ARTICLE 33

CONTENTS

Text of Article 33
Introductory Note .............................................................. 1-6
I. General Survey ............................................................... 7-32
   A. Action by the Security Council ..................................... 7-19
   B. Action by the General Assembly .................................... 20-32
II. Analytical Summary of Practice ....................................... 33-49
   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 ........... 33-49
      1. Decision of 22 November 1972 in connexion with the situation in territories
         under Portuguese administration ........................................... 34
         with the situation in the Middle East ................................... 35-37
      3. Decisions of 28 February 1974 and 28 May 1974 in connexion with the complaint
         by Iraq ............................................................................ 38-40
         13 December 1974 in connexion with the situation in Cyprus ......................... 41-46
      5. Decisions of 22 October 1975 and 6 November 1975 in connexion with the situation
         concerning Western Sahara ................................................ 47-49
   **B. In the General Assembly
      **1. The question of the obligation of the parties under Article 33 (1) in relation to
         the intervention of the General Assembly
      **2. The question of the application of Article 33 through procedures of a general
         character instituted by the General Assembly

106
ARTICLE 33

TEXT OF ARTICLE 33

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

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

INTRODUCTORY NOTE

1. The present study of Article 33 follows previous Repertory treatment of the Article in limiting the material it presents to the question of the relationship between the obligation of the parties concerned to seek peaceful settlement of a dispute or a situation and the intervention in the question of the Security Council or the General Assembly.

2. The cases treated in the Analytical Summary of Practice under section A reflect the extent to which parties to a dispute are obligated to seek pacific settlement before recourse to the Security Council, as well as the scope of the question of what measures the Security Council may take in the light of the provisions of Article 33.

3. Other resolutions and decisions adopted by the Security Council which do not involve any constitutional debate, but are considered to have a bearing on the application or interpretation of Article 33, are treated in the General Assembly. Further material from the proceedings of the Security Council is also included in the General Survey.

4. This study should also be read in conjunction with those on Articles 36 and 40 because on occasion some of the Security Council resolutions and decisions either recommended procedures previously agreed upon by the parties concerned or were aimed at the immediate restoration of conditions that would make further efforts of peaceful settlement possible. No constitutional significance should, however, be attached to this reference, which is made merely for the convenience of the reader.

5. The material relating to relevant discussion of Article 33 in the General Assembly does not lend itself to constitutional analysis under section B of the Analytical Summary of Practice, but is treated in the General Survey under “B. Action by the General Assembly”. This part of the General Survey refers to various resolutions adopted by the General Assembly, some of which contained basic declarations relating to the provisions of Article 33 while others called upon the parties concerned to seek a peaceful solution of their differences.

6. For the first time, important general references to Chapter VI of the Charter have been added to this study of Article 33 in order to ensure that a significant element in the interpretation and application of the principles of peaceful settlement is given proper consideration.

7. Among the resolutions adopted by the Security Council during the period under review, two referred explicitly to Article 33 of the Charter. Another resolution contained an explicit reference to Chapter VI of the Charter.

8. Resolution 377 (1975), adopted on 22 October 1975 in connexion with the consideration of the situation concerning Western Sahara, contained in its paragraph 1 a request by the Security Council, acting in accordance with Article 34 of the Charter and without prejudice to negotiations that the parties might undertake under Article 33 of the Charter, to the Secretary-General to enter into immediate consultations with the parties and to report to the Council on his efforts in order to enable the Council to take appropriate measures. Resolution 380 (1975), adopted on 6 November 1975 also in connexion with the same situation, reiterated in its paragraph 3 the phrase from resolution 377 (1975) about negotiations under Article 33 and urged the parties to co-operate with the Secretary-General in the fulfillment of his mandate.

9. Resolution 395 (1976), adopted on 25 August 1976 in connexion with the complaint by Greece against Turkey, recalled in its preambular part the Charter principles for the peaceful settlement of disputes and relevant provisions of Chapter VI of the Charter. In the operative part of the resolution, the Council recommended certain modes of peaceful settlement and called in particular for a resumption of direct negotiations between the two parties over their differences. During the consideration of the issue, several representatives invoked Article 33 and Chapter VI explicitly and implicitly, without giving rise to a constitutional discussion.

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

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1For the constitutional discussion regarding these two resolutions, see paras. 47-49 below.
2C resolution 395 (1976), in particular, paras. 2 and 3.
3For significant references, both explicit and implicit, to Article 33 and occasionally to Chapter VI, see: S C (31), 1953rd mtg., passim, statements by France, Italy, Pakistan, Panama, United Kingdom, United Republic of Tanzania, and by the President speaking in his capacity as representative of Japan. For the introduction of draft resolution S/12187 by the United Kingdom, see ibid., paras. 5 and 6.
might be considered as an indirect application of Article 33 of Chapter VI. Several of these involved some constitutional discussion relating either to the situation under consideration or to the decision to be adopted. The remaining resolutions contain implicit references to Article 33 or Chapter VI without major constitutional implications.

11. Until 1974, in extending the stationing of the United Nations Peace-keeping Force in Cyprus for further periods, the Council referred implicitly to Article 33 in urging the parties concerned to continue determined co-operative efforts to achieve the objectives of the Security Council by availing themselves in a constructive manner of the current auspicious climate and opportunities. After the crisis of 1974, the Council urged the parties to accelerate these efforts. 

In 1976, the Council took a stronger stand regarding the stalemate situation in Cyprus and linked its call for accelerated efforts with an appeal to the parties to act with the utmost restraint to refrain from any unilateral or other action likely to affect adversely the prospects of negotiations for a just and peaceful solution.

12. The Council adopted additional provisions regarding the situation in Cyprus. Thus, after the grave crisis had erupted in July 1974, the Council issued urgent calls to the parties to enter into or to resume negotiations for the restoration of peace in the area. The Council also requested the Secretary-General to undertake and to continue a mission of good offices making himself available to the parties in negotiations under his auspices. Furthermore, the Council expressed concern at the lack of progress in the intercommunal talks and took issue in the preambular part of several resolutions with various impediments to the successful pursuit of the negotiations under the Secretary-General's auspices.

13. In connexion with several other agenda items, the Security Council adopted calls for negotiations between the parties to promote a peaceful solution and authorized the Secretary-General to appoint a special representative to lend his good offices in the search for a solution. During the consideration of the situation in Timor, the Council requested the Representative of the Secretary-General to continue consultations with the various parties involved and called upon all States and parties to co-operate with the United Nations to achieve a peaceful solution. In another decision the Council reaffirmed the Charter principles regarding the peaceful settlement of disputes.

14. The instances listed in the foregoing paragraphs show the variety of modes of peaceful settlement recommended by the Security Council during the period under review. There were at the same time instances in which proposals recommending peaceful means in settling certain conflicts were either rejected or failed of adoption. In connexion with the situation in the India/Pakistan subcontinent, the United States submitted a draft resolution under which the Council would have invited the Governments concerned to accept the proposal of the Secretary-General offering his good offices to secure and maintain peace in the area. The draft resolution was put to the vote and failed of adoption owing to a negative vote by a permanent member of the Council.

15. During the Security Council meetings in Addis Ababa, a draft resolution was submitted by Guinea, Somalia and Sudan in connexion with the situation in Territories under Portuguese administration: its paragraph 4 would have reaffirmed the Council's demand for negotiations, on the basis of the right to self-determination and independence, with the genuine representatives of the people of the Territories with a view to the transfer of power. This provision was deleted from the revised draft resolution subsequently adopted by the Council.

16. During the Security Council meetings in Panama City the representative of Guinea, India, Indonesia, Kenya, Panama, Peru, Sudan and Yugoslavia submitted a joint draft resolution regarding the question of the
Panama Canal. Under the draft resolution the Council would have recalled that it was a purpose of the United Nations to bring about adjustment or settlement of international disputes or situations which might lead to a breach of the peace. It would also have taken note that the Governments of the Republic of Panama and the United States of America had agreed to reach a just and fair agreement with a view to the prompt elimination of the causes of conflict between them; (b) would have also taken note of the willingness shown by the two Governments to establish in a formal instrument agreements on the abrogation of the 1903 convention-on the Isthmian Canal and its amendments and to conclude a new, just and fair treaty concerning the present Panama Canal which would fulfill Panama's legitimate aspirations and guarantee full respect for Panama's effective sovereignty over all of its territory; and (c) would have urged the two Governments to continue negotiations in a high spirit of friendship, mutual respect and co-operation and to conclude without delay a new treaty aimed at the prompt elimination of the causes of conflict between them. In the course of the discussion on the issue of the Panama Canal a large number of representatives stated their Governments' support for the pacific settlement of the issue, called upon the two parties to strive for a speedy conclusion of a new treaty and endorsed an urgent appeal by the Council, as proposed in the draft resolution, to the parties regarding the conclusion of negotiations between the United States and Panama. Other representatives also expressed support for a negotiated settlement but held that it was up to the two parties to decide how to proceed in their talks, and cautioned the Council not to intervene unduly in this bilateral matter. The representative of the United States, invoking Article 33, stated: "While the Charter of the United Nations confers this responsibility on the Security Council, it also provides--indeed, in Article 33, it specifically enumerates--many ways to resolve international issues before such matters are brought directly before the Council", and added that the Panama Canal question could best be resolved through direct negotiations between the parties rather than through involvement of the Security Council. The draft resolution failed of adoption owing to the negative vote of a permanent member of the Council.

17. During the examination in 1973 of the situation in the Middle East pursued by the Council at its 1717th to 1726th, and 1733rd to 1735th meetings, Guinea, India, Indonesia, Kenya, Panama, Peru, Sudan and Yugoslavia submitted a draft resolution. Under this draft the Council would have inter alia taken note of the Secretary-General's report regarding the determined efforts of his Special Representative since 1967, deeply regretted that the Secretary-General had been unable to report significant progress either by himself or by his Special Representative in carrying out the terms of resolution 242 (1967), expressed serious concern at Israel's lack of co-operation with the Special Representative, requested the Secretary-General and his Special Representative to resume and pursue their efforts to promote a just and peaceful solution of the Middle East problem, decided to afford the Secretary-General and his Special Representative all support and assistance for the discharge of their responsibilities, and called upon all parties concerned to extend full co-operation to the Secretary-General and his Special Representative. While expressing general support for the exercise of good offices through the Special Representative, those representatives who made what might be considered implicit references to Article 33 addressed themselves to the issue of negotiations, direct or indirect, with or without prior conditions, between Israel and the Arab States. Several representatives stressed the need for negotiations to arrive at a peace settlement; others rejected this approach and advocated instead the involvement of the Security Council in the search for further steps toward peace in the Middle East. The draft resolution (S/10974) failed of adoption owing to the negative vote of a permanent member of the Council.

18. During the consideration of the situation in the Comoros, a draft resolution was submitted by Benin, Guyana, the Libyan Arab Republic, Panama and the United Republic of Tanzania under which the Council would have requested the Government of France to enter into immediate negotiations with the Government of the Comoros for the purpose of taking appropriate measures to safeguard the unity and territorial integrity of the State of the Comoros. The provision did not give rise to constitutional arguments about Article 33 or Chapter VI. The draft resolution failed of adoption owing to the negative vote of a permanent member of the Council.

19. Instances in which Article 33 or Chapter VI was invoked during debates in the Council are partly covered by the case histories in the Analytical Summary of this study. Generally Article 33 was invoked to support proposals for settlement through one or several of the measures listed in its paragraph 1. Chapter VI was referred to in order to remind the members of the Council of the important mandate for the pacific settlement of disputes. In cases other than those surveyed above or analyzed below there were a few incidental references to Article 33 as well as to Chapter VI. These references amounted to little more than general invocations of Article 33 or Chapter VI without constitutional significance.
B. Action by the General Assembly

20. A resolution adopted by the General Assembly during the period under review contained an explicit reference to both Article 33 and Chapter VI. A second resolution invoked Article 33 explicitly, and a third referred explicitly to Chapter VI. In addition, the Assembly adopted a number of resolutions in which Article 33 or Chapter VI was implicitly referred to.

21. On 12 December 1974, the General Assembly adopted resolution 3283 (XXIX) entitled: Peaceful settlement of international disputes. At the 2307th plenary meeting of the General Assembly, on 6 December 1974, the representative of Australia introduced under agenda item 20: Strengthening of the role of the United Nations with regard to the maintenance and consolidation of international peace and security, the development of co-operation among all nations and the promotion of the rules of international law in relations between States, a draft resolution co-sponsored by Australia, Canada, Colombia, Costa Rica, Fiji, Ghana, Italy, Japan, Netherlands, New Zealand, Philippines, Singapore, Sweden and the United Kingdom. In introducing the draft resolution, the representative of Australia frequently invoked both Article 33 and Chapter VI and urged the Assembly to broaden and intensify the application of the Charter principles of peaceful settlement. The draft resolution was discussed at the 2307th, 2308th, 2313th, 2314th and 2316th plenary meetings. At the 2316th meeting, the draft was slightly revised in paragraph 4 and subsequently adopted by a vote of 68 to 10, with 35 abstentions, as resolution 3283 (XXIX). It reads as follows:

"The General Assembly,

Noting that the Charter of the United Nations obliges Member States to settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered,

Recalling, in particular, that the Security Council is charged under the terms of Article 24 of the Charter with primary responsibility for the maintenance of international peace and security, and that disputes may be brought to the attention of the Council for purposes of peaceful settlement under the provisions of Chapter VI of the Charter,

Recalling also that Article 33 of the Charter directs that 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 further that the International Court of Justice is the principal judicial organ of the United Nations and, as such, is available to Members for the settlement of legal disputes, that it has recently amended the Rules of Court with a view to simplifying its procedure so as to avoid delays and simplify hearings, and that it may establish chambers to hear and determine cases by summary procedure allowing for the speediest possible settlement of disputes,

Mindful of the existence of other facilities and machinery available for the settlement of disputes by mediation, conciliation, arbitration or judicial settlement, including the Permanent Court of Arbitration at The Hague and established regional agencies or arrangements,

Reaffirming that recourse to peaceful settlement of international disputes shall in no way constitute an unfriendly act between States,

Mindful also of the continuing threat to international peace and security posed by serious disputes of various kinds and the need for early action to resolve such disputes by resort in the first instance to the means recommended in Article 33 of the Charter,

1. Draws the attention of States to the machinery established under the Charter of the United Nations for the peaceful settlement of international disputes;

2. Urges Member States not already parties to instruments establishing the various facilities and machinery available for the peaceful settlement of disputes to consider becoming parties to such instruments and, in the case of the International Court of Justice, recognizes the desirability that States study the possibility of accepting, with as few reservations as possible, the compulsory jurisdiction of the Court in accordance with Article 36 of the Statute of the Court;

3. Calls upon Member States to make full use and seek improved implementation of the means and methods provided for in the Charter of the United Nations and elsewhere for the exclusively peaceful settlement of any dispute or any situation, the continuance of which is likely to endanger the maintenance of international peace and security, including negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, good offices including those of the Secretary-General, or other peaceful means of their own choice;

4. Requests the Secretary-General to prepare an up-to-date report concerning the machinery established under the Charter for the peaceful settlement of international disputes, inviting his attention in particular to the following resolutions of the General Assembly:

(a) Resolution 268 D (III) of 28 April 1949, in which the Assembly established the Panel for Inquiry and Conciliation;
There was no constitutional discussion regarding this. On 17 December 1970 the General Assembly, at its 1833rd meeting, adopted resolution 2749 (XXV), entitled: "Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction". Its paragraph 15 contains an explicit reference to Article 33 and reads as follows:

"The parties to any dispute relating to activities in the area and its resources shall resolve such dispute by the measures mentioned in Article 33 of the Charter of the United Nations and such procedures for settling disputes as may be agreed upon in the international régime to be established."

There was no constitutional discussion regarding this provision in the declaration, as far as the period under review is concerned.

At the twenty-sixth session, during the consideration of agenda item 34 regarding the implementation of the Declaration on the Strengthening of International Peace and Security, the General Assembly, at its 2029th plenary meeting, on 21 December 1970, adopted resolution 2880 (XXV). The seventh preambular paragraph of this resolution, invoking Chapter VI together with Chapter VII explicitly, reads as follows:

"The General Assembly,

... "Solemnly declares that:

... "15. The parties to any dispute relating to activities in the area and its resources shall resolve such dispute by the measures mentioned in Article 33 of the Charter of the United Nations and such procedures for settling disputes as may be agreed upon in the international régime to be established."

The deliberations in the First Committee did not contain any constitutional discussion, but Chapter VI and Article 33 were explicitly referred to.

During the period under review, the General Assembly adopted a number of resolutions with implicit references to Article 33.

At the twenty-fifth session, in connexion with agenda item 85, "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations: report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States", the General Assembly, at its 1883rd plenary meeting, on 24 October 1970, adopted resolution 2625 (XXV), which contained in its annex the Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. One of the seven principles elaborated in the Declaration is the principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered. This principle is elaborated as follows:

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

States shall accordingly seek early and just settlement of their international disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice. In seeking such a settlement the parties shall agree upon such peaceful means as may be inappropriate to the circumstances and nature of the dispute.

The parties to a dispute have the duty, in the event of failure to reach a solution by any one of the above peaceful means, to continue to seek an agreement upon the dispute by other peaceful means agreed upon by them.

States parties to an international dispute, as well as other States, shall refrain from any action which may aggravate the situation so as to endanger the maintenance of international peace and security, and shall act in accordance with the purposes and principles of the United Nations.

International disputes shall be settled on the basis of the sovereign equality of States and in accordance with the principle of free choice of means. Recourse to, or acceptance of, a settlement procedure freely agreed to by States with regard to existing or future disputes to which they are parties shall not be regarded as incompatible with sovereign equality.

Nothing in the foregoing paragraphs prejudices or derogates from the applicable provisions of the Charter, in particular those relating to the pacific settlement of international disputes."

The deliberations leading to the adoption of the Declaration were based on the report on the 1970 session of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation
Chapter VI. Pacific settlement of disputes

among States.\textsuperscript{44} Since the principle of peaceful settlement had been elaborated during earlier sessions of the Special Committee, the proceedings in 1970 did not involve any constitutional discussion of this important principle or of Article 33, but the Article was referred to a few times.\textsuperscript{45}

26. During the twenty-fifth session, in connexion with the consideration of measures for the strengthening of international security: report of the Secretary-General, the General Assembly, at its 1932nd plenary meeting, on 16 December 1970, adopted resolution 2734 (XXV), entitled Declaration of the Strengthening of International Security.\textsuperscript{46} Its paragraph 6 contains an implicit reference to Article 33 and reads as follows:

"The General Assembly,"

". . . .\textsuperscript{47}

"6. Urges Member States to make full use and seek improved implementation of the means and methods provided for in the Charter for the exclusively peaceful settlement of any dispute or any situation, the continuance of which is likely to endanger the maintenance of international peace and security, including negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, good offices including those of the Secretary-General, or other peaceful means of their own choice, it being understood that the Security Council in dealing with such disputes or situations should also take into consideration that legal disputes should as a general rule be referred to the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court;"

During the discussion of the agenda item in the First Committee, several draft resolutions were introduced containing explicit or implicit reference to Article 33,\textsuperscript{48} and that Article as well as Chapter VI were frequently invoked without giving rise to a constitutional discussion.\textsuperscript{49}

44See G A (25), Supplement No. 18. For information regarding the consideration of this item during the twentieth to twenty-fourth sessions, see: General Assembly, Supplement No. 18, Vol. II, under Arts. 6-7. See also G A (25), Supplement No. 8, paras. 16-17, where it is reported that the consensus regarding the principle of peaceful settlement was formulated in 1966 and remained unchanged despite further deliberations during the 1967 session of the Special Committee. For the proceedings in the Sixth Committee during the twenty-fifth session, see: G A (25), Annexes, a.i. 85, A/8082. The Sixth Committee considered the item at its 1178th to 1184th meetings; the General Assembly dealt with it at the 1883rd plenary meeting.

45For explicit references to Article 33, see: G A (25), 6th Com., 1180th mtg.: United Kingdom, para. 33; and 1181st mtg.: Greece, para. 32.

46The vote in the First Committee was 106 to 1, with 1 abstention. The General Assembly adopted the Declaration by 120 votes to 1, with 1 abstention.

47G A (25), Annexes, a.i. 32, A/8096, para. 5: A/C.1/L.513, para. 7 (Article 33 implicit); A/C.1/L.514, para. 4 (Art. 33 explicit).

48Since four draft resolutions were before the First Committee, the Committee, at its 1179th meeting, adopted a draft resolution with sponsors and other interested parties in order to arrive at a single text. With the help of a drafting committee a single text was drafted and introduced by the representative of Brazil at the 179th meeting of the First Committee. The draft declaration A/C.1/L.558 was somewhat amended, but these revisions did not affect the implicit reference to Article 33 in its paragraph 6.

49It was discussed in the First Committee at its 1725th to 1739th, 1795th and 1797th meetings. It was also discussed at the 1932nd plenary meeting of the General Assembly. There were numerous explicit and implicit references to both Article 33 and Chapter VI in all these meetings. For explicit references to Article 33 see: G A (25), Plen., 1932nd mtg.: India, para. 128; 1st Com., 1726th mtg.: India, para. 128; 1727th mtg.: Yugoslavia, para. 99; 1730th mtg.: Kuwait, paras. 101, 104; and 1374th mtg.: Cyprus, para. 311; Romania, para. 49; United Kingdom, para. 128; 1737th mtg.: Philippines, para. 72; 1739th mtg.: Pakistan, para. 46.

For explicit references to Chapter VI, see: G A (25), 1st Com., 1725th

27. During the twenty-sixth session, the General Assembly adopted resolution 2799 (XXVI) in connexion with the situation in the Middle East (agenda item 22); under paragraphs 3, 4 and 8, it requested the Secretary-General to reactivate the mission of the Special Representative to the Middle East under Security Council resolution 242 (1967), expressed full support for the activities of the Special Representative and asked the Secretary-General to report to the General Assembly and the Security Council on the progress made by the Special Representative. This implicit reference to Article 33 was not accompanied by discussion in the Assembly reflecting on its constitutional aspects.\textsuperscript{50}

28. On several occasions during the period under review, the General Assembly reiterating its request for the Secretary-General to continue to provide his good offices,\textsuperscript{51} and called upon the parties to resume the negotiations in a meaningful and constructive manner.\textsuperscript{52} The deliberations on the Cyprus question did not give rise to constitutional discussions.\textsuperscript{53}

29. During the thirty-first session, the General Assembly adopted resolution 3432 (XXX)\textsuperscript{54} in connexion with the question of Belize (agenda item 23); in paragraph 4 the Assembly called upon the Government of the United Kingdom, as the administering Power, acting in close consultation with the Government of Belize, and upon the Government of Guatemala, to pursue urgently their negotiations for the earliest possible resolution of their differences of opinion concerning the future of Belize. This provision might be considered as an implicit reference to Article 33. The call for continued negotiations was reiterated in resolutions adopted during the thirty-first to thirty-third session.\textsuperscript{55} There was no
constitutional discussion in connexion with the Belize question, but Article 33 and Chapter VI were occasion-
ally explicitly invoked. 56

30. In connexion with the question of the Comorian island of Mayotte, the General Assembly, at its thirty-
first and thirty-second sessions, adopted resolutions which contained implicit references to Article 33. Dur-
ing the thirty-first session the Assembly, in its resolu-
tion 33/36, para. 3, adopted, at the 83rd plenary mtg. of the 32nd session on 28 November 1977; and resolu-
tion 33/36, para. 3, adopted, at the 81st plenary mtg. of the 33rd session on 13 December 1978.

31. During the thirtieth session the General Assembly adopted resolution 32/20 regarding the situa-
tion in the Middle East. It called for the reconvening of the Geneva Peace Conference on the Middle East and urged the parties to the conflict and all other interested parties to work towards the achieve-
ment of a comprehensive settlement aiming at the estab-
lishment of a just and lasting peace in the region. 59

This debate did not lead to any relevant constitutional discussion.

32. Article 33 and Chapter VI were invoked explicitly during the twenty-fifth, 60 twenty-sixth, 61 twenty-
seventh, 62 twenty-eighth, 63 twenty-ninth, 64 thirty-first, 65 thirty-second 66 and thirty-third ses-

During the twenty-seventh session Article 33 was explicitly referred to as follows: in connexion with the general debate: G A (27), Plen., 2057th mtg.: Cyprus, para. 132; in connexion with the non-use of nuclear weapons: ibid., 2081st mtg.: Romania, para. 117; in connexion with the strengthening of the role of the United Nations: ibid., 2088th mtg.: Argentina, para. 35; in connexion with the imple-
mencement of the Declaration on the Strengthening of International Security: ibid., 1st Com., 1917th mtg.: Cyprus, para. 76; in connexion with the importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples: ibid., 2084th mtg.: France, para. 1, in connexion with the role of the International Court of Justice: ibid., 1384th mtg.: Japan, para. 48; USSR, para. 58; 1385th mtg.: Australia, para. 25; Belgium, para. 16; Canada, para. 10; United Kingdom, para. 9. Chapter VI was explicitly invoked as follows: in connexion with the general debate: G A (27), Plen., 2052nd mtg.: Colombia, para. 62; in connexion with the implementation of the Declaration on the Grant-
ing of Independence to Colonial Countries and Peoples: ibid., 2074th mtg.: Nepal, para. 19; in connexion with a.i. 24: ibid., 2087th mtg.: Egypt, para. 42; 2088th mtg.: Sweden, para. 49; 2089th mtg.: Iran, para. 56, in connexion with a.i. 25: ibid., 2092nd mtg.: Lebanon, para. 67; 2094th mtg.: Jordan, para. 103; 2095th mtg.: Israel, para. 97; in connexion with the question of peace-keeping: ibid., Spec. Pol. Com., 843rd mtg.: Brazil, para. 11; in connexion with a.i. 89: ibid., 1380th mtg.: Madagascar, para. 4; in connexion with a.i. 90: ibid., 1385th mtg.: Belgium, para. 16.

During the twenty-eighth session there was one reference to Article 33 in connexion with the review of the role of the International Court of Justice: G A (28), 1st Com., 1152nd mtg.: United States, para. 55; and Chapter VI was referred to in connexion with the question of peace-

During the twenty-ninth session Article 33 was explicitly referred to as follows: in connexion with the general debate (a.i. 9): G A (29), Plen., 2259th mtg.: Australia, para. 149; in connexion with the imple-
mencement of the Declaration on the Strengthening of International Security: ibid., 1st Com., 1936th mtg.: Rumania, para. 229 and 230; 1937th mtg.: Italy, para. 82; Pakistan, para. 282; in connexion with the role of the International Court of Justice: ibid., 6th Com., 1210th, 1212th to 1214th, 1216th and 1217th mtgs., for a large number of explicit as well as implicit references to Art. 33. Chapter VI was explicitly invoked as follows: in connexion with a.i. 39: ibid., Spec. Pol. Com., 936th mtg.: Byelorussian SSR, para. 17; in connexion with the role of the International Court of Justice: ibid., 6th Com., 1466th to 1468th, 1470th and 1492nd mtgs., for a large number of explicit and implicit references to Art. 33. Chapter VI was explicitly referred to as follows: in connexion with the special Committee on the Question of Defining Aggression (a.i. 86): ibid., 6th Com., 1472nd mtg.: Austria, para. 31; in connexion with the review of the Charter (a.i. 95): ibid., 1517th mtg.: Ghana, para. 24.

During the thirtieth session Article 33 was explicitly invoked as follows: in connexion with the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples: ibid., 1375th mtg.: United States, para. 125; 1376th mtg.: Iraq, para. 23; 1385th mtg.: Belgium, para. 16. Chapter VI was referred to in connexion with the policies of apartheid, see: ibid., Spec. Pol. Com., 773rd mtg.: Madagascar, para. 35.
sions in the General Assembly and its committees on a wide range of agenda items without giving rise to constitutional arguments or leading to the formulation of relevant draft resolutions.

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

33. During the period under review, consideration of the obligation of the parties to seek a pacific settlement of their differences arose in the context of proposals to encourage the parties to seek settlement by direct negotiations, international inquiry and through the good offices of the Secretary-General.

I. DECISION OF 22 NOVEMBER 1972 IN CONNEXION WITH THE SITUATION IN TERRITORIES UNDER PORTUGUESE ADMINISTRATION

34. The draft resolutions successively submitted by Guinea, Somalia and Sudan contained paragraphs calling upon the Government of Portugal to enter into negotiations with the other parties involved. Thus, draft resolution S/10834, which was subsequently withdrawn, under paragraph 6, would have called upon the Government of Portugal to enter into negotiations with the national liberation movements of Angola, Guinea (Bissau) and Cape Verde, and Mozambique with a view to arriving at a solution of the conflict. This text was replaced by a new draft (S/10838) which underwent a few further changes (S/10838/Rev.1) and was subsequently adopted as resolution 322 (1972). The resolution read in its paragraph 3 as follows:

"The Security Council, ..."

During the consideration of the issue in the Security Council, numerous speakers urged the Portuguese Government to accept the call of the liberation movements in the Territories under its administration for negotiations toward a peaceful settlement as a result of which these Territories would gain their independence; these negotiations should be initiated in accordance with the provisions for peaceful settlement under the Charter. Besides general calls for negotiations, several representatives offered more specific proposals. Some of these envisaged restricting the subject of the negotiations to the mode of transferring governmental authority to the independence movements in the Territories; others emphasized the need for unconditional open talks. Most of the speakers in the debate suggested a strong involvement of the United Nations in getting the negotiations started and even in mediating between the parties during the actual negotiating process.

2. DECISIONS OF 21 OCTOBER 1973, 15 DECEMBER 1973 AND 29 NOVEMBER 1974 IN CONNEXION WITH THE SITUATION IN THE MIDDLE EAST

35. Following the outbreak of hostilities in the Middle East in October 1973, the Council issued several calls for the immediate start of negotiations between the parties, the first being S C resolution 338 (1973). The two sponsors of draft resolution S/11036, the USSR and the United States, affirmed resolution 242 (1967) as the main instrument for the settlement of the conflict in the Middle East and urged the parties and the members of the Council to initiate the search for a peaceful settlement through negotiations in accordance with the Charter of the United Nations and under appropriate auspices. Spokesmen for the parties involved differed as to the goals and the procedures of the suggested negotiations, one side advocating direct talks, the other side rejecting direct negotiations at that time and favouring mainly the involvement of the United Nations. Under the draft resolution which was adopted as resolution 338 (1973), the Security Council inter alia:

90S/10838/Rev.1 was unanimously adopted as S C resolution 322 (1972) at the 1677th meeting (S C (27), 1677th mtg., para. 83).

91For texts of relevant statements see S C (27), 1672nd mtg.: Ethiopia, para. 164; Sierra Leone, para. 63; 1673rd mtg.: Somalia, para. 117; United Republic of Tanzania, para. 5; Mr. Dos Santos, the Chargé d'Affaires of the Republic of Angola, para. 36; 1674th mtg., para. 35; 1676th mtg., para. 30; Somalia, para. 63; Yugoslavia, para. 3; 1677th mtg., para. 47; India, para. 16; Japan, para. 30; Panama, para. 3; Somalia, para. 78; United Kingdom, para. 64; United States, para. 76.

92For the texts of relevant statements see S C (28), 1743rd mtg.: Egypt, para. 23; Israel, para. 60; United States, para. 4; 1747th mtg.: USSR, para. 11; United States, paras. 5-10.

93Draft resolution S/11036 was adopted by 14 votes to none, with one member not participating, as resolution 338 (1973). See S C (28), 1747th mtg., para. 170, for the vote.
“2. Calls upon the parties concerned to start immediately after the cease-fire the implementation of Security Council resolution 242 (1967) in all of its parts;

“3. Decides that, immediately and concurrently with the cease-fire, negotiations shall start between the parties concerned under appropriate auspices aimed at establishing a just and durable peace in the Middle East.”

36. In accordance with resolution 338 (1973) steps were taken to start negotiations between the parties. The Council convened to discuss the arrangements for the proposed Peace Conference on the Middle East and adopted resolution 344 (1973) which read in relevant parts as follows:

“The Security Council,

“Considering that it has decided by its resolution 338 (1973) of 22 October 1973 that talks among the parties to the Middle East conflict for the implementation of resolution 242 (1967) of 22 November 1967 should be held under “appropriate auspices”,

“Noting that a peace conference on the Middle East situation is to begin shortly at Geneva under the auspices of the United Nations,

1. Expresses the hope that the Peace Conference will make speedy progress towards the establishment of a just and durable peace in the Middle East;

2. Expresses its confidence that the Secretary-General will play a full and effective role at the Conference, in accordance with the relevant resolution of the Security Council and that he will preside over its proceedings, if the parties so desire;

3. Requests the Secretary-General to keep the Council suitably informed of the developments in negotiations at the Conference, in order to enable it to review the problems on a continuing basis; . . .

During the debate several speakers stated that the phrase “under appropriate auspices” in resolution 338 (1973) referred to those of the United Nations, that the arrangements for the Peace Conference on the Middle East were not sufficient to implement the phrase in resolution 338, and that the new resolution constituted an attempt to involve the United Nations and, in particular, that the new resolution contained the whole framework for the conference were still in progress and since previous resolutions contained the whole framework for the conference and the peace negotiations.43

37. In connexion with the renewal of the United Nations Disengagement Observer Force for another six months, the Council included the report of the Secretary-General in the agenda. The Secretary-General, in orally introducing his report in the Council, emphasized the urgency of a negotiated settlement between the two parties involved. Several representatives expressed the hope that the peace negotiations would be renewed and called urgently for a resumption of the Peace Conference in Geneva as the most suitable forum for the conduct of the peace talks under resolution 338 (1973). The President, speaking as representative of the United States, stated that his Government shared the sense of urgency and would make every effort to advance step by step towards peace in the area.77 The draft resolution (S/11565) was jointly submitted by Austria, Indonesia, Kenya, Mauritania, Peru and the United Republic of Cameroon and was adopted as resolution 363 (1974),78 which “called upon the parties concerned to implement immediately Security Council resolution 338 (1973).”

3. DECISIONS OF 28 FEBRUARY 1974 AND 28 MAY 1974 IN CONNEXION WITH THE COMPLAINT BY IRAQ

38. During the debate concerning frontier incidents involving Iran and Iraq, all speakers urged the use of peaceful means in settling these incidents and called for bilateral negotiations between the parties involved. While one party insisted on strictly bilateral exchanges through normal diplomatic channels, the other sought to employ also judicial settlement and third party involvement in the search for a solution. Following the mission of the Special Representative of the Secretary-General and the report of the Secretary-General thereon,79 the Council resumed the discussion. Most representatives explicitly acknowledged the important third party role played by the United Nations and emphasized the use of the good offices of the Secretary-General through his Special Representative in bringing about the agreement among the parties regarding the next stages of the process of resolving the issue of the frontier incidents. Two members of the Council pointed out that the Secretary-General should seek the agreement of the Council regarding the nature and extent of his assistance to the parties in the exercise of his good offices.80

39. At the 1764th meeting, on 28 February 1974, the President read a statement81 representing the consensus of the members of the Council, which provided inter alia:

“2. . . . The Council reaffirms the fundamental principles set out in the Charter regarding respect for the territorial sovereignty of States and the pacific settlement of disputes . . .

42Draft resolution S/11156, submitted by the ten non-permanent members of the Council, was adopted at the 1760th mtg. by 10 votes to none, with 4 abstentions, and with one member not participating in the vote, as resolution 344 (1973) See S C (28), 1760th mtg., paras. 1, 7, 8, 9.

43For texts of relevant statements see S C (29), 1809th mtg.: Byelorussian SSR, para. 122; France, para. 102; Peru, para. 14; President (United States), para. 145; USSR, para. 39, United Republic of Cameroon, para. 64; Secretary-General, para. 7.

44Draft resolution S/11565 was adopted at the 1809th mtg. by 13 votes to none, with two members not participating in the vote, as resolution 363 (1974). See S C (29), 1809th mtg., para. 24.

45S C (29), Suppl. for April-June, 1974, S/11299, dated 27 November 1974.

46For texts of relevant statements see S C (29), 1762nd mtg.: Iran, paras. 35, 106, 113; Iraq, paras. 6, 92, 112; 1764th mtg.: China, para. 2; President, para. 3; 1770th mtg.: Byelorussian SSR, para. 74; China, para. 30; Iran, paras. 95, 111; Iraq, para. 103, 112; President (Kenya), para. 3; USSR, paras. 7, 17; United Kingdom, para. 36; United States, para. 47.

47S C (29), Suppl. for Jan.-March, 1974, S/11229.
"3. From the information available to the Council, it appears that the cause of the events lies, *inter alia*, in the fact that the legal basis for the delimitation of the boundary between the parties is contested.

"4. The Council has noted the recent exchange of ambassadors between the two States and hopes that this could constitute a channel through which problems affecting relations between the parties might be resolved.

"5. As additional information is required, the Security Council requests the Secretary-General "—to appoint as soon as possible a special representative... and "—to report within three months."

On 20 May 1974, the Secretary-General submitted his report* in accordance with the consent of the Council, in which he communicated to the Council the points of agreement between the parties arrived at through his Special Representative, acting in exercise of the good offices of the Secretary-General.

40. At its 1770th meeting on 28 May 1974, the Council considered this report and adopted a draft resolution which had emerged as a result of prior consultations as resolution 348 (1974).* The relevant parts read as follows:

"The Security Council,

"Recalling its consensus adopted on 28 February 1974 (S/11229),

"1. Takes note with appreciation of the Secretary-General's report, which was circulated to the Security Council on 20 May 1974 (S/11291);

"2. Welcomes the reported determination on the part of Iran and Iraq to de-escalate the prevailing situation and to improve their relations and, in particular, the fact that both countries have agreed through the Secretary-General's Special Representative, acting in the exercise of the Secretary-General's good offices, to the following points:

"(d) An early resumption, without any preconditions, at the appropriate level and place, of conversations with a view to a comprehensive settlement of all bilateral issues;

"4. Invites the Secretary-General to lend whatever assistance may be requested by both countries in connexion with the said agreement."


41. During the debates in the Council concerning the crisis of summer 1974, numerous speakers called for negotiations between the parties directly involved and among the guarantor States to seek a just and lasting peaceful settlement of the intercommunal issues dividing the island republic and the neighbouring States. Most representatives invoked the principles of the Charter of the United Nations for the pacific settlement of disputes and indicated that the continued involvement of the United Nations, in particular in the person of the Secretary-General and his Representative, was highly desirable and useful. One representative called for negotiations under the chairmanship of the Secretary-General and proposed the principal participation of the Security Council in the search for a solution. The representative of Cyprus raised the question whether negotiations could be fair and open while the invader, was occupying large parts of the territory.*

42. At the 1781st meeting, on 20 July 1974, the Council adopted resolution 353 (1974) which had emerged as a result of consultations among members of the Council.* Its paragraph 5 reads as follows:

"The Security Council,

"5. Calls upon Greece, Turkey and the United Kingdom of Great Britain and Northern Ireland to enter into negotiations without delay for the restoration of peace in the area and constitutional government in Cyprus and to keep the Secretary-General informed.*"

43. At the 1792nd meeting, on 14 August 1974, the Council adopted resolution 357 (1974), originally submitted by the United Kingdom* and revised during consultations among members of the Council;* Its paragraph 3 reads as follows:

"The Security Council,

"3. Invites the parties to resume without delay, in an atmosphere of constructive co-operation, the negotiations called for in resolution 353 (1974) whose outcome should not be impeded or prejudged by the acquisition of advantages resulting from military operations;"

45. At the 1795th meeting, on 30 August 1974, a draft resolution sponsored by Austria, France and the United Kingdom* was voted upon and adopted as resolution 361 (1974);* it provided inter alia:

"The Security Council,

"3. Urges the parties to resume without delay, in an atmosphere of constructive co-operation, the negotiations called for in resolution 353 (1974) whose outcome should not be impeded or prejudged by the acquisition of advantages resulting from military operations;"

*For texts of relevant statements see S C (29), 1779th mtg.: paras. 28, 88; 1780th mtg.: United States, para. 120; 1781st mtg.: Austria, para. 145; United Kingdom, paras. 41, 243; United States, para. 53; 1782nd mtg.: United States, para. 103; 1792nd mtg.: United Kingdom, para. 8; 1794th mtg.: President (USSR), para. 83; 1810th mtg.: Cyprus, para. 16; United States, para. 219.

*Draft resolution S/11350 was adopted unanimously without change at the 1781st mtg, as S C resolution 353 (1974).

*Draft resolution S/11446, adopted unanimously without further change as S C resolution 357 (1974).

*Draft resolution S/11479 was adopted unanimously without change at the 1785th mtg, as S C resolution 361 (1974).
“1. Expresses its appreciation to the Secretary-General for the part he has played in bringing about talks between the leaders of the two communities in Cyprus;

“2. Warmly welcomes this development and calls upon those concerned in the talks to pursue them actively with the help of the Secretary-General and in the interests of the Cypriot people as a whole;

“3. Calls upon all parties, as a demonstration of good faith, to take, both individually and in cooperation with each other, all steps which may promote comprehensive and successful negotiations;”.

46. In connexion with the extension of the mandate of UNFICYP at the 1810th meeting on 13 December 1974, the Council adopted resolution 364 (1974) which had emerged from consultations among members of the Council. It provided inter alia as follows:

“The Security Council,

‘Noting further that resolution 3212 (XXIX) enunciates certain principles intended to facilitate a solution to the current problems of Cyprus by peaceful means, in accordance with the purposes and principles of the United Nations,

‘...’

‘3. Urges the parties concerned to act with the utmost restraint and to continue and accelerate determined co-operative efforts to achieve the objectives of the Security Council;’”.

5. DECISIONS OF 22 OCTOBER 1975 AND 6 NOVEMBER 1975 IN CONNEXION WITH THE SITUATION CONCERNING WESTERN SAHARA

47. At the 1850th meeting, on 22 October 1975, the Council adopted by consensus resolution 377 (1975), which had been agreed upon in the course of informal consultations and read inter alia as follows:

“The Security Council,

‘...’

‘1. Acting in accordance with Article 34 of the Charter of the United Nations and without prejudice to any action which the General Assembly might take under the terms of its resolution 3292 (XXIX) of 13 December 1974 or to negotiations that the parties concerned and interested might undertake under Article 33 of the Charter, requests the Secretary-General to enter into immediate consultations with the parties concerned and interested and to report to the Security Council as soon as possible on the results of his consultations in order to enable the Council to adopt the appropriate measures to deal with the present situation concerning Western Sahara;’

48. At the 1854th meeting, on 6 November 1974, after informal consultations, the Council adopted by consensus resolution 380 (1975). It read inter alia as follows:

“The Security Council,

‘...’

‘3. Calls upon Morocco and all other parties concerned and interested, without prejudice to any action which the General Assembly might take under the terms of its resolution 3292 (XXIX) of 13 December 1974 or any negotiations which the parties concerned and interested might undertake under Article 33 of the Charter of the United Nations, to co-operate fully with the Secretary-General in the fulfillment of the mandate entrusted to him in Security Council resolutions 377 (1975) and 379 (1975).’”

49. During the Council’s deliberations concerning Western Sahara, the meaning of the explicit reference to Article 33 of the Charter in resolution 377 (1975) was discussed. Some representatives insisted that the letter and spirit of Article 33 required that the interested parties should try to settle their conflicting views about Western Sahara through negotiations as espoused in the Charter. Another representative held that the particular issue before the Council needed to be dealt with by the Council and that the interested parties had to carry out any decisions taken by the Council in fulfilling their obligations under the Charter’s provisions for the peaceful settlement of disputes. A third position was taken by another representative who demanded that the Council take forceful action to block, or put an end to, the aggressive action that threatened peace and security in the region; in doing so the Council would fulfill its obligations under Articles 33 and 34.**

**B. In the General Assembly

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

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

93Draft resolution S/11573 was adopted at the 1810th mtg. by 14 votes to none; with one member not participating in the vote, as S C resolution 364 (1974).

94For the President’s declaration and the adoption by consensus of S C resolution 377 (1975), see S C (30), 1850th mtg., para. 19.