

# ARTICLE 36

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## TEXT OF ARTICLE 36

1. The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.

2. The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties.

3. In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.

## INTRODUCTORY NOTE

1. Article 36 empowers the Security Council to recommend procedures or methods of adjustment in defined circumstances. The Council is enjoined, in making these recommendations, to take into consideration certain principles laid down in Article 36 (2) and (3).

2. Discussion bearing explicitly on Article 36 has been infrequent; accordingly, material selected on the basis of this restrictive criterion would be inadequate for the purpose of assessing the significance of the provisions of Article 36 in the working of the Council. A broader criterion than explicit reference to Article 36 has therefore been applied in the selection of material for inclusion in this study. The endeavour has been made in the General Survey to delimit, within the broad field of proceedings concerned with the pacific settlement of disputes, that aspect of the activities of the Council which may be equated with the formulation of procedures and methods of adjustment. The brief examination presented in the General Survey is amplified by the case histories presented under the four questions derived from the main provisions of Article 36. The interrelationship of these provisions has necessitated the entry of certain decisions under more than one question for the purpose of permitting the separation of constitutional discussion or a chain of proceedings in terms of their particular bearing on the principles laid down in Article 36 (2) and (3).

3. The broad criterion applied in the selection of material for presentation in this study permits the concentration of material which might, on other assumptions, be deemed relevant to Articles 24, 33 (2), 37, or 39. In this connexion, special attention is drawn to the introductory matter in section C of the Analytical Summary of Practice. 1/

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1/ See para. 71 below.

4. Certain further and more specific considerations governing the selection and arrangement of the material may be briefly indicated. Where a decision bearing on procedures or methods of adjustment was accompanied by constitutional discussion regarding Article 36, the material has been included under the question posed by the discussion, regardless of the terminology in the draft resolution. <sup>2/</sup> Material relating to the proceedings on the Ukrainian SSR complaint against Greece and on the Palestine question (prior to the resolution of 15 July 1948) has been included in the Analytical Summary of Practice, notwithstanding the absence of sustained constitutional discussion on Article 36, on the ground that, whereas Article 33 and Article 37 relate to "disputes" only, Article 36 authorizes the Council to recommend procedures for settlement with respect to "situations" as well as "disputes". Material relevant to the Indonesian question and the India-Pakistan question is extensively treated under the question of the obligation to take into consideration procedures for settlement already adopted by the parties; in order to maintain the sequence of the proceedings on these questions, the relevant decisions have been included. <sup>3/</sup> In general, the decisions recorded in this study do not necessarily constitute instances of the application of Article 36; their treatment under Article 36 rests on the criteria of relevance adopted for the purposes of the preparation of this Repertory.

### I. GENERAL SURVEY

5. On no occasion has Article 36 been invoked in the text of a resolution of the Security Council, and in few instances have sponsors of draft resolutions expressly related their proposals to it. The Sub-Committee on the Spanish question prefaced <sup>4/</sup> its recommendation to the Council with a statement invoking Article 36 as the Charter basis for the action proposed by the Sub-Committee. The United Kingdom, after having requested <sup>5/</sup> action under Article 36 in connexion with the Corfu Channel question, submitted two draft resolutions recommending procedures for settlement; one of these draft resolutions, which recommended reference of the dispute by the parties to the International Court of Justice, was adopted by the Council. An amendment invoking Article 36 and Article 34 in the preamble of a draft resolution recommending specific measures in connexion with the Greek frontier incidents question was withdrawn after constitutional discussion. <sup>6/</sup> Instances of the invocation of Article 36 by members of the Council, other than sponsors of draft resolutions, in the course of discussion on these and other questions are dealt with in the Analytical Summary of Practice.

6. In view of the scant nature of explicit evidence, the bearing of Article 36 on the working of the Council calls for assessment primarily in the light of decisions of the Council having the nature of recommendations of procedures or methods of adjustment. A synoptic statement of such decisions may be appropriately presented within the framework of a general review of the proceedings of the Council in the sphere of pacific settlement.

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<sup>2/</sup> For the problems raised by any attempt to correlate the distinction between draft resolutions which recommend the parties to adopt a procedure and those which call upon the parties with the distinction between Article 36 and Article 33, see resolutions of 1 August and 26 August 1947 in connexion with the Indonesian question (S C, 2nd yr., No. 72, 178th mtg., S/459, in footnote 1 to p. 1839, and S C, 2nd yr., No. 84, 195th mtg., S/521, in footnote 1 to p. 2224). See also discussion in connexion with the Syrian and Lebanese question (S C, 1st yr., 1st Series, No. 1, 23rd mtg., pp. 364 and 365), and paragraph 38 below.

<sup>3/</sup> See also in this Repertory under Article 37.

<sup>4/</sup> See paras. 23 and 45 below.

<sup>5/</sup> See paras. 106-108 below.

<sup>6/</sup> See paras. 51-55 below.

7. In connexion with several questions submitted to the Council, the affirmative decisions of the Council were exclusively of a procedural character, within the meaning of Article 27. Such questions were:

- (a) The Greek question: communication from the USSR dated 21 January 1946;
- (b) The Indonesian question (I);
- (c) The Syrian and Lebanese question;
- (d) The Greek question: communication from Ukrainian SSR dated 24 August 1946;
- (e) The Egyptian question;
- (f) The Czechoslovak question;
- (g) The Hyderabad question;
- (h) Identic notifications dated 29 September 1948;
- (i) The bombing by air forces of the territory of China;
- (j) The Anglo-Iranian Oil Company case;
- (k) Letter dated 29 May 1954 from the Acting Permanent Representative of Thailand to the United Nations;
- (l) Letter dated 8 September 1954 from the representative of the United States addressed to the President of the Security Council.

8. Proceedings of the Council on certain other questions, and certain phases of proceedings on other questions, also afford no instances of action relevant to the provisions of Article 36 in that the affirmative decisions would appear not to be classifiable within the category of procedures or methods of adjustment. Proceedings on the Spanish question and the Greek frontier incidents question resulted in affirmative decisions 7/ regarding the establishment of subsidiary organs with investigatory functions; in each case the draft resolutions recommending procedures and methods of adjustment were not adopted. 8/ The affirmative decision 9/ of the Council in connexion with the complaint of armed invasion of Taiwan (Formosa) provided for deferment of consideration with a view to permitting the participation of the representative of the People's Republic of China. The decisions of the Council on the complaint of aggression upon the Republic of Korea, 10/ and on the Palestine question 11/ from 3 June 1948 onwards are examined in the studies on Articles 39 and 40 by reason of the finding in those cases of a threat to or breach of the peace.

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7/ See also in this Repertory under Article 34, paras. 2-9.

8/ For the Spanish question, see paras. 44-48 below; for the Greek frontier incidents question, see paras. 51-55 below.

9/ S C, 5th yr., No. 48, 506th mtg., S/1823/Corr.1, pp. 3-5.

10/ See also in this Repertory under Article 39, para. 10; under Article 40, para. 16.

11/ See also in this Repertory under Article 39, para. 9; under Article 40, paras. 12-14.

9. In the review of other questions considered by the Council, characterized by the adoption of affirmative decisions relevant for the purposes of this analysis to Article 36, the distinction may be drawn between those questions which have, and those which have not, involved armed hostilities. In four cases -- the Indonesian question (II), the Palestine question, the India-Pakistan question, and the question of Guatemala -- the imminent danger of hostilities constituted a major factor in the decisions of the Council as to the procedures which it would be appropriate to adopt or to recommend. While these questions, with the exception of the Guatemalan question, involved the Council in recourse to procedures of good offices, mediation or conciliation, the two questions not involving hostilities in connexion with which the Council adopted affirmative decisions concerning procedures or measures of adjustment -- the Iranian question and the Corfu Channel question -- were the subject of resolutions recommending in the one instance settlement by judicial means and taking note in the other of the proposed recourse to direct negotiations.

10. While, in so far as Article 36 provides for recommendation by the Council of procedures and methods of adjustment, the action of the Council in this respect must be reviewed in the light of the relevant affirmative decisions, the proceedings of the Council must be assessed also for the degree to which they have of themselves afforded means of settlement in the various questions brought before it. That assessment requires examination of the extent to which the procedure of debate within the Council has itself, even in the absence of affirmative decisions, constituted a procedure or method of adjustment supplementing the method of affirmative recommendation. 12/

11. By way of exemplification of the classification given in the preceding paragraphs, the particular procedures or methods of adjustment employed or recommended by the Council may be summarized.

12. After consideration of the Corfu Channel question, the Council recommended 13/ that the parties refer the dispute to the International Court of Justice. In the course of the preliminary proceedings before the Court, both parties affirmed 14/ that this recommendation had been made under Article 36. The question of the obligation of the parties arising from such a recommendation was raised before the Court.

13. In connexion with the Iranian question, the Council, having heard both parties declare, in the course of debate, their readiness to resume negotiations, took note 15/ of this fact and requested the parties to inform it regarding the progress of these negotiations.

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12/ In the proceedings on the Syrian and Lebanese question, a draft resolution expressing confidence that negotiations would be undertaken failed of adoption by reason of the negative vote of a permanent member. At the close of the proceedings, the representatives of France and the United Kingdom announced that, notwithstanding the rejection of the proposal resulting from the negative vote of the permanent member, their Governments would carry out the will of the majority (S C, 1st yr., 1st Series, No. 1, 23rd mtg., p. 368). Communications subsequently received from the parties marked the successful settlement of the question (S C, Journal No. 33, p. 641, S/51; *ibid.*, p. 639, S/52; No. 36, p. 712, S/64; No. 41, p. 815, S/90).

13/ See paras. 106-108 below.

14/ See footnote 233 below.

15/ See para. 73 below.

14. In dealing with the questions involving hostilities or imminent threat of hostilities, the initial action of the Security Council took the form of resolutions 16/ calling upon the parties either to cease hostilities or not to aggravate the situation. In each of the cases, the termination of hostilities was sought by the Council by measures which do not permit of differentiation from other measures of pacific settlement by virtue of the nature of the procedure involved but only by virtue of the immediate objective envisaged. In connexion with the Palestine question, the identification of the particular procedures and methods directed to the halting of hostilities with procedures of pacific settlement under Chapter VI of the Charter was expressly asserted 17/ in the course of debate. In connexion with the Indonesian question and the India-Pakistan question, the terms of reference of the subsidiary organs established 18/ to act on behalf of the Council are indicative of the employment of identical powers in pursuit of the dual objectives of cessation of hostilities and settlement of the dispute.

15. In connexion with the question of Guatemala, the Council, after its initial call for the cessation of hostilities, refrained from pursuing its consideration of the matter. 19/

16. In dealing with the Palestine question, prior to the decision of 15 July 1948 20/ the Council supplemented its first call 21/ for the cessation of acts of violence by conversations between representatives of the Arab and Jewish communities and the President of the Council for the purpose of arranging a truce. As regards procedures connected with the political settlement, as distinct from the negotiations for the cessation of hostilities, the Council requested 22/ the convocation of a special session of the General Assembly in accordance with Article 20. After the conversations with the President had failed the Council adopted two resolutions, the first 23/ enjoining all concerned to take specific measures with a view to the cessation of acts of violence, and the second 24/ establishing a truce commission to supervise implementation of the first. The involvement of the armed forces of neighbouring countries in the situation led to the adoption of resolutions 25/ which called for

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16/ In connexion with the cessation of hostilities, see resolution of 1 August 1947 on the Indonesian question (II) (para. 76 below); resolution of 1 April 1948 on the Palestine question (S C, 3rd yr., Suppl. for April, S/714, I, pp. 4 and 5); resolution of 20 June 1954 on the question of Guatemala (S C, 9th yr., 675th mtg. paras. 200 and 203). For the resolution on the India-Pakistan question calling upon the parties not to aggravate the situation, see S C, 3rd yr., Nos. 1-15, 229th mtg., S/651, pp. 121-123. See also consideration of resolutions calling for the cessation of hostilities in this Repertory under Article 40, paras. 10 et seqq.

17/ See paras. 67-69 below.

18/ S C, 2nd yr., No. 103, 218th mtg., S/594, pp. 2723 and 2724; S C, 3rd yr., Suppl. for April, S/726, pp. 8-12.

19/ See para. 104 below and also in this Repertory under Article 52.

20/ For consideration of decisions on the Palestine question prior to 15 July 1948 in connexion with the power of the Council to institute provisional measures, see in this Repertory under Article 40, paras. 12 and 13.

21/ Resolution of 1 April 1948, S C, 3rd yr., Suppl. for April, S/714, I, pp. 4 and 5.

22/ Ibid., S/714, II, p. 5.

23/ S C, 3rd yr., Suppl. for April, pp. 7 and 8, S/723.

24/ S C, 3rd yr., No. 62, 287th mtg., S/727, pp. 32 and 33.

25/ S C, 3rd yr., Suppl. for May, p. 97, S/773, and pp. 103 and 104, S/801. See also paras. 67-69 below.

the issuance of cease-fire orders and instructed the Mediator, who had been appointed by the General Assembly to promote a peaceful adjustment of the situation in Palestine, to supervise the implementation of the cease-fire measures. Both the Truce Commission and the Mediator reported 26/ on the negotiations directed to the cessation of hostilities. The reliance on negotiation for the implementation of these resolutions was reinforced by the decision 27/ to consider possible action under Chapter VII in the event of the failure of the parties to implement the cease-fire resolution.

17. Consideration of the Indonesian question (II) 28/ involved extensive debate 29/ on the degree of intervention involved in the adoption of the procedure of good offices as opposed to mediation or arbitration. The resolution 30/ of 1 August 1947 contained two parts: the first called upon the parties to cease hostilities, and the second called upon them to resort to arbitration or other peaceful means. The failure of the parties to carry out this resolution resulted in the establishment 31/ of a consular commission to report on the compliance with the cease-fire resolution, and in the tender 32/ of good offices by the Council through a committee of three with the sole function of implementing the sub-paragraph of the resolution of 1 August dealing with the procedures of pacific settlement. The continuation of hostilities resulted in the extension 33/ of the responsibilities of the Committee of Good Offices to assist the parties in reaching agreement on the cessation of hostilities. The renewal of hostilities in 1948 subsequent to the breakdown of negotiations under the Renville Agreement resulted in the transformation 34/ of the Committee of Good Offices into a Commission with broad powers of recommendation with respect to the cessation of hostilities and the bases of settlement. The final settlement was concluded at a Round Table Conference of the parties, with the participation of the Commission, on conditions communicated to the Commission by the President of the Council. 35/

18. In dealing with the India-Pakistan question, the Council relied 36/ first on mediatory efforts by the President of the Council and by a Rapporteur. Their intervention resulted in the institution 37/ of further measures of mediation and conciliation through the agency of the Commission of Investigation and Mediation assigned to act in India and Pakistan on behalf of the Council. As regards hostilities, the Council, by its resolution 38/ of 21 April 1948, instructed the Commission to place its good offices and mediation at the disposal of the Governments of India and Pakistan with a view to facilitating the adoption of certain enumerated

26/ Reports of the Truce Commission, S/758, S/759 and S/761; and report of the Mediator, S C, 3rd yr., Suppl. for July, S/888, pp. 47-63.

27/ S C, 3rd yr., Suppl. for May, pp. 103 and 104, S/801.

28/ For consideration of the Indonesian question (II) in relation to provisional measures, see in this Repertory under Article 40, paras. 10 and 11, and in relation to Article 39, see under Article 39, paras. 16 et seqq.

29/ See paras. 77 et seqq. below.

30/ See para. 76 below.

31/ S C resolution of 25 August 1947, S C, 2nd yr., No. 82, 193rd mtg., S/513 and Corr.1, in footnote 3 to p. 2173.

32/ See para. 79 below.

33/ S C resolution of 1 November 1947, S C, 2nd yr., No. 103, 218th mtg., S/594, pp. 2723 and 2724.

34/ See para. 86 below.

35/ See para. 89 below.

36/ See para. 91 et seqq.

37/ See para. 93.

38/ S C, 3rd yr., Suppl. for April, pp. 8-12, S/726.

measures with respect to the restoration of peace and order. Through the instrumentality of the Commission, the parties were induced <sup>39/</sup> to agree to a cease-fire on the basis of the acceptance of terms of settlement embodied in the Commission's resolution of 5 January 1949. Subsequently, the Council appointed <sup>40/</sup> a single representative to replace the Commission in view of the conclusion <sup>41/</sup> reached by a majority of the members of the Commission that "the designation of a single person with broad authority and undivided responsibility offers a more practical means of finding the balance and compromise necessary to advance the settlement of the dispute." Before doing so, however, the Council again employed <sup>42/</sup> the method of mediation by the President of the Council. The Council also recommended <sup>43/</sup> the settlement by arbitration of the differences remaining with respect to demilitarization. Throughout the proceedings on the India-Pakistan question, the Council has recommended <sup>44/</sup> the determination of the future of Jammu and Kashmir by a plebiscite, and at an early stage it recommended the procedure by which the Plebiscite Administrator should be chosen. <sup>45/</sup>

## II. ANALYTICAL SUMMARY OF PRACTICE

### A. The question of the circumstances in which the Security Council may make recommendations in accordance with Article 36

19. Article 36 (1) provides that the Council may recommend appropriate procedures or methods of adjustment "at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature". The following paragraphs deal with cases in which draft resolutions recommending appropriate procedures or methods of adjustment gave rise to discussion on the applicability of this provision. In this connexion, the Council has discussed the question of the relation of the obligation of the parties, under Article 33 (1), "first of all" to seek a solution by peaceful means of their own choice, to the authority of the Council to make recommendations "at any stage"; the question whether it was both necessary and sufficient to find the dispute or situation to be one, in the words of Article 33, "the continuance of which is likely to endanger the maintenance of international peace and security"; and the question whether determination of the nature of the question should take the form of an explicit finding by the Council.

20. Also relevant in this connexion are (1) the proceedings on the India-Pakistan question, during which the Council found the dispute to be one the continuance of which was likely to endanger the maintenance of international peace and security, and (2) the discussion on the Iranian question. These cases are dealt with under section C <sup>46/</sup> of the Analytical Summary below.

#### *1. Decisions of 18 and 24 June 1946 in connexion with the Spanish question*

21. By letter <sup>47/</sup> dated 9 April 1946, the representative of Poland requested the Security Council to consider the situation arising from the existence and the

<sup>39/</sup> See para. 96 below.

<sup>40/</sup> See para. 102 below.

<sup>41/</sup> S C, 4th yr., Special Suppl. No. 7 (S/1430/Rev.1), p. 62.

<sup>42/</sup> See paras. 98-100 below.

<sup>43/</sup> S C, 6th yr., Suppl. for Jan., Feb. and March, pp. 25-27, S/2017/Rev.1.

<sup>44/</sup> See paras. 94 *et seqq.* below.

<sup>45/</sup> S C, 3rd yr., Suppl. for April, pp. 8-12, S/726.

<sup>46/</sup> See paras. 71 *et seqq.* below.

<sup>47/</sup> S C, 1st yr., 1st Series, Suppl. No. 2, annex 3 b (S/34), p. 55.

activities of the Franco régime in Spain which, it was claimed, had led to international friction and had endangered international peace and security. At the 34th meeting on 17 April 1946, the representative of Poland submitted a draft resolution <sup>48/</sup> declaring that the existence and the activities of the Franco régime in Spain had led to international friction and had endangered international peace and security, and calling upon Members under Articles 39 and 41 to sever diplomatic relations with the Franco Government. In support of the draft resolution, it was contended that the dangerous nature of the situation from the international standpoint had been clearly demonstrated, and that the evidence at hand was sufficient to take the proposed action without prolonged consideration. Opposition was advanced on the grounds that the preliminary evidence had not sufficed to determine the gravity of the situation; that the nature of a régime was indisputably a matter of domestic jurisdiction; that measures under Article 36 (1) were appropriate rather than those under Articles 39 and 41, inasmuch as the finding embodied in the draft resolution was based on Chapter VI; and that, before action was taken, it was necessary to undertake an investigation. <sup>49/</sup>

22. At the 39th meeting on 29 April 1946, the Council appointed <sup>50/</sup> the Sub-Committee on the Spanish Question to examine the evidence with a view to the determination by the Council whether the situation in Spain endangered international peace and security, and what practical measures the United Nations might take.

23. The Sub-Committee reported <sup>51/</sup> that the situation in Spain was of international concern, and though not an existing threat within the meaning of Article 39, was a situation the continuance of which was in fact likely to endanger the maintenance of international peace and security. Consequently, the Sub-Committee reported, the Council was empowered by Article 36 (1) to recommend appropriate procedures or methods of adjustment. <sup>52/</sup>

24. At the 45th meeting on 13 June 1946, the Chairman of the Sub-Committee submitted a draft resolution <sup>53/</sup> adopting the recommendations contained in the report. In the ensuing discussion, the question of the distinction between "threats to the peace" and "situations the continuance of which is likely to endanger the maintenance of international peace and security" was considered. <sup>54/</sup>

### Decision

(a) At the 47th meeting on 18 June 1946, the draft resolution submitted by the Chairman of the Sub-Committee was not adopted. <sup>55/</sup> There were 9 votes in favour and 1 against, with 1 abstention (the vote against being that of a permanent member).

<sup>48/</sup> S C, 1st yr., 1st Series, No. 2, 34th mtg., p. 167.

<sup>49/</sup> For texts of relevant statements see S C, 1st yr., 1st Series, No. 2.

34th mtg.: Mexico, pp. 171-174; Netherlands, pp. 174-177; Poland, pp. 155, 166 and 167.

35th mtg.: Australia, pp. 194-198; Brazil, pp. 193 and 194; China, pp. 198 and 199; USSR, pp. 185, 186, 192 and 193; United Kingdom, pp. 180-184.

37th mtg.: USSR, pp. 219-223; United States, pp. 217-219.

<sup>50/</sup> S C, 1st yr., 1st Series, No. 2, 39th mtg., pp. 244 and 245.

<sup>51/</sup> S C, 1st yr., 1st Series, Special Suppl. rev. ed., S:75, pp. 1-12.

<sup>52/</sup> See under II, B, 1, paras. 44 et seqq. below.

<sup>53/</sup> S C, 1st yr., 1st Series, No. 2, 45th mtg., p. 326.

<sup>54/</sup> For analytical summary of these views, see in this Repertory under Article 39.

<sup>55/</sup> S C, 1st yr., 1st Series, No. 2, 47th mtg., pp. 378-380.

(b) At the 48th meeting on 24 June, the Council voted upon the draft resolution submitted by Poland, with the reference to Articles 39 and 41 deleted. 56/ It was rejected 57/ by 7 votes to 4.

*2. Decisions of 20 September 1946 in connexion with the  
Ukrainian complaint against Greece*

25. By telegram 58/ dated 24 August 1946, the Ukrainian SSR brought to the attention of the Security Council the situation in the Balkans as a situation which endangered the maintenance of international peace and security. The question arose whether what was described in the communication constituted a situation and whether the circumstances existed in which recommendations would be appropriate. Several members were of the opinion that, inasmuch as the charges had not been substantiated, the Council ought not to take any action. While normally the Council might consider it desirable to investigate the situation to determine whether it was one the continuance of which was likely to endanger the maintenance of international peace and security, it was pointed out that this question was not amenable to action by the Council because of the nature of the charges. Since the broad responsibility of the Council in connexion with a situation was to devise suitable methods of adjustment, the Council would appropriately discharge its duty in the case before it by passing on to the next item on the agenda. Any other action might in some measure pass judgement on the Governments involved.

26. At the 67th meeting on 16 September 1946, the representative of Australia, in proposing 59/ that the Council pass to the next item on the agenda, explained that thereby the Council would indicate that its machinery could not be set in motion for reasons extraneous to the conciliatory functions of the Council. At the same meeting, the representative of the USSR submitted a draft resolution 60/ which would (1) establish as facts certain allegations made against Greece; (2) determine that the circumstances created a situation envisaged by Article 34 and endangered peace and security; and (3) call upon the Government of Greece to take certain measures to put an end to the situation.

27. The Council also had before it a draft resolution 61/ submitted by the United States recommending that it investigate the facts relating to all border incidents between Greece on the one hand, and Albania, Bulgaria and Yugoslavia on the other. The broadening of the question before the Council was opposed both by those who maintained that the new aspects thereby introduced were not related to the item on the agenda, and by those who contended that any action whatsoever would lend substance to the original charges. This approach to the question, it was observed, tended to transform a situation into a dispute. The view was expressed that, when a situation was brought before the Council, the chief concern was to disperse the feeling behind it, rather than to transform it into a dispute by singling out a particular aspect. Whereas Chapter VI offered various possibilities for dealing with a dispute, it was

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56/ S C, 1st yr., 1st Series, No. 2, 48th mtg., pp. 383 and 384.

57/ *Ibid.*, p. 388.

58/ S C, 1st yr., 2nd Series, Suppl. No. 5, annex 8 (S/137), pp. 149-151.

59/ S C, 1st yr., 2nd Series, No. 13, 67th mtg., p. 329.

60/ *Ibid.*, pp. 334 and 335.

61/ S C, 1st yr., 2nd Series, No. 16, 70th mtg., p. 396.

left entirely to the wisdom of the Council to devise appropriate methods of adjustment of a situation. 62/

### Decisions

(a) At the 70th meeting on 20 September 1946, the draft resolution submitted by the USSR was rejected 63/ by 9 votes to 2;

(b) the draft resolution submitted by the United States was not adopted. 64/ There were 8 votes in favour and 2 against, with 1 abstention (1 vote against being that of a permanent member);

(c) the draft resolution submitted by Australia was withdrawn. 65/

### *3. Proposal of 22 July 1947 in connexion with the Greek frontier incidents question*

28. At the 163rd meeting on 22 July 1947, during the consideration of a draft resolution 66/ submitted by the United States recommending measures for the adjustment of the situation on the Greek frontier, the representative of France proposed an amendment 67/ which would include in the preamble the finding that a dispute existed, the continuation of which was likely to endanger the maintenance of international peace and security. During the discussion on the effect of the amendment on the continuation of an investigation in the field, 68/ the representative of Syria proposed 69/ to invoke Articles 34 and 36 of the Charter in lieu of the finding.

29. The problem then arose whether an explicit determination of the nature of the question was necessary in order to act under Article 36. One member, supporting the view that a finding was not necessary, contrasted the provisions of Article 36 with those of Article 37. Whereas Article 37 expressly provided that the Council had to deem the dispute to be one which "in fact" was likely to endanger the maintenance of international peace and security, Article 36 implied that recommendations in pursuance of its provisions were not necessarily dependent upon a final decision on the nature of the dispute. Article 36 might be referred to and might be acted upon by the Council in any situation in which the Council deemed it necessary or useful, inasmuch as, in accordance with its provisions, the Council might at any stage of a dispute recommend methods of adjustment. A divergent view maintained that, although Article 36 empowered

62/ For texts of relevant statements, see S C, 1st yr., 2nd Series, No. 9, 62nd mtg.: Australia, pp. 251-254; United Kingdom, p. 249; No. 10, 64th mtg.: Australia, pp. 276-281; United States, p. 276; No. 11, 65th mtg.: Brazil, p. 296; No. 13, 67th mtg.: Australia, pp. 329-333; Netherlands, p. 326; USSR, pp. 334 and 335; No. 14, 68th mtg.: Poland, p. 351; No. 15, 69th mtg.: President (USSR), pp. 381 and 382; Australia, pp. 376-379, 390 and 391; France, p. 381; United States, pp. 366-367, 386 and 387; No. 16, 70th mtg.: President (USSR), p. 397; Australia, pp. 406, 414 and 415; France, p. 400; Poland, pp. 413 and 414; United Kingdom, pp. 415 and 416; United States, pp. 394 and 395.

63/ S C, 1st yr., 2nd Series, No. 16, 70th mtg., pp. 408 and 409.

64/ Ibid., p. 412.

65/ Ibid., p. 422.

66/ See para. 53 below.

67/ S C, 2nd yr., Suppl. No. 15, annex 39 (S/430), pp. 146-148.

68/ See also in this Repertory under Article 34, paras. 50 et seqq.

69/ S C, 2nd yr., No. 61, 163rd mtg., pp. 1429 and 1430.

the Council to make recommendations "at any stage of a dispute of the nature referred to in Article 33", the latter referred to a "dispute the continuance of which is likely to endanger the maintenance of international peace and security". By reason of the inclusion of the powers of Article 36 under Article 37, the former was contingent on the latter, and reference to Article 36 implied that the Council had considered Article 37 to be applicable. Consequently, it was contended, the invocation of Article 36 would have the same implication as the explicit finding proposed by the representative of France. 70/

30. The representative of Syria withdrew his proposal. 71/

*4. Decisions of 25 March and 9 April 1947 in connexion with  
the Corfu Channel question*

31. By letter 72/ dated 10 January 1947, the United Kingdom brought to the attention of the Council a dispute with the People's Republic of Albania arising out of an incident in the Straits of Corfu in which two British warships had been mined. At the 95th meeting on 20 January 1947, one member objected to the inclusion of the item in the agenda on the grounds that the incident, and the conduct of Albania in connexion with the incident, were not of the nature covered by Article 35, and that the parties had not fulfilled the requirements of Article 33 (1). In urging the inclusion of the item in the agenda, the representative of the United Kingdom drew attention to the provision of Article 36 (1) whereby the Council might make recommendations at any stage of a dispute of the nature referred to in Article 33. The item was included in the agenda. 73/

32. During consideration of two draft resolutions 74/ submitted by the United Kingdom in connexion with its request for recommendations under Article 36, several members observed that the Charter had circumscribed the functions of the Council by providing that it might make recommendations under Article 36 only when the continuance of the dispute was likely to endanger the maintenance of international peace and security. The consideration of any other dispute or situation enlarged the competence of the Council beyond the limits fixed by the Charter. Moreover, before acting under Article 36, the Council had to be satisfied that the requirements of Article 33 had been complied with. 75/

33. The representative of the United Kingdom explained that, since direct negotiations had failed, his Government had hoped that a settlement might be possible with the assistance of the Council which might make a finding of fact.

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70/ For texts of relevant statements see S C, 2nd yr., No. 61, 163rd mtg.: President (Poland), pp. 1431, 1435 and 1437; Australia, pp. 1433, 1434, 1435 and 1436; Belgium, p. 1430; Brazil, pp. 1428, 1429, 1435 and 1437; France, pp. 1430, 1431, 1434, 1436 and 1437; Syria, pp. 1429, 1430, 1434, 1435 and 1436; United Kingdom, p. 1435; United States, pp. 1431, 1434 and 1435.

71/ S C, 2nd yr., No. 61, 163rd mtg., p. 1437. See also in this Repertory under Article 34, paras. 50-53.

72/ S C, 2nd yr., Suppl. No. 3, annex 8 (S/247), pp. 35 and 36.

73/ S C, 2nd yr., No. 6, 95th mtg., p. 117.

74/ See paras. 49 and 108 below.

75/ For texts of relevant statements, see S C, 2nd yr.,  
No. 6, 95th mtg.: USSR, p. 115; United Kingdom, p. 117;  
No. 15, 107th mtg.: United Kingdom, p. 306;  
No. 18, 111th mtg.: Poland, pp. 375 and 376; USSR, pp. 366 and 371;  
No. 32, 125th mtg.: Brazil, pp. 686-688.

Decisions

- (a) For the decision of 25 March 1947, 76/ see paragraphs 49 and 50 below.  
(b) For the decision of 9 April 1947, 77/ see paragraph 108 below.

*5. Decision of 28 August 1947 in connexion with the Egyptian question*

34. By letter 78/ dated 8 July 1947, the Government of Egypt requested the inclusion in the agenda of the Council of a dispute with the United Kingdom arising out of the presence of British troops on Egyptian territory, the continuance of which, it was contended, was likely to endanger the maintenance of international peace and security. In the course of discussion the question was raised whether the dispute was one in respect of which the Council might make recommendations in accordance with Article 36.

35. At the 189th meeting on 20 August 1947, the representative of Brazil submitted a draft resolution 79/ noting that the methods of adjustment provided for by Article 33 had not been exhausted, recommending to the parties that they (1) resume direct negotiations and, in the event of their failure, (2) seek a solution by other peaceful means of their own choice, and (3) keep the Council informed of the progress of the negotiations. In support of the draft resolution, it was contended that not all situations or disputes fell within the jurisdiction of the Council. To intervene, the Council would have to recognize the existence of circumstances that constituted an unequivocal menace to international peace and security. Referring to the allegation that the dispute was one the continuance of which was likely to endanger the maintenance of international peace and security, one member maintained that, in the light of the complexity of international relations, doubt might be entertained regarding the existence of any dispute the continuance of which might not eventually satisfy that criterion. It was pointed out that such a broad interpretation of the language of the Charter, however, was vague and imprecise and would lead the Council to convert into a rule that which should constitute an exception; namely, its intervention in the relations between States to adjust matters that might be handled with better results by direct negotiations or other means afforded by diplomacy. Resort to the Council should take place only after the parties had exhausted the methods of international law. The only justification for action of the nature requested by the Egyptian Government, involving disregard of a treaty still in force, would be the presence of immediate danger and the impossibility of recourse to the traditional methods for the settlement of international disputes.

36. The view was also expressed that only when the Council considered that the procedures provided by Article 33 had proved inadequate or had been unduly delayed or protracted, might it proceed under Article 36 to recommend appropriate procedures or methods of adjustment.

37. Referring to the contention that the Council might intervene only after traditional methods of international law had failed, the representative of Egypt observed that that view denied to the Council the role assigned to it by Article 36 (1). As regards the nature of the question in respect of which recommendations might be made, he was of the opinion that there were no grounds under the Charter for limiting recommendations of the Council to disputes which might be deemed grave enough to

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76/ S C, 2nd yr., No. 29, 122nd mtg., p. 609.

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

78/ S C, 2nd yr., No. 59, 159th mtg., S/410, pp. 1343 and 1344.

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

constitute an unequivocal menace to peace; Chapter VI referred repeatedly to disputes and situations, the continuance of which was likely to endanger the maintenance of international peace and security.

38. He also contended that the adoption of the draft resolution submitted by Brazil would indicate that, in the view of the Council, the dispute was one the continuance of which was likely to endanger the maintenance of international peace and security, since the competence of the Council to call upon the parties in accordance with Article 33 (2) to settle their dispute by means set out in Article 33, or to recommend appropriate procedures or methods of adjustment under either Article 36 or Article 37, applied only in special circumstances. At the 193rd meeting on 22 August 1947, the representative of Australia, in view of the above-mentioned contentions which he considered valid, proposed 80/ to delete the word "recommends" from the draft resolution submitted by Brazil and to substitute the word "invites", on the ground that the use of the word "recommends" implied that the Council had determined the dispute to be of the nature referred to in Article 33. Since recommendations under Article 36 might only be made after such a finding, the Council could indicate its view that the dispute was not of the nature referred to in Article 33 by substituting the word "invites". In opposing this amendment, the sponsor of the draft resolution maintained that both words had approximately the same meaning and would have the same effect, and that the Council generally used the word "recommends". 81/

#### Decisions

(a) At the 198th meeting on 28 August 1947, the amendment submitted by Australia to substitute the word "invites" for "recommends" was rejected. 82/ There were 4 votes in favour and none against, with 6 abstentions.

(b) At the same meeting, the draft resolution submitted by Brazil, as modified by two other amendments, was rejected. 83/ There were 6 votes in favour and 1 against, with 3 abstentions. 84/

The United Kingdom did not participate in the vote in accordance with Article 27 (3).

#### *6. Decision of 19 October 1951 in connexion with the Anglo-Iranian Oil Company case*

39. By letter 85/ dated 28 September 1951, the United Kingdom brought before the Council the complaint of failure by the Government of Iran to comply with provisional measures indicated by the International Court of Justice in the Anglo-Iranian Oil

80/ S C, 2nd yr., No. 82, 193rd mtg., S/516, p. 2169.

81/ For texts of relevant statements, see S C, 2nd yr.,

No. 70, 175th mtg.: Egypt, pp. 1746-1748;

176th mtg.: United Kingdom, pp. 1769-1772, 1776, 1783 and 1784;

No. 80, 189th mtg.: Brazil, pp. 2105-2109;

No. 82, 193rd mtg.: Egypt, pp. 2164-2167;

No. 84, 196th mtg.: Australia, p. 2245; Brazil, p. 2236; Poland, p. 2249;

United Kingdom, p. 2254;

No. 86, 198th mtg.: Colombia, p. 2290; Egypt, pp. 2292-2295; USSR, pp. 2284 and 2285. See also footnote 118 below.

82/ S C, 2nd yr., No. 86, 198th mtg., p. 2303.

83/ Ibid., p. 2304.

84/ For consideration of other draft resolutions which were expressly ascribed to Article 36, see paras. 56 et seqq. below.

85/ S C, 6th yr., Suppl. for Oct., Nov. and Dec., pp. 1 and 2, S/2357.

Company case. Attention was drawn to the dangers inherent in the situation and to the threat to peace and security that might thereby be involved.

40. At the 560th meeting on 15 October 1951, after the Anglo-Iranian Oil Company staff had been expelled from Iran, the representative of the United Kingdom submitted a draft resolution 86/ declaring that a dispute existed, the continuance of which was likely to threaten the maintenance of international peace and security, and calling for the resumption of negotiations to resolve differences in accordance with the principles of the provisional measures handed down by the Court. Discussion on the draft resolution gave rise to the question whether the dispute was one in respect of which the Council might make recommendations under Article 36.

41. Several representatives were of the opinion that the question was not a dispute of the nature referred to in Chapter VI. It was contended that only after the Council had concluded that the dispute involved a threat to the maintenance of international peace and security might it make recommendations under Article 36. Though the Council, in other circumstances, might not be competent to "call upon" or to "recommend", it might nevertheless render its friendly services. The President (Brazil), after recalling a presidential statement, at the 172nd meeting, concerning the Indonesian question (II), expressed the view that, before the question of competence was decided, the Council had the power to call upon the parties to seek, of their own accord, a peaceful settlement of the dispute. 87/

42. At the 562nd meeting on 17 October 1951, the representative of Ecuador submitted a draft resolution 88/ under which the parties would be advised to reopen negotiations as soon as possible with a view to making a fresh attempt to settle their differences in accordance with the Purposes and Principles of the Charter. At the 565th meeting on 19 October 1951, the representative of France moved 89/ the adjournment of consideration of the matter until the International Court of Justice had ruled on its own competence.

#### Decision

At the 565th meeting on 19 October 1951, after the adoption 90/ of the motion made by France, the pending draft resolutions were not put to the vote.

#### B. The question of the nature of recommendations under Article 36 (1)

43. Certain draft resolutions, submitted in connexion with the Spanish question, the Corfu Channel question, the Egyptian question, the Greek frontier incidents question and the Palestine question, contained recommendations ascribed to Article 36 (1). In the course of the proceedings on the Egyptian question and the Palestine question, certain discussion and decisions bore upon the distinction between recommendations under Article 36 and action under other Articles. Also relevant in this connexion is one of the cases included in section A above, in connexion with which discussion

86/ Ibid., pp. 3 and 4, S/2358/Rev.1.

87/ For texts of relevant statements, see: S C, 6th yr.: 559th mtg.: China, para. 45; United Kingdom, paras. 16-20; United States, paras. 32 and 33; 561st mtg.: China, paras. 92-98; India, paras. 66-68; United Kingdom, para. 114; Yugoslavia, paras. 81-86; 562nd mtg.: President (Brazil), paras. 7-9; Ecuador, paras. 33-40.

88/ S C, 6th yr., 562nd mtg., S/2380, para. 48.

89/ S C, 6th yr., 565th mtg., para. 10.

90/ Ibid., para. 62.

took place on the significance of the word "recommends" in the operative part of a draft resolution. 91/

*1. Decision of 18 June 1946 in connexion with the Spanish question*

44. At the 35th meeting on 18 April 1946, in the course of the discussion on a draft resolution submitted by the representative of Poland 92/ proposing to take action under Articles 39 and 41, certain objections were based on the consideration that the sponsor had defined the situation in terms derived from Chapter VI. Accordingly, it was contended, the appropriate action of the Council would consist of recommending appropriate procedures or methods of adjustment under Article 36. In view of these objections, the Council appointed 93/ the Sub-Committee on the Spanish Question to make further studies in order that the Council might determine whether the situation in Spain had led to international friction and had endangered international peace and security, and if it so found, determine what practical measures the United Nations might take.

45. The Sub-Committee on the Spanish Question in its report 94/ of 31 May 1946 found that the situation in Spain was one the continuance of which was in fact likely to endanger the maintenance of international peace and security. The report concluded that:

"The situation in Spain thus falls to be dealt with by the Security Council under Chapter VI of the Charter, which covers measures of peaceful settlement and adjustment.

"The Security Council is empowered under Article 36 to recommend appropriate procedures or methods of adjustment of such a situation. It is not vested with executive authority, as in the case of Chapter VII, but it has the duty of devising methods of adjustment adequate to meet the given situation."

Accordingly, the Sub-Committee recommended 95/ inter alia:

"(b) The transmitting by the Security Council to the General Assembly of the evidence and reports of this Sub-Committee, together with the recommendation that unless the Franco régime is withdrawn and the other conditions of political freedom set out in the declaration are, in the opinion of the General Assembly, fully satisfied, a resolution be passed by the General Assembly recommending that diplomatic relations with the Franco régime be terminated forthwith by each Member of the United Nations."

46. At the 45th meeting on 13 June 1946, the representative of Australia, speaking as Chairman of the Sub-Committee, stated that the Council, if it followed the Sub-Committee's recommendations, would be exercising its power to recommend methods of adjustment or suitable procedures and to refer the matter to other organs of the United Nations whenever the circumstances were thought appropriate by the Council. The Chairman of the Sub-Committee submitted a draft resolution 96/ under which the

91/ See para. 38 above.

92/ S C, 1st yr., 1st Series, No. 2, 34th mtg., p. 167. See also paras. 21 et seq. above.

93/ S C, 1st yr., 1st Series, No. 2, 39th mtg., pp. 244 and 245.

94/ S C, 1st yr., 1st Series, Special Suppl., Rev. ed., pp. 1-12, 8/75.

95/ Ibid., p. 11.

96/ S C, 1st yr., 1st Series, No. 2, 45th mtg., p. 326.

Council would adopt the Sub-Committee's recommendations, subject to the addition to recommendation (b), after the words: "each Member of the United Nations" of the following provision: "or alternatively such other action be taken as the General Assembly deems appropriate and effective under the circumstances prevailing at the time."

47. The draft resolution based on the recommendation of the Sub-Committee gave rise to the objection that it was not proper to recommend indirectly one of the sanctions provided for in Chapter VII, since the Sub-Committee had come to the conclusion that Articles 39 and 41 were not at that time applicable. The severance of diplomatic relations, it was observed, was one of the enforcement measures envisaged under Chapter VII. In support of the Sub-Committee's recommendation, it was maintained that the Council was only recommending an appropriate method of adjusting a situation under Article 36 by taking the matter to the General Assembly, and that this procedure differed from an order of the Council under Chapter VII. It was further contended that procedures aimed at objectives somewhat analogous to those pursued under Chapter VII might be adopted within the framework of Chapter VI when the evidence did not substantiate the allegation that there was a threat to the peace or a breach of the peace.

48. At the 46th meeting on 17 June 1946, the representative of the United Kingdom submitted an amendment 97/ deleting the recommendation to the General Assembly regarding the severance of diplomatic relations. 98/

#### Decisions

At the 47th meeting on 18 June 1946, the amendment submitted by the United Kingdom was rejected. There were 6 votes in favour and 2 against, with 3 abstentions. After recommendation (b), together with two other recommendations, had not been adopted by reason of the negative vote of a permanent member, the draft resolution as a whole was put to the vote and was not adopted. There were 9 votes in favour and 1 against, with 1 abstention (the vote against being that of a permanent member). 99/

#### *2. Decision of 25 March 1947 in connexion with the Corfu Channel question 100/*

49. At the 107th meeting of the Council on 18 February 1947, the representative of the United Kingdom requested that, under Article 36, the Council recommend negotiations on the basis of a finding of fact for the settlement of his Government's dispute with Albania. After a sub-committee had reported on the facts in the case, the representative of the United Kingdom submitted a draft resolution 101/ at the 120th meeting on 20 March 1947, recommending that the parties settle the dispute on the

97/ Ibid., 46th mtg., pp. 348-349.

98/ For texts of relevant statements, see S C, 1st yr., 1st Series, No. 2, 35th mtg.: United Kingdom, p. 184;

45th mtg.: Australia, p. 327; Egypt, p. 330; USSR, pp. 336 and 337;

46th mtg.: Australia, pp. 352 and 353; United Kingdom, pp. 346 and 347.

99/ S C, 1st yr., 1st Series, No. 2, 47th mtg., pp. 378-380. See also in this Repertory under Article 39, paras. 53-59.

100/ For consideration of the nature of the recommendation, in accordance with Article 36 (3), to refer this dispute to the International Court of Justice, see paras. 106 *et seqq.* below.

101/ S C, 2nd yr., No. 27, 120th mtg., p. 567.

basis of a finding "that an unnotified minefield was laid in the Corfu Channel by the Albanian Government or with its connivance". After the sponsor of the draft resolution had accepted amendments 102/ designed to modify the finding of fact, the Council had before it the following text:

"The Security Council,

"...

"1. Considers that the laying of mines in peace-time without notification is unjustified and an offence against humanity;

"2. Finds that an unnotified minefield was laid in the immediate vicinity of the Albanian coast, resulting in serious injury to two of His Majesty's ships with loss of life and injury to their crews; that this minefield could not have been laid without the knowledge of the Albanian authorities;

"3. Recommends that the United Kingdom and Albanian Governments should settle the dispute on the basis of the Council's finding in paragraph 2 above, and that in the event of failure to settle, either party may apply to the Council for further consideration of the matter;

"4. Resolves to retain this dispute on its agenda until both parties certify that it has been settled to their satisfaction."

50. In the course of discussion, the view was expressed that, when working under Article 36, it was not the duty of the Council to examine the question in the manner of a court or tribunal. It was stated that the Council did not need to consider proof, facts, circumstances and laws, since it was not called upon to hand down a judgment. The function of the Council was political rather than judicial, and was limited to recommending appropriate procedures or methods of adjustment. 103/

#### Decision

At the 122nd meeting on 25 March 1947, the draft resolution submitted by the United Kingdom, as amended, was not adopted. 104/ There were 7 votes in favour and 2 against, with 1 abstention (1 vote against being that of a permanent member). The United Kingdom did not participate in the vote in accordance with Article 27 (3).

### *3. Decision of 29 July 1947 in connexion with the Greek frontier incidents question*

51. At the 147th meeting on 27 June 1947, the Security Council considered the report of the Commission of Investigation concerning Greek Frontier Incidents 105/, part IV of which comprised proposals "framed in the spirit of Chapter VI of the Charter of the

102/ S C, 2nd yr., No. 28, 121st mtg., p. 589; No. 29, 122nd mtg., pp. 596, 608 and 609.

103/ For texts of relevant statements, see S C, 2nd yr., No. 15, 107th mtg.: United Kingdom, p. 306; No. 32, 125th mtg.: Brazil, pp. 686-688; Poland, pp. 688-690; United Kingdom, p. 685.

104/ S C, 2nd yr., No. 29, 122nd mtg., p. 609.

105/ S C, 2nd yr., Special Suppl. No. 2, vol. I (S/360/Rev.1).

United Nations with a view, first, to prevent any aggravation of the situation, and, secondly, to alleviate it and eventually to restore it to normal. 106/

52. At the same meeting, the representative of the United States submitted a draft resolution 107/ recommending to the Governments involved the implementation of the Commission's proposals, and the establishment of a subsidiary organ of the Council for conciliation and investigation. The representative of the United Kingdom proposed an amendment 108/ incorporating the substance of the Commission's proposals in the draft resolution itself. The amendment was accepted by the sponsor of the draft resolution.

53. The part of the amended draft resolution 109/ embodying the Commission's proposals regarding the adjustment of the situation read as follows:

"The Security Council,

"...

"Resolves that:

"1. The Security Council recommends to the Governments of Greece, on the one hand, and Albania, Bulgaria and Yugoslavia on the other, to establish as soon as possible normal good-neighbourly relations, to abstain from all action, direct or indirect, which may be likely to increase or to maintain the tension and the unrest in the border areas, and rigorously to refrain from any support of elements in neighbouring countries aiming at the overthrow of the lawful Government of those countries.

"Giving support to armed bands formed in any of the four States concerned and crossing into the territory of another State, or refusal by any one of the four Governments in spite of the demands of the States concerned to take the necessary measures on its own territory to deprive such bands of any aid or protection, shall be avoided by the Governments of Albania, Bulgaria, Greece and Yugoslavia as a threat to the peace within the meaning of the Charter of the United Nations.

"2. The Security Council recommends that the Governments of Albania, Bulgaria, Greece and Yugoslavia establish, as soon as possible, normal diplomatic relations among themselves.

"3. The Security Council recommends to the Governments concerned that they enter into frontier conventions providing for effective machinery for the regulation and control of their common frontiers, and for the pacific settlement of frontier incidents and disputes.

"4. As the presence of refugees in any of the four countries is a disturbing factor, the Security Council recommends to the Governments of Albania, Bulgaria, Greece and Yugoslavia that they

"(1) Remove such refugees as far from the country from which they came as is practicably possible;

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106/ Ibid., p. 153.

107/ S C, 2nd yr., No. 51, 147th mtg., pp. 1124-1126.

108/ S C, 2nd yr., Suppl. No. 15, annex 38 (S/429), pp. 145 and 146.

109/ S C, 2nd yr., No. 66, 170th mtg., pp. 1603-1607.

"(2) Segregate them in camps or otherwise;

"(3) Take effective measures to prevent their participation in any political or military activity.

"The Security Council recommends that such camps be placed under the supervision of some international body authorized by the United Nations to undertake the task.

"In order to ensure that only genuine refugees return to their country of origin, repatriation shall not take place except after arrangements with the Government of the country of origin and after notification to the commission established under this resolution, or to the international body authorized for this task by the United Nations.

"5. The Security Council recommends to the Governments of Greece on the one hand and Albania, Bulgaria, and Yugoslavia on the other, that they study the practicability of concluding agreements for the voluntary transfer of minorities. Until such agreements come into force, individuals belonging to a given minority in any of the countries concerned desiring to emigrate, should be given all facilities to do so by the Government of the State in which they reside. The arrangements for any transfers under this paragraph should be supervised by the commission established under this resolution, which would act as a registration authority for any person desiring to emigrate."

54. In the course of the discussion on the draft resolution, the view was expressed that the Council was empowered under Article 36 to make such recommendations. At the 163rd meeting on 22 July 1947, the representative of Syria proposed 110/ to amend the preamble to read as follows:

"... finds it necessary that further action be taken by the Security Council under Articles 34 and 36 of the Charter."

55. In support of the proposal, several representatives expressed the view that the recommendations were in accordance with Article 36. However, after consideration of the effect of the Syrian proposal on the establishment of a commission of investigation and conciliation, 111/ the aforementioned support was withheld, and the sponsor withdrew his proposal. 112/

110/ S C, 2nd yr., No. 61, 163rd mtg., p. 1430.

111/ See also in this Repertory under Article 34, paras. 50 et seqq.

112/ For texts of relevant statements, see S C, 2nd yr.,

No. 58, 158th mtg.: China, pp. 1319 and 1320; Colombia, p. 1322; Syria, p. 1330;

No. 59, 159th mtg.: President (Poland), p. 1354; USSR, p. 1381;

No. 61, 162nd mtg.: President (Poland), pp. 1424 and 1427; France, pp. 1426 and 1427; Syria, pp. 1423 and 1424; United States, pp. 1424 and 1425;

163rd mtg.: President (Poland), pp. 1431, 1435, 1436 and 1437; Australia, pp. 1433, 1434, 1435 and 1436; Belgium, p. 1430; Brazil, pp. 1428, 1429, 1435 and 1437; France, pp. 1430, 1431, 1434, 1436 and 1437; Syria, pp. 1429, 1430, 1434, 1435 and 1436; United Kingdom, p. 1435; United States, pp. 1431, 1434 and 1435.

Decision

At the 170th meeting on 29 July 1947, the draft resolution submitted by the United States, as amended, was not adopted. 113/ There were 9 votes in favour and 2 against (1 vote against being that of a permanent member).

*4. Decisions of 29 August and 10 September 1947 in connexion with the Egyptian question*

56. At the 198th meeting on 28 August 1947, the Security Council rejected 114/ the draft resolution submitted by Brazil which noted that the methods of adjustment provided for by Article 33 had not been exhausted, and recommended the resumption of direct negotiations and the resort to peaceful means of the parties' own choice in the event of failure of negotiations.

57. At the same meeting, the representative of Colombia submitted a draft resolution 115/ calling upon the Governments of the United Kingdom and Egypt to:

"1. ... resume direct negotiations with a view:

"(a) To completing at the earliest possible date the evacuation of all United Kingdom military, naval and air forces from Egyptian territory, mutual assistance being provided in order to safeguard in time of war or imminent threat of war the liberty and security of navigation of the Suez Canal; and

"(b) To terminating the joint administration of the Sudan with due regard to the principle of self-determination of peoples and their right to self-government; ..."

58. Several representatives contended that the Council should not define the subject-matter of the negotiations, since the representatives of the parties alone would be empowered to do that when negotiations began. The draft resolution submitted by Colombia, it was contended, fell outside the framework of Article 33 in that it expressed an opinion on substance. Observing that his draft resolution called upon the parties to resume direct negotiations as provided for by Article 33 (2), the representative of Colombia maintained that, when dealing with a dispute, it was proper for the Council to mention the subject of the dispute. In doing so, it was not prejudging the legal position of the parties.

Decision

At the 200th meeting on 29 August 1947, the draft resolution submitted by Colombia was voted on in parts and rejected, 116/ having failed to receive the affirmative votes of 7 members.

59. At the 201st meeting on 10 September 1947, the representative of China submitted the following draft resolution: 117/

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113/ S C, 2nd yr., No. 66, 170th mtg., p. 1612.

114/ See paras. 34 et seqq. above.

115/ S C, 2nd yr., No. 86, 198th mtg., S/530, p. 2305.

116/ S C, 2nd yr., No. 87, 200th mtg., pp. 2338-2340.

117/ S C, 2nd yr., No. 88, 201st mtg., S/547, p. 2344.

"The Security Council,

"Having considered the dispute between the United Kingdom and Egypt brought to its attention by the letter of the Prime Minister of Egypt dated 8 July 1947;

"Recognizing the natural and reasonable desire of the Egyptian Government for the early and complete evacuation of British armed forces from Egypt;

"Noting that the Government of the United Kingdom has already evacuated its armed forces from certain parts of Egypt;

"Having confidence that the re-establishment of direct contact between the parties will result in early evacuation of remaining British armed forces;

"Recommends that the parties

"(a) Resume negotiations, and

"(b) Keep the Security Council informed of the progress of these negotiations and report thereon to the Council in the first instance not later than 1 January 1948."

60. Discussion on this draft resolution centred on the effect of the inclusion in the preamble of observations concerning the evacuation of British armed forces. The representative of the United Kingdom maintained that the draft resolution submitted by China attempted to alter or to restrict the field of negotiations, or to assign priority to certain parts of it, and therefore the adoption of its provisions would amount to dealing with the merits of the case under Article 36. At the same time, he observed, the Council was attempting to maintain the recommendation contained in the draft resolution submitted by Brazil which his Government preferred to the draft resolutions submitted by Colombia and China which included various recommendations under Article 36. Whereas a recommendation to resume negotiations in accordance with Article 33 would presumably imply that negotiations would cover the same field as those which had already been undertaken prior to submission of the question to the Council, action under Article 36 would delimit the field of negotiation.

61. The view was expressed by another representative that the combination of Articles 33 and 36 was not important, since the operative clauses of the draft resolution submitted by China, recommending the resumption of direct negotiations, were in accordance with Article 33. Others contended that, if the Council defined the elements of the negotiations, it would be necessary to refer to the legal question as well as to the evacuation of troops, since one of the parties contended that the basic issue was the validity of the Anglo-Egyptian Treaty of 1936.

62. Another view advanced was that the presence of troops in the territory of a sovereign State was the most urgent point in dispute, which, under the draft resolution submitted by China, would be dealt with by a method of adjustment in accordance with Article 36 (1), while the other points in dispute would be the subject of negotiation in accordance with Article 33. Consequently, it was maintained, there was no contradiction involved in working simultaneously under Articles 33 and 36. 118/

118/ For texts of relevant statements, see S C, 2nd yr.,

No. 87, 200th mtg.: Australia, pp. 2330 and 2331; Belgium, p. 2327; Colombia, pp. 2332-2334; France, pp. 2326 and 2327; United Kingdom, pp. 2324-2326;

No. 88, 201st mtg.: Australia, pp. 2352-2354; China, pp. 2344, 2345, 2355 and 2356; Egypt, pp. 2345 and 2346; Syria, pp. 2348 and 2349; United Kingdom, pp. 2346-2348; United States, pp. 2354 and 2355.

Decision

At the 201st meeting on 10 September 1947, the draft resolution submitted by China was not adopted. 119/ There were 2 votes in favour and none against, with 8 abstentions. The representative of the United Kingdom did not take part in the voting in accordance with Article 27 (3).

*5. Decisions prior to 15 July 1948 in connexion  
with the Palestine question*

63. By resolution 181 (II) of 29 November 1947, which recommended for Palestine the Plan of Partition with Economic Union, the General Assembly requested the Security Council to assume certain responsibilities. Specifically, the Security Council was requested (a) to take the necessary measures as provided for in the plan for its implementation; (b) if the circumstances required, to consider whether the situation in Palestine constituted a threat to the peace, and, if it so found, to take measures under Articles 39 and 41 to empower the United Nations Palestine Commission, established by General Assembly resolution 181 (II), to exercise in Palestine the functions which were assigned to it.

64. By resolution 120/ of 5 March 1948, adopted at the 263rd meeting, the Council called on the permanent members to consult and to inform it regarding the situation in Palestine and to make recommendations regarding the guidance and instructions which the Council might give to the Palestine Commission.

65. At the 277th meeting on 1 April 1948, the Council unanimously adopted "in the exercise of its primary responsibility for the maintenance of international peace and security" a resolution 121/ by which it called upon the Jewish Agency for Palestine and the Arab Higher Committee to make representatives available to the Security Council for the purpose of arranging a truce. At the same meeting, a second resolution 122/ was adopted by which the Council requested the Secretary-General to convoke a special session of the General Assembly to consider further the question of the future government of Palestine.

66. At the 283rd meeting on 16 April 1948, the Council adopted a resolution 123/ by which it called upon all persons and organizations in Palestine, and especially upon the Arab Higher Committee and the Jewish Agency, to take certain measures related to the aim of bringing about a cessation of hostilities. By resolution 124/ of 23 April 1948, adopted at the 287th meeting, the Security Council established a Truce Commission for Palestine 125/ to assist it in supervising the implementation, by the parties, of the Security Council resolution of 16 April.

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119/ S C, 2nd yr., No. 88, 201st mtg., p. 2362.

120/ S C, 3rd yr., No. 36-51, 263rd mtg., S/691, p. 43.

121/ S C, 3rd yr., Suppl. for April, pp. 4 and 5, S/714, I.

122/ Ibid., p. 5, S/714, II.

123/ Ibid., pp. 7 and 8, S/723.

124/ S C, 3rd yr., No. 62, 287th mtg., S/727, pp. 32 and 33.

125/ On the operation of the Truce Commission, see United Nations Publications, Sales No.: 1949.X.2.

## a. DECISION OF 22 MAY 1948

67. At the 293rd meeting on 17 May 1948, the Security Council had before it a draft resolution 126/ submitted by the United States which, having recorded that previous resolutions of the Council had not been complied with and that military operations were taking place, provided that the Council determine the situation in Palestine a threat to the peace and a breach of the peace within the meaning of Article 39 and order the cessation of military action. Discussion arose whether, in the circumstances, the Council should rely on the application of Chapter VII rather than on continued efforts in accordance with Chapter VI. The representative of the United Kingdom, at the 296th meeting on 18 May, proposed several amendments designed to eliminate the determination under Article 39 and to substitute the words "Calls upon all parties concerned in Palestine" for the words "Orders all Governments and authorities". In opposing this amendment, the representative of the United States observed that it would transfer the jurisdiction of the Council from Chapter VII to Chapter VI, notwithstanding the unsuccessful results obtained by the earlier resolutions of 5 March, 1 April, 16 April and 23 April 1948, all of which had been recommendations under Chapter VI. Other representatives supported the amendment offered by the United Kingdom on the ground that the efforts of negotiation and mediation had not been exhausted. At the 302nd meeting on 22 May, the Council voted upon the draft resolution submitted by the United States and amendments thereto. 127/

Decisions

(a) At the 302nd meeting on 22 May 1948, the paragraph of the draft resolution submitted by the United States invoking Article 39 was rejected. 128/ There were 5 votes in favour and none against, with 6 abstentions.

(b) At the same meeting, the representative of the United States accepted the amendment submitted by the United Kingdom substituting the words "Calls upon" for "Orders". The amendment submitted by the United Kingdom, as further amended, was adopted 129/ by 10 votes to none, with 1 abstention.

## b. DECISION OF 29 MAY 1948

68. At the 306th meeting on 27 May 1948, the representative of the USSR submitted a draft resolution 130/ which, having recorded that the resolution of 22 May had not been

126/ S C, 3rd yr., No. 67, 293rd mtg., p. 2.

127/ For texts of relevant statements, see S C, 3rd yr.,

No. 66, 292nd mtg.: Arab Higher Committee, pp. 7-9; Jewish Agency for Palestine, pp. 4-7.

No. 67, 293rd mtg.: Colombia, p. 9; USSR, p. 8; United States, p. 2;

No. 68, 294th mtg.: Syria, p. 9; Ukrainian SSR, pp. 2, 3, 13 and 14;

295th mtg.: Colombia, pp. 24-26; USSR, pp. 39-41;

No. 69, 296th mtg.: Belgium, pp. 11 and 12; China, p. 22; United Kingdom, pp. 2-5; United States, pp. 7 and 9;

No. 70, 297th mtg.: Syria, pp. 8 and 9; Ukrainian SSR, pp. 5 and 8;

298th mtg.: President (France), pp. 17-19; Argentina, pp. 31 and 32; Canada, pp. 14 and 15; Colombia, p. 30; Syria, pp. 20-22;

No. 71, 299th mtg.: USSR, p. 7;

302nd mtg.: Syria, p. 48; United States, pp. 43 and 44;

No. 75, 306th mtg.: United States, pp. 14 and 15.

128/ S C, 3rd yr., No. 72, 302nd mtg., p. 54.

129/ *Ibid.*, p. 59.

130/ S C, 3rd yr., No. 75, 306th mtg., S/794/Rev.1, pp. 17 and 18.

carried out and that the situation in Palestine constituted a threat to peace and security within the meaning of Article 39, provided that the Council order the cessation of military operation within thirty-six hours. At the same meeting, the representative of the United Kingdom submitted a draft resolution 131/ calling for a cessation of hostilities for a period of four weeks as a preliminary act of pacific settlement.

69. In support of his draft resolution, the representative of the United Kingdom stated that his Government recognized that, in view of the failure of previous recommendations under Chapter VI, it would be necessary to invoke Chapter VII if his Government's proposals did not prove effective. 132/

#### Decisions

(a) At the 310th meeting on 29 May, the draft resolution submitted by the USSR was rejected. 133/ There were 5 votes in favour and none against, with 6 abstentions.

(b) The draft resolution submitted by the United Kingdom, as revised, 134/ was adopted by a paragraph by paragraph vote. The text read as follows [the vote by which each paragraph was adopted is noted in brackets]:

"The Security Council,

"Desiring to bring about a cessation of hostilities in Palestine without prejudice to the rights, claims and position of either Arabs or Jews, [8 votes to none, with 3 abstentions],

"Calls upon all Governments and authorities concerned to order a cessation of all acts of armed force for a period of four weeks; [10 votes to none, with 1 abstention],

"Calls upon all Governments and authorities concerned to undertake that they will not introduce fighting personnel into Palestine, Egypt, Iraq, Lebanon, Saudi Arabia, Syria, Transjordan and Yemen during the cease-fire and

"Calls upon all Governments and authorities concerned, should men of military age be introduced into countries or territories under their control, to undertake not to mobilize or submit them to military training during the cease-fire; [7 votes to none, with 4 abstentions],

131/ Ibid., S/795, pp. 29 and 30.

132/ For texts of relevant statements, see S C, 3rd yr.,

No. 75, 306th mtg.: USSR, pp. 17 and 18; United Kingdom, pp. 28 and 29;

No. 76, 307th mtg.: Canada, p. 17; China, pp. 1 and 2; Jewish Agency for Palestine, pp. 11-13; Ukrainian SSR, pp. 16 and 17; United States, pp. 19-22;

308th mtg.: President (France), pp. 40 and 41; Colombia, pp. 26 and 27; United States, p. 43.

No. 77, 309th mtg.: Belgium, p. 13; USSR, pp. 8 and 9; United Kingdom, pp. 11-13;

310th mtg.: President (France), pp. 33 and 34; Colombia, pp. 32 and 33; Syria, pp. 24 and 25.

133/ S C, 3rd yr., No. 77, 310th mtg., pp. 36 and 37.

134/ S C, 3rd yr., Suppl. for May, pp. 103 and 104, S/801.

"Calls upon all Governments and authorities concerned to refrain from importing war material into or to Palestine, Egypt, Iraq, Lebanon, Saudi Arabia, Syria, Transjordan and Yemen during the cease-fire; [9 votes to none, with 2 abstentions],

"Urges all Governments and authorities concerned to take every possible precaution for the protection of the Holy Places and of the City of Jerusalem, including access to all shrines and sanctuaries for the purpose of worship by those who have an established right to visit and worship at them; [11 votes to none, with no abstentions],

"Instructs the United Nations Mediator for Palestine in concert with the Truce Commission to supervise the observance of the above provisions, and decides that they shall be provided with a sufficient number of military observers; [9 votes to none, with 2 abstentions],

"Instructs the United Nations Mediator to make contact with all parties as soon as the cease-fire is in force with a view to carrying out his functions as determined by the General Assembly; [9 votes to none, with 2 abstentions],

"Calls upon all concerned to give the greatest possible assistance to the United Nations Mediator; [9 votes to none, with 2 abstentions],

"Instructs the United Nations Mediator to make a weekly report to the Security Council during the cease-fire; [9 votes to none, with 2 abstentions],

"Invites the States members of the Arab League and the Jewish and Arab authorities in Palestine to communicate their acceptance of this resolution to the Security Council not later than 6 p.m. New York Standard Time on 1 June 1948; [8 votes to none, with 3 abstentions],

"Decides that if the present resolution is rejected by either party or by both, or if, having been accepted, it is subsequently repudiated or violated, the situation in Palestine will be reconsidered with a view to action under Chapter VII of the Charter. [7 votes to none, with 4 abstentions],

"Calls upon all Governments to take all possible steps to assist in the implementation of this resolution." [8 votes to none, with 3 abstentions].

70. At the 331st meeting of the Council, as a result of the dispatch to Palestine of fifty armed guards to assist the Mediator in the exercise of his functions, the question arose of the powers under which the Secretary-General had acted. In reply to the objections raised, the Secretary-General, after referring to the powers of the Mediator under Security Council resolution of 29 May 1948, stated: 135/

"This resolution of the Security Council was adopted under Chapter VI of the Charter and presumably in the exercise of Article 36, which provides that the Security Council may at any stage of a dispute or a situation recommend appropriate procedures or methods of adjustment. The truce provisions of

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135/ S C, 3rd yr., No. 93, 331st mtg., pp. 33 and 34. For proceedings in connexion with the Security Council resolution of 15 July 1948, see in this Repertory under Article 39.

the Security Council Resolution of May 29, and of certain further recommendations by the Mediator to implement the Truce, were agreed to by the parties to the dispute."

C. The question of the requirement to take into consideration procedures for settlement which have already been adopted by the parties

71. It has been considered appropriate in this section to relate certain proceedings in connexion with the Iranian question, the Indonesian question, the India-Pakistan question and the question of Guatemala to the provision of Article 36 (2) whereby the Council is enjoined to take into consideration any procedures for settlement which have already been adopted by the parties. The discussion which links the successive decisions in these cases was indicative of the concern of the Council to take fully into account such procedures for settlement as had already recommended themselves or appeared likely to recommend themselves to the parties. The ensuing decisions of the Council may themselves be examined in the light of the varying degree to which the procedures envisaged therein have represented the endorsement by the Council of procedures previously adopted by the parties themselves, as distinct from recommendations representing in a more marked degree intervention by the Council by virtue of its authority under Articles 36 and 37. The discussion in the Council was primarily directed to the wisdom of the alternative courses proposed for the consideration of the Council, rather than to the relationship between the particular proposals and the text of the Charter. Accordingly, the decisions in question and the antecedent discussion merit attention not only in relation to Article 36, but also in relation to Articles 33 and 37, and, in the case of the question of Guatemala, in relation to Article 52, on which the decisions have a more direct bearing. Also relevant in connexion with the question of Article 36 (2) are the cases dealt with in section A of the Analytical Summary of the study on Article 33. 136/

1. *Decision of 30 January 1946 in connexion with the Iranian question (I)*

72. By letter 137/ dated 19 January 1946, Iran brought a situation to the attention of the Council, alleging that it had arisen as a result of interference by the Soviet Union in the internal affairs of Iran and that it might lead to international friction. Iran requested the Council to investigate and to recommend appropriate terms of settlement. After describing previous efforts to negotiate a settlement in accordance with Article 33, 138/ the representative of Iran requested the Council to recommend withdrawal by the USSR of all support for the rebels in Azerbaijan and strict adherence by the USSR to the Tri-Partite Treaty of Alliance of 1942. The representative of the USSR, opposing any action by the Council, stated that, since his Government considered bilateral negotiations as the only acceptable means of settling such questions, Article 36 (1) was inapplicable. The representative of Iran declared that his Government was prepared to enter into direct negotiations with the USSR, provided that the Council recommended that procedure. Several representatives were of the opinion that, in view of the willingness of the parties to negotiate, a recommendation by the Council on the procedure of negotiation was not necessary.

73. The representative of the United Kingdom submitted a draft resolution 139/ retaining the matter on the agenda, on the basis of the consideration that both

136/ See in this Repertory under Article 33, paras. 14 et seqq.

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

138/ See also in this Repertory under Article 33, paras. 15 et seqq.

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

parties had affirmed their readiness to seek a solution of the question by negotiation. The representative of the USSR, in opposing the draft resolution, maintained, that by its adoption, the Council would, in fact, be making a recommendation. Citing the provisions of Article 37, he observed that such recommendations might be made only in respect of circumstances in which the continuance of a dispute in fact endangered the maintenance of peace and security. Retention of the matter on the agenda, he contended, implied that the Iranian question was of such a nature. The representative of the United Kingdom was of the opinion that, under Article 36, the Council was able to keep the matter under consideration until it was settled. The Council agreed to delete the reference to the retention of the matter on the agenda, it being understood that the omission of this provision would not preclude the Council from giving further consideration to the question should the need arise. 140/

### Decision

At the 5th meeting of the Security Council on 30 January 1946, the draft resolution submitted by the United Kingdom, as amended, was adopted 141/ unanimously. The third paragraph of the preamble read as follows: 142/

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

### *2. Decisions in connexion with the Indonesian question (II)*

74. By letter 143/ dated 27 March 1947, the Government of the Netherlands requested the Secretary-General to bring to the attention of the Security Council the Linggadjati Agreement which had been signed on 25 March 1947 between the Governments of the Netherlands and the Republic of Indonesia. By letter 144/ dated 21 July 1947, the representative of the Netherlands transmitted to the Secretary-General a statement by his Government on the application of "police-measures" in Indonesia.

#### a. DECISIONS OF 1 AND 25 AUGUST 1947 AND 28 FEBRUARY AND 29 JULY 1948 IN CONNEXION WITH THE TENDER OF THE GOOD OFFICES OF THE COUNCIL

75. By letters dated 30 July 1947, the Governments of Australia 145/ and India 146/ drew the attention of the Security Council to the situation in Indonesia. India invoked Article 35; Australia, referring to the situation as a breach of the peace, invoked Article 39 and urged the Council to take immediate action to restore international peace and security. As a provisional measure, the Government of Australia proposed to call upon the Governments of the Netherlands and of the Republic

140/ For texts of relevant statements, see S C, 1st yr., 1st Series, No. 1, 3rd mtg.: President (Australia), pp. 31 and 32; Iran, p. 35; USSR, pp. 42 and 43.

5th mtg.: President (Australia), p. 61; China, pp. 58 and 59; France, p. 59; Iran, pp. 48 and 49; Netherlands, pp. 60, 61 and 62; Poland, pp. 64, 65 and 69; USSR, pp. 49-53, 65, 66 and 70; United Kingdom, pp. 56, 66, 67 and 70; United States, pp. 58 and 71.

141/ S C, 1st yr., 1st Series, No. 1, 5th mtg., p. 71.

142/ *Ibid.*, p. 70. See also in this Repertory under Article 33, para. 23.

143/ S C, 2nd yr., No. 67, 171st mtg., S/311 in footnote 1 to p. 1624.

144/ *Ibid.*, S/426 in footnote 1 to p. 1625.

145/ S C, 2nd yr., Suppl. No. 16, pp. 149 and 150, annex 40 (S/449).

146/ *Ibid.*, p. 150, annex 41 (S/447).

of Indonesia to cease hostilities forthwith and to commence arbitration in accordance with article 17 of the Linggadjati Agreement. At the 171st meeting of the Council on 31 July 1947, the representative of Australia submitted a draft resolution 147/ to this effect. In support of the draft resolution, he observed that the two Governments were obliged to settle by arbitration any dispute arising from the Agreement. The representative of the Netherlands maintained that there was no obligation on the part of his Government to have recourse to arbitration, and, furthermore, that conditions in the area precluded recourse to arbitration at that time. During consideration of the draft resolution, the opinion was expressed that a situation might develop making arbitration impracticable, but in connexion with which some more expeditious or direct means might be more appropriately employed. It was therefore suggested 148/ that the reference in the draft resolution to methods of settlement might be changed to read "arbitration or by other peaceful means".

76. At the 172nd meeting on 1 August 1947, the representative of the United States proposed an amendment 149/ which would delete the invocation of Articles 39 and 40 and the reference to article 17 of the Linggadjati Agreement. The representative of Australia accepted 150/ both amendments to the draft resolution.

#### Decision

At the 173rd meeting on 1 August 1947, the Security Council adopted 151/ in a paragraph by paragraph vote the following resolution: 152/

"The Security Council,

"Noting with concern the hostilities in progress between the armed forces of the Netherlands and the Republic of Indonesia,

"Calls upon the parties:

"(a) To cease hostilities forthwith, and

"(b) To settle their disputes by arbitration or by other peaceful means and keep the Security Council informed about the progress of the settlement."

77. Subsequent consideration of procedures of pacific settlement appropriate to the case centred on the question whether the Council, when implementing the resolution of 1 August 1947, should establish a commission of mediation or arbitration, as requested by the Republic of Indonesia, or whether it should encourage the acceptance of the tender of good offices by the United States, as preferred by the Netherlands. 153/ At the 193rd and 194th meetings on 22 and 25 August 1947, the Council had before it two draft resolutions: the first 154/ requesting the parties to submit all matters in dispute to arbitration, and the second 155/ tendering the good offices of the Council to the parties.

147/ S C, 2nd yr., No. 67, 171st mtg., S/454, p. 1626.

148/ S C, 2nd yr., No. 67, 171st mtg., p. 1633.

149/ S C, 2nd yr., No. 68, 172nd mtg., p. 1658.

150/ S C, 2nd yr., No. 67, 171st mtg., p. 1633 and No. 68, 172nd mtg., p. 1675.

151/ S C, 2nd yr., No. 68, 173rd mtg., pp. 1700-1703.

152/ S C, 2nd yr., No. 72, 178th mtg., S/459 in footnote 1 to p. 1839.

153/ Ibid., p. 1855, and No. 76, 183rd mtg., p. 2003.

154/ S C, 2nd yr., No. 82, 193rd mtg., S/512 in footnote 1 to p. 2174.

155/ Ibid., S/514 in footnote 1 to p. 2179.

78. In support of the establishment of a commission of arbitration, it was observed that the procedure had been accepted by the parties under article 17 of the Linggadjati Agreement of 25 March 1947, and that the method of selecting the arbitrators was laid down in that Agreement, thereby making it possible to avoid the implication that the Council was imposing a procedure of settlement. Several members advocated the procedure of arbitration on the grounds that the fullest intervention of the Council was required to safeguard the position of the Republic; that procedure dependent on direct settlement between the parties had already failed; and that, without direct intervention, the Council would not be in a position to deal with the substance of the question and to take responsibility for the settlement. In support of a tender of good offices by the Council, the contention was advanced that the question of competence, which had been left in abeyance in connexion with the proceedings of 1 August 1947, would thereby be obviated; that the tender of good offices would stress the need for agreement and co-operation between the parties; and that the rights of the Council would be safeguarded by means of reports made to it. The view was also advanced that the Council should not impose a particular method of pacific settlement when such a course could be avoided. 156/

79. At the 194th meeting on 25 August 1947, after the adoption of a resolution 157/ requesting reports from consular representatives in Batavia on the observance of the cease fire, 158/ the Security Council rejected 159/ all draft resolutions proposing the establishment of a commission of the Security Council to act in a mediatory or arbitral capacity.

#### Decision

At the 194th meeting on 25 August 1947 the Security Council adopted 160/ by 8 votes to none, with 3 abstentions, the following resolution: 161/

#### "The Security Council

"Resolves to tender its good offices to the parties in order to assist in the pacific settlement of their dispute, in accordance with paragraph (b) of the resolution of the Council of 1 August 1947. The Council expresses its readiness, if the parties so request, to assist in the settlement through a committee of the Council consisting of three members of the Council, each party selecting one, and the third to be designated by the two so selected."

156/ For texts of relevant statements, see S C, 2nd yr.,

No. 67, 171st mtg.: United States, p. 1648;

No. 68, 172nd mtg.: Netherlands, p. 1655; United Kingdom, pp. 1656 and 1657; United States, pp. 1657 and 1658;

No. 72, 178th mtg.: Australia, p. 1854;

No. 76, 184th mtg.: Indonesia, p. 2003;

No. 79, 187th mtg.: United States, pp. 2068-2069;

No. 83, 194th mtg.: United States, pp. 2200, 2201, 2203 and 2205;

No. 99, 213th mtg.: United States, pp. 2602 and 2603;

No. 102, 217th mtg.: Brazil, pp. 2692 and 2693;

157/ S C, 2nd yr., No. 82, 193rd mtg., S/513 and Corr.1 in footnote 3 to p. 2173.

158/ For consideration of the action of the Council with respect to the cessation of hostilities as related to Articles 39 and 40, see in this Repertory under the relevant Articles.

159/ S C, 2nd yr., No. 83, 194th mtg., p. 2209.

160/ Ibid.

161/ S C, 2nd yr., No. 82, 193rd mtg., S/514, in footnote 1 to p. 2179.

80. The Committee of Good Offices on the Indonesian Question was established in accordance with this procedure. 162/ At the 219th meeting on 1 November 1947, the Council adopted 163/ a resolution which gave the Committee of Good Offices additional responsibilities in connexion with the cease fire.

81. During February 1948, the Council considered the first interim report 164/ of the Committee of Good Offices in which it was reported that a truce agreement had been signed, and that, under the Renville Agreement accord had been reached on eighteen political principles as a basis for subsequent negotiations for the settlement of the dispute. The Committee explained that it had informed the parties that, acting within its terms of reference, it was prepared, when requested by the parties, to offer its suggestions on "appropriate procedures or methods of adjustment, as well as on such basic matters as are related to procedures for the settlement and terms of settlement." 165/

82. Discussion in the Council centred on proposals to re-define the powers of the Committee. Several members supported the position of the Republic of Indonesia which favoured vesting the Committee with arbitral functions to deal with conflicting interpretations of the political principles. The view was advanced that the mere continuation of the Committee's good offices might favour the party with greater military strength, and might lead to prolonged negotiations which could make the maintenance of the truce difficult. Those who favoured maintaining the tender of good offices contended that it was a flexible procedure which permitted adaptation to the degree of consent between the parties; if the parties agreed to refer any matter to arbitration, there was nothing to prevent them from doing so. The word "assist" was not a passive word in the resolution of 25 August 1947 when interpreted with reference to the objective of settling all disputes arising between the parties and to the acceptance of the procedure by both parties. Moreover, it was pointed out that the Council was not competent under the Charter to force a particular method of peaceful settlement on two disputants. One proposal 166/ put before the Council sought to empower the Committee to make and to publish suggestions to the parties in connexion with a political settlement in the absence of a request from the parties.

### Decision

At the 259th meeting of the Security Council on 28 February 1948, after all draft resolutions and amendments broadening the authority and functions of the Committee of Good Offices had been either rejected or withdrawn, 167/ the Council adopted 168/ the following resolution: 169/

"The Security Council,

"Having considered the Report of the Committee of Good Offices, informing the Council of the steps taken by the Netherlands Government and the Government of the Republic of Indonesia to comply with the Council's resolution of 1 August 1947;

162/ For operations of the Committee of Good Offices on the Indonesian Question, see: United Nations Publications, Sales No.: 1949.X.7.

163/ S C, 2nd yr., No. 103, 219th mtg., p. 2750.

164/ S C, 3rd yr., Special Suppl. No. 1 (S/649/Rev.1).

165/ Ibid., p. 3.

166/ S/681.

167/ S C, 3rd yr., Nos. 16-35, 259th mtg., pp. 392 and 393.

168/ Ibid., p. 393.

169/ S/678.

"Notes with satisfaction the signing of the Truce Agreement by both parties and the acceptance by both parties of certain principles as an agreed basis for the conclusion of a political settlement in Indonesia;

"Commends the members of the Committee of Good Offices for the assistance they have given the two parties in their endeavours to settle their dispute by peaceful means;

"Maintains its offer of good offices contained in the resolution of 25 August 1947, and, to this end,

"Requests both parties and the Committee of Good Offices to keep the Council directly informed about the progress of the political settlement in Indonesia."

83. During June and July 1948, the Council considered the second 170/ and third 171/ interim reports of the Committee of Good Offices on the Indonesian Question in which the Committee reported on the suspension of negotiations. The representative of China, at the 341st meeting on 29 July 1948, submitted a draft resolution 172/ calling upon the parties to maintain the strict observance of existing agreements. In support of this draft resolution it was observed that, under Article 36 (2), the Council was obliged to take into consideration procedures for settlement already adopted by the parties. The adoption of the draft resolution submitted by China, it was maintained, would fulfil that obligation since it would leave to the Committee of Good Offices the responsibility of implementing the protocols and agreements agreed upon by the parties. Opposition to the draft resolution submitted by China was based on the contention that the Committee of Good Offices had in fact admitted its failure to bring about a political settlement, and that the continuation of such an organ with limited authority would favour the stronger party. 173/

#### Decision

At the 342nd meeting on 29 July 1948, the draft resolution submitted by China was adopted 174/ by 9 votes to none, with 2 abstentions. The resolution read as follows:

#### "The Security Council,

"Having considered the Committee of Good Offices' report on the Federal Conference opened in Bandung on 27 May 1948, Third interim report, Report on standstill in political negotiations and Report on restrictions on trade in Indonesia;

170/ S C, 3rd yr., Suppl. for June, pp. 41-72, S/787.

171/ Ibid., pp. 122-147, S/848 and Add.1.

172/ S C, 3rd yr., No. 99, 341st mtg., S/931, p. 22.

173/ For texts of relevant statements, see S C, 3rd yr.,

Nos. 16-35, 247th mtg.: Netherlands, pp. 151 and 152; Mr. Kirby (Australian member of the Committee of Good Offices), pp. 145-149;

249th mtg.: USSR, pp. 175-187;

251st mtg.: United States, pp. 211 and 212.

No. 86, 323rd mtg.: Belgium, p. 33; United States, pp. 38-40;

No. 89, 326th mtg.: Indonesia, p. 13;

No. 91, 328th mtg.: Indonesia, pp. 2 and 3; United Kingdom, pp. 17 and 18;

No. 99, 342nd mtg.: President (Ukrainian SSR), pp. 34-36; Syria, pp. 27-29; USSR, pp. 29-34.

174/ S C, 3rd yr., No. 99, 342nd mtg., pp. 38 and 39.

"Calls upon the Government of the Netherlands and the Republic of Indonesia with the assistance of the Council's Committee of Good Offices, to maintain strict observance of both the military and economic articles of the 'Renville' Truce Agreement, and to implement early and fully the twelve 'Renville' political principles and the six additional principles."

b. DECISIONS OF 28 JANUARY AND 23 MARCH 1949 IN CONNEXION WITH THE  
RECOMMENDATIONS OF THE COUNCIL CONCERNING NEGOTIATIONS  
AND THE SUBSEQUENT PROPOSAL OF THE NETHERLANDS FOR A  
ROUND TABLE CONFERENCE

84. Following the second outbreak of hostilities in Indonesia, the Council received the fourth interim report 175/ of the Committee of Good Offices on the Indonesian Question. At the 392nd meeting on 24 December and the 395th meeting on 28 December 1948, the Council adopted resolutions 176/ calling upon the parties to cease hostilities, calling upon the Government of the Netherlands to set free political prisoners; and instructing the Committee of Good Offices to report on the compliance by the parties.

85. By its report 177/ of 7 January 1949, the Committee of Good Offices raised the question whether the continuation of the Committee would serve any useful purpose or contribute to a peaceful settlement of the problem. It observed 178/ that, whereas the Committee had been established under the Security Council resolution of 25 August 1947 to assist the parties in reaching a pacific settlement of their dispute, direct negotiation as a method of pacific settlement had been rejected in favour of military action. Discussion centred on whether the Council should intervene more directly and make recommendations to the parties and whether the Committee should also be given similar powers. In opposition to such procedures, it was observed that the Council had not decided the question of competence and would need to do so before abandoning the procedure of good offices which had been accepted by both parties. Others maintained that the Council had exhausted the benefit of good offices and was under an obligation to act as the trustee of the Renville Agreement, for the implementation of which it was necessary for the Council to mediate between the parties and, if the parties were unable to agree, the Committee of Good Offices should have the power to arbitrate the differences. In making recommendations directly to the parties, the Council might base its action on principles already agreed upon by the parties, and might permit a freely negotiated settlement with the assistance of a Commission, which would be empowered to make recommendations to the parties without their prior consent. 179/

175/ S C, 3rd yr., Suppl. for Dec., pp. 1-116, S/1085.

176/ Ibid., p. 298, S/1149; and S/1164.

177/ S C, 4th yr., Suppl. for Jan., pp. 6-17, S/1189.

178/ Ibid., pp. 13-14.

179/ For texts of relevant statements, see S C, 4th yr.,

No. 1, 397th mtg.: Australia, p. 28;

No. 2, 398th mtg.: China, p. 12; Norway, p. 16; USSR, pp. 18 and 19;

No. 5, 401st mtg.: India, pp. 11 and 12; Indonesia, pp. 8 and 9.

No. 6, 402nd mtg.: United States, pp. 6-10;

No. 7, 403rd mtg.: Norway, p. 10;

No. 9, 406th mtg.: Netherlands, pp. 18 and 19. See also resolution adopted by the Conference on Indonesia held in New Delhi, S C, 4th yr., Suppl. for Jan., pp. 56-59, S/1222.

86. At the 402nd meeting on 21 January 1949, a draft resolution 180/ was submitted on behalf of China, Cuba, Norway and the United States, to transform the Committee of Good Offices into the United Nations Commission for Indonesia, and to recommend negotiations on the basis for a settlement.

#### Decision

At the 406th meeting on 28 January 1949, the Security Council adopted 181/ by a paragraph by paragraph vote the following resolution, 182/ based on the draft resolution:

#### "The Security Council

"Recalling its resolutions of 1 August 1947, 25 August 1947, and 1 November 1947, with respect to the Indonesian question;

"Taking note with approval of the reports submitted to the Security Council by its Committee of Good Offices for Indonesia;

"Considering that its resolutions of 24 December 1948 and 28 December 1948 have not been fully carried out;

"Considering that continued occupation of the territory of the Republic of Indonesia by the armed forces of the Netherlands is incompatible with the restoration of good relations between the parties and with the final achievement of a just and lasting settlement of the Indonesian dispute;

"Considering that the establishment and maintenance of law and order throughout Indonesia is a necessary condition to the achievement of the expressed objectives and desires of both parties;

"Noting with satisfaction that the parties continue to adhere to the principles of the Renville Agreement and agree that free and democratic elections should be held throughout Indonesia for the purpose of establishing a constituent assembly at the earliest practicable date, and further agree that the Security Council should arrange for the observation of such elections by an appropriate agency of the United Nations; and that the representative of the Netherlands has expressed his Government's desire to have such elections held not later than 1 October 1949;

"Noting also with satisfaction that the Government of the Netherlands plans to transfer sovereignty to the United States of Indonesia by 1 January 1950, if possible, and, in any case, during the year 1950;

"Conscious of its primary responsibility for the maintenance of international peace and security, and in order that the rights, claims and position of the parties may not be prejudiced by the use of force;

"1. Calls upon the Government of the Netherlands to insure the immediate discontinuance of all military operations, calls upon the Government of the Republic simultaneously to order its armed adherents

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180/ S C, 4th yr., Suppl. for Jan., pp. 53-56, S/1219.

181/ S C, 4th yr., No. 9, 406th mtg., pp. 21-33.

182/ S C, 4th yr., Suppl. for Feb., pp. 1-4, S/1234.

to cease guerilla warfare, and calls upon both parties to co-operate in the restoration of peace and the maintenance of law and order throughout the area affected.

"2. Calls upon the Government of the Netherlands to release immediately and unconditionally all political prisoners arrested by it since 17 December 1948 in the Republic of Indonesia; and to facilitate the immediate return of officials of the Government of the Republic of Indonesia to Jogjakarta in order that they may discharge their responsibilities under paragraph 1 above and in order to exercise their appropriate functions in full freedom, including administration of the Jogjakarta area, which shall include the city of Jogjakarta and its immediate environs. The Netherlands authorities shall afford to the Government of the Republic of Indonesia such facilities as may reasonably be required by that Government for its effective function in the Jogjakarta area and for communication and consultation with all persons in Indonesia.

"3. Recommends that, in the interest of carrying out the expressed objectives and desires of both parties to establish a federal, independent and sovereign United States of Indonesia at the earliest possible date, negotiations be undertaken as soon as possible by representatives of the Government of the Netherlands and representatives of the Republic of Indonesia with the assistance of the Commission referred to in paragraph 4 below on the basis of the principles set forth in the Linggadjati and Renville Agreements, and taking advantage of the extent of agreement reached between the parties regarding the proposals submitted to them by the United States representative on the Committee of Good Offices on 10 September 1948; and in particular, on the basis that:

"(a) The establishment of the interim federal government which is to be granted the powers of internal government in Indonesia during the interim period before the transfer of sovereignty shall be the result of the above negotiations and shall take place not later than 15 March 1949;

"(b) The elections which are to be held for the purpose of choosing representatives to an Indonesian constituent assembly should be completed by 1 October 1949; and

"(c) The transfer of sovereignty over Indonesia by the Government of the Netherlands to the United States of Indonesia should take place at the earliest possible date and in any case not later than 1 July 1950;

"Provided that if no agreement is reached by one month prior to the respective dates referred to in sub-paragraphs (a), (b), and (c) above, the Commission referred to in paragraph 4 (a) below or such other United Nations agency as may be established in accordance with paragraph 4 (c) below, shall immediately report to the Council with its recommendations for a solution of the difficulties.

"4. (a) The Committee of Good Offices shall henceforth be known as the United Nations Commission for Indonesia. The Commission shall act as the representative of the Security Council in Indonesia and shall have all of the functions assigned to the Committee of Good Offices by the Security Council since 18 December, and the functions conferred on it by the terms of this resolution. The Commission shall act by majority vote, but its reports and recommendations to the Security Council shall present both majority and minority views if there is a difference of opinion among the members of the Commission.

"(b) The Consular Commission is requested to facilitate the work of the United Nations Commission for Indonesia by providing military observers and other staff and facilities to enable the Commission to carry out its duties under the Council's resolutions of 24 and 28 December 1948 as well as under the present resolution, and shall temporarily suspend other activities.

"(c) The Commission shall assist the parties in the implementation of this resolution, and shall assist the parties in the negotiations to be undertaken under paragraph 3 above and is authorized to make recommendations to them or to the Security Council on matters within its competence. Upon agreement being reached in such negotiations, the Commission shall make recommendations to the Security Council as to the nature, powers, and functions of the United Nations agency which should remain in Indonesia to assist in the implementation of the provisions of such agreement until sovereignty is transferred by the Government of the Netherlands to the United States of Indonesia.

"(d) The Commission shall have authority to consult with representatives of areas in Indonesia other than the Republic, and to invite representatives of such areas to participate in the negotiations referred to in paragraph 3 above.

"(e) The Commission or such other United Nations agency as may be established in accordance with its recommendation under paragraph 4 (c) above is authorized to observe on behalf of the United Nations the elections to be held throughout Indonesia and is further authorized, in respect of the territories of Java, Madura and Sumatra, to make recommendations regarding the conditions necessary (a) to ensure that the elections are free and democratic, and (b) to guarantee freedom of assembly, speech and publication at all times, provided that such guarantee is not construed so as to include the advocacy of violence or reprisals.

"(f) The Commission should assist in achieving the earliest possible restoration of the civil administration of the Republic. To this end it shall, after consultation with the parties, recommend the extent to which, consistent with reasonable requirements of public security and the protection of life and property, areas controlled by the Republic under the Renville Agreement (outside of the Jogjakarta area) should be progressively returned to the administration of the Government of the Republic of Indonesia, and shall supervise such transfers. The recommendations of the Commission may include provision for such economic measures as are required for the proper functioning of the administration and for the economic well-being of the population of the areas involved in such transfers. The Commission shall after consultation with the parties, recommend which if any Netherlands forces shall be retained temporarily in any area (outside of the Jogjakarta area) in order to assist in the maintenance of law and order. If either of the parties fails to accept the recommendations of the Commission mentioned in this paragraph, the Commission shall report immediately to the Security Council with its further recommendations for a solution of the difficulties.

"(g) The Commission shall render periodic reports to the Council, and special reports whenever the Commission deems necessary.

"(h) The Commission shall employ such observers, officers and other persons as it deems necessary.

"5. Requests the Secretary-General to make available to the Commission such staff, funds and other facilities as are required by the Commission for the discharge of its functions.

"6. Calls upon the Government of the Netherlands and the Republic of Indonesia to co-operate fully in giving effect to the provisions of this resolution."

87. At the 416th meeting on 10 March 1949, the Security Council resumed consideration of the Indonesian question on the basis of the first and supplementary reports, 183/ dated 1, 7, 10 and 11 March, of the United Nations Commission for Indonesia, in which it was reported that the parties had failed to reach agreement on the establishment of an interim federal government as a result of "the failure of the Netherlands Government to accept the procedures of the resolution of 28 January 1949". The Council also had before it a letter 184/ dated 2 March, from the representative of the Netherlands to the President of the Security Council concerning invitations which had been extended by the Netherlands to all interested parties, including the Commission, to take part in a round table conference at The Hague. Referring to this proposal in its report, the Commission stated that it viewed the invitation and the related documents "as comprising a counter-proposal or substitute for the provisions of the 28 January resolution", and requested instructions from the Council "as to what its position should be toward the invitation".

88. In the course of discussion, several representatives expressed the view that an endorsement by the Council of the proposal for a round table conference might place the Government of the Republic of Indonesia on an unequal footing in negotiations with the Netherlands held in pursuance of the resolution of 28 January 1949, and might encourage the Netherlands in continued non-compliance with certain provisions of that resolution dealing with the restoration of the Republican Government at Jogjakarta. Concern regarding the role of the United Nations Commission was also expressed in view of the extensive responsibilities assigned to that organ by the resolution of 28 January 1949. The opinion was advanced that, if the parties would agree on the terms and conditions for a round table conference, the Council might consider the proposal to hold such a conference to be consistent with the objectives of the resolution of 28 January 1949.

89. At the 421st meeting on 23 March 1949, the representative of Canada submitted the text of a draft directive 185/ for transmission by the President of the Council to the Commission. In support of the text, the sponsor explained that in order to enable the conference to take place, it had to be regarded as a practicable and acceptable procedure by all the parties concerned, and, to that end, the United Nations Commission for Indonesia might, in the first instance, seek, within the powers conferred upon it by the resolution of 28 January 1949, a way of bringing about an acceptable and voluntary agreement between the representatives of the Netherlands and of the Republic of Indonesia which would enable the latter to participate in the conference at The Hague as one of the parties to the negotiations leading to the transfer of sovereignty of Indonesia. 186/

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183/ S C, 4th yr., Suppl. for March, pp. 8-35, S/1270 and Corr.1, S/1270/Add.1 and Corr.1, S/1270/Add.2 and Corr.1 and S/1270/Add.3.

184/ Ibid., pp. 35-41, S/1274.

185/ S C, 4th yr., No. 24, 421st mtg., p. 5.

186/ For texts of relevant statements, see S C, 4th yr., Nos. 19-24, 416-421st mtgs.

Decision

At the 421st meeting on 23 March 1949, the Council adopted 187/ by 8 votes to none, with 8 abstentions, the following directive to the Commission submitted by Canada:

"It is the sense of the Security Council that the United Nations Commission for Indonesia, in accordance with the Council's resolution of 28 January 1949, and without prejudicing the rights, claims and positions of the parties, should assist the parties in reaching agreement as to (a) the implementation of the Council's resolution of 28 January, and in particular paragraphs 1 and 2 of the operative part thereof; and (b) the time and conditions for holding the proposed conference at The Hague, to the end that the negotiations contemplated by the resolution of 28 January may be held as soon as possible. It is further the sense of the Council that, if such an agreement is reached, the holding of such a conference and the participation by the United Nations Commission for Indonesia in accordance with its terms of reference, would be consistent with the purposes and objectives of the Council's resolution of 28 January 1949."

90. On 9 May 1949, the Commission reported 188/ that both parties had accepted its invitation to participate in discussions pursuant to the directive of the Council of 23 March 1949, and on 4 August 1949, the Commission, in its first interim report, 189/ set out the agreements reached for the implementation of the resolution of 28 January 1949, including the time of and conditions for convening The Hague Conference. On 8 November 1949, the Commission reported 190/ that the Conference at The Hague had been successful.

### 3. Decisions in connexion with the India-Pakistan question

91. At the 229th meeting of the Council on 17 January 1948, following the adoption 191/ of a resolution 192/ calling upon the Governments of India and Pakistan to take measures calculated to improve the situation and to refrain from any acts which might aggravate the situation, the representative of the United Kingdom proposed 193/ that the President of the Council should meet with the representatives of the parties in order to seek some common ground on which the structure of a settlement might be built. The proposal met with the approval 194/ of the parties and the President declared 195/ his readiness to assist.

92. In the course of the consideration by the Council of the India-Pakistan question at the 229th-286th meetings inclusive between 17 January and 21 April 1948, four successive Presidents (Belgium, Canada, China and Colombia) 196/ met with the representatives of the parties.

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187/ S C, 4th yr., No. 24, 421st mtg., pp. 25 and 26.

188/ S/1320.

189/ S C, 4th yr., Special Suppl. No. 5 (S/1373/Rev.1).

190/ S C, 4th yr., Special Suppl. No. 6 (S/1417/Rev.1).

191/ S C, 3rd yr., Nos. 1-15, 229th mtg., p. 125.

192/ *Ibid.*, pp. 121-123, S/651.

193/ *Ibid.*, pp. 125 and 126.

194/ *Ibid.*, pp. 126 and 127.

195/ *Ibid.*, pp. 126 and 128.

196/ Negotiations during the month of February were carried on between the parties under the aegis of the President (Canada), with the previous President (Belgium) acting as Rapporteur. S C, 3rd yr., Nos. 16-35, 242nd mtg., pp. 54 and 55.

## a. DECISION OF 20 JANUARY 1948

93. At the 230th meeting on 20 January 1948, the President reported that the negotiations had achieved a preliminary result in the form of agreement on the text of a draft resolution 197/ establishing a commission of the Council. The President submitted 198/ the draft resolution in his capacity as representative of Belgium, and on behalf of the parties which had signified their approval.

Decision

At the 230th meeting on 20 January 1948, the Council adopted 199/ by 9 votes in favour, with 2 abstentions, the draft resolution submitted by Belgium. Section C of the resolution read as follows:

"C. The Commission is invested with a dual function:

"(1) To investigate the facts pursuant to Article 34 of the Charter;

"(2) To exercise, without interrupting the work of the Security Council, any mediatory influence likely to smooth away difficulties; to carry out the directions given to it by the Security Council; and to report how far the advice and directions, if any, of the Security Council have been carried out."

## b. DECISION OF 21 APRIL 1948

94. At the 231st meeting on 22 January, the President (Belgium), on the basis of his conversations with the representatives of India and Pakistan, reported 200/ that the parties had agreed in principle on the desirability of a plebiscite to determine the future of the State of Jammu and Kashmir. Subsequent reports of the President were usually accompanied by draft resolutions 201/ which were unacceptable to the parties. It was observed that negotiations with the parties had shown that it would prove difficult to draft recommendations acceptable to both parties, inasmuch as their views on the control and supervision of the forces of the State of Jammu and Kashmir and on the composition of the plebiscite administration could not be reconciled. In the course of the consideration of the matter by the Council, it was contended that, if the Council had reached the stage at which the parties were unable to make progress by the method of negotiations recommended by the Council, it was bound, pursuant to Article 36 (2), to take into consideration any partial agreement when making recommendations under Article 37. One representative emphasized that, subsequent to the resolution of 20 January 1948, the draft resolutions submitted to the Council on the basis of the negotiations were not acceptable to the parties, thereby bringing into question the utility of the procedure. In support of the continuance of negotiations under the aegis of the President, it was contended that thereby maximum agreement between the parties might be achieved and the chances of the agreement being implemented improved.

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197/ S C, 3rd yr., Suppl. for Nov., pp. 64 and 65, annex I (S/654).

198/ S C, 3rd yr., Nos. 1-15, 230th mtg., p. 129.

199/ Ibid., p. 143.

200/ Ibid., 231st mtg., pp. 164 and 165.

201/ Ibid., 237th mtg., S/661 and S/662, pp. 285-286; S C, 3rd yr., Suppl. for Jan., Feb. and Mar., pp. 24-25, S/667; and pp. 38-40, S/699.

95. At the 284th meeting on 17 April 1948, the Council began consideration of a draft resolution 202/ submitted by the representatives of Belgium, Canada, China, Colombia, the United Kingdom and the United States. The sponsors drew attention to their efforts prior to the submission of the draft recommendation of measures which, it was stated, had not been accepted by the parties. It was contended, however, that the draft resolution was based on the agreed position of the parties that the question should be solved by a fair and impartial plebiscite, and that the dispute was one the continuance of which was likely to endanger international peace and security. The sponsors also stated that the draft resolution might be modified if the two parties agreed on the changes. 203/

#### Decision

At the 286th meeting on 21 April 1948, the Council adopted, 204/ paragraph by paragraph, the following resolution:

"The Security Council,

"Having considered the complaint of the Government of India concerning the dispute over the State of Jammu and Kashmir;

"Having heard the representative of India in support of that complaint and the reply and counter-complaints of the representative of Pakistan;

"Being strongly of the opinion that the early restoration of peace and order in Jammu and Kashmir is essential and that India and Pakistan should do their utmost to bring about a cessation of all fighting;

"Noting with satisfaction that both India and Pakistan desire that the question of the accession of Jammu and Kashmir to India or Pakistan should be decided through the democratic method of a free and impartial plebiscite;

"Considering that the continuation of the dispute is likely to endanger international peace and security,

"Reaffirms the Council's resolution of 17 January;

"Resolves that the membership of the Commission established by the resolution of the Council of 20 January 1948, shall be increased to five and shall include

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202/ S C, 3rd yr., Suppl. for April, pp. 8-12, S/726.

203/ For texts of relevant statements see S C, 3rd yr.,

Nos. 1-15, 236th mtg.: President (Belgium), p. 279; United States, pp. 278 and 279;

237th mtg.: President (Belgium), pp. 285 and 286;

240th mtg.: United States, p. 368;

Nos. 16-35, 242nd mtg.: President (Canada), pp. 54 and 55;

243rd mtg.: President (Canada), p. 59;

Nos. 36-51, 269th mtg.: President (China), pp. 134, 135 and 138; Canada, pp. 138 and 139; Colombia, pp. 133 and 134.

No. 59, 284th mtg.: President (Colombia), pp. 2 and 3; Belgium, pp. 10 and 11, Canada, pp. 3 and 4; China, pp. 4-7; United Kingdom, p. 13; United States, pp. 18-22;

No. 60, 285th mtg.: India, p. 18; Pakistan, p. 48.

204/ S C, 3rd yr., No. 61, 286th mtg., pp. 9-40.

in addition to the membership mentioned in that resolution, representatives of ... and ... and that if the membership of the Commission has not been completed within ten days from the date of the adoption of this resolution the President of the Council may designate such other Member or Members of the United Nations as are required to complete the membership of five;

"Instructs the Commission to proceed at once to the Indian sub-continent and there place its good offices and mediation at the disposal of the Governments of India and Pakistan with a view to facilitating the taking of the necessary measures, both with respect to the restoration of peace and order and to the holding of a plebiscite, by the two Governments, acting in co-operation with one another and with the Commission, and further instructs the Commission to keep the Council informed of the action taken under the resolution, and to this end,

"Recommends to the Governments of India and Pakistan the following measures as those which in the opinion of the Council are appropriate to bring about a cessation of the fighting and to create proper conditions for a free and impartial plebiscite to decide whether the State of Jammu and Kashmir is to accede to India or Pakistan.

"A. Restoration of peace and order

"1. The Government of Pakistan should undertake to use its best endeavours:

"(a) To secure the withdrawal from the State of Jammu and Kashmir of tribesmen and Pakistani nationals not normally resident therein who have entered the State for the purpose of fighting and to prevent any intrusion into the State of such elements and any furnishing of material aid to those fighting in the State;

"(b) To make known to all concerned that the measures indicated in this and the following paragraphs provide full freedom to all subjects of the State, regardless of creed, caste, or party, to express their views and to vote on the question of the accession of the State, and that therefore they should co-operate in the maintenance of peace and order.

"2. The Government of India should:

"(a) When it is established to the satisfaction of the Commission set up in accordance with the Council's resolution of 20 January that the tribesmen are withdrawing and that arrangements for the cessation of the fighting have become effective, put into operation in consultation with the Commission a plan for withdrawing their own forces from Jammu and Kashmir and reducing them progressively to the minimum strength required for the support of the civil power in the maintenance of law and order;

"(b) Make known that the withdrawal is taking place in stages and announce the completion of each stage;

"(c) When the Indian forces shall have been reduced to the minimum strength mentioned in (a) above, arrange in consultation with the Commission for the stationing of the remaining forces to be carried out in accordance with the following principles:

"(i) That the presence of troops should not afford any intimidation or appearance of intimidation to the inhabitants of the State;

"(ii) That as small a number as possible should be retained in forward areas;

"(iii) That any reserve of troops which may be included in the total strength should be located within their present base area.

"3. The Government of India should agree that, until such time as the Plebiscite Administration referred to below finds it necessary to exercise the powers of direction and supervision over the State forces and police provided for in paragraph 8, they will be held in areas to be agreed upon with the Plebiscite Administrator.

"4. After the plan referred to in paragraph 2 (a) above has been put into operation, personnel recruited locally in each district should so far as possible be utilized for the re-establishment and maintenance of law and order with due regard to protection of minorities, subject to such additional requirements as may be specified by the Plebiscite Administration referred to in paragraph 7.

"5. If these local forces should be found to be inadequate, the Commission, subject to the agreement of both the Government of India and the Government of Pakistan, should arrange for the use of such forces of either Dominion as it deems effective for the purpose of pacification.

"B. Plebiscite

"6. The Government of India should undertake to ensure that the Government of the State invite the major political groups to designate responsible representatives to share equitably and fully in the conduct of the administration at the Ministerial level, while the plebiscite is being prepared and carried out.

"7. The Government of India should undertake that there will be established in Jammu and Kashmir a Plebiscite Administration to hold a plebiscite as soon as possible on the question of the accession of the State to India or Pakistan.

"8. The Government of India should undertake that there will be delegated by the State to the Plebiscite Administration such powers as the latter considers necessary for holding a fair and impartial plebiscite including, for that purpose only, the direction and supervision of the State forces and police.

"9. The Government of India should, at the request of the Plebiscite Administration, make available from the Indian forces such assistance as the Plebiscite Administration may require for the performance of its functions.

"10. (a) The Government of India should agree that a nominee of the Secretary-General of the United Nations will be appointed to be the Plebiscite Administrator;

"(b) The Plebiscite Administrator, acting as an officer of the State of Jammu and Kashmir, should have authority to nominate his assistants and other subordinates and to draft regulations governing the plebiscite. Such nominees should be formally appointed and such draft regulations should be formally promulgated by the State of Jammu and Kashmir;

"(c) The Government of India should undertake that the Government of Jammu and Kashmir will appoint fully qualified persons nominated by the Plebiscite

Administrator to act as special magistrates within the State judicial system to hear cases which in the opinion of the Plebiscite Administrator have a serious bearing on the preparation for and the conduct of a free and impartial plebiscite;

"(d) The terms of service of the Administrator should form the subject of a separate negotiation between the Secretary-General of the United Nations and the Government of India. The Administrator should fix the terms of service for his assistants and subordinates;

"(e) The Administrator should have the right to communicate directly with the Government of the State and with the Commission of the Security Council and, through the Commission, with the Security Council, with the Governments of India and Pakistan and with their representatives with the Commission. It would be his duty to bring to the notice of any or all of the foregoing (as he in his discretion may decide) any circumstances arising which may tend, in his opinion, to interfere with the freedom of the plebiscite.

"11. The Government of India should undertake to prevent, and to give full support to the Administrator and his staff in preventing, any threat, coercion or intimidation, bribery or other undue influence on the voters in the plebiscite, and the Government of India should publicly announce and should cause the Government of the State to announce this undertaking as an international obligation binding on all public authorities and officials in Jammu and Kashmir.

"12. The Government of India should themselves and through the Government of the State declare and make known that all subjects of the State of Jammu and Kashmir, regardless of creed, caste or party, will be safe and free in expressing their views and in voting on the question of the accession of the State and that there will be freedom of the Press, speech and assembly and freedom of travel in the State, including freedom of lawful entry and exit.

"13. The Government of India should use and should ensure that the Government of the State also use their best endeavours to effect the withdrawal from the State of all Indian nationals other than those who are normally resident therein or who on or since 15 August 1947 have entered it for a lawful purpose.

"14. The Government of India should ensure that the Government of the State release all political prisoners and take all possible steps so that:

"(a) All citizens of the State who have left it on account of disturbances are invited, and are free, to return to their homes and to exercise their rights as such citizens;

"(b) There is no victimization;

"(c) Minorities in all parts of the State are accorded adequate protection.

"15. The Commission of the Security Council should at the end of the plebiscite certify to the Council whether the plebiscite has or has not been really free and impartial.

#### "C. General Provisions

"16. The Governments of India and Pakistan should each be invited to nominate a representative to be attached to the Commission for such assistance as it may require in the performance of its task.

"17. The Commission should establish in Jammu and Kashmir such observers as it may require of any of the proceedings in pursuance of the measures indicated in the foregoing paragraphs.

"18. The Security Council Commission should carry out the tasks assigned to it herein."

c. DECISION OF 17 DECEMBER 1949

96. On 5 December 1949, the third interim report 205/ of the United Nations Commission for India and Pakistan was submitted to the Council. The Commission informed the Council that the initial conversations with the parties had indicated that "the Government of India was unwilling to consider a cease fire without provisions for the withdrawal of Pakistan forces from the State, whereas the Government of Pakistan requested an unconditional cease fire to be followed by consideration of the conditions for a final settlement of the dispute." 206/ In an effort to reconcile the two positions, the Commission had adopted the resolution 207/ of 13 August 1948 which consisted of three parts dealing with a cease fire order, a truce agreement and the final settlement. Objections of the parties had led to further proposals, which had resulted in the acceptance 208/ by the parties of the Commission's proposals on the plebiscite as a supplement to the resolution of 13 August. Their acceptance had been embodied in the Commission's resolution 209/ of 5 January 1949. Pursuant to this agreement, the Governments of India and Pakistan had ordered 210/ a cease fire which had become effective one minute before midnight, on 1 January 1949. The Commission had found, 211/ however, that several difficulties impeded the conclusion of a truce agreement in accordance with Part II of the resolution of 13 August 1948.

97. The Commission recommended 212/ that (a) the Council request the two Governments to take all necessary precautions to secure that their agreements regarding the cease fire be faithfully observed; (b) that the Council designate a single individual as its representative with broad authority to resolve outstanding issues, taking into account the resolutions already agreed to by both Governments for the establishment of conditions conducive to the holding of a plebiscite in the State of Jammu and Kashmir; and (c) that the Council consult with the two Governments in order to arrive at terms of reference for its representative, which should include authority to settle by arbitration outstanding issues involved in the question of demilitarization.

98. At the 457th meeting on 17 December 1949, the representative of Norway, recalling the procedures which had led to the adoption of the Council resolution of 21 April 1948, suggested that the President (Canada) should meet with the two parties to examine with them the possibility of reaching agreement on a basis for dealing with the problem.

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205/ S C, 4th yr., Special Suppl. No. 7 (S/1430/Rev.1).

206/ Ibid., p. 21.

207/ Ibid., pp. 21-23.

208/ Ibid., p. 25.

209/ Ibid., pp. 25-27.

210/ Ibid., p. 27.

211/ Ibid., p. 36.

212/ Ibid., pp. 62 and 63.

Decision

At the 457th meeting on 17 December 1949, the Council adopted 213/ the proposal submitted by Norway by 9 votes in favour, with 2 abstentions.

99. At the 458th meeting on 29 December 1949, after the President (Canada) had reported on his meetings with the parties since 17 December, the question arose whether his mediation should continue after the expiration of his term of office. The view was expressed that, since Canada would cease to be a member of the Council after 31 December 1949, the Council could not assign mediation functions to the representative of Canada. In support of the continuation of the procedure, it was contended that the matter of greatest importance was that the wishes of the parties be given priority by the Council, and consequently, the Council should not put obstacles in the way of the selection of the parties of those means which seemed to them most effective and most suitable to settle the dispute. In this connexion, it was suggested that the Council might request the President to continue his mediatory efforts in the capacity of a Rapporteur, provided that the parties agreed to the procedure. The President was of the opinion that it was very important that the procedural aspects of the question should be in as complete harmony as possible with the wishes of the Council and the wishes of the parties. At the end of the meeting, the President informed the parties that he would remain at their service for the duration of his mandate. 214/

100. At the 463rd meeting on 7 February 1950, the Council considered the report 215/ of the former President (General McNaughton of Canada), in which it was stated that continued activity on his part would not serve any useful purpose since there was no evidence that such activity would assist the parties in reaching an agreed course of action.

## d. DECISION OF 14 MARCH 1950

101. At the 467th meeting on 24 February 1950, the representatives of Cuba, Norway, the United Kingdom and the United States submitted a draft resolution, 216/ based on the "substantial measure of agreement on fundamental principles already reached", calling upon the parties to take certain measures in connexion with demilitarization prior to the plebiscite, and appointing a United Nations Representative who would replace the United Nations Commission for India and Pakistan "one month after both parties have informed the United Nations Representative of their acceptance of the transfer to him of the powers and responsibilities of the United Nations Commission..."

102. In the course of the consideration by the Council of this draft resolution, one sponsor explained that his Government had joined in submitting the draft in the belief that it was directed toward the earliest possible implementation of the agreement between the parties concerning the plebiscite, which was the procedure enabling the people of Jammu and Kashmir to make their views known. Another sponsor, reviewing the

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213/ S C, 4th yr., No. 53, 457th mtg., p. 8.

214/ For texts of relevant statements, see S C, 4th yr., No. 54, 458th mtg.: President (Canada), pp. 4-8, 19, 20 and 22; China, pp. 14 and 15; India, p. 22; Norway, pp. 8 and 9; Pakistan, p. 21; USSR, pp. 15 and 16; United Kingdom, pp. 9, 10 and 18; United States, pp. 20 and 21.

215/ S C, 5th yr., Suppl. for Jan.-May, pp. 3-16, S/1453.

216/ G A (V), Suppl. 2, pp. 13 and 14, S/1461.

experience which the Council had gained in dealing with disputes involving armed conflict, distinguished between, on the one hand, the effectuation of a cease-fire and a demilitarization programme as processes in which the Council might assume the initiative, and on the other hand, the political solution, which was the responsibility of the parties, and in the attainment of which their co-operation was the indispensable ingredient. The view was expressed that the draft resolution gave a secondary place to the points on which no agreement could be reached; it took as its basis the fundamental points upon which both parties had agreed, and set up a procedure whereby further agreement might be brought about. The representative of India stated that his Government desired that the person chosen as representative should be acceptable to it. 217/

### Decision

At the 470th meeting on 14 March 1950, the Council adopted 218/ by 8 votes to none, with 2 abstentions, 1 member being absent, the following resolution: 219/

#### "The Security Council,

"Having received and noted the reports of the United Nations Commission for India and Pakistan, established by the resolutions of 20 January and 21 April 1948

"Having also received and noted the report of General A.G.L. McNaughton on the outcome of his discussions with the representatives of India and Pakistan which were initiated in pursuance of the decision taken by the Security Council on 17 December 1949

"Commending the Governments of India and Pakistan for their statesmanlike action in reaching the agreements embodied in the United Nations Commission's resolutions of 13 August 1948 and 5 January 1949 for a cease-fire, for the demilitarization of the State of Jammu and Kashmir and for the determination of its final disposition in accordance with the will of the people through the democratic method of a free and impartial plebiscite and commending the parties in particular for their action in partially implementing these resolutions by

"(1) The cessation of hostilities effected 1 January 1949,

"(2) The establishment of a cease-fire line on 27 July 1949, and

"(3) The agreement that Fleet Admiral Chester W. Nimitz shall be Plebiscite Administrator,

"Considering that the resolution of the outstanding difficulties should be based upon the substantial measure of agreement on fundamental principles already reached, and that steps should be taken forthwith for the demilitarization of the State and for the expeditious determination of its future in accordance with the freely expressed will of the inhabitants,

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- 217/ For texts of relevant statements, see S C, 5th yr.,  
 No. 9, 467th mtg.: France, p. 10; Norway, pp. 2-5; United Kingdom, pp. 6-9;  
 United States, pp. 13-15;  
 No. 10, 468th mtg.: President (Cuba), pp. 5-6; Ecuador, pp. 3-5;  
 No. 11, 469th mtg.: India, p. 5; Pakistan, pp. 5-13.
- 218/ S C, 5th yr., No. 12, 470th mtg., p. 4.
- 219/ G A (V), Suppl. 2, pp. 13 and 14, S/1461.

"1. Calls upon the Governments of India and Pakistan to make immediate arrangements without prejudice to their rights or claims and with due regard to the requirements of law and order, to prepare and execute within a period of five months from the date of this resolution a programme of demilitarization on the basis of the principles of paragraph 2 of General McNaughton's proposal or of such modifications of those principles as may be mutually agreed;

"2. Decides to appoint a United Nations Representative for the following purposes who shall have authority to perform his functions in such place or places as he may deem appropriate:

"(a) To assist in the preparation and to supervise the implementation of the programme of demilitarization referred to above and to interpret the agreements reached by the parties for demilitarization,

"(b) To place himself at the disposal of the Governments of India and Pakistan and to place before these Governments or the Security Council any suggestions which, in his opinion, are likely to contribute to the expeditious and enduring solution of the dispute which has arisen between the two Governments in regard to the State of Jammu and Kashmir,

"(c) To exercise all of the powers and responsibilities devolving upon the United Nations Commission by reasons of existing resolutions of the Security Council and by reasons of the agreement of the parties embodied in the resolutions of the United Nations Commission of 13 August 1948 and 5 January 1949,

"(d) To arrange at the appropriate stage of demilitarization for the assumption by the Plebiscite Administrator of the functions assigned to the latter under agreements made between the parties,

"(e) To report to the Security Council as he may consider necessary submitting his conclusions and any recommendations which he may desire to make;

"3. Requests the two Governments to take all necessary precautions to ensure that their agreements regarding the cease-fire shall continue to be faithfully observed, and calls upon them to take all possible measures to ensure the creation and maintenance of an atmosphere favourable to the promotion of further negotiations;

"4. Extends its best thanks to the members of the United Nations Commission for India and Pakistan and to General A.G.L. McNaughton for their arduous and fruitful labours;

"5. Agrees that the United Nations Commission for India and Pakistan shall be terminated, and decides that this shall take place one month after both parties have informed the United Nations Representative of their acceptance of the transfer to him of the powers and responsibilities of the United Nations Commission referred to in paragraph 2 (c) above."

*4. Decisions of 20 and 25 June 1954 in connexion with  
the question of Guatemala*

103. At the 675th meeting on 20 June 1954, the representatives of Brazil and Colombia submitted a draft resolution 220/ referring the complaint of the Government of

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220/ S C, 9th yr., 675th mtg., S/3236, para. 69.

Guatemala to the Organization of American States. In support of the draft resolution, the sponsoring representatives called attention to the provisions of Article 33 and particularly to Article 52 (2) and (3) dealing with recourse or reference to regional arrangements or agencies for the pacific settlement of local disputes. It was contended that, by virtue of those provisions, it was the duty of Guatemala to apply first to the Organization of American States and that the Security Council should act accordingly. Guatemala contended that, since the question before the Council was not a dispute but a situation involving an act of aggression, neither Article 33 nor Article 52 (2) and (3) was applicable. In the course of the discussion, one representative contended that, inasmuch as one of the parties had rejected the procedure of referring the question to the Organization of American States, the adoption of the draft resolutions submitted by Brazil and Colombia would be a violation of Article 36 (2).

#### Decisions

- (a) At the 675th meeting on 20 June 1954, the draft resolution submitted by Brazil and Colombia, as amended, was not adopted. 221/ There were 10 votes in favour and 1 against (the vote against being that of a permanent member).
- (b) The Council thereupon unanimously adopted 222/ a draft resolution 223/ submitted by the representative of France calling for "the immediate termination of any action likely to cause bloodshed" and requesting "all Members of the United Nations to abstain, in the spirit of the Charter, from rendering assistance to any such action."

104. At the 676th meeting on 25 June 1954, the Security Council considered whether to include the question of Guatemala in the agenda for that meeting. In the course of the discussion, both those who favoured and those who opposed consideration of the question at that time invoked Article 36 (2) in support of their respective positions. In opposition to the inclusion of the item in the agenda it was contended that among the procedures which the Council was enjoined by Article 36 (2) to take into consideration was the procedure which had already been adopted by the American States; namely, the referral of disputes to regional arrangements or regional agencies which had been expressly included in Article 33 at the request of the American States. In support of the inclusion of the item in the agenda it was maintained that, in accordance with Article 36, the Council might adopt only those procedures for the settlement of a dispute which were acceptable to the two parties. 224/

#### Decision

At the 676th meeting on 25 June 1954, the agenda was not adopted. 225/ There were 4 votes in favour, 5 against and 2 abstentions.

221/ S C, 9th yr., 675th mtg., paras. 194 and 195.

222/ Ibid., para. 203.

223/ Ibid., para. 200.

224/ For texts of relevant statements, see S C, 9th yr.,

675th mtg.: President (United States), para. 170; Brazil, paras. 66-69; Colombia, paras. 72 and 73; France, paras. 75-79; Guatemala, paras. 60, 100-104 and 189-191; USSR, paras. 146-150;

676th mtg.: Brazil, paras. 11-27; Colombia, paras. 69-77, USSR, paras. 151 and 156-158.

225/ S C, 9th yr., 676th mtg., para. 195.

D. The question of recommending, in accordance with the general rule in Article 36 (3), that legal disputes should be referred by the parties to the International Court of Justice

105. In the course of the consideration by the Council of the Corfu Channel question and the Egyptian question discussion arose on the relationship of certain proposals to Article 36 (3). The nature of the powers of the Council under Article 36 (3) was also the subject of a separate opinion handed down by seven judges of the International Court of Justice on the application of the United Kingdom pursuant to the recommendation of the Council on the Corfu Channel question. The question of the legal nature of certain complaints before the Council was discussed in connexion with proposals to request advisory opinions 226/ as well as in relation to the provision of Article 36 (3).

*1. Decision of 9 April 1947 in connexion with the Corfu Channel question*

106. During consideration of the Corfu Channel question, the representative of the United Kingdom requested the Council to recommend, under Article 36, the settlement of the dispute by direct negotiation on the basis of a finding of fact. After hearing statements by the parties concerning the allegations in respect of which a finding had been requested, the Council, on 27 February 1947, appointed 227/ a sub-committee to report on the facts in the case. The sub-committee concluded 228/ that the Council should first consider whether, having regard to the evidence available, it felt itself able to pronounce on the question:

"(a) Whether or not a minefield existed in the swept channel opposite Saranda Bay on 22 October 1946; and

"(b) Whether or not this minefield was laid by Albania or with the connivance of the Albanian Government."

107. In presenting the report at the 120th meeting on 20 March 1947, the Chairman of the sub-committee suggested that, if the Council could not agree upon a statement of fact, it should recommend to the two parties the referral of the dispute to the International Court of Justice.

108. After the Council had rejected 229/ a draft resolution recommending the settlement of the dispute on the basis of a specific finding of fact, the representative of the United Kingdom, at the 125th meeting on 3 April 1947, submitted a draft resolution 230/ recommending, in accordance with Article 36, that the parties refer the dispute to the International Court of Justice. In opposition to the draft resolution, it was contended that the charges against Albania had not been proven and that some justification was necessary to bring a party before the International Court of Justice. Adoption of the draft resolution was advocated on the grounds that the provision in Article 36 (3) was applicable, and that, in attempting to consider the technical facts of the dispute in order to adopt a finding, the Council had, contrary

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226/ See also in this Repertory under Article 96.

227/ S C, 2nd yr., No. 21, 114th mtg., p. 432.

228/ S C, 2nd yr., Suppl. No. 10, annex 22 (S/300), pp. 77-109.

229/ For text of draft resolution and decision, see paras. 49 *et seqq.* above.

230/ S C, 2nd yr., No. 32, 125th mtg., pp. 685 and 686.

to its political nature, functioned in a judicial capacity. When dealing with such cases, it was contended, the Council should, bearing in mind Article 36, refer such disputes to the International Court of Justice. Referring to the necessary justification for such recommendations, one representative observed that it was for the Court to collect the evidence and to pronounce judgement upon the facts. In the course of the discussion, several representatives observed that the provision in Article 36 (3) also applied to cases in which action under Article 33 (2) appeared to be most appropriate. 231/

#### Decision

At the 127th meeting on 9 April 1947, the Security Council adopted 232/ by 8 votes to none, with 2 abstentions, the representative of the United Kingdom not participating in the vote in accordance with Article 27 (3), the following resolution:

#### "The Security Council,

"Having considered statements of representatives of the United Kingdom and of Albania concerning a dispute between the United Kingdom and Albania, arising out of an incident on 22 October 1946 in the Straits of Corfu, in which two British ships were damaged by mines with resulting loss of life and injury to their crews.

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231/ For texts of relevant statements, see S C, 2nd yr., No. 32, 125th mtg.: Belgium, p. 690; Brazil, pp. 686-688; Poland, p. 689; Syria, p. 688; United Kingdom, p. 685; United States, p. 686.  
No. 34, 127th mtg.: President (China), p. 726; Albania, p. 720; Australia, pp. 722 and 723; USSR, pp. 724-726.

232/ S C, 2nd yr., No. 34, 127th mtg., p. 727.

"Recommends that the United Kingdom and Albanian Governments should immediately refer the dispute to the International Court of Justice in accordance with the provisions of the Statute of the Court." 233/

233/ By application dated 22 May 1947, the United Kingdom instituted proceedings against Albania before the International Court of Justice, contending that the jurisdiction of the Court under Article 36 (1) of the Statute of the Court had been established by Security Council resolution of 9 April 1947. The United Kingdom based this contention on the grounds that: (a) the Council had acted under Article 36 of the Charter when it resolved to recommend to both parties to refer the dispute to the Court; (b) Albania had accepted all the obligations of a Member of the United Nations for the purposes of this dispute; and (c) Article 25 of the Charter provided that Members agree to accept and carry out the decisions of the Security Council in accordance with the Charter of the United Nations.

By letter dated 2 July 1947, the Government of Albania informed the Court that it had fully accepted the recommendation of the Security Council and that it was prepared to appear before the Court. The Government of Albania, however, considered that, according to the terms of the resolution of 9 April 1947, the Government of the United Kingdom, before bringing the case before the Court, had first to reach an understanding with the Government of Albania regarding the conditions under which the two parties, proceeding in conformity with the recommendation, would submit their dispute to the Court. The invocation of Article 25 in relation to a resolution adopted under Article 36 could not have the desired effect since recommendations under Article 36 were not binding and, consequently, they could not afford a direct basis for the compulsory jurisdiction of the Court.

On 9 December 1947, the Government of Albania submitted a preliminary objection to the United Kingdom application on the basis of these objections. The United Kingdom, in reply, argued that a special agreement was not necessary, and that the application of the United Kingdom and the letter of 2 July 1947 from the Government of Albania possessed all the essentials of a special agreement.

The majority judgement on the preliminary objection found that the question of the effect of the Security Council resolution on the jurisdiction of the Court was not relevant on the ground that, in any event, the letter of 2 July 1947 from the Government of Albania to the Court constituted an acceptance of the jurisdiction of the Court. The recommendation of the Security Council, the judgement observed, though clearly indicating that the submission of the case to the Court required action on the part of the parties, did not specify that the action had to be taken jointly, and, furthermore, the method of submitting the case to the Court was regulated by the text regulating the working of the Court as was pointed out by the Security Council in its recommendation.

Although concurring in the judgement of the Court, seven members of the Court signed a separate opinion regarding the claim of the Government of the United Kingdom that the Court might treat the Corfu Channel case as one falling within its compulsory jurisdiction by reason of the recommendation of the Council. The seven judges stated that the argument of the United Kingdom had not convinced them. In particular, they took into account "the terms used in Article 36, paragraph 3, of the Charter and ... its object which is to remind the Security Council that legal disputes should normally be decided by judicial methods..." They further stated that "it appears impossible to us to accept an interpretation according to which this article, without explicitly saying so, has introduced more or less surreptitiously, a new case of compulsory jurisdiction."

I C J, Yearbook, 1947-1948, pp. 55-60. Corfu Channel Case, Judgement on Preliminary Objection, I C J, Reports 1948, pp. 31 and 32.

*2. Decision of 28 August 1947 in connexion with  
the Egyptian question*

109. At the 189th meeting on 20 August 1947, in connexion with the Egyptian question 234/ the Council had before it a draft resolution 235/ noting the methods provided for by Article 33, recommending to the parties the resumption of direct negotiations and, in the event of failure, the solution of the dispute by other peaceful means of their own choice. At the same meeting, the representative of Belgium proposed an amendment 236/ to add the following phrase: "including the reference to the International Court of Justice of disputes concerning the validity of the Treaty of 1936". The sponsor of the draft resolution observed that, whereas his text was a general recommendation to the parties which did not pass on the merits of the case, the inclusion of the amendment offered by Belgium would single out the legal aspects of the case and would convey the impression that the Council agreed with the view that the validity of the Anglo-Egyptian Treaty of 1936 was the sole issue. The representative of Egypt maintained that the amendment served no useful purpose, since Article 33 included judicial settlement in its enumeration of procedures. The representative of the United Kingdom, on the other hand, supported the amendment on the ground that thereby the Council would indicate that recourse to the International Court of Justice was the proper method of settling such questions. In opposition to the amendment, it was contended that, whereas Article 36 (3) referred to legal disputes, the Egyptian complaint constituted a political dispute arising from the presence of British troops on Egyptian soil. In support of the amendment, the view was expressed that recourse to the Court would not preclude negotiations on the political aspects of the question, since a judgement that the treaty was valid could not preclude other means of settlement, and since direct negotiations would have to precede recourse to the Court. 237/

Decision

At the 198th meeting on 28 August 1947, the amendment submitted by Belgium was rejected. 238/ There were 4 votes in favour, none against and 6 abstentions. The representative of the United Kingdom did not take part in the vote. The draft resolution also failed of adoption. 239/

234/ See also paras. 34-38, and 56-62 above.

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

236/ *Ibid.*, S/507/Add.1, p. 2115.

237/ For texts of relevant statements, see S C, 2nd yr.,

No. 70, 175th mtg.: Egypt, pp. 1746-1748;

No. 70, 176th mtg.: United Kingdom, pp. 1769-1772, 1776, 1783 and 1784;

No. 73, 179th mtg.: Egypt, pp. 1861-1868;

No. 80, 189th mtg.: Belgium, p. 2115; United Kingdom, p. 2113;

No. 82, 193rd mtg.: Egypt, p. 2166; United Kingdom, p. 2169;

No. 84, 196th mtg.: President (Syria), pp. 2242 and 2243; Belgium, p. 2252; Brazil, pp. 2235 and 2236; United Kingdom, pp. 2252 and 2253;

No. 86, 198th mtg.: France, pp. 2291 and 2292.

238/ S C, 2nd yr., No. 86, 198th mtg., pp. 2302 and 2303.

239/ See paras. 34-38 above.

