (4) of the Charter.

235. The representative of Turkey maintained that there was an attempt on the Greek Cypriot side to impose a solution of the problem of Cyprus by resorting to the use of force in violation of the

²³³ *Ibid.*, p. 11, A/5753.

³⁴ *Ibid.*, A/5753/Add.1, para. 10.

²²⁵ G A (XX), Annexes, a.i. 93, p. 1, A/5934.

²³⁶ G A (XX), Annexes, a.i. 93, p. 3, A/5938.

²³⁷ *Ibid.*, A/5938/Add.1, para. 10.

²³⁸ *Ibid.*, pp. 1–3, A/5934/Add.1.

²³⁹ G A (XX), 1336th Plen. mtg., paras. 87 and 90.

²⁴⁰ G A (XX), Annexes, a.i. 93, A/6166, para. 6.

²⁴¹ G A (XX), 1st Com., 1416th mtg., para. 82.

²⁴² G A (XX), Plen., 1402nd mtg., para. 66.

²⁴³ G A (XX), Annexes, a.i. 93, A/6166, para. 20.

Charter. In a subsequent statement, referring to the fact that representative of Cyprus had said that Cyprus was a small country, he pointed out that the provisions of Article 2 (2) and (4) applied to all countries, great and small.

236. In the course of the discussion, it was stated that partition of Cyprus by force or by the threat of force would be a solution contrary to the Charter. To solve the problem of Cyprus, the General Assembly must not only reaffirm the independence of that State, its sovereignty, unity and territorial integrity, but also recommend that all States refrain from the use of force in regard to that country. When the independence and sovereignty of Cyprus were threatened because of the eagerness of certain great Powers to intervene, the Government of Cyprus should be allowed to settle its internal affairs without any foreign pressure; its sovereignty and territorial integrity must be respected and its people must be permitted to choose their political future without outside intervention. It was further observed that Cyprus was a Member of the United Nations and its relations with other Member States must therefore be interpreted in the light of the provisions of the Charter and, in particular, of Article 2 (1) and (4). After the draft resolution had been adopted, one representative stated that he could not support its operative paragraph 2, since it did not reflect accurately the terms of Article 2 (4) to which it referred. He had proposed using exactly the same wording as that in Article 2 (4) of the Charter but his proposal had been refused by the sponsors of the draft resolution.²⁴⁴

d. *Decision of 21 December 1965 in connexion with the item entitled "The inadmissibility of intervention in the domestic affairs of States and the protection of their independence and sovereignty"*

(i) *Précis of proceedings*

237. By a letter²⁴⁵ dated 24 September 1965 to the President of the General Assembly, the Minister for Foreign Affairs of the USSR requested the inclusion of an item entitled "The inadmissibility of intervention on the domestic affairs of States and the protection of their independence and sovereignty" in the agenda of the twentieth session of the General Assembly. In the explanatory memorandum it was stated that the United Nations should make fresh efforts to secure the strict application of the principle of the inadmissibility of any form of intervention by States in the domestic affairs of other States affirmed in Article 2 (4) of the Charter. The adoption of a declaration on that subject would represent a further definition and development of the principles of the United Nations Charter and in particular of the principle that "all Members shall refrain in their international relations from the threat or use

of force against the territorial integrity of political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations".

238. At its 1340th plenary meeting, on 28 September 1965, the General Assembly decided²⁴⁶ to include the item in its agenda and referred it to the First Committee for consideration and report.

239. In a draft declaration²⁴⁷ submitted²⁴⁸ by the USSR at the 1395th meeting of the First Committee on 3 December 1965, it was provided as follows:

"The General Assembly,

"...

"Recalls that the Charter of the United Nations imposes upon all Members of the United Nations an obligation to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any manner inconsistent with the purposes of the United Nations;

"...

"In the light of the above, the General Assembly regards it as its duty:

"...

"2. To urge all States Members of the United Nations to fulfil strictly the obligations which they have assumed under the Charter of the United Nations;

"3. To demand emphatically that acts constituting armed or any other type of intervention in the domestic affairs of States, as well as any acts directed against the just struggle of peoples for national independence and freedom, should be halted forthwith and should not be permitted in the future;"

240. On the same date, amendments²⁴⁹ to the USSR draft resolution were submitted by the United States. By amendment 8 a new operative paragraph 2 would be added as follows:

"Condemns any intervention, direct or indirect, by one State in the internal affairs of another State, whether such intervention involves armed attacks and invasion, or the initiation, promotion or support of movements which seek the forcible overthrow of the Government of an independent State, including the training and infiltration of personnel, the promotion of subversion or terrorism, and the clandestine supply of arms and other materiel;"

241. On 6 December 1965, amendments²⁵⁰ to the USSR draft resolution were submitted by the United Kingdom proposing, among other things, to replace the operative paragraph 3 of the USSR draft resolution by the following:

²⁴⁴ For text of relevant statements, see G A (XX), 1st Com. 1407th mtg.: Cyprus, paras. 9 and 10; 1408th mtg.: Cyprus, para. 39; Turkey, paras. 8 and 13; 1409th mtg.: Cyprus, para. 53; Turkey, para. 40; 1410th mtg.: Ecuador, para. 16; 1412th mtg.: Cyprus, paras. 73 and 76; Ivory Coast, para. 43; 1413th mtg.: Malawi, para. 4; Uganda, para. 1; 1414th mtg.: Mali, para. 24; 1416th mtg.: Iraq, para. 64;

²⁴⁵ G A (XX), Annexes, a.i. 107, p. 1, A/5977.

²⁴⁶ G A (XX), Plen., 1340th mtg., para. 3.

²⁴⁷ G A (XX), Annexes, a.i. 107, p. 2, A/C.1/L. 343/Rev.1.

²⁴⁸ G A (XX), 1st Com., 1395th mtg., para. 20.

²⁴⁹ G A (XX), Annexes a.i. 107, p. 5, A/C. 1/L.350.

²⁵⁰ G A (XX), Annexes, a.i. 107, p. 6, A/C. 1/L.351.

"To reaffirm the obligation of all Member States under Article 2 (4) of the Charter to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the purposes of the United Nations;"

242. At the 1395th meeting, on 3 December 1965, the representative of Colombia submitted²⁵¹ a draft resolution, hereinafter referred to as the eighteen-Power draft resolution, sponsored by Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela. On 6 December 1965, the sponsors, joined by Guatemala, submitted a revised draft resolution.²⁵²

243. On 9 December a second revised text²⁵³ was submitted which read as follows:

"The General Assembly,

"...

"Considering that violation of the principle of non-intervention poses a threat to the independence and the free and normal political, economic, social and cultural development of countries, particularly those which have freed themselves from colonialism, and can pose a serious threat to the maintenance of peace,

"...

"Mindful that in their policies all States should fully respect the independence, complete sovereignty and territorial integrity of States,

"...

"1. Reaffirms, that it is an obligation of every State or group of States to refrain from any act of intervention, whether direct or indirect, in the internal or external affairs of other States and that the fulfilment of that obligation is an essential requirement for the effective maintenance of international peace and security;

"...

"4. Condemns all forms of intervention, whether direct or indirect, intended to impair the sovereignty, the autonomy, the security or the political, economic and cultural integrity of States;

"5. Points out especially that no State may use or encourage the use of measures of an economic or political character to coerce another State or to obtain from it advantages of any kind and that, in particular, States shall not organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities against another State or interfere in civil strife in another State;

"6. Considers that measures which competent international organs take for the maintenance of peace or the protection of human rights in accordance with the Charter of the United Nations do not constitute intervention;"

²⁵¹ G A (XX), 1st Com., 1395th mtg., para. 36.

²⁵² G A (XX), Annexes, a.i. 107, p. 3, A/C.1/L.349/Rev.1 and Add.1.

²⁵³ G A (XX), Annexes, a.i. 107, p. 4, A/C.1/L.349/Rev.2.

244. On 6 December 1965, a draft resolution was submitted by the United Arab Republic which in its final revised form²⁵⁴ was sponsored by Algeria, Burma, Burundi, Cameroon, Cyprus, India, Iraq, Jordan, Kenya, Kuwait, Lebanon, Libya, Malawi, Mali, Mauritania, Nigeria, Rwanda, Saudi Arabia, Sudan, Syria, Togo, Uganda, United Arab Republic, United Republic of Tanzania, Yemen, Yugoslavia and Zambia, and provide as follows:

"The General Assembly,

"...

"Considering that one of the basic principles and purposes of the United Nations Charter is to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples and independence, complete sovereignty and territorial integrity of States and nations,

"...

"Considering that armed intervention is synonymous with aggression, and as such is considered in contradiction with the basic principles on which peaceful international co-operation between States should be built,

"...

"In the light of the above, the Member States of the United Nations solemnly declare:

"1. That no State or group of States is entitled to interfere, directly or indirectly, in any form, in the internal or external affairs of any State;

"...

"6. That the use of force to dislocate peoples and the denial to them of their national identity are direct violations of their inherent rights and are inconsistent with the principle of non-intervention;"

245. At the 1420th meeting of the First Committee, on 18 December 1965, the representatives of Peru and Mali submitted²⁵⁵ a draft resolution sponsored by Algeria, Argentina, Bolivia, Brazil, Burma, Burundi, Cameroon, Chile, Colombia, Congo, (Democratic Republic of,) Costa Rica, Dahomey, Ecuador, El Salvador, Ethiopia, Guatemala, Guinea, Haiti, Honduras, India, Iraq, Ivory Coast, Jordan, Kenya, Kuwait, Lebanon, Libya, Mali, Mauritania, Mexico, Nicaragua, Nigeria, Panama, Paraguay, Peru, Rwanda, Saudi Arabia, Sierra Leone, Syria, Tunisia, United Arab Republic, United Republic of Tanzania, Uruguay, Venezuela, Yemen and Yugoslavia. Subsequently, Afghanistan, the Congo (Brazzaville), Cyprus, Gabon, Iran, Malawi, Niger, Togo, Trinidad and Tobago, Uganda and Zambia joined in co-sponsoring the fifty-seven-Power draft resolution²⁵⁶ which read as follows:

"The General Assembly,

"Deeply concerned at the gravity of the international situation and the increasing threat to universal peace due to armed intervention and

²⁵⁴ G A (XX), Annexes, a.i. 107, p. 7, A/C.1/L.353/Rev.4 and Add.1.

²⁵⁵ G A (XX), 1st Com., paras. 40 and 42.

²⁵⁶ G A (XX), Annexes, a.i. 107, p. 9, A/6220, para. 13.

other direct or indirect forms of interference threatening the sovereign personality and the political independence of States,

“Considering that the United Nations, in accordance with their aim to eliminate war, threats to the peace and acts of aggression, created an Organization, based on the sovereign equality of States, whose friendly relations would be based on respect for the principle of equal rights and self-determination of peoples and on the obligation of its Members to refrain from the threat or use of force against the territorial integrity or political independence of any State,

“... ”

“Considering that armed intervention is synonymous with aggression and, as such, is contrary to the basic principles on which peaceful international co-operation between States should be built,

“... ”

“In the light of the foregoing considerations, solemnly declares:

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

“2. No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the régime of another State, or interfere in civil strife in another State;

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

Decisions

At the 1422nd meeting of the First Committee, on 20 December 1965, the fifty-seven Power draft resolution was adopted.²⁵⁷ The Chairman stated²⁵⁸ that the sponsors of the other draft resolutions before the Committee would not press for a vote on them.

At its 1408th plenary meeting, on 21 December 1965, the General Assembly adopted²⁵⁹ by 109 votes to none with 1 abstention, as its resolution 2131 (XX), the fifty-seven Power draft resolution submitted²⁶⁰ by the First Committee.

(ii) *Précis of relevant constitutional discussion*

246. In introducing his draft resolution, the representative of the USSR stated that the founders

of the United Nations had included in the Charter an obligation on the Member States to refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes and Principles of the United Nations. That obligation was one of the fundamental principles of the Charter. The adoption of the USSR draft resolution would help to give more concrete form to the principles of the Charter, particularly that under which Members were enjoined to refrain from the threat or use of force. In a subsequent intervention, the representative of the USSR pointed out that the current state of affairs in the world was mainly caused by armed intervention in the affairs of States, which was threatening the sovereignty and independence of States and peoples.

247. In the course of the discussion it was maintained that the Charter included among the Purposes and Principles of the Organization the prohibition of the threat or use of force against the territorial integrity and political independence of States. The Dumbarton Oaks proposal had contained no reference to that principle which, according to the sponsoring Governments, was implicit in the fact that the Organization was based on the principle of the sovereign equality of all its Members. At the San Francisco Conference, in Article 2 (4) of the Charter, certain States had succeeded in obtaining the condemnation of the threat or use of force and, consequently, of any armed aggression against the territorial integrity and political independence of States. Thus, an intervention accompanied by the use of force, constituted a violation of the Charter by contravening the provisions of Article 2 (4). The actions, to which the provisions of Article 2 (4) referred, were acts of intervention, designed to violate the basic sovereignty of a State by the threat or use of force. Article 2 (4) stated clearly one of the principles which States Members of the United Nations had to observe: when an army was sent across a frontier to attack another State, such action constituted a violation of the Charter. However, unlawful intervention took also the form of encouragement of guerilla warfare, of secret training of armed bands and the infiltration of agents whose goal was to impose the will of another State and another ideology or of employment of troops with a view to overthrowing another Government. There could be no doubt that those actions contravened the Charter. No war was lawful; but, in addition no State had the right to intervene in any way either for or against other Governments or movements — that was the essence of non-intervention. It was also pointed out that attempts to define “aggression” had so far failed. Responsibility for determining the existence of any threat to the peace, breach of the peace and acts of aggression therefore lay with the Security Council under Chapter VII of the Charter. In practice, however, it was difficult for the Security Council to arrive at agreed conclusions. Similar difficulties arose in attempting to define “intervention”, which was a concept closely related to aggression. One representative expressed the view that Article 2 (4) constituted a peremptory norm of international law; any treaty providing for military or other forcible intervention by

²⁵⁷ G A (XX), 1st Com., 1422nd mtg., para. 50.

²⁵⁸ *Ibid.*, para. 51.

²⁵⁹ G A (XX), Plen., 1408th mtg., para. 90.

²⁶⁰ G A (XX), Annexes, a.i. 107, p. 9, A/6220, para. 16.

one State against another could not therefore be valid.

248. It was also stated that it was essential for the United Nations to reaffirm and reinforce the provisions of the Charter relating to non-intervention, independence, the sovereignty and territorial integrity of States. One representative would be prepared to support the declaration that it was the duty of every State to refrain from the use of any forcible measures incompatible with the United Nations Charter to coerce the sovereign will of another State provided that it expressly prohibited any activities permitting, assisting, promoting or financing the organization or training of armed forces, of any type, anywhere, having as their purpose incursions into other States. The view was also expressed that the United Nations on the light of obligations assumed by Member State, under Article 2 (4) had a special responsibility to ensure that that principle was observed. The declaration should not be confined merely to stating the inadmissibility of intervention in the domestic affairs of States, as such, but should also contain a certain affirmation of the closely related principles of non-aggression, coexistence and international co-operation. It should, however, apply only to relations between States and should have no relevance to disputed territories. In those areas, cases involving support for the demands of their inhabitants should be examined objectively on their merits in accordance with international law.

249. It was contended further that the most obvious form of intervention was the use of force to intimidate or coerce another country to follow a particular course of action. There was no justification for unilateral military intervention by States in other States, even to safeguard the former's vital interests, since specific procedures for the peaceful settlement of such questions were laid down in the Charter. The threat or use of force was even more deplorable when it was applied by one State to compel the people of another to reject or maintain any belief or ideology, or to thwart the latter's free exercise of its right to self-determination; and the forcible establishment or maintenance by certain States of puppet régimes without any popular support in other States was also reprehensible. It was also stated that military intervention, which included wars of conquest and direct armed intervention, was easiest to define and constituted a violation of international law and of the Charter. A threat to peace arose whenever one State intervened in the internal affairs of States, particularly when armed force was used. There was no justification or excuse for such actions whatever the pretexts used by the aggressors. The concept of intervention implied that a State had the right to change the course of events in another State to its own advantage or to maintain a *status quo* in another State in its own interests. That attitude led to the threat and use of force. Moreover, any attempt to force countries to surrender to the desires of other States was a negation of the provisions of the Charter which were founded on the principle of sovereign equality. Coercive measure, infringing that principle were tantamount to intervention as were subversive or terrorist activities against other States.

250. It was also maintained that guerilla wars, designed to bring the country attacked under the domination of a party obeying orders from a foreign Government, had all the characteristics of indirect aggression. By the nature of their objectives present: forms of indirect and clandestine intervention constituted actual aggression which could easily become a threat to the peace. Article 1 of the Charter stated that one of the purposes of the United Nations was to take effective collective measures for the prevention of threats to the peace. The General Assembly should, therefore, adopt a declaration strongly condemning such actions as guerilla wars. In the eighteen-Power draft resolution²⁶¹ the General Assembly would reaffirm the inadmissibility of direct or indirect intervention by States in the domestic and foreign affairs of other States in terms which included specifically not only armed intervention but also indirect aggressive intervention intended to impair the sovereignty, security or the political, economic and cultural integrity of States; the draft resolution also condemned the strategy of encouraging armed bands, organized by foreign Governments to undertake subversive activities since they were a threat to world peace. Covert and indirect intervention, not open intervention, represented the greatest threat to peace. The discussion would serve a useful purpose if it would help the General Assembly to define the concepts of direct and indirect aggression and make it clear that indirect aggression by any techniques or for any purposes whatever was incompatible with the normal conduct of foreign relations. The *de facto* political character of situations in which a State or a group of States sought by indirect aggression to impose its political system on other independent States made it a matter of urgency to proceed to a revision of the concept of aggression and intervention in the light of the changing circumstances in which intervention had been perpetrated since the end of the Second World War. The concept of aggression must not only encompass conventional manifestations of armed force but also other forms of aggression, such as guerilla and psychological warfare. One representative pointed out that reference to indirect forms of intervention raised the question of the legitimacy of direct intervention undertaken in reply to indirect intervention. Was it permissible to retaliate with armed intervention against actions such as the training abroad of subversive agents?

251. It was contended also that the policy of armed intervention was directed mainly against national liberation movements, although the provisions of Article 2 (4) prohibited the use of force for the repression of those movements. The United Nations in any declaration that it adopted should pledge its support for national liberation movements. Assistance offered to suppressed peoples struggling against colonialism constituted no form of intervention either direct or indirect. Wars of liberation deserved the support of the international community, for they enabled peoples to win their freedom. For that reason States should refrain from the use of force against peoples and movements striving to

²⁶¹ See para. 243 above.

exercise their right to self-determination and independence and should recognize the right of peoples under colonialism and foreign domination. One representative stated that his Government accepted the theory of liberation movements in so far as they were directed at colonial and racist régimes and thus supported any measures, in the United Nations, including the use of force, designed to defeat *apartheid* and racial and colonial policies.

252. On the other hand, it was maintained that wars designed to overthrow the Government of newly independent countries were not wars of national liberation but acts of intervention. There was a subjective element in such concepts as "just wars", "colonial wars" and "wars of national liberation" which rendered a common understanding very difficult. Every State provided machinery for peaceful changes of government by opposition parties. But that did not give other States the right to call such opposition "liberation fronts" and give them assistance in their efforts to overthrow the established Governments. Since the essence of the concept of intervention was the usurpation of sovereignty, aid supplied to a *de jure* government was not intervention, whereas aid supplied, was, because it infringed the sovereignty of the established Government. One representative stated that there was an inconsistency between the draft resolution submitted by the USSR²⁶² and the explanatory memorandum attached to the request for the inclusion of the item in the agenda.²⁶³ In paragraph 4 of the memorandum all forms of intervention were condemned, whereas the draft resolution seemed to refer only to armed intervention, thus creating the impression that there were no other forms of intervention constituting a threat to international peace. Reference in operative paragraph 3 of the draft resolution to "the just struggle of peoples for national independence and freedom" should be made more specific, for in some quarters those words had been interpreted in a sense favourable to rebels who sought to overthrow legitimate Governments.²⁶⁴

²⁶² See para. 239 above.

²⁶³ See para. 237 above.

²⁶⁴ For text of relevant statements, see G A (XX), 1st Com., 1395th mtg.: Colombia, paras. 28, 30 and 34; USSR, paras. 3 and 21; 1396th mtg.: Afghanistan, para. 14; Nepal, para. 13; United States, paras. 7 and 8; 1397th mtg., Mexico, para. 24; 1398th mtg.: China, para. 47; Czechoslovakia, paras. 19 and 20; Thailand, paras. 29–31; 1399th mtg.: Australia, paras. 10, 11 and 21; Rwanda, paras. 38, 39 and 42; Uganda, paras. 34 and 37; Ukrainian SSR, para. 31; 1400th mtg.: Brazil, paras. 12, 13, 15 and 19; Congo (Democratic Republic of), para. 39; Ecuador, para. 31; Guinea, para. 5; Honduras, para. 28; 1401st mtg.: Algeria, paras. 16 and 17; Byelorussian SSR, para. 6; Liberia, paras. 39 and 41; Sweden, paras. 25 and 26; United Republic of Tanzania, paras. 2 and 5; Uruguay, para. 32; Yugoslavia, paras. 35 and 36; 1402nd mtg.: Chile, para. 44; Italy, para. 51; Ivory Coast, para. 36; Tunisia, para. 2; 1403rd mtg.: India, paras. 31 and 35; Kenya, para. 20; Malaysia, paras. 10 and 11; United Arab Republic, paras. 3 and 6; 1404th mtg.: Cyprus, paras. 28 and 31; Hungary, paras. 43 and 46; Iran, para. 36; Iraq, paras. 52 and 53; USSR, para. 12; 1405th mtg.: Albania, para. 51; France, paras. 39 and 41; Jordan, para. 5; Mongolia para. 26; Nigeria, para. 47; 1406th mtg.: United States, paras. 15–17; G A (XX), Plen., 1408th mtg.: Cyprus, para. 76; Pakistan, paras. 65 and 66.

****B. The question of the scope and limits of the phrase "in any other manner inconsistent with the Purposes of the United Nations"²⁶⁵**

C. The question of the bearing of the injunction in Article 2 (4) on the right of self-defence

253. During the period under review there was no extensive constitutional discussion relating to the above-mentioned, question either in the Security Council or in the General Assembly, although statements which may be considered as having a bearing on it were made on both organs in connexion with various items²⁶⁶ as follow:

1. *In the Security Council*

a. Complaint by the USSR (RB-47 incident): it was argued that as a matter of self-defence, States had the right to guard against surprise attack;

b. Complaint by Tunisia: it was maintained that the use of force by Tunisian armed forces against French forces stationed in Tunisian territory against the will of the Government of Tunisia constituted the exercise of the right of self-defence under Article 51;

c. Complaint by Yemen: the argument that force was used "as a defensive response" was answered by statements that the use of force in the circumstances was not covered by Article 51.

2. *In the General Assembly*

a. The question of Oman: it was contended that neither individual nor collective self-defence could be invoked by a third State in Oman;

b. The grave situation in Tunisia obtaining since 19 July 1961: statements were made similar to those advanced in the Security Council in connexion with the complaint by Tunisia;

c. The inadmissibility of intervention in the domestic affairs of States and the protection of their independence and sovereignty: attention was drawn to the provisions of Article 51 and 53 under which the legitimate use of force was permitted.

²⁶⁵ By resolution 221 (1966) adopted by the Security Council at its 1277th meeting on 9 April 1966 in connexion with Southern Rhodesia, the Security Council called upon the Government of the United Kingdom to prevent "by the use of force if necessary", the arrival at Beira of vessels reasonably believed to be carrying oil destined for Southern Rhodesia, and empowered the United Kingdom to arrest and detain the tanker known as the *Joanna V* upon her departure from Beira in the event her oil cargo was discharged there (oper. para. 5). The eventual "use of force, if necessary" by the United Kingdom Government in the circumstances stated in the resolution of the Security Council would constitute a lawful use of force which implicitly should be deemed as consistent with the Purposes of the United Nations. For consideration of resolution 221 (1966) see this *Supplement* under Article 39, para. 39; Article 41, para. 60; and Article 42, paras. 32–38.

²⁶⁶ For discussion of these questions in the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, see G A (XX), Annexes, a.i. 90 and 94, A/5746, paras. 26–127 and G A (XXI), Annexes, a.i. 87, A/6230, paras. 24–156.

1. IN THE SECURITY COUNCIL

a. *Complaint by the USSR (RB-47 incident)*²⁶⁷

254. It was stated, on the one hand, that the right of self-defence recognized in Article 51 of the Charter was derived from the principle of the sovereign equality and territorial integrity of States, and that those who violated that principle took upon themselves all the risks involved and could not claim any indemnity for any losses suffered as a result of the act of infringement. It was maintained, on the other hand, that the North Atlantic Treaty, while recognizing the primary responsibility of the Security Council for the maintenance of international peace and security, invoked the right of individual or collective self-defence recognized by Article 51 of the Charter. In present conditions, where aircraft and missiles could operate at great ranges, Governments were obliged, as a matter of self-defence, to guard against surprise attack, and to keep themselves informed of the capabilities and dispositions of foreign military forces through reconnaissance by aircraft and ships in international air space and waters.²⁶⁸

b. *Complaint by Tunisia*²⁶⁹

255. In the course of the discussion, it was stated by the representative of Tunisia that his country was lawfully defending itself against French aggression and that it was making use of its right of self-defence under Article 51 of the Charter to banish foreign forces from Tunisian soil forever. The French determination to maintain its presence in Tunisia by force alone that the French aggression was premeditated and justified the exercise of the right of self-defence. At the 966th meeting, the representative stated further that, since the Security Council had failed to adopt any draft resolution, the members might consider giving Tunisia, within the terms of the Charter, all the necessary assistance to repel the French attack in accordance with Article 51. It was also stated that the presence of armed foreign troops in the territory of a State against its will was an act of aggression incompatible with the provisions of the Charter and that the expulsion of such forces was an act of self-defence within the meaning of Article 51.²⁷⁰

c. *Complaint by Yemen*²⁷¹

256. The representative of the United Kingdom who termed the action undertaken against Harib Fort a "defensive response" to attacks by Yemeni

aircraft, in a later statement declared that there was, in existing law, a clear distinction to be drawn between two forms of self-help: one was of a retributive or punitive nature and termed "retaliation" or "reprisal"; the other, expressly contemplated and authorized by the Charter, was self-defence against armed attack. The term "counter-attack" might imply to some action in the nature of reprisals only. But it was clear that the use of armed force to repel or prevent an attack that is the legitimate action of a defensive nature might sometimes have to take the form of a counter-attack. The fort at Harib was not merely a military installation, but was a centre for aggressive action against the Federation of South Arabia. To destroy the fort with the minimum use of force was therefore a defensive measure confined to the necessities of the case.

257. It was maintained, on the other hand, that under Article 51 of the Charter, measures of self-defence were permitted when and if an armed attack occurred against a Member of the United Nations, but it was quite clear that Article 51 envisaged emergency situations when interim measures would be taken pending action by the Security Council. The attack on Harib could not be conceived as a spontaneous act of self-defence since there had been no armed attack from the Yemeni side. The incidents used by the United Kingdom as a justification for its retaliatory action involved not the loss of lives but the killing of a few camels. The United Kingdom action had clearly been a premeditated attack of retaliation planned well in advance and sanctioned at the highest levels of the United Kingdom Government. It was also stated that self-defence could not be exercised unless an armed attack occurred against a Member of the United Nations. Thus, even if it were proved that the action taken by United Kingdom forces was justified, the proof would not be legally admissible, because that action did not fall within the purview of Article 51 since the Federation of South Arabia was not a Member of the United Nations. One representative contended that it would be difficult to perceive how the action against Harib could be qualified as self-defence under Article 51 since it was an attack on a land objective and had nothing to do with the air raids which had served as a pretext for the attack. Another representative pointed out that the United Kingdom representative had advanced a distinction between the concept of reprisals and the concept of self-defence. However, no legally valid distinction could be drawn between the two. Self-defence excluded the right of counter-attack. In other circumstances, attempts to extend the right of self-defence to include the right of counter-attack had been condemned in time to avoid difficult situations for the country wishing to undertake them and for the United Nations.²⁷²

²⁶⁷ For proceedings, see paras. 77–79 above.

²⁶⁸ For text of relevant statements, see S C, 15th yr., 881st mtg.: United Kingdom, paras. 57 and 63; 883rd mtg.: Poland, para. 11.

²⁶⁹ For proceedings see paras. 84–92 above.

²⁷⁰ For text of relevant statements, see S C, 16th yr., 961st mtg.: Tunisia, paras. 56 and 59; USSR, para. 141; 964th mtg.: Tunisia, para. 27; USSR, para. 122; 966th mtg.: Tunisia, para. 70.

²⁷¹ For précis of relevant proceedings, see paras. 170–172 above.

²⁷² For text of relevant statements, see S C, 19th yr., 1106th mtg.: Iraq, para. 67; United Kingdom, paras. 51 and 57; 1107th mtg.: Iraq, paras. 13–15; 1108th mtg.: Ivory Coast, para. 50; 1109th mtg.: Morocco, para. 99; Syria, paras. 76 and 77; United Kingdom, paras. 17, 26 and 30; 1110th mtg.: Czechoslovakia, paras. 23 and 24.

2. IN THE GENERAL ASSEMBLY

a. *Question of Oman*²⁷³

258. Some representatives contended that the Charter entirely prohibited the use of force with the exception of its use in self-defence under Article 51 or for the purpose of collective measures against aggression carried out by the United Nations under Chapter VII of the Charter. Neither of those provisions could be invoked by the United Kingdom to defend its use of force in Oman which was in violation of the Charter.²⁷⁴

b. *The grave situation in Tunisia obtaining since 19 July 1961*²⁷⁵

259. The representative of Tunisia maintained that an armed attack designed to impair the independence and territorial integrity of a State constituted an act of aggression. The French flights over Tunisian territory and other aggressive French actions constituted a sufficiently serious threat to justify a legitimate reaction on the part of Tunisia, under the terms of Article 51 of the Charter.²⁷⁶

c. *The inadmissibility of intervention in the domestic affairs of States and the protection of their independence and sovereignty*²⁷⁷

260. One representative stated that all armed intervention was prohibited by Article 2 (4). Only the United Nations was competent to decide on the exercise of force and on the scope and conditions of its exercise. The prohibition of its use was a categorical and unconditional obligation, and any unilateral use of force by a State or a group of States was therefore prohibited. Individual or collective self-defence was the exception to that rule, but as Article 51 made clear, was permissible only in response to armed attack: threats, violations of international treaties and so forth were not cases in which the right of self-defence could be invoked. The case covered by Article 51 was the only exception to the exclusive competence of the United Nations to decide on the use of force. There was another

²⁷³ For proceedings, see paras. 204–214 above.

²⁷⁴ For text of relevant statements, see G A (XV) Spec. Pol. Com., 255th mtg.: Saudi Arabia, paras. 6 and 11; 256th mtg.: United Arab Republic, para. 27; 258th mtg.: Lebanon, para. 19; G A (XVI), Spec. Pol. Com.; 299th mtg.: Saudi Arabia, para. 29; 302nd mtg.: Poland, para. 10; 303rd mtg.: United Arab Republic, paras. 6 and 12.

²⁷⁵ For proceedings, see paras. 221–223 above.

²⁷⁶ For text of relevant statement, see G A (S-III), Plen., 996th mtg.: Tunisia, paras. 71 and 81.

²⁷⁷ For proceedings, see paras. 237–245 above.

exception to the prohibition of the use of force but not to the exclusive competence of the United Nations: the enforcement action which the United Nations was authorized to take for the maintenance of international peace and security. The use of force by regional agencies was only one of the forms which collective action by the United Nations might take, but no enforcement measure could be taken by the regional agencies without authorization by the Security Council as provided in Article 53. Another representative pointed out that a provision in the eighteen-Power draft resolution²⁷⁸ excepted measures taken by the United Nations and other competent international organs for the maintenance of international peace or the protection of human rights from being called intervention, provided that those measures were in accordance with the Charter. There could be no rule of law concerning the utilization of force at the international level contrary to the provisions of the Charter. Regional organizations could legitimately resort to force only to repel an armed attack, acting in collective self-defence as authorized in Article 51, and only if entrusted by their members with the functions of maintaining peace and security. Any action of that kind must be in conformity with Chapter VIII of the Charter: that meant that no enforcement action could be without the prior authorization of the Security Council as provided in Article 53. The view was also expressed that the above-mentioned provision in the eighteen-Power draft resolution was particularly important since, by providing that measures taken by competent international organs in accordance with the United Nations Charter did not constitute intervention, it safeguarded the provisions relating to the competence of the United Nations organs and other bodies which might be called upon to take special measures. It was also stated that the term "intervention" could not be applied to measures taken individually or collectively in self-defence, or to collective measures legitimately taken in the common interest in order to protect peace in accordance with the Charter. It was doubtful whether intervention by regional organizations could be sanctioned, except when authorized by the Security Council or recommended by the General Assembly, or in the exercise of the right of collective self-defence as provided for in Article 51. That Article was referred to by another representative who pointed out that no State was entitled to engage in war except for the limited purpose of immediate self-defence.²⁷⁹

²⁷⁸ See para. 243 above.

²⁷⁹ For text of relevant statements, see G A (XX), 1st Com., 1397th mtg.: Mexico, paras. 20 and 21; 1398th mtg.: Thailand, para. 29; 1400th mtg.: Ecuador, para. 32; 1402nd mtg.: Chile, para. 47; 1406th mtg.: Jamaica, para. 32.