

ARTICLE 34

CONTENTS

	<i>Paragraphs</i>
Text of Article 34	
Introductory Note	1-5
I. General Survey	6-13
II. Analytical Summary of Practice	14-67
A. The question of the Security Council being seized of disputes and situations under Article 34	14-54
a. Decision of 1 April 1960 in connexion with a complaint concerning South Africa	14-18
b. Decision of 23 June 1960 in connexion with the complaint by Argentina (Eichmann case)	19-24
c. Decision of 19 July 1960 in connexion with a complaint by Cuba (letter of 11 July 1960)	25-28
d. Decision of 5 January 1961 in connexion with a complaint by Cuba (letter of 31 December 1960)	29-32
e. Decisions of 15 March and 9 June 1961 in connexion with the situation in Angola	33-45
f. Decision of 7 August 1963 in connexion with the question of race conflict in South Africa	46-48
g. Decision of 4 June 1964 in connexion with the complaint concerning acts of aggression against the territory and civilian population of Cambodia	49-54
B. The question of the nature of the act of investigation under Article 34	55-62
Decision of 7 September 1959 in connexion with the report of the Secretary-General relating to Laos	55-62
**C. The question whether invitations to participate are incumbent on the Security Council in the preliminary investigation of questions	
**D. The question of the duty of Members of the United Nations, and of States which have accepted the obligations of pacific settlement provided in the Charter, in connexion with decisions of the Security Council to investigate under Article 34	
**E. The question of the power to continue investigation after a determination under Article 34	
**F. The question whether a determination under Article 34 could result from an appraisal of the Council prior to the act of investigation	
G. The question of the establishment of a permanent fact-finding body	63-67
Decision of the General Assembly of 20 December 1965 in connexion with the question of "methods of fact-finding"	63-67

TEXT OF ARTICLE 34

The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.

INTRODUCTORY NOTE

1. During the period under review Article 34 was invoked in connexion with: (a) proposals or suggestions for investigation of a situation which might lead to international friction or give rise to a dispute; (b) a situation or a dispute which might lead to international friction or whose continuance was likely to endanger the maintenance of international peace and security, without any investigation being requested and (c) matters which were dealt with by a regional organization and were also submitted to the Security Council as matters likely to endanger international peace and security.

2. In the General Survey, attention is drawn to a decision of the Security Council establishing a subsidiary organ of inquiry and to another decision requesting that a subsidiary organ established by the General Assembly report to the Council on inquiries which it considered necessary in connexion with a situation in a particular territory. Also listed therein

are instances in which Article 34 was invoked in the preambles of draft resolutions submitted to the Council.

3. In addition the General Survey includes three cases in which references were made to Article 34 either in the letter of submission or during the discussion in the Council without, however, any detailed consideration having been given to the provisions of Article 34 in a constitutional sense.

4. Some explicit references to Article 34 in the Security Council and in the General Assembly are also listed therein.

5. In the Analytical Summary of Practice two constitutional issues, which were examined in the *Repertory*, are dealt with. Another constitutional issue which arose during the period under review is treated under a new heading in section II G. During the period under review no material was found for inclusion under section II C, D, E and F.

GENERAL SURVEY

6. During the period under review, the Security Council did not institute any investigation for the purpose of determining whether the continuance of a dispute or a situation was likely to endanger the maintenance of international peace and security. However, without making any explicit reference to Article 34, the Security Council, by resolution 163 (1961) on the situation in Angola, requested the sub-committee which had been established by the General Assembly in resolution 1603 (XV) to conduct such inquiries as the sub-committee might deem necessary and to report to it and the General Assembly. On another occasion, the Security Council by resolution 189 (1964), decided to send three of its members to Cambodia and the Republic of Vietnam and requested them to report to the Council. The proceedings are reviewed below in paragraphs 33 to 45 and 49 to 54, respectively, in section II A.

7. Article 34 was also cited in the preambular part of two draft resolutions submitted to the Security Council. During consideration of a complaint by Cuba of 11 July 1960¹ the representatives of Argentina and Ecuador submitted a draft resolution

the third preambular paragraph of which read: "*Taking into account* the provisions of Articles 24, 33, 34, 35, 36, 52 and 103 of the Charter of the United Nations,". That draft resolution was subsequently adopted by the Council, as its resolution 144 (1960). The second instance occurred during the consideration of the situation in the Dominican Republic, at the 1204th meeting of the Security Council, on 11 May 1965, when the representative of Uruguay submitted a draft resolution² the third preambular paragraph of which read: "*Having regard* to Articles 24, 34 and 35 and the relevant provisions of Chapter VIII, of the Charter of the United Nations,". The draft resolution, when subsequently put to the vote, was not adopted.³

8. References to the Security Council's power of investigation were made in connexion with a decision of the Council to establish a subsidiary organ, when an issue concerning the nature of that decision.⁴ In the General Assembly, similar references were made during the discussion of the item entitled

¹ S C, 15th yr., Suppl. for July—Sept., p. 9, S/4378.

² S C, 20th yr., 1204th mtg., para. 4, S/6346.

³ S C, 20th yr., 1216th mtg., para. 69.

⁴ See paras. 55—62 below.

"The question of the establishment of a permanent fact-finding body".⁵

9. Article 34 was invoked in cases where an investigation was requested or where the Security Council's over-all responsibility with regard to the maintenance of international peace and security was discussed in relationship to regional arrangements. These questions are dealt with both in the General Survey and in the Analytical Summary of Practice.⁶ In an explanatory memorandum accompanying a letter⁷ requesting a meeting of the Security Council to consider the situation in Southern Rhodesia, the representatives of Ghana, Guinea, Morocco and the United Arab Republic stated that the action proposed by the United Kingdom leading to transfer of powers to Southern Rhodesian authorities, might create "a situation 'which might lead to international friction' and whose continuance 'is likely to endanger the maintenance of international peace and security'. It therefore calls, in any event, for investigation by the Security Council under Article 34 of the Charter". During the discussion of that item no further request for an investigation, as envisaged in Article 34, was made. A number of representatives were of the opinion that the Security Council was called upon not merely to intervene after a breach of the peace had occurred but that its main task was to prevent breaches of the peace. They also held the view that the United Kingdom's proposed action with regard to Southern Rhodesia might lead to international friction in the area within the meaning of Article 34 of the Charter. The representative of the United Kingdom, however, maintained that no situation of the nature described in Article 34 existed in Southern Rhodesia and added that the United Kingdom considered that the internal policy of the Government of Southern Rhodesia was a matter essentially within the domestic jurisdiction of that Government and, as such, was beyond the competence of the Security Council. The policy of that Government could not be used to establish the existence of a situation calling for action under Chapter VI of the Charter.⁸

10. During the consideration by the Security Council of a complaint⁹ by Senegal concerning "the repeated violations of Senegalese air space and territory" by Portuguese aircraft, one representative suggested that, in view of the fact that Portugal had denied charges of frontier incursions and violations of Senegalese air space and because of the degree of tension that was growing on the Senegal-

Portuguese-Guinea frontier, "an on-the-spot investigation would be helpful to elicit the truth and to ease tension in that area". For that reason, he added, "a small Security Council commission should be appointed to visit the area and report back to the Council with recommendations to avoid a recurrence of similar incidents". Another representative also stated that the Security Council, before taking a decision on the substance of the matter should try to obtain impartial findings on the disputed question and then examine the question in the light of those findings.¹⁰ The suggestion for a Security Council investigation was not pressed further on that occasion. However, during the discussion in the Council of a subsequent complaint¹¹ by Senegal, a number of representatives expressed support for the idea of investigation. One member added that, since the offer of an inquiry was unacceptable to one of the parties, the Council could itself order an investigation of the facts of the dispute, in accordance with Article 34 of the Charter. Some other members, however, held the view that the facts relating to the violations of the Senegalese air space and territory were well established and Portugal's non-compliance with the Security Council resolution of 24 April 1963 was well known: the suggestion for investigation would therefore be unacceptable to Senegal.¹²

11. By a letter¹³ dated 21 November 1961, the representative of Cuba requested an urgent meeting of the Security Council to consider his Government's charges that the Government of the United States was carrying out a plan of armed intervention in the Dominican Republic, in violation of that country's sovereignty, of the principles of the United Nations Charter and of the Charter of the Organization of American States (OAS). In making this request Cuba cited Article 34, together with other Articles of the Charter of the United Nations.

12. At its 980th meeting, on 22 November 1961, the Security Council included the question in its agenda. The representative of Cuba then stated that the situation created by the United States plans was very serious as it involved a threat to peace, and the Council should study the question in the light of the principles of the Charter.¹⁴ The representative of the Dominican Republic, who was invited to participate in the discussion at his request, stated that, in accordance with Article 34, the Security Council could investigate any dispute or situation which might lead to international friction in order to determine whether the continuance of that dispute or situation was likely to endanger international peace

⁵ See paras. 63-67 below.

⁶ See paras. 25-28 and 38-41 below. In connexion with the consideration of the Security Council of the complaint of Haiti (decision of 9 May 1963) with regard to the question of the relation between Article 52 (2) and (3) and Article 52 (4) which provides that Article 52 in no way impairs the application of Articles 34 and 35, see this *Supplement*, under Article 52, paras. 37-41.

⁷ S C, 18th yr., Suppl. for July-Sept., p. 64, S/5382.

⁸ For texts of relevant statements, see S C, 18th yr., 1064th mtg.: Ghana, paras. 21, 72 and 73; 1065th mtg.: Mali, paras. 28-30; United Arab Republic, para. 63; 1066th mtg.: United Kingdom, paras. 50-62; 1067th mtg.: Morocco, paras. 17 and 18; 1068th mtg.: Ghana, para. 24; USSR, para. 37.

⁹ S C, 18th yr., Suppl. for April-June, S/5279.

¹⁰ For texts of relevant statements, see S C, 18th yr., 1027th mtg.: Portugal, paras. 63-112; Senegal, paras. 48-62 and 113-117; 1028th mtg.: Ghana, para. 101; 1033rd mtg.: Brazil, para. 62. See also this *Supplement*, under Article 33, paras. 56-67.

¹¹ S C, 20th yr., Suppl. for April-June, S/6338.

¹² For texts of relevant statements, see S C, 20th yr., 1210th mtg.: Bolivia, paras. 100 and 101; Ivory Coast, paras. 89-91; USSR, paras. 45-47; 1211th mtg.: Ivory Coast, paras. 43-45; Malaysia, paras. 39, 40 and 42; 1212th mtg.: Ivory Coast, para. 65; Netherlands, para. 23; United Kingdom, paras. 39 and 40.

¹³ S C, 16th yr., Suppl. for Oct.-Dec., S/4992.

¹⁴ S C, 16th yr., 980th mtg.: Cuba, paras. 25 and 26.

and security. However, such was not the case and the charges by Cuba were groundless. The Council adjourned its discussion of the Cuban complaint.¹⁵ 13. Incidental references to Article 34 which did not lead to any constitutional discussion were also made on a number of occasions when the Security Council and the General Assembly discussed matters relating to the maintenance of international peace and security. Among the questions discussed by the Security Council were the situation in the Territories in Africa under Portuguese administration,¹⁶

¹⁵ *Ibid.*, 983rd mtg., para. 179. For other complaints by Cuba, see this *Supplement*, Article 52 and Article 53, paras. 28–31 and 32–44.

¹⁶ S C, 18th yr., 1044th mtg.: Venezuela, para. 44.

the complaint of the Government of Cyprus,¹⁷ the situation in the Republic of the Congo,¹⁸ and the Palestine question;¹⁹ those discussed by the General Assembly included the question of Hungary,²⁰ the status of the German-speaking element in the province of Bolzano (Bozen)²¹ and the question of race conflict in South Africa.²²

¹⁷ S C, 18th yr., Suppl. for Oct.—Dec., p. 112, S/5488.

¹⁸ S C, 16th yr., 934th mtg.: Liberia, paras. 9–10.

¹⁹ S C, 21st yr., 1293rd mtg.: Iraq, para. 127.

²⁰ G A (XIV), Plen., 850th mtg., para. 97.

²¹ G A (XV), Spec. Pol. Com., 180th mtg., para. 10.

²² G A (XVI), Spec. Pol. Com., 277th mtg.: France, para. 10; G A (XVIII), Spec. Pol. Com., 384th mtg.: Tunisia, para. 9.

II. ANALYTICAL SUMMARY OF PRACTICE

A. The question of the Security Council being seized of disputes and situations under Article 34

a. Decision of 1 April 1960 in connexion with a complaint concerning South Africa

14. By a letter²³ dated 25 March 1960, the representatives of Afghanistan, Burma, Cambodia, Ceylon, Ethiopia, Federation of Malaya, Ghana, Guinea, India, Indonesia, Iran, Iraq, Japan, Jordan, Laos, Lebanon, Liberia, Libya, Morocco, Nepal, Pakistan, Philippines, Saudi Arabia, Sudan, Thailand, Tunisia, Turkey, United Arab Republic and Yemen requested an urgent meeting of the Security Council "to consider the situation arising out of the large-scale killings of unarmed and peaceful demonstrators against racial discrimination and segregation in the Union of South Africa". In their opinion, that was a situation with grave potentialities for international friction, which endangered the maintenance of international peace and security.

15. At its 851st meeting, on 30 March 1960, the Security Council decided to include the item in its agenda.

16. At the same meeting, the representative of the Union of South Africa stated that his Government considered the inclusion of the item and its subsequent discussion a violation of a basic principle of the Charter contained in Article 2 (7).²⁴ He pointed out that in the past some Members of the United Nations had considered Article 2 (7) not as excluding debate, but as excluding what was called "intervention". However, it could not be denied that by placing the item on the agenda by reference to Article 35, "intervention" was being contemplated. The scope of Article 35, however, was circumscribed by Article 34, under the terms of which the Security Council was empowered to investigate any dispute or situation which might lead to international friction in order to determine whether the continuance of the dispute or situation was likely to endanger the maintenance of international peace and security.

²³ S C, 15th yr., Suppl. for Jan.—March, S/4279 and Add. 1.

²⁴ See also this *Supplement*, under Article 2 (7).

It had been argued that recent events in South Africa constituted a situation "which might lead to international friction or give rise to a dispute likely to endanger international peace and security". But, for such an eventuality, there had to be at least two parties, which, within the framework of the Charter, had to be sovereign independent States. However, the Union of South Africa had no intention of providing such a dispute or creating such a situation.

17. A number of representatives, however, maintained that, as a result of the racial policies of the Union of South Africa, a situation was created in that country whose continuance was likely to endanger the maintenance of international peace and security as envisaged in Articles 34 and 35. In their opinion, if a situation was likely to result in endangering international peace and security, neither Article 2 (7) nor any other Article of the Charter should prevent the United Nations from taking action. It was further stated that the request of the twenty-nine Member States was based upon Articles 34 and 35 and that it was evident that the policies of *apartheid* pursued by the Government of the Union of South Africa had already given rise to international friction between it and a number of African and Asian States. Moreover, the power of investigation vested in the Security Council under Article 34 could not be rendered ineffective by references to Article 2(7).²⁵

18. At the 854th meeting of the Council, on 31 March 1960, the representative of Ecuador submitted a draft resolution²⁶ whereby the Security Council would, in its operative paragraph 1, recognize "that the situation in the Union of South Africa is one that has led to international friction and, if continued, might endanger international peace and security".

²⁵ For texts of relevant statements, see S C, 15th yr., 851st mtg.: Tunisia, paras. 83, 91 and 115; United States, para. 27; 852nd mtg.: Ethiopia, para. 112; India, paras. 58, 63 and 64; Liberia, paras. 145 and 146; Pakistan, paras. 121 and 122; 853rd mtg.: Guinea, paras. 72 and 73; 854th mtg.: Ecuador, paras. 82 and 88; Poland, para. 64; USSR, paras. 37–40 and 44; 855th mtg.: India, para. 66; Tunisia, paras. 37, 39 and 41; 856th mtg.: Ceylon, paras. 4 and 5; Ethiopia, para. 63; India, para. 80; USSR, para. 37.

²⁶ *Ibid.*, 854th mtg., para. 101, S/4299.

Decision

At the 856th meeting of the Council, on 1 April 1960, the draft resolution submitted by Ecuador was adopted as resolution 134 (1960) by 9 votes to none, with 2 abstentions.²⁷

b. Decision of 23 June 1960 in connexion with the complaint by Argentina (*Eichmann case*)

19. By a letter²⁸ dated 15 June 1960, the representative of Argentina requested an urgent meeting of the Security Council "to consider the violation of the sovereign rights of the Argentine Republic resulting from the illicit and clandestine transfer of Adolf Eichmann from Argentine territory to the territory of the State of Israel, contrary to the rules of international law and the Purposes and Principles of the Charter of the United Nations and creating an atmosphere of insecurity and mistrust incompatible with the preservation of international peace". In an explanatory memorandum, it was stated, *inter alia*, that in view of the failure of the diplomatic representations made by it to the Government of Israel, the Government of Argentina felt compelled to request that the case be dealt with by the Security Council. In Argentina's view, the case was explicitly covered by the provisions of Articles 34 and 35 (1) of the Charter.

20. In a letter²⁹ dated 21 June 1960, the Government of Israel, after noting that Argentina in referring the question to the Security Council had invoked Article 34, stated that that Article contained a double limitation on the powers and functions of the Security Council. The first was that the only disputes or situations which could be dealt with under Article 34 were those the continuance of which was likely to endanger the maintenance of international peace and security. The second was that the action which the Council might take under that Article was limited to investigating whether the dispute or situation possessed that character. The unilateral allegations contained in the complaint of Argentina were not sufficient to bring the dispute or situation within the terms of Article 34. For that reason, the Government of Israel considered that the complaint which was sought to be brought before the Security Council and the action which was requested from it were beyond the Council's competence.

21. At its 865th meeting, on 22 June 1960, the Council decided, without objection, to include the item in its agenda. In the discussion that followed, the representative of Argentina maintained that his country was involved in a dispute with the State of Israel. The dispute concerned an infringement of its sovereignty and must, therefore, be regarded as a political rather than as a strictly legal dispute within the meaning of Article 36 (3).³⁰ The deliberate violation of the sovereignty of a State was in itself in conflict with the Charter and, further, under

Article 33 *et seq.*, the violation was within the competence of the Security Council if the differences led to a situation likely to endanger international peace and security. It would be an erroneous interpretation to state that, in speaking of a dispute or a situation likely to endanger the maintenance of international peace and security, the drafters of the Charter had in mind only the imminent danger of generalized military conflict, because international peace and security were also endangered if the possibility existed that a situation of hostility might arise between two States such as seriously to affect the relations between them.³¹

22. At the same meeting, the representative of Argentina submitted a draft resolution³² under which the Security Council, *inter alia*, having examined the complaint that the transfer of Adolf Eichmann to the territory of Israel constituted a violation of the sovereignty of the Republic of Argentina and noting that the repetition of acts such as that giving rise to that situation would involve a breach of the principles upon which international order was founded, creating an atmosphere of insecurity and distrust incompatible with the preservation of peace, would declare, in its operative paragraph 1 "that acts such as that under consideration, which affect the sovereignty of a Member State and therefore cause international friction, may, if repeated, endanger international peace and security".

23. The representative of Israel, contesting the position of Argentina concerning the competence of the Security Council under Article 34 of the Charter, stated that under that Article the Security Council could investigate any dispute or situation only for one legitimate purpose, that was "in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security". That meant that the Council could take action only in accordance with that Article and Israel was bound, therefore, to regard as *ultra vires* any resolution which might not be in conformity therewith.³³

24. In the discussion that followed, while concern was expressed generally about the violation of the sovereign rights of a Member State, some members of the Council had doubts whether the Council could intervene at the present stage as, in their view, there did not exist a threat to peace or international security. Other members felt that the violation of sovereignty created an atmosphere of insecurity and mistrust and that was inconsistent with the preservation of international peace.³⁴

Decision

The draft resolution submitted by Argentina, as amended by the United States³⁵ to include two

²⁷ S C, 15th yr., 865th mtg., paras. 30–34.

²⁸ *Ibid.*, para. 47.

²⁹ S C, 15th yr., 866th mtg.: Israel, paras. 12–14.

³⁰ For texts of relevant statements, see S C, 15th yr., 866th mtg.: United Kingdom, paras. 85–89, 94 and 95; United States, paras. 76–81; 867th mtg.: France, paras. 62 and 63; Italy, paras. 32 and 33; Poland, paras. 12 and 13; Tunisia, paras. 73–78; 868th mtg.: USSR, para. 64.

³¹ S C, 15th yr., 866th mtg.: United States, paras. 78 and 79.

²⁷ *Ibid.*, 856th mtg., para. 56.

²⁸ S C, 15th yr., Suppl. for April–June, p. 27, S/4336.

²⁹ *Ibid.*, p. 29, S/4341.

³⁰ For a study of Article 36, see this *Supplement*.

additional paragraphs, one preambular and one operative, was adopted as resolution 138 (1960) at the 868th meeting of the Council, on 23 June 1960, by 8 votes to none, with 2 abstentions and one member not participating.

c. Decision of 19 July 1960 in connexion with a complaint by Cuba (letter of 11 July 1960)

25. By a letter³⁶ dated 11 July 1960, the Minister for Foreign Affairs of Cuba requested an urgent meeting of the Security Council to consider a grave situation "which now exists, with manifest danger to international peace and security, as a consequence of the repeated threats, harassments, intrigues, reprisals and aggressive acts" to which Cuba had been subjected by the Government of the United States of America. In submitting its complaint against the United States, Cuba invoked Article 34 together with other Articles of the Charter, among them Article 52 (4).³⁷

26. At its 874th meeting, on 18 July 1960, the Security Council included the question in its agenda. At the same meeting, the representative of Cuba stated that his country was entirely within its rights in submitting its complaint to the Security Council instead of referring it to the Organization of American States (OAS). Regional arrangements made under the terms of Article 52 entailed rights which were of an optional rather than an exclusive character and Member States might exercise whichever of those rights they might choose. Moreover, it was clearly stated in paragraph 4 of Article 52 that "This Article in no way impairs the application of Articles 34 and 35". Cuba was thus acting within its rights in bringing a situation to the Security Council which was a threat to international peace and security.³⁸ The representative of the United States, however, maintained that the recourse to the Security Council by Cuba was not in harmony with its obligations under the Inter-American Treaty of Reciprocal Assistance and the Charter of the OAS, which provided that differences among American States should be resolved, first of all, through that Organization. After denying that his country had in any way contributed to the tensions in the Caribbean, the representative of the United States said that the Security Council should await the outcome of the consideration of the situation in the Caribbean by a meeting of the Foreign Ministers of the American Republics.³⁹

27. At the same meeting the representatives of Argentina and Ecuador submitted a draft resolution.⁴⁰ Its second and fourth preambular paragraphs read as follows:

"The Security Council,

"...

"Taking into account the provisions of Articles 24,

³⁶ S C, 15th yr., Suppl. for July-Sept., p. 9, S/4378.

³⁷ See this *Supplement* under Article 52, paras. 29-36.

³⁸ S C, 15th yr., 874th mtg.: Cuba, paras. 6-8.

³⁹ *Ibid.*, United States, paras. 97-101.

⁴⁰ *Ibid.*, para. 133, S/4392, same text as S/4395.

33, 34, 35, 36, 52 and 103 of the Charter of the United Nations,

"...

"Deeply concerned at the situation existing between Cuba and the United States of America". Under its operative paragraph 1, the Security Council would, *inter alia*, decide "to adjourn the consideration of this question pending the receipt of a report from the Organization of American States".

28. In the discussion that followed, the sponsors of the draft resolution as well as some members of the Council stated that it would be appropriate that regional organizations were given a chance to settle disputes among their members before recourse was had to the United Nations. Other representatives, however, pointed out that Article 24 of the Charter conferred upon the Security Council primary responsibility for the maintenance of international peace and security and that the proposal to refer the question to the OAS was contrary to Articles 52 (4), 103 and 34. The proposal was designed to prevent the Security Council from taking effective action to protect the sovereignty and independence of Cuba. Furthermore, Article 34 stated that the Security Council "may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute". The words "any dispute, or any situation" were of great importance in that context. It was obvious that the authors of the Charter had found it necessary to safeguard the right of all States to seek assistance from the United Nations and its organs in situations which, in their view, might endanger the maintenance of international peace and security. Article 34, together with the provisions of Article 52, meant that the Security Council could consider any case, regardless of other existing machinery outside the United Nations.⁴¹

Decision

At the 876th meeting of the Council, on 19 July 1960, the amendments⁴² proposed by the USSR were rejected and the draft resolution submitted by Argentina and Ecuador was adopted as resolution 144 (1960) by 9 votes to none, with 2 abstentions.

d. Decision of 5 January 1961 in connexion with a complaint by Cuba (letter of 31 December 1960)

29. By a letter⁴³ dated 31 December 1960, the Minister for External Relations of Cuba requested an urgent meeting of the Security Council to "adopt the measures which it may deem necessary to prevent armed units of the United States and mercenaries in its service violating the sovereignty, territorial integrity and independence of a State Member of the

⁴¹ For texts of relevant statements, see S C, 15th yr. 874th mtg.: Argentina, paras. 134-137; Ecuador, paras. 145-147 and 154-156; 875th mtg.: Ceylon, paras. 29-33; France, paras. 19-21; Italy, paras. 3-6; Poland, paras. 55-59; United Kingdom, paras. 63 and 64; 876th mtg.: USSR, paras. 83-89. See also this *Supplement*, under Article 24, paras. 15-19, Article 52, paras. 29-81, and Article 103, paras. 11-27.

⁴² S C, 15th yr., 876th mtg., paras. 105-107, S/4394.

⁴³ S C, 15th yr., Suppl. for Oct.-Dec., S/4605.

United Nations". In its request Cuba cited Article 34 together with other Articles of the Charter. At its 921st meeting, on 4 January 1961, the Security Council decided to include the item in its agenda.

30. At the same meeting, the representative of Cuba, after declaring that the United States policy towards his country constituted a threat to international peace and security, stated that the dispute submitted by his country was not a local one. It went beyond regional interests and could not be dealt with by the methods laid down in the Charter of the OAS. There was no doubt that the situation confronting the Security Council was the one described in Article 34 of the Charter.⁴⁴

31. At the 922nd meeting, on 4 January 1961, the representative of the United States rejected the charges against his country submitted before the Council by Cuba and stated that his Government had twice proposed that the *ad hoc* Committee of Good Offices created by the OAS be convened in order to clarify the facts in the controversy between the United States and Cuba but that proposal had been rejected by Cuba.⁴⁵

32. At the same meeting, the representatives of Chile and Ecuador submitted⁴⁶ a joint draft resolution under which the Security Council, after, in the first preambular paragraph, "*considering* the present tension in relations between the Republic of Cuba and the United States of America", would, *inter alia*, recommend to them that they make every effort to resolve their differences by the peaceful means provided for in the United Nations Charter and urge Member States to refrain from any action which might aggravate the present tension between the two countries.

Decision

After further discussion in the Council, the sponsors of the draft resolution did not press for a vote on it and the President of the Council (United Arab Republic) in conclusion expressed confidence that the debate would help in reducing the tension between Cuba and the United States, whose relations should be governed by the Charter and that, therefore, nothing would be done to aggravate the existing tension⁴⁷

e. Decisions of 15 March and 9 June 1961 in connexion with the situation in Angola

33. At the 934th meeting of the Security Council, on 15 February 1961, in connexion with the situation in the Republic of the Congo, while adoption of the agenda was under consideration, the representative of Liberia requested "the addition to the present provisional agenda . . . of the question of the recent disturbances in the territory of Angola". He quoted a statement issued by his Government in which the Liberian Government, noting that human rights

were being violated in Angola, had directed "its representative on the Security Council to request the inscription of the item on the Security Council's agenda under Article 34 of the Charter of the United Nations." The President of the Council (United Kingdom) observed, however, that he was "unable to see that, under the rules as they at present stand, it is legitimate to add an item to the agenda in the manner now suggested. I therefore feel bound to rule that, under the existing rules of procedure of the Security Council, I cannot agree to add this item as requested by the representative of Liberia". The representatives of the USSR and the United Arab Republic, though sharing the deep concern of the Government of Liberia with regard to the events in Angola, suggested that the Council should take up that matter at a later stage.⁴⁸ In a letter dated 20 February 1961, the representative of Liberia, after referring to the above-mentioned statement, formally requested⁴⁹ a meeting of the Council to deal with the crisis in Angola. In a letter⁵⁰ dated 7 March 1961, the representative of Portugal objected to the request of Liberia on the grounds that he considered the inclusion of the question in the Council's agenda as an act of interference in matters falling within his country's exclusive jurisdiction. The item submitted by Liberia was included in the provisional agenda of the Security Council at its 943rd meeting, on 10 March 1961.

34. At the same meeting, during the discussion which took place concerning the adoption of the agenda, the representative of Liberia, in explaining his reasons for the submission of the question to the Security Council, stated that its consideration had become necessary because of serious loss of life in Angola and the existence of conditions which were a defiance of human rights. If his delegation had invoked Article 34 of the Charter, it was so that Portugal might acknowledge the existence of the danger which threatened not only Angola but also the peace of Africa and of the world.

35. One representative stated that no one could contend that the inclusion in the agenda of the item proposed by Liberia would constitute an intervention in the domestic affairs of Portugal. If the Council wished to ascertain whether the events in Angola endangered peace and security within the meaning of Article 34, then they must be discussed by the Council. Another representative pointed out that at the 934th meeting of the Security Council, on 15 February 1961, the representative of Liberia had expressly referred to the presence of circumstances in Angola which were likely to endanger the maintenance of international peace and security. The attention of the Council was thus being drawn to a question involving the maintenance of peace and security which, according to Chapters VI and VII of the Charter, was the primary responsibility of the Security Council and it could not be argued that the question did not come within the scope of

⁴⁴ S C, 16th yr., 921st mtg.: Cuba, para. 58.

⁴⁵ SC, 16th yr., 922nd mtg.: United States, para. 10.

⁴⁶ S C, 16th yr., 922nd mtg., para. 54, S/4612.

⁴⁷ S C, 16th yr., 923rd mtg.: President (United Arab Republic), para. 178.

⁴⁸ For texts of relevant statement, see S C, 16th yr., 934th mtg.: President (United Kingdom), para. 11; Liberia, paras. 3-10; USSR, para 12; United Arab Republic, para. 13.

⁴⁹ S C, 16th yr., Suppl. for Jan. - March, p. 145, S/4738.

⁵⁰ *Ibid.*, p. 227, S/4760.

those Chapters. One representative, however, after stating that his delegation would follow its Government's policy of not opposing the inclusion of items in the agenda, had serious doubts regarding the competence of the Security Council to deal with the situation. It was not sufficient to cite Article 34 because, in that particular case, the requirements of that Article were far from being fulfilled. Moreover, there were other United Nations organs with specific competence in the promotion of human rights and they were clearly the ones to deal with that question.⁵¹

Decision

At its 944th meeting, on 10 March 1961, the Security Council decided to include the question submitted by Liberia in its agenda.

36. Following the adoption of the agenda, one representative stated that his Government had not so far seen any convincing evidence that the events which it was alleged took place in Angola could properly be represented as constituting a situation likely to endanger the maintenance of international peace and security. Consequently, it remained for the representative of Liberia to establish that there was a *prima facie* reason for the Security Council to be seized of the question. While his delegation had offered no objection to the adoption of the agenda, it nevertheless attached the greatest importance to the principle embodied in Article 2 (7) of the Charter. Two other representatives also expressed doubts whether the Security Council was the proper forum for the discussion of the item and whether Article 34 was applicable in the case under consideration. Another representative said that to assert that the clashes which had taken place between various elements of the population in Angola were of such a nature as to lead to an international dispute would be to stretch the meaning of Article 34 in a way which had not been intended by its authors. That would involve the danger of attributing to any dispute or incident which might occur in a country a meaning and significance which it did not have. Under the terms of Article 34, the purpose of the Council's investigation should be "to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security". However, the incidents which had taken place in Angola had had no sequel and his delegation considered that the Council must refrain from intervening in matters which were not indisputably within its jurisdiction.⁵²

37. The representative of Portugal maintained that there was no provision of the Charter which would justify the consideration of the matter by the Security Council and that the inclusion of the item in the agenda was illegal. No mention had been made of any dispute between Portugal and any other Member State which was likely to endanger the maintenance of international peace and security,

⁵¹ For texts of relevant statements, see S C, 16th yr., 943rd mtg.: Liberia, paras. 11 and 21; USSR, paras. 71 and 72; United Arab Republic, para. 44.

⁵² S C, 16th yr., 944th mtg.: Ecuador, paras. 29 and 30; France, paras. 18-21; Turkey, paras. 24 and 25; United Kingdom, paras. 14 and 15.

nor had any proof been presented of the existence of a situation which would cause a dispute of that nature. Therefore, none of the cases foreseen in Articles 33 and 34 were under consideration and those two Articles were the only ones which would justify any action of the Security Council within the scope of Chapter VI.⁵³

38. At the 945th meeting of the Security Council, on 14 March 1961, Liberia submitted a draft resolution⁵⁴ co-sponsored by Ceylon and the United Arab Republic. Its first and third preambular paragraphs read as follows:

"The Security Council,

"Taking note of the recent disturbances and conflicts in Angola resulting in loss of life of the inhabitants, the continuance of which is likely to endanger the maintenance of international peace and security,

"...

"Aware that failure to act speedily, effectively and in time for ameliorating the disabilities of the African peoples of Angola is likely to endanger international peace and security,"

and, in operative paragraph 2, it was stated that the Council

"2. Decides to appoint a sub-committee consisting of . . . and instructs this sub-committee to examine the statements made before the Security Council concerning Angola, to receive further statements and documents and to conduct such inquiries as it may deem necessary and to report to the Security Council as soon as possible."

39. During the discussion of the question and of the draft resolution, the sponsors maintained that the Portuguese repressive actions in Angola were creating a situation which was likely to be a threat to international peace and security and they requested, therefore, the appointment of a sub-committee which should report to the Council. In the opinion of one representative, if the people of Angola were not given reason to hope for self-determination, the existing tension would grow and might result in disorder causing a threat to international peace and security. A number of other representatives, however, expressed doubts whether it was relevant to invoke Article 34 in requesting the Council to deal with the situation in Angola. It was not sufficient to invoke Article 34, as in the case under consideration the requirements of that Article were far from being met. One representative added that, under the terms of the draft resolution, the Security Council was being invited wholly to ignore the limitations placed on its jurisdiction by Article 24 and to concern itself with matters which had been before the General Assembly and which might again be raised there. Two representatives also pointed out that there were other United Nations organs with specific competence in the promotion of human rights which could more appropriately deal with the present situation.⁵⁵

⁵³ *Ibid.*, Portugal, paras. 34-48.

⁵⁴ S C, 16th yr., 945th mtg., para. 107.

⁵⁵ For texts of relevant statements, see S C, 16th yr., 944th mtg.: Chile, paras. 4 and 5; France, paras. 18-21; Portugal, paras. 37-43; 946th mtg.: Chile, paras. 73 and 74; Turkey, paras. 83-84 and 155; United Kingdom, paras. 57 and 58.

40. Before the Council proceeded to vote on the draft resolution, the representative of Liberia, in answer to the expression of doubts which had been voiced regarding the applicability of Article 34, stated that that article conferred indisputable powers on the Council to investigate "any situation which might lead to international friction or give rise to a dispute". It was clear that a situation which could endanger world peace must not necessarily be a dispute between two Member States.⁵⁶

Decision

At the 946th meeting of the Security Council on 15 March 1961, the draft resolution was put to the vote. It was not adopted, having failed to obtain the affirmative votes of 7 members. The result was 5 votes in favour, none against, with 6 abstentions.⁵⁷

41. In a letter⁵⁸ dated 26 May 1961, the representatives of Afghanistan, Burma, Cambodia, Cameroon, Central African Republic, Ceylon, Chad, Congo (Brazzaville), Congo (Leopoldville), Cyprus, Dahomey, Ethiopia, Federation of Malaya, Gabon, Ghana, Guinea, India, Indonesia, Iran, Iraq, Ivory Coast, Japan, Jordan, Laos, Lebanon, Liberia, Libya, Madagascar, Mali, Morocco, Nepal, Nigeria, Pakistan, Philippines, Saudi Arabia, Senegal, Somalia, Sudan, Togo, Tunisia, United Arab Republic, Upper Volta, Yemen and Yugoslavia stated that the reports of large-scale massacres, the suppression of human rights and fundamental freedoms and the denial of political rights and self-determination to the people of Angola constituted a serious threat to international peace and security. They requested a meeting of the Security Council to consider the situation in Angola. By a letter⁵⁹ dated 27 May 1961, the representative of the USSR forwarded a statement in which his Government drew attention to the situation in Angola and requested that an authoritative international inquiry into the situation should be held immediately. By a letter⁶⁰ dated 3 June 1961, the representative of Portugal protested against the request of the forty-four Member States for the inclusion in the Council's agenda of a matter pertaining exclusively to the jurisdiction of the Government of Portugal.

42. At its 950th meeting on 6 June 1961, the Security Council included, without objection, the above-mentioned question in its agenda.

43. At the same meeting, the representative of Liberia submitted a draft resolution⁶¹ co-sponsored by Ceylon and the United Arab Republic. In it, the Security Council, after stating in the fourth preambular paragraph that it was "Convinced that the continuance of the situation in Angola is an actual and potential cause of international friction and

threat to international peace and security", declared that it:

"1. *Reaffirms* General Assembly resolution 1603 (XV) and calls upon Portugal to act in accordance with the terms of that resolution;

"2. *Requests* the Sub-Committee appointed in terms of the aforesaid General Assembly resolution to implement its mandate without delay;

"3. *Calls upon* the Portuguese authorities to desist forthwith from repressive measures and further to extend every facility to the Sub-Committee to enable it to perform its task expeditiously;

"4. *Requests* the Sub-Committee to report to the Security Council and the General Assembly as soon as possible."

44. In support of the draft resolution it was stated that the situation in Angola was an actual and potential source of international friction and a threat to international peace and security. In those circumstances, the necessary measures should be taken and it would be appropriate for the Council to request the sub-committee appointed by the Assembly under resolution 1603 (XV) to undertake an investigation and report to the Security Council as well as to the General Assembly. Two representatives, however, stated that the doubts expressed by their delegations in an earlier Council debate with regard to the existence in Angola of a situation likely to endanger international peace and security and the Council's competence in that matter still remained. Moreover, since the General Assembly by its resolution 1603 (XV) had already appointed a sub-committee of inquiry, it would be advisable for the Council to await its report. A number of other representatives, however, stated that while they had expressed doubts, at an earlier debate on the question, about the existence of a situation likely to endanger international peace and security and had suggested consideration of the question by organs other than the Security Council, they now found that the situation had changed fundamentally since then. Moreover, the General Assembly, by its resolution 1603 (XV), having taken note of the recent disturbances and conflicts in Angola the continuance of which was likely to endanger international peace and security, had decided to appoint a sub-committee to gather information on the situation in Angola. They hoped that the report of the sub-committee would provide the Council with accurate information and help it in its future consideration of the question.⁶²

45. At the 955th meeting of the Security Council, on 9 June 1961, the representative of Chile submitted certain amendments to the joint draft resolution.⁶³ The first amendment was to replace the words "threat to" in the fourth preambular paragraph

⁵⁶ *Ibid.*, 946th mtg.: Liberia, para. 158.

⁵⁷ *Ibid.*, para. 165.

⁵⁸ S C, 16th yr., Suppl. for April-June, p. 57, S/4816 and Add.1 and 2.

⁵⁹ *Ibid.*, p. 52, S/4813.

⁶⁰ *Ibid.*, p. 60, S/4821.

⁶¹ S C, 16th yr., 950th mtg., para. 38.

⁶² For text of relevant statements see S C, 16th yr., 950th mtg.: Liberia, paras. 32-38; United Arab Republic, paras. 77 and 78; 952nd mtg.: Ceylon, paras. 3-5; India, paras. 36, 37, 40 and 47; 953rd mtg.: Ghana, paras. 3-5; 954th mtg.: Ethiopia, para. 40; France, paras. 109-113; Nigeria, para. 4; 955th mtg.: Chile, paras. 49-51 and 64-66; Turkey, paras. 37-40; United Kingdom, paras. 6-8 and 11-12.

⁶³ S C, 16th yr., 955th mtg., paras. 65-68.

by the words "is likely to endanger the maintenance of". While one representative regarded the amendment as an improvement of the draft resolution as his delegation doubted whether there existed any real threat to international peace and security, another representative stated that there was no justification for the submission of that amendment as the facts clearly indicated that the events in Angola already constituted a threat to the maintenance of international peace and security.⁶⁴

Decision

At the 956th meeting of the Council, on 9 June 1961, the amendment submitted by Chile was adopted by 9 votes to none, with 2 abstentions. At the same meeting, the draft resolution, as amended, was adopted as resolution 163 (1961) by 9 votes to none, with 2 abstentions.⁶⁵

f. Decision of 7 August 1963 in connexion with the question of race conflict in South Africa

46. By a letter⁶⁶ dated 11 July 1963, the representatives of Algeria, Burundi, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Congo (Leopoldville), Dahomey, Ethiopia, Gabon, Ghana, Guinea, Ivory Coast, Liberia, Libya, Madagascar, Mali, Mauritania, Morocco, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Tanganyika, Togo, Tunisia, Uganda, United Arab Republic and Upper Volta again requested a meeting of the Security Council "to consider the explosive situation existing in the Republic of South Africa, which constitutes a serious threat to international peace and security". In a letter⁶⁷ to the President of the Council, the Government of South Africa declined the invitation of the Council to participate in the discussion of the question raised by the thirty-two African States which it considered as falling within its domestic jurisdiction and stated that the allegations that South Africa constituted a threat to international peace and security were groundless.

47. In the discussion that followed, the representatives of Liberia, Madagascar, Sierra Leone and Tunisia maintained that the situation in South Africa fell within the scope not only of Articles 55 and 56, but also of Articles 34 and 35 and subsequent Articles.⁶⁸

48. At the 1054th meeting, on 6 August 1963, the representative of Ghana submitted a draft resolution⁶⁹ jointly sponsored with Morocco and the Philippines. The eighth preambular paragraph of the draft resolution read: "*Being convinced* that the situation in South Africa is seriously disturbing international peace and security,". In elucidating

⁶⁴ For texts of relevant statements, see S C, 16th yr., 956th mtg.: Chile, paras. 166 and 167; USSR, paras. 125, 126, 129 and 130; United Kingdom, para. 24.

⁶⁵ *Ibid.*, paras. 157-159.

⁶⁶ S C, 18th yr., Suppl. for July-Sept., S/5348.

⁶⁷ S C, 18th yr., 1050th mtg., para. 6.

⁶⁸ For texts of relevant statements, see S C, 18th yr., 1050th mtg.: Sierra Leone, paras. 10-33; Tunisia, paras. 34-84; 1051st mtg.: Liberia paras. 26-80; Madagascar, paras. 9-25.

⁶⁹ S C, 18th yr., 1054th mtg., para. 62.

this paragraph, the sponsors of the draft resolution recalled that the Security Council, in its resolution 134 (1960) of 1 April 1960, had recognized that the situation in the Union of South Africa was one that had led to international friction and, if continued, might endanger international peace and security. Since that recognition had been made three years ago, the time had been reached when the Council should pronounce that the situation was in fact seriously disturbing international peace and security. On the other hand, one member pointed out that the Council must distinguish between a situation which had created international friction and one which constituted a threat to peace. In his view, there was no evidence that the actions of the Government of South Africa threatened the territorial integrity or political independence of any Member State. Another representative, speaking after the draft resolution had been adopted, stated that his delegation was gratified that the sponsors of the resolution had seen fit to change their original formulation from "is seriously endangering international peace and security" to "is seriously disturbing international peace and security". Thus, the reference in the eighth preambular paragraph was to those underlying elements of the situation which, if continued, were likely to endanger the maintenance of international peace and security.⁷⁰

Decision

At the 1056th meeting of the Council, on 7 August 1963, the draft resolution was put to the vote, as amended, and was adopted⁷¹ as resolution 181 (1963) by 9 votes to none, with 2 abstentions.

g. Decision of 4 June 1964 in connexion with the complaint concerning acts of aggression against the territory and civilian population of Cambodia

49. By a letter⁷² dated 13 May 1964, the representative of Cambodia requested an early meeting of the Security Council to consider "repeated acts of aggression by United States-South Viet-Nameese forces against the territory and the civilian population of Cambodia".

50. At its 1118th meeting, on 19 May 1964, the Security Council decided, without objection, to include the question in its agenda. At the same meeting, the representative of Cambodia, after stating that, as a result of a large number of violations of his country's territory, a tense situation had been created on the Cambodian-South Viet-Nameese frontier, suggested the appointment of a United Nations commission of inquiry to investigate the charges made against his country that the Viet-Cong had penetrated into South Viet-Nam through the territory of Cambodia. Such a commission should, however, have only a limited role as it could not serve as a substitute, in the supervision of frontiers, for the International Commission for Supervision and Control established under the 1954 Geneva

⁷⁰ For texts of relevant statements, see S C, 18th yr., 1054th mtg.: Ghana, para. 66; United Kingdom, paras. 83-85; 1056th mtg.: United States, para. 26.

⁷¹ S C, 1056th mtg., paras. 17 and 18.

⁷² S C, 19th yr., Suppl. for April-June, p. 130, S/5697.

Agreement.⁷³ The representative of the United States stated that his Government would welcome the establishment of some effective machinery under the United Nations auspices to help stabilize the situation along the Cambodian-Viet-Name frontier.⁷⁴

51. At the 1121st meeting of the Security Council, the representative of the Republic of Viet-Nam who had been invited⁷⁵ to participate in the discussion, without vote, stated that instead of the commission of inquiry, as suggested by Cambodia, his Government proposed the establishment of a committee of experts, under United Nations auspices, for delimiting disputed and uncertain points on the frontier between the Republic of Viet-Nam and Cambodia and the setting up of an effective system for frontier-zone inspection.⁷⁶

52. During the discussion in the Council, some members emphasized that, should the Security Council decide to establish a committee of inquiry, that committee must go beyond investigating the alleged charges of border violations and should be empowered to make recommendations to the Security Council concerning further steps to contribute to stability in the region. In addition, while some members suggested the establishment of a United Nations force to supervise the border, others felt that instead of establishing a new body, it would be advisable to refer the matter to the two Control Commissions, already established under the 1954 Geneva Agreement. Two members expressed the view that the facts relating to the aggressive acts against Cambodia were established and there was little need for an inquiry.⁷⁷

53. At the 1125th meeting of the Security Council on 3 June 1964, the representative of Morocco submitted a draft resolution,⁷⁸ co-sponsored by the Ivory Coast. Under its operative paragraph 5, the Security Council would decide to "send three of its members to the two countries and to the places where the most recent incidents have occurred, in order to consider such measures as may prevent any recurrence of such incidents; they will report to the Security Council within forty-five days".

54. That representative explained that the Security Council's delegation, as envisaged under operative paragraph 5, would get in touch with the Governments concerned and, after visiting the scenes of the incidents, would report to the Council on the outcome of the investigation in order to supplement the information available on the facts, the causes and the course of events. At a subsequent meeting, he added that the sponsors of the draft resolution did not intend that the mission of those members of the Council should be confined to mere

corroboration of the facts which had already been explained to the Council. They felt, however, that the broadest possible investigation, drawing upon information provided by the responsible authorities in the two countries, would enable the delegation sent by the Security Council to collect data which might be helpful to the Council in its future consideration of the question.⁷⁹

Decision

At the 1126th meeting of the Council, on 4 June 1964, operative paragraph 5 of the draft resolution submitted by the Ivory Coast and Morocco was adopted by 9 votes to none, with 2 abstentions. The draft resolution as a whole was adopted⁸⁰ unanimously as resolution 189 (1964).

B. The question of the nature of the act of investigation under Article 34

Decision of 7 September 1959 in connexion with the report of the Secretary-General relating to Laos

55. By a note⁸¹ dated 4 September 1959, the Permanent Mission of Laos to the United Nations transmitted to the Secretary-General a cablegram addressed to him by the Minister for Foreign Affairs of the Royal Government of Laos requesting the assistance of the United Nations, under Articles 1 (1) and 11 (2), for the dispatch of an emergency force in order to halt an aggression along its north-eastern frontier, attributed to elements from the Democratic Republic of Viet-Nam. The Secretary-General was also asked "to take the appropriate procedural action on this request". On 5 September 1959, the Secretary-General requested⁸² the President of the Security Council to convene urgently a meeting of the Council to consider an item entitled "Report by the Secretary-General on the letter received from the Minister for Foreign Affairs of the Royal Government of Laos, transmitted on 4 September 1959 by a note from the Permanent Mission of Laos to the United Nations".

56. At its 847th meeting, on 7 September 1959, the Security Council decided by 10 votes to 1 to include⁸³ the item in its agenda.

57. At the same meeting, the representative of the United States submitted the following draft resolution,⁸⁴ co-sponsored by France and the United Kingdom:

"The Security Council

"Decides to appoint a sub-committee consisting

⁷³ S C, 19th yr., 1118th mtg.: Cambodia, paras. 41 and 42. mtg., Morocco, para. 7.

⁷⁴ *Ibid.*, United States, para. 66.

⁷⁵ S C, 19th yr., 1118th mtg., para. 13.

⁷⁶ *Ibid.*, 1121st mtg., paras. 22-29 and 45.

⁷⁷ For texts of relevant statements, see S C, 1121st mtg.: France paras. 106 and 107; 1122nd mtg.: Morocco, paras. 44-48; United States, para. 13; 1124th mtg.: Bolivia, para. 92; Brazil, para. 68; Ivory Coast, para. 51; 1125th mtg.: Czechoslovakia, para. 38; USSR, paras. 55 and 56.

⁷⁸ S C, 19th yr., Suppl. for April-June, p. 180. S/5741.

⁷⁹ S C, 19th yr., 1125th mtg., Morocco, para. 23; 1126th mtg., Morocco, para. 7.

⁸⁰ *Ibid.*, para. 49. The Committee submitted its report (S/5832) to the Council on 27 July 1964. It was not, however, considered by the Security Council.

⁸¹ S C, 14th yr., Suppl. for July-Sept., S/4212.

⁸² *Ibid.*, S/4213.

⁸³ For the decision relating to the inclusion of the item in the Council's agenda, see this *Supplement* under Article 35, paras. 11 and 12.

⁸⁴ S C, 14th yr., Suppl. for July-Sept., S/4216.

of Argentina, Italy, Japan and Tunisia, and instructs this sub-committee to examine the statements made before the Security Council concerning Laos, to receive further statements and documents and to conduct such inquiries as it may determine necessary, and to report to the Council as soon as possible.”

58. In introducing the draft resolution, the representative of the United States stated that its language was virtually identical with the language which had been used in the action taken under Article 29⁸⁵ of the Charter in 1946, when the Security Council had established a committee to examine statements made before it with regard to the situation in Spain. The draft resolution would help the Council in receiving information which would be of value to it in its future consideration of the case. The other two sponsors of the draft resolution also maintained that it would be appropriate for the Council to seek further information before determining the course of action it would take. The members of the committee, as suggested in the draft resolution, could hear evidence submitted from all sides and could report to the Council on their findings.

59. During the discussion, some representatives considered, like the sponsors of the draft resolution, that an impartial report on the facts of the current situation in Laos was necessary before the Council could usefully deal with the substance of the communications to the Secretary-General. The representative of a permanent member of the Council, however, stated that the draft resolution could not be regarded as procedural as the proposal contained therein was a question of substance, requiring the unanimous approval of all five permanent members of the Security Council. The task which was going to be entrusted to the sub-committee under the draft resolution, including the consideration of the request of the Government of Laos to have an emergency force dispatched, could not be construed as procedural but was definitely of a substantive nature. Moreover, the sub-committee which was being proposed to be established was essentially “a sub-committee for investigation”. In that respect he recalled the four-Power statement of China, the USSR, the United Kingdom and the United States at the San Francisco Conference, on 7 June 1945,⁸⁶ with which France later associated itself, in paragraph 4, of which it was stated, *inter alia*, that decisions and actions by the Security Council might “initiate a chain of events which might, in the end, require the Council under its responsibilities to invoke measures of enforcement under Section B, Chapter VIII. This chain of events begins when the Council decides to make an investigation, or determines that the time has come to call upon States to settle their differences, or makes recommendations to the parties”. Thus, the decision to make an investigation was a step which could lead to major political consequences and, being a substantive question,

⁸⁵ See also this *Supplement*, under Article 29, footnote 60 and annex 1, item 5.

⁸⁶ See *Repertory*, vol. II, p. 105.

required the unanimity of the permanent members of the Security Council.⁸⁷

Decision

At its 847th meeting, on 7 September 1959, before voting on the draft resolution, the Council, at the request of the USSR, voted on the question whether the vote on the draft resolution should be regarded as procedural. The motion that the draft resolution was procedural was adopted⁸⁸ by 10 votes to 1.

60. After the President had announced the result of the vote, he stated that it was the interpretation of the Chair, shared by the overwhelming majority of the members, that the draft resolution fell clearly under Article 29 of the Charter and that the Security Council had considered the establishment of subsidiary organs as a matter of procedure.⁸⁹

61. The representative of a permanent member of the Council stated that the President’s interpretation of the vote was at variance with the Charter of the United Nations, the four-Power statement of 7 June 1945 and the practice of the Security Council. The draft resolution concerning the appointment of a subcommittee to examine the situation in Laos was not procedural in character but substantive and concerned a question with major political implications. The sponsors of the draft resolution would like to call it an inquiry but it was indeed an investigation and was covered, as stated earlier, by operative paragraph 4 of the four-Power statement of 7 June 1945.

62. The sponsors of the draft resolution, however, maintained that there was no doubt that it was in accord with the letter and the spirit of the Charter that a decision by the Council to establish a subcommittee of itself should be treated as a matter of procedure. Such a decision was covered by operative paragraph 2, and not paragraph 4 of the four-Power statement of 7 June 1945 which dealt with situations upon which decisions could be taken by a procedural vote and those included the establishment by the Council of “such bodies or agencies as it may deem necessary for the performance of its functions”.⁹⁰

****C. The question whether invitations to participate are incumbent on the Security Council in the preliminary investigation of questions**

****D. The question of the duty of Members of the United Nations, and of States which have accepted the obligations of pacific**

⁸⁷ For texts of relevant statements, see S C, 14th yr., 847th mtg.: Argentina, paras. 97, 99 and 100–103; Canada, paras. 94 and 95; Japan, paras. 87, 89 and 90; Tunisia, paras. 121 to 123; United Kingdom, paras. 78 and 79; United States, para. 60; 848th mtg.: Italy, para. 47; Panama, paras. 35–38; USSR, paras. 30, 51–70, 72 and 73.

⁸⁸ S C, 14th yr., 848th mtg., para. 78.

⁸⁹ See this *Supplement*, under Article 29, footnote 60 and annex 1, item 5.

⁹⁰ For texts of relevant statements, see S C, 14th yr., 848th mtg.: President (Italy), paras. 78, 79, 127 and 128; France, 91–93; USSR, 82–88, 102, 116–123 and 157–161; United Kingdom, 104–112; United States, 142, 144, 146 and 148 to 155.

settlement provided in the Charter, in connexion with decisions of the Security Council to investigate under Article 34

****E. The question of the power to continue investigation after a determination under Article 34**

****F. The question whether a determination under Article 34 could result from an appraisal of the Council prior to the act of investigation**

G. The question of the establishment of a permanent fact-finding body

Decision of the General Assembly of 20 December 1965 in connexion with the question of "methods of fact-finding"

63. During the consideration by the General Assembly, at its eighteenth session, of the item entitled "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations", the question of "methods of fact-finding" was also discussed. In the Sixth Committee of the General Assembly, which examined this item, a joint draft resolution⁹¹ was submitted by Canada, Cyprus, Jamaica, Liberia, Mexico, Netherlands, Pakistan and Sweden. Under its terms, the General Assembly, after stating in the fifth preambular paragraph its belief "that an important contribution to the peaceful settlement of disputes and to the prevention of such disputes could be made by providing for impartial fact-finding within the framework of international organizations and in bilateral and multilateral conventions" in operative paragraph 2, would, *inter alia*, request the Secretary-General to study the relevant aspects of the problem under consideration and to report on the results of such study to the General Assembly at its nineteenth session".

64. During the discussion of the item and of the draft resolution, some representatives expressed the view that application of the principle of peaceful settlement of disputes could be facilitated by the establishment of a fact-finding body whose functions would be complementary to the arrangements already in operation for that purpose. Moreover, under Article 34, such a body could legitimately be used by the Security Council for the purpose of investigating a dispute. Other representatives, however, were of the opinion that all disputes were not likely to affect the maintenance of peace to the same extent, and that the flexibility of the Charter was reflected in the fact that it provided in Articles 14 and 34 and in Chapter VII for different measures to be taken by different bodies according to the gravity of the dispute. No other machinery need be set up that might be considered as bypassing the methods of investi-

gation provided in the Charter. The impartiality of an investigation was no doubt essential but it could only be done in accordance with the Charter, that is to say, in accordance with the provisions which governed the operation of the Security Council. One representative feared that a fact-finding body would encroach upon the functions allotted to the Security Council under Article 34. The supporters of the draft resolution, however, stated that nothing in it could be construed as encroaching on the authority of the Security Council under Article 34. They added that the members of the fact-finding body could be chosen, *ad hoc*, with the consent of the parties to each individual dispute.⁹²

65. At its 834th meeting held on 11 December 1963, the Sixth Committee adopted the draft resolution by 45 votes to 14, with 21 abstentions and recommended it to the General Assembly. The General Assembly, at its 1281st plenary meeting on 16 December 1963, adopted it as its resolution 1967 (XVIII).

66. In accordance with operative paragraph 2 of resolution 1967 (XVIII), the Secretary-General submitted a report⁹³ on methods of fact-finding.

67. At the twentieth session of the General Assembly, the Secretary-General's report was discussed in the Sixth Committee which, at its 898th meeting, on 17 December 1965, adopted by 59 votes to none, with 10 abstentions a draft resolution⁹⁴ according to which the General Assembly, in the fifth preambular paragraph, believing "that the question of methods of fact-finding requires further study and that the materials resulting from such further study would also be of value for any further consideration of the item entitled 'Peaceful settlement of disputes,'" would request the Secretary-General "to supplement his study on the relevant aspects of the problem so as to cover the main trends and characteristics of international inquiry, as envisaged in some treaties as a means of ensuring their execution, and to report to the General Assembly at its twenty-first session".

Decision

At its 1404th plenary meeting on 20 December 1965, the Geneva Assembly adopted⁹⁵ the draft resolution recommended by the Sixth Committee by 80 votes to none, with 12 abstentions, as its resolution 2104 (XX).

⁹² For texts of relevant statement, see G A (XVIII), 6th Com., 803rd mtg.: Netherlands, paras. 3-5; 806th mtg.: Sweden, para. 23; 814th mtg.: United States, paras. 27 and 37; 816th mtg.: United Kingdom, para. 34; 819th mtg.: Belgium, paras. 13 and 14; 820th mtg.: Cuba, para. 31; 822nd mtg.: Finland, para. 34; Tunisia, paras. 22 and 23; 824th mtg.: Cyprus, para. 29; 825th mtg.: Argentina, para. 33; United States, para. 13; 831st mtg.: Iraq, paras. 6 and 7; Netherlands, paras. 1 and 2; Sweden, para. 8; USSR, paras. 31 and 32; 833rd mtg.: Cyprus, para. 14; 834th mtg.: Cuba, para. 14; Mexico, para. 5; Netherlands, para. 3.

⁹³ G A (XX), Annexes, a. i. 90, pp. 1-53, A/5694.

⁹⁴ G A (XX), 6th Com., 898th mtg., A/C.6/L.580 para. 54.

⁹⁵ G A (XX), Plen., 1404th mtg., para. 135.

⁹¹ G A (XVIII), Annexes, a. i. 71, p. 30, A/C.6/L.540 and Add. 1 and 2.