

ARTICLE 52

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TEXT OF ARTICLE 52

1. Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.

2. The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.

3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.

4. This Article in no way impairs the application of Articles 34 and 35.

INTRODUCTORY NOTE

1. Article 52 comprises two sets of provisions. On the one hand, Article 52 (1) states the general principle that nothing in the Charter "precludes the existence" of regional arrangements or agencies of the type described therein provided that they and their activities "are consistent with the Purposes and Principles of the United Nations". On the other hand, Article 52 (2-4) defines in general terms the relationship, under the Charter, of the United Nations, particularly of the Security Council, with regional arrangements or agencies in respect of the pacific settlement of local disputes.

2. Neither the Security Council nor the General Assembly has on any occasion taken a decision intended to define the scope of Article 52 (1), nor has either of the two organs expressly decided that a given regional arrangement or agency did or did not fulfil the requirements stated therein.

3. There have, however, been some instances in the proceedings of both the General Assembly and the Security Council when decisions were taken which, in the context of the relevant discussion, appear to have a bearing on the provisions of Article 52 (1) and may illustrate the position adopted by the two organs as regards the question of the scope of those provisions. These decisions are indicated in the General Survey and a brief review of the proceedings is included in the Analytical Summary of Practice.

4. With regard to the provisions of Article 52 (2-4), the proceedings of the Security Council in connexion with the question of Guatemala ^{1/} provide the only instance in

^{1/} The question of Guatemala appeared on the agenda of the Security Council under the title "Cablegram dated 19 June 1954 from the Minister for External Relations of Guatemala addressed to the President of the Security Council (S/3232)".

which these provisions have given rise to constitutional discussion either in the Security Council or in the General Assembly. These proceedings also bear on Articles 2/ other than Article 52. They are, however, particularly relevant to the general question of the relation between Article 52 (2) and (3) on the one hand, and Article 52 (4) on the other, a question which embraces two subsidiary questions which are examined in the Analytical Summary of Practice of this study, namely, the question of the scope of the provisions of Article 52 (2) and (3), and the question of the scope of the provisions of Article 52 (4). The General Survey contains a brief statement concerning the decisions of the Security Council in the foregoing proceedings. It includes as well a reference to statements and to a notification by the Secretary-General bearing on the question relating to the Charter dealt with here.

I. GENERAL SURVEY

5. The two decisions of the General Assembly dealt with in the Analytical Summary of Practice as bearing on the question of the scope of the provisions of Article 52 (1) are resolution 253 (III), entitled "Permanent invitation to the Secretary-General of the Organization of American States to be present at the sessions of the General Assembly", and resolution 477 (V), entitled "Permanent invitation to the Secretary-General of the League of Arab States to attend sessions of the General Assembly".

6. In addition, the proceedings of the Security Council connected with the question of Guatemala, although of particular relevance to the second question examined in the Analytical Summary of Practice, are also in some respects relevant to the above-mentioned question relating to Article 52 (1). This is the case also with regard to the discussion 3/ on various items considered by the General Assembly which are dealt with in this Repertory under Article 51.

7. As regards the question of the relation between Article 52 (2) and (3) and Article 52 (4), the following three decisions taken by the Security Council in connexion with the question of Guatemala are examined in the light of the relevant proceedings in the Analytical Summary of Practice:

(a) The decision of 20 June 1954, when an amended draft resolution of Brazil and Colombia failed to be adopted;

(b) The decision of the same date to adopt a draft resolution submitted by France; and

(c) The decision of 25 June 1954, when the agenda was not adopted.

8. The inclusion of the question of Guatemala in the summary statement by the Secretary-General on matters of which the Security Council is seized, and in the notification by the Secretary-General to the General Assembly under Article 12 (2), as well as a statement by the Secretary-General contained in the introduction to his ninth annual report on the work of the Organization submitted to the General Assembly, are

2/ See paras. 28 and 29 below, and in this Repertory under Article 24, annex II, items II, B, (v) and V, C, (11); Article 32, annex, item 4; Article 33, footnote 1; Article 35, annex, item B, 15; Article 36, paras. 9, 15, 71, 103 and 104; Article 40, paras. 7 and 18; Article 51, footnote 1; Article 54, para. 1; Article 103.

3/ For a summary of this discussion see footnote 6 below.

also briefly reviewed in the Analytical Summary of Practice as constituting action relevant to the application and interpretation of Article 52 (2-4). 4/

II. ANALYTICAL SUMMARY OF PRACTICE

A. The question of the scope of the provisions of Article 52 (1)

9. As indicated in the Introductory Note, there have been no decisions in the proceedings of the Security Council or of the General Assembly defining the scope of the provisions of Article 52 (1).

10. The proceedings connected with General Assembly resolutions 253 (III) and 477 (V), which are summarized below, are however relevant to this question since, in both cases, there was substantial constitutional discussion bearing on those provisions. The General Assembly, in both cases, requested the Secretary-General to extend the proposed invitations to the Secretary-General of the Organization of American States and to the Secretary-General of the League of Arab States respectively. The Assembly, however, refrained in both cases from making any pronouncement on whether the Organization of American States or the League of Arab States fell within the purview of Article 52 (1). In the case of resolution 477 (V), the Sixth Committee stated expressly in its report to the General Assembly that the invitation to be extended "did not in any way imply that the Arab League was or was not a regional agency within the meaning of Chapter VIII of the Charter".

11. Article 52 was also expressly and frequently invoked, in conjunction with Article 51, at the sixth, seventh and eighth sessions of the General Assembly, in the proceedings 5/ of the First Committee connected with three agenda items on measures to

4/ In 1950 Working Group 3 of the Sub-Committee on International Co-operation in the Political Field of the Interim Committee of the General Assembly studied some aspects of "the relation between the processes of peaceful settlement by regional agencies or States acting through them and settlement by organs of the United Nations". The results of this study were briefly summarized in the report of the Sub-Committee to the Interim Committee which the latter appended as annex A to its report to the General Assembly at its fifth session (G A (V), Suppl. No. 14 (A/1388), pp. 7 and 8), "for information" of the General Assembly and the Member States. The Assembly did not consider the report of the Sub-Committee.

5/ For a brief summary of these proceedings see in this Repertory under Article 51. paras. 5-7.

avert the threat of a new world war, when various proposals 6/ declaring that participation in the North Atlantic Treaty Organization was incompatible with membership in the United Nations were considered by the Committee.

12. The proceedings of the Security Council connected with the question of Guatemala, which are reviewed in section B below, may also be considered as having a certain bearing on the question examined here, since several representatives of the Council have, in that connexion, referred expressly or implicitly to the Organization of American States 7/ as a regional agency under Chapter VIII.

1. Resolution 253 (III)

13. The agenda item entitled, "Permanent invitation to the Secretary-General of the Organization of American States to be present at the sessions of the General Assembly", was included in the agenda of the first part of the third session of the General Assembly at the request of the representative of Argentina. 8/ It was considered at the 70th and 71st meetings of the Sixth Committee on 9 and 11 October 1948, and at the 151st plenary meeting on 16 October 1948.

14. A draft resolution submitted by Argentina led to discussion regarding the legal basis for an invitation to the Secretary-General of the Organization of American States.

15. The representative of Argentina claimed that an invitation would be more than a gesture of courtesy since it would be based on Article 52 (1), which envisaged the existence of regional arrangements or agencies, and on Chapter VIII which encouraged their development. They were legal entities in terms of the Charter and had their own part to play within its framework. Other representatives supporting the invitation expressed the view that an invitation would be within the scope of Chapter VIII and of Articles 1 and 33.

6/ During the debate on these proposals their sponsors and supporters argued that the North Atlantic Treaty could not be considered a regional arrangement under Article 52 on the grounds that it included States which were without any geographical connexion and without a common culture, language or history; that Article 52 referred to pacific settlement of local disputes and there could be no local conflict between some of the States which formed part of the North Atlantic Treaty; and that no regional action was therefore involved. They added that while Article 52 provided no justification for the Treaty, the latter was contrary to Article 53 which stated that no enforcement action should be taken under regional arrangements without the authorization of the Security Council. Consequently, the North Atlantic Treaty violated the Charter and should be treated accordingly. Other representatives maintained that geographical propinquity was not a prerequisite for participation in a regional agreement, a conclusion which could be drawn from the report of the Sub-Committee of Committee III/4 of the San Francisco Conference which indicated the rejection of an amendment intended to make geographical propinquity the basis for all regional arrangements. The representatives of the States parties to the North Atlantic Treaty maintained that the Treaty was in conformity with Article 51. (G A (VI), 1st Com., 488th - 493rd mtgs.; G A (VII), 1st Com., 596th - 603rd mtgs.; G A (VIII), 1st Com., 671st and 673rd - 676th mtgs).

7/ Communications from the Organization of American States have often been circulated as Security Council documents, as have been also, on occasion, communications from the League of Arab States. See also in this Repertory under Article 54.

8/ G A (III/1), Plen., Annexes, pp. 35 and 36, A/594.

16. It was argued by representatives opposing the invitation that the Charter did not provide for invitations to regional bodies. While Chapters IX and X outlined the relationship between the specialized agencies and the United Nations, Chapter VIII did not contain similar stipulations regarding the regional bodies. Moreover, invitations to regional bodies to be represented at the sessions of the Assembly would violate Charter provisions regarding membership of and representation in the United Nations. States Members of those bodies would gain the advantage of dual representation.

17. In reply, supporters of the invitation contended that the fact that regional bodies were not organically or administratively related to the United Nations was no reason for not inviting them to send observers to the United Nations. A permanent invitation was legal since the Charter contained no provision barring such an invitation. The invitation would not create dual representation, since the invited representatives would not have the right to vote.

18. The representative of Iran suggested 9/ that the invitation, which followed from the provisions of Article 52 (1), should specify that "the activities of the Organization of American States are in accordance with the aims and principles of the United Nations". Following objections that his proposal would necessitate a discussion of substance on the activities of the Organization, he withdrew the proposal. 10/

19. The representative of Egypt suggested 11/ that it be specified that the invitation was extended to the Organization "as a regional agency" in order to indicate that the precedent would be valid for other regional agencies. On receiving assurances from several representatives that the League of Arab States would be entitled to the same courtesy at the appropriate time, he withdrew 12/ his amendment.

20. At its 71st meeting on 11 October 1948 the Sixth Committee adopted 13/ by 41 votes to 5, with 5 abstentions, the draft resolution submitted by Argentina. 14/ The General Assembly considered the draft resolution adopted by the Sixth Committee at its 151st plenary meeting on 16 October 1948. 15/

9/ G A (III/1), 6th Com., 70th mtg., p. 69.

10/ G A (III/1), 6th Com., 71st mtg., p. 77.

11/ Ibid., p. 76.

12/ Ibid., p. 77.

13/ Ibid.

14/ G A (III/1), 6th Com., 71st mtg., A/C.6/226, p. 45. The text of the draft resolution, which had been amended by its sponsor by the addition of the words "as an observer", is identical to General Assembly resolution 253 (III).

15/ For texts of relevant statements, see G A (III/1); 6th Com., 70th mtg.: Argentina, p. 63; Brazil, p. 68; Chile, p. 67; Cuba, p. 67; Ecuador, p. 72; Egypt, pp. 64, 70 and 71; Greece, pp. 65, 67, 68 and 73; Haiti, p. 71; Iran, p. 69; Mexico, pp. 65 and 71; Netherlands, p. 64; Poland, p. 66; Syria, p. 66; USSR, pp. 69 and 70; United Kingdom, pp. 68 and 69; Uruguay, p. 72; Yugoslavia, pp. 65 and 69. 71st mtg.: Argentina, p. 74; Czechoslovakia, p. 73; Egypt, p. 76; Mexico, p. 76; Peru, p. 76; Syria, p. 76; Venezuela, pp. 74 and 75. Plen., 151st mtg.: Argentina, pp. 360 and 361; Egypt, pp. 361 and 362; USSR, p. 362.

Decision

At its 151st plenary meeting on 16 October 1948, the General Assembly adopted 16/ by 34 votes to 6, with 2 abstentions, the draft resolution, which became resolution 253 (III), entitled "Permanent invitation to the Secretary-General of the Organization of American States to be present at the sessions of the General Assembly". The resolution read as follows:

"The General Assembly

"Resolves that the Secretary-General be requested to invite the Secretary-General of the Organization of American States to be present as an observer at the sessions of the General Assembly."

2. Resolution 477 (V)

21. The agenda item entitled, "Permanent invitation to the League of Arab States to attend sessions of the General Assembly", was included in the agenda of the fifth session of the General Assembly at the request of the representative of Syria. 17/ It was considered at the 215th to 217th meetings inclusive of the Sixth Committee on 2, 4 and 5 October 1950, and at the 299th plenary meeting on 1 November 1950.

22. In support of an invitation to the Secretary-General of the League of Arab States, it was contended by a number of representatives that the League was a regional organization within the meaning of Article 52. These representatives held that, by resolution 120 (II), which referred to "regional organizations in the Middle East such as the Arab League", the General Assembly had recognized the League as a regional organization. However, they stated that the proposed invitation to the Secretary-General of the League would not require recognition of the League as a regional organization, since it would be extended as a gesture of courtesy as in the case of the Organization of American States.

23. In opposition to the proposed invitation, the representative of Israel argued, in a memorandum submitted to the Assembly 18/ and in statements before the Sixth Committee, that the League of Arab States was not a regional arrangement within the meaning of Article 52 for the following reasons: it was not accessible to all Member States in the Middle East; it was conceived on the principle of racial exclusiveness which did not accord with the basic ideas of the Charter; the Pact of the League, which had been signed prior to the Charter, did not contain any reference to acceptance by the League of obligations under the Charter; the League had failed to solve the conflicts within the area it covered; the activities of the League had been directed against the United Nations and had not been consistent with the Purposes and Principles of the Charter; and the League had not given support to the Security Council resolutions relating to the restoration of international peace and security in the Far East in connexion with the Korean question. He added that the League conducted its deliberations in secret and had not invited the Secretary-General of the United Nations or his representative to attend its sessions. At the 215th meeting of the Sixth Committee the representative of Israel stated that the basic elements of a regional arrangement in the sense of Chapter VIII were: "a the existence of a clearly defined security region for which the agency assumed responsibility; b the existence of a strong legal instrument with power to achieve its purposes; c the effectiveness of such an agency; d the consistency of

16/ G A (III/1), Plen., 151st mtg., p. 362.

17/ A/1290.

18/ G A (V), Annexes, a.i. 58, pp. 1 and 2, A/C.6/336.

such arrangements and their activities with the Purposes and Principles of the Charter". 19/ He contended that the League of Arab States did not satisfy these criteria.

24. In reply to the objections raised by the representative of Israel, other representatives stated that Article 52 laid down only that regional organizations should deal with matters relating to the maintenance of international peace and security and that their activities should be consistent with the Purposes and Principles of the Charter, but did not go beyond those conditions to lay down a model to which all regional organizations should conform. Article 52 did not define the regions of the world or lay down that the organizations should be accessible to all States in the regions or exclude organizations the members of which were bound together by racial ties. It did not require regional organizations formally to accept the obligations under the Charter or to take a stand on questions of foreign policy such as the decisions of the Security Council regarding the restoration of international peace and security. The regional arrangements to which Article 52 referred included those which had preceded the establishment of the United Nations. The holding of secret meetings was not inconsistent with the procedure of the United Nations. The principle of reciprocity of invitations had been objected to during the debates at the third session in connexion with the invitation to the Organization of American States and reference to reciprocity in the relevant draft resolution had been deleted on that occasion. Several representatives stated that the Arab League was not a racial organization, that its activities were not inconsistent with the Purposes and Principles of the Charter, that its records were published and that it had already suggested a relationship with the United Nations similar to that of the Organization of American States.

25. At the 216th meeting of the Sixth Committee, the representative of Bolivia suggested 20/ the establishment of a sub-committee to study the following two legal questions which, he said, were raised by the agenda item before the Committee: whether the purposes and principles of the League were compatible with those of the United Nations, and whether the League was actually a regional agency. Following discussion, during which opposition to the proposal was voiced on the ground that the Committee was concerned not with the question whether the League was a regional organization but with the question of closer co-operation between the League and the United Nations, the representative of Bolivia expressed the view that the agenda item should be referred back to the General Assembly as not being of a legal character. However, he stated that his delegation would not put its proposal 21/ forward formally since it had received no support. 22/

19/ G A (V), 6th Com., 215th mtg., para. 44.

20/ G A (V), 6th Com., 216th mtg., paras. 67 and 68.

21/ G A (V), 6th Com., 217th mtg., para. 28.

22/ For texts of relevant statements, see G A (V), General Com., 69th mtg.: Syria, para. 31. Plen., vol. I, 285th mtg.: Egypt, para. 89; Israel, paras. 77-87. 6th Com., 215th mtg.: Canada, paras. 28-32; Chile, paras. 87 and 88; Colombia, paras. 89-92; Egypt, paras. 2-10 and 77-81; Iraq, paras. 65-76; Israel, paras. 38-64; Saudi Arabia, paras. 11-27; Syria, paras. 33-37; United States, paras. 82-86. 216th mtg.: Argentina, paras. 57-60; Bolivia, paras. 67 and 68; Burma, paras. 51 and 52; China, paras. 15-17; Cuba, paras. 21 and 22; Dominican Republic, paras. 9-14; Greece, paras. 2-8; Lebanon, paras. 40-47; Liberia, paras. 18-20; Mexico, paras. 37-39; Pakistan, paras. 53-56; Peru, paras. 24-31; Philippines, paras. 63-66; United Kingdom, paras. 32-36; Yugoslavia, paras. 48-50. 217th mtg.: Bolivia, paras. 24, 26 and 28; Brazil, paras. 20-22; Czechoslovakia, para. 30; Iraq, paras. 9 and 10; Israel, paras. 1-8; Lebanon, paras. 17 and 27; Peru, para. 25; Poland, para. 31; Syria, paras. 12-14; Turkey, paras. 18 and 19; USSR, para. 30.

26. The Sixth Committee, in its report 23/ on the item to the General Assembly, stated that:

"It was understood, by the proponent of the draft resolution, as well as by other delegations supporting the motion, that the invitation to be addressed to the Secretary-General of the League of Arab States did not in any way imply that the Arab League was or was not a regional agency within the meaning of Chapter VIII of the Charter."

Decision

At its 299th plenary meeting on 1 November 1950, the General Assembly adopted 24/ by 29 votes to 1, with 5 abstentions, the draft resolution, which became resolution 477 (V), entitled "Permanent invitation to the Secretary-General of the League of Arab States to attend sessions of the General Assembly". The resolution read as follows:

"The General Assembly

"Requests the Secretary-General of the United Nations to invite the Secretary-General of the League of Arab States to attend sessions of the General Assembly as an observer."

B. The question of the relation between Article 52 (2) and (3) and Article 52 (4)

27. The provisions of Article 52 (2-4) have been the subject of substantial constitutional discussion during the consideration of the question of Guatemala by the Security Council.

28. The proceedings connected with this question have involved several problems of Charter application and interpretation and have a direct or indirect bearing on several Articles of the Charter. The question was brought before the Security Council by the Government of Guatemala under Articles 34, 35 and 39, as a complaint of aggression. The President (United States), after the adoption of the agenda at the 675th meeting on 20 June 1954, invited the representatives of Guatemala, Honduras and Nicaragua to come to the Council table under Article 32 which provides for such invitations only in the case of "disputes". When addressing the Council, the representative of Guatemala maintained that no dispute existed between Guatemala and any other State and that the question brought to the attention of the Council by his Government was an act of aggression; he later implied that it was a situation of the nature contemplated in Article 34. The question before the Council was variously referred to by representatives who participated in the discussion as a "situation", a "dispute", a "matter", a "complaint of aggression" and an "act of aggression". In addition to Article 52, Articles 24, 33, 34, 35, 36 and 39, as well as Chapter VIII as a whole, and, incidentally, Articles 37, 51, 53, 54 and 103 were invoked in the discussion. The Security Council, at its 675th meeting, failed to adopt a draft resolution which would have referred the question to the Organization of American States for urgent consideration with the request that it keep the Security Council informed of the measures it would be "able to take on the matter". At the same meeting the Council adopted a resolution by which it called for the immediate termination of any action

23/ G A (V), Annexes, a.i. 58, p. 6, A/1442.

24/ G A (V), Plen., vol. I, 299th mtg., p. 304.

likely to cause bloodshed and requested all Members of the United Nations to abstain from rendering assistance to any such action. At the next meeting dealing with the same question, the 676th held on 25 June 1954, the agenda was not adopted. The question has remained one of the matters of which the Security Council is seized.

29. In order to maintain a certain unity in the presentation of the proceedings relevant to the question, they are summarized below, while in most cases the studies in this Repertory on other Articles contain only brief references to these proceedings. The choice of entering this material as a whole under Article 52 has been determined by the consideration of the proceedings themselves, in the light of which the main question relating to the Charter which was involved would appear to be that of the relation between Article 52 (2) and (3) and Article 52 (4), a question which embraces two subsidiary questions relating respectively to the scope of the provisions of Article 52 (2) and (3), and the scope of the provisions of Article 52 (4).

30. Since these subsidiary questions are merely two different facets of the same general question relating to the Charter, the material entered under each of them is also to a greater or lesser extent relevant to the other.

1. The question of the scope of the provisions of Article 52 (2) and (3)

31. The provisions of Article 52 (2) and (3) deal exclusively with "pacific settlement of local disputes".

32. The question of Guatemala was submitted to the Security Council under Articles 34, 35 and 39 as a complaint of aggression. The Security Council, however, did not make any determination as to the nature of the question while the representative of one member of the Council maintained that the Council was confronted with an act of aggression; the representatives of all other members referred to the question in various terms, but mostly as a "situation" or a "dispute".

33. A considerable part of the discussion at the 675th meeting, in connexion with a draft resolution submitted by Brazil and Colombia which would have referred the complaint of Guatemala to the Organization of American States, as well as the discussion at the 676th meeting, in connexion with the adoption of the agenda, centred on the scope of the provisions of Article 52 (2) and (3).

34. While some representatives placed special emphasis on these provisions, other representatives stressed, in particular, the primary responsibility and authority of the Security Council for the maintenance of international peace and security, some of them expressly invoking Article 24 or Article 52 (4), or both.

35. The draft resolution submitted by Brazil and Colombia, as amended by the representative of France, with the concurrence of the sponsors, failed to be adopted at the 675th meeting. The agenda was not adopted at the 676th meeting.

a. FIRST DECISION OF 20 JUNE 1954 IN CONNEXION WITH
THE QUESTION OF GUATEMALA

36. In a cablegram dated 19 June 1954, 25/ the Minister for External Relations of Guatemala requested the President of the Security Council to convene a meeting urgently in order that, in accordance with Articles 34, 35 and 39, the Council might take the

25/ S C, 9th yr., Suppl. for April, May and June, pp. 11-13, S/3232.

measures necessary "to prevent the disruption of peace and international security in this part of Central America and also to put a stop to the aggression in progress against Guatemala". The communication stated that expeditionary forces coming from Honduras had captured a Guatemalan frontier post on 17 June 1954 and had advanced about fifteen kilometers inside Guatemalan territory. On 19 June 1954 aircraft coming from the direction of Honduras and Nicaragua had dropped explosive bombs on Guatemalan territory and had attacked Guatemala City and other towns.

37. The Security Council met on Sunday, 20 June 1954. After the adoption of the agenda, the President, acting under Article 32, invited 26/ the representatives of Guatemala, Honduras and Nicaragua to participate in the discussion.

38. The representative of Guatemala stated 27/ that Guatemala had been invaded by expeditionary forces forming part of an "unlawful international aggression" which was "the outcome of a vast international conspiracy," the background of which had been brought to the attention of the Security Council 28/ the previous year, and that the Government of Guatemala had two requests to make: first, it requested the Security Council to send a warning to the Governments of Honduras and Nicaragua calling upon them to apprehend the exiles and mercenaries who were invading Guatemala and whose bases were in Nicaragua and Honduras; secondly, it requested that an observation commission of the Security Council be constituted in Guatemala and in other countries, if necessary, to verify the fact that the countries accused by Guatemala had connived at the invasion. The representative of Guatemala added that the Inter-American Peace Committee of the Organization of American States had met the day before; that his Government, exercising the option which was open to the members of the Organization, had declined officially to allow the Organization of American States and the Inter-American Peace Committee to concern themselves with the situation.

39. The representative of Honduras expressed surprise at the charges made against his Government and stated that the matter should be referred to the Organization of American States. A similar request was made by the representative of Nicaragua. 29/

40. The representatives of Brazil and Colombia, calling attention to Chapter VIII 30/ and particularly to Article 52 (2) and (3), submitted a draft resolution 31/ which would have provided that the Security Council should refer the complaint of the Government of Guatemala to the Organization of American States for urgent consideration and should request the latter to inform the Council as soon as possible, as appropriate, of the measures it had been able to take on the matter.

41. The representative of France proposed 32/ that a final paragraph be added to the draft resolution submitted by Brazil and Colombia whereby the Council, without prejudice to such measures as the Organization of American States might take, would call for the immediate termination of any action likely to cause further bloodshed and would request all Members of the United Nations to abstain, in the spirit of the

26/ S C, 9th yr., 675th mtg., para. 2.

27/ Ibid., paras. 6, 10, 43-46 and 60.

28/ S/2988.

29/ S C, 9th yr., 675th mtg., paras. 62-65. The representative of Cuba, by a letter dated 20 June 1954 (S/3235/Rev.1) which was circulated to the members of the Council, expressed the opinion of his Government to the same effect.

30/ S C, 9th yr., 675th mtg., paras. 67, 68, 72 and 73.

31/ Ibid., S/3236, para. 69.

32/ S C, 9th yr., 675th mtg., para. 77.

Charter, from giving assistance to any such action. The amendment was accepted 33/ by the sponsors of the draft resolution, which, as amended, read as follows: 34/

"The Security Council,

"Having considered on an urgent basis the communication of the Government of Guatemala to the President of the Security Council (S/3232);

"Noting that the Government of Guatemala had dispatched a similar communication to the Inter-American Peace Committee, an agency of the Organization of American States;

"Having in mind the provisions of Chapter VIII of the Charter of the United Nations;

"Conscious of the availability of Inter-American machinery which can deal effectively with problems concerning the maintenance of peace and security in the Americas;

"Refers the complaint of the Government of Guatemala to the Organization of American States for urgent consideration;

"Requests the Organization of American States to inform the Security Council as soon as possible, as appropriate, on the measures it has been able to take on the matter;

"Without prejudice to such measures as the Organization of American States may take, the Council calls for the immediate termination of any action likely to cause further bloodshed and requests all Members of the United Nations to abstain, in the spirit of the Charter, from giving assistance to any such action."

42. During the debate on the amended draft resolution, the representative of Guatemala stated that Articles 33 and 52 were inapplicable since the question involved was not a dispute but an act of aggression. The request of Guatemala, he added, was based on Articles 34, 35 and 39. Although Articles 34 and 35 referred to disputes, and in that respect were not applicable, they also referred to "situations". Article 34 thus gave to Guatemala an unchallengeable right to appeal to the Security Council.

43. The representative of a member of the Council was also of the opinion that Article 52 was not applicable. Since there was a case of aggression, the Security Council was bound, under Article 24, to take immediate steps to end the aggression. Aggression was indivisible. There was no justification for referring the question to the Organization of American States merely because the aggression was taking place in Central America. Furthermore, since Guatemala had already declined the procedure of referring the question to the Organization of American States, the adoption of the draft resolution would be a violation of Article 36 (2).

44. The representative of another member was inclined, in the light of the incomplete information available, to consider that the situation in Guatemala did not involve aggression but was more in the nature of an internal revolt. It was the view of his Government that any Member of the United Nations had the right to ask for an urgent

33/ Ibid., paras. 82 and 85.

34/ Ibid., paras. 69 and 77.

meeting of the Security Council. The situation under consideration, however, seemed to be the kind of problem which, in the first instance, should be dealt with on an urgent basis by an appropriate agency of the Organization of American States rather than by the Security Council directly. The Council under that draft resolution would not be seeking to relieve itself of responsibility. The draft resolution was in accordance with Article 52; it would ask the Organization of American States merely to try to solve the problem and report back to the Security Council.

45. Views were expressed by other representatives to the effect that, without prejudging the merits of the case, Guatemala had been fully entitled to have recourse to the Security Council; that the Council was confronted with a state of affairs to which it could not remain indifferent since it raised a problem concerning the maintenance of peace and security, and that the urgency of the situation required that the Council act without delay. As to the question of what action it would be more appropriate to take in the first instance, some of these representatives, when announcing their support of the amended draft resolution submitted by Brazil and Colombia, voiced the following considerations: that it appeared to be difficult for the Security Council to take a decision on the substance of the problem without obtaining more complete information; that in a case such as that submitted by Guatemala, a regional organization might well be in the best position to ascertain facts and to recommend appropriate measures; that in referring the request of Guatemala to the Organization of American States as a matter of urgency the Security Council would not be delegating its responsibility to the Organization since it was requesting the Organization to report to the Council on the conclusions it might reach after carrying out its inquiry, and that it would rest with the Council to take the final decision; that the course recommended in the draft resolution appeared to be consistent with the overriding concern of the Council for the maintenance of international peace and security and was in conformity with Chapter VIII and in particular with Article 52.

46. A representative who opposed the draft resolution expressed the view that it would be difficult to adopt any complex resolution at the meeting. On the other hand immediate action was necessary. The Security Council should therefore limit itself to the adoption of a text along the lines of the amendment submitted by France. With reference to Article 52 (2) and (3) which had been quoted by the sponsors of the draft resolution, he pointed out that no one had quoted Article 52 (4), which laid down that: "This Article in no way impairs the application of Articles 34 and 35". The Council was, therefore, obliged to act under Articles 34 and 35 as well as under Article 24. The representative of Guatemala was also of the opinion that in the light of Article 52 (4) the Security Council was in duty bound to investigate the situation his Government had submitted. 35/

Decision

At the 675th meeting on 20 June 1954, the revised draft resolution submitted by Brazil and Colombia was not adopted. 36/ There were 10 votes in favour and 1 against (the vote against being that of a permanent member).

35/ For texts of relevant statements, see S C, 9th yr., 675th mtg.: Brazil, paras. 66-68; Colombia, paras. 72 and 73; France, paras. 75-77; Guatemala, paras. 6, 10 43-46, 60, 100-104 and 189-191; Honduras, para. 63; Lebanon, paras. 121-135; New Zealand, paras. 92-96; Nicaragua, para. 65; USSR, paras. 108-110, 119, 120, 144-152, 173, 176 and 185; United Kingdom, paras. 86-91; United States, paras. 155-158 and 170.

36/ S C, 9th yr., 675th mtg., para. 194. For text of draft resolution, see para. 41 above.

b. DECISION OF 25 JUNE 1954 IN CONNEXION WITH THE
QUESTION OF GUATEMALA

47. The representative of Guatemala, by letter dated 22 June 1954 37/ addressed to the Secretary-General, stated on behalf of his Government that the resolution adopted by the Council at its 675th meeting on 20 June 1954 (see paras. 61-64 below) had not been complied with by those States Members of the United Nations which had acquiesced in or assisted from their territories the acts of aggression suffered by Guatemala, and requested a meeting of the Security Council in order that the Council could use its authority with Honduras and Nicaragua as States Members of the United Nations to secure the cessation of all assistance to, or acquiescence in, the aggressive acts which were being committed by mercenary forces. The letter stated that:

"During the last forty-eight hours, aggressive acts against my country have continued by land, sea and air and have undoubtedly been committed from airfields and centres of operations situated outside Guatemalan territory while the Guatemalan National Army has confined its operations to the defence of the national territory and to repelling the aggressors." 38/

48. On 25 June 1954 the Security Council met again. The provisional agenda read as follows:

"1. Adoption of the agenda.

"2. Cablegram dated 19 June 1954 from the Minister for External Relations of Guatemala addressed to the President of the Security Council and letter dated 22 June 1954 from the representative of Guatemala addressed to the Secretary-General."

49. The President (United States) drew the attention of the members of the Security Council to various communications which had been received on the question, 39/ among them a cablegram 40/ dated 23 June 1954 from the Chairman of the Inter-American Peace Committee of the Organization of American States, informing the Security Council that on 23 June 1954 the representative of Nicaragua had proposed that a commission of inquiry of the Inter-American Peace Committee be established to proceed to Guatemala, Honduras and Nicaragua, and that the Committee had voted unanimously to deal with the question, and had so informed Guatemala. 41/

50. In response to a motion that the representative of Guatemala be invited to the Council table, the President ruled that it would not be in order to invite the representatives of Guatemala, Honduras and Nicaragua until after adoption of the agenda. The ruling of the President was maintained 42/ by the Council, a challenge having been rejected by 10 votes to 1.

37/ S C, 9th yr., Suppl. for April, May and June, pp. 14 and 15, S/3241.

38/ See also S/3238-S/3240, S/3242-S/3244, S/3246, S/3248 and S C, 9th yr., Suppl. for April, May and June, pp. 16 and 17, S/3245 and S/3247.

39/ S C, 9th yr., 676th mtg., paras. 1-6.

40/ S C, 9th yr., Suppl. for April, May and June, p. 16, S/3245.

41/ See also S/3256, S/3262, S/3267 and S C, 9th yr., Suppl. for April, May and June, pp. 17 and 18, S/3249 and S/3250.

42/ S C, 9th yr., 676th mtg., para. 63.

51. Constitutional discussion in the proceedings leading to the vote on the adoption of the agenda was along similar lines to the discussion at the 675th meeting.

52. The representatives of Brazil and Colombia, who had co-sponsored the draft resolution which failed of adoption at the previous meeting of the Security Council, referred to various provisions of the Charter, in particular to Article 52 (2) and (3) and expressed the view that, since the Organization of American States was already acting in the matter, it seemed reasonable that the Security Council should wait for the report of the Inter-American Peace Committee. The representatives of Brazil and Colombia announced that they would vote against the adoption of the agenda.

53. Three other representatives also announced their intention to vote against the adoption of the agenda for similar reasons. One of these representatives stated that he would oppose consideration by the Security Council of the Guatemalan dispute until the matter had first been dealt with by the Organization of American States, since it was necessary to preserve the balance struck by the Charter at San Francisco in 1945 regarding the relationship between the United Nations and regional organizations. Another representative declared that, by voting against the adoption of the agenda for the meeting, he was not voting for the removal of the item from the agenda which was quite another question.

54. One representative maintained that, since the question involved an act of aggression, it should be dealt with by the Security Council, the body upon which Article 24 laid primary responsibility for the maintenance of peace and security; to transfer the question to the Organization of American States would involve a violation of the Charter and undermine the authority of the Council.

55. Five representatives stressed repeatedly the authority and what was variously referred to as the "supreme responsibility", "primary responsibility" or "ultimate responsibility" of the Security Council for the maintenance of international peace and security, by reason of which the Security Council could not divest itself of its responsibility in connexion with the matter submitted by Guatemala. Three of the five representatives felt that, in any event, the question should be included in the agenda, although the debate could then be postponed, and one of them added that such postponement should take place only after hearing whether the representative of Guatemala had some new information or new proposals to offer, since it was of primary importance that a Member State which so desired should be afforded the opportunity to exercise its right to be heard by the Council. The other two representatives, when announcing their intention to abstain in the vote on the adoption of the agenda, maintained that an eventual refusal by the Council to adopt the agenda should not be interpreted as meaning in any way that the Council was disinteresting itself in the question or divesting itself of its ultimate responsibility with respect to it. In suspending its action until it was more fully informed, the Council was in no way jettisoning the matter. One of the two representatives added that, by applying the procedure provided in Article 52 (3), the Security Council was not declining any of

the responsibilities conferred upon it by paragraph 4 of the Article, which governed the interpretation of the preceding paragraphs. 43/

Decision

At the 676th meeting on 25 June 1954, the agenda was not adopted. 44/ There were 4 votes in favour and 5 against, with 2 abstentions.

2. The question of the scope of the provisions of Article 52 (4)

56. Article 52 (4) provides that Article 52 "in no way impairs the application of Articles 34 and 35".

57. During the proceedings in connexion with the question of Guatemala, which was submitted under Articles 34, 35 and 39, Article 52 (4) was expressly invoked 45/ by the representative of Guatemala and by two members of the Council as the paragraph which governed the interpretation of the preceding paragraphs of the Article.

43/ For texts of relevant statements, see S C, 9th yr., 676th mtg.: Brazil, paras. 23 and 27; China, paras. 123 and 124; Colombia, paras. 69-71, 73, 76 and 83; Denmark, paras. 131-134; France, paras. 97-100; Lebanon, paras. 102-107; New Zealand, paras. 125-130; Turkey, para. 110; USSR, paras. 148, 151 and 156-159; United Kingdom, paras. 87-90 and 93-96; United States, paras. 166-168; 178 and 181.

During the general debate at the ninth session of the General Assembly, the representatives of five Members of the United Nations, which are also members of the Organization of American States, made reference to the constitutional aspects of the proceedings of the Security Council in connexion with the question of Guatemala. Two representatives maintained that the Security Council had applied the principles of the Charter which, while affirming the universal jurisdiction of the United Nations, called for a resort first to regional arrangements and that this made it necessary to await the results of the inquiry and the measures decided upon by the regional agency before asking the United Nations to find a final solution. The three other representatives expressed views to the effect that the principles of a regional system and the safeguards which it offered could not be invoked in order to prevent States from having direct or immediate access to the jurisdiction of the United Nations or to deprive them no matter how temporarily of the protection of the latter; that the precedent established by the Security Council in the case of Guatemala was extremely dangerous since it implied a distorted interpretation of the Charter; that there may be cases in which it can legitimately be maintained that the United Nations and a regional organization have concurrent jurisdiction, but that to claim an exclusive jurisdiction for a regional organization would lead to the absurd position that a Member of the United Nations which was a party to a regional arrangement would be at a disadvantage as compared with other Member States which were not parties to any such arrangements; that the present provisions of the Charter were perfectly clear in this respect and that no other construction could validly be placed upon them. (G A (IX), Plen: 488th mtg., Argentina, paras. 83-89; 486th mtg., Brazil, para. 10; 485th mtg., Ecuador, paras. 57-58; 475th mtg., United States, para. 84; 481st mtg., Uruguay, paras. 15-19.)

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

45/ See paras. 46 and 55 above.

58. Article 52 (4) mentions only Articles 34 and 35. The possible effect which Article 52 might have upon the application of other Articles was not discussed in the above-mentioned proceedings. The statements ^{46/} of several representatives tended, however, to stress in various terms what was referred to by one ^{47/} of them as the "overriding concern" and the "supreme responsibility and authority" of the Security Council for the maintenance of international peace and security.

59. The Council, at its 675th meeting unanimously adopted a resolution of substance in connexion with the question of Guatemala which is briefly reviewed below. The resolution has a bearing on the general provisions of Article 24 and, in the absence of any indication by the Council of the specific Charter powers under which it chose to act, may be considered as falling either under Article 36 (1) or under Article 40.

60. The Security Council has remained seized of the question of Guatemala. Reference to the relevant summary statement and notification by the Secretary-General will be found below, together with a statement by the Secretary-General on the relationship under the Charter between the United Nations and regional arrangements, which is quoted as also throwing light on the constitutional question being examined here.

a. SECOND DECISION OF 20 JUNE 1954 IN CONNEXION
WITH THE QUESTION OF GUATEMALA

61. At the 675th meeting on 20 June 1954, during the discussion of the draft resolution submitted by Brazil and Colombia, as amended, the representative of Lebanon pointed out that a permanent member of the Council had criticized the text of the draft resolution, especially the paragraph which would refer the matter to the Organization of American States. He indicated that the possibility existed that the meeting would end without the Council taking any decision. In as urgent and serious a situation as the one being considered by the Council, this would be regrettable from the standpoint of the authority and dignity of the Council. To avoid it, he proposed that a text be sought to which there was no objection, and suggested, among other methods, the adoption of the text of the amendment submitted by France, since it seemed to have met with general approval.

62. Subsequently, the same representative asked the representative of France whether, in the event that the draft resolution submitted by Brazil and Colombia was not adopted, he would be willing to present the text of his amendment as an independent proposal. The representative of France replied in the affirmative.

63. After the President had announced the non-adoption of the draft resolution submitted by Brazil and Colombia, as amended, the representative of France recalled the statement of the representative of Lebanon and stated that he proposed to re-introduce his amendment as a separate draft resolution in order that the Council might give expression to its authority and make a general appeal to end the bloodshed. He added that the step he was taking should not be construed as casting doubt on, or weakening, the competence of the Inter-American Peace Committee. ^{48/}

^{46/} See paras. 45, 54 and 55 above.

^{47/} S C, 9th yr., 676th mtg., New Zealand, paras. 125, 129.

^{48/} For texts of relevant statements, see S C, 9th yr., 675th mtg.: France, paras. 142 and 198-200; Lebanon, paras. 121-135 and 141.

Decision

At the 675th meeting on 20 June 1954, the Security Council unanimously adopted 49/ the draft resolution submitted by France. The resolution read as follows:

"The Security Council,

"Having considered on an urgent basis the communication of the Government of Guatemala to the President of the Security Council (S/3232).

"Calls for the immediate termination of any action likely to cause bloodshed and requests all Members of the United Nations to abstain, in the spirit of the Charter, from rendering assistance to any such action."

64. After the adoption of the resolution, four representatives stated 50/ in explanation of their votes that they had voted in favour of the draft resolution submitted by France with the understanding that it would not in any way impair the competence of the Organization of American States.

b. INCLUSION OF THE QUESTION OF GUATEMALA IN THE NOTIFICATION
TO THE GENERAL ASSEMBLY UNDER ARTICLE 12 (2)

65. Pursuant to rule 11 of the provisional rules of procedure of the Security Council, the Secretary-General has issued periodically a "summary statement by the Secretary-General on matters of which the Security Council is seized and on the stage reached in their consideration". The question of Guatemala was first included in the summary statement dated 29 June 1954, 51/ and has continued to be included in all subsequent summary statements.

66. By letter 52/ dated 21 September 1954, the Secretary-General transmitted to the President of the General Assembly "In accordance with the provisions of Article 12, paragraph 2, of the Charter of the United Nations and with the consent of the Security Council ... a notification to the General Assembly listing matters relative to the maintenance of international peace and security which are being dealt with by the Security Council".

67. The question of Guatemala was listed 53/ in the notification as one of the "matters relative to the maintenance of international peace and security which are being dealt with by the Security Council, and which have been discussed during the period" since the notification of the previous year.

49/ S C, 9th yr., 675th mtg.: para. 203. See also S/3255, and S/3255/Add.1 and 2.

50/ S C, 9th yr., 675th mtg.: Brazil, para. 205; Colombia, para. 206; New Zealand, para. 214; United States, para. 220.

51/ S/3257. The question appeared in the summary statement under the title under which it was included in the agenda of the 675th meeting on 20 June 1954, namely "Cablegram dated 19 June 1954 from the Minister for External Relations of Guatemala addressed to the President of the Security Council".

52/ A/2732.

53/ The question appeared under the same title as in the weekly summary statement (see footnote 51).

C. STATEMENT BY THE SECRETARY-GENERAL ON THE RELATIONSHIP UNDER THE CHARTER
BETWEEN THE UNITED NATIONS AND REGIONAL ARRANGEMENTS

68. In the introduction to his ninth annual report on the work of the Organization submitted to the General Assembly, the Secretary-General stated: 54/

"The balance to be struck here must be struck with care.

"For example, the importance of regional arrangements in the maintenance of peace is fully recognized in the Charter and the appropriate use of such arrangements is encouraged. But in those cases where resort to such arrangements is chosen in the first instance, that choice should not be permitted to cast any doubt on the ultimate responsibility of the United Nations. Similarly, a policy giving full scope to the proper role of regional agencies can and should at the same time fully preserve the right of a Member nation to a hearing under the Charter."

54/ G A (IX), Suppl. No. 1 (A/2663), p. xi.