

ARTICLE 33

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TEXT OF ARTICLE 33

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

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

INTRODUCTORY NOTE

1. By Article 33 (1) the parties to any dispute of the character indicated are under an obligation "first of all" to seek a solution by "peaceful means of their own choice". By Article 33 (2) the Security Council is enjoined to call upon the parties to settle their dispute by such means when it deems necessary. The application of Article 33 therefore consists, in the first instance, of the effort made by the parties to a dispute to achieve a peaceful solution on their own initiative without recourse to the Security Council. Such efforts, being extraneous to the work of the Council, are not relevant to the Repertory of Practice of United Nations Organs.

2. The efforts of the parties, however, impinge upon the working of the Council in so far as consideration has been given, whether in the placing of a question upon the agenda or in the discussion of a question thereafter, to the relation between the obligation imposed upon the parties by Article 33 (1) and the intervention by the Council. It is from this point of view that the proceedings and decisions of the Council have been examined for the purpose of reviewing the application and interpretation of Article 33.

3. Article 33 relates to the settlement of disputes "the continuance of which is likely to endanger the maintenance of international peace and security". In practice, however, both in the submission of questions to the Council and in the consideration of questions by the Council, Article 33 has not been invoked in respect only of disputes of the character designated, nor has its invocation been restricted to questions submitted as disputes. Accordingly, neither in the General Survey nor in the Analytical Summary of Practice has any distinction based on the type of question dealt with been introduced.

4. In the absence of a clear distinction between disputes of the nature indicated and other disputes, or between disputes and situations, intervention by the Council resulting in a decision designed to encourage the parties to achieve a settlement by negotiation or by other methods may be considered, in the light of the text of the Charter or the proceedings of the Council, relevant to Articles 33 (2), 36 (1), 37 (2), and even to Articles 39 or 40. In the absence of evidence in the records in the light of which decisions may be related expressly to Article 33 (2), cases have been included in this study covering instances of decisions, whether affirmative or negative, taken by the Council subsequent to assertions or denials that the requirements of Article 33 (1) have been fulfilled. The General Survey contains a resumé of these decisions.

5. In the text of the Charter, the obligation imposed by Article 33 (1) upon the parties to any dispute is related, by Article 33 (2) and Article 37 (1), to the functions of the Security Council in the peaceful settlement of disputes. Nevertheless, the letter and spirit of Article 33 (1) has also been invoked in the consideration of questions by the General Assembly. Accordingly, material derived from the records of the General Assembly is included as indicative of the manner in which the Assembly has in certain instances based its own action on the general obligation stated in Article 33 (1).

6. On certain occasions the recommendation of the Security Council has laid stress on negotiations to be undertaken by the parties, the results of which were to be reported to the Security Council. As a matter of convenience, the resolutions of the Security Council on procedures and methods of adjustment in connexion with the pacific settlement of disputes are dealt with as a whole in this Repertory under Article 36. Such resolutions have also, however, a bearing on Article 33. Indeed, the references to Article 33, which have been made with some frequency both in the Security Council and in the General Assembly suggest that in the functioning of these organs the obligation of Article 33 (1) has been understood as a continuous obligation and has served as a basis for stressing the responsibility of the parties themselves to achieve a settlement as a condition of effective action by the United Nations. Cases in which this responsibility has been a significant element in the course of the proceedings of the Council have been dealt with in this Repertory under Article 36, in connexion with the question of the requirement of taking into consideration procedures already adopted by the parties.

I. GENERAL SURVEY

A. Action by the Security Council

7. In the consideration of eight questions brought to the attention of the Security Council, it has been contended that the obligation imposed upon the parties to a dispute by Article 33 (1) had not been complied with and that, consequently, the Council was excluded from jurisdiction in the matter or debarred from considering its substance. In no instance has objection to consideration by the Council been raised exclusively on the grounds of Article 33; the argument based on Article 33 (1) was put forward in conjunction with either a denial of the dangerous nature of the question or an invocation of Article 2 (7) or of Article 107 as grounds for challenging the competence of the Council. ^{1/}

8. In two of these instances, outlined below, the Council has adopted resolutions, one after preliminary discussion of the matter and one after consideration of the substance, envisaging specific procedures of settlement by the parties:

^{1/} In connexion with the question of Guatemala, the contention was made that the provision of Article 33 (1) concerning settlement of disputes through resort to regional agencies or arrangements, taken in conjunction with Article 52 (2), justified referral of the Guatemalan complaint to the Organization of American States before submission to the Security Council. On the other hand, the representative of Guatemala maintained that Article 33 (1) was not applicable inasmuch as it referred to disputes whereas the complaint of his Government dealt with an invasion and an act of aggression which called for direct intervention by the Council under Articles 34 and 39 (S C, 9th yr., 675th mtg., paras. 72, 73 and 101-104; see also in this Repertory under Article 52).

(a) In the case of the Iranian question, submitted by Iran on 19 January 1946, and included in the agenda at the 2nd meeting on 25 January 1946, a draft resolution was submitted by the Netherlands and was subsequently replaced by a text offered by the United Kingdom noting the readiness of the parties to resume negotiations and requesting them to inform the Council of the results. This text was adopted unanimously at the 5th meeting on 30 January 1946. 2/

(b) The complaint of the United Kingdom, concerning incidents in the Corfu Channel, was submitted on 10 January 1947 and was included in the agenda at the 95th meeting on 20 January 1947. After the rejection of a draft resolution, submitted by the United Kingdom, recommending a settlement of the dispute by negotiation on the basis of the finding of the Council, the latter, at its 127th meeting on 3 April 1947, adopted a new draft resolution submitted by the United Kingdom which recommended that the parties refer the dispute to the International Court of Justice. There were 8 votes in favour and none against, with 2 abstentions and 1 member not participating in the vote. 3/

9. In four instances, outlined below, the Council has rejected draft resolutions referring to negotiations between the parties: five such draft resolutions failed to obtain the affirmative votes of seven members, and three others failed to receive the concurring votes of the permanent members:

(a) In the case of the Syrian and Lebanese question, submitted by Syria and Lebanon on 4 February 1946 and placed on the agenda at the 19th meeting on 14 February 1946, the Council, after rejecting two draft resolutions submitted by Mexico and Egypt respectively, at its 23rd meeting on 16 February 1946, failed to adopt a draft resolution submitted by the United States expressing confidence that negotiations would be undertaken by the parties. There were 7 votes in favour and 1 against, with 3 abstentions (the vote against being that of a permanent member); 4/

(b) In the case of the complaint of the United Kingdom concerning incidents in the Corfu Channel, 5/ the Council, at its 122nd meeting on 25 March 1947, failed to adopt a draft resolution submitted by the United Kingdom recommending a settlement of the dispute by negotiation on the basis of the finding of the Council. There were 7 votes in favour and 2 against, with 1 abstention and 1 member not participating in the vote (1 vote against being that of a permanent member); 6/

(c) In the case of the Egyptian question, submitted by Egypt on 8 July 1947 and included in the agenda on 17 July 1947, the Council, at its 198th meeting on 28 August 1947, rejected a draft resolution submitted by Brazil which, after citing Article 33, recommended to the parties to resume negotiations or to seek a solution by other peaceful means of their own choice. There were 6 votes in favour and none against, with 3 abstentions. Two additional draft resolutions calling for the resumption of negotiations were also rejected; 7/

(d) In the case of the agenda item "Identical notifications dated 29 September 1948 from the Governments of the French Republic, the United States of America and the United Kingdom to the Secretary-General", the item was included in the agenda on

2/ See paras. 15-23 below.
3/ See paras. 30-36 below.
4/ See paras. 24-29 below.
5/ See para. 8 b. above.
6/ See paras. 30-36 below.
7/ See paras. 37-43 below.

5 October 1948. 8/ At its 372nd meeting on 25 October 1948, the Council failed to adopt a six-Power draft resolution citing Article 40 and calling upon the parties to reopen negotiations after certain steps concerning the situation in Berlin had been taken. There were 9 votes in favour and 2 against (1 vote against being that of a permanent member). 9/

10. In two instances, the Council refrained from discussion of the substance of the question, thus leaving it to be settled by the efforts of the parties immediately concerned. The questions involved were:

(a) The Tunisian question, submitted for inclusion in the agenda by 11 Member States in April 1952. Its inclusion in the agenda was rejected at the 576th meeting on 14 April 1952; 10/

(b) The agenda item "Appointment of a Governor for the Free Territory of Trieste", resubmitted by the USSR on 12 October 1953, for inclusion in the agenda. Its consideration was postponed pending the outcome of efforts to find a solution. 11/

11. In connexion with the consideration of one question, which gave rise to a discussion as to the powers of the Council and of the parties respectively to seek a settlement, a draft resolution authorizing the Chief of Staff of the Truce Supervision Organization in Palestine to explore possibilities of reconciling the interests involved in the dispute failed of adoption. This decision was taken at the 656th meeting of the Council on 22 January 1954 in connexion with the consideration of the agenda item "Complaint by Syria against Israel concerning work on the west bank of the River Jordan in the demilitarized zone", which had been submitted on 12 October 1953 and placed on the agenda on 27 October 1953. 12/

B. Action by the General Assembly

12. Submission of the following items to, or their consideration by, the General Assembly has occasioned discussions and decisions bearing on the injunction contained in Article 33 (1):

(a) The agenda item "Having regard to the provisions of the Charter and of the peace treaties, the question of the observance in Bulgaria and Hungary of human rights and fundamental freedoms, including questions of religious and civil liberties, with special reference to recent trials of church leaders", included in the agenda of the third session on 12 April 1949, pursuant to requests by Bolivia and Australia. By resolution 272 (III) the General Assembly expressed the hope that measures provided for in the peace treaties would be applied by the parties. At its fourth session, the General Assembly, by resolution 294 (IV) concerning the observance in Bulgaria, Hungary and Romania of human rights and fundamental freedoms, decided to submit certain questions to the International Court of Justice for an advisory opinion. These questions related to the applicability of the procedure laid down in the peace treaties; 13/

8/ After the adoption of the agenda, the representatives of the USSR and of the Ukrainian SSR stated that the decision constituted a violation of Article 107 and that they would not take part in the discussion of the question.

9/ See paras. 44-46 below.

10/ See paras. 47-52 below.

11/ See paras. 53-56 below.

12/ See paras. 57-60 below.

13/ See paras. 62-71 below.

(b) The agenda item "Complaint of violation by France in Morocco of the principles of the Charter and the Universal Declaration of Human Rights", submitted by 6 Member States at the sixth session but not included in the agenda of that session; 14/

(c) The agenda item "The Conciliation Commission for Palestine and its work in the light of the resolutions of the United Nations", submitted by 6 Member States and included in the agenda of the seventh session on 16 October 1952. A draft resolution citing Article 33 and urging the parties to enter into direct negotiations for the establishment of a settlement, bearing in mind the resolutions and principal objectives of the United Nations on the Palestine question, was not adopted. 15/

13. In connexion with the following two items relating to the general principles of international co-operation, resolutions have been adopted providing for procedures of settlement bearing on the implementation of Article 33 (1):

(a) The agenda item "Study of methods for the promotion of international co-operation in the political field", included in the agenda of the third session on 24 September 1948, pursuant to a report by the Interim Committee. By resolution 268 A (III), the General Assembly provided for the restoration of its original efficacy to the General Act of 26 September 1928 for the Pacific Settlement of International Disputes. By resolution 268 D (III), the General Assembly, after citing Article 33, provided for the establishment of a panel for inquiry and conciliation; 16/

(b) The agenda item "Establishment of a permanent commission of good offices", submitted by Yugoslavia and included in the agenda of the fifth session on 7 October 1950. By resolution 379 (V), the General Assembly, after citing Article 33, decided to refer the item to the Interim Committee. 17/

II. ANALYTICAL SUMMARY OF PRACTICE

A. In the Security Council:

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

14. On various occasions, there has been discussion in the Security Council with regard to the extent to which the parties to a dispute, or the parties concerned in a situation, are obligated to seek a peaceful settlement by their own efforts before recourse to the Council. These discussions occurred at times before the voting on the adoption of the agenda, and in some instances, when the substance of the question was under consideration. Most of these discussions have centred on the timeliness of the intervention of the Council.

1. Decision of 30 January 1946 in connexion with the Iranian question

15. At the 2nd meeting on 25 January 1946, the Security Council had before it a communication from Iran, 18/ submitted under Article 35, which charged interference by the USSR in the internal affairs of Iran, stated that attempts at negotiation in

14/ See paras. 72-75 below.

15/ See paras. 76-82 below.

16/ See paras. 84-89 below.

17/ See paras. 90-94 below.

18/ S C, 1st yr., 1st Series, Suppl. No. 1, pp. 16 and 17, annex 2A.

accordance with Article 33 had been unsuccessful, and requested the Council to investigate the situation and to take other appropriate measures.

16. The USSR denied 19/ the allegation by Iran of interference, insisted that the parties, having entered into negotiations, should continue to resort to that method of settlement, and opposed consideration of the complaint by Iran by the Council.

17. The Council agreed to include the item in the agenda. The representative of the USSR explained 20/ that he had not objected to the inclusion of the complaint of Iran on the understanding that its inclusion would not prejudice the merits of the case or the competence of the Council to consider it.

18. In the course of the discussion at the 3rd and 5th meetings on 28 and 30 January 1946, the question was raised whether the obligation contained in Article 33 (1) had been fulfilled and whether the circumstances of the case justified intervention by the Council.

19. The representative of Iran contended that the provision of Article 33 (1) requiring the parties first of all to seek a solution of their dispute by peaceful means of their own choice had been complied with, inasmuch as Iran had repeatedly endeavoured to open negotiations with the USSR. However, the USSR had refused either to discuss the matter in direct negotiations or to cease its interference in the administration of the Iranian province of Azerbaijan. The only course open to Iran was to bring the dispute to the attention of the Council as a situation which might lead to international friction.

20. The representative of the USSR contested the authority of the Council to consider the substance of the complaint of Iran and stressed the need for continued negotiations between the parties. Referring to Article 33, he indicated that the Council could not call upon the USSR to settle its dispute with Iran, since the matter was not of the nature envisaged in that Article, and the requirement that the parties should have resort to negotiation or other peaceful means had not been met. For similar reasons, Articles 34, 36 (1) or 37 (1) were not applicable to the question under consideration. He accordingly suggested that the USSR and Iran should be given an opportunity to settle the question by means of bilateral negotiation.

21. In a supplementary statement, the representative of Iran expressed the readiness of his Government to accept the suggestion of the USSR to enter into direct negotiations, but insisted that the matter should be retained on the agenda and that the Council should be kept informed of the progress of the negotiations.

22. Other members of the Council were of the opinion that, in view of the readiness of the parties to resume negotiations, they should be allowed to do so provided that the Council did not divest itself of its responsibility in the situation.

23. A draft resolution 21/ to this effect was submitted at the 5th meeting on 30 January 1946 by the representative of the Netherlands, who subsequently withdrew his text in favour of a text offered by the United Kingdom. After the representative of the USSR had objected to any reference in the draft resolution to the retention of the matter on the agenda, on the ground that it would amount to an application of Article 37 under conditions which did not correspond to the provisions of that Article,

19/ S C, 1st yr., 1st Series, Suppl. No. 1, pp. 17-19, annex 2A, S/W/2.

20/ S C, 1st yr., 1st Series, No. 1, 2nd mtg., p. 16.

21/ S C, 1st yr., 1st Series, No. 1, 5th mtg., pp. 63 and 64.

the draft resolution was amended accordingly. It was understood that the omission of the relevant words would not preclude the Council from further concern with the question, should the need arise. 22/

Decision

At the 5th meeting on 30 January 1946, the draft resolution submitted by the United Kingdom, as amended, was adopted 23/ unanimously.

The resolution read as follows:

"The Council,

"Having heard the statements by the representatives of the Soviet Union and Iran in the course of its meetings of 28 and 30 January, and

"Having taken cognizance of the documents presented by the Soviet and Iranian delegations and those referred to in the course of the oral debates;

"Considering that both parties have affirmed their readiness to seek a solution of the matter at issue by negotiation; and that such negotiations will be resumed in the near future,

"Requests the parties to inform the Council of any results achieved in such negotiations. The Council in the meanwhile retains the right at any time to request information on the progress of the negotiations."

*2. Decisions of 16 February 1946 in connexion with
the Syrian and Lebanese question*

24. At its 19th to 23rd meetings inclusive, between 14 and 16 February 1946, the Security Council considered the situation, brought 24/ to its attention by Syria and Lebanon under Article 34, which had arisen as a result of the presence of French and British troops in Syria and in Lebanon.

25. In the course of the discussion, the question was raised whether the requirements of Article 33 concerning the efforts to be made by the parties with a view to seeking a solution prior to submitting their dispute to the Council had been fulfilled.

26. The representatives of Syria and Lebanon maintained that it would be sufficient for the Council to recommend the evacuation of the foreign troops within a limited time, and that the matter should remain on the agenda of the Council until the withdrawal was completed. They insisted that the evacuation should be unconditional and not subject to any negotiations on the question of withdrawal in conjunction with other matters. They expressed readiness, however, to enter into negotiations after the troops had been withdrawn.

22/ For texts of relevant statements, see S C, 1st yr., 1st Series, No. 1, 3rd mtg.: President (Australia), p. 31; Iran, pp. 32-38; USSR, pp. 39-43; 5th mtg.: President (Australia), p. 61; China, pp. 58 and 59; France, p. 59; Iran, pp. 46-49; Netherlands, pp. 60, 61 and 62; Poland, pp. 64, 65 and 69; USSR, pp. 49-53, 65, 66 and 70; United Kingdom, pp. 56, 66 and 67; United States, pp. 58 and 71.

23/ S C, 1st yr., 1st Series, No. 1, 5th mtg., pp. 70 and 71.

24/ S C, 1st yr., 1st Series, Suppl. No. 1, pp. 82 and 83, S/5.

27. The representative of France stated that there was no intention to maintain troops in the territories of Syria and Lebanon indefinitely and added that his Government was prepared to examine the question with the Governments of Syria and Lebanon in order to work out the details of the solution. He denied that the existing situation in Syria and in Lebanon was of the nature referred to in Article 34, which had been invoked by the complaining States, but insisted that, if there was a dispute as Syria and Lebanon had claimed, the parties were required, under Article 33, to negotiate with a view to seeking a settlement.

28. In the opinion of other members of the Council, the possibilities of negotiation to find a peaceful solution, in accordance with Article 33, had not yet been exhausted. They favoured a recommendation to the parties to undertake negotiations and to report the results to the Council, in order that it might then consider what further action it might wish to take.

29. One member interpreted Article 33 to mean that even when a dispute clearly existed, as was the case in the Syrian and Lebanese question, the parties were entitled to refuse to enter into negotiations, which was only one of the means provided for solving a dispute. 25/

Decisions

a. At the 23rd meeting on 16 February 1946, two draft resolutions, submitted respectively by Mexico and by Egypt, which would have provided for negotiations on the technical arrangements for the evacuation of troops were rejected. 26/ There were 4 votes in favour of each draft resolution.

b. A draft resolution, submitted by the United States, which would have expressed confidence that foreign troops in Syria and Lebanon would be withdrawn as soon as practicable and that negotiations to that end would be undertaken by the parties without delay was not adopted. 27/ There were 7 votes in favour and 1 against, with 3 abstentions (the vote against being that of a permanent member).

3. Decisions of 25 March and 9 April 1947 in connexion with the complaint of the United Kingdom concerning incidents in the Corfu Channel

30. At its 95th meeting on 20 January 1947, the Security Council had before it a request 28/ submitted by the United Kingdom under Article 35, to consider its dispute with the People's Republic of Albania regarding an incident in the Corfu Channel in which two British warships had been mined on 22 October 1946. Copies of an exchange of notes between the two Governments were attached to the request.

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- 25/ For texts of relevant statements, see S C, 1st yr., 1st Series, No. 1, 20th mtg.: France, pp. 292 and 293; 21st mtg.: Australia, pp. 310 and 311; United States, pp. 300 and 301; 22nd mtg.: France, pp. 324-326; Syria, pp. 322, 323, 330 and 331; 23rd mtg.: France, pp. 338, 357 and 358; Lebanon, p. 342; USSR, pp. 360-362.
- 26/ S C, 1st yr., 1st Series, No. 1, 23rd mtg., p. 364. For texts of draft resolutions, see S C, 1st yr., 1st Series, No. 1, 22nd mtg., pp. 319, 323 and 324.
- 27/ S C, 1st yr., 1st Series, No. 1, 22nd mtg., pp. 332 and 333; 23rd mt., p. 368. The representatives of France and of the United Kingdom stated that they would give effect to the draft resolution submitted by the United States.
- 28/ S C, 2nd yr., Suppl. No. 3, pp. 35-46, annex 8 (S/247).

31. Inclusion of the question in the agenda was opposed on the ground that no proper effort had been made by the United Kingdom to bring about a settlement of the dispute in accordance with Article 33. The representative of the United Kingdom replied that his Government had resorted to a direct diplomatic exchange of views which had produced an unsatisfactory result.

32. After the inclusion of this item in the agenda, the representative of the United Kingdom requested that the Council, taking into consideration the failure of attempts at settlement through diplomatic correspondence, recommend, under Article 36, a settlement of the dispute by direct negotiations between the two Governments, on the basis of a finding by the Council that an unnotified mine field had been laid in the Corfu Straits by the Government of Albania or with its connivance. ^{29/} He also requested that the Council should retain the dispute on its agenda until both parties had certified that it had been settled to their satisfaction.

33. A draft resolution ^{30/} to this effect was submitted by the representative of the United Kingdom at the 120th meeting on 20 March 1947, after a report had been presented by a sub-committee of three which had been appointed previously to examine the available evidence concerning the incidents.

34. At the 122nd meeting on 25 March 1947, the representative of Poland submitted a draft resolution ^{31/} which provided that the Council, taking into consideration that the parties had not exhausted the means of peaceful settlement before bringing their case to the Council, would, pursuant to Article 33, call upon the parties to settle their dispute by any such means, subject to their own agreed choice.

Decision

At the 122nd meeting on 25 March 1947, the draft resolution submitted by the United Kingdom, as amended in the course of the debate, was not adopted. ^{32/} There were 7 votes in favour and 2 against, with 1 abstention and 1 member not participating in the vote (1 vote against being that of a permanent member). The draft resolution submitted by Poland was withdrawn.

35. At the 125th meeting on 3 April 1947, the representative of the United Kingdom submitted a new draft resolution ^{33/} by which the Council would recommend that the two parties refer the dispute to the International Court of Justice.

36. In supporting the draft resolution submitted by the United Kingdom, one member questioned whether the Council was competent to consider the dispute. He expressed the opinion that Albania and the United Kingdom had not exhausted the resources set forth in Article 33 when they referred their dispute to the United Nations. In this connexion, he observed that the powers and functions of the Security Council to consider disputes or situations were limited to those cases only which were likely to endanger

^{29/} At the 109th meeting, the representative of Albania denied any responsibility for, or knowledge of, the mines laid in the Corfu Channel and charged violation by the United Kingdom of the territorial waters of Albania.

^{30/} S C, 2nd yr., No. 27, 120th mtg., p. 567.

^{31/} S C, 2nd yr., No. 29, 122nd mtg., p. 600.

^{32/} S C, 2nd yr., No. 29, 122nd mtg., pp. 608 and 609.

^{33/} S C, 2nd yr., No. 32, 125th mtg., pp. 685 and 686.

international peace and security and only after the requirements of Article 33 had been complied with. 34/

Decision

At the 127th meeting on 9 April 1947, the draft resolution submitted by the United Kingdom was adopted 35/ by 8 votes to none, with 2 abstentions, and 1 member not participating in the vote.

4. Decisions of 28 August 1947 in connexion with the Egyptian question

37. At its 159th meeting on 17 July 1947, the Security Council had before it a request 36/ submitted by Egypt under Articles 35 and 37, to consider its dispute with the United Kingdom which had arisen as a result of the presence of British troops on Egyptian territory and of the policy of the United Kingdom in relation to the Sudan. In the request it was stated that attempts at reaching a fair settlement in conformity with Article 33 had failed, since the United Kingdom had striven to avail itself of the Anglo-Egyptian Treaty of 1936, which could no longer be binding upon Egypt, besides being inconsistent with the Charter.

38. The representative of the United Kingdom, in reply, stressed the validity of the Treaty, denied that it was in any way inconsistent with the Charter and concluded that the Security Council was not entitled to override treaty rights. In referring to the negotiations which had been conducted between the two Governments, he stated that his Government had agreed to enter into negotiations for the revision of the Anglo-Egyptian Treaty of 1936 as a matter of grace.

39. At the 189th meeting on 20 August 1947, the representative of Brazil submitted a draft resolution 37/ by which, after noting that the methods of adjustment provided for by Article 33 had not been exhausted, the Council would have recommended to the parties to resume direct negotiations and, in the event of their failure, to seek a solution by other peaceful means of their own choice, and to keep the Council informed of the progress of the negotiations.

40. In presenting his draft resolution, the representative of Brazil explained that the circumstances of the case did not justify the Council in taking action in the matter. In his opinion, intervention by the Council should take place only after the parties had shown themselves incapable of arriving at a satisfactory settlement or had exhausted the traditional methods of international law, a condition which did not seem

34/ A suggestion to convene a meeting of the Security Council for the purpose of discussing this interpretation was not pursued. For texts of relevant statements, see S C, 2nd yr.,

No. 6, 95th mtg.: USSR, p. 115; United Kingdom, p. 116.

No. 15, 107th mtg.: United Kingdom, p. 306.

No. 18, 111th mtg.: Australia, pp. 362 and 364; Poland, p. 376; USSR, pp. 365, 366, 371 and 378; United Kingdom, pp. 384 and 385.

No. 27, 120th mtg.: Poland, pp. 556 and 557; United Kingdom, pp. 567 and 568.

No. 29, 122nd mtg.: China, p. 601; Poland, p. 600; Syria, pp. 605 and 606.

No. 32, 125th mtg.: Brazil, pp. 686-688; Poland, pp. 688 and 689; Syria, p. 688; United Kingdom, pp. 684 and 685.

35/ S C, 2nd yr., No. 34, 127th mtg., pp. 726 and 727.

36/ S C, 2nd yr., No. 59, 159th mtg., S/410, pp. 1343-1345.

37/ S C, 2nd yr., No. 80, 189th mtg., S/507, pp. 2108 and 2109.

to exist in the particular case under consideration. Recourse to the Security Council should be restricted to questions of an urgent character, which did not permit sufficient time for more extended treatment and required immediate consideration to avoid the materialization of a threat to the peace. To seek redress in the Council before the traditional means of settlement had been exhausted would be tantamount to transferring to that body all diplomatic difficulties emerging from relations between States. The parties should, therefore, be allowed to settle their differences in conformity with the principles of justice and international law by having recourse to the usual methods, while the Council maintained a watchful attitude in the matter.

41. Objection to the draft resolution submitted by Brazil was raised on the grounds that the question had come before the Council because no positive result had been achieved by direct negotiations and that negotiations could not properly proceed during the occupation of the territories of Egypt and the Sudan. It was further argued that, by declining to deal with the substance of the question, the Council would evade its primary responsibility for the maintenance of international peace and security. Exception was also taken to the view that the competence of the Council should be confined to cases constituting an unequivocal menace to the peace.

42. The representative of Egypt, who opposed the draft resolution, contested the view that all the methods of settlement mentioned in Article 33 had first to be exhausted. He observed that Article 33 referred to those methods not as cumulative but as alternative methods. The Article did not enjoin an endless procedure whereby a party to a dispute was obliged to proceed successively from one means of settlement to the next.

43. At the 193rd meeting on 22 August 1947, the representative of Australia proposed an amendment to the effect that, in so far as the direct negotiations between the parties affected the future of the Sudan, they should include consultation with the Sudanese. The amendment was opposed on the ground that it provided a method which implied taking a position on the substance of the dispute, contrary to the system envisaged in Article 33. 38/

Decisions

At the 198th meeting on 28 August 1947, the amendment submitted by Australia was rejected. 39/ There were 2 votes in favour and none against, with 8 abstentions.

At the same meeting the draft resolution submitted by Brazil, as revised, was also rejected. 40/ There were 6 votes in favour and none against, with 3 abstentions.

Two additional draft resolutions which would have called for the resumption of direct negotiations were rejected 41/ at subsequent meetings.

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- 38/ For texts of relevant statements, see S C, 2nd yr.,
 No. 70, 175th mtg.: Egypt, pp. 1746-1748;
 No. 70, 176th mtg.: United Kingdom, pp. 1769-1772, 1776, 1783 and 1784;
 No. 80, 189th mtg.: Brazil, pp. 2103-2109;
 No. 82, 193rd mtg.: Egypt, pp. 2163-2167;
 No. 84, 196th mtg.: Australia, pp. 2243-2245; Poland, p. 2249; United Kingdom, p. 2254;
 No. 86, 198th mtg.: Colombia, p. 2290; USSR, pp. 2284 and 2285.
- 39/ S C, 2nd yr., No. 86, 198th mtg., p. 2303.
- 40/ S C, 2nd yr., No. 86, 198th mtg., pp. 2304 and 2305.
- 41/ S C, 2nd yr., No. 87, 200th mtg., pp. 2338-2340; No. 88, 201st mtg., p. 2362.

5. Decision of 25 October 1948 in connexion with the identical notifications dated 29 September 1948 from the Governments of the French Republic, the United Kingdom and the United States of America

44. At the 361st meeting on 4 October 1948, the Security Council had before it identical notifications 42/ by France, the United Kingdom and the United States drawing attention to the serious situation which had arisen as a result of the unilateral imposition by the USSR of restrictions on transport and communications between the Western Zones of Occupation in Germany and Berlin. In these notifications and in subsequent statements before the Council, reference was made to the protracted exchange of notes and conversations initiated by the three Governments with a view to making every effort to resolve their differences directly with the Government of the USSR. The point was stressed that these efforts indicated that the three Governments had complied to the limit with the obligation imposed by Article 33 to settle their dispute by peaceful means, but that they were precluded from further direct negotiations by the recourse of the Government of the USSR to measures of force, an action which had created a threat to the peace within the meaning of Chapter VII. In view of the failure to achieve any satisfactory result through the means of settlement prescribed in Article 33, the dispute had been referred to the Security Council in accordance with Article 37.

45. The representative of the USSR objected to the consideration of the question by the Security Council. He denied that the situation in Berlin constituted a threat to the peace and contended that the Council was, by virtue of Article 107, not competent to deal with the matter. He further maintained that reference of the question to the Council was not justified since the Governments of France, the United Kingdom and the United States had failed to avail themselves of the special machinery established by international agreement, the Four Power Control Council and the Council of Foreign Ministers, for dealing with grievances arising in connexion with Germany.

46. At the 370th meeting on 22 October 1948, the representatives of Argentina, Belgium, Canada, China, Colombia and Syria submitted a draft resolution 43/ which, citing Article 40, would have called upon the four occupying Powers to prevent any incident of a nature to aggravate the situation in Berlin, to take certain measures for the removal of the restrictions, and thereafter to reopen the negotiations in the Council of Foreign Ministers on all outstanding problems concerning Germany as a whole. 44/

42/ S C, 3rd yr., Suppl. for Oct. 1948, pp. 9-45, S/1020 and S/1020/Add.1.

43/ S C, 3rd yr., No. 119, 370th mtg., S/1048, pp. 5 and 6.

44/ For texts of relevant statements, see S C, 3rd yr.,
 No. 113, 361st mtg.: President (United States), p. 21; USSR, pp. 12 and 13;
 No. 114, 362nd mtg.: USSR, pp. 9, 16 and 17;
 No. 115, 363rd mtg.: United States, pp. 2-4, 10, 11, 19-21 and 26;
 No. 115, 364th mtg.: France, pp. 39, 41 and 45; United Kingdom, pp. 31, 33, 35 and 36;
 No. 117, 366th mtg.: United States, p. 9;
 No. 118, 368th mtg.: France, pp. 63 and 67, United Kingdom, pp. 49 and 50; United States, pp. 51, 53, 55, 56 and 60-62;
 No. 119, 370th mtg.: Belgium, p. 13; Canada, p. 14;
 No. 120, 372nd mtg.: France, p. 3.

Decision

At the 372nd meeting on 25 October 1948, the draft resolution was not adopted. ^{45/} There 9 votes in favour and 2 against, (1 vote against being that of a permanent member).

*6. Decision of 14 April 1952 in connexion
with the Tunisian question*

47. At its 574th to 576th meetings inclusive between 4 and 14 April 1952, the Security Council had before it requests ^{46/} submitted by eleven Member States under Article 35, to consider the situation in Tunisia.

48. In the course of the preliminary discussion on the inclusion of the item in the agenda, statements were made concerning the competence of the Council to consider the matter, and the timeliness and usefulness of such consideration. ^{47/} Reference was also made to the relation between the examination of a question by the Council and the obligation of the parties to seek a solution by negotiation.

49. Among the representatives who considered that the peaceful means envisaged in Article 33 had not been exhausted prior to bringing the matter to the attention of the Security Council, one favoured inclusion of the item in the agenda merely for the examination of the claim made by the eleven Member States that the situation in Tunisia was likely to endanger international peace and security. He stressed that a complaint by Member States regarding a situation which they deemed dangerous deserved the attention of the Security Council, without prejudice as to the merits of the case or to the competence of the Council to consider it.

50. Two other representatives, who stressed the overriding objective of the Council to foster agreement through negotiations between the parties themselves and expressed doubt whether consideration of the question in the Council would facilitate negotiations, abstained from the vote on the inclusion of the item in the agenda.

51. In support of inclusion of the item in the agenda and of its consideration in the Council, the point was made that the unequal status of the parties in the negotiations warranted intervention by the Security Council.

52. Prior to the vote on the adoption of the agenda, the Council voted on two other procedural proposals placed before it in the course of the debate; (1) a draft resolution submitted by Pakistan inviting the representatives of Member States which had submitted the question, to come before the Council for the purpose, as expressly requested by them, of answering some remarks of the representative of France; and (2) a draft resolution submitted by Chile including the question in the agenda on the understanding that such inclusion would not imply a decision on the competence of the Council to consider the substance of the question. ^{48/}

^{45/} S C, 3rd yr., No. 120, 372nd mtg., p. 14. By letter dated 9 May 1949 to the Secretary-General, the representatives of France, the United Kingdom and the United States stated that their Governments had concluded with the Government of the USSR an agreement on the question. S C, 4th yr., Suppl. for May, pp. 1 and 2, S/1316.

^{46/} S C, 7th yr., Suppl. for April, May and June, pp. 9-15, S/2574-S/2584.

^{47/} See in this Repertory under Article 34.

^{48/} For texts of relevant statements, see S C, 7th yr.,

574th mtg.: Brazil, paras. 95 and 102;

575th mtg.: President (Pakistan), paras. 81-85 and 104; Turkey, paras. 68 and 69; United States, paras. 15 and 18.

Decisions

At the 576th meeting on 14 April 1952, the draft resolution submitted by Pakistan was rejected. There 5 votes in favour and 2 against, with 4 abstentions. The draft resolution submitted by Chile was rejected by the same vote.

The provisional agenda was then also rejected. 49/ There were 5 votes in favour and 2 against, with 4 abstentions.

7. Decisions taken in October-December 1953 in connexion with the appointment of a governor for the Free Territory of Trieste

53. At the 625th meeting on 15 October 1953, the Security Council had before it a request 50/ submitted by the USSR to consider the question of the appointment of a governor for the Free Territory of Trieste. 51/ By a draft resolution 52/ submitted in conjunction with the request the Council would have noted that the partitioning of the Free Territory of Trieste effected by the Governments of the United States and the United Kingdom in violation of the Treaty of Peace with Italy was having the effect of increasing friction in relations between States, and primarily between the countries bordering on the Free Territory of Trieste, and was creating a threat to peace and security in that region of Europe. The draft resolution proposed a series of measures, including, as a first step, the appointment of a governor.

54. Objection was raised to the consideration of the question on the ground that attempts at conciliation and negotiation were being made and that debate in the Security Council might unfavourably influence the progress of these efforts. In this connexion, reference was made to the joint statement of the Governments of France, the United Kingdom and the United States of 18 October 1953, announcing their intention to seek a peaceful settlement of the situation through diplomatic negotiations and through proposals submitted to the two parties chiefly concerned, Italy and Yugoslavia. The opinion was expressed that the efforts of the three great Powers to reach a solution by negotiation came within the provisions of Article 33, and that, in refraining from intervention during the course of those negotiations, the Security Council would be tacitly applying paragraph 2 of that Article.

55. With respect to the argument that the Trieste question concerned not only three or five States but all twenty-one signatories to the Treaty of Peace with Italy, the view was held that, if an agreement were reached between the parties principally concerned, all threats to international peace and security in the area of Trieste would be averted and none of the other signatories would assume the responsibility of blocking the agreement.

56. In amplification of his request to the Council to consider the question and to adopt the draft resolution providing for the appointment of a governor, the representative of the USSR stated that the Council, under the provisions of Articles 24 and 34, could not refuse to consider or to investigate the serious situation in Trieste which had resulted from the violation of the Treaty of Peace with

49/ S C, 7th yr., 576th mtg., para. 122.

50/ S C, 8th yr., Suppl. for Oct., Nov. and Dec., p. 3, S/3105.

51/ The question was first discussed in 1947 and 1948, after the Security Council had accepted certain responsibilities devolving upon it under the Treaty of Peace with Italy, but no decision was reached. It was again considered in 1949 and the Council failed to adopt a resolution.

52/ S C, 8th yr., 625th mtg., para. 70.

Italy. Even under Article 33 (2), the Council could not remain inactive, since it was required to call upon the parties to settle their dispute by peaceful means as envisaged in paragraph 1 of that Article, and the parties to the Trieste dispute were not three or five States but all twenty-one signatories to the Treaty of Peace with Italy. 53/

Decisions

At the 628th meeting on 20 October 1953, the Security Council adopted a motion made by Colombia, as modified, to postpone discussion until 2 November, by 9 votes to 1, with 1 abstention. It decided on further postponements at the 634th and 641st meetings on 2 and 23 November. At the 647th meeting on 14 December 1953, the Council adopted, 54/ by 8 votes to 1, with 1 abstention and 1 member absent, a motion made by the United States to postpone further consideration of the item pending the outcome of concurrent efforts to find a solution.

8. Decision of 22 January 1954 in connexion with the Palestine question

57. At the 629th meeting on 27 October 1953, the Security Council began consideration of a complaint 55/ by Syria against Israel concerning work on the west bank of the River Jordan in the demilitarized zone. Syria contended that its General Armistice Agreement with Israel had left the international status of the demilitarized zone undetermined and that the Israel development project, which was likely to affect the status of the zone, required the mutual consent of both parties to the Agreement. Israel, on the other hand, maintained that the demilitarized zone formed part of its territory and that it was consistent with the Armistice Agreement to carry out works within the demilitarized zone provided certain recognized private rights were safeguarded.

58. At the 648th meeting on 16 December 1953, the representatives of France, the United Kingdom and the United States submitted a draft resolution 56/ which would have authorized the Chief of Staff of the Truce Supervision Organization, in his capacity as Chairman of the Israel-Syrian Mixed Armistice Commission, to explore possibilities of reconciling the interests involved in the dispute.

59. In objecting to the draft resolution, one representative emphasized the fundamental Charter principle of recognizing the need for mutual agreement between States on measures affecting their interests and opposed instructing the Chief of Staff to take action which would not require the approval of the parties concerned. In this connexion, he expressed the opinion that such an attitude was in conformity with Article 33, which set forth the obligations of the parties to achieve the settlement of disputes by their own efforts, while the Security Council was assigned the function of assisting the parties in the use of these peaceful means of settlement which were based on the principle of mutual consent.

53/ For texts of relevant statements, see S C, 8th yr., 628th mtg., Colombia, paras. 41 and 42; France, paras. 86-89; USSR, paras. 91-130.

54/ S C, 8th yr., 628th mtg., para. 133; 634th mtg., para. 89; 641st mtg., para. 101; 647th mtg., para. 43.

55/ S C, 8th yr., Suppl. for Oct., Nov. and Dec., pp. 5 and 6, S/3108/Rev.1.

56/ A second revision of the draft resolution was presented at the 655th meeting on 20 January 1954 (ibid., pp. 79 and 80, S/3151/Rev.2).

60. In reply it was pointed out that the question before the Council was not an ordinary dispute between two States in which the concern of the Council was to secure agreement between the parties, but a dispute arising in connexion with the General Armistice Agreement which had been concluded in pursuance of a resolution of the Council and concerning the authority of the Chief of Staff under that Agreement. ^{57/}

Decision

At the 656th meeting on 22 January 1954, the draft resolution, as modified, was not adopted. ^{58/} There were 7 votes in favour and 2 against, with 2 abstentions, (1 vote against being that of a permanent member).

B. In the General Assembly

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

61. The relevance of the obligation of prior recourse to peaceful means of settlement chosen by the parties has been argued during the consideration by the General Assembly of several disputes or situations, both in connexion with the adoption of the agenda and with the substance of the question. In conformity with the spirit of Article 33, it was argued, the General Assembly should encourage the parties to avail themselves of any given procedure which might assist them in achieving a peaceful solution of international disputes.

a. RESOLUTIONS 272 (III) AND 294 (IV)

62. At its third session, the General Assembly, pursuant to requests ^{59/} by Bolivia and Australia, included the following item in its agenda: "Having regard to the provisions of the Charter and of the peace treaties, the question of the observance in Bulgaria and Hungary of human rights and fundamental freedoms, including questions of religious and civil liberties, with special reference to recent trials of church leaders".

63. The Ad Hoc Political Committee, which considered the item at its 34th to 41st meetings inclusive between 19 and 22 April 1949, had before it a draft resolution ^{60/} submitted by Bolivia by which the Assembly would note the steps taken by several States signatories to the peace treaties with Bulgaria and Hungary regarding the accusations of the suppression of human rights and fundamental freedoms in these countries, would express the hope that measures would be applied in accordance with the treaties, would draw the attention of Bulgaria and Hungary to their obligations under the peace treaties, and would decide to retain the question on the agenda for the fourth session of the General Assembly.

64. Application of the procedure prescribed in the peace treaties, as recommended in the draft resolution submitted by Bolivia, was supported, on the ground, among other reasons, that it was in keeping with the spirit of Article 33. It was maintained that

^{57/} For texts of relevant statements, see S C, 9th yr.,

^{58/} 656th mtg., USSR, paras. 41-85; United Kingdom, paras 86-92.

^{53/} Ibid., para. 135.

^{59/} G A (III/2), Plen., Annexes, pp. 31 and 32, A/820 and A/821.

^{60/} G A (III/2), Ad Hoc Pol. Com., Annexes, p. 7, A/AC.24/51/Corr.1.

the notes addressed by the Governments of the United Kingdom and the United States, as well as by other States signatories to the peace treaties, to the Governments of Bulgaria and Hungary accusing them of having violated the clauses relating to human rights, had been in accordance with the procedure laid down in the peace treaties. This initial action had been in the nature of peaceful means resorted to prior to submitting the dispute to the United Nations. By encouraging recourse to that procedure, it was argued, the General Assembly would indicate that the matter was the concern not of a few Powers but of the world community of nations, and would thus assist in the execution of the specific functions entrusted to the Allied Powers under the peace treaties.

65. Some representatives were of the opinion that the draft resolution submitted by Bolivia was inadequate because it confined the recommended action to the measures provided for in the peace treaties. They maintained that the General Assembly, having asserted its competence in the matter, should establish a committee of investigation to determine the facts of the situation and to submit its conclusions to the Assembly for action. In this connexion, the view was expressed that Article 33 could not be invoked in the case under consideration, since the dispute was not limited to the signatories to the peace treaties, but was a matter of concern to all Member States. 61/

66. At its 41st meeting on 22 April 1949, the Ad Hoc Political Committee adopted the draft resolution submitted by Bolivia by 34 votes to 6, with 11 abstentions, after rejecting an amendment 62/ submitted by Australia and Cuba which would have provided for the appointment of a committee to study the situation. 63/

Decision

At its 203rd plenary meeting on 30 April 1949, the General Assembly adopted 64/ the text of the draft resolution, which became resolution 272 (III), by 34 votes to 6, with 9 abstentions.

67. In accordance with resolution 272 (III), the General Assembly retained the item on the agenda of its fourth session, at which its scope was expanded to include Romania and its title was changed to: "Observance in Bulgaria, Hungary and Romania of human rights and fundamental freedoms".

68. The Ad Hoc Political Committee, which considered the item at its 7th to 15th meetings inclusive between 4 and 13 October 1949, had before it the texts of notes 65/ exchanged by the Governments of the United Kingdom and the United States with the Governments of Bulgaria, Hungary and Romania, as well as with the Government of the USSR.

69. At the 7th meeting of the Committee on 4 October 1949, the representatives of Bolivia, Canada and the United States presented a draft resolution 66/ proposing the

61/ For objections on the ground of Article 107, see in this Repertory under Article 107.

62/ G A (III/2), Ad Hoc Pol. Com., Annexes, p. 9, A/AC.24/56.

63/ For text of relevant statements, see: G A (III/2), Ad Hoc Pol. Com., Bolivia, pp. 71-73; Cuba, pp. 74-76 and 122; United States, pp. 91 and 95. G A (III/2), Plen., Australia, p. 243. See also G A (IV), Ad Hoc Pol. Com., 7th mtg., United States, para. 22.

64/ G A (III/2), Plen., 204th mtg., pp. 272 and 273.

65/ G A (IV), Ad Hoc Pol. Com., Annex, vol. I, pp. 75-111, A/985/Rev.1 and A/990/Rev.1.

66/ Ibid., pp. 111 and 112, A/AC.31/L.1/Rev.1.

submission of certain questions to the International Court of Justice for an advisory opinion.

70. In support of the draft resolution, it was argued that the Court was not being asked for an opinion on the substance of the matter but merely to advise on the preliminary question of the applicability of the procedure prescribed in the peace treaties, in view of the refusal of the three Governments concerned to participate in that procedure. Such a course of action by the General Assembly would be within the spirit of Article 33, inasmuch as the signatories to the peace treaties would be further assisted in their efforts at a settlement through the means agreed upon in the treaties, and would obtain guidance on the legal questions involved. 67/

71. At its 15th meeting on 13 October 1949, the Ad Hoc Political Committee adopted by 41 votes to 5, with 9 abstentions, a modified version of the draft resolution, after rejecting an amendment submitted by Australia which would have appointed an ad hoc committee to report to the General Assembly at its fifth session on certain aspects of the matter.

Decision

At its 235th plenary meeting on 22 October 1949, the General Assembly adopted 68/ the text of the draft resolution, which became resolution 294 (IV), by 47 votes to 5, with 7 abstentions.

b. DECISION OF 13 DECEMBER 1951 IN CONNEXION WITH THE QUESTION OF MOROCCO

72. At its sixth session, the General Assembly had before it requests 69/ by Egypt, Iraq, Lebanon, Saudi Arabia, Syria and Yemen to consider the item "Complaint of violation by France in Morocco of the principles of the Charter and the Declaration of Human Rights".

73. The General Committee recommended, 70/ by 6 votes to 4, with 4 abstentions, that "consideration of the question of placing item 6 of the supplementary list on the final agenda of the General Assembly be postponed for the time being".

74. During the discussion of the recommendation of the General Committee in the General Assembly, reference was made, among other things, to the desirability of acting in consonance with the spirit of Article 33 prior to submitting a question to the United Nations. It was argued that, since the Government of France had indicated that conversations designed to hasten the reforms it had proposed for Morocco were under way and since the Sultan of Morocco had reaffirmed his desire for negotiations with a view to reaching agreement with the Government of France, it would be in accordance with the objectives of the Charter to leave it to the parties immediately concerned to follow their own avenues of settlement.

75. In support of including the item in the agenda, it was said that the States which had submitted the question to the General Assembly had, in fact, tried to exhaust the peaceful means set forth in the Charter, by addressing direct notes to France and by an

67/ G A (IV), Ad Hoc Pol. Com., 7th mtg., para. 34.

68/ G A (IV), Plen., 235th mtg., paras. 45-52.

69/ G A (VI), Annexes, a.i. 7, pp. 4-6, A/1894, A/1898, A/1904, A/1918, A/1908 and A/1909.

70/ G A (VI), General Com., 76th mtg., para. 32.

approach through Powers friendly to France. These attempts had met with no success. As to negotiations between France and Morocco as a means of settlement without recourse to the United Nations, the point was stressed that such negotiations lacked a common ground, inasmuch as it was the intention of the Government of France to carry on conversations concerning reforms to be introduced in Morocco, whereas the Sultan of Morocco desired the establishment of sovereignty. 71/

Decision

At its 354th plenary meeting on 13 December 1951, the General Assembly adopted 72/ the recommendation of the General Committee by 28 votes to 23, with 7 abstentions.

C. DECISION OF 18 DECEMBER 1952 IN CONNEXION WITH THE AGENDA ITEM
"THE CONCILIATION COMMISSION FOR PALESTINE AND ITS WORK IN THE
LIGHT OF THE RESOLUTIONS OF THE UNITED NATIONS"

76. This item was included in the agenda of the seventh session of the General Assembly at the request of Egypt, Iraq, Lebanon, Saudi Arabia, Syria and Yemen. In an explanatory memorandum 73/ accompanying the request, it was stated that the responsibility for the Palestine question, which the United Nations had assumed in 1947, had not been fulfilled. None of the relevant resolutions had as yet been implemented; the object in considering the item should be to have a broad view of the activity of the United Nations Conciliation Commission for Palestine in the light of those resolutions and the appropriate measures and machinery for giving them effect.

77. The Ad Hoc Political Committee, which considered the item at its 25th to 39th meetings inclusive between 25 November and 11 December 1952, also had before it the twelfth progress report of the Conciliation Commission for Palestine and a supplement 74/ thereto in which it was stated that certain results had been achieved but that, in the absence of a specific request from the parties, the Commission had had no opportunity of exercising its general function of conciliation. The report further concluded that if and when the parties were ready to accept the principles previously submitted by the Commission, general or partial agreement could be sought through direct negotiations, with United Nations assistance or mediation.

78. Consideration of the item centred on the question whether and to what extent the parties should have resort to direct negotiations as a means of settling their outstanding differences.

71/ For texts of relevant statements, see G A (VI), General Com., 75th and 76th mtgs.; Plen., 342nd, 353rd and 354th mtgs.

72/ G A (VI), Plen., 354th mtg., para. 290. The question of Morocco was included in the agenda of the seventh session of the General Assembly. In the course of the consideration of the question, reference was made to the obligation of the parties to endeavour to reach an agreement by negotiation. By resolution 612 (VII), adopted on 19 December 1952, the General Assembly expressed the hope that the parties would continue negotiations on an urgent basis. Similar references were made during the discussion of the Tunisian question and the relevant resolution 611 (VII), adopted on 17 December 1952, also envisaged negotiation between the parties.

73/ G A (VII), Annexes, a.i. 67, pp. 2 and 3, A/2184.

74/ Ibid., pp. 5-9, A/2216 and A/2216/Add.1.

79. At the 26th meeting on 26 November 1952, a draft resolution was submitted which was subsequently revised to incorporate certain amendments proposed during the discussion. The revised draft resolution 75/ read as follows:

"The General Assembly,

"Recalling that it is the primary duty of all Members of the United Nations, when involved in an international dispute, to seek the settlement of such a dispute by peaceful means, in accordance with Article 33 of the Charter,

"Recalling the existing resolutions of the General Assembly and the Security Council on Palestine,

"Recalling especially those resolutions which call upon the parties to achieve at an early date agreement on a final settlement of their outstanding differences,

"Taking note of the twelfth progress report (A/2216) of the United Nations Conciliation Commission for Palestine in which it is suggested that 'general or partial agreement could be sought through direct negotiations, with United Nations assistance or mediation',

"1. Expresses its appreciation of the efforts made to date by the United Nations Conciliation Commission for Palestine in the discharge of its mandate;

"2. Calls upon the parties to honour fully their undertaking to refrain from any acts of hostility against each other;

"3. Reaffirms the principle that the Governments concerned have the primary responsibility for reaching a settlement of their outstanding differences, and with this in view;

"4. Urges the Governments concerned to enter at an early date, without prejudice to their respective rights and claims, into direct negotiations for the establishment of such a settlement, bearing in mind the resolutions as well as the principal objectives of the United Nations on the Palestine question, including the religious interests of third parties;

"5. Requests the Conciliation Commission for Palestine to continue its efforts to fulfil the tasks entrusted to it under General Assembly resolutions and to be available for assistance in the negotiations, if so desired;

"6. Requests the Conciliation Commission for Palestine to render progress reports periodically to the Secretary-General for transmission to the Members of the United Nations;

"7. Requests the Secretary-General to continue to provide the necessary staff and facilities for carrying out the terms of the present resolution."

80. In support of this draft resolution it was argued that:

(a) The General Assembly had in the past recommended definite substantive solutions for various elements of the Palestine question. These recommendations could not be

75/ G A (VII), Annexes, a.i. 67, pp. 13 and 19, A/AC.61/L.23/Rev.4.

imposed upon the parties. Any solution must therefore be an agreed solution and the General Assembly should recommend to the parties methods and procedures by which they themselves might agree upon such a solution;

(b) An appeal to the parties to enter into direct negotiations for the purpose of settling their differences was consistent with the letter and spirit of Article 33 which laid down the principle that the primary responsibility for reaching a solution to their disputes rested with the parties;

(c) The scope of the negotiations should not be circumscribed by imposing preliminary conditions upon the parties. Such conditions would be laid down if the negotiations were confined to the framework of resolutions previously adopted by the General Assembly. While recommendations of the General Assembly to the parties to a dispute carried great authority, they could not be intended to stand in the way of an agreement directly arrived at by the parties; and

(d) In considering the scope of the direct negotiations, greater emphasis should be placed on the authority of the General Assembly resolutions and the parties should bear these resolutions in mind in engaging in direct negotiations.

81. Representatives who opposed the draft resolution contended that:

(a) The General Assembly, having assumed jurisdiction in the Palestine question and having adopted resolutions of far-reaching consequences, could not divest itself of further responsibility in the matter by inviting the parties to seek a solution of their own in direct negotiations;

(b) The obligation in Article 33 requiring the parties to a dispute to endeavour to find a settlement through means of their own choice applied to fresh disputes, whereas the Palestine question had already been before the General Assembly, which had adopted a number of resolutions independently of the agreement of the parties. Furthermore, Article 33 related to disputes the continuance of which was likely to endanger international peace and security, but it had not been established that the dispute existing between the Arab States and Israel was of that nature. In addition, Article 33 left the choice of methods for the settlement of the dispute to the parties involved, so that the General Assembly was in no way authorized to recommend any particular procedure; and

(c) Accordingly, the negotiations between the parties should be conducted on the basis of the General Assembly resolutions and under the auspices of the Conciliation Commission for Palestine.

82. At its 39th meeting on 11 December 1952, the Ad Hoc Political Committee adopted the revised draft resolution by 32 votes to 13, with 13 abstentions.

Decisions

At its 406th plenary meeting on 18 December 1952, the General Assembly first voted on an amendment 76/ submitted by the Philippines which would have replaced the words "bearing in mind", in paragraph 4 of the draft resolution, by the words "on the basis of", and would have added at the end of that paragraph the words: "and, in particular, the principle of the internationalization of Jerusalem". The amendment was rejected, having failed to obtain the required two-thirds majority.

76/ G A (VII), Annexes, a.i. 67, p. 19, A/L.134.

The draft resolution recommended by the Ad Hoc Political Committee was then voted upon and was rejected 77/ by 24 votes in favour, to 21 against, with 15 abstentions.

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

83. With the purpose of facilitating the implementation of prior efforts at peaceful settlement under Article 33 (1), proposals have been submitted to the General Assembly and to its subsidiary organ, the Interim Committee, for the establishment of machinery which might be resorted to by parties to a dispute of a nature to endanger international peace. Two of these proposals were adopted as recommendations by the General Assembly, while consideration of another proposal to institute a permanent commission of good offices under the United Nations remained pending together with the question of establishing a permanent conciliation organ.

a. RESOLUTIONS 268 A (III) AND 268 D (III)

84. At its third session, the General Assembly had before it a report 78/ of the Interim Committee entitled "Study of methods for the promotion of international co-operation in the political field". The report, which was submitted in pursuance of resolution 111 (II) instructing the Interim Committee to study methods for implementing the provisions of Article 11 (1) and Article 13 (1) (a), contained four specific recommendations in the form of draft resolutions, two of which were:

(a) A draft resolution 79/ which would provide for the restoration of its original efficacy to the General Act of 26 September 1928 for the Pacific Settlement of International Disputes;

(b) A draft resolution 80/ which would establish a panel for inquiry and conciliation to be composed of persons, designated by Member States, who, by reason of their training, experience, character and standing, were deemed to be well fitted to serve as members of commissions of inquiry or of conciliation and would be disposed to serve in that capacity.

85. In the course of the consideration of these draft resolutions by the Ad Hoc Political Committee at its 26th to 28th meetings inclusive between 6 and 9 December 1948, and at the 29th and 30th meetings on 6 and 7 April 1949, the question of the scope of the obligation imposed upon the parties to a dispute to resort first of all to peaceful means of their own choice, and the relation between this prior effort of the parties and the authority of the Security Council to intervene in a dispute was examined.

86. Adoption of the draft resolutions was supported on the ground that, among other things, the recommended instruments would facilitate the implementation of Article 33. It was contended that:

77/ G A (VII), Plen., 406th mtg., para. 73. In explaining his negative vote, the representative of the USSR stated that he had objected to the paragraphs providing for the continued activity of the Conciliation Commission for Palestine, which he considered incapable of promoting a settlement of the disputes between the parties.

78/ G A (III), Suppl. No. 10, p. 22, A/605.

79/ Ibid., p. 34, A/605, annex I.

80/ Ibid., pp. 35 and 36, A/605, annex IV.

(a) The General Act, which had been drawn up by the League of Nations Assembly and to which twenty States had acceded, laid down procedures designed to ensure that the contracting States should, according to their choice, make use of conciliation, judicial settlement or arbitration for the peaceful solution of their disputes. The General Act was still in force, although its effectiveness had diminished since some of its machinery had disappeared. By replacing that machinery, the full effect of the General Act would be restored and those States which had adhered to the Act, or which might wish to do so, would be able to use that multilateral treaty as a means of carrying out the obligations resulting from Article 33 (1);

(b) Similarly, by establishing the proposed panel from which members of a commission of inquiry or conciliation could be drawn, the parties to a dispute would be able, although under no obligation to do so, to make use of the procedure of inquiry and conciliation, in conformity with Article 33 (1), before submitting their dispute to the United Nations; and

(c) In this connexion, it was emphasized that, since the Security Council exercised exclusive jurisdiction only over disputes of a dangerous character, provision of machinery for the settlement of other disputes would in no way infringe the powers of the Security Council. As to disputes of a dangerous character, Article 37 clearly implied that, since parties to such a dispute were to have recourse to the Security Council only after other means had failed, they were fully entitled to use those other means in the first place.

87. In opposing the adoption of the recommended draft resolutions, some representatives contended that the proposed establishment of additional machinery for the pacific settlement of disputes was illegal since it emanated from an illegally constituted organ and was designed to curtail the competence of the Security Council. It was argued that:

(a) The General Act of 1928 contained provisions which did not conform to the principles of the United Nations Charter. The General Act provided for the establishment of conciliatory machinery, submission of a dispute to arbitration or to judicial settlement at the request of one of the parties, thus placing the two parties in an unequal position. In contradistinction, the Charter recognized the sovereign equality of the contending States by stipulating that the pacific settlement of disputes should be based on the agreement of both parties and that the Security Council should have only the power of recommendation as long as there was no threat to the peace, breach of the peace or act of aggression. Under the Statute of the International Court of Justice, the Court might assume jurisdiction only over cases which had been referred to it by both parties;

(b) The procedures for pacific settlement of disputes envisaged in the General Act would encroach upon the authority of the Security Council. The Charter assigned to the Council the primary responsibility for the maintenance of international peace and security and empowered it to deal with international disputes and situations in the discharge of its responsibility. Articles 35 and 36 enabled the Council to intervene at any stage of a dispute or situation and to recommend appropriate methods of peaceful settlement, thus making the establishment of additional instruments unnecessary; and

(c) For the same reasons, the creation of a panel for inquiry and conciliation would also undermine the authority of the Security Council in securing the peaceful settlement of disputes, since, under the draft resolution, functions of investigation and

conciliation would be assigned to the Secretary-General, the President of the General Assembly or the Chairman of the Interim Committee. 81/

88. At its 28th meeting on 9 December 1948, the Ad Hoc Political Committee adopted the draft resolution 82/ relating to the restoration of its original efficacy to the General Act of 26 September 1928 by 32 votes to 6, with 2 abstentions.

89. At its 30th meeting on 7 April 1949, the Ad Hoc Political Committee adopted the draft resolution 83/ relating to the creation of a panel for inquiry and conciliation by 41 votes to 6, with 3 abstentions.

Decisions

At its 199th plenary meeting on 28 April 1949, the General Assembly adopted 84/ the text of the draft resolution, which became resolution 268 A (III), 85/ concerning the General Act of 26 September 1928 by 45 votes to 6, with 1 abstention.

At the same meeting, the General Assembly adopted 86/ the text of the draft resolution, which became resolution 268 D (III), concerning the creation of a panel for inquiry and conciliation by 49 votes to 6, with 2 abstentions.

The second and fourth paragraphs of the preamble of resolution 268 D (III) read as follows:

"The General Assembly,

".....

"Deeming it desirable to facilitate in every practicable way the compliance by Member States with the obligation in Article 33 of the Charter first of all to seek a solution of their disputes by peaceful means of their own choice,

".....

"Concluding that to make provision for a panel of persons having the highest qualifications in this field available to any States involved in controversies and to the General Assembly, the Security Council and their subsidiary organs, when exercising their respective functions in relation to disputes and situations, would promote the use and effectiveness of procedures of inquiry and conciliation,"

81/ For texts of relevant statements, see

G A (III/1), Ad Hoc Pol. Com., 26th to 28th mtgs.;

G A (III/2), Ad Hoc Pol. Com., 29th and 30th mtgs.;

G A (III/2), Plen.: 197th to 199th mtgs.

82/ G A (III/2), Plen., Annexes, pp. 28 and 29, A/809.

83/ Ibid., pp. 43-45, A/833.

84/ G A (III/2), Plen., p. 208.

85/ In accordance with the terms of the resolution, the Secretary-General was required to publish the lists of accession to the Act. In his Annual Report submitted to the ninth session of the General Assembly, the Secretary-General gave the names of 4 Member States who had acceded to all or some of the provisions of the Revised General Act for the Pacific Settlement of International Disputes (G A (IX), Suppl. No. 1 (A/2663), pp. 98 and 99).

86/ G A (III/2), Plen., p. 209.

B. RESOLUTION 379 (V)

90. At its fifth session, the General Assembly had before it a request 87/ by Yugoslavia that the agenda item "Establishment of a permanent Commission of Good Offices" be included in the agenda. A draft resolution attached to the request proposed that all States develop the greatest measure of initiative with a view to settling their disputes by direct negotiations and by other peaceful means, in accordance with the terms of Article 33 (1), and proposed the establishment of a permanent commission of good offices for the purpose of facilitating the application of those means of settlement. The commission was to be composed of twelve Member States: six of them to be the non-permanent members of the Security Council and the remaining six to be elected by the General Assembly from among Member States other than the permanent members of the Security Council.

91. In an explanatory memorandum, it was stated that the proposed commission would perform a function not assigned either to the Security Council or to the General Assembly. The Charter laid down the obligation that States should solve their disputes by direct negotiations or other pacific methods of settlement. However, since the Security Council, although capable of functioning continuously, was restricted to the consideration of disputes likely to endanger international peace and security, and the General Assembly, non-permanent in character and large in membership, concerned itself with general problems of international co-operation, the specific task of improving disturbed relations between neighbouring States remained outside the competence of either principal organ. Establishment of a permanent subsidiary organ of the General Assembly would thus provide for the performance of a necessary function in the solution of conflicts before they assumed a character menacing international peace and security.

92. In the course of the discussion in the First Committee at its 390th and 391st meetings on 9 and 10 November 1950, objections were raised and doubts expressed, as to the legal grounds for the creation of the proposed commission. Reference was made to the broad functions vested in the Security Council under Articles 33, 34, 36, 37 and 38. Assignment to another organ of powers to recommend procedures of pacific settlement would thus conflict with the provisions of the Charter which conferred these powers upon the Security Council. It was also argued that the establishment of a permanent commission of good offices would not be in conformity with Article 33, under which the parties to a dispute were allowed to choose between the various means for peaceful settlement and to determine the composition of the conciliatory body they wished to employ.

93. Other representatives, while agreeing that it might be desirable to establish a subsidiary organ which would attempt to settle a dispute before it became so acute as to be submitted to the Security Council or to the General Assembly, favoured further study of the draft resolution submitted by Yugoslavia by the Interim Committee, which had before it a similar draft resolution submitted by Lebanon, 88/ which was subsequently merged with a draft resolution submitted by Uruguay.

94. At its 391st meeting on 10 November 1950, the First Committee adopted 89/ a draft resolution submitted by Lebanon and Uruguay by 46 votes to 5, with 5 abstentions.

87/ G A (V), Annexes, vol. II, a.i. 73, pp. 1-4, A/1401.

88/ For texts of relevant statements, see G A (V), 1st Com., 390th and 391st mtgs.

89/ G A (V), Annexes, vol. II, a.i. 73, p. 5.

Decision

At its 303th plenary meeting on 17 November 1950, the General Assembly adopted 90/ the text of the draft resolution, which became resolution 379 (V), by 45 votes to 5, with 3 abstentions. The resolution read as follows:

"The General Assembly,

"Mindful of the provision in Article 33 of the Charter that the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice;

"Recalling that in General Assembly resolution 295 (IV) the Interim Committee of the General Assembly is charged to consider systematically the further implementation of that part of Article 11 (paragraph 1) of the Charter relating to the general principles of co-operation in the maintenance of international peace and security and of that part of Article 13 (paragraph 1 a) which deals with the promotion of international co-operation in the political field,

"Considering that the Interim Committee of the General Assembly has already begun to study the question of the establishment of a permanent conciliation organ like that proposed by Yugoslavia,

"Considering that the study of this question is important and urgent,

"1. Decides to refer to the Interim Committee item 73 of the agenda of the present session (Establishment of a permanent commission of good offices);

"2. Recommends to the Interim Committee, in continuing its systematic examination of machinery for the pacific settlement of disputes, to study this item in connexion with the question of the establishment of a permanent organ of conciliation and taking into account the proposal introduced by Yugoslavia pursuant to item 73 and the discussions of the fifth session of the General Assembly on that item." 91/

90/ G A (V), Plen., 308th mtg., para. 50.

91/ The Interim Committee adjourned sine die on 17 March 1952 without having studied the question of the establishment of a permanent commission of good offices.