

# 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. As in previous Repertory studies of Article 36, the criterion applied in the selection and presentation of material for this study is broader than the occurrence of references to the provisions of Article 36 in the proceedings of the Security Council. Such references were few even in debate and are not found at all in the text of the Council's resolutions. It continues to be appropriate in a study of Article 36, however, to present material which illuminates the considerations guiding the Council in its determination whether to recommend procedures and methods of adjustment to the disputing parties; in its choice of such recommendations; and in the determination of its attitude to proposals that it should adopt specific measures for the resolution of the controversy before it. In connexion with the Suez Canal question, the India-Pakistan question and the complaint by Lebanon against the United Arab Republic, the role of the Council in assisting the parties in settling their difficulties was a central theme of discussion, as was the question of the appropriateness of action which it was proposed that the Council should take. The decisions in these cases are presented briefly in the General Survey and more elaborately in the case histories in sections C, D and E of the Analytical Summary of Practice. The General Survey also contains references to a decision taken in connexion with the Palestine question.
2. The case histories in the Analytical Summary of Practice are arranged in part under two headings which are carried over from earlier studies of Article 36: "C. The question of the requirement to take into consideration procedures for settlement which have already been adopted by the parties"; and "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". The third constitutional question which arose during the period under review is novel and is treated under a new heading: "E. The question of the limitations on the power of recommendation under Article 36 (1)". The interrelationship of the provisions of Article 36 has necessitated the entry of some of the decisions treated in this study under more than one heading to show the particular bearing of constitutional discussion in the Security Council on the principles laid down in paragraphs 2 and 3 of Article 36.
3. Some of the material here presented might, on other assumptions, be deemed relevant to other Articles of Chapter VI and Chapter VII of the Charter; in this connexion special attention is drawn to the studies under Articles 33 and 37.

## I. GENERAL SURVEY

4. The Security Council did not adopt a number of specific recommendations for the pacific settlement of disputes which had been proposed in the course of its proceedings. There were, on the other hand, certain affirmative decisions which, so far as they appear to be in the nature of recommendations of procedures or methods of adjustment, are reviewed here as relevant to the provisions of Article 36. During the discussion which preceded these decisions of the Council, emphasis was placed on the need of securing the agreement of the parties concerned to its recommendations.

5. In connexion with the Suez Canal question,<sup>1/</sup> the Security Council was asked to adopt a joint draft resolution <sup>2/</sup> which would have recognized that in subjecting the operation of the Suez Canal to exclusive Egyptian control, the Government of Egypt had created a situation likely to endanger the maintenance of international peace and security, and would have recommended certain proposals of the users of the Suez Canal as the basis for its future operation.

6. The Council held three meetings in private on the question; exploratory conversations were held concurrently by the parties directly concerned, with the participation of the Secretary-General. These private conversations resulted in agreement on six defined principles as a basis for negotiation. These six principles were embodied in a joint draft resolution submitted to the Council by some of the parties; the first part of the draft resolution, which contained these principles, was adopted by the Council at its meeting on 13 October 1956. In this resolution the Council decided that any settlement should conform with the six principles defined in the resolution and previously endorsed by all the parties concerned. The discussion in the Council of what its role should be in the settlement of the controversy is treated in the Analytical Summary of Practice.

7. Though the Council adopted the first part of the joint draft resolution, stating the basic principles, it did not adopt the second part, which contained recommendations on procedures for carrying out the six requirements and called for certain provisional measures.

8. In the course of its consideration of the India-Pakistan question, the Security Council rejected an amendment <sup>3/</sup> under which the President of the Council was to examine with the Governments concerned the possibility of referring the problem to the International Court of Justice. This decision is reviewed in section D of the Analytical Summary of Practice for its possible bearing on paragraph 3 of Article 36.

9. The proceedings of the Council on the India-Pakistan question included a discussion <sup>4/</sup> on whether reference should be made in a draft resolution to a proposal to introduce United Nations forces into Kashmir. It was asserted that this went beyond the limits of Chapter VI of the Charter, since the proposal had been objected to by one of the parties concerned; recommendations under Chapter VI required the agreement of the parties to become effective. The draft resolution was not adopted;

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<sup>1/</sup> See below, paras. 15-32.

<sup>2/</sup> S C, 11th yr., Suppl. for Oct.-Dec. p. 5, S/3666. No vote was taken because the sponsors indicated that they did not wish a vote (S C, 11th yr., 742nd mtg., para. 28).

<sup>3/</sup> See below, paras. 63-66.

<sup>4/</sup> See below, paras. 67-77.

a resolution adopted by the Council on 21 February 1957 contained no reference to the proposal for the use of United Nations forces. The discussion concerning this question is dealt with in section E of the Analytical Summary of Practice.

10. In connexion with the India-Pakistan question, the Security Council, in its resolution of 21 February 1957, requesting 5/ the President of the Council to examine with the parties any proposals likely, in his opinion, to contribute towards the settlement of the dispute, did not indicate specifically what lines he should follow, except as these might be inferred from references to previous decisions. Subsequently, the Council, by resolution of 2 December 1957, requested the United Nations representative for India and Pakistan to make appropriate recommendations to the parties for further action, with a view to the implementation of the resolutions 6/ of the United Nations Commission for India and Pakistan (UNCIP) of 13 August 1948 and 5 January 1949, and to a peaceful settlement. Both decisions of the Council appear to be relevant to Article 36 (2) and are dealt with in the Analytical Summary of Practice.

11. At the start of its consideration of a complaint<sup>7/</sup> by Lebanon that, if continued, the alleged intervention by the United Arab Republic in the internal affairs of Lebanon was likely to endanger international peace and security, the Council adjourned the initial discussion of the complaint three times in order to permit recourse to the regional organization to which both parties belonged. When the first proposal for adjournment was being considered, reference was made to Article 36 (2). Subsequently, in its resolution of 11 June 1958, the Council decided to dispatch an observation group to Lebanon with the objective of ensuring that there should be no illegal infiltration of personnel or supply of arms or other matériel across the Lebanese borders.

12. In connexion with the Palestine question, the Security Council considered the complaint 8/ of Jordan concerning certain activities of Israel civilians in alleged violation of the provisions of the General Armistice Agreement between Israel and Jordan 9/ in a sector between the armistice demarcation lines to the south of Jerusalem. At its 810th meeting, on 22 January 1958, the Council unanimously endorsed 10/ the recommendations 11/ of the Acting Chief of Staff of the United Nations Truce Supervision Organization in Palestine (UNTSO), which suggested practical arrangements for regulating activities in the area and set out specific measures for solving the problem. The Council also called upon the parties to observe article III of the Israel-Jordan General Armistice Agreement and to use the machinery provided in the agreement for the implementation of its provisions. During the discussion it was asserted 12/ that the Council's action solved a practical difficulty by giving the Chief of Staff authority to regulate activities in a zone in which neither party enjoyed sovereignty.

5/ For previous instances, see Repertory, vol. II, under Article 36, paras. 91, 92, 98-100.

6/ Ibid., paras. 96 and 97.

7/ See below, paras. 51-62.

8/ S C, 12th yr., Suppl. for July-Sept., p. 33, S/3878. This complaint was included in the agenda of the Security Council, together with the complaint by Israel concerning violations by Jordan of the provisions of the General Armistice Agreement, in particular its article VIII (ibid., p. 35, S/3883).

9/ United Nations, Treaty Series, vol. 42, I, No. 656, p. 303.

10/ S C, 13th yr., Suppl. for Jan.-Mar., p. 4, S/3942.

11/ S C, 12th yr., Suppl. for July-Sept., p. 38, S/3892.

12/ S C, 13th yr., 809th mtg., para. 52.

## II. ANALYTICAL SUMMARY OF PRACTICE

- \*\* A. The question of the circumstances in which the Security Council may make recommendations in accordance with Article 36
- \*\* B. The question of the nature of recommendations under Article 36 (1)
- C. The question of the requirement to take into consideration procedures for settlement which have already been adopted by the parties

13. This section examines the proceedings of the Security Council in connexion with the Suez Canal question, the India-Pakistan question and the complaint by Lebanon, in so far as they appear to be relevant to the provision of Article 36 (2), whereby the Council in making its recommendations was enjoined to take into consideration any procedures for settlement which had already been adopted by the parties concerned. These proceedings were generally indicative of the Council's endeavours to promote agreement between the parties, and to encourage negotiations by them.

14. During the consideration of two of the above questions - the Suez Canal question and the India-Pakistan question - statements were made to the effect that the Council should use its authority to make recommendations on the substance of the problems involved, irrespective of the positions taken by the parties concerned. The relevant parts of the resolutions containing such recommendations were, however, not adopted by the Council. 13/

*1. Decision of 13 October 1956 in connexion with the Suez Canal question*

15. By a letter<sup>27</sup> dated 23 September 1956, the representatives of France and the United Kingdom requested that a meeting of the Security Council be called to consider the situation "created by the unilateral action of the Egyptian Government in bringing to an end the system of international operation of the Suez Canal, which was confirmed and completed by the Suez Canal Convention of 1888". 15/

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13/ For the bearing of this discussion on Article 37, the study under Article 37 in this Supplement should also be consulted.

14/ S C, 11th yr., Suppl. for July-Sept., p. 47, S/3654. The representatives of France and the United Kingdom stated that the general nature of the situation had been described in their letter of 12 September 1956 (S C, 11th yr., Suppl. for July-Sept., p. 28, S/3645).

15/ The question was included in the agenda by the Security Council at its 734th meeting, on 26 September 1956, together with the following item submitted by Egypt on 24 September 1956: "Actions against Egypt by some Powers, particularly France and the United Kingdom, which constitute a danger to international peace and security and are serious violations of the Charter of the United Nations" (S C, 11th yr., Suppl. for July-Sept., p. 38, S/3650; p. 48, S/3656). The President of the Security Council stated at the same meeting that the two items would be discussed separately in the order in which they were included in the agenda (S C, 11th yr., 734th mtg., para. 143).

16. At the 735th meeting of the Security Council, on 5 October 1956, the representatives of France and the United Kingdom submitted a joint draft resolution, 16/ according to which the Security Council would:

- (a) Reaffirm the principle of the freedom of navigation of the Suez Canal in accordance with the Suez Canal Convention of 1888;
- (b) Consider that the rights which all users of the Suez Canal had enjoyed under the system upon which the Suez Canal Convention of 1888 was based should be safeguarded, and the necessary guarantees restored;
- (c) Endorse the proposals of the eighteen States 17/ as suitably designed to bring about an adjustment and solution of the Suez Canal question by peaceful means and in conformity with justice;
- (d) Recommend that the Government of Egypt should co-operate by negotiation in working out, on the basis of these proposals, a system of operation to be applied to the Suez Canal;
- (e) Recommend that the Government of Egypt should, pending the outcome of such negotiations, co-operate with the Suez Canal Users Association.

17. The representatives supporting the joint draft resolution expressed the view that the aggrieved States had lived up to their obligations under the Charter to seek a solution, first of all, by negotiation or other peaceful means. The joint draft resolution constituted a basis for possible peaceful negotiations. One representative contended that although established procedures which could be commended to the parties were open to the Council, they did not represent the most appropriate solution when there were principles in the Charter that could provide a remedy. By appeal to these, the Council could create conditions making possible the fulfilment of treaties. The negotiations should be conducted on an urgent basis under United Nations auspices and should be founded on the principles of the Charter contained in Articles 1 (3), 2 (1) and 2 (7). It was also stated that the Council should avoid discussing the draft resolution and should encourage the establishment of close contact between the parties directly concerned in the endeavour to find common ground as a basis for agreement.

18. One representative, in opposing the joint draft resolution, stated that France, the United Kingdom and the United States had thus far refused to negotiate with Egypt on the basis of equality, and the joint draft resolution confronted Egypt with conditions amounting to an ultimatum. The task of the Security Council was to find ways to bring about a peaceful settlement of the problem. Disputes should be settled only on the basis of negotiations on terms of full equality between the parties concerned. To bring about these negotiations in practice it was advisable to set up a negotiating committee of the Council. Another representative contended that the proposals in the joint draft resolution had been unacceptable to the party most directly concerned - Egypt. It tended to prejudge settlements which could be reached only

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16/ S C, 11th yr., Suppl. for Oct.-Dec., p. 5, S/3666.

17/ Ibid., p. 2, S/3665.

through negotiation conducted on the basis of equality, through the reconciliation of views. 18/

19. After the general debate on the question, the Council, at the suggestion of the representative of the United Kingdom, continued its discussion during the 739th to 741st meetings, held in private on 9, 11 and 12 October 1956. During this period exploratory conversations on the question were also held in closed meetings with the participation of the President of the Council, in his capacity as Minister of Foreign Affairs of France, and the Ministers of Egypt and the United Kingdom, in the presence and with the assistance of the Secretary-General.

20. At the 742nd meeting, on 13 October 1956, the Council had before it another joint draft resolution 19/ submitted by France and the United Kingdom. The first part set out six basic requirements for the settlement of the question; these had been agreed upon by the parties concerned at the closed meetings. Under this joint draft resolution, the Security Council, noting the accounts of the development of these exploratory conversations, would:

1. Agree that any settlement of the Suez question should meet the following requirements:

(a) There should be free and open transit through the Canal without discrimination, overt or covert (covering both political and technical aspects);

(b) The sovereignty of Egypt should be respected;

(c) The operation of the Canal should be insulated from the politics of any country;

(d) The manner of fixing tolls and charges should be decided by agreement between Egypt and the users;

(e) A fair proportion of the dues should be allotted to development;

(f) In case of disputes, unresolved affairs between the Universal Suez Maritime Canal Company and the Egyptian Government should be settled by arbitration, with suitable terms of reference and suitable provisions for the payment of sums found to be due;

2. Consider that the proposals of the eighteen Powers<sup>20/</sup> corresponded to the six requirements and were suitably designed to bring about a settlement of the Suez Canal question by peaceful means in conformity with justice;

3. Note that the Government of Egypt, while declaring its readiness in the exploratory conversations to accept the principle of organized collaboration

18/ For texts of relevant statements, see S C, 11th yr., 735th mtg.: United Kingdom, paras. 65, 69, 78, 82, 89, 93; 736th mtg.: Egypt, paras. 17-19, 47, 68, 76; USSR, paras. 141, 146, 155, 159, 169; 737th mtg.: Australia, para. 81; Cuba, para. 89; Iran, para. 57; Peru, para. 27; 738th mtg.: United States, para. 35; Yugoslavia, paras. 6, 23.

19/ S C, 11th yr., Suppl. for Oct.-Dec., p. 19, S/3671.

20/ S C, 11th yr., Suppl. for Oct.-Dec., p. 2, S/3665.

between an Egyptian authority and the users had not yet formulated sufficiently precise proposals to meet the requirements set out above;

4. Invite the Governments of Egypt, France and the United Kingdom to continue their interchanges and in that connexion invite the Government of Egypt to make known promptly its proposals for a system meeting the six requirements and providing guarantees to the users not less effective than those sought by the proposals of the eighteen Powers; and

5. Consider that, pending the conclusion of an agreement for the definitive settlement of the régime of the Suez Canal on the basis of the requirements set out above, the Suez Canal Users Association, which had been qualified to receive the dues payable by ships belonging to its members, and the competent Egyptian authorities, should co-operate to ensure the satisfactory operation of the Canal and free and open transit through the Canal in accordance with the Convention signed at Constantinople on 29 October 1888, destined to guarantee the free use of the Suez Maritime Canal.

21. The representative of the United Kingdom stated that the sponsors of the earlier joint draft resolution 21/ did not intend to ask the Council to consider it at the same time. They did not withdraw it and did not ask for a vote upon it. 22/

22. The representative of Iran submitted an amendment 23/ to operative paragraph 2 of the joint draft resolution, to add after the words, "in conformity with justice", the words, "while recognizing that other proposals, corresponding to the same requirements, might be submitted by the Egyptian Government". The amendment was accepted 24/ by the sponsors of the joint draft resolution.

23. At the 743rd meeting, on 13 October 1956, the representative of Yugoslavia submitted a draft resolution 25/ according to which the Security Council would:

(a) Consider that a solution must meet certain requirements (identical with the six requirements set forth in the joint draft resolution submitted by France and the United Kingdom);

(b) Recommend that the negotiations should be continued;

(c) Request the Secretary-General to offer his assistance, if necessary, in subsequent stages of negotiations; and

(d) Call on all the parties concerned to abstain from taking any measures which might impair the negotiations.

24. In accepting the amendment submitted by Iran, the representative of the United Kingdom requested the Security Council, first, to adopt the six requirements about which there appeared to be general agreement and, second, to endorse the ideas concerning methods of reaching an agreed means of implementing the requirements. He asked the Council to accept the draft resolution submitted by France and the

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21/ S C, 11th yr., Suppl. for Oct.-Dec., p. 5, S/3666.

22/ S C, 11th yr., 742nd mtg., para. 28.

23/ *Ibid.*, para. 60.

24/ S C, 11th yr., 743rd mtg., para. 103.

25/ S C, 11th yr., Suppl. for Oct.-Dec., p. 20, S/3672.

United Kingdom in its entirety, as a genuine contribution towards a peaceful settlement and a reduction in the tenseness of the situation.

25. In support of the Yugoslav draft resolution, it was contended that the second part of the joint draft resolution submitted by France and the United Kingdom was based on the proposals of the eighteen States; it had already been shown that these proposals offered no basis for agreement. At the current stage of the Council's deliberations, agreement had been reached concerning the principles which must serve as a basis for a just solution of the problem. The positive results achieved in private discussions showed that it was necessary to continue the negotiations with a view to reaching agreement on ways and means of putting these principles into effect.

26. Adoption of the provisional measures proposed in operative paragraph 5 26/ of the draft resolution submitted by France and the United Kingdom was endorsed by some representatives on the ground that the Council, while avoiding undue formality, should establish a modus vivendi pending the conclusion of a definitive settlement of the régime of the Suez Canal on the basis of the six requirements defined in the draft resolution. It was contended that there was no legal problem in applying the principle involved in Article 40 of Chapter VII of the Charter, by analogy, to the matters referred to in Chapter VI. The Charter did not exclude provisional measures from the powers accorded the Council for the pacific settlement of disputes under Articles 34, 36 and 37. The conservatory or provisional measures in the proposed operative paragraph 5 were deemed essential to ensure that subsequent negotiations towards a settlement would not be prejudiced by any events or incidents which might occur.

27. Objections to the adoption of these provisional measures were raised on the basis that the Suez Canal question had become the concern of the United Nations; this fact, together with the continuation of the negotiations initiated on the Suez Canal question, constituted a genuine safeguard, obviating the need to apply any extraordinary and special measures.

28. In reply to statements that the first part of the draft resolution was a declaration of general principles, and the second part represented the practical application of these principles, it was contended that the first part, formulating six agreed principles which were to be the point of departure for subsequent negotiations, was incompatible with the second part. Far from being the outcome of negotiations and far from reflecting agreement, the second part of the draft resolution reproduced proposals on which radical disagreement had been evinced between the parties. Egypt could not be forced to accept proposals to which it had not agreed. 27/

#### Decision

At the 743rd meeting of the Security Council, on 13 October 1956, the first part of the joint draft resolution submitted by France and the United Kingdom, including the statement of six requirements, was adopted 28/ unanimously.

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26/ See para. 20 above.

27/ For texts of relevant statements, see S C, 11th yr., 742nd mtg.: USSR, paras. 82-85, 97; United Kingdom, paras. 14, 15, 26, 28; 743rd mtg.: Belgium, paras. 62-65; Peru, paras. 86-89; United Kingdom, para. 40; United States, para. 12; Yugoslavia, paras. 25, 28.

28/ S C, 11th yr., 743rd mtg., paras. 106, 107.

The second part, beginning with operative paragraph 2, as amended by Iran, 29/ and continuing to the end of the joint draft resolution, was not adopted. 30/ There were 9 votes in favour and 2 against; one of the negative votes was that of a permanent member.

29. The draft resolution as a whole was not put to a vote. The President (France) ruled, 31/ without objection, that by the Council's tradition the whole was identical with the first part, which had been unanimously adopted. It would therefore be considered that the whole had been adopted unanimously.

30. The representative of Yugoslavia did not press 32/ for a vote on his draft resolution.

31. The resolution, 33/ as adopted, read:

"The Security Council,

"Noting the declarations made before it and the accounts of the development of the exploratory conversations on the Suez question given by the Secretary-General of the United Nations and the Foreign Ministers of Egypt, France and the United Kingdom,

"Agrees that any settlement of the Suez question should meet the following requirements:

"1. There should be free and open transit through the Canal without discrimination, overt or covert - this covers both political and technical aspects;

"2. The sovereignty of Egypt should be respected;

"3. The operation of the Canal should be insulated from the politics of any country;

"4. The manner of fixing tolls and charges should be decided by agreement between Egypt and the users;

"5. A fair proportion of the dues should be allotted to development;

"6. In the case of disputes, unresolved affairs between the Universal Suez Maritime Canal Company and the Egyptian Government should be settled by arbitration with suitable terms of reference and suitable provisions for the payment of sums found to be due".

32. Following the close of deliberations of the Security Council on the Suez Canal question, and after the adoption of the above resolution, it was indicated 34/ that the Secretary-General might continue to exercise his good offices. Communication between the Secretary-General and the Minister for Foreign Affairs of Egypt then proceeded; the Foreign Ministers of France and the United Kingdom were kept informed.

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29/ See paras. 20 and 22 above.

30/ S C, 11th yr., 743rd mtg., para. 106.

31/ Ibid., para. 107.

32/ S C, 11th yr., 743rd mtg., para. 112.

33/ S C, 11th yr., Suppl. for Oct.-Dec., p. 47, S/3675.

34/ S C, 11th yr., 743rd mtg., para. 111.

The exchange of communications was circulated to the Council by the Secretary-General 35/ when it seemed to him to represent a significant further development in the consideration of the question.

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

### a. DECISIONS OF 20 AND 21 FEBRUARY 1957

33. At the 768th meeting of the Security Council, on 15 February 1957, there was continued consideration of certain requests for the application of Article 37 (2) of the Charter, made by the representative of Pakistan at the 761st meeting, on 16 January 1957, 36/ in connexion with the India-Pakistan question. 37/ The representative of the United Kingdom introduced a draft resolution 38/ submitted jointly with Australia, Cuba and the United States. It provided that the Security Council would:

1. Request the President of the Security Council, the representative of Sweden, to examine with the Governments of India and Pakistan proposals which, in his opinion, were likely to contribute to the achievement of demilitarization or to the establishment of other conditions for progress towards the settlement of the dispute, having regard to the previous resolutions of the Security Council and of the United Nations Commission for India and Pakistan (UNCIP), and bearing in mind the statements of the representatives of the Governments of India and Pakistan and the proposal for the use of a temporary United Nations force;

2. Authorize him to visit the subcontinent for this purpose;

3. Request him to report to the Security Council as soon as possible, but not later than 15 April 1957;

4. Invite the Governments of India and Pakistan to co-operate with him in the performance of these functions;

5. Request the Secretary-General and the United Nations representative for India and Pakistan to render such assistance as he might request.

34. At the 770th meeting, on 18 February 1957, the representative of the Union of Soviet Socialist Republics submitted amendments 39/ to the joint draft resolution to:

- (a) Replace the preamble by a different text;

- (b) Amend operative paragraph 1 to request the President of the Council, the representative of Sweden, to examine with the Governments of India and Pakistan the situation in respect of Jammu and Kashmir, and to consider progress that could be made towards the settlement of the problem, bearing in mind the statements of the representatives of the Governments of India and Pakistan; and

- (c) In operative paragraph 3, delete the words, "but not later than 15 April 1957".

35/ S C, 11th yr., Suppl. for Oct.-Dec., p. 120, S/3728.

36/ See paras. 107-112; see also this Supplement, under Article 37.

37/ S C, 12th yr., Suppl. for Jan.-Mar., S/3767.

38/ Ibid., p. 7, S/3787.

39/ Ibid., p. 8, S/3789.

35. At the 771st meeting, on 18 February 1957, the representative of Colombia submitted an amendment 40/ to the joint draft resolution which would:

(a) Replace the preamble by a different text:

(b) Amend operative paragraph 1 to provide that the Security Council would request the President of the Security Council, the representative of Sweden, to examine with the Governments of India and Pakistan proposals which, in his opinion, were likely to contribute to the achievement of the provisions contemplated in the resolutions of 13 August 1948 and 5 January 1949 of the United Nations Commission for India and Pakistan, or to the establishment of other conditions for progress towards the settlement of the problem, bearing in mind the statements of the representatives of the Governments of India and Pakistan, the proposals for the use of a temporary United Nations force, if accepted by the parties, or the possibility of referring the problem to the International Court of Justice; and

(c) Replace the last phrase of operative paragraph 3 by the following: "if possible not later than 15 April 1957".

36. In support of the joint draft resolution, its sponsors contended that the Council's overriding endeavour in connexion with the India-Pakistan question had always been to secure a settlement acceptable to both parties. Thus the Council had sought to build upon the gains made in the past and upon agreements reached by the parties. Because of the wide area of agreement apparent in the statements of the representatives of India and Pakistan, the Council was justified in requesting the President of the Council, the representative of Sweden, to undertake the proposed task. It was hoped that when the President had completed his investigations and his discussions with the parties concerned, the Council would find it possible to proceed with elaboration of concrete measures which would be acceptable to the parties and would render settlement of the question possible.

37. It was further stated that the proposal for the Council to entrust this mission to the President would show the great importance it attributed to the solution of the India-Pakistan question; the Council could not better express its concern for the peaceful solution of the problem. Past experience had shown that the presence of a third party had been helpful in narrowing differences between the parties concerned. It was further observed that the joint draft resolution was not in the nature of a substantive decision. It prescribed a fact-finding mission; the Council would take no decision on the solution of the Kashmir problem until it had heard the report of its President, who should be in a position to weigh the views of the principal parties in the light of actual circumstances and bring the Security Council abundant evidence upon which to proceed further in its deliberations.

38. One representative expressed the view that there were, in principle, two courses along which progress might be made towards the ultimate goal of an agreement between the parties on a political basis. One course would be, as in the past, to bring the parties together for negotiations either directly or through some intermediary. The other course, if it should be found that the question could not be solved by negotiation, would be to have certain problems of a legal character clarified in order to create better conditions for agreement.

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40/ S C, 12th yr., Suppl. for Jan.-Mar., p. 8, S/3791/Rev.1.

39. Another representative stated that when the Security Council had established the United Nations Commission for India and Pakistan (UNCIP) in 1948, it had inadvertently committed the same error which the Security Council was about to commit in the joint draft resolution. The sole terms of reference of UNCIP had been to negotiate within the framework of the resolution of 21 April 1948, which one of the parties, India, had denounced. Thus UNCIP had been in the rather contradictory position of acting under Chapter VI of the Charter - in other words, engaging in conciliation procedures - and yet being required to keep strictly to a resolution denounced by one of the parties. The Council should not tie the hands of its President because, if it did so, it would encounter all the difficulties that UNCIP had encountered in 1948. The President should be given all the necessary time and latitude because whatever he might accomplish would be the only definite step the Security Council could depend on in its forthcoming discussions. For this reason, the Security Council should allow the President to consider all the suggestions that had been made.

40. The representative of India, in objecting to the joint draft resolution, stated that India had come to the Security Council under Chapter VI of the Charter, and the only procedures that could be adopted were therefore pacific procedures; their essence was mutual consent. Since January 1948 the Council had adopted resolutions which India had not been able to accept. The sponsors had been so informed, but the Council had continued to adopt resolutions without reference to conciliation, or to the possibility of their acceptance; in this particular case a draft resolution had been submitted which largely embodied proposals put forward by one side. This procedure was not designed to bring about a settlement.

41. In opposing the joint draft resolution, another representative contended that there was no need to tie the hands of the President by proposals that had been objected to by one or the other of the parties. An attempt to impose upon a Member State a solution with which it disagreed would foredoom the mission of the President of the Council to bring about a peaceful settlement within the terms of Chapter VI of the Charter. 41/

#### Decisions

At the 773rd meeting of the Security Council, on 20 February 1957, the amendments submitted by the Soviet Union were rejected 42/ by 1 vote in favour, 2 against, with 8 abstentions. The amendment submitted by Colombia was rejected 43/ by 1 vote in favour and none against, with 10 abstentions. The joint draft resolution was not adopted; 44/ there were 9 votes in favour, 1 against (that of a permanent member) and 1 abstention.

42. At the 773rd meeting, on 20 February 1957, Australia, the United Kingdom and the United States submitted the following joint draft resolution, 45/ which modified the terms of reference for the mission of the President.

41/ For texts of relevant statements, see S C, 12th yr., 768th mtg.: Australia, para. 57; China, para. 125; Colombia, paras. 63, 77 and 78; Cuba, para. 99; Philippines, para. 117; United Kingdom, paras. 8, 20; United States, paras. 26, 39; 769th mtg.: France, para. 32; Iraq; para. 23; Sweden, para. 39; 770th mtg.: USSR, para. 143; 771st mtg.: Colombia, paras. 10 and 11; 773rd mtg.: India, para. 111; USSR, paras. 138 and 139.

42/ S C, 12th yr., 773rd mtg., para. 124.

43/ Ibid., para. 125.

44/ Ibid., para. 126.

45/ Ibid., para. 130 (S/3792 and Corr.1).

"The Security Council

"Recalling its resolution of 24 January 1957, its previous resolutions and the resolutions of the United Nations Commission for India and Pakistan on the India-Pakistan question,

"1. Requests the President of the Security Council, the representative of Sweden, to examine with the Governments of India and Pakistan any proposals which, in his opinion, are likely to contribute towards the settlement of the dispute, having regard to the previous resolutions of the Security Council and of the United Nations Commission for India and Pakistan; to visit the sub-continent for this purpose; and to report to the Security Council not later than 15 April 1957;

"2. Invites the Governments of India and Pakistan to co-operate with him in the performance of these functions; and

"3. Requests the Secretary-General and the United Nations Representative for India and Pakistan to render such assistance as he may request."

Decision

At the 774th meeting, on 21 February 1957, this joint draft resolution was adopted 46/ by 10 votes in favour, none against, with 1 abstention.

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46/ Ibid., para. 79. The joint draft resolution, S/3792 and Corr.1, subsequently became resolution S/3793 (S C, 12th yr., Suppl. for Jan.-Mar., p. 9).

G. DECISION OF 2 DECEMBER 1957

43. At its 791st meeting, on 24 September 1957, the Security Council had before it a report 47/ submitted by the representative of Sweden in pursuance of the Security Council's resolution of 21 February 1957. He averred that though he was unable to report any concrete proposals which, in his opinion, were likely to contribute towards a settlement of the dispute, his examination of the situation at that time indicated that, despite the continued deadlock, both parties were still desirous of finding a solution to the problem. In this connexion, the Council might wish to take note of expressions from both Governments of their sincere willingness to co-operate with the United Nations in finding a peaceful solution.

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47/ S C, 12th yr., Suppl. for Apr.-June, p. 12, S/3821. On his explorations with regard to the implementation of the two resolutions of the United Nations Commission for India and Pakistan (UNCIP), the representative of Sweden reported:

"13. During our conversations the Government of India laid particular emphasis on the fact that, in its view, two factors stood in the way of the implementation of the two resolutions adopted by the United Nations Commission for India and Pakistan. The first of these was that part I of the resolution of 13 August 1948 S/1100, para. 757, and in particular paragraphs B and E, had, in the Indian view, not been implemented by the Government of Pakistan. For that reason, it was, in the Indian Government's submission, premature to discuss the implementation of parts II and III of that resolution, or of the resolution of 5 January 1949. The second of these impediments, which concerned rather part II of the first resolution, was that the Government of India, which had brought the case before the Security Council on 1 January 1948, felt aggrieved that the Council had so far not expressed itself on the question of what, in the Indian view, was aggression committed by Pakistan on India. In the Indian Government's view, it was incumbent on the Council to express itself on this question and equally incumbent on Pakistan 'to vacate the aggression'. It was argued that prior to the fulfilment of these requirements on the part of the Security Council and on the part of Pakistan the commitments of India under the resolution of 13 August 1948 could not reach the operative stage.

"14. I explained to the Government of India that the Security Council had properly taken cognizance of the original Indian complaint, and that it was not for me to express myself on the question whether its resolutions on the matter had been adequate or not. I pointed out that regardless of the merits of the present position taken by the Government of India, it could not be overlooked that India had accepted the two resolutions adopted by the Commission for India and Pakistan.

"15. The Government of Pakistan, for its part, in conversations with me, maintained that it had implemented part I of the first resolution in good faith and in full, and that the time had come to proceed to the implementation of part II."

44. At the 803rd meeting, on 18 November 1957, a joint draft resolution <sup>48/</sup> was submitted by Australia, Colombia, Philippines, United Kingdom and United States, whereby the Security Council would request the United Nations representative for India and Pakistan to make any recommendations to the parties which he considered desirable for further action in connexion with part I of the resolution of 13 August 1948 of the United Nations Commission for India and Pakistan (UNCIP), and to enter into negotiations with the Governments of India and Pakistan in order to implement part II of that resolution; and in particular to reach agreement on a reduction of forces on either side of the cease-fire line to a specific number, arrived at on the basis of the relevant Security Council resolutions. It would also call on the Governments of India and Pakistan to co-operate with the United Nations representative to formulate an early agreement on demilitarization procedures, which should be implemented within three months after such an agreement had been reached.

45. The representatives supporting the joint draft resolution stated that the Council had established an area of agreement between the parties; its most useful role would continue to be to proceed on the basis of this area of agreement, to seek to enlarge upon it and finally to make it a reality within the framework of the previous UNCIP resolutions. The parties should find a way, however, to resolve their difficulties through negotiation. This would be in conformity with the wishes they had expressed for a peaceful settlement within the framework of the United Nations. They had pledged themselves again to the principle of a resort to peaceful means of settlement, embodied in Article 33 of the Charter. There could be no doubt, however, that in the present instance, great difficulties impeded the adoption of specific measures for achieving such a settlement.

46. With reference to a statement in the report of the representative of Sweden concerning the possibility of submitting to arbitration the question whether part I of the UNCIP resolution of 13 August 1948 had been implemented, the representative of India pointed out that the suggested arbitration was not a simple one; the arbitrator would also be empowered to indicate to the parties the measures to be taken to arrive at full implementation. Should the Government of India agree to such a procedure, it would mean going outside the terms of the UNCIP resolutions, under which UNCIP itself was to report to the parties whether or not implementation had taken place. There was no need to arbitrate the obvious fact - reported by UNCIP - that Pakistan had increased its military potential and that an atmosphere in which a plebiscite might be held did not prevail. Only juridical questions could be the subject of arbitration; there was no case in international law where a matter such as this one, so wide and so intimately connected with India's integrity, could be arbitrated. Moreover, such procedure would set the question before the Council out of context, since India had submitted it under Chapter VI of the Charter, and the Council was not competent under the Charter to adjudicate a question of territory or to decide on legal questions. Since, therefore, it was fundamental to arbitration that the two sides should agree, and India did not accept, there could be no arbitration.

47. The representative of India stated further that his Government was totally opposed to the joint draft resolution because it conflicted with the United Nations Charter. Under Chapter VI of the Charter, no resolution had value that did not contain the element of conciliation. Though there was interdependence between part I and part II of the UNCIP resolution of 13 August 1948, the joint draft resolution stressed an early agreement on demilitarization without part I having been fulfilled. This was an attempt to alter the resolution, and the Indian Government was not willing to accept such a change.

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<sup>48/</sup> S C, 12th yr., Suppl. for Oct.-Dec., p. 11, S/3911.

48. The view was also expressed that the Security Council should use its authority to create favourable conditions for settlement by peaceful means, without foreign interference or pressure, of aspects of the question which were still unresolved. The Council was seeking a means of peaceful settlement of the dispute between India and Pakistan, and it was therefore its duty to look for methods and measures that would be acceptable to both parties.

49. It was stated, on the other hand, that, although it was quite impossible for the Council to push any sovereign nation into any action which it refused to take, it was the Council's responsibility, in the absence of any other solution acceptable to both, to help the parties make the UNCIP resolutions a reality. Thus, it was important for the Council to continue to lay stress on bringing about the demilitarization of Kashmir; this had consistently been recognized by the Council as an important goal that would help towards a settlement. The fact was also stressed that the Council, in proceeding under Chapter VI, was attempting to find a basis for progress towards a settlement acceptable to both sides, which had repeatedly asserted that they looked for the implementation of the UNCIP resolutions. In seeking to make progress towards a settlement the Council should proceed from these resolutions. There was no question of an attempt by the Security Council to impose a solution on this point; the joint draft resolution merely repeated publicly announced and reiterated decisions of the parties themselves. 49/

50. At the 807th meeting, on 28 November 1957, the representative of Sweden submitted certain amendments 50/ to the operative part of the joint draft resolution. Reference to "commitments" by the parties would be deleted, as well as the paragraph concerning the formulation of an early agreement on demilitarization procedures. He stated that these amendments were designed to meet some of the difficulties which the draft resolution had created for the parties.

#### Decision

At the 808th meeting, on 2 December 1957, the amendments submitted by Sweden, which had been welcomed by the sponsors of the joint draft resolution, were adopted 51/ by 10 votes in favour, none against, with 1 abstention. The joint draft resolution, as amended, was adopted 52/ by 10 votes in favour, none against, with 1 abstention. The resolution 53/ read as follows:

"The Security Council,

"Having received and noted with appreciation the report of Mr. Gunnar V. Jarring, the Representative of Sweden, on the mission undertaken by him pursuant to the Security Council resolution of 21 February 1957,

49/ For the texts of relevant statements, see S C, 12th yr., 791st mtg.: paras. 11, 39, 42; 795th mtg.: India, paras. 42, 52, 54, 60, 61, 64; 797th mtg.: United Kingdom, para. 21; United States, paras. 26, 31 and 32; 798th mtg.: Australia, paras. 8, 9, 13; France, para. 49; Philippines, para. 33; Sweden, para. 42; 799th mtg.: USSR, para. 16; 803rd mtg.: India, para. 2; United Kingdom, paras. 62 and 63; United States, paras. 26 and 27; 805th mtg.: India, paras. 46-48, 52; USSR, para. 79.

50/ S C, 12th yr., 807th mtg., paras. 2 and 3, S/3920.

51/ S C, 12th yr., 808th mtg., paras. 4, 8.

52/ Ibid., para. 17.

53/ S C, 12th yr., Suppl. for Oct.-Dec., p. 21, S/3922.

"Expressing its thanks to Mr. Jarring for the care and ability with which he has carried out his mission,

"Observing with appreciation the expressions made by both parties of sincere willingness to co-operate with the United Nations in finding a peaceful solution,

"Observing further that the Governments of India and Pakistan recognize and accept the provisions of its resolution dated 17 January 1948 and of the resolutions of the United Nations Commission for India and Pakistan dated 13 August 1948 and 5 January 1949, which envisage in accordance with their terms the determination of the future status of the State of Jammu and Kashmir in accordance with the will of the people through the democratic method of a free and impartial plebiscite, and that Mr. Jarring felt it appropriate to explore what was impeding their full implementation.

"Concerned over the lack of progress towards a settlement of the dispute which his report manifests,

"Considering the importance which it has attached to demilitarization of the State of Jammu and Kashmir as one of the steps towards a settlement,

"Recalling its previous resolution and the resolutions of the United Nations Commission for India and Pakistan on the India-Pakistan question,

"1. Requests the Government of India and the Government of Pakistan to refrain from making any statements and from doing or causing to be done or permitting any acts which might aggravate the situation and to appeal to their respective peoples to assist in creating and maintaining an atmosphere favourable to the promotion of further negotiations;

"2. Requests the United Nations representative for India and Pakistan to make any recommendations to the parties for further appropriate action with a view to making progress toward the implementation of the resolutions of the United Nations Commission for India and Pakistan of 13 August 1948 and 5 January 1949 and toward a peaceful settlement;

"3. Authorizes the United Nations representative to visit the sub-continent for these purposes; and

"4. Instructs the United Nations representative to report to the Security Council on his efforts as soon as possible."

3. *Decision of 11 June 1958 in connexion with the complaint by Lebanon*

51. By letter 54/ dated 22 May 1958, Lebanon requested the Security Council to consider the following question: "Complaint by Lebanon in respect of a situation arising from the intervention of the United Arab Republic in the internal affairs of Lebanon, the continuance of which is likely to endanger the maintenance of international peace and security." At the 818th meeting on 27 May 1958, after including this item on its agenda, the Council adopted 55/ a proposal by the

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54/ S C, 13th yr., Suppl. for Apr.-June, p. 33, S/4007.

55/ S C, 13th yr., 818th mtg., paras. 8, 41.

representative of Iraq to adjourn the meeting until 3 June 1958, by which time it would be known whether the question could be resolved outside the Council, it being understood that the Council would meet at short notice at the request of the representative of Lebanon. The President (Canada) stated that an adjournment to give the League of Arab States an opportunity to consider the question, with a view to achieving a peaceful solution on a regional basis, seemed to fit into the general pattern of United Nations procedures.

52. One representative welcomed the adjournment in order that the two Members of the United Nations might be able to settle their differences within the system of a regional organization to which both belonged. He understood that the League of Arab States had before it a complaint identical with that which was before the Security Council. Another representative thought that the adjournment proposal should be adopted in order to enable the League of Arab States to have recourse to such means as those contemplated in Article 33 of the Charter. It was similarly stated that it was the duty of the Council, in accordance with Article 36, to take into consideration the peaceful means freely chosen by the parties, in this instance the Pact of the League of Arab States, signed by them in 1945.

53. After a further postponement at the request 56/ of Lebanon, the Council, at its 822nd meeting, on 5 June 1958, decided 57/ on the ground that the League of Arab States was holding its last meeting on the question on that date, to postpone consideration of the item until the following day.

54. At the 823rd meeting, on 6 June 1958, the representative of Lebanon stated that the League of Arab States, which had been in session for six days, had taken no decision on the question. Consequently, Lebanon was bound to press it before the Council. Lebanon wanted the Council to stop the intervention in all its aspects, to preserve the independence of his country and, as a result, to remove the threat to international peace and security inherent in the situation. Lebanon had tried direct contacts with the United Arab Republic without avail.

55. The representative of the United Arab Republic contended that the Council had before it a domestic question which could not be a threat to international peace. At the meeting of the League of Arab States a resolution aimed at settling the question had not been accepted by Lebanon. In this connexion, the representative of the United Arab Republic drew the attention of the Council to Article 36 (2).

56. Several representatives expressed the view that the Security Council should be furnished with more complete information on the meetings of the League of Arab States dealing with the situation. The Council should not consider the question without ascertaining details of its consideration by the League. It was contended that a peaceful settlement should be realized through discussion in the Council if there were no other course open; such was the duty of the Council under the Charter. It was also observed that further consideration of the matter might pave the way for an arrangement which would safeguard both parties.

57. The President (China) stated that it was unnecessary for the Council to make a formal request for information on the proceedings of the League of Arab States with regard to the question, since the representatives of Iraq, Lebanon and the United Arab Republic could furnish the Council with such additional information.

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56/ S C, 13th yr., Suppl. for Apr.-June, p. 44, S/4018.

57/ S C, 13th yr., 822nd mtg., paras. 1, 3 and 5.

58. The view was expressed that by its appeal to the Council, Lebanon had shown that it had not seriously intended to arrive at a settlement by direct negotiations with the United Arab Republic, or with the assistance of friendly Arab countries. When prospects of a compromise agreement - within the regional system of the League of Arab States - became apparent, the Lebanese Government had rejected the agreement and transferred discussion of the complaint to the Council. In opposition to this view, it was asserted that Lebanon had made every effort to find a solution to the question in the League of Arab States, as was its duty in accordance with the Charter provisions. However, Lebanon had not obtained satisfaction in the regional organization and had acted rightfully in bringing its complaint to the Council.

59. At the 824th meeting of the Council, on 10 June 1958, the representative of Sweden submitted the following draft resolution: 58/

"The Security Council

"Having heard the charges of the representative of Lebanon concerning interference by the United Arab Republic in the internal affairs of Lebanon and the reply of the representative of the United Arab Republic,

"1. Decides to dispatch urgently an observation group to proceed to Lebanon so as to ensure that there is no illegal infiltration of personnel or supply of arms or other matériel across the Lebanon borders;

"2. Authorizes the Secretary-General to take the necessary steps to that end;

"3. Requests the observation group to keep the Security Council currently informed through the Secretary-General."

60. In explanation of the draft resolution, the representative of Sweden stated that the Council had before it a complaint in which a Member State had alleged that action by another Member had brought about a situation which, if continued, was likely to endanger international peace and security. Under the Charter, the Council might investigate such a situation and, if it deemed appropriate, recommend methods of adjustment. In order to enable the Council to perform this task, the parties must first present detailed information to the Council concerning, on the one hand, the evidence forming the basis of the allegation and, on the other, the arguments which might be put forward in refutation. If this information were considered inadequate, the Council might arrange for an investigation by establishing an investigation or observation commission. With regard to the Lebanese complaint, there might be justification for considering some arrangement for investigation or observation by the Council itself, to clarify the situation; to obtain a positive result it would be necessary for both parties to co-operate loyally in the investigation.

61. In support of the draft resolution, it was contended that it was an immediate practical measure to stabilize the situation and reduce the threat to peace and security. It was the Council's duty to take urgent steps with a view to preventing a further deterioration of the situation. The States concerned were, however, in no way absolved from pursuing their efforts to reconcile their differences, either by contacts through other channels or by unilateral action of a conciliatory nature. The provisions of the Charter were clear about the responsibility of Members of the United

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58/ S C, 13th yr., 824th mtg., para. 111, S/4022.

Nations to seek peaceful solutions by various means, and the fact that the Council had become seized of this question did not change that responsibility. 59/

### Decision

At the 825th meeting of the Security Council, on 11 June 1958, the draft resolution submitted by Sweden was adopted 60/ by 10 votes to none, with 1 abstention.

62. After the vote it was noted that neither the representative of Lebanon nor the representative of the United Arab Republic had objected to the draft resolution submitted by Sweden.

- 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

#### *Decision of 20 February 1957 in connexion with the India-Pakistan question*

63. At its 769th meeting, on 15 February 1957, the President of the Security Council, speaking as the representative of Sweden, stated that after nine years without any progress towards an agreement between the parties on the India-Pakistan question, the time had come for an alternative procedure. In the view of the Swedish Government, this could best be done by referring some of the legal aspects of the matter to the International Court of Justice, to have the legal background of the question clarified.

64. At the 771st meeting of the Council, on 18 February 1957, the representative of Colombia introduced an amendment 61/ to a joint draft resolution 62/ submitted by Australia, Cuba, United Kingdom and United States. Under this amendment, operative paragraph 1 would provide that the Security Council should request the President of the Council, the representative of Sweden, to examine with the Governments of India and Pakistan proposals which, in his opinion, were likely to contribute to the achievement of the provisions contemplated in the resolutions of 13 August 1948 and 5 January 1949 of the United Nations Commission for India and Pakistan (UNCIP), or to the establishment of other conditions for progress towards the settlement of the problem, bearing in mind the statements of the representatives of the Governments of India and Pakistan, the proposals for the use of a temporary United Nations force, if accepted by the parties, or the possibility of referring the problem to the International Court of Justice.

59/ For texts of relevant statements, see S C, 13th yr., 818th mtg.: President (Canada), para. 17; Colombia, paras. 21, 27; Iraq, para. 130; Panama, para. 34; 823rd mtg.: President (China), para. 191; Iraq, paras. 28-30; Japan, paras. 127 and 128; Lebanon, paras. 2-5, 72, 73, 180, 182; Panama, paras. 170-173; United Arab Republic, paras. 79-82, 85; 824th mtg.: France, para. 251; Sweden, paras. 97, 98, 100, 110 and 111; USSR, para. 187; United Kingdom, paras. 284, 285, 288; 825th mtg.: Canada, paras. 19, 22, 25; Panama, paras. 9-11; USSR, para. 83.

60/ S C, 13th yr., 825th mtg., para. 82. The draft resolution became resolution S/4023 (S C, 13th yr., Suppl. for Apr.-June, p. 47).

61/ S C, 12th yr., Suppl. for Jan.-Mar., p. 8, S/3791/Rev.1.

62/ S C, 12th yr., Suppl. for Jan.-Mar., p. 7, S/3787; see para. 33 above.

65. In support of the amendment, it was stated that if the Security Council wanted a judicial decision to settle the question of the ownership of Kashmir, it should apply to the International Court of Justice. If it wanted to follow the recommendations of UNCIP and accept the voluntary offer of a plebiscite, the Council could entrust the President with this task, but the President would need the agreement of both parties. If the President could not bring about a settlement, then the possibility of resuming a legal investigation of the case in order to determine which country had the right to occupy the State of Kashmir should be considered.

66. It was contended, on the other hand, that the adoption of the amendment would constitute a deviation from the procedure followed by the Council and by UNCIP, and the way in which those two bodies had treated the problem. It was also observed that the amendment was premature. The Council would be in a position to examine and study it only if the procedure envisaged in the joint draft resolution should fail to achieve results. 63/

#### Decision

At the 773rd meeting of the Security Council, on 20 February 1957, the amendment submitted by Colombia was rejected 64/ by 1 vote in favour, none against, with 10 abstentions.

E. The question of the limitations on the power of recommendation under Article 36 (1)

#### *Decisions of 20 and 21 February 1957 in connexion with the India-Pakistan question*

67. At its 768th meeting, on 15 February 1957, the Security Council had before it a draft resolution 65/ jointly submitted by Australia, Cuba, United Kingdom and United States, under which the Council, considering the importance it had attached to the demilitarization of the State of Jammu and Kashmir preparatory to the holding of a plebiscite, would note the proposal of Pakistan 66/ for the use of a temporary United Nations force in connexion with demilitarization, and would state its belief that the use of such a force deserved consideration. In the operative part of the draft resolution, the Council would ask its President, the representative of Sweden, to visit the sub-continent to examine with the Governments of India and Pakistan proposals which, in his opinion, would help to bring about demilitarization or further the settlement of the dispute. The President would also be directed to take into account the previous resolutions of the Security Council and of the United Nations Commission for India and Pakistan (UNCIP) and to bear in mind the statements of the representatives of India and Pakistan "and the proposal for the use of a temporary United Nations force".

68. With regard to this proposal, the sponsors of the draft resolution asserted that the idea was worth further examination with the two Governments. The intention was to enable the demilitarization procedure set out in the UNCIP resolutions to be put into effect. The proposal should be considered, since it might contribute to the achievement of demilitarization, as envisaged in the UNCIP resolutions, and to the pacific settlement of the dispute. It was hoped that the President of the Council would explore

63/ For texts of relevant statements, see S C, 12th yr., 769th mtg.: Sweden (President) para. 40; 771st mtg.: Colombia, paras. 7, 10 and 11; 773rd mtg.: Iraq, para. 8; Philippines, para. 49.

64/ S C, 12th yr., 773rd mtg., para. 125.

65/ S C, 12th yr., Suppl. for Jan.-Mar., p. 7, S/3787.

66/ S C, 12th yr., 761st mtg., paras. 109, 115.

this proposal further with the Governments of India and Pakistan, to examine its utility and to determine the extent to which it might be employed. Should a temporary United Nations force be of value in assisting demilitarization or a basic settlement of the dispute, it should certainly be one of the elements which should be borne in mind in a new attempt to achieve a settlement.

69. In the view of another representative, the proposal for a United Nations force, to exercise police functions in the areas to be vacated by the armed forces on either side of the cease-fire line, merited consideration. In another setting, the General Assembly had approved the introduction of a United Nations police force into areas by belligerent armies in order to promote conditions which might lead to progress in securing a peaceful settlement of a particularly difficult and complex problem. The Council could obviously only commend this idea to the parties, as a reasonable proposal to solve the deadlock on the question of demilitarization.

70. It was also observed that the Council was acting as mediator within the framework of Chapter VI of the Charter, and that the parties must first agree to the suggestion. The idea of United Nations troops in Kashmir was an excellent one, but only if and when India accepted it, since the presence of such troops could not be imposed by the Council. Under Chapter VI, the consent of the parties concerned to the presence of the troops had therefore to be obtained beforehand.

71. In opposing the proposal, the representative of India contended that it was contrary to the Charter because the United Nations had no authority to act in this respect under Chapter VI. Only under Chapter VII could troops be placed anywhere without the consent of the Government concerned. Such consent would not be forthcoming in this context, since the Government of India would in no circumstances agree to the stationing of foreign troops in Kashmir, which was part of the Indian Union. Resort to a United Nations force was therefore an impractical proposal, against the purposes of the Charter and of a settlement.

72. The representative of Pakistan stated that during the course of the previous eight years India had rejected one after another of the various procedures of Chapter VI of the Charter for settling the question by means of an agreed objective, namely, a plebiscite. If the situation was not to erupt into a catastrophe, something positive had to be done to demilitarize Kashmir, thus making it possible to hold a plebiscite. Kashmir was not Indian territory, and therefore the question of foreign troops on Indian soil did not arise. The entry of a United Nations force would make possible the discharge of the obligations of the parties concerning demilitarization under the international agreement. The United Nations force would in effect go into Kashmir with the consent of both parties, since both had agreed to demilitarize and to withdraw their forces. Consent was therefore presumed.

73. At the 770th meeting, on 18 February 1957, the representative of the Union of Soviet Socialist Republics introduced amendments 67/ to the joint draft resolution to (a) replace the preamble by a mere reference to the hearing by the Council of statements by the representatives of India and Pakistan, and (b) delete, in the operative part, the provisions concerning demilitarization and the proposal for the use of United Nations forces.

74. In support of these amendments it was contended that the Council would commit a serious mistake if it were to recommend any measures whatsoever without taking into account the extent to which they corresponded to the true situation in the Kashmir

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67/ S C, 12th yr., Suppl. for Jan.-Mar., p. 8, S/3789.

area. The Charter provided that United Nations forces could be used only to repel aggression and to restore international peace in any part of the world. The Charter did not provide for the use of United Nations troops to impose a plebiscite by force in any country. Thus, the introduction of a United Nations force into Kashmir would be completely at variance with the principles of the Charter. Furthermore, one of the parties directly concerned, India, had objected to the proposal. An attempt to impose upon a Member of the United Nations a solution with which it was not in agreement would foredoom the mission of the President of the Council concerning measures to bring about a peaceful settlement within the terms of Chapter VI of the Charter, which provided for the pacific settlement of disputes and excluded any measures of compulsion and any attempt to impose on one of the parties solutions unacceptable to it.

75. At the 771st meeting, on 18 February 1957, the representative of Colombia introduced amendments 68/ to delete from the preamble of the joint draft resolution any references to demilitarization or to the proposal to use a United Nations force, and to maintain in its operative part the proposal for the use of a temporary United Nations force, adding thereafter the words "if accepted by the parties". He stated that the criticisms of the representative of India implied that a United Nations force might be sent to Kashmir without India's approval. On the contrary, what the Council intended was to invite India to admit the force. If India did not accept the force, it would obviously be unable to go without India's consent.

76. With regard to India's objections, the representative of Pakistan observed that the sole purpose of the proposal to use United Nations forces was to facilitate the withdrawal of Pakistan troops, to which India attached so much importance; the process of demilitarization could be put into operation and completed thereafter in accordance with the terms of the UNCIP resolutions. It was never intended that the forces would be utilized in holding a plebiscite, since, under the terms of those resolutions, the tasks of organizing and actually holding the plebiscite had been assigned to the Plebiscite Administrator. In a sense, the introduction of a United Nations force would amount to an increase in the number of United Nations observers. It would thus be tantamount to a use of the procedures which had so far been followed with some success under Chapter VI of the Charter.

77. The representative of India asserted that the only resolutions of the Security Council which engaged his Government were those it had accepted. Resolutions of the Council under Chapter VI of the Charter had no binding effect upon Member States unless they consented to them. The essence of pacific procedures was mutual consent. Comparing the cases of Gaza and Kashmir was not valid since they were not parallel. In one case, Egypt had been invaded, and the purpose of the United Nations Emergency Force (UNEF) was to remove the invaders. In the case of Kashmir, the invasion was by Pakistan, and it was the invader which was inviting a United Nations force. In the one

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68/ S C, 12th yr., Suppl. for Jan.-Mar., p. 8, S/3791/Rev.1.

case, UNEF went to the defence of the victims of aggression; in the other case, it would go to stand by the aggressor. No analogy could therefore be drawn between the two cases. 69/

### Decisions

At the 773rd meeting of the Security Council, on 20 February 1957, the joint draft resolution was not adopted. 70/ There were 9 votes in favour, 1 against (that of a permanent member) and 1 abstention. The amendments submitted by the Soviet Union and by Colombia had previously been rejected 71/ for lack of the required majority of votes.

At the same meeting, a new draft resolution 72/ was jointly submitted by Australia, the United Kingdom and the United States. The terms of reference for the mission of the President were modified to omit any references to demilitarization and to the proposal for the use of a United Nations force.

At the 774th meeting, on 21 February 1957, the new joint draft resolution was adopted 73/ by 10 votes to none, with 1 abstention.

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69/ For texts of relevant statements, see S C, 12th yr., 768th mtg.: Colombia, paras. 79-83; Philippines, para. 115; United Kingdom, paras. 12, 14; United States, paras. 33 and 34; 769th mtg.: India, paras. 99, 103, 152-155; 770th mtg.: Pakistan, paras. 120-125; USSR, paras. 137, 139, 143; 771st mtg.: Colombia, para. 6; 772nd mtg.: Australia, paras. 126 and 127; United Kingdom, paras. 153 and 154; United States, para. 113; 773rd mtg.: Iraq, para. 4; Philippines, paras. 44-47; India paras. 99, 111; USSR, paras. 138 and 139; 774th mtg.: India, para. 30; Pakistan, para. 9; USSR, para. 44.

70/ S C, 12th yr., 773rd mtg., para. 126.

71/ Ibid., paras. 124 and 125.

72/ Ibid., para. 130, S/3792 and Corr.1.

73/ S C, 12th yr., 774th mtg., para. 79; the joint draft resolution subsequently became resolution S/3793 (S C, 12th yr., Suppl. for Jan.-Mar., p. 9).

